**IN THE HIGH COURT OF MALAYA AT KUALA LUMPUR**

**(COMMERCIAL DIVISION)**

**[SUIT NO.: WA-22NCC-516-11/2021]**

BETWEEN

**P2 ASSET MANAGEMENT SDN BHD**

**[Company No.: 202001035410 (1391731-T)] …PLAINTIFF**

AND

**1. ENTOMO MALAYSIA SDN BHD**
**(formerly KPISOFT MALAYSIA SDN BHD)**
**[Company No.: 200501018559 (700674-U)]**

**2. REVOLUSI ASIA SDN BHD**
**[Company No.: 202001028452 (1384772-D)]**

**3. MYSJ SDN BHD**
**[Company No.: 202001029525 (1385845-M)] …DEFENDANTS**

## GROUNDS OF JUDGMENT

### Introduction

[1] This Grounds of Judgment concerns three (3) applications filed by the Defendants –

i) Encl. 7: the 3rd Defendant's application to strike out the Statement of Claim ("**SOC**") filed on 24.11.2021 (hereinafter referred to as "**the Original SOC**") as documented in Encl. 2 pursuant to Order 18, rule 19(1)(a) of the Rules of Court 2012 ("**the Rules**") (hereinafter referred to as "**the Striking Out Application**");

ii) Encl. 16: the 3rd Defendant's application pursuant to Order 20 rule 4 of the Rules to disallow the amendments in the Amended SOC filed on 22.1.2022 as documented in Encl. 12 ("**the Amended SOC**") which were made without leave pursuant to Order 20 rule 3 of the Rules; and

iii) Encl. 19: the 1st Defendant's application to strike out/set aside the Amended SOC pursuant to Order 20 rule 4 of the Rules.

**Background facts**

[2] It was pleaded by the Plaintiff that at all material times prior to September 2020, the 1st Defendant has used its software to develop the mobile application known as 'MySejahtera' ("**the App**") on a corporate-social-responsibility basis, to assist the nation's combat against Covid-19.

[3] The App has achieved great success, and the 1st Defendant no longer wanted to offer the App on a corporate-social-responsibility basis, and intended to make business profit out of it. To that end:

[3.1] on 17.9.2020, the 2nd Defendant was incorporated. On 20.9.2020, the 1st Defendant and the 2nd Defendant entered into a Nominee Agreement;

[3.2] on 23.9.2020, the 3rd Defendant was incorporated. The 3rd Defendant would be the special vehicle for the commercialisation of the App –

[3.2.1] the 2nd Defendant owned all the shares in the 3rd Defendant. By reason of the Nominee Agreement, the 2nd Defendant held all these shares as the 1st Defendant's nominee; and

[3.2.2] on 6.10.2020, the 1st and the 3rd Defendants entered into a License Agreement, whereby inter alia, the 1st Defendant would transfer the intellectual property of the App to the 3rd Defendant and would grant the 3rd Defendant the license for the software. The intellectual property and/or license is the foundation of MYSJ's worth as a special vehicle.

[4] On 31.12.2020, the 2nd Defendant and the Plaintiff entered into a share sale agreement ("**SSA**"), where the 2nd Defendant would sell certain amount of shares in the 3rd Defendant to the Plaintiff. The existence of the Nominee Agreement was not made known to the Plaintiff. On the contrary, it was represented to the Plaintiff that the 2nd Defendant was the legal and beneficial owner of 100% of the shares in the 3rd Defendant. The existence of the Nominee

Agreement was discovered by the Plaintiff much later, circa September 2021.

[5] On 21.5.2021, the government issued a letter agreeing to enter into a service contract with the 3rd Defendant for the continued use of the App ("**May 2021 Letter**"). In this action, the Plaintiff takes the position that the May 2021 Letter constitutes the Letter of Award ("**LOA**") as defined by the SSA. In this regard, it is not disputed that all the Defendants, including the 3rd Defendant, have refused and/or failed to accept and acknowledge the May 2021 Letter as the LOA. Further to the above, no Addendum was executed by the 1st and the 3rd Defendants to date.

[6] On or about 7.9.2021, the 2nd Defendant suddenly issued a notice purporting to terminate the SSA based on the allegation that the Plaintiff had breached its contractual obligation by failing to obtain the LOA.

[7] On 24.11.2021, the Plaintiff initiated this action against the Defendants based on breach of contract, tort of inducement of breach of contract and tort of conspiracy.

[8] On 24.12.2021, the 3rd Defendant filed the Striking Out Application to strike out the Original SOC on the grounds that the Plaintiff has no cause of action against the 3rd Defendant and had not plead the same in the SOC.

[9] On 22.1.2022, the Amended SOC was filed by the Plaintiff without leave of the Court pursuant to Order 20 rule 3 of the Rules. The filing

of the Amended SOC was strenuously objected by the 1st and the 3rd Defendants which had subsequently filed encls. 16 and 19.

**Applications to disallow the amendments in the Amended SOC / to strike out the Amended SOC - Encls. 16 and 19**

[10] In Encl.16, the 3rd Defendant seeks the following prayers, *inter alia*:

i. the Plaintiff's amendments under Order 20 rule 3 to add paragraphs 35a, 35a.1, 35a.2, 35a.3, 35a.4, 35a.4.1, 35a.4.2, 35a.5, 35a.6, 38(DA), 38(DB), 38(I)(v) in Encl. 12 be disallowed and/ or struck out; and

ii. the Plaintiff's amendments under Order 20 rule 3 in paragraphs 36 and 37 be disallowed and/ or struck out and paragraphs 36 and 37 be restored as it was before being amended.

[11] In Encl.19, the 1st Defendant seeks the following prayers :

(a) the Plaintiff's amendments in Encl. 12 be struck out and/ or set aside; and

(b) the Plaintiff is directed to refile its original SOC dated 24.11.2021 ("**the Original SOC**").

[12] In Encl. 16, the 3rd Defendant raised the following grounds:

(a) the amendment to the SOC is made as a tactical manoeuvre and made in bad faith to thwart the 3rd Defendant's application to strike out in Encl. 7;

(b) the amendment to the SOC is an abuse of court process;

(c) the amendment to the SOC changes the character of the Plaintiff's suit; and

(d) the 3rd Defendant is prejudiced by the amendment to the SOC which cannot be compensated with costs.

[13] In Encl. 19, the 1st Defendant submitted that the Amended SOC introduces -

(a) new facts against the 1st Defendant;

(b) new cause of action, i.e. breach of contract against the 1st Defendant; and

(c) new reliefs against the 1st Defendant.

**Analysis on Encls. 16 and 19**

[14] The following analysis will address the issues raised in both applications.

*Whether the amendment is to be disallowed*

The law on opposing amendments

[15] The application is made based on Order 20 rule 4 which reads:

> "**4. Application for disallowance of amendment made without leave (O. 20 r. 4)**
>
> (1) Within fourteen days after the service on a party of a writ amended under rule 1(1) or of a pleading amended under rule 3(1), that party may apply to the Court to disallow the amendment.
>
> (2) Where the Court hearing an application under this rule is satisfied that if an application for leave to make the amendment in question had been made under rule 5 at the date when the amendment was made under rule 1(1) or rule 3(1) leave to make the amendment or part of the amendment would have been refused, it shall order the amendment or that part to be struck out.
>
> (3) Any order made on an application under this rule may be made on such terms as to costs or otherwise as the Court thinks just."

[16] In the case of ***Bukit Waha Quarry Sdn Bhd v Teguh Permata Sdn Bhd [2000] 7 MLJ 396***, Malik Ishak J held that in deciding whether to disallow amendments, the court would use the same approach as if it was an application for an amendment of pleadings.

[17] The burden however, falls on the party opposing the said amendments to show why the said amendments ought not to be granted.

[18] This is consistent with Order 20 rule 4(2) of the Rules where it reads:

> "**4. Application for disallowance of amendment made without leave (O. 20 r. 4)**
>
> (1) …
>
> (2) Where the Court hearing an application under this rule is satisfied that if an application for leave to make the amendment in question had been made under rule 5 at the date when the amendment was made under rule 1(1) or rule 3(1) leave to make the amendment or part of the amendment would have been refused, it shall order the amendment or that part to be struck out.".

[19] As such, principles laid down in the seminal cases of ***Yamaha Motors Co Ltd v Yamaha Malaysia Sdn Bhd & Ors [1983] 1 MLJ 213***, ***Hong Leong Finance v Low Thiam Hoe and another appeal [2016] 1 MLJ 301*** and the cases that follows the principles therein applies.

[20] In essence, the Federal Court in ***Yamaha Motors*** held that the court will allow amendments if no injustice is caused to the other parties. The considerations that must be factored in are:

(i) whether the application is bona fide;

(ii) whether the prejudice caused to the other side can be compensated by costs; and

(iii) whether the amendments would not in effect turn the suit from one character into a suit of another and inconsistent character.

[21] If the answers are in the affirmative, an application for amendment should be allowed at any stage of the proceedings particularly before trial, even if the effect of the amendment would be to add or substitute a new cause of action, provided the new cause of action arises out of the same facts or substantially the same facts as at cause of action in respect of which relief has already been claimed in the original statement of claim.

[22] The Court of Appeal in ***Skrine & Co v MBF Capital Bhd & Anor [1998] 3 MLJ 649*** expanded the principles and held:

> *"... First, all such amendments should be made as are necessary* ***to enable the real questions in controversy between the parties to be decided.*** *Secondly, amendments should not be refused solely because they have been made necessary by the honest fault or mistake of the party applying for leave to make them:* ***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****. Thirdly, however blameworthy (short of bad faith) a proposed amendment earlier, and however late the application for leave to make such amendment may have been,* ***the application should, in general, be allowed, provided that allowing it will not prejudice the other party****. Fourthly, there is no injustice to the other party if he can be compensated by appropriate orders as to costs.*
>
> (Emphasis added)

[23] The issue of whether a court must allow pleadings to be amended in order to save it from being struck out was discussed by the Court of Appeal in ***Shahidan Shafie v Atlan Holding Bhd & Other Appeals [2005] 3 CLJ 793***. The Court in allowing for the amendment held:

> *"The court has a discretion to exercise on the facts of each case whether the particular pleading ought to be struck out as disclosing no cause of action or ordered to be amended.* ***It is only when the court is satisfied that no amendment could possibly save it ought a pleading to be struck out****".*
>
> (Emphasis added)

[24] The Court of Appeal went on to state as follows:

> *"Lastly, there is* ***Muniandy s/o Subravan & Ors v The Chairman & Board Members of Koperasi Menara Maju Bhd [1997] 1 MLJ 557****. which is a decision of this Court. In that case, the High Court had struck out a statement of claim on the ground that certain statutory compliance had not been pleaded by the plaintiff. On appeal Shankar JCA said this:*
>
> > *"With all due respect to the trial judge, if he thought that it was imperative that the statement of claim should plead compliance, (notwithstanding that the fact of compliance was already on record by way of an agreed document),* ***he should have directed that the claim be amended. Striking out pleadings under O 18 r 19 of the Rules of High Court 1980 is a discretionary power to be exercised according to the justice of the case****."*
> >
> > (Emphasis added)

Duty of this Court

[25] To begin with, it is important for this Court to remind itself that this is not an amendment application. It is an application to disallow an amendment. As stated in ***Bukit Waha Quarry Sdn Bhd*** (*supra*), the same principles found in amendment of pleadings apply. However, the duty is on the Defendants to show why it should not be allowed.

[26] Firstly, whether the application is bona fide must be weighed in the context of the Plaintiff's right to make the amendments without leave. This is pursuant to Order 20 rule 3.

[27] Hence, if the Plaintiff is allowed under the Rules to make one amendment, it cannot be said the amendment was not bona fide. Otherwise, Order 20 rule 3 will be otiose.

[28] To the mind of this Court, only when there are amendments are made beyond Order 20 rule 3 should the argument of bona fide arise. Even then, it is incumbent upon the Court to assess whether the amendment should be granted.

[29] Interestingly, the 3rd Defendant raised the argument of bad faith in relation to the conduct of the Plaintiff in filing the application to amend the SOC on the last day when submissions were supposed to be filed in the striking out application documented under Encl.7. While there were lengthy submissions relating to this point made by both parties, it is the view of this Court that such belated conduct without more, is not bad faith.

[30] No matter how blameworthy the Plaintiff was, it does not equate to bad faith. Bad faith must connote some form of malicious or intentional dishonest act.

[31] As ruled in ***Skrine***, amendments should not be refused solely because they have been made necessary by the honest fault or mistake of the party applying for leave to make them. 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.

[32] In opposing the amendments, the Defendants also labeled the Plaintiff's action SOC as a tactical manoeuvre. The phrase "tactical manoeuvre" has its origins from the High Court decision in ***Ismail bin Ibrahim & Ors. V. Sum Poh Development Sdn. Bhd. & Anor [1988] 3 MLJ 348***.

[33] ***Ismail bin Ibrahim*** can be distinguished because the amendment application there sought to add an allegation of fraud after considerable delay. Further, a reading of ***Ismail bin Ibrahim*** would show that the court there found that the amendment was a tactical manoeuvre because the original pleading cannot in all probability succeed.

[34] ***Ismail bin Ibrahim*** was distinguished by Abdul Malik Ishak J (as he then was) on this basis in ***Bumiputra-Commerce Bank Bhd & Ors v Bumi Warna Indah Sdn Bhd [2004] 4 CLJ 825***:

> *"But these cases can readily be distinguished. The cases of Ismail bin Ibrahim & Ors v. Sum Poh Development Sdn Bhd & Anor (supra) and Jupiter Securities Sdn Bhd v. Wan Yaakub bin Abd Rahman (supra)* ***involved a plaintiff/defendant attempting to raise and plead fraud at a much later date.*** *And the rules governing amendments to pleadings to include a plea of fraud are much more restrictive than the general amendments as to pleadings simply because a plea of fraud must be raised at the earliest opportunity."*
>
> (Emphasis added)

[35] The current case does not have the effect of amendments seen in ***Ismail bin Ibrahim***. This Court struggles to accept the argument of bad faith or tactical manoeuvre and the submissions of the Defendants on both grounds are rejected.

[36] Secondly, it is also important for this Court to assess if the amendments would prejudice the Defendants. The Plaintiff cannot be faulted if the said amendments happen to affect the opposing party's position. This is the actual complaint of all the Defendants. It was raised by the Defendants (in particular the 3rd Defendant) that there is suddenly a new cause of action raised by the Plaintiff. But that is not a ground to oppose an amendment.

[37] It is legally unsound to suggest that an amendment must be rejected, just because such amendment has the effect of affecting the opposing party's position. This is because *'it is a truism to say that every amendment of pleadings is to improve a litigant's chance of winning. There is nothing wrong in that'*, per Abdul Malik Ishak J in ***Bumiputra-Commerce Bank Bhd*** (supra).

[38] This was also echoed by the South African Supreme Court of Appeal in ***Tusk Construction Support Services (Pty) Ltd and another v Independent Development Trust 23 ITELR 85 [2020] ZASCA 22*** where it was held:

> *"[19] It bears emphasising that the fact that* ***the amendment sought might lead to the defeat of the opposing party is not the sort of prejudice that is contemplated****."*
>
> (Emphasis added)

[39] This Court also does not find any delay in making the amendments. The amendments were made timeously before the close of pleadings and more than one (1) month before the original hearing date of the striking out application.

[40] The 3rd Defendant has yet to file its Defence and can certainly do so based on the Amended SOC. Other interlocutory applications can still be made by the Defendants if at all the said amendments gives rise to any need to do so. In short, it is early days and the amendment does not prejudice the Defendants.

[41] It must be recalled that in ***Skrine,*** the Court of Appeal held that "*however blameworthy (short of bad faith) a proposed amendment earlier, and however late the application for leave to make such amendment may have been, the application should, in general, be allowed, provided that allowing it will not prejudice the other party*".

[42] As such backed by the authorities mentioned above, this Court is fortified in its belief that the Plaintiff should not be faulted in any manner for making the amendment.

**Findings of this Court**

[43] It is the view of this Court that the Defendants have failed to satisfy this Court why the amendments must be disallowed.

[44] Furthermore, it can be seen that the amendments arose out of the same facts or substantially the same facts as at cause of action in respect of which relief has already been claimed in the original statement of claim (see ***Yamaha Motors***).

[45] Amendments should be made when they are necessary to be made so that the issues of controversy between the parties would be placed before the court for adjudication. It is of paramount importance that the true and correct facts are presented to the court for proper adjudication of the dispute between the parties (see ***Bukit Waha Quarry Sdn Bhd*** (supra)).

[46] Based on the principles found in ***Shahidan Shafie*** *(supra),* there is no basis for this Court to disallow the amendments as it is obvious that the said amendments will save the pleadings. This is irrespective of the fact that the application to strike of out the Plaintiff's claim against the 3rd Defendant was made prior to the application to amend.

*Whether the Writ must also be amended*

[47] as a supplemental argument, Counsel for the 1st Defendant raised the issue that the Plaintiff pleaded new facts, cause of action and reliefs against the Defendants in the Amended SOC. The current Writ however, does not reflect any of the amended reliefs, and at all material times only and wholly reflect the reliefs claim in the Original SOC.

[48] As such counsel contended that this failure to amend the Writ is a fundamental defect. The Plaintiff instead must first apply to amend the Writ as otherwise this will lead to inconsistent reliefs sought.

[49] Clearly, the issue raised by the 1st Defendant was a technical issue for which the 1st Defendant wanted the claim to be refiled to have the Writ reflecting the latest claim.

[50] Looking at the current jurisprudence of cases on amendment of pleadings, it is clear that cases such as ***Yamaha Motors, Hong Leng Finance*** and ***Skrine*** represent the current law. None of the said cases suggested that a statement of claim can only be amended if the endorsement of the writ is amended first.

[51] This Court agrees with the contention of the Plaintiff that a statement of claim may extend a plaintiff's claim without amending the endorsement of the writ.

[52] Order 18 rule 15 of the Rules allows the Plaintiff to "... ***in his statement of claim*** *alter, modify or* ***extend*** *any claim made by*

*him in the endorsement of the writ* ***without amending the endorsement.****"*.

[53] It is therefore the right of a plaintiff to, in his statement of claim, extend his claim made by him in the endorsement of writ without amending the endorsement. The defect in the writ if at all, is curable.

[54] The common law principle was considered exhaustively by Devlin J in ***Hill v Luton Corporation [1951] 2 KB 387*** where it was held as follows:

> *"the principle which permits the plaintiff to* ***cure defects in his writ by a proper statement of claim operates in the same way as if he were given the right to amend without leave****. It is then immaterial that the amendment, whether I be made by delivery of a statement of claim or otherwise, is made after the expiry of the period: it is merely a step in the action which can be taken at any time which the rules permit.*".
>
> (Emphasis added)

[55] Reference was made by counsel for the 1st Defendant to the Federal Court decision in ***Government of Malaysia v Mohamed Amin bin Hassan [1986] 1 MLJ 224***, where it was held a Statement of Claim cannot authorise a different case from the Writ. The court held as follows:

> *"The Shorter Oxford English Dictionary defines "alter" to mean "to make otherwise or different in some respect, without changing the thing itself,*

*to modify." In Stroud's Judicial Dictionary 4th edn. Volume 1 "alter", inter alia, means*

***"The power to alter, modify, or extend a plaintiff's claim by his statement of claim (R.S.C. Ord. 18 r.15) does not authorise a totally different case from that set up by the writ (Ker v Williams 30 SJ 238 Cave v Crew 62 LJ Ch 530), or the joining of a cause of action not mentioned in the writ (United Telephone Co v Tasker 59 LT 852)****".*

(Emphasis added)

[56] However, the above case must be distinguished on the facts and the Federal Court was certainly dealing with an issue that is dissimilar to the factual background of the current case. ***Government of Malaysia v Mohamed Amin bin Hassan*** was discussed in a Federal Court case of ***Instantcolour System Sdn Bhd v. Inkmaker Asia Pacific Sdn Bhd [2017] 4 CLJ 1; [2017] 2 MLJ 697*** where Ramly Ali, in discussing the impact of amendments where limitation is an issue held as follows:

*[36] In an application which falls outside the provisions of O. 20 r. 5(3), (4), (5), the strict rule as laid down in Weldon v. Neal [1887] 19 QBD 394, where amendments were not allowed if they would prejudice the opposing party's rights as existing at the date of the amendment. No amendment can be allowed which would deprive the added defendant of the benefit of the defence of limitation.*

*[37] There are a string of authorities on this point. One of them is - Braniff v. Holland and Hannen and Cubitts (Southern Ltd) [1969] 3 All ER 959, where the second defendant in that case was not allowed to be added out of time. The House of Lords in Ketteman v. Hansel Properties Ltd [1987] AC 189, also adopted the same proposition when it held that it has long been a rule of practice that an amendment should not be*

*allowed for the joinder of an additional defendant in a situation where a relevant period of limitation has already expired in relation to the cause of action against him. Dealing with the theory of relation back, the House of Lords held the view that it would be unjust to join him as a defendant at a time when limitation had run in his favour because to do so would have the effect of depriving him of a valid defence. The same principle was adopted by Hashim Yeop A Sani CJ (Malaya) in the case of Credit Corp (M) Bhd v. Fong Tak Sin [1991] 2 CLJ 871; [1991] 1 CLJ (Rep) 69; [1991] 1 MLJ 409.*

***[38]** In **Government of Malaysia v. Mohamed Amin Hassan [1985] 1 LNS 79; [1986] 1 MLJ 224**, **the Supreme Court likewise held that there was no authority which allowed the addition of a defendant in circumstances as to deprive him of his defence under the limitation statute particularly when the period of limitation had expired, and there was no power to resuscitate an action which must fail in limine upon a plea of limitation**. In that case, Syed Agil Barakbah SCJ expressed his view as follows:*

> *What the Magistrate's Court did in the present case was to allow amendment by allowing the respondent who was already suing as the plaintiff in the representative capacity to be added as the second plaintiff in his personal capacity after the expiration of the limitation period. That, in my opinion, violates the statutory limitation because it takes away the accrued right of the appellant to plead the lapse of limitation period. Secondly, I do not think it is the intention of legislature to allow such amendment at that stage. It is not a technical defect because it introduces a new party to the action and leave to amend should have been applied for prior to the expiry of the statutory period of limitation.*

*[39] The majority ruling in that case is that the power to amend the writ after any period of limitation current at the date of the issue of the writ has expired under r. 5(2) is that it is expressly confined to the type of*

*cases mentioned in rr. 5(3), (4) and (5). As aptly said by Seah SCJ, r. 5(2) "gives to the court a discretionary power to allow an amendment albeit it is made after the expiry of the limitation period if, and only if, the special circumstances in paras. (3), (4) or (5) exist...". Lee Hun Hoe CJ (Borneo), in the same case, had also correctly observed:*

> *... I must say that I am not aware of any authority which allows the addition of a party in such circumstances as to defeat the defendant of his defence under the Statute of Limitation.*

(Emphasis added)

[57] As such it can be safely concluded that ***Government of Malaysia v. Mohamed Amin Bin Hassan*** was decided on the basis that there was a limitation issue which came into play. That is not the issue in the current case before this Court.

Findings of this Court

[58] It is the finding of this Court that there is no basis to rule that there was a procedural defect that required an order from this Court to strike out the Plaintiff's claim or order that the Writ be refiled to reflect the Amended SOC.

[59] The test to the mind of this Court is whether the Defendants would be prejudiced by the current endorsement in Writ. The answer is clear. No prejudice will occur in the current endorsement as the Amended SOC in Encl. 12 cures any such defects and poses no prejudice to the Defendants.

**Conclusion on Encls. 16 and 19**

[60] Taking all the issues raised by the Defendants and comparing it to the submissions by the Plaintiff, this Court finds no reason to disallow the amendments sought by the Plaintiff. What is crucial is whether the SOC as amended in Encl.12 can be saved by the said amendment. The answer is in the affirmative.

[61] Federal Court case in ***Raphael Pura v. Insas Bhd & Anor [2003] 1 MLJ 513*** neatly summarized the position that courts should take albeit when dealing with amendment applications. It held:

> *"At the end of the day, the most important question which the court must ask itself is: are the ends of justice served by allowing the proposed amendment?* ***Pleadings must not be used as a means to punish a party for his errors or the errors of his solicitors***."
>
> (Emphasis added)

[62] The arguments on the supplemental issue raised by the Defendants outside of Encls. 16 and 19, is rejected as it was not in any manner prejudicial to the Defendants.

**The Striking Out Application – Encl. 7**

[63] As a result of this Court's finding that the amendments ought to be allowed and made by the Plaintiff, it follows that the substratum of the 3rd Defendant's claim that the SOC discloses no cause of action must fall.

[64] The 3rd Defendant in its Notice of Application clearly relied on Order 18 rule 19(1) (a). With the amendments being allowed, on the face of the pleadings and upon a read of it, clearly the SOC discloses a cause of action against the 3rd Defendant.

[65] The test to be employed is whether the claim mounted is obviously unsustainable ***(***See ***Bandar Builder Sdn Bhd & Ors v. United Malayan Banking Corporation Bhd [1993] 4 CLJ 7;*** **[1993] 3 MLJ 36**).

**Conclusion on Encl. 7**

[66] Upon an evaluation by this Court of the Amended SOC in Encl. 12, it is the finding of this Court that the case of the Plaintiff against the 3rd Defendant is not obviously unsustainable. As such, the application to strike the Plaintiff's suit is dismissed.

[67] All costs are ordered to be in the cause.

(**AHMAD FAIRUZ BIN ZAINOL ABIDIN**)
Judge
High Court of Malaya
Kuala Lumpur

Dated: 7th July 2022

## Counsels

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