



**Badan Peguam Malaysia  
Malaysian Bar**

[www.malaysianbar.org.my](http://www.malaysianbar.org.my)

Wisma Badan Peguam Malaysia  
2 Leboh Pasar Besar  
50050 Kuala Lumpur, Malaysia  
Tel : +603-2050 2050  
Fax : +603-2050 2019  
Email : [council@malaysianbar.org.my](mailto:council@malaysianbar.org.my)

**Circular No 121/2026  
Dated 10 Apr 2026**

To Members of the Malaysian Bar

**Highlights from the Appellate Courts (No 6/2026)**

The Publications Committee is pleased to circulate the sixth edition of this case note series for the year.

The cases covered in this edition are as follows:

**(1) Megafest Sdn Bhd (In Liquidation) v Cemerlang Coke Industrial Sdn Bhd & Ors (CA)**

*Insolvency – Undue preference – Voluntary settlements – Void disposition*

Written by Kwong Chiew Ee

**(2) Chia Seong Pow v Alexma Corporation Sdn Bhd (CA)**

*Contract law – Specific performance – Claim premised on contract alleged to be in draft and/or not concluded*

Written by Priscilla Faith Lim Qin Yun

**(3) Ahmad Farizul Ismail v Public Prosecutor (CA)**

*Criminal law – Section 33 of the Dangerous Drugs Act 1952 – Attempt to commit the offence of drug trafficking*

Written by Iqbal Harith Liang

The case notes may be accessed [here](#) (see page 2 onwards).

Sincerely,

**Gregory Das  
Chairperson  
Publications Committee**

# Highlights from the Appellate Courts

## **Megafest Sdn Bhd (In Liquidation) v Cemerlang Coke Industrial Sdn Bhd & Ors (CA)**

*Insolvency – Undue preference – Voluntary settlements – Void disposition*

### **Panel:**

Azhahari Kamal Ramli, JCA  
Ahmad Kamal Md Shahid, JCA  
Ong Chee Kwan, JCA

### **Brief Facts**

#### **In *Megafest Sdn Bhd (In Liquidation) v Cemerlang Coke Industrial Sdn Bhd & Ors* (Civil Appeals No.**

J-02(NCvC)(W)-761-05/2023), the liquidator of the Appellant, Megafest Sdn Bhd (in liquidation) ("Megafest"), commenced multiple actions in the High Court seeking to recover payments made by the company within two years prior to the presentation of the winding-up petition. The Respondents comprised several directors of Megafest and Cemerlang Coke Industrial Sdn Bhd ("Cemerlang Coke"), a supplier and creditor of the company.

The liquidator alleged that a series of payments made to the directors and related parties within the period preceding the winding-up petition constituted undue preference or void voluntary settlements. These payments, amounting to several million ringgit, were said to have been made within two years prior to the presentation of the winding-up petition and were allegedly unsupported by valuable consideration or proper documentary justification. The liquidator further challenged a payment of RM350,000 made to Cemerlang Coke, which had been effected through post-dated cheques issued pursuant to a settlement of a judgment debt obtained by Cemerlang Coke against Megafest. It was contended that this payment amounted to a fraudulent preference. In addition, the liquidator disputed the validity of a further payment of RM50,000 made after the presentation of the winding-up petition, for which the respondents sought validation.

The High Court dismissed the liquidator's claims in respect of undue preference and fraudulent preference and granted validation of the RM50,000 post-petition payment. The High Court held, among others, that the impugned payments fell outside the applicable "twilight period" and that the payment to Cemerlang Coke was made in the ordinary course of business and under commercial pressure. The liquidator appealed against the entirety of the decision.

### **Court of Appeal's Decision**

The appeal raised several interrelated questions concerning the avoidance of pre- and post-petition transactions in insolvency. These included the distinct statutory requirements (and the twilight period) for undue preference as opposed to fraudulent preference, and in particular whether proof of a dominant intention to prefer remains a necessary element in establishing fraudulent preference under Malaysian law. Finally, the appeal concerned the circumstances in which the court may properly exercise its discretion to validate payments made after the presentation of a winding-up petition, notwithstanding that such payments would otherwise be void against the liquidator.

In allowing the appeal in part, the Court of Appeal (per Ong Chee Kwan JCA) held as follows:

- (a) First, the High Court had erred in applying the incorrect twilight period in relation to the payments made to the directors. The Court clarified that the applicable period under section 52 of the Insolvency Act 1967 is two years in respect of transactions involving connected persons, and not six months. The impugned payments fell within this two-year period. The Court further found that the payments to the directors were unsupported by contemporaneous documentary evidence and were not made for valuable consideration. In the absence of a legitimate commercial basis, the payments constituted void voluntary settlements, and the directors were accordingly liable to repay the sums received to the company.
- (b) Second, the Court of Appeal affirmed the High Court's conclusion that the payment to Cemerlang Coke did not amount to a fraudulent preference. The Court emphasised that Malaysian law continues to require proof of a dominant intention to prefer a creditor in order to establish fraudulent preference. On the facts, the payment was made pursuant to a settlement of a judgment debt and under commercial pressure to avert further enforcement action and a possible winding-up petition. The Court held that the dominant intention was to preserve the company as a going concern rather than to prefer Cemerlang Coke over other creditors. Accordingly, the element of dominant intention to prefer was not established. The Court, however, emphasised that "commercial pressure" is a fact-sensitive defence and is not to be treated as a blanket safe harbour for companies to prefer one creditor over another merely because a creditor has issued a statutory demand notice.
- (c) Third, the Court of Appeal set aside the validation of the RM50,000 payment made to Cemerlang Coke after the presentation of the winding-up petition. The Court held that the payment was made solely in satisfaction of a past judgment debt and did not confer any benefit on the general body of creditors. In the absence of evidence that the payment was necessary for the continuation of business or the preservation of value for creditors generally, validation should not be granted under section 223 of the Companies Act 1965. The Court also found that a lack of knowledge of the winding-up petition per se does not justify validation of the payment. In an application for validation of void dispositions, the relevant consideration is whether the recipient of the payment gives value to the company (in exchange for payment) after the winding-up petition was presented.

Written by  
Kwong Chiew Ee  
Member, Publications Committee

## **Chia Seong Pow v Alexma Corporation Sdn Bhd (CA)**

Contract law – Specific performance – Claim premised on contract alleged to be in draft and/or not concluded

### **Panel:**

Hajah Azizah Haji Nawawi, CJSS

Azizul Azmi Adnan, JCA

Lim Hock Leng, JCA

The appeal in **Chia Seong Pow v Alexma Corporation Sdn Bhd** (Civil Appeal No. B-02(NCvC)(W)-556-04/2024) arose from a land sale dispute between the Appellant and the Respondent, the registered proprietor of two (2) parcels of land.

In February 2020, the Appellant was approached by a property agent, acting on behalf of the Respondent, with an offer to purchase the lands for RM5,109,510.00. Negotiations proceeded, and the Appellant's solicitors prepared and exchanged the 1<sup>st</sup> and 2<sup>nd</sup> draft sale and purchase agreements ("**SPA**") with the Respondent's solicitors.

On 13 June 2020, a land survey revealed that approximately 3,119 square metres of Lot 101 was unusable due to the steepness or high gradient of the land, prompting the Appellant *vide* their solicitors to propose, by WhatsApp, a revised price of RM30 per square foot, reducing the total consideration to RM4,102,341.00.

On 16 June 2020, the Appellant's solicitor texted the Respondent's solicitor, informing that their respective clients had agreed on the reduced price and requested the Respondent's solicitor to confirm this with the Respondent. The Appellant's solicitor also emailed the Respondent's solicitor for the requested confirmation. Pertinently, the Respondent's solicitor thereafter texted "Ok proceed", and the firm formally confirmed by email that their client had accepted the reduced price.

Consequently, the 3<sup>rd</sup> draft SPA incorporating the revised price was sent to the Respondent for execution. However, there was no response from the Respondent or its solicitors, despite reminders.

Subsequently, the Appellant's solicitors emailed the Respondent's solicitors a 4<sup>th</sup> draft SPA (proposing that there be one SPA for each of the two (2) subject lands) and thereafter, a 5<sup>th</sup> draft SPA (proposing that the Appellant's wife be added as a purchaser). However, the Respondent's solicitors did not respond to these proposed changes.

The Appellant later sent reminders relating to the execution of the 3<sup>rd</sup> draft SPA, including one informing that the Appellant had paid the requisite 10% deposit to his solicitors as stakeholders. However, the Respondent failed to execute the SPA.

### **High Court**

In view of the above, the Appellant filed a suit seeking specific performance and damages based on the 3<sup>rd</sup> draft SPA. The Respondent raised its defence that the property agent was not duly authorised to sell the lands, the Respondent's solicitors were never appointed to accept any offers for the lands, and that no concluded contract had been formed.

The High Court dismissed the Appellant's action. While the learned trial judge found that the property agent was duly

authorised and that the Respondent's solicitors had ostensible authority to bind their client, the learned trial judge held that no concluded contract had been formed. The learned trial judge found that the 3<sup>rd</sup> draft SPA remained unsigned, and there were further proposed changes through the 4<sup>th</sup> and 5<sup>th</sup> draft SPAs.

### **Court of Appeal**

On appeal, the Court of Appeal allowed the appeal and set aside the High Court's decision, for the following reasons:

- (1) The learned trial judge was plainly wrong in concluding that the 3<sup>rd</sup> draft SPA lacked agreed terms. By 16 June 2020, the parties had reached *consensus ad idem* (agreement of minds) on all three (3) essential elements of a land sale contract, described as the "three Ps": parties, property, and purchase price. The identities of the vendor and purchaser were clear, the properties were identified and described with sufficient particularity, and the reduced purchase price had been settled and agreed upon;
- (2) The description of each SPA iteration as a "draft" was merely an expression of convenience and did not negate the fact that the essential terms had been negotiated, agreed, and reduced into writing in the 3<sup>rd</sup> draft SPA;
- (3) The 4<sup>th</sup> and 5<sup>th</sup> draft SPAs, which proposed splitting the agreement into separate SPAs per lot and adding the Appellant's wife as a co-purchaser, were characterised by the Court as proposals to vary what was already a concluded and binding contract. The Respondent never responded to those proposals, having already agreed to all material terms;
- (4) The Court of Appeal relied on, amongst others, the Federal Court decision in **Charles Grenier Sdn Bhd v Lau Wing Hong** [1996] 3 MLJ 327, where the Federal Court held that where the essential terms have been agreed and embodied in an open contract, the parties are bound and need not await the execution of a formal agreement, unless an examination of the correspondence passing between the parties indicates otherwise;
- (5) However, a complicating factor emerged during the appeal. It was discovered that the Respondent had sold the lands to a third party while the trial was still ongoing, despite the fact that the Respondent's sole director Koong Foo Seong ("**Koong**") testified under cross-examination in May 2023 that the lands still belonged to the Respondent. The Appellant only discovered the sale in March 2025 and was granted leave to adduce this as fresh evidence; and
- (6) As the lands had been transferred to a third party, an order for specific performance was no longer available. The Court

declined to lift the corporate veil of the Respondent to hold Koong personally liable, as he had not been named a defendant in the action and had not been given the opportunity to be heard, invoking the *audi alteram partem* principle. It was left to the Appellant whether to pursue separate proceedings against Koong personally, including under section 540 of the Companies Act 2016.

In view of the above, the Court of Appeal allowed the appeal and set aside the High Court's decision. As specific performance could not be ordered given the sale to a third party, the matter was remitted to the High Court to assess the damages payable by the Respondent to the Appellant.

Written by  
Priscilla Faith Lim Qin Yun  
Member, Publications Committee

## **Ahmad Farizul Ismail v Public Prosecutor (CA)**

Criminal law – Section 33 of the Dangerous Drugs Act 1952 – Attempt to commit the offence of drug trafficking

### **Panel:**

Ravinthran N Paramaguru, JCA  
Collin Lawrence Sequerah, FCJ  
Ahmad Kamal Md Shahid, JCA

The facts in **Ahmad Farizul Ismail v Public Prosecutor** (Criminal Appeal No.: S-05(SH)-298-08/2023) were as follows. On 22 February 2020, a customs officer (PW2) stationed at Gudang Raya Airways found a parcel containing a compressed package suspected to contain drugs.

The Narcotics Unit at Kota Kinabalu International Airport then instructed PW2 to secure the parcel for further examination. Members of the Narcotics Unit then brought a drug detection dog and identified the presence of drugs. The parcel was then taken into custody by a customs officer (PW3) and later transported to the MAS Cargo Customs Office for safekeeping.

On 24 February 2020, a customs officer with the Enforcement Division (PW6) conducted a controlled delivery operation to move the parcel. Two officers under PW6's direction, PW4 and PW8, collected the parcel. The parcel was then moved to UTS Logistics in Kolombong, Kota Kinabalu.

The Appellant arrived at UTS Logistics, handed a slip of paper with the tracking number to a staff member stationed there (PW7), and stated that he was collecting the parcel on behalf of "Yohan". While PW7 processed the collection, the Appellant answered a phone call and abruptly left without completing the collection. He fled on foot but was apprehended by another customs officer (PW5) about 70 metres from UTS Logistics.

Upon inspection by PW6 at the Customs Office, the parcel was sent to the Chemistry Department for analysis. It was found to contain 942.2 grams of cannabis.

The High Court judge found that the prosecution proved a prima facie case and called the Appellant to enter his defence.

The Appellant claimed he was merely helping an acquaintance named "Yohan" collect the parcel. Yohan told him that the parcel was sent by his family, and the Appellant did not ask what its contents were. Yohan then passed him a piece of paper to claim the parcel, and also a quantity of syabu which the Appellant admitted to consuming. After consuming the syabu, the Appellant returned home, got ready, and then headed to a bus station to collect the parcel.

The Appellant also denied any involvement with the seized drugs and claimed not to know Yohan. The Appellant produced printed materials from the Internet to identify Yohan and disprove that he was a fictitious character. He also called DW2, a clerk at his solicitor's firm, to testify on her role in downloading these printed materials.

### **Decision of the High Court**

The High Court found that the Appellant was guilty of committing an offence under Section 33 of the Dangerous Drugs Act 1952 (attempt to traffic) read with Section 39B(1)(a)

DDA. The Appellant was convicted and sentenced to life imprisonment and 12 strokes of whipping.

### **Decision of the Court Of Appeal**

The Court of Appeal dismissed the appeal, affirming both the conviction and sentence. These are its key findings:

### **Interpreting s. 33 DDA**

- (1) This was the first Malaysian case on attempted drug trafficking under Section 33 DDA.
- (2) The Court referred to an Australian case (the case of **Britten v Alpogut** [1987] VR 929) to hold that impossibility in the commission of the offence is not a defence to a charge of criminal attempt save and except where the act intended does not amount to an offence known to the law.
- (3) The Court also referred to the Singaporean case of **Han Fang Guan v PP** [2020] 1 SLR 689 which postulated a two-stage framework:
  - (i) Intention:
    - a. What specific act did the Appellant intend to carry out?
    - b. Does the intended act, if carried out, constitute a criminal offence?
  - (ii) If both questions are answered in the affirmative, the Court will consider *actus reus*, namely:
    - a. Were there sufficient acts by the Appellant in furtherance of the intention to commit the criminal act?
- (4) Applying these to the facts, the Court held that:
  - (i) The Appellant's act of attempting to collect the parcel falls under the definition of trafficking under s. 2 of the DDA. It is therefore clear that the intended act constitutes a criminal offence.
  - (ii) The Appellant's act of leaving abruptly after receiving a phone call supports the inference that he had knowledge of the incriminating nature of the parcel's contents.
  - (iii) The Appellant's act of going to collect the parcel, bringing along the slip bearing the same tracking number, handing that slip to the staff, informing said staff that he was collecting the parcel for someone else, clearly shows an attempt to take possession of the parcel for trafficking.

- (5) The Court also considered s. 511 of the Penal Code which imposes punishment for attempts to commit certain offences. From this provision, the Court discerned that the framer of the Penal Code recognised that a man who had every intention to commit a crime ought not to escape accountability or liability just because the crime turns out to be inchoate.

### **Tampering Allegations Rejected**

- (6) Although there was a discrepancy between the testimonies of PW2 and PW3 as to whether the plastic flyer courier bag of the parcel was opened during K9 screening, this did not affect the integrity of the drug exhibits. The Appellant also made no challenge to the fact that the drug exhibits remained sealed and intact inside.
- (7) As there is no break in the chain of evidence, there is no requirement to call every person who handled the exhibit unless the identity of the exhibits was in issue.

### **Incomplete Investigation Argument Rejected**

- (8) The Appellant provided insufficient particulars of "Yohan". Nonetheless, the investigation made an effort to identify Yohan by conducting searches with JPN and the Immigration Department, which yielded no results.
- (9) Hence, given such scant particulars, the police investigation cannot be said to be deficient.
- (10) The Defence's evidence of social media photographs did not credibly establish Yohan's existence or exonerate the Appellant. The names appearing on the social media accounts do not, by any means, establish that "Yohan" actually exists.

### **Conclusion**

The Court of Appeal held that the High Court correctly found the prosecution had proved the charge of attempt to traffic dangerous drugs under Section 33 DDA beyond reasonable doubt. The Appellant's defence was inconsistent, lacking credibility, and raised only after the prosecution's case. The conviction and sentence of life imprisonment and 12 strokes of whipping were affirmed. The appeal was dismissed.

Written by  
Iqbal Harith Liang  
Member, Publications Committee