

47/84

No. 18 of 1983

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 :

LIM YOKE FOO @ LIM YAP KWEE Appellant

-and-

EU FINANCE BERHAD Respondents

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RECORD OF PROCEEDINGS

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MACFARLANES  
10 Norwich St. ,  
London EC4A 1BD.

STEPHENSON HARWOOD  
Saddlers' Hall  
Gutter Lane  
Cheapside  
London EC2V 6BS.

Solicitors for the Appellant

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Solicitors for the  
Respondents

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IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

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INDEX OF REFERENCE

PART I

No.	Description of Document	Date	Page
<u>IN THE HIGH COURT</u> <u>IN MALAYA AT KUANTAN</u>			
1.	Specially Indorsed Writ	26th April 1980	1
2.	Amended Statement of Defence and Counterclaim	28th July 1980	7
3.	Reply and Defence to Counterclaim	20th June 1980	12
4.	Judgment of Razak J	10th December 1980	14
5.	Order of the High Court	10th December 1980	19
<u>IN THE FEDERAL COURT OF MALAYSIA</u>			
6.	Notice of Appeal	18th December 1980	22
7.	Memorandum of Appeal	27th January 1981	23

No.	Description of Document	Date	Page
8.	Order of the Federal Court	25th March 1982	26
9.	Judgment of the Federal Court	31st March 1982	28
10.	Order granting final leave to Appeal to His Majesty the Yang Di Pertuan Agong	6th December 1982	36

PART II

EXHIBITS

No.	Exhibit Mark	Description of Document	Date	Page
<u>Plaintiff's Exhibits</u>				
P1	A	Form 16A (Charge)	10th October 1974	37
P2	B	Letter from Plaintiff to the Defendants	20th December 1974	45
P3	C	Translation of Form 16H*	15th June 1976	46
P4	D	Translation of Form 16H*	26th December 1979	48
P5	E	Translation of Receipt No. U971480 *	25th January 1980	50
P6	F	Translation of Letter from Pemungut Hasil Tanah, Kuantan to the Plaintiff's Solicitors, Messrs. James Foong & Co	*7th April 1980	51
P7	G	Translation of letter from Pemungut Hasil Tanah, Kuantan to the Plaintiff's Solicitors, Messrs James Foong & Co.	*14th April 1980	54
<u>Defendants' Exhibits</u>				
D1		Letter from Plaintiff to Defendants	12th September 1974	55
D2		Letter from Defendants to Plaintiff	16th September 1974	56
D3		Letter from Defendants to Plaintiff	23rd December 1974	57

Exhibit Mark	Description of Document	Date	Page
D4	National Land Code Form 16D from Defendants' Solicitors to Plaintiff	29th April 1975	58
D5	Letter from Plaintiff to Defendants	7th June 1975	59
D6	Letter from Defendants' Solicitors to Pemungut Hasil Tanah Pejabat Daerah, Kuantan	22nd June 1976	60
D7	Translation of letter from*30th June 1976 Pejabat Daerah, Kuantan to Defendants' Solicitors		61
D8	Order of Kuantan High Court	8th June 1978	62
D9	Translation of letter * from Defendants' Solicitors to Pemungut Hasil Tanah Pejabat Tanah, Kuantan	20th December 1978	63
D10	Translation of letter * from Defendants' Solicitors to Pemungut Hasil Tanah Pejabat Tanah Kuantan	21st February 1979	64
D11	Translation of letter * from Pejabat Daerah dan Tanah Kuantan to Defendants' Solicitors	19th January 1980	65
D12	Letter from Defendants' Solicitors to Pemungut Hasil Tanah Kuantan	31st January 1980	66
D13	Translation of letter * from Daerah dan Tanah Kuantan to Defendants' Solicitors	6th February 1980	67
D14	Translation of letter * from Defendants' Solicitors to Pemungut Hasil Tanah Kuantan	3rd May 1980	68
D15	Translation of letter from* 30th June 1976 Pejabat Daerah dan Tanah to Y.B. Penasihat Undang-Undang		69

Exhibit Mark	Description of Document	Date	Page
D16	Statement of Account from Defendants to the Plaintiff	19th May 1980	71

\* These are translations as agreed between the parties

DOCUMENTS TRANSMITTED TO THE PRIVY COUNCIL  
BUT NOT REPRODUCED

No.	Description of Document	Date
1.	Plaintiff's written submissions	2nd August 1980
2.	Defendants' written submissions	3rd September 1980
3.	Order granting Conditional leave to Appeal to His Majesty the Yang Di Pertuan Agong	21st June 1982

EXHIBITS

Plaintiff's Exhibits

4.	Form 16A	10th October 1974
5.	Receipt No. U971480	25th January 1980
6.	Letter from Pemungut Hasil Tanah, Kuantan to the Plaintiff's Solicitors, Messrs. James Foong & Co.	7th April 1980
7.	Letter from Pemungut Hasil Tanah, Kuantan to the Plaintiff's Solicitors, Messrs. James Foong & Co.	14th April 1980

Defendants' Exhibits

8.	Letter from Pejabat Daerah Kuantan to Defendants' Solicitors	30th June 1976
9.	Letter from Defendants' Solicitors to Pemungut Hasil Tanah Kuantan	20th December 1978
10.	Letter from Defendants' Solicitors to Pemungut Hasil Tanah, Pejabat Tanah Kuantan	21st February 1979
11.	Letter from Pejabat Daerah dan Tanah Kuantan to Defendants' Solicitors	19th January 1980

No.	Description of Document	Date
12.	Letter from Pejabat Daerah dan Tanah Kuantan to Defendants' Solicitors	6th February 1980
13.	Letter from Defendants' Solicitors to Pemungut Hasil Tanah Kuantan	3rd May 1980
14.	Letter from Pejabat Daerah dan Tanah to Y.B. Penasihat Undang-Undang	30th June 1976

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 :

LIM YOKE FOO @ LIM YAP KWEE Appellant

- and -

EU FINANCE BERHAD Respondents

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RECORD OF PROCEEDINGS

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PART I

No. 1

Specially Indorsed Writ - 26th  
April 1980

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SPECIALLY INDORSED WRIT

IN THE HIGH COURT IN MALAYA AT KUANTAN

CIVIL SUIT NO. 53 OF 1980

BETWEEN

Lim Yoke Foo @ Lim Yap Kwee Plaintiff

AND

20

Eu Finance Berhad Defendants

SPECIALLY INDORSED WRIT

THE HONOURABLE YANG AMAT MULIA RAJA TAN  
SRI AZLAN SHAH D.K.- , P.S.M.- , SP.M.P.- , Chief  
Justice of the High Court, Malaya, in the name  
and on behalf of His Majesty the Yang di-  
Pertuan Agong.

To, Eu Finance Berhad,  
305 Jalan Pudu,  
Kuala Lumpur.

In the High  
Court in  
Malaya at  
Kuantan

---

No. 1  
Specially  
Indorsed Writ  
26th April  
1980





- (3) HS (M) 4731 for Lot 5205 in the Mukim of Kuala Kuantan In the High Court in Malaya at Kuantan
- (4) HS (M) 4732 for Lot 5206 in the Mukim of Kuala Kuantan No. 1
- (5) HS (M) 4733 for Lot 5207 in the Mukim of Kuala Kuantan Specially Indorsed Writ 26th April 1980
- (6) HS (M) 4734 for Lot 5208 in the Mukim of Kuala Kuantan (cont'd)
- (7) HS (M) 4735 for Lot 5209 in the Mukim of Kuala Kuantan
- (8) HS (M) 4736 for Lot 5210 in the Mukim of Kuala Kuantan
- (9) HS (M) 4737 for Lot 5211 in the Mukim of Kuala Kuantan
- (10) HS (M) 4738 for Lot 5212 in the Mukim of Kuala Kuantan
- (11) HS (M) 4739 for Lot 5213 in the Mukim of Kuala Kuantan
- (12) HS (M) 4740 for Lot 5214 in the Mukim of Kuala Kuantan
- (13) HS (M) 4741 for Lot 5215 in the Mukim of Kuala Kuantan
- (14) HS (M) 4742 for Lot 5216 in the Mukim of Kuala Kuantan
- (15) HS (M) 4743 for Lot 5217 in the Mukim of Kuala Kuantan
- (16) HS (M) 4744 for Lot 5218 in the Mukim of Kuala Kuantan
- (17) HS (M) 4745 for Lot 5219 in the Mukim of Kuala Kuantan
- (18) HS (M) 4746 for Lot 5220 in the Mukim of Kuala Kuantan
- (19) HS (M) 4747 for Lot 5221 in the Mukim of Kuala Kuantan
- (20) HS (M) 4748 for Lot 5222 in the Mukim of Kuala Kuantan (hereinafter referred to as "the said lands").

2. The Defendants are the chargees of the

In the High  
Court in  
Malaya at  
Kuantan

No. 1  
Specially  
Indorsed Writ  
26th April  
1980  
(cont'd)

said lands under a Deed of Charge made in their favour by the Plaintiff and which is registered with the Land Office at Kuantan on the 8th day of November 1974.

3. By an Order of the Collector of Land Revenue, Kuantan (hereinafter referred to as "the Collector") dated the 26th day of December, 1979 under Form 16H of the National Land Code, it is stated, inter-alia, in the said Order that:-

- (i) the date fixed for sale by public auction was the 31st day of January, 1980; and 10
- (ii) that the amount due to the Chargee as at date of Order was \$443,694.52.

(The Plaintiff shall refer to the terms and contents of the Order of the Collector dated 26th December 1979 at the trial of this Suit).

4. On or about the 24th and 25th day of January, 1980 respectively, the Plaintiff his servants and/or agents paid to the Collector:-

- (a) a sum of \$443,694.52 being the sum due to the Chargees as stated in the Collector's order dated 26th December 1979; 20
- (b) a sum of \$5,367.25 being interest as have fallen due under the charge between the date of the Collector's said order dated 26th December, 1979 and the date of tender; and
- (c) a sum of \$10.00 as specified by the said Collector as an amount sufficient to cover all expenses incurred in connection with the making or carrying into effect of the Order. 30

5. Despite the payments as stated above, the Defendants failed refused and/or neglected to discharge the said lands to the Plaintiff.

6. On or about the 8th day of April 1980, the Plaintiff through his Solicitors, Messrs. James Foong & Company, demanded the Defendants to, inter-alia:-

- (i) execute memorandums of discharge of the said lands to the Plaintiff; and 40
- (ii) release the issue document of titles to the said lands so held by the Defendants to the Plaintiff

but till date hereof, the Defendants have failed refused and/or neglected to do so.

In the High Court in Malaya at Kuantan

WHEREOF the Plaintiff claims:-

No. 1  
Specially Indorsed Writ  
26th April 1980  
(cont'd)

- 10 (1) that the Defendants do release and hand over to the Plaintiff:-
- (a) the issue document of titles to the said lands;
- (b) the duplicate copies of Charge executed by the Plaintiff in favour of the Defendants and registered with the Land Office on the 8th day of November 1974;
- (2) that the Defendants do execute in favour of the Plaintiff valid and registrable memorandum of discharge of the said lands under Form 16N of the National Land Code; and/or
- 20 (3) in the alternative, that the Court do direct the Senior Assistant Registrar to execute in favour of the Plaintiff valid and registrable memorandum of discharge of the said lands under Form 16N of the National Land Code and order that these documents be effective to discharge the said lands;
- (4) damages;
- (5) costs;
- (6) such further or other relief as the Court deems fit and proper to grant.

30 Dated this 16th day of April 1980.

Sgd/- James Fong & Company  
Solicitors for the Plaintiff

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

Provided that if it appears from the indorsement of the Writ that the Plaintiff is

In the High  
Court in  
Malaya at  
Kuantan

No. 1  
Specially  
Indorsed Writ  
26th April  
1980  
(cont'd)

resident outside the scheduled territories as defined in the Exchange Control Ordinance, 1953, or is acting by Order or on behalf of a person so resident, or if the Defendant is acting by Order or on behalf of a person so resident, proceedings will only be stayed if the amount claimed is paid into Court within the said time and notice of such payment in is given to the Plaintiff, his Advocate and Solicitor or Agent.

10

This Writ was issued by Messrs James Foong & Company, Advocates & Solicitors, the Basement, Yee Seng Building, No. 15, Jalan Raja Chulan, Kuala Lumpur 05-02, Solicitors for the Plaintiff abovenamed.

This Writ was served by me at  
on the Defendants on                    the                    day  
of 19                    at the hour of                    a.m./p.m.

Indorsed this                    day of                    198 .

(Signed)

20

(Address)

---

No. 2

Amended Statement of Defence and  
Counterclaim - 28th July, 1980

In the High  
Court in  
Malaya at  
Kuantan

AMENDED STATEMENT OF DEFENCE AND  
COUNTERCLAIM

No. 2  
Amended  
Statement of  
Defence and  
Counterclaim

Amended pursuant to Order of Court dated 28th July  
the 11th day of July, 1980 and 19th 1980  
September, 1980.

Dated this 24th day of September, 1980.

10

Sgd/-

Senior Assistant Registrar ,  
High Court,  
Kuantan.

IN THE HIGH COURT OF MALAYA AT KUANTAN

SUIT NO: 53 OF 1980

Between

Lim Yoke Foo @ Lim Yap Kwee                      Plaintiff

And

Eu Finance Berhad                                      Defendant

20

AMENDED STATEMENT OF DEFENCE AND  
COUNTERCLAIM

AMENDED STATEMENT OF DEFENCE

1. The Defendants admit paragraphs 1 and 2  
of the Statement of Claim.

2. The Defendants would contend that prior  
to the Order of Sale referred to in paragraph  
3 of the Statement of Claim the Collector of  
Land Revenue, Kuantan (herein referred to as  
"the Collector") had issued an Order of Sale  
dated 15th June, 1976 (hereinafter referred  
to as "the 1st Order of Sale") in respect of  
all the lands referred to in paragraph 1 of the  
Statement of Claim pursuant to an enquiry under  
Section 261 of the National Land Code, 1965 held  
on 29th May, 1976 (hereinafter referred to as  
"the enquiry").

30

In the High  
Court in  
Malaya at  
Kuantan

No. 2  
Amended  
Statement of  
Defence and  
Counterclaim  
28th July  
1980  
(cont'd)

3. Paragraph 2 of the 1st Order of Sale provides that the amount due to the Defendants is \$443,694.52.

4. (a) The Defendants will contend that the amount stated to be due in the 1st Order of Sale i.e. \$443,694.52 only covers the amount due as on the date of the conclusion of the enquiry i.e. 29th May, 1976.

(b) The Defendants will further contend that in addition to the sum of \$443,694.52, they are also entitled to claim the following:-

10

(i) interest on \$350,000.00 (principal sum) at the rate of 18% per annum from 30th May, 1976 to date of full payment or tender of all sums due under Section 266(2) of the National Land Code, 1965

(ii) all further amount as have fallen due and payable by the Plaintiff under the Charge dated 8th November, 1974 under Presentation No. 1727/74 Vol. 24 Folio 20 registered by the Collector (hereinafter referred to as "the Charge").

20

5. (a) Pursuant to the 1st Order of Sale, the sale of the lands referred to in paragraph 1 of the Statement of Claim by public auction was to be held on 5th August, 1976. The Plaintiff filed an appeal against the said 1st Order of Sale (vide Kuantan High Court Civil Appeal No. 9 of 1976) whereupon the Collector postponed the public auction.

30

(b) The Plaintiff subsequently withdrew the appeal on 8th June, 1978.

6. (a) The Collector wrongfully issued another Form 16(H) dated 26th December, 1979 under the National Land Code, 1965 (hereinafter referred to as "the 2nd Order of Sale") whereby the sale of the lands by public auction was to be 31st January, 1980. The amount stated to be due under the 2nd Order of Sale is \$443,694.52.

(b) The Defendants will contend that the amount stated to be due in the 2nd Order of Sale is the amount due to the Defendants as on the conclusion of the enquiry referred to in paragraph 4(a) hereof i.e. 29th May, 1976.

40

(c) The Defendants will further contend that the 2nd Order of Sale is wrongful and or void in that it did not take into account the

further sum which the Defendants are entitled to recover from the Plaintiff as stated in paragraph 4 (b) (i) and (if) herein.

In the High Court in Malaya at Kuantan

(d) The Defendants will further contend that the 1st Order of Sale is valid and still subsisting and that the 2nd Order of Sale is void and has no legal effect as being contrary to the provision of the National Land Code, 1965.

No. 2  
Amended  
Statement of  
Defence and  
Counterclaim  
28th July  
1980  
(cont'd)

10 7. The Defendant deny that the amount due to the Defendants as at 26th December, 1979 was \$443,694.52 and therefore the tender by the Plaintiff to the Collector of a sum of \$443,694.52 does not amount to full satisfaction of the amount due under the Charge and under Section 266 of the National Land Code, 1965.

20 8. By reason of the aforesaid the Defendants are not obliged or under any duty to nor has the Plaintiff a right to insist or demand that the Defendants execute any memorandum of discharge for any of the lands referred to in paragraph 1 of the Statement of Claim on release the issue documents of title in respect thereof to the Plaintiff.

9. The Defendants will contend that the actual amount due to the Defendants under the Charge as at 26th December, 1979 is as follows:-

P A R T I C U L A R S

30	1.	Principal sum	\$350,000.00
	2.	Interest from 23.9.1974 to 23.12.1974 @ 15% per annum	\$ 13,208.69
	3.	Interest from 24.12.1974 to 26.12.1979 at 18% per annum	\$315,618.49
	4.	Legal fees:- Disbursements and other advance	\$ 10,169.20
		a) <u>Legal fee</u>	<u>\$6,526.80</u>
		b) <u>Disbursements and other advances</u>	<u>\$4,642.40</u>
			\$ 11,169.20
40		Total .....	<del>\$688,996.38</del>
		c/f .....	<u>\$689,996.38</u>
			=====

In the High  
Court in  
Malaya at  
Kuantan

No. 2  
Amended  
Statement of  
Defence and  
Counterclaim  
28th July  
1980  
(cont'd)

B/F ... \$689,996.38

LESS PAYMENT BY PLAINTIFF ON:-

i)	2nd November, 1974	\$5,525.69	
ii)	11th December, 1974	<u>\$4,375.00</u>	\$ 9,900.69
	Balance due on 26.12.1979		<u>\$679,095.69</u>
			<u>\$680,095.69</u>
			=====

10. Save as is hereinbefore expressly admitted the Defendants deny each and every allegation in the Statement of Claim though the same were set out herein seriatim and specifically traversed.

10

Wherefore the Defendants pray that the Plaintiff's claim be dismissed with costs.

AMENDED COUNTERCLAIM

11. The Defendants repeat paragraphs 1 to 9 of the Statement of Defence and pray:-

a) For a Declaration that the 1st Order of Sale is still subsisting and of full legal effects;

b) ~~Judgment for the sum due under the Charge as on 26th December, 1979 totalling \$679,095.69 and further interest at 18% per annum on the principal sum of \$350,000.00 from 27th December, 1979 until date of full payment to the Defendants of all sums due under the Section 266(2) of the National Land Code, 1965.~~

20

b) Judgment for :-

i) The sum due under the Charge as on 26th December, 1979 totalling \$680,095.69;

ii) further interest at 18% per annum on the principal sum of \$350,000.00 from 27th December, 1979 until date of full payment to the Defendants of all sums due under Section 266(2) of the National Land Code, 1965;

30

iii) interest at 18% per annum on disbursement and other advances made by the Defendants under the Charge totalling \$4,642.40 from the date of such disbursements and advance i.e. 21st June, 1979 until full settlement thereof;

40



- c) Costs of this action and Counterclaim;  
and
- d) Such further and or other relief that  
the Court may deem fit.

~~Dated this 24th day of May, 1980.~~

Dated this 28th day of July, 1980

~~SGD/- Tunku Zuhri, Manan & Abdullah  
Solicitors for the Defendants.~~

Sgd/- Tunku Zuhri, Manan & Abdullah.  
Solicitors for the Defendants

In the High  
Court in  
Malaya at  
Kuantan

No. 2  
Amended  
Statement of  
Defence and  
Counterclaim  
28th July  
1980  
(cont'd)

10

This Amended Statement of Defence and  
Counterclaim is filed by Messrs. Tunku Zuhri,  
Manan & Abdullah, Advocates & Solicitors,  
11th Floor, Bangunan Ming, Jalan Bukit Nanas,  
Kuala Lumpur, Solicitors for the Defendants  
abovenamed.

---



9. By reason of the matter aforesaid and the averments in the Statement of Claim, the Plaintiff avers that the Defendants' Counter-Claim is misconceived in law and in fact.

In the High Court in Malaya at Kuantan

10. Save as hereinbefore expressly admitted, the Plaintiff denies each and every allegations in the Statement of Defence and Counter-Claim as if the same were specifically set forth and traversed in seriatim.

No. 3  
Reply and  
Defence to  
Counterclaim  
20th June  
1980  
(cont'd)

11. Whereof the Plaintiff prays that the Defendants' Counter-Claim be dismissed with costs.

Dated this 20th day of June, 1980.

Sgd/- James Foong & Co.  
Solicitors for the Plaintiff

20 This Reply and Defence to Counter-Claim is filed by Messrs. James Foong & Company, Solicitors for the Plaintiff, of the Basement, Yee Seng Building, No. 15, Jalan Raja Chulan, Kuala Lumpur 05-02.

In the High  
Court in  
Malaya at  
Kuantan

No. 4

Judgment of Razak J - 10th  
December 1980

No. 4  
Judgment of  
Razak J  
10th December  
1980

JUDGMENT OF RAZAK , J.

IN THE HIGH COURT IN MALAYA AT KUANTAN

CIVIL SUIT NO. 53 OF 1980

Between

Lim Yoke Foo alias Lim Yap Kwee                      Plaintiff

And

Eu Finance Berhad                                              10  
305 ,Jalan Pudu  
Kuala Lumpur.                                              Defendants

JUDGMENT OF RAZAK , J.

The plaintiff claims that release of the  
issue document of title (the particulars of which  
are listed in the Statement of Claim) charged to  
the defendants as security for the plaintiff's  
loan. The defendants dispute the claim stating  
in their defence that the plaintiff had not  
settled the amount payable under the order of  
sale of the said lands made by the Collector at  
relevant times and counterclaim for the said  
amount.                                              20

The plaintiff took out a summons-in-chambers  
under Order 14 for the lands to be released. The  
summons-in-chambers was not proceeded with because  
at the hearing , the parties had agreed that since  
no witnesses were conceived that the suit would  
be determined entirely on counsel's submissions.

It was not in dispute that the defendants                      30  
had granted a loan to the plaintiff in the sum of  
\$350 000 at the interest rate of 15% per annum in  
respect of which the aforesaid lands were charged  
to the defendants on the 10th of October 1974 (In  
Ex. A of the Bundle of Documents). The loan was  
to be repaid on the 21st December , 1974 but on the  
20th December , the plaintiff applied for an  
extension of the period to 90 days at the interest  
rate of 18% per annum. It seems clear that by  
their letter on the 23rd December (Ex. 3 of the  
defendants' Bundle ) the defendants had accepted  
the offer. However, the plaintiff made default in  
repayment. Thus , at the request of the plaintiff ,  
an inquiry under Section 261 of the National Land                      40

Code was held by the Collector on the 29th May, 1976 and on the 15th of June, 1976, he made an order of sale for the sum of \$443,695.52 in Form 16H (Ex. C in the Bundle of Documents) to be held on the 5th of August, 1976. The plaintiff thereupon appealed to the High Court against the order but on the 8th of June, 1978, he withdrew the appeal. Consequently the Collector notified the defendants that the sale on the 5th of August, 1976 had been cancelled. The defendants then pursued their claim with the Collector to effect the sale of the lands thereto. The Collector instead on the 26th December, 1979 issued another order of sale under Form H (Ex. D in the Bundle of Documents) to take place on the 31st January, 1980. On the 28th January, however, the Collector informed the defendants that he was cancelling the sale since the plaintiff had duly paid the amount under the order which incidentally was also for the sum of \$443,695.52. It is not in dispute that the plaintiff pursuant to Section 266 of the National Land Code in addition had also tendered to the Collector the sum of \$5,367.25 as interest due from the date of the Collector's order on the 26th December, 1979 till the date of the tender and also the sum of \$10.00 as amount to cover all expenses in connection with the making of the order. The Collector had, however, returned the said sums and ordered instead that a sum of \$2,000 be paid as legal expenses which was duly complied with. It is also a common fact that in the earlier order, the lands which were the subject of the charge were stated to be 12 in number only whereas in the later order, it was stated to be 20.

In the High Court in Malaya at Kuantan  
No. 4  
Judgment of Razak J.  
10th December 1980  
(cont'd)

The defendants in their defence and/or submission contended that the sum of \$443,695.52 ordered under the sale on the 26th December, 1979, was only the amount due to them at the conclusion of the inquiry on the 29th May, 1976. They maintained that in addition they were entitled to:-

- (a) the interest on the initial loan of \$350,000 at the rate of 18% per annum from the 30th May, 1976 to the date of full payment or tender of all sums due; and
- (b) all further amounts as has fallen due as payable under the charge dated 8th November, 1974

In the High  
Court in  
Malaya at  
Kuantan

No. 4  
Judgment of  
Razak J.  
10th December  
1980  
(cont'd )

They held , thus , that the order of sale made on the 26th December , 1979 was null and void to the extent where it sought to deprive them of the sum claimed in paras (a) and (b) above and insisted that the first order of sale on the 15th of June , 1976 was still valid and subsisting.

But it was clearly evident to me that if the defendants considered that the order of sale made on the 26th December , 1979 to be no longer valid and of legal force, they must be seen , under Section 418 of the National Land Code , to have appealed against the Collector's decision. If they had refrained, however , from so doing and instead let things take their natural course , they must be deemed to have accepted the Collector's order and was bound by it and cannot be heard now to say that it was wrongful and invalid.

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The matter has simply become one of res judicata pro veritate accipitur. It follows that if there was any wrong committed, the defendants must have by their omission deemed to have waived it. Since the Collector had cancelled the earlier order and replaced it with another , then the latter must take effect.\* I think the Collector was only doing substantial justice to the parties in restoring in the second what was stated in the first order. It was incumbent upon him also to correct the number of lands which were subject to the order because if the order had stood , it meant that only 12 out of 20 of the lands would have been affected by the sale , which would have clearly prejudiced the defendants since they would be denied the right to sell all the lands which they were entitled to. The second order acted to put matters right. Of course, the amount due to the defendants under the new order could have included , as the defendants suggested , the interest accruable from the date of the first order till the time of payment. I can only assume the Collector had not done so because he must have felt it would have been unfair and somewhat harsh on the plaintiff if this had happened because as far as the plaintiff was concerned , the sale should rightly have taken place on the 5th August , 1976 if not for the Collector's intervention who made it on the 31st January , 1980 instead. It would have meant therefore penalising the plaintiff for what appears to be the Collector's failure to do what the defendants considered he ought to have done. Which only leads me to say that if the defendants had felt that the Collector had

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10 gravely erred or had acted negligently in such a manner as to materially affect them, then it was only to be expected that they had made the Collector a party to the action and the latter be asked to pay the defendants the interest which they are now claiming against the plaintiff. I do not think the defendants were refrained from doing so, the Collector's act being strictly administrative. It would be idle for the defendants to say that it was for the plaintiff to bring in the Collector as the third party when the plaintiff is not challenging the propriety or the legality of the Collector's order.

In the High Court in Malaya at Kuantan  
No. 4  
Judgment of Razak J.  
10th December 1980  
(cont'd)

20 It seems to me rather ironical that the defendants are finding themselves in the present predicament because of their own ill-doing. They could have exhausted their remedies but for some reason or other did not, and now seek instead to hide behind some pretext for not having done so, clearly lamenting the fact. They say they did not appeal because they thought the Collector's letter dated 6th February, 1980 made it clear that the order of sale made on the 9th May, 1976 still subsisted. But the point was not whether the defendants had thought the 1976 order still subsisted but whether the letter to them made it quite clear on what basis the amount due was computed and consequently whether the figure arrived at was correctly stated. To me, the Collector, in stating the amount due was \$443,695.52, was clearly saying the amount due was the same as ordered in 1976. If the defendants had thought that that basis was wrong and illegal, it was open to them to resist it by bringing the matter to court. I do not think anything can be clearer than that. But as I have said, for some reason or other known to them which I can only suggest was one of sheer lack of vigilance, they did not do so.

50 The plaintiff had, it seems clear, done what was expected to be done by him under Section 266 of the National Land Code by tendering to the Collector the sum under the order for sale and the interest which he considered to be leviable. He had duly paid the sum of \$2,000 which the Collector had subsequently called upon him to pay as legal expenses. These facts were not disputed by the defendants. The defendants said they had nevertheless not received the payments made, but if they had admitted the payments were in

In the High  
Court in  
Malaya at  
Kuantan

No. 4  
Judgment of  
Razak J.  
10th December  
1980  
(cont'd)

fact made, then it was only a matter for them to call for and receive them from the Collector.

In the circumstances, I would find therefore, for the plaintiff and made the order in terms of the prayer.

Sgd. (Razak, J.)  
Judge  
High Court Malaya  
Kuantan

Dated: 10th December, 1980

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Mr. M.A. Krishnan of Messrs. James Fong & Co. Kuala Lumpur for the plaintiff. En. Zainuddin bin Hj. Ismail of Messrs. Tunku Zuhri, Manan & Abdullah Kuala Lumpur for the defendants.

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No. 5

Order of the High Court - 10th  
December 1980

In the High  
Court in  
Malaya at  
Kuantan

ORDER

IN THE HIGH COURT IN MALAYA AT KUANTAN

No. 5  
Order of the  
High Court  
10th December  
1980

CIVIL SUIT NO. 53 OF 1980

BETWEEN

LIM YOKE FOO @ LIM YAP KWEE

PLAINTIFF

AND

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EU FINANCE BERHAD

DEFENDANTS

BEFORE THE HONOURABLE JUSTICE  
ABDUL RAZAK BIN DATO' ABU SAMAH  
JUDGE, HIGH COURT, MALAYA AT  
KUANTAN

IN OPEN COURT

THIS 10TH DAY OF DECEMBER, 1980

O R D E R

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UPON READING the Specially Indorsed Writ dated 26th April 1980, Statement of Defence and Counter-Claim dated 24th May 1980, Reply and Defence to Counter-Claim dated 20th June 1980, Amended Statement of Defence and Counter-Claim, Written Submissions of Counsels for the Plaintiff and Defendants dated 2nd August, 1980 and 3rd September 1980 respectively IT IS HEREBY ORDERED that the Defendants do release and hand over to the Plaintiff the issue document of titles to the following lands :-

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1. HS(M) 4729 for Lot 5203 in the Mukim of Kuala Kuantan;
2. HS(M) 4730 for Lot 5204 in the Mukim of Kuala Kuantan;
3. HS(M) 4731 for Lot 5205 in the Mukim of Kuala Kuantan;
4. HS(M) 4732 for Lot 5206 in the Mukim of Kuala Kuantan;
5. HS(M) 4733 for Lot 5207 in the Mukim of Kuala Kuantan;
6. HS(M) 4734 for Lot 5208 in the Mukim of Kuala Kuantan;

In the High Court in Malaya at Kuantan  
No. 5  
Order of the High Court  
10th December 1980  
(cont'd)

7. HS(M) 4735 for Lot 5209 in the Mukim of Kuala Kuantan;
8. HS(M) 4736 for Lot 5210 in the Mukim of Kuala Kuantan;
9. HS(M) 4737 for Lot 5211 in the Mukim of Kuala Kuantan;
10. HS(M) 4738 for Lot 5212 in the Mukim of Kuala Kuantan;
11. HS(M) 4739 for Lot 5212 in the Mukim of Kuala Kuantan;
12. HS(M) 4740 for Lot 5213 in the Mukim of Kuala Kuantan;
13. HS(M) 4741 for Lot 5214 in the Mukim of Kuala Kuantan;
14. HS(M) 4742 for Lot 5215 in the Mukim of Kuala Kuantan;
15. HS(M) 4743 for Lot 5216 in the Mukim of Kuala Kuantan;
16. HS(M) 4744 for Lot 5218 in the Mukim of Kuala Kuantan;
17. HS(M) 4745 for Lot 5219 in the Mukim of Kuala Kuantan;
18. HS(M) 4746 for Lot 5220 in the Mukim of Kuala Kuantan;
19. HS(M) 4747 for Lot 5221 in the Mukim of Kuala Kuantan;
20. HS(M) 4748 for Lot 5222 in the Mukim of Kuala Kuantan;

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with the duplicate copies of Charge executed by the Plaintiff in favour of the Defendants and registered with the Land Office on the 8th November 1974 AND IT IS FURTHER ORDERED that the Defendants do execute in favour of the Plaintiff valid and registrable memorandum of discharge of the said lands under Form 16N of the National Land Code and/or alternatively, that the Senior Assistant Registrar to execute in favour of the Plaintiff valid and registrable memorandum of discharge of the said lands under Form 16N of the National Land Code and order that these documents be effective to discharge the said lands AND IT IS ALSO ORDERED that the

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Defendants' counter-claim be and is hereby dismissed with costs.

GIVEN under my hand and the Seal of the Court this 10th day of December, 1980.

Sgd/- ABU SAMAH BIN NORDIN  
Senior Assistant Registrar  
High Court  
Kuantan.

In the High Court in Malaya at Kuantan

No. 5  
Order of the High Court  
10th December 1980  
(cont'd)

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This Order is filed by Messrs. James Foong & Company, Solicitors for the Plaintiff above-named, of the Basement, Yee Seng Building, No. 15, Jalan Raja Chulan, Kuala Lumpur 05-02.

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In the  
Federal  
Court of  
Malaysia

No. 6

Notice of Appeal - 18th  
December 1980

No. 6  
Notice of  
Appeal - 18th  
December 1980

NOTICE OF APPEAL

IN THE FEDERAL COURT OF MALAYA  
(APPELLATE JURISDICTION)

CIVIL APPEAL NO: 2 OF 1981

Between

Eu Finance Berhad

Appellant

And

Lim Yoke Foo @ Lim Yap Kwee

Respondent

(In the matter of Civil Suit No. 53  
of 1980 in the High Court in Malaya  
at Kuantan

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Between

Lim Yoke Foo @ Lim Yap Kwee

Plaintiff

And

Eu Finance Berhad

Defendant )

NOTICE OF APPEAL

Take notice that Eu Finance Berhad, the  
Appellant abovenamed being dissatisfied with the  
decision of the Honourable Mr. Justice Razak J.  
given at Kuantan High Court on the 10th day of  
December, 1980, appeals to the Federal Court  
against the whole of the said decision.

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Dated this 18th day of December, 1980.

Sgd / Tunku Zuhri, Manan &  
Abdullah  
Solicitors for the Appellant

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

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and to The Registrar,  
The High Court in Malaya at Kuantan

and to The Respondent abovenamed and/or  
his Solicitors,  
Messrs. James Foong & Co.,  
Bangunan Yee Seng, 15 Jalan Raja Chulan,  
KUALA LUMPUR.

The address for service for the Appellant  
abovenamed is at care of Messrs. Tunku Zuhri,  
Manan & Abdullah, 12th Floor, Bangunan Ming,  
Jalan Bukit Nanas, Kuala Lumpur.

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No. 7

Memorandum of Appeal - 27th  
January, 1981

In the  
Federal  
Court of  
Malaysia

MEMORANDUM OF APPEAL

IN THE FEDERAL COURT OF MALAYSIA  
(APPELLATE JURISDICTION)

No. 7  
Memorandum  
of Appeal  
27th January  
1981

CIVIL APPEAL NO: 2 OF 1981

Between

Eu Finance Berhad

Appellants

And

Lim Yoke Foo @ Lim Yap Kwee

Respondent

(In the matter of Civil Suit No. 53 of  
1980 in the High Court in Malaya at  
Kuantan

Between

Lim Yoke Foo @ Lim Yap Kwee Plaintiff

And

Eu Finance Berhad

Defendants)

MEMORANDUM OF APPEAL

- 20 1. The learned Judge was wrong in law and  
upon the facts in granting an order in terms  
of the prayers in the writ.
2. The learned Judge failed to distinguish  
between cancellation of a date fixed for sale  
of lands subject to a charge and cancellation  
of an order for sale of such lands.
3. The learned Judge erred in law in holding  
that the National Land Code gave power to a  
Collector of Land Revenue to cancel an order of  
30 sale of charged lands and replace it with another.
4. The learned Judge erred in law in holding  
that the National Land Code gave power to a  
Collector of Land Revenue to cancel an order of  
sale of charged lands made by his predecessor in  
office.
5. The learned Judge erred in law in holding  
that the Appellants/Defendants ought to have  
appealed under Section 418 of the National Land

In the  
Federal  
Court of  
Malaysia

No. 7  
Memorandum  
of Appeal  
27th January  
1981  
(cont'd)

Code if they contested the purported order dated 26th December, 1979.

6. The learned Judge erred in law in holding that the Appellants/Defendants must be deemed to have accepted and were bound by the purported order dated 26th December, 1979 and could not be heard to say it was wrongful and invalid.

7. The learned Judge erred in law and on the facts in holding the Appellants/Defendants must be deemed to have waived their objections to the purported order dated 26th December, 1979.

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8. The learned Judge erred in law in holding that the purported order dated 26th December, 1979 must take effect.

9. The learned Judge erred in holding it was incumbent upon the Collector of Land Revenue to issue the purported order dated 26th December, 1979 in order to correct the omissions in the order dated 15th June, 1976.

10. The learned Judge erred in holding that the Collector of Land Revenue had made an order incorporating a lesser sum than that actually due to the Appellants/Defendants because the sale had been delayed by the Collector's intervention and failure.

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11. The learned Judge erred in law in holding that a Collector of Land Revenue has power to state in an order for sale of charged lands a sum less than the sum properly due to the chargee on the date of sale.

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12. The learned Judge erred in law in holding that the Appellants/Defendants should have made the Collector of Land Revenue a party to the action and asked him to pay the interest claimed.

13. The learned Judge erred in holding the Appellants/Defendants guilty of ill-doing, hiding behind pretexts and sheer lack of vigilance.

14. The learned Judge ought to have held that the purported order dated 26th December, 1979 was void, invalid and of no legal effect and ought to have held it was not an order at all.

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15. The learned Judge ought to have held that the Collector of Land Revenue did not, on the facts of this case, have power to make an order where he had not held the enquiry.

16. The learned Judge ought to have held that the total sum tendered by the Respondent/Plaintiff to the Collector of Land Revenue was not a full and proper tender of the total amounts as referred to under Section 266 subsection 2(a), (b) and (c) of the National Land Code.

In the Federal Court of Malaysia  
No. 7  
Memorandum of Appeal  
27th January 1981  
(cont'd)

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17. Consequently the learned Judge ought to have dismissed the claim by the Respondent/Plaintiff and granted an order in terms of the prayers in the Counterclaim by the Appellants/Defendants.

Dated this 27th day of January, 1981.

Sgd. T. Zuhri  
Solicitors for the Appellants

This Memorandum of Appeal is filed by Messrs Tunku Zuhri, Manan & Abdullah, Advocates & Solicitors, 12th Floor, Bangunan Ming, Jalan Bukit Nanas, Kuala Lumpur, Solicitors for the Appellants/Defendants abovenamed.

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In the  
Federal  
Court of  
Malaysia

No. 8

Order of the Federal Court  
25th March 1982

No. 8  
Order of the  
Federal Court  
25th March  
1982

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT  
KUALA LUMPUR

(APPELLATE JURISDICTION)

CIVIL APPEAL NO. 2 OF 1981

BETWEEN

Eu Finance Berhad Appellants

AND

Lim Yoke Foo @ Lim Yap Kwee Respondent

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(In the matter of Civil Suit No. 53 of  
1980 in the High Court in Malaya at  
Kuantan

BETWEEN

Lim Yoke Foo @ Lim Yap Kwee Plaintiff

AND

Eu Finance Berhad Defendants)

CORAM: LEE HUN HOE , CHIEF JUSTICE HIGH COURT,  
BORNEO.  
HASHIM YEOP ABDULLAH SANI , JUDGE, HIGH  
COURT , MALAYA.  
E. ABDOOLCADER , JUDGE, HIGH COURT, MALAYA

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IN OPEN COURT

THIS 25TH DAY OF MARCH, 1982

O R D E R

THIS APPEAL coming up for hearing on this  
day in the presence of Mr. S.D.K. Peddie (Encik  
Zainudin bin Ismail with him) of Counsel for the  
Appellants abovenamed and Mr. M.A. Krishnan of  
Counsel for the Respondent abovenamed AND UPON  
READING the Record of Appeal filed herein AND  
UPON HEARING the argument and submission of  
Counsels aforesaid IT IS ORDERED that this  
Appeal be and is hereby allowed AND IT IS ORDERED  
that the Judgment of the learned Judge be set  
aside, that the Respondent's claim be dismissed  
and that the Appellants be granted a declaration  
on the counterclaim that the first order of the  
Collector of Land Revenue dated 15th June, 1976

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is still subsisting and of full legal effect AND IT IS FURTHER ORDERED that the moneys lodged on fixed deposit by the Respondent's Solicitors in satisfaction of the Appellant's claim together with the accrued interest thereon be paid out to the Appellants in satisfaction of its claim under the Charge AND IT IS LASTLY ORDERED that costs of this Appeal and in the Court below in respect of the claim and counter-claim be awarded to the Appellants and that the sum of \$500.00 deposited into Court by the Appellants by way of security be refunded to the Appellants.

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In the  
Federal  
Court of  
Malaysia  
No. 8  
Order of the  
Federal Court  
25th March  
1982  
(cont'd )

Given under my hand and the Seal of the Court this 25th day of March 1982.

SD: Illegible  
SENIOR ASSISTANT REGISTRAR  
FEDERAL COURT  
KUALA LUMPUR.

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This Order is filed by Messrs. Tunku Zuhri, Manan & Abdullah, Advocates & Solicitors, 12th Floor, Bangunan Ming, Jalan Bukit Nanas, Kuala Lumpur, Solicitors for the Appellants abovenamed.

In the  
Federal  
Court of  
Malaysia

No. 9

Judgment of the Federal Court  
31st March, 1982

No. 9  
Judgment of  
the Federal  
Court - 31st  
March 1982

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT  
KUALA LUMPUR

(APPELLATE JURISDICTION )

CIVIL APPEAL NO. 2 OF 1981

Between

Eu Finance Berhad Appellant  
And  
Lim Yoke Foo @ Lim Yap Kwee Respondent

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(In the matter of Civil Suit No. 53 of 1980 in  
the High Court in Malaya at Kuantan

Between

Lim Yoke Foo @ Lim Yap Kwee Plaintiff  
And  
Eu Finance Berhad Defendant )

Coram: Lee Hun Hoe, C.J., Borneo  
Hashim Yeop A. Sani, J.  
Abdoolcader, J.

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JUDGMENT OF THE COURT

THE ISSUE FOR DETERMINATION

The appeal before us involves only an issue as to the validity vel non of an order for the sale of land made by the Collector of Land Revenue, Kuantan on 26th December 1979 in Form 16H under section 263 of the National Land Code, 1965 ('the Code') after a similar order of sale after due enquiry under sections 261 and 262 of the Code had been made some three and a half years previously by another Collector on 15th June 1976. To avoid repetition, all references to statutory provisions in this judgment are in respect of the Code unless otherwise specifically indicated.

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BACKGROUND OF PROCEEDINGS

The facts of the matter, in so far as material for the determination of the issue in

question, are that the respondent as the registered owner of lands situate in Pahang and comprised in 20 titles executed a charge thereon as security for a loan of \$350 000 in favour of the appellant which was duly registered on 8th November, 1974. As a result of the requisite steps taken by the appellant to enforce the charge in default of payment, the Collector of Land Revenue, Kuantan ('the Collector') held an enquiry pursuant to the provisions of sections 261 and 262 which was concluded on 29th May, 1976, and he then made an order dated 15th June 1976 under section 263 in Form 16H ('the first order') for the sale of the lands by public auction on 5th August 1976, specifying the amount due to the appellant at the date of the order as \$443 694.52 and fixing the reserve price at \$507 000, but by an error set out in the schedule thereto only 12 instead of 20 titles as he should have. The appellant complained of the omission on 22nd June 1976 and asked for rectification of this lapsus calami by the Collector who by a letter dated 30th June 1976 acknowledged the error and confirmed that the first order covered all the 20 titles.

In the Federal Court of Malaysia  
No. 9  
Judgment of the Federal Court - 31st March 1982  
(cont'd)

The respondent filed on 18th June 1976 a notice of appeal against the first order (later substituted as required by the rules of court by a motion by leave of the court) founded on the rate of interest exigible whereupon the Collector purported to cancel the sale but in effect only postponed it as will be seen when we discuss the position in law. The appeal was however withdrawn on 8th June 1978 and the appellant's solicitors then requested the Collector to proceed with the sale by a letter dated 20th December 1978 followed by a reminder on 21st December 1979 in which the Collector was notified that the amount outstanding on 30th September 1978 was \$590 939.04 with interest chargeable thereafter at \$175 per diem. The Collector, whose office had by now been assumed by an entirely different person from the one who had held the enquiry and made the first order, then made and issued another order of sale dated 26th December 1979 under section 263 in Form 16H ('the second order') in which he purported to order the sale of the lands in question by public auction on 31st January 1980, specifying the amount due to the appellant as the same as that stated in the first order, namely \$443 694.52, but fixing the reserve price this time at a higher figure of \$562 000 and scheduling all the 20 titles.

In the  
Federal  
Court of  
Malaysia

No. 9  
Judgment of  
the Federal  
Court - 31st  
March 1982  
(cont'd)

On 28th January 1980 the Collector informed the appellant's solicitors by telephone that he was cancelling the sale as the respondent had tendered to him under section 266 the amount stated in the second order and he confirmed this intimation by a letter on 6th February 1980 to the effect that the respondent had paid to him the sum specified in the second order under section 266(1) and (2)(a). The appellant protested that that amount was in fact the sum due at the date of the first order and that there was accordingly no effective or valid tender by the respondent for the purposes of section 266. The substantive dispute between the parties is in relation to the interest accruing between the date of the first order and the tender made by the respondent, as the appellant's contention, as its solicitors clearly indicated to the Collector in their letter of 1st March 1980, is that the amount due from the respondent as on 25th February 1980 was \$683 956.44 with daily interest of \$175 accruing thereafter until payment, apart from the legal fees incurred by the appellant in the sum of \$6 526.80. As the respondent did not accede thereto the appellant's solicitors requested the Collector on 3rd May 1980 to fix a new date for the sale.

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The respondent had in the meantime however issued a writ on 26th April 1980 which was served on the appellant on 2nd May 1980, claiming the release and delivery of the issue documents of title and the registered duplicate copies of the charge, an order for the execution by the appellant or the Senior Assistant Registrar of the Court of a memorandum of discharge of the charge, and also damages. The appellant in turn counterclaimed for a declaration that the first order is still subsisting and of full legal effect with consequential prayers in respect of the sums claimed to be due and outstanding. The parties apparently agreed in the High Court that no evidence was necessary in these proceedings and that the suit should be determined only on written submissions of counsel. The learned Judge accordingly proceeded on this basis and on 10th December 1980 delivered judgment for the respondent on his claim except, as it would appear from the formal order extracted, in respect of his claim for damages, and dismissed the appellant's counterclaim.

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The appellant appeals against this decision but we are told from the Bar that on an application for a stay of execution pending the determination of the appeal, the parties had

10 agreed and an order was made accordingly to the effect that the charge would be discharged on payment of the amount not in dispute, and this has been done, but that the sum in dispute was to be lodged on fixed deposit in the name of the respondent's solicitors pending the result of the appeal. Counsel on both sides have therefore indicated that the only decision required of us in this matter is in regard to the validity of the second order and this would then only entail a consequential order for the disposal of the amount in dispute so lodged on fixed deposit.

In the Federal Court of Malaysia  
No. 9  
Judgment of the Federal Court - 31st March 1982  
(cont'd)

#### VALIDITY OF THE SECOND ORDER

20 There is no power in the Collector to cancel an order made under section 263 or the sale to be effected thereby. When the Collector purported to cancel the first order on the respondent lodging an appeal against it, he was in effect postponing the sale, as he has only the power by virtue of the provisions of section 264(3) to postpone a sale ordered under section 263, and subject thereto an order of sale once made will have to be implemented in accordance with the provisions of section 265 unless it ceases to have effect under the provisions of section 266(1) upon tender by a chargor of the amounts specified in section 30 266(2).

40 The error in the first order in specifying only 12 instead of 20 titles was acknowledged and confirmed by the Collector by his letter of 30th June 1976 and he could have formally rectified this under section 33 which applies to the enquiry held before the first order was made by virtue of the provisions of section 261(2). Section 34 provides for the re-opening and section 35 for a rehearing of an enquiry in the circumstances stipulated therein which do not apply in this case, and section 36 specifically prohibits a second enquiry except as provided in section 34. As soon as the Collector made the first order under section 263, he was fuctus officio save as to his power under section 264(3) to postpone the sale ordered or to formally rectify the first order within the purview of section 33, which no power to make another or subsequent order of sale under section 263. The second order was made 50 by a different Collector from the one who made the first order without holding any enquiry under sections 261 and 262 which is a prerequisite

In the  
Federal  
Court of  
Malaysia

No. 9  
Judgment of  
the Federal  
Court - 31st  
March 1982  
(cont'd)

for an order under section 263(1). He had no power to make any such order as he purported to, and we would ingeminate the absence of any power even in the Collector who made the first order himself to make a second order under section 263. He has only the power within the provisions of section 33 to correct verbal errors or remedy some accidental defect or omission not affecting a material part of the enquiry.

It is contended on behalf of the respondent that the second order was made to rectify the omission of 8 titles covered by the charge in the schedule to the first order, and further that the first and second orders have a common mistake in that they should both have been dated 29th May 1976 when the enquiry was concluded and that the appellant should have taken steps to have the dates of the two orders rectified accordingly by way of an appeal under section 418. We find this argument wholly untenable. The Collector who made the first order had on 30th June 1976 acknowledged the error in the Form 16H incorporating that order and he could have issued a corrective order under section 33 or the matter could perhaps have been rectified by the court under section 417(1). It is inconceivable that the second order made some three and a half years later was ever intended as a corrective order to repair the omission of the 8 titles and in any event it was not a corrective but an entirely different one as it bears a new date for the sale, an enhanced reserve price and is dated when it was in fact issued a considerable time later, and made by another Collector in flagrant violation of the provisions of section 263 at that. We should perhaps add on the point made as to the date of the two orders that the first order was properly dated 15th June 1976 in the Form 16H in which it is set out in view of the provisions of section 263(2), and the second order, in so far as the date is concerned, was also appropriately dated 26th December 1979 when it was purportedly made, and by no stretch of reasoning or imagination would it be possible to say that the second order should bear the same date as the first.

In the circumstances it is abundantly clear that the second order on which the respondent relies is no order at all within and for the purposes of section 263 and is a nullity and devoid of any effect.

The respondent however argues that the

second order in any event stands until and unless it has been set aside, and that the appellant's failure to appeal under section 418 to have it set aside is fatal and it is therefore not now open to the appellant to question its validity in these proceedings. The learned Judge accepted this contention and in effect based his decision on this premise.

In the  
Federal  
Court of  
Malaysia

No. 9  
Judgment of  
the Federal  
Court - 31st  
March 1982  
(cont'd)

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The general rule is that where an order is a nullity, an appeal is somewhat useless as despite any decision on appeal, such an order can be successfully attacked in collateral proceedings; it can be disregarded and impeached in any proceedings, before any court or tribunal and whenever it is relied upon - in other words, it is subject to collateral attack. In collateral proceedings the court may declare an act that purports to bind to be non-existent. In Harkness v. Bell's Asbestos and Engineering Ltd., (1) Lord Diplock, L.J. (now a Law Lord) said (at page 736) that 'it has been long laid down that where an order is a nullity, the person whom the order purports to affect has the option either of ignoring it or of going to the court and asking for it to be set aside'.

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Where a decision is null by reason of want of jurisdiction, it cannot be cured in any appellate proceedings; failure to take advantage of this somewhat futile remedy does not affect the nullity inherent in the challenged decision. The party affected by the decision may appeal 'but he is not bound to (do so), because he is at liberty to treat the act as void' [Birmingham (Churchwardens and Overseers) v. Shaw (2) (at page 880 per Denman, C.J.)]. In Barnard v. National Dock Labour Board (3) it was said that, as a notice of suspension made by the local board was a nullity, 'the fact that there was an unsuccessful appeal on it cannot turn that which was a nullity into an effective suspension' (at page 34 per Singleton, L.J.). Ridge v. Baldwin (4) is to the same effect.

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- (1) (1967) 2 Q.B. 729, 736.  
(2) (1849) 10 Q.B. 868, 880.  
(3) (1953) 2 Q.B. 18, 34.  
(4) (1964) A.C.40.

In the  
Federal  
Court of  
Malaysia

No. 9  
Judgment of  
the Federal  
Court - 31st  
March 1982  
(cont'd)

Lord Denning said in Director of Public Prosecutions v. Head (5) (at page 111) that if an order was void, it would in law be a nullity and there would be no need for an order to quash it as it would be automatically null and void without more ado. Lord Denning as Master of the Rolls so held too in Regina v. Paddington Valuation Officer & Anor., Ex parte Peachey Property Corporation Ltd. (No. 2) (6) (at page 402). The judgment of this court in Pow Hing & Anor. v. Registrar of Titles, Malacca (7) refers (at page 157) to the decision of the House of Lords in London & Clydeside Estates Ltd. v. Aberdeen District Council & Anor. (8) and a passage in the judgment of the Lord Chancellor, Lord Hailsham of St. Marylebone (at page 189) where he refers to a spectrum of possibilities as the legal consequence of non-compliance with statutory requirements and speaks of one extreme where there has been such an outrageous and flagrant violation of a fundamental obligation that what has been done may be safely ignored and treated as having no legal consequence and in the event of any reliance sought thereon the party affected is entitled to use the defect simply as a shield or defence without having taken any positive action of his own.

10

20

The decision of this court in Land Executive Committee of Federal Territory v. Syarikat Harper Gilfillan Berhad (9) to the effect that section 418 which provides for an appeal is the exclusive remedy of an aggrieved person or body against a decision inter alia of a Collector of Land Revenue and precludes any claim for declaratory relief, on which the respondent seeks to rely, has no application to the present proceedings as the decision sought to be impugned in that case was made within jurisdiction and was not a nullity. We reiterate the second order in the matter before us is invalid and wholly dehors the provisions of the Code and no appeal is therefore essential or necessary to impugn its validity and it can be subject to collateral attack in the instant proceedings.

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40

- 
- (5) (1959) A.C. 83, 111.  
(6) (1966) 1 Q.B. 380, 402.  
(7) (1981) 1 M.L.J. 155, 157.  
(8) (1980) 1 W.L.R. 182, 189.  
(9) (1981) 1 M.L.J. 234



THE RESULT

In the  
Federal  
Court of  
Malaysia  
No. 9  
Judgment of  
the Federal  
Court - 31st  
March 1982  
(cont'd)

10

We accordingly for the reasons we have given allowed this appeal at the conclusion of argument, set aside the judgment of the learned Judge, dismissed the respondent's claim and granted the appellant a declaration on the counterclaim that the first order is still subsisting and of full legal effect. We further made the necessary consequential order as a result, by agreement of counsel as we have earlier indicated, for the moneys lodged on fixed deposit in the name of the respondent's solicitors in satisfaction of the appellant's claim together with the accrued interest thereon to be paid out to the appellant in satisfaction of its claim under the charge and also ordered costs of this appeal and in the court below to the appellant in respect of the claim and counterclaim. The deposit lodged in court by way of security will be refunded to the appellant.

20

EPILOGUE

This case is yet another illustration of a bureaucratic botch by a misinformed land official in complete disregard of his functions and powers under the Code which has not only generated needless litigation, no doubt lucrative for the lawyers but certainly onerous and expensive for the parties, but also evoked an observation by the learned Judge that the appellant should have made the Collector a party to these proceedings and be asked to pay it the disputed sum for further interest!

30

It is to be hoped, and it is expected, that it will not be necessary to repeat in the future the admonition administered in the peroration of the judgment of this court in Pow Hing(7) in perhaps even more trenchant terms or at all.

40

Sgd. Justice Dato E. Abdoolcader  
JUDGE  
(JUSTICE DATO EUSOFFE ABDOOLCADER)

31st March 1982.

For Appellant ... S.D.K. Peddie and  
Zainuddin bin Hj. Ismail  
Solicitors ... Tunku Zuhri, Manan &  
Abdullah  
For Respondent ... M.A. Krishnan  
Solicitors ... James Foong & Company

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NOTE: Hearing: 25th March 1982

In the  
Federal  
Court of  
Malaysia

No. 10  
Order  
granting  
final leave  
to Appeal to  
His Majesty  
the Yang Di  
Pertuan  
Agong - 6th  
December 1982

No. 10

Order granting final leave to Appeal  
to His Majesty the Yang Di Pertuan  
Agong - 6th December 1982

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT  
KUALA LUMPUR

(APPELLATE JURISDICTION)

CIVIL APPEAL NO. 2 OF 1981

BETWEEN

Eu Finance Berhad Appellant 10

AND

Lim Yoke Foo @ Lim Yap Kwee Respondent

(In the matter of Civil Suit No. 53 of  
1980 in the High Court in Malaya at  
Kuantan

BETWEEN

Lim Yoke Foo @ Lim Yap Kwee Plaintiff

AND

Eu Finance Berhad Defendant)

CORAM: RAJA AZLAN SHAH , LORD PRESIDENT, MALAYSIA 20  
SALLEH ABAS , JUDGE, FEDERAL COURT, MALAYSIA  
E. ABDOLCADER , JUDGE, HIGH COURT , MALAYA

IN OPEN COURT

THIS 6TH DAY OF DECEMBER 1982

O R D E R

UPON MOTION made unto Court this day by  
Encik M.A. Krishnan of Counsel for the Respondent  
in the presence of Encik Selvanathan of Counsel  
for the Appellant AND UPON READING the Notice of  
Motion dated the 2nd day of November 1982 and the 30  
Affidavit of Anad Krishnan a/l Muthusary affirmed  
on the 5th day of October 1982 all filed herein  
AND UPON HEARING Counsels aforesaid IT IS HEREBY  
ORDERED that final leave to appeal to His Majesty,  
the Yang Di-Pertuan Agong against the Judgment  
herein delivered on the 25th day of March 1982  
be granted to the Respondent AND IT IS FURTHER  
ORDERED that the costs of this Application be  
costs in the Appeal.

Given under my hand and the Seal of the 40  
Court this 6th day of December 1982.

Sgd. Illegible

SENIOR ASSISTANT REGISTRAR

FEDERAL COURT , MALAYSIA , KUALA LUMPUR

This Order is filed by Messrs. James Foong &  
Anad, Solicitors for the Applicant/Respondent, of  
10th Floor, Bangunan Yee Seng, 15, Jalan Raja  
Chulan, Kuala Lumpur 05-02.

PART II

EXHIBITS

Plaintiff's Exhibits - P.1.  
Form 16A (Charge) - 10th October  
1974

Plaintiff's Exhibits  
P.1.  
Form 16A  
(Charge)  
10th October  
1974

A N N E X U R E

EXPRESS PROVISIONS AFFECTING THE WITHIN-  
WRITTEN-CHARGE

10 I, the abovenamed LIM YOKE FOO alias LIM YAP KWEE trading as Syarikat Puchong Industrial and Development of 2nd Floor, Jalan Klyne, Kuala Lumpur (hereinafter called "the Chargor") DO HEREBY EXPRESSLY AGREE COVENANT DECLARE AND UNDERTAKE with the abovenamed EU FINANCE BERHAD of No. 305, Jalan Pudu, Kuala Lumpur (hereinafter called "the Chargee") as follows:-

20 1. The said lands are together with the buildings from time to time erected thereon charged for the benefit of the Chargee with repayment on the 21st day of December, 1974 (hereinafter called "the maturity date") or on such earlier date as the Chargor may elect with repayment of the sum of Dollars Three Hundred and Fifty Thousand (\$350,000.00) lent to the Chargor by the Chargee (which said sum is hereinafter referred to as "the Principal Sum") together with interest thereon at one point two five per centum (1.25%) per month and it is hereby mutually agreed that such interest shall be paid in three (3) instalments the first of such instalments to be paid within one (1) month following the release of the Principal Sum, the second instalment within two (2) months of such release and the last to be paid together with the repayment of the Principal Sum on the maturity date.

40 2. In amplification and not in derogation of the provisions of Clause 1 hereof it is hereby agreed in the event default be made by the Chargor in payment of any one or more of the said instalments and other payments hereby agreed to be made at the times and in the manner herein mentioned or in the observance and performance of any of the covenants agreements terms or conditions hereinafter expressed or implied or the Chargor shall allow a second charge to be registered against the said lands or become bankrupt or enter into any statutory

Plaintiff's Exhibits

P.1.  
Form 16A  
(Charge)  
10th October  
1974  
(cont'd)

or other composition or arrangement with his creditors generally or any order for the compulsory acquisition of the said lands or part thereof shall be made and confirmed under or by virtue of any Act of Parliament Ordinance Enactment or other statutory provision or regulation or the Chargor shall die then in any such case it is hereby mutually agreed that the Chargee shall be at liberty to demand immediate payment of the Principal Sum and interest thereon and all other sums payable under this Charge and upon such demand being made all such moneys shall become immediately payable.

10

3. (a) Notwithstanding that instalments may have been paid as aforesaid the remainder of the Principal Sum and interest shall continue to be due for all the purposes of the exercise of statutory and other powers on demand.

(b) The Chargor may redeem the said lands at any time by making payment to the Chargee of the Principal Sum and all other moneys due including interest up to the date of payment upon giving to the Chargee one (1) week's notice in writing of his intention so to do subject nevertheless to the provisions of Clause 12 hereof and sub-clause (c) next following.

20

(c) It is expressly agreed between the parties that in the event of the Chargor repaying the Principal Sum before the maturity date the interest on the Principal Sum payable shall be one point five per centum (1.5%) per month if such repayment is made at any time within two (2) months of the date of release of the Principal Sum and if in the meantime any interest has been paid to the Chargee, the Chargor shall make good the difference.

30

4. (a) The Chargor shall comply with and observe all the conditions restrictions and category of land use express or implied imposed upon relating to or affecting the said lands or to which the said lands are subject as well as the provisions of any Act of Parliament Ordinance or Enactment for the time being in force and of any rules or orders made thereunder affecting the same.

40

(b) The Chargor will at all times during the continuance of this security keep the said lands and all buildings and other property thereon in good and substantial repair and condition to the satisfaction of the Chargee and will permit the Chargee or its Agents with or

50

without workmen and others at any time at convenient hours in the day time to enter into or upon the said lands and all buildings and other property thereon and examine the state and condition thereof and will forthwith repair and make good all defects and wants of reparation of which notice in writing shall be given to the Chargor by the Chargee and in case of default the Chargor will permit the Chargee to enter upon the same and effect such repairs as the Chargee may consider necessary.

Plaintiff's  
Exhibits

P.1.  
Form 16A  
(Charge)  
10th October  
1974  
(cont'd)

10

(c) The Chargor will pay all assessment rates taxes quit rents and other impositions in respect of the said lands and all buildings and other property thereon as soon as the same become due and will produce to the Chargee on demand all receipts for such payments and in default of payment or production as aforesaid it shall be lawful (but not obligatory) for the Chargee to pay all or any of such assessment rates taxes quit rents and other impositions.

20

(d) The Chargor will not at any time during the continuance of this security without the previous consent in writing of the Chargee make or suffer to be made any material change or addition whatsoever in or to the use of the said lands or any building, buildings or erection thereon or any part thereof and also if the Chargee shall consent as aforesaid will duly apply for all necessary permission as required by law and will give the Chargee immediate notice of such permission if granted and also that the Chargor will at all times indemnify and keep indemnified the Chargee against all proceedings costs expenses claims and demands whatsoever in respect of and arising out of the said application.

30

(e) At all times during the continuance of this security the Chargee may in its own or some other agency and at the expense of the Chargor insure and keep insured for such amounts in such names and with such insurers as the Chargee may from time to time select any buildings or any effects or property of an insurable nature whether affixed to the said lands or not being or forming part of the said lands;-

40

(i) against loss or damage by fire

(ii) against such other risks as the

50

Plaintiff's  
Exhibits

P.1.  
Form 16A  
(Charge)  
10th October  
1974  
(cont'd)

Chargee may from time to time think expedient and the Chargee may retain for its own use and benefit any commission paid or allowed to it as agents for such insurers.

(f) The Chargor will repay every sum from time to time paid by the Chargee for effecting or keeping on foot any such insurance.

(g) The Chargor will not except at the request or with the consent of the Chargee effect or keep on foot any insurance against any risk in respect of the said lands and other property hereby secured where the Chargee has effected or shall keep on foot such insurance. 10

(h) The Chargor will permit all insurance policies and the receipts or other evidence of payment of any premium paid by the Chargee to remain in the custody of the Chargee and will when required deliver or produce to the Chargee or to such persons as the Chargee may direct any policy of insurance by the Chargor and the receipt or other evidence or payment of the current premium in respect thereof. 20

(i) The Chargee may require any money received on any insurance of the said buildings effect or property whether effected by the Chargee or by the Chargor to be applied in or towards making good the loss or damage in respect of which the money is received or in or towards the discharge of any principal money or interest secured hereby and the Chargor shall hold any money received on such insurance in trust for the Chargee and the Chargee may receive and give a good discharge for any such money. 30

(j) The Chargor will not sell transfer lease, agree to lease let or part with possession of the said lands or any building thereon or any part thereof nor will he accept the surrender or any lease without the written consent of the Chargee which may be refused without assigning any reason therefor or given either absolutely or on such terms and conditions including the payment of increased monthly instalment or additional interest as the Chargee may deem necessary or advisable for the protection of its security and the decision of the Chargee shall be final and conclusive and shall not be questioned on any account whatsoever. 40

(k) The Chargor will within seven (7) days of the receipt of notice of the same by him give 50

full particulars to the Chargee of any notice or proposal for a notice or order or proposal for an order given issued or made to the Chargor in respect of the said lands or any building erected thereon by or on behalf of any planning, local government, public health sanitary housing or other authority and if so required by the Chargee produce such notice to the Chargee and also will without delay and within the period prescribed by such notice take all reasonable or necessary steps to comply with the provisions of such notice or order and also will at the request of the Chargee and at the last cost of the Chargor make or join with the Chargee in making such objection or objections or representation against or in respect of any proposal for such a notice or order as the Chargee shall deem expedient.

Plaintiff's  
Exhibits  
P.1.  
Form 16A  
(Charge)  
10th October  
1974  
(cont'd)

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(1) The Chargor will not do or omit or suffer to be done or omitted any act matter or thing in or on respecting the said lands or any building erected thereon which shall contravene the provisions of any Act of Parliament Ordinance Enactment order rules or regulations now or hereafter effecting the same and he will at all times hereafter indemnify and keep indemnified the Chargee against all actions proceedings costs expenses claims and demands in respect of any such act matter or thing done or omitted to be done in contravention of the said provisions.

30

40

5. In the event of any breach of the Chargor of any of the agreements covenants, terms, stipulations and undertakings herein provided and on the part of the Chargor to be observed and performed (including the agreement or covenant to pay the sum for the time being owing to the Chargee on demand as aforesaid) occurring and continuing for a period of not less than seven (7) days it shall be lawful for the Chargee forthwith to give notice to the Chargor under Section 254 of the National Land Code requiring the Chargor to remedy the said breach within a period of not less than seven (7) days.

50

6. Nothing contained herein shall be deemed to render it obligatory upon the Chargee either at law or in equity to make or continue to make any advances or to afford any other accommodation or facility whatsoever.

7. The Chargee may from time to time make such payments as it may consider expedient to any

Plaintiff's  
Exhibits

P.1.  
Form 16A  
(Charge)  
10th October  
1974  
(cont'd)

person whether the Chargor himself or anyone acting at his request or a receiver or subsequent chargee or to any person acting on the instructions of the Chargee in connection with maintaining repairing amending altering improving or insuring the said lands or any buildings erected thereon or for outgoings in relation thereto or for costs or expenses incurred by the Chargee for the enforcement protection or improvement of the security hereby created or the ultimate discharge of this Charge and generally as provided in Clause 4 hereof and all moneys so paid shall carry interest at the ruling rate from the date of the same being paid by the Chargee and shall be repayable with such interest by the Chargor on demand made by notice in writing. The expression "expenses" in this Clause shall be deemed to include all payments made or to be made by the Chargee in respect of:-

10

- (a) Taking out and maintaining any policy on the life of the Chargor or any policy guaranteeing the repayment of the money hereby secured or any part thereof and whether absolutely or on the happening of a contingency or any fire or other insurance policy. 20
- (b) Any work in or in connection with the construction repair maintenance or improvement of any private road or street (whether adjoining the said lands or giving access to the estate of which the said lands form part, or otherwise) or of drains sewerage pipes, septic tanks and other like things. 30
- (c) Any compliance with a notice or requirement relating to dilapidations nuisance or other thing of a like nature affecting the said lands or any buildings erected thereon. 40
- (d) Quit rent or any tax rate or assessment whatsoever affecting the said lands or any building erected thereon.
- (e) All costs and disbursements (legal or otherwise and where legal both judicial and extra judicial and as between solicitor and own client) incurred or paid by the Chargee incidental to this Charge or the collection of any money due or to become due hereunder. 50



8. (a) The Chargee may at any time with or without the consent or concurrence of the Chargor transfer the benefit of this security to any person.

Plaintiff's  
Exhibits

P.1.  
Form 16A  
(Charge)  
10th October  
1974  
(cont'd)

10 (b) All costs and expenses of the Chargee and of the transferee of and incidental to such transfer shall be payable by the Chargor and any statement or recital in the document of transfer of the amount then due to the Chargee under and by virtue of this Charge shall be conclusive and binding on the Chargor saving manifest errors only.

20 9. Section 245 of the National Land Code shall not apply to this Charge. In addition to and without prejudice to any other right of consolidation it is hereby declared that the said lands shall not be redeemed save and except on payment of all moneys due under any charge created by the Chargor or any person through whom he claims which is at the date hereof or at any time hereafter charged to or vested on the Chargee over any property other than the property comprised in this Charge.

10. Any notice required or authorised by this Charge or by statute to be given to or served on the Chargor shall be in writing and shall be sufficiently served under the National Land Code.

30 11. Any notice required or authorised by this Charge to be made by the Chargor to the Chargee shall be in writing and shall be sent by registered post to the Office of the Chargee.

40 12. Notwithstanding the fact that it may not have exercised any remedy available to it immediately on default by the Chargor or that it may have accepted moneys from the Chargor after such default the Chargee shall not be held to have condoned or acquiesced in such default and may at any time thereafter exercise all or any of the remedies available to it and any delay on the part of the Chargee in taking steps to enforce the remedies conferred on or available to it by this Charge or statute shall not be held to prejudice its right of action in respect thereof.

50 13. If the amount realised by the Chargee on a sale of the said lands under the provisions of the National Land Code after deduction and payment from the proceeds of such sale of all fees dues costs rents taxes and other outgoings

Plaintiff's  
Exhibits  
P.1.  
Form 16A  
(Charge)  
10th October  
1974  
(cont'd)

on the said lands is less than the amount due to the Chargee and whether at such sale the Bank is the purchaser or otherwise, the Chargor shall pay to the Chargee the difference between the amount due and the amount so realised and until payment, will also pay interest on such balance at the rate aforesaid with monthly rests.

14. In this Charge where the context so admits:-

- (a) "Month" means a month of thirty days. 10
- (b) The expression "National Land Code" means the National Land Code (Act 56 of 1965).
- (c) The expression "instalment" means an instalment payable under any covenant or provision herein contained.
- (d) The expression "Chargor" includes the personal representatives of and all persons deriving title under the Chargor. 20
- (e) The expression "Chargee" include its successors in title and assigns.

AS WITNESS the hands of the abovenamed Chargor and the Attorney of the abovenamed Chargee the day and year first above-written.

SIGNED by the abovenamed )  
LIM YOKE FOO alias LIM ) Sgd.  
YAP KWEE in the presence )  
of:- ) 30  
Sgd.  
Low Yong Suan  
Advocate & Solicitor  
Kuala Lumpur.

SIGNED by FRED EU KENG )  
FAI for and on behalf of ) EU FINANCE BERHAD  
the abovenamed EU ) By its Attorney  
FINANCE BERHAD in the ) Sgd.  
presence of:- ) 40  
Sgd.  
Low Yong Suan  
Advocate & Solicitor  
Kuala Lumpur.



P.3.  
Translation  
of Form 16H  
15th June  
1976

PTK.007/920

National Land Code

Form 16H

(Section 263)

ORDER OF SALE AT THE REQUEST OF CHARGEES

I, Mohd. Zainudin bin Mohd. Yusof,  
Collector, having made enquiry on the  
application of the chargee under the charge  
described in the schedule below of the land so  
described and being satisfied that no cause to  
the contrary exists;

10

Hereby, in exercise of the powers  
conferred by section 263 of the National Land  
Code, order the sale of the said land;

And I further order -

(a) that the sale shall be by public  
auction, to be held on the 5th day  
of August, 1976 at 9.00 am at the  
Land Office, Kuantan.

20

(b) that the reserve price for the purpose  
of the sale shall be \$507,000.00

2. I find that the amount due to the chargee  
at this date is \$443,694.52

Dated this 15th day of June, 1976.

Seal of  
Collector of  
Land Revenue,  
Kuantan

Collector Sgd.  
District Kuantan

30

SCHEDULE OF LAND\* AND INTEREST

*Town/Village Mukim	*Lot/Parcel L.D. No.	Description and No. of Title	Share of Land (if any)	Registered No. of Sub-Lease (if any)	Registered No. of charge (if any)
(1)	(2)	(3)	(4)	(5)	(6)
K. Kuantan	PT.5203	HS(M) 4729	Whole	-	Gadaian Pers.N 172
"	PT.5204	HS(M) 4730	"	-	Jilid 24.Folio
"	PT.5205	HS(M) 4731	"	-	"
"	PT.5206	HS(M) 4732	"	-	"
"	PT.5207	HS(M) 4733	"	-	"
"	PT.5208	HS(M) 4734	"	-	"
"	PT.5209	HS(M) 4735	"	-	"
"	PT.5210	HS(M) 4736	"	-	"
"	PT.5211	HS(M) 4737	"	-	"
"	PT.5212	HS(M) 4738	"	-	"
"	PT.5213	HS(M) 4739	"	-	"
"	PT.5214	HS(M) 4740	"	-	"

\* Delete whichever is not applicable

(This Form is translated by the Attorney-General, Malaysia, vide Legal Notification No. 12 of 1964. A.G. 3309 SF.1; P.T.TM.5/65(4))

Plaintiff's Exhibits

P.3.  
Translation  
of Form 16H  
15th June  
1976  
(cont'd)

P.4.  
Translation  
of Form 16H  
26th December  
1979

ORDER OF SALE AT THE REQUEST OF THE CHARGEЕ

I, Zainal Kassim bin Datuk Darus, Collector, having made enquiry on the application of the chargee under the charge described in the schedule below of the land so described and being satisfied that no cause to the contrary exists;

Hereby, in the exercise of the powers conferred by section 263 of the National Land Code, order the sale of the said land;

10

And I further order -

- (a) that the sale shall be by public auction, to be held on the 31st day of January 1980 at 10.00 am
- (b) that the reserve price for the purpose of the sale shall be \$562,000.00

2. I find that the amount due to the chargee at this date is \$443,694.52

20

Dated this 26th day of December, 1979

Collector Sgd

District Kuantan

Seal of Collector of  
Land Revenue, Kuantan.

SCHEDULE OF LAND \*AND INTEREST

*Town/Village Mukim	*Lot/Parcel L.O. No.	Description and No. of Title	Share of Land (if any)	Registered No. of *Lease/Sub Lease (if any)	Registered No. of Charge (if any)
(1)	(2)	(3)	(4)	(5)	(6)
1. K. Kuantan	PT.5203	HS(M) 4729	Whole	-	Pers: 1727
2. "	PT.5204	HS(M) 4730	"	-	Jilid: 24
3. "	PT.5205	HS(M) 4731	"	-	Folio : 20
4. "	PT.5206	HS(M) 4732	"	-	"
5. "	PT.5207	HS(M) 4733	"	-	"
6. "	PT.5208	HS(M) 4734	"	-	"
7. "	PT.5209	HS(M) 4735	"	-	"
8. "	PT.5210	HS(M) 4736	"	-	"
9. "	PT.5211	HS(M) 4737	"	-	"
10. "	PT.5212	HS(M) 4738	"	-	"
11. "	PT.5213	HS(M) 4739	"	-	"
12. "	PT.5214	HS(M) 4740	"	-	"
13. "	PT.5215	HS(M) 4741	"	-	"
14. "	PT.5216	HS(M) 4742	"	-	"
15. "	PT.5217	HS(M) 4743	"	-	"
16. "	PT.5218	HS(M) 4744	"	-	"
17. "	PT.5219	HS(M) 4745	"	-	"
18. "	PT.5220	HS(M) 4746	"	-	"
19. "	PT.5221	HS(M) 4747	"	-	"
20. "	PT.5222	HS(M) 4748	"	-	"

\*Delete whichever is not applicable.

(This Form is translated by the Attorney-General, Malaysia, Vide  
Legal Notification No. 12 of 1964, AG.3309 SF.1; P.T.TM. 5/65(4).)

Plaintiff's  
Exhibits  
P.4.  
Translation  
Of Form 16H  
26th December  
1979  
(cont'd)

Plaintiff's  
Exhibits

P.5. - Translation of Receipt  
No. U971480 - 25th January 1980

P.5.  
Translation  
of Receipt  
No. U971480  
25th January  
1980

(Fin) 38)  
(Rev. 12/64)  
Receipt

No. U971480

MALAYSIA

STATE of Pahang

Station Kuantan Department Land

Received from Lim Yoke Foo alias Lim Yap Kwee

Dollars four hundred forty three thousand six 10

hundred ninety four & cents fifty two only

in respect of

"Tender" payment on land  
HS(M) 4729 - \$ 443,694.52  
4748 Mukim Kuala Kuantan  
according to Section 266(E)  
(1) & (2) (A)  
N.L.C.  
P.T.K. 007/920  
\$ 443,694.52 20

Signature : Sgd.

Date: 25/1/1980



P.6. - Translation of Letter from  
Pemungut Hasil Tanah, Kuantan to  
the Plaintiff's Solicitors, Messrs.  
James Foong & Co - 7th April 1980

Plaintiff's  
Exhibits

P.6.  
Translation  
of Letter  
from Pemungut  
Hasil Tanah,  
Kuantan to  
the Plaintiff's  
Solicitors,  
Messrs. James  
Foong & Co.  
7th April  
1980

Telephone : Kuantan 21191/21290

DISTRICT AND LAND OFFICE  
KUANTAN 25

Our Letter Bil ( ) dlm.1TK.007/920

Your Letter: Kuantan 7th April 1980

10 M/s. James Foong & Co.,  
Yee Seng Building,  
15 Jalan Raja Chulan,  
Kuala Lumpur 05-02.

Sirs,

Order of Sale On the Application of  
the Chargee Dated 9th October, 1975,  
in respect of HS(M)4729 to BS(B)4748  
PT.5203 to PT.5222, Mukim Kuala  
Kuantan (20 titles)

20 With reference to the above matter, it  
is given below a brief account of the progress  
of this case:-

1.1: This application was submitted by the  
Chargee through M/s Tunku Zubri Manan &  
Abdullah, to this Administration on 9th  
October 1975 attaching Form 16G (Section  
260) National Land Code, Act 56/1965,  
dated 17th September 1975 and not on 26th  
December 1979, as in your document in  
your letter dated 28/1/1980.

1.2: The Collector of Land Revenue, Kuantan,  
had made enquiries on :-

1.2.1: 24/4//76 - at 9.45 am and

1.2.2: 29.5.76 - at 10.05 am

in this Administration (Department)

1.3: The Order of Sale of the Lands involved  
by public auction was made and issued on  
29/5/1976.

40 1.4: Form 16H (Section 263) National Land Code,  
Act 56/1965, dated 15th January, 1976, was  
issued by this Administration for gazetting

Plaintiff's Exhibits

P.6.

Translation of Letter from Pemungut Hasil Tanah, Kuantan to the Plaintiff's Solicitors, Messrs. James Foong & Co. 7th April 1980. (cont'd)

by the Honourable State Legal Advisor for public auction on 5th August, 1976 at 9.00am in this Administration (Department).

1.5: The Chargor through M.S. T. Ariarajah & Co., Advocates and Solicitors, submitted a letter of objection dated 18th June, 1976, to this Administration (Department). This matter had been referred to the High Court, Kuantan, and had been registered as Civil Appeal No. 9 of 1976.

10

1.6: "Notice of Motion" dated 15/10/1977, was issued and the date of hearing was fixed for 6th March, 1978 at 2.00p.m.

1.7: The Chargor withdrew this objection (reference) on 8th June, 1978, at the High Court, Kuantan.

1.8: This Administration (Department) had taken further action to carry out the order issued on 29/5/1976; as follows:-

1.8.1: Obtained land valuation from the State Valuation Director, vide our letter bil. (38), dated 21st April 1979, in the same series (to this letter) to obtain the actual valuation of these lands, in respect of which we are of the opinion that the market price is different between the years 1976 and 1979.

20

1.8.2: Submitted claim in respect of departmental payments which must be settled before the date of auction was fixed, according to our letter bil.(43) dated 5th June, 1979 in the same series. These payments had been settled.

30

1.8.3: Prepared and sent Form 16H (Section 263) National Land Code, Act 56/1965 dated 26th December 1979 for purposes of gazetting, for public auction which would be held on 31st January 1980.

40

Those actions were as a follow up to the order of sale which was issued on 29/5/76 (para 3)

2. On 24/1/80, you together with 2 other persons, came to see me to hand over Bank Draft N.B. Bhd. No. 971181, to the value of \$443,694.52c together with interest payment

for the charge for the sum of \$5,367.25c by Bank Draft.

Plaintiff's Exhibits

10 3. I consulted the Honourable State Legal Advisor at 3.30pm on 24/1/80 in his room, and he gave his view that interest payment did not arise anymore after the date the order was issued. The payment which should be settled was the total which was fixed on the date the order was made. This action is in accordance with Section 263/266, National Land Code 56/1965.

P.6.  
Translation  
of Letter  
from Pemungut  
Hasil Tanah,  
Kuantan to the  
Plaintiff's  
Solicitors,  
Messrs. James  
Foong & Co.  
7th April  
1980  
(cont'd)

4. Therefore, Bank Draft N.B. Bhd. No. 971182 to the value of \$5,367.25c was returned.

20 5. However, you still have not complied with the requirements of Section 266(2)(c), National Land Code 56/1965 according to the order which was issued on 29/8/1976, that is to pay all the legal expenses of the chargee amounting to \$2,000/-.

That is all, thank you.

Yours obediently ,

Sgd.

(ZAINAL KASSIM BIN DATUK DARUS)

for Collector of LAND Revenue,  
Kuantan.

cc.

30 The Honourable State Legal Advisor,  
Wisma Sri Pahang,  
KUANTAN.

Plaintiff's  
Exhibits

P,7.  
Translation  
of letter from  
Pemungut Hasil  
Tanah, Kuantan Telephone Kuantan 21191/21290  
to the  
Plaintiff's  
Solicitors,  
Messrs. James  
Foong & Co.  
14th April  
1980

P.7. - Translation of letter from  
Pemungut Hasil Tanah, Kuantan to  
the Plaintiff's Solicitors, Messrs.  
James Foong & Co. - 14th April 1980

DISTRICT AND LAND OFFICE  
KUANTAN

Our Letter Bil (55) dlm. PTK  
007/920 Kuantan 14th April 1980

Your Letter:

10

M/s James Foong & Co.,  
Yee Seng Building,  
15, Jalan Raja Chulan,  
KUALA LUMPUR 05-02

Sirs,

Payment for Order (of Sale) On HS(M)  
4729 to HS(M) 4748, Mukim K, Kuantan

With reference to the above-mentioned matter,  
it is returned herewith your sum of \$10/- because  
payment for the Order (of Sale) has already been  
settled by M/s. Tunku Zuhri, Manan & Abdullah, on  
28th June, 1979, Rt. No: 6056.

20

That is all, thank you.

Yours obediently,  
sgd.

(ZAINAL KASSIM BIN DATUK DARUS)  
for Collector of Land Revenue  
Kuantan.

SERVICE FOR THE NATION

Defendants' Exhibits

D.l. - Letter from Plaintiff to  
Defendants - 12th September 1974

Defendants'  
Exhibits

D.l.  
Letter from  
Plaintiff to  
Defendants  
12th September

SYARIKAT PUCHONG INDUSTRIAL & DEVELOPMENT

No. 8, (2nd Floor, Jalan Klyne, Kuala Lumpur, 1974  
Malaysia. Tel: 85726; 86098

Your ref:                      Date: 12th September, 1974

Our ref:

10

M/s. Eu Finance Berhad,  
305, Jalan Pudu,  
P.O. Box 2229,  
KUALA LUMPUR.

Dear Sirs,

Re: Secured Loan for \$350,000.00

We wish to apply for a short-term loan of  
\$350,000.00 to be secured by charge on lands  
held under H.S.(M) 4229 to 4748 for L.O. No. 5203  
to 5222 inclusive, Mukim of Kuala Kuantan..

20

The loan is required by us for the  
development of the said lands in Kuantan into  
a hotel and shopping complex.

We undertake to pay your loan processing  
fee of \$350/- and to repay the loan within 3  
months at an interest of 15% per year.

Enclosed herewith for your attention are:-

30

1. Valuation Report prepared by Ms. C.H.  
William, Talhar & Wong Sdn.
2. Architect's perspective drawing of the  
proposed hotel.
3. Your loan application form duly  
completed by us.

Kindly let us know as soon as possible  
whether our application is approved.

Yours faithfully,

Sgd/-

c.c. Tunku Zuhri, Manan & Abdullah,

Defendants  
Exhibits

D.2 - Letter from Defendants to  
Plaintiff - 16th September 1974

D.2  
Letter from  
Defendants to  
Plaintiff -  
16th September  
1974

EU FINANCE BERHAD  
LICENSED BORROWING COMPANY

305 JALAN PUDU, KUALA LUMPUR 06-15 PHONE:  
88262 & 84749 P.O. BOX 2229 CABLE: EUFINCO

September 16, 1974

Messrs. Puchong Industrial &  
Development Co.  
No. 8, Jalan Klyne,  
2nd Floor,  
Kuala Lumpur.

10

Dear Sirs:

Loan of 350,000.00 to be secured by a Charge  
on H.S.(M) 4229-4748 Mukim of Kuala Kuantan

We refer to your letter of 12th September, 1974  
and are pleased to advise you that your  
application for the above loan to assist you in  
the development of your Kuantan land into a  
hotel and shopping complex has been approved.

20

We are extending a copy of this letter to  
Messrs. Tunku Zuhri, Manan & Abdullah with  
instructions hereby to them to prepare the  
necessary charge on the above titles to secure  
the loan.

We are also forwarding to them our cheque for  
\$350,000.00 which sum they will release upon  
registration of the charge.

Yours faithfully,

EU FINANCE BERHAD

30

Sgd/-.....  
Wong Peng Wah  
Manager

WPW /cpl

cc: Messrs. Tunku Zuhri, Manan & Abdullah  
(Attention: Mr. Low Yong Suan)

D.3. - Letter from Defendants  
to Plaintiff - 23rd December  
1974

Defendants'  
Exhibits

D.3.  
Letter from  
Defendants to  
Plaintiff  
23rd December  
1974

December 23, 1974

Messrs. Puchong Industrial  
& Development Co.  
No. 8 Jalan Klyne,  
2nd Floor,  
Kuala Lumpur.

10

Dear Sirs:

Loan of \$350,000.00 to be secured by a  
Charge on H.S.(M) 4729-4748 Mukim of  
Kuala Kuantan

Thank you for your letter of 20th December,  
1974, requesting us to extend the above loan  
for a further period of 90 days.

Your request has been considered and the loan  
has to be re-paid to us on March 23, 1975.

20

As agreed, the interest charged for this loan  
will be 1.5% per month and our next debit note  
will, therefore, reflect this new rate.

Yours faithfully,  
EU FINANCE BERHAD

Sgd/-.....  
Wong Peng Wah  
Manager  
/cpl

c.c. Messrs. Tunku Zuhri, Manan & Abdullah  
(Attention: Mr. Low Yong Suan)

Defendants'  
Exhibits

D.4.  
National Land  
Code Form 16D  
from  
Defendants'  
Solicitors to  
Plaintiff  
29th April  
1975

D.4. - National Land Code Form 16D  
from Defendants' Solicitors to  
Plaintiff - 29th April 1975

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NATIONAL LAND CODE  
FORM 16 D  
(Section 254)

To: LIM YOKE FOO alias LIM YAP KWEE trading  
as Syarikat Puchong Industrial and Development  
of 2nd Floor, No. 8 Jalan Klyne, Kuala Lumpur  
chargor under the charge described in the  
schedule below of the lands so described.

10

Whereas you have committed a breach of  
the provisions of this charge by -

failing to repay the principal sum of  
\$350,000.00 on 23rd March, 1975 and interest  
thereon amounting to \$25,514.04 as at to-day's  
date.

And whereas the breach has continued for a  
period of not less than seven days prior to the  
date of this notice;

20

We, Eu Finance Bhd. of No. 305, Jalan Pudu,  
Kuala Lumpur, the chargee, by virtue of the  
powers conferred by section 254 of the National  
Land Code, hereby require you within the period  
of seven days from the service of this notice to  
remedy the breach;

And take notice that if you fail to remedy  
the breach within that period, we shall apply  
for an order of sale.

Dated this 29th day of April, 1975.

30

Sgd/-.....  
Tunku Zuhri, Manan & Abdullah,  
Solicitors for and on behalf  
of the Chargee Messrs. Eu  
Finance Berhad.



Defendants' Exhibits

D.4

National Land Code Form 16D  
from Defendants' Solicitors  
to Plaintiff 29th April 1975

JADUAL TANAH * DAN KEPENTINGAN					
Mukim	P.T.No	Jenis dan No. Hak-milek	Bahagian tanah (Jika ada)	No. Berdaftar *pajakan/pajakan kecil (jika ada)	No. Berdaftar gadaian (jika ada)
(1)	(2)	(3)	(4)	(5)	(6)
Kuala Kuantan	5203	H.S. (M) 4729	Sumua	Tiada	B/P:1727/74 Jil: 24 Fol: 20
"	5204	4730	"	"	"
"	5205	4731	"	"	"
"	5206	4732	"	"	"
"	5207	4733	"	"	"
"	5208	4734	"	"	"
"	5209	4735	"	"	"
"	5210	4736	"	"	"
"	5211	4737	"	"	"
"	5212	4738	"	"	"
"	5213	4739	"	"	"
"	5214	4740	"	"	"
"	5215	4741	"	"	"
"	5216	4742	"	"	"
"	5217	4743	"	"	"
"	5218	4744	"	"	"
"	5219	4745	"	"	"
"	5220	4746	"	"	"
"	5221	4747	"	"	"
"	5222	4748	"	"	"

DUA PULOH (20) HAKMILIK SAHAJA

D.5. - Letter from Plaintiff to  
Defendants - 7th June, 1975

Defendants'  
Exhibits

SYARIKAT PUCHONG INDUSTRIAL & DEVELOPMENT  
No. 8, (2nd Floor), Jalan Klyne, Kuala  
Lumpur, Malaysia. Tel: 85726; 86098

D.5.  
Letter from  
Plaintiff to  
Defendants  
7th June 1975

Your Ref:                      Date: 7th June, 1975

Our Ref:

10

Eu Finance Berhad,  
Jalan Pudu,  
KUALA LUMPUR.

Attention : Mr. Fred Eu.

Dear Sir,

I refer to my previous correspondence on  
the above matter.

I would be most grateful if your company  
could use its way to granting me an extension  
of 3 weeks to enable me to settle all interest  
and other charges due to your Company or even  
the loan.

20

I confirm that I have been served with a  
notice of foreclosure by your solicitors.

I would ask you to refrain from taking  
action on the foreclosure as I am making some  
arrangements which I believe will put me in a  
liquid position as to funds and I am confident  
that in three weeks' time I should be in a  
position to clear my account with your company.

30

I must say that I do appreciate the  
kindness and understanding you have already shown  
me in respect of the above matter and I look  
forward to a favourable reply from you.

Yours faithfully,  
Puchong Industrial  
& Development Co.  
Sgd/-.....  
for Lim Yoke Foo

Defendants'  
Exhibits

D.6.  
Letter from  
Defendants'  
Solicitors to  
Pemungut Hasil  
Tanah Pejabat  
Daerah,  
Kuantan  
22nd June 1976

D.6. - Letter from Defendants'  
Solicitors to Pemungut Hasil  
Tanah Pejabat Daerah , Kuantan  
22nd June  
1976

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(16) dlm.PTK. 007/920  
LYS/dc/3889/74  
22nd June, 1976.

Pemungut Hasil Tanah,  
Pejabat Daerah,  
KUANTAN.

10

Dear Sirs,

re: Form 16H - Order of Sale at instance  
of chargee being Eu Finance Berhad

We refer to the Form 16H issued by yourself  
on 15th June, 1976 under your reference  
PTK.007/920 and wish to draw your attention to  
the fact that in the schedule contained therein,  
only twelve titles were listed by Eu Finance  
Berhad , H.S. (M) 4729 to 4740.

20

We enclose herewith a copy of Form 16G dated  
17th September, 1975 and submitted by us to you  
on 18th September, 1975 from which , please note  
that the number of titles in question amount to  
twenty titles in all i.e. H.S. (M) 4729 to 4749.

Accordingly could you please amend Form 16H so  
that the schedule therein contains all the twenty  
titles in question.

Yours faithfully,

Enc.

30

Sgd/- .....  
TUNKU ZUHRE , MANAN &  
ABDULLAH

c.c.  
Eu Finance Berhad,  
305 JalanPudu,  
KUALA LUMPUR.

D.7. - Translation of letter from  
Pejabat Daerah, Kuantan to  
Defendants' Solicitors - 30th June  
1976

Defendants'  
Exhibits

D.7.  
Translation of  
letter from  
Pejabat Daerah,  
Kuantan to  
Defendants'  
Solicitors  
30th June 1976

Telephone Kuantan 21191/21290

DISTRICT AND LAND  
OFFICE, KUANTAN

Our Letter Bil (24) dlm. PTK  
007/920 Kuantan 30th June 1976

10 Your Letter: LYS/3889/74

M/s. Tunku Zuhri, Manan & Abdullah,  
11th Floor, Ming Building,  
Jalan Bukit Nanas,  
KUALA LUMPUR 04-01

Sirs,

Order of Sale according to Section 263  
National Land Code

20 1. I have the honour to refer to your letter  
dated 22nd June, 1976 concerning the above  
matter, and it is confirmed that the total  
number of titles involved in this Order of Sale  
is twenty titles in all. The numbers of the  
titles are H.S.(M) 4729 to 2748.

2. I am sorry for the mistake which is not  
intended.

Thank You.

Yours obediently,

Sgd. (MOHD ZAINUDIN BIN MOHD.  
YUSOF)

30 for Collector of Land Revenue  
Kuantan

C.C.  
M/S EU Finance Berhad,  
305, Jalan Pudu,  
Kuala Lumpur

M/S T. Ariarajah & Co.,  
4-B (2nd Floor) Jalan Klyne,  
Kuala Lumpur 01-21

Please take note of the above matter.

Defendants'  
Exhibits

D.8. - Order of Kuantan High Court  
8th June 1978

D.8.  
Order of  
Kuantan High  
Court - 8th  
June 1978

IN THE HIGH COURT IN MALAYA AT KUANTAN

CIVIL APPEAL NO 9 OF 1976

Between

Lim Yoke Foo @ Lim Yap Kwee  
Syarikat Puchong Industrial &  
Development

Appellant

And

Eu Finance Berhad

Respondent

10

(In the matter of the Collector of  
Land Revenue, Kuantan  
Re: Gadaian bertarikh 8hb. November,  
1974, Jilid 24, Folio 20, Bill PTK  
007/920).

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

THIS 8th DAY OF JUNE, 1978.

IN OPEN COURT

O R D E R

UPON HEARING Mr. Balendran mentioning on  
behalf of Messrs. T. Ariarajah & Co. of Counsel  
for the Appellant and Messrs. Tunku Zuhri, Manan  
& Abdullah of Counsel for the Respondent AND  
UPON READING the Originating Motion dated 8th  
day of August, 1977 and 15th day of October,  
1977 and the Affidavits of Lim Yoke Foo @ Lim Yap  
Kwee affirmed on 1st day of March, 1978 and all  
filed herein IT IS ORDERED that the Originating  
Motion be and is hereby withdrawn.

20

Given under my hand and the seal of the  
Court this 8th day of June, 1978.

30

Sgd/- ABU SAMAH BIN NORDIN  
Senior Assistant Registrar,  
High Court,  
Kuantan.

This Order is filed by Messrs. Tunku Zuhri,  
Manan & Abdullah, Advocates & Solicitors, 11th  
Floor, Bangunan Ming, Jalan Bukit Nanas, Kuala  
Lumpur, Solicitors for the Respondent abovenamed.

D.9. - Translation of letter from  
Defendants' Solicitors to Pemungut  
Hasil Tanah Pejabat Tanah, Kuantan  
20th December 1978

Defendants'  
Exhibits

D.9.  
Translation of  
letter from  
Defendants'  
Solicitors to  
Pemungut  
Hasil Tanah  
Pejabat Tanah,  
Kuantan - 20th  
December 1978

(28) dlm. PTK/007/920  
ZI/JH/3889/74

20th December, 1978.

Collector of Land Revenue,  
Land Office,  
Kuantan,  
Pahang.

10

Sir,

re: Order of Sale in accordance with  
Section 263, National Land Code

We have the honour to inform that the  
chargor has withdrawn their objection to the  
Order of Sale concerned from the High Court,  
Kuantan.

20

This matter was withdrawn on 8th June,  
1978 before His Lordship Mr. Justice Abdul  
Razak in the High Court, Kuantan.

We still have not obtained a copy of the  
Court Order regarding the matter until this  
date because of the delay by solicitors for the  
chargor in arranging for the same.

30

However, we shall be glad to obtain your  
approval so that sale of the said land could  
be commenced as soon as possible as the total  
debt of the chargor has increased day by day  
as a result of increase of interest thereon and  
we are worried that the total thereof will  
exceed the price of the land which can be  
realised when it is subsequently sold.

Your cooperation in this matter is  
appreciated. That is all, thank you.

Yours truly,

SGD.  
TUNKU ZUHRE, MANAN & ABDULLAH

40

C.C. Eu Finance Berhad,  
305, Jalan Pudu,  
Kuala Lumpur.

Defendants'  
Exhibits

D.10  
Translation of  
letter from  
Defendants'  
Solicitors to  
Pemungut Hasil  
Tanah Pejabat  
Tanah, Kuantan  
21st February  
1979

D.10. - Translation of letter from  
Defendants' Solicitors to Pemungut  
Hasil Tanah Pejabat Tanah, Kuantan  
21st February 1979

(3) dlm. PTK /007/920  
ZI/JH/3889/74  
21st February, 1979.

Attention: Encik Zainal Kassim Bin Datuk Darus

Collector of Land Revenue,  
Land Officer,  
Kuantan,  
Pahang.

10

Sir,

re: Order of Sale of H.S. (M) 4729 Mukim  
Kuala Kuantan

We refer to your letter dated 18th January,  
1979.

For your information, we have sent to you a  
photostat copy of the said Court Order through our  
letter dated 13th February, 1979.

20

However, we enclose herewith once again a  
copy of the said Court Order for your further  
action and fixing of the date of sale by Public  
Auction of the property concerned.

For your information we also wish to mention  
that the debt which is still due to our client was  
\$590,939.04 as on 30th September, 1978. After that  
date an interest of \$175.00 a day will be added  
until settlement of the said debt is completed.

That is all, thank you.

30

Yours truly,

SGD.

TUNKU ZUHRE, MANAN & ABDULLAH

c.c. Eu Finance Berhad,  
305 Jalan Pudu,  
Kuala Lumpur. (Attention: Mr. Liew Woy Kee)

D.11. - Translation of letter from  
Pejabat Daerah dan Tanah Kuantan  
to Defendants' Solicitors - 19th  
January 1980

Defendants'  
Exhibits

D.11.  
Translation  
of letter  
from Pejabat  
Daerah dan  
Tanah Kuantan  
to Defendants'  
Solicitors  
19th January  
1980

DISTRICT AND LAND OFFICE  
KUANTAN

Our Letter Bil (48) dlm. PTK  
007/920

Your Letter ZI/PK/3889/74

10

Kuantan 19th Jan. 1980.

M/s. Tunku Zuhri, Manan & Abdullah,  
11th Floor, Ming Building,  
Jalan Bukit Nanas,  
P.O. Box 2326,  
Kuala Lumpur 04-01

Sirs,

re: Public Auction of H.S. (M) 4729  
to HS(M) 4748 Mk. K. Kuantan

20

1. With reference to the above mentioned  
matter, as you are aware, Public Auction of  
the 20 titles concerned will be held in this  
Department on 31st January, 1980 at 10.00 a.m.

2. You are required to send a copy of charge  
Pers. 1727 Jil. 24 Fol. 20 together with  
documents of titles HS(M) 4729 to HS(M) 4748 which  
much reach this Administration ten days before  
31.1.80.

That is all, thank you.

Yours truly,

30

SGD.

(ZAINAL KASSIM BIN DATUK DARUS)

for Collector of Land Revenue,  
Kuantan.

SERVICE FOR THE NATION



Defendants'  
Exhibits

D.12  
Letter from  
Defendants'  
Solicitors  
to Pemungut  
Hasil Tanah  
Kuantan - 31st  
January 1980

D.12. - Letter from Defendants'  
Solicitors to Pemungut Hasil  
Tanah Kuantan - 31st January 1980

Bil.(48) dlm.PTK.007

LYS/rs/3889/74

31st January, 1980.

Pemungut Hasil Tanah,  
Pejabat Tanah,  
KUANTAN.

ATT: Encik Zainal Kassim  
Bin Datuk Darus

10

Dear Sir,

Re: Lelong Awam Keatas HS(M) 4729  
hingga HS(M) 4748 Mk. K. Kuantan

We refer to the telephone conversation between your Encik Zainal Kassim Bin Datuk Darus and our Encik Zainuddin on 28th January, 1980 in which your Encik Zainal Kassim informed us that you have accepted payment of a sum of \$443,694.52 from Mr. Lim Yoke Foo. Encik Zainal Kassim informed us that payment was accepted by yourself under Section 266 of the Land Code.

20

We note that the sum of \$443,694.52 is in fact the sum awarded by the Pemungut Hasil Tanah on 15th June, 1976. We had in fact informed Mr. Lim Yoke Foo that as at 15th January, 1980 the amount due to Eu Finance Berhad is \$679,581.44 not including our costs. It seems to us that Section 266 of the Land Code empowers the Pemungut Hasil Tanah to accept only the whole amount due as provided for under Sub-section 2.

30

In any case we note your advise that your office would forward to us the sum paid on the clear understanding that your acceptance of the amount paid does not amount to a discharge of the Order of Sale.

We shall be pleased to hear from you.

Yours faithfully,

SGD.

TUNKU , ZUHRE , MANAN & ABDULLAH

D.13. - Translation of letter from  
Daerah dan Tanah Kuantan to  
Defendants' Solicitors - 6th  
February 1980

Defendants'  
Exhibits  
D.13  
Translation of  
letter from  
Daerah dan  
Tanah Kuantan  
to Defendants'  
Solicitors  
6th February  
1980

Telephone: Kuantan 21191/21290

DISTRICT AND LAND OFFICE  
KUANTAN

Our Letter Bil (50) dlm.PTK  
oo7/920

10 Your Letter Kuantan 6th February, 1980

M/s. Tunku Zuhri, Manan & Abdullah,  
11th Floor, Ming Building,  
Jalan Bukit Nanas,  
P.O. Box 2326,  
Kuala Lumpur 04-01

Sirs,

Re: Public Auction of HS(M) 4729  
Mukim Kuala Kuantan

20 1. With reference to the above mentioned  
matter, we would inform you that the Public  
Auction of HS(M) 4729 Mukim Kuala Kuantan  
which has been fixed for 31/1/80 at 10.00 a.m.,  
is cancelled.

2. This cancellation is made because the  
owner of the land concerned (chargo~~r~~) has  
settled the final balance of the loan amounting  
to \$443,695.52~~0~~ as per order made on 9/5/1976.  
His action is in accordance with N.L.C. 56/1965,  
Section 266(1), (2)(a).

30 3. Please submit other payments in accordance  
with N.L.C. 56/1965, Section 266(2)(b) and (c),  
if these payments have not been settled to you  
by the chargor and in line with the order issued  
by the Collector.

That is all, thank you.

Yours obediently,

sgd.

(ZAINAL KASSIM BIN DATUK DARUS)

40

For Collector of Land Revenue,  
Kuantan.

Defendants'  
Exhibits

D.14  
Translation  
of letter  
from  
Defendants'  
Solicitors to  
Pemungut  
Hasil Tanah  
Kuantan  
3rd May 1980

D.14 - Translation of letter from  
Defendants' Solicitors to Pemungut  
Hasil Tanah Kuantan - 3rd May 1980

Bil. (50) dlm. PTK.007/920  
21/IK/3889/24

3rd May, 1980  
A.R. Registered

Collector of Land Revenue,  
District and Land Office,  
Kuantan,  
PAHANG

10

Attention Encik Zainal Kassim bin Datuk Darus

Sir,

Re: Public Auction of H.S. (M) 4729  
Mukim Kuala Kuantan

We refer to the above-mentioned matter and  
to your letter dated 6th February, 1980 and our  
letter in reply thereto dated 1st March, 1980.

Our client has not as yet to this date,  
received any amount from the claim which you  
mentioned in para 3 of your letter until to date  
and we would appreciate your co-operation in  
fixing a new date to auction the land concerned  
to obtain the payments referred to.

20

Once again, we wish to mention that  
interest of \$175/per day is imposed for each day  
the claim of our client is not paid to our  
client. It is necessary to proceed with the  
auction because payment under section 266(2)(b)  
and (c) of the National Land Code is yet to be  
settled by the chargor.

30

That is all, thank you.

Yours truly,

SGD.

C.C. Client  
M/s James Foong & Co.

No. 15 - Translation of letter  
from Pejabat Daerah dan Tanah to  
Y.B. Penasihat Undang-Undang - 30th  
June 1976

Defendants'  
Exhibits

No. 15  
Translation  
of letter  
from Pejabat  
Daerah dan  
Tanah to Y.B.  
Penasihat  
Undang-Undang  
30th June 1976

Telephone: Kuantan 21191/21290

DISTRICT AND LAND OFFICE  
KUANTAN

Kuantan 30th June 1976.

Our Letter: Bil(22) dlm. PTK.  
007/920

10

Your Letter:

The Honourable Legal Advisor,  
State of Pahang,  
Kuantan.

Sir,

Order of Sale at the Request of  
the Chargee under Section 263 of  
the National Land Code - Title  
HS(M) 4729 to HS(M) 4740 Mukim  
Kuala Kuantan

20

1. I have the honour to refer to my letter  
to you Bil. (19) in this series dated 15th June,  
1976 regarding the above-mentioned matter and  
would inform you that this Office has received  
a letter of Objection from the Chargor in  
respect of the said Order of Sale.

2. In view of the above, please treat my  
letter in Bil.(19) as cancelled.

That is all and thank you.

30

Yours obediently,  
Sgd.  
(MOHD. ZAINUDIN BIN MOHD. YUSOF)  
for Controller of Land Revenue,  
Kuantan

C.C. M/s Tunku Zuhri, Manan & Abdullah -  
Your letter Bil LYS/3889/74  
M/s Ariarajah & Co. - Your letter Bil.  
JA/C.1872/76  
Director of Land and Mines, Federal  
Territory, Kuala Lumpur.  
Director of Land Revenue Pekan,  
Temerloh and Bentong

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Defendants'  
Exhibits

- Reference the above matter, please treat  
Borang 'H' dated 15th June 1976  
Bil. (19A) dlm. PTK.007/920 as cancelled.

No. 15  
Translation  
of letter  
from Pejabat  
Daerah dan  
Tanah to Y.B.  
Penasihat  
Undang-Undang  
30th June  
1976  
(cont'd)

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D.16 - Statement of Account from  
Defendants to the Plaintiff - 19th  
May 1980

Defendants'  
Exhibits  
D.16  
Statement of  
Account from  
Defendants to  
the Plaintiff  
19th May 1980

STATEMENT OF ACCOUNT

EU FINANCE BERHAD

305 Jalan Pudu, Kuala Lumpur 06-15

Mr. Lim Yoke Foo  
Lot 12 & 13, Taman Goodwood No.  
Jalan Kuching Lama Date May 19, 198-  
Off Jalan Klang,  
Kuala Lumpur

Loan A.c No: 251.201.75

Principal sum \$350,000.00

Add: Interest

23.9.74 to 30.9.74  
@ 15% p.a. 1,150.69  
Oct 74 @ 15% p.a. 4,375.00  
Nov. 74 @ 15% p.a. 4,375.00  
1.12.74 to 23.12.74  
@ 15% p.a. 3,308.22  
24.12.74 to 31.12.74  
@ 18% p.a. 1,380.82  
75 Jan to Dec 63,000.00  
76 Jan to Dec 63,000.00  
77 Jan to Dec 63,000.00  
78 Jan to Dec 63,000.00  
79 Jan to Dec 63,000.00  
1.1.80 to 25.1.80  
@ 18% p.a. 4,315.07 333,904.80

683,904.80

Less: Payments

Nov 2, 1974 5,525.69  
Dec 11, 1974 4,375.00 9,900.69

674,004.11

Add:

Bayaran Iktisas 1,705.00  
Quit Rent 2,927.40  
Fees for Order 10.00

4,642.40

Legal fees 6,526.80 11,169.20

Balance as at 25.1.1980 \$685,173.31

=====

(Dollars Six hundred and eighty five thousand, one  
hundred and seventy three and cents thirty one  
only)

Sgd. Illegible  
E. & O.E.

Defendants'  
Exhibits  
 D.16  
 Statement of  
 Account from  
 Defendants to  
 the Plaintiff  
 19th May 1980

A	Mr. Lim Yoke Foo, Lot 12 & 13, Taman Goodwood, Jalan Kuching Lama, Off Jalan Klang, <u>KUALA LUMPUR.</u>		
B	<u>Loan A/C No: 251.201.75</u>		
	Balance as at 25.1.1980		\$685,173.31
	<u>Less:</u> Payment on 24.1.80 & 25.1.80 to Collector of Land Revenue		<u>443,694.52</u>
C	Balance		241,478.79
	<u>Add: Interest</u>		
	26.1.80 to 31.1.80	\$ 714.51	
	1980 February	3,662.18	
	March	3,662.18	
D	April	3,662.18	
	May	3,662.18	
	June	3,662.18	
	July	3,662.18	
	August	3,662.18	
E	September 30	<u>3,662.18</u>	<u>30,011.95</u>
			\$271,490.74
			=====

(Dollars Two hundred and seventy one thousand,  
 four hundred and ninety and cents seventy  
 four only)

...2/-





No. 18 of 1983

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 :

LIM YOKE FOO @ LIM YAP KWEE

Appellant

-and-

EU FINANCE BERHAD

Respondents

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RECORD OF PROCEEDINGS

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MACFARLANES  
10 Norwich St. ,  
London EC4A 1BD.

STEPHENSON HARWOOD  
Saddlers' Hall  
Gutter Lane  
Cheapside  
London EC2V 6BS.

Solicitors for the Appellant

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Solicitors for the  
Respondents

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