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HHQ | HLP
ADVOCATES & SOLICITORS

Empower

WHAT'S INSIDE THIS ISSUE:

A MONTHLY NEWSLETTER BY
HHQ & HLP

Note from the Editorial Team

Dear Readers,

As we have now completed the first quarter of 2022, we hope that most of you are en-route to accomplishing the resolutions you had set earlier this year. The end of the first quarter of the year is an appropriate period to reassess your goals and to recalibrate your objectives and targets and we hope that all of you meet your expectations at the end of this year.

Meanwhile, in this month's edition of the newsletter, we have some very captivating articles that we would like to share with you. Our first article is indeed very relevant in this day and age as it provides an overview of the financial technology industry in Malaysia - an area which we would all have to agree, is up and coming. If you would like to know more about this budding area of finance, do have a read of our article.

Our second article is also extremely useful as it considers and explains the various type of monetary remedies that would ordinarily be available to parties in a legal suit. The article explains what general, special, exemplary and nominal damages are and how they would apply in a lawsuit. It also describes how quantum meruit would apply in legal proceedings.

Our third article is a case summary of a High Court decision (which has recently been affirmed by the Court of Appeal) titled PCOM Pacific Sdn Bhd v Apex Communications Sdn Bhd & Anor [2020] MLJU 118. The case concerns the operation and application of Section 30 of the Construction Industry Payment and Adjudication Act 2012 i.e a provision which enables a party who obtained an adjudication decision in his favour, to make a written request for payment of the adjudicated amount directly from the principal of the party against whom the adjudication decision is made. To understand how the provision works, do check out our article.

If a party against whom an adjudication decision was made fails to make payment of the adjudicated amount, the party who obtained the adjudication decision in his favour may make a written request for payment of the adjudicated amount direct from the principal of the party against whom the adjudication decision is made.

The final article titled "keeping pets in a strata scheme" explains in a gist, the long lasting confusion of whether pets are allowed in stratified homes such as condominiums and apartments. For those of you who have pets, this article is for you!

Finally, do take a peek at our Inside Out section for the firms' latest updates and activities!

We hope that you enjoy reading this edition as much as we enjoyed putting it together for you! Happy reading!

Empower is a monthly newsletter jointly published by Halim Hong & Quek and Harold & Lam Partnership.

It is distributed for free and can be read on HHQ's or HLP's website at **https://hhq.com.my/** or **https://hlplawyers.com/**

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OVERVIEW OF FINTECH REGULATORY SANDBOX IN MALAYSIA

WRITTEN BY
TAN LEE WEEI & CHOO SHEAU KEE

In the past years, we have observed the rapid or rather aggressive growth and development of the financial technology (**"Fintech"**) industry in Malaysia. Banks and digital services providers have transitioned from the traditional mode of business to adoption of digital banking or advanced payment solutions to fetch the needs and demands of consumers by for instance a simple click or face recognition.

In the growth of such fast-evolving transition, the existing legal structure or framework in Malaysia may not be kept pace with the speed of Fintech companies introducing new innovative products, services and solutions in Malaysia. This has led to the launch of the Regulatory Sandbox by Bank Negara Malaysia (**"BNM"**) (**"Regulatory Sandbox"** or **"Sandbox"**) in October 2016 to provide a regulatory environment that is conducive for the deployment of Fintech and encourage overall technological innovation in the Malaysian financial sector.

1. Do you have a Sandbox in place in your jurisdiction? If not, is there any draft law addressing this initiative in the short / mid-term?

In Malaysia, Regulatory Sandbox was established by BNM to provide a live, contained environment in which participants may test their Fintech related product, service or solution within the legal parameters under the governing framework known as the Financial Technology Regulatory Sandbox Framework.

2. What are the main benefits of the Sandbox?

The Regulatory Sandbox acts as a catalyst in the introduction of new technological innovation and the delivery of financial services in Malaysia by granting regulatory flexibilities for Fintech solutions to be experimented in a production or live environment. Such flexibilities will be accompanied by appropriate safeguards to preserve financial stability, integrity of financial transactions, ensure fair business conduct and fair treatment to consumers.

It provides an avenue to the Fintech companies to enjoy regulatory flexibilities and facilitate the growth of innovative financial services with genuine value proposition that may otherwise be impeded from doing so due to any regulations. However, it is pertinent to note that the Sandbox cannot be used to circumvent existing laws and regulations. It is therefore not suitable for proposed product, service or solution that is already appropriately addressed under prevailing laws and regulations.

In other words, the Sandbox is a shield to protect Fintech ideas or solutions which may otherwise be rejected outright before the existing laws of Malaysia. Where there is limitation in the current laws, the Sandbox can be used as a practical framework to allow Fintech companies to venture and explore possibilities within the legally safe boundary.

3. Who can apply for the Sandbox?

The Regulatory Sandbox is open to the financial institutions (either on its own or in collaboration with a Fintech company) and all Fintech companies i.e. a company that utilises or plans to utilise technological innovation in the provision of financial services, including those without any existing presence in Malaysia but are interested to offer their services in the Malaysian market.

It is not necessary for a Fintech company to partner with a financial institution to be eligible for the Sandbox. However, Fintech companies that collaborate with financial institutions could gain added advantages from guidance and support provided by a partner financial institution.

4. How do you apply for the Sandbox?

An applicant must submit to BNM the prescribed Sandbox Application Form signed by the Chief Executive Officer of the applicant and all the relevant supporting documents. BNM will inform an applicant of its eligibility to participate in the Sandbox within 15 working days of receiving a complete application.

In the event of a rejected application, a cooling off period of six (6) months will need to be observed before the applicant is allowed to resubmit the application.

5. What are the main requirements to apply for the Sandbox?

An applicant seeking BNM's approval to participate in the Regulatory Sandbox must fulfil the following criteria and demonstrate that:

(a) the product, service or solution is genuinely innovative with clear potential to:

i. improve accessibility, efficiency, security and quality in the provision of financial services;

ii. enhance the efficiency and effectiveness of Malaysian financial institutions' management of risks; or

iii. address gaps in or open up new opportunities for financing or investments in the Malaysian economy;

(b) the applicant has conducted an adequate and appropriate assessment to demonstrate the usefulness and functionality of the product, service or solution, potential to improve financial services and satisfy market demand gaps and identified the associated risks. Typically, it would entail a strong market gap assessment or research accompanied with a solid underlying understanding of the relevant market landscape and accurate identification of issues currently in the market;

c) the applicant has the necessary resources to support testing in the Sandbox. This would include a ready prototype or minimum viable product to demonstrate the proposed solution, reasonably adequate financial and human resources to support live testing, and expertise to mitigate and control potential risks and losses arising from offering of the product, service or solution;

d) the applicant has a realistic business plan to deploy the product, service or solution on a commercial scale in Malaysia after exit from the Sandbox;

e) the provision of the product, service or solution is either wholly or partly incompatible with laws, regulations or standards administered by BNM. In such cases, BNM may consider granting relevant regulatory flexibilities for the purpose of testing a proposed product, service or solution that possesses strong value propositions; and

f) the applicant is led and managed by persons with credibility and integrity.

Further, in considering an application to participate in the Sandbox and the types and extent of regulatory flexibilities that may be accorded to the participants operating in the Sandbox, BNM will take into account, among others, the following:

(a) the potential benefits of the proposed product, service or solution;

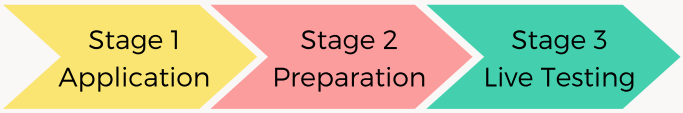
b) the potential risks and mitigating measures; and

c) the integrity, capability and track record of the financial institutions or fintech companies.

Companies with potential to contribute meaningfully to the creation of high value added jobs in Malaysia will be assessed more favourably by BNM.

6. How many phases are there in the Sandbox and what is the duration of the Sandbox?

Overall Regulatory Sandbox process



Submission of application

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Application Stage

- Applicant will be assessed against the eligibility criteria and proposed safeguards for testing.
- Applicant will be informed of its eligibility within 15 working days from the submission of complete application.

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Preparation Stage

- Participant will work with the Bank on the details of the testing parameters, measures to determine success or failure, exit strategy and transition plan before the commencement of the test.

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Testing Stage

- Participant may start testing the product, service or solution upon obtaining the Bank's approval.
- Participant may be required to submit information.
- Participant must submit interim reports on the progress of the test and final report at the end of the test.

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Testing succeeded or failed

Eligible applicants who are admitted into the Sandbox will move into preparation phase to work with BNM to prepare for live-testing. This will involve detailed discussions on several matters such as determining the appropriate testing parameters, ensuring adequate safeguards and robust risk management are put in place, and setting key performance indicators (KPI) to measure success and failure of the test, including planning for potential next steps after the test.

Applicants who have successfully completed preparations will be given approval to test the solution in the live market. The initial testing period is subject to a maximum of 12 months from the start date of the test. Upon expiry of the testing period, an approval to participate in the Sandbox and any regulatory flexibility accorded to the participants will automatically expire, unless the participant has obtained prior written approval from BNM for an extension of the testing period.

7. What happens to the projects that have successfully passed the Sandbox?

Upon completion of the testing, BNM will decide whether to allow the tested product, service or solution to be introduced in the market on a larger scale by taking into account the underlying economic and innovative values. Note that BNM may prohibit deployment of the product, service or solution in the market, amongst others, if the product, service or solution may cause unintended negative consequences to the public and/or financial stability.

Where successfully passed, participating Fintech companies intending to carry out regulated businesses will be assessed based on applicable licensing, approval and registration criteria under the Financial Services Act 2013, Islamic Financial Services Act 2013 and/or Money Services Business Act 2011 (collectively **"Applicable Laws"**), as the case may be. Note that approval to test in the Sandbox is not a guarantee for BNM's issuance of the full licence or approval. In other words, there is no blanket approval under the Regulatory Sandbox and it will be subject to the fulfilment of the requisite requirements under the Applicable Laws by the applicants.

8. Other relevant information.

It is one of the necessary conditions that regulatory impediments are identified clearly to be eligible for the Regulatory Sandbox. Also, the Sandbox cannot provide regulatory flexibilities on requirements that originate from regulations beyond BNM's regulatory ambit. Applicants are responsible to comprehensively assess the potential legal implications of the services they intend to offer vis-à-vis regulations administered by BNM or other regulators such as the Securities Commission of Malaysia.

Before you proceed to apply for participating in the Sandbox, you may consider reaching out to us at **lwtan@hhq.com.my** for a formal legal assessment on potential regulatory implications and to determine whether your Fintech product, service or solution falls within any of the existing activities regulated by BNM.

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MONETARY COMPENSATION AWARDED BY THE COURT

WRITTEN BY
JESSICA WONG YI SING

INTRODUCTION

The well-known legal maxim "*ubi jus ibi remedium*", translated to "where there is a wrong, there is a remedy" means no wrong should be allowed to go without any compensation if it can be redressed by the court of law. The Malaysian courts have wide discretionary power in awarding legal remedies. In this article, we would discuss some of the monetary remedies that are available to parties in a legal suit.

GENERAL DAMAGES

General Damages are intangible, non-monetary losses that are not quantifiable at the time of the trial. Some of the examples of general damages are loss of reputation in a defamation claim, pain and suffering, loss of amenities, psychological effects in car accident claims etc.

It is important to note that the Court has a wide discretion when it comes to the assessment of the general damages or losses and may award any award which it deems fit and/or reasonable.

In ***Sambaga Valli a/p KR Ponnusamy v Datuk Bandar Kuala Lumpur & Ors and another appeal*** **[2018] 1 MLJ 784**, the Court of Appeal laid down some factors to be considered in awarding general damages for personal injuries in car accident cases.

> *[14] It is trite that a person injured by another's wrong is entitled to general damages for non-pecuniary such as his pain and suffering, hardship, discomfort, mental distress and loss of amenities of life. There is no standard rule to measure the damage in such cases.* The courts usually determine the amount based on a fair and reasonable standard, free from sentimental or fanciful standards, and based upon evidence adduced. *The court should also consider the age, health and condition of the injured party pre-injury as compared with his condition after the injury. The court also consider the need for medical, psychological or physical symptoms, and the impact on the plaintiff's conduct and lifestyle before apportioning the amount of damages.*

Based on the above guidance set out by the court, the parties seeking for compensation should adduce the necessary relevant documents to assist the court to quantify the amount of damages.

Another point to note would be, in the event a party is not satisfied with the amount of damages awarded by the court, he or she is entitled to appeal against the decision at a court with higher jurisdiction. ***(Yee Hup Transport & Co & Anor v Wong Kong [1967] 2 MLJ 93).***

SPECIAL DAMAGES

Unlike general damages which are not quantifiable, special damages on the other hand refers to monetary losses that have a measurable dollar amount. It is a well-established principle that special damages must be specifically pleaded and particularised in the claim ***(Tan Kuan Yau v Suhindrimani [1985] 2 MLJ 22 (FC)).*** If a party seeking for special damages fails to plead them, then evidence in respect of those items cannot be led in court ***(Yeah Eh Farn v Alliance Bank (M) Bhd [2014] 3 CLJ 803).***

Further, special damages must be proven. A party claiming for special damages must produce sufficient evidence to prove the quantum of the special damages claimed. Documents such as invoices, purchase orders, debit notes etc. would be useful in proving losses incurred or suffered. Apart from that, a party claiming for special damages should also prove that such damages are not too remote, as covered under ***s74(1) of the Malaysia Contracts Act 1950***. In other words, the loss or damage suffered must be directly related to the actions or behaviour of the defendant (the party being sued).

EXEMPLARY DAMAGES / PUNITIVE DAMAGES

These are also known as retributory damages and are awarded in addition to actual damages to punish the outrageous conduct of the defendant which offended the morals of the society. Some examples include reckless driving, posting pornography photographs on the internet, acted with violence or cruelty etc.

Exemplary damages are considered appropriate in situations where a person's conduct displays a blatant disregard for the rights of another and enables a court to express the position that such behaviour will not be tolerated.

It is recognised by the Court of Appeal in ***Tradewinds Properties Sdn Bhd v Zulhkiple bin A Bakar & Ors [2019] 1 MLJ 421*** that exemplary damages/punitive damages would only be awarded in two categories of cases propounded in ***Rookes v Barnard [1964] AC 1129***, as follow:

i) Oppressive, arbitrary or unconstitutional action by the servants of the government; and

ii) Cases where defendant's conduct had been calculated by him to make a profit for himself which may well exceed the compensation payable to the plaintiff.

In addition, the Court of Appeal in ***Sambaga Valli a/p KR Ponnusamy v Datuk Bandar Kuala Lumpur & Ors and another appeal [2018] 1 MLJ 784*** listed out 3 principles in assessing the quantum of exemplary damages in the case:

> *"... exemplary damages are not intended to compensate the plaintiff and are not recoverable as a matter of right. The amount of the exemplary damages award is left to the judge's discretion and is determined by considering the character of the defendant's misconduct, the nature and extension of the plaintiff's injury and the means of the defendant. The quantum of exemplary damages to be awarded must be appropriate to the wrongdoing inflicted to the parties involved."*

Generally, an order for exemplary damages will only be granted by the court if the circumstances of the case fall within the two categories as well as fulfilling the three considerations propounded in ***Rookes v Barnard***.

NOMINAL DAMAGES

Nominal damages are a small sum of money awarded by the court as damages to a party who has suffered a legal wrong but no actual financial loss. In ***Syarikat Kemajuan Kuari (M) Sdn Bhd v Su bin Abdullah & Anor [2003] 1 MLJ 401***, the Court cited the *McGregor on Damages (16th Ed, 1997) at page 281* which highlighted two circumstances that give rise to an award of nominal damages:

i) firstly, where there is *injuria sine damno*. An injuria or wrong which entitles the plaintiff to a judgment for damages in his favour, but where there is no actual loss or damage, such judgment will be for nominal damages only; or

ii) secondly, where damage is shown but its amount is not sufficiently proven. The inadequate or absence of evidence of such amount of loss would entitle the plaintiff to nominal damages only.

In ***Pancaran Prima Sdn Bhd v Iswarabena Sdn Bhd [2020] MLJU 1273***, the Federal Court stated that nominal damages according to past Malaysian judicial precedents can range from RM 10 to RM 2,000.00. For example, in ***Hilbourne v Tan Tiang Quee [1972] 2 MLJ 94*** the High Court awarded the plaintiff substantial damages for loss of opportunity to purchase a piece of land. On appeal, the Court of Appeal reduced the damages to nominal damages of RM10 primarily because the plaintiff did not suffer any pecuniary loss.

Another example would be in the case of ***Industrial and Agricultural Distribution Sdn Bhd v Golden Sands Construction Sdn Bhd [1993] 3 MLJ 433*** concerning the plaintiff's claim for depreciation of an excavator because the defendant had used it for more than two-months period. The High Court awarded RM100 as the plaintiff could not prove the depreciation.

QUANTUM MERUIT

Quantum meruit is the determination of a reasonable value of the work performed or services rendered. This is a typical claim where there is no formal contract or valid agreement between the parties. This Latin word 'kwahn-tuhm mare-ooh-it' means "as much as he deserved."

Section 71 of the Contract Act 1950 allows a claim essentially based on *quantum meruit*.

> *"Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered."*

In ***Siow Wong Fatt v Susur Rotan Mining Ltd & Anor [1967] 2 MLJ 118***, it was held by the Privy Council that 4 conditions must be satisfied to establish a claim under Section 71 of the Contract Act 1950, which are:

i) the act must be lawful;

ii) The act must be done for another person;

iii) The act must not be intended to be done gratuitously; and

iv) The act must be such that the other person enjoys the benefit of the act.

Technically speaking, if you have provided lawful services to another party and the party has willingly accepted the services knowing that those services are not free and the person has enjoyed the benefit of those services, the conditions for a *quantum meruit* claim would be satisfied.

CONCLUSION

The monetary remedies discussed above are merely the tip of the iceberg. Apart from monetary remedies, the Malaysian courts also have the discretion to award equitable remedies such as specific performance, restitution, rescission etc. It is important to note that the party seeking any legal remedies from the court bears the legal burden to prove as *"he who asserts must prove"*, failing which he or she face the risk of being awarded only nominal damages or nothing at all.

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CASE SUMMARY: PCOM PACIFIC SDN BHD v APEX COMMUNICATIONS SDN BHD & ANOR [2020] MLJU 118

WRITTEN BY
PAN YAN TENG

INTRODUCTION

This case concerns the operation and application of section 30 of the Construction Industry Payment and Adjudication Act 2012 (CIPAA).

BACKGROUND FACTS

The Plaintiff is a private limited company involved in the business of electrical engineering installations. The First Defendant (D1) and Second Defendant (D2) are also private limited companies involved in the construction business. It is pertinent to note that D1 and D2 are connected through a Mustafa bin Ali who is a vice president of D1 as well as an alternate director of D2. They also have a common shareholder who is Dato' Ahmad Amer bin Awang.

D1 is the main contractor for the project known as the Klang Valley MRT Station Project ("**Project**"). D1 appointed D2 as its sub-contractor to carry out works for the Project. D2 in turn, appointed the Plaintiff as its sub-contractor to carry out the supply and installation of fibre optic cables and cable containment of the Project.

Disputes and differences arose between the Plaintiff and D2 under the Contract and the Plaintiff referred the disputes and differences to statutory adjudication under the CIPAA. On 6 December 2018, the Adjudicator ordered D2 to pay the sum of RM6,521,818.39 with interest at 5% per annum from the date of his decision to full realization together with costs and adjudicator's fees and expenses of RM111,250.00 ("**Decision**").

Upon receiving the Decision, the Plaintiff demanded for payment of the adjudicated sum pursuant to the Decision from D2. However, D2 failed, refused or neglected to do so and replied by letter dated 18 December 2018 to the Plaintiff that it was because D2 was not paid by D1. The Plaintiff filed an application to enforce the Decision pursuant to s. 28 of the CIPAA.

Around the same time, the Plaintiff also by way of letter dated 27 December 2018 issued a notice to D1 to make payment under the Decision as the principal of D2 pursuant to s. 30 of the CIPAA. However, D1 by way of letter dated 5 March 2019 replied to the Plaintiff that no outstanding sum is due and owing by D1 to D2. Consequently, the Plaintiff filed the application pursuant to s. 30 of the CIPAA against D1 and D2 ("**S.30 Application**").

THE HIGH COURT DECISION

The High Court allowed the S.30 Application by ordering D1 to make direct payment to the Plaintiff for the sum of RM6,521,818.39 with interest at 5% per annum from 6 December 2018 until full realization together with the costs of adjudication of RM111,250.00 within 7 days from 17 December 2019. The grounds in support of the decision are as follows:

a) The Judge found that D1 has failed to comply with the requirements of s. 30(2) of the CIPAA. This is because D1 did not issue the mandatory notice under s. 30(2) of the CIPAA to D2 and this is fatal to the defence that there are no monies due and owing from D1 to D2.

   The Judge referred to the case of ***HMN Nadhir Sdn Bhd v Jabatan Kerja Raya Malaysia & Ors*** [2018] 1 LNS 1938, Lee Swee Seng J (now JCA) and held as follows:

   > *"[26] There can be no proof of payment as the Defendant had failed or refused to issue the notice pursuant to section 30(2) of the CIPAA. I agree with the Plaintiff that the Defendant cannot rely on its breach of section 30(2) to avoid its mandatory obligation to make direct payment under section 30(3) of the CIPAA."*

b) Further, D1 did not discharge its burden of proof under s. 30(5) of the CIPAA to show that no monies are due and payable to D2. D1's contended that there are no monies due and payable to D2 as the result of the reconciliation of D2's statement of account ("**Reconciliation Exercise**"). The Reconciliation Exercise showed that D2 instead owed D1 the sum of RM127,383.09. D2 confirmed its acceptance of the Reconciliation Exercise.

   However, the Judge agreed with the Plaintiff that the Reconciliation Exercise is dubious in light of D2's nonchalant acceptance of it given that both D1 and D2 are connected in having common shareholder and key personnel at all material times. Moreover, D1 merely exhibited a statement of accounts of the purported Reconciliation Exercise devoid of any document to substantiate or support the same.

   The Judge referred to the case of ***CT Indah Construction Sdn Bhd v BHL Gemilang Sdn Bhd*** [2018] 1 LNS 380 where Lee Swee Seng J (now JCA) held as follows:

   > *"[25] I would agree with the Plaintiff that this is not a case where the Defendant can seriously dispute the amount to be paid over to the Plaintiff especially in the absence of a mandatory notice to BHL Builders under section 30(2) and further in the absence of a rebuttal of the allegation of the Adjudicated Amount to be paid by the Defendant to the Plaintiff when the Defendant had the first opportunity to do so."*

   The High Court also found that the subsequent justification by D1 that there are no monies due and payable as the result of the Reconciliation Exercise dubious and an afterthought in attempt to refuse payment. The statement of accounts of the purported Reconciliation Exercise is seemingly only prepared in March 2019 after it was requested by the Plaintiff's claims representative on 11 March 2019 in response to D1's solicitor's letter dated 5 March 2019. D1's solicitor's letter was issued to the Plaintiff in response to the notice issued on 27 December 2018 to D1 pursuant to s. 30(1) of the CIPAA. Instead of replying to the Plaintiff, the Judge found that D1 should have responded to D2 within 10 working days as compulsorily required by s. 30(2) of the CIPAA.

   The Judge further found that the exhibited statement of accounts of the purported Reconciliation Exercise has little, if no, evidential value in the absence of cogent substantiating documents in support thereof. Put simply, the statement of accounts is unworthy and unreliable.

continued from page 11

In this regard, the Judge allowed the S.30 Application with costs payable by D1 to the Plaintiff.

This High Court decision has recently been unanimously affirmed by the Court of Appeal. At the time of the preparation of this article, the Court of Appeal has not yet issued its ground of judgment.

CONCLUSION

Section 30 CIPAA applications are becoming more often these recent years as sub-contractors seek for payment from the principal. Based on the above, it is important for all employers, or contractors who are considered as "principal" under CIPAA to be vigilant and alert of the technical requirements in Section 30 CIPAA. The High Court Judge had found that the failure to issue a letter to the contractor (unsuccessful party in the adjudication) is in breach of the statutory requirements and this is fatal to the principal's defence. The principal's failure or negligence in issuing such notices on time would most likely be to the principal's detriment in defending the Section 30 claim.

Secondly, the High Court Judge has also clearly set out that the principal has the burden of proof under Section 30(5) that there are no monies due and owing to the contractor who was the unsuccessful party in the adjudication. Mere existence of statement of accounts that are not contemporaneous was not considered to be good defence in this case.

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CASE SUMMARY: PCOM PACIFIC SDN BHD V APEX COMMUNICATIONS SDN BHD & ANOR [2020] MLJU 118

KEEPING PETS IN STRATA SCHEME

WRITTEN BY
LEE PIN-E

It has been a confusion along the years on whether pets are allowed in stratified homes such as condominiums and apartments. In the year of 2016, the amendments to the Strata Management Act have brought certainties to the practice of keeping pets within a strata development.

With reference to By-Law 14 in the Third Schedule of the Strata Management (Maintenance and Management) Regulations 2015 ("the 2015 Regulations"), there is a provision for pets to be kept in a strata residence unless they are a threat, or cause annoyance, nuisance and even health hazards to other residents.

What will happen if your pet is "against the law"? If your pet causes nuisance or annoyance to other residents, you can be asked to remove your pet from the property under by-law 14(2) of the 2015 Regulations. If you fail to do so, the management body has the power to take action to remove your pet from the building. That having been said, the standard by-law enables the management corporation to regulate but not to prohibit the keeping of pets in stratified parcels.

It has come to the public's attention that purchasers of strata properties commonly signed what is called a deed of mutual covenants (DMC), which spells out the do's and don'ts in a strata community. Questions therefore arise as to whether the provisions in the DMC are still valid after the statutory by-laws came into force? If yes, the former or the latter shall the Strata residence abide by?

According to Section 148 of the 2015 Regulations, any written law, contracts and deeds relating to the maintenance and management of buildings and common property in as far as they are contrary to the provisions of the 2015 Regulations shall cease to have effect within the local authority area or that other area. As such, DMC is still valid following the enforcement of the by-law but only the provisions in it that are contrary to the provisions of 2015 Regulations can be rendered invalid.

However, strata residences must also beware of the local council's rules, regulations and requirements for the keeping of pets as local councils have a say about pets in stratified properties, and different councils have different rules and regulations on this. For example, Kuala Lumpur City Hall (DBKL) allows only nine specific small dog breeds to be kept in high-rise buildings, the Petaling Jaya City Council (MBPJ) and Ampang Jaya Municipal Council (MPAJ) do not allow dogs to be kept above the ground floor of a high-rise building. Subang Jaya Municipal Council, on the other hand, prohibits the keeping dogs on any high-rise building. Hence, it is important to check with the local council first as ultimately, it is the local authorities would decide whether a person is allowed to keep a pet or not.

In short, pets are generally allowed within a strata development and the management committee (MC) or joint management body (JMB) cannot legally ban owners and tenants from owning pets according to the 2015 Regulations. However, any rules in the DMC and/ or the 2015 Regulations must be subservient and consistent with the local authority law in that area.

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HHQ WOMEN'S DAY CELEBRATION

'THANK YOU TO ALL HHQ LADIES FOR YOUR HARD WORK EACH DAY TO ACCOMPLISH OUR FIRM PROFESSIONAL GOALS'
- MS LIM YOKE WAH, HHQ EXCO MEMBER.

SHARING PHOTOS OF HHQ LADIES DURING WOMEN'S DAY WITH THEIR TOKEN OF APPRECIATION GIVEN BY HHQ.
HAPPY WOMEN'S DAY!

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United Kingdom & Ireland Malaysian Law Students' Union (KPUM) is an umbrella body for all Malaysian students studying law in the United Kingdom. In collaboration with them, both HHQ and HLP had hosted a total of 18 students for KPUM's "A Day at Law Firm" event. The purpose of the visit was to provide students with an opportunity to gain practical legal insights on the operation of a law firm. During the visit, students had the opportunity to tour around the firms' premises, interact with the lawyers as well as listen to the sharing by associates and pupils on their legal career experiences. We hope they had a meaningful day at both HHQ and HLP.

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