

**ONG KIM CHUAN & ANOR V. LEMBAGA KUMPULAN WANG SIMPANAN PEKERJA**  
**[CIVIL APPEAL NO: J-04-125-2006]**

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<b>JURISDICTION</b>	<b>: COURT OF APPEAL</b>
<b>PANEL OF JUDGES</b>	<b>: (1) HELILIAH MOHD YUSOFF, JCA</b> <b>(2) HISHAMUDIN MOHD YUNUS, JCA</b> <b>(3) RAMLY ALI, JCA</b> <b>[UNANIMOUS DECISION]</b>
<b>JUDGMENT DATE</b>	<b>: 22.06.2009</b>

**A. MATERIAL FACTS**

1. The 1<sup>st</sup> defendant, HALEYWOOD INDUSTRIES SDN BHD (“the company”), had failed to make payment of EPF contributions for a total sum of RM180,624.00.
2. Both the 2<sup>nd</sup> and 3<sup>rd</sup> defendants (“the directors”) were at all material times the registered directors of the company during the period of outstanding contribution.
3. The company was wound up on 18 November 2002. Thus, the Plaintiff (“the EPF”) withdrew its suit against the company and proceed against the directors by virtue of Section 46 of EPF Act 1991.
4. The EPF obtained a summary judgment against the directors at the Sessions Court. The directors’ appeal to the High Court against the decision was dismissed. Hence, the directors filed an appeal to the Court of Appeal.
5. It was argued by the directors that under section 292(1) of the Companies Act 1965, in winding up of a company, any payment due under the Provident Fund or Employees Superannuation can be realized by filing the proof of debt with the official receiver.
6. The directors also argued that the provision of section 46 of EPF Act 1991 applies only in respect of the company which is still in operation and the directors have not lost their status or locus as directors.

## **B. DECISION OF THE COURT OF APPEAL**

7. The Court of Appeal unanimously dismissed the appeal with costs of RM3,000.00. It was held that under section 46, it is crystal clear that directors of a company (including persons or former directors who were directors during such periods in which contributions were liable to be paid to the EPF) shall together with the company be jointly and severally liable for the contributions due and payable to the fund. These provisions are to be enforceable "notwithstanding anything to the contrary in any other written law".
8. In the present case, the EPF may choose to initiate its claim against the company jointly with the two directors or to sue the directors alone without the company. The liability under s 46 on the appellants is created by statute 'directly' and personally on the appellants as directors or former directors of the first defendant company. Thus, the contributions due and payable become the debt of the appellants personally, jointly and severally with the company.
9. Thus, the liability of the directors is based on the provisions of s. 46 of the EPF Act, not on common law or any other written law, not even the Companies Act 1965. Section 46 stands by itself "notwithstanding anything to the contrary in the EPF Act or any other written law".



**Prosecution & Litigation Section  
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