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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 :

(1) SYARIKAT BUNGA RAYA-TIMOR
JAUH SDN. BHD.

(2) UNITED HOLDINGS BERHAD

Appellants
(Defendants)

- and -

TRACTORS MALAYSIA BERHAD

Respondent
(Plaintiffs)

RECORD OF PROCEEDINGS

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

Solicitors for the
Appellants

HERBERT SMITH & CO.
Watling House,
35-37 Cannon Street,
London, EC4M 5SD

Solicitors for the
Respondent

No.11 of 1981
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 :

(1) SYARIKAT BUNGA RAYA-TIMOR
JAUH SDN. BHD.

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Appellants
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(Plaintiffs)

RECORD OF PROCEEDINGS

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"W.C.C.10"	Letter Plaintiffs Solicitors to First Defendant	31st January 1978	116
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DOCUMENTS TRANSMITTED TO THE
JUDICIAL COMMITTEE BUT NOT
REPRODUCED

The remainder of exhibits "W.C.C.1" to "W.C.C.6" and "W.C.C.8" to "W.C.C.9", being the relevant Equipment Lease Agreements and Variation Agreements.

Exhibits "W.C.C.12" and "W.C.C.13" being copies of the Registration Cards (Certificates of posting and delivery) relating to Exhibits "W.C.C.10" and "W.C.C.11".

No.11 of 1981
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 :

(1) SYARIKAT BUNGA RAYA-TIMOR
JAUH Sdn. Bhd. Appellants
(2) UNITED HOLDINGS BERHAD (Defendants)

- and -

10 TRACTORS MALAYSIA BERHAD Respondent
(Plaintiffs)

RECORD OF PROCEEDINGS

No.1

AMENDED WRIT OF
SUMMONS

In the High
Court in Malaya
at Kuala Lumpur

No.1
Amended Writ
of Summons
5th June 1978

Amended this 5th day of June, 1978 pursuant
to Order 28 Rule 2 of the Rules of the Supreme
Court, 1957

Sgd.

20 Senior Assistant Registrar
High Court, Kuala Lumpur

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
CIVIL SUIT NO. 1419 OF 1978

Between :

Tractors Malaysia Berhad Plaintiff

And

1. Syarikat Bunga Raya-Timor
Jauh Sdn. Bhd.

2. United Holdings Berhad Defendants

In the High
Court in Malaya
at Kuala Lumpur

SPECIALLY INDORSED WRIT

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 :-

No.1
Amended Writ
of Summons

5th June 1978

(continued)

- | | | |
|---|---|----|
| 1. Syarikat Bunga Raya-
Timor Jauh Sdn.Bhd.
4th Floor, Wong Shee
Fun Building,
2E, Jalan Ah Fook
Johore Baru, Johore | 2. United Holdings
Berhad
4th Floor, Wong
Shee Fun Building,
2E, Jalan Ah Fook
Johore Baru, Johore | 10 |
|---|---|----|

WE COMMAND YOU that within twelve (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 the Plaintiff above-
named.

AND TAKE NOTICE that in default of your
so doing the Plaintiff may proceed therein and
judgment may be given in your absence. 20

WITNESS, ZAITUN ZAWIYAH BT. PUTEH, Senior
Assistant Registrar of the High Court, Malaya.

Dated this 8th day of May, 1978.

Sd: SKRINE & CO.
Plaintiff's Solicitors

Sd: ZAITUN ZAWIYAH
BT. PUTEH Senior
Assistant Registrar
High Court, Kuala
Lumpur.

N.B.:- This Writ is to be served within twelve 30
months from the date thereof, or, if renewed,
within six months from the date of last renewal
including the date of such date and not after-
wards.

The Defendant may appear hereto by entering
an appearance either personally or by solicitor
at the Registry of the High Court at Kuala
Lumpur.

A Defendant appearing personally may, if 40
he desires, enter his appearance by post, and
the appropriate forms may be obtained by
sending a Postal Order for \$3.00 with an
addressed envelope to the Registrar of the
High Court at Kuala Lumpur.

If a Defendant enters an appearance he must

also deliver a defence within fourteen (14) 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.

In the High Court in Malaya at Kuala Lumpur

No.1
Amended Writ of Summons

5th June 1978

(continued)

AMENDED STATEMENT OF CLAIM

10 1. By Nine (9) Equipment Lease Agreements in writing as varied by the relative Variation Agreements all dated June 23, 1977, the Plaintiffs agreed to let and the 1st Defendant agreed to take on lease tractors for a period of 36 months, particulars of which are set down below :-

P A R T I C U L A R S

	<u>Agreement No.</u>	<u>Date of main Agreement</u>	<u>Date of Commence-ment under Variation Agreement</u>	<u>Description of Tractor</u>	<u>Rental payable per month</u>
20	P.J./ Lease/ 05/76	25.5.76	1.10.76	New Cat D6CDD Serial No.26K 1769 c/w New Carco Winch- 13185	\$5,298.33
30	P.J./ Lease/ 06/76	25.5.76	-do-	New Cat D6CDD Serial No. 26K 1774 c/w New Carco Winch- 13201	\$5,298.33
40	P.J./ Lease/ 22/75	2.9.75	-do-	New Cat D6CDD Serial No. 99J 2161 c/w New Carco Winch- 3025	\$5,148.03

In the High Court in Malaya at Kuala Lumpur

No.1
Amended Writ
of Summons
5th June 1978
(continued)

<u>Agreement No.</u>	<u>Date of Main Agreement</u>	<u>Date of Commence-ment under Variation Agreement</u>	<u>Description of Tractor</u>	<u>Rental payable per month</u>
P.J./ Lease/ 23/75	2.9.75	1.10.76	New Cat D6CDD Serial No. 99J 2137 2157 c/w New Carco Winch- 3024	\$5,148.45 10
P.J./ Lease/ 07/76	25.5.76	-do-	New Cat D6CDD Serial No. 26K 1771 c/w New Carco Winch- 13186	\$5,298.33 20
P.J./ Lease/ 08/76	5.6.76	-do-	New Cat D6CDD Serial No. 26K 1770 c/w New Carco Winch- 13181	\$5,217.62 30
P.J./ Lease/ 09/76	5.6.76	-do-	New Cat D6CDD Serial No. 26K 1772 c/w New Carco Winch- 13187	\$5,217.62
P.J./ Lease/ 10/76	5.6.76	-do-	New Cat D6CDD Serial No. 26K 1773 c/w New Carco Winch- 13200	\$5,217.62 40
P.J./ Lease/ 21/75	2.9.75	-do-	New Cat D7FDD Serial No. 91E 1052 c/w New Carco Winch- 4742	\$5,666.11 50

The Plaintiff will refer to the said Agreement and Variation Agreements for their full terms and effects at the trial.

In the High Court in Malaya at Kuala Lumpur

No.1
Amended Writ
of Summons
5th June 1978
(continued)

10 2. By clause 2 of the said agreements the 1st Defendant agreed to pay to the Plaintiff punctually the monthly rental payable in advance on the first day of each month. By clause 16 of the said Agreements interest at the rate of 12% per annum calculated on a daily basis from the due date until payment was made would be payable on any unpaid rental.

3. By clause 5 of the said Agreements the 1st Defendant agreed to indemnify the Plaintiff against loss, or damage to the goods or any part thereof by fire accident theft or any other causes whatsoever and whether or not resulting from the negligence of the 1st Defendant.

20 4. Clause 18 of the said Agreements provided among other things that should the 1st Defendant fail to pay any sums payable or to observe or perform any term, condition or provision of the said Agreements the rentals for the balance of the said term should become due and payable and that the Plaintiff might forthwith and without notice terminate the lease for all purposes and retake possession of the said goods.

5. It was provided under Clause 19 that upon the termination of the lease the 1st Defendant should pay to the Plaintiff :-

- 30 (i) any arrears of rental accrued as at the date of termination;
- (ii) any sums other than rental which might have become payable;
- (iii) any expenses incurred by the Plaintiff in tracing and/or recovering possession of the goods or in enforcing the provisions of the lease;
- 40 (iv) an amount equal to the unpaid rentals for the remainder of the period of the lease.

6. By further agreements in writing of the same dates and made between the Plaintiff and the 2nd Defendant, the 2nd Defendant guaranteed the due payment and performance by the 1st Defendant of all sums due and all obligations under the said Equipment Lease Agreements and Variation Agreements.

In the High Court in Malaya at Kuala Lumpur

No.1
Amended Writ
of Summons
5th June 1978
(continued)

7. The 1st Defendant has paid various sums of money towards the rentals due under the said Equipment Lease Agreements and Variation Agreements as shown below :-

P A R T I C U L A R S

<u>Agreement No.</u>	<u>Rentals paid</u>	
1. PJ/Lease/05/76	\$31,789.98	
2. PJ/Lease/06/76	\$31,789.98	
3. PJ/Lease/22/75	\$30,888.18	
4. PJ/Lease/23/75	\$30,890.70	10
5. PJ/Lease/07/76	\$31,789.98	
6. PJ/Lease/08/76	\$31,305.72	
7. PJ/Lease/09/76	\$31,305.72	
8. PJ/Lease/10/76	\$31,305.72	
9. PJ/Lease/21/75	\$39,996.66	

All the abovementioned rentals were paid in respect of the period from October 1, 1976, to March 1, 1977.

8. In breach of the said Agreements and Variation Agreements the 1st Defendant has failed to pay further rentals due on the April 1, 1977, and subsequent months. 20

9. Pursuant to clause 18 of the said Agreements therefore the Plaintiff retook possession of the tractors thereunder and terminated the said Agreements and Variation Agreements.

P A R T I C U L A R S

<u>Agreement No.</u>	<u>Date of repossession</u>	
1. PJ/Lease/05/76	27.11.77	30
2. PJ/Lease/06/76	27.11.77	
3. PJ/Lease/22/75	6.12.77	
4. PJ/Lease/23/75	6.12.77	
5. PJ/Lease/07/76	6.12.77	
6. PJ/Lease/08/76	6.12.77	
7. PJ/Lease/09/76	6.12.77	
8. PJ/Lease/10/76	6.12.77	

The 1st Defendant voluntarily returned to the Plaintiff the said tractor under Agreement No. PJ/Lease/21/75 on or about January 29, 1978. 40

10. In the premises the Plaintiff has suffered loss and damage, particulars of which are set out in the Schedule attached hereto and marked "A".

11. By letters dated January 31, 1978, the Plaintiff's solicitors requested the 1st Defendant to make payment of the amounts payable under the first eight (8) relative Equipment Lease Agreements and Variation Agreements. By a letter dated March 9, 1978, the said Plaintiff's solicitors requested the 1st Defendant to make payment of the amounts payable under the Ninth Equipment Lease Agreement, i.e. PJ/Lease/21/75 dated June 23, 1977 as varied. However, the 1st Defendant has failed or refused to make any payment.

In the High Court in Malaya at Kuala Lumpur

No.1
Amended Writ
of Summons
5th June 1981
(continued)

10

12. The 2nd Defendant has failed or refused to pay or make good default by the 1st Defendant the amounts due to the Plaintiff under the said Agreements and Variation Agreements, and/or has failed or refused to indemnify the Plaintiff against their loss and damage arising out of the Plaintiff having entered into the said Agreements and Variation Agreements.

20

And the Plaintiff claims against both the 1st and 2nd Defendants :-

- (1) the sum of \$432,663.41 being arrears of rental;
- (2) the sum of \$1,022,649.76 being rentals due for the remainder of the period of the lease;
- (3) the sum of \$27,887.45 being interest due on unpaid rentals up to date of repossession or return of tractors;
- (4) the sum of \$25,900.00 being repossession expenses;
- (5) the sum of ~~\$59,400.00~~ \$58,230.00 being estimated repairs charges;
- (6) interest on \$432,663.41 at the rate of 12% per annum from the date of repossession or return of tractors to date of payment;
- (7) interest at the rate of 6% per annum on the sum of \$1,022,649.76 under prayer (2), the sum of \$25,900.00 under prayer (4) and the sum of ~~\$59,400.00~~ \$58,230.00 under prayer (5) aforesaid from the date of judgment to the date of payment;
- (8) costs of suit;
- (9) such further and other relief.

30

40

In the High
Court in Malaya
at Kuala Lumpur

~~Dated this 8th day of May, 1978~~

Dated this 5th day of June, 1978

No.1
Amended Writ
of Summons

5th June 1981
(continued)

Sgd. Skrine & Co.
Plaintiff's Solicitors

And the sum of \$60/- (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 \$300/- (or such sum as may be allowed on taxation). If the amount claimed be paid to the Plaintiff or its advocate and solicitor or agent within four days from the service hereof, further proceedings will be stayed.

10

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

20

This Writ was issued by Messrs. SKRINE & CO. Straits Trading Building, No.4 Leboh Pasar Besar, Kuala Lumpur, solicitors for the said Plaintiff of Jalan 205, Petaling Jaya, Selangor.

This Writ was served by me at
Defendant on the _____ day of _____ on the 1st
the hour of _____ 1978 at

30

Indorsed this _____ day of _____ 1978.

Signed:-

Address:-

This Writ was served by me at
Defendant on the _____ day of _____ on the 2nd
the hour of _____ 1978 at

40

Indorsed this _____ day of _____ 1978.

Signed:-

Address:-

In the High Court in Malaya
at Kuala Lumpur

SCHEDULE

"A"

No.1
Amended Writ of Summons
5th June 1981 (continued)

<u>No. Agreement No.</u>	<u>Total Rentals (36 months)</u>	<u>Rentals Paid</u>	<u>Rentals over due to date of repossession/ return</u>	<u>Rentals due for remain- der of the period of lease</u>	<u>Interest at 12% per annum up to date of repossession/ return</u>	<u>Repossession expenses</u>	<u>Estimated repairs</u>
1. PJ/Lease/05/76	\$190,739.88	\$31,789.98 (1.10.76 to 1.3.77)	\$42,386.64 (1.4.77 to 1.11.77)	\$116,563.26 (1.12.77 to 1.9.79)	\$ 2,820.18	\$ 3,950.00	\$ 6,600.00
2. PJ/Lease/06/76	\$190,739.88	\$31,789.98 (1.10.76 to 1.3.77)	\$42,386.64 (1.4.77 to 1.11.77)	\$115,563.26 (1.12.77 to 1.9.79)	\$ 2,820.18	\$ 3,950.00	\$ 6,500.00
3. PJ/Lease/22/75	\$185,328.94	\$30,888.18 (1.10.76 to 1.3.77)	\$46,332.27 (1.4.77 to 1.12.77)	\$108,108.49 (1.1.78 to 1.9.79)	\$ 2,870.49	\$ 3,000.00	\$ 6,500.00
4. PJ/Lease/23/75	\$185,344.24	\$30,890.70 (1.10.76 to 1.3.77)	\$46,336.05 (1.4.77 to 1.12.77)	\$108,117.49 (1.1.78 to 1.9.79)	\$ 2,870.73	\$ 3,000.00	\$ 6,500.00
5. PJ/Lease/07/76	\$190,739.88	\$31,789.98 (1.10.76 to 1.3.77)	\$47,684.97 (1.4.77 to 1.12.77)	\$111,264.93 (1.1.76 to 1.9.79)	\$ 2,954.31	\$ 3,000.00	\$ 6,500.00
C/f	\$942,892.82	\$157,148.82	\$225,126.57	\$560,617.43	\$14,335.89	\$16,900.00	\$32,600.00

In the High Court in Malaya
at Kuala Lumpur

No.1
Amended Writ of Summons
5th June 1981 (continued)

<u>No Agreement No.</u>	<u>Total Rentals (36 months)</u>	<u>Rentals Paid</u>	<u>Rentals over due to date of repossession/ return</u>	<u>Rentals due for remain- der of the period of lease</u>	<u>Interest at 12% per annum up to date of repossession/ return</u>	<u>Repossession expenses</u>	<u>Estimated repairs</u>
B/F	\$942,892.82	\$157,148.82	\$225,126.57	\$560,617.43	\$14,335.89	\$16,900.00	\$32,600.00
6. PJ/Lease/08/76	\$187,834.34	\$ 31,305.72 (1.10.76 to 1.3.77)	\$ 46,958.58 (1.4.77 to 1.12.77)	\$109,570.04 (1.1.78 to 1.9.79)	\$ 2,909.28	\$ 3,000.00	\$ 6,500.00
7. PJ/Lease/09/76	\$187,834.34	\$ 31,305.72 (1.10.76 to 1.3.77)	\$ 46,958.58 (1.4.77 to 1.12.77)	\$109,570.04 (1.1.78 to 1.9.79)	\$ 2,909.28	\$ 3,000.00	\$ 6,300.00
8. PJ/Lease/10/76	\$187,834.34	\$ 31,305.72 (1.10.76 to 1.3.77)	\$ 46,958.58 (1.4.77 to 1.12.77)	\$109,570.04 (1.1.78 to 1.9.79)	\$ 2,909.28	\$ 3,000.00	\$ 6,500.00
9. PJ/Lease/21/75	\$239,979.97	\$ 39,996.66 (1.10.76 to 1.3.77)	\$ 66,661.10 (1.4.77 to 1.1.78)	\$133,322.21 (1.2.78 to 1.9.79)	\$ 4,823.72	\$ -	\$-8,000.00 \$ 6,830.00
	<u>\$1,746,375.81</u>	<u>\$291,062.64</u>	<u>\$432,663.41</u>	<u>\$1,022,649.76</u>	<u>\$27,887.45</u>	<u>\$25,900.00</u>	<u>\$59,400.00</u> <u>\$58,230.00</u>

No. 2

SUMMONS IN CHAMBERS FOR
SUMMARY JUDGMENT

In the High
Court in Malaya
at Kuala Lumpur

No.2

Summons in
Chambers for
Summary Judgment

29th July 1978

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
CIVIL SUIT NO. 1419 OF 1978

Between

Tractors Malaysia Berhad

Plaintiff

And

1. Syarikat Bunga Raya-Timor
Jauh Sdn. Bhd.

10

2. United Holdings Berhad

Defendants

SUMMONS IN CHAMBERS

LET ALL PARTIES CONCERNED attend before
the Senior Assistant Registrar in Chambers at
the High Court at Kuala Lumpur on Friday the 1st
day of September 1978 at 9.00 o'clock in the
forenoon on the hearing of an application on the
part of the Plaintiffs for an Order that they
may be at liberty to sign final judgment against
the Defendants in the aggregate sum of
\$1,567,300.62 together with interest as stated
below :-

20

(a) interest on \$432,663.41 at the rate
of 12% per annum from the date of
repossession or return of tractors
to the date of payment;

(b) interest on \$1,022,649.76 at the rate
of 6% per annum from the date of
judgment to the date of payment;

30

(c) interest on \$25,900.00 at the rate
of 6% per annum from the date of
judgment to the date of payment;

(d) interest on \$58,230.00 at the rate of
6% per annum from the date of judgment
to the date of payment;

and that the costs of this application be
assessed at \$200.00.

Dated this 29th day of July, 1978.

Senior Assistant Registrar
High Court, Kuala Lumpur

In the High Court in Malaya at Kuala Lumpur

No.2

Summons in Chambers for Summary Judgment

29th July 1978

(continued)

This Summons in Chambers is filed by Messrs. Skrine & Co., Solicitors for the Plaintiff, whose address for service is at Straits Trading Building, No.4 Leboh Pasar Besar, Kuala Lumpur.

The Affidavit of Wan Chee Chuan affirmed on the 29th day of July, 1978 will be read in support of this application.

This Summons in Chambers is to be served on :-

10

Messrs. K.C.Koh & Co.,
Advocates & Solicitors,
2-E (4th Floor)
Jalan Ah Fook,
Wong Shee Fun Building,
Johore Bahru.

No.3
Affidavit of
Wan Chee Chuen
29th July 1978

No. 3

AFFIDAVIT OF WAN CHEE
CHUEN

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
CIVIL SUIT NO: 1419 OF 1978

20

Between:

Tractors Malaysia Berhad Plaintiff

And:

1. Syarikat Bunga Raya-Timor
Jauh Sdn.Bhd.

2. United Holdings Berhad Defendant

A F F I D A V I T

I, Wan Chee Chuen of care of Tractors Malaysia Berhad of Jalan 205, Petaling Jaya, Selangor, duly affirm and say as follows :-

30

1. I am the Credit Control Manager (Central Area) of the abovenamed Plaintiff Company, whose registered office is at Jalan 205, Petaling Jaya, Selangor.

2. The First Defendant Syarikat Bunga

Raya-Timor Jauh Sdn.Bhd. and the Second Defendant United Holdings Berhad are and were at the commencement of this action justly and truly indebted to the abovenamed Plaintiff Company in the sum of \$1,567,300.62 out of which \$432,633.41 is for arrears of rentals, \$1,022,649.76 for rentals due for the remainder of the period of the lease; \$27,887.45 for interest due on unpaid rentals up to date of repossession or return of tractors; \$25,900.00 for repossession expenses; \$58,230.00 for estimated repairs for breach of contract under nine (9) Equipment Lease Agreements in writing as varied by the relative Variation Agreements all dated June 23rd, 1977, referred to in paragraph 1 of the Statement of Claim. The particulars of the said claim appear by the amended Statement of Claim in this action.

In the High Court in Malaya at Kuala Lumpur

No.3
Affidavit of
Wan Chee Chuen
29th July 1978
(continued)

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3. Now produced and shown to me are the said nine (9) Equipment Lease Agreements in writing and the relative Variation Agreements marked "WCC1" to "WCC9".

4. By 2 A.R. Registered letters dated January, 31st and March, 9th 1978, the Plaintiff Company's solicitors Messrs. Skrine & Co., of Straits Trading Building, No.4, Leboh Pasar Besar, Kuala Lumpur demanded from the First and Second Defendants settlement of the Plaintiff Company's claim under the said nine (9) Agreements within 7 days from the date of the letters, which are now produced and shown to me marked "WCC 10" and "WCC 11" respectively. The relative A.R. Registration cards are now produced and shown to me marked "WCC 12" and "WCC 13" respectively.

Inspite of the letters neither the First Defendant nor the Second Defendant has settled the claim as demanded.

5. I verily believe that there is no defence to this action.

6. It is within my own knowledge that the said debt was incurred and is still due and owing. I am duly authorised by the Plaintiff Company to make this Affidavit.

AFFIRMED by the said)
Wan Chee Chuen at)
Kuala Lumpur this 29th) Sgd.
day of July 1978 at)
9.15 a.m.)

Before me: Sgd.
Commissioner for Oaths
(TNEH LIANG PENG)

In the High Court in Malaya at Kuala Lumpur

No.3
Affidavit of Wan Chee Chuen
29th July 1978
(continued)

This Affidavit is filed by Messrs. Skrine & Co. Solicitors for the Plaintiff, whose address for service is at Straits Trading Building, No.4 Leboh Pasar Besar, Kuala Lumpur.

No.4
Affidavit of Koh Kim Chai
11th September 1978

No.4
AFFIDAVIT OF KOH KIM CHAI

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
CIVIL SUIT NO: 1419 OF 1978

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Between:

Tractors Malaysia Berhad Plaintiff

And

1. Syarikat Bunga Raya-Timor Jauh Sdn. Bhd.

2. United Holdings Berhad Defendants

A F F I D A V I T

I, KOH KIM CHAI, I.C.No. 4428458 at 2E Jalan Ah Fook, Johore Bahru, a Malaysian Citizen, duly affirm and say as follows :-

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1. I am a Director of the 1st and 2nd Defendant companies and I am authorised by the said companies to make this Affidavit on both the companies behalf.

2. I beg to refer to the Affidavit of Wan Chee Chuen dated the 29th of July 1978 and to the exhibits attached thereto numbered "WCC1 - "WCC 13".

3. I verily believe that the Equipment Lease Agreements and the Variation Agreements thereto referred to in Exhibit "WCC 1 - "WCC 9" are in fact Hire Purchase Agreements as defined by Section 2 of the Hire Purchase Act 1967 in that the said Agreements involved the letting of goods with an option to purchase in which the instalments were referred to as

30

rent. This is noted from the fact that :-

In the High
Court in Malaya
at Kuala Lumpur

(a) the parties intended to give and did give the 1st Defendant an option to purchase the said goods as noted in Para.5 of a letter containing the arrangements under which the Equipment Lease Agreements were entered, dated the 21st of August 1975 from the Plaintiff to the 1st Defendant, a copy of which is annexed hereto and marked "KKC 1";

No.4
Affidavit of
Koh Kim Chai
11th September
1978

(continued)

(b) the Equipment Lease Agreements had reduced the residual value of the goods at the end of the lease period to \$1/- only thereby allowing for the transfer of the said goods to the 1st Defendant at a nominal sum of \$1/- only.

4. I am advised and verily believe that pursuant to the matters referred to in Para.3 above the said Equipment Lease Agreements and the Variation Agreements thereunder being in the nature of Hire Purchase Agreements are unenforceable and void in that they are in violation of the sections of the Hire Purchase Act 1967 and that in that event the claim against the 1st Defendant and the 2nd Defendant as Guarantor is unenforceable and untenable.

5. With reference to Equipment Lease Agreements exhibited as "WCC 3", "WCC 4", "WCC 5" and "WCC 6" the Guarantee and Indemnity Agreements signed by the 2nd Defendant have not been dated and I am advised and verily believe that the said Guarantees and Indemnity are therefore not enforceable.

6. In any event I am advised and verily believe that with regard to Clause 19 (ii)(d) of the Equipment Leases exhibited as "WCC 1" - "WCC 9", Section 75 of the Contracts Ordinance 1950 applies in that the said clauses by which the Plaintiff claims unpaid rentals is in the nature of a penalty and that in any event under Section 75 of the Contracts Act the Court is entitled to ascertain what is reasonable compensation for breach of contract.

7. I am further advised and verily believe that the Court in ascertaining the reasonable compensation for unpaid rentals referred to in Para.5 above should take into account inter alia:-

In the High Court in Malaya at Kuala Lumpur

No.4
Affidavit of Koh Kim Chai
11th September 1978
(continued)

- (a) the value of the equipments recovered; and
- (b) a rebate for lump sum payment of future rentals

and that such reasonable compensation if assessed by the Court would be substantially less than the sum of \$1,567,300.62 claimed under this item by the Plaintiff. I am further informed that the goods under the said Equipment Leases have now been sold by the Plaintiff at a profit. 10

8. I verily believe that the repossession expenses of \$25,000/- and estimated repairs of \$58,230/- for the goods under the Equipment Leases referred to in Para.2 of Wan Chee Chuen's Affidavit is far in excess of what it would cost to repossess and repair the said goods and in any event I state that the goods did not require any repairs whatsoever as the goods had been properly maintained. 20

9. With regard to the sum of \$432,633.41 claimed as arrears of rentals in the said Equipment Lease Agreements referred to in Para.2 of the Affidavit of Wan Chee Chuen I verily believe that this sum is not due as a grace period of 2 - 3 months was given to the 1st Defendant by the Plaintiff for monsoon periods as noted in Para.3 of the exhibit "KKC 1". If the monsoon periods are deducted then the sums to the Plaintiff as arrears of rentals would be less than the sum claimed. 30

10. I am advised by my Solicitors and verily believe that in the circumstances the 1st and 2nd Defendants have a good Defence to the claim of the Plaintiff and I pray that the application of the Plaintiff for Summary Judgment be dismissed with costs and that the 1st and 2nd Defendants be given unconditional leave to defend the action.

AFFIRMED by the said
KOH KIM CHAI at Kuala Lumpur this 11th day of September 1978 at 2.00 p.m. } SGD 40

Before me,
SGD
Commissioner for Oaths
(W.P. SARATHY P.P.M.)

This Affidavit is filed by Messrs. Ng Ek Teong & Partners, Solicitors for the 1st and 2nd Defendants herein, whose address for service is at 2nd Floor, Bangunan Persatuan Hokkien Selangor, Jalan Raja Chulan, Kuala Lumpur.

In the High Court in Malaya at Kuala Lumpur

No.4
Affidavit of
Koh Kim Chai
11th September
1978
(continued)

No.5

GROUNDS OF DECISION OF
SENIOR ASSISTANT REGISTRAR

No.5
Grounds of
Decision of
Senior Assistant Registrar
3rd November
1978

10 IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
Civil Suit No. 1419 of 1978

BETWEEN

Tractors Malaysia Berhad Plaintiff

AND

1. Syarikat Bunga Raya-Timor
Jauh Sdn. Bhd.
2. United Holdings Berhad Defendants

GROUNDS OF DECISION

20 This is an appeal against my decision in refusing to allow leave to the plaintiff to sign final judgment.

The facts of this case are as follows.

30 The plaintiff has let out some tractors to the first defendant. This letting out is evidenced by several agreements entered by the parties. The first defendant had made payments towards the rental of the said tractors from 1st October, 1976 to 1st March, 1977. However, from 1st April, 1977 onwards, the first defendant has failed to make any payments towards the rental due. Hence the plaintiff has repossessed several of the said tractors in the months of November and December, 1977. The first defendant

In the High
Court in Malaya
at Kuala Lumpur

No.5
Grounds of
Decision of
Senior Assist-
ant Registrar
3rd November
1978
(continued)

had also voluntarily returned one of the tractors in January, 1978. As a result of these non-payments by the first defendant and the second defendant who is the guarantor-indemnifier, the plaintiff commenced legal proceedings to recover the losses and damages which the plaintiff has suffered. During the hearing for leave to sign final judgment, the plaintiff prayed for judgment in respect of the arrears and interest of rentals, and also for costs. In respect of the rest of the prayers in the amended statement of claim, the plaintiff has agreed that a full hearing is necessary.

10

During the hearing, counsel for the plaintiff has submitted that the agreements (marked as exhibits "WCC1" to "WCC9" of enclosure 4) are simple hiring agreements. This is because in all the agreements the periods of the hiring are stipulated. The fact that all the agreement documents have the heading "Equipment Lease Agreement" has some bearing too. The counsel relied on the definition of "equipment lease" as stated in Encyclopedia of Forms and precedents Volume 10 paragraph 86. There it is stated that the term "equipment lease" has however acquired a distinctive significance in commerce as denoting an agreement for the lease of a plant or machinery for the business purposes for a term rather longer than the ordinary rental agreement, the lessee in general being given no power to terminate the lease before the end of the leasing period. Hence counsel submitted that the agreements cannot be hire-purchase agreements as contended by the defendant. The counsel continued to submit that the option to purchase the tractors as alleged by the defendant in the affidavit (i.e. paragraph 3 of enclosure 7) is irrelevant. The counsel states that since this option letter (marked "KKC1" of enclosure 7) has been sent before the agreements were signed, it is thus an extrinsic evidence. Being an extrinsic evidence it should not be allowed to be brought in to contradict the written agreements. For this point, counsel has relied on section 92 of the Evidence Act 1950 and the Federal Court decision in the case of Tractors Malaysia Bhd and Kumpulan Pembinaan Malaysia Sdn. Bhd. (registered as Federal Court Civil Appeal No.177 of 1977).

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Counsel for the defendant in his submission contends that the agreements

10 entered were in the nature of hire-purchase agreements. Options to purchase the said tractors were evidenced by letter dated 21st August, 1975 (marked as exhibit "KKC1" of enclosure 7). Counsel submitted that the said letter should be considered by virtue of proviso (a) in Section 92 of the Evidence Act, 1950. The said letter would invalidate the written agreements since they are in violation of the provisions of the Hire Purchase Act 1967. Thus such agreements are unenforceable and void.

In the High Court in Malaya at Kuala Lumpur

No.5
Grounds of Decision of Senior Assistant Registrar
3rd November 1978
(continued)

20 On the question as to the liability of the second defendant, counsel for the plaintiff submits that the agreements entered by the second plaintiff are not only agreements but also indemnity agreements. Thus even if the said agreements between the Plaintiff and the first defendant are null and void, the indemnifier is still liable. For this point, counsel relied on the decision in Yeoman Credit Ltd. v. Letter 1961 2AER 294. As such the second defendant is liable for the sum claimed. Counsel for the defendant, however, questioned the enforceability of the Guarantee/Indemnity Agreements. This is because several of the agreements (annexed together with exhibits marked "WCC 2", "WCC 4", "WCC 5" and "WCC 6") have not been dated. These dates were relevant since they indicated as from when the guarantees were to take effect.

30 As can be seen several issues have been put forward by both the counsels. These issues are triable and could be better dealt with during a full hearing. Thus I have dismissed the application and have given leave to the defendant to defend this action.

Sd:

40 Senior Assistant Registrar

In the High
Court in Malaya
at Kuala Lumpur

No. 6

NOTICE OF APPEAL TO
JUDGE IN CHAMBERS

No.6
Notice of
Appeal to Judge
in Chambers
4th November
1978

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
Civil Suit No.: 1419 of 1978

Between

Tractors Malaysia Berhad Plaintiff
And
1. Syarikat Bunga Raya-Timor
Jauh Sdn. Bhd. 10
2. United Holdings Berhad Defendants

NOTICE OF APPEAL

TAKE NOTICE that the Plaintiff abovenamed intends to appeal from the decision of the Senior Assistant Registrar given on the 3rd day of November, 1978 refusing to allow the Plaintiff's Summons in Chambers for leave to sign final judgment dated 29th July, 1978.

AND FURTHER TAKE NOTICE that you are required to attend before the Honourable Judge in Chambers in the High Court at Kuala Lumpur, on the day of 1978 at 9.30 o'clock in the forenoon on the hearing of an application by the Plaintiff abovenamed that the said Plaintiff's Summons in Chambers for leave to sign final judgment be allowed. And that the costs of this appeal and of the application to the Senior Assistant Registrar be the Plaintiff's in any event. 20

AND FURTHER TAKE NOTICE that it is the intention of the Plaintiff to attend by Counsel. 30

Dated this 4th day of November, 1978.

Plaintiff's Solicitors. Senior Assistant
Registrar, High Court,
Kuala Lumpur.

The address for service of the Plaintiff is care of Messrs. SKRINE & CO., Straits Trading Building, No.4, Leboh Pasar Besar, Kuala Lumpur, solicitors for the Plaintiff abovenamed. 40

This Notice of Appeal is to be served
on :-

Messrs. Ng Ek Teong & Partners,
Advocates & Solicitors,
Bangunan Persatuan Hokkien,
Jalan Raja Coulan,
KUALA LUMPUR,
Solicitors for the Defendants abovenamed.

In the High
Court in Malaya
at Kuala Lumpur

No.6
Notice of
Appeal to Judge
in Chambers

4th November
1978

(continued)

No. 7

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NOTES RECORDED BY MR.
JUSTICE HARUN HASHIM
WHEN SUIT HEARD IN THE
HIGH COURT

No.7

Notes recorded
by Mr. Justice
Harun Hashim
when suit
heard in the
High Court

5th May 1979

7A. NOTES OF EVIDENCE

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
CIVIL SUIT NO: 1419 OF 1978

Between

Tractors Malaysia Berhad

Plaintiff

And

20

1. Syarikat Bunga Raya-Timor
Jauh Sdn.Bhd.

2. United Holdings Berhad

Defendants

Mr. Wong Chong Wah for Plaintiff/Appellant
Mr. Narayanan for Defendants/Respondents

IN OPEN COURT BEFORE
HARUN J. ON 5.3.1979

NOTES OF EVIDENCE

Court: No appearance filed in this matter.
No defence filed either.

30

Narayanan:

Undertakes to file appearance

Wong:

Not opposing.

In the High Court in Malaya at Kuala Lumpur

No.7
Notes recorded by Mr. Justice Harun Hashim when suit heard in the High Court
5th May 1979
(continued)

Wong:

- (i) Asked for arrear of rentals
- (ii) Interest of unpaid rentals up to-date of re-possession or return of tractors.

Refers to G/D of SAR - rentals due for the remainder of the period of the lease - not correct - should be interest as in (ii) above.

Narayanan:

That is correct.

Wong:

10

But reserves right to argue if matter should go on appeal: rentals due for remainder of period in view of decision of this Court in C.S. 190/76 - that this matter should not be argued at stage of O.14 application.

Here terms and conditions of agreement all contained: Equipment Lease Agreement, Agreement in writing on all terms stated here. So also preambles and title of agreement - refers to clause in the agreement.

20

Submits indemnity remains good.

Variation agreement - guarantor also consented.

No denial that debts are due and owing - Encl. (7).

Objection to O.14 based on technical grounds - Mr. Koh Kim Chai - signed all documents - is a Solicitor of some standing in Johor Bahru. Mr. Koh is a Director of both companies.

Allegation that this agreement is a force - disguising Hire Purchase Agreement.

30

Refers to letter of 21 Aug.1975 - 5 tractors only involved - other 6 tractors were after 21 Aug.1975 - therefore this letter good for 3 tractors only.

Submits letter is inadmissible - refers to Equipment Lease Agreement (i) is common is now a technical meaning - no confusion in the trade and amongst lawyers - (ii) extrinsic evidence should not be allowed in - Encyclopaedia of Forms & Precedents (Butterworths) Vol. - p.425

40

Simple Hire - Meaning of Hire - para.86
Equipment Lease Agreement - lease of plant or machinery. Submits not a case of lessor taking

advantage of lessee - there are distinct advantages in this arrangement. Here all terms stated - rights and liabilities.

In the High Court in Malaya at Kuala Lumpur

10 General rule applicable - all terms stated in written agreement - extrinsic evidence should not be allowed section 91 Evidence Act also section 92 Evidence Act. Halsbury's Vol.12 (4th Edition) para.1478 @ p.612 - on extrinsic evidence. Also para.1480 - evidence of previous negotiations - para.1481 Contracts - extrinsic evidence - terms implied by law.

No.7
Notes recorded by Mr. Justice Harun Hashim when suit heard in the High Court
5th May 1979

Halsbury's Vol.9 (4th Edition) para.214 @ General rule - para.216 - written terms and written contracts. Federal Court Civil Appeal No: 177/77 - Tractors Malaysia Bhd. v. Kumpulan Pembinaan Malaysia Sdn.Bhd. - Section 92 Evidence Act.

(continued)

Value of residue - 31 - no meaning.

Claim against guarantors:

20 Submits indemnity here does not depend on the agreement - Chitty (24th Edition) Vol.2 - para. 3227 - not invalid even if H.P. Agreement void.

Yeoman Credit Ltd. v. Letter & Anor (1961) 2 All E.R. 294. Not dating Guarantor & Indemnity - attached to the agreement - same person signed the agreement. Anyway date not important - as long as document traceable to main agreement. In any event variation agreement specially referred to the Guarantor & Indemnity agreement.

30 Narayanan:

Section 2 Hire Purchase Agreement - definition - by this definition this agreement becomes H.P. Agreement. Section 6(2) - not enforceable when it complies. Letter - section 92 Evidence Act - proviso - illegality - Refers to Campbell Discount Co.Ltd. v. Gall (1961) 1 QB 431 & 439.

40 Phipson on Evidence (11th Edition) p.1794 - documents part evidence affecting Hire Purchase Agreements. F.C. Appeal 177/77 - did not deal with exemption to section 92 Evidence Act.

Hire Purchase - Good (2nd Edition) 482 - Guarantor did not guarantee anything more than what the hirer had undertaken. Not indemnity - Word "Indemnity" in Document for decorative purpose only.

Submits there are triable issues.

Wong not called upon to reply

In the High Court in Malaya at Kuala Lumpur

Court:

Appeal allowed.

No.7
Notes recorded by Mr. Justice Harun Hashim when suit heard in the High Court
5th May 1979
(continued)

Leave to Plaintiff to sign final judgment in the sum of \$432,663-41 being arrears of rent and the sum of \$27,887-45 being interest due on unpaid rentals up to date of repossession or return of tractors.

Costs.

Sgd: Harun
5 Feb. 1979.

10

No.8
Order of Harun J.
5th March 1979

No.8
ORDER OF HARUN J.

IN THE HIGH COURT IN MALAYA AT KUSUAL LUMPUR
Civil Suit No. 1419 of 1978

Between

Tractors Malaysia Berhad Plaintiff

And

- 1. Syarikat Bunga Raya-Timor Juah Sdn.Bhd.
- 2. United Holdings Berhad Defendants

20

BEFORE THE HONOURABLE MR. JUSTICE HARUN HASHIM
THIS 5TH DAY OF MARCH, 1979

IN OPEN COURT

O R D E R

THIS APPEAL coming on for hearing this day in the presence of Mr. Wong Chong Wah of Counsel for the Appellant/Plaintiff and Mr. Narayanan of Counsel for the Respondents/Defendants abovenamed AND UPON READING the Notice of Appeal dated the 4th day of November 1978 filed herein AND UPON HEARING Counsel as aforesaid IT IS ORDERED that the appeal be allowed AND IT IS ORDERED that the Order of Court given by Che Zura binte Yahya, the Senior

30

Assistant Registrar of the High Court, Kuala Lumpur on the 3rd day of November, 1978 be and is hereby set aside AND IT IS FURTHER ORDERED that the Appellant/Plaintiff be and is hereby at liberty to sign final judgment against the Respondents/Defendants for the sum of \$432,663.41 being arrears of rental and the sum of \$27,887.45 being interest due on unpaid rentals up to the date of repossession or return of tractors AND IT IS LASTLY ORDERED that the costs of this application be taxed by the proper officer of the Court and be paid by the Respondent/Defendants to the Appellant/Plaintiff.

In the High Court in Malaya at Kuala Lumpur

No.8
Order of Harun J.
5th March 1979
(continued)

Given under my hand and the seal of the Court this 5th day of March, 1979.

Sd:

Senior Assistant Registrar
High Court, Kuala Lumpur.

No. 9

JUDGMENT ON THE ORDER
OF HARUN J.

No.9
Judgment on
the Order of
Harun J.
5th March 1979

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
(COMMERCIAL DIVISION)

Civil Suit No. 1419 of 1978

Between

Tractors Malaysia Berhad Plaintiff

And

1. Syarikat Bunga Raya-Timor
Jauh Sdn. Bhd.
2. United Holdings Berhad Defendants

J U D G M E N T

Pursuant to the Order dated the 5th day of March 1979, whereby it was ordered that the Plaintiff be and is hereby at liberty to sign final judgment against the Defendants for the sum of \$432,663.41 being arrears of rental and the sum of \$27,887.45 being interest due on unpaid rentals to the date of repossession

In the High
Court in Malaya
at Kuala Lumpur

No.9
Judgment on
the Order of
Harun J.
5th March 1979
(continued)

or return of tractors and costs of suit to be
taxed.

IT IS THIS DAY ADJUDGED that the Plaintiff
do recover against the Defendants the sum of
\$432,663.41 (Ringgit Four hundred and thirty
two thousand six hundred and sixty three and
sen forty one) being arrears of rental and
the sum of \$27,887.45 (Ringgit Twenty seven
thousand eight hundred and eighty seven and
sen forty five) being interest due on unpaid
rentals up to the date of repossession or
return of tractors and costs of suit be taxed
by the proper Officer of the Court and be
paid by the Defendants to the Plaintiff.

10

Given under my hand and the Seal of the
Court this 5th day of March 1979.

Sd:

Senior Assistant Registrar
High Court, Kuala Lumpur.

In the Federal
Court of Malaysia
at Kuala Lumpur

No.10
Notice of
Appeal to the
Federal Court
4th April 1979

No.10

20

NOTICE OF APPEAL TO
THE FEDERAL COURT

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT
KUALA LUMPUR
(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO: OF 1979

Between

1. Syarikat Bunga Raya-Timor
Jauh Sdn. Bhd.
2. United Holdings Berhad

Appellants

30

And

Tractors Malaysia Berhad

Respondent

(In the matter of Civil Suit No.1419 of
1978 in the High Court in Malaya at
Kuala Lumpur)

Between

Tractors Malaysia Berhad

Plaintiff

And

1. Syarikat Bunga Raya-Timor
Jauh Sdn.Bhd.
2. United Holdings Berhad Defendants

In the Federal
Court of
Malaysia at
Kuala Lumpur

NOTICE OF APPEAL

No.10
Notice of
Appeal to the
Federal Court
4th April 1979
(continued)

10

TAKE NOTICE that Syarikat Bunga Raya-Timor Jauh Sdn. Bhd. and United Holdings Berhad, being dissatisfied with the decision of the Honourable Mr. Justice Datuk Harun Mahmud Hashim given in the High Court at Malaya at Kuala Lumpur on the 5th March 1979 on the Summons-in-Chambers dated the 29th day of July 1978 appeals to the Federal Court against the whole of the said decision.

Dated this 4th day of April 1979

SGD.

.....

Ng Ek Teong & Partners
Solicitors for the 1st
& 2nd Appellants

To:

20

The Chief Registrar
Federal Court Registry
Kuala Lumpur

The Senior Assistant Registrar
High Court
Kuala Lumpur.

The Respondent abovenamed or
his solicitors
M/s Skrine & Co.
4 Leboh Pasar Besar
Kuala Lumpur

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

In the Federal
Court of
Malaysia at
Kuala Lumpur

No.11

AFFIDAVIT OF KOH
KIM CHAI

No.11
Affidavit of
Koh Kim Chai
19th February
1980

IN THE FEDERAL COURT OF MALAYSIA
(APPELLATE JURISDICTION)
CIVIL APPEAL NO.82 OF 1979

Between

1. Syarikat Bunga Raya-Timor
Jauh Sdn. Bhd.
2. United Holdings Bhd. Appellants 10

And

Tractors Malaysia Berhad Respondent

(In the Matter of Kuala Lumpur High Court Civil
Suit No. C 1419 of 1978

Between

Tractors Malaysia Berhad Plaintiff

And

1. Syarikat Bunga Raya-Timor
Jauh Sdn. Bhd.
2. United Holdings Berhad (Defendants) 20

A F F I D A V I T

I, KOH KIM CHAI, (NRIC No.4428458) a
Malaysian Citizen of 23rd floor, Tun Abdul Razak
Complex, Jalan Ah Fook, Johore Bahru do solemnly
affirm and say as follows :-

1. I am a Director of the 1st and 2nd Defendant
companies and I am authorised by the said
companies to make this affidavit on behalf of
both the companies.

2. Pursuant to an appeal by the Plaintiffs 30
to the High Court on the decision of the Senior
Assistant Registrar on an Order 14 application,
the High Court ordered on the 5th day of March
1979 that the Plaintiffs be at liberty to sign
final judgment against the 1st and 2nd Defendants
for the sum of \$432,663.41 being arrears of
rental under 9 Equipment Lease Agreements and
the sum of \$27,887.45 being interest due thereon.

3. The 1st and 2nd Defendants filed a Notice of Appeal to the Federal Court on the 4th of April 1979 against the said Order of the High Court.

In the Federal Court of Malaysia at Kuala Lumpur

4. An application for stay to the High Court was heard on the 12th February 1980 before Mr. E.E. Sim Judicial Commissioner who disallowed the application.

No.11
Affidavit of
Koh Kim Chai
19th February
1980

10 5. The Plaintiffs claim against the Defendants in the said Order 14 application was limited to arrears in rental payable by the 1st Defendant as Lessees under 9 Equipment Lease Agreements and for interest on the said arrears of rental. The claim against the 2nd Defendant is as Guarantor to the said 9 Equipment Lease Agreements.

(continued)

6. The 1st and 2nd Defendants by Affidavits and at the hearing of this action contended and still do contend that :-

20 (a) The said 9 Equipment Lease Agreements are in fact Hire Purchase Agreements as defined in the Hire Purchase Act 1967 in that the said Agreements involve the letting of goods with an option to purchase in which the instalments were referred to as rent as noted from :-

30 (i) a letter from the Plaintiffs to the Defendants dated the 21st August 1975 by which the Plaintiffs gave the 1st Defendants an option to purchase the vehicles at the end of the lease period. The said letter of option is contended to be a condition precedent to the Equipment Lease Agreement or a collateral agreement and that the entire transaction is to be studied taking into consideration the said letter of option to see whether the agreements are Equipment Lease Agreements or Hire Purchase Agreements. A copy of the said letter is attached herewith and marked "K.K.C.1"

40

And (ii) the fact that the residual value in the Equipment Lease Agreements was only a nominal sum of \$1.00

Consequently the Equipment Lease Agreements being in the nature of Hire Purchase Agreements are unenforceable and void in that they are in violation of the Hire Purchase Act 1967 and that

In the Federal
Court of
Malaysia at
Kuala Lumpur

No.11
Affidavit of
Koh Kim Chai
19th February
1980

(continued)

in that event the claim against the 1st and 2nd Defendants based on the purported Equipment Lease Agreements is unenforceable.

(b) The said letter of option had also clauses which gave the 1st Defendants a grace period of 2-3 months to pay his rentals as these were considered monsoon periods and if the monsoon periods are deducted then the sums claimed as arrears of rental would be considerably less.

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7. The 2nd Defendants further contend :-

(a) that the guarantee given by the 2nd Defendants is not enforceable in view of the matters stated in Clause 6(a)(i) & (ii) in that as the principal agreement is not enforceable then consequently the guarantee is also not enforceable;

(b) that if the said guarantee is to be construed as an indemnity such construction was not pleaded by the Plaintiffs and in any event it is not enforceable even as an indemnity against the 2nd Defendants.

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(c) that a few of the guarantee agreements were not dated.

8. At the High Court hearing the Plaintiff successfully contended that the letter referred to in Para.6(a)(i) is not admissible in evidence under Section 91 and Section 92 of the Evidence Act 1950 (Revised 1971) to in any way affect the terms of the 9 Equipment Leases Agreements and thereby result in the said 9 Lease Agreements being unenforceable.

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9. It is respectfully contended that inter alia :-

(a) The fact whether the said letter is admissible or not under Section 91 and Section 92 of the Evidence Ordinance is a triable issue and

(b) The effect of the said letter on the 9 Equipment Leases and the resultant non-compliance with the Hire Purchase Act 1967 is a triable issue and

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(c) The very contention of the illegality of the transaction is a triable issue, and that these are all matters to be decided at a trial of the Civil Suit.

11. I am advised and verily believe that the 1st and 2nd Defendants have good and valid arguments and authority in support of their contentions which merit consideration by the Appellate Court and in any event they have raised triable issues which should be decided by a trial judge.

In the Federal Court of Malaysia at Kuala Lumpur

No.11
Affidavit of
Koh Kim Chai

19th February
1980

(continued)

10

11. (a) The 1st defendant Company is involved in the business of timber felling and extraction. The sole assets of the Company is a timber concession in Kelantan of approximately 20,000 acres. I verily believe that the current market price of the said timber concession is about M\$4,000,000/-.

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(b) The 1st Defendant Company is a wholly owned subsidiary of the 2nd Defendant Company which is a Public Company listed in the Kuala Lumpur Stock Exchange. The trading in the shares of the 2nd Defendant Company in the Stock Exchange had been suspended at the request of the 2nd Defendant.

(c) I verily believe that the 1st and 2nd Defendant Companies' assets consist entirely of fixed assets and that there is no liquid assets in the nature of cash to meet the judgment sum.

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12. I verily believe if the stay of execution is not granted, it will result in irreparable damage and serious injury to the 1st and 2nd Defendant for the following reasons :-

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(a) To pay the judgment sum, the 1st and 2nd Defendants will have to be wound-up and the timber concession sold to obtain cash. The said sale will be a forced sale and consequently, the price obtained will be substantially less than the market price. Furthermore, the consent of the Ruler-in-Council of Kelantan has to be obtained prior to the sale being effected and it is possible that in view of the forced sale, the Ruler-in-Council may not give the approval for the sale and the concession may be cancelled to the detriment of both the Defendants.

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(b) The assets of the 2nd Defendant is mainly the forecast concession held by the 1st Defendant and a winding up of the 2nd Defendant Company as stated in 11(a) above would also seriously affect the position of

In the Federal
Court of
Malaysia at
Kuala Lumpur

No.11
Affidavit of
Koh Kim Chai

19th February
1980

(continued)

the 2nd Defendant.

(c) Furthermore, the 2nd Defendant Company being a Public Company, the payment of judgment sum will also result in serious injury to the position of shareholders if the Company's fixed assets have to be sold.

13. Irreparable damage would be caused to the Defendants as :-

- (a) The judgment debt can only be obtained by the 1st and 2nd Defendant Companies' assets being sold by a forced sale; and 10
- (b) To do the sale, the Companies would have to be wound-up.

14. In any event, I am advised and verily believe that :-

- (a) This judgment against the 1st and 2nd Defendants is a summary judgment obtained pursuant to an Order 14 application without a full trial on the merits of the case. 20
- (b) If the stay of execution is not granted and the Federal Court were to reverse on appeal the decision of the High Court, it would mean, that as illegality has been pleaded, the Honourable Court had lent itself to the enforcement of an illegal contract by the Plaintiffs.

15. The 1st and 2nd Defendants are financially sound and even if they lose their appeal, I verily believe that given sufficient time the 1st and 2nd Defendants would be able to dispose of the assets at market price and pay the judgment debt. 30

16. In the circumstances, I humbly request this Honourable Court to grant a stay of execution in terms of the application herein and I pray for an Order in the terms of the application filed herein.

AFFIRMED by KOH KIM CHAI)
at Johore Bahru this) Sd: K.C.Koh 40
19th day of February,)
1980 at 12.10 p.m.)

Before me,
Sd: R. RAMASAMY
R.RAMASAMY P.I.S.
Commissioner for Oaths
High Court, JOHORE BAHRU

No.12

MEMORANDUM OF APPEAL

In the Federal
Court of
Malaysia at
Kuala Lumpur

IN THE FEDERAL COURT OF MALAYSIA
(APPELLATE JURISDICTION)

No.12
Memorandum of
Appeal

CIVIL APPEAL NO. 82 OF 1979

10th March
1980

Between

1. Syarikat Bunga Raya-Timor
Jauh Sdn. Bhd.
2. United Holdings Berhad Appellants

10

And

Tractors Malaysia Berhad Respondent

(In the Matter of Kuala Lumpur High Court
Civil Suit No. C 1419 of 1976)

Between

Tractors Malaysia Berhad Plaintiff

And

1. Syarikat Bunga Raya-Timor
Jauh Sdn. Bhd.
2. United Holdings Berhad (Defendants)

20

MEMORANDUM OF APPEAL

DIRECTIONS OF FEDERAL COURT

1. (a) On the 4th March 1980, the appellants abovenamed applied to the Federal Court at Kuala Lumpur by a Notice of Motion dated 21st day of February 1980 for a stay of execution pending appeal to the Federal Court, of a decision of the Honourable Justice Harun dated the 5th March, 1979.

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(b) At the hearing of the said Notice of Motion, the Federal Court noted that the written Grounds of Judgment had not yet been delivered in the Court below, and with the consent of the parties to action, the Federal Court directed on its own motion :

- (i) that the appellants pursuant to Rule 25 of the Federal Court (Civil Appeals) (Transitional) Rules 1963 do file the

In the Federal
Court of
Malaysia at
Kuala Lumpur

No.12
Memorandum of
Appeal

10th March
1980

(continued)

required appeal documents and proceed
with the appeal to the Federal Court
on the decision of Harun J. dated
the 5th day of March, 1979.

(ii) that hearing of the said appeal be
fixed for the 13th of March, 1980.

SEQUENCE OF PROCEEDINGS

2. (a) By way of a Summons-In-Chambers dated
29th July, 1978 the Respondent applied for
summary judgment under Order 14 of the Rules of
Supreme Court. 10

(b) The said application for summary
judgment was heard by the Senior Assistant
Registrar on the 3rd day of November 1978. At
the hearing of the application the Respondent
prayed for summary judgment only in respect of
the arrears of rental and interests thereon and
costs. In respect of the rest of the prayers
in the Amended Statement of Claim, the Respondent
agreed that it should be set down for trial. 20
The Senior Assistant Registrar dismissed the
application and gave the Appellants unconditional
leave to defend.

(c) By notice of Appeal dated the 4th day
of November, 1978 the Respondent appealed on
the decision of the Senior Assistant Registrar
to the Judge-In-Chambers.

(d) On the 5th March 1979, the Honourable
Justice Harun in Open Court reversed the order
of the Senior Assistant Registrar and gave 30
liberty to the Respondent to sign final judgment
against the Appellant for the sum of \$432,663.41
being arrears of rental and the sum of \$27,887.45
being interest due on unpaid rentals up to the
date of the repossession or return of the
tractors and costs.

(e) The Appellants filed a Notice of Appeal
dated the 4th day of April 1979 to the Federal
Court appealing against the whole of the said
decision dated the 5th March 1979. 40

GROUNDS OF APPEAL

3. The Learned Judge erred in law and in fact
when on the 5th March 1979, he granted summary
judgment as he did in that he appeared to have
failed to consider that the affidavits filed
clearly raised triable issues and a number of
bona fide defences to the claim namely :

10th March
1980

(continued)

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(a) that the leasing transaction was in law and in fact a Hire Purchase Transaction as defined by Section 2 of the Hire Purchase Act 1967 in that there was a letting of goods with an option to purchase in which the instalments were referred to as rentals;

(b) that consequently, the purported leasing transaction was a device to circumvent the provisions of the Hire Purchase Act 1967 and as there was non-compliance with the provisions of the Hire Purchase Act 1967, by virtue of the said Act and Section 24 of the Contracts Act 1950, the said purported leasing transaction and the Equipment Lease Agreements hereunder are unenforceable and void;

(c) that as the said Equipment Lease Agreements were unenforceable and void, the claim is untenable against the 1st Appellant and consequently, the Respondent cannot enforce the Guarantee and Indemnity Agreements provided by the 2nd Appellants.

4. The Learned trial Judge erred in :-

(a) apparently not holding that the letter which granted the option to purchase the tractors (referred to in Pages 112 and 113 of the Appeal Record) was admissible and had to be read together with the Equipment Lease Agreements to ascertain the true nature of the transaction.

(b) not considering that the indemnity contained in the Guarantee and the Indemnity Agreement provided by the 2nd Appellants do not create a liability on them to pay money to the Respondent in the event that the Equipment Lease Agreements are unenforceable by law and in any event, the Respondent had not pleaded in their Amended Statement of Claim that the 2nd Appellants had to indemnify the Respondents.

5. The Learned Judge failed to give due weight to the fact that :-

(a) Some of the Guarantee and Indemnity Agreements signed by the 2nd Appellants had not been dated;

(b) that the residual value in the Equipment Lease Agreements was a sum of ~~1~~1/- and that

In the Federal
Court of
Malaysia at
Kuala Lumpur

No.12
Memorandum of
Appeal

10th March
1980

(continued)

it infers that there is a clear option
to purchase;

- (c) that the Respondent had granted to the
Appellants a grace period of 2 to 3 months
in payment of rentals during monsoon
periods and that this called for evidence
as to what the monsoon periods were and
would reduce in any event the arrears of
rental claimed.

6. The Learned trial Judge should have
given unconditional leave to the Appellants
to defend this suit as the matters raised
above not only show bona fide triable issues
but show clearly that the Appellants have a
good defence at law.

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Dated this 10th day of March 1980

Sd: Ng Ek Teong & Partners
Solicitors for the Appellants

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Judgment of
Federal Court
2nd April 1980

No.13
JUDGMENT OF FEDERAL
COURT

20

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT
KUALA LUMPUR

(Appellate Jurisdiction)

FEDERAL COURT CIVIL APPEAL NO. 82 OF 1979

Between

1. Syarikat Bunga Raya-Timor
Jauh Sdn. Bhd.

2. United Holdings Berhad

Appellants

And

Tractors Malaysia Berhad

Respondent

(In the Matter of Kuala Lumpur High Court
Civil Suit No. C 1419 of 1978

Between

Tractors Malaysia Berhad

Plaintiff

And

30

1. Syarikat Bunga Raya-Timor
Jauh Sdn. Bhd.
2. United Holdings Berhad (Defendants)

In the Federal
Court of
Malaysia at
Kuala Lumpur

Coram: Raja Azlan Shah, C.J. Malaya
Chang Min Tat, F.J.
Syed Othman, F.J.

No.13
Judgment of
Federal Court
2nd April 1980
(continued)

JUDGMENT OF THE COURT

10 In the course of hearing an urgent
application for stay of execution, it occurred
to us that a much more satisfactory course in
the circumstances of this case would be to hear
the substantive appeal itself and though this
would not make available to us the undoubted
advantages of knowing the learned Judge's
grounds of decision, we formed the opinion that
in an Order 14 application which this proceeding
was, nothing really turned on the credibility
of witnesses and no real obstacle presented
20 itself to the course we proposed to take. Apart
from our inherent jurisdiction, Rule 25 of the
Federal Court (Civil Appeals) (Transitional)
Rules 1963 enables the appeal to be heard in
such conditions.

30 By nine agreements in writing, called
Equipment Leasing Agreements, all in identical
form save as to the dates, the amounts and the
objects of the leases, the respondents leased
on various dates between September 2, 1975 and
June 1976 certain very expensive machinery at
substantial rentals, all in excess of \$7,000
odd per month, for a period of 30 months
commencing from the dates of the agreements.
Ex facie, the agreements were exactly what
they were said to be - leasing agreements of
chattels of contracts of bailment with no element
of sale. Under these agreements, the
appellants as lessees had no interest that could
be seized by way of execution and there could
be no question of any assignment or mortgage
40 of an option to purchase. And if they purported
to assign any proprietary rights in the
machinery or otherwise deal with the objects
of lease as owners, or "do or permit any act
likely to endanger the safety or condition
of the goods or prejudice or jeopardise
the Lessor's ownership of the goods" (clause
18(f)), the respondents as lessors would become
entitled to immediate possession and to terminate
the leases. The lessees were also not entitled,
50 as under a hire-purchase agreement, in the
absence of any provisions to this effect, to

In the Federal Court of Malaysia at Kuala Lumpur

No.13
Judgment of Federal Court
2nd April 1980
(continued)

sub-hire them. Clause 19(i) refers to expiration or other determination of the lease and it is reasonably clear that the expiration refers to termination by effluxion of time and the "other determination" to the exercise of the lessors' rights arising upon any breach or breaches of the terms and conditions of the lease on the part of the lessees.

Clause 19(ii) reads :

"(ii) Upon the determination of the lease (other than by effluxion of time) the lessee shall pay the lessor :- 10

- (a) any arrears of rentals accrued as at the date of termination;
- (b) any sums other than rentals which may become payable under the agreement;
- (c) any expenses incurred by the lessor in tracing and/or recovering possession of the goods or in enforcing the provisions of this lease; 20
- (d) an amount equal to the unpaid rentals for the remainder of the period of this lease. "

In each leasing, the 2nd appellants executed a document termed a Guarantee and Indemnity to guarantee the due payment of all sums of money due from the lessees to the lessors and to indemnify the lessors against all losses, damages, costs and expenses.

Each lease was consensually varied as to the terms and the amounts of the payment. Whereas in the lease agreements, the total amount of the hiring charges was expressed in one lump sum to be paid by equal monthly parts for the period of the hire, with a leftover residual value of only \$1.00, the lump sum, decreased, in part, by the hire-rents hitherto paid, (i) was now further diminished by a certain rebate, (ii) then had added on to it accrued interest, (iii) and again was diminished by a more substantial residual value, (iv) and lastly increased by an amount termed hiring charges. The net amount became the total rent for the period of the hire, now increased to 36 months from the date of the variation and the monthly instalment of rent is one-thirty-sixth of this total rent. One of the results of this variation was that the monthly hire was, in actual figures, reduced from some 30 40

\$7,000 odd to some \$5,000 though it had to be borne in mind that the rents for the period that had elapsed before the variation took effect had been paid and had to be taken into consideration and the period of the hire was longer.

In the Federal Court of Malaysia at Kuala Lumpur

No.13
Judgment of Federal Court
2nd April 1980
(continued)

10 We were not advised of the significance in each case of this variation, but Mr. Wong Chong Wah for the respondents read to us a passage from T.M.Clark's Leasing (1978) published by McGraw-Hill Limited to the effect that there is no significance in the residual value and that this is nothing more or less than a book-keeping device to keep the books of the lessors in order. Goode on Hire Purchase Law and Procedure (2nd Edn.) at page 20 880 suggests that neither party to a leasing agreement contemplates that the equipment will have more than a nominal value at the end of the lease.

It is not contended by the appellants that entering into an equipment leasing agreement is contracting outside the Hire Purchase Act (Revised) 1978 with its statutory provisions for the protection of hirers and the safeguard of the subject of the hire, which the Courts will not sanction. In the same way as parties can agree to take a licence in preference to a lease of premises which would give the protection of the relevant Rent Acts. Mohd Mustafa s/o Seeni Mohd v. Kandasami s/o Kaliappa Gounder, (1) Deguren v. Seal Estates (2) and Rossvale v Green (3) it is similarly open to the parties to come to an agreement for a lease of equipment rather than to a hire-purchase agreement. To adapt the words of Geoffrey Lane L.J. (as he then was) in Aldrington Garages v Fielding (4) if there is here only a lease of goods not a hire purchase dressed up in the verbiage and trappings of a lease, the lessor is entitled to succeed in its action for recovery of possession, arrears of rentals and all the other claims in the agreement. Neither statute nor public policy is against a equipment lease: see also the recent decision of Eusoffe Abdoolcader J. in Ipoh High Court Civil Suit No.137 of 1977 between Tan Chin Kim Sawmill & Factory Sdn. Bhd. and Tan Way Keat (Plaintiffs)

50 (1) (1979) 2 M.L.J. 109 F.C.
(2) (1979) S.J. 222
(3) (1979) S.J. 610
(4) (1978) 247 E.G.557

In the Federal Court of Malaysia at Kuala Lumpur

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Judgment of Federal Court
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(continued)

and Lindeteves-Jacoberg (M) Sdn.Bhd. and Malaysian International Merchant Bankers Berhad (Defendants). In fact equipment leaseings confer certain advantages on both lessor and lessee principally in connection with tax reliefs available to both parties and the facility afforded to the lessee to return a piece of equipment which had become obsolete at the end of the minimum period without having to incur liability for payment of its full value and to replace it: see Goode on Hire-Purchase Law and Procedure (2nd Edn.) at pp.881.3.

10

In the event the appellants fell into arrears of their payment of the rentals. The respondents actively recovered possession of eight of the nine vehicles; the ninth was surrendered by the appellants to the respondents. The respondents also served a writ on the respondents for arrears of rentals under Clause 19(ii)(a) in the sum of \$432,663.41¢ and arrears of rentals for the remainder of the period of the leases under (b) in the sum of \$1,022,649.76¢ and interest. And a little later, the respondents made an Order 14 application to sign final judgment in terms of all the prayers in their writ. The Senior Assistant Registrar thought there were triable issues which would entitle the appellants to unconditional leave to defend. The Judge on appeal thought otherwise. The appellants now appeal to this Court to restore the decision of the Senior Assistant Registrar.

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The defence of the appellants has not been delivered but in an affidavit filed to oppose the Order 14 application, Mr. Koh Kim Chai, a director of the 1st and 2nd appellant companies and an advocate and solicitor, contended that the transactions were in law and in fact hire-purchase agreements which being in breach of the statutory provisions of the Act were unenforceable by the Court. What he contended was:

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"(a) the parties intended to give and did give the 1st Defendants an option to purchase the said goods as noted in Para.5 of a letter containing the arrangements under which the Equipment Lease Agreements were entered, dated the 21st of August 1975 from the Plaintiff to the 1st Defendant, a copy of which is annexed hereto and marked 'KKC 1';

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(b) the Equipment Lease Agreements had reduced the residual value of the

goods at the end of the lease period to \$1/- only thereby allowing for the transfer of the said goods to the 1st Defendant at a nominal sum of \$1/- only. "

In the Federal Court of Malaysia at Kuala Lumpur

No.13
Judgment of Federal Court
2nd April 1980

(continued)

10 The second objection can be easily disposed of. His contention that the residual value at the end of the lease period was \$1/- could not be true in the light of the re-
10 calculation in the variation agreements to which his two companies had subscribed. Neither could he indicate any provision in the documents for a purchase or an option to purchase at this nominal sum or at any other stated or agreed sum. His counsel at the appeal did not pursue the matter and no necessity therefore arises for us to rule on it.

20 The first objection is rather more substantial. It raises two issues, first, whether the letter referred to is admissible in evidence as a collateral agreement or for the purpose of construing the lease agreements and secondly whether if admissible and admitted, the provision of an option granted to the appellants to purchase the machines has or has not converted the lease agreements, if not all of them, at least three of them which were referred to therein, into hire-purchases which would call for the operation of the protective provisions of the Hire-Purchase Act. These, in our view,
30 are questions of law. A related problem is the proper construction of the letter for its full term and effect.

40 The general principle in an Order 14 application is that leave to defend must be given unless it is clear that there is no real substantial question to be tried, that there is no dispute as to facts or law which raises a reasonable doubt that the plaintiff is entitled to judgment: 1960 A.P. 263. Where the question of law raised is a difficult one, leave to defend should be given. But if the point is clear and the Court is satisfied that it is really unarguable, leave to defend will be refused. 1976 Supreme Court Practice 140, under the rubric "Question of Law". Therefore, if the Court is satisfied that the defence or defence objection is unarguable, it must refuse
50 leave to defend; anything short of that must merit unconditional leave to defend.

We now set out the relevant terms of this letter which was dated August 21, 1975 i.e.

In the Federal Court of Malaysia at Kuala Lumpur

No.13
Judgment of Federal Court
2nd April 1980
(continued)

anterior to any of the 9 lease agreements. The respondents confirmed the following arrangements :

- "1. We attach herewith our equipment lease agreements for two (2) units Cat D6C and one (1) unit Cat D7F DD all complete with Carco Winches. The details and terms of the lease are as per the agreements attached. We will deliver the above units by the 27th/28th August, 1975. 10
-
- 4. We will hold the price of neither (sic) the Cat D6C or the Cat D7F whichever you decide to purchase up till March, 1976 in consideration of your desire to purchase another seven or eight units by then.
- 5. As agreed, the option to purchase for the machines will be exercised by Syarikat Bunga Raya-Timor Jauh Sendirian Berhad or its assignee. " 20

The purpose of the appellants in seeking to introduce this letter is to contend that the option to purchase makes the leasings hire purchase agreements and therefore unenforceable by reason of the breaches of the Act.

With respect, we do not think that unenforceability is to be equated with invalidity or illegality so that we do not consider this letter admissible under section 92A of the Evidence Act 1950 to invalidate the agreements or to prove illegality, as contended by Mr. George for the appellants. Neither do we think that there is any latent ambiguity in the "residual value" in the agreements for elucidation under section 92(f) and section 95. We are in doubt whether this letter is admissible under section 92(b) to prove a separate agreement on a matter on which the leasing agreements were silent, since that sub-section refers to a separate oral agreement, unless of course the letter is evidence of an oral agreement. But we are of the opinion that it is at least arguable that the entire agreement between the parties consists of two sets of documents, the leasing agreements as varied and the letter, and on this view, they must be read together. We must not however be taken as expressing a firm opinion, as we did not have the benefits of argument but in this possibility of an arguable 30 40 50

case, there is in our opinion and with respect a triable issue which necessarily gives the appellants a right to unconditional leave to defend in those cases to which the letter refers.

In the Federal Court of Malaysia at Kuala Lumpur

No.13

Judgment of Federal Court

2nd April 1980

(continued)

10 On a proper construction of the letter in question, it seems to us that the obvious reference to and the enclosure of the three equipment lease agreements, the fixing of the prices of the equipment if the appellants should decide to purchase any in consideration of their intention to purchase other units and the ordinary grammatical meaning to be given to the word "purchase" must mean that the option to purchase which was given, referred, if at all, to the three vehicles in these three lease agreements and could not refer to the subsequent

20 leaseings. No similar offer had been shown by the appellants to have been made in any other document or letter. These later leaseings were therefore not qualified by any offer to purchase.

The appeal is therefore allowed in part, to the extent that unconditional leave to defend will be given to the appellants, in respect of the three agreements referred to in the letter of August 21, 1975 but the leave to sign final judgment against both appellants in respect of the equipment in the remaining leasing is upheld.

30 Before leaving the appeal, we have to refer to a notable omission which appeared to have escaped the notice of counsel at the appeal. It concerned the failure of the Judge when he allowed the appeal from the Senior Assistant Registrar to deal fully with the Order 14 application. The application was for the whole of the claim, that is, for arrears of rentals and for rentals for the unexpired remainder of the periods of the leases. The Judge merely

40 awarded the full sum for past rentals. He did not indicate in his note of the order he made what he proposed in regard to the future rentals. No cross-appeal by the lessors had been lodged or notice of such cross-appeal given: Rule 9 (1) and (2) Federal Court (Civil Appeals) (Transitional) Rules 1963. Neither did they by their counsel ask for the leave of this Court to contend that the decision of the High Court should be varied to include the future rentals

50 in respect of the equipment whose leases are not tainted by breaches of the Hire Purchase Act, or such damages as flowed from the lessees' breach of the agreements.

In the Federal
Court of
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Kuala Lumpur

No.13
Judgment of
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2nd April 1980
(continued)

Insofar as this claim for the rents for the unexpired period of the lease, contractually agreed to in clause 19(ii)(b) supra, which the learned Judge did not rule on, is concerned, reference may be made to a recent decision of this Court, written by Eusoffe Abdoolcader J. in Federal Court Civil Appeal No.44 of 1979, Diamond Peak Sdn.Bhd. & Anor. v. Tweedie. In that case it has held that when an Order 14 application is dismissed, it does not mean that the statement of claim is struck out and **if the Court purports** to do so, its order is bad and must be set aside. All the Court can do where leave to defend is properly to be given is to give such leave and exercise, if it chooses to do so at that stage, its power to give such directions as to the future conduct of the action as might be given under Order 30 Rules of the High Court.

10

At this stage we do not wish to say anything about the propriety of the claim for the agreed rentals for the unexpired period of the leases, but Eusoffe Abdoolcader J. dealt with that question in his judgment in the Ipoh High Court Civil Suit No. 137/1977, supra.

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Both decisions were given on the same day, March 6, 1980. We appreciate of course that they were not available to the Bar when this case was argued in the High Court or known to counsel when it came up before us.

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The order of this Court therefore is that the leave to the respondents to sign final judgment against both appellants for the arrears of rentals in respect of the six leasings to which the letter of August 21, 1975 does not refer, is confirmed, in such sum as the parties will arrive at from the relevant documents with interest thereon at the agreed rate up to the date of repossession, and in one case, up to the date of return and further interest at 12% p.a. on such arrears from the date of repossession or return as the case maybe to the date of payment. The judgment should also include the repossession expenses: clause 19(ii)(c). Leave to defend will be given to the appellants in respect of the three vehicles in the leasing agreements mentioned in the letter of August 21, 1975. This must mean leave to defend also in respect of the rentals for the unexpired period of these 3 leases. The order for costs to the respondents in the High Court and before the Senior Assistant Registrar will stand but the

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costs of the appeal in this Court shall be in the cause.

The application for stay is refused.

Sd: CHANG MIN TAT
(TAN SRI DATUK CHANG MIN TAT)
JUDGE
FEDERAL COURT, MALAYSIA

Kuala Lumpur
2nd April 1980

In the Federal
Court of
Malaysia at
Kuala Lumpur

No.13
Judgment of
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2nd April 1980
(continued)

10 Date of Hearing: 13th March, 1980

Encik V.C.George (Encik K.S. Narayanan with him)
for Appellants
Solicitors: Messrs. Ng Ek Teong & Partners

Encik Wong Chong Wah for Respondent.
Solicitors: Messrs. Skrine & Co.

No. 14

ORDER OF FEDERAL COURT

20 IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT
KUALA LUMPUR
(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. 82 OF 1979

Between

1. Syarikat Bunga Raya-Timor
Jauh Sdn. Bhd.

2. United Holdings Berhad Appellants

And

Tractors Malaysia Berhad Respondent

(In the Matter of Kuala Lumpur High Court
Civil Suit No. C 1419 of 1978

30 Between

Tractors Malaysia Berhad Plaintiff

And

1. Syarikat Bunga Raya-Timor
Jauh Sdn. Bhd.

2. United Holdings Berhad Defendants)

No.14
Order of
Federal Court
2nd April 1980

In the Federal
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Kuala Lumpur

No. 14
Order of
Federal Court
2nd April 1980
(continued)

CORAN: RAJA AZLAN SHAH, CHIEF JUSTICE, HIGH COURT
MALAYA
CHANG MIN TAT, JUDGE, FEDERAL COURT
MALAYSIA
SYED OTHMAN, JUDGE, FEDERAL COURT, MALAYSIA

IN OPEN COURT

THIS 2ND DAY OF APRIL, 1980

O R D E R

THIS APPEAL coming on for hearing on the 13th day of March, 1980 in the presence of Mr. V.C. George (with Mr. K.S. Narayanan with him) of Counsel for the Appellants and Mr. Wong Chong Wah of Counsel for the Respondent AND UPON READING the Record of Appeal filed herein AND UPON HEARING the submissions of Counsel as aforesaid IT WAS ORDERED that the Appeal do stand adjourned for judgment AND the same coming on for judgment this day in the presence of Miss Kumarsamy of Counsel for the Appellants Mr. Wong Chong Wah of Counsel for the Respondent IT IS ORDERED that the Appeal be and is hereby dismissed to the extent that the judgment of the Honourable Mr. Justice Harun Hashim dated the 5th day of March, 1979 be varied and confirmed as follows:-

- (1) the sum of \$273,333.99 being arrears of rental in respect of the six leasings;
- (2) the sum of \$17,322.51 being interest due on the arrears of rentals in respect of the said six leasings up to the date of repossession or return of tractors;
- (3) further interest at 12% per annum on the arrears of rental in respect of the said six leasings as follows:-
 - (a) the sum of \$84,773.28 from 27.11.77 to the date of payment;
 - (b) the sum of \$188,560.98 from 6.12.77 to the date of payment;
- (4) the sum of \$19,900.00 being repossession expenses in respect of the said six leasings;

AND IT IS ORDERED that leave be and is hereby given to the Appellants to defend in respect of the three vehicles under Equipment Leasing Agreements Nos. P.J./Lease 22/75, P.J./Lease 23/75 P.J./Lease 21/75 AND IT IS ORDERED that the Appellants do pay to the Respondent the

costs of the High Court and before the Senior Assistant Registrar arising out of the application of the Respondent dated 29th day of July, 1978 AND IT IS LASTLY ORDERED that the costs of this Appeal be costs in the cause AND IT IS ORDERED that the sum of \$500.00 paid into Court by the Appellants as security for costs of this Appeal be and is hereby refunded to the Appellants

In the Federal Court of Malaysia at Kuala Lumpur

No.14
Order of
Federal Court
2nd April 1980
(continued)

10 GIVEN under my hand and the Seal of the Court this 2nd day of April, 1980.

Sd: Illegible

Senior Assistant Registrar
Federal Court, Malaysia
Kuala Lumpur.

No.15

AFFIDAVIT OF K.S.
NARAYANAN

No.15
Affidavit of
K.S.Narayanan
3rd May 1980

20 IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT
KUALA LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO.82 OF 1979

Between

1.Syarikat Bunga Raya-Timor
Jauh Sdn.Bhd

2.United Holdings Berhad Appellants

And

Tractors Malaysia Berhad Respondent

(In the Matter of Kuala Lumpur High Court
Civil Suit No. C 1419 of 1978

30 Between

Tractors Malaysia Berhad Plaintiff

And

1. Syarikat Bunga Raya-Timor
Jauh Sdn. Bhd.

2. United Holdings Berhad Defendants)

In the Federal
Court of
Malaysia at
Kuala Lumpur

No.15
Affidavit of
K.S. Narayanan
3rd May 1980
(continued)

A F F I D A V I T

I, K.S. NARAYANAN of full age, Malaysian
Citizen residing at No. 205, Jalan Ara,
Bandaraya, Kuala Lumpur do hereby affirm and
say as follows :-

1. I am an Advocate and Solicitor of the
High Court in Malaya and a partner of Messrs.
Ng Ek Teong & Partners, Solicitors for the
Appellants abovenamed.

2. I have had and continue to have the
conduct of this matter and am authorised by the
Appellants abovenamed to affirm this Affidavit
on their behalf. 10

3. On the 2nd day of April 1980, this
Honourable Court delivered a decision and
ordered :-

(a) that the Respondents be given leave
to sign final judgment against both
the Appellants for the arrears of
rentals in respect of the six (6) 20
Equipment Leasing Agreements to which
the letter of August 21st 1975 does
not refer, in such sums as the parties
will arrive at from the relevant
documents with interest thereon at the
agreed rate, up to the date of
repossession, and in one case, up to
the date of return and further interest
at 12% per annum on such arrears from 30
the date of repossession or return as
the case may be to the date of payment
with expenses of repossession included;
and

(b) that the Appellants be given leave to
defend in respect of three (3) vehicles
in connection with three (3) other
Equipment Leasing Agreements mentioned
in the letter of August 21st 1975.

4. The Appellants are desirous of appealing
to His Majesty the Yang Di-Pertuan Agong in
respect of that part of the said Order of the
Honourable Court referred to in Paragraph 3(a)
above. 40

5. The Appellants contend that the said Order
of Court granting leave to sign final judgment
isan interlocutory Order and consequently
pursuant to Section 74(i)(b) of the Courts of
Judicature Act 1964 an appeal shall lie to His

Majesty the Yang Di-Persuan Agong only if the Federal Court considers the matter to be a fit one for appeal.

In the Federal Court of Malaysia at Kuala Lumpur

6. It is respectfully contended that :-

No.15

Affidavit of K.S. Narayanan

3rd May 1980

(continued)

10

(a) the Federal Court erred in coming to the conclusion that the letter of 21st August 1975 does not refer to the six (6) Equipment Leasing Agreements and that in any event, whether the said letter refers to the said Leasing Agreements or not is in itself a triable issue;

(b) the fact that the residual value of the said six (6) Equipment Leasing Agreements was \$1/- at inception and subsequently varied to about \$55,000/- raises the inferences that :-

20

(i) there was an option to purchase the vehicles under the said Leasing Agreements at a nominal sum of the residual value of \$1/- at the end of the Leasing period; and

30

(ii) the subsequent variation of \$55,000/- makes it clear that the residual value was not purely a figure "nothing more or less than a book-keeping device" as found by the Federal Court but a figure which was intended to water down the option given to the Lessor; and

(iii) that the inferences in (b)(i) and (ii) above and its effects raise triable issues to be determined by a trial judge.

40

(c) the letter of 21st August 1975 read with the circumstances of the variation of the residual value as referred to in (b) above gave an option to the first Appellant to purchase the six (6) vehicles contained in the six (6) Equipment Leasing Agreements thereby making the transaction a Hire-purchase transaction;

(d) if the Defendant alleges illegality and there are facts before the Court which support such allegation and the Plaintiff contends to the contrary as in the

In the Federal
Court of
Malaysia at
Kuala Lumpur

No.15
Affidavit of
K.S.Narayanan
3rd May 1980
(continued)

situation obtaining the instant case,
and where two separate inferences could
be drawn from the facts before the
Court the matter can only be resolved
by a trial during which evidence
would have to be lead in open Court
in support of the respective conten-
tions of the parties.

7. It is respectfully contended that this
matter is a fit and proper case for appeal
particularly as :- 10

(a) the Appellants have an arguable case
for reversing the conclusion of the
Federal Court granting the Respondents
final leave to sign Judgment as
triable issues exist; and

(b) one of the main contentions of the
1st and 2nd Appellants was and still
is that the relevant Equipment Leasing
Agreements are unenforceable against
them by the Respondents as they are
contrary to the Hire-Purchase Act
1967 and consequently illegal; and 20

(c) that if this leave to appeal is not
granted, the Appellants stand to lose
a sum of approximately \$400,000/-
which the Appellants allege the
Respondents would have obtained on
enforcing an illegal transaction.

8. In the alternative, the Appellants contend
that the Order of the Honourable Court referred
to in Paragraph 3(a) above is a final Order and
consequently pursuant to Section 74(i)(a) of
the Courts of Judicature Act 1964, an appeal
shall lie to His Majesty the Yang Di-Pertuan
Agong if the matter in dispute amounts to a
value in excess of \$25,000/-. This appeal has
a value of approximately \$400,000/- and it is
respectfully contended that in those circum-
stances, the Appellants should be given leave
to appeal to His Majesty the Yang Di-Pertuan
Agong. 30 40

9. The Appellants further hereby respectfully
apply for a stay of execution of the said
Order pending appeal to the Privy Council on
the grounds stated in Paragraphs 10, 11, 12, 13,
14, 15 and 16 of the Affidavit of Koh Kim Chai
affirmed on the 19th day of February 1980 and
filed in the High Court and which is annexed
to this Affidavit and marked "KSN1". 50

10. I humbly pray and this Honourable Court will grant an Order in terms of this application.

In the Federal Court of Malaysia at Kuala Lumpur

AFFIRMED by K.S. Narayanan)
at Kuala Lumpur in the) Sd: K.S.Narayanan
Federal Territory this)
3rd day of May 1980 at)
10.45 am)

No.15
Affidavit of
K.S. Narayanan
3rd May 1980
(continued)

Before me,

10

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.

No.16

20

AFFIDAVIT OF WONG
CHONG WAH

No.16
Affidavit of
Wong Chong Wah
13th May 1980

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT
KUALA LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO: 82 OF 1979

Between

1. Syarikat Bunga Raya-Timor
Jauh Sdn. Bhd.

2. United Holdings Berhad

Appellants

And

30

Tractors Malaysia Berhad

Respondent

(In the Matter of Kuala Lumpur High Court
Civil Suit No. C 1419 of 1978)

Between

Tractors Malaysia Berhad

Plaintiff

And

In the Federal
Court of
Malaysia at
Kuala Lumpur

No.16
Affidavit of
Wong Chong Wah
13th May 1980
(continued)

1. Syarikat Bunga Raya-Timor
Jauh Sdn. Bhd.
 2. United Holdings Berhad
- Defendants

A F F I D A V I T

I, WONG CHONG WAH of full age, of 3rd Floor, Straits Trading Building, 4 Leboh Pasa Besar, Kuala Lumpur, affirm and say as follows:-

1. I am a partner in Messrs. Skrine & Co., Advocates and Solicitors for the Respondent abovenamed and I am in charge of this matter. 10
2. On the 5th day of March 1979 the High Court at Kuala Lumpur in Civil Suit No.1419 of 1978 gave Judgment in favour of the Plaintiff against the Defendants herein and ordered that the Plaintiff be at liberty to sign final judgment against the Defendants for the sum of \$432,663.41 being arrears of rental and the sum of \$27,887.45 being interest due on unpaid rentals up to the date of repossession or return of tractors. 20
3. The abovenamed Appellants appealed against the said Judgment and the appeal was heard in the Federal Court of Malaysia at Kuala Lumpur on the 13th day of March 1980 when at the conclusion of the hearing, Judgment was reserved.
4. On the 2nd day of April 1980, the Federal Court gave judgment confirming in part the High Court's Judgment and allowing in part the Appellants' Appeal against the High Court's Judgment in that the Judgment sum was reduced to \$310,556.50 plus interest. 30
5. The Respondent is dissatisfied with the said Judgment of the Federal Court.
6. The said Judgment is an interlocutory Judgment or Order in a civil matter which is a fit one for appeal.
7. The Respondent is willing to enter into good and sufficient security for the due prosecution of the Appeal to the Yang Di-Pertuan Agung and the payment of costs herein, and to abide by any other conditions that may be imposed by this Honourable Court. 40
8. I pray that this Honourable Court will be pleased to grant to the Respondent leave to appeal to His Majesty the Yang Di-Pertuan Agung.

AFFIRMED at Kuala Lumpur)
this 13th day of May,) Sd: Wong Chong Wah
1980

In the Federal
Court of
Malaysia at
Kuala Lumpur

Before me,
Sd: Theh Liang Peng, P.P.N.
Commissioner for Oaths
Kuala Lumpur

No.16
Affidavit of
Wong Chong Wah
13th May 1980
(continued)

10 This Affidavit is filed by Messrs. Skrine & Co.
Straits Trading Building, No.4 Leboh Pasar Besar,
Kuala Lumpur, Solicitors for the Respondent
abovenamed.

No. 17

NOTICE OF MOTION OF
APPELLANTS FOR CONDITIONAL
LEAVE

No.17
Notice of
Motion of
Appellants for
Conditional
Leave

3rd June 1980

IN THE FEDERAL COURT OF MALAYSIA
(APPELLATE JURISDICTION)
CIVIL APPEAL NO. 82 OF 1979

Between

20 1. Syarikat Bunga Raya-Timor
Jauh Sdn. Bhd.
2. United Holdings Berhad Appellants
And
Tractors Malaysia Berhad Respondent

(In the Matter of Kuala Lumpur High Court
Civil Suit No. C1419 of 1978

Between

30 Tractors Malaysia Berhad Plaintiff
And
1. Syarikat Bunga Raya-Timor
Jauh Sdn.Bhd.
2. United Holdings Berhad Defendants)

NOTICE OF MOTION

TAKE NOTICE that on Tuesday 24th day of

In the Federal
Court of
Malaysia at
Kuala Lumpur

June 1980 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 Appellants
will move the Court for an Order :-

No.17
Notice of
Motion of
Appellants for
Conditional
Leave
3rd June 1980
(continued)

- (a) that conditional leave be granted to
the abovenamed Appellants to appeal
to His Majesty the Yang Di-Pertuan
Agong against that part of the
decision of this Honourable Court
given on the 2nd day of April 1980
granting leave to the Respondents to
sign final judgment against both the
Appellants for the arrears of rental
in respect of six (6) Equipment
Leasing Agreements with interest
thereon up to the date of repossession,
and in one case up to the date of
return, of the Equipment and further
interests at 12% per annum on such
arrears from the date of repossession
or return as the case may be to the
date of payment and repossession
expenses incurred; AND 10
- (b) that the execution of that part of
the Order referred to in (a) above
and all proceedings to enforce that
part of the Order be stayed pending
the disposal of the appeal; AND 20
- (c) that the costs of and incidental to
this application be costs in the cause. 30

Sd: Ng Ek Teong & Partners
Solicitors for Appellants
abovenamed

Dated at Kuala Lumpur this 3rd day of June
1980.

Sd: Illegible
Chief Registrar
Federal Court
Kuala Lumpur.

To: The Respondents and/or their
Solicitors Messrs. Skrine & Co.
Straits Trading Building,
4 Leboh Pasar Besar
Kuala Lumpur 40

This Application will be supported by the
Affidavit of K.S. Narayanan affirmed on the
3rd day of May 1980 and filed herein.

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

In the Federal Court of Malaysia at Kuala Lumpur

No.17
Notice of Motion of Appellants for Conditional Leave
3rd June 1980
(continued)

No. 18

NOTICE OF MOTION OF
RESPONDENTS FOR
CONDITIONAL LEAVE

No.18
Notice of Motion of Respondents for Conditional Leave

3rd June 1980

10 IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT
KUALA LUMPUR
(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO: 82 OF 1979

Between

1. Syarikat Bunga Raya-Timor
Jauh Sdn. Bhd.
2. United Holdings Berhad Appellants

And

Tractors Malaysia Berhad Respondent

20 (In the Matter of Kuala Lumpur High Court
Civil Suit No. C 1419 of 1978)

Between

Tractors Malaysia Berhad Plaintiff

And

1. Syarikat Bunga Raya-Timor
Jauh Sdn. Bhd.
2. United Holdings Berhad Defendants

NOTICE OF MOTION

30 TAKE NOTICE that the Court will be moved
on Tuesday the 24th day of June 1980, at 9.30

In the Federal
Court of
Malaysia at
Kuala Lumpur

Nol8
Notice of
Motion of
Respondents for
Conditional
Leave

3rd June 1980

(continued)

o'clock in the forenoon or as soon thereafter
as Counsel can be heard Mr. Wong Chong Wah
of Counsel for the abovenamed Respondent,
Tractors Malaysia Berhad, for an Order :-

(a) that conditional leave be granted
to the Respondent to appeal to His
Majesty the Yang Di-Pertuan Agung
against the decision of this
Honourable Court given on the 2nd day
of April, 1980

10

(b) that the costs of and incidental
to this application be costs in the
cause.

Sd: Skrine & Co.
Solicitors for the
Respondent abovenamed

Dated at Kuala Lumpur this

Sd: Illegible
Senior Assistant Registrar,
Federal Court, Malaysia
Kuala Lumpur.

20

To:-

Messrs. Ng Ek Teong & Partners,
2nd Floor, Bangunan Persatuan Hokkien
Selangor, Jalan Raja Chulan,
Kuala Lumpur, Solicitors for the
Appellants abovenamed.

The address for service on the Respondent is
Messrs. Skrine & Co., Straits Trading Building,
No4 Leboh Pasar Besar, Kuala Lumpur, Solicitors
for the Respondent abovenamed.

30

No. 19

ORDER GRANTING CONDITIONAL
LEAVE TO APPEAL

In the Federal
Court of
Malaysia at
Kuala Lumpur

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT
KUALA LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO: 82 OF 1979

No.19

Order granting
Conditional
Leave to Appeal

24th June 1980

Between

1. Syarikat Bunga Raya-Timor
Jauh Sdn. Bhd.

10

2. United Holdings Berhad

Appellants

And

Tractors Malaysia Berhad

Respondent

(In the Matter of Kuala Lumpur High Court
Civil Suit No: C 1419 of 1978)

Between

Tractors Malaysia Berhad

Plaintiff

And

1. Syarikat Bunga Raya-Timor
Jauh Sdn. Bhd.

20

2. United Holdings Berhad

Defendants)

CORAM: RAJA AZLAN SHAH, CHIEF JUSTICE, HIGH
COURT, MALAYA:
CHANG MIN TAT, JUDGE, FEDERAL COURT,
MALAYSIA:
SYED OTHMAN, JUDGE, FEDERAL COURT,
MALAYSIA

IN OPEN COURT

THIS 24TH DAY OF JUNE 1980

30

UPON MOTION made on to Court on the 24th
day of June 1980 by Mr.V.C.George, Counsel for
the Appellants abovenamed and by Mr. Wong Chong
Wah, Counsel for the Respondent abovenamed
AND UPON READING the Appellants' Notice of Motion
dated the 3rd of June 1980 and the Affidavit of
K.S. Narayanan affirmed on the 3rd of May 1980,
the Respondent's Notice of Motion dated the 3rd
day of June 1980 and the Affidavit of Wong Chong
Wah dated the 13th of May 1980, all filed herein
AND UPON HEARING Counsel for the Appellants and
Counsel for the Respondent as aforesaid

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In the Federal
Court of
Malaysia at
Kuala Lumpur

No.19
Order granting
Conditional
Leave to Appeal
24th June 1980
(continued)

IT IS ORDERED that leave be and is hereby granted to the Appellants to appeal to His Majesty the Yang di-Pertuan Agong against that part of the decision of this Honourable Court given on the 2nd day of April 1980 granting leave to the Respondent to sign final judgment against both the Appellants for the arrears of rental in respect of six (6) Equipment Lease Agreements with interest thereon up to the date of repossession and one case up to the date of return of the equipment and further interest at 12% per annum on such arrears from the date of repossession or return as the case may be to the date of payment and for repossession expenses incurred, upon the following conditions :-

10

(a) that the Appellants abovenamed do within three (3) months from the date hereof enter into good and sufficient security to the satisfaction of the Chief Registrar, Federal Court, Malaysia in the sum of \$5,000/- only for the due prosecution of the appeal and

20

(b) that the Appellants abovenamed do within the period of three (3) months from the date hereof take the necessary steps for the purpose of procuring the preparation of the record and for the despatch thereof to England.

30

AND IT IS ORDERED that leave be and is hereby granted to the Respondent to appeal to His Majesty the Yang di-Pertuan Agong against the decision of the Federal Court given on the 2nd day of April 1980 upon the following conditions:-

(i) that the Respondent abovenamed do within three (3) months from the date hereof enter into good and sufficient security to the satisfaction of the Chief Registrar, Federal Court, Malaysia in the sum of \$5,000/- only for the due prosecution of the appeal and

40

(ii) that the Respondent abovenamed be exempted from the preparation of the Record of Appeal and its despatch to England and

(iii) that in default by the Appellants abovenamed to proceed with the preparation of the Record of Appeal

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and its despatch to England within three (3) months from the date hereof the Respondent shall have three (3) months from the 24th September 1980 within which to procure the preparation of the Record of Appeal and its despatch to England.

In the Federal Court of Malaysia at Kuala Lumpur

No.19
Order granting
Conditional
Leave to Appeal
24th June 1980
(continued)

10 AND IT FURTHER ORDERED that the appeal by the Appellants and the appeal by the Respondent to His Majesty the Yang di-Pertuan Agong be and is hereby consolidated pursuant to Rule 124 of the Federal Court 1980 and that the Appellants' appeal be the main appeal AND IT IS
20 FURTHER ORDERED that the Appellants' prayer (b) contained in the Appellants' Notice of Motion dated the 3rd day of June 1980 requesting for stay of execution of the Judgment of this Honourable Court given on the 2nd of April 1980, pending appeal on the said judgment to His Majesty the Yang di-Pertuan Agong be refused
AND IT IS LASTLY ORDERED that costs of the Appellants' application and the Respondent's application be costs in the cause.

Given under my hand and seal of the Court this 24th day of June 1980.

Sgd: Illegible

SENIOR ASSISTANT REGISTRAR
FEDERAL COURT MALAYSIA
KUALA LUMPUR

30 This Order is filed by M/s Ng Ek Teong & Partners of 2nd Floor, Bangunan Persatuan Hokkien Selangor, Jalan Raja Chulan, Kuala Lumpur, Solicitors for Appellants abovenamed.

In the Federal
Court of
Malaysia at
Kuala Lumpur

No.20
Order granting
final leave to
appeal to
H.M.the Yang
Di-Pertuan
Agong

11th October
1980

No. 20

ORDER GRANTING FINAL
LEAVE TO APPEAL TO
H.M. THE YANG DI-PERTUAN
AGONG

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT
KUALA LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO: 82 OF 1979

Between

10

1. Syarikat Bunga Raya-Timor
Jauh Sdn. Bhd.
2. United Holdings Berhad Appellants

And

Tractors Malaysia Berhad Respondent

(In the Matter of Kuala Lumpur High Court
Civil Suit No. C 1419 of 1978)

Between

Tractors Malaysia Berhad Plaintiff

20

And

1. Syarikat Bunga Raya-Timor
Jauh Sdn. Bhd.
2. United Holdings Berhad Defendants)

CORAM: RAJA AZLAN SHAH, CHIEF JUSTICE, HIGH
COURT, MALAYA;
SYED OTHMAN, JUDGE, FEDERAL COURT,
MALAYSIA;
ABDUL HAMID, JUDGE, FEDERAL COURT,
MALAYSIA

IN OPEN COURT

30

THIS 11TH DAY OF OCTOBER 1980

UPON MOTION made on to Court this day
by Encik K.S. Narayanan of Counsel for the
Appellants abovenamed and also mentioning on
behalf of the Solicitors for the Respondent
AND UPON READING the Notice of Motion dated
the 26th day of September 1980 and the
Affidavit of K.S. Narayanan affirmed on the
23rd day of September 1980 AND UPON HEARING
Counsel for the Appellants aforesaid IT IS
ORDERED that final leave be and is hereby

40

10 granted to the Appellants to appeal to His Majesty the Yang Di-Pertuan Agong from that part of the decision of this Honourable Court given on the 2nd day of April 1980 granting leave to the Respondent to sign final judgment against both the Appellants for arrears of rental in respect of six (6) Equipment Lease Agreements with interest up to the date of repossession and in one case up to the date of return of equipment and further interest at 12% per annum on such arrears from the date of repossession or return as the case may be to the date of payment and repossession of expenses incurred.

GIVEN under my hand and the Seal of the Court this 11th day of October 1980.

Sd: (Illegible)

20 SENIOR ASSISTANT REGISTRAR
FEDERAL COURT
KUALA LUMPUR
MALAYSIA.

In the Federal Court of Malaysia at Kuala Lumpur

No.20
Order granting final leave to appeal to H.M. the Yang Di-Pertuan Agong

11th October 1980

(continued)

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

DEFENDANTS
EXHIBIT —

DEFENDANTS EXHIBIT

"K.C.C.1"

LETTER PLAINTIFFS TO FIRST
DEFENDANT

Letter
Plaintiffs to
First Defendant

21st August
1975

TRACTORS
MALAYSIA BERHAD

Incorporated in Malaysia Jalan 205 Petaling Jaya,
Selangor, Malaysia P.O.Box 2 Petaling Jaya,
Telephone: 779822 Telegram and Telex: "TRACTORS"
Telex: MA 37594

10

Our ref: PJ/S/M45

21st August, 1975

Syarikat Bunga Raya-Timor
Jauh Sendirian Berhad
6th Floor, Oriental Plaza
P.O.Box 1013
KUALA LUMPUR

Attention: Mr. K.C.Koh

Dear Sirs

LEASE AGREEMENTS FOR CATERPILLAR EQUIPMENT

20

Further to your discussion with the writer and
our General Manager Sales, we wish to confirm
the following arrangements :-

1. We attach herewith our equipment lease agreements for two (2) units Cat D6C DD and one (1) unit Cat D7F DD all complete with Carco Winches. The details and terms of the lease are as per the agreements attached. We will deliver the above units by the 27th/28th August, 1975. 30
2. As agreed, we will allow yourselves thirty (30) days after delivery of the units to decide on your machine model preference, which will then determine our replacement unit to yourselves. Should you decide to retain both models after thirty days, the given lease agreements will be maintained.
3. We will allow yourselves two or three months grace towards the payment of your lease instalments during the monsoon period only on condition that your project is seriously affected by weather conditions. 40

However, as agreed, you will pay your overdue interest promptly when due during this period. Also, after this period of grace, you will keep your accounts current after a few months, and it has also been agreed that your account should not left for more than three months at any time.

DEFENDANTS
EXHIBIT

"K.C.C.1"

Letter
Plaintiffs to
First Defendant

21st August
1975

(continued)

- 10 4. We will hold the price of either the Cat D6C or the Cat D7F whichever you decide to purchase up till March, 1976 in consideration of your desire to purchase another seven or eight units by then.
5. As agreed, the option to purchase for the machines will be exercised by Syarikat Bunga Raya-Timor Jauh Sendirian Berhad or its assigness.

We trust that the arrangements confirm our discussion and we wish to assure you of our best services and attention at all times.

20 Yours faithfully,
for TRACTORS MALAYSIA BERHAD

Sd:

LIM KOH CHIN
Sales Manager

LKC/jl

Encl.

PLAINTIFFS
EXHIBITS

PLAINTIFFS EXHIBITS

"W.C.C.7"

"W.C.C.7"
(1) Equipment
Lease Agreement
21/75
2 September 1975
(2) Schedule
thereto

- (1) EQUIPMENT LEASE AGREEMENT
21/75
- (2) SCHEDULE THERETO
- (3) GUARANTEE AND INDEMNITY IN
RESPECT THEREOF
- (4) VARIATION AGREEMENT
- (5) SCHEDULE TO VARIATION AGREEMENT

(3) Guarantee
and Indemnity in
respect thereof
2 September 1975

TRACTORS MALAYSIA BERHAD
(Incorporated in Malaysia)

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(4) Variation
Agreement
23 June 1977
(5) Schedule to
Variation
Agreement

EQUIPMENT LEASE AGREEMENT

AN AGREEMENT made the 2nd day of September 1975
between TRACTORS MALAYSIA BERHAD of Jalan 205,
P.O.Box 2 Petaling Jaya (hereinafter with its
successors and assigns referred to as "the
Lessor") of the one part and the person or
company whose name and address is set out in
the Schedule hereto (hereinafter referred to
as "the Lessee") of the other part

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WHEREAS at the request of the Lessee the
Lessor if it does not already own them has
agreed to purchase the goods described in the
Schedule hereto (hereinafter referred to as
"the goods") for the sole purpose of leasing
the goods to the Lessee Upon and Subject to the
terms and conditions herein contained.

NOW IT IS HEREBY AGREED as follows :-

1. The Lessor hereby lets and the Lessee takes
on lease from the Lessor the goods for the term
of years stated in the Schedule hereto (herein-
after referred to as "the said term").

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2. The Lessee shall punctually pay to the
Lessor during the said term the monthly rental
stated in the Schedule hereto payable in advance
on the first day of each month All payments
of rental hereunder shall be paid to the Lessor
at the address stated herein or at such other
address as the Lessor may from time to time
specify and payments made by post shall be at
the risks of the Lessee.

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3. The Lessee acknowledges that the goods are
and throughout the period of this Lease shall
remain the sole property of the Lessor and the
Lessee shall have no right of property therein

but is merely a bailee to use the same subject to the terms and conditions herein contained.

PLAINTIFFS
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4. The Lessee shall throughout the said term

- (1) Equipment Lease Agreement: 21/75
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- (i) Keep the goods in good and servicable repair and condition (fair wear and tear only excepted) and will if the goods shall be or become in any way out of order or repair have the same repaired or replaced by the Lessor or its nominee only and by no other person or firm and repay to the Lessor the full cost of such repair or replacement and the Lessor shall be entitled to possession of the goods for the purpose of repair or replacement and shall have a lien on the goods until such repayment by the Lessee but exercise of such lien shall not prevent the accrual of rental hereunder;

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- (ii) Punctually pay all registration charges licence fees rent rates taxes and other outgoings payable in respect of the goods or the use thereof or in respect of any premises in which the goods may from time to time be placed or kept and if so required by the Lessor produce to the Lessor on demand the last receipts for all such payments and in the event of the Lessee making default under the sub-clause the Lessor shall be at liberty to make all or any such payments and the Lessee agrees to reimburse the Lessor such amounts;

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- (iii) Permit the Lessor or its servants or agents at all reasonable times to enter upon the premises in which the goods are for the time being placed or kept for the purpose of testing or inspecting the condition of the goods;

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- (iv) Keep the goods in the possession and control of the Lessee at the address set out in the Schedule hereto or at such other address as may from time to time be approved in writing by the Lessor;

- (v) Notify the Lessor of any change in the Lessee's address and upon request by the Lessor promptly inform the Lessor

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(continued)

of the whereabouts of the goods.

5. The Lessee will indemnify the Lessor and keep the Lessor indemnified at all times against

(i) Loss of the goods or any part thereof by confiscation, forfeiture or seizure whether under distress for rent, execution or other legal process;

(ii) Loss, destruction of or damage to the goods or any part thereof by fire accident theft or any other causes whatsoever and whether or not resulting from the negligence of the Lessee;

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(iii) All claims and demands arising out of the use operation or keeping of the goods.

6. (i) The Lessee shall immediately after the signing of this Lease at its own cost insure and keep the goods insured throughout the said term in the name of the Lessor for not less than the amounts set out in the Schedule hereto under the heading "Insurable Values" in some insurance company approved by the Lessor under a comprehensive policy of insurance against loss or damage by accident fire theft and such other risks as the Lessor may from time to time require.

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(ii) The Lessee shall punctually pay all premiums payable under the said policy and produce the receipts for such payments to the Lessor on demand and to maintain the said policy in full effect and not to permit or suffer any act matter or thing whereby the said policy will or may be prejudicially affected or invalidated.

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(iii) In the event of any claim arising under any insurance hereunder the Lessee shall give to the Lessor immediate written notice thereof and will comply with all requests and instructions of the Lessor in connection with any claim and subsequent dealings with the insurers and hereby irrevocably authorises the Lessor to adjust or compromise any such claim as the Lessor may think fit and to receive any monies

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payable in respect thereof and to give effective receipts and discharges therefor and in the event of any claim being disputed by the insurer to take all such steps actions or proceedings as the Lessor shall deem necessary in the joint names of the Lessee and the Lessor or otherwise as the Lessor may think fit for the purpose of enforcing any of the Lessor's rights and remedies and generally to act for and on behalf of the Lessor and Lessee in respect of such claim as the Lessor may think fit. The Lessor shall be entitled to receive to the exclusion of the Lessee and to retain subject to the terms of this agreement without thereby divesting itself of the property in the goods or in the salvage thereof all monies payable by the insurers under any policy in consequence of the loss or destruction of or damage to the goods within the meaning of the provisions of any insurance Provided however that if the Lessee is not in default under the terms of this agreement and the goods are damaged but capable of repair the Lessor will apply any moneys received from the insurer in respect of such damage under the insurance referred to in Clause 6(i) herein towards the cost of the repairs. Provided further that the Lessor may at any time cancel such insurance or alter or vary any part or portion of the risks covered or the terms of insurance and any rebate of premium received by the Lessor shall be placed to the credit of the Lessee in respect of any moneys due owing or payable or becoming due or payable by the Lessee to the Lessor hereunder.

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- (continued)

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- (iv) If the goods be totally lost or destroyed or damaged beyond repair then subject to the provisions of Clause 5 (i) and (ii) this Lease shall ipso facto terminate and notwithstanding the provisions of Clause 19(ii) the Lessee shall forthwith pay to the Lessor the sum of the unpaid rentals under this Lease up to the date of loss, destruction or damage plus the insurance value of the goods at that date less the amount received by the Lessor from the insurer of the goods. But save as

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provided in this Clause the loss of or damage to the goods shall not affect the continuance of this Lease or the Lessee's liability for payment of rental hereunder.

(v) The Lessee may at its own expense insure the Lessee's interest in the goods.

(vi) The Lessee will at the Lessee's own expense insure and keep insured during the period of this Lease in an insurance company nominated by the Lessor the goods in the joint names of the Lessor and the Lessee for an amount and subject to terms approved by the Lessor all insurable liability in respect of injury to all persons (whether officers employees agents contractors occupiers licensees invitees trespassers or any members of the public) and whether or not upon the premises at which the goods are situated and damage to property and will on request by the Lessor provide evidence to the satisfaction of the Lessor of the currency of such last mentioned insurance. 10

7. The Lessee will use operate maintain and store the goods in a skilful and proper manner and shall obtain all necessary licences permits and permissions for the use of the goods and not use the goods or permit the same to be used contrary to any law regulation or bye-law relating thereto for the time being in force Provided that if the Lessee shall contravene or fail to comply with any statutory or other requirements as aforesaid then the Lessor may so comply and the Lessee will forthwith indemnify the Lessor against all costs charges and expenses incurred by the Lessor in connection therewith. 30 40

8. The Lessee will not cause or permit the goods to be affixed to any real property without the written consent of the Lessor Provided that if the goods are with such consent affixed to any land or building the Lessee shall ensure that such goods shall be capable of being removed without material injury to the said land or building and that all such steps shall be taken as are necessary to prevent title from passing to the owner of the said land or building. 50

9. The Lessee will maintain on the goods any insignia or identification marks or plates and will not remove or deface the same.

PLAINTIFFS
EXHIBITS

"W.C.C.7"

10. This Agreement is a personal one between the Lessor and the Lessee and the Lessee has no interest assignable in equity or at law in this agreement or in the goods and will not during the said term agree to, attempt, offer or purport to

(1) Equipment
Lease Agreement
21/75
2 September 1975

(2) Schedule
thereto

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(i) sell assign sublet pledge mortgage charge incumber or part with possession of or otherwise deal with the equipment or any interest therein nor create nor allow to be created any lien on the property whether for repairs or otherwise and in the event of the breach of this sub-clause by the Lessee the Lessor shall be entitled (but shall not be bound) to pay to any third party such sum as is necessary to procure the release of the goods and shall be entitled to recover such sum from the Lessee forthwith;

(3) Guarantee
and Indemnity in
respect thereof
2 September 1975

(4) Variation
Agreement
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(continued)

(ii) sell mortgage charge demise sublet or otherwise dispose of any land or building on or in which the goods are kept without giving the Lessor at least six weeks' prior notice in writing and the Lessee shall in any event ensure that any such sale mortgage charge demise sublease or other disposition as the case may be is made subject to the right of the Lessor to repossess the goods at any time (whether or not the same or any part thereof shall have become affixed to the said land or building) and for that purpose to enter upon such land or building and sever any part of the goods affixed thereto.

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11. As between the Lessor and the Lessee and their respective successors in title the said goods shall remain personal property and shall continue in the ownership of the Lessor notwithstanding that the same may have been affixed to any land or building. The Lessee shall be responsible for any damage caused to any such land or building by the affixing of the said goods thereto or the removal of the said goods therefrom (whether such affixing or removal be effected by the Lessor or the Lessee) and shall

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indemnify the Lessor against any claim made in respect of such damage.

12. The Lessee assumes all risks and liability for the goods and for the use operation and storage thereof and for injuries to or deaths of persons and damage to property howsoever arising from or incidental to such use operation or storage whether such injury to or death of person be of agents or employees of the Lessee or of third parties and such damage to property be of the Lessee or of others. The Lessee will save and hold the Lessor harmless from all losses damages claims penalties liabilities and expenses including legal costs howsoever arising or incurred because of or incidental to the goods or the use operation or storage or alleged use operation or storage thereof.

13. The Lessee acknowledges and agrees with the Lessor :-

(a) that the goods are of a size, design, capacity and manufacture selected by the Lessee.

(b) that the Lessee is satisfied that the goods are suitable for its purpose.

(c) that the Lessor is not the manufacturer of the goods in property of such kind.

(d) that having inspected the goods the Lessee has signed this agreement relying entirely on its own judgment and not on any statements made by the Lessor or the agents or servants of the Lessor.

(e) that no warranty of fitness or that the goods are merchantable shall apply to this agreement.

(f) that the goods are accepted by the Lessee with all faults and defects (if any) and delivery shall be conclusive evidence that the goods are in good and substantial working order and condition.

(g) that the Lessor has not made and does not hereby make any representation or warranty with respect to the merchantability condition, quality, durability or suitability of the goods in any respect.

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(h) that all promises warranties and conditions express or implied by Statute or otherwise whether given hereunder or collateral hereto or otherwise are hereby expressly negated and extinguished.

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(1) Equipment Lease Agreement 21/75

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(i) that the Lessor shall not be liable to the Lessee either in contract or in tort for any liability claim loss damage or expense of any kind or nature;

(i) caused directly or indirectly by goods or any inadequacy thereof for any purpose or any defect therein or by the use thereof or

(ii) in relation to any repairs servicing maintenance or adjustments thereto to any delay in providing or failure to provide the same or in relation to any interruption or loss of use thereof or any loss of business or any damage whatsoever and however caused.

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14. Time shall be of the essence of this contract in so far as it relates to obligations or agreements of the Lessee.

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15. The Lessee shall not be liable for fair wear and tear of the equipment and the burden of depreciation resulting from any such fair wear and tear shall fall upon the Lessor who shall be entitled to claim all capital allowances in respect of the goods.

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16. If the Lessee shall make default in payment of any moneys payable under this Agreement the Lessee shall pay to the Lessor on the sum or sums in arrears interest at the rate of 12 per centum per annum calculated on a daily basis and to accrue after as well as before any judgment without prejudice to the Lessor's rights under any other of the terms and conditions herein expressed or implied.

17. The Lessee warrants that every statement made and every particular given by the Lessee in relation to the transaction effected by this Agreement is true and correct in every particular and acknowledges that the Lessor entered into this Agreement relying on such warranty.

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18. If during the term of the Lease

- (a) the Lessor ascertains that the Lessee has made a false statement in the course of negotiations preceding this Agreement or in relation to the transaction effected by this Agreement; or
- (b) the Lessee fails to pay any sums payable hereunder; or
- (c) the Lessee fails to observe or perform any term, condition or provision of this Agreement on the part of the Lessee to be observed or performed; or 10
- (d) the Lessee commits or suffers an act of bankruptcy or being a company any steps or proceedings are taken to have the Lessee wound up or if a meeting of the Lessee's creditors is called or the Lessee makes any composition with the Lessee's creditors or a distress or execution is threatened or levied upon or against the Lessee's goods; or 20
- (e) if any insurance proposal made by the Lessee in respect of the goods be declined or any insurance policy in respect of the goods be cancelled; or
- (f) if the Lessee shall do or permit any act likely to endanger the safety or condition of the goods or prejudice or jeopardise the Lessor's ownerships of the goods; or 30
- (g) if the Lessee shall fail to give any requisite notice to the Lessor under this Agreement,

then in each and every such event the rentals for the balance of the said term shall thereupon become due and payable by the Lessee without prejudice to any pre-existing liability of the Lessee and the Lessor shall forthwith and without notice or demand become entitled to immediate possession of the goods and if the Lessor sees fit the Lessor may: 40

- (i) without prejudice to any other of the Lessor's rights under this Agreement forthwith and without notice terminate this Lease for all purposes and retake

possession of the goods and for that purpose the Lessor by its agents or servants may enter upon any land or premises where the goods are or where the Lessor or its agents or servants reasonably suspect that they are and for the purpose of such entry open any gate door or fastening and detach and dismantle the goods from any part of the land or premises to which it may be affixed and the Lessee shall be responsible for all damage caused to the land or buildings by such removal;

(ii) alternatively, by written notice left at or sent by post to the Lessee's last known address or to the registered office of the Lessee terminate the leasing created hereby and upon such notice being left or sent this Lease shall for all purposes determine and the Lessee shall no longer be in possession of the goods with the consent of the Lessor and the Lessee shall forthwith return the goods to the Lessor at the Lessee's own expense and in default thereof the Lessor may repossess and retake the goods in the manner prescribed by the preceding Clause 18(i) herein.

19. (i) Upon the expiration or other determination of the Lease the Lessee shall forthwith deliver to the Lessor the insurance policy or policies and Certificate or Certificates of Insurance & Registration Book (if any) relating to the goods as well as the goods in a good state of repair and condition and with all such additions alterations and improvements as shall have been made thereto.

(ii) Upon the termination of the Lease (other than by effluxion of time) the Lessee shall pay to the Lessor :-

- (a) any arrears of rentals accrued as at the date of termination
- (b) any sums other than rentals which may have become payable under this Agreement
- (c) any expenses incurred by the Lessor in tracing and/or recovering possession of the goods, or

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23 June 1977

(5) Schedule to Variation Agreement

(continued)

PLAINTIFFS
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in enforcing the provisions of
this Lease;

"W.C.C.7"

(1) Equipment
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21/75

(d) an amount equal to the unpaid
rentals for the remainder of the
period of this Lease

2 September 1975

(2) Schedule
thereto

~~20. If the Lessee having observed and performed
all the covenants and conditions of this Lease
shall desire to renew this Lease and shall
give notice of such desire not less than
months prior to the expiry of the term hereby
created the Lessee shall be entitled to a new
Lease of the goods for a term of years
commencing on the date of expiration of the
Lease at a rental to be agreed upon but other-
wise upon the same terms and conditions as
those herein contained excluding the right of
renewal as aforesaid~~

(Delete
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(3) Guarantee
and Indemnity in
respect thereof
2 September 1975

(4) Variation
Agreement
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(5) Schedule to
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21. No dealer or supplier through whom this
Lease was negotiated or by whom the goods were
supplied nor any agent or servant of the dealer
or supplier is or is to be deemed the agent of
the Lessor for any purpose whatsoever and no
liability is to be attached to the Lessor for
any condition warranties or representation
made by such dealer or supplier or agents or
servants thereof.

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(continued)

22. No relaxation forbearance delay or indul-
gence by the Lessor in enforcing any of the
terms and conditions of this Lease or the
granting of time by the Lessor to the Lessee
shall prejudice affect or restrict the rights
and powers of the Lessor hereunder nor shall
any waiver by the Lessor of any breach hereof
operate as a waiver of any subsequent or
continuing or recurrent breach hereof. All
rights and remedies conferred by this Agreement
shall be cumulative and in addition to every
other right and remedy available by law to the
Lessor.

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23. Any notice required or permitted to be
given to the Lessee under this Agreement may
be served upon the Lessee personally or left
at or sent by post to the Lessee's last known
address or registered office and if left at
such address shall take effect from the time
of such leaving and if sent by post be
conclusively deemed to have been received by
the Lessee within forty-eight hours after the
time of posting Any notice required to be given
by the Lessee under this Agreement shall be
in writing and sent by prepaid registered post

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to the Lessor at the address stated in this Agreement or such other address as may from time to time be notified to the Lessee.

PLAINTIFFS
EXHIBITS

"W.C.C.7"

24. The Lessor shall be entitled to assign its rights, benefits and interest under this Agreement.

(1) Equipment Lease Agreement
21/75
2 September 1975

25. A Certificate signed by any officer employed by the Lessor as to the amount due from the Lessee under this Agreement at the date of such Certificate shall be prima facie evidence that the amount so certified was in fact due from the Lessee at the date of such Certificate.

(2) Schedule thereto
(3) Guarantee and Indemnity in respect thereof
2 September 1975

26. In this Lease "the goods" shall include all additions, replacement and renewals thereof whether made before or after the date of this Lease. The Lessee shall not make any alterations, or additions to the goods nor affix nor instal any accessories equipment or device thereon or thereto without the written consent of the Lessor

(4) Variation Agreement
23 June 1977
(5) Schedule to Variation Agreement

27. The stamp duty in respect of this Agreement shall be paid by the Lessee to the Lessor on the signing of this Agreement.

28. In this Agreement unless the context otherwise requires words importing the singular shall include the plural words of the masculine gender shall include the feminine and neuter genders and the word person shall include company and vice versa in all cases. Where more than one person is the lessee hereunder all agreements by the Lessee shall be deemed to have been entered into by them and every two or more of them jointly and by each of them severally and reference to "the Lessee" shall include all of them and any one or more of them.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seal the day and year first above written

SIGNED for and on behalf of) TRACTORS MALAYSIA
Tractors Malaysia Berhad in) BERHAD
the presence of :-) Sd Illegible

Sd: Illegible) Credit Manager
Witness

PLAINTIFFS
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"W.C.C.7"

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The Common Seal of)
Syarikat Bunga Raya-)
Timor Jauh Sdn.Berhad)
was hereunto affixed)
in the presence of)
Mr. Goh Kee San)

SYARIKAT BUNGA RAYA-TIMOR
JAUH SDN.BD.
Sd: Illegible Director
Sd: Illegible Secretary

SIGNED by the said)
in the presence of:)
Sd: Goh Kee San
Witness

Interpreted in the)
language by)
and acknowledged to)
be understood by)

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NOTE: Hirer must sign alteration in full.

THE SCHEDULE

- (1) Address of Lessor:

Jalan 205,
P.O. Box 2,
Petaling Jaya.

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- (2) Name & Address of Lessee (including
Business name if any) :

Syarikat Bunga Raya-Timor
Jauh Sdn.Bhd.,
6th floor, Oriental Plaza,
P.O.Box 1013,
Kuala Lumpur 01-02.

- (3) Description of the Goods: One unit D7F DD
c/w Carco Winch Serial No. 4742

Engine No. Chassis/Serial No. Reg.No. 30
9LE1052

UNITED HOLDINGS BERHAD
Year: 1974

(4) Address where Goods are to be kept:

Kempong Ipoh,
Kelantan.

PLAINTIFFS
EXHIBITS

"W.C.C.7"

(5) Period of Lease:- Thirty (30) Calendar
Months Commencing on the 28th day of
August 1975

(1) Equipment
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(6) Total Rent: \$297,075.00 payable as
follows :-

(2) Schedule
thereto

10 the sum of \$9,902.50 per month from
28th-8-75 to 28th-1-78 then
the sum of \$ per month from
to then
the sum of \$ per month from
to then
the sum of \$ per month from
to then
the sum of \$ per month from
to then
20 the sum of \$ per month from
to, . then

(3) Guarantee
and Indemnity in
respect thereof
2 September 1975

(4) Variation
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23 June 1977

(5) Schedule to
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(continued)

the first of such instalments to be paid
on the signing of this agreement.
Residual Value: \$1.00

(7) Insurable Values:-

First Year : \$233,000.00
Second Year: \$115,000.00
Third Year: \$ 53,400.00
Fourth Year: \$
Fifth Year: \$
30 Sixth Year: \$

SYARIKAT BUNGA RAYA-TIMOR
JAUH SDN. BHD.

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"W.C.C.7"

GUARANTEE AND INDEMNITY
OF
EQUIPMENT LEASE AGREEMENT

(1) Equipment
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(4) Variation
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(5) Schedule to
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(continued)

IN CONSIDERATION OF TRACTOR MALAYSIA BERHAD (herein called "the Lessor") agreeing to enter into the equipment lease agreement with the lessee described in the schedule hereunder (hereinafter called "the lessee") in respect to equipment described in the said schedule, the undersigned (hereinafter called "the guarantor") hereby :-

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(a) guarantees the due payment to the lessor of all sums of money as shall from time to time or at any time hereafter become due and payable by the lessee under the terms of the said equipment lease agreement or any variation or extension thereof and also the due observance and performance of all other terms and conditions express or implied in the said agreement on the part of the lessee to be observed and performed AND ALSO hereby indemnifies the lessor and agrees to keep it indemnified from and against all loss damage costs and expenses suffered or incurred by the lessor by reason of any breach or non-performance by the lessee of any of such terms and conditions on the part of the lessee to be observed or performed and all actions claims and demands which may be instituted or made against the lessor in any way consequent upon arising out of or incidental to the said agreement.

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(b) authorises the lessor to grant or allow any time or indulgence to the lessee and to make any composition with the lessee as the lessor may think fit and to waive any of the rights of the lessor whether bestowed on the lessor pursuant to any of the said agreement or by law and to vary any of the terms and conditions of the said agreement.

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(c) agrees that the giving of such time or indulgence or compounding waiving or varying aforesaid shall not discharge the liability of the guarantor to the lessor hereunder or otherwise.

(d) agrees that the liability and obligation of the guarantor to the lessor hereunder shall be a continuing one and the lessor

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shall not be bound at any time to exercise any of its rights under the said agreement and any omission by the Lessor so to do shall not affect or discharge the liability of the guarantor hereunder

PLAINTIFFS
EXHIBITS

"W.C.C.7"

(1) Equipment
Lease Agreement
21/75
2 September 1975

(2) Schedule
thereto

(3) Guarantee
and Indemnity in
respect thereof
2 September 1975

(4) Variation
Agreement
23 June 1977

(5) Schedule to
Variation
Agreement

(continued)

10 (e) agrees that the term "the guarantor" shall mean and include all the signatories hereto and when two or more are guarantors the terms hereof shall bind them and every two or more of them jointly and each of them severally

THE SCHEDULE

Lessee:- Name Syarikat Bunga Raya-Timor Jauh
Sdn. Bhd.
6th floor Oriental Plaza
Address P.O. Box 1013
Kuala Lumpur

Description of Equipment :-

20 One unit new Caterpillar D7F DD
Tractor Serial No.91E1052 c/w
new Carco Winch Serial No.4742
and std. attachments Year: 1974

IN WITNESS whereof this Guarantee and Indemnity has been executed on the 2nd day of September 1975

Names, Addresses and
Signatures of Guarantors

Names and Signatures
of Witnesses to
Guarantors' Signatures

30 Sd: Illegible Director
Sd: Illegible Secretary

Sd: Goh Kee San

United Holdings Bhd.
6th floor Oriental Plaza
Jalan Parry
Kuala Lumpur

Mr.Goh Kee San
c/o TMB
Petaling Jaya

PLAINTIFFS
EXHIBITS

"W.C.C.7"

(1) Equipment
Lease Agreement
21/75
2 September 1975

(2) Schedule
thereto

(3) Guarantee
and Indemnity in
respect thereof
2 September 1975

(4) Variation
Agreement
23 June 1977

(5) Schedule to
Variation
Agreement

(continued)

THIS AGREEMENT is made the 23rd day of June 1977 Between TRACTORS MALAYSIA BERHAD of P.O. Box 2, Jalan 205, Petaling Jaya, Selangor (hereinafter with its successors and assigns referred to as the Lessor) of the first part SYKT BUNGA RAYA-TIMOR JAUH SDN. BHD. of 6th floor Oriental Plaza, P.O. Box 1013, Kuala Lumpur 01-02 (hereinafter referred to as the Lessee) of the second part And UNITED HOLDINGS BERHAD of 6th floor Oriental Plaza, Jalan Parry, Kuala Lumpur (hereinafter referred to as the Guarantor) of the third part

10

WHEREAS the Lessor, Lessee and Guarantor entered into the Equipment Lease Agreement No. PJ/Lease/21/75 relating to tractor One unit new Caterpillar D7F DD Tractor Serial No. 91E1052 c/w new Carco Winch Serial No.4742 and std.attachments (description) and have agreed to vary the said Equipment Lease Agreement in the manner hereinafter appearing.

20

NOW IT IS HEREBY AGREED as follows :-

1. The said Equipment Lease Agreement shall from and including the date of this Agreement be varied by varying in the manner set out in the Schedule hereto the amount and mode of payment of the sums payable under the Equipment Lease Agreement.

2. The Guarantor agrees to the said variation.

3. Save as herein provided the said Equipment Lease Agreement shall continue in full force and effect.

30

4. This Agreement shall not come into force until signed on behalf of the Lessor by one of its officers duly authorised for the purpose.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands the day and year first above written

SIGNED for and on behalf of)
TRACTORS MALAYSIA BERHAD in) TRACTORS MALAYSIA
the presence of Rahim bin) BERHAD
Baba) Sd: Illegible

40

Credit Manager

Sd: Illegible

The Common Seal of Sykt }
Bunga Raya-Timor Jauh }
Sdn.Bhd. was hereunto }
affixed in the presence }
of Loh Soo Yep)

Sd: S.Y.Loh

10 SIGNED by the said Sykt }
Bunga Raya-Timor Jauh }
Sdn. Bhd. in the }
presence of Loh Soo Yap)

Sd: S.Y.Loh

SIGNED by the said United }
Holdings Berhad (Guaran- }
tor) in the presence of }
Loh Soo Yap)

Sd: S.Y.Loh

SYARIKAT BUNGA RAYA-
TIMOR JAUH SDN.BHD.
Sd: Illegible
Director

UNITED HOLDINGS
BERHAD
Sd: Illegible

PLAINTIFFS
EXHIBITS

"W.C.C.7"

(1) Equipment
Lease Agreement
21/75
2 September 1975

(2) Schedule
thereto

(3) Guarantee
and Indemnity in
respect thereof
2 September 1975

(4) Variation
Agreement
23 June 1977

(5) Schedule to
Variation
Agreement

(continued)

20 This is the Exhibit marked "W.C.C.7" referred
to in the Affidavit of Wan Chee Chuen affirmed
before me this 29th day of July 1978

Sgd. Tneh Liang Peng
Commissioner for Oaths
(Pesuruhjaya Sumpah)
Kuala Lumpur, Malaysia

T H E S C H E D U L E

83

Total outstanding under the original
Equipment Lease Agreement as on 1st-10-76

\$262,230.00

Less: Rebate

\$ 34,856.80

\$227,373.20

30 Add: Overdue interest at
12% per annum for 14
months for the period
30-8-75 to 30-9-76

\$ 3,598.86

\$230,972.06

Less: Residual Value

\$ 69,291.62

\$161,680.44

Add: Hiring Charges

\$ 78,299.53

40 Total rental payable under
Equipment Lease Agreement
as varied by this Agreement

\$239,979.97

PLAINTIFFS
EXHIBITS

"W.C.C.7"
(1) Equipment
Lease Agreement
21/75
2 September 1975
(2) Schedule
thereto
(3) Guarantee
and Indemnity in
respect thereof
2 September 1975
(4) Variation
Agreement
23 June 1977
(5) Schedule to
Variation
Agreement

(continued)

The total rent of \$239,979.97 mentioned
above shall be payable as follows :-

the sum of \$6,666.11 per month from 1st-10-76
to 1st-09-79 then
the sum of \$ per month from
to then
the sum of \$ per month from
to then

the first of such instalments to be paid on
the 1st day of October 1976.

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SYARIKAT BUNGA RAYA-TIMOR JAUH
SDN. BHD.

Sd: Illegible
Director

Part of
"W.C.C.8"
(2) Schedule
to Equipment
Lease Agreement
22/75
2 September 1975
(3) Guarantee
and Indemnity
2 September 1975
(5) Schedule to
Variation
Agreement
23 June 1977

Part of
"W.C.C.8"
(2) SCHEDULE TO EQUIPMENT
LEASE AGREEMENT 22/75
(3) GUARANTEE AND INDEMNITY
(5) SCHEDULE TO VARIATION AGREEMENT

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THE SCHEDULE

- (1) Address of Lessor:
Jalan 205,
P.O.Box 2,
Petaling Jaya.
- (2) Name & Address of Lessee (including
Business name if any)
Syarikat Bunga Raya-Timor
Jauh Sendirian Berhad,
6th floor, Oriental Plaza,
P.O.Box 1013,
Kuala Lumpur 01-02

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- | | | |
|----|--|---|
| | (3) Description of the Goods: One unit Cat
D6C c/w Carco Winch, Serial No.3025 | PLAINTIFFS
<u>EXHIBITS</u> |
| | Engine No. Chassis/Serial No. Reg.No.
99J2161 | Part of
"W.C.C.8" |
| | Year: 1974 | (2) Schedule
to Equipment
Lease Agreement
22/75 |
| | (4) Address where Goods are to be kept:
Kampong Ipoh,
Kelantan. | 2 September 1975 |
| 10 | (5) Period of Lease:- Thirty (30) Calendar
Months Commencing on the 29th day of
August 1975 | (3) Guarantee
and Indemnity
2 September 1975 |
| | (6) Total Rent: \$224,400.00 payable as follows:
the sum of \$7,480.00 per month from
29th-8-75 to 29th-1-78 | (5) Schedule to
Variation
Agreement
23 June 1977 |
| | then | (continued) |
| | the sum of \$ per month from | |
| | to then | |
| | the sum of \$ per month from | |
| | to then | |
| 20 | the sum of \$ per month from | |
| | to then | |
| | the sum of \$ per month from | |
| | to then | |
| | the sum of \$ per month from | |
| | to then | |

the first of such instalments to be paid on
the signing of this agreement.
Residual Value: \$1.00

(7) Insurable Values:-

30	First Year: \$176,000.00
	Second Year: \$ 86,300.00
	Third Year: \$ 50,000.00
	Fourth Year: \$
	Fifth Year: \$
	Sixth Year: \$

SYARIKAT BUNGA RAYA-TIMOR
JAUH SDN. BHD.

PLAINTIFFS
EXHIBITS

Part of
"W.C.C.8"

GUARANTEE AND INDEMNITY
OF
EQUIPMENT LEASE AGREEMENT

(2) Schedule
to Equipment
Lease Agreement
22/75
2 September 1975

(3) Guarantee
and Indemnity
2 September 1975

(5) Schedule to
Variation
Agreement
23 June 1977

(continued)

IN CONSIDERATION OF TRACTOR MALAYSIA BERHAD (herein called "the lessor") agreeing to enter into the equipment lease agreement with the lessee described in the schedule hereunder (hereinafter called "the lessee") in respect to equipment described in the said schedule, the undersigned (hereinafter called "the guarantor") hereby :-

(a) guarantees the due payment to the lessor of all sums of money as shall from time to time or at any time hereafter become due and payable by the lessee under the terms of the said equipment lease agreement or any variation or extension thereof and also the due observance and performance of all other terms and conditions express or implied in the said agreement on the part of the lessee to be observed and performed AND ALSO hereby indemnifies the lessor and agrees to keep it indemnified from and against all loss damage costs and expenses suffered or incurred by the lessor by reason of any breach or non-performance by the lessee of any of such terms and conditions on the part of the lessee to be observed or performed and all actions claims and demands which may be instituted or made against the lessor in any way consequent upon arising out of or incidental to the said agreement

(b) authorises the lessor to grant or allow any time or indulgence to the lessee and to make any composition with the lessee as the lessor may think fit and to waive any of the rights of the lessor whether bestowed on the lessor pursuant to any of the said agreement or by law and to vary any of the terms and conditions of the said agreement.

(c) agrees that the giving of such time or indulgence or compounding waiving or varying aforesaid shall not discharge the liability of the guarantor to the lessor hereunder or otherwise

(d) agrees that the liability and obligation of the guarantor to the lessor hereunder

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40

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or otherwise

PLAINTIFFS
EXHIBITS

- (d) agrees that the liability and obligation of the guarantor to the lessor hereunder shall be a continuing one and the lessor shall not be bound at any time to exercise any of its rights under the said agreement and any omission by the lessor so to do shall not affect or discharge the liability of the guarantor hereunder
- 10 (e) agrees that the term "the guarantor" shall mean and include all the signatories hereto and when two or more are guarantors the terms hereof shall bind them and every two or more of them jointly and each of them severally

Part of
"W.C.C.8"

(2) Schedule to Equipment Lease Agreement 22/75
2 September 1975

(3) Guarantee and Indemnity 2 September 1975

(5) Schedule to Variation Agreement 23 June 1977

THE SCHEDULE

(continued)

Lessee: Name Syarikat Bunga Raya-Timor Jauh Sdn. Bhd

20 Address 6th floor Oriental Plaza
P.O. Box 1013
Kuala Lumpur 01-02

Description of Equipment:-

One unit new Caterpillar D6C DD
Tractor Serial No.99J2161 c/w
Carco Winch and accessories
Serial No.3025 Year: 1974

IN WITNESS whereof this Guarantee and Indemnity has been executed on the 2nd day of September 1975

30 Names, Addresses and Signatures of Guarantors

Names and Signatures of Witnesses to Guarantors' Signatures

UNITED HOLDINGS BERHAD

Sd: Illegible
Director

Sd: Goh Kee San

Sd: Illegible
Secretary

Mr. Goh Kee San
c/o TMB
Petaling Jaya

40 United Holdings Bhd
6th floor Oriental Plaza
Jalan Parry
Kuala Lumpur

PLAINTIFFS
EXHIBITS

This is the Exhibit marked "W.C.C.8" referred to in the Affidavit of Wan Chee Chuen affirmed before me this 29th day of July 1973

Part of
"W.C.C.8"

Sgd. Tneh Liang Peng
Commissioner for Oaths,
(Pesuruhjaya Sunpah)
Kuala Lumpur, Malaysia.

(2) Schedule
to Equipment
Lease Agreement
22/75
2 September 1975

T H E S C H E D U L E

(3) Guarantee
and Indemnity
2 September 1975

Total outstanding under the
original Equipment Lease
Agreement as on 1st-10-76 10
\$201,960.00

(5) Schedule to
Variation
Agreement
23 June 1977

Less: Rebate \$ 26,329.60
\$175,630.40

Add: Overdue interest at 12%
per annum for 14 months
for the period 30/8/75
to 30/9/76 \$ 2,756.74

Less: Residual Value \$178,387.14
\$ 53,516.14

Add: Hiring Charges \$124,871.00
\$ 60,473.24 20

Total rental payable under
Equipment Lease Agreement
as varied by this Agreement \$185,344.24

The total rent of \$185,344.24 mentioned above shall be payable as follows :-

the sum of \$5,148.45 per month from 1st-10-76
to 1st-09-79 then
the sum of \$ per month from
to then
the sum of \$ per month from 30
to then

the first of such instalments to be paid on
the 1st day of October 1976.

Sd: Illegible

PLAINTIFFS
EXHIBITS

Residual Value: \$1.00

Part of
"W.C.C.9"
(2) Schedule to
Equipment Lease
Agreement 23/75
2 September 1975

(5) Schedule
to Variation
Agreement
23 June 1977

(7) Insurable Values :-
First Year: \$176,000.00
Second Year: \$ 86,300.00
Third Year: \$ 50,000.00
Fourth Year: \$
Fifth Year: \$
Sixth Year: \$

SYARIKAT BUNGA RAYA-TIMOR
JAUH SDN. BHD.

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Sd: Illegible

(continued)

This is the Exhibit marked "W.C.C.9" referred to in the Affidavit of Wan Chee Chuen affirmed before me this 29th day of July 1978

Sgd. Tneh Liang Peng
Commissioner for Oaths
(Pesuruhjaya Sumpah)
Kuala Lumpur, Malaysia

T H E S C H E D U L E

Total outstanding under the original Equipment Lease Agreement as on 1st-10-76	\$201,960.00	20
<u>Less: Rebate</u>	<u>\$ 26,329.60</u>	
	\$175,630.40	
<u>Add: Overdue interest at 12% per annum for 14 months for the period 30-8-75 to 30-9-76</u>	<u>\$ 2,742.01</u>	
	\$178,372.41	
<u>Less: Residual Value</u>	<u>\$ 53,511.72</u>	30
	\$124,860.69	
<u>Add: Hiring Charges</u>	<u>\$ 60,468.25</u>	
Total rental payable under Equipment Lease Agreement as varied by this Agreement	<u>\$185,328.94</u>	

The total rent of \$185,328.94 mentioned above shall be payable as follows :-

the sum of \$5,148.03 per month from 1st-10-76 to 1st-09-79 then		
the sum of \$	per month from	40
	to	then
the sum of \$	per month from	
	to	then

the first of such instalments to be paid on the 1st day of October 1976.

PLAINTIFFS
EXHIBITS

SYARIKAT BUNGA RAYA-TIMOR
JAUH SDN. BHD.

Sd: Illegible
Director

Part of
"W.C.C.9"

(2) Schedule to
Equipment Lease
Agreement 23/75
2 September 1975

(5) Schedule
to Variation
Agreement
23 June 1977

(continued)

Part of
"W.C.C.1"

- 10 (2) SCHEDULE TO EQUIPMENT
LEASE AGREEMENT 05/76
(3) GUARANTEE AND INDEMNITY
(5) SCHEDULE TO VARIATION
AGREEMENT

Part of
"W.C.C.1"

(2) Schedule to
Equipment Lease
Agreement 05/76
25 May 1976

(3) Guarantee
and Indemnity
25 May 1976

(5) Schedule
to Variation
Agreement
23 June 1977

THE SCHEDULE

- (1) Address of Lessor:

Tractors Malaysia Bhd
Jalan 205
Petaling Jaya
Selangor

- 20 (2) Name & Address of Lessee (including Business
name if any):

Sykt Bunga Raya-Timor Jauh Sdn.Bhd
6th floor Oriental Plaza,
Jalan Parry, PO Box 1013
Kuala Lumpur 01-02

- (3) Description of the Goods: One unit new
Caterpillar D6C Direct Drive Tractor c/w
std. attachments, Fitted with new Carco
Winch

30 Engine No. Chassis/Serial No. Reg. No.
26K1769
Winch S/No. 13185

- (4) Address where Goods are to be kept.

Kampong Ipoh,
Kelantan

PLAINTIFFS
EXHIBITS

Part of
"W.C.C.1"

(2) Schedule to
Equipment Lease
Agreement 05/76
25 May 1976

(3) Guarantee
and Indemnity
25 May 1976

(5) Schedule
to Variation
Agreement
23 June 1977

(continued)

(5) Period of Lease:- Thirty (30) Calendar
Months Commencing on the 25th day of May
1976

(6) Total Rent: \$224,400.00 payable as follows:

the sum of \$7,480.00 per month from
25th-5-76 to 25th-10-78

then
the sum of \$ per month from
to then

the sum of \$ per month from
to then

the sum of \$ per month from
to then

the sum of \$ per month from
to then

the sum of \$ per month from
to then

10

the first of such instalments to be paid on
the signing of this agreement.

Residual Value: \$1.00

(7) Insurable Values :-

First Year: \$176,000.00

Second Year: \$140,800.00

Third Year: \$126,720.00

Fourth Year: \$

Fifth Year: \$

Sixth Year: \$

20

Sd: Illegible

GUARANTEE AND INDEMNITY
OF
EQUIPMENT LEASE AGREEMENT

30

IN CONSIDERATION OF TRACTOR MALAYSIA BERHAD
(herein called "the Lessor") agreeing to enter
into the equipment lease agreement with the
lessee described in the schedule hereunder
(hereinafter called "the lessee") in respect to
equipment described in the said schedule, the
undersigned (hereinafter called "the guarantor")
hereby :-

(a) guarantees the due payment to the lessor
of all sums of money as shall from time
to time or at any time hereafter become
due and payable by the lessee under the

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terms of the said equipment lease agreement or any variation or extension thereof and also the due observance and performance of all other terms and conditions express or implied in the said agreement on the part of the lessee to be observed and performed AND ALSO hereby indemnifies the lessor and agrees to keep it indemnified from and against all loss damage costs and expenses suffered or incurred by the lessor by reason of any breach or non-performance by the lessee of any of such terms and conditions on the part of the lessee to be observed or performed and all actions claims and demands which may be instituted or made against the lessor in any way consequent upon arising out of or incidental to the said agreement

PLAINTIFFS
EXHIBITS

Part of
"W.C.C.1"

(2) Schedule to
Equipment Lease
Agreement 05/76
25 May 1976

(3) Guarantee
and Indemnity
25 May 1976

(5) Schedule
to Variation
Agreement
23 June 1977

(continued)

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- (b) authorises the lessor to grant or allow any time or indulgence to the lessee and to make any composition with the lessee as the lessor may think fit and to waive any of the rights of the lessor whether bestowed on the lessor pursuant to any of the said agreement or by law and to vary any of the terms and conditions of the said agreement
- (c) agrees that the giving of such time or indulgence or compounding waiving or varying aforesaid shall not discharge the liability of the guarantor to the lessor hereunder or otherwise
- (d) agrees that the liability and obligation of the guarantor to the lessor hereunder shall be a continuing one and the lessor shall not be bound at any time to exercise any of its rights under the said agreement and any omission by the lessor so to do shall not affect or discharge the liability of the guarantor hereunder
- (e) agrees that the term "the guarantor" shall mean and include all the signatories hereto and when two or more are guarantors the terms hereof shall bind them and every two or more of them jointly and each of them severally

THE SCHEDULE

Lessee: Name Syarikat Bunga Raya-Timor Jauh Sdn.Bhd.
Address 6th floor Oriental Plaza
Jalan Parry, PO Box 1013
Kuala Lumpur

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PLAINTIFFS
EXHIBITS

Part of
"W.C.C.1"

(2) Schedule to
Equipment Lease
Agreement 05/76
25 May 1976

(3) Guarantee
and Indemnity
25 May 1976

(5) Schedule
to Variation
Agreement
23 June 1977

(continued)

Description of Equipment: One unit new
Caterpillar D6C Direct Drive Tractor c/w
6A B'dozer, HD canopy and std. attachments.
Fitted with new Carco Winch

Serial No. 26K1769
Winch Serial No. 13185
Year: 1976

IN WITNESS whereof this Guarantee and
Indemnity has been executed on the 25th day of
May 1976

10

Names, Address and Signatures of Guarantors	Names and Signatures of Witness to Guarantors' Signatures
--	---

Sd: Goh Kee San

UNITED HOLDINGS BERHAD

Mr. Goh Kee San
c/o TMB
PJ

Sd: Illegible
Director

Sd: Illegible
Secretary

This is the Exhibit marked "W.C.C.1" referred
to in the Affidavit of Wan Chee Chuen affirmed
before me this 29th day of July 1978

20

Sgd. Tneh Liang Peng
Commissioner for Oaths
(Pesuruhjaya Sumpah)
Kuala Lumpur, Malaysia

T H E S C H E D U L E

Total outstanding under the original Equipment Lease Agreement as on 1st-10-76	\$216,920.00	30
<u>Less: Rebate</u>	<u>\$ 33,831.60</u>	
	\$183,088.40	
<u>Add: Overdue interest at 12%</u> per annum for 4 months for the period 30-6-76 to 30-9-76	<u>\$ 491.84</u>	
	\$183,580.24	
<u>Less: Residual Value</u>	<u>\$ 55,074.07</u>	
	\$128,506.17	
<u>Add: Hiring Charges</u>	<u>\$ 62,233.71</u>	40
Total rental payable under Equipment Lease Agreement as varied by this Agreement	<u>\$190,739.88</u>	

The total rent of \$190,739.88 mentioned above shall be payable as follows :-

PLAINTIFFS
EXHIBITS

10 the sum of \$5,298.33 per month from 1st-10-76
to 1st-09-79 then
the sum of \$ per month from
to then
the sum of \$- per month from
to then
the first of such instalments to be paid on
the 1st day of October 1976

Part of
"W.C.C.1"
(2) Schedule to
Equipment Lease
Agreement 05/76
25 May 1976

(3) Guarantee
and Indemnity
25 May 1976

SYARIKAT BUNGA RAYA-TIMOR JAUH
SDN.BHD.

(5) Schedule
to Variation
Agreement
23 June 1977

Sd: Illegible
Director

(continued)

20 Part of
"W.C.C.2"
(2) SCHEDULE TO EQUIPMENT
LEASE AGREEMENT 06/76
(3) GUARANTEE AND INDEMNITY
(5) SCHEDULE TO VARIATION
AGREEMENT

Part of
"W.C.C.2"
(2) Schedule to
Equipment Lease
Agreement 06/76
25 May 1976

(3) Guarantee
and Indemnity
25 May 1976

THE SCHEDULE

(5) Schedule
to Variation
Agreement
23 June 1977

(1) Address of Lessor:

Tractors Malaysia Bhd.
Jalan 205
Petaling Jaya
Selangor

(2) Name & Address of Lessee (including Business
name if any) :

30 Sykt Bunga Raya-Timor Jauh Sdn.
Bhd.
6th floor, Oriental Plaza
Jalan Parry, PO Box 1013
Kuala Lumpur 01-02

(3) Description of the Goods: One unit new
Caterpillar D6C DD Tractor c/w std.
attachments, Fitted with new Carco Winch

Engine No. Chassis/Serial No. Reg. No.
26K1774

Winch S/No. 13201

PLAINTIFFS
EXHIBITS

Part of
"W.C.C.2"

(2) Schedule to
Equipment Lease
Agreement 06/76
25 May 1976

(3) Guarantee
and Indemnity
25 May 1976

(5) Schedule
to Variation
Agreement
23 June 1977

(continued)

(4) Address where Goods are to be kept:

Kampong Ipoh
Kelantan

(5) Period of Lease:- Thirty (30) Calendar
Months Commencing on the 25th day of May
1976

(6) Total Rent: \$224,400.00 payable as follows:

the sum of \$7,480.00 per month from	25th-5-76 to 25th-10-78	then	10
the sum of \$	per month from	to then	
the sum of \$	per month from	to then	
the sum of \$	per month from	to then	
the sum of \$	per month from	to then	
the sum of \$	per month from	to then	20

the first of such instalments to be paid
on the signing of this agreement.
Residual Value: \$1.00

(7) Insurable Values:-

First Year:	\$176,000.00	
Second Year:	\$140,800.00	
Third Year:	\$126,720.00	
Fourth Year:	\$	
Fifth Year:	\$	
Sixth Year:	\$	30

Sd: Illegible

GUARANTEE AND INDEMNITY
OF
EQUIPMENT LEASE AGREEMENT

PLAINTIFFS
EXHIBITS

Part of
"W.C.C.2"

- 10 IN CONSIDERATION OF TRACTOR MALAYSIA BERHAD (herein called "the lessor") agreeing to enter into the equipment lease agreement with the lessee described in the schedule hereunder (hereinafter called "the lessee") in respect to equipment described in the said schedule, the undersigned (hereinafter called "the guarantor") hereby :-
- (2) Schedule to Equipment Lease Agreement 06/76 25 May 1976
- (3) Guarantee and Indemnity 25 May 1976
- (a) guarantees the due payment to the lessor of all sums of money as shall from time to time or at any time hereafter become due and payable by the lessee under the terms of the said equipment lease agreement or any variation or extension thereof and also the due observance and performance of all other terms and conditions express or implied in the said agreement on the part of the lessee to be observed and performed AND ALSO hereby indemnifies the lessor and agrees to keep it indemnified from and against all loss damage costs and expenses suffered or incurred by the lessor by reason of any breach or non-performance by the lessee of any of such terms and conditions on the part of the lessee to be observed or performed and all actions claims and demands which may be instituted or made upon arising out of or incidental to the said agreement
- (5) Schedule to Variation Agreement 23 June 1977
- (continued)
- 20
- 30
- (b) authorises the lessor to grant or allow any time or indulgence to the lessee and to make any composition with the lessee as the lessor may think fit and to waive any of the rights of the lessor whether bestowed on the lessor pursuant to any of the said agreement or by law and to vary any of the terms and conditions of the said agreement
- 40
- (c) agrees that the giving of such time or indulgence or compounding waiving or varying aforesaid shall not discharge the liability of the guarantor to the lessor hereunder or otherwise
- (d) agrees that the liability and obligation of the guarantor to the lessor hereunder shall be a continuing one and the lessor shall not be bound at any time to exercise any of its rights under the said agreement and any
- 50

PLAINTIFFS
EXHIBITS

Part of
"W.C.C.2"

(2) Schedule to
Equipment Lease
Agreement 06/76
25 May 1976

(3) Guarantee
and Indemnity
25 May 1976

(5) Schedule
to Variation
Agreement
23 June 1977

(continued)

omission by the lessor so to do shall not affect or discharge the liability of the guarantor hereunder.

- (e) agrees that the term "the guarantor" shall mean and include all the signatories hereto and when two or more are guarantors the term hereof shall bind them and every two or more of them jointly and each of them severally

THE SCHEDULE

10

Lessee:- Name Syarikat Bunga Raya-Timor Jauh
Sdn. Bhd.
Address 6th floor, Oriental Plaza
Jalan Parry, P.O.Box 1013
Kuala Lumpur 01-02

Description of Equipment:- One unit new
Caterpillar D6C Direct Drive
Tractor c/w 6A B'dozer, HD
canopy and std. attachments.
Fitted with new Carco Winch. 20
Serial No.26K1774
Winch Serial No. 13201
Year: 1976

IN WITNESS whereof this Guarantee and
Indemnity has been executed on the 25th day of
May 1976

Names, Addresses and
Signatures of Guarantors

Names and Signatures
of Witnesses to
Guarantors' Signatures

UNITED HOLDINGS BERHAD

Sd: Goh Kee San 30

Sd: Illegible
Director

Mr. Goh Kee San
c/o TMB
PJ

Sd: Illegible
Secretary

This is the Exhibit marked "W.C.C.2" referred to in the Affidavit of Wan Chee Chuen affirmed before me this 29th day of July 1978

Sgd. Tneh Liang Peng
 Commissioner for Oaths
 (Pesuruhjaya Sumpah)
 Kuala Lumpur, Malaysia.

PLAINTIFFS
EXHIBITS

Part of
 "W.C.C.2"
 (2) Schedule to
 Equipment Lease
 Agreement 06/76
 25 May 1976
 (3) Guarantee
 and Indemnity
 25 May 1976
 (5) Schedule
 to Variation
 Agreement
 23 June 1977
 (continued)

T H E S C H E D U L E

10	Total outstanding under the original Equipment Lease Agreement as on 1st-10-76	\$216,920.00
	<u>Less: Rebate</u>	<u>\$ 33,831.60</u>
		\$183,088.40
	<u>Add: Overdue interest at 12% per annum for 4 months for the period 30-6-76 to 30-9-76</u>	<u>\$ 491.84</u>
		\$183,580.24
	<u>Less: Residual Value</u>	<u>\$ 55,074.07</u>
20		\$128,506.17
	<u>Add: Hiring Charges</u>	<u>\$ 62,233.71</u>
	Total rental payable under Equipment Lease Agreement as varied by this Agreement	<u><u>\$190,739.88</u></u>

The total rent of \$190,739.88 mentioned above shall be payable as follows :-

30	the sum of \$5,298.33 per month from 1st-10-76 to 1st-09-79 then
	the sum of \$ per month from to then
	the sum of \$ per month from to then

the first of such instalments to be paid on the 1st day of October 1976

Sd: Illegible

PLAINTIFFS
EXHIBITS

Part of
"W.C.C.3"

Part of
"W.C.C.3"
(2) Schedule to
Equipment Lease
Agreement 07/76
25 May 1976

- (2) SCHEDULE TO EQUIPMENT LEASE
AGREEMENT 07/76
(3) GUARANTEE AND INDEMNITY
(5) SCHEDULE TO VARIATION
AGREEMENT

(3) Guarantee
and Indemnity
Undated

THE SCHEDULE

(5) Schedule to
Variation
Agreement
23 June 1977

- (1) Address of Lessor:
Tractors Malaysia Bhd. 10
Jalan 205,
Petaling Jaya,
Selangor
- (2) Name & Address of Lessee (including Business
name if any)
Sykt. Bunga Raya-Timor Jauh Sdn.Bhd.
6th Floor, Oriental Plaza,
Jalan Parry,
P.O.Box 1013
Kuala Lumpur 01-02 20
- (3) Description of the Goods:- One unit New
Caterpillar D6C Direct Drive Tractor c/w
std. attachments. Fitted with new Carco
Winch
Engine No. Chassis/Serial No. Reg.No.
26K1771
Winch S/No. 13186
- (4) Address where Goods are to be kept:
Kampong Ipoh,
Kelantan 30
- (5) Period of Lease:- Thirty (30) Calendar
Months Commencing on the 25th day of May
1976
- (6) Total Rent: \$224,400.00 payable as follows:
the sum of \$7,480.00 per month from 25-5-76
to 25-10-78 then
the sum of \$ per month from
to then
the sum of \$ per month from
to then 40
the sum of \$ per month from
to then
the sum of \$ per month from
to then

the first of such instalments to be paid on the signing of this agreement.
Residual Value: \$1.00

PLAINTIFFS
EXHIBITS

Part of
"W.C.C.3"

(7) Insurable Values:-

First Year: \$176,000.00
Second Year: \$140,800.00
Third Year: \$126,720.00
Fourth Year: \$
Fifth Year: \$
Sixth Year: \$

(2) Schedule to
Equipment Lease
Agreement 07/76
25 May 1976

(3) Guarantee
and Indemnity
Undated

(5) Schedule to
Variation
Agreement
23 June 1977

10

SYARIKAT BUNGA RAYA-TIMOR
JAUH SDN. BHD.

Sd: Illegible
Director

(continued)

GUARANTEE AND INDEMNITY
OF
EQUIPMENT LEASE AGREEMENT

IN CONSIDERATION OF TRACTOR MALAYSIA BERHAD (herein called "the lessor") agreeing to enter into the equipment lease agreement with the lessee described in the schedule hereunder (hereinafter called "the lessee") in respect to equipment described in the said schedule, the undersigned (hereinafter called "the guarantor") hereby :-

20

30

40

- (a) guarantees the due payment to the lessor of all sums of money as shall from time to time or at any time hereafter become due and payable by the lessee under the terms of the said equipment lease agreement or any variation or extension thereof and also the due observance and performance of all other terms and conditions express or implied in the said agreement on the part of the lessee to be observed and performed AND ALSO hereby indemnifies the lessor and agrees to keep it indemnified from and against all loss damage costs and expenses suffered or incurred by the lessor by reason of any breach or non-performance by the lessee of any of such terms and conditions on the part of the lessee to be observed and performed and all actions claims and demands which may be instituted or made against the

PLAINTIFFS
EXHIBITS

- Part of
"W.C.C.3"
- (2) Schedule to
Equipment Lease
Agreement 07/76
25 May 1976
- (3) Guarantee
and Indemnity
Undated
- (5) Schedule to
Variation
Agreement
23 June 1977
- (continued)
- lessor in any way consequent upon arising out of or incidental to the said agreement
- (b) authorises the lessor to grant or allow any time or indulgence to the lessee and to make any composition with the lessee as the lessor may think fit and to waive any of the rights of the lessor whether bestowed on the lessor pursuant to any of the said agreement or by law and to vary any of the terms and conditions of the said agreement 10
- (c) agrees that the giving of such time or indulgence or compounding waiving or varying aforesaid shall not discharge the liability of the guarantor to the lessor hereunder or otherwise
- (d) agrees that the liability and obligation of the guarantor to the lessor hereunder shall be a continuing one and the lessor shall not be bound at any time to exercise any of its rights under the said agreement and any omission by the lessor so to do shall not affect or discharge the liability of the guarantor hereunder 20
- (e) agrees that the term "the guarantor" shall mean and include all the signatories hereto and when two or more are guarantors the terms hereof shall bind them and every two or more of them jointly and each of them severally. 30

THE SCHEDULE

Lessee: Name Syarikat Bunga Raya-Timor Jauh
Sdn. Bhd.
Address 6th Floor, Oriental Plaza,
Jalan Parry, P.O.Box 1013,
Kuala Lumpur 01-02

Description of Equipment:-

One unit new Caterpillar D6C
Direct Drive Tractor c/w 6A
B'dozer, HD Canopy and std.
attachments. Fitted with new
Carco Winch. 40
Serial No. 26K1771
Winch Serial No. 13186
Year: 1976

IN WITNESS whereof this Guarantee and
Indemnity has been executed on the

day of 197

PLAINTIFFS
EXHIBITS

Names, Addresses and
Signatures of Guarantors

Names and Signatures
of Witnesses to
Guarantors' Signatures

Part of
"W.C.C.3"

UNITED HOLDINGS BERHAD

Sd: Illegible
Director

Sd: Illegible
Secretary

Sd: Goh Kee San

Mr. Goh Kee San
c/o Tractors
Malaysia Bhd.
Petaling Jaya.

(2) Schedule to
Equipment Lease
Agreement 07/76
25 May 1976

(3) Guarantee
and Indemnity
Undated

(5) Schedule to
Variation
Agreement
23 June 1977

10

(continued)

This is the Exhibit marked "W.C.C.3" referred
to in the Affidavit of Wan Chee Chuen affirmed
before me this 29th day of July 1978

Sgd. Tneh Lieng Peng
Commissioner for Oaths
(Pesuruhjaya Sumpah)
Kuala Lumpur, Malaysia

T H E S C H E D U L E

20	Total outstanding under the original Equipment Lease Agreement as on 1st-10-76	\$216,920.00
	<u>Less: Rebate</u>	<u>\$ 33,831.60</u>
		\$183,088.40
	<u>Add: Overdue interest at 12%</u> per annum for 4 months for the period 20-6-76 to 30-9-76	<u>\$ 491.84</u>
		\$183,580.24
	<u>Less: Residual Value</u>	<u>\$ 55,074.07</u>
30		\$128,506.17
	<u>Add: Hiring Charges</u>	<u>\$ 62,233.71</u>
	Total rental payable under Equipment Lease Agreement as varied by this Agreement	<u>\$190,739.88</u>

The total rent of \$190,739.88 mentioned above
shall be payable as follows :-

PLAINTIFFS
EXHIBITS

Part of
"W.C.C.3"

(2) Schedule to
Equipment Lease
Agreement 07/76
25 May 1976

(3) Guarantee
and Indemnity
Undated

(5) Schedule
to Variation
Agreement
23 June 1977

(continued)

the sum of \$5,298.33 per month from 1st-10-76
to 1st-09-79 then
the sum of \$ per month from
to then
the sum of \$ per month from
to then

the first of such instalments to be paid on
the 1st day of October 1976

SYARIKAT BUNGA RAYA-TIMOR JAUH
SDN. BHD

10

Sd: Illegible

Part of
"W.C.C.4"

(2) Schedule to
Equipment Lease
Agreement 08/76
25 May 1976

(3) Guarantee
and Indemnity
Undated

(5) Schedule to
Variation
Agreement
23 June 1977

Part of
"W.C.C.4"

- (2) SCHEDULE TO EQUIPMENT
LEASE AGREEMENT 08/76
(3) GUARANTEE AND INDEMNITY
(5) SCHEDULE TO VARIATION
AGREEMENT

THE SCHEDULE

- (1) Address of Lessor: 20
Tractors Malaysia Bhd
Jalan 205
Petaling Jaya
Selangor
- (2) Name & Address of Lessee (including
Business name if any) 30
Sykt Bunga Raya-Timor Jauh
Sdn. Bhd
6th floor Oreintal Plaza
Jalan Parry, P.O.Box1013
Kuala Lumpur 01-02
- (3) Description of the Goods: One unit
Caterpillar D6C Direct Drive Tractor c/w
std. attachments. Fitted with new
Carco Winch
- Engine No Chassis/Serial No. Reg.No.
26K1770
Winch S/No. 13181

- | | | |
|-----|---|---|
| (4) | Address where Goods are to be kept:
Kampong Ipoh
Kelantan | PLAINTIFFS
<u>EXHIBITS</u>
Part of
"W.C.C.4" |
| (5) | Period of Lease: Thirty (30) Calendar
Months Commencing on the 5th day of June
1976 | (2) Schedule to
Equipment Lease
Agreement 08/76
25 May 1976 |
| (6) | Total Rent: \$224,400.00 payable as
follows:

the sum of \$7,480.00 per month from
5th-6-76 to 5th-11-78 then
the sum of per month from
to then
the sum of per month from
to then
the sum of per month from
to then
the sum of per month from
to then
the sum of per month from
to then | (3) Guarantee
and Indemnity
Undated

(5) Schedule
to Variation
Agreement
23 June 1977

(continued) |

10

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the first of such instalments to be paid
on the signing of this agreement
Residual Value: \$1.00

- (7) Insurable Values:
- | | |
|--------------|--------------|
| First Year: | \$176,000.00 |
| Second Year: | \$140,800.00 |
| Third Year: | \$126,720.00 |
| Fourth Year: | \$ |
| Fifth Year: | \$ |
| Sixth Year: | \$ |

30

SYARIKAT BUNGA RAYA-TIMOR JAUH
SDN. BHD.

Sd: Illegible
Director

PLAINTIFFS
EXHIBITS

GUARANTEE AND INDEMNITY
OF
EQUIPMENT LEASE AGREEMENT

Part of
"W.C.C.4"

(2) Schedule to
Equipment Lease
Agreement 08/76
25 May 1976

(3) Guarantee
and Indemnity
Undated

(5) Schedule
to Variation
Agreement
23 June 1977

(continued)

IN CONSIDERATION OF TRACTOR MALAYSIA BERHAD
(herein called "the lessor") agreeing to enter
into the equipment lease agreement with the
lessee described in the schedule hereunder
(hereinafter called "the lessee") in respect to
equipment described in the said schedule, the
undersigned (hereinafter called "the guarantor")
hereby :- 10

(a) guarantees the due payment to the lessor
of all sums of money as shall from time to
time or at any time hereafter become due
and payable by the lessee under the terms
of the said equipment lease agreement or
any variation or extension thereof and also
the due observance and performance of all
other terms and conditions express or 20
implied in the said agreement on the part
of the lessee to be observed and performed
AND ALSO hereby indemnifies the lessor and
agrees to keep it indemnified from and
against all loss damage costs and expenses
suffered or incurred by the lessor by
reason of any breach or non-performance by
the lessee of any of such terms and
conditions on the part of the lessee to be
observed and performed and all actions 30
claims and demands which may be instituted
or made against the lessor in any way
consequence upon arising out of or inciden-
tal to the said agreement

(b) authorises the lessor to grant or allow
any time or indulgence to the lessee and
to make any composition with the lessee
as the lessor may think fit and to waive
any of the rights of the lessor whether
bestowed on the lessor pursuant to any of 40
the said agreement or by law and to vary
any of the terms and conditions of the
said agreement

(c) agrees that the giving of such time or
indulgence or compounding waiving or
varying aforesaid shall not discharge the
liability of the guarantor to the lessor
hereunder or otherwise

(d) agrees that the liability and obligation
of the guarantor to the lessor hereunder
shall be a continuing one and the lessor 50
shall not be bound at any time to exercise

any of its rights under the said agreement and any omission by the lessor so to do shall not affect or discharge the liability of the guarantor hereunder

PLAINTIFFS
EXHIBITS

Part of
"W.C.C.4"

(e) agrees that the term "the guarantor" shall mean and include all the signatories hereto and when two or more are guarantors the terms hereof shall bind them and every two or more of them jointly and each of them severally

(2) Schedule to Equipment Lease Agreement 08/76 25 May 1976

(3) Guarantee and Indemnity Undated

(5) Schedule to Variation Agreement 23 June 1977

10

THE SCHEDULE

Lessee: Name Syarikat Bunga Raya-Timor Jauh Sdn. Bhd
Address 6th floor Oriental Plaza Jalan Parry, P.O. Box 1013 Kuala Lumpur 01-02

(continued)

Description of Equipment:

One unit new Caterpillar D6C Direct Drive Tractor c/w 6A B'dozer, HD canopy and std. attachments. Fitted with new Carco Winch

20

Serial No. 26K1770
Winch Serial No. 13181
Year: 1976

IN WITNESS whereof the Guarantee and Indemnity has been executed on the day of 197

30

Names, Addresses and Signatures of Guarantors

Names and Signatures of Witnesses to Guarantors' Signatures

Sd: Goh Kee San

UNITED HOLDINGS BERHAD

Mr. Goh Kee San
c/o TMB
PJ

Sd: Illegible
Director

Sd: Illegible
Secretary

PLAINTIFFS
EXHIBITS

Part of
"W.C.C.4"

(2) Schedule to
Equipment Lease
Agreement 08/76
25 May 1976

(3) Guarantee
and Indemnity
Undated

(5) Schedule
to Variation
Agreement
23 June 1977

(continued)

This is the Exhibit marked "W.C.C.4" referred
to in the Affidavit of Wan Chee Chuen affirmed
before me this 29th day of July 1978

Sgd. Tneh Liang Peng
Commissioner for Gaths
(Pesuruhjaya Seumpah)
Kuala Lumpur, Malaysia

T H E S C H E D U L E

Total outstanding under the original Equipment Lease Agreement as on 1st-10-76			10
<u>Less:</u> Rebate	\$216,920.00		
	<u>\$ 36,542.00</u>		
	\$180,378.00		
<u>Add:</u> Overdue interest at 12% per annum for 3 months for the period 30/7/76 to 20/9/76		\$ 405.77	
		<u>\$180,783.77</u>	
<u>Less:</u> Residual Value		<u>\$ 54,235.13</u>	
		\$126,548.64	20
<u>Add:</u> Hiring Charges		<u>\$ 61,285.70</u>	
Total rental payable under Equipment Lease Agreement as varied by this Agreement		<u>\$187,834.34</u>	

The total rent of \$187,834.34 mentioned above
shall be payable as follows :

the sum of \$5,217.62 per month from 1st-10-76 to 1st-09-79 then			
the sum of \$ per month from to then			30
the sum of \$ per month from to then			

the first of such instalments to be paid on
the 1st day of October 1976

Sd: Illegible

Part of
"W.C.C.5"

PLAINTIFFS
EXHIBITS

- (2) SCHEDULE TO EQUIPMENT
LEASE AGREEMENT 09/76
(3) GUARANTEE AND INDEMNITY
(5) SCHEDULE TO VARIATION
AGREEMENT
-

Part of
"W.C.C.5"

(2) Schedule to
Equipment Lease
Agreement 09/76
25 May 1976

(3) Guarantee
and Indemnity
Undated

(5) Schedule
to Variation
Agreement
23 June 1977

THE SCHEDULE

- 10 (1) Address of Lessor:
Tractors Malaysia Bhd
Jalan 205
Petaling Jaya
Selangor
- (2) Name & Address of Lessee (including
Business name if any):
Sykt Bunga Raya-Timor Jauh Sdn.Bhd
6th floor Oriental Plaza
Jalan Parry, P.O.Box 1013
Kuala Lumpur 01-02
- 20 (3) Description of the Goods:
One unit new Caterpillar D6C
Direct Drive Tractor c/w std.
attachments. Fitted with new
Carco Winch
Engine No. Chassis/Serial No. Reg.No.
26K1772
Winch S/No. 13187
- 30 (4) Address where Goods are to be kept:
Kampong Ipoh
Kelantan
- (5) Period of Lease:- Thirty (30) Calendar
Months Commencing on the 5th day of June
1976
- 40 (6) Total Rent: \$224,400.00 payable as follows:
the sum of \$7,480.00 per month from 5th-6-76
to 5th-11-78 then
the sum of \$ per month from then
to then
the sum of \$ per month from then
to then
the sum of \$ per month from then
to then

PLAINTIFFS
EXHIBITS

the sum of \$ per month from
to then

Part of
"W.C.C.5"
(2) Schedule to
Equipment Lease
Agreement 09/76
25 May 1976
(3) Guarantee
and Indemnity
Undated
(5) Schedule
to Variation
Agreement
23 June 1977

the first of such instalments to be paid
on the signing of this agreement.
Residual Value: \$1.00

(7) Insurable Values:-

First Year: \$176,000.00
Second Year: \$140,800.00
Third Year: \$126,720.00
Fourth Year: \$
Fifth Year: \$
Sixth Year: \$

10

SYARIKAT BUNGA RAYA-TIMOR
JAUH SDN. BHD.

Sd: Illegible
Director

(continued)

GUARANTEE AND INDEMNITY
OF
EQUIPMENT LEASE AGREEMENT

IN CONSIDERATION OF TRACTOR MALAYSIA BERHAD
(herein called "the Lessor") agreeing to enter
into the equipment lease agreement with the
lessee described in the schedule hereunder
(hereinafter called "the lessee") in respect to
equipment described in the said schedule, the
undersigned (hereinafter called "the guarantor")
hereby :-

20

(a) guarantees the due payment to the lessor
of all sums of money as shall from time to
time or at any time hereafter become due
and payable by the lessee under the terms
of the said equipment lease agreement or
any variation or extension thereof and also
the due observance and performance of all
other terms and conditions express or implied
in the said agreement on the part of the
lessee to be observed and performed AND ALSO
hereby indemnifies the lessor and agrees to
keep it indemnified from and against all
loss damage costs and expenses suffered or
incurred by the lessor by reason of any
breach or non-performance by the lessee of
any of such terms and conditions on the
part of the lessee to be observed or

30

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performed and all actions claims and demands which may be instituted or made against the lessor in any way consequent upon arising out of or incidental to the said agreement

PLAINTIFFS
EXHIBITS

Part of
"W.C.C.5"

(2) Schedule to
Equipment Lease
Agreement 09/76
25 May 1976

(3) Guarantee
and Indemnity
Undated

(5) Schedule
to Variation
Agreement
23 June 1977

(continued)

- 10 (b) authorises the lessor to grant or allow any time or indulgence to the lessee and to make any composition with the lessee as the lessor may think fit and to waive any of the rights of the lessor whether bestowed on the lessor pursuant to any of the said agreement or by law and to vary any of the terms and conditions of the said agreement
- 20 (c) agrees that the giving of such time or indulgence or compounding waiving or varying aforesaid shall not discharge the liability of the guarantor to the lessor hereunder or otherwise
- (d) agrees that the liability and obligation of the guarantor to the lessor hereunder shall be a continuing one and the lessor shall not be bound at any time to exercise any of its rights under the said agreement and any omission by the lessor so to do shall not affect or discharge the liability of the guarantor hereunder
- 30 (e) agrees that the term "the guarantor" shall mean and include all the signatories hereto and when two or more are guarantors the terms hereof shall bind them and every two or more of them jointly and each of them severally

THE SCHEDULE

Lessee: Name Syarikat Bunga Raya-Timor Jauh
Sdn. Bhd.
Address 6th floor Oriental Plaza
Jalan Parry, P.O.Box 1013
Kuala Lumpur 01-02

40 Description of Equipment:

One unit new Caterpillar D6C
Direct Drive Tractor complete
with 6A B'dozer, HD canopy and
standard attachments. Fitted
with new Carco Winch
Serial No.26K1772
Winch Serial No.13187
Year: 1976

PLAINTIFFS
EXHIBITS

Part of
"W.C.C.5"
(2) Schedule to
Equipment Lease
Agreement 09/76
25 May 1976
(3) Guarantee
and Indemnity
Undated
(5) Schedule
to Variation
Agreement
23 June 1977

IN WITNESS whereof this Guarantee and
Indemnity has been executed on the
day of 197

Names, Addresses and
Signatures of Guarantors

Names and Signatures
of Witnesses to
Guarantors' Signatures

UNITED HOLDINGS BERHAD

Sd: Illegible
Director

Sd: Illegible
Secretary

Sd: Goh Kee San

Mr. Goh Kee San
c/o TMB
PJ

10

(continued)

This is the Exhibit marked "W.C.C.5" referred
to in the Affidavit of Wan Chee Chuen affirmed
before me this 29th day of July 1978

Sgd. Tneh Liang Peng
Commissioner for Oaths
(Pesuruhjaya Sumah)
Kuala Lumpur, Malaysia

T H E S C H E D U L E

20

Total outstanding under the original Equipment Lease Agreement as on 1st-10-76	\$216,920.00	
<u>Less: Rebate</u>	<u>\$ 36,542.00</u>	
	\$180,378.00	
<u>Add: Overdue interest at 12%</u> per annum for 3 months for the period 30-7-76 to 30-9-76	<u>\$ 405.77</u>	
	\$180,783.77	
<u>Less: Residual Value</u>	<u>\$ 54,235.13</u>	30
	\$126,548.64	
<u>Add: Hiring Charges</u>	<u>\$ 61,285.70</u>	
	\$187,834.34	
Total rental payable under Equipment Lease Agreement as varied by this Agreement	<u>\$187,834.34</u>	

The total rent of \$187,834.34 mentioned above
shall be payable as follows :-

the sum of \$5,217.62 per month from 1st-10-76
to 1st-09-79 then
the sum of \$ per month from
to then
the sum of \$ per month from
to then
the first of such instalments to be paid on
the 1st day of October 1976

PLAINTIFFS
EXHIBITS

Part of
"W.C.C.5"
(2) Schedule to
Equipment Lease
Agreement 09/76
25 May 1976

10

SYARIKAT BUNGA RAYA-TIMOR JAUH
SDN. BHD.

(3) Guarantee
and Indemnity
Undated

Sd: Illegible
Director

(5) Schedule
to Variation
Agreement
23 June 1977

(continued)

- Part of
"W.C.C.6"
- (2) SCHEDULE TO EQUIPMENT LEASE
AGREEMENT 10/76
 - (3) GUARANTEE AND INDEMNITY
 - (5) SCHEDULE TO VARIATION
AGREEMENT

Part of
"W.C.C.6"

(2) Schedule to
Equipment Lease
Agreement 10/76
25 May 1976

(3) Guarantee
and Indemnity
Undated

(5) Schedule
to Variation
Agreement
23 June 1977

20

THE SCHEDULE

(1) Address of Lessor:

Tractors Malaysia Bhd
Jalan 205
Petaling Jaya
Selangor

(2) Name & Address of Lessee (including
Business name if any) :

Sykt Bunga Raya-Timor Jauh Sdn.Bhd
6th floor Oriental Plaza
Jalan Parry, P.O.Box 1013
Kuala Lumpur 01-02

30

(3) Description of the Goods:

One unit new Caterpillar D6C
Direct Drive Tractor c/w std.
attachments. Fitted with new
Carco Winch

PLAINTIFFS
EXHIBITS

Engine No. Chassis/Serial No. Reg.No.
26K1773
Winch S/No. 13200

Part of
"W.C.C.6"

(2) Schedule to
Equipment Lease
Agreement 10/76
25 May 1976

(3) Guarantee
and Indemnity
Undated

(5) Schedule
to Variation
Agreement
23 June 1977

(continued)

- (4) Address where Goods are to be kept:
Kampong Ipoh
Kelantan
- (5) Period of Lease:- Thirty (30) Calendar
Months Commencing on the 5th day of June
1976
- (6) Total Rent: \$224,400.00 payable as follows: 10
the sum of \$7,480.00 per month from
5th-6-76 to 5th-11-78 then
the sum of \$ per month from then
to then
the sum of \$ per month from then
to then
the sum of \$ per month from then
to then
the sum of \$ per month from then 20
to then

the first of such instalments to be paid
on the signing of this agreement.
Residual Value: \$1.00

- (7) Insurable Values :-
First Year: \$176,000.00
Second Year: \$140,800.00
Third Year: \$126,720.00
Fourth Year: \$ 30
Fifth Year: \$
Sixth Year: \$

SYARIKAT BUNGA RAYA-TIMOR JAUH
SDN. BHD.

Sd: Illegible
Director

GUARANTEE AND INDEMNITY
OF
EQUIPMENT LEASE AGREEMENT

PLAINTIFFS
EXHIBITS

Part of
"W.C.C.6"

- IN CONSIDERATION OF TRACTOR MALAYSIA BERHAD (herein called "the lessor") agreeing to enter into the equipment lease agreement with the lessee described in the schedule hereunder (hereinafter called "the lessee") in respect to equipment described in the said schedule, the undersigned (hereinafter called "the guarantor") hereby :-
- 10
- (a) guarantees the due payment to the lessor of all sums of money as shall from time to time or at any time hereafter become due and payable by the lessee under the terms of the said equipment lease agreement or any variation or extension thereof and also the due observance and performance of all other terms and conditions express or implied in the said agreement on the part of the lessee to be observed and performed AND ALSO hereby indemnifies the lessor and agreed to keep it indemnified from and against all loss damage costs and expenses suffered or incurred by the lessor by reason of any breach or non-performance by the lessee of any of such terms and conditions on the part of the lessee to be observed or performed and all actions claims and demands which may be instituted or made against the lessor in any way consequence upon arising out of or incidental to the said agreement
- 20
- 30
- 40
- (b) authorises the lessor to grant or allow any time or indulgence to the lessee and to make any composition with the lessee as the lessor may think fit and to waive any of the rights of the lessor whether bestowed on the lessor pursuant to any of the said agreement or by law and to vary any of the terms and conditions of the said agreement
- (c) agrees that the giving of such time or indulgence or compounding waiving or varying aforesaid shall not discharge the liability of the guarantor to the lessor hereunder or otherwise
- (d) agrees that the liability and obligation of the guarantor to the lessor hereunder shall be a continuing one and the lessor shall not be bound at any time to exercise any of its rights under the said agreement and any
- 50
- (2) Schedule to Equipment Lease Agreement 10/76 25 May 1976
- (3) Guarantee and Indemnity Undated
- (5) Schedule to Variation Agreement 23 June 1977
- (continued)

PLAINTIFFS
EXHIBITS _

Part of
"W.C.C.6"

omission by the lessor so to do shall not affect or discharge the liability of the guarantor hereunder

(2) Schedule to
Equipment Lease
Agreement 10/76
25 May 1976

(e) agrees that the term "the guarantor" shall mean and include all the signatories hereto and when two or more are guarantors the terms hereof shall bind them and every two or more of them jointly and each of them severally

(3) Guarantee
and Indemnity
Undated

THE SCHEDULE

10

(5) Schedule
to Variation
Agreement
23 May 1977

Lessee: Name Syarikat Bunga Raya-Timor Jauh
Sdn. Bhd.
Address 6th floor Oriental Plaza
Jalan Parry, P.O.Box 1013
Kuala Lumpur 01-02

(continued)

Description of Equipment:

One unit new Caterpillar D6C
Direct Drive Tractor c/w 6A
B'dozer, HD canopy and std.
attachments. Fitted with new
Carco Winch.

20

Serial No. 26K1773
Winch Serial No. 13200
Year: 1976

IN WITNESS whereof this Guarantee and
Indemnity has been executed on the
day of 197

Names, Addresses and
Signatures of Guarantors

Names and Signatures
of Witnesses to
Guarantors' Signatures³⁰

UNITED HOLDINGS BERHAD

Sd: Illegible
Director

Sd: Goh Kee San

Mr. Goh Kee San
c/o TMB
PJ

Sd: Illegible
Secretary

This is the Exhibit marked "W.C.C.6" referred to in the Affidavit of Wan Chee Chuen affirmed before me this 29th day of July 1978

Sgd. Tneh Liang Peng
Commissioner for Oaths
(Pesuruhjaya Sumpah)
Kuala Lumpur, Malaysia

PLAINTIFFS
EXHIBITS

Part of
"W.C.C.6"

(2) Schedule to
Equipment Lease
Agreement 10/76
25 May 1976

(3) Guarantee
and Indemnity
Undated

(5) Schedule
to Variation
Agreement
23 June 1977

T H E S C H E D U L E

10	Total outstanding under the original Equipment Lease Agreement as on 1st-10-76	\$216,920.00
	<u>Less: Rebate</u>	<u>\$ 36,542.00</u>
		\$180,378.00
	<u>Add: Overdue interest at 12% per annum for 3 months for the period 30-7-76 to 30-9-76</u>	<u>\$ 405.77</u>
		\$180,783.77
	<u>Less: Residual Value</u>	<u>\$ 54,235.13</u>
20	<u>Add: Hiring Charges</u>	<u>\$126,548.64</u>
		<u>\$ 61,285.70</u>
	Total rental payable under Equipment Lease Agreement as varied by this Agreement	<u>\$187,834.34</u>

(continued)

The total rent of \$187,834.34 mentioned above shall be payable as follows :-

	the sum of \$5,217.62 per month from 1st-10-76 to 1st-09-79 then
30	the sum of \$ per month from to then
	the sum of \$ per month from to then

the first of such instalments to be paid on the 1st day of October 1976

SYARIKAT BUNGA RAYA-TIMOR JAUH SDN.BHD

Sd: Illegible
Director

PLAINTIFFS
EXHIBITS

"W.C.C.10"

Letter Plaintiffs
Solicitors to
First Defendant

31 January 1978

"W.C.C.10"

LETTER PLAINTIFFS SOLICITORS
TO FIRST DEFENDANT

A.R. REGISTERED

January 31 1978

WCW/CMW/48637/78

Syarikat Bunga Raya-Timor Jauh Sdn.Bhd.
6th Floor, Oriental Plaza,
P.O. Box 1013
KUALA LUMPUR

10

Dear Sirs

PJ/Lease/05/76 dated 25.5.76
PJ/Lease/06/76 dated 25.5.76
PJ/Lease/22/75 dated 2.9.75
PJ/Lease/23/75 dated 2.9.75
PJ/Lease/07/76 dated 25.5.76
PJ/Lease/08/76 dated 5.6.76
PJ/Lease/09/76 dated 5.6.76
PJ/Lease/10/76 dated 5.6.76

We act for Tractors Malaysia Berhad of Jalan 205, Petaling Jaya. Our clients have informed us that by 8 equipment lease agreements, as subsequently varied described above, our clients let and you took on lease from our clients 8 tractors thereunder.

20

Under the said agreements, you agreed to pay to our clients the monthly rentals stated in the Schedule to them payable in advance. Clause 18 of the said agreements further provided that should you fail to pay the rentals punctually as agreed, our clients should forthwith and without notice on demand become entitled to immediate possession of the tractors and without notice terminate the agreements and to retake possession of the tractors. Clause 19 also provided that upon the termination of the agreements, you should pay to our clients the following :-

30

- (a) Arrears of rentals accrued as at the date of termination;
- (b) Any sums other than rentals which might have become due under these agreements;
- (c) Any expenses incurred by our clients in tracing and/or recovering possession of the tractors or in enforcing the provisions

40

of the agreements;

- (d) An amount equal to other unpaid rentals for the remainder of the period of the lease under the agreements.

PLAINTIFFS
EXHIBITS

"W.C.C.10"

Letter Plain-
tiffs Solicitors
to First
Defendant

31 January 1978

(continued)

As a result of your persistent default in making the payments due to our clients, our clients exercised their rights under the agreements and repossessed all the 8 tractors.

10 Pursuant to the agreements you are liable to pay our clients the following sums of monies for all the 8 agreements:-

1. \$366,002.31 being arrears of rentals as at the date of termination;
2. \$889,327.55 being the amount equal to the unpaid rentals for the remainder period of the lease periods under the agreements;
3. \$23,063.73 being overdue interests due to date of repossession;
4. \$25,900/- being repossession expenses;
- 20 5. \$51,400/- being estimated repairs under clause 4(i) of the said agreements.

The total claim due to our clients under the abovementioned heads of claims amount to \$1,355,693.59. We enclose herewith the particulars of the Schedule Of Outstanding/Overdues as at Date of Repossession.

30 We have now been instructed by our clients to demand from you, which we hereby do, the said sum of \$1,355,693.59 to be paid to us or our clients within seven (7) days from the date hereof, failing which legal proceedings will be instituted against you.

You will notice that interest continues to accrue as long as payment is delayed by you.

Yours faithfully,

Encl.

c.c.: By Certificate of Posting:

40 Syarikat Bunga Raya-Timor
Jauh Sdn. Bhd.
6th Floor Oriental Plaza
P.O. Box 1013
KUALA LUMPUR

PLAINTIFFS
EXHIBITS

"W.C.C.10"

Letter Plaintiffs
Solicitors to
First Defendant

31 January 1978
(continued)

c.c.: By A.R. REGISTERED &
Certificate of Posting:

United Holdings Berhad
6th Floor Oriental Plaza
Jalan Parry
Kuala Lumpur

c.c.: Tractors Malaysia Berhad
P.O. Box 2
PETALING JAYA

This is the Exhibit marked "W.C.C.10"
referred to in the Affidavit of Wan Chee Chuen
affirmed before me this 29th day of July 1978

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Sgd. Tneh Liang Peng
Commissioner for Oaths
(Pesuruhjaya Sumpah)
Kuala Lumpur, Malaysia

"W.C.C.11"

Letter Plain-
tiffs Solicitors
to First
Defendant

9th March 1978

".W.C.C.11"

LETTER PLAINTIFFS SOLICITORS
TO FIRST DEFENDANT

A.R. REGISTERED

20

March 9 1978
WCW/CMW/48637/78

Syarikat Bunga Raya-Timor Jauh Sdn.Bhd.
6th Floor Oriental Plaza
P.O. Box 1013
KUALA LUMPUR

Dear Sirs

PJ/LEASE/21/75 DATED 23.6.77

We act for Tractors Malaysia Berhad of Jalan
205, Petaling Jaya.

30

Our clients have informed us that by the
above Equipment Lease Agreement as subse-
quently varied, our clients let and you took
on lease the tractor mentioned therein.

Under the said agreement, you agreed to pay to our clients the monthly rentals stated in the Schedule to them payable in advance. Clause 18 of the said agreement further provided that should you fail to pay the rentals punctually as agreed, our clients should forthwith and without notice on demand become entitled to immediate possession of the tractor and without notice terminate the agreement and to retake possession of the tractor. Clause 19 also provided that upon the termination of the agreement, you should pay to our clients the following :-

PLAINTIFFS
EXHIBITS

"W.C.C.11"

Letter Plaintiffs
Solicitors to
First Defendant

9th March 1978

(continued)

10

- (a) Arrears of rentals accrued as at the date of termination;
- (b) Any sums other than rentals which might have become due under this agreement;
- (c) Any expenses incurred by our clients in tracing and/or recovering possession of the tractor or in enforcing the provisions of the agreement;
- (d) An amount equal to other unpaid rentals for the remainder of the period of the lease under the agreement.

20

Pursuant to the agreement you are liable to pay to our clients the following sums of monies :-

30

1. \$66,661.10 being arrears of rental as at the date of return of the tractor;
2. \$133,322.21 being the amount equal to the unpaid rentals for the remainder period of the lease;
3. \$4,823.72 being overdue interest due to date of return of tractor;
4. \$6,830/- being estimated repairs under clause 4(1) of the said agreement.

The total claim due to our clients under the agreement amounts to \$211,637.03.

40

We have now been instructed by our clients to demand from you, which we hereby do, the said sum of \$211,637.03 to be paid to us or our clients within seven (7) days from the date hereof, failing which legal proceedings will be instituted against you.

You will notice that interest continues to accrue as long as payment is delayed by you.

PLAINTIFFS
EXHIBITS

"W.C.C.11"

Letter Plaintiffs
Solicitors to
First Defendant
9th March 1978
(continued)

Yours faithfully,

c.c.: By Certificate of Posting:

Syarikat Bunga Raya-Timor
Jauh Sdn. Bhd.
6th Floor Oriental Plaza
P.O.Box 1013
KUALA LUMPUR

c.c.: By A.R.Registered:

United Holdings Berhad
6th Floor Oriental Plaza
Jalan Parry
KUALA LUMPUR 10

c.c.: By Certificate of Posting:

United Holdings Berhad
6th Floor Oriental Plaza
Jalan Parry
KUALA LUMPUR

c.c.: Tractors Malaysia Berhad
P.O. Box 2
PETALING JAYA

20

This is the Exhibit marked "W.C.C.11"
referred to in the Affidavit of Wan Chee Chuen
affirmed before me this 29th day of July 1978

Sgd. Tneh Liang Peng
Commissioner for Oaths
(Pesuruhjaya Sumpah)
Kuala Lumpur, Malaysia

No.11 of 1981

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 :

(1) SYARIKAT BUNGA RAYA-TIMOR
JAUH SDN. BHD.

(2) UNITED HOLDINGS BERHAD

Appellants
(Defendants)

- and -

TRACTORS MALAYSIA BERHAD

Respondent
(Plaintiffs)

RECORD OF PROCEEDINGS

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

Solicitors for the
Appellants

HERBERT SMITH & CO.
Watling House,
35-37 Cannon Street,
London, EC4M 5SD

Solicitors for the
Respondent