

FOOD SAFETY BREACH AND HALAL INTEGRITY: GERBANG ALAF RESTAURANTS SDN BHD (FORMERLY KNOWN AS GOLDEN ARCHES RESTAURANTS SDN BHD) V CHAI SU LIN & ANOR [2023] 5 MLJ 491

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ABSTRACT

This case review is based on the case of Gerbang Alaf Restaurants Sdn Bhd (formerly Golden Arches Restaurants Sdn Bhd) v Chai Su Lin & Anor [2023] 5 MLJ 491 from a halal food safety, hygiene and halal integrity angle. The case began when a McDonald's franchise agreement was terminated for failure by the franchisee to keep the premises clean and wholesome, causing pest problems, complaints from customers, multiple instances of failed inspections and temporary closure of the restaurant by the Ministry of Health. The Court of Appeal deemed the repeated breaches sufficient to conclude that termination under Section 31(3)(d) of the Franchise Act 1998 was warranted on the basis of documentary evidence, physical evidence and expert testimony. The case is analysed in this study using the components of the halal forensic science which are the implications, halal management, standards and regulations, halal science and Islamic jurisprudence. The results show that halal integrity has nothing to do with the use of halal ingredients only, but it also applies to the idea of halalan tayyiban, meaning that food must be clean, safe and free from contamination. The case emphasizes how important scientific evidence, effective hygiene management, regulatory compliance, and following Shariah principles are for protecting the welfare of consumers, building consumer confidence and sustaining the integrity of the halal food industry.

Introduction

The food service industry is an important sector to ensure that food products are safe, hygienic and meet quality standards. Food hygiene and food safety in the context of halal food management are important principles which have to be observed during the preparation, handling and service of food. The concept of halal does not only include the halal nature of ingredients, but also the *halalan tayyiban* (wholesome, safe, clean and free from any form of contamination). Not complying with these standards poses a risk to public health but can also affect consumer confidence and food industry integrity.

Failure to ensure food hygiene in food premises can lead to a number of potential food safety issues such as the presence of pests, cross-contamination and the spread of foodborne diseases. These can lead to regulatory penalties for health officials, reputational harm and legal liability for business owners. With the expansion of food and franchise business, it becomes more important than ever to ensure adherence to hygiene standards to safeguard consumers and maintain the reputation of brands. Thus, having effective monitoring systems, periodic inspections and ensuring compliance with operational standards are key elements to food safety governance.

This issue is reflected in the case of Gerbang Alaf Restaurants Sdn Bhd (formerly known as Golden Arches Restaurants Sdn Bhd) v Chai Su Lin & Anor [2023] 5 MLJ 491. The dispute stemmed from the expiration of a franchise agreement between Gerbang Alaf Restaurants Sdn Bhd and the franchisee company, a McDonald's, which was terminated by the franchisee when it claimed that the franchisee had not complied with the cleanliness and sanitation of the premises as stipulated in Clause 18(b) of the Franchise Agreement. In the case, it was established that there were complaints from customers, health authorities temporarily closed the restaurant, failed hygiene inspections, reports of cockroaches and rodents. The Court of Appeal ultimately determined that the failure to comply with hygiene standards repeatedly was material breaches under the franchise agreement and therefore an entitlement for its termination pursuant to Section 31(3)(d) of the Franchise Act 1998. Food safety, hygiene management and regulatory compliance are stressed as key factors in ensuring public trust, protecting food operations and ensuring food integrity.

Facts of the Case

The case was a clash between the franchisor – Gerbang Alaf Restaurants Sdn Bhd, which was authorised to run and sub-franchise McDonald's restaurants in Malaysia – and the franchisees Chai Su Lin and her assignee company, which operated a McDonald's restaurant in Kuching, Sarawak, under a Franchise Agreement (FA). On February 13, 2007, the parties had entered into the Franchise Agreement, Operator Lease Agreement (OTA), and Sale and Purchase Agreement (SPA). Later, the rights and interests of the first respondent under such agreements were transferred to the second respondent.

The dispute started in 2017, when Gerbang Alaf Restaurants complained that the respondents had consistently failed to comply with the obligations to maintain and operate the restaurant in a good, clean and sanitary condition contained in Clause 18(b) of the Franchise Agreement. In 2017, a number of inspections and audits carried out by the franchisor identified serious hygiene issues, such as signs of cockroach and rodent activity, sanitation, food safety and not meeting McDonald's operational standards. After unannounced pest audits and brand standard visits, the franchisor sent a number of warning letters, notices and requests for corrective action.

An inspection of the restaurant premises by the Ministry of Health revealed rat droppings and cockroaches on December 13, 2017. The health authority therefore issued a closure order under the Food Act 1983 and issued directives to the operator to implement the necessary corrective cleaning procedures prior to the restaurant reopening. The incident also brought media attention which reportedly caused it to have an impact on the goodwill, brand image and reputation of McDonald's.

Gerbang Alaf Restaurants (GAR) sent a Notice of Default to the respondents on December 15, 2017 after they failed to keep the restaurants in line with the franchise agreement on the issue of cleanliness. The notice also included that the franchisor reserved the right to terminate the agreement under paragraph (3)(d) of section 31 of the Franchise Act 1998 for "a failure by a franchisee to comply with the terms of a franchise agreement on a recurring basis.

On 26 December 2017, the franchisor notified the ex-privy trustees that it was to terminate the Franchise Agreement immediately, as a result of the non-compliance with the cleanliness and operational standards requirements. The respondents contested the termination and filed an action in the High Court asking that it be set aside as illegal, uncalled for and unconstitutional and award them damages. The High Court initially ruled in favour of the respondents and ruled the termination to be unlawful.

The Court of Appeal was then approached by Gerbang Alaf Restaurants with an appeal. The Court of Appeal heard extensive evidence of the repeated defaults by the respondents in complying with the conditions of hygiene stipulated in Clause 18(b) of the Franchise Agreement. Repeated pest infestations, failure to pass inspections, customer complaints and the restaurant's temporary closure by health authorities were sufficient to warrant termination under the Franchise Act 1998 (Section 31(3)(d)). The result was that the Court of Appeal allowed the appeal, set aside the High Court's decision and finally determined that the termination.

Means of Evidence

Documentary Evidence

The documentary evidence in this case was the production of a number of reports, notices, letters and official records showing the repeated failure of the respondents to maintain the standards of hygiene and operation necessary under the Franchise Agreement.

The most important document was a Notice of Default from Gerbang Alaf Restaurants Sdn Bhd dated 15th December 2017. The notice advised the respondents that they have been repeatedly in violation of Clause 18(b) of the Franchise Agreement for not keeping the restaurant in a good, clean and sanitary condition. The notice also referred to the previous warnings and any previous correspondence and stated that the franchisor would exercise its right to terminate the agreement under Section 31(3)(d) of the Franchise Act 1998.

The Unannounced Pest Audit (UPA) Reports dated 24th February, 2017 and 24th May, 2017 were another key piece of documentary evidence. These reports detailed the presence of pests, lack of cleanliness, food safety issues, and lack of compliance with operational procedures. The reports were accompanied by photographs to illustrate issues such as poor sanitation and pest problems in the restaurant premises.

The court also took into account the Brand Standard Visit (BSV) Report dated 19th May, 2017. The report noted the kitchen of the restaurant was not tidy, the equipment was not clean and the overall hygiene standards were not compliant with the requirements under McDonald's operating system.

Other pieces of documentary evidence comprised the Rentokil Service Reports of the 2017 year. Although the respondents considered these reports as an indication of pest control activities, several reports did contain the presence of flies, ants, cockroaches and rodents with the conclusion that the premises should be cleaned at all times to reduce the risk of pest problems.

The court also reviewed the Intertek Visit Report from an independent third-party quality and safety auditor. Some parts of the report indicated satisfactory level of food safety, others noted presence of flies around the area of food wrapping and cockroaches on the kitchen floor.

Lastly, documents signed and issued by the Ministry of Health were accepted as evidence. These comprised: Food Premises Closure Notice, Corrective Cleaning Order and Notice to Attend Court, all of which were issued after an inspection on 13 December 2017, where the Food and Environmental Hygiene Officer found droppings from rodents and the cockroach infestations in the restaurant.

Physical Evidence

The physical evidence in this case was mostly comprised of photos, pest infestation findings and observations made during inspections and audits at the restaurant sites.

The Unannounced Pest Audit Reports included photographs to illustrate the presence of pests and hygiene problems in the restaurant. These images indicated that the operating environment was not clean and was not in compliance with the standards required under the McDonald's franchise system, and supported the allegation that the respondents had fallen short, many times, of maintaining a clean operating environment.

During inspections, evidence of rodents, cockroaches, rodent droppings, flies and other pests were collected in various areas of the restaurant. The results of these pest audits and independent inspections, and the investigation carried out by the Ministry of Health, were noted. This suggests the possibility of food safety issues and consumer and employee exposure.

Health authorities closing down the restaurant was also indirect physical evidence of non-compliance. The Ministry of Health has inspected the premises and decided that conditions are such that the premises must be closed under the Food Act, 1983. The physicals taken together, corroborated the franchisor's assertion that the respondents had consistently violated their contractual responsibilities for cleanliness and food safety.

Expert Witnesses

In this case, a number of professional expert witnesses were key. The key expert witness was DW2, the defendant's Risk Management Department Manager, who performed the Unannounced Pest Audits and wrote reports of pest infestations, hygiene deficiencies and food safety risks in the restaurant. The court also relied on the testimony of a witness, DW1, who was the defendant's Operations Consultant and performed the Brand Standard Visits (BSV) and assessed compliance with the McDonald's Quality, Service, and Cleanliness (QSC) standards.

In addition, evidence was offered by professionals from Rentokil Initial (M) Sdn Bhd, a professional pest control company, in the form of the service report, and they admitted that there was a recurring problem at the restaurant that was related to pest problem. The evidence for hygiene and food safety issues was further supplemented by findings from an independent quality assurance and safety company (EUROLAB). The combination of these expert evaluations confirmed that the restaurant was repeatedly not maintaining the necessary levels of hygiene in accordance with the Franchise Agreement.

Issues Involving Halal Forensic

Implications

This incident has important consumer confidence, food safety and food service operator reputation issues. The results of the rodent and cockroach inspection, as well as the unsanitary conditions in the restaurant premises, are of great concern for the food hygiene and public health. A halal forensics point of view, poor sanitation may be detrimental to the integrity of the halal food by allowing food products to come into contact with najas (filth) and harmful biological agents. The restaurant's closure by the Ministry of Health further highlights the gravity of the hygiene issues and the harm they could be doing to consumers. In addition, the widespread media coverage of the incident negatively impacted the image of the franchise and the McDonald's brand, which undermined the public's confidence in the company's practices regarding the halal and food safety aspects.

Halal Management

This is a case of deficiencies in the halal management, such as the lack of cleanliness, pest management and continuous compliance to operational requirements. To ensure that the food is safe and halal throughout the food handling process, food premises should adopt proper sanitation procedures, regular inspections, conduct pest management programs, train its staff and establish monitoring systems for effective halal management. Though the respondents were repeatedly warned, audited and requested to take corrective measures from the franchisor, the complaints regarding the pest infestation and hygiene concerns went unnoticed and unattended. The case illustrates the significance of an effective halal

assurance system which incorporates a hygiene control, risk management and monitoring system, to avoid contamination and to ensure consumer confidence.

Standards and Acts

There are a number of legal and regulatory issues that apply to this situation. The Franchiser used Clause 18(b) of the Franchise Agreement, which states that the restaurant must be kept in good, clean, and sanitary condition to meet McDonald's standards. The franchise was terminated following the provisions of Section 31(3)(d) of the Franchise Act 1998 which provides for termination in cases of repeated failure of a franchisee to comply with the conditions of the franchise. Further, the Ministry of Health made a decision under Section 11 of the Food Act 1983 to close the restaurant temporarily because it was infested with pests and conditions were not sanitary. This case is also important for the requirements of MS 1500:2019 which highlights the importance of cleanliness, sanitation, food safety and prevention of contamination in halal food production and service.

Halal Science

Identification and assessment of the risks that could compromise the food safety and halal integrity is a very important role that can be helped by using halal science. In this, scientific evidence was gathered through conducting pest audit reports, food safety inspections, hygiene assessment, quality assurance evaluation etc. Rodents, cockroaches, flies, and rodent droppings are a sign of biological contamination which can pose a risk for the safety and quality of food products. The restaurant's shortcomings in regard to hygiene were scientifically demonstrated with the help of photographs, inspection reports, and data on pest control. According to the halal science point, if the food is contaminated by pests, then the food is not safe to eat, which is against the principles of clean, safe and wholesome food (halalan tayyiban).

Syariah Law

Under Islamic law, Muslims must consume food, which must be halal and tayyib (clean, safe and beneficial). Allah SWT says in the Ayah 168 (Surah Al-Baqarah):

“People, eat good and wholesome on earth, and avoid the paths of Satan!”

Food premises need to be extremely clean and hygienic, according to the principle of halalan tayyiban. The presence of these rodents, cockroaches and other vermin in the food preparation areas is a cause of worry as they might contaminate food with najis (filth) and harmful substances, which are not acceptable according to Islamic concept of cleanliness. The case didn't contain any non-halal ingredients, but the ongoing lack of hygienic conditions may undermine the integrity of the food served, since it is halal. In this perspective, a food operator means a person who is responsible for preparing, handling and serving the food to prevent consumers from suffering harm (darar) and to ensure the consumers' welfare in accordance with the objective of Islamic laws (Maqasid al-Shariah) which is to maintain life (hifz al-nafs).

Conclusion

To summarise, in the case of Gerbang Alaf Restaurants Sdn Bhd (formerly Golden Arches Restaurants Sdn Bhd) v Chai Su Lin & Anor [2023] 5 MLJ 491, the court stressed the importance of keeping food premises clean, safe and hygienic to protect the integrity of the food service industry. The evidence submitted, which consisted of pest audit reports, inspection records, photographs and expert evidence, confirmed that the respondents were continually failing to keep the premises at the restaurant in a clean and wholesome state. This meant that the Court of Appeal ruled that the repeated breaches were sufficient to terminate the Franchise Agreement under Section 31(3)(d) of the Franchise Act 1998. The case serves as a reminder of the critical need for compliance with the regulations, proper hygiene practices, and ongoing monitoring to ensure the safety of consumers and the preservation of trust in food products.

From a Halal forensic science point of view, the case highlights the importance of not only using halal ingredients but also cleanliness of food, safety, and food freedom from contamination which is the concept named “halalan tayyiban.” Pests such as rat, cockroaches were present which affected the safety of food and the halal certification of the food served. Hence, in addition to legal responsibilities, food operators are also accountable for halal, pest and sanitation issues. Finally, this case highlights the importance of halal forensic investigations, scientific evidence and halal management systems for ensuring consumer

safety, maintaining the integrity of halal, and achieving the aim of the Qur' Anadolu and specifically the preservation of human lives (hifz al-nafs).

References

- Abd Rahim, S. I., Mohd Mansor, S. K., Yakob, M. A., & Noraini, N. (2018). Food safety, sanitation and personal hygiene in food handling: An overview from Islamic perspective. *International Journal of Social Science and Humanities Research*, 6(4), 225–232.
- Department of Standards Malaysia. (2019). *MS 1500:2019 Halal food — General requirements* (Edisi ke-3).
- Enforcement of halal certification compliance in food outlets: Hygiene perspective. (2023). *International Journal of Research and Innovation in Social Science*, 7(10), 1201–1210. <https://doi.org/10.47772/IJRIS.2023.7010098>
- Gerbang Alaf Restaurants Sdn Bhd (formerly known as Golden Arches Restaurants Sdn Bhd) v Chai Su Lin & Anor* [2023] 5 MLJ 491.
- Hashim, K. E., Mohamad, M. N., & Ismail, A. (2022). Malaysian halal certification in fulfilling Hifz Nafs concept and entrepreneur's role. *International Journal of Humanities Technology and Civilization*, 7(2), 1–10. <https://doi.org/10.15282/ijhtc.v7i2.8783>
- Malaysia. (1983). *Akta Makanan 1983* (Akta 281).
- Malaysia. (1998). *Akta Fransais 1998* (Akta 590).
- Roslan, A. S., Mohd Yusof, R., & Hussain, N. H. (2020). The practice of halal concept among food premises in Perlis: The hygiene perspective. *International Journal of Modern Trends in Social Sciences*, 3(11), 1–10. <https://doi.org/10.35631/IJMTSS.311001>
- Skrine Advocates & Solicitors. (2023, Disember). *Court of Appeal: Remedy is not a cure for repeated breaches of a franchise agreement*. Skrine. <https://www.skrine.com/insights/alerts/december-2023/court-of-appeal-remedy-is-not-a-cure-for-repeated->
- Zulkifli, N., & Bujang, A. (2018). Assuring Tayyib from a food safety perspective in halal food sector: A conceptual framework. *MOJ Food Processing & Technology*, 6(2), 223–229. <https://doi.org/10.15406/mojfpt.2018.06.00181>