

31/80

No.24 of 1979

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA
(APPELLATE JURISDICTION)

B E T W E E N :

DAIMAN DEVELOPMENT SDN.BHD.

Appellants
(Defendants)

- and -

MATHEW LUI CHIN TECK

Respondent
(Plaintiff)

AND B E T W E E N :

DAIMAN DEVELOPMENT SDN. BHD.

Appellants
(Defendants)

- and -

LOH SEW WEE

Respondent
(Plaintiff)

(CONSOLIDATED BY ORDER DATED 4TH FEBRUARY 1979)

RECORD OF PROCEEDINGS

COWARD CHANCE,
Royex House,
Aldermanbury Square,
London, EC2V 7LD

CHARLES RUSSELL & CO.
Hale Court,
Lincoln's Inn,
London, WC2A 3UL

Solicitors for the Appellants

Solicitors for the Respondents

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA
(APPELLAT JURISDICTION)

B E T W E E N :

DAIMAN DEVELOPMENT SDN.BHD. Appellants
(Defendants)

- and -

MATHEW LUI CHIN TECK Respondent
(Plaintiff)

AND B E T W E E N :

DAIMAN DEVELOPMENT SDN.BHD. Appellants
(Defendants)

- and -

LOH SEW WEE Respondent
(Plaintiff)

(CONSOLIDATED BY ORDER DATED 4TH FEBRUARY 1979)

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

No.	Description of Document	Date	Page
	<u>IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU</u>		
	<u>Daiman Development Sdn.Bhd. and Mathew Lui Chin Teck</u>		
1	Specially indorsed Writ	16th October 1975	1
2	Statement of Claim	16th October 1975	4
3	Statement of Defence	6th November 1975	6

No.	Description of Document	Date	Page
4	Order for Further and Better Particulars of Defence	12th April 1976	8
5	Further and Better Particulars of Defence	24th April 1976	10
	<u>Daiman Development Sdn. Bhd. and Loh Sew Wee</u>		
6	Specially indorsed Writ	30th September 1975	12
7	Statement of Claim	29th September 1975	14
8	Statement of Defence	6th November 1975	16
9	Order for Further and Better Particulars of Defence	12th April 1976	18
10	Further and Better Particulars of Defence	24th April 1976	20
11	<u>Notes of Evidence</u>	17th November 1976	22
	<u>Plaintiff's evidence</u>		
	P.W.1 Mathew Lui Chin Teck		
	Examination		22
	Cross-Examination		23
	Re-Examination		24
	<u>Defendants' Evidence</u>		
	D.W.1 Ang Thian Poh		
	Examination		24
	Cross-Examination		26
12	Judgment (Syed Othman J)	15th August 1977	30
13	Order (Daiman Development Sdn.Bhd. and Mathew Lui Chin Teck)	15th August 1977	38
14	Order (Daiman Development Sdn.Bhd. and Loh Sew Wee)	15th August 1977	39

No.	Description of Document	Date	Page
<u>IN THE FEDERAL COURT OF MALAYSIA (APPELLATE JURISDICTION)</u>			
15	Notice of Appeal (Daiman Development Sdn.Bhd. and Mathew Lui Chin Teck)	20th August 1977	40
16	Notice of Appeal (Daiman Development Sdn.Bhd. and Loh Sew Wee)	20th August 1977	42
17	Memorandum of Appeal (Daiman Development Sdn.Bhd. and Mathew Lui Chin Teck)	29th September 1977	44
18	Memorandum of Appeal (Daiman Development Sdn.Bhd. and Loh Sew Wee)	29th September 1977	47
19	Order (Daiman Development Sdn.Bhd. and Mathew Lui Chin Teck)	16th July 1978	50
20	Order (Daiman Development Sdn.Bhd. and Loh Sew Wee)	16th July 1978	51
21	Judgment	31st July 1978	53
22	Order granting final leave to appeal to His Majesty the Yang di-Pertuan Agong and consolidating the Appeals	4th February 1979	59

EXHIBITS

(DAIMAN DEVELOPMENT SDN.BHD. AND MATHEW
LUI CHIN TECK)

Exhibit No.	Description of Document	Date	Page
<u>Agreed Bundle of Documents</u>			
AB1 and 2	Payment Card	1st October 1972	61

Exhibit No.	Description of Document	Date	Page
AB3	Booking Proforma	1st October 1972	62
AB4	Official Receipt No. 0767	1st October 1972	64
AB5	Letter: Appellants to Respondent	30th May 1975	65
AB6	Letter: Respondent to Appellants	4th June 1975	66
AB7	Letter: Respondent to Appellants	11th June 1975	68
AB8	Letter: Appellants to Respondent	13th June 1975	69
AB9	Letter: Respondent to Appellants	21st June 1975	70
AB10	Letter: Appellants to Respondent	24th June 1975	71
AB11	Letter: Respondent to Appellants	20th August 1975	72
AB12	Letter: Appellants to Respondent	23rd August 1975	74
AB13	Letter: Respondent's Solicitors to Appellants	2nd September 1975	75
AB14	Letter: Appellants to Respondent's Solicitors	6th September 1975	76

EXHIBITS

(Daiman Development Sdn.Bhd.
and Loh Sew Wee)

Agreed Bundle of Documents

AB1 & 2	Payment Card	12th December 1972	78
AB3	Booking Proforma	12th December 1972	79
AB4	Official Receipt No. 1212	12th December 1972	81
AB5	Letter: Appellants to Respondent	25th June 1975	82
AB6	Letter: Respondent's Solicitors to Appellants	8th July 1975	83
AB7	Letter: Respondent's Solicitors to Appellants	26th July 1975	84
AB8 & 9	Letter: Appellants' Solicitors to Respondent's Solicitors	28th July 1975	85
AB10	Letter: Appellants' Solicitors to Respondent's Solicitors	30th July 1975	87
AB11	Letter: Respondent's Solicitors to Appellants' Solicitors	5th August 1975	88
AB12	Letter: Appellants Solicitors to Respondent's Solicitors	12th August 1975	89

Exhibit No.	Description of Document	Date	Page
AB13	Letter: Respondent's Solicitors to Appellants' Solicitors	25th August 1975	90
AB14	Letter: Appellants' Solicitors to Respondent's Solicitors	20th September 1975	91

DOCUMENTS TRANSMITTED TO JUDICIAL COMMITTEE BUT NOT REPRODUCED

Description of Document	Date
<u>Daiman Development Sdn.Bhd. and Mathew Lui Chin Teck</u>	
Summons for Further and Better Particulars of Defence	23rd February 1976
Written submission by Counsel for Appellants to Federal Court	8th July 1976
Notice of Motion for Conditional leave to appeal to His Majesty the Yang di-Pertuan Agong	13th September 1978
Affidavit of Chua Peng Len in Support of Motion	19th August 1978
Order granting conditional leave to appeal	26th September 1978
<u>Daiman Development Sdn.Bhd. and Loh Sew Wee</u>	
Summons for Further and Better Particulars of Defence	23rd February 1976
Written submission by Counsel for Appellants in Federal Court	8th July 1976
Notice of Motion for conditional leave to appeal to His Majesty the Yang di-Pertuan Agong	13th September 1978
Affidavit of Chua Peng Len in support of Motion	26th September 1978

Description of Document

Date

Notes of Argument recorded by
Suffian L.P.

16th July 1978

Notes of Argument recorded by
Gill C.J.

16th July 1978

Notes of Argument recorded by
Manan J.

16th July 1978

No. 24 of 1979
IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

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

B E T W E E N :

DAIMAN DEVELOPMENT SDN.BHD. Appellants
(Defendants)
- and -
MATHEW LUI CHIN TECK Respondent
(Plaintiff)

10 AND B E T W E E N :

DAIMAN DEVELOPMENT SDN. BHD. Appellants
(Defendants)
- and -
LOH SEW WEE Respondent
(Plaintiff)

(CONSOLIDATED BY ORDER DATED 4TH FEBRUARY 1979)

RECORD OF PROCEEDINGS

No. 1

SPECIALLY INDORSED WRIT
16th October 1975

In the
High Court
at Johore
Bahru

20 IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU
CIVIL SUIT NO. 416 OF 1975

No.1
Specially
indorsed
Writ

Between

Mathew Lui Chin Teck Plaintiff

16th October
1975

And

Daiman Development Sdn.Bhd. Defendants

THIS HONOURABLE TAN SRI SARWAN SINGH GILL P.S.M.
Chief Justice of the High Court in Malaya, in

In the
High Court
at Johore
Bahru

No.1
Specially
indorsed Writ
16th October
1975
(continued)

the name and on behalf of His Majesty, the
Yang Di-Pertuan Agong.

To:

Daiman Development Sdn. Bhd.
Room 506, 5th Floor,
O.C.B.C. Building,
Johore Bahru.

WE, COMMAND you, that within 8 days after
the service of this writ on you, inclusive of
the day of such service, you do cause an
appearance to be entered for you in an action
at the suit of Mathew Lui Chin Teck of c/o
Post Office, Kota Tinggi, Johore.

10

AND TAKE NOTICE, that in default of your
so doing the plaintiff may proceed therein and
judgment may be given in your absence.

WITNESS Mr. K.N. Segara Sr/Assistant
Registrar of the High Court in Malaya the
16th day of October 1975.

Sd: Arthur Lee & Co.
Plaintiff's solicitors.

Sd: K.N.Segara
Sr/Assistant Registrar
High Court,
Johore Bahru.

20

N.B. This Writ is to be served within twelve
months from the date thereof, or, if renewed
within six months from the date of last renewal
including the day of such date and not after-
wards.

The defendant (or defendants) may appear
hereto by entering an appearance (or appearances)
either personally or by solicitors at the
Registry of the High Court at Johore Bahru.

30

A Defendant appearing personally, may, if
he desires, enter his appearance by post, and
the appropriate forms may be obtained by sending
a Postal Order for \$3.00 with an addressed
envelope to the Registrar of the High Court at
Johore Bahru.

If the defendant enters an appearance he
must also deliver a defence within fourteen days
from the last day of the time limited for
appearance, unless such time is extended by the
Court or a Judge, otherwise judgment may be
entered against him without notice unless he
has in the meantime been served with a summons
for judgment.

40

AND the sum of \$60.00 (or such sum as may

be allowed on taxation) for costs, and also, in case the Plaintiff/s obtain/s an order for substituted service, the further sum of \$300/- (or such sum as may be allowed on taxation). If the amount claimed be paid to the plaintiff/s or his/their advocates and solicitors or agent/s within four days from the service hereof, further proceedings will be stayed.

In the
High Court
at Johore
Bahru

No.1

Specially
indorsed Writ

16th October
1975

(continued)

10

Provided that if it appears from the indorsement of the Writ that the plaintiff/s is/are resident outside the scheduled territories as defined in the Exchange Control Ordinance 1953 or is/are acting by order or on behalf of a person/persons so resident, proceedings will only be stayed if the amount claimed is paid into court within the said time and notice of such payment in is given to the Plaintiff/s his/their advocates & Solicitors or agent/s.

20

This Writ was issued by Messrs. Arthur Lee & Co. of 3rd Floor MCA Building, Jalan Segget, Johore Bahru, Solicitors for the said plaintiff/s and who reside/s at c/o Post Office Kota Tinggi, Johore.

This Writ was served by me at _____ on
the Defendant on the _____ day of _____ 19
at the hour of _____

Indorsed this _____ day of _____ 19

(Signed)

(Address)

In the
High Court
at Johore
Bahru

No. 2

STATEMENT OF CLAIM
16th October 1975

No.2
Statement of
Claim
16th October
1975

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU
CIVIL SUIT NO. 416 OF 1975

Between

Mathew Lui Chin Teck Plaintiff

And

Daiman Development Sdn.Bhd. Defendants

STATEMENT OF CLAIM

10

1. On the 1st day of October, 1972 the plaintiff entered into an agreement to purchase from the defendants, a licensed housing developer, for Dollars Twenty-six thousand (\$26,000/-) only a piece of land situated at Taman Sri Tebrau, in the district of Johore Bahru, in the State of Johore and known as private lot 949 with a single storey semi-detached house to be erected thereon (hereinafter referred to as the said property).

20

2. (a) On the aforementioned date the plaintiff paid to the defendants a sum of Dollars Seven hundred (\$700/-) only being booking fee for the purchase of the said property, which payment was duly acknowledged by the defendants vide their official receipt No.0767 and dated the 1st October 1972.

(b) At the same time, a letter in the form of a booking proforma was signed by the plaintiff agreeing to certain terms and conditions and delivered to the defendants at their office. It was agreed inter alia that the purchase price of the said property was to be in the sum of Dollars Twenty-six thousand (\$26,000/-) only. The plaintiff will at the trial refer to the said booking proforma for its full terms and effect.

30

3. (a) On or about the 30th day of May, 1975 the defendants informed the plaintiff of their decision to increase the purchase price to Dollars Thirty-five thousand one hundred (\$35,100/-) only without obtaining the prior agreement of the plaintiff.

40

(b) The plaintiff instructed his solicitors to formally give notice to the defendants of

his disagreement to their unilateral increment of the purchase price and to express his willingness to sign the defendants' standard agreement of sale at the agreed price of Dollars Twenty-six thousand (\$26,000/-) only, which said instructions was communicated to the defendants vide a letter dated 2nd September 1975.

In the
High Court
at Johore
Bahru

No.2

Statement
of Claim

16th October
1975

(continued)

10 4. Notwithstanding repeated requests by the plaintiff the defendants have neglected and refused and continue to neglect and refuse to take any steps towards the completion of the said agreement.

5. The plaintiff has at all material times been and is now ready and willing to fulfil all his obligations under the said agreement.

AND the plaintiff claims for :-

- 20 i) Specific performance of an agreement between the plaintiff and the defendants dated 1st day of October 1972, for the sale by the defendants to the plaintiff of all that piece of land situated at Taman Sri Tebrau, in the District of Johore Bahru in the State of Johore and known as private lot No.949 together with a single storey semi-detached house to be erected thereon;
- ii) Further or alternatively, damages for breach of contract;
- 30 iii) A declaration that the plaintiff is entitled to a lien on the said property for his deposit (together with interest thereon) and any damages and costs awarded in this action;
- iv) Further or other relief;
- v) Costs.

Dated this 16th day of October 1975.

Sd: Arthur Lee & Co.
Solicitors for the Plaintiff.

In the
High Court
at Johore
Bahru

No. 3

STATEMENT OF DEFENCE
6th November 1975

No. 3

Statement
of Defence
6th November
1975

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU
CIVIL SUIT NO. 416 OF 1975

Between

Mathew Lui Chin Teck Plaintiff

And

Daiman Development Shd.Bhd. Defendants

STATEMENT OF DEFENCE

10

1. In reply to paragraph 1 of the Statement of Claim, the defendants admit having agreed to sell to the plaintiff the said property at a price of Dollars Twenty-six thousand (\$26,000/-) and wish to further state that the defendants are developers of certain properties by building up the same and selling them according to the approved sub-divided lots. At the initial stages booking fees were received from the plaintiff a sum of Dollars Seven hundred (\$700/-) as the Intended purchasers desire to express their genuiness to purchase and subsequently to enter into an agreement of sale to be prepared and executed. It was understood between the parties that the bookings made by the Intended purchasers were subject to contract and if the project is to be abandoned by the developer such money will be refunded. Further if the Intended purchasers wished to withdraw they may do so. 20 30

2. The defendants contend that if the building material rise in price byond the expectation of the Intended purchasers they are entitled to refuse to purchase any property and hence withdraw their money paid in.

3. In reply to paragraph 2 of the Statement of Claim, the defendants admit having accepted the booking fee of Dollars Seven hundred (\$700/-) and having delivered a booking proforma but further state that the plaintiff permitted the defendants to make the necessary alteration which may be required from time to time and agreed to pay for the same. However, if there were to be major alterations then the plaintiff expressly stated he would consider and settle the same or alternatively have the right to 40

cancel the said booking and demand the refund of \$700/- paid in.

In the
High Court
at Johore
Bahru

No.3

Statement
of Defence

6th November
1975

(continued)

10

4. On the 30th day of May, 1975, the defendants informed the plaintiff of the finalised price in the sum of Dollars Thirty-five thousand one hundred (\$35,100/-). The said letter also intimated to the plaintiff that if the price was not acceptable the booking may be cancelled and the said property may be sold to another person.

5. Despite repeated requests made by the defendants to the plaintiff to execute the agreement of sale and to pay 10% of the purchase price, the plaintiff failed or refused and still fails and refuses to do so.

6. The defendants pray that this action be dismissed with costs.

20

7. Save as hereinafter expressly admitted each and every allegation in the Statement of Claim is denied as if set out hereinafter and traversed seriatim.

Dated and delivered this 6th day of
November 1975.

Sd: A.L. Looi
Solicitors for the Defendants

30

The abovenamed Plaintiff
and/or his Solicitors,
M/S Arthur Lee & Company,
3rd Floor MCA Building,
Jalan Segget, Johore Bahru.

In the
High Court
at Johore
Bahru

No.4

Order for
Further and
Better
Particulars
of Defence

12th April
1976

No. 4

ORDER FOR FURTHER AND
BETTER PARTICULARS OF
DEFENCE - 12th April 1976

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU
CIVIL SUIT NO. 416 OF 1975

Between

Mathew Lui Chin Teck

Plaintiff

And

Daiman Development Sdn.Bhd.

Defendants

10

BEFORE MR. SENIOR ASSISTANT REGISTRAR
K.N. SEGARA

IN CHAMBERS

THIS 12TH DAY OF APRIL, 1976

O R D E R

UPON the application of the Plaintiff by
Summons Entered No.71 of 1976 dated the 23rd
day of February, 1976 AND UPON READING the
said summons and the Affidavit of Ang Thian
Poh @ Ang Ong Nga affirmed on the 6th day of
April, 1976 and filed herein on the 7th day of
April, 1976 and the exhibits referred to therein
AND UPON HEARING Mr. Arthur Lee Meng Kwang of
Counsel for the Plaintiff and Mr. S.Patmanathan
of Counsel for the Defendants IT IS ORDERED

20

1. That the Defendants within fourteen (14)
days from the date of this Order serve on the
Plaintiff the following further and better
particulars in writing of the Statement of
Defence :

30

i) Under paragraph 1, of the allegation
that "it was understood between the
parties that the bookings made by the
intended purchasers were subject to
contract" state the date on which and
the place at which it is alleged the
understanding was made stating whether
the alleged understanding was arrived
at orally or in writing and if written
identifying the document or documents
in which it is alleged that it was
embodied.

40

ii) Under paragraph 1 of the allegation
that "it was understood between the

parties that.....if the project is to be abandoned by the developer such money will be refunded "state the date on which and the place at which it is alleged the understanding was arrived at orally or in writing and if written, identifying the document or documents in which it is alleged that it was embodied.

In the
High Court
at Johore
Bahru

No. 4

Order for
Further and
Better
Particulars
of Defence

12th April
1976

(continued)

10

iii) Under paragraph 3 of the allegation that "the plaintiff permitted the defendants to make the necessary alteration which may be required from time to time and agreed to pay for the same" state the date on which and the place at which the alleged agreement was arrived at orally or written and if written identifying the document or documents in which it is alleged that it was embodied.

20

2. That the costs of and occasioned by this application be the defendants' in any event.

Given under my hand and the Seal of the Court, this 12th day of April, 1976.

Sd: K.N.Segara,

Senior Assistant Registrar
High Court, Malaya,
Johore Bahru.

In the
High Court
at Johore
Bahru

No.5

Further and
Better
Particulars
of Defence

24th April
1976

No. 5

FURTHER AND BETTER
PARTICULARS OF DEFENCE
24th April 1976

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU
CIVIL SUIT NO. 416 OF 1975

Between

Mathew Lui Chin Teck

Plaintiff

And

Daiman Development Sdn.Bhd.

Defendants

10

FURTHER AND BETTER PARTICULARS

Served pursuant to Order of Court dated
the 12th day of April, 1976

The following are the particulars of the
Statement of Defence (delivered as set out in
the application of the plaintiff)

1. By the words "it was understood between
the parties that the booking made by the
intended purchasers were subject to contract"
the defendants say that the understanding was
an outcome of the contents of the Booking
Proforma dated the 1st of October, 1972.

20

Paragraph 1 of the said Proforma reads:-

"that within two (2) weeks from the
date of receipt of a notice by the
Company or its solicitors M/S A.L.Looi
O.C.B.C. Building, Johore Bahru, Johore,
the sum of \$2,600/- and sign the agreement
of sale with the Company which shall
be prepared by the Solicitors and subject
to the terms and conditions therein."

30

The defendants contend the above and
particularly the portion underlined into a
contract at a future date and consequently
the defendants contention of the understanding
between the parties.

The defendants identify the "Booking
Proforma" as the relevant document.

2. The defendants say that the plaintiff
knew or ought to have known that if the project
was to be abandoned such money, meaning
booking fee, would be refunded. The defendants

40

contend that, the plaintiff also stated in the aforesaid booking proforma as follows :-

In the
High Court
at Johore
Bahru

"That in the event of failure on my part to comply.....the Booking will be treated as cancelled and the booking Fee of \$700/- shall be forfeited to the Company and I shall have no further claims against the Company."

No.5

Further and
Better
Particulars
of Defence

24th April
1976

(continued)

10 The defendants contend that it was mutual for either party to abandon their part of the obligations to arise in the future. The defendants contend that the plaintiff knew or ought to have known of the rights of the defendants to abandon their project as much as the plaintiff's right to withdraw.

3. The plaintiff, in Paragraph 2 of the aforesaid booking proforma put forward :-

20 "That I have inspected the Company's layout and building plan and agree to accept whatever alteration and amendments as may be required by the authorities....."

30 The Defendants contend that upon the words as set out above the Plaintiff did agree to alteration being carried out. It was implied by the same that whatever condition the authorities may impose, in the form of alterations, the Defendants were bound to carry out the same and as such the Plaintiff would pay for the same to be set out in the future agreement to be put back.

The conditions imposed by the authorities subsequent to the forwarding of the aforesaid booking proforma were generally as follows :-

1. Construction of a drainage system now known as Sg. Sengkuang;
2. Erection of Street lighting posts;
3. Widening of previously approved roads;
- 40 4. Fixing of five foot way electricity mains and additional mains;
5. Various alterations to houses inter alia pertaining to ventilations, Septic tanks etc.

The Defendants had not expected the aforementioned additional conditions to be imposed and the prices of materials at that time of increase were much higher than expected.

In the
High Court
at Johore
Bahru

Dated this 24th day of April, 1976

Sd: A.L. Looi

Solicitors for the
Defendants.

No.5

Further and
Better
Particulars
of Defence

24th April
1976

(continued)

No.6

Specially
indorsed Writ
30th September
1975

No. 6

SPECIALLY INDORSED WRIT
30th September 1975

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU
CIVIL SUIT NO. 391 OF 1975

Between

10

Loh Sew Wee (f)

Plaintiff

And

Daiman Development Sdn.Bhd. Defendants

THIS HONOURABLE TAN SRI SARWAN SINGH GILL P.S.M.
Chief Justice of the High Court in Malaya, in
the name and on behalf of His Majesty, the
Yang di Pertuan Agong

To: Daiman Development Sdn.Bhd.
Room 506, 5th Floor,
O.C.B.C. Building,
Johore Bahru.

20

WE COMMAND you, that within 8 days after
the service of this writ on you, inclusive of
the day of such service you do cause an
appearance to be entered for you in an action
at the suit of Loh Sew Wee of No.34 Jalan
Landak Kawan, Century Gardens, Johore Bahru.

AND TAKE NOTICE, that in default of you
so doing the plaintiff may proceed therein and
judgment may be given in your absence.

30

Witness Mr. K.N.Segara, Senior Assistant
Registrar High Court in Malaya this 30th day
of September 1975.

Sd: Arthur Lee & Co.
Plaintiff's Solicitors.

Sd: K.N.Segara
Senior Assistant
Registrar
High Court,
Johore Bahru.

In the
High Court
at Johore
Bahru

No.6

Specially
indorsed
Writ

30th
September
1975

(continued)

10

N.B. This Writ is to be served within twelve months from the date thereof, or if renewed within six months from the date of last renewal, including the day of such date and not afterwards.

The defendant (or defendants) may appear hereto by entering an appearance (or appearances) either personally or by solicitor at the Registry of the High Court at Johore Bahru.

20

A defendant appearing personally, may, if he desires, enter his appearance by post, and the appropriate forms may be obtained by sending a Postal Order for \$3.00 with an addressed envelope to the Registrar of the High Court at Johore Bahru.

If the defendant enters an appearance he must also deliver a defence within fourteen days from the last day of the time limited for appearance, unless such time is extended by the Court or a Judge, otherwise judgment may be entered against him without notice unless he has in the meantime been served with a Summons for judgment.

30

And the sum of \$60.00 (or such sum as may be allowed on taxation) for costs, and also, in case the plaintiff/s obtain an order for substituted service, the further sum of \$300/- (or such sum as may be allowed on taxation). If the amount claimed be paid to the plaintiff or his/their advocates and solicitors or agents within four days from the service hereof, further proceedings will be stayed.

40

Provided that if it appears from the indorsement of the writ that the plaintiff/s is/are resident outside the scheduled territories as defined in the Exchange Control Ordinance 1953 or is/are acting by order or on behalf of a person/persons so resident, or if the defendant is /are proceeding will only be stayed if the amount claimed is paid into court within the said time and notice of such payment in is given to the Plaintiffs, their advocates and solicitors or agent.

This Writ was issued by M/S Arthur Lee & Co. of 3rd Floor, MCA Building, Jalan Segget, Johore Bahru solicitors for the said plaintiff

In the
High Court
at Johore
Bahru

who resides at No.34 Jalan Landak Kawan,
Century Gardens, Johore Bahru.

No.6

This Writ was served by me at
on the defendant on the day of 19
at the hour of

Specially
indorsed
Writ

Indorsed this day of 19

30th September
1975

(Signed)

(Address)

(continued)

No.7
Statement of
Claim
29th September
1975

No. 7

STATEMENT OF CLAIM
29th September 1975

10

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU
CIVIL SUIT NO. 391 OF 1975

Between

Loh Sew Wee (f)

Plaintiff

And

Daiman Development Sdn.Bhd.

Defendants

STATEMENT OF CLAIM

1. On the 12th day of December 1972, the
plaintiff entered into an agreement to
purchase from the defendants, a licensed
housing developer, for Dollars Twenty-six
thousand (\$26,000/-) only a piece of land
situated at Taman Sri Tebrau, in the District
of Johore Bahru, in the State of Johore and
known as private lot 1314 with a double-
storey terrace type A house to be erected
thereon (hereinafter referred to as the said
property).

20

2. (a) on the aforementioned date the
plaintiff paid to the defendants a sum of
Dollars Seven hundred (\$700/-) only being
booking fee for the purchase of the said
property which payment was duly acknowledged
by the defendants vide their official receipt
No.1212 and dated the 12th December 1972.

30

(b) at the same time, a letter in the form of a booking proforma was signed by the plaintiff agreeing to certain terms and conditions and delivered to the defendants at their office. It was agreed inter alia that the purchase price of the said property was to be in the sum of Dollars Twenty-six thousand (\$26,000/-) only. The plaintiff will at the trial refer to the said booking proforma for its full terms and effect.

In the High Court at Johore Bahru

No.7

Statement of Claim

29th September 1975

(continued)

3. (a) On or about the 25th day of June 1975 the defendants informed the plaintiff of their decision to increase the purchase price to Dollars Thirty-five thousand one hundred (\$35,100/-) only without obtaining the prior agreement of the plaintiff.

(b) the plaintiff instructed her solicitors to formally give notice to the defendants of her disagreement to their unilateral increment of the purchase price and to express her willingness to sign the defendants' standard agreement of sale at the agreed price of Dollars Twenty-six thousand (\$26,000/-) only, which said instructions was communicated to the defendants vide a letter dated 8th July, 1975.

4. Notwithstanding repeated requests by the plaintiff the defendants have neglected and refused and continue to neglect and refuse to take any steps towards the completion of the said agreement.

5. The plaintiff has at all material times been and is now ready and willing to fulfil her obligations under the said agreement.

AND the plaintiff claims for :-

- i) specific performance of an agreement between the plaintiff and the defendants dated the 12th day of December 1972 for the sale by the defendants to the plaintiff of all that piece of land situated at Taman Sri Tebrau, in the District of Johore Bahru, in the State of Johore and known as private lot 1314 together with a Terrace Type A house to be erected thereon;
- ii) further or alternatively, damages for breach of contract;
- iii) a declaration that the plaintiff is entitled to a lien on the said property for her deposit (together with interest thereon) and any damages and costs awarded in this action;

In the
High Court
at Johore
Bahru

No. 7

Statement
of Claim
29th September
1975
(continued)

iv) further or other relief;
v) costs.

Dated this 29th day of September 1975.

Sd: Arthur Lee & Co.

Solicitors for the plaintiff.

No. 8
Statement
of Defence
6th November
1975

No. 8

STATEMENT OF DEFENCE
6th November 1975

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU
CIVIL SUIT NO. 391 OF 1975

10

Between

Loh Sew Wee (f)

Plaintiff

And

Daiman Development Sdn.Bhd. Defendants

STATEMENT OF DEFENCE

1. In reply to paragraph 1 of the Statement of Claim, the defendants admit having agreed to sell to the plaintiff the said property at a price of Dollars Twenty six thousand (\$26,000/-) and wish to further state that the defendants are developers of certain properties by building up the same and selling them according to the approved sub-divided lots. At the initial stages booking fees were received from the plaintiff a sum of Dollars Seven hundred (\$700/-) as the Intended purchasers desire to express their genuiness to purchase and subsequently to enter into an agreement of sale to be prepared and executed. It was understood between the parties that the bookings made by the Intended purchasers were subject to contract and if the project is to be abandoned by the developer such money will be refunded. Further if the Intended purchasers wished to withdraw they may do so.

20

30

2. The defendants contend that if the building material rise in price beyond the expectation of the Intended purchasers they are entitled to refuse to purchase any property and hence withdraw their money paid in.

In the
High Court
at Johore
Bahru

No.8

Statement
of Defence
6th November
1975

(continued)

10

3. In reply to paragraph 2 of the Statement of Claim, the defendants admit having accepted the booking fee of Dollars Seven hundred (\$700/-) and having delivered a booking proforma but further state that the plaintiff permitted the defendants to make the necessary alteration which may be required from time to time and agreed to pay for the same. However, if there were to be major alterations then the plaintiff expressly stated she would consider and settle the same or alternatively have the right to cancel the said booking and demand the refund of the \$700.00 paid in.

20

4. On the 25th day of June, 1975 the defendants informed the plaintiff of the finalised price in the sum of Dollars Thirty five thousand one hundred (\$35,100/-). The said letter also intimated to the plaintiff that if the price was not acceptable the booking may be cancelled and the said property may be sold to another person.

30

5. Despite repeated requests made by the defendants to the plaintiff to execute the Agreement of Sale and to pay 10% of the purchase price, the plaintiff failed or refused and still fails and refuses to do so.

6. The defendants pray that this action be dismissed with costs.

7. Save as hereinafter expressly admitted each and every allegation in the Statement of Claim is denied as if set out hereinafter and traversed seriatim.

Dated this 6th day of November 1975.

Sd: A.L. Looi

40

Solicitors for the Defendant

To: The abovenamed Plaintiff
and/or her solicitors
M/S Arthur Lee & Co.
3rd Floor MCA Building,
Johore Bahru.

In the
High Court
at Johore
Bahru

No. 9

ORDER FOR FURTHER AND
BETTER PARTICULARS OF
DEFENCE - 12th April 1976

No.9

Order for
Further
and Better
Particulars
of Defence
12th April
1976

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU
CIVIL SUIT NO. 391 OF 1975

Between

Loh Sew Wee (f) Plaintiff

And

Daiman Devekipment Sdn.Bhd. Defendants 10

BEFORE MR.SENIOR ASSISTANT REGISTRAR
K.N.SEGARA IN CHAMBERS

THIS 12TH DAY OF APRIL 1976

O R D E R

UPON the application of the Plaintiff by
Summons Entered No.72 of 1976 dated the 23rd
day of February, 1976 AND UPON READING the
said Summons and the Affidavit of Ang Thiam
Poh @ Ang Ong Nga affirmed on the 6th day of
April, 1976 and filed herein on the 7th day of
April, 1976 and the exhibits referred to
therein AND UPON HEARING Mr. Arthur Lee Meng
Kwang of Counsel for the plaintiff and Mr.S.
Patmanathan of Counsel for the defendants
IT IS HEREBY ORDERED 20

1. That the defendant do within fourteen (14)
days from the date of this Order serve on the
plaintiff the following further and better
particulars in writing of the Statement of
Defence: 30

i) Under paragraph 1 of the allegation
that "it was understood between the
parties that the bookings made by the
intended purchasers were subject to
contract" state the date on which and
the place at which it is alleged the
understanding was made stating whether
the alleged understanding was arrived
at orally or in writing and if written
identifying the document or documents
in which it is alleged that it was
embodied. 40

ii) Under paragraph 1 of the allegation
that "it was understood between the

parties that.....if the project is to be abandoned by the developer such money will be refunded "state the date on which and the place at which it is alleged the understanding was arrived at orally or in writing and if written, identifying the document or documents in which it is alleged the understanding was arrived at orally or in writing and if written, identifying the document or documents in which it is alleged that it was embodied.

In the
High Court
at Johore
Bahru

No.9

Order for
Further
and Better
Particulars
of Defence

12th April
1976

(continued)

- 10
- iii) Under paragraph 3 of the allegation that "the plaintiff permitted the defendants to make the necessary alteration which may be required from time to time and agreed to pay for the same" state the date on which and the place at which the alleged agreement was arrived at orally or written and if written identifying the document or documents in which it is alleged that it was embodied.
- 20

2. That the costs of and occasioned by this application be the defendants' in any event.

Given under my hand and the Seal of the Court, this 12th day of April 1976.

Sd: K.N.Segara

Senior Assistant Registrar
High Court, Malaya,
Johore Bahru.

30

In the
High Court
at Johore
Bahru
No.10

No. 10

FURTHER AND BETTER
PARTICULARS OF DEFENCE
24th April 1976

Further and
Better
Particulars
of Defence
24th April
1976

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU
CIVIL SUIT NO. 391 OF 1975

Between

Loh Sew Wee (f)

Plaintiff

And

Daiman Development Sdn.Bhd.

Defendants

10

FURTHER AND BETTER PARTICULARS

Served pursuant to Order of Court dated
the 12th day of April, 1976

The following are the particulars of the
Statement of Defence (delivered as set out
in the application of the plaintiff).

1. By the words "it was understood between
the parties that the booking made by the
intended purchasers were subject to contract"
the defendants say that the understanding
was an outcome of the contents of the Booking
Proforma dated the 12th day of December, 1972.
Paragraph 1 of the said proforma reads :-

20

"That within two (2) weeks from the date
of receipt of a notice by the Company
or its solicitors M/S A.L.Looi of Room
401-403, Fourth Floor, O.C.B.C. Building,
Johore Bahru, Johore the sum of \$2,600/-
and sign the agreement for sale with the
Company which shall be prepared by the
Solicitors and subject to the terms and
conditions therein."

30

The defendants contend the above and
particularly the portion underlined into a
contract at a future date and consequently the
defendants contention of the understanding
between the parties.

The defendants identify the "Booking
Proforma" as the relevant document.

2. The defendants say that the Plaintiff knew
or ought to have known that if the project was
to be abandoned such money, meaning booking fees
would be refunded. The defendants contend that,

40

the plaintiff also stated in the aforesaid booking proforma as follows :-

In the
High Court
at Johore
Bahru

"That in the event of failure on my part to comply.....the Booking will be treated as cancelled and the Booking Fee of \$700/- shall be forfeited to the Company and I shall have no further claims against the Company."

No.10

Further
and Better
Particulars
of Defence

24th April
1976

(continued)

10 The defendants contend that it was mutual for either party to abandon their part of the obligations to arise in the future. The defendants contend that the plaintiff knew or ought to have known of the rights of the defendants to abandon their project as much as the plaintiff's right to withdraw.

3. The plaintiff in Paragraph 2 of the aforesaid booking proforma put forward :-

20 "That I have inspected the Company's layout and building plan and agree to accept whatever alteration and amendments as may be required by the authorities.....".

30 The defendants contend that upon the words as set out above the plaintiff did agree to alterations being carried out. It was implied by the same that whatever conditions the authorities may impose, in the form of alterations, the Defendants were bound to carry out the same and as such the plaintiff would pay for the same to be set out in the future agreement to be put back.

The conditions imposed by the authorities subsequent to the forwarding of the aforesaid booking proforma were generally as follows :-

1. Construction of a drainage system now known as Sg. Sengkuang.
2. Erection of Street lighting posts;
3. Widening of previously approved roads;
- 40 4. Fixing of five foot way electricity mains and additional mains;
5. Various alterations to houses inter alia pertaining to ventilations, Septic tanks etc.

The defendants had not expected the aforementioned additional conditions to be imposed and the prices of materials at that time of increase were much higher than expected.

In the
High Court
at Johore
Bahru

Dated this 24th day of April 1976

No.10

Sd: A.L.Looi

Further
and Better
Particulars
of Defence

Solicitors for the Defendants

24th April
1976

(continued)

Notes of
Evidence
17th November
1976

No. 11

NOTES OF EVIDENCE
17th November 1976

Plaintiff's
evidence

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU
CIVIL SUIT NO. 416 OF 1975

Between

MATHEW LUI CHIN TECK

Plaintiff 10

And

DAIMAN DEVELOPMENT SDN.BHD.

Defendants

NOTES OF EVIDENCE

Before me in Open Court,
This 17th day of November, 1976
Sgd. Syed Othman Ali
JUDGE, MALAYA.
C.S. 416/75

Mathew Lui Chin Teck v. Daiman Dev.Sdn.Bhd.
Arthur Lee for plaintiff 20
(Tan Kai Meng with him)
Patmanathan for defendants.

Present Plaintiff. Ang Thiam Poh -
manager - defendants

Lee Parties agreed that this is a test case.
Decision in this would bind C.S.391/75 - Low
Sew Wee v. same defendants. Agreed Facts - AF.
Agreed Bundle of Documents marked AB. Calls.

Mathew Lui
Chin Teck
Examination

P.W.1 Mathew Lui Chin Teck affirmed, states
in English. 30

44 years old. Postmaster Kota Tinggi.
Address: P.O. Kota Tinggi

In the
High Court
at Johore
Bahru

No.11

Notes of
Evidence

17th November
1976

Plaintiff's
evidence

Mathew Lui
Chin Teck
Examination

(continued)

10 I know defendant company. It is a
licensed housing development company. It
sells houses. I know Mr. Ang in Court. On
1st October, 1972 I went to defendants' office.
I booked for the purchase of the house -
semi-detached. The agreed price was \$26,000/-.
I was handed over AB3. I signed it. I paid
Mr. Ang \$700/-. The receipt which he issued
is as in AB4. Then I was given a card AB1 and
AB2. I signed 2 copies of AB3. I understood
the documents I signed. I understood that on
some date I would have to sign a formal
agreement of sale. It is stated in AB3 the
cost of the house is \$26,000/-. I discussed
with Mr. Ang this cost. I told him that I
would be applying for a government loan. So I
asked him if the price was definite. He told
me that the price was fixed at \$26,000/-.
20 Because of this I signed AB3.

30 In June, 1975 I received a notice from
the defendants that it intended to increase
the price. Letter is dated 30th May, 1975.
The letter is as in AB5. (Defendants: House
has not yet been sold). The letter says that
the price of the house has been increased from
\$26,000/- to \$35,100/-. Before this the
defendants did not consult me about this. I
did not agree to this increase. I then wrote
to the defendants. My letter is AB5. After
this letter I paid my 10% deposit i.e. \$1,900/-
based on the old price. This figure plus
\$700/- booking fee make up \$2,600/- I sent
this by letter AB7. The defendants returned
the cheque to me by letter from the defendants
as in AB8. I replied to the defendants as
in AB9. I asked them to accept price that has
been agreed upon. Otherwise I would take
40 legal action. I asked defendants to fulfil
the conditions as in proforma AB3. I told
defendants that I was willing to sign agreement
of sale prepared by them. The defendants
replied as in AB10 urging me to accept the new
price. I did not agree with the defendants.
I replied as in AB11. AB12 is the reply which
I received from defendants rejecting old price.
I consulted my solicitors and my solicitors
sent AB13. The reply received is AB14. Up
50 to date defendants have not refunded my \$700/-.

Cross-Examination by defence counsel

Cross-
examination

I went to defendants to purchase a house -
a semi-detached house. I saw the layout plan
and the plan for the house. I do not know
whether they were proposed. I also saw a model

In the
High Court
at Johore
Bahru

No.11

Notes of
Evidence

17th November
1976

Plaintiff's
evidence

Mathew Lui
Chin Teck
Cross-
examination
(continued)

of house in the office of the company. He did not tell me that the plans had not been approved. I did not verify. I was with Mr. Ang for about half an hour. I selected the Lot No. of the house which is 949 and then I talked to him more about getting a loan from government to purchase the house. I did not ask when the house will be built. I did not know that it was to be built later on. I was in no hurry. I did not make enquiries as to when I shall get the house. I did not mind waiting for 2 or 3 years. I agree that I did not have the full purchase price with me at the time. I read AB3. I understood it. I agree here I am described as an intending purchaser. I agree that payment of booking is subject to terms and conditions in AB3. I did not know what would be the agreement of sale. I agree that I did not know the scheme of payment and the grant number of the land. But I know the lot number. I agree clause 2 relates to cancellation of booking. I agree clause 3 relates to defendants.

10

20

In AB6 I did say that I was not prepared to enter into any agreement except according to the old price. I did not agree to the new price.

Re-examination

Re-examination by Tan. My main concern was with the price. As far as I understood AB3 there is nothing which says that the price of the house would be altered.

30

C. F. P.

Patmanathan One witness. AB3 not final contract. Final contract would come at a later date at which plaintiff bound to sign. Price went up because of several conditions laid by government in conditions of development. Calls.

Defendants'
evidence

D.W.1 Ang Thian Poh affirmed, states in English.

40

Ang Thian Poh
Examination

33 years old. Manager of Defendant company. Live at No.2 Jalan Delima, Kim Teng Park, Johore Bahru.

My company decided to develop land at Jalan Tebrau in 1972. It purchased the land. It wanted to build 1720 units of houses and shop houses. The development had also in view market reserve, school reserves, health centre reserves, post office reserves and

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community centre reserves. About the end of 1972 the architects were ready with the layout plan and house and shop house plans. They were in the proposed stages. A copy of the plans were on display in the office. I then invited purchasers to come forward. One was the plaintiff. Towards the end of 1972 there were 700 or 800 intending purchasers. When they came to the office they were informed of the type of houses we were going to build. They were shown the plans and informed that construction would commence on obtaining approval from the authorities. I then asked them to sign the booking proforma - similar to AB3. AB3 was signed by plaintiff. I remember the particular conversation I had with plaintiff. I discussed about the intended purchase. I informed him about the situation of the development and that we would have to obtain approval of the sub-division and approval of building plans before we could start construction and that this would take one or two years. Plaintiff enquired about the agreement of sale. I told him that the agreement would be signed when we were about to start construction. I told that the agreement would be prepared by our solicitors at the time when we were about to start construction. There was no agreement yet at that time. I did not discuss about the agreement with him at the time.

Defendant company proceeded with application for subdivision early in 1973. By this time there were about 1200 intended purchasers. The company had to comply with a lot of requirements by the authorities. The requirements were amendments to building plans, conditions imposed before subdivision could be approved. They are 30% of the buildings to be sold to bumiputras and 30% discount should be given to them on the price. The company had also to surrender to the government 5 pieces of land for school, post office, health centre and community centre and market reserves. The total area is about 11.5 acres. Conditions on buildings plans were imposed. The roads were to be widened from 18 feet to 20 feet wide. The depth of the road surface was to be increased by 2 more inches of granite. The proposed back lanes were 10 feet wide and the government wanted it to be widened to 20 feet. The defendants were also required to deepen and widen Sg. Sengkuang which runs adjacent to the land and later on to contribute a portion of the cost of lining the river with concrete. Then there were the conditions by the NEB that the company should provide 5-foot way electrical mains. This means that we have

In the
High Court
at Johore
Bahru

No.11
Notes of
Evidence
17th November
1976

Defendants'
evidence

Ang Thian
Poh
Examination
(continued)

In the
High Court
at Johore
Bahru

No.11

Notes of
Evidence

17th November
1976

Defendants'
evidence

Ang Thian Poh
Examination
(continued)

to provide the overhead wires to NEB for installation. J.K.R. required that the defendants should provide capital contribution for water meters. The defendants had to turf the road and the slopes in the whole project. These conditions had to be complied with before subdivision could be approved. Subdivision was approved in October 1974. By this time the costs of building materials had also gone up. Defendants had to increase the price of the land. In respect of plaintiff's house it was increased from \$26,000/- to \$35,100/-. On 30th May 1975 I served AB5 on the plaintiff. I gave him opportunity to sign up an agreement or to cancel the sale with a refund of the booking fee. Till today the plaintiff has not signed the agreement.

10

Cross-
examination

Cross-examination by plaintiff's counsel Tan

I did not impress on plaintiff that there would be price adjustment in the future when I discussed with plaintiff. The booking proforma signed by intending purchasers was to ascertain that they are purchasers of the houses. Under the developers rule the development is allowed to collect only 2½% of the purchase price. There are terms in the booking forms. After signing the form he was still at liberty to negotiate further. If he had agreed to AB5 the property could have been sold to him.

20

30

Cross-examination by Lee

There was no advertisement for the sale of the houses. There was a signboard at the site. I can't remember what the signboard read. I agree that the signboard might have stated that we are developers of the site and that enquiries could be made in an office. I agree that there was reference to types of houses for sale. In 1972 the layout plan had not yet been approved. There was only a proposed plan.

40

Re-examination Nil

By Court The additional cost by the defendants was \$7 million Estimates costs was \$2 million.

C. F. D.

Both counsel Argument will take about 1½ hours - mainly on law.

To a date to be fixed for arguments.

50

Before Me In Open Court,
This 7th day of March, 1977
Sgd. S.Othman Ali
JUDGE, MALAYA

In the
High Court
at Johore
Bahru

No.11

9.10 a.m.
C.S. 416/75

Notes of
Evidence

17th November
1976

10 Mathew Lui Chin Teck v Daiman Dev.Sdn.
Bhd. Arthur Lee for plaintiff, Chan
Kai Meng with him.
Patmanathan for defendants.

A.Lee C.S. 391/75 will follow events of this
case. Today is for submission.

20 Patmanathan No final contract between parties.
Facts not very much in dispute. Plaintiff
signed the proforma. After signing a lot of
conditions imposed on developers. More land
were taken out. On 1st October, 1972 plaintiff
signed AB3. He is described as intending
purchaser. Lot Number stated as per company's
layout. House single storey semi-detached.
Reads proforma. Agreement referred to not
yet signed. Signed as intending purchaser.
No mention of approved layout plan. Matter of
alterations had not come up. Defendants have
not yet signed document.

30 AB5 30th May, 1975 Letter from defendants
paragraph 2 "in view of amendments.....
adjusted price. Paragraph 3 payment to make up
10%. This is agreement contemplated in AB3.
AB5 last paragraph opportunity given to
plaintiff to withdraw.

AB6 paragraph 2 contend that AB3 legal
document last sentence, "I am not prepared to
sign any further agreement."

AB9 - plaintiff insists on the price in
form.

AB10 company says agreement not signed.
Price increased due to overall development.

40 AB13 last paragraph plaintiff's solicitors
requesting that agreement of sale be forwarded.
On this there is an agreement of sale to be
signed. AB14 defendants refused to accept
that. All documents put together indicate
that after proforma there was an agreement to
be signed - up to 6th September, 1975. 2 years
after signing the proforma.

Plaintiff treating booking as agreement
of sale.

Rule 10(3) Housing Developers (Control and

In the
High Court
at Johore
Bahru

No.11

Notes of
Evidence

17th November
1976

Licensing) Rules 1970 under Act 1966.
Rule 12(1)(e)(f)(h) & (i). Various
conditions not settled.

Seet Soh Ngoh v. Vengatersawaran Sdn.
Berhad. (1976) 1 MLJ 242 agreement of sale
not yet signed.

Tai Tong Realty v. Galstan & Anor (1973)
2 MLJ 90 see at page 95F another contract is
to be entered into.

Yap Eng Thong & Anor. v. Faber Union
(1973) 1 MLJ 191 at page 193D.

10

Clifton v Palunbo (1944) 2 AER 497 at
499. Point discussed in this case.

A.Lee Crux of matter - construction of AB3
proforma. On this defendants based 2 lines
of defence P5 paragraph 1 rigidly followed.
See p.11 plaintiff went to defendants'
office. Plan shown by defendant company.

Yeo Long Seng v. Lucky Park (Pte) Ltd.
(1971) 1 MLJ 20 at page 22. Winslow at
paragraph F legally binding contract.

20

Section 7 Act 136 Contract ordinance.

Defendants licensed developers. Purchase
price fixed. Cannot be altered Rule 10. 5%
of purchase price.

No right recourse to adjust the price.

Rule 12(1)(i).

₹700/- accepted. Defendants acknowledged
there was a binding agreement upon terms as
in paragraph 1.

30

Rule 5. In evidence development cost
₹2 million extra. If it was envisaged to
increase there must be provision in the
proforma. Defendants made a bad calculation
of the whole project see p.13.

Authorities cited by defendants do not
apply.

Irrevocable option to purchase at the
price stated.

Right of presumption to purchase as in
AB3. Rule 10.

40

Authorities cited by defendants do not apply.

Irrevocable option to purchase at the price stated.

Right of presumption to purchase as in AB3. Rule 10.

Du Sautoy v. Symes (1967) 1 AER 25.

Smith v. Morgan (1971) 2 AER 1500.

Right of presumption referred to in these cases.

10 Document was made by company - construed against the company; many ambiguities.

In all 1720 units additional costs nearly \$10,000/-; out of proportion \$7/- million as against \$2/- million additional costs.

C. A. V.

Before me in Open Court,
This 15th day of August 1977
Sgd. S.Othman Ali
JUDGE, MALAYA

C.S. 416/75

20 Mathew Lui Chin Teck v Daiman Dev.Sdn.Bhd.
Arthur Lee for plaintiff
Patmanathan for defendants.

Judgment delivered. For plaintiff.
Defendants to perform contract within 3 months subject to payment of all monies purchase price agreed. Costs to the plaintiff.

Arthur Lee It has been agreed that judgment in this case will apply to C.S. 391/75 - plaintiff Madam Low Sew Wee.

30 Patmanathan I agree to this.

Court Judgment in C.S. 391/75 as above.

Certified true copy.
Sgd. G.S.Panshi

Setio-usaha kepada Hakim
Mahkamah Tinggi,
Johore Bahru.

In the
High Court
at Johore
Bahru

No.11

Notes of
Evidence

17th November
1976

In the
High Court
at Johore
Bahru

No. 12

JUDGMENT - 15th August
1977

No.12
Judgment
15th August
1977

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU
CIVIL SUIT NO. 416 OF 1975

Between

MATHEW LUI CHIN TECK Plaintiff

And

DAIMAN DEVELOPMENT SDN. BHD. Defendants

JUDGMENT OF SYED OTHMAN, J.

10

The plaintiff seeks specific performance by the defendants of an agreement between them for the sale by the defendants of a piece of a property i.e. land together with a single storey semi-detached house to be erected thereon at Taman Sri Tebrau, Johore Bahru, for \$26,000/-; alternatively damages for breach of contract.

Both parties are agreed that the whole case depends on the construction of certain provisions in the Housing Developers (Control & Licensing) Rules 1970 (P.U. (A) 208/70) and of a booking proforma signed by the plaintiff at the instance of the defendants, when he agreed to purchase the property on paying a booking fee of \$700/-. The proforma reads :

20

" DAIMAN DEVELOPMENT SDN. BERHAD.

Booking Proforma

Name of intending purchaser Mr.Mathew Lui
Chin Teck (NRIC 0690161)

Address Post Office, Kota Tinggi, Johor

30

Lot No. Booked (as per company's layout)
949

Approximate Basic Area 2,800 sq.ft. Type
of house single storey semi-deatched.

Purchase price Dollars Twenty six thousand
only (\$26,000/-).

" I, the abovenamed Mathew Lui Chin Teck,
hereby agree to purchase the above Lot
together with the house as specified at
the above stated price for which a

40

Booking Fee of \$700/- is now paid to the Company subject to the following terms and conditions :-

In the
High Court
at Johore
Bahru

No.12

Judgment

15th August
1977

(continued)

10 "1. That within (2) weeks from the date of receipt of a notice by the Company, sent to the above address, I shall pay to the Company or its solicitors, M/S A.L.Looi of Rooms 401 & 402, 4th Floor, O.C.B.C. Building, Johore Bahru, Johore the sum of \$2,600 and sign the agreement for Sale with the Company which shall be prepared by the Solicitors and subject to the terms and conditions therein.

20 2. That I have inspected the Company's layout and building plans and specifications and agree to accept whatever alterations and amendments as may be required by the Authorities. In the event of major alterations and amendments to the layout plan I reserve the right to cancel my booking and the booking fee hereby paid shall be refunded to me by the Company free of interest.

30 3. That in the event of failure on my part to comply with Clause 1 above after due notice has been given by the Company or its Solicitors, the Booking will be treated as cancelled and the Booking fee of \$700.00 shall be forfeited to the company and I shall have no further claims against the Company.

40 4. That the area of the Lot above stated is only approximate and in the event that the area thereof differs upon the issue of the Qualified Title in respect of the said Lot, I shall abide to the same and agree to pay \$2.00 per sq.ft. for any excess above the basic area and in the event of shortage in the basic area above stated the Company shall refund to me the difference calculated at the rate of \$2.00 per sq.ft.

Dated this 1st day of October, 1972.

Sgd. xx
Witness

Sgd. xx
Signature of intending
purchaser"

50 The dispute arose when on 30th May, 1975 the defendants wrote a letter to the plaintiff informing him that the price of the property was being increased to \$35,100 and if the price was not acceptable the booking might be cancelled and the property sold to another person.

The plaintiff did not agree to this and

In the
High Court
at Johore
Bahru

No.12

Judgment

15th August
1977

(continued)

wrote on 4th June, 1975 (AB6) to the defendants insisting that the old price as agreed upon could not be altered. Then on 10th June, 1975 (AB7) he sent a cheque for \$1,900, which, with the booking fee of \$700/- totals \$2,600/- being 10% deposit of the agreed price. The defendants by AB8 replied on 13th June, 1975 stating :-

"We do not agree to your contentions therein and as you do not agree to the adjustment in our price, we regret we cannot accept your payment."

10

The cheque was returned. There was subsequent correspondence, but it did not change matters. The plaintiff insisted that the price of the property should remain as in the proforma, while the defendants maintained that the increase was "very reasonable compared to the current prices of houses in Johore Bahru" and suggested that the plaintiff should either withdraw the booking or transfer it to someone else (See AB10).

20

The defendants' evidence as given by the manager may be summarised as follows. The defendants decided to develop the land it had purchased by building 1720 units of houses and shop-houses and by reserving some areas for market, school, health centre, post office and community centre. The layout plan was put up in the office. When the plaintiff came to the office he informed the plaintiff that it would take one or two years before construction would start, as the defendants had to obtain approval for the sub-division and construction, and the agreement would be signed when construction was about to start. The defendants applied for sub-division early in 1973 and had to comply with many requirements by the authorities i.e. amendments to the building plans, 30% of the buildings to be sold to bumiputras at 15% discount, surrender of land about 11.5 acres for school, post office, health centre, a community centre and market; the 18 feet road to be widened to 20 feet; granite for road depth to be increased by 2 inches; back lanes to be widened; Sg. Sengkuang running along the developed area to be deepened and to contribute to the cost of lining the river with concrete; and provisions for overhead wires for N.E.B. installations and other minor works. The conditions were complied with the sub-division of the land was approved in October, 1974. By this time, according to the witness, the building materials had gone up, and the defendants had to increase the price of the house from \$26,000 to \$35,100.

30

40

50

In answer to question by the Court the manager says that the additional cost to the Company was \$7 million, the estimated costs was \$2 million.

In the
High Court
at Johore
Bahru

No.12

Judgment

15th August
1977

(continued)

10

In argument, the defence contends that the booking proforma was in effect an agreement which was subject to contract and cannot be treated as a complete agreement, as paragraph 1 of the proforma mentions that there is an agreement of sale to be signed.

20

For the plaintiff, it is argued that the statement of defence is not supported by evidence as adduced by the defence; it may be that development cost might have increased by \$2 million, but if it was intended that the purchaser was to bear this cost, then there should have been some provisions in the proforma to show this, and the proforma, as it stands, gives the plaintiff an irrevocable option to purchase the property at the price stated.

In dealing with the case here, I do not propose to discuss the many authorities concerning "subject to contract" which have been referred to by both sides. As I have stated earlier, the case devolves, as agreed, on the construction of the proforma and on the effect of the Rules 10 and 12 of the Housing Developers (Control and Licensing) Rules, 1970. Rule 10 reads :-

30

"10.(1) A purchaser of housing accommodation including the land shall not be required to pay a booking fee of a sum exceeding 2.5 per centum of the purchase price of such housing accommodation including the land.

40

(2) Notwithstanding paragraph (1) of this Rule, no purchaser of a housing accommodation including the land shall be required to pay a booking fee of a sum exceeding one thousand dollars.

(3) For the purposes of this Rule the term "booking fee" shall include any payment by whatever name called which payment gives the purchaser an option or right to purchase the housing accommodation including the land."

50

The provisions of rule 10 are quite clear. The intention of subrule (1) is that the purchase price must be stated at the time of the booking. By subrule (3) the booking fee is to be treated as an option or right to purchase the property at, in my view, the purchase price stated.

In the
High Court
at Johore
Bahru

No.12

Judgment

15th August
1977

(continued)

Rule 12 lays down that the contract of sale shall be in writing and prescribe the terms and conditions to be contained in the contract of sale. They are rather comprehensive. For the purpose of the present case, I need refer only to subrule (1) paragraphs (g) and (i). The substantive part of paragraph (g) reads :-

"...The price of such land for purpose of adjustment shall be calculated as the same price per square foot as was used to calculate the purchase price stated in the contract of sale and any payment resulting from the adjustment and requiring to be paid by the party concerned shall be so paid within seven days of the issue of the new document of title." 10

In the proforma the approximate area of the land allotted for the house to be built is stated to be 2,800 square feet and in paragraph 4 of the proforma the purchase price is fixed at \$2/- per square foot. According to Rule 12(1)(g), the defendants may adjust the price of the land depending on the actual measurements shown in the document of title. There is no evidence to show that adjustments were required for this purpose, and I can see no provision whereby the developer can make other adjustments. 20 30

Paragraph (i) of Rule 12(1) speaks for itself. It reads :-

"(i) provision binding on the licensed housing developer that the housing accommodation to be erected for the purchaser shall be constructed in good and workmanlike manner in accordance with the specifications and plans described in the contract of sale which specifications and plans have been approved by the appropriate Authority, and agreed to by and between the purchaser and the licensed housing developer. No changes thereto or deviation therefrom shall be made without the consent of the purchaser except such as may be required by the Appropriate Authority or certified by the architect of the licensed housing developer to be expedient or necessary. The cost of such changes or deviations shall be borne by the licensed housing developer and no claim whatsoever may be made against the purchaser." 40 50

I now come to the statement of defence. The defence contends that if the building

materials rise in price beyond the expectation of the intended purchasers they are entitled to refuse to purchase any property and hence withdraw their money paid in. I can see nothing in the proforma which gives the defendants this right. In any case, no evidence is adduced showing the extent of the rise in the price of the materials which were beyond the expectation of the purchasers.

In the
High Court
at Johore
Bahru

No.12

Judgment

15th August
1977

(continued)

10 The statement of defence then alleges
"the plaintiff permitted the defendants to
make the necessary alterations which may be
required from time to time and agreed to pay
for the same. However, if there were to be
major alterations then the plaintiff expressly
stated he would consider and settle the same
or alternatively have the right to cancel the
said booking and demand refund of \$700 paid
in". No evidence is adduced that the plaintiff
20 gave permission as pleaded. In fact the
plaintiff complained in his letter (AB 11) dated
20th August, 1975 that the alterations to the
house plan were inferior to the original, and
pointed out the proforma refers to alterations
by the authorities and not by the defendants.
The defendants in reply merely said that they
could not accept the contentions.

30 Looking at the proforma, I cannot see any
single phrase which gives the defendants the
right to alter the price of the property in
the event of any change in the house plan.
Clause 2 of the proforma gives the right to
the plaintiff to cancel the booking in the
event of major alterations and amendments to
the layout plan. It does not give the
defendants such right. As far as I can see
most of the requirements of the authorities
were in fact in the proposed layout plan. The
defence witness himself says in evidence that
40 the layout plan provided reserves for post
office, school, market and other amenities
as required by the authorities. Considering
the clause, even if there were such major altera-
tions and amendments, it would be a matter,
not for the defendants, but for the plaintiff
whether or not to cancel his booking. Further,
I can find no evidence that there was in fact
any major alteration to the layout plan.

50 Apart from all what I have said, the very
fact that the Defendants suggested in AB10 that
the plaintiff should either withdraw the
booking or transfer it to someone else shows
that the defendants themselves knew that they
had no right to withdraw from the contract.

The defence evidence on increase in costs

In the
High Court
at Johore
Bahru

No.12

Judgment

15th August
1977

(continued)

generally, I would regard as somewhat bland and not at all convincing. I doubt very much if there was any substantial increase in cost as stated by the defence witness. Letter AB 10 dated 24th June, 1975 makes no mention of increase in costs. Its paragraphs 2 reads :-

" The increase in the price has to be made in view of the amendments to the building plans and to the over-all development of our housing scheme. We contend that the increase is very reasonable compared to the current price of houses in Johore Bahru." 10

No evidence is adduced that the amendments required by the Authorities were such that they entailed cutting down the units of houses to be built and surrender of more land than proposed in the original layout plan. It may be that the changes for the inferior as contended by the plaintiff were made to make up for other costs, bearing in mind that sale to bumiputras was required to be at 15% discount. 20

I am of the view that under paragraph 1 of the proforma, whatever agreement of sale was to be signed, payment by the plaintiff at that stage of signing the agreement of sale was fixed at \$2,600, i.e. 10% of the purchase price. This by itself clearly fixes the purchase price of the property. I find that the proforma in the present case has about the same effect as the one appearing in Yeo Long Seng v. Lucky Park (Pte) Ltd. (1971) 1 MLJ 21, referred to by Encik Arthur Lee, for the plaintiff. With respect I agree with the remarks by Winslow J. at page 23 :- 30

" It may well be said that conveyancing practice recognises a formal contract of sale concluded in the usual form and in accordance with the usual conditions of sale as being part of the normal machinery or procedure preceding a conveyance of land. The agreement in the schedule now takes the place of the formal contract required in the case of sales by developers. This however is far from saying that there can never be any contract at common law if all the agreed terms between the parties are incorporated in correspondence or in some other way sufficient to constitute a sufficient note or memorandum evidencing agreement leaving no other term to be yet agreed." 40 50

Even without considering the rules that have been

prescribed, I am inclined to think that the terms and conditions of the sale agreement mentioned in paragraph 1 of the proforma would only relate to consequential matters affecting the sale, but not the purchase price.

In the
High Court
at Johore
Bahru

No.12

Judgment

15th August
1977

(continued)

10

Considering the case as a whole, my strong feelings are that the defendants have increased the price of the property to be sold for no other reason but that there was a general increase in the price of property in Johore Bahru.

The property is under caveat and has not been transferred to anyone. The plaintiff's application for specific performance is hereby granted. The property is hereby ordered to be transferred to the plaintiff within 3 months, subject to payment by the plaintiff of the whole of the purchase price as agreed upon. Costs to the plaintiff.

20

Johore Bahru,
15th August, 1977

(Syed Othman bin Ali)
Judge, High Court,
Malaya.

Solicitors:

Encik Arthur Lee (M/S Arthur Lee & Co.) for
plaintiff.

Encik Patmanathan (M/S A.L.Looi & Co.) for
defendants.

In the
High Court
at Johore
Bahru

No. 13
ORDER - 15th August 1977

No.13
Order
15th August
1977

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU
CIVIL SUIT NO. 416 OF 1975

Between

Mathew Lui Chin Teck Plaintiff

And

Daiman Development Sdn.Bhd. Defendants

BEFORE THE HONOURABLE MR. JUSTICE SYED
OTHMAN, JUDGE, MALAYA.

10

IN OPEN COURT
THIS 15TH DAY OF AUGUST, 1977

O R D E R

UPON this action coming on for trial this day in the presence of Mr. Arthur Lee Meng Kwang and Mr. Chan Kai Meng of Counsel for the Plaintiff and Mr. S.Patmanathan of Counsel for the Defendants AND UPON READING the pleadings herein AND UPON HEARING the evidence adduced and Counsel as aforesaid IT IS THIS DAY ADJUDGED 20 that the abovenamed Plaintiff be at liberty to enter Judgment against the abovenamed Defendant on the following terms, namely the agreement entered into between the parties hereto on the 1st day of October 1972 in respect of all that piece of land situated at Taman Sri Tebrau, in the District of Johore Bahru, in the State of Johore and known as private Lot No.949 together with a single storey semi-detached house erected thereon (hereinafter referred to as the "said property") be specifically 30 performed and carried into execution for and at the price of Dollars Twenty six thousand (\$26,000.00) only.

AND IT IS ALSO ORDERED that within three (3) months from the date herein, the said property be transferred to the Plaintiff subject to payment by the Plaintiff of whole of the purchase price as agreed upon

AND IT IS FURTHER ORDERED that the abovenamed Defendant do pay the abovenamed Plaintiff the costs of this action to be taxed as between Party and Party on the higher scale. 40

GIVEN under my hand the Seal of the Court, this 15th day of August, 1977.

Sd: Illegible
Senior Assistant Registrar
High Court, Malaya,
Johore Bahru.

In the
High Court
at Johore
Bahru

No.13

Order

15th August
1977

(continued)

No. 14

ORDER - 15th August 1977

No.14

Order

15th August
1977

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU
CIVIL SUIT NO. 391 OF 1975

Between

10

Loh Sew Wee

Plaintiff

And

Daiman Development Sdn.Bhd.

Defendants

BEFORE THE HONOURABLE MR. JUSTICE SYED

OTHMAN, JUDGE, MALAYA

IN OPEN COURT

THIS 15TH DAY OF AUGUST 1977

O R D E R

20

UPON this action coming on for trial this day in the presence of Mr. Arthur Lee Meng Kwang and Mr. Chan Kai Meng of Counsel for the Plaintiff and Mr. S.Patmanathan of Counsel for the Defendant AND UPON READING the pleadings herein AND UPON HEARING the evidence adduced and Counsel as aforesaid IT IS THIS DAY ADJUDGED that the abovenamed Plaintiff be at liberty to enter Judgment against the abovenamed Defendant on the following terms, namely the agreement entered into between the parties hereto on the 12th day of December 1972 in respect of all that piece of land situated at Taman Sri Tebrau, in the District of Johore Bahru, in the State of Johore and known as private Lot No. 1314 together with a double storey terrace A house erected thereon (hereinafter referred to as the "said property") be specifically performed and carried into execution for and at the price of Dollars Twenty six thousand (\$26,000) only.

30

In the
High Court
at Johore
Bahru

No.14

Order

15th August
1977

(continued)

AND IT IS ALSO ORDERED that within three (3) months from the date herein, the said property be transferred to the Plaintiff subject to payment by the Plaintiff of whole of the purchase price as agreed upon.

AND IT IS FURTHER ORDERED that the abovenamed Defendant do pay the abovenamed Plaintiff the costs of this action to be taxed as between Party and Party on the higher scale.

10

GIVEN under my hand the Seal of the Court, this 15th day of August, 1977.

Sd: Illegible
Senior Assistant
Registrar
High Court, Malaya,
Johore Bahru.

In the
Federal Court
of Malaysia

No.15

Notice of
Appeal

20th August
1977

No. 15

NOTICE OF APPEAL
20th August 1977

20

IN THE FEDERAL COURT OF MALAYSIA
(APPELLATE JURISDICTION)

CIVIL APPEAL NO. 169 OF 1977

Between

Daiman Development Sdn. Berhad Appellant

And

Mathew Lui Chin Teck Respondent

In the matter of Civil Suit No.416 of 1975
in the High Court at Johore Bahru.

Between

Mathew Lui Chin Teck Plaintiff

And

Daiman Development Sdn. Berhad Defendant

30

NOTICE OF APPEAL

TAKE NOTICE that Daiman Development Sdn. Berhad the abovenamed appellant being dissatisfied with the decision of the Honourable Mr. Justice

Datuk Syed Othman given at Johore Bahru on the 15th day of August, 1977 appeals to the Federal Court against the whole of the said decision.

In the
Federal Court
of Malaysia

No.15

Dated this 20th day of August 1977

Notice of
Appeal

20th August
1977

Sd: A.L.Looi
Solicitors for the Appellant

(continued)

10 To: The Registrar,
Federal Court Malaysia,
Kuala Lumpur.

and to

The Senior Assistant Registrar,
High Court in Malaya,
Johore Bahru.

and to

M/S Arthur Lee & Co.
Advocates & Solicitors,
3rd Floor M.C.A. Building,
Johore Bahru.

20 The address for service for the appellant
is at Rooms 401 and 402, Bangunan O.C.B.C.
Johore Bahru.

Filed at Johore Bahru this 22nd day of August, 1977

Sd: ROHANI BINTE MOHD DALI,
Senior Assistant Registrar,
High Court, Malaya,
Johore Bahru.

Deposit of \$500/- lodged this 22nd day of August, 1977.

30 Sd: ROHANI BINTE MOHD DALI
Senior Assistant Registrar,
High Court, Malaya,
Johore Bahru.

In the
Federal Court
of Malaysia

No.16

Notice of
Appeal
20th August
1977

No. 16

NOTICE OF APPEAL
20th August 1977

IN THE FEDERAL COURT OF MALAYSIA
(APPELLATE JURISDICTION)
CIVIL APPEAL NO. 170 OF 1977

Between

Daiman Development Sdn. Bhd. Appellant

And

Loh Sew Wee Respondent 10

In the matter of Civil Suit No.391 of 1975
in the High Court at Johore Bahru

Between

Loh Sew Wee Plaintiff

And

Daiman Development Sdn. Bhd. Defendants

NOTICE OF APPEAL

TAKE NOTICE that Daiman Development Sdn. Berhad the abovenamed appellant being dissatisfied with the decision of the Honourable Mr. Justice Datuk Syed Othman given at Johore Bahru on the 15th day of August 1977 appeals to the Federal Court against the whole of the said decision. 20

Dated this 20th day of August 1977.

Sd: A.L. Looi
Solicitors for the Appellant

To: The Registrar,
Federal Court, Malaysia,
Kuala Lumpur. 30

and to

The Senior Assistant Registrar,
High Court in Malaya,
Johore Bahru.

and to

M/S Arthur Lee & Co.
Advocates & Solicitors,
3rd Floor, MCA Building,
Johore Bahru.

The address for service for the appellant
is at Rooms 401 and 402, Bangunan OCBC
Johore Bahru.

10 Filed at Johore Bahru this 22nd day of August,
1977.

Sd: ROHANI BINTE MOHD DALI
Senior Assistant Registrar,
High Court, Malaya,
Johore Bahru

Deposit of \$500/- lodged this 22nd day of
August 1977.

20 Sd: ROHANI BINTE MOHD DALI
Senior Assistant Registrar,
High Court, Malaya,
Johore Bahru.

In the
Federal Court
of Malaysia

No.16

Notice of
Appeal

20th August
1977

(continued)

In the
Federal Court
of Malaysia

No.17

Memorandum
of Appeal
29th September
1977

No. 17

MEMORANDUM OF APPEAL
29th September 1977

IN THE FEDERAL COURT OF MALAYSIA
(APPELLATE JURISDICTION)

CIVIL APPEAL NO. 169 OF 1977

Between

Daiman Development Sdn. Berhad Appellant

And

Mathew Lui Chin Teck Respondent 10

In the matter of Civil Suit No. 416 of 1975
in the High Court at Johore Bahru

Between

Mathew Lui Chin Teck Plaintiff

And

Daiman Development Sdn. Berhad Defendants

MEMORANDUM OF APPEAL

Daiman Development Sdn. Berhad the
Appellant herein being dissatisfied with the
decision of the Honourable Mr. Justice Datuk
Syed Othman given at Johore Bahru on the 15th
day of August 1977 appeals to the Federal
Court against the whole of the said decision
on the following grounds : 20

1. That the Learned Judge erred in law and
in fact in deciding that there was a
binding contract of sale between the
parties.
2. That the Learned Judge erred in law and
in fact in failing to decide that the
booking proforma dated the 1st day of
October, 1972, was a conditional contract
and therefore not binding on the parties. 30
3. The Learned Judge erred in law and in fact
in deciding that the Booking Proforma was
a final agreement equally as effective as
the usual form of sale agreement between
contracting parties.
4. The Learned Judge erred in law and in fact
in deciding that the price of the premises 40

together with the land was finalised and agreed upon by way of the completion of the booking proforma by the Respondent.

In the
Federal Court
of Malaysia

No.17

Memorandum
of Appeal

29th September
1977

(continued)

- 10 5. The Learned Judge erred in law and in fact in failing to decide that the Rules under the Housing Developers (Control and Licensing) Rules 1970 had to be applied as a whole and not partially in regard to the terms and conditions of agreement of sale including the terms of payment.
6. That the Learned Judge erred in law in failing to decide that the rights of the Respondent would arise only after the signing of the agreement of sale stipulating the terms and conditions as set out under Rule 12(1) of the Housing Developers (Control and Licensing) Rules, 1970, in addition to such other terms and conditions to be agreed upon.
- 20 7. The Learned Judge failed to give adequate weight in the interpretation of the provisions of the Booking proforma wherein it was stated that the Respondent shall "sign the agreement for sale with the Company which shall be prepared by the solicitors and subject to the terms and conditions therein" and in failing to decide that such a provision provided that the final agreement of sale was to be entered into between the parties and that the Booking Proforma was not the final agreement.
- 30 8. The Learned Judge erred in fact in deciding that the Appellant as Developers of land would intend to bind themselves finally two years before the commencement of their building project involving 1720 units of building regardless of contingencies that may arise or occur in such development and under all the circumstances of this matter and in particular upon payment by the Respondent of only 2½ per cent or thereabouts of the tentative purchase price.
- 40 9. The Learned Judge erred in law and in fact in considering and including that the increase in costs of building "was bland and not at all convincing" whereas the Appellants were not put to strict proof of the same and such evidence was not in issue between the parties nor was such increase either challenged in cross-examination or pleaded accordingly by the Respondent.
- 50 10. That the Learned Judge erred in law and in

In the
Federal Court
of Malaysia

No.17

Memorandum
of Appeal

29th September
1977

(continued)

fact in relying on the case of Yeo Long Seng v. Lucky Park (Pte) Ltd. (1971) 1 M.L.J. 21 the decision of which is on principles of Common Law and the application of the Statute of Frauds which decision is applicable in the circumstances of this case.

11. The Learned Judge erred in law and in fact in Ordering specific performance after the trial which results retrospectively, to the time of signing of the Booking Proforma, of enforcing by way of Specific Performance of proposed building and layout plans without approval of the authorities. 10
12. In the premises the Defendant/Appellant humbly prays :
- (a) That this Appeal be allowed
 - (b) That the Judgment of the Learned Judge given on the 15th August 1977 be set aside. 20
 - (c) That an Order may be made as justice may require.
 - (d) Costs of this Appeal and of the trial below.

Dated this 29th day of September 1977.

Sd: A.L.Looi

Solicitors for the
Appellant/Defendants

To: The Chief Registrar,
Federal Court,
Kuala Lumpur. 30

And to

The abovenamed Plaintiff/Respondent
and or his solicitors
M/S Arthur Lee & Co.
2nd Floor, MCA Building,
Johore Bahru.

The address for service of the Appellant/
Defendant is at M/S A.L.Looi Rooms 401-403,
4th Floor, O.C.B.C. Building, Johore Bahru. 40

No. 18
MEMORANDUM OF APPEAL
29th September 1977

In the
Federal Court
of Malaysia

No.18

Memorandum
of Appeal

29th September
1977

IN THE FEDERAL COURT OF MALAYSIA
(APPELLATE JURISDICTION)

CIVIL APPEAL NO. 170 OF 1977

Between

Daiman Development Sdn. Berhad Appellant

And

10 Loh Sew Wee Respondent

In the matter of Civil Suit No.391 of 1975
in the High Court at Johore Bahru

Between

Loh Sew Wee Plaintiff

And

Daiman Development Sdn. Berhad Defendants

MEMORANDUM OF APPEAL

20 Daiman Development Sdn. Berhad the Appellant
herein being dissatisfied with the decision of
the Honourable Mr. Justice Datuk Syed Othman
given at Johore Bahru on the 15th day of August
1977 appeals to the Federal Court against the
whole of the said decision on the following
grounds :

1. That the Learned Judge erred in law and
in fact in deciding that there was a
binding contract of sale between the
parties.
- 30 2. That the Learned Judge erred in law and
in fact in failing to decide that the
booking proforma dated the 1st day of
October 1972, was a conditional contract
and therefore not binding on the parties.
3. The Learned Judge erred in law and in
fact in deciding that the Booking Proforma
was a final agreement equally as effective
as the usual form of sale agreement
between contracting parties.
4. The Learned Judge erred in law and in fact

in deciding that the price of the premises together with the land was finalised and agreed upon by way of the completion of the booking proforma by the Respondent.

5. The Learned Judge erred in law and in fact in failing to decide that the Rules under the Housing Developers (Control and Licensing) Rules 1970 had to be applied as a whole and not partially in regard to the terms and conditions of agreement of sale including the terms of payment. 10
6. That the Learned Judge erred in law in failing to decide that the rights of the Respondent would arise only after the signing of the agreement of sale stipulating the terms and conditions as set out under Rule 12(1) of the Housing Developers (Control and Licensing) Rules, 1970, in addition to such other terms and conditions to be agreed upon. 20
7. The Learned Judge failed to give adequate weight in the interpretation of the provisions of the Booking proforma wherein it was stated that the Respondent shall "sign the agreement for sale with the Company which shall be prepared by the solicitors and subject to the terms and conditions therein" and in failing to decide that such a provision provided that the final agreement of sale was to be entered into between the parties and that the Booking Proforma was not the final agreement. 30
8. The Learned Judge erred in fact in deciding that the Appellant as Developers of land would intend to bind themselves finally two years before the commencement of their building project involving 1720 units of building regardless of contingencies that may arise or occur in such development and under all the circumstances of this matter and in particular upon payment by the Respondent of only 2½ per cent or thereabouts of the tentative purchase price. 40
9. The Learned Judge erred in law and in fact 50 in considering and including that the increase in costs of building "was bland and not at all convincing" whereas the Appellants were not put to strict proof of the same and such evidence was not in issue between the parties nor was such

increase either challenged in cross-examination or pleaded accordingly by the Respondent.

In the
Federal Court
of Malaysia

No. 18

Memorandum
of Appeal

29th September
1977

(continued)

10. That the Learned Judge erred in law and in fact in relying on the case of Yeo Long Seng v. Lucky Park (Pte) Ltd. (1971) 1 M.L.J. 21 the decision of which is on principles of Common Law and the application of the Statute of Frauds which decision is applicable in the circumstances of this case.

11. The Learned Judge erred in law and in fact in Ordering specific performance after the trial which results retrospectively, to the time of signing of the Booking Proforma, of enforcing by way of Specific Performance of proposed building and layout plans without approval of the authorities.

12. In the premises the Defendant/Appellant humbly prays:

- (a) That this Appeal be allowed.
- (b) That the Judgment of the Learned Judge given on the 15th August 1977 be set aside.
- (c) That an Order may be made as justice may require.
- (d) Costs of this Appeal and of the trial below.

Dated this 29th day of September 1977.

Sd: A.L.Looi

Solicitors for the Appellant/
Defendants

To: The Chief Registrar,
Federal Court,
Kuala Lumpur.

And to

The abovenamed Plaintiff/Respondent
and or his solicitors
M/S Arthur Lee & Co.
2nd Floor, MCA Building,
Johore Bahru.

The address for service of the Appellant/Defendant is at M/S A.L.Looi Rooms 401-403, 4th Floor, O.C.B.C. Building, Johore Bahru.

In the
Federal Court
of Malaysia

No. 19

ORDER - 16th July 1978

No. 19

Order
16th July 1978

IN THE FEDERAL COURT OF MALAYSIA HOLDEN
AT JOHORE BAHRU

(Appellate Jurisdiction)

FEDERAL COURT CIVIL APPEAL NO. 169 OF 1977

Between

Daiman Development Sdn. Bhd. Appellants

And

Mathew Lui Chin Teck Respondent 10

(In the Matter of Civil Suit No.416
of 1975 in the High Court in Malaya
at Johore Bahru

Between

Mathew Lui Chin Teck Plaintiff

And

Daiman Development Sdn.Bhd.
Defendants)

Coram: SUFFIAN, LORD PRESIDENT, FEDERAL COURT,
MALAYSIA; 20
GILL, CHIEF JUSTICE, HIGH COURT, MALAYA:
IBRAHIM MANAN, JUDGE, HIGH COURT, MALAYA

IN OPEN COURT

THIS 16TH DAY OF JULY, 1978

O R D E R

THIS APPEAL coming on for hearing this
day in the presence of Mr. Cecil Abraham
(together with Mr. S.Patmanathan) of Counsel
for the Appellants and Mr. Arthur Lee Meng
Kwang of Counsel for the Respondent AND UPON 30
READING the Records of Appeal herein AND UPON
HEARING the Counsels aforesaid IT IS ORDERED
that the Appeal be and is hereby dismissed
AND IT IS ORDERED that the costs be taxed
and paid by the Appellants to the Respondent
herein AND IT IS FURTHER ORDERED that the sum
of \$500/- (Ringgit Five hundred) deposited
in Court by the Appellants as security for
costs be paid out to Respondent forwards (sic) 40
taxed costs AND IT IS LASTLY ORDERED that the
application of the Appellants for stay of

proceedings herein is dismissed.

GIVEN under my hand and the Seal of the Court this 16th day of July, 1978.

Sd: Illegible
CHIEF REGISTRAR, FEDERAL
COURT, MALAYSIA

In the
Federal Court
of Malaysia

No.19

Order
16th July 1978
(continued)

No. 20

ORDER - 16th July 1978

No.20

Order
16th July
1978

10

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT
JOHORE BAHRU

(Appellate Jurisdiction)

FEDERAL COURT CIVIL APPEAL NO. 170 OF 1977

Between

Daiman Development Sdn. Bhd. Appellants

And

Loh Sew Wee Respondent

(In the Matter of Civil Suit No.391
of 1975 in the High Court in Malaya
at Johore Bahru

20

Between

Loh Sew Wee Plaintiff

And

Daiman Development Sdn.
Bhd. Defendants)

Coram: SUFFIAN, LORD PRESIDENT, FEDERAL COURT,
MALAYSIA:
GILL, CHIEF JUSTICE, HIGH COURT, MALAYA
IBRAHIM MANAN, JUDGE, HIGH COURT, MALAYA

30

IN OPEN COURT

THIS 16TH DAY OF JULY, 1978

In the
Federal Court
of Malaysia

O R D E R

No.20
Order
16th July
1978
(continued)

THIS APPEAL coming on for hearing this day in the presence of Mr. Cecil Abraham (together with Mr. S.Patmanathan) of Counsel for the Appellants and Mr. Arthur Lee Meng Kwang of Counsel for the Respondent AND UPON READING the Records of Appeal herein AND UPON HEARING the Counsels aforesaid IT IS ORDERED that the Appel be and is hereby dismissed AND IT IS ORDERED that the costs be taxed and paid by the Appellants to the Respondent herein AND IT IS FURTHER ORDERED that the sum of \$500/- (Ringgit Five hundred) deposited in Court by the Appellants as security for costs be paid out to Respondent (sic) forwards taxed costs AND IT IS LASTLY ORDERED that the application of the Appellants for stay of proceedings herein is dismissed. 10

GIVEN under my hand and the Seal of the Court this 16th day of July, 1978. 20

Sd: Illegible
CHIEF REGISTRAR, FEDERAL
COURT, MALAYSIA

No. 21
GROUNDS OF JUDGMENT
31st July 1978

In the
Federal Court
of Malaysia

No.21

Grounds of
Judgment

31st July
1978

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT
JOHORE BAHRU

(Appellate Jurisdiction)

FEDERAL COURT CIVIL APPEAL NO. 169 OF 1977
(Johore Bahru High Court Civil Suit 416/1975)

Between

10 Daiman Development Sdn. Bhd. Appellants/Defendants

And

Mathew Lui Chin Teck Respondent/Plaintiff

AND

FEDERAL COURT CIVIL APPEAL NO.170 OF 1977
(Johore Bahru High Court Civil Suit No.391/1975)

Between

Daiman Development Sdn.Bhd. Appellants/Defendants

And

Loh Sew Wee Respondent/Plaintiff

20 Coram: Suffian, L.P.;
Gill, C.J. Malaya;
Ibrahim Manan, J.

GROUNDS OF JUDGMENT OF THE COURT

We dismissed these two appeals and now
give our reasons.

The learned trial judge has written a
comprehensive judgment, and we need only be brief.

30 The defendants (appellants before us) are
housing developers in Johore Bahru, where they
planned to build on a big tract of land 1,720
units of houses for sale to the public. (For
brevity we shall refer to them as the developers).

The facts in the two cases from which
these appeals arise are the same, and it was
agreed that the result in one case would determine
the result in the other.

In the
Federal Court
of Malaysia

No.21

Grounds of
Judgment

31st July
1978

(continued)

It is enough if we refer only to the facts in appeal 169 which are as follows .

The Plaintiff went to the developers' office wanting to buy a house. He chose a single-storey semi-detached house to be built on a specified lot, Lot No.949, paid a booking fee of \$700/-, was given a receipt by the developers, at page 56 of the appeal record (AR56) and signed a booking proforma AR55. (This was on 1st October, 1972, and that was the date borne on the receipt and proforma). The proforma reads as follows:-

10

DAIMAN DEVELOPMENT SDN.BERHAD

BOOKING PROFORMA

NAME OF INTENDING PURCHASER Mr.Mathew
Lui Chin Teck
(NRIC No.0690161)

ADDRESS Post Office, Kota Tinggi, Johore.

LOT NO. BOOKED (as per Company's Layout)
949

20

APPROXIMATE BASIC AREA 2,800 SQ.FT.

TYPE OF HOUSE Single-storey Semi-detached

PURCHASE PRICE DOLLARS Twenty Six
thousand only (\$26,000.00) only.

I, the abovenamed Mathew Lui Chin Teck, hereby agree to purchase the above Lot together with the house as specified at the above stated price for which a Booking fee of \$700.00 is now paid to the Company subject to the following terms and conditons :-

30

1. That within two (2) weeks from the date of receipt of a notice by the Company, sent to my above address, I shall pay to the Company or its Solicitors, M/s. A.L.Looi of Rooms 401 & 402, 4th Floor, O.C.B.C. Building, Johore Bahru, Johore, the sum of \$2,600.00 and sign the Agreement For Sale with the Company which shall be prepared by the Solicitors and subject to the terms and conditions therein.

40

2. That I have inspected the Company's layout and building plans and specifications and agree to accept whatever alterations and amendments as may be required by the Authorities.

In the event of major alterations and amendments to the layout plan I reserve the right to cancel my booking and the booking fee hereby paid shall be refunded to me by the Company free of interest.

In the
Federal Court
of Malaysia

No.21

Grounds of
Judgment

31st July
1978

(continued)

- 10 3. That in the event of failure on my part to comply with Clause 1 above after due notice has been given by the Company or its Solicitors, the Booking will be treated as cancelled and the Booking Fee of \$700.00 shall be forfeited to the Company and I shall have no further claims against the Company.
- 20 4. That the area of the Lot above stated is only approximate and in the event that the area thereof differs upon the issue of the Qualified Title in respect of the said Lot, I shall abide to the same and agree to pay \$2.00 per sq.ft. for any excess above the basic and in the event of shortage in the basic area above stated the Company shall refund to me the difference calculated at the rate of \$2.00 per sq.ft.

Dated this 1st day of October, 1972.

Sd. (Illegible)
Witness

Sd. (Illegible)
SIGNATURE OF INTENDING
PURCHASER

30 It will be noticed from the booking proforma that the parties agreed the purchase price of the house at \$26,000 and that the plaintiff agreed to buy the property subject to the four conditions set out in it.

It seems that there was much delay in completion of the project and nearly three years later, on 30th May, 1975, the developers sent a letter AR57 to the plaintiff -

- 40 (a) unilaterally increasing the price by \$9,000 to \$35,100, because, it was said, of "amendments and additions to the building plans and the increase of material and construction costs";
- (b) asking the plaintiff to pay a further deposit of \$2,810, so that the total deposit to be paid by him would have come to \$3,510, i.e., 10% of the new purchase price, and to sign the Agreement of Sale (as required by Condition 1 of the booking proforma); and
- 50 (c) saying that if the plaintiff failed to

In the
Federal Court
of Malaysia

No.21

Grounds of
Judgment

31st July
1978

(continued)

pay and sign the Agreement within 14 days the developers would treat the booking as cancelled, whereupon the developers would be free to sell the property to another without being liable to the plaintiff or alternatively the developers would refund the booking fee back to the plaintiff under Condition 2 of the booking proforma.

10

On 4th June, 1975, the plaintiff wrote the letter AR58 insisting that the developers could not increase the price at all. He contended that the booking proforma was binding on both parties, that it did not give the developers a right to increase the price nor forfeit nor refund the deposit if the plaintiff insisted on having the house, which the plaintiff did. On 11th June he posted to the developers the letter AR59 enclosing a cheque for \$1,900 - which added to the \$700 already paid would have come to \$2,600, being 10% of the \$26,000, the original price. Finally the plaintiff asked the developers when he might call at their office to sign the agreement. By letter dated 13th June, AR60, the developers returned the cheque, saying that they did not agree with the plaintiff's contention. By letter dated 21st June, AR61, the plaintiff insisted that the developers were in breach of their agreement. By letter of 24th June, AR62, to the plaintiff, the developers contended that what had been signed was only a booking proforma, not an agreement, and further explained the increase in price as follows :

20

30

"The increase in the price has to be made in view of the amendments to the building plans and to the overall development of our housing scheme. We contend that the increase is very reasonable compared to the current prices of houses in Johore Bahru."

40

By letter of 20th August, AR63, the plaintiff stuck to his gun. He contended that under the Booking proforma the amendments to the plan of the house were for the worse, not better, and that the intending purchaser only agreed to amendments required "by the Authorities", not otherwise.

50

By letter of 23rd August, AR64, the developers gave formal notice that unless the further sum of \$2,810 was paid they would cancel the booking and refund the booking fee.

10 On 2nd September the plaintiff - this time through solicitors - wrote, insisting that the developers honour their bargain, and asking them to send the agreement stating therein the agreed price, for signature by the plaintiff. The developers did not send the agreement: by letter of 6th September they said that they were "not being unreasonable as you will note wide difference in our price compared with the current prices of other houses now being sold by other developers in Johore Bahru."

In the Federal Court of Malaysia

No.21

Grounds of Judgment

31st July 1978

(continued)

On 16th October, 1975, the plaintiff filed suit.

The learned Judge gave judgment for the plaintiff and ordered the developers on payment of the balance of the purchase price to transfer the property to the plaintiff.

20 In our respectful view the learned judge was quite right.

30 The issue was whether the booking proforma was a mere agreement to agree, as the defendants contended, or a firm contract of sale of the property, as the plaintiff contended. In our judgment, the proforma was a firm contract. It identified the parties, it specified the property to be bought and its price. True, the plaintiff was required to sign an agreement of sale to be prepared by the developers' solicitors and subject to the terms and conditions therein; but in fact the developers never showed the plaintiff the draft of any agreement. All the developers did was to announce unilaterally an increase in price for reasons which could not, in our view, affect the price to be paid by the plaintiff. The developers are bound by the Housing Developers (Control and Licensing) Rules, 1970, published as P.U.(A) 268 of 1970, and only details may be inserted into the further agreement. 40 These details were never put to the plaintiff and he never had an opportunity to consider them; it was only after the plaintiff had rejected the draft of the further agreement that the developers might - we say might deliberately - call off the sale.

50 The proforma allowed the price to be varied only in two ways; first, under Condition 2, if the price was changed because of alterations and amendments to the developers' layout and building plans and specifications required "by the Authorities". In the event of major alterations and amendments being made to the layout plan - which had the effect of increasing the price of the house - the plaintiff would have the right to cancel his booking and recover his deposit.

It is to be noted that this condition gave the developers the right to effect alterations and amendments required by the authorities, irrespective of whether the plaintiff agreed or not, and gave the plaintiff the right to withdraw and recover his deposit in the event of major alterations and amendments to the layout plan; but it did not give the developers the right to increase unilaterally the price of the house as a result of these alterations and amendments. 10

Secondly, under Condition 4, the developers had the right to increase the price should the land turn out to be bigger than originally thought.

Apart from the above, we do not think that the developers could in any way change the price stated in the proforma.

For the above reasons we dismissed these appeals. 20

We considered the application of the developers for a stay of execution pending further appeal and the objections on behalf of the plaintiff and decided that in the circumstances no further stay should be granted.

31st July, 1978 (Tun Mohamed Suffian)
LORD PRESIDENT, MALAYSIA.

NOTES

1. Arguments and decision in Johore Bahru on Sunday, 16th July, 1978 30

2. Counsel:

For appellants - Mr.C.Abraham (Mr.S. Patmanathan with him)
Solicitors: A.L.Looi, Johore Bahru.

For respondent - Mr.Arthur Lee
Solicitors: Nik Hussain, Ibrahim & Abdullah, Johore Bahru.

3. Authorities cited:

Yeo 1971 1 MLJ 20 40
Skyline Trading Co. 1969 2 MLJ 212
Low Kar Yit 1963 MLJ 165.

Certified true copy

Sd: Illegible

Setia-usaha kapada Ketua Hakim Negara
Mahkamah Persekutuan, Malaysia
Kuala Lumpur

16 AUG 1978

ORDER GRANTING FINAL LEAVE
TO APPEAL TO HIS MAJESTY
THE YANG DI-PERTUAN AGONG
AND CONSOLIDATING THE APPEALS
4th February 1979

In the
Federal Court
of Malaysia

No.22

Order granting
final leave to
appeal to His
Majesty the
Yang di-
Pertuan Agong
and consoli-
dating the
Appeals
4th February
1979

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT
JOHORE BAHRU

(APPELLATE JURISDICTION)

10 FEDERAL COURT CIVIL APPEAL NO. 169 OF 1977

Between

Daiman Development Sdn. Bhd. Appellants

And

Mathew Lui Chin Teck Respondent

(In the Matter of Civil Suit No.416
of 1975 in the High Court in Malaya
at Johore Bahru

Between

Mathew Lui Chin Teck Plaintiff

20 And

Daiman Development Sdn.
Bhd. Defendants)

FEDERAL COURT CIVIL APPEAL NO. 170 OF 1977

Between

Daiman Development Sdn.Bhd. Appellants

And

Low Sew Wee Respondent

30 (In the Matter of Civil Suit No.391
of 1975 in the High Court in Malaya
at Johore Bahru

Between

Loh Sew Wee Plaintiff

And

Daiman Development
Sdn. Bhd. Defendants)

In the
Federal Court
of Malaysia

No.22

Order granting
final leave to
appeal to His
Majesty the
Yang di-
Pertuan Agong
and consoli-
dating the
Appeals

4th February
1979

(continued)

CORAM: RAJA AZLAN SHAH, ACTING CHIEF JUSTICE,
HIGH COURT, MALAYA;
WAN SULEIMAN, JUDGE, FEDERAL COURT,
MALAYSIA;
SALLEH ABAS, JUDGE, FEDERAL COURT,
MALAYSIA:

IN OPEN COURT

THIS 4TH DAY OF FEBRUARY, 1979

O R D E R

UPON MOTION preferred unto Court this 10
day by Mr. A.L.Looi, Counsel for the Appellants
abovenamed in the presence of Mr. Arthur Lee
Meng Kwang, Counsel for the Respondents above-
named AND UPON READING the Notices of Motion
dated the 15th day of January, 1979 and the
Affidavits of Looi Ah Lek sworn on the 1st
day of January, 1979 filed herein in support
of the Motions AND UPON HEARING Counsel as
aforesaid IT IS ORDERED that the above two 20
Appeals be consolidated and final leave be
and is hereby granted to the Appellants herein
by a single Order to appeal to His Majesty the
Yang di-Pertuan Agong from the Orders of the
Federal Court of Malaysia dated 16th day of
July, 1978 AND IT IS LASTLY ORDERED that the
costs of and incidental to the applications be
costs in the cause.

GIVEN under my hand and the seal of the
Court this 4th day of February, 1979.

Sd: (Illegible) 30
CHIEF REGISTRAR,
FEDERAL COURT, MALAYSIA.

EXHIBITS

Daiman Development Sdn. Bhd. &
Mathew Lui Chin Teck

AGREED BUNDLE OF DOCUMENTS

AB 1 & 2

PAYMENT CARD

DAIMAN DEVELOPMENT SDN. BHD.

NAME: Mr. Mathew Lui Chin Teck

TAMAN Daiman

10 LOT NO. 949

Single-storey Semi-detached

Room 506, 5th Floor,
O.C.B.C. Building,
Johore Bahru.

Tel: 4378 & 4930

Please:

- (1) Make your monthly payment to us within the 1st week of every month.
- (2) If payment is made by post, you may either enclose the card with your payment to us or make your own entry.
- (3) Bank Commission should be added if payment is made by outstation cheques.

20

Cost: \$26,000.00 Date of Purchase: 1 OCT 1972

Deposit: \$700.00 Monthly Instalment \$.....

<u>No.</u>	<u>\$</u>	<u>¢</u>	<u>Rept.No.</u>	<u>Date</u>
1	100	00	0767	1/10

EXHIBITS

Daiman Development Sdn. Bhd. & Mathew Lui Chin Teck

Agreed Bundle of documents

AB1 & 2

Payment Card

1st October 1972

EXHIBITS

Daiman Development Sdn.Bhd. & Mathew Lui Chin Teck

Agreed Bundle of documents

AB 3

Booking Proforma

1st October 1972

EXHIBITS

Daiman Development Sdn.Bhd. & Mathew Lui Chin Teck

AGREED BUNDLE OF DOCUMENTS

AB 3

BOOKING PROFORMA

DARIMAN DEVELOPMENT SDN.BERHAD

BOOKING PROFORMA

NAME OF INTENDING PURCHASER: Mr. Mathew Lui Chin Teck (NRIC 0690161) 10

ADDRESS: Post Office, Kota Tinggi, Johore.

LOT No. BOOKED (as per Company's layout): 949

APPROXIMATE BASIC AREA: 2,800 sq.ft.

TYPE OF HOUSE: Single-storey Semi-detached

PURCHASE PRICE DOLLARS: Twenty six thousand only (\$26,000.00) only

I, the above-named Mathew Lui Chin Teck hereby agree to purchase the above Lot together with the house as specified at the above stated price for which a Booking Fee of \$700.00 is now paid to the Company subject to the following terms and conditions: 20

1. That within two (2) weeks from the date of receipt of a notice by the Company, sent to my above address, I shall pay to the Company or its Solicitors, M/s A.L.Looi of Rooms 401 & 402, 4th Floor, O.C.B.C. Building, Johore Bahru, Johore the sum of \$2,600 and sign the Agreement For Sale with the Company which shall be prepared by the Solicitors and subject to the terms and conditions therein. 30

2. That I have inspected the Company's layout and building plans and specifications and agree to accept whatever alterations and amendments as may be required by the Authorities. In the event of major alterations and amendments to the layout plan I reserve the right to cancel my booking and the booking fee hereby paid shall be refunded to me by the Company free of interest. 40

3. That in the event of failure on my part to comply with Clause 1 above after due notice has been given by the Company or its Solicitors, the Booking will be

treated as cancelled and the Booking Fee of \$ 700.00 shall be forfeited to the Company and I shall have no further claims against the Company.

EXHIBITS

Daiman Development Sdn.Bhd. & Mathew Lui Chin Teck

- 4. That the area of the Lot above stated is only approximate and in the event that the area thereof differs upon the issue of the Qualified Title in respect of the said Lot, I shall abide to the same and agree to pay \$2.00 per sq.ft. for any excess above the basic and in the event of shortage in the basic area above stated the Company shall refund to me the difference calculated at the rate of \$2.00 per sq.ft.

Agreed Bundle of documents

AB 3

Booking Proforma

1st October 1972

(continued)

10

Dated this 1st day of October, 1972

Sd: (Illegible)
WITNESS

Sd: (Illegible)
SIGNATURE OF INTENDING
PURCHASER

20

FOR OFFICIAL USE ONLY

DEPOSIT PAID \$700.00

CASH
CHEQUE
CHEQUE NO. 042725
BANK Malayan Banking
Limited

RECEIPT NO. 0767

1 OCT 1972

EXHIBITS

Daiman Development Sdn.Bhd. & Mathew Lui Chin Teck

Agreed Bundle of Documents

AB 4

Official Receipt No.0767
1st October 1972

EXHIBITS

Daiman Development Sdn.Bhd. & Mathew Lui Chin Teck

AGREED BUNDLE OF DOCUMENTS

AB 4

OFFICIAL RECEIPT No.0767

DAIMAN DEVELOPMENT SDN. BHD.
Room 506, 5th Floor,
O.C.B.C Building, J.B. Malaysia

No. 0767

10

N.B. - The Company will not be bound by any receipt except upon this official form signed by an authorised officer of the Company.

Date: 1st October 1972

RECEIVED from Mr. Mathew Lui Chin Teck the sum of Dollars Seven hundred only being the Booking Fee for Lot No.949 - Single storey semi-detached.

\$700/-
MBL 042725

Sd: (Illegible)
Signature of Authorised
Officer.

20

EXHIBITS

Daiman Development Sdn.Bhd. &
Mathew Lui Chin Teck

AGREED BUNDLE OF DOCUMENTS

AB 5

LETTER, APPELLANTS TO RESPONDENT
30th May 1975

EXHIBITS

Daiman Development
Sdn.Bhd. &
Mathew Lui Chin
Teck

Agreed Bundle
of documents

AB 5

Letter Appellants
to Respondent
30th May 1975

10

DAIMAN DEVELOPMENT SDN.BHD.
Room 506, 5th Floor, O.C.B.C.Building,
Johore Bahru. Tel No. 4930/4378

Registered

Date: 30 MAY 1975

ATP/L/949/72

Mr.Mathew Lui Chin Teck,
Post Office,
Kita Tinggi,
Johore

Dear Sir/Madam:

20

Re: Booking for purchase of Private
Lot No.949 Taman Sri Tebrau,
Johore Bahru

With reference to your above booking we are pleased to inform you that the conversion and subdivision together with the amended building plans have been duly approved and we will be commencing construction soon.

30

In view of the amendments and additions to the building plans and the increase of material and construction costs, the adjusted price for the above lot together with a single semi-detached house is \$35,100.00.

As you have already paid to us a booking fee of \$700.00 we shall be much obliged if you will kindly call at our office within fourteen (14) days from date hereof to pay us the further sum of \$2,810.00 totalling 10% of the purchase price and to sign the Agreement of Sale.

40

Please note that should you fail to call on us to pay the said sum of \$2,810.00 and sign the Agreement within the fourteen (14) days hereby given we shall deem that the booking has been cancelled by you and we shall be at liberty to sell the said lot to another interested purchaser without being liable to you or alternatively should you desire to exercise your right under Clause 2 of the Booking Proforma

EXHIBITS

Daiman Development Sdn.Bhd. & Mathew Lui Chin Teck

Agreed Bundle of Documents

AB 5

Letter Appellants to Respondent

30th May 1975

(continued)

dated the 1st day of October 1972 in view of paragraph 2 above, the booking fee of \$700.00 will be refunded to you.

Thank you,

Yours faithfully,
DAIMAN DEVELOPMENT SDN.BHD.

Sd:

T.P.Ang
(MANAGER)

EXHIBITS

Agreed Bundle of documents

AB 6

Letter Respondent to Appellants

4th June 1975

EXHIBITS

Daiman Development Sdn.Bhd. & Mathew Lui Chin Teck

AGREED BUNDLE OF DOCUMENTS

AB 6

LETTER, RESPONDENT TO APPELLANTS
4th June 1975

10

Mathew Lui Chin Teck,
Pejabat Pos,
Kota Tinggi. Tel.KT202

Registered A.R. 4th June 1975

20

The Manager,
Daiman Development Sdn.Bhd.,
Room 506, 5th Floor,
O.C.B.C. Building,
Johore Bahru.

Dear Sir,

Yr.Ref. ATP/L/949/72

Re: Booking for purchase of private house Lot No.949 approximate area 4495 sq.ft. (Basic area 2800 sq.ft. at Tama Sri Tebrau, J.Bahru)

30

I acknowledge receipt of your letter dated 30th May 1975, regarding the above-mentioned subject and regret to inform you that I cannot accept the increase in price for the above lot together with a Single-story semi-detached house from \$26,000.00 to \$35,100.00 as reason follows :-

I contend that the proforma signed by both parties, that is the buyer as well as the Developer, on 1st Oct.1972, is a legal

40

document - Bill of Sale - and it is binding to both parties. Please also note, that there is no clause in the proforma that permits the Developer nor the Developer reserve the right to increase the price of the house. Furthermore, nor, has the Developer the right to forfeit or refund the Booking deposit to the prospective buyer if the buyer is still the interested party to purchase the house at the original price as agreed upon. I will not stress, further, regarding the legality of the signed proforma and in any breach of agreement will have to be settled by the Legal Authority.

10

I, therefore, give notice that I am still the interested party and that I agree to purchase the above-mentioned house as specified in the proforma and according to the original sale price \$26,000.00 (DLS. TWENTY-SIX THOUSAND ONLY) which was signed by both parties on 1st Oct. 1972.

20

Please note, that unless and until this issue is settled, I am not prepared to sign any further agreement with your Company.

Thank you,

Yours faithfully,

(Mathew Lui Chin Teck)

EXHIBITS

Daiman Development Sdn.Bhd. & Mathew Lui Chin Teck

Agreed Bundle of Documents

AB 6

Letter Respondent to Appellants

4th June 1975

(continued)

EXHIBITS

Daiman Develop-
ment Sdn.Bhd. &
Mathew Lui Chin
Teck

Agreed Bundle
of Documents

AB 7

Letter, Respon-
dent to
Appellants

11th June 1975

EXHIBITS

Daiman Developments Sdn.Bhd. &
Mathew Lui Chin Teck

AGREED BUNDLE OF DOCUMENTS

AB 7

LETTER, RESPONDENT TO APPELLANTS
11th June 1975

Ref: 7/M/L/75

Mathew Lui Chin Teck,
Pejabat Pos,
Kota Tinggi, Johore

10

Registered R.A.

11th June 1975

The Manager,
M/S Daiman Development Sdn.Bhd.,
Johore Bahru

Dear Sir,

Yr. Ref. ATP/L/949/72

Re: Booking for purchase of
private House Lot No.949
approximate 4495 sq.ft.
(Basic area 2800 sq.ft.)
at Tama Sri Tebrau, J.B.

20

Further to my letter dated 4th June 1975
in reply to your notice dated 30th May 1975
in connection with the above mentioned
subject, I attach herewith a cheque
MBB No.146219 for the amount of \$1,900/-.
The payment is in accordance to the signed
proforma dated 1st Oct. 1972. That is,
10% of the purchase price of \$26,000/-.
Since I have paid the booking fee of \$700/-
on 1.10.1972 under cheque MBB KTG.No.042725
and your receipt No.0767. The balance is
therefore \$1,900/-.

30

Please kindly acknowledge and let me
know when I shall be required to call at
your office to sign the Agreement of Sale.

Thank you,

Yours faithfully,

(Mathew Lui Chin Teck)

EXHIBITS

Daiman Development Sdn.Bhd. &
Mathew Lui Chin Teck

AGREED BUNDLE OF DOCUMENTS

AB 8

LETTER, APPELLANTS TO RESPONDENT
13th June 1975

EXHIBITS

Daiman Develop-
ment Sdn.Bhd. &
Mathew Lui Chin
Teck

Agreed Bundle
of Documents

AB 8

Letter Appellants
to Respondent

13th June 1975

10 DAIMAN DEVELOPMENT SDN. BHD.
Room 506, 5th Floor, O.C.B.C. Building,
J.B. MALAYSIA Tel: 4930 & 4378

REGISTERED

Our reference: ATP/RW/949/72

13th June 1975

Mr. Mathew Lui Chin Teck,
Post Office,
Kota Tinggi,
JOHORE.

Dear Sir,

20 Re: Private Lot No. 949
in Taman Sri Tebrau

We refer to your letter dated the 4th
June and 11th June 1975 respectively.

We do not agree to your contentions
therein and as you do not agree to the
adjustment in our price, we regret that we
cannot accept your payment.

Your cheque No. 146219 for the sum of
\$1,900.00 is returned herewith.

Yours faithfully,

30 DAIMAN DEVELOPMENT SDN.BHD.

Sd:
T.P. ANG
MANAGER

EXHIBITS

Daiman Development Sdn. Bhd. & Mathew Lui Chin Teck

Agreed Bundle of Documents

AB 9

Letter Respondent to Appellants
21st June 1975

EXHIBITS

Daiman Development Sdn.Bhd. & Mathew Lui Chin Teck

AGREED BUNDLE OF DOCUMENTS

AB 9

LETTER, RESPONDENT TO APPELLANTS
21st June 1975

Ref: 9/ML/RIG.75

Mathew Lui Chin Teck,
Pejabat Pos,
Kota Tinggi, Johore
21st June 1975

10

The Manager,
Daiman Development Sdn. Bhd.
Johore Bahru

Dear Sir,

Yr.Ref: ATP/RW/949/72

Re: Purchase of Private house Lot No. 949 approximate area 4495 sq.ft. (Basic area 2800 sq.ft.) at Taman Sri Tebrau Johore Bahru

20

I am in receipt of your letter dated 13th June 75, together with the returned cheque No. 146219 for the sum of \$1,900/- (Dls.One thousand nine hundred only) which is for the 10% payment for the above-mentioned house.

I noted, with regret, that your company refused to accept my payment as required by the agreement therein. However, I presume your company is aware that failure to abide and comply to the condition as specified in the signed proforma by any one party is considered breach of agreement. Into this effect, may I refer to my both the previous letter dated 4th June and 11th June 1975, which is in reply to your notice dated 30th May 1975, and it is evident, that your Company has not fulfil the condition and agreement as signed by both parties on 1st October 1972.

30

I, therefore give notice that within fourteen (14) days, as from the date on receipt of this letter, your Company should agree to accept the condition and the price of the house as stated in the signed proforma. Otherwise, I will have no other choice but to refer this matter to my legal adviser to initiate legal proceeding against your Company for breach of agreement.

40

Yours faithfully,
(Mathew Lui Chin Teck)

EXHIBITS

Daiman Development Sdn. Bhd. &
Mathew Lui Chin Teck

AGREED BUNDLE OF DOCUMENTS

AB 10

LETTER, APPELLANTS TO RESPONDENT

24th June 1975

DAIMAN DEVELOPMENT SDN. BHD.
Room 506, 5th Floor, O.C.B.C. Building,
J.B. Malaysia Tel. 4930 & 4378

10

Your reference. 9/ML/KTG.75
Our reference: ATP/L/949/72

24th June, 1975

Mr. Mathew Lui Chin Teck,
c/o Post Office,
Kota Tinggi,
Johore.

Dear Sir,

20

Re: Booking for purchase of Private
Lot 949 in Taman Sri Tebrau,
Johore Bahru

We refer to your letter dated 21st June,
1975.

You have not signed the Agreement yet. What
you have signed is our Booking Proforma. We are
at all time prepared to sell you the above Lot
provided that you accept our adjusted price in
respect of the said lot.

30

The increase in the price has to be made
in view of the amendments to the building plans
and to the over-all development of our housing
scheme. We contend that the increase is very
reasonable compared to the current prices of
houses in Johore Bahru.

40

Should you feel that the increase is
unjustified and that you cannot accept the same,
you may either withdraw your booking or transfer
the same to someone else. And should you insist
to have the said lot you would rather think it
over to accept our increase in the price or seek
redress in legal proceedings which has to be
decided by the Court. Whether which party will
deserve judgment in favour is still uncertain
but the time and the costs to be incurred for
these proceedings would be substantial. We do
encourage you to take the latter step but if
it is the only course that is available we will
accept it in good faith.

Perhaps you would now think it over and

EXHIBITS

Daiman Devel-
opment Sdn.
Bhd. &
Mathew Lui
Chin Teck

Agreed Bundle
of documents

AB 10

Letter,
Appellants to
Respondent

24th June
1975

EXHIBITS

Daiman Develop-
ment Sdn. Bhd. &
Mathew Lui Chin
Teck

Agreed Bundle
of documents

AB 10

Letter,
Appellants to
Respondent

24th June 1975

(continued)

accept our increase in the price.

Yours faithfully,
DAIMAN DEVELOPMENT SDN. BHD.

Sd:
T.P.ANG Manager

EXHIBITS

Agreed Bundle
of Documents

AB 11

Letter
Respondent to
Appellants

20th August
1975

EXHIBITS

Daiman Development Sdn.Bhd. &
Mathew Lui Chin Teck

AGREED BUNDLE OF DOCUMENTS

AB 11

LETTER, RESPONDENT TO APPELLANTS
20th August 1975

10

Ref: Mathew Lui Chin Teck,
Pejabat Pos,
Kota Tinggi, Johore
20th Aug. 1975

The Manager,
M/S Daiman Development Sdn.Bhd.,
JOHORE BAHRU

Dear Sir,

Yr.Ref: ATP/L/949/72

Re: Booking for purchase of Private
House Lot 949 in Taman Sri
Tebrau Johore Bahru

20

I thank you for your letter dated 24th
June 1975 regarding the above mentioned
subject and to inform you that after long and
careful consideration I have come to a
decision that I cannot accept the price
increase for the house which I have booked.
As such, if I am left with no choice I will
have to refer this matter to my lawyer for
further action.

30

I quite understand the right of our
signed Booking Proforma and perhaps the
enactment in the Developer's Act will clarify
the ruling.

I also agree with your company and have noted that there is amendments to the building plan in your housing scheme in connection with the semi-detached house. But the question is: whether the amendments of the housing plan was for the more superior or for the more inferior structure. To the observion of the laymen, the amendments of the present semi-detached house has become more inferior. I have seen the original plan before I made the booking and perhaps your company would agree that the dining hall was surposed to be split-level, whereas, it has now been discarded. Please also note, in our signed Booking Proforma the intending purchaser only agree to accept whatever alterations and amendments as may be required by the Authorities. Therefore any amendments made other than as required by the Authorities can be considered breach of contract of agreement. However, I am prepared to overlook all this matter provided your company will and agree to abide to the original price of the house as agreed upon in our signed Booking Proforma.

10

20

30

Finally, I wish to inform you that it is not by intention to embarrass your company by seeking judgment in court and as an act of good will and faith I hope we should settle this matter privately.

Yours faithfully,

(Mathew Lui Chin Teck)

EXHIBITS

Daiman Development Sdn.Bhd. & Mathew Lui Chin Teck

Agreed Bundle of documents

AB 11

Letter Respondent to Appellants

20th August 1975

(continued)

EXHIBITS

Daiman Development Sdn.Bhd. & Mathew Lui Chin Teck

Agreed Bundle of documents

AB 12

Letter, Appellants to Respondent

23rd August 1975

EXHIBITS

Daiman Development Sdn.Bhd. & Mathew Lui Chin Teck

AGREED BUNDLE OF DOCUMENTS

AB 12

LETTER, APPELLANTS TO RESPONDENT
23rd August 1975

DAIMAN DEVELOPMENT SDN.BHD.
Room 506, 5th Floor,
O.C.B.C. Building, J.B.
Malaysia Tel.4930 & 4378

10

Our reference: ATP/RW/949/72

REGISTERED

23rd August 1975

Mr. Mathew Lui Chin Teck,
c/o Post Office,
Kota Tinggi,
JOHORE.

Dear Sir,

Re: Booking for purchase of Private Lot No.949 in Taman Sri Tebrau 20

Thank you for your letter dated 20th of August 1975.

We regret that we cannot accept your contentions therein.

In the circumstances, we hereby give you Notice that unless the said sum of \$2,810.00 being the balance of the first 10% payment is paid to us within seven (7) days from date hereof, we shall be at liberty to cancel your booking and refund you the \$700.00 booking fee. 30

Yours faithfully,
DAIMAN DEVELOPMENT SDN.BHD.

Sd:
T.P.ANG
MANAGER

EXHIBITS

Daiman Development Sdn.Bhd. &
Mathew Lui Chin Teck

AGREED BUNDLE OF DOCUMENTS
AB 13

LETTER, RESPONDENT'S SOLICITORS
TO APPELLANTS - 2nd September 1975

AL/0047/75/g

2.9.1975

10 Messrs. Daiman Development
Sdn. Bhd.
5th Floor, OCBC Building,
Johore Bahru.

Dear Sirs,

Re: Purchase of Private Lot No.949
Taman Sri Tebrau

We have been instructed by Mr. Mathew Lui
Chin Teck of c/o Post Office, Kota Tinggi,
Johore to act on his behalf in respect of
the above-said matter.

20 It would appear from the various correspon-
dence between our client and your goodselves
that you do not intend to fulfil the agreement
entered into between you and our client on
the 1st October 1972 despite our client's
willingness to fulfil his part.

30 We have our Client's instructions to reiterate
that he wish to request you to forward to us
your standard agreement of sale for his
necessary signature stating the price, as
agreed at \$26,000/-.

Kindly let us hear from you in due course.

Yours faithfully,

Sd:

c.c. Mr. Mathew Lui Chin Teck
lt.

EXHIBITS

Daiman Develop-
ment Sdn.Bhd.&
Mathew Lui
Chin Teck

Agreed Bundle
of documents

AB 13

Letter,
Respondent's
Solicitors to
Appellants

2nd September
1975

EXHIBITS

Daiman Development Sdn.Bhd. & Mathew Lui Chin Teck

Agreed Bundle of documents

AB 14

Letter, Appellants to Respondent's Solicitors

6th September 1975

EXHIBITS

Daiman Development Sdn.Bhd. & Mathew Lui Chin Teck

AGREED BUNDLE OF DOCUMENTS

AB 14

LETTER, APPELLANTS TO RESPONDENT'S SOLICITORS - 6th September 1975

DAIMAN DEVELOPMENT SDN.BHD.
Room 506, 5th Floor,
OCBC Building, J.B.Malaysia
Tel. 4930 & 4378

10

Your reference: AL/0047/75/g
Our reference: ATP/L/949/72

6th September, 1975

M/s Arthur Lee & Co.
3rd Floor, MCA Building,
Jalan Segget,
Johore Bahru.

Dear Sirs,

Re: Booking for purchase of Private Lot No.949 in Taman Sri Tebrau 20

Thank you for your letter dated the 2nd September 1975.

We are prepared at any time to sell the above property to your client provided that your client agrees to our now adjusted price and forward us the sum of \$2,810.00 being the balance of the first 10% payment of the purchase price. 30

Please understand that we are not being unreasonable as you will note the wide difference in our price compared with the current prices of other houses now being sold by other Developers in Johore Bahru. There are some unreasonable and unscrupulous purchasers, who, because of being unable to pay even the 1st 10% payment for financial reasons and praying for time and knowing that it would be a tremendous loss to them if they were to give up the booking would find excuses in any way to cover up their inability to proceed with the purchase and tend to take advantages on the Developers in whatever way available. 40

Take Notice therefore that unless your client pays us the 1st payment of \$2,810.00

as required within seven (7) days from date hereof and sign the Agreement of Sale we shall charge him interest thereon together with interest on all further payments if not paid at the rate of 10% per annum to be calculated from day to day until date of payment as provided under the rules of the Developer's Act, 1970.

10

Thank you,

Yours faithfully,

DAIMAN DEVELOPMENT SDN.BHD.

Sd:

T.P. ANG
MANAGER

c.c.

20

M/s A.L.Looi
401 & 402 Bangunan OCBC,
Jalan Ibrahim,
Johore Bahru.

EXHIBITS

Daiman Deve-
lopment
Sdn. Bhd. &
Mathew Lui
Chin Teck

Agreed Bundle
of documents

AB 14

Letter,
Appellants
to Respon-
dent's
Solicitors

6th September
1975

(continued)

EXHIBITS

Daiman Development Sdn.Bhd. & Loh Sew Wee

Agreed Bundle of Documents

AB 1 & 2

Payment Card

12th December 1972

EXHIBITS

Daiman Development Sdn. Bhd. & Loh Sew Wee

AGREED BUNDLE OF DOCUMENTS

AB 1 & 2

PAYMENT CARD

DADIMAN DEVELOPMENT SDN. BHD.

NAME: Mdm. Loh Sew Wee

TAMAN Daiman

LOT NO. 1314 10
DOUBLE STOREY TERRACE TYPE 'A'

Room 506, 5th Floor,
O.C.B.C. Building,
Johore Bahru. Tel. 4378 & 4930

Please:

- (1) Make your monthly payment to us within the 1st week of every month
- (2) If payment is made by post, you may either enclose the card with your payment to us or make your own entry. 20
- (3) Bank Commission should be added if payment is made by outstation cheques.

Cost \$26,000.00 Date of Purchase 12 DEC 1972
Deposit: \$700.00 Monthly Instalment \$

No.	\$	¢	Rept. No.	Date
1	700.00		1212	12/12

EXHIBITS

Daiman Development Sdn.Bhd. &
Loh Sew Wee

AGREED BUNDLE OF DOCUMENTS

AB 3

BOOKING PROFORMA - 12th
December 1972

EXHIBITS

Daiman Develop-
ment Sdn.Bhd. &
Loh Sew Wee

Agreed Bundle
of documents

AB 3

Booking Proforma

12th December
1972

10

NAME OF INTENDING PURCHASER: Mdm. Loh Sew
Wee
(NRIC 3732300)

ADDRESS: 29, Jalan Musang Pulut, Century
Garden, Johore Bahru, Johore

LOT NO. BOOKED (as per Company's layout) 1314

APPROXIMATE BASIC AREA: 1,700 SQ.FT.

TYPE OF HOUSE: Double Storey Terrace A

PURCHASE PRICE DOLLARS: Twenty six thousand
(\$26,000.00) only

20

I, the above named Loh Sew Wee hereby
agree to purchase the above Lot together
with the house as specified at the above
stated price for which a Booking Fee of
\$700.00 is now paid to the Company subject
to the following terms and conditions :-

30

1. That within two (2) weeks from the
date of receipt of a notice by the
Company, sent to my above address, I
shall pay to the Company or its
Solicitors, M/s A.L.Looi of Rooms 401
& 402, 4th Floor, O.C.B.C. Building,
Johore Bahru, Johore the sum of \$2,600.00
and sign the Agreement For Sale with
the Company which shall be prepared by
the Solicitors and subject to the
terms and conditions therein.

40

2. That I have inspected the Company's
layout and building plans and specifi-
cations and agree to accept whatever
alterations and amendments as may be
required by the Authorities. In the
event of major alterations and amend-
ments to the layout plan I reserve the
right to cancel my booking and the
booking fee hereby paid shall be
refunded to me by the Company free of
interest.

50

3. That in the event of failure on my part
to comply with Clause 1 above after
due notice has been given by the
Company or its Solicitors, the Booking
will be treated as cancelled and the
Booking Fee of \$700.00 shall be
forfeited to the Company and I shall have

EXHIBITS

Daiman Develop-
ment Sdn.Bhd. &
Loh Sew Wee

Agreed Bundle
of documents

Booking Proforma

12th December
1972

(continued)

no further claims against the
Company.

- 4. That the area of the Lot above stated is only approximate and in the event that the area thereof differs upon the issue of the Qualified Title in respect of the said Lot, I shall abide to the same and agree to pay \$2.00 per sq.ft. for any excess above the basic and in the event of shortage in the basic area above stated the Company shall refund to me the difference calculated at the rate of \$2.00 per sq.ft.

10

Dated this 12th day of December 1972

Sd:
WITNESS

Sd: J.S.W.Loh
SIGNATURE OF INTENDING
PURCHASER

FOR OFFICIAL USE ONLY

DEPOSIT PAID: \$700.00

CASH
CHEQUE
CHEQUE NO.
BANK

20

RECEIPT NO. 1212

EXHIBITS

Daiman Development Sdn.Bhd. &
Loh Sew Wee

AGREED BUNDLE OF DOCUMENTS

AB 4

OFFICIAL RECEIPT NO.1212

12th December 1972

10 DAIMAN DEVELOPMENT SDN.BHD.
Room 506, 5th Floor, O.C.B.C.
Building, J.B. Malaysia
Tel. 4930 & 4378

No. 1212

N.B. The Company will not be bound by
any receipt except upon this official
form signed by an authorised officer
of the Company

Date: 12th December 1972

20 RECEIVED from Mdm. Loh Sew Wee the sum of
Dollars Seven hundred only being Booking
fee for Lot No.1314 - Two storey Terrace
Type 'A'

\$700/-

Sd:
Signature of Authorised
Officer

EXHIBITS

Daiman Develop-
ment Sdn.Bhd. &
Loh Sew Wee

Agreed Bundle
of documents

AB 4

Official Receipt
No.1212

12th December
1972

EXHIBITS

Daiman Development Sdn.Bhd. & Loh Sew Wee

Agreed Bundle of documents

AB 5

Letter, Appellants to Respondent

25th June 1975

EXHIBITS

Daiman Development Sdn.Bhd. & Loh Sew Wee

AGREED BUNDLE OF DOCUMENTS

AB 5

LETTER, APPELLANTS TO RESPONDENT

25th June 1975

DAIMAN DEVELOPMENT SDN.BHD.
ROOM 506, 5TH FLOOR, O.C.B.C.BUILDING
JOHORE BAHRU. TEL.NO: 4930/4378

10

ATP/RW/1314/72 REGISTERED

25 June 1975

Madam Loh Sew Wee,
29, Jalan Musang Pulut,
Century Garden,
JOHORE BAHRU.

Dear Madam,

Re: Booking for purchase of
Private Lot No. 1314
Taman Sri Tebrau, Johore
Bahru

20

With reference to your above booking we are pleased to inform you that the conversion and subdivision together with the amended building plans have been duly approved and we will be commencing construction soon.

In view of the amendments and additions to the building plans and the increase of material and construction costs, the adjusted price for the above lot together with double storey terrace type A house is \$35,100.00.

30

As you have already paid to us a booking fee of \$700.00 we shall be much obliged if you will kindly call at our office within fourteen (14) days from date hereof to pay us the further sum of \$2,810.00 totalling 10% of the purchase price and to sign the Agreement of Sale.

40

Please note that should you fail to call on us to pay the said sum of \$2,810.00 and sign the Agreement within the fourteen (14) days hereby given we shall deem that the booking has been cancelled by you and we shall be at liberty to sell the said lot to another interested purchaser without being liable to you or alternatively should you desire to exercise your right under

Clause 2 of the Booking Proforma dated the 12th day of December 1972 in view of paragraph 2 above, the booking fee of \$700.00 will be refunded to you.

Thank you,

Yours faithfully,

DAIMAN DEVELOPMENT SDN.BHD.

Sd:

T.P. ANG
MANAGER

10

EXHIBITS

Daiman Development Sdn. Bhd. & Loh Sew Wee

Agreed Bundle of Documents

AB 5

Letter, Appellants to Respondent

25th June 1975

(continued)

EXHIBITS

AGREED BUNDLE OF DOCUMENTS

AB 6

LETTER, RESPONDENT'S SOLICITORS TO APPELLANTS - 8th July 1975

EXHIBITS

Agreed Bundle of documents

AB6

Letter, Respondent's Solicitors to Appellants

8th July 1975

ATP/RW/1314/72

AL/0002/75

8.7.1975

Messrs. Daiman Development Sdn.Bhd.
Room 506, 5th Floor,
O.C.B.C. Building,
Johore Bahru.

20

Dear Sirs,

Re: Booking for purchase of
Private Lot No.1314 Taman
Sri Tebrau, Johore Bahru

We have been handed your letter dated 25th June 1975 addressed to our client Madam Loh Sew Wee of 29 Jalan Musang Pulut, Century Garden, Johore Bahru with instructions to reply thereto.

30

Our client says that she is not prepared to accept your unilateral increment to the price of the proposed house from \$26,000/- to \$35,100/-. You are aware that the price which was agreed upon between your Company and our client was \$26,000/- only and nothing more.

As per the booking proforma, our client is prepared to pay the sum of \$2,600/-.

40

Further, our client says that she never at any time agreed and does not agree to the increment in the price of the proposed house.

EXHIBITS

Daiman Development Sdn.Bhd. & Loh Sew Wee

Agreed Bundle of documents

AB 6

Letter, Respondent's Solicitors to Appellants

8th July 1975

(continued)

We have our client's instructions to inform your goodselves that she is willing to sign your standard agreement of sale at the agreed price of \$26,000/-.

Please forward to us your standard agreement of sale for our client's signature upon which event our client will pay you the further sum of \$1,900/- to make up the sum of \$2,600/- as per the terms of the booking proforma.

10

Yours faithfully,

Sd:

EXHIBITS

Agreed Bundle of documents

AB 7

Letter, Respondent's Solicitors to Appellants

26th July 1975

EXHIBITS

Daiman Development Sdn.Bhd.& Loh Sew Wee

AGREED BUNDLE OF DOCUMENTS

AB 7

LETTER, RESPONDENT'S SOLICITORS TO APPELLANTS - 26th July 1975

ATP/RW/1314/72 AL/0002/75 26.7.75 20

M/s Daiman Development Sdn.Bhd.
Room 506, 5th Floor,
O.C.B.C. Building,
Johore Bahru.

Dear Sirs,

Re: Booking for purchase of
Private Lot No.1314
Taman Sri Tebrau,
Johore Bahru

Please be referred to our letter dated the 8th July 1975. 30

May we know whether we could forward our client's cheque for \$1,900/- to make up the sum of \$2,600/- as per the terms of the booking proforma?

Our client is anxious to proceed with the purchase and would appreciate your early response to forward us your standard agreement of sale for her signature. 40

Yours faithfully,
Sd:

c.c. Mdm. Low Sew Wee

EXHIBITS

Daiman Development Sdn.Bhd. &
Loh Sew Wee

AGREED BUNDLE OF DOCUMENTS

AB 8 & 9

LETTER, APPELLANTS' SOLICITORS
TO RESPONDENT'S SOLICITORS
28th July 1975

EXHIBITS

Daiman Develop-
ment Sdn.Bhd. &
Loh Sew Wee

Agreed Bundle
of documents

AB 8 & 9

Letter,
Appellants'
Solicitors to
Respondent's
Solicitors

28th July 1975

10 A.L.LOOI 401 & 402 Bangunan
Advocates & Solicitors OCBC,
Jalan Ibrahim,
A.L.LOOI Johore Bahru.
S.PATMANATHAN Talipon: 2727
TAY CHEOW KEE

Surat Tuan: AL/0002/75
Surat Kami: LAL/lgc/D321/1094/75

28th July, 1975

20 M/s. Arthur Lee & Co.,
Advocates & Solicitors,
3rd Floor, MCA Building,
Jalan Segget,
Johore Bahru.

Dear Sirs,

Re: Booking for purchase of Private
Lot 1314 in Taman Sri Tebrau,
Johore Bahru

30 I act on behalf of M/s. Daiman Development
Sdn.Bhd., who have handed over to me your
letter dated 8th July, 1975 to reply the
same and to peruse the matter further.

40 My clients instruct me that you are the
solicitors for Madam Loh Sew Wee, who is
the purchaser of Private Lot No.1314, in
Taman Sri Tebrau, Johore Bahru, for the
price of \$35,100.00. My instructions are
to forward to you four copies of the Agree-
ment of Sale for execution by your client and
demand for payment of the sum of \$2,600.00
which is the balance of the 10% payable
upon execution of this Agreement.

Please be informed that my clients have
instructed me that they are now prepared
to amend any terms herein or to go into
further negotiations on any terms be it
price or otherwise. My clients further
instruct me that any counter offer by your
client would be treated as rejection of
this contract of sale.

I am further instructed that the site plan

EXHIBITS

Daiman Development Sdn.Bhd. & Loh Sew Wee

Agreed Bundle of documents

AB 8 & 9

Letter,
Appellants'
Solicitors to
Respondent's
Solicitors

28th July 1975

(continued)

and building plan together with the specifications are available at the office of the Architects, M/s. Yew Boo Jamp at No.61-B, Jalan Meldrum, Johore Bahru, for inspection by your client or yourselves on any working day during office hours.

Kindly request your client to execute the Agreements herein and return the same with due payment within fourteen (14) 10 days from date of receipt of this letter. Please inform you client to take notice that if she shall fail to comply with my clients' request, my instructions are to treat the contract of sale as cancelled and to forfeit whatever booking fee paid by your client and take any necessary proceedings.

Yours faithfully,

Sd: A.L.Looi

20

Enc:

c.c. Daiman Development Sdn.Bhd.

EXHIBITS

Daiman Development Sdn.Bhd. &
Loh Sew Wee

AGREED BUNDLE OF DOCUMENTS

AB 10

LETTER, APPELLANTS' SOLICITORS
TO RESPONDENT'S SOLICITORS
30th July 1975

EXHIBITS

Daiman Develop-
ment Sdn.Bhd. &
Loh Sew Wee

Agreed Bundle
of documents

AB 10

Letter,
Appellants'
Solicitors to
Respondent's
Solicitors

30th July 1975

10 A.L. LOOI
Advocates & Solicitors

A.L.LOOI 401 & 402 Bangunan
S.PATMANATHAN OCBC,
Jalan Ibrahim,
Johore Bahru
Talipon: 2727

Surat Tuan: AL/0002/75
Surat Kami: LAL/lgc/D321/1094/75

30th July, 1975

20 M/s Arthur Lee & Co.,
Advocates & Solicitors,
3rd Floor, MCA Building,
Jalan Segget,
Johore Bahru.

Dear Sirs,

Re: Booking for purchase of Private
Lot No.1314 in Taman Sri Tebrau,
Johore Bahru

30 I would refer you to my letter dated 28th
July, 1975 and more particularly to paragraph
2 thereof.

I have to make the following correction. The
balance of the 10% payable upon execution of
the Agreement by your client is \$2,810.00 and
not \$2,600.00 as stated in my said letter.

The error is very much regretted.

Yours faithfully,
Sd: A.L.Looi

c.c. Daiman Development Sdn.Bhd.

EXHIBITS

Daiman Development Sdn.Bhd. & Loh Sew Wee

Agreed Bundle of documents

AB 11

Letter, Respondent's Solicitors to Appellants' Solicitors

5th August 1975

EXHIBITS

Daiman Development Sdn.Bhd. & Loh Sew Wee

AGREED BUNDLE OF DOCUMENTS

AB 11

LETTER, RESPONDENT'S SOLICITORS TO APPELLANTS' SOLICITORS

5th August 1975

LAL/lgc/D.321/1094/75 4556
AL/0002/75/g 5.9.1975

10

Messrs. A.L.Looi,
Advocates & Solicitors,
Johore Bahru.

Dear Sirs,

Re: Booking for purchase of Private Lot No.1314 in Taman Sri Tebrau, Johore Bahru

We thank you for your letter of the 28th July 1975.

20

In order that we may be able to obtain proper instructions from our client, may we have your clarification to clause 3 of your letter which contains two contradictory statements.

We are prepared to advise our client to negotiate a compromise on the purchase price but strictly without prejudice to her right to proceed with the matter in court if negotiations prove to be abortive. 30

Kindly let us hear from you soon.

Yours faithfully,

Sd: Lee

c.c. client
/lt.

EXHIBITS

Daiman Development Sdn.Bhd. &
Loh Sew Wee

AGREED BUNDLE OF DOCUMENTS
AB 12

LETTER, APPELLANTS' SOLICITORS
TO RESPONDENT'S SOLICITORS
12th August 1975

EXHIBITS

Daiman Development Sdn.
Bhd. &
Loh Sew Wee

Agreed Bundle
of documents
AB 12

10 A.L. LOOI 401 & 402 Bangunan
Advocates & Solicitors OCBC,
Jalan Ibrahim,
A.L.LOOI Johore Bahru
S.PATMANATHAN Talipon: 2727
TAY CHEOW KEE
Surat Tuan: AL/0002/75/g
Surat Kami: LAL/lgc/D.321/1094/75

Letter,
Appellants'
Solicitors to
Respondent's
Solicitors
12th August
1975

12th August, 1975

20 Messrs. Arthur Lee & Co.,
Advocates & Solicitors,
MCA Building,
Johore Bahru.

Dear Sir,

Re: Booking for purchase of
Private Lot No.1314 in Taman
Sri Tebrau

Thank you for your letter dated 5/8/75.

30 I regret to inform you that a clerical error
has occasioned. In paragraph 3 of my letter
28th July, 1975, the word "now" in line 2
should read "not". As such please consider
the present position as "not prepared to
amend". I regret for the error in my letter
of 28/7/75.

Therefore the 14 day limitation in the last
paragraph is effective from the date of
receipt of this letter.

Yours faithfully,
Sd: A.L.Looi

lgc/lhk

EXHIBITS

Daiman Development Sdn Bhd. & Loh Sew Wee

Agreed Bundle of Documents

AB 13

Letter, Respondent's Solicitors to Appellants' Solicitors

25th August 1975

EXHIBITS

Daiman Development Sdn.Bhd. & Loh Sew Wee

AGREED BUNDLE OF DOCUMENTS

AB 13

LETTER, RESPONDENT'S SOLICITORS TO APPELLANTS' SOLICITORS
25th August 1975

LAL/lgc/D321/1094/75
AL/0002/75/g

25.8.75

10

Messrs. A.L.Looi,
Advocates & Solicitors,
4th Floor, OCBC Building,
Johore Bahru.

Dear Sirs,

Re: Booking for purchase of
Private Lot No.1314 in
Taman Sri Tebrau

Your letter dated the 12th August 1975 refers. We thank you for your clarification contained therein.

20

Please be informed that our client is not prepared to accept your clients' unilateral increase of the price of the property which said increase is in breach of the agreement entered into between them on the 12th December 1972.

May we know whether you have instructions to accept service of process?

Yours faithfully,

30

Sd: Lee

c.c. client
lt.

EXHIBITS

Daiman Development Sdn.Bhd. &
Loh Sew Wee

AGREED BUNDLE OF DOCUMENTS
AB 14

LETTER, APPELLANTS' SOLICITORS
TO RESPONDENT'S SOLICITORS
20th September 1975

EXHIBITS

Daiman Deve-
lopment Sdn.
Bhd. &
Loh Sew Wee

Agreed Bundle
of documents
AB 14

Letter,
Appellants'
Solicitors to
Respondent's
Solicitors
20th
September
1975

10 A.L.LOOI
Advocates & Solicitors
401 & 402 Bangunan OCBC
Jalan Ibrahim,
S.PATMANATHAN Johore Bahru
Talipon: 2727

Surat Tuan: AL/0002/75/g
Surat Kami: SP/lgc/D.321/1094/75

20th September, 1975

20 M/s Arthur Lee & Co.
Advocates & Solicitors,
3rd Floor, MCA Bldg.,
Jalan Segget,
Johore Bahru.

Dear Sir,

Re: Booking for purchase of
Private Lot No.1314 in
Taman Sri Tebrau

Your letter dated 25.8.1975 refers.

We are prepared to accept service of
Summons on behalf of our clients.

30 Yours faithfully,

Sd: A.L.Looi
fa.

No.24 of 1979

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA
(APPELLATE JURISDICTION)

B E T W E E N :

DAIMAN DEVELOPMENT SDN.BHD.

Appellants
(Defendants)

- and -

MATHEW LUI CHIN TECK

Respondent
(Plaintiff)

AND B E T W E E N :

DAIMAN DEVELOPMENT SDN. BHD.

Appellants
(Defendants)

- and -

LOH SEW WEE

Respondent
(Plaintiff)

(CONSOLIDATED BY ORDER DATED 4TH FEBRUARY 1979)

RECORD OF PROCEEDINGS

COWARD CHANCE,
Royex House,
Aldermanbury Square,
London, EC2V 7LD

CHARLES RUSSELL & CO.
Hale Court,
Lincoln's Inn,
London, WC2A 3UL

Solicitors for the Appellants

Solicitors for the Respondents