

**IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR**

**CIVIL DIVISION**

**CIVIL SUIT NO. S2-22-18-2007**

**BETWEEN**

**PACIFIC VINTAGE SDN BHD**

**.....PLAINTIFF**

**AND**

**1. NASION COM SDN BHD**

**2. NASIONCOM HOLDINGS BERHAD**

**.....DEFENDANT**

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**GROUND OF JUDGMENT**

This is the 2<sup>nd</sup> Defendant's application to strike out the Plaintiff's claim under 0 18 r 19 (1) (a) , (b) or (d).

## **Brief facts**

Sometimes in 2006 the 1<sup>st</sup> and 2<sup>nd</sup> Defendants were investigated by the Securities Commission (SC) for alleged breach of security laws. Pursuant to the investigation, the SC also raided the premises of the Plaintiff's secretarial office. In the midst of the investigation Plaintiff was shown the 1<sup>st</sup> and 2<sup>nd</sup> Defendants' statement of accounts and documents which shows that the Plaintiff was a customer of the 1<sup>st</sup> defendant and owes the 1<sup>st</sup> Defendant large sums of money. The group accounts of the 2<sup>nd</sup> Defendant also shows that the Plaintiff owes large sums of money to the 2<sup>nd</sup> Defendant by virtue of the 1<sup>st</sup> Defendant being a wholly owned subsidiary of the 1<sup>st</sup> Defendant.

The Plaintiff claims that these statements of accounts and various documents were falsified and had lodged a police report.

Arising from the publication of the falsified statement of accounts and the various documents, the SC had raided the premises of the Plaintiff thus causing serious disruption to the business operation of the Plaintiff. This has come to the knowledge of the Plaintiff's business circle resulting in the Plaintiff suffering loss to its business.

Therefore the Plaintiff claims for special damages and an injunction restraining the Defendants from further falsifying or publishing invoices, delivery orders and the various documents stated therein in the statement of claim.

The 2<sup>nd</sup> Defendant's defence is that the documents were prepared upon instruction from their clients and hence the Plaintiff has no cause of action against them

### **The Courts Findings**

Principle in striking out is that it will only be exercised in plain and obvious case where the case cannot be sustained. Refer to ***Bandar Builders Sdn Bhd v United Malayan Banking Sdn Bhd*** [1993] 3 MLJ 36.

The Plaintiff's claim is for damages against the Defendants which have made use of the Plaintiff's name to show that the Plaintiff owed large sums of money to the Defendants when in actual fact there was no such debt.

The defence of the Defendants is that the preparation of the documents was under instruction of its clients, which the Defendants have not identified. The Defendant alleged that there is a dealership agreement allegedly signed by the director of the Plaintiff (which is denied by the Plaintiff) and the 1<sup>st</sup> Defendant. This raises question that needs determination by the court therefore it is not a fit case to be struck out. (Refer ***Loh Holdings Sdn Bhd v Peglin Development Sdn Bhd*** [1984] 2 MLJ 105

Plaintiff has averred that there is no "dealership agreement" and that the Plaintiff have never received any of the invoices, statement of accounts referred to by the Defendants which formed the basis of the debt of the Plaintiff to the Defendants.

Plaintiff have also never given its consent for its name to be used by the Defendants. KM Management & Corporate Services Sdn Bhd provides secretarial services to the Plaintiff and it has no authority to grant any consent for the Plaintiff to be made as “Agen Pembelian”.

There is no dispute that the statement of accounts of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, invoices and documents were falsified and it was found to be with the Defendants when the SC raided the their premises. As a result the premises of Plaintiff’s company secretary were raided by the SC. Plaintiff suffered losses and is claiming for damages.

Therefore from the above, there is a cause of action against the Defendants for falsifying the documents calculated to cause pecuniary loss to the Plaintiff. This claim by the Plaintiff is not frivolous or vexatious and neither is it an abuse of the process of court. Refer to *McDougall v Knight* [1890] 25 QBD 1.

Therefore the application by the 2<sup>nd</sup> defendant herein to strike out the Plaintiff’s claim is hereby dismissed with costs.

Datin Zabariah Mohd Yusof

Tarikh : 11.6.2009

Bagi pihak Plaintiff : Puan Annie Gomez

Tetuan Kamarudin & Partners.

