

**DALAM MAHKAMAH TINGGI MALAYA DI SHAH ALAM  
DALAM NEGERI SELANGOR DARUL EHSAN  
[GUAMAN NO: BA-22NCvC-53-02/2024]**

**ANTARA**

**TROPICANA PROPERTY MANAGEMENT  
SDN BHD**

(No. Syarikat: 199601022309 (394661 -D))

**... PLAINTIF**

**DAN**

**PERBADANAN PENGURUSAN TROPICANA  
GRANDE CONDOMINIUMS**

(No. Pendaftaran SEL: 133/2019)

**... DEFENDAN**

**GROUND OF JUDGMENT**

**Introduction**

- [1] The Plaintiff filed this action on 9-2-2024 to set aside or invalidate an Order made by another High Court in Originating Summons No: BA-24NCvC-158-02/2022 dated 8-7-2022 (“**Order in OS 158**”); or alternatively, to declare that the Plaintiff has complied with the Order in OS 158, restrain the Defendant by an injunction from enforcing it and stay its execution.
- [2] On 15-5-2024, the Defendant applied in Enclosure 8 to strike out the action on grounds of *res judicata* and abuse of process. After reading all written submissions filed and hearing the arguments of counsel on 30- 9-2024, I allowed Enclosure 8 on 18-10-2024 and struck out the action with costs of RM5,000.00.
- [3] The following are my reasons for striking out this action.

**Background Facts**

- [4] The Defendant is the management corporation of Tropicana Grande Condominium (“**Property**”) properly formed under the **Strata Titles Act 1985**. The Plaintiff is the former property manager appointed by the Defendant to manage the Property.
- [5] The Plaintiffs services were not renewed and the relationship between the Plaintiff and Defendant terminated on 31-12-2021.

**Order for Delivery Up - OS 158**

- [6] An issue arose with the handing over of the documents, records and/or assets relating to the management of the Property by the Plaintiff. The Defendant sued the Plaintiff and obtained the Order in OS 158 that ordered the Plaintiff to deliver a list of such documents, records and/or assets.
- [7] On 19-9-2023, the Court of Appeal heard and dismissed the Plaintiffs appeal against the Order in OS 158 in Civil Appeal No. B-02(NCvC)(A)-1493-08/2022. As there was no further appeal against the Court of Appeal decision, the Order in OS 158 is final.
- [8] Incidentally, the Plaintiff had also filed a separate interlocutory application in Enclosure 16 on 11-7-2024 to stay the execution of the Order in Suit 158. I also dismissed Enclosure 16 on 18-10-2024 since it is a final Order of another High Court which has been affirmed on appeal.

**Parallel Proceedings - Suit 13**

- [9] Disputes between the parties persisted after the conclusion of OS 158, including disputes relating to the Plaintiff’s compliance with the Order in OS 158. On 12-1-2024, the Defendant filed Suit No. BA-22NCvC- 13-01/2024 (“**Suit 13**”) against the Plaintiff for *inter alia*, breach of the property management agreement.

- [10] The Defendant also pleaded a claim in detinue in Part E of the Statement of Claim in Suit 13, specifically alleging the Plaintiffs failure to comply with the Order in OS 158 and seeking damages. In the face of the detinue claim, I asked counsel for the Plaintiff if his client's Defence in Suit 13 must be that the Plaintiff has complied, the very declaration sought here. That seemed a reasonable assumption.
- [11] After the hearing of Enclosure 8 on 30-9-2024, this Court reserved decision and asked counsel for the Plaintiff to consider the option of amending the pleadings in Suit 13 if necessary, to include the prayers involving the Order in OS 158. Counsel for the Defendant confirmed that Suit 13 was at pleadings stage. This would have avoided the duplicity of proceedings complained of.
- [12] The Plaintiff declined to take up the suggestion of bringing this action to Suit 13 by way of an amendment to the pleadings there.

### **Analysis and Findings**

#### *Res Judicata*

- [13] During the hearing of Enclosure 8, counsel for the Plaintiff quite rightly, decided not to contest the arguments made that this Court has no power to set aside the final Order in OS 158, there being no allegation here that it is a nullity due to breach of natural justice, illegality or want of jurisdiction. See *Ooi Bee Tat @ Ooi Bee Lee v. Ooi Bee Tat & Sons Sdn Bhd & Anor* [1995] 5 MLJ 10, citing *Hock Hua Bank Bhd v. Sahari bin Murid* [1981] 1 MLJ 143 and *Badiaddin Mohd Mahidin & Anor v. Arab Malaysian Finance Bhd* [1998] 2 CLJ 75.
- [14] As the Order in OS 158 is final, it is also trite that any attempt to re-litigate its merits or any issue properly belonging to the subject matter of that litigation is *res judicata*. See *Asia Commercial Finance (M) Berhad v. Kawai Teliti Sdn Bhd* [1995] 3 CLJ 783 and *Scott & English (M) Sdn Bhd v. Yung Chen Wood Industries Sdn Bhd* [2018] 6 CLJ 271.

To the extent that the Plaintiff is still complaining that the Order in OS 158 should not have been granted for the reasons cited in paragraph 32 of the Statement of Claim, the issue is *res judicata*.

*Abuse of Process*

- [15] In opposing the striking out of the Plaintiff's alternative prayers relating to its compliance or otherwise with the Order in OS 158, the only argument advanced by the Plaintiff was that there is no duplicity of proceedings because Suit 13 is a different suit on the parties claims and counterclaims relating to the termination of the property management agreement between them.
- [16] A week before the date fixed for the decision of Enclosures 8 and 16, the Plaintiff filed a further interlocutory application with a Certificate of Urgency in Enclosure 33 to seek leave to adduce a further affidavit, ostensibly to adduce the complete pleadings in Suit 13 and show that the suit there is different.
- [17] I also dismissed Enclosure 33 on 18-10-2024 because there was no reason given for the Plaintiff's failure to exhibit the complete pleadings in Suit 13 in the affidavit exchange of Enclosure 8 which had long closed. The duplicity of proceedings had been put in issue from the outset as a ground for striking out.
- [18] In any case, I informed the parties that I had read the complete pleadings in Suit 13. The pleadings subsequent to the Statement of Claim were annexed as Exhibits to the affidavit filed in support of Enclosure 33. I considered the same before deciding Enclosure 8 and did not need an affidavit to explain what they meant.
- [19] As expected, the Plaintiff denied the claim of detinue, In paragraphs 47 and 48 of the Defence, the same particulars that encapsulate the claim summarised in paragraphs 42 of the Statement of Claim in this action were set out as follows:

VI. Detinue

47. Paragraphs 73 to 80, and 84 (e) and (g) of the SOC are strictly denied and the Plaintiff is put to strict proof thereof. Paragraphs 26 to 37 above are repeated herein in response thereof.
48. Save as pleaded below, paragraphs 81 to 83 of the SOC are strictly denied and the Plaintiff is put to strict proof thereof. In this regard, the Defendant contends as follows:
- (a) Vide the Defendant's former solicitor's letter dated 16.03.2022, the Defendant delivered to the Plaintiff the management accounts for the months of November and December 2021, which were not available during the handover on 31.12.2021, due to the Plaintiff's failure to provide the requisite termination notice period;
  - (b) The High Court Order in the Earlier Suit was granted on 08.07.2022. Paragraph 37 above is repeated herein. In granting the High Court Order, the Court directed for the Defendant to inform the Plaintiff if any of the requested documents were not available;
  - (c) On 14.07.2022, the Plaintiff's solicitors wrote to the Defendant's solicitors enclosing a list of documents which were required by the Plaintiff;
  - (d) On 22.07.2022, in compliance with the directions of the High Court, the Defendant's representative, Miss Nancy Khong affirmed an affidavit and filed the same in the Earlier Suit, *inter alia*, to inform the Court of the status of the items or documents which were requested by the Plaintiff pursuant to the High Court Order, including that they have either been

left with the Plaintiff in the management office when the Defendant did the handover on 31.12.2021 and/or have been provided to the Plaintiff's solicitors vide a letter dated 16.03.2022 and/or have been further provided in the compact disc (CD) that was filed together with the affidavit and/or are no longer in the Defendant's possession;

- (e) Via the Defendant's former solicitor's letter dated 11.10.2023, the Defendant handed the digital copies of the general listing and management accounts for the years 2014 to 2020, the audited reports for the years 2014 to 2021 and the emails under the [tropicanagrande@tropicnacorp.com](mailto:tropicanagrande@tropicnacorp.com) email which the Defendant was able to retrieve;
  
- (f) Via the Defendant's former solicitors letter dated 15.01.2024, the Defendant provided the Plaintiff a google link containing the Creditor Listing, Debtor Statement of Accounts, Other Debtor Statement of Accounts and Tenant Statement of Accounts in respect of the Condominium; and
  
- (g) On or about 06.04.2022, the Defendant's employee, Miss Norfazalinah had continued to assist the new property manager of the Condominium via WhatsApp, to locate some files and in finding out the password for the safe.

The Plaintiff has also pleaded a Counterclaim in Suit 13, repeating inter alia, paragraph 48 of the Defence.

[20] Section 25 of the *Courts of Judicature Act 1964* read with paragraph 11 of the Schedule thereto provides that the Court has power to dismiss proceedings where the proceedings ought not to be continued by reason of multiplicity of proceedings. The following passage in the judgment of the Court of Appeal in *Tai May Chean v. New Way Capital*

*Sdn Bhd & Anor and anor appeal* [2020] 12 MLJ 471 provides a complete response to the Plaintiff on this point and I can do no better than to reproduce it here:

*[25] Now, the objection to multiplicity of proceedings is well-founded. It is in the public interest to avoid conflicting decisions by two different courts on the same issue between parties (see Lesco Development Corp Sdn Bhd v Malaysia Building Society Bhd [1988] 2 MLJ 184; [1987] CLJ Rep 160 and Taunton-Collins v Cromie and another [1964] 2 All ER 332). Conflicting decisions on the same issue not only brings embarrassment to the court but may also undermine public confidence in the administration of justice.*

*[26] The other objection to multiplicity of proceedings is the same rationale used to advance the plea of res judicata or estoppel. It is that a party ought not to be unnecessarily harassed by multiple proceedings on the same issue. As in res judicata, the public interest is the same; there should be finality in litigation and parties should not be twice vexed in the same matter (see Henderson v Henderson [1843-60] All ER Rep 378; (1843) 3 Hare 100; Arnold and others v National Westminster Bank plc [1991] 2 AC 93 and Johnson v Gore Wood & Co (a firm) [2002] 2 AC 1).*

*[27] The multiplicity objection differs from res judicata in that in a multiplicity situation, the courts have yet to decide on the issues. It is more a case of a party abusing the process of the court by raising the same cause of action or issues before different courts. It may perhaps be analogous to the doctrine of res judicata in the wider sense as decided in the celebrated case of Henderson v Henderson, where it was held that res judicata would preclude a party from raising in subsequent proceedings matters which were not, but could and should have been*

*brought forward, if reasonable diligence had been exercised. However one looks at it, the objective is the same; to prevent oppressive and unnecessary litigation which is underpinned by the public policy against re-litigating identical claims.*

*[28] So, in our view, the question the learned judge ought to have asked himself was whether the instant OS amounted to oppressive and unnecessary litigation giving rise to the overwhelming supposition that it was an abuse of the court process...*

[21] In allowing Enclosure 8, I made it a point to say that no plea of *res judicata* should be raised in Suit 13 to contest the matters pleaded there about compliance or non-compliance with the Order in OS 158 by reason of the striking out of this action which I am not deciding on its merits. As I said, the merits of this contest may be made in Suit 13 or even in opposing committal proceedings should they be taken out.

[22] For the avoidance of doubt, I also made it a point that I am saying nothing about the plea of *res judicata* that the Defendant here may raise in Suit 13 for any other reason.

### **Conclusion**

[23] For the reasons set out above, I agree with the Defendant that this action is frivolous, vexatious and an abuse of the process of the Court.

**Dated:** 12 NOVEMBER 2024

**(ELAINE YAP CHIN GAIK)**  
PESURUHJAYA KEHAKIMAN  
MAHKAMAH TINGGI MALAYA  
SHAH ALAM



**Counsel:**

*For the plaintiffs - Jasbeer Singh & Jeyshini Naidu P G Kali Das; M/s  
Jasbeer Nur & Lee*

*(Kuala Lumpur)*

*For the defendant - Megan Choo & Teh I-Vern; M/s Josephine, LK Chow &  
Co*