

**IN THE HIGH COURT OF MALAYA IN SHAH ALAM
IN THE STATE OF SELANGOR DARUL EHSAN
CIVIL APPEAL NO: BA-12ANCvC-60-11/2024**

BETWEEN

**ECOSEAL RESOURCES SDN BHD
(COMPANY NO. : 1321498-T)**

... APPELLANT

AND

**TAZALIZAH BINTI ABIDIN TALIB
(IDENTITY CARD NO.: 800508-14-5768)**

... RESPONDENT

[In the Session Court of Ampang
In The State of Selangor Darul Ehsan
Civil Suit No. BC-B52NCvC-8-12/2023

Between

Tazalizah binti Abidin Talib
(Identity Card No.: 800508-14-5768)

... Plaintiff

And

1. Yap Kuan Ching
(Identity Card No. : 691231-05-5443)
2. Ecoseal Resources Sdn Bhd
[Company No. : 1321498-T]

... Defendants

GROUND OF JUDGMENT

INTRODUCTION

[1] This is an appeal by the second defendant against the order of the Session Court Judge dated 9.10.2024 pursuant to Order 29 Rule 2 of the Rules of Court 2012. The Session Court Judge ordered for a detention



and/or preservation of the sum of RM350,000.00 to be paid by the second defendant to the plaintiff in the Session Court Ampang within 7 days from the date of the Order.

BRIEF FACTS

[2] On 20.12.2022, the plaintiff and the 1st defendant executed a Joint Venture Agreement. The terms of the agreement, among others, are-

- (i) They agreed to purchase a 48-acre land at Panduan Perdana, DBKL.
- (ii) Each will invest RM500,000.00, and the total investment is RM1,000,000.00.
- (iii) If the land purchase does not materialize, the 1st defendant shall refund the investment to the plaintiff.

[3] Prior to that, the plaintiff, the first defendant, and Yap Yong Seng, the director of the second defendant, attended all meetings held at the second defendant's office to purchase the land.

[4] Upon entering the Agreement, the plaintiff paid the sum via cheques from Star Hygiene & Cleaning Services Sdn Bhd, dated 23 December 2022 and 9 January 2023, which were deposited into the second defendant's account as requested by the first defendant. According to exhibit T-4, the plaintiff holds 100% of the shares in Star Hygiene & Cleaning Services Sdn Bhd.

[5] The plaintiff then questioned the status of the land purchase and requested proof of how the amount paid was utilised. The first and second



defendants did not respond, prompting the plaintiff, through the solicitor, to issue a notice of demand and termination to the first defendant for the refund of the amount paid. Consequently, the plaintiff filed a suit against the first and second defendants in the Ampang Session Court.

[6] In the second defendant's Affidavit in reply, it was asserted that the sum paid by Star Hygiene was given to the first defendant at their request. To support this contention, the second defendant exhibited a payment voucher without the bank statement.

PLAINTIFF'S SUBMISSION

[7] The plaintiff asserted that the first defendant made a representation, stating that he manages the second defendant and that his son has been appointed as the director and shareholder of the second defendant.

[8] The plaintiff deposited the investment sum of RM350,000.00 into the second defendant's account to purchase the land from DBKL under a Bumiputra company. The cheques dated 23.12.2022 and 9.1.2023 and the clearance proof can be seen in exhibit T-3 of the plaintiff's affidavit of support.

[9] When the defendants failed to update the plaintiff on the progress of the land purchase, the plaintiff, relying on clause 3 of the agreement, requested that the defendants refund her the investment money.



SECOND DEFENDANT'S SUBMISSION

[10] The second defendant averred that they were not privy to the agreement between the plaintiff and the first defendant, and the plaintiff has no locus standi to initiate a legal proceeding against the second defendant.

LEGAL PRINCIPLES

[11] Order 29 Rules 2 Rules of Court 2012 provides for detention and preservation of subject matter of cause or matter as follows-

- (1) On the application of any party to a cause or matter, the Court may make an order for the detention, custody or preservation of any property which is the subject matter of the cause or matter, or as to which any question may arise therein, or for the inspection of any such property in the possession of a party to the cause or matter.

[12] Whereas in Order 29 Rules 3 RoC 2012 states that –

- (2) Where the right of any party to a specific funds is in dispute in a cause or matter, the Court may, on the application of a party to the cause or matter, order the fund to be paid into Court or otherwise secured.

[13] The law for interim preservation of property is well established. The underlying purpose of this rule is to provide security for the property in



question, as ruled in **Tan Lay Soon v Kam Mah Theatre Sdn Bhd (Malayan United Finance Bhd, Intervener) [1992] 2 MLJ 434.**

[14] The order for interim preservation of property is a temporary and discretionary remedy. In **Karunamoorthy a/l Ramasamy v Hariharan A/L Subramaniam & Ors [2020] CLJU 1400**, the Court held that –

[10] ... To 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 that 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 in 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] CLJ Rep 182; [1982] 2 MLJ 162; Tan Chong Keat Sdn Bhd v. Pintar Pintas Sdn Bhd [2005] 2 CLJ 863; [2005] 4 MLJ 201; Telic Corp Sdn Bhd lwn. Majlis Bandaraya Melaka Bandaraya Bersejarah Dan Satu Lagi [2009] 7 CLJ 681; [2009] 9 MLJ 703)

[15] The test for a preservation order is set out in **Tan Chong Keat Sdn Bhd v Pintar Pintas Sdn Bhd [2005] 4 MLJ 2001** as being -

- (a) the balance of convenience lies; and
- (b) whether there are serious issues to be tried.



ISSUE TO BE DECIDED

[16] The relevant issues to be decided are as follows-

- (i) Where does the balance of convenience lie; and
- (ii) Whether there are serious issues to be tried

COURTS' DECISION

Issue 1: Whether the balance of convenience lies in allowing the preservation order

[17] The essential consideration is the preservation of the subject matter pending the final disposal of the action. The subject matter in this action is the sum of RM350,000.00 paid by the plaintiff into the second defendant's account.

[18] In the Affidavit in Support, the plaintiff exhibited company information, which shows that the plaintiff is the shareholder and director of Star Hygiene. The second defendant remained silent after receiving the sum of RM350,000.00 from the unknown party.

[19] On 2 November 2023, the plaintiff issued the defendants a demand and termination notice, but they did not respond.

[20] In **Teknik Cekap Sdn Bhd v Villa Genting Development Sdn Bhd [2000] 7 CLJ 385**, Abdul Malik Ishak J said that –

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 Mercia 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).

[21] It is evident from the facts of the case that the sum of RM350,00 deposited into the second defendant's account was acknowledged. The second defendant claimed that he subsequently paid the money to the first defendant.

[22] It is more crucial that the second defendant fails to exhibit a bank statement in his affidavit in reply to demonstrate that RM350,000.00 has been transferred to the first defendant.

[23] Therefore, the Session Court Judge correctly grants an interim preservation order. In the case of **Sebaya Sdn Bhd v Syarikat Bekerjsama Ladang Kepala Sawit Pegawai-pegawai Negeri Pahang [1979] CLJU 91**, the Federal Court affirmed the preservation order of the High Court because the payment of net profits was not disputed. The defendant also did not raise the defence of illegality concerning the transaction.

Issue 2: Whether there is a serious issue to be tried.

[24] It is pertinent to note that in the statement of defence, the first defendant acknowledged that he and the plaintiff had entered into a joint venture agreement to purchase and develop land in Pandan Perdana. However, the first defendant denied the plaintiff's allegation regarding the payment sum RM350,000.00. In my view, this represents a substantial



contradiction between the assertions of the first and second defendants concerning the whereabouts of the RM350,000.00.

[25] Given the second defendant's assertion that RM350,000.00 has been transferred to the first defendant, this raises a serious issue that needs to be tried.

CONCLUSION

[26] For the reasons stated above, the notice of appeal is dismissed with costs of RM3,000.00, subject to payment of allocator.

Dated: 16th March 2025

.....
HAZIZAH KASSIM
Judicial Commissioner
High Court of Malaya At Shah Alam
(NCvC 10)

1. For the Appellant : Vanaja Nambiar and Tan Jee Sern
Messrs Vanaja, Allison & Jee
(Wilayah Persekutuan Kuala Lumpur)
2. For the Respondent : Azzan Aznan Abd Rahim and
Syazwan Hasim
Messrs Syazwan Hasim & Azeel Eskandar
(Ampang, Selangor)

