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1. [Tazalizah bt Abidin Talib v Yap Kuan Ching & Anor \[2024\] MLJU 3017](#)

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# TAZALIZAH BT ABIDIN TALIB v YAP KUAN CHING & ANOR

CaseAnalysis  
| [2024] MLJU 3017

## Tazalizah bt Abidin Talib v Yap Kuan Ching & Anor [2024] MLJU 3017

Malayan Law Journal Unreported

SESSIONS COURT (AMPANG)

FADZLIN SURAYA MOHD SUAHA SCJ

CIVIL ACTION NO BC-B52NCVC-8-12 OF 2023

1 November 2024

### Fadzlin Suraya Mohd Suah SCJ:

#### JUDGMENT

[1] On 9.10.2024 I allowed the plaintiff's notice of application seeking for an order of ad interim injunction for the preservation of property under Order 29 rule 1 (1) (2) (2A) and rule 2 of the [Rules of Court 2012](#) (enclosure 13"). The order sought was framed as follows:

"a. Bahawa satu perintah Injunksi ad interim bagi penahanan, penjagaan dan/atau pemeliharaan wang berjumlah RM350,000.00 yang dipegang oleh Defendan Kedua di bawah Perjanjian tersebut dengan mengarahkan Defendan Kedua sama ada secara sendiri, melalui ejen atau pengkhidmatnya atau selainnya hendaklah menandatangani wang berjumlah RM350,000.00 tersebut kepada Mahkamah atau ke dalam akaun pelanggan firma guaman Plaintiff sehingga Mahkamah yang mulia mendengar dan melupakan permohonan ini;

b. Bahawa satu perintah injunksi bagi penahanan, penjagaan dan/atau pemeliharaan wang berjumlah RM350,000.00 yang dipegang oleh Defendan Kedua di bawah Perjanjian tersebut dengan mengarahkan Defendan Kedua sama ada secara sendiri, melalui ejen atau pengkhidmatnya atau selainnya hendaklah menandatangani wang berjumlah RM350,000.00 tersebut kepada Mahkamah atau ke dalam akaun firma peguamcara Plaintiff sehingga Mahkamah yang mulia mendengar dan melupakan tuntutan Plaintiff dalam tindakan ini;

c. Selanjutnya satu perintah injunksi bahawa bayaran perenggan (a) dan/atau (b) di atas didepositkan oleh Defendan Kedua dalam masa tujuh (7) hari dari tarikh perintah permohonan di sini;

d. Kos permohonan ini ditanggung oleh Defendan Kedua; dan

e. Lain-lain relif atau perintah sebagaimana Mahkamah yang mulia ini fikir adil dan suaimanfaat."

#### Background

[2] The subject matter of the application are monies claimed due to the plaintiff from the defendants for the payment made to the second defendant's company. The second defendant is a company where the first defendant's son serves as a director.

[3] In her affidavit in support, the plaintiff averred that sometime in 2022, the first Defendant had offered the plaintiff for a joint-venture project to purchase 48 acres of land in Pandan Perdana belonging to Dewan Bandaraya Kuala Lumpur. Parties have also signed an agreement dated 20.12.2022 and agreed to pay RM500,000.00 each.

[4] The Plaintiff also averred that the first defendant had informed her that the second defendant is a company under him and he named his son as the director and share holder of the company representing him in the company.

[5] The Plaintiff had on the instruction of the first defendant deposited RM350,000.00 to the second defendant's account. The deposits were made by way of two cheques to the second defendant's account from the Plaintiff's company account, Star Hygiene & Cleaning Services Sdn Bhd on 23.12.2022 and 9.1.2023.

[6] The Plaintiff averred that the defendants have breached the terms of the agreement when they failed to update the status of the purchase of the property to the plaintiff. The plaintiff on 2.11.2023 terminated the agreement and sued the plaintiff for breach of contract, claiming for the monies deposited to be refunded.

#### **Order 29 rule 2**


[10] It is trite law that an order for interim preservation of property is a temporary and discretionary remedy. It aims to preserve the property being the subject matter of an action pending the disposal of the said action. Amarjeet Singh JC (as His Lordship then was) in *Karunamoorthy a/l Ramasamy (Trading as Era Hemas Trading) v. Hariharan a/l Subramaniam & Ors* [2020] 1 LNS 1400 in discussing the law on preservation held as follows;

"[10] It is established law that an order for interim preservation of property is a temporary and discretionary remedy. It is to preserve the property which is the subject matter of an action pending the disposal of the said action. To consider whether to grant it or to refuse it the Court is not concerned with the chances of success or failure of the plaintiff in proving his civil suit at the forthcoming trial, neither is the Court's function to evaluate the evidence and materials before it for the purpose. The Court is simply concerned with what it has to do in the meantime in order to protect the right of the parties so that no irreparable injury would be caused to either of them. Further whilst the Court is not concerned with such questions the Court must however, be satisfied that there are serious questions to be gone into that action lest an application for preservation of property should be made on frivolous and vexatious grounds. (*Lian Keow Sdn Bhd v. Overseas Credit Finance Bhd* [1982] 2 MLJ 162; *Tan Chong Keat Sdn Bhd v. PintarPintas Sdn Bhd* [2005] 4 MLJ 201; *Telic Corp Sdn Bhd lwn. Majlis Bandaraya Melaka Bandaraya Bersejarah Dan Satu Lagi* [2009] 9 MLJ 703)." (Emphasis added)

[11] The principles for granting the preservation of property under Order 29 rule 2 of the [Rules of Court 2012](#) applies equally to the principles for an interlocutory injunction under Order 29 rules 1 of the [Rules of Court 2012](#). As stated in *Keet Gerald Francis Noel John v. Mohd Noorbin Abdullah* [1995] 1 CLJ 293, the approach in granting of an interlocutory injunction would apply in determining an application for interim preservation of property, will be:

- (1) whether there is a serious question to be tried in the sense that the claim was not frivolous or vexatious;
- (2) if the question (1) is answered in the affirmative, this Court must determine where the balance of convenience lies; and
- (3) favour of allowing or refusing the order.

[12] In *Teknik Cekap Sdn Bhd v. Villa Genting Development Sdn Bhd* [2000] 7 CLJ 385, Abdul Malik Ishak J held that for an order directing preservation of monies under Order 29 rule 2(1) the sum of monies must be identifiable. His Lordship held as follows:

"If the sum of money is identifiable, then the process of preservation under this rule may be resorted to. Indeed this rule may be invoked to preserve an identifiable sum of money that arises from any criminal activity (*West Marcia Constabulary v. Wagener* [1981] 3 All ER 378 and *Chief Constable of Kent v. V & Anor* [1982] 3 All ER 36). So long as the money can be preserved, this rule may be vigorously resorted to (*Polini v. Gray* [1879] 12 Ch D 438 .

[13] It is the plaintiff's contention that they have fulfilled all the requirements of the application to preserve the monies paid to the second defendant's account. The plaintiff submitted that the amount RM350,000.00 is an identifiable fund which was deposited into the second defendant's account by way of two cheques dated 23.12.2022 and 9.1.2023 as averred in the plaintiff's affidavit in support of the application.

[14] It was further submitted that the second defendant had failed to explain the whereabouts of the money and had only stated that the money was paid to the first defendant by producing only payment vouchers without the bank statement.

[15] It was the second defendant's submission that the plaintiff failed to identify the agreement between the parties and also failed to prove that the monies is in the second defendant's keeping. Moreover, it is the second

defendant's contention that they are not parties to the agreement. The second defendant in their affidavit averred that the monies was paid byjitar Hygiene and it was then paid to the first defendant whereby payment vouchers were exhibited as proof. It was the second defendant submission that the plaintiff has failed to prove that there are serious issues to be tried and thus the application should be dismissed.

**[16]** Applying the law to the facts of the instant case, and for the very purpose of this application, this Court need only to determine whether the monies are the type that ought to be preserved by an order of the preservation. If they are, whether this Court ought to exercise it discretion in favour of granting the order sought by the plaintiff.

**[17]** The plaintiff has contended that she has a valid claim over the monies paid by virtue of the agreement with the first defendant dated 20.12.2022. Her claim is supported by bank slips and statements exhibited in the affidavit in support of the applications. The second defendant denied the allegation and claimed that they are not party to the agreement and therefore the agreement is not binding on them. It is also their contention that it is impossible for them to have the monies in their possession since they are not party to the agreement.

**[18]** After having considered the statement of claim and the affidavits filed by the parties, I am satisfied that there are serious questions to be tried, mainly whether the defendants are liable for the amount claimed by the plaintiff for the breach of the agreement.

**[19]** Moreover, the plaintiff claimed that the monies were paid to the second defendant but the second defendant denied having the possession of the monies and in their affidavit in reply said that the monies were already paid to the first defendant by exhibiting only payment vouchers as proof. Therefore, it is important that the monies be preserved in order to protect the rights of the parties so that no irreparable injuries would be caused. In the case of *Una Keow Sdn Bhd v. Overseas Credit Finance Bhd* [1982] CLJ 350, Salleh Abas FJ (as His Lordship then was) held as follows:

“An interlocutory injunction is a temporary and discretionary remedy. To consider whether to grant it or refuse it the court is not concerned with the chances of success or failure of the appellants in proving their civil suit at the forthcoming trial, neither is the court's function to evaluate the evidence and materials before it for that purpose. The court is simply concerned with what it has to do in the meantime in order to protect the rights of the parties so that no irreparable injury would be caused to either of them. Further whilst the court is not concerned with such questions the court must however, be satisfied that there are serious questions to be gone into that suit, lest an application for injunction should be made on frivolous and vexatious grounds (*American Cynamid v. Eithicon Ltd.*)” (Emphasis added)

**[20]** In *Tan Chong Keat Sdn Bhd v. Pintar Pintas Sdn Bhd* [2005] 4 MLJ 201, the court was of the view that there were damages due to the defendant but in view of the conduct of the plaintiff there was a real risk that the plaintiff may dissipate or remove the balance of the proceeds of sale of the sale property due from the chargee bank. It was held as follows:

“We are of the view that there exist several questions to be tried... Further, the conduct of the appellant seems to support the respondent's stand that there is a real risk that the appellant may dissipate or remove the balance of the proceeds of sale of the said property due from Public Bank Berhad. Under the circumstances, the balance of convenience clearly lies in favour of granting the order for the preservation of the balance of the proceeds of sale of the said property. ... We cannot see how the appellant can be prejudiced by such an order.”

**[21]** Based on the affidavits, it appears that the monies in question were deposited by the plaintiff into the second defendant's account. Plaintiff in the instant case also claimed for the monies paid to the first defendants which were deposited into the second defendant's account based on an agreement entered on 20.12.2022.

**[22]** I am of the view that an interim preservation order on the monies should be made on the facts and circumstances of the case as if the balance of convenience clearly lies in favour of granting the order for the preservation of the monies deposited into the second defendant's account. I am also of the view that the defendants will not be prejudiced by such an order.

**[23]** Hence, the plaintiffs application in enclosure 13 was allowed with costs. The RM350,000.00 is to be deposited into the Court until the disposal of the case, within seven (7) days from the date of the order.