

DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR
(BIDANGKUASA RAYUAN)

RAYUAN SIVIL NO. WA - 12ANCvC - 135 - 08/2017

ANTARA

FAHRI AZZAT (NO. K/P: [REDACTED])

...PERAYU

DAN

1. YTL COMMUNICATIONS SDN BHD (SYARIKAT NO. 793634-V)

2. YTL DIGITAL SDN BHD (SYARIKAT NO. 236882-K)

(Kedua-dua Responden juga dikenali sebagai YES) ...RESPONDEN-RESPONDEN

[Dalam Mahkamah Sesyen Di Kuala Lumpur
(Bahagian Sivil)

Saman Pemula No. WA - B54 - 37 - 03/2017

Antara

Fahri Azzat (No. K/P: [REDACTED])

...Plaintif

Dan

1. YTL Communications Sdn Bhd (Syarikat No. 793634-V)

2. YTL Digital Sdn Bhd (Syarikat No. 236882-K)

(Kedua-dua Defendan juga dikenali sebagai YES) ...Defendan-Defendan

Diputuskan oleh Tuan Mohd Zulbahrin bin Zainuddin pada 17 Ogos 2017.]

APPELLANT'S SUPPLEMENTARY SUBMISSION

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Appellant's Supplementary Submission: The Communications and Multimedia Act 1998 is not applicable to the present dispute

1. On 22-2-2018, the 1st Respondent submitted that, in the present dispute, the Communications and Multimedia Act 1998 ("the CMA") applies to the exclusion of the Consumer Protection Act 1999 ("the CPA"), relying on section 271 of the CMA which reads:-

"If there is any inconsistency or conflict between this Act and any other relevant written law, the provisions of this Act shall prevail to the extent of the inconsistency or conflict."

2. The Supreme Court in *Dewan Undangan Negeri Kelantan v Nordin bin Salleh* [1992] 1 MLJ 697 [IAP-2, Tab 5] provides an illustration of what amounts to an 'inconsistency' as follows (at p. 715D – G):-

"We recognize that as regards that part of the plaintiffs' case which alleged inconsistency between art XXXIA of the Kelantan State Constitution and art 10(1)(c) of the Federal Constitution, the alleged inconsistency must, first of all, be identified.

According to *Lane on the Australian Federal System* (2nd Ed) p 882:

Etymologically, inconsistency arises between two things 'when they cannot stand together at the same time'. *Clyde Engineering Co Ltd v Cowburn* (1926) 37 CLR 466 at p 503. 'Inconsistency' derives from 'in' (privative) and 'con' (together) and 'istere' (stand). Judicially, however, the meaning of inconsistency has not been restricted to this narrow connotation. 'Inconsistent' for the

High Court comprises four different relations (including the one just given): (1) Impossible to obey both laws and direct collision. (2) Commonwealth permits or confers: State prohibits or deprives. (3) Commonwealth confers or imposes: State modifies. (4) Commonwealth covers the field: State enters the field.”

3. In the present dispute, the 1st Respondent has *not* shown any conflict or inconsistency between the CMA and the CPA. It will be submitted that there is *no* conflict or inconsistency between the CMA and the CPA with respect to the present dispute, and that both laws deal with two different subject matters. Paragraph 13.3 of the Appellant’s Outline Submissions dated 8-1-2018, on the preamble of both laws, is reiterated here.
4. Indeed, even the relevant Minister, when proposing the amending bill to add section 24D of the CPA in 2010, stated [*IAP-2, Tab 6*]:-

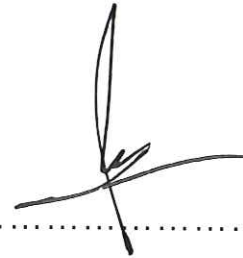
“Although currently the courts may decide that a contract is null or may be nullified based on the provisions of the Contract Act 1950, the [Consumer Protection Act 1999] itself does not have any specific provisions regarding a contract or the terms of a contract. *Neither do existing legislation provide protection to the consumers or the weaker parties from use of terminology or terms in the contract that are categorised as unreasonable or unfair.*” [Emphasis added] (at p. 52)

5. Should it even be argued that both laws deal with the same subject matter, it will be submitted that the maxim *generalibus specialia derogant* applies i.e. where there are two provisions of written law, one general and the other specific, then, whether or not these two provisions are to be found in the same or different statutes, the special

or specific provision excludes the operation of the general provision. In that regard and with respect to whether a contract or its terms are unfair, Part IIIA of the CPA on Unfair Contract Terms (being the special provisions) excludes the operation of Part VIII of the CMA on Consumer Protection (being the general provisions): *Luggage Distributors (M) Sdn Bhd v Tan Hor Teng & Anor* [1995] 1 MLJ 719 at 758I – 759D, CA [IAP-2, Tab 7]

6. In light of above matters, the Appellant prays for this appeal to be allowed with costs and the appropriate declarations granted.

Dated this 8th day of March 2018



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Solicitors for the Appellant
Messrs Fahri & Co.

This **Appellant's Supplementary Outline Submissions** is filed by the Messrs Fahri & Co, the Appellant's solicitors, with the address for service at No. 15-2, Jalan PJU 7/16A, Mutiara Damansara, 47800 Petaling Jaya, Selangor.

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