DALAM MAHKAMAH TINGGI MALAYA DI SHAH ALAM DALAM NEGERI SELANGOR DARUL EHSAN

SAMAN PEMULA NO: BA-24NCC-15-02/2023

Dalam perkara mengenai Perjanjian Jual Beli antara Simfoni Humaira Resources (No. Syarikat: 201503250268 (2469912-M)) dan XFYRE (M) Sdn Bhd (No. Syarikat: 201301020345 (1050175-D))

Dan

Dalam perkara mengenai Perjanjian Pemegang Amanah bertarikh 21.9.2020 antara Simfoni Humaira Resources (No. Syarikat: 201503250268 (2469912-M)) dan XFYRE (M) Sdn Bhd (No. Syarikat: 201301020345 (1050175-D)) dan Tetuan Fahmi Zhafri Ashraf & Co (didakwa sebagai firma)

Dan

Dalam perkara mengenai Seksyen 11 dan Seksyen 41 Akta Relief Spesifik 1950

Dan

Dalam perkara mengenai Aturan 7, Aturan 15 Kaedah 16, Aturan 28 dan Aturan 92 Kaedah 4 Kaedah-Kaedah Mahkamah 2012



ANTARA

- 1. HASNOR AFIFAH BINTI MOHD NOOR (NO. KP: 810330-03-5666) (Berniaga di bawah nama dan gaya Simfoni Humaira Resources (No. Syarikat: 201503250268 (2469912-M))
- 2. LONTEX GROUP Sp. z.o.o. **PLAINTIF-**(No. Pendaftaran KRS 0000989832) PLAINTIF ...

DAN

- 1. XFYRE (M) Sdn Bhd (No. Syarikat: 201301020345 (1050175-D))
- **TETUAN LAW CHAMBERS OF ZHAFRI** 2. AMINURASHID (dahulunya dikenali sebagai Tetuan Fahmi Zhafri Ashraf & Co) (Didakwa sebagai firma)
- 3. MOHD ZHAFRI BIN AMINURASHID
- 4. **FAHMI BIN ADILAH**
- 5. MOHAMAD ASHRAF BIN AHMAD SOHAIMI
- 6. MUHAMMAD SYAFIQ BIN SALLEH
- 7. NORMAN BIN MOHD NASIR . . .

DEFENDAN-DEFENDAN

GROUNDS OF JUDGMENT

(Enclosure 67)

Introduction

Simfoni Humaira Resources (as buyer) and the 1st Defendant (as [1] seller) entered into a Sale and Purchase Agreement dated 15.9.2020 ("SPA") for the sale and purchase of disposable nitrile gloves. The total



contract value was RM7,164,000.00. A deposit of RM1,194,000.00 ("**Deposit**") was paid into the client account of Fahmi Zhafri Ashraf & Co ("**FZA & Co**").

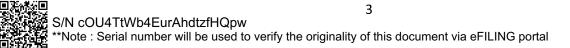
[2] In this Originating Summons, the Plaintiffs seek a declaration that SPA has been mutually terminated after the 1st Defendant failed to deliver the goods purchased and consequently, the Deposit which was held by FZA & Co under a Stakeholders' Agreement dated 21.9.2020 ("**Stakeholders' Agreement**") should be refunded.

[3] The 2nd to 7th Defendants are the successor firm and former partners of FZA & Co, the original law firm that received the Deposit under the Stakeholders' Agreement. On 13-6-2024, the 1st Defendant applied in Enclosure 67 for an order pursuant to Order 15 Rule 6(2)(a) of the **Rules of Court 2012** that the 2nd to 7th Defendants cease to be parties.

[4] I dismissed Enclosure 67 with costs of RM5,000.00 on 8-11-2024 and these are my reasons.

Procedural History

[5] By Order of Court dated 11-4-2023, the individual lawyers who were at different points in time, partners of FZA & Co, were joined as the 3^{rd} to 7th Defendants and the intitulement of the Originating Summons was amended accordingly. These former partners were by then practising under various other law firms.



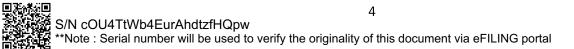
[6] On 21-11-2023, a further amendment was made to the name of the FZA & Co to reflect its current name, Law Chambers of Zhafri Aminurashid. The change of name occurred with effect from 15-7-2022. The 3rd Defendant is now the sole proprietor of the 2nd Defendant, the 4th to 7th Defendants having retired from the firm on various dates.

[7] There is in evidence, a letter from the Bar Council dated 6-3-2023 that confirmed the above position. The 2^{nd} to 7^{th} Defendants did not dispute the position and in fact, the joinder of the 3^{rd} to 7^{th} Defendants and the amendment to the name of the 2^{nd} Defendant were not opposed by any of the Defendants.

[8] For clarity, the current solicitors for the 1st Defendant had taken over conduct of the matter on 26-1-2024 from Messrs Isa Aziz Ibrahim, who had in turn taken over conduct of the matter on behalf of the 1st Defendant from Messrs Mira Sham, Yong & Connie Ng on 6-10-2023. The 1st to 3rd Defendants were previously jointly represented by Messrs Isa Aziz Ibrahim and Messrs Mira Sham, Yong & Connie.

Divergence of Interests

[9] By a letter dated 22-5-2023, Messrs Mira Sham, Yong & Connie Ng, then solicitors representing the 1st to 3rd Defendants wrote to solicitors for the Plaintiff in an open letter, with instructions to consent to the claims in this Originating Summons and to propose a repayment scheme to settle the claims upon recovery of judgment sums procured by the 1st Defendant against various 3rd parties.



[10] On 27-5-2022, the 3rd Defendant had signed a statutory declaration to declare that he was the partner of FZA & Co having exclusive conduct of the matter involving the 1st Defendant and took full responsibility for the release of the Deposit from the firm's client account. He claimed that Khamil bin Ismail of the 1st Defendant, persuaded him to release the Deposit against a promise to repay it once the SPA was concluded. The Deposit was not ultimately repaid into FZA & Co's client account.

[11] The interests of the 2nd to 7th Defendants, separately represented, had thus diverged completely from that of the 1st Defendant in this litigation. It appeared that the 1st Defendant filed Enclosure 67 when the 2nd to 7th Defendants did not support the 1st Defendant's application in Enclosure 56, an application by the 1st Defendant for various relief pursuant to sections 10 and 11 of the **Arbitration Act 2005** and for security for costs under Order 23 of the **Rules of Court 2012**.

[12] I had also dismissed Enclosure 56 on 8-11-2024 and have written separate grounds of Judgment for that decision. In those grounds, I have also addressed the numerous preliminary objections raised there, some of which were also directed at Enclosure 67, namely the 1st Plaintiff's *locus standi* after the business registration of Simfoni Humaira Resources expired, and the capacity of Khamil bin Ismail, an undischarged bankrupt, to affirm affidavits on behalf of the 1st Defendant.

[13] I will not repeat the reasons here, but I accepted the Plaintiffs' preliminary objection (Khamil bin Ismail's lack of capacity) and dismissed the 1st Defendant's preliminary objection (1st Plaintiff's *locus standi*). As in Enclosure 56, I have nevertheless also considered Enclosure 67 on its merits.



The Alleged Misjoinder

The 1st Defendant took the position that the 2nd to 7th Defendants [14] are busybodies because it claims that the Plaintiffs' cause of action under this Originating Summons arose from the SPA to which they are not privy. The 1st Defendant also submitted that the appearance and/or inclusion of the 2nd to 7th Defendants was to "harass, pressure, injure and prejudice" the 1st Defendant.

The 2nd and 3rd Defendants opposed Enclosure 67. The 4th to 7th [15] Defendants, as did the Plaintiffs, raised the same preliminary objection that the affidavits filed on behalf of the 1st Defendant by Khamil bin Ismail should be disregarded because he lacked capacity as an undischarged bankrupt, and that Enclosure 67 should accordingly be dismissed in limine because it is unsupported.

The 4th to 7th Defendants also took issue with the content of the 1st [16] Defendant's affidavit which alleged inter alia, possible insurance fraud relating to the intended settlement between the Plaintiffs and professional indemnity insurers for the 4th to 7th Defendants. This cross-fire of allegations is noted by the Court but is not relevant to the present application.

Simply put, I rejected the 1st Defendant's contention that there is a [17] misjoinder of the 2nd to 7th Defendants because it is self-evident that the 2nd to 7th Defendants are necessary and proper parties. This is because the refund of the Deposit held by FZA & Co is an integral part of this action and under partnership law, the former partners of FZA & Co are all ostensibly liable, jointly and severally, for the alleged breach of the Stakeholders' Agreement when it was paid out of the firm's client account.



[18] The general rule of Order 15 Rule 6 of the **Rules of Court 2012** is that all necessary and proper parties should be before the Court to enable the effectual and complete determination of all questions and issues between the parties that arise for decision. Accordingly, this Court can find no legal or factual basis as to why the 2nd to 7th Defendants should cease to be parties to this action.

Bertarikh : 20 November 2024

SGD

ELAINE YAP CHIN GAIK PESURUHJAYA KEHAKIMAN MAHKAMAH TINGGI MALAYA SHAH ALAM

Peguam

Untuk Plaintif-Plaintif	:	Frida Krishnan (with Ng Chia
		How), The Chambers Of Frida
		(Kuala Lumpur)
Untuk Defendan Pertama	:	Bestian Ng, Messrs M. Raman &
		Associates (Seri Kembangan)
Untuk Defendan Kedua		Wong Yun Loong, Messrs Isa
dan Ketiga	:	Aziz Ibrahim (Petaling Jaya)



Untuk Defendan Keempat, Tan Ying Xuan, Messrs Azim, Kelima, Keenam dan Ketujuh : Tunku Farik & Wong (Kuala Lumpur)

