

BSC MANUFACTURING (M) SDN BHD v VALUE PLUS INDUSTRIES SDN BHD

CaseAnalysis
| **[2022] MLJU 2825**

BSC Manufacturing (M) Sdn Bhd v Value Plus Industries Sdn Bhd [2022] MLJU 2825

Malayan Law Journal Unreported

SESSION COURT (SHAH ALAM)

YONG LEOU SHIN SJ

CIVIL SUIT NO BA-A52NCC-33-02 OF 2022

1 August 2022

*(Yong dan Rakan-Rakan) for the plaintiff.
(Daljit Singh Partnership) for the defendant.*

Yong Leou Shin SJ:

GROUNDS OF DECISION

(ENCL. 24 APPLICATION FOR A STAY OF PROCEEDING) INTRODUCTION

[1]On 30.5.2022, the Plaintiff vide Encl. 24 applied for a Stay of Proceeding pursuant to O. 92 r. 4 of the Rules of Court 2012 (ROC 2012). I declined the Defendant's application on 20.6.2022. Hence, this appeal.

BACKGROUND FACTS OF THE CASE

[2]This is a goods sold and delivered case whereby Plaintiff's company claimed for the principal sum of RM244,432.50 being balance outstanding for goods which have been supplied to the Defendant together with late payment interest and costs.

[3]The Plaintiff has commenced with this suit against the Defendant on February 2022.

[4]The Defendant has on 17.3.2022 entered their Memorandum of Appearance and thereafter has served their Statement of Defence on 6.4.2022 and the same Defence has been amended since 4.5.2022.

[5]The Plaintiff has thereafter filed an application under Order 14 for Summary Judgment, all the cause papers haven been exhausted including the written submission and the Court has fixed the matter for decision on 20.6.2022.

[6]On 30.5.2022, the Defendant filed an application to seek for a stay of proceeding pending their Judicial Management suit.

GROUNDS OF APPLICATION

[7]The Defendant contended that the main reason for applying a stay of proceeding is because the Defendant is not able to properly defend this suit.

[8]Previously, the Defendant in this case had been placed under judicial management. According to the Defendant, the Defendant's Judicial Manager had controlled the Defendant's business and affairs for the past year, since 16.2.2021. Defendant averred that the Judicial Manager's misstatements are connected to his adjudication of the Defendant's proof of debts during the judicial management.

[9]The Defendant averred that the Judicial Manager had committed misfeasance due to the following acts:

- i. The Judicial Manager has abandoned his post;
- ii. The Judicial Manager did not properly discharge the judicial management order dated 16.2.2021 as required under **Section 424 of the Companies Act 2016**
- iii. The Judicial Manager did not apply for leave of Court to discharge himself as a judicial manager as required under **Section 417 of the Companies Act 2016**
- iv. The Judicial Manager has refused to provide any handover of the Defendant's documents to Madam Hoe Poh Lin. He has instead allegedly handed over the documents to fraudsters;
- v. It has since been discovered by the Defendant that the Judicial Manager has not been truthful to the Shah Alam Court (where the judicial management proceedings are held).

[10]Defendant informed that there are two ongoing applications against the Judicial Manager in the Shah Alam Court, which are:

- i. **Enclosure 187** – Application to set aside the judicial management order and for the Judicial Manager to account for his fees / costs;
- ii. **Enclosure 315** – Application for leave to commence committal proceedings against the Judicial Manager (Judicial Manager suit).

THE LAW RELATING TO STAY OF PROCEEDINGS

[11]The Court of Appeal in *Jagdis Singh Banta Singh vs. Outlet Rank (M) Sdn Bhd* [2013] 3 CLJ 47 at **pages 57 to 59** laid down on the principles of stay of proceedings as follows:-

[22] Now, what factors or principles will, and should, guide the courts in applications for a stay of an order granted by a court. These factors or principles have been reiterated in very many of cases decided by our courts. The factors or principles so enumerated are inexhaustive, and not all of them are applicable to every case. Each has its own peculiar principle. Some of the principles to be considered in the motions may be stated as follows:

- (a) *The courts have an unimpeded discretion to grant or refuse stay. In this, like in all other instances of discretion, the court is bound to exercise that discretion both judicially as well as judiciously and not erratically. (See Serangoon Garden Estate Ltd v. Ang Keng [1953] 1 LNS 98; [1953] 19 MLJ 116; Leong Poh Shee v. Ng Kat Chong [1965] 1 LNS 90; [1966] 1 MLJ 86)*
- (b) *An unsuccessful party applying for a stay must show "special circumstances". What will constitute "special circumstances" will no doubt vary from case to case. The fact that an appeal would be rendered nugatory if stay was refused is the most common one. (See Kosma Palm Oil Mill Sdn Bhd & Ors v. Koperasi Serbausaha Makmur Bhd [2003] 4 CLJ 1 and Re Kong Thai Sawmill (Miri) Sdn Bhd; Ling Beng Sung v. Kong Thai Sawmill (Miri) Sdn Bhd & Ors (No 2) [1974] 1 LNS 136; [1976] 1 MLJ 131). The application is not granted as a matter of routine and it is not an automatic or mechanical relief slavishly followed after filing an appeal. In every matter or suit before a court of law, whether in its original or appellate stage of proceedings, the court will consider the competing rights of both parties including the applicant and respondent to justice.*

- (c) *There is a need to preserve the res or preservation of the subject matter of litigation. The courts have an obligation to protect the res for the purpose of ensuring that the appeal, if successful, will not be rendered nugatory. (See *Erinford Properties Ltd v. Cheshire County Council* [1974] 2 WLR 749). But where it is shown by affidavit evidence, say by the respondent that the res will not be destroyed or there is in fact no res, an application may not be granted.*
- (d) *Where an application is an abuse of the court process, then the stay of proceedings will not be granted. A typical example of abuse of court process is where a suit is duplicated or where a party employs improper and perverse procedure to obtain an advantage undeservedly.*
- (e) *It is important to stress that initiation of a suit in a court of law demands the suit will be heard expeditiously and completed without any inhibition midway. Therefore, where an application for stay of proceedings is intended to merely stop or suspend the proceedings; it will be refused.*

Some applicants, on seeing the weakness of their client's case, would resort to application for stay and thereby waste the time of the other party and the court. The party simply cannot resort to the interlocutory of stay proceedings on having the slightest disagreement with any ruling of a trial judge. Courts are enjoined not to encourage such unwholesome practice.

- (f) *An applicant for stay of proceedings must come with clean hands because what he is asking is an equitable relief. Equity will not assist the unclean. That is why the court has to look into the antecedents of the parties.*

[12]In the case of *Universal Trustee v. Lambing Pertama* [2014] 1 LNS 797; [2015] 7 MLJ 305 the learned high court judge observed that: “Although the law does not distinguish stay of execution and stay of proceedings, an **applicant for stay of proceedings** should **bear a heavier burden** when compared to an application for stay of execution because stay proceedings hinders expeditious disposal of an action.”

[13]Hence it is clear that comparatively, an applicant seeking stay of proceeding should bear a heavier burden when compared to an applicant who asks for stay of execution because stay of proceedings hinders expeditious disposal of an action.

[14]It is therefore incumbent for the Defendant to show special circumstances and that the circumstances must be deposed in the Affidavit supporting the application for stay.
COMPETING ARGUMENT OF PARTIES Submission by the Defendant

[15]Defendant submitted that the key issue for this court to decide on is:

“Whether it is fair for a company, previously placed under the Court’s control via a judicial manager, to defend itself against creditors when the affairs of the company are not in order due to misfeasance by the said judicial manager?”

[16]Defendant submitted that this question ought to be answered in the negative based on the following submissions.

[17]Defendant urged the court to uphold the right to be heard (*Audi Alteram Partem*) and submitted that the Defendant will not be given a fair opportunity to defend this suit unless its affairs are sorted out in the judicial management proceedings first.

[18]In the circumstances, the Plaintiff’s alleged legal rights should not be placed higher than the Defendant’s rights to be heard. Even legislation cannot escape the legal force of the right to be heard.

[19]Defendant further submitted that there are special circumstances warranting a stay of proceedings. According to the Defendant, this is an unusual case because if the Defendant’s allegations against the Judicial Manager are proven to be true:

- i. The Judicial Manager has lied to the Shah Alam Court;

- ii. The Judicial Manager has not acted in accordance with the law or directions from the Court;
- iii. The judicial manager refused to properly handover the affairs of the Defendant to Madam Hoe Poh Lin;
- iv. The Defendant's affairs and financial position cannot be ascertained since the Judicial Manager unilaterally caused the judicial management order to lapse; and
- v. The Judicial Manager wrongfully adjudicated the Defendant's creditors' proof of debts without proper understanding of the Defendant's financial position and while admitting fraudulent debts.

A stay of proceedings will allow the investigations against the Judicial Manager to conclude first and Defendant submitted that this would be in the interest of justice.

[20] Defendant continued to submit that the investigation against the Judicial Manager may affect the Plaintiff's claim because:

- i. The Plaintiff submitted its proof of debt to the Judicial Manager;
- ii. The Plaintiff only claimed for the principal sum of RM244,432.50 (without late payment interest) in its proof of debt;
- iii. By doing so, the Plaintiff has taken the position that the full outstanding sum owed by the Defendant is only the principal sum (and not the late payment interest). This brings into question the validity of the late payment interest charged;
- iv. This also means that the Plaintiff's invoices presented in this Court bearing the late payment interest are questionable documents;
- v. Until and unless the Judicial Manager explains the adjudication of the proof of debts, this inconsistency in the Plaintiff's claim will also remain unexplained; and
- vi. For avoidance of doubt, the Defendant claimed that the entire adjudication process was a sham in Enclosure 315 in the judicial management proceedings

[21] Defendant highlighted that the Plaintiff's application for Summary Judgment ("**Enclosure 11**") makes Enclosure 24 even more necessary. If Enclosure 11 is granted, there will be no trial and no time to wait for the outcome of the investigation against the Judicial Manager.

[22] Defendant also submitted that the Plaintiff has refused previously to provide documents to the Defendant (pursuant to a Notice to Produce) for reasons best known to it.

[23] Defendant averred that the Plaintiff does not want the Defendant to properly defend itself and is attempting to obtain a rushed judgment against the Defendant, who is coming out of a failed judicial management.

Submission by the Plaintiff

[24] The Plaintiff submitted that the Defendant as an applicant here has failed to show that there is any special circumstance to warrant a stay of proceeding.

[25] In summary, from the Defendant's lengthy affidavits, the sole ground relied by the Defendant for this application is purportedly the Judicial Manager has acted wrongly in his responsibility and the Defendant had challenge the same by filing several applications in the Judicial Manager Suit and since the Plaintiff has participated by filing the Proof on Debt, this suit ought to be stayed pending the Defendant's application and dispute in the Judicial Manager Suit resolved.

[26] Plaintiff submitted that the Defendant's allegations are misconceived and those are not special circumstances to warrant a stay of proceeding and the Defendant is estopped from raising irrelevant facts here to confuse the Court.

[27]The Defendant's allegation about there are two enclosures in the Judicial Manager suit is not a special circumstance for firstly the Plaintiff does not have any knowledge on the two enclosures and the two enclosures have nothing to do with the Plaintiff nor the Defendant viz-a-viz this proceeding.

[28]Secondly, it was admitted by the Defendant that the Judicial Management Order has expired on 15.2.2022 and has not been reinstated. There is no any further Judicial Management order in existence at present. Hence, the Judicial Management proceeding has ended and the consequential dispute between the parties in the Judicial Manager suit is not related to this suit.

[29]The Plaintiff submitted that the Plaintiff's claims against the Defendant is for goods sold and delivered by the Plaintiff to the Defendant in the period between June 2020 to December 2020.

[30]The debts and the cause of action has accrued before the Judicial Management Order and irrespective whether there is a Judicial Manager Suit (pending or otherwise), the debts are owing, due and payable.

[31]The Defendant's allegation about the affairs of the company is not in order due to the misfeasance by the Judicial Manager is again irrelevant. The Plaintiff submitted, the debts owed by the Defendant to the Plaintiff accrued even before the Judicial Manager stepped in and the Defendant is estopped from using the disputes between the Defendant and the Judicial Manager as an excuse to delay the proceedings here.

[32]The Plaintiff submitted that the outcome from the Defendant's application in the Judicial Manager Suit (whether allow or dismiss) will not affect the Plaintiff's claims here and, in any event, if this application for stay of proceeding is allowed, then the Defendant is indirectly obtaining a "restraining order" against the Plaintiff and the Plaintiff is very much prejudiced by it.

[33]Hence, the Defendant's application here is an abuse of court process and what was raised by the Defendant does not amount to a special circumstance.

[34]Next, the Plaintiff submitted that there is nothing to stop the Defendant to proceed with their application in the Judicial Manager Suit and hence the Defendant's allegation about *Audi Alteram Partem* (right to be heard) is again misconceived.

[35]The Plaintiff emphasized here that the Defendant in this action is a Company formed under Companies Act and the law pertaining to "separate legal entity" is trite.

[36]The Plaintiff is suing the Defendant as an entity of its own and the deponent who affirmed the affidavit on behalf of the Company is a director of the Defendant's company since year 2011 (which was 9 years before the debt accrued) and the deponent cannot now act like she doesn't know anything about the company and claimed that the Defendant has purportedly "not be given a fair opportunity to defend this suit".

[37]The Defendant, as a separate legal entity ought to have their own record and the dispute between the Judicial Manager with the Defendant cannot be used here as an excuse to delay the Plaintiff from their right to proceed legally against the Defendant to recover the outstanding amount.

[38]The Plaintiff submitted that the Plaintiff's claims here have nothing to do with the Judicial Manager and even if the Judicial Manager were found guilty in the Defendant's application and the Judicial Manager were to be committed to the jail, it will not change the outcome of this suit.

[39]The cases law quoted by the Defendant in their Written Submission are not relevant to the facts herein and are merely regurgitating the principle of law for a stay of proceeding.

[40]The Plaintiff submitted that the case before this Court today is clearly simple as the Defendant owed money to the Plaintiff due to goods supplied by the Plaintiff to the Defendant.

[41]All contemporaneous documents have been submitted to the Court in the Summary Judgment's application. The Defendant has failed to raise any triable issue and keep asserting that their current director has no knowledge of the matter.

[42]Then, in order to further delay the proceeding, the Defendant has decided to file in this frivolous application merely to stop the Plaintiff from pursuing its legal rights against the Defendant.

[43]The Defendant's allegation about the Plaintiff purportedly refused to provide documents to the Defendant is self-contradicting as the Defendant has withdrawn their application for discovery.

[44]The Defendant current director's lack of knowledge ought not to be the burden of the Plaintiff and ought not to be used to prejudice the Plaintiff. The current director ought to have full knowledge of the Defendant's management as that is the responsibility of a director. Hence, the Plaintiff is entitled to proceed with this claim and there is no reason why the Plaintiff's claim here needs to be stayed.

[45]On the facts herein, the dispute raised by the Defendant is merely self-serving as the same are between the Judicial Manager and the Defendant.

[46]The outcome of the Defendant's application in the Judicial Manager Suit will not affect nor make any changes to the case here as the Plaintiff is not a party to that suit.

[47]The Defendant in this action is a separate legal entity and hence the internal dispute of the Defendant's company is also not relevant to the Plaintiff's claims here.

[48]It has also been submitted by the Plaintiff that the Defendant's application for stay of proceeding is an abuse of court process and was made in bad faith. Plaintiff named this application a malicious delaying tactic formulated by the Defendant.

[49]The Plaintiff submitted that this application for a stay of proceeding was filed by the Defendant after the filing of the Defence and the Plaintiff's application for Summary Judgment (of which decision is fixed on 20.6.2022).

[50]There are six (6) case managements before the filing of this application and the Defendant has never once put the Court on notice about their intention to seek for a stay of proceeding.

[51]The Defendant has even taken steps to file their Statement of Defence and an Application for Discovery.

[52]No explanation was given for the delay in filing this application and one can easily conclude that this application is filed in mala fide and is a tactical ploy.

[53]The Plaintiff submitted that the law is trite that in seeking the court's direction in granting the stay, the Defendant should have filed the application promptly and should not sleep on its right. [*Haji Wan Habib Syed Mohamed v Datuk Patinggi Haji Abdul Taib Mahmud & Anor* [1986] 2 CLJ 115 referred]

[54]On the facts herein, the Defendant has waited until the very last minute to file this application for stay. It cannot be denied that the Defendant has knowledge about the purported Judicial Management since day one when they were served with the Writ, hence, if the Defendant's application for stay is genuine, they ought to have filed it promptly.

[55]The Plaintiff is very much prejudiced by this last-minute application, as submitted earlier, the Plaintiff's claim against the Defendant is for goods sold and delivered.

[56]The debt owed by the Defendant to the Plaintiff has accrued since year 2020.

[57]The Defendant has full knowledge about the debt owing but has repeatedly find excuse to delay the payment.

[58]Furthermore, the Plaintiff submitted that the justice of the case also calls for the dismissal of this stay application given how it is a delay tactic laced with bad faith to derail the Plaintiff from getting judgment from the Defendant.

THE FINDINGS AND ANALYSIS OF THE COURT.Issue: Whether there are special circumstances which warrant a stay of proceedings

[59]Defendant urged this court to consider whether it is fair for a company, previously placed under the Court's control via a judicial manager, to defend itself against creditors when the affairs of the company are not in order due to misfeasance by the said judicial manager?

[60]To this court, what is material is whether there are special circumstances which warrant a stay of proceedings. Undoubtedly, fairness must be to both sides and the concept of fairness must be applied judicially. The Defendant's contention is that due to alleged misfeasance by the said judicial manager, the affairs of the company became not in order and therefore under the circumstances, it is now unfair for the company to defend itself against creditors.

[61]Having perused the affidavit filed by the Defendant, this court is of the view the two ongoing applications against the judicial manager in the Shah Alam Courts is not related to the Plaintiff. The Plaintiff only participated in the proof of debts during the judicial management, Plaintiff is not one of the fraudsters alleged by the Defendant in that proceeding, Plaintiff has in no way interfere with the adjudication process or involve in the handover of the Defendant's documents to Madam Hoe Poh Lin, it is clear that the ongoing investigation against the judicial manager is indeed not related to the Plaintiff's claim in this case.

[62]The Defendant cited the case of *AB (Sudan) v Secretary of State for the Home Department* [2013] EWCA Civ 921 to support their argument that if the court is shown that there will be, or there is likely to be, some extent in the foreseeable future that may have an impact on the way a claim is decided, the court may stay proceedings in the claim until after the event.

[63]With respect this court do not see how the investigation against the judicial manager may affect the Plaintiff's claim here. Plaintiff in the current case is not a party to the ongoing investigation of the Defendant nor did the Plaintiff being sued by the Defendant in any suit involving the purported misconduct of the judicial manager. The subject matter in this civil suit is the outstanding amount not paid for goods supplied whereas the ongoing investigation concerns the allegation against the other directors of the Defendant's company and the subsequent suit filed by the Defendant against the judicial manager.

[64]All in all, a judicial manager's primary duty is to rehab and ensure that the company can be sustained. In the event the company failed to be restructured and resuscitated, the Judicial Manager may prepare a statement of proposal to present a more advantageous realisation of the company's assets for the benefit of its creditors. The only link in between the judicial management of Defendant's company and this case is that Plaintiff being one of the creditors had submitted its proof of debts to the Judicial Manager and also representative of the Defendant in the judicial management. Plaintiff is not the applicant creditor for this judicial proceeding. The applicant creditor is another company named KPS Plywood Sdn Bhd (KPS).

[65]The Defendant pleaded that Defendant's director Hoh Poh Lin had intervened the proceeding and attempted to set aside the judicial management order obtained on the ground that KPS had demonstrated a wrongful pecuniary claim against Defendant. According to Hoh Poh Lin, the alleged debt owed to KPS is actually based on fictitious transactions relating to sale and purchase of wood. Defendant's money had been channelled to those companies under the pretext of such fictitious transactions.

[66]This court is unimpressed with the Defendant's plea because even if the named persons Mr Gan Boon Tian and Wong Cheng Houng from the previous management are found responsible for the alleged fictitious transaction which had accordingly caused the financial distress in the Defendant, it does not change the facts in this current case where the Plaintiff is a bona fide seller who had sold and delivered goods to the Defendant pertaining to their request, so money for the goods delivered must be paid irrespective of the alleged monetary loss/financial distress suffered by the Defendant.

[67]Based on the contemporaneous documents exhibited in the current case such as invoices and delivery order, the goods sold by the Plaintiff to the Defendant were consisted mainly of thinner, sealer and hardener. Whatever purported fictitious transactions as alleged by the Defendant now, the Plaintiff has no knowledge of it and the Plaintiff's claim is not part of any such purported fictitious transaction as well. Defendant also never pleaded that the transactions entered into between Plaintiff and the Defendant were void ab initio.

[68]On the point whether the Defendant is able to properly defend his suit, this court is not convinced by the Defendant's averments that the Defendant will not be given a fair opportunity to defend his suit unless its affairs are sorted out in the judicial management proceedings first. Reason being that in the current case, the Plaintiff is an outsider, to deprive the Plaintiff of its right to claim for the money owned or to delay its claim is clearly prejudicial for the Plaintiff had acted in good faith to enter into business transaction with the Defendant without any knowledge of the internal disputes claimed by the Defendant.

[69]The Plaintiff is not obligated to inquire into the regularity of the acts of internal management of the Defendant before entering into any transactions with the Defendant. Likewise, all the business transaction or commercial activities performed by the company would not be rendered nugatory merely because there are some internal disputes. It is not the duty of this court to help the Defendant to obtain necessary documents in order to enable the preparation of their defence. This court agreed with the Plaintiff's submission that the Defendant's purported internal issues do not therefore negate the debt owed by them to the Plaintiff. As illustrated in the case of *Huo Heng Oil Co (EM) Sdn Bhd v Tan Tiew Yong* [1987] 1 MLJ 139, the Court held that:-

*"in an action for price of goods sold and delivered it is not sufficient for the defendant to merely deny the debt **he must plead any facts which negative the existence of the debt** or which show that the claim is not maintainable on other grounds."*

[70]The disputes among the directors would not in any way absolve the company from its debt, this court agreed with the Plaintiff's submission, irrespective of who is sitting now as the director of the company, the Plaintiff's claim stands as it is. Furthermore, the Defendant also did not plead that the Plaintiff's claim is wrong or aver that the transaction entered into between them are void or an invalid one. The arguments put forth by the Defendant seem to suggest to this court that merely because there are internal company disputes and the alleged misfeasance of judicial manager in the judicial management proceeding, this company is then entitled to put hold of any claim against it and whoever had claim towards it shall wait for the investigations against the Judicial manager to conclude first and most probably shall also wait for the directors of the company to settle their disputes and get prepared with whatever documents needed or else any suit proceeded against this company is considered not fair to this company.

[71] I am not persuaded by this argument as any belated judgment in the Plaintiff's suit may also cause prejudice to the Plaintiff as well. In considering a stay, the succinct words of the Court of Appeal in *Jagdis Singh Banta Singh vs. Outlet Rank (M) Sdn Bhd* [2013] 3 CLJ 47 are as follows:-

*(e) It is **important** to stress that **initiation of a suit** in a court of law **demands the suit will be heard expeditiously and completed without any inhibition midway**. Therefore, where an application for stay of proceedings is intended to merely stop or suspend the proceedings it will be refused. Some applicants, on seeing the weakness of their client's case, would resort to application for stay and thereby waste the time of the other party and the court. The party simply cannot resort to the interlocutory of stay proceedings on having the slightest disagreement with any ruling of a trial judge. Courts are enjoined not to encourage such unwholesome practice.*

[72] All in all, the primary consideration lies in the issue of how is the Plaintiff's claim affected by the Judicial Manager's misfeasance or how would the outcome of the ongoing investigation impact Plaintiff's claim.

[73] According to the Defendant, the Plaintiff had submitted its proof of debt to the judicial manager. The Defendant submitted that since the Plaintiff only claimed for the principal sum of RM244, 432.50 (without late payment interest) in its proof of debt, by doing so, the Plaintiff has taken the position that the full outstanding sum owed by the Defendant is only the principal sum (and not the late payment interest). This brings into question the validity of the late payment interest charged; This also means that the Plaintiff's invoices presented in this Court bearing the late payment interest are questionable documents.

[74] The Defendant argued that until and unless the Judicial Manager explains the adjudication of the proof of debts, this inconsistency in the Plaintiff's claim will also remain unexplained.

[75] This court had analysed this line of argument and finds that this argument is not convincing because if the trial goes on, without the Judicial Manager's explanation, the Defendant can still cross Plaintiff's witnesses pertaining to this alleged inconsistency if this issue is considered a crux in their Defence. The court however found that initially the Defendant did not plead the alleged inconsistency or raise the issue that the invoices are questionable documents in its Defence filed on 6.4.2022. The Defendant only pleaded the above issues in an amended defence after pleading was closed and filed it on 4.5.2022. The Defendant's allegation about the purported discrepancies of the Plaintiff's documents is an afterthought and seemingly not a genuine defence.

[76] In the case of *CIMB Bank Berhad v Mangium Sawmill Sdn Bhd and Others* [2009] MLJU 1010, David Wong Dak Wah J (as he was then) has agreed with the dictum of Siti Norma Yaakob J (as she was then) in the case of *Development & Commercial Bank Bhd v Abdullah Ismail & Anor* [1989] 1 CLJ Rep 467 and held that:-

*"I fully agree with her Ladyship. In any event this attempt by the 2nd defendant to improve its defense simply shows that it had no defense in the first place. Any defendant who has a **genuine defense would have known it as soon as legal action is taken against them** especially when it has the benefit of legal advice as in this case."*

[77] A perusal of the Defendant's defence will reveal that the Defendant has never once raised any issue pertaining to the purported discrepancies of the Plaintiff's documents but after the Plaintiff's Supporting Affidavit has been filed and served, the Defendant suddenly raised that there are some purported discrepancies in the Plaintiff's document.

[78] The court also failed to see how this purported inconsistency will beg the issue of alleged questionable invoices. As pointed correctly by the Plaintiff, the Defendant had been blowing hot and cold in this issue. On the one hand, the Defendant alleged that the Proof of Debt filed was wrongly approved by the Judicial Manager as he has approved it without investigation and an application for committal proceeding was filed against the Judicial Manager.

[79] On the other hand, the Defendant is now relying on the Proof of Debt by saying the Plaintiff did not claim for late payment interest in the Proof of Debt and this is purportedly an inconsistency which begs explanation.

[80] This court agreed with Plaintiff's submission that the amount stated in the Proof of Debt corresponds with the Plaintiff's current claims here, RM244,432.50 and the Plaintiff's rights to claim for late payment interest is from the contract (the invoice).

[81] The Plaintiff has supplied goods to the Defendant since 2018 and it is stated clearly in all the tax invoices regarding Plaintiff's *RIGHT TO CHARGE AN INTEREST RATE OF 2.0% PER MONTH ON ALL OVERDUE ACCOUNT*.

[82] Since the Defendant had received goods based on invoices issued by the Plaintiff and had never raised any objection with regard to the payment terms, then the Defendant must be taken to have accepted the terms stated in the invoice. In *Niaga Tani Sdn Bhd v Samarez holdings Bhd* [2002] 7 CLJ 327, the High Court held that:

*"As all monthly statements, invoices and debit notes were served on the defendants, it could not be said that the Defendants did not know the actual amount due and owing to the plaintiffs nor as to how the interest due and owing was calculated...**the amount of and the manner in which the interest is to be calculated is clearly set out in the invoices** and the debit notes and the defendants have **never objected to nor questioned** the Plaintiffs regarding the same and that consequently, the defendant are now estopped from denying the same."*

[83] Whether the Plaintiff did or did not mention about the interest in their submission of proof of debt is not the actual issue here as the Plaintiff has never expressly waived their right to claim for the same. Since there is no inconsistency with regard to the amount of the principal debt owned by the Defendant, the claim made by the Plaintiff in this suit is not a questionable claim which calls for an explanation.

[84] In considering this application, this court noted that the applicant had admitted during case management that the Judicial Management Order has expired since 15.2.2022 and the Defendant therefore cannot rely on section 410(c) dan 411(4)(c) of the Company Act 2016 for the purpose of urging a stay. Defendant however submitted that the Judicial Manager has abandoned his post in which he did not properly discharge the order and himself in accordance with the requirements under s. 424 and s.417 of the Companies Act 2016 respectively.

[85] I agreed with the plaintiff's submission that the outcome of the Defendant's application in the Judicial Management suit will not affect or vary the Plaintiff's case here as the Plaintiff is not a party to the suit and Plaintiff has no knowledge with regard to the contentions of the Defendant in the purported suit. In other words, this court believes that the outcome of the Judicial Management suit would not raise any controversial question in the current suit.

[86] The next issue raised by the Defendant is due to the internal disputes and the alleged misfeasance of the judicial manager, the Defendant, the deponent of the affidavit madam Ho Poh Lin has been deprived of the right to access financial documents of the company, hence, the Defendant cannot now properly defend the suit.

[87] This court noted that the Plaintiff is suing the Defendant as an entity of its own and the deponent who affirmed the affidavit on behalf of the Company is a director of the Defendant's company since year 2011 (which was 9 years before the debt accrued), nevertheless the deponent now seemed to be so perturbed about being denied by other directors to access the documents of the company over the years and alleged that had been denied such right as well during the judicial management proceeding.

[88] This court finds that the Defendant in this case had made an application vide enclosure 6 under Order 24 rule 10 ROC 2012 for inspection of documents referred to in pleadings and affidavits. The

Plaintiff objected to this application on the ground that the Defendant should get the copy of documents from their client, same documents have been handed over to the Defendant's representative together with the proof of debt on 7.4.2021 and that the application made by the Defendant was not bona fide as the Defendant has yet to file their Defence at that time.

[89]Defendant counter argued that they were unable to file their defence without those documents. Court granted an extension of time for the Defendant to file their defence. Subsequently, vide enclosure 8, Plaintiff consented to the inspection of document stated in paragraph 2 of the notice i.e a letter by the Plaintiff's counsel dated 10.3.2021 together with the acknowledge receipt and the certificate of postage. Defendant then had withdrawn their application for inspection of documents.

[90]This court is of the view that the Defendant's submission in this issue is unfounded now. Firstly, by now, the Plaintiff in this case had filed all the contemporaneous documents related to this case including the alleged questionable invoices as stated under first paragraph of the Defendant's notice for inspection in their affidavit in support to the Order 14 application vide enclosure 12. Secondly, the Defendant had also filed their defence and amended defence. The Defendant while keep asserting that they are unable to properly defend their case is silent on what kind of other or further important documents needed for them to be able to properly defend this suit.

[91]This court agreed with the Plaintiff's submission that the Defendant, as a separate legal entity ought to have their own record and the dispute between the Judicial Manager with the Defendant cannot be used here as an excuse to delay the Plaintiff from their right to proceed legally against the Defendant to recover the outstanding amount. The case before this Court today is clear cut case of money owed due to goods supplied by the Plaintiff to the Defendant. This court found that all contemporaneous documents have been submitted to the Court in the Summary Judgment's application, hence, this "not able to properly defend its suit" ground is devoid of merit.

[92]The plea of Audi Alteram Partem by the Defendant is also misconceived as there is nothing to stop the Defendant from proceeding with the judicial management suit. The Plaintiff has never stopped or prevented the Defendant from pursuing their suit against the Judicial Manager. There is no denial of procedural fairness as the Defendant would be accorded the right to be heard in the current suit filed by Plaintiff as well. However, for this current suit, in view of the application made vide Enclosure 11 by the Plaintiff for the court to enter a summary judgment against the Defendant, the Defendant needs to satisfy the court that there are indeed triable issues or else the law allows a summary judgment.

Conclusion

[93]After considering the affidavit evidence filed herein and the respective submissions of the learned counsels, this Court finds that the Applicant has failed to discharge its burden of proof in showing that there are special circumstances warranting a stay of proceeding. Bearing in mind that an applicant in an application for stay of proceedings bears a heavier burden, this court is of the view that the reasons put forth by the Defendant are devoid of merits and do not constitute any special circumstance warranted a stay of proceeding in this case. The Defendant's stay application is dismissed with cost RM1000.