

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

CIVIL DIVISION

SAMAN PEMULA S7-24-1172-2007

Dalam perkara mengenai Perisytiharaan
Jualan oleh Ehsan Auctioneers Sdn Bhd
selaras dengan Perianjian Pinjaman dan
Penyerahan hak bertarikh 28.6.1995 di
antara Southern Finance Company Berhad
dan Antara Bumi Sdn Bhd berhubung
dengan, antara lainya, apartmen yang
dikenali sebagai Unit No.11-5-5, Typ-e C2,
Menara Antara yang dibina di atas tanah
yang dipegang dibawah CT 14098,
Lot 653, Seksyen 57, Bandar Kuala
Lumpur, Wilayah Persekutuan.

Dan

Dalam perkara mengenai Seksyen 41
Akta Relif Tertentu, 1950

Dan

Dalam perkara mengenai Seksyen 25
dan Jadual kepada Akta Mahkamah
Kehakiman, 1964

Dan

Dalam perkara mengenai Aturan 15,45
dan 92 Kaedah-Kaedah Mahkamah
Tinggi, 1980

ANTARA

- 1. FONG CHOON KEE**
- 2. FONG SEOW YOKE**

.....PLAINTIF-PLAINTIF

DAN

- 1. ANTARA BUMI SDN BHD**
- 2. KOEK TIANG KUNG**

.....DEFENDAN-DEFENDAN

GROUND OF JUDGMENT

Enclosure 29 is an Appeal by the 2nd Defendant's against the decision of the SAR in dismissing the 2nd Defendant's SIC (Enclosure 15) for enlargement of time in filing the 2nd Defendant's Affidavit No. 1 (Enclosure 6) and Affidavit No. 3 (Enclosure 14A) which have been filed out of time on 9th July 2007 and 14th April 2008 respectively. The said applications was dismissed with cost by the SAR on 23rd October 2008.

Affidavit No.1 was filed out of time and the Application for extension of time (Enclosure 5) to admit the said Affidavit was struck Off with costs on 12th November 2007 by the SAR

The 2nd Defendant's Appeal (Enclosure 9) to the Judge in Chambers against the SAR's decision was also dismissed with costs on 2nd Mac 2008 by the Judge.

This is the 2nd attempt by the 2nd Defendant to appeal against the decision of the SAR to admit Affidavit No.1 once again.

This is an abuse of process of court.

Affidavit No.3.

The contents of Affidavit No. 3 are similar with Affidavit No.1. This is also the 2nd Defendant's second attempt to refile a similar Affidavit (Second Defendant's Affidavit No.3 affirmed on 14th April 2008).

This is clearly an Abuse of process of Court in trying to readmit a similar Affidavit.

The SAR had determined on the application for extension of time to admit Affidavit No.1 and the application had been dismissed with cost. The Appeal to the Judge in Chambers on the decision of the SAR was also dismissed with cost on 27th September 2008.

Affidavit No.3 has been filed out of time by 300 days. The Plaintiffs O/S and Affidavit in Support was served on the 2nd Defendant's Solicitors on 4th June 2007. Therefore the reply by the 2nd Defendant should have been filed within 14 days from 4th June 2007 that is on or before 18th June 2007 in accordance with 032 r 13 (2) (a) RHC 1980. Therefore there has been inordinate delay in filing Affidavit No 3 .

The 2nd Defendant is also in breach of 0 32 r 13 (1) RHC 1980.

Therefore the appeal by the 2nd Defendant is dismissed with costs.

Datin Zabariah Mohd Yusof

Tarikh : 11.6.2009

Bagi Pihak Plaintiff : Encik Krishna
Tetuan Fauzi, Ngah & Ngasa

Bagi Pihak Defendant : P.C.Chang
Tetuan S.K.Lam, Wong & Yap