

Realtech Sdn Bhd

... Plaintiff

AND

Hj Mohd Sanusi bin Hj Md Tahir

... 1st Defendant

Nadj Restaurant

... 2nd Defendant

Aliyamu Abdul Majeed

... 3rd Defendant

Thrivikraman Pattavilakom Sadasivan

... 4th Defendant

Vellulissery Unnikrishnan Aswin

... 5th Defendant

Kilykkotte-Khrisnankutty Devadasan

... 6th Defendant

**(High Court of Brunei Darussalam)
(Civil Suit No. 4 of 2024)**

Haji Abdullah Soefri bin POKPSM DSP Haji Abidin, J.C.

4th February 2025

Headnote: Injunction – Order 29 of the Rules of the Supreme Court (RSC) – Whether an injunctive relief is necessary to prevent the defendants from dissipating their assets, incomes or business – Whether an injunctive relief is necessary to prevent the defendants from leaving the country – Whether the defendants would be adequately compensated with damages – Whether an injunctive relief is required to maintain the status quo – Application dismissed.

Ms Nur Khairunnisa@Masarah Binti Hj Hanipah of Messrs Lt Col (Rtd) Harif Ibrahim Law for the Plaintiff.

Mr Zamri Bin Hj Md Taha of Messrs Zamri Taha Associates for the 1st, 2nd and 3rd Defendants.

JUDGMENT

Haji Abdullah Soefri, J.C.:

The plaintiff filed application is support by an affidavit of Peedi Kaparambil Narayanan Sunil Kumarkumar (BGIC No. 50-912676). Mr Sunil is the Director of the Plaintiff and affirmed that he was advice and verily believed that the 3rd and 4th Defendants is planning to leave Brunei Darussalam to India and evade liability from the above suit. He affirmed that what happened to the 5th and 6th Defendants and affirmed that once the 3rd and 4th Defendants are out of Brunei Darussalam, it will be difficult and if not very costly to trace them and bring them to justice.

Mr Sunil also affirmed that the 4th Defendant will turn 65 years old on 25th May 2024 and thus, it is important for them to obtain a court order to refrain him from leaving Brunei Darussalam and he allowed escape without a trace.

Mr Sunil further affirmed that as a result of the 3rd and 4th Defendants' plan to escape the law and civil action against them, an immediate application and order is necessary.

The Plaintiff submits that there is a serious question to be tried as it is the Plaintiff's case that the sale and purchase of Nila Restaurant has not been authorised and D3, D4, D5 and D6 jointly and in concert has committed fraud. This argument places the ownership and purchase of Nila Restaurant in dispute and therefore need to be preserved.

It is further submitted that the balance of convenience leans towards granting a preliminary injunction to the Plaintiff so as to prevent the assets connected to Nila Restaurant from being dissipated by the 1st and 2nd Defendants.

Plaintiff submits further that there is no irreparable harm to the Defendants. The irreparable harm is to the Plaintiff in the event that Nila Restaurant and incomes from the branch at Kg Mata – Mata is not preserved and is being dissipated. This action shall be rendered academic and nugatory.

It is submitted that D1 and D2 received the sale and transfer of Nila Restaurant from fraud committed by D3, D4, D5 and D6.

Defence Submission

It is submitted that the affidavit of Mr Peedi (Sunil) which is to support the Plaintiff's application has failed in two (2) things:

(a) Failed to show evidence that the 1st and 2nd Defendants is or has been dissipating assets, incomes or business.

(b) Failed to show evidence that the 3rd Defendant is leaving the country or is absconding because of the suit.

It is submitted further that in order for the Plaintiff to succeed, there must be evidence showing that the 1st and 2nd Defendants has been actively dissipating assets, insurance and business of the Nadj Restaurant at Kg Mata – Mata address.

It is submitted that Nadj Restaurant has been in business for 20 years or so. There have several branches around the country.

They bought the furniture, fixture and fittings in 2021. If they were to dissipate the furniture, fixtures and fittings, it would have been in 2021 just after buying them. They would not have waited until 2024. They would not have operated at Kg Mata – Mata.

It is submitted further by the Defence that in order for the Plaintiff to succeed in applying and injunctive relief to stop the 3rd Defendant from leaving the country or absconds, there must be evidence showing that the 3rd Defendant was actively going to abscond or run away from the country.

It is submitted that D3 have been in the country for 20 years. There is no apparent reason why he would suddenly decide to leave and abscond. If he had decided to abscond, it would have been in 2021 when just after buying the furniture, fixtures and fitting, sold them and leave the country.

It is further submitted that the damages would be adequate for the Plaintiff if the injunctive relief sought after us refused as the 1st, 2nd and 3rd Defendants have been in business in Brunei for 20 years and have several restaurant branches in the country and would have assets and income from other branches.

The Plaintiff's main claim is a monetary claim.

The inconvenience caused to the 1st, 2nd and 3rd Defendants outweighs of the Plaintiff. The injunctive relief would harm the 1st, 2nd and 3rd Defendant and causing them to suffer losses.

There is no status quo to be maintained or preserved in the injunctive relief. The conduct of the 1st, 2nd and 3rd Defendants does not harm or injured the Plaintiff but in fact if the injunctive relief is granted, it would harm 1st, 2nd and 3rd Defendants and causing them to suffer losses.

There is nothing to preserve and or to maintain by an injunctive relief.

Conclusion

Having had heard all the parties, scrutinize all the affidavits and submissions and documents, I am satisfied and agree with the Defence that the Plaintiff have failed to show:

- (a) Failed to show there is evidence to support for the injunctive relief
- (b) Failed to show that damages would not be adequate for them if the injunctive relief was refused
- (c) Failed to provide an undertaking of damages to the 1st, 2nd and 3rd and also 4th Defendants if the injunctive relief was granted they would be adequately compensated with damages.
- (d) Failed to show as a balance that an injunctive relief is required and the status quo need to be maintained

The Plaintiff ex-parte summons in chambers is hereby dismissed and costs is awarded to the Defendants to be taxed if not agreed.

Plaintiff ex-parte summons in chambers is dismissed and costs to the Defendants to be taxed if not agreed.

Full grounds of judgment will be provided on a later date.

HAJI ABDULLAH SOEFRI BIN POKSM DSP HAJI ABIDIN
Judicial Commissioner