

SECURITIES

Securities Commission – Statements recorded by investigating officers of Securities Commission – Whether such statements privileged – Whether public interest would be compromised by the disclosure of statements – Securities Commission Act 1993, section 134

Suruhanjaya Sekuriti v Datuk Ishak Bin Ismail

[Rayuan Sivil No: 02-21-04/2012], Federal Court

Facts The appellant was a statutory body established under the Securities Commission Act 1993 (“the SCA”) while the respondent was a shareholder of a company (“the Company”). The appellant claimed that the respondent had breached securities law as he had made false statements relating to the Company’s operation and profitability. The appellant commenced an investigation on the respondent which involved interviewing 38 individuals and recording their statements pursuant to section 134 of the SCA¹ (“the Statements”). The appellant then sued the respondent at the High Court and a dispute arose when the respondent’s discovery application was allowed. The High Court allowed the disclosure of various documents including the Statements and the investigation papers with other supporting documents. The Court of Appeal had affirmed the decision of the High Court upon appeal, hence, the present appeal.

Issue The issue was whether the privilege under section 124 of the Evidence Act 1950 (“EA”)² applies to the statements recorded pursuant to section 134 of the SCA.

Held In allowing the appeal, it was held that section 134 of the SCA must be read subject to the rules of privilege and prohibition on the grounds of public policy in both civil and criminal proceedings. In this case, the Statements were subject to section 124 of EA. As the Statements were made to the investigation officer in the course of their official duties in official confidence, and that the investigation officer had deposed that the disclosure of the Statements would prejudice the appellant’s ability to carry out future investigations, the disclosure was thus disallowed.

ZUL RAFIQUE & partners
{FEBRUARY 2016 \ 01293139}

¹ Power to call for examination.

² Official Communication.