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26 APRIL 2024

### **Exorbitant Claim of RM4.7 Million for Constructive Dismissal Struck Out by the High Court**

*High Court of Malaya in Kuala Lumpur Civil Suit No.: WA-22NCvC-565-10/2022 [Abdul Nasir bin Ahmad v 7-Eleven Malaysia Sdn Bhd]*

A former employee (“**Plaintiff**”) filed a claim of constructive dismissal against 7-Eleven Malaysia Sdn Bhd (“**Defendant**”) at the High Court seeking relief in the region of RM4.7 million. The Defendant succeeded in its application to strike out the claim brought by the Plaintiff against the Defendant.<sup>1</sup>

#### **Brief Facts**

At the material time, the Defendant had contemplated undertaking a reorganisation of its finance team for genuine operational and business purposes (“**Proposed Restructuring Exercise**”).

<sup>1</sup> Pursuant to Order 18, Rules 19(1)(a), (b), and/or (d) of the Rules of Court 2012 and/or Order 92, Rule 4 of the Rules of Court 2012 and/or the inherent jurisdiction of the High Court

A discussion was held with the Plaintiff regarding the Proposed Restructuring Exercise. The very next day, the Plaintiff hastily resigned by giving three months' notice, citing the Proposed Restructuring Exercise as the reason behind his resignation. He did so notwithstanding that the Proposed Restructuring Exercise was neither finalised nor implemented. The Plaintiff was paid his salary for the entirety of his three-month notice period.

The Defendant sought to strike out the Plaintiff's claim on the basis that the Plaintiff's pleadings disclosed no reasonable cause of action, the Plaintiff's claim was scandalous, frivolous, or vexatious, and/or that the Plaintiff's claim was an abuse of the process of the Court.<sup>2</sup>

### **Decision of the High Court**

The High Court held that the Defendant had successfully proven that the case filed by the Plaintiff was plainly and obviously unsustainable. There was nothing on the face of the Plaintiff's pleadings that demonstrated a breach of the terms of the Plaintiff's employment contract.

The High Court further held that even if the Plaintiff were to be successful in his claim for constructive dismissal, the damages were restricted to the salary/wages equivalent to the notice period under his employment contract<sup>3</sup>, which had already been paid to the Plaintiff. The High Court applied the principle in ***7-Eleven Malaysia Sdn Bhd v Ashvine Hari Krishnan***<sup>4</sup> that it is an abuse of process to seek exorbitant relief for a claim of constructive dismissal in the civil courts, as there is a statutory framework under the Industrial Relation Act 1967 to hear claims for wrongful dismissal.

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<sup>2</sup> Order 18, Rule 19(1)(a), (b), and (d), Rules of Court 2012

<sup>3</sup> Fung Keong Rubber Manufacturing (M) Sdn Bhd v Lee Eng Kiat & Ors [1981] 1 MLJ 238

<sup>4</sup> [2023] 4 CLJ 895

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Based on the foregoing, the High Court concluded that the Plaintiff would be unsuccessful in his claim against the Defendant. When all contractual dues have been paid, a claim in the civil court shall be regarded as an abuse of process and should be struck out summarily.<sup>5</sup>

## **Commentary**

Section 20(1A) of the Industrial Relations Act 1967 states that disgruntled employees have a 60-day time limit within which a representation for unjust dismissal may be made to the Industrial Relations Department. The matter would then be escalated to the Industrial Court should parties fail to reach a settlement. This is the statutory mechanism to deal with unjust dismissal claims. In this matter, it is undisputed that the Plaintiff was well within the 60-day time frame to make a representation at the Industrial Relations Department when he filed his claim at the High Court. The Plaintiff made a conscious decision not to pursue a claim in the Industrial Court.

The Defendant was represented by Partner Amardeep Singh Toor and Associate Ashreyna Kaur Bhatia of Lee Hishammuddin Allen & Gledhill.

If you have any queries, please contact Associate, **Ashreyna Kaur Bhatia** ([akb@lh-ag.com](mailto:akb@lh-ag.com)), or her team Partner, **Amardeep Singh Toor** ([ast@lh-ag.com](mailto:ast@lh-ag.com)).