

**IN THE HIGH COURT OF MALAYA IN SHAH ALAM
IN THE STATE OF SELANGOR DARUL EHSAN, MALAYSIA
CIVIL APPEAL NO.: BA-12B-69-07/2022**

BETWEEN

**SINAS TEKNIK SDN. BHD.
[COMPANY NO. : 769061-D]**

..... APPELLANT

AND

TETUAN FOO HIAP SIONG & CO

..... RESPONDENT

(In the Matter of the Sessions Court of Shah Alam
In the State of Selangor Darul Ehsan, Malaysia
Civil No. BA-A52NCVC-43-05/2020)

Between

Tetuan Foo Hiap Siong & Co

..... Plaintiff

And

Sinas Teknik Sdn. Bhd.
[Company No. : 769061-D]

..... Defendant

GROUND OF JUDGMENT
(Appeal After Full Trial)

Introduction

- [1] After the full trial, the Sessions Court gave judgment in the total amount of RM233,119.14 in favour of the Respondent-Plaintiff, a law firm, against the Appellant-Defendant for invoices in respect of legal professional services rendered to several companies including the Appellant-Defendant.



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- [2] On appeal, this Court on 16 March 2023 allowed the Appellant-Defendant's appeal in part and reduced the judgment sum to RM79,371.70, being the total of the invoiced amounts in respect of legal professional services rendered to the Appellant-Defendant only.
- [3] Dissatisfied with this Court's decision dated 16 March 2023, the Respondent-Plaintiff has filed an appeal to the Court of Appeal.

Principles on appellate intervention

- [4] The principles on appellate interference on damages and quantum of damages that can be gleaned from the case authorities can be summarised as follows:
- (1) In an appeal against award of damages or compensation, the appellate court may intervene where it is satisfied that the trial judge has acted on a wrong principle of law, or has misapprehended the facts, or has for other reasons made a wholly erroneous estimate of the damages suffered: House of Lords in *Davies v. Powell Duffryn Assoc. Collieries* [1942] AC, p. 616- 617, followed in *Collector of Stamp Duties v. Ng Fah In* [1981] 1 MLJ at p. 292A; to be a wholly wrong estimate of the damages, the amount awarded must manifestly be either excessively high or excessively low; and
 - (2) An omission on the part of the trial judge to consider some relevant matters or he had admitted for the purpose of assessment some irrelevant considerations or a misdirection of law are examples of having acted on a wrong principle of law or having misapprehended the facts which justifies appellate interference on the award of damages or the quantum of damages: Federal Court in *Tan Kuan Yau v. Suhindrimani* [1985] 2 MLJ 22; followed by the Court of Appeal in *Laksmna Realty Sdn Bhd v. Goh Eng Hwa* [2006] 1 MLJ 653 at pg. 682 para [16].

Pleadings in our present case

- [5] In our present case, the Respondent/Plaintiff's pleaded case is that the Plaintiff provided legal professional services to the Defendant and issued invoices totalling RM233,119.14 to the Defendant, and



that in spite of claim and reminder by the Plaintiff, the Defendant failed or neglected to pay the invoices: see pages 19 to 22 of the Appeal Records.

- [6] In the Plaintiff's Statement of Claim, there is no pleading of allegation that the legal professional services were rendered to other companies related to or controlled by the Defendant or that the corporate veil should be lifted, nor any particulars in support of any plea for lifting of corporate veil. There is also no pleading that there was any alleged third party promise by the Defendant to pay for the legal professional services to be rendered to the other companies.
- [7] In the Defence, the Defendant averred that the Plaintiff's claims have included invoices issued to other companies, that by virtue of separate legal entities and lack privity of contract the Defendant was not liable for invoices issued to other companies, that Foo Hiap Siong (William) promised to provide free services, that the Plaintiff has acknowledged that there was an amount of RM36,800.00 held in the Plaintiff's account to the credit of the Defendant, and that the Defendant has no obligation to pay any of the invoices: see pages 23 to 25 of the Appeal Records.
- [8] In the Plaintiff's Reply to Defence, the Plaintiff pleaded *inter alia* that the other companies were within the same group of companies controlled by the Defendant, the other companies had the same registered address and business address as the Defendant, that the other companies were directly related to the Defendant, and that the Defendant acknowledged receipt of the invoices: see pages 26 to 29 of the Appeal Records.
- [9] It appears that the Sessions Court, in holding the Defendant liable for all the proforma invoices, based the decision on the following main points:
- (a) that the Defendant and the other companies are in the same Group of Companies;
 - (b) the Defendant's witness SD1 was a Director of all the companies in the Group of Companies;
 - (c) the corporate veil of the Defendant and the Sinas Teknik Group of Companies should be lifted, thereby rendering the Defendant



liable for all the proforma invoices issued to the various companies in the same Group of Companies;

- (d) the Defendant did not challenge the proforma invoices within 6 months and is therefore barred from contesting the same under the Legal Profession Act; and
- (e) the Plaintiff did not agree to provide free services.

Principles of pleadings

- [10] The rule of pleading is in line with the fundamental rule of natural justice i.e. the right to be informed of any adverse point so that one has the opportunity of stating the answer: **Muniandy & Anor v Muhammad Abdul Kader & Ors** [1989] 2 MLJ 416 at p 418. Also see **Wisma Punca Emas Sdn Bhd v Dr Donal R O'Holohan** [2023] 8 MLJ 19 at 32 [1987] 1 MLJ 393; **Gimstern Corporation (M) Sdn Bhd & Anor v Global Insurance Co Sdn Bhd** [1987] 1 MLJ 302 and **Tan Ah Chim & Sons Sdn Bhd v Ooi Bee Tat & Anor** [1993] 3 MLJ 633.
- [11] Where the material facts vital to support the claim were not pleaded, the party is not allowed to succeed in its claim based on unpleaded material facts: **AmBank (M) Berhad v Luqman Kamil** [2012] 3 MLJ 1 (Federal Court's decision).
- [12] In **RHB Bank Bhd (menggantikan Kwong Yik Bank Berhad) v Kwan Chew Holdings Sdn Bhd** [2010] 2 MLJ 188; [2010] 1 CLJ 665, the Federal Court held as follows at p 202:

"[33] Second, the proposition of the Court of Appeal was not even pleaded by the respondent. The respondent's cause of action against the appellant was for breach of contract. Nowhere in the respondent's pleading, expressly or by implication, can we detect a claim for breach of a joint venture agreement arising out of a fiduciary duty placed upon the appellant in the capacity as principal of an agent. It is a cardinal rule in civil litigation that the parties must abide by their pleadings ...

[35] On this, we would like to add that it is not the duty of the court to invent or create a cause of action or a defence under the guise of doing justice for the parties lest it be accused of being biased towards one against the other. The parties should know best as to what they want and it is not for the court to pursue a cavalier



approach to solving their dispute by inventing or creating cause or causes of action which were not pleaded in the first place. Such activism by the court must be discouraged otherwise the court would be accused of making laws rather than applying them to a given set of facts.”

[13] In **Joseph Paulus Lantip v Tnio Chee Chang** [2020] 5 MLJ 708; [2020] 4 CLJ 79 in a judgment delivered by Mary Lim JCA (now FCJ) the Court of Appeal held as follows:

*“[28] The role played by pleadings cannot be overstated. It is a fundamental principle of fair play which extends to the court, that all parties are bound by their pleadings. It would be most damaging to our administration and system of justice if parties are allowed to plead a certain complaint, lead evidence on another and the court, decides on something entirely different. The Federal Court recently reminded and expressed the following view on the importance of proper pleadings in *Iftikar Ahmed Khan (as the executor of the estate for Sardar Mohd Roshan Khan, deceased) v Perwira Affin Bank Bhd (previously known as Perwira Habib Bank Malaysia Bhd)* [2018] 2 MLJ 292; [2018] 1 CLJ 415:*

*[29] It is settled law that parties are bound by their pleadings and are not allowed to adduce facts and issues which they have not pleaded: **Samuel Naik Siang Ting v Public Bank Bhd ... In Lee Ah Chor v Southern Bank Bhd** [1991] 1 MLJ 428; [1991] 1 CLJ 667; [1991] 1 CLJ Rep 239 it was held that where a vital issue was not raised in the pleadings, it could not be allowed to be granted and to succeed on appeal. A decision based on an issue which was not raised by the parties in their pleadings is liable to be set aside: ... In *The Chartered Bank v Yong Chan* [1990] 1 MLJ 157; [1990] 1 CLJ 1113; [1990] 1 CLJ Rep 330, the Federal Court set aside the judgment of the trial judge as it was decided on an issue not raised on the pleadings. In that case, the trial judge erred in concluding that the pleadings included a claim for breach of contract as well as a claim for libel.*

[29] Having examined the pleaded case of the respective parties, in particular that of the plaintiff's, we are unable to find a complaint based on conversion, whether in the paragraphs identified by the learned JC or in the entire amended statement of claim.

...



[37] It is not open to the court to fashion a cause of action or even defence for any of the parties. The plaintiff had pleaded material facts in his amended statement of claim for his particular choice of cause of action and reliefs (specific performance, injunction and damages). The remedy of specific performance is in fact indicative of what exactly is the plaintiff's cause of action, and it clearly is associated with a claim for a breach of contract as contained in the timber sale agreement and the PAs, all by reason of misrepresentation. The plaintiff was seeking specific performance of the timber sale agreement, and the second PA.

[38] Although the plaintiff may claim to have a cause of action in the tort of conversion, and assuming that he did (to which we disagree as we shall explain shortly), he clearly did not pursue that cause in his pleaded claim. His cause was for breach of contract by reason of misrepresentation, which breaches the first defendant promised to rectify but supposedly did not. Hence, the claim for specific performance." (Emphasis added.)

- [14] In **Iftikar Ahmed Khan (as the executor of the estate for Sardar Mohd Roshan Khan, deceased) v Perwira Affin Bank Bhd (previously known as Perwira Habib Bank Malaysia Bhd)** [2018] 1 CLJ 415, [2018] 2 MLJ 292 the Federal Court held that the plaintiff's pleadings based his cause of action in negligence and as such he was not allowed to succeed on a cause of action in breach of contract. The Federal Court held as follows:

"[22] The function of pleading is to give fair notice of the case which has to be met: *Rosita Baharum v Sabedin Salleh* [1993] 1 MLJ 393; [1993] 2 CLJ 300, *Perniagaan Kinabalu (S) Sdn Bhd v Sua Ah Yoke & Ham Jon See* [2002] MLJU 601; [2002] 1 LNS 348. This is to prevent the opposing party from being taken by surprise by evidence which departs from pleaded material facts, for such evidence if allowed, will prejudice and embarrass or mislead the opposing party: See *Superintendent of Lands and Surveys (4th Div) & Anor v Hamit bin Matusin & Ors* [1994] 3 MLJ 185; [1994] 3 CLJ 567; *Raja Abdul Malek Muzaffar Shah Raja Shahrizzaman v Setiausaha Suruhanjaya Pasukan Polis & Ors* [1995] 1 MLJ 308; [1995] 1 CLJ 619A good pleading should contain a statement of: (1) facts, not law, (2) material facts only, (3) facts, not evidence, and (4) facts stated in a summary form: see *Halsbury's Laws of England (4th Ed, Reissue)*, para 13.



[23] *What are material facts? All facts which must be proved in order to establish the ground of claim or defence are material: Philip v Philips [1878] 4 QBD 127 at 133, 134. Parties are bound by their pleadings. This is a rule which will be strictly enforced by the court. Thus, where a party's case is based on a contract and the other party to the contract is in breach of it, these material facts must be pleaded.*

[27] *It is settled law that parties are bound by their pleadings and are not allowed to adduce facts and issues which they have not pleaded: Samuel Naik Siang Ting v Public Bank Bhd [2015] 6 MLJ 1; [2015] 8 CLJ 944, State Government of Perak v Muniandy [1986] 1 MLJ 490; [1985] 1 LNS 117, Veronica Lee Ha Ling & Ors v Maxisegar Sdn Bhd [2011] 2 MLJ 141; [2009] 6 CLJ 232. In Lee Ah Chor v Southern Bank Bhd [1991] 1 MLJ 428; [1991] 1 CLJ 667; [1991] 1 CLJ Rep 239 it was held that where a vital issue was not raised in the pleadings, it could not be allowed to be granted and to succeed on appeal. A decision based on an issue which was not raised by the parties in their pleadings is liable to be set aside: Yew Wan Leong v Lai Kok Chye [1990] 2 MLJ 152; [1990] 1 CLJ 1113; [1990] 1 CLJ Rep 330. In The Chartered Bank v Yong Chan [1974] 1 MLJ 157; [1974] 1 LNS 178 the Federal Court set aside the judgment of the trial judge as it was decided on an issue not raised on the pleadings. In that case, the trial judge erred in concluding that the pleadings included a claim for breach of contract as well as a claim for libel.*

[36] *The cases cited by both counsel to us clearly show that the law on the first question posed by the appellant is settled. It is this. In a case where the matter or material facts are not pleaded but evidence is led without objections at trial, the court is duty bound to consider such evidence although it may be a departure from the pleading. It has the effect of curing defect in the pleading. In such a case, the opposite party is not taken by surprise, prejudiced, embarrassed or misled. The exception is where the evidence represents a radical departure from the pleading and is not just a variation, modification or development of what has been alleged in the pleading. Dato' Hamzah bin Abdul Majid v Omega Securities Sdn Bhd [2015] 6 MLJ 725; [2015] 9 CLJ 677 is an illustration of a case where there was a radical departure from the pleading. In that case, loan, which was not a pleaded defence but evidence of it was adduced without objection was rejected as a defence as it was a radical departure from pleading, not just a variation, modification or development of what had been alleged in the pleading."*



Requirements of specific pleading for lifting of corporate veil

- [15] In the Federal Court's judgment in **Solid Investment Ltd v. Alcatel Lucent (M) Sdn Bhd** [2014] 3 CLJ 73, at 92, the Federal Court in a judgment delivered by Hasan Lah FCJ held as follows:

"We agree with the Court of Appeal that the learned trial judge erred in lifting the corporate of the defendant to make the defendant liable to account to the plaintiff. The reason given by the learned trial judge was that it was in the interest of justice to prevent associated companies of Alcatel Group including the defendant from "darting in and out with the corporate labyrinth" before the court. We also agree with the Court of Appeal that there must be evidence either of actual fraud or some conduct amounting to fraud in equity to justify the lifting of corporate veil ." (emphasis added).

- [16] In **Tenaga Nasional Bhd v. Irham Niaga Sdn Bhd & Anor** [2011] 1 CLJ 491; [2011] 1 MLJ 752, at 772 and 773, the Court of Appeal held as follows:-

"[49] You cannot simply raise the veil of incorporation just because you feel that it is in the interest of justice. But if there is fraud, then the veil of incorporation may be lifted. But here, there was no fraud at all...."

[51] At para 56 of the statement of claim at p 74 of the appeal record at Jilid 1, the respondents pleaded what they said to be fraud. However, the word 'fraud' does not mean anything more than what is stated. When you plead fraud, the particulars must be pleaded. Since there was no liability on the part of the appellant (TNB) to pay the award handed down by the arbitrator, then the plea of fraud must necessarily fail. When fraud has been pleaded, that warrants a strict scrutiny of the pleadings. Here, on the facts, there was no fraud at all. In Wong Yew Kwan v. Wong Yu Ke & Anor [2010] 2 CLJ 703; [2009] 2 MLJ 672, this court said that 'mere general allegations of fraud are insufficient to constitute a pleaded case of fraud'...

[52] Now, at para 56 of the statement of claim at p 74 of the appeal record at Jilid 1, the respondents suggested that the appellant (TNB) had used TNBT since its inception as a contracting vehicle to commit fraud. If such allegations were true (the



appellant (TNB) here has denied it vehemently), then the respondents would have been aware of the alleged fraud at the time the five agreements were entered or at the latest at the time when the original suit was filed. Yet the respondents had elected to affirm the validity of the five agreements and pursue the matter by way of an arbitration proceeding against TNBT solely."

(emphasis added).

Whether the Plaintiff can plead in the reply to defence a new cause of action or new ground claim which was not pleaded in the statement of claim

[17] In **Khazanah Jaya Sdn Bhd v. Hisco Malaysia Sdn Bhd**, [2021] 1 LNS 2196 the Court of Appeal in the judgment delivered by Vazeer Alam JCA has summarised, in the following passages, the law on the issue whether the Plaintiff can plead a new cause of action or new ground of claim which was not pleaded in the statement of claim the Plaintiff can plead a new cause of action or new claim which was not pleaded in the statement of claim:

"[42] In so stating we are cognizant of the principle that in a reply to defence, the plaintiff cannot be inconsistent with any previous pleading, nor raise a new ground or claim. In Mat bin Lim & Anor v. Ho Yut Kam & Anor [1966] 1 LNS 99; [1967] 1 MLJ 13, Raja Azlan Shah J (as HRH then was) said:

"That being the case, the reply must not depart from the statement of claim. In this connection I may as well adopt a passage from the current edition of Bullen & Leake's "Precedents and Pleadings" (11th Edn.) at page 694:

"The plaintiff, however, must not set up in his reply a new cause of action which is not raised either on the writ or in the statement of claim; it is provided that 'no pleading shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same'. In other words the reply must not contradict or 'depart' from the statement of claim".

See also International Shipcare Sdn Bhd v. The owner of and other persons interested in the ships or vessels MV "EL HADJAR" registered at the port of Annaba, Algeria; MV "AIN



TEMOUCHENT", MV "NEMEMCHA" and MV "NEDROMA" which are all registered at the port of Algiers, Algeria [2014] 1 LNS 879; [2014] AMEJ 1034; [2015] 7 MLJ 753; and Williamson v. London & North Western Railway [1879] 12 Ch D 787.

[43] The function of a reply in the overall scheme of pleadings in a civil action was considered and well expressed by the Singapore Court of Appeal in Romar Positioning Equipment Pte Ltd v. Merriwa Nominees Pty Ltd [2004] SGCA 44, where the Court held:

It bears remembering that the function of a reply is to allow the plaintiff to raise facts in answer to the defendant's case. In particular, it will be necessary to file a reply if the defendant raises a new issue for the first time in the defence. As the function of a reply is limited to answering matters raised in the defence, it follows that the reply should not be used as an avenue to introduce new causes of action which are not raised in the statement of claim. If a plaintiff wishes to raise an additional and inconsistent claim in the alternative after the statement of claim has been filed, the proper approach should be to apply to amend the statement of claim, rather than slip it in by way of the reply.

[44] Learned counsel for the appellant had referred to the judgment of my learned brother Lee Swee Seng J (as he then was) in Accolade Land Sdn Bhd v. Mass Rapid Transit Corporation Sdn Bhd & Ors [2017] MLJU 1868 in support of his contention that the respondent had supplemented the Statement of Claim by the additional facts pleaded in the Reply to Defence, and that this is not permitted in law. Whilst we agree that as a general rule a party cannot supplement the statement of claim through the reply to defence, we do not find the respondent had in this case, supplemented their case, by merely answering, specifically, the plea of limitation raised by the appellant in the Defence. In fact, the pronouncement of my learned brother in Accolade Land Sdn Bhd v. Mass Rapid Transit Corporation Sdn Bhd & Ors (supra) supports the respondent's position. In this regard it would be appropriate to quote the relevant passage from the judgment of Lee Swee Seng J (as he then was):

[103] It follows from the cardinal principle that a plaintiff is not allowed to supplement its statement of claim by including in its reply, matters that should have been pleaded in the statement of claim. The Singapore High Court case of Nirumalan K Pillay & Ors



v. A Balakrishnan [1997] 1 SLR 322 stated as follows this principle at p. 326, para. [10]:

"...Further, because the function of a reply is to answer matters raised in the defence, its contents must relate to matters raised in the defence. What is the same thing, the plaintiffs may not supplement his statement of claim by including in his reply matters which ought to have been included in the statement of claim. In this respect, a reply is analogous to re-examination of a witness which should be confined to matters touched on in cross-examination. Fresh evidence adding to or re-affirming evidence-in-chief is not permitted in re-examination." (emphasis added),

[45] The respondent, as plaintiff in this action, must specifically plead and identify their cause or causes of action against the appellant/defendant in the Statement of Claim. See Yap Seong Yee v. Eureka Property Management Sdn Bhd and another appeal [2018] 8 CLJ 713; [2018] 6 MLJ 799. This the appellant has done. There is no requirement in law for the appellant, as plaintiff, to plead in the Statement of Claim facts in anticipation of the respondent's defence. Learned counsel for the appellant argues that the respondent ought to have amended the Statement of Claim to include the fact of the repayment of the loan being conditional after completion of the IKBN Project, instead of doing so in the Reply to Defence. We are of the opinion that in the circumstances of the case the respondent's answer to the plea of limitation taken up in the Reply to Defence was wholly appropriate, as the respondent was merely responding to matters raised in the Defence, as it was entitled to. The respondent was neither seeking to supplement nor to amend any defect in the Statement of Claim. It was also not a case of adding a new cause of action in the Reply to Defence. Hence, we find that nothing turns on this issue."

[18] In the premises, following the Court of Appeal's decision in **Khazanah Jaya Sdn Bhd v. Hisco Malaysia Sdn Bhd** (*supra*), this Court has held that in the Reply to Defence the Plaintiff cannot plead a new cause of action or new ground of claim which was not pleaded in the statement of claim. If there is any new cause of action or ground of claim or material particulars in support of the claim which the plaintiff wants to add to his pleadings, he must apply for and obtain leave to amend his pleadings in the statement of claim, serve the amended statement of claim on the defendant and give the defendant an opportunity to amend his defence. If the new cause of action or ground of claim also directly affects a legal entity who is



not a party to the pleaded case, the plaintiff in his leave amendment application also has to apply for addition of the said legal entity as a co-defendant so that the rules of natural justice can be fulfilled.

Application of legal principles to the facts of this case

- [19] In our present case, the Respondent/Plaintiff's pleaded case in the Statement of Claim is that the Plaintiff provided legal professional services to the Defendant and issued invoices totalling RM233,119.14 to the Defendant, and that in spite of claim and reminder by the Plaintiff, the Defendant failed or neglected to pay the invoices: see pages 19 to 22 of the Appeal Records. In the Plaintiff's Statement of Claim, there is no pleading of allegation that the legal professional services were rendered to other companies related to or controlled by the Defendant or that the corporate veil should be lifted, nor any particulars in support of any plea for lifting of corporate veil. There is also no pleading of fraud or equitable fraud or particulars of fraud in the Statement of Claim to fulfil the specific requirements of pleading for a case of lifting corporate veil.
- [20] In the Reply to Defence, the Plaintiff also did not plead fraud or particulars of fraud in the Statement of Claim to fulfil the specific requirements of pleading for a case of lifting corporate veil. The pleading of same group of companies or control within the same group of companies in the Reply to Defence do not satisfy the requirements of specific pleading for a case of lifting corporate veil. Moreover, the Plaintiff cannot rely on any new cause of action or grounds for claiming relief which are included in the Reply to Defence but which are not pleaded in the Statement of Claim.
- [21] In the circumstances, only invoices which fall within the ambit of the pleaded cause of action in the Plaintiff's Statement of Claim can be considered here. Any invoice which falls outside the ambit of the Plaintiff's pleaded cause of action in the Statement of Claim cannot be considered or allowed, notwithstanding the purported attempt to include new cause of action or new ground for claim in the Reply to Defence.
- [22] In the premises, the trial judge erred in law and in fact in awarding judgment sum to the Plaintiff inclusive of the invoices issued to the other companies purportedly brought under the lifting of corporate veil.



Amount of judgment sum which should be awarded to the Plaintiff here

[23] From the evidence adduced in the present case, the summarised particulars of the proforma invoices issued by the Plaintiff are as tabulated below:

Abbreviations: **ST** - Sinas Teknik Sdn Bhd; **SM** - Sinas (M) Sdn Bhd; **RJ** - Rajmaju Sdn Bhd; **RB** – Rajmaju Beverages Sdn Bhd; **RM** – Rajmaju Management Sdn Bhd; **RJ** – Rajmaju Sdn Bhd

	Amount (Ringgit)	Issued to	Description of services & to whom services rendered	Page of Appeal Records
1	11,251.90	ST and/or RB	Court suit by RB v. Snowaze	257, 245 - 247
2	16,551.90	ST and/or RB	Court suit by ST v. Cho Wai Woon (IT Automation)	260, 252 – 255.303
3	4,824.00	ST	Corporate documents of ST	265 - 267
4	16,640.94	RB	Court suit v. United HVK	268
5	3,657.00	ST and/or RB	Proposal of ST for Perodua Project	270, 541
6	13,330.00	RB	Re-write pipe/mineral proposal	274
7	1,365.00	SM	Prepare trust Agreements	276, 679
8	14,522.00	ST and/or RB	Proposal of RJ to Majlis Islam (MAIK)	279 – 280, 707 - 708
9	1,312,00	RM	MOU & NDA with Majlis Islam	282
10	34,386.00	ST	MOU & NDA Tuk Tak Project	284



11	5,479.00	ST	JVA with Politeknik	287 – 288, 750
12	12,561.00	ST and/or RB	Proposal by RB to PAIP	299 – 300, 271 – 272, 620
13	10,799.00	RB	JVA (PTRV)	302 - 303
14	5,489.00	RB	JVA with Ahmad Aizuddin	404 - 305
15	14,522.00	ST and/or RB	Proposal of RJ for land for coconut plantation	434 – 435, 108
16	14,522.00	ST and/or RB	Proposal of RJ for land for coco plantation	436 – 437, 347 - 348
17.	15,582.00	ST and/or RB	Proposal of RJ for Projek Air Mineral Lancang	440 - 441
18	1,772.50	Zaidi		443 - 445
19	5,110.00	ST	LI & MOU with MCDV	446 – 448, 959 - 961
20	3,347.20	RJ	JVA & NDA with Astral Maya	449 – 451, 1058
21	5,479.00	ST	Agreement with Coca Bottlers	563 - 564
22	5,479.00	RB	RB's Agreement with Kelab Sukan BBM	856 - 857
23	11,251.00	No information	No information	-
24	1,150.00	ST	ST's Trust Agreement	954
25	2,734.80	ST	St's Smart Parking PP	1055 - 1056

[24] Based on the evidence adduced and the pleadings here, the Respondent/Plaintiff herein is only entitled to recover legal professional fees which were rendered to the Appellant/Defendant, namely Sinas Teknik Sdn Bhd (or abbreviated as "ST" in the immediately foregoing table), and for which the invoices have been duly served upon the Appellant/Defendant (Sinas Teknik Sdn Bhd). The Respondent/Plaintiff in in the present case is not entitled to



recover from the Appellant/Defendant (Sinat Teknik Sdn Bhd) for the services rendered to another company, and is not allowed to succeed its claims against the Appellant/Defendant (Sinat Teknik Sdn Bhd) on grounds of lifting corporate veil or third party promise to pay, as these other grounds were not pleaded here in the Statement of Claim.

- [25] In the circumstances, the Respondent/Plaintiff in the present case is only entitled to recover from the Appellant/Defendant (Sinat Teknik Sdn Bhd) in respect of items 2, 3, 5, 10, 11, 19, 21, 24 and 25 in the above-mentioned table. The total amount of these items 2, 3, 5, 10, 11, 19, 21, 24 and 25 are computed as follows:
 $16,551.90 + 4,824.00 + 3,657.00 + 34,386.00 + 5,479.00 + 5,110.00 + 5,479.00 + 1,150.00 + 2,734.80 = \text{RM79,371.70}$.

Conclusion

- [26] By reason of the above, this Court hereby allows the Appellant/Defendant's appeal in part, reduces the judgment sum for the Respondent/Plaintiff from RM233,119.14 to **RM79,371.70** and orders that the interest and scale costs of the trial shall be adjusted according to the reduced judgment sum.
- [27] This Court also awards costs of this appeal in the sum of RM7,000, subject to allocator, to the Appellant/Defendant.

Dated this : 2nd May 2023

Signed

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SARBANUN BINTI MOKHTAR
Secretary to
Y.A. Tuan Tee Geok Hock
Judge
High Court of Malaya at Shah Alam
(NCvC10)

TEE GEOK HOCK
JUDGE

HIGH COURT OF MALAYA AT SHAH ALAM
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