

## Can An Unsigned “Draft” SPA Still Bind You?

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Many parties assume that if a sale and purchase agreement (SPA) has not been signed, there is no binding deal because the document remains “just a draft”. A recent Court of Appeal decision suggests the position may not be so simple.

In *Chia Seong Pow v Alexma Corp Sdn Bhd* [2026] MLJU 658, the Court of Appeal held that a binding contract for the sale of land may arise even where the SPA was never formally executed. The court’s focus was not on whether the agreement carried the label “draft”, but whether the parties had already agreed on the essential terms of the transaction.

The decision is a timely reminder for purchasers, vendors, developers, property agents and solicitors alike that in an era of WhatsApp messages and email negotiations, informal communications may carry significant legal consequences.

### The Dispute

The case involved the proposed sale of two parcels of land in Gombak, Selangor. The lands were initially offered to the purchaser for approximately RM 5.1 million through a property agent, with negotiations subsequently progressing through several drafts of the SPA exchanged between the parties’ solicitors.

Matters took a turn after a land survey conducted on 13 June 2020 revealed that a substantial portion of one lot was unsuitable for development because of its steep terrain. The purchaser’s solicitors then proposed a reduced purchase price of RM 4,102,341.

Three days later, on 16 June 2020, a series of WhatsApp messages and emails were exchanged between the solicitors. The purchaser’s solicitors sought confirmation of the revised price. At 3.34pm, the vendor’s solicitor replied via WhatsApp: “Ok proceed”. This was followed at 4.08pm by a formal email confirming that the vendor had agreed to the revised purchase price.

Following the confirmation, the purchaser’s solicitors circulated a third draft SPA incorporating the revised terms for execution. However, the vendor did not proceed with signing the agreement. The purchaser subsequently commenced proceedings seeking specific performance and damages.

### **High Court: No Signed SPA, No Concluded Contract**

The High Court dismissed the purchaser’s claim. Although the court accepted that the property agent had authority to act and that the vendor’s solicitors had ostensible authority to negotiate on behalf of the vendor, it nevertheless held that no concluded contract existed because the third draft SPA had never been signed.

The High Court also placed weight on the fact that further draft agreements were subsequently circulated containing additional proposed amendments, suggesting that negotiations were still ongoing.

### **Court Of Appeal: The Contract Was Already Concluded**

The Court of Appeal reversed the decision.

Central to the appellate court’s reasoning was the principle that a contract for the sale of land may be concluded once the parties have agreed on the essential terms of the transaction, commonly described as the “three Ps”:

- the parties;
- the property; and
- the purchase price.

The court found that by 16 June 2020, all three elements had already been clearly identified and agreed. The identities of the purchaser and vendor were undisputed, the property was sufficiently identified and the revised purchase price had been expressly accepted through the WhatsApp message and subsequent email confirmation.

In those circumstances, the court held that the parties had reached consensus ad idem, notwithstanding that the SPA remained in draft form and had not been formally executed.

### **A “Draft” May Still Be Binding**

One of the more significant aspects of the decision is the court’s observation that merely labelling a document as a “draft” does not necessarily prevent it from becoming legally binding.

The Court of Appeal noted that the use of the term “draft” is often a matter of convenience during negotiations. What ultimately matters is whether the parties had objectively demonstrated agreement on the essential terms and an intention to proceed with the transaction.

The court also held that subsequent proposals including suggestions to split the transaction into two SPAs and to add the purchaser’s wife as a co-purchaser, did not negate the existence of the earlier agreement. These were viewed merely as attempts to vary an already concluded contract.

### **WhatsApp Messages As Evidence Of Contractual Intention**

The decision also underscores the growing legal significance of electronic communications in commercial transactions. The vendor solicitor’s brief WhatsApp message- “Ok proceed”, featured prominently in the court’s analysis and was treated as evidence of acceptance of the revised terms when read together with the surrounding correspondence and conduct of the parties.

The case reflects the commercial reality that negotiations today frequently take place through WhatsApp messages, emails and virtual discussions rather than formal signed correspondence alone.

As a result, informal phrases such as “Agreed”, “Confirmed”, “Proceed”, or “We can move forward” may carry legal implications far beyond what parties might have intended at the time.

### **Practical Implications**

The decision carries several practical lessons for market participants.

First, a signed SPA is not always the sole determinant of whether a binding agreement exists. Malaysian courts will examine the substance of the parties’ communications and conduct rather than focusing exclusively on formal execution.

Second, parties should exercise caution when communicating during negotiations. Casual confirmations sent over WhatsApp or email may later be relied upon as evidence that a binding agreement had already been reached.

Third, where parties do not intend to be legally bound until formal execution of the SPA, that position should be expressly and consistently stated throughout negotiations. Phrases such as “subject to contract”, “subject to execution of the SPA”, or “subject to further approval” may help reduce the risk of unintentionally creating binding obligations prematurely.

Finally, conduct matters. Actions such as paying deposits, arranging financing, preparing completion documents or otherwise acting as though the transaction has been finalised may reinforce the existence of a concluded agreement.

## Why This Decision Matters

The Court of Appeal’s decision in *Chia Seong Pow v Alexma Corp Sdn Bhd* reflects the courts’ continuing adaptation to modern commercial realities, where negotiations increasingly unfold through digital communications rather than traditional face-to-face meetings and formally signed correspondence.

The broader message is clear: courts will look beyond labels and technicalities to examine the substance of the parties’ dealings. In appropriate circumstances, even a brief electronic confirmation may be sufficient to create binding legal obligations.

For purchasers, vendors, developers, agents and solicitors alike, the case serves as a cautionary reminder that negotiations should never be treated casually. In the digital age, a simple “Ok proceed” may ultimately prove far more consequential than intended.

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