

**DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR
DI DALAM WILAYAH PERSEKUTUAN, MALAYSIA
[RAYUAN SIVIL NO : WA-12ANCVC-123-08/2023]**

ANTARA

**1. VITAL LIVING EMPIRE SDN ... PERAYU-PERAYU
BHD**

(No. Syarikat : 1125321-T)

**2. SASHITHERAN A/L
KANAGASABAPATHI**

(No. K/P : 900103-14-6875)

**3. VIGNESWARAN A/L AH
WALI**

(No. K/P : 810701-08-6789)

DAN

1. SATIS KUMAR

2. NGEOW CHOW YING

3. YEW DING WEI

**(RESPONDEN KEDUA DAN KETIGA DISAMAN SEBAGAI SEBUAH
FIRMA YANG BERAMAL DI BAWAH NAMA DAN GAYA NGEOW
& TAN PEGUAMCARA & PEGUAMBELA)**

... RESPONDEN-RESPONDEN

**[DALAM MAHKAMAH SESYEN KUALA LUMPUR
DALAM WILAYAH PERSEKUTUAN KUALA LUMPUR, MALAYSIA
GUAMAN SIVIL NO : WA-B52NCVC-481-11/2022**

ANTARA

1. VITAL LIVING EMPIRE SDN BHD ... PLAINTIF-PLAINTIF
(No. Syarikat : 1125321-T)

2. SASHITHERAN A/L
KANAGASABAPATHI
(No. K/P : 900103-14-6875)

3. VIGNESWARAN A/L AH WALI
(No. K/P : 810701-08-6789)

DAN

1. ELEGANT GROUP SDN BHD
(NO. Syarikat : 159996-U)

2. SATIS KUMAR

3. NGEOW CHOW YING

4. YEW DING WEI

(DEFENDAN KETIGA DAN KEEMPAT DISAMAN SEBAGAI
SEBUAH FIRMA YANG BERAMAL DI BAWAH NAMA DAN GAYA
NGEOW & TAN PEGUAMCARA & PEGUAMBELA)

...DEFENDAN-DEFENDAN]

GROUND OF JUDGEMENT

INTRODUCTION

[1] This is an appeal against the decision of the learned Sessions Court Judge in allowing the Respondents' Application (2nd Defendant (**D2**), 3rd Defendant (**D3**) and 4th Defendant (**D4**) to strike out the Plaintiffs Writ of Summons and Statement of Claim (**SOC**) under Order 18 Rule 19 (1) (**b**), (**c**) and (**d**) of the Rules of Court 2012 (**ROC 2012**) with costs.

[2] For ease of reference, the respective parties shall be referred to as the Plaintiffs and Defendants as they were in the Sessions Court.

BRIEF FACTS

[3] D1 is the owner of two (2) premises with addresses at No. 1 & 3 (4th Floor) (**1st Premises**) and No. 5 (4th Floor) (**2nd Premises**), Lorong 4/137C, Batu 5, Jalan Klang Lama, 58200 Kuala Lumpur (**Premises**).

[4] The 1st Plaintiff (**P1**) rented the 1st Premises and 2nd Premises from D1 on 24/12/2020 and 15/2/2021, respectively (**Tenancy Agreements**).

[5] The 2nd Plaintiff (**P2**) and the 3rd Plaintiff (**P3**) are directors of P1.

[6] The 2nd Defendant (**D2**) is an employee of Messrs. Ngeow & Tan (**Firm**) and holds the position of a Chief Operating Officer (**COO**) while the 3rd Defendant (**D3**) is a partner of the Firm.

[7] It was not disputed that P1 owed D1, the arrears in rental of the Premises.

[8] On 29.08.2022, P1 received a notice of demand for the sum of RM 287,299.20 for the arrears in rental from the Firm as the solicitors representing D1.

[9] Later, P3 visited the Firm's office on 1/9/2022, met D2 at the Firm and requested for a longer period of time to settle the arrears.

[10] The next day, on 2/9/2022, P3 again, visited the Firm's office and left a letter of guarantee that was signed by P2 and P3 as guarantors.

[11] The Plaintiffs in their SOC stated that there was a contract made between P1 and D1 on either 1/9/2022 or 2/9/2022, which was referred as the '*second contract*' in the SOC and the settlement conditions are binding upon D1.

[12] On the other hand, it was the contention of the Defendants that P1 and D1 had never reached into any agreement to resolve or settle their disputes in respect of the outstanding rentals.

[13] Thereafter, a termination letter of the Tenancy Agreements was given to P1 on 5/10/2022.

FINDINGS AND ANALYSIS

Order 18 Rule 19 of ROC 2012

[14] O18 R19 of ROC 2012 provides-

"19. Striking out pleadings and endorsements (O. 18 r. 19)

(1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the endorsement, of any writ in the action, or anything in any pleading or in the endorsement, on the ground that-

(a) it discloses no reasonable cause of action or defence, as the case may be;

(b) it is scandalous, frivolous or vexatious;

(c) it may prejudice, embarrass or delay the fair trial of the action; or

(d) it is otherwise an abuse of the process of the Court,

and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.:". "

[15] The principle for striking out of pleadings pursuant to O 18 r 19 of the ROC 2012 is well settled (see *Bandar Builder Sdn Bhd & Ors v. United Malayan Banking Corporation Bhd* [1993] 4 CLJ 7; [1993] 1 MLRA 611; [1993] 3 MLJ 36; [1993] 2 AMR 1969, *Sim Kie Choon v. Superintendent of Pudu Prison & Ors* [1985] CLJ (Rep) 293;

[1985] 1 MLRA 167; [1985] 2 MLJ 385, Middy Industries Sdn Bhd & Ors v. Arensi Marley (M) Sdn Bhd [2013] 3 MLRA 114; [2013] 3 MLJ 511 and Gasing Heights Sdn Bhd v. Aloyah bte Abd Rahman & Ors [1996] 3 CLJ 695; [1996] 2 MLRH 631; [1996] 3 MLJ 259; [1996] 3 AMR 3000).

- [16] Further, in *Serac Asia Sdn Bhd v. Sepakat Insurance Brokers Sdn Bhd* [2013] 6 CLJ 673; [2013] 5 MLRA 175; [2013] 5 MLJ 1; [2013] 4 AMR 385 (FC), it was held that '*where the claim on the face of it is obviously unsustainable, the claim should be struck out*'.
- [17] The Plaintiffs brought this action and sued D2, D3 and D4, to be held liable for D1 pertaining to a settlement proposal which according to the Plaintiffs, could either be on 1/9/2022 or 2/9/2022 (referred in the SOC as a '*second contract*') which the Plaintiffs regarded as a valid and binding contract against D1. It was apparent, that the Plaintiffs themselves are not certain about the date of the '*second contract*'.
- [18] This Court finds that it is contradictory for the Plaintiffs to say that there was an element of fraud that forced P2 and P3 to sign the letter of undertaking and yet still claiming that a binding contract known as the '*second contract*' was formed on that meetings of 1/9/2022 and 2/9/2022 at the Firm.
- [19] Obviously, further negotiations for settlements were made thereafter, but not concluded. Reference could also be made, particularly to the letters dated 29/8/2022 (conditional terms to halt the termination) and 26/9/2022 (Notice of Forfeiture by D1 to P1). The settlement negotiations were conducted by D2 and D3 while representing D1.
- [20] Hence, D2 and D3 were only acting upon instructions of D1, being the Firm's client, in regards to the rental in arrears owed by P1 to D1.

[21] Furthermore, D2, D3 and D4, are not privy to the Tenancy Agreements between P1 and D1.

[22] In this context, the case of *Double Acres Sdn. Bhd. v. Tiarasetia Sdn Bhd*, held-

"Simply put, this doctrine means that only the original party to a contract may sue or be sued upon it. In other words, it is the original party that may enforce or be bound by the terms of the contract. While the doctrine of privity of contract denies the third party of any right, it also prevents the third party from being held liable under the contract to which the third party is not a party thereto. In Price v Easton (1833) 4 B & Ad 433; and in Tweddle v Atkinson (1861) 1B & S 393, the courts there laid down a singular principle of law to this effect: that no one may be entitled to or be bound by the terms of a contract to which he is not the original party thereto."

[23] In regards to D4, it is also obvious that D4 is not a partner of the Firm since he left on 9/7/2022, before the commencement of this Suit. Thus, D4 should not be named as a party.

[24] As such, based on the above reasons, it is plainly obvious that this is a case suitable for Order 18 R19 of the ROC 2012 as decided by the learned Sessions Court Judge and for the reasons given by him in arriving to this decision.

[25] Accordingly, under O. 55 of ROC, this appeal is by way of a rehearing and this court has assessed and weighed all the evidence and laws placed before this Court in its entirety. In this regard, for all the reasons aforesaid, this Court finds that there is no merit in the Plaintiff's appeal to warrant appellate intervention (See *Ong Leong Chiou v. Keller (M) Sdn Bhd (FC)* [2021] 4 CLJ 821; [2021] 4 MLRA 211; [2021] 3 MLJ 622, *Tengku Dato' Ibrahim Petra Tengku Indra Petra v. Petra Perdana Berhad & Another Case* [2018] 2 CLJ

641; (FC) [2018] 1 MLRA 263; [2018] 2 MLJ 177, *Ng Hoo Kui & Anor v. Wendy Tan Lee Peng & Ors*, [2020] 12 MLJ 67; [2020] 6 MLRA 193 and *MMC Oil & Gas Engineering Sdn Bhd v. Tan Bock Kwee & Sons Sdn Bhd* [2016] 4 CLJ 665; [2016] 3 MLRA 144; [2016] 2 MLJ 428).

[26] Thus, this appeal is dismissed with cost.

Dated: 6 JUNE 2024

(SUZANA MUHAMAD SAID)

Judicial Commissioner of the High Court

NCVC 1

Kuala Lumpur Court.

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