IN THE HIGH COURT OF MALAYA AT KUALA LUMPUR
IN THE FEDERAL TERRITORY OF KUALA LUMPUR, MALAYSIA
[CIVIL SUIT NO: WA-22NCC-473-07/2023]

BETWEEN

MILANN BRIDGE SDN BHD
(COMPANY NO.: 912622-U) **... PLAINTIFF**

AND

1. **MINISO (M) SDN BHD**
(COMPANY NO.: 1171610-K)

2. **LEE KUAN FOO**
(NRIC NO.: 650109-08-5939) **... DEFENDANTS**

Grounds of Judgment

A. Introduction

[1] This is a plain and simple case concerning an alleged debt claimed by the Plaintiff and the Defendants' defence that the claim was amicably settled according to the letter dated 29-11-2021.

B. Background Facts

[2] The Plaintiff and the First Defendant had entered into a Business Agreement dated 27-12-2018. The Second Defendant had then provided a letter of guarantee and indemnity dated 27-12-2018 for the debts and obligations of the First Defendant to the Plaintiff.

[3] The Plaintiff alleges that the First Defendant owes it the sum of RM2,475,633.00 is due to it based on the obligation appearing in the Business Agreement and that the said sum must also be paid by the Second Defendant based on the letter of guarantee and indemnity dated 27-12-2018.

[4] A formal notice of demand was issued to the 2nd Defendant by the Plaintiff's previous solicitors dated 9-8-2022 and 4-11-2022.

[5] The Defendants contend that no sums are outstanding as the parties had agreed to settle all the allegedly due as per the letter dated 28-1-2021. I reproduce the contents of the said letter:-

> **Confirmation of Balance Amount**
>
> **With regards, our management only agreed to the balance instalments plan as follows:**
>
> **Instalment 1 - RM 525,000 - December 2021**
>
> **Instalment 2 - RM 525,000 - January 2022**
>
> **Instalment 3 - RM 525,000 - February 2022**
>
> **Instalment 4 - RM 525,000 - March 2022**
>
> **Total Amount : RM 2,100,000**
>
> **Kindly confirm that the final amount is RM2,100,000. Before proceeding with the above instalment payment processing, we need your company to confirm the above balance figures. We will execute the above instalment payment after your confirmation.**
>
> **You may contact me (03-89640833 or 016-2755405 Mr Loke) for any further queries. I would be very grateful to you. Thank you.**
>
> **Best Regards,**

[6] According to the Defendants and based on the testimony of the Defendants' witnesses the sum of RM 2.1 million was paid in full and received by the Plaintiff on the following dates:-

No.	Date	Mode of Payment	Amount (RM)
1	19-12-2021	Cheque dated 14-12-2021	225,000.00

2	28-12-2021	Cheque dated 28-12-2021	150,000.00
3	3-1-2022	Cheque dated 3-1-2022	150,000.00
4	25-1-2022	Instant Transfer	225,000.00
5	27-1-2022	Banker's Acceptance	150,000.00
6	2-3-2022	Instant Transfer	150,000.00
7	11-3-2022	Banker's Acceptance	250,000.00
8	8-4-2022	Banker's Acceptance	150,000.00
9	12-4-2022	Banker's Acceptance	150,000.00
10	10-6-2022	Banker's Acceptance	200,000.00
11	7-9-2022	Instant Transfer	150,000.00
12	19-9-2022	Banker's Acceptance	150,000.00
		Total	RM 2.1 million

[7] The Plaintiff admits receiving the said sums and states that as the First Defendant had failed to pay the sums as agreed in the settlement agreement within the time agreed, the said settlement agreed had failed and therefore it is entitled to pursue the full sums to it as what appears to be the amount due and payable by the terms of the Business Agreement and the invoices as produced before this Court.

[8] The Plaintiff contends that as the First Defendant had failed to comply with the strict time frame as agreed in the said letter dated 28-1-2021, it decided to terminate the same and claim for the full sums outstanding. The demand was made by letter dated 5-8-2022 to the First Defendant and against the Second Defendant dated 9-8-2022 and 4-11-2022. There was allegedly no agreement to extend the time frame for payment and as such the previous settlement lapsed, which allows for the termination and the claim of the full sums outstanding.

C. Issue to be Determined

[9] Therefore, the issue that has to be resolved by this Court is whether the Plaintiff is entitled to claim for the full sums due under the Business Agreement despite receiving the sum of RM 2.1 million as stated in the letter dated 28-1-2021 that was paid by the First Defendant out of time.

D. Decision of this Court

[10] It is important to note that the Defendants admit that the agreed timelines to be adhered to for the settlement agreement as contained in the letter dated 28-1-2021 were not complied with by the First Defendant.

[11] However, it must first be considered by this Court the implication of the letter dated 29-11-2021 and the impact it will have on the alleged debts of the Defendants to the Plaintiff.

[12] The Plaintiff has produced before this Court invoices, delivery orders, revised quotations and debit notes for the period between 26-12-2019 and 5-1-2021. The Plaintiff also produced a copy of the statement of accounts dated 4-8-2022 and 5-10-2022. The claim in this suit is for the invoices from 28-5-2020 to 19-6-2020 and late payment charges for December 2020, January 2021, February 2021, March 2021 and April 2021. As I said earlier the total claim is RM 2, 475, 633.00 this is after deducting the sum of RM 300,000.00 paid in September 2022.

[13] I first refer to the decision of the Court of Appeal in *Bank Islam Malaysia Bhd v. Lim Kok Hoe and another appeal* [2009] 6 CLJ 22 where Raus Shariff JCA (as he then was was) held:-

> "It is trite law that the Court should not rewrite the terms of the contract between the parties that it deems to be fair or equitable. This principle has been clearly expressed in numerous cases. (See *SHELL MALAYSIA TRADING SDN BHD v. LIM YEE TECK ORS* [1982] CLJU 11; [1982] 1 LNS 11;

> *WONG PA HOCK v. AMERICAN INTERNATIONAL ASSURANCE* CO *LTD & ANOR* [2002] 2 CLJ 267; *M. PAKIAM v. YP DEVATHANJAM* [1952] CLJU 60; [1952] 1 LNS 60; [1952] MLJ 58; and *CHARTER REINSURANCE CO. LTD v. FAGAI* [1996] 2, All ER 46."

[14] This Court must consider what was agreed to between the parties by looking at the words they appear in the contract. This is to be determined objectively and based on the test laid down in *Berjaya Times Square Sdn Bhd v. M-Concept Sdn Bhd* [2010] 1 CLJ 269.

[15] I also refer to the judgment of the Federal Court in *Wong Yee Boon v. Gainvest Builders (M) Sdn Bhd* [2020] 2 CLJ 727, where Azahar Mohamed FCJ (as he then was) held:-

> "[8] As a starting point, it is important to bear in mind the basic principle of construction of contracts. The basic rule is that effect must be given to the intention of the parties. This requires an objective test and not a subjective approach. It is an objective approach which is required and a solution should be found which is both reasonable and realistic (see *Beriaya Times Square Sdn Bhd v. M-Concept Sdn Bhd* [2010] 1 CLJ 269; [2010] 1 MLJ 592). The intention must be sought from the document itself. To ascertain the intention of the parties, the court reads the terms of the contract as whole, giving the words used their natural and ordinary meaning. We have explained this basic principle in the case of *Lucy Wong Nyuk King & Anor v. Hwang Mee Hiong* [2016] 4 CLJ 813; [2016] 3 AMR 101 as follows:
>
> [34] In this regard, the point which has a strong bearing on the matter is that it is an established principle of construing a contract that, among others, a contract must be construed as a whole, in order to ascertain the true meaning of its several clauses, and also, so far as practicable, to give effect to every

part of it. Each clause in an ordinary commercial contract should be so interpreted as to bring them into harmony with the other clauses of the contract (see *National Coal Board v. Wm Neill & Son (St Helens) Ltd* [1984] 1 All ER 555 which was cited in *Royal Selangor Golf Club v. Anglo-Oriental (M) Sdn Bhd* [1990] 3 CLJ (Rep) 37 and *Mulpha Pacific Sdn Bhd v. Paramount Corp Bhd* [2003] 4 CLJ 294; [2003] 4 MLJ 357). In *Australian Broadcasting Commission v. Australasian Performing Right Association Limited* [1973] 129 CLR 99, it was held that the whole of the contract has to be considered, since the meaning of any one part of it may be revealed by other parts, and the words of every clause must if possible be construed so as to render them all harmonious one with another.

[35] Professor McMeel in The Construction of Contracts (Interpretation, Implication and Rectification) (2nd Ed, 2011) explains in clear words this long-standing canon of construction at para 1.73 as follows:

Both the traditional and the modern approaches to construction stress the importance of having regard to the instrument as a whole. It is important not to fixate on one particular word or phrase and thereby neglect the overall purpose of the document or to give disproportionate importance to one phrase or clause. This is a long-standing rule.

[36] As stated by Lewison in The Interpretation of Contracts 5th Edition at para 7.02 that in order to arrive at the true interpretation of a document, a clause must not be considered in isolation, but must be considered in the context of the whole of the document. In *Chamber Colliery Company Ltd v. Twyerould* [1893] [1915] 1 Ch. 268 (note) (which was cited by Lewison), Lord Watson said:

> I find nothing in this case to oust the application of the well known rule that a deed ought to be read as a whole, in order to ascertain the true meaning of its several clauses; and that the words of each clause should be so interpreted as to bring them into harmony with the other provisions of the deed, if that interpretation does no violence to the meaning of which they are naturally susceptible."

[16] This Court is also not entitled to add, vary, contradict or substitute the terms of what was agreed upon. Please see ***Section 91 and Section 92 of the Evidence Act*** and the decision of the Federal Court in *Lee Soh Hua v. Know Lup Pioe* & *Ors* [1984] 1 CLJ Rep 191.

[17] In this case, it is apparent to me that the parties had agreed to enter into a compromise or settlement agreement that reduces the amount outstanding from what it was originally to the sum of RM 2.1 million. This appears in the words that appear in the letter dated 28-1-2021.

[18] In the said letter, the First Defendant did state:

> "Before proceeding with the above instalment payment processing, we need your company to confirm the above balance figures. We will execute the above instalment payment after your confirmation."

The above was accepted by the Plaintiff on 1-12-2021.

[19] Therefore, the agreement would have reduced the amount indebted by the First Defendant to the Plaintiff from the original debt due to only the sum of RM 2.1 million as agreed between the litigants. There is no clause in the Settlement letter that if such payments were not made, the full sums outstanding as originally owed by the First Defendant to the Plaintiff will become due and owing or a clause that states that the Plaintiff is entitled to revert to its original rights if the said payments were not made within the alleged time frame agreed.

[20] I refer to ***section 64 of the Contracts Act***, which I have reproduced herein:-

"Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance, or may accept instead of it any satisfaction which he thinks fit.

ILLUSTRATIONS

(a) *A* promises to paint a picture for *B*. *B* afterwards forbids him to do so. *A* is no longer bound to perform the promise.

(b) *A* owes *B* RM5,000. *A* pays to *B*, and *B* accepts, in satisfaction of the whole debt, RM2,000 paid at the time and place at which the RM5,000 were payable. The whole debt is discharged.

(c) *A* owes *B* RM5,000. *C* pays to *B* RM1,000 and *B* accepts them, in satisfaction of his claim on *A*. This payment is a discharge of the whole claim.

(d) *A* owes *B* under a contract, a sum of money, the amount of which has not been ascertained. *A*, without ascertaining the amount, gives to *B*, and *B*, in satisfaction thereof, accepts the sum of RM2,000. This is a discharge of the whole debt, whatever may be its amount.

(e) *A* owes *B* RM2,000, and is also indebted to other creditors. *A* makes an arrangement with his creditors, including *B*, to pay them a composition of fifty cents in the dollar upon their respective demands. Payment to *B* of RM1,000 is a discharge of *B*'s demand.

[21] A similar case to the facts at hand can be seen in the decision of Lau Bee Lan J in *Isometric Innovations Sdn Bhd v. Radicare (M) Sdn Bhd* [2011] CLJU 366.

[22] In that case, Isometric provided services to Radicare. Invoices were issued to Radicare and were unpaid. The total sum due according to the invoices produced was the sum of about RM 19 million. The said parties negotiated a settlement and agreed that the sum of RM 10, 990, 413.13

(settlement sum) was to be paid by way of a lump sum payment to Isometric as a full and final settlement of the claim by Isometric.

[23] The said settlement sum was not paid in a single payment and by 17-9-2004 only the sum of RM 1.7 million was paid by Radicare. The Defendant, Radicare, relied on section 64 of the Contracts Act and argued that there was accord and satisfaction barring the Plaintiff from claiming the full sum of RM 19 million claimed in the said proceeding.

[24] The High Court after carefully considering the facts that appeared in the said case found that there is subject to the defence of accord and satisfaction under section 64 of the Contracts Act. Her Ladyship found that that the claim for the full sum was compromised. At its highest, Isometric could only claim the sum of RM 10 million as agreed despite the non-payment of the said sum in a single payment as alleged by Isometric's counsel.

[25] I also refer to the decision of the Supreme Court in *Associated Pan Malaysia Cement Sdn Bhd v. Sykt Teknikan & Kejuruteraan Sdn Bhd* [1990] 1 CLJ Rep 15 where Gunn Chit Tuan SCJ held:-

> "The word 'waiver' is used in the English Common Law in a variety of a different senses. As pointed out by the respondent, it was unfortunate that the appellant, as the defendant, had not submitted to the trial Judge in what sense the word was pleaded and used. We agreed with Mr. Sri Ram that s. 64 of our Contracts Act 1950, which was also not brought to the attention of the learned Judge, represents a departure from the Common Law in England. Our law on waiver in s. 64 of the Contracts Act 1950, is similar to the Indian Law on the general principles of waiver under which it is open to a promisee to dispense with or remit wholly or in part the performance of the promise made to him or he can accept any promise which he thinks fit. Under our law neither consideration nor an agreement will be necessary. In this case we also agreed with the respondent that

it had not been shown to the trial Judge or to us that the respondent had intentionally foregone its claims. On the other hand *the learned Judge who* saw *and heard Mr. Ong in the witness box accepted his evidence that the respondent did not intend to abandon its claims under the various contracts. We therefore agreed with the learned Judge that* as a *matter of fact waiver did not apply in this* case."

[26] The Plaintiff's counsel contends that the letter dated 28-1-2021 constitutes a conditional remission of the sums due and argues that as the said sums were not paid within the agreed time frame, then the full sums as originally due have to be paid. He relies on various Indian authorities such as *Tata Locomotive and Engineering Co Ltd v. Sarkara Kartar Singh AIR* [1961] Pat 37, *New Standard Bank Ltd v. Probodj Chandra Cahakravarty AIR* [1942] Cal 87, *Union of India v. Kishorilal Gupta* [1959] SC 1362 and various other authorities from the said jurisdiction.

[27] I am, however, not persuaded by the learned counsel's argument. Instead, the Indian authorities indicate to me that the settlement agreement as contained in the letter dated 28-1-2021 replaces or extinguishes the obligation contained in the Business Agreement and the original debts of the First Defendant. The Indian Supreme Court in *The Union of India v. Kishorilal Gupta* [1959] AIR 1362 had this to say:-

"If so, the only two outstanding questions are: (i) what is the legal effect of the contract dated February 22, 1949, on the earlier contracts? ; and (ii) does the arbitration clause in the earlier contracts survive after the settlement contract?

The law on the first point is well-settled. One of the modes by which a contract can be discharged is by the same process which created it, i.e., by mutual agreement; the parties to the original contract may enter into a new contract in substitution of the old one. The legal position was clarified by the Privy Council in *Payana Reena Saminathan v. Pana Lana Palaniappa*

(1). Lord Moulton defined the legal incidents of a substituted contract in the following terms at p. 622:

> "The 'receipt' given by the appellants, and accepted by the respondent, and acted on by both parties proves conclusively that all the parties agreed to a settlement of all their existing disputes by the arrangement formulated in the 'receipt'. It is a clear example of what used to be well known in common law pleading as" accord and satisfaction by a substituted agreement". No matter what were the respective rights of the parties inter se they are abandoned in consideration of the acceptance by all of a new agreement. The consequence is that when such an accord and satisfaction takes place the prior rights of the parties are extinguished. They have in fact been exchanged for the new rights; and the new agreement becomes a new departure, and the rights of all the parties are fully represented by it."

The House of Lords in *Norris v. Baron and Company* (2) in the context of a contract for sale of goods brought out clearly the distinction between a contract which varies the terms of the earlier contract and a contract which rescinds the earlier one, in the following passage at p. 26:

> "In the first case there are no such executory clauses in the second arrangement as would enable (1) [1914] A.C. 618 622. (2) [1918] A.C. 1. 26.

you to sue upon that alone if the first did not exist; in the second you could sue on the second arrangement alone, and the first contract is got rid of either 2 by express words to that effect, or because, the second dealing with the same subject-matter as the first but in a different way, it is impossible that the two should be both performed.

Scrutton, L.J., in British Russian Gazette and Trade Outlook Limited v. Associated Newspaper, Limited (1), after referring to the authoritative text-books on the subject, describes the concept of 11 accord and satisfaction "thus at p. 643:

> "Accord and satisfaction is the purchase of a, release from an obligation whether arising under contract or tort by means of any valuable consideration, not being the actual performance of the obligation itself. The accord is the agreement by which the obligation is discharged. The satisfaction is the consideration which makes the agreement operative. Formerly it was necessary that the consideration should be executed Later it was conceded that the consideration might be executory The consideration on each side might be an executory promise, the two mutual promise making an agreement enforceable in law, a contract I An accord, with mutual promises to perform, is good, though 'the thing be not performed at the time of action; for the party has a remedy to compel the performance', that is to say, a cross action on the contract of accord if, however, it can be shown that what a creditor accepts in satisfaction is merely his debtor's promise and not the performance of that promise, the original cause of action is discharged from the date when the promise is made."

The said observations indicate that an original cause of action can be discharged by an executory agreement if the intention to that effect is clear. The modern rule is stated by Cheshire and Fifoot in their Law of Contract, 3rd Edn., at p. 453:

> "The modern rule is, then, that if what the creditor has accepted in satisfaction is merely his (1) [1933] 2 K.B. 6i6, 643, 644. debtor's promise to give consideration, and not the performance of that promise, the original cause of

> action is discharged from the date when the agreement is made. This, therefore, raises a question of construction in each case, for it has to be decided as a fact whether it was the making of the promise itself or the performance of the promise that the creditor consented to take by way of satisfaction."

So too, Chitty in his book on Contracts, 31st Edn., states at p. 286:

> "The plaintiff may agree to accept the performance of a substituted consideration in satisfaction, or he may agree to accept the promise of such performance. In the former there is no satisfaction until performance, and the debtor remains liable upon the original claim until the satisfaction is executed. In the latter, if the promise be not performed, the plaintiff's remedy is by action for the breach of the substituted agreement, and he has no right of resort to the original claim."

From the aforesaid authorities it is manifest that a contract may be discharged by the parties thereto by a substituted agreement and thereafter the original cause of action arising under the earlier contract is discharged and the parties are governed only by the terms of the substituted contract.

The ascertainment of the intention of the parties is essentially a question of fact to be decided on the facts and circumstances of each case."

[28] The above position was adopted by Ahmad Maarof J (as he then was) in *Megarina Sdn Bhd v. Enersafe Sdn Bhd* [2005] 8 CLJ 361. Although I note that this Court must consider the circumstances of each case, the terms appearing in each settlement agreement and whether the rights as contained in the previous agreement remain intact if the settlement agreement is breached.

[29] Having considered the words as they appear and used in the letter dated 28-1-2021, I find that there was an agreement that the balance due and payable by the First Defendant to the Plaintiff shall be the sum of RM 2.1 million and that this payment extinguishes all of the debts of the First Defendant to the Plaintiff. The parties did not state or provide any clause that states that failure to pay the said amount within the time frame as agreed will allow the original debts to be claimed by the Plaintiff against the First Defendant. Therefore, the previous debts were totally extinguished by the settlement agreement.

[30] In the circumstances, "the consequence is that when such an accord and satisfaction takes place the prior rights of the parties are extinguished." The previous rights and obligation of parties "have ....been exchanged for the new right to claim payment of the sum of RM 2.1 million that was agreed as the sum due and payable to the Plaintiff. I find the new agreement as contained in the letter dated 28-1-2021, following section 64 of the Contracts Act, becomes "a new departure, and the rights of all the parties are fully represented by it".

[31] I further refer to the decision of our Courts in *PJD Landmarks Sdn Bhd v. Soh Jien Min* & *Ors* [2022] 12 MLJ 609:-

> *"[20] Compromise and settlement by way of settlement are often resorted to by contracting parties who have disputes or disagreements with each other at a time whether before or after the filing of a court suit. Such settlement agreements are encouraged by our system of administration of justice as a useful tool in expeditious and economical disposal of cases and disputes,* ***and are enforceable under the law as binding contracts between the parties*** *unless it is specifically prohibited by a statute or unless there is any vitiating circumstance, as in the case of any contract, which invalidates the settlement agreement.*
>
> ...

[23] Flowing from the principle decided by the Court of Appeal in Pacific Sanctuary Holdings case, a plaintiff who has signed a contract with a defendant but has subsequently executed a settlement agreement with the latter in respect of the entire causes of action under the original contract is barred from taking any further action on the original contract. ***The settlement agreement thus entered into has the effect of superseding or extinguishing the earlier contract, with the result that there is no longer any cause of action under the original contract to be sued upon between the parties.*** *Likewise, a plaintiff who has signed a contract with a defendant but has subsequently executed a settlement agreement with the latter in respect of a specific cause of action under the original contract is barred from taking any further action on the said specific cause of action under the original contract."*

[32] I also refer to the decision of the Court of Appeal in *Lai Kok Kit v. MBF Finance Bhd* [2000] 3 CLJ 213, where Gopal Sri Ram JCA (as he then was) held:-

"It follows from what we have said thus far that upon the making of the second agreement and upon the defendant's breach of it, the rights of the parties were to be determined in accordance with that agreement. The defendant in our view did not have the right to have recourse to the first agreement. Accordingly the sums claimed by it in the Sessions Court action were clearly irrecoverable. However, the plaintiff was under a separate obligation to pay and settle the personal loan given him under the second agreement. Mr. Ravichandran accepts that his client is so liable."

[33] In this case, the First Defendant has since paid the full sum outstanding i.e. RM 2.1 million. The Plaintiff is not entitled to claim based on the debts before the parties agreed to the terms of the letter dated 28- 1-

2021. Those rights have since been extinguished by the terms of the said letter. Even if the First Defendant had committed a breach of the said letter, the Plaintiff would only be entitled to claim for the amount unpaid based on the agreed amount of RM 2.1 million.

[34] In the circumstances, I find that the Defendants have successfully defended the claim against the Plaintiff and the claim should be dismissed.

[35] I note that the Plaintiff suggests that the Defendants did not specifically plead section 64 of the Contracts Act in its defence. I find that this is not necessary. The Defendants did plead that the Plaintiff's claim has been fully paid following the terms of the letter dated 28-1-2021. I find that the Defendants' pleadings are sufficient and cover the defence raised during the trial.

[36] Counsel for the Plaintiff further argues that his client had issued letters of demand dated 5-8-2022 to the First Defendant and against the Second Defendant dated 9-8-2022 and 4-11-2022, the Plaintiff is entitled to terminate the said Settlement agreement and claim for the full sums due based on the original agreement and the existing debts at the material time.

[37] He refers to the right of an innocent party to decide to either terminate the contract or seek payment for damages that may arise as a result of the breach. Reliance is placed on the decision of the *Federal Court in Berjaya Times Square Sdn Bhd v. M Concept Sdn Bhd* [2010] 1 MLJ 597 and the Court of Appeal's decision in *Meskiara Property Holdings Sdn Bhd v. Norisham bin Ibrahim* [2022] MLJ U 224 and *KSK Sawmill Sdn Bhd v. FW Solutions Sdn Bhd* [2020] MLJU 84.

[38] I am bound by the decisions of the Superior Courts and their findings on applicable legal principles. However, as I have found earlier, the earlier debt and the earlier agreement were extinguished completely by the letter dated 28-1-2021. As the sum of RM 2.1 million was paid in full, the Plaintiff has no further claim for damages irrespective of any late payment by the First Defendant. The sums owed by the First Defendant have been reduced to RM 2.1 million. There is no agreement that if the said sums were not paid in full within the time frame then the original debt becomes due. As that proviso was missing from the said settlement agreement, then the sum of RM 2.1 became the compromised amount and the Plaintiff is not entitled to claim beyond the said compromised sum.

[39] Finally, I note that the parties have submitted on the issue of estoppel and whether the Defendants are entitled to rely on the receipt of the payment of the sum of RM 2.1 million to deny the Plaintiff the right to claim for the original sums due. I find that this issue is merely academic and does not arise from the facts of this case. As it stands, the Plaintiff is bound by the terms of the compromise as contained in the letter dated 28-1-2021 and is not entitled to claim for the sums claimed in this proceeding under the said letter and the applicable law as contained in ***section 64 of Contracts Act*** as explained in the above cases.

[40] As there are no sums due from the First Defendant, it is therefore trite that there would be no amount payable by the Second Defendant under the terms of the Letter of Guarantee and Indemnity. I also find that there are no sums due for any interest as alleged by the Plaintiff.

E. Orders of this Court

[41] For the above reasons, I dismiss the Plaintiff's claim with costs of RM 10,000.00 subject to the allocator.

[42] On the issue of costs, I have considered the complexity of the claim, the seniority of counsel appearing before me and the importance of the claim for the litigants.

Dated: 12 JULY 2024

(DATO' INDERA MOHD ARIEF EMRAN BIN ARIFIN)

Judge

High Court of Malaya at Kuala Lumpur

NCC 5

Parties Appearing:

For the plaintiff - Michael Chow together with Elisa Oyenz; Messrs. Michael Chow; Advocates & Solicitors

For the defendants - Lee Chia Yee; Messrs. Ong, Ric & Partners; Advocates & Solicitors