

Breach of Contract: Filing Small Claims at the Magistrate Court in Malaysia

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Abstract

Small-claim courts were established to assist ordinary people easily and affordably settle small claims and were intended to be fairly proceeding. In Malaysia, each claim in this proceeding is limited to the value of MYR5000 and lawyers may not represent neither the plaintiff nor the defendant. Although the small-claim court made it easy for ordinary people to file their claims, it was not popular as magistrates in the ordinary courts still heard cases that did not appear to be friendly to the layman. The objective of this study is to investigate the legal discussion of small claim proceeding in a Magistrate Court and the kinds of recovery of debts in breach of contract that could be brought before the trial. To achieve the aim of this paper, a doctrinal legal research methodology is used by adopting a library-based research through conceptual analysis as well as content analysis. This paper obtained secondary data of the primary sources from Contracts Act 1950, Rules of Court 2012 and a case study involving small claim proceeding in Magistrate Court of Tapah, Perak. It is hoped that this paper will contribute to a body of knowledge in understanding the process of recovery of debts below MYR5000 by mechanism of small claim proceeding in a Magistrate Court in Malaysia.

Keywords: Magistrate Court, Small Claim, Contracts, Recovery of Debts, Procedure

Introduction

Contract is a negotiating transaction involving a party known as the offeror and offeree. Once both parties agree with the terms of an agreement, the legal relationship will be established and bound on them. Contract law in Malaysia is mainly regulated and enforced by the Contracts Act 1950 ("CA 1950"). Section 9 of the CA 1950 states *"so far as the proposal or acceptance of any promise is made in words, the promise is said to be express. So far as the proposal or acceptance is made otherwise than in words, the promise is said to be implied"*. A contract is an agreement between the parties in order to perform a specific work or job and usually governed by a written agreement. It is important to consider that contracts are not limited to written form. Instead, contracts can be either written, oral or combined. According to Hartley (2016), despite not being as common as written agreements, oral agreements can still create contractual relationships. If one party breaches the agreement, a legal action may be taken by the injured party. It would be unfair for a court to compel the performance of a contract on the basis of ambiguous terms interpreted by the court, as the court may erroneously order what the parties have never intended or envisaged. Therefore, by virtue of section 30 of the Contracts Act 1950, the contract terms have to be definite and certain.

However, with regard to the breach of contracts, are the contracting parties aware that the matters can be filed to the small claim proceeding in a Magistrate Court if the claim does not exceed MYR5000? Small claim can be filed by the complainant in the Magistrate Court with certain fees. Parties are not allowed to be represented by a lawyer at the small claims proceeding, although they may consult an attorney outside the court. It is also considered as an alternative way of asserting one legal right when the amount demanded is small in a legal dispute. This study seeks to clarify and discuss contract breach matters not exceeding MYR5000 where the injured party i.e. the claimant known as plaintiff can claim the amount against the wrongdoer known as the defendant from the Small Claim Court. The small claim proceeding is not represented by the legal practitioner i.e. lawyer but the injured party will represent himself in court. Not so many contracting parties, however, know about Malaysia's Small Claim proceeding, the procedure and the law apply. With regard to this issue, the purpose of this study is to investigate the legal discussion of small claim proceeding in a Magistrate Court and the kinds of breach of a contract that could be brought before this trial.

Methodology

This paper seeks to discuss a small claim proceeding in a Magistrate Court and the kinds of recovery of debts in breach of contract that could be brought before this trial. This study is using a doctrinal legal research or otherwise known as a methodology of pure legal research. This paper adopts a research methodology based on libraries through conceptual analysis as well as content analysis and legal doctrinal analysis. According to Hutchinson (2015), this 'conceptual analysis critique' is based on an understanding of the rules of precedent between the courts, the rules of statutory interpretation, the tacit knowledge of discipline, such as the difference between civil and criminal jurisdictions, and various tests of liability, along with the recognized methods of reasoning, taken from philosophy and logic, such as induction and deduction. Doctrinal research is a study of a doctrine of law and practice and is largely documented. This library-based research was conducted to find for the process and procedure of small claim court action. This study gathered data from primary and secondary sources and analysed it. The secondary data consisted of the primary sources, which included

the Contracts Act 1950 and Rules of Court 2012. In addition, this paper was obtained from one case study involving small claim proceeding in Tapah, Perak. The secondary sources included books, law reports, articles in academic journals, and online databases.

Discussion

Even before the rules were put in place, the Malaysian experiment with a small claim procedure began. Then, the supervisory judge of the subordinate judiciary in Selangor and the Federal Territory, Justice Harun Hashim, announced initiatives for a “quick, simple and cheap” remedy. The special arrangement would follow the lower court procedures and simplify them as it progressed (Rachagan and Sothirachagan, 2018). In the Magistrate Court, small claims proceedings are heard (McKenzie, 2011). In Malaysia, small claims are where the disputed amount or the subject matter's value does not exceed MYR5000 (Choong and Sujata, 2007).

A small claim court is a statutory specialized tribunal with particular responsibilities and powers. It is intended to provide a judicial settlement of disputes involving small amounts of money. Its procedure is important for inexpensive, speed and simplicity (John, 1940). The claim started when the injured party completed the prescribed forms and filed them with the tribunal. The claimant is required to state in the prescribed form the amount of the claim and the particulars of the claim, including the dates and basis of the claim. The trial is normally conducted before a Magistrate in the Malay language. If necessary, the parties may request that the proceedings be conducted in English or that an interpreter be present in the Chinese or Tamil language for testimony or submissions to be delivered. McKenzie (2011) deliberate the Magistrate makes an order at the end of the trial, which is an enforceable judgement.

In *Wee Nai Li v. Sarawak Bank Employees Union* [2012] 1 LNS 872, the court explains that the aim of the Small Claim Procedure is to ensure that parties with small claims are not deterred from filing their cases in court due to the high legal costs of hiring lawyers to prepare their pleadings and defend them in court. ‘Small Claims’ is heard in a Magistrate Court where both the plaintiff and defendant will not be represented by lawyers. The rationale is that if an individual was suing for a small claim, he would hardly be able to afford a solicitor's services and would therefore be unrepresented at the hearing. It is also expected that the hearing should be as open as possible and that a minimum of legal expertise should be available (Hashim, 1987).

The kinds of breach of a contract that could be brought before Small Claim Court. The main purpose of contract law is to create a fair, business-friendly, harmonious and co-habitant environment for contracting parties. Contract law minimizes the chances of litigation while protecting the contracting parties' interests (Malik and Ahmed, 2018). Inarguably, the scope of the legal contract will only be applicable when it involves the issue of relationship as well as economic interest between contracting parties (Mitchell, 2009). Generally, a proposal can be done in any form. It can be made orally, in writing, by conduct or by a combination of these methods. Section 9 of the Contracts Act 1950 provides that a proposal made in words (oral or written) is said to be expressed; where a proposal made other than in words, the promise is implied. The law requires that parties enter into contracts with their full and free consent. Free consent is the basis of a contractual relationship. There must be a meeting of the minds

as to the nature and scope of the contract, a *consensus ad idem*. In this context, a reference could be made to Section 13 of the Contracts Act 1950 which reads 'consent' as when two or more parties in the same situation agree on the same issue (Kamal *et al.*, 2017).

If some form of pressure applied improperly on the victim in obtaining the consent, the court may set aside the contract (Farihana, 2019). Section 10 of the CA 1950 provides "*all agreements are contracts if they are made by the free consent of parties competent to contract for a lawful consideration and with a lawful object and are not hereby expressly declared to be void.*" Consent is deemed "free" when it is not caused by coercion, undue influence, fraud, misrepresentation, and mistake. There are a lot of examples of contract law i.e. sales contract, employment contract, loan contract, formal marriage agreement, hire purchase agreement, assigning someone for services such as photographer, tenancy contract and online contract. In Malaysia, there are contract of service and contract for service which have a huge difference in meaning. Contract of service is a contract whereby one individual agrees to hire another as an employee and the other individual agrees to serve the employer as an employee. Meanwhile, a contract for service is not a relationship between the employer and the employee. Usually the person is self-employed or can provide their services at a fee on a freelance basis. He or she is not an employee within the Employment Act definition based on Section 2(1) of the Employment Act 1955.

Fairness seems to require an individual who infringes a contract to pay compensation to the victim of the infringement for the resulting injury (Cooter and Aron Eisenberg, 1985). Only an employee under a contract of service will be entitled to invoke the jurisdiction of the Industrial Court in the event that the employer has violated his rights under the statute. If not, the plaintiff can only seek remedy in a Civil Court for breach of contract (Richard, Janessa and Jia Ling, 2018). In *Wee Nai Li v. Sarawak Bank Employees Union [2012] 1 LNS 872*, high court set aside the order of Magistrate court in small claim proceedings. In this case, the plaintiff wrote a letter to the defendant requesting for the refund of her investment in the sum of MYR2, 110.30 under the benevolent fund on the ground that she had been promoted to a post of operations officer with effect from 1st September 2010. However, the defendant replied that they were unable to refund her contribution paid to the benevolent fund on the ground that she was not promoted as a managerial staff and relied on Rule 3 of the Rules of the Sarawak Bank Employees' Union. Plaintiff subsequently filed her claims at the Small Claim Court on 28th November 2011. Kie, High Court Judge held that the Magistrate's Court has the jurisdiction to hear a claim for RM5, 000.00 or less.

Small Claim Court can hear the case regarding refund of money that is paid for goods that turn out to be faulty, refund of wages or salaries paid for works not done, claim for unpaid commissions, payment of services provided, facilities supplied, or repairs carried out and claims for recovery of debts or liquidated demands. The claims in the small claim court do not exceed MYR5000.00 by virtue of Order 93, Rules 2 of the Rules of Court 2012 ("ROC 2012").

The Procedure at Small Claim Court in Malaysia

The procedure for small claims has been simplified so that parties can make a claim without the need for lawyers. It also means parties do not need to spend lots of money to hire a lawyer to represent them. This makes filing for small claims more worthwhile (Syahredzan, 2017). For someone making a small claim, he or she may obtain the necessary form from the magistrate court registry. The person making the claim, being the plaintiff, must fill in the form with his or her name, identity card number and address and the same details for the person against whom the claim is being made, known as the defendant have to be disclosed in the said form.

The proceeding in a small claim court is governed by Order 93 of the ROC 2012. Order 93 Rules 1(1) of the ROC 2012 states this order shall have effect in proceedings in the Magistrate Court between an individual plaintiff and defendant. By virtue of Order 93 Rules 3 of the ROC 2012, the plaintiff will state the amount and particulars of the claim in Form 198 of the ROC. The plaintiff will file four copies of Form 198 in Magistrate Court and pay the prescribed fees of Ringgit Malaysia Ten only as filing fee. The plaintiff will extract sealed copies of Form 198 from court and serve a sealed copy of Form 198 to the defendant by personal service or prepaid registered post to the last known address of the defendant. By virtue of Order 93 Rules 6 of the ROC 2012, upon receiving Form 198 from the plaintiff, if the defendant intends to dispute the claim, he may file four copies of his defence in Form 199 of ROC within 14 days after service of Form 198. Form 199 shall contain particulars as to why the defendant dispute the claim and counterclaim (if any). The defendant has to serve a copy of Form 199 to the plaintiff.

If the plaintiff did not receive a Form 199, the court may give judgment for the plaintiff. If the plaintiff received a counterclaim in a Form 199, he shall have to file a defence to such counterclaim in Form 200 of ROC. Where the defendant is absent at the hearing, judgment shall be entered for the plaintiff. If the plaintiff is absent at the hearing, judgment shall be entered for the defendant. If both parties appear in court, after the hearing, the court shall give a decision. Normally, before deciding a case, the court will usually assist the parties in settlement. If the parties cannot settle, the court will consider all documentary and oral evidence and hear argument from the parties. The plaintiff would also need to fill in the form the details and particulars of the claim and how the claim came about. Filing must take place within the same district or state at the small claim court as the address of the defendant. In this article, the case study referred to is based on small claim proceeding taken by Part 3 students of Diploma in Accountancy, UiTM Perak Branch, Tapah Campus at Small Claim Court in Magistrate Court, Tapah, Perak. As regards the claim made by the students of UiTM Perak Branch, Tapah Campus against their landlord, four students who were the plaintiffs in this case proceeded with the legal action against two defendants. First defendant promised to return the balance amounting to MYR2240.00 to the plaintiffs, while the second defendant who was named in the claim was the offeror in the agreement (i.e. parties signed the agreement with plaintiffs). Plaintiffs have to stay off campus because of not being given residential colleges by UiTM. They then rented a house near the campus in September 2017. The defendants made an oral promise with plaintiffs to sign the agreement for six months rental and plaintiffs thereby needed to pay a lump sum for the amount they have agreed. However, the dispute arose in October 2017 when defendants used the elements of coercion towards the plaintiffs in signing the agreement. Fraudulently, the defendants also amended

the agreement without informing the plaintiffs. The defendants amended the agreement from six months to a year and the plaintiffs have to pay for one-year rental instead of a six-month rental. Plaintiffs refused to sign and oblige the agreement. The defendants therefore asked plaintiffs to move out from the rental house within just one week. Plaintiffs therefore lodged a police report (Report No: TAPAHROAD/001385/17 and TAPAHROAD/001504/17) since the defendants had received MYR4,100.00 (six-month rental fees and deposit) from the plaintiffs. The defendants refused to return the balance of the payment amounting to MYR2240.00 (balance of four-month rental fees after the plaintiffs vacated the house). The plaintiffs thereto proceeded with a legal action to claim the remaining four-month rental from the defendants. Plaintiffs filed an application using Form 198 against the defendants on 6 November 2017. The defendants then filed Form 199 as statement of defence on 26 December 2017. The magistrate court registered the writ of summons for this case as AD-A77-2-11/2017. In the argument, the plaintiffs referred to the case of Tan Chiw Thoo v. Tee Kim Kuay [1997] 1 CLJ 541, which in this case, Peh Swee Chin FCJ held that fraud, coercion etc. are kinds of conduct which if proved, would vitiate any agreement so as to make it unenforceable.

The defendants stated in their defence via Form 199 that plaintiffs have breached the oral promise and the defendants have used a lot of money to provide a fully-furnished house to the plaintiffs. Other than that, one of the defendants argued that the consequences of the plaintiffs bringing up the case to court made him fall sick. Defendants defended that plaintiffs were not cooperative to settle this problem. Both plaintiffs and first defendant were heard in the Small Claim Court on 22 January 2018. The magistrate ruled that the defendants had breached the contract by demanding the plaintiffs to vacate the said premise and court held that the defendants have to pay the plaintiffs a sum of MYR2240.00 with cost of MYR100.00. By referring to the case study above, if both parties understand the flows of the proceeding and can represent themselves in court with the evidence supported for their case, the proceeding taken in the small claim court is easier. The party to the contract is entitled to sue and be sued under a small claim proceeding if any party violates the agreement because the contract is legally binding on the parties concerned (Farihana, Irawaty and Anuar, 2019). In addition, there are many types of contracts where the innocent party can demand in court if it is not possible to achieve the negotiation. However, the amount of demand for the small claim court should not exceed MYR5000.

Conclusion

The small claim court has successfully provided innocent party with a good alternative redress mechanism at first glance, which is cheap, fast, and relatively informal. To note, small claim courts help to cater specific problems and it is beneficial for the public to settle their claims in a speedier and cheaper way as compared to ordinary courts. It is important to point out that in order to recover debts below MYR5000, people can go through a court without spending too much money, and the court will tolerate the hearing process when laymen represent themselves with good faith. Hence, this paper recommends a clear procedure of filing in the small claim court so that the rights of every entitled person may be protected by adhering to the principles of law itself.

Observation

From the observation made, Malaysia has recognized the concept of refund in cases where there is a breach of contract by any of the contracting parties. The rationale of this principle is to protect the rights of innocent party in the said contract. There are numerous disputes brought before this small claim court, namely refund of money that has been paid for goods that turn out to be faulty, refund of wages or salaries paid for unfinished works, claim for unpaid commissions, payment of services and facilities supplied or repairs carried out and claims for recovery of debts or liquidated demands. In this context, if the said breach of contract does not exceed MYR5000, an applicant may file his action with the small claim division as its execution is more efficient and relevant to the public.

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