

**IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR  
(CIVIL DIVISION)**

**ORIGINATING SUMMONS NO. 24FC-1312-10/2014**

**BETWEEN**

**ALLIANCE BANK MALAYSIA BERHAD ... PLAINTIFF**

**AND**

**AMROU BAKOUR ... DEFENDANT**

**GROUND OF JUDGMENT**

**ENCLOSURE 1**

1. This is the Originating Summons (“OS”) (“Application”) filed on 27.10.2014 by the Plaintiff against the Defendant for, inter alia, an Order for sale by public auction of the property held under Strata Title Geran No. 65442, No. Bangunan M1, No. Tingkat 7, No. Petak 19, No. Lot 323, Seksyen 89A, Kuala Lumpur (“Property”) for settlement of the total amount owed by the Defendant to the Plaintiff i.e. RM3,168,748.95 as on 27.10.2014 together with interest at 4% per annum + Base Lending Rate (“BLR”) from the date of default of payment until full realization pursuant to the Charge and annexure that was registered on 19.3.2012 under Presentation no. 8398/2012 (“Charge”).

## **BACKGROUND**

2. When the OS first came up for Hearing before the learned Senior Assistant Registrar (“SAR”) on 28.11.2014, the Defendant was absent. No Affidavit in Reply (“AIR”) to the Plaintiff’s Affidavit in Support (“AIS”) (encl. 2) and Plaintiff’s Affidavit Tambahan (enclosure 3) was filed by the Defendant. The two Affidavits of service by the Plaintiff (enclosures 4 and 5) prove that the Defendant was served with the OS and enclosures 2 and 3 on 13.11.2014 and 19.11.2014 respectively. The SAR granted the Plaintiff an Order in terms of enclosure 1.

3. On 24.4.2015, I allowed the Defendant’s Application (enclosure 10) to set aside the SAR’s Order dated 28.11.2014. The Defendant was represented by his Solicitor, Mr. Pramjit Singh of Messrs Harjit Sandhu, Wan & Associates. Mr. Pramjit informed the Court that the Defendant needed 2 weeks to file his AIR since he is a pilot. I then made the following Orders regarding enclosure 1:

Defendant’s AIR to be filed on/before 8.5.2015;

Plaintiff’s AIR to be filed on/before 22.5.2015;

Skeletal Submissions of both parties to be filed on/before 5.6.2015.

4. I fixed enclosure 1 for Hearing before me on 18.6.2015.

## **HEARING ON 18.6.2015**

5. When the matter came up for Hearing on 18.6.2015, Mr. Pramjit was present to represent the Defendant. On record, the Defendant had not filed any AIR or written Skeletal Submissions as ordered by the Court on 24.4.2015.

6. The Plaintiff had filed its Skeletal Submissions.
7. Mr. Pramjit apologised to the Court. He stated that he had written to the Court a letter dated 15.6.2015 to inform the Court that the Defendant is a citizen of Syria, and since April 2015, the Defendant has gone back due to a family emergency. He could not contact the Defendant, and asked for an adjournment. He stated that the Defendant only forwarded him his Affidavit on the evening of the day before the Hearing. Mr. Pramjit asked for an adjournment and undertook to file the Defendant's AIR that same day and serve it on the Plaintiff.
8. Counsel for the Plaintiff objected to the Defendant's application for adjournment. Since the Defendant did not file his AIR and written Submissions, and whereas the Plaintiff had filed its Submissions, Counsel for the Plaintiff asked for an Order in terms of enclosure 1.
9. I was of the view that on 24.4.2015 the Defendant was already given a second chance to defend this action when the Court allowed his Application to set aside the SAR's Order dated 28.11.2014. The Defendant should appreciate this opportunity and should have been diligent to comply with the Court's directions to file his AIR and Skeletal Submissions by the dates given. Notwithstanding the fact that the Defendant is a pilot from Syria, and has personal issues, it is obvious that the Defendant did not take the Court's directions seriously. It is highly improbable that Mr. Pramjit could not contact the Defendant in this electronic age where communication can be effected instantaneously by telephone, facsimile, email, short message system (SMS), Whatsapp and other modes of electronic

communication. By the fact that the Defendant could send to his Counsel his AIR on the evening of 17.6.2015 it shows that the Defendant is contactable. It is fair to conclude that both the Defendant and his Counsel had taken the Court lightly and expected an eleventh hour oral application for adjournment without any documentary proof of the Defendant's family emergency, the Defendant's whereabouts, and all attempts made by the Defendant's Counsel to communicate with the Defendant.

10. Justice means not only being fair to the Defendant, but also to the Plaintiff. The Plaintiff had done did its part diligently and its papers were all in order. The Defendant was given extended time by the Court to file his AIR by 3 p.m. of 16.6.2015, but he failed to do so. I therefore saw no good reason to postpone the Hearing.
11. Counsel for the Plaintiff informed the Court that the Statement of Account (tendered) shows the Defendant's indebtedness to the Plaintiff amounting to RM3,492,114.49.
12. I required Counsel for the Plaintiff to file an Affidavit on the outstanding sum due to the Plaintiff as on 18.6.2015. I granted interlocutory judgment against the Defendant and then fixed continued Hearing on 30.6.2015.

### **HEARING ON 30.6.2015**

13. On 30.6.2015 both Counsels were present.

14. I considered the Plaintiff's Affidavit Tambahan (enclosure 21) which exhibited the Statement of Account showing the outstanding sum owed by the Defendant as on 18.6.2015 being RM3,492,114.49.
15. Upon considering enclosure 1, the Plaintiff's AIS, and the Plaintiff's Affidavit Tambahan including enclosure 21, I was satisfied that the Plaintiff has proved its claim against the Defendant.
16. The Court then proceeded to grant final Judgment to the Plaintiff as per the prayers in enclosure 1 for the sum owed i.e. RM3,492,114.49 and interest at 4% per annum + BLR and penalty interest on the arrears amount as prayed (see enclosures 1, 2 and 21). I ordered costs of RM2,000.00 to be paid by the Defendant to the Plaintiff. I further ordered that the date for public auction of the Property be on 29.10.2015.

Dated 3 August 2015

**-sgd-**  
**( DATUK YEOH WEE SIAM )**  
Judge  
Civil Division  
High Court, Malaya, Kuala Lumpur

Counsel/Solicitors for the Plaintiff

Ms Nurul Hazreen Binti Ahmad Kamal  
Messrs Ong & Co.

Counsel/Solicitors for the Defendant

Mr. Pramjit Singh  
Messrs Harjit Sandhu, Wan & Associates