

IN THE HIGH COURT OF MALAYA AT KUANTAN

IN THE STATE OF PAHANG DARUL MAKMUR

SIVIL APPEAL NO.CA-11ANCvC-4-09/2022

BETWEEN

ADNAN BIN YAAKOB

(NRIC NO: 500418-06-5217)

...APPELLANT

AND

SURUHANJAYA SEKURITI MALAYSIA

...RESPONDENT

[IN MAGISTRATE COURT AT KUANTAN

IN THE STATE OF PAHANG DARUL MAKMUR

CIVIL SUIT NO: CA-A72NCVC-32-02/2022

BETWEEN

SURUHANJAYA SEKURITI MALAYSIA

...PLAINTIFF

AND

ADNAN BIN YAAKOB

...DEFENDANT]

(NRIC NO: 500418-06-5217)

GROUND OF JUDGMENT



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INTRODUCTION

1. The Appellant in this suit has filed Notice of Appeal in KM1 to appeal against the Summary Judgment decision pursuant to Order 14 Rules of Court 2012 that was delivered by the Magistrate in Magistrates Court Kuantan on 25.8.2022. This Court has perused through the cause papers and has come into the decision to dismiss the Appellant's appeal (KM1) with cost amounting to RM1,000.00.

MATERIAL FACTS OF THE CASE

2. The Appellant in this suit is a member of the Board of Directors of Pasdec Holdings Berhad ("PASDEC") and its largest shareholder, Perbadanan Kemajuan negeri Pahang ("PKPNP").
3. The Respondent is a statutory body established under Section 3 of the Securities Commissions Act 1993 ("SCMA") and is vested with the functions and powers given to it under SCMA and Capital Market and Services Act 2007 ("CMSA")."
4. Pursuant to Section 354 (3) of the CMSA, where a person has contravened the provisions of the CMSA (other than the provisions



under Part V and division 2 of Part VI) or any securities law, the Respondent has the power to take the cations provided under Section 354(3)(a) to (f) of the CMSA which is inclusive of reprimanding and imposing penalty.

5. On 16.5.2018, PASDEC issued an Abridged Prospectus dated 16.5.2018 ("Abridged prospectus"). To simply the facts, the Respondent conducted a review on the above matter and found inter alia that the Applicant as a member of PASDEC's Board of Directors, had authorized the issuance of Abridged Prospectus which contained information from which there is a material omission.
6. As of the date of issuance of the Abridged Prospectus on 16.5.2018, PKNP's application to the Ministry of Finance (MOF) for approval to subscribe for the PKNP's entitlement at the issue price of RM0.35 per Rights Share was still pending. This material information was not disclosed in the Abridged Prospectus.
7. As a member of the PASDEC's Board of Directors, the Defendant has individually and collectively accepted full responsibility for the



accuracy of the information in the Abridged Prospectus pursuant to the PASDEC's Directors Responsibility Statement dated 2.5.2018.

8. By a notice of show cause dated 15.11.2018, the Respondent notified the Applicant of their findings and allowed the Appellant to provide a written explanation within 14 business days why actions should not be taken against him under Section 354(1)(a) of the CMSA read together with Section 246(1)(b) and Section 367(1) of CMSA.
9. The Appellant by a reply letter dated 4.12.2018, the Appellant admitted that there was a material omission in the abridged Prospectus and pleaded for leniency in respect of the punishment to be imposed on him.
10. The Respondent then sent a letter dated 22.7.2020 to the Appellant to notify him that he has breached Section 354(1)(a) of the CMSA read together with Section 246(1)(b) and Section 367(1) of CMSA. The Respondent imposed sanctions for the Appellant to be reprimanded and a penalty in the sum of RM84,000.00 to be paid within 14 business days.



11. The Appellant sent another appeal letter dated 19.8.2020 for the sanctions to be withdrawn against him. The Respondent dismiss the appeal via a letter dated 18.2.2021 and maintained the sanctions.
12. The Respondent's solicitors via a letter dated 22.12.2021 demanded for the payment of the RM84,000.00 from the Appellant. However, since no payment was made, the Respondent filed a civil suit in Magistrates Court Kuantan to claim the same.
13. On 31.5.2022 the Respondent filed in a Notice of Application for Summary Judgement against the Appellant. The magistrates court allowed the Respondent's application for Summary Judgement pursuant to Order 14(1) Rules of Court 2012 with cost RM1,000.00.
14. Dissatisfied with the Summary Judgement decision made by the Magistrates Court, the Appellant filed in an appeal to the High Court via Notice of appeal (KM1) here.



MAIN ISSUES

Has the preliminary requirements under Order 14 Rules of Court 2012 been met?

15. The principal rule in summary judgement proceedings have been laid out in numerous case laws which one of it is the Court of Appeal case of **UNP PLYWOOD SDN BHD v. HSBC BANK MALAYSIA BHD [2010] 5 CLJ 177** where it was decided that;

*“Summary judgment procedure is a procedural device available for prompt and expeditious disposition of an action by a plaintiff or a counterclaim by a defendant, without a trial when there is **no dispute as to the fact and law.**”*

16. Thus, it is the duty of this court to examine whether is there any dispute as to facts and law which hinders the granting of a Summary Judgement. A Summary Judgement can only be granted in cases which are plain and obvious where it is unnecessary for a full trial and calling of witnesses.

17. This court is of the view that, via the pleadings filed by both parties there is no dispute in any facts and law that should be considered.



The main issue is whether the Appellant is liable to pay the RM84,000.00 that is being claimed by the Respondent due to the material omission in the Abridged Prospectus.

18. The above issue could be simply answered via the admission of the Appellant himself in paragraph 13 of the Amended Statement of Defence, whereby the Appellants agrees that there is a material omission in the Abridged Prospectus. It is a well-known law that parties are always bound by their pleadings.
19. The fact that the Appellant has admitted to their mistakes was further supported by the Appellant letter to the Respondent dated 4.12.2018 (page 101 of the Record of Appeal) and letter dated 19.8.2020 (page 109 of the Record of Appeal).
20. Both these letters simply show that the Appellant at all material times are aware of their mistake and has even appealed for the sanction to be reduced.
21. This Court does not find the need for a full trial and Summary Judgement is the best way to dispose this matter because the



admission of the Appellant is there. Besides that, the Appellant has failed to submit any triable issues for this Court to ponder upon.

22. This Court does not consider the averments in the Appellant's Affidavit in Reply (page 73 of the Record of Appeal) stating that the appellant would like to withdraw the admission made via the above-mentioned letters because he was not guided by a legal representative. This court is of the view that this defence is an afterthought made by the Appellant to avoid being held liable for the mistakes made.
23. When the admission was made via the letters, the Appellant was aware of his mistake and knew the consequences of his mistake. To later on submit to this court that such admission was made without the guidance of a legal representative, is clearly an afterthought and could be considered as a bare denial.
24. Therefore, this court considers of the admission made by the Appellant and agrees with the decision made by the Magistrate in the Magistrates Court that there are no triable issues in this case.



25. This Court is guided by the Supreme Court Case of **BANK NEGARA MALAYSIA v MOHD ISMAIL & ORS [1992] 1 MLJ 400**

where it was decided that:

*“Where **such assertion, denial or dispute is equivocal, or lacking in precision or is inconsistent with undisputed contemporary documents or other statements by the same deponent, or is inherently improbable in itself, then the judge has a duty to reject such assertion or denial, thereby rendering the issue not triable**”*

26. Thus, it could be concluded in this case there is no apparent triable issue that renders the need of a full trial.

Was the Appellant denied from the right to be heard?

27. This Court is of the view that the Appellant was not denied the right to be heard when he was given a chance to answer to the Notice of Show Cause Issued by the Respondent.

28. When the Appellant received the Notice of Show Cause from the Respondent, he was given a chance to set out his stand and any



form of Defence before the sanction was ordered by the Respondent.

29. The Appellant in turn did not show any form of plausible defense and rather has admitted to the mistakes made by him. Thus, the Appellant could not later on come to this court and say he was not given the chance to be heard, when he has exhausted his right when he replied to the Notice of Show Cause issued by the Respondent.

30. Thus, this court believes that it is definitely not an issue to be tried.

Is the Appellant liable for the material omission in the Abridged Prospectus?

31. After reading through all the cause papers and documents tendered to this court, it is undisputed that the Appellant is liable for the material omission in the Abridged Prospectus.

32. This Court is guided by the contemporaneous documents which clearly shows that the Appellant was liable for the material omissions. At the time when the Abridged Prospectus was issued,



the Appellant was a director of PASDEC and PKNP. Therefore, pursuant to Section 354(1)(a) of the CMSA read together with Section 246(1)(b) and Section 367(1) of CMSA he is liable.

33. From the minutes of PASDEC's Special Board of Director's Meeting dated 25.1.2018, the Appellant has individually and collectively accepted full responsibility for the accuracy of the information in the Abridged Prospectus. Furthermore, the PASDEC's Director's Responsibility Statement dated 2.5.2018 acknowledges the Appellant's responsibility for the accuracy of the Abridged Prospectus.

34. Though the Appellant at all material time is averring that he should not be held responsible, all the contemporaneous documents are proving otherwise.

CONCLUSION

35. Thus, it is crystal clear that the case filed in the Magistrates Court is definitely a plain and obvious case where Summary Judgement is a suitable mean to dispose the matter. This Court is of the view



that the Magistrate has diligently perused through the documents before deciding as such.

36. Therefore, this Court upholds the decision in the Magistrates Court and the Appeal (KM1) is disposed with cost of RM1,000.00.

-signed-

ZAINAL AZMAN BIN AB AZIZ

JUDGE

HIGH COURT MALAYA OF KUANTAN

PAHANG DARUL MAKMUR

DATED : 30 NOVEMBER 2023



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Appellant :

Tan Sri Adnan bin Yaakob – appear and represent himself.

YP Plantation Holdings Sdn Bhd

Tingkat 4, Kompleks Yayasan Pahang

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Respondent Solicitor:

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