

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

**GUAMAN SIVIL NO S6-22-712-2006**

**ANTARA**

**GANSHAMDAS ATMARAM KHALANI .....PLAINTIFF**

**DAN**

**RAHMAT AMAN DEVELOPMENT SDN BHD .....DEFENDAN**

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**GROUND OF JUDGMENT**

Enclosure 4 is the Plaintiff's application for an injunction against the Defendant:

- a) prohibiting the Defendant whether by their directors, trustee, nominee, beneficiary, officers, servants and agents from disposing, selling, charging, leasing or using the said land until final disposal of the suit;

- b) through their directors, trustee, nominee, beneficiary, officers, servants and agents to safeguard the land from being disposed, sold, charged, leased, or used until final disposal of the suit herein.

### **Brief Facts**

By a Sale and Purchase Agreement dated 14.1.1998 (SPA), entered into between Rahmat Aman SB and Maggie d/o Devadoss and Peter Devadoss (the Vendors), Rahman Aman SB acquired 2 parcels of empty land held under titles of GM 1203 Lot No. 4526 and GM 1206 Lot No. 4527, both of Mukim Batu, Kuala Lumpur (said Properties) at a consideration of RM 1,600, 000.00.

Rahmat Aman SB paid the partial consideration of RM 970, 000.00 only to the Vendors upon signing of the SPA and did not have sufficient monies to pay for the balance of RM 630, 000.00.

Plaintiff avers that Rahmat Aman SB through brokers induced the Plaintiff to invest the sum of RM 630, 000.00 in acquisition of the properties. Rahmat Aman SB, the broker and the Plaintiff subsequently entered into an Investment Agreement dated 14.6.2000, where the Plaintiff agreed to invest the sum of RM 630, 000.00 in the acquisition of the property upon the terms and conditions contained in the Agreement.

Pursuant to Clause 4.1 of the Agreement, Rahmat Aman SB had represented to the Plaintiff that the said properties would be registered in the name of the Defendant as its nominee. The

Memorandum of Transfer shows that the properties were registered in the name of the Defendant as nominee and trustee for Rahman Aman SB.

Rahmat Aman SB instructed Plaintiff to issue payments of his investment of RM 630,000.00 to the Vendor's solicitors.

Pursuant to clause 2.1 of the Investment Agreement, Rahmat Aman SB issued 4 cheques of RM 157,500.00 for the repayment of the Plaintiff's investment of RM 630, 000.00.

Rahmat Aman SB agreed to pay Plaintiff a guaranteed return of RM 270, 000.00 on his investment. Rahmat Aman SB issued 2 cheques of RM 135, 000.00 to the Plaintiff.

All of Rahmat Aman SB's cheques were dishonoured.

By a letter dated 20.1.2000 Rahmat Aman SB informed the Plaintiff that the Defendant is in the process of selling the said properties for a total consideration sum of RM 2, 132, 000.00 and requested the Plaintiff to assist in the selling of the said properties.

Plaintiff then instituted winding up proceedings against Rahmat Aman SB for the recovery of his investment monies under Winding Up Petition No D-28-1116-2003 and also had instituted legal proceedings under High Court O/S No S6-24-2844-2005 against the 2 directors of Rahmat Aman SB namely, M Ramanathan Meyappan and Ashvin Kumar a/l Jayantilal.

The Defendant raised the following issues:

- a) Whether the Plaintiff has a cause of action against the Defendant;
- b) The failure of the Plaintiff to fully disclosed the facts of this case when applying for the ex parte interlocutory injunction;
- c) The delay of making the application for injunction;
- d) Issue of damages.

### The Court's Findings

#### Whether the Plaintiff has a cause of action against the Defendant

The prerequisite for an injunction is that there must be a triable issues between the parties.

In this case the basis for the claim by the Plaintiff against the Defendant is as a nominee to Rahmat Aman SB whereby the Plaintiff claims to have made payments of RM 630, 000.00 as investment monies.

In paragraph 3 of the Plaintiff's Statement of Claim Plaintiff avers that:

“ Defendan adalah nominee dan pemegang amanah kepada Syarikat Rahmat Aman SB”

In paragraph 8 of Enclosure 8 Plaintiff states that:

“ .....menurut klausa 4.1 Investment Agreement tersebut, Rahmat Aman SB telah merepresentasikan kepada saya

bahawa Hartanah-Hartanah tersebut akan didaftarkan atas nama Defendan sebagai nominee mereka. Melalui satu Memorandum Pindahmilik bertarikh 9.8.2000 hakmilik individual untuk Hartanah-Hartanah tersebut telah didaftarkan atas nama Defendan sbagai nominee dan pemegang amanah untuk Rahmat Aman SB, sebagai benefisiari sah Hartanah-Hartanah tersebut.”

Thus from the Plaintiff’s own averments that the Defendant is a mere nominee or agent to Rahmat Aman SB.

Consequently, I am of the view that the Plaintiff has no cause of action against the Defendant as the Investment Agreement was between the Plaintiff and Rahmat Aman SB not the Defendant. The Defendant is not privy to the Investment Agreement.

Subsequent to that, since the Plaintiff has no cause of action against the Defendant, there was therefore no legal basis for the interlocutory injunction to be granted or for it to be continued. Without a cause of action, no serious question ought to go for trial. Refer to ***Keet Gerald Francis Noel John v Mohd Noor @ Harun b Abdullah & 2 Ors*** [1995] 1 MR 373.

A point to note is, since the Ddefendant is the nominee of Rahmat Aman SB, therefore the properties belongs to that of Rahmat Aman SB. Rahmat Aman SB had been wound up and therefore all its assets is under the custody of liquidators. (Refer to section 233 Companies Act 1965.)

The failure of the Plaintiff to fully disclosed the facts of this case when applying for the interlocutory injunction

The Plaintiff did not disclose to the Court the existence of caveats lodged by the Plaintiff on the said properties dated 9.3.2001, and by the brokers dated 13.8.2002, during the arguments for the ex parte interlocutory injunction on 28.7.2006.

If these facts have been disclosed by the Plaintiff, the interlocutory injunction would not have been necessary as the presence of the caveats on the said properties would be sufficient to prevent any dealings on the said properties.

The basic principle of law when making an application for an injunction is that a party seeking for an ex parte relief must make full disclosure to the court of all facts which are material to the exercise of the court's discretion. See the case of ***Balakerisnan a/l Varathan & Anor v Muniandy a/l Varathan & Anor*** [2005] 4 AMR 767.

Therefore clearly, the Plaintiff have failed to make full disclosure of the material facts regarding the presence of the private caveat on the said properties, which means that at the point of application for the ex parte injunction there was no urgency, not to mention no necessity for the said ex parte injunction at all. (Refer to ***Inter Heritage (M) Sdn Bhd v ASA Sports Sdn Bhd*** [2002] 1 AMR 890).

Therefore the ex parte injunction ought to be set aside on this basis.

### The delay of making the application for injunction.

Obviously there is a delay in making the application for this injunction. The chronology is as follows which will show that there is delay by the Plaintiff:

- The payments were stopped by Rahman Aman SB somewhere around October 2001.
- The private caveat lodged by the Plaintiff on the said properties was dated 9.3.2001 and by the brokers on 13.8.2002.
- Plaintiff filed this application for an injunction on 21.7.2006.

The Plaintiff had not provided a cogent explanation for the delay of 5 years from the date when Rahmat Aman SB stopped the payment.

### Issue of damages

The relief prayed for by the Plaintiff is monetary relief for the amount which he had “invested”. The Plaintiff failed to show in what way is damages not an adequate remedy to the him in the event judgment is in his favour. Since this is monetary judgment which the Plaintiff is claiming, it is without doubt that damages is an adequate remedy and there is no necessity for an injunction.(Refer to the case of ***Perbadanan Setiausaha Kerajaan Negeri Selangor & 2 Ors v Metroway Sdn Bhd & Anor*** [2003] 4 AMR 550.

Therefore based on the above reasons, the application for an injunction by the Plaintiff is dismissed with costs.

Datin Zabariah Mohd Yusof

Tarikh : 15.6.2009

Bagi Pihak Plaintiff : Encik Harjit Singh Sachdev

Tetuan Harjit Sandhu

Bagi Pihak Defendant : Encik V. Mugunthan

Tetuan Gunaseelan & Associates