Trip4asia Sdn Bhd & Anor v Destini Bhd [2021] MLJU 1755

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COURT OF APPEAL (PUTRAJAYA)

HANIPAH FARIKULLAH, AZIZAH NAWAWI AND HASHIM HAMZAH JJCA

CIVIL APPEAL NO W-02(IM)(NCvC)-1455-08 OF 2019, W-02(IM)(NCvC)-1454-08 OF 2019, W-02(IM)(NCvC)-1457-08 OF 2019, W-02(IM)(NCvC)-1458-08 OF 2019, W-02(IM)(NCvC)-1459-08 OF 2019, W-02(IM)(NCvC)-1460-08 OF 2019, W-02(IM)(NCvC)-1461-08 OF 2019 AND W-02(IM)(NCvC)-1462-08 OF 2019

7 September 2021

Rishikesinggam a/l Raja Kulasingam (Daljit Singh Gill and Joshua Kong Jun Wai with him) (Daljit Singh Partnership) for the appellant.
Ravichandaran a/l Selliah (Tharuny a/p Palanisamy with him) (S Ravichandran & Anuar) for the respondent.

Hashim Hamzah JCA:

GROUNDS OF JUDGMENTIntroduction

[1]For ease of reference, the parties to the present appeals shall be referred as they were in the High Court below.

[2]Briefly, the facts in the present appeals are as follows.

[3]The 1st Plaintiffs' business relationship with the 1st Defendant started as early as December 2015. The 1st Plaintiff had on various occasions engaged the 1st Defendant's services in the arrangement of flight tickets, holiday packages and hotel accommodations for the 1st Plaintiff's customers.

[4]The 2nd Plaintiff came to know about the 1st Defendant through the 1st Plaintiff. Eventually, sometime in January 2016, the Plaintiffs had decided to organise an event in Gold Coast, Australia. The event was supposed to be attended by 200 to 250 people from Guangzhou, China and Kuala Lumpur, Malaysia. Preparatory works had commenced since then. The Plaintiffs decided to engage the services of the 1st Defendant to source, procure, arrange and secure charter flights to Gold Coast, Australia for the said event.

[5]The 1st Defendant then appointed the 4th Defendant to arrange the charter flights. The 9th Defendant, as one of the 4th Defendant's directors, had later enquired with the 10th Defendant to secure the required charter flights. The 4th Defendant received a quotation of the estimated cost from the 10th Defendant and forwarded it to the 1st Defendant. The 4th Defendant and the 10th Defendant then entered into a Passenger Services Agreement dated 22.04.2016 to confirm that the 4th Defendant had procured the charter flight services from the 10th Defendant. A copy of the said agreement has been forwarded to the 1st Defendant.

[6]However, the 4th Defendant was informed by the 1st Defendant that the scheduled charter flights had

been put on hold and the route was changed from Australia to Japan. The 4th Defendant through the 9th Defendant then informed the 10th Defendant regarding the change of plans. The 10th Defendant subsequently requested for payment of security deposit and for new dates and routes to be provided as soon as possible. The 10th Defendant's request was communicated by the 4th Defendant to the 1st Defendant but the matter failed to be concluded. The 4th Defendant had later came to know that the Plaintiffs have withdrawn their contract with the 1st Defendant.

[7]The Plaintiffs filed an action against a total of 13 Defendants in the High Court of Malaya in Kuala Lumpur for, among others, breach of contract, fraud, misrepresentation, and conspiracy to injure regarding the proposed charter flights to Gold Coast, Australia, which did not materialise. All the Defendants had subsequently filed an application to strike out the Plaintiffs' Writ and Statement of Claim under O. 18 r. 19(1)(a), (b) and (d) of the Rules of Court 2012 ("ROC 2012"). After hearing the submission of all parties, the learned High Court Judge had allowed the 4th to the 13th Defendants' applications with no order as to costs. The learned High Court Judge had dismissed the 1st to the 3rd Defendants' application.

[8]Dissatisfied with the learned High Court Judge's decision, the Plaintiffs filed these appeals. The 1st to the 3rd Defendants did not file any appeal against the said decision.

[9]There were eight appeals filed by the Plaintiffs, namely Appeals No.W-02(IM)(NCVC)-1454-08/2019 (against the 4th Defendant), W-02(IM)(NCVC)-1455-08/2019 (against the 13th Defendant), W-02(IM)(NCVC)-1457-08/2019 (against the 9th Defendant), W-02(IM)(NCVC)-1458-08/2019 (against the 8th Defendant), W-02(IM)(NCVC)-1459-08/2019 (against the 7th Defendant), W-02(IM)(NCVC)-1460-08/2019 (against the 10th, 11th and 12th Defendants), W-02(IM)(NCVC)-1461-08/2019 (against the 6th Defendant), and W-02(IM)(NCVC)-1462-08/2019 (against the 5th Defendant).

[10]However, on 13.04.2021, notices of discontinuance have been filed by the Plaintiffs with regard to Appeals No. 1455 and 1460, and hence the two appeals have been struck off accordingly.

[11]This is the grounds of our decision with regard to the remaining appeals.
Law on Striking Out of Pleadings

[12]The 4th to the 9th Defendants' applications were filed pursuant to O. 18 r. 19(1)(a), (b) and (d) of the Rules of Court 2012, which states that:

> *"Striking out pleadings and endorsements* (O. 18, r. 19)
>
> *19.(1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the endorsement, of any writ in the action, or anything in any pleading or in the endorsement, on the ground that—*
>
> (a) *it discloses no reasonable cause of action or defence, as the case may be;*
>
> (b) *it is scandalous, frivolous or vexatious;*
>
> (c) *it may prejudice, embarrass or delay the fair trial of the action; or*
>
> (d) *it is otherwise an abuse of the process of the Court,*
>
> *and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.*
>
> *(2) No evidence shall be admissible on an application under subparagraph (1)(a).*
>
> *(3) This rule shall, as far as applicable, apply to an originating summons as if it were a pleading."*

[13]The leading authority pertaining to a striking out application under the above provision can be seen in the Supreme Court case of *Bandar Builder Sdn Bhd & Ors v. United Malayan Banking Corporation Bhd* [1993] 4 CLJ 7 where it was held that:

> *"The principles upon which the Court acts in exercising its power under any of the four limbs of* O. 18 r. 19(1) Rules of the

> High Court *are well settled.* ***It is only in plain and obvious cases that recourse should be had to the summary process under this rule (per*** Lindley M.R. in *Hubbuck v. Wilkinson* [1899] 1 QB 86*, p. 91), and this summary procedure can only be adopted when it can be clearly seen that* ***a claim or answer is on the face of it "obviously unsustainable"*** (*Attorney- General of Duchy of Lancaster v. L. & N.W. Ry. Co.* [1892] 3 Ch. 274*, CA). It cannot be exercised by a minute examination of the documents and facts of the case, in order to see whether the party has a cause of action or a defence (Wenlock v. Moloney* [1965] 1 WLR 1238; [1965] 2 All ER 871, CA.*). The authorities further show that if there is a point of law which requires serious discussion, an objection should be taken on the pleadings and the point set down for argument under* O. 33 r. 3 *(which is in para materia with our* O. 33 r. 2 Rules of the High Court*) (Hubbuck v. Wilkinson) (supra).* ***The Court must be satisfied that there is no reasonable cause of action or that the claims are frivolous or vexatious or that the defences raised are not arguable****."*
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> (emphasis added)

[14]The Federal Court in the case of *Tan Wei Hong & Ors v. Malaysia Airlines Bhd & Other Appeals* [2018] 9 CLJ 425 reaffirmed the principles in Bandar Builder (supra).

[15]In the case of *See Thong & Anor v. Saw Beng Chong* [2012] 1 LNS 817, Ramly Ali JCA (as he then was) in delivering the judgment of the Court of Appeal held:

> *"Judges dealing with striking out application under* O. 18 r. 19 of the RHC *must always bear in mind that the power to strike a case under the order without having to go for trial* ***should be exercised sparingly and only in a plain and obvious case****. The procedure is of a summary nature.* ***The party affected should not be deprived of his right to have his case proceeded by a proper trial unless the claim is obviously unsustainable. The Federal Court in the case of*** *C C Ng & Brothers Sdn Bhd v. Government of State of Pahang* [1985] 1 CLJ 235; [1985] CLJ (Rep) 45; [1985] 1 MLJ 350*, had said that "the inherent power to dismiss an action summarily without permitting the plaintiff to proceed to trial is a drastic power. It should be exercised with utmost caution" - Per Seah FJ. It is a power which* ***ought to be very sparingly exercised and only in very exceptional cases****. (per Lord Herschell in Lawrence v. Norrey - as cited in C C Ng & Brothers)."*
>
> (own emphasis added)

[16]In another Court of Appeal case of *Sivarasa Rasiah & Ors v. Che Hamzah Che Ismail & Ors* [2012] 1 CLJ 75; [2012] 1 MLJ 473, the following was held:

> *"A striking out order should not be made summarily by the court* ***if there is issue of law that requires lengthy argument and mature consideration****. It should also not be made* ***if there is issue of fact that is capable of resolution only after taking viva voce evidence during trial, (see;*** *Lai Yoke Ngan & Anor v. Chin Teck Kwee & Anor* [1997] 3 CLJ 305; [1997] 2 MLJ 565 *(Federal Court)."*
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> (own emphasis added)

[17]Bearing in mind the principles of law mentioned above, we now turn to consider the merits of the Plaintiffs' appeals.

Analysis and Findings

[18]As can be gleaned from the Plaintiffs' statement of claim, the Plaintiffs' cause of action against the 4th to the 9th Defendants is premised on misrepresentation, fraud and conspiracy to injure.

[19]At the outset, the learned counsel for the Plaintiffs submitted that the learned High Court Judge had erred both in fact and in law when he failed to appreciate that allegations of conspiracy and fraud by the Plaintiffs were matters of facts which should only be determined through a proper trial. A specific passage of Abu Samah JCA's judgement in the Court of Appeal case of *Meeriam Rosaline a/p Edward Paul & Ors v William Singam a/l Raja Singam (suing as Public Officer of Pertubuhan Persaudaraan Kristian Thaveethin Kudaram, Ipoh, Perak)* [2010] 4 MLJ 541 was quoted to us by the learned counsel for the Plaintiffs as follows:

> *"… The respondent's allegations pertaining to breach of trust, conspiracy, fraud and misrepresentation were matters of facts which could only be decided at the trial and not by contest of affidavits. The mere fact that the pleading is weak and*

not likely to succeed at the trial is no ground for the pleadings to be struck out (see Moore v Lawson and Another (1914–1915) 31 TLR 418, *Wenlock v Moloney & Ors* [1965] 2 All ER 871.*"*

[20]We do not agree with the learned counsel for the Plaintiffs' submission above. We hold that the paramount consideration of the court in a striking out application should be whether the case is a plain and obvious case to be struck out summarily under O. 18 r. 19 of ROC 2012. In fact, this was the approach taken by the Court of Appeal in **Meeriam Rosaline** (supra) which was relied upon by the learned counsel for the Plaintiffs. The relevant passages of Abu Samah JCA's judgment which were not produced by the learned counsel for the Plaintiffs, read:

"[38] Now, in view of the serious allegations of breach of trust, conspiracy, fraud and misrepresentation in the respondent's statement of claim, the denials by the appellants in their joint statement of defence and the conflicting affidavits by the opposing parties ***can it be said that this is a plain and obvious case for striking out of the respondent's action****?*

...

… [42] The above said passage, in our view, provides a complete answer to this appeal. ***In short, we were of the view that this was not a plain and obvious case to strike out the respondent's action summarily under*** O 18 r 19(1)(b) of the RHC ***as being scandalous, frivolous or vexatious****. It was obviously not an unsustainable case, pure and simple. The respondent's allegations pertaining to breach of trust, conspiracy, fraud and misrepresentation were matters of facts which could only be decided at the trial and not by contest of affidavits. The mere fact that the pleading is weak and not likely to succeed at the trial is no ground for the pleadings to be struck out (see Moore v Lawson and Another* (1914–1915) 31 TLR 418, *Wenlock v Moloney & Ors* [1965] 2 All ER 871.*"*

(emphasis added)

[21]An example where the court still allows the defendant's application to strike out the plaintiff's claim even when the conspiracy to injure is alleged in the statement of claim can be seen in the Court of Appeal case of *Renault SA v. Inokom Corporation Sdn Bhd & Anor And Other Applications* [2010] 5 CLJ 32**.**

[22]We now turn to consider whether this is a plain and obvious case to be struck out on the grounds that it discloses no reasonable cause of action, or it is scandalous, frivolous or vexatious, or it is otherwise an abuse of the process of the Court. As we have stated earlier, the Plaintiffs' cause of action against the 4th to the 9th Defendants is premised on misrepresentation, fraud and conspiracy to injure.

[23]With regard to misrepresentation, Mohd Ghazali Yusoff FCJ in delivering the judgment of the Court of Appeal in *Sim Thong Realty Sdn Bhd v. Teh Kim Dar* [2003] 3 CLJ 227 (which has been cited with approval by the Federal Court in *Admiral Cove Development Sdn Bhd v. Balakrishnan Devaraj & Anor* [2011] 9 CLJ 133) held as follows:

"Now the ***elements of an actionable misrepresentation are well settled****. They are set out as follows in Professor McKendrick's Contract Law, 3rd edn, a leading work on the subject:*

A misrepresentation may be defined as an unambiguous, false statement of fact which is addressed to the party misled and which materially induces the contract. This definition may be broken down into three distinct elements. The first is that the representation must be an unambiguous false statement of fact, the second is that it must be addressed to the party misled and the third is that it must be a material inducement to entry into the contract*.*

Section 18 of our Contracts Act 1950 defines "misrepresentation" as follows:

'Misrepresentation' includes:

(a) *the* ***positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true****;*

(b) *any* ***breach of duty which, without an intent to deceive, gives an advantage to the person committing it, or anyone claiming under him, by misleading another to his prejudice, or to the prejudice of anyone claiming under him****; and*

(c) ***causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement****."*

(emphasis added)

[24]Turning to the facts of the present case, we agree with the finding of the learned High Court Judge that there was no communication whatsoever between the Plaintiffs and the 4th to the 9th Defendants with regard to the arrangement of the charter flights. Furthermore, the 4th to the 9th Defendants were not privy to the agreement between the Plaintiffs and the 1st Defendant, and the Plaintiffs were not privy to the Passenger Services Agreement. In short, there was no contract entered into between the Plaintiffs and the 4th to the 9th Defendants in the first place. In fact, the Plaintiffs claimed to have engaged the services of the 1st Defendant to secure the charter flights based on the 1st Defendant's representation to the Plaintiffs. There was nothing in the Plaintiffs' statement of claim and the affidavits to show that the 4th to the 9th Defendant were involved in the representation made by the 1st Defendant to the Plaintiffs. In addition, the 4th Defendant was only appointed by the 1st Defendant after the 1st Defendant have been appointed by the 1st Plaintiff to secure the charter flights. As such, there was no nexus whatsoever between the Plaintiffs and the 4th to the 9th Defendants.

[25]For these reasons, we are of the considered view that the Plaintiffs' claim for misrepresentation against the 4th to the 9th Defendants is a non-starter and obviously unsustainable.

[26]Next, we would address the issue of fraud and conspiracy to injure together.

[27]With regard to fraud, we are guided by the judgment of the Federal Court in *Letchumanan Chettiar Alagappan (As Executor To Sl Alameloo Achi (Deceased)) & Anor v. Secure Plantation Sdn Bhd* [2017] 5 CLJ 418 where Jeffrey Tan FCJ held:

"[18] ***What amounts to 'fraud'?*** *"****It is not easy to give a definition of what constitutes fraud in the extensive signification in which the term is understood by civil courts of justice****. The courts have always avoided hampering themselves by defining or laying down as a general proposition what shall constitute fraud. Fraud is infinite in variety* (*Reddaway v. Banham* [1896] AC 199, 221*). The fertility of man's invention in devising new schemes of fraud is so great, that the courts have always declined to define it, or to define undue influence, which is one of the many varieties, reserving to themselves the liberty to deal with it under whatever form it may present itself* (*Allcard v. Skinner* (1887) 36 Ch D 145, 183). ***Fraud, in the contemplation of a civil court of justice, may be said to include properly all acts, omissions, and concealments which involve a breach of a legal or equitable duty, trust or confidence, justly reposed, and are injurious to another, or by which an undue or unconscientious advantage is taken of another (Story, Eq Jur 187). All surprise, trick, cunning, dissembling and other unfair way that is used to cheat anyone is considered fraud (Finch 439). Fraud in all cases implies a wilful act on the part of anyone, whereby another is sought to be deprived, by illegal or inequitable means, of what he is entitled to*** (*Green v. Nixon* (1857) 23 Beav 530, 535*) "(Kerr on Fraud and Mistake 7th edn at p. 1). "The concept of fraud is notoriously difficult to define" (Cavell and Anor v. Seaton Insurance Co* [2009] EWCA Civ 1363 *per Longmore LJ, Mummery and Toulson LJJ in agreement). We would not hazard to define 'fraud'. We would just say that 'fraud' is a generic term which also covers all manner of cheat, deceit and dishonesty. Given its wide meaning, "an action in fraud will usually include a number of distinct causes of action... " and "claims to trace assets in equity or, perhaps, at common law" (Bullen & Leake & Jacobs Precedents of Pleadings 18th edn, vol. 2 at 57- 01)."*

(emphasis added)

[28]With regard to conspiracy to injure, we refer to the judgment of Vernon Ong JCA in the Court of Appeal case of *Goh Bak Ming v Yeoh Eng Kong and other appeals* [2018] MLJU 1133 where it was held:

"Tort of Conspiracy to Injure

[18] In law the tort of conspiracy may take two forms: (1) conspiracy by unlawful means; and (2) conspiracy by lawful

means. ***A conspiracy by unlawful means is constituted when two or more persons combine to commit an unlawful act with the intention of injuring or damaging the plaintiff, and the act is carried out and the intention achieved. In a conspiracy by lawful means, there need not be an unlawful act committed by the conspirators. But there is an additional requirement of proving a "predominant purpose" by all the conspirators to cause injury or damage to the plaintiff, and the act is carried out and the purpose achieved*** (*Quah Kay Tee v Ong and Co Pte Ltd* [1996] 3 SLR(R) 637 *the Singapore Court of Appeal at p 653).*

[19] In essence, the key ingredients to be proven by the plaintiff in order to make out a prima facie of the tort of conspiracy are as follows:

(i) ***an agreement, combination, understanding, or concert between two or more persons;***

(ii) ***commit an act with the intention to injure or cause damage to the plaintiff;***

(iii) ***he act is executed and the plaintiff is injured or suffered damage; and***

(iv) ***if the act executed is not an unlawful act, then it must also be shown that the intention to cause injury or damage to the plaintiff was the predominant or main purpose.***

In Quah Kay Tee (supra) it was emphasized that a predominant purpose is not the same as intention; that, where lawful means are used, the purpose of the combination must be "spiteful and malicious" (Sorrell v Smith [1925] AC 700 *at 748) or actuated by "disinterested malevolence" (Nann v Raimist* [1931] 255 NY 307*, per Cardozo CJ at 319; McKernan v Fraser* [1931] 46 CLR 343 *at 398). The conspirators' actions must therefore serve none of their own commercial purpose; their predominant purpose must be to do harm to the plaintiff."*

(emphasis added)

[29]KN Segara JCA in delivering the judgment of the Court of Appeal in the case of **Renault SA (supra)** had this to say:

"[32] In regard to the tort of conspiracy, the following need to be satisfied at this interlocutory stage:

(a) ***an agreement between two or more persons*** *(that is an agreement between Tan Chong and others);*

(b) *an agreement* ***for the purpose of injuring*** *Inokom and Quasar;*

(c) *that* ***acts done in execution of that agreement resulted in damage to Inokom and Quasar;***

(d) ***damage is an essential element*** *and where damage is not pleaded the Statement of Claim may be struck out.*

[see *Yap JH v. Tan Sri Loh Boon Siew & Ors* [1991] 3 CLJ 2960; [1991] 4 CLJ (Rep) 243 HC]

[33] It is clear that the very first element to be shown must be an agreement between two or more persons for the purpose of injuring Inokom and Quasar. ***'Agreement' is not limited to a signed and sealed agreement but any informal agreement****, including a combination of efforts of the alleged co-conspirators. After that,* ***it has to be shown or at least alleged that acts were done in execution of that agreement which resulted in damage to Inokom and Quasar****. In this case, the acts done would have to be unlawful, namely, the alleged false representation made by Renault to Inokom and Quasar as to the level of investment Inokom and Quasar will have to make for the Kangoo Project.*

[33] It is trite law that ***the agreement to injure must come first*** *(in other words the agreement should have crystallized),* ***before the alleged unlawful acts*** *are done in execution or pursuant to the agreement."*

(emphasis added)

[30]Turning to the facts of the present case, the Plaintiffs submitted that there was evidence of tampering of documents which can be seen in the Passenger Services Agreement executed between the 4th Defendant and the 10th Defendant and their respective e-mail correspondences. The Plaintiffs also sought for a declaration that the Passenger Services Agreement is a sham agreement. The Plaintiffs were adamant that these issues should be ventilated in a proper trial.

[31]We have gone through the Plaintiffs' Statement of Claim and the affidavits. We found that the Plaintiffs allegation of fraud and conspiracy to injure against the 4th to the 9th Defendants hinged

primarily on the fact that there were differences in the Passenger Services Agreement and the correspondences of e-mail between the 9th Defendant and the 10th Defendant, and nothing more.

[32]It is important to note that the Plaintiffs were not privy to the Passenger Services Agreement. The Plaintiffs were strangers to the Passenger Services Agreement and had no *locus standi* to declare the Passenger Services Agreement as a sham agreement. On this, we agree with the learned High Court Judge that since there is no contractual relationship between the Plaintiffs and the 4th Defendant, the Plaintiffs' claim against the 4th to the 9th Defendants is wrong and cannot be maintained in law.

[33]The Court of Appeal in *Tan Poh Yee v Tan Boon Thien and other appeals* [2017] 3 MLJ 244 had deliberated at great length on the issue of privity of contract and ultimately, in allowing the appellants' appeal to strike out the respondent's claim, concluded that:

> *"… We can thus discern from the second appellant's defence that she was not privy to the purported 2004 agreement.* ***In law, there is no basis for the second appellant to have been made a party to the action where she was not privy to the purported 2004 agreement. As a general rule, the doctrine of privity of contract enables only the original party to a contract to sue or be sued upon it, so that a third party does not enjoy the right to sue and incurs no liability to be sued*** *(see Chong Nyuk Fung & Anor v Loi Lung Kiong & Ors* [1998] MLJU 41; [1998] 5 CLJ 146; *Brilliant Team Management Sdn Bhd v South East Pahang Oil Palm Sdn Bhd & Ors* [2007] 1 MLJ 536; [2006] 2 CLJ 1218)."
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> (emphasis added)

[34]We have also gone through the Passenger Services Agreement and found that there are indeed some differences in Schedule A to the Passenger Services Agreement where one contains provisions on contract price and payment schedule while the other one does not. Regarding the e-mail correspondences, we have also found that the Plaintiffs were not given the complete version of the e-mail correspondences between the 9th Defendant and the 10th Defendant. Be that as it may, the learned counsel for the Plaintiffs never addressed in what manner these differences constitute fraud or conspiracy to injure the Plaintiffs and we fail to see how these differences would have supported the Plaintiffs' claim.

[35]On the other hand, we agree with the learned counsel for the 4th to the 9th Defendants that the series of e-mail correspondences actually proves that proper negotiation did take place between the 4th Defendant and the 10th Defendant pertaining to the charter flights before the Passenger Services Agreement was executed. It just went on to show, as correctly found by the learned High Court Judge, that the 4th Defendant had indeed fulfilled its part of the bargain with the 1st Defendant. Unfortunately, the 1st Plaintiff itself had withdrawn from its contract with the 1st Defendant, which rendered the Passenger Services Agreement to be unenforceable. We also agree with the 4th to the 9th Defendants that they did not gain anything from their effort in procuring the charter flights on behalf of the 1st Defendant as the 1st Defendant never forwarded any payments to the 4th Defendant.

[36]We are of the considered view that the learned High Court Judge had summarised the facts of the present case comprehensively when he held, with particular reference to the Court of Appeal case of *University of Malaya v. FBSM Ctech Sdn Bhd* [2018] 5 MLJ 397 that this is a classic example of a case where the employer (the 1st Plaintiff) appointed the main contractor (the 1st Defendant) and the main contractor appointed the subcontractor (the 4th Defendant) under a particular project (securing the charter flights) of the employer. Therefore, the contractual relationship is defined separately as between the employer and the main contractor, and the main contractor with the subcontractor.

[37]In addition, as we have discussed earlier, there was no communication whatsoever between the Plaintiffs and the 4th to the 9th Defendant. There were also no elements of fraud and conspiracy to injure the Plaintiffs as between the 4th to the 9th Defendants and the Plaintiffs and also the other Defendants. Clearly, this is a plain and obvious case to strike out the Plaintiffs' action against the 4th to the 9th Defendants since it discloses no reasonable cause of action, it is scandalous, frivolous and vexatious, and is otherwise an abuse of the process of the Court.

Conclusion

[38]In conclusion, based on the reasons enumerated above, we found no merits in the Plaintiffs' appeals. The learned High Court Judge has not erred in allowing the Respondents' applications and we see no reason to depart from the learned High Court Judge's decision. As such, all appeals are dismissed with a cost of RM10,000. The decision of the High Court is hereby affirmed.

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