

WRIT OF SUMMONS



MALAYSIA
IN THE HIGH COURT IN SABAH AND SARAWAK AT KOTA KINABALU
SUIT NO. K22-46- OF 2003

BETWEEN

MERCES BUILDERS (S) SDN BHD
(Company No. 317893-T)

...PLAINTIFF

AND

110301B 1500044544 19-03-2003 1041
SAMAN 19-03-2003
A1 200.00
OK 618938-18-10028-01
Jumlah RM***** 200.00
SPHD 1.0 PAU

...DEFENDANT

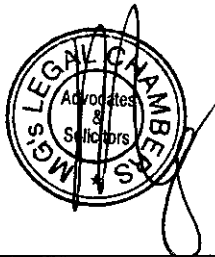
WONG YIT MING
(NRIC No. 531116-12-5335)

YANG AMAT ARIF TAN SRI DATUK STEVE SHIM LIP KIONG, P.S.M., P.J.N., CHIEF JUDGE OF THE HIGH COURT IN SABAH AND SARAWAK, IN THE NAME AND ON BEHALF OF SERI PADUKA BAGINDA YANG DI-PERTUAN AGONG

To: Wong Yit Ming
Lot 75, Taman Golden City
Luyang, Kota Kinabalu

WE COMMAND you, that within TEN (10) DAYS after the service of this Writ on you inclusive of the day of such service, you do cause and appearance to be entered for you in a cause at the suit of MERCES BUILDERS (S) SDN BHD (Company No. 317893-T) and take notice that in default of your so doing the Plaintiff may proceed therein to judgment and execution.

WITNESS MR. GABRIEL GUMIS HUMEN, REGISTRAR OF THE HIGH COURT IN SABAH AND SARAWAK dated day of **19 MAR 2003** 2003.



Advocates for the Plaintiff
Messrs MG's Legal Chambers

Deputy Registrar
High Court, Kota Kinabalu

MEMORANDUM TO BE SUBSCRIBED ON THE WRIT

This Writ may not be served more than twelve (12) calendar months after the above date unless renewed by order of Court.

The Defendant (or Defendants) may appear hereto by entering an appearance (or appearances) either personally or by an Advocate at the Registry of the High Court.

A Defendant appearing personally may, if he desires, enter his appearance by post, and the appropriate forms may be obtained by sending a Postal Order for RM5.00 with an addressed envelope to the Registrar, High Court at Kota Kinabalu.

STATEMENT OF CLAIM

1. The Plaintiff is a private limited company incorporated in Malaysia under the Companies Act 1965 and are carrying on business as Civil and Building Contractors.
2. The Plaintiff at the request of the Defendant granted to the Defendant money advances personally which amount to a total sum of RM1,745,000.00 particulars which are as follows:-

PARTICULARS

Date	Cheque No.	Amount
08/04/1996	SBB 063565	RM 195,000.00
08/04/1996	Cash	RM 10,000.00
05/08/1996	PBB 098333	RM 300,000.00
10/12/1996	PBB 108936	RM 150,000.00
27/03/1997	BBMB 162691	RM 160,000.00
10/12/1996	PBB 108936	RM 150,000.00
09/10/1997	PBB 030699	RM 150,000.00
18/10/1997	BBMB 210126	RM 50,000.00
13/11/1997	BBMB 210133	RM 50,000.00
12/08/1997	BBMB 210118	RM 100,000.00
05/03/1998	BBMB 268901	RM 50,000.00
26/01/1999	PBB 215369	RM 5,000.00
19/08/1999	PBB 243565	RM 25,000.00
23/11/1997	SBB 090149	RM 200,000.00
10/03/1998	BBMB 268903	RM 150,000.00
		----- RM 1,745,000.00 =====

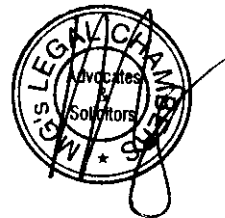
3. On the 19th day of June 2002, the Plaintiff through their solicitors issued a Letter of Demand to the Defendant demanding for a refund of the said sum of RM1,745,000.00 but the Defendant has failed, refused or ignored to pay the same or any part thereof to the Plaintiff.

4. In the premises, the Defendant is truly and justly indebted to the Plaintiff in the sum of RM1,745,000.00.

AND THE PLAINTIFF claims against the Defendant for:-

- (a) the said sum of RM1,745,000.00;
- (b) interest on the said sum of RM1,745,000.00 at the rate of 8% per annum from the 20th day of June 2002 to the date of Judgment pursuant to Section 11 of the Civil Law Act 1956;
- (c) interest on the said sum of RM1,745,000.00 at the rate of 8% per annum from the date of Judgment to the date of full settlement;
- (d) costs; and
- (e) such other relief or remedy as this Honorable Court may deem fit to grant.

Dated this 18th day of December 2002.



MESSRS MG's LEGAL CHAMBERS
Advocates for the Plaintiff

& CO



MALAYSIA
IN THE HIGH COURT IN SABAH AND SARAWAK AT KOTA KINABALU

SUIT NO. K22-46 OF 2003

Filed in the High Court at
Kota Kinabalu. - 8 MAY 2003
Senior Assistant Registrar
High Court

BETWEEN

MERCES BUILDERS (S) SDN BHD
(Company No. 317893-T)

1103018 1500047486 08-05-2003 1444
K22-46-03 08-05-2003
A64 8.00
CK 291463-26-10010-01
Jumlah RM***** 8.00
SPHD 1.0 LYDIA

AND

WONG YIT MING
(NRIC NO. 531116-12-5335)

... DEFENDANT

DEFENCE AND COUNTERCLAIM

1103018 1500047486 08-05-2003 1444
K22-46-03 08-05-2003
A180 200.00
CK 291463-26-10010-01
Jumlah RM***** 200.00
SPHD 1.0 LYDIA

DEFENCE

1. Paragraph 1 of the Statement of Claim is admitted.

2. The Defendant admits receiving the sum of RM1,745,000.00 (hereinafter referred to as "the said Sum") from the Plaintiff. However, the Defendant denies that the said Sum was a personal advance from the Plaintiff or that it was made at the request of the Defendant. The Defendant denies that he is liable to refund or repay the said Sum to the Plaintiff and states that the payment of the said Sum by the Plaintiff arose out of the circumstances and transactions as described hereinbelow.

3. The Defendant states that by an Agreement in writing entered into between one Wong Pak Hiung and Wong Yit Fui (hereinafter referred to as "the Vendors") with one Ragam Handal Sdn Bhd (hereinafter referred to as "Ragam Handal") dated the 1st August 1996 (hereinafter referred to as "the 1st Agreement"), the Vendors

agreed to sell and Ragam Handal agreed to purchase all the Vendors' shares in a company called Winmart Sdn Bhd. The consideration for the sale of the shares pursuant to the 1st Agreement was RM1,200,000.00 and was to be paid by Ragam Handal to the Vendors.

4. By an undated Letter of Undertaking (hereinafter referred to as "the said Letter of Undertaking") addressed to the Vendors, the Plaintiff confirmed that it was aware of the 1st Agreement and undertook to pay the purchase consideration of RM1,200,000.00 to the Vendors in consideration of the Vendors entering into the 1st Agreement with Ragam Handal and having executed the Memoranda of Transfer (Form 32A) in favour of Ragam Handal in respect of the shares pursuant to the 1st Agreement.
5. By a Deed of Assignment (hereinafter referred to as "the said Deed of Assignment") dated 6th August 1996 between the Vendors and the Defendant, the Vendors absolutely assigned all their rights, title, interests and benefit arising under the 1st Agreement to the Defendant.
6. The Defendant states that the Plaintiff was legally obliged to pay the sum of RM1,200,000.00 to him in accordance with the terms and conditions of the 1st Agreement, the said Letter of Undertaking and the said Deed of Assignment.
7. By another Agreement in writing entered into between the Plaintiff and the Defendant dated 1st August 1996 (hereinafter referred to as "the 2nd Agreement"), the Defendant agreed to sell and the Plaintiff agreed to purchase 180,000 of the Defendant's shares in Ragam Handal. The consideration for the sale of the shares

pursuant to the 2nd Agreement was RM1,000,000.00 to be paid by the Plaintiff to the Defendant.

8. Ragam Handal was at that material time in the process of securing development projects on a privatisation basis as well as on contract basis to Lembaga Pembangunan Perumahan Dan Bandar to build low-cost houses in Sabah. It was an express term of the 2nd Agreement that in the event that Ragam Handal secured more than 1000 units of low-cost houses, the consideration for the sale of shares pursuant to the 2nd Agreement shall be rateably and proportionately increased by RM1,000.00 per unit.
9. The Defendant states that by a Sale and Purchase Agreement dated 5th May 1997 between Ragam Handal on the one part and Lembaga Pembangunan Perumahan Dan Bandar (hereinafter referred to as "LPPB") of the other part, Ragam Handal was successful in securing the development of an additional 560 units of low-cost houses (hereinafter referred to as "the 3rd Agreement").
10. Further to the contents of Paragraphs 8 and 9 hereinabove, the Defendant states that the Plaintiff was obliged to pay to the Defendant an additional sum of RM560,000.00 in respect of the sale of shares pursuant to the 2nd Agreement making the sum due thereunder to RM1,560,000.00.
11. The Defendant states that pursuant to the 1st Agreement (read together with the said Letter of Undertaking and the said Deed of Assignment) and the 2nd Agreement (read together with the 3rd Agreement), the Plaintiff was justly and truly indebted to the Defendant for the sum of RM2,760,000.00 (hereinafter referred to as "the consideration due to the Defendant"). The Defendant

further states that the Plaintiff had only made payment to the Defendant in the sum of RM1,745,000.00 on diverse dates as set out in Paragraph 2 of the Statement of Claim being part payment for the consideration due to the Defendant.

12. The Defendant contends and shall contend that the Plaintiff has failed, refused and/or failed to pay the outstanding balance of RM1,015,000.00 comprising part of the consideration due to the Defendant.
13. The Defendant admits receiving the Plaintiff's Solicitor's letter dated 19th April 2002 as stated in Paragraph 3 of the Statement of Claim but states that he is not liable to refund the sum of RM1,745,000.00 or any sum to the Plaintiff.
14. Paragraph 4 of the Statement of Claim is denied.
15. In the premises, the Defendant states that the Plaintiff's action herein is frivolous, vexatious and an abuse of the court process and ought to be struck out.
16. Save as hereinbefore specifically admitted, the Defendant denies each and every allegation contained in the Statement of Claim as if the same were herein set out and traversed seriatim.

COUNTERCLAIM

17. The Defendant repeats the contents of Paragraphs 1 – 15 hereinabove.

18. The Defendant states that the Plaintiff is justly and truly indebted to the Defendant for the sum of RM1,015,000.00 being the outstanding balance pursuant to the consideration due to the Defendant.
19. The Defendant further states that the Plaintiff's action herein amounts to the tort of Abuse of the Process of Court.

PARTICULARS

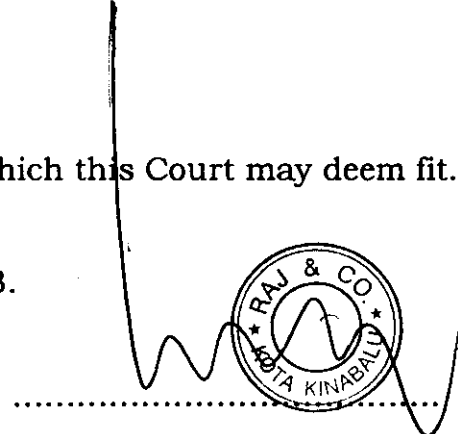
- a) The Plaintiff initiated the present suit against the Defendant in the High Court in Sabah and Sarawak at Kota Kinabalu for the refund or repayment of the sum of RM1,745,000.00.
 - b) The Plaintiff had all along known and was aware that the payment of the sum of RM1,745,000.00 to the Defendant was part payment of a debt due and owing by the Plaintiff to the Defendant pursuant to the transactions mentioned in the Defence hereinabove. The Plaintiff therefore knew that there was no basis for the claim for the sum of RM1,745,000.00 against the Defendant.
 - c) In the premises, the institution of the present suit against the Defendant is a deliberate and willful abuse of the process of the Court not for the genuine purpose of obtaining relief but for an ulterior or collateral purpose to oppress the Defendant and to cause humiliation, harassment and embarrassment to the Defendant.
20. As a result of the Plaintiff's actions referred to in Paragraph 19 hereinabove, the Defendant has suffered loss and damage to his

reputation and has suffered distress and humiliation and has been put to expense in defending this suit.

WHEREFORE THE DEFENDANT COUNTERCLAIMS the following:-

- (a) Payment of the outstanding balance of RM1,015,000.00;
- (b) Damages for the tort of the abuse of Process of Court;
- (c) Interest on (a) and (b) above at the rate of 8 % per annum from the date of this action (or such other date as the Honorable Court may order) until the date of Judgment pursuant to Section 11 of the Civil Law Act 1956;
- (d) Statutory interest at the rate of 8% per annum on (a) and (b) above from the date of Judgment until full payment;
- (e) Costs;
- (f) Such further or other order which this Court may deem fit.

Dated the 8th day of May 2003.



Messrs Raj & Co.

Advocates for the Defendant

This Defence and Counterclaim is filed by Messrs. Raj & Co., the Advocates for the Defendant whose address for service is Room 304, 3rd Floor, EONCMG Life Building, No. 1, Jalan Sagunting, 88000 Kota Kinabalu, Sabah. SL8-WYM/Def Merccs v WYM3



MALAYSIA
IN THE HIGH COURT IN SABAH AND SARAWAK AT KOTA KINABALU

SUIT NO. K22-46 OF 2003

BETWEEN

MERCES BUILDERS (S) SDN BHD
(Company No. 317893-T)

AND

WONG YIT MING
(NRIC No. 531116-12-5335)

1103018 1500050772 20-06-2003 1515
K22-46-03 PLAINTIFF 06-2003
R64 8.00
OK 671941-18-10028-01
Jumlah RM***** 8.00
SPHO 1.0 PAH

DEFENDANT
Filed in the High Court at
Kota Kinabalu, 20 JUN 2003
Senior Assistant Registrar
High Court

REPLY TO THE DEFENCE AND DEFENCE TO COUNTERCLAIM

1. In reply to Paragraph 2 of the Defence and Counterclaim, the Plaintiff states that the sum of RM1,745,000.00 was paid to the Defendant as an advance in consideration of the Plaintiff's being awarded the job as main contractors for the projects of Ragam Handal Sdn Bhd (Company No. 311505-D) (hereinafter referred to as "Ragam Handal") and Winmart Sdn Bhd (Company No. 190562-H) (hereinafter referred to as "Winmart") and as a security for the contracts the Plaintiffs of Ragam Handal executed the sale and purchase agreement with the shareholders. Since the contracts have been terminated by Ragam Handal and Winmart and the Plaintiffs did not take over Ragam Handal, the advance of RM1,745,000.00 paid to the Defendant as agent should be refunded or repaid to the Plaintiff by the Defendant as there is a total failure of consideration.
2. In reply to Paragraph 3 of the Defence and Counterclaim, the Plaintiff repeats Paragraph 1 herein above and state that the 1st Agreement was signed between the Vendors and Ragam Handal and that the sum of RM1,200,000.00 was not connected to the 1st Agreement but was an advance of the profits due to the Defendant if the Plaintiff's contracts with Ragam Handal and Winmart was not terminated.
3. In reply to Paragraphs 4, 5 and 6 of the Defence and Counterclaim and state as follows:-
 - (i) The Letter of Undertaking from the Plaintiff to the Vendors is in respect of the profit due to the Defendant for Winmart and Ragam Handal projects and since the contracts with Winmart and Ragam Handal has been terminated, the Letter of Undertaking are null and void.
 - (ii) The Plaintiff has no knowledge of the Deed of Assignment dated 6th August 1996 between the Vendors and the Defendant.
 - (iii) As the Plaintiff has no knowledge and have never consented to the Deed of Assignment, the Plaintiff were legally not obliged to pay the sum of RM1,200,000.00 to the Defendant and the Plaintiff repeats Paragraph 2 hereinabove.

- (iv) The Plaintiff repeats Paragraph 1 and 2 herein above and once again state that there has been a total failure of consideration by the Defendant and the sum of RM1,200,000.00 ought to be recovered from the Defendant.
4. In reply to Paragraphs 7 to 11 of the Defence and Counterclaim, the Plaintiff states as follows:-
- (a) Repeats Paragraph 1 hereinabove;
 - (b) The sum of RM1,000,000.00 paid pursuant to the Second Agreement to the Defendant ought to be returned to the Plaintiff as the Defendant is still the majority shareholder of Ragam Handal and therefore there is a total failure of consideration by the Defendant and the sum of RM1,000,000.00 ought to be refunded to the Plaintiff by the Defendant.
 - (c) Ragam Handal is the company that secured the Project referred to in Paragraph 8 and 9 of the Defence and Counterclaim and the Ragam Handal does not belong to the Plaintiff. In fact the majority shareholder of Ragam Handal is the Defendant and therefore the sums due to the Defendant should be recovered by the Defendant from Ragam Handal.
 - (d) As there has been a total failure of consideration by the Defendant, the Plaintiff is not indebted to the Defendant in the sum of RM2,760,000.00.
 - (e) The Defendant admits receiving part of the consideration sum of RM1,745,000.00 which should be returned to the Plaintiff as the sum of RM1,745,000.00 was paid for consideration which has wholly failed and therefore the Plaintiff have a right to recover the same from the Defendant.
5. In reply to Paragraph 12 of the Defence and Counterclaim, the Plaintiff states that the Defendant is claiming for a consideration as the Plaintiff has been terminated as contractors for the projects belonging to Ragam Handal and Winmart.
6. In reply to Paragraph 13 of the Defence and Counterclaim, the Plaintiff states that the Defendant is liable to refund the sum of RM1,745,000.00 as the consideration for which the Plaintiff paid the money for has wholly failed and therefore the Plaintiff have the right to recover the money from the Defendant.

DEFENCE TO COUNTERCLAIM

7. In reply to Paragraph 17 and 18 of the Defence and Counterclaim, the Plaintiff repeats Paragraphs 1 to 7 hereinabove.

8. In reply to Paragraph 19 of the Defence and Counterclaim, the Plaintiff denies that this action amounts to the tort of abuse of process of Court due to the reasons stated in Paragraph 1 to 7 hereinabove.
9. In reply to Paragraph 20 of the Defence and Counterclaim, the Plaintiff denies that the Defendant has suffered loss and damage to his reputation and has suffered distress and humiliation as the Defendant knew that as the consideration for which the Plaintiff paid the sum of RM1,745,000.00 has wholly failed and the sum of RM1,745,000.00 already paid by the Plaintiff to the Defendant should be returned to the Plaintiff and there is no consideration whatsoever for the Plaintiff to pay to the Defendant the sum of RM1,015,000.00.
10. In the premises, the Defendant is abusing the process of Court and the Plaintiff prays that the Defendant's Counterclaim be dismissed with costs.
11. Save as hereinbefore expressly admitted, the Plaintiff denies each and every allegation set out in the Counterclaim as if the same were herein specifically set out and traversed seriatim.

Dated this 20th day of June 2003.



Messrs MG's Legal Chambers
Solicitors for the Plaintiff

This Reply to the Defence and Counterclaim is filed by Messrs MG's Legal Chambers, Solicitors for the Plaintiff whose address for service is at Lot 11, 1st Floor, Lorong Margosa 2, Luyang Phase 8, Jalan Kolam, 88300 Kota Kinabalu, Sabah, Malaysia.