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DALAM MAHKAMAH RAYUAN MALAYSIA
(BIDANG KUASA RAYUAN)

10

RAYUAN SIVIL NO. Q-02-817-1999

ANTARA

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DYNAWORTH SHIPPING SDN BHD

Lot 250, Block 12,
 Jalam Riam, MCLD,
 98000 Miri, Sarawak

... **PERAYU**

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DAN

SHAPADU PROPERTIES SDN BHD

2nd Floor, Phase 1, PKNS Complex,
 Shah Alam, 40670 Selangor

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... **RESPONDEN**

[Dalam Perkara Syarikat (Penggulungan) No. 28-02-97 (MR) dalam
 Mahkamah Tinggi dalam Sabah dan Sarawak di Miri

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Dalam Perkara Akta Syarikat, 1965

Dan

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Dalam perkara mengenai SHAPADU PROPERTIES SDN BHD

DYNAWORTH SHIPPING SDN BHD ... Pempetisyen/
 Pemiutang Kehakiman

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Diputuskan oleh Yang Arif Pesuruhanjaya Kehakiman Tuan Hasan Bin
 Lah di Miri pada 16.09.1999]

5 **CORAM:**

RAUS SHARIF, JCA
NIHRUMALA SEGARA M.K. PILLAY, JCA
SULAIMAN DAUD, JCA

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JUDGMENT OF THE COURT

15 The appellant (Petitioner) applied at the High Court, Miri by Notice of
Motion dated 22/6/1999 (page 19 Appeal Record) for an order that
the High Court Order dated 3rd February 1999 and/or alternatively that
the High Court Order dated 5th May 1999 both made pursuant to the
respondent's (Debtor's) application by Summons In Chambers dated
20 4th July 1998 be set aside and/or struck off and/or discharged. The
said Notice of Motion was dismissed with costs by the learned
Judicial Commissioner on 16/9/1999 and hence this appeal before us
by the Petitioner.

25 The Debtor's Summons-In-Chambers dated 4th July 1998 was not in
the Appeal Record before us but, nevertheless, we had the benefit of
the detailed grounds of the Ruling on the Preliminary Objection in
respect of the said Summons-In-Chambers crystallizing in the Order
dated 3rd February 1999 [see Rekod Rayuan Tambahan pages 21-28].
30 Obviously, there are no written grounds of decision by the learned
Judicial Commissioner for the order made on the 5th day of May,
1999 on the substantive application of the said Summons-In-
Chambers, as it was a consent order.

5 The material parts of the relevant High Court Order dated 3rd
February 1999 reads:

“UPON HEARING the preliminary objection raised by.....
for the Petitioner to the Debtor company Shapadu Properties Sdn Bhd’s
10 Summons-In-Chambers (.....) dated 4th July
1998.....
.....AND THE SAME coming up for ruling on the 3rd day of
February,
1999.....
15it is HEREBY Ordered that the preliminary objection raised
by the Petitioner be dismissed with cost to the Debtor Company and costs
to be taxed unless agreed upon and the Debtor’s company Summons-In-
Chambers(.....) dated 4th July 1998 be fixed
for hearing on the 5th day of May, 1999 at 9am.”

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The material parts of the relevant High Court Order dated 5th May
1999 reads:

“UPON READING the Summons- In-Chambers (.....
25)
.....) dated 4th day of July
1998.....
.....IT IS ORDERED BY CONSENT that the Registrar’s
Certificate dated 27th day of May 1998 be set aside with costs to the
Debtor Company to be taxed unless agreed upon”

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The grounds of the application by the Petitioner in the Notice of
Motion dated 22nd June 1999 to set aside the above orders dated 3rd
February, 1999 and 5th May 1999 were as follows:

- 5 (1) That the High Court Order dated 3rd February, 1999 was drafted, sealed and issued without the Petitioner's consent as provided under O.42 r.8(1) and in non-compliance of O.42 r.8(3) & (4) RHC 1980;
- 10 (2) That it is an abuse of the process of the Court to issue and/or to seal 2 separate Orders in respect to 1 application by Summons-In-Chambers;
- 15 (3) That the Preliminary Objection referred to in the High Court Order dated 3rd February, 1999 was made by the Petitioner in the course of and/or within the hearing of or as part of the hearing of the said Summons-In-Chambers dated the 4th July, 1999;
- 20 (4) That the rejection of a Preliminary Objection is not and/or does not amount to an Order of the Court;
- 25 (5) That with 2 impugned Orders the Judgment Debtor can apply for 2 sets of Taxation and/or 2 sets of costs when they are only entitled to 1 taxation for 1 set of costs in respect to 1 application by Summons-In-Chambers dated the 4th July, 1998 and that therefore the 2 impugned Orders is tantamount to the perpetration of fraud on the Petitioner; and /or alternatively that the Judgment Debtor must elect as to
- 30 which of the aforesaid 2 Orders is proper;

5 The application was supported by 3 affidavits affirmed by counsel
for the petitioner and opposed by 2 affidavits affirmed by counsel
for the debtor. We are entirely satisfied that the learned Judicial
Commissioner had addressed all the issues raised by counsel as
evident in his detailed grounds of judgment [see *Rekod Rayuan*
10 *Tambahan* pages 7-20] and had not erred in law when he
dismissed the Notice of Motion with costs. We have no reason to
disturb any of his finding of facts that were disputed in relation to
the drawing up of the orders before they were entered and sealed
by the Senior Assistant Registrar. We are unanimous that there
15 are no merits in this appeal before us.

The Order dated 3rd of May, 1999 made on the Preliminary
Objections by the Petitioner relating to the said Summons-In-
Chambers by the Debtor and the Order made by consent on 5th of
20 May, 1999 on the substantive application by the Debtor in the said
Summons-In-Chambers were perfected and sealed by the Senior
Assistant Registrar. Both orders are lawful and regularly obtained.

The court (Judicial Commissioner) has no power under any
25 application in the same proceedings to set aside, alter or vary an
order/ruling after it has been drawn up unless it is an order/ruling
by default or made in the absence of a party at the hearing, or
except under the slip rule, so far as is necessary to correct errors
in expressing the intention of the court [see *Hock Hua Bank Bhd v*
30 *Sahari bin Murid (1981) 1 MLJ 143*].

5 Appeal dismissed with costs. Deposit to respondent to account of
taxed costs.

10 (DATO' NIHRUMALA SEGARA A/L M.K. PILLAY)

Judge
Court of Appeal
PUTRAJAYA

15 Reference:

Hock Hua Bank Bhd v Sahari bin Murid (1981) 1 MLJ 143

Peguambela Perayu

20 Tetuan Tai Choi Yu & Co.
No. 12, Tingkat 1
Bangunan Kiat Siang
Jalan Bendahara
98000 Miri, SARAWAK

25 Peguambela Responden

Tetuan Kadir, Wong, Lin & Co.
No. 98 & 100, Tingkat 1 & 2
Jalan Bendahara
98000 Miri, SARAWAK

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27th APRIL 2009