DALAM MAHKAMAH RAYUAN MALAYSIA

(BIDANG KUASA RAYUAN)

RAYUAN SIVIL NO. W-02(NCVC)(W)-2524-10/2012

ANTARA

MOHD. RIDZWAN BIN ABDUL RAZAK	**...**	**PERAYU**

DAN

ASMAH BINTI HJ. MOHD. NOR	**...**	**RESPONDEN**

[Dalam Mahkamah Tinggi Malaya di Kuala Lumpur, Guaman Sivil No. 23NCVC-102-12/2011

ANTARA

MOHD RIDZWAN BIN ABDUL RAZAK	...	PLAINTIF

DAN

ASMAH BINTI HJ. MOHD NOR	...	DEFENDAN

CORAM:

ZAHARAH BINTI IBRAHIM, HMR

ANANTHAM KASINATHER, HMR

MAH WENG KWAI, HMR

JUDGEMENT OF THE COURT

INTRODUCTION

[1] This was an appeal from the decision of the High Court of Malaya at Kuala Lumpur, dismissing the Appellant/Plaintiffôs claim for defamation but allowing the Respondent/Defendantôs counterclaim for sexual harassment.

[2] For ease of reference the parties will be referred to as they were in the High Court.

THE PLAINTIFF'S CLAIM IN THE HIGH COURT

[3] The Plaintiff claimed the following reliefs (in its original language):

(a) Suatu deklarasi bahawa Plaintif tidak bersalah dalam menyebabkan gangguan seksual kepada Defendan sebagaimana didakwa dalam Aduan tersebut (the ñAduanò being the complaint by the Defendant to the Chief Executive Officer of their then employer, Lembaga Tabung Haji);

(b) Gantirugi am pada jumlah yang akan ditaksirkan Mahkamah;

(c) Gantirugi teruk pada jumlah yang akan ditaksirkan Mahkamah bagi kegagalan Defendan untuk meminta maaf kepada Plaintif;

(d) Defendan memohon maaf secara umum kepada Plaintif dan menyebabkan Lembaga Tabung Haji mengisukan kenyataan am berkenaan permohonan maaf itu dan bahawa Plaintif tidak bersalah kepada semua ahli pengurusan tertinggi dan kakitangannya;

(e) Lembaga Tabung Haji menarikbalik amaran keras secara pentadbiran dari rekod kerja Plaintif dan semua rujukan tentangnya pada masa akan datang berhubung rekod kerja Plaintif bagi tempoh perkhidmatan Plaintif di Lembaga Tabung Haji;

(f) Faedah atas jumlah gantirugi yang dituntut dalam perenggan (b) dan (c) sebanyak 4% setahun dari 29/7/2009 hingga tarikh penghakiman;

(g) Faedah sebanyak 4% setahun atas jumlah penghakiman dari tarikh penghakiman hingga tarikh penyelesaian;

(h) Kos tindakan ini atas dasar indemnmiti;

(i) Apa-apa relif lain yang Mahkamah yang mulia fikirkan adil dan sesuai.

THE DEFENDANT'S COUNTERCLAIM IN THE HIGH COURT

[4] The Defendant, in claiming to have been sexually harassed by the Plaintiff to the extent that she suffered mental and emotional stress and trauma, counterclaimed against the Plaintiff for the following:

(a) ganti rugi am yang akan ditaksirkan oleh Mahkamah

(b) ganti rugi teruk dan teladan yang akan ditaksirkan oleh Mahkamah;

(c) faedah pada kadar 4% setahun atas jumlah penghakiman dari tarikh penghakiman sehingga tarikh penyelesaian;

(d) kos tindakan;

(e) lain-lain relief yang difikirkan sesuai dan adil oleh Mahkamah ini.

THE PLEADED CASE

The Plaintiff's pleaded case

[5] The pleaded case of the Plaintiff was that until 28/02/2010, the Plaintiff was a General Manager at Lembaga Tabung Haji **["LTH"],** at its Risk Management Division. The Defendant was a member of the staff under his supervision until 23/07/2009 when she was transferred to the Legal Division of LTH as a Senior Manager.

[6] On 29/07/2009, the Defendant lodged a complaint [**"the Complaint"**] with the Chief Executive Officer of LTH claiming that the Plaintiff:

(1) on 19/7/2009 uttered vulgar remarks to the Defendant at LTH's office;

(2) was fond of making dirty jokes that were sexually oriented in front of his subordinates, without any respect for female subordinates;

(3) frequently used rude and uncouth words in emails to the Defendant which the Defendant found to be disturbing, unethical and intolerable;

(4) repeatedly offered to make the Defendant his second wife;

(5) abused his position as a superior officer by saying anything he wished without regard to moral limits, work code ethics and the feelings of his subordinates.

[7] As a result of the Complaint, LTH set up a committee of inquiry which then conducted an inquiry from 01/09/2009 until 16/09/2009.

[8] The committee later found that there was insufficient evidence to warrant a disciplinary action to be taken against the Plaintiff. However, the Human Resource Department of LTH decided to issue a strong administrative reprimand to the Plaintiff. The Defendant was then transferred to the Legal Division of the LTH.

[9] Aggrieved by the Complaint which the Plaintiff claimed to be defamatory of him and affected his reputation and standing as a Muslim and a member of the senior management of LTH, and which led to his contract at LTH not being renewed, the Plaintiff lodged an official complaint to LTH seeking that disciplinary action be taken against the Defendant for lodging the Complaint without any proof.

[10] LTH did not take any disciplinary action against the Defendant.

[11] The Plaintiff requested LTH to supply him with the Complaint documents and the report of the committee of inquiry. However, LTH only furnished the Complaint papers, but not the others.

[12] The Defendant also did not apologise to the Plaintiff for the sexual harassment complaints she made.

[13] These events led to the filing of the Plaintiffôs claim.

The Defendant's pleaded case

[14] In her Defence, the Defendant set out in great detail the words and acts of the Plaintiff that led her to make the Complaint.

[15] In her Counterclaim, the Defendant claimed that the sexual harassment by the Plaintiff in the form of the words and acts set out in her Defence had caused her to suffer serious emotional, mental stress and trauma and that she had become ill as a result.

Agreed issues to be tried

[16] The parties agreed that the issues to be tried were as follows:

(1) whether the Defendant had defamed the Plaintiff through the contents of the Defendant's letter of complaint dated 27.07.2009 addressed to the CEO;

(2) whether the Defendant's counterclaim against the Plaintiff for sexual harassment was valid in law;

(3) in the event that the Defendant had a valid cause of action in her counterclaim, was the Plaintiff liable for the Defendant's emotional and mental pain and suffering.

FINDINGS OF THE HIGH COURT

[17] The learned High Court Judge addressed the first issue to be tried in paragraphs 71 to 96 of her Judgement, and concluded that the Plaintiff had failed to prove his claim of defamation against the Defendant.

[18] The learned High Court Judge found that the Defendant had followed the proper procedure in lodging a complaint with the CEO of LTH. What subsequently followed was the action taken by the management of LTH in investigating or inquiring into that complaint.

[19] The learned High Court Judge also found that the incidents set out in the Complaint, except the complaints about the e-mail, to be true. Impliedly, the learned High Court Judge found the Defendant had proved justification.

[20] On the third agreed issue, the learned High Court Judge found that there was ample evidence to show that the Plaintiff had uttered vulgar and/or sexually explicit and rude statements either addressed directly to the Defendant or in her presence and knowing that she would hear it.

[21] Unfortunately, however, the learned High Court Judge did not make a finding on the second agreed issue, namely whether the Defendantôs counterclaim for sexual harassment was a valid claim in law.

[22] Based on her Ladyshipôs findings, her Ladyship dismissed the Plaintiffôs claim and allowed the Defendantôs counterclaim.

APPEAL

[23] In his Memorandum of Appeal, the Plaintiffôs grounds were principally the following:

(1) the learned High Court Judge erred in dismissing his claim for defamation;

(2) the learned High Court Judge erred in allowing the Defendantôs counterclaim whenï

(a) the Defendantôs counterclaim had no valid basis in law;

(b) the Defendant had failed to discharge her burden of proving the counterclaim.

ANALYSIS

(1) <u>The Plaintiff's claim for defamation</u>

[24] The learned High Court Judge found that while the statements complained of were defamatory of the Plaintiff, the Defendant had made them in a formal complaint to the Chief Executive Officer of LTH. The Plaintiffôs own witness, PW3, confirmed that this was the proper mechanism for a member of the staff to complain about his/her bosses.

[25] There was more than ample evidence led through various witnesses, notably the Plaintiffôs own witnesses PW2 and PW4, as well as the report of the investigative committee set up by LTH adduced through DW3, that the Plaintiff did make vulgar and sexually oriented statements directed at the Defendant or within the presence of the Defendant.

[26] We agreed with the learned High Court Judge that the Defendantôs evidence need not be corroborated only by witnesses called by the Defendant. In our view, the counterclaim and the

Plaintiffôs claim were so closely interlinked that the defence against the claim had evidential value in proving the counterclaim.

[27] We were of the considered view that there was no basis to interfere with those findings of facts.

[28] However, we noted with interest that the relief the Plaintiff prayed for was not for damages for defamation. He prayed for a declaration that he was not guilty of causing sexual harassment to the Defendant as claimed in the Complaint.

[29] The Plaintiff also sought a general apology from the Plaintiff, and oddly enough sought an order that the Defendant cause LTH to issue a statement on that apology, and that the Plaintiff was not guilty, to the top management and staff of LTH.

[30] Additionally, the Plaintiff sought an order that LTH expunge from the Plaintiffôs employment record at LTH the administrative reprimand and all references to it. LTH was not a party to the case in the High Court and this appeal.

[31] Given the reliefs prayed for, we were of the considered view that the Plaintiffôs claim was correctly dismissed.

(2) **The Defendant's counterclaim for sexual harassment**

(a) ***Legal basis for the counterclaim***

[32] The Defendantôs counterclaim was for sexual harassment that caused adverse effect on her and induced emotional and mental and traumatic pressure on her.

[33] We were not able to find any authority specifically on sexual harassment, except one submitted by counsel for the Plaintiff. However, that case, *Henson v City of Dundee*, 682 F.2d 897 (1982), was a case from the United States which specifically dealt with a specific statutory provision known as Title VII action.

[34] The Malaysian Government had accepted that sexual harassment in the workplace, especially, is to be abhorred. In 1999 a **Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace** was formulated by the Government and employers were urged to adopt it. While the Code has no force of law, it signalled the change in the mindset of the authorities on sexual harassment in the workplace.

[35] In the Code, sexual harassment is defined asï

> Any unwanted conduct of a sexual nature having the effect of verbal, non-verbal, visual, psychological or physical harassment:
>
> - that might, on reasonable grounds, be perceived by the recipient as placing a condition of a sexual nature on her/his employment; or
>
> - that might, on reasonable grounds, be perceived by the recipient as an offence or humiliation, or a threat to his/her well-being, but has no direct link to her/his employment.

[36] Based on that definition, the Code divides sexual harassment into two categories, namely sexual coercion and sexual annoyance.

[37] Sexual coercion is defined as follows:

> é sexual harassment that results in some direct consequence to the victim's employment. An example of sexual harassment of this coercive

kind is where a superior, who has the power over salary and promotion, attempts to coercive kind is where a superior, who has the power over salary and promotion, attempts to coerce a subordinate to grant sexual favours. If the subordinate accedes to the superior's sexual solicitation, job benefits will follow. Conversely, if the subordinate refuses, job benefits are denied.

[38] The second type of sexual harassment, sexual annoyance is defined as follows:

é sexually-related conduct that is offensive, hostile or intimidating to the recipient, but nonetheless has no direct link to any job benefit. However, the annoying conduct creates a bothersome working environment which the recipient has to tolerate in order to continue working. A sexual harassment by an employee against a co-employee falls into this category. Similarly, harassment by a company's client against an employee also falls into this category.

[39] The Code further sets out various forms of sexual harassment in paragraph 8:

Sexual harassment encompasses various conducts of a sexual nature which can manifest themselves in five possible forms, namely:

- verbal harassment:

  e.g. offensive or suggestive remarks, comments, jokes, jesting, kidding, sounds, questioning.

- non-verbal/gestural harassment:

  e.g. leering or ogling with suggestive overtones, licking lips or holding or eating food provocatively, hand signal or sign language denoting sexual activity, persistent flirting.

- visual harassment :

  e.g. showing pornographic materials, drawing sex-based sketches or writing sex-based letters, sexual exposure.

- psychological harassment :

  e.g. repeated unwanted social invitations, relentless proposals for dates or physical intimacy.

- physical harassment :

  e.g. inappropriate touching, patting, pinching, stroking, brushing up against the body, hugging, kissing, fondling, sexual assault

[40] The vulgar and sexually-explicit words complained of by the Defendant clearly would be sexual harassment in the form of verbal harassment. However, as stated above, the Code does not have force of law, especially not as between co-workers as in the case before us.

[41] In the absence of statutory provisions on sexual harassment, the question that we needed to ask was: could acts of sexual harassment be allowed to be inflicted on a person without any sanction on the perpetrator?

[42] We were of the considered view that where the acts of sexual harassment were serious enough so as to cause adverse psychological effect on the victim, those acts would fall within the tort of intentionally causing nervous shock similar to that in *Wilkinson v Downton* [1897] 2 QB 57.

[43] In *Wilkinson v Downton* the defendant deliberately and falsely told the plaintiff that her husband had been injured in a road

accident. This caused the plaintiff to suffer severe shock and she became seriously ill. The Court (Wright J.) held that the plaintiff was entitled to recover in tort for the psychiatric illness which she suffered as a result of the defendantôs wilful act.

[44] The decision in *Wilkinson v Downton* was relied upon for the decision in *Clark v Canada* [1994] 3 FC 323. The Plaintiff, Clark, was a former member of the Royal Canadian Mounted Police (RCMP). The brief facts of the case are reproduced below from the headnotes of the case report.

> This was an action for damages for wrongful dismissal launched by a former RCMP member who alleged that sexual and other harassment on the part of some of her male colleagues and supervisors constituted a breach of the terms of her employment, negligence and intentional infliction of nervous shock. The plaintiff joined the RCMP in July 1980. Before long, she was subjected to sarcastic and sexist remarks by male colleagues and such comments continued to be made despite her objections. The sergeant said that she was not a real woman. Other members called her a "butch" and watched pornographic movies in the work area which she occupied. She stated that the work environment caused her unhappiness and began to affect her health. She completed her five-year term of engagement in July 1985 and was re-engaged for "continuous service". A year later, she requested a transfer, asthma being the reason given. In October 1986, she filed a complaint of harassment against two of her supervisors after numerous negative comments and reprimands had been placed in her file. When her condition worsened to the point where she was undergoing a mental crisis, plaintiff resigned from the RCMP in July 1987, again giving asthma as the reason. The evidence was that plaintiff had, in fact, been harassed by male constables and that her superiors failed to come to her assistance. The harassment was the major cause for her resignation. This action raised three main issues: 1) liability arising from the employment relationship, 2) liability in tort under the *Crown Liability Act* and 3) damages.

[45] The plaintiff in that case was suing the Government and the provisions of the Crown Liability Act considered in that case were similar to those in our Government Proceedings Act 1956, in particular sections 5 and 6 of our Act. The tort complained of was primarily the tort of intentionally causing nervous shock.

[46] The Court allowed the plaintiffs claim. On the issue of tort of intentionally causing nervous shock, Dubé J, held as follows (references to footnotes and citations have been omitted to facilitate reading):

> (i) Intentional infliction of nervous shock
>
> As noted by Noël J. in the *Boothman* case. judicial recognition of this cause of action in tort originates with the *Wilkinson v. Downton* case, in which a practical joker informed a woman her husband had been seriously injured, thereby inducing a state of nervous shock and prolonged mental and physical suffering. In finding the defendant liable, Wright J. stated:
>
> The defendant has é wilfully done an act calculated to cause physical harm to the plaintiff" that is to say, to infringe her legal right to personal safety, and has in fact thereby caused physical harm to her. That proposition without more appears to me to state a good cause of action, there being no justification alleged for the act. This wilful injuria is in law malicious, although no malicious purpose to cause the harm which was caused nor any motive of spite is imputed to the defendant.
>
> It is difficult to imagine that such a statement, made suddenly and with apparent seriousness, could fail to produce grave effects under the circumstances upon any but an exceptionally indifferent person, and therefore an intention to produce such an effect must be imputed, and it is no answer in law to say that more harm was done than was anticipated, for that is commonly the case with all wrongs.
>
> The *Wilkinson* principle has been adopted and applied in a number of Canadian cases. In addition to *Boothman*, see *Bieletski v. Obadiak*

(1921), 61 D.L.R. 494 (Sask. K.B.); affd (1922), 65 D.L.R. 627 (Sask. C.A.) (nervous shock following repetition of false statement that plaintiff's son had committed suicide); *Purdy v. Woznesensky*, [1937] 2 W.W.R. 116 (Sask. C.A.) (nervous shock to wife witnessing assault on husband); *Abramzik et al. v. Brenner et al.* (1967), 65 D.L.R. (2d) (Sask. C.A.) (distinguishing *Wilkinson* cases from negligent infliction of nervous shock); *Rahemtulla v. Vanfed Credit Union*, [1984] 3 W.W.R. 296 (B.C.S.C.) (bank teller suffering nervous shock following wrongful accusation of theft and dismissal); *Timmermans v. Buelow* (1984), 38 C.C.L.T. 136 (Ont. H.C.) (nervous shock induced by landlord's actions when attempting to evict psychologically vulnerable tenant). In *Purdy*, the Court found that an intention to cause the plaintiff nervous shock ought to be imputed to the defendant. In *Abramzik*, Culliton C.J.S. noted "[t]here can be no doubt but that an action will lie for the wilful infliction of shock, or a reckless disregard as to whether or not shock will ensue from the act committed." In *Rahemtulla*, McLachlin J., as she then was, applied three criteria gleaned from prior cases: first, outrageous or flagrant and extreme conduct; second, conduct calculated "to produce some effect of the kind which was produced;" third, conduct producing actual harm, i.e., a visible and provable illness. In *Timmermans*, Catzman J. found the defendant's limited intention and motivation did not relieve him from liability, particularly in light of his knowledge of the plaintiff's fragile emotional state.

The above cases involved single precipitating events. However the recent *Boothman* decision on which the plaintiff relies concerned a course of harassing and intimidating conduct Prosser states that in the American cases, liability "usually has rested on a prolonged course of hounding by a number of extreme methods": "Insult and Outrage" (1956), 44 *Cal. L.Rev.* 40, at pp. 48-49. over a seven-month period which caused a severe mental breakdown that was ongoing at the time of the trial seven years later. Noël J. found the defendant, who supervised the plaintiff and who was her sole co-worker, had hired the plaintiff because of her emotional vulnerability, exploited it in order to dominate her and, when that failed, drove her to break down and quit. He concluded that the supervisor's authority had been exercised wrongfully to inflict mental pain and suffering, to harass, humiliate, interfere with and assault the plaintiff. He found wilful *injuria* of the

Wilkinson type, combined with malicious purpose owing to knowledge of the plaintiff's psychological fragility, and awarded damages for assault and intentional infliction of nervous shock, in addition to exemplary damages.

Doctrinal authorities have summarized principles arising from the case law as follows. Fridman states [Fridman, *The Law of Torts in Canada*, vol. 1 (Toronto: Carswell, 1989), at p. 48]. that:

The defendant may achieve this [emotional or mental] harm without any physical touching of the plaintiff, in the absence of any threat to the plaintiff's physical safety, and without in any way infringing the plaintiff's freedom of movement. It is essential that the defendant cause the harm by his own direct act.

Both extreme conduct and "objective and substantially harmful physical or psychopathological consequences," rather than "mere anguish or fright," are required in order for a cause of action to arise. Fleming, at pp. 33-34; Linden, *Canadian Tort Law*, 5th ed. (Markham, Ont.: Butterworths, 1993), at pp. 50-51; see also *Frame v. Smith*, [1987] 2 S.C.R. 99, at p. 128. As to the former, Linden notes at pp. 47-48. that:

The quality of outrageousness might ... be based on the special position of authority of the defendant. If a landlord, a police officer, or a school principal uttered insults or threats to someone over whose future well-being they had some control, these acts might be considered beyond the bounds of decency, and therefore actionable.

Prosser adds at p. 50. that:

Still another basis on which extreme outrage may be found lies in the defendant's knowledge that **the plaintiff is especially sensitive, susceptible and vulnerable to injury through mental distress at the particular conduct** *[emphasis added by us*]

The gist of the outrage is the defendant's knowledge of the plaintiff's vulnerability, and where there is no such knowledge, conduct which is not otherwise sufficiently extreme leads to no liability, even though the plaintiff may in fact suffer serious injury because of it.

Fleming comments on the intentional element as follows:

Cases will be rare where nervous shock involving physical injury was fully intended. More frequently, the defendant's aim would have been merely to frighten, terrify or alarm his victim. But this is quite sufficient, provided his conduct was of a kind reasonably capable of terrifying a normal person, or was known or ought to have been known to the defendant to be likely to terrify the plaintiff for reasons special to him. Such conduct could be described as reckless.

"Calculated" to cause harm has not been narrowly interpreted.

Irvine suggests that the interpretation of the term "calculated" that accords best with its use in *Wilkinson* and the subsequent case law is

é that nervous shock é was not even reasonably foreseeable, given the defendant's limited knowledge of his victim's frailties; still less intended: but that some unwelcome, uncomfortable or unpleasant emotional apprehension or sensation é was foreseen and intended, even though that apprehension or emotional discomfort so foreseen fell far short of the traumatic nervous shock in fact caused.

Irvine also cites case law to the effect that limitation of liability based on remoteness and lack of foreseeability is inapplicable in the field of intentional torts. *Bettel et al. v. Yim* (1978), 20 O.R. (2d) 617 (Co. Ct.), *Allan et al. v. New Mount Sinai Hospital et al.* (1980), 28 O.R. (2d) 356 (H.C. Ont.); revd on other grounds (1981), 33 O.R. (2d) 603 (C.A.).

The case at hand involves a situation unlike those occurring in any of the decisions reviewed. First, several of the plaintiff's fellow members and superiors are involved, as opposed to a single individual. A further distinction is that here the impugned behaviour involves both a course of conduct on the part of a number of those individuals, as well as discrete acts or omissions on the part of the same or other individuals, over a four-year period. Given this unique set of circumstances, I am nevertheless satisfied that the above authorities support the plaintiff's claim for intentional infliction of nervous shock, for reasons already given.

I am satisfied that the evidence reviewed above establishes that the conduct directed toward the plaintiff was extreme, and calculated "to produce some effect of the kind which was produced". *Rahemtulla*. I

> have also concluded that the plaintiff's mental and physical deterioration until her reassignment in February 1987 meets the third criterion outlined in *Rahemtulla*, i.e., actual harm in the form of illness. In my view the plaintiff's condition, attested to by both Drs. Cooper and Shih, was analogous to those for which damages were awarded in that case and in the *Timmermans* case.

[47] It was our considered view that the time was now appropriate for the tort of intentionally causing/inflicting nervous shock to be recognised in this country, as had been done in Canada.

(b) Whether the counterclaim was proved

[48] There were a lot of similarities between the facts in *Clark v Canada* and the facts of the case on appeal before us.

[49] As we have said above (in paragraphs 25 and 26) there was more than sufficient evidence led to show that the Plaintiff did make vulgar and sexually oriented statements directed at the Defendant or within the presence of the Defendant. We have also stated earlier that we agreed with the learned High Court Judge that the Defendantôs evidence need not be corroborated only by witnesses called by the Defendant. The Defendantôs evidence could also be corroborated by evidence given by the Plaintiffôs witnesses.

[50] In the case on appeal before us, the evidence led before the High Court, in particular PW2ôs evidence, indicated that the Defendant was an emotionally vulnerable person, in the sense that she appeared to be under some emotional pressure and had migraine and pains in her leg. She clearly would be more susceptible to being adversely affected by the kind of objectionable remarks made by the Plaintiff, and the fact that the Plaintiff

continually made such remarks indicated that he knew that such remarks would make the Defendant extremely uncomfortable, to put it mildly.

[51] After her complaint started to be investigated, the Defendant was placed in another Department, assigned to do duties which had nothing to do with the job she was hired to do. This transfer had a direct nexus to the acts of the Plaintiff that she lodged a complaint about.

[52] DW1, a psychiatrist who examined the Defendant four times from January 2012, diagnosed her as having major depression. His conclusion was that the depression was caused by being harassed by the Plaintiff, and that continued to haunt her even after she left LTH.

[53] The Defendant herself testified that she was under so much emotional stress she could no longer bear being in LTH and had left to take up a post in Sabah.

[54] It was our considered view that the acts of the Plaintiff in uttering the remarks which amounted to sexual harassment of the Defendant and with the knowledge of her vulnerability fell within the ambit of the tort of intentionally causing nervous shock.

Conclusion

[55] We were therefore unanimous in our view that the learned High Court Judge did not err in allowing the Defendantôs counterclaim.

Damages

[56] On damages, in view of the evidence that the Plaintiff had, as a result of making the Complaint, been transferred to another Department to perform duties which had nothing to do with the job she was hired to do, and the distress she underwent before finding it necessary to leave LTH and move to Sabah, we were of the view that the amount awarded as damages was not excessive and we saw no reason to disturb it.

DECISION

[57] On the basis of the above analysis, we dismissed the Plaintiffs appeal with costs of RM 20,000.00 to the Defendant.

tt

(ZAHARAH BINTI IBRAHIM)

Judge,
Court of Appeal, Malaysia.

Putrajaya.

31.12.2014.

For the Appellant:

Puan Aisya Abdul Rahman
Encik Fahri Azzat
[Messrs Azzat & Izzat]

For the Respondent:
Puan Hazizah Kassim
Encik Hazwan Mohd Nor
[Tetuan Hazizah & Co.]