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Mah Sing Properties Sdn Bhd v SG Prestige Sdn Bhd

B HIGH COURT (JOHOR BAHRU) — CIVIL APPEAL NO JA-12ANCvC-145–12 OF 2019
EVROL MARIETTE PETERS JC
2 JANUARY 2021

C *Civil Procedure — Amendment — Statement of defence — Application to amend statement of defence — Whether there was unreasonable delay — Burden of explaining unreasonable delay — Rules of Court 2012 O 20*

D This was appellant's appeal against the decision of the sessions court in dismissing the appellant's application to amend its defence under O 20 of the Rules of Court 2012 ('the Rules of Court'). The respondent had entered into a sale and purchase agreement ('SPA') where the appellant had sold to the respondent a property for the price of RM2,784,895 subject to the terms and
E conditions of the SPA. The appellant had failed to deliver vacant possession by 31 December 2015 in accordance with the SPA and the result thereof, the plaintiff had filed an action for the sum of RM231,313.60 as liquidated agreed damages for the late delivery of the property. The defendant had on 19 December 2017 filed its defence which the plaintiff replied to on
F 1 January 2018. Pleadings were closed on 16 January 2018. It was undisputed that the defendant was also sued by other purchasers of the same project which originated in the magistrate's court and escalated to the Court of Appeal. The proceedings in this present action was stayed as pending appeal in the earlier suit. After the appeal was dismissed the respondent filed an application on
G summary judgment on 11 September 2019 the decision of which was fixed on 26 November 2019, but on 27 September 2019 the defendant filed the application to amend which was eventually dismissed on 10 December 2019. After the Court of Appeal had dismissed the application the defendant filed an application to amend the defence.

H **Held**, dismissing the appeal with costs of RM1,500 subject to allocatur fees:

(1) The onus was on the applicant to furnish a reasonable explanation to explain the delay in filing an application, and that failure to do so would result in the application being disallowed. An application would also be
I disallowed if it was made as a tactical manoeuvre. It was established that the Federal Court in *Hong Leong Finance Bhd v Low Thiam Hoe and Another Appeal* [2016] 1 MLJ 301 had displaced the principles enunciated in *Yamaha Motor Co Ltd v Yamaha (M) Sdn Bhd* [1983] 1 MLJ 213 on amendment of pleadings, if such application was made at a

later stage of proceedings, it was imperative that the application to amend must be made at an early stage of the proceedings and where the application was made at a later stage there must be cogent and reasonable explanation for the delay (see paras 10–11 & 13).

(2) Delay must be looked at contextually and not in isolation. It must be borne in mind that the application to amend was made only after the plaintiff had filed its application for summary judgment. The appellant's reason for its delay was unconvincing as it did not explain why the averments in the proposed amendments were not mentioned in the original defence bearing in mind that these facts were readily available at the time the original defence was filed. Since the facts were already known the to the defendant at the time the original defence was filed, coupled with the late filing of the application to amend, the irresistible inference was that the filing of the application to amend was in relation to some tactical manoeuvre (see paras 20, 26 & 30).

[Bahasa Malaysia summary

Ini merupakan rayuan perayu terhadap keputusan mahkamah sesyen yang membatalkan permohonan perayu untuk meminda pembelaannya dibawah A 20 Kaedah-Kaedah Mahkamah 2012 ('KKM'). Responden telah memasuki satu perjanjian jual beli ('PJB') yang mana perayu telah mejual kepada responden satu hartanah pada harga RM22,784,895 tertakluk kepada terma dan syarat PJB. Perayu gagal untuk menyerahkan milikan kosong pada 31 Disember 2015 selaras dengan PJB dan oleh yang demikian, plaintif telah memfailkan tindakan untuk jumlajh RM231,313.60 sebagai ganti rugi jumlah tertentu yang dipersetujui untuk penyerahan lewat hartanah. Defendan telah pada 19 Disember 2017 memfailkan pembelaannya yang mana plaintif telah membalasnya pada 1 Januari 2018. Pliding telah ditutup pada 16 Januari 2018. Ianya tidak dinafikan bahawa defendan turut disaman oleh pembeli lain projek yang sama yang bermula di mahkamah majistret dan telah sampai ke Mahkamah Rayuan. Prosiding dalam tindakan ini telah digantung menantikan rayuan dalam guaman terdahulu. Selepas rayuan ditolak defendan memfailkan permohonan penghakiman terus pada 11 September 2019 dam defendan memfailkan permohonan untuk meminda yang telah kemudiannya ditolak pada 10 Disember 2019. Selepas Mahkamah Rayuan telah menolak permohonan tersebut defendan memfailkan permohonan untuk meminda pembelaan.

Diputuskan, menolak rayuan dengan kos sebanyak RM1,500 tertakluk kepada bayaran alokatur:

(1) Beban adalah pada pemohon untuk mengemukakan penjelasan yang munasabah kelewatan dalam memfailkan satu permohonan, dan kegagalan untuk berbuat sedemikian akan menyebabkan permohonan ditolak. Satu permohonan akan turut ditolak sekiranya ianya dibuat

A sebagai satu pergerakan taktikal. Ianya telah dinyatakan oleh Mahkamah Persekutuan dalam *Hong Leong Finance Bhd v Low Thiam Hoe* [2016] 1 MLJ 301 dan satu lagi rayuan yang mengetepikan prinsip yang dinyatakan dalam *Yamaha Motor Co LTd v Yamaha (M) Sdn Bhd* [1983] 1 MLJ 213 berkaitan dengan pindaan kepada pliding, sekiranya B permohonan sedemikian dibuat di peringkat lewat prosiding, ianya adalah penting bahawa permohonan untuk meminda dibuat di peringkat awal prosiding dan apabila permohonan dibuat di peringkat lewat, perlu wujud penjelasan yang jelas dan munasabah untuk kelewatan (lihat perengan 10–11 & 13).

C (2) Kelewatan perlu dilihat dalam konteks dan tidak secara berasingan. Ianya perlu diingati bahawa permohonan untuk meminda hanya dibuat selepas plaintif telah memfailkan permohonan untuk penghakiman terus. Alasan perayu untuk kelewatannya adalah tidak meyakinkan kerana D ianya tidak menjelaskan mengapa pengataan dalam pindaan yang dicadangkan tidak dinyatakan dalam pembelaan awal mengambil kira bahawa fakta ini sudah wujud pada waktu pembelaan asal difailkan. Memandangkan fakta ini sudah diketahui defendan pada waktu pembelaan asal difailkan, berserta dengan pemfailan lewat permohonan E untuk meminda, inferens yang tidak boleh dinafikan adalah, pemfailan permohonan ini adalah berkaitan dengan satu pergerakan taktikal (lihat perengan 20, 26 & 30).]

Cases referred to

F *Abdul Johari bin Abdul Rahman v Lim How Chong & Ors* [1997] 1 MLJ 629, CA (refd)

Bumiputra-Commerce Bank Berhad and others v Bumi Warna Indah Sdn Bhd [2004] MLJU 529; [2004] 4 CLJ 825, HC (refd)

Dato' Tan Heng Chew v Tan Kim Hor and another appeal [2009] 5 MLJ 790, G CA (refd)

ECM Libra Investment Bank Bhd v Foo Ai Meng & Ors [2013] 3 MLJ 35; [2013] 1 LNS 99, CA (folld)

HSB Bank Malaysia Bhd v Macquarie Technologies (M) Sdn Bhd [2004] 4 MLJ 398, CA (refd)

H *Hong Leong Finance Bhd v Low Thiam Hoe and another appeal* [2016] 1 MLJ 301; [2015] 8 CLJ 1, FC (refd)

Ismail bin Ibrahim & Ors v Sum Poh Development Sdn Bhd & Anor [1988] 3 MLJ 348, HC (folld)

Jupiter Securities Sdn Bhd v Wan Yaakub bin Abd Rahman [2002] 3 MLJ 264, I HC (refd)

Ketteman & Ors v Hansel Properties Ltd & Ors [1987] 1 AC 189, HL (refd)

Lim Nyang Tak Michael v ACE Technologies Sdn Bhd [1995] 4 MLJ 616, HC (refd)

Mahan Singh v Government of Malaysia [1973] 2 MLJ 149 (refd)

Multi-Pak Singapore Pte Ltd (in receivership) v Intraco Ltd [1993] 2 SLR 113, CA
Nanyang Development (1966) Sdn Bhd v Malaysian Armed Forces Co-operative Housing Society Ltd [1972] 2 MLJ 149, FC (folld)
New Zealand Insurance Co Ltd v Ong Choon Lin (t/a Syarikat Federal Motor Trading) [1992] 1 MLJ 185, SC (folld)
Suruhanjaya Pilihan Raya & Ors v Kerajaan Negeri Selangor and another appeal [2018] 2 MLJ 322; [2018] 1 CLJ 258, CA (refd)
Taisho Co Sdn Bhd v Pan Global Equities Bhd & Anor [1999] 1 MLJ 359, CA (refd)
Yamaha Motor Co Ltd v Yamaha Malaysia Sdn Bhd & Ors [1983] 1 MLJ 213; [1983] CLJ Rep 428, FC (refd)

Legislation referred to

Contracts Act 1950 s 75
Rules of Court 2012 O 20, O 20 rr 1, 5

CH Ng (Tay Le & Co) for the plaintiff.
Justin Voon (Justin Voon Chooi & Wing) for the defendant.

Evrol Mariette Peters JC:

THIS APPEAL

[1] This is an appeal ('this appeal') by the appellant/defendant to this court against the decision of the learned sessions court judge ('SCJ') on 10 December 2019 dismissing the defendant's application to amend its defence under O 20 of the Rules of Court 2012 ('the Rules of Court'). For ease of reference, the appellant and respondent will be referred to respectively as the defendant and plaintiff.

[2] This appeal was dismissed for the following reasons.

THE BRIEF FACTS

[3] The plaintiff company and defendant company had entered into a sales and purchase agreement ('the SPA') on 31 December 2012, where the defendant had sold to the plaintiff, a property for the price of RM2,784,895 subject to the terms and conditions of the SPA.

[4] The defendant had failed to deliver vacant possession by 31 December 2015 in accordance with the SPA, and as a result thereof, the plaintiff filed an action for the sum of RM231,313.60 as liquidated agreed damages ('LAD') for late delivery of the property.

[5] On 19 December 2017, the defendant filed its defence, to which the plaintiff replied on 1 January 2018. Pleadings were closed on 16 January 2018.

[6] It was undisputed that the defendant was also sued by other purchasers of the same project ('the earlier suit'), an action which originated in the magistrate's court, and which had escalated to the Court of Appeal. The proceedings in the present action was stayed pending that appeal in the earlier suit. After that appeal was dismissed on 21 August 2019, the plaintiff, on 11 September 2019 filed an application for summary judgment. The decision for the application of the summary judgment was fixed for 26 November 2019, but on 27 September 2019, the defendant filed the application to amend, which was eventually dismissed on 10 December 2019.

THE APPLICABLE LAW

[7] The application to amend was made under O 20 r 5 of the Rules of Court 2012, which reads:

> Order 20 — Amendments
>
> Rule 5 Amendment of writ or pleading with leave
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> (1) Subject to Order 15, rules 6, 6A, 7 and 8 and the following provisions of this rule, the Court may at any stage of the proceedings allow the plaintiff to amend his writ, or any party to amend his pleading, on such terms as to costs or otherwise as may be just and in such a manner, if any, as it may direct.
>
> ...

[8] The judge has a discretion to allow an application to amend a pleading but such powers must be exercised judicially. The two leading cases on the principles applicable to applications to amend pleadings are *Yamaha Motor Co Ltd v Yamaha Malaysia Sdn Bhd & Ors* [1983] 1 MLJ 213; [1983] CLJ Rep 428, and *Hong Leong Finance Bhd v Low Thiam Hoe and another appeal* [2016] 1 MLJ 301; [2015] 8 CLJ 1.

[9] In the Federal Court case of *Yamaha Motor Co Ltd v Yamaha Malaysia Sdn Bhd & Ors* [1983] 1 MLJ 213; [1983] CLJ Rep 428, Mohd Azmi FCJ in delivering the judgment, stated the law as follows:

> The general principle is that the court will allow such amendments as will cause no injustice to the other parties. Three basic questions should be considered to determine whether injustice would or would not result, (a) whether the application is *bona fide*; (b) whether prejudice caused to the other side can be compensated by costs; and (c) whether the amendments would not in effect turn the suit from one character into a suit from one character into a suit of another and inconsistent character.

[10] On the issue of delay in filing an application to amend a pleading, the established principle is that the onus is on the applicant to furnish a reasonable explanation for such a delay, and that the failure to do so would result in the application being disallowed.

[11] Furthermore, the application to amend a pleading will also be disallowed if it is made as a tactical manoeuvre.

[12] Thus in the Federal Court case of *Hong Leong Finance Bhd v Low Thiam Hoe and another appeal* [2016] 1 MLJ 301; [2015] 8 CLJ 1, Zulkifli Ahmad Makinuddin CJ stated and applied the following principles:

> Having considered the facts and the circumstances of the present case, our views are as follows:
>
> (a) when dealing with an application to amend the pleadings, which introduce a new case in the claim or defence, on the eve of the trial, the principles in *Yamaha Motor* are not the sole considerations;
>
> (b) the principles in *Yamaha Motor* applies to cases where the application to amend the pleadings is made at an early stage of the proceedings;
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> (c) that there has to be a cogent and reasonable explanation in the applicant's affidavit as to why the application was filed late;
>
> (d) that the application to amend the pleadings is not a tactical manoeuvre;
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> (e) that the proposed amendment must disclose full particulars for the court to ascertain if there is a real prospect of success in proving the same; and
>
> (f) that lateness in the application to amend the pleadings cannot necessarily be compensated by payment of costs.

[13] It is established, therefore, that the Federal Court in *Hong Leong Finance Bhd v Low Thiam Hoe and another appeal* [2016] 1 MLJ 301; [2015] 8 CLJ 1 had displaced the principles enunciated in *Yamaha Motor Co Ltd v Yamaha (M) Sdn Bhd* on amendment of pleadings, if such application is made at a later stage of proceedings, making it imperative that the application to amend must be made at an early stage of the proceedings; and where the application is made at a later stage, there must be cogent and reasonable explanation for the delay.

CONTENTIONS, EVALUATION, AND FINDINGS

Whether the proposed amendments would change the substance and character of the original defence

[14] The defendant's initial defences were that the certificate of extension of time issued by the engineer was absolute, and that the late delivery was due to delay categorised under *force majeure* which was beyond the control of the

defendant. These were the same defences raised at the earlier suit, hence the stay of the proceedings in this claim, since the decision of the Court of Appeal would have had a bearing on the defences raised in this claim. However, after the Court of Appeal had dismissed the defendant's appeal in the earlier suit, the application to amend was filed, and the defendant had raised the following defences:

(a) that the plaintiff had no locus standi to commence and maintain the suit;

(b) that the plaintiff had failed to pay the quit rent and assessment, maintenance charges, and the deposit for water supply; and

(c) that the plaintiff's claim is subject to s 75 of the Contracts Act 1950.

[15] The learned SCJ took the view that the proposed amendments would change the character and substance of the original defence. In my view, she was correct in her finding as the defences in the proposed amendments were not pleaded in the original defence.

[16] What is also pertinent to note that the matters raised in the proposed defence were already available when the original defence dated 19 December 2017 was filed.

Whether the delay was satisfactorily explained

[17] The application to amend was filed on 27 September 2019, which was 21 months after the original defence was filed. From the records and minutes of the court proceedings, this was after 14 case managements held from 5 December 2017 until 11 September 2019. The reason given was that the defendant had changed solicitors.

[18] A perusal of the grounds of judgment indicated that the learned SCJ had taken this into consideration but found it unacceptable as the change of solicitors was done only after the decision of the Court of Appeal in the earlier suit which was unfavourable to the defendant. I agreed with the learned SCJ, that a change of solicitors cannot be an excuse for delay in filing an application, lest it be a tactic for indolent litigants to justify delay on their part.

[19] I am mindful that in O 20 r 1 of the Rules of Court, it is stated that the 'court may at any stage of the proceedings allow the plaintiff to amend his writ, or any party to amend his pleading', and as such, the defendant, in relying on the cases of *Bumiputra-Commerce Bank Berhad and others v Bumi Warna Indah Sdn Bhd* [2004] MLJU 529; [2004] 4 CLJ 825, *Abdul Johari bin Abdul Rahman v Lim How Chong & Ors* [1997] 1 MLJ 629, *Dato' Tan Heng Chew v*

Tan Kim Hor and another appeal [2009] 5 MLJ 790, *HSB Bank Malaysia Bhd v Macquarie Technologies (M) Sdn Bhd* [2004] 4 MLJ 398, *Mahan Singh v Government of Malaysia* [1973] 2 MLJ 149, and *Hong Leong Finance Bhd v Low Thiam Hoe and another appeal* [2016] 1 MLJ 301; [2015] 8 CLJ 1, contended that there was no delay to begin with, and that even if there was, that factor alone should have not been a ground for the learned SCJ to dismiss the application to amend.

[20] I am unable to agree with the contention of the defendant, bearing in mind that first and foremost, delay must be looked at contextually and not in isolation. The defendant argued that the issue of delay did not even arise since the trial dates were not scheduled. However, it must be borne in mind that the application to amend was made only after the plaintiff had filed its application for summary judgment.

[21] It is also pertinent to note that in the cases that the defendant had relied on, it was stated that delay alone is not a ground to refuse an application for leave to amend, *provided* no injustice or prejudice is suffered by the opposing party, and that the proposed amendments should not change the nature and character of the defence.

[22] In this case, the learned SCJ's decision was not based upon the issue of delay alone. She had specifically stated that the reason for the delay was unacceptable, as change of solicitors could not be an excuse in light of the fact that the Plaintiff had already filed an application for summary judgment, and that a date had been scheduled for its decision. Furthermore, it would be grossly unjust to the Plaintiff if the application to amend was allowed — an injustice which in my view could not have been compensated by costs.

[23] In this context, I found instructive and relevant, the case of *Ismail bin Ibrahim & Ors v Sum Poh Development Sdn Bhd & Anor* [1988] 3 MLJ 348, where an analogy can be drawn, as in that case, although trial dates had not been scheduled, the application to amend was disallowed as the same was found to be an attempt to circumvent the application to strike out the original writ and the statement of claim.

[24] The plaintiff's submission was that the timing of this application to amend, raised the issue of bona fides or lack thereof, and it was, therefore, a tactical manouevre to resist the application for summary judgment.

[25] Where there is delay in making an application to amend, the applicant must 'place some material and advance some cogent reasons to impel the court to lean on his side', failing which, the inference is that the 'application borders on lack of bona fides': per Haidar JCA in *Taisho Co Sdn Bhd v Pan Global*

Equities Bhd & Anor [1999] 1 MLJ 359 adopting the Singapore case of *Multi-Pak Singapore Pte Ltd (in receivership) v Intraco Ltd* [1993] 2 SLR 113.

[26] I found the defendant's reason for its delay unconvincing as it did not explain why the averments in the proposed amendments, were not mentioned in the original defence, bearing in mind that these facts were readily available at the time the original defence was filed.

[27] On this note, reference is again made to *Ismail bin Ibrahim & Ors v Sum Poh Development Sdn Bhd & Anor* where it was held that the circumstances in which an amendment would not be permitted are: (a) where the facts giving rise to the amendment were known at the time of the original pleading; and (b) where the delay in making the amendment was in connection with some tactical manoeuvre.

[28] The same concerns were expressed in *Lim Nyang Tak Michael v ACE Technologies Sdn Bhd* [1995] 4 MLJ 616, where in dismissing the defendant's application to amend the defence, the court held that if the defendant truly had a valid defence, it would not have waited, and the fact that it did, raised the inference that the application was a tactical manoeuvre and was done in bad faith to delay the rights of the plaintiff on his claim.

[29] Both *Ismail bin Ibrahim & Ors v Sum Poh Development Sdn Bhd & Anor* and *Lim Nyang Tak Michael v ACE Technologies Sdn Bhd* were approved and adopted by the court in *Jupiter Securities Sdn Bhd v Wan Yaakub bin Abd Rahman* [2002] 3 MLJ 264.

[30] Since the facts were already known to the defendant at the time the original defence was filed, coupled with the late filing of the application to amend, the irresistible inference is that filing of the application to amend was in relation to some tactical manoeuvre.

Whether the learned SCJ exercised discretion according to law

[31] The plaintiff had also contended that since this was an appeal, the court should be slow to intervene, since having a different view alone is insufficient ground, unless it can be shown that the learned SCJ had misunderstood and misapplied the law. I am mindful that whilst this appeal is by way of rehearing as emphasised by the defendant, it must be borne in mind that it is against the decision of the learned SCJ in the exercise of her discretion.

[32] On that note I found instructive the case of *ECM Libra Investment Bank Bhd v Foo Ai Meng & Ors* [2013] 3 MLJ 35; [2013] 1 LNS 99, where it was stated by Hamid Sultan Abu Backer J (now JCA):

After having given much consideration to the submission of the learned counsel for the appellant, we take the view that the appeal must be dismissed. Our reasons, inter alia, are as follows:

(a) it is well settled that the appellate court will not ordinarily interfere with the exercise of discretion of a trial court in relation to procedural and/or interlocutory matters (see *Gary v Garrett* [1878] Ch D 473);

(b) the appeal relates to an interlocutory procedural order and exercise of discretion. It is well settled that in an appeal against the exercise of discretion by a judge, the initial function of the appellate court is one of review only, there being no original discretion vested in the appellate court. It is for the appellant to demonstrate that an error in the exercise of discretion has indeed occurred and it is also one of the categories of cases where appellate interference is warranted (see *Wah Bee Construction Engineering v Pembenaan Fungsi Baik Sdn Bhd* [1996] 3 CLJ 858; *Majlis Peguam Malaysia & Ors v Raja Segaran a/l Krishnan* [2002] 3 MLJ 155).

[33] Reference is made also to *Suruhanjaya Pilihan Raya & Ors v Kerajaan Negeri Selangor and another appeal* [2018] 2 MLJ 322; [2018] 1 CLJ 258, where it was stated by Abdul Rahman Sebli JCA (now FCJ):

[96] The correct approach to be adopted by an appellate court in dealing with the exercise of such discretion has been explained by Lord Guest delivering the judgment of the Privy Council in *Ratnam v Cumarasamy & Anor* [1965] 1 MLJ 228; [1964] 1 LNS 237, a decision on appeal from Malaysia, in the following terms at p 229:

> The principles upon which a court will act in reviewing the discretion exercised by a lower court are well settled. There is a presumption that the judge has rightly exercised his discretion (*Charles Osenton & Co v Johnston* per Lord Wright at p 148). The court will not interfere unless it is clearly satisfied that the discretion has been exercised on a wrong principle and should have been exercised in a contrary way or that there has been a miscarriage of justice (*Evans v Bartlam*).

[97] There are, therefore, two situations where the exercise of the discretion can be assailed on appeal:

(a) where the discretion has been exercised on a wrong principle and should have been exercised in a contrary way; or

(b) where there has been a miscarriage of justice occasioned by the exercise of the discretion.

[98] Other than these two situations, the exercise of the discretion must not ordinarily be disturbed on appeal as the presumption is that the judge has rightly exercised his discretion.

[34] I was guided also by the cases of *Nanyang Development (1966) Sdn Bhd v Malaysian Armed Forces Co-operative Housing Society Ltd* [1972] 2 MLJ 149, *New Zealand Insurance Co Ltd v Ong Choon Lin (t/a Syarikat Federal Motor*

Trading) [1992] 1 MLJ 185 as referred to by the plaintiff.

[35] It was highlighted by the defendant, based on the case of *Ketteman & Ors v Hansel Properties Ltd & Ors* [1987] 1 AC 189 adopted by the Court of Appeal in *Dato' Tan Heng Chew v Tan Kim Hor and another appeal* that 'it is not the function of the court to punish parties for mistakes which they have made in the conduct of their cases by deciding otherwise than in accordance with their rights'.

[36] Although that may be the case, I have to remind the defendant that in the very same case it was also stated by Lord Griffiths:

> Whether an amendment should be granted is a matter for the discretion of the trial judge and he should be guided in the exercise of the discretion by his assessment of where justice lies. Many and diverse factors will bear upon the exercise of this discretion. I do not think it possible to enumerate them all or wise to attempt to do so. But justice cannot always be measured in terms of money and in my view a judge is entitled to weigh in the balance the strain the litigation imposes on litigants, particularly if they are personal litigants rather than business corporations, the anxieties occasioned by facing new issues, the raising of false hopes, and the legitimate expectation that the trial will determine the issues one way or the other.

[37] It must be remembered, therefore, that justice is a commodity for all, and not just for one, or the other. In this case, the defendant was not penalised, but the fact and circumstances of the case do not justify amendments at this stage of the proceedings. As such, and based on the reasoning and evaluation of the learned SCJ, I am of the view that she had exercised her discretion in accordance with the law and there was absolutely no ground for intervention.

CONCLUSION

[38] In the upshot, based on the aforesaid reasons, and after careful scrutiny of all the evidence before this court, both oral and documentary, including submissions of counsel for both parties, and the grounds of judgment of the learned SCJ, this appeal was dismissed with costs in the sum of RM1,500 (subject to allocatur fees).

Appeal dismissed with costs of RM1,500 subject to allocatur fees.

Reported by Izzat Fauzan