

**HAJI MD HARIS BIN HAJI OMAR**

**AND**

**STAR PUBLISHING PTE LTD**

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**(Court of Appeal of Brunei Darussalam)  
(Civil Appeal No. 7 of 2017)**

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Before: Mortimer P, Leonard and Burrell JJA.  
**27<sup>th</sup> November 2017**

*Headnote: Civil law, appeal against a judgment for money owed; judgment below inevitable in view of findings of fact on uncontradicted evidence; appeal dismissed with costs to respondent.*

Mr Lt. Col (R) Hj Harif bin Hj Ibrahim (Messrs Lt Col (RTD) Harif Eric Advocates & Solicitors) for Appellant  
Mr Lim Boon Khai (Messrs Ridzlan Lim Advocates & Solicitors) for Respondent

**Leonard, JA.:**

This is appeal from a meticulous, detailed and clear judgment given in favour of the respondent by Lugar-Mawson J in the High Court on 19 June, 2017. It is an appeal solely on issues of fact. Though some grounds are expressed as relating to issues of law they are in reality challenges to findings of fact based upon admissible evidence. Whilst an issue was raised at the trial as to the admissibility of three statements of account, which were prepared for and delivered to the appellant by the respondent in order to explain how the debt was made up, the objection was manifestly misconceived and unarguable. The three statements were admissible in any event, (section 170 (3) and section 172 of the Evidence Act) the weight to be given to them being a matter for the judge. In any event the judge expressly said that he did not treat the written accounts as evidence of the truth of their contents, relying instead for his findings on the evidence he heard from the respondent's Vice President.

The judge found as a fact on the evidence that the appellant owed to the respondent the net sum of \$1,220,387.72 in respect of unpaid sales invoices relating to books supplied by the respondent, a publisher, to the appellant as distributor. There was ample evidence, which was accepted by the judge, upon which he was entitled to find the facts which led inevitably to the judgment which he gave. The appellant gave or adduced no evidence contradicting the claim, simply denying it and taking the position that he had not been provided with sufficient information to enable him to admit that the sum

claimed was correct. He asserted for the first time in his affidavit evidence in chief that he had not received many of the invoices and had not received delivery of the books to which those invoices related. This assertion was not pleaded in the Defence or the Counterclaim and it was apparently based on the fact that neither he nor his former manager had signed invoices to acknowledge receipt. The judge said, at paragraph 45 of his judgment

*"I am satisfied that the defendant has put forward a wholly unsubstantiated defence to this action. He has been unable to provide a single plausible reason as to why he has failed to pay the money he owes to the plaintiff."*

It is clear from the record that the appellant had been given sufficient information to enable him to understand the calculation of the debt.

When the business between the parties came to an end the respondent worked out what sum was owed by the appellant, set against that sum unpaid handling and distribution fees and thus arrived at the net sum which it claimed. The appellant has alleged that the judge imported into a contract between the parties a term which was never agreed namely that the appellant would be paid handling and distribution fees by way of setoff. That is incorrect. There was a provision that the fees would be paid but no method of payment was specified and the judge did not purport to find any implied term as to the method of payment. In paragraph 44 of his judgment he made that clear, saying

*"The Defendant claimed that he never agreed that the amounts owing to him could be dealt with by way of a set off against the amounts he owed to the Plaintiff. That is an irrelevant contention. In the first place, none of the agreements between the Plaintiff and the Defendant prohibit this. Secondly, the Defendant, in a letter to the Plaintiff dated 12 February 2009, (Exhibit P2A) agreed that the 8% handling charge then due to him in respect of the Plaintiff's sales to the CDD could be offset against the value of an order he had placed in December 2008. And thirdly, that, as by the spring of 2013, the relationship between the parties had ended, all that remained to be done was for there to be a final account drawn-up and a settlement of any amounts found owing by, or to, either party."*

The counterclaim was found by the judge to be confused and inaccurate. In view of his findings on the claim, the counterclaim merited no further consideration and he dismissed it.

The appeal is dismissed. There will be an order that the respondent's costs be taxed, if not agreed, and paid by the appellant.

**Mortimer, P.**

**Leonard, J.A.**

**Burrell, J.A**