

18/84

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA (APPELLATE
JURISDICTION)

B E T W E E N :

O.C.B.C. LIMITED

Appellant
(Plaintiff)

- AND -

PHILIP WEE KEE PUAN @ WEE KEE PHUAN

Respondent
(Defendant)

RECORD OF PROCEEDINGS

COWARD CHANCE,
Royex House,
Aldermanbury Square,
London EC2V 7LD
Solicitors for the Appellant

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Notice of Motion for conditional leave to appeal to His Majesty the Yang di Pertuan Agong	7th September 1981
Affidavit of Joseph Lim in support of Motion	7th September 1981
Order granting conditional leave to appeal to His Majesty the Yang di-Pertuan Agong	2nd November 1981

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA
(APPELLATE JURISDICTION)

B E T W E E N :-

O.C.B.C. LIMITED

Appellant
(Plaintiff)

- AND -

10

PHILIP WEE KEE PUAN @ WEE KEE
PHUAN

Respondent
(Defendant)

RECORD OF PROCEEDINGS

NO.1

SPECIALLY INDORSED WRIT

IN THE HIGH COURT IN MALAYA AT KOTA BHARU

CIVIL SUIT NO.95 OF 1975

20

BETWEEN

O.C.B.C. Ltd.

Plaintiff

AND

PHILLIP WEE KEE PUAN @ WEE KEE PHUAN

Defendant

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

30

To:- Phillip Wee Kee Puan @ Wee Kee Phuan,
93, Jalan Market,
Tumpat,
KELANTAN.

WE COMMAND you, that within 8 days after
the service of this Writ on you, inclusive of

In the High Court
in Malaya

No.1
Specially endorsed
Writ 14th June
1975

In the High Court
in Malaya

No.1
Specially
endorsed Writ
14th June 1975
(Contd.)

the day of such service, you do cause an appearance to be entered for you in an action at the suit of O.C.B.C. Ltd. of O.C.B.C. Building, Jalan Temenggong, Kota Bharu, Kelantan.

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

WITNESS, Mohd. Nor bin Mohamad,
Senior Assistant Registrar of the High
Court in Malaya, the 15th day of June, 1975.

10

(L.S.)

Sd. Foo Say Sd: Mohd. Nor Mohamad,
Ghee & Co. Senior Assistant
Registrar, High Court
in Malaya, Kota Bharu.

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

20

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

A defendant appearing personally may, if he desires, enter his appearance by post, and the appropriate forms may be obtained by sending a Postal Order for \$30,00 with an addressed envelope to the Registrar of the High Court in Malaya at Kota Bharu.

30

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

40

STATEMENT OF CLAIM

The Plaintiff's claim is for the sum of

RM44,250.72 with interest and costs.

In the High Court
in Malaya

.... PARTICULARS ANNEXED HERETO

PARTICULARS

No.1
Specially
endorsed Writ
14th June 1975
(Contd.)

- 10 1. The Plaintiff is a limited company carrying on the business of bankers at its branch at OCBC. Building, Jalan Temenggong, Kota Bharu, Kelantan and elsewhere.
2. The Defendant is a business man residing at 93, Jalan Market, Tumpat, Kelantan.
3. At all material times the Defendant was a customer of the Plaintiff at its said branch, operating under a current account No.795.
- 20 4. At the request of the Defendant the Plaintiff made advances from time to time to the Defendant on his said current account which together with interest, commission and banking charges amounted to \$69,250.72 as at 26.12.1972.
- 30 5. As from about 21.1.64 the Defendant's said current account was secured by a charge to the Plaintiff of several pieces of lands belonging to the Defendant's late father Wee Sidk Hor @ Wee Sock Ho @ Wee Saw Hor @ Wee Sok Hor @ Wee Siok Hor full particulars of which charge are provided hereunder for the purpose of repayment on demand of all sums to be advanced by the Plaintiff to the Defendant to the limit of \$25,000.00 with interest at the bank's current rate with monthly rests.

PARTICULARS OF THE CHARGE

40 Charge dated 21.1.1964 bearing Presentation No. 79/64 and Charge No. 7/64 in respect of lands comprised in Lots 133, 134, 135, 136, 137 and 138 previously held under old grants Nos. 59, 60, 61, 62, 63 and 64 respectively and presently held under new grants Nos: 11733, 11734, 11735, 11736, 11737 and 11738 respectively, Section 1, Bandar Tumpat, Kelantan, with a brick building thereon known as "Ruby Cinema".

6. The Defendant's father, the said Wee Sidk Hor @ Wee Sock Ho @ Wee Saw Hor @ Wee Sok Hor @ Wee Siok Hor died on the 17.10.1964 intestate (hereinafter referred to as the deceased) and his estate was handed to the Official administrator, Malaysia for administration.

7. By letters in writing dated 3.1.1973 the

In the High Court
in Malaya

No.1
Specially endorsed
Writ 14th June
1975 (Contd.)

Plaintiff through its solicitors wrote to the Defendant and to the assistant Official Administrator in Kota Bharu, representing the Official Administrator, Malaysia respectively demanding settlement of the Defendant's said current account in the sum of \$69,250.72 as at 26.12.1972 with interest thereon at the bank's current rate with monthly rests.

8. On 23.12.1973 the Plaintiff made an application to the High Court Kota Bharu in Originating Summons No.109 of 1973 to foreclose the aforesaid Charge by the deceased to the Plaintiff. 10

9. On the 26.9.1974 the Plaintiff obtained an Order of Court in the said Originating Summons inter alia to the effect that the lands comprised in the said charge be sold by Public auction under the direction of the Senior Assistant Registrar of the High Court Kota Bharu for the recovery by the Plaintiff of the sum of \$25,000.00 being the limit of the liability by the estate of the deceased under the said charge with further interest thereon and monthly rests as aforesaid. 20

10. In view of the said order of Court dated 26.9.74 the liability of the deceased's estate to the Plaintiff under the said charge will be discharged upon the said of the (sic) property comprised in the charge and the proceeds thereof being utilized to settle the said sum of \$25,000.00 with interest thereon and monthly rests as aforesaid and costs. 30

11. In the circumstances, the amount due, owing and payable by the Defendant under the said current account to the Plaintiff as at 26.12.72 is \$44,250.72 (being \$69,250.72 less \$25,000.00) with further interest thereon at 10.8% per annum or at the bank's current rate with monthly rests as from 26.12.72 to date of realisation. 40

12. The Defendant has failed, neglected or refused to pay the Plaintiff the said sum of \$44,250.72 with interest and monthly rests or at all inspite of repeated demands.

WHEREFORE the Plaintiff claims:-

- (a) the sum of \$44,250.72;
- (b) interest thereon at the rate of 10.8% per annum or at the bank's current rate with monthly rests as from 26.12.1972 50

- to date of realisation;
- (c) coats; and
- (d) further or other relief.

DATED this 14th day of June, 1975.

In the High Court
in Malaya

No.1
Specially
endorsed Writ
14th June 1975
(Contd.)

10 Sd. Foo Say Ghee & Co.
Solicitors for the Plaintiff.

And the sum of \$120.00 (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 \$300.00 (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.

20 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 or on behalf of a person so resident, proceedings will only be stayed if the amount claimed is paid into Court within the said time and notice of such payment in is given to the plaintiff or its advocate and solicitor or agent.

30 This Writ was issued by Messrs. Foo Say Ghee & Co., Advocates and Solicitors of Kota Bharu, Kelantan, whose address for service is at No.3, 1st. Floor, Bangunan Hotel Murni, Jalan Maju, Kota Bharu, Kelantan, Solicitor for the said Plaintiff who resides at O.C.B.C. Building, Jalan Temenggong, Kota Bharu, Kelantan.

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

Indorsed this day of 19

(Signed)

(Address)

No.2
Defence 19th
July 1976

IN THE HIGH COURT IN MALAYA AT KOTA BHARU

CIVIL SUIT NO: 95 OF 1975

BETWEEN

O.C.B.C.Ltd

Plaintiff

AND

10

Phillip Wee Kee Puan
alias Wee Kee Phuan

Defendant

STATEMENT OF DEFENCE

1. The Defendant admits paragraph 1, 2 and 3 of the Statement of Claim.

2. The Defendant has no knowledge of the averment in paragraph 4 and puts the Plaintiffs to strict proof thereof.

3. Paragraphs 5, 6, 7, 8, 9 and 10 are admitted.

20

4. Defendants repeat paragraph 2 of the Defence and puts the Plaintiffs to strict proof thereof. Paragraph 11 is denied.

5. The Defendant repeats paragraph 4 of the Defence and also says that the Plaintiffs' claim is statute barred.

6. Paragraph 12 is denied.

7. Further and in the alternative the Defendant prays that this action be stayed as the Plaintiff had already obtained judgment on the same account No: 795 Overseas Chinese Banking Corporation Limited, Kota Bharu.

30

WHEREFORE the Defendant prays that the Plaintiffs claim be dismissed with costs.

DATED this 19th day of July, 1976.

Sd. Abdul Aziz Abdullah & Co.
Solicitors for the Defendant.

This Statement of Defence was filed by
M/s. Abdul Aziz Abdullah & Company,
Solicitors for the Defendant abovenamed whose

40

address for service is 572-A, Jalan Temenggong,
Kota Bharu, Kelantan.

In the High Court
in Malaya

No.2
Defence 19th
July 1976 (Contd)

NO.3

Notes of Evidence

In the High Court
in Malaya

No.3
Notes of
Evidence 10th
and 23rd
January 1980

10

IN THE HIGH COURT IN MALAYA AT KOTA BHARU

CIVIL SUIT NO. 95 OF 1975

BETWEEN

O.C.B.O. Ltd

Plaintiff

AND

Phillip Wee Kee Puan @
Wee Kee Phuan

Defendant

IN OPEN COURT

10TH JANUARY, 1980

20

NOTES OF EVIDENCE
BEFORE MOHAMED ZAHIR, J.

Mr. Foo for the Plaintiff.

Encik Aziz and Mr. Nayagam for the
Defendant.

The Defence Counsel now agree that the
amount due from the Defendant to the
Plaintiff, if he is held liable, is
\$44,250.72 as at 26.12.1972.

Intd. N.Z.1.

30

The Defence Counsel asks for adjournment.

Intd. N.Z.1.

Mr. Foo no objection.

Intd. N.Z.1.

Adjourned to 23rd January 1980 for hearing
at 9.30 a.m.

Intd. M.Z.I.
10/1/80.

23rd January, 1980.

Mr. Foo for the Plaintiff.

Encik Aziz and Mr. Nayagam for the
Defendant.

Mr. Foo states that the Defence should
begin the case as the quantum has been
admitted and as the Defence raises the
issue of res judicata.

Intd. M.Z.I.

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Mr. Nayagam applies to amend the
Defence and files a fresh amended defence by
adding paragraph 8 to include the plea of accord
and satisfaction.

Intd. M.Z.I.

Mr. Foo states that the amendment is
made at the 11th hour and without notice to him.
He objects.

Intd. M.Z.I.

Mr. Nayagam states this plea has been
taken by the Defendant even in Chambers and
even on 10th January, 1980 when the case was
adjourned to enable the Defence to subpoena
the former Assistant Official Administrator
to give evidence on this point.

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Intd. M.Z.I.

Amendment allowed.

Intd. M.Z.I.

I rule that the plaintiff should begin
in view of plea of limitation.

30

Intd. M.Z.I.

I rule that the plaintiff should begin
in view of plea of limitation.

Intd. M.Z.I.

Bundle of Documents agreed to the
contents as well put - marked "AB".

Intd. M.Z.I.

Plaintiffs
evidence

Mr. Foo calls:

Mr. Foo
examination

P.W.1 Lin Din Seng s/s in English, 35 years,
Manager O.C.B.C. at Kota Bharu residing at
OCBC Building, Jalan Temenggong, Kota Bharu.

40

I am the manager of OCBC Kota Bharu.

As at 26.12.1972 the Defendant was indebted to the Bank at \$69,250.72 with interest accrual. The Bank made a demand for this sum on 3rd January, 1973 (page 16 of Bundle). The Bank filed foreclosure proceedings against the estate of Wee Siok Hor as guarantor on 26th December, 1973 (Mr. Nayagam admits this date). The Bank obtained an Order of Court on 26th September 1974 (marked P1). The proceedings were against the Official Administrator as the administrator of the estate of the deceased as well as against 4 others including the defendant as beneficiaries of the estate of the deceased. Under the order the Bank could recover \$25,000.00 plus interest thereon.

In the High Court
in Malaya

No. 3
Notes of Evidence
10th and 23rd
January 1980
(Contd.)

Plaintiffs
evidence

Mr. Foo
examination

The Bank received the sum of \$25,000.00 and \$8,562/- interest on 10th November, 1975. My solicitors acknowledged receipt of the money vide letter dated 11th November, 1975 strictly without prejudice to the Civil Suit No. 117/75 filed in the High Court against the Official Administrator as administrator of the estate of Wee Siok Hor and 4 others including the defendant as beneficiaries of the estate of the deceased. A copy of the writ is now produced marked P2.

Intd. M.Z.I.

(Letter dated 11th November, 1975 admitted as 13 even though without prejudice it is not between the parties herein and further it is part of the issue raised in the amended Defence).

Intd. M.Z.I.

On 13th November, 1975 I sent a credit note to the Defendant for the sum of \$25,000.00 which was credited to his account which appears on last entry of page 4 of AB. The Bank did not accept this sum of \$25,000.00 as full discharge of the Defendant's account. It is only part payment. The interest on \$25,000.00 was received from the Official Administrator out of proceeds from sale of the property of the deceased, the guarantor, in the sum of \$8,562/-. It was received by the Bank on 23.1.1976. My Solicitors also wrote an acknowledgment of the receipt of the sum again strictly without prejudice to the Civil Suit (letter marked P4).

The Bank withdrew on 5th November, 1978 the Civil Suit No. 117/75 against the Official Administrator as the administrator of the estate of the deceased and also against the 4 beneficiaries of the estate without the case being heard with liberty to file a fresh one.

After that the Bank did not institute any proceedings against the estate but even on 15th June 1975 this suit had already been filed against the Defendant personally, the operator of the account.

In the High Court in Malaya

No. 3
Notes of
Evidence 10th
and 23rd
January 1980
(Contd.)

Plaintiffs
evidence
Mr. Foo
examination
(Contd.)

**
Cross-examined

The Bank did not at any time agree that upon payment of \$25,000.00 and interest is an accord and satisfaction to all the Defendant's indebtedness. The Bank merely relinquished their rights to sue further against the guarantor, the deceased.

Intd. M.Z.I.

**

Xxn by Mr. Nayagam:

The Defendant allowed his account to remain dormant and allowed interest to accumulate since 8th September, 1965 when he credited the sum of \$200/-. and since then there was interest accumulation and charges on premium of fire policy on the building of the property charged to the Bank. But the Defendant did not write in to say that he would be closing the account. If full payment were made then only the Defendant could close his account. 10

The interest of \$8,562/- was credited into the Defendant's account on 23rd February, 1976 as in AB5. The sum of \$63,75 appearing in AB5 is credit on fire insurance commission. It is where the Bank obtained commission on fire insurance and it is credited back to the customer's account. 20

The sum of \$4,948.61 in AB2 might be interest refunded. This needs further clarification.

Intd. M.Z.I.

11.10 a.m. Adjourned for 30 minutes.

Intd. M.Z.I.

11.40 a.m. Court resumes.

Intd. M.Z.I.

Yes, the sum of \$4,948.61 as in AB2 is refund of interest. I now produce the credit note (marked P5). The credit note for \$8,562/- was also sent to the Defendant (produce copy P6). 30

P. There was a satisfaction of debt.

A. No.

The Bank accepted the sum of \$25,000.00 and interest as part payment of the Defendant's debt with every intention to claim the balance due.

(Mr. Nayagam produced an affidavit with the enclosures affirmed by the former Manager of the Bank affirmed on 23rd December 1973 - marked D1). 40

Intd. M.Z.I.

**

Re-examn:

In the High Court
in Malaya

(Mr. Foo refers to a letter dated 14th January, 1974 written by the Defendant addressed to the Solicitors for the Plaintiff and copied to the Court and Official Administrator).

No. 3
Notes of Evidence
10th and 23rd
January 1980
(Contd.)

Yes, the Bank also received a copy of the letter (produced and marked P7).

Intd. M.Z.I.

**

Re-examined

10

I ask Mr. Nayagam whether he has anything to ask on P7.

Intd. M.Z.I.

Mr. Nayagam has nothing to ask on P7.

Intd. M.Z.I.

By Court: Nil

Intd. M.Z.I.

Case for the Plaintiff

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Mr. Nayagam produces Defence in Civil Suit No. 117/75. Mr. Foo no objection (admitted as D2 also O/S No. 109/73. Mr. Foo no objection - admitted as D3).

Intd. M.Z.I.

Mr. Nayagam does not wish to call his client as a witness and will depend on the documents produced.

Intd. M.Z.I.

Adjourned to tomorrow for submission.

Intd. M.Z.I.
23/1/80.

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NO. 4

NOTES OF PROCEEDINGS

In the High Court
in Malaya

24th January, 1980

No. 4

C.S. 95/75 (Continuation from yesterday)

Notes of
Proceedings
24th January and
8th March 1980

Mr. Foo for the Plaintiff.

Mr. Nayagam for the Defendant.

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Both parties agree that the amount alleged to be due from the Defendant arises from overdraft facilities granted to the Defendant by the Plaintiff to the limit of \$25,000.00 and interest thereon as secured by the charge edecuted by the deceased.

Intd. M.Z.I.

Mr. Nayagam submits:

Mr. Nayagam states he is abandoning all other defence except limitation. Refers to Section 6(1)(a) Limitation Act 1953. 6 years from the date of action accrued. Refers to Halsbury's Laws of England, 3rd Ed. Vol.24 page 181 and page 193 as to accrual of cause of action. The cause of action accrued as early as 1965. At page 197, when time continues to run. Page 213 paragraph 386 - when cause of action arises.

Refers to AB11 and states on demand as cause of action accrues on 22.1.1964. Now states that time runs as in 1965 the date of the account became dormant. Notice of demand given in 1973 and writ issued in 1975 - Statute barred. 10

Acknowledgment P7 in relation to foreclosure proceedings against the estate of the deceased. This is for the charge and not for this debt.

Refers to same Halsbury page 298 para. 590 & 591 and page 305. Interest credited to the account is not evidence of payment but evidence of non-payment. 20

As to payment of \$25,000.00 refers to Section 28(5) of Limitation Act.

Intd. M.Z.I.

Mr. Foo submits:-

When time starts to run? Defence states that it is in 1965. No authority. In case of overdraft there is no fixed time by the borrower to pay at any specified time. In this case time will not run until demand made and in this case on 3.1.1973 (AB16). Refers to same Halsbury page 217 paragraph 396. Refers to Mallal's Digest Vol. 1 paragraph 580 page 95. 30

The question of acknowledgment by the Defendant in 1974, even though it was in respect of foreclosure proceedings, the Defendant agreed to raise an initial sum of \$25,000.00. The Defendant undertook to pay the balance owing. It is clearly an acknowledgment.

The estate paying \$25,000.00, the foreclosure proceedings were for the whole sum.

Intd. M.Z.I.

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Adjourned to 8th March, 1980 for Judgment.

Intd. M.Z.I.

24/1/80

8TH MARCH 1980.

In the High Court
in Malaya

Mr. Foo for the Plaintiff.

Mr. Nayagam and Encik Aziz for the
Defendant.

Judgment delivered.

Judgment for the Plaintiff with costs.

Intd. N.Z.I.
8/3/80.

Salinan Yang Diakui Benar.

Sd. xxx

Stiausaha kepada Hakim
Bahkamah Tinggi,
Kota Bharu. 17 MAR 1980.

No.4

Notes of
Proceedings
24th January and
8th March 1980
(Contd.)

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NO.5

In the High Court
in Malaya

JUDGMENT OF MOHAMED ZAHIR J.

IN THE HIGH COURT IN MALAYA AT KOTA BHARU

CIVIL SUIT NO: 95 of 1975

BETWEEN

O.C.B.C. Ltd.

Plaintiff

AND

Phillip Wee Kee Puan @
Wee Kee Phuan

Defendant

JUDGMENT OF MOHAMED ZAHIR J.

The Plaintiff sued the Defendant for \$44,250.72 being the amount due and payable to the Plaintiff on a current account. The defendant was on or about 2nd October 1963 granted overdraft facilities by the plaintiff bank and the amount then granted to the defendant was up to \$25,000.00.

The account became dormant since 1965 and interest at the rate of 10.8% per annum began to accumulate. The overdraft was secured by a

No.5

Judgment of
Mohamed Zahir J.
8th March 1980

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charge executed by the defendant's father, since died, of a piece of land up to the limit of \$25,000.00 and interest.

On 26th September, 1974, the plaintiff obtained an order for sale of the properties charged. On 15th June 1975 the plaintiff filed these proceedings against the defendant for the balance of the amount due after deducting the amount due from the estate of the defendant's father, the guarantor. The estate of the guarantor was administered by the Official Administrator and in compliance with the order of Court aforesaid the Official administrator paid on 13th November, 1975 to the plaintiff the sum of \$25,000/- being the principal guaranteed on the charge and on 23rd February, 1976 a further sum of \$8,562/- being the interest due. These payments were made after the issue of the writ by the plaintiff against the defendant. The amount claimed by the plaintiff being the balance due to the plaintiff has been agreed by both parties and the issue before me is whether the plaintiff's claim is statute barred. The earlier plea of res judicata was abandoned by the defendant.

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The plaintiff's counsel argued that time starts running from the date of demand i.e. on 3rd January 1973 when the plaintiff sent a notice to the defendant demanding the repayment of the amount due. He quoted Halsbury's Laws of England, 3rd Edition, page 217 which referred to the case of Hoachimson v. Swiss Bank Corporation (1921) 3 K.B. 110 where in that case the customer had a credit balance to the bank, it was held that a previous demand was necessary before an action could be maintained and it was held that action in that case was not statute barred. Counsel argued that applying the principle of that case in the reverse, the Bank's cause of action will only accrue after demand.

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However, it appears that in the case of a loan by the bank it is being treated as any other loan and time starts running after such loan is granted (see Bradford Old Bank v. Sutcliffe (1918) 2 K.B. 833 and Parr's Banking Co. Ltd. v. Yates (1898) 2 K.B. 460). On the other hand, it would appear that the amount in the credit account of a bank customer cannot be treated as a loan as the customer never intended to hand the money to the bank (see also Bian Chiang Bank Bhd. v. Kwong Hing Cheong (1978) 2 MLJ 193).

50

Counsel for the plaintiff also submitted the case of The Kwong Yik (Selangor) Banking Corporation Ltd. v. Malayan Daily Express (1926) Ltd. and Others (1933) MLJ. 198 where it was held that time does not run against a guarantor until demand is made by the bank. The case is distinguished from the Parr's Bank case as there was a deed of guarantee executed where the guarantor undertakes to pay "of all moneys which may at any time be due to you from the firm on the general balance of its account with you". In the instant case the defendant had not executed any agreement that advances are payable on demand. Counsel's submission on this point therefore fails.

In the High Court
in Malaya

No.5
Judgment of
Mohamed Zahir J.
8th March 1980
(Contd.)

He, however, submitted the alternative if time runs from default then there was acknowledgment on the part of the defendant vide the defendant's letter dated 14th January, 1974 (Ex.P7). The letter is addressed to the plaintiff's solicitors written and signed by the defendant with the heading of Originating Summons No. 109/73 and the parties, consisting of the plaintiff and the beneficiaries of the guarantor in which the defendant was one of them. The letter reads as follows:-

"I am one of the Respondent abovenamed. I write to request for a postponement of the application to a date sometime in the middle of March 1974 so as to enable me to raise as initial payment to O.C.B.C. Ltd., Kota Bharu a sum of about \$25,000.00 from the sale of a rubber estate amounting to about 29 acres.

I hope to arrange to sell the property comprised in the charge and from the proceeds thereof the official administrator will be able to pay the balance owing to O.C.B.C. Ltd. I shall be able to disclose to the Court at the next date of hearing as to whether the sale of the property could be finalized."

I am in agreement with counsel that the defendant's letter dated 14th January, 1974 revives the time for suing by the plaintiff and starts time to run afresh. Section 26(2) of the Limitation Ordinance reads as follows:

"where any right of action has accrued to recover any debt or other liquidated pecuniary claim, or any claim to the personal estate of a deceased person or to any share or interest therein, and the person liable or accountable therefor

In the High Court
in Malaya

No.5
Judgment of
Mohamed Zahir J.
8th March 1980
(Contd.)

acknowledge the claim or makes any payment in respect thereof, the right shall be deemed to have accrued on and not before the date of the acknowledgment or the last payment:"

"Acknowledgment" is not defined by the Limitation Ordinance. It merely states "acknowledgment the claim". Michael Franks on Limitation of Actions at page 218 says as follows:-

10

"With regard to liquidated claims the defendant must expressly or by implication admit that the claim is at that time existing, due and unpaid, but it is not necessary that the acknowledgment should actually name the sum, if the debt can be connected with the acknowledgment by positive evidence or inference".

20

Counsel for the defendant replied that the defendant wrote the letter as a beneficiary of the deceased guarantor and it concerned foreclosure proceedings against the properties of the deceased guarantor. This could very well be the case. But I am of the opinion that the defendant in this context cannot have a split personality. He is in fact both a beneficiary of the estate of the deceased as well as the operator of the accounts. He even promised in his letter that he hoped to arrange to sell the properties in the charge and to pay the balance owing to the plaintiff. This is not merely an implication to pay but a clear unequivocal promise to pay. It was not his business to write the letter as at that time there was an administrator appointed, that was the Official Administrator and it relates to his account. He is clearly "the person accountable therefor..." under Section 26(2) of the Ordinance. Again, I am of the opinion that the defendant cannot claim to be acting on behalf of the estate of his father as there was an administrator already appointed.

30

40

All that is necessary for an acknowledgment which takes the case out of the statute is that the debtor should recognise the existence of the debt, or that the person who might rely on the statute should recognise the rights against himself (see Wright v. Pepin (1954) 2 A.E.R. 52 at p.55). The acknowledgment need not even

50

contain a promise to pay and it is immaterial that the amount of the debt is not expressed in the acknowledgment or that the correctness of the amount claimed is disputed in the acknowledgment (see Halsbury's Laws of England 3rd Ed. p. 300).

In the High Court
in Malaya

No.5
Judgment of
Mohamed Zahir J.
8th March 1980
(Contd.)

10 The words "the person liable or accountable therefor" means generally anyone who is entitled to tender the money and whose tender the creditor is bound to accept. In this case if the defendant were to tender the money, even if he were to state that he did so in his capacity as a beneficiary of the estate of his father, the plaintiff must accept his tender because it was the defendant's own debt. In the case of Lewin v. Wilson (1886) 11 A.C. 639 Lord Hobhouse stated as follows at page 646:

20 "In this case their Lordships think it sufficient to say that payments made by a person who under the terms of the contract is entitled to make a tender, and from whom the mortgages (sic) is bound to accept a tender, of money for the defeasance or redemption of the mortgage, are payments which by S.30 give a new starting point for the lapse of time".

The principle of the above case is followed by Re Clifden (1900) 1 Ch.774.

30 In Harlock v. Ashberry (1882) 19 Ch. D. 539. Jessel M.R. at page 546 stated as follows:-

"Therefore on principle and on authority I think that the payment to take the case out of the statute must be a payment by a person who is bound to pay the principal or interest of the mortgage money".

40 By way of analogy, even though the instant case did not involve any payment, the defendant is the person who is bound to pay towards the principal and interest and the fact that he had made such promise to pay revives the cause of action so as to start running afresh from the date of acknowledgment.

I therefore enter judgment for the agreed sum of \$44,250.72 with interest thereon at 10.8% with monthly rests as from 26th December, 1972 to date of realisation and costs to be taxed.

(Sgd.) MOHAMED ZAHIR
Judge

Mohamed Zahir bin Haji Ismail)
Judge, High Court.
Malaya.

50 Kota Bharu,
8th March, 1980.

In the High Court
in Malaya

No.5
Judgment of
Mohamed Zahir J.
8th March 1980
(Contd.)

Date of hearing: 23-24 January, 1980

Counsel:

Mr. Foo Say Ghee of
M/s. Foo Say Ghee & Co. .. for the Plaintiff

Mr. M.S. Nayagam of
M/s. Nayagam & Co. .. for the Defendant.

Salinan yang diskui benar.
Sd. xxx

10

Setiausaha kepada Hakim,
Nahkamah Tinggi,
Kota Bharu. 17 MAR 1980.

NO.6

ORDER

In the High Court
in Malaya

No.6
Order 8th March
1980

IN THE HIGH COURT IN MALAYA AT KOTA BHARU

CIVIL SUIT NO: 95 OF 1975

20

BETWEEN

O.C.B.C. Ltd. ... Plaintiff

AND

Philip Wee Kee Puan @ Wee Kee Phuan
... Defendant

BEFORE THE HONOURABLE DATUK MOHD. ZAHIR BIN
HAJI ISMAIL. JUDGE. HIGH COURT IN MALAYA,
KOTA BHARU.

IN OPEN COURT,
THIS 8TH DAY OF MARCH, 1980.

30

O R D E R

UPON THIS SUIT coming on for hearing on
the 10th day of January, 1980, 23rd day of January,
1980 and 24th day of January, 1980 in the
presence of Mr. Foo Say Ghee of Counsel for
the Plaintiff and Encik Abdul Aziz Abdullah
and Mr. Nayagam of Counsel for the Defendant
and in the presence of Mr. Lim Din Seng,
Manager of the Plaintiff company and the
Defendant in person AND UPON HEARING Counsel

40

and parties aforesaid and the same being adjourned to the 8th day of March, 1980 for judgment AND UPON THE SAME COMING ON FOR JUDGMENT this day in the presence of Mr. Foo Say Ghee of Counsel for the Plaintiff and Encik Abdul Aziz Abdullah and Mr. Nayagam of Counsel for the Defendant.

In the High Court
in Malaya

No.6
Order 8th March
1980 (Contd.)

10

IT IS ORDERED that judgment be and is hereby entered for the Plaintiff against the Defendant in the sum of \$44,250.72 together with interest thereon at the rate of 10.8% per annum with monthly rests as from 26.12.72 to date of realisation.

AND IT IS FURTHER ORDERED that the Defendant do pay the Plaintiff costs of this suit to be taxed by the proper officer of the Court.

GIVEN under my hand and the Seal of the Court this 8th day of March, 1980.

20

Sd. xxx
SENIOR ASSISTANT REGISTRAR,
HIGH COURT, MALAYA,
KOTA BHARU.

NO.7

In the Federal
Court

NOTICE OF APPEAL

No.7
Notice of Appeal
11th March 1980

IN THE FEDERAL COURT OF MALAYSIA

(APPELLATE JURISDICTION)

30

CIVIL APPEAL NO: 57 OF 1980

BETWEEN

Philip Wee Kee Puan @ Wee Kee Phuan .. Appellant.

AND

O.C.B.C. Ltd. .. Respondent.

(In the Matter of Kota Bharu Civil Suit
No.95 of 1975)

Between

O.C.B.C. Ltd. .. Plaintiff.

In the Federal
Court

No.7
Notice of Appeal
11th March 1980
(Contd.)

And

Philip Wee Kee Puan @ Wee
Kee Phuan ... Defendant).

NOTICE OF APPEAL

TAKE NOTICE that Philip Wee Kee Puan @
Wee Kee Phuan, The Defendant being
dissatisfied with the decision of the
Honourable Mr. Justice Datuk Haji Mohd. Zahir
bin Haji Ismail given at Kota Bharu on the
8th day of March 1980, appeals to the
Federal Court against the whole of the said
decision.

10

DATED this 11th day of March, 1980.

Sd. Nayagam & Co.
SOLICITORS FOR APPELLANT.

To: 1. The Sen. Asst. Registrar
High Court, Malaya,
Kota Bharu.

20

2. The Respondent abovenamed
Or their Solicitors.
M/s Foo Say Ghee & Co.,
Kota Bharu,
Kelantan.

3. The Registrar.
Federal Court,
The Law Courts,
Kuala Lumpur.

30

This Notice of Appeal is taken out by
M/s. Nayagam & Co. of Chartered Bank
Building, (1st. Floor), Jalan To' Hakim,
Kota Bharu, Kelantan.

In the Federal
Court

No.8
Amended Petition
of Appeal undated

NO.8

AMENDED PETITION OF APPEAL

IN THE FEDERAL COURT OF MALAYSIA
(APPELLATE JURISDICTION)

40

FEDERAL COURT CIVIL APPEAL NO: 57 OF 1980

BETWEEN

Philip Wee Kee Puan @
Wee Kee Phuan ... APPELLANT

AND

O.C.B.C. Ltd ... RESPONDENT
(In the matter of Kota Bharu Civil Suit
No.95 of 1975

In the Federal
Court

No.8
Amended Petition
of Appeal
undated
(Contd.)

Between

O.C.B.C. Ltd ... Plaintiff

And

10 Philip Wee Kee Puan
@ Wee Kee Phuan ... Defendant).

AMENDED MEMORANDUM OF APPEAL

Philip Wee Kee Puan @ Wee Kee Phuan the Appellant abovenamed appeals to the Federal Court against the whole of the decision of The Honourable Dato Justice Mohamed Zahir bin Haji Ismail given at the High Court at Kota Bharu on the 8th of March 1980 on the following grounds:-

20 1. "The issue of acknowledgment of debt not having been raised in the pleadings the learned trial judge ought in law to have excluded any and all reference to it in the trial and grounds of judgment "having regard to the decision of Rajan Azlan Shah J. in:-

Mat bin Lim and Another v. Ho Yut Kam and Another 1967 - 1 M.L.J. 13.

30 ~~1.~~ 2. The learned trial judge erred in law in the exercise of his discretion in admitting for the first time at the re-examination stage of the trial the letter dated 14th January 1974 (exhibit p.52).

~~2.~~ 3. The learned trial Judge erred in law and in fact in holding that the Appellant "in this context cannot have a split personality".

~~3.~~ 4. The learned trial Judge erred in law and in fact in not distinguishing and not treating originating summons No.109/73 and High Court Civil Suit 95/75 as separate and distinct causes of action.

40 ~~4.~~ 5. The learned trial Judge erred in fact in holding that the Appellant promised in his letter (exhibit p.52) "to arrange to sell the properties in the charge and to pay the balance owing to the Plaintiff". The letter in fact reads "I hope to arrange to sell the property comprised in the charge and from the proceeds

In the Federal Court

No.8
Amended Petition
of Appeal undated
(Contd.)

thereof the Official Administrator will be able to pay the balance owing to O.C.B.C. Ltd." (italics mine).

~~5.~~ 6. The learned trial Judge erred in law that the above statement was a "clear unequivocal promise to pay".

~~6.~~ 7. The learned trial Judge erred in law and in fact in holding that "it was not his (appellant's) business to write the letter".

10

~~7.~~ 8. The learned trial Judge erred in law and in fact in holding that the Appellant claimed to be acting on behalf of the estate of his father.

~~8.~~ 9. The learned trial Judge erred in law in holding that the letter (exhibit p.52) in an acknowledgment of the appellant's debt.

~~9.~~ 10. The learned trial judge was wrong in law and in fact in allowing interest at 10.8% as from the 26th December, 1972.

20

~~10.~~ 11. The learned trial Judge should therefore have dismissed the Plaintiff's claim with costs.

~~DATED this 13th day of April, 1980.~~

DATED this _____ day of _____ 1981.

SOLICITOR FOR THE APPELLANT.

To: (1):- The Chief Registrar.
Federal Court, Malaysia,
Kuala Lumpur.

(2) The Senior Assistant Registrar.
High Court, Malaya,
Kota Bharu.

30

(3) The Respondent or their Solicitors,
M/s. Foo Say Ghee & Co.
Advocates & Solicitors.
Kota Bharu.

This Amended Memorandum of Appeal is filed by M/s. Nayagam & Co., Solicitors for the Appellant whose address for service is at Chartered Bank Building (1st. Floor),
Jalan To' Ankim, Kota Bharu, Kelantan.

40

JUDGMENT

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT
KOTA BHARU

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO.57 OF 1980

B E T W E E N

10 Philip Wee Kee Puan @ Wee
Kee Phuan ... Appellant

AND

O.C.B.C. Ltd. ... Respondent

(In the matter of Kota Bharu Civil Suit
No.95 of 1975

Between

O.C.B.C. Ltd ... Plaintiff

And

20 Philip Wee Kee Puan @
Wee Kee Phuan ... Defendant)

CORAM: Wan Sulaiman, F.J.
Salleh Abas, F.J.
Hashim Sani, J.

JUDGMENT OF THE COURT

In this appeal the facts are as follows.
On 2/10/1963 the Appellant was granted an over-
draft facility by the Respondent bank up to the
limit of \$25,000.00 and his late father on
21/1/1964 stood a surety for him by charging his
30 lands in favour of the Respondent as a collateral
to the overdraft facility. The last entry in
the Appellant's account in respect of which the
overdraft was granted was on 8/9/1965 when the
Appellant paid into the account a sum of \$200.00.
Since then the account became dormant and by
26/12/1972 the amount of debt together with
accumulated interest owed to the Respondent stood
at \$69,250.72. The Appellant's father having
40 died, his estate was managed by Official
Administrator, on 3/1/1973 Messrs. Foo Say Ghee
& Co. a firm of solicitors acting on behalf of
the Respondent sent a letter to Official

Administrator demanding payment of this debt within 14 days, and a similar letter to the Appellant. Subsequently as no payments were made by either Official Administrator or the Appellant the Respondent applied for and obtained an Order from the Court by Originating Summons No. 109/1973 to sell the charged lands in order to recover the guaranteed sum of \$25,000.00 and some interest. This sum was finally paid by the Official Administrator on 13/11/1975.

10

As regards the Appellant despite the letter of demand sent to him by the Respondent's solicitors on 3/1/1973 he paid nothing to the Respondents. However, on 14/1/1974 whilst the Originating Summons No. 109/1973 was pending he wrote a letter exhibit P7 to the Respondent's solicitors requesting the postponement of the Respondent's Originating Summons in the following terms:-

20

"Re: In the High Court in Malaya at Kota Bharu Originating Summons No.109/73 Oversea-Chinese Banking Corpn. Ltd.

1. The Official Administrator, Malaya (as the administrator of the estate of Wee Sidk Hor, deceased)
2. Wee Choo Luan @ Wee Chui Luan
3. Wee Choo Hong @ Wee Chui Hong
4. Philip Wee Kee Puan @ Wee Kee Phuan
5. Teh Eng Bee @ Tay Eng Boo

30

I am one of the Respondent abovenamed, I write to request for a postponement of the application to a date sometime in the middle of March 1974 so as to enable me to raise as initial payment to O.C.B.C. Ltd., Kota Bharu a sum of about \$25,000.00 from the sale of a rubber estate amounting to about 29 acres. I hope to arrange to sell the property comprised in the charge and from the proceeds thereof the official administrator will be able to pay the balance owing to O.C.B.C. Ltd. I shall be able to disclose to the Court at the next date of hearing as to whether the sale of the property could be finalised.

40

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Yours faithfully,

Sd..XXX.....

10 As no payment was forthcoming from the Appellant, on 16/6/1975 the Respondent took out a Writ against the Appellant claiming, the balance of the debt amounting to \$44,250.72. In his defence the Appellant claimed that the debt in so far as he is concerned, was statute barred. In the trial during the course of re-examination of the Appellant the Respondent's counsel produced exhibit P7. Counsel for the Appellant made no objection to its admissibility. The Learned Judge in his judgment examined the law relating to overdraft and came to the conclusion that the debt was statute barred, but nevertheless gave judgment in favour of the Respondent because of exhibit P7. The Appellant now appeals to us on the ground that the Learned Judge should not have taken into consideration exhibit P7 as this document was not where pleaded on the Respondent's Statement of Claim.

20 It is settled law that for the purpose of statute of limitation as regards overdraft the cause of action against the borrower arises everytime an advance is made by the bank and that no demand for repayment of debt is necessary for the accrual of cause of action, unless there is a term in the overdraft agreement requiring such notice - Parr's Banking Co. Ltd. v Yates, (1) Bian Chiang Bank Bhd v Kwong Hing Cheong (2). On the other hand the cause of action against a person who stood as a surety for an overdraft facility only accrues when a demand for repayment is made to the surety. Bradford Old Bank, Ltd. v. Satcliffe (3). In the present appeal the account became dormant on 8/9/1965, and therefore time for the purpose of limitation began to run from that date. By the time writ was taken out on 16/6/1975 it is three months short of ten years, and the suit is thus caught by section 6 of the Limitation Ordinance 1953.

30 The Learned Judge, however gave judgment for the Respondent because of the exhibit P7.

40 Counsel for the Appellant submitted that exhibit P7 constitutes a new cause of action and that unless it is pleaded in the Statement of Claim, the Appellant should be entitled to the judgment, because the debt having been statute barred the statement of claim therefore discloses no cause of action. This submission, in our view, is well founded. The point was

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- (1) (1898) 2 QB 460
- (2) (1978) 2 MIJ. 193
- (3) (1918) 2 KB 833

In the Federal
Court

No.9
Judgment (Contd.)

dealt with by Raja Azlan Shah J. as he then was in Mat bin Lim and Anor. v. Ho Yut Kam & Anor. (4) and we accept this judgment as a correct statement of the Law relating to the pleading and judgment on the statute of limitation. The Respondent's stand in the trial seems to be that the debt was not statute-barred, and that even if it was so barred, the debt was revived by document exhibit P7. Such alternative cause of action must in our view be pleaded in the Statement of Claim. As this was not done, the Statement of Claim therefore discloses no cause of action and the suit should be dismissed.

10

We therefore allow the appeal with costs and the deposit should be refunded to the Appellant.

Sgd.
(Salleh Abas)

20

(4) (1967) 1 MLJ. 13 see also Busch v Stevens
(1962) 1 All ER 412, per Lawton J at p.416

In the Federal
Court

No.10
Order 30th July
1981

NO.10

ORDER

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT
KOTA BHARU

(APPELLATE JURISDICTION)

30

FEDERAL COURT CIVIL APPEAL NO.57 OF 1980

BETWEEN

PHILIP WEE KEE PUAN @
WEE KEE PHUAN

Appellant

AND

O.C.B.C. Ltd.

Respondent

(In the Matter of Kota Bharu Civil Suit
No.95 of 1975

Between

O.C.B.C. Ltd.

Plaintiff

40

And

In the Federal
Court

Philip Wee Kee Puan @ Wee Kee Phuan Defendant)

CORAM: WAN SULEIMAN, AG CHIEF JUSTICE, HIGH
COURT, MALAYA, SALLEH ABAS, JUDGE, FEDERAL
COURT, MALAYSIA, HASHIM SANI, JUDGE, HIGH COURT,
MALAYA.

No.10
Order 30th July
1981
(continued)

IN OPEN COURT

10

THIS 30TH DAY OF JULY,
1981

O R D E R

20

THIS APPEAL coming on for hearing on the 6th day of June, 1981 in the presence of Encik M.S. Nayagam of Counsel for the Appellant abovenamed and Encik Foo Say Ghee of Counsel for the Respondent abovenamed AND UPON READING the Record of Appeal herein AND UPON HEARING the arguments and submission from the Counsels aforesaid IT WAS ORDERED that the Appel do stand adjourned for judgment AND the Appeal coming on for delivery of judgment this day in the presence of Encik M.S. Nayagam of Counsel for the Appellant and Encik Foo Say Ghee of Counsel for the Respondent abovenamed.

IT IS ORDERED that the Appeal be and is hereby allowed with costs.

30

AND IT IS ALSO ORDERED that the sum of \$500.00 deposited by the Appellant in Court as security for costs of this Appeal be paid out to the Appellant.

GIVEN under my hand and the Seal of the Court this 30th day of June, 1981.

Signed: Illegible
SENIOR ASSISTANT REGISTRAR
FEDERAL COURT,
KUALA LUMPUR.

40

This Order is taken out by M/s. Nayagam & Co., of Chartered Bank Building (1st Floor), Jalan To' Hakim, Kota Bharu, Kelantan, Solicitors for the Appellant.

In the Federal Court

No.11

No.11
Order granting final leave to appeal to His Majesty the Yang di-Pertuan Agong 22nd March 1982

Order granting final leave to Appeal to His Majesty the Yang di-Pertuan Agong

IN THE FEDERAL COURT IN MALAYSIA HOLDEN AT KUALA LUMPUR

(APPELLATE JURISDICTION)

10

FEDERAL COURT CIVIL APPEAL NO:57 of 1980

BETWEEN

Philip Wee Kee Puan @
Wee Kee Phuan Appellant

And

O.C.B.C. Ltd. Respondent

(In the Matter of Kota Bharu Civil Suit No.95 of 1975 Personal Claims Division

Between

20

O.C.B.C. Ltd. Plaintiff

And

Philip Wee Kee Puan @
Wee Kee Phuan Defendant)

CORAM: LEE HUN HOE, CHIEF JUSTICE, HIGH COURT, BORNEO ABDUL HAMID, JUDGE, FEDERAL COURT, MALAYSIA E. ABDOLCADER, JUDGE, HIGH COURT, MALAYA.

IN OPEN COURT

THIS 22ND DAY OF MARCH, 1982

30

O R D E R

UPON MOTION made unto Court this day in the presence of Mr. S. Radhakrishnan of Counsel for the abovenamed Respondent and Mr. Nayagam of Counsel for the abovenamed Appellant AND UPON READING the Notice of Motion filed on the 24th day of December, 1981 and the Affidavit of Wilfred Abraham affirmed on the 23rd day of December, 1981, both filed herein BY CONSENT IT IS ORDERED that final leave be and is hereby granted to the Respondent to appeal to His Majesty the Yang Di Pertuan Agong against the whole of the decision of this Honourable Court given on the 30th day of July, 1981.

40

GIVEN under my hand and the Seal of the Court this 22nd day of March, 1982.

Sgd: K.S. Tan
SENIOR ASSISTANT REGISTRAR,
FEDERAL COURT,
MALAYSIA,
KUALA LUMPUR.

In the Federal
Court

No.11
Order granting
final leave to
appeal to His
Majesty the
Yang di-Pertuan
Agong 22nd
March 1982
(Contd.)

10 This Order is taken out by Messrs Shearn
Delamore & Co., and Drew & Napier, Solicitors
for the Respondent whose address for service
is at No. 2 Bentong, Kuala Lumpur.

EXHIBITS

AGREED BUNDLE OF DOCUMENTS MARKED AB. PAGES 1-8 STATEMENTS
OF ACCOUNT OF DEFENDANT FROM 1972 to 1979

19

OVERSEA-CHINESE BANKING CORPORATION LIMITED, KOTA BHARU

See Mr. 795
Phuan

PAYMENT STOPPED				
CHEQUE No.	AMOUNT	DATED	INTL	REMARKS
				33

OVERDRAFT LIMIT: \$25,000.00
DOLLARS: Twenty Five Thousand
INTEREST RATE: 10%

ALLIANCE BANK PHUAN. 795
LIN PHUAN.
A.I.

DEBIT	CREDITS	DATE	INTL	BALANCE	CHECK TOTAL	INTEREST PRODUCT			
						DAYS	PRODUCT	OLD PRODUCT	TOT.
FORWARD	DEBIT	JUN 30 '72		65,564.33 00					
491.83		JUL 2 6'72		66,076.21 00					
491.83 +		JUL 2 6'72		66,174.50 00					
520.25 -		AUG 2 6'72		66,790.00 00					
615.42 -		SEP 2 6'72		67,411.15 00					
621.15 -		OCT 2 6'72		68,017.85 00					
606.70 -		NOV 2 6'72		68,641.76 00					
625.91 -		DEC 2 6'72		69,250.72 00					
618.95 -									

CHEQUE BOOKS ISSUED			
No.	TO No.	No.	TO No.

Certified true copy:
For Oversea-Chinese Banking Corporation
(Kota Bharu Branch)
[Signature]
Manager

PAYMENT STOPPED			
CHEQUE NO	AMOUNT	DATE	INTL

SRKS **34**

9.60%

OVERDRAFT LIMIT: \$25,000/3

DOLLARS: Twenty Five Thousand &

INTEREST RATE: 12%

EE KUN PHUAN. 799
RR#T

CREDITS	DATE	INTL	BALANCE	CHECK TOTAL	INTEREST PRODUCT			
					DAYS	PRODUCT	OLD PRODUCT	TOTAL PROD
DEC 1372			24,250.72					
5.71	JAN 27 '73		69,906.43					
1.75	FEB 5 '73		70,266.18					
2.80	FEB 26 '73		70,890.99					
3.91	MAR 10 '73		68,942.37					
2.0	MAR 26 '73		66,506.36					
0.55	MAY 2 '73		67,116.33					
1.51	JUN 2 '73		68,197.39					
3.07	JUL 26 '73		68,755.46					
0.40	AUG 26 '73		69,295.86					
1.96	SEP 26 '73		69,860.82					
1.3	OCT 29 '73		70,412.61					
1.05	NOV 26 '73		70,986.07					
6.17	DEC 26 '73		71,546.14					

Handwritten notes: 4,948.61 + A, interest, refund

CHEQUE BOOKS ISSUED	
No. 327101-125	TO No
No	TO No
No	TO No

Certified true copy:

For Overdraft

[Signature]

PAYMENT STOPPED				REMARKS
CHEQUE No.	AMOUNT	DATED	INIT.	
				34

OVERDRAFT LIMIT: \$75,000/- S
 DOLLARS: Twenty five thousand only
 INTEREST RATE: 60/100

S. K. PHUAN. 799
 S.E.

CREDITS	DATE	INTL	BALANCE	CHECK TOTAL	INTEREST PRODUCT			
					DAYS	PRODUCT	OLD PRODUCT	TOTAL PROD
EC 1/73 025	AN 2 6'74		71,546.14 00					
.00	JAN 2 6'74		72,190.22 00					
.25	FEB 17'74		72,552.47 00					
.82	FEB 26'74		73,203.29 00					
.22	MAR 2 6'74		73,798.51 00					
.35	APR 27'74		74,462.86 00					
.54	MAY 2 6'74		75,174.79 00					
.51	JUN 2 6'74		75,915.38 00					
.77	JUL 27'74		76,639.15 00					
.90	AUG 2 6'74		77,393.05 00					
1.45	SEP 2 6'74		78,156.41 00					
.14	OCT 2 6'74		78,981.55 00					
.31	NOV 2 6'74		79,678.86 00					
1.15	DEC 2 6'74		80,438.51 00					

CHEQUE BOOKS ISSUED	
No. 87/101-125	TO No.
No.	TO No.
No.	TO No.

Certified true copy:

[Signature]

ANKING CORPORATION, LIMITED - KOTA BHARU BRANCH
 S IN THE REPUBLIC OF SINGAPORE

اور سہا چائیس بیٹکنج آرڈر
 行有限公司

LE FHUAN. 795

CHECK NO.	AMOUNT	PAYMENT STOPPED		REMARKS
		PAID	INTL	

36

OVERDRIFT LIMIT	\$25,000/-	INTEREST RATE	11-60.
	DOLLARS TWENTY FIVE THOUSAND		

1975

	CREDITS	DATE	INIL	BALANCE	CHECK TOTAL	REMARKS
		JAN 26 '75		80,433.51		
45 -		JAN 26 '75		81,230.96		
00 -	63.75 +	EB 16 '75		81,593.21		
30 -		EB 26 '75		82,389.57		
91 -		MAR 26 '75		83,116.47		
	25,000.00 +	NOV 13 '75		58,116.47		

CHECK BOOKS ISSUED			
No	827101 - 125	TO No.	
No		TO No.	
No		TO No.	

Certified true copy:

[Handwritten Signature]

TRADING CORPORATION, LIMITED
 (INCORPORATED IN SINGAPORE)

1976

شركة التاج للتجارة
 有限公司

KEO FOUEN 795
 t,

PAYMENT STOPPED				
DATE	CHEQUE NO.	AMOUNT	INITIALS	REMARKS

OVERDRAFT LIMIT
 \$25,000
 Words **3.7**
 INTEREST RATE

CHEQUE BOOKS ISSUED	
NO.	TO NO.
NO.	TO NO.
NO.	TO NO.


DTS	CREDITS	DATE	INTL	BALANCE	CHECK TOTAL	INTEREST			
						DAYS	TOTAL DECIMALS	OLD BALANCE DECIMALS	DECI

				58,116.17					
	63.75 +	EB 3 '76		58,478.72					
	8,562.00 +	EB 23 '76		49,916.72					

Account / rebate for ...

OFF CER'S SIGNATURE

Certified true copy:



CORPORATION, LIMITED

شركة
مصرفية

795

PAYMENT STOPPED				
DATE	CHEQUE NO.	AMOUNT	INITIALS	REMARKS

1011

OVERDRAFT LIMIT

\$ 25,000/=

Words

INTEREST RATE

38

CHEQUE BOOKS ISSUED

No. TO NO.

No. TO NO.

No. TO NO.

CREDITS	DATE	INCL	BALANCE	CHECK TOTAL	INTEREST			
					DAYS	TOTAL DECIMALS	OLD BALANCE DECIMALS	DECIMALS
WARD 350	JAN 1977	<i>fl</i>	49,916.7200					

OFFICER'S SIGNATURE

Certified true copy:

REPUBLIC OF SINGAPORE

البنك التجاري
有限公司

Kia Thuan 735
at,

PAYMENTS STOPPED				
DATE	CHEQUE NO.	ACCOUNT	REMARKS	INITIALS

OVERDRAFT LIMIT

\$25,000/=

Words

3.9%

INTEREST RATE

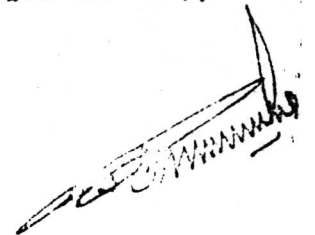
CHEQUE BOOKS ISSUED

NO.	TO NO.
NO.	TO NO.
NO.	TO NO.

DEBIT	CREDITS	DATE	INIT	BALANCE	CHECK TOTAL	INTEREST			
						DAYS	TOTAL DECIMALS	OLD BALANCE DECIMALS	DEC
CARRY FORWARD									
	67.50 +	EP 14'73	/	50,500.2200					

OFFICER'S SIGNATURE

Certified true copy:



BANKING CORPORATION, LIMITED -

(THE REPUBLIC OF SINGAPORE)

البنك التجاري المحدود
 行有限公司

Key Book No. 795
 t,

1979

PAYMENT STOPPED				
DATE	CHEQUE NO.	AMOUNT	INITIALS	REMARKS

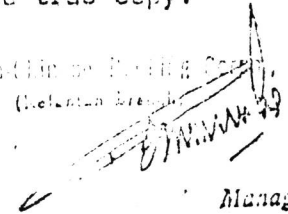
OVERDRAFT LIMIT
\$ 25,000/-
Words
(70)
INTEREST RATE

CHEQUE BOOKS ISSUED	
NO. _____	TO NO. _____
NO. _____	TO NO. _____
NO. _____	TO NO. _____

DEBITS	CREDITS	DATE	INTL.	BALANCE	CHECK TOTAL	INTEREST			
						DAYS	TOTAL DECIMALS	OLD BALANCE DECIMALS	DECIMALS
		JAN 1979		5,300.220					

OFFICER'S SIGNATURE

Certified true copy:

Per Overdraft on Banking Corp., Ltd.
 (Singapore Branch)

 Manager.

No. 63/80

司 公 限 有 行 銀 僑 華
Oversea-Chinese Banking Corporation, Ltd.

CONFIDENTIAL

Application for Accommodation of Kota Bharu Office

Date of Application 2nd October, 1963.

- | | |
|--|--|
| 1. Name of Applicant: | <u>Phillip Wee Kee Puan,</u> |
| 2. Address: | <u>93, Jalan Market, Tumpat, Kelantan.</u> |
| 3. Business and how long established: | <u>Business Registration No. _____</u>
<u>Talkies Manager and Landed Proprietor</u>
<u>since 1957.</u> |
| 4. Names of Partners/Directors: | <u>Personal</u> |
| 5. In the case of a Limited Company state: (A) Date of Incorporation _____, (B) Private or Public _____, (C) Capital:—Authorised \$ _____; Issued \$ _____; Paid Up \$ _____, (D) Reserve Funds on _____ \$ _____, (E) Particulars of Debentures and/or Floating Charge, if any, to _____ for \$ _____ (F) This facility permitted under Memorandum Clause No. _____ and powers vested in Directors under Article No. _____
N. B. A properly certified resolution of the Shareholders or Directors as the case may be is necessary. | |
| 6. Number and the names of the Banks with whom Applicant now has dealings | <u>Two</u> Banks namely <u>Ourselves</u>
<u>& Chung Khiaw Bank Limited</u> |
| 7. Nature of facility required whether Fixed Loan, Overdraft, Negotiation of Bills, etc., and whether clean, guaranteed or secured. If guaranteed state name of guarantor and his existing liabilities, if any, under other accounts and if secured give full particulars of Security on reverse side of this Form. If this is an additional facility | <u>C/A Overdraft - Secured</u>

Guarantor _____ whose
Existing liabilities to us are: _____ |

4. B. If this application is for an additional facility, particulars of existing security should be clearly marked E.S. and particulars of additional security, if any, clearly marked A.S.)

PARTICULARS OF SECURITY (Reference 7 on reverse)

GENERAL FOR BUILDING Estate or Vacant Land	Brief description— state whether Building, Vacant land, Estate, etc.	Locality—whether on main road and distance from Town	Total Area	Title— if leasehold, give particulars and quit rents	When and at what price did owners pur- chase property	If property is now mortgaged, state amount and to whom	Date and Amount of own or professional valuation and name of valuer	Name of Registered Owner of property and how is Security to be held—by way of mortgage, charge, deposit of deeds, caveat, or otherwise.
		<u>Land to Building</u> One concrete 'baby' Cinema Hall at Jalan Market, Bukit, Belantian.	In Tumpat Town Centre <i>about 1/2 mile from Kala Pahar</i>	5409 sq. feet.	Grant Nos: 59 - 64, Lot Nos: 133 -138, Sec. I Tumpat Town	Built in 1957 at \$50,000/-	No	29-9-1963 By Management Land - 11,000/- Bldg. - 50,000/- 20,000/-
IF BUILDING IN ADDITION TO these columns in addition to those under "GENERAL"	State whether the building is a Shop, Terrace or Compound House; structure; and number of storeys.	Age and present condition	Used as: Residence Office, Shop or Godown	Whether locality improving or depreciating	Vacant or occupied and monthly rent	If under lease— give period and expiry date	Amount insured or to be insured	Remarks
	One concrete Cinema Hall, built of brick walls, cement floor and roofed with asbestos sheets. - Good Modern sanitation installed.	7 Years	As Cinema Hall	Improving	Occupied by Cinor	No.	Already insured for 50,000/-	Property inside Malay Reservation Area. Sanction has to be obtained from M.L.S.
IF ESTATE IN ADDITION TO these columns in addition to those under "GENERAL"	AREAS		Ages of Trees	Condition of:		Monthly Yield	State whether there are any buildings on the estate, their condition and value; the health of the estate and other remarks.	
	Cultivated			Estate				
				Soil				
				Trees				
	Swamps							
	Total Area							
OTHER SECURITY	If the Security consists of Shares, Jewellery, Goods etc., give all material particulars below. (Attach a separate sheet if this space is not sufficient for the purpose.)							

Exhibits

Agreed bundle of Documents marked AB
Pages 11-13 Memorandum of Charge

Agreed Bundle
of Documents
marked AB.
Pages 11-13
Memorandum of
Charge 21st
January 1964

SCHEDULE 3211

(Section 123 (i) (a))

MEMORANDUM OF CHARGE

Presentation No. 79/64 10

Charge No 7/64

I, Wee Sook No. (i/C No.0161989) alias WEE SIOK HOR of 93, Jalan Market, Tempat, Kelantan (hereinafter called the chargor) being registered as the proprietor subject to the registered interests stated in the document of title thereto of the land held under Grants no.59-64. Lots No.133-138, Mukim Section 1. Tapat District Tapat rental area 5409 sq.ft. sqaure depas, and desiring to render the said land together with one concrete "Ruby" illegible wall standing thereon available for the purpose of securing to and for the benefit of OVERSEA-CHINESE BANKING CORPORATION KOTA BHARU, KELANTAN (hereinafter called the chargee) the repayment on demand of all sums heretofore or hereafter to be advanced to Phillip Wee Kee Puan of 98, Jalan Market, Tapat, Kelantan by the said chargee in the manner hereinafter appearing, with interest thereon at the rate of 9.6 per centum per annum up to the limit of dollars TWENTY FIVE THOUSAND ONLY (\$25,000/-) do hereby charge the said land held under Grants No.59-64, Lots No.133-138, illegible together with one concrete "Ruby" Cinema Hall, illegible of brick illegible cement floor and roofed with asbestos sheets at Jalan Market, illegible for the benefit of the said chargee with the repayment on demand of the balance which on the illegible between the said Phillip Wee Kee Puan and the chargee shall for the time being be owing in respect of cheques, bills, notes or drafts drawn accepted or endorsed by the said Phillip Wee Kee Puan either alone or jointly with another or other (including all moneys which may become owing in respect of any notes, bills or drafts drawn accepted or endorsed by the said Phillip Wee Kee Puan either alone or jointly with another or other which may not at the time of closing the said account have become due or payable but

10 which for the time being have been entered in the said account) or in respect of cheques, bills, notes or drafts accepted, paid or discounted on behalf of the said Phillip Wee Kee Puan either alone or jointly with another or others for or loans or advances made to or for the use in the accommodation of the said Phillip Wee Kee Puan whether alone or jointly with another or others or in respect of

20 contracts for the forward delivery of goods, bills or specie or otherwise howsoever up to the limit of dollars TWENTY FIVE THOUSAND ONLY \$5,000/- for principal and for interest at the rate of 9.6 per centum per annum with monthly rests, commission and other usual Bankers' charges, such sum to be raised and paid at the times and in manner following, that is to say, immediately upon the receipt by me of a notice in writing sent by the chargee in manner hereinafter provided. And, in when the said general account shall be closed either by service of illegible aforesaid or by my death a balance shall be owing to the chargee by Phillip Wee Kee Puan or my legal personal representatives the case may be will so long as the same or any part thereof shall remain owing pay to the chargee interest thereon at the aforesaid rate of 9.6 per centum computed from the time when such

30 balance shall have been ascertained and I agree that the statement of the Agent, Sub-Agent or Accountant of OVERSEA-CHINESE BANKING CORPORATION LIMITED KOTA BHARU, KELANTAN as to the amount of such balance shall be final and conclusive.

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

40 (i) Any demand for payment of the balance intended to be hereby secured may be made by a notice in writing signed by the Agent, Sub-Agent or Accountant of OVERSEA CHINESE BANKING CORPORATION LIMITED, KOTA BHARU, KELANTAN or by any solicitor or firm of solicitors purporting to act for OVERSEA CHINESE BANKING CORPORATION LIMITED, KOTA BHARU, KELANTAN and such notice shall be deemed to have been sufficiently served on me if it is left at my usual or last known place of business in or sent by registered letter to either of such addresses, and in

50 the last mentioned case the service shall be deemed to be made at the time when the registered letter would in the ordinary course be delivered.

(ii) Such notice of demand or the death of

Exhibits

Agreed Bundle of Documents marked AB. Pages 11-13 Memorandum of Charge 21st January 1964 (Contd.)

myself shall be deemed to operate as though one month's default in payment of the principal moneys and interest hereby secured within the meaning of The Land Enactment, had been made and the chargee shall immediately after the service of such notice or death as aforesaid be entitled to apply to the Court under Section 136 of the Land Enactment or to the District Officer under Section 130 as the case may be.

10

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

20

(iv) It is hereby expressly agreed and declared that notwithstanding the provisions relating to the rate of interest as hereinbefore provided, the chargee shall be entitled at any time and from time to time to vary at its discretion such rate of interest by serving a notice in writing on me of such its intention and such amended rate of interest shall be payable as from the date specified in the said notice. Service of such notice shall be effected in the same manner as notice demanding payment of the balance as hereinbefore provided.

30

40

And subject as aforesaid OVERSEA-CHINESE BANKING, CORPN LTD. KOTA BHARU, KELANTAN shall be entitled to all powers and remedies given to a chargee under by The Land Enactment.

SIGNATURE OF CHARGOR

50

I illegible of
OVERSEA-CHINESE BANKING CORPN LTD. KOTA,

BHARU KELANTAN do hereby accept this charge on the terms stated.

Exhibits

For Oversea-Chinese Banking Coporation

Agreed Bundle of Documents marked AB. Pages 11-13 Memorandum of Charge 21st January 1964 (Contd.)

SIGNATURE OF CHARGEES

10 Dated the _____ day of _____ 19

Signed by the said chargor in the) presence of _____)

Signed by the said chargee in the) presence of _____)

Memorial made on the title in volume of the Grants Nos.59-64 this 22nd day of January at 11.30 a.m.

Rejected under Section _____ illegible

LAND REGISTRAR

20 Here state description to the satisfaction of the Land Registrar

30 I, _____ illegible hereby testify that the signature/thumb print of Chargor written/affixed in my presence on this 21st day of January 1964, is according to my personal knowledge/information given to me by the following trustworthy and reliable person, namely which information I verily believe the true signature/thumb print of the said Wee Sock Hor who has acknowledged to me that he is of full age and that he has voluntarily executed this instrument.

As witness my hand this 21st day of January, 1964.

Signature.

40 I, _____ illegible Hereby testify to the signature of the attorney of the Chargee above written in my presence on this 21st day of January 1964, is according to my own personal knowledge the true signature of the said Tjang Tong who has acknowledged to me that he is of full age that he has voluntarily executed this instrument.

As witness my hand this 21st day of January, 1964.

Signature.

Exhibits

Agreed Bundle of
Documents marked
AB, Pages 11-13
Memorandum of
Charge 21st
January 1964
(Contd.)

illegible so long as the
same or any part thereof shall remain
owing, pay to the chargee interest
thereon at the aforesaid rate of 9.6 per centum
computed from the time when such notice shall
have been ascertained and I agree that the
statement of the Agent. Sub-Agent or
Accountant of OVERSEA-CHINESE BANKING
CORPORATION LIMITED, KOTA BHARU, KELANTAN
as to the illegible such balance
shall be final and conclusive.

10

It is hoped that a clearer copy of this
document will be available at the hearing
of the appeal.

Agreed Bundle of Documents marked AB
Pages 14-15 Letter Foo Say Ghee & Co.
to Tuan Penolong Pentadbir Pesaka

Exhibits

Agreed Bundle
of Documents
marked AB
Pages 14-15
Letter Foo Say
Ghee & CO. to
Tuan Penolong
Pentadbir Pesaka
3rd January 1973

FOO SAY GHEE & CO. COPY

Our Ref: (73)d/m.Pn.pp(KN) 63/70/2
Your Ref: FSG/OPS/1558/72

10

Date. 3rd January 1973

Tuan Penolong Pentadbir Pesaka
Jabatan Pemegang Amanah Raya dan
Pentadbir Pesaka
Bangunan Mahkamah Tinggi
KOTA BHARU A.R. REGISTERED

Dear Sir

20 Re: 1, Overdraft on Account No.795 secured
by Charge of one concrete "Ruby"
Cinema Wall at Jalan Market,
Tumpat, Kelantan. Grant Nos: 59-64,
Lots 133-138 Section 1, Tumpat Town.

2. Estate of Wee Siok Hor, deceased

We act for Messrs. Oversea-Chinese Banking
Corporation Ltd., Kota Bharu, Kelantan.

30 We are instructed that the above account is
operated by Mr. Phillip Wee Kee Puan, secured by
a Charge of the above property belonging to the
deceased's estate of which you are the official
administrator.

We are instructed that the overdraft
outstanding on the above account is \$69,250.72
as on 26th December, 1972 and the interest
thereon is 10.8% per annum with monthly rests.

40 Our instructions are to give you notice
which we hereby do that if the said sum of
\$69,250.72 with interest thereon at 10.8% per annum
with monthly rests as from 26th December, 1972
is not settled by Mr. Phillip Wee Kee Puan
within 14 days from the date of receipt hereof,
our clients will take whatever action as may be
advised against Mr. Phillip Wee Kee Puan or
yourself as the official administrator of the
estate of Wee Siok Hor to recover the said
outstanding sum with interest.

Yours faithfully

Sd: Foo Say Ghee & Co.

Exhibits

FOO SAY GHEE & CO.

Sheet No. 2

Agreed Bundle of
Documents marked
AB. Pages 14-15
Letter Foo Say
Ghee & Co. to
Tuan Penolong
Pentadbir Pesaka
3rd January 1973
(Contd.)

c.c.

1. M/s. O.C.B.C. Ltd.,
Kota Bharu,
Kelantan.
2. Phillip Wee Kee Puan,
No.93, Jalan Market,
Tumpat, Kelantan.

10

Agreed Bundle of Documents marked AB
Pages 16-17 Letter Foo Say Ghee & Co
to Defendant

Exhibits

Agreed Bundle of
Documents marked
AB Pages 16-17
Letter Foo Say
Ghee & Co.
to Defendant
3rd January 1973

FOO SAY GHEE & CO. COPY

Our Ref:
Your Ref: FSG/OPS/1558/72

10 Date: 3rd January, 1973

Mr. Phillip Wee Kee Puan,
No.93 Jalan Market,
Tumpat,
KELANTAN.

A.R. REGISTERED

Dear Sir,

20 Re: Overdraft on Account No; 795
secured by Charge of one concrete
"Ruby" Cinema Wall at Jalan
Market, Tumpat, Kelantan.
Grant Nos: 59-64, Lots 133-138
Section 1, Tumpat Town.

We act for Messrs. Oversea-Chinese Banking
Corporation Ltd., Kota Bharu, Kelantan.

We are instructed that the overdraft
outstanding on the above account is \$69,250.72
as on 26th December, 1972 and the interest
thereon is 10.8% per annum with monthly rests.

30 Our instructions are to give you notice
which we hereby do that you are to pay to our
clients the said sum of \$69,250.72 with interest
thereon at 10.8% per annum with monthly rests as
from 26th December, 1972 within 14 days from the
date of receipt hereof. Upon failure to comply
with the notice herein, our clients will take
whatever action as may be advised without further
reference to you or to the official
administrator of the estate of Wee Siok Hor,
the Chargor in respect of the above Charge.

Yours faithfully,

40 Sd: Foo Say Ghee & Co.

Exhibits

FOO SAY GHEE & CO.

SHEET NO.2

Agreed Bundle of
Documents marked
AB. Pages 16-17
Letter Foo Say
Ghee & Co.
to Defendant
3rd January 1973
(Contd.)

c.c.

1. M/s O.C.B.C. Ltd.,
Kota Bharu,
KELANTAN.
2. Tuan Penolong Pentadbir Pesaka,
Jabatan Pemegang Amanah Raya
dan Pentadbir Pesaka,
Bangunan Mahkamah Tinggi,
KOTA BHARU (Ref: (73)d/m.Pn.PP(KN)
63/70/2)

10

Agreed Bundle of documents marked AB.
Pages 18-19 Amended Order in
Originating Summons No.109/1973

Exhibits

Agreed Bundle of
documents marked
AB. Pages 18-19
Amended Order in
Originating
Summons
No.109/1978
26th September
1974

AMENDED ORDER

IN THE HIGH COURT IN MALAYA AT KOTA BHARU

10 ORIGINATING SUMMONS NO:109/1973

(Petition for L/A No: 15 of 1966)

Amended pursuant to Order of Court in
Chambers before His Lordship the Judge
dated 1.12.74

In the matter of the estate of Wee Sidk Hor @
Wee Sock Ho @ Wee Saw Hor @ Wee Sok Hor @ Wee
Siok Hor, deceased, in the above petition
No: 15 of 1966

20 and

In the Matter of Section 256 of the National
Land Code No.56 of 1965

and

30 In the matter of Presentation No.79/64 and
charge No.7/64 in respect of Land comprised
in Lots 133, 134, 135, 136 137 and 138 formerly
held under old Grant Nos. 59, 60, 61, 62, 63
and 64 and presently held under new Grant Nos.
11733, 11734, 11735, 11736, 11737 and 11738
respectively, Section 1, Town of Tumpat,
Kelantan including "Ruby Cinema" brick building
standing thereon.

BETWEEN

Oversea-Chinese Banking
Corporation Limited.

Applicant/Chargee

AND

- 40
1. The Official Administrator,
Malaya (as the administrator
of the above estate)
 2. Wee Choo Luan @ Wee Chui Luan (f)
 3. Wee Choo Hong @ Wee Chui Hong (f)
 4. Phillip Wee Kee Puan @ Wee Kee Phuan
 5. Teh Eng Bee @ Tay Eng Bee (f)
- Respondents.

Exhibits

Agreed Bundle of documents marked AB. Pages 18-19 Amended Order in Originating Summons No.109/1978 26th September 1974 (Contd.)

BEFORE THE HONOURABLE MR. JUSTICE ABDUL RAZAK BIN DATUK ABU SAMAH, JUDGE, HIGH COURT, KOTA BHARU.

IN CHAMBERS
THIS 26TH DAY OF SEPTEMBER, 1974

AMENDED ORDER

UPON THIS ORGINATING SUMMONS coming on for hearing this day in the presence of Mr. Foo Say Ghee of Counsel for the Applicant/ Chargee AND in the presence of the Assistant Official Administrator for the 1st Respondent AND Encik Abdul Aziz Abdullah of Counsel for the 4th Respondent AND in the presence of the 2nd, 3rd, and 5th Respondents in person AND UPON READING the Originating Summons dated the 29th day of December, 1973 and the Affidavit of Mr. Toh Swee Hook affirmed on the 23rd day of December, 1973 and the Affidavit-in-Reply of Mr. Phillip Wee Kee Puan affirmed on the 9th day of September 1974 and filed herein: 10

IT IS ORDERED that the land comprised in Lots 133, 134, 135, 136, 137 and 138 formerly held under old Grant Nos. 59, 60, 61, 62, 63 and 64, and presently held under new Grant Nos. 11733, 11734, 11735, 11736, 11737 and 11738 respectively, Section 1, Town of Tumpat, Kelantan, including the brick building standing thereon known as "Ruby Cinema" the same charged to the Applicant/Chargee abovenamed vide Presentation No: 79/64 Charge No.7/64 be sold by public Auction on a date to be fixed by the Senior Assistant Registrar under the direction of this Honourable Court for the recovery of \$25,000.00 together with interest thereon at the rate of 9.6% per annum with monthly rests from 3rd day of January 1975 until date of realisation. 20 30 40

AND IT IS FURTHER ORDERED that the Senior Assistant Registrar of this Honourable Court do fix the reserve price.

AND IT IS LASTLY ORDERED that the Respondent do pay to the Applicant/Chargee costs of this application.

GIVEN under my hand and the Seal of this Court this 26th day of September, 1974. 50

Sd. XXXXXXXXXXXX
SENIOR ASSISTANT REGISTRAR,
HIGH COURT, MALAYA,
KOTA BHARU.

AFFIDAVIT

IN THE HIGH COURT IN MALAYA AT KOTA BHARU

ORIGINATING SUMMONS NO: 109 OF 1973

(Petition for L/A No.13 of 1966)

10 In the matter of the estate of Wee Sidk Hor @
Wee Sock Ho & Wee Saw Hor @ Wee Sok Hor @
Wee Sick Hor, deceased, in the above petition
No.15 of 1966.

AND

In the matter of Section 256 of the National
Land Code No.56 of 1965

AND

20 In the matter of Presentation No.79/64 and
Charge No.7/64 in respect of Land comprised
in Lots 133, 134, 135, 136, 137 and 138
formerly held under old Grant Nos. 59, 60,
61, 62, 63, and 64 and presently held under
new Grant Nos. 11733, 11734, 11735, 11736,
11737 and 11738 respectively, Section 1.
Town of Tumpat, Kelantan including "Ruby
Cinema" brick building standing thereon

BETWEEN

Oversea-Chinese Banking
Corporation Limited. Applicant/Chargee

30 AND

1. The Official Administrator,
Malaya (as the administrator
of the above estate)
2. Wee Choo Luan @ Wee Chui
Luan (f)
3. Wee Choo Hong @ Wee Chui
Hong (f)
4. Phillip Wee Kee Puan @
Wee Kee Phuan
- 40 5. Teh Eng Bee @ Tay Eng Bee (f)

AFFIDAVIT

1. I am the proprietor of the firm of M/s.
Foo Say Ghee & Co. of No.3, First Floor,
Bangunan Hotel Nurmi, Jalan Maju, Kota Bharu,
Kelantan, and I attend to this matter on behalf
of my said firm which act as solicitors for the
Applicant/Chargee abovenamed.

2. I make this Affidavit partly of my own

Exhibits

Agreed Bundle of documents marked AB. Pages 20-22 Affidavit of Foo Say Ghee 4th November 1974 (Contd.)

knowledge and partly from information obtained by me in the course of professional duties as such solicitor aforesaid.

3. At the hearing of the matter herein on 16.9.74 a consent Order was recorded to the effect that the Applicant/Chargee be at liberty to sell the lands comprised in lots 133, 134, 135, 136, 137 and 138 formerly held under old grant Nos. 59, 60, 61, 62, 63 and 64, and presently held under new Grant Nos. 11733, 11734, 11735, 11736, 11737 and 11738, respectively, Section 1, Town of Tumpat, Kelantan, including the brick building standing thereon known as "Ruby Cinema" for the recovery of the sum of \$25,000.00.

10

4. Unfortunately the consent Order did not record the date of the commencement of interest of 9.6% per annum accruable on the said sum of \$25,000.00.

20

5. In the Memorandum of Charge executed by the deceased Chargor on 17.10.64 it is clearly provided that the legal representatives of the estate of the deceased Chargor are liable to pay the Applicant/Chargee interest on the sum of \$25,000.00 at the rate of 9.6 per centum computed from the time when such balance shall have been ascertained.

6. The said sum of \$25,000.00 was ascertained on 3.1.73 when the Notice of Demand was served on the Official Administrator (the 1st. Respondent).

30

7. In the Order extracted by the Applicant/Chargee interest on the said sum of \$25,000.00 is stated to run from the date of the Order.

8. In view of the provision in the Memorandum of Charge the said Order for interest to run from the date of the Order is evidently an error and not consented to at the time when the Order was made.

40

WHEREFORE I pray for an order in terms of the Application.

Affirmed by the abovenamed)
Foo Say Ghee at Kota Bharu this)
4th day of November, 1974, at) Sd. xxx
10.45 a.m.)

Before me,

Sd. Tg. Hamzah B. Tg. Mohamed.

Letter Defendant to Foo Say Ghee & CO.

Exhibits

P7

Letter Defendant
to Foo Say Ghee
& Co. 14th
January 1974

Phillip Wee Kee Puan @
Wee Kee Phuan,
93, Jalan Market,
Tumpat,
Kelantan.

14th January 1974

M/s. Foo Say Ghee & Co.
Advocates & Solicitors,
KOTA BHARU.

10

Dear Sirs,

Re: In the High Court in Malaya at Kota
Bharu Originating Summons No.109/73
Oversea-Chinese Banking Corpn. Ltd.

--vs--

1. The Official Administrator, Malaya
(as the administrator of the estate
of Wee Sidk Hor, deceased)
2. Wee Choo Luan @ Wee Chui Luan
3. Wee Choo Hong @ Wee Chui Hong
4. Phillip Wee Kee Puan @ Wee Kee Phuan
5. Teh Eng Bee @ Tay Eng Bee.

20

I am one of the Respondent abovenamed. I write to
request for a postponement of the application to
a date sometime in the middle of March 1974 so as
to enable me to raise as initial payment to
O.C.B.C. Ltd., Kota Bharu a sum of about \$25,000.00
from the sale of a rubber estate amounting to
about 29 acres.

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I hope to arrange to sell the property comprised
in the charge and from the proceeds thereof the
official administrator will be able to pay the
balance owing to O.C.B.C. Ltd. I shall be able
to disclose to the Court at the next date of hearing
as to whether the sale of the property could be
finalized.

Yours faithfully,

Sd. xxx

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c.c.

1. The Senior Assistant Registrar,
High Court,
Kota Bharu.
2. The Official Administrator,
Public Trustee's Office,
KOTA BHARU.
3. M/s. O.C.B.C. Ltd.,
KOTA BHARU.

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

B E T W E E N :

O.C.B.C. LIMITED

Appellant
(Plaintiff)

- AND -

PHILIP WEE KEE PUAN @ WEE KEE PHUAN

Respondent
(Defendant)

RECORD OF PROCEEDINGS

COWARD CHANCE,
Royex House,
Aldermanbury Square,
London EC2V 7LD
Solicitors for the Appellant