# ANG SOON YAM
**v.**
# TI HOCK SENG &ORS

High Court Malaya, Melaka
Raja Segaran S Krishnan JC
[Civil Suit No: MA-22NCvC-63-12/2023]
14 April 2026

**Case(s) referred to:**
*Daud Arshad &Ors v. Felcra Berhad [2019] 6 MLRA 200; [2019] 2 MLJ 33; [2019] 9 CLJ 443 (refd)*
*Krishnan Rajan N Krishnan v. Bank Negara Malaysia &Ors [2002] 3 MLRH 438; [2003] 1 MLJ 149; [2003] 1 CLJ 388; [2003] 1 AMR 518 (refd)*
*Petroleum Nasional Bhd v. Kerajaan Negeri Terengganu &Another Appeal [2003] 1 MLRA 582; [2004] 1 MLJ 8; [2003] 4 CLJ 337; [2003] 5 AMR 696 (refd)*
*Setiakon Engineering Sdn Bhd v. Mak Yan Tai &Anor [2024] 5 MLRA 791; [2024] 5 MLJ 460; [2024] 8 CLJ 190 (refd)*
*Si Rajah &Anor v. Dato Mak Hon Kam &Ors (No 2) [1993] 3 MLRH 421; [1993] 3 MLJ 741; [1994] 1 CLJ 215; [1993] 2 AMR 3047 (refd)*

**Legislation referred to:**
Limitation Act 1953, ss 6(1)(a), 29
Rules Of Court 2012, O 14A, O 18 r 12(1)(a), (b), O 33 rr 2, 5, O 34 rr 1, 9

**Counsel:**
*For the plaintiff: Ng Kian Nam (Chua Yee Soong with him); M/s Ng Kian Nam &Partners*
*For the defendants: Jason Tze-Xi Nathan; M/s Mogan Karupiah*

*[Dismissing Enclosure 65 with costs of RM15,000.00.]*

## JUDGMENT

**Raja Segaran S Krishnan JC:**

### A. Introduction

**[1]** Enclosure 65 is an interlocutory application brought under O 33 rr 2 and 5, read with O 14A and O 18 r 12(1)(a) and (b) of the Rules of Court 2012. By that application, the defendants seek prior determination of several questions arising from the amended statement of claim, including whether five heads of claim are barred by s 6 of the Limitation Act 1953, whether s 29 of that Act is engaged, whether the pleading satisfies O 18 r 12(1)(a) and (b), whether the claim against the 3rd Defendant is maintainable on the pleaded facts, and whether the police and prosecution materials against the 4th Defendant exhibited by the defendants have any legal effect on the maintainability of the

present civil action. The application also seeks consequential orders, including dismissal of the whole action or parts of it, striking out of the claim against the 3rd Defendant, and a stay of the full trial pending disposal of those questions.

**[2]** The Court is not, at this stage, concerned with the ultimate merits of the plaintiff's suit. The question at present is anterior to that. It is whether the matters identified in encl 65 are, in law and in fairness, fit to be severed from the main action and determined in advance on the present interlocutory record.

## B. Material Facts and Procedural History

**[3]** The suit was commenced by writ on 8 December 2023. The amended statement of claim pleads that the plaintiff paid monies to or for the benefit of the defendants in a series of transactions over a period of years. The causes of action pleaded include fraud, misrepresentation and unjust enrichment. The total sum claimed is RM4,488,980.00.

**[4]** On the face of encl 65, the defendants identify five heads of claim as allegedly barred by s 6 of the Limitation Act 1953, namely the Baba Nyonya Resort transaction, the friendly loan, the Brunei monies, the alleged investment in D4 shares in Hong Kong, and the porcupine investment. The application further contends that s 29 of the Limitation Act 1953 does not assist the plaintiff, that the pleading does not satisfy O 18 r 12(1)(a) and (b), that the claim against the 3rd Defendant discloses no proper pleaded basis, and that the whole action should in consequence be dismissed or materially reduced.

**[5]** The affidavit record shows that the plaintiff's case is not pleaded merely by reference to dates of payment. The case pleaded is that the defendants procured the payments through representations and inducements, that the monies were not returned, and that the plaintiff only later realised that the defendants had acted fraudulently. The plaintiff's position on the affidavits is that discovery of the relevant wrongdoing occurred later, and that s 29 is engaged on the facts pleaded.

**[6]** The record further shows that by the time encl 65 was filed, the action had long moved beyond the initial pleading stage. The writ was filed on 8 December 2023. Case management directions had been given for closing of pleadings and for interlocutory applications. Enclosure 65 was only filed on 3 March 2026. The action had already been fixed for full trial on 1 July 2026.

**[7]** The materials before the court also include police and prosecution correspondence exhibited by the defendants, recording that the case against the 4th Defendant had been classified as no further action.

**[8]** The issues to be tried already settled in the action include whether, between about 2013 and 2021, the defendants fraudulently induced the plaintiff to make various payments, and whether limitation should be computed from the dates of payment. That procedural context is material because it shows that

the pleaded controversy already extends beyond a simple calendar question.

## C. Issues for Determination

**[9]** The issues which arise for determination are these:

(a) whether the questions raised in encl 65 are suitable for prior determination under O 33 r 2 or O 14A;

(b) whether the limitation issues, including the plaintiff's reliance on s 29 of the Limitation Act 1953, can be determined on the present record without trial;

(c) whether the complaints made under O 18 r 12(1)(a) and (b) are capable of disposing of the whole action or any severable part of it at this stage;

(d) whether the claim against the 3rd Defendant is suitable for separate disposal on the present interlocutory record; and

(e) whether the materials relating to the police investigation and the no-further-action decision have any determinative bearing on the maintainability of the present civil action.

**[10]** The first issue is dispositive. If the identified questions are not fit for prior determination, the application fails.

## D. Statutory and Legal Framework

### Order 33 Rules 2 and 5

**[11]** Order 33 rule 2 confers power on the court to order any question or issue arising in a cause or matter, whether of fact, of law, or partly of both, to be tried before, at, or after the trial of the cause or matter. Order 33 rule 5 provides that if the decision of such separately tried question or issue substantially disposes of the cause or matter or renders the trial unnecessary, the court may dismiss the cause or matter or make such other order or give such judgment as may be just.

**[12]** The power is broad, but it is not unconfined. It is not enough that a question can be articulated as one of law, or as one capable of separate formulation. The Court must be satisfied that the issue is sufficiently precise, sufficiently self-contained, and sufficiently fit for prior determination that trying it separately will truly save time and cost rather than duplicate the work of the full trial.

**[13]** In *Petroleum Nasional Bhd v. Kerajaan Negeri Terengganu &Another Appeal* [2003] 1 MLRA 582; [2004] 1 MLJ 8; [2003] 4 CLJ 337; [2003] 5 AMR 696, the Court of Appeal reiterated the observations in *Si Rajah &Anor v. Dato Mak Hon Kam &Ors (No 2)* [1993] 3 MLRH 421; [1993] 3 MLJ 741;

[1994] 1 CLJ 215; [1993] 2 AMR 3047 that, as a general rule, the court will exercise its power under O 33 r 2 only if trial of the question will result in substantial saving of time and expenditure, and that such an order should not be made where obscurity of fact or law means that the matter ought properly to be decided at trial. The question should also be carefully and precisely framed. *Krishnan Rajan N Krishnan v. Bank Negara Malaysia &Ors* [2002] 3 MLRH 438; [2003] 1 MLJ 149; [2003] 1 CLJ 388; [2003] 1 AMR 518 likewise emphasises that an O 33 application may not be appropriate where facts are in dispute or where extrinsic evidence is required, and that the overriding consideration is whether the application would result in a substantial saving of time and expenditure.

## Order 14A

**[14]** Order 14A permits determination of a question of law or construction of a document at any stage of the proceedings where the court is satisfied that the question is suitable for determination without the full trial of the action and that such determination will finally determine the entire cause or matter or any claim or issue therein. The mere fact that a question is couched in legal language does not make it suitable for O 14A. If its answer depends on disputed facts, inferential findings, or factual evaluation that properly belongs to a trial, the threshold for O 14A is not met.

## Limitation Act 1953

**[15]** Section 6(1)(a) of the Limitation Act 1953 prescribes a six-year period for actions founded on contract or tort. Section 29 postpones the commencement of limitation in cases of fraud until the plaintiff has discovered the fraud or could with reasonable diligence have discovered it. The legal effect of s 29 is therefore fact-sensitive. It requires the court to identify not merely the date of an earlier transaction, but the point of discovery, the existence and character of any concealment, and whether earlier discovery was reasonably possible.

**[16]** It follows that while limitation may in some cases be determined as a preliminary issue, that is only appropriate where the material facts necessary to decide accrual and postponement are admitted, incontrovertible, or otherwise capable of determination without the factual inquiry reserved for trial.

## Order 18 Rule 12(1)(a) and (b)

**[17]** Order 18 rule 12(1)(a) and (b) requires that where a party relies on misrepresentation, fraud, breach of trust, wilful default or undue influence, the necessary particulars must be specifically pleaded. So too where a party alleges any malice, fraudulent intention or other condition of mind except knowledge, particulars of the facts relied on must be pleaded.

**[18]** The purpose of the rule is fair notice. A case in fraud must not be pleaded vaguely or formulaically. But the rule does not justify reading a pleading atomistically, nor does it permit the court to ignore the factual narrative of the statement of claim as a whole.

**[19]** In *Setiakon Engineering Sdn Bhd v. Mak Yan Tai &Anor* [2024] 5 MLRA 791; [2024] 5 MLJ 460; [2024] 8 CLJ 190, the Federal Court recognised that the absence of the word "fraud" is not necessarily fatal if the particulars of the fraudulent and deceitful acts are properly pleaded and disclosed in substance. The inquiry is therefore substantive and contextual, not merely verbal.

## Preliminary Observation on Timing and Procedural Posture

**[20]** The present application was filed after pleadings had closed, after pre-trial case management steps had been undertaken, and after the action had already been fixed for full trial. That procedural setting does not, by itself, render the application incompetent. O 33 r 2 expressly permits a question or issue to be tried before, at or after trial. But once proceedings have reached that stage, the court must examine with greater care whether the proposed interlocutory intervention is properly to be entertained then, having regard to the structure of the rules, the existing trial framework, and the requirement that proceedings be managed justly, expeditiously and economically.

## Late Interlocutory Application After the Action Has Matured for Trial

**[21]** In that situation, the inquiry is not exhausted by showing that the court still has power to hear the application. The further question is whether, in light of its timing, the application remains suitable to be entertained and determined at that stage of the proceedings.

**[22]** The first consideration is whether the point now raised was, in substance, capable of being raised earlier. Under O 34 r 1, the court may direct parties to attend case management so that interlocutory matters may, so far as possible, be dealt with and directions given for the future course of the action in a manner best adapted to secure its just, expeditious and economical disposal. Order 34 rule 9 reflects the procedural expectation that matters capable of interlocutory disposal should, so far as practicable, be raised at the first pre-trial case management.

**[23]** The second consideration is whether a satisfactory explanation has been given for the delay. It is not enough merely to point to the existence of power under O 33 or O 14A. The real question is why this application, on this material, in this action, was not brought when it reasonably could and should have been brought.

**[24]** The third consideration is whether the application remains substantively suitable for separate disposal at that stage. If reliance is placed on O 14A, the court must be satisfied that the issue is suitable for determination without full trial and that such determination will finally determine the relevant cause, matter, claim or issue. If reliance is placed on O 33 rr 2 and 5, the court must be satisfied that separate determination will substantially dispose of the cause or matter or render the trial unnecessary.

**[25]** The fourth consideration is the degree of disruption that the late

application would cause to the existing trial structure. By that stage, directions will ordinarily already have been given as to pleadings, issues to be tried, bundles, witness statements and trial dates. A late application which cuts across that structure may result in duplication of preparation, wasted costs, fragmentation of the trial, or adjournment pressure. Those matters bear directly on whether entertaining the application would still serve the orderly disposal of the proceedings.

**[26]** The fifth consideration is whether the lateness is explicable by some supervening development, such as a recent amendment, newly available material, or some circumstance that genuinely could not have been raised earlier. If not, and if the point was already apparent from the pleadings, affidavits, or established structure of the case, the absence of a satisfactory explanation weighs materially against the exercise of discretion in favour of the applicant.

**[27]** The sixth consideration is costs. Where a late interlocutory application occasions unnecessary expense or delay, the court is entitled to reflect that in costs. The rules do not require the court to treat such an application as a nullity. But they do permit the court to control such practice through a firm exercise of discretion and, where appropriate, through an order as to costs proportionate to the procedural burden caused.

**[28]** The correct position is therefore not that every late interlocutory application must fail, nor that lateness is immaterial. It is that once an action has progressed to an advanced procedural stage, the applicant must satisfy the court not merely that the power exists, but that the application, if entertained then, will still serve the just, expeditious and economical disposal of the action. If it will not, the court is entitled to refuse it.

## E. Analysis and Determination

### Whether the Questions in Encl 65 Are Suitable for Prior Determination

**[29]** Against that background, the present application must be approached by reference to its true legal character. Although framed as a request for prior determination of questions, it seeks in substance to obtain dispositive rulings on major parts of the suit, and potentially the whole action, on the present interlocutory materials. That course is permissible only if the issues identified are truly separable from the factual controversies reserved for trial.

**[30]** The first and most important difficulty is that the proposed limitation questions are not self-contained questions of law. They depend upon the factual structure of the plaintiff's pleaded case. The affidavit record and the pleadings show that the plaintiff's case is not confined to bare dates of payment. It is that monies were paid over time in several transactions, for different purposes, under representations and inducements said to have been made by the defendants, and that the plaintiff only later realised that the defendants had acted fraudulently. Whether that later discovery occurred, when it occurred, what led to it, whether there had been concealment, whether

the plaintiff had earlier reason to suspect fraud, and whether reasonable diligence would have uncovered the position sooner are all matters which go directly to s 29 of the Limitation Act 1953.

**[31]** The defendants contend that para [44] of the amended statement of claim (SOC) is vague and fails to plead when and how each alleged fraud was discovered. Having examined para [44], the court finds that it pleads a single date of discovery (30 March 2023) for all eight transactions spanning from 2013 to 2022. Whether that is sufficient is a mixed question of law and fact. However, the plaintiff also relies on the narrative in the SOC (paras [6]-[43]) to show the sequence of dealings and the alleged concealment. At this interlocutory stage, the court is not satisfied that the pleading is so deficient that no arguable s 29 case is disclosed. Accordingly, the factual disputes remain.

**[32]** Those matters cannot be determined merely by identifying the dates on which particular payments were made. Once s 29 is invoked in a pleaded and arguable way, the court must examine the surrounding circumstances bearing on discovery, concealment, explanation, delay and conduct. In the present case, those matters are disputed on the affidavit record and are already embedded in the issues marked out for trial. The issues to be tried include whether the defendants, between about 2013 and 2021, fraudulently induced the plaintiff to make the impugned payments, and whether limitation should run from the dates of payment. That confirms that the limitation issue is intertwined with matters already reserved for full ventilation at trial.

**[33]** The second difficulty is one of utility. Separate trial under O 33 is justified only if it produces a substantial saving of time and expenditure. Here, it would not. To determine the limitation issue now, the court would still have to examine the sequence of dealings, the alleged representations, the later conduct said to have delayed discovery, and the plaintiff's asserted point of realisation. That would involve a substantial factual inquiry. If the application failed, the action would proceed to trial in any event. If it succeeded only in part, the action would still proceed on the remaining claims. The likely result would therefore be duplication rather than economy. That is the opposite of what O 33 is intended to achieve.

**[34]** That conclusion is reinforced by the stage at which encl 65 was filed. The Court does not proceed on the footing that delay alone bars the application. But timing remains material to discretion. Where an applicant invokes O 33 after the action has matured and trial is imminent, the applicant must demonstrate with particular clarity that the proposed severance will simplify, rather than interrupt, the efficient disposition of the case. On the present facts, that standard is not met.

**[35]** The defendants rely on *Daud Arshad &Ors v. Felcra Berhad* [2019] 6 MLRA 200; [2019] 2 MLJ 33; [2019] 9 CLJ 443 for the proposition that delay is not a bar to an O 33 application, and that such applications may be filed even after trial has commenced. This court accepts that proposition. However, Daud Arshad does not stand for the proposition that timing is irrelevant to the

exercise of discretion. The Court retains discretion to refuse an application if it would not serve the just, expeditious and economical disposal of the action. In this case, the application was filed after pleadings closed, after pre-trial case management, and only three months before trial. The issues raised are intertwined with disputed facts. Granting the application would likely delay the trial, not expedite it.

**[36]** For those reasons, the threshold requirement of suitability under O 33 r 2 and O 14A is not satisfied. On that basis, the application is refused.

## Whether Limitation and Section 29 Can Nonetheless Be Decided Now

**[37]** Even if one looks directly at the limitation issue, the same conclusion follows.

**[38]** The defendants contend that the causes of action accrued when the plaintiff made the impugned payments, and that six years had expired before the writ was filed. That may eventually prove correct in whole, in part, or not at all. But it is not a proposition that can be accepted at this stage as a matter of legal inevitability.

**[39]** The difficulty with that position is that it assumes the very matters which remain disputed. It assumes, first, that accrual is to be fixed simply by reference to payment dates and not by reference to the nature of the pleaded causes of action and the surrounding conduct. It assumes, second, that s 29 cannot apply because the plaintiff's later discovery case is insufficient. It assumes, third, that reasonable diligence necessarily required earlier discovery. None of those assumptions can be resolved fairly on the present record without factual findings.

**[40]** The affidavits relied on by the plaintiff refer to a later realisation of the alleged fraud and to conduct by the defendants said to have prolonged the plaintiff's belief in the legitimacy of the transactions before the truth emerged. Whether that account is proved is a matter for trial. But it is enough to show that the s 29 issue cannot be decided merely by arithmetic.

**[41]** I therefore reject the premise that the limitation defence here is suitable for prior summary determination. In the circumstances of this case, limitation is intertwined with disputed matters of fact going to discovery, concealment, inducement and the later conduct of the parties.

## Whether The Pleading Of Fraud Is Fatally Defective Under Order 18 Rule 12

**[42]** The next question is whether the amended statement of claim is so deficient in its pleading of fraud and fraudulent misrepresentation that the action, or substantial parts of it, should now be terminated.

**[43]** Fraud must be specifically pleaded. That is elementary. A party is entitled to know the case it must meet. But the rule does not authorise the court to examine one paragraph in isolation and ignore the structure of the pleading as

a whole.

**[44]** On a fair reading of the SOC the plaintiff has pleaded the transactions, the payments said to have been made, the amounts, the alleged purposes, the parties involved, the alleged inducements and the eventual non-return of the monies, together with a later realisation that the defendants had acted dishonestly. The plaintiff also pleads alternative causes of action including misrepresentation and unjust enrichment.

**[45]** The Court has examined paras [6]-[11] (Baba Nyonya Resort), [12]-[14] (friendly loan), [15]-[18] (Brunei monies), [24]-[26] (Hong Kong shares), and [38]-[43] (porcupine investment). In each section, the plaintiff pleads the date, amount, recipient, alleged representation, and the eventual failure to return the monies. Paragraph [44] pleads that the plaintiff realised the fraud on 30 March 2023. While the pleading could be more precise, particularly as to the specific role of each defendant, the court is satisfied that the defendants have sufficient notice of the case they must meet.

**[46]** That is not the same as saying that the pleading is beyond criticism. The defendants are entitled to say that particular allegations should have been stated with sharper precision, or more distinctly linked to particular defendants, or more closely tied to specific dates and events. But those criticisms do not justify the conclusion that the pleading discloses no legally sustainable claim and that the matter should therefore be disposed of under O 33.

**[47]** In my judgment, the SOC contains a sufficient factual narrative to show the material basis of the plaintiff's case. Whether the pleaded facts are ultimately proved is a different question. Whether particular portions of the pleading should later be refined or further particularised is also a different question. But the present application does not establish a pleading failure of such a character as to justify dismissal of the action at this stage.

**[48]** The reasoning in Setiakon Engineering supports that approach. The proper inquiry is whether the substance of the fraudulent conduct is pleaded, not merely whether the pleading satisfies a mechanical verbal formula. On that approach, the present pleading is not fatally defective on its face. The application to strike out for non-compliance with O 18 r 12 is therefore refused.

## The Claim Against the 3rd Defendant

**[49]** The application also seeks dismissal of the action against the 3rd Defendant on the footing that no sufficient facts are pleaded against him.

**[50]** That issue cannot be detached from the structure of the SOC and the factual allegations said to connect each defendant to the disputed transactions. It is true that where several defendants are sued, the pleading must identify the conduct attributed to each of them with sufficient clarity. But whether the plaintiff has failed so fundamentally in relation to the 3rd Defendant that the

claim against him should be summarily terminated is not a question suitable for prior determination under the present application.

**[51]** The SOC pleads at para [13] that the plaintiff paid RM1,510,000.00 into 3rd Defendant's bank account for the purpose of onward transmission to 2nd Defendant. At para [15], the SOC pleads that 3rd Defendant was the joint owner of a safety deposit box containing B$397,000.00. The plaintiff does not plead any fraudulent representation or dishonest conduct specifically by 3rd Defendant. However, the plaintiff also pleads unjust enrichment against all defendants. Whether 3rd Defendant is personally liable for fraud or unjust enrichment is a question that cannot be determined on the present interlocutory record without examining the totality of the evidence. The claim against 3rd Defendant is not so obviously devoid of merit that it should be struck out at this stage.

**[52]** The materials do not establish that the claim against the 3rd Defendant is devoid of any pleaded foundation. What is sought is, in substance, a merits assessment of the adequacy and reach of the transaction-specific pleading against him. That inquiry is not properly undertaken in the abstract under the rubric of preliminary issues when the wider factual case remains for trial.

**[53]** There is a further consideration. The affidavit record also shows that the plaintiff's case is not confined only to fraud, but includes unjust enrichment and misrepresentation. The Court should therefore be slow, at this stage, to equate every criticism of the fraud pleading with the conclusion that no cause of action remains maintainable against the 3rd Defendant at all.

### The Effect of the Police Investigation and the No-Further-Action Decision

**[54]** The application also relies on the fact that the police and prosecution authorities took no further action against the 4th Defendant. That material does not advance the application in any determinative sense.

**[55]** A decision not to prosecute, or to take no further action, does not extinguish a civil cause of action. The criminal process and the civil process serve different legal functions, proceed by different standards, and may reach different outcomes on the same broad factual background. The absence of criminal proceedings therefore does not determine whether a civil claim in fraud, misrepresentation, unjust enrichment or recovery of money is maintainable.

**[56]** The Court therefore cannot treat the no-further-action material as a basis for disposing of the present action or any severable part of it at this interlocutory stage. Whether those documents are admissible, what weight they carry, and what follows from them, if anything, are separate matters. They do not transform this civil action into one suitable for prior disposal under O 33 or O 14A.

## F. Conclusion

**[57]** The dispositive issue in encl 65 is whether the identified questions are suitable for prior determination under O 33 r 2 or O 14A.

**[58]** They are not. The proposed limitation and s 29 issues are intertwined with disputed facts central to the pleaded controversy. Their determination would require the court to engage with matters of inducement, concealment, discovery, later conduct and reasonable diligence that are not capable of fair resolution on the present interlocutory record.

**[59]** The complaints under O 18 r 12 do not establish a pleading defect of such finality as to justify summary disposal of the whole action or any major part of it at this stage. The claim against the 3rd Defendant is likewise not suitable for severed determination under the present application.

**[60]** The materials concerning police investigation and no further action do not affect the maintainability of the present civil action.

**[61]** The application therefore does not satisfy the threshold conditions for separate prior determination.

## G. Orders of the Court

**[62]** The Court accordingly makes the following orders:

1. Enclosure 65 is dismissed.

2. The prayers in encl 65 for prior determination of the identified questions under O 33 r 2 and O 14A are refused.

3. The prayers in encl 65 for dismissal of the whole action, dismissal of the identified heads of claim, striking out of the claim against the 3rd Defendant, and stay of the full trial are refused.

4. The action shall proceed to trial on the dates fixed, subject to any further case management directions of the court.

5. Costs of encl 65 are awarded to the plaintiff in the sum of RM15,000.00.