

**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-PLAINTIF**  
(No. Pendaftaran KRS 0000989832)

## DAN

1. **XFYRE (M) Sdn Bhd**  
(No. Syarikat: 201301020345 (1050175-D))
2. **TETUAN LAW CHAMBERS OF ZHAFRI 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** ... **DEFENDAN-DEFENDAN**
7. **NORMAN BIN MOHD NASIR** ...

## **GROUND OF JUDGMENT** (Enclosure 67)

### **Introduction**

**[1]** Simfoni Humaira Resources (as buyer) and the 1<sup>st</sup> Defendant (as 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 1<sup>st</sup> 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 2<sup>nd</sup> to 7<sup>th</sup> 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 1<sup>st</sup> Defendant applied in Enclosure 67 for an order pursuant to Order 15 Rule 6(2)(a) of the **Rules of Court 2012** that the 2<sup>nd</sup> to 7<sup>th</sup> 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<sup>rd</sup> to 7<sup>th</sup> 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 3<sup>rd</sup> Defendant is now the sole proprietor of the 2<sup>nd</sup> Defendant, the 4<sup>th</sup> to 7<sup>th</sup> 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<sup>nd</sup> to 7<sup>th</sup> Defendants did not dispute the position and in fact, the joinder of the 3<sup>rd</sup> to 7<sup>th</sup> Defendants and the amendment to the name of the 2<sup>nd</sup> Defendant were not opposed by any of the Defendants.

[8] For clarity, the current solicitors for the 1<sup>st</sup> 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 1<sup>st</sup> Defendant from Messrs Mira Sham, Yong & Connie Ng on 6-10-2023. The 1<sup>st</sup> to 3<sup>rd</sup> 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 1<sup>st</sup> to 3<sup>rd</sup> 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 1<sup>st</sup> Defendant against various 3<sup>rd</sup> parties.



[10] On 27-5-2022, the 3<sup>rd</sup> Defendant had signed a statutory declaration to declare that he was the partner of FZA & Co having exclusive conduct of the matter involving the 1<sup>st</sup> 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 1<sup>st</sup> 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 2<sup>nd</sup> to 7<sup>th</sup> Defendants, separately represented, had thus diverged completely from that of the 1<sup>st</sup> Defendant in this litigation. It appeared that the 1<sup>st</sup> Defendant filed Enclosure 67 when the 2<sup>nd</sup> to 7<sup>th</sup> Defendants did not support the 1<sup>st</sup> Defendant's application in Enclosure 56, an application by the 1<sup>st</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> Defendant's preliminary objection (1<sup>st</sup> Plaintiff's *locus standi*). As in Enclosure 56, I have nevertheless also considered Enclosure 67 on its merits.



## The Alleged Misjoinder

[14] The 1<sup>st</sup> Defendant took the position that the 2<sup>nd</sup> to 7<sup>th</sup> Defendants 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 1<sup>st</sup> Defendant also submitted that the appearance and/or inclusion of the 2<sup>nd</sup> to 7<sup>th</sup> Defendants was to "harass, pressure, injure and prejudice" the 1<sup>st</sup> Defendant.

[15] The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants opposed Enclosure 67. The 4<sup>th</sup> to 7<sup>th</sup> Defendants, as did the Plaintiffs, raised the same preliminary objection that the affidavits filed on behalf of the 1<sup>st</sup> 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.

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

[17] Simply put, I rejected the 1<sup>st</sup> Defendant's contention that there is a misjoinder of the 2<sup>nd</sup> to 7<sup>th</sup> Defendants because it is self-evident that the 2<sup>nd</sup> to 7<sup>th</sup> 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 2<sup>nd</sup> to 7<sup>th</sup> 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 Plaintiff-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 dan Ketiga** : **Wong Yun Loong, Messrs Isa Aziz Ibrahim (Petaling Jaya)**



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



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