

**DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR
DALAM WILAYAH PERSEKUTUAN KUALA LUMPUR
(BAHAGIAN SIVIU)
[GUAMAN NO: WA-22NCVC-802-12/2020]**

TAN LAY CHONG

(NO. K/P: 541108-10-6379)

**[BERDAGANG DI BAWAH NAMA DAN GAYA
PROPSTAR REALTY**

(NO. PENDAFTARAN : E (3) 1591)] ... PLAINTIF

DAN

LAI LEE FONG

(NO. K/P : 790228-14-5142)

... DEFENDAN

JUDGMENT

Introduction

[1] The Defendant in this case applied under order 29, Order 32 Rule 6 Oder 92 Rule 4 of the Rules of Court 2012 (“the Rules”) for all the items seized by the Plaintiff under an *ex parte* Anton Piller order to be returned to the Defendant. The Defendant also applied for injunction to restrain the Plaintiff in using in any manner the items seized under the Anton Piller order.

The Background

[2] The main dispute between the Plaintiff and the Defendant revolved around the business of an estate agency by the name of Propstar Realty (“the business). Both the Plaintiff and the

Defendant claims to have founded this business and being owners of this business.

- [3] By way of an *ex parte* application the Plaintiff applied for assess to the premises of the business and to retrieve relevant documents and accounts under the possession of the Defendant at the business premise. The Defendant had denied the Plaintiff access to the premise of the business as well as the documents of the business.
- [4] The Court allowed the *ex parte* application believing the contention of the Plaintiff that he had founded the business and was now being denied entry into the business premise as well as being shut out of the business.
- [5] The documents and items seized are now under the control of the supervising counsels appointed by the Plaintiff under the *ex parte* application.

The Decision on Defendant's Present Application

- [6] The center of dispute of this whole claim brought by the Plaintiff is the ownership of the business. The ownership of the business will in turn determine which party is entitled to the items and document seized. In the Court's view, without a determination of ownership of the business it cannot be determined with certainty whether it is the Plaintiff or the Defendant is entitled to the documents as well as the running of the business.
- [7] As a determination of the main suit depends on the ownership of the business, the Court had directed using its powers under Order 33 of the Rules for this issue to be tried first. Unfortunately this decision of the Court was reversed by the Court of Appeal.

[8] Until the full trial is proceeded upon and the ownership of the business is finally determined the Court is of the view that neither party is entitled to the documents and items seized and therefore the items and documents are best left with the supervising lawyers.

Conclusion

[9] As a result of the pending unresolved dispute as to ownership of the business, the Court cannot allow the Defendant's application and therefore the Court dismissed the Defendant's application for a return of the items and documents seized and also disallowed the Defendants application to restrain the Plaintiffs of making use of the documents.

[10] The Court directed that the documents and items seized could be used by either parties for the purposes of trial if they are relevant.

Dated: 18 NOVEMBER 2021

(AKHTAR TAHIR)

Judge

High Court of Malaya, Kuala Lumpur

COUNSEL:

For the plaintiff - M/s Nadzarin Kuok Puthucheary & Tan

B4-34-2

Solaris Dutamas

Jalan Dutamas 1

50480 Kuala Lumpur

For the defendant - M/s Michael Chow

No. 8A, Jalan Bukit Raja

Off Jalan Taman Seputeh

Taman Seputeh

58000 Kuala Lumpur

Legislation referred to:

Rules of Court 2012, O. 29, O. 32 r. 6, O. 33, O. 92 r. 4