

## **Jade Homes Sdn Bhd v Sivananthan a/l Krishnan**

Decision by the Federal Court (delivered by Zabariah Mohd Yusof)

### **Key Issues**

*Is the Court entitled to rely on the opinions of persons pursuant to section 49 of the Evidence Act 1950 when interpreting the meaning of a particular direction or condition where its meaning is commonly used by a body of men or a particular class of people?*

The Federal Court held that the evidences explaining how Condition 8 ought to be interpreted were given by those from the construction industry and the Local Authority. Thus, their evidences of the practice, procedure and language must be considered as a particular class of people. This would fall under section 49 of the Evidence Act (“**EA**”) and not section 45 of the EA.

Because the case herein turned on a particular usage in the context of written instruments, the person giving evidence on the interpretation need not be an expert. It would be sufficient as long the witness was from a similar trade and could show that it had the requisite knowledge pertaining to the common practice and meaning of the terms used.

Therefore, the Federal Court held that substantial weight ought to be given to those evidences under section 49 of the Evidence Act 1958. The Federal Court further held that section 49(c) of the EA ought to be read together with section 98 of the EA when considering evidences from those with special knowledge.

*The Non-Independence of one of the expert witnesses– DW7*

Although DW7 was from the local authority’s office and was involved in the preparation of the document bearing Condition 8, the Federal Court found no fault in his independence. It was held that nowhere was it said that opinions of persons having special

knowledge had to be an independent witness. All it says is that the opinion had to be independent of hearsay which was the case here. Thus, the evidence presented by DW7 was admissible.

### **Decision**

The appeal was allowed with costs of RM200,000.00 here and below.

### **Facts**

The plaintiff purchased a property from the defendant but subsequently found that he was unable to physically occupy the premises due to some alleged material defects in the construction. The plaintiff claimed that the defendant had as a whole failed to comply with the requirements of the Approved Building Plan and/or Development Order (“**DO**”) as well as neglected to issue the Certificate of Completion and Compliance to the unit. One incident being the failure to build a ‘Reinforced Concrete Wall’ (“**RC Wall**”) outside the property as required under Condition 8 of the Approved Building Plan and/or DO (“**Condition 8**”).

However, the defendant stated that it did comply with the conditions of the Approved Building Plan and/or DO. The requirement of the RC wall is to only be applied where the platform level is an immediate vertical drop of land exceeding 1200mm. He subsequently filed a counterclaim against the plaintiff and as a whole contended that though the plaintiff had made many complaints about the slope and the rubble wall, the plaintiff refused the defendant’s offer to solve those problems and instead had it removed. It was thus argued that the claim herein is thus an abuse of process and caused the defendant’s loss and damages.