

DALAM MAHKAMAH SESYEN SHAH ALAM
DALAM NEGERI SELANGOR DARUL EHSAN, MALAYSIA

SAMAN NO. BA-B53F-15-06/2021

ANTARA

1. VALLEY PETS (SG LONG) SDN BHD
(No. SYARIKAT: 1394453-X)

2. CHONG VOON KEAT
(No. K/P: 780806-14-5197)

...PLAINTIF-PLAINTIF

DAN

WINNIE MU CHIAW SHAN
(No. K/P: 950712-12-5864)

...DEFENDAN

ALASAN KEPUTUSAN

Pendahuluan

1. Ini adalah permohonan plaintif-plaintif lampiran 20 untuk membatalkan pliding dalam pembelaan dan membuang ikatan-ikatan Dokumen Defendan (lampiran 19 & 26) menurut Aturan 18 Kaedah 19 (b), (c) dan (d), Aturan 34 kaedah 1, Aturan 34 Kaedah 2, Aturan 92 Kaedah 4 Kaedah-Kaedah Mahkamah 2012.

2. Setelah meneliti permohonan plaintif-plaintif ("plaintif") dan setelah mempertimbangkan hujah-hujah kedua-dua pihak, Mahkamah memutuskan untuk membenarkan permohonan plaintif lampiran 20 dengan kos.



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3. Defendan tidak berpuas hati dengan keputusan Mahkamah dan memfailkan rayuan ke Mahkamah Tinggi. Berikut adalah alasan-alasan kepada keputusan Mahkamah yang tidak memihak kepada defendan.

Latar belakang kes

4. Fakta kes adalah seperti berikut: Pada 2.1.2021 defendan telah membawa anjing peliharaan defendan bernama Kohee ke klinik haiwan plaintif dikenali sebagai Valley Pets untuk mendapatkan rawatan perubatan akibat kecederaan parah pada bahagian tertentu anjing peliharaan tersebut.

5. Kesan kecederaan tersebut adalah berpunca daripada periuk nasi panas terjatuh atas bahagian kepala anjing peliharaan tersebut menyebabkan kelecuman di bahagian atas kedua-dua telinga, kepala, leher dan bahagian bahu. Selepas anjing peliharaan tersebut dirawat, defendan dinasihatkan supaya meneliti keadaan anjing tersebut selama seminggu.

6. Defendan kemudiannya membawa kembali anjing tersebut ke Valley Pets pada 9.1.2021 dan defendan dimaklumkan bahawa rawatan pembersihan kecederaan luka-luka tersebut hanya boleh dilakukan semasa prosedur pembiusan penuh/*general anaesthesia* memandangkan tahap kecederaan anjing tersebut adalah serius.

7. Setelah diberi nasihat berkenaan dengan risiko rawatan dan prosedur, defendan menandatangani Borang Kebenaran untuk meneruskan rawatan tersebut. Walau bagaimanapun, anjing peliharaan



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defendan mati setelah mengalami serangan jantung dalam rawatan tersebut pada 10.1.2021.

8. Pada 14.1.2021, defendan telah menerbitkan perkataan-perkataan yang didakwa fitnah melalui laman profil Facebook defendan yang dikenali sebagai "Xiao Xuan" dan pelbagai akaun kumpulan Facebook mendakwa bahawa kematian anjing tersebut adalah berpunca daripada kecuaiannya plaintif.

9. Defendan juga menyeru kepada orang awam supaya tidak mengunjungi klinik haiwan plaintif pertama atas alasan bahawa doktor-doktornya di klinik haiwan tersebut tidak mempunyai lesen veterinar untuk menjalankan rawatan dan pembedahan.

10. Pada 14.6.2021, defendan menerbitkan semula perkataan-perkataan yang didakwa fitnah di laman profil Facebook beliau dan cuba mengkaitkan kematian anjing peliharaan defendan dengan anjing peliharaan kepunyaan pihak ketiga yang dikenali sebagai Yvonne Gan dan William Wong yang mati semasa pembedahan neuter di klinik haiwan Valley Pets.

11. Pada 2.7.2021 plaintif pertama dan pihak ketiga iaitu Yvonne Gan and William Wong telah memasuki perjanjian penyelesaian dan pihak ketiga dihendakki untuk memadamkan kesemua dokumen-dokumen di laman web sosial media. Pihak-pihak juga bersetuju bahawa kesemua fakta dan maklumat adalah rahsia dan tidak boleh dibentangkan kepada pihak ketiga kecuali tindakan Mahkamah untuk menguatkuasakan perjanjian penyelesaian tersebut.



12. Plaintiff kemudiannya melalui peguamcara plaintiff telah menghantar notis tuntutan bertarikh 17.6.2021 kepada defendan dan memfailkan writ dan pernyataan tuntutan bertarikh 29.6.2021 terhadap defendan. Defendan memfailkan pembelaannya dan menyatakan bahawa pernyataannya pada 14.1.2021 dan 14.6.2021 adalah benar pada isu dan fakta dan juga merupakan komen berpatutan untuk kepentingan awam.

13. Semasa pengurusan kes, Mahkamah telah mengarahkan pihak-pihak untuk memfailkan Ikatan Dokumen Bersama sebelum atau pada 5.11.2021 dan seterusnya menetapkan perbicaraan pada 14.7.2022.

14. Berdasarkan kepada pembelaan defendan, plaintiff menyatakan bahawa defendan telah merujuk kepada perjanjian penyelesaian yang melibatkan plaintiff dan pihak ketiga yang mana ianya adalah *privilege document* dan maklumat sulit yang tidak boleh digunakan untuk prosiding Mahkamah.

15. Walaupun dibantah oleh plaintiff, peguamcara defendan tetap meneruskan pemfailan dokumen-dokumen tersebut dalam Ikatan Dokumen Defendan yang mengandungi *post* Facebook dan *Google Reviews* yang telah dipadamkan oleh Yvonne Gan dan William Wong.

16. Pada 26.11.2021 plaintiff telah memfailkan permohonan lampiran 20 untuk membatalkan pliding dan membuang Ikatan Dokumen Defendan atas alasan bahawa dokumen-dokumen tersebut adalah *privileged documents* yang juga mengandungi perjanjian penyelesaian yang tidak boleh digunakan dalam prosiding perbicaraan.



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17. Pada 23.8.2022 Mahkamah telah membenarkan permohonan plaintif lampiran 20 untuk membatalkan pliding dan membuang Ikatan Dokumen Defendan.

KEPUTUSAN MAHKAMAH

18. Mahkamah bersetuju bahawa segala dokumen dan maklumat yang terkandung dalam perjanjian penyelesaian adalah *priviledged documents* dan terlindung daripada pendedahan. Oleh itu, pernyataan-pernyataan dalam pembelaan dan juga dokumen-dokumen tersebut dihalang daripada dikemukakan oleh defendan.

19. Dalam kes **Gnitrow Ltd v Cape Plc** [2000] WL 87769 Mahkamah Rayuan telah memutuskan bahawa tindakan untuk memaksa pendedahan kandungan suatu perjanjian penyelesaian kepada pihak ketiga atau pengemukaan dalam prosiding Mahkamah akan melemahkan semangat pihak-pihak untuk menyelesaikan pertikaian diluar Mahkamah:

Judge Kershaw QC came to the opposite conclusion in the Svel case, relying on the speech of **Lord Griffiths in Rush & Tompkins Ltd v Greater London Council & Anor** [1989] AC 1280 . Lord Griffiths stated, at p 1305:

I have come to the conclusion that the wiser course is to protect 'without prejudice' communications between parties to litigation from production to other parties in the same litigation. In multi-party litigation it is not an infrequent experience that one party takes up an unreasonably intransigent attitude that makes it extremely difficult to settle with him. In such circumstances it would, I think, place a serious fetter on negotiations between other parties if they knew that everything that passed between them would ultimately have to be revealed to the one obdurate litigant. What would in fact happen would be that nothing would



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be put on paper but this is in itself a recipe for disaster in difficult negotiations which are far better spelt out with precision in writing.

In my view this advantage does not outweigh the damage that would be done to the conduct of settlement negotiations if solicitors thought that what was said and written between them would become common currency available to all other parties to the litigation. In my view the general public policy that applies to protect genuine negotiations from being admissible in evidence should also be extended to protect those negotiations from being discoverable to third parties.

...

For the claimant, Mr Robert Owen QC submits that the agreement is privileged as having been made without prejudice and also that it is not relevant to the trial of liability in the present action. As to privilege, Mr Owen accepts that Lord Griffiths in *Rush & Tompkins* was considering negotiations prior to settlement rather than the terms of the resulting settlement but submits that the reasoning applies, in the present context, equally to the terms of settlement. In litigation involving more than two parties, it would discourage two of them from settling if they knew that the terms of settlement were disclosable to the other parties.

...

If a claimant in an action for damages for personal injuries, where damages were at large, were to settle with one of two defendants. It could be a severe disincentive to negotiations generally if, by declining to negotiate, a party can routinely claim the advantage of knowing what other parties have agreed before condescending to negotiate for himself.

20. Dalam kes **Alex Nandaseri De Silva v Sarath Wickrama Surendre** [2013] MLJU 1598 Mahkamah Tinggi memutuskan untuk tidak membenarkan plaintif mendedahkan ketiga-tiga surat berkenaan dengan kandungan mediasi semasa perbincangan. Alasannya ialah bahawa surat-surat tersebut adalah tidak relevan berdasarkan Seksyen 5 untuk tujuan perbincangan. Seterusnya, Seksyen 23 Akta Keterangan 1950 melindungi



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pihak-pihak daripada pendedahan segala kandungan berhubung dengan penyelesaian pertikaian diluar Mahkamah:

[180] The following excerpts from Halsbury's Laws of Malaysia, vol. 1, pp. 405, 406, 435 and 436 concerning documents which are protected from production are relevant and are applicable to the three letters in the instant case: Documents protected from production ... The grounds on which this protection can be claimed can be classified under the following main heads :-

- (1) legal professional privilege ;
- (2) public interest immunity ;
- (3) that the documents in question may tend to incriminate the party or his or her spouse ;
- (4) that the production is contrary to some statutory provision which imposes secrecy ;
- (5) that production is contrary to some express or implied agreement between the parties ; and
- (6) that production would, in the circumstances of the particular case, be oppressive.

The first five of these grounds protect documents from disclosure at the trial as well as on discovery, and are also grounds for refusal to answer interrogatories or questions asked of a witness at the trial ...

Agreement not to disclose ; without prejudice; communications. An agreement between the parties not to disclose a particular document or information is a ground for refusing discovery of that document or information. (see *Rabin v. Mendoza & Co* [1954] 1 All ER 247, [1954] 1 WLR 271, CA (Eng); *Berry and Stewart v. Tottenham Hotspur Football and Athletic co Ltd* [1935] Ch 718 at 727; *Whiffen v. Hartwright* (1848) 11 Beav 111; *Turney v. Bayley* (1864) 4 De GJ & Sm 332.)

...

- (1) where an agreement as to the settlement of the dispute has been reached (*Rush & Tomkins Ltd v. Greater London Council* [1989] AC 1280, [1988] 3 All ER 737, HL);



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...

[181] In *Compagnie Financiere et Commerciale du Pacifique v. Peruvian Guano Co* [1882] 11 QBD 55, CA (Eng) the English Court of Appeal held that the party wishing to have the document discovered must show that the document is prima facie relevant.

[182] Bredt LJ said as follows at p. 38: A document is not "material," unless it relates to the subject matter of the action, and the documents of which production is sought do not relate to the question in dispute.

[183] ... Based on the ratio decidendi of the case the three letters are prima facie irrelevant to the plaintiff's claim against the defendant for damages for defamation.

[184] ... I am of the respectful view that my decisions and directions were fair and were within my discretion to make in order to ensure a just, expeditious and economical disposal of the plaintiff's suit at the full trial pursuant to O. 34 rr. 2(2) and (3) of the RC 2012.

21. Dalam kes sekarang, perjanjian penyelesaian adalah di antara plaintif dan pihak ketiga dan bukannya antara plaintif dan defendan. Prinsip untuk menguatkan semangat untuk pihak-pihak menyelesaikan pertikaian diluar Mahkamah tidak boleh dikompromi. Defendan juga mengetahui bahawa perkara subjek dalam perjanjian penyelesaian tersebut sememangnya tidak berkaitan dengan defendan.

22. Adalah tidak munasabah untuk defendan memaksa plaintif untuk mengemukakan perjanjian penyelesaian tersebut melalui notis untuk mengemukakan dokumen. Defendan juga telah bertindak secara melampau apabila memaksa pihak dalam perjanjian penyelesaian untuk menghadiri Mahkamah sebagai saksi bagi pendedahan kandungan perjanjian penyelesaian tersebut.



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23. Dalam kes **Dolling-Baker v Merrett and others** [1991] 2 All ER 890 Mahkamah memutuskan seperti berikut:

Held - Although there was good reason to suppose that some parts of the documents used in and arising out of the arbitration might be relevant to the plaintiff's action. It was not possible to say that all the documents were even prima facie relevant and the plaintiff had not made out a case sufficient to enable the court to decide which documents were relevant. In any event, inspection of the documents could not be ordered under RSC Ord 24, r 11(2) unless it was necessary for the fair disposal of the action. In determining whether the documents were necessary for the fair disposal of the action the court would have regard to the implied obligation, arising out of the private nature of an arbitration, imposed on both sides not to disclose or use for any other purpose documents relating to the arbitration and whether the information could be obtained in a way which did not involve a breach of that implied obligation. Since the plaintiff had not shown that inspection of the documents used in and arising out of the arbitration was necessary for the fair disposal of the action both discovery and production of the documents relating to the arbitration would be refused. Furthermore, the first defendant was entitled to an injunction restraining the second defendants, without the consent of the first defendant, from disclosing, producing or otherwise making use of those documents, but since the implied obligation which gave rise to the entitlement to the injunction applied equally to both sides of the arbitration the first defendant would be required to give a cross-undertaking not to disclose, produce or otherwise make use of those documents without the consent of the court before an injunction would be granted. The appeal would accordingly be allowed

24. Perjanjian penyelesaian tersebut tidak berkaitan dalam kes sekarang dan defendan telah melampau apabila menindas pihak-pihak



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yang tidak berkaitan dengan guaman ini untuk mendedahkan perjanjian penyelesaian mereka.

Breach of confidence

25. Pihak-pihak dalam perjanjian penyelesaian tersebut mempunyai obligasi supaya tidak mendedahkan sebarang maklumat dalam perjanjian penyelesaian tersebut. Tindakan defendan telah meletakkan pihak-pihak tersebut dalam risiko disaman atas pemecahan kontrak dan *breach of confidence* yang dihalang oleh perjanjian penyelesaian tersebut.

26. Dalam kes **AN Clark (Engineers) Ltd.** [1969] RPC 41 Mahkamah Tinggi menyatakan seperti berikut:

Held, (1) that of the three elements essential to a cause of action for breach of confidence, namely:

- (a) that the information was of a confidential nature,
- (b) that it was communicated in circumstances importing an obligation of confidence and
- (c) that there was an unauthorised use of the information.

27. Perlindungan kepada maklumat sulit adalah dilanjutkan kepada sesiapa yang menerima sebarang pengetahuan mengenai maklumat sulit tersebut secara kemudian dan tidak dibenarkan untuk mendedahkannya.

28. Dalam kes **AG v Guardian Newspapers** [1988] 3 All ER 545, House of Lords memutuskan:

- (b) The Sunday Times article on 12 July 1987 was a breach of confidence since it included material prejudicial to national security



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which had not been published elsewhere and the fact that the information was about to be published elsewhere (ie the United States) in breach of confidence did not relieve the Sunday Times of its own obligation to respect the confidentiality of the material.

...

One of those constraints is that anyone who receives information from a person bound by an obligation of secrecy or confidence, and who knows that the information has been passed to him by his informant in breach of that obligation, becomes automatically prima facie himself bound by a like obligation of secrecy or confidence which will prevent his disseminating the information any further, or making any use of it without the consent of the person to whom the obligation of secrecy or confidence was owed by the informant. [pp614]

...

I start with the broad general principle (which I do not intend in any way to be definitive) that a duty of confidence arises when confidential information comes to the knowledge of a person (the confidant) in circumstances where he has notice, or is held to have agreed, that the information is confidential, with the effect that it would be just in all the circumstances that he should be precluded from disclosing the information to others. [pp 658]

29. Defendan juga telah mengambil tindakan yang melampau apabila memfailkan writ sepina untuk memaksa pihak yang tidak relevan iaitu Yvonne Gan untuk menghadiri Mahkamah sebagai saksi bagi pihak defendan yang mana Yvonne Gan bukanlah individu *who has seen the facts or knows the facts*.

30. Beliau tidak berada di klinik plaintif pertama semasa pembedahan anjing peliharaan defendan dijalankan. Oleh itu, orang yang tidak mempunyai pengetahuan peribadi berkenaan guaman ini tidak wajar dipaksa untuk memberi keterangan bagi pihak defendan.



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31. Dalam kes **ECM Libra Investment Bank Bhd v Foo Ai Meng & Ors** [2013] 3 MLJ 35 Mahkamah Rayuan mengesahkan keputusan Mahkamah Tinggi untuk mengeneipikan writ sepina atas alasan bahawa:

- (a) documents are confidential and not relevant ; and
- (b) the witness has no personal knowledge of the appellant's claim against the defendants and the writ of subpoena was issued with mala fide intent.

32. Adalah jelas bahawa dokumen yang terlindung adalah tidak relavan kepada liabiliti defendan dalam guaman ini kerana ia bukanlah dokumen *contemporaneous* atau berkait rapat dengan pertikaian atau isu di hadapan Mahkamah ini.

33. Defendan berhujah bahawa dokumen yang terlindung tersebut adalah perlu untuk defendan membangkitkan pembelaan komen berpatutan mengenai suatu perkara kepentingan awam.

34. Plaintiff pula berhujah bahawa defendan telah memperolehi Laporan Bedah Siasat Universiti Putra Malaysia bertarikh 11.2.2011 dan mengetahui bahawa kematian anjing perliharaan defendan adalah disebabkan "*underlying condition*" pada jantung.

35. Plaintiff seterusnya berhujah bahawa defendan enggan menerima hakikat yang sebenar dan berdegil untuk memfitnah plaintiff-plaintiff demi menguntungkan dirinya.

36. Tambahan lagi, kedua-dua pakar veterineri Profesor Dr. Noordin dan Profesor Madya Dr Chen Hui Cheng di Fakulti Perubatan Veterinar,



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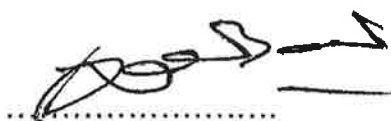
Universiti Putra Malaysia telah mengesahkan kematian anjing perliharaan defendan bukan disebabkan oleh kecuaiian plaintif-plaintif.

Kesimpulan

37. Berdasarkan kepada alasan-alasan yang dinyatakan di atas, mahkamah memutuskan permohonan plaintif-plaintif lampiran 20 untuk membatalkan pliding dan membuang Ikatan Dokumen Defendan dibenarkan dengan kos.

38. Kos permohonan ini ditetapkan atas jumlah RM3000.00 dibayar oleh defendan kepada plaintif-plaintif.

Bertarikh pada 17 haribulan Oktober, 2022



ISHAK BIN BAKRI

Pihak-Pihak:

Khoo May Yee (Tetuan Foo Hiap Siong & Co.) b/p plaintif

Gary Wong Kin Wai (Tetuan Goh Wong Pereira) b/p defendan



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