

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

CIVIL DIVISION

CIVIL SUIT NO. S-22-309-2008

BETWEEN

N-VISIO SDN BHD

.....PLAINTIFF

AND

- 1. HORIZON MULTIMEDIA SDN BHD**
- 2. GERALD NICHOLAS TAN ENG HOE**
- 3. JOHN LOH KUAN YONG**
- 4. MARK LEE YOONG CHONG**
- 5. DAVID JAMES WONG**
- 6. ANGELA WONG MIEW HOONG**

.....DEFENDANT

GROUND OF JUDGMENT

This is Plaintiff's appeal to the Judge in Chambers against the SAR's decision dismissing Enclosure 34, Plaintiff's application to amend the pleadings and adding in Defendant 7 to Defendant 10 in the Suit herein.

The Plaintiff's Application

The Plaintiff's existing action involves the alleged conspiracy to interfere with the Plaintiff's business, alleged theft of the short codes, unlawful use of Plaintiff's confidential information and breach of employee's good faith and fidelity.

The Plaintiff seeks to join the proposed 2nd Plaintiff and the proposed 7th to 10th Defendants to this suit pursuant to Order 15 rule 4 of the Rules of the High Court 1980.

The joinder of parties is subject to two conditions:

- i. The right to relief must in each case be in respect of or arise out of the same transaction or series of transactions; and
- ii. There must be some common question of law or fact.

The Plaintiff seeks to join Excel Mobile Investments Ltd in this suit (the "Proposed 2nd Plaintiff) on grounds that Excel Mobile Investments Ltd business in China have been diverted by the 2nd to 5th Defendants to Phoenix Investment Global (the Proposed 7th Defendant).

I am of the view that the application of joinder by the Plaintiff fails to satisfy the requirements as stipulated in O 15 r 14 RHC and hence I dismissed the appeal by the Plaintiff with costs. Reasons:

- a) The addition of the Proposed 2nd Plaintiff and the Proposed 7th Defendant to the Suit herein raises a new distinct cause of action i.e with regards to the business in China by Excel Mobile Investments Ltd and the alleged diversion of the business in China to the proposed 7th defendant. These facts are new and has no link to the existing facts pleaded in the original claim.
- b) there is no common question of law or fact to the existing action because:
 - (i) The plaintiff's existing action involves alleged theft of short codes and unlawful use of Plaintiff's confidential information and breach of employee's good faith and fidelity;
 - (ii) The proposed amendment seeks to introduce Excel Mobile Investments Ltd business in China and the alleged diversion of the business in China to the proposed 7th defendant.

It certainly does not arise out of the same transaction or series of transaction.

Moreover the consent of Excel Mobile Investments Ltd was not shown to have been obtained, to include it as the proposed 2nd Plaintiff.

Therefore the appeal by the Plaintiff is dismissed with costs.

Datin Zabariah Mohd Yusof

Tarikh : 11.6.2009