



SECTION 16(1) & ITEM 32(a) FIRST SCHEDULE

STAMP ACT 1949

NIKE GLOBAL TRADING B.V., SINGAPORE BRANCH

V.

PEMUNGUT DUTI SETEM

ORIGINATING SUMMONS NO.: WA-24-36-06/2022

 HIGH COURT OF KUALA LUMPUR

 YA DATO' AMARJEET SINGH A/L SERJIT SINGH

 06 NOVEMBER 2023

On 01.05.2021, Nike European Operations Netherlands (“the Original Lender”) and Nike Global (Malaysia) Sdn. Bhd. (“the Borrower”) entered into an Intercompany Loan

Agreement amounting to RM41,257,000. The full amount of loan has been fully disbursed by the Original Lender to the Borrower. Subsequently, the Original Lender and the Borrower entered into a Novation Agreement dated 17.12.2021 (“the Novation Agreement”) with the Incoming Lender, Nike Global Trading B.V., Singapore Branch (“the Plaintiff”) whereby the Original Lender transferred the debt amounting to RM41,257,000 to the Plaintiff. The Novation Agreement was presented to the Defendant through an online system (“STAMPS”) for the adjudication of stamp duty on 21.01.2022. The Defendant issued the Notice of Assessment (Ad Valorem Duty) dated 21.02.2022 for the sum of RM1,716,004 for the Novation Agreement. The Plaintiff appealed.

The Plaintiff argued that Section 16 Stamp Act 1949 (“SA 1949”) is not applicable as the Novation Agreement does not amount to a conveyance or transfer of property within the meaning of Section 16 SA 1949. Clause 1.2 of the Novation Agreement novates from the Original Lender to the Plaintiff the duties, obligations and liabilities of the Original Lender which cannot be assigned in law and can only be novated. Novation, assignment, conveyance and transfer of property are fundamentally distinct legal concepts. The Plaintiff also submitted that the Defendant committed errors in law and fact when he decided that the Novation Agreement was not a novation, instead it is a transfer of the rights and benefits to receive the repayment of the monies disbursed.

The Defendant contended that Instruments which are listed under Schedule 1 SA 1949 are chargeable with duties as provided under Section 4 SA 1949. The governing principle is that stamp duty strikes at instruments rather than transactions. The instrument in dispute is the Novation Agreement which transferred or vested the debt from the Original Lender to the Plaintiff without consideration which attracts the application of Section 16(1) SA 1949. Hence, the Novation Agreement shall be charged as a transfer on sale under Item 32(a) First Schedule SA 1949. Therefore, for stamp duty purposes, regard should be had to the substance of the instrument rather than to its form. The Novation Agreement is for the purpose of transferring the debt to the Plaintiff since the amount of loan under the original agreement has been fully disbursed to the Borrower. The Plaintiff no longer assumes any obligation of the Original Lender from the original agreement since the loan has been fully disbursed to the Borrower. Thus, the Novation Agreement’s sole purpose is to transfer the debt owed to the Original Lender to now, the Plaintiff.

On 06.11.2023, the High Court dismissed the Plaintiff’s Originating Summons with costs of RM5,000.

Editorial Note:

- *The Plaintiff has the right to file an appeal to the Court of Appeal within 30 days from the decision of the High Court.*