

**IN THE HIGH COURT OF MALAYA AT KUALA LUMPUR
(COMMERCIAL DIVISION)
CIVIL SUIT NO.: WA-22NCC-108-03/2021**

BETWEEN

**CONWELD ENGINEERING SDN BHD
(Company No.: 820598-W)**

... PLAINTIFF

AND

**1. LOW TERK CHEN
(NRIC No.: 760828-01-7059)**

**2. LOW MAN FOOK
(NRIC No.: 610506-01-5233)**

**3. NG WAN WOUI
(NRIC No.: 730608-14-5246)**

... DEFENDANTS

AND

**1. GOH SWEE BOH @ GOH CHENG KIN
(NRIC No.: 360904-07-5195)**

... 1ST THIRD PARTY

**2. GOH TZE CHIEN
(Passport No.: E6273774A)**

... 2ND THIRD PARTY



GROUNDS OF JUDGMENT

Introduction

- [1] I had on 5.2.2024 struck out the Plaintiff's Suit for non-compliance of pre-trial case management directions ("PTCM Directions") pursuant to O.34 r.2 (3) of the Rules of Court 2012. This was made on the applications of the Defendants.
- [2] Subsequent to the Striking Out Orders, in Enclosure 119, the Plaintiff filed a Notice of Application for an order to set aside this Court's Striking Out Orders dated 5.2.2024 and for reinstatement of the said Plaintiff's Suit.
- [3] The Defendants objected the reinstatement application. However, I allowed the reinstatement.

The issue

- [4] Whether this Court should allow a reinstatement of the Suit based on the reasons provided by the Plaintiff as found in their Affidavit in support.

Considerations by the Court

- [5] It is to be recalled that the case was struck out on 5.2.2024 as result of the delay by the Plaintiff in complying with PTCM Directions made by this Court. In the current application, the Plaintiff explained why



there was a delay, then. At paragraphs 4 and 5 of the Plaintiff's Affidavit in Support, the Plaintiff's representative averred as follows:

4. *First and foremost, I would like to extend my apology to this Court for any delays in these proceedings, which were completely unintended on my part. Between January and March 2023, parties were engaged in negotiations in an attempt to settle the dispute amicably. Unfortunately, these discussions did not lead to a resolution.*

5. *Between April and October 2023, as part of my commitment to ensuring the best representation for the Plaintiff, I endeavoured to seek alternative lawyers. However, due to my location in Singapore, finding a suitable Malaysian lawyer to take over the case proved to be unexpectedly challenging, which led to the decision to continue with SX Liew & Co in the interim. My intention was never to delay the Court proceedings. This is evidenced by my choice to stick with SX Liew & Co after months of an unsuccessful search for alternative representation. These actions were taken not to hinder progress but as necessary steps to ensure the case for the Plaintiff was handled with the utmost diligence and care.*

[6] I find the apology and reasons given by the Plaintiff via its representative to be worthy of consideration. The explanation seems honest and genuine. To my mind, if there is sincere effort put in by the Plaintiff to engage counsel and make the necessary payments to get the legal representation that is required, a second chance must be given.



- [7] During the course of submissions, counsel for the Plaintiff demonstrated to this Court the Plaintiff will make all efforts to ensure that all direction of the Court will be carried out expeditiously so that the trial can proceed unhindered. I accept the fervent plea and am satisfied with the commitment demonstrated to this Court.
- [8] It was pointed out by Defendants' counsel that the delay was due to the Plaintiff's failure and refusal to pay legal fees to its solicitors as previously borne out in its lawyer's own letter and representation to the Court. I find that this is not something that is not out of the ordinary. To my mind, the Plaintiff has now learnt its lesson. The case was struck out needing it now to make this reinstatement application and incurring more costs.
- [9] I also took into account that this is a derivative action. It was filed against the Defendants for various alleged wrongdoings, including breach of fiduciary duties, misappropriation of company's funds and involvement in money laundering activities. Leave to commence this action was granted on 9.2.2021 ("Leave Order"). The Leave Order was affirmed by both the Court of Appeal and Federal Court on 11.4.2022 and 30.3.2023 respectively.
- [10] I am fully aware that the burden lies on the person who seeks to invoke the Court's sympathy and inherent jurisdiction (see **Chuah Tim Lan v. RHB Bank Bhd & Anor [2008] 6 MLJ 793**). I am also fully cognisant that if I were to allow the reinstatement of the Suit, it would be purely an exercise of my discretion. An exercise of discretion however, must be exercise judicially based on the



material before the Court (see *Abdul Hamid Mohd Amin v Ramacon Corporation Sdn Bhd [2016] 3 CLJ 111*). I accept the feisty submissions of the Defendants who contended that the notion of justice is not what the Plaintiff claims to be just, it is to be assessed based on principled approach on established legal principles.

[11] However, at the heart of the matter is this Court's consideration of wanting to allow the Plaintiff to have its day in Court.

[12] Any delay can be addressed in the form of costs at the conclusion of the trial, as permitted under O.59 r.8(b) of the Rules of Court 2012, and as upheld by the Court of Appeal in *Dr Sim Kui Hian v. Chong Chieng Jen and Other [2021] 6 CLJ 30*.

Conclusion

[13] For the above reasons, the Striking Out Orders dated 5.2.2024 are set aside and the Suit is reinstated with the matter be fixed for Case Management forthwith.

(AHMAD FAIRUZ BIN ZAINOL ABIDIN)

Judge

High Court of Malaya

Kuala Lumpur

Dated: 17th September 2024



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Counsel

Wong Zhi Khung and Liew Shu Xian for the Plaintiff
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WS Saw for the 1st and 2nd Defendants
Messrs. Nethi & Saw, Kuala Lumpur

W V Lye for 3rd Defendant
Messrs. W V Lye & Partners, Kuala Lumpur



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