

THE HIGH COURT OF MALAYA AT KUALA LUMPUR

(COMMERCIAL DIVISION)

[SUIT NO: D-22NCC-55-2011]

BETWEEN

CCM CHEMICALS SDN BHD ... PLAINTIFF

AND

**WAN MUHAMAD IBRISAM WAN IBRAHIM
(NO K/P: 640412-03-5433) ... DEFENDANT**

GROUNDS OF DECISION

This is a Summary Judgment application in Enclosure 5 against the Defendant for the principal sum of RM2,591,603.75 as at 28.2.2010 and “administrative charges” on this sum of RM2,591.75 amounting to RM709,084.26 at the rate of 1.5% per month up to 31.8.2010 and administrative charges thereafter at the rate of 1.5% per month from 1.9.2010 until date of full payment, and costs on an indemnity basis.

The Defendant in this instant proceeding is a Guarantor who is said by the Plaintiff to have executed a Guarantee and Indemnity Agreement dated 17.12.2007 in the Plaintiff's favour as consideration for the supply of goods by the Plaintiff to a Company named Ace Polymers Industries Berhad (presently in Liquidation). See the relevant Credit Facility Agreement dated 17.12.2007 between the Plaintiff and the company exhibited as MH-1, at pages 14 to 15 of the Plaintiff's Supporting Affidavit. The amount of Credit Facilities granted for goods and/or services supplied and the credit period is spelt out in Clause 1 of the Credit Facility Agreement. The right to impose Administrative Charges at the rate of 1.5% per month is specified in Clause 6 thereof.

The Company was wound up by Order of the High Court, Shah Alam on 28.1.2010. Consent having been obtained to proceed against the Company, the Plaintiff filed a suit against it, for which judgment in default of appearance was entered against the Company for the same sum now being claimed against the Defendant. See Exhibit MH-1 of the Plaintiff's Supporting Affidavit affirmed by Mahadzir bin Mustafa (Enclosure 6), at page 26.

The judgment in default is dated 6.7.2010.

Following that, a letter of demand was sent to the Defendant on 29.9.2010, in which was enclosed a Certificate of Indebtedness for the amount. The Defendant failed to pay the amount demanded.

The only ground raised by the Defendant Guarantor in this application is forgery of his signature on the Guarantee and Indemnity document. He has lodged a police report on this allegation on 26.3.2011, more than 5 months after the Letter of Demand was sent to him on 1.10.2010. There is also no contemporaneous document which has been produced to corroborate his allegation of forgery. On the other hand, the Plaintiff has produced an affidavit affirmed by Eng Kok Wai, the person witnessing his signature, to confirm that the deponent was present and did sign the Guarantee and Indemnity Agreement (Enclosure 9). Eng Kok Wai has categorically stated he witnessed the Defendant signing the Guarantee and Indemnity. See paragraph 4 of this affidavit.

The Defendant has not denied signing a contemporaneous document bearing the same date, ie, the Credit Facility Agreement of 17.12.2007, in his capacity as the Managing Director of the Borrower company. The evidence disclose the Defendant was also at the material time a shareholder of the holding company, and therefore an indirect shareholder of the Borrower company.

The defence of forgery is therefore in the circumstances untenable and cannot be regarded as raising a *bona fide* triable issue. If the Defendant is *bona fide* he should have by now submitted his signature to the Chemistry Department for analysis. The police have also not investigated the report further.

It is too easy to lodge a police report and feign forgery to escape a contractual liability, and therefore where there are no contemporaneous documents in support, the conclusion will be compelling that such allegation is a sham defence, especially when the person signing the document is the Managing Director of the Borrower, who has executed a contemporaneous document the same day for the Credit Facility. The allegation of forgery does not extend beyond a bare denial, such that the Defendant has not succeeded in satisfying the court that his defence is reasonably capable of belief. *“Denials in a defence do not constitute evidence. They are challenges to the other side to show proof”*: *Chen Heng Ping & Ors v. Intradagang Merchant Bankers (M) Bhd* [1995] 2 MLJ 363. On the facts here, the Plaintiff has responded with proof through the affidavit of Eng Kok Wai.

Claim allowed under Enclosure 5 as prayed in prayer 1, paragraphs 1.1, 1.2 and 1.3. Further order that taxed costs be paid by the Defendant to the Plaintiff. The claim for costs on an indemnity basis for the amount of RM400,000.00 is disallowed, since it is inherently excessive and has not been fully established on the evidence. It is best if costs be taxed in the circumstances.

Dated: 23 MAY 2011

(MOHAMAD ARIFF MD YUSOF)
JUDGE
HIGH COURT MALAYA
KUALA LUMPUR

COUNSELS

For the plaintiff - Alex Chang Huey Wah; M/s Alex Chang & Co

For the defendant - S Maniarasan (Fareez Zahir with him); M/s Adam Abdullah & Mani