

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

CIVIL DIVISION

CIVIL SUIT NO. S3-22-1465-2007

BETWEEN

BERJAYA TIMES SQUARE

.....PLAINTIFF

AND

1. ONE NATION DEVELOPMENT SDN BHD

2. LAU MAN PIU

3. LIANA PIU HUOI PHENG

.....DEFENDANT

GROUND OF JUDGMENT

This is the Application of the Plaintiff against the Defendants pursuant to Summons-In-Chambers dated 7th October 2008 [Enclosure 5] for summary judgment in regards to its claim against the Defendants for a sum amounting to RM 593,832.59.

BACKGROUND FACTS

The Plaintiff had entered into a Tenancy Agreement with the 1st Defendant via a Tenancy Agreement dated 30th June 2003 for the rental of the Premise for a period of three years with a monthly rent of

RM 11,748.00 together with service charges, payments to the advertising and promotion fund and other expenditures.

The relevant clauses in the Tenancy Agreement which are of importance would be Clauses 2(1), 4(7), 5(1)(b), 5(1) (c), 8(1), 9(1), 10(2), 14 and 26.

The 2nd and 3rd Defendants are both guarantors of the 1st Defendant pursuant to the Letter of Guarantee and Indemnity dated 5th May 2003("Guarantee Letter") to indemnify any payment of rent, service charges, damages and/or other expenses incurred and liable to be paid by the 1st Defendant to the Plaintiff as in accordance with the Guarantee Letter.

On 5th April 2004, the 1st Defendant had prematurely ceased its business operations on the Premise.

As such, the Plaintiff is claiming against the 1st Defendant for non-payment of rent, service charges and other expenses incurred during the time the Tenancy Agreement which was still subsisting then and also after it was prematurely terminated. These amounts to RM 593,832.59. The same is also due and owing from the 2nd and 3rd Defendant.

The Defendants have not filed any affidavit in reply to oppose this application, therefore relying on its Defence and Counter claim.

Issues raised by the Defendants;

The only issue raised in the Defence and Counterclaim is regarding the alleged misrepresentation by the Plaintiff which have induced the Defendants to enter into the said tenancy Agreement.

On this issue, I refer to clause 26 of the Tenancy Agreement which states:

“This Tenancy Agreement shall upon its execution thereof supersede the Letter of Offer and also further supersede and cancel in all respects all previous contracts, agreements, representations, undertakings and prior negotiations amongst the Parties hereto with respect to the subject matter hereof whether such be written or oral.”

This clause excludes whatever representations made prior to the Tenancy Agreement.

From the facts the Defendants have clearly breached the Tenancy Agreement when it fails to pay for the rent due and other necessary charges as stipulated under the Tenancy Agreement.

The defendants have terminated the Tenancy Agreement before the expiry of the terms of the tenancy, as such the 1st defendant is liable to pay to the Plaintiff the sum of the non payment of the rent as of the date of the vacant possession and for the outstanding due for the unexpired period.

The tenancy is for a fixed period of 3 years from 1st October 2003 to 30th September 2006. Clause 10(2) of the Tenancy Agreement states that in the event if the 1st Defendant vacates the Premise before the expiry date, 1st Defendant is liable to pay the agreed liquidated damages for the monthly rentals and services charges for the entire duration of the tenancy (see Clause 10(2) of the Tenancy Agreement Of Enclosure 4.

The claim for the unexpired period from 10th November 2004 to 30th September 2006 is RM378,344.96.

Being guarantors, the 2nd and 3rd Defendants are also liable for the same amount as the 1st Defendant.

As there was no reply to the Plaintiff's affidavit in support, the only issue raised in the Defence and Counter Claim is without merits and does not constitutes a triable issue.

Therefore, the application of the Plaintiff in Enclosure 4 is allowed with costs.

Datin Zabariah Mohd Yusof

Tarikh : 12.6.2009

Bagi Pihak Plaintiff : Cik Nalani Murugiah
Tetuan Thangaraj & Associates

Bagi Pihak Defendant : Azhar Nur Abdul Manaf
Tetuan Zain Johnson & Associates