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RESTORING JUSTICE: HOW TO SET ASIDE A JUDGMENT OBTAINED BY FRAUD?

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A court judgment is meant to bring closure. But what if that “final” decision was built on deception – where one party concealed key documents, gave false evidence, or deliberately misled the court to win?

It happens more often than most people realise. And when it does, the injustice can be devastating, especially when large sums, property, or reputation are at stake.

This article explains how the law approaches situations where a judgment is obtained through fraud and the principles applied when such a judgment is challenged.

What is a “Judgment Obtained by Fraud”?

A judgment obtained by fraud arises when one party intentionally deceives the court or the opposing side, leading to a decision based on falsehoods or concealed facts.

This goes far beyond simple mistakes or misstatements.

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The law only intervenes when there is deliberate deception. The wrongdoing must be intentional, calculated, and directed towards misleading the court.

For instance, the Federal Court in **Seruan Gemilang Makmur Sdn Bhd v Kerajaan Negeri Pahang Darul Makmur & Anor**¹ dealt with precisely such a situation. The Appellant obtained a RM37 million judgment in an earlier High Court proceeding after producing a fabricated plan and giving false testimony that the plan had been approved by the State Executive Council, when in truth, no such approval existed.

When the genuine approved plan later surfaced, the Respondents filed a fresh action to set aside the judgment, alleging fraud and/or perjury by the Appellant. The Respondents sought to strike out the claim on the grounds of *res judicata* and insufficiency of the pleaded particulars of fraud. The Federal Court dismissed the striking-out application, holding that the particulars of fraud were sufficiently pleaded and raised material disputes that could only be resolved at trial. In this context, the Court further clarified that fraud under Section 44 of the Evidence Act 1950 (“**EA 1950**”) refers to actual, positive fraud, which is a deliberate scheme to keep both the court and the opposing party in ignorance of the truth.

Similarly, in **Chee Pok Choy & Ors v Scotch Leasing Sdn Bhd**,² the Respondent obtained an order in its favour by concealing, amongst others, its status as a licensed moneylender, thereby evading the mandatory requirements for obtaining a foreclosure against the debtor under the Moneylenders Act and Order 79 of the Rules of the High Court 1980.

The Court of Appeal ruled that such conduct amounted to deliberate fraud practised upon the court, falling squarely within Section 44 of the EA 1950. It set aside the earlier order accordingly.

Res Judicata – A Barrier to Challenging a Fraudulent Judgment?

Ordinarily, once a judgment is given, that’s the end – the doctrine of *res judicata* prevents the same issues from being reopened. Nonetheless, fraud unravels all.

The courts have made it clear that *res judicata* cannot shield a dishonest outcome. Section 44 of the EA 1950 provides a right to impeach (*set aside*) a judgment obtained through fraud.

The Court of Appeal in **Chee Pok Choy**³ examined this very doctrine in the context of setting aside a prior judgment and affirmed that *res judicata*, whether in its narrow or broader sense, is ultimately a doctrine intended to achieve justice. Accordingly, it cannot operate as an insurmountable barrier to impeaching or setting aside a judgment procured by fraud.

[1] *Seruan Gemilang Makmur Sdn Bhd v Kerajaan Negeri Pahang Darul Makmur & Anor* [2016] 3 MLJ 1

[2] *Chee Pok Choy & Ors v. Scotch Leasing Sdn Bhd* [2001] 4 MLJ 346

[3] *ibid*

How to Challenge a Judgment Obtained by Fraud?

Challenging a judgment for fraud is not as straightforward as asking the court to revisit its earlier decision.

The law requires a fresh action⁴ to be filed, as once a court has delivered its judgment, it becomes *functus officio*. In other words, the court has exhausted its power in that matter and cannot, within the same action, alter, vary, or set aside a judgment that has been regularly obtained and entered, or an order once it has been perfected.⁵

In this regard, to persuade the court to set aside a judgment tainted by fraud, the plaintiff must set out, with particulars in the pleadings on how, when, where, and in what manner the fraud occurred. The evidence adduced must also qualify as fresh evidence, which requires demonstrating that:

- (i) **It could not have been obtained with reasonable diligence** for use at the original trial, where reasonable diligence means genuine, timely, and thorough efforts to secure the best available evidence without negligence or inadequate preparation;⁶
- (ii) **It would have had an important influence on the decision** had it been produced earlier, being capable of materially altering the outcome of the trial;⁷ and
- (iii) **It is apparently credible**, in the sense of being reliable and believable on its face, even if not incontrovertible.⁸

These strict requirements exist to ensure that only genuine cases of fraud, and not mere mistakes, oversights, or tactical regrets, justify reopening a final judgment.

Conclusion

The law recognises that fraud strikes at the very heart of justice. While doctrines like *res judicata* exist to preserve finality in litigation, they cannot be used to protect judgments built on deception. Ultimately, the law reaffirms a simple but enduring principle, that no judgment tainted by fraud is beyond the reach of justice.

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[4] Seruan Gemilang Makmur Sdn Bhd v Kerajaan Negeri Pahang Darul Makmur & Anor [2016] 3 MLJ 1

[5] Hock Hua Bank Bhd v Sahari bin Murid [1981] 1 MLJ 143

[6] Re Lim Hong Kee David [1995] 4 MLJ 564

[7] The Attorney General of Malaysia v Dato' Sri Mohd Najib bin Tun Hj Abdul Razak and another appeal [2025] 5 MLJ 944

[8] *ibid*