

**LEMBAGA KUMPULAN WANG SIMPANAN PEKERJA V. EDWIN CASSIAN  
NAGAPPAN  
[CIVIL APPEAL NO: 03-3-10-2019(W)]**

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<b>JURISDICTION</b>	<b>: FEDERAL COURT</b>
<b>PANEL OF JUDGES</b>	<b>: (1) ROHANA YUSUF PCA (2) AZAHAR MOHAMED CJ (MALAYA) (3) NALLINI PATHMANATHAN FCJ [UNANIMOUS DECISION]</b>
<b>JUDGMENT DATE</b>	<b>: 19.07.2021</b>

**A. MATERIAL FACTS**

1. The Employees' Provident Fund Board ("the EPF Board") commenced a suit against a company, Fix Interior Collections Sdn Bhd ("the company") and its directors, Edwin Cassian a/l Nagappan @ Marie ("Edwin") and Bernard John a/l Nagappan @ Marie Alphonso Michael . The cause of action was premised on the company's failure to pay the EPF contribution.
2. A consent judgment was recorded on 24.04.2013, where the defendants agreed to pay the judgment sum amounting to RM133,697.00 by way of 24 installments together with the accrued dividend, late payment charge and legal fees of RM800.00. However, the phrase that the defendants would be 'jointly and severally' liable for the judgment sum was not included in the consent judgment.
3. The defendants only made part payment and later failed to comply with the terms of the consent judgment. Due to that, the EPF Board proceeded to issue a bankruptcy notice against Edwin alone by way of substitute service. Creditor's petition was also served by way of substitute service.
4. Later on, Edwin filed an application to set aside the bankruptcy notice and the creditor's petition. The application was allowed by the Senior Assistant Registrar ('SAR').

5. The EPF Board appealed to the judge-in-chambers. However, the High Court Judge dismissed the appeal and affirmed the decision of the SAR. The High Court Judge ordered the defendants to pay the sum in equal proportions and further held that if the words 'jointly and severally' liable were not inserted into the consent judgment, the court could not look behind the judgment.
6. The EPF Board's appeal to the Court of Appeal was similarly unsuccessful and was dismissed. The EPF Board's reliance on s. 46 of the EPF Act to impart the words "jointly and severally" into the consent judgment was not accepted by the Court of Appeal. The court of Appeal of the view that the consent judgment recorded between the parties was a binding contract between the parties. Thus, the bankruptcy notice and creditor's petition were defective because both these papers claimed full judgment sum instead of portion owed by Edwin.
7. Hence, the EPF Board appeal to the Federal Court on the this sole question of law "whether the court should give effect to the liability on a 'joint and several' basis as provided under s. 46 of the Employees Provident Fund Act 1991 ('Act') in a situation where the words 'joint and several' were not specifically stated in the judgment".

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

8. The Federal Court unanimously allowed the appeal with no order as to costs. It was held that s. 46 of the EPF Act which imposes joint and several liability on the directors of a company for unpaid contributions. These provisions must be given full effect, as they comprise statutory law. It is not open to the courts to stultify, vary or whittle down the clear provisions promulgated by Parliament in relation to liability for EPF contributions, by construing judgments in manner which is not consonant with the EPF Act. In short, the EPF Act prevails over the terms of the judgment.

