

**SIDHU BROTHERS TRANSPORT SDN BHD lwn. SIME DARBY AUTO CONNEXION SDN BHD**  
MAHKAMAH SESYEN, SHAH ALAM  
RAFIQHA HANIM MOHD ROSLI HS  
[GUAMAN SIVIL NO: BA-A52NCC-571-12/2020]

**Case(s) referred to:**

**Counsel:**

*Bagi pihak plaintif - Ekbal Singh Sandhu; T/n Azian & Co*

*Bagi pihak defendan - Wong Chin Fung Steven, Ng Kean Yip & Tengku Mohd Hazwanhisyam T Zulkarnaini; T/n Arifin & Partners*

**DALAM MAHKAMAH SESYEN DI SHAH ALAM**  
**DALAM NEGERI SELANGOR DARUL EHSAN, MALAYSIA**  
**[GUAMAN SIVIL NO: BA-A52NCC-571-12/2020]**

**ANTARA**

**SIDHU BROTHERS TRANSPORT SDN. BHD.**  
**[COMPANY NO.: 200301007068 / 609488-P]**

**... PLAINTIF**

**DAN**

**SIME DARBY AUTO CONNEXION SDN. BHD.**  
**[BUSINESS REGISTRATION NO.: 198101002488 / 68602-V]**

**... DEFENDAN**

**ALASAN PENGHAKIMAN**  
**(SELEPAS PERBICARAAN PENUH)**

**A. PENDAHULUAN**

**[1]** Ini adalah suatu tuntutan Plaintif yang melibatkan sama ada terdapat kontrak yang mengikat antara pihak Plaintif dan pihak Defendan berkenaan dengan pembelian dua kenderaan berjenama Ford seperti di bawah:

- a) Ford Ranger 2.2 L Single Cab dengan nombor pendaftaran SYF 6683; dan
- b) Ford Everest 2.0 BI-Turbo dengan nombor pendaftaran VDD 832.

**[2]** Suratcara dan kertas kausa yang berkaitan dan yang telah difailkan adalah seperti di bawah:

- i. Ikatan pliding (Lampiran 30);
- ii. Isu - isu untuk dibicarakan (Lampiran 45);
- iii. Fakta - fakta yang dipersetujui (Lampiran 35);
- iv. Ikatan Dokumen Bersama Bahagian B (Lampiran 31);
- v. Ikatan Dokumen Bersama Bahagian C yang telah ditukar ke Bahagian B (Lampiran 32);
- vi. Ikatan Dokumen Bersama Tambahan Bahagian B (Lampiran 36);
- vii. Ikatan Dokumen Bersama Tambahan Bahagian C yang telah ditukar ke Bahagian B (Lampiran 37);

viii. Ikatan Dokumen Bersama Tambahan Defendan Bahagian B (Lampiran 41);

**[3]** Mahkamah juga melihat pada kesemua keterangan seperti di bawah:

Saksi Plaintiff

- i. Maljindar S. Sidhu Brar A/L Mahindar S (Jimmy) (SP-1)
- ii. Gurjit Kaur A/P Mahindar Singh (SP-2)
- iii. Jasjeet Singh Sidhu A/L Jaswant Singh (SP-3)
- iv. Rashjit Singh A/L Jagjit Singh (SP-4)

Saksi Defendan

- i. Kwan Bui San (Sandy) (SD-1)
- ii. Steven Kong Fon Seng (SD-2)

**[4]** Isu - isu untuk dibicarakan adalah seperti yang berikut :

- i. sama ada wujudnya satu perjanjian mengikat Plaintiff dan Defendan bagi tempahan kenderaan FORD RANGER 2.2L SINGLE CAB dan kenderaan FORD EVEREST 2.0 BI-TURBO; dan
- ii. sekiranya Mahkamah mendapati bahawa terdapat satu perjanjian mengikat pihak - pihak, sama ada Plaintiff dan / atau Defendan telah melanggar perjanjian tempahan kenderaan FORD RANGER 2.2L SINGLE CAB dan kenderaan FORD EVEREST 2.0 BI-TURBO tersebut; dan
- iii. sekiranya Defendan telah melanggar perjanjian tempahan tersebut, remedi dan jumlah ganti rugi untuk dibayar oleh Defendan kepada Plaintiff.

## **B. HUJAHAN PLAINTIF**

**[5]** Plaintiff merupakan suatu syarikat yang menjalankan perniagaan lori pengangkutan, manakala Defendan merupakan suatu syarikat yang menjalankan perniagaan menjual dan mengedar kenderaan baharu jenama Ford.

**[6]** Pada atau sekitar 1/7/2020, Plaintiff memaklumkan yang mereka memerlukan dua jenis kenderaan tambahan bagi kegunaan perniagaan dan kakitangan kakitangan Plaintiff. Oleh itu, Plaintiff telah membuat tempahan dua unit kenderaan dari Defendan seperti yang berikut:

- i. satu unit kenderaan FORD RANGER 2.2L SINGLE CAB yang telah didaftar dengan Jabatan Pengangkutan Jalan sebelum penjualan dan mempunyai No Pendaftaran SYF 6683 (selepas ini dirujuk sebagai 'kenderaan FORD RANGER tersebut'); dan
- ii. satu unit kenderaan FORD EVEREST 2.0 BI-TURBO yang telah didaftar dengan Jabatan Pengangkutan Jalan sebelum penjualan dan mempunyai No Pendaftaran VDD 832 (selepas ini dirujuk sebagai 'kenderaan FORD EVEREST tersebut').

**[7]** Selaras dengan tempahan kenderaan FORD RANGER tersebut, Plaintiff telah membuat tindakan seperti di bawah:

- i. Plaintiff telah membuat bayaran deposit sebanyak RM 500-00 kepada Defendan pada 1/7/2020 dan Defendan telah menerima deposit sebanyak RM 500-00 ini;
- ii. Kemudiannya juga pada 1/7/2020, Plaintiff dan Defendan telah memasuki satu perjanjian Retail Customer Order (selepas ini dirujuk sebagai 'RTO FORD RANGER tersebut') yang mempunyai nombor siri 752323 di mana terma - terma jual-beli adalah dinyatakan dan dipersetujui oleh Plaintiff dan Defendan;
- iii. Harga belian kenderaan FORD RANGER tersebut termasuk dengan bayaran sampingan (on the road price) adalah RM 75,057-54. Ini adalah dinyatakan dan disahkan dalam RTO FORD RANGER tersebut yang awal sebelum dipinda; dan
- iv. Defendan setelah menerima tempahan ini dan memasuki perjanjian RTO FORD RANGER tersebut, telah menerima deposit dari Plaintiff dan telah mengeluarkan satu resit rasmi bertarikh 2/7/2020 yang mempunyai nombor siri 821496.

**[8]** Kemudiannya adalah dipersetujui bahawa pihak Defendan (Sandy) (SD-1) akan membuat permohonan - permohonan kemudahan pinjaman dari bank - bank bagi pihak Plaintiff untuk melengkapkan pembelian ini.

**[9]** Walaubagaimanapun pada atau sekitar 10/10/2020 Defendan (Sandy) telah memaklumkan kepada Plaintiff (Jimmy)(SP-1) bahawa kenderaan FORD RANGER tersebut dan kenderaan FORD EVEREST

tersebut telah dijual dan diserahkan kepada pembeli yang lain.

**[10]** Perbuatan Defendan yang telah menjual kenderaan FORD RANGER tersebut dan kenderaan FORD EVEREST tersebut kepada pihak yang lain adalah pelanggaran perjanjian RTO FORD RANGER tersebut perjanjian dan RTO FORD EVEREST tersebut terutamanya di sini dimana Plaintiff telah bergantung kepada terma - termannya dan telah membuat bayaran deposit sebanyak RM 1,000-00.

**[11]** Oleh yang demikian Plaintiff adalah menuntut remedi pelaksanaan spesifik atau sebagai gantian (*in lieu*) remedi pelaksanaan spesifik, gantirugi dari Pihak Defendan. Pada segala masa, Plaintiff kekal bersedia, sanggup dan berupaya untuk melaksanakan dan menyempurnakan kedua dua perjanjian RTO FORD RANGER tersebut dan RTO FORD EVEREST tersebut.

**[12]** Pada atau sekitar 1/7/2020 Plaintiff adalah, memerlukan 2 kenderaan bagi kegunaan operasi dan kakitangannya maka Plaintiff telah menempah 2 kenderaan tersebut dari pihak Defendan. (Q5 A1 & A2 / PSP-1).

**[13]** Selanjutnya satu perjanjian bertulis bertajuk Retail Customer Order (selepas ini dirujuk sebagai 'RTO FORD RANGER tersebut') yang mempunyai No. Siri 752323 dan satu lagi dokumen Retail Customer Order (selepas ini dirujuk sebagai 'RTO FORD EVEREST tersebut') yang mempunyai No. Siri 752322 telah disediakan dan ditandatangani oleh Pihak Defendan (*M/S 8-11 Ikatan B1*).

i. Selaras dengan RTO FORD RANGER tersebut dan RTO FORD EVEREST tersebut Plaintiff telah membuat bayaran sebanyak RM 1000-00 (RM500-00 setiap satu) dan Defendan telah mengeluarkan resit resmi.

ii. Resit Resmi RTO FORD RANGER adalah dirujuk di muka surat 23 Ikatan B dimana dengan terang ianya ada merujuk kepada No. Siri RTO FORD RANGER iaitu 752323.

iii. Resit Resmi RTO FORD EVEREST adalah dirujuk di muka surat 24 Ikatan B dimana dengan terang ianya ada merujuk kepada No. Siri RTO FORD EVEREST iaitu 752322.

**[14]** Pertikaian yang ditimbulkan disini oleh pihak Defendan adalah bahawa RTO FORD RANGER tersebut dan RTO FORD EVEREST tersebut adalah tidak ditandatangani oleh pihak Plaintiff maka tidak ada tempahan yang dibuat.

**[15]** Pihak Plaintiff berhujah bahawa kedua - dua RTO tersebut adalah tidak dapat ditandatangani oleh Plaintiff kerana ianya adalah hanya dihantar kepada pihak Plaintiff secara e-mel dan ianya adalah tidak lengkap di mana bahagian yang perlu ditandatangani oleh Plaintiff tidak diberikan kepada Plaintiff. Salinan asal hanya serahkan kepada Plaintiff secara courier setelah kedua - dua kenderaan tersebut telah dijual.

**[16]** Keterangan Gurjit (SP-2) yang langsung tidak dicabar oleh pihak Defendan adalah dirujuk:

*S : Now, Ms Gurjit, did the plaintiff received the RTO, you know what we are referring to? RTO is the form that you are suppose to sign, did you received RTO from the defendant?*

*J : Yes I received after the car has been sold.*

*S : Now, did you, before the car was sold, did you received any copies of the RTO?*

*J : I received through Email.*

*S : Now, did you sign the RTO?*

*J : No*

*S : Can you explain to the court why you never sign?*

*J : The form was incomplete.*

*17. Keterangan soal balas Sandy (SD-1) adalah dirujuk:-*

*S5 : You know the retail customer order?*

*J : Yes.*

*S6 : SDAC signed already, correct or not?*

*J : Yes*

*S7 : Then only 3rd of July you sent to Sidhu Brothers by email, correct?*

*J : Correct.*

*S8 : That original copy where was it?*

*J : On the file, I filing in the file.*

*S9 : That means it was in possession of SDAC, the is correct?*

*J : Yes.*

*S10 : That means you are holding the original copy, correct?*

J : Yes.

S11 : You did not give the original copy to Sidhu Brothers at that point, that is correct or not?

J : Correct.

S16 : Now, do you agree with me that it was only after Sidhu brothers requested for the RCO you sent it to them? The RCO?

J : Agree. Because Mr Jimmy ask me to sent.

S21 : Is there, for this RCO that you email to Gurjit Kaur, do you agree with me that the column for signing was not sent to Gurjit Kaur? This copy that you sent is without the signing column?

J : Yes.

S23 : Now, first and foremost you sent this RCO after Gurjit, I mean after Sidhu Brothers request for this RCO, you sent them an RCO without the column. Now can you show me some evidence where you requested them to sign the RCO?

J : I didn't request them to sign because of trust.

S24 : So you agree that you did not asked them to sign the RCO now, if you look at your witness statement at question 4. In question 4 answer e, okay what is your, you look at question 4 okay. My current job scope as sales consultant is as follows, abcd and e. I will also guide the customer to sign all the relevant document for submission to both SDAC and recommended financier for purposes of the sale of the Ford Vehicle. I mean this is part of your job isn't it?

J : Yes.

S25 : So you agree with me to get the Sidhu Brother to sign the RCO is part of your job?

J : Can say that.

S26 : Now, you can say that, that is what you say you can say that. That means, you did not do your job by not getting Sidhu Brothers to sign the RCO, you agree with me?

J : Sorry come again.

S27 : You, you said that part of the job is to get Sidhu Brothers to sign the RCO?

J : Yes.

S35 : You are not sure? Ok never mind. Now, you look at the page 15 and 16 of the bundle B. Do you recognize this letter?

J : Yes.

S36 : Can you see paragraph 3 sub 1?

J : Yes.

S37 : You recognize?

J : Yes.

S38 : Do you know what does it say?

J : To provide our client with the original copy of the RTO

S39 : Ok, so can you agree with me that only after you got this letter to sent the original RCO to the Sidhu Brothers?

J : Yes.

**[17]** Keterangan soal balas SD-1 Sandy adalah dirujuk sekali lagi dimana Sandy memberikan keterangan bahawa:

- i. didalam resit resmi yang dikeluarkan oleh Defendan ianya adalah dinyatakan dengan terang bahawa bayaran RM1,000-00 adalah bagi "Booking Fees for Ranger" dan "Booking Fees for Everest"; dan
- ii. Resit resmi ini telah dikeluarkan oleh Defendan adalah bersangkutan dan/atau selaras dengan RTO FORD RANGER tersebut No. Siri 752323 dan RTO FORD EVEREST tersebut No. Siri 752322.

S40 : Ok, now can you turn to page 23 and 24, can you explain to the court what is these document at page 23 and 24?

J : This is the official receipt which is the customer paid for the money in the our company account. So we have to issue the official receipt to the customer.

S41 : So once the customer pays the booking fee and then you refered this receipt, is that correct?

J : Any payment lah, yes.

S42 : Ok so what was this payment for?

J : This payment is for the he interested on the vehicle, so he want to look for that.

S43 : Sandy, you look at the document, and you see the remark column, and you tell the court what is written there? Take the document, open and look?

J : Ya, the remark is, booking fee of Ranger.

S44 : Ok, that is in page 23, correct?

J : Yes.

S45 : In page 24, this receipt is for what? Looks at the remarks?

J: Booking fee for Everest.

S58 : Okay. Can you look at the page 21 ikatan pliding bundle A. Sorry, before we move forward, can you look again at bundle B, page 21 til 24. Now if you look at page 21 and look at page 24, now if you look at the customer order number, can you see there in the middle?

J : Yes.

S59 : 752322, now if you look at page 21, can you see the RCO number?

J : Yes.

S60 : 752322?

J : Yes.

S61 : Now, can you confirm that this receipt is issued pursuant to this RCO at page 21?

J : Yes.

S62 : Now if you look at page 23, can you see the customer order number, 752323?

J : Yes.

S63 : And if you look at page 22, which is the RCO for the Ford Ranger, now can you agree that this official receipt is issued pursuant to this RCO at page 22?

J : Yes.

**[18]** Dalam kes *HELLER FACTORING SDN BHD (PREVIOUSLY KNOWN AS MATANG FACTORING SDN BHD) v. METALCO INDUSTRIES (M) SDN BHD* [1995] 2 MLJ 153 :

COURT OF APPEAL (KUALA LUMPUR)

ZAKARIA YATIM MAHADEV SHANKAR AND ABU MANSOR JJCA

Held by a majority, dismissing the appeal (Zakaria Yatim JCA dissenting):

(4) (Per Mahadev Shankar JCA) The fact that the appellant had not dated or signed the sale and purchase agreement did not mean that there could be no concluded contract. Where a contract had been signed by one party only, it could be enforced where there was evidence, such as part performance by one party and acceptance by the other, that the other party had elected to be bound by it.

.....

It was strenuously submitted that because Matang had not dated or signed this document, there could be no concluded contract. We are unable to subscribe to this view. The true position is that where a contract has been signed by one party only, it can be enforced where there is evidence that the other party has elected to be bound by it. (See the cases in 12 English and Empire Digest (Contract) at p 193 para 1166 where *Buckhouse v. Crosby* [1737] 2 Eq Cas Abr 32; 22 ER 28 and other cases are referred to.) Part performance by one party, accepted by the other, is such other evidence. Delivery on 19 February was part performance.

[19] Dalam kes *UNIVERSITI TUN ABDUL RAZAK SDN BHD v. INTRA HARTA CONSULTANTS SDN BHD* [2022] AMEJ 0411

Rayuan Sivil No. WA-12BNCVC-50-07/2021

Mohd Nazlan Mohd Ghazali J

[34] After all, [Section 8 the Contracts Act 1950](#) clearly provides that the performance of the conditions of a contract will be deemed as an acceptance of one party to be bound to the contract. As such, despite the absence of a formal written agreement, the law will find the existence of a contract if like presently, by its conduct, a party performs the terms stated in a contract. This also is the finding of the Court of Appeal in *Heller Factoring (M) Sdn Bhd v. Metalco Industries (M) Sdn Bhd* [1995] 3 CLJ 5 which ruled that a contract can be enforced despite it only being signed by one party if there is evidence that the other party had elected to be bound by the contract.

[20] [CONTRACTS ACT 1950 \(ACT 136\)](#) memperuntukkan:

**8. Acceptance by performing conditions, or receiving consideration**

*Performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal.*

[21] Dalam kes *COUNTRY GARDEN PACIFICVIEW SDN BHD v. ANAND RAJ GIRI A/L HARIPASAR GIRI* 140 [2021] 6 AMR

[14] *The plaintiff had also emphasised that since the SPA had been signed by the defendant only on August 7, 2018, the bargain was struck with effect from that date, and not earlier. I found that argument untenable since it is trite law that where a contract had been signed by one party only, it could still be enforced where there is evidence that the other party had elected to be bound by it: per Mahadev Shankar JCA in *Heller Factoring (M) Sdn Bhd* (formerly known as *Matang Factoring Sdn Bhd*) v. *Metalco Industries (M) Sdn Bhd* [1995] 2 AMR 1353; [1995] 3 CLJ 9.*

[22] Bersandar kepada fakta - fakta dan otoriti yang dinyatakan diatas pihak Plaintiff berhujahkan bahawa RTO -RTO merupakan satu perjanjian yang mengikat pihak - pihak.

[23] Permohonan pinjaman bank untuk mendapatkan kemudahan bank telah dipersetujui adalah untuk dilaksanakan oleh pihak Defendan. Walaupun adalah diplidkan oleh pihak Defendan bahawa mereka telah membuat permohonan dan konon ianya telah ditolak, selepas pemeriksaan balas adalah didapati bahawa Defendan langsung tidak membuat apa - apa permohonan kepada mana mana institusi kewangan untuk kemudahan pinjaman. Keterangan Sandy dirujuk dan diulangi dibawah:

S102 : *If you look at page 21, you said here, if you see paragraph 21, membantu Sidhu Brothers untuk memohon pinjaman sewabeli daripada Public Bank, Hong Leong Bank, Affin Bank Berhad. Correct?*

J : *Correct*

S103 : *So you submitted the loan application, that is what you are saying, correct?*

J : *Correct.*

S105 : *And then on paragraph 23 you wrote, pada 15.7, 18.7 dan 28.7, all 2020, masing-masing, Sandy telah memaklumkan bahawa pembiaya-pembiaya tersebut masing-masing telah menolak permohonan pinjaman sewabeli Sidhu Brothers atas sebab-sebab yang lebih diketahui oleh Sidhu Brothers. Then at paragraph 24, Mr Jimmy ask you to try again, correct?*

J : *Correct.*

S106 : *At paragraph 25, you pleaded that, the tolak sekali lagi and at paragraph 26 and 27, you said that, setakat 2.10, belum mendapat kelulusan dan SDAC telah menjual kenderaan-kenderaan tersebut, correct?*

J : *Correct.*

S107 : *This is what you are saying. So you are the one who submitted the loan and then you are saying that you did all the correspondence with the Hong Leong*

bank and all that, and the loan was ditolak, appeal also tolak, and so you sold the vehicle, correct?

J : Not I sold.

S : SDAC sold?

J : Ye

S126 : Now Sandy, you said that there is only 2 email that you sent to the bank and this are the attachment,, can you show me where is the loan application form? Loan Application form?

J : Loan application form is the sales order to apply the loan

S127 : Which sales order?

J : The attachement with VSO.

S128 : VSO? VSO stand for what?

J: Vehicle sales order.

S129 : But that is a sales order isn't it?

J: Yes.

S133 : So where is the loan application form?

J : This is the loan application form. Is the RTO.

S134 : No, this is the RTO between ford and Sidhu Brothers, isn't it? You see, retail customer order between Ford and Sidhu Brothers transport. My question to you is, where is the loan application form? From Sidhu Brothers must signed one form and submit to the bank?

J : That is the bank that will sent to the customer to sign, if they are got the form. Is not all the bank will, because we when first...

S135 : No no no, you said that you pleaded that you assist the customer to made the application? So when you sent all this document you must also sent the form isn't it?

J : We submit the loan for the application.

S136 : So can you agree with me that you did not submit any loan application form? You did not submit any loan application form?

J : I not agree.

S138 : Then you show us where is the form?

J : The RTO Is the...

S : So your answer is, page 21 and page 22 of bundle B is the loan application form, correct?

J : Yes. For SDAC

S139 : For SDAC page 21 and 22 of the bundle B is the loan application form, correct?

J : Correct.

S140 : Now, you said that you have submitted the loan and all that and you have submitted this retail customer of order which is purportedly to be the loan application form?

J : Correct.

S141 :

S : You are the person who told Sidhu Brothers that their loan has been rejected, correct or not?

J : Correct

S142 : Now, can you show us some document or email from either one of the bank that stipulated that the loan has been rejected?

J : They not sending me any email ...

S143 : No no no, my question to you is, can you show me an email or a document or a whatsapp message stating that the loan has been rejected, all 3 loan has been rejected? Show me, from the bank? From Public Bank, Hong Leong Bank, and/or Affin bank?

J : You want the conversation is from the bank right?

S : Yes.

J: I couldn't find my whatsapp conversation.

S144: Now Sandy, we have look through the document, can you agree with me that before the court there is no correspondence between you and the bank stating that all 3 loan have been rejected?

J: I cant find...

S : Now Sandy, you can look here or you can look at the judge. Can you agree with me Sandy, that before the court there is no document to show, between you and the bank to show that all 3 loan has been rejected?

J : Yes.

S146 : Now, Sandy, firstly you are telling the court now that page 21 and 22 of bundle B, which is actually the RCO is the loan application form. Secondly you are saying you pleaded at on 15, 18 and 28 Julai 2020, the loan has 20 been rejected by the bank but you failed to show any correspondence between you and the bank, now how do you expect me or this court to believe that you have made such an application? How you expect me to believe that you made a loan? That you did submit the loan for Sidhu Brothers? The document are not there? It is a important document Sandy, it is loan application form as you pleaded, subsequently you are pleading that the loan has been rejected, there must be some document to support your contention? Now Sandy, can you agree with me that you have mislead Sidhu Brothers to believe that you have made an application for them? In actual fact you did not put any application for any loan?

J : No, I have.

S147 : Now Sandy, I put it to you that you never made any loan application on behalf of Sidhu Brothers?

J : No I am not agree.

[24] Defendan memplidkan di perenggan 26 dan 27 Pembelaan bahawa sehingga 2-10-2020 pinjaman Plaintiff masih belum diluluskan dan kemudian sahaja telah menjualkan kenderaan-kenderaan tersebut kepada pihak yang lain. Walaubagaimanapun apabila disoal balas didapati bahawa kenderaan tersebut telahpun dijual sebelum Oktober 2020. Dirujuk keterangan Sandy:

S148 : Now I refer you to page 22, paragraph 27 of ikatan dokumen, bundle A. Look at paragraph 27, .... This is what you are saying, okay, until 2nd October, no loan so you sold the car to 3rd parties. Now, can you tell me now now, when were this vehicle actually being sold, when were they actually sold? Was it before 2nd October 2020 or after October 2020? That is my question? October 2020, you said you have not got any, no loan has been approved, correct? Setakat 2.10.2020. Can you tell the court, when were the vehicle sold? Was it before 2.10.2020 or after 2.10.2020?

J : As I understand isbefore **october 2020**.

S149 : Before 2.10.2020 the vehicle already sold, correct?

J : Correct.

S152 : But before you informed Jimmy, you already sold the vehicle, correct or not?

J : SDAC sold, is not I sold.

S153 : SDAC sold the vehicle before you informed Jimmy, correct?

J : Correct

[25] Defendan menyatakan dalam keterangan bahawa kenderaan telah pun dijual tetapi apabila disoal balas gagal memberikan sebarang dokumen sokongan bahawa kenderaan tersebut telah pun dijual. Dirujuk keterangan Sandy:

S177 :

S : You told me just now, before 2nd of October 2020 the vehicle are already sold?

J : Correct.

S178 : Now, can you provide us some evidence before the court that his vehicle already sold? Show some supporting document to show that this vehicle already



*sold to AB or C, sold to who and when? Show some supporting document?*

*J : I couldn't find any proof that in the bundle.*

*S180 : No my question is, can you agree with me there is no document in front here, before the court, there is no document to show that the vehicle the Ford Ranger and Everest has been sold to a third party?*

*J : Yes.*

*S181 : There is no document to show, correct?*

*J: Correct.*

*S182 : Ok now Sandy, if there is no document here to show that the vehicle has been sold to a third party, how am I to believe you? How are you to convince the court that the vehicle suddenly been sold to a 3rd party? There is nothing, there is no email, neither there is any whatsapp conversation, there is nothing to support that the vehicle has been sold to a third party, so how do you want us to believe? Sandy, can you agree with me if I said, both the Ford Ranger and the Ford Everest are still with SDAC, do you agree or not?*

*J : Not agree*

**[26]** Plaintiff adalah sanggup membeli kenderaan tersebut dengan tunai dan masih lagi sedia membuat pembelian sekiranya kenderaan - kenderaan tersebut belum lagi dijual. Di perenggan 12 pernyataan tuntutan Plaintiff telah memplidkan bahawa pada segala masa, Plaintiff kekal bersedia, sanggup dan berupaya untuk melaksanakan dan menyempurnakan kedua dua perjanjian RTO FORD RANGER tersebut dan RTO FORD EVEREST tersebut.

**[27]** Dalam Penyata Saksi SP-1 (Jimmy) telah menyatakan seperti berikut:

*Q9: Can you explain to this court what is the issue here?*

*A1: Our issue is that, despite the Plaintiff already made out the deposit, signed the RTO's and providing all the documents required for the approval of the loan, on or around 10/10/2020 Ms Sandy from the Defendant told me that the Plaintiffs loan applications have been rejected and that the FORD RANGER and FORD EVEREST were already sold to another party.*

*A2: This was shocking news and clear breach of the RTO FORD RANGER and RTO FORD EVEREST because the agreements are still in force and the Plaintiff never agreed for the two vehicles to be sold to others.*

*A3: In any event the Plaintiff was always ready to make out the balance purchase price in cash therefore the story of loan cannot be approved does not make any sense. The deposit paid was also not refunded.*

*A4: The Plaintiff still needs both the vehicles.*

*Q10: What does the Plaintiff pray from this Honorable Court?*

*A1: The Plaintiff wants to purchase both the vehicles and ready to purchase the same by one cash payment. The Plaintiff is therefore praying for a declaration that the RTO FORD RANGER and RTO FORD EVEREST is still valid and enforceable.*

*A2: The Plaintiff is praying for a declaration that the Defendants have breached the RTO FORD RANGER and RTO FORD EVEREST.*

*A3: The Plaintiff is praying for an order of Specific Performance of the RTO FORD RANGER and RTO FORD EVEREST or damages in lieu of the same.*

i. Terma - terma RTO - RTO tersebut di Perenggan 3 ada peruntukan bagi pembelian secara tunai, tetapi daripada membuat cadangan ini kepada pihak Plaintiff, pihak Defendan telah memilih untuk tanpa merujuk kepada Plaintiff menjual kepada pihak yang lain.

ii. Terma - terma RTO - RTO tersebut di Perenggan 10 ada dengan jelas memperuntukkan bahawa sekiranya sebarang notis perlu dihantar ianya boleh dihantar melalui email. Pihak Defendan mempunyai kesemua nombor telefon dan email pihak Plaintiff. Walaubagaimanapun telah memilih untuk tanpa sebarang Notis menjual kenderaan tersebut kepada pihak ketiga.

**[28]** Dalam kes *TAKASHIMAYA CONSTRUCTION & DEVELOPMENT SDN BHD & ANOR v. MY INFLUX SDN BHD AND ANOTHER APPEAL* [2019] MLJU 1562

*[65] The plaintiffs referred to an Indian Supreme Court decision of Jagdish Singh v. Natthu Singh [1992] 1 SCC 647 on the effect of [section 18 of the Specific Relief](#)*

Act 1950 which ruled that:

"24. When the plaintiff by his option has made **specific performance** impossible, Section 21 does not entitle him to seek damages. That position is common to both Section 2 of Lord Cairn's Act, 1858 and Section 21 of the **Specific Relief Act, 1963**. But in Indian Law where the contract, for no fault of the plaintiff, becomes impossible of **performance** Section 21 enables award of compensation in lieu and substitution of **specific performance**."

[66] Here there is **aspecific** finding that the plaintiffs are not at fault. Hence the plaintiffs are entitled to compensation in lieu of **specific performance**. The learned High Court Judge was correct in awarding compensation in lieu of **specific performance**.

[29] Dalam kes *NG THAI lwn. WONG FAH DEVELOPMENT SDN BHD* [2023] MLJU 1326

[66] Dalam kes *Bukit Melita Sdn Bhd v. Revolusi Rancak Sdn Bhd* [2020] 2 CLJ 199 pemakaian seksyen 18 Akta Relief Spesifik 1950 ini telah dinyatakan seperti berikut:

"[25] As regards the application of *s. 18 of the Specific Relief Act 1950* ("the SRA 1950") it was contended that the court granting the order has the power to award damages if it was of the opinion that merely granting the specific performance was inadequate as to constitute a remedy to the plaintiff's claim.

[30] Dalam kes *SOUTH ASIA NOBLE SDN BHD v. CORAK PROSPEK BINAAN SDN BHD & ANOR* [2018] MLJU 1260

[98] *Section 18(1) of the Specific Relief Act 1950* empowers the Court to compensate for a breach of contract, in addition to ordering its performance. It states so in the following terms:

"Any person suing for the specific performance of a contract may also ask for compensation for its breach, either in addition to, or in substitution for, its performance."

[31] Bersandarkan kepada fakta - fakta yang dinyatakan disini dan otoriti - otoriti yang dikemukakan pihak kami berhujah bahawa :

- i. Defendan telah melanggar kedua -dua perjanjian RTO;
- ii. Sekiranya Mahkamah yang Mulia ini mendapati kenderaan tersebut masih belum di jual, Plaintiff memohon satu perintah pelaksanaan specific; dan
- iii. Sekiranya Mahkamah yang Mulia ini mendapati kenderaan kenderaan tersebut telah jual, Plaintiff memohon Perintah ganti rugi dibayar kepada Plaintiff.

[32] Kerugian yang dialami oleh Plaintiff adalah :

- i. Dari tarikh 10/10/2020 sehingga selesai isu perlanggaran perjanjian RTO FORD RANGER tersebut, Plaintiff terpaksa menyewa satu kenderaan pancuan empat roda dari R & KJ ENTERPRISE pada harga RM3,000-00 setiap bulan;
- ii. perbezaan harga belian diantara kenderaan yang ditempah selaras dengan perjanjian RTO FORD RANGER dengan kenderaan lain dipasaran yang mempunyai spesefikasi yang sama;
- iii. dari tarikh 1/1/2021 sehingga selesai selesai isu perlanggaran perjanjian RTO FORD EVEREST tersebut, Plaintiff terpaksa menggunakan kenderaan kereta Toyota Camry (No. Pendaftaran WA6677G) milikan pengarahnya bernama JASJEET SINGH SIDHU A/L JASWANT SINGH (JASJEET) bagi kegunaan Perniagaan Plaintiff. Oleh yang demikian Plaintiff telah bersetuju membayar pampasan sebanyak RM 3,000-00 sebulan bermula dari 1/1/2021 sehingga selesai tindakan disini kepada JASJEET bagi menggunakan keretanya. Walaubagaimanapun pada September 2022 satu kereta Mazda nombor pendaftaran No. VCR 1200 telah dibelikan untuk kegunaan En Jasjeet. Maka Plaintiff adalah hanya menuntut ganti rugi sebanyak RM 3,000-00 dari 1/1/2021 sehingga September 2022.
- iv. perbezaan harga belian diantara kenderaan yang ditempah selaras dengan perjanjian RTO FORD EVEREST dengan kenderaan lain dipasaran yang mempunyai spesefikasi yang sama
- v. gagal memilik kedua - dua kenderaan tersebut.

**[33]** Saksi Plaintiff SP-4 bernama Rashjit Singh A/L Jagjit Singh (Nric No: 900906-14-5649) dalam penyata saksi telah memberikan keterangan berikutan :

Q2: *Why are you in Court today?*

A1: *I have rented my vehicle to the Plaintiff and I am here to give my evidence*

Q4: *Do you have any business dealings with the Plaintiff?*

A1: *Yes.*

A2: *In October 2020, Mr Maljinder had asked me to rent my Toyota Hilux to the Plaintiff. I agreed to rent out my Toyota Hilux to the Plaintiff for RM 3,000-00 per month commencing October 2020. A copy of the registration card for my Toyota Hilux having Registration No WUH8892 can be seen at page 42 IDTP.*

A3: *From October 2020 until 15 November 2021, I had rented my Toyota Hilux to the Plaintiff. On 16 November 2021 I took back my Toyota Hilux and gave to the Plaintiff for continued rental a Proton X70 Suv which is still on going until now. The rental for the Proton was maintained at RM3,000-00 per month. A copy of the registration card for my Proton X70 Suv having Registration No RS 9155 can be seen at page 43 IDTP.*

A4: *I refer to pages 1 & 2 of IKATAN DOKUMEN BERSAMA (PART C) and pages 3 -31 IDTP. This are my invoices to the Plaintiff until April 2023.*

Q5: *Have you been paid the rental for your vehicle rented to the Plaintiff?*

~~A1: *I have only been paid for 5 months. The balance rental for the remaining period until now has not been paid.*~~

~~A2: *A sum of RM90,000-00 is now due and payable to me by the Plaintiff.*~~

**[34]** Pada hari bicara peguam Plaintiff telah memohon keseluruhan jawapan kepada Q5 di atas dibatalkan dan SP-4 memberikan keterangan lisan kepada soalan ini. SP-4 telah memberikan keterangan lisan seperti berikut untuk menjawab Q5 di atas.

S : *Mr Rasjit Singh, for how many month in total have you rented your vehicle to the, can you explain to the court for how many month in total you have rented the vehicle to the plaintiff?*

J : *Okay, till now, 33 months I have rented this vehicle to the plaintiff.*

S : *From when to when?*

J : *October 2020 to June 2023 till now, to this month is July.*

S : *Have you been paid the rental for your vehicle rented to the plaintiff?*

J : *I have been paid for 19 months in the sum of 57,000, for 19 months. And another 14 months is due, the total is 42,000.*

**[35]** Saksi Plaintiff SP-2 Gurjit Kaur A/P Mahindar Singh dalam penyata saksi telah menyatakan seperti yang berikut:

Q2: *What is your role in the Plaintiff Company?*

A1: *I manage administrative matters, accounts and finances of the company. The finances of the company is managed together with Mr. Maljinder (also known as Jimmy)*

Q10: *What happen after you found out that the loan was rejected?*

A1: *I was upset because the Plaintiff had an urgent need for vehicles.*

A2: *My son who is doing business under the name R & KJ Enterprise had on Jimmy's requested agreed to give his Toyota Hilux to the Plaintiff as a rental.*

A3: *The Plaintiff rented a Toyota Hilux from R & KJ Enterprise from October 2020 until 15/11/2021 and then Plaintiff rented a Proton X70 SUV from R & KJ Enterprise from 16/11/2021 until to-date. The monthly rental is RM3,000-00.*

A4: *The registration card for the Toyota Hilux can be seen at page 42 Ikatan Dokumen Tambahan Plaintiff (IDTP) and the registration card Proton X70 SUV can be seen at page 43 IDTP.*

Q11: *What are these documents in pages 31 until 41 of IDTP?*

A1: *These are the bank in slips and relevant pages of the Plaintiffs bank statements being rental paid by the Plaintiff to R & KJ Enterprise for the Toyota Hilux Rental.*

Q12: What are these documents in pages 3 - 31 of IDTP?

A1: These are all the invoices issued by the R & KJ for the rental of the Toyota Hilux and the Proton X70 SUV.

**[36]** Saksi Plaintiff SP-3 bernama Jasjeet Singh Sidhu A/L Jaswant Singh (Nric No: 840301-14-5505) dalam penyata saksi telah memberikan keterangan berikut:

Q4: Do you know about R & KJ Enterprise?

A1: Yes. The Plaintiff had an urgent need for vehicles.

A2: Gurjit's son who is the doing business under the name R & KJ Enterprise had first given his Toyota Hilux to the Plaintiff as a rental and later a Proton X70 SUV. The monthly rental is RM3,000-00.

A3: We had to rent because we could not get the vehicles from the Defendant. We need the said FORD RANGER and FORD EVEREST to support the Plaintiffs transport business

Q5: What is this document in Page 3 Ikatan Dokumen Bersama (Bahagian C) [IDB-C]?

A1: The Plaintiff requires many vehicles for its day-to-day operations.

A2: Because the Defendant failed to sell the vehicles to the Plaintiffs, I had to use my personal vehicle a Toyota Camry having registration No. WA 6677G for company duties. I was unhappy and the company had in April 2021 agreed to compensate me RM3,000-00 per month commencing 1/1/2021.

A3: I managed to get a company vehicle only on October 2022 a Mazda having registration No. VCR 1200.

A4: The Plaintiff has agreed to compensate me RM 3,000-00 a month commencing 1/1/2021 until September 2023. This sum must be claimed back from the Defendant.

A5: For this period that I am to be compensated, the Company's Board of Directors had passed a resolution as can be seen in Page 3 [IDB-C]. I am one of the Directors that had signed this resolution.

**[37]** Saksi Plaintiff SP-2 Gurjit Kaur A/P Mahindar Singh dalam penyata saksi telah selanjutnya menyatakan seperti yang berikut:

Q15: What else do you wish to inform this Honorable court?

A1: At around the time the sale of the FORD RANGER and FORD EVEREST was terminated by Defendant, there were shortage of company vehicles and the Director of the Plaintiff Mr Jasjeet Singh Singh Sidhu A/L Jaswant Singh was required to use his personal vehicle for company operations and matters.

A2: On 20 April 2021 the Plaintiff had agreed to compensate the Director of the Plaintiff Mr Jasjeet Singh Singh Sidhu A/L Jaswant Singh, RM 3,000-00 per month commencing 1 January 2021 for using his personal car for company operations.

A3: The Director of the Plaintiff Mr Jasjeet Singh Singh Sidhu A/L Jaswant Singh was only provided with a company vehicle on October 2022.

A4: The Company had purchased and provided Mr Jasjeet Singh Singh Sidhu A/L Jaswant Singh a Mazda having registration No. VCR 1200. The Vehicle was purchased cash for RM 66,000-00.

A5: A copy of the Invoice for purchase of the Mazda, a Bank in slip and Registration card of the Mazda can be seen at pages 83-85 of IDTP.

A6: I wish to inform the Court that this transfer of RM66,000-00 in two transactions was done by me personally

**[38]** Saksi Plaintiff SP-1(Jimmy) dalam penyata saksi telah memberikan keterangan seperti yang berikut:

Q9: Can you explain to this court what is the issue here?

....

A3: In any event the Plaintiff was always ready to make out the balance purchase price in cash therefore the story of loan cannot be approved does not make any sense. The deposit paid was also not refunded.

A4: The Plaintiff still needs both the vehicles.

Q10: What does the Plaintiff pray from this Honorable Court?

A1: The Plaintiff wants to purchase both the vehicles and ready to purchase the same by one cash payment. The Plaintiff is therefore praying for a declaration that the RTO FORD RANGER and RTO FORD EVEREST is still valid and enforceable

A2: The Plaintiff is praying for a declaration that the Defendants have breached the RTO FORD RANGER and RTO FORD EVEREST.

A3: The Plaintiff is praying for an order of Specific Performance of the RTO FORD RANGER and RTO FORD EVEREST or damages in lieu of the same.

A4: Until this issue of the RTO FORD RANGER is resolved the Plaintiff had to rent a vehicle from R & KJ Enterprise. This has caused the Plaintiff to incurred a loss of RM 3,000-00 per month. For this loss the Plaintiff is praying for compensation of RM 3,000-00 per month commencing 10/10/2020 until date of Judgment from this court. The Plaintiff prays to this honorable court to be compensated for this loss.

A5: Due to the breach of RTO FORD EVEREST, from 1/1/2021 until October 2022 (20 months), the Plaintiff had to rely on the Toyota Camry Vehicle owned by its Director. The Plaintiff had no option but to compensate the said Director RM3,000-00 per month for this. The Plaintiff prays to this honorable court to be compensated for this loss.

A6: Besides the above I wish to add that the Defendants had bullied the Plaintiff here. The Defendants took the deposit and then sold the vehicles to some other parties. This is very unfair and the Defendants with deep pockets ought to do this to others. As such an example should be made of the Defendants and the Plaintiffs are praying for RM200,000-00 in exemplary damages.

A7: The Defendants also pray for interest and cost.

Q.11 Earlier you mentioned that the Plaintiff is seeking damages in lieu of Specific Performance. Can you explain further to the Court what do you mean?

A1: If the vehicles cannot be obtained from the Defendants, we have to now purchase similar type of vehicle from somewhere else.

A2: I have personally on 26th April 2023 made a visit to the Sime Darby - Ford showroom at No. 72, Batu 3 & half, Jalan Gombak, 53000 Kuala Lumpur.

A3: There I met Sales Consultant Mr Alvin Ong. He had briefed me on similar new models of the said vehicles that are available. He then proceeded to give me his contact particulars that were black and white and printed on aA4 size paper, price quotations for the FORD RANGER and FORD EVEREST in black and white and printed on a A4 size paper. I also took a photograph of the showroom with my phone. The photograph of the showroom can be seen at page 45 Ikatan Dokumen Tambahan Plaintiff [IDTP].

A4: The new FORD RANGER single cab is available at RM 99,088.00 and damages in lieu the Plaintiff prays to be compensated RM 99,088.00 - RM 75,057.54 = RM 24,030.46.

A5: The new FORD EVEREST 2.0 BI-TURBO is available at RM 309,088.00 and damages in lieu the Plaintiff prays to be compensated RM 309,088.00 -RM 176,613.88 =RM 132,474.12.

[39] Dalam kes *LEONG HIN ENTERPRISE SDN BHD v. CHEVRON MALAYSIA LTD* [2018] MLJU 1747

*It is trite law that pursuant to s. 74 of the Contracts Act 1950, compensation for loss or damage for breach of contract can only be awarded if the loss has arisen naturally in the usual course of things from the breach or which the parties knew, when they made the contract, to be likely to result from the breach of it and the loss is not too remote or indirect;*

[40] Dalam kes *KOPERASI KASTAM DIRAJA MALAYSIA BHD v. YI GO GROUP SDN BHD* [2021] 5 MLJ 590

COURT OF APPEAL (PUTRAJAYA)

HANIPAH FARIKULLAH, HAS ZANAH MEHAT AND LEE SWEE SENG JJCA

[34] *The compensation here is for the loss or damage which naturally arose in the usual course of things from the breach. Under s. 74(1) of the Contracts Act 1950 and the first limb thereof, the plaintiff is allowed to claim for losses that arise*



*naturally from the breach. That would involve the loss arising from not being able to let out the items repossessed to another customer or perhaps letting them out at a lower rate or perhaps only being able to let out intermittently.*

**[41]** Dalam kes *HAMDAN BIN JOHAN & ORS v. FELCRA BHD & ORS* [2010] 8 MLJ 628

*The measure of damages recoverable for breach of contract involves the consideration of s. 74 which substantially affirms the common law rule laid down in Hadley v. Baxendale [1854] 156 ER 145. The common law rule in the assessment of damages consists of two limbs. The first limb concerns damages flowing naturally, ie in the normal course of things from the breach. The second limb concerns the damages that the parties at the time of the making of the contract may reasonably be supposed to have contemplated, as the probable result of the breach. In the assessment of damages for breach of contract, the general rule is that the aggrieved party be put in the same position as if the contract had been performed so that normally he is entitled to recover from the contract breaker his loss of profits (see paras 19-20).*

**[42]** Dalam kes *LEONARD LIM YAW CHIANG v. DIRECTOR OF JABATAN PENGANGKUTAN JALAN NEGERI SARAWAK & ANOR* [2008] MLJU 1091

*[57] As to the claim for damages, the amended provision of O. 53 of the Rules of the High Court 1980 ("the RHC 1980") allows the applicant to claim damages in judicial review. In this case the applicant has shown that because of the respondents' decision in blacklisting him and refusing to issue him with a motor vehicle licence he had to find alternative means of transport by renting another vehicle. However the amount the applicant claimed is, I think quite excessive. The applicant's vehicle that was refused the motor vehicle licence is only a 'Kenari', a small medium car. But the applicant had rented a 'Honda Accord', a much bigger car, as his alternative transport. I think the applicant should not be allowed to benefit from the fault of the 2nd respondent more than it is necessary to compensate the applicant for inconvenience caused by the decision. In this instant case the applicant has not shown he suffered any loss other than the inconvenience of not being able to use his motor vehicle QKP1085 for his daily use. Therefore, I think the amount of compensation in damages should be reasonable and for this purpose I will direct that the damages be assessed by the deputy registrar by taking into consideration the evidence adduced in the affidavits at the hearing of this judicial review and also any other evidence as to the average rental of a 'Kenari' prevailing in the market at the relevant time or period.*

### **C. HUJAHAN DEFENDAN**

**[43]** Bahawa En. Pardeep Singh telah menghubungi pihak Defendan pada 22-6-2020 melalui aplikasi WhatsApp dengan memaklumkan pada SD1 iaitu Kwan Bui San (Sandy), untuk menghubungi SP1 Jimmy Sidhu (Jimmy), kerana pihak Plaintiff amat memerlukan sebuah trak seperti mana yang dinyatakan dalam m.s. 1, Bundle C1.

**[44]** Seterusnya SD1 telah menghubungi SP1 di mana mereka memaklumkan yang mereka berminat dengan kenderaan Defendan yang merupakan *pre-registered Ford Everest units*. Pada 23-6-2020, Sandy telah memanjangkan kepada SP1 beberapa mesej melalui aplikasi WhatsApp messages serta beberapa gambar berkenaan dengan kenderaan yang mahu dibeli oleh pihak Plaintiff sepertimana di **m.s. 2 & 3 Bundle C1**.

**[45]** Selanjutnya pada 1-7-2020, Jimmy telah menghantar mesej dalam aplikasi WhatsApp sepertimana di **m.s. 9 Bundle C1** dengan memaklumkan kepada Sandy yang mereka berminat untuk membeli:

- (i) Ford Everest dengan harga RM170,000-00; dan
- (ii) Ford Ranger dengan harga RM71,000-00.

**[46]** Selepas itu, Jimmy telah memaklumkan pada Sandy yang Syarikat Sidhu Brothers mahu mendapatkan pinjaman kenderaan bagi membiayai kesemua kenderaan seperti di atas dengan melakukan perkara seperti di bawah:

- i. memberikan akaun bank Plaintiff serta memaklumkan pihak Syarikat Sidhu Brothers adalah perlu membayar wang pendahuluan sebanyak RM1,000-00 sebagai *pre-booking fees* untuk Ford Everest dan Ford Ranger sementelah menunggu kelulusan pihak Bank bagi pinjaman di atas;

ii. harga kenderaan yang dipersetujui adalah seperti berikut:

- a) Ford Everest berharga **RM176,613-88**;
- b) Ford Ranger berharga **RM75,057-54**;

iii. gambar yang ditangkap bagi *1<sup>st</sup> Retail Customer Orders* yang kemudiannya telah dihantar secara pesanan WA pada 1-07-2020 seperti di m.s. 10 Bundle B1):

- a) *form no.*: 752322 bagi *booking form* untuk Ford Everest; dan
- b) *form no.*: 752323 bagi *booking form* untuk the Ford Ranger.

[47] Bagi tujuan permohonan pembiayaan kenderaan ini Sandy telah memohon pada Jimmy untuk menyediakan Borang 9, 24, 44, 49 sepertimana dalam **Akta Syarikat 2016** termasuk kad pengenalan bagi kesemua pengarah Syarikat Sidhu Brothers bersama dengan penyata bank selama enam (6) bulan bagi membolehkan pihak beliau dapat membantu Plaintiff dalam perkara ini sebagaimana yang dinyatakan dalam m.s. **11 Bundle C1**.

[48] Pihak Syarikat Sidhu Brothers telah kemudian memasukkan RM1,000-00 bayaran *pre-booking fees* bagi Ford Everest dan Ford Ranger sebagaimana yang dinyatakan dalam m.s. **14 Bundle B**. Sandy telah kemudian memanjangkan *1<sup>st</sup> Retail Customer Orders* bertarikh 1-07-2020 kepada Jimmy melalui WA sebagaimana dalam **m.s. 10 Bundle B1**.

[49] Pada 3-7-2020, Jimmy melalui suatu panggilan telefon sepertimana di m.s. **26 Bundle B1** telah memohon pada Sandy untuk menaikkan harga kedua-dua kenderaan tersebut bagi membolehkan pihak Sidhu Brothers menerima pinjaman pembiayaan kenderaan yang lebih tinggi.

[50] Atas permohonan ini, Sandy telah meminda *1<sup>st</sup> Retail Customer Orders* dan kemudiannya memajukan kepada Plaintiff *2<sup>nd</sup> Retail Customer Orders* sebagaimana di **m.s. 21 dan 22 Bundle B** melalui suatu e-mel seperti di m.s. **page 19 Bundle B** dengan harga terpinda seperti di bawah:

- a) **RM196,613-88** bagi Ford Everest; dan
- b) **RM89,269-75** bagi the Ford Ranger.

[51] Namun, pihak Sidhu Brothers tidak mengambil sebarang tindakan bagi kedua-dua *1<sup>st</sup> Retail Customer Orders* dan *2<sup>nd</sup> Retail Customer Orders*.

[52] Sungguhpun pihak Syarikat Sidhu Brothers tidak mengambil sebarang tindakan bagi kedua-dua *1<sup>st</sup> Retail Customer Orders* dan *the 2<sup>nd</sup> Retail Customer Orders*, Sandy telah membantu Syarikat Sidhu Brothers dalam mendapatkan permohonan pinjaman pembiayaan kenderaan melalui bank-bank di bawah:

- a) Public Bank Berhad ("**Public Bank**");
- b) Hong Leong Bank Berhad ("**Hong Leong Bank**"); dan
- c) Affin Bank Berhad ("**Affin Bank**").

[53] Akan tetapi pada 15-7-2020, 18-7-2020 and 28-7-2020, Sandy telah memaklumkan Jimmy bahawa kesemua permohonan telah ditolak seperti di **m.s. 13 hingga 15, Bundle B1**.

[54] Jimmy telah lagi sekali memohon pada Sandy untuk membuat permohonan semula akan tetapi kesemua permohonan juga telah ditolak sepertimana yang dinyatakan dalam **m.s. 33 Bundle B1**.

[55] Maka setakat 2-10-2020, pihak Syarikat Sidhu Brothers telah gagal mendapatkan pinjaman pembiayaan kenderaan dan atas alasan ini pihak Defendan kemudian telah menjual kesemua kenderaan tersebut pada pihak yang lain. Wang pendahuluan *pre-booking fees* berjumlah sebanyak RM1,000-00 telah dipulangkan kepada pihak syarikat Sidhu Brothers melalui Messrs Azian & Co seperti di m.s. **17 dan 18, Bundle B**.

[56] Atas kegagalan mendapatkan pinjaman dan juga pada masa yang sama, pihak Plaintiff tidak pernah menyatakan yang mereka akan membayar secara tunai sepertimana yang dinyatakan di bawah:

*"NKY: You have told the court that the plaintiff is always ready to make the balance purchase price by way of cash?"*

*Jimmy: Yes.*

*NKY: But, there is nothing before the court today to suggest that they have proposed that you going to buy with cash?"*

*Jimmy: Yes.*

[57] Kes *NAI YAU JUU v. PASDEC CORP SDN BHD & ANOR* [2005] 3 MLJ 431 telah menyatakan seperti di m.s. 445:

*[22] That offer of facility itself showed that in the intended purchase there were several other details and terms and conditions to be fulfilled. Exhibit 7 was copied to several other addressees and it to be noted that the defendant was not one of them. It cannot be said the exh P7 was conduct consistent with the defendant having made an offer to the plaintiff. There was nothing to indicate at that stage what position the bank was in if indeed a contract was already concluded as at 13 October 1995.*

[58] Di m.s. 9 **Bundle B1**, telah menerangkan berkenaan dengan terma-terma bagi *Retail Customers Orders*, seperti di bawah:

**"BOOKING FEE AND DEPOSIT:**

1. (a) Upon the Purchaser's/Hirer's execution of the:-

(i) *Second Schedule under the Malaysia Hire Purchase Act 1967 (\*Act) as prepared by the bank/financial institution ('Bank'), the Purchaser/Hirer shall pay to the Company the booking fee of the sum equivalent to one percent (1%) of the On-The-Road Price as appearing overleaf ('Booking Fee'). The Booking Fee shall constitute part payment towards the Deposit (as hereinafter defined).*

(ii) *hire purchase agreement prepared by the Bank, the Purchaser/Hirer shall pay the sum equivalent to nine percent (9%) of the On-The-Road Price (\*Outstanding Deposit) as appearing overleaf to the Bank (or the Company if the Bank has appointed the Company to collect the same in writing).*

*The Deposit shall be the total aggregate amount of the Booking Fee and the Outstanding Deposit.*

(b) *The Company shall refund the sum equivalent to ninety percent (90%) of the Booking Fee ("Refund") to the Purchaser/Hirer if the Purchaser/Hirer shall cancel the order of the Vehicle but before the Purchaser/Hirer signs the hire-purchase agreement with the Bank."*

[59] Oleh demikian, pihak Defendan dengan ini berhujah bahawa pembayaran wang cengkeram atau deposit sebanyak 10% dari harga kenderaan atas jalan tidak pernah sama sekali dibayar oleh pihak Plaintiff kerana mereka telah gagal mendapatkan pinjaman pembiayaan kenderaan ataupun melalui wang tunai sebagaimana yang dinyatakan dalam pernyataan saksi **PSD-2** di m.s. 8 yang mana **SD-2** telah menyatakan dengan jelas bahawa *pre-booking fees* bukanlah suatu *firm order* oleh Plaintiff untuk membeli Ford Everest and Ford Ranger kerana pihak Plaintiff perlu mendapatkan pinjaman pembiayaan kenderaan bagi membolehkan kedua-dua kenderaan tersebut dapat dibeli oleh mereka. Oleh demikian, ia bukanlah suatu perjanjian yang mengikat kedua-dua pihak.

[60] Pada 29-9-2020 dan 30-09-2020, SP-2 telah menghantar suatu e-mel kepada Sandy seperti di m.s. 17 dan 18 **Bundle C** dengan melampirkan maklumat dan dokumen suatu syarikat lain i.e. "Pengangkutan Lori MS Sdn Bhd" dan "Syarikat Sidhu Adek Beradek Sdn Bhd" seperti di m.s. 19 dan 20 **Bundle C** bagi membuat permohonan pembiayaan pinjaman.

[61] Oleh demikian, dengan penghantaran maklumat dan nama pemohon lain tidak boleh dikira sebagai permohonan yang sama memandangkan kesemua tindakan lanjut akan melibatkan variasi pada kesemua *Retail Customer Orders* berikutan maklumat ini.

[62] Berhubungan dengan perkara di atas, adalah dihujahkan oleh pihak Defendan bahawa pihak Plaintiff tidak sama sekali mengalami sebarang kerugian akibat tidak membeil kenderaan kenderaan di atas dan selanjutnya di atas kegagalan pembelian ini yang memerlukan pihak mereka terpaksa menyewa kenderaan lain.

[63] Defendan berhujah bahawa pihak Plaintiff telah gagal membuktikan bahawa terdapat keperluan untuk menyewa kenderaan dari R & KJ Enterprise, pada masa kejadian memandangkan bukti yang diberikan di m.s. 32 hingga 41 **Bundle D** hanyalah diberikan selepas pemfailan kes ini pada 8-12-2020.

[64] Dalam pada masa yang sama, pihak Plaintiff melalui SP4 telah gagal membuktikan bahawa R & KJ Enterprise mempunyai lesen untuk menyewa kenderaan serta kenderaan yang disewa hanyalah digunakan untuk kegunaan persendirian sahaja sebagaimana yang dinyatakan di m.s. 43 and 44 **Bundle D**.

[65] Berlandaskan pada kesemua hujahan di atas, tuntutan Plaintiff adalah tidak berasas dan perlu ditolak oleh Mahkamah ini.

#### **D. ANALISA DAN DAPATAN MAHKAMAH**



[66] Mahkamah telah melihat pada kesemua keterangan, dokumen dan ekshibit bagi kes ini dan berpandangan bahawa pihak Plaintiff telah gagal membuktikan tuntutan mereka atas imbalan kebarangkalian dan menolak tuntutan Plaintiff dengan kos RM20,000 dengan berlandaskan dapatan dan analisa seperti di bawah:

**(i) Isu Pertama dan Kedua: Sama ada wujudnya satu perjanjian mengikat Plaintiff dan Defendan bagi tempahan kenderaan FORD RANGER 2.2L SINGLE CAB dan kenderaan FORD EVEREST 2.0 BI-TURBO dan sekiranya Mahkamah mendapati bahawa terdapat satu perjanjian mengikat pihak - pihak, sama ada Plaintiff dan / atau Defendan telah melanggar perjanjian tempahan kenderaan FORD RANGER 2.2L SINGLE CAB dan kenderaan FORD EVEREST 2.0 BI-TURBO tersebut**

[67] Hasil analisa pada kesemua dokumen dan keterangan di Mahkamah ini, Mahkamah ini mendapati bahawa tiada kontrak yang mengikat memandangkan pihak Plaintiff hanyalah membayar RM1,000.00 sebagai *pre-booking fees* yang mana merupakan amalan biasa (*standard procedure*) bagi mana-mana pihak yang mahu membuat tempahan kenderaan di syarikat Defendan dengan terma tempahan seperti di bawah :

**"BOOKING FEE AND DEPOSIT:**

1. (a) Upon the Purchaser's/Hirer's execution of the:-

*(i) Second Schedule under the Malaysia Hire Purchase Act 1967 (\*Act) as prepared by the bank/financial institution ('Bank'), the Purchaser/Hirer shall pay to the Company the booking fee of the sum equivalent to one percent (1%) of the On-The-Road Price as appearing overleaf ('Booking Fee'). The Booking Fee shall constitute part payment towards the Deposit (as hereinafter defined).*

*(ii) hire purchase agreement prepared by the Bank, the Purchaser/Hirer shall pay the sum equivalent to nine percent (9%) of the On-The-Road Price (\*Outstanding Deposit) as appearing overleaf to the Bank (or the Company if the Bank has appointed the Company to collect the same in writing).*

*The Deposit shall be the total aggregate amount of the Booking Fee and the Outstanding Deposit.*

*(b) The Company shall refund the sum equivalent to ninety percent (90%) of the Booking Fee ("Refund") to the Purchaser/Hirer if the Purchaser/Hirer shall cancel the order of the Vehicle but before the Purchaser/Hirer signs the hire-purchase agreement with the Bank."*

[68] Mahkamah ini mengunapakai prinsip *judicial notice* bahawa terma-terma di atas adalah suatu terma umum bagi kesemua transaksi yang melibatkan penjualan kenderaan di syarikat Defendan dan mana-mana pembeli yang tidak mampu membeli kenderaan secara tunai serta mahu menggunakan pinjaman pembiayaan kenderaan melalui institusi kewangan perlu membayar *pre-booking fees* bagi mencerminkan hasrat pembeli tersebut. Hanya setelah pembeli berjaya mendapatkan sesuatu kelulusan pinjaman itu, barulah baki harga sesuatu harga itu dapat dilunaskan melalui pinjaman yang diberikan oleh mana-mana institusi kewangan yang telah bersetuju membiayai pembelian kenderaan tersebut sepertimana yang dijelaskan dalam kes *NAI YAU JUU v. PASDEC CORP SDN BHD & ANOR* [2005] 3 MLJ 431 telah menyatakan seperti di m.s. 445:

*[22] That offer of facility itself showed that in the intended purchase there were several other details and terms and conditions to be fulfilled. Exhibit 7 was copied to several other addressees and it to be noted that the defendant was not one of them. It cannot be said the exh P7 was conduct consistent with the defendant having made an offer to the plaintiff. There was nothing to indicate at that stage what position the bank was in if indeed a contract was already concluded as at 13 October 1995.*

[69] Dalam pada masa yang sama, Mahkamah ini melihat tindakan membantu pihak Plaintiff bagi mendapatkan pinjaman pembiayaan kenderaan adalah boleh disifatkan sebagai pengakuan kepada Plaintiff sebagai empunya yang berhak kepada kenderaan-kenderaan yang telah ditempah memandangkan pihak Plaintiff perlu membayar keseluruhan harga bagi kenderaan yang ditempah tersebut sebagaimana dalam terma-terma tempahan sebelum ini.

[70] Namun, berdasarkan pada keterangan serta dokumen di Mahkamah, Plaintiff bukan sahaja gagal mendapatkan pinjaman pembiayaan kenderaan dari mana-mana institusi kewangan malahan tiada pun keterangan dari mana-mana saksi Plaintiff ataupun keterangan dokumen yang menyatakan mereka sebenarnya sanggup membayar kesemua jumlah harga kenderaan tersebut secara tunai.

[71] Tambahan juga, Mahkamah ini berpandangan kegagalan untuk mendapatkan pinjaman pembiayaan kenderaan bagi membiayai pembelian kenderaan bukanlah terletak pada Defendan sebagai penjual,

kerana melalui amaran Mahkamah sekiranya pihak Plaintiff berjaya mendapatkan pinjaman pembiayaan tersebut atau pun berjaya membuat bayaran secara tunai, isu pembelian kedua-dua kenderaan tidak akan timbul.

**[72]** Oleh itu, adalah menjadi dapatan Mahkamah atas kegagalan pihak Plaintiff seperti yang diperihalkan di atas, tiada kontrak yang mengikat pihak-pihak bagi membolehkan pihak Plaintiff dapat membeli kenderaan tersebut sebagaimana yang dinyatakan dalam kes [THE KA WAH BANK LTD v. NADINUSA SDN BHD AND ANOR \[1998\] 2 CLJ 486](#) yang menyatakan Hakim Mahkamah Persekutuan telah memutuskan:

*"According to Chitty on Contracts, 26th Edn. (1989) Vol. 1, para. 54, p. 44, "an acceptance is a final and unqualified expression of assent to the terms of the offer". But, where the reply is qualified or attempts to vary the terms of the offer or attempts to accept an offer on new terms (not contained in the offer), then such a reply is not a communication of an acceptance but may be a rejection accompanied by a counter-offer which the original offeror can accept or reject (ibid. paras. 56, 95, pp. 46, 72)."*

**[73]** Dalam pada masa yang sama, Mahkamah ini juga melihat pada tindakan Plaintiff yang kemudiannya bertindak memasukkan penama-penama lain bagi pembelian kenderaan-kenderaan tersebut sebagai suatu permohonan yang berlainan dan tidak boleh dijumlahkan kepada permohonan yang sama dibuat oleh Plaintiff sebelum ini memandangkan kedua-dua syarikat yang dicadangkan mempunyai entiti yang berbeza dan juga syarikat Plaintiff.

**[74]** Sehubungan itu, Mahkamah ini berpandangan bahawa tawaran awalan (*initial offer*) yang diberikan oleh pihak Defendan adalah terbatal (*unenforceable*) memandangkan terdapat tawaran balasan (*counter offer*) untuk menggantikan penama-penama lain iaitu "Syarikat Pengangkutan Lori MS Sdn Bhd" dan "Syarikat Sidhu Adek Beradek Sdn Bhd" seperti di yang dinyatakan **m.s. 19 dan 20 Bundle C** bagi membuat permohonan pembiayaan sebagaimana yang diputuskan dalam kes [MAHABUILDERS BERHAD v. HOTEL RASA SAYANG SDN BHD \[2014\] 3 CLJ 661](#) di m.s. 668 dan 669 yang menyatakan seperti di bawah:

*"[13] Thus the introduction of a new term may be considered as a counter-offer "destroying the original offer". This accords with s. 7(a) of the Contracts Act which requires acceptance to be "absolute and unqualified". In [Tan Chee Hoe & Anor v. RamJethmal Punjabi \[1983\] 2 CLJ 150; \[1983\] CLJ \(Rep\) 1022](#); [1983] 2 MLJ 31 the applicants had merely added the words "who will hold the same as stakeholders" after the words "Advani Hoo Morris & Kumar" (the name of the solicitors firm) on the signed acceptance copy of the offer but it was held by the High Court of Singapore that the applicants had introduced a material fresh term which amounted to a counter-offer that was not accepted by the respondent. In his judgment Wee Chong Jin CJ cited the following passage in vol. 8 Halsbury's Laws of England, 3rd edn. at p. 75:*

*In order to constitute acceptance the assent to the terms of an offer must be absolute and unqualified... If the acceptance is conditional, or any fresh term is introduced by the person to whom the offer is made, his expression of assent amounts to a counter-offer, which in turn requires to be accepted by the person who made the original offer.*

**[14]***An offer is made only once. The rest are counter-offers. In the context of the present case the proposal is the defendant's offer to sell Lot 20952 to the plaintiff on terms and conditions contained in the draft sale and purchase agreement prepared by the defendant's solicitors. Did the plaintiff accept the proposal without qualification in order to bind the defendant with its offer? On the facts I must say at the outset that the plaintiff's acceptance of the proposal was not absolute as it was conditional upon the defendant agreeing to the new cl. 3A. There can be no argument that cl. 3A is a material variation from the draft agreement, which at any rate is more substantial than the variation in [Tan Chee Hoe & Anor \(supra\)](#).*

**[15]***By introducing the new cl. 3A the plaintiff was in fact making a counter-offer, thereby reversing its role from being offeree to that of offeror. It was the defendant's call whether to accept the counter-proposal, conditionally or absolutely. If the defendant were to accept the plaintiff's counter-proposal it would be a contract on terms offered by the plaintiff. As the defendant did not accept the counter-proposal, it was no longer bound by the terms of the original offer."*

**(ii) Isu Ketiga: Sekiranya Defendan telah melanggar perjanjian tempahan tersebut, remedi dan jumlah ganti rugi untuk dibayar oleh Defendan kepada Plaintiff.**

[75] Berkenaan dengan isu di atas, memandangkan pihak Plaintiff telah gagal membuktikan atas imbalan keberangkalian berkenaan isu pertama dan kedua bahawa terdapat wujudnya suatu kontrak yang mengikat dan atas perkara ini pihak Defendan telah mengingkari kontrak tersebut, maka adalah menjadi dapatan Mahkamah bahawa tuntutan di bawah pelaksanaan spesifik ini juga telah gagal dibuktikan.

[76] Dapatan Mahkamah ini adalah berdasarkan pada kesemua dokumen yang dipanjangkan berkaitan tuntutan kerugian hanyalah diberikan selepas kes ini difailkan di Mahkamah ini seperti di bawah:

- resolusi Pengarah bagi Syarikat Sidhu Brothers' bertarikh pada 20-4-2021 di **m.s. 3 Bundle C**; dan
- kesemua pembayaran di **m.s. 32 hingga 41 Bundle D**.

[77] Mahkamah ini berpandangan bahawa pemfailan dokumen selepas tuntutan Plaintiff difailkan di Mahkamah ini tidak boleh diambil kira (*inadmissible*) selaras dengan seksyen 73A(3) Akta Keterangan 1950 [Akta 56] seperti di bawah:

*"(3) Nothing in this section shall render admissible as evidence any statement made by a person interested at a time when proceedings were pending or anticipated, involving a dispute as to any fact which the statement might tend to establish."*

[78] Pandangan Mahkamah ini juga bersandarkan pada kes *POPULAR INDUSTRIES LTD v. EASTERN GARMENT MANUFACTURING SDN BHD* [1989] 3 MLJ 360 yang mana Mahkamah Tinggi telah memutuskan di m.s. 366 dan 367 seperti di bawah:

*"A word now about general principles. When a plaintiff claims damages from a defendant, he has to show that the loss in respect of which he claims damages was caused by the defendant's wrong, and also that the damages are not too remote to be recoverable. The principle of remoteness of damage is a limiting principle of policy and the principles applicable in contract and tort are not the same. "*

*"It is axiomatic that a plaintiff seeking substantial damages has the burden of proving both the fact and the amount of damages before he can recover. If he proves neither, the action will fail or he may be awarded only nominal damages upon proof of the contravention of a right. "*

[79] Begitu juga dalam kes *LIM SEONG CHOON & ANOR v. R RAYARATNAM* [1990] 3 MLJ 252 yang menyatakan seperti di bawah:

*"Following Payton v. Brooks [1974] 1 Lloyd's Rep 241, I am satisfied that the learned magistrate had erred in law in awarding the plaintiff \$1,000 for the depreciation. Granted that the plaintiff can recover under special damage for diminution in value, yet, in my opinion, it is essential that appropriate evidence be called to prove it."*

## **E. KEPUTUSAN**

[80] Umum mengetahui bahawa bagi mana-mana kes sivil, pihak yang menuntut mempunyai beban pembuktian untuk menyatakan bahawa sesuatu tuntutan itu adalah benar dan bukannya rekaan semata-mata. Ini adalah bersandarkan pada seksyen 101 dan 102 Akta Keterangan 1950 [Akta 56] yang jelas memperuntukkan:

### **"101 Beban membuktikan**

*(1) Sesiapa yang berhasrat supaya mana-mana mahkamah memberikan penghakiman tentang apa-apa hak atau tanggungan di sisi undang-undang, dengan bergantung kepada kewujudan fakta yang ditegaskan olehnya, mestilah membuktikan bahawa fakta itu wujud.*

*(2) Apabila seseorang terikat untuk membuktikan kewujudan apa-apa fakta, dikatakan bahawa beban membuktikan terletak pada orang itu.*

**102 Pada siapa terletaknya beban membuktikan** *Beban membuktikan dalam sesuatu guaman atau prosiding terletak pada orang yang akan gagal jika tiada apa-apa keterangan langsung diberikan oleh mana-mana pihak."*

[81] Tahap pembuktian adalah atas dasar imbalan keberangkalian (*balance of probabilities*) sebagaimana yang dinyatakan oleh Mahkamah Persekutuan dalam kes [DR SHANMUGANATHAN v.](#)

[PERIASAMY S/O SITHAMBARAM PILLAI \[1997\] 2 CLJ 153](#); [1997] 3 MLJ 61 yang telah memutuskan bahawa beban yang perlu dibuktikan adalah dalamimbangan keberangkalian bagi mana-mana kes sivil. Kes ini juga turut dijadikan sebagai panduan dalam kes Mahkamah Tinggi [RODA BERLIAN \(M\) SDN BHD & ORS v. LIM TITT HUAT & ORS \[2023\] 1 LNS 264](#) menyatakan seperti yang berikut:

*[28] The Plaintiffs bear the legal and evidential burden to prove on a balance of probabilities of establishing a case against the Defendants throughout the trial before the onus shift to the Defendants to establish their Defence. In the case of DR SHANMUGANATHAN v. PERIASAMY S/O SITHAMBARAM PILLAI [1997] 2 CLJ 153; [1997] 3 MLJ 61, The Federal Court held:*

*"Sections 101, 102, 103 and 106 of the Evidence Act 1950 deal with the burden of proof Under s. 101, it is provided that whoever desires any court to give judgment as to any legal right or liability, dependent on the existence of facts which he asserts, must prove that those facts exist. Under s. 102 the burden of proof lies on that person who would fail if no evidence at all were given on either side. Under s. 103, the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence. unless it is provided by any law that the proof of that fact shall lie on any particular person. Under s. 106, when any fact is especially within the knowledge of any person the burden of proving that fact is upon him."*

**[82]** Selaras dengan kesemua keterangan dokumen serta peruntukan undang-undang serta autoriti yang dinyatakan di atas, adalah jelas lagi bersuluh bahawa dalam mana-mana kes sivil pihak Plaintiff perlu terlebih dahulu mengemukakan bukti bagi menyokong tuntutan mereka yang mana setakat ini masih tidak dapat dipenuhi oleh pihak Plaintiff. Sehubungan itu, Lampiran 1 ditolak dengan kos sebanyak RM20,000.

**Dated:** 9 NOVEMBER 2023

Disediakan oleh:

**(RAFIQHA HANIM MOHD ROSLI)**  
HAKIM MAHKAMAH SESYEN (6) SHAH ALAM  
SELANGOR DARUL EHSAN  
[2023] 5 LNS 280

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