



CASE STUDY

Sabah Development Bank Berhad v. Petron Oil (M) Sdn Bhd [2020] 1 LNS 197

Summary

A valid and absolute assignment transfers the entitlement of a chose in action from the assignor to the assignee. The assignee is then fully entitled to deal with said chose in action in the manner set out in the assignment.

Background

Sabah Electricity Board (“**SESB**”) awarded Swakaya contract to supply and deliver diesel fuel to SESB’s power stations (“**SESB Contract**”).

In order to finance and carry out the SESB Contract, Swakaya applied for and was granted 2 banking facilities from Sabah Development Bank Berhad (“**SDBB**”). As security, Swakaya executed an Assignment of Contract Proceeds and a Supplemental Assignment of Contract Proceeds which purports to assign absolutely to SDBB all the contract proceeds from the SESB Contract (“**Assignment**”). Swakaya agreed that SDBB could use the proceeds deposited towards payment of the outstanding credit facilities.

Swakaya gave written notice of the Assignment to SESB. Swakaya instructed SESB to remit all contract proceeds arising from SESB Contract to a joint account with MBB (1st account). SESB acknowledged receipt of the notice of the Assignment and agreed to comply with the instructions on the remittance of funds.

Swakaya had entered into contract with Petron for the supply of diesel fuel.

Due to the 1st account then being frozen by MACC, Swakaya requested Petron to supply diesel directly to SESB and agreed for SESB to pay Petron directly.

Swakaya opened a second bank account with CIMB (2nd account) into which the all contract proceeds from the SESB Contract was to be remitted. SDBB informed SESB of the 2nd account and requested all contract proceeds from the SESB Contract be remitted into the 2nd account.

During the period between the freezing of the 1st account and the opening of the 2nd account, Petron was paid directly a portion of the amount due to it for the supply of the diesel fuel. However, once informed by SDBB of the 2nd account, SESB had remitted all contract proceeds into the 2nd account which was used by SDBB to settle part of the loans taken by Swakaya from the SDBB.

The HC and COA found that the monies deposited into the 2nd account were held on constructive trust by SDBB for Petron and that it was unconscionable for SDBB to utilize said monies to settle Swakaya’s loan. COA concluded that Petron had “better rights over the money” as it was specifically for the purposes of payment to Petron.

FC Decision

The FC overturned COA’s decision on the ground that SDBB obtained and therefore enjoys a valid and enforceable absolute assignment over the contract proceeds which, under the law, transfer the entitlement to the monies from the SESB contract proceeds (‘the chose in action’) held in either 1st or 2nd account, in favour of SDBB. Therefore, SDBB is and was, therefore at all material times, fully entitled to utilise the SESB contract proceeds in reducing the loan sums or credit facilities afforded by it to Swakaya.

Disclaimer: The material on this article comprise of the author’s views; it does not constitute legal or other professional advise. You should consult your lawyer for further legal advise.

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