



No.1 of 1971

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

ON APPEAL  
FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N:

PEGANG MINING CO. LIMITED Appellant

- and -

CHOONG SAM First Respondent

- and -

10 LIM CHIM YEE and CHAN HON PENG (f)  
as Executors of CHAN PHOOI HOONG  
deceased Second Respondents

- and -

TONG SWEE KING (f) as Executrix of the  
Estate of HO KOK YEW deceased Third Respondent

C A S E FOR THE SECOND RESPONDENTS

In the Federal  
Court of  
Malaysia

Record

20 1. The Second Respondents respectfully adopt the  
matters set out in the Case of the First Respondent  
including the submissions and reasons therein stated.

2. The Second Respondents were the Second Vol. I p.39  
Defendants in the action brought by the Third  
Respondent to this Appeal in the High Court of  
Malaya and by their Defence the Second  
Respondents admitted the validity of the claim  
of the Third Respondent (as Plaintiff) against  
them and also against the Appellant to this Appeal.

30 The said Defence contained the following Vol. I p.39  
paragraph:- 11.8-14

"2. The Second Defendants have always been  
ready and willing to do everything in their

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power to fulfil their obligations to the Plaintiff but have been unable to do so because the First Defendant has refused to adhere to its obligations to the Second Defendants as set out in detail in the Statement of Claim".

3. The position of the Second Respondents in the High Court action was dealt with by the learned Judge (Ali J.) in the concluding part of his Judgment in the following way:-

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11.20-25

"With regard to the plaintiff's claim against the 2nd defendants, it is difficult to find from the plaintiff's pleadings whether she had any real cause of action, but in view of the conclusion which I have arrived at, the proper order, I think, would be to enter judgment for the 2nd defendants as well.

1. 30

".....In the terms of the Plaintiff's pleadings it must have been obvious to the 2nd Defendants that inasmuch as no allegation of breach of contract had been made against them there was no real cause of action by the Plaintiff. ....

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1. 38

Indeed, it was apparent during the trial that the 2nd Defendants were in fact supporting the Plaintiff's claim. The reason for this is quite obvious for if the Plaintiff succeeds in this action, the 2nd Defendants stand to benefit by it. It is difficult to understand why the 2nd Defendants had not been joined as Plaintiffs in this action."

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4. The Second Respondents, although as Second Defendants a successful party in the proceedings, therefore had a legal and financial interest in an Appeal against the decision of the High Court succeeding. They were, however, made parties as Second Respondents in the Notice of Appeal. When the First Respondent made his application to intervene in the proceedings following the purported settlement of the Appeal, Chan Hon Peng, with the authority of his co-executor, swore an Affidavit on the 27th March 1967 on behalf of the Second Respondents, who were not a

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party to the said purported settlement,  
in which he stated (inter alia) that the  
Second Respondents were desirous of pursuing  
the Appeal, that the Estate had a direct legal  
interest in the claim and in the appeal and  
that the Second Respondents were prepared to be  
substituted as Appellants. They therefore  
appeared on the 2nd May 1967 before the  
Federal Court and supported the application  
of the First Respondent (as Intervener).  
By Order of the Court dated the 17th July  
1967 the Second Respondents became (by consent)  
added as second Appellants instead of continuing  
as Second Respondents.

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5. Accordingly, the Second Respondents  
respectfully submit that this Appeal should be  
dismissed with costs for the reasons set out  
in the Case of the First Respondents.

DINGLE FOOT, Q.C.

JOHN A. BAKER

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O N A P P E A L  
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- and -

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HOONG deceased Respondents

- and -

TONG SWEE KING (f) as  
Executrix of the Estate of Third  
HO KOK YEW deceased Respondent

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CASE FOR THE SECOND RESPONDENTS

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