

13/82

No. 55 of 1980

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N :

HARON BIN MOHD. ZAID

Appellant
(Defendant)

- and -

CENTRAL SECURITIES (HOLDINGS)
BERHAD

Respondent
(Third Party)

RECORD OF PROCEEDINGS

KINGSFORD DORMAN,
14 Old Square,
Lincoln's Inn,
London, WC2A 3UB

Solicitors for the
Appellant

MACFARLANES,
Dowgate Hill House,
Dowgate Hill,
London, EC4R 2SY

Solicitors for the
Respondent

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA AT
KUALA LUMPUR

B E T W E E N :

HARON BIN MOHD. ZAID

Appellant
(Defendant)

- and -

CENTRAL SECURITIES (HOLDINGS)
BERHAD

Respondent
(Third Party)

RECORD OF PROCEEDINGS

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Such portion of the following Exhibits to the Affidavit of Mah King Hock affirmed on 31st December 1977 as are not considered relevant :-

- "M 1" All Lists of names and addresses of persons holding shares in United Holdings Berhad on the 29th July 1974 contained in share register, apart from first, second, third, fourth and ninth pages containing name and address of Dr. Chong Kim Choy, and summary of share capital and shares

- "M 2" All Lists of names and addresses of persons holding shares in United Holdings Berhad on 30th June 1975 contained in share register, apart from first, second, third, fourth, seventh, eighth, ninth and fourteenth pages containing particulars of Directors and names and addresses of Dr. Chong Kim Choy, Haron Bin Mohd Zaid, Koh Kim Chai and Sharikat Seri Padu Sdn. Bhd.

Such portion of the following Exhibits to the Affidavit of John Chew Sun Hey affirmed on 10th January 1978 as are not considered relevant :-

- "JC 2" All Lists of names and addresses of persons holding shares in United Holdings Berhad on 15th December 1977 contained in share register, apart from pages containing particulars of Directors, and names and addresses of Dr. Chong Kim Choy, Haji Haron Bin Mohd. Zaid, Dato Koh Kim Chai and Sharikat Seri Padu Sdn. Bhd.
-

Description of Document

Date

Volume III consisting of documents the inclusion of which was objected to by the Appellants and which subsequently the Respondent agreed should be omitted

No.55 of 1980

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N :

HARON BIN MOHD ZAID Appellant
(Defendant)

- and -

CENTRAL SECURITIES (HOLDINGS) Respondent
BERHAD (Third Party)

10

RECORD OF PROCEEDINGS

No. 1

SPECIALY INDORSED
WRIT OF SUMMONS

In the High
Court in
Malaya at
Kuala Lumpur

No.1

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
Civil Suit No. 1364 of 1977

Specially
Indorsed Writ
of Summons

21st May 1977

Between

Syarikat Seri Padu Sdn.Bhd. Plaintiff

And

Haron bin Mobd Zaid Defendant

20

THE 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 Haron bin Mobd Zaid
No.16 Jalan Pandan
Johore Bahru

WE COMMAND you, that within 12 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

In the High Court in Malaya at Kuala Lumpur

No.1

Specially Indorsed Writ of Summons

21st May 1977

(continued)

of Syarikat Seri Padu Sdn.Bhd. of No. 2-D
Jalan Ah Fook, Johore Bahru

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

WITNESS K.P.Singam, Asst. Registrar of the High Court in Malaya the 21st day of May 1977

Sgd. Illegible
Plaintiff
Solicitors

L.S.

Sgd. K.P.Singam
Assistant Registrar, 10
High Court

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 the 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 Kuala Lumpur. 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 of \$3.00 with an addressed envelope to the Assistant Registrar of the High Court at Kuala Lumpur

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

STATEMENT OF CLAIM

1. The Plaintiffs are a company incorporated in the States of Malaya and having their registered office at No.2-D, Jalan Ah Fook, Johore Bahru. 40

2. The Defendant is a businessman and resides at No.16, Jalan Pandan, Johore Bahru.

3. By an Agreement made on 12th March 1975 the Defendant agreed to sell to the Plaintiffs 560,000 fully paid-up ordinary shares of \$1/- each of United Holdings Berhad at the agreed price of \$8/- per share. The purchase price for the said 560,000 shares was \$4,480,000-00.

In the High Court in Malaya at Kuala Lumpur

No. 1

10 4. In accordance with the aforesaid agreement, the Plaintiffs duly paid to the Defendant the sum of \$4,480,000/- on or about the 12th day of March 1975 and under the Agreement the Defendant agreed to deliver to the Plaintiffs the share certificates therefor and the relevant registrable transfer documents within one week from the date of payment.

Specially Indorsed Writ of Summons

21st May 1977

(continued)

5. The Defendant delivered only 36,722 shares out of the agreed 560,000 shares which he had contracted to sell and deliver leaving a balance of 523,278 shares.

20 6. The said 36,722 shares were accepted by the Plaintiffs without prejudice to their rights to rescind and/or claim for damages and/or other reliefs for breach of contract.

7. The Defendant in breach of the said Agreement failed and/or neglected to deliver the remaining 523,278 shares and registrable transfer documents in spite of repeated demands and requests to do so by the Plaintiffs.

30 8. By reason of the breach of the Agreement on the part of the Defendant by failing to deliver the said 523,278 fully paid-up ordinary shares of \$1/- each of United Holdings Berhad within the time agreed by the Plaintiffs and the Defendant, the Plaintiffs are entitled to the refund of the purchase price thereof, as follows:-

PARTICULARS

523,278 fully paid-up ordinary shares of United Holdings Berhad of \$1/- each at the price of \$8/- per share \$4,186,224-00

0 9. The Defendant has failed and/or neglected to refund to the Plaintiffs the said sum of \$4,186,224-00 in spite of demands and requests by the Plaintiffs.

10. The Plaintiffs claim:

- (a) the sum of \$4,186,224-00
- (b) Damages
- (c) Interest at the rate of 6% from 12th day of March 1975 to date of realisation
- (d) Costs
- (e) Such further or other relief as this Honourable Court may deem just.

50 Dated this 17th day of May 1977

Sgd. Illegible
SOLICITORS FOR THE PLAINTIFF

In the High Court in Malaya at Kuala Lumpur

No. 1

Specially Indorsed Writ of Summons

21st May 1977 (continued)

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

Provided that if it appears from the indorsement of the Writ that the Plaintiff is/are resident outside the scheduled territories as defined in the Exchange Control Ordinance, 1953, or is acting by order or on behalf of a person so resident, or if the Defendant is acting by order or on behalf of a person 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, his/their advocate and solicitor or agent. 10

This Writ was issued by Messrs. WONG & PARAMJOTHY whose address for service is No. 304, OCBC Building, Johore Bahru, solicitors for the said Plaintiff who resides/carries/carry on business at No. 2-E, Jalan Ah, Fook, Johore, Bahru. 20

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

Indorsed this day of 19

(Signed)

(Address)

30

No. 2

Summons for Leave to issue Third Party Notice

21st June 1977

No. 2

SUMMONS FOR LEAVE TO ISSUE THIRD PARTY NOTICE

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR CIVIL SUIT NO. 1364 OF 1977

Between

Syarikat Seri Padu Sdn.Bhd.

Plaintiffs

And

Haron bin Mohd Zaid

Defendant

SUMMONS FOR LEAVE TO ISSUE THIRD PARTY NOTICE

40

LET ALL PARTIES concerned attend the Judge in Chambers at the High Court of Kuala Lumpur on Monday the 18th day of July 1977 at 9.30 o'clock in the forenoon on the hearing of an application on the part of the Defendant abovenamed for the following Orders:-

- (1) That the Defendant may be granted leave to issue and serve a Third Party Notice on Central Securities (Holdings) Berhad a Public Company incorporated in the States of Malaya;

50

(2) That the time for service of the Third Party Notice may be extended to two (2) months from the date of the Order to be made herein;

In the High Court in Malaya at Kuala Lumpur

(3) That the costs of and incidental to this application be costs in the cause.

No.2

Summons for Leave to issue Third Party Notice

Dated this 21st day of June 1977.

21st June 1977

(continued)

Sd. Sharkawi Alis

Senior Assistant Registrar,
High Court, Kuala Lumpur.

10

This Summons was taken out by M/s Ng Ek Teong & Partners of 2nd Floor, Bangunan Persatuan Hokkien Selangor, Jalan Raja Chulan, Kuala Lumpur, Solicitors for the Defendant herein.

This application will be supported by the Affidavit of Haron bin Mohd Zaid affirmed on the 20th day of June, 1977 and filed herein.

20

No. 3

AFFIDAVIT OF HARON
BIN MOHD ZAID

No.3

Affidavit of
Haron bin
Mohd Zaid

20th June 1977

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
CIVIL SUIT NO: 1364 OF 1977

Between

Syarikat Seri Padu Sdn.Bhd. Plaintiffs

And

Haron bin Mohd Zaid Defendant

A F F I D A V I T

30

I Haron bin Mohd Zaid presently residing at No.16, Jalan Pandan, Johore Bahru, being of full age, Malaysian Nationality, make affirmation and say as follows :-

1. I am the Defendant herein.

In the High
Court in
Malaya at
Kuala Lumpur

No. 3

Affidavit of
Haron bin
Mohd Zaid

20th June 1977

(continued)

2. This action is brought by the Plaintiffs against me for the refund of \$4,186,224 being the purchase price of 523,278 ordinary fully paid-up shares of \$1/- each of United Holdings Berhad at \$8/- per share and for damages (together with interest and costs) purported to have been suffered by the Plaintiffs as a result of the alleged breach of an agreement made on the 12th day of March 1975 between me and the Plaintiffs for the sale by me to the Plaintiffs of 560,000 fully paid-up ordinary shares of \$1/- each of United Holdings Berhad at the agreed price of \$8/- per share amounting to \$4,480,000.00 for the said 560,000 shares. 10
3. The breach alleged is that I had failed to duly deliver 523,278 of the said shares and the relevant transfer documents thereof to the Plaintiffs within one week of the payment to me of the said agreed purchase price. 20
4. I entered an appearance to the Writ of Summons herein on the 11th day of June, 1977. No Statement of Defence has as yet been delivered.
5. By a written agreement dated the 7th day of December 1974 between Central Securities (Holdings) Berhad a public Company incorporated in the States of Malaya and myself the said Company represented to me that it was the beneficial owner of 1,400,000 fully paid-up ordinary shares of \$1/- each of United Holdings Berhad and agreed to sell the said shares to me at \$8/- per share i.e. at a total purchase price of \$11,200,000.00 which amount was duly paid by me to Central Securities (Holdings) Berhad on or about the 22nd January 1975. 30
6. Upon due payment of the said \$11,200,000.00 Central Securities (Holdings) Berhad in purported discharge of its obligation under the said agreement of the 7th day of December 1974 to duly deliver to me the said shares purchased by me, purported to deliver to me certain shares certificates including share certificate numbered 0227 for 523,278 fully paid-up ordinary shares of \$1/- each together with certain documents purported to be the relevant registrable memorandum of transfer duly executed by the registered owner of the relevant shares to enable me or my assigns to be registered as the owner of the said shares. 40 50

7. On or about the 12th day of March 1975 I sold the said 523,278 shares held under the said certificate numbered 0227 to the Plaintiffs and delivered to it the said share certificate together with the relevant memorandum of transfer that had been delivered to me by Central Securities (Holdings) Berhad.

In the High Court in Malaya at Kuala Lumpur

No.3

Affidavit of Haron bin Mohd Zaid

20th June 1977

(continued)

10 8. On or about the 13th day of December 1976 the Plaintiffs discovered that the said memorandum of transfer was executed by one Dr. Chong Kim Choy (as registered owner of the shares) in purported transfer of the said shares to International Holdings (Pte) Ltd.

20 9. In spite of repeated requests to do so Central Securities (Holdings) Berhad have refused to deliver to me a registrable memorandum of transfer that would enable me to have the said shares transferred to my name or to the name of the Plaintiffs.

30 10. In the event Central Securities (Holdings) Berhad have been in breach of the agreement to sell and deliver to me the said shares held under the said Certificate numbered 0227 whereby I am advised by my Solicitors that I am entitled to a refund of the \$4,186,224.00 paid therefor and for damages interest and costs as against Central Securities (Holdings) Berhad which relief and/or remedies are substantially the same as the relief and/or remedies claimed by the Plaintiffs against me.

11. Accordingly I respectfully pray for an order in the terms of my application.

Affirmed at Kuala Lumpur)
this 20th day of June,) Sd.
1977 at 4.15 p.m.)

Before me,

Sd. Abdul Majid Khan

Commissioner for Oaths, K.L.

In the High
Court in
Malaya at
Kuala Lumpur

No.4

Order granting
leave to issue
Third Party
Notice

18th July 1977

No. 4

ORDER GRANTING LEAVE
TO ISSUE THIRD PARTY
NOTICE

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
CIVIL SUIT NO: 1364 OF 1977

Between

Syarikat Seri Padu Sdn. Bhd. Plaintiffs

And

Haron bin Mohd Zein Defendant 10

BEFORE THE HONOURABLE MR. JUSTICE MOHD.AZMI
THIS 18TH DAY OF JULY, 1977

IN CHAMBERS

O R D E R

UPON HEARING Mr. G.Krishman of Counsel
for the Defendant abovenamed AND UPON READING
the Summons for Leave to Issue Third Party
Notice dated the 21st day of June 1977 and
the Affidavit of Haron bin Mohd Zein affirmed
on the 20th day of June 1977 both filed
herein IT IS ORDERED that the Defendant be 20
and is hereby granted leave to issue and
serve a Third Party Notice on Central
Securities (Holdings) Berhad AND IT IS
ORDERED that the time for service of the
Third Party Notice be and is hereby extended
to two (2) months from the date hereof
AND IT IS LASTLY ORDERED that the costs of
and incidental to this application be costs
in the cause.

GIVEN under my hand and the Seal of the 30
Court this 18th day of July, 1977.

Sd. Illegible

L.S. Senior Assistant Registrar,
High Court, Kuala Lumpur.

No. 5

THIRD PARTY NOTICE

In the High
Court in
Malaya at
Kuala Lumpur

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
CIVIL SUIT NO: 1364 OF 1977

No.5

Third Party
Notice

16th August
1977

Between

Syarikat Seri Padu Sdn.Bhd. Plaintiffs

And

Haron bin Mohd Zaid Defendant

And

10 Central Securities (Holdings)
Berhad Third Party

THIRD PARTY NOTICE

Issued pursuant to the Order of the
Honourable Mr. Justice Mohd. Azmi, High
Court, Kuala Lumpur dated the 18th day of
July, 1977.

To:

20 Central Securities (Holdings) Berhad,
Penthouse, Wisma Central,
Jalan Ampang,
Kuala Lumpur.

30 TAKE NOTICE that this action has been
brought by the Plaintiffs against the
Defendant. In it the Plaintiffs claim against
the Defendant for the refund of \$4,186,224.00
being the purchase price of the 523,278 ordinary
fully paid-up shares of \$1/- each of United
Holdings Berhad held under Share Certificate
numbered 0227 at \$8/- per share and for
damages (together with interest and costs)
purported to have been suffered by the Plaintiffs
as a result of the alleged breach of an agreement
made on the 12th day of March 1975 between the
Defendant and the Plaintiffs for the sale by
the Defendant to the Plaintiffs of 560,000
fully paid-up ordinary shares of \$1/- each of
United Holdings Berhad at the agreed price of
\$8/- per share amounting to \$4,480,000.00 for
40 the said 560,000 shares as appears from the
Specially Indorsed Writ, a copy whereof together
with the Statement of Claim are delivered with
this Notice.

In the High
Court in
Malaya at
Kuala Lumpur

No.5

Third Party
Notice

16th August
1977

(continued)

The Defendant claims against you the refund of the sum of \$4,186,224.00 being the purchase price of the said 523,278 shares at \$8/- per share and for damages, interest and costs on the grounds that :-

1. By a written agreement dated the 7th day of December 1974 between you and the Defendant, you represented to the Defendant that you were the beneficial owner of 1,400,000 fully paid-up ordinary shares of \$1/- each of United Holdings Berhad and agreed to sell the said shares to the Defendant at \$8/- per share i.e. at a total purchase price of \$11,200,000.00 which amount was duly paid by the Defendant to you on or about the 22nd January 1975. 10
2. Upon due payment of the said \$11,200,000.00 you in purported discharge of your obligation under the said Agreement of the 7th day of December 1974 to duly deliver to the Defendant the said shares purchased by the Defendant, purported to deliver to the Defendant certain shares certificates including share certificate numbered 0227 for 523,278 fully paid-up ordinary shares of \$1/- each together with certain documents purported to be the relevant registrable memorandum of transfer duly executed by the registered owner of the relevant shares to enable the Defendant or his assigns to be registered as the owner of the said shares. 20 30
3. On or about the 12th day of March 1975 the Defendant sold the said 523,278 shares held under the certificate numbered 0227 to the Plaintiffs and delivered to it the said share certificate together with the said relevant memorandum of transfer that had been delivered to the Defendant by you.
4. On or about the 13th day of December 1976 the Plaintiffs discovered that the said memorandum of transfer was executed by one Dr. Chong Kim Choy (as registered owner of the shares) but in purported transfer of the said shares to one International Holdings (Pte) Ltd. and not to the Defendant. 40
5. In spite of repeated requests to do so you have refused to deliver to the Defendant a registrable memorandum of transfer that would enable the Defendant to have the said shares transferred to his name or to the name of the Plaintiffs. 50

6. In the event you have been in breach of the Agreement to sell and deliver to the Defendant the said shares held under the said Certificate numbered 0227 whereby the Defendant is entitled to a refund of the \$4,186,224.00 paid therefore and for damages interest and costs as against you which relief and/or remedies are substantially the same as the relief and/or remedies claimed by the Plaintiffs against the Defendant.

In the High Court in Malaya at Kuala Lumpur

No.5

Third Party Notice

16th August 1977

(continued)

AND TAKE NOTICE that if you wish to dispute the Plaintiffs' claim against the Defendant or the Defendant's claim against you, you must cause an appearance to be entered for you within eight (8) days after service of this Notice upon you inclusive of the day of service, otherwise you will be deemed to admit the Plaintiffs' claim against the Defendant and the Defendant's claim against you and your liability to refund to the Defendant the sum of \$4,186,224.00 and to pay to the Defendant damages as assessed by the Court, interest and costs and will be bound by any judgment or decision given in the action and the judgment may be enforced against you in accordance with Order 16A of the Rules of the Supreme Court.

Dated this 16th day of August, 1977.

Sd. Ng Ek Teong L.S.
Solicitors for the Defendant

Sd. Illegible
Senior Assistant Registrar, High Court, Kuala Lumpur.

The person served with this Notice may appear hereto by entering an appearance either personally or by Solicitors at the Registry of the High Court at Kuala Lumpur.

The person served with this Notice appearing personally may, if he desires, enter his appearance by post, and the appropriate forms may be obtained by sending a Postal Order of \$4.00 with an addressed envelope to the Registrar of the High Court, Kuala Lumpur.

This Third Party Notice is taken out by Messrs. Ng Ek Teong & Partners, Solicitors for the Defendant herein whose address for service is 2nd Floor, Bangunan Persatuan Hokkien Selangor, Jalan Raja Chulan, Kuala Lumpur.

In the High
Court in
Malaya at
Kuala Lumpur

No.6

Notice of
Conditional
Appearance
6th September
1977

No. 6

NOTICE OF CONDITIONAL
APPEARANCE

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
CIVIL SUIT NO.1364 OF 1977

BETWEEN

Syarikat Seri Padu Sdn. Bhd. Plaintiffs

AND

Haron bin Mohd. Zaid Defendant

AND

Central Securities (Holdings)
Berhad Third Party

10

NOTICE OF CONDITIONAL
APPEARANCE

TAKE NOTICE that Conditional Appearance
has been entered in this action for the
Third Party abovenamed.

Dated this 6th day of September, 1977

Solicitors for the Third
Party, 20
M/s Mah-Kok & Din,
Penthouse, No.9, Jalan Gereja,
(The Chase Manhattan Bank),
Kuala Lumpur.

To:

The Defendant abovenamed
and/or his Solicitors,
M/s. Ng Ek Teong & Partners,
2nd Floor, Bangunan Persatuan
Hokkien Selangor, 30
Jalan Raja Chulan,
Kuala Lumpur.

NMD/8247/CSH

No. 7
MEMORANDUM OF CONDITIONAL
APPEARANCE

In the High
Court in
Malaya at
Kuala Lumpur

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
CIVIL SUIT NO. 1364 OF 1977

No. 7
Memorandum of
Conditional
Appearance
6th September
1977

BETWEEN

Syarikat Seri Padu Sdn. Bhd. Plaintiffs
AND
Haron bin Mohd. Zaid Defendant
AND
Central Securities (Holdings)
Berhad Third Party

10

MEMORANDUM OF CONDITIONAL
APPEARANCE

To:

The Senior Assistant Registrar,
High Court,
Kuala Lumpur.

20

ENTER a Conditional Appearance for Central Securities (Holdings) Berhad the Third Party abovenamed in this action without prejudice to an application to set aside the Third Party Notice and service thereof for Central Securities (Holdings) Berhad the Third Party in this Action.

Dated this 6th day of September, 1977.

Sd. Illegible

Solicitors for the Third
Party

30

This Appearance is to stand as unconditional unless the Third Party apply within ten (10) days to set aside the Third Party Notice or service thereof and obtain an Order to that effect.

Filed this 8th day of September, 1977.

L.S.

Sgd.
Senior Assistant Registrar,
High Court, Kuala Lumpur

In the High
Court in
Malaya at
Kuala Lumpur

No. 7

Memorandum of
Conditional
Appearance

6th September
1977

(continued)

To:

The Defendant and/or
his Solicitors,
M/s. Ng Ek Teong & Partners,
2nd Floor, Bangunan Persatuan
Hokkien Selangor,
Jalan Raja Chulan,
KUALA LUMPUR.

This Memorandum of Conditional
Appearance is filed by M/s. Mah-Kok & Din, 10
Solicitors for the Third Party, whose
address for service is Penthouse, No.9,
Jalan Gereja, (The Chase Manhattan Bank),
Kuala Lumpur.

NMD/8247/CSH

No.8

Summons issued
by Third Party
to set aside
Third Party
Notice

30th September
1977

No. 8

SUMMONS ISSUED BY THIRD
PARTY TO SET ASIDE THIRD
PARTY NOTICE

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR 20
CIVIL SUIT NO. 1364 OF 1977

BETWEEN

Syarikat Seri Padu Sdn. Bhd. Plaintiffs

AND

Haron bin Mohd. Zaid Defendant

AND

Central Securities (Holdings)
Berhad Third Party

SUMMONS-IN-CHAMBERS

LET ALL PARTIES concerned attend the 30
Judge in Chambers at the High Court, Kuala
Lumpur on Wednesday the 2nd day of November,
1977 at 9.30 o'clock in the forenoon at the
hearing of an Application on the part of the
Third Party for an order that the Third Party
Notice issued herein pursuant to the Order
of High Court, Kuala Lumpur dated 18th day
of July, 1977 and/or its service thereof on

the Third Party on 5th September, 1977, be set aside on the grounds that :-

In the High Court in Malaya at Kuala Lumpur

No. 8

Summons issued by Third Party to set aside Third Party Notice

30th September 1977

(continued)

- 10
- (a) There is no proper question to be tried between the Defendant and the Third Party in that the agreement was performed;
 - (b) The issue between the Defendant and the Third Party forms the subject of a separate action vide High Court Kuala Lumpur Civil Suit No. 2323 of 1976 and is bad for duplicity;
 - (c) The service of the Third Party Notice on the Third Party on 5th day of September, 1977 was bad.

AND the Defendant do pay to the Third Party the costs of and occasioned by this application to be taxed.

Dated this 30th day of September, 1977.

20 Sd. Illegible Sd. Illegible
Solicitors for the Third Party abovenamed Senior Assistant Registrar, High Court, Kuala Lumpur.

To:

30 The Defendant abovenamed and/or his solicitors, Messrs. Ng Ek Teong & Partners, 2nd Floor, Bangunan Persatuan Hokkien Selangor, Jalan Raja Chulan, Kuala Lumpur.

This Summons is filed by Messrs. Mah-Kok & Din, solicitors for the Third Party abovenamed and whose address for service is Penthouse No.9, Jalan Gereja, Kuala Lumpur.

This Summons will be supported by the Affidavit of Mah King Hock affirmed on the 29th day of September, 1977 and filed herein.

NMD/8247/CSH

In the High
Court in
Malaya at
Kuala Lumpur

No. 9

Affidavit of
Mah King Hock
and exhibits
thereto

24th September
1977

No. 9

AFFIDAVIT OF MAH KING
HOCK AND EXHIBITS THERETO

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
CIVIL SUIT NO. 1364 OF 1977

BETWEEN

Syarikat Seri Padu Sdn.Bhd. Plaintiffs

AND

Haron bin Mohd. Zaid Defendant

AND

Central Securities (Holdings)
Berhad Third Party

10

A F F I D A V I T

I, MAH KING HOCK of full age and care
of Penthouse, 10th Floor, Wisma Central,
Jalan Ampang, Kuala Lumpur, do solemnly
affirm and say as follows :-

1. I am a Director of the Third Party
Company (hereinafter referred to as the
"Third Party") and am duly authorised to make 20
this Affidavit.

2. In regard to paragraph 2 of the Third
Party Notice the Third Party has duly delivered
the share certificates inclusive of Share
Certificate No.0227 for 523,278 fully paid-up
ordinary shares of \$1.00 each of United
Holdings Berhad and the relevant registrable
Memorandum of Transfer and same have been
duly received by the Defendant. A photocopy 30
of the acknowledgment by the Defendant is
exhibited herein and marked "MKH-1".

3. I beg to refer to the Kuala Lumpur High
Court Civil Suit No.2323 of 1976 (hereinafter
referred to as the "Civil Suit") in which
the Defendant has filed an action against
the Third Party for rescission of the contract
and claiming for the return of the sum of
\$11,200,000.00 being the whole purchase
price of 1.4 million shares in United Holdings
Berhad of which the said amount of 523,278 40
shares as comprised in the Share Certificate
No.0227 was and is included. The Third Party

has duly filed a defence to the Civil Suit. Photocopies of the Writ and Statement of Claim and Defence in respect of the Civil Suit is exhibited herein and marked "MKH-2" and "MKH-3" respectively.

In the High Court in Malaya at Kuala Lumpur

No.9

10 4. In the circumstances, the claim under the Civil Suit forms the same subject matter as the present claim in the Third Party Notice and as such I verily believe there is now a duplicity of action.

Affidavit of Mah King Hock and exhibits thereto

24th September 1977

(continued)

5. I am verily advised the service of the Third Party Notice on the Third Party on 5th September, 1977 was bad in law as with the said Third Party Notice there was no service of a copy of the relevant Writ of Summons and the Statement of Claim.

6. In the circumstances I therefore pray for an Order in terms of this Application.

20 AFFIRMED at Kuala Lumpur)
this 24th day of) Sgd.
September, 1977 at 11.30)
a.m.

Before me,

Sgd.

EXHIBIT "MKH-1" TO
AFFIDAVIT OF MAH
KING HOCK

Exhibit "MKH-1"
to Affidavit
of Mah King
Hock

Received from Messrs. Central Securities (Holdings) Berhad the following :

30 (1) United Holdings Berhad

Certificate No. 0227 for 523,278 shares
" " 0229 for 458,990 shares
" " 2185
to
2204 for 20,000 shares
1,002,268 shares

(2) Chartered Bank, K.L. cheques book containing 106 blank cheques Nos.927499 to 927600 inclusive.

(3) Chartered Bank, Singapore, cheques book

In the High
Court in
Malaya at
Kuala Lumpur

No.9

Affidavit of
Mah King Hock
and exhibits
thereto

24th September
1977

Exhibit "MKH-1"
(continued)

containing 41 cheques Nos.930620 to
930660 inclusive.

- (4) F.N.C.B. Jalan Ampang, 1 cheque book
- (5) \$41,400 Preference Stock Units Esso
Malaysia Berhad (Certs.Nos. 03200/01,
03203/09, 03435, 03202, 5211/42 and
5227).
- (6) \$4,000 Ordinary Stock Units Esso
Malaysia Berhad (Certs.Nos. 77732/3,
77773/5). 10
- (7) \$15,000 Ordinary Stock Malayan
Breweries Ltd. (Certs.Nos.9978/85,
9991/2, 14821/25).
- (8) \$2,500 Ordinary Stock Malayan Tobacco
Co.Bhd. (Certs.Nos.98581, 100242/3).
- (9) 20,000 shares United Plantations
Berhad (Certs.Nos.B14157/76).
- (10) \$665 Ordinary Stock Fraser & Neave Ltd.
(Certs.No.54867).
- (11) 1,000,000 shares Urico Industries 20
Sdn.Bhd. (Cert.No.B005).
- (12) 1,200,000 ordinary shares Far Eastern
Hotels Development (M) Berhad (Pte.)
Limited (Certs.Nos. A.000251/54,
A.000201/10 and A.000191/200) with
24 signed Transfer Deeds of 50,000
shares each.

Sgd. Illegible
23/12/74

This is the Exhibit marked "MKH-1"
referred to in the Affidavit of
Mah King Hock sworn to before me
this day of 19

30

Commissioner for Oaths
Kuala Lumpur

EXHIBIT "MKH-2" TO
AFFIDAVIT OF MAH KING HOCK

In the High
Court in
Malaya at
Kuala Lumpur

GENERALLY INDORSED WRIT OF SUMMONS

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
Civil Suit No.2323 of 1976

No.9
Affidavit of
Mah King Hock
and exhibits
thereto

24th September
1977

(continued)

Between
HJ. HARON BIN MOHD.ZAID Plaintiff
And
CENTRAL SECURITIES
(HOLDINGS) BHD. Defendant

10

Exhibit
"MKH-2"

THE HONOURABLE TAN SRI SARWAN SINGH GILL,
P.S.M., P.M.N., CHIEF JUSTICE OF THE HIGH
COURT IN MALAYA IN THE NAME AND ON BEHALF OF
HIS MAJESTY THE YANG DI-PERTUAN AGONG

To: CENTRAL SECURITIES (HOLDINGS)BHD.,
Penthouse, 10th Floor,
Wisma Central,
Jalan Ampang,
Kuala Lumpur.

20

WE COMMAND you, that within eight (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 HJ. HARON BIN MOHD. ZAID of
No.16, Jalan Panda, Stulang Darat, Johore Bahru.

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

30

WITNESS (Illegible) Registrar
of the High Court in Malaya the 8th day of
October 1976.

Sgd. Illegible
Solicitors for the
Plaintiff

Sgd. Illegible
Snr. Assistant Registrar,
High Court, Kuala Lumpur

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 the last
renewal, including the day of such date and not
afterwards.

40

The Defendant (or Defendants) may appear hereto

In the High Court in Malaya at Kuala Lumpur

No.9

Affidavit of Mah King Hock and exhibits thereto

24th September 1977

Exhibit "MKH-2" (continued)

by entering an appearance (or appearances) either personally or by Solicitor, at the Registry of the High Court at Kuala Lumpur.

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 of \$3.00 with an addressed envelope to the Assistant Registrar of the High Court at Kuala Lumpur.

The Plaintiffs' claim is for :-

10

(a) Rescission of a written contract dated the 7th day of December, 1974 and made between the Plaintiff and the Defendants.

(b) Return of the said \$11,200,000/- money paid to the Defendants by the Plaintiff in pursuance of the said contract.

(c) Damages

(d) Interest on the amount found to be due to the Plaintiff at such rate and for such period as the Court shall think just.

20

(e) Further or other relief.

Dated and delivered this 6th day of October, 1976

Sgd. K.C. Koh & Co.

Solicitors for the Plaintiff

THIS WRIT was issued by K.C.KOH & CO. whose address for service is at No.2-E, Jalan Ah Fook, (4th Floor) Johore Bahru, Solicitors for the said Plaintiff who resides at No.16, Jalan Pandan, Stulang Darat, Johore Bahru.

30

This is the Exhibit marked "MKH-2" referred to in the Affidavit of Mah King Hock sworn to before me this day of 19

Commissioner for Oaths
Kuala Lumpur

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
CIVIL SUIT No. 2323 OF 1976

In the High
Court in
Malaya at
Kuala Lumpur

Between

HJ. HARON BIN MOHD.ZAID Plaintiff

And

CENTRAL SECURITIES
(HOLDINGS) BERHAD Defendants

No.9

Affidavit of
Mah King Hock
and exhibits
thereto

24th September
1977

STATEMENT OF CLAIM

Exhibit "MKH-2"
(continued)

10 1. The Plaintiff is a businessman residing at No.16, Jalan Pandan, Stulang Darat, Johore Bahru, Johore and the Defendants are a public limited company incorporated in Malaysia and having their registered office at Penthouse, 10th Floor, Wisma Central, Jalan Ampang, Kuala Lumpur.

20 2. By an agreement in writing dated the 7th day of December, 1974 (hereinafter referred to as "the said Agreement") the Plaintiff agreed to purchase from the Defendants and the Defendants agreed to sell to the Plaintiff 1,400,000 shares representing 70% of the equity capital in United Holdings Berhad, a company incorporated in Malaysia with their registered office at 6th Floor, Oriental Plaza, Jalan Parry, Kuala Lumpur (hereinafter referred to as "U.H.") at M\$8/- per share making a total consideration of M\$11,200,000/-.

30 3. In order to induce the Plaintiff to purchase the said 1,400,000 shares, the Defendants represented to the Plaintiff in the said Agreement that the Defendants were at the material time the "beneficial owner" of 1,400,000 shares of U.H. which representation the Defendants well knew was false or made recklessly, not caring whether it was true or false, and further that the Defendants could and subsequently did in fact arrange for a loan of M\$2.5 million with their related company namely
40 Malaysia Borneo Finance Berhad, a licenced borrowing company incorporated in Malaysia with its place of business at No.164, Jalan Tuanku Abdul Rahman, Kuala Lumpur (hereinafter referred to as "M.B.F.") for the Plaintiff so that the Plaintiff could pay the \$11,200,000/- to the Defendants in full for the purchase price of the said shares.

4. Acting upon the faith and truth of the said representations and the arrangement made for the said loan by the Defendants and induced thereby

In the High Court in Malaya at Kuala Lumpur

No.9

Affidavit of Mah King Hock and exhibits thereto

24th September 1977

Exhibit "MKH-2" (continued)

the Plaintiff made and completed the said Agreement and paid the said \$11,200,000/- the receipt whereof the Defendants duly acknowledged.

5. In truth and in fact, the said representations were false and untrue in that the Defendants at the material time were not the beneficial owner of 1,400,000 shares in U.H.

6. So soon as he discovered the said fraud, the Plaintiff as he was entitled to do, verbally repudiated the said Agreement and determined the same by conveying such repudiation to one Mr. Chan Teck Huat an accountant practising under the style of Kassim Chan & Co. at 7th Floor, A.I.A. Building, Kuala Lumpur, an agent of the Defendants who carried out the negotiations throughout the whole transaction for and on behalf of the Defendants. But the said Mr. Chan represented to the Plaintiff that 1,002,000 of the said shares were sold by the Defendants and the balance of 398,000 shares were sold by the Defendants' related company Sg. Kinta Dredging Berhad which representation was in fact and in truth also false. As such, the Plaintiff through the legal firm of K.C.Koh & Co. sent a letter dated the 23rd day of December, 1974 to the Defendants giving them notice of rescission of the said Agreement and denying therein at the same time having contracted to purchase the said 398,000 shares or any part thereof from Sg. Kinta Dredging Berhad, and also above all demanding for the return of the said \$11,200,000/- by the Defendants to the Plaintiff to which letter there was no reply.

7. By reason of the matters aforesaid arising out of the said fraudulent misrepresentations on the part of the Defendants, the Plaintiff lost the said \$11,200,000 and interest thereon and the Plaintiff thereby suffered loss and damage.

PARTICULARS

Having been induced by fraudulent misrepresentations on the part of the Defendants, the Plaintiff paid for the 1.4 million shares in U.H. at \$8/- per share making a total consideration of \$11,200,000-00

As the shares are unquoted on the Stock Market, the present price per share is Nil

Loss or damage suffered
by Plaintiff \$11,200,000-00

In the High
Court in
Malaya at
Kuala Lumpur

8. The Defendants have up to date failed to return to the Plaintiff the sum of \$11,200,000/- in spite of the Plaintiff's demand.

No.9

Affidavit of
Mah King Hock
and exhibits
thereto

AND the Plaintiff claims :-

24th September
1977

- 10 (a) Rescission of the said Agreement
(b) Damages
(c) Return of the said \$11,200,000-00
(d) Interest on the amount found to be due to the Plaintiff at such rate and for such period as the Court shall think fit.
(e) Further or other relief.

Exhibit
"MKH-2"

(continued)

Dated and delivered this 6th day of October, 1976.

Sgd. K.C.Koh & Co.
Solicitors for the Plaintiff

20 EXHIBIT "MKH-3" TO
AFFIDAVIT OF MAH
KING HOCK

Exhibit
"MKH-3" to
Affidavit of
Mah King Hock

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
CIVIL SUIT NO. 2323 OF 1976

BETWEEN

Hj. Haron bin Mohd. Zaid Plaintiff

AND

Central Securities (Holdings)Bhd. Defendants

D E F E N C E

1. The Defendants admit paragraphs 1 and 2 of the Statement of Claim.
30 2. The Defendants deny paragraphs 3, 4 and 5 of the Statement of Claim and contend the following :-

(a) Prior to the 7th day of December, 1974

In the High
Court in
Malaya at
Kuala Lumpur

No.9

Affidavit of
Mah King Hock
and exhibits
thereto

24th September
1977

Exhibit "MKH-3"
(continued)

and at all material times the Plaintiff was aware and has knowledge that the sale of the 1,400,000 shares in United Holdings Berhad by the Defendants to him was from such composition of 1,002,000 shares from the Defendants and the balance 398,000 shares would be forthcoming from Sungei Kinta Tin Dredging Limited.

10

(b) Plaintiff with knowledge of the true facts and position as set out in sub-paragraph (a) above agreed with the Defendants that in spite of the above position it be described in the said Agreement that the Defendants were the "beneficial owner" of the 1,400,000 shares.

(c) The alleged representation was made honestly and in the true spirit of the goodwill then existing between the parties and further same was based on the true facts at the material time. 20

3. The Defendants deny the whole of paragraph 6 of the Statement of Claim and state that they have no knowledge of the alleged representation made by the said Chan Teik Huat. The Defendants further contend that they have no knowledge of the letter dated 23rd December, 1974 giving notice of rescission of the said Agreement alleged to have been sent by K.C. Koh & Co. to the Defendants 30

4. Further and in any event after 23rd day of December, 1974 the Plaintiff has affirmed the said Agreement.

PARTICULARS

(a) Sometime after the execution of the said Agreement upon request by Sungei Kinta Tin Dredging Limited that it was unable to deliver in full its 398,000 shares sold to the Plaintiff the Defendants negotiated and subsequently entered into a supplemental agreement with the Plaintiff by and on behalf of both parties as evidenced in writing dated 22nd day of January, 1975. The Defendants will refer to the said supplemental agreement at the trial for its full terms and effect. 40 50

(b) At the material time upon the completion of the sale and purchase in accordance with the said Agreement and the supplemental agreement the Plaintiff continued and carried on the business of United Holdings Berhad.

In the High Court in Malaya at Kuala Lumpur

No.9

Affidavit of Mah King Hock and exhibits thereto

24th September 1977

Exhibit "MKH-3" (continued)

10

(c) The Plaintiff and his nominees being directors of United Holdings Berhad have since 23rd December, 1974 continued to carry on the business of United Holdings Berhad.

5. Further or alternatively the Defendants aver that in pursuance of the said Agreement and the supplemental agreement the Defendants duly delivered to the Plaintiff all the shares it has contracted to sell which the Plaintiff received and accepted in satisfaction of all the terms of the above agreements.

20

6. The Defendants deny paragraph 7 of the Statement of Claim and put the Plaintiff to strict proof thereof and further allege that the Plaintiff and his nominees as directors of United Holdings Berhad applied to the Stock Exchange to suspend the trading of its shares.

30

7. The Defendants state that if the alleged representation constitutes a misrepresentation (which is denied) then and in such a case same did not prevent the performance of the said Agreement and the supplemental agreement nor did it affect the substance and root of the subject matter entitling the Plaintiff to rescind the said Agreement.

40

8. Further and in any event the status of United Holdings Berhad has altered since the Plaintiff and his nominees took over control of the same and in the premises the Plaintiff is unable to return the said United Holdings Berhad to the Defendants in the same or substantially the same status and condition as he received it from the Defendants and the Plaintiff is accordingly not entitled to rescind the said Agreement.

9. The Defendants say that this claim by the Plaintiff is frivolous and made to embarrass the Defendants.

10. Save and except as hereinbefore expressly admitted the Defendants deny each and every allegation in the Statement of Claim as if the

In the High Court in Malaya at Kuala Lumpur

No.9

Affidavit of Mah King Hock and exhibits thereto

24th September 1977

Exhibit "MKH-3" (continued)

same was set out and traversed seratim.

AND the Defendants pray that the whole of the Statement of Claim be dismissed with costs.

Dated this 22nd day of October 1976

Sgd. Illegible

Defendants' Solicitors

This Defence is filed by Messrs. Mah Kok & Din Solicitors for the Defendants whose address for service is Penthouse, No.9, Jalan Gereja, Kuala Lumpur. 10

NMD/7110/CSH

No.10

Summons issued by Defendant for Third Party Directions

3rd October 1977

No. 10

SUMMONS ISSUED BY DEFENDANT FOR THIRD PARTY DIRECTIONS

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR CIVIL SUIT NO: 1364 OF 1977

Between

Syarikat Seri Padu Sdn.Bhd. Plaintiffs

And

Haron bin Mohd. Zaid Defendant

And

Central Securities (Holdings) Berhad Third Party

20

SUMMONS FOR THIRD PARTY DIRECTIONS

LET ALL PARTIES concerned attend the Judge in Chambers on Wednesday the 2nd day of November 1977 at 9.30 o'clock in the forenoon on the hearing of an application on the part of the Defendant abovenamed -

30

- (1) For an order that he be at liberty to enter Judgment against the Third Party for the sum of \$4,186,224.00 and for damages interest and for the costs which the Defendant may be required to

pay to the Plaintiff and his own costs of defending the action against the Plaintiff and the costs of these third party proceedings, all such costs to be taxed;

In the High Court in Malaya at Kuala Lumpur

No.10

(2) Alternately, for Third Party Directions as follows :-

Summons issued by Defendant for Third Party Directions

10

(i) that the Defendant abovenamed deliver a Statement of his claim to the said Third Party within fourteen (14) days from the date of this Order who shall plead thereto within fourteen (14) days;

3rd October 1977

(continued)

20

(ii) that the Defendant abovenamed and the said Third Party do respectively file an Affidavit of Documents within sixty (60) days from the close of pleadings and there be an inspection of documents within thirty (30) days thereafter;

(iii) that the question of the liability of the Third Party to indemnify the Defendant abovenamed be tried together with the trial of the action between the Plaintiffs and the Defendant;

(iv) that the costs of this application be costs in the cause.

30

Dated this 3rd day of October, 1977.

L.S. Sgd. Sharkawi Alis
Senior Assistant Registrar,
High Court, Kuala Lumpur.

To:

1. The Plaintiffs herein and/or its Solicitors, M/s. Wong & Paranjothy, No.304, OCBC Building, Johore Bahru.
- 40 2. The Third Party herein and/or its Solicitors, M/s. Mah-Kok & Din, No.9, Jalan Gereja, (The Chase Manhattan Bank), Kuala Lumpur.

In the High Court in Malaya at Kuala Lumpur

No.10
Summons issued by Defendant for Third Party Directions
3rd October 1977
(continued)

This Summons for Third Party Directions was taken out by M/s. Ng Ek Teong & Partners, Solicitors for the Defendant herein whose address for service is at 2nd Floor, Bangunan Persatuan Hokkien Selangor, Jalan Raja Chulan, Kuala Lumpur.

No.11
Affidavit of Haron Bin Mohd Zaid and exhibit thereto
27th October 1977

No. 11
AFFIDAVIT OF HARON BIN MOHD ZAID AND EXHIBIT THERETO 10

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
CIVIL SUIT NO. 1364 OF 1977

Between
Syarikat Seri Padu Sdn.Bhd. Plaintiffs
And
Haron bin Mohd. Zaid Defendant
And
Central Securities (Holdings) Berhad Third Party 20

A F F I D A V I T

I, Haron bin Mohd. Zaid, being of full age, Malaysian Citizen residing at No.16, Jalan Pandan, Johore Bahru, make affirmation and say as follows :-

1. I am the Defendant abovenamed and have read the Affidavit of Mah King Hock affirmed the 29th September, 1977.
2. As to paragraph 2 of the said Affidavit it is admitted that Share Certificate No.0227 for the 523,278 shares 30

was received by me. What was purported to be the relevant registrable Memorandum of Transfer that was delivered to me that was to enable me to have the said shares transferred to my name or the name of my nominees in fact was discovered to be duly executed by one Dr. Chong Kim Choy transferring the said shares to International Holdings (Pte) Ltd. The document now shown to me marked "H1" is a photocopy of the said Memorandum of Transfer.

In the High Court in Malaya at Kuala Lumpur

No.11

Affidavit of Haron bin Mohd Zaid and exhibit thereto

27th October 1977

(continued)

10

3. As to paragraph 3 of the said Affidavit at the time that the said Civil Suit No. 2323 of 1976 was commenced in October, 1976, the fact that the necessary Memorandum of Transfer for the said 523,278 shares purported to transfer the said shares to International Holdings (Pte) Ltd. and not to me or my nominees had not been discovered by me.

20

4. After discovery of that fact, I could either have had the Writ and Statement of Claim in the said Civil Suit No.2323 of 1976 amended to aver the facts pertaining to the said 523,278 shares or could have filed a separate action against Central Securities (Holdings) Bhd. in respect of the said 523,278 shares my cause of action therefor being different from my cause of action in respect of my claim in the Civil Suit No. 2323 of 1976.

30

5. However since Syarikat Seri Padu Sdn. Bhd. have filed this action against me in respect of the said 523, 278 shares I have been advised by my Solicitors that in all the circumstances the most expedient manner in which this matter could be adjudicated upon would be by Third Party Proceedings.

40

6. I am advised by my Solicitors and verily believe that my cause of action in the said Civil Suit No.2323 of 1976 is different from the cause of action against the Third Party in Civil Suit No.1364 of 1977 and that there is no duplicity of action. In that case i.e. Civil Suit No.2323 of 1976, I claim against Central Securities (Holdings) Bhd. (the Third Party herein) for the refund of \$11,200,000.00 and damages on the grounds that Central Securities (Holdings) Bhd. had fraudulently misrepresented in an agreement in writing to me that they were the beneficial owner of 1,400,000 shares in United Holdings Berhad which was found to be

50

In the High Court in Malaya at Kuala Lumpur

No.11

Affidavit of Haron Bin Mohd Zaid and exhibit thereto

27th October 1977

(continued)

false. In any case, I am advised by my Solicitors that that Civil Suit No.2323 of 1976 would be stayed amended or withdrawn completely as the case may be depending on the outcome of this Civil Suit No.1364 of 1977.

7. Sometime in the month of December 1976 I asked one Mr. K.C.Koh an Advocate & Solicitor practising in Johore Bahru to request Central Securities (Holdings) Bhd. to rectify the omission and deliver to me a proper registrable Memorandum of Transfer transferring the said 523,278 shares to me or my nominees. 10

8. K.C.Koh informed me that he attended on Dato Loy Hean Hiong one of the Joint Managing Directors of the said Company who informed him that the said Company could provide me with a proper registrable Memorandum of Transfer provided I paid the Company a further sum of \$523,278.00 over and above the agreed purchase price for the said shares. 20

9. It is admitted that in serving the Third Party Notice of 5th September 1977 the Writ of Summons and the Statement of Claim were not served by my Solicitors on the Third Party at the same time. This omission was rectified on 7th September 1977 when the said Writ and Statement of Claim were served on the Third Party. 30

10. I am advised by my Solicitors that such omission is an irregularity that has not prejudiced the Third Party and as such does not nullify the service of the Third Party Notice.

11. I am advised by my Solicitors and verily believe that the Third Party has no defence to my claim against them and pray for an order that I be at liberty to enter Judgment against the Third Party in the terms of prayer (1) of the Summons for Third Party Directions. 40

Affirmed by the abovenamed) Haron bin Mohd.Zaid at Kuala Lumpur this 27th day of October 1977) Sgd. Haron bin Mohd.Zaid

Before me,

Sd.

EXHIBIT "H.1" TO AFFIDAVIT
OF HARON BIN MOHD ZAID

In the High
Court in
Malaya at
Kuala Lumpur

TRANSFER

No.11

I, DR. CHONG KIM CHOY
196 Rasah Road,
Sekenbah.

Affidavit of
Haron Bin
Mohd Zaid
and exhibit
thereto

In consideration of the Sum of (see
note at foot) NIL

27th October
1977

10 paid by International Holdings (Pte)Ltd.
21st Floor, Singapore Hilton,
Orchard Road, Singapore.

(continued)
Exhibit "H1"

hereinafter called the said Transferee

Do hereby bargain, sell, assign,
and transfer to the said Transferee

523,278 Five hundred and twenty three
thousand two hundred and
seventy eight shares of
\$1/- each fully paid

20 Certificate No.0227 of and in the
undertaking called the UNITED
HOLDINGS BERHAD

To hold unto the said Transferee
Executors Administrators and Assigns subject
to several conditions on which held
the same immediately before the execution
hereof and the said Transferee,
do hereby agree to accept the said
subject to the conditions aforesaid

30 As Witness our Hands this day
of in the year of our Lord
One Thousand Nine Hundred and

Signed sealed and delivered)
by the above named)
in the presence of) Sd. Chong Kim
Choy

Signature Witness signature
Address undecipherable
Occupation

40 Signed Sealed and delivered)
by the abovenamed)
in the presence of)

Signature
Address
Occupation

In the High Court in Malaya at Kuala Lumpur

No.11

Affidavit of Haron Bin Mohd Zaid and exhibit thereto

27th October 1977

Exhibit "H1" (continued)

Signed sealed and delivered) by the above named in the presence of,

Signature

Address

Occupation

Signed sealed and delivered) by the above named in the presence of

Signature

Address

Occupation

10

NOTE:- The Consideration money set forth in a transfer may differ from that which the first seller will receive owing to subsales by the original Buyer: the Stamp Act requires that in such cases the consideration money paid by the Sub-purchaser shall be the one inserted in the Deed, as regulating the ad valorem Duty the following is the clause in question.

20

"Where a person having contracted for the purchase of any property, but not having obtained a Conveyance thereof, contracts to sell the same to any other person and the property is, in consequence, conveyed immediately to the Sub-purchaser, the Conveyance is to be charged with ad valorem Duty in respect of the consideration moving from the Sub-Purchaser."

54 & 55 Vict. Cap.39 (1891) Section 58 Sub-section 4.

30

When a Transfer is executed out of Great Britain, it is recommended that the signature be attested by H.M.Consul or Vice Consul, a Clergyman, Magistrate, Notary Public, or by some other person holding a public position - as most Companies refuse to recognise Signature not so attested. When a Witness is a Female she must state whether she is a Spinster, Wife or Widow: and if a Wife she must give her Husband's Name, Address and Quality, Profession or Occupation. The Date must be inserted in Words and not in Figures.

40

No. 12

SUMMONS ISSUED BY PLAINTIFFS
FOR LIBERTY TO SIGN FINAL
JUDGMENT AGAINST THE DEFENDANT

In the High
Court in
Malaya at
Kuala Lumpur

No.12

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
CIVIL SUIT NO. 1364 OF 1977

Summons issued
by Plaintiffs
for liberty
to sign Final
Judgment
against the
Defendant

28th October
1977

Between

Syarikat Seri Padu Sdn.Bhd. Plaintiffs

And

10 Haron bin Mohd Zaid Defendant

And

Central Securities. (Holdings)
Berhad Third Party

SUMMONS-IN-CHAMBERS

20 LET ALL PARTIES CONCERNED attend the Judge
in Chambers in the High Court at Kuala Lumpur
on the 11th day of January, 1978 at 9.30 o'clock
in the forenoon on the hearing of an application
on the part of the abovenamed Plaintiffs for
the following Orders :-

- (a) that the Plaintiffs be at liberty to
sign final Judgment in this action
against the abovenamed Defendant for
the sum of \$4,186,224-00 indorsed
in the Writ of Summons and interest the
rate of 6% per annum from the 12th day
of March, 1975 or such other date as
this Honourable Court shall allow till
the date of realisation;
- 30 (b) cost; and
- (c) such other further Order that this
Honourable Court may deem fit.

Dated this 28th day of October, 1977

Sd. Illegible

SENIOR ASSISTANT REGISTRAR
HIGH COURT, KUALA LUMPUR

Entered No. /77
Clerk

In the High Court in Malaya at Kuala Lumpur

No.12

Summons issued by Plaintiffs for liberty to sign Final Judgment against the Defendant

28th October 1977

(continued)

This Summons is filed by M/s. Wong & Paramjothy, Solicitors for the above-named Plaintiffs, whose address for service is at Room 304, OCBC Building, Jalan Ibrahim, Johore Bahru.

This Summons is supported by the Affidavit of Koh Kim Chai affirmed on the 22nd day of October, 1977 and filed herein on the _____ day of October, 1977

No.13

Affidavit of Koh Kim Chai

22nd October 1977

No. 13

AFFIDAVIT OF KOH KIM CHAI

10

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
CIVIL SUIT NO.1364 OF 1977

Between

Syarikat Seri Padu Sdn.Bhd. Plaintiffs

And

Haron bin Mohd Zaid Defendant

And

Central Securities (Holdings) Berhad Third Party 20

A F F I D A V I T

I, KOH KIM CHAI NRIC No.4428458 of No.2-E, Jalan Ah Fook, Johore Bahru do solemnly and sincerely declare as follows:-

1. I am the Director of the abovementioned Plaintiffs and am duly authorised to make this Affidavit. I also have personal knowledge of the matters deposed herein.

2. By an Agreement dated the 12th day of March 1975 the abovenamed Defendant agreed to sell to the Plaintiffs 560,000 fully paid up ordinary shares of \$1.00 each of United Holdings Bhd at the agreed price of \$8.00 per share. The purchase price for the 30

said 560,000 shares was \$4,480,000-00.

In the High
Court in
Malaya at
Kuala Lumpur

No. 13

Affidavit of
Koh Kim Chai.

22nd October
1977

(continued)

3. On the aforesaid date the Plaintiffs paid to the Defendant the sum of \$4,480,000-00 and under the said Agreement the Defendant agreed to deliver to the Plaintiffs the share certificates therefor and the relevant registrable transfers within one (1) week from the date of the payment.

10 4. The Defendant has delivered to the Plaintiffs 36,722 shares only out of the agreed 560,000 shares which the Defendant had contracted to sell. The said 36,722 shares were accepted by the Plaintiffs on a without prejudice basis to their right to rescind and/or claim for damages and/or other reliefs for breach of the contract.

20 5. The Defendant in breach of the agreement failed or neglected to deliver the remaining 523,278 shares and registrable transfer in spite of repeated demands and requests to do so by the Plaintiffs.

30 6. By reason of the breach of the Agreement on the part of the Defendant by failing to deliver the said 523,278 fully paid up ordinary shares of \$1.00 each of United Holdings Bhd within the time agreed by the Plaintiffs and the Defendant, the Plaintiffs are entitled to the refund of the purchase price thereof, as follows :-

523,278 fully paid up ordinary
shares of United Holdings Bhd of
\$1.00 each at the price of \$8.00 per
share \$4,186,224-00.

7. The Defendant therefore is justly and truly indebted to the Plaintiffs in the sum of \$4,186,224-00.

40 8. In spite of repeated demands and requests by the Plaintiffs, the Defendant still fails or neglects to pay the aforesaid sum of \$4,186,224-00 or any part thereof.

9. I verily believe that there is no defence to the action and the Appearance filed by the Defendant is merely to delay the action.

In the circumstances, I humbly pray for an Order in terms of the application filed herein.

In the High Court in Malaya at Kuala Lumpur

AFFIRMED by the abovenamed)
KOH KIM CHAI at Johore)
Bahru this 22nd day of) Sd. Koh Kim Chai
October, 1977 at 10.00 a.m)

No.13
Affidavit of Koh Kim Chai
22nd October 1977
(continued)

Before me,
Sd.Chin Kon Sing
Commissioner for Oaths
Johore Bahru

This Affidavit is taken out by M/s.Wong & Paramjothy of Suite 304, OCBC Building, Jalan Ibrahim, Johore Bahru, Solicitors for the abovenamed Plaintiffs. 10

No.14
Affidavit of Koh Kim Chai and exhibits thereto
31st October 1977

No. 14
AFFIDAVIT OF KOH KIM CHAI AND EXHIBITS THERETO

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
CIVIL SUIT NO: 1364 OF 1977

Between
Syarikat Seri Padu Sdn.Bhd. Plaintiffs
And 20
Haron bin Mohd. Zaid Defendant
And
Central Securities (Holdings) Berhad Third Party

A F F I D A V I T

I, Koh Kim Chai being of full age, Malaysian, residing at 19, Jalan Kemunting, Johore Bahru make affirmation and say as follows :-

1. I am an Advocate & Solicitor practising 30 at Johore Bahru. I am also a Company Director.
2. I have seen the Affidavit of Haron bin Mohd.Zaid affirmed the 27th day of October, 1977

and filed herein.

3. I respectfully confirm that I was required by the said Haron bin Mohd. Zaid to persuade Central Securities (Holdings) Berhad to deliver to him a proper and registrable Memorandum of Transfer transferring the said 523,278 shares to him or to his nominee.

10 4. I attended on or about the 15th day of December, 1976 on Datuk Loy Hean Hiong one of the Joint Managing Directors of Central Securities (Holdings) Berhad and made the said request of Haron bin Mohd. Zaid. Dato Loy Hean Hiong pointed out to me that without the 523,278 shares the purchaser would not have a controlling interest in United Holdings Berhad and unless Central Securities (Holdings) Berhad were paid a further \$523,278.00 calculated at \$1/- per share the required Memorandum of Transfer would not be delivered.

20 5. When I protested against this unmitigated sharp practice he laughed and said "one lives and learns."

30 6. I wrote two letters dated the 15th day of December 1976 and the 30th day of January 1977 to Central Securities (Holdings) Berhad relevant to these matters copies whereof are now shown to me and marked "KCK 1" and "KCK 2" respectively and attached hereto.

Affirmed by the abovenamed)
KOH KIM CHAI at Kuala)
Lumpur this 31st day of) Sd. Koh Kim Chai
October 1977)

Before me,
Sgd. SU CHENG YEE
Pesurohjaya Sumpah
Commissioner for Oaths

In the High
Court in
Malaya at
Kuala Lumpur

No.14

Affidavit of
Koh Kim Chai
and exhibits
thereto

31st October
1977

(continued)

In the High
Court in
Malaya at
Kuala Lumpur

EXHIBIT "KCK 1" TO
AFFIDAVIT OF KOH
KIM CHAI

No.14

Affidavit of
Koh Kim Chai
and exhibits
thereto

31st October
1977

(continued)

Exhibit "KCK 1"

K. C. KOH & CO.
Advocates & Solicitors

2-E (4th Floor)
Jalan Ah Fook,
Wong Shee Fun Building
Johore Bahru, Johore
Tel: 55812 & 53920 10

Our ref: HC.2350/76/KCK/sk

15th December, 1976

Messrs. Central Securities (Holdings)Bhd.,
Wisma Central,
Jalan Ampang,
Kuala Lumpur (Attn: Datuk Loy Hean Hiong)

Sirs,

Re: Share Certificate No.0227 for
523,278 shares in United Holdings
Bhd. 20

We act for Tuan Hj. Haron bin Mohd.Zaid
of No.16, Jalan Pandan, Johore Bahru.

We refer to the conversation between
Datuk Loy Hean Hiong and our Mr. K.C.Koh
regarding the abovementioned Share Certifi-
cate which cannot be transferred to Sharikat
Seri Padu Sdn. Bhd. because the Memorandum
of Transfer executed by Dr. Chong Kim Choy,
the registered owner of the said Share
Certificate, in favour of International 30
Holdings Private Limited is invalid. We
shall be obliged if you will be good enough
to deliver the necessary Memorandum of
Transfer duly executed within two (2) weeks
from the date hereof failing which our client
may take such legal action as he may be
advised.

Yours faithfully,

Sd. K.C.Koh & Co.

c.c. Client

40

EXHIBIT "KCK 2" TO
AFFIDAVIT OF KOH KIM
CHAI

In the High
Court in
Malaya at
Kuala Lumpur

No.14

K. C. KOH & CO.
Advocates & Solicitors

Affidavit of
Koh Kim Chai
and exhibits
thereto

2-E (4th Floor)
Jalan Ah Fook,
Wong Shee Fun Building,
Johore Bahru, Johore
Tel: 55812 & 53920

31st October
1977

(continued)

10

Our ref: HC.2350/76/KCK/sk

Exhibit "KCK 2"

30th January, 1977

Messrs. Central Securities (Holdings) Bhd.,
Wisma Central,
Jalan Ampang,
Kuala Lumpur (Attn: Datuk Loy Hean Hiong)

Dear Sirs,

Re: Share Certificate No.0227 for
523,278 shares in United Holdings
Bhd.

20

Further to our letter dated 15th December,
1976 to which we do not seem to have received
any reply.

TAKE NOTICE that if we do not receive any
reply from you within seven (7) days from the
date hereof, we shall commence legal proceedings
against you without further reference to you.

Yours faithfully,

Sd. K.C.Koh & Co.

30

c.c. Client

In the High
Court in
Malaya at
Kuala Lumpur

No. 15

AFFIDAVIT OF DATO LOY
HEAN HEONG

No.15

Affidavit of
Dato Loy Hean
Heong

31st December
1977

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
CIVIL SUIT NO. 1364 OF 1977

BETWEEN

Syarikat Seri Padu Sdn. Bhd Plaintiffs

AND

Haron bin Mohd. Zaid Defendant

AND

Central Securities (Holdings)
Berhad Third Party

10

AFFIDAVIT IN REPLY

I, Dato Loy Hean Heong of full age
and care of Penthouse, 10th Floor, Wisma
Central, Jalan Ampang, Kuala Lumpur, do
solemnly affirm and say as follows :-

1. I am a director of the Third Party
Company and also authorised to make this
Affidavit.

2. I refer to the Affidavit of Koh Kim
Chai affirmed on 31st October, 1977 and filed
herein (hereinafter referred to as "Koh's
Affidavit").

20

3. Refer to paragraphs 4 and 5 of Koh's
Affidavit I strongly deny that on or about
15th December 1976 the said Koh Kim Chai
attended to me or at all.

4. I have no cause to attend to the said
Koh Kim Chai or the Defendant on or about
that date as the Third Party was already a
defendant in the Civil Suit No.2323 of 1976
filed by the Defendant previous on 8th
October 1976. The said Civil Suit No.2323
of 1976 was pending and if at all an approach
was made by Koh Kim Chai in respect of or
related to the subject matter I would have
ask the said Koh Kim Chai to refer the
matter to the Third Party's Solicitors.

30

5. Refer to paragraph 6 of Koh's Affidavit

I deny receiving the said letters "KCK 1" and "KCK 2".

6. I humbly pray that this Honourable Court dismiss the action of the Defendant with costs.

AFFIRMED at Kuala Lumpur) this 31st day of December) 1977 at 11.05 a.m. Sd. Dato L.H.Heong

Before me,

Sgd.

COMMISSIONER FOR OATHS, (Pesuruhjaya Sampah) Kuala Lumpur, Malaysia

NMD/8247/CSH

In the High Court in Malaya at Kuala Lumpur

No.15

Affidavit of Dato Loy Hean Heong

31st December 1977

(continued)

10

No. 16

AFFIDAVIT OF MAH KING HOCK AND EXHIBITS THERETO

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR CIVIL SUIT NO: 1364 OF 1977

BETWEEN

Syarikat Seri Padu Sdn. Bhd. Plaintiffs

AND

Haron bin Mohd. Zaid Defendant

AND

Central Securities (Holdings) Berhad Third Party

AFFIDAVIT IN REPLY

I, Mah King Hock of full age and care of Penthouse, 10th Floor, Wisma Central, Jalan Ampang, Kuala Lumpur, do solemnly affirm and say as follows :-

30

1. I am a director of the Third Party Company (hereinafter referred to as the "Third Party") and am duly authorised to make this Affidavit-in-Reply.

No.16

Affidavit of Mah King Hock and exhibits thereto

31st December 1977

In the High Court in Malaya at Kuala Lumpur

No.16

Affidavit of Mah King Hock and exhibits thereto

31st December 1977

(continued)

2. I have read the Affidavits of Haron bin Mohd. Zaid affirmed the 27th October 1977 (hereinafter referred to as "Haron's Affidavit") and Koh Kim Chai affirmed the 31st October 1977 (hereinafter referred to as "Koh's Affidavit").

3. As to paragraph 2 of Haron's Affidavit, the Exhibit "H1" was duly sent to the Defendant with the Share Certificate No.0227 for 523,278 shares. From the Annual Returns of the United Holdings Berhad made up to 29th July 1974 (A photocopy of a certified true copy of the search is exhibited herein and marked "M-1" and to 30th June 1975 (A photocopy of a certified true copy of the search is exhibited herein and marked "M-2") it appears that the shares amounting to 523,278 were nevertheless transferred from the said Dr. Chong Kim Choy to the Plaintiffs as in M-1 524,278 shares were in the name of the said Dr. Chong Kim Choy and the Plaintiffs did not even appear as a shareholder whereas in M-2 the Plaintiffs is a registered shareholder holding 985,510 shares (item 94) whilst Dr. Chong Kim Choy's shareholding was reduced to just 1,000 shares (item 22). 10 20

4. In reply to paragraph 3 of Haron's Affidavit, I contend he was being untruthful in stating that at the time the said Civil Suit No. 2323 of 1976 was commenced in October 1976 he did not discover the fact that the necessary Memorandum of Transfer for the said 523,278 shares purported to transfer the said shares of International Holdings (Pte) Ltd. when in actual fact he has or is deemed to have knowledge that the said shares have been duly transferred from Dr.Chong Kim Choy to the Plaintiffs (as stated in "M-2"). The said Haron bin Mohd. Zaid was at all material time the director of the said United Holdings Berhad (refer to "M-2") and also a director of the Plaintiffs' company. 30 40

5. As to paragraph 4 of Haron's Affidavit, I am advised there can never be two separate causes of action and if at all there is an action by the Defendant against the Third Party (which is denied) their present claim is included and the same subject matter as in the pending Civil Suit No.2323 of 1976. 50

6. As to paragraph 6 of Haron's Affidavit, I am verily advised that there can never be different causes of action in Civil Suit

No.2323 of 1976 and the present action as they both are in respect of the same subject matter. The last part of paragraph 6 of Haron's Affidavit clearly indicates the status of the two cases in that if the Defendant is so advised then there should only be one civil suit.

In the High Court in Malaya at Kuala Lumpur

No.16

Affidavit of Mah King Hock and exhibits thereto

31st December 1977

(continued)

10 7. I am advised and verily believe that there can never be any claim against the Third Party when the said shares have all been transferred and duly registered in the name of the Plaintiffs.

20 8. I am to state that as a result of the Defendant's numerous false claims and action the Third Party has been advised and has instituted an action vide Kuala Lumpur High Court Civil Suit No.3430 of 1977 against the said Defendant and one Koh Kim Chai for false and malicious conspiracy, false and malicious prosecution, abuse of the proper process of the Court and libel. The photocopy of the said Writ and Statement of Claim is exhibited herein and marked "M-3".

9. I therefore pray that this action against the Third Party be dismissed with costs.

AFFIRMED at Kuala Lumpur)
this 31st day of) Sd. Mah King Hock
December 1977 at 11.05 am)

30

Before me,

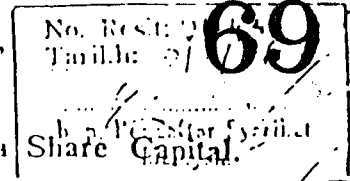
Sgd.

COMMISSIONER FOR OATHS
(Pesuruhjaya Sampah)
Kuala Lumpur, Malaysia

NMD/8247/CSH

A

"THE COMPANIES ACT, 1965"



Form of Annual Return of a Company Having a
(PURSUANT TO SECTION 165)

Annual Return of the UNITED HOLDINGS Berhad

made up to the 29th day of July 1974 (being the date of or a date not later than the fourteenth day after the date of the Annual General Meeting in 1974).

The date of the Annual General Meeting of the Company was 29th July, 1974

B The address of the Registered Office of the Company is—

Tingkat Kedua, Blok E, Kompleks Pejabat Damansara, Damansara Heights, K. L.

The address of the place at which the register of members is kept if other than the registered office is—

As above

Summary of Share Capital and Shares.

C	Nominal Share Capital \$ 30,000,000 divided into ¹	{ 30,000,000 shares ^{stock units} of \$1/- each shares of \$ each
	Total number of shares taken up ¹ to the 29th day of July, 1974 (being the date of the return or other authorized date)	{ 2,000,000 stock units of \$1 each
	Number of shares issued subject to payment wholly in cash.	1,000,000
	Number of shares issued as fully paid up otherwise than in cash.	1,000,000
	Number of shares issued as partly paid up to the extent of per share otherwise than in cash.	Nil
	² Number of shares (if any) of each class issued at a discount.	Nil
D	Total amount of discount on the issue of shares which has not been written off at the date of this Return.	\$ Nil
	³ There has been called up on each of 1,000,000 shares ^{stock units}	\$ 1/-
	³ There has been called up on each of shares.	\$ Nil
	³ There has been called up on each of shares.	\$ Nil
	⁴ Total amount of calls received including payments on application and allotment.	\$ 1,000,000
	Total amount (if any) agreed to be considered as paid on 1,000,000 shares ^{stock units} which have been issued as fully paid up otherwise than in cash.	\$ 1,000,000
E	Total amount (if any) agreed to be considered as paid on shares which have been issued as partly paid up to the extent of per share otherwise than in cash.	\$ None
	Total amount of calls unpaid.	\$ Nil
	Total amount of sums (if any) paid by way of commission in respect of any shares or debentures since the date of the last Return.	\$ Nil
	Total amount of the sums (if any) allowed by way of discount in respect of any debentures since the date of the last Return.	\$ Nil
F	Total number of shares forfeited.	\$ Nil
	Total amount paid (if any) on shares forfeited.	\$ Nil
	⁵ Total amount of the indebtedness of the company in respect of all charges which are required to be registered with the Registrar of Companies.	\$ Nil

¹ Where there are shares of different kinds or amounts (e.g. Preference and Ordinary, or \$ and \$) state the numbers and nominal values separately.
² If the shares are of different kinds, state them separately.
³ Where various amounts have been called or there are shares of different kinds, state them separately.
⁴ Include what has been received on forfeited as well as on existing shares.
⁵ State in respect of each charge the registered number thereof, the date of registration, and the amount of indebtedness at the date of the Return.

Particulars of the Directors Managers Secretaries and Auditors of the UNITED HOLDINGS BERHAD at the date of the Annual Return

The present full name	Any former names	Usual address	Other business occupation and in the case of Directors particulars of other directorships required to be shown by S. 141(2)(b) and (3) (If none, state so)
Tengku Idris Shah Aziz	None	"Idrizar" 6 Lengkok Bellamy, Kuala Lumpur.	D. Y. T. M. Raja Muda of Selangor None
Dr. Chong Kim Choy	None	196 Rasah Road, Seremban	Director and Medical Practitioner Far Eastern Hotels Development (M) Bhd. Seasian Hotel Berhad.
Datuk Lee Yoke Yea	None	20 Wilkinson Street, Seremban	Company Director None
David Aubrey Michael Bloom	None	No. 5 Jalan Batai, Damansara Heights, Kuala Lumpur.	Chartered Accountant Malayan Cement Bhd. Selangor Properties Bhd. - Group Hotel Bunga Raya (KL) Bhd. Wearne Brothers Ltd. - Group Pegi Malaysia Berhad - Group Seasian Hotel Berhad
Geh Cheng Hooi (alternate to Mr. D. A. M. Bloom)	None	25 Jalan Utara, Petaling Jaya.	Chartered Accountant Selangor Properties Berhad - Group Wearne Brothers Ltd. - Group Climate Engineering (M) Sdn. Bhd. Metallo Industries Sdn. Berhad Selco (Malaysia) Sdn. Berhad Pegi Malaysia Berhad

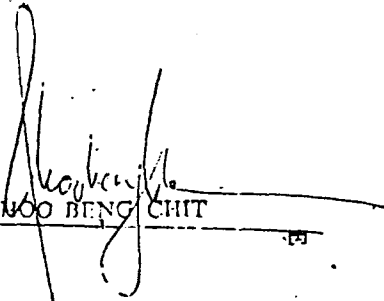

KOO BENG CHIT

Exhibit "M.1" to Affidavit of Mah King Hock (First, Second, Third, Fourth and Ninth pages only)
(Contd.)

703

71:6

Copy of last audited Balance Sheet and Profit and Loss Account of the Company.

This Return must include a copy, certified by a director or by the manager or secretary of the company to be a true and correct copy of the last balance sheet and of the last profit and loss account which have respectively been audited by the company's auditors (including every document required by law to be annexed or attached thereto) together with a copy of the report of the auditors thereon (certified as aforesaid) and if any such balance sheet or account is in a language other than Malay or English there must also be annexed to it a translation thereof in Malay or English certified in the prescribed manner to be a correct translation. If the said last balance sheet or account did not comply with the requirements of the law as in force at the date of the audit there must be made such additions to and corrections in the copy as would have been required to be made therein in order to make it comply with the said requirements, and the fact that the said copy has been so amended must be stated thereon. If a company has more than one such audited balance sheet or profit and loss account since the date of the last Return, every such balance sheet and profit and loss account must be included.

B

Notwithstanding the foregoing provisions of this paragraph this Return need not include a copy of the last balance sheet and profit and loss account of any company which is an exempt private company at the date of the Return and has been an exempt private company since the date of the last Return the incorporation of the company or the commencement of this Act, whichever last occurs, if the Return includes a certificate signed by a director of the company, secretary of the company and the auditor of the company which certifies that, to the best of their knowledge and belief:

- (a) the company is and has at all relevant times been an exempt private company;
- (b) a duly audited profit and loss account and balance sheet which comply with the requirements of the Act have been laid before the company in general meeting; and
- (c) as at the date to which the profit and loss account has been made up the company appeared to have been able to meet its liabilities as and when they would fall due.

C

Certificate to be Given by all Companies

A certificate in the form set out hereunder shall be given by the secretary or a director of every company.

Certificate

I/We (1) after having made due inquiries certify:—

- (a) that the provisions of the Unclaimed Moneys Act, 1965, relating to unclaimed moneys have been complied with;
- (b) having made an inspection of the share register, that transfers have not (1) been registered since the date of the last Annual Return (1)

D

(1) Strike out if inapplicable.

Companies

- (c) (1) ~~that the provisions of the Companies Act, 1965, relating to the filing of the annual returns of the company have been complied with;~~
- (d) (1) ~~that the provisions of the Companies Act, 1965, relating to the filing of the annual returns of the company have been complied with;~~

E

Signature

Signature (1)

F

Signature

Secretary

(1) Strike out this paragraph if the company is not a private company.
(2) In the case of the first Annual Return of a private company strike out the words "last Annual Return" and substitute therefor the words "incorporation of the company".
(3) Strike out this paragraph except in the case of a private company whose members exceed fifty.
(4) Note—A certificate signed by the same person in the capacity of both director and secretary will not be accepted.
See section 139 (5).

72

A List of persons holding shares in the... UNITED HOLDINGS
Berhad on the 29th day of July 1974 (being the date of the Return or other
authorized date) and an account of the shares so held.

NOTE — If the names in this list are not arranged in alphabetical order, an index sufficient
to enable the name of any person in the list to be readily found must be annexed to this list.

Folio in Register Ledger Containing Particulars	NAMES AND ADDRESSES	*Number of Shares held by Existing Members†
B	See attached lists	(7)
C		
D		
E		
F		

* The aggregate number of shares held, and not the distinctive numbers, must be stated, and the column must be added up throughout so as to make one total to agree with that stated in the summary to have been taken up.
† When the shares are of different classes these columns may be subdivided so that the number of each class held may be shown separately. Where any shares have been converted into stock particulars of the amount of stock must be shown.

[Signature]
KHOOC-RENG CHIT
Secretary

[Signature]
(Signature)

(Secretary)

Exhibit "M.1" to (Affidavit
of Mah King Hock (First,
Second, Third, Fourth and
Ninth pages only)
(Contd.)

NAMES AND ADDRESSES

SHARES HELD BY
Existing
Members}

REMARKS
A 772³

Mrs. CHEE Hoo Soow,
c/o Kennedy, Burkill & Co. Ltd.,
Chartered Bank Chambers,
Penang.

1,000

B

Mr. Cheng Swee Guan,
682, Jalan Indra Putra,
Johore Bahru.

2,000

Madam Chow Gai Looi,
6, Kapar Road,
Ipoh.

1,000

C

Mdm. CHEW Guat Hua,
345, Leboh Pantai,
Penang.

1,000

Madam Daisy CHEW Hon Woon,
35, Jalan Kemuning,
Kebun Teh Park,
Johore Bahru.

C.116

.78

D

Miss Janet CHEW,
187-189, Carnarvon Street,
Penang.

1,000

CHEW Tung Seng, Esq.,
5, Green Garden Three,
Green Lane Estate,
Penang.

2,000

E

Mdm. CH'NG Boon See,
9, Midlands Drive,
Penang.

1,000

F

Dr. CHONG Kim Choy,
196, Rasah Road,
Seremban.

524,278

Mr. CHONG Yean Fong,
19, Jalan Tuanku Abdul Rahman,
(Batu Road),
Kuala Lumpur.

G

105
40
18

"THE COMPANIES ACT, 1965."

Form of Annual Return of a Company Having a Share Capital.
(PURSUANT TO SECTION 165)

Annual Return of ~~the~~ United Holdings Berhad

No. Prs: 111.
T: 9.7.75

Berhad, made up to the 30th day of June 1975 (being the date of the Annual General Meeting in 1975).
The date of the Annual General Meeting of the Company was 30th June 1975.
The address of the Registered Office of the Company is:—
6th Floor, Oriental Plaza, Jalan Parry, Kuala Lumpur

The address of the place at which the register of members is kept if other than the registered office is:—
As above

Summary of Share Capital and Shares.

Nominal Share Capital	\$30,000,000	divided into	30,000,000 shares of \$1.00 each
			shares of \$ each
Total number of shares taken up to the 30th day of June 1975 (being the date of the return or other authorized date)			2,000,000 stock units of \$1.00 each
Number of shares issued subject to payment wholly in cash.			1,000,000
Number of shares issued as fully paid up otherwise than in cash.			1,000,000
Number of shares issued as partly paid up to the extent of per share otherwise than in cash.			Nil
Number of shares (if any) of each class issued at a discount.			Nil
Total amount of discount on the issue of shares which has not been written off at the date of this Return.			Nil
There has been called up on each of 1,000,000 stock units			1.00
There has been called up on each of shares.			Nil
There has been called up on each of shares.			Nil
Total amount of calls received including payments on application and allotment.			1,000,000
Total amount (if any) agreed to be considered as paid on 1,000,000 stock units / shares which have been issued as fully paid up otherwise than in cash.			1,000,000
Total amount (if any) agreed to be considered as paid on shares which have been issued as partly paid up to the extent of per share otherwise than in cash.			None
Total amount of calls unpaid.			Nil
Total amount of sums (if any) paid by way of commission in respect of any shares or debentures since the date of the last Return.			Nil
Total amount of the sums (if any) allowed by way of discount in respect of any debentures since the date of the last return			Nil
Total number of shares forfeited.			Nil
Total amount paid (if any) on shares forfeited.			Nil
Total amount of the indebtedness of the company in respect of all charges which are required to be registered with the Registrar of Companies.			Nil

- Where there are shares of different kinds or amounts (e.g. Preference and Ordinary, or \$ and \$) state the numbers and nominal values separately.
- If the shares are of different kinds, state them separately.
- Where various amounts have been called or there are shares of different kinds, state them separately.
- Include what has been received on forfeited as well as on existing shares.
- State in respect of each charge the registered number thereof, the date of registration, and the amount of indebtedness at the date of the return.

41
106

Copy of last audited Balance-Sheet and Profit and Loss Account of the Company.

This return must include a copy, certified by a director or by the manager or secretary of the company to be a true copy of the last balance-sheet and of the last profit and loss account which have respectively been audited by the company's auditors (including every document required by law to be annexed or attached thereto) together with a copy of the report of the auditors thereon (certified as aforesaid) and if any such balance-sheet or account is in a language other than Malay or English there must also be annexed to it a translation thereof in Malay or English certified in the prescribed manner to be a correct translation. If the said last balance-sheet or account did not comply with the requirements of the law as in force at the date of the audit there must be made such additions to and corrections in the said copy as would have been required to be made therein in order to make it comply with the said requirements, and the fact that the said copy has been so amended must be stated thereon. If a company has more than one such audited balance-sheet or profit and loss account since the date of the last return, every such balance sheet and profit and loss account must be included.

B

Notwithstanding the foregoing provisions of this paragraph this return need not include a copy of the last balance sheet and profit and loss account of any company which is an exempt private company at the date of the return and has been an exempt private company since the date of the last return the incorporation of the company or the commencement of this Act, whichever last occurs, if the return includes a certificate signed by a director of the company, the secretary of the company and the auditor of the company which certifies that, to the best of their knowledge and belief:-

- (a) the company is and has at all relevant times been an exempt private company;
- (b) a duly audited profit and loss account and balance sheet which comply with the requirements of the Act have been laid before the company in general meeting; and
- (c) as at the date to which the profit and loss account has been made up the company appeared to have been able to meet its liabilities as and when they would fall due.

C

Certificate to be Given by all Companies

A certificate in the form set out hereunder shall be given by the secretary or a director of every company.

Certificate

I/We * after having made due inquiries certify:-

D

- (a) that the provisions of the Unclaimed Moneys Act, 1965, relating to unclaimed moneys have been complied with;
- (b) having made an inspection of the share register, that transfers have not been registered since the date of the last annual return *

~~of~~
~~the incorporation of the company*~~

- (c) ~~(1) that the company has not since the date of the last annual return issued any invitation to the public to subscribe for any shares or debentures of the company or to deposit money for that purpose or to make any call on it~~
- (d) ~~(1) that the excess of members of the company above fifty (counting joint holders of shares as one person) consists wholly or persons who are in the employment of the company or of its subsidiary or persons who are in the employment of the company or of its subsidiary and therefore have not been treated as members of the company.~~

E

Director (*) 

Date 8th July, 1975

Secretary

F

* Strike out if inapplicable.

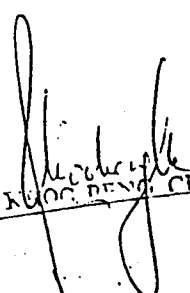
- (1) Strike out this paragraph if the company is not a private company.
- (2) In the case of the first annual return of a private company strike out the words "last annual return" and substitute therefor the words "incorporation of the company".
- (3) Strike out this paragraph except in the case of a private company whose members exceed fifty.
- (4) Note-A certificate signed by the same person in the capacity of both director and secretary will not be accepted. See section 139 (5).

G

List of persons holding shares in the United Holdings
 Berhad on the 30th day of June 1975 (being the date of the return or
 other authorized date) and an account of the shares so held.

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NOTE — If the names in this list are not arranged in alphabetical order, an index
 sufficient to enable the name of any person in the list to be readily found must be annexed
 to this list.

Folio in Register Ledger Containing Particulars	NAMES AND ADDRESSES	*Number of Shares held by Existing Members†
<p>(See attached list)</p> <p style="text-align: right;">  KUO BENG CHIU - 1 NOV 1977 </p>		

* The aggregate number of shares held, and not the distinctive numbers, must be stated, and the column must be added up throughout so as to make one total to agree with that stated in the summary to have been taken up.
 † When the shares are of different classes these columns may be subdivided so that the number of each class held may be shown separately. Where any shares have been converted into stock particulars of the amount of stock must be shown.

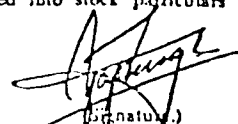

 (State whether director or manager or secretary.)
SECRETARY

Exhibit "M.2"
to Affidavit of
Mah King Hoek
(First, Second,
Third, Fourth,
Seventh, Eighth,
Ninth and
Fourteenth
pages only)
(contd.)

RETURN GIVING PARTICULARS IN REGISTER OF DIRECTORS, MANAGERS AND SECRETARIES, AND CHANGES OF PARTICULARS

UNITED HOLDINGS BERHAD

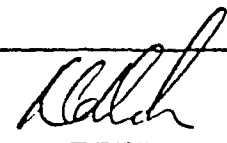
DIRECTORS

Present Name	Former Name	Address	Business Occupation (if any)	Particulars of other Directorships	Nature of Appointment or Change and Relevant Date	Identity Card No.
Koh Kim Chai	-	2E Jalan Ah Fook Johore Bahru, Johore	Director	-	Appointed for Syarikat June 7, 1976	4428459
Haron bin Mohd Zaid	-	16 Jalan Pandan Stulang Darat, Johore Bahru, Johore	Director	-	Appointed for Syarikat June 7, 1976	2666914
Tay Sook Kiang	-	19 Jalan Kamunting, Johore Bahru, Johore	Director	-	Appointed for Syarikat June 7, 1976	7634925

MANAGERS AND SECRETARIES

Office in Company	Full Name	Address	Other Occupation (if any)	Nature of Appointment or Change and Relevant Date	Identity Card No.
MANAGER	1) Loo Siew Yin	406 Jalan 5/63, Petaling Jaya	Lawyer	-	1184470
SECRETARIES:	2) Yap Ping Kon	209 Jalan Malerof, Off Jalan Bungear, Kuala Lumpur.	Accountant	Resigned June 15, 1976	2142240

Dated this 14th day of July, 1976

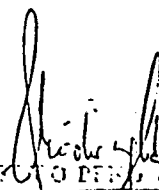


Director/Secretary

100

111

21	CHEM Tung Seng, Esq., 5, Green Garden Three, Green Lane Estate, Penang.		2,000	A
	Merchant.	F.D.		
22	Dr. CHONG Kim Choy, 196, Ratah Road, Sorebhan.		1,000	
		UH		
23	Mdm. CHUA Sree Sim, c/o P.O. Box 305, Kuala Lumpur.		2,000	B
24	Chung Khiaw Bank Nominees (M) Sdn. Bhd., 2nd Floor, Bangunan Lee Wah Bank, Medan Pasar, Kuala Lumpur.	U.H.	1,000	
25	Mr. CHUNG Kun Tat, 21, Salween Road, Penang.		1,000	C
26	Mrs. Usha Rani DAS, 669, Residential Area, Kuala Pilah, N.S.	UH.	5,000	
		D.13		D
27	Mdm. EE Siang Choo, 33, Jalan Tun Tan Cheng Lock, Malacca.		9,000	
	Mdm. Chey Baik Looi, 6, Karpur Road, Ipoh.	UH		
	Housewife.	F.D.		
28	Mdm. EE Siang Khong, 33, Jalan Tun Tan Cheng Lock, Malacca.		9,000	
29	Mdm. Foo Sook Chin, 8, Woodward Road, Ipoh.	U.H.	1,000	F


Mah King Hock
KUALA LUMPUR
Penang, S. M. S. (Sharikat)2

112

- | | | | | |
|----|---|------|--------|---|
| 30 | GIN Aik Sdn. Bhd.,
33, Jalan Tun Tan Chong Lock,
Malacca. | | 3,000 | A |
| | | U.H. | | |
| 31 | Mr. GOH Ann Heng,
21, First Cross Street,
Malacca. | | 1,000 | |
| | Merchant. | U.H. | | |
| 32 | Goh Bin Soo,
118 Heeren Street,
Malacca. | | 1,000 | B |
| | | G.32 | | |
| 33 | Mr. GOH Joon Boo,
21 First Cross Street,
Malacca. | | 1,000 | |
| | Merchant. | F.D. | | C |
| 34 | Haron bin Mohd Zaid,
16, Jalan Pandan,
Johore Bahru. | | 50,000 | |
| 35 | Ho Eng Kang,
513, Jln. Tuanku Abdul Rahman,
P.O. Box 782,
Kuala Lumpur. | | 3,000 | D |
| | | H.13 | | |
| 36 | Ho Eng San,
c/o 513, Jalan Tuanku Abdul Rahman,
Kuala Lumpur. | | 1,000 | |
| | | H.37 | | |
| 37 | Mr. HOH Su Heng,
No. 5, Road 5/35,
Petaling Jaya,
Selangor. | | 1,000 | E |
| | Merchant. | F.D. | | |
| 38 | Hongkong & Shanghai Bank (K.L.)
Nominees Ltd.,
2, Ampang Street,
Kuala Lumpur. | | 7,000 | |
| | | H.18 | | |
| 39 | L.Y...H. Tengku Idris Shah Ibni Sultan
Salahuddin Abdul Aziz Shah D.K.,
"Idrizar", 6, Longkok Gollary,
Kuala Lumpur. | | 1,000 | F |

[Signature]
 KWOC BENG CHIT

113

- 40 Mr. Kutarapura Subramania Vadhyar
Harayana IYER,
House No.16, (Lot No.10),
Jalan S.S1/5, Sungai Way, Selangor. 500 A
- 41 Miss KHOO Kooi Huah,
1874, Jalan Paul,
Teluk Anson. 1,000
- 42 Mr. KHOR Jin Hoe,
17, Jalan Maktab,
Kuala Lumpur 15-02 U.H. 1,000 B
- 43 Mdm. KHOR Saw Than,
30, Road 12/16,
Petaling Jaya. U.H. 1,000
- 44 Mr. KOH Boon Chong,
5, Jalan Rugayah,
Batu Pahat, Johore. U.H. 1,000 C
- 45 Koh Kim Chai,
6, Jalan Bentangau,
Johore Bahru. U.H. 100,000 D
- 46 Mr. Koh Sin Hock,
1 Green Garden Three,
Penang. K.23 1,000
- 47 Mr. Anselm KOK Sze Fatt,
436, Jalan Pudu,
Kuala Lumpur. UH 1,000 E
- 48 Mr. LAU Choon Theam,
1st Floor, Bangunan Mah Sing,
112-114, Jalan Pudu,
Kuala Lumpur. UH. 1,000
- 49 Mr. LAU Kim Cheng,
30-8, Jalan Junid,
Kuar. UH 1,000 F

[Signature]
KHO BOENG CHIT

[Signature]
r Sharikat

	Yaham Ong Beng Neo, 321, Kampong Gelam, 8 1/2 mile Tangga Batu, Malacca.	0.18		A
90	Mr. QUAH Hun Chow, 11, Logan Road, Penang.		4,000	
		U.H.		
91	Che Rahmah binti Rusu, 265, Jalan Karsaat Hujung, Kg. Dato Keramat, Kuala Lumpur.		300	B
		F.D.		
92	SALEBY Sdn. Bhd., 4th Floor, Mercantile Bank Building, Lorong Pasar Besar, Kuala Lumpur.		2,000	C
		UH		
93	Seagroatt & Campbell Nominees Sdn. Bhd., P. O. Box 790, Kuala Lumpur.		1,000	
		F.D.		
94	Sharikat Seri Padu Sdn. Bhd., 6th Floor, Oriental Plaza, Jalan Parry, Kuala Lumpur.		985,510	D
95	Mr. SCH Tiah Lin, 28, Jalan 20/9, Petaling Jaya.		1,000	
		UH		E
96	C. T. Tan Co., Ltd., 18 Jonker Street, Malacca.		1,000	
		T.45		
97	Edm. TAN Chuan Tean, c/o Ronnie Theoira, 301-C, Sin Hoe Gardens, Bukit Bahru, Malacca.		4,000	
		U.H.		F
98	Mr. TAN Hin Poon, 126, Beoren Street, Malacca.		2,000	

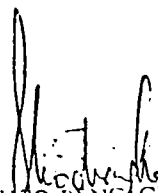

 KING BENG CHIT
 T.135

EXHIBIT "M.3" TO
AFFIDAVIT OF MAH
KING HOCK

In the High
Court in
Malaya at
Kuala Lumpur

No.16

Affidavit of
Mah King Hock
and exhibits
thereto

31st December
1977

(continued)

Exhibit "M.3"

WRIT OF SUMMONS

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
CIVIL SUIT NO. 3430 OF 1977

Between

Central Securities
(Holdings) Berhad Plaintiffs

And

1. Hj. Haron bin Mohd.
 Zaid
2. Koh Kim Chai Defendants

10

The Honourable Tan Sri Sarwan Singh Gill,
P.M.N., P.S.M., Chief Justice of the High Court,
Malaya, in the name and on behalf of His
Majesty the Yang Dipertuan Agung

To: 1. Hj. Haron bin Mohd. Zaid,
 16 Jalan Panda,
 Stulang Darat,
 Johore Bahru

20

2. Koh Kim Chai,
 2-E Jalan Ah Fook,
 Johore Bahru.

We Command you, that within 12 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 Central Securities (Holdings)
Berhad, Penthouse, 10th Floor, Wisma Central,
Jalan Ampang, Kuala Lumpur.

30

And Take Notice that in default of your
so doing the Plaintiffs may proceed therein
and judgment may be given in your absence.

WITNESS, Sharkawi Alis Senior Assistant Registrar
of the High Court in Malaya at Kuala Lumpur
the 25th day of November 1977.

Sd. Illegible
Plaintiffs' Solicitors

Sd. Sharkawi Alis
Senior Assistant Registrar
High Court, Kuala Lumpur

40

In the High
Court in
Malaya at
Kuala Lumpur

No.16

Affidavit of
Mah King Hock
and exhibits
thereto

31st December
1977

Exhibit "M.3"

(continued)

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 Kuala Lumpur

10

INDORSEMENT OF WRIT

The Plaintiffs' claim is for damages and
aggravated and punitive damages for :-

- (a) false and malicious conspiracy;
- (b) false and malicious prosecution;
- (c) abuse of the proper process of
the Court;

and (d) libel

arising out of the numerous false claims the
Defendants and each of them have made that
the Plaintiff Company had induced the
First Defendants to enter into an agreement
in writing dated 7th December 1974 with
the Plaintiff Company by fraudulent
representation and/or cheating and numerous
further false claims that the Defendants
had rescinded such agreement as a result
whereof the Defendants caused a search
warrant to be issued whereby the Plaintiff
Company's premises were searched by the
police and caused false claims to be made
in proceedings the short title and reference
to the record of which is H.J.Haron bin
Mohd. Zaid v. Central Securities (Holdings)
Bhd. Kuala Lumpur Civil Suit No. 2323 of
1976.

20

30

(Signed) Presgrave & Matthews

Plaintiffs' Solicitors

This Writ was issued by Messrs. Presgrave and Matthews of No.2 Beach Street, Penang whose address for service is at No.2 Beach Street, Penang, Solicitors for the said Plaintiffs who carries on business at Penthouse, 10th Floor, Wisma Central, Jalan Ampang, Kuala Lumpur.

In the High Court in Malaya at Kuala Lumpur

No.16

Affidavit of Mah King Hock and exhibits thereto

10 The Writ was served by me at on the Defendant on the _____ day of 19 , at the hour of _____ day of 19 . Indorsed this _____ day of 19 .
(Signed)

31st December 1977

Exhibit "M.3"
(continued)

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
CIVIL SUIT NO. _____ OF 1977

(Writ issued this _____ day of _____ 1977)

Between

20 And Central Securities (Holdings) Berhad Plaintiffs
1. Hj. Haron bin Mohd. Zaid
2. Koh Kim Chai Defendants

STATEMENT OF CLAIM

(accompanying Writ of Summons herein under provisions of Order 3 Rule 6 of the Rules of the Supreme Court 1957)

1. At all material times prior to the matters hereinafter alleged :-

30 (1) The Plaintiff company was and is a public limited company incorporated in Malaysia and having its registered office at Penthouse, 10th Floor, Wisma Central, Jalan Ampang, Kuala Lumpur and carried on business as inter alia an industrial holding company.

(2) One Sungei Kinta Tin Dredging Ltd. (hereinafter called "SK") was and is a public limited company incorporated

In the High
Court in
Malaya at
Kuala Lumpur

No.16

Affidavit of
Mah King Hock
and exhibits
thereto

31st December
1977

Exhibit "M.3"
(continued)

in England and having its
registered office at 10th Floor,
Wisma Central, Jalan Ampang,
Kuala Lumpur and held approximately
30% of the issued share capital
of the Plaintiff company.

- (3) One United Holdings Bhd. (herein-
after called "UH") was and is a
public limited company incorporated
in Malaysia and having its registered 10
office at 6th Floor, Oriental Plaza,
Jalan Parry, Kuala Lumpur.
- (4) One Malaysia Borneo Finance
Corporation (M) Bhd. (hereinafter
called "MBF") was and is a public
limited company incorporated in
Malaysia and having its registered
office at 9th Floor, Wisma Central,
aforesaid and carried on business
as a borrowing company. 20
- (5) One Overseas Lumber Bhd. (herein-
after called "OLB") was and is a
public limited company incorporated
in Malaysia and having its registered
office at 6th Floor, Oriental Plaza,
Jalan Parry, Kuala Lumpur and
carried on business inter alia in
the timber trade.
- (6) One Syarikat Bunga Raya Timor Jauh
Sd. Bhd. (hereinafter called "BR") 30
was and is a private limited company
incorporated on the 4th November
1974 in Malaysia and having its
registered office at 6th Floor,
Oriental Plaza, Jalan Parry, Kuala
Lumpur and carried on business as
inter alia an investment company.
2. (1) (i) At all material times prior to
the matters hereinafter alleged
the Second Defendant controlled 40
the majority of the issued
share capital of OLB.
- (ii) At all material times the
Second Defendant was a Director
of OLB.
- (2) (i) At all material times prior
to the matters hereinafter
alleged the Defendants by
themselves or their nominees
controlled BR. 50

(ii) At all material times the Second Defendant was a Director of BR.

In the High Court in Malaya at Kuala Lumpur

(3) At all material times the Second Defendant was a principal in the firm of Advocates and Solicitors known as K.C.Koh & Co.

No.16

Affidavit of Mah King Hock and exhibits thereto

10 3. At all material times prior to 7th December 1974 the Plaintiff company was the beneficial owner of 1,400,000 shares in UH in that :-

31st December 1977

Exhibit "M.3"

(1) By an agreement (to which the Plaintiff company will refer for its full terms and true effect) dated 2nd November 1974 the Plaintiff company had agreed to and thereafter did buy from a third party 1,002,268 shares in UH.

(continued)

20 (2) (i) By an agreement (to which the Plaintiff company will refer for its full terms and true effect) made by letter dated 28th November 1974 SK had agreed to purchase from another third party 397,732 shares in UH.

30 (ii) By letter (to which the Plaintiff company will refer for its full terms and true effect) dated 6th December 1974 SK authorised and agreed that the Plaintiff company should sell such 397,732 shares in UH for not less than M\$8/- per share.

4. At all material times :-

(1) UH had substantial liquid resources (in excess of M\$8,000,000/-).

(2) OLB had liquidity problems and very substantial overdrafts.

40 5. (1) By an agreement in writing (hereinafter called the "Original Agreement") dated 7th December 1974 the Plaintiff company agreed to sell and the First Defendant agreed to purchase 1,400,000 shares in UH for M\$11,200,000/-.

(2) There were express terms of the Original Agreement that :-

(i) the Plaintiffs would deliver 1,002,268 of such shares on completion and the First Defendant would then pay M\$10,700,000/-.

In the High
Court in
Malaya at
Kuala Lumpur

No.16

Affidavit of
Mah King Hock
and exhibits
thereto

31st December
1977

Exhibit "M.3"
(continued)

- (ii) the Plaintiffs would deliver the balance (397,732) of such shares within 60 days from 7th December 1974.
- (3) In entering into the said Agreement the First Defendant was acting jointly with and/or as nominee for or agent of the Second Defendant.
6. (1) Pursuant to the terms of the Original Agreement the Plaintiff company on the 23rd December 1974 delivered to the First Defendant 1,002,268 shares in UH and the First Defendant paid to the Plaintiff company therefor the said sum of M\$10,700,000/- 10
- (2) The First Defendant acquired the said sum of M\$10,700,000/- in the following circumstances :-
- (i) A sum of M\$2,500,000/- by loan from MBF against the security of the said 1,002,268 shares which said loan was repayable within 3 months from the 23rd December 1974. 20
- (ii) A sum of M\$8,200,000/- from the cash resources of UH.
7. (1) By letter dated 19th December 1974 the vendor to SK of 397,732 shares in UH advised SK that he could not deliver such shares but could deliver only 20,000 thereof. 30
- (2) Accordingly the Plaintiff company was obliged to acquire shares on the market in order to satisfy its obligation to deliver a further 397,732 shares to the First Defendant.
8. (1) On or about the 23rd December 1974 the Defendants requested the Kuala Lumpur Stock Exchange to suspend the listing of shares in UH upon the purported ground that UH was acquiring substantial interests in several companies. 40
- (2) Pursuant to the Defendants' request the Kuala Lumpur Stock Exchange as from the 23rd December 1974 suspended the listing of shares in UH.

- (3) The suspension of the listing of the shares in UH rendered valueless alternatively invalidated the shares in UH deposited by the Defendants as security for their said loan of M\$2,500,000/- as by directive dated 7th September 1971 from Bank Negara Malaysia unquoted shares are not suitable security for loans.
- 10 (4) The Plaintiff company will contend that the true reason for the Defendants seeking a suspension of the listing of shares in UH was to prevent the Plaintiff company from purchasing shares in UH in the market so that the Plaintiff company would not be able to fulfil its obligations under the Original Agreement.
- 20 9. (1) Despite the suspension of trading in UH shares the Plaintiffs were able readily to acquire such shares at prices below that to be paid by the First Defendant under the Original Agreement.
- (2) In about January 1975 the Defendants approached the Plaintiffs and requested the Plaintiff company to buy such shares in UH as it needed to acquire from the Defendants at about the price the Plaintiff company was paying third parties therefor.
- 30 (3) Accordingly by a supplemental Agreement the Plaintiff company agreed to buy and the Defendants agreed to sell 100,000 shares in UH at M\$6.40 per share.
- (4) The Supplemental Agreement expressly provided that :-
- 40 (i) the total consideration payable by the Plaintiff company (M\$640,000/-) should be set off against the balance (M\$500,000/-) payable by the First Defendant under the Original Agreement.
- (ii) the difference of M\$140,000/- would be paid by the Plaintiff company 60 days after 7th December 1974 when the balance of 297,732 shares in UH were to be delivered by the Plaintiff company.

In the High Court in Malaya at Kuala Lumpur

No.16

Affidavit of Mah King Hock and exhibits thereto

31st December 1977

Exhibit "M3"

(continued)

In the High
Court in
Malaya at
Kuala Lumpur

No.16

Affidavit of
Mah King Hock
and exhibits
thereto

31st December
1977

Exhibit "M.3"

(continued)

(iii) any shortfall on delivery of shares in UH by the Plaintiff company would be settled by the Plaintiff company paying M\$8.50 per such share to the First Defendant.

(5) On the 4th February 1975 the Plaintiff company delivered the balance of 297,732 shares in UH to the First Defendant and its cheque for M\$140,000/- pursuant to the terms of the Supplemental Agreement. 10

10. In an attempt to make regular the payment (alleged in paragraph 6(2)(ii) hereof) by UH of M\$8,200,000/- to finance the purchase of its own shares :-

(1) the Defendants caused UH to agree (by an agreement hereinafter called the "BR Agreement" made in or about February 1975) to purchase, subject to the approval of the relevant authorities, the entire issued share capital of BR for a total consideration of M\$14,680,000/- to be paid as to :- 20

(i) M\$8,200,000/- on 23rd December, 1974

(ii) M\$500,000/- on 30th December, 1974

(iii) M\$2,700,000/- by 23rd January 1975 30

(iv) M\$3,250,000/- by 23rd December 1977

(2) The Defendants purported to back date the BR Agreement to 23rd December 1974.

(3) The BR Agreement was not made at arms length in that the Defendants and each of them were directly interested therein by virtue of their 40 interests in BR and OLB and/or the consideration payable by UH was excessive.

11. (1) The Defendants have requested the Kuala Lumpur Stock Exchange to lift the suspension upon trading in the shares of UH but such Stock Exchange

has declined and continues to decline to do so whereby such shares remain suspended.

In the High Court in Malaya at Kuala Lumpur

No.16

Affidavit of Mah King Hock and exhibits thereto

31st December 1977

Exhibit "M.3"

(continued)

(2) The Defendants have requested the relevant authorities to approve the acquisition by UH of the issued share capital of BR upon the terms of the BR Agreement but at the date hereof such approval has not been given.

10 12. Accordingly the Defendants :-

(1) have been unable to make or purport to make regular the payment (alleged in Paragraph 6 (2)(ii) hereof) whereby UH paid M\$8,200,000/- to finance the purchase of its own shares.

(2) have been unable to repay to UH the said sum of M\$8,200,000/-.

(3) have been unable to raise finance to support OLB.

20 13. In and since about at least August 1975 the Defendants have fraudulently and maliciously conspired together :-

(1) falsely to claim that they rescinded the Original Agreement.

(2) to compel the Plaintiff company to pay to the Defendants the sum of M\$11,200,000/-.

30 (3) to discredit the Plaintiff company so as and/or to cover up the matters alleged in Paragraph 12 hereof.

Particulars

(A) Of Overt Acts

The Plaintiff company relies upon the following overt acts :-

40 (i) by letter dated 6th August 1975 the Defendants threatened to institute criminal proceedings against the Plaintiff company unless the Plaintiff company paid M\$11,200,000/- within 7 days.

(ii) the Defendants have dishonestly claimed orally to have rescinded the Original

In the High
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Affidavit of
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Exhibit "M.3"

(continued)

Agreement on or about the 23rd
December 1974.

- (iii) the Defendants have forged a letter dated 23rd December 1974 which purports to rescind the Original Agreement.
- (iv) (A) the Defendants have dishonestly made false statement to the effect that :-
- (a) the Plaintiff company made material misrepresentation to the Defendants to induce them to enter into the Original Agreement. 10
- (b) the Defendants relied upon the alleged misrepresentations.
- (c) the Defendants rescinded the Original Agreement by virtue of the alleged misrepresentations. 20
- (d) the Plaintiff company had cheated and defrauded the Defendants.
- (B) Such statements were made by the Defendants orally and/or in writing to the police in and since about October 1976 with the intention that the police should act upon the same and issue search warrants and institute criminal proceedings against the Plaintiff company. 30
- (v) The Defendants have issued proceedings in this Court the short title and reference to the record of which is Hj. Haron Bin Mohd. Zaid v. Central Securities (Holdings) Bhd. Kuala Lumpur Civil Suit No.2323 of 1976 dishonestly making false allegations to the effect alleged in subparagraph (iv)(A) and claiming M\$11,200,000/- as damages. 40

(B) Of Dishonesty

The Plaintiff company relies upon the following :-

- (i) the fact that the Defendants falsely

claim orally to have rescinded the Original Agreement on the 23rd December 1974.

In the High Court in Malaya at Kuala Lumpur

No.16

Affidavit of Mah King Hock and exhibits thereto

31st December 1977

Exhibit "M.3"

(continued)

- 10 (ii) the fact that the Defendants forged the letter dated 23rd December 1974.
- (iii) the fact that the Defendants knew from at least about 6th December 1974 that the Plaintiff company was purchasing shares in UH in the market and elsewhere but notwithstanding the Defendants (even if they were entitled to rescind the Original Agreement which the Plaintiffs deny) affirmed the Original Agreement :-
- 20 (a) by successfully seeking the suspension of trading in the shares of UH on the Kuala Lumpur Stock Exchange
- (b) by causing UH to provide M\$8,200,000/- of the consideration for the purchase of the shares in UH from the Plaintiff company.
- (c) by becoming Directors of UH.
- (d) by causing the First Defendant to be appointed Secretary of UH on 23rd December 1974.
- 30 (e) by causing the registered office of UH to be removed to 6th Floor, Oriental Plaza, Jalan Parry, Kuala Lumpur.
- (f) by causing their nominee Yap Ping Koh to be appointed Secretary of UH in place of the First Defendant on 12th January 1975.
- (g) by entering into the Supplemental Agreement.
- 40 (h) by acknowledging the Plaintiff company's said letter of 4th February 1974 without comment as to any claim for rescission of the Original Agreement.
- (i) by making numerous announcements to the public without comment as to any claim for rescission of the Original Agreement.
- (j) by not advising the Kuala Lumpur

In the High
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Stock Exchange of any claim for
rescission of the Original
Agreement.

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Affidavit of
Mah King Hock
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thereto
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1977
Exhibit "M.3"
(continued)

- (iv) the fact that the Defendants caused UH to provide M\$8,200,000/- :-
- (a) to finance the purchase of its own shares.
 - (b) without any or any proper authority.
- (v) the fact that the Defendants on the 23rd December 1974 caused the quotation of UH shares to be suspended although thereby they rendered unmarketable and unacceptable as security the 1,002,268 shares in UH deposited that day with MBF as security for a loan of M\$2,500,000/-. 10
- (vi) the fact that the Defendants caused UH to purport to acquire the issued share capital of BR although :-
- (a) such acquisition was not in the interest of UH. 20
 - (b) the purported consideration payable by UH was not justified.
 - (c) the Defendants were interested in and stood to profit from the arrangement.
 - (d) the BR Agreement was not concluded at arms length.

(C) Of Malice

In support of this allegation that the Defendants are activated by malice the Plaintiffs rely upon the fact that the Defendants are acting in an attempt to cover up and/or escape the consequences of the matters alleged in paragraph 12 hereof. 30

14. (1) Further or alternatively the Defendants have falsely and maliciously and without reasonable or probable cause made the statements alleged in Paragraph 13 hereof to the police upon the faith whereof the police on the 6th December 1976 applied to the Magistrate sitting at Magistrates' Court Kuala Lumpur for a search warrant to search the Plaintiff company's premises. In support of 40

the allegations of malice and want of reasonable or probable cause the Plaintiff company relies upon the matters pleaded in Paragraph 13 hereof.

In the High Court in Malaya at Kuala Lumpur

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10 (2) By order dated 6th December 1976 the magistrate of the Kuala Lumpur Magistrates' Court issued a search warrant which was executed on the 7th December 1976 when the police removed numerous documents from the Plaintiff company's premises.

Affidavit of Mah King Hock and exhibits thereto

31st December 1977

(3) Such documents all concern the matters alleged herein.

Exhibit "M.3"
(continued)

15. Further or in the further alternative by instituting the proceedings alleged in Paragraph 13(A)(v) hereof the Defendants were and are acting in abuse of the proper process of the Court in that :-

20 (1) such claim is made maliciously and without reasonable or probable cause.

(2) such claim is made by the Defendants for the improper purpose of embarrassing or coercing the Plaintiff company to pay money to the Defendants.

In support of the foregoing allegations the Plaintiff company relies upon the Particulars hereinafter pleaded.

30 16. (1) Further or alternatively the Defendants and each of them, referring to a representation alleged to have been made by the Plaintiff company, to the effect that they were the beneficial owner of 1,400,000 shares in UH, falsely and maliciously wrote and published or caused to be written and published of and concerning the Plaintiff company, in the form of written statements to the police, words as follows :-

40 Particulars of Words used by the First Defendant

The First Defendant said: "I later found out that the said representation was false or fraudulently or dishonestly made to me in that they were not the beneficial owner of the shares which they contracted to sell, which had induced me to pay the said sum of money. I was cheated."

In the High Court in Malaya at Kuala Lumpur

No.16

Affidavit of Mah King Hock and exhibits thereto

31st December 1977

Exhibit "M.3"

(continued)

Particulars of Words used by the Second Defendant

The Second Defendant said words to the effect that the Plaintiffs were selling short; that the Plaintiffs had cheated him of \$11.2 millions; that the Plaintiffs were a wheeler dealer and that their integrity was questionable; and that he had rescinded the Purchase Agreement on 23rd December 1974.

10

The Plaintiffs cannot give further particulars until after discovery herein.

(2) The Defendants and each of them well knew at the time when they made the statements to the police that the said statements would be read by divers persons.

(3) The words "selling short" in their material and ordinary meaning meant and were understood to mean that the Plaintiff company had sold or purported to sell shares of which it was not then the beneficial owner.

20

(4) By reason of the premises, the Plaintiffs have been greatly injured in their said business and they have been brought into hatred, ridicule and contempt.

17. By reason of the said false and malicious conspiracy and/or the said false and malicious prosecution and/or the said abuse of the proper process of the Court and/or the said libel the Plaintiff company has suffered loss and Damage.

30

Particulars

(1) The Plaintiff company has been damaged in its reputation.

(2) The goodwill of the Plaintiff company has been damaged :-

(i) by the issue of the search warrant and by the searches conducted thereunder.

40

(ii) by the First Defendant's said action.

(iii) by the publicity appearing in the financial and other press to the matters alleged in sub-paragraph (i)

and (ii) such publicity being the foreseeable and/or natural and probable consequence of :-

- (a) the application for and issue of a searchwarrant against the Plaintiff company,
- (b) the issue of proceedings claiming M\$11,200,000/- against the Plaintiff company.

10 (3) The Plaintiff company has been prevented from or restricted in attending to its lawful business.

(4) The Plaintiff company has incurred substantial legal fees in and about defending itself from the Defendants' charges.

18. Further or alternatively and by reason of the matters hereinbefore alleged the Plaintiff company claims aggravated and/or exemplary Damages.

20

Particulars

(1) Of Aggravated Damages

By reason of the matters alleged the Defendants have been motivated by malevolence and/or spite towards the Plaintiff company whereby the Plaintiff company's (through its proper officers) sense of dignity and pride has been gravely injured.

(2) Of Punitive Damages

30

The Defendants have acted in the matters alleged so as to make a profit for themselves in that by the matters alleged the Defendants have sought and are seeking to avoid and/or to postpone their liability and/or accountability for the repayment of M\$8,200,000/- to UH or generally in respect of such transactions and/or to cover up the matters alleged.

40

Wherefore the Plaintiff company claims damages and aggravated and punitive damages for :-

- (a) false and malicious conspiracy;
- (b) false and malicious prosecution;
- (c) abuse of the proper process of the Court;

In the High Court in Malaya at Kuala Lumpur

No.16

Affidavit of Mah King Hock and exhibits thereto

31st December 1977

Exhibit "M.3"
(continued)

In the High Court in Malaya at Kuala Lumpur

No.16

Affidavit of Mah King Hock and exhibits thereto

31st December 1977

Exhibit "M.3" (continued)

and (d) libel

arising out of the numerous false claims the Defendants and each of them have made that the Plaintiff company had induced the First Defendants to enter into an agreement in writing dated 7th December 1974 with the Plaintiff Company by fraudulent representation and/or cheating and numerous further false claims that the Defendants had rescinded such agreement as a result whereof the Defendants caused a search warrant to be issued whereby the Plaintiff Company's premises were searched by the police and caused false claims to be made in proceedings the short title and reference to the record of which is H.J.Haron Bin Mohd. Zaid v. Central Securities (Holdings) Bhd. Kuala Lumpur Civil Suit No.2323 of 1976.

10

Sgd. Presgrave & Matthews
Plaintiffs' Solicitors

20

No.17

Affidavit of John Chew Sun Hey and exhibits thereto

10th January 1978

No. 17

AFFIDAVIT OF JOHN
CHEW SUN HEY AND
EXHIBITS THERETO

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
CIVIL SUIT NO: 1364 OF 1977

Between

Syarikat Seri Padu Sdn. Bhd.

Plaintiffs

And

Haron bin Mohd. Zaid

Defendant

30

And

Central Securities (Holdings)
Berhad

Third Party

A F F I D A V I T

I, John Chew Sun Hey residing at 85, Jalan Terasek Lapan, Bungsar Baru, Kuala Lumpur, being of full age, Malaysian Citizen, make affirmation and say as follows :-

1. I am the Secretary of United Holdings Berhad.

40

2. I have seen the Affidavit of Mah King Hock affirmed the 31st day of December 1977 and beg leave to refer to paragraph 3 thereof.

In the High Court in Malaya at Kuala Lumpur

10 3. When Share Certificate No.0227 for 523,278 shares were submitted to the Company for transfer from the name of Dr. Chong Kim Choy although the form of Memorandum of Transfer purported to transfer the said shares to International Holding (Pte) Ltd. and as such could only be transferred to that Company the staff in the registration Department of the Company erroneously effected the transfer of the said shares to Syarikat Seri Padu Sdn.Bhd.

No.17
Affidavit of John Chew Sun Hey and exhibits thereto
10th January 1978

(continued)

4. The error was discovered in December 1976 and it was thereafter rectified. The document now shown to me and marked "JC 1" is a photocopy of the copy of the letter dated 13th December 1976 written by the Company to Syarikat Seri Padu Sdn. Bhd.

20 5. The document now shown to me and marked "JC 2" is a copy of the returns of the Company dated 15th December 1977 filed with the Registrar of Companies in which Dr. Chong Kim Choy is shown to hold 524,278 shares and Syarikat Seri Padu Sdn. Bhd. only 462,232 shares.

Affirmed at Kuala Lumpur)
this 10th day of January) Sd. J. Chew Sun Hey
1978 at 2.15 p.m.)

Before me,

30 Sgd. SU CHENG YEE
Pesuruhjaya Sumpah
Commissioner for Oaths

In the High
Court in
Malaya at
Kuala Lumpur

No.17

Affidavit of
John Chew
Sun Hey
and exhibits
thereto

10th January
1978

(continued)

Exhibit "JC 1"

EXHIBIT "JC 1" TO AFFIDAVIT
OF JOHN CHEW SUN HEY

UNITED HOLDINGS BERHAD

CIL/-

13th December 1976

The Secretary,
Sharikat Seri Padu Sdn. Bhd.,
4th Floor, Wang Shoo Fun Bldg.,
2E Jalan Ah Fook,
Johore Bahru.

Dear Sir,

10

REGISTRATION OF STOCKS

We have to inform you that the transfer form
in respect of the transfer of 523,278
United Holdings Berhad stocks registered
in the name of Dr. Chong Kim Choy was not
duly executed in accordance with the require-
ments of the Companies Act, 1965. As such
we have to return this stock certificate
No.D 0227 to you as we are not in the
position to affect the transfer.

20

Yours faithfully,

Registration Department

Enc.

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"THE COMPANIES ACT, 1965."

A

**Form of Annual Return of a Company Having a Share Capital
 (PURSUANT TO SECTION 165)**

Annual Return of ~~1978~~ **1977** **United Holdings Berhad**.....

~~Barbados~~ made up to the **15th** day of **December** 1977 (being the date of
~~the Annual General Meeting in 1977~~ the Annual General Meeting in 1977).

The date of the Annual General Meeting of the Company was **15th December 1977**.

The address of the Registered Office of the Company is:—

B

2E, Jalan Ah Fook, 4th Floor, Wang Shee Fun Building, Johore Baru.

The address of the place at which the register of members is kept if other than the registered
 office is:—

6th Floor, Oriental Plaza, Jalan Parry, Kuala Lumpur 04-01.

Summary of Share Capital and Shares.

Nominal Share Capital \$ 30,000,000 divided into¹ { 30,000,000 shares of \$1.00 each
 shares of \$ each

Total number of shares taken up¹ to the 15th
 C day of December 1977 (being the date of the { 2,000,000 stock units of \$1.00 each
 return or other authorized date).....

Number of shares issued subject to payment wholly in cash. 1,000,000
 Number of shares issued as fully paid up otherwise than in
 cash. 1,000,000

Number of shares issued as partly paid up to the extent
 of per share otherwise than in cash. Nil

² Number of shares (if any) of each class issued
 at a discount. Nil

Total amount of discount on the issue of shares which has not
 been written off at the date of this Return. \$..... Nil

D

³ There has been called up on each of 1,000,000 stock units
 shares. \$..... 1.00

³ There has been called up on each of shares. \$..... Nil

³ There has been called up on each of shares. \$..... Nil

⁴ Total amount of calls received including payments on
 application and allotment. \$..... 1,000,000

Total amount (if any) agreed to be considered as paid
 on 1,000,000 stock units shares which have been issued as fully
 paid up otherwise than in cash. \$..... 1,000,000

E

Total amount (if any) agreed to be considered as paid
 on shares which have been issued as partly
 paid up to the extent of per share
 otherwise than in cash. \$..... None

Total amount of calls unpaid. \$..... Nil

Total amount of sums (if any) paid by way of commission
 in respect of any shares or debentures since the date of
 the last Return. \$..... Nil

Total amount of the sums (if any) allowed by way of discount
 in respect of any debentures since the date of the last return

Total number of shares forfeited. \$..... Nil

F

Total amount paid (if any) on shares forfeited. \$..... Nil

⁵ Total amount of the indebtedness of the company in respect
 of all charges which are required to be registered with
 the Registrar of Companies. \$..... Nil

¹ Where there are shares of different kinds or amounts (e.g. Preference and Ordinary, or \$ and \$)
 state the numbers and nominal values separately.

² If the shares are of different kinds, state them separately.

³ Where various amounts have been called or there are shares of different kinds, state them separately.

⁴ Include what has been received on forfeited as well as on existing shares.

⁵ State in respect of

Copy of last audited Balance-Sheet and Profit and Loss Account of the Company.

This return must include a copy, certified by a director or by the manager or secretary of the company to be a true copy of the last balance-sheet and of the last profit and loss account which have respectively been audited by the company's auditors (including every document required by law to be annexed or attached thereto) together with a copy of the report of the auditors thereon (certified as aforesaid) and if any such balance-sheet or account is in a language other than Malay or English there must also be annexed to it a translation thereof in Malay or English certified in the prescribed manner to be a correct translation. If the said last balance-sheet or account did not comply with the requirements of the law as in force at the date of the audit there must be made such additions to and corrections in the said copy as would have been required to be made therein in order to make it comply with the said requirements, and the fact that the said copy has been so amended must be stated thereon. If a company has more than one such audited balance-sheet or profit and loss account since the date of the last return, every such balance-sheet and profit and loss account must be included.

Notwithstanding the foregoing provisions of this paragraph this return need not include a copy of the last balance sheet and profit and loss account of any company which is an exempt private company at the date of the return and has been an exempt private company since the date of the last return the incorporation of the company or the commencement of this Act, whichever last occurs, if the return includes a certificate signed by a director of the company, the secretary of the company and the auditor of the company which certifies that, to the best of their knowledge and belief :-

- (a) the company is and has at all relevant times been an exempt private company;
(b) a duly audited profit and loss account and balance sheet which comply with the requirements of the Act have been laid before the company in general meeting; and
(c) as at the date to which the profit and loss account has been made up the company appeared to have been able to meet its liabilities as and when they would fall due.

Certificate to be Given by all Companies

A certificate in the form set out hereunder shall be given by the secretary or a director of every company.

Certificate

I/We * after having made due inquiries certify:-

- (a) that the provisions of the Unclaimed Moneys Act, 1965, relating to unclaimed moneys have been complied with;
(b) having made an inspection of the share register, that transfers have not * been registered since the date of the last annual return *

or

the incorporation of the company

- (c) that the company has not since the date of the last annual return * issued any securities which are not registered in the register of securities of the company or are not registered in the register of securities of the company for fixed periods or payable at call; and
(d) that the excess of members of the company above fifty, if any, consists of persons who are in the employment of the company or of its subsidiary or persons who while previously in the employment of the company or of its subsidiary were and thereafter have continued to be members of the company

Director (4)

Date.....7th January, 1978.....

Secretary

* Strike out if inapplicable.
(1) Strike out this paragraph if the company is not a private company.
(2) In the case of the first annual return of a private company strike out the words "last annual return" and substitute therefor the words "incorporation of the company".
(3) Strike out this paragraph except in the case of a private company whose members exceed fifty.
(4) Note-A certificate signed by the same person in the capacity of both director and secretary will not be accepted. See section 139 (4)

The Present Full Name	Any Former Names	Usual Address	Other Business Occupation and in the case of Directors Particulars of Other Directorships required to be shown by S. 141 (2) (b) and (3) (If none, state so)
Koh Kim Chai	-	2E, Jalan Ah Pook, Johore Bahru	Lawyer - Director of United Holdings Group
Haji Haron bin Mohd Zaid	-	16, Jalan Pandan Stulang Darat Johore Bahru	Company Executive
Tay Sook Kiang	-	19, Jalan Kemuning Johore Bahru, Johor	Director of United Holdings Group
John Chew Sun Hey	-	-	-
Financial Controller	-	85, Terrace Lapan, Bangsar Baru Kuala Lumpur 22-14	Financial Controller
Certified Public Accountants	-	Kompleks Antarabangsa, Jalan Sultan Ismail, Kuala Lumpur 04-03	Certified Public Accountants

* "Director" includes any person who occupies the position of a director by whatever name called and any person in accordance with whose directions or instructions the directors of a company are accustomed to act.

† In the case of directors the address given must be the usual residential address. Sec. 141 (3) (a)

Exhibit "JC 2" to Affidavit of John
Chew Sun Hey (First, second, fourth,
fifth, sixth, ninth, tenth, twelfth,
fifteenth and seventeenth pages only)
(Contd.)

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Registration No:	Local No. 7	A
Name of Corporation:	United Holdings Berhad	
Title of Document:	ANNUAL RETURN	
Lodged on behalf by	John Chew Sun Hey	B
Address:	6th Floor, Oriental Plaza Jalan Parry Kuala Lumpur	
Telephone No.	203870	
LODGED IN THE OFFICE OF THE REGISTRAR OF COMPANIES	Kuala Lumpur	C

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List of persons holding shares in ~~the~~United Holdings.....^A
 Berhad on the 15th day of December 1977 (being the date of the return or
 other authorized date) and an account of the shares so held.

NOTE — If the names in this list are not arranged in alphabetical order, an index sufficient to enable the name of any person in the list to be readily found must be annexed to this list.

Folio in Register Ledger Containing Particulars	NAMES AND ADDRESSES	*Number of Shares held by Existing Members†
(See attached list)		B C D E F

* The aggregate number of shares held, and not the distinctive numbers, must be stated, and the column must be added up throughout so as to make one total to agree with that stated in the summary to have been taken up.

† When the shares are of different classes these columns may be subdivided so that the number of each class held may be shown separately. Where any shares have been converted into stock particulars of the amount of stock must be shown.

Ad. 7

A	Madam Chew Saik Looi, 6, Kaspar Road, Ipoh.	1,000
	Housewife.	F.D.
B	CHEW Iung Seng, Esq., 5, Green Garden Three, Green Lane Estate, Penang.	2,000
	Merchant.	F.D.
	Mr. Chiew Han Liang, 10, Main Road, Kulai, Johor.	1
C	Dr. CHONG Kim Choy, 196, Rasah Road, Seremban.	524,270
		UH
	Mr. Choy Wee Chiap, 6, Jalan Wisata, Johor Baru, Johor.	10
D	Madam CHUA Swee Sim, c/o P.O. Box 305, Kuala Lumpur.	2,000
		U.H.
	Mr. CHUNG Kun Tat, 21, Salween Road, Penang.	1,000
E		UH.
	Mrs. Usha Rani DAS, 659, Residential Area, Kuala Pilah, N.S.	5,000
		D.13
F	Mad. EE Siong Chee, 33, Jalan Tun Tan Cheng Lock, Malacca.	

A	Mdm. EE Siong Khong, 33, Jalan Tun Tan Cheng Lock, Malacca.	9,000
	U.H.	
	Madam Foo Sook Chin, 8, Woodward Road, Ipoh.	1,000
B	GIM Aik Sdn. Bhd., 33, Jalan Tun Tan Cheng Lock, Malacca.	3,000
	U.H.	
	Mr. GOH Ann Heng, 21, First Cross Street, Malacca.	1,000
C	Merchant.	U.H.
	Goh Bin Soo, 118 Heeren Street, Malacca.	1,000
	G.32	
D	Mr. GOH Joon Boo, 21 First Cross Street, Malacca.	1,000
	Merchant.	F.D.
	Haji Haron bin Mohd Zaid, 16, Jalan Pandan, Johore Bahru.	50,000
E	Ho Eng Kang, 313, Jln. Tuanku Abdul Rahman, U. Box 782, Kuala Lumpur.	3,000
	H.13	
F	Ho Eng San, c/o 513, Jalan Tuanku Abdul Rahman, Kuala Lumpur.	1,000
	H.37	
	Ho Kong Ying, 20, Leboh Raya Bodhi, Pulau Pinang.	1,000

A	Mr. K.H. Soon Chong, 5, Jalan Rugayah, Batu Pahat, Johore.		1,000
		UH	
	Dato' Koh Kim Chai, 6, Jalan Bentangau, Johore Bahru.		98,000
B	Mr. Koh Sin Hock, 1 Green Garden Threc, Penang.		2,000
		K.23	
	Lau Chong Ip, 40, Jalan Silang, Kuala Lumpur 01-21		28
C	Mr. LAU Choon Thoan, 1st Floor, Pangsuan Mah Sing, 112-114, Jalan Pudu, Kuala Lumpur.		1,000
		UH.	
	Mr. LAU Kim Cheng, 30-8, Jalan Junid, Muar.		1,000
D		UH	
	Mr. LAW Teik Hock, 36, Abou Sittee Lane, Penang.		2,000
		UH	
E	Mr. Leo Chong Hoe, 16, Jalan Kluang, Batu Pahat, Johore.		2,000
	LEE Hoy Leong. (dec'd) 56, Weld Road, Kuala Lumpur.		1,950
		UH	
F	Mr. LEE Leong Chuan, c/o Lian Hin Rubber Co. Ltd., Pukit Tebok Road, Seremban.		2,000
	Property Owner.	U.H.	

A	Loko Kok Kan, 2, Taman Freeman Tiga, Kuala Lumpur.	T.2	2,000
	Yiss Lool Yoon Nool, 43, Coronation Road, Taiping.	L.116	1,000
B	Housowife.	F.D.	
	Loong Sow Ching, 2 Jalan Skola, Kuala Lumpur.	L.11	396
C	MALAYAN Traders Business Sdn. Bhd., Y.L. Lee Building, Mountbatten Road, Kuala Lumpur.	U.H.	1,000
	Mr. Mohindor Singh Gill, 224, Jalan Bahru, Kajang, Selangor.		1,000
D	MINB Nominees Sdn. Berhad, P.O.Box 2250, Kuala Lumpur.	UH	4,000
	MOHAMED Ibrahim, 60, Ang Seng Road, Kuala Lumpur.	M.4	92
E	Mohd. Azwan bin Haji Haron, 4A-3, Jalan Yusoff Taha, Johore Bahru.		4,000
	Mohd. Azmi bin Haji Haron, 34, Jalan SS 1/20, Subang, Sungai Way, Selangor.		50,000
F	Mr. Muthiah s/o Arunambalan, 23, Jalan 14/62, Petaling Jaya.		1,000

A	Mr. Charles Col Minh Inn, No. 1, Jalan 6/24, Section 6, Petaling Jaya.	1,000
	O.S.M. Nominees Sdn. Berhad, 6th Floor, Lee Wah Bank Building, Kuala Lumpur.	1,000
B	PETERIC Sendirian Berhad, 17, Jalan Dalima, Kuala Lumpur.	3,000
	U.H.	
	Mdm. PCH Siew Kin, No. 2, Longkok Barat, Pulau Pinang.	1,000
C	U.H.	
	Mr. QUAH Hun Chow, 11, Logan Road, Penang.	4,000
	U.H.	
D	Che Rahmah binti Purn, 255, Jalan Keramat Muzong, Kg. Dato Keramat, Kuala Lumpur.	300
	F.D.	
	SALEDY Sdn. Bhd., 4th Floor, Mercantile Bank Building, Loboh Pasar Besar, Kuala Lumpur.	2,000
	UH	
E	Seagroatt & Campbell Nominees Sdn. Bhd., P. O. Box 790, Kuala Lumpur.	1,000
	F.D.	
F	Sharikat Seri Padu Sdn. Bhd., 6th Floor, Oriental Plaza, Jalan Parry, Kuala Lumpur.	402,232

No. 18

AFFIDAVIT OF MAH KING
HOCK

In the High
Court in
Malaya at
Kuala Lumpur

No.18

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
CIVIL SUIT NO. 1364 OF 1977

Affidavit of
Mah King Hock
15th February
1978

BETWEEN

Syarikat Seri Padu Sdn. Bhd. Plaintiff

AND

Haron bin Mohd. Zaid Defendant

AND

Central Securities (Holdings)
Bhd. Third Party

10

A F F I D A V I T

I, MAH KING HOCK of full age and care of
Penthouse, 10th Floor, Wisma Central, Jalan
Ampang, Kuala Lumpur, do solemnly affirm and
say as follows :-

20

1. I have read the affidavit of John Chew
Sun Hey affirmed on 10th January, 1978 and
filed herein.

2. I am advised and verily believe that the
members register cannot be rectified by just
deleting the mistake in same and as such the
registration previously stands.

AFFIRMED at Kuala Lumpur)
this 15th day of February) Sd. Mah King Hock
1978 at 2.30 p.m.)

Before me,

NMD/8247/CSH

In the High
Court in
Malaya at
Kuala Lumpur

No. 19

AFFIDAVIT OF KOH KIM
CHAI AND EXHIBITS THERETO

No.19

Affidavit of
Koh Kim Chai
and exhibits
thereto

18th February
1978

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
CIVIL SUIT NO: 1364 OF 1977

Between

Syarikat Seri Padu Sdn. Bhd. Plaintiffs

And

Haron bin Mohd. Zaid Defendant

And

Central Securities (Holdings)
Berhad Third Party

10

A F F I D A V I T

I, Koh Kim Chai of 19, Jalan Kemunting,
Johore Bahru, being of full age, Malaysian
Citizen, make affirmation and say as follows:

1. I am an Advocate and Solicitor and a
Director of United Holdings Berhad.

2. I have read the Affidavit of Mah King
Hock affirmed on 31st December 1977 (herein-
after referred to as "Mah's Affidavit").

20

3. I have to state that in December 1976
in the course of Police investigations
arising out of a report made by Hj. Haron
bin Mohd. Zaid and classified as cheating
by the Police and Deputy Public Prosecutor
pertaining to this matter, I was asked by
the Police to produce the relevant share
certificates and memorandum of transfer held
by the Registration Department of United
Holdings Berhad.

30

4. To my surprise I discovered that share
certificate number 0227 for 523,278 shares
originally registered in the name of one
Dr.Chong Kim Choy had been transferred to
the name of Syarikat Seri Padu Sdn. Bhd. the
Plaintiffs herein inspite of the fact that
there was no memorandum of transfer executed
by the said Dr. Chong Kim Choy transferring
the said shares to the Plaintiffs.

40

5. I then contacted the said Dr. Chong Kim
Choy who confirmed to me that he was the

registered shareholder of the said share number 0227 and that the only memorandum of transfer pertaining thereto that was executed by him was in favour of one International Holdings (Pte) Ltd.

In the High Court in Malaya at Kuala Lumpur

No.19

10 6. He also showed to me two letters dated 17th March 1975 and 22nd April 1975 from Yap Ping Kon the then Secretary of the Company to him and a copy of his reply thereto dated 25th April 1975 copies whereof are now shown to me marked "A", "B" and "C" and attached hereto.

Affidavit of Koh Kim Chai and exhibits thereto
18th February 1978

(continued)

7. The original of Dr. Chong Kim Choy's said letter and the office copy of Yap's said letters were not found in our files inspite of a diligent search by me.

20 8. I made enquiries among such members of the staff working under the said Yap Ping Kon at the relevant time and understand and verily believe that he had instructed that the share could be registered in the name of the Plaintiffs inspite of Dr. Chong's memorandum of transfer and contrary to S.103(1) of the Companies Act, 1965 and that he would get a fresh memorandum of transfer from Dr. Chong which later events show Dr. Chong refused to provide.

30 9. Yap resigned from the service of the Company and it is significant that he is now a director of Pacific Development Credit Bhd. which is the parent Company of Malaysia Borneo Finance Corporation (M) Bhd. both of which Companies are associated with Central Securities (Holdings) Berhad the Third Party herein.

Affirmed at Kuala Lumpur)
this 18th day of February) Sd. K.K.Chai
1978 at 9.30 a.m.)
Before me,

40 Sgd. SU CHENG YEE
Pesurohjaya Sumpah
Commissioner for Oaths

In the High
Court in
Malaya at
Kuala Lumpur

EXHIBIT "A" TO AFFIDAVIT
OF KOH KIM CHAI

No. 19
Affidavit of
Koh Kim Chai
and exhibits
thereto
18th February
1978
(continued)
Exhibit "A"

UNITED HOLDINGS BERHAD
(Incorporated in Malaysia)
6th Floor, Oriental Plaza, Jalan Parry,
Kuala Lumpur 04-01

Ref: YPK/hw 17th March, 1975

Dr. Chong Kim Choy,
196 Rasah Road,
SEREMBAN

10

Dear Dr. Chong,

SHARE CERTIFICATE NO: 0227

I refer to the transfer form signed by
you to cover certificate No.: 0227 for
523,278 shares of United Holdings Bhd. and
return herewith the said form for your
cancellation.

As you are aware these shares were
sold to Central Securities and subsequently
to Mr. Koh Kim Chai, the transfer form
executed by you is invalid as the transferee,
International Holdings Pte. Ltd. has been
inserted in the transfer form. As such I
enclose herewith a new transfer form for
your execution. Kindly sign on both sides
of the transfer form marked by a pencil
cross. On completion I shall be glad if
you will return this to me immediately.

20

Your kind attention to this matter is
greatly appreciated.

30

Yours faithfully,

Sd.

Yap Ping Kon
Secretary

Enc;

This is the exhibit marked "A"
referred to in the Affidavit of
Koh Kim Chai affirmed before me
this 18th day of February, 1978

Sgd. SU CHENG YEE
Pesuruhjaya Sumpah
Commissioner for Oaths

40

EXHIBIT "B" TO AFFIDAVIT
OF KOH KIM CHAI

In the High
Court in
Malaya at
Kuala Lumpur

UNITED HOLDINGS BERHAD
(Incorporated in Malaysia)
6th Floor, Oriental Plaza, Jalan Parry,
Kuala Lumpur 04-01
P.O.Box 1013, KUALA LUMPUR 01-02

No.19

Affidavit of
Koh Kim Chai
and exhibits
thereto

18th February
1978

Our ref: YPK/hw

Date: 22nd April 1975

REGISTERED

(continued)

10 Dr. Chong Kim Choy,
196, Rasah Road,
SEREMBAN

Exhibit "B"

Dear Sir,

Enclosed please find a copy of the transfer
form for your signature and return.

Yours faithfully,

Sd.

Yap Ping Kon
Secretary

20 This is the exhibit marked "B"
referred to in the Affidavit of
Koh Kim Chai affirmed before me
this 18th day of February, 1978

Sgd. SU CHENG YEE
Pesuruhjaya Sumpah
Commissioner for Oaths

In the High
Court in
Malaya at
Kuala Lumpur

No.19

Affidavit of
Koh Kim Chai
and exhibits
thereto
18th February
1978

(continued)

Exhibit "C"

EXHIBIT "C" TO AFFIDAVIT
OF KOH KIM CHAI

CHONG DISPENSARY

Dr. Mollie Ong Siew Choo 100-101 PAUL STREET,
Dr. Chong Kim Choy SEREMBAN
Dr. Khoo Sian Bin

Our ref: YPK/ 25th April, 1975

The Secretary,
United Holdings Bhd.,
6th Floor, Oriental Plaza,
P.O.Box 1013, Kuala Lumpur 01-02

10

Dear Sir,

Share Certificate No.0227 for
\$523,278/-

I acknowledge with thanks your registered
letter dated 22nd instant. This share certi-
ficate was held by us in trust for Interna-
tional Holdings (Pte) Ltd., and I had already
transferred the same shares back to them
without any monetary consideration. I am
therefore returning the original transfer
form signed by me (transferee being I.H.P.L.)
to you. It is only proper that you transfer
the shares to I.H.P.L. and get them to
transfer the shares to whoever are the
present legal owners. I regret that I cannot
in good faith declare that I have received
a sum of \$1,486,109.52 from Sharikat Seri
Padu Sdn. Bhd. when this is not true, as
it will give rise to further problems for me. 30

Yours faithfully,

Sd. Chong Kim Choy
(Dr. Chong Kim Choy)

This is the exhibit marked "C"
referred to in the Affidavit of
Koh Kim Chai affirmed before me
this 18th day of February, 1978

No. 20
JUDGES NOTES OF EVIDENCE,
SUBMISSIONS OF COUNSEL AND
DECISION MADE BY HARUN J.
ON 28th JUNE 1978

In the High
Court in
Malaya at
Kuala Lumpur

No.20

Judges Notes
of Evidence,
Submissions
of Counsel
and decision,
made by
Harun J. on
28th June
1978

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
CIVIL SUIT NO. 1364 OF 1977

Between

Syarikat Seri Padu Sdn.Bhd. Plaintiffs

And

Haron bin Mohd. Zaid Defendant

And

Central Securities (Holdings)
Berhad Third Party

10

Mr. Thara Singh Sidhu for Plaintiffs
Mr. V.C.George (Mr. Joginder Singh with him)
for Defendant
Mr. V.Krishman on behalf of Counsel for Third
Party - who will only attend at 2.30 p.m.
as fixed.

20

IN OPEN COURT BEFORE
HARUN J. ON 28.6.1978

NOTES OF EVIDENCE

Thara Singh:

On Encl. (13)

George:

Submits to judgment.

Court:

Leave to enter final judgment in terms of
Summons-in-Chambers (13)

30

Sgd. Harun

28 June 1978

Mr. V.C.George (Mr. Joginder Singh with him)
for Defendant

Mr. Sivalingam (Mr. Nik Din with him) for 3rd
Party.

Encl. (10):

Sivalingam:

In the High Court in Malaya at Kuala Lumpur

No.20

Judges Notes of Evidence, Submissions of Counsel and decision, made by Harun J. on 28th June 1978

(continued)

Subject matter of this suit 1364/77 is the same as the subject matter in C.S.2323/76.

Number of shares in 2323/76 is more than the present proceedings.

Nature of action - failure of consideration based upon which Defendant claims rescission of contract - is common to both actions.

Evidence to be led in both actions is the same.

Now that Plaintiffs have obtained judgment by consent against the Defendant the issue that remain to be tried is between Defendant and the Third Party. 10

Has there been any misrepresentation regarding title to the shares?

Is there any failure of consideration arising out of the irregularities?

As the shares being registered in the name of the nominee of the Defendant, can there be a rectification of the Company Register in contravention of section 162 of the Companies Act. 20

Since there is no complaint from the party in whose name the shares were originally registered is there any dispute as to title?

In view of the fact that the Plaintiff and the Defendant have been in control of the Company are they not barred by laches and acquiescence.

Is there not an election to accept delivery of the shares together with the transfer form as good completion of the contract. 30

The Plaintiffs having been in control of the Company are they not now estopped from arguing that they were not aware of the irregularities, if any.

Issue: Who was responsible for rectification of the register.

Who was responsible for actual registration of the shares. 40

What are the things that transpired between Plaintiff and the Defendant whereby Plaintiff became a nominee for the Defendant.

Was the Plaintiff not aware of the circumstances at the time of the transfer as Plaintiff was given control of the company even before the transfer of the shares.

Section 100 Companies Act - Certificate to be

evidence of title.
No rectification without order of Court -
Section 162 Companies Act.
Plaintiffs were the registered owners of
the shares but they on their own accord
asked for rectification of the register and
asked for their money.
These are the issues in the other civil suit.
Submits it will be more convenient to
10 determine the issues in the other Civil Suit -
Encl. (9)
Alternatively consolidation.

George:
Submits these issues are different.
Cause of action is different -
In C.S.2323/76 - cause of action is fraud.
Here cause of action is non-delivery -
total failure of consideration.
20 Evidence will not be the same. Evidence of
non-delivery is irrelevant to the other
action.
In view of other action - fraud not pleaded
here - other action earlier.
Here no question of misrepresentation - mere
non-delivery.
Only issue before the Court is total failure
of consideration.
30 Facts clear from affidavit. There are no
issues for trial. Questions put forward by
Counsel for Third Party all concern total
failure of consideration.
Third Party in affidavits - states "duly
delivered".
Memorandum of Transfer - Encl. (15) - Dr.
Chong Kim Choy purports to transfer 523,278
shares to International Holdings Ltd. Singapore.
No dispute on this.
Consolidation - not desirable here.
40 Not correct to say that it was the Plaintiff
who asked for rectification - see Secretary of
United Holdings - Encl.(20). It was the
Secretary who returned the transfer form.
Could the register be rectified - not an issue -
section 162 Companies Act does not apply.
Interest of other parties not relevant.
Sivalingam: Not taking procedural points.

In the High
Court in
Malaya at
Kuala Lumpur

No.20

Judges Notes
of Evidence,
Submissions
of Counsel
and decision,
made by
Harun J. on
28th June
1978

(continued)

In the High Court in Malaya at Kuala Lumpur

No.20

Judges Notes of Evidence, Submissions of Counsel and decision, made by Harun J. on 28th June 1978

(continued)

George: 0.18 r.1 r.8.
0.36 r.7.

Even if there was joinder, Court may order separate trials. This cause of action not known when writ filed in other action. The other action entered for trial. More expenditure to deal with present case as it stands.

Submits Third Party proceedings proper here. C.S. 2323/76 filed in October 1976.

Sivalingam:

10

Sri Padu - are Hj. Haron and Koh Kim Chai.

United Holdings " "

Cause of action may not be the same but relief is the same.

Court:

Encl. (10) dismissed with costs.

Sgd. Harun.

Encl. (11):

George:

0.16A r.1 (1)(b) } on prayer (1).
0.16A r.7 (1)(a) }

20

Encl.(5) Third Party Notice.

Affidavit of Mah King Hock Encl. (9) - merely says he has delivered - but Memorandum of Transfer is that executed by Dr. Chong.

Encl. (15) - Hj. Haron's affidavit.

Mah King Hock's further affidavit Encl.(18) - admits the Memorandum of Transfer is that covering Cert.0227 - para.3. Against this John Chew's affidavit - Encl.(20) - discovery of error in December 1976.

30

Section 103 Companies Act - proper instrument of transfer to be delivered for registration.

Gower (3rd Edition) 394 validly executed memorandum of transfer.

KLSE - Bylaw No: 5(v) Good delivery - Valid certificates and transfers.

Sale of Goods Act - section 2: "Goods" includes stocks and shares; section 57 - damages for non-delivery; section 61(2)(b) interest by way of damages - from date of payment made.

40

Hichens, Harrison, Woolston & Co. v. Jackson & Sons (1943) AC 266; @ 275; @ 279 - duty of seller @ 280 when seller has not performed his contract.

Rowland v. Divall (1923) 2 KB 500 - entitled to return of purchase money @ 504 - No right to sell therefore no sale - @ 507 failure of consideration.

In the High Court in Malaya at Kuala Lumpur

Biggerstaff v. Rowatt's Wharf Ltd. (1896) 2 Ch.93 - failure of consideration - return of money @ 101 short-delivery @ 102 @ 104.

No.20

- 10 Platt v. Rowe Vol. XXVI TLR 49 @ 52.
- Submits on the facts, the Third Party having said there is good delivery but the facts show that there has been no delivery. All facts before the Court - admitted by both parties.

Judges Notes of Evidence, Submissions of Counsel and decision, made by Harun J. on 28th June 1978

(continued)

There is no issue to go to trial.

Defendant has established the liability of the Third Party.

O.16A r.7(1)(a) - prays for judgment.

Sivalingam:

- 20 Share Certificates and transfer forms delivered to Defendant (Hj. Haron) who subsequently caused the Plaintiff (his nominee) to become the registered proprietor of the shares.

Important because they have taken control of the company.

Dr.Chong himself was a director of United Holdings - dealing amongst friends.

Mah King Hock's Affidavit - (18) -

- 30 There are triable issues -
- O.16 r.7(1)(b) - judgment should not be entered but Court should give directions.

Court:

Leave to enter judgment against Third Party for the sum of \$4,186,224.00 with interest at 6% from 22 January 1975 and costs payable to Plaintiff as taxed and costs.

Sgd. Harun

28 June 1978

- 40 Certified true copy
Sd. Illegible
Secretary to Judge
Kuala Lumpur 11/9/78

In the High
Court in
Malaya at
Kuala Lumpur

No. 21

GROUNDS OF JUDGMENT
OF HARUN J.

No.21

Grounds of
Judgment of
Harun J.

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
CIVIL SUIT NO. 1364 OF 1977

8th September
1978

Between

Syarikat Seri Padu Sdn. Bhd. Plaintiffs

And

Haron bin Mohd. Zaid Defendant

And

Central Securities
(Holdings) Berhad Third Party

10

GROUNDS OF JUDGMENT

On 12th March 1975 the Defendant agreed to sell to the Plaintiffs 560,000 fully paid-up ordinary shares of \$1/- each of United Holdings Bhd. at \$8/- per share. The Plaintiffs paid the total sum of \$4,480,000/- for the said shares and the Defendant agreed to deliver to the Plaintiffs the share certificates and transfer documents within one week. The Defendant delivered only 36,722 shares. The Plaintiffs' claim is for the refund of the purchase price of \$4,186,224/- paid in respect of the undelivered 523,278 shares, damages, interest and costs. 20

This writ was filed on 21 May 1977. The Defendant entered appearance on 13 June 1977 and on 21 June 1977 took out a Summons for Leave to issue a Third Party Notice on Central Securities (Holdings) Bhd. The said leave was granted on 18 July 1977. The Defendant claims that the shares he sold to the Plaintiffs were acquired from Central Securities which had entered into a written agreement with him on 7 December 1974 to sell 1,400,000 fully paid-up ordinary shares of \$1/- each of United Holdings Bhd. at \$8/- per share. On 22 January 1975 the Defendant paid Central Securities the total purchase price of \$11,200,000/- for the said shares whereupon Central Securities delivered to the Defendant share certificates and Memoranda of Transfer. One of the share certificates is numbered 0227 for 523,278 shares together with the relevant Memorandum of Transfer. Pursuant to 30 40

10 the agreement of 12 March 1975 with the Plaintiffs, the Defendant had delivered to Plaintiffs the said share certificate numbered 0227 and the Memorandum of Transfer. On 13 December 1976 the Plaintiffs discovered that the Memorandum of Transfer in respect of share certificate numbered 0227 was executed by the registered owner in favour of International Holdings (Pte) Ltd. The Defendant made repeated requests to Central Securities for a registrable Memorandum of Transfer but Central Securities refused to deliver whereby the Defendant claims from Central Securities that he is entitled to substantially the same relief and/or remedies as claimed by the Plaintiffs against the Defendant.

In the High Court in Malaya at Kuala Lumpur

No.21

Grounds of Judgment of Harun J.

8th September 1978

(continued)

20 Central Securities entered Conditional Appearance to the Third Party Notice on 8 Sept. 1977 and on 30 Sept. 1977 applied to set aside the Third Party Notice. On 3 October 1977 the Defendant applied for leave to enter final judgment against Central Securities or alternatively for Third Party Directions. On 28 October 1977 the Plaintiffs applied for leave to enter final judgment against the Defendant. These applications were, by consent, adjourned to Open Court
30 and heard together.

The Defendant submitted to judgment and I accordingly gave leave to Plaintiffs to enter final judgment by consent. The application of Central Securities to set aside the Third Party Notice is made on the following grounds :-

- 40
- (a) There is no proper question to be tried between the Defendant and the Third Party in that the agreement was performed;
 - (b) The issue between the Defendant and the Third Party forms the subject of a separate action vide High Court Kuala Lumpur Civil Suit No.2323 of 1976 and is bad for duplicity;
 - (c) The service of the Third Party Notice on the Third Party on 5th day of September, 1977 was bad.

Ground (c) was abandoned.

50 Now that the Plaintiffs have obtained

In the High Court in Malaya at Kuala Lumpur

No.21

Grounds of Judgment of Harun J.

8th September 1978

(continued)

judgment by consent against the Defendant, it is true that the remaining issue in this action is between the Defendant and Central Securities. It is also true that in Civil Suit 2323/76 which was commenced on 8 October 1976 by the Defendant against Central Securities the subject matter of the cause of action therein includes the said share certificate numbered 0227. It is therefore the contention of Central Securities 10 that the dispute between them be determined in Civil Suit 2323/76 or alternatively the two actions be consolidated. There is however a basic difference between the two causes of action as is apparent from the pleadings in both cases. In Civil Suit 2323/76 the cause of action is fraud whereas in this action it is failure of consideration viz. non-delivery of share certificates which have been paid for. The evidence required to prove 20 the allegations in respect of the two actions are not the same. Even learned Counsel for Central Securities conceded that the causes of action are not the same but he contends the relief sought is the same. In my view this alone is insufficient to justify consolidation of the two cases or to set aside Third Party proceedings.

It is said that the agreement was performed because Share Certificate numbered 30 0227 and the Transfer Form were delivered to the Defendant who accepted them. According to the Annual Return of United Holdings Bhd. made pursuant to section 165 of the Companies Act 1965 and made up to 29 July 1974 one Dr. Chong Kim Choy held 524,278 shares but according to the Annual Return made up to 30 June 1975 the respective shares held by the parties relevant to this action were -

Dr. Chong Kim Choy	1,000 shares	40
Haron bin Mohd.Zaid(Deft.)	50,000 shares	
Syarikat Seri Padu Sdn. Bhd. (Pltfs.)	985,000 shares	

However, the Annual Return made up to 15 December 1977 shows as follows :

Dr.Chong Kim Choy	524,278 shares
Haji Haron b.Mohd.Zaid	50,000 "
Syarikat Seri Padu Sdn. Bhd.	462,232 "

From these Annual Returns it is apparent that 50

10 Dr.Chong held the disputed 523,728 shares in 1974; did not hold them in 1975 but held them again in 1977. And during the period Dr. Chong did not hold them, Plaintiffs' share increased by an equal number of shares but were similarly reduced in the final return. The explanation for this is that the shares held by Share Certificate numbered 0227 was erroneously registered in the name of the Plaintiffs until the error was discovered in December 1976. That the registration was an error is obvious from the Transfer Form executed by Dr. Chong Kim Choy who had executed it in favour of International Holdings (Pte) Ltd. The Secretary of United Holdings Bhd. discovered the error and by letter to the Plaintiffs dated 13 December 1976 returned the share certificate numbered 0227 to the Plaintiffs stating that he could not register the transfer. Defendant's Solicitors wrote to Central Securities on 15 December 1976 explaining the position and asked for a registrable Memorandum of Transfer within two weeks. This was not forthcoming and on 30 January 1977 the solicitors gave notice that unless they received a reply within seven days they would commence legal proceedings. Without a registrable Memorandum of Transfer the Defendant could not effectively deal with share certificate numbered 0227, in this instance to transfer it to the Plaintiffs. On these facts, I was satisfied that Central Securities had not performed their part of the agreement with the Defendant. It was suggested that rectification of the register could only be effected by an order of Court under section 162 of the Companies Act. In my view this provision is irrelevant to the issue. So also the argument regarding laches, acquiescence and estoppel on the ground that the Defendant and Koh Kim Chai were the Directors of the Plaintiff Company and United Holdings Bhd. at the material time. For these reasons, I dismissed the application of Central Securities with costs to set aside the Third Party Notice.

50 I next deal with the application of the Defendant for leave to enter final judgment against Central Securities (Third Party) or alternatively for Third Party Directions. From the facts it would appear that the only defence of the Third Party to the claim by the Defendant is that they have physically delivered share certificate numbered 0227 to the Defendant and the fact of registration in

In the High Court in Malaya at Kuala Lumpur

No. 21

Grounds of Judgment of Harun J.

8th September 1978

(continued)

In the High
Court in
Mayala at
Kuala Lumpur

No.21

Grounds of
Judgment of
Harun J.

8th September
1978

(continued)

1975 of these shares in the name of the Plaintiffs. That registration was an error and has since been rectified. It is equally clear that by section 103 of the Companies Act the Third Party is required to deliver a proper instrument of transfer. The Third Party has not fulfilled this requirement. The fact remains that share certificate numbered 0227 is still registered in the name of Dr. Chong Kim Choy and neither the Plaintiffs 10 nor the Defendant could deal with it. They have no right of sale and therefore there has been no effective sale by the Third Party to the Defendant. For these reasons, I held that there is no issue to go to trial.

With regard to the relief sought, on the authorities where there has been a failure of consideration in a case such as this, the appropriate remedy is the return of the money with interest and costs. I accordingly gave leave to Defendant to enter final judgment against the Third Party in the sum of \$4,186,224/- with interest at the rate of 6% per annum from 22 January 1975 and costs. 20

Sgd. Harun M.Hashim
(Harun J.)
Judge, High Court,
Kuala Lumpur.

Hearing & Argument 28.6.1978

Counsel: 30

Mr.Thara Singh Sidhu of M/s Wong & Paramjothy
for Plaintiffs

Mr. V.C.George (Mr. Joginder Singh with him)
of M/s Ng Ek Teong & Partners for
Defendant

Mr. M.Sivalingam (Mr. Nik Din with him) of
M/s. Mah-Kok & Din for Third Party

Kuala Lumpur,
8th September, 1978

Certified true copy 40
Sd. Illegible
Secretary to Judge

11/9/78

No. 22

ORDER AGAINST DEFENDANT

In the High
Court in
Malaya at
Kuala Lumpur

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
CIVIL SUIT NO. 1364 OF 1977

No. 22

Order against
Defendant

28th June
1978

B E T W E E N

Syarikat Seri Padu Sdn. Bhd. Plaintiffs

AND

Haron Bin Mohd. Zaid Defendant

AND

10 Central Securities (Holdings)
Berhad Third Party

BEFORE THE HONOURABLE

MR. JUSTICE HARUN

THIS 28TH DAY OF JUNE 1978

IN OPEN COURT

O R D E R

20 UPON HEARING Mr. Thara Singh Sidhu of
Counsel for the Plaintiffs and Mr. V.C.George
(Mr. Joginder Singh with him) of Counsel for
the Defendant and in the presence of Mr. V.
Krishman of Counsel for the Third Party AND
20 UPON READING the Writ of Summons and the State-
ment of Claim and the Summons-In-Chambers dated
22nd October 1977 (Enclosure 13) together with
the Affidavit of Koh Kim Chai affirmed on the
22nd day of October 1977 and both filed herein
IT IS ORDERED that the Defendant do pay to the
Plaintiffs the sum of \$4,186,224/- together with
interest thereon at the rate of 6% per annum
30 from the 12th day of March 1975 to the date of
realisation and that the costs of these proceed-
ings be taxed by the proper officer of the Court
and paid by the Defendant to the Plaintiffs.

Given under my hand and the Seal of this
Court this 28th day of June 1978.

Sgd. Illegible

SENIOR ASSISTANT REGISTRAR
HIGH COURT, KUALA LUMPUR.

40 This Order is filed by Messrs. Ng Ek Teong &
Partners, Solicitors for the Defendant herein whose
address for service is 2nd Floor, Bangunan Persatuan
Hokkien Selangor, Jalan Raja Chulan, Kuala Lumpur.

In the High
Court in
Malaya at
Kuala Lumpur

No. 23

ORDER AGAINST THIRD
PARTY

No.23

Order against
Third Party

28th June
1978

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
CIVIL SUIT NO. 1364 OF 1977

B E T W E E N

Syarikat Seri Padu Sdn. Bhd. Plaintiffs

AND

Haron Bin Mohd. Zaid Defendant

AND

Central Securities (Holdings)
Berhad Third Party

10

BEFORE THE HONOURABLE

MR. JUSTICE HARUN

THIS 28TH DAY OF JUNE 1978 IN OPEN COURT

O R D E R

UPON HEARING Mr. M. Sivalingam (Encik Nik Din with him) of Counsel for the Third Party and Mr. V.C. George (Mr. Joginder Singh with him) of Counsel for the Defendant AND UPON READING the Third Party's Summons-In-Chambers (Enclosure 10) and the Summons for Third Party Directions (Enclosure 11) and the Writ of Summons and Statement of Claim and the Third Party Notice and the Affidavits of Mah King Hock affirmed on 29th September 1977, Haron Bin Zaid affirmed on 27th October 1977, Koh Kim Chai affirmed on 31st October 1977, Datok Loy Hean Heong affirmed on 31st December 1977, John Chew Sun Hey affirmed on 10th January 1978, Mah King Hock affirmed on 15th February 1978 and Koh Kim Chai affirmed on 18th February 1978 and all filed herein IT IS ORDERED that :-

20

30

1. The Third-Party's Application to set aside the Third-Party Notice be and is hereby dismissed with costs;
2. The Third-Party do pay to the Defendant the sum of \$4,186,224/- together with interest thereon at the rate of 6% per annum from 22nd day of January 1975 to the date of realisation and the costs of and incidental to this action including such costs that the Defendant is called

40

upon to pay to the Plaintiffs all to be taxed by the proper officer of the Court.

In the High Court in Malaya at Kuala Lumpur

GIVEN UNDER my hand and the Seal of this Court this 28th day of June 1978

No.23

Order against Third Party

28th June 1978

(continued)

Sgd. Illegible

SENIOR ASSISTANT REGISTRAR
HIGH COURT, KUALA LUMPUR

10 This Order is filed by M/s. Ng Ek Teong & Partners, Solicitors for the Defendant herein whose address for service is 2nd Floor, Bangunan Persatuan Hokkien Selangor, Jalan Raja Chulan, Kuala Lumpur.

No. 24

JUDGMENT AGAINST
DEFENDANT

No.24

Judgment against Defendant

28th June 1978

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
CIVIL SUIT NO. 1364 OF 1977

B E T W E E N

20 Syarikat Seri Padu Sdn. Bhd. Plaintiffs
AND
Haron bin Mohd. Zaid Defendant
AND
Central Securities (Holdings) Berhad Third Party

J U D G E M E N T

30 Pursuant to the Order of the Honourable Mr. Justice Harun Hashim made on the 28th day of June 1978 whereby it was ordered that the Plaintiffs be and are hereby at liberty to sign final judgment for the sum of \$4,186,224/- together with interest thereon at the rate of 6% per annum from the 12th day of March 1975 to the date of realisation IT IS THIS DAY ADJUDGED the Plaintiffs do recover against the Defendant the sum of \$4,186,224/- (Ringgit Four Million One Hundred and Eighty Six Thousand and Two Hundred and Twenty Four) only together with interest

In the High
Court in
Malaya at
Kuala Lumpur

No.24

Judgment
against
Defendant

28th June
1978

(continued)

thereon at the rate of 6% per annum from
the 28th day of June 1978 to date of
realisation and that the costs of this
suit be taxed by the proper officer of the
Court.

Given under my hand and the Seal of the
Court this 28th day of June 1978.

(L.S.) Sd. Illegible

SENIOR ASSISTANT REGISTRAR
HIGH COURT, KUALA LUMPUR

10

This Judgment is taken out by M/s. Ng Ek
Teong & Partners Solicitors for the Defendant
abovenamed and whose address for service is
2nd Floor, Bangunan Persatuan Hokkien, Jalan
Raja Chulan, Kuala Lumpur.

No.25

Judgment
against
Third Party

28th June
1978

No. 25

JUDGMENT AGAINST THIRD
PARTY

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
CIVIL SUIT NO. 1364 OF 1977

20

B E T W E E N

Syarikat Seri Padu Sdn. Bhd. Plaintiffs

AND

Haron Bin Mohd. Zaid Defendant

AND

Central Securities (Holdings)
Berhad Third Party

J U D G E M E N T

Pursuant to the Order of the Honourable
Mr. Justice Harun on the 28th day of June,
1978 whereby IT IS ORDERED that the Third-
Party's Application to set aside the Third-
Party Notice be and is hereby dismissed with
costs AND IT IS FURTHER ORDERED that the
Third-Party do pay to the Defendant the sum
of \$4,186,224/- (Ringgit Four Million One
Hundred and Eighty Six Thousand and Two
Hundred and Twenty Four) only together with

30

10 interest thereon at the rate of 6% per annum from the 22nd day of January 1975 to the date of realisation IT IS THIS DAY ADJUDGED that the Defendant do recover against the Third-Party the sum \$4,186,224/- (Ringgit Four Million One Hundred and Eighty Six Thousand and Two Hundred and Twenty Four) only together with interest thereon at the rate of 6% per annum from the 22nd day of January 1975 to date of realisation and that the costs of and incidental to this action including such costs that the Defendant is called upon to pay to the Plaintiffs all to be taxed by the proper officer of the Court.

Given under my hand and the Seal of this Court this 28th day of June 1978.

(L.S.) Sd. Illegible

20 SENIOR ASSISTANT REGISTRAR
HIGH COURT, KUALA LUMPUR.

This Judgment is taken out by M/s. Ng Ek Teong & Partners, Solicitors for the Defendant herein whose address for service is 2nd Floor, Bangunan Persatuan Hokkien Selangor, Jalan Raja Chulan, Kuala Lumpur.

In the High Court in Malaya at Kuala Lumpur

No.25

Judgment against Third Party

28th June 1978

(continued)

In the High
Court in
Malaya at
Kuala Lumpur

No.26

Letter from
Messrs. Mah Kok
& Din on behalf
of the Respondent
requesting that
Summons dated
30th September
1977 and 3rd
October 1977 be
adjourned into
open Court for
further argument
29th June 1978

No. 26

LETTER FROM MESSRS. MAH KOK
& DIN ON BEHALF OF THE
RESPONDENT REQUESTING THAT THE
SUMMONSES DATED 30TH SEPTEMBER
1977 AND 3RD OCTOBER 1977 BE
ADJOURNED INTO OPEN COURT FOR
FURTHER ARGUMENT

NMD/8247/CSH/22 BY HAND URGENT

June 29, 1978

10

Tuan,

Re: K.L. High Court Civil Suit No.1364/77
Syarikat Seri Padu Sdn. Bhd. -
 Plaintiffs
Haron bin Mohd. Zaid - Defendant
Central Securities (H)
Bhd. - Third Party

We refer to the Summons-in-Chambers of
the Application by the Third Party
(enclosure 10) dated 30th September 1977
and the Summons for Third Party Directions
by the Defendant dated 3rd October, 1977
which were heard by the Honourable Judge
on 28th June, 1978 in which the Honourable
Judge dismissed the former and gave
judgment against the Third Party in the
latter.

20

Pursuant to the Order 54 Rule 22A of the
Rules of Supreme Court we would like to
request that both the said Applications
be adjourned to open court for further
arguments. We hope His Lordship will
agree to our request.

30

Thanking you,

Yang benar,
Sd: Mah Kok & Din

The Senior Assistant Registrar
High Court,
KUALA LUMPUR

c.c. (1) Clients
IL (2) Mr. Sivalingam

40

No. 27

CERTIFICATE OF JUDGE
THAT NO FURTHER ARGUMENT
REQUIRED

In the High
Court in
Malaya at
Kuala Lumpur

No.27

Certificate
of Judge that
no further
argument
required

4th July
1978

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
CIVIL SUIT NO: 1364 OF 1977

B E T W E E N

Syarikat Seri Padu Sdn. Bhd. Plaintiff

AND

10 Haron bin Mohd. Zaid Defendant

CERTIFICATE UNDER ORDER 54
RULE 22A OF THE RULES OF
SUPREME COURT, 1957

I hereby certify that I do not require
further arguments in open Court in respect
of the Summons in Chambers dated 3rd October,
1977.

Dated this 4th day of July, 1978

Sd: Harun

20

(DATUK HARUN)
J U D G E,
HIGH COURT, MALAYA,
KUALA LUMPUR.

To:

M/s. Ng Ek Teong & Ptns.,
Advocates & Solicitors,
Kuala Lumpur

30 M/s. Mah Kok & Din,
Advocates & Solicitors,
Kuala Lumpur.

No.28

No.28

224

United Holdings
Berhad Annual
Report 1975

UNITED HOLDINGS BERHAD ANNUAL REPORT 1975

United Holdings Berhad Annual Report 1975

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UNITED HOLDINGS BERHAD
(INCORPORATED IN MALAYSIA)

BOARD OF MANAGEMENT

- CHAIRMAN* : Dato' Koh Kim Chai
- DIRECTORS* : Haji Haron bin Mohd. Zaid
: Tay Sook Kiang
- SECRETARY* : John S H Chew
- REGISTERED OFFICE** : 4th Floor, Wong Shee Fun Building
Jalan Ah Fook
Johore Bahru
- AUDITORS** : Turquand, Youngs & Co
Certified Public Accountants
Kompleks Antarabangsa
Jalan Sultan Ismail
Kuala Lumpur 04-03

UNITED HOLDINGS BERHAD
(INCORPORATED IN MALAYSIA)

NOTICE OF ANNUAL GENERAL MEETING

NOTICE IS HEREBY GIVEN that the Annual General Meeting of the Company will be held at the Registered Office of the Company on 4th Floor, Wong Shee Fun Building, Jalan Ah Fook, Johore Bahru on 15th December, 1977 at 11.00 a.m. for the following purposes:

AGENDA

1. To receive and, if approved, adopt the audited accounts for the year ended 31st October, 1975 and the Reports of the Directors and the Auditors;
2. To re-elect Directors;
3. To appoint Auditors and to authorise the Directors to fix their remuneration;
4. To transact any other ordinary business of which due notice shall have been given.

By Order of the Board

JOHN S H CHEW
Secretary

Johore Bahru,
22nd November, 1977.

- Note:**
1. A member entitled to attend and vote at a meeting of the Company is entitled to appoint a proxy who need not be a member of the Company to attend and vote in his stead.
 2. The instrument appointing a proxy shall be in writing under the hand of the appointor or his attorney duly authorised in writing or, if the appointor is a corporation, either under seal or under the hands of an officer or an attorney duly authorised.
 3. The instrument appointing a proxy shall be deposited at the registered office of the Company not less than 48 hours before the time appointed for the meeting.

CHAIRMAN'S STATEMENT

I have pleasure in presenting to you the Company's annual report for the year ending 31st October, 1975. The delay is regretted and is due to many unforeseen circumstances. The 1976 accounts are now ready for audit. I am certain that they can be ready in the very near future.

As you can see from the accounts, the Company had a difficult year due to the poor timber market and the downturn in the world economy. The direct Singapore subsidiary, Aquamarine (Private) Ltd is in creditors' liquidation and the First National Bank of Chicago appointed a receiver for Overseas Lumber Berhad, Johore. This action of the First National Bank of Chicago is being contested by us in the High Court in Malaya, Johore Bahru, on the advice of our solicitors who are of the opinion that the purported appointment of receiver is void and therefore unenforceable. However, we are negotiating for the immediate withdrawal of the receivership.

On 23rd December, 1974, we requested for temporary suspension of trading of your Company's shares in the Kuala Lumpur Stock Exchange and the Stock Exchange of Singapore. The reasons for the voluntary suspension were that your Company was undergoing re-organisation and re-structuring as a result of a number of acquisitions involving both public and private companies and that your Company was holding an Extraordinary General Meeting of shareholders to approve the aforesaid acquisitions. The Extraordinary General Meeting was held on 19th March, 1975 and on 20th March, 1975, your Company applied to the Kuala Lumpur Stock Exchange and the Stock Exchange of Singapore for re-listing of your Company's shares. Your Company is still awaiting approval.

Your Directors are of the opinion that it is in the best interest of your Company that your Company diversifies into other profitable ventures. Presently, your Company is actively participating in housing and property developments in the country. The position of your Company should improve hereafter.

DATO' KOH KIM CHAI

Chairman

REPORT OF THE DIRECTORS

The Directors submit their annual report together with the audited accounts for the year ended 31st October, 1975.

ACCOUNTS

	<u>Group</u> \$	<u>Company</u> \$
(Loss)/Profit for the year before taxation	(138,271)	27,224
Taxation	(51,774)	(51,274)
Loss before extraordinary items	<u>(190,045)</u>	<u>(24,050)</u>
Extraordinary items	<u>(11,679)</u>	<u>(11,679)</u>
Loss for the year after taxation and extraordinary item	(201,724)	(35,729)
Retained profits brought forward	<u>1,085,076</u>	<u>1,085,076</u>
Retained profits carried forward	<u><u>883,352</u></u>	<u><u>1,049,347</u></u>

The Directors do not recommend the payment of any dividend for the year ended 31st October, 1975.

Changes in the group structure were announced in the last Directors' Report and are stated in note 3 to the accounts.

Since the end of the financial year under review, the First National Bank of Chicago have appointed a receiver for Overseas Lumber Bhd. and P. T. Overseas Lumber. Aquamarine (Pte.) Ltd. is in liquidation by order of the High Court of Singapore dated 10th September, 1976 following a petition by a creditor.

The appointment of a receiver for the two companies named above is being contested by the Company in the High Court of Malaya. The Company has been advised by its solicitors that the purported appointment of the receiver is void and therefore unenforceable.

In view of the above, the accounts of these subsidiaries for the year ended 31st October, 1975 have not been finalised and are therefore not consolidated or attached to these accounts.

The Directors are unable to give an opinion on the current value of the investments in subsidiaries stated in the accounts at cost or the recoverability of the amounts due from subsidiaries. No provision has been made in these accounts for diminution in value of the investments.

UNITED HOLDINGS BERHAD
 (INCORPORATED IN MALAYSIA)

STATUTORY INFORMATION

Subject to the statements made above, your Directors report that:—

- (i) In their opinion, the results for the year have not been materially affected by items of an abnormal character.
- (ii) No circumstances have arisen which render adherence to the existing method of valuation of assets and liabilities of the Company and of the Group misleading or inappropriate.
- (iii) No contingent liability which has not been discharged, has been undertaken by the Company and the Group in the period covered by the profit and loss account
- (iv) Particulars of Directors' shareholdings were as follows:—

	<u>At</u> <u>1.11.74</u>	<u>Bought</u>	<u>Sold</u>	<u>At</u> <u>31.10.75</u>
D.Y.T.M. Tengku Idris Shah Aziz (Resigned 5.12.74)	1,000	—	—	
David Aubrey Bloom (Resigned 5.12.74)	1,000	—	—	
Dr. Chong Kim Choy (Resigned 5.12.74)	524,278	—	523,278	
Dato Lee Yoke Yea (Resigned 5.12.74)	3,000	—	—	
Dato' Koh Kim Chai (Appointed 23.12.74)	—	100,000	—	100,000
Haji Haron bin Mohd. Zaid (Appointed 23.12.74)	—	50,000	—	50,000
Han Sin-Kwang (Appointed 8. 2.75 Resigned 1.12.75)	—	1,000	—	1,000
Yap Ping Kon (Appointed 8. 2.75 Resigned 15. 3.76)	—	1,000	—	1,000

None of the other directors held any shares in the Company during the period covered by the profit and loss account.

DIRECTORATE

In accordance with the Articles of Association, Dato' Koh Kim Chai retires from the Board at the Annual General Meeting and, being eligible, offers himself for re-election.

AUDITORS

Messrs. Turquand, Youngs & Co. retire and will not be seeking re-election. The appointment of Messrs. Anthony Skelchy & Aziz has been proposed.

On behalf of the Board,

DATO' KOH KIM CHAI
DIRECTOR

HAJI HARON BIN MOHD. ZAID
DIRECTOR

Johore Bahru
2nd November, 1977

UNITED HOLDINGS BERHAD
 (INCORPORATED IN MALAYSIA)

BALANCE SHEETS AS AT 31ST OCTOBER, 1975

	NOTE	GROUP	COMPANY	
		1975	1975	1974
		\$	\$	\$
FIXED ASSETS	2	3,344,557	64,557	40,000
INTERESTS IN SUBSIDIARY COMPANIES	3	12,105,829	15,436,862	1,679,802
INVESTMENTS	4	1,246,420	1,246,420	1,720,620
CURRENT ASSETS				
Deposits at call with a corporation		—	—	7,705,056
Other debtors	5	74,527	63,590	2,465,2
Fixed deposit		—	—	1,730
Cash and Bank balances		1,246	916	70,82
		<u>75,773</u>	<u>64,506</u>	<u>8,766,20</u>
DEDUCT: CURRENT LIABILITIES				
Trade creditors		96,143	—	—
Other creditors and accruals		618,659	580,343	57,33
Taxation		238,169	237,669	399,049
		<u>952,971</u>	<u>818,012</u>	<u>456,380</u>
NET CURRENT (LIABILITIES)/ASSETS		(877,198)	(753,506)	8,309,640
INTANGIBLE ASSETS — Preliminary expenses		8,730	—	—
TOTAL ASSETS		<u>15,828,338</u>	<u>15,994,333</u>	<u>12,750,062</u>
FINANCED BY:—				
SHARE CAPITAL	6	2,000,000	2,000,000	2,000,000
CAPITAL RESERVE	7	7,664,986	7,664,986	7,664,986
GENERAL RESERVE		2,000,000	2,000,000	2,000,000
RETAINED PROFITS		<u>883,352</u>	<u>1,049,347</u>	<u>1,085,076</u>
		12,548,338	12,714,333	12,750,062
DEFERRED LIABILITY	8	<u>3,280,000</u>	<u>3,280,000</u>	—
		<u>15,828,338</u>	<u>15,994,333</u>	<u>12,750,062</u>

The notes annexed form an integral part of these accounts.

UNITED HOLDINGS BERHAD
 (INCORPORATED IN MALAYSIA)

PROFIT AND LOSS ACCOUNTS FOR THE YEAR ENDED 31ST OCTOBER, 1975

	<u>NOTE</u>	<u>GROUP</u>	<u>COMPANY</u>	
		<u>1975</u> \$	<u>1975</u> \$	<u>1974</u> \$
Profit/(Loss) for the year before taxation	9	(138,271)	27,224	1,058,587
Taxation	10	(51,774)	(51,274)	(430,715)
Profit/(Loss) before extraordinary items		(190,045)	(24,050)	627,872
Extraordinary items	11	(11,679)	(11,679)	(1,224,495)
Loss after taxation and extraordinary items		(201,724)	(35,729)	(596,623)
Transfer from capital reserve		—	—	1,224,495
Retained profit/(Loss) for the year		<u>(201,724)</u>	<u>(35,729)</u>	<u>627,872</u>

STATEMENT OF RETAINED PROFITS

Balance at 1st November	1,085,076	1,085,076	457,204
Retained profit/(Loss) for the year	<u>(201,724)</u>	<u>(35,729)</u>	<u>627,872</u>
Balance at 31st October per balance sheet	<u>883,352</u>	<u>1,049,347</u>	<u>1,085,076</u>

The notes annexed form an integral part of these accounts.

UNITED HOLDINGS BERHAD
(INCORPORATED IN MALAYSIA)

NOTES TO AND FORMING PART OF THE ACCOUNTS

1. ACCOUNTING POLICIES

1.1 Basis of Consolidation

The consolidated accounts comprise the accounts of the Company and one of its wholly-owned subsidiaries, Syarikat Bunga Raya Timor-Jauh Sdn. Bhd.

A receiver has been appointed by the First National Bank of Chicago for the two subsidiaries of Syarikat Bunga Raya Timor-Jauh Sdn. Bhd. which are Overseas Lumber Bhd. (90% holding) and P.T. Overseas Lumber (54% holding).

The Company's other wholly-owned direct subsidiary Aquamarine (Pte.) Ltd. is in liquidation by order of the High Court of Singapore following a petition by a creditor.

In view of the above, the accounts of these three subsidiaries for the year ended 31st October, 1975 have not been finalised and are therefore not consolidated or attached to these accounts.

1.2 Depreciation

(i) Fixed assets are depreciated on a straight line basis over their estimated useful lives at the following rates:—

Office furniture, fittings and equipment	10%
Motor vehicles	20%

(ii) Leasehold land and building are amortised over the period of the lease.

(iii) No provision has been made in respect of amortisation of concession logging rights as logging did not start until the end of the accounting year.

Amortisation on concession logging rights will be provided as from the financial year ended 31st October, 1976.

UNITED HOLDINGS BERHAD
(INCORPORATED IN MALAYSIA)

2. FIXED ASSETS

The Group —

	At Valuation March 1966	Cost	Depreciation	1975 Net Book Value
	\$	\$	\$	\$
Leasehold land and buildings	40,000	—	4,000	36,000
Forest concession	—	3,280,000	—	3,280,000
Office furniture, fittings and equipment	—	18,652	1,863	16,789
Motor vehicles	—	14,709	2,941	11,768
	<u>40,000</u>	<u>3,313,361</u>	<u>8,804</u>	<u>3,344,557</u>

The Company —

	At Valuation March 1966	Cost	Depreciation	1975 Net Book Value	1974 Net Book Value
	\$	\$	\$	\$	\$
Leasehold land and building	40,000	—	4,000	36,000	40,000
Office furniture, fittings and equipment	—	18,652	1,863	16,789	—
Motor vehicles	—	14,709	2,941	11,768	—
	<u>40,000</u>	<u>33,361</u>	<u>8,804</u>	<u>64,557</u>	<u>40,000</u>

3. INTEREST IN SUBSIDIARIES

On 23rd December, 1974, the Company acquired the whole of the issued capital of Syarikat Bunga Raya Timor-Jauh Sdn. Bhd., a company incorporated in Malaysia.

Syarikat Bunga Raya Timor-Jauh Sdn. Bhd. then owned 90% of Overseas Lumber Bhd. (Incorporated in Malaysia) which in turn owned 100% of Aquamarine (Pte.) Ltd. (Incorporated in Singapore) and 60% of P.T. Overseas Lumber (Incorporated in Indonesia).

Subsequently, on 1st July, 1975 the Company acquired the whole of the issued capital of Aquamarine (Pte.) Ltd. from Overseas Lumber Bhd.

On 10th January, 1975, the Company sold the whole of its interest in Urico Industries Sdn. Bhd. and its subsidiary Seasian Hotels Bhd.

UNITED HOLDINGS BERHAD
(INCORPORATED IN MALAYSIA)

3. INTEREST IN SUBSIDIARIES (CONTD.)

	<u>The Group</u>	<u>The Company</u>	
	<u>1975</u>	<u>1975</u>	<u>1974</u>
	\$	\$	\$
Shares at cost (unquoted):			
Syarikat Bunga Raya Timor-Jauh Sdn. Bhd. (100%)	—	14,680,000	—
Overseas Lumber Bhd. (90% holding)	11,400,000	—	—
Aquamarine (Pte.) Ltd. (100% holding)	50,000	50,000	—
Urico Industries Sdn. Bhd.	—	—	1,000,000
	<u>11,450,000</u>	<u>14,730,000</u>	<u>1,000,000</u>
Amounts due from subsidiary companies	664,216	706,862	1,679,802
	<u>12,114,216</u>	<u>15,436,862</u>	<u>2,679,802</u>
Amount due to subsidiary company	8,387	—	—
	<u>12,105,829</u>	<u>15,436,862</u>	<u>2,679,802</u>

Since the end of the financial year under review, the First National Bank of Chicago have appointed a receiver for Overseas Lumber Bhd. and P.T. Overseas Lumber. Aquamarine (Pte.) Ltd. is in liquidation by order of the High Court of Singapore dated 10th September, 1976 following a petition by a creditor.

The appointment of a receiver for the two companies named above is being contested by the Company in the High Court of Malaya, on the advice of its solicitors that it is void and therefore unenforceable.

The investments in subsidiaries and the amounts due from subsidiaries are stated in the accounts at cost. No provision has been made in these accounts for diminution in value of these items.

4. INVESTMENTS

	<u>The Group</u>	<u>The Company</u>	
	<u>1975</u>	<u>1975</u>	<u>1974</u>
	\$	\$	\$
Shares in corporations, at cost:			
Quoted	46,420	46,420	1,353,176
Unquoted	1,200,000	1,200,000	1,560,000
	<u>1,246,420</u>	<u>1,246,420</u>	<u>2,913,176</u>
Less: Provision for diminution in value	—	—	1,192,556
	<u>1,246,420</u>	<u>1,246,420</u>	<u>1,720,620</u>

4. INVESTMENTS (CONTD.)

	<u>The Group</u>	<u>The Company</u>	
	<u>1975</u>	<u>1975</u>	<u>1974</u>
	\$	\$	\$
Middle market value of quoted investments	38,940	38,940	431,133
Directors' valuation of unquoted investments	1,200,000	1,200,000	1,200,000
	<u>1,238,940</u>	<u>1,238,940</u>	<u>1,631,133</u>

5. OTHER DEBTORS

Included in other debtors is an amount for \$56,325 owing by Syarikat Seri Padu Sdn. Bhd., a company which owns 49% interest in the share capital of United Holdings Berhad.

6. SHARE CAPITAL

	<u>The Group</u>	<u>The Company</u>	
	<u>1975</u>	<u>1975</u>	<u>1974</u>
	\$	\$	\$
Authorised:			
30,000,000 ordinary shares of \$1 each	30,000,000	30,000,000	30,000,000
Issued and fully paid:			
2,000,000 ordinary shares of \$1 each	2,000,000	2,000,000	2,000,000

7. CAPITAL RESERVE

Balance at 1st November	7,664,986	7,664,986	8,889,481
Transfer of extraordinary items from profit and loss account	—	—	(1,224,495)
	<u>7,664,986</u>	<u>7,664,986</u>	<u>7,664,986</u>

8. DEFERRED LIABILITY

The deferred liability is in respect of an amount owing to two shareholders, Zahara binte Abdullah and Mohd. Azmi bin Haron repayable within three years from the date of the balance sheet free of interest.

UNITED HOLDINGS BERHAD
 (INCORPORATED IN MALAYSIA)

9. PROFIT BEFORE TAXATION

	<u>The Group</u>	<u>The Company</u>	
	<u>1975</u>	<u>1975</u>	<u>1974</u>
	\$	\$	\$
The profit for the year is arrived at:			
After crediting:—			
Interest received	139,266	139,266	1,038,978
Directors' fee	—	—	9,427
Directors' fees overprovided	1,824	1,824	—
Gross dividends received from quoted shares	34,148	34,148	73,722
And after charging:—			
Directors' remuneration	29,000	29,000	—
Depreciation	8,804	8,804	—
Audit fee	8,018	6,018	4,000
Hire of tractors	75,365	—	—

10. TAXATION

Taxation is based on the profit for the year and is made up as follows:—

Malaysian taxation	11,500	11,000	425,000
Less: Double taxation relief	10,000	10,000	414,000
	1,500	1,000	11,000
Add: Overseas taxation	10,000	10,000	414,000
	11,500	11,000	425,000
Underprovision in prior years	40,274	40,274	5,715
	<u>51,774</u>	<u>51,274</u>	<u>430,715</u>

11. EXTRAORDINARY ITEMS

Loss on sale of quoted investments	(11,679)	(11,679)	(51,409)
Unclaimed dividends written back	—	—	19,470
Provision for diminution in value of investments	—	—	(1,192,556)
	<u>(11,679)</u>	<u>(11,679)</u>	<u>(1,224,495)</u>

12. GROUP COMPARATIVE FIGURES.

No consolidated accounts were prepared for the year ended 31st October 1974 as the company had disposed of its subsidiaries prior to the finalisation of the accounts.

UNITED HOLDINGS BERHAD
(INCORPORATED IN MALAYSIA)

STATEMENT BY DIRECTORS

We, DATO' KOH KIM CHAI and HAJI HARON BIN MOHD. ZAID, being two of the Directors of UNITED HOLDINGS BERHAD do hereby state that, in the opinion of the Directors, the accompanying Balance Sheets and Profit and Loss Accounts together with the notes attached thereto are drawn up so as to give a true and fair view of the state of affairs of the Company and the Group as at 31st October, 1975 and of the results of the business of the Company and the Group for the year ended on that date.

On behalf of the Board,

)	
DATO' KOH KIM CHAI)	
)	
)	<u>DIRECTORS</u>
)	
HAJI HARON BIN MOHD. ZAID)	

Johore Bahru,
2nd November, 1977

**DECLARATION PURSUANT TO SECTION 169
OF THE COMPANIES ACT 1965**

I, DATO' KOH KIM CHAI being the Director primarily responsible for the financial management of UNITED HOLDINGS BERHAD do solemnly and sincerely declare that the accompanying Balance Sheets and Profit and Loss Accounts together with the notes attached thereto are, to the best of my knowledge and belief, correct and I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act, 1960.

Subscribed and solemnly declared by)	
)	
the abovenamed DATO' KOH KIM CHAI at Johore Bahru)	DATO' KOH KIM CHAI
)	
in the State of Johore on 3rd November, 1977)	

Before me:

(CHIN KON SING)
PESUROHJAYA SUMPAH
(COMMISSIONER FOR OATHS)
JOHOR BAHRU.

UNITED HOLDINGS BERHAD
(INCORPORATED IN MALAYSIA)

AUDITORS' REPORT TO THE MEMBERS OF UNITED HOLDINGS BERHAD

The consolidated accounts comprise the accounts of the Company and one of its subsidiaries. The accounts of the remaining three subsidiary companies, of which we are not the auditors, are not available for the reasons given in note 1.1 to the accounts and therefore have not been consolidated or attached to these accounts. We have not been able to satisfy ourselves of the Company's title to the shares in Overseas Lumber Bhd. which is one of these three companies and which in turn owns the group interest in another of the three companies, P.T. Overseas Lumber.

The Company's and the Group's investments in subsidiaries are stated in the accounts at cost of \$14,730,000 and \$11,450,000 respectively and amounts owing by subsidiaries at \$706,862 and \$664,216 respectively and we are unable to form an opinion as to value thereof, if any, for the reasons stated above.

We therefore state pursuant to sub-sections 1 & 2 of Section 174 of the Companies Act 1965 that the accounts are not properly drawn up in accordance with this Act and that we have not obtained all the information and explanations that we require for the purpose of our audit.

For these reasons:—

- (1) We are unable to state whether the accompanying accounts give a true and fair view of the state of affairs of the Company as at 31st October, 1975 and of its results for the year then ended.
- (2) We state that the accompanying accounts do not give a true and fair view of the state of affairs of the Group as at 31st October, 1975 and of its results for the year then ended.

In our opinion:—

- (a) the accounting and other records (including registers) examined by us have been properly kept in accordance with the provisions of the said Act; and
- (b) the Directors' Report in so far as it is required by the said Act to deal with matters dealt with in the accounting and other records examined by us, gives a true and fair view of such matters.

TURQUAND, YOUNGS & CO.
Certified Public Accountants.

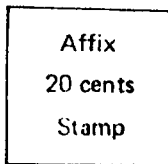
Kuala Lumpur,
5th November, 1977

UNITED HOLDINGS BERHAD
(INCORPORATED IN MALAYSIA)

FORM OF PROXY

I/We
of
being a member of United Holdings Berhad and entitled to
.....
votes, hereby appoint
of
or, failing him,
of
as my/our proxy to vote for me/us and on my/our behalf at the ANNUAL GENERAL MEETING of
the Company to be held on the 15th December, 1977 and at any adjournment thereof.

As witness my/our hands this day of 1977.



.....
Signature and/or Common Seal

- Note:**
1. A member entitled to attend and vote at a meeting of the Company is entitled to appoint a proxy who need not be a member of the Company to attend and vote in his stead.
 2. The instrument appointing a proxy shall be in writing under the hand of the appointor or his attorney duly authorised in writing or, if the appointor is a corporation, either under seal or under the hands of an officer or an attorney duly authorised.
 3. The instrument appointing a proxy shall be deposited at the registered office of the Company not less than 48 hours before the time appointed for the meeting.

In the Federal
Court of
Malaysia at
Kuala Lumpur

No. 29
Notice of
Appeal
6th July
1978

No. 29

NOTICE OF APPEAL

IN THE FEDERAL COURT OF MALAYSIA HOLDEN
AT KUALA LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. 105 OF 1978

B E T W E E N

Central Securities (Holdings)
Berhad Appellant

AND

10

Haron bin Mohd. Zaid Respondent

(In the matter of Civil Suit No. 1364
of 1977 in the High Court in Malaya
at Kuala Lumpur)

B E T W E E N

Syarikat Seri Padu Sdn. Bhd. Plaintiffs

AND

Haron bin Mohd. Zaid Defendant

AND

Central Securities (Holdings) 20
Berhad Third Party

NOTICE OF APPEAL

TAKE NOTICE that Central Securities
(Holdings) Berhad, being dissatisfied with
the decision of the Honourable Mr. Justice
Datuk Harun Mahmud Hashim given in the
High Court in Malaya at Kuala Lumpur on
the 28th June, 1978 on the Summons-in-Chambers
dated 30th September, 1977 and Summons for
Third Party Directions dated 3rd October, 30
1977 appeals to the Federal Court against
the whole of the said decision.

Dated this 6th day of July, 1978

Sd. Illegible
Solicitors for the
Appellant

Sd. Illegible
CENTRAL SECURITIES
(HOLDINGS) BERHAD

Appellant's Signature

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

In the Federal
Court of
Malaysia at
Kuala Lumpur

The Senior Assistant Registrar,
High Court,
Kuala Lumpur.

No. 29
Notice of
Appeal

The Respondent abovenamed
or his Solicitors,
M/s. Ng Ek Teong & Partners,
2nd Floor, Bangunan Persatuan,
Hokkien Selangor,
Jalan Raja Chulan,
Kuala Lumpur.

6th July 1978
(continued)

10

This Notice of Appeal is filed by Messrs.
Mah-Kok & Din, solicitors for the Appellant
whose address for service is Penthouse, 9,
Jalan Gereja, Kuala Lumpur.

NMD/8247/CSH

20

No. 30

No.30

MEMORANDUM OF APPEAL

Memorandum
of Appeal
1978

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT
KUALA LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. 105 OF 1978

BETWEEN

Central Securities (Holdings)
Berhad

Appellant

AND

30 Haron bin Mohd Zaid

Respondent

(In the matter of Civil Suit No.1364
of 1977 in the High Court in Malaya
at Kuala Lumpur)

BETWEEN

Syarikat Seri Padu Sdn. Bhd.

Plaintiffs

AND

Haron bin Mohd Zaid

Defendant

In the Federal
Court of
Malaysia at
Kuala Lumpur

AND

Central Securities
(Holdings) Berhad

Third Party

No. 30

MEMORANDUM OF APPEAL

Memorandum of
Appeal
1978
(continued)

Central Securities (Holdings) Berhad
the Appellants abovenamed appeal to the
Federal Court against the whole of the
decision of the Honourable Mr. Justice
Harun Hisham given at Kuala Lumpur on 28th
June 1978 on the following grounds :-

10

1. The Learned Judge wrongly exercised his discretion in refusing to stay the Third Party Proceedings herein.
2. The Learned Judge ought to have stayed or set aside the Third Party Proceedings herein on the grounds that :-
 - (i) the cause of action in the Third Party Proceedings is the same as that alleged by the Defendant against the Third Party in Civil Suit No.2323 of 1976; 20
 - (ii) the subject matter of the action herein is the same as that in Civil Suit No.2323 of 1976;
 - (iii) the relief sought is the same as that sought in Civil Suit No.2323 of 1976;
 - (iv) in any event if the claim herein is not precisely the same as any in Civil Suit No.2323 of 1976 it could and should be made therein as a matter of convenience and to avoid duplicity of actions; 30
 - (v) that the Defendant's claim against the Third Party for a specific share certificate was misconceived;
 - (vi) that as the earlier proceedings registered as Civil Suit No.2323 of 1976 where the Defendant is the Plaintiff and the Third Party the Defendant is a claim for rescission of the whole contract the claim in these proceedings is covered as the relief sought amounts to partial rescission; 40
 - (vii) that there cannot be partial

rescission or partial failure of consideration.

In the Federal Court of Malaysia at Kuala Lumpur

No. 30

Memorandum of Appeal

1978

(continued)

3. That the Learned Judge ought to have given the Third Party leave to defend on the ground that the Third Party had a good defence to the Defendant's claim on one or more of the following grounds :-

- 10 (i) that the Defendant did acquire the beneficial ownership of the said shares in 1974 and thereafter exercised all rights of ownership in respect thereof;
- (ii) that the Defendant cannot now be heard to complain at the form of the Memorandum of Transfer as :
- 20 (a) he accepted it at the time without demur and as a sufficient Memorandum of Transfer to him or his nominee
- (b) he secured the registration of the said shares into the name of the Plaintiffs, his nominee
- (iii) that the Defendant having in December 1974 accepted the relevant share certificate and Memorandum of Transfer:
- 30 (a) accepted or is deemed to have accepted the same as sufficiently discharging the Third Party's obligations in respect thereof under the contract; alternatively
- (b) accepted or is deemed to have accepted the same in substitution for the Third Party's obligations under the contract.
- 40 (iv) the Learned Judge was wrong to hold that the registration in the name of the Plaintiff on the register was made in error as there was no evidence or insufficient evidence to show the error and even if there was an error the defect was capable of being made good;
- (v) that the Defendant cannot rely upon the purported change of registration of the shares from the name of the Plaintiff to that of Dr. Chong Kim Choy alternatively such change was invalid and/or ineffective in that:

In the Federal
Court of
Malaysia at
Kuala Lumpur

No. 30

Memorandum
of Appeal

1978

(continued)

- (a) it was not done by duly
executed transfer or by order
of the court
 - (b) Dr. Chong had no right to the
said shares or to have them
registered in his name
 - (vi) that this court if necessary can and
should under its powers under the
Companies Act or under its inherent
jurisdiction order the registration 10
of the said shares in the name of
the Defendant;
 - (vii) that the Defendant does not show
that International Holdings (Pte)
Ltd. and/or Dr. Chong Kim Choy
was not his nominee and/or trustee;
 - (viii) that the Defendant is barred by
acquiescence and/or laches from
making the claim herein.
4. That the Learned Judge ought to have 20
given the Third Party unconditional leave
to defend under the inherent jurisdiction
of the court and/or for other good cause
in that :
- (i) if contrary to the Third Party's
contentions the Defendant can
properly complain at the form of
the Memorandum of Transfer the
Third Party ought to have the
reasonable opportunity of compell- 30
ing by action if necessary the
transferor to perfect such
Memorandum or otherwise make the
same good;
 - (ii) the conduct of the Defendant in
and about :
 - (a) making the said agreement
 - (b) making claims against the Third
Party in respect thereof
 - (c) in his dealing with and in 40
respect of the said shares
and/or the registration thereof
is such that it ought to be
fully examined in a full hearing
and the claim herein should
proceed to trial along with
the other actions pending
between the parties.

- (iii) the Plaintiff and its claim herein is controlled by the Defendant;
- (iv) the Third Party has counterclaims against the Defendant for negligence and/or breach of duty in not making the complaint herein in December 1974 and for losses consequent upon such failure;
- 10 (v) in the circumstances the factual background should be fully investigated and factual disputes between the parties resolved at a full hearing;
- (vi) that the deletion had been made after the Plaintiff had been on the register for at least twenty-one months and during that period and after he had by himself and his group taken control of the company and had appointed his own nominees to the board of directors and exercised all rights of management and that these circumstances made the purported deletion ineffective;
- 20 (vii) that the purported deletion of the name of the Plaintiff from the register of members of the company was a nullity;
- (viii) that a claim for money had and received is not maintainable if the contract had been partly performed and the Defendant has derived some of the benefit for which he bargained;
- 30 (ix) the effect of the long period of time during which the Plaintiff remained on the register as undisputed registered owner of the shares was a question to be tried;
- (x) the facts relating to the registration of and subsequent deletion of the Plaintiff's name from the register were matters to be investigated at the trial before legal questions could be posed and answered;
- 40 (xi) that as the agreement between the parties had been performed the true remedy lay only in damages and that no damages could have been awarded without an inquiry into what damages, if any, were suffered by the Defendant;
- 50

In the Federal Court of Malaysia at Kuala Lumpur

No. 30

Memorandum of Appeal 1978

(continued)

In the Federal
Court of
Malaysia at
Kuala Lumpur

No. 30

Memorandum
of Appeal

1978

(continued)

- (xii) that the long period of time during which the Plaintiff remained on the register and the fact that the Defendant and his group were and are still in control of the company were circumstances meriting a trial of the various questions involved which could not be summarily decided by affidavit evidence; 10
- (xiii) that on the facts related in paragraph (xii) above no restitution was possible;
- (xiv) that the pending actions between the Defendant and the Third Party and the fact that the Plaintiff company and the Defendant were virtually the same person and that the Defendant had consented to judgment gave rise to grounds for refusing summary judgment 20
- (xv) that there was an issue of fact to be tried as to when the deletion was made in view of the fact that the Secretary of United Holdings Berhad who is also the Secretary of the Plaintiff filed the Annual Returns only on or about 7th January 1978 which was after these proceedings had been commenced and if it was found that the deletion was after the commencement of the proceedings the Plaintiff would have had no cause of action at the time of the commencement of the proceedings. 30
5. The Learned Judge was wrong to say that the cause of action against the Third Party was failure of consideration.
6. The Learned Judge should have held that in the face of the affidavits Dr. Chong Kim Choy was only a trustee of the disputed shares and that in the events that had happened he had become at all material times a trustee for the Defendant and if it was denied that he was a trustee the denial was a matter to be tested by a trial. 40
7. The Learned Judge misinterpreted the meaning of Section 103 of the Companies Act.
8. The Learned Judge was wrong in finding, without trial, that the two letters dated 50

15th December, 1976 and 30th January 1977, alleged to have been sent by K.C.Koh were received by the Third Party and not answered when the Third Party had denied receipt of the letters and the Learned Judge should have held that as K.C.Koh had a personal interest in the matter there was a triable issue.

In the
Federal Court
of Malaysia
at Kuala
Lumpur

No 30

Memorandum
of Appeal

1978

(continued)

10 9. The Learned Judge was wrong to say that Section 162 of the Companies Act was not relevant to the issues involved in the case.

20 10. The Learned Judge should have held that the Plaintiff had been registered in the Registrar of Members of the Company and that therefore being a holder of a certificate which was conclusive evidence of title and the deletion by someone of its name from the Register could not deprive the Plaintiff of its rights.

11. The decision of the Learned Judge should be reversed now that the form of transfer fulfilling the requirements of the Defendant has already been furnished by the Third Party.

12. The Learned Judge was wrong to give leave to the Defendant to enter final judgment for \$4,186,224.00 with interest of six per cent per annum from 22nd January, 1975.

Dated this day of 1978

30

.....
Solicitors for the Appellant

In the Federal
Court in
Malaysia at
Kuala Lumpur

No. 31

NOTICE OF MOTION

No. 31
Notice of
Motion
13th October
1978

IN THE FEDERAL COURT IN MALAYSIA HOLDEN
AT KUALA LUMPUR
(APPELLATE JURISDICTION)
FEDERAL COURT CIVIL APPEAL NO. 105 OF 1978

Between

Central Securities (Holdings)
Berhad Appellant

And

Haron bin Mohd. Zaid Respondent

10

(In the Matter of Civil Suit No.
1364 of 1977 In the High Court in
Malaya at Kuala Lumpur)

Between

Syarikat Seri Padu Sdn. Bhd. Plaintiffs

And

Haron bin Mohd. Zaid Defendant

And

Central Securities (Holdings)
Berhad Third Party

20

NOTICE OF MOTION

TAKE NOTICE that the Federal Court will
be moved on the 6th day of November 1978 at
9.00 o'clock in the forenoon or so soon
thereafter as Counsel can be heard by
Counsel for the abovenamed Respondent for
an Order that this Appeal be dismissed with
costs on the grounds that it has been
improperly and incompetently brought as no
leave had been obtained from a Judge of the
High Court or from the Federal Court in
compliance with the provisions of Section
68(2) of the Courts of Judicature Act, 1964.

30

Or that such other order be made as
the Court may seem just.

And that the costs of this Application
be paid by the abovenamed Appellant.

Sd: Ng Ek Teong & Partners
Solicitors for the
Respondent abovenamed.

40

Dated this 13th day of October 1978

Chief Registrar
Federal Court
Malaysia.

In the Federal
Court in
Malaysia at
Kuala Lumpur

No. 31

This Notice of Motion is taken out by
Messrs. Ng Ek Teong & Partners, Solicitors
for the Respondent whose address for
service at 2nd Floor, Bangunan Persatuan
Hokkien Selangor, Jalan Raja Chulan,
Kuala Lumpur.

Notice of
Motion

13th October
1978

(continued)

10

This Motion will be supported by the
Affidavit of Haron bin Mohd. Zaid affirmed
on the 13th day of October 1978 and filed
herein.

No. 32

AFFIDAVIT OF HARON BIN
MOHD. ZAID

No. 32

Affidavit of
Haron Bin
Mohd. Zaid

13th October
1978

IN THE FEDERAL COURT IN MALAYSIA HOLDEN
AT KUALA LUMPUR

20

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. 105 OF 1978

Between

Central Securities (Holdings)
Berhad

Appellant

And

Haron bin Mohd. Zaid

Respondent

(In the Matter of Civil Suit No. 1364
of 1977 In the High Court in Malaya
at Kuala Lumpur)

30

Between

Syarikat Seri Padu Sdn. Bhd.

Plaintiffs

And

Haron bin Mohd. Zaid

Defendant

And

Central Securities (Holdings)
Berhad

Third Party

In the Federal
Court in
Malaysia at
Kuala Lumpur

No.32

Affidavit of
Haron Bin
Mohd. Zaid

13th October
1978

(continued)

A F F I D A V I T

I, HARON BIN MOHD. ZAID being of full age, Malaysia residing at No.16, Jalan Pandan, Johore Bahru make affirmation and say as follows :-

1. I am the Respondent abovenamed and beg to refer to the Record of Appeal herein.

2. On the 28th day of June 1978 the Honourable Mr. Justice Harun Hashim heard in Open Court the following two applications together viz :- 10

(a) the Summons-in-Chambers dated the 30th day of September 1977 taken out by the Appellant for an Order that the Third Party Notice taken out by me be set aside; and

(b) the Summons for Third Party Directions dated the 3rd day of October 1977 taken out by me for an Order that I be given liberty to enter judgment against the Third Party (Appellant), alternatively for Third Party Directions. 20

3. The Appellant's said application was dismissed and my said application for liberty to enter judgment against the Third Party (Appellant) was granted. Against both the said decisions the Appellant have purported to appeal to this Honourable Court.

4. I am advised by my Solicitors and verily believe that the said appeal is not properly before this Honourable Court in that it has not been competently brought as no leave to do so had been obtained from a Judge of the High Court or from this Honourable Court as is required by Section 68(2) of the Courts of Judicature Act, 1964. 30

5. In the circumstances I pray that this Honourable Court holds that the said appeal is not properly and competently brought before this Honourable Court and that it be struck out and be dismissed with costs. 40

Affirmed by the abovenamed)
Haron bin Mohd.Zaid at) Sd.Haron Bin Mohd.
Kuala Lumpur in the Federal) Zaid
Territory this 13th day of)
October 1978 at 2.00 p.m.) Before me,
Sd. Yee Soon Kwong
Commissioner for Oaths
Kuala Lumpur

This Affidavit is filed by Messrs. Ng Ek Teong & Partners, Solicitors for the Respondent whose address for service is at 2nd Floor, Bangunan Persatuan Hokkien Selangor, Jalan Raja Chulan, Kuala Lumpur.

In the Federal Court in Malaysia at Kuala Lumpur

No. 32

Affidavit of Haron Bin Moh. Zaid

13th October 1978

(continued)

No. 33

ORDER DISMISSING NOTICE
OF MOTION

No. 33

Order dismissing Notice of Motion

27th February 1978 (sic)

10

IN THE FEDERAL COURT IN MALAYASIA HOLDEN
AT KUALA LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. 105 OF 1978

Between

Central Securities (Holdings)
Berhad

Appellant

And

Haron bin Mohd. Zaid

Respondent

20

(In the Matter of Civil Suit No. 1364
of 1977 In the High Court in Malaya
at Kuala Lumpur)

Between

Syarikat Seri Padu Sdn. Bhd.

Plaintiffs

And

Haron bin Mohd. Zaid

Defendant

And

Central Securities (Holdings)
Berhad

Third Party

30

CORAM: SUFFIAN, LORD PRESIDENT,
FEDERAL COURT, MALAYSIA

RAJA AZLAN SHAH, CHIEF JUSTICE,
HIGH COURT IN MALAYA

WAN SULEIMAN, JUDGE, FEDERAL
COURT MALAYSIA

In the Federal
Court in
Malaysia at
Kuala Lumpur

IN OPEN COURT
THIS 27TH DAY OF FEBRUARY 1978 (sic)

No.33

O R D E R

Order dismiss-
ing Notice
of Motion

27th February
1978 (sic)

(continued)

UPON MOTION made unto Court this day
by Mr. V.C. George (Mr. K.S. Narayanan
and Mr. Joginder Singh with him) of
Counsel for the Respondent abovenamed in
the presence of Mr. Lim Kean Chye (Mr.M.
Sivalingam and Encik Nik Mohd. Din with
him) of Counsel for the Appellant AND UPON 10
READING the Respondents Notice of Motion
dated the 13th day of October 1978 and
the Affidavit of Haron bin Mohd. Zaid
affirmed the 13th day of October 1978 and
both filed herein AND UPON HEARING Counsel
as aforesaid IT IS ORDERED that the
Respondent's application to dismiss this
Appeal on the ground that it has been
improperly and incompetently brought as
no leave had been obtained from a Judge 20
of the High Court or from the Federal Court
in compliance with the provisions of
Section 68(2) of the Courts of Judicature
Act 1964 be and is hereby dismissed AND
IT IS LASTLY ORDERED that the Respondent
do pay the costs of and incidental to
this Notice of Motion in any event.

GIVEN under my hand and the Seal of
this Court this 27th day of February 1978. (sic)

Sd: Illegible 30
Deputy Registrar
Federal Court, Malaysia

This Order is filed by Messrs. Ng Ek
Teong & Partners Solicitors for the
Respondent/Defendant abovenamed whose
address for service is 2nd Floor, Bangunan
Persatuan Hokkien Selangor, Jalan Raja
Chulan, Kuala Lumpur.

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IN THE FEDERAL COURT IN MALAYSIA HOLDEN
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(APPELLATE JURISDICTION)

16th May 1979

FEDERAL COURT CIVIL APPEAL NO. 105 OF 1978

Between

10 Central Securities (Holdings)
Berhad Appellant

And

Haron bin Mohd. Zaid Respondent

(In the Matter of Civil Suit No.1364
of 1977 In the High Court in Malaya
at Kuala Lumpur)

Between

Syarikat Seri Padu Sdn. Bhd. Plaintiffs

And

Haron bin Mohd. Zaid Defendant

20 And

Central Securities (Holdings)
Berhad Third Party

CORAM: SUFFIAN, L.P.
RAJA AZLAN SHAH, AG.C.J. MALAYA
WAN SULEIMAN, F.J.

JUDGMENT OF THE COURT

30 The facts in this case are fully stated
in the judgment of Harun J. in which (1) he
dismissed the application of Central Securities
(Holdings) Berhad, "the third party" to set
aside the third party notice, and (2) he allowed
Haron bin Mohd. Zaid "the defendant" to enter
final judgment against the third party.

40 On March 12, 1975 the defendant agreed
to sell to Syarikat Seri Padu Sdn. Bhd. "the
plaintiffs" 56,000 fully paid-up ordinary
shares of \$1/- each of United Holdings Bhd.
at \$8/- per share. The plaintiffs paid the
total sum of \$4,480,000/- for the said shares
and the defendant agreed to deliver to the
plaintiffs the share certificates and the

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instruments of transfer within one week.
The defendant delivered effectively on
36,722 shares. The plaintiffs' claim was
for the refund of the purchase price of
\$4,186,224/- paid in respect of the
undelivered 523,278 shares, damages,
interest and costs.

The writ was filed on May 21, 1977.
The defendant entered appearance on June
13, 1977 and on June 21, 1977 took out a 10
summons for leave to issue and serve a
third party notice on the third party. The
said leave was granted on July 18, 1977.
The defendant claimed that the shares he
sold to the plaintiffs were part of the
1,400,000 fully paid ordinary shares of
\$1/- each of United Holdings Bhd. at
\$8/- per share he had acquired from the
third party under a written agreement 20
dated December 7, 1974. On January 22,
1975 the defendant paid the third party
the total purchase price of \$11,200,000/-
for the said shares whereupon the latter
delivered to the defendant share certifi-
cates of this amount and the necessary
instruments of transfer. One of the
share certificates is numbered 0227 for
523,278 shares together with the relevant
instrument of transfer "Exh.H.1". Pursuant 30
to the agreement of March 12, 1975 with
the plaintiffs, the defendant then deliver-
ed to them inter alia the said share
certificate numbered 0227 and the instrument
of transfer. On December 13, 1976, some
20 months afterwards, the plaintiffs
discovered, so they alleged, that the
instrument of transfer in respect of share
certificate numbered 0227 was executed
by the registered owner Dr. Chong Kim Choy 40
in favour of International Holdings (Pte)
Ltd. In the meantime, the shares were
registered in the name of Seri Padu. On
being registered the defendant made repeated
requests to the third party for a registrable
instrument of transfer but the latter refused
and failed to deliver the transfer form or
other shares of this amount whereby the
defendant claims from them that he is entitled
to substantially the same relief and/or remedies
as claimed by the Plaintiffs against the defendant.

The third party entered a conditional 50
appearance to the third party notice on
September 8, 1977 and on September 30,
1977 applied to set aside the said notice.
On October 3, 1977 the defendant applied
for leave to enter final judgment against

the third party, alternatively, for third party directions as follows :

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(i) that the defendant deliver a statement of claim to the third party within 14 days from the date of this order who shall plead thereto within 14 days;

10 (ii) that the defendant and the third party file an affidavit of documents within 60 days from the close of pleadings and there be an inspection of documents within 30 days thereafter;

(iii) that the question of the liability of the third party to indemnify the defendant be tried together with the trial of the action between the plaintiffs and the defendant, and

(iv) that the costs of the application be costs in the cause.

20 On October 28, 1977 the plaintiffs applied for leave to enter final judgment against the defendant. These applications were, by consent, adjourned into open court and heard together.

30 The defendant submitted to judgment and the learned judge accordingly gave leave to plaintiffs to enter final judgment by consent. The application of the third party to set aside the third party notice was made on the following grounds :

(a) There is a question proper to be tried between the defendant and the third party in that the agreement was performed;

40 (b) The issue between the defendant and the third party forms the subject of a separate action vide High Court Kuala Lumpur Civil Suit No.2323 of 1976 and is bad for duplicity;

(c) The service of the third party Notice on the third party on 5th day of September, 1977 was bad.

Ground (c) was abandoned.

With regard to (a) the learned judge held that the third party had not performed their part of the agreement with the defendant.

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The basis of his decision is that without a proper instrument of transfer the defendant could not effectively deal with share certificate numbered 0227, in this instance to transfer it to the plaintiffs. He further held that section 162 of the Companies Act, 1965 and the arguments regarding laches, acquiescence and estoppel were irrelevant.

With regard to (b) the learned judge 10
in the exercise of his discretion refused to
allow consolidation of the present case with
Civil Suit No.2323/76. He said that there
is a basic difference between the two causes
of action; in the former, it is on the
ground of failure of consideration, viz,
non-delivery of share certificates which
have been paid for; in the latter, an action
for rescission and damages based on fraud.
Further, the evidence required to prove 20
the allegations in respect of the two causes
of action are not the same although the
relief claim sought is the same.

In the circumstances, the learned
judge dismissed the third party's applica-
tion to set aside the third party notice.

It is common ground that in July 1974
Dr. Chong Kim Choy held 524,278 shares
(see Annual Return of United Holdings for
year ending July 29, 1974) in June 1975 he 30
held 1,000 shares, the defendant held
50,000 shares, and the plaintiffs held
985,510 shares (see Annual Return of United
Holdings for year ending June 30, 1975);
and in December 1977, he held 524,278 shares,
the defendant held 50,000 shares, and the
plaintiffs held 462,232 shares (see Annual
Return of United Holdings for year ending
June 30, 1975); and in December 1977, he 40
held 524,278 shares, the defendant held
50,000 shares, and the plaintiffs held
462,232 shares (see Annual Return of United
Holdings for year ending December 15, 1977).

From these Annual Returns it is
apparent that Dr. Chong Kim Choy held the
disputed 523,278 shares in 1974; did not
hold them in 1975 but held them again in
1977. During the period he did not hold
them, the plaintiffs' shares increased by
an equal number of shares but were similarly 50
reduced in 1977. This came about by act of
registering share certificate numbered 0227
in the name of the plaintiffs followed by

deregistration and re-registration in the name of Dr. Chong Kim Choy.

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The learned judge held as a fact that the first act of registration was erroneous. In doing so, he upheld the basic and entire case for the defendant against the third party.

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10 With regard to the defendant's application of October 3, 1977 for summary judgment against the third party, alternatively, for third party directions, the learned judge held that there was no issue to go to trial and he gave leave to the defendant to enter final judgment in the sum of \$4,186,224.00 as representing the refund of the purchase price of the undelivered shares comprised in share certificate numbered 0227 with interest. It would be sufficient if we echoe his reasoning: "The fact remains
20 that share certificate numbered 0227 is still registered in the name of Dr. Chong Kim Choy and neither the plaintiffs nor the defendant could deal with it. They have no right of sale and therefore there has been no effective sale by the third party to the defendant.

The third party appeal against the whole of the decision.

30 In this court counsel for the third party submitted a massive written argument in which he urged a complete reversal of the decision. We cannot possibly discuss in detail all his arguments but we will take each of his main submissions in turn.

40 We also have been referred to a great number of authorities by both counsel but we think for present purposes we shall be absolved from any disrespect for their arguments if we only refer to a few, because on certain points excerpts from the material authorities are assembled in them.

The question is therefore simply whether, at the hearing of the application for third party directions, the court is satisfied that there is a question proper to be tried between the defendant and the third party: see Waterford Turkish Baths Co. v. Barter: (1) Greville v Hayes (2). It is on such application that the

(1) 17 Ir. L.T.R. 61
(2) (1894) 2 Ir. R.20

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validity of the third party notice and the objection of the third party will be gone into: see Baxter v. France (3). If the Court is so satisfied, and the facts are complex and disputed, the directions will be for trial. If not so satisfied the court may order judgment on the application of the defendant.

The liability of the third party may be established by an affidavit of the defendant or other persons analogous to an affidavit in support of a summons under O.14 of the Rules of the Supreme Court to which no sufficient answer is made by the third party: see Gloucestershire Banking Co. v. Phillips (4). Therefore the third party who are operated with the burden of satisfying the court that there is a question proper to be tried loses their case unless they can produce evidence to support it.

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It is the contention of counsel for the third party that the directions should be for trial as there are many issues to be explored and it is therefore wrong for the learned judge to have accepted them as proven facts. The main triable issues relied on can be briefly stated.

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It is argued on behalf of the third party that it is wrong for the learned judge to hold that since the instrument of transfer Exh. "HK1" was not in proper form the defendant could not effectively transfer the share certificate numbered 0227 to the plaintiffs. In the course of the argument the following cases were cited, Re Paradise Motor Co. Ltd. (5) Fitch v. Lovell (6) and Hawkes v. McArthur (7) for the proposition that section 103 of the Companies Act is only a revenue section and that a transfer contravening the said section is not void but only an irregularity and a beneficial owner can deal with the shares pending registration. Section 103 is couched in the following words :

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"Notwithstanding anything in its article a company shall not register a transfer of shares of debentures unless a proper instrument of transfer has been delivered to the company....."

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- (3) (1895) 1 Q.B. 455 C.A.
(4) (1884) 12 Q.B.D. 533
(5) (1968) 2 A.E.R. 625
(6) I.R.C. (1962) 2 A.E.R. 685
(7) (1951) 1 A.E.R.22

In our opinion, the weight of the authorities which were cited supports the view that the third party can deal with the shares pending registration. We bear in mind the much quoted and commonsense warning by Devlin J. in St. John Shipping Corporation v. Joseph Rank Ltd. (8) against a too-ready assumption of illegality or invalidity of contracts when dealing with statutes regulating commercial transactions.

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10 The third party contend that the defendant's claim upon which he has obtained judgment is a claim for the return with interest of part only of the entire purchase price of \$11,200,000 which he paid under what they allege was a single and indivisible contract for the purchase at that price of 1.4 million shares. As they had delivered to the defendant 976,722 of the 1.4 million shares, thus representing 63% of the whole contract, there had been part performance, and as the defendant had derived some of the benefit which he had bargained for, he cannot claim restitution to recover the purchase-money: see Hunt v. Silk (9). This is based on the theory that the consideration is whole and indivisible, and that the courts will not apportion it unless the parties have done so. Another reason is that the parties cannot be restored to the situation in which they stood immediately before the time when the contract was made. Thus in Taylor v. Hare (10) it was held that where a vendor sold a patent right, and the purchaser paid the purchase-money and used the patent right and enjoyed a benefit therefrom, but it afterwards appeared that the patent was invalid, the purchaser could not claim restitution of the purchase money. See also Lawes v. Purser (11).

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50 Even if this contract was divisible as in the case of a sale of goods to be delivered by instalments (see section 38, Sale of Goods (Malay States) Ordinance No. 1 of 1957) and that there had been a failure of consideration in respect of a properly severable part of it, it is argued that the defendant cannot succeed in his claim for rescission and a return of part of his money unless he can make restitution. But

(8) (1975) 1 Q.B. 267 3 All ER 683

(9) (1804) 5 East 449

(10) (1805) 1 B. & P.N.R.

(11) (1856) 6 E. & B. 930

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restitution cannot be made if something transferred under the contract has altered its character. Thus in Clarke v Dickson(12) rescission was refused where a partnership, in which the representee had been induced to take shares, had been converted into a limited liability company, for the existing shares were wholly different from those which he originally received.

As a variant or possibly as an extension of the above argument it is suggested that the Sales of Goods (Malay States) Ordinance No.1 of 1957, which includes stocks and shares is also relevant. However, it is of significance to bear in mind that a little note of caution is necessary in applying the provisions of the said Ordinance as to the passing of possession and property in the goods; they present a certain difficulty in reconciling with the company law with regard to shares other than bearer shares since the legal ownership of the registered shares is determined by reference to the company's share register and transfer can be made only in written form and in conformity with the requirements of the articles of association. The section most relied on is section 13(2) which enacts:

"Where a contract of sale is not severable and the buyer has accepted the goods or part thereof or where the contract is for specific goods the property in which has passed to the buyer, the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty, and not as a ground for rejecting the goods and treating the contract as repudiated, unless there is a term of the contract express or implied to that effect."

It is accordingly argued on the strength of that section that as the contract was not severable the only remedy of the defendant who had accepted a substantial part of the shares contracted for but claimed defect in title as to a small part is to maintain an action for damages for breach of warranty, and not for recovery of the purchase price.

(12) (1858) E.B. & E. 148

In any event even if the contract was severable, it is further suggested that another issue fell to be determined which was wholly over-looked by the learned judge, namely whether there was some conduct, by way of estoppel, on the part of the defendant amounting to acceptance in performance of the contract.

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10 It is therefore suggested there is a flaw in the judgment and that if the learned judge had considered the defendant's claim in the context of the law of restitution he would have to consider the equitable doctrine of laches which he held not to be relevant. It is a well established principle that equity, in accordance with the maxim vigilantibus et non dormientibus lex succurrit, refuses to grant relief to stale claims. In the present case the claim was not made until 20 over 2½ years after the contract had been completed in December, 1974 and the defendant has been throughout and remains in enjoyment of the management and control of United Holdings, and very substantial changes have been made in the company's financial affairs in the interim - see 1975 Annual Report. In the circumstances it is argued that as the defendant has been 30 dilatory in the prosecution of his claim and has acquiesced in the wrong done to him is guilty of laches and is debarred from relief: see Lindsay Petroleum Co. v Hurd (13) quoted with approval by Lord Blackburn in Erlanger v New Sombrero Phosphate Company (14)

40 The defendant naturally fortifies his case on the authority of such cases as Rowland v. Divall (15) Biggerstaff v. Rowatt's Wharf Ltd (16) and Platt v. Rowe (17) for the proposition that the defendant can nevertheless rescind the contract and recover back the price paid as there has been a total failure of consideration. It is said here that he did not get what he had paid for, namely, the shares comprised in share certificate numbered 0227 because the transferee named therein was International Holdings.

50 In considering this proposition it becomes necessary to examine these cases in order to determine what is the accepted

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- (13) (1874) L.R. 5 P.C.221, 239
(14) (1878) 3 App. Cas. 1218, 1278
(15) (1923) 2 K.B. 500
(16) (1896) 2 Ch. 93
(17) 26 T.L.R. 49

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principle. The present case, it is urged, is no different from that of Biggerstaff v Rowatt's Wharf Ltd (supra). In that case Harvey, Brand & Co. bought from a limited company and paid for 7000 barrels. There was a short delivery of 400 barrels. It was held that it was a severable contract and Harvey, Brand & Co. could sue for money had and received for the short delivery on the ground of total failure of consideration as regards the barrels not delivered.

10

In Platt v. Rowe (supra) it was held that there was a total failure of consideration where the shares were not registered in the name of the transferor, and the purchaser could recover the purchase price from him.

The authority most relied on is Rowland v. Divall (supra). The defendant sold a car to the plaintiff which, unknown to either of them, had been stolen. The defendant was in breach of the implied condition that he had a right to sell the car but the plaintiff did various acts, namely, he repainted the car and resold it to a customer. It was not discovered that the car was a stolen car until the police seized it. The plaintiff and his purchaser between them had possession of it for about four months. It was held that the plaintiff could recover the purchase price as there had been a total failure of consideration: he had not "received any portion of what he agreed to buy....the person who sold it to him had no right to sell it and therefore he did not get what he paid for - namely, a car to which he would have title; and under those circumstances the user of the car by the purchaser seems quite immaterial for the purpose of considering whether the condition had been converted into a warranty" per Bankes L.J. at page 504.

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It is important to bear in mind that the claim was for breach of an implied condition on the part of the seller that he had the right to sell the car. Bankes L.J. said at page 503: "The plaintiff now brings his action to recover back the price that he paid to the defendant upon the ground of total failure of consideration. As I have said, it cannot now be disputed that there was an implied condition

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10 on the part of the defendant that he had a right to sell the car, and unless something happened to change that condition into a warranty the plaintiff is entitled to rescind the contract and recover back the money. The Sale of Goods Act itself indicates in s.53 (section 59 of our Ordinance No.1 of 1957) the circumstances in which a condition may be changed into a warranty: 'Where the buyer elects, or is compelled, to treat any breach of a condition on the part of the seller as a breach of warranty' the buyer is not entitled to reject the goods, but his remedy is in damages. Mr. Doughty contends that this is a case in which the buyer is compelled to treat the condition as a warranty within the meaning of that section, because, having had the use of the car for 20 four months, he cannot put the seller in status quo and therefore cannot now rescind, and he has referred to several authorities in support of that contention. But when those authorities are looked at, (referring to Taylor v Hare (supra), Hunt v Silk (supra), Lawes v. Purser (supra)) I think it will be found that in all of them the buyer got some part of what he contracted for".

30 The decision in Rowland v Divall (supra) has been the subject of comment by textbook writers as a decision which "rests basically on a fallacy", see Atijah on Sales of Goods, 5th ed. at page 502; Treitel, 30 M.L.R. at pages 146-149. In our view, that case can be explained on the basis that the contract was voidable and not void and that gave an election to the plaintiff to reject it within a reasonable time. The answer that the plaintiff gave was: "As soon 40 as I knew that I had not got the property I took my action, and the fact that I had had the use of the car does not make any difference." Devlin J. commented that statements as follows :

50 "Clearly, the answer would not have been the same if the buyer, with knowledge of the true facts, had continued to use the car for another twelve months or so, and had then found that the market had fallen and that he would like to hand it back again; nor, of course, would it be open to the seller in such circumstances to appear one morning and take the car back again, and when the buyer protested, to say: "The car was never

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yours, because I never had any property in it; I have never bought the property "from the person who really owned it," and it has improved considerably in "value, and now I want it back, and here "is the price that you paid for it"; but that would necessarily be the result if the contract were void, and not merely voidable." see Kwei Tek Chao v. British Traders and Shippers Ltd. (18)

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The present case is based on the representation that the third party was the beneficial owner of 1.4 million United Holdings shares and where, as it is alleged, there was misrepresentation, the contract was not void, but voidable at the option of the defendant. He must take action with reasonable promptness to rescind 20 it on becoming aware of it. Otherwise the right to rescind may be lost. And it may be lost if he takes any benefit under the contract, or does something amounting to an acceptance of it after becoming aware of the misrepresentation. Further he runs the risk of losing that right if, with knowledge of his right to rescind, he requests the other party to remedy the default. Another material consideration is restitu- 30 tion; if it is impossible, through altered circumstances, to restore the parties to their original positions, e.g., if the shares received by the defendant have, either because of his action or as a result of his acquiescence, undergone a substantial alteration, especially in a detrimental sense, he may lose his right to rescind.

Everything depends upon the facts of the case and the nature of the contract and 40 these must be gone into upon a full investigation upon a witness action and not upon affidavit evidence.

At this stage of the proceedings we will not undertake a preliminary trial of the action beyond noting the several circumstances which lead us to the conclusion that the decision to give leave to the defendant to sign final judgment against the third party without trial was to say the 50

(18) (1954) W.L.R. 365 at 372

least, wrong and unsupportable.

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As has been noted, the whole contention, with which the judge agreed, of the defendant was that the registration of the shares was an error. An error implies an honest mistake as to a fact, without there being any deliberation about it and especially without there being any purposeful gain derived from it. Whether the first act of registration is an error must therefore necessarily be tested by evidence, which the third party must be given the opportunity to cross examine and should not be accepted at this stage on a mere suggestion or a bare assertion in an affidavit. This is particularly so, having regard to the several circumstances in the case. First, the plaintiffs are effectively Dato Koh Kim Chai and the defendant and the registration of the 523,278 shares in the plaintiffs meant that they now had 985,510 shares which with the 100,000 shares in the name of Dato Koh Kim Chai and the 50,000 shares in the name of the defendant gave them a holding of 1,135,510 shares out of the 2,000,000 shares issued, in other words, an absolute majority. And this majority they held from June 30, 1975, to December 15, 1977. It effectively enabled them to put Dato Koh Kim Chai and the defendant on the Board of Directors, displacing, among others, Dr. Chong Kim Choy. And, with their voting strength, they were enabled to do what they liked to do with the company and its assets. In the claim of the defendant against the third party, it is necessary, in our view, that this be gone into.

Accordingly, the significance of the correspondence between the secretary of the company and Dr. Chong Kim Choy. On March 17, 1975 the secretary of United Holdings wrote to Dr. Chong Kim Choy as follows:

"Dear Dr. Chong,

SHARE CERTIFICATE NO. 0227

I refer to the transfer form signed by you to cover certificate no. 0227 for 523,278 shares of United Holdings Bhd. and return herewith the said form for your cancellation.

As you are aware these shares were sold to Central Securities and subsequently to Mr. Koh Kim Chai, the

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transfer form executed by you is
invalid as the transferee, Inter-
national Holdings Pte. Ltd. has been
inserted in the transfer form. As
such I enclose herewith a new transfer
form for your execution. Kindly sign
on both sides of the transfer form
marked by a pencil cross. On
completion I shall be glad if you
will return this to me immediately. " 10

On April 22, 1975 he again wrote to Dr. Chong
enclosing a copy of the transfer form for
his signature. Then came the reply from
Dr. Chong which was dated 25th April, 1975:

"Dear Sir,

Share Certificate No. 0227 for
523,278

I acknowledge with thanks your
registered letter dated 22nd instant. 20
This share certificate was held by
me in trust for International
Holdings (Pte) Ltd., and I had already
transferred the same shares back to
them without any monetary considera-
tion. I am therefore returning the
original transfer form signed by me
(transferee being I.H.P.L.) to you.
It is only proper that you transfer
the shares to I.H.P.L. and get them
to transfer the shares to whoever 30
are the present legal owners. I
regret that I cannot in good faith
declare that I have received a sum of
11,486,109.52 from Syarikat Seri Padu
Sdn. when this is not true, as it will
give rise to further problems for me.

Yours faithfully,

(Dr. Chong Kim Choy) "

Now what are the reasonable and proper
inferences to be drawn from these letters? 40
In our view, the irresistible inferences
are: the defendant had held the share
certificate in question from the time he
had received it from the third party to the
time he delivered it to the plaintiffs
without having it registered in his name.
This was some 5 days after he had entered
into the agreement of sale with the plaintiffs.
When the plaintiffs sought to register it
in their name, the secretary knew immediately 50
that it could not be done. The secretary

10 must have advised the plaintiffs because instead of rejecting the application to register the transfer outright, he endeavoured to obtain a registrable transfer from Dr. Chong Kim Choy, but despite the transferor's refusal and, it is to be stressed, despite his clear knowledge that it was wrong to do so, he did register the transfer in the name of the plaintiffs. Whether he did so of his own motion or at the direction of another or others will have to be seen. This fact will have to be adduced in evidence. If he did so because he was directed to do so, the identity and the motives of those under whose order he ignored the provisions of law must be determined for a proper and final adjudication of the claim. What the secretary should have done, of course, was to refuse to register the transfer as being against the rules and return it to the party seeking the transfer. What he did, however, was otherwise than in accordance with his strict duties. He or someone else (there being another secretary) carried out the registration and then, later, much later, again in direct contra-vention of section 162 Companies Act, that is without any power to do so, and without an order of Court, he deregistered the plaintiffs and, strangely, registered the same shares in the name not of International Holdings (Pte) Ltd. despite the latter letter, but in the name of Dr. Chong Kim Choy.

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16th May 1979

(continued)

40 Thirdly, the suspension of trading of the company's shares on the Kuala Lumpur Stock Exchange. This was sought by Dato Koh Kim Chai and his Board of Directors on December 23, 1974 and was for the purpose of re-organising and restructuring, impliedly for the good of the company and the benefit of the shareholders. An application for re-listing was made on March 20, 1975, but alas for the pious hopes and the good intentions of the directors, approval to date has not been forthcoming. Clearly there is more to the case than meets the eye.

50 There appears therefore some justification for the conclusion that the defendant "had got some part of what he contracted for", and that is material consideration "that he had done something to convert the condition into a warranty" entitling him to seek his

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remedy, if any, in damages only. We agree with the third party's contention that the issues regarding laches, acquiescence and estoppel are in the circumstances not irrelevant as the learned judge held them to be. He had misdirected himself in law on those points quite apart from the further consideration of restitution which also was overlooked by him.

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A point deserving consideration is this. It is argued on behalf of the third party that when the disputed shares were transferred to the plaintiffs in 1975, their name was placed by United Holdings on their register of members until it was unilaterally removed by them in 1977 without a court order under section 162 of the Companies Act. The section reads as follows :

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"162.(1) If -

- (a) the name of any person is without sufficient cause entered in or omitted from the register; or
- (b) default is made or unnecessary delay takes place in entering in the register the fact of any person having ceased to be a member -

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the person aggrieved or any member or the company may apply to the Court for rectification of the register, and the Court may refuse the application or may order rectification of the register and payment by the company of any damages sustained by any party to the application.

(2) On any application under sub-section (1) of this section the Court may decide -

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- (a) any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members or between members or alleged members on the one hand the company on the other

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hand; and

- (b) generally, any question necessary or expedient to be decided for the rectification of the register.

(3) The Court when making an order for rectification of the register shall by its order direct a notice of the rectification to be so lodged.

(4) No application for the rectification of a register in respect of an entry which was made in the register more than thirty years before the date of the application shall be entertained by the Court."

The question, they contend, is whether United Holdings, having once registered the plaintiffs as shareholders, are entitled propio motu to strike them off the register? They argued on the strength of what was said in Ward v South Eastern Railway (19) United Holdings, having chosen to put upon the register persons having a perfectly good equitable title to be there, cannot afterwards of their own will and pleasure take them off on the simple ground that there is a flaw in their legal title. Since the register of members is prima facie evidence of matters inserted therein as required or authorised by section 158(4) of the Companies Act, it is further argued on the authority of Re Derham and Allen Ltd. (20) that only the court can rectify it on proper application under section 162; accordingly it is wrong on the part of United Holdings unilaterally to strike the plaintiffs' name off the share register. Since the plaintiffs are to be recognised as the registered owner it lay within their power to initiate rectification of the register. Section 162 is relevant in the present case and the learned judge was in error when he held that it was not.

The defendant's case is based on the proposition that what is shown in the register of members is not conclusive and that the company may rectify the register on

(19) 119 R.R. 968
(20) (1946) Ch. 31, 36.

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(continued)

the ground of mistake without going to the court. Since the registrar of United Holdings had the power and had made the rectification, to go to court is irrelevant. A further argument is that what he had asked for was title to the disputed shares; it is patent from the instrument of transfer Exh. "H1" that title was not transferred to him. In the circumstances it is suggested that the learned judge was not in error when he held that section 162 was not relevant. 10

The point has been considered many times in many cases. We do not propose to refer to all of them, but it is worth referring to a few which put the matter in its proper perspective. The power to rectify the register under the section is a summary remedy. The court on an application under the section may decide any question of title of any party to have his name entered or omitted from the register, whether such question arises between members and alleged members or between such persons and the company. It may also decide any incidental questions arising with the above, if expedient or necessary. Sometimes the summary procedure under the section is not an appropriate remedy. Thus where complicated questions of law and fact arise it is, we think, only proper to refer the parties to a suit, because rectification can also be had by a suit: see In Re Len Chee Omnibus Co.Ltd. (21). In Reese River Silver Mining Co. v. Smith (22) the application for rectification of the register on the ground of fraud and misrepresentations was by way of a suit against the company. And delay in applying for rectification will destroy the remedy. See In Re Len Chee Omnibus Co.Ltd. (supra) where it was held that two years delay was fatal; Ansett v Butler Air Transport Ltd. (23) where a suit for rectification of the share register was delayed almost a year, it was held that the plaintiffs were not entitled to relief. 20 30 40

In the present case United Holdings had taken upon itself to rectify the register without any application to court 50

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- (21) (1969) 2 M.L.J. 202
(22) (1869) L.R. 4 H.L.64
(23) (1958) 75 W.N. 299

for that purpose, and in justification of this procedure we were referred to the judgment of Jessel M.R. in In re Poole Firebrick and Blue Clay Co.Ltd. (24) (a case of common mistake and both parties were willing to rectify), to In re Reese River Silver Mining Co. (supra) (directors should not wait for the filing of the bills to rectify the register if they knew that the contract had been entered into upon fraudulent representations) and to Re Derham and Allen Ltd. (supra) (issues of shares at a discount require the sanction of the court). In this connexion the observation of Cohen J. in that case is apposite (pg.36):

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" I wish to say nothing to encourage directors to carry out rectification of a company's register without an order of the court being obtained in proceedings in which the right to rectification is duly established. The protection of the court's order is in the ordinary case essential to any rectification of the register by the removal of the name of a registered holder of shares."

In the present case United Holdings dispute the propriety of the plaintiffs to be on their register and in this regard we would refer to the observation of McCardie J. in First National Reinsurance Co.v. Greenfield (25) :

" I should add this with regard to the rectification of the register that an application to the Court is only essential when the company disputes the right to rectification."

To that we need only add that expulsion of a member from the register is a serious matter and the company cannot take upon itself to alter it.

Be that as it may, it seems to us to be somewhat futile exercise to deal with this point because the real issue here is not whether section 162 of the Companies Act is or is not relevant, but whether rectification under the section is an

(24) (1874) L.R. 18 Eg. 542
(25) (1921) 2 K.G. 260, 279

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appropriate remedy, or whether the remedy should be by way of a suit. We take the view that an application for rectification cannot be granted where there are serious disputes regarding title and the issues cannot be properly decided in the summary proceedings under the section. Delay is a material consideration. In the present case, the delay is almost 2 years. The dicta of Kay J. in In re Scottish Petroleum Co. (26) point emphatically to the case here represented by the third party: "The law of the court is that a man must take proceedings to have his name removed with due diligence if he has any complaint to make". 10

The observations of Baggallay, Lindley and Fry L.JJ. in that case support the view the third party are taking. If a man is too late to secure rectification it must follow that he is too late to avoid the contract. In that case the delay of a fortnight in repudiating the shares make it doubtful whether the repudiating in the case of a going concern would have been in time (pg. 434). 20

Having regard to all the circumstances of the case, we are of the view that the learned judge was wrong in giving summary judgment to the defendant. There is a question proper to be tried between the parties. That being so it remains to consider the question of consolidation of the third party proceeding with Civil Suit No.2323 of 1976. 30

The main purpose of consolidation is to save costs and time, and therefore it will not usually be ordered unless there is "some common question of law or fact bearing sufficient importance in proportion to the rest" of the subject-matter of the actions "to render it desirable that the whole should be disposed of at the same time" (Payne v British Time Recorder Co. (27) Horwood v. British Statesman Publishing Co.Ltd. (28) Daws v. Daily Sketch) (29) 40
Where this is the case, actions may be consolidated where the plaintiffs are the same and the defendants are the same.

(26) (1882) 23 Ch.D. 413
(27) (1921) 2 K.B.16
(28) (1929) W.N.38
(29) (1960) 1 W.L.R.126; (1960) 1 All E.R.397,C.A.

10 Now, the causes of action in this third party proceeding and Civil Suit No. 2323 of 1976, where the plaintiffs and the defendants are the same, arise out of the same series of transactions, i.e., purchase of United Holdings shares and short delivery of such shares, and in our view there are questions of fact or law common to them, e.g., where rescission is a common element of relief, it is only necessary to prove that there is misrepresentation, innocent or fraudulent.

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(continued)

We may add that in such circumstances, one of the tests in deciding whether consolidation should be ordered is to determine whether two inconsistent judgments will come into existence if it is not ordered.

20 We therefore allow the appeal with costs here and below and issue the third party directions in terms of the application of October 3, 1977 except prayer (iii), unconditional leave to defend, and consolidation of the third party proceeding with Civil Suit No.2323 of 1976.

Kuala Lumpur,
May 16, 1979

(RAJA AZLAN SHAH)
CHIEF JUSTICE
MALAYA

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(1) Hearing: 26th February, 1979 to 2nd March, 1979

(2) Counsel: Encik Lim Kean Chye (Encik M. Sivalingam and Encik Nik Mohd. Din with him) for Appellants.

Solicitors: Messrs. Mah-Kok & Din of Kuala Lumpur.

40 Encik V.C.George (Encik K.S. Narayanan and Encik Joginder Singh with him) for Respondents

Solicitors: Messrs. Ng Ek Teong & Partners.

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No. 35

ORDER OF FEDERAL COURT

No.35
Order of
Federal Court
16th May 1979

IN THE FEDERAL COURT IN MALAYSIA HOLDEN
AT KUALA LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. 105 OF 1978

Between

Central Securities (Holdings)
Berhad

Appellant

And

Haron bin Mohd. Zaid

Respondent

10

(In the Matter of Civil Suit No.1364
of 1977 In the High Court in Malaya
at Kuala Lumpur)

Between

Syarikat Seri Padu Sdn. Bhd.

Plaintiffs

And

Haron bin Mohd. Zaid

Defendant

And

Central Securities (Holdings)
Berhad

Third Party

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CORAM: SUFFIAN, LORD PRESIDENT, FEDERAL
COURT, MALAYSIA;
RAJA AZLAN SHAH, ACTING CHIEF
JUSTICE, HIGH COURT, MALAYA;
WAN SULEIMAN, JUDGE, FEDERAL COURT,
MALAYSIA.

IN OPEN COURT

THIS 16TH DAY OF MAY, 1979

O R D E R

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THIS APPEAL coming on for hearing on
the 26th, 27th, 28th days of February 1979,
and on the 1st and 2nd days of March, 1979
in the presence of Mr. Lim Kean Chye
(together with Mr. M. Sivalingam and Encik
Nik Mohamed Din) of Counsel for the Appellant
and Mr.V.C.George (together with Mr. K.S.
Narayanan and Mr. Joginder Singh) of Counsel
for the Respondent AND UPON READING the
Record of Appeal filed herein AND UPON
HEARING Counsel as aforesaid IT WAS ORDERED

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that this Appeal do stand adjourned for judgment AND the same coming on for judgment this day in the presence of Mr. Lim Kean Chye (Encik Nik Mohamed Din with him) of Counsel for the Appellant and Mr. V.C.George (Mr. K.S.Narayanan and Mr. Joginder Singh with him) of Counsel for the Respondent IT IS ORDERED that the Appeal be and is hereby allowed AND IT IS FURTHER ORDERED that the third party directions be and is hereby issued in terms of the application of 3rd October 1977 in that the Respondent deliver a Statement of his claim to the Appellant within fourteen (14) days from the date of this Order who shall plead thereto within fourteen (14) days and in that the Respondent and the Appellant do respectively file an Affidavit of Documents within sixty (60) days from the close of pleadings and there be an inspection of documents within thirty (30) days thereafter AND IT IS FURTHER ORDERED that the Appellant be and is hereby given unconditional leave to defend AND IT IS FURTHER ORDERED that the third party proceedings herein be and is hereby consolidated with Kuala Lumpur High Court Civil Suit No.2323 of 1976 AND IT IS FURTHER ORDERED that the Respondent do pay costs in the Court below and the costs of this Appeal to be taxed by the proper officer of the Court AND IT IS LASTLY ORDERED that the sum of \$500.00 (Ringgit Five hundred only) paid into Court as security for Costs of this Appeal be refunded to Appellant.

GIVEN under my hand and the Seal of the Court this 16th day of May, 1979.

Sd: Illegible
Deputy Registrar
Federal Court
Malaysia

This Order is filed by Mah-Kok & Din Solicitors for the Appellant abovenamed whose address for service is Podium Bangunan Bank Rakyat, Jalan Tangsi Kuala Lumpur.

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No.35

Order of Federal Court
16th May 1979
(continued)

In the Federal
Court in
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Kuala Lumpur

No. 36

NOTICE OF MOTION

No.36
Notice of
Motion
22nd August 1979

IN THE FEDERAL COURT IN MALAYSIA HOLDEN
AT KUALA LUMPUR
(APPELLATE JURISDICTION)
FEDERAL COURT CIVIL APPEAL NO. 105 OF 1978

Between

Central Securities (Holdings)
Berhad Appellant

And

Haron bin Mohd. Zaid Respondent

10

(In the matter of Civil Suit No.1364
of 1977 In the High Court in Malaya
at Kuala Lumpur)

Between

Syarikat Seri Padu Sdn.Bhd. Plaintiffs

And

Haron bin Mohd. Zaid Defendant

And

Central Securities (Holdings)
Berhad Third Party

20

NOTICE OF MOTION

TAKE NOTICE that on Wednesday, the
19th of September 1979 at 9.30 o'clock in
the forenoon or soon thereafter as he can
be heard Mr. V.C.George of Counsel for
the abovenamed Respondent will move the
Court for an Order :-

(a) that conditional leave be granted
to the abovenamed Respondent to
appeal to his Majesty the Yang Di-
Pertuan Agong against the whole of
the decision of this Honourable
Court given on the 27th day of
February 1979 on the Notice of
Motion dated the 13th of October
1978; and

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(b) that the costs of and incidental
to this application be costs
in the cause

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Sd: Ng Ek Teong & Partners
Solicitors for the Respondents
abovenamed.

In the Federal
Court in
Malaysia at
Kuala Lumpur

Dated at Kuala Lumpur this 22nd day of
August 1979.

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Notice of
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1979

(continued)

Sd: Illegible
Chief Registrar
Federal Court
Malaysia

10 To: The Appellant and/or their
Solicitors Messrs. Mah Kok & Din
Podium Bangunan Bank Rakyat
Jalan Tangsi
Kuala Lumpur

This Application will be supported by the
Affidavit of V.C.George affirmed on the
5th day of April 1979 and filed herein.

20 This Notice of Motion is filed by Messrs.
Ng Ek Teong & Partners solicitors for the
Respondent abovenamed, whose address for
service is at 2nd Floor Bangunan Persatuan
Hokkien Selangor, Jalan Raja Chulan, Kuala
Lumpur.

In the Federal
Court in
Malaysia at
Kuala Lumpur

No. 37

AFFIDAVIT OF V.C.GEORGE

No.37
Affidavit of
V.C.George
5th April 1979

IN THE FEDERAL COURT IN MALAYSIA HOLDEN
AT KUALA LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO.105 OF 1978

Between

Central Securities (Holdings)
Berhad Appellant

And

10

Haron bin Mohd. Zaid Respondent

(In the Matter of Civil Suit No.1364
of 1977 In the High Court in Malaya
at Kuala Lumpur)

Between

Syarikat Seri Padu Sdn.Bhd. Plaintiffs

And

Haron bin Mohd. Zaid Defendant

And

Central Securities (Holdings)
Berhad Third Party 20

A F F I D A V I T

I, V.C. GEORGE, of full age, Malaysian
Citizen residing at No.1 Lorong Damai 13,
Kiri, Off Jalan Ampang, Kuala Lumpur do
hereby affirm and say as follows :-

1. I am an Advocate & Solicitor of the
High Court in Malaya and a partner of the
firm of Messrs. Ng Ek Teong & Partners,
Solicitors for the Respondent abovenamed. 30

2. I have had and continue to have the
conduct of this matter and am authorised
by the Respondent abovenamed to affirm
this Affidavit.

3. On the 27th day of February 1979 this
Honourable Court delivered a decision
dismissing the Respondents application by
Notice of Motion dated the 13th of October
1978. The Respondent is desirous of appeal-
ing to His Majesty the Yang Di-Pertuan 40
Agong against the whole of the said decision

of this Honourable Court.

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Court in
Malaysia at
Kuala Lumpur

No.37

4. The said decision is in the nature of an Interlocutory Order given with regard to an interlocutory application contained in the said Notice of Motion which was taken as a preliminary objection.

Affidavit of
V.C. George

5. It is respectfully suggested that this is a fit and proper case for appeal inter alia for the following reasons :-

5th April 1979

(continued)

- 10 (a) very important questions on appeal procedure are raised in the said Notice of Motion and apparently decisions of the Federal Court of Malaya on the appeal procedure are at variance with the decisions of the Privy Council;
- 20 (b) that the matters raised in the said Notice of Motion should be decided in the Judicial Committee of the Privy Council as otherwise litigants and their legal advisors will continue to be confused as to what is the proper procedure on the questions raised by the proposed appeal.
- 30 (c) that the subject matter of the appeal proper itself is a sum of approximately \$5 million.

6. I humbly pray that this Honourable Court will be pleased to grant the Respondent an order in the terms of this application.

Affirmed by V.C.George }
at Kuala Lumpur in the } Sd: V.C.George
Federal Territory this }
5th day of April 1979 }
at 9.00 a.m. } Before me,

40 Sd: Yee Soon Kwong
Commissioner for Oaths
Kuala Lumpur

This Affidavit is filed by Messrs. Ng Ek Teong & Partners, Solicitors for the Respondent whose address for service is 2nd Floor Bangunan Persatuan Hokkien Selangor, Jalan Raja Chulan, Kuala Lumpur

In the Federal
Court in
Malaysia at
Kuala Lumpur

No. 38

AFFIDAVIT OF V.C.GEORGE

No.38
Affidavit of
V.C.George
18th June 1979

IN THE FEDERAL COURT IN MALAYSIA HOLDEN
AT KUALA LUMPUR
(APPELLATE JURISDICTION)
FEDERAL COURT CIVIL APPEAL NO. 105 OF 1978

Between

Central Securities (Holdings)
Berhad Appellant

And

Haron bin Mohd.Zaid Respondent

10

(In the Matter of Civil Suit No.1364
of 1977 In the High Court in Malaya
at Kuala Lumpur)

Between

Syarikat Seri Padu Sdn.Bhd. Plaintiffs

And

Haron bin Mohd. Zaid Defendant

And

Central Securities (Holdings)
Berhad Third Party

20

FURTHER AFFIDAVIT

I, V.C. GEORGE, of full age, Malaysian
Citizen residing at No.1 Lorong Damai 13,
Kiri, Off Jalan Ampang, Kuala Lumpur do
hereby affirm and say as follows :-

1. I beg leave to refer to my Affidavit
affirmed on the 5th day of April 1979 and
filed herein and am authorised by the
Respondent to affirm and file this further
Affidavit in ellaboration of what was
stated by me in my said Affidavit of 5th
April 1979.

30

2. I beg leave to refer to the Notice of
Motion of the 13th of October 1978 of the
abovenamed Respondent, Haron bin Mohd.Zaid.
By that Motion and the Affidavit in support
thereof it was Haron's contention that the
Appeal before this Honourable Court was
not properly before it on the ground that

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it could only have been brought to the Federal Court with leave of the Court of first instance or of the Federal Court.

In the Federal Court in Malaysia at Kuala Lumpur

3. Such leave was neither sought nor obtained.

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Affidavit of V.C.George
18th June 1979
(continued)

10 4. The Orders against which the Appellants, Central Securities (Holdings) Berhad (hereinafter referred to as "Central Securities") were appealing were two Orders made by The Honourable Mr. Justice Harun. They were Interlocutory Orders within the meaning of Section 68(2) of the Courts of Judicature Act 1964 and though originally brought in Chambers were not heard by him in Chambers but were disposed of in Open Court and as such are deemed to be interlocutory Orders made in Chambers.

20 5. In the event it was submitted before the Federal Court that the first line of Section 68(2) of the Courts of Judicature Act 1964 i.e. the requirement that a Certificate be applied for, has no application and that a condition precedent to appealing to the Federal Court against such orders is to obtain within 30 days of the Orders leave to do so either from the Judge of first instance or from the Federal Court.

30 6. The applications in respect of which the said two Orders were given by Harun J. were :-

(i) that liberty be given to the Respondent Haron bin Mohd.Zaid to enter what in effect was summary judgment against Central Securities; and

(ii) Central Securities application to set aside the Third Party Notice.

40 7. The Learned Trial Judge dismissed the application to set aside the Third Party Notice and gave leave to the Respondent to enter judgment against Central Securities for the amounts claimed in the Third Party Notice and the decision of the Learned Judge on both the applications were incorporated in one order.

50 8. The Learned Trial Judge provided Central Securities with a Certificate certifying that he did not require further arguments in respect of the applications for summary judgment but did not provide such a Certificate in respect

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Kuala Lumpur

No. 38

Affidavit of
V.C.George
18th June 1979
(continued)

of the application to set aside the
Third Party Notice.

9. The Respondent by way of a preliminary
objection moved the Federal Court for an
order that the Appeal be dismissed with
costs on the ground that it has been
improperly and incompetently brought as
no leave had been obtained from a Judge
or from the Federal Court as required by
Section 68(2) of the Courts of Judicature
Act 1964. 10

10. The said preliminary objection was
dismissed by the Federal Court but no
reasons were given for its said decision.
It is my respectful contention that the
Federal Court erred in dismissing the
Motion.

11. I respectfully contend that the Federal
Court should have followed the decisions
of the English Court of Appeal in *Salter
Rex vs Ghost* (1971) 2 QB 597 following the
test laid down in *Salaman vs Warner* (1891)
1 QB 734 and the decision of the Australian
Courts in *Becker vs Marion City Corporation*
(1974) 9 SASR 560 and in *Tampion vs.
Anderson* (1974) 48 ALJR 11 and was bound
by the decision of the Privy Council in
Becker vs. Marion City Corporation (1976)
2 WLR 728 following the Federal Court's
decision in *Khalid Panjang's case* (1964)
30 MLJ 108 at 111 and should have held that
the orders appealed against were interlocu-
tory orders. 20 30

12. Appeals from Interlocutory Orders made
in Chambers are governed by Section 68(2)
of the Courts of Judicature Act 1964.

13. In the instant case the applications
were to be heard by the Judge in Chambers
but were not considered by him in Chambers.
He adjourned them to Open Court pursuant to
Order 54 Rule 22 of the Rules of Supreme
Court and the orders made were in Open Court
and as aforesaid were Interlocutory orders. 40

14. By the proviso to Order 54 Rule 22
although the Orders were made in Open Court
they are deemed to be decisions at Chambers
and as such Section 68(2) of the Courts of
Judicature Act 1964 has application.

15. Section 68(2) has two limbs the 1st of
which provides the procedure for a 50

dissatisfied party to apply to the Judge for the adjournment of the matter into Open Court for further argument and reconsideration.

In the Federal Court in Malaysia at Kuala Lumpur

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Affidavit of V.C. George

18th June 1979

(continued)

10 This procedure (referred to as the "1st limb") could not be invoked in the instant case as the Judge had not heard the matter in Chambers and had adjourned it on his own accord into the Open Court pursuant to Order 54 Rule 22 - See T.O. Thomas vs. K.C.I.Reddy & Anor 1974 2 MLJ 87.

Again in the case of Sri Jaya Transport Co.Ltd.vs Fernandez (1971) MLJ 87 the Federal Court in identical circumstances ruled that the obtaining of the Certificate is not only not available but totally irrelevant.

20 16. The 1st limb to Section 68(2) not being available to Central Securities all it had left was the 2nd limb of Section 68 (2) which it had to satisfy as a condition precedent to appealing against the decision of the Court of first instance i.e. a condition precedent that it should have obtained leave of the Judge or of the Federal Court. That was the decision of this Honourable Court in the T.O.Thomas case and in the Sri Jaya case.

30 17. At no stage did Central Securities seek to obtain leave in respect of either of the decisions given in respect of the said two applications and no leave was granted either by a Judge of the High Court or by the Federal Court.

40 18. It is most respectfully contended that this Honourable Court had no powers to override the mandatory procedural provisions for the bringing of an appeal to it. Alternatively if this Honourable Court had taken the view that the Appeal was properly before it, it is most respectfully contended that it erred in so doing.

50 19. It is further respectfully contended that in dismissing the said Motion taken by way of preliminary objection this Honourable Court had not followed its own decision in the cases of T.O.Thomas and Sri Jaya. It has also apparently run contrary to the decisions of the English Court of Appeal, the Australian Court of Appeal and the Privy Council in respect of matters identical to the instant case.

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Court in
Malaysia at
Kuala Lumpur

No.38
Affidavit of
V.C. George
18th June 1979
(continued)

20. It is most respectfully contended
that in the circumstances this matter is
a fit and proper case for appeal to His
Majesty.

Affirmed by V.C.GEORGE)
at Kuala Lumpur in the)
Federal Territory this)
18th day of June 1979)
at 12.30 p.m.) Before me,

Sd: (Abdul Majid Khan) 10
Commissioner for Oaths
Kuala Lumpur

This Affidavit is filed by Messrs. Ng Ek
Teong & Partners, Solicitors for the
Respondent abovenamed whose address for
service is 2nd Floor, Bangunan Persatuan
Hokkien Selangor, Jalan Raja Chulan, Kuala
Lumpur.

No.39
Notice of
Motion
22nd August
1979

No. 39
NOTICE OF MOTION

20

IN THE FEDERAL COURT IN MALAYSIA HOLDEN
AT KUALA LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO.105 OF 1978

Between

Central Securities (Holdings)
Berhad Appellant

And

Haron bin Mohd. Zaid Respondent

(In the Matter of Civil Suit No.1364 30
of 1977 In the High Court in Malaya
at Kuala Lumpur)

Between

Syarikat Seri Padu Sdn.Bhd. Plaintiffs

And

Haron bin Mohd. Zaid Defendant

And

Central Securities (Holdings) Third Party
Berhad

NOTICE OF MOTION

In the Federal
Court in
Malaysia at
Kuala Lumpur

No.39

Notice of
Motion

22nd August
1979

(continued)

TAKE NOTICE that on Wednesday the 19th day of September 1979 at 9.30 o'clock in the forenoon or soon thereafter as Counsel for the abovenamed Respondent will move the Court for an Order :-

- 10 (a) that conditional leave be granted to the abovenamed Respondent to appeal to His Majesty, the Yang Di-Pertuan Agong, against the whole of the decision of this Honourable Court given on the 16th of May 1979 with regard to Federal Court Civil Appeal No. 105 of 1978;
- (b) that that part of the decision of this Honourable Court dated the 16th of May 1979 which states:-
- 20 (i) that Third Party Directions be issued in terms of the application of the 3rd day of October 1977; and
- (ii) that Third Party proceedings herein be consolidated with Kuala Lumpur High Court Civil Suit No. 2323/76
- 30 be stayed till the appeal to His Majesty the Yang Di-Pertuan Agong is finally disposed or until further order;
- (c) that the costs of and incidental to this application be costs in the cause.

Sd: Ng Ek Teong & Partners
Solicitors for the Respondents
abovenamed

Dated at Kuala Lumpur this 22nd day of August 1979.

40 Sd: Illegible
Chief Registrar
Federal Court
Malaysia.

In the Federal
Court in
Malaysia at
Kuala Lumpur

No.39

Notice of
Motion

22nd August
1979

(continued)

TO:-

The Appellant and/or their
Solicitors
Messrs. Mah Kok & Din
Podium
Bangunan Bank Rakyat
Jalan Tangsi
Kuala Lumpur

This Application will be supported by the
Affidavit of Haron Bin Mohd Zaid affirmed
on the 20th day of June 1979 and filed
herein.

10

This Notice of Motion is filed by Messrs.
Ng Ek Teong & Partners, Solicitors for
the Respondent abovenamed, whose address
for service is at 2nd Floor, Bangunan
Persatuan Hokkien Selangor, Jalan Raja
Chulan, Kuala Lumpur

No.40

Affidavit of
Haron Bin
Mohd.Zaid

20th June
1979

No. 40

AFFIDAVIT OF HARON BIN
MOHD ZAID

20

IN THE FEDERAL COURT IN MALAYSIA HOLDEN
AT KUALA LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO.105 OF 1978

Between

Central Securities (Holdings)
Berhad

Appellant

And

Haron bin Mohd. Zaid

Respondent

30

(In the Matter of Civil Suit No.1364
of 1977 In the High Court in Malaya
at Kuala Lumpur)

Between

Syarikat Seri Padu Sdn.Bhd.

Plaintiffs

And

Haron bin Mohd. Zaid

Defendant

And

Central Securities (Holdings)
Berhad

Third Party

In the Federal
Court in
Malaysia at
Kuala Lumpur

A F F I D A V I T

No.40

I, HARON BIN MOHD.ZAID being of full age, Malaysian, residing at No.16 Jalan Pandan, Johore Bahru, made affirmation and say as follows :-

Affidavit of
Haron bin
Mohd. Zaid

20th June
1979

(continued)

10 1. I am the Applicant/Respondent above-named and beg to refer to the abovementioned Appeal and to the decision of this Honourable Court dated the 16th day of May 1979 allowing the said Appeal.

20 2. I am advised by my Solicitors that I have to obtain leave of this Honourable Court to appeal from the said decision of this Honourable Court to His Majesty the Yang Di-Pertuan Agong as the said decision is in the nature of an Interlocutory Order, in that this Honourable Court by the said decision ordered :-

(a) that the Appellants be given unconditional leave to defend High Court Civil Suit No.1364/77;

(b) that third party directions be issued in terms of the application of the 3rd of October 1977; and

30 (c) that third party proceedings herein be consolidated with Kuala Lumpur High Court Civil Suit No. 2323/76.

40 3. I am advised by my Solicitors and verily believe that there are merits in the proposed Appeal to His Majesty the Yang Di-Pertuan Agong and that there are important issues in the judgment of the Court of first instance and the Judgment of this Honourable Court that should be canvassed before the Judicial Committee of the Privy Council for their advice to His Majesty the Yang Di-Pertuan Agong.

4. I am advised by my Solicitors and verily believe :-

(a) that on the facts presented to the Judge in the High Court the Third Party/Appellants rested their case on only one issue which is whether there was delivery of 523,278 shares

In the Federal
Court in
Malaysia at
Kuala Lumpur

No.40

Affidavit of
Haron bin
Mohd. Zaid

20th June
1979

(continued)

contained in share certificate
No.0227 from the Appellant to
the Defendant/Respondent.

(b) that before this Honourable Court
the Counsel for the Appellants in
the course of his submission
introduced matters which were not
facts before the High Court and
issues based on those matters
which were also not brought before 10
the High Court

5. I am advised and verily believe :-

(a) that this Honourable Court erred
in arriving at its decision in
considering facts and issues
thereon, which were never raised
in the High Court; and

(b) that this Honourable Court, after
the Appellant had rested their
case on just one issue in the 20
High Court, erred in considering
other issues in arriving at its
decision.

6. I am advised and verily believe that
three important matters that concern litigants
and practitioners generally will be canvassed
in the appeal to the Judicial Committee of
the Privy Council namely :-

(a) Should the Federal Court on an
appeal from a summary judgment in 30
the High Court consider matters
which were not adduced as facts
in the High Court and issues
based on such matters;

(b) Should the Federal Court in an
appeal from a summary judgment in
the High Court, consider issues
which were not available from the
facts adduced in the High Court;

(c) Should the Federal Court on an 40
appeal from a summary judgment in
the High Court consider matters
and issues thereon which could
have been raised in the High Court
but were not specifically raised
in the High Court as the Appellant
had rested their case on only one
single issue.

7. I am advised and verily believe that if

conditional leave is granted to me to appeal to His Majesty the Yang Di-Pertuan Agong then it is humbly requested that that part of the decision of this Honourable Court :-

In the Federal Court in Malaysia at Kuala Lumpur

No.40

Affidavit of Haron bin Mohd. Zaid
20th June 1979

- (a) that Third Party Directions be issued in terms of the application of the 3rd day of October 1977; and
- 10 (b) that Third Party Proceedings herein be consolidated with Kuala Lumpur High Court Civil Suit No.2323/76

(continued)

be stayed till this appeal is finally disposed or until further Order.

8. I humbly pray that my application be granted in terms of the Notice of Motion.

20 AFFIRMED by the abovenamed)
 HARON BIN MOHD. ZAID at) Sd: Haron Bin
 Kuala Lumpur in the) Mohd. Zaid
 Federal Territory this)
 20th day of June 1979 at)
 . a.m.) Before me,

Sd: Yee Soon Kwong
Commissioner for Oaths
Kuala Lumpur

30 This Affidavit is filed by Messrs. Ng Ek Teong & Partners, Solicitors for the Respondent abovenamed whose address for service is at 2nd Floor, Bangunan Persatuan Hokkien Selangor, Jalan Raja Chulan, Kuala Lumpur.

In the Federal
Court in
Malaysia at
Kuala Lumpur

No. 41

AFFIDAVIT OF HARON BIN
MOHD ZAID

No.41

Affidavit of
Haron Bin
Mohd Zaid

3rd September
1979

IN THE FEDERAL COURT IN MALAYSIA HOLDEN
AT KUALA LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO.105 OF 1978

Between

Central Securities (Holdings)
Berhad Appellant 10

And

Haron bin Mohd. Zaid Respondent

(In the Matter of Civil Suit No.1364
of 1977 In the High Court in Malaya
at Kuala Lumpur)

Between

Syarikat Seri Padu Sdn.Bhd. Plaintiffs

And

Haron bin Mohd. Zaid Defendant

And

20

Central Securities (Holdings)
Berhad Third Party

FURTHER AFFIDAVIT

I Haron bin Mohd. Zaid being of full
age, Malaysian, residing at No.16 Jalan
Pandan, Johore Bahru made affirmation and
say as follows :-

1. I beg leave to refer to my Affidavit
affirmed on the 20th day of June 1979 and
filed herein and I now affirm and file
this further affidavit in ellaboration on
what was stated by me in my said affidavit
of the 20th June 1979. 30

2. I am advised by my Solicitors and
verily believe that a Judge sitting as a
Court of first instance perforce can
adjudicate only on the facts presented to
him either by affidavit or by witness
evidence.

3. By my Third Party Notice, in essence, 40
I claimed against the Third Party that

523,278 shares in United Holdings Bhd held under share certificate numbered 0227 which they had purported to deliver to me pursuant to my purchase of it from the Third Party was not duly delivered as the relevant Memorandum of Transfer which was delivered to me together with the said Share Certificate in fact purported to transfer the said shares from one Dr. Chong Kim Choy to one International Holdings (Pte) Ltd.

In the Federal Court in Malaysia at Kuala Lumpur

No.41

Affidavit of Haron Bin Mohd Zaid

3rd September 1979

(continued)

4. The Third Party did not dispute the facts stated in para.2 hereof and in fact exhibited the said Memorandum of Transfer which is at page 59 of the Record of Appeal but contended that by the physical delivery of the said Share Certificate and the said Memorandum of Transfer they had duly delivered the said shares.

20 5. The affidavits before the High Court also show :-

(a) that in 1974 Dr. Chong Kim Choy was the registered owner of those 523,278 shares contained in the said share certificate and

(b) that in 1975 the Plaintiff was the registered owner and

(c) that in 1977 the shares reverted back to Dr. Chong Kim Choy.

30 6. The Secretary of United Holdings Bhd by his affidavit had explained to the Learned Judge that the purported registration of the said shares from Dr. Chong Kim Choy to the Plaintiff Syarikat Seri Padu Sdn.Bhd. on the basis of the Memorandum of Transfer from Dr. Chong Kim Choy to International Holdings (Pte) Ltd. was done erroneously (and in breach of the Company's Act) and as such a rectification of the register had to
40 be and was effected.

7. As to my contention that I should have summary judgment no other facts were presented by the Third Party to the High Court.

8. In essence the only other matter raised by the Third Party was that there was another suit pending between me and them namely Civil Suit No.2323 of 1976 in which I had claimed rescission of the whole contract of the sale of shares to me by the Third Party on

In the Federal
Court in
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No.41

Affidavit of
Haron Bin
Mohd Zaid

3rd September
1979

(continued)

the ground of fraud and as the said
523,278 shares were part of those
shares the Third Party Notice should be
set aside for duplicity of action.

9. The facts on which the Third Party
relied on their contention that the
Third Party Notice should be set aside
and in any event summary judgment should
not be entered against them are in four
short affidavits namely 3 affidavits by 10
Mah King Hock dated the 24th day of
September 1977 (page 30 of the Record)
31st day of December 1977 (page 66 of the
Record) and 15th day of February 1978
(page 200 of the Record) and one affidavit
by Dato Loy Hean Hong dated 31st day of
December 1977 (page 64 of the Record).

10. The pleadings in Civil Suit No.2323
of 1976 and the Writ and Statement of
Claim in Civil Suit No.3430 were also 20
exhibited. As to that I am advised by
my Solicitors and verily believe that it
is trite law that such pleadings cannot
take the place of facts and are simply
a submission by the lawyers who settled
them.

11. Since the Third Party rested their
case on the said limited facts and on the
said two issues the Learned Judge proceeded
to adjudicate on them and found that - 30

(i) the Third Party Notice was
perfectly in order in that by it
the defendant claimed refund of
moneys paid due to non-delivery
of the 523,278 shares on the
ground of total failure of
consideration whilst in Civil
Suit No.2323 as far as these
shares were concerned fraudulent
misrepresentation was alleged - 40
there was therefore two completely
different causes of action and
no duplicity of actions; and

(ii) as to whether he should give
summary judgment by granting to
the Defendant leave to enter
judgment for the price of the
shares, since the only issue
raised was whether the handing
over of the share scripts 50
together with the said Memorandum
of Transfer (transferring the

shares to International Holdings (Pte) Ltd) amounted to due delivery, he held that there was no due delivery and proceeded to grant leave to enter final judgment against the Third Party.

In the Federal Court in Malaysia at Kuala Lumpur

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Affidavit of Haron Bin Mohd. Zaid

3rd September 1979

(continued)

10 12. It appears from what Learned Counsel for the Third Party had submitted before this Honourable Court, that, there might have been "other facts" that may have been relevant and from which "other issues" could have been raised by the Third Party.

13. No evidence was led in respect of those "other facts" either in the Court below or before this Honourable Court at the hearing of the Appeal.

14. This Honourable Court in its judgment allowing the Appeal -

20 (i) In respect of the Memorandum of Transfer held :-

(at Page 9 of the Judgment),

".....that the Third Party can deal with shares pending registration. We bear in mind.....the common sense warning by Devi J. against a too-ready assumption of illegality or invalidity of contract dealing with commercial transactions".

30 I am advised by my Solicitors and verily believe and most respectfully say that this Honourable Court overlooked that the Third Party chose not to give any explanation as to why it had not delivered a proper Memorandum of Transfer and chose to take the stand that what it delivered was a good memorandum. It must also be remembered that there was a
40 letter from Dr. Chong Kim Choy to United Holdings Bhd (which was quoted in full in the judgment of this Honourable Court at page 20) which shows that as far as he was concerned as registered owner of the shares he was not prepared to transfer them to anyone other than International Holdings (Pte) Ltd and the Third Party
50 chose not to give any explanation as to what they were doing with shares

In the Federal
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No.41

Affidavit of
Haron Bin
Mohd.Zaid

3rd September
1979

(continued)

belonging to Dr. Chong or to
International Holdings (Pte) Ltd.

- (ii) Found favour (at bottom of page 9
of the Judgment at requitor) in
the contention by Counsel for
the Third Party that the contract
for the purchase of 1.4 million
shares for \$11,200,000 was a
single and indivisible contract,
there has been part performance 10
and that therefore I cannot claim
restitution.

Also that the Third Party cannot
be restored to its former position.

I am advised by my Solicitors and
verily believe that the facts
necessary to raise this issue
were never before either the High
Court or this Honourable Court.
Even the contract for the purchase 20
of the shares were not introduced
as evidence. In fact not only
were the necessary facts not
before the High Court but this
issue was never raised there -
not even in submission.

Reference is made to Section 13(2)
of the Sale of Goods Act (at
bottom of page 11 of the Judgment).
However no suggestion was made in 30
the Court below that the contract
is not severable and in any event
no evidence was adduced in the
Court below to even suggest that
that was the position.

My contention supported by
affidavits filed by me or on my
behalf was that due delivery to
me of each of the shares purchased
by me was a condition of the sale 40
and not a warranty and by not
"duly delivering" to me the
523,278 shares the Third Party was
in breach of a condition of the
contract to which the Third Party's
contention was simply that it had
duly delivered.

- (iii) As to estoppel, delay acquiescence
and laches (page 12 of Judgment)
which this Honourable Court found 50
could be relevant and which the

High Court found were not relevant, I am advised by my Solicitors and verily believe and most respectfully state that in the Court below the Third Party having rested their case on the issue whether the handing over of the Memorandum of Transfer (from Dr. Chong Kim Choy to International Holdings Pte Ltd) amounted to due delivery, the Learned Judge found that in respect of that issue the question of estoppel, delay acquiescence and laches were not relevant, which aspect of the matter this Honourable Court did not appear to have directed its attention to.

In the Federal Court in Malaysia at Kuala Lumpur

No.41

Affidavit of Haron Bin Mohd. Zaid

3rd September 1979

(continued)

(iv) If in fact the position is that by non-delivery of the 523,278 shares there was a breach of condition (and not merely of a warranty) then the cases of Biggerstaff, Platt vs Rowe and Roward vs Divall support my case.

(v) At the last paragraph of page 17 of Judgment it is suggested that this case was based on misrepresentations. My Solicitors advise me and I respectfully say that Civil Suit No. 2323 of 1976 is based on misrepresentation. This case was not based on misrepresentation but was on total failure of consideration. As soon as I became aware of the total failure, of consideration I took steps to give the Third Party an opportunity of setting matter right and when they could not or would not do so the Plaintiff filed the action against me and I brought the Third Party into it.

15. I humbly pray that my application be granted in terms of the Notice of Motion.

Affirmed by Haron bin Mohd.)
Zaid at Kuala Lumpur in the) Sd: Haron bin Mohd
Federal Territory this 3rd) Zaid
day of September 1979 at)
11.00 a.m.) Before me,

50 Sd: Yee Soon Kwong
Commissioner for Oaths
Kuala Lumpur

In the Federal
Court in
Malaysia at
Kuala Lumpur

No.41

Affidavit of
Haron Bin
Mohd. Zaid

3rd September
1979

(continued)

This Further Affidavit is filed by
Messrs. Ng Ek Teong & Partners whose
address for service is 2nd Floor, Bangunan
Persatuan Hokkien Selangor, Jalan Raja
Chulan, Kuala Lumpur.

No.42

Judgment of
Federal Court

1st November
1979

No. 42

JUDGMENT OF FEDERAL
COURT

IN THE FEDERAL COURT IN MALAYSIA HOLDEN
AT KUALA LUMPUR

10

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. 105 OF 1978

Between

Central Securities (Holdings)
Berhad

Appellant

And

Haron bin Mohd. Zaid

Respondent

(In the Matter of Civil Suit No.1364
of 1977 In the High Court in Malaya
at Kuala Lumpur)

20

Between

Syarikat Seri Padu Sdn.Bhd.

Plaintiffs

And

Haron bin Mohd. Zaid

Defendant

And

Central Securities (Holdings)
Berhad

Third Party

CORAM: Raja Azlan Shah, Ag. LP Malaysia
Chang Min Tat, F.J.
Ibrahim Mandn, F.J.

JUDGMENT OF THE COURT

The defendant Haron bin Mohd. Zaid
(Haron) applies for the leave of this Court 30
to appeal to His Majesty the Yang Di-Pertuan

Agong from two orders made by this Court, the first an order made on February 27, 1979 and the second an order made on May 16, 1979.

In the Federal Court in Malaysia at Kuala Lumpur

Appeals to the Yang Di-Pertuan Agong are governed by the provisions of section 74 of the Courts of Judicature Act 1964. An appeal lies with the leave of the Federal Court,

No.42

Judgment of Federal Court

1st November 1979

10 "74(1)(a) from any final judgment or order in any civil matter where

(continued)

(i) the matter in dispute in the appeal amounts to or is of the value of twenty-five thousand dollars or upwards;

20 (ii) the appeal involves, directly or indirectly, some claim or question to or respecting property or some civil right of like amount or value; or

(iii) the case is from its nature a fit one for appeal; and

(b) from any interlocutory judgment or order which the Federal Court considers a fit one for appeal. "

30 Section 75(1) sets a time limit of six weeks for an application for leave from the date on which the decision appealed against was made. Time may however be extended by the Federal Court. Section 75(2) spells out the powers of the Federal Court to set conditions regarding the execution of the order sought to be appealed from or for a stay.

40 Though the leave of the Federal Court is required in all cases, Lopez v. Velliapa Chettiar (1) has laid down what appears so clearly in the wording that an appeal under section 74(1)(a)(i) or (ii) is as of right and the Federal Court has no discretion to refuse leave to appeal. The leave for appeals under section 74(1)(a)(i) or (ii) is referable

(1) (1968) 1 M.L.J. 224 P.C.

In the Federal
Court in
Malaysia at
Kuala Lumpur

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Federal Court

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1979

(continued)

only to the conditions for such leave in section 75. The Federal Court has discretion to refuse leave only in cases which come within section 74(1)(a)(iii) or 74(1)(b). In the latter case, leave will only be granted if in the opinion of this Court, the interlocutory judgment or order is one fit for appeal.

The earlier order is a dismissal of Haron's application to abort the appeal of the third party in the action, Central Securities, from the High Court to this Court on a contention that the appeal being one from an interlocutory judgment or order was without the leave of a judge of a High Court in Chambers as required by section 68(2) Courts of Judicature Act 1964 and therefore not properly brought before this Court. The second is an order setting aside the order giving Haron leave to sign final judgment against Central Securities on a summons for directions brought by Haron against the third party. 10 20

Mr. George for Haron concedes, in our opinion entirely correctly, that both orders he seeks the leave of this Court to appeal from are interlocutory. An order setting aside an award of an arbitration has been held to be interlocutory: Re. Croasdell & Cammel Laird & Co. (2) He accepts the burden of satisfying us that they are fit ones for appeal. He concedes further that so far he has lost nothing really. Haron's claim against the third party will go to trial and stands to be adjudicated. But he does not see why he should lose the benefit of his earlier victory in the form of the Order 14 judgment in the High Court and in his view, his best course would be to restore this judgment before their Lordships of the Privy Council by an objection to the appeal from the High Court to the Federal Court on purely procedural grounds. It is his contention that the several decisions on appeal procedure conflict and urgently require final determination by the highest Court. 30 40

It may be convenient to deal, at this stage, with his procedural objections.

(2) (1906) 2 K.B. 569

Section 68(2) reads :

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Malaysia at
Kuala Lumpur

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Federal Court

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1979

(continued)

10

"(2). No appeal shall lie from an interlocutory order made by a Judge of a High Court in Chambers, unless the Judge has certified, after application within four days after the making of such order by any party for further argument in Court, that he requires no further argument or unless leave is obtained from the Federal Court or from a Judge of the High Court."

Haron contends, unless we have misunderstood him altogether, that the appeal to this Court had not complied with the requirements of this section. No leave had in fact been obtained.

20

What had happened was this: Haron consented to judgment and at the same time he applied for a third party notice to be issued to Central Securities who thereupon entered a conditional appearance and within time took out a summons for the dismissal of the notice. This summons was heard by the Judge together with Haron's application for third party directions wherein he also prayed for judgment against Central Securities as on an Order 14 application. The parties came before the Judge in Chambers when no argument seemed to have been presented. By common consent, the parties appeared in Court when after argument, the Judge dismissed Central Securities' application to set aside the third party notice and gave leave to Haron to sign final judgment against Central Securities on his summons. That was on June 28, 1978. The decisions, though made in Court and not in Chambers, are however deemed to be decisions at Chambers, by the provisions of Order 54 rule 22 Rules of the Supreme Court 1957.

30

40

A dissatisfied party, if desirous of taking the matter further, is bound to observe the requirements of rule 22A which is a local rule but which appears to be an adaption of Order 55 rule 14D in the 1957 Annual Practice. It is in these words:

50

"22A. Any party dissatisfied with any order made by a Judge in Chambers may apply, at the time the order is made, orally, or at any time within four days from the day of the order in

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(continued)

writing to the Registrar, for the adjournment of the matter into Court for further argument; and on such application, the Judge may either adjourn the matter into Court and hear further argument, or may certify in writing that he requires no further argument. If the Judge hears further argument he may set aside the order previously made, and make such other order as he thinks fit." 10

It does not appear from the Record of Appeal but it certainly does from the High Court file to which we have made reference that on June 29, 1978, that is, the next day after the orders were made and therefore well within the four days specified, the solicitors for Central Securities made application by letter for further argument on both matters into Court. This letter was received on June 30 and placed before the Judge. On July 4, 1978, the Judge indicated that he would issue a certificate that he required no further argument. The certificate issued however was in respect only of Haron's application for third party directions. It clearly did not set out the manifest intention of the Judge. As we understand the practice in the Kuala Lumpur registry, it was the registry itself which typed out the certificate for issue. Whether or not Haron's solicitors were aware of this application, the fact that the certificate did not extend to the summons for the dismissal of the action is not the reason for or the substance of Haron's contention that Central Securities' appeal to this Court was incompetent. 20 30

Rule 23 of the same order provides for an appeal from the decision of a Judge at Chambers to the Federal Court. Therefore conditional on Central Securities having complied with the requirements in rule 22A, the way was open to them to go on appeal. It is not apparent how Central Securities could be said not to have complied with rule 22A. 40

Since no grounds of decision had been given, we do not know the reason why the Federal Court dismissed Haron's application to stop the appeal thereto, but the reason seems obvious. Leave from the Federal Court or from a Judge of the High Court is not a sine qua non, without which an appeal cannot 50

proceed, if an application has been made for further argument within four days and the Judge has certified, after application that he requires no further argument. Leave is only required if no application has been made and no certificate has been issued.

In the Federal Court in Malaysia at Kuala Lumpur

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Judgment of Federal Court

1st November 1979

(continued)

10 Having regard to the fact that this is not a case where further argument has been heard, we are not called upon to
20 decide between the conflicting decisions of Nagappa Rengasamy Pillai v. Lim Lee Chong (3) and T.O.Thomas v. K.C.I. Reddy & Anor. (4) The former case decided that after such further argument in Court, the first limb of section 68(2) of the Courts of Judicature Act 1964 did not apply and there was no need to apply for a certificate
30 but there was every need under the second limb to apply for leave. Without such leave, by reason of the clear dichotomy in the section, no appeal lay. In the matter, by a majority, the Federal Court held that in such a circumstance, no leave was required. The appeal was as of right. Here, the certificate was given after application made within time. The first limb of section 68A had been satisfied, and in the circumstances no conflict arises between this
40 section and Order 54 rule 22A, which would appear to be the reason given by Tun Azmi, L.P. in the T.O.Thomas' case for distinguishing Nagappa Rengasamy Pillai's case in which he had concurred with the judgment of H.T. Ong F.J. (as he then was).

40 The real bait offered by Mr. George is however a temptation to refer to the Privy Council for decision as to the proper test to apply to decide when a judgment or order is final and when it is interlocutory. The Courts in England have tended to differ in their views of what is the proper test to be applied. One test considers the nature of the application in which the order is made. It was applied in this form in Salaman v. Warner (5) and has come to be known as the Salaman test, but it was actually first formulated by Lord Esher M.R. (then Brett L.J.) in Standard Discount Co. v. La Grange (6) As Du Parcq L.J. put it in
50 Egerton v. Shirley (7) at page 110, an order

-
- (3) (1968) 2 M.L.J. 91 F.C.
(4) (1974) 2 M.L.J. 87 F.C.
(5) (1891) 1 Q.B.734
(6) (1877) 3 C.P.D. 67
(7) (1945) K.B. 107

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Kuala Lumpur

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(continued)

is an interlocutory order unless made on an application of such a character that whatever order had been made therefrom must finally have disposed of the matter in dispute. The other test stated by Lord Alverstone C.J. in Bozson v. Altrincham Urban District Council (8) and known as the Bozson test is: if the judgment or order as made finally disposes of the rights of the parties, it is a final order, otherwise it is an interlocutory order. See Tampion v. Anderson (9) at p.12.

10

En passant, it is not without interest to note that Lord Denning M.R. who applied the Salaman test had himself admitted that Lord Alverstone C.J. was right in logic but he claimed that Lord Esher M.R. was correct in experience: Salter Rex & Co. v. Ghosh (10) at p.601.

The conflict in the English judicial decisions may never be resolved by the House of Lords since under section 68(2) of the Supreme Court of Judicature (Consolidation) Act 1925, any doubt arising as to what orders are final and what are interlocutory is to be determined by the Court of Appeal. No similar inhibition exists to prevent this question of the correct test from being decided by the Privy Council from Malaysia. Mr. George for Haron says that our Malaysian Courts have in Peninsular Land Development Sdn. Bhd. v. K. Ahmad (No.2) (11) and in Hong Kim Sui v. Malayan Banking Berhad (12) adopted the Bozson test in preference to the Salaman test, wrongly as it now turns out having regard to the later decisions of the Privy Council in Becker v. Marion City Corporation (13) and Tampion v. Anderson, supra, and we should now send the matter up for final determination.

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In Becker's case, an order was made to the effect that the applicant was not entitled to require the local council to examine her proposed plan for subdivision lodged subsequently with the director and her right to appeal to Her Majesty in Council depended on whether their decision was a final judgment. Their Lordships in

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- (8) (1903) 1 K.B. 547
(9) (1974) 48 A.L.J.R. 11 P.C.
(10) (1971) 2 Q.V. 597 C.A.
(11) (1970) 1 M.L.J. 253 F.C.
(12) (1971) 1 M.L.J. 289 F.C.
(13) (1976) 2 W.L.R. 728 P.C.

considering her application for special leave held that it was a final judgment since the negative answer to the question produced a state of finality and approved the judgment of Hogarth J. in the Supreme Court of South Australia in (1974) 9 S.A.S.R. 560 at p.562, that

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(continued)

10 "for the purpose of these proceedings I think that the order of the Court was final. It finally decided the question whether or not the plaintiff was entitled to have her plan considered by (the Council). That was the list and that was finally determined adversely to her. Whichever way the decision went it was a final decision as between the parties. I think therefore that the judgment is a final judgment."

20 The issue whether the judgment was final and interlocutory was therefore decided by the finality effect. But the order was also made on an application of such a character that whatever order had been made therefrom must finally have disposed of the matter in dispute. Whatever the test that is applied, the order is a final order.

30 In Tampion v. Anderson, supra, the question was whether an order staying an action on the ground that it was frivolous and vexatious and an abuse of the process of the Court is an interlocutory judgment. In holding that it was, their Lordships of the Privy Council referred to the continuing controversy between Bozson and Salaman, thought the attempt to frame a definition difficult and declined to do so. They adopted the suggestion of Lord Denning M.R. in Salter Rex and Co. v. Ghosh, supra, at 40 p.601 when he said "This question of final or interlocutory is so uncertain that the only thing for practitioners to do is to look up the practice books and see what has been decided on the point. Most orders have now been the subject of decision." In their Lordships' opinion, this advice, even if it be distressing to the scientific lawyer, might nevertheless be the most helpful in any actual case. And, doing precisely that, they found 50 a consistent line of authority to the effect that such an order is an interlocutory judgment, in In re Page, Hill v. Fladgate(14);

(14) (1910) 1 Ch. 489

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Price v. Phillips (15) Hunt v. Allied
Bakeries Ltd. (16) and the dictum of
Lord Denning M.R. in Salter Rex & Co. v.
Ghosh, supra.

Where they had refused to do so in
Tampion v. Anderson, supra, it appears
unlikely that their Lordships of the Privy
Council would now agree to give a definition
of final or interlocutory in this case if
we were to succumb to the temptation
offered us by Mr. George. In all probability,
we would be told, go back to the practice
books, as they did. 10

But before doing so, it is not without
interest to note that the decision in
Salter Rex & Co. v. Ghosh, supra, would
have been the same whichever test was
applied. Perhaps it was for this reason
that Lord Denning M.R. made the suggestion
of going back to the practice books 20

And so far as we can discover, apart
from the view of Lord Denning M.R. in
Salter Rex & Co. v. Ghosh that an order 14
judgment is interlocutory, there is only
one other possibly applicable case which
holds a judgment on admissions of fact is
interlocutory: Technistudy Ltd. v. Kelland
(17).

But this Court has, in Ratnam v.
Cumarasamy & Anor (18) after reviewing the
various cases, come to the conclusion that
the test laid down in Bozson has been
approved and followed in the Court of Appeal
in England in subsequent cases though not in
In re. Page, supra. And it has in Peninsular
Land Development Sdn.Bhd. v. K.Ahmad (No.2),
supra, and in Hong Kim Sui & Anor. v.
Malayan Banking Berhad, supra, preferred the
Bozson test to the Salaman test and held that
an order giving leave to sign final judgment
is a final and not an interlocutory judgment. 30 40

In the absence of any of the exceptions
stated in Young v. British Aeroplane Co.Ltd.
(19) we are bound to follow these two
decisions. But even if we believe that they

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- (15) (1894) 11 T.L.R.86
(16) (1956) 1 W.L.R. 1326
(17) (1976) 1 W.L.R. 1042; (1970) 3 All E.R.632 C.A.
(18) (1962) M.L.J. 330
(19) (1944) K.B. 718, C.A.

10 have been wrongly decided and not merely
per incuriam (see the definition by Lord
Goddard C.J. in Huddersfield Police
Authority v. Watson (20) at p.847), we
would heed the admonition given by the
House of Lords in Davis v. Johnson (21)
that in such a case we should follow our
previous decisions and leave the matter
to be corrected on appeal as being the
most convenient and quickest way of having
the law determined.

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20 Mr. Sivalingam suggests that the
situation is really this: If the order
refusing to strike out the third party
notice and the Order 14 judgment are
interlocutory, then the certificate
obtained on the solicitors' application
renders the appeal to the Federal Court
competent. If the Order 14 judgment is
final, then no leave is required. The
30 appeal is as of right. The appeal to this
Court was in the main from the Order 14
judgment. The other order was not very
material, as, it will be seen later, the
subject matter will be adjudicated in
another action which Haron had earlier
instituted against Central Securities and
which was the basis for the application
itself. So long as the Order 14 judgment
30 is set aside and the matter goes to trial,
the application to strike out the third
party notice on the ground that the matter
would be adjudicated in this earlier action
would not be of any material significance.

40 We therefore do not consider that
there is any real difference in appeal
procedure requiring us to make, as it
were, a reference to the Privy Council for
final determination and in all the circum-
stances of this case, we must decline on
this ground alone.

But the consideration still remains
whether, in our view, this case is otherwise
a fit one for appeal. For this purpose it
is necessary to refer to the pleadings in
some detail.

The plaintiff, Syarikat Seri Padu Sdn.
Bhd., (Seri Padu) commenced this action as

(20) (1947) 1 K.B.842
(21) (1978) 2 W.L.R. 553 H.L.(E);
(1978) 1 All E.R. 1132

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purchaser against Haron effectively for rescission of a contract made on March 15, 1975 to buy 560,000 \$1/- shares in a company listed on the Stock Exchange and known as the United Holdings Berhad (United Holdings). The cost agreed at \$8/- per share came to \$4,480,000. The full purchase money was alleged to have been paid over, but only 36,722 shares with registrable transfers were handed over. The balance of 523,278 shares had, it was alleged, up to the institution of the action on May 17, 1977, i.e. rather more than 2 years later, not been delivered. If the complaint was that these shares were not delivered, it is not true. These shares were delivered in circumstances that will appear later in this judgment. The other 36,722 shares delivered were accepted, without prejudice to Seri Padu's rights, so it was claimed, to rescind or claim for damages or other reliefs for breach of contract. The gist of the complaint was the failure to hand over the 523,278 shares at all. The claim was therefore for a sum of \$4,186,244 in respect of these particular shares, damages (though no pleas were made in the statement of claim that Seri Padu had suffered any damages), interests and costs.

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In his affidavit in support of his application for a third party notice, Haron claimed to have bought and received 1,400,000 United Holdings shares at the same price of \$8/- per share from Central Securities on December 7, 1974 for \$11,200,000. Amongst the share certificates delivered to him was one, numbered 0227 for 523,278, and it is clear that the subject matter of the apparent difference between Seri Padu and Haron concerned this particular share certificate.

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It was alleged by Haron in his affidavit and this allegation was repeated in an averment in his statement of claim against Central Securities that it was only on or about December 13, 1976 that Seri Padu and he discovered that the transfer accompanying this particular share certificate was executed by one Dr. Chong Kim Choy, the registered owner, into the name of International Holdings (Pte) Ltd. It was implied in this averment that share certificate No.0227 was accepted by Haron and later by Seri Padu without knowledge that it was not

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transferable but if physical delivery was admitted, the pleadings lacked any explanation how a nominated transfer form was accepted and registered and discovery of the ineffectiveness of the transfer only made some 2 years after the first transaction, and what happened to these shares in the meantime. But it constituted the basis of the claim against the third party, which was therefore for \$4,186,224 the precise claim against Haron by Seri Padu.

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(continued)

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Central Securities' summons in chambers to set aside the third party notice was made on two grounds. The first was that there was no proper question to be tried between them and the reason was that "agreement was performed". This ground appears surprising, but quite clearly a director of Central Securities thought that by delivery and acceptance of a non-registrable transfer by the purchaser the vendor had performed its part of the bargain. The second was on the ground of prolix and vexatious proceedings, termed by the solicitors for Central Securities as "bad for duplicity," a phrase borrowed from criminal law. It was founded on the existence of another action, K.L. High Court No.2323 of 1976 commenced earlier by Haron against Central Securities for rescission of the entire contract of sale of the 1,400,000 shares and refund of the entire sum of \$11,200,000 on the contention that the shares were at the institution of the action completely valueless. The claim of Haron in this earlier suit clearly included the claim in the third party action. We shall have to return to the pleadings on this suit later and now turn to the events in this action.

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In the event, Haron consented to judgment being entered against him by Seri Padu. With this judgment we are not concerned, Central Securities application to set aside the third party notice was dismissed and Haron's application to sign final judgment as on an Order 14 application was allowed. Central Securities then appealed to this Court and this Court in a reserved judgment delivered on May 16, 1979 allowed the appeal from the final judgment entered and ordered the action to be consolidated with the earlier suit and tried together.

In this earlier action, Haron claimed for the rescission of the entire contract of sale

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of 1,400,000 shares on an allegation of fraud, which was particularised as a claim by Central Securities to be at all material times the beneficial owner of the shares, when in fact it was not. Haron appeared to claim that the ownership of the shares was a material particular as without it he would not have agreed to buy. He did not think that in a contract of sale, what was material was the ability of the vendor to deliver the goods agreed to be sold within the time limited or within such time as was reasonable in the circumstances when time was not of the essence. The defence however said it owned 1,002,000 shares which it had delivered to Haron, that it had contracted to purchase the remaining 398,000 shares and for that reason had described itself as the beneficial owner of the entire bundle of shares agreed to be sold and that subsequently it had entered into a supplemental agreement for the purchase of the 398,000 shares, to the knowledge of Haron. It alleged that it had delivered all the shares contracted to be sold but as was seen earlier, the shares delivered consisted of a script for 523,278 which could not be validly transferred to anybody but the named transferee. The fact remained however that this particular share certificate was for a greater part of the period between the acceptance and the claim in both actions registered in the name of Seri Padu and as the judgment of this Court observed, required explanation in view of a letter from United Holdings refusing initially to register which would appear to contradict the assertion of Haron and Seri Padu that it only discovered this restricted transfer two years later and in view of the use made by Haron and Seri Padu to gain control of United Holdings: see the judgment of this Court at pages 18-23. But it is also to be observed that at no time either had Central Securities ever offered any explanation how it came to sell share certificate No.0227 without a valid transfer executed by the registered holder in blank or in the name of purchasers or his nominee or nominees. All it relied on was that both Haron and Seri Padu, of which Haron was a director, had acted on it and both Seri Padu in the person of Koh Kim Chai, a director and Haron had been enabled to get on the board of directors of United Holdings and control the company and direct its operations from that time onwards.

10 In the circumstances shown in the affidavits, this Court considered that the simple and uncomplicated view taken by the High Court of a delivery of the articles sold which the vendor had no title to pass was not justified and that triable issues had been raised and a defence on the merits shown which on well-established principles applicable to an Order 14 application
20 entitled the respondent Central Securities to defend unconditionally. In the exercise of its discretion, this Court also ordered a consolidation of this action with the earlier action. The judgment of the Court also meant that the third party directions on Haron's application be issued and the claim of Haron against Central Securities proceed to trial after the relevant pre-trial procedures and documentation had been
20 completed.

30 We need only to refer to the previous judgment of this Court to show that this is not merely a case of a total failure of consideration. We do not consider that this is a fit case for appeal. In our view the evidence must be gone into and what the parties really require is an early date for trial. Mr. Sivalingam for Central Securities has expressed a desire for an early trial. The Chief Justice assures the parties that he will assist them in getting an early date.

The applications are dismissed with costs.

Kuala Lumpur,

1st November, 1979

Sd: Illegible

(TAN SRI DATUK CHANG
MIN TAT)

JUDGE,
FEDERAL COURT, MALAYSIA

Date of Hearing: 26.9.79

40 Encik V.C.George (Encik K.S.Narayanan with him)
for Applicant.

Solicitors: Messrs. Ng Ek Teong & Partners.

Encik M. Sivalingam (Encik Nik Mohd. Din bin Nik Yusoff with him) for Respondent

Solicitors: Messrs. Mah Kok & Din.

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Order of the
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1979

No. 43

ORDER OF THE FEDERAL
COURT

IN THE FEDERAL COURT IN MALAYSIA HOLDEN
AT KUALA LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO.105 OF 1978

Between

Central Securities (Holdings)
Berhad Appellant 10

And

Haron bin Mohd. Zaid Respondent

(In the Matter of Civil Suit No.1364
of 1977 In the High Court in Malaya
at Kuala Lumpur)

Between

Syarikat Seri Padu Sdn. Bhd. Plaintiff

And

Haron bin Mohd. Zaid Defendant

And

Central Securities (Holdings)
Berhad Third Party 20

CORAM: RAJA AZLAN SHAH, CHIEF JUSTICE,
HIGH COURT, MALAYA;
CHANG MIN TAT, JUDGE, FEDERAL COURT,
MALAYSIA;
IBRAHIM ABDUL MANAN, JUDGE, FEDERAL
COURT, MALAYSIA

IN OPEN COURT

THIS 1ST DAY OF NOVEMBER, 1979 30

O R D E R

UPON MOTION made unto Court on the 26th
day of September, 1979 by Mr. V.C.George
(Mr. K.S.Narayanan with him) of Counsel for
the Respondent abovenamed in the presence
of Mr. M.Sivalingam (Encik Nik Mohamed Din
with him) of Counsel for the Appellant
abovenamed AND UPON READING the Notice of
Motion dated the 22nd day of August, 1979
and the Affidavit and Further Affidavit of 40

V.C.George affirmed on the 5th day of April, 1979 and the 18th day of June 1979 respectively all filed herein IT WAS ORDERED that this Notice of Motion do stand adjourned for judgment AND the same coming on for judgment this day in the presence of Mr. V.C.George of Counsel for the Respondent and Mr. M.Sivalingam (Encik Nik Mohamed Din with him) of Counsel for the Appellant IT IS ORDERED that Respondent's application for conditional leave to appeal to His Majesty the Yang Di-Pertuan Agong against the whole of the decision of this Honourable Court given on the 27th day of February 1979 on the Notice of Motion dated the 13th day of October, 1978 be and is hereby dismissed AND IT IS FURTHER ORDERED that an early date for hearing be fixed for the trial of the consolidated suits of Kuala Lumpur High Court Civil Suits Nos.1364 of 1977 and 2323 of 1976 AND IT IS LASTLY ORDERED that the Respondent do pay the costs of and incidental to this Notice of Motion in any event.

GIVEN under my hand and the Seal of the Court this 1st day of November, 1979

Sd: Illegible
Deputy Registrar,
Federal Court,
Malaysia.

This Order is filed by Mah-Kok & Din, Solicitors for the Appellant abovenamed whose address for service is 17th Floor, Bangunan Bank Rakyat, Jalan Tangsi, Kuala Lumpur.

In the Federal Court in Malaysia at Kuala Lumpur

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1st November 1979

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Court in
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Kuala Lumpur

No. 44

ORDER OF FEDERAL
COURT

No.44

Order of
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1st November
1979

IN THE FEDERAL COURT IN MALAYSIA HOLDEN
AT KUALA LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. 105 OF 1978

Between

Central Securities (Holdings)
Berhad Appellant 10

And

Haron bin Mohd. Zaid Respondent

(In the Matter of Civil Suit No.1364
of 1977 In the High Court in Malaya
at Kuala Lumpur)

Between

Syarikat Seri Padu Sdn.Bhd. Plaintiffs

And

Haron bin Mohd. Zaid Defendant

And

20

Central Securities (Holdings)
Berhad Third Party

CORAM: RAJA AZLAN SHAH, CHIEF JUSTICE,
HIGH COURT, MALAYA:
CHANG MIN TAT, JUDGE, FEDERAL COURT,
MALAYSIA:
IBRAHIM ABDUL MANAN, JUDGE,
FEDERAL COURT, MALAYSIA.

IN OPEN COURT

THIS 1ST DAY OF NOVEMBER, 1979 30

O R D E R

UPON MOTION made unto Court on the
26th day of September, 1979 by Mr. V.C.George
(Mr. K.S.Narayanan with him) of Counsel for
the Respondent abovenamed AND UPON HEARING
Mr. M.Sivalingam (Encik Nik Mohamed Din
with him) of Counsel for the Appellant
abovenamed AND UPON READING the Notice of
Motion dated the 22nd day of August, 1979
and the Affidavit and Further Affidavit of
Haron bin Mohd.Zaid affirmed on the 20th day

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of June, 1979 and the 3rd day of September, 1979 respectively all filed herein IT WAS ORDERED that this Notice of Motion do stand adjourned for judgment AND the same coming on for judgment this day in the presence of Mr. V.C.George of Counsel for the Respondent and Mr. M.Sivalingam (Encik Nik Mohamed Din with him) of Counsel for the Appellant. IT IS ORDERED that the Respondent's application for an Order :-

In the Federal Court in Malaysia at Kuala Lumpur

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1st November 1979

(continued)

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(a) that conditional leave be granted to the abovenamed Respondent to appeal to His Majesty the Yang Di-Pertuan Agong against the whole of the decision of this Honourable Court given on the 16th day of May, 1979 with regard to Federal Court Civil Appeal No.105 of 1978;

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(b) that that part of the decision of this Honourable Court dated the 16th day of May, 1979 which states :-

(i) that Third Party Directions be issued in terms of the application of the 3rd day of October, 1977; and

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(ii) that Third Party proceedings herein be consolidated with Kuala Lumpur High Court, Civil Suit No.2323/76 be stayed till the appeal to His Majesty the Yang Di-Pertuan Agong is finally disposed or until further order;

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be and is hereby dismissed AND IT IS FURTHER ORDERED that an early date for hearing be fixed for the trial of the consolidated suits of Kuala Lumpur High Court, Civil Suits Nos. 1364 of 1977 and 2323 of 1976 AND IT IS LASTLY ORDERED that the Respondent do pay the costs of and incidental to this Notice of Motion in any event.

GIVEN under my hand and the Seal of the Court this 1st day of November, 1979.

Sd: Illegible

Deputy Registrar,
Federal Court,
Malaysia.

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This Order is filed by Mah Kok & Din, Solicitors for the Appellant abovenamed whose address for service is 17th Floor, Bangunan Bank Rakyat, Jalan Tangsi, Kuala Lumpur

In the Judicial
Committee of
the Privy Council

No.45

Order granting
Special Leave to
Appeal to H.M. the
Yang Di-Pertuan
Agong

8th May 1980

No. 45

ORDER GRANTING SPECIAL
LEAVE TO APPEAL TO
H.M. THE YANG DI-PERTUAN
AGONG

AT THE COUNCIL CHAMBER WHITEHALL

The 8th day of May 1980

REPORT OF THE LORDS OF THE JUDICIAL
COMMITTEE OF THE PRIVY COUNCIL TO THE
YANG DI-PERTUAN AGONG 10

WHEREAS by virtue of the Malaysia
(Appeals to Privy Council) Order 1978 there
was referred unto this Committee a humble
Petition of Haron Bin Mohd. Zaid in the
matter of an Appeal from the Federal Court
of Malaysia between the Petitioner and
Central Securities (Holdings) Berhad
Respondents setting forth that the 20
Petitioner prays for special leave to
appeal (1) from the Order of the Federal
Court dated the 27th February 1979
dismissing the Petitioner's application made
on the 13th October 1978 to dismiss the
Respondents' appeal from two Orders of the
High Court in Malaya at Kuala Lumpur dated
28th June 1978 and (2) from the Judgment
of the Federal Court dated the 16th May
1979 allowing the Appeal by the Respondents 30
from the said Orders of the High Court:
And humbly praying Your Majesty to grant
him special leave to appeal against the
Order and Judgment of the Federal Court
dated the 27th February 1979 and 16th May
1979 respectively or for further or other
relief:

THE LORDS OF THE COMMITTEE in obedience
to the Malaysia (Appeals to Privy Council)
Order 1978 have taken the humble Petition 40
into consideration and having heard Counsel
on behalf of the Petitioner no one appear-
ing at the Bar on behalf of the Respondents
Their Lordships do this day agree to report
to Your Majesty as their opinion that
special leave ought to be granted to the
Petitioner to enter and prosecute his Appeal
against the Order and Judgment of the
Federal Court dated the 27th February 1979
and the 16th May 1979 respectively on 50
condition of lodging in the Registry of the

Privy Council the sum of £5,000 as security for costs:

AND Their Lordships do further report that the proper officer of the said Federal Court ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy of the Record proper to be laid before the Judicial Committee on the hearing of the Appeal upon payment by the Petitioner of the usual fees for the same.

LO

E.R. MILLS

In the Judicial
Committee of the
Privy Council

No.45

Order granting
Special Leave
to Appeal to
H.M. the Yang
Di-Pertuan
Agong

8th May 1980

(continued)

No. 55 of 1980

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L
FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N :

HARON BIN MOHD. ZAID

Appellant
(Defendant)

- and -

CENTRAL SECURITIES (HOLDINGS)
BERHAD

Respondent
(Third Party)

RECORD OF PROCEEDINGS

KINGSFORD DORMAN,
14 Old Square,
Lincoln's Inn,
London, WC2A 3UB

Solicitors for the
Appellant

MACFARLANES,
Dowgate Hill House,
Dowgate Hill,
London, EC4R 2SY

Solicitors for the
Respondent