



**DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR
DALAM WILAYAH PERSEKUTUAN, MALAYSIA
(BAHAGIAN SIVIL)
[GUAMAN NO: 22NCVC-125-02/2013]**

ANTARA

ACTIZEN AESTHETICS SDN BHD

(No. Syarikat: 755808-A)

... PLAINTIF

DAN

1. MUN LEE PROPERTIES SDN BHD

(No. Syarikat: 687876-U)

2. CHIN HON FAH

(No. K/P: 640205-10-7473)

3. CHIN KE LIANG

(No. K/P: 930924-14-5981)

4. CHIN LEOU GYN

(No. K/P: 920802-14-6768)

**... DEFENDAN
-DEFENDAN**

GROUND OF DECISIONS

1. This case was fixed for trial on 30/5/2013 and 31/5/2013. During the case management of this case, parties were directed to comply with directions for trial which were issued on “unless basis”.



2. On the day of trial, the Counsel for 2nd, 3rd and 4th Defendants raised an objection that the Plaintiff was in breach of the “unless order” issued by the Court, by serving on the Defendant, a Supplementary Bundles of Documents, a video recording and 3 new witness statements on 29/5/2013. Counsel for the 1st Defendant also raised the same objections.

3. The Defendants requested the Court to invoke its powers under Order 34 r. 1(3) Rules of Court 2012, to strike out the Plaintiff’s case and that “unless order” orders must be taken seriously by parties. The Defendants further submitted that they were prejudiced because of the various “new” documents filed and the 3 “new” witness statements served by the Plaintiff and they are deprived of preparation to meet the Plaintiff’s case especially in the light of “new” witness statements, video recording and “new” Bundles of Documents. The Defendant also informed that they are unable to proceed with trial that day as they require time to look at the new witness statements, video recording and Bundles of Documents.

4. The Plaintiff submitted that the delay in service of the Witness statements and new documents was not intentional and



contumelious whilst the Defendants submitted otherwise. I prefer and accept the Defendants' submissions.

5. The 1st Defendant has indicated that in the event the Plaintiff's suit is struck out, they will similarly withdraw their counterclaim with liberty to file afresh.
6. Having considered the circumstances of the case and the submissions of learned counsels for the Plaintiff and all the Defendants, I therefore dismiss the Plaintiff's case and the 1st Defendant's counterclaim, both with liberty to file afresh and I make no order as to costs.
7. My reasons for the above order are as follows:
 - [a] I find that the Plaintiff did not proffer any good reasons as to why they were in breach of the "unless order" issued. I cannot find any reasons upon which this Court could exercise its discretion in favour of the Plaintiff. In any event court orders, be they "on unless" basis or otherwise must be obeyed unless there are good reasons.



[b] In this new regime of case managements and speedy trials, counsels should be comply strictly with court directions given especially on “unless basis” so that trials can be properly managed and disposed off speedily otherwise precious judicial time will be wasted.

Dated: 16 AUGUST 2013.

(LEE HENG CHEONG)
Judicial Commissioner
Civil Division
Kuala Lumpur High Court

Counsel:

For the plaintiff - John Clerk (Daniel Chuah, Andy Peh, Mohd Ali Redha & Lua Kok Hiyong with him); M/s Sidek Teoh Wong & Dennis

For the 1st defendant - Joseph Ting (CM Tan & Cyrus Tiu Foo Wooi with him); M/s Joseph Ting & Co

For the 2nd - 4th defendant - Abdul Rasyid Ismail (Lubna Sheikh Ghazali, Syafrin, Abdul Halim & Zulaikha Hamidi with him); M/s Rashid Zulkifli