

**DALAM MAHKAMAH TINGGI MALAYA KUALA LUMPUR
(BAHAGIAN SIVIL)**

GUAMAN NO: S7-22-82-2007

ANTARA

CHEAH LING LING

.....PLAINTIF

DAN

CHEAH SEE HAN

..... DEFENDAN

GROUND OF JUDGMENT

This is the Plaintiff's appeal against the decision of the SAR which disallowed the application by the Plaintiff for an amendment to the Statement of Claim.

The application of the Plaintiff is to amend paragraph 7, 9 and 10 (b) of the Statement of Claim as follows:

- a) amend and correct the spelling mistake to the word "Peguamcara";
- b) in the same paragraph to include the period "dalam tempoh 5 tahun";

- c) in paragraph 9 to delete the date of the letter of demand by the Plaintiff from “8.12.2000” to “8.12.2005”;
- d) in paragraph 10 (b) to amend the rate of interest from ‘18%’ to ‘8 %’.

The Defendant does not object to the amendment as proposed by the Plaintiff as in paragraph (a) and (d) above. However the Defendant opposes strongly on the other amendments.

The Court's Findings

The Court disallow the proposed amendment by the Plaintiff as it is not made bona fide. Reasons:

- a) The application by the Plaintiff is to circumvent the issue of limitation which has already set in against the Plaintiff. The Defendant in its application dated 11.4.2007 (enclosure 2) to strike out the Plaintiff's claim had raised the issue of limitation period as one of its grounds to strike out the Plaintiff's claim;
- b) Plaintiff in her original Statement of Claim in paragraph 9 states that her solicitors had sent letters dated 8.12.2000 and 22.12.2000 to the Defendant to which the Defendant has denied. The writ of Statement was filed on 26.12.2007. Based on these dates (8.12.2000 and 22.12.2000) the Plaintiff is clearly out of time. However with the proposed amendment, it would have the effect that the Plaintiff's claim is still within the time limit.

- c) On the issue of the demand letter dated 8.12.2005, which the Plaintiff is seeking to insert as an amendment to the Statement of Claim, it is to be observed that from the alleged date of posting of the demand letter which is 21.12.2005 as compared to the date of the letter 8.12.2005, there is a gap of 13 days of the letter being kept before it was posted. On a balance of probability, that the certificate of posting may not be referring to this 8.12.2005 letter.

What is perplexing is that if it is true that the letter of demand was dated 8.12.2005, this date would have been inserted at the time when the Statement of Claim was first filed, as whatever facts would have already been available at that point in time. So is the fact that the Defendant had allegedly agreed to pay within 5 years after the date of 8.12.2005, these facts would have been pleaded at the first instance when the Statement of Claim was filed. These are facts within the personal knowledge of the Plaintiff. In this case it took the Plaintiff 7 months to realize that these facts have not been pleaded, which to my mind is very crucial and formed the substratum of the Plaintiff's claim against the Defendant. The question would then arise how did the Plaintiff pleaded the date 8.12.2000 (when the Statement of Claim was first filed) when the date should have been 8.12.2005. Surely there must have been a basis when the date 8.12.2000 was pleaded in the first place. These had not been explained by the Plaintiff.

The above explanation seems to suggest that the proposed amendment with regards to the dates is a mere afterthought and not bona fide and it causes prejudice to the Defendant which cannot be compensated with costs. (Refer to the case of **Malayan Banking Ltd v Ting Ee Ngieng** [1965] 2 MLJ 165) With the proposed amendment, if allowed would have the effect of depriving the Defendant of an available defence to the Plaintiff's claim.

Therefore based on the above reasons the application by the Plaintiff is dismissed with costs.

Datin Zabariah Mohd Yusof

Tarikh 29.6.2009

Bagi pihak Plaintiff : Encik Armanjit Singh
(Tetuan P Sevam & Ass.)

Bagi pihak Defendan : Encik A.Nagarajan
(Tetuan Rommel & A. Nagarajan)