SUMMARY JUDGMENT : ITS APPLICATION IN MALAYSIA

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This project paper on summary Judgment and It Application in Malaysia is intended to discuss the application of the Summary Judgment Order or commonly known as Order 14 Judgment in Malaysia generally.

It laid down the object and the procedure in application of Summary Judgment whether in High Court or in Subordinate Court.

In addition,in earlier chapter of this project paper is in the light of the development, historical and application of the Order 14 Judgment into the Malaysian Courts.

The remainder of this paper included the usage and the procedure in application for Order 14 Judgment.

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CHAPTER 1

INTRODUCTION

i) CONCEPT OF SUMMARY JUDGEMENT

The concept of summary judgment procedure has found permanent foothold in Malaysia civil procedure. The rule of summary judgment (or order 14 judgment) as commonly known was decided or orginated from the English procedure in England. A brief historical excursion should not be out of place.

> "Before the middle of the nineteenth century
> a defendant sued in the plainest of plain
> cases - e.g. for the price of goods sold and
> delivered or upon a dishonoured cheque - had
> merely to put upon the record a plea, no matter
> how devoid of merits or remote from the actual
> facts, and the case had to go for trial with
> all the delay and expenses necessarily in-
> volved. At the trial the defendant very often
> did not appear. Eventually the bankers and
> other holders of bills in the city of London
> complained so vigorously that in 1855 the
> Summary Procedure on Bills of Exchange Act
> (Commonly called "Keating's Act") was passed.
> In cases to which the Act applied the
> defendant had to get leave to appear, which
> he could only do by paying the money into
> court or setting out his defence in an affi-
> davit. By the Judicature Act, 1973, and
> later by the Rules of Supreme Court, 1883,

(commonly called 'Keating's Act').

Later the rules was extended by the Judicature Act, 1983 and later by the Rules of Supreme Court, 1883 to cover cases where the plaintiff sought to recover a debt or liquidated demand in money and action for the recovery of land.

It was until 1937 that the summary judgement are made available to allowed every case in the Queen's Bench Division except for cases of libel, slander, malicious prosecution, false imprisonment, and active in which fraud is allged by the plaintiff.

Furthermore, since January, 1964 this rule was extended to a counterclaiming by the defendant and judgment on part only for a claim or civil law claim.

ii)   PURPOSE OF SUMMARY JUDGMENT

The purpose of the summary judgment as earlier introduced in England was and is not to deprive a defendant from defending quite the contrary, it was to give the plaintiff a quick remedy if he can show to the satisfaction of the court that the defendant has no answer and the case is a straight forward case.[1]

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[1] Thompson v. Mershall 28 WR 220; Jones v. Stone [1894] AC 122; Lloyd's Banking Co. v. Ogle 1 Ex. D 262,263