

TAM KWOR HAM & ORS V. LEMBAGA KUMPULAN WANG SIMPANAN PEKERJA
[CIVIL APPEAL NO: 1-12-73-2004]

JURISDICTION	: HIGH COURT OF MALAYA AT MELAKA
JUDGE	: LOW HOP BING
JUDGEMENT DATE	: 28.02.2006

A. MATERIAL FACTS

1. The Defendants were the directors of Tang Kwor Ham Realty, whose company had failed to make payment of EPF contributions for the periods of October 1998 to September 2000.
2. The Plaintiff (EPF Board) had vide certificate in Form E notified the company the outstanding amount of the above contribution which amounting to RM41,141.00. The company had paid a partial payment of RM19,813.00 and leaving the outstanding balance amounting to RM21,328.00 together with the aforesaid rates of dividend and interest.
3. In order to recover the outstanding balance, The Plaintiff filed a suit against the directors jointly and severally liable to the company. No action was taken against the company since the company went into liquidation.
4. The summary judgment was obtained by the Plaintiff against the Defendants. Thus the Defendants appealed before the High Court and contended that they ought to be trial for the following reasons: -
 - a) the Plaintiff had wrongly computed the arrears of contributions thereby creating a triable issue;
 - b) ss. 45(1), 46 and 49 of the Act did not provide for their joint and several liability for EPF contributions of the company's employees; and
 - c) non-employees of the company were included in the contribution payable by the company.

B. DECISION OF THE HIGH COURT

5. The Court held that the Defendants were the directors of the company from 6 November 1997 to 10 September 2002, which period obviously included the period in relation to the unpaid contributions, dividend and interest thereon, and in the light of the clear and unambiguous provisions contained in the above statutory provisions, especially s. 46(1), the defendants were clearly liable for the EPF contributions under the said provisions.

6. Before the commencement of this action in the court below, there has been no dispute by the company as to the computation or the contents therein. Section 64 elevates the evidential weight of the certificates to the level of prima facie evidence of such entry and the truth of the contents thereof. It is significant to note that the company had responded to the above certificates in Form E by paying part of the contributions, dividend and interest, leaving the balance which now constitutes the Plaintiff's claim. This is the company's undoubted affirmation of the truth of the contents thereof. Plaintiff's Form E was unrebutted.



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