

44/79

No. 39 of 1978

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N

BANK OF AMERICA NATIONAL TRUST
AND SAVINGS ASSOCIATION

Appellant

- and -

CHAI YEN (Married Woman)

Respondent

RECORD OF PROCEEDINGS

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

Appellant's Solicitors

PHILIP CONWAY THOMAS & CO.
61 Catherine Place,
Westminster,
London, S.W.1.

Respondent's Solicitors

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N :

BANK OF AMERICA NATIONAL TRUST
AND SAVINGS ASSOCIATION

Appellant

- and -

CHAI YEN (Married Woman)

Respondent

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

No.	Description of Document	Date	Page No.
<u>IN THE HIGH COURT OF MALAYSIA</u>			
1	Originating Summons	4th December 1975	1
2	Affidavit of Robert A.Lemos with Exhibits thereto	4th December 1975	5
3	Notice of Appointment to hear Originating Summons	9th February 1976	38
4	Affidavit of Chai Yen with Exhibits thereto	31st March 1976	40
5	Affidavit of Gan Kah Chai with Exhibits thereto	1st July 1976	65

No.	Description of Document	Date	Page No.
6	Affidavit of Chai Yen	3rd September 1976	76
7	Notes of Proceedings of Mohd. Azmi J.	6th September 1976	79
8	Grounds of Judgment of Mohd. Azmi J.	6th September 1976	82
9	Order of Court	6th September 1976	86
10	Letter, Augustin- Negrin & Co. to Senior Assistant Registrar requesting further argument	8th September 1976	88
11	Letter, Judge's Secretary to Syarikat Augustin-Negrin	14th October 1976	91
12	Judge's Certificate	14th October 1976	92
<u>IN THE FEDERAL COURT OF MALAYSIA</u>			
13	Notice of Appeal	1st November 1976	93
14	Memorandum of Appeal	30th March 1978	95
15	Judgement of Federal Court	16th August 1978	100
16	Notice of Motion for Conditional Leave to Appeal	14th September 1978	104
17	Affidavit of Brewster Phillips Campbell	12th September 1978	106
18	Order granting conditional leave to Appeal	26th September 1978	109

No.	Description of Document	Date	Page No.
19	Order granting final leave to Appeal to His Majesty the Yang di-Pertuan Agong	13th November 1978	112

DOCUMENTS TRANSMITTED BUT NOT REPRODUCED

Description of Document	Date
Exhibit "RAL 2" to affidavit of Robert A. Lemos (On the Malay language)	4th December 1975

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N :

BANK OF AMERICA NATIONAL TRUST
AND SAVINGS ASSOCIATION

Appellant

- and -

CHAI YEN (Married Woman)

Respondent

10

RECORD OF PROCEEDINGS

No. 1

ORIGINATING SUMMONS
- 4th December 1975

In the High
Court of
Malaysia

No.1
Originating
Summons

4th December
1975

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

ORIGINATING SUMMONS NO.494 OF 1975

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

And

20

In the Matter of Memorandum
of Charge presentation No.
27377 Volume CCXL Folio
196 in respect of land held
under Q.T.(R) No.7414 for
Lot 703, in the Mukim of
Petaling;

And

per annum in accordance with the terms of the said two charges should not be granted and if no cause be shown for the following Orders :-

In the High Court of Malaysia

No.1
Originating Summons
4th December 1975
(cont'd)

- 1) that the lands be sold by public auction;
- 2) that the said sale shall be held on or as soon as may be after such date not being less than one (1) month from the date of the Order, as this Court may direct;
- 3) that the total amount due to the Chargee at the date of such Order be specified;
- 4) that the Senior Assistant Registrar fix a reserve price for the purpose of the sale being a price equal to the estimated market value of the said lands;
- 5) that the Chargee/Applicant may be at liberty to bid at the sale and to set off the amount due to her under the said charge against the purchase price;
- 6) that all costs and expenses of and incidental to this application and any such sale be taxed by the proper officer of this Court and be paid to the Chargee/Applicant out of the proceeds of such sale;
- 7) such further or other directions as this Honourable Court may deem just and proper.

Dated this 4th day of December, 1975.

(Sgd)

Senior Assistant Registrar,
High Court, Kuala Lumpur.

This Originating Summons is taken out by Messrs. Skrine & Co., Straits Trading Building, No.4 Laboh Pasar Besar, Kuala Lumpur, Solicitors for the Chargee/Applicant abovenamed.

In the High
Court of
Malaysia

No.1
Originating
Summons
4th December
1975
(cont'd)

The address for service of the Chargee/
Applicant is c/o Messrs. Skrine & Co., Straits
Trading Building, No.4, Leboh Pasar Besar,
Kuala Lumpur.

The Affidavit of Robert A. Lemos
affirmed on the 4th day of December, 1975 and
filed herein will be read in support of this
application.

NOTE: If the Respondents do not enter
appearances within the time and at the 10
place abovementioned such Order will be
made and proceedings taken as the Judge
may think just and expedient.

To:-

Chai Yen (m.w.) of
K 37 Salak South Garden,
Kuala Lumpur.

No. 2

AFFIDAVIT OF ROBERT A. LEMOS
WITH EXHIBITS THERETO -
4th December 1975

In the High
Court of
Malaysia

No.2
Affidavit of
Robert A.
Lemos with
Exhibits
thereto

4th December
1975

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

ORIGINATING SUMMONS NO.494 OF 1975

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

10

And

In the Matter of Memorandum
of Charge presentation No.
27377 Volume CCXL Folio 196
in respect of land held
under Q.T.(R) No.7414 for
Lot 703, in the Mukim of
Petaling;

And

20

In the Matter of Memorandum
of Charge presentation No.
1931/74 Volume 5, Folio 1
in respect of land held under
Certificate of Title No.2509
for Lot 3775 in the Mukim
of Bentong.

B E T W E E N :

BANK OF AMERICA NATIONAL
TRUST & SAVINGS ASSOCIATION Chargee/Applicant

And

30

CHAI YEN (M.W.) Chargor/Respondent

A F F I D A V I T

I, Robert A. Lemos, of full age of care of
Bank of America NT & SA, 2 Jalan Raja Chulan,
Kuala Lumpur, hereby affirm and state as follows:-

1. I am the Assistant Vice President/Operation
of the Chargee/Applicant herein and am duly
authorised to make this Affidavit on its behalf.

In the High
Court of
Malaysia

No.2

Affidavit of
Robert A.
Lemos with
Exhibits
thereto

4th December
1975

(cont'd)

2. The abovenamed Chai Yen (m.w.) (hereinafter referred to as the Chargor) is the registered proprietress of lands held under the following titles :

- (1) Q.T.(R) 7414 for Lot 703 in the Mukim of Petaling.
- (2) Certificate of Title 2509 for Lot 3775 in the Mukim of Bentong.

3. On the 21st of April 1971, the Registrar of Titles, State of Belangor, registered a charge under presentation No.27377, Volume CCXL Folio 196 by the Chargor in favour of the Chargee over the land held under Q.T.(R) 7414 for Lot 703 in the Mukim of Petaling to secure the repayment on demand of all monies owing to the Chargee by Valor Electrical & Electronic Co., together with interest thereon at the rate of $9\frac{1}{2}\%$ per annum (which rate of interest was subsequently increased to 14% per annum). A copy of the said Charge is now produced and shown to me marked "RAL 1" (hereinafter referred to as "the 1st Charge").

10

20

4. On the 30th of November 1974, the Registrar of Titles, Pahang, registered a charge under presentation No.1931/74 Volume 5, Folio 1, by the Chargor in favour of the Chargee over the land held under Certificate of Title 2509 for Lot 3773 in the Mukim of Bentong to secure the repayment on demand of all moneys owing to the Chargee by Valor Electrical & Electronic Co. together with interest at the rate of 16% per annum. A copy of the said Charge is now shown to me and marked "RAL 2" (hereinafter referred to as "2nd Charge").

30

5. On 21st June 1975, the Chargee through its solicitors Messrs. Skrine & Co. served by Registered post a demand in writing on the Chargor, demanding a sum of \$896,286.79 being the principal sum and interest due from the said Valor Electrical & Electronic Co. under the 1st Charge as at 14th March 1975 pursuant to the said Charge within one (1) month from the service of the said demand. Annexed hereto and marked "RAL 3" is a copy of the said letter and of the A.R. registered card.

40

In the High
Court of
Malaysia

No.2
Affidavit of
Robert A.
Lemos with
Exhibits
thereto

4th December
1975

(cont'd)

10 6. On the 12th of August 1975, the Chargee through its solicitors, Messrs. Skrine & Co. served by Certificate of Posting a demand in writing on the Chargor, demanding a sum of $\text{RM}896,286.79$ being the principal sum and interest due from the said Valor Electrical & Electronic Co. under the 2nd Charge as at 14th March 1975 pursuant to the said Charge within seven (7) days of the service of the said demand. Annexed hereto and marked "RAL 4" is a copy of the said letter and of the said Certificate of Posting.

7. The Chargor failed to comply with both the demands and has thereby defaulted.

20 8. On the 21st of August 1975, the Chargee's solicitors served by personal service at the Chargor's address at K37 Salak South Garden, Kuala Lumpur, a Notice of Default with respect to the 1st Charge in Form 16D dated 12th August 1975 under Section 254 of National Land Code on the Chargor calling on her to pay the said sum of $\text{RM}898,286.79$ and interest accruing at 14% per annum from 14th March 1975 under the 1st Charge within one (1) month from the service of the said Notice. Annexed hereto and marked "RAL 5" is a copy of the said Notice.

30 9. On 27th October 1975, the Chargee's solicitors served by personal service at the Chargor's address at K37 Salak South Gardens, Kuala Lumpur, a Notice of Default with respect to the 2nd Charge in Form 16D dated 9th September 1975, under Section 254 of National Land Code on the Chargor calling on her to pay the said sum of $\text{RM}896,286.79$ and interest accruing at 14% per annum from 14th March 1975 under the 2nd Charge within fourteen (14) days from the service of the said Notice. Annexed hereto and marked "RAL 6" is a copy of the
40 said Notice.

10. The Chargor has failed to comply with both the notices referred to above within the times stipulated and to the date of affirmation of this Affidavit has failed to do so and has thereby defaulted. Such default has continued for a space of more than one (1) month with respect to the notice referred to in paragraph 8 above and for a period of more than 14 days

In the High
Court of
Malaysia

No.2
Affidavit of
Robert A.
Lemos with
Exhibits
thereto

4th December
1975

(cont'd)

with respect to the notice referred to
in paragraph 9 above and has still not been
remedied.

11. I therefore pray for an Order directing
the sale of the said lands by public auction
or otherwise upon such terms and conditions
as this Court may deem appropriate and for
an Order that the Chargor do deliver
possession of the said lands to the purchaser
at any such sale.

10

AFFIRMED at Kuala Lumpur)
this 4th day of December) Sgd. Robert A. Lemos
1975 at 9.30 a.m.)

Before me,

Sgd. Harinom Sayareen

Commissioner for Oaths

This Affidavit is filed by Messrs. Skrine
& Co., Straits Trading Building, No.4, Leboh
Pasar Besar, Kuala Lumpur, on behalf of the
Chargee/Applicant abovenamed.

20

EXHIBIT "RAL 1"

In the High
Court of
Malaysia

NATIONAL LAND CODE

FORM 16A

(Section 242)

C H A R G E

(To secure payment of a principal sum)

(Stamps to be affixed - or payment of duty
certified - in this space)

No.2
Affidavit of
Robert A.
Lemos with
Exhibits
thereto

4th December
1975

(cont'd)

FOR REGISTRY USE

10 Memorial of registration File of -
made in the register Charge
Document of Title scheduled Volume CCXL
below, with effect from 9 h Folio 196
02 m on the 21 day of April, Presentation
1971. No. 27377

Sgd.

L.S. Registrar
State of

20 I, CHAI YEN (f) (I.O. No: 0495101)
of No.4, Jalan Landok, Kuala Lumpur, Belangor,
proprietor of the land described in the
schedule below;

For the purpose of securing the payment
to the chargee named below, with interest, of
the sum from time to time due to the chargee
on any current or other account or accounts
of VALOR ELECTRICAL & ELECTRONICS CO. kept
with the chargee;

30 This is the Exhibit marked "RAL 1"
referred to in the Affidavit of
Robert A.Lemos affirmed before me
this 4th day of December 1975

Sgd.

Commissioner for Oaths

In the High
Court of
Malaysia

No.2
Affidavit of
Robert A.
Lemos with
Exhibits
thereto
4th December
1975

Exhibit
"RAL 1"
(cont'd)

Hereby charge the said land with
the payment to the chargee of the said
sum and interest thereon in accordance
with the provisions annexed hereto.

Dated this 20th day of April 1971

Sgd.

Signature (or other form
of execution) by or on
behalf of chargor

FORM 13B

10

(Section 211)

I, THOMAS MUN LANG LEE an Advocate &
Solicitor of the High Court in Malaya
practising at Kuala Lumpur, hereby testify
that the above signature was written in
my presence this 20th day of April, 1971
and is according to information given to
me by the following trustworthy and reliable
person, namely CHAN HWEI LOAH of BANK OF
AMERICA NT & SA, K.L. which information I
verily believe, the true signature of CHAI
YEN (f) who has acknowledged to me -

20

- (i) that she is of full age,
- (ii) that she has voluntarily executed
this instrument, and
- (iii) that she understands the contents
and effect thereof.

As witness my hand this 20th day of
April, 1971.

Sgd.

Signature.

30

We BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, a company incorporated in United States of America and having an office or place of business in Malaysia at No.2, Jalan Weld, Kuala Lumpur, accept this charge.

In the High Court of Malaysia

No.2
Affidavit of Robert A. Lemos with Exhibits thereto

4th December 1975

Exhibit "RAL 1"
(cont'd)

BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION,
by its Attorney,

10

Sgd. Brewster Campbell

Signature (or other form of execution) by or on behalf of chargee.

FORM 13B

(Section 211)

20 I, THOMAS MUN LANG LEE an Advocate & Solicitor of the High Court of Malaya practising at Kuala Lumpur, hereby testify that the above signature was written in my presence this 20th day of April, 1971 and is, according to my own personal knowledge, the true signature of BREWSTER P. CAMPBELL JR who has acknowledged to me -

- (i) that he is of full age,
- (ii) that he has voluntarily executed this instrument, and
- (iii) that he understands the contents and effect thereof.

30 As witness my hand this 20th day of April, 1971.

Sgd.
Signature.

In the High
Court of
Malaysia

No.2
Affidavit of
Robert A.
Lemos with
Exhibits
thereto
4th December
1975

Exhibit
"RAL 1"
(cont'd)

Where the address of the person
claiming under this instrument is outside
the Federation, an address within the
Federation for the service of notices is
to be added to this space.

The address for the service of notices
on BANK OF AMERICA NATIONAL TRUST AND
SAVINGS ASSOCIATION is No.2, Jalan Weld,
Kuala Lumpur.

SCHEDULE OF LAND AND INTEREST

10

Mukim	Lot No.	Description & No. of Title	Share of Land	Regi- tered No. of Lease/ sub- lease	Regis- tered No. of charge
(1)	(2)	(3)	(4)	(5)	(6)
Petaling	703	Q.T.(R) No: 7414	the whole	nil	nil

One (1) Title Affected

20

A N N E X U R E

Express provisions affecting the within-written
charge.

It is hereby mutually agreed between the
Chargor and the Chargee as follows :-

1. The purpose of the within-written Charge
(hereinafter referred to as "this Charge") is
to secure the repayment on demand of all sums
heretofore or hereafter to be advanced to
VALOR ELECTRICAL & ELECTRONIC CO. of 4 Jalan
Landak, Kuala Lumpur (hereinafter referred to
as "the Borrower") with interest thereon in
manner hereafter appearing which sums are
represented by the balance from time to time

30

due to the Chargee under any current or other account or accounts of the Borrower with the Chargee.

In the High Court of Malaysia

10 2. In the event of the dissolution of the Borrower whose account is hereby secured, where the Borrower is a partnership firm, this security shall apply to all money borrowed and liabilities incurred in the name of such firm until receipt by the Chargee of actual notice of such dissolution. If however the dissolution be by reason only of the death of a partner or the introduction of a further partner or partners into the firm this security 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 Chargee from or by the new firm or firms thereby constituted as though there had been no change in the firm as previously constituted.

20 3. The Chargee may debit to any current or other account or accounts of the Borrower with the Chargee and the balance on the said account or accounts shall include all moneys owing in respect of cheques bills notes drafts trust receipts or guarantees drawn accepted or indorsed by the Borrower alone or jointly with another or others (including all moneys which may become owing in respect of any
30 cheques notes bills drafts trust receipts or guarantees drawn accepted or indorsed by the Borrower either solely or jointly with another or others which may not at the time of closing the said account or accounts have become due or payable but which for the time being have been entered in the said account or accounts) or in respect of cheques bills notes drafts trust receipts or guarantees accepted paid or discounted on behalf of the Borrower either
40 alone or jointly with another or others or in respect of contracts for the forward delivery of goods bills or specie or otherwise howsoever and interest on the balance due to the Chargee on the Borrower's said account or accounts with the Chargee at the close of business on each day at the rate of nine and a half per centum ($9\frac{1}{2}\%$) per annum until the said rate is altered as provided in Clause 13 of this Annexure with monthly rests commission and other usual bankers charges.

No.2
Affidavit of
Robert A.
Lemos with
Exhibits
thereto
4th December
1975
Exhibit "RAL 1"
(cont'd)

In the High
Court of
Malaysia

No.2
Affidavit of
Robert A.
Lemos with
Exhibits
thereto

4th December
1975

Exhibit
"RAL 1"

(cont'd)

4. The Chargee shall be at liberty by notice in writing to the Chargor to consolidate with the balance due to the Chargee on the Borrower's said account or accounts with the Chargee from time to time any other moneys owing by the Chargor to the Chargee and secured by any other charge or charges created by the Chargor or any person through whom the Chargor claims on property other than that comprised in this Charge so that such other money shall become secured by this Charge. 10

5. The Chargee may at all times without discharging or in any way affecting the security hereby created -

- (a) determine vary or increase any credit to the Borrower;
- (b) grant to the Borrower or to any other person any time or indulgence;
- (c) renew any bills notes or other negotiable securities; 20
- (d) deal with exchange release modify or abstain from perfecting or enforcing any securities or other guarantees or rights which it may now or hereafter have from or against the Borrower or any other person;
- (e) compound with the Borrower or with any other person or guarantor.

6. Any money received hereunder may be placed and kept to the credit of a suspense account for so long as the Chargee thinks 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 Borrower to the Chargee. Notwithstanding any such payment in the event of any proceedings in or analogous to bankruptcy liquidation composition or arrangement the Chargee 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 security had not been created. 30 40

7. Until all money and liabilities due or incurred by the Borrower to the Chargee shall have been paid or discharged the Chargor will

not by paying off any sum recoverable here-
under or by any other means or on any other
ground claim any set-off or counterclaim
against the Borrower in respect of any
liability from the Chargor to the Borrower
or claim or prove in competition with the
Chargee in respect of any payment by the
Chargor hereunder or be entitled to claim
or have the benefit of any set-off counterclaim
10 or proof against or dividend composition or
payment by the Borrower or its estates or the
benefit of any other security which the
Chargee may now or hereafter hold for any money
or liabilities due or incurred by the Borrower
to the Chargee or to have any share therein.

8. Any security now or hereafter held by
the Chargor from the Borrower in respect of
the liability hereby created shall be held
20 in trust for the Chargee and shall be used
to make good any deficiency realised
hereunder.

9. The sum hereby secured and the balance
thereof owing from time to time is payable
by the Chargor on demand or on the death of
the Chargor and upon the same becoming
payable the account or accounts hereby secured
shall be closed.

10. If and when the said account or accounts
30 shall be closed pursuant to Clause 9 and a
balance shall then be owing to the Chargee
by the Borrower, the Chargor and her personal
representatives as the case may be shall so
long as the same or any part thereof shall
remain owing pay to the Chargee interest
thereon at the rate prevailing at the date
that the said account or accounts are closed,
with monthly rests, computed from the time
when such balance shall have been ascertained
and the Chargor agrees that the statement of
40 the Manager, Assistant Manager, Accountant
or other officer of the Chargee as to the
amount of such balance shall be final and
conclusive.

11. Any demand for the payment of the sum
hereby secured may be signed on behalf of
the Chargee by the Manager, Assistant Manager,
Accountant or other officer of the Chargee or
by any solicitor or firm of solicitors purporting

In the High
Court of
Malaysia

No.2
Affidavit of
Robert A.
Lemos with
Exhibits
thereto

4th December
1975

Exhibit
"RAL 1"

(cont'd)

In the High
Court of
Malaysia

No.2

Affidavit of
Robert A.
Lemos with
Exhibits
thereto

4th December
1975

Exhibit
"RAL 1"

(cont'd)

to act for the Chargee.

12. When the payment of any money hereby secured or intended so to be shall be further secured to the Chargee by any bill of exchange promissory note draft guarantee or other instrument reserving a higher rate of interest to be paid in respect thereof than that herein covenanted to be paid, such higher rate of interest shall be payable in respect of such moneys and nothing contained in or to be implied from these presents shall affect the right of the Chargee to enforce and recover payment of such higher rate of interest or as the case may be the difference between such higher rate and the rate which shall have been paid hereunder. 10

13. The Chargor shall pay interest on the daily balance of the Borrower's account or accounts as aforesaid at the said rate referred to in Clause 3 or at such other rate as shall be fixed from time to time by the Chargee. The rate of interest may be varied from time to time by the Chargee without notice. 20

14. The Chargor shall not throughout the duration of this Charge transfer sell charge lease or otherwise deal with the land hereby charged without the written consent of the Chargee first had and obtained.

15. The Chargee shall have the custody or possession of the issue copy of the title of the land hereby charged so long as this Charge remains undischarged. 30

16. In addition to the agreements on the part of the Chargor implied pursuant to section 250 of the National Land Code the Chargor shall:

(i) repair and keep in repair all buildings erected or hereafter to be erected on the land hereby charged and the expression "in repair" shall be construed in accordance with the definition of that expression contained in Section 5 of the National Land Code; 40

(ii) keep all buildings erected or hereafter to be erected on the land hereby charged

insured in a sum satisfactory to the Chargee and in the manner referred to in sub-section (b) of the said section 250;

In the High Court of Malaysia

No.2

Affidavit of Robert A. Lemos with Exhibits thereto

4th December 1975

Exhibit "RAL 1" (cont'd)

and the provisions of sub-sections (c) and (d) of the said section 250 shall apply in all respects to this Charge and all lands hereby secured and the buildings now or hereafter erected thereon.

10 17. The security created by this Charge is hereby expressly declared to be a continuing security to cover the balance owing on the said account or accounts of the Borrower with the Chargee from time to time irrespective of whether at any time or times throughout the duration of this Charge the Borrower may cease for any period to be indebted to the Chargee.

20 18. The Chargor shall not pull down, remove or alter any part of the building or buildings or fixtures now or hereafter erected on the land hereby charged without the prior consent of the Chargee and shall forthwith replace or make good the same in the event of the pulling down, removing or altering of the same.

30 19. The Chargor shall comply with all conditions express or implied relating to the land hereby charged and all ordinances enactments rules or orders made in respect thereof.

40 20. If on realisation of this security under the National Land Code the amount recovered on the sale of the land hereby charged is less than the amount due under this Charge the Chargee notwithstanding that the Chargee may be the purchaser thereof at such sale shall be entitled to recover from the Chargor any difference between the amount due herein and the amount so realised and until such deficit is paid by the Chargor shall be entitled to charge interest on such balance due at the rate aforesaid until the date of final payment.

21. If the land hereby charged shall be put up for sale by public auction pursuant to the

In the High
Court of
Malaysia

No.2
Affidavit of
Robert A.
Lemos with
Exhibits
thereto

4th December
1975

Exhibit
"RAL 1"
(cont'd)

provisions in that behalf contained in the National Land Code the Chargee shall be entitled to set off the moneys due by the Chargor to the Chargee pursuant to this Charge against any moneys payable by the Chargee as purchaser at such sale in the event of the Chargee exercising the Chargee's rights under the National Land Code to bid at such sale.

22. Any notice in writing required to be served hereunder shall be sufficiently served on the Chargor if it be left at the address of the Chargor last known to the Chargee or as stated herein or sent by registered letter post to either of such addresses and shall be sufficiently served on the Chargee if addressed to the Chargee and sent by registered letter post to its address herein or to such other address as the parties may from time to time appoint for the service of notices. A notice sent by post shall be deemed to be given at the time when it ought in due course of post to be delivered at the address to which it is sent. 10
20

23. In the case of the death of the Chargor and until receipt by the Chargee of notice in writing of the grant of probate of the will or administration of the estate of the deceased any notice or demand by the Chargee sent by post aforesaid addressed to the deceased or her personal representatives at the address of the deceased last known to the Chargee or as stated herein shall for all purposes be deemed a sufficient notice or demand by the Chargee to the deceased and her personal representatives and shall be as effectual as if the deceased were still living. 30

24. The implied agreement referred to in section 251 of the National Land Code shall not apply to this Charge. 40

25. It is hereby expressly agreed that section 245 of the National Land Code shall not apply to this Charge and this Charge shall not be discharged unless in addition to making payment in full of all moneys secured by this Charge the Chargor also makes payment in full of all moneys consolidated with the moneys secured by this Charge in the manner referred

to in Clause 4 hereof.

26. Save where hereby expressly varied or excluded every express or implied provision and agreement on the part of the Chargor contained in the National Land Code shall apply to this Charge.

27. In this Charge where the context so permits or requires the masculine shall include the feminine and neuter genders and the singular shall include the plural number and vice versa.

In the High
Court of
Malaysia

No.2
Affidavit of
Robert A.
Lemos with
Exhibits
there to

4th December
1975

Exhibit
"RAL 1"

(cont'd)

In the High Court of Malaysia

No.2 Affidavit of Robert A Lemos with exhibits thereto

4th December 1975

Exhibit "RAL2"

This is the exhibit marked "RAL2" referred to in the Affidavit of Robert A. Lemos affirmed before me this 4th day of December 1975 illegible Commissioner for Oaths

NATIONAL LAND CODE

Form 16A

(Section 242)

C H A R G E

(To secure payment of a principal sum)

10

(Stamps to be affixed - or payment of duty certified - in this space)

FOR REGISTRY USE

Memorial of registration made in the register Document/s of Title scheduled below, with effect from (9.30) on the 30th day of November, 1974

File of Charge

Volume 5

Folio 1

Presentation No. 1931/74

Signed: Illegible

L.S. Registrar

20

I, CHAI YIN (F) (Identity Card No. 0455101) of No.4, Jalan Landak, Kuala Lumpur, proprietor of the land described in the schedule below:

For the purpose of securing the repayment to the chargee named below, with interest, of a loan of \$70,000.00 made by the chargee at my request to VALOR ELECTRICAL & ELECTRONIC CO., the receipt of which paid amount by VALOR ELECTRICAL & ELECTRONIC CO. I hereby acknowledge

30

Dated this 26th day of September, 1974

.....

Signature

(or other form of execution by or on behalf of chargor)

I, WILLIAM DONALD BEWSHER, an Advocate and Solicitor in the High Court in Malaya practising in Kuala Lumpur, hereby testify that the above signature was written in my presence this 26th day of September, 1974, and is

10

(a) according to my own personal knowledge

~~(b) according to information given by me by the following trustworthy and reliable person namely~~

.....
.....

~~which information I verily believe.~~

the true signature of CHAI YIN (F) who has acknowledged to me

20

- (i) that she is of full age,
- (ii) that she has voluntarily executed this instrument, and
- (iii) that she understands the contents and effect thereof

As witnessed my hand this 26th day of September, 1974

.....

Signature

Advocate & Solicitor Kuala Lumpur

30

WE, BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION a company registered in the United States of America and having an office in Malaysia at No. 8, Jalan Weld, Kuala Lumpur, accept this charge.

By our power of attorney

K.W. JOHNSON.
Signature.

(or other form of execution by or on behalf of chargee)

In the High Court of Malaysia

No.2

Affidavit of Robert A Lemos with exhibits thereto

4th December 1975

Exhibit "RAL2" (Cont'd)

I, THOMAS MUN LUNG LEE, an Advocate & Solicitor, in The High Court in Malaya practising in Kuala Lumpur, hereby testify that the above signature of the Chargee's power of attorney was written in my presence this 26th day of September, 1974, and is according to my own personal knowledge, the true signature of KENNETH W. JOHNSON, who has acknowledged to me

10

- (i) that he is of full age,
- (ii) that he has voluntarily executed this instrument, and
- (iii) that he understands the contents and effects thereof

As witnessed my hand this 26th day of September 1974

Signature
Advocate & Solicitor
Kuala Lumpur

Where the address of the person claiming under this instrument is outside the Federation, an address within the Federation for the service of notices is to be added in this space

20

The address for the service of notices on BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION

is
No. 8, Jalan Weld,
Kuala Lumpur.

SCHEDULE OF LAND AND INTEREST

Town/ Village/ Mukin	Lot/ Parcel/ L.O.No.	Description and No. of Title	Share of land (if any)	Reg- istered No. of Lease/ sub-lease (if any)	Reg- istered No. of Charge (if any)
(1) Mukin Bentong	(2)	(3) C.T.No.	(4) All	(5) None	(6) None

30

ONE TITLE ONLY

LAMP IRAN
(ANNEXURE)

In the High
Court of
Malaysia

Express provisions affecting the within-written charge.

No.2
Affidavit of
Robert A.
Lemos with
Exhibits
thereto

4th December
1975

Exhibit
"RAL 2"

(cont'd)

- It is hereby mutually agreed between the Chargor and the Chargee as follows :-
1. The Chargor shall pay to the Chargee on demand the said sum of Dollars Nine hundred and seventy thousand (S\$970,000/-) (hereinafter called "the principal sum") which is referred to in the within-written charge (hereinafter called "this Charge") or such less sum as is for the time being owing on the loan account kept between VALOR ELECTRICAL & ELECTRONIC CO. of 4 Jalan Landak, Kuala Lumpur (hereinafter called "the Borrower") and the Chargee together with interest thereon at the rate herein provided.
2. The Chargee shall be at liberty by notice in writing to the Chargor to consolidate with the balance due to the Chargee on the Borrower's said account with the Chargee from time to time any other moneys owing by the Chargor to the Chargee whether or not secured by any other charge or charges created by the Chargor or any person through whom the Chargor claims on property other than that comprised in this Charge so that such other moneys shall become secured by this Charge.
3. The Chargor shall pay interest on the principal sum or on such less sum as is for the time being owing as aforesaid at the rate of sixteen per centum (16%) per annum until the same is altered in accordance with Clause 5 of this Annexure and such interest shall also be secured by this Charge. Payments of interest shall be made, with monthly rests, on or before the fifth day of each succeeding month, the first of such payments to be made on or before the 5th day of October, 1974. In the event of an order for sale being obtained by the Chargee under the National Land Code the interest aforesaid shall continue to be paid at the rate aforesaid.
4. Any demand for payment of the moneys intended to be hereby secured may be made by a

In the High
Court of
Malaysia

No.2
Affidavit of
Robert A.
Lemos with
Exhibits
thereto

4th December
1975

Exhibit
"RAL 2"

(cont'd)

notice in writing sent by the Chargee or
by any solicitor or firm of solicitors
purporting to act for the Chargee.

5. The rate of interest referred to in
Clause 3 may be varied from time to time
by the Chargee without notice.

6. The Chargor shall not throughout the
duration of this Charge transfer sell charge
lease or otherwise deal with the land hereby
charged without the written consent of the
Chargee first had and obtained. 10

7. The Chargor shall not pull down, remove
or alter any part of the building or buildings
or fixtures now or hereafter erected on the
land hereby charged without the prior consent
of the Chargee and shall forthwith replace
or make good the same in the event of the
pulling down, removing or altering of the
same.

8. The Chargee shall have the custody or
possession of the issue copy of the title
of the land hereby charged so long as this
Charge remains undischarged. 20

9. The Chargor shall during the term of this
security pay the quit rent taxes and other
payments payable from time to time in respect
of the said land as and when the same shall
become due and payable. In default whereof
the Chargee may in its absolute discretion
which shall not be questioned pay the same or
any part thereof and all moneys expended by
the Chargee together with interest thereon at
the rate aforesaid from the date of such
payments shall be recoverable from the Chargor. 30

10. In addition to the agreements on the part
of the Chargor implied pursuant to Section 250
of the National Land Code the Chargor shall :-

(i) repair and keep in repair all buildings
erected or hereafter to be erected
on the land hereby charged and the
expression "in repair" shall be
construed in accordance with the
definition of that expression contained
in Section 5 of the National Land
Code; 40

(ii) keep all buildings erected or hereafter

to be erected on the land hereby charged insured in a sum satisfactory to the Chargee and in the manner referred to in sub-section (b) of the said Section 250;

In the High Court of Malaysia

No.2
Affidavit of
Robert A.
Lemos with
Exhibits
thereto

4th December
1975

Exhibit
"RAL 2"
(cont'd)

10 and the provisions of sub-sections (c) and (d) of the said Section 250 shall apply in all respects to this Charge and all lands hereby secured and the buildings now or hereafter erected thereon.

11. The Chargor shall comply with all conditions express or implied relating to the said land and all ordinances enactments rules or orders made in respect thereof.

20 12. If the land hereby charged shall be put up for sale by public auction pursuant to the provisions in that behalf contained in the National Land Code the Chargee shall be entitled to set off the moneys due by the Chargor to the Chargee pursuant to this charge against any moneys payable by the Chargee as purchaser at such sale in the event of the Chargee exercising the Chargee's rights under the National Land Code to bid at such sale.

30 13. If on realisation of this security under the National Land Code the amount recovered on the sale of the land hereby charged is less than the amount due under this Charge, the Chargee notwithstanding that the Chargee may be the purchaser thereof at such sale under Clause 12 hereof shall be entitled to recover from the Chargor any difference between the amount due herein and the amount so realised and until such deficit is paid by the Chargor shall be entitled to charge interest on such balance due at the rate aforesaid until the date of final payment.

40 14. The implied agreement referred to in Section 251 of the National Land Code shall not apply to this Charge.

15. It is hereby expressly agreed that Section 245 of the National Land Code shall not apply to this Charge and this Charge shall not be discharged unless in addition to making

In the High
Court of
Malaysia

No.2
Affidavit of
Robert A.
Lemos with
Exhibits
thereto
4th December
1975

Exhibit
"RAL 2"
(cont'd)

payment in full of all moneys secured by this Charge the Chargor also makes payment in full of all moneys consolidated with the moneys secured by this Charge in the manner referred to in Clause 2 hereof.

16. Save where hereby expressly varied or excluded every express or implied provision and agreement on the part of the Chargor contained in the National Land Code shall apply to this Charge.

10

17. Any notice in writing required to be served hereunder shall be sufficiently served on the Chargor if addressed to the Chargor and sent by registered post to his address herein and shall be sufficiently served on the Chargee if addressed to the Chargee and sent by registered post to its address herein or to such other addresses as the parties may from time to time appoint for the service of notices. A notice sent by post shall be deemed to be given at the time when it ought in due course of post to be delivered at the address to which it is sent.

20

18. In the case of the death of any person a party hereto and until receipt by the Chargee of notice in writing of the grant of probate of the will or administration of the estate of the deceased any notice or demand by the Chargee sent by post aforesaid addressed to the deceased or his personal representatives at the address of the deceased last known to the Chargee or as stated herein shall for all purposes be deemed a sufficient notice or demand by the Chargee to the deceased and his personal representatives and shall be as effectual as if the deceased were still living.

30

19. In the case of the winding up of the Chargor where the Chargor is a corporation and until receipt by the Chargee of notice in writing of the liquidation of the Chargor any notice or demand by the Chargee sent by post aforesaid addressed to the Chargor at its registered address shall for all purposes be deemed a sufficient notice or demand by the Chargee to the Chargor and shall be effectual.

40

20. The period of seven (7) days shall be the period for the purposes of this Charge (in substitution for the period of one month referred

to in sub-section 254 (1) of the National Land Code) after which a notice may be served in Form 16D pursuant to Section 254 of the National Land Code and the period of fourteen (14) days shall be the period for the purposes of this Charge (in substitution for the period of one month referred to in sub-section 254(1)(b) of the National Land Code) which shall be inserted in the notice in Form 16D within which time the breach complained of is required to be remedied.

10

21. The Chargor shall be liable to pay all fees and expenses in connection with or incidental to this Charge including the Chargee's solicitors' fees (on a solicitor and client basis) in connection with the preparation and execution of this Charge and the documents related thereto. If the monies hereby secured or any part thereof shall be required to be recovered through any process of law and if any advocate and solicitor is employed to recover the same the Chargor shall pay (in addition to the monies then due and payable and hereby secured) the Chargee's solicitors' fees (on a solicitor and client basis) and any other fees and expenses incurred in respect of enforcing payment of the monies hereby secured through any process of law or otherwise by the employment of an advocate and solicitor as aforesaid.

20

30

22. The security liabilities and or obligations created by this Charge shall continue to be valid and binding for all purposes whatsoever notwithstanding any change by amalgamation reconstruction or otherwise which may be made in the constitution of the Chargee and similarly the security liabilities and or obligations created by this Charge shall continue to be valid and binding for all purposes whatsoever notwithstanding any change by amalgamation reconstruction or otherwise howsoever in the constitution of the Borrower and it is expressly declared that no change of any sort whatsoever in relation to or affecting the Borrower shall in any way affect the security liabilities and or obligations created hereunder in relation to any transaction whatsoever whether past present or future.

40

23. The Chargee may at all times without

In the High Court of Malaysia

No.2
Affidavit of
Robert A.
Lemos with
Exhibits
thereto

4th December
1975

Exhibit
"RAL 2"
(cont'd)

In the High
Court of
Malaysia

No.2
Affidavit of
Robert A.
Lemos with
Exhibits
thereto

4th December
1975

Exhibit
"RAL 2"

(cont'd)

discharging or in any way affecting the
security hereby created :-

- (a) determine vary or increase any
credit to the Borrower;
- (b) grant to the Borrower or to any
other person any time or indulgence;
- (c) renew any bills notes or other
negotiable securities;
- (d) deal with exchange release modify
or abstain from perfecting or
enforcing any securities or other
guarantees or rights which it may
now or hereafter have from or
against the Borrower or any other
person;
- (e) compound with the Borrower or with
any other person or guarantor.

10

24. Any money received hereunder may be
placed and kept to the credit of a suspense
account for so long as the Chargee thinks 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 Borrower to the Chargee.
Notwithstanding any such payment in the event
of any proceedings in or analogous to bankruptcy
liquidation composition or arrangement the
Chargee 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 security had not
been created.

20

30

25. Until all money and liabilities due or
incurred by the Borrower to the Chargee shall
have been paid or discharged the Chargor will
not 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
Borrower in respect of any liability from the
Chargor to the Borrower or claim or prove in
competition with the Chargee in respect of any
payment by the Chargor 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 Borrower or its
estate or the benefit of any other security

40

which the Chargee may now or hereafter hold for any money or liabilities due or incurred by the Borrower to the Chargee or to have any share therein.

In the High Court of Malaysia

No.2
Affidavit of Robert A. Lemos with Exhibits thereto

4th December 1975

Exhibit "RAL 2"
(cont'd)

10

26. Any security now or hereafter held by the Chargor from the Borrower in respect of the liability hereby created shall be held in trust for the Chargee and shall be used to make good any deficiency realised hereunder.

27. In this Charge where the context so permits or requires the masculine shall include the feminine and neuter genders and the singular shall include the plural number and vice versa.

20

28. It is hereby declared and agreed that this Charge is created by way of collateral security to a charge dated 20th April, 1971 over the land held under Q.T.(R) 7414, Lot 703, Mukim of Petaling employed in one transaction to secure one principal sum and interest within the meaning of Section 4(3) of the Stamp Ordinance, 1949.

Sgd.

Sgd.

Signature of Chargor

Signature of the Attorney of the Chargee

In the High
Court of
Malaysia

EXHIBIT "RAL 3"

21st June 1975

No.2
Affidavit of
Robert A.
Lemos with
Exhibits
thereto

TK/el/32700/74

A R REGISTERED

Madam Chai Yen
K37 Salak South Gardens
KUALA LUMPUR

4th December
1975

Exhibit
"RAL 3"

Dear Madam

CHARGE PRESENTATION NO.27377
VOLUME CCXL FOLIO 196 DATED
21ST APRIL 1971

10

We act for BANK OF AMERICA NATIONAL TRUST AND
SAVINGS ASSOCIATION, Kuala Lumpur.

We are informed by our clients that at your
request, our clients advanced various sums of
money which sums were secured by a Charge over
a piece of land held under Q.T.(R) No.7414 Lot 703
in the Mukim of Petaling. We are further
informed that you are the registered owner of
the above piece of land and the Chargor of
the above charge. The charge is stamped to
secure up to a maximum sum of \$970,000/-. 20

We have now been requested by our clients to
demand from you repayment of the sum of
\$896,286.79 being the principal sum and interest
accruing at 14% per annum from 14th March, 1975
to our clients under the above-mentioned charge.

TAKE NOTICE that if the above-mentioned sum is
not paid either to our clients or to us within
one (1) month from the date hereof, our clients
will proceed to apply for an Order for Sale
of the above-mentioned land with the view to
recovering the said sum. 30

Yours faithfully,

c.c. M/s Valor Electrical & Electronic Co.
No.4 Jalan Landak
Pudu
KUALA LUMPUR

c.c. Client

This is the Exhibit marked "RAL 3" referred to in the Affidavit of Robert A. Lemos affirmed before me this 4th day of December 1975

In the High Court of Malaysia

Sgd.

Commissioner for Oaths

No.2 Affidavit of Robert A. Lemos with Exhibits thereto

4th December 1975

JABATAN PERKHIDMATAN POS. MALAYSIA

10 Hendak-lah di-
penohi yang asal
To be filled in by
the office of
original

AKUAN MENERIMA SURAT
DAFTARAN DALAM NEGERI
Advice of Delivery
inland registered letter

Exhibit
"RAL 3"
(cont'd)

Di-hantar oleh
Sent by:

Yang bertanda tangan di-
bawah ini mengatakan benda
yang tersebut telah di-
sampaikan di-alamat yang
tersebut pada.....
19.....

Di-alamatkan kepada
20 Addressed to:
Mdm. Chai Yen
K37 Salak South Garden
K.I.

The undersigned states
that the article mentioned
was duly delivered at the
address stated on

Telah di-poskan di
Posted at: K.L.
Pada 23.6.1975
On

*Si-penerima
.....
Recipient
atau
or

Di-bawah No. Daftar

Di-tanda / Ketua Pos.....
tangani Postmaster
oleh

Under Registration No. Signature of

30 * Pontong apabila si-penerima
enggan menanda tangani kad
ini atau kad ini tidak berserta
dengan benda itu.

Delete. when recipient declines
to sign this card or when the
card does not accompany the
article

SETELAH PENOH KAD INI HENDAK I AH DI-KEMBALIKAN
AL AMAT DI-SLUELAH
On completion this card should be returned to the
address overleaf

In the High
Court of
Malaysia

TK/e1/32700/74

No.2
Affidavit of
Robert A.
Lemos with
Exhibits
thereto

4th December
1975

Exhibit
"RAL 3"

(cont'd)

URUSAN PERKHIDMATAN POS

Hendak-lah di-penuhi oleh al-penghantar
dengan menerangkan alamat-nya yang penob
di-bawah loi

(To be filled in by the sender who will
indicate below his full address)

Kapada... SKRINE & CO.....
(To) Advocates & Solicitors

Jalan dan 4 Leboh Pasar Besar
Nombor P.O.Box 987
(Street
and
Number)

10

Pekan atau Kuala Lumpur 01-23
Kampong
(Town or
Village)

Exhibit
"RAL 4"

EXHIBIT "RAL 4"

A.R. REGISTERED

12th August 1975

20

TK/pk/32700/74

Madam Chai Yen
K37 Salak South Garden
KUALA LUMPUR

Dear Madam

CHARGE PRESENTATION NO. 1931/74
VOLUME 5 FOLIO 1 DATED 30th November 1974

We act for BANK OF AMERICA NATIONAL TRUST AND
SAVINGS ASSOCIATION, Kuala Lumpur.

We are informed that our clients granted a
fixed loan to Messrs. Valor Electrical &
Electronic Co., which sum was secured by a
charge over a piece of land held under C.T.2509,

30

for Lot No.3775 in the Mukim of Bentong.
You are the registered owner of the piece
of land and the Chargor of the above charge.
We have now been requested by our clients
to demand from you repayment of the sum of
\$896,286.79 being the principal sum and
interest due as at 14th March 1975 and
further interest accruing at 14% per annum
from 14th March 1975 to date of payment.

In the High
Court of
Malaysia

No.2
Affidavit of
Robert A.
Lemos with
Exhibits
thereto

- 10 We are further instructed to inform you that
unless the above-mentioned sum together
with all accrued interest is paid either to
our clients or to us within seven (7) days
of the date hereof, our clients shall proceed
to apply for an Order for sale of the above-
mentioned land with the view to recovering
the above-mentioned sum.

4th December
1975

Exhibit
"RAL 4"
(cont'd)

Yours faithfully,

- 20 c.c. Messrs. Valor Electrical & Electronic Co.
No.4 Jalan Landak
Pudu
KUALA LUMPUR

Clients

This is the Exhibit marked "RAL 4" referred
to in the Affidavit of Robert A.Lemos
affirmed before me this 4th day of December
1975

(Sgd)

Commissioner for Oaths

In the High
Court of
Malaysia

EXHIBIT "RAL 5"

No.2
Affidavit of
Robert A.
Lemos with
Exhibits
thereto

4th December
1975

Exhibit
"RAL 5"

This is the Exhibit marked "RAL 5"
referred to in the Affidavit of
Robert A.Lemos affirmed before me
this 4th day of December 1975

Sgd.

Commissioner for Oaths

NATIONAL LAND CODE
FORM 16 D
(Section 254)

10

NOTICE OF DEFAULT WITH RESPECT TO A CHARGE

To: Madam Chai Yen,
K-37 Salak South Garden
KUALA LUMPUR

Chargor under the Charge described in the
schedule below of the land so described.

WHEREAS you have committed a breach of
the provisions of this Charge by failing to
pay the sum of \$898,286.79 being the principal
sum and interest accruing at 14% per annum
from the 14th day of March, 1975 due to us
the Chargee, when so demanded of you by our
Solicitors Messrs. Skrine & Co., Straits
Trading Building, 4 Leboh Pasar Besar, Kuala
Lumpur in a letter dated the 21st day of June
1975.

20

AND WHEREAS the breach has continued
for a period of at least one (1) month prior
to the date of this notice;

We, as Chargee, by virtue of the powers
conferred by Section 254 of the National Land
Code, hereby require you within the period of
one (1) month from the service of this notice
to remedy the breach;

30

AND TAKE NOTICE that if you fail to remedy
the breach within that period, we shall apply
for an order of sale.

Dated this 12th day of August, 1975

BANK OF AMERICA NATIONAL TRUST AND
SAVINGS ASSOCIATION, by its Attorney
Sgd.

40

Signature (or other form of execution)
by or on behalf of chargee

In the High
Court of
Malaysia

SCHEDULE OF LAND AND INTEREST

Mukim	Lot No.	Descrip- tion and No. of Title	Share of land	Regis- tered No. of lease/ sub- lease	Regis- tered No. of charge	
10	(1)	(2)	(3)	(4)	(5)	(6)
	Petaling	703	Q.T.(R) No.7414	whole	nil	No.27377 Vol:CCXL Fol: 196

No.2
Affidavit of
Robert A.
Lemos with
Exhibits
thereto
4th December
1975

Exhibit
"RAL 5"
(cont'd)

NATIONAL LAND CODE

FORM 16 D

(Section 254)

NOTICE OF DEFAULT WITH RESPECT TO A CHARGE

20 TO:- Madam Chai Yen,
K37, Salak South Garden,
Kuala Lumpur

Chargor under the Charge described in the
Schedule below of the land so described.

30 WHEREAS you have committed a breach of the
provisions of this Charge by failing to pay the
sum of \$896,286.79 being the principal sum and
interest accruing at 14% per annum from 14th day
of March, 1975 due to us the Chargee, when so
demanded of you by our Solicitors Messrs. Skrine
& Co., Straits Trading Building, 4 Leboh Pasar
Besar, Kuala Lumpur in a letter dated the 12th
day of August, 1975.

AND WHEREAS the breach has continued for
a period of at least seven (7) days prior to
the date of this notice;

In the High
Court of
Malaysia

No.2
Affidavit of
Robert A.
Lemos with
Exhibits
thereto

4th December
1975

Exhibit
"RAI 5"
(cont'd)

We, as Chargee, by virtue of the powers conferred by Section 254 of the National Land Code, hereby require you within the period of fourteen (14) days from the service of this notice to remedy the breach;

AND TAKE NOTICE that if you fail to remedy the breach within that period, we shall apply for an order of sale.

Dated this 9th day of September, 1975.

BANK OF AMERICA NT & SA
by our Attorney

10

Sgd.

Signature (or other form of
execution) by or on behalf of
Chargee

EXHIBIT "RAL 6"

In the High
Court of
Malaysia

Jika alamat orang yang berhak di bawah suratcara ini ialah di luar Persekutuan, maka suatu alamat die dalam Persekutuan, untuk notis-notis disampaikan hendaklah ditambah dalam ruangan ini.

No.2
Affidavit of
Robert A.
Lemos with
Exhibits
thereto

Alamat untuk notis-notis disampaikan kepada

4th December
1975

10

BANK OF AMERICA NATIONAL TRUST AND
SAVINGS ASSOCIATION

Exhibit
"RAL 6"

ialah

No.2 Jalan Raja Chulan,
Kuala Lumpur.

JADUAL TANAH DAN KEPENTINGAN

20

Bandar/ Pekan/ Mukim	No.Lot / Petak/ P.T.	Jenis dan No.Hak- milik	Baha- gian tanah (jika ada)	No.Ber- daftar pajakan/ pajakan keoil (jika ada)	No.Ber- daftar gadaian (jika ada)
(1)	(2)	(3)	(4)	(5)	(6)
Mukim Bentong	3775	C.T.No. 2509	Semua	Tiada	Per No. 1931/74 Jil.5 Rol.1

SATU HAKMILIK SAHAJA

30

This is the Exhibit marked "RAL 6" referred to in the Affidavit of Robert A.Lemos affirmed before me this 4th day of December 1975

Sgd.

Commissioner for Oaths

In the High
Court of
Malaysia

No. 3
Notice of
Appointment
to hear
Originating
Summons
9th February
1976

No. 3

NOTICE OF APPOINTMENT
TO HEAR ORIGINATING
SUMMONS - 9th February 1976

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

ORIGINATING SUMMONS NO.494 OF 1975

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

And

In the Matter of Memorandum of
Charge presentation No.27377 10
Volume CCXL Folio 196 in respect
of land held under Q.T.(R) No.
7414 for Lot 703, in the Mukim
of Petaling;

And

In the Matter of Memorandum of
Charge presentation No.1931/74
Volume 5, Folio 1 in respect of
land held under Certificate of
Title No.2509 for Lot 3775 in 20
the Mukim of Bentong.

B E T W E E N :

BANK OF AMERICA NATIONAL
TRUST & SAVINGS ASSOCIATION Chargee/Applicant

And

CHAI YEN (M.W.) Chargor/Respondent

NOTICE OF APPOINTMENT TO HEAR
ORIGINATING SUMMONS

TAKE NOTICE that you are required to
attend the Judge in Chambers at the High Court, 30
Kuala Lumpur, on Monday, the 5th day of April
1976 at 9.30 o'clock in the forenoon, on the
hearing of the Originating Summons issued
herein on the 4th day of December, 1975 and that
if you do not attend in person or by your advocate

and solicitor at the hour and place mentioned, such order will be made and proceedings taken as the Judge may think expedient.

In the High
Court of
Malaysia

Dated this 9th day of February, 1976

Sgd.
Solicitors for the
Chargee/Applicant
abovenamed

Sgd.
Senior Assistant
Registrar, High Court
Kuala Lumpur

No.3
Notice of
Appointment
to hear
Originating
Summons
9th February
1976
(cont'd)

10

This Notice was taken out by Messrs.
Skrine & Co., Straits Trading Building,
No.4 Leboh Pasar Besar, Kuala Lumpur,
Solicitors for the Chargee/Applicant herein.

This Notice is to be served on :-

Messrs. Augustin-Negrin & Co.,
Room 209, 2nd Floor,
Lee Yan Lian Building,
Jalan Tun Perak,
Kuala Lumpur,
Solicitors for the Chargor/Respondent.

20

In the High
Court of
Malaysia

No.4
Affidavit of
Chai Yen with
Exhibits
thereto

31st March
1976

No. 4

AFFIDAVIT OF CHAI YEN
WITH EXHIBITS THERETO
- 31st March 1976

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

ORIGINATING SUMMONS NO: 494 OF 1975

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

And 10

In the Matter of Memorandum of
Charge presentation No.27377
Volume CCXL Folio 196 in
respect of land held under
Q.T.(R) No.7414 for Lot No.703
in the Mukim of Petaling;

And

In the Matter of Memorandum of
Charge presentation No.1931/74
Volume 5, Folio 1 in respect of 20
land held under Certificate of
Title No.2509 for Lot 3775 in
the Mukim of Bentong.

B E T W E E N:

BANK OF AMERICA NATIONAL
TRUST & SAVINGS ASSOCIATION Chargee/Applicant

And

CHAI YEN (M.W.) Chargor/Respondent

A F F I D A V I T

I, Chai Yen of full age and of Malaysian 30
Nationality of K 37 Salak South Garden, Kuala
Lumpur hereby affirm and state as follows :-

1. I am the Chargor/Respondent in this
Originating Summons.
2. I crave leave to refer to the Affidavit of

Robert A. Lemos affirmed on the 4th day of December 1975 and filed herein.

In the High
Court of
Malaysia

3. The Affidavit of Robert A. Lemos does not set out the facts fully and truly.

No.4
Affidavit of
Chai Yen with
Exhibits
thereto

10 4. The Chargee/Applicant has sued four persons including me as the Second Defendant for all the same monies in this Originating Summons purported to be owing to the Chargee/Applicant by Valor Electrical & Electronic Co. on a Specially Indorsed Writ issued by this Honourable Court on the 24th day of March 1975 vide Kuala Lumpur High Court Civil Suit No. 432 of 1975.

31st March
1976
(cont'd)

A copy of the said Writ with the Statement of Claim that accompanied it is annexed hereto and marked Exhibit "CY 1".

20 5. I am contesting the Chargee's/Applicant's claims against me in this Action vide the Statement of Defence filed on my behalf dated the 25th day of April 1975.

A copy of the said Statement of Defence is annexed hereto and marked Exhibit "CY 2".

6. Kuala Lumpur High Court Civil Suit No. 432 of 1975 has to-date not yet been tried or settled.

30 7. With regard to the charge executed on 29.4.71 under presentation No.27377, Volume CCXL, Folio 196 mentioned in paragraph 3 of the said Affidavit of Robert A. Lemos the land charged therein was at the time in question worth approximately Dollars Sixty thousand (\$60,000/-) and it was mutually agreed between the Chargee/Applicant and me that the total of all sums advanced by the Chargee/Applicant would be limited to a sum not exceeding sixty per-cent of the value as at that time of the said property.

40 The claims in Kuala Lumpur High Court Civil Suit No.432 of 1975 covers all sums advanced as agreed aforesaid on the security of this charge. The Chargee's/Applicant's action to sell this property to recover money advanced on the security of it is a duplication.

In the High
Court of
Malaysia

No.4
Affidavit of
Chai Yen with
Exhibits
thereto

31st March
1976

(cont'd)

I verily believe that this land is at present worth something in the region of Dollars Ninety thousand (\$90,000/-) only and I humbly contend that the Chargee/Applicant is endeavouring to recover money in excess of what I had undertaken to meet.

8. At no time did I ever agree to act as guarantee on the security of this charge for an unlimited sum to be advanced by the Chargee/Applicant to the Valor Electrical & Electronic Co. 10

9. With regard to the charge purported to have been executed on the 26th September 1974 under presentation No.1931/74, Volume 5, Folio 1 over the land held under Certificate of Title 2509 for Lot 3733 in the Mukim of Bentong I contend that no principal sum of Dollars Nine hundred and seventy thousand (\$970,000/-) was in fact owing on the loan account kept between the Chargee/Applicant and Valor Electrical & Electronic Co. of No.4 Jalan Landak, Kuala Lumpur. 20

At no time did the Valor Electrical & Electronic Co. receive any principal sum of Dollars Nine hundred and seventy thousand (\$970,000/-) from the Chargee/Applicant nor does the Valor Electrical & Electronic Co. owe the Chargee/Applicant the sum of \$896,286.79.

10. (i) On or about the 2nd day of September 1974 I was induced by the Chargee/Applicant their agents or servants to sign documents for this charge which were not dated and also blank guarantee forms and ancillary letters and documents including the now filled-in documents annexed hereto marked Exhibit "CY 3" and Exhibit "CY 4" pertaining to a principal sum of \$970,000/- purported to be owing to the Chargee/Applicant by the Valor Electrical & Electronic Co. 30 40

(ii) I was induced to sign the documents for this charge and the blank guarantee forms ancillary letters and other documents against my will by the false and fraudulent representations and undue influence of the Chargee/Applicant their servants or agents over me and without proper consideration of the effect of

what I was doing and I had no legal or other independent advice.

In the High Court of Malaysia

(iii) The Chargee/Applicant their servants or agents represented to me :-

No.4
Affidavit of
Chai Yen with
Exhibits
thereto

31st March
1976

(cont'd)

10

(a) that the said documents for this charge and the blank guarantee forms ancillary letters and other documents were not intended to be operative according to their tenour;

(b) that the Valor Electrical & Electronic Co. was only notionally taking over debts owing to the Chargee/Applicant by the Third and Fourth Defendants in Kuala Lumpur High Court Civil Suit No. 432 of 1975 namely Fu Kok Siew and Yoong Fook;

20

(c) that they would not call upon me to pay the sum inserted in the said charge and the other said forms;

(d) that they would only look to the First, Third and Fourth Defendants in Kuala Lumpur High Court Civil Suit No.432 of 1975 for payment of their debts and not me.

30

(iv) At the time when the said charge and other said forms were signed by me my husband who is the First Defendant in Kuala Lumpur High Court Civil Suit No.432 of 1975 was a customer of the Chargee/Applicant and he was enjoying overdraft facilities and an Account in respect of Letters of Credit and Trust Receipts and my husband and I were obliged to and dependent on the Chargee/Applicant for assistance.

40

(v) The said charge and the other said documents were executed by me at the request of the Chargee/Applicant their servants or agents and on their advice that they were merely to facilitate journal adjustments within the accounting system of the Chargee's/Applicant's business for the purpose of audit and to overcome the misfeasance of its servants or agents.

In the High
Court of
Malaysia

No.4
Affidavit of
Chai Yen with
Exhibits
thereto

31st March
1976

(cont'd)

11. I contend there was no or no valuable consideration to support the charge under presentation No.1931/74, Volume 5, Folio 1 over the land held under Certificate of Title 2509 for Lot 3733 in the Mukim of Bentong and that any guarantees in respect thereof are void in law.

Further I contend that any purported guarantee in respect of this charge is fictitious and that any transactions involving any sum of \$970,000/- in the records of the Chargee/Applicant pertaining to the Account/s of the First Defendants in Kuala Lumpur High Court Civil Suit No.432 of 1975 and/or to any alleged guarantee by me are merely illusory. 10

12. I contend that a comparison of the issues raised in the Affidavit of Robert A.Lemos and in this Summons with the issues raised in Kuala Lumpur High Court Civil Suit No. 432 of 1975 shows that they are identical and that the proceedings herein, since they have come after the said Civil Suit, are misconceived. 20

I am advised by my Solicitors and verily believe that this amounts to vexation and oppression of me and is an abuse of the process of Court.

13. I am further advised by my Solicitors and verily believe that in such cases the Court will under its inherent jurisdiction stay the proceedings herein pending the disposal of Kuala Lumpur High Court Civil Suit No. 432 of 1975, since the Chargee/Applicant cannot be permitted to litigate the same issues twice after having filed proceedings in Court vide Kuala Lumpur High Court Civil Suit No. 432 of 1975 for all sums said to be connected with both charges referred herein. 30

The issues of fact and law raised between the Chargee/Applicant on the one hand and me on the other are such that they cannot be satisfactorily disposed of in proceedings where evidence is taken by Affidavit. Oral evidence and full opportunity of cross-examination are essential. 40

14. I am not opposed to the early disposal of all outstanding issues involving all interested

parties in both Actions but I do object to being exposed to the need to defend myself twice against the same persons and I respectfully ask that the Court may be pleased to stay the proceedings in this Summons which has come after the filing of Kuala Lumpur High Court Civil Suit No.432 of 1975.

In the High Court of Malaysia

No.4 Affidavit of Chai Yen with Exhibits thereto

31st March 1976

(cont'd)

10 AFFIRMED by the said)
CHAI YEN at Kuala)
Lumpur this 31st day) Sgd. C. Yen
of March, 1976 at)
3.00 p.m.)

Before me,

Sgd.

Commissioner for Oaths
SOO KOK KWONG
Commissioner for Oaths
High Court
Kuala Lumpur

20

Explained by me in Chinese.

I hereby certify that the above Affidavit was read translated and explained by me, a sworn interpreter of Court, to the deponent who seemed perfectly to understand the contents, declared to me that he or she did understand and made his or her signature in my presence.

Sgd.

30

SOO KOK KWONG
Commissioner for Oaths
High Court
Kuala Lumpur

This Affidavit is filed by Messrs. Augustin-Negrin & Co., Solicitors for the Chargor/Respondent above-named and whose address is at Room 209, 2nd Floor, Lee Yan Lian Building, Jalan Tun Perak, Kuala Lumpur 01-21.

WE COMMAND YOU, that within eight (8) 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 Bank of America National Trust and Savings Association of 2 Jalan Raja Chulan, Kuala Lumpur.

In the High Court of Malaysia

No.4
Affidavit of Chai Yen with Exhibits thereto

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

31st March 1976

WITNESS, Noor Farida binti Ariffin, Senior Assistant Registrar of the High Court, Malaya.

Exhibit "CY 1"
(cont'd)

Dated this 24th day of March, 1975.

Sd. Skrine & Co.
Plaintiffs' Solicitors

Sd. Noor Farida
Senior Assistant Registrar, High Court, Kuala Lumpur.

20 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 date of such date and not afterwards.

The Defendant may appear hereto by entering an appearance either personally or by solicitor at the Registry of the High Court at Kuala Lumpur.

30 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 \$3.00 with an addressed envelope to the Registrar of the High Court at Kuala Lumpur.

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

In the High
Court of
Malaysia

No.4
Affidavit of
Chai Yen with
Exhibits
thereto

31st March
1976

Exhibit
"CY 1"

(cont'd)

STATEMENT OF CLAIM

1. The Plaintiff are bankers carrying on business at their Kuala Lumpur Branch at No.2 Jalan Raja Chulan, Kuala Lumpur.

2. At all material times the First Defendant was the customer of the Plaintiffs at their said Branch.

3. By separate guarantees in writing made between the Plaintiffs and the Second, Third and Fourth Defendants respectively dated the 2nd of September, 1974, 3rd of October, 1974 and the 3rd of October 1974 respectively, the said Second, Third and Fourth Defendants severally agreed for the consideration set out in their respective guarantees to guarantee the payment on demand of all advances made by the Plaintiffs to the First Defendant to the extent of \$970,000/-, \$400,000/- and \$130,000/- respectively together with interest commission and banking charges and other sums stated in the said guarantees.

10

20

4. In respect of the said guarantees the Plaintiffs have made advances to the First Defendant which together with interest commission and banking charges amount to \$897,774.71 as at the 17th February, 1975.

5. By an A.R. Registered letter dated the 24th day of February, 1975 the Plaintiffs through their Solicitors, Messrs. Skrine & Co. demanded payment of the said sum of \$897,774.71 from the First Defendant with copies to all the other Defendants, but neither the First Defendant nor the other Defendants have paid the said sum or any part thereof.

30

AND the Plaintiffs claim against the First Defendant as principal :-

(a) Judgment for the sum of \$897,774.71;

(b) Interest at the rate of 14% per annum on \$897,774.71 from the 18th day of February, 1975 to the date of payment;

40

(c) Costs.

AND against the Second Defendant as surety :-

- (a) Judgment for the sum of \$897,774.71;
- (b) Interest thereon at the rate of 14% per annum from the 18th day of February, 1975 to the date of payment;
- (c) Cost.

In the High Court of Malaysia

No.4
Affidavit of Chai Yen with Exhibits thereto

AND against the Third Defendant as surety :-

31st March 1976

10

- (a) Judgment for the sum of \$400,000/-;
- (b) Interest thereon at the rate of 14% per annum from the 18th day of February, 1975 to the date of payment;
- (c) Costs.

Exhibit "CY 1"
(cont'd)

AND against the Fourth Defendant as surety:-

- (a) Judgment for the sum of \$130,000/-;
- (b) Interest thereon at the rate of 14% per annum from the 18th day of February, 1975 to the date of payment;
- (c) Costs.

20

Dated this 22nd day of March, 1975.

Sgd. Skrine & Co.
Plaintiffs' Solicitors.

30

And the sum of \$60/- (or such sum as may be allowed on taxation) for costs and also in case the Plaintiffs obtain an Order for substituted service, the further sum of \$300/- (or such sum as may be allowed on taxation). If the amount claimed be paid to the Plaintiffs or their advocate and solicitor or agent within four days from the service hereof, further proceedings will be stayed.

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

In the High
Court of
Malaysia

No.4
Affidavit of
Chai Yen with
Exhibits
thereto

31st March
1976

Exhibit
"CY 1"
(cont'd)

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, its advocate and solicitor or agent.

This Writ was issued by Messrs. Skrine & Co., whose address for service is Straits Trading Building, No.4 Leboh Pasar Besar, Kuala Lumpur, Solicitors for the said Plaintiffs of No.2 Jalan Raja Chulan, Kuala Lumpur.

10

This Writ was served by me at
on the 1st Defendant on the
day of 1975 at the hour of

Indorsed the day of 1975.

Signed :-

Address:-

20

This Writ was served by me at
on the 2nd Defendant on the
day of 1975 at the hour of

Indorsed the day of 1975.

Signed:-

Address:-

This Writ was served by me at
on the 3rd Defendant on the
day of 1975 at the hour of

Indorsed the day of 1975.

30

Signed :-

Address:-

This Writ was served by me at

on the 4th Defendant on the
of 1975 at the hour of

day

In the High
Court of
Malaysia

Indorsed the day of 1975.

Signed:-

Address:-

No.4
Affidavit of
Chai Yen with
Exhibits
thereto

31st March
1976

Exhibit
"CY 1"

(cont'd)

EXHIBIT "CY 2"

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

Exhibit
"CY 2"

CIVIL SUIT NO: 432 OF 1975

BETWEEN

10 Bank of America National Trust
and Savings Association Plaintiffs

AND

1. Siew Ting Yoong, trading
as Valor Electrical &
Electronic Co.
2. Chai Yen (f)
3. Fu Kok Siew
4. Yoong Fook Defendants

20 STATEMENT OF DEFENCE OF THE SECOND
DEFENDANT

1. The Second Defendant admits paragraphs 1
and 2 of the Statement of Claim herein and
adds that the First Defendant is her husband.

2. (a) The Second Defendant denies paragraph 3
of the Statement of Claim and states that she
signed blank guarantee forms at the request of
the Plaintiffs their servants or agents.

30 (b) The Second Defendant further denies
the First Defendant received from the Plaintiff
any advance of \$970,000/- on account of the
alleged guarantee by her.

In the High
Court of
Malaysia

No.4
Affidavit of
Chai Yen with
Exhibits
thereto

31st March
1976

Exhibit
"CY 2"

(cont'd)

3. The Second Defendant denies paragraph 4 of the Statement of Claim.

4. The Second Defendant admits receiving a copy of the letter dated the 24th February 1975 mentioned in paragraph 5 of the Statement of Claim.

5. On or about the 2nd day of September 1974 the Second Defendant was induced by the Plaintiffs their servants or agents to sign the aforesaid blank guarantee forms to support a promise of the First Defendant to pay the Plaintiffs money which money included sums of money that were owing to the Plaintiffs by the Third and Fourth Defendants. 10

6. (i) The Second Defendant was induced to sign the said guarantee forms against her will by the false and fraudulent representations and the undue influence of the Plaintiffs their servants or agents over her and without proper consideration of the effect of what she was doing and she had no legal or other independent advice. 20

PARTICULARS

The Plaintiffs represented :-

- (a) that the said guarantee forms and ancillary letters and documents were not intended to be operative according to their tenour;
 - (b) that the First Defendant was only notionally taking over the debts of the debts of the Third and Fourth Defendants; 30
 - (c) that the Plaintiffs would not call upon the First Defendant and/or the Second Defendant to pay the sum inserted in the guarantee forms which would include sums due from the Third and Fourth Defendants;
 - (d) that the Plaintiffs would only look to the First, Third and Fourth Defendants for payment of their debts with the Plaintiffs and not the Second Defendant; 40
- (ii) At the time when the said guarantee

forms were signed by the Second Defendant, her husband the First Defendant was a customer of the Plaintiffs and was enjoying overdraft facilities and an account in respect of Letters of Credit and Trust Receipts and she and the First Defendant were obliged to and dependent on the Plaintiffs for assistance.

In the High Court of Malaysia

No.4
Affidavit of
Chai Yen wit
Exhibits
thereto

10 (iii) The said documents were executed by the Second Defendant at the request of the Plaintiffs and on their advice that they were merely to facilitate journal adjustments within the accounting system of the Plaintiffs' business for the purpose of audit and to overcome the misfeasance of some of its servants or agents.

31st March
1976

Exhibit
"CY 2"

(cont'd)

7. There was no or no valuable consideration to support the said guarantee.

8. The said guarantees are void in law.

20 9. The Second Defendant further states that she is not liable and never was liable for the sum claimed or for any amounts due from the Third and Fourth Defendants to the Plaintiffs.

10. The Second Defendant avers that any purported guarantee by her mentioned in the Statement of Claim herein is fictitious.

30 11. The Second Defendant contends that any transactions involving any sum of \$970,000/- in the records of the Plaintiffs pertaining to the Account/s of the First Defendant and/or to any alleged guarantee by her are merely illusory.

12. Save as is hereinbefore expressly admitted the Second Defendant denies each and every allegation in the Statement of Claim herein as if the same were set out and traversed seriatim.

40 WHEREFORE the Second Defendant prays that this Suit be dismissed and with Costs.

Dated this 25th day of April, 1975

In the High
Court of
Malaysia

No.4
Affidavit of
Chai Yen with
Exhibits
thereto

31st March
1976

Exhibit
"CY 2"

(cont'd)

Sgd. Augustin Negrin & Co.
Solicitors for the Second
Defendant

This Statement of Defence is filed by
Messrs. Augustin-Negrin & Co., Solicitors
for the Second Defendant and whose
address for service is at 402-3, 4th Floor,
Kwong Yik Bank Building, 75 Jalan Bandar,
Kuala Lumpur 01-20.

This is the Exhibit marked "CY 2"
referred to in the Affidavit of
CHAI YEN sworn before me this 31st
day of March 1976

10

Sd. SOO KOK KWONG

Commissioner for Oaths
Supreme Court, Kuala Lumpur

Exhibit
"CY 3"

EXHIBIT "CY 3"

This is the Exhibit marked "CY 3" referred
to in the Affidavit of CHAI YEN (f) sworn
before me this 31st day of March 1976

20

Sgd. SOO KOK KWONG

Commissioner for Oaths
Supreme Court, Kuala Lumpur.

CONTINUING GUARANTEE

To BANK OF AMERICA NATIONAL TRUST AND
SAVINGS ASSOCIATION
KUALA LUMPUR

I MDM. CHAI YEN of K37 Salak South
Garden, Kuala Lumpur (hereinafter called
"the Guarantor") in consideration of your
time to time making or continuing advances
to or coming under liabilities or discounting
bills for or otherwise giving credit or
granting banking facilities or granting time

30

to or on account of VALOR ELECTRICAL & ELECTRONIC CO. of 4 Jalan Landak, Kuala Lumpur (hereinafter referred to as "the Principal") do hereby guarantee to and agree with you as follows :-

In the High Court of Malaysia

No.4

Affidavit of Chai Yen with Exhibits thereto

31st March 1976

Exhibit "CY 3"

(cont'd)

10 1. The Guarantor shall pay and satisfy to you on demand and hereby guarantees the repayment to you on demand of all sums of money which now are or shall hereafter become
20 due to you from the Principal either alone or in conjunction with any other corporation or corporations, person or persons and whether as Principal or Surety and whether upon account current or other banking account or accounts or otherwise or in respect of bills, drafts, notes or other negotiable instruments made drawn, accepted, advised, endorsed or
30 paid by you or on your account for the Principal either alone or in conjunction as aforesaid or which you may from time to time become liable to pay in respect of any bills, drafts, notes, letters of credit, circular notes or any other dealing or transaction on account of or for the benefit or accommodation of the Principal either alone or in conjunction as aforesaid together with all interest costs, commission and other banking charges and expenses including legal charges, and expenses which you may incur in enforcing or obtaining payment of the sums of money
40 due to you from the Principal either alone or in conjunction as aforesaid or attempting so to do.

50 2. This guarantee shall continue in force and be a continuing guarantee (subject to such notice of withdrawal as is hereinafter mentioned) to the extent at any one time of \$970,000.- (Malaysian Dollars Nine Hundred and Seventy Thousand only) in addition to such further sum for interest thereon and other banking charges in respect thereof and costs and expenses as shall accrue due to you within six months before or at any time after the date upon which payment shall be demanded by you from the Guarantor or any one or more of the persons constituting the Guarantor and shall (subject to the aforesaid maximum limit of the liability of the Guarantor) be applicable to the whole ultimate balance that may become due to you from the Principal either alone or in

In the High
Court of
Malaysia

No.4
Affidavit of
Chai Yen with
Exhibits
thereto

31st March
1976

Exhibit
"CY 3"

(cont'd)

conjunction as aforesaid and not merely to a portion coextensive with the amount of the said limit. This Guarantee shall not be considered as satisfied by any intermediate payment or satisfaction of the whole or any part of any sum or sums of money 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 Principal to you upon any such account as hereinbefore mentioned. 10

3. Where the Guarantor is a firm or otherwise consists of more than one person the liability of the Guarantor hereunder shall be deemed to be the joint and several liability of the partners in the firm or of such persons as aforesaid.

4. This guarantee shall not be determined or affected by the death of the Guarantor or of any one or more of the persons constituting the Guarantor but the Guarantor or the survivor or survivors of such persons aforesaid and the personal representatives of the Guarantor or any of such persons who may be dead may at any time give you notice in writing to determine this guarantee and at a date not less than three calendar months after the receipt by you of such notice this guarantee shall cease with respect to all future transactions after that date but so that subject to the aforesaid maximum limit of his liability the Guarantor shall remain liable to the extent of the amount due to you from the Principal at the said date with interest at the rate aforesaid and for such costs and expenses as aforesaid. 20 30

5. Notwithstanding any such notice of determination as aforesaid this guarantee shall as well before as after such notice of determination be a security to the extent aforesaid for all monies becoming due to you from the Principal in respect of any transaction entered upon prior to the date when this guarantee ceases under the provisions of Clause 4. 40

6. It shall be lawful for you at any time after notice to determine this guarantee has been given or after payment of the monies

hereby guaranteed has been demanded of the Guarantor to continue any existing or to open any new account or accounts with the Principal and no money thereafter paid into such account or accounts shall be appropriated in discharge of any monies hereby guaranteed unless expressly directed by the person paying the same at the time of such payment to be so appropriated.

In the High
Court of
Malaysia

No.4
Affidavit of
Chai Yen with
Exhibits
thereto

31st March
1976

Exhibit
"CY 3"

(cont'd)

10 7. The bankruptcy or insolvency of the Principal shall not affect or determine the liability of the Guarantor under this guarantee but such liability shall continue in full force and effect until you shall have been repaid all monies due to you from the Principal immediately before the bankruptcy or insolvency of the Principal.

20 8. All dividends compositions and monies received by you from the Principal or from any other company, person or estate capable of being applied by you in reduction of the indebtedness of the Principal shall be regarded for all purposes as payments in gross and you shall be entitled to prove in the bankruptcy of the Principal should he become bankrupt in respect of the whole of his indebtedness to you and without any right on the part of the Guarantor to be subrogated to you in respect of any such proof until
30 you shall have received in the bankruptcy of the Principal or from other sources 100 cents in the \$.

40 9. No assurance, security or payment which may be avoided under any enactment relating to bankruptcy or under Section 256 and 257 of the Companies Ordinances 1940-1946 as revised and amended or any statutory modification thereof and no release settlement or discharge which may have been given or made on the faith of any such assurance, security or payment shall prejudice or affect your right to recover from the Guarantor to the full extent of this guarantee.

10. This guarantee and your rights under it shall be in addition to and shall not be in any way affected or prejudiced by your holding or taking any other or further securities or by your varying, releasing or omitting or

In the High
Court of
Malaysia

No.4
Affidavit of
Chai Yen with
Exhibits
thereto

31st March
1976

Exhibit
"CY 3"

(cont'd)

neglecting to enforce any such securities or by your varying or determining any credit to the Principal or by your renewing bills of exchange, promissory notes or other negotiable instruments or giving time for payment or granting any other indulgence to or making any other arrangements with or accepting any composition from the Principal or any person or persons, corporation or corporations liable on any bills of exchange, promissory notes or other negotiable instruments or securities held or to be held by you. 10

11. You shall be at liberty but not bound to resort for your own benefit to any other means of payment at any time and in any order you think fit without thereby diminishing the liability of the Guarantor and you may put this guarantee in force either for the payment of the ultimate balance after resorting to other means of payment or for the balance due at any time notwithstanding that other means of payment have not been resorted to and in the latter case without entitling the Guarantor to any benefit from such other means of payment so long as any monies remain due from the Principal to you. 20

12. In the event of the Principal becoming bankrupt or making any arrangement or composition with creditors the Guarantor will not prove in competition with you in any such bankruptcy in respect of the debt due from the Principal to you but will give you the benefit of any proof which the Guarantor may be entitled to make in respect of any part of such debt paid by the Guarantor until you shall have received the full amount of the debt to you from the Principal. 30

13. Any accounts settled or stated by or between you and the Principal or on his behalf and any judgment recovered by you against the Principal in respect of the amount of the indebtedness by the Principal may be adduced by you and shall be accepted by the Guarantor as conclusive evidence of the amount thereby appearing to be due from the Principal to you and any payment to you by or on behalf of the Principal on account of his liability whether for advances or interest or charges and any acknowledgment by acquiescence in account or 40

otherwise by or on behalf of the Principal of such liability shall operate as an acknowledgment of the liability of the Guarantor according to the terms thereof.

In the High Court of Malaysia

No.4

Affidavit of Chai Yen with Exhibits thereto

31st March 1976

Exhibit "CY 3"

(cont'd)

10 14. Any indebtedness of the Principal now or hereafter held by the Guarantor is hereby subordinated to the indebtedness of the Principal to you and such Indebtedness of the Principal to the Guarantor if you so require shall be collected, enforced and received by the Guarantor as trustee for you and be paid over to you on account of the indebtedness of the Principal to you but without reducing or affecting in any manner the liability of the Guarantor under the other provisions of this guarantee.

20 15. Nothing done or omitted by you in pursuance of any authority or permission contained in this guarantee shall affect or discharge the liability of the Guarantor under it.

16. This guarantee shall continue notwithstanding the death of the Principal or the assumption by him of any partner or partners or any change which may from time to time take place in his firm.

30 17. This guarantee shall continue to bind the Guarantor notwithstanding any amalgamation that may be effected by you with any other company or companies, person or persons or notwithstanding any reconstruction by you involving the formation of and transfer of all or any of your assets to a new company or notwithstanding the sale of all or any part of your undertaking and assets to another company whether the company or companies with which you amalgamate or the company to which you transfer all or any of your assets either on a construction or sale as aforesaid shall or shall not differ in their or its objects character and constitution from you it being the intent of the Guarantor that this guarantee shall remain valid and effectual in all respects in favour of, against and with reference to and that the benefit of this guarantee and all rights conferred upon you hereby may be assigned to and enforced by any such company or companies, person or persons and proceeded on in the same manner to all intents and purposes as if such

40

In the High
Court of
Malaysia

No.4
Affidavit of
Chai Yen with
Exhibits
thereto
31st March
1976
Exhibit
"CY 3"
(cont'd)

company or companies, person or persons
had been named herein instead of you.

18. Any notice or demand required to be
given or made under this guarantee may be
given or made by leaving the same or sending
it through the post in a prepaid envelope
addressed in the case of a notice to be given
to you at....., and in all other cases to the Company or
person to or upon whom the notice or demand 10
is to be given or made at their registered
or principal office or last known place of
abode and a notice or demand so given or made
shall be deemed to be given or made on the day
it was so left or the day following that on
which it is posted as the case may be.

19. You shall so long as any monies remain
owing hereunder have a lien therefor on all
monies now or hereafter standing to the
Guarantor's credit with you whether on any 20
current or other account.

20. If it shall so happen that the name
of the Principal hereinbefore inserted shall
be that either of a firm or of a limited
company or other corporation or of any
committee or association or other unincorporated
body any of the printed provisions hereinbefore
contained which shall be primarily and
literally applicable to the case of a single 30
and individual Principal only shall be
construed and take effect so as to give you
hereunder a guarantee for the monies owing
from such firm and every member thereof or
from such limited company or corporation or
committee or association or other unincorporated
body as identical or analogous as may be with
or to that which would have been given for the
monies owing from a single individual if
the Principal had been a single individual. And 40
any monies shall be deemed to be so owing not-
withstanding any defect informality or
insufficiency in the borrowing powers of the
Principal or in the exercise thereof which might
be a defence as between the Principal and you.
And further in the case of a firm this guarantee
shall be deemed to be a continuing guarantee
of all monies owing on any such account as
hereinbefore mentioned from the person or persons
carrying on business in the name of or in

10 succession to the firm or from any one or more of such persons although by death retirement or admission of partners or other causes the constitution of the firm may have been in part or wholly varied. And in the case of a limited company or other corporation any reference to bankruptcy shall be deemed to be a reference to liquidation or other analagous proceeding and the monies owing as aforesaid and hereby guaranteed shall be deemed to include any monies owing in respect of debentures or debenture stock of such limited company or other corporation held by or on behalf of the bank.

In the High Court of Malaysia

No.4
Affidavit of Chai Yen with Exhibits thereto

31st March 1976

Exhibit "CY 3"

(cont'd)

20 IN WITNESS WHEREOF this Guarantee has been duly executed by the undersigned Guarantors (by MDM. CHAI YEN and behalf of the Company below mentioned pursuant to a Resolution of the Board of Directors a certified copy whereof is hereto annexed) this 2nd day of September 1974.

(Sgd) C. Yen

MDM. CHAI YEN
(NRIC 0495101)

In the High
Court of
Malaysia

EXHIBIT "CY 4"

No.4
Affidavit of
Chai Yen with
Exhibits
thereto
31st March
1976
Exhibit
"CY 4"

NOTE: PRINCIPAL IN INSTALMENTS WITH INTEREST
ADDED

CHECK APPROPRIATE BLOCK

Individual 2 Corporation
Partnership Association

Account(5) Class(3) Loan (5)
701 0L-873

M\$ 970,000.- Malaysia Kuala Lumpur October 4,
1974

10

For value received, the undersigned
promises to pay in lawful money of Malaysia to
the order of the BANK OF AMERICA NATIONAL
TRUST AND SAVINGS ASSOCIATION at its Kuala
Lumpur office in this city the principal sum
of Nine hundred and seventy thousand only
MALAYSIAN DOLLARS with interest payable on or
before Oct.5, 1974 and monthly thereafter in
like lawful money from.....date.....
at the rate of 16(14) per cent per annum
subject always to our right to alter the rate
of int. in our absolute discretion computed
on the basis of a three hundred sixty five (365)
day year and actual days elapsed on the decreas-
ing balance of said principal sum until paid;
and to pay said principal sum in instalments
as follows :

20

Thirty Thousand only MALAYSIAN DOLLARS
(M\$30,000-00) on or before Oct.5, 1974 and
twenty two (22) successive monthly instalments
of:

30

M\$30,000; M\$70,000; M\$40,000; M\$40,000; M\$35,000;
M\$40,000; M\$60,000; M\$25,000; M\$25,000; M\$70,000
M\$35,000; M\$60,000; M\$35,000; M\$35,000; M\$60,000
M\$35,000; M\$ 40,000; M\$40,000; M\$40,000; M\$40,000
M\$40,000; M\$45,000

on or before the 5th day of each consecutive
month thereafter until August 5, 1976 on which
date the entire balance of principal and interest
then unpaid shall be due and payable.

This loan is subject always to our right
to demand immediate payment or to alter the
terms of repayment notwithstanding the above
repayment schedule.

40

If default be made in the payment when due of any part or instalment of principal or interest, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note without notice.

In the High Court of Malaysia

No.4 Affidavit of Chai Yen with Exhibits thereto

31st March 1976

Exhibit "CY 4"

(cont'd)

10

In the event of commencement of suit to enforce payment of this note, the undersigned agrees to pay such additional sum as attorney fees as the court may adjudge reasonable.

This note binds each of the undersigned, if more than one, jointly and severally. This loan is also secured by Charges given by Mdm. Chai Yen over the properties held under C.T.2509 Lot 3775 Mukim of Bentong and Q.T.(R) No.7414 Lot 703 Mukim of Petaling and this promissory note must not be construed as in any way diminishing or affecting our rights under the said Charges

20

Minimum Charge M\$.....

IN WITNESS WHEREOF the undersigned has caused this note to be executed by its officers thereunto duly authorised and directed by a resolution of its Board of Directors duly passed and adopted by a majority of said Board at a meeting thereof duly called noticed and held.

30

The Common Seal of was hereunto affixed in accordance with its Memorandum and Articles of Association in the presence of:

.....Director

..... Director

..... Secretary

Sgd:
VALOR ELECTRICAL &
ELECTRONIC CO.

40

Address 4 Jalan Landak, Pudu
Kuala Lumpur 06-13

NOTE: PRINCIPAL IN INSTALMENTS WITH INTEREST Exhibit "CY 4"

63

CHECK APPROPRIATE BLOCK

INDIVIDUAL CORPORATION

PARTNERSHIP ASSOCIATION

ACCOUNT (\$)	CLASS (\$)	LOAN (\$)
	701	OL-673

M\$970,000.00 Malaysia Kuala Lumpur October 4, 1974

For value received, the undersigned promises to pay in lawful money of Malaysia to the order of the **BANK OF AMERICA** at its Kuala Lumpur office

BANK OF AMERICA
NATIONAL TRUST AND SAVINGS ASSOCIATION

In this city the principal sum of Nine Hundred and Seventy Thousand only MALAYSIAN DOLLARS,

with interest payable on or before Oct. 5, 1974 and monthly thereafter in like lawful money from date at the rate of 16% (14) subject always to our right to alter the rate of int. in our absolute discretion per cent per annum computed on the basis of a three hundred sixty five (365) day year and actual days elapsed, on the decreasing balance of said principal sum until paid; and to pay said principal sum in instalments as follows:

Thirty Thousand only MALAYSIAN DOLLARS (M\$30,000.00) or before Oct. 5, 1974 and

twenty two (22) successive monthly instalments of M\$30,000; M\$70,000; M\$40,000; M\$40,000; M\$35,000; M\$40,000; M\$60,000; M\$35,000; M\$70,000; M\$35,000; M\$60,000; M\$40,000; M\$35,000; M\$35,000; M\$35,000; M\$60,000; M\$35,000; M\$40,000; M\$40,000; M\$40,000; M\$40,000; M\$40,000; M\$45,000 on or before the 5th day of each consecutive month thereafter until August 5, 1976 on which date the entire balance of principal and interest then unpaid shall be due and payable.

If default be made in the payment when due of any part or instalment of principal or interest, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note without notice. This loan is subject always to our right to demand immediate payment or to alter the terms of repayment notwithstanding the above repayment schedule.

In the event of commencement of suit to enforce payment of this note, the undersigned agrees to pay such additional sum as attorney fees as the court may adjudge reasonable.

This note binds each of the undersigned, if more than one, jointly and severally.

This loan is also secured by Charges given by Mdm. Chai Yen over the properties held under C.T. 2509 Lot 3775 Mukim of Bentong and Q.T.(R) No. 7414 Lot 703 Mukim of Petaling and this preliminary note shall not be considered as in any way diminishing or affecting our rights in the said Minimum Charge M\$ Charges

The common seal of the undersigned was hereunto affixed in accordance with the Memorandum and Articles of Association in the presence of:

Director Telephone No. _____

Director Mail Address 4, Jalan Landak, Kuala Lumpur 06-15

Secretary _____

Exhibit marked "CY4"
presented to the Affidavit for Statutory Declaration/Petition
by CHAI YEN (A) sworn to
on the 31st day of March 1976

SH. SOO KOK KWONG
Commissioner for Oaths,
Magistrate Court Kuala Lumpur

Exhibit "CY4"
to Affidavit of
Chai Yen dated
31st March 1976

VALOR ELECTRICAL & ELECTRONIC COMPANY

*subject always to our right to alter the rate of int. in our absolute discretion.

RATE 16% * MATURITY AUGUST 5, 1976

CLASS: 701 JOAN: OL-873

INTEREST PAID			PAID ON ACCOUNT OF PRINCIPAL		
DATE	AMOUNT	PAID TO	DATE	AMOUNT	BALANCE
			4 OCT 70		970 000-00
10-7-74	1275-60	10-7-74	10-7-74	14616-01	955 384-99
10-19-74	2597-136	10-19-74	10-19-74	8202-64	947 182-35
10-25-74	3186-72	10-25-74	10-25-74	4313-30	942 869-05
10-28-74	1089-39	10-28-74	10-28-74	4411-61	941 457-44
11-2-74	1805-52	11-2-74	11-2-74	1451-44	940 006-00
11-6-74	1442-19	11-6-74	11-6-74	2857-81	937 148-19
11-21-74	3235-65	11-21-74	11-21-74		933 912-54
11-27-74	2586-15	11-27-74	11-27-74		931 326-39
12-3-74	2156-70	12-3-74	12-3-74	43-20	931 283-19
12-11-74	2875-41	12-11-74	12-11-74	7772-86	923 510-33
12-22-74	6222-66	12-22-74	12-22-74	6222-66	923 087-67
1-4-75	4240-45	1-4-75	1-4-75	1351-31	921 736-36
8 JAN 1975	1762-21	8 JAN 1975	8 JAN 1975	582-20	921 154-16
11 JAN 1975	706-67	11 JAN 1975	11 JAN 1975	1206-34	919 947-82
6 JAN 1975	1761-36	16 JAN 1975	16 JAN 1975	8135-64	911 812-18
8 JAN 1975	1398-88	20 JAN 1975	20 JAN 1975	601-14	911 211-04
2 JAN 1975	698-97	22 JAN 1975	22 JAN 1975	3201-03	908 009-01
1 JAN 1975	3237-81	31 JAN 1975	1 JAN 1975	576-71	908 282-30
8 FEB 1975		8 FEB 1975	8 FEB 1975		
7 FEB 1975	2436-66	7 FEB 1975	7 FEB 1975	6561-74	891 720-56
18 JAN 1975	2766-90	15 JAN 1975	15 JAN 1975	1633-10	890 087-46
7 FEB 1975	680-47	17 FEB 1975	17 FEB 1975	3309-53	886 777-93
9 MAR 1975	2407-77	2 MAR 1975	3 MAR 1975	120-26	886 657-67
8 MAR 1975		7 FEB 24 1975	6 MAR 1975		
6 MAR 1975	102-75	27 FEB 1975	6 MAR 1975	41-9	886 615-68
12 MAR 1975	206-47	12 MAR 1975	2 MAR 1975	516-89	886 098-79

STANDARD IDENTIFIER NUMBER: 981286

KEY: 3

64A

1.24 reserves... and all taxes and insurance premiums or consent of the undersigned; and by virtue of the provisions that may become due and payable under and by virtue of the instrument of security. If any, securing the aforesaid note, and hereby waives (1) the right, if any, to direct the application of any payment; (2) the right, if any, to the benefit of, or to direct the application of, any security hypothecated to the holder until all indebtedness of the maker to the holder has been paid; (3) the right to require the holder to proceed against the maker; or to pursue any other remedy in the holder's power; and agrees that the holder may proceed against the undersigned directly and independently of the maker, and that the cessation of the liability of the maker for any reason other than full payment, or any extension, renewal, fortification, change of rate of interest, or acceptance, release or substitution of security, or any impairment or suspension of the holder's remedies or rights against the maker, shall not in anywise affect the liability of the undersigned hereunder.



No. 5

AFFIDAVIT OF GAN KAH CHAI
WITH EXHIBITS THERETO -
1st July 1976

In the High
Court of
Malaysia

No.5
Affidavit of
Gan Kah Chai
with Exhibits
thereto
1st July 1976

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

ORIGINATING SUMMONS NO.494 OF 1975

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

10

And

In the Matter of Memorandum
of Charge presentation No.
27377 Volume CCXL Folio 196
in respect of land held under
Q.T.(R) No.7414 for Lot No.
703, in the Mukim of
Petaling;

And

20

In the Matter of Memorandum
of Charge presentation No.
1931/74 Volume 5, Folio 1
in respect of land held under
Certificate of Title No.2509
for Lot 3775 in the Mukim of
Bentong.

B E T W E E N:

Bank of America National
Trust & Savings Association Chargee/Applicant

And

30

Chai Yen (m.w.) Chargor/Respondent

A F F I D A V I T

I, GAN KAH CHAI of full age of care of Bank
of America National Trust & Savings Association,
No.2 Jalan Raja Chulan, Kuala Lumpur, hereby
affirm and state as follows :-

1. I am the Assistant Manager of the Chargee/

In the High
Court of
Malaysia

No.5
Affidavit of
Gan Kah Chai
with Exhibits
thereto

1st July 1976
(cont'd)

Applicant abovenamed and am duly authorised
to make this Affidavit on its behalf.

2. I refer to the Affidavit filed by the
Chargor/Respondent and dated 31st March 1976.

3. In reply to paragraphs 7 and 8, I wish
to state that :-

- (a) The Charge executed by the Chargor/
Respondent on 29.4.71 under presentation
No.27377, Volume CCXL, Folio 196 was
executed by the Chargor/Respondent to
secure to the Chargee/Applicant "....
the payment to the Chargee/Applicant named
below with interest of the sum from time
to time due to the Chargee/Applicant on
any current or other account or accounts
of Valor Electrical & Electronic Co.,
kept with the Chargee/Applicant". 10
- (b) The said Charge was originally stamped
for the sum of \$40,000/-.
- (c) The sole-proprietor of the said Valor
Electrical & Electronic Co., (hereinafter
referred to as "Valor") is one Siow Ting
Yong, the husband of the Chargor/Respondent. 20
- (d) The Chargor/Respondent was actually involved
in the operation and management of Valor
as she was the person authorised by Valor
to operate its bank account with the
Chargee/Applicant. Annexed hereto and
marked "GKC 1" is a copy of the letter of
authorisation. 30
- (e) The said Charge was subsequently up-stamped
at various times and it was finally
upstamped to the sum of \$970,000/- with
the knowledge and consent of the Chargor/
Respondent.

4. In reply to paragraphs 9, 10 and 11, I
wish to state as follows :-

- (a) The Chargee/Applicant herein also extended
banking facilities to a business known as
Wing Lian Enterprise (hereinafter referred
to as Wing Lian) the sole-proprietor of
which was ostensibly one Fu Kok Siew. 40

- (b) The Chargor/Respondent was actively involved in the operation and management of Wing Lian Enterprise as she was the person authorised by Wing Lian Enterprise to operate the Bank account with the Chargee/Applicant. Annexed hereto and marked "GKC 2" is a copy of the letter of authorisation.
- (c) The Chargee/Applicant herein extended banking facilities to a business known as Syarikat Onn Fai Trading (hereinafter referred to as "Onn Fai") the sole-proprietor of which was ostensibly one Yoong Fook on the 17th day of May 1974. The facilities thus granted were secured by a lien holder's caveat in favour of the Chargee/Applicant and executed by the Chargor/Respondent over the land held under C.T.2509 for Lot 3775.
- (d) In July 1974, during routine investigations into the operation of the accounts of Valor, Onn Fai, and Wing Lian it was revealed that these three firms were involved in a "KITE-FLYING" operation. Investigations by the Chargee/Applicant further revealed that the actual operators of Onn Fai and Wing Lian were the Chargor/Respondent and her husband Siow Ting Yong and that these two firms were formed solely to facilitate the operation of "KITE-FLYING".
- (e) The Chargee/Applicant confronted both the said Siow Ting Yong and the Chargor/Respondent who admitted to the representatives of the Chargee/Applicant, the contents described in paragraph 4(d) above. The Chargee/Applicant was then requested by the Chargor/Respondent and the said Siow Ting Yong to consolidate the three accounts of Valor, Onn Fai and Wing Lian and treat the consolidated amount due as amounts due from the account of Valor. The consolidated amount due as at 20th September 1974 was the sum of \$970,000/-.
- (f) The Chargee/Applicant was prepared to accommodate the said request if the

In the High
Court of
Malaysia

No.5
Affidavit of
Gan Kah Chai
with Exhibits
thereto

1st July 1976
(cont'd)

In the High
Court of
Malaysia

No.5
Affidavit of
Gan Kah Chai
with Exhibits
thereto

1st July 1976
(cont'd)

Chargor/Respondent was prepared to up-
stamp the Charge dated 29.4.71 to
\$970,000/- and create a new charge in
favour of the Chargee/Applicant over
land held under C.T. 2509 for Lot 3775
to secure repayment of the sum of
\$970,000/- by Valor. The Chargor/
Respondent of her own free will, volun-
tarily agreed to provide the required
securities. Annexed hereto and marked
"GKC 3" and "GKC 4" are copies of letters
dated 26th September 1974.

10

(g) In accordance with the Agreement referred
to in paragraph 4(f) above, the Chargor/
Respondent executed a charge on the 26th
of September 1974 in favour of the
Chargee/Applicant herein vide presenta-
tion No. 1931/74 Volume 5, Folio 1.

5. It is denied that the Chargee/Applicant,
its servants or agents exercised any undue
influence on the Chargor/Respondent or any
unlawful methods were adopted by the Chargee/
Applicant as alleged by the Chargor/Respondent.
Furthermore, the Chargor/Respondent was not
prevented and had every opportunity and time
to obtain independant legal advice.

20

AFFIRMED at Kuala Lumpur)
this 1st day of July)
1976 at 10.05 a.m.) Sgd. Gan Kah Chai

Before me,

30

Sgd. Tneh Liang Peng
COMMISSIONER FOR OATHS,
(Pesurutiaya Sumpah)
Kuala Lumpur, Malaysia

This Affidavit is filed by Messrs. Skrine &
Co. Straits Trading Building, No.4 Leboh Pasar
Besar, Kuala Lumpur, Solicitors for the
Chargee/Applicant abovenamed.

EXHIBIT "GKC 1"

In the High
Court of
Malaysia

This is the Exhibit marked "GKC 1"
referred to in the Affidavit of Gan Kah Chai
affirmed before me this 1st day of July 1976

No.5
Affidavit of
Gan Kah Chai
with Exhibits
thereto

Sgd. Tneh Liang Peng
COMMISSIONER FOR OATHS
(Pesuruhiaya Sumpah)
Kuala Lumpur, Malaysia

1st July 1976

Exhibit
"GKC 1"

10

MANDATE FOR THIRD PARTY TO OPERATE A
CURRENT ACCOUNT OF A SOLE PROPRIETOR-
SHIP FIRM

Date: 6 SEP 1973

To BANK OF AMERICA NATIONAL TRUST AND
SAVINGS ASSOCIATION
G.P.O. Box 950
Kuala Lumpur,
Malaysia

20

I, Siow Ting Yong the sole proprietor of
Valor Electrical & Electronic Co. 4 Jalan
Landak, Kuala Lumpur 06-13 request that you
will until you receive written directions from
me to the contrary treat and consider Mdm. Chai
Yen as fully empowered by my firm and on my
firm's behalf and account and in my firm's name:

30

To draw sign and indorse cheques and
other orders for payment notwithstanding
that the debiting of any such instruments
to the account may cause the said account
to be overdrawn or any overdraft to be
increased thereby.

*To draw sign accept and indorse bills of
exchange and promissory notes notwithstanding
that the debiting of any such bills of
exchange or promissory notes to the account
may cause the said account to be overdrawn
or any overdraft to be increased thereby.

40

*To withdraw any or all of my firm's
securities bills coupons or other property
in your hands including any box (or boxes)
and its (their) content.

In the High
Court of
Malaysia

No.5
Affidavit of
Gan Kah Chai
with Exhibits
thereto
1st July 1976
Exhibit
"GKC 1"
(cont'd)

*To negotiate for and take advances
by way of discount loans overdrafts
or otherwise with or without security

*To pledge charge and deposit security
for the repayment of such advances.

And generally in all dealings and
transactions between my firm and you to act
as fully and effectually for all intents
and purposes as I could if personally present
and acting in the matters and transactions
aforesaid, and also in such other matters and
transactions as may arise in the course of
business for all of which this shall be a
sufficient authority to you your managers
clerks and officers; and in the event of my
death or in the event of the dissolution of
my firm as to all matters and things which
after such death or dissolution shall be
done by the said Mdm. Chai Yen by virtue of
or under colour or in pursuance hereof I
engage that (so far as you are interested or
concerned) such acts of the said Mdm. Chai Yen
shall be binding upon my executors or admini-
strators and all other persons claiming from
or under me in the event of my death and shall
be binding upon me in the event of the dissolu-
tion of my firm unless notice in writing of
such death or dissolution of my firm shall
have been previously given you by some party
entitled to give the same in the event of my
death or by me in the event of the dissolution
of my firm.

10

20

30

This authority shall remain in force until
revoked notwithstanding any change in the
constitution or name of the firm and shall
apply notwithstanding any change in the member-
ship of the firm by the admission of partners
retirement or otherwise.

VALOR ELECTRICAL &
ELECTRONIC CO.

Sgd.

Sole Proprietor

Specimen signature of
Person authorised

VALOR ELECTRICAL &
ELECTRONIC CO.

Sgd.

Sole Proprietor

Signature of customer

40

EXHIBIT "GKC 2"

MANDATE FOR THIRD PARTY TO OPERATE CURRENT
ACCOUNT OF A SOLE PROPRIETORSHIP FIRM

In the High
Court of
Malaysia

No.5
Affdavit of
Gan Kah Chai
with Exhibits
thereto

Date: October 7, 1972

This is the Exhibit marked "GKC 2" referred
to in the Affidavit of Gan Kah Chai
affir ed before me this 1st day of July
1976

1st July 1976
Exhibit
"GKC 2"

10

Sgds. Tneh Liang Peng
COMMISSIONERS FOR OATHS
(Pesuruhjaya Sumpah)
Kuala Lumpur, Malaysia

To: BANK OF AMERICA NATIONAL TRUST AND
SAVINGS ASSOCIATION
G.P.O.Box 950
Kuala Lumpur, Malaysia

20

I, FU KOK SIEW the sole proprietor of
Wing Lian Enterprise C24, Jalan Gempita 4
Salak South Garden, Kuala Lumpur request that
you will until you receive written directions
from me to the contrary treat and consider
Mdm. CHAI YEN as fully empowered for my firm
and on my firm's behalf and account and in my
firm's name:

30

To draw sign and indorse cheques and other
orders for payment notwithstanding that
the debiting of any such instruments to
the account may cause the said account to
be overdrawn or any overdraft to be
increased thereby.

*To draw sign accept and indorse bills of
exchange and promissory notes notwith-
standing that the debiting of any such
bills of exchange or promissory notes to
the account may cause the said account to
be overdrawn or any overdraft to be
increased thereby.

40

*To withdraw any or all of my firm's
securities bills coupons or other property
in your hands including any box (or boxes)
and its (their) content.

In the High
Court of
Malaysia

No.5

Affidavit of
Gan Kah Chai
with Exhibits
thereto

1st July 1976

Exhibit
"GKC 2"

(cont'd)

*To negotiate for and take advances
by way of discount loans overdrafts
or otherwise with or without security

*To pledge charge and deposit security
for the repayment of such advances.

And generally in all dealings and
transactions between my firm and you to act
as fully and effectually for all intents and
purposes as I could if personally present and
acting in the matters and transactions afore- 10
said, and also in such other matters and
transactions as may arise in the course of
business for all of which this shall be a
sufficient authority to you your managers
clerks and officers; and in the event of my
death or in the event of the dissolution of
my firm as to all matters and things which after
such death or dissolution shall be done by
the said Mdm. Chai Yen by virtue of or under
colour or in pursuance hereof I engage that 20
(so far as you are interested or concerned) such
acts of the said Mdm. Chai Yen shall be binding
upon my executors or administrators and all
other persons claiming from or under me in
the event of the dissolution of my firm unless
notice in writing of such death or dissolution
of my firm shall have been previously given
you by some party entitled to give the same
in the event of my death or by me in the event
of the dissolution of my firm. 30

This authority shall remain in force until
revoked notwithstanding any change in the
constitution or name of the firm and shall
apply notwithstanding any change in the member-
ship of the firm by the admission of partners
retirement or otherwise.

WING LIAN ENTERPRISE

WING LIAN ENTERPRISE

Sgd.

Sgd. .

Specimen signature of
Person authorised

Signature of customer

40

EXHIBIT "GKC 3"

In the High
Court of
Malaysia

September 26, 1974

Bank of America
2 Jalan Raja Chulan
Kuala Lumpur

No.5
Affidavit of
Gan Kah Chai
with Exhibits
thereto

Dear Sirs:

1st July 1976

re: Charge over Q.T.(R) 7414,
Lot No.703, Mukim of Petaling
dated 20th April, 1971

Exhibit
"GKC 3"

10 This is to confirm that I agree that
the abovementioned Charge which has hitherto
been given by me to you to secure overdraft
facilities of Valor Electrical & Electronic
Co. up to the amount of \$120,000/- is now to
be utilised by you to secure the sum of
20 ~~\$~~970,000/- on the loan account of Valor
Electrical & Electronic Co. In consequence
thereof, I agree that the abovementioned
Charge is to be upstamped so that it will
secure the sum of \$970,000/-.

This is one of the Charges referred to
in your letter to me of the same date.

I also confirm that the lien holder's
caveat which you hold over C.T.2509 Lot 3775,
Mukim Bentong as a result of the deposit of
the title deed with you also secures the
said loan, until it is removed and replaced
by the Charge over the same property which I
executed today.

30

Yours faithfully,
Sgd. C. Yen
(Mdm. Chai Yen)

This is the Exhibit marked "GKC 3" referred
to in the Affidavit of Gan Kah Chai affirmed
before me this 1st day of July 1976

Sgd. Tneh Iian Peng
COMMISSIONERS FOR OATHS
(Pesuruhjaya Sumpah)
Kuala Lumpur, Malaysia

In the High
Court of
Malaysia

EXHIBIT "GKC 4"

No.5
Affidavit of
Gan Kah Chai
with Exhibits
thereto
1st July 1976
Exhibit
"GKC 4"

BANK OF AMERICA
Kuala Lumpur Branch

September 26, 1974

Madam Chai Yen
No.4 Jalan Landak
Kuala Lumpur

Re: C.T.No.2509 Lot 3775 Mukim of
Bentong and Q.T.(R) No.7414
Lot 703 Mukim of Petaling

10

Dear Madam Chai,

Under the Charges over the properties held under the titles specified and executed by you in favour of our Bank the balance of the loan account between Valor Electrical & Electronic Co. and the Bank, which is secured by the said Charges, is payable by you on demand.

Subject always to our right to demand immediate payment of the loan or to alter the terms of repayment, we hereby confirm that for the time being the loan of ~~RM~~\$970,000, which we have agreed to advance is to be repaid in full by Valor Electrical & Electronic by August 5, 1976 such repayments to be made as follows :-

20

On or before October 5, 1974	-	M\$30,000.-	
-do- November 5, 1974	-	30,000.-	
-do- December 5, 1974	-	70,000.-	
-do- January 5, 1975	-	40,000.-	30
-do- February 5, 1975	-	40,000.-	
-do- March 5, 1975	-	35,000.-	
-do- April 5, 1975	-	40,000.-	
-do- May 5, 1975	-	60,000.-	
-do- June 5, 1975	-	25,000.-	
-do- July 5, 1975	-	25,000.-	
-do- August 5, 1975	-	70,000.-	
-do- September 5, 1975	-	35,000.-	
-do- October 5, 1975	-	60,000.-	
-do- November 5, 1975	-	35,000.-	40
-do- December 5, 1975	-	35,000.-	
-do- January 5, 1976	-	60,000.-	
-do- February 5, 1976	-	35,000.-	
-do- March 5, 1976	-	40,000.-	

On or before	April 5, 1976	- M\$40,000.-	In the High Court of <u>Malaysia</u> No.5 Affidavit of Gan Kah Chai with Exhibits thereto
-do-	May 5, 1976	- 40,000.-	
-do-	June 5, 1976	- 40,000.-	
-do-	July 5, 1976	- 40,000.-	
-do-	August 5, 1976	- 45,000.-	
		<u>M\$970,000.-</u>	

10 Interest on the said loan is payable at the rate of 16% per annum with monthly rests subject always to our right to alter the rate of interest in our absolute discretion. Payments of interest shall be made on the fifth day of each month.

1st July 1976
Exhibit
"GKC 4"
(cont'd)

20 The Bank would not normally call up the said Charges provided that the various covenants given by yourself as Chargor are properly observed and the intention with regard to repayments by Valor Electrical & Electronic Co. is strictly adhered to, and there is no adverse change in circumstances, but this letter must not be taken as in any way fettering our rights under the said Charges and, in particular, the right to demand payment of all moneys secured by the said Charges at any time if we consider it in our interest to do so.

Please sign your agreement at the foot of the duplicate copy of this letter and return it to us.

30 Sincerely yours,
Sgd. K.W.Johnson
K.W.Johnson
Manager
KCC:1sl

We agree to the above terms:
Sgd. C.Yen
Mdm. Chai Yen (Chargor)

Sgd. S.T.Yoong
Mr.Siow Ting Yoong S/P of
Valor Electrical & Electronic Co.
(Borrower)

In the High
Court of
Malaysia

No.5
Affidavit of
Gan Kah Chai
with Exhibits
thereto
1st July 1976
Exhibit
"GKC 4"
(cont'd)

This is the Exhibit marked "GKC 4" referred
to in the Affidavit of Gan Kah Chai
affirmed before me this 1st day of July
1976

Sgd. Tneh Lian Peng
COMMISSIONER FOR OATHS
(Pesuruhjaya Sumpah)
Kuala Lumpur, Malaysia

No.6
Affidavit of
Chai Yen
3rd September
1976

No. 6
AFFIDAVIT OF CHAI YEN
- 3rd September 1976

10

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

ORIGINATING SUMMONS NO.494 OF 1975

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

And

In the Matter of Memorandum
of Charge presentation No.
27377 Volume CCXL Folio 196 in 20
respect of land held under
Q.T.(R) No.7414 for Lot No.703
in the Mukim of Petaling;

And

In the Matter of Memorandum of
Charge presentation No.1931/74
Volume 5, Folio 1 in respect
of land held under Certificate
of Title No.2509 for Lot 3775 30
in the Mukim of Bentong.

B E T W E E N :

Bank of America National
Trust & Savings Association Chargee/Applicant

And
Chai Yen (m.w.) Chargor/Respondent

In the High
Court of
Malaysia

No.6
Affidavit of
Chai Yen

3rd September
1976

(cont'd)

A F F I D A V I T

I, Chai Yen of full age and of Malaysian Nationality of K 37 Salak South Garden, Kuala Lumpur hereby affirm and state as follows :-

1. I crave leave to refer to the Affidavit of Gan Kah Chai affirmed on the 1st day of July 1976 and filed herein.

10 2. I was by the contents of the documents marked Exhibit "GKC 2" in the said Affidavit merely the bona fide agents of the principals Messrs. Valor Electrical & Electronic Co. and Messrs. Wing Lian Enterprise with limited authority to act for them.

20 3. I do not know what is meant by a "KITE-FLYING" operation as mentioned in paragraph 4(d) of the said Affidavit and I deny all the sinister remarks and insinuations against me contained in the said Affidavit.

4. At no time did I ever request the Chargee/Applicant to consolidate the accounts of Messrs. Valor Electrical & Electronic Co., Messrs. Syarikat Onn Fair Trading and Messrs. Wing Lian Enterprise as mentioned in paragraph 4(e) of the said Affidavit and I deny that Siow Ting Yoong and I admitted to anyone the contents described in paragraph 4(d) of the said Affidavit.

30 I am advised and verily believe that consolidation of the said accounts could not and cannot be done legally unless there were/are proper Novations.

5. Kuala Lumpur High Court Civil Suit No. 432 of 1975 has to-date not as yet been tried or settled.

40 AFFIRMED by the said Chai Yen at Kuala Lumpur this 3rd day of September, 1976 at 12.20 p.m. Sgd. Chai Yen

In the High
Court of
Malaysia

No.6
Affidavit
of Chai Yen

3rd September
1976

(cont'd)

Before me,
Sgd. Wong Shue Yan
Commissioner for Oaths,
High Court, Kuala Lumpur.

Explained by me in Chinese.

I hereby certify that the above Affidavit was read, translated and explained by me, a sworn interpreter of Court, to the deponent who seemed perfectly to understand the contents, declared to me that she did understand and made her signature in my presence.

10

Sgd.
Commissioner for Oaths

This Affidavit is filed by Messrs. Augustin-Negrin & Co., Solicitors for the Chargor/ Respondent above-named and whose address for service is at Room 209, 2nd Floor, Lee Yan Lian Building, Jalan Tun Perak, Kuala Lumpur 01-21.

20

No. 7

NOTES OF PROCEEDINGS
OF MOHD. AZMI J. -
6th September 1976

In the High
Court of
Malaysia

No.7
Notes of
Proceedings
of Mohd.Azmi
J.

6th September
1976

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

ORIGINATING SUMMONS NO. 494 OF 1975

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

10

And

In the Matter of Memorandum
of Charge presentation No.
27377 Volume CCXL Folio 196
in respect of land held
under Q.T.(R) No.7414 for
Lot 703, in the Mukim of
Petaling;

And

20

In the Matter of Memorandum
of Charge presentation No.
1931/74 Volume 5, Folio 1,
in respect of land held under
Certificate of Title No.2509
for Lot 3775 in the Mukim of
Bentong.

BETWEEN

Bank of America National
Trust & Savings Association Chargee/Applicant

AND

30

Chai Yen (m.w.) Chargor/Respondent

In Chambers

6th September, 1976

NOTES OF PROCEEDINGS
BEFORE MOHD. AZMI J.

Mr. K.Thayalan for Chargee/Applicant.
Mr. S. Augustin for Chargor/Respondent.

In the High
Court of
Malaysia

Enclosure (2)

Mr. Thayalan:

No.7
Notes of
Proceedings
of Mohd.Azmi
J.

6th September
1976

(cont'd)

Civil Suit No.432/75 is being stayed.

The Originating Summons is foreclosure.
This prayer cannot be asked in Civil Suit No.
432/75.

Three guarantors. They are being sued
in Civil Suit No.432/75 to enforce the
guarantee.

Present Originating Summons is for
foreclosure on a charge given by Respondent
alone in addition to guarantee.

10

Mr. Augustin:

Civil Suit No.432/75 filed one and a half
years ago is still pending. Actually in
that case four persons are being sued - Second
Defendant (Chai Yen). Respondent in present
Originating Summons sued as guarantor. The
other three are principal debtors.

After looking at writ, Mr.Augustin now
agrees - First Defendant sued as principal
(husband of Second Defendant) and Defendant
Nos. 2, 3 and 4 sued as guarantors. But
Statement of Defence pleaded only Second
Defendant guarantor up to the extent of
\$40,000/- (points to para 3(b) of affidavit -
enclosure (13) - relating to charge - not
guarantee). Refers to para. 4(e) of affidavit.
\$970,000/- is in respect of consolidated
account of First, Third and Fourth Defendants
in Civil Suit No.432/75. Respondent executed
the guarantee for \$970,000/- but alleges that
it was done as a result of fraud and undue
influence. There is no novation. Plaintiff
purports to have transferred the debts of
Second and Third Defendants to First Defendant's
account.

20

30

Refers to para.12 of Respondent's
affidavit (enclosure 7). The issues the same.

Plaintiff claims the whole sum of
\$970,000/- in Civil Suit No.432/75, and then
claims part of it under Originating Summons.

40

There are two charges. Nothing in Originating Summons to show the sum actually covered under first charge.

In the High Court of Malaysia

Mr. Thayalan:

No.7
Notes of Proceedings of Mohd. Azmi J.

The fact that it is admitted the present Respondent was sued as a guarantor in Civil Suit No.432/75 shows the present Originating Summons can proceed.

6th September 1976

10 As regard the alleged fraud and undue influence, the document in affidavit is a charge. Refers to attestation to charge before solicitor "RAL1" attached to enclosure (1) - first charge same with second charge "RAL2". The attestation has not been challenged in affidavit. Respondent knows everything. She is wife of principal debtor (First Defendant), and also an authorised signatory of First Defendant's sole proprietorship. (Refers to "GKC 1" in 20 Affidavit enclosure (13), and also "GKC 2"). Refers to para.4 of enclosure (13). Para.4(e) shows how \$970,000/- came into being.

(cont'd)

On novation, only First Defendant (husband of Respondent) who can say he does not agree to consolidation of the three accounts. Refers to "GKC 4". Both Respondent and her husband signed it.

Refers to "GKC 4" - increased from \$40,000/- to \$970,000/-.

30

Sd. Mohd. Azmi

ORDER:

Order-in-terms (enclosure 2)
Date of sale 13.12.1976.

Sd. Mohd. Azmi

Certified true copy
Sgd.
Secretary to Judge 15 Mar.78
Kuala Lumpur

In the High
Court of
Malaysia
No.8
Grounds of
Judgment of
Mohd. Azmi J.
6th September
1976

No. 8

FOUNDATIONS OF JUDGMENT OF
MOHD. AZMI J. - 6th
September 1976

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
ORIGINATING SUMMONS NO. 494 OF 1975

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

And 10

In the Matter of Memorandum
of Charge presentation No.
27377 Volume CCXL Folio 196
in respect of land held under
Q.T.(R) No.7414 for Lot 703,
in the Mukim of Petaling;

And

In the Matter of Memorandum
of Charge presentation No.
1931/74 Volume 5, Folio 1 in 20
respect of land held under
Certificate of Title No.2509
for Lot 3775 in the Mukim of
Bentong.

BETWEEN

Bank of America National
Trust & Savings Association Chargee/Applicant

AND

Chai Yen (m.w.) Chargor/Respondent

FOUNDATIONS OF JUDGMENT OF MOHD. AZMI J. 30

This is an application by Originating
Summons for foreclosure of two pieces of land
by the Bank of America National Trust & Savings
Association under section 256 of the National
Land Code for the recovery of the sum of
\$898,286.79 being principal and interest due
under two charges as at March 14, 1975, together

with further interest thereon from March 15, 1975 to the date of realization at the rate of 14% per annum. Both lands were charged by Chai Yen - the first charge being registered on April 21, 1971, vide Presentation No.27377 Volume CCXL, Folio 196, and the second charge being registered on November 30, 1974 vide Presentation No. 1931/74, Volume 5, Folio 1.

In the High Court of Malaysia

No.8
Grounds of Judgment of Mohd.Azmi J.
6th September 1976

10 The application is supported by the Affidavit of Robert A. Lemos sworn on December 4, 1975, and that of Gan Kah Chai sworn on July 1, 1976 in their capacities as Assistant Vice President and Assistant Manager of the Bank respectively. The chargor, Chai Yen, a married woman, opposed the application vide her affidavits sworn on March 31, 1976 and September 2, 1976.

20 From the chargor's affidavits and the submission of her counsel, the Bank's application is being opposed on the following three main grounds.

30 Firstly, it is argued that the chargor had been induced to sign documents relied upon by the Bank against her will by the false and fraudulent representations and undue influence of the Bank, their servants or agents, and that she signed the said documents without proper consideration of the effect of what she was doing, and that she had no legal or other independent advice. I find no merit in this argument. The chargor is not the illiterate person that she would like the Court to believe. From paragraphs 3 and 4 of Gan Kah Chai's affidavit, I accept the fact that she was the person authorised by Valor Electrical & Electronic Co. to operate the company's account with the Bank. She was also so authorised by Wing Lian Enterprise. This is supported by documents marked "GKC 1" and "GKC 2" attached to Gan Kah Chai's affidavit. The banking facilities given to Syarikat Onn Fai Trading were also secured by a lien holder's caveat created in her favour. Her involvements in these three firms convince me that she is a business-minded person and in all probabilities is not the sort of person who can be hoodwinked into signing important business documents or to sign documents

(cont'd)

In the High
Court of
Malaysia

No.8
Grounds of
Judgment of
Mohd. Azmi J.

6th September
1976

(cont'd)

without knowing their implications. The two charges "RAL 1" and "RAL 2" attached to Robert A. Lemos' affidavit are attested and both attestations have not been challenged in her affidavits. In the event, I find no merit in her allegation of fraud and undue influence.

The second argument is that the consolidation of the accounts of the three firms, viz. Valor Electrical & Electronic Co., Wing Lian Enterprise and Syarikat Onn Fai Trading, by the Bank was illegal as there were no proper novations and contrary to the provisions of the National Land Code. On this issue, I accept the explanation as contained in paragraph 4 of Gan Kah Chai's affidavit. On the balance of probabilities, I accept the fact that in July 1974, during routine investigations by the Bank into the operation of the accounts of Valor Electrical & Electronic Co., the Wing Lian Enterprise and Syarikat Onn Fai Trading (hereinafter referred to as "Valor", "Onn Fai" and "Wing Lian"), it was revealed that these three firms were involved in a "kite-flying"; and it was further revealed that the actual operators of Onn Fai and Wing Lian were the chargor herself and her husband Siow Ting Yong, who is the sole-proprietor of Valor. As a result of this discovery, at the request of the Bank, the chargor and her husband agreed to consolidate the three accounts of Valor, Onn Fai and Wing Lian and to treat the consolidated amount due as amounts due from the account of Valor. The consolidated amount due was \$970,000/- as at September 20, 1974. It was then mutually agreed to upstamp the charge dated April 29, 1971 to \$970,000/- and the chargor agreed to create a new charge in favour of the Bank on land held under C.T.2509 for Lot 3775 to secure repayment of the sum of \$970,000/- by Valor. This is supported by documents marked "GKC 3" and "GKC 4". In accordance with this agreement, the second charge vide Presentations No.1931/74 was executed. It should be noted that "GKC 4" was executed both by the chargor and her husband Siow Ting Yong. In my view, there is nothing unlawful regarding the consolidation of the three accounts. In any case, the present application is based on two charges executed by the chargor.

10 Finally, it is argued that the present
Originating Summons should be stayed pending
the disposal of Kuala Lumpur High Court
Civil Suit No.432 of 1975. It is
contended that the issues raised in this
Summons and the issues raised in the Civil
Suit are identical; and since the Civil
Suit was filed first, the present applica-
tion is misconceived, vexatious and an abuse
of the process of the Court. No authority
is cited for this proposition. In Civil
20 Suit No. 432/75, the chargor's husband
(the sole proprietor of Valor) is being sued
as a principal debtor, and the chargor and
two others (the sole proprietor of Onn Fai
and Wing Lian respectively) are sued as
guarantors. The prayer against the present
chargor as second defendant is for the sum
of \$897,774.71. The course of action against
her in that case is liability as a guarantor.
Whereas, in the present Originating Summons,
the application is for foreclosure based on
two charges executed by her. I agree with
the submission of Mr. Thayalan, counsel for
the Bank, that the fact that it is admitted
the chargor is sued as a guarantor in Civil
30 Suit No.432/75, there is nothing to prevent
the Court from entertaining the present
application. The matters raised in the Civil
Suit merely confirm that the chargor perfectly
knew what she was doing when she executed the
two charges.

Accordingly, I allow the Bank's application
in terms of the Summons and fix the date of
sale on December 12, 1976.

Sgd. Mohd. Azmi

JUDGE
HIGH COURT
KUALA LUMPUR

40 Kuala Lumpur
September 6, 1976.

Mr.K.Thayalan for Chargee/Applicant
Mr. S. Augustin for Chargor/Respondent.

Certified true copy

Sd. 18 Mar.78
Secretary to Judge, Kuala Lumpur

In the High
Court of
Malaysia

No.8
Grounds of
Judgment of
Mohd. Azmi J.
6th September
1976
(cont'd)

In the High
Court of
Malaysia
No.9
Order of
Court
6th September
1976

No. 9

ORDER OF COURT -
6th September 1976

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
ORIGINATING SUMMONS NO. 494 OF 1975

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

And

In the Matter of Memorandum of Charge Presentation No.27377 10
Volume CCXL Folio 196 in
respect of land held under
Q.T.(R) No.7414 for Lot 703
in the Mukim of Petaling;

And

In the Matter of Memorandum of Charge Presentation No.1931/74 20
Volume 5, Folio 1 in respect of
land held under Certificate of
Title No.2509 for Lot 3775
in the Mukim of Bentong.

BETWEEN

Bank of America National
Trust & Savings Association Chargee/Applicant

And

Chai Yen (m.w.) Chargor/Respondent

BEFORE THE HONOURABLE MR. JUSTICE MOHD. AZMI

THIS 6TH DAY OF SEPTEMBER, 1976 IN CHAMBERS

O R D E R

30

UPON HEARING Mr. Thayalan Kanapathippillai
of Counsel for the Chargee/Applicant and Mr.
S.R.C. Augustin of Counsel for the Chargor/
Respondent abovenamed AND UPON READING the

10 Originating Summons dated the 4th day of
December, 1975 the Affidavit of Robert A.
Lemos affirmed on the 4th day of December,
1975, the Affidavits of Chai Yen affirmed
on the 31st day of March, 1976 and the 3rd
day of September, 1976 and the Affidavit of
Gan Kah Chai affirmed on the 1st day of July,
1976 and all filed herein IT IS ORDERED that
the whole of the lands held under Q.T.(R)7414
for Lot 703 in the Mukim of Petaling and
C.T.2509 for Lot 3775 in the Mukim of
Bentong respectively and charged to the
Chargee/Applicant by the Chargor/Respondent
by two charges respectively dated 20th April,
1971 and 26th September, 1974 and registered
on 21st April, 1971 and 30th November, 1974
respectively under presentations No.27377,
Volume CCXL, Folio 196 and presentation No.
20 1931/74, Volume 5, Folio 1, respectively be
sold by Public Auction on the 13th day of
December, 1976 for the recovery of the sum
of ~~8~~896,286.79 being principal and interest
due under the said two charges as at 14th
March, 1975 together with further interest
thereon from 15th March, 1975 to the date of
realisation at the rate of 14% per annum in
accordance with the terms of the said two
charges AND IT IS ORDERED that the Senior
30 Assistant Registrar do fix a reserve price
for the purpose of the sale being a price
equal to the estimated market value of the
said lands AND IT IS FURTHER ORDERED that the
Chargee/Applicant be and is hereby at liberty
to bid at the sale and to set off the amount
due to it under the said charge against the
purchase price AND IT IS LASTLY ORDERED that
all costs and expenses of and incidental to
this application and any such sale be taxed by
40 the proper officer of this Court and be paid
to the Chargee/Applicant out of the proceeds
of such sale.

In the High
Court of
Malaysia
No.9
Order of
Court
6th September,
1976
(cont'd)

Given under my hand and the seal of the
Court this 6th day of September, 1976

Sd.

Senior Asst. Registrar,
High Court, Kuala Lumpur.

In the High
Court of
Malaysia

No.10
Letter,
Augustin-
Negrin & Co.
to Senior
Assistant
Registrar
requesting
further
argument
8th September
1976

No. 10

LETTER, AUGUSTIN-NEGRIN & CO.
TO SENIOR ASSISTANT REGISTRAR
REQUESTING FURTHER ARGUMENT
- 8th September 1976

8th September, 1976

461/76

The Senior Assistant Registrar,
High Court,
Kuala Lumpur.

10

Tuan/Puan,

Per: Kuala Lumpur High Court
Originating Summons No.
494 of 1975

Bank of America National
Trust & Savings Assn. Vs:
Chai Yen (m.w.)

We act for Chai Yen (m.w.) the Chargor/
Respondent in the above Originating Summons.

The application in the Originating
Summons came on for Hearing on the 6th of
this month before His Lordship the Hon'ble
Mr. Justice Haji Mohamed Azmi bin Datuk Haji
Kamaruddin in Chambers.

20

We had objected to the application among
other things vide the Affidavits of the
Chargor/Respondent sworn to on the 31st day
of March 1976 and the 3rd day of September,
1976 and filed in Court.

However His Lordship granted the appli-
cation of the Chargee/Applicant in terms.

30

Our client the Chargor/Respondent is
with great respect dissatisfied with the
said order made by His Lordship and we are
instructed to apply which we respectfully
hereby do for the adjournment of this
Originating Summons into Court for further
argument.

Our reasons inter alia are as follows:-

- 1) The Chargor/Respondent had been induced to sign documents relied upon by the Chargee/Applicant against her will by the false and fraudulent representations and undue influence of the Chargee/Applicant their servants or agents over the Chargor/Respondent, and without proper consideration of the effect of what she was doing and she had no legal or other independent advice;
- 2) The consolidation of the accounts of Messrs. Valor Electrical & Electronic Co., Messrs. Syarikat Onn Fai Trading and Messrs. Wing Lian Enterprise by the Chargee/Applicant was illegal as there were no proper Novations and furthermore contrary to the provisions of the National Land Code;
- 3) No proper Accounts were provided or proved by the Chargee/Applicant in respect of the two accounts of Messrs. Valor Electrical & Electronic Co. viz an overdraft account and an account in respect of letter of Credit and Trust Receipts each of which carried different rates of interest and which two accounts were mixed up by the Chargee/Applicant;
- 4) A comparison of the issues raised in this Originating Summons with the issues raised in Kuala Lumpur High Court Civil Suit No.432 of 1975 shows that they are identical and that the proceedings in the Originating Summons since they have come after the said Civil Suit are misconceived amounting to vexation and oppression of the Chargor/Respondent and an abuse of the process of Court;
- 5) The issues of fact and law raised between the Chargee/Applicant on the one hand and the Chargor/Respondent

In the High Court of Malaysia

No.10
Letter,
Augustin-Negrin & Co.
to Senior Assistant Registrar requesting further argument

8th September 1976

(cont'd)

In the High
Court of
Malaysia

No.10
Letter,
Augustin-
Negrin & Co.
to Senior
Assistant
Registrar
requesting
further
argument
8th September
1976
(cont'd)

on the other are such that they
cannot be satisfactorily disposed
of in proceedings where evidence
is taken by Affidavit;

- 6) The proceedings in the Originating
Summons should be stayed pending
the disposal of Kuala Lumpur High
Court Civil Suit No. 432 of 1975
which was commenced with a Specially
Indorsed Writ and which Civil Suit 10
has not been heard or settled.

In the said premises we humbly pray that
His Lordship may be pleased to grant us the
Order as requested under Order 54 Rule 22A.

Terima kaseh.

Adalah kami dengan hormatnya,

Sd. Augustin-Negrin & Co.

c.c. Messrs. Skrine & Co.,
Advocates & Solicitors,
Straits Trading Building,
4 Leboh Pasar Besar, 20
Kuala Lumpur 01-23.

client

SA/zar

No. 11

LETTER, JUDGE'S SECRETARY
TO SYARIKAT AUGUSTIN-NEGRIN
- 14th October 1976

In the High
Court of
Malaysia

No.11
Letter,
Judge's
Secretary to
Syarikat
Augustin-
Negrin
14th October
1976

Bil:(17)d1m.OS.494/75

PEJABAT PENDAFTARAN
MAHKAMAH TINGGI
MAHKAMAH KEADILAN
KUALA LUMPUR

10

14th October, 1976

Syarikat Augustin-Negrin,
Bangunan Lee Yan Lian,
Bilik 209, Tingkat 2,
Jalan Tun Perak,
Kuala Lumpur.

Tuan,

ORIGINATING SUMMONS NO.494 of 1975

Bank of America National Trust &
Savings Association

20

vs:

Chai Yen (m.w.)

I am directed by the Honourable Judge to refer to your letter under reference 461/76 dated 8th September, 1976 and to inform you that His Lordship do not wish to hear further argument in the above matter. The Certificate of His Lordship under Order 54 Rule 22A, Rules of Supreme Court, 1957 is forwarded herewith.

Saya yang menurut perintah,

30

(Sgd)

Penolong Kanan Pendaftar.

s.k.

Syarikat Skrine,
Bangunan Straits Trading,
No.4 Leboh Pasar Besar,
Kuala Lumpur.

In the High
Court of
Malaysia

No.12
Judge's
Certificate
14th October
1976

No. 12

JUDGE'S CERTIFICATE
- 14th October 1976

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

ORIGINATING SUMMONS NO.494 OF 1975

BETWEEN

Bank of America National
Trust & Savings Association Chargee/Applicant

And

Chai Yen (m.w.)

Chargor/Respondent 10

C E R T I F I C A T E

I HEREBY CERTIFY that I do not want
further argument under Order 54 Rule 22A,
Rules of the Supreme Court, 1957.

Dated this 14th day of October, 1976.

(Sgd) Mohd. Azmi

(MOHD. AZMI, J.)
JUDGE
HIGH COURT.

In the Federal
Court of
Malaysia

No.13
Notice of
Appeal

1st November
1976

(cont'd)

BETWEEN

Bank of America National
Trust & Savings Association CHARGEЕ/APPLICANT

AND

Chai Yen (m.w.) CHARGOR/RESPONDENT

NOTICE OF APPEAL

TAKE NOTICE that Chai Yen (m.w.) the Appellant abovenamed being dissatisfied with the decision in Chambers of the Honourable Mr. Justice Mohd. Azmi given at Kuala Lumpur High Court on the 6th day of September, 1976, appeals to the Federal Court against the whole of the said decision pursuant to certificate given by the Honourable Justice Mohd. Azmi on 14th day of October, 1976 that he does not want further arguments under Order 54 Rule 22A Rules of the Supreme Court, 1957. 10

Dated this 1st day of November, 1976.

Sd.

Sd.

20

.....

APPELLANT

APPELLANT'S SOLICITORS

To:

The Chief Registrar,
Federal Court,
KUALA LUMPUR

And to:

The Senior Assistant Registrar,
High Court,
KUALA LUMPUR.

And to:

30

The respondents abovenamed
and/or their Solicitors,
Messrs. Skrine & Co.,
Bangunan Straits Trading,
No.4 Leboh Pasar Besar,
KUALA LUMPUR

This Notice of Appeal is filed by
Messrs. G.T.Rajan & Co., Solicitors
for the Appellant abovenamed whose
address for service is No.1-A, Jalan
Melayu, (Top Floor), Kelang, Selangor.

In the Federal
Court of
Malaysia

No.13
Notice of
Appeal

1st November
1976

(cont'd)

No. 14

MEMORANDUM OF APPEAL
- 30th March 1978

No.14
Memorandum
of Appeal
30th March 1978

10

IN THE FEDERAL COURT OF MALAYSIA
(APPELLATE JURISDICTION)

CIVIL APPEAL NO.143 OF 1976

BETWEEN

CHAI YEN (m.w.)

Appellant

AND

BANK OF AMERICA NATIONAL
TRUST & SAVINGS ASSOCIATION

Respondents

20

(In the Matter of Kuala Lumpur
High Court Originating Summons
No.494 of 1975)

In the Matter of Order 54 Rule
22A of the Rules of the Supreme
Court

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

And

In the Federal
Court of
Malaysia

No.14
Memorandum
of Appeal

30th March 1978

(cont'd)

In the Matter of Memorandum
of Charge presentation No.
27377 Volume CCXL Folio 196
in respect of land held
under Q.T.(R) No.7414 for
Lot No.703 in the Mukim of
Petaling

And

In the Matter of Memorandum
of Charge presentation No.
1931/74 Volume 5 Folio 1 in
respect of land held under
Certificate of Title No.2509
for Lot 3775 in the Mukim
of Bentong

10

BETWEEN

BANK OF AMERICA NATIONAL
TRUST & SAVINGS ASSOCIATION CHARGEES/APPLICANT

AND

CHAI YEN (m.w.)

CHARGOR/RESPONDENT 20

MEMORANDUM OF APPEAL

The Appellant Chai Yen (m.w.) appeals to the Federal Court against the whole of the decision of the Honourable Mr. Justice Mohd. Azmi given on the 6th day of September, 1976 on the following grounds :-

- 1) The learned Judge erred in law and fact in believing the various allegations made in the Affidavits of Gan Kah Chai and Robert A. Lemos, the agents of the Respondents without testing their credibility by having the said Summons adjourned to open Court and hearing the arguments of the Appellant's Counsel in support of Appellant's contention that the said allegations are not true. 30
- 2) The learned Judge was wrong in law and fact in accepting the investigation carried out particularly by an interested party i.e. the Respondents 40

30th March 1978

(cont'd)

10 as to the operation of the
accounts of Valor Electrical &
Electronic Co., Wing Lian
Enterprise and Syarikat Onn Fai
Trading as "Kite Flying" without
substantive evidence to that
effect and further denied the
Appellant the opportunity to
challenge the so called investi-
gation carried out by the
Respondents.

- 3) Further the learned Judge was
wrong in law and fact to hold
without independent evidence of
any nature or by admission of
Appellant that the Appellant had
authorised the consolidation of
accounts.

20 The Appellant in law is "feme
sole" and holds her land in her
own right, in the premises, what-
ever business operation her
husband indulges as sole proprietor
in his own right ought not to
encumber her property adversely.

- 30 4) The learned Judge was wrong in
law and fact to come to the
conclusion that the Appellant's
charge of land Q.T.(R) No.7414 for
Lot No.703 in the Mukim of Petaling
and C.T.No.2509 for Lot 3775 in
the Mukim of Bentong given as
security only for advances made to
Valor Electrical & Electronic Co.
(a sole proprietor concern) also
binds advances made to Wing Lian
Enterprise and Syarikat Onn Fair
Trading which are themselves sole
proprietor concerns operated by
40 independent proprietors.

- 5) The learned Judge failed to consider
and give effect to the terms and
conditions of the Charges which
strictly secures only advances made
to Valor Electrical & Electronic Co.
If advances made to WingLian
Enterprise and Syarikat Onn Fai
Trading is to be secured under the

In the Federal
Court of
Malaysia

No.14
Memorandum
of Appeal

30th March 1978

(cont'd)

same Charge then the Appellant ought to have been urged to discharge the Charge and charge again to include the names of Wing Lian Enterprise and Syarikat Onn Fai Trading so as to bind the Appellant.

- 6) The learned Judge ought to have stayed the Originating Summons aforesaid pending the outcome of Kuala Lumpur Civil Suit No.432/75 filed by the Respondent a year and a half earlier which civil claim is for the same principal sum and same subject matter as in the Originating Summons, and the learned Judge could have prevented multiplicity of actions and abuse of process of the Court. 10

Further the Appellant would have been given the opportunity to prove inter alia her allegation of fraud raised in her Defence to the satisfaction of the Court. 20

- 7) The learned Judge failed to hold that the execution of Charge in respect of land held under Q.T.(R) No.7414 for Lot No.703 in the Mukim of Petaling and C.T.No.2509 for Lot 3775 in the Mukim of Bentong given for the alleged sum of \$960,000/- was untenable and Appellant averment that the Charges were executed in blank forms ought to be true, for no bank in its normal banking practice would have given credit facilities exceeding total value of the land at the time of creation of such Charges. 30

- 8) The learned Judge was wrong in law in failing to consider the defective nature of the Charges purported to have been executed by the Appellant and the non-attestation of the annexure and the alleged upstamping of the Charges. 40

Dated this 30th day of March, 1978.

Sd. Sd.
.....
(APPELLANT) (SOLICITORS FOR THE APPELLANT)

In the Federal Court of Malaysia

No.14
Memorandum of Appeal

30th March 1978
(cont'd)

To:
The Chief Registrar,
Federal Court,
KUALA LUMPUR.

And to:

10 The Senior Assistant Registrar,
High Court,
KUALA LUMPUR.

And to:

The Respondents abovenamed
and/or their Solicitors,
Messrs. Skrine & Co.,
Straits Trading Building,
4, Leboh Pasar Besar,
KUALA LUMPUR.

20 This Memorandum of Appeal is filed by
Messrs. C.T.Rajan & Co., Solicitors for the
Appellant abovenamed whose address for service
is at No.17 Jalan Sultan, (Top Floor), Kelang,
Selangor.

In the Federal
Court of
Malaysia

No.15
Judgment of
Federal Court

16th August
1978

No. 15

JUDGMENT OF FEDERAL COURT
- 16th August 1978

IN THE FEDERAL COURT OF MALAYSIA AT
KUALA LUMPUR (Appellate Jurisdiction)

FEDERAL COURT CIVIL APPEAL NO.143 OF
1976

BETWEEN

Chai Yen (m.w.)

Appellant

AND

10

Bank of America National
Trust and Savings Association Respondents

(In the Matter of Kuala Lumpur
High Court Originating
Summons No.494 of 1975

In the Matter of Order 54 Rule
22A of the Rules of the Supreme
Court

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

20

And

In the Matter of Memorandum of
Charge presentation No.27377
Volume CCXL Folio 196 in
respect of land held under
Q.T.(R) No.7414 for Lot No.703
in the Mukim of Petaling

And

In the Matter of Memorandum of
Charge presentation No.1931/74
vol.5 Folio 1 in respect of
land held under Certificate
of Title No.2509 for Lot 3775
in the Mukim of Bentong

30

BETWEEN

Bank of America National
Trust & Savings Association Chargee/
Applicant

AND

Chai Yen (m.w.) Chargor/
Respondent)

In the Federal
Court of
Malaysia

No.15
Judgment of
Federal Court

16th August
1978

(cont'd)

10 Coram: Raja Azlan Shah, F.J.
Wan Suleiman, F.J.
Chang Min Tat, F.J.

JUDGMENT OF THE COURT

20 A preliminary objection is taken to
this appeal by the respondents who argue
that the appeal has not been brought before
the Federal Court within the meaning and
scope of Rule 13, Federal Court (Appeals)
(Transitional) Rules 1963. The argument
is founded on the fact that the notice of
appeal was filed and served more than one
month from order now appealed from and the
appeal cannot now lie in this Court without
the special leave of the full Court and of
this leave, there is none and none is
being applied for.

30 The relevant order is an order for sale
of certain lands charged by the appellant
to the respondents under the National Land
Code. The application for foreclosure was
made in an originating summons and
consequently heard in chambers. The order
for sale was made on September 6, 1976,
after the learned Judge had heard and
considered certain contentious arguments.
The sale was fixed for December 12, 1976.
Notice of appeal was filed in Court on
November 1, 1976, and a copy thereof was
served on the respondents on the same day,
considerably more than the one month specified.

40 Had the matter stopped here, this Court
will have, on the present rules and on the
authority of its previous and other decisions
from which it can see no valid reason to
depart, no other course than to rule that

In the Federal
Court of
Malaysia

No.15
Judgment of
Federal Court
16th August
1978

(cont'd)

there is no appeal before it. But counsel for the appellant asks us to consider the effect of the application for further arguments which the appellant made by letter dated September 8, 1976, well within the 4 days allowed under Order 54 Rule 22A Rules of the Supreme Court. He contends that such an application has the practical effect of making what may be a final order not a final order for the purposes of lodging the notice of appeal. He draws the attention of this Court to the fact that the learned Judge only decided on October 14, 1976 not to require further arguments and to issue a certificate to this effect on the same date. Necessarily therefore, filing of the notice of appeal and service thereof, even if effected immediately after October 14 (which they were) must be more than 1 month from the order appealed from.

10

20

The answer of counsel for the respondents is that as from September 6, 1976, the appellant could avail herself of the procedure under this rule and order, but it was not mandatory for her to do so. She could proceed on appeal without going through the process of making further arguments. With respect, this answer appears to require prescience which litigants or counsel should be well advised to have, if they were not to have to meet objections of every possible nature and form. Unfortunately however such prescience is often only hind-sight. Further arguments may well not be mandatory, but they are available and if a litigant, for good reasons, one of which appears clearly to be the saving of costs, chooses to avail herself of them, then she should not be shut out of further process, if this process has to be taken.

30

40

On a fuller consideration, we are of the view that however final in terms the order of September 6, 1976, may be, in practical effect, it could not be acted upon until the decision of the learned Judge on the further arguments or his decision not to require further arguments was made known. He could have heard such further arguments and then he could confirm his previous decision or revoke it or

50

10 make such further or other order as he
deemed just. In the latter event and in the
event he decided not to hear further
arguments, the fact that the order made in
chambers had been drawn up and perfected
(as this one was) would have no significance.
If on the other hand, he decided to confirm
the order, the sale would take place unless
an appeal was filed and a stay ordered. But
if on the day fixed for the sale of the
charged lands, he had not made known his
decision to confirm the order, then quite
clearly the sale could not be carried out,
and it would have to be adjourned till such
time as his decision was made known. The same
position would be arrived at, if by that
time, he had not made known his decision on
the further arguments or he had not decided
20 whether to hear further arguments. In other
words, the situation stagnated until his
decision one way or the other was made known.
The matter could only proceed from his
decision. Clearly then, in the case of a
decision not to require further arguments,
the process of appeal could only commence
from the date of his decision.

30 We therefore rule that in the case of
an order made in chambers in which an
application under Order 54 Rule 22A has been
lodged within time, the time to appeal runs
from the date, not of the order but of the
decision not to require further arguments,
and that on the facts of this case, an
appeal has been properly brought to this
Court.

The preliminary objection is dismissed
with costs.

40 Kuala Lumpur, CHANG MIN TAT
 (TAN SRI DATUK CHANG MIN TAT)
 JUDGE,
16th August, FEDERAL COURT, MALAYSIA
1978

Date of Hearing: 31st May, 1978

Encik G.T.Rajan for Appellant.
Solicitors: Messrs. G.T.Rajan & Co.

Encik K.Thayalan for Respondents
Solicitors: Messrs. Skrine & Co.

In the Federal
Court of
Malaysia

No.15
Judgment of
Federal Court

16th August
1978

(cont'd)

In the Federal
Court of
Malaysia

No.16
Notice of Motion
for Conditional
Leave to Appeal
14th September
1978

No. 16

NOTICE OF MOTION FOR
CONDITIONAL LEAVE TO APPEAL
- 14th September 1978

IN THE FEDERAL COURT OF MALAYSIA HOLDEN
AT KUALA LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO.143 OF 1976

BETWEEN

Chai Yen (m.w.) Appellant 10

AND

Bank of America National
Trust & Savings Association Respondents

(In the Matter of Kuala Lumpur
High Court Originating Summons
No.494 of 1975

In the Matter of Order 54 Rule
22A of the Rules of the Supreme
Court

In the Matter of Section 256 of 20
the National Land Code No.56
of 1965

And

In the Matter of Memorandum
of Charge presentation No.
27377 Volume CCXL Folio 196
in respect of land held under
Q.T.(R) No.7414 for Lot No.703
in the Mukim of Petaling

And 30

In the Matter of Memorandum of
Charge presentation No.1931/74
Volume 5 Folio 1 in respect of
land held under Certificate of
Title No.2509 for Lot 3775 in
the Mukim of Bentong

BETWEEN
Bank of America National
Trust & Savings Association Chargee/
Applicant
AND
Chai Yen (m.w.) Chargor/
Respondent)

In the Federal
Court of
Malaysia
No.16
Notice of Motion
for Conditional
Leave to Appeal
14th September
1978
(cont'd)

NOTICE OF MOTION

10 TAKE NOTICE that this Honourable Court
will be moved on Tuesday the 26th day of
September 1978 at 9.30 o'clock in the
forenoon or so soon thereafter as Counsel
can be heard Mr. Thayalan Kanapathippillai
of Counsel for the Respondents, will move
the Court for an Order :-

- 20 (1) that Conditional Leave may be
granted to the Respondents to appeal
to His Majesty the Yang Dipertuan
Agung against the whole of the
Judgment and Order of this
Honourable Court given on the 16th
day of August, 1978.
(2) that costs of incidental to this
Appeal shall be costs in the cause.

Dated this 14th day of September, 1978.

Sd. Skrine & Co.

Sd.

Respondents' Solicitors

CHIEF REGISTRAR,
FEDERAL COURT, MALAYSIA
KUALA LUMPUR

30 This Notice of Motion is taken out by
Messrs. SKRINE & CO., Straits Trading Building,
No.4 Leboh Pasar Besar, Kuala Lumpur, Solicitors
for the Respondents abovenamed

The Affidavit of Brewster Phillips Campbell
affirmed on the 12th day of September, 1978
and filed herein will be read in support of
this application.

This Notice of Motion will be served on :-

In the Federal
Court of
Malaysia

No.16
Notice of Motion
for Conditional
Leave to Appeal

14th September
1978

(cont'd)

Messrs. G.T.Rajan & Co.,
No.17, Jalan Sultan,
(Top Floor)
Kelang, Selangor,
Solicitors for the Appellant
abovenamed.

Filed at Kuala Lumpur, this 14th day
of September, 1978.

Sd.

CHIEF REGISTRAR,
FEDERAL COURT, MALAYSIA
KUALA LUMPUR

10

No.17
Affidavit of
Brewster
Phillips Campbell

12th September
1978

No. 17

AFFIDAVIT OF BREWSTER PHILLIPS
CAMPBELL - 12th September 1978

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT
KUALA LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO:143 OF 1976

BETWEEN

20

Chai Yen (m.w.)

Appellant

AND

Bank of America National
Trust & Savings Association

Respondents

(In the Matter of Kuala Lumpur
High Court Originating Summons
No:494 of 1975

In the Matter of Order 54 Rule
22A of the Rules of the Supreme
Court

30

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

And

In the Matter of Memorandum
of Charge presentation No.
27377 Volume CCXL Folio 196
in respect of land held under
Q.T.(R) No.7414 for Lot No.
703 in the Mukim of Petaling

In the Federal
Court of
Malaysia

No.17
Affidavit of
Brewster
Phillips
Campbell

And

In the Matter of Memorandum
of Charge presentation No.
1931/74 Volume 5 Folio 1 in
respect of land held under
Certificate of Title No.2509
for Lot 3775 in the Mukim of
Bentong

12th September
1978

(cont'd)

10

BETWEEN

Bank of America National
Trust & Savings Association Chargee/Applicant

AND

Chai Yen (m.w.) Chargor/Respondent

20

A F F I D A V I T

I, BREWSTER PHILLIPS CAMPBELL, of full age,
of care of Bank of America NT & SA, International
Complex, Jalan Sultan Ismail, Kuala Lumpur,
affirm and state as follows :

1. I am the Manager of the Respondents and I
am duly authorised to make this Affidavit on
their behalf.

30

2. On 16th August 1978, this Court delivered
Judgment on a preliminary point raised by the
Respondents that the appeal had been brought
out of time.

3. The Respondents are desirous of appealing
to His Majesty the Yang DiPertuan Agung against
the said Judgment of the Court as I am advised
by the Respondents' Solicitors which advice I
verily believe that this is a fit and proper
case to appeal.

4. I am advised that this is a fit and proper
case to appeal and that leave ought to be

In the Federal
Court of
Malaysia

No.17
Affidavit of
Brewster
Phillips
Campbell
12th September
1978
(cont'd)

granted for the following reasons :

- (a) The decision in this case is inconsistent with the decision given by this Court in the case of SRI JAYA TRANSPORT CO.LTD. v. FERNANDEZ 1970 1 MLJ page 87.
- (b) There are several mutually conflicting decisions by the Federal Court on the question of appeal to the Federal Court from the decision of a Judge made in Chambers, and it is necessary to obtain a definite ruling. 10
- (c) The decision is contrary and inconsistent with the previous decisions of the Federal Court on the question as to what is a "Final Order" and what is an "Interlocutory Order".
- (d) The decision is contrary to Rule 13 of the Federal Court (Civil Appeals) (Transitional) Rules 1963. 20

5. The Respondents are willing to undertake as a condition for security to the satisfaction of this Court, in such sum as this Court may duly prescribe and to conform to any other conditions that may be imposed, under Rule 7 of the Federal Court (Appeals from Federal Court) (Transitional) Rules, 1963. 30

6. I therefore pray that conditional leave to appeal to His Majesty the Yang DiPertuan Agung be granted.

AFFIRMED at Kuala Lumpur)
this 12th day of)
September 1978 at 2.05) Sgd.Brewster P.
p.m.) Campbell

Before me,

Sgd. Tneh Lian Peng
COMMISSIONER FOR OATHS,
(Pesuruhjaya Sumpah)
Kuala Lumpur, Malaysia 40

This Affidavit is filed by Messrs. Skrine & Co. Solicitors for the Respondents, whose address for service is at Straits Trading Building, No.4 Leboh Pasar Besar, Kuala Lumpur.

In the Federal Court of Malaysia

No.17
Affidavit of
Brewster
Phillips
Campbell

12th September
1978

(cont'd)

No. 18

ORDER GRANTING CONDITIONAL
LEAVE TO APPEAL - 26th
September 1978

No.18
Order granting
conditional
leave to Appeal
26th September
1978

10 IN THE FEDERAL COURT OF MALAYSIA HOLDEN
AT KUALA LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO:143 OF 1976

BETWEEN

Chai Yen (m.w.)

Appellant

AND

Bank of America National
Trust & Savings Association

Respondents

20

(In the Matter of Kuala Lumpur
High Court Originating Summons
No.494 of 1975

In the Matter of Order 54 Rule
22A of the Rules of the Supreme
Court

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

In the Federal
Court of
Malaysia

No.18
Order granting
conditional
leave to Appeal

26th September
1978

(cont'd)

And

In the Matter of Memorandum of
Charge presentation No.27377 Volume
CCXL Folio 196 in respect of land
held under Q.T.(R) No.7414 for Lot
No.703 in the Mukim of Petaling

And

In the Matter of Memorandum of
Charge presentation No.1931/74
Volume 5 Folio 1 in respect of land
held under Certificate of Title No.
2509 for Lot 3775 in the Mukim of
Bentong.

10

Between

Bank of America National
Trust & Savings Association Chargee/
Applicant

And

Chai Yen (m.w.) Chargor/
Respondent) 20

CORAM: LEE HUN HOE, CHIEF JUSTICE, HIGH COURT,
BORNEO;
RAJA AZLAN SHAH, JUDGE, FEDERAL COURT,
MALAYSIA:
WAN SULEIMAN, JUDGE, FEDERAL COURT,
MALAYSIA.

IN OPEN COURT

THIS 26TH DAY OF SEPTEMBER, 1978

O R D E R

UPON MOTION made unto Court this day
by Mr. Thayalan Kanapathippillai of Counsel
for the Respondents in the presence of Mr.
G.T.Rajan of Counsel for the Appellant
abovenamed AND UPON READING the Notice of
Motion dated the 14th day of September, 1978
and the Affidavit of Brewster Phillips Campbell
affirmed on the 12th day of September, 1978
both filed herein AND UPON HEARING Counsel as
aforesaid IT IS ORDERED that leave be and is

30

hereby granted to the Respondents abovenamed to appeal to His Majesty the Yang di-Pertuan Agong from the Judgment of this Court given on the 16th day of August, 1978 upon the following conditions :-

In the Federal
Court of
Malaysia

No.18

Order granting
conditional
leave to Appeal

26th September
1978

(cont'd)

10

- (1) That the Respondents abovenamed do within three (3) months from the date hereof enter into good and sufficient security to the satisfaction of the Chief Registrar, Federal Court, Malaysia, in the sum of \$5,000/- (Ringgit Five thousand only) for the due prosecution of the appeal, and the payment of all such costs as may become payable to the Appellant abovenamed in the event of the Respondents abovenamed not obtaining an Order granting the Respondents final leave to appeal or of the Appeal being dismissed for non-prosecution, or of His Majesty the Yang di-Pertuan Agong ordering the Respondents abovenamed to pay the Appellant's costs of the Appeal as the case may be; and

20

30

- (2) That the Respondents abovenamed do within three (3) months from the date hereof take necessary steps for the purpose of procuring the preparation of the Record and for the despatch thereof to England.

AND IT IS ORDERED that the costs of and incidental to this Appeal be costs in the cause AND IT IS LASTLY ORDERED that the Appeal be stayed.

Given under my hand and the seal of
the Court this 26th day of September, 1978.

Sgd.

40

CHIEF REGISTRAR
FEDERAL COURT, MALAYSIA

In the Federal
Court of
Malaysia

No.19
Order granting
final leave to
Appeal to His
Majesty the
Yang di-Pertuan
Agong

13th November
1978

No. 19

ORDER GRANTING FINAL LEAVE
TO APPEAL TO HIS MAJESTY
THE YANG DI-PERTUAN AGONG
- 13th November 1978

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT
KUALA LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO.143 OF 1976

BETWEEN

10

Chai Yen (m.w.)

Appellant

AND

Bank of America National
Trust & Savings Association

Respondent

(In the Matter of Kuala Lumpur
High Court Originating Summons
No.494 of 1975

In the Matter of Order 54 Rule
22A of the Rules of the Supreme
Court

20

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

And

In the Matter of Memorandum of
Charge Presentation No.27377
Volume CCXL Folio 196 in respect
of land held under Q.T.(R)
No.7414 for Lot No.703 in the
Mukim of Petaling

30

And

In the Matter of Memorandum of
Charge Presentation No.1931/74
Volume 5 Folio 1 in respect of
land held under Certificate of
Title No.2509 for Lot 3775 in
the Mukim of Bentong.

Between
Bank of America National
Trust & Savings
Association
Chargee/
Applicant
And
Chai Yen (m.w.)
Chargor/
Respondent

In the Federal
Court of
Malaysia
No. 19
Order granting
final leave to
Appeal to His
Majesty the
Yang di-Pertuan
Agong

13th November
1978

(cont'd)

10 CORAM: GILL, CHIEF JUSTICE, HIGH COURT,
MALAYA;
WAN SULEIMAN, JUDGE, FEDERAL COURT,
MALAYA;
SYED OTHMAN, JUDGE, FEDERAL COURT,
MALAYA;

IN OPEN COURT

THIS 13TH DAY OF NOVEMBER, 1978

O R D E R

20 UPON MOTION made unto Court this day by
Mr. S.D.K. Peddie of Counsel for the Respondent
and in the presence of Mr. G.T.Rajan of
Counsel for the Appellant abovenamed AND UPON
READING the Notice of Motion dated the 19th
day of October, 1978 and the Affidavit of
Brewster Phillips Campbell affirmed on the
18th day of October, 1978 both filed herein
AND UPON HEARING Counsel as aforesaid IT IS
ORDERED that Final Leave be and is hereby
30 granted to the abovenamed Respondent to appeal
to His Majesty the Yang di-Pertuan Agong from
the decision of this Honourable Court given
on the 16th day of August, 1978 AND IT IS
ORDERED that the costs of and incidental to
this application be made costs in the cause.

GIVEN under my hand and the seal of the
Court this 13th day of November, 1978.

Sgd.

CHIEF REGISTRAR
FEDERAL COURT, MALAYSIA.

No. 39 of 1978

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N

BANK OF AMERICA NATIONAL TRUST
AND SAVINGS ASSOCIATION

Appellant

- and -

CHAI YEN (Married Woman)

Respondent

RECORD OF PROCEEDINGS

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

Appellant's Solicitors

PHILIP CONWAY THOMAS & CO.
61 Catherine Place,
Westminster,
London, S.W.1.

Respondent's Solicitors