

**Mahader Mohamed
Nasreen Jaya Sdn Bhd**

**... 1st Plaintiff
... 2nd Plaintiff**

AND

**Ubayathullah Haja Mohideen
Zainah Binti Haji Muhammad
Awangku Muhammad Dinie Hazwan Bin Pengiran
Haji Sahari
Sri Azlina Sdn Bhd
Standard Chartered Bank
Gallant Sdn Bhd**

**... 1st Defendant
... 2nd Defendant
... 3rd Defendant
... 4th Defendant
... 5th Defendant
... 6th Defendant**

**(High Court of Brunei Darussalam)
(Civil Suit No 39 of 2021)**

Edward Timothy Starbuck Woolley, J.C.
**Date of Hearing: 3 November, 2025.
Date of Decision: 8 November 2025.**

Headnote: Application for leave to appeal interlocutory order for amendment of pleadings – principles to be applied – whether limitation period applies to the claim made – whether cause of action shown.

Mr On Hung Zheng and Ms Kimberly Faye Chiuh Mei (M/S CCW Partnership) for the Plaintiffs.

Mr Anlan Hee Tze Khaw and Mr Eugene Loh Jit Kuan (M/S Yusof Halim & Partners) for the 1st - 4th Defendants.

Ms Evelyn Lee Xin Yin (M/S YC Lee and Lee) for the 5th Defendant.

Mr Hj Muhammad Zainidi Bin Haji Abd Hamid (M/S ZS Legal Advocates & Solicitors) for the 6th Defendant.

Cases cited:

Ak Abdul Rahman Rahimin bin Pg Mahali and another v Rizan bin Hj Hamid [2008] BLR 198.

Haji Awang Mohd Hussaini bin Hj Awang Ahmad v Ponnusamy Rajapandian CACV No 6 of 2015

DECISION

Woolley, J.C.:

This is an application by the Plaintiffs for leave to appeal to the Court of Appeal a decision of Judicial Commissioner Muhammed Faisal bin PDJLD DSP Kol (B) Haji Kefli who on 18 August 2025 dismissed an appeal from a decision of Senior Registrar Kamaliah Fadhilah binti Haji Ibrahim granting leave to the 1st to 4th Defendants to include a counterclaim by the 1st Defendant for unjust enrichment and fraudulent misrepresentation, and from a decision by Senior Registrar Hajah Noor Amalina binti DP Haji Alaihuddin ordering that the parties appoint a joint handwriting expert, and that time for the appeal be extended.

Leave to amend

2 In the statement of claim there are a number of claims against the 1st to 4th Defendants including, while the 1st Plaintiff was away in India, withdrawal of the sum of B\$106,750.00 from the Plaintiffs' bank account by way of forgery, removal from the Plaintiffs' premises documents, cheque books and cash, taking possession of the Plaintiffs' shop, removal of the stock from the shop and closing it, forging a letter from the 1st Plaintiff resigning as a director from the 2nd Plaintiff, appointing the 3rd Defendant as a director to replace him, making a report to the police accusing the 1st Plaintiff of defrauding the 2nd Defendant and trying to prevent the 1st Plaintiff from returning to Brunei.

3 The 1st to 4th Defendants deny the claims and maintain, in brief, that the 1st Defendant was the sole beneficial owner of the 2nd Plaintiff, having bought all the shares from the previous owner Ezak Abdawood (Ezak) in 2012, but which were held in the names of the 1st Plaintiff and his brother as the 1st Defendant's nominees, and consequently any dealings with the 2nd Plaintiff and its assets were lawful. The counterclaim is for sums paid by the 1st Defendant by way of rent for the 2nd Plaintiff's premises and debts of the 2nd Plaintiff, in the belief that he was the sole owner of the 2nd Plaintiff, such belief being the result of misrepresentations made by the 1st Plaintiff and the Third Party.

4 The first point raised by counsel for the Plaintiffs is that the summons to amend is in substance an application by the 1st Defendant in which the 2nd to 4th Defendants have no interest or locus standi, and thus their part in the summons should be dismissed with costs. This submission does not bear close examination as this is a joint defence by the first four Defendants and they have to be parties to any application to amend it.

5 The principal argument on behalf of the Plaintiffs in support of their objection to the amendments is that the claims of unjust enrichment by mistaken belief and fraudulent misrepresentation are time barred as the limitation period expired on 23 December 2018 and it is submitted on their behalf that these claims arose on the dates the payments were made on dates between 2012 and 2019. However, this ignores the fact that the time for such claims to be made only commences when discovery of the mistake or misrepresentation is made. There is no suggestion here that the 1st Defendant knew of the mistake or misrepresentation at the time he made the payments, otherwise, as a matter of common sense, no doubt they would not have been made. It follows that the discovery of the mistake or misrepresentation must have been at a later date. No other date has been put forward by either side to this application, except to the extent that it was suggested in submissions by counsel for the 1st to 4th Defendants that the filing of the statement of claim herein only alerted them then to the allegation that the 1st Defendant was not the beneficial owner of the 2nd Plaintiff, and possible misrepresentation or fraud.

6 Mr. Zheng submitted that, as there was no affidavit evidence to this effect, this should be rejected. This may be right as I have no direct evidence from the Defendants of the date of knowledge, but having also rejected the submission of the Plaintiffs as to their claim of the date the limitation period begins, and as this is a matter raised by them, the Court is left with nothing on which to form an opinion as to limitation, and it must be left to the judge at trial, having heard and evaluated the evidence, to rule on the matter. I am unable to say now that this claim is time barred and it cannot therefore be a reason to disallow the amendments.

7 A number of submissions have been made regarding the proper limitation period for a claim for unjust enrichment such as this, however in view of my decision above it is unnecessary for me to consider them here.

8 Counsel for the Plaintiffs further submitted that the amendments disclosed no cause of action against the Plaintiffs for unjust enrichment as the payments made were to the 2nd Plaintiff's landlord and creditors and to Ezak rather than the Plaintiffs. However, it is clear from the amended defence that these payments were made in the belief that the 1st Defendant was the owner of the 2nd Plaintiff and was obliged to pay, and if he was not, then the Plaintiffs had benefitted to the extent of the amount paid, and in that sense were unjustly enriched. I have no doubt that this raises an arguable case of unjust enrichment.

9 A similar submission is made in respect of the claim of fraudulent misrepresentation that it lacks particulars and does not involve the 2nd Plaintiff company in any event and there should be no claim against the company. This latter submission makes a good point, but in my view a comparatively minor one which does not prejudice or embarrass the Plaintiffs and can be dealt with at trial. As to the lack of particulars, having carefully considered the amendments made, I am satisfied that there are adequate particulars for the Plaintiffs to know what case they have to meet, and what they seek here amounts to evidence which again is a matter for the trial judge.

10 One other matter regarding the amendments was raised on behalf of the Plaintiffs namely that further amendments were made to the defence beyond those applied for. It is clear from paragraph 35 of the ruling of the learned Registrar that she gave leave for further amendments to the prayer of the defence which in any event arise naturally from the substantive amendments for which leave was given. I find nothing here to say that the amendments made following the order were in excess of the order made.

The Order for Expert Witness

11 This concerns the order made by Senior Registrar Hjh Noor Amalina binti Hj Dato Paduka Alaihuddin on 16 April 2025 at a pre-trial conference that the parties are to try to jointly agree to a handwriting expert, failing which such expert will be nominated by the Court pursuant to Order 40, rule 1 of the RSC. The Plaintiffs' objection to this is that that Order requires an application by a party to the action, which was not made here, and that it would be unjust as they had already incurred costs appointing their own expert, as had been ordered in the summons for directions. However, this does not take into account the very wide powers given to the Court to manage the conduct of proceedings under Order 34, rule 1, which reads:

“Notwithstanding anything in these Rules, the Court may, at any time after the commencement of any proceedings, of its own motion direct any party or parties to those proceedings to appear before it, in order that the Court may make such order or give such direction as it thinks fit, for the just, expeditious and economical disposal of the cause or matter.”

12 The learned Senior Registrar was exercising her discretion in this matter to make, what in my view is a sensible order well within the powers under this rule, and I see no reason to question that exercise of discretion.

Principles on Leave to Appeal

13 I have been referred to a number of authorities which have considered leave to appeal and the principles to be applied. Without quoting them at length, those held by the Court of Appeal in Brunei include:

“Interlocutory applications and appeals are rightly described as “satellite” litigation.....Additional delay in an appeal to this court on such matters ought not to

be entertained save where there is a serious point of principle involved or where a decision on the point would be of general advantage, not usually otherwise. There must always be some good reasons.” - Ak Abdul Rahman Rahimin bin Pg Mahali and another v Rizan bin Hj Hamid [2008] BLR 198.

“In summary, it is neither practical nor desirable to further define ‘good reasons’ as circumstances vary so greatly but leave will not normally be granted to appeal to this court in satellite litigation unless substantial injustice will result from refusing leave, or if the public interest will be served by having the matter decided by this court.” – Haji Awang Mohd Hussaini bin Hj Awang Ahmad v Ponnusamy Rajapandian CACV No 6 of 2015

14 Applying those principles to the matter before me, I am not satisfied that sufficient reasons have been shown to me to allow this application for leave to appeal. For the reasons I have given above, it has not been shown that the decisions of the learned Judicial Commissioner or the learned Senior Registrar were clearly wrong, that any substantial injustice would result in refusing leave, or that there is any point of general public interest which would justify leave to take the matter to the Court of Appeal.

15 This application is accordingly dismissed, with costs to the 1st to 6th Defendants to be taxed if not agreed.



EDWARD TIMOTHY STARBUCK WOOLLEY
Judicial Commissioner