



**IN THE HIGH COURT OF MALAYA AT MELAKA
[CIVIL SUIT NO: MA-21 NCvC-4-02/2021]**

BETWEEN

**MOHD RIDHUAN ZAKARIA @ ISMAIL
(NRIC No.: T1121183/841127-03-5611) ... PLAINTIFF**

AND

- 1. LEMBAGA PEMBIAYAAN PERUMAHAN SEKTOR AWAM**
- 2. KEMENTERIAN KEWANGAN MALAYSIA**
- 3. KERAJAAN MALAYSIA ... DEFENDANTS**

HEARD TOGETHER WITH

IN THE HIGH COURT OF MALAYA AT MELAKA

CIVIL SUIT NO. MA-21 NCvC-5-02/2021

BETWEEN

**MOHD KAMARUZZAMAN RESDI
(NRIC No.: T1140962/851120-03-5247) ... PLAINTIFF**

AND

- 1. LEMBAGA PEMBIAYAAN PERUMAHAN SEKTOR AWAM**
- 2. KEMENTERIAN KEWANGAN MALAYSIA**



3. Kerajaan Malaysia

... Defendants

GROUND OF JUDGMENT

[1] Enclosure 6 in MA-21 NCvC-4-02/2021 was filed by the first Defendant pursuant to Order 18 Rule 19(1)(a) and Order 18 Rule 19(1)(b), (c) or (d) of the Rules of Court (“ROC”) 2012 and also under the inherent jurisdiction of this Court.

[2] Enclosure 10 in MA-21NCvC-4-02/2021 was filed by the second Defendant and the third Defendant pursuant to Order 18 Rule 19(1)(a) of the ROC 2012 and also under the inherent jurisdiction of this Court.

[3] Enclosure 7 in MA-21NCvC-5-02/2021 was filed by the first Defendant pursuant to Order 18 Rule 19(1)(a) and Order 18 Rule 19(1)(b), (c) or (d) of the ROC 2012 and also under the inherent jurisdiction of this Court.

[4] Enclosure 10 in MA-21NCvC-5-02/2021 was filed by the second Defendant and the third Defendant pursuant to Order 18 Rule 19(1)(a) of the ROC 2012 and also under the inherent jurisdiction of this Court.

[5] Upon the oral application and by the agreement of all parties, all applications in both cases were heard together.

Consideration by the High Court

Enclosure 10 in MA-21 NCvC-4-02/2021

Enclosure 10 in MA-21 NCvC-5-02/2021



[6] The second Defendant and the third Defendant filed Enclosures 10 pursuant to Order 18 Rule 19(1)(a) of the ROC 2012.

[7] It is settled law that with regard to applications under Order 18 Rule 19(1)(a) of the ROC 2012, this Court shall not consider any affidavit evidence when deliberating and determining such applications.

[8] Section 3(1) of the Public Sector Home Financing Board Act 2015 (“Act 767”) provides that:

“3. Establishment of the Board

(1) A body corporate to be known by the name of ‘Public Sector Home Financing Board’ is established.”

[9] Section 3(3) of Act 767 provides that:

“3. Establishment of the Board

(3) The Board may sue and be sued in its own name.”

[10] Section 46 of Act 767 provides that:

“46. Savings and transitional

(1) Any application, approval, direction, decision, recommendation, specification, notice or other acts or things issued, made or done under the repealed Act and in force or having effect immediately before the appointed date, shall be deemed to have been issued, made or done under this Act, and shall continue to remain in force and have effect in relation to the person to whom it applied until amended or substituted.



(2) *Any application, approval or decision under the repealed Act pending immediately before the appointed date shall, on the appointed date, be dealt with by the Board under this Act.*

(3) *Neither the repeal of the repealed Act nor anything contained in this Act shall affect the liability of any person to be prosecuted or punished for offences committed under the repealed Act before the appointed date, or any proceedings brought or sentence imposed before that date in respect of such offence.*

(4) *Subject to this Act, any proceedings whether civil or criminal, or cause of action by or against the Government or any person acting on its behalf, pending or existing immediately before the appointed date in relation to the repealed Act may be continued or instituted by or against the Board as it might have been by or against the Government or such person as if this Act had not been enacted.*

(5) *Any appeal brought or any leave to appeal applied for on or after the appointed date against a decision given in any legal proceedings to which the Government was a party in relation to the repealed Act before the appointed date may be brought by or against the Board. ”*

[11] This Court read these sections together. The language of these sections is plain and clear. When read together, the legal effect of these sections are as set out below.

- The first Defendant was established under Act 767.
- Under Act 767, the first Defendant was established as a body corporate which can sue and be sued.



- Under Act 767, any action against the third Defendant shall be continued or instituted against the first Defendant (and not against the second Defendant and/or the third Defendant).

[12] In the present 2 cases, the Plaintiff filed the action against the 3 Defendants.

[13] Given the statutory provisions mentioned above, this Court found that the action by the Plaintiff in both cases against the second Defendant and the third Defendant was misconceived in law.

[14] Further, this Court also reviewed and considered the Plaintiffs pleaded claim in the Statement of Claim for both cases.

[15] This Court noted that apart from describing the second Defendant and the third Defendant in paragraphs 3 and 4 of the Statement of Claim, the Plaintiff did not plead any cause of action against the second Defendant and the third Defendant in both cases.

[16] This Court also noted that in both cases, the Plaintiff only pleaded a claim for damages - special, general and exemplary damages - against the second Defendant and the third Defendant.

[17] This Court found that in both cases, the second Defendant and the third Defendant made out their case that there was no reasonable cause of action pleaded by the Plaintiff against the second Defendant and the third Defendant.

[18] This Court also exercised its inherent powers to strike out the Plaintiff's claim against the second Defendant and the third Defendant to prevent an abuse of the process of this Court.

Enclosure 6 by D1 in MA-21 NCvC-4-02/2021

Enclosure 7 by D1 in MA-21 NCvC-5-02/2021



[19] On 11.5.2008, the Plaintiff entered into a written contract with a developer and 3 land owners (“SPA”).

[20] By the SPA, the developer and the 3 land owners were to sell and the Plaintiff was to purchase a single storey terrace house (“House”).

[21] The SPA included a schedule of payment with regard to the payment of the purchase price for the House to be made by the Plaintiff to the developer.

[22] Thereafter, the Plaintiff entered into a written contract with the third Defendant whereby the third Defendant agreed to grant and the Plaintiff agreed to borrow a specified amount as a loan which loan was to pay the purchase price for the purchase of the House (“Loan Agreement”).

[23] As security for the loan, the Plaintiff executed a Deed of Assignment in favour of the third Defendant (“Assignment”).

[24] This Court reviewed the pleadings filed by both parties in each case.

[25] This Court also reviewed and considered the affidavits filed by both parties and the exhibits disclosed and attached to these affidavits.

[26] After careful consideration, this Court found that there were issues to be considered and determined at a trial - where *viva voce* and documentary evidence would be required - and that these issues included, among others:

- (1) Whether the SPA was incorporated into the Loan Agreement and the Assignment?



- (2) What were the obligations by the first Defendant with regard to disbursement of the loan borrowed by the Plaintiff?
- (3) Whether the first Defendant breached any of the terms with regard to the disbursement of the loan borrowed by the Plaintiff?
- (4) Whether the first Defendant breached any other terms or conditions under the Loan Agreement and the Assignment?
- (5) Whether the second Defendant issued the document which the Plaintiff described as “*Garis Panduan/Prosedur Operasi Standard*”?
- (6) What is the effect in law, if any, of the document which the Plaintiff described as “*Garis Panduan/Prosedur Operasi Standard*”?
- (7) Whether the first Defendant is required to comply with the document which the Plaintiff described as “*Garis Panduan/Prosedur Operasi Standard*”?
- (8) Given the contractual relationship between the Plaintiff and the first Defendant, whether the Plaintiff is limited in law to a claim in contract against the first Defendant?
- (9) Given the contractual relationship between the Plaintiff and the first Defendant, whether the Plaintiff is permitted in law to also advance a cause of action in the tort of negligence against the first Defendant?
- (10) Whether the Plaintiff has any cause of action in contract or tort or both as against the first Defendant?



(11) Whether the claim by the Plaintiff against the first Defendant is time barred?

(12) Whether the Plaintiff is entitled in law and on the facts to the relief pleaded in the Statement of Claim?

[27] This Court had taken cognisance that at this juncture, it is not required to make any definitive findings of fact or determine serious issues of law.

[28] In *Lai Yoke Ngan & Anor v. Chin Teck Kwee & Anor* [1997] 2 MLJ 568 at 588, the Federal Court held that:

“There is no dearth of authority dealing with the approach that a court should take when exercising its summary jurisdiction under O. 18 r. 19. The unanimous view is that the summary power ought not to be invoked save in a plain and obvious case: see Bandar Builder Sdn Bhd & Ors v. United Malayan Banking Bhd. [1993] 3 MLJ 36, per Mohd. Dzaidin SCJ (now FCJ).

An examination of the record provided demonstrates that this is not such a case. There are several issues of law that require mature consideration. And there are several issues of fact that are capable of resolution only after taking viva voce evidence.”

[29] Given the various issues identified above and bound by the decision of the Federal Court in *Lai Yoke Ngan*, this Court found that it was not suitable or appropriate to determine Enclosure 6 in MA- 21 NCvC-4-02/2021 and Enclosure 7 in MA-21NCvC-5-02/2021 in a summary manner.

Decision by the High Court

[30] On 5.8.2021, this Court made the orders set out below.



MA-21 NCvC-4-02/2021

[31] Enclosure 6 filed by the first Defendant was dismissed.

[32] This Court also ordered costs in the cause.

[33] Enclosure 10 filed by the second Defendant and the third Defendant was allowed.

[34] This Court also ordered that costs in the sum of RM2,000.00 shall be paid by Plaintiff to the second Defendant and the third Defendant respectively.

MA-21 NCvC-5-02/2021

[35] Enclosure 7 filed by the first Defendant was dismissed.

[36] This Court also ordered costs in the cause.

[37] Enclosure 10 filed by the second Defendant and the third Defendant was allowed.

[38] This Court also ordered that costs in the sum of RM2,000.00 shall be paid by Plaintiff to the second Defendant and the third Defendant respectively.

(MAIDZUARA MOHAMMED)

Judicial Commissioner
High Court Melaka

Dated: 9 SEPTEMBER 2021

COUNSEL:

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[2021] 1 LNS 1451

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Case(s) referred to:

Lai Yoke Ngan & Anor v. Chin Teck Kwee & Anor [1997] 2 MLJ 568 at 588

Legislation referred to:

Public Sector Home Financing Board Act 2015, ss. 3(1)(3), 46

Rules of Court 2012, O. 18 r. 19(1)(a)(b)(c)(d)