DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR

DALAM WILAYAH PERSEKUTUAN KUALA LUMPUR

GUAMAN NO: WA-22NCC-606-11/2022

ANTARA

1. **P. PONNAMAL A/P PONNIAH**
   (NO. K/P: 510720-01-5172)

2. **PREMA A/P ACHU**
   (NO.K/P: 640524-10-7008)

3. **DEBORAH ANN RODRIGO**
   (NO. K/P: 651003-10-7276)

4. **Y.M. CHE ENGKU MAHIRAH BT ABDULLAH**
   (NO. K/P: 510313-10-5904)

5. **GOH CHIANG BENG**
   (NO. K/P: 640824-08-5103)

6. **ALEXANDER VINCENT**
   (NO. K/P: 640515-08-6233)

7. **GEA BAN THONG**
   (NO. K/P: 640229-08-5213)

8. **NG GUAT TIN**
   (NO. K/P: 650425-18-5770)

9. KOH KOCK KEANG
(NO. K/P: 590826-10-6219)

10. SUPRAMANIAM A/L S SHANMUGAM
(NO. K/P: 580322-08-6171)

11. HARITH BIN ABDUL HAMID
(NO. K/P: 641116-01-6267)

12. ISMAT BIN ABDUL RAUF
(NO. K/P: 580419-06-5203)

13. KOH KOK CHONG
(NO. K/P: 621030-10-6669)

14. GEA SEOK ENG
(NO. K/P : 490628-08-5260)

15. THANGAMUTHU A/L KARUPPIAH
(NO. K/P : 570802-10-6259) **… PLAINTIF-PLAINTIF**

DAN

1. GOH HWAN HUA
(NO. K/P: 660901-01-5175)

2. I-SERVE ONLINE MALL SDN BHD
(NO SYARIKAT : 1096985-X)

3. BRIGHT MOON VENTURE PLT
(NO PENDAFTARAN: LLP0022149-LGN)

4. QA SMART PARTNERSHIP PLT
(NO PENDAFTARAN: LLP0020886-LGN)

5. TRILLION COVE HOLDINGS BERHAD
(NO SYARIKAT: 1386271-T) … DEFENDAN-DEFENDAN

JUDGMENT

A. Introduction

[1] The defendants filed applications to strike out the plaintiffs' claim against them ("Striking Out Applications"). The court dismissed the Striking Out Applications, for the reasons set out below.

B. Background Facts

[2] The 1st to 15th plaintiffs are investors. Their claims are for repayment of sums they had paid under the following agreements:

a. Subscription agreements between the 1st to 4th plaintiffs and the 5th defendant ("SAs")

i. The 1st to 4th plaintiffs claimed they had paid subscription sums under the SAs, and in return, the 5th defendant had agreed to pay redemption

sums to them on a monthly basis. The redemption sums were initially paid, but ceased to be paid from November 2021.

ii. The 1st to 4th plaintiffs terminated the SAs, and are seeking repayment of the subscription sums and the monthly redemption sums.

b. Partner's financing agreements between the 5th to 9th plaintiffs and the 3rd defendant ("5th to 9th Plaintiffs' PFAs")

i. The 5th to 9th plaintiffs claimed they provided financing sums to the 3rd defendant. Returns were to be paid to them on a monthly basis. The monthly financing returns were initially paid, but ceased to be paid from November 2021.

ii. They were also informed that the 5th to 9th Plaintiffs' PFAs had been novated to the 4th defendant, but they were not given a copy of the novated agreements.

iii. The 5th to 9th plaintiffs terminated the 5th to 9th Plaintiffs' PFAs, and are seeking repayment of the financing sums and the monthly financing returns.

c. Partner's financing agreements between the 10th to 15th plaintiffs and the 4th defendant ("10th to 15th Plaintiffs' PFAs")

i. The 10th to 15th plaintiffs claimed they provided financing sums to the 4th defendant. Returns were to be paid on a monthly basis. The monthly financing returns were initially paid to the 10th to 15th plaintiffs, but ceased to be paid from November 2021.

ii. The 10th to 15th plaintiffs terminated the 10th to 15th Plaintiffs' PFAs, and are seeking repayment of the financing sums and the monthly financing returns.

[3] The plaintiffs claimed that payments they made to the 3rd to 5th defendants pursuant to the SAs, the 4th to 9th Plaintiffs' PFAs and the 10th to 15th Plaintiffs' PFAs (collectively, the "Agreements") were for the purpose of the 1st and 2nd defendants. They alleged that the 1st and 2nd defendants are the ultimate beneficiary and controlling minds behind the investments and payments they had made to the 3rd to 5th defendants.

[4] The defendants denied these allegations. Their case is that the Agreements ought to be construed within the four corners of the documents, and that factors outside the scope of the Agreements must be disregarded.

[5] Further, they contend that the monies claimed in this suit are part of monies seized pursuant to orders made by the Public Prosecutor under section 50(1) of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ("AMLATFA"), and as such, under section 54(3) of AMLATFA, the plaintiffs are prohibited from the commencing this action.

C. <u>The Striking Out Applications</u>

[6] The defendants filed the Striking Out Applications pursuant to order 18 rule 19(1) of the Rules of Court 2012 ("ROC").

[7] The main grounds relied on by the defendants to support the Striking Out Applications are as follows:

a. The plaintiffs are statutorily barred from filing this action, as the monies claimed are part of monies seized under AMLATFA;

b. The 1st and 2nd defendants are not privy and are not parties to the Agreements, which were entered into by the plaintiffs with the 3rd to 5th defendants; and

c. The plaintiffs' claims are not sufficiently particularised, so as to give rise to a cause of action against the defendants.

D. Considerations and Findings

[8] The court considered the grounds relied on by the defendants in the Striking Out Applications.

Ground 1: The plaintiffs are statutorily barred from filing this action

[9] It is not in dispute that:

a. On 11 November 2021, Bank Negara Malaysia froze the bank accounts of the 1st, 2nd, 4th and 5th defendants ("Freezing Orders");

b. On 28 February 2022, seizure orders under section 50(1) of AMLATFA were made on the bank accounts of the 1st, 2nd, 4th and 5th defendants ("Seizure Orders");

c. This action was filed on 21 July 2022 while the Seizure Orders were in force; and

d. The plaintiffs were aware that the Seizure Orders were in force at the time this action was filed.

[10] The defendants contend that as the monies claimed are part of Seizure Orders, section 54(3) of AMLATFA prohibits the plaintiffs from instituting this action against the defendants, without the consent of the Public Prosecutor.

[11] Section 54(3) of AMLATFA reads:

> *"(3)* ***For so long as a seizure of any property under this Act remains in force, no action, suit or other proceedings of a civil nature shall be instituted,*** *or if it is pending immediately before such seizure, be maintained or continued in any court or before any other authority* ***in respect of the property which has been so seized,*** *and no attachment, execution or other similar process shall be commenced, or if any such process is pending immediately before such seizure, be maintained or continued, in respect of such property on account of any claim, judgement or decree, regardless whether such claim was made, or such judgement or decree was given, before or after such seizure was effected, except at the instance of the Federal Government or the Government of a State, or at the instance of a local authority or other statutory authority, or* ***except with the prior consent in writing of the Public Prosecutor.****"*
>
> (emphasis added)

[12] The section prohibits the institution of a civil action, suit or proceedings, in respect of properties that have been seized under AMLAFTA.

[13] In arguing that this action cannot be filed without the prior consent in writing of the Public Prosecutor, the defendants relied on the Court of Appeal case of ***Lau Yong Ying v The Bank of Punjab & Ors and other appeals [2018] 4 MLJ 88***, and specifically the following paragraph of the judgment:

> *"[46] **The JID was obtained after the issuance of the notice of seizure. Therefore, by virtue of the provisions of the AMLATFA any dealing subsequent to the notice of seizure is a nullity and void.** The learned JC in his judgment held that where a JID can be proved to be null and void on the grounds of illegality or jurisdictional error it has to be set aside ex debitio justitiae."*
>
> (emphasis added)

[14] It is the defendants' argument that although ***Lau Yong Ying*** (supra) involved a judgment in default which is of a monetary nature, the Court of Appeal nonetheless found the judgment in default to be irregular, having been obtained after a seizure order was in force over the property that is the subject matter of the judgment in default.

[15] However, what the defendants appeared to have neglected to consider is that the judgment in default related directly to the seized property, as it was a claim to recover the unpaid balance of the purchase price of the property. Once the judgment in default was obtained, steps were taken to enforce the judgment by way of a writ of seizure and sale on the property. Thus, the claim in ***Lau Yong Ying*** (supra) is a claim in respect of a property that had been seized, and the prohibition in section 54(3) of AMLATFA would be applicable.

[16] I am of the view that the same cannot be said for this present case. The plaintiffs are claiming the return of monies they had paid under the Agreements, and returns due to them pursuant to these Agreements. From documents available before this court, it is not evident that the

plaintiffs' claims relate to monies in the bank accounts of the 1st, 2nd, 4th and 5th defendants that are subject to the Seizure Orders.

[17] The application of section 54(3) of AMLATFA was examined in ***Dato' Zahari Bin Sulaiman v Genneva Sdn Bhd [2010] MLJU 1706***, a case I found instructive. The case concerns the sale of used gold coins by the plaintiff to the defendant. The defendant failed to make full payment for the purchase of the coins and the plaintiff claimed the remainder of the purchase price. However, the defendant's monies in several bank accounts were seized under section 50(1) of AMLATFA, and the defendant filed an application to strike out the plaintiff's claim, arguing that section 54(3) of AMLATFA is an absolute bar to the commencement of any civil action, suit or other proceedings whether it relates directly or indirectly to the property which has been seized under the AMLATFA. The plaintiff in turn filed an application for summary judgment against the defendant.

[18] The court dismissed the striking out application and allowed the summary judgment application, holding as follows:

> *"Section 54, it is to be observed, is headed "Dealing with property after seizure to be void." **It is obvious from this heading, and from the contents of the Section, that the reference to action, suit or proceeding of a civil nature has to be related to the property seized,** in our case the numerous banking accounts of the various Banks seized. **Section 54(3) cannot be read the way the Defendant wants it to be read, for to do so will interfere with the general fundamental right of a citizen to resort to court process and access to justice for the determination of***

his dispute. *See e.g.* ***Kekatong Sdn Bhd v Danaharta Urus Sdn Bhd [2003] 4 AMR 384*** *(Court of Appeal) for an express recognition of access to justice as a fundamental right. Such an outcome cannot be made dependent merely as an incidental interpretation of this statutory provision. If it is to be excluded, it will require clearer words that those appearing in Section 54(3). Such a reading of the statutory provision will be in keeping with the common law principle of statutory interpretation that requires courts to interpret statutes so as not to interfere with vested rights, unless the statute clearly states so. It will also be in line with Section 17A of our Interpretation Act which requires courts to adopt a purposive interpretation and adopt an interpretation that will promote the purposes and objects of the statute rather than the reverse. Therefore, with all respect due, the Defendant's argument is untenable.* ***Section 54(3), as presently worded, cannot be reasonably interpreted as imposing a general restraining order on all suits, actions or proceedings as against all litigants or potential litigants, and irrespective of the properties seized.*** *To read this provision as imposing a kind of restraining order on legal process generally will, in my view, fall foul of Section 17A of the Interpretation Act."*

(emphasis added)

[19] ***Dato' Zahari Bin Sulaiman*** (supra) was cited with approval by the Court of Appeal in ***Genneva Malaysia Sdn Bhd v Tio Jit Hong & Ors [2020] MLJU 175***.

[20] Thus, the law as it stands is clear. Under section 54(3) of AMLATFA, only a claim in respect of a property subject to a seizure order under AMLATFA would be prohibited from being commenced without the consent of the Public Prosecutor. There is no absolute prohibition against an action being commenced against a company whose property is subject to a seizure order.

[21] In the present case, the plaintiffs' claims are for repayment of monies they had paid and returns due to them under the Agreements. I am unable to agree with the defendants' argument that the target of the claim is the funds in the accounts that are subject to the Seizure Orders.

[22] The cases of the parties as pleaded and documentary evidence before this court at this stage of the proceedings are insufficient for the court to make a conclusive determination that these monies do in fact form part of the accounts of the 1st, 2nd, 4th and 5th defendants, which are subject to the Seizure Orders. A determination can only be made at the full trial of this action, taking into account the movements of the monies paid by the plaintiffs under the Agreements.

[23] As such, the court finds that this is not a plain and obvious case for the court to strike out the plaintiffs' claims on the basis of the statutory prohibition under section 54(3) of AMLATFA.

Ground 2: The 1st and 2nd defendants are not privy and are not parties to the Agreements

[24] It is not in dispute that the 1st and 2nd defendants are not parties to the Agreements. Thus, the 1st and 2nd defendants argued that they cannot be subjected to liabilities arising from these Agreements.

[25] The court considered the plaintiffs' allegations in the statement of claim, that they were notices, announcements and online teleconferences organised by and/or under the instructions of the 1st and 2nd defendants, on the plaintiffs' investments in the 3rd to 5th defendants.

[26] The plaintiffs also pleaded that the 1st defendant had amongst others:

a. addressed the plaintiffs personally on their investments in the 3rd to 5th defendants, either in his personal capacity or as a representative of the 2nd defendant; and

b. made representations and statements on issues faced by the 2nd defendant, and their impact on the plaintiffs' returns, pursuant to the Agreements.

[27] The court finds the allegations raised in the statement of claim warrant further consideration. The court also notes that apart from the 1st and 2nd defendants arguing that the Agreements must be read within the four corners of their documents and that extrinsic evidence cannot be brought in to determine liability under these Agreements, the allegations have not been sufficiently rebutted.

[28] With the allegations raised, the true nature of the transactions between the plaintiffs and the 3rd to 5th defendants, and the 1st and 2nd defendants' roles in these transactions (if any at all), can only be determined at a full trial of this action. It is therefore my considered finding that this is not a plain and obvious case for the court to exercise its power to summarily strike out this action under order 18 rule 19(1) of the ROC.

Ground 3: The plaintiffs' claims are not sufficiently particularised

[29] The plaintiffs' case is that notwithstanding the contractual relationship between the plaintiffs and the 3rd to 5th defendants, it is the 1st and 2nd defendants that are the ultimate beneficiary and controlling minds behind the investments the plaintiffs had made into the 3rd to 5th defendants.

[30] Thus, the plaintiffs allege that:

a. The 2nd to 5th defendants function as a single economic unit;

b. The 3rd to 5th defendants are agents of the 1st and/or 2nd defendants;

c. The 1st and/or 2nd defendants are trustees of the 3rd to 5th defendants; and

d. The 1st and/or 2nd defendants are under a duty to the plaintiffs to ensure monies invested by the plaintiffs were

used accordingly and appropriately to enable the plaintiffs to obtain their returns; and

e. The 1st and/or 2nd defendants have conspired to perpetrate fraud upon the plaintiffs.

[31] I am unable to agree with the defendants' argument that the plaintiffs' case, as pleaded, is not sufficiently particularised and does not show any cause of action against the defendants. The causes of action arise from breaches allegedly committed by the 3rd to 5th defendants in failing to repay the sums paid by the plaintiffs under the Agreements, and well as to pay the plaintiffs' returns as they fell due pursuant to these Agreements.

[32] The issues to be determined by this court, including whether the Agreements were breached as alleged and whether the 1st and/or 2nd defendants are liable for the alleged breaches, would not be able to be determined merely by an assessment of documentary evidence before this court.

[33] The defendants further argued that the non-payment of sums claimed by the plaintiffs arises as a result of supervening events, namely the Freezing Order and the Seizure Orders. Whether this is in fact the case, and whether the defendants had perpetrated fraud against the plaintiffs by not paying the sums allegedly due, can only be determined at the full trial of this action.

[34] I am in this regard guided by the following oft-quoted passage of ***Bandar Builder Sdn Bhd & Ors v United Banking Corporation Bhd [1993] 3 MLJ 36***:

> *"The principles upon which the court acts in exercising its power under any of the four limbs of O 18 r 19(1) of the RHC are well settled.* ***It is only in plain and obvious cases that recourse should be had to the summary process under this rule*** *(per Lindley MR in* ***Hubbuck & Sons Ltd v Wilkinson, Heywood & Clark Ltd 7****, and* ***this summary procedure can only be adopted when it can be clearly seen that a claim or answer is on the face of it 'obviously unsustainable'*** *(see* ***AG of Duchy of Lancaster v L & NW Rly Co 8****) ... The court must be satisfied that there is no reasonable cause of action or that the claims are frivolous or vexatious or that the defences raised are not arguable.*
>
> *… This court as well as the court below are not concerned at this stage with the respective merits of the claims. But what we have to consider is whether the counterclaim discloses some cause of action and, likewise, whether the defence to counterclaim raises a reasonable defence.* ***It has been said that so long as the pleadings disclose some cause of action or raise some question fit to be decided by the judge, the mere fact that the case is weak and not likely to succeed at the trial is no ground for the pleadings to be struck out*** *(see* ***Moore v Lawson 10*** *and* ***Wenlock v Moloney & Ors 9****)."*
>
> (emphasis added)

[35] I find that the statement of claim as it stands does disclose a cause of action and raises questions that are fit to be decided after a full trial of this action.

E. Decision

[36] With the findings as set out, the court dismissed the Striking Out Applications, with costs.

Dated 13 December 2023

- sgd -

ADLIN ABDUL MAJID
Judge
High Court of Malaya
Commercial Division (NCC6)
Kuala Lumpur

Counsel:

Plaintiffs	:	Rajesvaran Nagarajan (together with Amanda Sonia Mathew and Sachpreetraj Singh) of Messrs. Raj & Sach
1st defendant	:	David Mathews (together with Tina Francis) of Messrs. Mathews Hun Lachimanan
2nd and 5th defendants	:	Chetan Jethwani (together with Ava Geh) of Messrs. Chetan Jethwani & Company
3rd and 4th defendants	:	Varunnath Viswanathan of Messrs. KP Lu & Tan