



### The Plaintiff's Claim

- (i) Pursuant to a resolution dated 27-03-2003 the Plaintiff was appointed a director of Magneprint Technology Sdn Bhd ("MTSB") to look after the interest of the Defendant's shares;
- (ii) Pursuant to a resolution dated 04-04-2003, the Plaintiff was appointed a director of Percetakan Wawasan Maju Sdn Bhd ("PWM") so as to look after the Defendant's interest for a loan given to the Company;
- (iii) In respect of both appointments, the Defendant had given the Plaintiff an undertaking that the Defendant shall pay the Plaintiff's director's fees;
- (iv) The Plaintiff shall be entitled to claim traveling and entertainment expenses during his tenure as Director for MTSB and PWM; and
- (v) The Plaintiff is entitled to claim professional fees for legal work and advice rendered for the restructuring of MTSB.

### Issue on the Defendant not filing conditional appearance

Plaintiff submits that because the Defendant have filed an unconditional appearance, he is precluded from filing an application to strike out the Plaintiff's Writ and Statement of Claim

under Order 18 rule 9 RHC 1980. The Plaintiff also submits that the application herein by the Defendant was made after 6 months 13 days after the unconditional appearance was filed, and no reasons was forwarded by the Defendant as to why the delay in filing this application.

On this issue, I refer to the provision of Order 18 rule 19 (1) RHC 1980 which allows the application to strike out to be made at any stage of the proceedings. Herein is the said provision:

" The Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement, of any writ in the action, or anything in any pleading or in indorsement...."

The words "at any stage of the proceedings" were deliberated by the Federal Court in the case of ***Hong Leong Bank Bhd (formerly known as Hong Leong Finance Bhd) v Staghorn Sdn Bhd and other appeals*** (2008) 1 ALJ 622 where Abdul Hamid Mohamed CJ, delivering the judgment of the Federal Court had this to say:

" Thus, we see that our courts have been very consistent regarding the scope of the application of this rule. This is very sensible as the words ' At any stage of proceedings...' necessarily mean that there is a proceeding pending. Once judgment is entered, the proceeding has come to an end".

The case of ***Doreen Industries (M) Sdn Bhd & Ors v Sri Ram & Co (sued as a firm) & ors*** [2001] 6 MLJ 532 where again the court reiterated that the words “ at any stage of the proceedings” in 018 r 19 RHC expressly exclude any time limit for the application of striking out. This case is also the authority for the proposition that an application under 0 18 r9 RHC may be made even though the Defendant had entered an unconditional appearance and had filed a defence.

As to the delay of 6 month and 13 days, I am of the view that it is not inordinate and there is no evidence from the circumstances of this case that the Plaintiff had been prejudiced by the delay. Refer to the Court of Appeal case of ***Neoh Hong Sang T/A Neoh Hong Sang v Lye Weng Enterprise Sdn Bhd*** [2008] 4 CLJ 808 where the striking out application was made after 15 years from the date of filing the Writ and Statement of Claim, but nevertheless the Court of Appeal did not find the delay inordinate.

Therefore, the Plaintiff's objection as to the fact that this application was made after an unconditional appearance was filed and a delay of 6 months 13 days, is baseless.

#### The Claim for the Director's Fees

Paragraph 8 of the Statement of Claim states that there was an undertaking and promise by the Defendant to the Plaintiff that the Defendant is to pay the Plaintiff Director's Fees during the tenure of the Plaintiff's term as Defendant's nominee in PWTM and MTSB.

However the Plaintiff failed to condescend to particulars as to the alleged oral undertaking and promise i.e when, where was the undertaking given. Whether it was given at a meeting when there were witnesses? All these are particulars which the Plaintiff have failed to adduced.

#### The Claim for Travelling Expenses

The Plaintiff also failed to show the details and particulars in respect of the said claim, and on what basis is he entitled to claim. The pleadings and the affidavits of the Plaintiff are bare averments and unsubstantiated.

#### The alleged restructuring and the claim for legal fees

Similarly for these claims, the Plaintiff had not provided for material particulars like:

- (i) The time period of the restructuring exercise;
- (ii) Whether bills for the legal fees issued to the Defendant, PWM or MRSB?;
- (iii) The nature of the work or advice in the restructuring exercise; and
- (iv) Particulars with regard to the said restructuring whether they were in the nature of claim from debtors, procurement of investments, cost-cutting exercise, rearrangement of management, etc.

Whether the Plaintiff's case is a plain and obvious case which ought to be struck out.

The pleadings and the affidavits of the Plaintiff does not support the Plaintiff's claim. I am guided by the fact that at this stage the court is not concerned as to the merits of the Plaintiff's claim, but all that the Plaintiff is required to show is that there is a reasonable cause of action against the Defendant, no matter how weak the case may be. However there is no exception to the fact that the Plaintiff must condescend on some material particulars for the Defendant to know what is it that the Plaintiff is alleging against him for him to formulate a defence, and also for the court to take cognizance of the fact that there is a claim against the Defendant, no matter how slight it may be. I find support in the case of *Re Lee Siew Kow deceased* (1951) MLJ 224 where Murray Aynsley CJ said at page 225:

" .....the basic principle is that the pleading must contain a statement in a summary form of the material facts....but not the evidence by which they are to be proved. The meaning of material facts is explained in the often cited passage of Cotton LJ in *Phillips v Phillips* (1818) 4 QBD 139:

The pleading, not to be embarrassing to the defendants should state the facts which will put the defendants on guard and tell them what they have to meet when the case come on for trial."

This point was further reiterated in the case of ***Adib Mokhtar & Ors v Jason Chan Chee Khong & Anor*** [1999] 2 MLJ 473 wherein states:

“ It should hardly need stating then that the basic purpose of O 18 r 7(1) is to enable a Defendant to know what it is that a plaintiff alleges against him and in doing so, the plaintiff is obliged to state facts sufficient to formulate a complete cause of action.”

A point to note further is as submitted by the Defendant that in Exhibit TDN-6 of Enclosure 8A is a letter dated 26.2.2008 sent out by the Defendant to the Plaintiff seeking for particulars for the alleged entertainment expenses, traveling expenses and professional fees charged, but there was no evidence of any response given by the Plaintiff.

Further, in Exhibit TDN-3 in Enclosure 8A, the Plaintiff had reproduced an affidavit which was used in another suit no: 05-24-177-2007, whereby the Plaintiff had deposed in the said affidavit the following:

At paragraph 10,

“ Pada setiap masa yang material, saya tidak dimaklumkan dan/atau diminta sebarang pendapat atau kebenaran mengenai Syarikat Defendan Pertama. Saya tidak pernah memberi arahan atau menguruskan apa-apa transaksi atau perjalanan syarikat Defendan Pertama (PWM).”

At paragraph 12,

" Walaupun saya tidak terlibat dan urusan perniagaan syarikat Defendan Pertama, malah telah meletakkan jawatan sebagai pengarah syarikat Defendan Pertama (PWM)..."

From these averments by the Plaintiff in these affidavit as reproduced in exhibit TDN-3, it is clear that the Plaintiff himself had stated that he was never involved in operation or transaction of the company (PWM), hence how could he be entitled to director's fees, entertainment allowances or traveling expenses.

The resolution exhibited as exhibit P-2 in Enclosure 9, clearly states that the Plaintiff is not entitled to any director's fees.

Since the Plaintiff had averred in his affidavit in suit no 05-24-177-2007 that he was never involved in any operation or transaction in the companies whatsoever, then how did the Plaintiff look after the interest of the Defendant.

Another point which seems to point to the inconsistencies in the Plaintiff's contention is as to an invoice which the Plaintiff had produced which is dated 14-04-2003 for Director's Fees, when the resolution was only dated 11-04-2003.

There was also no evidence to show that the Plaintiff had sent invoices periodically to the Defendant for these claims. The Plaintiff only filed his claim in the year 2007 for the alleged fees

and expenses for the year 2003 when he had already resigned since then.

The Defendant submits that these invoices only surfaced at this striking out proceedings. This was never explained by the Plaintiff as to why it took him 4 years to file his clam against the Defendant. This shows that the claim is not bona fide, and thus is a frivolous and vexatious action to be brought against the Defendant. In the case of ***Goh Koon Suan v Heng Gek Kiau*** (1991) 2 MLJ 307 the court states that:

" A proceeding is said to be vexatious when the party bringing it is not acting bona fide, and merely wishes to annoy or embarrass his opponent, or when it is not calculated to lead to any practical result".

Thus it is an abuse of the process of court to call upon the Defendant to justify a plea which does not disclose a reasonable cause of action. This is certainly prejudicial an embarrassing to the Defendant. Refer to ***Jamir Hassan v Kang Min*** [1992] 2 MLJ 46.

Thus based on the above stated reasons the application of the Defendant under 0 18 r 19 RHC 1980 in Enclosure 22 is allowed with costs and accordingly the Plaintiff's Writ and Statement of Claim is dismissed with costs.

t.t. Datin Zabariah Mohd Yusof  
Tarikh : 5.6.2009

Bagi pihak Plaintiff : Encik R.Thaya & S.C. Tan  
Tetuan Ravi Aida & Partners

Bagi pihak Defendan : Encik Rajan Navaratnam  
Tetuan Rajan Navaratnam