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‘Reopening’ a Final Decision

On 1 October 2020, the Court of Appeal dismissed an application to reopen and review its own decision in allowing the defendant’s appeal in 2019.¹

Partner SM Shanmugam (together with associate Shona Anne Thomas) acted as counsel for the defendant at the Court of Appeal for the appeal in 2019 and in opposing the plaintiff’s application yesterday.

The plaintiff commenced a claim against the defendant in reliance on the provisions of the Consumer Protection Act 1999 (**CPA**). After full trial, the Sessions Court dismissed the claim and held, among others, that the CPA was not applicable on the facts of the case. The plaintiff appealed and the High Court reversed the Sessions Court’s decision. The defendant appealed and in 2019, the Court of Appeal unanimously allowed the defendant’s appeal and affirmed the decision of the Sessions Court.

The plaintiff then filed an application at the Court of Appeal to reopen and review its decision. The plaintiff submitted, among others, that the Court of Appeal had erred in finding that the CPA was not applicable due to the subject matter of the dispute having been purchased for business use as well as the fact that the said findings were “*caught by the doctrine of res judicata*” and “*had caused significant injustice*” to the plaintiff.

In response, the defendant submitted that, among others, the Court of Appeal’s inherent powers to review its own decision can only be exercised in very limited and/or exceptional circumstances. The defendant referred to well-settled authorities² and submitted that the application does not meet the threshold for

¹ [2019] 1 LNS(O) 12 (CA)

² *Dato’ Seri Anwar Bin Ibrahim v Public Prosecutor* [2004] 3 MLJ 517 (FC); *Dee Bee Yoke (claiming as lawful wife and dependent to Low Chin Wee, deceased) & Anor v Nick Abu Dasuki bin Hj Abu Hassan & Anor and another appeal* [2016] 12 MLJ 39 (CA)

the exercise of the review jurisdiction.³ Examples of circumstances justifying the review and reopening of a final decision include a lack of quorum; or the decision had been obtained by fraud; or where bias has been established.⁴ To quote the Federal Court, “*Otherwise, there will be no end to litigation. A review may lead to another review and a further review*”.⁵

In dismissing the plaintiff’s application, the Court of Appeal reiterated that matters of opinion such as the interpretation of statute are within its purview and do not meet the threshold for the exercise of its review jurisdiction.

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³ *Asean Security Paper Mills Sdn Bhd v Mitsui Sumitomo Insurance (Malaysia) Bhd* [2008] 6 CLJ 1 (FC)

⁴ *Ibid*

⁵ *Ibid*