



**DALAM MAHKAMAH TINGGI MALAYA DI SHAH ALAM
DALAM NEGERI SELANGOR DARUL EHSAN, MALAYSIA
[GUAMAN SIVIL NO: 21NCVC-15-04/2014]**

ANTARA

ZAINUDDIN ZAKARIA

(NO. K/P: 700328-03-5483)

And 81 OTHERS

**... PLAINTIF-
PLAINTIF**

DAN

- 1. MASS RAPID TRANSIT CORPORATION SDN BHD**
- 2. KEMENTERIAN KEWANGAN MALAYSIA**
- 3. SURUHANJAYA PENGANGKUTAN AWAM DARAT (SPAD)**
- 4. ILMU PANDUAN HIDUP SDN BHD ... DEFENDAN
DEFENDAN**

GROUND OF DECISION

[Enclosure 10]

Introduction

[1] This was an application filed by the 3rd Defendant to strike out the Plaintiffs' Writ under O. 18 r. 19 (a),(b) and (d) of the ROC 2012. The 3rd Defendant raised the following issues: (i) the Plaintiffs do not have *locus standi* in this action, and (ii) the Plaintiffs have sued the wrong party or no cause of action against the 3rd Defendant.

[2] For the record, the 1st and 4th Defendants have also filed similar applications.

[3] The parties argued before this Court on 17.11.2014, and decision was delivered by this Court on 2.12.2014. This Court allowed the 3rd Defendant's application and the reasons for allowing the application are as below.

The Background Facts

[4] The Plaintiffs were the licensed traders at Complex Muhibbah - Block A, Bazaar Pasar Malam Up Town. Kota Muhibbah, Kota Damansara, Selangor (the Complex).

[5] The Complex was once situated on a piece of land known as Tapak Pasar Modern at Jalan Teknologi 3/2, Seksyen 3, Kota Damansara, Daerah Petaling, Negeri Selangor or also known as Lot 54759, Pekan Baru, Sg Buloh, Daerah Petaling (the Land).

[6] Sometime in 2012, the Plaintiffs were requested by the local authority to vacate the Complex, because the Complex would be demolished to give way to the construction of a Mass Rapid Transit railway-line - the Sungai Buloh-Kajang Line (SBK Line).

[7] The Plaintiffs claimed that an agreement was reached between the Plaintiffs and the 3rd Defendant and several other parties in a meeting held at the Pejabat Tanah dan Galian Selangor (PTG) on 29.9.2012.

[8] The Plaintiffs claimed that these were the purported terms which the parties had agreed upon (as per the Statement of Claim):

90. *“...pihak Defendan telah mengadakan beberapa kali perbincangan bagi tujuan pengosongan tapak perniagaan Blok A pihak Defendan Pertama telah pada 29hb September 2012 dan berjaya mencapai satu perjanjian dengan pihak Plaintiff Plaintiff melalui satu mesyuarat yang diadakan pada 29 hb September 2012 di Pejabat Tanah dan Galian Selangor antara lain yang dipersetujui ialah:*

- a. ...*
- b. ...*
- c. Pihak Plaintiff Plaintiff hendaklah setelah menerima wang pampasan hendaklah mengosongkan tapak pembinaan selewatnya pada 15hb April 2013.*
- d. Pihak Plaintiff Plaintiff dibenarkan untuk berniaga di tapak asal pada 16hb Disember 2013.*

[9] The Plaintiffs alleged that they were to be allowed to re-enter the original site after 8 months after vacating the Complex to resume their businesses.

[10] At paragraph 92 of the Statement of Claim, the Plaintiffs further averred:

92. *Setelah tamat tempoh lapan bulan seperti yang ditetapkan. Pihak Plaintiff Plaintiff telah cuba memasuki ke tapak perniagaan asal walau bagaimanapun pihak Defendan Defendan terutamanya Defendan Pertama dan Defendan Keempat telah gagal untuk menyediakan satu tapak yang sesuai untuk Plaintiff Plaintiff memulakan kembali perniagaan.*

[11] The Plaintiff sought the following reliefs against all the Defendants:

- a. *Ganti rugi teladan RM10,000,000.00;*
- b. *Ganti rugi khas RM2,005,741.20 untuk diagihkan kepada Plaintiff Plaintiff bagi kehilangan pendapatan perniagaan setakat 16.3.2014;*
- c. *Faedah pada kadar 5% dari tarikh tunggakan jumlah RM2,005,741.20 iaitu pada 16.12.2013 sehingga tarikh penyelesaian penuh;*
- d. *Ganti rugi am;*
- e. *Satu perintah mengarahkan pihak Defendan Defendan diarahkan untuk menyediakan tapak perniagaan seperti yang dipersetujui serta diterima pakai oleh pihak Plaintiff dalam masa 30 hari dari tarikh penghakiman diberikan.*
- f. *Dan/atau sebagai alternative pihak Defendan Defendan membayar ganti rugi bagi kehilangan tapak perniagaan yang akan*

ditaksirkan mengikut harga pasaran oleh Mahkamah Yang Mulia ini.

g. *Kos*

h. *Lain-lain relif yang difikirkan suai.*

The 3rd Defendant's Application

First Issue - Locus Standi

[12] The 3rd Defendant submitted that the Plaintiffs did not have *locus standi* to institute this action as they were not the registered or beneficial owners of the Land. The Land belongs to the Selangor State Government. The 3rd Defendant cited the case of *Piagamas Maju Sdn. Bhd. v. Pengarah Tanah dan Galian Negeri Selangor & Satu Lagi* [2013] 2 CLJ 824 in support of its contention. In that case it was held:

“Sesuatunya pemberian milikan tanah negeri hanya menjadi sempurna setelah suratan hak milik didaftarkan. Selagi pemohon tanah negeri belum didaftarkan sebagai pemilik berdaftar tanah, maka tanah terlibat masih terus kekal sebagai tanah negeri dan Pihak Berkuasa Negeri bebas mengurus atau melupuskannya.”

[13] In reply to the above contention, the Plaintiffs' counsel submitted that the Plaintiffs' claim was not concerning any issue or right in relation to the Land. What the Plaintiffs' claim was the loss of income arising from not being allowed to re-enter the same place to carry out their businesses as before.

[14] I agree with the Plaintiffs' submission. The Plaintiffs' claim is not based on any issue, right or interest over the land. The Plaintiffs' claim is purely based on a breach of an alleged agreement to purportedly allow them to return to the original site 8 months after vacating the Complex. The reliefs sought are not based on an interest in the Land *per se*, but an "agreement" to resume their businesses in the Land. Hence, the Plaintiffs do have *locus standi* to institute an action of this nature based on the cause of action relied on and the reliefs sought. However, whether the Plaintiffs have sued the right party or not is a different issue altogether.

Second Issue - Did the Plaintiffs Sue the Right Party OR No Cause of Action Against the 3rd Defendant

[15] The 3rd Defendant's counsel submitted that there was no cause of action against the 3rd Defendant, because the 3rd Defendant was not in a position to provide a site for the Plaintiffs to resume their businesses or to determine the time frame when a site could be ready for the Plaintiffs to resume their businesses.

[16] In order to determine whether a statement of claim shows any cause of action against a party or not, the court may look at the substance of the action and not merely at the form of the pleadings [see *Yong Sze Hong v. PAN KA General Agencies* [1994] 1 CLJ 555].

[17] In the Plaintiffs' own pleadings, they acknowledged that it was the 1st and 4th Defendants who were supposed to provide a suitable site for the Plaintiffs to return and resume their businesses on the Land, and not



the 3rd Defendant. [see paragraph 92 of the Statement of Claim as reproduced above].

[18] The 3rd Defendant's roles in the MRT Project were explained in paragraph 8 of its Statement of Defence (Encl. 6). The primary role of the 3rd Defendant was merely supervisory. It was to ensure the compliance of the *Land Public Transport Act 2010* by all the parties involved in the project. It also has an administrative role to disburse compensation funds to parties affected by the MRT Project. The funds came from the Federal Government.

[19] It was submitted that the 3rd Defendant has no control over when the Plaintiffs could re-enter the Land. The reliefs sought against the 3rd Defendant were impossible for it to perform.

[20] Besides what the 3rd Defendant's counsel has submitted, I find it is not possible for the 3rd Defendant to have had agreed to the purported agreement which was alleged to have entered on 29.9.2012. This is because the minutes of the meeting (Exhibit "MKD-4" in the affidavit of one Mohd Kamal bin Derahman dated 4.7.2014) does not show any representative from the 3rd Defendant had attended the meeting.

[21] Further, in the same affidavit, another minutes of meeting dated 14.1.2013 is appended and marked as Exhibit "MKD-3". The only reference made with regard to the 3rd Defendant in this minute is that the 3rd Defendant (known as SPAD) will make payment within two weeks after receiving the instruction from the Land Administrator.



[22] There is nothing in both documents (“MKD-3” and “MKD-4”) to suggest that the 3rd Defendant had agreed with the Plaintiffs to allow the Plaintiffs to re-enter the Land.

[23] Based on the above pleaded facts, I am of the considered view that there is no direct *nexus* between the substance of the action and the 3rd Defendant, except that the 3rd Defendant was to arrange for the payments of the compensation to the Plaintiffs.

[24] A cause of action is simply a factual situation the existence of which entitles one person to obtain from the court a remedy against another person [see *Letang v. Cooper* [1965] 1 QB 232 at page 242].

[25] The factual situation pleaded, no matter how badly it is drafted, ought to disclose that a plaintiff is entitled to obtain from the court a remedy against the defendant. If the factual situation pleaded does not disclose, even in the most tenuous form, the entitlement of a plaintiff seeking from the court to a remedy against a defendant, then the plaintiff’s writ is bound to be struck out.

[26] After having considered the substance of the action and the Plaintiffs’ pleadings and affidavit, I hold that the pleaded factual situation does not enable for this Court to find that the Plaintiffs are entitled to seek from this Court the remedies sought against the 3rd Defendant.

[27] I am convinced that the Plaintiffs have not disclosed any reasonable cause of action against the 3rd Defendant. The Plaintiffs’ action is *obviously unsustainable* against the 3rd Defendant.



Decision

[28] Based on the above reasoning, I therefore allowed the 3rd Defendant's application with costs of RM5,000.00.

(CHOO KAH SING)
Pesuruhjaya Kehakiman
Mahkamah Tinggi
Shah Alam

Dated: 9 DECEMBER 2014

Counsels:

For the plaintiffs - Ahmad Zaharil Muhaiya; M/s A M Zaharil & Co

For the defendants - Afifi Ahmad; M/s Azrul Afifi & Azuan

Legislation referred to:

Ruls of Court 2012, O. 18 r. 19(a), (b), (d)