AZMI FADZLY MAHA & SIM

CASE UPDATE 5/2026

Court of Appeal Reaffirms the Primacy of Pleadings in Assessment of Damages

SPNB Aspirasi Sdn Bhd v Chimonief Sdn Bhd [2022] 4 MLJ 865

AFMS had the privilege of acting for SPNB Aspirasi Sdn Bhd where our managing partner, Ahmad Fadzly Bin Abdul Gani acted as lead counsel for the appellant in SPNB Aspirasi Sdn Bhd v Chimonief Sdn Bhd 2022 4 MLJ 865, where the Court of Appeal unanimously allowed the appeal and set aside a RM90 million award made during an assessment of damages proceeding.

Background

The dispute arose from a development agreement under which the respondent was appointed as a turnkey contractor for a proposed development project. Following the appellant's failure to file a defence, the respondent obtained a judgment in default for, among others, the sum of RM9.792 million representing the outstanding land cost, together with damages to be assessed.

At the assessment stage, the High Court awarded a global sum of RM90 million based primarily on an expert report that calculated alleged loss of profits arising from the construction component of the project.

The appellant appealed.

Key Issues Before the Court of Appeal

The appeal raised several important questions:

1. Whether damages could be assessed on matters that were not pleaded in the statement of claim.
2. Whether loss of profits based on construction costs could be claimed when such costs were not part of the pleaded case.
3. Whether the assessment proceeded on the incorrect assumption that the relevant agreements had been terminated.
4. Whether the High Court had applied the correct principles governing the assessment of contractual damages.

The Court of Appeal's Decision

The Court of Appeal allowed the appeal and reaffirmed a number of fundamental principles of civil litigation.

First, the Court emphasised that parties remain bound by their pleadings, even at the assessment of damages stage. While liability had been established through the default judgment, the quantum of damages still had to be assessed within the confines of the pleaded claim. The respondent's pleaded case concerned the outstanding land cost and did not extend to claims based on the construction component of the development.

Secondly, the Court held that the claim for loss of profits derived from construction costs was unsustainable because the relevant contractual basis for such a claim had neither been pleaded nor established. The supplementary agreement, which allegedly gave rise to such rights, was not relied upon in the statement of claim, and there was no pleaded termination of the agreements that would trigger the contractual entitlement to claim the entirety of the anticipated profits.

Thirdly, the Court found that the assessment exercise was fundamentally flawed because it relied on construction-cost projections that were not finalised and were, in any event, premature. The construction phase had not commenced, there was no approved building plan, and the contractual mechanisms necessary to crystallise such claims had not been invoked.

Finally, the Court reiterated that damages for breach of contract are compensatory in nature. An award of RM90 million arising from a pleaded default involving RM9.792 million in land costs required proper justification and a clear evidential basis. The Court found that such justification was absent.

Key Takeaways

This decision serves as an important reminder that:

1. A judgment in default does not dispense with the requirement to prove the nature and extent of the damages claimed.
2. Courts are not at liberty to assess damages on causes of action, contractual rights or factual bases that fall outside the pleaded case.

3. Expert evidence, however sophisticated, cannot overcome a fundamental pleading deficiency.
4. Damages awards must remain anchored to established legal principles and the contractual framework agreed between the parties.

The judgment is a significant reaffirmation of the long-established principle that pleadings define the boundaries of a dispute and that those boundaries remain relevant throughout the litigation process, including during assessment proceedings.

Written by:

Ahmad Fadzly Abdul Gani
Partner
fadzly@afmslaw.com

28 October 2026

Disclaimer: This update is provided for general informational purposes only and does not constitute legal advice. It should not be relied upon as a substitute for legal advice.

For further information, please feel free to contact the author of this update.