

**DALAM MAHKAMAH TINGGI MALAYA DI SUNGAI PETANI  
[RAYUAN SIVIL NO: KB-12A-2-01/2021]**

**ANTARA**

**INOKOM CORPORATION SDN BHD**

**(No Syarikat: 251228-M)**

**... PERAYU**

**DAN**

**EKATUJU SDN BHD**

**(No Syarikat: 304775-K)**

**... RESPONDEN**

**ALASAN PENGHAKIMAN**

**Pengenalan**

- [1] Untuk kemudahan rujukan, pihak-pihak akan dirujuk sepertimana rujukan mereka di Mahkamah Sesyen.
- [2] Ini adalah rayuan Defendan terhadap keputusan Mahkamah Sesyen bertarih yang telah membenarkan permohonan Plaintiff untuk penghakiman terus dan merekodkan penghakiman terhadap Defendan atas terma-terma berikut -
- (i) jumlah sebanyak RM 237,944.97;
  - (ii) faedah ke atas jumlah tersebut pada kadar 5% setahun dari Tarik penyampaian Writ dan Pernyataan Tuntutan iaitu pada 21/7.2020 sehingga penyelesaian penuh; dan
  - (iii) kos sebanyak RM 2000.00

**Latarbelakang rayuan**

- [3] Berikut adalah fakta-fakta yang tidak dipertikaikan. Defendan telah melantik Plaintiff untuk menyediakan perkhidmatan gudang untuk barangan Defendan melalui surat perlantikan bertarikh 12.2.2019.
- [4] Antara terma-terma penting surat perlantikan tersebut adalah bahawa -
- (i) Plaintiff hendaklah menerima, menyimpan dan menghantar barangan Defendan yang termasuk tetapi tidak terhad kepada komponen automotif di gudang Plaintiff bagi tempoh mulai 1.10.2019 hingga 20.9.2019 [Klausula 1.1];
  - (ii) Defendan melalui ejennya akan menghantar barangan ke Gudang Plaintiff dan Plaintiff dikehendaki menurunkan barangan tersebut dari kontena dan menyimpan barangan tersebut dalam pembungkusan asalnya berikutan arahan dan keperluan Defendan [Klausula 1.3 dan Klausula 1.4];
  - (iii) Defendan hendaklah membuat bayaran untuk perkhidmatan Plaintiff dalam tempoh 30 hari dari penerimaan invois melainkan jika terdapat sebarang pertikaian oleh Defendan [Klausula 3.1];
  - (iv) Plaintiff hendaklah memberikan perkhidmatan mereka dengan kemahiran professional dan cermat [Klausula 6.1];
  - (v) Plaintiff bertanggungjawab untuk sebarang kehilangan atau kerosakan kepada barangan semasa barangan tersebut di bawah jagaan, simpanan dan kawalan Plaintiff akibat kegagalan Plaintiff mengambil tindakan berjaga-jaga yang munasabah [Klausula 14.2],

- [5] Defendan teiah gagai membuat bayaran dengan sempurna untuk tempoh Jun 2019 hingga Oktober 2019 kecuali 2 bayaran sebanyak RM 209,120.00 pada 28.8.2019 dan sebanyak RM 397,360.00 pada 27.9.2019.
- [6] Setelah Plaintiff mengeluarkan notis tuntutan bertarikh 14.2.2020 untuk jumlah tertunggak sebanyak RM 397,360.00 dan memfailkan suratcara di Mahkamah Sesyen Kulim, Defendan teiah membuat bayaran sebanyak 159,415.00 pada 16.5.2020.
- [7] Tuntutan Plaintiff adalah untuk RM 237,944.97 yang berupa baki tertunggak yang perlu dibayar oleh Defendan.
- [8] Dalam penyata pembelaan mereka, Defendan mendakwa Plaintiff telah menyebabkan kerosakan kepada barangan mereka. Akibatnya, Defendan terpaksa menanggung penggantian barangan yang dirosakkan.
- [9] Defendan mengakui keberhutangannya kepada Plaintiff tetapi mendakwa bahawa mereka berhak menolak RM 237,944.97 yang berupa jumlah kos penggantian barangan yang dirosakkan oleh Plaintiff.

### **Keputusan Mahkamah Sesyen**

- [10] Di Mahkamah Sesyen, Plaintiff telah memohon penghakiman terus untuk jumlah tertunggak ini beserta faedah dan kos. Permohonan tersebut telah dibenarkan oleh HMS.
- [11] Dalam alasan penghakiman beliau, HMS telah membuat dapatan bahawa Defendan telah gagal mengemukakan sebarang isu yang wajar dibicarakan.

## Prinsip undang-undang terpakai

[12] Mahkamah ini menerimapakai prinsip undang-undang yang dihuraikan dalam kes *Synergy Spectacular Sdn Bhd v. Teratas Petroleum Sdn Bhd* [2022] MLJU 4 di mana Hakim Azizah Haji Nawawi menyatakan -

“The central feature of appellate intervention is trite, that is to determine whether or not the trial court had arrived at its decision or finding correctly on the basis of the relevant law and/or the established evidence. This had been explained by the Federal Court in the case of *Gan Yook Chin (P) & Anor v. Lee Ing Chin @ Lee Teck Seng & Ors* [2005] 2 MLJ 1, where the Federal Court held as follows:-

*[14] In our view, the Court of Appeal in citing these cases had clearly borne in mind the central feature of appellate intervention, i.e. to determine whether or not the trial court had arrived at its decision or finding correctly on the basis of the relevant law and/or the established evidence. In so doing, the Court of Appeal was perfectly entitled to examine the process of evaluation of the evidence by the trial court. Clearly, the phrase ‘insufficient judicial appreciation of evidence’ merely related to such a process. This is reflected in the Court of Appeal’s restatement that a judge who was required to adjudicate upon a dispute must arrive at his decision on an issue of fact by assessing, weighing and, for good reasons, either accepting or rejecting the whole or any part of the evidence placed before him. The Court of Appeal further reiterated the principle central to appellate intervention, ie that a decision arrived at by a trial court without judicial appreciation of the evidence might be set aside on appeal. This is consistent with the established plainly wrong test.”*

In another case, the Federal Court in *CIMB Bank Bhd (formerly known as Bumiputera Commerce Bank Bhd) v. Sebang Gemilang Sdn Bhd & Anor* [2018] 3 MLJ 689 held as follows:-

*[38] The issue of knowledge of the equitable assignment is entirely a question of facts. Both the courts below concluded that the appellant had knowledge of the equitable assignment based on the facts and circumstances of the case. It is trite law that an appellate court will not, generally speaking, intervene unless the trial court is shown to be plainly wrong in arriving at its judicial decision or there has been no or insufficient judicial appreciation of evidence (see Gan Yook Chin (P) & Anor v. Lee Ing Chin @ Lee Teck Seng & Ors [2005] 2 MLJ 1)."*

### **Rayuan Defendan**

[13] Dakwaan bahawa Plaintiff telah menyebabkan kerosakan kepada barangan Defendan semasa barangan tersebut dalam simpanan Plaintiff yang mengakibatkan kerugian kepada Defendan telah diplidkan sebagai tuntutan balas oleh Defendan. Defendan bukan sahaja menuntut kos penggantian barangan rosak dalam jumlah RM 237,944.97 tetapi juga ganti rugi untuk kerugian perniagaan dalam jumlah RM 999,999.99.

[14] Walaupun Defendan tidak menggunakan perkataan "set off", mereka telah membangkitkan isu bahawa -

(i) Plaintiff telah melanggar terma-terma perlantikan mereka kerana telah menyebabkan kerosakan kepada barangan Defendan semasa barangan tersebut dalam simpanan Plaintiff dan ini telah mengakibatkan kerugian kepada Defendan; dan

(ii) Defendan berhak menolak RM 237,944.97 yang berupa jumlah kos penggantian barangan yang dirosakkan oleh Plaintiff.

[15] Mahkamah ini berpandukan penghakiman daiam dua kes berikut berhubung apa itu “set off” dan tuntutan balas -

(i) *Permodalan Plantations Sdn Bhd v. Rachuta Sdn Bhd* [1985] 1 MLJ 157 di mana Salleh Abas LP telah menyatakan -

(a) “to constitute a set-off the sum of money meant as a cross-claim must from its nature and quality be such that it is proper to be dealt with as a defence to the plaintiffs claim and not as a separate cause or matter”;

(b) “the characteristics of set-off as contained in Order 18 rule 17 are that (1) it is a cross-claim for a sum of money, ascertained or otherwise; (2) it is relied as a defence to meet the whole or part of the plaintiffs claim, and (3) that it is immaterial whether it is added or not as a counterclaim as long as it is included in the defence”;

(c) “if a cross-claim relied on by the defendant as a set-off does not and cannot absolve the plaintiffs claim because it arises from a separate transaction, the cross-claim is not necessarily a set-off, though it is so described, and that such cross-claim could, because of its nature and quality, only amount to a counterclaim”;

(d) “a counterclaim on the other hand is also a cross-claim which a defendant has against a plaintiff but in respect of which the defendant can bring a separate action against the plaintiff if he wishes to do so. Thus, to all intents and purposes a counterclaim is a separate and independent action by the defendant, which the law allows to be joined to the plaintiffs action in order to avoid multiplicity or circuity of suits”; dan

(e) “a counterclaim is wider than a defence of set-off and that whilst the former is a separate action by a defendant against a plaintiff, the latter is essentially a defence, although a defendant is entitled to add it as counterclaim. Being a defence to a plaintiff’s action, the matter sought to be set- off must essentially be connected with or form part of the matter upon which the plaintiffs action is founded”.

(ii) *Shanghai Hall Ltd v. Town House Hotel Ltd* [1967] 1 MLJ 223 di mana Azlan Shan FCJ telah menyatakan -

“In view of the modification of the common law rule with regard to set off by legislation, set off can now be pleaded in respect of mutual debts or such matters or complaints as are allowable to reduce or extinguish the claim or other matters of equity which formerly might have called for injunction or prohibition. That aspect of set off as developed by the Judicature Acts should have been taken into account when considering the plaintiffs claim for arrears of rent. The learned judge gave undue weight to the alleged admission of arrears of rent without considering the equitable doctrine of set off and, in my opinion, he was wrong. *Morgan & Son v. Martin Johnson & Co., supra*, and *Hanak v. Green, supra*, seem to be authorities that are closely applicable to the present case.”

[16] Berpandukan penghakiman dalam kedua kes ini, Mahkamah ini mendapati bahawa tuntutan balas Defendan berhubung dan berbangkit daripada terma-terma surat perlantikan yang juga menjadi asas tuntutan Plaintiff.

[17] HMS mendapati Defendan teiah gagal mengemukakan sebarang pembelaan untuk tuntutan Plaintiff untuk baki tertunggak bagi perkhidmatan gudang yang disediakan. HMS teiah memandang

berat pengakuan jelas, nyata dan berulang Defendan bahawa mereka sememangnya berhutang kepada Plaintiff.

[18] Pada pandangan Mahkamah ini, HMS teiah gagal meneliti keterangan dokumentari dalam bentuk emel di antara wakil Defendan dan wakil Plaintiff di mana isu berkenaan kerosakan kepada barangan Defendan teiah diketengahkan beberapa kali.

[19] HMS juga gagal untuk mengambilkira bahawa pada setiap masa yang material, Defendan konsisten bahawa alasan untuk tidak membuat bayaran penuh tuntutan Plaintiff adalah kerana mereka ada tuntutan balas berhubung kerosakan kepada barangan mereka.

[20] Walaupun HMS teiah HMS teiah merujuk kepada prinsip undang-undang mantap berkenaan A. 14 Kaedah-Kaedah Mahkamah 2012 dan nas undang-undang yang berkaitan, keputusan beliau tidak berlandaskan keterangan yang dikemukakan oleh Defendan.

### **Keputusan**

[21] Dalam keadaan ini, wajar untuk Mahkamah ini membenarkan rayuan Defendan dan mengenyepikan keputusan dan penghakiman HMS bertarikh 4.1.2021

[22] Kos rayuan ini dan kos prosiding di Mahkamah Sesyen ditetapkan pada RM 4000.00 tertakluk kepada bayaran fi alokatur.

**Bertarikh:** 15 MAC 2022



**(NARKUNAVATHY SUNDARESON)**  
Pesuruhjaya Kehakiman  
Mahkamah Tinggi Malaya di Sungai Petani

**KAUNSEL:**

*Bagi pihak perayu - Ng Kean Yip; Arifin & Partners*  
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*Bagi pihak responden - Hariul Alif Hairul Azam; C P Ang & Co*  
18, Lebuh Kampung Benggali, Kampung Benggali  
12000 Butterworth, Pulau Pinang.

**Kes-kes yang dirujuk:**

*Synergy Spectacular Sdn Bhd v. Teratas Petroleum Sdn Bhd [2022]*  
*MLJU 4*

**Perundangan yang dirujuk:**

Kaedah-Kaedah Mahkamah 2012, A. 14