

**DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR
(BAHAGIAN DAGANG)
GUAMAN NO: D1-22-1161-1993**

ANTARA

CHEAH NGUN YING - **PLAINTIF**
(sebagai wasi dan pentadbir harta pusaka
Low Lai Kui @ Low Lye Kooi, si mati)

DAN

1. **LOW CHEONG & SONS SDN BHD**
2. **LOW SEOW HAR @ LOW SOW HAR**
3. **LOW LEE KING**
4. **WOO KAM NIN**
(sebagai pemegang amanah Low Chee Yeong,
Low Chee Yew dan Low Chee Keong)
5. **WOO KAM NIN**
(sebagai pemegang harta pusaka Low Cheong
@Low Yuen Cheong) - **DEFENDAN-DEFENDAN**

GROUND OF JUDGMENT

Enclosure 70 is the applicant's application for leave to intervene in this suit pursuant to Order 15 rule 6 of the Rules of Court 2012 (ROC 2012) and that the judgment dated 30th September 2009 be set aside pursuant to Order 42 rule 3 of the ROC 2012 on the ground that the proposed intervener's name had been wrongly referred to in the endorsement or the penal notice of the judgment even though the proposed intervener was never a party to this suit.

[2] Issue

- (a) Whether the proposed intervener can be allowed to intervene after the judgment was obtained and perfected ;
- (b) Whether the proposed intervener's name was correctly endorsed in the penal notice of the judgment although he was not a party to the suit; and
- (c) Whether the judgment can be set aside under Order 42 rule 13 of the ROC 2012.

Decision

[3] Whether the proposed intervener can be allowed to intervene after the judgment was obtained and perfected.

a. Order 15 rule 6 ROC provides as follows:

(1) A cause or matter shall not be defeated by reason of the misjoinder or non-joinder of any party, and the Court may in any cause or matter determine the issues or questions in dispute so far as they affect the rights and interests of the persons who are parties to the cause or matter.

(2) Subject to this rule, at any stage of the proceedings in any cause or matter, the Court may on such terms as it thinks just and either of its own motion or on application-

(a) order any person who has been improperly or unnecessarily made a party or who has for any reason ceased to be a proper or necessary party, to cease to be a party;

(b) order any of the following persons to be added as a party, namely-

(i) any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon; or

(ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which, in the opinion of the Court, would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter.

(3) An application by any person for an order under paragraph (2) adding him as a party shall, except with the leave of the Court, be supported by an affidavit showing his interest in the matters in dispute in the cause or matter or, as the case may be, the question or issue to be determined as between him and any party to the cause or matter.

b. Order 15 rule 6 had been discussed by the Federal Court in Hong Leong Bank Bhd (formerly known as **Hong Leong Finance Bhd**) v **Staghorn Sdn Bhd & Other Appeals**

[2008] 2 MLJ 622, and it had been held inter alia also as follows:

- i. *(per Abdul Hamid Mohamad Chief Justice) The words 'At any stage of the proceedings...' necessarily mean that there is a proceeding pending. Once the judgment is entered, the proceeding has come to an end. Furthermore, O 15 is concerned with the very early stage of a proceeding, to have all the necessary parties in before the trial begins (see paras 21 & 27).*

- ii. *(per Abdul Hamid Mohamad Chief Justice) An application for leave to intervene in order to set aside an order for sale by a party not already a party to the proceedings must be made under O 15 r 6 of the RHC. The application may be made 'at any stage of the proceedings' meaning before judgment, otherwise the proceedings have concluded and there is no longer a proceeding in existence for the party to intervene in. The judge had also become functus officio. Even then, the application must be made promptly. Order 15 r 6 of the RHC applies to all civil proceedings whether commenced by a writ, motion or summons etc (see para 55-56 & 60).*

c. It is therefore clear that the words “ *at any stage of proceeding ...*” provided under Order 15 rule 6 (2) must necessarily mean that there is a proceeding pending. Once a judgment is entered, the proceeding comes to an end. In this instance, the judgment was entered after a full trial on 30th September 2009. It had been perfected and served on the 1st defendant on 02nd March 2010. The 1st defendant had appealed against the judgment and the Court of Appeal had dismissed the appeal on 09th April 2012. The proposed intervener was again served with the judgment on 29th January 2014. Hence it is obvious that the said judgment had been perfected and extracted. Therefore I view, there is no proceeding pending as envisaged by Order 15 rule 6 of The ROC 2012 for the proposed intervener to intervene. Although the proposed intervener now argues that there is a proceeding pending as there is committal proceeding “pending”, I am of the view that committal proceeding is actually a form of enforcement of judgment. Refer to Order 45 rule 1 ROC 2012.

[4] Whether the proposed intervener's name was correctly endorsed in the penal notice of the judgment although he was not a party to the suit.

a. The said judgment was entered against the 1st defendant, a company. It is not disputed that the proposed intervener was a director of the 1st defendant.

b. Order 45 rule 5 of the ROC 2012 provides, inter alia, as follows:

“ Enforcement of judgment to do or abstain from doing an act (O. 45 r. 5)

(1) Where-

(a) a person required by a judgment or order to do an act within a time specified in the judgment or order refuses or neglects to do it within that time or, as the case may be, within that time as extended or abridged under Order 3, rule 5; or

(b) a person disobeys a judgment or order requiring him to abstain from doing an act,

then, subject to these Rules, the judgment or order may be enforced by one or more of the following means:

(A) with the leave of the Court, an order of committal;

(B) where that person is a body corporate, with the leave of the Court, an order of committal against any director or other officer of the body;

(C) subject to the provision of the Debtors Act 1957, an order of committal against that person or, where that person is a body corporate, against any such officer.”

- c. The endorsement is provided for by Order 45 rule 7 in Form 83(c) (previously Form 87(c) under the Rules of High Court 1980 enforced at the time of the judgment being entered). Hence, I agree with the respondent that the applicant's contention that he was not a party to the suit is devoid of merit as he was cited in the penal notice as a director of the 1st defendant; a company and that is allowed by the law as cited earlier.

[5] Whether the judgment can be set aside under Order 42 rule 13 of the ROC 2012

- a. This issue had also been discussed by the Federal Court in **Hong Leong's** case (*Supra*) where it was held that to set aside an order of judgment, there must be a provision in the rules that can be relied on for that purpose. Examples of such provisions are Order 13 rule 8, Order 14 rule 11, Order 70 rule 18(6) and 20(9), and Order 81 rule 7. In other cases, setting aside may only be done by a fresh action. There is no such provision applicable in the instant case.

Conclusion

[6] Based on the above, after considering submissions made by the parties, I dismiss enclosure 70 with cost.

**DATO' ZALEHA BINTI YUSOF
JUDGE
HIGH COURT OF MALAYA
KUALA LUMPUR**

Dated: 20th April 2015

For the plaintiff: Lee Chuen Tiat ; Messrs Ros Lee & Co

For the Defendant: Parvinder Kaur Sandhu; Messrs Jasbeer Nur
& Lee