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Federal Court decides to keep split claims within jurisdiction of tribunal for homebuyers claims

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Introduction

One of the questions before the Federal Court in *Remeggious Krishnan v SKS Southern Sdn Bhd*⁽¹⁾ was whether a "split claim" could be filed by a homebuyer with the tribunal for homebuyers claims regarding the same subject property where the total amount of dispute of the claims exceeded the monetary jurisdiction of the tribunal.

The Federal Court held that a homebuyer could file a split claim in this situation, thus paving the way for homebuyers to be allowed to file separate claims under the maximum threshold of section 16M(1) of the Housing Development (Control and Licensing) Act 1966 (HDA). The claim can be within the jurisdiction of the tribunal so long as the separate claims relate to different issues. This is notwithstanding that these may be related to the same property. This article is focused on this question in particular as decided by the Federal Court.

Facts

The respondent was the developer of a project known as "Sky Habitat @ Meldrum Hill, Johor Bahru". The appellant purchased one of the units in the project. In the sale and purchase agreement (SPA) signed between the appellant and respondent, delivery of vacant possession was set at 36 months from the date of the SPA.

The respondent had informed the appellant of its readiness to deliver vacant possession by the respondent's notice dated 24 April 2018. However, the property was delivered with no electricity supply. Although an application was sent to Tenaga Nasional Berhad and the respondent had paid the deposit, the appellant filed two claims with the tribunal for homebuyers claims against the respondent, namely:

- a non-technical claim for 49,832 Malaysian ringgits; and
- a technical claim for 40,000 Malaysian ringgits.

The tribunal heard the non-technical claim and awarded a sum of 16,452.05 Malaysian ringgits with costs of 400 Malaysian ringgits in favour of the appellant. The respondent then applied for leave to issue judicial review against the tribunal and the appellant. The respondent sought to declare the decision as invalid, null and void on two bases:

- The appellant had filed two separate claims with the tribunal contrary to sections 16M(1) and 16Q of the Housing Development (Control and Licensing) Act (HDA) 1966.
- The tribunal had erred in awarding damages to the appellant for the non-connection of electricity to the property.

Sections 16M and 16Q of the HDA are reproduced as follows:

- Section 16M of the HDA lists these provisions:

(1) Subject to sections 16N and 16Q, the Tribunal shall have jurisdiction to determine a claim lodged under section 16L where the total amount in respect of which an award of the Tribunal is sought does not exceed fifty thousand ringgit.

(2) Subject to subsection (1), a respondent to a claim may raise a debt or liquidated demand as-

(a) a defence; or

(b) a counterclaim.

(3) Where a respondent raises a debt or liquidated demand under subsection (2) and the debt or demand is proved the Tribunal shall-

(a) give effect to the defence; or

(b) hear and determine the counter-claim notwithstanding that the original claim is withdrawn, abandoned or struck out.

(4) Any claim lodged with the Tribunal may include loss or damage of a consequential nature.

- Section 16Q of the HDA states that "[c]laims may not be split, nor more than one claim brought, in respect of the same matter against the same party for the purpose of bringing it within the jurisdiction of the Tribunal".

Decision

High Court

The High Court dismissed the respondent's application on the basis that section 16Q of the HDA permits the filing of split claims if the

respondent chose to deal with the split claims and that the discretion should not be interfered with. Although the claims were split, they were for two different claims, one being a technical claim and the other a non-technical claim. The respondent then appealed against the High Court's decision.

Court of Appeal

Upon hearing the respondent's appeal, the Court of Appeal unanimously allowed the appeal with costs. The Court of Appeal held that section 16M(1) of the HDA ought to be read together with section 16Q of the HDA. When reading section 16Q as a whole, the Court of Appeal held that there was no prohibition against the filing of "split claims" provided the total amount remains within the jurisdiction of the tribunal. Further, even though the appellant's claims were for different claims, this was immaterial, and the tribunal had no jurisdiction to hear the two split claims as these were beyond the jurisdiction of the tribunal and were contrary to sections 16M(1) and 16Q of the HDA.

The appellant thus appealed to the Federal Court where leave was granted for an appeal to be filed on four questions of law. One of these being in view of sections 16Q and 16M of the HDA, whether the tribunal had jurisdiction to hear 2 separate claims in respect of the same subject property where the total amount of the two claims exceeded the monetary jurisdiction of 50,000 Malaysian ringgits.

Federal Court

The Federal Court answered this question affirmatively. In doing so, the Court held that it was necessary to allude to the purpose and objective of the HDA which is to protect house buyers. As such, any term in the HDA had to be interpreted in a manner that would afford the most protection to house buyers.

The words "the same matter" in section 16Q of the HDA were interpreted as meaning the same issue or type of claim and not the same property. Hence, the two claims were not barred under section 16Q given that they related to two different issues, one technical (relating to the respondent's failure on some structural elements of the property) and the other non-technical (relating to breach of manner of delivery of the property).

Further, the monetary jurisdiction of the tribunal being limited to 50,000 Malaysian ringgits under section 16M of the HDA was only in respect of one claim, rather than in respect of all the claims. As such, even if the claims combined would exceed the sum of 50,000 Malaysian ringgit, this would not cause section 16M of the HDA to be invoked. In the event that this was invoked, this would result in the appellant's claims falling outside the jurisdiction of the tribunal.

In its conclusion, the Federal Court added that there may be a situation where a purchaser files two claims for the same matter in which the combined amount of the split claims exceeds the monetary judgment of the tribunal. There, the tribunal may exercise its discretion to disallow these types of claims to be split.

Comment

Arguably, drawing the distinction between what would be regarded as the same matter (ie, the same issue) as opposed to the same project is a step towards allowing homebuyers to access to the remedies available under the HDA. Bearing in mind the overall objective of the HDA of affording protection of the purchasers' interests, the Federal Court's judgment here appears to be a step in the right direction, although the distinction drawn could be seen as arbitrary. Hence, purchasers need to tread carefully when bringing their claims before the tribunal. Where a matter would exceed the monetary limit prescribed under section 16M of the HDA, a homebuyer would need to seek remedy in the courts, or risk having their claim dismissed by the tribunal or later set aside by the courts even if previously allowed.

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Endnotes

(1) [2023] 1 LNS 362.