

14

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

No. 3 of 1974

O N A P P E A L
FROM THE FEDERAL COURT OF MALAYSIA (APPELLATE JURISDICTION)

B E T W E E N :

MALAYAN BANKING BERHAD

Appellants
(Applicants)

and

1. TAN FONG GUAN
2. TAN AY LIN (f)
3. LIM TAN TEE (f)

Respondents
(Respondents)

RECORD OF PROCEEDINGS

Coward Chance,
Royex House
Aldermanbury Square
LONDON EC2V 7 LD

Solicitors for the Appellants

O N A P P E A L

FROM THE FEDERAL COURT IN MALAYSIA (APPELLATE JURISDICTION)

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O N A P P E A L
FROM THE FEDERAL COURT OF MALAYSIA (APPELLATE JURISDICTION)

B E T W E E N :

MALAYAN BANKING BERHAD

Appellants
(Applicants)

and

1. TAN FONG SUAN
2. TAN AY LIN (f)
3. LIM TAN TEE (f)

Respondents
(Respondents)

RECORD OF PROCEEDINGS

No. 1

ORIGINATING SUMMONS

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

ORIGINATING SUMMONS NO.32 OF 1972

In the Matter of Section 256 of
the National Land Code;

And

In the Matter of Charge over the
lands held under Grant No.7072,
Lot 1599, Mukim of Labis, District
of Segamat and sub-divided into
Certificates of Titles Nos. 12332,
12333, 12334, 12335, 12336, 12337,
12338, 12339, 12340, 12341 and
12342 for Lot Nos. 4031, 4032,
4033, 4034, 4035, 4036, 4037, 4038,
4039, 4040 and 4041 respectively,
Mukim of Labis, District of Segamat.

In the High
Court in
Malaysia at
Kuala Lumpur

No. 1

Originating
Summons
19th January
1972

Between

Malayan Banking Berhad

Applicants

And

(2)

In the High
Court in
Malaya at
Kuala Lumpur

1. Lim Meng See
2. Tan Fong Guan
3. Tan Ay Lin (f)
4. Lim Tan Tee (f)

Respondents

No. 1

ORIGINATING SUMMONS

Originating
Summons
19th January
1972
(continued)

LET 1. Lim Meng See, 2. Tan Fong Guan, 3. Tan Ay Lin(f) and 4. Lim Tan Tee (f), all of No.27, Jalan Buloh Kasap, Segamat, Johore, the Respondents abovenamed within twelve (12) days after service of this Summons on them, inclusive of the day of such service cause an appearance to be entered for them to this Summons which is issued upon the application of Malayan Banking Berhad for an Order:-

10

- (1) that the lands held under Grant No. 7072, Lot 1599, Mukim of Labis, District of Segamat and subdivided into Certificates of Titles Nos.12332, 12333, 12334, 12335, 12336, 12337, 12338, 12339, 12340, 12341 and 12342 for Lots Nos. 4031, 4032, 4033, 4034, 4035, 4036, 4037, 4038, 4039, 4040 and 4041 respectively, Mukim of Labis, District of Segamat, and charged to the Applicants under a (sic) 1st and 2nd Charges registered in the Register of Charges Presentation No.167749 Volume CVI Folio 66 and 176652 Volume CIX Folio 142 respectively, be sold by public auction under the National Land Code to satisfy the sum of \$116,826.53 due to the Applicants as at the 15th day of May 1971 with interest thereon at the rate of 9.6% per annum as from the 16th day of May 1971 to the date of the Order and further interest on the decretal at the rate of 6% per annum to the date of payment or realisation;

20

- (2) That the date on which the sale shall be held be specified;

- (3) that the reserve price and other directions relating to the sale be fixed by the Senior Assistant Registrar;

- (4) that the Respondents do pay the costs of this application as taxed by the proper officer of the Court;

30

40

- (5) any other directions that this Honourable Court may deem fit.

Dated this 19th day of January, 1972.

Sd: Anwar Ismail
Senior Assistant Registrar
High Court, Kuala Lumpur

This Summons was taken out by Messrs. Shook Lin & Bok, Solicitors for the Applicants herein whose address for service is 801-809, Lee Wah Bank Building, Medan Pasar, Kuala Lumpur.

In the High Court in Malaya at Kuala Lumpur

This Summons will be supported by the Affidavit of CHEW TECK HONG affirmed on the 13th day of January 1972 and filed herein.

No. 1

Originating Summons
19th January 1972
(continued)

10 The Respondents may appear hereto by entering an appearance either personally or by their Advocates and Solicitors at the Registry of the High Court at Kuala Lumpur.

NOTE: If the Respondents do not enter an appearance within the time and at the place above-mentioned such Order will be made and proceedings taken as the Judge may think just and expedient.

No. 2

No. 2

AFFIDAVIT OF CHEW TECK HONG

Affidavit of Chew Teck Hong - sworn
13th January 1972

20 I, CHEW TECK HONG of full age and care of No.9, Jalan Aji, Segamat, Johore, hereby solemnly affirm and say as follows:-

1. The Applicants are a limited liability company incorporated in Malaysia and carrying on the business of Bankers at their branch office at No.9, Jalan Aji, Segamat, Johore and elsewhere. I am the Manager of the Applicants at their said branch office and am duly authorised to affirm this Affidavit on their behalf.

30 2. The 1st Respondent was the registered proprietor of the land held under Grant for Land No. 7072 Lot 1599 Mukim of Labis, District of Segamat (hereinafter referred to as "the said land").

40 3. On or about the 4th day of May 1962 the 1st Respondent executed a Memorandum of Charge on the said land in favour of the Applicants as security for all advances made by the Applicants to the 1st Respondent to the extent of \$35,000.00 with interest thereon at the rate of 12% per annum with monthly rests, commission and other usual bankers' charges. The document now shown to me is the said Memorandum of Charge, a xerox copy whereof is marked "MBB 1" and attached herewith (hereinafter referred to as "the 1st Charge").

4. On or about the 11th day of June 1963 the 1st Respondent executed another Memorandum of

In the High Court in Malaya at Kuala Lumpur

No. 2

Affidavit of Chew Teck Hong - sworn 13th January 1972 (continued)

Charge on the said land in favour of the Applicants as security for further advances made by the Applicants to the 1st Respondent to the extent of \$30,000.00 with interest thereon at the rate of 9.6% per annum with monthly rests, commission and other usual bankers' charges. The document now shown to me is the said Memorandum of Charge, a xerox copy whereof is marked "MBB 2" and attached hereto (hereinafter referred to as "the 2nd Charge").

10

5. The 1st and 2nd Charges were registered on 13th August 1962 and on 19th June 1963 vide Presentation Nos. 167749 Volume CVI Folio 66 and Presentation No. 176652 Volume CIX Folio 142 respectively.

6. On or about the 1st day of December 1963 the said land was sub-divided and Certificates of Titles were issued in respect of the sub-divided lots viz. 12332, 12333, 12334, 12335, 12336, 12337, 12338, 12339, 12340, 12341 and 12342 for Lots Nos. 4031, 4032, 4033, 4034, 4035, 4036, 4037, 4038, 4039, 4040 and 4041 respectively.

20

7. On or about the 6th day of December 1963 the 1st Respondent transferred the sub-divided plots aforesaid under the following Certificates of Titles to the 2nd, 3rd and 4th Respondents subject to the 1st and 2nd Charges and in the manner following:

Certificate of Title No.	Lot No.	Transferee	Share in Land	
12333	4032	2nd Respondent	undivided 1/2 share	30
12334	4033	do.	do.	
12335	4034	3rd & 4th Respondents	the whole	40
12336	4035	do.	do.	
12337	4036	4th Respondent	undivided 1/2 share	40
12338	4037	do.	do.	
12339	4038	2nd & 3rd Respondents	the whole	40
12340	4039	do.	do.	
12341	4040	3rd Respondent	undivided 1/2 share	40
12342	4041	do.	do.	

8. By the terms of the 1st and 2nd Charges, the 1st Respondent, together with the 2nd, 3rd and 4th

Respondents as transferees subject to the said 1st and 2nd Charges, are liable inter alia, to repay on demand the balance sum which on the overdraft account of the 1st Respondent is due and owing to the Applicants.

In the High Court in Malaya at Kuala Lumpur

No. 2

Affidavit of Chew Teck Hong - sworn 13th January 1972

(continued)

10 9. The 1st Respondent was adjudicated a bankrupt on 13th March 1965. On that date the said overdraft account showed a debit balance of \$73,173.79 with further interest thereon at the rate of 9.6% per annum.

20 10. By letters dated June 8, 1971 the Applicants through their solicitors Messrs. Shook Lin & Bok, 801, Lee Wah Bank Building, Medan Pasar, Kuala Lumpur (hereinafter called "the said Solicitors") demanded of the 1st, 2nd, 3rd and 4th Respondents payment within seven (7) days thereof, of the sum of \$116,826.53 being the whole outstanding balance due to the Applicants on the account of the 1st Respondent as at 15th May 1971 together with interest thereon at the rate of 9.6% per annum to date of payment. The said letters were sent to the 1st, 2nd, 3rd and 4th Respondents by A.R. registered post on 9th June 1971 and received by each of them on or about the 10th June 1971. Copies of the said letters and the A.R. retour cards are also annexed hereto and marked "MBB 3", "MBB 4", "MBB 5", "MBB 6", "MBB 7", "MBB 8", "MBB 9" and "MBB 10" respectively.

30 11. The 1st, 2nd, 3rd and 4th Respondents or either of them have failed and or neglected to pay the aforesaid sum of \$116,826.53 together with the accruing interest thereon to date or any part thereof and thereby have committed a breach of the terms and conditions of the 1st and 2nd Charges.

40 12. That the aforesaid breach having continued for a period of more than one (1) month, the Applicants through the said Solicitors caused a Statutory Notice of Demand under Form 16D of the National Land Code, 1965 and dated 28th August 1971 (hereinafter referred to as "the said Notices") to be issued to each of the 1st, 2nd, 3rd and 4th Respondents, requiring them to remedy the said breach within a period of one (1) month from the date of receipt thereof failing which an Order for Sale would be applied for. The said Notices were sent to each of the 1st, 2nd, 3rd and 4th Respondents

In the High Court in Malaya at Kuala Lumpur

No. 2

Affidavit of Chew Teck Hong - sworn 13th January 1972 (continued)

by A.R. registered post on 2nd September 1971 and received by them on or about 3rd September 1971. Copies of the said Notices and A.R. retour cards are further annexed hereto and marked "MBB 11", "MBB 12", "MBB 13", "MBB 14", "MBB 15", "MBB 16", "MBB 17" and "MBB 18" respectively.

13. That the 1st, 2nd, 3rd and 4th Respondents or either of them have failed and or neglected to comply with the said Notice.

Wherefore I pray for an Order in terms of the Summons.

10

Affirmed by the said CHEW TECK HONG at Segamat on the 13th day of January 1972 at 10.00 a.m. } Sd. CHEW TECK HONG

Before me,

Sd. C. RANJIT SINGH

Commissioner for Oaths

This Affidavit is filed by Messrs. Shook Lin & Bok, Solicitors for the Applicants herein and whose address for service is Nos. 801-809, Lee Wah Bank Building, Medan Pasar, Kuala Lumpur

20

No. 3

No. 3

Exhibit "MBB 1" Memorandum of Charge 4th May 1962

EXHIBIT "MBB 1" MEMORANDUM OF CHARGE

THE JOHORE LAND ENACTMENT Section 68 Schedule P. Form (iii) C H A R G E

I/We Lim Meng See being registered as the proprietor(s) (subject to the respective annual rent(s) of \$478/50 of all that/those piece(s) of land containing the respective areas of 79a 2 r 10p or thereabouts situated in the Mukim of Labis, District of Segamat, State of Johore and more particularly described in the Schedule, and desiring to render the said land available for

30

the purpose of securing to and for the benefit of Malayan Banking Limited, a Company incorporated in the Federation of Malaya with its Head Office at No.92, High Street, Kuala Lumpur and a registered office at No.9, Jalan Aji, Segamat, Johore (hereinafter called "the Bank") the repayment on demand of all sums advanced to me/us by the Bank in manner hereinafter appearing (with interest thereon at the rate of 12 per cent per annum) up to the limit of Dollars Thirty five thousand only (₹35,000/-)

10

DO HEREBY CHARGE the said land for the benefit of the Bank with the repayment on demand of the balance which on the account between me and the Bank shall for the time being be owing in respect of cheques, bills, notes or drafts drawn, accepted or endorsed by me either alone or jointly with another or others, including all moneys which may become owing in respect of any notes, bills or drafts drawn, accepted or endorsed by me either solely or jointly with another or others which may not at the time of closing the said account have become due or payable, but which for the time being have been entered in the said account, or in respect of cheques, bills, notes or drafts accepted, paid or discounted on behalf of me either alone or jointly with another or others or for loans or advances made to or for the use or accommodation of me whether alone or jointly with another or others or in respect of contracts for the forward delivery of goods, bills or specie otherwise howsoever, up to the limit of Dollars Thirty five thousand only (₹35,000/-) for principal and interest at the rate of 12 per cent per annum with monthly rests, commission and other usual bankers' charges, such sum to be raised and paid at the times and in the manner following that is to say, immediately upon the receipt by me of a notice in writing sent by the Bank in the manner hereinafter provided.

20

30

40

And if, when the said current account shall be closed either by service of such notice in writing as aforesaid or by my/our death(s) a balance shall be owing to the Bank by me I/we or my/our legal personal representatives, as the case may be, will, so long as the same or any part thereof shall remain owing, pay to the Bank interest thereon at the aforesaid rate of 12 per cent per annum computed from the time when such balance shall have been ascertained; and I/we agree that the statement

In the High Court in Malaya at Kuala Lumpur

—
No. 3

Exhibit
"MBB 1"
Memorandum
of Charge
4th May 1962
(continued)

In the High
Court in
Malaya at
Kuala Lumpur

—
No. 3

Exhibit
"MBB 1"
Memorandum
of Charge
4th May 1962
(continued)

of the Agent (Sub-Agent or Accountant) of the
Bank as to the amount of such balance shall be
final and conclusive.

Provided always, and it is hereby declared and
agreed as follows:-

- (1) Any demand for payment of the balance
intended to be hereby secured may be made by
a notice in writing signed by the Agent (Sub-
Agent or Accountant) of the Bank on behalf
of the Bank or by any solicitor or firm of
solicitors purporting to act for the Bank
and such notice shall be deemed to have been
sufficiently served on me/us if it is left
at my/our usual or last known place or
residence in No.27, Jalan Buloh Kasap,
Segamat, Johore or at my/our usual or last
known place of business, or sent by
registered letter to either of such
addresses; and, in the last mentioned case,
the service shall be deemed to be made at
the time when the registered letter would,
in the ordinary course, be delivered. 10
- (2) Such notice of demand, or my/our death(s)
shall be deemed to operate as if one month's
default in payment of the principal moneys
and interest hereby secured within the
meaning of section 68 of "The Land Enactment"
had been made. 20
- (3) When the payment of any money hereby secured,
or intended so to be, shall be further secured
to the Bank by any bill of exchange, promissory
note, draft, receipt or other instrument
reserving a higher rate of interest to be
paid in respect thereof than that herein-
before covenanted to be paid, such higher rate
of interest shall be payable in respect of
such moneys, and nothing contained in or to be
implied from these presents shall affect the
right of the Bank to enforce and recover
payment of such higher rate of interest or,
as the case may be, the difference between
such higher rate and the rate which shall
have been paid hereunder. 30 40

(Special stipulations, if any)

(4) I/We the Chargor(s) or my/our assign(s) will keep the premises standing on the land(s) hereby charged, namely

insured against loss or damage by fire in the name of the Bank with Insurers approved by the Bank in the sum of Dollars

10 or to the full insurable value thereof, and will make all payment required therefor not later than the same shall fall due and on demand produce to the Bank the Policy or Policies of such insurance and the premium receipts:- If the Chargor(s) make default in any of such matters the Bank may at its discretion insure and keep insured the said premises in the same amount, and its expenses of so doing shall be repaid to the Bank by the Chargor (s) on demand and until so repaid may be added to the principal moneys hereby secured and bear interest accordingly.

20 (5) The Chargor will keep any buildings fixtures or machinery which may from time to time form part of the said premises in a good state of repair and in perfect working order and also insured against loss or damage by fire in their full value for the time being with Insurers of the Bank.

30 (6) In the case of default by the Chargor in keeping any of the said buildings fixtures or machinery in repair the Chargor will permit the Bank to enter on the charged properties and effect such repairs as the Bank may consider necessary, and the Chargor will repay to the Bank every sum expended by the Bank on such repairs and every sum so expended by the Bank shall be a charge on the charged properties.

40 (7) The Bank may at any time during the continuance of this charge between sunrise and sunset and so often as the Bank thinks fit either by its Manager, Agent, Sub-Agent or any other person authorised in writing enter upon any part of the properties hereby charged to inspect the same.

In the High Court in Malaya at Kuala Lumpur

—
No. 3

Exhibit
"MBB 1"
Memorandum
of Charge
4th May 1962
(continued)

In the High
Court in
Malaya at
Kuala Lumpur

No. 3

Exhibit
"MBB 1"
Memorandum
of Charge
4th May 1962
(continued)

- (8) I/We the chargor will not during the continuance of this charge hereby created without the previous consent in writing of the Bank let or sublet lease or charge any part of the properties hereby charged to the Bank.
- (9) It is hereby declared that this charge shall be a continuing charge and extend to cover any sums of money which shall for the time being constitute the balance due from the Chargor to the Bank. 10
- (10) The Chargor hereby attorns tenants to the Bank of such of the said premises as are in his occupation or the monthly/yearly rent of a peppercorn if demanded. Provided that the Bank may at any time hereafter enter into and upon such premises to any part thereof and determine the tenancy hereby created without giving to the Chargor or his successors in title any notice to quit and that either the tenancy created by the said attornment nor any receipt of rent shall constitute the Bank chargees in possession or render them liable to account as such. 20
- (11) The Bank may once in every three years during the continuance of this charge obtained from a Licensed Valuer at the cost of me/us the Chargor a proper valuation of the properties hereby charged, and its expenses of so doing shall be repaid by me/us to the Bank on demand and until so repaid may be added to the principal moneys hereby secured and bear interest accordingly. 30
- (12) (Deleted)
- (13) It is hereby expressly agreed and declared that notwithstanding the provisions relating to the rate of interest as hereinbefore provided, the Bank shall be entitled at any time and from time to time to vary at its discretion such rate of interest by serving a notice in writing on me /and on the customer or the firm) of such its intention, and such amended rate of interest shall be payable as 40

(11)

from the date specified in the said notice. Service of such notice shall be effected in the same manner as a notice demanding payment of the balance due as hereinbefore provided.

In the High Court in Malaya at Kuala Lumpur

No. 3

Exhibit "MBB 1" Memorandum of Charge 4th May 1962 (continued)

10 (14) The Bank is fully authorised during the continuance of this Charge or as long as it is in force, to pay all outgoing expenses, e.g. quit rent, assessment, etc., due from time to time on the property or properties Charged to the Bank and such money or monies paid, if any, be added to the principal moneys and bear interests accordingly.

PRESENTATION NO. 166841

Charge, VOL. CVI, FOL. 4

REGISTERED AT JOHORE BAHRU THIS 7TH DAY OF JULY 1962 AT 11.00 O'CLOCK IN THE FORENOON.

S E A L

Commissioner of Lands & Mines
Johore

20

PRESENTATION NO. 167749.

Charge, VOL. CVI, FOL. 66

REGISTERED AT JOHORE BAHRU THIS 13TH DAY OF AUG. 1962 AT 11.09 O'CLOCK IN THE FORENOON

S E A L

Commissioner of Lands & Mines
Johore

30

And, subject as aforesaid, the Bank shall be entitled to all powers and remedies given to a Chargee under Part V of "The Land Enactment".

In the High Court in Malaya at Kuala Lumpur
—
No. 3

SCHEDULE

All that piece of land measuring 79a 2r 10p or thereabouts situated in the Mukim of Labis, District of Segamat, State of Johore and comprised in Johore Government Grant No. 7072 Lot No. 1599.

Exhibit "MBB 1" Memorandum of Charge 4th May 1962 (continued)

In witness whereof I/We the Chargor(s) Lim Meng See have hereunto set my/our hand(s) the 4th day of May, 1962 in the presence of: }
Lim Meng See
Signature of Lim Meng See

10

C.Paramjothy

Solicitor.

I, Chelliah Paramjothy an Advocate & Solicitor of the Federation of Malaya hereby testify that the signature/thumb print of the Chargor written/affixed in my presence on this 4th day of May 1962 is/are according to my own personal knowledge the true signature/right thumb print of the said Lim Meng See who has/have acknowledge to me that he is/are of full age and that he has/have voluntarily executed this instrument.

20

As witness my hand this 4th day of May, 1962.

C. Paramjothy

Signature.

PRESENTATION NO. 165492

Charge, Vol. CV FOL. 131

REGISTERED AT JOHORE BAHRU THIS 8TH DAY OF MAY 1962 AT 11.37 O'CLOCK IN THE FORENOON.

S E A L
Commissioner of Lands & Mines
Johore

THIS IS THE EXHIBIT MARKED "MBB 1" referred to in the Affidavit of LIM SAN CHEE affirmed Before me this 23rd day of September 1969.

30

WONG & PARAMJOTHY
Advocates & Solicitors.

Sd. Illegible
Commissioner for Oaths
Kuala Lumpur.

No. 4

EXHIBIT "MBB 2" MEMORANDUM OF CHARGE

THE JOHORE LAND ENACTMENT
Section 68 Schedule P. Form (iii)
CHARGE

In the High
Court in
Malaya at
Kuala Lumpur

No. 4

Exhibit
"MBB 2"
Memorandum
of Charge
11th June
1963

10 I/We Lim Meng See (i/c J.190616) of No.27 Jalan
Buloh Kasap, Segamat, being registered as the
proprietor(s) (subject to the respective annual
rent(s) of \$478-50 and to such charges as are
notified by Memorandum endorsed hereon, of all that/
those piece(s) of land containing the respective
areas of 79a. 2 roods 10 poles or thereabouts
situated in The Mukim of Labis, District of Segamat,
and more particularly described in the Schedule;
and desiring to render the said land available for
the purpose of securing to and for the benefit of
The Malayan Banking Limited, a Company incorporated
in the Federation of Malaya having its registered
head office at Kuala Lumpur, and of its several
20 branch offices in the State of Johore, Federation
of Malaya, (hereinafter called "the Bank") the
repayment on demand of all sums advanced to me/us
by the Bank in manner hereinafter appearing (with
interest thereon at the rate of 9.6% per cent per
annum) up to the limit of Dollars thirty thousand
only (\$30,000-00)

30 DO HEREBY CHARGE the said land for the benefit
of the Bank with the repayment on demand of the
balance which on the account between me and the
Bank shall for the time being be owing in respect
of cheques, bills, notes or drafts drawn, accepted
or endorsed by me either alone or jointly with
another or others, including all moneys which may
become owing in respect of any notes, bills or
drafts drawn, accepted or endorsed by me either
solely or jointly with another or others which may
not at the time of closing the said account have
become due or payable, but which for the time
40 being have been entered in the said account, or in
respect of cheques, bills, notes or drafts accepted,
paid or discounted on behalf of me either alone or
jointly with another or others or for loans or
advances made to or for the use or accommodation of
me whether alone or jointly with another or others
or in respect of contracts for the forward delivery

In the High
Court in
Malaya at
Kuala Lumpur

—
No. 4

Exhibit
"MBB 2"
Memorandum
of Charge
11th June
1963
(continued)

of goods, bills or specie otherwise howsoever, up to the limit of Dollars thirty thousand only (₹30,000-00) for principal and for interest at the rate of 9.6% per cent per annum with monthly rests, commission and other usual bankers' charges, such sum to be raised and paid at the times and in the manner following that is to say, immediately upon the receipt by me of a notice in writing sent by the Bank in the manner hereinafter provided.

And if, when the said current account shall be closed either by service of such notice in writing as aforesaid or by my/our death(s) a balance shall be owing to the Bank by me I/we or my/our legal personal representatives, as the case may be, will, so long as the same or any part thereof shall remain owing, pay to the Bank interest thereon at the aforesaid rate of 9.6% per cent per annum computed from the time when such balance shall have been ascertained; and I/we agree that the statement of the Agent (Sub-Agent or Accountant) of the Bank as to the amount of such balance shall be final and conclusive. Provided always, and it is hereby declared and agreed as follows:-

- (1) Any demand for payment of the balance intended to be hereby secured may be made by a notice in writing signed by the Agent (Sub-Agent or Accountant) of the Bank on behalf of the Bank or by any solicitor or firm of solicitors purporting to act for the Bank and such notice shall be deemed to have been sufficiently served on me/us if it is left at my/our usual or last known place or residence in No.27 Jalan Buloh Kasap, Segamat, or at my/our usual or last known place of business, or sent by registered letter to either of such addresses; and, in the last mentioned case, the service shall be deemed to be made at the time when the registered letter would, in the ordinary course, be delivered.
- (2) Such notice of demand, or my/our death(s) shall be deemed to operate as if one month's default in payment of the principal moneys and interest hereby secured within the meaning of section 68 of "The Land Enactment" had been made.

10

20

30

40

- 10 (3) When the payment of any money hereby secured, or intended so to be, shall be further secured to the Bank by any bill of exchange, promissory note, draft, receipt or other instrument reserving a higher rate of interest to be paid in respect thereof than that hereinbefore covenanted to be paid, such higher rate of interest shall be payable in respect of such moneys, and nothing contained in or to be implied from these presents shall affect the right of the Bank to enforce and recover payment of such higher rate of interest or, as the case may be, the difference between such higher rate and the rate which shall have been paid hereunder.

In the High Court in Malaya at Kuala Lumpur

—
No. 4

Exhibit "MBB 2"
Memorandum of Charge
11th June 1963
(continued)

(Special stipulations, if any)

- (4) (Deleted)

- 20 (5) The Chargor will keep any buildings, fixtures or machinery which may from time to time form part of the said premises in a good state of repair and in perfect working order and also insured against loss or damage by fire in their full value for the time being with Insurers of the Bank.

- 30 (6) In the case of default by the Chargor in keeping any of the said buildings, fixtures or machinery in repair the Chargor will permit the Bank to enter on the charged properties and effect such repairs as the Bank may consider necessary, and the Chargor will repay to the Bank every sum expended by the Bank on such repairs and every sum so expended by the Bank shall be a charge on the charged properties.

- 40 (7) The Bank may at any time during the continuance of this charge between sunrise and sunset and so often as the Bank thinks fit either by its Manager, Agent, Sub-Agent or any other person authorised in writing enter upon any part of the properties hereby charged to inspect the same.

- (8) I/We the chargor will not during the continuance of this charge hereby created without the previous consent in writing of the Bank let or

In the High
Court in
Malaya at
Kuala Lumpur

—
No. 4

Exhibit
"MBB 2"

Memorandum
of Charge
11th June
1963
(continued)

sublet lease or charge any part of the
properties hereby charged to the Bank.

- (9) It is hereby declared that this charge shall be a continuing charge and extend to cover any sums of money which shall for the time being constitute the balance due from the Chargor to the Bank.
- (10) The Chargor hereby attorns tenants to the Bank of such of the said premises as are in his occupation or the monthly/yearly rent of a peppercorn if demanded. Provided that the Bank may at any time hereafter enter into and upon such premises to any part thereof and determine the tenancy hereby created without giving to the Chargor or his successors in title any notice to quit and that either the tenancy created by the said attornment nor any receipt of rent shall constitute the Bank chargees in possession or render them liable to account as such. 10 20
- (11) The Bank may once in every three years during the continuance of this charge obtained from a Licensed Valuer at the cost of me/us the Chargor a proper valuation of the properties hereby charged, and its expenses of so doing shall be repaid by me/us to the Bank on demand and until so repaid may be added to the principal moneys hereby secured and bear interest accordingly.
- (12) (Deleted) 30
- (13) It is hereby expressly agreed and declared that notwithstanding the provisions relating to the rate of interest as hereinbefore provided, the Bank shall be entitled at any time and from time to time to carry at its discretion such rate of interest by serving a notice in writing on me (and on the customer or the firm) of such its intention, and such amended rate of interest shall be payable as from the date specified in the said notice. Service of such notice shall be effected in the same manner as a notice demanding payment of the balance due as hereinbefore provided. 40

(14) The Bank is fully authorised, during the continuance of this Charge or as long as it is in force, to pay all outgoing expenses, e.g. quit rent, assessment, etc. due from time to time on the property or properties Charged to the Bank and such money or monies paid, if any, be added to the principal moneys and bear interests accordingly.

In the High Court in Malaya at Kuala Lumpur

No. 4

Exhibit "MBB 2" Memorandum of Charge 11th June 1963 (continued)

10

THIS IS THE EXHIBIT MARKED "MBB 2" referred to in the Affidavit of Lim San Chee affirmed Before me this 23rd day of September 1969.

Sd. Illegible Commissioner for Oaths Kuala Lumpur.

20

And, subject as aforesaid, the Bank shall be entitled to all powers and remedies given to a Chargee under Part V of "The Land Enactment".

SCHEDULE

All that piece of land containing by measurement the area of 79a. 2r. 10 pls. or thereabouts situate in the Mukim of Labis in the District of Segamat and comprised in Johore Government Grant No. 7072 Lot No. 1599 (subject to the annual rent of \$478-50).

(Subject to Charge Presentation No. 167749 Vol.CVI. Fol. 66).

30

In witness whereof I/We the Chargor(s) Lim Meng See have hereunto set my/our hand(s) the 11th day of June, 1963 in the presence of:

(Sd.) LIM MENG SEE

Identified by:

G. Paramjothy

Hoo Kengseng.

Solicitor, Muar.

40

I, Chelliah Paramjothy, an Advocate & Solicitor of the Federation of Malaya hereby testify that the signature/thumb print of the Chargor written/affixed in my presence on this 11th day of June, 1963, is/are according to my own personal knowledge/information

(18)

In the High
Court in
Malaya at
Kuala Lumpur

No. 4

Exhibit
"MBB 2"
Memorandum
of Charge
11th June
1963
(continued)

given to me by the following trustworthy and
reliable person namely: Hoo Keng Seng of No.6 Jalan
Petrie, Muar, which information I verily believe
the true signature/right thumb print of the said
Lim Meng See, who has/have acknowledge to me that
he is/are of full age and that he has/have
voluntarily executed this instrument.

As witness my hand this 11th day of June, 1963.

C. Paramjothy.

Signature.

10

PRESENTATION NO. 176652

Charge VOL. CIX FOL. 142

REGISTERED AT JOHOREBAHRU THIS 19TH DAY
OF JUNE 1963 AT 10.54 O'CLOCK IN THE
FORENOON.

S E A L

Commissioner of
Lands & Mines
Johore

WONG & PARAMJOTHY
Advocates & Solicitors

20

No. 5

Exhibit
"MBB 3"
Letter,
Shook Lin &
Bok to Lim
Meng Lee
8th June 1971

No. 5

EXHIBIT "MBB 3" - LETTER, SHOOK LIN & BOK
to LIM MENG SEE

TKH/NMC/8108-1/MBB/LMS

A.R. REGISTERED

June 8, 1971.

Dear Sir,

Re: Your overdraft Account with
The Malayan Banking Berhad. Secured by

30

1st and 2nd Charge Presentation Nos. 167749 and 176652, Volume CVI and CIX, Folios 66 and 142, respectively over the lands held under Grant No. 7072 for Lot 1599 and subdivided into Certificate of Titles Nos. 12332, 12333, 12334, 12335, 12336, 12337, 12338, 12339, 12340, 12341 and 12342 for Lots Nos. 4031, 4032, 4033, 4034, 4035, 4036, 4037, 4038, 4039 and 4040 and 4041 respectively
Mukim of Labis District of Segamat

In the High Court in Malaya at Kuala Lumpur

No. 5

Exhibit "MBB 3" Letter, Shook, Lin & Bok to Lim Meng Lee 8th June 1971 (continued)

10

We act for The Malayan Banking Berhad who instruct us that your abovementioned overdraft account showed a debit balance of \$116,826.53 as at May 15th 1971 with interest thereon at the rate of 9.6% per annum. The said account is secured by the abovementioned Charges.

20

Our clients further instruct us to give you notice as Chargor of the said Charge, which we hereby do, to make payment, of the said sum of \$116,826.53 with interest thereon at the rate of 9.6% per annum calculable as from May 16, 1971 within seven (7) days from the date hereof. Please take notice that unless payment of the said money, together with the interest accruing is received by us or our clients within the period specified herein, our instructions are to commence legal proceedings for the realisation of the abovementioned lands secured by the said Charges to satisfy the same without further reference.

30

Yours faithfully,

Mr. Lim Meng See,
No. 27, Jalan Buloh Kasap,
Segamat,
Johore.

40

- c.c. 1. By Ordinary Post.
2. The Official Assignee of the property of Lim Meng See, bankrupt. (By A.R. Post.)
3. Malayan Banking Bhd., No. 92, Jalan Bandar, Kuala Lumpur.

THIS IS THE EXHIBIT MARKED "MBB 3" referred to in the Affidavit of Chew Teck Hong affirmed Before me this 13th day of January 1972.

Sd. C. Ranjit Singh
Commissioner for Oaths
Kuala Lumpur

(20)

In the High
Court in
Malaya at
Kuala Lumpur

No. 6

EXHIBIT "MBB 4" - LETTER, SHOOK LIN & BOK
to TAN FONG GUAN

No. 6

TKH/NMC/8108-1/MBB/LMS

Exhibit
"MBB 4"
Letter,
Shook Lin &
Bok to Tan
Fong Guan
8th June 1971

A.R. REGISTERED

June 8, 1971.

Dear Sir,

Re: Overdraft Account of Lim Meng See with
The Malayan Banking Berhad. Secured by
1st and 2nd Charge Presentation Nos.
167749 and 176652, Volume CVI and CIX,
Folios 66 and 142, respectively over
the lands held under Grant No. 7072 for
Lot 1599 and subdivided into Certificate
of Titles Nos. 12332, 12333, 12334,
12335, 12336, 12337, 12338, 12339,
12340, 12341, 12342, for Lots Nos. 4031,
4032, 4033, 4034, 4035, 4036, 4037,
4038, 4039, 4040 and 4041 respectively,
Mukim of Labis, District of Segamat

10

20

We act for the Malayan Banking Berhad, who
instruct us that the abovementioned overdraft
account of Lim Meng See showed a debit balance
of \$116,826.53 as at May 15, 1971 with interest
thereon at the rate of 9.6% per annum. The
said account is secured by the abovementioned
Charges over the said lands of which an
undivided half share each of Lots 4032, 4033,
4038 and 4039 have been transferred to you by
the said Lim Meng See on the 12th day of
December 1963, subject to the said Charges.

30

Our clients further instruct us to give you notice as transferee of the undivided half share in the aforesaid lots respectively comprised in the said charged lands, which we hereby do, to make payment of the said sum of \$116,826.53 with interest thereon at the rate of 9.6% per annum calculable as from May 16, 1971, within seven (7) days from the date hereof. Please take notice that unless payment of the said moneys together with the accruing interest is received by us or our clients within the period specified herein, our instructions are to commence legal proceedings for realisation of the said charged lands to satisfy the same without further reference.

In the High Court in Malaya at Kuala Lumpur

No. 6

Exhibit "MBB 4" Letter, Shook Lin & Bok to Tan Fong Guan 8th June 1971 (continued)

10

Yours faithfully,

THIS IS THE EXHIBIT MARKED "MBB 4" referred to in the Affidavit of Chew Teck Hong affirmed Before me this 13th day of January 1972.

Sd. C. Ranjit Singh
Commissioner for Oaths,
Kuala Lumpur.

Mr. Tan Fong Guan,
No. 27, Jalan Buloh Kasap,
Segamat,
Johore.

20

- c.c. 1. By Ordinary Post.
- 2. The Malayan Banking Bhd.,
No. 92, Jalan Bandar,
Kuala Lumpur.

KSL

No. 7

No. 7

EXHIBIT "MBB 5" - LETTER, SHOOK LIN & BOK to TAY AY LEN

Letter, Shook Lin & Bok to Tay Ay Len 8th June 1971

TKH/NMC/8108-1/MBB/LMS
A.R. REGISTERED

June 8, 1971.

30

Dear Sir,

Re: Overdraft Account of Lim Meng See with The Malayan Banking Berhad. Secured by 1st and 2nd Charge Presentation Nos. 167749 and 176652, Volume CVI and CIX, Folios 66 and 142, respectively over the lands held under Grant No. 7072 for Lot 1599 and

In the High Court in Malaya at Kuala Lumpur

No. 7

Exhibit "MBB 5" Letter, Shook Lin & Bok to Tay Ay Len 8th June 1971 (continued)

subdivided into Certificate of Titles Nos. 12332, 12333, 12334, 12335, 12336, 12337, 12338, 12339, 12340, 12341 and 12342 for Lots Nos. 4031, 4032, 4033, 4034, 4035, 4036, 4037, 4038, 4039, 4040 and 4041 respectively, Mukim of Labis, District of Segamat.

We act for The Malayan Banking Berhad, who instruct us that the abovementioned overdraft account of Lim Meng See showed a debit balance of \$116,826.53 as at May 15, 1971 with interest thereon at the rate of 9.6% per annum. The said account is secured by the abovementioned Charges over the said lands, of which an undivided half share each of Lots 4034, 4035, 4038, 4039, 4040 and 4041 have been transferred to you by the said Lim Meng See on the 12th day of December 1963, subject to the said Charges.

10

Our clients further instruct us to give you notice as transferee of the undivided half share in the aforesaid lots respectively comprised in the said charged lands, which we hereby do, to make payment of the said sum of \$116,826.53 with interest thereon at the rate of 9.6% per annum calculable as from May 16, 1971 within seven (7) days from the date hereof. Please take notice that unless payment of the said moneys together with the accruing interest is received by us or our clients within the period specified herein, our instructions are to commence legal proceedings for realisation of the said charged lands to satisfy the same without further reference.

20

30

Yours faithfully,

Mr. Tay Ay Lin, No.27, Jalan Buloh Kasap, Segamat, Johore.

c.c. 1. By Ordinary Post.

2. Malayan Banking Bhd., No.92, Jalan Bandar, Kuala Lumpur.

THIS IS THE EXHIBIT MARKED "MBB 5" referred to in the Affidavit of Chew Teck Hong affirmed Before me this 13th day of January 1972.

Sd. C.Ranjit Singh Commissioner for Oaths Kuala Lumpur.

KSL.

EXHIBIT "MBB 6" - LETTER, SHOOK LIN & BOK
to LIM TAN TEE

TKH/NMC/8108-1/MBB/LMS

A.R. REGISTERED

In the High
Court in
Malaya at
Kuala Lumpur

No. 8

June 8, 1971

Exhibit
"MBB 6"
Letter, Shook
Lin & Bok to
Lim Tan Tee
8th June 1971

Dear Sir,

10 Re: Overdraft Account of Lim Meng See with
The Malayan Banking Berhad. Secured by
1st and 2nd Charge Presentation Nos. 167749
and 176652, Volume CVI and CLX, Folios 66
and 142, respectively over the lands held
under Grant No. 7072 for Lot 1599 and sub-
divided into Certificate of Titles Nos.
12332, 12333, 12334, 12335, 12336, 12337,
12338, 12339, 12340, 12341 and 12342 for
Lots Nos. 4031, 4032, 4033, 4034, 4035,
4036, 4037, 4038, 4039, 4040 and 4041
respectively, Mukim of Labis, District of
Segamat

20 We act for The Malayan Banking Berhad, who instruct
us that the abovementioned overdraft account of Lim
Meng See showed a debit balance of \$116,826.53 as at
May 15, 1971 with interest thereon at the rate of
9.6% per annum. The said account is secured by the
abovementioned Charges over the said lands, of which
an undivided half share each of Lots 4034, 4035,
4036 and 4037 have been transferred to you by the
said Lim Meng See on the 12th day of December 1963,
subject to the said Charges.

30 Our clients further instruct us to give you notice
as transferee of the undivided half share in the
aforesaid lots respectively comprised in the said
charged lands, which we hereby do, to make payment
of the said sum of \$116,826.53 with interest thereon
at the rate of 9.6% per annum calculable as from
May 16, 1971, within seven (7) days from the date
hereof. Please take notice that unless payment of
the said moneys together with the accruing interest
is received by us or our clients within the period
specified herein, our instructions are to commence
legal proceedings for realisation of the said

2/

(24)

In the High
Court in
Malaya at
Kuala Lumpur

No. 8

Exhibit
"MBB 6"
Letter, Shook
Lin & Bok to
Lim Tan Tee
8th June 1971
(continued)

charged lands to satisfy the same without further
reference.

Yours faithfully,

Mr. Lim Tan Tee,
No.27, Jalan Buloh Kasap,
Segamat,
Johore.

THIS IS THE EXHIBIT MARKED

"MBB 6" referred to in the
Affidavit of Chew Teck Hong
affirmed Before me this
13th day of January 1972.

10

Sd. C. Ranjit Singh

Commissioner for Oaths
Kuala Lumpur.

(25)

No. 9

EXHIBIT "MBB 7" - ADVICE OF DELIVERY BY A.R.
REGISTERED POST OF LETTER SHOOK LIN & BOK TO
LIM MENG LEE DATED 8TH JUNE 1971

In the High
Court in
Malaya at
Kuala Lumpur

No. 9

Exhibit "MBB 7"
Advice of
Delivery by
A.R. Registered
Post of Letter
Shook Lin & Bok
to Lim Meng Lee
dated 8th June
1971

10th June 1971

(Pos-R & P. 10)
(Rev. 1/55)

JABATAN PERKHIDMATAN POS, NEGERI TANAH MELAYU

Hendak-lah di-penuhi oleh pejabat yang asal
To be filled in by the office of origin

AKUAN MENERIMA SURAT DARTARAN DALAM NEGERI
Advice of delivery inland registered letter

Barang Berdaftar atau Bungkusannya
Registered article or parcel

Yang bertanda tangan di-bawah ini mengatakakan benda yang tersebut telah di-sampaikan di-alamat yang tersebut pada.....

Di-bantar oleh SHOOK LIN & BOK

The undersigned states that the article mentioned was duly delivered at the address stated on

Di-alamatkan kepada MR. LIM MENG LEE

Di-alamatkan kepada MR. LIM MENG LEE

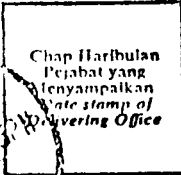
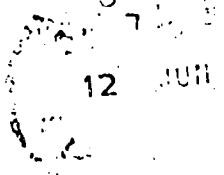
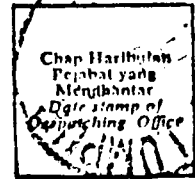
Di-alamatkan kepada MR. LIM MENG LEE
Di-alamatkan kepada MR. LIM MENG LEE
Di-alamatkan kepada MR. LIM MENG LEE

Teloh di-poskan di-
Posted at

Di-tanda tangani oleh
Signature of

Pada
On

Di-bawah No. Daftar
Under Registration No.



Potong apabila si-penerima menanda tangani kad ini atau apabila kad ini tidak disertai dengan benda itu.
Delete when recipient deigns this card or when the card does not accompany the article.
Potong apabila kad yang telah di-penuhi ada bersama benda itu dan si-penerima akan menanda tangan.
Delete when the completed card accompanies the article and the recipient will sign.

SETELAH PENOH KAD INI HENDAK-LAH DI-KEMBALIKAN KEPADA ALAMAT DI-SEBELAH
On completion this card should be returned to the address shown overleaf

THIS IS THE RECEIPT MARKED
" MBB 7"
of Chew Peck Hong
affirmed before me on 13th day of
January 1972
Sd/- C. Rajit Singh
Kuala Lumpur.

No. 10

In the High Court in Malaya at Kuala Lumpur

EXHIBIT "MBB 8" - ADVICE OF DELIVERY BY A.R. REGISTERED POST OF LETTER SHOOK LIN & BOK TO TAN FONG GUAN DATED 8TH JUNE 1971.

No. 10

(Pos- R. & P. 10) (Rev. 1/53)

Exhibit "MBB 8" Advice of Delivery by A.R. Registered Post of Letter Shook Lin & Bok to Tan Fong Guan dated 8th June 1971

JABATAN PERKHIDMATAN POS, NEGERI TANAH MELAYU

Hendaklah di-penuhi oleh pejabat yang asal
To be filled in by the office of origin

Perang Berdaftar atau Bungkusan
Registered article or parcel

Dihantar oleh
Sent by

Dilampirkan kepada
Addressed to

Di
At

Telah di poskan di
Posted at

Pada
On

Dibantu No. Daftar
Under Registration No.

AKUAN MENFERIMA SURAT DAFTARAN DALAM NEGERI
Advice of delivery inland registered letter

Yang bertanda tangan di-bawah ini mengatakan benda yang tersebut telah di-sampaikan di-alamat yang tersebut pada.....19....
The undersigned states that the article mentioned was duly delivered at the address stated on

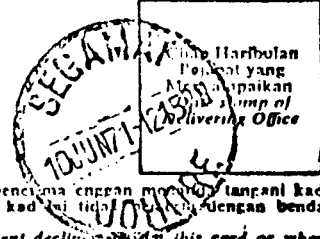
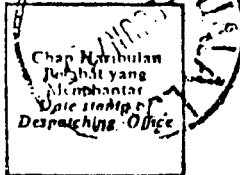
*Si-penerima
Recipient atau
or
Ketua Pos
Postmaster

Di-landa tangani oleh
Signature of

Chen Haribulan
Pejabat yang
Menerima
Stamp of
Delivery Office

Polong apabila si-penerima enggan menanda tangani kad ini atau apabila kad ini tidak mengacpanya benda itu.
Delete when recipient declines to sign this card, or when the card does not accompany the article.

Polong apabila kad yang telah di-penuhi ada bersama benda itu dan si-penerima akan menanda tangan.
Delete when the completed card accompanies the article and the recipient will sign.



SETELAH PENOH KAD INI HENDAKLAH DI-KEMBALIKAN KEPADA 'ALAMAT DI-SEBELAH
On completion this card should be returned to the address shown overleaf

10th June 1971

THIS IS THE EXHIBIT MARKED
" MBB 8 " set out to in the Affidavit
of Chen Peck Hong
affirmed before me on the 13th day of
January 1972
S.S. Ranjit Singh
Commissioner of Oaths
Kuala Lumpur.

(27)

No. 11

EXHIBIT "MBB 9" - ADVICE OF DELIVERY BY A.R.
REGISTERED POST OF LETTER SHOOK LIN & BOK TO
TAY AY LIN DATED 8TH JUNE 1971

In the High
Court in
Malaya at
Kuala Lumpur

No. 11

Exhibit "MBB 9"
Advice of
Delivery by
A.R.
Registered
Post of
Letter Shook
Lin & Bok to
Tay Ay Lin
dated 8th June
1971

10th June 1971

(Pos- R & P. 10)
(Rev. 1/55)

JABATAN PERKHIDMATAN POS, NEGERI TANAH MELAYU

Hendak-lah di-penuhi oleh pejabat yang asal
To be filled in by the office of origin

Datang Berdaftar atau Dungkukan
Registered article or parcel

Dihantar oleh...
Sent by

Di-alamatkan kepada...
Addressed to

Di...
At

Telah di-poskan di...
Posted at

Pada...
On

Dibawah No. Daftar...
Under Registration No.

AKUAN MENERIMA SURAT DAFTARAN DALAM NEGERI
Advice of delivery inland registered letter

Yang beranda tangan di-bawah ini mengatakan benda yang tersebut telah di-sampaikan di-alamat yang tersebut pada... 19...

The undersigned states that the article mentioned was duly delivered at the address stated on

Di-tanda tangan oleh...
Signature of

*Si-penerima...
Recipient
atau
or
Ketua Pos...
Postmaster

Chap Haribulan Pejabat yang Menhanlari
Day stamp of Despatching Office

Chap Haribulan Pejabat yang Menhanlari
Day stamp of Delivery Office

* Potong apabila si-penerima enggan menanda tangan kad ini atau apabila kad ini tidak disertai dengan benda itu.
Delete when recipient declines to sign this card or when the card does not accompany the article.

* Potong apabila kad yang telah di-penuhi ada bersama benda itu dan si-penerima akan menanda tangan.
Delete when the completed card accompanies the article and the recipient will sign.

12 JUN 1971

SETELAH PENOHL KAD INI HENDAK-LAH DI-KEMBALIKAN KEPADA ALAMAT DI-SEBELAH
On completion this card should be returned to the address shown overleaf

THIS IS THE RESERVE MARKED
" MBB 9 " referred to in the Advice of
Delivery by A.R. of
Cher Leck Hong
affirmed
Jaanny
S. C. Rajit Singh

In the High Court in Malaya at Kuala Lumpur

EXHIBIT "MBB 10" - ADVICE OF DELIVERY BY A.R. REGISTERED POST OF LETTER SHOOK LIN & BOK TO LIM TAN TEE DATED 8TH JUNE 1971

No. 12

Exhibit "MBB 10" Advice of Delivery by A.R. Registered Post of Letter Shook Lin & Bok to Lim Tan Tee dated 8th June 1971

10th June 1971

(Pos-R. & P. 10) (Rev. 1/53)

JABATAN PERKHIDMATAN POS, NEGERI TANAH MELAYU

Hendaklah di-penuhi oleh pejabat yang asal To be filled in by the office of origin
Barang Berdaftar atau Bungkusan Registered article or parcel
Dihantar oleh... Sent by
Dialamatkan kepada... Addressed to
Telah diposkan di... Posted at
Pada... On
Di bawah No. Daftar Under Registration No.

AKUAN MENERIMA SURAT DAFTARAN DALAM NEGERI Advice of delivery inland registered letter
Yang bertanda tangan di-bawah ini mengakui benda yang tersebut telah di-sampaikan di-alamat yang tersebut pada... The undersigned states that the article mentioned was duly delivered at the address stated on
Di-tanda tangan oleh Signature of
*Si-penerima Recipient
atau or
Ketua Pos Postmaster

Chap Haribulan Pejabat yang Menyampaikan Date stamp of Despatching Office

9/6/71
12 JUN 1971

SEKAM
20 JUN 1971
Chap Haribulan Pejabat yang Menyampaikan Date stamp of Delivering Office

- Potong apabila si-penerima carian... Delete when recipient searches for this card or when the card does not accompany the article.
Potong apabila kad yang telah di-penuhi ada bersama benda itu dan si-penerima akan menanda tangan. Delete when the completed card accompanies the article and the recipient will sign.

SETELAH PENOJI KAD INI HENDAK-LAH DI-KEMBALIKAN KEPADA 'ALAMAT DI-SEBELAH On completion this card should be returned to the address shown overleaf

THIS IS THE EXHIBIT MARKED "MBB 10" referred to in the Affidavit of Cheuk Peck Hong affirmed before me this 13th day of January 1972 J. C. Ramjit Singh

No. 13

EXHIBIT "MBB 11" - STATUTORY NOTICE OF DEMAND
UNDER FORM 16D OF NATIONAL LAND CODE 1965
SERVED UPON LIM MENG SEE

In the High
Court in
Malaya at
Kuala Lumpur

—
No.13

NATIONAL LAND CODE
FORM 16D
(Section 254)

Exhibit
"MBB 11"
Statutory
Notice of
demand under
Form 16D of
National
Land Code
1965 served
upon Lim
Meng See
28th August
1971

NOTICE OF DEFAULT WITH RESPECT TO A CHARGE

10 To: Mr. Lim Meng See,
No.27, Jalan Buloh Kasap,
Segamat, Johore.

Pegawai Pemegang Harta,
Mahkamah Ke'adilan,
Johore Bahru.

Chargor under the charge described in the schedule
below of the land.

20 Whereas you have committed a breach of the
provisions of this charge by failing to make payment
on demand of the sum of \$116,826.53 being the whole
outstanding balance due as at the 15th day of May
1971 together with interest thereon at the rate of
9.6% per annum calculable as from the 16th day of
May 1971 to the date of payment or any part thereof
pursuant to a notice of demand dated the 8th day of
June 1971. And whereas the breach has continued
for a period of at least one (1) month prior to the
date of this notice; We, as chargees, by virtue of
the powers conferred by section 254 of the National
Land Code, hereby require you within the period of
30 one (1) month from the service of this notice to
remedy the breach;

And take notice that if you fail to remedy the
breach within that period, we shall apply for an
Order of Sale.

Dated this 28th day of August 1971.

Malayan Banking Berhad,
by its Attorney

(Sd.) ILLEGIBLE

.....
Signature (or other form of
execution) by or on behalf
of Chargees.

In the High
Court in
Malaya at
Kuala Lumpur

No.13

Exhibit
"MBB 11"
Statutory
Notice of
demand under
Form 16D of
National
Land Code
1985 served
upon Lim
Meng See
28th August
1971
(continued)

SCHEDULE

Where the address of the person claiming under this instrument is outside the Federation, an address within the Federation for the service of notices is to be added in this space.

THIS IS THE EXHIBIT MARKED
"MBB 11" referred to in the
Affidavit of Chew Teck Hong
affirmed Before me this 13th
day of January 1972.

10

Sd. C. Ranjit Singh
Commissioner for Oaths
Kuala Lumpur

SCHEDULE OF LAND* AND INTEREST

Mukim	*Lot	Description and No. of Title Certificates of Title Nos.	Share of land (if any)	Regis- tered No. of *lease/ sub-lease (if any)	Regis- tered No. of Charge (if any)	
(1)	(2)	(3)	(4)	(5)	(6)	
Mukim of Labis	{ 4031	12332	the whole	Nil	} Presen- tation No.167749 Volume CVI Folio 66 Presen- tation No.176652 Volume CIX Folio 142	20
"	{ 4032	12333	undivided	"		
"	{ 4033	12334	$\frac{1}{2}$ share	"		
"	{ 4036	12337	"	"		
"	{ 4037	12338	"	"		
"	{ 4040	12341	"	"		
"	{ 4041	12342	"	"		

30

*Delete as appropriate

In area

No. 14

EXHIBIT "MBB 12" - STATUTORY NOTICE OF DEMAND
UNDER FORM 16D OF NATIONAL LAND CODE 1965
SERVED UPON TAN FONG GUAN

In the High
Court in
Malaya at
Kuala Lumpur

No.14

NATIONAL LAND CODE
FORM 16D
(Section 254)

Exhibit
"MBB 12"
Statutory
Notice of
demand under
Form 16D of
National
Land Code
1965 served
upon Tan Fong
Guan
28th August
1971

NOTICE OF DEFAULT WITH RESPECT TO A CHARGE

10 To: Mr. Tan Fong Guan,
No.27, Jalan Buloh Kasap,
Segamat, Johore.

Chargor under the charge described in the schedule
below of the land.

20 Whereas you have committed a breach of the
provisions of this charge by failing to make payment
on demand of the sum of \$116,826.53 being the whole
outstanding balance due as at the 15th day of May
1971 together with interest thereon at the rate of
9.6% per annum calculable as from the 16th day of
May 1971 to the date of payment or any part thereof
pursuant to a notice of demand dated the 8th day of
June 1971.

And whereas the breach has continued for a period
of at least one (1) month prior to the date of this
notice; We, as chargees, by virtue of the powers
conferred by Section 254 of the National Land Code,
hereby require you within the period of one (1)
month from the service of this notice to remedy
the breach;

30 And take notice that if you fail to remedy the
breach within that period, we shall apply for an
Order of Sale.

Dated this 28th day of August 1971.

Malayan Banking Berhad
by its Attorney

Sd. ILLEGIBLE

.....
Signature (or other form of
execution) by or on behalf
of Chargees.

In the High
Court in
Malaya at
Kuala Lumpur

No.14

Exhibit
"MBB 12"
Statutory
Notice of
demand under
Form 16D of
National
Land Code
1965 served
upon Tan Fong
Guan
28th August
1971
(continued)

SCHEDULE

Where the address of the person claiming under this instrument is outside the Federation, an address within the Federation for the service of notices is to be added in this space.

THIS IS THE EXHIBIT MARKED
"MBB 12" referred to in the
Affidavit of Chew Teck Hong
affirmed Before me this 13th
day of January 1972.

Sd. C. Ranjit Singh
Commissioner for Oaths
Kuala Lumpur

10

SCHEDULE OF LAND* AND INTEREST

Mukim	*Lot	Description and No. of Title Certificates of Title Nos.	Share of Land (if any)	Regis- tered No. of *lease/ sub-lease (if any)	Regis- tered No. of Charge (if any)	
(1)	(2)	(3)	(4)	(5)	(6)	
	(4032	12333	undivided $\frac{1}{2}$ share	Nil) Presenta- tion No. 167749 Volume CVI Folio 66 Presenta- tion No. 176652 Volume CIX Folio 142	20
	{ 4033	12334	"	"		
Mukim	{ 4038	12339	"	"		
of	{ 4039	12340	"	"		
Labis	{					30

*Delete as appropriate

In area

No.15

EXHIBIT "MBB 13" - STATUTORY NOTICE OF DEMAND
UNDER FORM 16D OF NATIONAL LAND CODE 1965
SERVED UPON TAN AY LIN

NATIONAL LAND CODE
FORM 16D
(Section 254)

In the High
Court in
Malaya at
Kuala Lumpur

No.15

Exhibit
"MBB 13"
Statutory
Notice of
demand under
Form 16D of
National
Land Code
1965 served
upon Tan Ay
Lin
28th August
1971

NOTICE OF DEFAULT WITH RESPECT TO A CHARGE

10

To: Mr. Tan Ay Lin,
No.27, Jalan Buloh Kasap,
Segamat, Johore.

Chargor under the charge described in the schedule
below of the land.

20

Whereas you have committed a breach of the
provisions of this charge by failing to make payment
on demand of the sum of \$116,826.53 being the whole
outstanding balance due as at the 15th day of May
1971 together with interest thereon at the rate of
9.6% per annum calculable as from the 16th day of
May 1971 to the date of payment or any part thereof
pursuant to a notice of demand dated the 8th day
of June 1971.

30

And whereas the breach has continued for a period
of at least one (1) month prior to the date of
this notice; We, as chargees, by virtue of the
powers conferred by section 254 of the National
Land Code, hereby require you within the period of
one (1) month from the service of this notice to
remedy the breach;
And take notice that if you fail to remedy the
breach within that period, we shall apply for an
Order of Sale.

Dated this 28th day of August 1971.

Malayan Banking Berhad
by its Attorney

Sd. ILLEGIBLE

.....
Signature (or other form of
execution) by or on behalf
of Chargees.

40

SCHEDULE

In the High
Court in
Malaya at
Kuala Lumpur

No.15

Exhibit
"MBB 13"
Statutory
Notice of
demand under
Form 16D of
National
Land Code
1965 served
upon Tan Ay
Lin
28th August
1971
(continued)

Where the address of the person claiming under this instrument is outside the Federation, an address within the Federation for the service of notices is to be added in this space.

THIS IS THE EXHIBIT MARKED
"MBB 13" referred to in the
Affidavit of Chew Teck Hong
affirmed Before me this 13th
day of January 1972.

Sd. C. Ranjit Singh
Commissioner for Oaths
Kuala Lumpur

10

SCHEDULE OF LAND* AND INTEREST

Mukim	*Lot	Description and No. of Title Certificates of Title	Share of land (if any)	Regis- tered No. of *lease/ sub-lease (if any)	Regis- tered No. of Charge (if any)	
(1)	(2)	(3)	(4)	(5)	(6)	
	(4034	12335	undivided $\frac{1}{2}$ share	Nil) Presenta- tion No. 167749 Volume CVI Folio 66) Presenta- tion No. 176652 Volume CIX Folio 142	20
	(4035	12336	"	"		
Mukim	(4038	12339	"	"		
of	(4039	12340	"	"		
Labis	(4040	12341	"	"		
	(4041	12342	"	"		
						30

*Delete as appropriate

In area

No. 16
EXHIBIT "MBB 14" - STATUTORY NOTICE OF DEMAND
UNDER FORM 16D OF NATIONAL LAND CODE 1965 SERVED
UPON LIM TAN TEE

In the High
Court in
Malaya at
Kuala Lumpur

NATIONAL LAND CODE
FORM 16D
(Section 254)

No.16

Exhibit
"MBB 14"
Statutory
Notice of
Demand under
Form 16D of
National
Land Code
1965 served
upon Lim Tan
Tee
28th August
1971

NOTICE OF DEFAULT WITH RESPECT TO A CHARGE

10 To: Mr. Lim Tan Tee,
No.27, Jalan Buloh Kasap,
Segamat, Johore.

Chargor under the charge described in the schedule
below of the land.

20 Whereas you have committed a breach of the
provisions of this charge by failing to make payment
on demand of the sum of \$116,826.53 being the whole
outstanding balance due as at the 15th day of May
1971 together with interest thereon at the rate of
9.6% per annum calculable as from the 16th day of
May 1971 to the date of payment or any part thereof
pursuant to a notice of demand dated the 8th day of
June 1971.

And whereas the breach has continued for a period of
at least one (1) month prior to the date of this
notice; We, as chargees, by virtue of the powers
conferred by section 254 of the National Land Code,
hereby require you within the period of one (1)
month from the service of this notice to remedy
the breach;

30 And take notice that if you fail to remedy the
breach within that period, we shall apply for an
Order of Sale.

Dated this 28th day of August 1971.

Malayan Banking Berhad
by its Attorney

Sd. ILLEGIBLE

.....
Signature (or other form of
execution) by or on behalf
of Chargees.

In the High
Court in
Malaya at
Kuala Lumpur

No.16

Exhibit
"MBB 14"
Statutory
Notice of
Demand under
Form 16D of
National
Land Code
1965 served
upon Lim Tan
Tee
28th August
1971
(continued)

SCHEDULE

Where the address of the person claiming under this instrument is outside the Federation, an address within the Federation for the service of notices is to be added in this space.

THIS IS THE EXHIBIT MARKED
"MBB 14" referred to in the
Affidavit of Chew Teck Hong
affirmed Before me this 13th
day of January 1972.

Sd. C. Ranjit Singh
Commissioner for Oaths
Kuala Lumpur

10

SCHEDULE OF *LAND AND INTEREST

*Town/ Village/ Mukim	*Lot/ Parcel/ L.O.No.	Descrip- tion and No. of Title	Share of land (if any)	Regis- tered No. of *lease/ sub- lease (if any)	Regis- tered No. of Charge (if any)	
(1)	(2)	(3)	(4)	(5)	(6)	
	(Lot Nos.	Certifi- cates of Title Nos.	undivided		Presen- tation No. 167749	
Mukim	4034	12335	$\frac{1}{2}$ share	Nil	Volume CIX	
of	4035	12336	"	"	Folio 66	
Labis	4036	12337	"	"	Presen- tation No. 176652	30
	4037	12338	"	"	Volume CIX Folio 142	

*Delete as appropriate

In area

(37)

No. 17

**EXHIBIT "MBB 15" - ADVICE OF DELIVERY BY A.R.
REGISTERED POST OF STATUTORY NOTICE OF DEMAND
SERVED ON LIM MENG LEE**

In the High
Court in
Malaya at
Kuala Lumpur

No. 17

Exhibit "MBB 15"
Advice of
Delivery by
A.R. Registered
Post of
Statutory
Notice of
Demand served
on Lim Meng Lee

(Pos - P & F. 10)
(Rev. 1/55)

SEKUTUP PERUSAHAAN PERUSAHAAN MELAYU
Membuat dan menghantar surat di bawah ini kepada
Barang Berdaftar atau barang yang
Registered article or
Di-hantar oleh
Sent by
Di-alamatkan kepada
Addressed to
Di
At
Telah di poskan di
Posted at
Pada
On
Di bawah No. Daftar
Under Registration

ARTIKEL BERDAFTAR DI BAWAH INTI PENGAKTAPAN DALAM
REKOD PERUSAHAAN MELAYU
Yang berdaftar di bawah int pengaktaban benda
yang tersebut telah di sampaikan di alamat yang tersebut
pada... 19...
The undersigned states that the article mentioned was duly
delivered at the address stated on

*Si penerima
Receipt
atau
or
Ketua Post
Postmaster

Di-tanda tangan oleh
Signature of

Chap Haribulan
Priabul yang
Menghantar
Date stamp of
Despatching Office

Chap Haribulan
Priabul yang
Menghantar
Date stamp of
Despatching Office

SEKUTUP PERUSAHAAN MELAYU
12352-1
RECEIVED
2/9/71
317/1/15
Recd 6/1/71
-3SEP71-1215PI

3rd September
1971

SETELAH PENOH KAD INI JEMPUTAN D. KEMBAT...
On completion this card should be returned to...
KEMBAT...
KEMBAT...
KEMBAT...

2000...
of...
13th...
11 January 1972
D. C. Ranjit Singh
Kuala Lumpur

In the High Court in Malaya at Kuala Lumpur

EXHIBIT "MBB 16" - ADVICE OF DELIVERY BY A.R. REGISTERED POST OF STATUTORY NOTICE OF DEMAND SERVED UPON TAN FONG GUAN

No. 18

Exhibit "MBB 16" Advice of Delivery by A.R. Registered Post of Statutory Notice of Demand served upon Tan Fong Guan

3rd September 1971

(Pos-R. & P. 10)
(Rev. 1/55)

JABATAN PERKHIDMATAN POS, NEGERI TANAH MELAYU

Hendak-lah di penohi oleh pejabat yang asal
To be filled in by the office of origin

Baru Berdaftar atau Bungkokan
Registered article **SHOOK LIN & BOK**

Di-hantar oleh
Sent by **MR. TAN FONG GUAN**

Di-alamatkan kepada
Addressed to **27, Jln. BULOH KABAR, SEGAMAT**

Telah di-poskan di
Posted at **GPO, KL**

Pada
On **2/9/71**

Di-bawah No. Daftar
Under Registration No.

Chap Haribulan
Pejabat yang
Menhantar
*Date stamp of
Despatching Office*

RECEIVED
2 SEP 1971

Rec'd 6/9/71

AKUAN MELNERIMA SURAT DAFTARAN DALAM NEGERI
Advice of delivery inland registered letter

Tung bertanda tangan di-bawah ini mengatakan benda yang tersebut telah di sampaikan di-alamat yang tersebut pada.....

The undersigned states that the article mentioned was duly delivered at the address stated on

Di-tanda tangani oleh
Signature of **[Signature]**

*Si-penerima
Recipient
atau
or
Ketua Pos
Postmaster

Jabatan Pos
Menyampaikan
*Date stamp of
Delivering Office*
3 SEP 71-1215PM

• Potong apabila si-penerima enggan menanda tangani kad ini atau apabila kad ini tidak disertai dengan benda itu.
Delete when recipient declines to sign, or when the card does not accompany the article.

† Potong apabila kad yang telah di-penohi ada bersama benda itu dan si-penerima akan menanda tangan.
Delete when the completed card accompanies the article and the recipient will sign.

SETELAH PENOH KAD INI HENDAK-LAH DI-KEMBALIKAN KAPADA 'ALAMAT DI-SEBELAH'
On completion this card should be returned to the address shown overleaf

THIS IS THE EXHIBIT MARKED
" MBB 16 " in the case of
of **Chen Peck Hong**
affirmed before me this **13th** day of
18 January 1972
S. C. Rajit Singh
Commissioner of Courts
Kuala Lumpur.

EXHIBIT "MBB 17" - ADVICE OF DELIVERY BY A.R.
REGISTERED POST OF STATUTORY NOTICE OF DEMAND
SERVED UPON TAN AY LIN

In the High
Court in
Malaya at
Kuala Lumpur

No. 19

Exhibit "MBB 17"
Advice of
Delivery by
A.R. Registered
Post of
Statutory
Notice of
Demand served
upon Tan Ay Lin

3rd September
1971

(Pos-R. & P. 10)
(Rev. 1/55)

JABATAN PERKHIDMATAN POS, NEGERI TANAH MELAYU

Hendaklah di penohi oleh pejabat yang asal
To be filled in by the office of origin

Barang Berdaftar atau Pendaftaran
Registered article or *AMC/828-1/MBB*

Di-hantar oleh
Sent by *AMC/828-1/MBB*

Di-halamatkan kepada
Addressed to *TAN AY LIN*

Di
At *24, JLN. BULOH KASAP*

Telah di-poskan di
Posted at *600 KL*

Pada
On *6/9/71*

Di-bawah No. Daftar
Under Registration *820*

Chap Haribulan
Pejabat yang
Menghantar
Date stamp of
Despatching Office

SELANGOR
6/9/71
820

AKUAN MENERIMA SURAT DAFTARAN DALAM
NEGERI

LM S Advice of delivery inland registered letter
Yang bertanda tangan di-bawah ini menyatakan benda
yang tersebut telah di-sampaikan di-alamat yang tersebut
pada.....19....

The undersigned states that the article mentioned was duly
delivered at the address stated on

Di-tanda tangani oleh
Signature of *BEHAMINT, SOHORE*

*Si-penerima
Recipient
atau
or
Ketua Pos
Postmaster

SOHORE
Chap Haribulan
Pejabat yang
Menghantar
Date stamp of
Despatching Office

Potong apabila si-penerima tidak menanda tangan kad
ini atau apabila kad ini tidak disertai dengan benda
itu.

Delete when recipient declines to sign this card or when
the card does not accompany the article.

Potong apabila kad yang telah di-penohi ada bersama
benda itu dan si-penerima akan menanda tangan.
Delete when the completed card accompanies the article
and the recipient will sign.

SETELAH PENOH KAD INI HENDAKLAH DI-KEMBALIKAN KAPADA ALAMAT DI-SEBELAH
On completion this card should be returned to the address shown overleaf

THIS IS THE
" MBB 17 Chen Keck Hong
of
affirmed 13th of
January 1971
S. C. Rajit Singh
Kuala Lumpur.

In the High Court in Malaya at Kuala Lumpur

EXHIBIT "MBB 18" - ADVICE OF DELIVERY BY A.R. REGISTERED POST OF STATUTORY NOTICE OF DEMAND SERVED UPON LIM TAN TEE

No. 20

Exhibit "MBB 18" Advice of Delivery by A.R. Registered Post of Statutory Notice of Demand served upon Lim Tan Tee

3rd September 1971

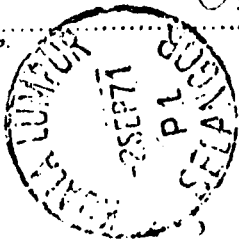
(Pos-R. & P. 10) (Rev. 1/53)

JABATAN PERKHIDMATAN POS, NEGERI TANAH MELAYU

Hendaklah di-penuhi oleh penjabat yang asal... Barang Berdaftar atau Bungkusan... Di-hantar... Di-alamatkan kepada... Telah di-poskan di... Pada... Di-bawah No. Daftar...

AKAN MENERIMA SURAT DAFTARAN DALAM NEGERI... Yang beranda tangan di-bawah ini mengatakan benda yang tersebut telah di-sampaikan di-alamat yang tersebut pada... The undersigned states that the article mentioned was duly delivered at the address stated on

Chap Haribulan Pejabat yang Menghantar Date stamp of Despatching Office



Si-penerima... Di-tanda tangani oleh... Signature of

Handwritten signature and date: 2/9/71



Potong apabila si-penerima... Delete when recipient declines to sign this card... Delete when the completed card accompanies the article and the recipient will sign.

SETELAH PENOH KAD INI HENDAKLAH DI-KEMBALIKAN KAPADA 'ALAMAT DI-SEBELAH' (After completion this card should be returned to the address shown overleaf)

THIS IS THE EXHIBIT MARKED "MBB 18" referred to in the Affidavit of Chest Teck Hong affirmed January 13th 1972 J.C. Rajaratnam Commissioner for Oaths Kuala Lumpur

No. 21

AFFIDAVIT OF TAN FONG GUAN,
TAN AY LIN AND LIM TAN TEE

In the High
Court in
Malaya at
Kuala Lumpur

No.21

Affidavit of
Tan Fong Guan,
Tan Ay Lin
and Lim Tan
Tee sworn
17th June
1972

We, TAN FONG GUAN, TAN AY LIN (f) AND LIM TAN TEE (f) all of full age and residing at No.27, Jalan Buloh Kasap, Segamat, Johore, jointly affirm and say as follows:-

1. We are the 2nd 3rd and 4th Respondents herein.

10 2. The Affidavit of Chew Teck Hong affirmed on the 13th day of January, 1972 and filed herein has been read and explained to us.

3. We admit paragraphs 1, 2, 3, 4 and 5 of the said Affidavit, save and except that the limit of the Chargor's liability inclusive of interest under the 1st Charge is \$35,000 and the limit of the Chargor's liability inclusive of interest under the 2nd Charge is \$30,000/-.

20 4. Paragraphs 6 and 7 of the said Affidavit are admitted. The subdivision and transfers of the sub-divided lots mentioned therein were made with the consent of the Applicants.

30 5. With reference to Paragraph 8 of the said Affidavit we crave leave to refer to the terms of the 1st and 2nd Charges. Under the 1st Charge the whole of the land is charged to the Applicants as security for the repayment of advances made by the Applicants to the 1st Respondent with interest thereon up to the limit of \$35,000/-. Under the 2nd Charge the whole of the land is similarly further charged to the Applicants as security for advances to the 1st Respondent with interest thereon up to the limit of \$30,000/-. In so far as the whole of the charged land is concerned it is a security for the Applicants up to a total limit of \$65,000/- and no more. We are advised and verily believe that any sum owing by the 1st Respondent to the Applicants over and above the said total limit of \$65,000/- whether by way of principal or interest, is an unsecured debt provable only in
40 the bankruptcy of the 1st Respondent.

6. With reference to Paragraph 9 of the said Affidavit, save and except that the 1st Respondent

In the High
Court in
Malaya at
Kuala Lumpur

—
No.21

Affidavit of
Tan Fong Guan,
Tan Ay Lin
and Lim Tan
Tee sworn
17th June
1972
(continued)

was adjudicated a bankrupt on the 13th March, 1965 we have no knowledge of the actual amount owing by the 1st Respondent to the Applicants on that date.

7. With reference to Paragraphs 10, 11, 12 and 13 of the said Affidavit, we admit having received the letters of demand dated June 8th, 1971 and the Statutory Notices of Demand dated 28th August, 1971.

8. By letters dated the 28th August 1971 and 11th September 1971 we through our Solicitors M/s. Chung & Huang offered to pay to the Applicants' 10
Solicitors M/s. Shook Lin & Bok the sum of \$65,000/- for the discharge of the said lands under the 1st and 2nd Charges and the delivery of the documents of title to the said lands to us, but this offer was refused by the Applicants' said Solicitors. A copy of each of our said Solicitors' letters and a copy of the Applicants' Solicitors' reply are annexed hereto and marked "A", "B" and "C" respectively.

9. Years earlier on the 20th October, 1967 we 20
were served with similar notices from the Applicants' said Solicitors, M/s. Shook Lin & Bok demanding payment of \$97,801.58 being the amount alleged as owing by the 1st Respondent under the said 1st and 2nd Charges as at the 25th day of August, 1967. We had through our said Solicitors M/s. Chung & Huang on the 17th November, 1967 offered to pay the sum of \$65,000/- for the discharge of the lands under the said 1st and 2nd 30
Charges but this offer was refused by the Applicants' said Solicitors. A copy of our said Solicitors' letter is annexed hereto and marked "D". On the 14th May, 1968, the Applicants commenced proceedings against us and the 1st Respondent under Originating Summons No.190 of 1968 in the High Court at Muar for an order for sale of the lands charged to recover the sum of \$106,428.83 alleged to be owing by the 1st Respondent as at 31st December, 1967. Before the date of hearing 40
of the Originating Summons, the Applicants' Solicitors M/s. Shook Lin & Bok, for reasons unknown to us, withdrew the said Originating Summons.

10. On or about August 1969, the Applicants through their said Solicitors M/s. Shook Lin & Bok again served on us a fresh notice of demand dated

31st July 1969 demanding payment of the sum of \$104,093.85 alleged to be owing by the 1st Respondent as at the 15th day of July 1969. We again offered through our Solicitors M/s. Chung & Huang to pay the sum of \$65,000/- for the discharge and delivery of the said documents of title to us, but this offer was again refused. A copy of our said Solicitors' letter dated 10th September 1969 and a copy of the Applicants' Solicitors' reply dated 24th September, 1969 are annexed hereto and marked "E" and "F" respectively. On the 2nd October 1969 the Applicants again commenced proceedings against us and the 1st Respondent under Originating Summons No.284 of 1969 in the High Court at Muar for an order for sale of the lands charged to recover the sum of \$104,093.85 alleged to be owing by the 1st Respondent as at 15th July, 1969. The application under the said Originating Summons was dismissed by the High Court Muar on 31st October 1970 on the ground that the notices of demand were bad in law.

In the High Court in Malaya at Kuala Lumpur

No.21

Affidavit of Tan Fong Guan, Tan Ay Lin and Lim Tan Tee sworn 17th June 1972 (continued)

11. We have been and are ready and willing to pay the sum of \$65,000/- being the limit of the liabilities under the 1st and 2nd Charges, to the Applicants, provided all the documents of title are discharged from the Two Charges and delivered to us.

AFFIRMED by TAN FONG GUAN,)
 TAN AY LIN (f) and LIM TAN) Sd: Tan Fong Guan and
 TEE (f) at Segamat on the) Tan Ay Lin (f)
 17th day of June 1972 at)
 10.30 a.m.) R.T.M. of Lim Tan Tee (f)

Before me,

Di-terangkan oleh
 Sd:
 Jurubahasa China
 17/6/72,
 Mahkamah Majistret,
 Segamat.

Sd:

 Commissioner for Oaths,
 Segamat.

I hereby certify that the above-written Affidavit was read, translated and explained in my presence by me to the deponents Tan Ay Lin (f) and Lim Tan Tee (f) who seemed perfectly to understand it declared to me that they did

In the High Court in Malaya at Kuala Lumpur

understand it and made their signatures thereto in my presence.

No.21
Affidavit of Tan Fong Guan, Tan Ay Lin and Lim Tan Tee sworn 17th June 1972 (continued)

Sd:
.....
Commissioner for Oaths Segamat.

This Affidavit was filed by M/s. Chung & Huang Solicitors for the 2nd, 3rd and 4th Respondents herein whose address for service is Bangkok Bank Building, (1st Floor), Kuala Lumpur.

10

No. 22

No.22
Exhibit "A", Letter, Chung & Huang to Shook, Lin & Bok 28th August 1971

EXHIBIT "A" - LETTER, CHUNG & HUANG to SHOOK LIN & BOK

This is the exhibit marked "A" referred to in the affidavit of Tan Fong Guan, Tan Ay Lim (f) and Lim Tan Tee (f) affirmed before me this 17th day of June 1972.

Sd.
Commissioner for Oaths Segamat.

20

C H U N G & H U A N G

28th August, 1971

TKH/NMC/8108-1/MBB/LMS

H/1577/65/L(C)

M/s. Shook Lin & Bok, Advocates & Solicitors, Lee Wah Bank Building, Kuala Lumpur.

Dear Sirs,

30

re: Overdraft account of Lim Meng See with the Malayan Banking Berhad

We act for Tan Fong Guan, Tan Ay Lin (f) and

Lim Tan Tee (f) who have handed your letters to them of the 8th June 1971 in connection with the above matters to us, with instructions to reply.

In the High Court in Malaya at Kuala Lumpur

—
No.22

Exhibit "A"
Letter, Chung & Huang to Shook, Lin & Nok
28th August 1971
(continued)

10 As you are fully aware, our clients have maintained all along that they are liable to your clients only for a total sum of \$65,000/- under the 1st and 2nd Charges. As early as the 20th October 1967 when your clients demanded payment of the sum of \$97,801.58 being the amount then owing under the above overdraft we had on behalf of our clients informed you that our clients were ready and willing to pay to your clients the sum of \$65,000/- being the limit of liability in return for the delivery of the title deeds to us together with valid and registrable discharges of the said 1st and 2nd Charges. Your clients, however, refused to accept our clients' offer and commenced proceedings under Muar High Court Originating Summons No.190 of 1968 for the sale of the properties charged. These proceedings were subsequently withdrawn by your clients.

20 On the 31st July 1969 your clients again demanded payment from our clients if the sum of \$104,093.85 alleged to be owing under the said overdraft account. On behalf of our clients we again offered to pay to your clients the sum of \$65,000/- if your clients will deliver the titles to us together with the Discharges of the two Charges. This was again refused by your clients and your clients again commenced proceedings in the Muar High Court by Originating Summons No.284 of 1969 for the sale of the properties charged. Your clients' application under the said Originating Summons was dismissed by the Court on the 31st October, 1970.

30 Your letter of the 8th June 1971 now demands payment of the sum of \$116,826.53 as at 15th May, 1971 with interest thereon at the rate of 9.6% per annum from May 16th 1971. Our clients reiterate what they have maintained since 1967 that they are liable to your clients only for a total of \$65,000/- and that they are ready and willing to pay this sum to your clients on your undertaking to deliver the titles charged, to us together with valid and registrable discharges of the said two charges.

40 Yours faithfully,

Sd:

C/LVK

(46)

In the High
Court in
Malaya at
Kuala Lumpur

No. 23

EXHIBIT "B" - LETTER, CHUNG & HUANG to
SHOOK, LIN & BOK

No.23

Exhibit "B"
Letter, Chung
Huang to
Shook, Lin &
Bok
11th September
1971

This is the exhibit marked "B"
referred to in the affidavit of
Tan Fong Guan, Tan Ay Lim (f)
and Lim Tan Tee (f) affirmed
before me this 17th day of June
1972.

Sd.
Commissioner for Oaths
Segamat.

10

CHUNG & HUANG

11th September, 1971

NMC/8108-1/MBB/LMS
H/1577/65/L(C)

M/s. Shook Lin & Bok,
Advocates & Solicitors,
Lee Wah Bank Building,
Kuala Lumpur.

By Despatch

Dear Sirs,

20

re: Overdraft Account of Lim Meng See
with Malayan Banking Berhad

We act for Mr. Tan Fong Guan, Mesdames Tay Ay
Lin and Lim Tan Tee who have handed us your clients'
Notices of Default under Form 16 D dated 28th August
1971 served on them demanding payment for \$116,826.53
being the amount alleged to be owing under the 2
Charges as at 15th May, 1971.

We refer to our letter of the 28th August, 1971
to you in connection with this matter and are to
inform you once again that our clients are ready to
pay to your clients the sum of \$65,000/- being the
limit of their liability under the said 2 Charges if
you will give us your undertaking to deliver the
relevant titles to us together with valid and
registrable discharges of the said 2 Charges.

30

Kindly let us hear from you.

C/CYL

Yours faithfully,

(47)

No. 24

EXHIBIT "C" - LETTER, SHOOK LIN &
BOK to CHUNG & HUANG

In the High
Court in
Malaya at
Kuala Lumpur

No.24

Exhibit "C"
Letter, Shook
Lin & Bok to
Chung & Huang
9th December
1971

This is the exhibit marked "C"
referred to in the affidavit of
Tan Fong Guan, Tan Ay Lin (f)
and Lim Tan Tee (f) affirmed before me
this 17th day of June, 1972.

Sd.

Commissioner for Oaths,
Segamat.

10

SHOOK LIN & BOK

H/1577/65/L(C)

TKH/NMC/8108-1/MBB/LMS

December 9, 1971

Dear Sirs,

re: Overdraft Account of Lim Meng See
with Malayan Banking Bhd.

20

We refer to previous correspondence on the
above matter ending with your letter of September 11,
1971 and regret to advise that your client's
proposals are not acceptable to our clients.

Kindly let us know whether you have instructions
to accept service of the cause papers on your
client's behalf.

Yours faithfully,

Sd:

M/s. Chung & Huang,
Advocates & Solicitors,
Bangkok Bank Building,
Kuala Lumpur.

30

c.c. Malayan Banking Bhd., K.L.

SYC.

In the High Court in Malaya at Kuala Lumpur

No. 25

EXHIBIT "D" - LETTER, CHUNG & HUANG to SHOOK LIN & BOK

No.25

Exhibit "D", Letter, Chung & Huang to Shook Lin & Bok
17th November 1967

This is the exhibit marked "D" referred to in the affidavit of Tan Fong Guan, Tan Ay Lin (f) and Lim Tan Tee (f) affirmed before me this 17th day of June 1972.

Sd.
Commissioner for Oaths,
Segamat.

10

CHUNG & HUANG

17th November, 1967

EL/8108-1/MBL/LMS

H/1755/67

Messrs. Shook Lin & Bok,
Advocates & Solicitors,
Lee Wah Bank Building,
Kuala Lumpur.

BY DESPATCH

Dear Sirs,

20

re: Notice Under Form 16E National Land Code

Your 3 letters under reference No.EL/8108-1/MBL/LMS of the 20th ultimo addressed to Mesdames Tan Ay Lin, Lim Tan Tee and Mr. Tan Fong Guan all of 27, Jalan Buloh Kasap, Segamat, Johore, have been handed to us with instructions to reply thereto.

2. The charges executed by our clients and Mr.Lim Meng See were to secure to your client repayment of a loan up to the limit of \$65,000/- and no more on the overdraft account of Lim Meng See.

30

3. Mr. Lim Meng See was adjudicated a bankrupt on 13th March 1965; this had the effect, under the Bankruptcy Ordinance, of freezing his account as at that date and no interest is chargeable to his account after that date. The amount due to your client is therefore the amount due as at that date and no more.

2/...

4. Your client is therefore entitled to payment of either \$65,000/- from our clients or \$78,000/- from the Bankrupt.

5. Further, the Bankrupt's account in your clients' bank also shows that your client had on many occasions allowed overdraft to the Bankrupt beyond the limit of \$65,000/- secured by the charges: our clients are certainly not liable for any overdraft in excess of that limit.

10. 6. Our clients wish to arrange to pay to your client \$65,000/- and obtain from your client discharge of all the properties charged to your client by our three clients and the Bankrupt. If your client agrees, please let us know.

Yours faithfully,

Sd:

20 c.c. Mesdames Tan Ay Lin and
Lim Tan Tee and
Mr. Tan Fong Guan,
27, Jalan Buloh Kasap,
Segamat,
Johore.

H/CSL

No. 26

EXHIBIT "E" - LETTER, CHUNG & HUANG to
SHOOK LIN & BOK

30 This is the exhibit marked "E"
referred to in the affidavit of
Tan Fong Guan, Tan Ay Lin (f) and
Lim Tan Tee (f) affirmed before me
this 17th day of June, 1972.

Sd.
Commissioner for Oaths,
Segamat.

CHUNG & HUANG

TJL/8108-1/MBB/LMS

H/1577/65

10th September, 1969

In the High
Court in
Malaya at
Kuala Lumpur

—
No.25

Exhibit "D"
Letter, Chung
& Huang to
Shook Lin &
Bok
17th November
1967
(continued)

No.26

Exhibit "E"
Letter, Chung
& Huang to
Shook Lin &
Bok
10th September
1969

In the High
Court in
Malaya at
Kuala Lumpur

M/s. Shook Lin & Bok,
Advocates & Solicitors,
Lee Wah Bank Building,
Kuala Lumpur.

No.26

Dear Sirs,

Exhibit "E"
Letter, Chung
& Huang to
Shook Lin &
Bok
10th September
1969
(continued)

re: Charge Presentation No.167749 and
176652 to secure overdraft account
of Lim Meng See

We act for Tay Ay Lin, Tan Fong Guan and Lim
Tan Tee in respect of your Notice of Demand of
\$104,093.85.

10

As you are fully aware, our clients are jointly
liable for Mr. Lim Meng See's overdraft under the
above two charges up to a total limit of \$65,000/-.

As early as November, 1967, when you demanded
on behalf of Malayan Banking Ltd., from our clients
the sum of \$97,801.58, we wrote to you on 17th
November, 1967 that our clients were only liable
for the total sum of \$65,000/- on the two charges
and we offered on behalf of our clients to pay the
said sum of \$65,000/- but this was not acceptable
by your clients. We reiterate that our clients have
been and are prepared to pay your clients the sum
of \$65,000/- against a discharge of the charges
affecting their interests in the said land.

20

Yours faithfully,

Sd:

c.c. Mr. Tan Fong Guan,
27, Jalan Buloh Kasap,
Segamat.

30

c.c. Madam Tan Ay Lin,
27, Jalan Buloh Kasap,
Segamat.

Madam Lim Tan Tee,
27, Jalan Buloh Kasap,
Segamat.

C/lc

No. 27

EXHIBIT "F" - LETTER, SHOOK LIN & BOK to
CHUNG & HUANG

In the High
Court in
Malaya at
Kuala Lumpur

No.27

Exhibit "F"
Letter,
Shook Lin &
Bok to Chung
& Huang
24th
September
1969

This is the exhibit marked "F"
referred to in the affidavit of
Tan Fong Guan, Tan Ay Lin (f) and
Lim Tan Tee (f) affirmed before me
this 17th day of June, 1972.

10

Sd.
Commissioner for Oaths,
Segamat.

SHOOK LIN & BOK

H/1577/65

TJL/8108-1/MBB/LMS

September 24, 1969

Dear Sirs,

Demand for Payment of Principal Sum
Re: Lim Meng See, Tan Fong Guan,
Tan Ay Lin & Lim Tan Tee

20

We refer to your letter of September 10, 1969
and note the contents thereof.

2. Our clients instruct us that they have not
and cannot agree to accept your clients' offer to
pay \$65,000/-. It is for that reason that the
present action is initiated.

3. We shall be pleased to know whether you have
instructions from your clients to accept service of
process.

Yours faithfully,

30

Sd:

Messrs. Chung & Huang,
Bangkok Bank Building,
Kuala Lumpur.

c.c. Malayan Banking Berhad,
92, Jalan Bandar,
Kuala Lumpur.

In the High Court in Malaya at Kuala Lumpur

No. 28

AFFIDAVIT OF CHEW TECK HONG

No.28
Affidavit of Chew Teck Hong Sworn 14th November 1972

I, Chew Teck Hong of full age and care of No.9, Jalan Aji, Segamat, Johore, hereby solemnly affirm and say as follows:-

1. I am the Manager of the Applicants herein and am duly authorised to make this affidavit on their behalf.

2. I crave leave to refer to paragraph 10 of the previous affidavit affirmed by me on the 13th day of January 1972 and filed herein, deposing inter alia, that the balance due on the Respondents' account amounted to \$116,826.53 as at the 15th day of May, 1971 with interest thereon at the rate of 9.6% per annum to date of payment.

10

3. That the whole outstanding balance on the Respondents' said account as at the 18th day of December, 1972 inclusive of interest calculated up to that date will amount to \$128,034.49.

Affirmed by the said Chew Teck Hong at Segamat on the 14th day of November, 1972 at 10 a.m. } Sd. Chew Teck Hong

20

Before me,

Sd:

Commissioner for Oaths

This Affidavit is filed by Messrs. Shook Lin & Bok, solicitors for the Applicants herein and whose address for service is Nos.801-809, Lee Wah Bank Building, Medan Pasar, Kuala Lumpur.

No. 29

AFFIDAVIT OF MOHAMED ELYAS MAJEED

In the High Court in Malaya at Kuala Lumpur

No.29

Affidavit of Mohamed Elyas Majeed Sworn 13th December 1972

I, MOHAMED ELYAS MAJEED an Advocate and Solicitor of the High Court in Malaya practising at Johore Bahru affirm and say as follows:-

10 1. On the instructions of Messrs. Chung and Huang Solicitors for the 2nd, 3rd and 4th Respondents herein, I made a search in the Register of Charges in the land Office, Johore Bahru in connection with Johore Government Grant No.7072 Lot 1599 and 2 Charges therein; Charge Presentation No.167749 Vol. CVI. Folio 66 registered at Johore Bahru on 13th August, 1962 for \$35,000/- and Charge Presentation No.176652 Vol. CIX Folio 142 registered at Johore Bahru on 19th June, 1963 for \$30,000/-.

2. The Original copy of the Charge Presentation No.167749 Vol. CVI Folio 66 dated 13th August 1962 for \$35,000/- was stamped for \$70/-.

20 3. The original copy of the Charge Presentation No.176652 Vol. CIX Folio 142 dated 19th June, 1963 for \$30,000/- was stamped for \$60/-.

Affirmed by the above-)
named Mohamed Elyas)
Majeed at Johore Bahru) Sd: Mohamed Elyas Majeed.
this 13th day of)
December, 1972.)

Before me,

30 Sd: Chin Kon Sing
Pesurohjaya Sumpah
(Commissioner for Oaths)
Mahkamah Seshen
Johore Bahru

This Affidavit was filed by Messrs. Chung and Huang, Solicitors for the 2nd, 3rd and 4th Respondents herein whose address for service is Bangkok Bank Building (1st Floor), Jalan Bandar, Kuala Lumpur.

In the High Court in Malaya at Kuala Lumpur

No. 30

NOTES OF PROCEEDINGS BEFORE MOHD. AZMI, J.

In Open Court

18th December, 1972

No.30

NOTES OF PROCEEDINGS
BEFORE MOHD. AZMI J.

Notes of Proceedings before Mohd. Azmi, J. 18th December 1972

Mr. Chan Siew Yoon for Applicants.
Mr. S.K. Lee for 2nd, 3rd and 4th Respondents.

1st Respondent is a bankrupt. No appearance has been entered. Official Assignee also served.

Certificate of non-appearance - enclosure (19). 10

Mr. Chan submits:

Application for sale under section 256 National Land Code.

Amount due to date \$128,034.49 - enclosure (17).

Applicants' contention is that the \$65,000/- offered by the three respondents i.e. the limit in the two charges, represent only the principal sum and that the lands also stood as security for interest.

This case involves interpretation of the two charges dated 13.8.1962 and 19.6.1963. MBB1 and MBB2 - enclosure (1). 20

(NOTE: At this stage, Mr. S.K. Lee applies to amend Respondents' affidavit enclosure (9). Heading to read at Kuala Lumpur instead of "at Muar". By consent, application allowed).

Mr. Chan continues:

Both charges same except as to amount and rate of interest. 30

(NOTE: At this stage, both counsel agreed that for purpose of legal argument, only MBB1 - the first charge - will be argued).

Both in the recital part and the operative part of first charge refer to limit figure of \$35,000/-. They refer to principal sum only, and secondly the charge also stands security for interest.

In the High Court in Malaya at Kuala Lumpur

No. 30

Notes of Proceedings before Mohd. Azmi J. 18th December 1972 (continued)

Recitals -

10 The reference to interest within bracket is significant. Reading it without the bracket would give different interpretation. The reference of "Up to the limit of \$35,000/-" refers to principal sum only. With the bracket there are two separate things - principal and interest. Respondents' contention is that the limit covers both principal and interest.

Operative Part -

\$35,000/- refer to principal sum.

(NOTE: At this stage both counsel agree there is no comma after the word principal in the original document).

20 Refers to "\$35,000/- for principal and for interest at the rate of 12 per cent per annum ...". So, the land is charged for principal sum up to the limit of \$35,000/- and secondly it is charged for payment of interest with no limit.

No Bank would be foolish to limit the amount of interest.

30 Refers to White v. City of London Brewery Company (1889) 42 Ch. 237. Mortgage of public house. The total limit was £900. It was held the limit referred only to principal sum, the Mortgage also stood as security for the interest. Reads head notes and page 247 Cotton L.J. last para and page 248, and of judgment "In my opinion"

In the present case, it is an overdraft on current account.

Refers to affidavit enclosure (20) on behalf of Respondents. The purpose of the affidavit is to show that the charges have been stamped \$35,000/- and \$30,000/- respectively. The total limit for

In the High Court in Malaya at Kuala Lumpur

No. 30

Notes of Proceedings before Mohd. Azmi J.
18th December 1972
(continued)

both is \$65,000/-. This is not so. There is no stamp fee on interest - only on principals. Refers to section 14 Stamps Ordinance No. 59/1949. No one can say in advance what the accumulated interest would be.

The four corners of the charge only need be referred to for interpretation of the document.

Mr. S.K. Lee submits:

If words of document are clear, then Court must only look at the documents. Refers to Volume 11 Third Edition Halsbury page 382 para 629; page 384 para 632; page 385 para 633 and page 389 para 638.

10

Words must be taken in the ordinary sense and given ordinary meaning.

Refers to MBB1.

Applying the above principles, the ordinary meaning of MBB1 is that the Applicants are only entitled to \$35,000/-.

The Recital - "... desiring to render the said land the repayment of all sums advanced to me by the Bank with interest up to the limit of \$35,000/-".

20

Applicants are trying to put the "interest" outside the limit of \$35,000/-. By the way it is worded the \$35,000/- is inclusive of everything.

The word principal not mentioned at all in recital.

The Operative Part -

"DO HEREBY CHARGE the said land with the repayment on demand of the balance ... shall for the time being be owing up to a limit of \$35,000/- for principal and for interest at the rate of 12 per cent per annum"

30

The interpretation of separating the interest is stretching the words out of the ordinary meaning of the words.

Respondents' interpretation as to the recital and the operative part is consistent.

The whole liability for which the land is charged is up to the limit of \$35,000/- and no more.

WHITE's case (1889) 42 Ch. 237. It only says that the proviso in that agreement does not apply to interest. We do not know what the document is in that case.

10 Concedes Respondents liable to interest from date of demand 10.6.1971 to date of payment. Refers to para 10 of Applicants' affidavit. But since October 1967, Respondents have been willing to pay \$65,000/-.

White's case - only applicable as regards interest from 10.6.1971 date of demand at 9.6% per annum.

Mr. Chan replies:

The interest is not only payable but secured by the charge.

20 CASE adjourned to 11.30 a.m.

Hearing resumed.

Court as before.

I find in both charges the land is charged as security for the principal sum up to the limit stated therein, and as well as security for the interest.

ORDER:

Order in terms of Originating Summons to satisfy the sum of \$128,034.49¢.

30 Date of sale 27.2.1973.

Sd. Mohd. Azmi

JUDGE
HIGH COURT
KUALA LUMPUR

In the High
Court in
Malaya at
Kuala Lumpur

No.30

Notes of
Proceedings
before Mohd.
Azmi J.
18th December
1972
(continued)

In the High
Court in
Malaya at
Kuala Lumpur

No. 31

JUDGMENT OF MOHD. AZMI J.

No.31

Judgment of
Mohd. Azmi J.
18th December
1972

This is an application by Originating Summons under section 256 of the National Land Code on the part of the Malayan Banking Berhad for an order for sale of certain lands which have been charged to them by the respondents. Two charges are created in favour of the applicants in respect of the same lands, the first of which was registered on May 8, 1962 for the sum of \$35,000/-, and the second one registered on June 19, 1963 for \$30,000/-. As on the date of hearing, the whole outstanding balance due on the respondents' account inclusive of interest amounts to \$128,034.49. 10

The first respondent was adjudicated a bankrupt on March 13, 1965 and did not enter an appearance, but the other three respondents object to the application principally on the ground that the said lands have been charged to the applicants for the purpose of securing to the applicants monies owing up to the limit of \$65,000/- only. It is their contention that by the terms of the instrument of the two charges, any amount due in excess of that sum is not a secured debt and cannot be recovered by foreclosure under section 256. It is not in dispute that since October 1967 the three respondents have been willing to pay the sum of \$65,000/-, but the applicants have refused to accept the offer contending that the amount limited in the two charges does not include both principal and interest. In other words, it is the contention of the applicants that the limit figures of \$35,000/- in the first charge and \$30,000/- in the second charge are only applicable to the principal sums, and that the charges also stand as security for interest due on the principal sums. 20 30

This case therefore calls for interpretation of the two charges marked "MBB1" and "MBB2" in the supporting affidavit of the applicants. As both documents are practically identical except as to the amount and the rate of interest, for the determination of this case it is sufficient to consider the first charge "MBB1". The issue to be determined in this case is whether, having regard to the terms of the charge, the limit figure of \$35,000/- covers both principal and interest or 40

whether it excludes interest. For the purpose of interpreting the document, it is necessary to refer to the recital and the operative part of the charge. In the recital, it is stated that the chargor being registered as the proprietor "desiring to render the said land available for the purpose of securing to and for the benefit of "the Bank" the repayment on demand of all sums advanced to me/us by the Bank in manner hereinafter appearing (with interest thereon at the rate of 12 per cent per annum) up to the limit of Dollars Thirty five thousand only (\$35,000/-)". In the operative part it is provided that the chargor "DO HEREBY CHARGE the said land for the benefit of the Bank with the repayment on demand of the balance which on the account between me and the Bank shall for the time being be owing in respect of cheques, bills, notes or drafts drawn, accepted or endorsed by me up to the limit of Dollars Thirty five thousand only (\$35,000/-) for principal and for interest at the rate of 12 per cent per annum with monthly rests, commission and other usual bankers' charges, such sum to be raised and paid at the times and in the manner following that is to say, immediately upon the receipt by me of a notice in writing sent by the Bank in the manner hereinafter provided." (The emphasis is mine).

The law as to the interpretation of document has been well stated by Halsbury, volume 11, Third Edition, at paragraphs 629, 632, 633 and 638. At paragraph 632, Halsbury has this to say:

"The words of a written instrument must in general be taken in their ordinary sense notwithstanding the fact that such a construction may appear not to carry out the view which it may be supposed the parties intended to carry out; but if the provisions and expressions are contradictory, and there are grounds, appearing on the face of the instrument, affording proof of the real intention of the parties, that intention will prevail against the obvious and ordinary meaning of the words; where the literal construction would lead to an absurd result, and the words used are capable of being interpreted so as to avoid this result, the literal construction will be abandoned. So, too, considerations of inconvenience may be admitted when the

In the High Court in Malaya at Kuala Lumpur

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No. 31

Judgment of Mohd. Azmi J. 18th December 1972

(continued)

In the High
Court in
Malaya at
Kuala Lumpur

—
No.31

Judgment of
Mohd. Azmi J.
18th December
1972
(continued)

construction of the document is ambiguous. If, however, the intention is clearly and unequivocally expressed, then, however capricious it may be, the court is bound by it, unless it is plainly controlled by other parts of the instrument.

The rule is that in construing all written instruments the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of words may be modified, so as to avoid that absurdity and inconsistency, but no farther. The instrument must be construed according to its literal import, unless there is something in the subject or context which shows that this cannot be the meaning of the words."

10

20

In the present case, giving the words in the recital and the operative part of the instruments their ordinary sense, it is clearly the intention of the parties that the limit of \$35,000/- is intended to apply only to principal. In my view, the word "and", which I have underlined in the operative part of the document, should be read disjunctively, so that interest should be treated as a distinct subject-matter. If the words "interest at the rate of 12 per cent per annum with monthly rests, commission and other usual bankers' charges" were intended to come within the ambit of the limitation, then these words should have appeared before the words "up to limit of Dollars Thirty five thousand only". It is my considered opinion that this interpretation is supported by the fact that the words "with interest thereon at the rate of 12 per cent per annum" are placed within brackets in the recital. The fact that these words are put within brackets is very significant, because if it is intended that interest should be included within the limitation clause there seems to be no necessity for putting those words within brackets. In any event, the words which appear in the operative part of the instrument should carry more weight than those appearing in the recital.

30

40

Learned counsel for the applicants has cited the case of White v. City of London Brewery Company(1). In that case, a mortgage contained a proviso limiting the amount to be recovered by the mortgagee under it to £900. Although the facts in that case are somewhat different from the present case, Cotton L.J. at page 248 said:

In the High Court in Malaya at Kuala Lumpur

—
No. 31

Judgment of Mohd. Azmi J. 18th December 1972

(continued)

10 "In my opinion the proviso limiting the amount to be recovered does not apply to the moneys which the mortgagees can claim for their reimbursement, but simply to the principal moneys due on the mortgage, which are to be paid out of the sale moneys after the sums directed to be reimbursed have been paid, and does not prevent payment beyond the £900 either for interest or in respect of anything which is directed to be reimbursed."

20 For the above reasons, I find that the limit figures of \$35,000/- in the first charge and \$30,000/- in the second charge are only applicable to the principal sums, and the applicants are entitled to recover the amount due in excess of \$65,000/- in respect of interest, commissions, bankers' charges, etc., by foreclosure under section 256. I accordingly order that this application be allowed in terms of the Originating Summons, and I also order the sale of the lands be held on February 27, 1973 to satisfy the sum of \$128,034.49.

30 Sd. Mohd. Azmi
JUDGE
HIGH COURT
KUALA LUMPUR

Kuala Lumpur
December 18, 1972.

Mr. Chan Siew Yoon of M/s Shook Lin & Bok for applicants.

Mr. S.K. Lee of M/s Chung & Huang for second, third and fourth respondents.

(1)(1889) 42 Ch. 237.

(62)

In the High
Court in
Malaya at
Kuala Lumpur

No. 32

ORDER

No.32

BEFORE THE HONOURABLE MR. JUSTICE
MOHD. AZMI

IN OPEN COURT

Order
18th December
1972

THIS 18TH DAY OF DECEMBER 1972

O R D E R

UPON HEARING Mr. Chan Siew Yoon of Counsel for the Applicants, Mr. S.T. Chung and Mr. S.K. Lee of Counsel for the 2nd, 3rd and 4th Respondents and in the absence of the 1st Respondent though duly served 10
AND UPON READING the Originating Summons dated the 19th day of January 1972, the two Affidavits of Chew Teck Hong affirmed on the 13th day of January 1972 and on the 14th day of November 1972 respectively and the joint Affidavit of the 2nd, 3rd and 4th Respondents abovenamed affirmed on the 17th day of June 1972 and the Affidavit of Mohamed Elyas Majeed affirmed on the 13th day of December 1972 and all filed herein AND UPON HEARING Counsel aforesaid 20
IT IS ORDERED that the lands held under Grant No. 7072, Lot 1599, Mukim of Labis, District of Segamat and sub-divided into Certificates of Titles Nos. 12332, 12333, 12334, 12335, 12336, 12337, 12338, 12339, 12340, 12341 and 12342 for Lots Nos. 4031, 4032, 4033, 4034, 4035, 4036, 4037, 4038, 4039, 4040 and 4041 respectively, Mukim of Labis, District of Segamat, and charged to the Applicants under a 1st and 2nd Charges registered in the Register of Charges Presentation No.167749 Volume 30
CVI Folio 66 and 176652 Volume CIX Folio 142 respectively, be sold by public auction under the National Land Code and under the directions of this Honourable Court on Tuesday the 27th day of February 1973 to satisfy the sum of \$128,034.49 (Dollars one hundred and twenty eight thousand and thirty four and cents forty nine only) due to the Applicants as at the 18th day of December 1972 and further interest on the decretal sum at the rate of 6% per annum from the 19th day of December 1972 to the date of payment 40
or realisation AND IT IS ORDERED that the reserve price and other directions relating to the sale be fixed by the Senior Assistant Registrar AND IT IS LASTLY ORDERED that the Respondents do pay the costs of this application as taxed by the proper officer of the Court.

(63)

GIVEN under my hand and the seal of the Court
this 18th day of December 1972.

Sd: Nadiyah Salleh

Senior Assistant Registrar,
High Court, Kuala Lumpur.

In the High
Court in
Malaya at
Kuala Lumpur

No.32

Order
18th December
1972
(continued)

No. 33

NOTICE OF APPEAL

In the
Federal Court
of Malaysia

No.33

Notice of
Appeal
30th December
1972

10

TAKE NOTICE that Tan Fong Guan, Tan Ay Lin (f)
and Lim Tan Tee (f), the above-named Appellants
being dissatisfied with the decision of the
Honourable Mr. Justice Haji Mohamed Azmi given at
Kuala Lumpur on the 18th day of December, 1972
appeal to the Federal Court against the whole of
the said decision.

Dated this 30th day of December, 1972.

Sd: CHUNG & HUANG

.....
M/s. Chung & Huang
Advocates & Solicitors,
Solicitors for the above-named
Appellants.

20

To:

1. The Chief Registrar,
Federal Court,
Kuala Lumpur.
2. The Senior Assistant Registrar,
High Court,
Kuala Lumpur.
3. Malayan Banking Berhad the abovenamed
Respondents or their solicitors M/s. Shook
Lin & Bok,
Advocates & Solicitors,
Nos. 801-809, Lee Wah Bank Building,
Medan Pasar,
Kuala Lumpur.

30

In the
Federal Court
of Malaysia

No.33

Notice of
Appeal
30th December
1972
(continued)

No.34

Memorandum
of Appeal
2nd April
1973

The address for service of the above-named Appellants is care of their solicitors M/s. Chung & Huang, Advocates & Solicitors, Bangkok Bank Building, (1st Floor), No.105, Jalan Bandar, Kuala Lumpur.

No. 34

MEMORANDUM OF APPEAL

Tan Fong Guan, Tan Ay Lin (f) and Lim Tan Tee (f) the Appellants abovenamed appeal to the Federal Court Malaysia (Appellate Jurisdiction) against the whole of the decision of the Honourable Mr. Justice Mohd. Azmi given at Kuala Lumpur on the 18th day of December, 1972 on the following grounds:- 10

1. The Learned Trial Judge erred in Law in his interpretation that the words "up to the limit of Dollars Thirty Five Thousand only (\$35,000.00)" appearing in both the recital and the substantive part of the Charge applied only to the principal sum.
2. The Learned Trial Judge erred in holding that because the words "with interest thereon at the rate of 12 per cent per annum" are placed within brackets in the recital to the Charge, the intention was that interest was not to be included within the limitation. 20
3. The Learned Trial Judge further erred in holding that the word "and" in the phrase "for principal and for interest at the rate of 12 per cent per annum with monthly rests" should be read disjunctively so that interest should be treated as a distinct subject-matter. 30
4. The Learned Trial Judge failed to appreciate that there is no specific principal sum stated in the Charge and that the limit of \$35,000.00 is inclusive of the principal sum, interest thereon at the rate of 12 per cent per annum with monthly rests, commission and other usual

bankers' charges.

5. The Learned Trial Judge further failed to appreciate that the interest stated in the charge is 12 per cent per annum with monthly rests that is, with compound interest and that when such interest is added as a debit item in the account such interest lose their quality as interest and become capitalised by being merged with the principal.

10 6. The Learned Trial Judge erred in following the opinion of Cotton L.J. given in his judgment in White v. City of London Brewery Company (1889) 42 Ch.D. 237 when the facts in that case are quite different from those of the present case.

Your Appellants accordingly pray that this appeal be allowed and that the Order of the High Court dated the 18th day of December, 1972 be set aside and that such further or other order be made as this Honourable Court may think just and fit and for costs.

Dated this 2nd day of April 1973.

Sd: Chung & Huang
.....
Appellants' Solicitors.

Filed on behalf of the Appellants by their Solicitors Messrs. Chung & Huang, Advocates & Solicitors of Bangkok Bank Building (1st Floor), Jalan Bandar, Kuala Lumpur.

In the
Federal Court
of Malaysia

—
No. 34

Memorandum
of Appeal
2nd April
1973
(continued)

In the
Federal Court
in Malaysia

No. 35

NOTES OF SUFFIAN, C.J.

No.35

Wednesday, 5th September, 1973

Notes of
Arguments
recorded by
Suffian C.J.
5th September
1973

Chung Shiu Tett for appellants.
Chan Siew Yoon for respondent.

Chung addresses

Facts are in respondent's affidavit (p.7) and
in appellants' (p.43).

Charge by Lim at p.12.

Second charge by Lim on same land to same
bank, p.16.

10

Lim on 13.3.65 declared bankrupt.

Respondent says that \$73,173.79 was on 13.3.65
owing on the charges.

Respondent in Originating Summons claims
\$116,826.53 as owing on both charges on 15.5.71.
Judge ordered sale to recover \$128,034.49 as at
18.9.72.

Refers to respondent's affidavit (p.43).

Both charges identical except for figures.

20

Form of charge prescribed by Johore Land
Enactment.

Principles of interpretation set out clearly
by judge (p.68F2). I accept them.

Refers to charge (p.12). Reads 1st and 2nd
paras.

First para. is quite clear. Limit governs
both capital and interest because they appear
before word "limit", Judge preoccupied with brackets.
Words in brackets could have been put within commas
or dashes - they are in parenthesis. 30

Oxford English Dictionary on "parenthesis".

If words in brackets are put immediately after "§35,000" - then respondent's contention is correct.

Torrens system is to facilitate land dealings.

To the layman charge is quite clear. Limit governs both principal and interest.

Respondent can recover interest - but only as unsecured debtor.

Second para. equally clear.

10 Encyclopaedia of Forms and Precedents, 4th edition, vol. 2, page 833.

Possible for bank to provide upper limit to be §35,000 plus interest on that.

Chan addresses

Charge secures not only principal up to §35,000 but in addition also for interest on that capital.

If what my learned friend says is correct - if Lim took overdraft up to limit of §65,000, then when first month's interest falls due, that amount would not be secured.

20 First para. - words in brackets should be read separately.

The Elements of Drafting by Aitken, 4th edition, p.116.

If word including is used, then appellants' contention would be right: Encyclopaedia of Forms and Precedents, 4th edition, vol. 2, p.830, para. 1, p.839 bottom para. to p.840.

30 Second para. makes clearer respondent's contention - on principal there was a limit of §35,000, on interest no limit.

Bank can control amount of capital loaned but not interest on it.

If limit is intended to cover both capital and interest, then the operative part after the words "for principal" in para. 2 would omit word "for"

In the
Federal Court
in Malaysia

—
No.35

Notes of
Arguments
recorded by
Suffian C.J.
5th September
1973
(continued)

In the
Federal Court
in Malaysia

No.35

Notes of
Arguments
recorded by
Suffian C.J.
5th September
1973
(continued)

before "interest" - or they could have used "both
for principal and interest".

Chung replies

Charges can only mean what they say - limit
covers both principal and interest.

This was not a fixed loan but a running loan.

If court with me and the amount is paid to
respondent, the charge should not be discharged but
should be transferred by the banker to the payer.
(Chan: Court cannot do that - Lim is a bankrupt.)

10

Sd. (M. Suffian)

No.36

Notes of
Arguments
recorded by
Gill F.J.
5th September
1973

No. 36

NOTES RECORDED BY GILL F.J.

5th September, 1973

Encik Chung for the appellants.
Encik Chan Siew Yoon for Respondents.

Chung:

A straightforward appeal on the form of a
Charge under the National Land Code. Facts set
out in the affidavits at pages 7 to 11 and pages
43 to 47. Lim Meng See charged his land to
Malayan Banking Berhad. Charge at page 12. At a
later date he charged the same land to the
Respondents for a further loan. That Charge is at
page 16. After that Lim Meng See subdivided the
land into separate portions and separate titles
were issued. He then transferred several of those
pieces of land to the appellants, with the
approval of the Bank. All the transfers to the
appellants were subject to the Charges.

20

30

Lim Meng See was adjudicated bankrupt on
13.3.1965. The Respondents claimed that as on that
date there was due on the two charges a sum of
\$73,173.79. In the originating summons from which
this appeal has arisen the Respondents claimed
\$116,826.53 as being the amount owing under both

these charges as at 15.3.1971. When the order for sale was made an order was made for the recovery of \$128,034.49 as on 18.12.1972.

In the
Federal Court
in Malaysia

Refer to affidavit of respondents in the Court below starting at page 43. Read para 5, paras 6, 7, 8, 9, 10 and 11.

No.36

Notes of
Arguments
recorded by
Gill F.J.
5th September
1973
(continued)

10 The whole point of this appeal turns on the interpretation of the charges. Both charges are identical except for the amounts and rates of interest. First charge carries 12% per annum and the second charge 9%. The form of charge is the Form under the old Johore Land Enactment - form prescribed for overdraft accounts.

20 Refer to charge at page 12. Refer to Judge's observations on interpretation of documents at page 68. Read charge at page 12. The relevant parts relate to the limit of \$35,000. I submit the meaning is clear. The Judge went wrong in placing emphasis on the bracket. The bank must be vigilant. The Bank must write to ask the Chargor to reduce the limit as soon as it is reached or sue for foreclosure. Refer to the meaning of the word "parenthesis" in Oxford English Dictionary. The fact that the words are in brackets has no significance. If the words "with interest thereon at the rate of 12% per annum" were to come after the words "up to the limit of \$35,000", then I would agree that the contention of the Bank would be correct.

30 Forms under the Torrens System are made simple so as to avoid any difficulty about interpretation. Refer to Encyclopaedia of Forms (4th edition) Vol.2 page 833. In an overdraft you do not separate principal and interest, because interest is capitalised all the time. There is only one sum owing.

Chan:

40 I have tendered written submissions. It is said that security is only up to the sum of \$65,000. If that were true, then the bank will be forced to recall the loan the moment there is some amount due to account of interest as soon as the limit of \$65,000 to account of principal is reached.

In the
Federal Court
in Malaysia

No.36

Notes of
Arguments
recorded by
Gill F.J.
5th September
1973
(continued)

Read recital in the charge at page 12. Refer to Elements of Drafting (4th edition) by Aitken page 116. If the words within brackets are removed, the limit of \$35,000/- is only in respect of principal. The word "including" is not used. Refer to Encyclopaedia of Forms (4th edition) Vol.2 page 830, 839 (the words "including interest" were used).

I come to the operative part of the charge which is very clear. Principal and interest are two separate things and the limit is in respect of principal but there is no limit in respect of interest. If the intention of the parties had been to limit up to \$35,000 inclusive of interest, then in the operative part after the words "for principal" the word "for" before the "interest" would not have been used. It would have been clearer still if the words were "both for principal and for interest".

10

Chung (in reply)

20

9 I personally think that reading the charge, it means what it says. If the Court is with me and the amount is paid by the appellants, the charges should not be discharged but should be transferred by the Bank to the payer.

C.A.V.

S.S. Gill.

No.37

No. 37

Notes of
Arguments
recorded by
Ong Hock
Sim F.J.
5th September
1973

NOTES RECORDED BY ONG HOCK SIM, F.J.

P.C. Civ.App. 2/73

Mr. S.T. Chung
Mr. S.Y. Chan

for Appts.
for Respts.

30

Mr. Chung:

Question of Interpretation of Johore Land
Enactment.

Facts set out in Affidavit pp.7-11.

Charges executed by Lim Meng See pp. 12-15.

2nd Charge " " " " " pp. 16-19.

In the
Federal Court
in Malaysia

No.37

Subsequently subdivided the land and sold to the 3 appts and himself. Subdivision and sale were with approval of the bank and subject to the charges. Later, Lim Meng See was adjudicated bankrupt on 13th March 1965. At that date, due to the Bank on the 2 Charges \$73,173-79¢.

Notes of
Arguments
recorded by
Ong Hock
Sim F.J.
5th September
1973
(continued)

10 Bank claimed on O/S \$116,826-53 as amount owing under the 2 Charges as on 15th May, 1971.

Order made by Judge was for \$128,034-49 as on Dec. 18, 1972.

Affidavits of Appts. pp 43-47, At p 44, para 5, at p 45-46, paras 8, 9.

Charges identical except for amount.

After 2nd Charge, interest on 1st Charge reduced from 12% p.a. to 9.6%p.a.

pp68-70, pp 12-13.

20 Oxford English Dictionary meaning of "parenthesis".

Encyclopaedia of Forms & Precedents 4th Edn. Vol.II Banking. p 833.

Mr. Chan:

Tendered written submission earlier.

If intention of parties were to include principal and interest up to the limit, it could have charged the land up to limit for principal and interest.

Mr. Chung:

If Court agrees with me, the Charges to be transferred by Bank to any person satisfying the claim.

C.A.V.

H.S.O. 5/9

In the
Federal Court
in Malaysia

No.38

Written
Submission
by the
Respondents
(Appellants
in Privy
Council
Appeal)

8th August
1973

No. 38

WRITTEN SUBMISSION BY THE RESPONDENTS
(Appellants in Privy Council Appeal)

SHOOK LIN & BOK
ADVOCATES & SOLICITORS
KUALA LUMPUR

MS. 8.8.73

CSY/8108-1/MBB/LMS

LIST OF AUTHORITIES

1. TEXT-BOOKS

- .1 Aitken's Elements of Drafting 4th Edn.116 10
- .2 Alison Russell on Legislative Drafting and Forms, 4th Edn. page 94
- .3 Rupert Cross in Precedent in English Law (1961) pages 59-60

2. CASE-LAWS

- .1 Duke of Devonshire v. O'Connor (1890) 24 Q.B.D. 468
- .2 King v. Speyer, King v. Cassel (1916) 1 K.B. 595
- .3 Pope Alliance Corporation v. Spanish River Mills (1929) A.C. 269 at pages 283-84 20
- .4 White v. City of London Brewery Company (1889) 42 Ch.D. 237
- .5 Letchumi & Another v. Asia Insurance Co. Ltd. (1972) 2 M.L.J. 105
- .6 Rengasamy Pillai v. Comptroller of Income Tax (1970) 1 M.L.J. 233
- .7 Inland Revenue Commissioners v. Holder (1931) 2 K.B. 61 30
- .8 Inland Revenue Commissioners v. Oswald (1945) A.C. 360
- .9 Paton v. Inland Revenue Commissioners (1938) A.C. 341
- .10 In Re Morris (1922) 1 Ch.D. 126
- .11 In Re Craven's Mortgage (1907) 2 Ch.D.448

WRITTEN SUBMISSION BY THE RESPONDENTS

In the
Federal Court
in Malaysia

A INTRODUCTION

No.38

Written
Submission
by the
Respondents
(Appellants
in Privy
Council
Appeal)

8th August
1973
(continued)

10 This is an appeal by the abovenamed Appellants to the Federal Court Malaysia from the whole of the decision of Mr. Justice Mohd. Azmi given in the High Court in Malaya at Kuala Lumpur. The decision was made upon an application to the High Court in Malaya at Kuala Lumpur by the present Respondents, as chargees, for an Order of Sale of land secured by two charges. The issue involved judicial interpretation of the two charge documents as to whether the combined limit of \$65,000/- refers to the principal sum only, in which case the Bank (the present Respondents) are entitled to the Order of Sale, or, to all sums including interest and so forth, in which case the Bank are not entitled to the Order of Sale since the said sum of \$65,000/- had been offered by the Appellants to the Bank and was rejected by the Bank. In the result, Mr. 20 Justice Mohd. Azmi ruled that the limit figure of \$65,000/- referred only to the principal sum and accordingly granted the application for order of sale. This Appeal is from that decision. The Appellants have raised six grounds of appeal.

B ARGUMENT

1 The First Three Grounds of Appeal

30 1.1 In my view, the first three grounds of appeal may be taken together as they challenge the interpretation given to particular words in the Charge document by the Learned Trial Judge. For purpose of convenience, I will refer only to the first charge in my argument as both the Charge documents are practically the same, except as to the amount and rate of interest.

40 1.2 The Appellants contend that the Trial Judge erred in law in his interpretation that the words "up to the limit of Dollars Thirty Five Thousand Only (\$35,000/-)" appearing in both the recital and the substantive part of the Charge applied only to the principal sum. This contention is set out in the first ground of appeal. His contention is based on two grounds which are set out in Grounds Nos. 2 and 3 respectively.

In the
Federal Court
in Malaysia

No.38

Written
Submission
by the
Respondents
(Appellants
in Privy
Council
Appeal)

8th August
1973
(continued)

1.3 In the first place, it is said by the Appellants that the Learned Trial Judge was wrong in holding that just because the words "with interest thereon at the rate 12% per annum" were placed within brackets in the recital to the Charge, the intention was that interest was not to be included within the limitation. It was our contention before the Learned Trial Judge that the reference to interest within brackets is significant in that with the brackets there are two separate things - principal and interest - whereas reading it without the brackets would give a different interpretation. The Learned Trial Judge accepted our argument and ruled that "the fact that these words are put within brackets is very significant, because if it is intended that interest should be included within the limitation clause there seems to be no necessity for putting those words within brackets". Please see page 70 of Appeal Record.

10

1.4. It is reasonable to anticipate that Counsel for the Appellants will argue that no significance should be attached to the brackets and the placing of words within brackets should not be indicative of an intention different from a case where there are no brackets. In this connection, it will be relevant to consider the case of Duke of Devonshire v. O'Connor (1890) 24 Q.B.D. 468 at page 478 where Lord Esher M.R. said:-

20

"To my mind, however, it is perfectly clear that in an Act of Parliament there are no such things as brackets any more than there are such things as stops."

30

Lord Esher in this case was construing the terms of a private Inclosure Act where words existed within brackets and he interpreted the words to read as though they were without brackets. This decision was expressly followed by Lord Reading C.J. in King v. Speyer, King v. Cassel (1916) 1 K.B. 596 at page 614 in construing the words within brackets in Section 3 of the English Act of Settlement, when he said:-

40

"I disregard the brackets for the purpose of construing the language."

1.5 However, in my view, little or no reliance

can be placed on these cases as laying down a cannon of judicial interpretation applicable to present day construction of parliamentary legislation or deeds. This is because their lordships in enunciating these principles were concerned with the interpretation of archaic English Statutes viz. the 1789 Inclosure Act in the Duke of Devonshire's case and the 1700 Act of Settlement, in the King v. Speyer, King v. Cassell case respectively. Accordingly, the principles of interpretation laid down in those cases in regard to the use of brackets and other punctuations may no longer be true or applicable. Thus in Sir Alison Russel's Legislative Drafting and Forms 4th Edition at page 94 there is the following passage:-

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"In Devonshire (Duke of) v. O'Connor (1890) 24 Q.B.D. 468, Lord Esher M.R. lays down the law as follows. 'To my mind it is perfectly clear that in an Act of Parliament there are no such things as brackets, any more than there are such things as stops.'

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It may be doubted whether this observation is correct at the present time when Acts are necessarily so much more complex; and it is submitted that it is not so in a colony, where every Act is signed by the Governor in a print complete with punctuation and brackets. In any case, every one on all ordinary occasions construes a section with the aid of its stops and brackets, and accordingly the draftsman should give them great attention."

Please see also Pope Alliance Corporation v. Spanish River Mills (1929) A.C. 269 at pages 283-84, where the Privy Council in construing a provision of the Canadian Patent Act placed great emphasis on punctuation marks as aids to construction despite old rules to the contrary.

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1.6 Mr. J.K. Aitken, LL.M. (Melbourne), page 116 in his book entitled "The Elements of Drafting" referred to the usefulness of brackets in a document. He said:-

"Brackets can be used not only to separate some subordinate statement from the run of the sentence but also to enclose a long adjectival or adverbial clause and so by catching the eye at the closing bracket at

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its end help the reader to pick up the sentence again.

... Brackets may also be used as a convenient aid in interpolating an additional statement"

In any event, such cases as Duke of Devonshire and King v. Speyer, King v. Cassel which were concerned with the interpretation of statutes, should have no application in the instant case which is concerned with the interpretation of some words in a form even though it is prescribed by statute (See Schedule P Form (iii) of the Johore Land Enactment). See also purpose of Forms in Schedule at page 225 of Craies on Statute Law 7th Edition.

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1.7 We must not really overlook the fact that the parties to the contract are not lawyers and are not concerned with the nicety of the rules and principles of interpretation. They have learned the use of comma, full stop and brackets in schools and in offices and they can see no reason why they should not apply their knowledge to the document they are drawing or which has been drawn for them. If, in adopting the statutory form, they had not thought fit to drop the brackets then they must have attached significance to them. It would then be for the judge to ascertain what that significance was.

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1.8 In my humble opinion, therefore, the Learned Trial Judge was correct in attaching significance to the brackets and in inferring therefrom an intention to exclude interest from the limitation.

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1.9 In the second place, it is said by the Appellants that the Learned Trial Judge was again wrong in holding that the word "and" in the phrase "for principal and for interest at the rate of 12% per annum with monthly rests" should be read disjunctively so that interest should be treated as a distinct subject-matter. I think the reason given by the Learned Trial Judge in reading the word "and" disjunctively is that if it were the intention of the parties that the word "and" should have a conjunctive meaning then it would have been easier for the words "interest at the rate of 12% per annum with

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10 monthly rests ..." to be put before the words "up to the limit of Dollars Thirty-five Thousand only". It is true that in ordinary usage the word "and" has a conjunctive effect, although in law it has been recognised that it may be read disjunctively to mean "or". But it must be appreciated in the present case that the Learned Trial Judge's exercise was not so much in determining whether "and" has the disjunctive or conjunctive meaning but in ascertaining what was the true intention of the parties as to the scope of the limit in the Charge document.

1.10 It is my humble view, therefore, that the Trial Judge had not erred in attaching to the word "and" a disjunctive meaning. In any event, whether the word "and" should be read disjunctively or conjunctively is not important. What is important is whether the reason given by the Learned Judge is correct.

20 1.11 I think the body of the Charge makes it clear beyond doubt that the limit figure is in respect of principal only, and that the Charge further stands security for interest, commission and other usual banker's charges. One can see from the body of the Charge that the two things - principal and interest - are made very distinct. The Chargor "DO HEREBY CHARGE" the said land:-

- 30 .1 Firstly : up to the limit of \$35,000/- for principal.
- .2 Secondly : and for interest at the rate of 12% per annum. (The underline is mine).

40 The repetition of the word "for" immediately before the word "interest" is significant. If the word "for" before the word "interest" is omitted, it may be highly arguable that the limit figure represents the total amount secured by the Charge either in respect of principal interest or otherwise. Another way of indicating that the limit figure covers both principal and interest is to use the word "both" immediately before the words "for principal". As it is, there cannot be any doubt that the limit figure represents only the principal.

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2 The Fourth Ground

2.1 This ground is difficult to follow. The charges were in common form for bank charges in that they were not designed to stand as security for the loan of a fixed sum, but to secure whatever balance may from time to time be due to the Bank on a running account. One would not, therefore, expect them to specify the "principal sum" advanced by the Bank. There is, however, nothing to prevent the Bank and in fact it is the usual practice of the Bank as indicated in the Charge to limit the principal sum which sum no doubt is determined in accordance with the worth of the security. It is, therefore, difficult to follow the Appellants' logic that just because there is no specific principal sum in the sense of a fixed loan, the limit figure must necessarily include both the principal sum and interest etc.

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3 The Fifth Ground

3.1 The fifth ground of appeal reads as follows:-

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"The Learned Trial Judge further failed to appreciate that the interest stated in the Charge is 12% per annum with monthly rests, that is, with compound interest and that when such interest is added as a debit item in the account such interest lose their quality as interest and become capitalised by being merged with the principal."

3.2 It will be seen that this is a fresh point of law which was not raised in the Court below and, consequently, was not dealt with by the Learned Trial Judge. It is impossible to see how this point can be raised now in view of the authoritative pronouncement on the matter by Lord Diplock in the Privy Council's case of Rengasamy Pillai v. Comptroller of Income Tax (1970) 1 MLJ page 233. At page 234 he said:-

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"As has been repeatedly stated it is not the practice of their Lordships, save in very exceptional cases, to allow a fresh point of law to be argued without the benefit of the judgments in the Court below, even where all the facts which may be relevant to the new point are before their Lordships and beyond

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dispute. (See United Marketing Company v. Kara and the cases there cited). In the present appeal the full circumstances relating to the proceedings before the board of review which resulted in the assessment being reduced, and which must constitute the factual foundation for this fresh point of law are not in evidence. Even if their Lordships thought that the point was right in law they would not be disposed to allow the appeal upon this ground."

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It will be seen from the above that in order to raise this new point, the Appellants must satisfy the Court that there are exceptional circumstances and that all the facts which may be relevant to the new point are before the Court and beyond dispute. In the present case, it is impossible to see how the Appellants can satisfy the Court that there are here exceptional circumstances. Furthermore, there is no possibility of the Appellants showing to the Court that all the facts relevant to this new point are before the Court because they are not in fact before the Court. For if this point had been raised, such facts as the manner in which an overdraft account is operated; the way the accrued interest is debited in the account and such other facts pointing to the intention of the parties as to the manner in which the accrued interest is to be treated, would have been put before the Court below.

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3.3 I think it is important to refer to the case of Letchumi & Another v. Asia Insurance Company Limited (1972) 2 MLJ 105, where the Federal Court allowed an arguable point not raised in the Court below to be raised before it. Ong C.J. said:-

"This is a point not considered in the judgment of the trial judge - since it was not raised and argued before him - but it must, in my opinion, be considered by us in the interests of justice. An omission at the trial, by inadvertence or otherwise, to canvass an arguable point is not the same thing as abandoning it altogether - which would have precluded us from reopening and reconsidering the matter."

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It is fine if the learned Chief Justice had allowed it to be raised in the interests of justice. But with the greatest respect I humbly submit that it is wrong for him to say that for the purpose of raising a fresh point of law in appeal, there is a distinction between omission to canvass the point at trial and a deliberate abandonment of a point raised. It must be borne in mind that the reason for not allowing a fresh point to be raised is because the Appeal Court has not had the benefit of the judgments in the Court below. The Appeal Court is deprived of that benefit whether the point was raised in the Court below but was abandoned or it was not raised at all. Furthermore, Rengasamy's case was a case where the fresh point was not raised at all and not a point raised but abandoned. Support for this is found in the following passage in the judgment of Lord Diplock at page 234:-

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"Before their Lordships the appellant sought to rely upon a different ground of invalidity which was never argued in either of the courts below and is not even adverted to in the appellant's case. Furthermore, it is a technical point devoid of any substantial merit."

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3.4 If the preliminary objection is overruled, it becomes necessary to deal with the merit of this ground of appeal. This ground is really based on a passage in Halsbury's Laws of England 3rd Edition Vol. 2 at page 229:-

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"It is the practice of bankers to debit the accrued interest to the borrower's current account at regular periods, where the current account is overdrawn or becomes overdrawn as the result of the debit the effect is to add the interest to the principal, in which case it loses its quality of interest and becomes capital."

The case of Commissioner of Inland Revenue v. Holder (1931) 2 K.B. 81 is cited as authority for that proposition. The Lord Justices in the Court of Appeal in coming to the decision were much influenced by the case of Reddie v. Williamson 1 MacPh. 228. As Reddie's case is referred to in reasonable details in Holder's case, it is

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sufficient to deal with Holder's case to see whether that statement as quoted above has any application in the instant case.

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3.5 The brief facts of the case are found in the head-notes. It was held in that case that the interest due each half-year which, upon the failure of the company to pay it, was, according to the regular practice of bankers, added to the capital sum advanced, was thereby capitalised and could not thereafter be treated as interest.

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3.8 It is then clear that if the accrued interest was treated as capital it was because of the banking practice which prevailed in England in those days. This practice was thought to be necessary in order for the bank or for any mortgagee to charge compound interest without offending the usury laws. This is clear from the following passage in the judgment of Romer L.J. at page 98:-

"As to the first of these two contentions, it is to be observed that the relations between the company and the bank were regulated not by any special agreement, but by the ordinary usage prevailing between bankers and their customers as to the method of keeping accounts. In accordance with this usage the balance of principal and interest was struck at the end of each half-year and the aggregate sum was introduced as the first item in the subsequent half-yearly account and interest calculated upon it. It was in fact the very method of keeping accounts that was considered by Manners L.C. in the case of Lord Clancarty v. Latouche, except that there the balances were struck yearly and not half-yearly. The result of this method of keeping accounts is, of course, to charge the customer with compound interest, and the question that had to be considered in Lord Clancarty v. Latouche was as to the legality of such a charge. Now it has been laid down by Lord Eldon in the case of Ex-parte Bevan that a contract to allow the charging of compound interest was bad. That was because such a contract was usurious. 'It is clear,' said Lord Eldon 'You cannot a priori agree to let a man have money for

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twelve months, settling the balance at the end of six months; and that the interest shall carry interest for the subsequent six months; that is, you cannot contract for more than 5%, agreeing to forbear for six months. But, if you agree to settle accounts at the end of six months, that not being part of the prior contract, and then stipulate, that you will forbear for six months upon those terms, that is legal'."

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Something to the same effect was said by Lord Hanworth M.R. at page 94:-

"The plan of capitalising interest at the end of each half-year was adopted by bankers in order to enable them in effect to secure what is usually termed compound interest, which could not have otherwise been claimed by reason of the usury laws"

3.7 In Holder's case, there was no mortgage deed and the bank relied on the regular practice of bankers to charge interest. It is difficult to see how this practice will apply in this case particularly there is here a Charge document regulating the charging of interest. In the circumstances, therefore, it is impossible to say that Holder's case or the statement in Halsbury's Laws of England as quoted above will apply.

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3.8 Indeed, it was admitted in the Holder's case that where there was a mortgage deed setting out all the terms including that of charging interest, the regular practice of the bankers in treating the interest as capitalised would not apply. The question, therefore, of whether the interest in those cases is capitalised or not would depend on a construction of the mortgage deed. This is what Lord Hanworth M.R. said in the Holder's case (at page 95):-

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"There are some cases in which it has been held that half-yearly or yearly rests had not made the interest so dealt with capital for all purposes: see In re Craven's Mortgage and In re Morris.

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In the first of these Warrington J. followed Bebb v. Bunny, and held that the interest

paid on a mortgage fell within Section 10 of the Income Tax Act 1853. He expressly decided, upon the terms of the deed before him, that there was nothing in it to capitalise the interest, or to change its character or make it something which it was not before.

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In re Morris was also decided upon the terms of the mortgage deed under which the expectancies of the mortgagors were conveyed to an insurance society subject to redemption on payment to the society of a sum of £40,000 at a time contemplated, with compound interest thereon at the rate of 4½% with annual rests. Craven's case was followed, and it was held that the compound interest had not been capitalised. Lord Sterndale expressly decided the case upon the terms used in the mortgage, which in his opinion were not sufficient to connote capitalisation.

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Warrington L.J. declined to deal with anything except the document which was before the Court, and Younger L.J. thought the operation whereby the compound interest was calculated, although it produced a result not in substance distinguishable from a capitalisation of interest, was not, and was not intended to be, capitalisation.

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We are here considering not the terms of a particular deed entered into between the parties, but a practice which has been adopted by bankers for over a century, and which had certain qualities attributed to it. It prevailed between Blumfield Ltd. and their bankers for nearly seven years, and I think that upon the true inference from the facts, and under direction of the cases rightly understood, it must be held that the interest down to November 1926 had been capitalised with the approval of the principal debtors."

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3.9 There is here, just as there is in the case of In re Craven's Mortgage (1907) 2 Ch. 448 or Re Morris (1922) 1 Ch. 126, a charge document and, therefore these two cases ought to be more in line with our present case. In re Morris, Lord Sterndale M.R. dispelled the fallacy which was then prevailing that just because the accrued interest was being

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added from time to time to the capital as a matter of book-keeping, it must be treated as having been capitalised for all purposes. The following passage in his judgment at pages 131, 132 and 133 is most relevant:-

"In my opinion the words "compound interest" are not so comprehensive, and do not mean so much as the appellants contend. The agreement that the mortgagors make - and I am satisfied that it would probably be the only one that they ever thought they were making - is that if they do not pay their interest as it should be paid, after the death of the lunatic, at its due date, then they will have to pay interest upon that interest as well as interest upon the capital which is unpaid. The way in which that is generally done in keeping accounts is that at the end of the first and every succeeding year the interest for the year which is unpaid is added to the capital; at the end of the second year the interest for that year, if it is unpaid, together with interest on the first year's unpaid interest, is added to the sum made up of the capital and the first year's interest; and upon those aggregate sums interest is calculated for the following year, and so on. That is the way in which, in practice, the matter is dealt with. The process would be more complicated but would, as it seems to me, effect the same result, if the interest were not added to the capital, but two accounts were kept, one charging interest upon capital year by year, and the other charging interest upon the sums of overdue interest which are not paid from year to year. That however is not the way in which it is done in practice. It would be a cumbrous and unbusinesslike way of doing it. The way in which it is done as a matter of business is by adding the interest year by year - namely, the interest for the first year to the capital sum, the interest for the second year to the capital sum, plus the first year's interest. This is commonly and conveniently spoken of as capitalising the interest. It is capitalising the interest in a sense, and in the sense in which Mr. Beaumont put the matter to us. He said that the interest should be treated as

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capital for the purpose of bearing interest; and in the sense that it becomes a thing which bears interest itself, which interest, as a rule, does not, it may be said to be capitalised - that is to say, it may be said to be put in the same position as capital in the sense that it is regarded as a thing which bears interest. But it seems to me that it is going a very long way beyond that to say that it is made capital for all purposes, and that when it is paid, at the expiration of three, four, five or ten years, it is all paid, with the exception of the last year, as capital. I do not think that the words "compound interest with yearly rests" at all necessarily show, or indeed do show, that the mortgagors intended that any unpaid interest should become capital for all purposes, the result no doubt, if it were so, being that they would pay more than they would if it were to be considered as interest, because if they had paid their interest at the end of the first year they would have paid it less tax. That is admitted. If it is to become capital for all purposes, then they have to pay that as part of the capital, without any deduction of tax at all. I do not believe that such a matter was ever in contemplation, and in my opinion that is not the meaning of an agreement simply to pay compound interest. I think that the word "capitalisation" used in many of the books quoted is a convenient word, but for the purposes for which it has been used in the argument before us it is a fallacious word, because it is taken as referring to capitalisation for all purposes, income tax and otherwise. I do not think that is the meaning of the word. In my opinion - not to beg the question - when these sums of interest come to be paid at the end of the time when payment is made, although interest has been charged upon them, and although, as a matter of book-keeping, they have from time to time been added to capital, they do not cease to be interest of money - that is to say, they are overdue interest upon which interest has been paid."

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As I see it, our present case is no different from Re Morris in all the material aspects except that

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in Re Morris the interest is charged on yearly rests whereas it is on a monthly rest in the present case.

3.0 It may be argued that Re Morris is not concerned with banking loans, but I can see no difference between banking loan and non-banking loan so far as the keeping of account is concerned. After all, in both cases, interest is added to the capital for purpose of charging interest for the following month or for the following year. That there is no such difference is made clear by Lord Porter in the case of Inland Revenue Commissioners v. Oswald (1945) A.C. page 360 at 379:-

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"Had the sum in question in the present case been bank interest on a loan the question whether the interest there had been paid by adding it to the capital sum borrowed would have been determined by your Lordships' decision in Paton v. Inland Revenue Commissioners. At an earlier date, in Inland Revenue Commissioners v. Holder, the Court of Appeal had decided that the capitalisation of bank interest ought properly to be regarded as a fresh borrowing of interest by the borrower from the bank followed by the application of the sum so notionally borrowed in payment of the interest due, with the result that there was a payment at the moment of capitalisation. In Paton's case your Lordships held that this was not so and that the debiting of interest in the account did not constitute, as between the borrower and the bank, a payment of interest My Lords, I do not find myself able to distinguish in principle between that case and the one the House is now considering. In each case there is a debt and in each case there is a contract under which, in default of payment, a so-called capitalisation of interest takes place. It is true that in the one case the contract is constituted by the custom of bankers and in the other by a deed of mortgage, but the substance, though not the machinery, is the same. Capitalisation means no more than that interest, which continues to be interest, shall be treated

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together with the capital sum due as itself interest-bearing but does not alter its quality as interest."

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10 3.11 As I have already pointed out that Holder's case will have no application in the present case and the present case is more in line with Re Morris and Re Craven's Mortgage. In the circumstances, what Sterndale M.R. has said above should decide the issue before us. Indeed, on a reading of the Charge document, there is really nothing, either expressly or impliedly, to suggest capitalisation of the interest or the change of the character of interest to something which it was not before. The principal and interest are clearly treated as two very distinct matters. In fact, adequate light has been thrown on the meaning of the word principal by what had preceded it in the body of the Charge and this meaning does not include accrued interest. There is no intention whatsoever of capitalising the accrued interest. All that is said is that interest is charged at the rate of 12% per annum on monthly rests and this, in practice is done by adding the accrued interest at the end of the month, if it is not paid, to the principal purely for purpose of calculating interest for the following month. And, as described by Lord Sterndale M.R. in Re Morris, it is a matter of book-keeping. The capitalisation here, if one wishes to choose that word, is, to use the words of Lord Porter in Inland Revenue Commissioners v. Oswald (supra) "No more than that interest, which continues to be interest, shall be treated together with the capital sum due as itself interest-bearing but does not alter its quality as interest". Indeed, with this observation of Lord Porter, I humbly submit that the proposition of law as quoted above from Halsbury's Laws of England for which Holder's case (C.A.) is said to be authority is no longer valid.

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40 3.12 There is another point which it is important to mention here. In Holder's case, the Court had given a further reason why the amount of accrued interest ought to be treated as capital. They held that the accrued interest ought properly to be regarded as having been paid by a fresh borrowing of that amount by the borrower from the bank. In other words, it was a notional payment of the interest due with a notional fresh borrowing

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of that amount of interest from the bank. This is what Romer L.J. said when he referred to the case of Reddie v. Williamson (page 100):-

"In giving judgment, Lord Inglis, after stating how the account had been kept, said this: "Where an account is kept in this way the interest thus accumulated with principal at the end of each year not only becomes principal, but never thereafter ceases to be dealt with as principal." Then, after pointing out that the bank could have demanded from the guarantors at the end of each year interest upon advances made up to £400, he said that if the bank, instead of demanding that interest, chose to accumulate it with the capital, they were dealing with the account, so far as the guarantors were concerned, in precisely the same way as if the customer had given the bank a cheque upon the account for the amount in question with which the bank extinguished the interest and then placed the amount of the cheque to the debit of the account as an ordinary draft. Lord Cowan in his judgment said: "The true view is, that the periodical interest at the end of each year is a debt to be then paid, and which must be held to have been paid when placed to the debit of the account as an additional advance by the bank." With these observations I desire to express my respectful concurrence."

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In the case of Paton v. Inland Revenue Commissioners (1938) A.C. 341 it was held that this was not so and that the debiting of interest in the account did not constitute, as between the borrower and the bank, a payment of interest. The myth of notional payment was exploded by Lord MacMillan in that case when he said at page 356:-

"In my opinion this means that the taxpayer must really, and not merely notionally, have paid the interest; there must be payment such as to discharge the debt; the payment must be a fact not a fiction."

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3.13 I humbly submit that there is no merit in this ground of appeal.

4 Sixth Ground

4.1 It is alleged in this ground that the Learned Trial Judge erred in following the opinion of Cotton L.J. given in his judgment in White v. City of London Brewery Company (1889) 42 Ch.D. 237 when the facts in that case are quite different from those of the present case.

10 4.2 It must be pointed out that the Learned Trial Judge has noted the difference (see page 70 of Appeal Record) and if he has cited with approval the opinion of Cotton L.J. it must be because there is a similarity between the two cases in some material aspects. Indeed, both the cases are concerned with mortgage or charge of property as security for repayment of moneys advanced. In both cases interest is chargeable. In both cases there is a limit figure. In both the cases the issue before the Court is whether this limit figure represents the principal sum and that the mortgage or charge further stands security for interest and other charges.

20 4.3 It will therefore be seen that there is a similarity in all material aspects between the two cases. The Learned Trial Judge is fully justified in following the opinion of Cotton L.J. As a matter of fact, no two cases ever have completely identical facts. The ratio decidendi is derived from all the material facts before the Court and not from all the facts, material or immaterial.

30 See Rupert Cross on Precedent in English Law pages 59-60.

4.4 Even if the Judge was wrong in following the opinion of Cotton L.J. it should not affect his decision of the whole case which was arrived at by a process of interpretation of the charge document and was quite independent of the authority of White's case.

Dated the 6th (sic) day of August, 1973.

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The facts and the arguments in this appeal have been well stated in the previous judgments and there is no need for me to repeat them.

With respect I agree with my brother Ong that the limit applies both to principal and interest, not to principal only and that this appeal is allowed.

In my view the words "up to the limit of \$35,000" in the recital of the first charge clearly govern both principal and interest. They would have governed only principal (not interest) if the recital had read:

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" I, Lim Meng See ... desiring to render the said land available for the purpose of securing to and for the benefit of Malayan Banking Ltd. ... the repayment on demand of all sums advanced to me by the Bank in manner hereinafter appearing up to the limit of \$35,000 (with interest thereon)".

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In my view the words "up to the limit of \$35,000" in the operative part of that charge also govern both principal and interest, not principal only. They would have governed only principal (not interest) if the operative part had read:

" I do hereby charge the said land for the benefit of the Bank with the repayment on demand of the balance which on the account between me and the Bank shall for the time being be owing, etc., for principal up to the limit of \$35,000 and for interest, etc, commission and other usual banker's charges".

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In the event there shall be an order as follows:

1. This appeal is allowed with costs here and in the court below.
2. The learned trial judge's order is hereby set aside and instead there shall be an order

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as proposed by my brother Ong.

Appellants' deposit to be returned to them.

Judgment delivered in Kuala Lumpur
on 20th November, 1973.

(M. Suffian)
CHIEF JUSTICE, MALAYA.

Separate judgment by H.S. Ong, F.J., and
dissenting judgment by Gill, F.J.

Notes

- 10 1. Arguments in Kuala Lumpur on 5th September,
1973.
2. Counsel:
- Mr. Chung Shiu Tett of Messrs. Chung &
Huang, Kuala Lumpur, for appellants.
- Mr. Chan Siew Yoon of Messrs. Shook, Lin
& Bok, Kuala Lumpur, for respondents.
3. Authorities cited:
- (1) The Elements of Drafting by Aitken, 4th
edition, p.116.
- 20 (2) Encyclopaedia of Forms and Precedents, 4th
edition, vol. 2, p.830, para. 1; p.833
and p.839, bottom para. to p.840.

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Suffian C.J.
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In the
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No. 40

JUDGMENT OF GILL F.J.

No.40

Judgment of
Gill F.J,
20th November
1973

On 2nd May 1962 one Lim Meng See executed a charge over his land held under Grant for Land No. 7072 for Lot 1599 in the Mukim of Labis in the District of Segamat, Johore in favour of the respondents, the Malayan Banking Berhad, as security for the repayment of all sums advanced to him by the respondents up to the limit of \$35,000 bearing interest at 12 per cent per annum with monthly rests. On 11th June 1963 he executed a second charge over the same land as security for the repayment of all sums advanced to him by the respondents up to the limit of \$30,000 bearing interest thereon at 9.6 per cent per annum with monthly rests.

10

The two Charges, which were duly registered, were in identical terms except for the difference in the amount to be advanced on each charge and the rate of interest. The relevant parts of the recital and the operative clause of the first charge are as follows:

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" I Lim Meng See ... desiring to render the said land available for the purpose of securing to and for the benefit of Malayan Banking Limited ... the repayment on demand of all sums advanced to me by the Bank in manner hereinafter appearing (with interest thereon at the rate of 12 per cent per annum) up to the limit of Dollars Thirty five thousand only (\$35,000/-)

30

DO HEREBY CHARGE the said land for the benefit of the Bank with the repayment on demand of the balance which on the account between me and the Bank shall for the time being be owing in respect of cheques, bills, notes or drafts drawn, accepted or endorsed by me either alone or jointly with another or others ... up to the limit of Dollars Thirty five thousand only (\$35,000/-) for principal and interest at the rate of 12 per cent per annum with monthly rests, commission and other usual bankers' charges ..."

40

On or about 1st December 1963 the land in

10 question was sub-divided and separate titles were issued in respect of each of the sub-divided lots. On or about 6th December 1963 Lim Meng See transferred, subject to the two charges, all but one of the sub-divided lots either in whole or in part to the three appellants, so that by the terms of the two charges the appellants together with Lim Meng See became liable to repay on demand the balance sum which on the overdraft account of Lim Meng See became due and owing to the respondents.

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Lim Meng See was adjudicated bankrupt on 13th March 1965 when his overdraft account with the bank showed a balance of \$73,173.79 with further interest at the agreed rates.

20 By letters dated 8th June 1971 the respondents through their solicitors demanded of Lim Meng See and the appellants payment within seven days of the sum of \$116,826.53 being the outstanding balance as on May 15th 1971 on the overdraft account of Lim Meng See with the bank inclusive of interest. Lim Meng See as well as the appellants failed or neglected to pay the afore-said sum of \$116,826.53 together with the interest accruing thereon, thereby committing a breach of the terms and conditions of the two charges. This breach having continued for more than one month, the bank through their solicitors caused to be served on the chargors on 28th August 1971 a
30 statutory notice of demand in Form 16D as prescribed under Section 254 of the National Land Code. The chargors failed or neglected to comply with this notice.

40 On 19th January 1972 the respondents took out an originating summons in the High Court at Kuala Lumpur for an order under section 256 of the National Land Code that the lands, the subject matter of the two charges, be sold by public auction to satisfy the sum of \$116,826.53 alleged to be due to the applicants as on 15th May 1971 together with further interest thereon to date of payment or realisation.

In due course, the originating summons came up for hearing before Mohd. Azmi J. The first respondent or the Official Assignee on his behalf had taken no steps to oppose the application for sale. The appellants objected to the application

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principally on the ground that the lands had been charged to the respondents for the purpose of securing only the principal amounts advanced by the respondents to Lim Meng See up to the limit of \$65,000 so that the amount due in excess of that sum of \$65,000 was not a secured debt which could be recovered by foreclosure proceedings under section 256 of the National Land Code.

It is common ground that the appellants have been willing since October 1967 to pay the said sum of \$65,000, but the respondents refused to accept the offer contending that the two charges were meant to secure not only the repayment of the principal sums advanced up to the limit of \$65,000 but also the payment of interest on those principal sums at the agreed rates.

10

As stated by the learned judge in his grounds of judgment, the determination of the dispute before him called for an interpretation of the two charges in respect of which the order for sale was applied. As both charges were in identical terms except for the amount and the rate of interest, he considered the terms of the first charge for the determination of the case before him.

20

In interpreting the relevant provisions of the charge the learned judge relied on the following passage in Halsbury's Laws of England, Volume ii, Third Edition paragraph 632:

"The words of a written instrument must in general be taken in their ordinary sense notwithstanding the fact that such a construction may appear not to carry out the view which it may be supposed the parties intended to carry out; but if the provisions and expressions are contradictory, and there are grounds, appearing on the face of the instrument, affording proof of the real intention of the parties, that intention will prevail against the obvious and ordinary meaning of the words; where the literal construction would lead to an absurd result, and the words used are capable of being interpreted so as to avoid this result, the literal construction will be abandoned. So too, considerations of

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inconvenience may be admitted when the construction of the document is ambiguous. If, however, the intention is clearly and unequivocally expressed, then, however capricious it may be, the court is bound by it, unless it is plainly controlled by other parts of the instrument.

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The rule is that in construing all written instruments the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no farther. The instrument must be construed according to its literal import, unless there is something in the subject or context which shows that this cannot be the meaning of the words."

20

Applying the above rule to the facts of the present case the learned judge reached a conclusion which is set out in his grounds of judgment in the following terms:-

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" In the present case, giving the words in the recital and the operative part of the instruments their ordinary sense, it is clearly the intention of the parties that the limit of \$35,000/- is intended to apply only to principal. In my view, the word "and", which I have underlined in the operative part of the document, should be read disjunctively, so that interest should be treated as a distinct subject-matter. If the words "interest at the rate of 12 per cent per annum with monthly rests, commission and other usual bankers' charges" were intended to come within the ambit of the limitation, then those words should have appeared before the words "up to limit of Dollars Thirty five thousand only". It is my considered opinion that this interpretation is supported by the fact that the words "with interest thereon at the rate of 12 per cent per annum" are placed within brackets in the recital. The fact that these words are put within brackets is very significant, because if it is intended that

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interest should be included within the limitation clause there seems to be no necessity for putting those words within brackets. In any event, the words which appear in the operative part of the instrument should carry more weight than those appearing in the recital."

He further relied on a passage from a judgment of Cotton L.J. in the case of White v. City of London Brewery Company (1) which was cited to him by counsel for the applicants. That passage as set out in his grounds of judgment reads as follows:-

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"In my opinion the proviso limiting the amount to be recovered does not apply to the moneys which the mortgagees can claim for their reimbursement, but simply to the principal moneys due on the mortgage, which are to be paid out of the sale moneys after the sums directed to be reimbursed have been paid, and does not prevent payment beyond the £900 either for interest or in respect of anything which is directed to be reimbursed."

20

In the result, the learned judge held that the limits of \$35,000 and \$30,000 under the two charges were only applicable to the principal sums and that the applicants were entitled also to recover the amount due in excess of that sum in respect of interest, commissions, bankers' charges, etc., by foreclosure proceedings under section 256 of the National Land Code. Accordingly, he made an order for the sale of the lands to satisfy the sum of \$128,934.49, being the amount due to the applicants as on 18th December 1972, and further interest on the decretal sum at the rate of 6 per cent per annum from 19th December 1972 to the date of payment or realisation. It is from that decision of the learned judge that an appeal has been brought to this Court.

30

The main ground of appeal against the learned judge's decision is that he erred in law in his interpretation that the words "up to the limit of Dollars Thirty Five Thousand Only (\$35,000/-)" appearing in both the recital and the substantive part of the charge applied only to the principal sum. In support of that main ground is the second

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(1) (1889) 42 Ch. 237, 248.

ground that the learned trial judge erred in holding that because the words "with interest thereon at the rate of 12% per annum" are placed within brackets in the recital to the charge, the intention was that interest was not to be included within the limitation. Also in support of the same ground is the third ground that the learned trial judge further erred in holding that the word "and" in the phrase "for principal and for interest at the rate of 12% per annum with monthly rests ..." should be read disjunctively, so that interest should be treated as a distinct subject-matter.

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It would seem clear that the answer to this appeal turns purely on the construction of the two charges which are identical except for the amounts and the rates of interest. It is contended for the appellants that the learned judge went wrong in placing an emphasis on the brackets. The words within the brackets are clearly used by way of parenthesis. The word "parenthesis" is defined in the Shorter Oxford English Dictionary to mean "an explanatory or qualifying word, clause, or sentence inserted into a passage with which it has not necessarily any grammatical connexion, and usually marked off from it by round or square brackets, dashes, or commas." It is submitted that the fact that the words are in brackets has no significance. With that submission I entirely agree but only to the extent that those words are not grammatically essential to the passage into which they have been inserted, and especially when they appear only in the recital to the charge. Now, a recital is a part of a document stating facts. The facts stated in the recital to the first charge are that the chargor is desirous of making available his land as security for obtaining from the chargee advances up to \$35,000/- and that such advances are to bear interest at the rate of 12 per cent per annum. It is to be observed that the words "with interest thereon at the rate of 12 per cent per annum" within the brackets are explanatory or qualifying words and that they do not necessarily have any grammatical connection with the passage into which they are inserted.

What governs the charge is its operative part. The operative part of the charge, to my mind, makes it quite clear that the land in question stands charged with the repayment on demand of the out-

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standing balance at any particular time of the chargor's account with the bank up to the limit of \$35,000/- for principal and for interest at the specified rate with monthly rests, commission and other usual bankers' charges. It is to be observed that the words "up to the limit of" qualify only the amounts advanced whether in respect of cheques, bills, notes or drafts drawn, accepted or endorsed by the chargor. The amounts which became due and payable from time to time on account of interest, commission, or other usual bankers' charges cannot be said to be the amounts advanced by the bank. Even the recital speaks of the repayment on demand "of all sums advanced to me". If the words within the brackets are not grammatically essential for the passage into which they have been inserted in parenthesis, the words "up to the limit of" in the recital itself would appear to relate only to the sums advanced to the chargor.

10

20

Assuming that I am wrong in thus construing the recital, there is a clear inconsistency between the recital and the operative part. The question therefore is, how is one to interpret the charge as a whole in the face of that inconsistency? In my judgment, the answer is that the operative part of the charge must prevail over the recital. I do not think any authority is required for the proposition that it is the operative part which must govern the terms and conditions of the charge when there is nothing ambiguous about it. If there is any ambiguity at all, it is in the recital. I am therefore of the opinion that the learned trial judge was quite right when he said that the words which appear in the operative part of the instrument should carry more weight than those appearing in the recital.

30

As regards the appellants' contention that the learned judge was wrong in holding that the word "and" in the operative clause of each of the charges should be read disjunctively, I do not think it makes any difference whether the word "and" is said to have been used disjunctively or conjunctively. The question is, what is the effect of the use of that word? The learned trial judge has answered that question himself by adding at the end of the sentence complained of the words "so that interest should be treated as a distinct

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subject-matter". He then goes on to elaborate that if the words "interest at the rate of 12 per cent per annum with monthly rests, commission and other usual bankers' charges" were intended to come within the ambit of the limitation, then those words should have appeared before the words "up to limit of Dollars Thirty five thousand only".

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10 Another point taken on behalf of the appellants is that the learned judge failed to appreciate that there is no specific sum stated in the charge, so that the limit of Dollars Thirty five thousand should be treated as being inclusive of the principal sum, interest, commission and other usual bankers' charges. I do not think there is any merit in this point. The charge clearly was not in respect of a loan for a fixed sum but for overdraft facilities to the extent of \$35,000/-, and it was in the statutory form. The fact that no specific principal sum is mentioned in the charge
20 in the sense of a fixed loan does not by itself mean that the extent of the limit must necessarily include both the principal sums advanced and interest, etc.

30 A further ground of appeal is that the learned trial judge failed to appreciate that the interest stated in the charge is 12 per cent per annum with monthly rests, that is, with compound interest, and that when such interest is added as a debit item in the account it loses its quality as interest and becomes capitalised by being merged with the principal. This is a point of law which was not raised in the court below and consequently was not dealt with by the learned trial judge. Counsel for the respondents, relying on the authority of what was stated by the Privy Council in the case of Rengasamy Pillay v. Comptroller of Income Tax (2), submitted that the appellants were not entitled to raise it. The rule is that in order to raise this
40 new point, the appellants must satisfy the Court that there are exceptional circumstances and that all the facts which may be relevant to the new point are before the Court and beyond dispute. There may be no special circumstances to justify the raising of this new point, but the facts relevant to it are before the Court and they are not in dispute. The charge itself speaks of

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interests with monthly rests. I am therefore of the opinion that the preliminary objection to this ground must be overruled, especially when I consider this ground also to be without any merit.

As stated by Lord Porter in Inland Revenue Commissioner v. Oswald⁽³⁾, "capitalisation means no more than that interest, which continue to be interest, shall be treated together with the capital sum due as itself interest-bearing but does not alter its quality as interest". There is no suggestion whatsoever in this case that it is not possible to separate the amounts advanced under the charges and the amounts which have become due by way of interest, commission, and other usual bankers' charges. It is submitted on behalf of the appellants that in the case of an overdraft you do not separate principal and interest, because interest is capitalised all the time, so that there is only one sum owing. I do not think this submission can in any way alter the answer to this appeal. Of course, there is only one sum owing but there is no difficulty about separating the amount due on the principal sums advanced from what has become due by way of interest, etc.

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The last ground of appeal is that the learned judge erred in following the opinion of Cotton L.J. given in his judgment in White v. City of London Brewery Company⁽¹⁾ when the facts in that case are quite different from those of the present case. It is true that the facts in that case were somewhat different from the facts here, but the learned trial judge was aware of that difference. He cited with approval the opinion of Cotton L.J. because of the obvious similarity in the principle involved in the two cases. I do not think, therefore, that the learned judge was wrong in following the opinion of Cotton L.J. Even if he was wrong in doing so, he was right in the construction which he put on the charge documents.

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For the reasons which I have stated I would dismiss this appeal with costs.

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S.S. Gill
(S.S. GILL)
JUDGE,
FEDERAL COURT

Kuala Lumpur,
20th November, 1974.

Counsel:

Encik Chung Shiu Tett of M/s Chung & Huang
for the Appellants.
Encik Chan Siew Yoon of M/s Shook Lin & Bok
for the Respondents.

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No.41

JUDGMENT OF ONG HOCK SIM, F.J.

Judgment of
Ong Hock
Sim F.J.
20th November
1973

10 The Appellants and one Lim Meng See (who did
not enter appearance) were respondents in an
Originating Summons issued at the instance of the
Malayan Banking Berhad for an order of sale by
public auction under section 256 of the National
Land Code of the land held under Grant No. 7072
for Lot No. 1599 in the Mukim of Labis in the
District of Segamat, State of Johore. The said
Lim Meng See had executed two charges in accordance
with the Johore Land Enactment on May 4, 1962 and
20 June 11, 1963 duly registered on August 13, 1962
and June 19, 1963 vide Presentation No. 167749
Volume CVI Folio 66 and Presentation No. 176652
Volume ~~CIX~~ Folio 142 respectively in favour of
the Bank as security for all advances to be made
by the Bank to the said Lim Meng See up to the
limit of \$35,000/- under the first charge and
\$30,000/- under the second charge, making a total
of \$65,000/-.

30 On or about December 1, 1963, the said land
was subdivided and Certificates of Title were
issued in respect of the subdivided lots, namely,
12332, 12333, 12334, 12335, 12336, 12337, 12338,
12339, 12340, 12341 and 12342 for Lots Nos. 4031,
4032, 4033, 4034, 4035, 4036, 4037, 4038, 4039,
4040 and 4041 respectively.

On or about December 6, 1963, the said Lim
Meng See transferred, subject to the first and
second Charges, the subdivided lots under the
following Certificates of Title to:-

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<u>Name</u>	<u>Certificate of Title No.</u>	<u>Lot No.</u>	<u>Extent of Interest</u>	
Tan Fong Guan (first appellant)	12333	4032	Undivided $\frac{1}{2}$ shre	
- do -	12334	4033	- do -	
Tan Ay Lin (f) and Lim Tan Tee (f) (second and third appellants)	12335	4034	The whole	
- do -	12336	4035	- do -	10
Lim Tan Tee (f)	12337	4036	Undivided $\frac{1}{2}$ share	
- do -	12338	4037	- do -	
Tan Fong Guan and Tan Ay Lin	12339	4038	The whole	
- do -	12340	4039	- do -	
Lim Tan Tee	12341	4040	Undivided $\frac{1}{2}$ share	
- do -	12342	4041	- do -	

It is not disputed that both the subdivision and subsequent transfers of the sub-divided lots by the said Lim Meng See were with the approval and consent of the Bank. It may also be inferred that upon the execution of the second charge in 1963, the interest of 12% per annum under the first charge was reduced to 9.6% per annum, the amount of interest agreed under the second charge.

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On March 13, 1965, the said Lim Meng See was adjudicated a bankrupt. On that date, the amount due to the Bank in respect of advances made was \$73,173.79 with further interest thereon at the rate of 9.6% per annum.

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Before commencement of the proceedings which resulted in this appeal before us, the Bank had instituted Originating Summons No. 190 of 1968 in the High Court at Muar (which was withdrawn) and Originating Summons No.284 of 1969 in the High

Court at Muar (which was dismissed on the ground that the notices of demand were bad in law).

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Judgment of
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10 The appellants say that upon receipt of
notices of demand dated October 20, 1967, they had
through their solicitors on November 17, 1967
offered to pay the sum of \$65,000/- for discharge
of the lands which, as advised, they contend
represent the limit of the security of the Bank
upon the charged land. Any sum in excess thereof
due from Lim Meng See would be an unsecured debt
provable in bankruptcy. They maintain that view
throughout but the Respondent/Bank claimed that
the said land was charged with the repayment of
the \$65,000/- being the limit of the principal,
and the interest thereon at the agreed rate. As
the learned Judge puts it "the issue to be deter-
mined is whether, having regard to the terms of
the charge, the limit figure of \$35,000/- covers
20 both principal and interest or whether it excludes
interest," it being agreed that for purposes of
the case, the construction of the first charge
alone be considered. The recital stated that the
chargor "being registered as the proprietor" is
desirous "to render the said land available for
the purpose of securing ... the repayment on
demand of all sums advanced ... by the Bank in
manner hereinafter appearing (with interest
thereon at the rate of 12 per cent per annum) up
to the limit of Dollars Thirty-five thousand only
30 (\$35,000/-)". The operative part went on to say
"DO HEREBY CHARGE the said land ... with the
repayment on demand of the balance which on the
account ... shall be owing in respect of cheques,
bills, notes or drafts ... including all moneys...
up to the limit of Dollars Thirty-five thousand
only (\$35,000/-) for principal and for interest
at the rate of 12 per cent per annum with monthly
rests, commission and other usual bankers' charges,
40 such sum to be raised and paid immediately
upon the receipt ... of a notice in writing."
The learned Judge "giving the words in the recital
and the operative part of the instrument their
ordinary sense" concluded that "it is clearly the
intention of the parties that the limit of \$35,000/-
is intended to apply only to principal." He
further held the conjunction "and" in the operative
part should be read disjunctively so that interest
should be treated as a distinct subject-matter.

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(continued)

I am unable however to find need in the present case to have recourse to any canons of construction. The recital referred to "all sums advanced in manner hereinafter appearing, which as stated in the operative part, shall "be owing in respect of cheques, bills, notes or drafts drawn, accepted or endorsed ... either alone or jointly with another or others, including all moneys which may become owing in respect of any notes, bills, or drafts drawn, accepted or endorsed ... solely or jointly with another or others which may not at the time of closing the said account have become due or payable but which for the time being have been entered in the said account or in respect of cheques, bills, notes or drafts accepted, paid or discounted ... either alone or jointly with another or others or for loans or advances made to or for the use and accommodation of me whether alone or jointly with another or others or in respect of contracts for the forward delivery of goods, bills or specie otherwise howsoever". It is equally clear that the land is security for repayment of all such sums advanced (with interest thereon at the rate of 12 per cent per annum) up to the limit of \$35,000/-. The "and" in the operative part cannot in my view be read disjunctively. The balance on account between the chargor and the Bank was up to the limit of Dollars Thirty-five thousand only (\$35,000/-) for principal and for interest at the rate of 12 per cent per annum with monthly rests, commission and other usual bankers' charges, such sum to be raised and ... immediately upon the receipt ... of a notice in writing sent by the Bank". If interest were to be a separate item, it would have been simple to have said "up to the limit of \$35,000/- only for principal and for interest thereon at the rate of 12% per annum" or "up to the limit of \$35,000/- only for principal with interest thereon at the rate of 12% per annum".

In my view, the said land is charged "with the repayment on demand of the balance which on the account between me and the Bank shall for the time being be owing" ... up to the limit of \$65,000/- with interest at 9.6% per annum. In terms of the charge, the chargor covenants after service of notice of demand to "pay interest thereon at the aforesaid rate of 9.6% per annum on the balance owing to the Bank."

As was said by Lord Esher M.R. in White vs. City of London Brewery Company (1):

"First of all, as I say, the nominal plaintiff had borrowed £700 upon a security that was to cover that sum and further advances, subject to a proviso which really came to this, that if they lent him more than £900 they should not be able to rely on the mortgage as a security for the excess."

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Ong Hock
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(continued)

10 It would seem therefore that the respondents are not entitled to rely on the two charges as security on the balance owing beyond the limit of \$65,000/-, with interest at the aforesaid rate of 9.6% per annum after service of a notice of demand in writing. In so far as the sum owed exceeds the limit of \$65,000/- as at the date of demand, that excess will be a debt personal to the chargor (the first respondent) and provable as a debt in bankruptcy. Appellants' counsel conceded that the
20 appellants were liable to pay interest from the date of demand, that is, June 10, 1971 to date of payment (vide para. 10 of the affidavit of Chew Teck Hong affirmed on January 13, 1972 and in terms of the charge).

I agree and I would therefore allow the appeal with costs here and in the Court below and set aside the order for sale by public auction of the said land. There will be a further order for repayment of the sum of \$65,000/- with interest at
30 9.6% per annum with effect from June 10, 1971 to December 18, 1972 and thereafter on such sum with interest at 6% till satisfaction. Upon receipt of payment of such sum, the Bank shall, at the appellants' costs, discharge the said land from liability under the said two charges.

Kuala Lumpur,
November 20, 1973

TAN SRI DATO' JUSTICE H. S. ONG
(ONG HOCK SIM)
JUDGE

Counsel:

Encik Chung Shiu Tett of M/s Chung & Huang
for the Appellants.
Encik Chan Siew Yoon of M/s Shook Lin & Bok
for the Respondents.

(1) (1889) 42 Ch. D 237 at 242.

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Federal Court
of Malaysia

No. 42

O R D E R

No.42

Order
20th November
1973

THIS APPEAL coming on for hearing on the 5th day of September, 1973 in the presence of Mr. S.T. Chung of Counsel for the Appellants abovenamed and Mr. Chan Siew Yoon of Counsel for the Respondents abovenamed AND UPON READING the Record of Appeal herein AND UPON HEARING Counsel for the parties as aforesaid IT WAS ORDERED that this Appeal do stand adjourned for judgment AND the same coming on for judgment this day in the presence of Mr. O.C. Lim of Counsel for the Appellants and Mr. P. Cumaraswamy of Counsel for the Respondents IT IS ORDERED that this Appeal be and is hereby allowed and the Order of the Court below for the sale of the lands by public auction be and is hereby set aside AND IT IS ORDERED that the Appellants do pay to the Respondents the sum of \$65,000/- with interest at 9.6% per annum with effect from 10th June, 1971 to 18th December, 1972 and thereafter on such sum with interest at 6% per annum till satisfaction AND IT IS FURTHER ORDERED that upon receipt of payment of such sum the Respondents shall at the Appellants' costs discharge the said lands from liability under the said two charges AND IT IS FURTHER ORDERED that the Respondents do pay the Appellants' costs of this Appeal and the Appellants' costs in the Court below AND IT IS LASTLY ORDERED that the sum of \$500/- deposited in Court by the Appellants as security for costs of this Appeal be paid out to the Appellants.

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GIVEN under my hand and the seal of the Court this 20th day of November, 1973.

Sd. E.E. SIM.

CHIEF REGISTRAR
FEDERAL COURT, MALAYSIA.

(107)

No. 43

ORDER GRANTING FINAL LEAVE TO APPEAL TO HIS MAJESTY THE YANG DIPERTUAN AGUNG

In the
Federal Court
of Malaysia

No.43

CORAM: AZMI, LORD PRESIDENT, FEDERAL COURT,
MALAYSIA:
SUFFIAN, CHIEF JUSTICE, HIGH COURT, MALAYA:
ONG HOCK SIM, JUDGE, FEDERAL COURT,
MALAYSIA.

Order
granting
final leave
to appeal to
His Majesty
the Yang
Dipertuan
Agung

IN OPEN COURT

This 7th day of March, 1974

7th March
1974

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O R D E R

UPON MOTION made unto the Court this day by Mr. Chan Siew Yoon of Counsel for the Respondents abovenamed in the presence of Mr. Chung Shiu Tett of Counsel for the Appellants abovenamed AND UPON READING the Notice of Motion dated the 22nd day of February, 1974 and the Affidavit of Teh Soon Poh affirmed on the 18th day of February, 1974 and filed in support of the said Motion AND UPON HEARING Counsel as aforesaid:

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IT IS ORDERED that final leave be and is hereby granted to the Respondents abovenamed to appeal to His Majesty the Yang Dipertuan Agung from the Judgment of the Federal Court dated the 20th day of November, 1973 AND IT IS FURTHER ORDERED that the costs of this application be costs in the cause.

GIVEN under my hand and the seal of the Court this 7th day of March, 1974.

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E.E. SIM

CHIEF REGISTRAR
FEDERAL COURT, MALAYSIA.



O N A P P E A L
FROM THE FEDERAL COURT OF MALAYSIA (APPELLATE JURISDICTION)

B E T W E E N :

MALAYAN BANKING BERHAD

Appellants
(Applicants)

and

1. TAN FONG GUAN
2. TAN AY LIN (f)
3. LIM TAN TEE (f)

Respondents
(Respondents)

RECORD OF PROCEEDINGS

Coward Chance,
Royex House
Aldermanbury Square
LONDON EC2V 7 LD

Solicitors for the Appellants