



**DALAM MAHKAMAH TINGGI MALAYA DI SHAH ALAM
DALAM NEGERI SELANGOR DARUL EHSAN, MALAYSIA
[GUAMAN NO: BA-22NCvC-116-03/2020]**

ANTARA

- 1. BLUEPRINT PLANNING INTERNATIONAL SDN. BHD.
(No. Syarikat : 1019648-K)**
- 2. BLUEPRINT PLANNING SDN.BHD.
(No. Syarikat : 836803-W) ... PLAINTIF-PLAINTIF**

DAN

- 1. NG WERN PING
(No. K/P : 800714-14-5961)**
- 2. GOR SHEAU SHUENN
(No. K/P: 871206-23-5889)**
- 3. WONG LI YUIN
(No. K/P: 800131-01-5610)**
- 4. ROZANNA BINTI ABDUL RASHID
(No. K/P: 830510-10-5092)**
- 5. STELLA LER PEI GHEE
(No. K/P: 880922-43-5624)**
- 6. SENG LIANG AN
(No. K/P: 840717-04-5153) ... DEFENDAN-DEFENDAN**

Abstract: 1. A mandatory interlocutory injunction is granted before the trial in exceptional sporadic cases. The court could grant mandatory interlocutory injunction even if its effect is to wholly grant the applicant the injunctive relief it prays for in the trial. Avoiding a party from being held at ransom during the



interim period is a relevant factor to be considered in granting a mandatory interlocutory injunction.

2. A licensed financial planner or financial adviser representative of a particular company cannot work or serve as a licensed financial planner or financial adviser representative of another company until and unless the Bank Negara Malaysia amends or alters its records to reflect the termination or cessation of the services of the said financial planner or financial adviser representative under the said company. A refusal of the letter of confirmation of termination or cessation would cause disproportionate prejudice or hardship to the said financial planner or financial adviser representative, so much so that the prejudicial consequences to the latter include deprivation or severe impairment of their livelihood. In such circumstances, the said licensed financial planner or financial adviser representative is entitled to seek an order of court by way of mandatory interlocutory injunction to compel the company to issue the required letters pending disposal of a dispute between them.

CIVIL PROCEDURE: Injunction - Interlocutory injunction - Perpetual mandatory injunction - Application by defendants being previous licensed financial planners and advisers representatives of plaintiffs - Plaintiffs refused to issue letter to Bank Negara confirming that defendants have ceased from being financial planners and advisers representatives for plaintiffs - Whether Bank Negara could approve or register defendants as licensed financial planners and advisers representatives without written confirmation from plaintiffs - Whether plaintiffs' refusal have any bearing to their claims against defendants - Whether defendants would be able to establish their rights to get letters of confirmation or release from plaintiffs at trial - Whether refusal of issuance of letters of confirmation or release would cause greater prejudice or hardship to defendants rather than plaintiffs - Whether avoiding a party from being held at ransom during interim period is a relevant factor to be considered in granting mandatory interlocutory injunction



[Defendant’s application allowed partly with costs to be borne by parties.]

Case(s) referred to:

ESPL (M) Sdn Bhd v. Radio & General Engineering Sdn Bhd [2004] 4 CLJ 674 CA (refd)

Films Rover International Ltd v. Cannon Film Sales Ltd [1987] 1 WLR 670, [1986] 3 All ER 772 (refd)

Gribbs & Co. v. Malaysia Building Society Bhd [1982] CLJ Rep 99 FC (refd)

Keet Gerald Francis Noel John v. Mohd Noor & Ors [1995] 1 CLJ 293 CA (refd)

Locabail International Finance Ltd v. Agroexport (The Seahawk) [1986] 1 WLR 657 (refd)

Sivaperuman v. Heah Seok Yeong Realty Sdn Bhd [1978] 1 LNS 184 FC (refd)

Shepherd Homes Ltd v. Sandham [1971] Ch 340 (refd)

SJ Securities Sdn Bhd v. Esmali Bin Naziaddin [1998] 1 LNS 338 HC (refd)

TR Hamzah & Yeang Sdn Bhd v. Lazar Sdn Bhd [1985] CLJ Rep 312 FC (refd)

Legislation referred to:

Contracts Act 1950, s. 28

Federal Constitution, art. 6

GROUND OF JUDGMENT



(Enclosure 58)

INTRODUCTION

[1] This appeal centres around a short and simple letter which the Plaintiffs are ordered to state a fact the truth of which the Plaintiffs have admitted or confirmed in their pleadings but which the Plaintiffs refuse to issue, knowing that the withholding of such a letter is depriving the Defendants of their livelihood or eligibility for continuing to to work as financial planners and/or advisers.

BACKGROUND FACTS

[2] The Defendants were previously licensed financial planners (“LFP”) and/or financial adviser representatives (“FAR”) with the Plaintiffs.

[3] After the Defendants left the Plaintiffs’ organisation, the Plaintiffs’ in March 2020 filed this suit against the Defendants wherein the Plaintiffs claim the Defendants for the following alleged causes of action:

- (1) conspiracy to cheat; and
- (2) breach of terms of service contracts; etc.

[4] In the Statement of Claim, the Plaintiffs claim for the following damages and reliefs:

- (1) special damages of RM2,471,762.86;
- (2) general damages;
- (3) aggravated damages;



- (4) exemplary damages; and
- (5) interests and costs.

[5] The Defendants in their Defence and Counterclaim have denied the Plaintiffs' allegations of conspiracy or breach or damages. In addition, the Defendants alleged that the Plaintiffs were in breach of contracts and/or duties and therefore the Defendants counterclaim for the following damages and reliefs:

- (a) declaration that the FAR Agreements between the 1st Plaintiff with the respective Defendants and the LFP Agreements between the 2nd Plaintiff with the respective Defendants have been effectively terminated on 31.10.2019;
- (b) a declaration that the Plaintiffs have been unjustly enriched at the expense of the Defendants to the sum stipulated in paragraph 43(a);
- (c) an injunction restraining the Plaintiffs, whether by themselves, their directors, officers, servants, representatives and/or agents from in any way interfering with the Defendants and the Defendants' officers, servants, representatives, agents and the Defendants' associated companies, from rendering services as Financial Adviser Representatives and/or Licensed Financial Planners and/or the Defendants' respective professions individually or under any companies;
- (d) an injunction restraining the Plaintiffs, whether by themselves, their directors, officers, servants, representatives and/or agents from in any way interfering with the profession and/or trades and/or business of the



Defendants and the Defendant's officers, servants, representatives, agents and the Defendants' associated companies;

- (e) an injunction directing the Plaintiffs to represent in writing to the Bank Negara Malaysia, the Securities Commission of Malaysia, the service providers and the customers served by the Defendants prior to the termination of the FAR and LFP Agreements, that the FAR and LFP Agreements between the Defendants and the Plaintiffs have been effectively terminated on 31.10.2019, and that there are no further obligations on part of the Defendants;
- (f) an injunction directing the Plaintiffs to release the relevant licenses and approvals of the Defendants immediately;
- (g) the special damages for the sum stipulated in paragraphs 43(a) to 43(e);
- (h) damages including exemplary and aggravated damages against the Plaintiffs to be assessed for among others, the following: -
 - (i) the breach of the FAR and/or LFP Agreements;
 - (ii) the unlawful interference with the trades and business of the Defendants and Alpine;
 - (iii) by holding the Defendants' licenses and livelihood in ransom; and
 - (iv) emotional distress caused to the Defendants.
- (i) an order for accounts and inquiries against the Plaintiffs in respect of the fees and commissions due from the Plaintiffs to the Defendants since 1.9.2019 and continuing and the



necessary order for payment against the Plaintiffs on the amounts so determined within seven (7) days from the date the Order of this Honourable Court;

- (j) interest;
- (k) costs; and
- (l) such other and/or further orders and/or directions which this Honorable Court deems fair and just.

[6] The Defendants pleaded in their Defence and Counterclaim *inter alia* as follows:

“36. The Defendants contend that the Plaintiffs have breached the express and/or implied terms of the FAR and LFP Agreements, including but not limited to the express clauses cited above, and/or failed to discharge their duties up to the expected standard in accordance with the express and/or implied terms of the FAR and LFP Agreements, including but not limited to the clauses cited above, which are as particularised below: -

PARTICULARS

- (a) the written notices of termination of the FAR and LFP Agreements of the Defendants dated 30.9.2019 were handed over the director of the Plaintiffs, Cik Normaria binti Omar on 30.9.2019;*
- (b) pursuant to the said notices of termination, the termination would be effective 31.10.2019;*
- (c) the Plaintiffs being fully aware and having the 2nd Plaintiff itself acknowledged and represented to the*



customers in writing that the terminations of the Defendants were effective on 31.10.2019;

(d) nevertheless, the Plaintiffs among others: -

(i) refused to process the termination of the FAR and LFP Agreements, which among others, resulted in the renewal of the 1st Defendants CMSRL License on 28.11.2019 post-termination of the LFP Agreement between the 1st Defendant and the 2nd Plaintiff;

(ii) refused to give confirmation to the Bank Negara Malaysia and the Security Commission of Malaysia that the FAR and LFP Agreements between the Plaintiffs and the respective Defendants were effectively terminated on 31.10.2019;

(iii) refused to release the Defendants as Financial Advisor Representatives of the 1st Plaintiff;

(iv) refused to release the Defendants' CMSRL Licences from the 2nd Plaintiff;

(v) caused confusion among the Defendants' customers on the status of the Defendants' licenses by among others, releasing only the FIMM licenses ie, Unit Trust Consultant and Private Retirement Consultant licenses to the Defendants in January 2020 and misrepresenting to the customers that the Defendants' licenses have been revoked by the regulators;



- (vi) *unlawfully obstructed and interfered with Alpine's application for a Financial Advisor's License with the Bank Negara Malaysia and for the Capital Market Services License with the Securities Commission of Malaysia, resulting in the Defendant's inability to carry out their trade and profession;*
- (vii) *unlawfully obstructed and interfered with the Defendants' application for individual licenses and approval under Alpine;*
- (viii) *unlawfully obstructed and interfered with the Defendants' and Alpine's trades and businesses;*
- (ix) *sought to impose additional and unreasonable terms on the Defendants outside the ambit of the FAR and LFP Agreements by holding he Defendants' licenses and/or approvals and/or livelihood at ransom as a condition for agreeing to grant the relevant releases. The additional terms varied among the Defendants but the common terms were as follows: -*
 - a. *to provide offshore clients indemnity;*
 - b. *to provide Financial Planners & Advisers Indemnity for other clients to both Plaintiffs;*
 - c. *to provide Financial Planners & Advisers Indemnity to both Plaintiffs; and*



- d. *to provide the Plaintiffs a draft of the indemnity letter and the Plaintiffs will get the Plaintiffs' legal adviser to "vet through".*

- (x) *other than the above, the additional conditions which the Plaintiffs sought to impose on the 3rd Defendant are among others, as follows: -*
 - a. *the 2nd Plaintiff would buy back the 11% of the 3rd Defendant's shares with NAV Formula;*

 - b. *the 3rd Defendant was to "return" the 1st Plaintiff's shares before the 3rd Defendant could be released as a guarantor;*

 - c. *the 3rd Defendant was to provide the Plaintiffs with a shareholders indemnity; and*

 - d. *the Plaintiffs could only release the FAR Approval and CMSRL License after the 3rd Defendant "settle transfer on 29.2% BPI shares, 11% BPP Shares and together with other exit requirement".*

- (xi) *have since 1.9.2019 to date and continuing, received fees and commissions paid by the relevant services providers to account of the respective Defendants and yet failing to account to the Defendants the Defendants' entitlement;*



- (xii) *continued with the representation to the relevant service providers that the Defendants' were still rendering services under the Plaintiffs;*
 - (xiii) *failed to enhance the security of the Plaintiffs' office which resulted in the 1st Defendant's loss of a laptop; and*
 - (xiv) *conducting the acts above-mentioned from (i) to (xiii) with the intention to injure the profession, livelihood, trades and/or business Defendants and Alpine, and with bad faith.*
37. *The Defendants and the Defendants' solicitors have subsequently issued letters to the Plaintiffs and their solicitors to address the issues in paragraph 32 and paragraph 36 above, and among others, demanded the Plaintiffs: -*
- (a) *to immediately release the Defendants' said relevant licenses from the Plaintiffs;*
 - (b) *to confirm with the Bank Negara Malaysia and Securities Commission Malaysia that the Defendants were no longer operating under the Plaintiffs platform with effect from 31.10.2019; and*
 - (c) *to account to the Defendants, with full particulars, all fees and commissions received by the Plaintiffs from the relevant service provider on account of the services rendered by the Defendants and to pay over such amounts to the Defendants within seven (7) days from the rendering of such account.*



38. *Nevertheless, not only did that the Plaintiffs continue to refuse the Defendants' particular demands, the Plaintiffs sought to further impose additional unreasonable and unlawful terms outside the ambit of the FAR and LFP Agreements post- termination by holding the Defendants' licenses, approvals and livelihood at ransom, despite the Plaintiffs being fully aware and having the 2nd Plaintiff itself acknowledged and represented to the customers in writing that the terminations of the Defendants were effective on 31.10.2019.*
39. *The Defendants content that the Plaintiffs have breached the express and/or implied terms of the FAR and LFP Agreements and/or have failed to discharge their duties up to the expected standard in accordance with the express and/or implied terms of the FAR and LFP Agreements. The Defendants refer to paragraph 36 of this counterclaim.*
40. *The Defendant further and/or in the alternative contend that the Plaintiffs have unlawfully interfered with the profession, trades and business of the Defendants and/or Alpine with an intention to injure the profession, trades and businesses of the Defendants and/or Alpone. The Defendants refer to paragraph 36 of this counterclaim.*
41. *For the fees and commissions since 1.9.2019 to date and continuing, which are due and payable by Plaintiffs to the Defendants, the Defendants, the Defendants further and/or in the alternative contend that the Plaintiffs have unjustly enriched themselves at the expense of the Defendants and/or have otherwise conducted themselves knowingly that the gains from the wrongful receipt and/or wrongful retain of the fees and commissions are likely to exceed the*

damages at risk. The Defendants refer to paragraph 36 of this counterclaim.

42. *The Defendants further and/or in the alternative contend that the Plaintiffs have breached the statutory obligation by not acting in accordance with the law including the relevant legislations, regulations and/or the guidelines issued by the regulating body including the Bank Negara Malaysia and the Securities Commission Malaysia. Among others, the breach includes section 62 of the Financial Services Act 2013: -*

“62. An institution shall notify the Bank in writing of the fact that a person has ceased to be its chairman, director, chief executive officer, senior officer or financial adviser’s representative, as the case may be pursuant to this Division or under any other circumstances and of the reasons for the cessation within seven days from the date of such cessation.”

43. *As a consequence, to the Plaintiffs’ conducts, the Defendants respectively to date, inter alia, suffered loss and damage as follows and continuing: -*

(a) loss of fees and commissions since 1.9.2019 to date and continuing, with the best particulars which the Defendants can provide presently are as follows: -

(i) RM150,000.00 for the 1st Defendant;

(ii) RM52,000 for the 2nd Defendant;

(iii) RM165,000 for the 3rd Defendant;



- (v) *RM2,100.00 for the 4th Defendant;*
 - (v) *RM13,000.00 for the 6th Defendant;*
 - (b) *wasted expenditure incurred by the Defendants to date and continuing, to meet clients for clarification due to the confusion caused by the Plaintiffs, with the best particulars which the Defendants can provide presently are as follows:-*
 - (i) *RM5,000.00 for the 1st Defendant;*
 - (ii) *RM1,000.00 for the 2nd Defendant;*
 - (iii) *RM5,000.00 for the 3rd Defendant;*
 - (iv) *RM1,000.00 for the 4th Defendant;*
 - (v) *RM1,000 for the 5th Defendant;*
 - (vi) *RM1,000.00 for the 6th Defendant;*
 - (c) *wasted expenditure of RM40,000 in Alpine suffered by the 3rd and the 6th Defendants;*
 - (d) *wasted expenditure of credit card debt interests RM10,000.00 suffered by the 1st and 3rd Defendant respectively; and*
 - (e) *loss of RM1,500 for the 1st Defendant's laptop.*
44. *In addition, the Defendants have also suffered loss and damage for the following which the Defendants will seek the Court's quantification during trial: -*
- (a) *loss of customers;*
 - (b) *loss of business and/or investment opportunities;*



- (c) *loss of marketing opportunity;*
- (d) *business interruption loss due to the Plaintiff's default;*
- (e) *wasted time, costs, resources and expenses incurred due to the Plaintiffs' default;*
- (f) *damage to the livelihood of the Defendants;*
- (g) *damage to the Defendants' reputation as Financial Adviser Representatives and Licensed Financial Planners; and*
- (h) *emotional distress caused by the unlawful conduct of the Plaintiffs."*

[7] In the pleadings in the suit and the affidavits filed and exchanged in respect of Enclosure 58 it is not disputed the Defendants services as licensed financial planners (LFP) and/or financial adviser Representatives (FAR) with the Plaintiffs have ended or been terminated: para 31.1 of the Plaintiffs' Defence to counterclaim and Plaintiffs' letters to various parties: Exhibit at pages 252 – 257 of Enclosure 59.

DEFENDANT'S APPLICATION IN ENCLOSURES 58

[8] After a written request has been refused by the Plaintiffs, the Defendants filed their application in Enclosure 58 for the following interim reliefs:

- “1. *An order directing the Plaintiffs to, within seven (7) days upon service of the order of this Honourable Court, issue a confirmation letter/release letter to the Bank Negara Malaysia, confirming that the Defendants have ceased*

being financial adviser representatives at the 1st Plaintiff and licensed financial planners at the 2nd Plaintiff effective 31.10.2019 and/or to satisfy such other requirements which may be specified by the Bank Negara Malaysia for the purpose of releasing the Defendants as financial adviser representatives at the 1st Plaintiff;

2. *an order directing the Plaintiffs to, within seven (7) days upon service of the order of this Honourable Court, issue a confirmation letter/release letter to the service providers namely, Investors Trust Assurance SPC, Great Eastern Life Assurance Malaysia Berhad, Prudential Assurance Malaysia Berhad, AIA Berhad, Hong Leong Assurance Berhad, Manulife Malaysia Berhad, Zurich Life Insurance Malaysia Berhad, Allianz Malaysia Berhad, Archipelago Insurance Limited, RL360 Insurance Company Limited and Syarikat Takaful Malaysia (“**Service Providers**”), confirming that the Defendants have ceased being financial adviser representatives at the 1st Plaintiff and licensed financial planners at the 2nd Plaintiff effective 31.10.2019 and/or to take all necessary steps may be required by the said Service Providers for the purpose of releasing the Defendants as financial adviser representatives at the 1st Plaintiff and licensed financial planners at the 2nd Plaintiff;*
3. *an order directing the Plaintiffs to, within seven (7) days upon service of the order of this Honourable Court, represent in writing to the Bank Negara Malaysia that the Plaintiffs have no objection to an unconditional approval of Alpine Advisory Sdn Bhd’s application for a Financial Adviser’s License and/or to satisfy such other requirements specified by the Bank Negara Malaysia;*



4. *an order directing the Plaintiffs to, within seven (7) days upon service of the order of this Honourable Court, represent in writing to the Bank Negara Malaysia that the Plaintiffs have no objection to the approvals for the Defendants to be Financial Adviser's Representative of Alpine Advisory Sdn Bhd or any other Licensed Financial Advisers companies and/or to satisfy such other requirements specified by the Bank Negara Malaysia;*
5. *that until further order of this Honourable Court, the Plaintiffs whether by themselves and/or through their directors, officers, agents, servants and/or representatives be restrained from in any way, directly and indirectly, interfering with the Defendants from rendering services as Financial Adviser Representatives, Licensed Financial Planners, Corporate UTS Advisers and/or Corporate PRS Advisers under Alpine Advisory Sdn Bhd or any other companies;*
6. *that until further order of this Honourable Court, the Plaintiffs whether by themselves and/or through their directors, officers, agents, servants and/or representatives be restrained from in any way directly and indirectly, interfering with the profession and/or trades and/or business of the Defendants, Alpine Advisory Sdn Bhd, the Defendants' officers, servants, representatives, agents and the Defendants' associated companies;*
7. *costs of this application to paid by the Plaintiffs to the Defendants; and/or*
8. *such other and / or further orders / reliefs as this Honorable Court deems just.*



The ground of this application are set out in the Defendants' Affidavit affirmed by Wong Li Yuin on 15.1.2021 and essentially are that the injunction is needed to protect the livelihood of the Defendants."

[9] After having read and considered the cause papers and the respective cause papers and the respective submissions of the parties, this Court on 25.02.2021 allowed only prayer 1 of the Defendants' application in Enclosure 58 but dismissed the other prayers in Enclosure 58.

[10] The Plaintiffs have filed an appeal against the Court's decision dated 25.2.2021, and no appeal has been filed by the Defendants against the dismissal of other prayers. As such, the Grounds of Judgment herein will be focused on prayer 1 of Enclosure 58.

PARTIES' SUBMISSIONS

[11] In the Defendants' Written Submissions in support of Enclosure 58, the Defendants submitted as follows:

"4. The Plaintiffs have themselves expressly admitted in the pleading that the Agreements have been terminated effective 31.10.2019, and have also represented the same to various customers and third parties.

5. Notwithstanding that, the Plaintiffs have deliberately refused to issue confirmation/release letters to th Bank Negara Malaysia ("BNM") and the relevant services providers to confirm the same, and attempting to impose additional terms on the Defendants, post termination of the FAR and LFP Agreements, in exchange of the said release letter.



6. *As a result of the Plaintiff's unlawful refusal to issue the said confirmation/release letters, **the Defendants livelihood is severely affected and the public is misled**: -*
- (a) *the Defendants are unable to be financial adviser representatives ("FAR" of any other companies including one Alpine Advisory Sdn Bhd;*
 - (b) *the BNM's latest list of approved financial advisor representatives from BNM official portal to date, is still showing that the Defendants are. FARs of the 1st Plaintiff;*
 - (c) *the Defendants are still shown as FARs of the 1st Plaintiff in the records of various services providers including Prudential Assurance Malaysia Berhad, Hong Leong Assurance Berhad and Allianz Malaysia Berhad.*
7. *The Plaintiffs; unlawful refusal of the said confirmation/release letters also infringes the constitutional right of the Defendants to seek and be engaged in lawful and gainful employment, trade and business under Article 5(1) of the Federal Constitution with reference to the Court of Appeal's decision in Tan Tek Seng v. Suruhanjaya Perkhidmatan Pendidikan & Anor [1996] 1 MLJ 261 on the interpretation of Article 5(1) (see page 54 H to I of DBOA). Article 5(1) of the Federal Constitution is reproduced as follows:*

"No person shall be deprived of his life or personal liberty save in accordance with law."

8. *It is a trite principle of law that the Plaintiffs cannot hold the Defendants' livelihood at ransom pending trial, especially when the Plaintiffs are only claiming for **monetary reliefs** ultimately. (Federal Court's decision in *TR Hamzah & Yeang Sdn Bhd v. Lazar Sdn Bhd* [1985] 2 MLJ 45 at pages 12B right, 25 B-I right and 26 F-G right of DBOA and High Court's decision in *SJ Securities Sdn Bhd v. Esmail bin Naziadin* [1998] 7 MLJ 68 at pages 6 E-G, 9 B-C, 10 D-I of DBOA).*
9. *In *SJ Securities Sdn Bhd v. Esmail bin Naziadin* [1998] 7 MLJ 68, the stockbroker company refused to issue a release letter for its remisier and as a result, the remisier was not able to seek engagement with other member companies. The Court granted the injunction to issue the release letter, and the relevant excerpt judgment is produced as follows: -*
- “I see no justification in withholding the release letter. Assuming for a moment the plaintiff being successful, it would be a judgment for a debt. Would that judgment entitle the plaintiff to withhold the release letter whereby to deprive the defendant the opportunity to seek employment elsewhere? Certainly not. The legal remedy available, would be for the plaintiff to levy execution on the judgment, if it was not satisfied. I was satisfied that such an injunction would be probably inevitable eventually.”*
10. *Similarly, in *TR Hamzah & Yeang Sdn Bhd v. Lazar Sdn Bhd* [1985] 2 MLJ 45, an architect firm sued for the balance of their professional fees from the client. The architect refused to issue a letter of release **unless** the fees*



*claims were paid. Without the said letter of release, the client was prevented from engaging other architects to proceed with the construction of the building, leaving the project unfinished. The Federal Court granted the injunction for architect firm to issue the letter of release, as the egregious act of the architect firm, if allowed, would mean that “the architect can hold the client to ransom”. Ultimately, what the architect firm is claiming for is **monetary reliefs**.*

*11. In the circumstances, the Defendant prays for the Defendants’ application for an interim injunction be allowed as the Plaintiffs have no right to hold the Defendants’ livelihood in ransom. Ultimately, what the Plaintiff is claiming for is **monetary reliefs** as seen in the Amended Statement of Claim is Enclosure 60.”*

[12] On the other hand, the Plaintiffs put forward the following arguments in opposition to Enclosure 58:

- (1) perpetual mandatory injunction should not be granted in the interlocutory application in the circumstances of this case;
- (2) delay on the part of the Defendants in filing this application, which ought to have been filed in November 2020;
- (3) the Defendants have conspired and obtained unlawful monetary benefit to the prejudice of the Plaintiffs;
- (4) this is the Defendants’ backdoor way to get licence approval for Alpine and for them from Bank Negara

Malaysia and is to interfere with public duties of government departments;

- (5) interim injunction is to preserve *status quo*, not to change the *status quo*;
- (6) the conduct of the Defendants and their solicitors as a whole does not support the grant of an injunction;
- (7) the Defendants are not entitled to indemnity or any letter of indemnity; and
- (8) the Defendants acted in conspiracy and/or breach of contract.

LEGAL PRINCIPLES ON INTERIM INJUNCTION

[13] In *Gribbs & Co. v. Malaysia Building Society Bhd* [1982] 1 MLJ 271, Salleh Abbas FCJ held:

“(2) In deciding the manner of interlocutory injunction that should be granted court of equity will consider how the interests of the parties may be protected, bearing in mind both the position of the parties subsequently at the final hearing and also question of hardship and inconvenience in the meantime and will take into account any other relevant discretionary considerations which may arise.”

[14] The general principles regarding interlocutory injunction has been authoritatively laid down by the Court of Appeal in *Keet Gerald Francis Noel John v. Mohd Noor bin Abdullah & Ors* [1995] 1 MLJ 193 as follows:

“ A judge hearing an application for an interlocutory injunction should:

(1) *Ask himself whether the totality of the facts presented before him disclosed a bona fide serious issues to be tried. He must refrain from making any determination on the merits of the claim or any defence to it and identify with precision the issues raised and **decide whether they are serious enough to merit a trial.** If he finds that no serious question is disclosed, the relief should be refused. If, however, he finds that there are serious questions to be tried, he should more on to the next step of his inquiry;*

(2) *Having found that an issue has been disclosed that requires further investigation, he must **consider where the justice of the case lies.** He must take into account all relevant matters, **including the practical realities of the case before him and weigh the harm the injunction would produce by its grant, against the harm that would result from its refusal; and***

(3) *The judge must have in the forefront of his mind that the remedy that he is asked to administer is discretionary, intended to produce a just result for the period between the date of the application and the trial proper and to maintain the status quo. It is a judicial discretion capable of correction on appeal. A judge should briefly set out in his judgment the several factors that weighed in his mind when arriving at his conclusion.”*

[15] As an exception to the general principles, a **mandatory** interlocutory injunction is granted in exceptional extremely rare cases, as explained by Eusoffe Abdoolcader J. in *Sivaperuman v. Heah Seok Yeong Realty Sdn Bhd* [1979] 1 MLJ 150 in the following words:

“(1) **The interlocutory injunction although couched in prohibitory terms was in effect a mandatory injunction in substance and effect;**

- (2) *An interim or interlocutory mandatory injunction would never be granted before trial save in exceptional and extremely rare cases;*
- (3) *The interlocutory injunction in this case virtually gives to the respondents the full relief sought to be secured at the trial,* as the respondents could not be said to be really concerned about their claim for damages against a labourer;
- (4) In view of the case of the appellant's dismissal being pending before the Industrial Court which had jurisdiction to make an award *inter alia* for reinstatement or re-employment, the circumstances would be exceptional and a refusal of the interlocutory injunction would be justified on that ground alone;
- (5) *It was necessary for any plaintiff seeking interlocutory relief to show that there was at least a serious question to be tried and to adduce sufficiently precise factual evidence to satisfy the court that he had a real prospect of succeeding in his claim at the trial.* In this case the respondents had not met this test as there was no factual evidence to point to a real prospect of success at the trial in view of the pending determination by the Industrial Court in relation to the appellant's employment;
- (6) *In this case damages would be an adequate remedy and the balance of convenience would be in favour of the appellant, as would be considerations of the maintenance of the status quo and greater hardship;*
- (7) *It could only be in the most extreme circumstances that the court should interfere by way of mandatory injunction*

in the delicate mechanism of industrial disputes and industrial negotiations.”

Similar caution is echoed by Salleh Abbas FCJ in *Tam Kam Cheong v. Stephen Leong Kan Sing & Anor* [1980] 1 MLJ 36 who stated:

“The grant of this injunction is entirely discretionary and it is certainly not issued as a matter of course. (Morris v. Redland Bricks Ltd.) In exercise of its jurisdiction on the issue of mandatory injunction, the court has to be extremely cautious and must act with moderation as the jurisdiction has to be exercised sparingly. (Wrotham Park Estate v. Parkside Home). It can be issued only in cases where the injury done for the prevention or rectification of which injunction is sought cannot be adequately compensated by pecuniary damages.

.....

Every case has to depend upon its own circumstances, and it is a generally accepted view that the court will not interfere by way of mandatory injunction except in cases in which extreme, or at all events very serious, damage will ensue from its interference being withheld. (Durell v. Pritchard)”

[16] The English Court of Appeal in *Locabail International Finance Ltd v. Agroexport (The Seahawk)* [1986] 1 WLR 657 at 664 approved the following passage of Megarry J’s judgment in *Shepherd Homes Ltd v. Sandham* [1971] Ch 340 at 351:

‘Third, on motion, as contrasted with the trial, the court is far more reluctant to grant a mandatory injunction than it



would be to grant a comparable prohibitory injunction. In a normal case the court must, inter alia, feel a high degree of assurance that at the trial it would appear that the injunction was rightly granted; this is a higher standard than is required for a prohibitory injunction.’ [emphasis added]

This statement of principle was also accepted by Hoffman J in *Films Rover International Ltd v. Cannon Film Sales Ltd* [1987] 1 WLR 670 at 680 - 681; [1986] 3 All ER 772 at 781, as being another way of saying that the features which justify describing an injunction as ‘mandatory’ will usually also have the consequence of creating a greater risk of injustice if it is granted rather than withheld at the interlocutory stage unless the court feels a ‘high degree of assurance’ that the plaintiff would be able to establish his right at a trial.

At page 572 of Spry, *Equitable Remedies*, 5th Ed, the learned author emphasises the balance of convenience and what the justice of the case requires:

*“.... On all interlocutory applications the hardship or prejudice that may ensue if relief is granted or if conversely it is refused is weighed with other relevant considerations, including the strength of the plaintiff’s case (see generally *American Cynamid Co v. Ethicon Ltd* [1975] AC 396); and although the court acts with caution, a mandatory order is made if the balance of justice so requires. **But when the plaintiff is seeking on an interlocutory application an order for the specific performance of part or all of the defendant’s obligations under a contract, being relief that is ordinarily granted only at the final hearing, that relief is, at least in the absence of special circumstances, granted only if its refusal would give rise to disproportionate***

prejudice or hardship to the plaintiff, as against the prejudice or hardship that its grant will cause the defendant (Films Rover International Ltd v. Cannon Film Sales Ltd [1987] 1 WLR 670). Since account is taken of the strength of the plaintiff's case, the more probable it appears that he will succeed at the final hearing or in other relevant proceedings, the less reluctance to intervene will be shown by the court (Locabail International Finance Ltd v. Agroexport [1986] 1 WLR 657).”

- [17] In *ESPL (M) Ltd v. Radio & General Engineering Sdn Bhd* [2004] 4 CLJ 674 the Court of Appeal granted an interlocutory mandatory injunction to compel continued payment of monies into the trust account which was created for receiving monies for construction works. In *ESPL*, the Court of Appeal was “*dealing with a mandatory injunction in terms in which it gives to the defendant at the interlocutory stage, the whole of the relief it claims under its counterclaim. So, once the mandatory injunction is granted, there is really no need for a trial on the issue of a trustHence, following Cayne v. Global Natural Resources Plc [1984] 1 All ER 245 and NWL Ltd. v. Woods [1979] 3 All ER 614, at has become necessary to place a higher threshold in the defendant's path on merits before deciding whether the orders asked for should be granted. To sum up, it is our respectful opinion that the defendant has established a trust in its favour in which the plaintiff has constituted itself as trustee. Applying settled law, there is simply to reason why a mandatory injunction should not be granted*”.
- [18] The principles regarding the threshold for granting interlocutory injunctions which can be gleaned from the above-decided authorities can be summarized as follows:



- (a) where an applicant seeks an interlocutory **prohibitory** injunction before the trial, the threshold is a serious triable issue or arguable case: **American Cynamid** case; **Keat Gerald** case.

- (b) where an applicant seeks an interlocutory **mandatory** injunction before the trial for performance of obligation which is ordinarily granted only at the final hearing or trial, the threshold is a relatively higher one, ie, the following requirements:
 - (i) the Court has to assess the strength of the applicant's case on merits,
 - (ii) the Court feels a high degree of assurance that the applicant would be able to establish his right at the trial or it appears more probable that the applicant will succeed at the trial on the point at hand; and
 - (iii) if its refusal would give rise to disproportionate prejudice or hardship to the applicant, as against the prejudice or hardship its grant will cause the opposite party:

ESPL Ltd case; Shepherd Homes Ltd v. Sandham (supra); Locabail International Finance Ltd v. Agroexpert (The Seahawk) (supra); Films Rover International Ltd v. Cannon Films Sales Ltd (supra); Spry, Equitable Remedies.



APPLICATION OF PRINCIPLES TO FACTS OF THE PRESENT CASE

- [19] In the present case, it is the undisputed fact that the Defendants' services as licensed financial planners (FPs) and/or financial adviser representatives (FARs) with the Plaintiffs have been terminated and have ended.
- [20] It is also undisputed or indisputable that the financial planning services are regulated by the relevant authorities including Bank Negara Malaysia and that the Defendants, having been registered as the Plaintiffs' licensed financial planners and/or financial adviser representatives in Bank Negara Malaysia' records, cannot work or service as licensed financial planners and/or financial adviser representatives whether on their own or under another company until and unless the Bank Negara Malaysia amends or alters its records to reflect the termination of the Defendants services under the Plaintiffs.
- [21] The contemporaneous letters exchanged between Bank Negara Malaysia and the parties also established that without a written confirmation from the Plaintiffs that the Defendants' services with the Plaintiffs have been terminated, Bank Negara Malaysia would not approve or register the Defendants as licensed financial planners and/or financial adviser representatives whether on their own or under another company.
- [22] In the present case, the Plaintiffs' causes of action are based on an alleged conspiracy to injure and/or alleged breaches of contract for services. There is no claim by the Plaintiffs that the Defendants must continue to render services to the Plaintiffs as the Plaintiffs licensed financial planners and/or financial adviser representatives. Indeed, any such claim would be unsustainable



in law because except for a scholarship contract or a partnership contract or a contract on sale of business goodwill, a contract in restraint of contract is void: section 28 Contracts Act 1950. In our present case, the Plaintiffs do not allege that their case against the Defendants falls under any of such exceptions. Article 6 of the Federal Constitution prohibits and slavery and forced labour.

[23] In the premises, irrespective of whether or not the Plaintiffs can succeed at the trial in their causes of action based on an alleged conspiracy to injure and/or alleged breaches of contract for services, the Defendants would still be at liberty to carry out their profession or services as licensed financial planners and/or financial adviser representatives on their own or under any company of their choice. As such, the termination or cessation of the Defendants' services with the Plaintiffs is a foregone conclusion which cannot be reversed by the outcome of the Plaintiffs' action herein. Even if the Plaintiffs were assumed to succeed in their claims at the trial, their remedies would be in damages and/or injunction against infringement of legal right (if any), but the Plaintiffs would not be able to obtain any court order to compel the Defendants to return to their services with the Plaintiffs.

[24] In the circumstances, this Court after considering the strength of the Defendants' counterclaim prayer (1) feels a high degree of assurance that the Defendants would be able to establish their right to get the letters of confirmation and/or release from the Plaintiffs at the trial.

[25] The letters of confirmation and/or release sought in prayer (1) of Enclosure 58 is a short and simple letter by the Plaintiffs addressed to Bank Negara Malaysia to confirm that the

Defendants' services with the Plaintiffs have been terminated or ended – a fact which is plainly true in this case. Issuing of such letters of confirmation and/or release by Plaintiffs would not cause any prejudice or hardship to the Plaintiffs. Conversely, a refusal of the letter would cause disproportionate prejudice or hardship to the Defendants, so much so that the Defendants would not be able to work or carry out their profession or services as licensed financial planners or financial adviser representatives. The prejudicial consequences to the Defendants include deprivation or severe impairment of their livelihood.

[26] In *TR Hamzah & Yeang Sdn Bhd v. Lazar Sdn Bhd* [1985] 2 MLJ 45, an architect firm sued for the balance of their professional fees from the client. The architect refused to issue a letter of release **unless** the fee claims were paid. Without the said letter of release, the client was prevented from engaging other architects to proceed with the construction of the building, leaving the project unfinished. The Federal Court granted the pre-trial injunction for the architect firm to issue the letter of release, as the egregious act of the architect firm, if allowed, would mean that “*the architect can hold the client to ransom*”. Ultimately, what the architect firm is claiming for is **monetary reliefs**.

[27] In *SJ Securities Sdn Bhd v. Esmali bin Naziaddin* [1998] 7 MLJ 68, the stockbroker company refused to issue a release letter for its remisier and as a result, the remisier was not able to seek engagement with other member companies. The Court granted the pre-trial injunction to issue the release letter, and the relevant excerpt judgment is produced as follows: -

“I see no justification in withholding the release letter. Assuming for a moment the plaintiff being successful, it would

be a judgment for a debt. Would that judgment entitle the plaintiff to withhold the release letter whereby to deprive the defendant the opportunity to seek employment elsewhere? Certainly not. The legal remedy available, would be for the plaintiff to levy execution on the judgment, if it was not satisfied. I was satisfied that such an injunction would be probably inevitable eventually.”

- [28] The cases of the *TR Hamzah & Yeang Sdn Bhd* and *SJ Securities Sdn Bhd* reinforced the principle summarized in para 18(b) above that in suitable cases of exceptional circumstances the Court should grant interlocutory mandatory injunction even if its effect is to grant to the applicant wholly the injunctive relief it prays for in the trial. Avoiding a party from being held at ransom during the interim period is a relevant factor to be considered. These two Malaysian decisions are consistent with the principles decided in the English cases and the Malaysian cases as summarized in paragraph 18(b) above.

CONCLUSION

- [29] In conclusion, this Court on 25 February 2021 allowed only prayer 1 of Enclosure 58 and granted an order as follows:

“An order directing the Plaintiffs to, within seven (7) days upon service of the order of this Honourable Court, issue a confirmation letter/release letter to the Bank Negara Malaysia, confirming that the Defendants have ceased being financial adviser representatives at the 1st Plaintiff and licensed financial planners at the 2nd Plaintiff effective 31.10.2019 and/or to satisfy such other requirements which may be specified by the Bank Negara Malaysia for the purpose of releasing the Defendants as financial adviser representatives at the 1st



Plaintiff”.

[30] However, this Court dismissed the other prayers in Enclosure 58 because this Court is not satisfied that the high threshold requirements for granting the interlocutory mandatory injunction in terms of the other prayers have been fulfilled.

[31] As the Defendants succeeded in one prayer but failed in other prayers of Enclosure 58 application, this Court also ordered that each party is to bear its own costs of the application.

Dated: 5 APRIL 2021

(TEE GEOK HOCK)

Judicial Commissioner

High Court of Malaya At Shah Alam

(NCVC 10)

COUNSEL:

*For the plaintiffs - Thulasi Ramadass; M/s Thulasi Ramadass
(Shah Alam)*

For the defendants - Wong Zhi Khung; M/s Michael Chow