

THE COURT OF APPEAL OF MALAYSIA
(APPELLATE JURISDICTION)
CIVIL APPEAL NO: W-02(IM)(IPCV)-1261-07/2017

BETWEEN

LA KAFFA INTERNATIONAL CO. LTD. ... APPELLANT

AND

LOOB HOLDING SDN BHD ... RESPONDENT
(Company No.: 9055299-P)

IN THE MATTER OF ORIGINATING SUMMONS
NO: WA-24IP-3-02/2017 IN THE HIGH COURT OF
MALAYA IN KUALA LUMPUR

Between

La Kaffa International Co. Ltd ... Plaintiff

AND

Loob Holding Sdn Bhd ... Defendant
(Company No.: 9055299-P)

CORAM:

Hamid Sultan bin Abu Backer, JCA
Badariah binti Sahamid, JCA
Rhodzariah binti Bujang, JCA

GROUND OF JUDGMENT (DISSENTING)

(1) On the 27/6/2018, YA Datuk Dr Haji Hamid Sultan bin Abu Backer, and YA Datuk Dr Badariah binti Sahamid and I delivered a unanimous decision granting a prohibitory injunction against the respondent for operating its drink stall business under the name “Tealive’ which was in direct competition with that operated by the appellant under the name ‘Chatime’. The respondent was the appellant’s former franchise holder of the said Chatime business. The respondent had applied to stay that prohibitory order pending its leave to appeal against the court’s decision to the Federal Court which was allowed by YA Datuk Dr Haji Hamid Sultan bin Abu Backer and YA Datuk Dr. Badariah binti Sahamid but which I respectfully disagreed. My reasons for doing so are these :

- (i) In my considered view there is indeed a special circumstance as envisaged by the Federal Court in **Kosma Palm Oil Mill Sdn Bhd & ors v Koperasi Serbausaha Makmur Bhd** (2009) 4 CLJ 1 for allowing an interim stay and that is the undisputed fact that if the injunction is not stayed pending the leave application, all 179 outlets of Tealive in Malaysia would have to cease operation and all 1171 of the respondent’s

employees working with Tealive would be out of jobs. This scenario is not just a mere “fear of losing business, customers, suppliers and goodwill” as stated by this court in **Ming Ann Holdings Sdn Bhd v Danaharta Urus Sdn Bhd** (2002) 3 CLJ 380 but a real ramification from disallowing the stay. The hardship and inconvenience, in other words, will not just be suffered by the respondent being the wrongdoer as found by this court and which should not be a valid consideration for granting a stay but to innocent third parties – its employees and their families which numbered more than a thousand. This includes the owners of the premises where Tealive operates and with whom the respondent had entered tenancy agreements with.

- (ii) There would be no prejudice to the appellant if stay is granted because the transgression of its right by the respondents would adequately be compensated by damages. Infact the High Court had already ordered the respondent to affirm an affidavit every month to state the amount of gross monthly sales from Tealive and if the appellant wins in the arbitration

proceeding still pending in Singapore between the parties, all profits from the Tealive business would go to the appellant.

- (iii) The full grounds of judgment of this court by YA Datuk Hamid Sultan bin Abu Backer was ready at the time of its delivery and therefore there would not be any delay in the hearing of the motion for leave. So the interim stay would very likely be for a relatively short period but yet the hardship and inconvenience caused to these innocent third parties, particularly the employees and their families, would simply be too great.

(2) In saying all of the above, I am fully aware that at the time of the hearing of this application, the respondent has yet to file their motion for leave to appeal in the Federal Court but I could not hold that fact against them because when the decision was delivered on 27/6/2018, the respondents was directed to file this application for stay (if it so wished) within two days from the said date and we also fixed a date for its hearing, that is 4/7/2018. An extract from the court management system of the summary of the court proceeding on 27/6/2018 is reproduced below.

Date/Proceeding Type	Minute	Result	Method of Disposal
27 Jun 2018 Keputusan	<p>KORAM:</p> <p>YA DATUK DR HAJI HAMID SULTAN BIN ABU BACKER, HMR</p> <p>YA DATUK DR BADARIAH BINTI SAHAMID, HMR</p> <p>YA DATO RHODZARIAH BINTI BUJANG, HMR</p> <p>Case is fixed for decision.</p> <p>KES BERKAITAN RAYUAN NO. W-02(IM)(IPCV)-1275-07/2017</p>	<p>Decision (Unanimous).</p> <p>Appeal 1261 is allowed under prayer 1(a), 1(b) and 1(c) of the application. The High Court's order is varied to include these prayers.</p> <p>Appeal 1275 is dismissed. Costs of RM 30,000 here and below for both appeals subject to allocator. Deposits to be refunded.</p> <p>If the respondent/Loob wishes to file a motion for stay, the respondent/Loob is given 2 days to file in the motion and the other 2 days for the appellant/La Kaffa to reply to that motion. The hearing of the motion is fixed on 4.7.2018.</p>	Rayuan Dibenarkan

Therefore the respondent was merely following the directive given and the timelines set by the court in filing the application for stay of the court order.

(3) Thus, in these circumstances I would allow the interim stay as prayed for but it is of course conditional upon the filing of the motion for leave to appeal to the Federal Court.

Date : 5 July 2018

signed

RHODZARIAH BINTI BUJANG

Judge

Court of Appeal

Malaysia

Note : This copy of the Court's Grounds of Judgment is subject to editorial revision.

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