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A summary of some key considerations in Summary Judgment applications (Order 14 Rule 1 of the Rules of Court 2012).

INTRODUCTION

A Summary Judgment application, pursuant to Order 14 Rule 1 of the Rules of Court 2012, is one of the most common interlocutory application.

If successful, the Plaintiff would have a judgment against the Defendant(s) without the need for a trial.

This would save the Plaintiff's (as well as the Court's) time, and costs.

HAVE THE PRELIMINARY REQUIREMENTS BEEN MET?

The Federal Court in the seminal case of *National Company for*

Foreign Trade v Kayu Raya Sdn Bhd [1984] 2 MLJ 300 laid down the preliminary requirements for a Summary Judgment application:

“(i) the defendant must have entered an appearance;

(ii) the statement of claim must have been served on the defendant; and

(iii) the affidavit in support of the application must comply with the requirements of Rule 2 of the Order 14.”¹

¹ *National Company for Foreign Trade v Kayu Raya Sdn Bhd* [1984] 2 MLJ 300 (FC), at p. 301



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Once the preliminary requirements are met, the Plaintiff would have established a prima facie case in its favour.²

The burden is then on the Defendant(s) to show merits in its/their Defence.³

In the event any of the preliminary requirements are not met, the Defendant(s) has/have a strong technical ground for opposing the Summary Judgment application.⁴

ARE THERE ANY TRIABLE ISSUES?

It is trite that:

- i. Summary Judgment applications should only be allowed in plain and obvious cases;⁵ and
- ii. the existence of even a single triable issue would suffice to defeat a Summary Judgment application.

² *National Company for Foreign Trade v Kayu Raya Sdn Bhd* [1984] 2 MLJ 300 (FC), at p. 302

³ *Ibid.*

⁴ See e.g. *Noh Hyoung Seok v Perwira Affin Bank Bhd* [2004] 2 MLJ 203 (CA), at paragraph 51

⁵ *HSBC Bank Malaysia Bhd v Dharani Sugars & Chemical Ltd and another appeal* [2011] 1 MLJ 52 (FC), at paragraph 22



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In *Tong Lee Hua v Yong Kah Chin* [1979] 1 MLJ 233, the Federal Court held the following:

“It is commonplace that an application for summary judgment under Order 14 can be successfully resisted by a defendant if he manages to raise **a bona fide triable issue**, i.e., a defence on the merits. In other words he must be able to raise a legal defence which if it is believed goes to the root of the claim.”⁶ (Emphasis ours)

The Court of Appeal in *South East Asia Insurance Bhd v Kerajaan Malaysia* [1996] MLJU 642 similarly held:

“It is well settled that if a defendant in an O. 14 application succeeds in raising **even a single triable issue**, it will not be a fit and proper case to order summary judgment. **It is only in plain and obvious cases where there are no issues to be tried should recourse be had to O. 14.**”⁷ (Emphasis ours)

⁶ *Tong Lee Hua v Yong Kah Chin* [1979] 1 MLJ 233, at pp. 233-234

⁷ *South East Asia Insurance Bhd v Kerajaan Malaysia* [1996] MLJU 642



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Examples of triable issues which have been accepted in the past include:

- i. whether an agreement and/or its contents were authentic;⁸
- ii. whether the termination of an agreement was valid;⁹
- iii. whether the defence of estoppel was applicable.¹⁰

The Courts will assess on a case to case basis whether there are any triable issues present in the case before them.

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⁸ *Kawan Lama Builders Sdn Bhd & Anor v Sykt Lumut Quarry Sdn Bhd* [2021] 3 MLJ 242 (CA), at paragraph 50(a)

⁹ *Orange Business Services (Network) SDN BHD v Dealtel (Malaysia) SDN BHD and another suit* [2019] MLJU 477 (CA), at paragraph 9

¹⁰ *UNP Plywood Sdn Bhd v HSBC Bank Malaysia Bhd* [2010] 5 MLJ 323 (CA), at paragraph 38