

DALAM MAHKAMAH TINGGI MALAYA D1 KUALA LUMPUR
(BAHAGIAN SIVIL)
GUAMAN NO. 54-23-161- 2008

ANTARA

HASNAN BINTI HASSAN
(No. K/P: 690902-03-55461 A 1372384)

... PLAINTIF

DAN

EON BANK BERHAD

.....DEFENDAN

GROUND OF JUDGMENT

The Plaintiff vide Summons in Chambers dated 24.2.2009 applies to strike out the Defendant's Statement of Defence dated 15.1.2009 pursuant to Order 18 Rule 19 (1) (a) of the Rules of the High Court 1980 (RHC) for failing to disclose any reasonable defence. After hearing submissions from both parties. I allow the Plaintiff's application with costs. Dissatisfied with the decision the Defendant appeal to the Court of Appeal.

Since the Plaintiff is only relying on paragraph (a) of Order 18 Rule 19 (1) of the RHC 1980, no affidavit evidence is admissible as provided for in Order 18 Rule 19 (2) of the RHC 1980. The Plaintiff is also not invoking the inherent jurisdiction of the Court. See Pegasus Engineering Sdn. Bhd. v Sambu (M) Sdn. Bhd. [1998] 3 CIJ 677. Therefore, the Plaintiff is not required to file any affidavit in support of its application and the Defendant is similarly precluded from filing any affidavit in reply to the Plaintiffs application.

Since the Plaintiff is relying on Order 18 Rule 19 (1) (a) of the RHC 1980, the Court can only look at the pleadings to invoke the proper test namely "whether the defence on the face of the pleadings is clearly unsustainable". Therefore, the Court must look at the impugned Statement of Defence dated 15.1.2009.

The Plaintiff seeks to rely on its Writ of Summons dated 28.10.2008 and Statement of Claim dated 23.10.2008 (Enclosures 1 and 2), the Statement of Defence dated 15.1.2009 and the Reply to the Defence dated 3.2.2009.

Background Facts

Plaintiff is/was not a customer to the Defendant.

In 2006, Plaintiff went to a branch of Malayan Banking Berhad in Kuala Lipis, Pahang to open an account. She was told by the Bank that she could not open any account because her records shown that she had been adjudged a bankrupt on 20-4-2005 in Shah Alam High Court upon Defendant's application.

Plaintiff claimed she has never had any account with Defendant and had never signed any guarantee documents relevant to the Defendant. Thus, Plaintiff lodged 2 police reports against the Defendant for wrongly utilizing Plaintiff's old I/C number.

It was discovered that the Defendant had used Plaintiff's old I/C number against one Makeram bin Mat Daud (who has similar I/C

number with Plaintiff) and upon the latter's default in a hire purchase agreement with the Defendant. Plaintiff demanded from the Defendant to strike out her name from the Insolvency Office's Bankruptcy list due to the mistake committed by the Defendant.

Defendant then filed an application to amend the relevant cause papers in the bankruptcy proceedings and also wrote to CTOS Sdn Bhd to correct the I/C number of Makeram Bin Mat Daud. However on the hearing date fixed for the amendment application in Shah Alam High Court, Defendant's counsel was absent, thus the amendment application was struck off by the Registrar. No reinstatement or setting aside of the order application was made by Defendant. Defendant also did not notify the Insolvency Department to correct this serious error.

In 2007 Plaintiff found out that her status in the Insolvency Department was still "not known" because Makeram bin Mat Daud who has similar I/C number with Plaintiff was a bankrupt.

The Plaintiffs claim is for general damages for negligence arising from the Defendant's act or omission whereby the Plaintiffs national identity card particulars were unlawfully and wrongfully used by the Defendant in bankruptcy proceedings commenced by the Defendant against a third party wherein the said third party was subsequently adjudged to be a bankrupt. As a result the Plaintiff whose I/C number was used in relation to the third party in the bankruptcy proceedings found herself black-listed by various governmental agencies and also by banks and financial institutions in Malaysia. The Plaintiff who is a civil servant was also threatened

with disciplinary proceedings and dismissal from the public service; was unable to open any bank account or obtain a loan or credit facilities; and was barred from leaving the country. See paragraphs 3 to 15 of the Statement of Claim (Enclosure 2).

The Plaintiff is also seeking general damages in the sum of RM500,000.00 for defamation from the Defendant and for other ancillary orders for the libel arising from the Defendant unlawfully and wrongfully using the Plaintiffs identity card number in the bankruptcy proceedings in the High Court, in publishing, circulating and gazetting the false statement about the alleged bankruptcy of the Plaintiff to third parties namely the Insolvency Department Malaysia, the Government of Malaysia and other credit reference agencies including Bank Negara Malaysia, CTOS Sdn. Bhd. And Financial Information Services Sdn. Bhd. See paragraphs 5 to 29 in the Statement of Claim (Enclosure 2).

The Defendant filed a Statement of Defence dated 15.1.2009. A perusal of the Statement of defence shows that it consisted of bare denials, general traverses, admissions and non admissions. See paragraphs 1 to 18 of the Statement of Defence.

The Defendant does not state what is the nature of the Defence. The defendant merely states are the general words like “defendan menafikan... dan Plaintiff perlu membuktikanny atas dasar bukti yang kukuh”. These can be found in Paragraphs 4 until 17 of the Statement of Defence. The defence is a sham defence. And there is no merits at all in the Defence. See ***Penang Shipbuilding Corp. Sdn. Bhd. v. Mashaha Holdings Sdn. Bhd.***

[1986] CLJ (Rep) 575, **Sri Ferringhi Sdn. Bhd. v Yap Chaon Eng & Ors.** (2000) 5 CLJ 628 and **Adib Mokhtar & Ors. v. Jason Chan Chee Khong & Anor.** [1999] 5 CLJ 555.

The Statement of Defence consists of a bare denial of the Plaintiffs entire claim and there is no indication of what is the nature of the defence. The defence does not condescend to particulars and this will prejudiced the Plaintiff as the Plaintiff is deprived of the ctual nature of the Defence. The defence is therefore a sham and it ought to be struck out.To allow it to go for trial is a sheer waste of time as it is obviouslay unsustainable. See **Pernas Sime Darby Holdings Sdn. Bhd. v. M. Poovanandran** [1985] 1 LNS 102, [1986]1 MLJ 418 ; **Public Bank. Berhad v. Heng Weng Chin & Ors.** [2002] 3 CLJ 751.

The Defendant contends that of the claim of defamation which is pleaded in paragraph 16 of the Statement of Claim is by itself is defective. This is because the Plaintiff has failed to state a case for defamation. It is elementary rule of law that in order to put forward a claim for defamation the Plaintiff must plead:

- a. The actual words alleged to be defamatory;
- b. The defamatory imputations conveyed;
- c. The person to whom the words were published.

I disagree with the contention of the defendant on this issue. The allegations in the Statement of Claim is sufficient to establish a case of defamation against the defendant. What is alleged is that as a result of the Defendant unlawfully and wrongfully using the

Plaintiffs identity card number in the bankruptcy proceedings in the High Court Shah Alam, in publishing, circulating and gazetting the false statement about the alleged bankruptcy of the Plaintiff to third parties namely the Insolvency Department Malaysia, the Government of Malaysia and other credit reference agencies including Bank Negara Malaysia, CTOS Sdn. Bhd. and Financial Information Services Sdn. Bhd., the Plaintiff was defamed. Paragraph 16 to 28 of the Statement of Claim states the facts that amounts to defamation. Thus, the allegations are clear and Defendant's response is at para 15 and 16 of the Statement of Defence which is a bare defence. The Defendant could have stated in its Defence this fact but that is not so. In any event if the Defendant thinks that the Statement of Claim is defective as far as the allegations of defamation is concerned, the defendant should have applied for the Statement of Claim to be strike out under 0 18 r 19 RHC. Therefore, Statement of Claim is therefore not defective.

Finally, the Plaintiff submits that the Statement of Defence dated 15.1.2009 does not contain a proper indorsement of the name or firm and business address of the solicitor by whom it was served. (See Order 18 Rule 6 (4) (b) of the RHC 1980 and the Malaysian Court Practice High Court. 2004 Edition). The Plaintiff submits that this is a mandatory provision and the failure to observe it renders the pleading defective. However, I am of the view that the failure to comply with the mandatory provision does not cause injustice or prejudiced the plaintiff in any way. From the earlier appearance filed the Plaintiff would know that the Defendant solicitors' are Pritan, Eng & Co. Furthermore the defence was forwarded accompanied by a letter from Pritan, Eng & Co with their address.

Finally the name of the Solicitors does appear on the defence and so does the signature above "Peguamcara Defendan". All that is missing is the address of the Defendant Solicitors which is known to the Plaintiff Solicitors by reason of the earlier documents filed.

Therefore, based on the above stated reasons I find that the Statement of Defence does not disclose a reasonable defence. All that was pleaded was a bare denial without condescending to particulars. Hence I allow the application by the Plaintiff in Enclosure 6 as follows:

- Prayer (a) is allowed;
- Prayer (b) and (c) allowed but the quantum to be assessed by the Registrar.

Similarly the prayers in the Statement of Claim is ordered as follows :

- prayer 29 (d) allowed,
- prayer (e) allowed but with the words "dan lain-lain credit rating agency di Malaysia" deleted;
- prayer (f) and (g) disallowed.
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Costs as prayed in para (e) of Enclosure 6 is awarded to the Plaintiff.

t.t. Datin Zabariah Mohd Yusof

Tarikh :18.5.2009

Bagi pihak Plaintiff : Encik Gerard Lourdesamy
Tetuan Gerard Samuel & Associates

Bagi Defendan : Encik Pritan Singh
Tetuan Pritan, Eng & Co