AUTHENTIC PATISSERIE SUPPLIES SDN BHD

v.

ARYZTA FOOD SOLUTIONS MALAYSIA SDN BHD

MAHKAMAH SESYEN, KLANG
NURUL MARDHIAH MOHAMMED REDZA SJ
[SUIT NO: BL-A52NCVC-78-08-2023]
11 MARCH 2026

TORT: *Vicarious liability – Employer and employee – Fraudulent acts of employee – Credit Controller extracted competitor's CTOS report using forged letter of consent and fabricated company stamp – Whether fraudulent act committed under direction, approval and authorisation of company – Whether wrongful acts committed in course of employment – 'Close connection' test – Employer provided employee with tools and access to CTOS subscription account – Whether internal disciplinary action absolved employer of liability – Whether fair and just to impose liability on employer – Whether competitor exposed to risk of proprietary harm – Whether damages ought to be awarded*

TORT: *Fraud and forgery – Extraction of private credit information – Unauthorised extraction of CTOS report – Forgery of digital signature and company stamp – Whether company could claim ignorance of method of extraction – Implausibility of lack of knowledge when statutory/contractual consent known prerequisite – Whether fraudulent act committed under direction, approval and authorisation of company – Whether wrongful acts committed in course of employment – 'Close connection' test – Employer provided employee with tools and access to CTOS subscription account – Whether internal disciplinary action absolved employer of liability – Whether fair and just to impose liability on employer – Whether competitor exposed to risk of proprietary harm – Whether damages ought to be awarded*

DAMAGES: *Nominal damages – Injuria sine damno – Infringement of legal rights without proof of actual financial loss – Breach of privacy and credit rights – Quantum of nominal damages – Special damages – Requirement for special damages to be strictly pleaded and proven – Failure to provide documentary evidence of reputational damage*

The plaintiff was a company involved in, amongst others, the business of retail sale of bakery products and sugar confectionary, wholesale of biscuits, cakes, breads and other bakery products. The defendant was involved in the business of producing and exporting frozen dough and other bakery products. At all material times, PW1 together with Leong Kei Kei ('Leong') were founders, directors and shareholders of the plaintiff. Prior to the establishment of the plaintiff, PW1 and Leong were the employees of the defendant wherein the last position PW1 held in the defendant was the sales and marketing director of the defendant while the last position that Leong held in the defendant's company was the senior trade marketing executive. PW1 and Leong refused to follow the relocation of the defendant's company to Pulau Indah. Due to the refusal, the employment of PW1 and Leong was terminated by the defendant. Subsequently, the plaintiff was established. PW1 and Leong had received a letter of cease and desist from the defendant. In the said letter, the defendant alleged that PW1 and Leong had directly contravened the express and implied terms of the employment contract with the defendant due to the establishment of the plaintiff. The defendant had demanded for PW1 and Leong to immediately cease and desist from purportedly using confidential information belonging to the defendant which was alleged to have been obtained in the course of PW1's and Leong's employment with the defendant. The defendant had enclosed a copy of the plaintiff's full and complete report extracted from the CTOS Data Systems Sdn Bhd ('CTOS') ('plaintiff's CTOS report'). In reply to the said letter, both PW1 and Leong alleged that the defendant by its conduct in extracting the plaintiff's CTOS report was surprising and highly irregular as the plaintiff had never given its consent for the extraction to be conducted. As such, the plaintiff reserved the rights to take the necessary action. Eventually, the plaintiff discovered that the defendant possessed the plaintiff's CTOS report without authorisation given by the plaintiff to the defendant to extract the same from CTOS. The plaintiff made a complaint to CTOS, to inform CTOS in respect of the unauthorised extraction of the plaintiff's CTOS report by the defendant. The plaintiff also requested CTOS to take the appropriate action against the defendant arising from the defendant's unauthorised extraction of the plaintiff's CTOS report. CTOS later conducted an internal investigation and subsequently suspended the defendant from further access to any credit reports with immediate effect. In furtherance, CTOS informed the plaintiff that the plaintiff's CTOS report was released upon prior consent confirmation received from the defendant. CTOS also reiterated that the plaintiff's CTOS report was issued based on the defendant's confirmation on the plaintiff's written consent. Following that, CTOS provided the purported consent letter dated which plaintiff alleged to be a forged consent letter ('forged consent letter'). The forged consent letter essentially gave consent and/or authorisation for CTOS to release the plaintiff's CTOS report to the defendant, which contained the personal data of the plaintiff as well as its directors and shareholders. It contained PW1's signature, which PW1 had never affixed and a company stamp that was not the plaintiff's. PW1 then lodged a police report in respect of the incident arising from the forged consent letter. The letter of demand was issued to the defendant upon the plaintiff's discovery of the fraud and/or forgery committed by the defendant. Arising thereof, the defendant had wrongfully and/or illegally and/or fraudulently obtained the plaintiff's CTOS report. The plaintiff demanded, *inter alia*, for a cease and desist from forging the plaintiff's signature and to surrender the fabricated company stamp. The defendant essentially took the position that the extraction of the plaintiff's CTOS report was unauthorised and was committed by their employee, DW2, on his own frolic. However, the defendant also took the position that they would not fulfil the demand of the plaintiff for an apology as well as the monetary compensation. The plaintiff filed a writ of summons and the statement of claim against the defendant, claiming, *inter alia*, for (i) a declaration that the defendant had committed fraud; (ii) an injunction restraining the defendant from exploiting or forging the signature or digital signature of the plaintiff's director; (iii) an injunction compelling the defendant to take out an advertisement in three separate local newspapers to apologise to the plaintiff for its fraudulent conduct; and (iv) special damages, general damages and exemplary damages. The issues that arose were (i) whether DW2 committed the fraudulent act under the direction, approval, authorisation and/or acquiescence of the defendant or acted on his own frolic and volition and without the authority and/or instructions of the defendant; (ii) whether the defendant was vicariously liable to or accountable to the plaintiff for the fraudulent act; (iii) whether the fraudulent act committed by DW2 could be considered as an action under the ordinary course of employment; (iv) whether the nature and scope of the DW2's work was such that members of the public including the plaintiff was exposed to the risk of propriety harm; and (v) whether the plaintiff was entitled to general and special damages and whether it had been proven by the plaintiff.

Held (allowing plaintiff's claim with nominal damages in sum of RM20,000):

(1) DW2 had extracted the plaintiff's CTOS report by submitting a forged letter of consent bearing the PW1's digital signature and the fabricated company stamp of the plaintiff. It was an undeniable fact that DW2 had received an instruction from DW1 to extract the plaintiff's CTOS report after DW1 learned about the risk of the plaintiff who was believed to have been soliciting with the defendant's clients. The evidence of DW1 that he was not aware of the method used by DW2 in extracting the CTOS report of the plaintiff was unacceptable. DW1 had agreed at all material times, since the commencement of DW1's employment with the defendant, DW1 knew that to extract a full CTOS report, it required consent. It was implausible for DW1 to not have known that the extracted CTOS report of the plaintiff which DW1 received was made without the letter of consent of the plaintiff since DW1, at all material times, knew the requirement to extract the CTOS report of the plaintiff. (paras 48-51)

(2) If the extracted CTOS report was not what had been instructed and expected by DW1, DW1 and the defendant would not have proceeded to instruct the defendant's solicitor to issue letters of cease and desist against PW1 and Leong wherein the CTOS report of the plaintiff had been attached to support the notice. This was no ordinary action for any

Head of Finance or any Director to be cavalier in safeguarding the company's interest. Therefore, the contention made by DW1 that DW1 only knew that the extraction was made without the plaintiff's written consent was inadmissible. The evidence given by DW1 was contradictory, inconsistent and unreliable. (para 54)

(3) DW2 had commenced his employment with the defendant as Credit Controller of the defendant. Therefore, at all material times, DW2 was under the employment of the defendant and that the fraudulent acts committed by DW2 were well within the course of DW2's employment with the defendant. Among others, DW2 was responsible to conduct searches on companies who apply credit term with the defendant. It was part of DW2's job description to extract the CTOS report on any potential customer or any competitor companies. The plaintiff's company was a competitor company to the defendant. It was a nature of the DW2's employment and job scope in extracting and purchasing a CTOS report of any intended company including the competitor company as instructed by the defendant. DW2's wrongful action was done in the course of employment and in executing his duties as a Credit Controller of the defendant. There was a close connection between the wrongful act committed by DW2 with his role as a Credit Controller of the defendant. (paras 59-62)

(4) By fabricating and forging the letter of consent of the plaintiff, the plaintiff's financial standing and legal index and other private information of the plaintiff's company was at stake. It created a real risk of harm to the credit rights and privacy to the public, as well as exposing CTOS to liability under s. 24(1) of the Credit Reporting Agencies Act 2010. The defendant had created a risk by employing D2 and providing D2 with powers, tools and unlimited access to the defendant's subscription account with CTOS. The 'close connection' test adopted by the case of *GMP Kaisar Security (M) Sdn Bhd v. Mohamad Amirul Amin Mohamed Amir* held an employer vicariously liable if the tort was so closely connected with the employee's employment that it would be fair and just to impose liability. Even though an internal investigation and a warning letter was issued by the defendant against DW2, it was just an internal management decision that did not exclude the defendant from being vicariously liable to the wrongful acts of DW2. The threshold of four denominators were satisfied and fulfilled as to give rise to the liability on behalf of the defendant against the wrongdoing of its employee. (paras 63-66)

(5) Despite allowing the plaintiff's claims, this court disallowed the claim made by the plaintiff for an apology from the defendant to be advertised in local newspapers. This prayer was not a statutory remedy or court-ordered remedy in cases based on forgery or wrongdoing. An apology serves as a legal remedy in various situations especially in defamation and contempt of court cases. The CTOS report of the plaintiff, which had been extracted by DW2, represented the genuine financial and legal status of the plaintiff and was not a false statement until otherwise proven. Thus, the claim for apology was an excessive demand which should not be allowed. This court deemed it unfit and improper to mitigate damages. Further, the harm done was yet to be proven. (paras 67-69)

(6) The plaintiff failed to demonstrate any injury caused to the plaintiff's pocket by the wrongdoing done by DW2. No documentary evidence or any other evidence to support the alleged reputational damage and emotional distress suffered by the plaintiff. Nevertheless, nominal damages could be awarded in this case where an infringement of a legal right of the plaintiff, also known as *injuria sine damno*. This phrase applied to all cases of breach of contract and torts actionable *per se*. This court therefore allowed nominal damages of RM20,000 to be paid to the plaintiff since there was an infringement of the plaintiff's legal right due to the wrongdoing committed by DW2. Other claims for specific damages was not proven by the plaintiff as special damages must be strictly proven and pleaded. This court disallowed the special damages and only awarded general and nominal damages. (paras 73-77)

Case(s) referred to:

Ahmad Faizal Ahmad Zamzami v. Telekom Malaysia Bhd & Another Appeal [2025] 1 CLJ 347 CA ***(refd)***

CIMB-Principal Asset Management Bhd v. Ketua Pengarah Hasil Dalam Negeri [2022] CLJU 2047; [2022] 1 LNS 2047 HC ***(refd)***

GMP Kaisar Security (M) Sdn Bhd v. Mohamad Amirul Amin Mohamed Amir [2022] 10 CLJ 669 FC ***(refd)***

Kuala Dimensi Sdn Bhd v. Port Kelang Authority [2025] 3 CLJ 497 FC ***(refd)***

Mak Khuin Weng v. Melawangi Sdn Bhd [2016] 8 CLJ 831 CA ***(refd)***

Maslinda Ishak v. Mohd Tahir Osman & Ors [2009] 6 CLJ 653 CA ***(refd)***

Poratha Corporation Sdn Bhd v. Technofit Sdn Bhd [2019] CLJU 941; [2019] 1 LNS 941 CA ***(refd)***

Syarikat Kemajuan Kuari (M) Sdn Bhd v. Su Abdullah & Anor [2003] 1 CLJ 578 HC ***(refd)***

Tan Kwor Ham & Ors v. Lembaga Kumpulan Wang Simpanan Pekerja [2005] 8 CLJ 67 FC ***(refd)***

United Malayan Banking Corporation Bhd v. Palm & Vegetable Oils (M) Sdn Bhd & Ors [1982] CLJ 547; [1982] CLJ (Rep) 358 FC ***(refd)***

Legislation referred to:

Credit Reporting Agencies Act 2010, s. 24(1)

Evidence Act 1950, ss. 58, 114(g)

For the plaintiff - Jenny Ng Juen Yee & Roeshan Gomez; M/s Ng & Gomez

For the defendant - Dharmen Sivalingam & Thanisha Sree Harry; M/s Dharmen Sivalingam & Partners

Reported by Suhainah Wahiduddin

JUDGEMENT
(Enclosure 1)

Nurul Mardhiah Mohammed Redza SJ:

[1] This is my judgement in respect of the plaintiff's claim against the defendant, *inter alia,* for declarations, injunctions, special and exemplary damages due to fraud and forgery committed by the defendant's employee and for vicarious liability against the defendant.

Brief Facts

[2] The plaintiff is a company incorporated under the Company Law of Malaysia with its registered address at A-12-05, Eko Cheras No. 693, Jalan Cheras, Batu 5, 56000 Kuala Lumpur, Wilayah Persekutuan Kuala Lumpur. The plaintiff is involved, amongst others in the business of retail sale of bakery products and sugar confectionery, wholesale of biscuits, cakes, breads and other bakery products.

[3] The defendant is a company incorporated under the Company Law of Malaysia with its registered address at Menara Hap Seng, Tingkat 10, No. 1 & 3, Jalan P Ramlee, 50250 Kuala Lumpur, Wilayah Persekutuan Kuala Lumpur. The defendant is involved in the business of producing and exporting frozen dough and other bakery products.

[4] At all material times, PW1 together with Ms Leong Kei Kei ("Ms Leong") are founders, directors and shareholders of the plaintiff. Prior to the establishment of the plaintiff, PW1 and Ms Leong were the employees of the defendant wherein the last position PW1 held in the defendant was the Sales and Marketing Director of the defendant while the last position that Ms Leong held in the defendant's company was the Senior Trade Marketing Executive.

[5] On or around 30 August 2022, PW1 and Ms Leong refused to follow the relocation of the defendant's company to Pulau Indah. Due to the refusal, the employment of PW1 and Ms Leong was terminated by the defendant and their last day of employment with the defendant was on 30 November 2022. Subsequently, the plaintiff was established on 9 December 2022.

[6] On 28 March 2023, PW1 had received a letter of cease and desist ("the said letter") from the defendant's solicitors, Messrs Dharmen Sivalingam & Partners ("the defendant's solicitor"). In the said letter, the defendant alleged that PW1 had directly contravened the express and implied terms of the employment contract with the defendant due to the establishment of the plaintiff. Subsequently, Ms Leong had received the same letter of cease and desist dated 12 May 2023 from the defendant's solicitor demanding the same.

[7] The defendant had demanded for PW1 and Ms Leong to immediately cease and desist from purportedly using confidential information belonging to the defendant, which was alleged to have been obtained in the course of PW1's and Ms Leong's employment with the defendant. The defendant had enclosed a copy of the plaintiff's full and complete report extracted from the CTOS Data Systems Sdn Bhd ("CTOS") dated 15 March 2023 ("the plaintiff's CTOS report").

[8] In reply to the said letter, both PW1 and Ms Leong alleged that the defendant by its conduct in extracting the plaintiff's CTOS report was surprising and highly irregular as the plaintiff had never given its consent for the extraction to be conducted. As such, the plaintiff reserved the rights to take the necessary action.

[9] Aside from the exchange of correspondences between the PW1, Ms Leong and the defendant's solicitors, there was no legal proceeding until to date initiated and/or complaint filed by the defendant against PW1 or Ms Leong for contravening the express and implied terms of the employment contract with the defendant. Immediately, PW1 and Ms Leong had engaged Messrs Sieh & Ng to request from the defendant with the purported written consent by the plaintiff that the defendant had submitted to CTOS for the extraction of the plaintiff's CTOS report.

[10] The defendant only responded one month later after the plaintiff *vide* its solicitors issued a letter of demand dated 13 July 2023 ("the letter of demand") to the defendant upon discovery of the fraud and/or forgery committed by the defendant, as well as the unauthorised extraction of the plaintiff's CTOS report by the defendant.

[11] Eventually, the plaintiff discovered that the defendant possessed the plaintiff's CTOS report without authorisation given by the plaintiff to the defendant to extract the same from CTOS. The plaintiff then instructed Messrs Sieh & Ng to lodge a complaint to CTOS *vide* the letter dated 10 May 2023.

[12] In the said letter to CTOS, the plaintiff had amongst others, inform CTOS in respect of the unauthorised extraction of the plaintiff's CTOS report by the defendant. The plaintiff had also requested CTOS to take the appropriate action against the defendant arising from the defendant's unauthorised extraction of the plaintiff's CTOS report.

[13] In reply to the complaint, CTOS *vide* its letter dated 19 May 2023 stating amongst others, that pursuant to the CTOS' subscription agreement, there is a strict requirement imposed on its subscriber, the defendant, to procure the consent of the plaintiff before the extraction of the plaintiff's CTOS report. CTOS had later conducted an internal investigation and subsequently suspended the defendant from further accessing to any credit reports with immediate effect.

[14] In furtherance, CTOS informed the plaintiff *vide* letter dated 9 June 2023 that the plaintiff's CTOS report was released upon prior consent confirmation received from the defendant. CTOS also reiterated in its letter that the plaintiff's CTOS report was issued based on the defendant's confirmation on the plaintiff's written consent. Following that, CTOS provided the purported consent letter dated 10 March 2023 which the plaintiff alleged to be a forged consent letter ("the forged consent letter") *vide* CTOS's letter dated 28 June 2023 to the plaintiff's solicitors.

[15] The forged consent letter essentially gave consent and/or authorisation for CTOS to release the plaintiff's CTOS report to the defendant, which contains the personal data of the plaintiff as well as its directors and shareholders. It contained PW1's signature, which PW1 had never affixed and a company stamp that was not the plaintiff's.

[16] The signature contained on the forged consent letter seems like a digital signature that PW1 have used during PW1's employment with the defendant. PW1 have stopped using this digital signature since PW1 left the employment with the defendant. Therefore, the signature contained on the forged consent letter is not a digital signature affixed by PW1. Further, the company stamp contained in the forged consent letter is also not the company stamp of the plaintiff. The genuine company stamp of the plaintiff can be seen at the letter from the plaintiff to CTOS signed on 20 June 2023.

[17] The signature contained therein is forged and/or misused without the plaintiff and/or its director's knowledge and that the company stamp contained therein is not the company stamp of the plaintiff. PW1 then lodged a police report on 30 June 2023 in respect of the incident arising from the forged consent letter.

[18] The letter of demand dated 13 July 2023 was issued to the defendant upon the plaintiff's discovery of the fraud and/or forgery committed by the defendant. Arising thereof, the defendant had wrongfully and/or illegally and/or fraudulently obtained the plaintiff's CTOS report and the plaintiff demanded from the defendant the following:

(i) forthwith cease and desist from forging my signature and/or exploiting and/or utilising my digital signature which is kept in the defendant's system;

(ii) forthwith destroy all documents containing my digital signature and provide the proof of destruction;

(iii) forthwith surrender the fabricated company stamp;

(iv) issue an apology letter in respect of the defendant's conduct in forging and/or misusing my signature and/or digital signature; and

(v) to pay a sum of RM100,000 to the plaintiff due to the damages and losses suffered arising from the fraud and/or forgery committed by the defendant at the interest of the plaintiff.

[19] The defendant responded *vide* its solicitor's letters, both dated 20 July 2023. The defendant essentially took the position that the extraction of the plaintiff's CTOS report was unauthorised and it was committed by their employee on his own frolic. However, the defendant also took the position that they would not fulfil the demand of the plaintiff for an apology as well as the monetary compensation.

[20] Due to the defendant's reluctant to cooperate with the demands, the plaintiff finally filed a writ of summons and the statement of claim on 25 August 2023 against the defendant claiming the following prayers:

(i) a declaration that the defendant had committed fraud in forging and/or falsifying the consent form dated 10 March 2023 submitted by the defendant to CTOS without the knowledge of the plaintiff for the fraudulent and/or wrongful extraction of the plaintiff's CTOS report;

(ii) a declaration that the defendant had forged and/or misused the signature and/or the digital signature of the plaintiff's director, Mr Oh Her Shiu in the consent form dated 10 March 2023;

(iii) a declaration that the defendant had fabricated and/or counterfeited the company stamp of the plaintiff and affixed the fabricated and/or counterfeited the company stamp of the plaintiff on the consent form dated 10 March 2023;

(iv) an injunction restraining the defendant whether by itself, its employees, servants, agents and/or third parties or otherwise howsoever from exploiting, misusing and/or forging the signature and/or digital signature of the plaintiff's director, Mr Oh Her Shiu maintained and/or kept in the system of the defendant forthwith;

(v) an injunction compelling the defendant to remove and destroy the digital signature and/or any documents containing the digital signature of the plaintiff's directors maintained and/or kept in the system of the defendant forthwith;

(vi) an injunction compelling the defendant to surrender all the physical fabricated and/or counterfeited company stamp of the plaintiff to the plaintiff and/or destroy all the digital fabricated and/or counterfeited company stamp of the plaintiff with proof of the destruction to be submitted to the plaintiff's solicitors within three days from the service of the judgment of this Honourable Court;

(vii) an injunction compelling the defendant to take out an advertisement in three separate local newspapers in the national language, English and Mandarin, of at least the size of 13cm x 10cm, to apologise to the plaintiff for its fraudulent conduct of falsifying the consent form dated 10 March 2023, exploiting and/or misusing and/or forging the signature and/or digital signature of the plaintiff's director, Mr Oh Her Shiu and fabricating and/or counterfeiting the company stamp of the plaintiff by the defendant and to provide copies of the advertisements to the plaintiff's solicitors within 14 days from the service of the judgment of this Honourable Court;

(viii) special damages in the sum of RM100,000;

(ix) general damages;

(x) exemplary damages;

(xi) costs on indemnity basis together with interest thereon; and

(xii) such further and/or other reliefs as this Honourable Court deems fit and just.

[21] In rebuttal, the defendant had later filed the statement of defence dated 9 July 2024 stating the followings:

(i) in around 2022, the defendant had made a business decision to close down the defendant's operations located in Bangi whereby the defendant's operation is relocated to its new premises located in Pulau Indah, Klang. At all material times, it was the defendant's intention that all of its employees impacted by the defendant's relocation would be relocated to the new premises in Pulau Indah;

(ii) however, PW1 and Ms Leong rejected the defendant's offer of transfer. Accordingly, the defendant issued a letter, notice of termination due to the closure of operations at Arryzta Bangi dated 30 August 2022 to PW1 and Ms Leong respectively, stating that, *inter alia*, their respective termination dates were 30 November 2022 and also reminding PW1 and Ms Leong that they had a continuous obligation;

(iii) in early 2023, the defendant found out that PW1 and Mr Leong had established a company, namely the plaintiff and that PW1 had been in contact with some of the defendant's clients. In order to obtain confirmation, the defendant verbally instructed one of its employees, Mr Soo Wai Hoong/DW2 ("the said employee") to extract a report from CTOS Data Systems Sdn Bhd ("the said CTOS report") regarding the plaintiff;

(iv) at all material times, the employee did not obtain the defendant's consent as to the manner and/or method of obtaining the said plaintiff's CTOS report where it was expected that the employee would obtain the CTOS report in the correct and lawful manner and/or method, but the defendant was unaware that the employee was doing so wrongfully;

(v) from the plaintiff's CTOS report, the defendant found that there was a substantial similarity between the defendant's business and the plaintiff's business. As this was contrary and/or inconsistent with the employment contract and/or continuous obligation of PW1 and Ms Leong, the defendant issued a letter of cease and desist dated 28 March 2023 to PW1 and Ms Leong to remind them on their continuous obligation;

(vi) thereafter, PW1 contacted DW1, the defendant's Director/Chief Financial Officer and represented that PW1 wished to resolve the matter amicably. In good faith, DW1 agreed to meet with PW1 on 4 April 2023 and 12 April 2023, where all parties agreed to hold a meeting on 26 April 2023. During the meeting, PW1 and Ms Leong would present their business plan to the plaintiff as stated in the defendant's letter dated 19 April 2023;

(vii) however, on 12 May 2023, PW1 and Ms Leong, through their respective solicitor, stated, *inter alia*, that the plaintiff never gave consent to the defendant to extract the plaintiff's CTOS report and therefore, they made a complaint regarding the plaintiff's CTOS report for being extracted unlawfully. This is the first time it has been brought to the defendant's attention that the defendant's employee obtained the CTOS report in a wrongful manner;

(viii) around May 2023, the defendant also discovered that the plaintiff was using a company logo that was identical and/or similar to the defendant's logo in the plaintiff's business. The defendant's employee, without being given authority and/or instructions by the defendant, had issued a letter bearing the signature of PW1 and the plaintiff's company stamp to CTOS in order to extract the plaintiff's CTOS report. The employee had acted of his own volition and without being given authority and/or instructions in doing the above;

(ix) at all material times, the defendant had no knowledge as stated above, until informed by PW1 and Ms Leong *via* their respective solicitor's letter dated 12 May 2023 and subsequently confirmed by the employee/DW2 who admitted his wrongful actions to the defendant;

(x) since the defendant had no knowledge of how the employee had extracted the CTOS report until informed by the employee and after receiving PW1 and Ms Leong's letter dated 12 May 2023, the defendant conducted a proper investigation, where the defendant found that the employee had acted, *inter alia*, without authorisation and/or instructions in extracting the CTOS report in submitting a letter to CTOS bearing PW1's signature and the plaintiff's company stamp. Accordingly, the defendant took appropriate disciplinary action against the employee;

(xi) the defendant responded by letter from his solicitor dated 21 August 2023 and stated, *inter alia*, that the defendant only destroyed the forged consent letter in accordance with the plaintiff's request in the letter dated 13 July 2023. Subsequently, the plaintiff in reply to that letter had issued a letter from the plaintiff's solicitor dated 25 August 2023 requested the defendant to destroy all documents bearing PW1's signature; and

(xii) the defendant responded by letter from the defendant's solicitor dated 29 August 2023 and stated, *inter alia*, that the defendant could not destroy all documents bearing PW1's signature because there were legally binding documents executed by PW1 for and/or on behalf of the company.

[22] The case had proceeded with trial where the plaintiff had called one witness, *ie*, PW1 while, defendant had called two witnesses to testify for each parties' case. They were as follows:

(i) PW1 - Mr Oh Her Shiu (the plaintiff's Director);

(ii) DW1 - Mr Pang Chee Ming (the defendant's Director and Head of Finance); and

(iii) DW2 - Mr Soo Wai Hoong (the defendant's credit controller).

Plaintiff's Case

[23] It is the plaintiff's case that the defendant has admitted to the fraud committed by the defendant's employee. The defendant's admission on the fraudulent acts can be seen in the defendant's statement of defence dated 11 October 2023, in the witness statement of DW2 and in the oral testimony of the defendant's witnesses.

[24] As a result of the defendant's admission, the plaintiff contends that there is no need for the plaintiff to prove the fraudulent acts, and that the fraudulent acts have been established. In support to this contention, the plaintiff relied on s. 58 of the Evidence Act 1950.

[25] The plaintiff stated that the fraudulent acts which committed by the defendant's employee DW2 were within the knowledge, authorisation and/ or acquiesce of the defendant. DW1 had given an instruction to DW2 to extract the plaintiff's CTOS report.

[26] The plaintiff had also alleged that the defendant is estopped from asserting that DW1 only sought a "CTOS lite report" because the defendant had never pleaded that the defendant had instructed DW2 to extract a "CTOS lite report" which does not need the plaintiff's consent. The plaintiff referred to the case of *CIMB-Principal Asset Management Bhd v. Ketua Pengarah Hasil Dalam Negeri* [2022] CLJU 2047; [2022] 1 LNS 2047; [2022] MLJU 2081 and a Federal Court's case of *Kuala Dimensi Sdn Bhd v. Port Kelang Authority* [2025] 3 CLJ 497; [2025] 2 MLJ 238.

[27] The plaintiff also contends that the defendant cannot produce any contemporaneous document showing DW1 instructed DW2 to extract a "CTOS lite report". The defendant, well versed in CTOS's procedures, exploited this loophole by unlawfully extracting the plaintiff's CTOS report knowing that CTOS does not require pre-extraction consent documentation, unlike the stricter CCRIS system.

[28] During cross-examination, DW1, who is the Head of Finance and a Director of the defendant, agreed that DW1 indeed formed part of the defendant's management and that his conduct represented the defendant's conduct. As a director, DW1 is the "directing mind and will" of the defendant, whose knowledge and intent are imputed to the defendant.

[29] DW1 and DW2 freely admitted to acts of carelessness or negligence, provided the defendant itself remains insulated. The plaintiff argued that even if DW2's extraction was truly careless (which the plaintiff denies), it defies logic that DW1, as Head of Finance and a Director, would also be "careless" and "negligent" when he received the plaintiff's full CTOS report within three hours of giving the instruction.

[30] It is the plaintiff's submission that defendant had failed to lodge a police report on the discovery of fraudulent acts committed by defendant's employee. The defendant management's decision to continue the deception of the CTOS officer demonstrates that the defendant was complicit in the fraud.

[31] The plaintiff contends that the defendant failed to produce the email thread between DW2 and Ms Sheila from CTOS. Thus, the plaintiff submits that adverse inference ought to be drawn against the defendant for failing to produce material and relevant documents pursuant to s. 114(g) of the Evidence Act 1950.

[32] The plaintiff had also submitted that if the defendant truly lacked of knowledge and had no role in DW2's misconduct, it would have protected its interests by disclosing the truth at the first opportunity, immediately after the 12 May 2023 notification.

[33] Instead, the defendant's pattern of delayed, evasive replies and outright suppression of the forged consent letter confirms that it not only authorised the unlawful extraction but also orchestrated the subsequent fraudulent acts to conceal its own liability.

[34] The defendant issued only a warning letter to DW2 after four days the plaintiff issued a letter of demand. However, DW2 remained employed at the defendant throughout the proceedings. The plaintiff submitted that this confirms the plaintiff's position that DW2 was never meant to be punished, as he acted on the defendant's instructions in unlawfully extracting the CTOS report and committing the fraudulent acts.

[35] The plaintiff's proposition on the issue of vicarious liability, the plaintiff had referred to the recent Court of Appeal's decision in *Ahmad Faizal Ahmad Zamzami v. Telekom Malaysia Bhd & Another Appeal* [2025] 1 CLJ 347; [2025] 1 MLJ 879 clarified that the proper test is not whether the employee was on a "frolic of his own", but whether the act was so closely connected to the job that vicarious liability ought to follow. The plaintiff had also referred to the Court of Appeal's case of *Maslinda Ishak v. Mohd Tahir Osman & Ors* [2009] 6 CLJ 653; [2009] MLJ 829.

[36] The plaintiff submitted that the defendant's failure to call material witnesses, Mr Wincent from CTOS Sdn Bhd, Mr KH Kwon, the defendant's Managing Director, Ms Jolene, Elaine Lee and Kah Pei, the HR personnel had triggered s. 114(g) of the Evidence Act 1950.

[37] It is the submission of the plaintiff, that DW1 is not a credible witness and was evasive under cross-examination. However, DW1 admitted under cross-examination that the plaintiff's CTOS report was valuable and that, but for the plaintiff's CTOS report, the defendant would not have instructed its solicitor to issue the defendant's notices of cease and desist against the PW1 and Ms Leong.

Defendant's Case

[38] In rebuttal, the defendant submitted that after the incorporation of the plaintiff, the defendant learned through informal discussions that the plaintiff allegedly approaching the defendant's customers ("alleged acts"), leading the defendant's management to suspect solicitation by its former employees.

[39] On 15 Match 2023, during a casual discussion, DW1 was informed by Ms Jolene the plaintiff's alleged acts. In response, DW1 had instructed DW2 to extract the plaintiff's CTOS lite report ostensibly to verify the plaintiff's business details and activities. In executing DW1's instruction, DW2 had mistakenly extracted the plaintiff's full CTOS report instead of the lite version, without the plaintiff's consent.

[40] The plaintiff's CTOS report which had been extracted by DW2 revealed similarity between the defendant's business and that of the plaintiff. Subsequently, to safeguard the defendant's interests and given that the actions of both PW1 and Ms Leong were in violation and/or inconsistent with their employment contract and/or continuing obligation under the notice of termination dated 30 August 2022.

[41] On 11 May 2023, CTOS had contacted DW2 to request a copy of the consent letter from the plaintiff for the CTOS report that was extracted. DW2 went on a "frolic of his own" had forged a written consent letter to include the plaintiff's company stamp and PW1's signature and submitted to CTOS ("the fraudulent act").

[42] The defendant submitted that DW2 had acted independently and without authorisation and/or instruction wherein at all material times the defendant was unaware until DW2 admitted his actions to DW1 on 11 May 2023 that DW2 had submitted the forged consent to CTOS.

[43] On 12 May 2023, PW1 and Ms Leong asserted that the plaintiff had not given any consent for the extraction of full CTOS report wherein they reserve their right to take necessary action. DW1 then conducted an internal investigation of DW2 wherein DW1 had issued a warning letter to DW2.

[44] Subsequently, the plaintiff had demanded the defendant to furnish a written consent used to obtain the plaintiff's CTOS report, refrain the defendant from using the forged PW1's digital signature and to destroy any documents containing the forged signature and to surrender the plaintiff's company stamp. On top of that, the plaintiff had also demanded the defendant to issue an apology and to pay RM100,000 in damages for alleged fraud and forgery.

[45] In response to the demand, the defendant denied having authorised or condoned the DW2's actions and maintained that DW2 had acted on his own. The defendant agreed to destroy the forged consent letter but refused to issue an apology or pay compensation to the plaintiff.

Issues For The Determination By This Honourable Court

[46] Having heard the evidence by both parties and submissions of parties, I conclude that the main issue for determination by this Honourable Court, *inter alia,* are as follows:

(i) whether DW2 committed the fraudulent act under the direction, approval, authorisation and/or acquiescence of the defendant or acted on his own frolic and volition and without the authority and/or instructions of the defendant;

(ii) whether the defendant is vicariously liable to or accountable to the plaintiff for the fraudulent act;

(iii) whether the fraudulent act committed by DW2's can be considered as an action under the ordinary course of employment;

(iv) whether the nature and scope of the DW2 works was such that members of the public including the plaintiff is exposed to the risk of propriety harm; and

(v) whether the plaintiff is entitled to general and special damages and whether it has been proven by the plaintiff.

Findings

[47] I have heard the evidence, I read pleadings and submissions of the parties in detail. I do not think it is necessary for me to repeat the submissions of the parties as it has been adequately dealt with in length in the respective submissions. I take the view that the plaintiff's claim must be allowed in prayer (i) to (vi) with damages sum of RM20,000 to be paid to the plaintiff. I also ordered that the cost of RM5,000. My reasons, *inter alia,* are as follows.

[48] It is undisputed facts that DW2 had extracted the plaintiff's CTOS report by submitting a forged letter of consent bearing PW1's digital signature and the fabricated company stamp of the plaintiff. It is an undeniable fact that DW2 had received an instruction from DW1 to extract the plaintiff's CTOS report after DW1 learned about the risk of the plaintiff who is believed to have been soliciting with the defendant's clients.

[49] Nevertheless, DW1 informed the court that DW1 had no knowledge that the extracted CTOS report was obtained by submitting the forged letter of consent by the plaintiff until DW2 had informed of the wrongful act on 11 May 2023. According to DW1, DW1 only instructed DW2 to extract for a CTOS lite report and not a CTOS full report of the plaintiff. DW1 further in his evidence stated that DW1 was not aware that DW2 had extracted the CTOS full report and the acts of fraudulent was made on DW2's own frolic and was unauthorised.

[50] Here, I find that the evidence by DW1 that he was not aware of the method used by DW2 in extracting the CTOS report of the plaintiff is unacceptable. During cross-examination, I notice that DW1 had actually agreed that at all material times, since the commencement of DW1's employment with the defendant, DW1 knew that to extract a full CTOS report it requires consent while a CTOS lite report does not require consent for the extraction (refer to p. 157 of the notes of proceeding).

[51] According to DW1, the instruction given to DW2 to extract the CTOS report of the plaintiff was arisen from the "casual discussion" held between DW2, Ms Jolene and DW1 on 15 March 2023. It is the evidence of DW2, as instructed by DW1, DW2 had extracted CTOS report of the plaintiff after three hours from the time the instruction was given and it had been done on the same date, *ie*, on 15 March 2023. I find it is implausible for DW1 not to have known that the extracted CTOS report of the plaintiff which DW1 received was made without the letter of consent of the plaintiff since DW1 at all material times knew the requirement to extract the CTOS report of the plaintiff.

[52] Further, I find that based on DW1's evidence, DW1 knew exactly that the CTOS full report and CTOS lite report have different contents and sources. DW1 in his evidence had reiterated that CTOS lite report is a generic report that contains the company's corporate profile from SSM and only contains publicly available information. While the CTOS report contains additional information such as the company's litigation index, trade reference and legal case information. I also find that DW1 knew that to extract the CTOS report it will need a consent letter from the company while to extract the CTOS lite report no consent letter is needed.

[53] When DW1 was in possession of the CTOS report extracted by DW2 on 15 March 2023 and when the letter of cease and desist dated 28 March 2023 was issued against the PW1 and Ms Leong, I find that DW1 was aware that it was a CTOS full report of the plaintiff based on the contents available on the extracted plaintiff's CTOS report. It is also an undisputed fact that the CTOS report attached to the defendant's letter of cease and desist dated 28 March 2023 was the CTOS full report of the plaintiff and not CTOS lite report (refer letter of cease and desist dated 28 March 2023 to PW1 at pp. 18 to 28, bundle D and letter of cease and desist dated 28 March 2023 to Ms Leong at pp. 29 to 38, bundle D both annexed as Appendix A).

[54] If the extracted CTOS report was not what had been instructed and expected by DW1, DW1 and the defendant would not have proceeded to instruct the defendant's solicitor to issue letters of cease and desist dated 28 March 2023 against PW1 and Ms Leong wherein the CTOS report of the plaintiff had been attached to support the notice. This is no ordinary action for any head of finance or any director to be cavalier in safeguarding the company's interest. Therefore, I find the contention made by DW1 that DW1 only knew about the extraction was made without the plaintiff's written consent on 11 May 2023 was forthcoming and inadmissible. I also find that the evidence given by DW1 is contradictory, inconsistent and unreliable.

[55] In addition, it is clear from the evidence of DW1 that the defendant's position as regards to the fraudulent act committed by DW2 was without authorisation and that DW1 had instructed for a CTOS lite report and not a full CTOS report of the plaintiff. On this point, I find that nothing in the defendant's statement of defence dated 10 November 2023 had mentioned or pleaded about the "CTOS lite report" as instructed by DW1.

[56] Therefore, I find it ought not to be considered by this court as any defect or omission in the statement of claim or statement of defence cannot be made good by way of evidence. I am guided by the case of *Tang Kwor Ham & Ors v. Lembaga Kumpulan Wang Simpanan Pekerja* [2005] 8 CLJ 676 where Low Hop Bing J having considering the Federal Court's case of *United Malayan Banking Corporation Bhd v. Palm & Vegetable Oils (M) Sdn Bhd & Ors* [1982] CLJ 547; [1982] CLJ (Rep) 358, held that:

> In the light of the principles enunciated by the Federal Court in *United Malayan Banking Corporation*, *supra*, as applied in two High Court judgments *viz* in *Pernas Sime Darby*, *supra*, and *Vijayaletchimy*, *supra*, I am of the view that the above unpleaded issue cannot perform the function of fortifying the statement of defence and hence does not merit any consideration by me. I therefore hold that the answer to the question is in negative.

Whether The Four Common Denominators Of The Vicarious Liability Test Have Been Satisfied?

[57] The proper legal test for imposing vicarious liability in tort is as enunciated by the Federal Court in *GMP Kaisar Security (M) Sdn Bhd v. Mohamad Amirul Amin Mohamed Amir* [2022] 10 CLJ 669, [2022] 6 MLJ 369 per the judgment of Harmindar Singh, FCJ who distilled the well-established principles from English cases and said that an employer will be liable for the wrongful or even criminal actions of the employee – if the thing done by the employee is so closely connected with the job assigned to that employee.

[58] Following the Federal Court's case of *GMP Kaisar* (*supra*), the scope of vicarious liability in a case where the employee committed an intentional wrong is underpinned by the following common denominators:

(i) the intentional wrong must be committed by the employee in the course of employment;

(ii) there must be a connection between the wrongful act and the nature of the employment;

(iii) the nature of the employment is such that the public at large are exposed to risk of physical or proprietary harm; and

(iv) the risk is created by the employer, owing to the features of the business.

[59] In the case before this court, DW2 had commenced his employment with the defendant as a credit controller of the defendant since 6 October 2021. Therefore, at all material times, DW2 is under the employment of the defendant and that the fraudulent acts committed by DW2 were well within the course of DW2's employment with the defendant.

[60] DW2 had informed the court that his job scope and key responsibilities as a credit controller of the defendant includes the following:

(i) prepare and analyse financial reports in an accurate, timely and efficient manner;

(ii) provide analytical support to facilitate business decisions;

(iii) process new account application, set-up credit terms and credit limit extensions;

(iv) check the company's credit rating with banks;

(v) conduct company background searches; and

(vi) check payment histories.

[61] Among others, DW2 is responsible to conduct searches on company who applies credit term with the defendant. Usually, DW2 will purchase a CTOS report of the company from the CTOS Sdn Bhd in order to seek financial background and liability. DW2 is also responsible to enquire that the defendant's customers are financially stable and other legal index is a non-issue. It is also part of the DW2's job description to extract the CTOS report on any potential customer or any competitor companies. There is no doubt that the defendant alleged that the plaintiff company is a competitor company to the defendant.

[62] Thus, I find that it is a nature of the DW2's employment and job scope in extracting and purchasing a CTOS report of any intended company including the competitor company as instructed by the defendant. DW2's wrongful action was done in the course of employment and in executing his duties as a credit controller of the defendant. I must say that there is a close connection between the wrongful act committed by DW2 with his role as a credit controller of the defendant.

[63] It is also unreasonable that public is not exposed to the harm caused by the wrongful acts of DW2. By fabricating and forging the letter of consent of the plaintiff, the plaintiff's financial standing and legal index and other private information of the plaintiff's company is at stake. I am agreeable to the plaintiff's submission that it creates a real risk of harm to the credit rights and privacy to the public, as well as exposing CTOS to liability under s. 24(1) of the Credit Reporting Agencies Act 2010.

[64] Section 24 of the Malaysian Credit Reporting Agencies Act 2010 (CRAA 2010) governs the disclosure of credit information by registered credit reporting agencies. It stipulates that agencies must obtain consent and adhere to strict regulations when sharing credit data with third parties. Failure to comply with, the agencies such as CTOS will face penalties up to RM500,000, two years' imprisonment, or both for the unauthorised disclosure based on the forgery letter of consent fabricated by DW2.

[65] As to the fourth denominator, I find that the defendant had created a risk by employing DW2 and providing DW2 with powers, tools and unlimited access to the defendant's subscription account with CTOS. Notwithstanding the test of common denominators, the "close connection" test adopted by the FC's case of *GMP Kaisar* (*supra*) holds an employer vicariously liable if the tort so closely connected with the employee's employment that it would be fair and just to impose liability as per Rohana Yusuf PCA (concurring):

> (1) Vicarious liability is generally appropriately involved where there is a significant connection between the creation or enhancement of risk and the wrong that flows from the risk. The risk reasonably to be perceived defines the duty to be obeyed, and risk imports relation; it is a risk to another or to others within the range of apprehension (*Bazley v. Curry*). The act of Jaafar, the tortfeasor, shooting the members of the public and Amirul were a series of actions so closely connected with his employment as a bodyguard. His action was done in the course of employment and in executing

> his duties as a bodyguard. The 'close connection' test must always be considered on the factual matrix and circumstances of each case and could not apply independently without looking at each set of facts. Hence, his employer, GMP, was vicariously liable for the wrongful act committed against Amirul. (paras 42 & 48).

[66] It is fair to state that even though an internal investigation and a warning letter was issued by the defendant against DW2, I am of the opinion that it was just an internal management decision that does not exclude the defendant from being vicariously liable to the wrongful acts of the DW2. I find that the threshold of four denominators are satisfied and fulfilled as to give rise to the liability on behalf of the defendant against the wrongdoing of its employee.

Remedy Of An Apology

[67] Despite allowing the plaintiff's claims, I had also disallowed prayer (g) claimed by the plaintiff for an apology from the defendant to be advertised in at least three separate local newspapers in the national language, English and Mandarin of at least the size of 13cm x 10cm within 14 days from the date of the judgment. For this prayer, I find the prayer is not a statutory remedy or court-ordered remedy in cases based on forgery or wrong-doing. An apology serves as a legal remedy in various situation especially in defamation and contempt of court's cases.

[68] Others, such remedy of an apology is provided under the Industrial Relations Act 1967, Anti-Sexual Harassment Act 2022, Anti-Bully Act 2026 or under the Emergency (Essential Powers) (No 2) Ordinance 2021 for spreading fake news or under the Election Offences Act 1954 for failure or errors in election expense statement. For non-statutory remedy, an apology involves wrong-doing by publishing false statements, defamation or spreading fake news.

[69] The CTOS report of the plaintiff which has been extracted by DW2 represents the genuine financial and legal status of the plaintiff not a false statement until otherwise proven. Further, I find the prayer (vii) is an excessive demand which should not be allowed by this Honourable Court wherein I deemed it to be unfit and improper to mitigate damages. Further, the harm done is yet to be proven.

Damages

[70] As regards to the damages, it is a trite law that "he who claims, proves". The Court of Appeal in *Poratha Corporation Sdn Bhd v. Technofit Sdn Bhd* [2019] CLJU 941; [2019] 1 LNS 941; [2018] AMEJ 0214; [2020] 1 MLJ 74, reiterated this principle. It held that the party claiming damages bears the burden of proving the fact and the quantum of the damages suffered and that if the claimant only succeeds in proving the fact and not the quantum, it will only be entitled to nominal damages.

YA Hasnah Hashim JCA (as she then was) in delivering the decision of the Court of Appeal held:

> [44] It is trite law that the party claiming damages bears the burden of proving the fact and quantum of damages suffered.

[71] In relation to a company, the plaintiff has a duty to demonstrate that the wrong doing done by DW2 had injuriously affected the company in relation to its pocket. I am guided by the the COA's case in *Mak Khuin Weng v. Melawangi Sdn Bhd* [2016] 8 CLJ 831; [2016] 5 MLJ 314 CA Per Hamid Sultan Abu Backer JCA held as follows:

> *[11] A company can bring an action in respect of words that damage its trading reputation provided they can prove the words complained of injuriously affect the company. (Jameel and another v. Wall Street Journal Europe SPRL [2006] UKHL 44). This element must be pleaded and proved.*
>
> (emphasis added)

[72] The plaintiff in this particular case submitted that the plaintiff's directors suffered anxiety, distress and reputational harm compounded by the need to engage counsel, issue multiple letters, liaise with authorities and expend time and resources. The plaintiff had also submitted that the plaintiff is entitled to damages for the emotional and reputable harm inflicted.

[73] On the other hand, the defendant argued that reputational damage and emotional distress alleged to have suffered by the plaintiff are precisely on a mere speculation and vague assertions. The plaintiff failed to prove that the plaintiff had lost clients or contracts or that any third party saw relied on or even knew about the CTOS report had affected the plaintiff's reputation or to prove that any publication, social media coverage, regulatory report or market disruption ever occurred or the plaintiff's operations were impeded.

[74] For this issue, I am agreeable with the submission made by the defendant's solicitor that the plaintiff failed to demonstrate any injury caused to the plaintiff's pocket by the wrong-doing done by DW2. No documentary evidence or any other evidence to support the alleged reputational damage and emotional distress suffered by the plaintiff.

[75] Nevertheless, nominal damages can be awarded in the case where there is an infringement of a legal right of the plaintiff also known as *injuria sine damno*. This phrase applies to all cases of breach of contract and torts actionable *per se*.

[76] I refer to the case the case of *Syarikat Kemajuan Kuari (M) Sdn Bhd v. Su Abdullah & Anor* [2003] 1 CLJ 578, where Nik Hashim J held as follows:

> *McGregor on Damages*, 16th edn 1997 at p. 281 tabulated two circumstances which give rise to an award of nominal damages:
>
> (1) Where there is *injuria sine damno*, and

(2) Where damage is shown but its amount is not sufficiently proved.

In my view, the two situations above are relevant to the facts of the present cases.

According to *McGregor* at paras. 421, 422 and 423, pp. 281 and 282, the 1st and 2nd situations arise as follows:

(1) Where there is *injuria sine damno*

... The best statement as to the meaning and incidence of nominal damages is given by Lord Halsbury LC in *The Mediana* [1900] AC 113 at 116 where he said:

'Nominal damages' is a technical phrase which means that you have negatived anything like real damage, but that you are affirming by your nominal damages that there is an infraction of a legal right which, though it gives you no right to any real damages at all, yet gives you a right to the verdict or judgment because your legal right has been infringed.

Thus nominal damages may be awarded in all cases of breach of contract and in torts actionable *per se*. Furthermore, at least nominal damages should be awarded in such cases, but not all the decisions appear to adhere strictly to this.

It is sometimes said that the law presumes or implies damage in every breach of contract or in every tortious invasion of a legal right, and that this, therefore, would justify an award of nominal damages in such cases without proof of actual loss.

[77] Therefore based on the above principle I allowed nominal damages of RM20,000 to be paid to the plaintiff since there is an infringement of the plaintiff's legal right due to the wrong-doing committed by DW2. Other claims for specific damages was not proven by the plaintiff as special damages must be strictly proven and pleaded. I find no receipt of payment was produced as the claim for the special damages. Document at p. 94 of bundle D is merely a claim form. Therefore, I disallow the special damages and only award a general and nominal damages of RM20,000.

[78] Based on the above grounds, I allow the plaintiff's claim in prayer (i) to (vi) with nominal damages in the sum of RM20,000. I also ordered that the cost of RM5,000 is to be paid by the defendant to the plaintiff.