

7/84

No. 42 of 1981

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA
(APPELLATE JURISDICTION)

B E T W E E N :

- | | |
|------------------------|-------------------|
| 1. OOI BOON LEONG | |
| 2. PETER KOK SIEW FATT | <u>Appellants</u> |
| 3. HIROALD KOWADA | (Defendants) |

- and -

CITIBANK N.A.	<u>Respondents</u> (Plaintiffs)
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RECORD OF PROCEEDINGS

DOUGLAS GOLDBERG & CO.
137 Regent Street,
London, W1R 7LD

Solicitors for the
Appellants

COWARD CHANCE,
Royex House,
Aldermanbury Square,
London, EC2V 7LD

Solicitors for the
Respondents

No.	Description of Documents	Date	Page No.
	"TLP 3B" Letter - Plaintiffs Solicitors to Second Defendants	8th October 1977	20
	"TLP 4" Letter - Solicitors for First Defendant to Solicitors for Plaintiffs	17th October 1977	21
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5	Affidavit of Hiroald Kowada (3rd Defendant)	2nd May 1978	23 - 24
6	Affidavit of Ooi Boon Leong (1st Defendant) and following exhibits thereto	22nd March 1978	25 - 28
	"OBL 1" Letter - Plaintiffs to Leisure Industries Sdn.Bhd.	24th March 1975	29 - 32
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JUDICIAL COMMITTEE BUT NOT
REPRODUCED

Description of Documents	Date
Letter Plaintiffs Solicitors to Senior Assistant Registrar High Court	9th January 1979
Certificate under Order 54 Rule 22A of the Rules of the Supreme Court	19th January 1979
Notice of Motion for conditional leave to appeal to His Majesty the Yang Di-Pertuan Agong	27th August 1980
Affidavit of V.C.George in support of motion	15th August 1980
Order granting conditional leave to Appeal	29th September 1980

No. 42 of 1981

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA
(APPELLATE JURISDICTION)

B E T W E E N :

1. OOI BOON LEONG
2. PETER KOK SIEW FATT Appellants
3. HIROALD KOWADA (Defendants)

10

- and -

CITIBANK N.A. Respondent
 (Plaintiffs)

RECORD OF PROCEEDINGS

No. 1

SPECIALLY ENDORSED
WRIT dated 13th
December 1977

In the High
Court in
Malaya at
Kuala Lumpur

No.1
Specially
Indorsed Writ
dated 13th
December 1977

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
CIVIL SUIT NO. 3631 OF 1977

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Between

Citibank N.A. Plaintiffs

And

(1) Ooi Boon Leong
(2) Peter Kok Siew Fatt
(3) Hiroald Kowada Defendants

SPECIALLY INDORSED WRIT

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

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In the High Court in Malaya at Kuala Lumpur

No.1 Specially Indorsed Writ dated 13th December 1977 (continued)

To

(1) Ooi Boon Leong 3rd Floor, Ming Building Jalan Bukit Nanas, KUALA LUMPUR

(3) Hiroald Kowada 17 Jalan Kelichap Singapore 19, Republic of Singapore

(2) Peter Kok Siew Fatt OR 14 Jalan Pakat, Ukay Heights, KUALA LUMPUR

c/o Jurong Family Bowl, No.1 Yuan Ching Road, Singapore 22, Republic of Singapore

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WE COMMAND YOU, that within eight days after the service of this Writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in an action at the suit of Citibank N.A.

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

WITNESS ZURA BTE. YAHYA Senior Assistant Registrar of the High Court in Malaya, this 13th day of December 1977.

20

Sgd. Shearn Delamore & Co. and Drew & Napier (L.S.) Solicitors for the Plaintiffs

Sgd. Zura Bte Yahya Senior Assistant Registrar High Court, Kuala Lumpur

SPECIALLY INDORSED WRIT

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

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

A Defendant appearing personally may, if he desires, enter his appearance by post, and the appropriate forms may be obtained by sending a Postal Order for \$3/- with an

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addressed envelope to the Registrar of the High Court at Kuala Lumpur.

In the High Court in Malaya at Kuala Lumpur

If the defendant enters an appearance he must also deliver a defence within 14 days from the last day of the time limited for appearance, unless such time is extended by the Court or a Judge, otherwise judgment may be entered against him without notice, unless he has in the meantime been served with a summons for judgment.

No.1
Specially Indorsed Writ dated 13th December 1977
(continued)

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STATEMENT OF CLAIM

1. The Plaintiffs are a National Banking Association incorporated in the United States of America and have a place of business at the AIA Building Jalan Ampang, Kuala Lumpur.

2. The 1st Defendant is an Advocate and Solicitor and has an address for service at 3rd Floor Ming Building, Jalan Bukit Nanas, Kuala Lumpur.

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3. The 2nd Defendant has an address for service at No.14 Jalan Pakat, Ukay Heights, Kuala Lumpur.

4. The 3rd Defendant has an address for service at (1) 17 Jalan Kelichap, Singapore 19, Republic of Singapore and (2) c/o the Jurong Family Bowl, No.1 Yuan Ching Road, Singapore 22, Republic of Singapore, a place outside the scheduled territories as defined in the Exchange Control Ordinance 1953.

30

5. The Defendants on the 24th day of March 1975 in consideration of the Plaintiffs of making or continuing advances or otherwise giving credit or affording banking facilities and accommodation for as the Plaintiffs may think fit to the Leisure Industries Sdn. Bhd. a company of which the Defendants were directors jointly and severally guarantee payment on demand up to the limit of \$600,000/- (Ringgit Six Hundred Thousand only) together with interest thereon at the rate of 3% above Malaysian prime or 12½% per annum whichever is higher.

40

The total amount outstanding as at the 31st October 1977 by Leisure Industries Sdn. Bhd. is as follows :-

In the High Court in Malaya at Kuala Lumpur

Term Loan	-	\$302,999.30
Interest	-	\$ 28,732.02
TOTAL		<u>\$331,731.32</u>

No.1 Specially Indorsed Writ dated 13th December 1977 (continued)

6. The Plaintiffs have demanded the payment of the said sum from the Defendants but the Defendants have refused and/or omitted to pay same.

7. Wherefor the Plaintiffs pray judgment for:

- (1) the sum of \$331,731.32
- (2) interest at the rate of 12% on the said sum of \$331,731.32 from the 1st day of November 1977 to the date of realisation 10
- (3) costs of this action
- (4) such further and other relief.

Dated this 13th day of December 1977.

Sgd. Shearn Delamore & Co. and Drew & Napier SOLICITORS FOR THE PLAINTIFFS.

And the sum of \$45/- (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 \$200/- (or such sum as may be allowed on taxation). If the amount claimed be paid to the Plaintiff or his advocate and solicitors or agent within four days from the service hereof, further proceedings will be stayed. 20

Provided that if it appears from the indorsement of the Writ that the Plaintiff is resident outside the scheduled territories as defined in the Exchange Control Ordinance, 1953, or is acting by order or on behalf of a person so resident, 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. 30

This Writ was issued by Messrs. Shearn Delamore & Co. and Drew & Napier of Chartered Bank Building, No.2 Benteng, Kuala Lumpur whose 40

address for service is at Chartered Bank Building, No.2, Benteng, Kuala Lumpur, Solicitors for the said Plaintiffs who reside at/whose place of business is at AIA Building, Jalan Ampang, Kuala Lumpur.

In the High Court in Malaya at Kuala Lumpur

No.1
Specially Indorsed Writ dated 13th December 1977
(continued)

This Writ was served by me at
on the Defendant on the day
of 1977 at the hour of
Indorsed this day of 1977.

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No. 2

SUMMONS FOR JUDGMENT
dated 21st January 1978

No.2
Summons for Judgment dated 21st January 1978

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
CIVIL SUIT NO. 3631 OF 1977

Between

Citibank N.A.

Plaintiffs

And

(1) Ooi Boon Leong
(2) Peter Kok Siew Fatt
(3) Hiroald Kowada

Defendants

20

SUMMONS FOR JUDGMENT UNDER
ORDER 14 RULE 1

LET ALL PARTIES concerned attend the Registrar in Chambers on Friday the 24th day of March 1978 at 9.00 o'clock in the forenoon at the High Court Kuala Lumpur on the hearing of an application on the part of the Plaintiffs for final judgment in this action against the Defendants for the amount claimed in the Statement of Claim together with interest and costs.

30

This Summons will be attended by Counsel.

Dated this 21st day of January 1978

(L.S.) Sgd. Zaitun Zawiyah
.....
SENIOR ASSISTANT REGISTRAR
HIGH COURT, KUALA LUMPUR

In the High Court in Malaya at Kuala Lumpur

No.2
Summons for Judgment dated 21st January 1978
(continued)

TO: The 1st and 2nd Defendants abovenamed, and/or their Solicitors, Messrs. Ng Ek Teong & Partners, 2nd Floor, Bangunan Persatuan Hokkien, Selangor, Jalan Weld, KUALA LUMPUR

This Summons-in-Chambers is filed by the Plaintiffs' Solicitors, Messrs. Shearn Delamore & Co. and Drew & Napier, whose address for service is at No.2 Benteng, Kuala Lumpur. 10

It will be supported by the Affidavit of Tan Loong Pung, affirmed on the 20th day of January 1978 and filed herein.

No.3
Affidavit of Tan Loong Pung dated 20th January 1978

No. 3

AFFIDAVIT OF TAN LOONG PUNG dated 20th January 1978

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
CIVIL SUIT NO. 3631 OF 1977

Between

20

Citibank N.A.

Plaintiffs

And

- (1) Ooi Boon Leong
- (2) Peter Kok Siew Fatt
- (3) Hiroald Kowada

Defendants

A F F I D A V I T

I, TAN LOONG PUNG, of full age and a Malaysian Citizen residing at Kuala Lumpur affirm and say as follows :-

1. I am the Assistant Vice President of the Citibank N.A. Kuala Lumpur and a lawfully constituted attorney of the Plaintiffs and am duly authorised to affirm this Affidavit on behalf of the Plaintiffs and the facts deposed herein are within my knowledge save where the contrary appears.

30

2. I crave leave to refer to the Statement of Claim wherein the Plaintiffs are claiming the sum of M\$331,731.32 together with interest thereon at the rate of 12 $\frac{1}{2}$ % per annum from the 1st day of November 1977 to the date of realisation.

In the High Court in Malaya at Kuala Lumpur

No.3

Affidavit of Tan Loong Pung dated 20th January 1978

(continued)

10 3. I crave leave to refer to the Joint and Several Guarantee dated the 24th March 1975 entered into between the Plaintiffs and the Defendants, a copy of which Guarantee is now attached and marked "TLP 1". The Guarantee was granted to the Plaintiffs by the Defendants in consideration for the Plaintiffs agreeing to make a continuing advances otherwise giving credit or affording banking facilities to one Leisure Industries Sdn.Bhd. a company of which the Defendants were directors and it was for a sum not exceeding Six hundred thousand Dollars (\$600,000/-) together with interest thereon at the rate of 12% per annum from the date of demand

20 4. I crave leave to refer to a copy of the letter dated 23rd September 1977 sent to the Defendants demanding the said sum, a copy of which letter is attached and marked "TLP 2".

5. I also crave leave to refer to a letter dated 8th October 1977 written by my solicitors M/s. Shearn Delamore & Co. and Drew & Napier, the contents of which are self-explanatory. A copy of the said letters are now produced and marked "TLP 3A" and "TLP 3B".

30 6. I crave leave to refer to a letter dated 17th October 1977 from Messrs. Ng Ek Teong & Partners, solicitors for the 1st Defendant in this matter wherein the 1st Defendant has merely denied the debt. A copy of the said letter is now produced and marked "TLP 4".

40 7. I am advised in law by my solicitors and verily believe that the Guarantee in itself is a tacit admission of the debt and the Plaintiffs will refer to the Guarantee for its full terms and effects.

8. I am advised in law by my Solicitors and verily believe that the Defendants have no defence to the above action.

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

In the High Court in Malaya at Kuala Lumpur

AFFIRMED by the said TAN LOONG PUNG at Kuala Lumpur this 20th day of January 1978 at 2.15 p.m.

Sgd. Tan Loong Pung

No.3 Affidavit of Tan Loong Pung dated 20th January 1978 (continued)

BEFORE ME,

Sgd. Su Cheng Yee COMMISSIONER FOR OATHS, KUALA LUMPUR

This Affidavit is filed by the Plaintiffs' Solicitors Messrs. Shearn Delamore & Co. and Drew & Napier whose address for service is at No.2 Benteng, Kuala Lumpur.

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Exhibit "TLP 1" dated 24th March 1975

EXHIBIT "TLP 1" dated 24th March 1975

JOINT AND SEVERAL GUARANTEE TO FIRST NATIONAL CITY BANK MALAYSIA

IN CONSIDERATION of you, First National City Bank New York a body corporate incorporated with limited liability in the United States of America and having a place of business at A.I.A. Building Jalan Ampang, Kuala Lumpur (hereinafter called "the Bank" which expression shall where the context so admits include the bank's successors and assigns) making or continuing advances or otherwise giving credit or affording banking facilities and accommodation for as long as the bank may think fit to LEISURE INDUSTRIES SDN. BHD. care of Mr. Ooi Boon Leong, 3rd Floor, Bangunan Ming Jalan Bukit Nanas, Kuala Lumpur (hereinafter called the customer) we the undersigned Haroaki Kowada, Peter Kok Siew Fatt and Ooi Boon Leong jointly and severally guarantee payment on demand upon us of all money and liabilities whether certain or contingent now or hereafter owing or incurred to the Bank from or by the customer on any current or other account or in any manner whatever whether as principal or surety and whether alone or jointly with any other person

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40

and in whatever name style or firm including:

In the High
Court in
Malaya at
Kuala Lumpur

No.3
Affidavit of
Tan Loong Pung
dated 20th
January 1978

Exhibit
"TLP 1"
thereto dated
24th March
1975

(continued)

- 10 (a) in the case of the death bankruptcy
or liquidation of the customer all
sums which would at any time have
been owing to the Bank by the customer
if such death had occurred or such
bankruptcy or liquidation had
commenced respectively at the time
when the Bank receives actual notice
thereof and notwithstanding such
death bankruptcy or liquidation;
- 20 (b) all money obtained from or liabilities
incurred to the Bank notwithstanding
that the borrowing or incurring of
such liabilities may be invalid or in
excess of the powers of the customer
or of any director attorney agent or
other person purporting to borrow or
act on behalf of the customer and
notwithstanding any other irregularity
in such borrowing or incurring such
liabilities;
- 30 (c) in the event of the discontinuance by
any means of this guarantee all cheques
drafts bills notes and negotiable
instruments drawn by or for the account
of the customer on the Bank or its
agents and purporting to be dated on
or before the date when such discontinuance becomes known to the Bank or its
agents although presented to or paid
by the Bank or them after that date and
all liabilities of the customer to the
Bank at such date whether certain or
contingent and whether payable forthwith
or at some future time or times and
also all credits then established by
the Bank for the customer;

40 together with interest on all such debts and
liabilities to the date of payment with monthly
rests (whether the relation of Banker and
customer has ceased or not) commission banking
charges legal and other costs charges and
expenses whether incurred in enforcing or
seeking to enforce any security for or obtaining
or seeking to obtain payment of all or any part
of the money hereby guaranteed or otherwise
howsoever. Such debts shall be deemed to be
50 owing from each of us as principal debtors
notwithstanding any defect informality or
insufficiency in the borrowing powers of the
customer or in the exercise thereof which might

In the High Court in Malaya at Kuala Lumpur

No.3 Affidavit of Tan Loong Pung dated 20th January 1978

Exhibit "TLP 1" thereto dated 24th March 1975

(continued)

be a defence as between the customer and the Bank.

Provided that the total sum recoverable from us hereunder is limited to the sum of \$600,000 (Dollars six hundred thousand only) owing or incurred to the Bank as aforesaid at the date that demand for the same is made by the Bank or discontinuance by any means of this guarantee by any of us or by the executors administrators or legal representatives of any of us howsoever such sum is arrived at with interest thereon at the rate of 3% above Malaysian prime per annum or 12½% per annum whichever is higherpercentage per annum from the date of demand or discontinuance as aforesaid.

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2. This guarantee shall not be considered as satisfied by any intermediate payment or satisfaction of the whole or any part of any sum owing as aforesaid but shall be a continuing security and shall extend to cover any sum or sums of money which shall for the time being constitute the balance due from the customer to the Bank upon any such account as hereinbefore mentioned.

20

3. This guarantee may be enforced by the Bank at any time by notice in writing requiring payment notwithstanding that any bills or other instruments covered by it may be in circulation or outstanding and the Bank may include the amount of the same or any of them in the general balance owing to the Bank by the customer or not at the Bank's option.

30

4. This guarantee shall be in full force and binding as a continuing guarantee upon each of us and his executors administrators liquidators or other legal personal representatives as the case may be notwithstanding any change in the name style or constitution of the customer howsoever such change in the name style or constitution of the customer shall be effected and notwithstanding the death or disability or liquidation of any or all of us until the receipt by the Bank from everyone of us or our executors administrators liquidators or other legal representatives as the case may be of three (3) calendar months' notice in writing to discontinue this guarantee.

40

During the pendency of such notice the Bank may afford the customer such accommodation as the Bank would have done had no such notice

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10 been received, and all money as resulting due or remaining unpaid at or after the expiration of such notice shall be in all respects treated as secured by this guarantee. Each of us and his executors administrators liquidators or other legal representatives as the case may be shall remain bound by this guarantee to pay to the Bank on demand any outstanding liabilities or obligations (not exceeding the limit, if any, of this guarantee) due from the customer to the Bank upon any such account as hereinbefore mentioned including obligations undertaken by the Bank pending such notice whether maturing during the currency of such notice or maturing after expiration of such notice until payment of the same has been made in full to the Bank.

In the High Court in Malaya at Kuala Lumpur

No.3
Affidavit of Tan Loong Pung dated 20th January 1978

Exhibit "TLP 1" thereto dated 24th March 1975

(continued)

20 5. Notwithstanding that the customer is a committee or association or other unincorporated body which has no legal existence of which is under no legal liability to discharge obligations undertaken or purported to be undertaken by it or on its behalf this guarantee shall be valid and binding on us and have effect as though we were joint and several principal debtors.

30 6. In the event of the dissolution of any firm whose account is hereby secured this guarantee shall apply to all money borrowed and liabilities incurred in the firm's name until receipt by the Bank of actual notice of such dissolution. If however the dissolution be by reason only of the introduction of a further partner or partners into the firm or the death or retirement of any existing partners from the firm or the amalgamation of the firm with another firm or be in consequence of a corporation taking over all the assets of the firm this
40 guarantee shall continue and in addition to the debts and liabilities of the old firm shall apply to all money and liabilities due or incurred to the Bank from or by the new firm or corporation as aforesaid thereby constituted as though there had been no change in the firm as previously constituted.

7. The Bank may at all times without prejudice to this guarantee and without discharging or in any way affecting our liability hereunder and without notice to any of us:

- 50 (1) determine vary or increase any credit to the customer;
- (2) grant to the customer or to any other

In the High
Court in
Malaya at
Kuala Lumpur

No.3
Affidavit of
Tan Loong Pung
dated 20th
January 1978

Exhibit
"TLP 1"
thereto dated
24th March
1975

(continued)

person any time or indulgence;

- (3) renew any bills notes or other negotiable securities;
- (4) take any other securities or guarantees from the customer or any other person;
- (5) deal with exchange release modify or abstain from perfecting or enforcing any securities or other guarantees or rights which the Bank may now or hereafter have from or against the customer or any other person;
- (6) compound with the customer or with any other person or guarantor.

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8. The liability of any of us hereunder shall not be affected by any failure by the Bank to take any security or by any invalidity of any security taken or by any existing or future agreement by the Bank as to the application of any advances made or to be made to the customer.

9. Any money received hereunder may be placed and kept to the credit of a suspense account for so long as the Bank think fit without any obligation in the meantime to apply the same or any part thereof in or towards discharge of any money or liabilities due or incurred by the customer to the Bank. Notwithstanding any such payment in the event of any proceedings in or analogous to bankruptcy liquidation composition or arrangement the Bank may prove for and agree to accept any dividend or composition in respect of the whole or any part of such money and liabilities in the same manner as if this guarantee had not been given.

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10. Without prejudice to the Bank's right to open new accounts in the name of the customer from time to time in the event of this guarantee ceasing from any cause whatsoever to be binding as a continuing security on us our executors administrators or legal representatives or any of us or them the Bank shall be at liberty without thereby affecting its right hereunder to open a fresh account or accounts and to continue any then existing account with the customer and no money paid from time to time into any such account or accounts by or on behalf of the customer and subsequently drawn out by the customer shall on settlement of any claim in respect of this guarantee be appropriated towards or have the effect of payment of any part

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of the money due from the customer at the time of this guarantee ceasing to be so binding as a continuing security or of the interest thereon unless the person or persons paying in the money shall at the time in writing direct the Bank specially to appropriate it to that purpose.

In the High Court in Malaya at Kuala Lumpur

No.3
Affidavit of Tan Loong Pung dated 20th January 1978

Exhibit "TLP 1" thereto dated 24th March 1975

(continued)

10

11. Until all money and liabilities due or incurred by the customer to the Bank shall have been paid or discharged no one of us will by paying off any sum recoverable hereunder or by any other means or on any other ground claim any set-off or counterclaim against the customer in respect of any liability on the part of us or any of us to the customer or claim or prove in competition with the Bank in respect of any payment by any of us hereunder or be entitled to claim or have the benefit of any set-off counterclaim or proof against or dividend composition or payment by the customer or his estate or the benefit of any other security which the Bank may now or hereafter hold for any money or liabilities due or incurred by the customer to the Bank or to have any share therein.

20

12. This guarantee shall be in addition to and not in substitution for any other guarantee for the customer given by any of us to the Bank.

30

13. Any security now or hereafter held by or for us or any of us from the customer in respect of the liability of us or any of us hereunder shall be held in trust for the Bank and as security for our liability hereunder.

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14. You shall so long as any money remains owing hereunder have a lien therefore on all money now or hereafter standing to our credit or to the credit of any of us with you whether on any current or other account and the Bank shall also have a lien on any stock or share certificates title deeds or other securities belonging to us or any one or more of us or under our control or that of any one or more of us which have been deposited with the Bank for any purpose.

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15. To give effect to this guarantee the Bank shall be at liberty to act as though we and each of us were principal debtors or principal debtor to the Bank for all payments guaranteed by us as aforesaid to the Bank and notwithstanding:

In the High
Court in
Malaya at
Kuala Lumpur

No. 3
Affidavit of
Tan Loong Pung
dated 20th
January 1978

Exhibit
"TLP 1"
thereto dated
24th March
1975

(continued)

- (i) the failure of any one or more of us the intended guarantors to complete this guarantee or
- (ii) the fact that for any reason whatsoever the signature of any one or more of us the intended guarantors to this guarantee shall not bind him or his estate or
- (iii) the release by the Bank of any one or more of us from further liability under this guarantee;

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the remainder of us shall be bound by this guarantee and it shall be and remain a continuing security as to the other or others of us.

16. No one of us shall be discharged or released from this guarantee by any arrangement made after this guarantee or any dealing between the customer and the Bank without our knowledge or consent or by any variation or alteration without our knowledge or consent in the agreement between the customer and the Bank for the making of advances or otherwise giving credit or affording banking facilities to the customer by the Bank.

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In order to give full effect to the provisions of this guarantee each of us hereby waives all rights inconsistent with such provisions and which we might otherwise as sureties be entitled to claim and enforce and we declare that the Bank shall be at liberty to act as though we or each of us were principal debtors or principal debtor to the Bank for all payments guaranteed by us as aforesaid to the Bank.

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17. The Bank shall be under no liability to marshal in our favour any securities or any of the funds or assets which the Bank may be entitled to receive or upon which the Bank has a claim.

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18. Any notice or demand hereunder shall be deemed to have been sufficiently given if sent by prepaid letter post to the address last known to the Bank or stated hereon of the one of us to whom or to whose personal representatives such notice is given and shall be assumed to have reached the addressee in the course of post. In the case of the death of any of us and until the Bank receives notice in writing of the grant of probate of his will or of

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administration of his estate any notice or demand by the Bank sent by post as aforesaid addressed to such one of us or his personal representatives at his address last known to the Bank or stated hereon shall for all purposes of this guarantee be deemed a sufficient notice or demand by the Bank to such one of us and his personal representatives and shall be as effectual as if he were still living.

In the High Court in Malaya at Kuala Lumpur

No.3
Affidavit of Tan Loong Pung dated 20th January 1978

Exhibit "TLP 1" thereto dated 24th March 1975

(continued)

10 19. Any admission or acknowledgment in writing by the customer or by any person authorized by the customer of the amount of indebtedness of the customer to the Bank and any judgment recovered by the Bank against the customer in respect of such indebtedness shall be binding and conclusive on and against us and our executors administrators and legal representatives in all courts of law and elsewhere. A certificate by an officer of the Bank as to the money and liabilities for the time being due or incurred to the Bank from or by the customer shall be conclusive evidence in any legal proceedings against us or any one of us or our personal representatives.

20 20. This guarantee shall be in addition to and shall not be in any way prejudiced or affected by any collateral or other security now or hereafter held by the Bank for all or any part of the money hereby guaranteed nor shall such collateral or other security or any lien to which the Bank may be otherwise entitled or the liability of any person or persons not parties hereto for all or any part of the monies hereby secured be in anywise prejudiced or affected by this present guarantee. And the Bank shall have full power at its discretion to give time for payment to or make any other arrangement with any such other person or persons without prejudice to this present guarantee or any liability hereunder. And all money received by the Bank from us or any of us or the customer or any person or persons liable to pay the same may be applied by the Bank to any account or item of account or to any transaction to which the same may be applicable.

40 50 21. This guarantee shall not be determined by the Bank being absorbed by or amalgamating with or taking over any other Bank or firm or corporation but shall endure and be available for past and subsequent advances and all other purposes for or by the absorbing or amalgamated company or concern.

In the High Court in Malaya at Kuala Lumpur

No. 3
Affidavit of Tan Loong Pung dated 20th January 1978

Exhibit "TLP 1" thereto dated 24th March 1975

(continued)

22. In these clauses where the context so permits the singular includes the plural and vice versa and the masculine includes the feminine and neuter genders and person includes a corporation and reference to the Bank means First National City Bank New York

23. No assurance security or payment which may be avoided under section 293 or 294 of the Companies Act 1965 or by any provisions of the Bankruptcy Act 1967 and no release settlement or discharge which may have been given on the faith of any such assurance security or payment shall prejudice or affect the Bank's right to recover from us to the full extent of this guarantee as if such assurance security payment release settlement or discharge (as the case may be) had never been granted given or made.

10

Dated this 24th day of March 1975

Signed by the above-named in my presence:

Sd: Haroaki Kowada
Haroaki Kowada

20

Sd: Peter Kok Siew Fatt
Peter Kok Siew Fatt

Sd: Ooi Boon Loong
Ooi Boon Loong

Witness to above signatures: Sd: (Illegible)

EXHIBIT "TLP 2"
dated 23rd September
1977

In the High
Court in
Malaya at
Kuala Lumpur

COPY

FIRST NATIONAL CITY BANK
NEW YORK
(Incorporated with limited
liability in the U.S.A.)
KUALA LUMPUR

No.3
Affidavit of
Tan Loong Pung
dated 20th
January 1978

Exhibit
"TLP 2"
thereto dated
23rd September
1977

10 A.R. REGISTERED

PERSONAL, PRIVATE AND CONFIDENTIAL

23rd September 1977

Mr. Ooi Boon Leong
c/o Mr. Ooi Boon Leong's Office
3rd Floor, Ming Building
Jalan Bukit Nanas
Kuala Lumpur

20

Mr. Peter Kok Siew Fatt
c/o No.11, 2nd Floor
Jalan Silang
Kuala Lumpur

Mr. Hiroaki Kowada
c/o Jurong Family Sports Centre
No.1 Yuan Ching Road
Singapore 22

Dear Sirs

Re: Leisure Industries Sdn.Bhd.
Term Loan outstandings \$302,152-67
(excluding interests)

30

We refer to our letter dated August 26, 1977 to
subject company, carbon copies to you, demanding
full payment of the above loan and all interests
outstandings. To date no such payment has been
made.

40

As such, since you are jointly and severally
guarantors of the said loan, we hereby demand
payment of the above sum plus whatever interests
until date of full liquidation of the loan within
seven (7) days from date of this letter hereof,
failing which we will have no alternative but to
take legal action to recover all monies due to
us by the said company. All legal fees and other
costs incurred in our so doing shall be at your

In the High
Court in
Malaya at
Kuala Lumpur

No.3
Affidavit of
Tan Loong
Pung dated
20th January
1978

Exhibit
"TLP 2"
thereto dated
23rd September
1977

(continued)

expense.

Very truly yours,

Sd:

Noordin Abdullah
ASSISTANT MANAGER

c.c. M/s. Shearn Delamore & Co.
P.O. Box 188
2, Benteng
Kuala Lumpur

Attention: Encik Rahmat Jumari

10

/ja

This is the Exhibit marked "TLP 2" referred
to in the annexed Affidavit of TAN LOONG PUNG
affirmed on the 20th day of Jan. 1978

Sd: Su Cheng Yee
Commissioner for Oaths
High Court, Kuala Lumpur

Exhibit
"TLP 3A"
thereto dated
8th October
1977

EXHIBIT "TLP 3A"
dated 8th October
1977

20

SD 39108 (RJ)

8th October, 1977

Mr. Ooi Boon Leong,
c/o Mr. Ooi Boon Leong's Office,
3rd Floor, Ming Building,
Jalan Bukit Nanas,
KUALA LUMPUR

BY HAND

Dear Sir,

Term Loan outstandings
\$302,152.67 (excluding
interests)

30

We act for Citibank N.A., Jalan Ampang,
Kuala Lumpur. We are instructed by our clients
that you have given a guarantee to our clients
in respect of a Term Loan in favour of Leisure
Industries Sdn.Bhd.

10 We are instructed that our clients have written to you to demand payment under the guarantee in respect of the above amount outstanding on the Term Loan to Leisure Industries Sdn.Bhd. Since you have failed to make payment under the terms of the guarantee and the demand by our clients, we are instructed to inform you that unless the aforesaid amount is paid to us within seven (7) days from the date hereof, legal proceedings will be commenced against you without any further reference and you will be liable for the costs incurred.

Yours faithfully,

c.c. Citibank
jt.

Attn: En. Noordin Abdullah

20 This is the Exhibit marked "TLP 3A" referred to in the annexed Affidavit of TAN LOONG PUNG affirmed on the 20th day of Jan.1978

Sgd. Su Cheng Yee
Commissioner for Oaths
High Court, Kuala Lumpur.

In the High
Court in
Malaya at
Kuala Lumpur

No.3
Affidavit of
Tan Loong Pung
dated 20th
January 1978

Exhibit
"TLP 3A"
thereto dated
8th October
1977

(continued)

In the High
Court in
Malaya at
Kuala Lumpur

EXHIBIT "TLP 3B"
dated 8th October 1977

SD 39108 (RJ)

No. 3
Affidavit of
Tan Loong Pung
dated 20th
January 1978
Exhibit
"TLP 3B"
thereto dated
8th October
1977

8th October 1977

Mr. Peter Kok Siew Fatt,
c/o No.11, 2nd Floor,
Jalan Silang,
KUALA LUMPUR

BY HAND

Dear Sir,

Term Loan outstandings 10
\$302,152.67 (excluding interests)

We act for Citibank N.A., Jalan Ampang,
Kuala Lumpur. We are instructed by our
clients that you have given a guarantee to our
clients in respect of a Term Loan in favour of
Leisure Industries Snd. Bhd.

We are instructed that our clients have
written to you to demand payment under the
guarantee in respect of the above amount out- 20
standing on the Term Loan to Leisure Industries
Sdn.Bhd. Since you have failed to make payment
under the terms of the guarantee and the
demand by our clients, we are instructed to
inform you that unless the aforesaid amount is
paid to us within seven (7) days from the date
hereof, legal proceedings will be commenced
against you without any further reference and
you will be liable for the costs incurred.

Yours faithfully,

c.c. Citibank
jt.

30

Attn: En. Noordin Abdullah

This is the Exhibit marked "TLP 3B" referred
to in the annexed Affidavit of TAN LOONG PUNG
affirmed on the 20th day of Jan.1978

Sgd. Su Cheng Yee
Commissioner for Oaths
High Court, Kuala Lumpur

EXHIBIT "TPL 4"
dated 17th October 1977

In the High
Court in
Malaya at
Kuala Lumpur

NG EK TEONG & PARTNERS

Advocates & Solicitors
Notaries Public
Commissioners for Oaths

P.O.Box 7, 2nd Floor,
Bangunan Persatuan Hokkien
Selangor, Jalan Raja Chulan,
Kuala Lumpur

Telephones: 80306/80307/80308

No.3
Affidavit of
Tan Loong Pung
dated 20th
January 1978

Exhibit
"TLP 4"
thereto dated
17th October
1977

10

17 October 1977

SD 39108 (RJ)
3877/SN/MS/nk

M/s Shearn, Delamore & Co.
Advocates & Solicitors,
2 Benteng,
KUALA LUMPUR 01-19

Dear Sirs,

20

Re: Term loan outstanding
\$302,152.67 (excluding interests)

We act for Mr. Ooi Boon Leong of c/o Mr. Ooi
Boon Leong's office, 3rd Floor, Ming Building,
Jalan Bukit Nanas, Kuala Lumpur.

We refer to your letter of the 8th of October
1977 and have instructions from our client to
inform you that he denies the liability to pay
the sum of \$302,152.67 (excluding interests)
demanded by you or any sum whatsoever.

30

Yours faithfully,

Sd:

c.c. Client

This is the Exhibit marked "TLP 4" referred
to in the annexed Affidavit of TAN LOONG PUNG
affirmed on the 20th day of Jan. 1978

Sgd. Su Cheng Yee
Commissioner for Oaths
High Court, Kuala Lumpur

In the High
Court in
Malaya at
Kuala Lumpur

No.4
Affidavit of
Peter Kok Siew
Fatt dated
22nd March
1978

No. 4

AFFIDAVIT OF PETER KOK
SIEW FATT dated 22nd
March 1978

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
CIVIL SUIT NO.3631 OF 1977

Between:

Citibank N.A.

Plaintiffs

And

1. Ooi Boon Leong
2. Peter Kok Siew Fatt
3. Hiroald Kowada

10

Defendants

A F F I D A V I T

I, PETER KOK SIEW FATT, of full age, a Malaysian Citizen residing at No.11, 2nd Floor, Jalan Silang, Kuala Lumpur, and the 2nd Defendant referred to in this Civil Suit, affirm and say as follows :-

1. I beg to refer to the Affidavit of Ooi Boon Leong filed herein on the 22nd of March 1978.

20

2. I confirm that I am one of the Co-Guarantors to the Guarantee referred to in Para.2 of Ooi Boon Leong's Affidavit.

3. I am also a Director of the Company Leisure Industries Snd. Bhd.

4. I confirm that I agree to all the matters stated in Para.2 - Para.11 of the Affidavit of Ooi Boon Leong as though repeated herein.

5. I am advised by my Solicitors and verily believe that the claim by the Plaintiff Bank in the circumstances is not tenable and that I have a good defence thereto.

30

6. I pray that the application of the Plaintiff Bank for Summary Judgment be dismissed with costs and that I be given unconditional leave to defend the action.

AFFIRMED by the said PETER)
KOK SIEW FATT at Kuala)
Lumpur this 22nd day of) Sgd. Peter Kok
March 1978 at 9.00 a.m.) Siew Fatt

In the High
Court in
Malaya at
Kuala Lumpur

BEFORE ME,
Sgd. Yee Soon Kwong
(Yee Soon Kwong)
Pesuruhjaya Sumpah
Commissioner for Oaths

No.4
Affidavit of
Peter Kok Siew
Fatt dated
22nd March
1978
(continued)

10 This Affidavit is filed by Messrs. Ng Ek Teong
& Partners of 2nd Floor, Banguanan Persatuan
Hokkien Selangor, Jalan Raja Chulan, Kuala
Lumpur, Solicitors for the 2nd Defendant
abovenamed.

No. 5

AFFIDAVIT OF HIROALD
KOWADA dated 2nd
May, 1978

No.5
Affidavit of
Hiroald Kowada
dated 2nd
May 1978

20 IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
CIVIL SUIT NO.3631 OF 1977

Between

Citibank N.A.

Plaintiffs

And

1. Ooi Boon Leong
2. Peter Kok Siew Fatt
3. Hiroald Kowada

Defendants

A F F I D A V I T

30 I, HIROALD KOWADA, of full age residing at
c/o Jurong Family Bowl, No.1 Yuan Ching Road,
Singapore 22, Republic of Singapore, and the
3rd Defendant referred to in this Civil Suit,
affirm and say as follows :-

1. I beg to refer to the Affidavit of Ooi
Boon Leong filed herein on the 22nd of March
1978.

In the High Court in Malaya at Kuala Lumpur

No.5
Affidavit of Hiroald Kowada dated 2nd May 1978
(continued)

2. I confirm that I am one of the Co-Guarantors to the Guarantee referred to in Para.2 of Ooi Boon Leong's Affidavit.

3. I am also a Director of the Company, Leisure Industries Sdn.Bhd.

4. I confirm that I agree to all the matters stated in Para.2 - Para.11 of the Affidavit of Ooi Boon Leong as though repeated herein.

5. I am advised by my Solicitors and verily believe that the claim by the Plaintiff Bank in the circumstances is not tenable and that I have a good defence thereto. 10

6. I pray that the application of the Plaintiff Bank for Summary Judgment be dismissed with costs and that I be given unconditional leave to defend the action.

AFFIRMED by the said HIROALD KOWADA at Juala Lumpur this 2nd day of May 1978 at 10.00 a.m. } Sgd. Hiroald Kowada 20

Before me,
Sgd. Yee Soon Kwong
(Yee Soon Kwong)
Pesuruhjaya Sumpah
Commissioner for Oaths

This Affidavit is filed by Messrs. Ng Ek Teong & Partners of 2nd Floor, Bangunan Persatuan Hokkien Selangor, Jalan Raja Chulan, Kuala Lumpur, Solicitors for the 3rd Defendant abovenamed. 30

No. 6

AFFIDAVIT OF OOI BOON
LEONG dated 22nd March
1978

In the High
Court in
Malaya at
Kuala Lumpur

No.6
Affidavit of
Ooi Boon Leong
dated 22nd
March 1978

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
CIVIL SUIT NO. 3631 OF 1977

Between

Citibank N.A.

Plaintiffs

And

10

1. Ooi Boon Leong
2. Peter Kok Siew Fatt
3. Hiroald Kowada

Defendants

A F F I D A V I T

I, OOI BOON LEONG (I.C.No.3421065) of full age, a Malaysian Citizen residing at No.20 Jalan Pasir, Off Jalan Seavoy, Kuala Lumpur, and the 1st Defendant referred to in this Civil Suit, affirm and say as follows :-

20 1. I beg to refer to the Affidavit filed herein by Tan Loong Pung the Assistant Vice-President of the Plaintiff Bank.

2. I beg to refer in particular Para.3 of the said Affidavit and confirm that I had signed a joint and several Guarantee referred herein dated the 24th March 1975 but deny as stated in Para.7 of the said Affidavit that the said Guarantee is an admission of the debt.

30 3. On or about March 1975 the Directors of Leisure Industries Snd.Bhd. (hereinafter referred to as "the Company") and I as one of the Directors of the Company approached the Plaintiff Bank for credit facilities to be granted to the Company and the Company was agreeable to providing a Debenture in the nature of a Charge on the assets of the Company to the Plaintiff Bank as security for sums advanced.

40 4. The Plaintiff Bank agreed to grant the credit facilities to the Company on terms contained in a letter of offer dated 24th March 1975 (a copy of which is attached hereto and marked OBL-1) namely :-

In the High Court in Malaya at Kuala Lumpur

No.6 Affidavit of Ooi Boon Leong dated 22nd March 1978 (continued)

- (i) the company provides a Debenture to the Plaintiff Bank charging all its assets; and
- (ii) letter of undertaking signed by all shareholders not to divest their respective shareholdings without the Bank's prior written consent and to inject additional capital into the company in the event of cash shortfall as long as the term loan is outstanding; and 10
- (iii) all the Directors of the Company provide additional collateral securities in the nature of personal guarantees amounting to \$600,000/-

5. The said letter of offer was accepted by the Company.

6. I gave the Guarantee dated the 24th March 1975 on the understanding that the Plaintiff Bank would be (a) obtain a valid Debenture from the Company as stated in Para.4(i) above and (b) obtain the undertakings from shareholders as stated in Para.4(ii) above. 20

7. (a) Consequently on the 6th of May 1975 a Debenture was given to the Plaintiff Bank in which the Company charged its assets to the Plaintiff Bank and stated therein that the Guarantee provided by me is in the nature of an additional collateral security;

(b) After the said Debenture was duly given the Company began drawing on the credit facilities provided by the Plaintiff Bank. 30

8. (a) In the latter part of 1977 the Company having defaulted in the repayment of its loans and on perusing its Debenture given to the Plaintiff Bank, it was found that the Debenture did not have any express provisions whereby in the event of default of payment of credit facilities granted, Receivers appointed under the said Debenture could sell properties of the Company which were charged under the said Debenture; 40

(b) On or about January 1978 the Company appointed Receivers under the terms of the said Debenture and by way of an Originating Summons No.86 of 1976 in the High Court at Kuala Lumpur the Receiver applied to the High Court for directions to grant them the liberty

to sell the property charged under the said Debenture (a copy of the said Originating Summons is attached hereto and marked OBL-2).

In the High Court in Malaya at Kuala Lumpur

(c) I verily believe that the High Court at Kuala Lumpur heard the Originating Summons on the 21st March, 1978 and granted the application as prayed for;

No.6
Affidavit of
Ooi Boon Leong
dated 22nd
March 1978

(d) I verily believe that the Company may appeal against the decision of High Court in the said Originating Summons.

(continued)

10

9. (a) To the best of my recollection only the 1st 2nd and 3rd Defendants signed the undertaking referred to in Para.4(ii) as shareholders, though the requirement prior to disbursement to the Company of loans was that all shareholders should sign the said undertaking.

20

(b) I verily believe that the shareholders who have not signed the undertaking referred to in Para.8(a) hold about 40% of the issued Share Capital of the Company.

10. I am advised and verily believe that as a result of the matters referred to in Paras.6, 7, 8, 9:

(a) there has been a variation of the terms under which the Guarantee was given by me to the Plaintiff Bank thus exposing me to a liability greater than what I had guaranteed; and

30

(b) in any event as a result of the Debenture not containing a power of sale and the Plaintiff Bank failing to obtain the required undertakings from the shareholders I as Guarantor have lost the benefit of the securities granted by the Company to the Plaintiff Bank to which I am entitled to;

(c) in the circumstances I am advised and verily believe that the Guarantee is discharged and/or invalid and unenforceable.

40

11. I am further advised and verily believe that the said Guarantee is void in that it contains a promissory note and as it had not been duly stamped in accordance with the provisions of the Stamp Ordinance 1949 the said Guarantee is void and unenforceable.

12. I am advised by my solicitors and verily believe that the claim by the Plaintiff Bank in

In the High Court in Malaya at Kuala Lumpur

No.6
Affidavit of Ooi Boon Leong dated 22nd March 1978
(continued)

the circumstances is not tenable and that I have a good defence thereto.

13. I pray that the application of the Plaintiff Bank for Summary Judgment be dismissed with costs and that I be given unconditional leave to defend the action.

AFFIRMED by the said
OOI BOON LEONG at
Kuala Lumpur in the
Federal Territory this
22nd day of March 1978
at 9.00 a.m.) Sgd. Ooi Boon Leong

10

Before me,
Sgd. Yee Soon Kwong
(Yee Soon Kwong)
Commissioner for Oaths,
Kuala Lumpur

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

20

EXHIBIT "OBL 1"
dated 24th March 1975

In the High
Court in
Malaya at
Kuala Lumpur

FIRST NATIONAL CITY BANK
NEW YORK
(Incorporated with limited
liability in the U.S.A.)
KUALA LUMPUR

No.6
Affidavit of
Ooi Boon Leong
dated 22nd
March 1978

TCLC/ESLK
March 24, 1975

Exhibit
"OBL 1"
thereto dated
24th March
1975

10 M/s Leisure Industries Sdn.Bhd.
c/o Ooi Boon Leong,
3rd Floor, Ming Building,
Jalan Bukit Nanas, Kuala Lumpur.

Dear Sirs:

Re: Credit Facilities - Term
Loan and Guarantees

20 This will confirm that Citibank is prepared
to make funds available to you substantially
according to the terms and conditions outlined
below, and subject to our annual review and
sole-discretion :-

Borrower: Leisure Industries Sdn.Bhd.
c/o Ooi Boon Leong,
3rd Floor, Ming Building,
Jalan Bukit Nanas,
Kuala Lumpur.

Lender: First National City Bank,
Kuala Lumpur.

30 Amount: (a) Two year term
loan, full draw-
down by July 1,
1975 - M\$500,000/-
(b) Local Guarantees- M\$100,000/-
M\$600,000/-

40 Purpose: (a) The term loan will be used for
machinery, skates and boots,
installation and interior works
for the ice-skating rink.

(b) Local guarantees will be used
for issuance to Malaysian Customers,
the National Electricity Board
and/or other bodies undertaking

In the High Court in Malaya at Kuala Lumpur
 No.6
 Affidavit of Ooi Boon Leong dated 22nd March 1978
 Exhibit "OBL 1" thereto dated 24th March 1975
 (continued)

payments and/or performance involving the ice-skating project.

Interest Rate:	(a) The interest rate on the term loan will be 3% above the Malaysian prime rate per annum or 3% above our cost of funds per annum whichever is higher, and payable monthly. (b) Commission chargeable on the issuance of local guarantees will be $\frac{1}{2}$ % flat, for a maximum period of one year.	10
Commitment Fee:	A commitment fee of $\frac{1}{2}$ % flat on the term loan shall be payable upon the acceptance by Leisure Industries Sdn.Bhd. of the terms and conditions of lending.	
Repayment:	First repayment of M\$125M to begin 6 months after full drawdown, after which quarterly repayment of M\$62.5M each; i.e. repayment schedules Jan. 1, 1976 - M\$125M Apr. 1, 1976 - 62.5M July 1, 1976 - 62.5M Oct. 1, 1976 - 62.5M Jan. 1, 1977 - 62.5M Apr. 1, 1977 - 62.5M July 1, 1977 - 62.5M (final)	20
Security:	(a) A registered first fixed and floating charge stamped for M\$600,000/- over all fixed and current assets, both present and future. (b) Joint and Several Guarantee for M\$600,000/- signed by M/s H.Kowada, Ooi Boon Leong and Peter Kok Siew Fatt. (c) Hypothecation of M\$250M (or equivalent) deposit of Mr.Eiji Ozaki at First National City Bank, Tokyo. (d) Hypothecation of 110M shares of Ancom Snd.Bhd. (previously Ansul (M) Sdn.Bhd.) in the name of Mr. Ooi Boon Leong.	30 40

Conditions of Disbursement:

Conditional upon the following terms :-

In the High Court in Malaya at Kuala Lumpur

No.6

Affidavit of Ooi Boon Leong dated 22nd March 1978

Exhibit "OBL 1" thereto dated 24th March 1975

(continued)

10

- (a) Satisfactory completion of securities and documentation.
- (b) Letter of undertaking signed by all shareholders not to divest their respective shareholdings without the Bank's prior written consent and to inject additional capital into the company in the event of cash shortfall as long as the term loan is outstanding
- (c) Certificate signed by company secretary or auditor that paid up capital is M\$300,000/-.

20

Affirmative Covenants:

Standard plus :

30

- (a) Current ratio (current assets over current liabilities) shall not fall below 0.6:1 during the first year of operation and 1:1 during the subsequent periods which Citibank's term loan is outstanding, and the leverage ratio (total liabilities over tangible net worth) shall not exceed 1.3:1 for the first year of operation, 0.7:1 for the second year and 0.5:1 for the third year

40

- (b) Quarterly Internal balance sheets and detailed profit and loss accounts to be submitted 30 days after each quarterly closing

50

- (c) Audited balance sheets and detailed profit and loss accounts to be submitted within 90 days after each year-end closing

- (d) Leisure Industries Sdn.Bhd. will ensure adequate insurance coverage over all their assets with an insurance company acceptable to Citibank, and Citibank to be named as a co-beneficiary in all policies. Such policies cannot be cancelled

In the High
Court in
Malaya at
Kuala Lumpur

No.6
Affidavit of
Ooi Boon Leong
dated 22nd
March 1978

Exhibit
"OBL 1"
thereto dated
24th March
1975

(continued)

Negative
Covenants:

without the prior written
consent of the Bank.

Standard plus:

(a) No dividends will be
declared and paid without the
prior written consent of the
Bank which consent will not
to be unreasonably withheld

(b) There shall be no mergers,
consolidation etc. without the
prior written consent of the
Bank, which consent will not
to be unreasonably withheld.

10

Prepayment:

Prepayments are permissible
in inverse order as long as
the source of prepayment is
from internal cash generation;
otherwise, a penalty fee of
1% flat will be levied on the
amount prepaid.

20

Default:

Standard plus:

- (a) Failure to pay principal
- (b) Failure to pay interest
- (c) Failure to perform covenants
- (d) Failure to meet other
obligations - Cross
defaults.

Legal Fees:

All legal expenses incurred
shall be for the account of
Leisure Industries Sdn.Bhd.

30

This commitment is conditional upon the
preparation, execution and delivery of legal
documentation in form and substance satisfac-
tory to us and to our solicitors incorporating
substantially the terms set forth above.

Please confirm your acceptance of our
offer by signing and returning to us the
duplicate copy of this letter on or before
April 2, 1975, the date this commitment expires.

Yours very truly,
Sgd. E. Shun Leong Kwang
Eddy Shun Leong Kwang
General Manager

40

LEISURE INDUSTRIES SDN.BHD.
Sgd. (Illegible) Sgd. (Illegible)
Director Director

A C C E P T E D

EXHIBIT "OBL 2" dated
4th February 1978

In the High
Court in
Malaya at
Kuala Lumpur

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
ORIGINATING SUMMONS NO.86 OF 1978

In the Matter of Leisure
Industries Sdn. Bhd.

And

In the Matter of Section 183(3)
of the (illegible) Act, 1965 and
Order (illegible) Rule 8(g) of the
Rules of the Supreme Court, 1957

No.6
Affidavit of
Ooi Boon Leong
dated 22nd
March 1978

Exhibit
"OBL 2" thereto
dated 4th
February 1978

10

BETWEEN

1. David (illegible)
2. (illegible) Ibrahim Applicants

AND

1. Leisure (illegible)
2. First National City Bank New
York now known as Citibank N.A. Defendants

ORIGINATING SUMMONS

20

LET ALL PARTIES concerned attend at Chambers
at the Court at Kuala Lumpur on Tuesday the
28th day of February 1978 at 9.30 o'clock in the
forenoon on the hearing of an application by
DAVID AUBREY MICHAEL * and RAMLI BIN IBRAHIM *(illegible)
the joint Receivers and Managers of the above-
named Company appointed under the powers
contained in an instrument dated 6th May 1975
that directions may be given that they be at
liberty to sell by tender private treaty or
public auction all the existing plant equipment
and machinery and all the properties and assets
whatsoever and wheresoever situate of the above-
named company, such offers to be sent to the
said Receivers and managers at Messrs. Peat,
Marwick Mitchell & Co., Ting Kat Kudua Block E
Kelmleke. Pujabat Damanwara

30

(illegible) Heights 23-04
or as the Court may direct.

Dated this 4th day of February 1978

40

(L.S) Signed: Zaitun Zawiyah

Senior Assistant Registrar,
High Court,
Kuala Lumpur

In the High Court in Malaya at Kuala Lumpur

This Originating Summons was taken out by Messrs. Shearn Delamore & Co. and Drew & Napier, Solicitors for the Applicants.

No.6 Affidavit of Ooi Boon Leong dated 22nd March 1978

This Originating Summs will be supported by the Joint Affidavit of David Aubrey Michael Bloom and Ramli bin Ibrahim affirmed on the 2nd day of February, 1978, and filed herein.

Exhibit "OBL 2" thereto dated 4th February 1978

To: 1) Leisure Industries Sdn.Bhd., 3rd Floor, Bangunan Ming, Jalan Bukit Nanas, KUALA LUMPUR.

10

2) First National City Bank New York, A.I.A. Building, Jalan Ampang, KUALA LUMPUR

(continued)

Note: It will not be necessary for you to enter an appearance, but if you do attend either in person or by your Solicitor at the time and place above-mentioned, such Order will be made and proceedings taken as the Judge (or Registrar) may think just and expedient.

20

No.7 Further Affidavit of Tan Loong Pung dated 23rd May 1978

No. 7

FURTHER AFFIDAVIT OF TAN LOONG PUNG dated 23rd May 1978

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR CIVIL SUIT NO. 3631 OF 1977

Between

Citibank N.A.

Plaintiffs

30

And

- 1. Ooi Boon Leong
2. Peter Kok Siew Fatt
3. Hiroald Kowada

Defendants

A F F I D A V I T

I, TAN LOONG PUNG, of full age and a Malaysian Citizen residing at Kuala Lumpur affirm and say as follows :-

1. I am the Assistant Vice President of the Citibank N.A., Kuala Lumpur and a lawfully constituted Attorney of the Plaintiffs and am duly authorised to affirm this Affidavit on behalf of the Plaintiffs and the facts deposed herein are within my knowledge save where the contrary appears.

In the High Court in Malaya at Kuala Lumpur

No.7
Further Affidavit of Tan Loong Pung dated 23rd May 1978

(continued)

10 2. I crave leave to refer to the Joint and Several Guarantee executed by the three Defendants in this matter, in particular, to Clause 19 of the Guarantee which reads as follows :-

"Any admission or acknowledgment in writing by the customer or by any person authorised by the customer of the amount of indebtedness of the customer to the Bank and any judgment recovered by the Bank against the customer in respect of such indebtedness shall be binding and conclusive on and against us and our executors administrators and legal representatives in all courts of law and elsewhere. A certificate by an officer of the Bank as to the money and liabilities for the time being due or incurred to the Bank from or by the customer shall be conclusive evidence in any legal proceedings against us or any one of us or our personal representatives."

20

30 3. I attach herewith and mark Exhibit A a Certificate pursuant to Clause 19 of the Joint and Several Guarantee duly executed by me as an officer of the Bank and a lawfully constituted Attorney of the Plaintiffs.

AFFIRMED by the said)
TAN LOONG PUNG at) Sgd.
Kuala Lumpur this 23rd)
day of May 1978 at)
9 a.m.)

40

Before me
Sgd.
Commissioner for Oaths,
Kuala Lumpur

This Affidavit is filed by M/s Shearn Delamore & Co., Solicitors for the Plaintiffs abovenamed, whose address for service is No.2 Benteng, Kuala Lumpur.

In the High
Court in
Malaya at
Kuala Lumpur

EXHIBIT "A" dated
24th March 1975

No.7
Further
Affidavit of
Tan Loong Pung
dated 23rd
May 1978

Re: Certificate pursuant to
Clause 19 of Joint & Several
Guarantee dated March 24, 1975

Exhibit "A"
thereto dated
24th March
1975

I, Tan Loong Pung, an Attorney and Officer
of the Bank, do hereby certify that as at 13th
day of December 1977, the said Ooi Boon Leong,
Peter Kok Siew Fatt and Haroaki Kowada were
indebted in Citibank N.A., in the sum of
\$333,986-46 being principal and \$33,196-96
being interest totalling \$367,183-42.

10

Very truly yours

Sgd.
Tan Loong Pung
Assistant Vice President

/ja

This is the Exhibit marked "A"
referred to in the annexed
Affidavit/Petition of Tan Loong
Pung affirmed on 23rd day of
May 1978

20

Sgd.
Commissioner for Oaths
High Court, Kuala Lumpur

No. 8

FOUNDATIONS OF DECISION OF
SENIOR ASSISTANT REGISTRAR
dated 26th May 1978

In the High
Court in
Malaya at
Kuala Lumpur

No.8
Grounds of
Decision of
Senior
Assistant
Registrar
dated 26th
May 1978

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
CIVIL SUIT NO: 3631 OF 1977

BETWEEN

CITIBANK N.A.

Plaintiffs

AND

10

1. OOI BOON LEONG
2. PETER KOK SIEW FATT
3. HIROALD KOWADA

Defendants

FOUNDATIONS OF DECISION

This is an appeal from my Order allowing the Plaintiffs' claim for summary judgment under 0.14 r.1 of the Rules of Supreme Court.

20

In this matter the Plaintiffs in their Statement of Claim allege that the Defendants on 24.3.75 in consideration of the Plaintiffs making or continuing advances or otherwise giving credit or affording banking facilities and accommodation to Leisure Industries Sdn. Bhd. (hereinafter referred to as the "Company") of which the Defendants were directors jointly and severally guaranteed payment on demand up to a limit of \$600,000.00 together with interest at the rate of 3% above the Malaysian prime rate or 12% per annum whichever is higher.

30

The Plaintiffs say the amount outstanding as at 31.10.77 including interest was \$331,731.22 which amount they say the Defendants refuse to pay. Accordingly the Plaintiffs prayed for judgment for this sum together with interest thereon at 12½% and from 1.11.77 to date of realisation and costs, in their application for judgment under 0.14 r.1.

40

In support of this application, the Plaintiffs' Assistant Vice President Tan Loong Pung has deposed an Affidavit on 20.1.78 (Encl. 8). This affidavit in substance repeats the material parts of the Statement of Claim and exhibits the Guarantee (exhibit "TPL1"), letter of demand by the Plaintiffs (exhibit "TPL2")

In the High Court in Malaya at Kuala Lumpur

No.8
Grounds of Decision of Senior Assistant Registrar dated 26th May 1978

(continued)

a letter written by the Plaintiffs' solicitors to the First and Second Defendants (exhibit "TLP3A" and "TLP3B") respectively and a reply from the First Defendant's solicitors (exhibit "TLP4"). It is therein alleged that the First Defendant's reply as contained in exhibit "TLP4" is a mere denial of the debt and that the Guarantee (exhibit "TPL1") is a tacit admission of the debt on the defendant's part.

10

In opposition to this the First Defendant has deposed and filed his affidavit dated 20.3.78 (encl.11). Annexed to this affidavit is a letter from the Plaintiffs to Leisure Industries Sdn.Bhd. (exhibit "OBL1"). The First Defendant confirms that he executed the said Guarantee but denies that the Guarantee constitutes an admission of the debt.

The First Defendant further contends that the Plaintiffs only agreed to grant the credit facilities upon the following terms :-

20

- (a) The company was to provide a debenture to the Plaintiffs charging all its assets;
- (b) Letter of undertaking signed by all shareholders not to divest their respective shareholdings without the Plaintiffs' consent.
- (c) All the Directors of the company to provide additional collateral security in the nature of personal guarantee amounting to \$600,000.00.

30

These conditions were, says the First Defendant, accepted by the Company and the First Defendant signed the Guarantee upon the understanding that the Plaintiffs would obtain a valid debenture from the company and also obtain the necessary undertakings from the shareholders.

The First Defendant contends that the Plaintiffs failed to get a valid debenture, in that the debenture obtained did not have any express provision to appoint Receiver who could sell the company's properties charged under the debenture, should the company default in repayment of the credit facilities granted to the company. The First Defendant however confirms that Receivers were appointed pursuant to Court Order on 21.3.78 in Kuala Lumpur

40

High Court Originating Summons No.86 of 1978, with authority to sell the company's properties. The First Defendant believes that the company may appeal against the decision appointing the Receivers.

In the High Court in Malaya at Kuala Lumpur

No.8

Grounds of Decision of Senior Assistant Registrar dated 26th May 1978

(continued)

10

The First Defendant also contends that the Plaintiffs failed to get the undertaking of all the shareholders in that the shareholders whose undertaking was not obtained hold 40% of the company's issued share capital. He also contends that the said guarantee is valid and unenforceable because it contains a promissory note and that it had not been stamped in accordance with the Stamp Ordinance, 1949.

20

The Second and Third Defendants have also deposed their affidavits (encl.12 & 14) on 22.3.78 and 2.5.78 respectively and have adapted the contentions of the First Defendant, as their grounds for opposing this application.

The Plaintiffs' Asst. Vice President, Tan Loong Pung has filed a further affidavit (encl.13) dated 23.5.78 in which he quotes clause 19 of the Guarantee and attaches a certificate signed by him as required by the said clause 19, to show that the amount due as on 13.12.77 was \$367,183.42.

30

Perusal of the pleadings and the affidavits filed herein, shows that there is no complaint upon the part of the defendants in respect of the sum of \$331,731.32 as in the statement of claim. Therefore it is not necessary for me to decide whether the contentions of the Defendants raised, are such as to raise bona fide triable issues.

40

In view of the fact that the amount of \$331,731.32 is not in dispute, the first issue whether execution of the Guarantee is ipso facto on admission of liability does not arise and need not be considered, as far as the amount is concerned.

The next point as regards the validity of the debenture is concerned, it was never exhibited by the Defendants. In any event I do not consider this contention a bona fide issue as a competent Court had appointed the Receivers with power to sell the properties of the company. So long as the order existed it was not competent for me to go behind it to

In the High Court in Malaya at Kuala Lumpur

No.8

Grounds of Decision of Senior Assistant Registrar dated 26th May 1978

(continued)

see if it was regular or not. The defendants also say that the company may appeal against this Order. To my mind this is not sufficient. The doubtful intention of the company to appeal or not to appeal, does not help the Defendants.

Further, if there was any defect in the debenture, which could not be cured by the Court Order appointing the receivers, the Defendants cannot complain about this as they had by clause 8 of the Guarantee consented to remain liable even if any security taken by the Plaintiffs were to turn out to be invalid. I therefore had no hesitation in rejecting this contention for reasons stated above.

10

The Defendant's third contention that the Guarantee is void in that it contains a promissory note which is not stamped under the Stamp Ordinance, 1949, is without substance. Pursuant of the Guarantee shows that it is the usual Guarantee and I find it properly stamped. I therefore rejected this contention without hesitation as being made without any bona fide.

20

The Defendants final contention that the Plaintiffs' had not obtained the undertaking of all the shareholders not to divest their respective shares does not in my opinion raise any triable issue in view of clause 8 of the Guarantee executed by the Defendants.

This clause reads as follows :-

"The liability of any of us hereunder shall not be affected by any failure by the Bank to take any security or by any invalidity of any security taken or by any existing or future agreement by the Bank as to the application of any advances made or to be made to the customer."

30

The Defendants' counsel in respect of this point argued that clause 8 of the Guarantee is inconsistent with sections 92 and 94 of the Contracts Act 1950 and clause 16 of the Guarantee is inconsistent with section 86 of the said Act, and that as such the existence of these conflicting clauses, by virtue of section 1(2) of the Contracts Act, 1950, invalidates the whole Guarantee and the Guarantee is therefore not enforceable. In support of this argument the learned counsel cited the case of Chitguppi & Co. v. Vinayah Kashinath (1921) Bombay Report - A.I.R. pg. 164.

40

With due respect I could not accept this argument. Sections 92 and 94 are invoked not by the mere presence of any clause in the Guarantee but by some act or omission done or not done by the Plaintiffs which are contrary to the said sections and which acts or omission are not done with the consent of the Defendants.

In the High Court in Malaya at Kuala Lumpur

No.8
Grounds of Decision of Senior Assistant Registrar dated 26th May 1978

(continued)

10 The authority cited by the Defendants' counsel, as I read it, enunciates the principle that an express stipulation in a contract of guarantee whereby the surety purports to waive "all his rights legal, equitable, and statutory or otherwise" which may be inconsistent with the guarantee, will not deprive the surety of his right to discharge under section 133 of the Indian Contract Act, 1872.

20 There is nothing in this authority to say that the whole Guarantee becomes void, just because the offending clause is too general. I therefore held that the Guarantee is not invalid or unenforceable.

Similarly I held that clause 16 by its mere presence in the Guarantee does not invalidate or make the Guarantee unenforceable so long as the Defendants have given their consent as contemplated by section 86 and 94 of the Contracts Act, 1950.

30 It may be observed that sections 133 and 141 of the Indian Contracts Act 1872 are respectively in para materia with section 86 and 94 of our Contracts Act 1950.

40 Section 86 and 94 permit the creditor to do certain acts or variation with the consent of the surety. Under clause 8 of the Guarantee the Defendants have consented to the Plaintiffs to take or not to take a security and not to complain if the security taken turns out to be invalid. By clause 16 the Defendants have consented to the Plaintiffs making any variations in respect of "advances or otherwise giving credit or affording Banking facilities" to the Company.

The Defendants main complaint is that the Plaintiffs have not obtained the security by way of undertaking from all the shareholders that they would not divest their shares and that debenture taken is defective.

In this respect it is necessary to consider

In the High
Court in
Malaya at
Kuala Lumpur

No.8

Grounds of
Decision of
Senior
Assistant
Registrar
dated 26th
May 1978

(continued)

whether the Plaintiffs are protected by clauses 8 of the Guarantee in that whether the defendants have given a valid consent to the Plaintiffs as is required by section 86 of the Contracts Act 1950.

By clause 8 what the Defendants have consented to is in respect of a specific contingency the nature of which is known to the Defendants that is, the Defendants could clearly anticipate that their consent is only in respect of security and had thereby waived their rights only so far as a security to be taken by the Plaintiffs was concerned. The Defendants in our present case were not by the said clause required to waive all rights under the statute as was the position in the Indian case, where the variation or its nature was not known when the consent to waive all their rights was given.

10

In the circumstances, I held that the Defendants who are directors of the company, when they executed the Guarantee had expressly given their consent to the Plaintiffs or specific purposes, the nature of which purposes was known to them and that the consent was given within the ambit of sections 86 and 94 of the Contracts Act, 1950.

20

Having considered the pleadings and their respective affidavits of the parties and the submissions of their counsels, I had no doubt in my mind that there was no bona fide triable issue, which would entitle the Defendants to have the Plaintiffs application dismissed. I therefore entered judgment for the Plaintiffs.

30

Sgd. Illegible
ASST. REGISTRAR

No.9

NOTICE OF APPEAL
dated 31st May 1978

In the High
Court in
Malaya at
Kuala Lumpur

No.9
Notice of
Appeal dated
31st May 1978

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
CIVIL SUIT NO. 3633 OF 1977

Between

Citibank N.A.

Plaintiffs

And

10

1. Ooi Boon Leong
2. Peter Kok Siew Fatt
3. Hiroald Kowada

Defendants

NOTICE OF APPEAL

TAKE NOTICE that all the abovenamed Defendants intend to appeal from the decision of the Senior Assistant Registrar given on the 26th day of May, 1978 ordering that the Plaintiffs be granted Judgment on the amount claimed in the Statement of Claim together with interest and costs.

20

AND FURTHER TAKE NOTICE that you are required to attend before the Honourable Judge in Chambers in the High Court, Kuala Lumpur, on Monday the 21st day of August 1978 at 9.30 o'clock in the forenoon, on the hearing of an application by all the said Defendants that the aforesaid Order of the Senior Assistant Registrar be set aside. And that the costs of this Appeal be borne by the Plaintiffs.

Dated this 31st day of May 1978

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Sgd. Messrs. Ng Ek Teong
& Partners
Solicitors for all the
three Defendants

Sgd. Illegible
Senior Assistant
Registrar High Court
Kuala Lumpur

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

40

To: Citibank N.A. or their Solicitors,
Messrs. Shearn Delamore & Co.
2 Benteng, Kuala Lumpur.

In the High
Court in
Malaya at
Kuala Lumpur

No. 10

NOTES OF SUBMISSION
dated 21st August 1978

No.10
Notes of
Submission
dated 21st
August 1978

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
CIVIL SUIT NO. 3631 OF 1977

Summons for Judgment dated 21.1.1978, enclosure
No.9
Notice of Appeal dated 30.5.1978 enclosure No.17

Between

Citibank N.A.

Plaintiff

10

And

1. Ooi Boon Leong
2. Peter Kok Siew Fatt
3. Hiroald Kowada

Defendants

Before me in Chambers
This 21st day of August, 1978

Sgd.
Datuk Wan Hamzah
Judge,
High Court, Malaya.

Narayanan for 1st, 2nd and 3rd Defendants
C. Abraham for Plaintiff.

20

Narayanan :

Section 86 of Contract Act. There has
been variance in the agreement.

Section 92.

Section 94.

Enclosure (11), para.4(ii). This under-
taking has now (sic) been obtained from shareholders.
This is pre condition before the fund can be
released. Page 3 of OBL 1 - condition, item(b). 30
The Bank had got only 60 percent of the share-
holders to give the undertaking. The other 40
percent have not given the undertaking. This
is variation of the terms of the loan to the
principal debtors on which the guarantors
stood guarantee. This variation had not been
consented to by the guarantors, and the
security had not been taken under sections 92
and 94 of the Act by the Bank. So under the Act

the guarantors are entitled to be discharged from the guarantee.

In the High Court in Malaya at Kuala Lumpur

Enclosure (8) - the guarantee is annexed to it, clauses 8 and 16.

No.10
Notes of Submission dated 21st August 1978

Under Malaysian Law these clauses are not tenable. This is new legal point.

(continued)

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Section 1(2) of the Contract Act. I rely on the words: "any incident of any contract", and say that these two clauses are incidents of a contract which are inconsistent under the Act, and therefore they are affected by the Act by virtue of section 1(2).

"Indian Contract Act" by Mulla, 8th Edition, page 3. A.I.R. 1921 Bombay 164 K.B. CHITGUPPI etc.

Therefore the sections of the Act prevail over the clauses.

20

The Bank i.e. the creditor has omitted to do an act which his duty to the surety requires him to do, i.e. omits to get the undertaking from 40 percent of the shareholders. Therefore section 92 applies.

C. Abraham:

30

Letter OBL 1 dated 24.3.1975. List of securities given. The letter of undertaking by shareholders is a condition of disbursement, not a security. This letter was prior to the agreement and the guarantee. Section 92 of the Evidence Act. Therefore the letter cannot be looked at.

Section 96 of Contract Act. Variance with the consent of the guarantors. The guarantors have consented by clause 8 and 16.

Narayanan:

There are triable issues.

By Court:

Decision reserved. Stay of execution granted until decision.

40

Sgd. Datuk Wan Hamzah
21/8/1978

In the High Court in Malaya at Kuala Lumpur

No.10
Notes of Submission dated 21st August 1978
(continued)

Salinan Yang diakui benar

Sgd. Illegible
.....

Setiausaha Hakim
Kuala Lumpur

15/1/1979

No.11
Judgment dated 8th January 1979

No. 11
JUDGMENT dated 8th January 1979

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
Civil Suit No. 3631 of 1977

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Summons for Judgment dated 21.1.1978 enclosure No.9
Notice of Appeal dated 30.5.1978 enclosure No.17

Between

Citibank N.A.

Plaintiff

And

- 1. Ooi Boon Leong
- 2. Peter Kok Siew Fatt
- 3. Hiroald Kowada

Defendants

J U D G M E N T

20

This is an appeal by the defendants from the decision of the Assistant Registrar giving leave to the plaintiff to sign judgment under Order 14 of the Rules of Supreme Court. I find a number of issues in this case which should be tried. I shall state some of these issues.

It is alleged by the defendants that the plaintiff had agreed as a pre condition for disbursement that it should obtain letters of undertaking by all shareholders not to divest their respective shareholdings. It is also alleged by the defendants that the plaintiff had agreed to grant the credit facilities to the Leisure Industries Sdn.Bhd. on the term that the company provides a debenture to the

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10 plaintiff charging all of its assets. It is further alleged that the plaintiff had failed to obtain such letters of undertaking from some of the shareholders and that the debenture which the company had provided was defective in that it did not contain express provision for receivers to sell the properties charged, and therefore the plaintiff had failed to obtain a perfect and good debenture. It is contended by the defendants that by such failures the plaintiff had omitted to do an act which was its duty to the sureties to do, and therefore they were entitled to be discharged from the guarantee under section 92 of the Contracts Act 1950. This is an issue which should be tried.

In the High Court in Malaya at Kuala Lumpur

No.11
Judgment dated 8th January 1979

(continued)

20 It is further contended by the defendants that by reason of the plaintiff making disbursement without such letters of undertaking from some shareholders and without obtaining a good debenture, there had been a variation in the agreement for credit facilities to which the defendants had not consented. They therefore contended that they were discharged under section 86 of the Act. This is another issue which should be tried.

30 It is further contended by the defendants that by reason of such failures on the part of the plaintiff, they had lost the benefit of security which they had against the principal debtor, and they therefore contend that they were discharged under section 94 of the Act. This is another issue which should be tried.

It is further contended that clauses 8 and 16 of the guarantee agreement are inconsistent with the provisions of the Act and the clauses are therefore of no effect. This is yet another issue which should be tried.

40 I therefore allow this appeal and order that the Assistant Registrar's decision be set aside, and that unconditional leave be granted to the defendants to defend. Costs to the defendants.

Sgd. Datuk Wan Hamzah bin Salleh
(DATUK WAN HAMZAH BIN SALLEH)

Kuala Lumpur
8th January 1979

JUDGE,
High Court, Malaya

Counsel: Mr.Narayanan of M/s Ng Ek Teong & Partners for 1st, 2nd & 3rd Defendants

Mr.C.Abraham of M/s. Shearn Delamore & Co. for the Plaintiff.

In the High Court in Malaya at Kuala Lumpur

No.11
Judgment dated 8th January 1979
(continued)

Salinan yang diakui benar,
Sgd. Illegible
.....
Setiausaha Hakim
Kuala Lumpur

8/1/79

No.12

Order dated 8th January 1979

No. 12

ORDER dated 8th January 1979

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
CIVIL SUIT NO. 3631 OF 1977

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Between

Citibank N.A.

Plaintiffs

And

- 1. Ooi Boon Leong
- 2. Peter Kok Siew Fatt
- 3. Hiroald Kowada

Defendants

BEFORE THE HONOURABLE MR. JUSTICE WAN HAMZAH
THIS 8TH DAY OF JANUARY, 1979

IN CHAMBERS

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O R D E R

The Notice of Appeal coming up for hearing on the 21st day of August, 1978 in the presence of Mr. K.S.Narayanan of Counsel for the Defendants and Mr. Cecil Abraham of Counsel for the Plaintiffs AND UPON READING the Defendants' Notice of Appeal dated the 31st day of May 1978 AND UPON HEARING the arguments of Counsel aforesaid IT WAS ORDERED that this Appeal do stand adjourned for Judgment and the said Appeal coming on for Judgment this day in the presence of Mr. V.C. George of Counsel for the Defendants and Mr. Ong Chor Kweng of Counsel for the Plaintiffs IT IS ORDERED that this Appeal be and is hereby allowed and that the

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decision of the Senior Assistant Registrar given on the 26th day of May, 1978 be set aside AND the Defendants be granted unconditional leave to defend AND IT IS LASTLY ORDERED that the costs of this appeal be taxed by the proper Officer of the Court and be paid by the Plaintiffs to the Defendants.

GIVEN under my hand and the Seal of the Court this 8th day of January 1979

SENIOR ASSISTANT REGISTRAR
HIGH COURT, KUALA LUMPUR

In the High Court in Malaya at Kuala Lumpur

No.12
Order dated 8th January 1979

(continued)

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No. 13

NOTICE OF APPEAL
dated 22nd January
1979

In the Federal Court of Malaysia

No.13
Notice of Appeal dated 22nd January 1979

IN THE FEDERAL COURT OF MALAYSIA (APPELLATE JURISDICTION)

CIVIL APPEAL NO. OF 1979

Between

Citibank N.A.

Appellants

And

1. Ooi Boon Leong
2. Peter Kok Siew Fatt
3. Hiroald Kowada

Respondents

(In the Matter of Kuala Lumpur High Court Civil Suit No.3631 of 1977)

Between

Citibank N.A.

Plaintiffs

And

1. Ooi Boon Leong
2. Peter Kok Siew Fatt
3. Hiroald Kowada

Defendants)

30

NOTICE OF APPEAL

TAKE NOTICE that Citibank N.A. the Appellants abovenamed being dissatisfied with the decision of the Honourable Mr. Justice Datuk

In the
Federal Court
of Malaysia

No.13
Notice of
Appeal dated
22nd January
1979

(continued)

Wan Hamzah bin Haji Wan Mohamed Salleh given
at Kuala Lumpur on the 8th day of January,
1979 appeal to the Federal Court against the
whole of the said decision.

Dated this 22nd day of January 1979

Sgd. Messrs. Shearn Delamore & Co.
and Drew & Napier
.....

Messrs. Shearn Delamore & Co.
and Drew & Napier
Solicitors for the Appellants

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- TO:
1. The Chief Registrar,
Federal Court,
Malaysia,
Kuala Lumpur.
 2. The Senior Assistant Registrar,
High Court,
Kuala Lumpur.
 3. The Defendants and/or their Solicitors,
Messrs. Ng Ek Teong & Partners,
2nd Floor, Bangunan Peratuan Hokkien
Selangor,
Jalan Raja Chulan,
Kuala Lumpur. 20

The address for service of the Appellants
are Messrs. Shearn Delamore & Co. and Drew &
Napier, Chartered Bank Building, No.2 Benteng,
Kuala Lumpur.

No. 14

MEMORANDUM OF APPEAL
dated 19th February
1979

In the
Federal Court
of Malaysia

No.14
Memorandum of
Appeal
dated 19th
February 1979

IN THE FEDERAL COURT OF MALAYSIA
(APPELLATE JURISDICTION)

CIVIL APPEAL NO. 21 OF 1979

Between

Citibank N.A.

Appellants

10

And

1. Ooi Boon Leong
2. Peter Kok Siew Fatt
3. Hiroald Kowada

Respondents

(In the Matter of Kuala Lumpur High Court
Civil Suit No. 3631 of 1977

Between

Citibank N.A.

Plaintiffs

20

And

1. Ooi Boon Leong
2. Peter Kok Siew Fatt
3. Hiroald Kowada

Defendants)

MEMORANDUM OF APPEAL

Citibank N.A. the abovenamed appellants appeal to the Federal Court against the whole of the decision of the Honourable Mr. Justice Wan Hamzah given at Kuala Lumpur on the 8th day of January 1979 on the following grounds:-

30

1. That the Learned Trial Judge was wrong in law in holding that the failure on the part of the Plaintiffs to obtain Letters of Undertaking contained in an offer for credit facilities dated 24th March 1975, by all the shareholders of Leisure Industries Sdn. Bhd. (hereinafter called "the principal debtors") as pre-condition to disbursements constituted an issue to be tried and in so doing failed to appreciate (a) the fact that the Defendants had subsequently executed a Guarantee on the 24th day of March 1975 (b) the provisions of Sections 91 and 92 of the Evidence Act 1950 (c) the proviso in preamble to the Guarantee which reads as follows

40

In the
Federal Court
of Malaysia

No.14
Memorandum of
Appeal
dated 19th
February 1979
(continued)

"Such debts shall be deemed to be owing from each of us as principal debtors notwithstanding any defect informality or insufficiency in the borrowing powers of the customer or in the exercise thereof which might be a defence as between the customer and the Bank" and provisions of Clauses 8, 15 and 16 of the Guarantee and (d) that a Letter of Undertaking was not a security document.

2. The Learned Trial Judge failed to appreciate 10
that even if the Debenture did not contain an
express power for the Receivers and Managers to
sell the property charged that did not invalidate
the Guarantee in view of the provisions of clause
8 of the Guarantee and the Learned Trial Judge was
wrong in law in holding that Section 92 of the
Contracts Act 1950 afforded a defence to the
Defendants.

3. The Learned Trial Judge was wrong in law
in holding that there was an issue to be tried
under Section 86 of the Contracts Act 1950, 20
namely that there has been a variation in the
Agreement for credit facilities to which the
Defendants had not consented and in so doing
failed to consider the Clauses 8, 15 and 16
of the Guarantee.

4. The Learned Trial Judge was wrong in law
in holding that there was an issue to be tried
on whether the Defendants had been discharged
of their liabilities in view of the provisions
of Section 94 of the Contracts Act 1950. 30

5. The Learned Trial Judge was wrong in law
in holding that there was a further issue to
be tried, namely whether Clauses 8 and 16 were
inconsistent with the provisions of the
Contracts Act 1950.

6. The Learned Trial Judge was wrong in law
in granting the Defendants unconditional leave
to defend especially as the amount owing by
the Defendants were not in dispute.

Dated this 19th day of February 1979 40

Sgd: (Illegible)

SOLICITORS FOR THE APPELLANTS

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

The Senior Assistant Registrar,
High Court,
Kuala Lumpur.

In the
Federal Court
of Malaysia

The Respondents abovenamed
and/or their Solicitors,
M/s. Ng Ek Teong & Partners,
Bangunan Persatuan Hokkien Selangor,
Jalan Raja Chulan,
Kuala Lumpur.

No.14
Memorandum of
Appeal
dated 19th
February 1979
(continued)

10 This Memorandum of Appeal is filed by the
Appellants' solicitors, Messrs. Shearn Delamore
& Co. and Drew & Napier whose address for
service is at No.2 Benteng, Kuala Lumpur.

No. 15
REASONS FOR JUDGMENT
dated 2nd July 1980

No.15
Reasons for
Judgment
dated 2nd
July 1980

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

FEDERAL COURT CIVIL APPEAL NO.21 OF 1979

20

Between

Citibank N.A.

Appellants

And

1. Ooi Boon Leong
2. Peter Kok Siew Fatt
3. Hiroald Kowada

Respondents

(In the Matter of Kuala Lumpur High Court
Civil Suit No.3631 of 1977

Between

Citibank N.A.

Plaintiffs

30

And

1. Ooi Boon Leong
2. Peter Kok Siew Fatt
3. Hiroald Kowada

Defendants)

Coram: Raja Azlan Shah, C.J. Malaya.
Chang Min Tat, F.J.
Salleh Abas, F.J.

JUDGMENT OF THE COURT

No.15
Reasons for
Judgment
dated 2nd
July 1980
(continued)

The appellant bank ("the bank") in this case sued the respondents for the sum of \$331,731.32⁴ inclusive of interest upon a contract of guarantee up to a limit of \$600,000/- for banking accommodation given to Leisure Industries Sdn. Bhd. The respondents are directors of the company. Whether they are the only directors has not been made clear. They jointly and severally guaranteed in written form the repayment of such advances made to the Company and interest thereon at an agreed rate. 10

The writ was issued on December 13, 1977. On January 21, 1978 the bank took out an RSC Order 14 application, supported by a proper affidavit, for summary judgment. The Assistant Registrar made an order in terms but his order was reversed in the High Court. The appellant now appeals to this court to restore the order of the Assistant Registrar. 20

The clauses relevant to the consideration by the court in hearing RSC order 14 application are the following :

"Clause 8. The liability of any of us hereunder shall not be affected by any failure by the Bank to take any security or by any invalidity of any security taken or by any existing or future agreement by the Bank as to the application of any advances made or to be made to the customer. 30

Clause 16. No one of us shall be discharged or released from this guarantee by any arrangement made after this guarantee or any dealing between the customer and the Bank without our knowledge or consent or by any variation or alteration without our knowledge or consent in the agreement between the customer and the Bank for the making of advances or otherwise giving credit or affording banking facilities to the customer by the Bank. 40

In order to give full effect to the provisions of this guarantee each of us hereby waives all rights inconsistent with such provisions and which we might otherwise as sureties be entitled to claim and enforce and we declare that the Bank shall be at liberty to act as though we or each of us were principal debtors or principal

debtor to the Bank for all payments guaranteed by us as aforesaid to the Bank. "

In the
Federal Court
of Malaysia

These clauses expressly maintain the liability of the respondents in the event of the bank doing or omitting to do certain acts therein recited.

No.15
Reasons for
Judgment
dated 2nd
July 1980

(continued)

10 The respondents contend that their liabilities under the guarantee were conditional on the bank securing certain acts on the part of the company, the directors and the shareholders. Such acts are not contained in the guarantee but are present in a long letter bearing the same date as the guarantee and containing the terms and conditions under which the bank was prepared to grant the loan facilities to the company. The acceptance by the respondents of the offer was expressly made conditional upon a formal document of guarantee

20 "Incorporating substantially" the said terms.

It has nowhere been contended that there are other documents and inferentially the guarantee sued on was the legal document containing the terms between the parties and it was executed by the respondents after acceptance by them. It must therefore be a matter for argument whether the said letter is admissible in evidence to determine the existence and the application of the terms of the guarantee having

30 regard to the provisions of sections 91 and 92 of the Evidence Act 1950. We are of the view that the said letter does not fall within the category of negotiations as to be caught by the prohibitory provisions of the Evidence Act but gives factual background which is certainly admissible. As Lord Wilberforce said in Prenn v. Simmonds: (1)

40 " In my opinion, the evidence of negotiations...ought not to be received, and evidence should be restricted to evidence of the factual background known to the parties at or before the date of the contract, including evidence of the "genesis" and objectively the "aim" of the transaction. "

Relying entirely on the contents of this letter, the respondents raised two objections

(1) (1971) 3 AER 237, 241

In the
Federal Court
of Malaysia

No.15
Reasons for
Judgment
dated 2nd
July 1980
(continued)

to the application. They argued that the failure of the bank to obtain (i) a valid debenture on the company's assets in that it did not contain any provision to enable the receivers to be appointed in the event of default to sell the properties of the company charged under it, and (ii) a letter of undertaking from the shareholders who held about 40% of the issued share capital not to divest their respective shareholdings without the Bank's prior written consent and to inject additional capital into the company in the event of a cash shortfall as long as the term loan was outstanding constituted variations of their contractual liability and were sufficient to absolve them from their obligations. The Assistant Registrar thought such arguments irrelevant. The High Court considered that they raised issues which entitled the respondents to unconditional leave to defend. 10

It is necessary to consider the statutory provisions of section 86 of the Contracts Act 1950 which was relied on by the respondents. The section is as follows :

"Any variance, made without the surety's consent, in the terms of the contract between the principal debtor and the creditor, discharges the surety as to transactions subsequent to the variance."

The section provides express provision for the respondents to consent to any variation. They are the sole judges whether or not they will consent to remain liable notwithstanding such variation, and that if they have not so consented they will be discharged. This provision is in accordance with what is stated to be the law by Cotton, L.J. in Holme v. Brunskill⁽²⁾ which was followed in the Privy Council in National Bank of Nigeria Limited v. Awolesi:⁽³⁾ 30

"The true rule in my opinion is, that if there is any agreement between the principals with reference to the contract guaranteed, the surety ought to be consulted, and that if he has not consented to the alteration, although in cases where it is without inquiry evidence that the alteration is unsubstantial, or that it cannot be otherwise than beneficial to the 40

(2) (1878) 3 QBD 495, 505, 506
(3) (1964) 1 WLR 1311, 1316

surety, the surety may not be discharged; yet, that if it is not self-evident that the alteration is unsubstantial, or one which cannot be prejudicial to the surety, the Court, will not, in an action against the surety, go into an inquiry as to the effect of the alteration....but will hold that in such a case the surety himself must be the sole judge whether or not he will consent to remain liable notwithstanding the alteration, and that if he has not so consented he will be discharged."

In the
Federal Court
of Malaysia

No.15
Reasons for
Judgment
dated 2nd
July 1980

(continued)

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20

This passage follows the classic statement of Lord Loughborough L.C. in Rees v. Berrington⁽⁴⁾ "It is the clearest and most evident equity not to carry on any transaction without the knowledge of (the surety), who must necessarily have a concern in every transaction with the principal debtor. You cannot keep him bound and transact his affairs (for they are as much his as your own) without consulting him."

We think the matter is tersely summed up by Quain J. in the case of Polak v. Everett:⁽⁵⁾ "I think the convenience and policy of the matter....is that the contract of the surety should not be altered without his consent."

30

40

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In the light of what was said in Holme's case (supra) "where it is without inquiry evident that the alteration is unsubstantial, or that it cannot be otherwise than beneficial to the surety" we are of the opinion that the variation, if any, was so fleeting and patently non-prejudicial to the respondents as to fall within the de minimis non curat lex rule - the law does not concern itself with trifles. Whatever the validity of the first objection i.e. that the debenture was said to be defective in that it did not contain any provision to enable the receivers to be appointed in the event of default to sell the properties of the companies charged under it, the bank in an inter-partes application had obtained an order from the High Court to sell the assets of the company under the debenture. The order was made on March 21, 1978 and until it is set aside on appeal, it is an effective order for the sale and could not, by any stretch of the imagination or by any sensible argument, be said to result to the detriment of the respondents, it not being contended that

(4) (1975) 30 E.R. 765, 767

(5) (1876) 1 Q.B.D. 669, 677

there were other assets which had escaped the net of the debenture. But the respondents have put forward the suggestion that the company may appeal against the decision authorising the sale. The short answer to that is of course that the appeal must be lodged in accordance with well-defined rules of court within a specified time. This court is not advised that such an appeal has been brought.

With regard to the second objection that the bank had failed to obtain an undertaking from the other shareholders holding about 40 per cent of the issued share capital of the company not to divest their share holdings without the bank's prior written consent, there has not been a shred of evidence or even of allegation that such shareholders had in fact transferred their shares. In any event, this contention completely ignores the ordinary provision in the articles of association of a private limited company such as this one is that the transfer of any shares by any shareholder could only be effected with the approval of the board of directors - a provision necessary for the smooth operation of a private limited company as a small body of men - and the fact therefore that the first line of defence to make the shareholders retain their shares and thus to preserve, as if it could, the financial security of the respondents, was the respondents themselves. Neither is it anywhere alleged that the shares were other than fully paid up shares to show that there is any possibility of a call-up on the unpaid portion of the shares.

In any event, the contract of guarantee contains express provisions giving the bank the right to do or omit to do certain things without thereby prejudicing its right against the respondents. Clause 8 provides that the bank may recover from the respondents notwithstanding any failure on its part to take any security or that any security given to the bank is invalid. Clause 16 enables the Bank at its absolute discretion and without notice to or consent of the respondents vary or alter the contract between the bank and the company and that any rights of the respondents which is inconsistent with the terms of the contract has been waived by them. In other words there was a voluntary waiver of the rights of the respondents to be subrogated on payment of the loan. Accordingly where the respondents have promised to waive any variation or alteration and the bank has proceeded with the performance of the contract

on that basis it would be in our opinion inequitable to allow them to resile from the contract.

In the
Federal Court
of Malaysia

No.15
Reasons for
Judgment
dated 2nd
July 1980

(continued)

10 That brings us to the important question whether the Assistant Registrar was entitled to deal with the case under the R.S.C. Order 14 procedure. We have often said in this court many a time that where all the issues are clear and the matter of substance can be decided once and for all without going to trial there is no reason why the Assistant Registrar or the judge in chambers, or, for that matter this court, shall not deal with the whole matter under the R.S.C. Order 14 procedure. In the present case the guarantee contains a clause which enables the Bank by producing a certificate of indebtedness by its officer to dispense with legal proof of the actual indebtedness of the respondents. Clause 19 provides thus "A
20 certificate by an officer of the bank as to the money and liabilities for the time being due or incurred to the bank from or by the customer shall be conclusive evidence in any legal proceedings against us or any one of us or our personal representatives." It means that, for the purpose of fixing liability of the respondents, the company's indebtedness may be ascertained conclusively by a certificate; see Dobbs v. National Bank of Australia Ltd; (6)
30 Bache & Co. v. Banque Vernes (7)

In the circumstances the respondents are bound under clause 19 to accept the certificate of indebtedness duly executed by the Assistant Vice President of the Branch as conclusive evidence of the debt due to the bank. On this footing the bank would be entitled to judgment as prayed for.

This appeal is allowed with costs here and in the High Court below.

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(RAJA AZLAN SHAH)
CHIEF JUSTICE
MALAYA

Kuala Lumpur

2nd July 1980

(6) (1935) 53 CLR 643
(7) (1973) 2 L.L.R 437

In the
Federal Court
of Malaysia

No.15
Reasons for
Judgment
dated 2nd
July 1980
(continued)

Notes:

- (1) Hearing in Kuala Lumpur on Wednesday,
21st May, 1980
- (2) Counsel: Encik C.Abraham for Appellants
Solicitors: Messrs. Shearn,
Delamore & Co.,
Kuala Lumpur

Encik V.C.George (Encik K.S.
Narayanan with him) for
Respondents

Solicitors: Messrs. Ng Ek
Teong & Partners
Kuala Lumpur

10

In the High
Court in
Malaya at
Kuala Lumpur

No.16
Formal Judgment
dated 2nd
July 1980

No. 16

FORMAL JUDGMENT
dated 2nd July 1980

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

SUIT NO. 3631 OF 1977

Between

Citibank N.A.

Plaintiffs

And

1. Ooi Boon Leong
2. Peter Kok Siew Fatt
3. Hiroald Kowada

Defendants

The 2nd day of July 1980

J U D G M E N T

The Defendants having entered an appearance
herein and the Plaintiffs having by Order of
the Federal Court of Malaysia dated the 2nd
day of July 1980 been given leave to sign
judgment against the Defendants as herein
provided be entered for the Plaintiffs against
the Defendants IT IS THIS DAY ADJUDGED that
the Defendants do pay the Plaintiffs the sum
of Ringgit Three hundred and thirty one
thousand, seven hundred and thirty one and
cents thirty two only (\$331,731.32) together
with interest thereon at the rate of 12%
per annum from the 1st day of November 1977

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to the date of realisation together with costs to be taxed by a proper officer of this Court.

Dated this 2nd day of July 1980

Sgd.
SENIOR ASSISTANT REGISTRAR
HIGH COURT, KUALA LUMPUR

In the High
Court in
Malaya at
Kuala Lumpur

No.16
Formal Judgment
dated 2nd
July 1980
(continued)

No. 17

ORDER OF FEDERAL COURT
dated 2nd July 1980

10
IN THE FEDERAL COURT OF MALAYSIA
(APPELLATE JURISDICTION)
CIVIL APPEAL NO. 21 OF 1979

Between

Citibank N.A.

Appellants

And

1. Ooi Boon Leong
2. Peter Kok Siew Fatt
3. Hiroald Kowada

Respondents

20
(In the Matter of Kuala Lumpur High Court
Civil Suit No. 3631 of 1977

Between

Citibank N.A.

Plaintiffs

And

1. Ooi Boon Leong
2. Peter Kok Siew Fatt
3. Hiroald Kowada

Defendants)

30
CORAM:- RAJA AZLAN SHAH, ACTING LORD PRESIDENT,
MALAYSIA
CHANG MIN TAT, JUDGE, FEDERAL COURT,
MALAYSIA
SALLEH ABAS, JUDGE, FEDERAL COURT,
MALAYSIA

IN OPEN COURT

THIS 2ND DAY OF JULY 1980

In the
Federal Court
of Malaysia

O R D E R

No.17
Order of
Federal Court
dated 2nd
July 1980
(continued)

THIS APPEAL coming up for hearing on the 23rd day of May 1980 in the presence of Mr. Cecil Abraham of Counsel for the Appellants and Mr. V.C.George with Mr. Narayanan of Counsel for the Respondents AND UPON READING the Record of Appeal filed herein AND UPON HEARING the Submissions of Counsel aforesaid IT IS ORDERED that the Appeal do stand adjourned for judgment and the same coming up for judgment in the presence of Mr. Cecil Abraham of Counsel for the Appellants and Mr. Narayanan of Counsel of the Respondents 10
IT IS ORDERED that the Appeal be allowed and that the Appellants be given leave to sign final judgment against the Respondents in the sum of \$331,731.32 together with interest thereon at the rate of 12% per annum on the said sum of \$331,731.32 from the 1st day of November 1977 to the date of realisation 20
AND IT IS FURTHER ORDERED that the Respondents do pay the costs of this Appeal and also the costs of the proceedings in the Court below which costs is to be taxed by a proper officer of this Court AND IT IS LASTLY ORDERED that the sum of Ringgit Five Hundred only (\$500/-) deposited in Court by the Appellants as security for costs of this Appeal be paid out to the Appellants

GIVEN under my hand and the Seal of the Court this 2nd day of July 1980. 30

Sgd.
CHIEF REGISTRAR,
FEDERAL COURT,
MALAYSIA.

No. 18

ORDER GRANTING FINAL
LEAVE TO APPEAL TO
HIS MAJESTY THE YANG
DI-PERTUAN AGONG dated
19th May 1981

In the
Federal Court
of Malaysia

No.18
Order granting
Final Leave
to appeal to
His Majesty
the Yang
Di-Pertuan
Agong dated
19th May
1981

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT
KUALA LUMPUR

(APPELLATE JURISDICTION)

10

FEDERAL COURT CIVIL APPEAL NO: 21 OF 1979

Between

Citibank N.A.

Appellants

And

- 1. Ooi Boon Leong
- 2. Peter Kok Siew Fatt
- 3. Hiroald Kowada

Respondents

(In the Matter of Kuala Lumpur High Court
Civil Suit No: 3631 of 1977

Between

20

Citibank N.A.

Plaintiffs

And

- 1. Ooi Boon Leong
- 2. Peter Kok Siew Fatt
- 3. Hiroald Kowada

Defendants)

CORAM: RAJA AZLAN SHAH, CHIEF JUSTICE, HIGH COURT,
MALAYA
ABDUL HAMID, JUDGE, FEDERAL COURT, MALAYSIA
E. ABDOLCADER, JUDGE, HIGH COURT, MALAYA

IN OPEN COURT

30

THIS 19TH DAY OF MAY 1981

O R D E R

40

UPON MOTION made unto Court this day by Encik Cecil Abraham of Counsel for the Appellants abovenamed and also mentioning on behalf of the Solicitors for the Respondents abovenamed AND UPON READING the Notice of Motion dated the 15th day of April 1981 and the Affidavit of K.S. Narayanan affirmed on the 10th day of March 1981 AND UPON HEARING Counsel for the Appellants aforesaid IT IS ORDERED that final

In the
Federal Court
of Malaysia

No.18

Order granting
Final Leave
to appeal to
His Majesty
the Yang
Di-Pertuan
Agong dated
19th May
1981

(continued)

leave be and is hereby granted to the Respon-
dents to appeal to His Majesty the Yang Di-
Pertuan Agong against the whole of the decision
of this Honourable Court given on the 2nd day
of July 1980.

GIVEN under my hand and the Seal of the
Court this 19th day of May 1981.

SENIOR ASSISTANT REGISTRAR
FEDERAL COURT, MALAYSIA
KUALA LUMPUR

10

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

No. 42 of 1981

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA
(APPELLATE JURISDICTION)

B E T W E E N :

1. OOI BOON LEONG
 2. PETER KOK SIEW FATT
 3. HIROALD KOWADA
- Appellants
(Defendants)

- and -

CITIBANK N.A.

Respondents
(Plaintiffs)

RECORD OF PROCEEDINGS

DOUGLAS GOLDBERG & CO.
137 Regent Street,
London, W1R 7LD

Solicitors for the
Appellants

COWARD CHANCE,
Royex House,
Aldermanbury Square,
London, EC2V 7JD

Solicitors for the
Respondents