

**LEMBAGA KUMPULAN WANG SIMPANAN PEKERJA V. ADORNA RMIT SDN BHD**  
**& 9 ORS**  
**[CIVIL SUIT NO: 22-632-2001]**

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<b>JURISDICTION</b>	<b>: HIGH COURT OF MALAYA AT PENANG</b>
<b>JUDGE</b>	<b>: DATO' KAMALANATHAN RATNAM</b>
<b>JUDGEMENT DATE</b>	<b>: 03.11.2003</b>

**A. MATERIAL FACTS**

1. The 1<sup>st</sup> Defendant, Adorna Rmit Sdn Bhd, had failed to make payment of EPF contributions for the periods of October 1998 to July 2000 for a total sum of RM303,867.00.
2. The 2<sup>nd</sup> to the 10<sup>th</sup> Defendants were at all material times the registered directors of the 1<sup>st</sup> Defendant during the period of contribution stated above. Thus, the Plaintiff (EPF Board) contended that pursuant to section 46 of the EPF Act 1991, the directors were jointly and severally liable to the 1<sup>st</sup> Defendant.
3. The Court allowed the summary judgment application by the Plaintiff and accordingly, the Judgment was recorded against the company and its directors.
4. Among the issues that were raised before the Court:
  - a) The 6<sup>th</sup> Defendant was appointed informally as a director of the 1<sup>st</sup> Defendant for the sole purpose of re-negotiating a joint-venture agreement between the 1<sup>st</sup> Defendant, the 8<sup>th</sup> Defendant and the other respective parties.
  - b) The position of a non-active director, i.e a director appointed for the sole purpose of re-negotiating a joint-venture agreement between the company and other directors and was not involved in day-to-day management of the 1<sup>st</sup> Defendant.
  - c) The 6<sup>th</sup> Defendant had not received any remuneration from the 1<sup>st</sup> Defendant.

- d) The 6<sup>th</sup> Defendant had not complied with the requirement of Section 123(4) of the Companies Act 1965, where the 6<sup>th</sup> Defendant did not make the Statutory Declaration under the Act.

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

5. The Court held that the relevant section relied on by the Plaintiff is sufficient to include the directors' liability which is joint and several, in the event the Company namely the 1<sup>st</sup> Defendant in this case failed to pay the EPF dues. This is a unique section which is peculiar to this Act. It is a sensible section which, ensures that directors owe a duty to see to it that the companies' employees' compulsory saving are protected. Director are the alter ego of a company. It is therefore not appropriate for a director to attempt to escape culpability by pleading that he is a sleeping partner or director, or a silent director or a non-active director.



**Prosecution & Litigation Section**  
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