

**DALAM MAHKAMAH RAYUAN MALAYSIA
(BIDANGKUASA RAYUAN)
RAYUAN SIVIL NO. B – 02 – 937 – 2005**

ANTARA

LIMKOKWING INSTITUTE OF CREATIVE
TECHNOLOGY SDN BHD
(NO. SYARIKAT: 231000-H)

... PERAYU

DAN

1. BOON SHAK FOONG
2. CHEN YOK KHIM
3. LAI CHOON NYOK
4. LAU CHEE KEONG
5. LOW TECK BENG
6. LIM BENG PEOW
7. LIM SIEW KIM
8. NG BAK SENG
9. NG HWAH
10. NG WEI SEONG
11. SER KWEE MUI
12. SIM TECK HOCK
13. TAN KUI CHEN
14. WONG MENG CHOW
15. YONG KONG WOOL
16. TAN GEOK TEE
17. TAN YU MOI
18. KOO KOK SENG

... RESPONDEN-
RESPONDEN

(Dalam Perkara Mengenai Guaman Sivil No. MT2-22-627-2002
Di dalam Mahkamah Tinggi Malaya Di Shah Alam

Antara

1. Boon Shak Foong
2. Chen Yok Khim
3. Lai Choon Nyok
4. Lau Chee Keong
5. Low Teck Beng
6. Lim Beng Peow

7. Lim Siew Kim
8. Ng Bak Seng
9. Ng Hwah
10. Ng Wei Seong
11. Ser Kwee Mui
12. Sim Teck Hock
13. Tan Kui Chen
14. Wong Meng Chow
15. Yong Kong Wooi
16. Tan Geok Tee
17. Tan Yu Moi
18. Koo Kok Seng

... Plaintiff-
Plaintif-

Dan

Limkokwing Institute Of Creative
Technology Sdn Bhd
(No. Syarikat: 231000-H)

... Defendan)

Coram: Gopal Sri Ram, F.C.J.
(sitting as a Judge of the Court of Appeal)
Sulong Matjeraie, J.C.A.
Ahmad bin Haji Maarop, J.C.A.

ORAL JUDGMENT

Gopal Sri Ram, F.C.J. delivering judgment:

1. This is the judgment of the Court.
2. The plaintiffs; and there are 18 of them; brought an action against the defendant for misrepresenting the true nature of a degree program offered by the latter's institution. Although there are a number of wide ranging allegations in the statement of claim, the cause of action appears to be negligence and misrepresentation. Put differently what the plaintiffs are saying is that they were induced by misrepresentation to undertake a course which was not properly accredited or recognised. The defendant applied to strike out the

statement of claim on the ground that it is frivolous, vexatious and constitutes an abuse of the court's process. The learned judge who heard the application dismissed it. The defendant now appeals to us.

3. Now, we must say at once that the statement of claim was very poorly settled. For example, an allegation of fraud is made in general terms with no material particulars. Even in the relevant paragraph of the statement of claim alleging negligence, the assertion is general and badly done. But the question is not whether the statement of claim will eventually win the plaintiffs their case in court. The real question is whether the pleading is demurrable, that is to say, that it discloses no cause of action. The plaintiffs may not succeed at the trial. But that does not matter either. What matters is whether this is a plain and obvious case warranting the striking out of the statement of claim.

4. Learned counsel for the defendant has studiously taken us through some of the relevant materials. However there is a serious dispute as to the interpretation that has to be placed on these. In particular it is not plain and obvious that no misrepresentation was ever made because there is some evidence to suggest that the course the plaintiffs pursued was not recognised. On the material before us we are not satisfied that this is a plain and obvious case warranting the exercise of the summary jurisdiction under Ord. 18 r. 19 and our view coincides with that of the learned judge who heard the application in the court below. Mr. Lee of counsel for the plaintiffs has given us his solemn undertaking that he will amend the

statement of claim by removing the charge of fraud and making other amendments to put his house in order. In the face of that undertaking and given that the statement of claim even as it stands is not demurrable we do not think that we should accede to this appeal.

5. For the reasons already given we find ourselves in agreement with the orders made by the learned judge. The appeal is dismissed with costs. The deposit will be paid out to the respondents to account their taxed costs.

Judgment delivered in Open Court at the conclusion of arguments on 27 April 2009.

Counsel for the appellant: Dahlia W.M. Lee (Alex Netto with her)

Solicitors for the appellant: Tetuan Kam Woon Wah & Co.

Counsel for the respondents: C.K. Lee

Solicitors for the respondents: Tetuan Lee Leow & Co.

Verified with Y.A. Gopal Sri Ram, F.C.J. and certified by me to be correct.