

**IN THE HIGH COURT OF MALAYA AT SHAH ALAM
IN THE STATE OF SELANGOR DARUL EHSAN
CIVIL SUIT NO: MT1-22-764-2005**

BETWEEN

- 1. LUIGI ANGELO BUFFONE
(Canadian Passport No: BC 101594)**
- 2. EVA NATALINA BUFFONE (a minor)
(suing through Luigi Angleo Buffone as next friend)**
- 3. PELMEN GEORGE BUFFONE (a minor)
(suing through Luigi Angelo Buffone as next friend)**

... PLAINTIFFS

AND

**GRACE A/P GEORGE
(I.C. No: 710911-10-5126)**

... DEFENDANT

GROUND OF DECISION

This is an appeal by the defendant against the decision of the Senior Assistant Registrar (“SAR”) in enclosure 9 dismissing the defendant’s application for security for costs against the plaintiff.

The 1st plaintiff and the defendant were married on 5 June 1992. From the marriage, they had two children, the 2nd and 3rd defendants. The 1st plaintiff claimed that their marriage had irretrievably broken down in January 2000 due to the defendant's alleged affair with a local Indian man. This had caused the 1st plaintiff to leave the defendant, taking the 2nd and 3rd plaintiffs to Canada with him. The 1st plaintiff came to this court seeking to recover RM30,000.00 allegedly loaned to the defendant for the purchase of a Nissan car and 50% of the net profit of 'Buffone Enterprise' until the year 2000. The 1st plaintiff also prays for declaratory orders and proceeds of the sales of two properties in Damansara Jaya and Taman Sri Gombak ("the Damansara and Gombak properties"). The plaintiff said that he solely contributed to the purchase of the said properties and that the defendant's name was used for registration purposes. It was alleged that contrary to an earlier agreement, the defendant had sold off the properties.

The 1st plaintiff had commenced divorce proceedings in Canada. The defendant, whom the 1st plaintiff claimed had initially

agreed to give custody of the children to the 1st plaintiff and to arrangements regarding the properties, had reneged and contested the matter. For that purpose, the defendant was said to have migrated to Canada.

The defendant further submitted that the defendant should be given security for costs since she had shown that she has a *prima facie* defence to the plaintiff's claim. The defendant submitted that if the plaintiff were to lose in this case, it would be cumbersome and impossible for the defendant to enforce her costs to be taxed in Canada because there is no security and further more the plaintiffs are Canadian citizens not domiciled in this country, with no assets in the jurisdiction.

The defendant further submitted that the Canada is not a member country of the First Schedule of the Reciprocal Enforcement of Judgments Act 1958. The defendant referred to *inter alia*, the case of *Ng Hui Lip & Anor v. Chan Hwa Cheng & Ors* [1958] MLJ 24 where Smith J held that:

“the enforcement of a Federation Judgment in Singapore was not automatic and therefore the mere fact that a plaintiff is resident in Singapore is not a ground for the Court refusing to order security for costs under section 369 of the Criminal Procedure Code.”

By virtue of the above decision the defendant submitted that any order obtained by the defendant here in Malaysia such as Order as to Costs or an interlocutory order as to damages is not enforceable against the plaintiffs in Canada since Canada is not a reciprocating country.

The defendant said that she will incur numerous expenses and costs since the matter would be going for trial. The defendant submitted that in view of the amount of work involved in defending this suit, the defendant should be given security for costs by the plaintiff.

Lastly, the defendant submitted that there is no prejudice to the plaintiff if the security for costs is awarded against them since the security for costs is a bond and is readily refunded to the plaintiffs when they are successful at the end of this suit.

The plaintiffs in their submission in reply said that the decision of the SAR and the discretion exercised should not be reversed since the SAR had exercised the discretion as allowed by the law in coming to a conclusion that no security for costs was payable in this case by the plaintiffs.

The plaintiffs submitted that any order for security for costs made against the plaintiffs will bring grave injustice to the plaintiffs as the main objective in bringing this suit against the defendant is to recover all monies that were put into the investment properties and business in view of setting up a home in Malaysia for the family and to bring up the children of the marriage.

The plaintiffs submitted further that this application by the defendant is designed to stifle the plaintiffs' claim and to cause hardship to the plaintiff. The plaintiffs claimed that the defendant is responsible for their current financial set back.

The plaintiffs contended that the position of the defendant is no different from that of the plaintiffs in that she is no longer resident in

Malaysia and had now settled down in Canada. The plaintiffs found it absurd for the defendant to claim that she is entitled to security for costs while no such security is accorded to the plaintiffs.

The plaintiffs further submitted that it would be unjust if the plaintiffs were to pay security for costs when the defendant herself is not able to show her ability to satisfy payment of the judgment sum and costs and on top of that is also living in Canada.

After considering the defendant's application in enclosure 22, affidavits and written submission filed by both parties, the court arrived at the following decision:

1. Both the plaintiffs and defendant are in Canada and the costs incurred by them in attending and disposing of the matter in Malaysia are considerably high.
2. The proceedings are still pending before the court and the parties had both shown their interest and willingness to

proceed with the action. I see no reason why any of them should not be present.

3. In my view in order to expedite the hearing of the matter the parties should proceed with the Notice to Appear for Pre-Trial Case Management in Enclosure 20 before the actual trial of the matter.

In the premises I make the following orders:

The defendant's appeal in Enclosure 22 is dismissed with costs

The SAR's decision on 18 August 2006 is upheld.

(DATO' MARIANA BT HJ YAHYA)

Judicial Commissioner

Civil High Court 1

Shah Alam

Date: 25 April 2008

CASE REFERRED TO:

Ng Hui Lip & Anor v. Chan Hwa Cheng & Ors [1958] MLJ 24

STATUTES REFERRED TO:

1. *Rules of the High Court 1980*
2. *Reciprocal Enforcement of Judgments Act 1958*

COUNSELS:

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