

JUDGMENT Express

[2026] 3 MLRA

UEM Land Berhad
v. Mohd Khalid Mohd Noor

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UEM LAND BERHAD v. MOHD KHALID MOHD NOOR

Court of Appeal, Putrajaya
Mohd Nazlan Mohd Ghazali, Mohd Firuz Jaffril, Lim Hock Leng JJCA
[Civil Appeal No: W-02(NCvC)(W)-1616-09-2024]
19 February 2026

Contract: Breach — Early termination of tenancy agreement by appellant — Whether termination unjust and invalid — Whether cl 6 and cl 15 had to be read together — Whether respondent's acceptance of letter of termination signified acceptance of termination of agreement — Whether early termination had to be agreed upon and reasons for termination provided by terminating party — Whether respondent's reliance on s 29 Contracts Act 1950 and doctrine of legitimate expectation without basis

The appellant had appointed the respondent as the operator of a turf farm on a parcel of land owned by it, and the parties thereafter entered into a tenancy agreement dated 12 January 2017 concerning the respondent's use of the land for turf farming and supply, for a tenure of 3 years. The agreement was entered into following the respondent's presentation of a proposal of its intention to use the rented land to plant a particular type of grass (cow grass), which it would then supply to the appellant and/or the appellant's subsidiary for use in their development project, at a fixed and discounted rate. Clause 6 of the tenancy agreement provided for termination/discharge in the specific circumstances set out thereunder, and under cl 15 of the tenancy agreement, the appellant had the right to terminate the agreement by giving 3 months' prior notice of its intention to do so. Prior thereto, the respondent on 28 September 2016 signed a declaration letter (vendor declaration) declaring *inter alia* that it had not offered any bribe or improper advantage to anyone in the appellant company as inducement for being selected for a business transaction or for any other purpose connected thereto, and agreed that the appellant had the right to immediately revoke/terminate the tenancy agreement in the event of a breach by the respondent of any of the undertakings and declarations thereunder. The respondent was subsequently implicated in the Malaysian Anti-Corruption Commission's investigations involving the appellant's Deputy General Manager and the respondent's employee. The respondent's involvement in the said investigations pertained to documents and agreements executed between the respondent and the appellant. Consequent thereto, and in light of the appellant's zero tolerance policy on corruption pursuant to the vendor declaration, the respondent was informed that the tenancy would be mutually terminated, and on 23 May 2018 the respondent was issued with a 3 months' notice of termination. The respondent accepted the terms of the termination letter by signing thereon but 2 years thereafter sued the appellant



for breach of contract by the early termination of the tenancy agreement. The High Court Judge (HCJ) in finding in favour of the respondent held *inter alia* that the mutual termination of the tenancy agreement was a variation of the tenancy agreement in the absence of any option therein for mutual termination; that cl 15 could not be read independently but must be read together with cl 6 which stated that the tenancy agreement could be terminated only upon the default by the respondent; that the vendor declaration could not be relied on by the appellant as there was no mention of any such declaration in the tenancy agreement; that the complicity between the respondent and the appellant's deputy GM was not established; and thus, the termination of the agreement was invalid and unjustified. Hence the instant appeal. The appellant submitted *inter alia* that the HCJ had erred in holding that cls 6 and 15 must be read together; that the parties were entitled to terminate the agreement by giving 3 months' notice, and that no steps were taken by the respondent to object to the termination letter. The respondent submitted *inter alia* that the appellant's unilateral termination of the tenancy agreement was unjust and invalid as no reasons were given for the termination; that the acceptance of the letter of termination did not signify acceptance of the termination of the agreement; that it had a legitimate expectation that the appellant would purchase the cow grass.

Held (allowing the appeal):

- (1) In view of the words 'Notwithstanding anything contained herein...' in cl 15 of the tenancy agreement, both cl 6 and cl 15 must be read independently of the other, contrary to the HCJ's conclusion that the said clauses must be read together. (paras 29-30)
- (2) Reading the tenancy agreement as a whole, it was clear that the agreement provided for 2 modes of termination, i.e. under cl 6, pursuant to a default which had not been rectified by the respondent, and under cl 15, which catered for an early termination scenario by the respondent or the appellant, by giving 3 months' notice. There was no requirement under cl 15 for early termination to be agreed upon by the other party or for the terminating party to provide reasons for the early termination, contrary to the HCJ's finding. (paras 31-32)
- (3) The contradiction in evidence as to whether the respondent had agreed to the termination of the tenancy agreement by signing the termination letter or merely acknowledging receipt of it did not affect the validity of the early termination, so long as the requirements of cl 15 were complied with by the appellant. In this regard, the respondent's reliance on s 29 of the Contracts Act 1950, which rendered void any agreement that absolutely restricted a party from enforcing its rights under the contract through ordinary legal proceedings or limits time for doing so, was without merit. (para 33-34)
- (4) The respondent's reliance on the doctrine of legitimate expectation for the appellant to purchase the cow grass was without basis, as the said doctrine



applied only to matters of public law and not private law disputes such as that in the present case. (para 35)

Case(s) referred to:

Arnold v. Britton & Ors [2015] UKSC 36 (refd)

Bank of Credit and Commerce International SA v. Munawar Ali [2001] 2 WLR 735 (refd)

Berjaya Times Square Sdn Bhd v. M-Concept Sdn Bhd [2009] 3 MLRA 1 (refd)

GPQ Sdn Bhd v. Constant View Sdn Bhd [2017] 4 MLRA 483 (refd)

Investors Compensation Scheme Ltd v. West Bromwich Building Society [1998] 1 All ER 98 (refd)

Perembun (M) Sdn Bhd v. Conlay Construction Sdn Bhd [2012] 2 MLRA 71 (refd)

SPM Membrane Switch Sdn Bhd v. Kerajaan Negeri Selangor [2016] 1 MLRA 1 (refd)

Legislation referred to:

Contracts Act 1950, s 29

Counsel:

For the appellant: Harjinder Kaur Ajaib Singh (Ainnur Annisa Abdul Razak, Toh Xin Yi with her); M/s Shahrizat Rashid & Lee

For the respondent: Ng Yih Miin (Felyna Mustafa Kamal with her); M/s T S Ong & Ng

[For the High Court judgment, please refer to *Mohd Khalid Mohd Noor v. UEM Land Berhad* [2024] MLRHU 1945]

JUDGMENT**Mohd Firuz Jaffril JCA:****INTRODUCTION**

[1] The present appeal concerns a cause of action for breach of contract in the form of an early termination of a three (3) year tenancy agreement. The facts of this appeal are as gathered from the judgment of the learned High Court Judge ('HCJ') and from the submissions of the parties. We respectfully adopt them, subject to some modifications.

[2] For purposes of convenience, the parties shall be referred to as per their capacity in this appeal.

BACKGROUND

[3] Vide a letter dated 2 April 2015 titled "Proposed Planting of Axonopus Compressus (Cow Grass) For Commercial Purposes at the Designated Land Area in Cyberjaya, Bangi, ET AL" the Respondent made a proposal to a subsidiary company of the Appellant, UEM Sunrise Berhad, which included, *inter alia*, the following:



- 3.1 The Respondent would be permitted to rent a plot of land (approximately 30 acres) owned by the Appellant/ UEM Sunrise for a minimum tenure of three (3) years, with the option to renew.
- 3.2 The Respondent intended to use the rented land to plant *Axonopus Compressus* (a type of grass hereinafter referred to as “Cow Grass”).
- 3.3 In return for leasing the land, the Respondent would supply Cow Grass to the Appellant and/ or UEM Sunrise for use in the ‘Serene Heights Development Project’ at a fixed and discounted rate.

[4] On 27 January 2016, the Respondent presented their proposal to the Appellant via PowerPoint slides (“the presentation”). The presentation, conducted by Encik Mohd Khalid and Encik Mohd Noor, SP1 and SP2 respectively, was delivered in both English and Bahasa Malaysia.

[5] Subsequently, a letter of appointment dated 21 June 2016, was issued to the Respondent titled “Appointment of Emkay Enterprise (‘Emkay’) as the Operator of the Turf Farm on a Parcel of UEM Land Berhad (‘UEM Land’)s Land (26.71 acres) at Serene Heights, Bangi for a period of three (3) years with an option to renew on a 1+1 year basis for a nominal fee of RM1.00 as the tenancy fee” (“the Letter of Appointment”). The salient terms of the Letter of Appointment are, *inter alia*, as follows:

- “5. All costs and liabilities arising from the work done on the Land to clear the Land, set up and operate the turf farm shall be borne by Emkay solely and the UEM Land shall not be made accountable to any of the aforesaid costs and liabilities;
6. Prior to the expiration of the tenancy period, UEM Land shall be able to terminate the tenancy by giving a written notice to Emkay.”

Refer to *Ikatan Teras Bersama* (Jilid 2), pp 233-234 (marked as P179).

[6] On 28 September 2016, the Respondent completed and signed a General Vendor Registration Form together with a Declaration Letter (“Vendor Declaration”) wherein the Respondent declared and gave an undertaking of the following:

- 6.1 That the Respondent (as the Vendor company) did not and/ or would not, either directly or indirectly, promise, offer or give any bribe or an improper advantage to any person in the Appellant as an inducement for being selected for a business transaction and/ or for any other purpose connected to the business transaction.
- 6.2 That the Respondent, vide the Vendor Declaration, had also agreed that should the Respondent, its directors, officers or employees be in breach of any of the declarations and undertakings stated therein, the Appellant would have the right to immediately revoke



and/ or terminate the Tenancy Agreement without any liability towards the Appellant.

[7] On 12 January 2017, the Respondent and Appellant entered into the Tenancy Agreement concerning the Respondent's use of land for turf farming and supply. The Tenancy Agreement included, but was not limited to, the following terms and conditions:

"15. EARLY TERMINATION

15.1 Notwithstanding anything contained herein, the Landlord shall have the right to terminate this Agreement by giving the Tenant three (3) month prior notice in writing of its intention to terminate whereupon the Landlord shall not be required to pay any compensation whatsoever to the Tenant upon the exercise of such a right, but without prejudice to any action or other remedy which the Landlord has or might otherwise have for the recovery of damages or arrears from the Tenant as a result of such a termination.

15.2 Notwithstanding anything contained herein, the Tenant shall have the right to terminate this Agreement by giving the Landlord three (3) months prior notice in writing of its intention to terminate whereupon the Landlord shall re-enter upon the Demised Premises or any part hereof in the name of the whole, but without prejudice to any action or other remedy which the Landlord has or might otherwise have for the recovery of damages or arrears as a result of such termination.

APPENDIX II

2. Costs

The Tenant shall bear all the costs incurred directly or incidental in setting up and operating the Turf Farm. The Landlord shall not be made accountable for any part of the aforesaid costs incurred."

[8] Subsequent investigations by the Malaysian Anti-Corruption Commission (Suruhanjaya Pencegahan Rasuah Malaysia) ("MACC") involving the Appellant's Deputy General Manager, Noor Hisyam Mohd Abdullah Hashim, led to the Respondent being called for questioning on 5 February 2018:-

8.1 SP2, an employee of the Respondent, was questioned, investigated, and arrested by MACC in relation to an ongoing investigation.

8.2 Meanwhile, En Noor Hisyam, also implicated in these investigations, was administratively suspended and later charged by the Appellant for serious misconduct, including receiving RM30,000.00 from SP2 in 2015, leading to his termination by the Appellant on 15 November 2018.



8.3 The Respondent's involvement in the MACC investigations pertains to documents and agreements executed and signed between the Respondent and the Appellant.

8.4 Subsequently, En Noor Hisyam faced additional charges from MACC and was sentenced by the Special Court of Corruption Johor Bahru on 6 August 2020.

Termination of the Tenancy Agreement

[9] On 21 March 2018, a meeting was held between the Appellant's representatives, Encik Mohd Nor Hilmi bin Ahmad Mustami and Encik Yusri bin Ahmad, SD1 and SD2 respectively, and the Respondent at Serene Heights ("the March 2018 meeting"):

9.1 The Respondent was informed that, in light of the Appellant's Zero Tolerance Policy on Corruption pursuant to the Vendor Declaration, all companies implicated by MACC investigations would be terminated. Since the Respondent was implicated in the investigations, they would be given a three (3) months' notice of termination, and the Tenancy Agreement would be mutually terminated.

9.2 The Respondent was at all material times aware and understood that the Appellant would issue a three (3) months' termination notice pursuant to the Tenancy Agreement.

[10] On 23 May 2018, the Appellant's representative met with the Respondent to serve the three (3) months' Termination Letter as discussed in the March 2018 meeting.

10.1 The Respondent, being aware of and present at the discussion in March 2018, had full knowledge that the Appellant was serving such notice vide the Termination Letter.

10.2 The Respondent accepted the terms stated in the Termination Letter and signified his acceptance by signing the Termination Letter.

LEGAL PROCEEDINGS

[11] Circa two (2) years after the issuance of the Termination Letter and termination of the Tenancy Agreement, the Respondent commenced civil proceedings against the Appellant via the Writ of Summons and Statement of Claim dated 26 November 2020.

[12] Trial commenced on 11 July 2023 and continued on various dates, namely 1 September 2023, 5 September 2023, 22 April 2024 and was concluded on 18



June 2024. The High Court subsequently delivered its decision on 30 August 2024.

The High Court's Decision

[13] In arriving at his decision, the HCJ took the view that there were two (2) issues which required determination:

- (i) Whether the investigation by the MACC justified the Defendant in terminating the Agreement; and
- (ii) Whether the Plaintiff had agreed to the Termination of the Agreement.

[14] With reference to the 1st issue, the findings of the HCJ are summarised as follows:

- (i) the Defendant's main justification in terminating the Agreement is the investigations conducted by the MACC in relation to the agreement as it had sullied the reputation of the Defendant. That being the case, the Plaintiff and Defendant had agreed to terminate the agreement by entering into the Termination Agreement;
- (ii) Whilst the Plaintiff agrees that the MACC investigation was the actual cause for the termination, he denies that he had mutually agreed to the termination;
- (iii) The purported Termination Agreement did not give any reasons for the termination apart from stating:

“The Landlord and the Tenant have agreed to mutually terminate the Tenancy Agreement effective upon expiry of 3 months from the date of this letter without recourse to each other...”
- (iv) The non-disclosure of the reasons for termination is a material omission which renders the Termination Agreement defective;
- (v) Under the Tenancy Agreement there is no option for mutual termination. The mutual termination is therefore a variation to the Tenancy Agreement. Any such variation must be agreed by both parties;
- (vi) Clause 15 of the Tenancy Agreement which the Defendant contends allows them to terminate by giving a 3 months' notice cannot be read independently. It must be read together with cl 6 thereof which states that the Tenancy Agreement can be terminated only on the default by the Plaintiff. If the Defendant can apply cl 15 at their whims and fancy, the Court deems the clause to be unconscionable and therefore unlawful;



- (vii) Reliance on cl 15 is also misconceived and an afterthought as the defendant's main defence was the Termination Agreement. The Defendant cannot approbate and reprobate their reliance on the Tenancy Agreement and the Termination Agreement to suit their purpose. If the Defendant was relying on cl 15 of the Tenancy Agreement, they would not have gone out of their way to obtain the Plaintiff's consent to sign the Termination Agreement;
- (viii) The Defendant cannot rely on a Vendor's Declaration dated 28 September 2016 signed by the Plaintiff pledging not to be involved in any corrupt practice as the Termination Agreement did not mention anything about the declaration;
- (ix) More importantly, it was the Defendant's Deputy General Manager that was charged. Neither the Plaintiff nor any of its employees were charged in Court although they were called for questioning. The complicity of the Plaintiff with the Defendant's Deputy General Manager has not been established. Suspicion alone cannot be a basis to implicate the Plaintiff with any offence; and
- (x) Hence, the Termination Agreement relied on by the Defendant to terminate the Agreement is not only invalid but also unjustified.

[15] With reference to the 2nd issue, the HCJ found that the termination was not mutual but a unilateral termination which was not justified under the Agreement. Coupled with the findings on the 1st issue, the HCJ concluded that the Defendant had breached the Tenancy Agreement with the Plaintiff.

[16] Dissatisfied with the decision of the HCJ, the Defendant appealed to this Court.

THE APPEAL

Summary of The Defendant's Submission

[17] At the hearing of the appeal, learned counsel for the Defendant canvassed the following grounds in support of the appeal:

- (i) The Learned High Court Judge erred in holding that cl 15 must be read together with cl 6 of the Tenancy Agreement.
- (ii) The Defendant's reliance on cl 15 of the Tenancy Agreement is not an afterthought and parties are entitled to terminate the Tenancy Agreement by issuing a three (3) months' notice.
- (iii) The Plaintiff's allegation of being misrepresented by the Defendant is unsustainable.



- (iv) Despite the issuance of the Termination Letter, the Plaintiff did not take any steps to object to the Termination Letter.
- (v) The Learned High Court Judge erred in treating SP1 and SP2's admissions as conclusive proof that the MACC investigation was merely speculative and unrelated to the Tenancy Agreement.

Summary of The Respondent's Submission

[18] In response, learned counsel for the Respondent submitted as follows:

- (i) This appellate Court should not reverse the finding of facts by the learned HCJ;
- (ii) The termination of the agreement was unjust as the Respondent was not convicted nor charged by the MACC;
- (iii) The Appellant had no valid reason to terminate the agreement. Hence the termination was unjust and invalid;
- (iv) The agreement was unilaterally terminated by the Appellant;
- (v) The Respondent's acceptance of the letter of termination does not signify his acceptance of the termination of the agreement;
- (vi) The Appellant has been unjustly enriched;
- (vii) Adverse inference ought to be invoked against the Appellant for their failure to call a material witness ie the photographer who took the photos of the 'turf farm';
- (viii) Clause 15 and cl 2 of Appendix II to the Tenancy Agreement runs foul of the provisions of s 29 of the Contracts Act;
- (ix) The Respondent suffered losses as a result of the termination;
- (x) The secondary evidence adduced by the Respondent was correct;
- (xi) The Appellant cannot rely on the 'General Vendor Registration Form' as it was not marked as an exhibit by the court;
- (xii) The Respondent had a legitimate expectation for the 'cow grass' to be purchased by the Appellant; and
- (xiii) The Defendant's witnesses were not reliable.

PRINCIPLES ON APPELLATE INTERVENTION

[19] It is trite law that an appellate court will be slow to interfere with the findings of facts and judicial appreciation of the facts of the trial judge. Such intervention is however warranted when:



- a. The judgment is based upon a wrong premise of fact or law;
- b. There was insufficient judicial appreciation by the trial judge of the evidence circumstances placed before him;
- c. The trial judge had overlooked the inherent probabilities of the case;
- d. The course of events affirmed by the trial judge could not have occurred;
- e. The trial judge had made an unwarranted deduction based on faulty reasoning from admitted or established facts; and
- f. The trial judge had so fundamentally misdirected himself that one may safely say that no reasonable court which had properly directed itself and asked the correct questions would have arrived at the same conclusion. (see *Perembun (M) Sdn Bhd v. Conlay Construction Sdn Bhd* [2012] 2 MLRA 71).

[20] Having reviewed the record of appeal and the submission of the parties, we agree with the HCJ's finding that the termination was not mutual but a unilateral termination. This was a finding of fact that an appellate court will not interfere unless it is shown that the HCJ's finding was one that was plainly wrong or one which no reasonable court, given the same facts and circumstances, would have arrived at the same conclusion.

[21] Despite agreeing with the above finding of fact, we are of the unanimous view that the HCJ had arrived at his decision based upon a wrong premise of law on the following findings:

- (i) That the non-disclosure of the reasons for termination is a material omission which renders the Termination Agreement defective;
- (ii) That since there is no option for mutual termination under the Tenancy Agreement, the Termination Agreement amounts to a variation which must be agreed by both parties;
- (iii) That cl 15 of the Tenancy Agreement which the Defendant contends allows them to terminate by giving a 3 months' notice cannot be read independently. It must be read together with cl 6 thereof which states that the Tenancy Agreement can be terminated only on the default by the Plaintiff. If the Defendant can apply cl 15 at their whims and fancy, the Court deems the clause to be unconscionable and therefore unlawful; and
- (iv) Despite making a finding that the termination was not mutual but a unilateral termination, the HCJ concluded that the termination of the Tenancy Agreement was not justified.



Our analysis

[22] To begin with, we wish to emphasise that the principles of contractual interpretation can be summarised as follows:

[22.1] In *Berjaya Times Square Sdn Bhd v. M-Concept Sdn Bhd* [2009] 3 MLRA 1 at paragraph [42], the Federal Court emphasised that a contract is to be interpreted in accordance with the following guidelines. First, a court interpreting a private contract is not confined to the four corners of the document. It is entitled to look at the factual matrix forming the background to the transaction. Second, the factual matrix which forms the background to the transaction includes all material that was reasonably available to the parties. Third, the interpreting court must disregard any part of the background that is declaratory of subjective intent only. Lastly, the court should adopt an objective approach when interpreting a private contract. See, *Investors Compensation Scheme Ltd v. West Bromwich Building Society* [1998] 1 All ER 98. As Lord Clyde said in *Bank of Credit and Commerce International SA v. Munawar Ali* [2001] 2 WLR 735:

The knowledge reasonably available to them (that is to say the parties to the contract) must include matters of law as well as matters of fact. The problem is not resolved by asking the parties what they thought they intended. It is the imputed intention of the parties that the court is concerned to ascertain. The parties may well have never applied their minds to the particular eventuality which has subsequently arisen, so that they may never in fact have had any conscious intention in relation to that eventuality. It is an objective approach which is required and a solution should be found which is both reasonable and realistic. The meaning of the agreement is to be discovered from the words which they have used read in the context of the circumstances in which they made the agreement. The exercise is not one where there are strict rules, but one where the solution is to be found by considering the language used by the parties against the background of the surrounding circumstances.

...

The most recent statement of the guideline to interpretation of contracts statutes and other instruments is to be found in *Attorney General of Belize v. Belize Telecom Limited* [2009] UKPC 10, where when delivering the Advice of the Board, Lord Hoffmann said:

“The court has no power to improve upon the instrument which it is called upon to construe, whether it be a contract, a statute or articles of association. It cannot introduce terms to make it fairer or more reasonable. It is concerned only to discover what the instrument means. However, that meaning is not necessarily or always what the authors or parties to the document would have intended. It is the meaning which the instrument would convey to a reasonable person having all the background knowledge which would reasonably be available to the audience to whom



the instrument is addressed: see *Investors Compensation Scheme Ltd v. West Bromwich Building Society* [1998] 1 WLR 896, 912-913. It is this objective meaning which is conventionally called the intention of the parties, or the intention of Parliament, or the intention of whatever person or body was or is deemed to have been the author of the instrument. ”

[23] In giving effect to a term of an agreement, this Court ought to give emphasis to the natural meaning of the words used in the Agreement. This methodology in interpreting the provisions of a written contract finds its source from the UK Supreme Court in *Arnold v. Britton & Ors* [2015] UKSC 36.

[24] The facts in the above case are summarised below:

“Paddy Arnold, landlord of Oxwich Leisure Park, near Swansea, claimed Britton, the tenant with 42 others, should pay service repairs at 10% increases every year, as their contract expressly stated. Britton and others had leases for holiday chalets for 99 years from 1974. The total number of properties concerned was 25. (The Lessee may be one or more persons).

Clause 3(2) of the lease states that the respondent being the current owner of the Leisure Park and the landlord under the leases, requires the lessee to pay for the first year of the term a fixed sum representing a 10% increase on the previous year — ie an initial annual service charge of £90, which increases at a compound rate of 10% in each succeeding year.”

[25] The owner of the caravan park considered that the service charge provision required the tenants to pay an initial annual service charge of £90, increasing at a compound rate of 10% in each succeeding year. The owner’s interpretation meant that the annual service charge payable by each of the tenants would be over £500,000 by 2072.

The issue on appeal was whether the landlord’s interpretation of the service charge clause was correct.

The tenants argued that the clause, properly read, required them to pay a fair proportion of the owner’s costs of providing the services, subject to a maximum of £90 in the first year and increases every year by 10% on a compound basis. In other words, they contended that the words “up to” should be read into the clause before ‘the yearly sum of £90’.”

The UK Supreme Court’s Judgment

The tenants were initially successful in the Swansea County Court but the Cardiff District Registry and the Court of Appeal found in favour of the owner on appeal. The tenants were granted permission to appeal to the Supreme Court.

The Supreme Court dismissed the tenants’ appeal on grounds that it was clear that the purpose of the service charge clause was to quantify the sum payable by the tenants and there is no principle



of interpretation which entitles the Court to re-write a contractual provision simply because the fact to which the parties cater for does not seem to be developing in the way which the parties may well have expected.

[26] In delivering judgment on behalf of the court, Lord Neuberger stated as follows:-

“When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to “what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean”...

That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause...

17. First, the reliance placed in some cases on commercial common sense and surrounding circumstances (eg in *Chartbrook*, paras 16-26) should not be invoked to undervalue the importance of the language of the provision which is to be construed. The exercise of interpreting a provision involves identifying what the parties meant through the eyes of a reasonable reader, and, save perhaps in a very unusual case, that meaning is most obviously to be gleaned from the language of the provision. Unlike commercial common sense and the surrounding circumstances, the parties have control over the language they use in a contract. And, again save perhaps in a very unusual case, the parties must have been specifically focusing on the issue covered by the provision when agreeing the wording of that provision.”

[27] The above decision in *Arnold v. Britton* was cited with approval by our own Federal Court in *SPM Membrane Switch Sdn Bhd v. Kerajaan Negeri Selangor* [2016] 1 MLRA 1.

[28] Having stated the above principles of interpretation to a contract, we reproduced below both cl 6 and cl 15 of the Tenancy Agreement.

“6. Termination and Discharge

6.1 Default by Tenant

The Landlord and Tenant hereby agree that in the event that one of the following events shall occur:-

- a) the Tenant being wound-up or going into liquidation voluntarily or otherwise (except for the purpose of amalgamation or reconstruction);
- b) the Tenant continues to commit, permit or suffer to occur any breach or default in the due and punctual observance and performance of any of the covenants, obligations and provisions of this Agreement after the Landlord has given seven (7) days notice in writing to the Tenant to rectify such breach or default;



- c) if the Tenant shall make any assignment for the benefit of or enter into any arrangement with its creditors;
- d) if the Tenant shall make default in the payment of any monies owing to the Landlord other than rent whether under this Agreement or upon any other account whatsoever after fourteen (14) days written demand therefore has been made by the Landlord upon the Tenant; and
- e) if the Tenant shall default in any of its obligations specified under s 3 (a) and (b) in the Appendix II hereto then and in any one or more of such events the Landlord shall at any time thereafter be entitled to terminate this Agreement, whereupon such termination, the Landlord shall re-enter upon the Demised Premises or any part thereof in the name of the whole, but without prejudice to any action or other remedy which the Landlord has or may otherwise have for the recovery of all costs and expenses incurred by the Landlord in demolishing any structures constructed.

6.2 Default by the Landlord

This Agreement may be terminated forthwith or discharged upon service of a written notice from the Tenant to the Landlord in the event the Landlord being wound-up or going into liquidation voluntarily or otherwise (except for the purpose of amalgamation and reconstruction).

15. Early Termination

- 15.1 Notwithstanding anything contained herein, the Landlord shall have the right to terminate this Agreement by giving the Tenant three (3) month prior notice in writing of its intention to terminate whereupon the Landlord shall not be required to pay any compensation whatsoever to the Tenant upon the exercise of such a right, but without prejudice to any action or other remedy which the Landlord has or might otherwise have for the recovery of damages or arrears from the Tenant as a result of such a termination.
- 15.2 Notwithstanding anything contained herein, the Tenant shall have the right to terminate this Agreement by giving the Landlord three (3) months prior notice in writing of its intention to terminate whereupon the Landlord shall re-enter upon the Demised Premises or any part hereof in the name of the whole, but without prejudice to any action or other remedy which the Landlord has or might otherwise have for the recovery of damages or arrears as a result of such termination.”

[29] Our reading of both cl 6 and cl 15 finds that the wording of both these clauses is clear and unambiguous. It therefore follows that these clauses must be read literally in their plain and ordinary meaning.

[30] Unlike the approach taken by the HCJ, where he concluded that both cl 6 and cl 15 must be read together, we are of the view that both cl 6 and cl 15 must be read independently of each other. Our view is supported by the words,



“Notwithstanding anything contained herein...” as provided in both cl 15.1 and 15.2 of the Tenancy Agreement.

[31] Reading the Tenancy Agreement as a whole, it is clear that the Tenancy Agreement entered into between the Plaintiff and the Defendant provides for two (2) modes of termination. The first mode of termination, as provided under cl 6 is pursuant to a default which has not been rectified by the Plaintiff tenant, whilst the 2nd mode of termination as provided under cl 15 is to cater for an early termination scenario by the Plaintiff or the Defendant by giving three (3) months’ notice.

[32] A further reading of cl 15 finds no requirement for the terminating party to give any reasons for the early termination, contrary to the finding of the HCJ. Clause 15 also does not require the early termination to be agreed upon by the other party (in this case: The Plaintiff).

[33] The facts before us show that the Defendant had resorted to terminating the Tenancy Agreement by giving the requisite three (3) months’ notice to the Plaintiff. Whilst there is a contradiction in evidence as to whether the Plaintiff had agreed to the termination by signing the Termination Agreement or had merely acknowledged receipt of it, as long as the Defendant complies with the requirements as stated in cl 15, the contradiction in our considered view does not affect the validity of the early termination.

[34] In this regard, we find that the Plaintiff’s reliance on s 29 of the Contracts Act, which renders void any agreement that absolutely restricts a party from enforcing their rights under a contract through ordinary legal proceedings or limits time for doing so, is without merit.

[35] We are also constrained to state that the Plaintiff’s reliance on the doctrine of legitimate expectation for the Defendant to purchase the turf grass planted by him is without basis as the doctrine is only applicable to matters of public law and not private law disputes such as that between the Plaintiff and the Defendant herein (see *GPQ Sdn Bhd v. Constant View Sdn Bhd* [2017] 4 MLRA 483).

CONCLUSION

[36] In the upshot, we hereby allow the appeal with costs of RM20,000.00 to the Appellant/Defendant here and below, subject to allocatur.

