

38/81

IN THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL

No. 35 of 1980

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA

(Appellate Jurisdiction)

B E T W E E N :

PERDANA PROPERTIES Bhd

Appellants
(Respondents)

- and -

UNITED ORIENT LEASING COMPANY Sdn. Bhd.

Respondents
(Applicants)

RECORD OF PROCEEDINGS

Nabarro Nathanson
76 Jermyn Street
London SW1Y 6NR

Solicitors for the
Appellants

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Solicitors for the
Respondents

O N A P P E A L

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RECORD OF PROCEEDINGS

INDEX OF REFERENCE

No. of Document	Description of Document	Date	Page No.
<u>IN THE HIGH COURT IN MALAYSIA</u>			
1	Originating Motion	23 October 1979	1
2	Affidavit of Tunku Naquiyuddin Ibni Tuanku Jaafar & Chan Kwok Chor in support of Originating Motion and exhibit A thereto	23 October 1979	6
3	Affidavit of Ng Seng Huat in support of Originating Motion and exhibits thereto	23 October 1979	11
4	Affidavit of Liew Kuek Hin in reply	10 November 1979	56
5	Notes of hearing	13 November 1979	58
6	Reasons for judgment	15 November 1979	60
7	Order	15 November 1979	65

No. of Document	Description of Document	Date	Page No.
<u>IN THE FEDERAL COURT OF MALAYSIA</u>			
8	Notice of Appeal	15 November 1979	66
9	Memorandum of Appeal	5 December 1979	68
10	Reasons for Judgment	2 April 1980	70
11	Order	2 April 1980	75
12	Motion for conditional leave to appeal to His Majesty the Yang Di-Pertuan Agong	14 April 1980	77
13	Affidavit of Liew Kuek Hin in support of Motion	12 April 1980	79
14	Affidavit of Tunku Naqiyuddin Ibni Jaafar	7 May 1980	81
15	Order granting conditional leave	19 May 1980	83
16	Order granting final leave to appeal to His Majesty the Yang Di-Pertuan Agong	4 August 1980	85
<u>IN THE HIGH COURT</u>			
17	Notes of evidence in Distress Suit No. 9/1979	19 September 1979	86
18	Affidavit of Ong Ban Chai in Distress Suit No. 12/1979	22 October 1979	89

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA
(Appellate Jurisdiction)

B E T W E E N :

PERDANA PROPERTIES Bhd

Appellants
(Respondents)

- and -

10 UNITED ORIENT LEASING COMPANY Sdn. Bhd

Respondents
(Applicants)

RECORD OF PROCEEDINGS

No. 1

In the
High Court

ORIGINATING MOTION

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU

ORIGINATING MOTION NO. 33 OF 1979

In the Matter of Section 10(c) of
the Distress Ordinance 1951

And

20

In the Matter of Order 52 Rule 1 of
the Rules of the Supreme Court 1957

And

In the Matter of Distress Suit No. 12
of 1979 in the High Court in Malaya
at Johore Bahru

Between

United Orient Leasing
Company Sdn. Bhd.

Applicants

And

30

Perdana Properties Bhd

Respondents

In the
High Court

NOTICE OF MOTION

No. 1
Originating
Motion

23rd October
1979

(Continued)

TAKE NOTICE that the Court will be moved on the 13th day of November 1979 at 9.00 o'clock in the forenoon or so soon thereafter as Counsel can be heard by Mr. Wong Kim Fatt of Counsel for the abovenamed Applicants for the following order that :

(1) All the goods and chattels stated in the Schedule annexed hereto belonging to the Applicants and seized by the Bailiff under Distress Suit No. 12 of 1979 in this Honourable Court at the premises of Emporium President and Supermarket Sdn. Bhd. in Johore Tower Johore Bahru, be released forthwith to the Applicants.

10

(2) Issues be stated and tried if the Court deems necessary or fit; and

(3) Costs be paid by the Respondents.

Dated this 23rd day of October, 1979.

(L.S.)

Sd:
.....
Solicitors for the
Applicants

Sd:
.....
Assistant Registrar, High
Court, Malaya, Johore Bahru.

20

Entered No. 65/79

The Notice of Motion was taken out by M/s. Allen & Gledhill, Advocates & Solicitors of 302-303, Third Floor, O.C.B.C. Building, Jalan Ibrahim, Johore Bahru, Solicitors for the Applicants United Orient Leasing Company Sdn. Bhd.

This Originating Motion is supported by the Affidavit of Tunku Naquiyuddin Ibni Tuanku Jaafar and Chan Kwok Chor and Ng Seng Huat and filed herein on the 24th day of October 1979.

30

To:

The abovenamed Respondents
and/or their Solicitors,
M/s. Ong Ban Chai & Razak,
Advocates & Solicitors,
Johore Bahru.

THE SCHEDULE

In the
High Court

(Goods under Equipment Lease Agreement No: 79-183
dated 13.4.1979)

No. 1
Originating
Motion

23rd October
1979

(continued)

- a) 17 sets Kiddie Ride Machines
1. KDT Combat
 2. KDT Red Baron
 3. KDT Polaris
 4. KDR Jet Fighter
 5. SB-Y2-A Mini Train
 - 10 6. BF-13 Jumbo 747
 7. BF-16 Jumbo 747
 8. BG-19 Vintage Car (Green)
 9. BG-18 Vintage Car (Red)
 10. BG-20 Vintage Car (Yellow)
 11. BH-21 Locomotive (Red)
 12. BH-22 Locomotive (Blue)
 13. BI-26 Tank (Green)
 14. BDS-11 Sports Car (Blue)
 15. KDB Rotary Boat
 - 20 16. SB-MI-A Mini Mono Rail Pompom Sen SB-MI
 17. KDC Cable Car.

b) 13 units NCR Electronic Cash Register

1. 11 units NCR Electronic Cash Register Model:
2140-2509
2. 2 units NCR Electronic Cash Register Model:
2115-1301.

(Goods under Equipment Lease Agreement No: 79-199
dated 2.5.1979)

a) Refrigeration Equipment

- 30 1. 1 set FM8 Single Deck Fish Display Case
c/w accessories.
2. 1 set FM12 Single Deck Meat Display Case
c/w accessories
3. 1 set FM1S8 Meat Case c/w accessories
4. 1 set FM1S12 Meat Case c/w accessories
5. 1 set BHDB8 Diary Case c/w accessories
6. 1 set BHDB12 Diary Case c/w accessories
7. 2 sets HW300FSM Condensing unit c/w accessories
8. 2 sets HW336RLM Condensing unit c/w accessories
- 40 9. 1 set HW205 RLM Condensing unit c/w accessories
10. 2 sets HW150FSM Condensing unit c/w accessories
11. 2 sets HS310-4 Cooler Coils c/w accessories
12. 2 sets BTF12 Frozen Food Display Case c/w accessories
13. 1 set BTF8 Frozen Food Display Case c/w accessories
14. 1 set 'FRP' Type 10TR Capacity Water cooling tower
with one condenser water circuit and one centrifugal
water pump set for the condenser water circuit c/w
refrigerant pipework and accessories.

In the
High Court
 No. 1
 Originating
 Motion
 23rd October
 1979
 The Schedule
 (continued)

b) Bakery Equipment

1. 1 unit Electric Baking Oven Model E1B-33S
3 decks each 3 trays
2. 1 unit Dough Kneader Model V6 Junior with 2
stainless steel bowls & 3 mixing tools c/w
built-in motor
3. 1 unit Cake mixer Model V3 Toppy with 2 stainless
steel bowls & 3 mixing tools c/w built-in motors
4. 1 unit Bun divider/Rounder Type Piccol-5U
36 divisions with built-in motor 10
5. 1 unit Proofer Model MBM/JB-02 (2 rack capacity)
in stainless steel execution (without racks)
6. 1 unit Dough Moulder Model 'WF' wide Fine with
built-in motor
7. 120 pcs Baking Pans
8. 4 units Stainless Steel Rack
9. 3 units Stainless Steel worktable with 2
drawers & undershelf
10. 1 unit Stainless Steel Double Bowl sink with
slatted undershelf 20
11. 1 unit Model PME50/6D/SP Stainless Steel exterior
finished commercial refrigerator with 1 set
 $\frac{3}{4}$ HP 'Tecumseh'(USA) condensing sealed unit
c/w all accessories

c) Coffee House Equipment

1. 1 pce Crystal-Tip Ice Cube Machine Model 012-BA-20
2. 1 pce Hamilton Beach 936 Drink Mixer
3. 1 pce Reynolds Coffee Machine Model OCS-100
4. 24 pcs Cecilware Coffee Decanters
5. 1 pce Cecilware Deep Fat Fryer Model EL 410 30
6. 1 pce Cecilware Electric Short Order Store
Model EL 12
7. 1 pce Vulcan-Hart Gas Range c/w burners one 24"
griddle & 2 ovens below
8. 1 pce Vulcan-Hart Gas Salamander
9. 1 pce Jetspray Model Twinset c/w twin decanters
10. 1 unit Stainless Steel Double Bowl Sink with
plain shelf
11. 1 unit Undercounter Fridge
12. 1 unit Stainless steel Equipment Stand with
cupboard below 40
13. 1 unit Stainless Steel undercounter Fridge
c/w worktop
14. 1 unit s/s Worktable with overhead shelves &
underslatted shelf
15. 1 unit s/s Single Bowl Sink with slatted shelf
16. 1 unit s/s Kwali Range c/w steamer & 3 burners
17. 1 unit Aluminium Exhausthood
18. 1 unit s/s Equipment stand with intermediate
shelf 50
19. 1 unit s/s worktable with sink & overhead
shelves & slatted shelves below

	c)	<u>Coffee House Equipment (continued)</u>	In the <u>High Court</u>
			No. 1
	20.	2 units s/s storage rack-4 tiers	Originating
	21.	1 unit s/s single Bowl sink c/w slatted shelf	Motion
	22.	1 unit s/s single Bowl sink with slatted shelf	23rd October
	23.	2 units Hot Food display cases	1979
	24.	2 units s/s Mobile Trolleys	The Schedule
	25.	1 unit s/s worktable c/w slatted shelf	(continued)
10	26.	1 unit s/s worktable c/w slatted shelf with cabinet below	
	27.	1 unit Aerofoil Axial Fan 24J/24	
	28.	1 unit Aerofoil Axial Fan 19J/24	
	29.	1 unit Aerofoil Axial Fan 19J/18	
	30.	1 unit Model PME/Water Cooler Stainless Steel exterior finished commercial water cooler equipped with one set 'Tecumseh' (USA) condensing sealed unit c/w all accessories	
20	31.	1 unit Model PME/SP7D/FZ Stainless Steel exterior finished commercial freezer equipped with one set $\frac{1}{2}$ HP & 1 set $\frac{3}{4}$ HP 'Tecumseh' condensing sealed unit c/w all accessories.	
	32.	1 unit S/Steel exterior finished commercial freezer equipped with one set $\frac{1}{2}$ HP 'Tecumseh' (USA) condensing sealed unit c/w all accessories.	
30	33.	1 unit s/s exterior finished commercial showcase equipped with one set $\frac{3}{4}$ HP 'Tecumseh' condensing sealed unit c/w all accessories.	
	d)	<u>Scales & Labelling Machines</u>	
	1.	1 unit Avery 1103-ccc SI Counter Scale	
	2.	3 units Avery 3809-CFY Coin Freed Persons Weighers	
	3.	1 unit Labelling Scale Model SC 8405 NP/HP 11	
	4.	1 unit Digital Computer Scale Model SL 32-15	

In the
High Court

No. 2

No. 2
Affidavit of
Tunku Naquiyuddin
Ibni Tuanku
Jaafar and Chan
Kwok Chor affirmed
on 23rd October
1979 and exhibit
A thereto

AFFIDAVIT OF TUNKU NAQUIYUDDIN IBNI TUANKU
JAAFAR AND CHAN KWOK CHOR AFFIRMED ON 23RD
OCTOBER 1979 AND EXHIBIT A THERETO

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU

ORIGINATING MOTION NC. 33 OF 1979

In the Matter of Section 10(c)
of the Distress Ordinance 1951

And

In the Matter of Order 52 Rule 1 of
the Rules of the Supreme Court 1957

10

And

In the Matter of Distress Suit No. 12
of 1979 in the High Court in Malaya
at Johore Bahru

Between

United Orient Leasing
Company Sdn. Bhd

Applicants

And

Perdana Properties Bhd

Respondents

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A F F I D A V I T

We, TUNKU NAQUIYUDDIN IBNI TUANKU JAAFAR,
(i/c. No. 5209974) company director, of 39, Jalan
Batai, Damansara Heights, Kuala Lumpur, and CHAN
KWOK CHOR (i/c. No. 4445437), credit and marketing
officer, of 32 Jalan Jerau 3, Taman Pelangi, Johore
Bahru, do hereby truly affirm and state as follows:

1. We, Tunku Naquiyuddin Ibni Tuanku Jaafar and
Chan Kwok Chor, are respectively a director and
credit and marketing officer of the Applicants United
Orient Leasing Company Sdn. Bhd., a company incorporated
in Malaysia and having its registered office at 2nd
Floor, Bangunan Dato Zainal, No. 23, Jalan Melaka,
Kuala Lumpur. We are duly authorised to make this
affidavit on behalf of the Applicants.

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2. During the hearing of the objection proceedings
in the Sessions Court on the 22nd day of October 1979
relating to executions by execution creditors against
the goods ("the said goods") of the Applicants stated

in the Schedule to the application herein, the Learned President of the Sessions Court, Mr. Ee Chin Seng, made orders directing the release of the said goods to our company the Applicants who are the owners of the said goods.

In the
High Court

No. 2
Affidavit of
Tunku
Naquiyuddin
Ibni Tuanku
Jaafar and Chan
Kwok Chor
affirmed on
23rd October
1979 and exhibit
A thereto
(Continued)

10 3. Pursuant to the aforesaid orders, Encik Ariff Sulaiman, Bailiff of the Sessions Court, Johore Bahru, accompanied us to premises in Johore Tower, Johore Bahru, and handed over possession of the said goods to us on behalf of our company the Applicants at 12.20 pm on the 22nd day of October 1979. The said Bailiff and we duly acknowledged delivery of the said goods on a Schedule of the said goods (last page) annexed hereto and marked exhibit 'A'.

20 4. After we took possession of the said goods, the Bailiff of the High Court, Johore Bahru, Encik Aziz bin Ismail (who has been waiting at the entrance to the premises) accompanied by a representative of the Respondents, the Landlords of the premises, came into the aforesaid premises in Johore Tower and, despite our verbal warning that we have taken possession of the said goods owned by our company, wrongfully seized the said goods at 12.50 pm. Confirmation of the seizure by the said Encik Aziz at the instance of the Respondents was made on the first page of exhibit 'A'.

I therefore pray for an Order in terms of the application herein.

30 AFFIRMED by the abovenamed
TUNKU NAQUIYUDDIN IBNI TUANKU } Sgd:
JAAFAR and CHAN KWOK CHOR at } TUNKU NAQUIYUDDIN IBNI
Johore Bahru on this 23rd day } TUANKU JAAFAR
of October 1979 at 3.00 pm. } Sgd:
} CHAN KWOK CHOR

Before me, Sgd: JOHN ANG SOON HO,
Advocate and Solicitor,
Commissioner for Oaths,
Johore Bahru

40 This Affidavit is filed on behalf of the Applicants by their Solicitors Messrs. Allen & Gledhill, 302-303, Third Floor, O.C.B.C. Building, Jalan Ibrahim, Johore Bahru.

In the
High Court

No. 2
Affidavit of
Tunku
Naquiyuddin
Ibni Tuanku
Jaafar and Chan
Kwok Chor
affirmed on
23rd October
1979 and exhibit
A thereto
(Continued)

This is the paper writing marked "A" referred to in
the affidavit of Tunku Naquiyuddin Ibni Tuanku Jaafar
and Chan Kwok Chor affirmed on the 23rd day of October
1979, before me

(Sgd)

John Ang Soon Ho
Advocate and Solicitor
Commissioner for Oaths
Johore Bahru.

a) Refrigeration Equipment

10

1 set FM8 Single Deck Fish Display Case c/w
accessories
1 set FM12 Single Deck Meat Display Case c/w
accessories
1 set FMTS8 Meat Case c/w accessories
1 set FMTS12 Meat Case c/w accessories
1 set BHDB8 Diary Case c/w accessories
1 set BHDB12 Diary Case c/w accessories
2 sets HW300FSM Condensing unit c/w accessories
2 sets HW336RLM Condensing unit c/w accessories
1 set HW205RLM Condensing unit c/w accessories
2 sets HW150 FSM Condensing unit c/w accessories
2 sets HS310-4 Cooler Coil c/w accessories
2 sets BTF12 Frozen Food Display Case c/w accessories
1 set BTF8 Frozen Food Display Case c/w accessories
1 set 'FRP' Type 10TR Capacity Water cooling tower
with one condenser water circuit and one centrifugal
water pump set for the condenser water circuit c/w
refrigerant pipework and accessories

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Sd: Illegible

Sd: Illegible

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Acknowledge receipt of copy of List of Goods under
schedule as required by the Applicant in Warrant
of Distress No. 12 of 1979.
Time: 12.50 p.m on 22.10.79.

Sd: Aziz Bin Ismail
Ag. for Bailiff
High Court
Johore Bahru
12.50 p.m

b) Bakery Equipment

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1 unit Electric Baking Oven Model ElB-33S 3 decks each
3 trays
1 unit Dough Kneader Model V6 Junior with 2 stainless
steel bowls & 3 mixing tools c/w built-in motor
1 unit Cake Mixer Model V3 Toppy with 2 stainless steel
bowls & 3 mixing tools c/w built-in motors
1 unit Bun divider/Rounder Type Piccol-5U 36 divisions
with built-in motor
1 unit Proofer Model MBM/JB-02 (2 rack capacity) in
stainless steel execution (without racks)
1 unit Dough Moulder Model 'WK' wide Fine with built-
in motor
120 pcs. Baking Pans
4 units Stainless Steel Rack

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b) Bakery Equipment (Continued)

3 units Stainless Steel worktable with 2 drawers and undershelf
1 unit Stainless Steel Double Bowl Sink with slatted undershelf
1 unit Model PMB50/6D/SP Stainless Steel exterior finished commercial refrigerator with 1 set $\frac{3}{4}$ HP 'Tecumseh' (USA) condensing sealed unit c/w all accessories

In the
High Court

No. 2
Affidavit of
Tunku
Naquiyuddin
Ibni Tuanku
Jaafar and Chan
Kwok Chor
affirmed on
23rd October
1979 and exhibit
A thereto
(Continued)

c) Coffee House Equipment

1 pce Crystal-Tip Ice Cube Machine Model 012-BA-20
1 pce Hamilton Beach 936 Drink Mixer
1 pce Reynolds Coffee Machine Model OCS-100
24 pcs Cecilware Coffee Decanters
1 pce Cecilware Deep Fat Fryer Model EL 410
1 pce Cecilware Electric Short Order Store Model EL 12
1 pce Vulcan-Hart Gas Range c/w 6 burners one 24" griddle & 2 ovens below
1 pce Vulcan-Hart Gas Salamander
1 pce Jetspray Model Twinset c/w twin decanters
1 unit Stainless Steel Double Bowl Sink with plain shelf
1 unit Undercounter Fridge
1 unit Stainless Steel equipment Stand with cupboard below
1 unit Stainless Steel Undercounter Fridge c/w worktop
1 unit s/s Worktable with overhead shelves & underslatted shelf
1 unit s/s Single Bowl Sink with slatted shelf
1 unit s/s Kwali Range c/w steamer & 3 burners
1 unit Aluminium Exhausthood
1 unit s/s Equipment stand with intermediate shelf
1 unit s/s worktable with sink & overhead shelves & slatted shelves below
2 units s/s storage rack-4 tiers
1 unit s/s single Bowl sink c/w slatted shelf
1 unit s/s Single Bowl sink with slatted shelf
2 units Hot Food display cases
2 units s/s Mobile Trolleys
1 unit s/s worktable c/w slatted shelf
1 unit s/s worktable c/w slatted shelf with cabinet below
1 unit Aerofoil Axial Fan 24J/24
1 unit Aerofoil Axial Fan 19J/24
1 unit Aerofoil Axial Fan 19J/18
1 unit Model PME/SP7D/FZ Stainless Steel exterior finished commercial freezer equipped with one set $\frac{1}{2}$ HP & 1 set $\frac{3}{4}$ HP 'Tecumseh' condensing sealed unit c/w all accessories
1 unit Model PME/Water Cooler Stainless Steel exterior finished commercial water cooler equipped with one set 'Tecumseh' (USA) condensing sealed unit c/w all accessories

In the
High Court

No. 2
Affidavit of
Tunku
Naquiyddin
Ibni Tuanku
Jaafar and Chan
Kwok Chor
affirmed on
23rd October
1979 and
exhibit A
thereto
(Continued)

c) Coffee House Equipment (Continued)

1 unit S/Steel exterior finished commercial freezer
equipped with one set $\frac{1}{2}$ HP 'Tecumseh' (USA) condensing
sealed unit c/w all accessories
1 unit s/s exterior finished commercial showcase
equipped with one set $\frac{3}{4}$ HP 'Tecumseh' condensing
sealed unit c/w all accessories

d) Scales & Labelling Machines

1 unit Avery 1103-ccc SI Counter Scale
3 units Avery 3809-CFY Coin Freed Persons Weighers
1 unit Labelling Scale Model SC 8405 NP/HP 11
1 unit Digital Computer Scale Model SL 32-15

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DESCRIPTION OF EQUIPMENT

a) 17 sets Kiddie Ride Machines

1. KDT Combat
2. KDT Red Baron
3. KDT Polaris
4. KDR Jet Fighter
5. SB-Y2-A Mini Train
6. BF-13 Jumbo 747
7. BF-16 Jumbo 747
8. BG-19 Vintage Car (Green)
9. BG-18 Vintage Car (Red)
10. BG-20 Vintage Car (Yellow)
11. BH-21 Locomotive (Red)
12. BH-12 Locomotive (Blue)
13. BI-26 Tank (Green)
14. BDS-11 Sports Car (Blue)
15. KDB Rotary Boat
16. SB-MI-A Mini Mono Rail Pompom Sen SB-MI
17. KDC Cable Car

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b) 13 units NCR Electronic Cash Register

1. 11 units NCR Electronic Cash Register Model
2140-2509
2. 2 units NCR Electronic Cash Register Model
2115-1301

Sd: Illegible

Sd: Illegible

40

Sd: CHAN KWOK CHOR
(I/C No: 4445437)
U.O.L. 12.20 p.m 22.10.79

Sd: TUNKU NAQUIYUDDIN IBNI TUANKU JAAFAR
(Director) (I/C No: 5209974)
12.20 p.m 22.10.79

The above goods returned to United Orient Leasing Co.,
Sdn. Bhd:-

Sd: Ariff B. Sulaiman
Bailiff
Sessions Court
Johore Bahru
12.20 p.m 22.10.79

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AFFIDAVIT OF NG SENG HUAT
AFFIRMED ON 23RD OCTOBER 1979
AND EXHIBITS THERETO

In the
High Court

No. 3
Affidavit of
Ng Seng Huat
and Exhibits
thereto
affirmed
23rd October
1979

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU

ORIGINATING MOTION NO. 33 OF 1979

In the Matter of Section 10(c) of the
Distress Ordinance 1951

And

10 In the Matter of Order 52 Rule 1 of the
Rules of the Supreme Court 1957

And

In the Matter of Distress Suit No. 12
of 1979 in the High Court in Malaya
at Johore Bahru

Between

United Orient Leasing Company Sdn. Bhd

Applicants

And

20 Perdana Properties Bhd Respondents

A F F I D A V I T

I, NG SENG HUAT, Manager, of full age of 32 Jalan
Jerau Tiga, Taman Pelangi, Johore Bahru, do hereby
solemnly affirm and say as follows :-

30 1. I am the Johore Bahru Branch Manager of the
Applicants United Orient Leasing Company Sdn. Bhd.,
a company incorporated in Malaysia and having its
registered office at 2nd Floor, Bangunan Dato Zainal,
No. 23 Jalan Melaka, Kuala Lumpur, and a branch at
Room 9, 16th Floor, Kompleks Tun Abdul Razak, Jalan
Ah Fook, Johore Bahru, and am authorised to make this
affidavit on behalf of the Applicants.

2. By two equipment lease agreements dated 13th
April 1979 and 2nd May 1979 the Applicants United
Orient Leasing Company Sdn. Bhd. have leased to
Emporium President and Supermarket Sdn. Bhd. all the
goods and chattels ("the said goods") described in
the Schedule to this application. True copies of the

In the
High Court

No. 3
Affidavit of
Ng Seng Huat
and Exhibits
thereto
affirmed
23rd October
1979
(Continued)

aforesaid agreements are annexed hereto and marked exhibit "N1". It is customary for emporiums and supermarkets to lease such goods and chattels. The Applicants are not tenant in any premises in Johore Tower, Johore Bahru, and have no beneficial interest in any tenancy therein or any part thereof.

3. The owners of the said goods are United Orient Leasing Company Sdn. Bhd. the Applicants. The lessees Emporium President and Supermarket Sdn. Bhd. suffered executions in the subordinate courts in Johore Bahru on the 3rd day of September 1979 and were in breach of the said agreements by not paying the rental punctually at the material time. Accordingly, the Applicants by letter dated 3rd September 1979 duly served on the said lessees gave notice of assumption of immediate possession of the said goods pursuant to Article 21(b) of the said lease agreement. A copy the said notice is annexed hereto and marked exhibit "N2".

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4. The said goods did not and do not belong to the lessees and were wrongfully seized by the Respondents herein in Distress Suit No. 12 of 1979 in this Honourable Court on the 22nd day of October 1979, after the goods had been delivered to us by the Bailiff of the Sessions Court, Johore Bahru, pursuant to Orders of release made by the Learned President, Mr. Ee Chin Seng on the 22nd day of October 1979, when Mr. Ong Ban Chai of M/s. Ong Ban Chai & Razak, Solicitors for the Respondents, was personally present in Court and was aware of the aforesaid orders. M/s. Ong Ban Chai & Razak acting for execution creditors, have also released the said goods of the Applicants in Johore Bahru Sessions Court Civil Appeal No. 261 of 1979 and 270 of 1979. Copies of their letters of release are annexed hereto and marked exhibits "N3".

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5. I therefore pray for an Order in terms of this application.

AFFIRMED by the abovenamed
NG SENG HUAT at Johore Bahru
on this 23rd day of October
1979 at 3.15 pm

Sd: NG SENG HUAT

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Before me,

SD: JOHN ANG SOON HO
Advocate and Solicitor
Commissioner for Oaths
Johore Bahru.

This Affidavit is filed on behalf of the Applicants by their Solicitors Messrs. Allen & Gledhill, 302-303 Third Floor, O.C.B.C. Building, Jalan Ibrahim, Johore Bahru.

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EQUIPMENT LEASE AGREEMENT

No. 3
Affidavit of
Ng Seng Huat
and Exhibits
thereto
affirmed
23rd October
1979
(Continued)

10 THIS LEASE AGREEMENT made this 13th day of
April One thousand nine hundred and seventynine
(1979). Between UNITED ORIENT LEASING COMPANY SDN.
BHD. a company incorporated in Malaysia and having
an office at 2nd Floor, Bangunan Dato Zainal, No. 23
Jalan Melaka, Kuala Lumpur (hereinafter called "the
Lessor" which expression shall include its successors-
in-title and assigns) of the one part And Emporium
President & Supermarket Sdn. Bhd. a company incorporated
in Malaysia and having a business office at Johor
Tower, 15 Jalan Greja, Johor Bahru, Johor (hereinafter
called "the Lessee" which expression shall include
its successors-in-title and permitted assigns) of the
other part.

20 WHEREAS at the request of the Lessee the Lessor
has agreed to purchase/has purchased the equipment
hereinafter described for the purpose of leasing the
same to the Lessee upon the terms and conditions
hereinafter appearing.

NOW THEREFORE THIS AGREEMENT WITNESSETH that
for and in consideration of the mutual covenants and
premises hereinafter set forth, the parties hereto
agree as follows:-

Article 1. (Leased Equipment)

30 The Lessor hereby agrees to lease and let to the
Lessee and the Lessee hereby agrees to take on lease
and hire/takes on lease and hire from the Lessor
the equipment (hereinafter called "the Equipment"
which expression shall be deemed to include all
replacements and renewals thereof and all accessories
and additions thereto whether made before or after
the date of this Lease Agreement) more particularly
described in Item (1) of the schedule attached hereto
which schedule shall be deemed a part of this Lease
Agreement (hereinafter called "the Schedule") for
the period upon the terms and conditions herein set
forth and SUBJECT ALWAYS to the due and punctual
40 payment of the rent hereinafter mentioned and the
due observance and performance of the covenants and
conditions herein contained by the Lessee.

Article 2. (Term)

Subject to the provisions for earlier termination
as elsewhere provided in this Lease Agreement the
initial term (hereinafter called "the initial Term")
of the lease hereby created shall be the period
described in Item (5) of the Schedule which term
shall commence on the date when the Acceptance Receipt

In the
High Court

No. 3

Affidavit of
Ng Seng Huat
and Exhibits
thereto
affirmed

23rd October
1979

(Continued)

referred to in Article 5 hereof is issued.

Article 3. (Rent)

The Lessee shall punctually pay to the Lessor a rental for the Equipment, and the amount, currency, method and place of payment of such rental thereof shall be as stipulated in Item (7) of the Schedule (hereinafter called "the Rent"). Time shall be the essence of the contract in respect of all payments of rental by the Lessee which payment shall be in full without any deductions whatsoever.

10

Article 4. (Renewal of Agreement)

In the event that the Lessee, not less than two months prior to the expiration of the Initial Term makes a written request to the Lessor for renewal of this Lease Agreement and if at such time and until the expiry of the Initial Term there shall be no breach by the Lessee of the terms and conditions herein contained the Lessor shall continue to lease the Equipment to the Lessee on the same terms and conditions as herein contained (save and except there shall be no further provision for renewal) PROVIDED HOWEVER that:-

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- (a) the period (hereinafter called "the Renewed Term") of the renewal lease shall be for one (1) year commencing immediately after the expiry of the Initial Term, unless otherwise agreed upon between the parties hereto in writing;
- (b) the rental payable shall be the amount as stipulated in Item (8) of the Schedule; and
- (c) the Agreed Loss Value shall be as stipulated in Item (10) of the Schedule.

30

Article 5. (Delivery of Equipment)

(1) The Lessee shall inspect the Equipment and issue to the Lessor an Acceptance Receipt (hereinafter called "the Acceptance Receipt") therefor in such form as may be required by the Lessor not later than the date stipulated in Item (4) of the Schedule and after receipt of the Equipment either from the seller named in Item (2) of the Schedule (hereinafter called "the Seller") or from the Lessor as the case may be.

40

(2) The Lessee may commence using the Equipment in accordance with the provisions of this Lease Agreement from the date the Lessee issued to the Lessor the Acceptance Receipt pursuant to the provisions of the preceding paragraph.

(3) (a) In the event that the Lessee discovers any defects in the Equipment or has any complaints in respect thereof the Lessee shall immediately notify the Lessor thereof and specifically state such defects and complaints in the Acceptance Receipt provided that nothing in this clause shall be construed to imply that the Lessor is liable or responsible for such defects and complaints.

10 (b) In the event of the Lessee failing to so notify the Lessor in accordance with paragraph 3(a) of this Article the Lessee hereby agrees that it shall be deemed that the Equipment has been delivered in perfect condition and that the Lessee shall not raise any objections whatsoever thereafter.

20 (4) If pursuant to this Lease Agreement it shall be necessary to do so, the Lessor shall exercise its best efforts to make arrangements with the Seller so that the Equipment can be delivered to the Lessee by the expected date of delivery as described in Item (4) of the Schedule. In the event that the Lessor is unable to make such arrangements for delivery with the Seller the Lessor shall notify the Lessee to that effect and discuss with the Lessee the possibility of making substitute arrangements. If the Lessor and the Lessee are unable to agree on such substitute arrangements within fourteen (14) days after such aforesaid notice by the Lessor either the Lessor or the Lessee shall be entitled to terminate this Lease Agreement and upon such termination this Lease Agreement shall be null and void and of no effect and neither the Lessor nor the Lessee shall be held responsible for such termination and neither the Lessor nor the Lessee shall have any claims against the other.

Article 6. (Defects in Equipment)

40 (1) The Lessee, having negotiated with the Seller and having on its own accord selected the Equipment for its own use, hereby acknowledges and declares that the Lessor shall not be responsible for any delay in delivery or non-delivery by the Seller of the Equipment or for any defects or for the quality or fitness of the Equipment or any part or parts thereof.

50 (2) In the event that the Lessee suffers any damages in consequence of any delay in delivery or non-delivery of or any defect in or quality of or unfitness of the Equipment and the Lessee having duly signed the Acceptance Receipt in accordance with Article 5(1) hereof the Lessor agrees to assign to the Lessee (at the Lessee's own cost and expense) whatever rights the Lessor may have if any to seek such compensation for damages from the Seller provided

In the
High Court

No. 3
Affidavit of
Ng Seng Huat
and Exhibits
thereto
affirmed
23rd October
1979
(Continued)

In the
High Court

No. 3
Affidavit of
Ng Seng Huat
and Exhibits
thereto
affirmed
23rd October
1979
(Continued)

always and it is hereby declared that the Lessor makes no representation or warranty as to the likelihood or possibility of recovery of such compensation.

(3) The provisions of the preceding paragraphs of this Article shall apply to the latent defects of the Equipment mutatis mutandis unless there is any special agreement or arrangement with the Seller excluding same, provided that nothing herein shall in any way be construed as a representation or warranty given by the Lessor to the Lessee of the latent quality or fitness of the Equipment.

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(4) Any liability the Lessor might otherwise incur and any right or immunity the Lessee might otherwise possess in respect of any conditions warranties or representations relating to the condition of the Equipment or its merchantable quality or suitability or fitness for the particular or any purpose for which it is or may be required whether express or implied and whether arising under this Lease Agreement or under any prior agreement or in oral or written statements made by or on behalf of any person in the course of negotiations in which the Lessee or its representative may have been concerned prior to this Lease Agreement are hereby excluded. No liability shall attach to the Lessor either in contract or in tort for loss injury or damage sustained by reason of any defect in the Equipment whether such defect be latent or apparent on examination and the Lessor shall not be liable to indemnify the Lessee in respect of any claim made against the Lessee by a third party for any such loss injury or damage.

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(5) Neither the Seller nor any dealer or supplier through whom this Lease Agreement was negotiated or by whom the Equipment was supplied nor any person in the employ of the Seller or any such dealer or supplier is or is to be deemed the agent of or acting on behalf of the Lessor for any purpose and no liability is to be attached to the Lessor for any conditions warranties or representations made by the Seller or such dealer or supplier or person in the employ of the Seller or such dealer or supplier.

40

Article 7. (Custody and Use of Equipment)

(1) In the event that the Lessor instructs the Lessee to affix labels, plates or other markings on the Equipment to indicate that the Equipment is owned by the Lessor the Lessee shall forthwith at its own cost and expense follow such instructions.

(2) The Lessor shall arrange to deliver (but at the Lessee's cost and expense) the Equipment to the address described in item (3) of the Schedule

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and the Lessee shall not remove the Equipment therefrom, without the Lessor's prior written consent. The Lessee shall promptly notify the Lessor of any change in the Lessee's address and upon request by the Lessor promptly inform the Lessor of the whereabouts of the Equipment and in the event of default by the Lessee hereunder pay to the Lessor all expenses (including legal costs on a full indemnity basis) incurred by or on behalf of the Lessor in ascertaining the whereabouts of taking possession of preserving insuring and storing the Equipment and of any legal proceedings by or on behalf of the Lessor to enforce the provisions of this Lease Agreement.

In the
High Court

No. 3
Affidavit of
Ng Seng Huat
and Exhibits
thereto
affirmed
23rd October
1979
(Continued)

(3) The Lessee shall treat the Equipment as a good custodian and user would as to the time and method of use and treatment thereof and shall at the Lessee's own cost and expense obtain and maintain all necessary registrations, licences, permits and permissions for the use of the Equipment and shall comply with and conform to all regulations and instructions of any governmental or such other competent authorities and to all Acts of Parliament, statutes, rules, regulations, policies, and byelaws for the time being in force in connection with the possession storage use and maintenance of the Equipment.

(4) The Lessee shall indemnify the Lessor against loss of or damage to the Equipment or any part thereof from whatever cause arising and whether or not such loss or damage results from the act, default or negligence of the Lessee.

(5) The Lessee shall indemnify the Lessor against all damages, costs, claims, demands and actions made upon the Lessor by reason of any loss injury or damage suffered by any person or party from the presence, placement, custody maintenance and/or the use of the Equipment.

Article 8. (Maintenance of Equipment and Expenses)

The Lessee shall at its own cost and expenses at all times:-

- (a) dutifully and faithfully follow the Equipment's manufacturers' recommendations as to use service and maintenance thereof;
- (b) conduct regular and proper inspection of the Equipment;
- (c) keep the Equipment in good and serviceable repair and condition and replace all missing damaged or broken parts with parts supplied

In the
High Court

No. 3
Affidavit of
Ng Seng Huat
and Exhibits
thereto
affirmed
23rd October
1979
(Continued)

or recommended by the original manufacturers of the Equipment or with the prior written approval of the Lessor with parts of equal quality and value and in default of so doing permit the Lessor to take possession of the Equipment for the purpose of having repairs carried out and repay to the Lessor the full cost of such repairs and the Lessor shall have a lien on the Equipment until such repayment but exercise of such lien shall not prevent the accrual of rental hereunder;

10

- (d) ensure that the Equipment is operated in a skilful and proper manner and by persons who are competent to operate the same;
- (e) punctually pay for all servicing of and repairs and other work done to the Equipment and for spare parts and accessories thereof and keep the Equipment free from distress or execution or any other legal process;
- (f) punctually pay all registration charges licence fees rent rates taxes and other outgoings payable in respect of the Equipment or the custody and use thereof and produce to the Lessor on demand the last receipts for all such payments and in the event of the Lessee making default under this clause the Lessor shall be at liberty to make all or any of such payments and to recover the amount thereof from the Lessee forthwith.

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Article 9. (Alterations to Equipment)

(1) Without the written consent of the Lessor the Lessee shall not make any additions, improvements or alterations to the Equipment or changes of the working order, function or quality thereof.

(2) If the Lessee does make additions or alterations to or improve the Equipment without the prior written consent of the Lessor, the Lessee shall immediately upon being required so to do by the Lessor remove the same and reinstate the Equipment to its original state at the Lessee's cost and expense.

40

(3) Any additions, improvements or alterations made to the Equipment (whether or not with the Lessor's consent) shall be deemed to form part of the Equipment

Article 10. (Equipment not to be affixed to premises)

In the
High Court

No. 3
Affidavit of
Ng Seng Huat
and Exhibits
thereto
affirmed
23rd October
1979
(Continued)

(1) Without the Lessor's written consent the Lessee shall not affix, secure, fasten, anchor or in any way attach the Equipment to the premises in which the Equipment is kept and used or to any immovable property.

10 (2) In the event that the Lessee seeks the Lessor's consent referred to in the preceding paragraph of this Article, the Lessee shall submit a written consent or a certificate from the owner or landlord of such premises or immovable property to the effect that such owner or landlord agrees not to treat the Equipment as a fixture or fitting forming a part of such premises or immovable property and as between the Lessor and the Lessee the Equipment hereby leased shall remain personal property and shall continue in the ownership of the Lessor notwithstanding that the same may have been affixed to
20 any land or building as aforesaid. The Lessee shall be responsible for any damage caused to any such land or building by the affixing of the Equipment thereto or the removal of the Equipment therefrom (whether such affixing or removal be effected by the Lessor or the Lessee) and shall indemnify the Lessor against any claim made in respect of such damage.

30 (3) The Lessee hereby undertakes to the Lessor that it will duly and punctually pay all rents and rates, assessments, taxes and other outgoings payable in respect of the premises where the Equipment may for the time being be placed stored and/or used and shall produce to the Lessor on demand the receipt or receipts for the then latest payment due in respect thereof.

Article 11. (Prohibition of Transfer, etc. of Equipment)

40 (1) The Lessee acknowledges that ownership and title to the Equipment after delivery thereof to the Lessee shall remain vested in the Lessor and the Lessee shall have no right or interest therein otherwise than as a lessee. The Lessee shall not attempt to transfer sell or otherwise dispose of the Equipment or do any other act that may infringe upon the Lessor's ownership. The Lessee shall not permit the Equipment to be possessed or used by any third party. If such event occurs, the Lessee shall immediately notify the Lessor thereof and the Lessee shall at its own cost and expense forthwith cause the Equipment to be released therefrom.

50 (2) If the Lessor's title to the Equipment is impeached, infringed or jeopardised whilst the

In the
High Court

No. 3
Affidavit of
Ng Seng Huat
and Exhibits
thereto
affirmed
23rd October
1979
(Continued)

Equipment is the subject of the lease hereby created (or if thereafter, in consequence of anything done by the Lessee) the Lessee shall bear all costs and expenses of the Lessor incurred by the Lessor in removing such impeachment infringement or jeopardy.

(3) Without prejudice to the generality of the foregoing paragraphs of this Article, the Lessee shall not:-

- (a) sell assign sub-let pledge mortgage charge encumber or part with possession of or otherwise deal with the Equipment or any interest therein nor create nor allow to be created any lien on the Equipment whether for repairs or otherwise and in the event of any breach of this clause by the Lessee the Lessor shall be entitled (but shall not be bound) to pay to any third party such sum as is necessary to procure the release of the Equipment from any charge encumbrance or lien and shall be entitled to recover such sum from the Lessee forthwith; 10 20
- (b) sell mortgage charge demise sub-let or otherwise dispose of any land or building on or in which the Equipment is kept or enter into any contract to do any of the aforesaid things without giving the Lessor at least six (6) weeks' prior notice in writing and the Lessee shall in any event procure that any such sale mortgage charge demise sub-lease or other disposition as the case may be is made subject to the right of the Lessor to repossess the Equipment at any time (whether or not the same or any part thereof shall have become affixed to the said land or building) and for that purpose to enter upon such land or building and sever any equipment affixed thereto. 30 40

Article 12. (Inspection of Equipment)

The Lessee hereby grants full leave and irrevocable licence to the servants, agents of the Lessor or any person authorised by the Lessor at all reasonable times to enter upon the premises where the Equipment may for the time being be placed kept and/or used to inspect and examine the Equipment

Article 13. (Loss and Damage to Equipment)

- (1) The Lessee hereby assumes and shall bear from the commencement of the Initial Term referred 50

to in Article 2 hereof the entire risk of loss of or damage to the Equipment or any part thereof from whatever cause arising (ordinary wear and tear only excepted).

In the
High Court

No. 3
Affidavit of
Ng Seng Huat
and Exhibits
thereto
affirmed
23rd October
1979
(Continued)

(2) In the event of any loss or damage to the Equipment, the Lessee, at its cost and expense and at the option of the Lessor, shall forthwith:-

- 10 (a) replace the Equipment with like equipment in good repair, condition and working order; or
- (b) reinstate the Equipment and render it in good repair, condition and working order.

20 (3) Notwithstanding paragraph (2) of this Article in the event that the whole of the Equipment is lost and/or rendered useless (including but not limited to damage incapable of economic repair and infringement of ownership) for any reason whatsoever the Lessee shall pay to the Lessor forthwith on demand the Agreed Loss Value described in Item (9) of the Schedule (hereinafter called "the Agreed Loss Value").

(4) In the event of paragraph (2) of this Article applying, this Lease Agreement shall continue to have full force and effect without any amendment and in particular the Rent shall continue to be payable in full.

30 (5) In the event of paragraph (3) of this Article applying, this Lease Agreement shall be deemed to be terminated upon full payment of the Agreed Loss Value and thereafter neither party shall have any claims against the other save and except in respect of any antecedent breach or prior claims.

40 (6) In the event of paragraph (3) of this Article applying and upon full payment of the Agreed Loss Value, the Lessor shall transfer to the Lessee the ownership of the Equipment in its then existing condition together with whatever legal rights if any the Lessor may have against third parties PROVIDED THAT the Lessor shall not in any way be responsible for the condition, working order, function, quality etc. of the Equipment or financial ability of any such third parties nor shall the Lessor be deemed to have made any representations or warranties whatsoever as to the validity of any such transfer or the ability to sustain any such claims in law.

Article 14. (Insurance)

(1) The Lessor shall at its discretion have the Equipment insured with an insurance company selected and approved by the Lessor and in the name of the

In the
High Court

No. 3
Affidavit of
Ng Seng Huat
and Exhibits
thereto
affirmed
23rd October
1979
(Continued)

Lessor but at the expense of the Lessee simultaneously with the issuance of the Acceptance Receipt referred to in Article 5 hereof and shall keep such insurance in full force and effect during the term of this Lease Agreement.

(2) The Lessor shall at its discretion determine the risks against which the Equipment is to be insured and such insurance shall be for an amount sufficient to cover the Agreed Loss Value of the Equipment described in Item (9) of the Schedule. The Lessee shall also at its discretion insure against third party claims (including claims by the Lessor or the Lessee) arising out of the custody or use of the Equipment such insurance to be made in the name of the Lessor but at the expense of the Lessee and for such amount as the Lessor shall in its discretion think fit.

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(3) The Lessee shall on demand forthwith pay to the Lessor the premiums for all insurances referred to in this Article as the same is effected and upon each and every renewal thereof.

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(4) The Lessee may at its own expense insure the Equipment against such other risks as it desires but such insurance shall not in any way relieve the Lessee from all or any of its responsibilities covenants and obligations under this Lease Agreement.

(5) Failure to recover under any insurances effected pursuant to this Article shall not relieve the Lessee from any of its responsibilities covenants and obligations under any part of or the whole of this Lease Agreement.

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(6) The Lessee shall not do any act or thing whereby any of the insurances effected under this Article will or may be vitiated.

Article 15. (Receipt of Insurance Proceeds)

(1) The Lessor shall be entitled to receive all insurance proceeds and moneys if and when any event covered by insurance occurs and if applicable the Lessee hereby irrevocably appoints the Lessor the agent of the Lessee for the purpose of receiving all or any of such proceeds and moneys and giving a discharge therefor.

40

(2) The proceeds and moneys of such insurance, at the option of the Lessor, shall be applied towards any or all of the following:-

- (a) towards payment of any costs and expenses incurred or to be incurred pursuant to sub-paragraphs (a) and (b) of paragraph (2) of Article 13;

(b) towards payment of the Agreed Loss Value or any part thereof pursuant to paragraph (3) of Article 13 in which event the Lessee will be relieved from its liability to pay the Agreed Loss Value to the extent of the insurance proceeds and moneys actually received by the Lessor; and

10 (c) towards payment of damages to any third party or the Lessee due to the occurrence of the event covered by insurance.

(3) If and when events covered by any insurance should occur, the Lessee shall immediately notify the Lessor thereof in writing and shall deliver to the Lessor without delay all documents necessary for the receipt of all insurance proceeds and moneys.

Article 16. (Deposit or Prepaid Rent)

20 The Lessor shall be entitled simultaneously with the execution of this Lease Agreement to collect from the Lessee either a deposit or a prepaid rent as described in Item 6 of the Schedule as the Lessor shall at its absolute discretion decide and such deposit or prepaid rent will be retained by the Lessor and dealt with in the manner as follows:-

30 (1) In the event of the Lessor electing to collect a deposit (hereinafter called "the Deposit") such deposit shall be retained by the Lessor as security for the due observance and performance by the Lessee of the stipulations terms and conditions of the Lease Agreement and any renewal thereof. The Deposit shall be maintained at the same amount during the term of the Lease Agreement and shall not be treated as payment of the Rent or any part thereof and the same shall be returned to the Lessee free of interest on the termination of the Lease Agreement less such sums as may then be due to the Lessor under the terms of the Lease Agreement but without prejudice to any other claims which the Lessor may have against the Lessee under the terms of the Lease Agreement.

40 (2) In the event of the Lessor electing to collect a prepaid rent (hereinafter called "the Prepaid Rent") such prepaid rent shall be retained by the Lessor as security for due observance and performance by the Lessee of the stipulations terms and conditions of the Lease Agreement and any renewal thereof, the Prepaid Rent shall bear no interest and subject as hereinafter provided in this paragraph shall be automatically applied by the Lessor in satisfaction of the Rent falling due on the dates mentioned in the said Item (6) of the Schedule on the due dates therefor until it is exhausted provided always that this provision shall in no way relieve

50

In the
High Court

No. 3
Affidavit of
Ng Seng Huat
and Exhibits
thereto
affirmed
23rd October
1979
(Continued)

In the
High Court

No. 3
Affidavit of
Ng Seng Huat
and Exhibits
thereto
affirmed
23rd October
1979
(Continued)

the Lessee from promptly paying the Rent falling due on dates other than those mentioned in the said Item (6) of the Schedule.

(3) Notwithstanding the provisions of paragraphs (1) and (2) of this Article if the Lessee is in default under any of the provisions of this Lease Agreement (including the events referred to in Article 21 hereunder) then the Lessor shall be entitled at its discretion to apply the Deposit or the Prepaid Rent or any part thereof against all and any monies, damages, arrears of the Rent and/or Agreed Loss Value as the Lessor thinks fit and, unless the Lessor shall exercise its rights and terminate the lease hereby created under sub-paragraph (c) of paragraph (1) of Article 17, the Lessee shall on written demand by the Lessor again pay to the Lessor the full amount of the Deposit or the Prepaid Rent (or such amount as may be required to make up the full amount referred to in Item (6) of the Schedule) which shall serve as security and be treated in the same way as the Deposit or the Prepaid Rent paid originally in accordance with paragraphs (1) and (2) of this Article.

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(4) If there is any other form of securities given to the Lessor in addition to the Deposit or the Prepaid Rent (or treated as such under paragraph (2) of this Article) all of such securities (including the Deposit or the Prepaid Rent) shall be deemed to secure all claims of the Lessor and the order of use of such securities and the Deposit or the Prepaid Rent shall be the entire absolute and unfettered discretion of the Lessor.

30

Article 17. (Default)

(1) If the Lessee fails to pay the Rent provided for in Article 3 hereof after the same becomes due and payable or any other sums and monies due and payable under this Lease Agreement or if the Lessee fails to observe or perform all and any provision of this Lease Agreement or if the Lessor shall on any reasonable ground consider itself insecure the Lessor shall without prejudice to any pre-existing liability of the Lessee to the Lessor have the right forthwith to exercise all or any of the following remedies without having to give any prior notice or demand to the Lessee:-

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(a) to declare a part of or the entire amount of the total amount of the Rent for the whole period of the Initial Term payable under this Lease Agreement and all other moneys, sums costs and expenses under this Lease Agreement immediately due and payable by the Lessee;

50

(b) to take possession of the Equipment or demand its return;

In the
High Court

(c) to terminate the lease hereby created and to demand from the Lessee the full amount of the Agreed Loss Value and in addition thereto to claim from the Lessee for compensation for all loss and damages including but not limited to loss of profits.

No. 3
Affidavit of
Ng Seng Huat
and Exhibits
thereto
affirmed
23rd October
1979

10 (2) Even if any of the remedies provided for in sub-paragraphs (a) and (b) of the paragraph (1) of this Article have been taken by the Lessor, the Lessee shall not be relieved from any other liability under this Lease Agreement including but not limited to liability for damages.

(Continued)

Article 18. (Interest on overdue payments)

20 Without prejudice to the rights of the Lessor against the Lessee under the terms of this Lease Agreement if the Lessee fails to pay any sums or moneys whatsoever due under this Lease Agreement (including but not limited to the Rent, the Agreed Loss Value and any costs and expenses advanced by the Lessor on behalf of the Lessee) the same shall bear interest at the rate described in Item (11) of the Schedule from the date due until payment is made in full by the Lessee with such interest.

Article 19. (Prohibition of Assignment of Rights by Lessee, etc.)

30 (1) The lease hereby created is personal to the Lessee and the Lessee shall not be entitled to assign its rights or obligations hereunder to any third party.

(2) No monetary obligations of the Lessee under this Lease Agreement may be offset or set-off with any claims against the Lessor, the Seller, the Lessor's assignees and/or predecessors-in-title or successors-in-title of the Lessor.

Article 20. (Transfer of Lessor's Rights)

40 (1) The Lessor may, without the Lessee's consent, transfer, pledge or establish a mortgage or charge on the Equipment, subject to this Lease Agreement.

(2) The Lessor may, without the Lessee's consent, transfer or pledge all or part of its rights and obligations under this Lease Agreement, or use the Equipment as security for whatever purposes the Lessor deems fit.

In the
High Court

No. 3
Affidavit of
Ng Seng Huat
and Exhibits
thereto
affirmed
23rd October
1979
(Continued)

(3) The Lessor shall be entitled to assign this Lease Agreement or any right or rights hereunder including the right conferred on the Lessor to enter upon land or buildings to inspect the Equipment and to sever and repossess the same and any assignment of this Lease Agreement by the Lessor shall be deemed to include an assignment of the Lessor's rights to enter sever and repossess.

Article 21. (Right of Lessor in certain events)

Should any one of the following events take place, 10
the Lessor may without any prior notice or demand to the Lessee exercise any or all of the remedies as provided for in paragraph (1) of Article 17 hereof and the effects thereof shall be the same as those provided for in paragraph (2) of Article 17:-

- (a) suspension or discontinuance or threatened suspension or discontinuance of business of the Lessee or bankruptcy or dissolution or winding-up of the Lessee; or
- (b) on the Lessee being the subject of any writ of execution or distress, attachment or disposition (regardless of whether or not the same affects the Equipment) or on a petition for the dissolution or winding-up of the Lessee being presented; or 20
- (c) on the Lessee entering into any compromise arrangement or composition with its creditors or any assignment for the benefit of such creditors; or
- (d) if any judgment against the Lessee shall remain unsatisfied for more than fourteen (14) days; or 30
- (e) if the Lessee shall abandon the Equipment.

Article 22. (Report of Business etc.)

The Lessee shall immediately on demand by the Lessor made at any time provide the Lessor with such particulars statements and details as to the Lessee's financial status and the place state and condition of the Equipment as the Lessor shall required.

Article 23. (Surrender of Equipment) 40

(1) Upon the expiration of earlier termination of this Lease Agreement for any reason whatsoever the Lessee shall deliver and surrender up the Equipment to the Lessor at the address of the Lessor stated in this Lease Agreement or at such other address as the Lessor may specify or if so required by the Lessor shall hold the Equipment available for collection by the Lessor or its agents and the Lessor and its agents may without notice retake possession of the Equipment and may for that purpose enter upon any land or buildings on or in which the Equipment is or is believed by the Lessor or its agents to be situated and if the Equipment or any part thereof is affixed to such land or buildings the Lessor shall be entitled to sever the same therefrom and 50

to remove the Equipment or part thereof so severed and the Lessee shall be responsible for damage caused to the land or buildings by such removal.

In the
High Court

No. 3
Affidavit of
Ng Seng Huat
and Exhibits
thereto
affirmed
23rd October
1979
(Continued)

(2) The Lessee shall bear all costs and expenses incurred by the Lessor in connection with such delivery, surrender, collection and/or repossession of the Equipment.

Article 24. (Supplementary Provisions & Headings)

(1) The Lessee hereby agrees that the supplementary provisions set out in Item (12) of the Schedule, are a part of this Lease Agreement and this Lease Agreement will be supplemented or amended in accordance therewith.

(2) The captions and headings to the Articles of this Lease Agreement are for reference only do not affect the interpretation and/or enforcement of the provisions of this Lease Agreement.

Article 25. (Indulgence etc.)

No relaxation forbearance delay or indulgence by the Lessor in enforcing any of the terms and conditions of this Lease Agreement or the granting of time by the Lessor to the Lessee shall prejudice affect or restrict the rights and powers of the Lessor hereunder nor shall any waiver by the Lessor of any breach hereof operate as a waiver of any subsequent or any continuing breach hereof.

Article 26. (Agreement supersedes previous arrangements)

This Lease Agreement embodies all the terms and conditions between the parties hereto and supersedes and cancels in all respects all previous arrangements, agreements and undertakings if any between the parties hereto whether such be written or oral

Article 27. (Stamp duty and legal charges)

The Lessee shall pay all legal charges (including the Lessor's solicitors charges) in respect of this Lease Agreement and all stamp duty thereon.

Article 28. (Law)

This Lease Agreement shall be governed and construed in all respects in accordance with the laws of Peninsular Malaysia and the parties hereto hereby submit to the jurisdiction of the Courts of Peninsular Malaysia provided always that the Lessor shall be at liberty to take any proceedings in any courts whether in Peninsular Malaysia or elsewhere to protect and enforce the provisions of this Lease Agreement or otherwise to recover payment of any sums or monies due hereunder.

Article 29. (Notices)

Any notice request or demand requiring to be served by either party hereto to the other under the provisions of this Lease Agreement shall be in writing and shall be deemed to be sufficiently served:-

- (a) if it is given by the party or its solicitor or solicitors by post in a registered letter addressed to the party to be served

In the
High Court

No. 3
Affidavit of
Ng Seng Huat
and Exhibits
thereto
affirmed
23rd October
1979
(Continued)

at its address hereinbefore mentioned and
in such a case it shall be deemed (whether
it is actually delivered or not) to have
been received at the time when such
registered letter would in the ordinary
course be delivered; or

- (b) if it is given by the party or its solicitor
or solicitors and despatched by hand to the
party to be served or its solicitor or
solicitors.

10

Article 30. (Definitions)

In this Lease Agreement where the context so
admits:-

(1) Where there are two or more persons or
parties included in the term "the Lessee" their
liabilities under the Lease Agreement shall be joint
and several; and

(2) Words importing the masculine gender shall
be deemed to include the feminine and neuter genders
and words importing the singular number shall include
the plural and vice versa.

20

Article 31. (Lease Agreement to bind successors-
in-title, etc.)

This Lease Agreement shall be binding on the
successors-in-title and permitted assigns (if any)
of the Lessee.

IN WITNESS WHEREOF the parties hereto have by
the duly authorised representatives set their hands
the day and year first abovewritten.

SIGNED for and on behalf)
of the Lessee by)
ENG YU CHONG in the)
presence of:-)
(Sgd))

EMPORIUM PRESIDENT &
SUPERMARKET SDN. BHD.

30

SIGNED for and on behalf)
of the Lessor by)
K. NAGANUMA)
in the presence of:-)
(Sgd))

UNITED ORIENT LEASING
COMPANY SDN. BHD

(Sgd)
Director & General
Manager

40

S C H E D U L E

In the
High Court

ITEM (1) Description of the Equipment
(according to Seller's description):-

GENERAL DESCRIPTION, ACCESSORIES, QUANTITY	Model No.	Serial No.
a) 17 units Kiddie Ride Machines		
b) 13 units NCR Electronic Cash Register		

No. 3
Affidavit of
Ng Seng Huat
and Exhibits
thereto
affirmed
23rd October
1979
(Continued)

Manufacturer/Year of Manufacture:

- 10 ITEM (2) Seller: a) Emporium President & Supermarket Sdn. Bhd.
- ITEM (3) Place at which the Equipment is to be delivered and kept: b) NCR Malaysia Sdn. Bhd. Ground to 3rd Floor, Johor Tower, 15 Jalan Greja, Johor Bahru, Johor.
- ITEM (4) Expected Date of Delivery of the Equipment by Seller:-
- Inspection Period: 3 days from the said expected date of delivery.
- 20 ITEM (5) Term of Lease: Three (3) years.
- ITEM (6) Deposit or Prepaid Rent:
- Deposit: M\$ 50,582/- (Ringgit: Fifty thousand five hundred and eighty-two only)
- Prepaid Rent: M\$ - covering the last - month/s
- ITEM (7) Rent: 36 monthly payments of M\$ 5,439/- (Ringgit: Five thousand four hundred and thirty-nine only)
- 30 Method of Payment:
- 1st Payment: By Cheque on date of Acceptance Receipt.
- 2nd and subsequent payments: By Banker's Order every month unless otherwise arranged on the same day of the month on which the Acceptance Receipt was Issued

In the
High Court

No. 3
Affidavit of
Ng Seng Huat
and Exhibits
thereto
affirmed
23rd October
1979
(Continued)

ITEM (7) Place of Payment:
(Contd.) To Lessor's account with Malayan Banking
Berhad, Head Office, Jalan Bandar,
Kuala Lumpur A/C No: 0-3001-061306-2

ITEM (8) Rent for renewed lease: -

ITEM (9) Agreed Loss Value:

1st Year	\$216,870/-	5th Year
2nd Year	\$169,220/-	6th Year
3rd Year	\$112,560/-	7th Year
4th Year		8th Year

10

Year in this Item means a period of 12
calendar months calculated from the
commencement date of the leasing of the
said Equipment.

Where default or early termination occurs
in-between the above years, the amount of
Agreed Loss Value shall be calculated
proportionately based on the number of
monthly lease rents paid during the
relevant year

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ITEM (10) Agreed Loss Value for Renewed Lease:

ITEM (11) Overdue interest: 0.04% per day

ITEM (12) Supplementary Provisions:

1. The Lessee shall guarantee and indemnify the Lessor the estimated residual value of \$50,582/- (Ringgit: Fifty thousand five hundred and eighty-two only) of the Leased Equipment.
2. Without prejudice to the provisions of Articles 14 and 15 hereof the Lessee hereby covenants and undertakes to be solely liable for and to pay to the Lessor on demand any sum which the Lessor may have to bear under any excess clause(s) in accordance with the terms and conditions of any insurance or insurances effected by the Lessor in respect of the Equipment.

30

DESCRIPTION OF EQUIPMENT

In the
High Court

- 10 a) 17 sets Kiddie Ride Machines
1. KDT Combat
 2. KDT Red Baron
 3. KDT Polaris
 4. KDR Jet Fighter
 5. SB-Y2-A Mini Train
 6. BF-13 Jumbo 747
 7. BF-16 Jumbo 747
 8. BG-19 Vintage Car (Green)
 9. BG-18 Vintage Car (Red)
 10. BG-20 Vintage Car (Yellow)
 11. BH-21 Locomotive (Red)
 12. BH-22 Locomotive (Blue)
 13. BI-26 Tank (Green)
 14. BDS-11 Sports Car (Blue)
 15. KDB Rotary Boat
 16. SB-MI-A Mini Mono Rail Pompom Sen SB-MI
 17. KDC Cable Car
- 20 b) 13 units NCR Electronic Cash Register
1. 11 units NCR Electronic Cash Register
 Model 2140-2509
 2. 2 units NCR Electronic Cash Register
 Model 2115-1301

No. 3
Affidavit of
Ng Seng Huat
and Exhibits
thereto
affirmed
23rd October
1979
(Continued)

In the
High Court

CONTRACT NO. 79-199

EQUIPMENT LEASE AGREEMENT

No. 3
Affidavit of
Ng Seng Huat
and Exhibits
thereto
affirmed
23rd October
1979
(Continued)

THIS LEASE AGREEMENT made this 2nd day of May One thousand nine hundred and seventy-nine (1979) Between UNITED ORIENT LEASING COMPANY SDN. BHD. a company incorporated in Malaysia and having an office at 2nd Floor, Bangunan Dato Zainal, No. 23 Jalan Melaka, Kuala Lumpur (hereinafter called "the Lessor" which expression shall include its successors-in-title and assigns) of the one part And Emporium President & Supermarket Sdn. Bhd. a company incorporated in Malaysia and having a business office at Johor Tower, 15 Jalan Greja, Johor Bahru, Johor, (hereinafter called "the Lessee" which expression shall include its successors-in-title and permitted assigns) of the other part.

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WHEREAS at the request of the Lessee the Lessor has agreed to purchase/has purchased the equipment hereinafter described for the purpose of leasing the same to the Lessee upon the terms and conditions hereinafter appearing.

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NOW THEREFORE THIS AGREEMENT WITNESSETH that for and in consideration of the mutual covenants and premises hereinafter set forth, the parties hereto agree as follows:-

Article 1. (Leased Equipment)

The Lessor hereby agrees to lease and let to the Lessee and the Lessee hereby agrees to take on lease and hire/takes on lease and hire from the Lessor the equipment (hereinafter called "the Equipment" which expression shall be deemed to include all replacements and renewals thereof and all accessories and additions thereto whether made before or after the date of this Lease Agreement) more particularly described in Item (1) of the schedule attached hereto which schedule shall be deemed a part of this Lease Agreement (hereinafter called "the Schedule") for the period upon the terms and conditions herein set forth and SUBJECT ALWAYS to the due and punctual payment of the rent hereinafter mentioned and the due observance and performance of the covenants and conditions herein contained by the Lessee.

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Article 2. (Term)

Subject to the provisions for earlier termination as elsewhere provided in this Lease Agreement, the initial term (hereinafter called "the Initial Term") of the lease hereby created shall be the period described in Item (5) of the Schedule which term shall commence on the date when the Acceptance Receipt

referred to in Article 5 hereof is issued.

In the
High Court

Article 3. (Rent)

10 The Lessee shall punctually pay to the Lessor a rental for the Equipment, and the amount, currency, method and place of payment of such rental thereof shall be as stipulated in Item (7) of the Schedule (hereinafter called "the Rent"). Time shall be the essence of the contract in respect of all payments of rental by the Lessee which payment shall be in full without any deductions whatsoever.

No. 3
Affidavit of
Ng Seng Huat
and Exhibits
thereto
affirmed
23rd October
1979
(Continued)

Article 4. (Renewal of Agreement)

20 In the event that the Lessee, not less than two months prior to the expiration of the Initial Term makes a written request to the Lessor for renewal of this Lease Agreement and if at such time and until the expiry of the initial Term there shall be no breach by the Lessee of the terms and conditions herein contained the Lessor shall continue to lease the Equipment to the Lessee on the same terms and conditions as herein contained (save and except there shall be no further provision for renewal) PROVIDED HOWEVER that:-

- 30 (a) the period (hereinafter called "the Renewed Term") of the renewal lease shall be for one (1) year commencing immediately after the expiry of the Initial Term, unless otherwise agreed upon between the parties hereto in writing:
- (b) the rental payable shall be the amount as stipulated in Item (8) of the Schedule; and
- (c) the Agreed Loss Value shall be as stipulated in Item (10) of the Schedule.

Article 5. (Delivery of Equipment)

40 (1) The Lessee shall inspect the Equipment and issue to the Lessor an Acceptance Receipt (hereinafter called "the Acceptance Receipt") therefor in such form as may be required by the Lessor not later than the date stipulated in Item (4) of the Schedule and after receipt of the Equipment either from the seller named in Item (2) of the Schedule (hereinafter called "the Seller") or from the Lessor as the case may be.

(2) The Lessee may commence using the Equipment in accordance with the provisions of this Lease Agreement from the date the Lessee issued to the Lessor the Acceptance Receipt pursuant to the provisions of the preceding paragraph.

In the
High Court

No. 3
Affidavit of
Ng Seng Huat
and Exhibits
thereto
affirmed
23rd October
1979
(Continued)

(3) (a) In the event that the Lessee discovers any defects in the Equipment or has any complaints in respect thereof the Lessee shall immediately notify the Lessor thereof and specifically state such defects and complaints in the Acceptance Receipt provided that nothing in this clause shall be construed to imply that the Lessor is liable or responsible for such defects and complaints.

(b) In the event of the Lessee failing to so notify the Lessor in accordance with paragraph 3(a) of this Article the Lessee hereby agrees that it shall be deemed that the Equipment has been delivered in perfect condition and that the Lessee shall not raise any objections whatsoever thereafter.

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(4) If pursuant to this Lease Agreement it shall be necessary to do so, the Lessor shall exercise its best efforts to make arrangements with the Seller so that the Equipment can be delivered to the Lessee by the expected date of delivery as described in Item (4) of the Schedule. In the event that the Lessor is unable to make such arrangements for delivery with the Seller the Lessor shall notify the Lessee to that effect and discuss with the Lessee the possibility of making substitute arrangements. If the Lessor and the Lessee are unable to agree on such substitute arrangements within fourteen (14) days after such aforesaid notice by the Lessor either the Lessor or the Lessee shall be entitled to terminate this Lease Agreement and upon such termination this Lease Agreement shall be null and void and of no effect and neither the Lessor nor the Lessee shall be held responsible for such termination and neither the Lessor nor the Lessee shall have any claims against the other.

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Article 6. (Defects in Equipment)

(1) The Lessee, having negotiated with the Seller and having on its own accord selected the Equipment for its own use, hereby acknowledges and declares that the Lessor shall not be responsible for any delay in delivery or non-delivery by the Seller of the Equipment or for any defects or for the quality or fitness of the Equipment or any part or parts thereof.

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(2) In the event that the Lessee suffers any damages in consequence of any delay in delivery or non-delivery of or any defect in or quality of or unfitness of the Equipment and the Lessee having duly signed the Acceptance Receipt in accordance with Article 5(1) hereof the Lessor agrees to assign to the Lessee (at the Lessee's own cost and expense) whatever rights the Lessor may have if any to seek such compensation for damages from the Seller provided always and it is hereby declared that the

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Lessor makes no representation or warranty as to the likelihood or possibility of recovery of such compensation.

In the
High Court

No. 3
Affidavit of
Ng Seng Huat
and Exhibits
thereto
affirmed
23rd October
1979
(Continued)

10 (3) The provisions of the preceding paragraphs of this Article shall apply to the latent defects of the Equipment mutatis mutandis unless there is any special agreement or arrangement with the Seller excluding same, provided that nothing herein shall in any way be construed as a representation or warranty given by the Lessor to the Lessee of the latent quality or fitness of the Equipment.

20 (4) Any liability the Lessor might otherwise incur and any right or immunity the Lessee might otherwise possess in respect of any conditions warranties or representations relating to the condition of the Equipment or its merchantable quality or suitability or fitness for the particular or any purpose for which it is or may be required whether express or implied and whether arising under this Lease Agreement or under any prior agreement or in oral or written statements made by or on behalf of any person in the course of negotiations in which the Lessee or its representative may have been concerned prior to this Lease Agreement are hereby excluded. No liability shall attach to the Lessor either in contract or in tort for loss injury or damage sustained by reason of any defect in the Equipment whether such defect be latent or apparent on examination and the Lessor shall not be liable to
30 indemnify the Lessee in respect of any claim made against the Lessee by a third party for any such loss injury or damage.

40 (5) Neither the Seller nor any dealer or supplier through whom this Lease Agreement was negotiated or by whom the Equipment was supplied nor any person in the employ of the Seller or any such dealer or supplier is or is to be deemed the agent of or acting on behalf of the Lessor for any purpose and no liability is to be attached to the Lessor for any conditions warranties or representations made by the Seller or such dealer or supplier or person in the employ of the Seller or such dealer or supplier.

Article 7. (Custody and Use of Equipment)

(1) In the event that the Lessor instructs the Lessee to affix labels, plates or other markings on the Equipment to indicate that the Equipment is owned by the Lessor the Lessee shall forthwith at its own cost and expense follow such instructions.

50 (2) The Lessor shall arrange to deliver (but at the Lessee's cost and expense) the Equipment to the address described in Item (3) of the Schedule

In the
High Court

No. 3
Affidavit of
Ng Seng Huat
and Exhibits
thereto
affirmed

23rd October
1979
(Continued)

and the Lessee shall not remove the Equipment therefrom, without the Lessor's prior written consent. The Lessee shall promptly notify the Lessor of any change in the Lessee's address and upon request by the Lessor promptly inform the Lessor of the whereabouts of the Equipment and in the event of default by the Lessee hereunder pay to the Lessor all expenses (including legal costs on a full indemnity basis) incurred by or on behalf of the Lessor in ascertaining the whereabouts of taking possession of preserving insuring and storing the Equipment and of any legal proceedings by or on behalf of the Lessor to enforce the provisions of this Lease Agreement.

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(3) The Lessee shall treat the Equipment as a good custodian and user would as to the time and method of use and treatment thereof and shall at the Lessee's own cost and expense obtain and maintain all necessary registrations, licences, permits and permissions for the use of the Equipment and shall comply with and conform to all regulations and instructions of any governmental or such other competent authorities and to all Acts of Parliament, statutes, rules, regulations, policies and byelaws for the time being in force in connection with the possession storage use and maintenance of the Equipment.

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(4) The Lessee shall indemnify the Lessor against loss of or damage to the Equipment or any part thereof from whatever cause arising and whether or not such loss or damage results from the act, default or negligence of the Lessee.

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(5) The Lessee shall indemnify the Lessor against all damages, costs, claims, demands and actions made upon the Lessor by reason of any loss injury or damage suffered by any person or party from the presence, placement, custody maintenance and/or the use of the Equipment.

Article 8. (Maintenance of Equipment and Expenses)

The Lessee shall at its own cost and expenses at all times:-

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- (a) dutifully and faithfully follow the Equipment's Manufacturers' recommendations as to use service and maintenance thereof;
- (b) conduct regular and proper inspection of the Equipment;
- (c) keep the Equipment in good and serviceable repair and condition and replace all missing damaged or broken parts with parts

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supplied or recommended by the original manufacturers of the Equipment or with the prior written approval of the Lessor with parts of equal quality and value and in default of so doing permit the Lessor to take possession of the Equipment for the purpose of having repairs carried out and repay to the Lessor the full cost of such repairs and the Lessor shall have a lien on the Equipment until such repayment but exercise of such lien shall not prevent the accrual of rental hereunder:

In the
High Court

No. 3
Affidavit of
Ng Seng Huat
and Exhibits
thereto
affirmed
23rd October
1979
(Continued)

- (d) ensure that the Equipment is operated in a skilful and proper manner and by persons who are competent to operate the same;
- (e) punctually pay for all servicing of and repairs and other work done to the Equipment and for spare parts and accessories thereof and keep the Equipment free from distress or execution or any other legal process;
- (f) punctually pay all registration charges licence fees rent rates taxes and other outgoings payable in respect of the Equipment or the custody and use thereof and produce to the Lessor on demand the last receipts for all such payments and in the event of the Lessee making default under this clause the Lessor shall be at liberty to make all or any of such payments and to recover the amount thereof from the Lessee forthwith.

Article 9. (Alterations to Equipment)

(1) Without the written consent of the Lessor the Lessee shall not make any additions, improvements or alterations to the Equipment or changes of the working order, function or quality thereof.

(2) If the Lessee does make additions or alterations to or improve the Equipment without the prior written consent of the Lessor, the Lessee shall immediately upon being required so to do by the Lessor remove the same and reinstate the Equipment to its original state at the Lessee's cost and expense.

(3) Any additions, improvements or alterations made to the Equipment (whether or not with the Lessor's consent) shall be deemed to form part of the Equipment.

Article 10. (Equipment not to be affixed to premises)

(1) Without the Lessor's written consent the

In the
High Court

No. 3
Affidavit of
Ng Seng Huat
and Exhibits
thereto
affirmed
23rd October
1979
(Continued)

Lessee shall not affix, secure, fasten, anchor or in any way attach the Equipment to the premises in which the Equipment is kept and used or to any immovable property.

(2) In the event that the Lessee seeks the Lessor's consent referred to in the preceding paragraph of this Article, the Lessee shall submit a written consent or a certificate from the owner or landlord of such premises or immovable property to the effect that such owner or landlord agrees not to treat the Equipment as a fixture or fitting forming a part of such premises or immovable property and as between the Lessor and the Lessee the Equipment hereby leased shall remain personal property and shall continue in the ownership of the Lessor notwithstanding that the same may have been affixed to any land or building as aforesaid. The Lessee shall be responsible for any damage caused to any such land or building by the affixing of the Equipment thereto or the removal of the Equipment therefrom (whether such affixing or removal be effected by the Lessor or the Lessee) and shall indemnify the Lessor against any claim made in respect of such damage.

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(3) The Lessee hereby undertakes to the Lessor that it will duly and punctually pay all rents and rates, assessments, taxes and other outgoings payable in respect of the premises where the Equipment may for the time being be placed stored and/or used and shall produce to the Lessor on demand the receipt or receipts for the then latest payment due in respect thereof.

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Article 11. (Prohibition of Transfer, etc. of
Equipment)

(1) The Lessee acknowledges that ownership and title to the Equipment after delivery thereof to the Lessee shall remain vested in the Lessor and the Lessee shall have no right or interest therein otherwise than as a lessee. The Lessee shall not attempt to transfer sell or otherwise dispose of the Equipment or do any other act that may infringe upon the Lessor's ownership. The Lessee shall not permit the Equipment to be possessed or used by any third party. If such event occurs, the Lessee shall immediately notify the Lessor thereof and the Lessee shall at its own cost and expense forthwith cause the Equipment to be released therefrom.

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(2) If the Lessor's title to the Equipment is impeached, infringed or jeopardised whilst the Equipment is the subject of the lease hereby created (or if thereafter, in consequence of anything done by the Lessee) the Lessee shall bear all costs and expenses of the Lessor incurred

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by the Lessor in removing such impeachment
infringement or jeopardy.

In the
High Court

(3) Without prejudice to the generality of
the foregoing paragraphs of this Article, the
Lessee shall not:-

No. 3
Affidavit of
Ng Seng Huat
and Exhibits
thereto
affirmed
23rd October
1979
(Continued)

- 10 (a) sell assign sub-let pledge mortgage charge
encumber or part with possession of or
otherwise deal with the Equipment or any
interest therein nor create nor allow to be
created any lien on the Equipment whether
for repairs or otherwise and in the event
of any breach of this clause by the Lessee
the Lessor shall be entitled (but shall not
be bound) to pay to any third party such
sum as is necessary to procure the release
of the Equipment from any charge encumbrance
or lien and shall be entitled to recover
such sum from the Lessee forthwith;
- 20 (b) sell mortgage charge demise sub-let or
otherwise dispose of any land or building
on or in which the Equipment is kept or
enter into any contract to do any of the
aforesaid things without giving the Lessor
at least six (6) weeks' prior notice in
writing and the Lessee shall in any event
procure that any such sale mortgage charge
demise sub-lease or other disposition as
the case may be is made subject to the
right of the Lessor to repossess the
30 Equipment at any time (whether or not the
same or any part thereof shall have become
affixed to the said land or building) and
for that purpose to enter upon such land
or building and sever any equipment affixed
thereto.

Article 12. (Inspection of Equipment)

40 The Lessee hereby grants full leave and
irrevocable licence to the servants, agents of the
Lessor or any person authorised by the Lessor at
all reasonable times to enter upon the premises
where the Equipment may for the time being be placed
kept and/or used to inspect and examine the Equipment.

Article 13. (Loss and Damage to Equipment)

(1) The Lessee hereby assumes and shall bear
from the commencement of the Initial Term referred
to in Article 2 hereof the entire risk of loss of or
damage to the Equipment or any part thereof from
whatever cause arising (ordinary wear and tear only
excepted).

(2) In the event of any loss or damage to the Equipment, the Lessee, at its cost and expense and at the option of the Lessor, shall forthwith:-

- (a) replace the Equipment with like equipment in good repair, condition and working order; or
- (b) reinstate the Equipment and render it in good repair, condition and working order.

(3) Notwithstanding paragraph (2) of this Article in the event that the whole of the Equipment is lost and/or rendered useless (including but not limited to damage incapable of economic repair and infringement of ownership) for any reason whatsoever the Lessee shall pay to the Lessor forthwith on demand the Agreed Loss Value described in Item (9) of the Schedule (hereinafter called " the Agreed Loss Value").

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(4) In the event of paragraph (2) of this Article applying, this Lease Agreement shall continue to have full force and effect without any amendment and in particular the Rent shall continue to be payable in full.

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(5) In the event of paragraph (3) of this Article applying, this Lease Agreement shall be deemed to be terminated upon full payment of the Agreed Loss Value and thereafter neither party shall have any claims against the other save and except in respect of any antecedent breach or prior claims.

(6) In the event of paragraph (3) of this Article applying and upon full payment of the Agreed Loss Value, the Lessor shall transfer to the Lessee the ownership of the Equipment in its then existing condition together with whatever legal rights if any the Lessor may have against third parties PROVIDED THAT the Lessor shall not in any way be responsible for the condition, working order, function, quality etc. of the Equipment or financial ability of any such third parties nor shall the Lessor be deemed to have made any representations or warranties whatsoever as to the validity of any such transfer or the ability to sustain any such claims in law.

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Article 14. (Insurance)

(1) The Lessor shall at its discretion have the Equipment insured with an insurance company selected and approved by the Lessor and in the name of the Lessor but at the expense of the Lessee simultaneously with the issuance of the Acceptance Receipt referred to in Article 5 hereof and shall keep such insurance in full force and effect during the term of this Lease Agreement.

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10 (2) The Lessor shall at its discretion determine the risks against which the Equipment is to be insured and such insurance shall be for an amount sufficient to cover the Agreed Loss Value of the Equipment described in Item (9) of the Schedule. The Lessee shall also at its discretion insure against third party claims (including claims by the Lessor or the Lessee) arising out of the custody or use of the Equipment such insurance to be made in the name of the Lessor but at the expense of the Lessee and for such amount as the Lessor shall in its discretion think fit.

In the
High Court

No. 3
Affidavit of
Ng Seng Huat
and Exhibits
thereto
affirmed
23rd October
1979
(Continued)

(3) The Lessee shall on demand forthwith pay to the Lessor the premiums for all insurances referred to in this Article as the same is effected and upon each and every renewal thereof.

20 (4) The Lessee may at its own expense insure the Equipment against such other risks as it desires but such insurance shall not in any way relieve the Lessee from all or any of its responsibilities covenants and obligations under this Lease Agreement.

(5) Failure to recover under any insurances effected pursuant to this Article shall not relieve the Lessee from any of its responsibilities covenants and obligations under any part of or the whole of this Lease Agreement.

30 (6) The Lessee shall not do any act or thing whereby any of the insurances effected under this Article will or may be vitiated.

Article 15. (Receipt of Insurance Proceeds)

(1) The Lessor shall be entitled to receive all insurance proceeds and moneys if and when any event covered by insurance occurs and if applicable the Lessee hereby irrevocably appoints the Lessor the agent of the Lessee for the purpose of receiving all or any of such proceeds and moneys and giving a discharge therefor.

40 (2) The proceeds and moneys of such insurance, at the option of the Lessor, shall be applied towards any or all of the following:-

- (a) towards payment of any costs and expenses incurred or to be incurred pursuant to sub-paragraphs (a) and (b) of paragraph (2) of Article 13.
- (b) towards payment of the Agreed Loss Value or any part thereof pursuant to paragraph (3) of Article 13 in which event the Lessee will be relieved from its liability to pay

In the
High Court

No. 3
Affidavit of
Ng Seng Huat
and Exhibits
thereto
affirmed
23rd October
1979
(Continued)

the Agreed Loss Value to the extent of
the insurance proceeds and moneys actually
received by the Lessor; and

- (c) towards payment of damages to any third
party or the Lessee due to the occurrence
of the event covered by insurance.

(3) If and when events covered by any insurance
should occur, the Lessee shall immediately notify
the Lessor thereof in writing and shall deliver to
the Lessor without delay all documents necessary
for the receipt of all insurance proceeds and moneys.

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Article 16. (Deposit or Prepaid Rent)

The Lessor shall be entitled simultaneously with
the execution of this Lease Agreement to collect
from the Lessee either a deposit or a prepaid rent
as described in Item 6 of the Schedule as the Lessor
shall at its absolute discretion decide and such
deposit or prepaid rent will be retained by the
Lessor and dealt with in the manner as follows:-

(1) In the event of the Lessor electing to
collect a deposit (hereinafter called "the Deposit")
such deposit shall be retained by the Lessor as
security for the due observance and performance by
the Lessee of the stipulations terms and conditions
of the Lease Agreement and any renewal thereof. The
Deposit shall be maintained at the same amount during
the term of the Lease Agreement and shall not be
treated as payment of the Rent or any part thereof
and the same shall be returned to the Lessee free
of interest on the termination of the Lease Agreement
less such sums as may then be due to the Lessor
under the terms of the Lease Agreement but without
prejudice to any other claims which the Lessor may
have against the Lessee under the terms of the Lease
Agreement.

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(2) In the event of the Lessor electing to
collect a prepaid rent (hereinafter called "the
Prepaid Rent") such prepaid rent shall be retained
by the Lessor as security for due observance and
performance by the Lessee of the stipulations terms
and conditions of the Lease Agreement and any
renewal thereof, the Prepaid Rent shall bear no
interest and subject as hereinafter provided in this
paragraph shall be automatically applied by the
Lessor in satisfaction of the Rent falling due on the
dates mentioned in the said Item (6) of the Schedule
on the due dates therefor until it is exhausted
provided always that this provision shall in no way
relieve the Lessee from promptly paying the Rent
falling due on dates other than those mentioned in
the said Item (6) of the Schedule.

40

50

(3) Notwithstanding the provisions of paragraphs (1) and (2) of this Article if the Lessee is in default under any of the provisions of this Lease Agreement (including the events referred to in Article 21 hereunder) then the Lessor shall be entitled at its discretion to apply the Deposit or the Prepaid Rent or any part thereof against all and any monies, damages, arrears of the Rent and/or Agreed Loss Value as the Lessor thinks fit and, unless the Lessor shall exercise its rights and terminate the lease hereby created under sub-paragraph (c) of paragraph (1) of Article 17, the Lessee shall on written demand by the Lessor again pay to the Lessor the full amount of the Deposit or the Prepaid Rent (or such amount as may be required to make up the full amount referred to in Item (6) of the Schedule) which shall serve as security and be treated in the same way as the Deposit or the Prepaid Rent paid originally in accordance with paragraphs (1) and (2) of this Article.

(4) If there is any other form of securities given to the Lessor in addition to the Deposit or the Prepaid Rent (or treated as such under paragraph (2) of this Article) all of such securities (including the Deposit or the Prepaid Rent) shall be deemed to secure all claims of the Lessor and the order of use of such securities and the Deposit or the Prepaid Rent shall be the entire absolute and unfettered discretion of the Lessor.

Article 17. (Default)

(1) If the Lessee fails to pay the Rent provided for in Article 3 hereof after the same becomes due and payable or any other sums and monies due and payable under this Lease Agreement or if the Lessee fails to observe or perform all and any provision of this Lease Agreement or if the Lessor shall on any reasonable ground consider itself insecure the Lessor shall without prejudice to any pre-existing liability of the Lessee to the Lessor have the right forthwith to exercise all or any of the following remedies without having to give any prior notice or demand to the Lessee:-

(a) to declare a part of or the entire amount of the total amount of the Rent for the whole period of the Initial Term payable under this Lease Agreement and all other moneys, sums costs and expenses under this Lease Agreement immediately due and payable by the Lessee;

(b) to take possession of the Equipment or demand its return;

In the
High Court

No. 3
Affidavit of
Ng Seng Huat
and Exhibits
thereto
affirmed
23rd October
1979
(Continued)

In the
High Court

No. 3
Affidavit of
Ng Seng Huat
and Exhibits
thereto
affirmed
23rd October
1979
(Continued)

- (c) to terminate the lease hereby created and to demand from the Lessee the full amount of the Agreed Loss Value and in addition thereto to claim from the Lessee for compensation for all loss and damages including but not limited to loss of profits.

(2) Even if any of the remedies provided for in sub-paragraphs (a) and (b) of the paragraph (1) of this Article have been taken by the Lessor, the Lessee shall not be relieved from any other liability under this Lease Agreement including but not limited to liability for damages.

10

Article 18. (Interest on overdue payments)

Without prejudice to the rights of the Lessor against the Lessee under the terms of this Lease Agreement if the Lessee fails to pay any sums or moneys whatsoever due under this Lease Agreement (including but not limited to the Rent, the Agreed Loss Value and any costs and expenses advanced by the Lessor on behalf of the Lessee) the same shall bear interest at the rate described in Item (11) of the Schedule from the date due until payment is made in full by the Lessee with such interest.

20

Article 19. (Prohibition of Assignment of Rights by Lessee, etc.)

(1) The lease hereby created is personal to the Lessee and the Lessee shall not be entitled to assign its rights or obligations hereunder to any third party.

30

(2) No monetary obligations of the Lessee under this Lease Agreement may be offset or set-off with any claims against the Lessor, the Seller, the Lessor's assignees and/or predecessors-in-title or successors-in-title of the Lessor.

Article 20. (Transfer of Lessor's Rights)

(1) The Lessor may, without the Lessee's consent, transfer, pledge or establish a mortgage or charge on the Equipment, subject to this Lease Agreement.

40

(2) The Lessor may, without the Lessee's consent, transfer or pledge all or part of its rights and obligations under this Lease Agreement, or use the Equipment as security for whatever purposes the Lessor deems fit.

(3) The Lessor shall be entitled to assign this Lease Agreement or any right or rights hereunder including the right conferred on the Lessor to enter

upon land or buildings to inspect the Equipment and to sever and repossess the same and any assignment of this Lease Agreement by the Lessor shall be deemed to include an assignment of the Lessor's rights to enter sever and repossess.

In the
High Court

No. 3
Affidavit of
Ng Seng Huat
and Exhibits
thereto
affirmed
23rd October
1979
(Continued)

Article 21. (Right of Lessor in certain events)

Should any one of the following events take place, the Lessor may without any prior notice or demand to the Lessee exercise any or all of the remedies as provided for in paragraph (1) of Article 17 hereof and the effects thereof shall be the same as those provided for in paragraph (2) of Article 17:-

10

(a) suspension or discontinuance or threatened suspension or discontinuance of business of the Lessee or bankruptcy or dissolution or winding-up of the Lessee; or

20

(b) on the Lessee being the subject of any writ of execution or distress, attachment or disposition (regardless of whether or not the same affects the Equipment) or on a petition for the dissolution or winding-up of the Lessee being presented; or

30

(c) on the Lessee entering into any compromise, arrangement or composition with its creditors or any assignment for the benefit of such creditors; or

(d) if any judgment against the Lessee shall remain unsatisfied for more than fourteen (14) days; or

(e) if the Lessee shall abandon the Equipment.

Article 22. (Report of Business etc.)

The Lessee shall immediately on demand by the Lessor made at any time provide the Lessor with such particulars statements and details as to the Lessee's financial status and the place state and condition of the Equipment as the Lessor shall require.

Article 23. (Surrender of Equipment)

40

(1) Upon the expiration or earlier termination of this Lease Agreement for any reason whatsoever the Lessee shall deliver and surrender up the Equipment to the Lessor at the address of the Lessor stated in this Lease Agreement or at such other address as the Lessor may specify or if so required by the Lessor shall hold the Equipment available for collection by the Lessor or its agents and

In the
High Court

No. 3
Affidavit of
Ng Seng Huat
and Exhibits
thereto
affirmed
23rd October
1979
(Continued)

the Lessor or its agents may without notice retake possession of the Equipment and may for that purpose enter upon any land or buildings on or in which the Equipment is or is believed by the Lessor or its agents to be situated and if the Equipment or any part thereof is affixed to such land or buildings the Lessor shall be entitled to sever the same therefrom and to remove the Equipment or part thereof so severed and the Lessee shall be responsible for all damage caused to the land or buildings by such removal. 10

(2) The Lessee shall bear all costs and expenses incurred by the Lessor in connection with such delivery, surrender, collection and/or repossession of the Equipment.

Article 24. (Supplementary Provisions & Headings)

(1) The Lessee hereby agrees that the supplementary provisions set out in Item (12) of the Schedule, are a part of this Lease Agreement and this Lease Agreement will be supplemented or amended in accordance therewith. 20

(2) The captions and headings to the Articles of this Lease Agreement are for reference only do not affect the interpretation and/or enforcement of the provisions of this Lease Agreement.

Article 25. (Indulgence etc.)

No relaxation forbearance delay or indulgence by the Lessor in enforcing any of the terms and conditions of this Lease Agreement or the granting of time by the Lessor to the Lessee shall prejudice affect or restrict the rights and powers of the Lessor hereunder nor shall any waiver by the Lessor of any breach hereof operate as a waiver of any subsequent or any continuing breach hereof. 30

Article 26. (Agreement supersedes previous arrangements)

This Lease Agreement embodies all the terms and conditions between the parties hereto and supersedes and cancels in all respects all previous arrangements, agreements and undertakings if any between the parties hereto whether such be written or oral. 40

Article 27. (Stamp duty and legal charges)

The Lessee shall pay all legal charges (including the Lessor's solicitors charges) in respect of this Lease Agreement and all stamp duty thereon.

Article 28. (Law)

In the
High Court

10 This Lease Agreement shall be governed and construed in all respects in accordance with the laws of Peninsular Malaysia and the parties hereto hereby submit to the jurisdiction of the Courts of Peninsular Malaysia provided always that the Lessor shall be at liberty to take any proceedings in any courts whether in Peninsular Malaysia or elsewhere to protect and enforce the provisions of this Lease Agreement or otherwise to recover payment of any sums or monies due hereunder.

No.3
Affidavit of
Ng Seng Huat
and Exhibits
thereto
affirmed
23rd October
1979
(Continued)

Article 29. (Notices)

Any notice request or demand requiring to be served by either party hereto to the other under the provisions of this Lease Agreement shall be in writing and shall be deemed to be sufficiently served:-

- 20 (a) if it is given by the party or its solicitor or solicitors by post in a registered letter addressed to the party to be served at its address hereinbefore mentioned and in such a case it shall be deemed (whether it is actually delivered or not) to have been received at the time when such registered letter would in the ordinary course be delivered; or
- 30 (b) if it is given by the party or its solicitor or solicitors and despatched by hand to the party to be served or its solicitor or solicitors.

Article 30. (Definitions)

In this Lease Agreement where the context so admits:-

- (1) Where there are two or more persons or parties included in the term "the Lessee" their liabilities under the Lease Agreement shall be joint and several; and
- 40 (2) Words importing the masculine gender shall be deemed to include the feminine and neuter genders and words importing the singular number shall include the plural and vice versa.

In the
High Court

No. 3
Affidavit of
Ng Seng Huat
and Exhibits
thereto
affirmed
23rd October
1979
(Continued)

Article 31. (Lease Agreement to bind
successors-in-title, etc.)

This Lease Agreement shall be binding on
the successors-in-title and assigns of the Lessor
and successors-in-title and permitted assigns (if
any) of the Lessee.

IN WITNESS WHEREOF the parties hereto have by
the duly authorised representatives set their hands
the day and year first abovewritten.

SIGNED for and on behalf)	
of the Lessee by	(Sgd)
ENG YU CHONG	EMPORIUM PRESIDENT &
in the presence of:-	SUPERMARKET SDN.BHD.
(Sgd))
	Managing Director

SIGNED for and on behalf)	
of the Lessor by) UNITED ORIENT LEASING
K. NAGANUMA in the) COMPANY SDN. BHD.
presence of :-	(Sgd)
(Sgd)) Director and
) General Manager

S C H E D U L E

In the
High Court

ITEM (1) Description of the Equipment
(according to Seller's description):-

No. 3
Affidavit of
Ng Seng Haut
and Exhibits
thereto
affirmed
23rd October
1979
(Continued)

GENERAL DESCRIPTION, ACCESSORIES, QUANTITY	Model No.	Serial No.
a) Refrigeration Equipment	As described in the list attached	
b) Bakery Equipment		
c) Coffee House Equipment		
d) Scales & Weighing Machines		

10 Manufacturer/Year of
Manufacture:

ITEM (2) Seller: Emporium President & Supermarket
Sdn. Bhd.

ITEM (3) Place at which the Equipment is to be
delivered and kept:-

Ground to 3rd Floor, Johor Tower,
15, Jalan Greja, Johor Bahru

ITEM (4) Expected Date of Delivery of the
Equipment by Seller:-

20 Inspection Period: 3 days from the said
expected date of delivery

ITEM (5) Term of Lease: Three (3) years

ITEM (6) Deposit or Prepaid Rent:

Deposit: M\$ 86,727/- (Ringgit: Eighty-
six thousand seven hundred twenty-seven
only)

Prepaid Rent: M\$ - covering last
- months

30 ITEM (7) Rent: 36 monthly payments of M\$ 9,325/-
(Ringgit: Nine thousand three hundred
and twenty-five only)

Method of Payment:

1st Payment: By Cheque on date of Acceptance
Receipt.

2nd and subsequent payments: By Banker's
Order every month unless otherwise
arranged on the same day of the month on
which the Acceptance Receipt was issued.

In the
High Court

No. 3
Affidavit of
Ng Seng Huat
and Exhibits
thereto
affirmed
23rd October
1979
(Continued)

ITEM (7)
(Contd.)

Place of Payment:

To be Lessor's account with Malayan
Banking Berhad, Head office, Jalan Bandar,
Kuala Lumpur A/C No: 0-3001-061306-2

ITEM (8) Rent for renewed lease: -

ITEM (9) Agreed Loss Value:

1st Year	\$371,850/-	5th Year
2nd Year	\$290,140/-	6th Year
3rd Year	\$192,990/-	7th Year
4th Year		8th Year

10

Year in this item means a period of 12
calendar months calculated from the
commencement date of the leasing of the
said Equipment.

Where default or early termination occurs
in-between the above years, the amount of
Agreed Loss Value shall be calculated
proportionately based on the number of
monthly lease rents paid during the
relevant year

20

ITEM (10) Agreed Loss Value for Renewed Lease:

ITEM (11) Overdue Interest: 0.04% per day

ITEM (12) Supplementary Provisions:

Without prejudice to the provisions of
Articles 14 and 15 hereof the Lessee
hereby covenants and undertakes to be
solely liable for and to pay to the Lessor
on demand any sum which the Lessor may
have to bear under any excess clause(s) in
accordance with the terms and conditions of
any insurance or insurances effected by the
Lessor in respect of the Equipment.

30

Description of Equipment

- a) Refrigeration Equipment
- b) Bakery Equipment
- c) Coffee House Equipment
- d) Scales & Weighing Machines

a) Refrigeration Equipment

In the
High Court

- 10 1 set FM8 Single Deck Fish Display Case
c/w accessories
1 set FM12 Single Deck Meat Display Case
c/w accessories
1 set FM12S8 Meat Case c/w accessories
1 set FM12S12 Meat Case c/w accessories
1 set BHDB8 Dairy Case c/w accessories
1 set BHDB12 Dairy Case c/w accessories
2 sets HW300 FSM Condensing unit c/w accessories
2 sets HW336RLM Condensing unit c/w accessories
1 set HW205RLM Condensing unit c/w accessories
2 sets HW150 FSM Condensing unit c/w accessories
2 sets HS310-4 Cooler Coils c/w accessories
2 sets BTF12 Frozen Food Display Case c/w
accessories
1 set BTF8 Frozen Food Display Case c/w
accessories
20 1 set 'FRP' Type 10TR Capacity Water cooling
tower with one condenser water circuit and
one centrifugal water pump set for the
condenser water circuit c/w refrigerant
pipework and accessories

No. 3
Affidavit of
Ng Seng Huat
and Exhibits
thereto
affirmed
23rd October
1979
(Continued)

b) Bakery Equipment

- 30 1 unit Electric Baking Oven Model E1B-33S
3 decks each 3 trays
1 unit Dough Kneader Model V6 Junior with
2 stainless steel bowls & 3 mixing tools
c/w built-in motor
1 unit Cake Mixer Model V3 Toppy with 2
stainless steel bowls & 3 mixing tools c/w
built-in motors
1 unit Bun divider/Rounder Type Piccol-5U
36 divisions with built-in motor
1 unit Proofer Model MBM/JB-02 (2 rack
capacity) in stainless steel execution
(without racks)
1 unit Dough Moulder Model 'WF' wide Fine
with built-in motor
40 120 pcs Baking Pans
4 units Stainless steel rack
3 units Stainless steel worktable with 2 drawers
& undershelf
1 unit Stainless steel double bowl sink with
slatted undershelf
1 unit Model PME50/6D/SP Stainless steel
exterior finished commercial refrigerator
with 1 set $\frac{3}{4}$ HP 'Tecumseh' (USA) condensing
sealed unit c/w all accessories

In the
High Court

No. 3
Affidavit of
Ng Seng Huat
and Exhibits
thereto
affirmed
23rd October
1979
(Continued)

c) Coffee House Equipment

1 pce Crystal-Tip Ice Cube Machine Model 912-BA-20	
1 pce Hamilton Beach 936 Drink Mixer	
1 pce Reynolds Coffee Machine Model OCS-100	
24 pcs Cecilware Coffee Decanters	
1 pce Cecilware Deep Fat Fryer Model EL 410	
1 pce Cecilware Electric Short Order Store Model EL 12	
1 pce Vulcan-Hart Gas Range c/w 6 burners one 24" griddle & 2 ovens below	10
1 pce Vulcan-Hart Gas Salamander	
1 pce Jetspray Model Twinset c/w twin decanters	
1 unit Stainless steel double bowl sink with plain shelf	
1 unit Undercounter fridge	
1 unit Stainless steel equipment stand with cupboard below	
1 unit Stainless steel undercounter fridge c/w worktop	20
1 unit s/s worktable with overhead shelves & underslatted shelf	
1 unit s/s Single bowl sink with slatted shelf	
1 unit s/s Kwali Range c/w steamer & 3 burners	
1 unit Aluminium exhausthood	
1 unit s/s Equipment stand with intermediate shelf	
1 unit s/s worktable with sink & overhead shelves & slatted shelves below	
2 units s/s storage rack-4 tiers	30
1 unit s/s single bowl sink c/w slatted shelf	
1 unit s/s single bowl sink with slatted shelf	
2 units Hot food display cases	
2 units s/s Mobile trolleys	
1 unit s/s worktable c/w slatted shelf	
1 unit s/s worktable c/w slatted shelf with cabinet below	
1 unit Aerofoil Axial Fan 24J/24	
1 unit Aerofoil Axial Fan 19J/24	
1 unit Aerofoil Axial Fan 19J/18	40
1 unit Model PME/SP7D/FZ Stainless steel exterior finished commercial freezer equipped with one set $\frac{1}{2}$ HP & 1 set $\frac{3}{4}$ HP "Tecumseh" condensing sealed unit c/w all accessories	
1 unit Model PME/Water Cooler stainless steel exterior finished commercial water cooler equipped with one set "Tecumseh" (USA) condensing sealed unit c/w all accessories	
1 unit S/steel exterior finished commercial freezer equipped with one set $\frac{1}{2}$ HP "Tecumseh" (USA) condensing sealed unit c/w all accessories	50
1 unit s/s exterior finished commercial showcase equipped with one set $\frac{3}{4}$ HP "Tecumseh" condensing sealed unit c/w all accessories	

d) Scales & Labelling Machines

1 unit Avery 1103-ccc SI Counter Scale
3 units Avery 3809-CFY Coin Freed Persons
Weighers
1 unit Labelling Scale Model SC 8405 NP/HP 11
1 unit Digital Computer Scale Model SL 32-15

In the
High Court

No. 3
Affidavit of
Ng Seng Huat
and Exhibits
thereto
affirmed
23rd October
1979

(Continued)

This is the paper writing marked "N2" referred to in
the affidavit of Ng Seng Huat affirmed on the 23rd
day of October 1979 before me.

10 (Sgd) JOHN ANG SOON HO
Advocate and Solicitor
Commissioner for Oaths
Johore Bahru

3rd September 1979

The Directors
Emporium President & Supermarket Sdn Bhd
Johor Tower Jalan Greja
Johor Baru
Johor

20 Dear Sirs

Re: Lease Agreements: 79-183
: 79-199

It has come to our knowledge that your company's
trading premises in the Johor Tower, Johor Baru, is
the subject of Orders of Attachment by your
creditors today.

30 Accordingly, in accordance with Article 21(b) of
the Lease Agreements and also your failure to pay
the overdue rents, we hereby, without prejudice to
the terms and conditions of the above two (2) Lease
Agreements, give you notice that as owner of the
equipment under lease to you, we are assuming immediate
possession of our equipment under the above two(2)
Lease Agreements.

Yours faithfully
UNITED ORIENT LEASING CO SDN BHD

(Sgd)

NG SENG HUAT
Branch Manager

In the
High Court

No. 3
Affidavit of
Ng Seng Huat
and Exhibits
thereto
affirmed

23rd October
1979
(Continued)

This is the paper writing marked "N3" referred to
in the affidavit of Ng Seng Huat affirmed on
the 23rd day of October 1979, before me.

(Sgd) JOHN ANG SOON HO
Advocate and Solicitor
Commissioner for Oaths
Johore Bahru.

ONG BAN CHAI & RAZAK
Advocates & Solicitors
Peguam2bela Dan Peguam2cara
Commissioner for Oaths, Pesuruhjaya Sumpah

10

4th Floor, FOH CHONG BUILDING, JALAN IBRAHIM,
JOHORE BAHRU, MALAYSIA

Our Ref: OBC/L/A/D.218/79

26th September 1979

The Registrar
Sessions Court
Johore Bahru.

Dear Sirs,

re: Johore Bahru Sessions Court
Civil Action No. 261 of 1979

20

We refer to the above.

Kindly release the goods belonging to United
Orient Leasing Company Sdn. Bhd.

Yours faithfully

(Sgd)

cc: The Bailiff,
Sessions Court
Johore Bahru.

M/s Allen & Gledhill
Advocates & Solicitors
Johore Bahru

30

ILLEGIBLE

ONG BAN CHAI & RAZAK
Advocates & Solicitors
Peguam2bela Dan Peguam2cara
Commissioner for Oaths, Pesuruhjaya Sumpah

4th Floor, FOH CHONG BUILDING, JALAN IBRAHIM,
JOHORE BAHRU, MALAYSIA

Our ref: OBC/N/D,220/79

27th September, 1979

10 The Registrar,
Sessions Court,
Johore Bahru.

Dear Sir

Sessions Court Johore Bahru
Civil Action No. 270 of 1979

We refer to the above matter and shall be
pleased if you will release the goods belonging
to United Orient Leasing Co. Sdn. Bhd. as soon
as possible.

Yours faithfully,

20

(Sgd)

c.c. M/s Allen & Gledhill
Advocates & Solicitors
Johore Bahru.

In the
High Court

No. 3
Affidavit of
Hg Seng Huat
and Exhibits
thereto
affirmed
23rd October
1979
(Continued)

In the
High Court

No. 4

AFFIDAVIT OF LIEW KUEK HIN
AFFIRMED ON 10TH NOVEMBER 1979

No. 4
Affidavit of
Liew Kuek Hin
affirmed
10 November
1979

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU

ORIGINATING MOTION NO. 33 OF 1979

In the Matter of Section 10(c)
of the Distress Ordinance 1951

And

In the Matter of Order 52 Rule 1 of
the Rules of the Supreme Court 1957

10

And

In the Matter of Distress Suit No.12
of 1979 in the High Court in Malaya
at Johore Bahru

Between

United Orient Leasing Company Sdn Bhd

Applicants

And

Perdana Properties Bhd Respondents

AFFIDAVIT IN REPLY

20

I, LIEW KUEK HIN (NRIC No. 0003103) of No. 59-B
Jalan Ah Rook, Johore Bahru, Johore, do solemnly and
sincerely affirm and say as follows:-

1. I am a director of Perdana Properties Berhad,
the Respondents herein.

2. I have full knowledge of this matter and am
authorised to make this Affidavit.

3. I have perused the Affidavit dated 23rd October,
1979 affirmed by Ng Send, Tunku Naquiyuddin Ibni
Tuanku Jaafar and Chan Kwok Chor all of United Orient
Leasing Company Sdn. Bhd. in support of their
motion to release all the goods listed in the schedule
attached to their respective Affidavits.

30

4. I say that the Landlord, Perdana Properties Bhd.,
was always under the impression that these goods
listed in the said schedules as found in the premises
belonged to Emporium President & Supermarket Sdn.Bhd.

5. The 1st Equipment Lease Agreement dated 13th April, 1979 and the 2nd Equipment Lease Agreement dated 2nd May, 1979 stated respectively that the seller of those equipment and machines was Emporium President & Supermarket Sdn. Bhd.; thus they confirm the Landlord's impression that the equipment and machines belonged to Emporium President & Supermarket Sdn. Bhd.

In the
High Court

No. 4
Affidavit of
Liew Kuek Hin
affirmed
10th November
1979
(Continued)

10 6. Between 13th April, 1979 and 2nd May, 1979, the Emporium President & Supermarket Sdn. Bhd., managed to sell all the machines and equipment to United Orient Leasing Company Sdn. Bhd. and obtained a sum of \$588,720.00, particulars are as follows:-

- a) The 1st Equipment Lease Agreement dated 13th April, 1979, the tenant obtained a loan of \$216,870.00 by agreeing to pay 36 monthly payments of \$5,439.00;
- b) The 2nd Equipment Lease Agreement dated 2nd May, 1979, the tenant obtained a loan of \$371,850.00 by agreeing to pay 36 monthly payments of \$9,325.00.

20

7. I pray that the motion be dismissed with costs.

Affirmed by the abovenamed)
LIEW KUEK HIN (NRIC No.0003103) Sd: LIEW KUEK HIN
at Johore Bahru this 10th day)
of November 1979 at 12.40 pm)

Before me,

Sd: CHIN KON SING PIS, PPN
PESUROHJAYA SUMPAN
(COMMISSIONER FOR OATHS)
JOHORE BAHRU.

30

This Affidavit in Reply is filed by Messrs. Ong Ban Chai & Razak, Solicitors for the Respondents whose address for service is at 4th Floor, Foh Chong Building, Johore Bahru.

In the
High Court

No. 5

NOTES OF HEARING
DATED 13th NOVEMBER 1979

No. 5
Notes of
Hearing

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU

13th November
1979

Originating Motion No. 33/79
(Distress Suit No. 12/79)

Between

United Orient Leasing
Company Sendirian Bhd.

Applicants

And

10

Perdana Properties Bhd

Respondents

Notes of Evidence

Before me in open Court,

This 13th day of November
1979

Sgd Anuar
Judge, Malaya

O.M. 33/79

United Orient Leasing Comp. Sdn Bhd. V Perdana
Properties Bhd.

20

Mr. Wong Kim Fatt for United Orient
Mr. Ong Ban Chai for Perdana Properties

Wong - 2 issues
- whether seizure is wrongful
Q whether any other issue to be tried.

Goods belong to applicants. Leased out to
Emporium (tenant)

No dispute in affidavit of respondent.

Ownership of goods not disputed.

- Applicants were owners - not disputed.

30

Article 11 of Lease Agreement referred.

It is not a Hire Purchase agreement. It is
one of lease.

Onus ownership is proved. It is for landlord
to prove that there is reputed ownership of tenant.

Section 12 Distress Ordinance 1951 does not apply.

Ex parte Oundle and Thrapston Rural District Council and Others v. The Trustee (1948)1 All England Law Reports 849. Reputed ownership.

In the
High Court

Lease agreement terminated on 3.9.79 - cannot be said in possession of tenant with permission of owners.

No. 5
Notes of
Hearing

Smart Bros. v Holt (1929)2 KB 303 - Hire Purchase Agreement.

13th November
1979
(Continued)

10 Rogers etc v Martin (1910)1 KB 19 - Hire Purchase agreement - piano let to wife of tenant.

Customs - where customs proved doctrine of reputed ownership does not apply.

Ex parte Watkin (1948)1 All E.R. Doctrine of reputed ownership.

Ban Chai

Challoner's case - Challoner v Robinson (1908)1 Ch. 49. Privilege Distress.

Jay's Furnishing Co. (1914-1915) All Eng. Report 811.

20 Right of owner to enter hirer's premises reputed owner.

Lease agreement referred.

Mallal's Digest Vol.3 p 998 para 7029 - third party distress - not exempted from seizure.

English Empire Digest Challoner's case.

Halsbury 19 page 559 - hire purchase agreement.

Atkin's 15, 2nd ed 174. Distrain of rent - goods of stranger - including.

Sigma Sawmill (1979)1 MLJ 41.

30 Halsbury 12 p 142.

Hire Purchase section 12 Distress Ordinance
Intd. A

In the
High Court

No. 5
Notes of
Hearing

13th November
1979
(Continued)

Wong Kim Fatt - ownership cannot be disputed.
Para 6 of affidavit.
Judgment reserved.

Intd. A.

To 2.30 p.m.

Intd. A.

This 15th day of November, 1979

Wong Kim Fatt for the applicants

Ban Chai for the Plaintiff/Respondent.
Application is dismissed with costs.
Order of execution to proceed.

10

Intd. A.

Certified true copy.

Sd.
G.S. PANSHI
Setia-usaha kapada Hakim
Mahkamah Tinggi
Johore Bahru
5.12.79

No. 6
Judgment

15th November
1979

No. 6

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JUDGMENT

DATED 15th NOVEMBER 1979

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU

ORIGINATING MOTION NO. 33/79
(Distress Suit No. 12/79)

BETWEEN

United Orient Leasing
Company Sendirian Berhad Applicants

And

Perdana Properties Berhad Respondent 30

JUDGMENT OF ANNUAR, J.

This is an application by way of Originating
Motion by United Orient Leasing Company Sendirian
Berhad (the Applicants) for an Order that :-

"All the goods and chattels stated in the Schedule annexed hereto belonging to the Applicants and seized by the Bailiff under Distress Suit No. 12 of 1979 in the Honourable Court at the premises of Emporium President and Supermarket Sdn. Bhd. in Johor Tower, Johor Bahru, be released forthwith to the Applicants."

In the
High Court

No. 6
Judgment

15th November
1979
(Continued)

10 The facts of the case are thus. The Applicants
leased out to Emporium President and Supermarket
Sdn. Bhd. (the Emporium) a few items of goods and
chattels (the said goods) described fully in the
Lease Agreement dated 13th August, 1979 and 2nd May,
1979. The Emporium suffered execution in the
Subordinate Courts in Johor Bahru on 3rd September,
1979. The respondent caused to be issued a Warrant
of Distress against the Emporium for arrears of rent
in High Court Distress Suit No. 12/79 dated 19th
20 September, 1979. In view of section 20(1) of the
Distress Ordinance 1951 no seizure could be effected
on the goods in the Emporium. The Warrant of
Distress however was served on the Bailiff of the
Subordinate Court who was in possession of the
property under the execution order. The applicants
filed an objection in the Subordinate Court and the
goods were released to the Applicants by the learned
President on 22nd October 1979. The property
therefore were deemed to have been attached or
seized under the Warrant of Distress No. 12/79.
30 Order 46(a) rule 2(3) of the Rules of Supreme Court
applied.

The respondent then made an application by
O.M. 31/79 and obtained an order for the matter to
be transferred to the High Court. The Court ordered
that the High Court receive and realise all the goods
attached and seized at the premises of the Emporium.
The Court also fixed a date for the auction of the
said goods.

40 The Applicants then filed the present action to
have the goods released.

At the hearing of the Motion the Learned Counsel
for the Applicants submitted that in the first place
the seizure is wrongful and bad in law and secondly
that the said goods did not belong to the Emporium
and were therefore wrongly seized.

I will deal with the question of seizure first.

50 Under section 20(1) of the Distress Ordinance,
1951 any property liable to be seized under a Warrant
of Distress which has already been seized in execution
of an Order by any Court shall not be seized again.

In the
High Court

No. 6
Judgment

15th November
1979
(Continued)

But a Warrant of Distress may be served on an officer in possession of the property under execution order. The officer shall then be liable to pay out of the proceeds of the sale of the goods seized by him to the landlord.

It was argued that under section 20 of the Ordinance the landlord cannot levy execution of property which has already been executed or seized by an Order of any Court and that the landlord's only right is the payment out of sales of the property. 10

It has also been argued that Order 46(1) rule 2(1) of the Rules of Supreme Court does not apply to cases of Warrant of Distress. It was submitted that since Order 46(2) rule 2(1) speaks of "property attached by way of execution" it does not include a Warrant of Distress. The Applicants' contention was that "execution" is an Order after judgment has been given by the Court and it does not include "distrain" by a landlord. For that reason it was argued that Order 46(a) rule 2(3) of the Rules of the Supreme Court would not apply. Order 46(a) rule 2(3) provides that :- 20

"If the property is released from prior attachment, it shall be deemed to have been attached and seized under subsequent order or warrant."

With respect I am unable to agree with the submission by the learned counsel for the Applicants. Looking at sub-section (3) of section 20 of the Distress Ordinance it is clear that when notice of Warrant of Distress has been served on an officer in possession of the property attached by way of execution it is open for the execution creditor or execution debtor to apply to the Court to discharge or suspend the Warrant of Distress. It means that the serving of the Warrant of Distress on the officer in possession of the property has the effect of the property being attached or seized. There is therefore no necessity for the Warrant of Distress to be re-executed on the property if the property is released from the prior attachment. I am of the view that section 20 of the Distress Ordinance 1951 read together with Order 46a Rule 2 have effect as an attachment and therefore Order 46(a) rule 3 would apply. 30 40

The applicant's application is made under section 10(c) of the Distress Ordinance 1951. The Applicants have to satisfy the Court that the immediate tenant i.e. the Emporium, has no right of property or beneficial interest in the said goods. There is no dispute as to the ownership. The Applicants have satisfied the Court that the Emporium has no right of 50

property or beneficial interest in the said goods. However the provision of section 10 would not apply if the said goods fall under any of the categories of goods under section 12. Among other things section 10 does not apply to goods in the possession, order, or disposition of such tenant by the consent and permission of the true owner under such circumstances that such tenant is the reputed owner thereof. Section 12(1) reads:-

In the
High Court

No. 6
Judgment

15th November
1979
(Continued)

10 "The provision of section 10 shall not apply:-

- (1) to goods belonging to to goods in the possession, order or disposition of such tenant by the consent and permission of the true owner under such circumstances that such tenant is the reputed owner thereof."

20 The Manager of the Applicants in his affidavit of 23rd October 1979 stated that the said goods were leased out to the Emporium by two Lease agreements dated 13th April 1979 and 2nd May 1979. The Emporiums were in breach of the agreements by not paying the rental punctually. Accordingly the Applicants by letter dated 30th September 1979 gave notice of assumption of immediate possession of the said goods pursuant to Article 21(6) of the said Lease agreement.

30 It should be observed that on 3rd September 1979 the said goods were attached by execution of an Order of the Court. On that date the Emporium was still in possession of the said goods. These facts to my mind show that the goods were in such a situation as to convey to the minds of those who know their situation the reputation of ownership.

 In Re Coulton, Ex p. Watkins, Lord Selbourne, L.C. discussed at length "reputed owner".

40 "... The doctrine of reputed ownership does require any investigation into the actual state of knowledge or belief, either of all creditors, or of particular creditors, and still less of the outside world, who are no creditors at all, as to the position of the particular goods. It is enough for the doctrine if these goods are in such a situation as to convey to the minds of those who know their situation the reputation of ownership, that reputation arising by the legitimate exercise of reason and judgment on the knowledge of those facts which are capable of being generally known to those who choose to make inquiry on the subject. It is not at

50 all necessary to examine into the degree of

In the
High Court

No. 6
Judgment

actual knowledge which is possessed, but the Court must judge from the situation of the goods what inference as to ownership might be legitimately drawn by those who know the facts"

15th November
1979
(Continued)

In the present case the goods were in the possession of the Emporium at the time when they were seized by the Court. The only legitimate inference that could be drawn from this is that the Emporium is the reputed owner thereof. This being the case the goods fall under the categories of goods listed in section 12 and therefore section 10 does not apply.

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The application is dismissed with costs.

Dated this 15th day of November, 1979.

Sd.
(Annuar bin Dato Zainal Abidin)
Judge.

Solicitors

Mr. Wong Kim Fatt (M/s Allen & Gledhill) for
Applicants.
Mr. Ong Ban Chai (M/s Ong Ban Chai & Razak) for
Respondent.

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No. 7

In the
High Court

ORDER
DATED 15th NOVEMBER 1979

No. 7
Order

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU

15th November
1979

ORIGINATING MOTION NO. 33 of 1979

In the Matter of Section 10(c) of
the Distress Ordinance 1951

And

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In the Matter of Order 52 Rule 1 of
the Rules of the Supreme Court 1957

And

In the Matter of Distress Suit No. 12
of 1979 in the High Court in Malaya
at Johore Bahru

Between

United Orient Leasing
Company Sdn. Bhd

Applicants

And

Perdana Properties Bhd

Respondents

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BEFORE THE HONOURABLE, MR. JUSTICE
ANUAR BIN DATO' ZAINAL ABIDIN, JUDGE,
HIGH COURT, MALAYA, JOHORE BAHRU.

IN OPEN COURT
THIS 15TH DAY OF
NOVEMBER 1979

O R D E R

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Upon the application of the Applicants made by way
of Originating Motion Entered No. 65/79 coming up for
hearing on the 13th day of November 1979 in the presence
of Mr. Wong Kim Fatt of Counsel for the Applicants
and Mr. Ong Ban Chai of Counsel for the Respondents
AND UPON READING the Originating Motion and joint
Affidavit of Tunku Naquiyuddin Ibni Tuanku Jaafar
and Chan Kwok Chor affirmed on the 23rd day of
October 1979, and the exhibits annexed thereto and the
affidavit of Ng Seng Huat affirmed on the 23rd day of
October 1979 and the exhibits annexed thereto and the
affidavit of Liew Kuek Hin affirmed on the 12th day
of October 1979 and filed herein AND UPON HEARING
submissions of Counsel as aforesaid IT IS ORDERED
that this application be adjourned for judgment on
the 15th day of November 1979 AND UPON SAME coming

In the
High Court

No. 7
Order

15th November
1979
(Continued)

up for judgment this day in the presence of Counsel
as aforesaid IT IS ORDERED that the application be
dismissed with costs.

Given under my hand and Seal of the Court this
15th day of November, 1979.

L.S. Sd:
Senior Assistant Registrar,
High Court, Malaya,
Johore Bahru.

In the
Federal Court

No. 8
Notice of
Appeal

15th November
1979

No. 8

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NOTICE OF APPEAL
DATED 15TH NOVEMBER 1979

IN THE FEDERAL COURT OF MALAYSIA
(Appellate Jurisdiction)

CIVIL APPEAL NO. OF 1979

BETWEEN

United Orient Leasing
Company Sdn. Bhd. Appellants

AND

Perdana Properties Bhd. Respondents

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(In the matter of Originating Motion
No. 33 of 1979 in the High Court in
Malaya at Johore Bahru

BETWEEN

United Orient Leasing
Company Sdn. Bhd. Applicants

AND

Perdana Properties Bhd. Respondents)

NOTICE OF APPEAL

TAKE NOTICE that the Appellants being
dissatisfied with the decision of the Honourable
Mr. Justice Anuar given at the Johore Bahru High
Court on the 15th day of November, 1979, appeal

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to the Federal Court against the whole of the said decision.

In the
Federal Court

Dated this 15th day of November, 1979.

Sd: ALLEN & GLEDHILL
M/s Allen & Gledhill
Solicitors for the Appellants.

No. 8
Notice of
Appeal

15th November
1979
(Continued)

FILED AT JOHORE BAHRU THIS
17TH DAY OF NOVEMBER, 1979.

10 Sgd:
Sr. Assistant Registrar,
High Court, Malaya
Johore Bahru.

Deposit of \$500/- lodged this 17.11.79

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

And To: The Senior Assistant Registrar,
High Court, Malaya,
Johore Bahru.

20 And To: Perdana Properties Bhd.
and/or their Solicitors,
M/s Ong Ban Chai & Razak
Foh Chong Building
Johore Bahru.

The address for service for the appellants is
M/s Allen & Gledhill, Rooms 302-303, 3rd Floor,
O.C.B.C. Building, Jalan Ibrahim, Johore Bahru.

In the
Federal Court

No. 9

MEMORANDUM OF APPEAL
DATED 5TH DECEMBER 1979

No. 9
Memorandum
of Appeal

5th December 1979

IN THE FEDERAL COURT OF MALAYSIA
(Appellate Jurisdiction)

CIVIL APPEAL NO. 218 OF 1979

BETWEEN

United Orient Leasing
Company Sdn. Bhd.

Appellants

AND

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Perdana Properties Bhd

Respondents

(In the Matter of Originating Motion
No. 33 of 1979 in the High Court in
Malaya at Johore Bahru

Between

United Orient Leasing
Company Sdn. Bhd.

Applicants

And

Perdana Properties Bhd.

Respondents)

MEMORANDUM OF APPEAL

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United Orient Leasing Company Sdn. Bhd., the
Appellants abovenamed, appeal to the Federal Court
against the whole of the decision of the Honourable
Mr. Justice Anuar bin Dato Zainal Abidin given at
Johore Bahru on the 15th day of November 1979 on the
following grounds :

1. The said decision was wrong in law and
against the weight of evidence.
2. The learned judge ought to have made an
order directing the Respondents to release
the goods of the Appellants wrongfully
attached by the Respondents in the Distress
Suit No. 12 of 1979 to the Appellants
because the Appellants were and are so
entitled in law.
3. Alternatively, the learned Judge ought to
have made such order in the proper exercise
of his discretion.

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- 10 4. The learned Judge erred in law in holding that the goods were in the reputed ownership of Emporium President and Supermarket Sdn. Bhd. (the Emporium) merely because they were in its possession on the 3rd September 1979 when they came under execution by a judgment creditor (not the Respondents) in the Johore Bahru Sessions Court. The learned Judge failed to consider the undisputed fact that this judgment creditor and other judgement creditors had all acknowledged the title of the Appellants to these goods and had all released the goods to the Appellants.
- 20 5. The learned Judge erred in law in failing to consider and give effect to the undisputed fact that the notice of 3rd September 1979 as stated by the learned Judge served on the Emporium on 3rd September 1979 before attachment of the goods by the Respondents on 22nd October 1979, had terminated the lease agreements, and the consent or permission of the Appellants as owners had therefore been withdrawn.
- 30 6. The learned Judge ought to have held that from the undisputed facts the Respondents had wrongfully seized the goods from the possession of the Appellants on 22nd October 1979 after the goods had been delivered to the Appellants by the Bailiff of the Sessions Court, Johore Bahru.
- 40 7. The learned Judge erred in law in holding that the Emporium was the reputed owner of the goods when at all material times the Respondents themselves or their solicitors knew and did not dispute that the goods in fact belonged to the Appellants.
8. The learned Judge erred in law in completely failing to consider and give effect to the undisputed fact that the custom of emporiums and supermarkets to lease such goods by itself would exclude the doctrine of reputed ownership, with the legal consequence that the goods were not liable to attachment or seizure and sale by the Respondents.

Dated this 5th day of December, 1979.

Sd:.....
(Solicitors for the Appellants)

In the
Federal Court

No. 9
Memorandum
of Appeal

5th December
1979
(Continued)

To
The Registrar,
The Federal Court,
Kuala Lumpur.

and to

The Respondents and/or
their solicitors
M/s. Ong Ban Chai & Razak
Johore Bahru.

The address for service of the Appellants is
M/s. Allen & Gledhill, 302 O.C.B.C. Building, Johore
Bahru.

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No. 10
Judgment
2nd April 1980

No. 10
JUDGMENT
DATED 2nd APRIL 1980

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

FEDERAL COURT CIVIL APPEAL NO. 218 OF 1979

Between

United Orient Leasing
Company Sdn. Bhd.

Appellants

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And

Perdana Properties Bhd.

Respondents

(In the Matter of Originating Motion No. 33
of 1979 in the High Court in Malaya at
Johore Bahru

Between

United Orient Leasing
Company Sdn. Bhd.

Applicants

And

Perdana Properties Bhd

Respondents)

Coram: Wan Suleiman, F.J.
Syed Othman, F.J.
Ibrahim Manan, F.J.

JUDGMENT OF THE COURT

On 3rd September, 1979 the Sessions Court at Johor
Bahru levied an execution order against an emporium.
Among the goods and chattels seized were refrigerators,
bakery and coffee house equipments, scales, labelling
machines, kiddie ride machines and cash registers found
on the premises. The appellants claimed that these
equipments belonged to them. On the same day they
gave the emporium notice of assumption of the equipments.

On 4th September, 1979 the respondents took out a warrant of distress in the High Court and distrained the goods already under seizure by the Sessions Court. On application by the appellants, the learned trial Judge, after a hearing on 19th September, 1979 discharged the warrant on the ground, it has been indicated, that no order had been obtained for the issue of warrant of distress and seizure of the equipments was wrongful under s.20(1) of the Distress Ordinance, 1951. On the same day, i.e. 19th September, 1979 the respondents caused the present warrant of distress to be issued against the emporium. The Warrant was served on the Bailiff of the Sessions Court.

In the
Federal Court

No. 10
Judgment

2nd April 1980
(Continued)

On 22nd October, 1979 the Sessions Court after hearing an objection by the appellants against seizure of the equipments ordered that they be released to the appellants. But the High Court on 15th November, 1979 dismissed the appellants' motion for release of the equipments distrained under the present warrant of distress holding in effect that the equipments had been in such situation in the premises of the emporium that the emporium was the reputed owner.

In dealing with this appeal against the above decision, there is little need to discuss the various arguments raised and authorities cited. The case rests mainly on interpretation of the particular facts. It needs only to be determined whether on the evidence the findings of the learned trial Judge can be sustained.

So far as relevant to the present case, section 10 of the Distress Ordinance, 1951 contains power enabling a Judge to release a distrained article seized under a warrant of distress issued to recover rent if the applicant satisfies the Court that the tenant had no right to property in a distrained article. But s.12(1) created exceptions. The exception applicable here is that which relates to goods in the possession of a tenant by the consent and permission of the true owner under such circumstances that such tenant is the reputed owner.

There were two affidavits deposing as to facts.

By an affidavit dated 23rd October, 1979 the appellants' manager said that the equipments belonged to the appellants and were leased to the emporium under lease agreements of 13th April, 1979 and 2nd May 1979; that the appellants by letter on 3rd September, 1979 gave the emporium notice of assumption of immediate possession of the equipments; and that on 26th September, 1979 and 27th September, 1979 the solicitors for the respondents in the warrant of

In the
Federal Court

No. 10
Judgment

2nd April 1980
(Continued)

distress and in this appeal and who also acted for the executing creditors in the Sessions Court wrote to the Registrar, Sessions Court, stating that the equipments belonged to the appellants and asked that they be released to the appellants.

A director of the respondents by an affidavit in reply of 10th November, 1979 said that the respondents had always been under the impression that the equipments in the premises belonged to the emporium, the two lease agreements were in fact agreements of purchase by the appellants of the equipments and then leasing them back to the emporium.

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The learned trial judge's findings which led him to the conclusion that the emporium was the reputed owner read as follows:

"It should be observed that on 3rd September, 1979 the said goods were attached by execution of an Order of the Court. On that date the Emporium was still in possession of the said goods. These facts to my mind show that the goods were in such a situation as to convey to the minds of those who know their situation the reputation of ownership."

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The points to note here are that on 3rd September, 1979 the emporium was in possession of the equipments, when the Sessions Court attached them. It was also found that the appellants gave notice of assumption, which should have been on 3rd September, 1979, and not on 30th September, 1979, having regard to the appellants' affidavit, which was not disputed by the respondents.

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It may be accepted that in the circumstances, the notice of assumption at the time it was given could have been for the purpose of forestalling seizure by the Court. We are also of the view that under ordinary circumstances the fact that the appellants gave notice of assumption of property without taking any positive steps to recover possession did not erase reputed ownership by the emporium at the time. The law appears to be that even if there is a termination of agreement, goods remaining in the possession of the tenant may still be within the reputed ownership of the tenant and liable to distress. But in the present case, there are other circumstances which should have been considered.

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Although as at 3rd September, 1979 the emporium could be considered to be the reputed owner, the Sessions Court took over possession by the execution order, and the effective warrant of distress was

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only taken out on the 19th September, 1979. The material date to determine such possession as to make a tenant the reputed owner of a distrained article is immediately before and at the issue of the warrant of distress. The question which should be considered is whether after the 3rd September, 1979 the emporium continued to be in such possession of the equipments under such circumstances that the emporium was still the reputed owner.

In the
Federal Court

No. 10
Judgment

2nd April 1979
(Continued)

The evidence shows there was a change of circumstances brought about by the following events. On 4th September, 1979 the respondents took out the first warrant of distress and apparently also distrained the equipments already under seizure by the Sessions Court the previous day. On application by the appellants, the learned trial Judge, after a hearing on 19th September, 1979, discharged the warrant on the ground indicated above. On this date when the respondents took out the present warrant of distress, they must have been aware of the full circumstances surrounding the equipments: the appellants had given notice of assumption of the equipments. The appellants were in no position to take steps to assume possession as the equipments were under attachment by the Sessions Court. By the notice it must be taken that the appellants as the true owners of the equipments had withdrawn consent and permission from the emporium being in possession of the equipments and were claiming them. There is nothing to show that the respondents were not aware of this notice even when they took out the warrant of distress on 4th September, 1979. The indications are that the incorrect finding that this notice was given on 30th September, 1979, instead of 3rd September, 1979 must have led the trial Court to conclude that up to 30th September, 1979, well after the present warrant of distress, the emporium still had possession of the equipments, subject to the Sessions Court attachment. Further, what is crucial to the appellants' right is that when the present warrant of distress came up for hearing on 15th November, 1979, the solicitors of the respondents had already on 26th or 27th September, 1979 acknowledged that the equipments belonged to the appellants and requested the Sessions Court to release them to the appellants. The acknowledgment must be taken to relate back to the date of attachment and is a complete admission that the appellants were entitled to the equipments and the emporium had no right to possession. Nowhere in the judgment, did the learned trial Judge advert to this admission.

Appeal allowed. Equipments to be returned to

In the
Federal Court

the appellants. Costs to the appellants.
Deposit to be refunded to appellants.

No. 10
Judgment

Sd: TAN SRI DATO SYED OTHMAN BIN ALI

(SYED OTHMAN BIN ALI)
JUDGE,
FEDERAL COURT, MALAYSIA

2nd April 1980
(Continued)

Kuala Lumpur,
April 2, 1980

Arguments at Kuala Lumpur
on 8th January, 1980

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Counsel:

Encik H.C. Hoffman (Encik Wong Kim Fatt with him)
M/s Allen & Gledhill) for appellants.

Encik Ong Ban Chai
(M/s. Ong Ban Chai & Razak) for respondents.

Salinan yang di-akui benar.

Sd.
Setia-usaha kepada Hakim
Mahkamah Persekutuan
Malaysia
Kuala Lumpur

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No. 11

In the
Federal Court

ORDER

DATED 2ND APRIL 1980

No. 11
Order

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

2nd April 1980

FEDERAL COURT CIVIL APPEAL NO. 218 OF 1979

Between

United Orient Leasing Company
Sdn. Bhd.

Appellants

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And

Perdana Properties Bhd

Respondents

(In the Matter of Originating Motion No. 33
of 1979 in the High Court in Malaya at
Johore Bahru

Between

United Orient Leasing Company
Sdn. Bhd.

Applicants

And

Perdana Properties Bhd.

Respondents)

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CORAM: WAN SULEIMAN, JUDGE, FEDERAL COURT, MALAYSIA;
SYED OTHMAN, JUDGE, FEDERAL COURT, MALAYSIA;
IBRAHIM MANAN, JUDGE, FEDERAL COURT, MALAYSIA.

IN OPEN COURT

THIS 2ND DAY OF APRIL, 1980

O R D E R

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THIS APPEAL coming up for hearing on the 8th day
of January 1980 in the presence of Mr. R.C. Hoffman
and Mr. Wong Kim Fatt of Counsel for the Appellants
abovenamed and Mr. Ong Ban Chai of Counsel for the
Respondents abovenamed AND UPON READING the Record
of Appeal and the Written Submissions herein AND
UPON HEARING the submissions of Counsel as aforesaid
IT WAS ORDERED that this appeal do stand adjourned
for judgment.

AND the same coming on for judgment this day
in the presence of Counsel as aforesaid IT IS ORDERED
that this appeal be and is hereby allowed and that
the judgment and order of the Honourable Court below

In the
Federal Court

No. 11
Order

2nd April 1980
(Continued)

be and is hereby set aside.

AND IT IS ALSO ORDERED that the Respondents do return to the Appellants all the goods and equipment comprised in the two equipment lease agreements dated respectively 13th April 1979 and 2nd May 1979.

AND IT IS FURTHER ORDERED that the Respondents do pay the costs of the Appellants in this appeal and in the High Court at Johore Bahru.

AND IT IS LASTLY ORDERED that the deposit of \$500.00 paid into Court by the Appellants in this appeal as security for costs be refunded to the Appellants.

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AND IT IS LASTLY ORDERED that the deposit of \$500.00 paid into Court by the Appellants in this appeal as security for costs be refunded to the Appellants.

GIVEN under my hand and the seal of the Court this 2nd day of April 1980.

Sd. K.S. TAN

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Senior Assistant Registrar,
Federal Court,
Malaysia
KUALA LUMPUR.

No. 12

In the
Federal Court

NOTICE OF MOTION
DATED 14TH APRIL 1980

No. 12
Notice of
Motion
14th April 1980

IN THE FEDERAL COURT OF MALAYSIA

(Appellate Jurisdiction)

CIVIL APPEAL NO. 218 OF 1979

Between

United Orient Leasing
Company Sdn. Bhd.

Appellants

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And

Perdana Properties Bhd

Respondents

(In the Matter of originating Motion
No. 33 of 1979 in the High Court in
Malaya at Johore Bahru

Between

United Orient Leasing
Company Sdn. Bhd.

Applicants

And

Perdana Properties Bhd.

Respondents)

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NOTICE OF MOTION

TAKE NOTICE that on Monday the 19th day of
May 1980 at 9.30 o'clock in the forenoon or as soon
thereafter as Counsel can be heard by Counsel for
Perdana Properties Bhd., the above-named Respondents
for an Order:-

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- (a) that conditional leave be granted to the
Respondents to appeal to His Majesty the
Yang Di-Pertuan Agong against the decision
of this Honourable Court given on the 2nd
day of April, 1980;
- (b) that the Appellants be refrained from
removing their goods attached by the
Respondents in the Distress Suit No. 12
of 1979 pending the result of appeal to
His Majesty the Yang Di-Pertuan Agong or
until further Order of this Honourable
Court; and
- (c) that the costs of and incidental to this

In the
Federal Court

application be costs in the cause.

Dated this 26th day of April, 1980.

No. 12
Notice of
Motion

Sd.	Sd.
Senior Assistant Registrar,	Solicitors for
Federal Court,	the Respondents
Malaysia, Kuala Lumpur	

14th April 1980
(Continued)

This Notice of Motion is supported by the Affidavit of Liew Kuek Hin affirmed on the 12th day of April, 1980 and filed herein on the 14th day of April, 1980.

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This Notice of Motion is filed by M/s Ong Ban Chai & Razak, Solicitors for the abovenamed Respondents whose address for service is at Suite Nos. 703-707, 7th Floor, Johor Tower, Jalan Greja, Johore Bahru, Johore.

To: The abovenamed Appellants,
and/or their solicitors,
M/s Allen & Gledhill,
Advocates & Solicitors,
O.C.B.C. Building,
Nos. 302-303 (3rd Floor),
1, Jalan Ibrahim,
Johore Bahru.

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Filed this 14th day of April, 1980

Sd: K.S. Tan
Senior Assistant Registrar,
Federal Court, Malaysia
Kuala Lumpur.

No. 13

In the
Federal Court

AFFIDAVIT OF LIEW KUEK HIN
AFFIRMED ON 12TH APRIL, 1980

No. 13

IN THE FEDERAL COURT OF MALAYSIA
(Appellate Jurisdiction)

Affidavit of
Liew Kuek Hin
affirmed
12th April 1980

CIVIL APPEAL NO. 218 OF 1979

Between

United Orient Leasing
Company Sdn. Bhd.

Appellants

10

And

Perdana Properties Bhd

Respondents

(In the Matter of Originating Motion
No. 33 of 1979 in the High Court in
Malaya at Johore Bahru

Between

United Orient Leasing
Company Sdn. Bhd.

Applicants

And

Perdana Properties Bhd

Respondents)

20

A F F I D A V I T

I, LIEW KUEK HIN (NRIC NO. 0003103) of 6th Floor,
Johor Tower, Jalan Greja, Johore Bahru do solemnly
and sincerely affirm and say as follows:-

1. I am a director of Perdana Properties Berhad,
the Respondents herein.

2. I have full knowledge of this matter and am
authorised to make this Affidavit.

30

3. On the 2nd day of April, 1980 this Honourable
Court delivered judgment allowing the Appellants'
appeal against the decision of the Honourable
Mr. Justice Annuar bin Dato' Zainal Abidin given at
the Johore Bahru High Court on 15th November, 1979.

4. I am desirous of appealing to His Majesty the
Yang Di-Pertuan Agong against the judgment of this
Honourable Court delivered on the 2nd day of April,
1980.

In the
Federal Court

No. 13
Affidavit of
Liew Kuek Hin
affirmed
12th April 1980
(Continued)

5. The matter in dispute in respect of this appeal exceeds \$500,000.00.

6. I am advised by my Solicitors that the case is a fit one for appeal and that my company has good grounds of appeal. I am advised by my Solicitors that the seizure of goods and chattels of the Applicants seized by the Bailiff under Johore Bahru High Court Distress Suit No. 12 of 1979 at the premises of Emporium President and Supermarket Sdn. Bhd., in Johor Tower, Johore Bahru was proper and lawful.

10

7. I am also advised that this case is a fit and proper one for appeal as it involves the question of construction and legal effect of provisions of the Distress Ordinance, 1951.

8. The issue of this appeal was and is whether the Respondents have the right to levy distress against the properties and machineries of the Appellants in respect of arrears of rent owing by the Emporium President and Supermarket Sdn. Bhd. to the Respondents Perdana Properties Bhd.

20

9. The Respondents are willing to undertake as a condition for leave to appeal to enter into good and sufficient security to the satisfaction of this Court in such sum as this Honourable Court may duly prescribe and to conform to any other conditions that may be duly imposed.

10. I humbly pray that this Honourable Court will grant me leave to appeal to His Majesty the Yang Di-Pertuan Agong.

30

Affirmed by the abovenamed
LIEW KUEK HIN at Johore Bahru } Sd:
this 12th day of April, 1980 } LIEW KUEK HIN
at 12.15 pm.

Before me,

Sd.

CHIN KON SING PIS, PPN.

PESUROHJAYA SUMPAH

(COMMISSIONER FOR OATHS)

JOHOR BAHRU.

40

This Affidavit is filed by M/s. Ong Ban Chai & Razak, Solicitors for the Respondents whose address for service is at Suite Nos. 703-707, 7th Floor, Johor Tower, Jalan Greja, Johore Bahru, Johore.

No. 14

AFFIDAVIT OF TUNKU NAQUIYUDDIN
IBNI TUANKU JAAFAR AFFIRMED ON
7TH MAY 1980

In the
Federal Court

No. 14
Affidavit of
Tunku
Naquiyuddin
Ibni Tuanku
Jaafar
affirmed
7th May 1980

IN THE FEDERAL COURT OF MALAYSIA
(Appellate Jurisdiction)

CIVIL APPEAL NO. 218 OF 1979

Between

10 United Orient Leasing
Company Sdn. Bhd. Appellants

And

Perdana Properties Bhd Respondents

(In the Matter of Originating Motion No. 33
of 1979 in the High Court in Malaya at
Johore Bahru

Between

United Orient Leasing
Company Sdn. Bhd. Applicants

And

20 Perdana Properties Bhd. Respondents)

A F F I D A V I T

I, Tunku Naquiyuddin Ibni Tuanku Jaafar,
(i/c No. 5209974) company director, of No. 39 Jalan
Batai, Damansara Heights, Kuala Lumpur, do hereby
truly affirm and state as follows:-

30 1. I am a director of the Appellants herein
United Orient Leasing Company Sdn. Bhd., a company
incorporated in Malaysia and having its registered
office at 2nd Floor, Bangunan Dato Zainal, No. 23,
Jalan Melaka, Kuala Lumpur. I am duly authorised
to make this affidavit on behalf of the Appellants.

2. I crave leave to refer to the Respondents'
application for conditional leave and the affidavit
of Mr. Liew Kuek Hin affirmed on 12th April, 1980
in support thereof.

3. Under paragraph 5 of the affidavit, the
Respondents have admitted the value of the goods of
the Appellants to be in excess of \$500,000.00.

In the
Federal Court

No. 14
Affidavit of
Tunku
Naquiyuddin
Ibni Tuanku
Jaafar
affirmed
7th May 1980
(Continued)

4. The value of our goods as per the two lease agreements, less rents received, is \$538,989.00 as follows:-

Agreement of 13.4.79	...	\$216,870.00
Agreement of 2.5.79	...	<u>\$371,850.00</u>
		\$588,720.00

Less rents received (April-July 79) for Agreement of 13.4.79; 4 x \$5,439		<u>\$ 21,756.00</u>	10
		\$566,964.00	

Less rents received (May-July 79) for Agreement of 2.5.79; 3 x \$9,325		<u>\$ 27,975.00</u>	
		<u>\$538,989.00</u>	

5. I verily believe that our goods under the 2 lease agreements were wrongfully sold at the instance of the Respondents. The auction sale took place in Johore Bahru on 6th December, 1979, resulting in a total loss of \$538,989.00 to the Appellants, besides legal costs and disbursements, expenses and other losses. By letter dated 15th November, 1979, our solicitors, M/s. Allen & Gledhill, warned the Respondents through their solicitors M/s. Ong Ban Chai & Razak that the Respondents sell the goods at their own risk. 20

6. Owing to the wrongful seizure and sale of our said goods, the Appellants have to date incurred legal costs and disbursements in the sum of \$33,000.00 in respect of the High Court proceedings and \$20,246.00 in respect of the Federal Court proceedings, totalling \$53,246.00. 30

7. The losses suffered by the Appellants to date are at least in the sum of \$592,235.00

8. I therefore humbly pray that this Honourable Court will be pleased to, in addition to the usual conditions, impose a condition that the Respondents do pay into Court the said sum of \$592,235.00 which shall be paid over to the Appellants in the event of the Respondents not proceeding with the appeal or of the appeal being dismissed by His Majesty the Yang di-Pertuan Agong. 40

Affirmed by the abovenamed)
Tunku Naquiyuddin Ibni
Tuanku Jaafar at Kuala
Lumpur this 7th day of May
1980 at 3.00 pm

Sd: TUNKU NAQUIYUDDIN
IBNI TUANKU JAAFAR

In the
Federal Court

No. 14
Affidavit of
Tunku
Naquiyuddin
Ibni Tuanku
Jaafar

7th May 1980

Before me,

Sd: ZAIN AZAHARI BIN ZAINAL ABIDIN
Pesurohjaya Sumpah
Kuala Lumpur.

10

This affidavit is filed on behalf of the
Appellants by their solicitors, M/s. Allen &
Gledhill, whose address for service is 302, O.C.B.C.
Building, Johore Bahru.

No. 15

ORDER
DATED 19TH MAY 1980

IN THE FEDERAL COURT OF MALAYSIA HOLDEN
AT KUALA LUMPUR

(Appellate Jurisdiction)

CIVIL APPEAL NO. 218 OF 1979

20

Between

United Orient Leasing
Company Sdn. Bhd.

Appellants

And

Perdana Properties Bhd.

Respondents

(In the Matter of Originating Motion
No. 33 of 1979 in the High Court in
Malaya at Johore Bahru

Between

30

United Orient Leasing
Company Sdn. Bhd.

Applicants

And

Perdana Properties Bhd.

Respondents)

In the
Federal Court

No. 15
Order granting
conditional
leave to
appeal

19th May 1980
(Continued)

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

IN OPEN COURT

THIS 19TH DAY OF MAY, 1980

O R D E R

UPON MOTION made unto the Court this day by
Mr. G.S. Nijar of Counsel for the Respondents
abovenamed in the presence of Mr. Wong Kim Fatt of
Counsel for the Appellants abovenamed AND UPON READING
the Notice of Motion dated the 26th April, 1980 and
the Affidavit of Liew Kuek Hin affirmed on the 12th
April, 1980 and the Affidavit of Tunku Naquiyuddin
Ibni Tuanku Jaafar affirmed on the 7th day of May,
1980 all filed herein AND UPON HEARING Counsel
as aforesaid IT IS ORDERED that leave be and is
hereby granted to the Respondent abovenamed to appeal
to His Majesty the Yang Di-Pertuan Agong from the
Order of the Federal Court dated the 2nd day of
April, 1980 upon the following conditions:-

- (a) that the abovenamed Respondent do within
three (3) months of the date hereof enter
into a good and sufficient security to the
satisfaction of the Chief Registrar of the
Federal Court in the sum of M\$5,000.00
(Ringgit Five Thousand only) for the due
prosecution of the Appeal and the payment
of all such costs as may become payable
to the above Appellant in the event of the
abovenamed Respondent not obtaining an
Order granting final leave to appeal or
of the Appeal being dismissed for non-
prosecution or of His Majesty the Yang
Di-Pertuan Agong ordering the abovenamed
Appellant costs of the Appeal as the case
may be; and
- (b) that the abovenamed Respondent do within
the said period of three (3) months from
the date hereof take the necessary steps
for the purpose of procuring the preparation
of the Record and despatch thereof to
England AND IT IS LASTLY ORDERED that the
costs of this Motion be costs in the cause.

GIVEN under my hand and the Seal of the Court,
this 19th day of May, 1980.

Sd. K.S. TAN
Senior Assistant Registrar,
Federal Court, Malaysia, Kuala Lumpur.

This Order is filed on behalf of the Respondent
by their Solicitors Messrs. Ong Ban Chai & Razak, of
Suite Nos. 703-707, 7th Floor, Johor Tower, Jalan Greja,
Johore Bahru, Johore.

No. 16

In the
Federal Court

ORDER GRANTING FINAL LEAVE TO APPEAL
DATED 4TH AUGUST 1980

No. 16
Order granting
final leave
to appeal

4th August 1980

IN THE FEDERAL COURT OF MALAYSIA HOLDEN
AT KUALA LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. 218 OF 1979

Between

10 United Orient Leasing
Company Sdn. Bhd. Appellants

And

Perdana Properties Bhd. Respondents

(In the Matter of Originating Motion
No. 33 of 1979 in the High Court in
Malaya at Johore Bahru

Between

United Orient Leasing
Company Sdn. Bhd. Applicants

And

20 Perdana Properties Bhd. Respondents)

CORAM: LEE HUN HOE, CHIEF JUSTICE, HIGH COURT, BORNEO;
CHANG MIN TAT, JUDGE, FEDERAL COURT, MALAYSIA;
SALLEH ABAS, JUDGE, FEDERAL COURT, MALAYSIA.

IN OPEN COURT

THIS 4TH DAY OF AUGUST, 1980

O R D E R

30 UPON MOTION made unto the Court this day by
Encik Abdul Razak Ahmad of Counsel for the Respondents
above-named in the presence of Mr. Wong Kim Fatt of
Counsel for the Appellants above-named AND UPON
READING the Notice of Motion dated the 8th day of
July, 1980 and the Affidavit of Ong Ban Chai affirmed
on the 7th day of July, 1980 and filed herein on the
8th day of July, 1980 AND UPON HEARING Counsel as
aforesaid IT IS ORDERED that final leave be and is
hereby granted to the Respondents to appeal to His
Majesty the Yang di-Pertuan Agong against the
decision of this Honourable Court given on the 2nd
day of April, 1980 and IT IS LASTLY ORDERED that

In the
Federal Court

No. 16
Order granting
final leave
to appeal

4th August 1980
(Continued)

the costs of and incidental to this application be
costs in the cause.

GIVEN under my hand and the Seal of the Court,
this 4th day of August, 1980.

L.S. Sd: K.S. TAN
Senior Assistant Registrar,
Federal Court, Malaysia,
Kuala Lumpur.

This Order is filed on behalf of the Respondents
by their Solicitors, Messrs. Ong Ban Chai & Razak,
of Suite Nos. 703-707, 7th Floor, Johor Tower, Jalan
Greja, Johore Bahru, Johore.

10

In the
High Court

No. 17
Notes of
Evidence in
Distress suit
No. 9 of 1979

No. 17

NOTES OF EVIDENCE IN DISTRESS SUIT NO. 9
OF 1979 DATED 19th DAY OF SEPTEMBER 1980

19th September
1979

IN THE HIGH COURT IN MALAYA AT JOHOR BAHRU

DISTRESS SUIT NO. 9/1979

Between

Perdana Properties Bhd.

Plaintiffs

And

20

Emporium President &
Supermarket Sdn. Bhd.

Defendants

Notes of Evidence

Before me in Open Court,

This 19th day of September 1979

Sgd. Anuar
Judge, Malaya

Distress Suit No. 9/79
Mr. Parjit Singh for the Defendants (Emporium)
Mr. Ong Ban Chai for the Perdana Properties
Mr. Wong Kim Fatt for United Oriental Leasing
Mr. Arthur Lee for Bata

30

Intd. A.

Mr. Parjit - Illegality of Warrant of Distress.

- Landlord claims from September 1978

to July 1979 rental, maintenance and water charges,
and rubbish clearing and miscellaneous.

In the
High Court

Distress not altogether of rent but more
than rent.

No. 17
Notes of
evidence
in Distress
Suit No. 9
of 1979

Halsbury 12 at 91 - rent for which distress
may be made.

2. Distress ab initium wrong - there has
been execution by Lower Court on 3rd September
1979 - Distress was only executed on 4th September.

19th September
1979
(Continued)

10 R.S.C. 046(a) and (2). property attached -
shall not thereafter be seized.

Section 20 Distress Ordinance 1951 property
seizable under Distress already under seizure.

Halsbury Vol. 12, 102 paragraph 155 - goods in
custody of law, immune from distress.

Section 8(f) goods in the custody of the law.

20 Agreement between Landlord and tenant provide
for notice to be given 3 months to remedy breach
before any action could be taken. In present case
no notice was given.

P.W.1 Mohd. Arif bin Sulaiman affirmed states in
Malay.

Bailiff, Sessions Court, Johor Bahru.

On 3.9.79 I executed an order for execution
issued by the Magistrate Court, J.B. I executed to
the Emporium President and Supermarket Sdn Bhd vide
C.S. No. 431/79.

30 I attached the properties found on the premises
at the 1st floor, 2nd floor and 3rd floor and ground
floor. I attached on the properties found on the
premises without exception.

On that day I executed 6 execution orders.

Intd. A.

Cross-examination by Ong Ban Chai

No question.

Intd. A.

Ong Ban Chai replies to Parjit

Rent - meaning not found in Distress Ordinance
Civil Law Act section 3.

In the
High Court

(English law) Landlord & Tenant (Requisitioned
Land) Act 1942, section 2 and section 13
interpretation of "rent".

No. 17
Notes of
evidence
in Distress
Suit No. 9
of 1979

Ronson v. Photi (1940)2 All E.R. 538 rent is
actual contractual rent.

Section 20 Distress Ordinance R.S.C. Order
46 (a) rule 2.

19th September
1979
(Continued)

Halsbury vol. 16, 55 seizure - when constitute
to valid seizure.

The High Court Distress is not illegal.

10

Intd. A.

Parjit

Rent - actual contractual charges.

Nothing in agreement about charges. Tender
agreement Exb. P1.

Intd. A.

Wong Kim Fatt

Halsbury 12 page 15 illegal distress - if
includes other sums which are not rent.

Warrant of Distress - on face of it - illegal
included "other charges".

20

Woodfall 27th vol. 1 362 Landlord and Tenant
Goods in custody cannot be taken under distress.

Halsbury vol. 12 131. Seizure para 232 actual
or contractive.

As at 3.9.79 goods were in custody of Bailiff
therefore under custody of court.

Arthur Lee. Sec 5 Distress Ordinance there must be
application ex parte for an order of distress.

Intd. A.

30

COURT:

Application O.I.T.

Warrant of Distress is discharged with costs.

Intd. A.

Certified true copy
Sd: Illegible 23.12.79

AFFIDAVIT OF ONG BAN CHAI
IN DISTRESS SUIT NO. 12 OF
1979 DATED 22ND OCTOBER 1979

No. 18
Affidavit of
Ong Ban Chai
in Distress
Suit No. 12
of 1979
affirmed
22nd October
1979

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU
ORIGINATING MOTION NO. 31 OF 1979

(Re: High Court Johore Bahru
Distress Suit No. 12 of 1979)

10

In the Matter of Order 46A of the
Rules of the Supreme Court, 1957

BETWEEN

Perdana Properties
Berhad APPLICANT

AND

20

Emporium President &
Supermarket Sdn. Bhd.
of Ground, First, Second
and Third Floor,
Johor Tower, Johore Bahru
RESPONDENT

A F F I D A V I T

I, ONG BAN CHAI, Advocate and Solicitor of the
High Court in Malaya practising at 4th Floor, Foh
Chong Building, Jalan Ibrahim, Johore Bahru, Johore,
do solemnly and sincerely affirm and say as follows:-

30

1. I am the Solicitor on record for the above-
named Applicant.

2. I have full knowledge of this matter and am
authorised to make this Affidavit.

3. I say that the objection proceedings filed in
the Subordinate Courts by the owners of the goods
attached at the premises of the Respondent have
already been dealt with and none of the objection
proceedings was resisted or contested by any of the
Judgment execution creditors; as such all goods
belonging to the third parties as objectors/claimants
were released accordingly on 22nd October, 1979.
The Bailiff of the High Court has on the same day
attached all those goods so released.

40

4. I verily believe that there is no other

In the
High Court

No. 18
Affidavit of
Ong Ban Chai
in Distress
Suit No. 12
of 1979
affirmed
22nd October
1979
(Continued)

proceedings filed regarding this Distress Suit and
as such, I humbly pray for an Order in terms of the
Motion filed herein.

Affirmed by the abovenamed)
ONG BAN CHAI at Johore Bahru } Sd: ONG BAN CHAI
this 22nd day of October, }
1979 at 3.30 pm. }

Before me,

Sd: K. MUNJEET SINGH
Peruruhjaya Sumpah
Mahkamah Tinggi
Johor Bahru.

10

This Affidavit is filed by Ong Ban Chai &
Razak, Solicitors for the abovenamed Applicant whose
address for service is c/o 4th Floor, Foh Chong
Building, Jalan Ibrahim, Johore Bahru, Johore.

IN THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL

No. 35 of 1980

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA

(Appellate Jurisdiction)

B E T W E E N :

PERDANA PROPERTIES Bhd

Appellants
(Respondents)

- and -

UNITED ORIENT LEASING COMPANY Sdn. Bhd.

Respondents
(Applicants)

RECORD OF PROCEEDINGS

Nabarro Nathanson
76 Jermyn Street
London SW1Y 6NR

Solicitors for the
Appellants

Coward Chance
Royex House
Aldermanbury Square
London EC2V 7LD

Solicitors for the
Respondents