

**DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR,
DALAM NEGERI WILAYAH PERSEKUTUAN, MALAYSIA
(BAHAGIAN SIVIL)
[RAYUAN SIVIL NO: WA-12ANVC-280-10/2021]**

DI ANTARA

**DARWINA AB RAHMAN
(NO. K/P: 890307-56-5004)**

... PERAYU

DAN

- 1. HYM ALLIANCE SDN BHD
(NO. SYARIKAT : 20191003077 [1312403-K])**
- 2. NURUL NABILAH ITAM AHMAD
(NO. K/P: 930927-08-5902)**

... RESPONDEN-RESPONDEN

**DALAM PERKARA MAHKAMAH SESYEN DI KUALA LUMPUR
DALAM NEGERI WILAYAH PERSEKUTUAN, MALAYSIA
GUAMAN SIVIL NO: WA-A52NCVC-172-03/2021**

DI ANTARA

**DARWINA AB RAHMAN
(NO. K/P: 890307-56-5004)**

... PLAINTIF

DAN

- 1. HYM ALLIANCE SDN BHD
(NO. SYARIKAT: 201901003077 [1312403-K])**

**2. NURUL NABILAH ITAM AHMAD
(NO. K/P: 930927-08-5902) ... DEFENDAN-
DEFENDAN**

JUDGMENT

Introduction

[1] The Plaintiff appealed to this Court against the decision of the learned Sessions Judge (“the Judge”) who had allowed the Defendant’s application to strike out the Plaintiff’s claim under Order 18 Rule 19 of the Rules of Court 2012 (“the Rules”).

Brief Facts

[2] The Plaintiff’s claim was against the 1st Defendant which was a private limited company and the 2nd Defendant who was the Managing Director of the 1st Defendant.

[3] The 1st Defendant had developed a software called “meta-Trader 4” and the Plaintiff was appointed to give training and advise to the executives of the company on the use of the software.

[4] It is the Plaintiff’s claim that while being employed by the 1st Defendant, she had carried out various transactions using the company’s software, on the representations of the 2nd Defendant who was the alter ego of the 1st Defendant, that any losses suffered as a result of the transactions will be borne by the 1st Defendant.

[5] In carrying out the transactions on the representation made by the 2nd Defendant, the Plaintiff suffered a loss of RM296,9888.46 which she now claims from the Defendants.

[6] The Defendant' defense is that the Plaintiff had carried out the transaction on her own volition and for herself and not on behalf of the Defendants. The Plaintiff was therefore herself liable for any losses suffered.

The Issue

[7] In an application to strike out under Order 18 Rule 19 of the Rules, the only issue the Court needs to determine is whether there is a triable cause of action which is not frivolous , vexatious or an abuse of the process of court

Triable cause of action

[8] Whether there are triable issues in this case can be determined by the cause of action. In this case the cause of action is misrepresentation. The cause of action of misrepresentation can fall under the law of contract or under the law of tort.

[9] In this case the learned Sessions Judge had looked at the issue from the point of law of contract when he decided y that there was no privity of contract between the Plaintiff and the Defendants of transactions carried out by the Plaintiff using her personal account and using her own agent.

[10] The Learned Judge failed to look at the cause of action from the view of the law of tort. In this case the Plaintiff has alleged that she was induced to carry out the transaction on the representation of the

2nd Defendant that the 1st Defendant would bear any losses in the event that there are losses suffered.

[11] Whether such representations were made by the 2nd Defendant and whether such representations tied the 1st Defendant down by

virtue of the 2nd Defendant being the alter ego of the 1st Defendant can only be determined after a full trial.

[12] Oral evidences from both the Plaintiff and the 2nd Defendant are necessary to determine what actually transpired. Reliance on documents is insufficient to arrive at a conclusion.

Conclusion

[13] By virtue of the above reasons the Court allowed the Plaintiff's appeal and remitted the case for full trial.

Dated : 18 FEBRUARY 2022

(AKHTAR TAHIR)

Judge

High Court of Malaya, Kuala Lumpur

COUNSEL:

For the appellant - M/s Kevin Wu & Associates

D-1-1-13, Solaris Dutamas

Jalan Dutamas 1

50480 Kuala Lumpur

For the respondents - M/s Gabriel Susayan & Partners

No. 61, 2nd Floor,

Bangunan Ban Guan Hin

Jalan Dato Hamzah

41000 Klang

Selangor

Legislation referred to:

Rules of Court 2012, O. 18 r. 19