

PLASTECH INDUSTRIAL SYSTEMS SDN BHD

v.

N&C RESOURCES SDN BHD & ORS

High Court Malaya, Kuala Lumpur
Umi Kalthum Abd Majid J
[Civil Suit No: 22IP-49-2009]
6 September 2013

Civil Procedure: Contempt of court — Committal proceedings — Plaintiff sought for an order of committal against defendants — Plaintiff alleged that defendants had committed acts of contempt by not complying with relevant judgment and order — Whether proved — Whether defendants had valid excuses for not complying with the judgment and order

The plaintiff commenced an action against the defendants for copyright infringement, passing-off, unlawfully taking and using the plaintiff's proprietary information, breach of fiduciary duty of confidentiality and breach of fiduciary duties and breach of trust. The plaintiff successfully obtained judgment against the defendants ('the judgment'). The 1st, 2nd and 4th defendants were served with the judgment at a later date. The 1st, 3rd and 4th defendants (excluding the 2nd defendant as he was adjudged a bankrupt) appealed to the Court of Appeal and had also an application for stay of execution of the judgment pending appeal to the Court of Appeal. The High Court dismissed the stay application and ordered the 1st, 3rd and 4th defendants to deliver-up the moulds to an agreed third party pending disposal of the appeal ('the Order'). The 1st, 3rd and 4th defendants appealed to the Court of Appeal for stay of execution of the judgment pending appeal to the Court of Appeal but it was dismissed. The 1st, 3rd and 4th defendants' main appeal to the Court of Appeal was struck out for their failure to file the record of appeal. The 1st, 3rd and 4th defendants leave to appeal to the Federal Court was also refused. The plaintiff sought for an order of committal against the defendants. The plaintiff alleged the defendants had committed acts of contempt against the judgment and the order. The 1st, 3rd and 4th defendants denied the plaintiff's allegation that they had deliberately and intentionally failed to comply with the judgment. The 3rd defendant claimed that he was not in the position to compel compliance of the judgment because he was only the sale and marketing director of the 1st defendant.

Held (allowing the plaintiff's application):

(1) The 3rd defendant had constructive knowledge of the judgment when he and the 1st and 4th defendants applied for a stay of the judgment in the High Court. Thus, the 3rd defendant was served with and knew of the judgment. Notwithstanding the fact that the 1st, 3rd and 4th defendants were served with the judgment at a later date, they were aware and/or knew of the judgment earlier. The 1st, 3rd and 4th defendants were therefore required to comply with the judgment and to deliver-up the moulds to the third party. They had failed to do so. (paras 16 & 18)



(2) The plaintiff had successfully proved beyond reasonable doubt that the defendants had committed and still continue to commit acts of contempt of court when they failed and/or continued to fail to comply with the judgment and the order. (para 23)

(3) In so finding the defendants were guilty of contempt of court, their many excuses for not complying with the judgment and the Order were rejected. Their applications for stay of the judgment at the High Court and at the Court of Appeal, which were both dismissed, were not valid excuses for not complying with the judgment and the order. (para 24)

Case(s) referred to:

Chu Choon Moi v. Ngan Sew Tin [1985] 1 MLRA 444; [1986] 1 MLJ 34 (refd)

Lee Lim Huat v. Yusuf Khan Ghows Khan & Anor [1997] 1 MLRA 244 (refd)

Murray Hiebert v. Chandra Sri Ram [1999] 1 MLRA 494 (refd)

Wee Choo Keong v. MBf Holdings Bhd & Anor And Another Appeal [1993] 1 MLRA 260 (refd)

Legislation referred to:

Rules of Court 2012, O 45 r 7(7), O 52 r 4

Counsel:

For the plaintiff: Justin TY Voon (SL Su & Yeoh Chen Yee with him); M/s S Justin Voon Chooi & Wing

For the 1st, 2nd & 4th defendants: Rajinder Singh (Clinton Nicholas Gomez with him); M/s Rajinder Singh Veriah & Co

For the 3rd defendant: Lau Ko Luen (Victoria Loi Tien Fen with him); M/s Shook Lin & Bok

JUDGMENT

Umi Kalthum Abd Majid J:

The Application

[1] This is the plaintiff's application (encl 36A) for an order of committal pursuant to O 52 r 4 of the Rules of Court 2012 to be made against the following parties:

- i) Innotech Formwork System Sdn Bhd (formerly known as "N&C Resources Sdn Bhd") ("Innotech");
- ii) Chua Teik Huat;
- iii) Kenny Yong Kuet Wee;
- iv) Nga Poh Choo;
- v) Koaki Enterprise Sdn Bhd ("Koaki");



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vi) Ong Mee Hua.

[2] The plaintiff's application for leave to commence contempt proceedings against the above alleged contemnors was granted by the High Court on 9 August 2012.

The Background

[3] The plaintiff commenced an action against the defendants for copyright infringement, passing-off, unlawfully taking and using the plaintiff's proprietary information, breach of fiduciary duty of confidentiality and breach of fiduciary duties and breach of trust by way of writ summons filed in 2009. The plaintiff obtained judgment against the defendants on 6 October 2011 ("the judgment").

[4] The 1st, 3rd and 4th defendants appealed to the Court of Appeal and had also an application for stay of execution of the judgment pending appeal to the Court of Appeal. On 25 November 2011, the High Court dismissed the stay application and ordered the 1st, 3rd and 4th defendants to deliver-up the moulds as stated in the judgment to an agreed third party pending disposal of the appeal ("the 25 November 2011 Order"). The 1st, 3rd and 4th defendants appealed to the Court of Appeal for stay of execution of the judgment pending appeal to the Court of Appeal but it was dismissed on 2 February 2012.

[5] The 1st, 3rd and 4th defendants' main appeal to the Court of Appeal was struck out on 17 May 2012 for their failure to file the Record of Appeal. The defendant's leave to appeal to the Federal Court was refused on 15 October 2012.

Application For Committal Proceedings

[6] In respect of this application (encl 36A), the plaintiff filed 9 affidavits (encls 43, 35A, 52, 60, 67, 68, 70 and 61) whilst the alleged contemnors filed 12 affidavits in opposition (encls 55, 56, 52, 58A, 59, 57A, 60, 60A, 63, 64, 65, 66 and 71).

[7] The plaintiff sought for an Order of Committal against all the defendants in this case and two other parties namely Koaki and Ong Mee Hua who it was alleged had aided the defendants to delay and or to disobey para 2 of the judgment in relation to the delivery of the moulds. The plaintiff alleged the above named alleged contemnors had committed acts of contempt against the judgment and 25 November 2011 Order. For ease of reference, para 2 of the judgment and para (ii) of the 25 November 2011 Order are reproduced here as follows:

Paragraph 2 of the judgment

"(2) Suatu Perintah mandatori yang mengarahkan defendan-defendan dalam jangka masa tujuh hari dari penyerahan Perintah ini kepada mereka, menghantar-serah ("delivery up") kepada pihak plaintif atau menyebabkan untuk dihantar – serah kepada milikan pihak plaintif:



- (a) Kesemua katalog-katalog defendan-defendan yang melanggar hakcipta dalam KATALOG-KATALOG plaintif dan/atau GAMBAR-GAMBAR plaintif dan/atau Maklumat Proprietari plaintif;
- (b) Kesemua acuan dan produk-produk yang mengandungi atau dihasilkan dengan menggunakan Maklumat Proprietari plaintif yang berada dalam milikan, kuasa, jagaan atau kawalan defendan-defendan;
- (c) Identiti-identiti kesemua pihak yang terlibat dalam mendedahkan, menggunakan, berkomunikasi, menyebarkan dan/atau menyiarkan melalui apa-apa cara dan/atau kegunaan untuk manfaat defendan-defendan atau mana-mana pihak ketiga apa-apa atau semua Maklumat Proprietari yang dimiliki plaintif;
- (d) Mengemukakan keterangan keuntungan (“account of profits”) berkenaan kerja-kerja atau projek-projek yang diperolehi, dijalankan dan/atau disempurnakan yang merupakan hasil perbuatan-perbuatan pelanggaran hakcipta berkenaan dengan GAMBAR-GAMBAR dan/atau KATALOG-KATALOG plaintif, perbuatan-perbuatan pengelirupaan terhadap plaintif, penyalahgunaan Maklumat Proprietari plaintif, kemungkiran kewajipan fidusiari, kemungkiran kewajipan kesetiaan (“fidelity”) kemungkiran perjanjian pekerjaan, frod dan/atau bersubahat untuk frod.”

Paragraph (ii) 25 November 2011 Order

- (ii) Bahawa defendan-defendan pertama, ketiga dan keempat menghantar serah (“delivery up”) acuan-acuan (“moulds”) [seperti yang dinyatakan dalam perenggan 2(b) Penghakiman bertarikh 6 Oktober 2011] kepada pihak ketiga yang dipersetujui di antara pihak-pihak sementara menunggu pelupusan rayuan defendan-defendan pertama, ketiga dan keempat di Mahkamah Rayuan di mana caj penyimpanan akan ditanggung oleh pihak plaintif dengan kebebasan diberi kepada pihak plaintif untuk menuntut balik caj penyimpanan tersebut daripada defendan-defendan pertama, ketiga dan keempat jikalau rayuan defendan-defendan pertama, ketiga dan keempat di Mahkamah Rayuan telah ditolak oleh Mahkamah Rayuan.”

[8] The plaintiff averred that the alleged contemnors had committed the following acts of contempt:

- 8.1 the defendants had ignored the judgment and refused to comply with it even though there was a time frame of seven days for compliance from the date of service of the judgment;
- 8.2 the 1st, 3rd and 4th defendants filed various applications at the High Court and the Court of Appeal to stay the judgment but both were refused by the High Court and the Court of Appeal respectively;
- 8.3 the 1st, 3rd and 4th defendants refused to comply with the 25 November 2011 Order and refused to agree on the delivery of

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the moulds to a third party pursuant to the 25 November 2011 Order;

8.4 despite there being no order for “stay” granted since 6 October 2011 the defendants deliberately delayed the compliance of the judgment;

8.5 The defendants used Koaki to sue the 1st defendant based on an alleged “lien” on the moulds, in order to confuse the issue and if they succeeded on this, this purported “lien” by Koaki can be an “excuse” for the defendants to allege that they could not hand over the moulds to the plaintiff. The 4th defendant and Ong Mee Hua are husband and wife. The 4th defendant was the majority shareholder and Managing Director of Koaki until he stepped down prior to the filing of Shah Alam suit referred to below;

8.6 Koaki commenced a suit against the 1st defendant on 2 April 2012 vide Shah Alam High Court Civil Suit No: 22NCVC-520-04-2012 (“Shah Alam suit”) for a declaration of “lien” over the same moulds that ought to have been delivered to the plaintiff pursuant to the judgment. The plaintiff alleged that this Shah Alam suit was a sham suit because the 1st defendant never defended this suit and had failed to enter appearance;

8.7 the plaintiff had to apply to intervene in the Shah Alam suit and it was allowed on 13 August 2012. Subsequently, on 31 October 2012, after trial the Shah Alam High Court dismissed the whole suit between Koaki and the plaintiff (as intervener). The 1st defendant (N&C Resources Sdn Bhd and now Innotech) never took part in the trial although the company was the defendant in the Shah Alam suit.

8.8 Koaki had also applied vide Summons-in-Chambers dated 29 May 2012 to intervene in this case, to pursue Koaki’s “lien” over the moulds. However, this application was dismissed by YA Datuk Hanipah Binti Farikullah on 26 July 2012;

8.9 the defendants had also failed to deliver the “product” which the defendants had made with the moulds. These products were the formwork “panel” which had been exhibited as “P10” during the trial. The plaintiff averred that the defendant can still sell these products in the market.

[9] The plaintiff averred that the defendant had complied with the judgment after the commencement of the committal proceedings. However the compliance was neither genuine nor *bona fide* and there was inordinate delay. The defendant had surrendered 121 catalogues in compliance with para 2(a) of the judgment on 21 November 2012 without explaining how it was that out of 500 catalogues only 10 were purportedly “used” and 369 left were



unaccounted for. The defendants surrendered the “mould” to the plaintiff on 3 December 2012 but the delivery of the offending products were never complied with. Further the defendant claimed that parties mentioned in para 2(c) of the judgment are only the 2nd, 3rd and 4th defendants. The defendants had failed to comply with para 2(d) of the judgment as some random and disorganised invoices and other miscellaneous documents were given very belatedly on 21 December 2012 which was clearly not an “account of profits” based on breach of copyright, passing off, unlawful use of the plaintiff’s proprietary information as required under the said para 2(d) of the judgment.

The 1st, 2nd And 4th Defendants’ Defence

[10] The 1st and 4th defendants’ solicitors had written a letter dated 6 October 2012 to the plaintiff’s solicitor requesting date and time for the moulds to be delivered to the plaintiff. In response the plaintiff fixed 3 December 2012 as the date for delivery of the moulds. The 1st defendant delivered the moulds to the plaintiff on the said date. The 1st defendant had also delivered the 1st defendant’s catalogues and audited account to the plaintiff on 20 November 2012. The relevant documents of the 1st defendant were delivered to the plaintiff’s solicitor on 21 December 2012. The 1st, 2nd and 4th defendants denied the plaintiff’s allegation that they had deliberately and intentionally failed to comply with the judgment dated 6 October 2011.

[11] As regards to the 25 November 2011 Order, it became academic and unenforceable when the Court of Appeal struck out the defendant’s appeal on 17 May 2012.

The 3rd Defendant’s Defence

[12] The 3rd defendant claimed that he was not in the position to compel compliance of the judgment because he was only the Sale and Marketing Director of the 1st defendant. The 3rd defendant was rarely involved in the affairs of the 1st defendant company. The 3rd defendant was merely a minority shareholder and thus not in the position to compel the other defendants to comply with the judgment. Therefore he could not be at fault for something that was beyond his power. The 3rd defendant also submitted that the other defendants had complied with the judgment.

Koaki Enterprise Sdn Bhd And Ong Mee Hua Defences

[13] Koaki filed the Shah Alam suit against the 1st defendant to claim for the sum of RM596,821.19, being the unpaid amount for the sale of the “moulds”, and also sought a lien over the said moulds. Koaki had filed the application to intervene in this suit because it had sought a lien over the moulds and therefore exercising its legal rights. Neither the Shah Alam suit nor the application to intervene had the effect of preventing the plaintiff from enforcing the judgment.

[14] The 4th defendant had also ceased to become the Director and shareholder of Koaki effective on 1 March 2012 and 15 March 2012 respectively. Therefore

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the 4th defendant was not in control of Koaki when the Shah Alam suit was filed against the 1st defendant. The suit was filed to protect Koaki's interests and to minimise losses in the event Koaki succeeded in the Shah Alam suit.

[15] On the other hand the allegation against Ong Mee Hua, that she had interfered with the administration of justice, was baseless because Ong Mee Hua had acted in her capacity as Director of Koaki to protect the company's interest. Ong Mee Hua was never made a party in this suit. Furthermore all the allegations made by the plaintiff in these committal proceedings were also raised in the Shah Alam suit. The learned judge in dismissing the whole suit with each party bearing its own costs, had not made any adverse findings against Ong Mee Hua.

The Decision

[16] Before I proceed to rule on the matter, certain time lines need to be borne in mind in order for me to determine the culpability of each alleged contemnor. This is because in the first place, the four defendants are required to comply with the judgment seven days from the judgment being served on them (para 2 of judgment). The four defendants were served with the judgment as follows:

- 16.1 1st defendant was served at its registered office on 29 March 2012;
- 16.2 2nd defendant was served personally on 21 March 2012;
- 16.3 4th defendant was served personally on 21 March 2012 (exh "CYT3");
- 16.4 3rd defendant I had found in an earlier judgment dated 12 July 2013 (where the 3rd defendant had applied to set aside the *ex parte* order dated 9 August 2012 for leave granted to commence these committal proceedings against the 3rd defendant) to have constructive knowledge of the judgment when he and the 1st and 4th defendants had applied for a stay of the judgment in the High Court vide Summons-in-Chambers dated 13 October 2011 and where the 3rd defendant had affirmed an affidavit-in-support of the application dated 13 October 2011 (exh "CYT26"). For all intents and purposes I rule that the 3rd defendant was served with/knew of the judgment at the latest on 13 October 2011. Moreover, in the earlier judgment, I had ruled that by virtue of O 45 r 7(7) of the Rules of Court 2012 the personal service on the 3rd defendant was dispensed with.

[17] Notwithstanding the fact that the 1st, 2nd and 4th defendants were served with the judgment at a later date, I also rule that the 1st, 2nd and 4th defendants were aware and/or knew of the judgment at the latest on 13 October 2011. The defendants were therefore required to comply with the judgment seven days after 13 October 2011 that is, by 20 October 2011. They failed to do so.



[18] Instead the 1st, 3rd and 4th defendants (excluding the 2nd defendant as he was adjudged a bankrupt) filed an application to the High Court for a stay of the judgment pending appeal to the Court of Appeal, which was dismissed on 25 November 2011. But the High Court further ordered the 1st, 3rd and 4th defendants to deliver-up the moulds as stated in the judgment to an agreed third party pending the disposal of the appeal in the Court of Appeal. This then constituted the 25 November 2011 Order. Seeing that the 25 November 2011 Order did not stipulate the time when the 1st, 3rd and 4th defendants were to comply with the said 25 November 2011 Order, I can only say that it should be within reasonable time after the plaintiff had identified the third party and communicated this information to the 1st, 3rd and 4th defendants' counsel that is, vide letter dated 10 February 2012 (exh "CYT10"). The 1st, 3rd and 4th defendants refused to respond to that letter. In view of the fact that the judgment had stipulated compliance with it by the defendants within seven days upon the judgment being served on them, I rule that reasonable time for the purposes of compliance with the 25 November 2011 Order is within seven days from the date of the said letter dated 10 February 2012. This means that the 1st, 3rd and 4th defendants must deliver-up the moulds to the third party seven days after 10 February 2012, which was on 17 February 2012. They had failed to do so.

[19] After the committal proceedings were filed on 22 August 2012, the defendants purportedly took steps to comply with the judgment as follows:

- 19.1 pursuant to para 2(a), the defendants surrendered 121 catalogues out of 500 catalogues on 21 November 2012, with 10 purportedly "used", leaving 369 catalogues unaccounted for (exh "NPC6", encl 66);
- 19.2 pursuant to para 2(b), the defendants delivered the moulds on 3 December 2012 to the plaintiff (exh "NPC7", encl 66) but the "products" which the defendants had made with the moulds had not been delivered to date;
- 19.3 pursuant to para 2(c), the defendant's counsel's letter dated 18 December 2012, served on the plaintiff's counsel on 21 December 2012 (exh "NPC8", encl 66), stating that the parties mentioned in para 2(c) are only the 2nd, 3rd and 4th defendants;
- 19.4 pursuant to para 2(d), the defendants sent to the plaintiff's counsel, vide their counsel's letter dated 20 November 2012 (exh "NPC6", encl), the 1st defendant's audited accounts for financial years ending 31 December 2009, 2010 and 2011. Subsequently, the defendants gave the plaintiff some random and disorganised invoices and miscellaneous documents (80 altogether) on 21 December 2012 (exh "NPC8", encl 66). Both sets of documents clearly do not amount to "account of profits" as required under para 2(d);

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[20] As for the compliance with the 25 November 2011 Order, the 1st, 3rd and 4th defendants had delivered the moulds to the plaintiff and not to the third party in breach of the said Order on 3 December 2012 (but by which time the 25 November 2011 Order had become academic when the Court of Appeal had struck off the defendants' appeal on 17 May 2012). For the purposes of the judgment, I find the defendants had complied with para 2(b) of the judgment as of 3 December 2012.

[21] The standard of proof for contempt is beyond reasonable doubt (*Murray Hiebert v. Chandra Sri Ram*) [1999] 1 MLRA 494; *Lee Lim Huat v. Yusuf Khan Ghows Khan & Anor* [1997] 1 MLRA 244).

[22] What constitutes beyond reasonable doubt is explained in the Supreme Court case of *Chu Choon Moi v. Ngan Sew Tin* [1985] 1 MLRA 444; [1986] 1 MLJ 34 where, per Syed Agil Barakbah SCJ (delivering judgment of the court) at p 450, right column, paras D-F, it was held:

“... We agree that fraud whether made in civil or criminal proceedings must be proved beyond reasonable doubt and cannot be based on suspicion and conjecture ... Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The degree of proof need not reach certainty but it must carry a high degree of probability. What it means is that the evidence adduced is such that the court believes its existence or a prudent man considers its existence probable in the circumstances of the particular case. If such proof extends only to a possibility but not in the least a probability, then it falls short of proving beyond reasonable doubt ...”

[23] I find that the plaintiff had successfully proved beyond reasonable doubt that the four defendants had committed and still continues to commit acts of contempt of court when they failed and/or continues to fail to comply with the judgment and the 25 November 2011 Order. I therefore allow the plaintiff's application in their regard with costs at RM5,000.00 payable by each contemnor to the plaintiff within one week from date of this judgment. Based on the time lines I have laid out above, I find:

23.1 all the defendants had failed to comply with the whole judgment from 20 October 2011 to 24 November 2011 that is, about one year one month;

23.2 all the defendants had failed to comply with para 2(a) of the judgment with regards to the catalogues from 20 November 2011 to 21 November 2012 that is, one year one month. Even though it is regrettable that the defendants had failed to surrender the balance of 369 catalogues to the plaintiff, but for the purposes of these proceedings I will accept the fact that that was all that the defendants could have surrendered to the plaintiff;

23.3 all the defendants had failed to comply with para 2(b) of the judgment pertaining to the “products” which the defendants had made with the moulds from 20 October 2011 to date and are still



continuing to fail to comply with the same that is, nearly two years and continuing;

23.4 the 1st, 3rd and 4th defendants failed to comply with the 25 November 2011 Order from 17 February 2012 to 17 May 2012 (when the defendants' appeal was struck off by the Court of Appeal) (and notwithstanding that the delivery was made to the plaintiff and not to the third party) that is, about three months, in regard to the moulds, as per para (ii) of the 25 November 2011 order;

25.2

23.5 all the defendants had failed to comply with para 2(c) of the judgment with regard to naming the parties mentioned in para 2(c) from 20 October 2011 to 21 December 2012 that is, one year two months;

25.3

23.6 all the defendants had failed to comply with para (d) of the judgment with regard to "account of profits" from 20 October 2011 to date and are still continuing to fail to comply with the same that is, nearly two years and continuing.

25.4

[24] In so finding the defendants guilty of contempt of court, I reject their many excuses for not complying with the judgment/25 November 2011 Order. Their applications for stay of the judgment at the High Court and at the Court of Appeal, which were both dismissed, were not valid excuses for not complying with the judgment/the 25 November 2011 Order. Neither was the existence of the Shah Alam suit a valid excuse. In the Supreme Court case of *Wee Choo Keong v. MBf Holdings Bhd & Anor And Another Appeal* [1993] 1 MLRA 260, Abdul Hamid bin Omar LP (delivering judgment for the said court) held that, at p 261, para d, left column:

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"Obedience to Court Order

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It is established law that a person against whom an order of court has been issued is duty bound to obey that order until it is set aside. It is not open for him to decide for himself whether the order was wrongly issued and therefore does not require obedience. His duty is one of obedience until such time as the order may be set aside or varied. Any person who fails to obey an order of court runs the risk of being held in contempt with all its attendant consequences."

1.2

[25] As for the alleged contemnors Koaki and Ong Meng Hua, I find that the plaintiff had failed to prove beyond reasonable doubt that they were acting in contempt of the judgment and or the 25 November 2011 Order and I dismiss the plaintiff's application in their regard with no order as to costs. I do so for the following reasons:

1.3

25.1 any party is free to file any applications and suits in court. Whether or not those applications/suits have been dismissed/allowed by the court is left to the court to so determine. The

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plaintiff cannot extrapolate that just because Koaki's application to intervene in this civil suit was dismissed by the High Court, Koaki's civil suit in the Shah Alam suit was dismissed, that it showed the deliberate actions of Koaki and Ong Meng Hua to subvert the judgment and or 25 November 2011 Order;

25.2 I accept Koaki's and Ong Meng Hua's grounds for making the application/filing the Shah Alam suit that is, to protect Koaki's interest in the moulds and monies paid, notwithstanding the fact that both were dismissed by the court. It must also be remembered that the Shah Alam suit was dismissed with each party bearing its own costs and not that Koaki had to pay costs to the intervener/plaintiff in this case;

25.3 even though the actions of Koaki and Ong Meng Hua may have links to this case, and may be said to be an abuse of process of the court, that in themselves do not to my mind constitute acts of contempt of the judgment/25 November 2011 Order without more;

25.4 notwithstanding the fact that Koaki and Ong Meng Hua were featured in this suit, they were not made parties to this suit by the plaintiff in the first place.

[26] After I had found the 1st to the 4th contemnors guilty of contempt of court, I called upon them to put forth their respective pleas in mitigation of the sentence to be meted out to them.

After considering the plea in mitigation of sentencing of the 1st to the 4th contemnors, I hereby sentence the said contemnors as follows:

- 1.1 the 1st defendant/1st contemnor – a fine of RM20,000.00 for the past contempt and an additional fine of RM100.00 per day for each day of non-compliance of the judgment;
- 1.2 the 2nd defendant/2nd contemnor – a fine of RM15,000.00 for past contempt and an additional fine of RM100.00 per day for each day of non-compliance of the judgment, in default of the RM15,000.00 fine thereof a term of imprisonment of two months;
- 1.3 the 3rd defendant/3rd contemnor – a fine of RM10,000.00 for past contempt and an additional fine of RM100.00 per day for each day of non-compliance of the judgment, in default of the RM10,000.00 fine thereof a term of imprisonment of two months;
- 1.4 the 4th defendant/4th contemnor – a fine of RM15,000.00 for past contempt and an additional fine of RM100.00 per day for each day of non-compliance of the judgment, in default of the RM15,000.00 fine thereof a term of imprisonment of two months.



Before I imposed the sentences, I took into consideration that there had been an inordinate delay by the contemnors to comply with the judgment and/or the 25 November 2011 Order; there had been partial compliance of the same; there continues to be non-compliance of the judgment in respect of para 2(b) pertaining to the "products" and para 2(d) pertaining to the "account of profits"; the fact that the "account of profits" have not been forth coming has a detrimental effect on the plaintiff to apply for assessment of damages against the defendants/contemnors.

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