

DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR
(BAHAGIAN SIVIL)
GUAMAN SIVIL NO: S7-22-40-2006

ANTARA

1. KRISH MANIAM & CO
2. DATO' KRISNA KUMAR A/L
SIVASUBRAMANIAM**PLAINTIF**

DAN

1. MAMPU JAYA SDN BHD
2. CHOY TAY SENG
3. PAG-MAMPU JAYA SDN BHD**DEFENDANT**

GROUND OF JUDGMENT

This is with regards to the appeal by Citibank Berhad's (hereinafter referred to as "the Bank") appeal against the Registrar's decision which allowed the Plaintiff's application to join the Bank as the 4th Defendant.

Brief Background

The claim of the Plaintiffs against the 1st, 2nd and 3rd Defendants is essentially for legal fees due to the Plaintiffs.

By way of settlement of the debt, the 1st and 2nd Defendants offered to the 2nd Plaintiff, a property ("the Property") developed by the 3rd Defendant (sister company of the 1st Defendant).

The settlement of the debt was to be by way of the 1st and 2nd Defendants paying off within five years, the loan obtained by the 2nd Plaintiff from the Bank to finance the purchase of the Property.

After paying some of the installments, the 1st and 2nd Defendants failed to pay the balance of the Loan installments.

From the Statement of Claim, the Plaintiffs' claim against the Defendants, is for:

- (i) judgment against them for the balance of the legal fees outstanding;
- (ii) judgment against them for a further sum of RM270,000 due from the Defendants as further additional legal fees incurred since the earlier legal fees due;

Essentially the application by the Plaintiff is under O 15 r 6 (2) (b) (ii) RHC i.e. to include the Bank as the 4th defendants to this Suit. Authorities have shown that the principles applicable are as follows:

- a) the court has a wide discretion to make an order of joinder of parties to enable all matters in dispute can be effectively and completely determined and adjudicated upon. (Refer to Kuala Lumpur Finance Bhd v Azmi & Co Sdn Bhd Dan 1 lagi [1996] 4 MLJ 650;

- b) The application for joinder may be made at any stage provided that it is made before final judgment. (Refer to Shell Malaysia Trading Sdn Bhd v Leong Yuet Yeng & Ors [1990] 3 MLJ 254).

From the Statement of Claim, the dispute is between the Plaintiffs and the defendants with regards to payment of fees. As far as the bank is concerned the privity is between the 2nd Plaintiff and the Bank. There is no cause of action as between the 2nd Plaintiff and the Bank.

The 2nd Plaintiff is the borrower of the loan which was issued by Bank. This can be seen from:

- the facility Agreement dated 22.8.2001 signed by the 2nd plaintiff as borrower (Exhibit CBB-1);
- Assignment dated 22.8.2001 in favour of the bank, of the rights to the property signed by the 2nd plaintiff as Borrower, by way of security for the loan;
- The Statement of accounts for the loan was sent to the 2nd Plaintiff's address. (CBB-3)
- Letters from the bank and its solicitors to the 2nd plaintiff demanding for payment of the arrears of the loan instalments- (CBB-4);
- Bank's solicitors' letter of demand dated 31.5.2005 to the 2nd Plaintiff – (CBB-5);
- Bank's solicitors' letters dated 17.7.2006 and 25.7.2006 to the 2nd Plaintiff's solicitors. (CBB6);

- Bank's solicitors' letters dated 22.11.2006 and 1.12.2006 to the 2nd Plaintiff's solicitors, and their reply dated 27.11.2006. The letter shows that the 2nd plaintiff had proposed a settlement of the debt which was accepted by the Bank. But the 2nd plaintiff did not comply with the terms of the settlement- (CBB-7);

Payment to the bank had been made by the 2nd Plaintiff. An example of Loan payment Slip is in exhibit CBB-8.

There have been some request by the bank for payment from the 1st Defendant, but that was upon and on the instruction of the 2nd Plaintiff. However this does not affect the liability of the 2nd plaintiff to pay the bank the amount of the Loan taken.

Therefore clearly as far as the loan is concerned it is between the 2nd plaintiff and the Bank. The Bank has a cause of action against the 2nd Plaintiff in the event of breach by the 2nd Plaintiff. Any arrangement made by the 2nd plaintiffs with the defendants as to payment of the said legal fees is no concern of the Bank. So long as the repayment of the loan is made every month, whoever pays for or on behalf of the 2nd Plaintiff is between the 2nd Plaintiff and the said person. The bank is not concern as to the source of payment so long as the loan is being serviced. All these does not detract from the fact that the 2nd Plaintiff is liable as the borrower to the Bank.

Therefore from the above, it is clear that the 2nd Plaintiff has no cause of action against the Bank.

The appeal by the Bank is hereby allowed with costs and the decision of the Registrar which allowed the bank to be added as the 4th Defendant is set aside.

Datin Zabariah Mohd Yusof

Tarikh 3.7.2009

Bagi pihak Plaintiff : Encik D. Paramalingam
(Tetuan Shamiah K. E Ng & Siva)

Bagi pihak Defendan : Encik Andrian Hee
(Tetuan Muthu & Partners)