

44/84

No. 45 of 1982

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

ON APPEAL

FROM THE FEDERAL COURT OF MALAYSIA

BETWEEN :

SUN KEE & CO.  
(sued as a Firm)

Appellants

- and -

1. CHOP SIN HUA HIN

2. HO HAI POH

Respondents

RECORD OF PROCEEDINGS

STEPHENSON HARWOOD,  
Saddlers' Hall,  
Gutter Lane,  
London, EC2V 6BS

Solicitors for the  
Appellants

PHILIP CONWAY THOMAS & CO.,  
61 Catherine Place,  
London, SW1E 6HB

Solicitors for the ~~FIRST~~  
Respondents

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

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O N A P P E A L  
FROM THE FEDERAL COURT OF MALAYSIA

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B E T W E E N :

SUN KEE & CO.  
(sued as a Firm)

Appellants

- and -

1. CHOP SIN HUA HIN
2. HO HAI POH

Respondents

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RECORD OF PROCEEDINGS

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No.45 of 1982

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

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O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA

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B E T W E E N :

SUN KEE & CO.  
(Sued as a Firm)

Appellants

- and -

10 1. CHOP SIN HUA HIN  
2. HO HAI POH

Respondents

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RECORD OF PROCEEDINGS

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No. 1

ORDER

In the  
High Court

No.1  
Order  
11th Januar:  
1980

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

APPLICATION FOR EXECUTION NO. 303 OF 1979

(In the Matter of Kuala Lumpur High Court Civil  
Suit No. 1009 of 1976)

Between

20 Chop Sin Hua Hin  
(Suing as a firm)

Plaintiffs

And

Sun Kee & Co.  
(Sued as a firm)

Defendants

BEFORE THE SENIOR ASSISTANT REGISTRAR,  
ENCIK IDRIS BIN OTHMAN

THIS 11TH DAY OF JANUARY, 1980

IN CHAMBERS

In the  
High Court

O R D E R

No.1  
Order  
11th January  
1980

(continued)

UPON HEARING Miss Madeleine Cheah of Counsel for Plaintiffs and in the absence of the Defendants' Counsel AND UPON READING the Summons for Directions dated the 6th day of November, 1979 and filed herein IT IS ORDERED that lands held under Documents of Title No. H.S.(D) 24508, P.T.53 and H.S.(D) 24509, L.O.54, both in the Mukim of Batu, District of Kuala Lumpur, containing by measurement 15,000 square feet each be sold by public auction on the 17th day of March, 1980 under the direction of this Honourable Court at 10.30 o'clock in the forenoon at the High Court garage, Kuala Lumpur AND IT IS ORDERED that the reserve price of the said lands be and is hereby fixed at Dollars Two Hundred and Seventy Thousand (\$270,000.00) AND IT IS ALSO ORDERED that Encik Lim Liang Guan, 3L Enterprises, 86B, Jalan SS 2/60, Petaling Jaya, Selangor, a licensed auctioneer be and is hereby appointed to conduct the sale herein AND IT IS FURTHER ORDERED that the Proclamation for Sale of the said properties be posted not less than four (4) weeks before the date of sale at the following places :-

10

20

- (a) Notice Board of the High Court at Kuala Lumpur;
- (b) Notice Board of the Land Office at Kuala Lumpur;
- (c) Some conspicuous place on the said properties;

30

and that there be a publication in the Malay Mail not less than four (4) weeks before the date of sale AND IT IS FURTHER ORDERED that a sum of Ringgit \$1,000.00 (Ringgit One Thousand only) be deposited by the Plaintiffs towards the sale and expenses of the auctioneer AND IT IS FURTHER ORDERED that out of the total sum realisable from the sale, the actual sums due to the following charges :-

- (a) Hock Hua Bank Berhad due in respect of Charge No. 45295 under Charge Jilid CCLXXI, Folio 94 presented and registered on 19th July, 1972 and Charge No.10087 under Charge Jilid CCVI, Folio 120 presented and registered on 12th June, 1973 in respect of property held under H.S.(D) 24508, P.T.53, Mukim of Batu, District of Kuala Lumpur;
- (b) The Hongkong and Shanghai Banking Corporation due in respect of Charge

40

50

No. 1632/77 under Charge Jilid 55,  
Folio 189 presented and registered  
on 14th February, 1977 and Charge No.  
12276/78 under Charge Jilid 93, Folio  
8 presented and registered on 28th July,  
1978 in respect of property held under  
H.S.(D) 24509, L.O.54, Mukim of Batu,  
District of Kuala Lumpur;

In the  
High Court

No.1  
Order  
11th January  
1980

(continued)

10 be paid to the above chargees and that the balance  
due after payment of all expenses be paid to the  
Plaintiffs towards satisfaction of the amount due  
to the Plaintiffs in connection with the Judgment  
obtained by the Plaintiffs against the Defendants  
in Kuala Lumpur High Court Civil Suit No.1009 of  
1976 AND IT IS FURTHER ORDERED that the costs of  
this application be taxed by the proper officer  
of the Court AND IT IS FURTHER ORDERED that the  
said chargees, Hock Hua Bank Berhad and The  
20 Hongkong and Shanghai Banking Corporation, shall  
within two (2) weeks before the date of sale  
deposit with the Senior Assistant Registrar the  
Title deeds to the said properties AND IT IS  
FURTHER ORDERED that the said chargees, Hock Hua  
Bank Berhad and The Hongkong and Shanghai Banking  
Corporation, shall deliver to the Senior Assistant  
Registrar, their respective duly executed  
Discharges of Charge in respect of the above  
Charges on the said properties on receipt of the  
principal sums together with all interest due to  
30 the said Chargees under the above Charges  
AND IT IS LASTLY ORDERED that the Plaintiffs be  
given leave to bid at the auction and liberty to  
apply.

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

Sgd: Illegible

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

40 This Order was taken out by Messrs. Allen & Gledhill,  
Solicitors for the Plaintiffs herein whose address  
for service is at 24th Floor, UMBC Building, Jalan  
Sulaiman, Kuala Lumpur.



In the  
High Court

No. 2

NOTICE OF MOTION

No.2  
Notice of  
Motion  
20th March  
1980

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

APPLICATION FOR EXECUTION NO: 303 OF 1979

In the Matter of Order 43  
Rule 11(a) of the Rules of  
the Supreme Court, 1957.

Between

Sun Kee & Co.  
(suing as a firm)

Applicants

10

And

1. Chop Sin Hua Hin  
(sued as a firm)
2. Ho Hai Poh

Respondents

NOTICE OF MOTION

TAKE NOTICE that on Monday the 24th day of  
March, 1980 at 9.30 o'clock in the forenoon or  
as soon thereafter as he can be heard Dato Morris  
Edgar, Counsel for the abovenamed Applicants  
for an Order that the Sale by Public Auction on  
the 17th day of March, 1980 of the land held under  
Entry in the Mukim Register No: H.S.(D) 24508 for  
Lot No.P.T. 53 and Mukim Register No: H.S.(D)  
24509 for Lot No. P.T. 54 both in District of  
Kuala Lumpur, belonging to 1. Chee Khiew Seng,  
2. Chee Kew Tuck and 3. Chew Khiew Siew together  
trading as Sun Kee & Co. the Applicants abovenamed  
be set aside.

20

Dated this 20th day of March, 1980.

30

Sgd: Morris Edgar &  
Thuraisingham  
.....

Sgd: Illegible  
.....

Solicitors for the  
Applicants abovenamed

Senior Assistant Registrar  
High Court, Kuala Lumpur.

This Notice of Motion was taken out by M/s  
Dato Morris Edgar and Clough Thuraisingham,  
Advocates and Solicitors on behalf of the Applicants  
abovenamed whose address for service is 3rd Floor,  
Hwa-Li Building, No:63-65, Jalan Ampang, Kuala Lumpur.

This Application will be supported by the Affidavit of K.B.Thuraisingham and Chee Khiew Siew both affirmed on the 19th day of March, 1980.

In the  
High Court

No.2  
Notice of  
Motion  
20th March  
1980

This Notice of Motion is intended to be served on :-

- 10
1. Chop Sin Hua Hin,  
through his Solicitors,  
M/s Allen & Gledhill,  
Advocates & Solicitors,  
24th Floor, Bangunan U.M.B.C.,  
Jalan Suleiman,  
Kuala Lumpur.
  2. Ho Hai Poh,  
No.40, Jalan Tunku Abu Bakar,  
Temerloh,  
Pahang.

(continued)

No. 3

AFFIDAVIT OF K.B.  
THURAISINGHAM

20

No.3  
Affidavit of  
K.B.  
Thuraisinghar  
19th March  
1980

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

APPLICATION FOR EXECUTION NO: 303 OF 1979

In the Matter of Order 43 Rule  
11(a) of the Rules of the  
Supreme Court, 1957.

Between

Sun Kee & Co.  
(suing as a firm)

Applicants

30

And

1. Chop Sin Hua Hin  
(sued as a firm)
2. Ho Hai Poh

Respondents

A F F I D A V I T

I, K.B. THURAISINGHAM of 3rd Floor, Hwa-Li Building, No: 63-65, Jalan Ampang, Kuala Lumpur make oath and say as follows :-

In the  
High Court

No.3  
Affidavit  
of K.B.  
Thuraisingham  
19th March  
1980

(continued)

1. I am an Advocate and Solicitor of the High Court in Malaya and a partner in the firm of Messrs. Dato Morris Edgar & Clough Thuraisingham, 3rd Floor, Hwa-Li Building, No. 63-65, Jalan Ampang, Kuala Lumpur, Solicitors for the abovenamed Applicants and confirm that the facts disposed hereto are within my own knowledge.

2. My firm was retained by the Applicants to act for them in these proceedings in the place of Messrs. Low and Lee who previously acted.

10

3. I crave leave to refer to the Affidavit filed by Chee Khiew Siew, the Managing Partner of the Applicants herein affirmed on 19th of March, 1980 and also refer to the Order of this Honourable Court made on 11th of January, 1980 ordering the Sale by Auction of two pieces of land identified more particularly in the said Order dated 11th January, 1980.

4. I verily believe that the said Order contains a material irregularity in that it discloses the actual reserve price.

20

5. I also verily believe that the said Order contains a further material irregularity in that no provision was made for the two lands to be offered for sale individually and in a specified Order as provided for by Section 257(2) of the National Land Code 1965.

6. I further crave leave to refer to Section 257(1)(d) of the said National Land Code 1965 which provides for the reserve price to be "equal to the estimated market value of the land in question". As shown by two independant registered Valuers the valuation of the two lands over two separate periods of time exceeded materially and substantially the reserve price fixed.

30

7. Whereupon in view of the matters above-stated, I pray that this Honourable Court makes an Order in terms of the Application.

40

AFFIRMED by the abovenamed )  
K.B.THURAISINGHAM at Kuala ) Sgd: K.B.Thuraisingham  
Kumpur this 19th day of )  
March, 1980 at 10.00 a.m. )

Before me,  
Sgd: YEE SOON KWONG  
Pesurohjaya Sumpah  
Commissioner for Oaths

This Affidavit is filed by Messrs. Dato Morris Edgar and Slough Thuraisingham, Solicitors for the Applicants herein whose address for service is at 3rd Floor, Hwa-Li Building, No.63-65 Jalan Ampang, Kuala Lumpur.

In the  
High Court

No.3  
Affidavit  
of K.B.  
Thuraisingham  
19th March  
1980

(continued)

No. 4

AFFIDAVIT OF CHEE  
KHIEW SIEW

No.4  
Affidavit of  
Chee Khiew  
Siew  
19th March  
1980

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

APPLICATION FOR EXECUTION NO.303 OF 1979

In the Matter of Order 43 Rule  
11(e) of The Rules of the Supreme  
Court, 1957

Between

Sun Kee & Co.  
(suing as a firm)

Applicants

And

20 1. Chop Sin Hua Hin  
(sued as a firm)  
2. Ho Hai Poh

Respondents

A F F I D A V I T

I, CHEE KHIEW SIEW of full age and a Malaysian Citizen of No.613, Jinjang South, Kuala Lumpur, Managing Partner of Sun Kee & Co. do hereby affirm and say as follows :-

1. I have personal knowledge of the matters set out herein and am duly authorised to make this Affidavit.

30 2. I crave leave to refer to the Order made by this Honourable Court on the 11th day of January,

In the  
High Court

No.4  
Affidavit of  
Chee Khiew  
Siew  
19th March  
1980

(continued)

1980 pursuant to the Application by the Plaintiffs to sell two pieces of land by Public Auction on 17th March, 1980. A photocopy of the Order is attached hereto and marked 'CKS-1'.

3. This Order was obtained in the absence of my Solicitors.

4. I further crave leave to refer to that part of the said Order wherein the reserve price was fixed at \$270,000/-.

10

5. I am advised and verily believe that the said reserve price does not even represent a price equal to the estimated value of the lands, and is in fact a substantial discount from the real value obtainable. In support I now enclose herewith a Valuation Report prepared by a registered Valuation Surveyor, Lew Chin Chuan, and marked 'CKS-2'.

6. This Valuation represents the value of the properties as on 19th March, 1979.

20

7. In addition I made several urgent overtures to the Plaintiffs to agree to a short postponement of the Auction to enable me to either apply for a revision of the reserve price or to make arrangements to settle the debt but have been met by their refusal to agree to a postponement.

8. In the circumstances our Solicitors urgently filed a Notice of Motion on the 17th of March, 1979, the date of the Auction Sale, to try and obtain an Order for the Auction Sale to be stayed (a copy is attached hereto and marked 'CKS-3').

30

9. However as their Lordships, the Honourable Judges of this Court were attending the opening of Parliament we were neither able to obtain a hearing of the Motion nor able to stop the Auction Sale.

10. I am advised and verily believe that the property was auctioned and sold for \$275,000/-.

11. I thereupon caused another firm of registered Valuers, Jordon Lee and Jaffar, to value the said properties as on the date of the Order for Sale, i.e. the 11th of January, 1980. They valued the said properties as on that date as \$480,000/-.

12. By reasons of the matter abovestated the Applicants have sustained substantial loss and irreparable injury to their business and reputation.

In the  
High Court

13. In view of the above circumstances and in the interest of justice I humbly pray that the Auction Sale be set aside.

No.4  
Affidavit of  
Chee Khiew  
Siew  
19th March  
1980

10 AFFIRMED by the above- )  
named CHEE KHIEW SIEW ) Sgd: Chee Khiew Siew  
at Kuala Lumpur this )  
19th day of March, 1980 )  
at 10.00 a.m. )

(continued)

Before me,  
Sgd: YEE SOON KWONG

Pesurohjaya Sumpah  
Commissioner for Oaths.

20 This Affidavit is filed by Messrs. Dato  
Morris Edgar and Clough Thuraisingham, Solicitors  
for the Applicants abovenamed whose address for  
service is at 3rd Floor, Hwa-Li Building,  
No.63-65, Jalan Ampang, Kuala Lumpur.

C E R T I F I C A T E

I hereby certify that the above Affidavit was read translated and explained by me to the deponent who seemed perfectly to understand it, declared to me that he did understand it and made his signature in my presence.

Sgd: YEE SOON KWONG  
Commissioner for Oaths.

30 REPORT AND VALUATION OF THE PROPERTY  
KNOWN AS LOT NOS. P.T. 53 & 54, MUKIM  
OF BATU, TAMAN KEPONG, KUALA LUMPUR

FOR  
M/S. SUN KEE & CO.

No. 4  
Affidavit of  
Chee Khiew  
Siew  
19th March  
1980

THIS IS THE EXHIBIT MARKED 'CKS-2' REFERRED TO  
IN THE AFFIDAVIT OF CHEE KHIEW SIEW AFFIRMED  
THIS 19TH DAY OF MARCH 1980.

(continued)

(Exhibit  
CKS-2)

Sgd: Yee Soon Kwong  
COMMISSIONER FOR OATHS

In the  
High Court

No.4  
Affidavit of  
Chee Khiew  
Siew  
19th March  
1980  
( Exhibit CKS-2)  
(continued)

LEW, CHIN CHUAN & CO.  
Valuation Surveyors, Estate Agents,  
Auctioneers & Development Consultants.

REPORT AND VALUATION OF THE PROPERTY  
KNOWN AS LOT NOS. P.T. 53 & 54,  
MUKIM OF BATU, TAMAN KEPONG,  
KUALA LUMPUR

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APPENDIX

DEVELOPERS' LAYOUT PLANT

TERMS OF REFERENCE

An assessment of the market value of the property known as Lot No.s P.T. 53 and 54, Mukim 20 of Batu, Taman Kepong, Kuala Lumpur, as at 19th March, 1979 is required for financing purpose.

The term "market value" as used in this report is intended to mean the price that the subject property is expected to fetch if it is offered for sale on the stated date under the following assumed conditions :-

- (a) The owner is willing but not obliged or coerced to sell. 30
- (b) Adequate publicity is given to the sale.
- (c) A reasonable period of time is

allowed for payment of the purchase consideration.

In the  
High Court

(d) No account is to be taken of the possibility of a sale to a special purchaser.

No.4  
Affidavit of  
Chee Khiew  
Siew  
19th March  
1980

PARTICULARS OF TITLE

10 The land known as Nos. P.T. 53 and 54 are registered in the Land Office of Kuala Lumpur under provisional titles, Nos. H.S.(D) 24508 and 24509 respectively.

(Exhibit  
CKS-2)  
(continued)

Tenure of the land is a grant-in-perpetuity subject only to the payment of annual quit rent of \$450/- per lot to the Collector of Land Revenue.

Area of each plot according to a private survey carried out by the developers of the estate is 15,000 square feet.

LOCATION AND DESCRIPTION

20 The subject land is situated at Jalan Kilang in the housing estate known as Taman Kepong. Attached to this report is a copy of an extract from the developers' layout plan of the estate. The subject land is edged in red.

30 At time of inspection the land is vacant except for the presence of two small temporary open sheds constructed of corrugated iron roofs and timber frames. It is flat and fenced with chain link fencing. Used framework and other builders' materials were stored at the site which was allowed to be overgrown with lallang. Lot 52 which adjoins Lot 53 has an existing two-storey factory building currently occupied by Premier Stainless Steel Fabricator Sdn. Bhd. Lot 55 is an unfenced vacant site. A factory now stands on Lot 56 which is occupied by "Oriental Wood Products".

Two new factories are now under construction on the opposite sites.



In the  
High Court

No.4  
Affidavit of  
Chee Khiew  
Siew  
19th March  
1980  
(Exhibit CKS-2)  
(continued)

GENERAL REMARKS

Taman Kepong is one of three recently developed housing estates in Kepong, a town which is about eight miles from Kuala Lumpur centre. Kepong Development Sdn. Bhd., the developers of the estate have wisely set aside land for light industries.

New factories are now in operation or in an advanced stage of construction. The success of this development scheme is brought about by the overflow of light industries from the city to its outskirts.

10

Kepong and its neighbouring village of Jinjang are both noted for their abundant supply of hardworking industrial labour.

BASIS OF VALUATION

Our investigations reveal that the developers had achieved 100% sale of their industrial sites at the commencement of their project in 1971. There is now a scarcity of small industrial sites of comparable sizes and locations.

20

In the Jalan Segambut and Jalan Sungei Besi light industrial areas in the city, sales of land had been recently transacted up to \$15/- per square foot.

A fair basis of assessment in our view is by comparison and taking into account the differences in location and the current supply and demand situation of small industrial sites in Kuala Lumpur.

30

OPINION OF VALUE

After weighing all the respective advantages and disadvantages of all the points reported above, the market value of the subject land as at the date of this report may be fairly assessed as follows :-

Lot No. P.T.53 - 15,000 sq.ft.  
Lot No. P.T.54 - 15,000 sq.ft.

30,000 sq.ft. @ \$15/- =

For less favourable location  
deduct say, 20%

\$450,000.00

\$ 90,000.00  
\$360,000.00

40

RINGGIT THREE HUNDRED AND SIXTY THOUSAND

In the  
High Court

Sgd. Lew Chin Chuan  
LEW CHIN CHUAN  
Valuation Surveyor  
Registered by Act of Parliament  
No.67 of 1967

No.4  
Affidavit of  
Chee Khiew  
Siew  
19th March  
1980  
(Exhibit  
CKS-2)  
(continued)

Dated: 19th March, 1979

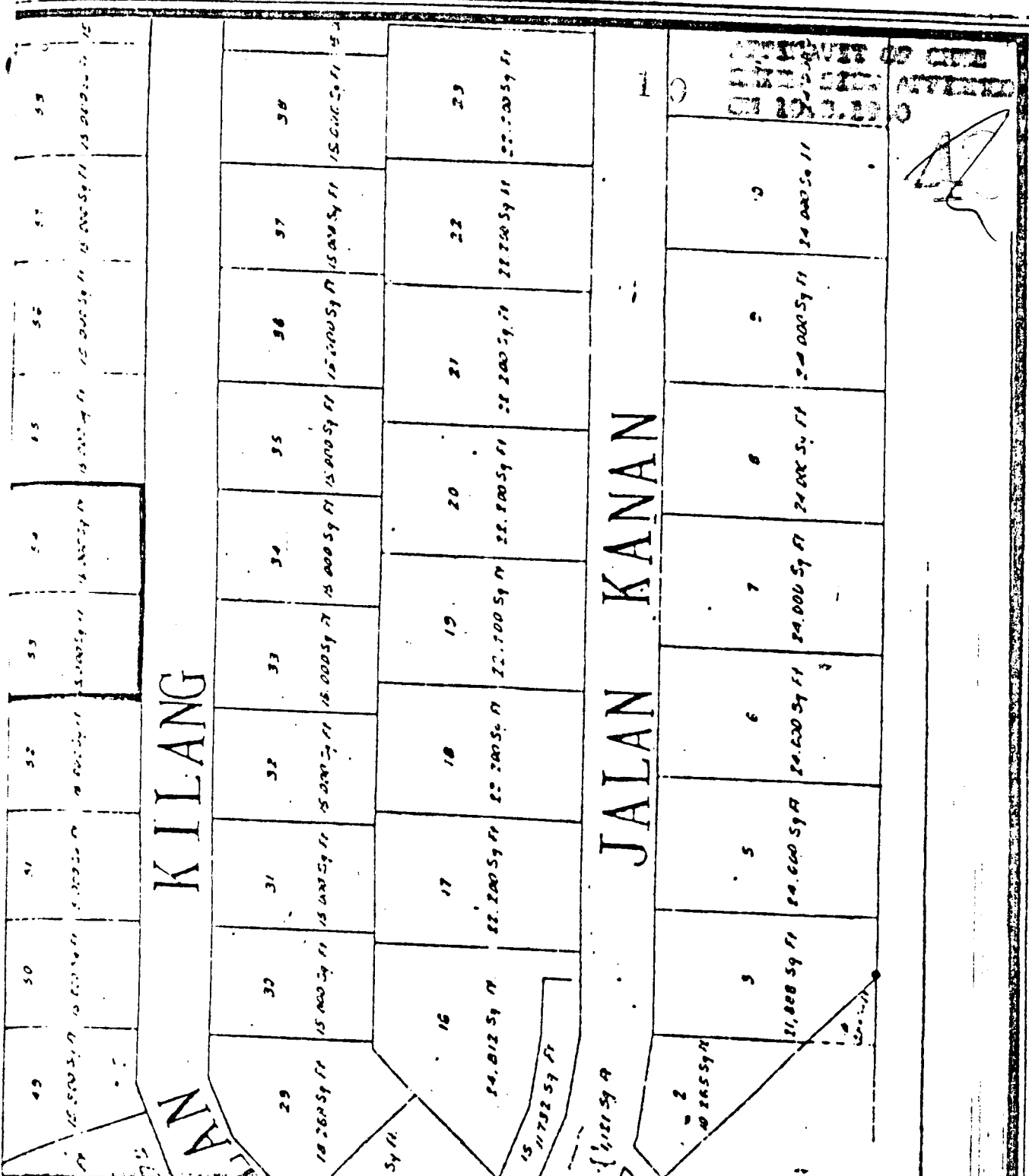
LIMITING CONDITIONS

- 10 (i) This report and valuation is prepared on the instruction of and for M/s. Sun Kee & Co. and is intended for submission to their bankers for financing purpose.
- (ii) This report and valuation is not to be circulated, published or reproduced without our prior approval.

---

A P P E N D I X

---



DATE: 15.11.2011  
 BY: [Signature]  
 SCALE: 1:1000



LOCATION: PLAN TRACED/DRAWN BY: [Signature]  
 SCALE: DATE:



**LEW CHIN CHUAN & CO.**  
 VALUATION SURVEYORS, ESTATE AGENTS,  
 AUCTIONEERS & DEVELOPMENT CONSULTANTS.

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

In the  
High Court

APPLICATION FOR EXECUTION NO. 303 OF 1979

No.4  
Affidavit of  
Chee Khiew  
Siew  
19th March  
1980

(In the matter of Kuala Lumpur High Court  
Civil Suit No. 1008 of 1976)

Between

Chop Sin Hua Hin  
(suing as a firm)

Plaintiffs

(continued)

And

(Exhibit  
CKS-3)

10

Sun Kee & Co.  
(sued as a firm)

Defendants

NOTICE OF MOTION

20

TAKE NOTICE that this Honourable Court will  
be moved on Monday the 17th day of March, 1980  
at 9.00 o'clock in the forenoon or so soon  
thereafter as Counsel can be heard for the  
Defendants for an Order that the Public Auction  
to be held on 17th March, 1980 at 10.30 a.m.  
in the forenoon at the High Court Garage be  
restrained by injunction until the decision is  
made by this Honourable Court on an Application  
to be filed forthwith.

Dated this 17th day of March, 1980.

Sgd: Illegible  
Solicitors for the  
Defendants

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

30

This Notice of Motion will be supported by  
the Affidavit of Chee Khiew Siew affirmed on the  
15th day of March, 1980.

This Notice of Motion is filed by Messrs.  
Dato Morris Edgar and Clough Thuraisingham,  
Solicitors for the Defendants abovenamed whose  
address for service is at 3rd Floor, Hwa-Li Building,  
No.63-65, Jalan Ampang, Kuala Lumpur.

In the  
High Court

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

No.4  
Affidavit of  
Chee Khiew  
Siew  
19th March  
1980  
(Exhibit CKS-3)  
(continued)

APPLICATION FOR EXECUTION NO. 303 OF 1979

(In the matter of Kuala Lumpur High Court  
Civil Suit No.1009 of 1976)

Between

Chop Sin Hua Hin  
(suing as a firm)

Plaintiffs

And

Sun Kee & Co.  
(sued as a firm)

Defendants

10

A F F I D A V I T

I, CHEE KHIEW SIEW of full age and a Malaysian Citizen of No.613, Jinjang South, Kuala Lumpur, Managing Partner of Sun Kee & Co. do hereby affirm and say as follows :-

1. I have personal knowledge of the matters set out herein and am duly authorised to make this Affidavit.

2. I crave leave to refer to the Order made by this Honourable Court on the 11th day of January, 1980 pursuant to the Application by the Plaintiffs to sell certain lands by Public Auction on 17th March, 1980. A photocopy of the Order is attached hereto and marked "CKS-1".

20

3. This Order was obtained in the absence of my Solicitors.

4. I further crave leave to refer to that part of the said Order wherein the reserve price was fixed at \$270,000/-.

30

5. I am advised and verily believe that the said reserve price does not even represent a fair forced sale value and is in fact a substantial discount from the real value obtainable. In support I now enclose herewith a Valuation Report prepared by a registered Valuation Surveyor, Lew Chin Chuan, and marked "CKS-2".

6. This valuation represents the value of the properties as on 19th March, 1979 and I am advised and verily believe that the price of property have further risen since last year.

In the  
High Court

No.4  
Affidavit of  
Chee Khiew  
Siew  
19th March  
1980  
(Exhibit  
CKS-3)  
(continued)

10

7. In addition I have made urgent overtures to the Plaintiffs to agree to a short postponement of the Auction to enable me to either apply for a revision of the reserve price or to make arrangements to settle the debt but have been met by their refusal to agree to a postponement.

8. In view of the above circumstances and in the interest of justice I humbly pray that the Auction Sale be stayed.

AFFIRMED by the abovenamed)  
CHEE KHIEW SIEW at Kuala Lumpur this 15th day of March, 1980 at 1.08 p.m. ) Sd: Chee Khiew Siew

20

Before me,

Sgd: YEE SOON KWONG  
PESUROHJAYA SUMPAH  
COMMISSIONER FOR OATHS

This Affidavit is filed by Messrs. Dato Morris Edgar and Clough Thuraisingham, Solicitors for the Defendants abovenamed whose address for service is at 3rd Floor, Hwa-Li Building, No.63-65, Jalan Ampang, Kuala Lumpur.

30

THIS IS THE EXHIBIT MARKED "CKS-3" REFERRED TO IN THE AFFIDAVIT OF CHEE KHIEW SIEW AFFIRMED THIS 19TH DAY OF MARCH 1980

Sgd: Yee Soon Kwong  
COMMISSIONER FOR OATHS

In the  
High Court

No. 5

NOTES OF PROCEEDINGS

No.5  
Notes of  
Proceedings  
24th March  
1980

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

APPLICATION FOR EXECUTION NO. 303 OF 1979

In the Matter of Order 43 Rule 11(e)  
of the Supreme Court, 1957

B E T W E E N

Sun Kee & Co.  
(sued as a firm)

Applicants 10

And

1. Chop Sin Hua Hin  
(suing as a firm)

2. Ho Hai Poh

Respondents

In Open Court

24th March, 1980

NOTES OF PROCEEDINGS

BEFORE MOHD. AZMI J.

Mr. Morris Edgar for Applicants.  
Miss M. Cheah for First Respondent.  
Ho Hai Poh - the successful bidder - Second 20  
Respondent - absent - not served.

Enclosure (32)

Mr. Morris Edgar:

Application to set aside the sale by public  
auction on 17.3.1980.

Application is under Order 43 Rule 11(4)  
Rules of Supreme Court.

The reserve price is very much under. The  
two pieces of land were sold for \$275,000/-.

One Valuer Mr. Lew Chin Chuan has valued both lands at \$360,000/- as at 19.3.1979.

In the  
High Court

Another Valuer - Jordan Lee & Jaffer - has valued the lands separately at \$247,500/- for each lot making a total of \$495,000/- on 11.1.1980.

No. 5  
Notes of  
Proceedings  
24th March  
1980

10 Section 257(1)(d) National Land Code - Reserve price should be equal to the estimated value of the land in question.

(continued)

Section 257(2)(b) - If there are more than two pieces of land - they should be sold separately. Senior Assistant Registrar's attention was not drawn to this section. Both sales were sold as if they were one.

There is therefore material irregularity in this case.

20 The principal sum due at time of sale was \$132,804.64. With interest and expenditure would be around \$140,000/-. The sale of one of the lands would have been sufficient. But both were sold.

Sgd: Mohd. Azmi

Miss Cheah:

(1) Each Valuer has his own opinion and it depends.

30 Respondent's Valuer based his valuation for purpose of auction sale on open market value.

(2) As regards Section 257(2)(B), it is still at the discretion of Registrar. It is not mandatory that the sale should be done one after another. Further, there is no change in respect of present execution.



In the  
High Court

No. 5  
Notes of  
Proceedings  
24th March  
1980  
(continued)

The sale is in respect of sale under an execution of a judgment after a prohibitory order had been made.

If there is irregularity, the Summons for Direction and order extracted were served on former solicitor, Syarikat Low & Lee. They had full knowledge of this on 7.2.1980 - more than a month before the sale. No protest made in respect of valuation.

10

Concedes \$140,000/-.

Application should be dismissed.

Mr. Edgar replies:

Refers to Order 43 Rule 11(e)

Also Order 51 Rule 4.

Section 258 applies to all sale by order of Court. There is no special provision relating to sale under prohibitory order. It is mandatory.

20

Land P.T.53 was charged to Hock Hua Bank for \$86,415.75.

Land P.T.54 was charged to Hongkong and Shanghai Bank for \$59,970.39 plus interest.

Sgd: Mohd. Azmi

Finding:

I find no material irregularity in this case. No protest was made by the Applicants' Solicitors as to reserve price and directions as to the sale.

30

ORDER:

Application dismissed with costs.

Sgd: Mohd. Azmi

Certified true copy

Sgd: Illegible  
.....

Secretary to Judge  
Kuala Lumpur dated 28th January, 1981

In the  
High Court

No. 5  
Notes of  
Proceedings  
24th March  
1980

(continued)

In the  
High Court

No. 6

No.6  
Summons  
5th May  
1980

SUMMONS

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

APPLICATION FOR EXECUTION NO. 303 OF 1979

Between

Sun Kee & Co.  
(suing as a firm)

Applicants

And

1. Chop Sin Hua Hin  
(sued as a firm)

10

2. Ho Hai Poh

Respondents

SUMMONS-IN-CHAMBERS

LET ALL PARTIES CONCERNED attend before the Honourable Judge-in-Chambers at the High Court, Kuala Lumpur on Tuesday the 3rd day of June, 1980 at 9.30 o'clock in the forenoon on the hearing of an Application on the part of the abovenamed Applicants firm for an Order.

20

(a) Stay of all proceedings to execution Judgment until hearing of the Federal Court Civil Appeal No. 70 of 1980.

(b) The costs of this Application be the cost in the cause.

Dated this 5th day of May, 1980.

Sgd: Illegible

-----  
Senior Assistant Registrar,  
High Court,  
Kuala Lumpur.

30

This Summons-in-Chambers is filed by Messrs. Dato Morris Edgar and Clough Thuraisingham, Solicitors for the Applicants' firm herein whose address for service is at

3rd Floor, Hwa-Li Building, No.63-65  
Jalan Ampang, Kuala Lumpur.

In the  
High Court

The Affidavit of K.B.Thuraisingham  
affirmed on the 5th day of May, 1980 and  
filed herein will be read in support of this  
Application.

No.6  
Summons  
5th May  
1980

(continued)

This Summons-In-Chambers will be served  
on :

- 10 (1) M/s Allen & Gledhill,  
Solicitors for the 1st Respondent/Defendant  
Advocates & Solicitors,  
24th Floor,  
Bangunan U.M.B.C.,  
Jalan Suleiman,  
Kuala Lumpur
- 20 (2) Ho Hai Poh,  
2nd Respondent/Defendant,  
No.40, Jalan Tunku Abu Bakar,  
Temerloh,  
Pahang

No. 7

AFFIDAVIT OF K.B.  
THURAISINGHAM

No.7  
Affidavit of  
K.B.  
Thuraisingham  
5th May 1980

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

APPLICATION FOR EXECUTION NO. 303 OF 1979

Between

Sun Kee & Co.  
(suing as a firm)

Applicants

30

And

1. Chop Sin Hua Hin  
(sued as a firm)  
2. Ho Hai Poh

Respondents

In the  
High Court

A F F I D A V I T

No. 7  
Affidavit  
of K.B.  
Thuraisingham  
5th May 1980  
  
(continued)

I, K.B.THURAISINGHAM of full age and a Malaysian Citizen of 3rd Floor, Hwa-Li Building No.63-65, Jalan Ampang, Kuala Lumpur do hereby affirm and say as follows :-

1. I am the Solicitor for the abovenamed Applicants and have full authority to make this Affidavit.

2. I crave leave to refer your Lordship to the proceedings filed herein and Notice of Appeal, Federal Court Civil Appeal No.70 of 1980 filed on 29th March, 1980. 10

3. The Applicants abovenamed being dissatisfied with the decision made in Open Court by the Honourable Mr. Justice Mohamed Azmi on 17th March, 1980 on the Notice of Motion for setting aside the Auction Sale being dismissed with cost had appealed to the Federal Court of Appeal at Kuala Lumpur against the whole of the said decision. 20

4. I verily believe that the Applicants had good grounds of Appeal in the abovenamed Appeal proceedings and further there are points of law and facts that have to be decided by the Honourable Federal Court of Civil Appeal at Kuala Lumpur.

5. Therefore I humbly pray for an Order in terms of this Application.

AFFIRMED by the said K.B.)  
THURAISINGHAM at Kuala ) Sgd: Balen Thurais- 30  
Lumpur this 5th day of ) ingham  
May, 1980 at 2.20 p.m. )

Before me,  
Sgd: YEE SOON KWONG  
Pesuruhjaya Sumpah  
Commissioner for Oaths.

This Affidavit is filed by Messrs. Dato Morris Edgar and Clough Thuraisingham, Solicitors for the Applicants abovenamed whose address for service is 3rd Floor, Hwa-Li Building, No.63-65 40  
Jalan Ampang, Kuala Lumpur.

AFFIDAVIT OF ONG HAI

No.8  
Affidavit of  
Ong Hai  
13th June  
1980

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

APPLICATION FOR EXECUTION NO: 303 OF 1979

Between

Sun Kee & Co.  
(suing as a firm)

Applicants

And

10

- 1. Chop Sin Hua Hin  
(sued as a firm)
- 2. Ho Hai Poh

Respondents

A F F I D A V I T

I, ONG HAI, of full age and residing at 3566, Circle Road, Jinjang North, Kepong, Kuala Lumpur, do solemnly affirm and say as follows :-

20

1. I am the Manager of the First Respondent firm and I am duly authorised by the First Respondent to affirm this Affidavit on its behalf.

30

2. The First Respondent's Solicitors by letter dated the 11th December, 1979 submitted the Court with a copy of the Valuation Report and that at the same time the Applicants' Solicitors were also handed a copy of the Valuation Report. A copy of the letter dated the 11th December, 1979 together with a copy of the Valuation Report are now shown to me and are annexed hereto and marked as Exhibits "OH-1" and "OH-2" respectively.

40

3. On the 7th day of February, 1980 the First Respondent's by letter dated 6th February, 1980 served the Applicants' former Solicitors with a copy of the Order of Court given on the 11th day of January, 1980. A copy of the said letter together with a copy of the Order of this Honourable Court given on the 11th day of January, 1980 are now shown to me and are annexed hereto and marked as Exhibits "OH-3" and "OH-4" respectively.

In the  
High Court

No 8  
Affidavit of  
Ong Hai  
13th June  
1980

(continued)

4. On the 15th day of March, 1980 the Applicants' Solicitors wrote to my Solicitors. A copy of the said letter is now shown to me and is annexed hereto and marked as Exhibit "OH-5".

AFFIRMED by the said )  
ONG HAI at Kuala Lumpur)  
on this 13th day of )  
June, 1980 at 11.30 a.m)

Before me,  
Sgd: TNEH LIANG PENG, P.P.N.  
Commissioner for Oaths  
(Pesuruhjaya Sumpah)  
Kuala Lumpur

10

This Affidavit is filed by Messrs. Allen & Gladhill, Solicitors for the First Respondent herein whose address for service is at 24th Floor, UMBC Building, Jalan Sulaiman, Kuala Lumpur.

No. 8  
Affidavit  
of Ong Hai  
13th June  
1980  
(continued)  
(Exhibit  
OH-1)

CYM/lhy/1339/75

11th December, 1979

The Senior Assistant Registrar,  
High Court,  
KUALA LUMPUR.

BY HAND

Tuan,

K.L. High Court Application for  
Execution No. 303/79  
(Commercial Division)  
Chop Sin Hua Hin v. Sun Kee & Co.

We enclose herewith a copy of the Valuation Report in respect of the above matter. 30

Enc: Yang benar,  
c.c. Syarikat Low & Lee  
Advocates & Solicitors,  
Room 401, 4th Floor,  
Bangunan Soon Chiong Fei,  
Nos.26-30, Jalan Petaling, BY HAND  
KUALA LUMPUR  
(Your ref: LL/2/2087/LW/76(0))

A copy of the Valuation Report  
is enclosed herewith by way of  
service upon you.

In the  
High Court

This is the Exhibit marked "OH-1" referred  
to in the Affidavit of Ong Hai sworn to at  
Kuala Lumpur this 13th day of June 1980  
before me

No.8  
Affidavit of  
Ong Hai  
13th June  
1980  
(Exhibit OH-1  
(continued))

10

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

JONES LANG  
WOOTTON

4 Jalan Ampang,  
Kuala Lumpur 01-16 Malaysia  
Cables "Wonderment" Kuala  
Lumpur  
Telex: MA 30926  
Telephone: 207266m 23561

No. 8  
Affidavit of  
Ong Hai  
13th June  
1980  
(continued)  
(Exhibit OH-2)

VALUATION

OF

20

PT. 53 and PT. 54 MUKIM OF BATU  
DISTRICT OF KUALA LUMPUR  
WILAYAH PERSEKUTUAN

PREPARED FOR:

ALLEN & GLEDHILL,  
24TH FLOOR, BANGUNAN U.M.B.C.,  
JALAN SULAIMAN,  
KUALA LUMPUR 01-33

30

This is the Exhibit marked "OH-2" referred to  
in the Affidavit of Ong Hai sworn to at Kuala  
Lumpur this 13th day of June 1980 before me

Sgd. TNEH LIANG PENG, P.P.N.  
COMMISSIONER FOR OATHS  
(Pesuruhjaya Sumpah)  
Kuala Lumpur, Malaysia



No.8  
Affidavit of  
Ong Hai  
13th June  
1980  
(Exhibit OH 2)  
(continued)

1.0	TERMS OF REFERENCE	
2.0	THE SUBJECT OF VALUATION	
3.0	LOCATION OF THE PROPERTIES	
4.0	DESCRIPTION OF THE PROPERTIES	
5.0	SERVICES	
6.0	PARTICULARS OF TITLES	
7.0	PLANNING DETAILS	
8.0	VALUATION	
	8.01 BASIS OF VALUATION FOR AUCTION SALE	10
	8.02 METHOD OF VALUATION	
	8.03 OPINION OF VALUE	
9.0	LIMITING CONDITIONS	

---

1.0	TERMS OF REFERENCE	Instructions to value PT 53 and PT 54 Mukim of Batu, District of Kuala Lumpur, Wilayah Persekutuan, for purposes of a public auction were conveyed to us by Messrs. Allen & Gledhill vide a letter dated 26th November 1979.	20
		Accordingly, we have carried out an inspection, extracted particulars of land titles at the Land Registry and gathered all other relevant information necessary to form our opinion of value.	
		We now submit our report and valuation.	30
2.0	THE SUBJECT OF VALUATION	The properties forming the subject of this valuation are two contiguous plots of vacant industrial land.	

3.0 LOCATION OF  
THE PROPERTIES

In the  
High Court

No.8  
Affidavit of  
Ong Hai  
13th June  
1980  
(Exhibit OH 2)  
(continued)

10

The subject properties are located within the industrial area of Taman Kepong. Taman Kepong is a mixed development comprising of dwelling units, shophouses and industrial premises. It is located at about the 8th milestone Jalan Kepong and adjacent to Taman Kepong Baru, Taman Desa Jaya and Taman Bukit Maluri.

20

The subject properties are located fronting onto a metalled road, Jalan Kilang which is accessible via Jalan Development, Jalan Kepong Garden and Jalan Kanan from Jalan Kepong.

Appendix 'A' annexed to this report indicates the site of the subject properties edged in red.

30

The nature of properties in the immediate vicinity of the subject properties comprises mainly of individually designed industrial premises amongst which are Meika Food Industry Sdn. Bhd. Samaco Engineerings, Kilang Besi Soon Hing Kum Lee and Syarikat Hong Soon Huat Sdn. Bhd. Nearby is the residential area of Taman Kepong comprising of single storey terraced houses.

40

4.0 DESCRIPTION  
OF THE  
PROPERTIES

50

PT 53 and 54 are two contiguous rectangular shaped plots of land each having a provisional site area of 15,000 square feet. The terrain of these two plots are generally flat and almost level with the frontage road, Jalan Kilang. The outer site boundaries are demarcated with

In the  
High Court

No. 8  
Affidavit  
of Ong Hai  
13th June  
1980  
(Exhibit OH 2)  
(continued)

chain link fence and the  
driveway is secured by a  
pair of metal gates.

These sites have a combined  
road frontage of about 200 feet  
and a depth of approximately  
150 feet.

The site was at the date of  
our inspection vacant and  
overgrown with lalang.

10

5.0 SERVICES

Main water, electricity supply  
and telephone services are  
available for connection.  
Other public services such as  
collection of refuse, repairs  
and maintenance of roads and  
roadside drains etc. are  
provided for by the Local  
Authority for the area.

6.0 PARTICULARS  
OF TITLES

Lot Nos: PT 53 and PT 54 Mukim  
of Batu, District of  
Kuala Lumpur

Title HS(D) 24508 and HS(D)  
Nos: 24509 respectively

Areas: 15,000 square feet for  
each of the lots

Tenure: Perpetuity

Category  
of Land

Use: Industry

Registered

Proprietor: Both the titles are  
registered in the name  
of Chee Khiew Seng  
(1/3 share), Chee Kew  
Tuck (1/3 share), Chew  
Khiew Siew (1/3 share)

20

30

8.0 VALUATION  
8.01 BASIS OF  
VALUATION  
FOR PUR-  
POSES OF  
AUCTION  
SALE

Our basis of valuation is that  
of open market value. Open market

40

10 value is defined as meaning the price at which the property might reasonably be expected to be sold by private treaty at the date of valuation between a willing buyer and a willing seller dealing at arm's length and assuming that it is freely exposed to the market and excluding any bid by a special purchaser.

In the High Court  
No.8  
Affidavit  
of Ong Hai  
13th June  
1980  
(Exhibit OH 2)  
(continued)

20 Values are assumed to remain static during the period of negotiation for sale, for which a reasonable time is allowed. In the case of auction sale, we would presume that the property would be fully exposed to the market for a reasonable period of time before the auction date to enable potential purchasers to inspect the property and to make such enquiries as could be anticipated to be made by a prudent prospective purchaser having regard to the nature of the property, thereby ensuring as fully as possible that the full open market value of the property is realised.

30

8.02 METHOD OF VALUATION

40 We have basically used the comparable method of valuation to arrive at our opinion of value. The comparable method is the comparison of like with like, meaning comparison of similar type properties. Where there are no perfect comparables, allowances are made for the differences.

8.03 OPINION OF VALUE

50 We wish to draw attention that the titles carry a prohibitory order restraining transfer, charge or lease for a period of 6 months commencing 3rd October 1979. However, in

In the  
High Court

No. 8  
Affidavit  
of Ong Hai  
13th June  
1980  
(Exhibit OH 2)  
(continued)

arriving at our opinion of value, we have assumed that this encumbrance is rescinded in whole or in part i.e. permission to transfer, charge or lease.

Having considered all relevant factors influencing value, we are of the opinion that the open market value of the perpetual interest in the subject properties with vacant possession and on the basis that they are free of the existing charge to Hock Hua Bank Berhad is Dollars Three Hundred Thousand (\$300,000). 10

Our opinion of the forced sale value of the same is Dollars Two Hundred and Seventy Thousand (\$270,000). 20

9.0 LIMITING  
CONDITIONS

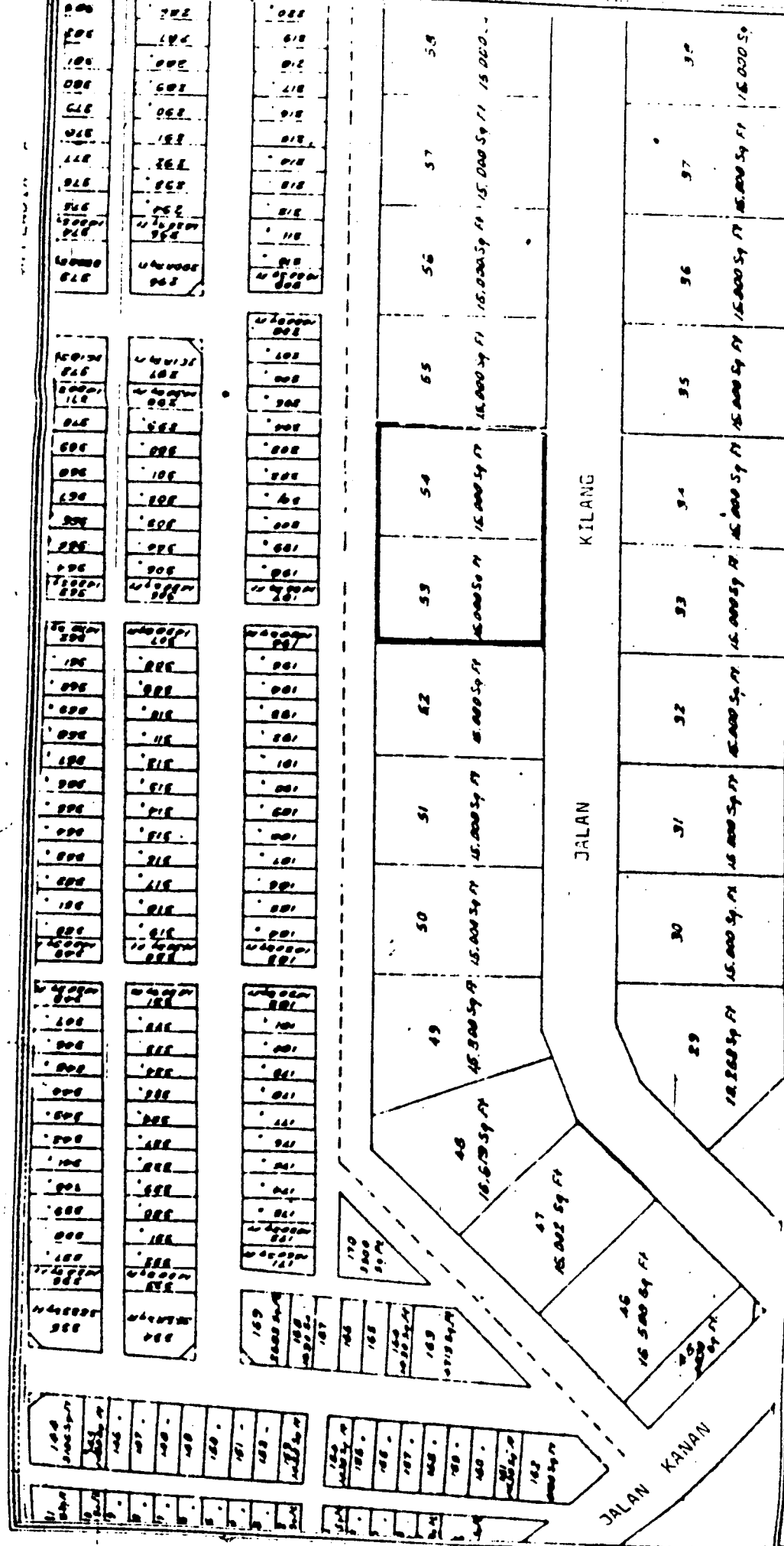
Neither the whole nor any part of this report nor any reference thereto may be included in any document, circular or statement without our written approval of the form and context in which it will appear.

Finally and in accordance with our standard practice, we must state that this report is for the use only of the party to whom it is addressed and no responsibility is accepted to any third party for the whole or any part of its contents. 30

Sgd: Sulaiman

SULAIMAN MUSTAFA, ARICS MIS(M)  
REGISTERED SURVEYOR  
JONES LANG WOOTTON 40

JF/aa  
Date: 10th December 1979  
Ref: V/205/79



**Jones Lang  
Wootton**  
International Real Estate Agents  
Property Consultancy and Management,  
Valuations, Sales and Leasing

LOCATION: PT 55 AND PT 54,  
WILAYAH PERSEKUTUAN  
MUKIM OF BATU, DISTRICT OF KUALA LUMPUR.

APPROVED BY THE LOCAL AUTHORITY  
ON 13.6.1980

In the  
High Court

LL/2/3087/LH/76/L/E)  
CYM/cck/1339/75

No.8  
Affidavit  
of Ong Hai  
13th June  
1980  
  
(continued)  
  
(Exhibit  
OH-3)

February 6, 1980

Syarikat Low & Lee,  
Advocates & Solicitors,  
Room 401, 4th Floor,  
Bangunan Soon Chiong Fei,  
26-30, Jalan Petaling,  
KUALA LUMPUR.

BY HAND

Dear Sirs,

10

K.L. High Court Application for  
Execution No. 303 of 1979

We enclose herewith a copy of the Order  
given by the Court on the 11th day of January,  
1980 by way of service upon you.

Kindly acknowledge receipt of service by  
endorsing on the carbon copy of this letter  
and on the copy of the Order.

Yours faithfully,

Enc:

20

This is the Exhibit marked "OH-3" referred  
to in the Affidavit of Ong Hai sworn to at  
Kuala Lumpur this 13th day of June 1980  
before me

TNEH LIANG PENG, P.P.N.  
Commissioner for Oaths  
(Pesuruhjaya Sumpah)  
Kuala Lumpur, Malaysia

DATO MORRIS EDGAR &  
CLOUGH THURAISSINGHAM  
Advocates & Solicitors

TALIPON: 23631 & 23632  
TELEGRAMS: "MORRISCO"  
Bangunan Hwa-Li  
(3rd Floor)  
63-65 Jalan Ampong,  
Kuala Lumpur 01-17,  
Malaysia  
P.O.Box No.436

In the  
High Court

No.8  
Affidavit  
of Ong Hai  
13th June  
1980

10

AFFIDAVIT OF ONG HAI  
AFFIRMED ON 13.6.1980

(continued)  
(Exhibit  
OH-5)

Surat Tuan: MC/d1/1083/78  
Surat Kami: BT/TMS/LIT/1610/79

15th March 1980

M/s Allen & Gledhill  
Advocates & Solicitors  
Bangunan U.M.B.C.  
24th Floor  
Jalan Sulaiman  
KUALA LUMPUR

This is the Exhibit marked  
"OH-5" referred to in the  
Affidavit of Ong Hai sworn  
to at Kuala Lumpur this  
13th day of June 1980  
before me

Sgd TNEH LIANG PENG P.P.N.  
Commissioner for Oaths  
(Pesuruhjaya Sumpah)  
Kuala Lumpur, Malaysia

20

Attn: Miss Madeleine Cheah

Dear Madam,

Re: K.L. High Court Civil Suit No.  
C 331 of 1979

We refer to our earlier letter of date and to  
our second telephone call (Mr. Thuraissingham/  
Miss Cheah) and confirm that we have two Cashiers  
Orders made out in our name for \$25,000. This  
amount will adequately cover the shortfall if  
indeed there is any shortfall.

30

We are attempting to get in touch with the  
solicitors for Public Bank to resolve this issue.  
We would be grateful if your Miss Cheah is  
available early Monday morning to deal with this  
matter. Please therefore prepared to postpone  
the auction.

Yours faithfully,  
DATO MORRIS EDGAR & CLOUGH THURAISSINGHAM

Sd: Illegible

BT/tms

40

Associated with SHARMA & CO. Advocates &  
Solicitors, 4A Beach Street, Penang  
Tel Nos. 22924/21640



In the  
High Court

No. 9

AFFIDAVIT OF ONG HAI

No.9  
Affidavit  
of Ong Hai  
29th July  
1980

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

APPLICATION FOR EXECUTION NO: 303 OF 1979

Between

Sun Kee & Co.  
(suing as a firm)

Applicants

And

1. Chop Sin Hua Hin  
(sued as a firm)
2. Ho Hai Poh

10

Respondents

A F F I D A V I T

I, ONG HAI, of full age and residing at 3566, Circle Road, Jinjang North, Kepong, Kuala Lumpur do solemnly affirm and say as follows:-

1. I am the Manager of the First Respondent firm and I am duly authorised by the First Respondent to affirm this Affidavit on its behalf.

20

2. I crave leave to refer to my Affidavit affirmed on the 13th day of June, 1980 filed herein. I further crave leave to refer to the Summons-In-Chambers dated the 5th day of May, 1980 filed by Applicants in respect of which application the Applicants are now asking that all proceedings with regard to execution of the Judgment be stayed.

3. The First Respondent by Summons-In-Chambers dated the 1st day of August, 1979 applied for a Prohibitory Order to attach the properties involved which is the subject-matter of the First Respondent's application for a stay of execution of the Judgment.

30

A copy of the said Summons-In-Chambers dated the 1st day of August, 1979 is now shown to me and is annexed hereto and marked as Exhibit "OH-1".

4. The Applicants did not object to the said Summons-In-Chambers dated the 1st day of August, 1979 and on the 7th day of September, 1979 this Honourable Court made an Order granting a Prohibitory Order to attach the properties involved.

10 A copy of the Order of this Honourable Court made on the 7th day of September, 1979 is now shown to me and is annexed hereto and marked as Exhibit "OH-2".

5. Subsequently the First Respondent applied by Summons for Directions dated the 6th day of November, 1979 to have the properties involved disposed of by Public auction.

A copy of the said Summons for Directions dated the 6th day of November, 1979 is now shown to me and is annexed hereto and marked as Exhibit "OH-3".

20 6. This Honourable Court made an Order in terms of the said Summons for Directions on the 11th day of January, 1980.

A copy of the Order of this Honourable Court made on the 11th day of January, 1980 is now shown to me and is annexed hereto and marked as Exhibit "OH-4".

30 7. Pursuant to the Order of this Honourable Court made on the 11th day of January, 1980, an auctioneer has been appointed to conduct the sale of the properties involved by public auction and the properties involved have been sold by public auction on the 17th day of March, 1980 and the proceeds of sale have been paid by the purchasers into Court.

8. The First Respondent has been advised and verily believe that since the execution of the Judgment has been carried out that it is now too late for the Applicants to come to Court to apply for a stay of execution of the Judgment.

40 AFFIRMED by the said ONG )  
HAI at Kuala Lumpur on ) Sgd: Ong Hai  
this 29th day of July, )  
1980 at 9.10 a.m. )

Before me,  
Sgd: Tneh Liang Peng  
Commissioner for Oaths  
(Pesuruhjaya Sumpah) Kuala Lumpur

In the  
High Court

No. 9  
Affidavit  
of Ong Hai  
29th July  
1980

(continued)

No. 9  
Affidavit  
of Ong Hai  
29th July  
1980

(continued)

(Exhibit OH-1)

This Affidavit is filed by Messrs. Allen & Gledhill, Solicitors for the First Respondent whose address for service is at 24th Floor, UMBC Building Jalan Sulaiman, Kuala Lumpur.

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

APPLICATION FOR EXECUTION NO. 303 OF 1979

(In the matter of Kuala Lumpur High Court  
Civil Suit No.1009 of 1976)

Between

Chop Sin Hua Hin  
(suing as a firm)

Plaintiffs

And

Sun Kee & Co.  
(sued as a firm)

Defendants

10

SUMMONS-IN-CHAMBERS

LET ALL PARTIES concerned attend before the Judge/Registrar on Friday, the 7th day of September, 1979 at 10.00 o'clock in the forenoon for an Order under Order 43 rule 2 of the R.S.C. that the Plaintiffs may be granted leave to obtain a Prohibitory Order to attach the properties held under Documents of Title Nos. H.S.(D) 24508, P.T. No.53 and H.S.(D) 24509, L.O. No.54, both in the Mukim of Batu, containing by measurement 15,000 square feet each for the purpose of satisfying the Judgment obtained by the Plaintiffs against the Defendants in Kuala Lumpur High Court Civil Suit No. 1009 of 1976 and that the costs of this application be taxed and be paid by the Defendants to the Plaintiffs.

20

30

Dated this 1st day of August, 1979.

Sgd: Abdul Razak Ibrahim  
Senior Assistant Registrar,  
High Court, Kuala Lumpur.

To:-

The Defendants abovenamed and/or  
its Solicitors,  
Syarikat Low & Lee,  
Room 401, 4th Floor,  
Bangunan Soon Chiong Fei,  
Nos. 26-30, Jalan Petaling,  
KUALA LUMPUR

In the  
High Court

No.9  
Affidavit  
of Ong Hai  
29th July  
1980  
(Exhibit OH-1)  
(continued)

10

This Summons-In-Chambers is taken out  
by Messrs. Allen & Gledhill, Solicitors for  
the Plaintiffs, whose address for service is  
at 24th Floor, UMBC Building, Jalan Sulaiman,  
Kuala Lumpur.

The Affidavit of ONG HAI affirmed on the  
17th day of July, 1979 and filed herein will  
be read in support of this Application.

CYM/1339/75.

20

This is the Exhibit marked "OH-4"  
referred to in the Affidavit of Ong  
Hai sworn to at Kuala Lumpur this  
29th day of July 1980 before me

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

In the  
High Court

No.9  
Affidavit  
of Ong Hai  
29th July  
1980

(continued)

(Exhibit OH-2)

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

APPLICATION FOR EXECUTION NO. 303 OF 1979

(In the matter of Kuala Lumpur High Court  
Civil Suit No. 1009 of 1976)

Between

Chop Sin Hua Hin  
(suing as a firm)

Plaintiffs

And

Sun Kee & Co.  
(sued as a firm)

Defendants

10

BEFORE THE SENIOR ASSISTANT REGISTRAR,  
ENCIK ABDUL RAZAK

IN CHAMBERS

THIS 7TH DAY OF SEPTEMBER, 1979

O R D E R

UPON HEARING Mr. Chin Yew Meng of Counsel  
for the Plaintiffs and Mr. Lee Shan Too of  
Counsel for the Defendants AND UPON READING the  
Summons-In-Chambers dated the 1st day of  
August, 1979 and the Affidavit of Ong Hai  
affirmed on the 17th day of July, 1979 all filed  
herein BY CONSENT IT IS ORDERED that the  
Plaintiffs be granted leave to obtain a  
Prohibitory Order to attach the properties held  
under Documents of Title Nos. H.S.(D) 24508,  
P.T. No.53 and H.S.(D) 24509, L.O. No.54, both  
in the Mukim of Batu, containing by measurement  
15,000 square feet each for the purpose of  
satisfying the Judgment obtained by the Plaintiffs  
against the Defendants in Kuala Lumpur High Court  
Civil Suit No. 1009 of 1976 and that the costs  
of this application be taxed and be paid by the  
Defendants to the Plaintiffs.

20

Given under my hand and the seal of the  
Court this 7th day of September, 1979.

Sgd: Illegible

Senior Assistant Registrar,  
High Court, Kuala Lumpur

In the  
High Court

No. 9  
Affidavit  
of Ong Hai  
29th July  
1980  
(Exhibit OH2)  
(continued)

This is the Exhibit marked "OH-2" referred  
to in the Affidavit of Ong Hai sworn to at  
Kuala Lumpur this 29th day of July 1980  
before me.

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

10

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

APPLICATION FOR EXECUTION NO. 303 OF 1979

(In the matter of Kuala Lumpur High Court  
Civil Suit No. 1009 of 1976)

No. 9  
Affidavit  
of Ong Hai  
29th July  
1980  
(Exhibit  
OH-3)

Between

Chop Sin Hua Hin  
(suing as a firm)

Plaintiffs

20

And

Sun Kee & Co.  
(sued as a firm)

Defendants

SUMMONS FOR DIRECTIONS

LET ALL PARTIES concerned attend before  
the Registrar in Chambers on Friday, the 23rd  
day of November, 1979 at 10.00 o'clock in the  
forenoon on the hearing of an application on the  
part of the Plaintiffs abovenamed for an Order  
that :-

30

1. The lands held under Documents of Title No.  
H.S.(D) 24508, P.T. 53 and H.S.(D) 24509, L.O.  
No.54, both in the Mukim of Batu, District of  
Kuala Lumpur, containing by measurement 15,000  
square feet each be sold by public auction under

In the  
High Court

No. 9  
Affidavit  
of Ong Hai  
29th July  
1980  
(Exhibit OH-3)  
(continued)

the directions of the Court on the date,  
time and place to be fixed by the Senior  
Assistant Registrar.

2. The reserve price for each property be  
fixed.

3. A licensed auctioneer be appointed to  
conduct the sale herein.

4. Proclamation for Sale of the said  
properties be posted not less than four (4)  
weeks before the date of sale at the following  
places :- 10

(a) Notice Board of the High Court at  
Kuala Lumpur;

(b) Notice Board of the Land Office at  
Kuala Lumpur;

(c) Some conspicuous place on the said  
properties;

and that there be a publication in the Malay  
Mail not less than four (4) weeks before the  
date of sale. 20

5. A sum as ordered by the Senior Assistant  
Registrar be deposited by the Plaintiffs  
towards the sale and expenses of the auctioneer.

6. Out of the total sum realisable from the  
sale, the actual sums due to the following  
chargees :-

(a) Hock Hua Bank Berhad due in respect  
of Charge No. 45295 under Charge  
Jilid CCLXXX, Folio 94 presented  
and registered on 19th July, 1972 30  
and Charge No. 10087 under Charge  
Jilid CCCVI, Folio 120 presented  
and registered on 12th June, 1973 in  
respect of property held under  
H.S.(D) 24508, P.T.53, Mukim of  
Batu, District of Kuala Lumpur;

(b) The Hongkong and Shanghai Banking  
Corporation due in respect of Charge  
No.1632/77 under Charge Jilid 55,  
Folio 189 presented and registered 40  
on 14th February, 1977 and Charge  
No. 12276/78 under Charge Jilid 93,  
Folio 8 presented and registered on

28th July, 1978 in respect of property held under H.S.(D) 24509, L.O. 54, Mukim of Batu, District of Kuala Lumpur.

In the High Court

No.9  
Affidavit  
of Ong Hai  
29th July  
1980  
(Exhibit OH3)  
(continued)

10 be paid to the above chargees and that the balance due after payment of all expenses be paid to the Plaintiffs towards satisfaction of the amount due to the Plaintiffs in connection with the Judgment obtained by the Plaintiffs against the Defendants in Kuala Lumpur High Court Civil Suit No. 1009 of 1976.

7. The costs of this application be taxed by the proper officer of the Court.

8. The said chargees, Hock Hua Bank Berhad and The Hongkong and Shanghai Banking Corporation, shall within two (2) weeks before the date of sale deposit with the Senior Assistant Registrar the title deeds to the said properties.

20 9. The said chargees, Hock Hua Bank Berhad and The Hongkong and Shanghai Banking Corporation, shall deliver to the Senior Assistant Registrar, their respective duly executed Discharges of Charge in respect of the above Charges on the said properties on receipt of the principal sums together with all interest due to the said Chargees under the above Charges.

10. The Plaintiffs be given leave to bid at the auction.

11. Liberty to apply.

30 Dated this 6th day of November, 1979.

Sgd: Illegible  
Senior Assistant Registrar  
High Court, Kuala Lumpur.

40 To:- (1) The Defendants abovenamed and/or its Solicitors,  
Syarikat Low & Lee,  
Room 401, 4th Floor,  
Bangunan Soon Chiong Fei,  
Nos. 26-30, Jalan Petaling,  
KUALA LUMPUR

(2) Hock Hua Bank Berhad,  
22, Jalan Klyne,  
KUALA LUMPUR.



In the  
High Court

No.9  
Affidavit  
of Ong Hai  
29th July  
1980  
(Exhibit OH-3)  
(continued)

(3) The Hongkong And Shanghai Banking  
Corporation,  
1, Bantang,  
KUALA LUMPUR.

This Summons for Directions was taken out  
by Messrs. Allen & Gledhill, Solicitors for  
the Plaintiffs herein whose address for service  
is at 24th Floor, UMBC Building, Jalan Sulaiman,  
Kuala Lumpur.

CYM/cck/1339/75

10

This is the Exhibit marked "OH-3"  
referred to in the Affidavit of Ong Hai  
sworn to at Kuala Lumpur this 29th day  
of July 1980 before me

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

No.10  
Affidavit  
of Chee  
Khiew Siew  
21st August  
1980

No.10

AFFIDAVIT OF CHEE  
KHIEW SIEW

20

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

APPLICATION FOR EXECUTION NO. 303 OF 1979

Between

Sun Kee & Co.  
(suing as a firm)

Applicants

And

1. Chop Sin Hua Hin  
(sued as a firm)
2. Ho Hai Poh

Respondents

30

A F F I D A V I T

I, CHEE KHIEW SIEW of full age and a  
Malaysian Citizen of No.613, Jinjang South,

Kuala Lumpur, the Managing Partner of the Applicants and can depose to the truth of the matters set out herein.

In the  
High Court

No.10  
Affidavit  
of Chee  
Khiew Siew  
21st August  
1980

10

1. Since the Sale by Court Order, certain tenants of my firm occupying a portion of the lands (hereinafter called the said lands) forming the subject matter of the sale have unilaterally damages property and expanded their area of occupation by taking over other portions of the said lands illegally. Despite a demand by my Solicitors by letter dated 3rd May, 1980 (photocopy of which is attached hereto and marked "C.K.S.-1") the said tenants Samaco Engineering Sdn.Bhd. of Lot No.33, Jalan Kilang, Kepong Garden, Kepong, Selangor have :

(continued)

20

- (a) continued their illegal trespass
- (b) failed to pay any further rent
- (c) failed to compensate my firm for damages caused and
- (d) refused to comply with the eviction notices.

30

2. In addition a company called, Standard Industrial Engineering Sdn.Bhd. of Lot No.2, Jalan 215, Petaling Jaya have purportedly negotiated with the said tenants to rent the said lands, and have illegally moved in onto the said lands and interfered with my firms machinery and equipment and caused my firm considerable loss. (A photocopy of their letter dated 21st April, 1980 is enclosed herewith and marked "C.K.S.-2"). Despite two letters (photocopies of which are attached hereto and marked "C.K.S.-3" and "C.K.S.-4") sent to them by my Solicitors, they are still in occupation.

40

3. By reasons thereof my firm has suffered loss and continue to do so.

4. I am advised and verily believe that I can only move against them with certainty only if my legal status is clear, as although I am still the registered proprietor, I have, by reason of the sale, lost my ownership as a result of the purchaser holding the equitable title pending my appeal. With the benefit of a stay of execution I can proceed with speed to

In the  
High Court

No.10  
Affidavit  
of Chee  
Khiew Siew  
21st August  
1980

(continued)

remove them and mitigate my Company's loss.

5. The abovementioned Companies (hereinafter called the said Companies) have quite clearly taken advantage of the situation to my Company's detriment.

6. The continuation of the present illegal occupation by the said Companies and damage they have caused compound and magnify the extent of my loss when all I am "guilty" of is the owing of a debt to the Respondents. 10

7. I also refer to the Appeal and state that I verily believe I have good grounds in law to set aside the Sale :

(a) I was in a position to pay the debt due but was not allowed to by the Respondents. (See photostat copies of two letters from the Public Bank marked exhibits 5 and 6.) The Bank has yet to withdraw the offer of the facilities. 20

(b) The sale reserve price was grossly inadequate thereby causing my company substantial loss (see photocopies of the attached Valuations marked exhibits 7 and 8).

(c) The purchaser has now offered to sell the said lands for \$510,000/- (see attached Affidavit of Lam Fung Heng dated and marked exhibit 9).

(d) The (inadequate) reserve price was disclosed prior to the sale thereby ensuring the conclusion of the sale at or about the reserve price. 30

(e) Since two properties were involved, the sale Order should have been guided by Section 257 of the National Land Code.

8. By reasons thereof I humbly submit that:

(a) I have a valid, cogent and persuasive grounds for Appeal and 40

(b) If a stay is not granted then:

10

- (i) by reasons of matters set out in Paragraphs 1, 2, 3 and 4 herein my Company will continue to suffer losses and may not be able to do anything about it.
- (ii) by reasons of matters set out in Paragraph 7(c) the Purchaser under the Court Order may well sell the property (at the price my company, if at all, should rightly have obtained) and a bona fide purchaser for value will get a good title thereby rendering the Appeal nugatory.

In the  
High Court

No.10  
Affidavit  
of Chee  
Khiew Siew  
21st August  
1980

(continued)

9. I therefore pray for an Order in terms of the Summons-In-Chambers.

20

AFFIRMED by the abovenamed)  
CHEE KHIEW SIEW at Kuala Lumpur this 21st day of August, 1980 at 10.10 a.m.) Sgd: CHEE KHIEW SIEW

Before me,

Sgd: YEE SOON KWONG  
Pesurohjaya Sumpah  
Commissioner for Oaths.

This Affidavit is filed by M/s Dato Morris Edgar and Clough Thuraisingham, Solicitors for the Applicants abovenamed whose address for service is 3rd Floor, Hwa-Li Building, No.63-65 Jalan Ampang, Kuala Lumpur.

In the  
High Court

BT/SS/Lit/1682/80

3rd May, 1980

No.10  
Affidavit  
of Chee  
Khiew Siew  
21st August  
1980

Mr. Wong Choo Chieang  
Director,  
Samaco Engineering Sdn.Bhd.,  
Lot No. 33, Jalan Kilang,  
Kepong Garden,  
Kepong,  
SELANGOR

(continued)

(Exhibit CKS-1)

Dear Sir,

10

Re: Portion of Lot 54 measuring 60' x 100'  
and Fenced

We act for Sun Kee Engineering Works Sdn.Bhd.  
According to our clients you have rented the  
above property upon the following terms and  
conditions :-

- 1) To rent a portion of the land on a month  
to month basis
- 2) The said portion of the land is 60'x 100'  
marked and fenced.
- 3) The rent must be paid on the 15th of each  
month.
- 4) 30 days notice is required in the event  
our clients wish to stop renting the said  
property to you.

20

It has been brought to our attention that you  
have recently damaged and removed the fencing  
and have expanded the said property without our  
clients consent.

Please take note that our clients wish to give  
you 30 days notice effective from the 15th May,  
1980 to vacate the said property.

30

We are also advised that you alone or acting  
in Common with Standard Industrial Engineering  
Sdn.Bhd. have also removed our clients machinery  
and equipment and placed them in one area without  
our clients consent. Consequently, you have  
damaged both our clients land and machinery and  
equipment. At a stock count, a number of the  
machinery and equipment are also missing.

40

Please take note that with immediate effect you are instructed to remove every and all of your properties now thereon from our clients land without prejudice to whatever cause of action our clients may propose to take to seek compensation for losses and damages already suffered and continuing and to protect our clients rights and interests.

In the  
High Court  
No.10  
Affidavit  
of Chee  
Khiew Siew  
21st August  
1980  
(Exhibit CKS-1)  
(continued)

10 Yours faithfully,  
DATO' MORRIS EDGAR & CLOUGH THURAISINGHAM

c.c. M/s. Sun Kee Engineering Works Sdn.Bhd.

BT:ss

This is the Exhibit marked "CKS-1" referred to in the Affidavit of Chee Khiew Siew affirmed this 21st day of August 1980

Sgd: Yee Soon Kwong  
COMMISSIONER FOR OATHS

20 STANDARD INDUSTRIAL ENGINEERING SDN. BHD.  
No.2, Lot 2, Jalan 215, Petaling Jaya,  
Kuala Lumpur. Tel: 773616, 771874

SIE/1915/80

Date: 21st April, 1980  
21st August  
1980

M/s Sun Kee Engineering Works,  
203A, Batu , Jalan Klang,  
Kuala Lumpur.

(continued)  
(Exhibit  
CKS-2)

Attention: Mr. Chee

Dear Sir,

Re: Lot A53 A54 Mukim of Batu Kepong Kuala Lumpur

30 We have negotiated with the tenants for the above to rent their land with effect from 18th April, 1980 and are in the process of clearing the site. We note that there are certain items belonging to your company and would request that you kindly remove

In the  
High Court

No.10  
Affidavit  
of Chee  
Khiew Siew  
21st August  
1980  
(Exhibit CKS-2)  
(continued)

them from the site. Alternatively, we would  
arrange cranes to shift these materials to  
the back of the site.

Your early co-operation is much appreciated.

Yours faithfully,  
for STANDARD INDUSTRIAL ENGINEERING SDN. BHD.

Sd: R. Chan  
RONNIE CHAN  
MANAGING DIRECTOR

RC/nn

10

This is the Exhibit marked "CKS-2" referred  
to in the Affidavit of Chee Khiew Siew affirmed  
this 21st day of August 1980

Sgd. Yee Soon Kwong  
COMMISSIONER FOR OATHS

---

SIE/1915/80  
BT/TMS/LIT/1682/80

No. 10  
Affidavit  
of Chee  
Khiew Siew  
21st August  
1980  
(continued)  
(Exhibit  
CKS-3)

26th April 1980

M/s Standard Industrial Engineering  
Sdn. Bhd.  
No.2 Lot 2  
Jalan 215  
Petaling Jaya

20

Dear Sirs,

Re: Lot A53 A54 Mukim of Batu Kepong  
Kuala Lumpur

We act for M/s Sun Kee Engineering Works of  
No.203A Batu 4½ Jalan Klang, Kuala Lumpur.

Your letter reference SIE/1915/80 dated 21st  
April 1980 addressed to our clients had been  
passed to us to reply.

30

We have been instructed by our clients to state  
that the above mentioned properties is presently  
a subject matter under appeal in the High Court,  
Kuala Lumpur.

Our information confirmed by a search, indicates you have no registrable interest in the property.

In the  
High Court

Hence we are instructed by our clients to state that any person who occupies or attempt to occupy the said properties are trespassers to the said properties.

No.10  
Affidavit  
of Chee  
Khiew Siew  
21st August  
1980

10

You are therefore request to restrain from occupying the said properties and not to remove any materials found on the said properties, failing which our clients will reserve the right to take all or any steps necessary to protect their rights and to cover any losses they may incur.

(Exhibit CKS-3  
(continued))

Yours faithfully,  
DATO MORRIS EDGAR & CLOUGH THURAISINGHAM

c.c. clients

20

This is the Exhibit marked "CKS-3" referred to in the Affidavit of Chee Khiew Siew affirmed this 21st day of August 1980.

Sgd. Yee Soon Kwong  
COMMISSIONER FOR OATHS

\_\_\_\_\_  
SIE/1915/80  
BT/SS/LIT/1682/80

3rd May, 1980

M/s Standard Industrial Engineering  
Sdn. Bhd.  
No.2, Jalan 215,  
PETALING JAYA

No. 10  
Affidavit  
of Chee  
Kiew Siew  
21st August  
1980

(continued)

(Exhibit  
CKS-4)

30

Dear Sir,

Re: Lot A53 and A54, Mukim of Batu Kepong,  
Kuala Lumpur

Further to our letter dated 26th April, 1980, it has been brought to our attention that you acting alone or in common with Samaco Engineering Sdn.Bhd.,



In the  
High Court

No.10  
Affidavit  
of Chee  
Khiew Siew  
21st August  
1980  
(Exhibit CKS-4)  
(continued)

have damaged and removed part of the fencing of our clients property on Lot 53 and Lot 54, and by using a bulldozer, you have damaged the land.

You have also removed our clients machinery and equipment and placed them in one area without our clients consent. Consequently, you have damaged both our clients land and machinery and equipment. At a stock count, a number of the machinery and equipment are also missing.

10

Please take note that with immediate effect you are instructed to remove every and all of your properties now thereon from our clients land without prejudice to whatever cause of action our clients may propose to take to seek compensation for losses and damages already suffered and continuing and to protect our clients rights and interests.

Yours faithfully,  
DATO MORRIS EDGAR & CLOUGH THURAISINGHAM

20

c.c. M/s Sun Kee Engineering Works Sdn. Bhd.  
BT:ss

This is the Exhibit marked "CKS-4" referred to in the Affidavit of Chee Khiew Siew affirmed this 21st day of August 1980

Sgd. Yee Soon Kwong  
COMMISSIONER FOR OATHS

PUBLIC BANK BERHAD

In the  
High Court

Our ref. Sec.Dept./LYM/lyc/FL 70041

11th March, 1980

PRIVATE & CONFIDENTIAL

Sun Kee Engineering Works Sdn.Berhad,  
2034, 4½ Miles, Klang Road,  
Kuala Lumpur.

No.10  
Affidavit  
of Chee  
Khiew Siew  
21st August  
1980

(continued)

(Exhibit 5)

Dear Sirs,

Account No. FL 70041

10 We are pleased to advise that your application  
for a Fixed Loan has been approved on the  
following conditions :-

- (1) The amount is \$140,000-00
- (2) The interest rate is at 11% per annum with  
yearly rests
- (3) The facility is to be utilised strictly for  
the business of your company
- (4) The facility is granted for a period of 10  
years and is repayable by 120 monthly instal-  
ments of \$1,982-00 each subject to adjustment  
in the last instalment with effect from one  
month after date of full release of loan.
- (5) The monthly instalments must be prompt and  
regular.
- (6) The facility is to be secured by way of a  
First Fixed charge of \$140,000-00 over the  
land held under:-

20  
30

(i) H.S.(D) 2581 Lot No. F.F.23802 Mukim  
of Batu, Wilayah Persekutuan registered  
in the name of Chee Khiew Seng

(ii) . . (R) 15552 Lot No.303 Mukim of  
Batu, Wilayah Persekutuan registered  
in the name of Chee Kiew Choon  
Chee Khiew Thong

(iii) H.S.(D) 24508 No. P.T.53 Mukim of  
Batu, illegible of Kuala Lumpur

In the  
High Court

registered in the name of Chee  
Kew Tuck, Chee Khiew Seng and  
Chee Khiew Siew

No.10  
Affidavit  
of Chee  
Khiew Siew  
21st August  
1980  
(Exhibit 5)  
(continued)

All the 3 properties are to be transferred  
to your name.

- (7) The facility is to be additionally  
guaranteed jointly and severally by Mr.  
Chee Khiew Seng, Mr. Chee Khiew Siew,  
Mr. Choo Kiew Choon @ Chee Khiew Thong.

The buildings on the said land (i) & (ii) at 10  
No.238, Jalan Berombong (Jln.48) Kepong Bharu,  
Kuala Lumpur and No.67, Jln. Beberak (Jalan 81)  
Kepong Bharu, Kuala Lumpur are to be insured  
with our appointed insurance company, London  
& Pacific Insurance Co. Bhd. at the estimated  
full insurable value of \$65,000-00 and  
\$35,000-00 respectively against the loss of  
fire, the risks of riot & strike and malicious  
damages.

Kindly acknowledge and confirm the arrangements 20  
by signing and returning to us the carbon copy  
of this letter.

Yours faithfully,  
For PUBLIC BANK BERHAD  
(Securities Department)

Sd: Illegible  
Senior Operations Officer

This is the Exhibit marked "5" referred to  
in the Affidavit of Chee Khiew Siew affirmed  
this 21st day of August 1980 30

Sgd: Yee Soon Kwong  
COMMISSIONER FOR OATHS

PUBLIC BANK BERHAD

In the  
High Court

Our ref: Sec.Dept./LYM/lyc

11th March, 1980

PRIVATE & CONFIDENTIAL

Sun Kee Engineering Works Sdn.Berhad  
203A, 4½ Miles, Klang Road,  
Kuala Lumpur

No.10  
Affidavit  
of Chee  
Khiew Siew  
21st August  
1980

(continued)

(Exhibit 6)

Dear Sirs,

10 We are pleased to advise that your application  
for an overdraft facility has been approved  
on the following conditions :-

- (1) The amount is \$115,000-00
- (2) The interest rate is at 11% per annum
- (3) The facility is to be utilised strictly  
for the business of your company
- (4) The account is to be actively & satisfac-  
torily conducted
- (5) The overdraft limit must be strictly observed  
at all times

20 (6) The facility is subject to an initial  
reduction of \$25,000-00 with effect from  
1st April 1981 with subsequent annual  
reductions of \$10,000-00 each

(7) The facility is to be secured by way of a  
second charge of \$115,000-00 over the  
property held under :-

- (i) H.S.(D) 2561 Lot No. P.T.23802 Mukim of  
Batu, Wilayah Persekutuan registered in  
the name of Chee Khiew Seng
- 30 (ii) Q.T.(R) 15552 Lot No.303 Mukim of Batu,  
Wilayah Persekutuan registered in the  
name of Choo Kiew Choon @ Chee Khiew Thong
- (iii) H.S.(D) 24508 No. P.T.53 Mukim of Batu,  
Daerah of Kuala Lumpur registered in  
the name of Chee Kew Tuck Chee Khiew Seng  
and Chee Khiew Siew

In the  
High Court

No.10  
Affidavit  
of Chee  
Khiew Siew  
21st August  
1980  
(Exhibit 6)  
(continued)

All the 3 properties are to be transferred to  
your name.

- (8) The facility is to be additionally  
guaranteed jointly and severally by Mr.  
Chee Khiew Seng, Mr. Chee Khiew Siew,  
Mr. Choo Kiew Choon & Chee Khiew Thong
- (9) The overdraft would only be released by  
us upon the presentation of registration  
of the 2nd charge of \$115,000-00 in our  
favour and execution of the Letter of  
Guarantee.

10

Kindly forward to us your company's resolution  
in respect of the overdraft facility of  
\$115,000-00 and fixed loan facility of \$140,000-00.

For your information all overdraft facilities  
granted by us are subject to periodical review  
and repayable on demand although we do not at  
this time anticipate exercising our rights in  
this respect.

Kindly acknowledge and confirm the arrangements  
by signing and returning to us the carbon copy  
of this letter.

20

Yours faithfully,  
For PUBLIC BANK BERHAD  
(Securities Department)

Sd: Illegible  
Senior Operations Officer

This is the Exhibit marked "6" referred to  
in the Affidavit of Chee Khiew Siew affirmed  
this 21st day of August 1980

30

Sgd: Yee Soon Kwong  
COMMISSIONER FOR OATHS

This is the Exhibit marked "7" referred to  
in the Affidavit of Chee Khiew Siew affirmed  
this 21st day of August 1980

In the  
High Court

Sgd: Yee Soon Kwong  
COMMISSIONER FOR OATHS

No.10  
Affidavit  
of Chee  
Khiew Siew  
21st August  
1980

CONFIDENTIAL

(continued)

R E P O R T  
&  
V A L U A T I O N

(Exhibit

10 JORDAN LEE & JAAFAR (INC. JURUNILAI BERSATU)  
CHARTERED & REGISTERED SURVEYORS  
Valuation & Property Management Consultants  
Rating & Compensation Valuers Real Estate Agents

HEAD OFFICE:

Bilek 503/504, Tingkat Kelima,  
Bangunan Lee Wah Bank,  
Medan Pasar, Kuala Lumpur 01-20  
Tel: 03-21367-8

BRANCH OFFICES:

20 Perak: Room 5, 2nd Floor,  
Labrooy House,  
Jalan Pejabat Pos, Ipoh  
Tel: 05-514826

Johor: Bilek 312, Tingkat 3,  
Bangunan Tan Kim Chua,  
Jalan Meldrum, Johor Bahru  
Tel: 073-20324

Negeri

30 Sembilan: 1st Floor, Den Bee Building,  
42 Jalan Tuan Sheikh,  
Seremban  
Tel: 06-713456

Pahang: No.12A, Jalan Telok Sisek,  
Kuantan  
Tel: 095-21459

In the  
High Court

No.10  
Affidavit  
of Chee  
Khiew Siew  
21st August  
1980  
(Exhibit 7)  
(continued)

JORDAN LEE & JAAFAR (INC. JURUNILAI BERSATU)  
CHARTERED & REGISTERED SURVEYORS  
Valuation & Property Management Consultants  
Rating & Compensation Valuers Real Estate  
Agents

JL/SL/V80/C3020

11th January 1980

C O P Y

Mr. Chee Khiew Siew  
Sun Kee Engineering Works Sdn.Bhd.  
203A Batu 4½  
Jalan Kelang  
KUALA LUMPUR

10

Dear Sir,

Re: H.S.(D) 24508, Lot P.T.53 and  
H.S.(D) 24509, Lot P.T.54, Mukim  
of Batu, Wilayah Persekutuan

We thank you for your instructions to ascertain the fair market value of the above mentioned properties.

Having made the necessary inspections and investigations, we append below our Report and Valuation.

20

1.00 DEFINITION OF FAIR MARKET VALUE

"FAIR MARKET VALUE" as used herein is being the amount at which the property would exchange between a willing buyer and a willing seller, neither being under compulsion, both parties having reasonable knowledge of all relevant facts, and with equity to both, and that the interest of the property is free from liens and encumbrances, and the date of the determination of the Fair Market Value is the stated date of the Report.

30

2.00 PURPOSE OF VALUATION : For Mortgage Purpose

3.00 TITLE PARTICULARS

Brief particulars of the titles are as follows :-

<u>TITLE NOS.</u> <u>H.S. (D)</u>	<u>LOT NOS.</u> <u>(P.T.)</u>	<u>LAND AREA</u> <u>(Sq.ft.)</u>	<u>CATEGORY OF</u> <u>LANDUSE</u>	<u>In the</u> <u>High Court</u>
24508	53	15,000	Industry	No.10 Affidavit of Chee Khiew Siew 21st August 1980 (Exhibit 7) (continued)
24509	54	15,000	Industry	
Mukim :	Batu			
District :	Wilayah Persekutuan			
Nature of Interest :	Freehold			
10 Express Conditions:	Tanah ini hendaklah digunakan semata2 utuk perusahaan 40% dari pekerja-pekerja hendaklah tenliri dari pekerja2 burniputra			
Restrictions In Interest :	Nil			
Registered Proprietors :	Chee Khiew Seng (1/3 share), Chee Kiew Siew (1/3 share) and Chee Kew Tuck (1/3 share)			
Encumbrances:	<u>Lot P.T.53</u>  Charged to Hock Hua Bank Berhad			
20	<u>Lot P.T.54</u>  Charged to The Hongkong and Shanghai Banking Corporation.			
Remarks :	A Prohibitory Order by the High Court has been entered on the properties for a period of 6 months with effect from 3rd October 1979 via Presentation No. 1387/79, Misc. Doc. Jilid 8, Folio 79 dated 18th October, 1979.			
30	The above particulars are extracted from the title deeds deposited at the Wilayah Persekutuan Land Office and are assumed to be correct for the purpose of this valuation.			

#### 4.00 LOCATION

For the purpose of identification, the properties are shown edged red in the attached Location Plan, Appendix 'A'.



In the  
High Court

No. 10  
Affidavit  
of Chee  
Khiew Siew  
21st August  
1980  
(Exhibit 7)  
(continued)

The properties are located with direct frontage onto Jalan Kilang within the light industrial area of Kepong Garden. The latter lies in the north west fringe of the Federal Territory, about 8 miles from the city centre of Kuala Lumpur.

The neighbourhood comprises some recently developed industrial concerns.

Amongst them include the Samaco Engineering Sdn.Bhd. Meika Food Industries, Great Wall Plastic Industries and others. To the north lies the residential properties of Kepong Garden. 10

Kepong Garden lies within a densely populated and upcoming suburbs of Kuala Lumpur. Found within the area are several housing estates namely, Tarnan Kepong Bahru, Petaling Garden, Tarnan Desa Jaya and also the large settlements of Kepong and Jinjang. 20

#### 5.00 DESCRIPTION

The properties comprise two contiguous rectangularly-shaped vacant industrial lots, each containing a land area of 15,000 square feet. Each has a frontage width of 100 feet and an average depth of 150 feet.

The lands are generally flat and about the same level as the frontage road and the adjoining lands. 30

The boundaries are fenced in with chain-link fencing. The lands are otherwise vacant except for two temporary sheds and some builder's material kept at the frontal portion. The rear portion of the lands are overgrown with lallang grass.

The lands are well-drained and the soil composition is observed to be compact.

A made-up drain system parts the properties from the frontage road. 40

#### 6.00 SERVICES

Essential services such as mains water and

electricity supplies are available in the area.

In the  
High Court

Public services such as road maintenance and refuse collections are undertaken by City Hall.

No.10  
Affidavit  
of Chee  
Khiew Siew  
21st August  
1980  
(Exhibit 7)  
(continued)

Public transport in the form of buses is available in the housing estate.

7.00 OUTGOINGS

10 We were informed by the relevant authority that the properties are currently assessed to an annual value of \$12,000.00. At the current rate of 7%, the annual assessment payable is \$640.00.

The total annual land rent levied on the properties is \$900.00 according to the titles.

8.00 TOWN PLANNING

20 Enquiries made at the City Planning Department, disclosed that the properties are situated within an area approved for industrial use. Further, we were informed that the development order to develop the properties with a two storey office/workshop building has been granted. However, the development has to satisfy the usual conditions.

Attached herewith is the letter, "Appendix B" from the City Planning Department (Dewan Bandaraya) in regards of the said approval.

30 9.00 BASIS OF VALUATION

40 We have adopted the Comparative Approach in the following valuation. Under this approach, an estimate of the value is derived from direct comparison of capital values of other comparable properties where transactions have taken place, that is, comparing the subject property with other 'bench mark' properties which are fairly near substitutes for one another. Such properties should as far as possible be of similar size, physical character and improvements thereon.

In the  
High Court

No.10  
Affidavit  
of Chee  
Khiew Siew  
21st August  
1980  
(Exhibit 7)  
(continued)

It is necessary to weigh very carefully all the respective advantages and disadvantages of each property so as to arrive at a fair basis of value after some adjustments.

It is important, when adopting the Comparative Approach to take cognisance of the underlying economic factors which may be of influence to the trend of market prices and the market forces prevailing then.

10

Through our investigations, it has been ascertained that similar type of lands in and around the area are currently commanding a price in the region of between \$14.00 to \$18.00 per square foot depending on factors of location, plot size, accessibility and improvements thereon. Premising on the foregoings and in view of the fact that development order has been obtained, we are of the opinion that the properties are worth \$16.50 per square foot. Hence the valuation is done in this manner.

20

10.00 VALUATION

Taking all relevant factors into consideration, we assess the fair market value of the freehold unencumbered properties in their existing condition subject to free from all encumbrances and with benefit of vacant possession to be as follows :-

30

Lot P.T.53  
Land Area : 15,000 sq.ft.@  
                                  \$16.50 p.s.f.   \$247,500.00

Lot P.T.54  
Land Area : 15,000 sq.ft @  
                                  \$16.50 p.s.f.   \$247,500.00

Total:   \$495,000.00  
          =====

(Ringgit: Four Hundred and Ninety-Five Thousand  
Only)

40

Encl: Appendices A and B

jL/YTS/ct

Sgd: Jordan Lee & Jaafar  
JORDAN LEE & JAAFAR INC.  
JURUNILAI BERSATU

Chartered & Registered Surveyors

# LOCATION PLAN APPENDIX

49	50	51	52	53	54	55	56	57
15,000 Sq Ft	15,000 Sq Ft	15,000 Sq Ft	15,000 Sq Ft	15,000 Sq Ft	15,000 Sq Ft	15,000 Sq Ft	15,000 Sq Ft	15,000 Sq Ft

## KILANG

30	31	32	33	34	35	36	37
15,000 Sq Ft	15,000 Sq Ft	15,000 Sq Ft	15,000 Sq Ft	15,000 Sq Ft	15,000 Sq Ft	15,000 Sq Ft	15,000 Sq Ft

16	17	18	19	20	21	22
22,200 Sq Ft	22,200 Sq Ft	22,200 Sq Ft	22,200 Sq Ft	22,200 Sq Ft	22,200 Sq Ft	22,200 Sq Ft

## JALAN KANAN

2	3	4	5	6	7	8	9
24,000 Sq Ft	24,000 Sq Ft	24,000 Sq Ft	24,000 Sq Ft	24,000 Sq Ft	24,000 Sq Ft	24,000 Sq Ft	24,000 Sq Ft

53 & 53, NIKIM OF BATU,  
MELAKA PERSEKUTUAN

JORDAN LEE & JAAFAR  
INC. JURUNILAI BERSATU  
CHARTERED & REGISTERED SURVEYORS



113

7. Peruntukan hendaklah dibuat untuk bekalan air yang cukup bagi rancangan pembangunan itu menurut kehendak Pengerah Bekalan Air Selangor. Salinan surat kolaborasi daripada Pengerah Bekalan Air Selangor hendaklah dikemukakan kepada Pengerah Jabatan Akitok sebelum pelan bangunan diluluskan.
8. Memohon kepada Jabatan Talikom mengenai keperluan talipau bagi pembangunan yang dicadangkan. Salinan surat pengakuan daripada Jabatan Talikom hendaklah dihantar kepada Jabatan Akitok sebelum pelan bangunan diluluskan.
9. Kawasan disekeliling bangunan itu hendaklah diperindah dengan pohon-pohon kayu, pokok-pokok luya dan lain-lain tumbuhan perhiasan sebelum Sijil Kelayakan dikeluarkan.
10. Dinding-dinding di bahagian belakang di tingkat bawah hendaklah diperbuat daripada batu mar-mar setinggi 5' tinggi dari paras lantai.
11. Mengambil langkah-langkah yang berpatutan supaya tidak timbul sebarang kerosak atau gangguan yang mana boleh membahayakan keselamatan dan kesihatan hasil dari perusahaan makanan tersebut.

RAJA MOHD. ALI IBU RAJA ORIAN  
Pengerah Perancang Bandar  
b.p. Pihakberkuasa Perancang Bandaraya.

s.k.

Pengerah Tanah dan Galian, Wilayah Persekutuan.

Pengerah Jabatan Akitok, Dewan Bandaraya.

Pengerah Jabatan Kerja Awam, Dewan Bandaraya.

Pengerah Jabatan Pengurusan Lalulintas, Dewan Bandaraya.

Pengerah Jabatan Pombotongan & Perparitan, Dewan Bandaraya.

:T.

No. 10  
Affidavit  
of Chee  
Khiew Siew  
21st August  
1980  
(Exhibit 7)  
(continued)

LIMITING CONDITIONS

1. Values are reported in Malaysian currency. 10
2. Whilst we have made investigations into the title of the property as recorded by the Land Registry, we are unable to accept any responsibility for its validity or for any liability against the property which were recorded subsequent to date of our search. 10
3. We have assumed in our valuation that the property as currently used is not in contra-vention of any planning or similar regula-tions or otherwise stated.
4. Neither the whole nor any part of this valuation and report or any reference to it may be included in any published document, circular or statement nor published in any way without our prior written approval of the form and context in which it may appear. 20
5. Where it is stated in the report that information has been supplied to us by another party, this information is believed to be reliable but we can accept no responsi-bility if this should prove otherwise. Where information is given without being attributed directly to another party, this information has been obtained by our own search of records and examination of documents or by enquiry from Government or other appropriate 30 departments.
6. In accordance with our standard practice, we must state that this valuation report is limited to the client to whom the report is addressed and to that client and that specific purpose only. We disclaim all responsibilities and will accept no liability to any other party.
7. No structural survey has been made, but in the course of our inspection, we did not 40 note any serious defects. We are however, not able to report that the property is free of rot, infestation or any other defect.

A F F I D A V I T

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

APPLICATION FOR EXECUTION NO: 303 OF 1979

Between

Sun Kee & Co.  
(suing as a firm)

Applicants

And

- 10      1. Chop Sin Hua Hin  
            (sued as a firm)  
            2. Ho Hai Poh

Respondents

In the  
High Court

No.10  
Affidavit  
of Chee  
Khiew Siew  
21st August  
1980

(continued)

(Exhibit 9)

I, LAM FUNG HENG of full age and a Malaysia Citizen of No.4A, Jalan Landak off Jalan Pasar, Kuala Lumpur, a land and property broker by profession and can depose to the truth of the matters as set out herein.

20      1. I refer to the Affidavit of Chee Khiew Siew dated            day of            , 1980 and to Clause 7(c) therein and state that on or around 24th April, 1980 a gentleman by the name of Gan Siek Kee responded to my enquiries and offered to sell to me the said properties the subject matter of application for Execution 303 of 1979 at the cost of \$510,000/-.

30      2. The said Mr. Gan confirmed that he is now the purchaser and explained that the Second Respondent bid for the said Lands on behalf of a syndicate of which he, Mr. Gan, was a member. Subsequent to the sale, a private auction was held between syndicate members, and Mr. Gan was able to secure the said lands.

3. Mr. Gan imposed as one of the conditions of sale that I make a written offer of the said sum of \$510,000/- whereupon he will instruct his Solicitors, one M/s. M.C.Tan to prepare the said Sale Agreement.

40      4. Despite my attempts he refused to give me a written option stating that the circumstances of this sale prevented him from doing so and refused to confirm my letter (copy attached and marked LFH 1).



In the  
High Court

No.10  
Affidavit  
of Chee  
Khiew Siew  
21st August  
1980  
(Exhibit 9)  
(continued)

5. I verily believe that the said Gan Siek Kee is ready and willing to sell at the price of \$510,000/- or more as in my experience that is about the market price currently available for the said lands.

AFFIRMED by the abovenamed)  
LAM FUNG HENG at Kuala Lumpur this day of August, 1980 at a.m./) p.m.)  
Sd: Lam Fung Heng

10

Before me,

Illegible

Commissioner for Oaths

This is the Exhibit marked "9" referred to in the Affidavit of Chee Khiew Siew affirmed this 21st day of August 1980

Sgd: Yee Soon Kwong  
COMMISSIONER FOR OATHS

This Affidavit is filed by M/s Dato' Morris Edgar & Clough Thuraisingham, Solicitors for the Applicants herein whose address for service is 3rd Floor, Hwa Li Building, No.63 & 65, Jalan Ampang, Kuala Lumpur. 20

26th April 1980

In the  
High Court

Mr. Hiah (Gan Siek Kee)  
3Q Jalan Rodger  
Kuala Lumpur

No.10  
Affidavit  
of Chee  
Khiew Siew  
21st August  
1980

Dear Mr. Gan

Re: H.S.(D) 24508 No. P.T.53. Area: 15,000  
sq.ft.  
H.S.(D) 24509 No. P.T.54. Area: 15,000  
sq.ft.

(continued)

10

Mukim of Batu, Daerah of Kuala Lumpur

(LFH 1)

With reference to our recent telephone conversation (Messrs. Gan/Lam) on the 24th & 25th April 1980, in which you offered the captioned properties for sale, in the capacity of the said properties owner, upon the following terms and conditions :-

Area of Properties: 30,000 sq.ft. (with vacant possession)

20

Selling Price: M\$17.00 per sq.ft. shall be the selling price inclusive of "goodwill" money. The total selling price is M\$17.00 x 30,000 sq.ft. = M\$510,000.

M\$300,000 shall be the Contract Price in the Sale and Purchase Agreement. The balance M\$210,000 shall be the "goodwill" money.

30

Terms of Payment: (1) 10% of the Contract Price of M\$300,000 shall be paid on signing of the Agreement together with the "goodwill" money amounting to M\$210,000.  
(2) 90% of the Contract Price of M\$300,000 shall be paid within six (6) months from date of the Agreement.

40

To enable me to present your offer to my Board of Directors, would you please let me have your confirmation by signing the original of this letter, and return it to me as soon as possible.

May I have an early reply.

In the  
High Court

No.10  
Affidavit  
of Chee  
Khiew Siew  
21st August  
1980  
(LFH 1)  
(continued)

Yours faithfully,  
  
Lam Fung Heng  
c/o 4A Jalan Landak  
Off Jalan Pasar  
Kuala Lumpur.

I confirm the said offer.

.....

Mr. Hiah (Gan Siek Kee)

No.11  
Affidavit  
of Ho Hai Poh  
8th December  
1980

No. 11  
AFFIDAVIT OF HO HAI POH

10

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

APPLICATION FOR EXECUTION NO. 303 OF 1979

In the Matter of Order 43 Rule 11(e)  
of the Rules of the Supreme Court, 1957

Between

Sun Kee & Co.  
(suing as a firm)

Applicants

And

1. Chop Sin Hua Hin  
(sued as a firm)
2. Ho Hai Poh

20

Respondents

A F F I D A V I T

I, HO HAI POH of full age and a Malaysian  
Citizen of No.40, Jalan Tengku Abu Bakar,  
Temerloh, Pahang do hereby affirm and say as  
follows :-

1. I am the third (3rd) Respondent in this  
matter set out herein and am duly authorised to

make this Affidavit.

In the  
High Court

2. I crave leave to refer to the Applicants' application to stay proceeding and execution Judgment until hearing of Federal Court Civil Appeal No.70 of 1980 and the Affidavits filed herein.

No.11  
Affidavit of  
Ho Hai Poh  
8th December  
1980

10 3. On the 17th day of March, 1980, I purchased the properties known as H.S.(D) 24508 P.T.53 and H.S.(D) 24509 P.T.54 at a public auction in the vicinity of the High Court garage at Kuala Lumpur.

(continued)

20 4. Upon the Bailiff of the High Court in pursuance of the Order of the High Court at Kuala Lumpur made on the 7th day of September, 1979 and 11th day of January, 1980 selling the above said properties to me, I paid to the Senior Assistant Registrar, High Court, Kuala Lumpur, a deposit of 25% of the amount of the purchase price. (A copy of the Contract is herewith annexed marked "HHP 1" and a copy of the receipt issued by the High Court at Kuala Lumpur is herewith annexed marked "HHP 2").

30 5. On the 27th day of March, 1980 within the time stipulated in the abovesaid contract that is duly signed by the Bailiff of the High Court at Kuala Lumpur and stamped, I paid the balance of \$206,250/- to the High Court at Kuala Lumpur, I was issued a receipt for the said sum by the High Court at Kuala Lumpur. (A copy of the said receipt is herewith annexed marked "HHP 3").

40 6. I have fully complied with the conditions of Sale and when I approached the High Court to have a Certificate of Sale issued to me, I was informed by the Bailiff that it is not possible on account of a Notice of Motion filed by the Sun Kee & Company, the previous owners of the abovesaid properties, despite the fact that I had in good faith purchased the abovesaid properties as authorised by Order of the High Court at Kuala Lumpur.

7. I have no previous knowledge of the dispute between the Plaintiff Chop Sin Hua Hin and the Defendant Sun Kee & Company but upon being served a copy of the Defendants' notice of motion, I am advised by my Solicitors to note the following:-

(a) The Defendants' Solicitors did not

In the  
High Court

No.11  
Affidavit of  
Ho Hai Poh  
8th December  
1980

(continued)

attend Court when the Court on the 11th day of January, 1980 ordered that the Defendants' property be sold by public auction on the 17th day of March, 1980 and there was no indication that the Defendants were present.

- (b) The Court order dated 11th day of January, 1980 gave the Defendants ample time to act in that auction which was held only on the 17th day of March, 1980 and it was stipulated in the Order that four (4) weeks prior to this date, public notice to be given at conspicuous places and in the Malay Mail and inspite of which the Defendant did not try to do anything until the day the public auction was held. 10
- (c) The Valuers' report submitted by the Defendant were dated the 19th day of March, 1979 and the 11th day of January, 1980 also gave the Defendant ample time to act but only on the 17th day of March, 1980 did they attempt to prevent the public auction and I am advised by my Solicitors that the Defendants' present state of affairs is primarily due to the Defendants omission to act within the ample time given to the Defendant and that I should not be unjustly victimised on account of the failure of the Defendant to act. 20 30

8. I am advised to refer to the Affidavit of one Lam Fung Heng a self confessed PROFESSIONAL LAND & PROPERTY BROKER. I have no knowledge of this person, nor do I have any knowledge of the named Gan Siek Kee. I purchased the abovesaid properties for my own Company which is a private limited Company. I verily believed that the said Lam Fung Heng's Affidavit is untrue and mischievous. 40

9. I have paid all of the purchase price to the High Court at Kuala Lumpur. The sum involved is not small. It is normal practice to secure the title to the properties as soon as possible in order to negotiate long term finance. By the Defendants present actions, I am unjustly prevented from securing title to the said 50

properties and I am put to much financial hardship.

In the  
High Court

10. Owing to the above reasons, I humbly pray that :-

No.11  
Affidavit c  
Ho Hai Poh  
8th Decembe  
1980

(i) Applicants' application to stay proceeding pending appeal be dismissed;

(ii) that I be forwarded a Certificate of Sale to complete the purchase.

(continued)

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(iii) alternatively, in the event that the Applicants' application be successful, that I be awarded normal interest rate and damages on the purchase price, from the date of payment to the Court till receipt of the said sum.

AFFIRMED by the abovenamed)  
HO HAI POH at Kuala Lumpur) Sgd: Ho Hai Poh  
this 8th day of December )  
1980 at 12.30 p.m. )

Before me,

20

Sgd: YEE SOON KWONG  
Pesuruhjaya Sumpah  
Commissioner for Oaths

This Affidavit is filed by Messrs. Yussof, Lim & Nordin Torji, Solicitors for the Second (2nd) Respondents abovenamed whose address for service is at Suite 710, 7th Floor, Lee Yan Lian Building, Jalan Tun Perak, Kuala Lumpur.



PROCLAMATION OF SALE

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR  
COMMERCIAL DIVISION  
APPLICATION FOR EXECUTION NO. 303 OF 1979

In the  
High Court

No.11  
Affidavit of  
Ho Hai Poh  
8th December  
1980

In the Matter of Kuala Lumpur High Court  
Civil Suit No. 1009 of 1976

BETWEEN

(continued)

Chop Sin Hua Hin  
(Suing as a Firm)

Plaintiffs

(Exhibit HHP 1)

10

AND

Sun Kee & Co.  
(Suing as a Firm)

Defendants

In pursuance of the Order of the High Court  
at Kuala Lumpur made herein in the above matter  
on the 7th day of September, 1979 and 11th January,  
1980 it is hereby proclaimed that the Bailiff of  
the High Court, Kuala Lumpur with the assistance  
of the undermentioned Auctioneer.

WILL SELL BY

20

P U B L I C A U C T I O N  
ON MONDAY THE 17TH DAY OF MARCH, 1980  
at 10.30 a.m. in the forenoon  
IN THE VICINITY OF THE HIGH COURT GARAGE,  
KUALA LUMPUR

The property

Mukim - Batu  
District - Kuala Lumpur

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Titles	Lot Nos.	Area	Owners
H.S.(D) 24508	P.T.53	15,000	Chee Khiew Seng
H.S.(D) 24509	P.T.54	sq.ft.	(1/3 share)
		each	Chee Kew Tuck
			(1/3 share)
			Chew Khiew Siew
			(1/3 share)

Encumbrances

- (i) Both the Titles are charged to the Hock Hua Bank Bhd.
- (ii) Both the titles are endorsed with a prohibitory order vide presentation No.1387/79 Misc. Doc. Vol.8 Folio 79, restraining the subject

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In the  
High Court

No.11  
Affidavit of  
Ho Hai Poh  
8th December  
1980  
(Exhibit HHP-1)  
(continued)

properties from being  
transferred, charged or  
leased for a period of 6  
months commencing on 3rd  
October, 1979.

(iii) Part of PT 54 measuring  
375 square feet is leased  
to Lembaga Letrik Negara  
for a term of 30 years from  
1st June 1978 to 31st May 10  
2008.

The sites Lot Nos. P.T.53 and 54 are two  
contiguous rectangular shaped plots of land  
each having a provisional site area of 15,000  
square feet. The terrain of these two plots  
are generally flat and almost level with the  
frontage road, Jalan Kilang. The outer side  
boundaries are demarcated with chain link fence  
and the driveway is secured by a pair of metal  
gates. These sites have a combined road frontage 20  
of about 200 feet and a depth of approximately  
150 feet.

The said property will be sold subject to  
a Reserve Price of \$270,000.00 (Ringgit: Two  
Hundred & Seventy Thousand Only).

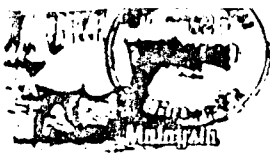
For further particulars please apply to  
the Bailiff, High Court, Kuala Lumpur or to  
Messrs. Allen & Gledhill, Advocates & Solicitors,  
Tingkat 24, Bangunan UMBC, Jalan Sulaiman  
Kuala Lumpur, Solicitors for the Plaintiffs 30  
herein or the undermentioned Auctioneer.

The said property will be sold subjects  
to the Conditions of Sale mentioned hereunder.

3L ENTERPRISES,  
Property Manager,  
86B, Jalan SS 2/60,  
Petaling Jaya,  
Selangor.  
Tel.763296  
Dated 13th January, 1980

L.G. LIM  
Licensed Auctioneer

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CONDITIONS OF SALE

1. Subject to the Reserve Price, the highest bidder, being so allowed by the Bailiff, shall be the Purchaser, and the Bailiff having the right to refuse any bid. If any dispute shall arise as to the highest bidder, the property shall, at the option of the Bailiff, be put up again for sale and resold or the Bailiff may decide the dispute.
2. The Applicant be and is hereby at liberty to bid at the sale and in the event of it becoming the Purchaser to set-off the purchase price against the amount due on the said charge on the date of sale, plus the cost and expenses of the sale and all costs due from the Respondent by way of cost in this Originating Summons.
3. No bid shall be less in advance of the last previous bid than a sum to be fixed by the Senior Assistant Registrar, at the time of the sale and no bidding shall be retracted.
4. All intending bidders are required to deposit with the Bailiff, High Court, Kuala Lumpur, 25% of the fixed reserve price for the said property by Bank Draft in favour of The Senior Assistant Registrar, High Court, Kuala Lumpur, prior to the Auction sale.
5. Immediately after the fall of the hammer the purchaser shall pay to the Senior Assistant Registrar, High Court, Kuala Lumpur a deposit 25% of the amount of the purchase price in cash and to part payment thereof and shall sign the memorandum at the foot of these conditions. In default of such deposit the property shall forthwith be again put up for sale, the deficiency in price (if any), which may result on a re-sale or the purchase money if there is no re-sale as the case may be, shall be recoverable from the defaulting purchaser.
6. The balance of the purchase money shall be paid in by the purchaser within fourteen (14) days from the date of the sale to the Senior Assistant Registrar, High Court, Kuala Lumpur.
7. In default of such payment of the balance of the purchase money within the period allowed the property shall be again put up for sale. The deposit, after defraying the expenses of the sale, shall be forfeited to the said Chargee-Applicant and the deficiency in price (if any) which may result on a re-sale, or the balance of the purchase money if there is no re-sale shall be recoverable from the defaulting purchaser, as the case may be.
8. As from the time of the sale the property shall be at the sole risk of the purchaser as regards loss or damage by fire or other accident or otherwise.
9. The purchaser shall admit the identity of the property purchased by him with that comprised in the muniments offered by the Chargee-Applicant as the title of the property upon the evidence afforded by the comparison of the description in the particulars and the muniments respectively.
10. The property is believed and shall be taken to be correctly described and is sold subject to all easements, liabilities and rights (if any) subsisting thereon or thereover without any obligation arising to define the same respectively and no error, mis-statement or mis-description shall annul the sale nor shall any compensation be allowed in respect thereof.
11. Costs of the transfer, any arrears of rent and all other fees payable shall be borne by the purchaser.
12. For the purpose of these conditions the time allowed by the conditions for the payment of the balance of the purchase money (namely 14 days) shall be deemed to be the essence of the contract.
13. In the event of any discrepancy, mis-statement or error appearing in the various translation of the particulars and conditions herein, the English version shall prevail.

CONTRACT

MEMORANDUM:— At the Public Auction this 17th day of March, 1980, of the property comprised in the foregoing particulars Ho Hai Poh No. 2875203 to the highest bidder for and declared the purchaser of the said property for the sum of \$275,000.00 has been paid to the Bailiff, High Court, Kuala Lumpur, as agent for the Vendor the sum of \$68,750.00 by way of deposit and agrees to pay the balance of the purchase money and complete the purchase according to the conditions and the said Auctioneer hereby confirms the said purchase and the Bailiff acknowledges the receipt of the said deposit.

Purchaser

Agent for the Vendor

Purchase Money \$275,000.00  
 Deposit Paid 25% \$68,750.00  
 Balance Due \$206,250.00

High Court, Malaysia  
Kuala Lumpur.

告 通 賣 拍

吉隆坡馬來亞高等法庭(商業組)，根據一九七九年申訴案三〇三號，有關一九七六年吉隆坡高等法庭民事法第一〇九號。

原告：新華興實業(譯音)  
 被告：山記公司(譯音)

茲遵照吉隆坡高等法庭於一九七九年九月七日及一九八〇年正月十一日所宣判之命令，由該法庭掌管及本拍賣人之協助下，將於一九八〇年三月十七日(星期一)上午十時半，在吉隆坡高等法庭旁之車房處，公開拍賣被告的產業如下：

該地在峇都區，吉隆坡縣，地契為H.S.(D)二四五〇八及H.S.(D)二四五〇九號第P.T.五十三及五十四段，面積每段一萬五千平方呎。業主為朱僑成，朱僑德，邱僑秀，每人佔三份之一股。

該地的負擔：(一)兩段地均抵押于福華銀行有限公司。(二)兩段均簽有書面的禁止令，見抵押契據一三八七/七九。第六個月，由一九七九年十月三日起。 (三)地契或租契為期一年，由一九七九年六月一日起至一九八〇年五月一日。

由一萬五千平方呎，大致上是兩段接近的長方形地段，面積有一萬五千平方呎，該地有相連的路在前段約二百呎，深約有一百五十呎。

該產業將保留價格廿七萬元出售。

欲知詳情，請向上述法庭掌管或吉隆坡，夜蘭蘇萊曼，合眾銀行大廈廿五樓艾倫及卡力希律師樓或本拍賣人詢問。

拍賣人：L.G. 林  
 電話：七六三二九六

一九八〇年正月十三日

In the  
High Court

No. 12

JUDGMENT

No.12  
Judgment of  
Mohd. Axmi J.  
23rd December  
1980

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

APPLICATION FOR EXECUTION NO. 303 OF 1979

In the Matter of order 43 Rule 11(e)  
of the Rules of the Supreme Court,  
1957

B E T W E E N

Sun Kee & Co.  
(sued as a firm)

Applicants

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And

1. Chop Sin Hua Hin  
(suing as a firm)
2. Ho Hai Poh

Respondents

GROUND'S OF JUDGMENT OF MOHD. AZMI J.

This is an application by Notice of Motion dated March 20, 1980 to set aside the sale by public auction of two pieces of land belonging to Chee Khiew Seng, Chee Kew Tuck and Chew Khiew Siew - the partners of Sun Kee & Co., the defendants in Kuala Lumpur High Court Civil Suit No.1009 of 1976. The properties held under Document of Title Nos. H.S.(D) 24508 P.T. No. 53 and H.S.(D) 24509 L.O. No.54 in the District of Kuala Lumpur measuring 15,000 square feet each, were attached by Chop Sin Hua Hin, the Plaintiffs in the aforesaid Civil Suit (the present Respondents) for the purpose of satisfying the judgment obtained against the Defendants (the Applicants in the present case). The judgment obtained on March 6, 1978 was in the sum of \$164,200/- with interest, but before the sale, the Applicants had made various payments, leaving the

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balance sum of \$132,804.64 and interest thereon still due and owing.

In the  
High Court

10 The present application is supported by two Affidavits sworn by K.B.Thuraisingham and Chee Khiew Siew. By Paragraphs 4, 5 and 6 of his Affidavit sworn on March 19, 1980, Mr. Thuraisingham contends that there are two material irregularities in the Order of the Senior Assistant Registrar dated January 11, 1980, ordering the sale by auction of the Applicants' two pieces of land. Firstly, the Order disclosed the actual reserve price; and, secondly, no provision was made for the two lands to be offered for sale individually and in a specified order as provided by Section 257(2) of the National Land Code, 1965. Further, it is contended the reserve price of the 20 two lands fixed at \$270,000/- is not "equal to the estimated market value of the land in question" and therefore is contrary to the provision of Section 257(1)(d) of the National Land Code. In Paragraph 3 of Mr. Chee Khiew Siew's Affidavit, it is sworn that the Order of Sale was obtained in the absence of his Solicitors. In Paragraph 5, Mr. Chee refers to a Valuation Report prepared by Lew Chin Chuan & Co. which assessed the value of the two lands 30 at £360,000/- as on March 19, 1979. In his submission, Counsel for the Applicants also refers to Valuation Report of Messrs. Jordan Lee & Jaafar assessing the value of the lands at \$495,000/- as on January 11, 1980. In this case, the two lands were sold to a successful bidder Mr. Ho Hai Poh (the Second Respondent) at a price of \$275,000/- on March 17, 1980, i.e. \$5,000/- above the reserve price; 40 and three days later, the present application to set aside the sale was filed.

No. 12  
Judgment of  
Mohd. Azmi J.  
23rd December  
1980

(continued)

Order 43 Rule 11(e) of the rules of the Supreme Court provides:

"Where immovable property or any registered interest therein has been sold in execution of a decree, decree-holder or any person entitled to share in a rateable distribution of

In the  
High Court

No. 12  
Judgment of  
Mohd. Azmi J.  
23rd December  
1980

(continued)

assets or whose interests are affected by sale may apply to the Court or a Judge to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it:

Provided that no sale shall be set aside on the ground of irregularity or fraud unless upon the facts proved the Court or a Judge is satisfied that the application has sustained substantial injury by reason of such irregularity or fraud."

10

In this application, I find no merit in the complaint of Mr. Thuraisingham in his affidavit that the Order of Sale discloses the actual reserve price. Under Section 257(1)(d) of the National Land Code, every order of sale made by the Court under Section 256 shall require the Registrar to fix a reserve price for the purpose of the sale. This provision has been complied with pursuant to Summons for Direction dated November 6, 1979. The fact that the Order of Sale itself contains the reserve price of \$270,000/- is not a material irregularity within the ambit of Order 43 Rule 11(e). Nor is the complaint that the two pieces of land should have been auctioned separately instead of together has any merit. The provisions of Section 257(2) of the National Land Code are not mandatory. They merely give the Court to make further direction, where the charge in question relates to more lands than one, that they be offered for sale individually and in a specified order. The fact that the Court did not make such a direction, does not, in my view, amount to an irregularity sufficiently material to justify the setting aside of the auction sale. Particularly in this case, it is more convenient that the two lands are sold together, having regard to the

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10 facts that they are contiguous lots of equal size, and assessed by Messrs. Jones Lang Wootton as one parcel of land at \$300,000/- as at December 10, 1979 on the basis that they are free of the existing charge to Hock Hua Bank Berhad, to whom a sum of \$86,415.75 was due, and the charge to Hongkong & Shanghai Bank to whom \$59,970.39 was also due, and also having regard to the balance sum of \$132,804.64 still owing to the decree-holder. Clearly, on the basis of that Valuation, selling the land separately would not have benefited the Applicants in any way, as each lot by itself would not in all probabilities be sufficient to realise enough fund to pay off Hock Hua Bank Hongkong & Shanghai Bank and the Respondents.

20 The only question that requires serious consideration is whether the reserve price of \$270,000/- fixed for both lots by the Registrar represents a price equal to the estimated market value of the lands in question, as required by the provision of Section 257(1)(d) of the National Land Code. At the time of fixing the reserve price, only the Valuation Report of Messrs. Jones Lang Wootton was made available. Although 30 the Applicants have now produced two other Valuation Reports - one by Messrs. Lew Chin Chuan which assessed the market value of the two lands at \$360,000/- as on March 19, 1979, and the other by Messrs. Jordan Lee & Jaafar, which valued them at \$495,000/- as on January 11, 1980 - I am of the opinion that the valuation of Messrs. Jones Lang Wootton 40 is more reliable having regard to the purpose for which the various Reports have been prepared. Messrs. Jones Lang Wootton's valuation was made specifically for purposes of a public auction of the two lands. Paragraph 8.03 of the Report states :

" Having considered all relevant factors influencing value, we are

In the  
High Court

No. 12  
Judgment of  
Mohd. Azmi J.  
23rd December  
1980

of the opinion that the open market value of the perpetual interest in the subject properties with vacant possession and on the basis that they are free of the existing charge to Hock Hua Bank Berhad is Dollars Three Hundred Thousand (\$300,000).

(continued)

Our opinion of the forced sale value of the same is Dollars Two Hundred and Seventy Thousand (\$270,000). "

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On the other hand, the Valuation Report of Lew Chin Chuan dated March 19, 1979 was prepared for financing purposes. It is intended for submission to Applicants' Bankers for financing purposes, and it would appear that at that material time the properties were free from any encumbrance. Similarly, the Valuation Report of Messrs. Jordan Lee & Jaafar dated January 11, 1980 was prepared for mortgage purpose. Although encumbrances pertaining to both lands have been taken into consideration, the Report has been prepared for financing purposes. The two Valuation Reports produced by the Applicants are not therefore prepared to determine the market value of the properties for the purpose of sale, but for financing purposes. As such, they are less reliable than the Report of Messrs. Jones Lang Wootton for the purpose of determining the estimated market value of the lands as envisaged in Section 257(1)(d) of the National Land Code. In my judgment, the reserve price of £270,000/- is a price equal to the estimated market value of the two lands. The Applicants have therefore failed to prove that there is a material irregularity in conducting the sale. As such, the question that they have suffered substantial injury as a result of such material irregularity does not arise. Although it can be argued that the reserve price ought to have been fixed at \$300,000/- instead of \$270,000/- the difference is comparatively small to constitute

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a material irregularity. In any event, the highest bidder during the sale was only \$275,000/-.

In the  
High Court

No.12  
Judgment of  
Mohd. Azmi J.  
23rd December,  
1980

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It is also pertinent to note that the Summons for Direction and the Order extracted were served on Messrs. Low & Lee, the then Solicitors for the Applicants. They had full knowledge of the reserve price, but no protest was made in respect of the valuation of the two properties before the sale.

(continued)

In the absence of material irregularity or fraud in the publishing or conducting of the auction sale, the application is accordingly dismissed with costs.

Sgd: Mohd. Azmi

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JUDGE  
HIGH Court,  
KUALA LUMPUR

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Kuala Lumpur  
December 23, 1980.

Mr. Morris Edgar for Applicants.  
Miss M. Cheah for First Respondent.  
Mr. Ho Hai Poh, the Second Respondent - absent  
(not served)

Certified true copy

Sgd: Illegible  
.....

dated 28th January, 1981

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Secretary to Judge  
Kuala Lumpur



In the Federal  
Court

No. 13

NOTICE OF APPEAL

No.13  
Notice of  
Appeal  
29th March  
1980

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR  
(APPELLATE AND SPECIAL POWERS)

IN THE FEDERAL COURT OF APPEAL AT KUALA LUMPUR  
CIVIL APPEAL NO. 70 OF 1980

Between

Sun Kee & Co.  
(suing as a firm)

Appellant

And

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1. Chop Sin Hua Hin  
(sued as a firm)
2. Ho Hai Poh

Respondents

(In the Matter of Kuala Lumpur High Court  
Application for Execution No: 303 of 1979)

Between

Chop Sin Hua Hin  
(suing as a firm)

Plaintiff

And

Sun Kee & Co.  
(sued as a firm)

Defendant

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NOTICE OF APPEAL

TAKE NOTICE that the Appellant abovenamed  
being dissatisfied with the decision made in  
open court by the Honourable Mr. Justice Mohamed  
Azmi J. on 17th March, 1980 and the Notice of  
Motion for setting aside the Auction Sale in  
open Court being dismissed with cost appeals to  
the Federal Court of Appeal at Kuala Lumpur  
against the whole of the said decision.

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Dated this 29th day of March, 1980

Sgd: Dato Morris Edgar &  
Clough Thuraisingham  
.....

Solicitors for the Appellants

This Notice of Appeal is filed by Messrs. Dato Morris Edgar and Clough Thuraisingham, Solicitors for the Appellants herein whose address for service is 3rd Floor, Hwa-Li Building, No.63-65, Jalan Ampang, Kuala Lumpur.

In the Federal Court

No.13  
Notice of Appeal  
29th March  
1980

To: (1) M/s Allen & Gledhill,  
Solicitors for the 1st Respondent/  
Plaintiff,  
Advocates & Solicitors,  
24th Floor,  
Bangunan U.M.B.C.,  
Jalan Suleiman,  
Kuala Lumpur.

(continued)

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(2) Ho Hai Poh  
2nd Respondent,  
No.40, Jalan Tunku Abu Bakar,  
Temerloh,  
Pahang.

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No.14

MEMORANDUM OF APPEAL

No.14  
Memorandum  
of Appeal  
24th February  
1981

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

CIVIL APPEAL NO. 70 OF 1980

Between

Sun Kee & Co.  
(Suing as a firm)

Appellants

And

30

1. Chop Sin Hua Hin  
(sued as a firm)  
2. Ho Hai Poh

Respondents

(In the Matter of the Application for Execution No. 303 of 1979 dated the 6th day of November, 1979 in Kuala Lumpur High Court (Commercial Division))

In the  
Federal Court

Between

No.14  
Memorandum  
of Appeal  
24th February  
1981

Chop Sin Hua Hin  
(Suing as a firm)

Plaintiffs

And

Sun Kee & Co.  
(sued as a firm)

Defendants

(continued)

MEMORANDUM OF APPEAL

Sun Kee & Co. the Appellants abovenamed appeal to the Federal Court against the decision of the Honourable Justice Dato Haji Mohd. Azmi J. at Kuala Lumpur on the 24th day of March, 1980 on the following grounds :-

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1. (a) In that the learned Judge erred in law when he held that the disclosure of the actual reserve price in the Order of Sale was not a material irregularity.
- (b) In that the learned Judge failed to direct his mind to the purpose of the practice whereby the reserve price is not disclosed in the Affidavit. 20
2. (a) In that the learned Judge erred in law when he held that the provisions of Section 257(2) of the National Land Code was not mandatory.
- (b) In that the learned Judge erred in law when he held that the failure of the Court to make the direction in terms of Section 257(2) was not a material irregularity. 30
3. In that the learned Judge erred in fact and law when he failed to direct his mind to the consequences of the disclosure of the reserve price and the joint sale of the two lots, namely the creation of a situation whereby the auction was concluded at a mere 5000 above the reserve price resulting in the Applicant sustaining substantial loss. 40
4. In that the learned Judge failed to

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countenance that the Applicants, by virtue of two letters received from Public Bank Berhad were immediately prior to and at the time of the auction able to settle all debts by the generation of a loan.

In the Federal Court

No.14  
Memorandum  
of Appeal  
24th February  
1981

- 10 5. That the learned Judge while noting that the previous Solicitors had made no protest on the reserve price before the sale, failed to direct his mind to the fact that an attempt was made by the Applicants before the sale by Motion for an Order that the auction be restrained by injunction and that the said learned Judge refused to hear the urgent Motion without assigning any reasons thereto and apparently without even perusing the papers.
- 20 6. (a) In that the learned Judge erred in law in that he failed to give proper weight to the requirement of Section 257(1)(d) which called for the fixing of a reserve price equal to the estimated market value of the land in question.
- 30 (b) In that the learned Judge erred in law and fact when he accepted as valid a valuation report by Jones Lang & Wootton that was based on considerations other than "fair market value" and then went on to rule that the reserve price was equal to the estimated market value of the lands.
- 40 (c) In that the learned Judge erred in fact when he held that the other two Valuation Reports prepared for mortgage purposes were less reliable for purposes of estimating the fair market value than a report prepared for the forced sale of the lands.

(continued)

Dated this 24th day of February, 1981.

Sgd: Illegible  
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Solicitors for the Plaintiffs/  
Applicants

In the Federal  
Court

No.14  
Memorandum  
of Appeal  
24th February  
1981

(continued)

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

And To:

The Senior Assistant Registrar,  
High Court,  
Kuala Lumpur.

And To:

The abovenamed Respondents/  
Defendants and/or their Solicitors, 10  
M/s Allen & Gledhill,  
Bangunan U.M.B.C.,  
24th Floor,  
Jalan Suleiman,  
Kuala Lumpur

This Memorandum of Appeal is filed by  
Messrs. Morris Edgar and Clough Thuraisingham,  
Solicitors for the Appellants/Plaintiffs  
abovenamed whose address for service is at 20  
Lot 6.03B, 6th Floor, Wisma Central, Jalan  
Ampang, Kuala Lumpur.

No.15  
Judgment of  
the Court  
23rd July  
1981

No. 15

JUDGMENT OF THE COURT

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

CIVIL APPEAL NO. 70 OF 1980

Between

Sun Kee & Co.  
(suing as a firm) Appellant 30

And

1. Chop Sin Hua Hin  
(sued as a firm)  
2. Ho Hai Poh Respondents

(In the Matter of the Application for Execution No.303 of 1979 dated the 6th day of November 1979 in Kuala Lumpur High Court Civil Suit No. 1009 of 1976)

In the Federal Court

No.15  
Judgment of  
the Court  
23rd July 1981

Between

Chop Sin Hua Hin  
(suing as a firm)

Plaintiff

(continued)

And

10 Sun Kee & Co.  
(sued as a firm)

Defendant

Coram: Raja Azlan Shah, C.J.  
Abdul Hamid, F.J.  
Abdoolcader, J.

JUDGMENT OF THE COURT

20 A summons for directions for the sale by public auction of 2 contiguous lots of land in the District of Kuala Lumpur belonging to the partners of the appellant firm and against which a prohibitory order attaching them in an application for execution had been granted on 7th September 1979 by consent was taken out on 6th November 1979 by the 1st Respondent which as plaintiff in the substantive action had obtained judgment against the appellant for a monetary sum but leaving a balance still payable in the region of some \$140,000 inclusive of interest and costs. The summons was served on the appellant's solicitors and copies of a valuation report dated 10th December 1979 by a 30 reputable firm of international real estate agents and valuers, Jones Lang Wootton, valuing the property sought to be sold at a forced sale value of \$270,000 were sent to the Senior Assistant Registrar of the High Court and the appellant's solicitors on 11th December 1979. There was no protest on behalf of the appellant against the valuation disclosed nor did their solicitors attend before the Senior Assistant Registrar at the hearing of the summons on 11th 40 January 1980 when an order was accordingly made for the sale of the lands in question by public auction on 17th March 1980 at a reserve price of \$270,000 in accordance with the valuation report tendered, with the necessary consequential directions. A copy of the Order was served on the

(continued)

appellant's solicitors under cover of a letter dated 6th February 1980.

It was only on 17th March 1980 that the appellant took out a motion returnable that very day on which the sale was fixed for 10.30 a.m. to restrain the sale, to quote, 'by injunction until the decision is made by this Honourable Court on an Application to be filed forthwith.' We need only observe with regard to this application that this is hardly the diligence one would have expected in the circumstances when the appellant and their solicitors knew of the Order made on 11th January 1980 and there was furthermore prominent publication of the proclamation of sale more than 4 weeks before the date of the sale pursuant to the terms of the Order, quite apart from the fact that the 2 valuation reports the appellant now seeks to rely on date as far back as March 1979 and January 1980.

According to an affidavit made by the managing partner of the appellant, all the judges were attending the opening of Parliament in the morning of 17th March 1980 and the appellant's motion could not therefore be heard and the sale accordingly proceeded pursuant to the Order of 11th January 1980 when the 2 lots were purchased by the 2nd respondent for \$275,000. The appellant then filed a motion on 20th March 1980 returnable on 24th March 1980 for an order for the sale to be set aside which Mohamed Azmi, J., heard and dismissed on that day. The appellant appealed against that decision.

The appellant's complaint basically and primarily is that the reserve price should not have been disclosed in the Order of 11th January 1980 and also that no provision was made for the 2 lots to be offered for sale individually and in a specified order as provided for by section 257(2) of the National Land Code (the 'Code'). They further contend that there has been non-compliance with the provisions of section 257(1)(d) of the Code which stipulate for the reserve price fixed for the purpose of the sale to be a price equal to the estimated market value of the lands in question and rely on 2 valuation reports they had obtained from two other valuers showing the value of the lands as \$360,000 at 19th March 1979 and \$495,000 at

11th January 1980 respectively which substantially exceed the reserve price fixed by the Senior Assistant Registrar.

In the Federal Court

No.15  
Judgment of  
the Court  
23rd July  
1981

10 At the outset of the hearing of this appeal Dato Morris Edgar for the Appellant had perforce to concede in answer to a query we raised that section 257 of the Code has no application in this matter. It is clear from the provisions of Chapter 3 of Part Sixteen in Division IV of the Code and in particular section 256(2) and (3) that section 257 only applies to an order for sale at the instance of a chargee of land. The statutory provision that would apply and govern the sale of the lands in question in the matter before us is Order 43 rule 11 of the Rules of the High Court, 1957, the material part being  
20 paragraph (e) thereof which provides (so far as material for the present purposes) that any person whose interests are affected by the sale may apply to the Court or a Judge to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it.

(continued)

30 The incorporation of the reserve price in the Order of 11th January 1980 is not an irregularity which would vitiate the sale nor indeed, quite apart from the provisions of section 257(2) of the Code which do not apply and which in any event are only directory and discretionary, is the fact that the 2 lands were not directed to be sold separately. If that was the proper course in the circumstances of this case a direction to that effect could have been urged and sought on cogent grounds at the instance of the appellant but the appellant's solicitors  
40 deliberately chose not to attend before the Senior Assistant Registrar when the summons was heard and the Order made despite the service of the summons on them. No excuse has been or indeed perhaps can possibly be advanced for this absence and it might therefore well be taken to amount to a willingness to let the summons for sale go by default or implied consent.

50 This left Dato Edgar with the only argument open to him, scilicet the question of the reserve price not reflecting the estimated market value of the lands and he of course relied on the 2 valuation reports the appellant



In the Federal  
Court

No.15  
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(continued)

had obtained and which we have earlier referred to. The Senior Assistant Registrar at the time he made the Order on 11th January 1980 had before him only the valuation of Jones Lang Wootton tendered by the 1st Respondent and made by a reputable firm of valuers which he could not have any reason to doubt and, it will be noted, was specifically made on the basis of a valuation for a sale of the lands by auction. The March 1979 valuation report now relied on by the appellant clearly states that it was prepared on the instructions of and for the appellant and was intended for submission to their bankers for financing purposes, and so too with the other valuation report of January 1980 in support of the appellant's contention on the question of market value which specifically states that the valuation was made for mortgage purposes. These 2 valuation reports therefore were prepared to estimate the value of the lands in question as security for the purpose of obtaining finance. We cannot but therefore wholly endorse the learned Judge's assessment of the 3 valuation reports produced in this matter and his finding in the circumstances that the reserve price of \$270,000 was a fair estimate of the market value of the lands based on the valuation by Jones Lang Wootton which he found to be more reliable than the other two. There is therefore no justification for any complaint with regard to the reserve price fixed. In any event, in taking the passive and supine attitude the appellant did in not protesting against the valuation made by Jones Lang Wootton at the proper time when they had ample opportunity to do so they acted to their own detriment and at their peril and there is no reason why the 2nd respondent as the purchaser at a properly conducted sale should suffer as a result of their default which it would not be inapposite to categorize as wilful.

The argument for the appellant was so feeble and inevitably so brief that there was hardly anything for the respondents to answer. At the end of the day, and an extremely short one at that, we did not have to call upon counsel for the respondents and accordingly dismissed this appeal with costs and directed the deposit in court by way of security to go to the respondents to account of their taxed

costs.

In the Federal Court

Sgd: Justice Dato E. Abdoolcader  
.....

No.15  
Judgment of the Court  
23rd July 1981

JUDGE  
HIGH COURT  
(JUSTICE DATO EUSOFFE  
ABDOOLCADER)

(continued)

23rd July 1981

10 For Appellant ... Dato Morris Edgar  
Solicitors: Morris Edgar & Clough  
Thuraisingham  
For Respondents ... Mr. Chin Yew Meng  
Solicitors: ... Allen & Gledhill

NOTE: Hearing: 20th May 1981

No. 16

ORDER GRANTING FINAL  
LEAVE TO APPEAL

No.16  
Order granting  
Final Leave  
to Appeal  
22nd March  
1982

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

CIVIL APPEAL NO. 70 OF 1980

Between

Sun Kee & Co.  
(Suing as a firm)

Appellant

And

1. Chop Sin Hua Hin  
(sued as a firm)  
2. Ho Hai Poh

Respondents

In the Federal Court

No.16  
Order granting  
Final Leave  
to Appeal  
22nd March  
1982

(continued)

(In the Matter of the Application for Execution No. 303 of 1979 dated the 6th day of November, 1979 in Kuala Lumpur High Court (Commercial Division)

Between

Chop Sin Hua Hin  
(Suing as a firm)

Plaintiffs

And

Sun Kee & Co.  
(sued as a firm)

Defendants)

10

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

O R D E R

UPON MOTION made unto Court this day by Encik G.Krishnan (Encik C.M.Chen with him) of counsel for the Appellant in the presence of Encik Ee Beng Guan of Counsel for the 1st Respondent and mentioning for the Second Respondents AND UPON READING the Appellant's Notice of Motion dated the 14th day of January, 1982 and the Affidavit of Chen Chee Min affirmed on the 14th day of January, 1982 IT IS ORDERED that the Appellant be and is hereby granted final leave to appeal to His Majesty the Yang Di Pertuan Agong against the decision of this Honourable Court given on the 22nd day of May 1981, in the above Federal Court Civil Appeal No. 70 of 1980.

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AND IT IS FURTHER ORDERED that the cost of the Application for final leave be costs in the Cause.

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

Sgd: G.S. Tan  
.....

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SENIOR ASSISTANT REGISTRAR,  
FEDERAL COURT MALAYSIA, KUALA LUMPUR

This Order is filed by Messrs. C.M. Chen & Co., Solicitors for the Appellant, whose address for service is at No.44-2A (First Floor), Jalan Sultan Ismail, Kuala Lumpur.

In the Federal  
Court

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No.16  
Order granting  
Final Leave  
to Appeal  
22nd March  
1982

(continued)

No. 45 of 1982

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

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O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA

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B E T W E E N :

SUN KEE & CO.  
(sued as a Firm)

Appellants

- and -

1. CHOP SIN HUA HIN

2. HO HAI POH

Respondents

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RECORD OF PROCEEDINGS

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STEPHENSON HARWOOD,  
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London, EC2V 6BS

Solicitors for the  
Appellants

PHILIP CONWAY THOMAS & CO.,  
61 Catherine Place,  
London, SW1E 6HB

Solicitors for the **FIRST**  
Respondents