

**IN THE HIGH COURT OF MALAYA IN SHAH ALAM  
IN THE STATE OF SELANGOR DARUL EHSAN, MALAYSIA  
SUMMONS WRIT NO: 22-753-2005**

**BETWEEN**

**WING FAH ENTERPRISE SDN BHD**

**... PLAINTIFF**

**AND**

**MATSUSHITA ELECTRONIC COMPONENTS (M) SDN BHD**

**... DEFENDANT**

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**CORUM:**

**Y.A. DATO' HAJI AKHTAR BIN TAHIR**

**JUDGE**

**HIGH COURT OF MALAYA**

**SHAH ALAM, SELANGOR DARUL EHSAN**

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**APPELLANTS / PLAINTIFF'S  
COUNSELS**

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**GROUND OF JUDGMENT**

**The background**

1. The Plaintiff's claim against the Defendant stemmed from a breach of contract to supply 'besi-besi hancur' ("the said goods") by the Defendant to the Plaintiff for a period of 3 years.

2. The Defendant had supplied the said goods to the Plaintiff for a period of 6 months from July to December 2004 but stopped further supplies from January 2005. The Defendant stopped the supply of the goods on the allegation that the Plaintiff had no license to sell the said goods.
  
3. The High Court had dismissed the Plaintiff's claim against the Defendant prompting the Plaintiff to appeal to the Court of Appeal. The Court of Appeal allowed the Plaintiff's appeal against the Defendant and set aside the High Court decision.
  
4. The Court of Appeal further decided that the termination of contract by the Defendant was not valid and therefore amounted to a breach of contract. The Plaintiff was entitled to damages for the breach. The case was then remitted to the High Court for the assessment of damages.

5. The Senior Assistant Registrar (SAR) who conducted the hearing of the assessment decided that the Plaintiff had failed to prove actual loss and therefore were entitled to only nominal damages.
  
6. The Plaintiff then filed an appeal against the decision of the SAR to the Judge in Chambers.

### **The decision of the SAR**

7. At the trial for the assessment of damages the Plaintiff called 1 witness whereas the Defendant called 2 witnesses.
  
8. The Plaintiff's witness had submitted a schedule showing a loss of profit. The data for determining the loss was taken from the website of the London metal Exchange ("LME") and the calculation was based on the exchange rate of the USD against the Malaysian ringgit.

9. The Defendant objected to the admissibility of this documents produced by the Plaintiff's witness. The documents produced by the Plaintiff contained information as to the price of the iron and other information related to iron.
10. The Plaintiff sought to admit the documents as computer generated documents under section 90A of the Evidence Act and produced a certificate under section 90A of the Evidence Act.
11. The learned SAR decided against admitting the Plaintiff's document the main reason being that the documents were of no value based on the Plaintiff's witness own admission that he had no personal knowledge of the data stated on the documents nor he himself could throw any light on the accuracy of the data.
12. The learned SAR further decided that assessment of damages must be based on section 74 of the Contract's Act 1950 wherein the actual loss must be proved. In this case even if the contents of the

documents of the Plaintiff were to be taken into account the Plaintiff has only shown projected loss rather than actual loss.

13. It was the decision of the learned SAR that since the Plaintiff had failed to prove actual loss but taking into account the decision of the Court of Appeal that the Defendant had breached the agreement, the Plaintiff was still entitled to damages. The damages the Plaintiff was however entitled to were only nominal damages. This was decided in the case **Popular Industries Limited V Eastern Garment Manufacturing Sdn Bhd [1989] 3 MLJ 360** and **Malaysian Rubber Development Corporation Bhd V Glove Seal Sdn Bhd [1194] 3 MLJ**.
  
14. Following the guidelines in the above cases the learned SAR dismissed the Plaintiff's claim for RM 23, 811, 679.03 and allowed nominal damages of RM100, 000.

## The decision on appeal

15. On the admissibility of the Plaintiff's documents the learned SAR was absolutely right in disallowing the admissibility of the documents and giving very little weight to the contents of the document.
  
16. It should be noted that the Plaintiff's reliance on section 90 A of the Evidence Act is totally misconceived and erroneous. For purpose of clarity the provisions of section 90A of the Evidence Act are set out here in full:

***(1) In any criminal or civil proceeding a document produced by a computer, or a statement contained in such document, shall be admissible as evidence of any fact stated therein if the document was produced by the computer in the course of its ordinary use, whether or not the person tendering the same is the maker of such document or statement. (Emphasis mine)***

***(2) For the purposes of this section it may be proved that a document was produced by a computer in the course of its ordinary use by tendering to the court a certificate signed by a person who either before or after the production of the document by the computer is responsible for the management of the operation of that computer, or for the conduct of the activities for which that computer was used.***

***(3)(a) It shall be sufficient, in a certificate given under subsection (2), for a matter to be stated to the best of the knowledge and belief of the person stating it.***

***(b) A certificate given under subsection (2) shall be admissible in evidence as prima facie proof of all matters stated in it without proof of signature of the person who gave the certificate.***

***(4) Where a certificate is given under subsection (2), it shall be presumed that the computer referred to in the certificate was in***

***good working order and was operating properly in all respects throughout the material part of the period during which the document was produced.***

***(5) A document shall be deemed to have been produced by a computer whether it was produced by it directly or by means of any appropriate equipment, and whether or not there was any direct or indirect human intervention.***

***(6) A document produced by a computer, or a statement contained in such document, shall be admissible in evidence whether or not it was produced by the computer after the commencement of the criminal or civil proceeding or after the commencement of any investigation or inquiry, in relation to the criminal or civil proceeding or such investigation or inquiry, and any document so produced by a computer shall be deemed to be produced by the computer in the course of its ordinary use.***

*(7) Notwithstanding anything contained in this section, a document produced by a computer, or a statement contained in such document, shall not be admissible in evidence in any criminal proceeding, where it is given in evidence by or on behalf of the person who is charged with an offence in such proceeding the person so charged with the offence being a person who was-*

*(a) responsible for the management of the operation of that computer or for the conduct of the activities for which that computer was used; or*

*(b) in any manner or to any extent involved, directly or indirectly, in the production of the document by the computer.*

*[90A. Ins. Act [A851:s.9](#)]*

17. It is clear from the above provision that the computer producing the document must be a computer in the course of its ordinary use. This refers to **dedicated** computers kept in organizations to do a certain

function of general purport. This provision would cover for instance computers producing receipts on payments. In the present case the Plaintiff's computers keeping details of accounts for instance would be covered by this provision. The production of the account sheets of the company from this computer would therefore be admissible under this provision. However information downloaded from the internet in no way form the ordinary use for the Plaintiff's computers. Anyone can download information from the internet including on personal computers. It would be illogical to suggest that the above provision was enacted to allow admissibility of documents downloaded from the internet.

18. In this case the Plaintiff could have easily proven actual loss by producing their account sheet detailing out the sale of the said goods and the profit made from such sale. It is to be noted that the Defendant did supply the said goods to the Plaintiff for 6 months. There is no evidence led by the Plaintiff to show the profits received from the sale of the said goods. These figures could have formed a

basis to calculate the actual loss of profit for the remainder of the period contracted for.

19. The learned SAR was therefore clearly right in dismissing the amount the Plaintiff's claimed for and only allowing nominal damages.

20. In the upshot I dismissed the Plaintiff's claim with a cost of RM5, 000.

**Dated: 08 AUGUST 2016**

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**(DATO' HAJI AKHTAR BIN TAHIR)**  
**Judge**  
**High Court of Malaya**  
**Shah Alam, Selangor Darul Ehsan**

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**COUNSELS**

**En. Oh Teik Keng bersama**

**Cik Kabina Levan**

**Tetuan Oh Teik Keng & Partners**

**... for the Appellant/Plaintiff**

**Dato Imran Arifin bersama**

**En. Eddie Chua**

**Tetuan Wong & Partner**

**... the Respondent / Defendant**

