

**DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR  
DI DALAM WILAYAH PERSEKUTUAN, MALAYSIA  
(BAHAGIAN DAGANG)  
[GUAMAN SIVIL NO: WA-22NCC-326-07/2021]**

**ANTARA**

**IKEDA MARI & 254 YANG LAIN ... PLAINTIF-PLAINTIF**

**DAN**

**MFACE INTERNATIONAL SDN BHD  
& 6 YANG LAIN ... DEFENDAN-DEFENDAN**

**(DIDENGAR BERSAMA DENGAN)**

**DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR  
DI DALAM WILAYAH PERSEKUTUAN, MALAYSIA  
(BAHAGIAN DAGANG)**

**GUAMAN SIVIL NO.: WA-22NCC-346-08/2021**

**ANTARA**

**WANG LEE FU & 215 YANG LAIN ... PLAINTIF-PLAINTIF**

**DAN**

**MFACE INTERNATIONAL SDN BHD  
& 6 YANG LAIN ... DEFENDAN-DEFENDAN**

**JUDGMENT**

- [1] The 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants in both the above suits (collectively “**the Defendants**”) had applied for security for costs pursuant to Order 23 Rule 1(1)(a) and Order 92 Rule 4 of the Rules of the Court 2012 (“**ROC**”) against several Plaintiffs in respect of the above two suits as follows:
- i) WA-22NCC-326-07/2021 (“**Suit 326**”): Security for costs of RM200,000.00 against all **255** Plaintiffs (**Enclosure 18**);
  - ii) WA-22NCC-346-08/2021 (“**Suit 346**”): Security for costs of RM200,000.00 against the 2<sup>nd</sup>, 17<sup>th</sup>, 34<sup>th</sup>, 35<sup>th</sup>, 38<sup>th</sup>, 95<sup>th</sup>, 101<sup>st</sup>, 102<sup>nd</sup>, 111<sup>th</sup>, 136<sup>th</sup>, 142<sup>nd</sup>, 147<sup>th</sup>, 152<sup>nd</sup>, 162<sup>nd</sup> and 182<sup>nd</sup> Plaintiffs, totalling **15** Plaintiffs (**Enclosure 15**).
- [2] Parties orally submitted on Enclosure 18 of Suit 326 which oral submissions were to cover Enclosure 15 of Suit 346 as they both substantially similar in terms of the background facts, the Plaintiffs’ claim and the Defendants’ defence. Though the Plaintiffs in Suit 326 and Suit 346 are different, however, the nature of the Plaintiffs’ claim there are essentially the same and so is the Defendants’ defence. **All** the Defendants in both Suits 326 and Suit 346 are the **same**.
- [3] I had dismissed both Enclosures 18 and 15 and below are the reasons for my decision.

**A] SALIENT BACKGROUND FACTS****Chronology of Proceedings And the Parties**

- [4] It is important to highlight at the outset the chronology of proceedings that have transpired that had caused Suits 326 and Suit 346 to be heard together as well as with 3 other suits that

were all filed at the Kuala Lumpur High Court (Commercial Division). A brief summary of the chronology of proceedings and the parties can be seen from the table below.

No.	Particulars of Suit	No. of Plaintiffs	No. of Defendants	Case Origin/ Date Transferred
1.	WA-22NCC- <b>201</b> -05/2020 Wang, Jianbin & 46 Ors v. Mface International Sdn Bhd & 6 Ors)	47	7	Originally from this Court (NCC 3)
2.	WA-22NCC- <b>586</b> -1/2020 Li Tao & 62 Ors v. Mface International Sdn Bhd & 6 Ors)	63	7	Transferred from Court NCC 2 by Order of Court dated 5.4.2021
3.	WA-22NCC- <b>614</b> -12/2020 Lim Kar Yian & 18 Ors v. Mface International Sdn Bhd & 6 Ors	19	7	Transferred from Court NCC 2 by Order of Court dated 13.3.2021
4.	WA-22NCC- <b>326</b> -07/2021			

	Ikeda Mari & 254 Ors v. Mface International Sdn Bhd & 6 Ors ( <b>present suit</b> )	255	7	Transferred from Court NCC2 by Order of Court dated 5.10.2021
5.	WA-22NCC-346- 08/2021 Wang Lee Fu & 215 Ors v. Mface International Sdn Bhd & 6 Ors ( <b>present suit</b> )	216	7	Transferred from Court NCC2 by Order of Court dated 29.9.2021
TOTAL		600	(same Defendants )	<b>By Consent / Without Objection</b>

(collective referred to as “**the Suits**”)

[5] Suits No.s 2 to 5 were transferred based on formal and oral transfer applications by the respective Plaintiffs in those Suits. The Defendants (being the same Defendants) in all the above Suits had either consented or did not object to the transfer of Suits No.s 2 to 5 to this Court and for Suits No.s 2 to 5 to be heard together with Suit WA-22NCC-201-05/2020 (“**Suit 201**”) which is originally from this Court.

[6] The relevance and importance of the above chronology will be explained later in this Judgment but suffice to say for now that

they have a bearing on Enclosures 18 and 15, namely, because the Suits are managed and will be heard together (or consolidated which is a matter I will determine after managing all the Suits together).

### **Parties**

- [7] The Plaintiffs against whom the Defendants sought security for costs in Enclosures 18 and 15 are individual foreigners from several countries, namely, **Japan, Korea, France, Taiwan, Singapore and Indonesia**. These Plaintiffs are citizens of their respective countries.
- [8] The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants are private limited companies which were incorporated in Malaysia.
- [9] The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants have the same business address while the 1<sup>st</sup> Defendant's business address is at the same location as the 2<sup>nd</sup> and 3<sup>rd</sup> business address except that it is located at a different floor.
- [10] At all material times, the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants are directors of the 1<sup>st</sup> Defendant and the 4<sup>th</sup> Defendant is a director of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.
- [11] The Defendants for both Suits 326 and 346 are the **same**.
- [12] The 1<sup>st</sup> Defendant company has been wound up on **27.7.2021** by a Petitioner called Concept Theatre Sdn Bhd.
- [13] All the Defendants in the Suits were represented by the **same** firm of solicitors until the 1<sup>st</sup> Defendant was wound up.
- [14] All the Plaintiffs are also represented by the same firm of solicitors.

[15] The **background** and **causes of action** of the Plaintiffs' claim in both Suits 326 and Suit 346 as well as the other cases in the Suits are substantially the **same**.

[16] Similarly, the Defendants' **defence** in both Suits 326 and 346 as well as the other cases in the Suits are substantially the **same**.

### **The Plaintiffs' Claim**

[17] The Plaintiffs' pleaded case and claim against the Defendants in Suits 326 and 346 are summarised in the paragraphs below.

[18] The Plaintiffs' claim against the Defendants is essentially in respect of a fraudulent online investment scheme ("*online investment scheme for rewards*") which the Plaintiffs allege is a scam ("**the Scheme**").

[19] The Scheme is operated, inter alia, as follows:

- i) The 1<sup>st</sup> Defendant provides for and is actively involved in the Scheme, both locally and internationally.
- ii) The 2<sup>nd</sup> Defendant is a corporate partner of the 1<sup>st</sup> Defendant and the 3<sup>rd</sup> Defendant is a corporate partner of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. The 3<sup>rd</sup> Defendant provides courses in respect of the Scheme and how to invest in the Scheme;
- iii) The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants offer the Scheme through the 4<sup>th</sup> Defendant where the Plaintiffs had invested a sum of money into the 1<sup>st</sup> Defendant via cash and/or electronic fund transfer.
- iv) At all material times, the 4<sup>th</sup> Defendant offers the seminars and particulars regarding the Scheme which seminars were organised by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants ("**Seminars**").

The Plaintiffs intend to produce the video recording on this at the trial of these actions.

- v) The Seminars organised by the Defendants were held at certain locations such as MBI Desaku dan MBI International Multi-Function Convention Centre (MFCC) in Kulim, Kedah dan MBI Resort in Danok, Thailand.
- vi) Payments were made to individual bank accounts held by the agents of the Defendants and/or bank accounts held by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. Although payments were made to different bank accounts, the 1<sup>st</sup> Defendant had issued invoices to the Plaintiffs as confirmation and proof of the payments made through the Defendants' website <https://www.mfcclub.com> (“**the said Website**”) and the Plaintiffs were given access to manage their respective accounts on the said Website.
- vii) The invoices that were issued by the 1<sup>st</sup> Defendant were only issued for first-time payments only. The amount paid by the Plaintiffs are shown as “*Advertisement Point*” (“**AP**”) in their respective accounts stated on the Website.

[20] The Plaintiffs' had invested in the Scheme and were allowed to increase their investments. Although no invoice is issued for these subsequent payments, they are reflected as increment of AP in the Plaintiffs' respective accounts on the said Website.

[21] As a reward for their investment under the Scheme, the Plaintiffs were given reward points which included reward in the form of MCOIN, GRC and others. The Defendants had represented to the Plaintiffs that these reward points can be used in premises owned by the Defendants such as a shopping centre known as “*Mmall*” located in Penang.



[22] The Plaintiffs later discovered that the Scheme was a scam based on a notice issued by Bank Negara Malaysia (“**Bank Negara**”) stating that Scheme is unlawful and that the 1<sup>st</sup> Defendant had been blacklisted.

[23] The main reliefs sought by the Plaintiffs against the Defendants are as follows:

- i) A declaration that the contracts entered between the Plaintiffs and the Defendants are void *ab initio* dan cannot be enforced by either party;
- ii) The refund of the monies the Plaintiffs’ paid towards the Scheme; and
- iii) A declaration that the Defendants jointly and/or severally hold the Plaintiffs’ investments as a constructive trustee for the Plaintiffs.

### **The Defendants’ Defence**

[24] Defendants basically denied all the Plaintiffs allegations namely that:

- i) they are not involved in the Scheme;
- ii) they did not create, own or have control over the Website including the following websites pleaded in the Statement of Claim;
  - a) <https://www.mfcclub.com>;
  - b) <https://www.mfcclub.net>; and
  - c) <https://www.mfcclub.info>.
- iii) they did not receive any monies from the Plaintiffs;

- iv) the Defendants have never issued any invoice to the Plaintiffs and have no knowledge of the any accounting statements and/or invoices referred to by the Plaintiffs;
- v) the monies paid by the Plaintiffs to the alleged agents of the Defendants are not the agents of the Defendants and the Defendants have no knowledge and neither have the Defendants authorised any agent to receive monies from the Plaintiffs on the Defendants' behalf; and
- vi) in the alternative, since the Plaintiffs allege the Scheme is illegal and the Plaintiffs are involved in the Scheme, the Plaintiffs' cause of action is tainted with illegality and thus the Plaintiff cannot enforce the contract or maintain a cause of action against the Defendants.

**B] REQUIREMENTS OF A SECURITY FOR COSTS APPLICATION AND GROUNDS IN SUPPORT OF ENCLOSURES 18 AND 15**

[25] The Defendants' Security for Costs applications in Enclosures 18 and 15 were made pursuant to Order 23 Rule 1(1)(a) ROC in which Order 23 Rule 1(1) ROC provides as follows:

*“(1) Where, on the application of a defendant to an action or other proceedings in the Court, it appears to the Court-*

- (a) that the plaintiff is ordinarily resident out of the jurisdiction;*
- (b) that the plaintiff (not being a plaintiff who is suing in a representative capacity) is a nominal plaintiff who is suing for the benefit of some other person and that there is reason to believe that he will be unable to pay the costs of the defendant if ordered to do so;*

(c) *subject to paragraph (2), that the plaintiff's address is not stated in the writ or originating summons or is incorrectly stated therein; or*

(d) *that the plaintiff has changed his address during the course of the proceedings with a view to evading the consequences of the litigation,*

*then, if, **having regard to all the circumstances of the case**, the Court thinks it just to do, it may order the plaintiff to give such security for the defendant's costs of the action or other proceedings as it thinks just.*

(own emphasis added)

[26] The Defendants grounds in support of Enclosure 18 and 15 can be seen in paragraph 11(a) to (c) of the Defendants' Affidavit In Reply (**Enclosures 19** in Suit 326 and **Enclosure 16** in Suit 346) as follows:

“11. Saya telah dinasihati oleh peguamcara Defendan Ke-2 hingga Defendan Ke-7 dan sesungguhnya percaya dan menyatakan bahawa sekiranya tindakan perundangan ini adalah diputuskan kelak berpihak kepada saya dengan kos diawad kepada saya oleh Mahkamah yang Mulia, berkemungkinan amat besar bahawa Plaintiff-Plaintif tersebut tidak akan bayar dan/atau tidak mampu bayar apa-apa kos yang diperintahkan oleh Mahkamah yang Mulia ini. Dalam hal sedemikian, saya tidak mempunyai apa-apa cara mahupun peluang untuk menguatkuasakan perintah Mahkamah yang Mulia ini memandangkan: -

i) Kesemua Plaintiff adalah warganegara asing (*foreigners*) iaitu warganegara- warganegara Jepun, Korea, Perancis, China, Taiwan dan Singapura;

- ii) Kesemua Plaintiff bermastautin di luar bidang kuasa Mahkamah Yang Mulia ini yang kesemuanya kini bermastautin di negara- negara Jepun, Korea, China, Taiwan dan Singapura; dan
- iii) Kesemua Plaintiff tidak mempunyai alamat tetap dan/atau aset yang diketahui di dalam bidang kuasa Mahkamah Yang Mulia ini.”

[27] It is important to note that the Defendants rely on Order 23 Rule 1(1)(a) ROC specifically and therefore the Defendants cannot raise any issue regarding the Plaintiffs’ addresses which falls under Order 23 Rule 1(1)(c) ROC. Further, the Plaintiffs have all pleaded their respective addresses in the Statement of Claim.

[28] It is not in dispute that the Plaintiffs against whom the Defendants sought security for costs are all outside the jurisdiction of the Court.

[29] However, it must be emphasised, first and foremost, that the grant of security for costs is **not automatic** just because a plaintiff “*is ordinarily resident out of the jurisdiction*”. This is trite law and it is also trite that the Court has a discretion whether to grant security for costs. In *Kasturi Palm Products v. Palmex Industries Sdn Bhd* [1985] 2 MLRH 213 it was held as follows:

*“In the present case, the question is simply whether or not it is just to order security for costs? In my opinion, **two major considerations** clearly merit my attention. The first consideration is of course the fact that the plaintiff is ordinarily resident out of this jurisdiction. **Admittedly, under Rule 1(i), security for costs cannot now be ordered as of right from a foreign plaintiff**, but only if the Court thinks it just to order depending on the circumstances of the case. Secondly, it is*

*material to consider one of the grounds of the defendants in disputing the plaintiffs main application.”*

(own emphasis added)

[30] The factors that the Court takes into consideration in a security for costs application under Order 23 ROC are trite and can be seen in the case of *Macon Charter Bv v. Inai Kiara Sdn Bhd & Ors* [2017] MLRHU 281 which referred to *Luminous Crossroads Sdn Bhd v. Lim Kong Huat Construction* [2001] 4 MLRH 698; [2002] 5 CLJ 100; [2001] 4 AMR 4861 where it was held as follows:

*[15] In order to ascertain the relevant considerations for the Court to take into account in order to make a finding whether it is just or not to order security for cost, the Court in Luminous Crossroads Sdn Bhd v. Lim Kong Huat Construction [2001] 4 MLRH 698; [2002] 5 CLJ 100; [2001] 4 AMR 4861 had applied the case of Sir Lindsay Parkinson & Co Ltd v. Triplan Ltd (that was also referred to by Justice Dzaidin in Kasturi Palm Products’), which held that:*

*“The court has a discretion which it will exercise considering all the circumstances of the particular case. So I turn to consider the circumstances. Counsel for Triplan helpfully suggests some of the matters which the court might take into account, such as whether the company’s claim is bona fide and not a sham and whether the company has a reasonably good prospect of success. Again it will consider whether there is an admission by the defendants on the pleadings or elsewhere that money is due. If there was a payment into court of a substantial sum of money (not merely a payment into court to get rid of a nuisance claim), that too would count. The court might also consider whether*

*the application for security was being used oppressively - so as to try to stifle a genuine claim. It would also consider whether the company's want of means has been brought about by any conduct of the defendants, such as delay in payment or delay in doing their part of the work." (emphasis added)*

(own emphasis added)

[31] The considerations that the Court takes into account in an Order 23 ROC application was laid down in *Luminous* (*supra*) based on the English case of *Sir Lindsay Parkinson & Co Ltd v. Triplan Ltd* [1973] 2 All ER 273 as follows:

*"It is trite law that under O. 23 and s. 351, the court has a discretion which must be exercised after considering all the circumstances of the particular case: Sir Lindsay Parkinson & Co Ltd v. Triplan Ltd [1973] 2 All ER 273. In addition, this discretion is a judicial discretion which must be exercised according to established judicial principles.*

*In Sir Lindsay Parkinson & Co Ltd v. Triplan Ltd, supra, Lord Denning, MR set out some factors which the court might take into consideration in exercising its discretion on whether or not to award security for costs, as follows:*

- (a) whether the company's claim is bona fide and not a sham;*
- (b) whether the company has a reasonably good prospect of success;*
- (c) whether there is an admission by the defendants on the pleadings or elsewhere that money is due;*

- (d) *if there was payment into court of a substantial sum of money (not merely a payment into court to get rid of a nuisance claim);*
- (e) ***whether the application for security was being used oppressively - so as to try and stifle a genuine claim;***
- (f) *whether the company's want of means has been brought about by any conduct of the defendants, such as delay in payment or delay in doing their part of the work.*

(own emphasis added)

[32] The Court in *Luminous (supra)* also held that the factors to be considered in an Order 23 ROC application is not exhaustive and held as follows:

*“In my view, these factors **are not intended to be exhaustive but merely provide general guidelines for consideration.** The facts and circumstances of each particular case are crucial and would determine whether the judicial discretion is properly exercised.”*

(own emphasis added)

[33] In *Raju Rajaram Pillai v. MMC Power Sdn Bhd & Anor* [2000] 4 CLJ 189, Justice Malik Ishak, as he then was held as follows:

*“**Of crucial importance, fit for consideration, would be the likelihood of the plaintiff succeeding.** The court **may refuse** the defendant's application for security for costs when there is a **strong prima facie presumption** that the defendant will fail in his defence (*Crozat v. Brogden* [1894] 2 QB 30 at 33, per Collins J). Then there is the rule which says **that it may be a denial of justice to order a plaintiff to give security for the***

*costs of the defendant who has, in fact, no defence to the claim at all. If the defendant admits part of the claim, then the court may refuse him security (Hogan v. Hogan (No 2) [1924] 1 Ir. R. 14). In the event, the defendant admits his liability to the fullest extent, then the plaintiff will not be ordered to give security (De St. Martin v. Davis & Co [1884] WN 86) and this would be so even if the defendant were to counterclaim (Winterfield v. Bradnum [1878] 3 QBD 324)."*

.....

*"Rath J in Michael Bickley Pty Ltd v. Westinghouse Electric Australasia Ltd [1983] 1 ACLC 967 listed down the relevant matters to be considered in the exercise of the court's discretion to grant security following closely the items set out by Lord Denning M.R. in the Parkinson's case. The same items were also listed by Needham J in M.A. Productions Pty Ltd v. Austarama Television Pty Ltd (supra) where at p. 407 of the report his Lordship said:*

*First, the court can consider the **strength and bona fides** of the plaintiff's case. **Secondly**, whether the defendants' application for security is **oppressive** in the sense that it is being used merely to deny to an impecunious plaintiff a right to litigate. **Thirdly**, the court can consider whether the **want of assets experienced by the plaintiff is caused by the default of the defendants**. **Fourthly**, whether the order, if made, would **stultify the plaintiff's action**.*

*In short, no two cases would be the same. One must examine and have regard "**to all the circumstances of the case.**" Impecunious plaintiff should be ordered to pay security for costs and this would be the balancing act that ought to weigh the pendulum of justice evenly."*



.....

*“Even the Court of Appeal in Trident International Freight Services Ltd v. Manchester Ship Canal Co and Another [1990] BCLC 263 was of the view that in an application for security for costs it was **not appropriate to go into the merits** of the case **unless** it can be clearly demonstrated, one way or the other, that there was a **high probability of success or failure**. I have in the early part of this judgment set out in extenso the **facts of the case as garnered from the pleadings without going into the merits** of the case. There was **no necessity at all, at this juncture, to go into a minute and in depth detail of the merits** of the case. In evaluating the prospects of success of either party, I must shy away from a very detailed evaluation of the merits of the case. Suffice for me to say that there was **available evidence** to direct the plaintiff to provide security for costs. This was my judgment and I so ordered accordingly.”*

(own emphasis added)

[34] The Court in *Tripple International Limited v. Belia Cermat Sdn Bhd & Ors* [2016] 1 LNS 135 also arrived at a similar conclusion as in the case of *Raju Rajaram (supra)* regarding the importance of the likelihood of the plaintiff and defendant succeeding in the case. Justice Hasnah Dato’ Mohammed Hashim (as she then was, now Federal Court Judge) held as follows:

*“[13] In an application for security for costs it would be premature at this stage **to examine the merits of the case** (Re: *Faridah Begum bt. Abdullah v. Dato Michael Chong* [1995] 2 MLJ 404). **However, a major point** for consideration is the **probability or likelihood of the Plaintiff succeeding and also the probability of the Defendants succeeding.**”*

(own emphasis added)

[35] Therefore, based on the above authorities I would summarise the factors that the Court takes into consideration in an application for security for costs under Order 23 ROC as follows:

- i) Security for costs is not granted as of right just because the plaintiff is ordinarily outside jurisdiction (*Kasturi Palm (supra)*);
- ii) The granting of security for costs is at the Court's discretion which is exercised based the consideration of several factors which are not exhaustive (*Luminous (supra)*; **Sir Lindsay Parkinson**) and after “*having regard to all the circumstances of the case*” (Order 23 Rule 1(1) ROC).
- iii) Out of the many factors the Court takes into consideration, the paramount consideration is the **strength and bona fides** of the plaintiff's case (*Raju Rajaram (supra)*; ***Tripple International (supra)***);
- iv) In determining the strength or weakness of the plaintiff's and the defendant's case the Court does not go into an in-depth examination of the full merits of the case and it based on the pleadings and the available evidence at the hearing of the Order 23 ROC application (*Raju Rajaram (supra)*); and
- v) Whether the grant of security for costs would be oppressive and would stultify the plaintiff's action (*Raju Rajaram (supra)*; *MA Productions Pty Ltd v. Austarama Television Pty Ltd* [1982] 1 ACLC 404).

**C] WHETHER SECURITY FOR COSTS OUGHT TO BE GRANTED**

[36] After giving due consideration to the various factors which the Court takes into consideration in order to determine whether security for costs ought to be granted, I was not in favour of granting security for costs for the following reasons:

- i) Whilst it is not in dispute that the Plaintiffs are ordinarily resident outside the jurisdiction of the Court, however, that alone is not sufficient for the grant of security for costs against them.
- ii) Therefore, I then proceeded to examine the likelihood of success of Plaintiffs' case (as well as the Defendants') being a factor of paramount or utmost importance in an Order 23 ROC application and this Enclosures 18 and 15. In doing so I have been mindful and I stress, have **not** delved into an in- depth examination of the full merits of the case but have confined it to the respective parties' pleadings and the available evidence at the hearing of Enclosures 18 and 15.
- iii) Having examined the merits of the Plaintiffs' and Defendants' case I found that the Plaintiffs have a *bona fide* case and that it is **not a sham**.
- iv) I further found that, based on the pleadings and evidence available at the hearing of Enclosures 18 and 15, the Plaintiffs have a **reasonably strong *prima facie* case** based on, inter alia, the following:
  - a) Bank Negara had blacklisted the 1<sup>st</sup> Defendant and a website associated with the 1<sup>st</sup> Defendant on **22.5.2017** in that they are "*not authorised nor*

*approved under the relevant laws and regulations administered by BNM”.*

- b) News Reports stating the **4<sup>th</sup> Defendant** has been charged with charge for issuing unauthorised electronic money.
- c) News Reports stating that Mface International Bhd and the and the **3<sup>rd</sup> Defendants**, are companies under the MBI Group, and allegedly linked to a “*pyramid investment scheme*” and are amongst the companies under Bank Negara’s watchlist.
- d) News Reports stating that the **5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants** were charged with money laundering, involving RM122.88 million under subsection 4(1)b of the Anti Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act (AMLA) 2001. The **5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants** were also charged for committing an offence under section 27(b) of the Direct Sales and Anti-Pyramid Scheme Act 1993 for promoting a pyramid scheme under MFace between 2012 and 2017.
- e) News Report stating that “*MFace issues Mcoin, a digital currency that has been used in Penang and Kuala Lumpur, including to redeem goods at dedicated malls dubbed “M Mall”*”.
- f) As stated earlier in the background facts, the **2<sup>nd</sup> and 3<sup>rd</sup> Defendants** have the **same business address** while the **1<sup>st</sup> Defendant**’s business address is at the same location as the **2<sup>nd</sup> and 3<sup>rd</sup> business address** except that it is located at a different floor.

- g) Documents showing the AP on the said Website regarding amounts paid by the Plaintiffs towards the Scheme.
- h) The Defendants (i.e. the 2<sup>nd</sup> to 7<sup>th</sup> Defendants) did **not** deny being charged as reported but stated that there are no “*dakwaan semasa*”. No details or documents were provided by the Defendants.
- i) Further, the same Defendants averred that the News Reports were not pertaining (“*tidak berkaitan*”) to Suits 326 and 346 and Enclosures 18 and 15, however, the accuracy of the said News Reports were not raised or denied.
- j) The Defendants deny any involvement in the Scheme but has not pleaded or adduced any evidence through the affidavits filed by the Defendants in respect of Enclosures 18 and 15 of the true nature and actual business the Defendants are in.
- k) The Defendants have also not pleaded nor shown via affidavit evidence of any actions the Defendants themselves have taken to clear their name arising from the allegations regarding, inter alia, the wrongful use of their name and alleged involvement in the Scheme, the alleged invoices issued by the 1<sup>st</sup> Defendant or in respect of the allegation of monies collected on behalf of the 1<sup>st</sup>, 2<sup>nd</sup> and/or 3<sup>rd</sup> Defendants by the Defendants’ alleged agents which the Defendants have denied.
- v) The grant of security for costs is oppressive and would stultify the Plaintiffs’ action given that I have found that the Plaintiffs have a reasonably strong *prima facie* case.

This is also due to the fact that there is a total of **270** foreign individual Plaintiffs involved in Enclosures 18 and 15 collectively who are from several countries and the grant of security for costs against each of them would be oppressive and would stultify the Plaintiffs' action.

[37] Another factor that I have taken into consideration in deciding Enclosures 18 and 15 is that the Suits have been placed before me in this Court to be heard together (or consolidated, which will be determine later once the Suits have been case managed in preparation for trial). As the Suits are all before this Court I cannot then ignore the fact that there is a total of **600** Plaintiffs in the Suits, all of whom are claiming for essentially the **same reliefs** against the **same Defendants**. This goes to the issue of the *bona fides* and strength of the Plaintiffs' case in all these Suits.

[38] I have also taken into consideration that for Enclosure 15 of Suit 346 in particular, the security for costs was **not** sought against all the Plaintiffs there as some of them are local Plaintiffs. Therefore, if the Defendants in Suit 346 succeed, the Defendants would still be able to recover the costs from the remaining Plaintiffs, in the event the foreign Plaintiffs fail to pay costs, depending on the order of costs given.

[39] For the sake of clarity, it is important for me to again emphasise that the finding of the Court that the Plaintiffs have a reasonably strong *prima facie* case is based on the pleadings and the evidence available at the hearing of Enclosures 18 and 15 and it is not based on an in-depth examination of the full merits of the case which I do not need to go into at this stage (*Raju Rajaram (supra)*).

**D] CONCLUSION**

[40] For the reasons stated above, I dismissed Enclosure 18 of Suit 326 and Enclosure 15 of Suit 346, both with costs in the cause.

**Dated:** 30 JUNE 2022

**(WAN MUHAMMAD AMIN WAN YAHYA)**

Judicial Commissioner  
High Court of Malaya,  
Kuala Lumpur  
(Commercial Division (NCC 3))

**COUNSEL:**

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**Case(s) referred to:**

*Kasturi Palm Products v. Palmex Industries Sdn Bhd* [1985] 2 MLRH 213

*Macon Charter Bv v. Inai Kiara Sdn Bhd & Ors* [2017] MLRHU 281

*Luminous Crossroads Sdn Bhd v. Lim Kong Huat Construction* [2001] 4 MLRH 698; [2002] 5 CLJ 100; [2001] 4 AMR 4861

*Sir Lindsay Parkinson & Co Ltd v. Triplan Ltd* [1973] 2 All ER 273

*Raju Rajaram Pillai v. MMC Power Sdn Bhd & Anor* [2000] 4 CLJ 189

*Tripple International Limited v. Belia Cermat Sdn Bhd & Ors* [2016] 1 LNS 135

*MA Productions Pty Ltd v. Austarama Television Pty Ltd* [1982] 1 ACLC 404

**Legislation referred to:**

Anti Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act (AMLA) 2001, s. 4(1)b

Direct Sales and Anti-Pyramid Scheme Act 1993, s. 27(b)

Rules of the Court 2012, O. 23 r. 1(1)(a)(c), O. 92 r. 4