

94/79

IN THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL

No. 24 of 1977

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA HOLDEN AT
KUALA LUMPUR

IN THE MATTER of the ADVOCATES AND SOLICITORS ORDINANCE 1947

- and -

IN THE MATTER of CHOE KUAN HIM, gentleman, one of the
Advocates and Solicitors of the High Court

B E T W E E N :

T. DAMODARAN S/O P.V. RAMAN

Appellant
(Applicant)

- and -

CHOE KUAN HIM

Respondent
(Respondent)

RECORD OF PROCEEDINGS

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Solicitors for the Appellant

Solicitors for the Respondent

(i)

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INDEX OF REFERENCE

No.	Description of Document	Date	Page
	<u>IN THE HIGH COURT</u> <u>IN MALAYA</u>		
1.	Originating Summons	30th July 1974	1
2.	Affidavit of T. Damodaran	23rd July 1974	3
3.	Affidavit of Choe Kuan Hin	2nd October 1974	6
4.	Affidavit of Choe Kuan Hin	5th March 1975	8

(ii)

No.	Description of Document	Date	Page
5.	Judgment	14th July 1975	11
6.	Order	14th July 1975	16
	<u>IN THE FEDERAL COURT OF MALAYSIA</u>		
7.	Memorandum of Appeal	18th September 1975	18
8.	Notice of Appeal	11th August 1975	19
9.	Memorandum of Cross Appeal	16th September 1975	21
10.	Judgment of Suffian L.P.	20th August 1976	22
11.	Judgment of Suleiman F.J.	20th August 1976	29
12.	Judgment of Ali F.J.	20th August 1976	30
13.	Order of Federal Courts	20th August 1976	34
14.	Order Granting Conditional Leave to Appeal	15th November 1976	36
15.	Order Granting Final Leave to Appeal	4th April 1977	37

E X H I B I T S

Exhibit Mark	Description of Document	Date	Page
D.1.	Undertaking of Choe Kuan Him	6th March 1974	44
D.2.	Cheque of Choe Kuan Him to T. Damodaran \$182,200.00	23rd April 1974	45
D.3.	Returned cheque advice, United Malayan Banking Corpn to Damodaran s/o P.V. Raman	30th April 1974	46

(iii)

Exhibit Mark	Description of Document	Date	Page
D.4.	Letter, Skrine & Co. to Syarikat Choe	30th April 1974	47
D.5.	Letter, Syarikat Choe to Skrine & Co.	4th May 1974	48
D.6.	Letter, Skrine & Co. to Syarikat Choe	7th May 1974	50
D.7.	Letter, Syarikat Choe to T. Damodaran	8th May 1974	51
C.6.	Agreement, T. Damodaran s/o P.V. Raman and Andawan s/o Ayapen	3rd August 1973	39
C.7.	Assignment, Andawan s/o Ayapen to United Realty Sendirian Berhad	6th March 1974	42
C.8.	Pleadings, Civil Suit No. 256 of 1973	(various)	53

DOCUMENTS TRANSMITTED TO
PRIVY COUNCIL BUT NOT
REPRODUCED

Description of Document	Date
Notes of Argument and Evidence by Syed Agil Barakbah J.	Various
Written Submission on behalf of Appellant	9th March 1975
Written Submissions on behalf of Respondent	9th March 1975
Copy Abstract of Title S.P. 16830	16th December 1974
Copy Abstract of Title S.P. 16831	16th December 1974
Copy Abstract of Title S.P. 16832	16th December 1974

Description of Document	Date
Copy Abstract of Title S.P. 16833	16th December 1974
Copy Abstract of Title S.P. 31020	16th December 1974

IN THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL

No. 24 of 1977

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA
HOLDEN AT KUALA LUMPUR

IN THE MATTER of the ADVOCATES AND SOLICITORS
ORDINANCE 1947

- and -

10 IN THE MATTER of CHOE KUAN HIM, gentleman, one
of the Advocates and Solicitors of the High Court

B E T W E E N :

T. DAMODARAN S/O P.V. RAMAN Appellant
(Applicant)

- and -

CHOE KUAN HIM Respondent
(Respondent)

RECORD OF PROCEEDINGS

No. 1

IN THE HIGH COURT
IN MALAYA

20

ORIGINATING SUMMONS

IN THE HIGH COURT IN MALAYA AT ALOR STAR

ORIGINATING SUMMONS NO. 677 OF 1974

No. 1
Originating Summons
30th July 1974

In the matter of the Advocates and
Solicitors Ordinance, 1947

And

In the matter of Choe Kuan Hin,
gentleman, one of the Advocates
and Solicitors of the High Court

IN THE HIGH COURT
IN MALAYA

Between

T. Damodaran s/o P.V. Raman Applicant

No. 1

And

Originating Summons
30th July 1974
continued

Choe Kuan Hin Respondent

ORIGINATING SUMMONS

LET Choe Kuan Hin of Syarikat Choe of No. 1A, Tingkat Satu 1561, Jalan Kota, Alor Setar, Kedah, attend the Judge in Chambers, on Saturday the 5th day of October, 1974 at 9.00 o'clock in the forenoon at the State of Kedah on the hearing of an application by T. Damodaran s/o P.V. Raman for an Order that the said Choe Kuan Hin do forthwith pay to the said T. Damodaran s/o P.V. Raman the sum of \$182,200/- pursuant to his written personal undertaking contained in a letter dated March 6, 1974, written by the said Choe Kuan Hin with interest thereon at the rate of 12% per annum from the 16th day of April 1974 to date of payment and that the said Choe Kuan Hin do pay to the said T. Damodaran s/o P.V. Raman the costs of and occasioned by this application to be taxed.

10

20

Dated this 30th day of July, 1974.

Sd. Illegible

(L.S.) Assistant Registrar,
High Court,
Alor Star.

30

This Summons was taken out by Messrs. Skrine & Co., Straits Trading Building, 4 Leboh Pasar Besar, Kuala Lumpur, Solicitors for the Applicant abovenamed.

This Summons will be supported by the Affidavit of T. Damodaran s/o P.V. Raman affirmed on the 23rd day of July 1974 and filed herein.

To :-

Mr. Choe Kuan Hin,
Syarikat Choe,
No. 1A, Tingkat Satu
1561, Jalan Kota,
Alor Setar,
Kedah.

40

NOTE:

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

IN THE HIGH COURT
IN MALAYA

No. 1

Originating Summons
30th July 1974
continued

10

No. 2

AFFIDAVIT OF T. DAMODARAN
S/O P.V. RAMAN

IN THE HIGH COURT
IN MALAYA

No. 2

Affidavit of T.
Damodaran P.V.
Raman
23rd July 1974

A F F I D A V I T

I, T. Damodaran s/o P.V. Raman also known as Damodaran s/o P.V. Raman of full age and residing at No. 4211, Sungei Nyor Road, Butterworth, Province Wellesley, do hereby affirm and say as follows :-

20

1. I am the Applicant in this Originating Summons.

2. I was at the material time the registered owner of all those pieces of land held under Grant Nos. 31020, 16830, 16831, 16832 and 16833 for Lots Nos. 1003, 141, 142, 143 and 144 respectively, in the Mukim of Sungei Pasir, District of Kuala Muda, State of Kedah (hereinafter referred to as "the said lands").

30

3. By an assignment dated March 6, 1974, the Sale Agreement made between myself and one Andaran s/o Ayapen in respect of the said lands, was assigned by the latter to Syarikat Alor Merah Sdn. Bhd. (hereinafter called "the Purchaser").

4. In the course of this transaction I received a written undertaking from the Respondent who is the Solicitor for the Purchaser and dated March, 6, 1974.

40

The written undertaking stated that the balance of the purchase price, namely, \$332,792/- had been deposited with the Respondent's firm and that this would be released to me upon the transfer of the said lands being duly registered in the name of

IN THE HIGH COURT
IN MALAYA

No. 2

Affidavit of T.
Damodaran P.V.
Raman
23rd July 1974
continued

the Purchaser.

The written undertaking is annexed hereto and marked "D.1". (1)

5. The transfer was registered on the 16th day of April, 1974. The Respondent made payment of the sum of \$150,000/- out of the balance of the purchase price of \$332,792/- to the Chargor of the said lands and a sum of \$182,200/- was paid to me by the Respondent under cheque No. ASB 038801 drawn on the United Malayan Banking Corporation Berhad, being part payment of the balance of the purchase price due to me. The said cheque given me was stopped payment by the Respondent.

10

Annexed hereto and marked "D.2" (2) and "D.3" (3) are the said cheque and the Bank's advice slip.

6. I then instructed my Solicitors Messrs. Skrine & Co., Straits Trading Building, 4 Leboh Pasar Besar, Kuala Lumpur, to write a letter to the Respondent's firm which they did on April 30, 1974.

20

A copy of the letter is annexed hereto and marked "D.4". (4)

7. The Respondent's firm replied to my Solicitors on May 4, 1974. The Respondent in his letter brought in the consideration of the lis pendens.

A copy of the letter is annexed hereto and marked "D.5". (5)

8. On May 7, 1974, my Solicitors wrote to the Respondent's firm pointing out that the written undertaking given was without any condition or limitation and that the Respondent was in breach of his professional undertaking.

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A copy of the letter is annexed hereto and marked "D.6". (6)

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- (1) Exhibit "D.1" see page 53
 - (2) Exhibit "D.2" see page 54
 - (3) Exhibit "D.3" see page 55
 - (4) Exhibit "D.4" see page 56
 - (5) Exhibit "D.5" see page 58
 - (6) Exhibit "D.6" see page 59

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9. The Respondent's firm on May 8, 1974 wrote to me instead of my Solicitors, informing that his client would be withholding payment of the balance of the purchase price and hold me responsible for all losses expenses and costs sustained and incurred by the Respondent's client.

IN THE HIGH COURT
IN MALAYA

No. 2

Affidavit of T.
Damodaran P.V.
Raman
23rd July 1974
continued

A copy of the letter is annexed hereto and marked "D.7".(7)

10

10. On May 22, 1974, my Solicitors wrote to the Respondent's firm stating that the undertaking given by the Respondent was in clear terms.

11. To date the Respondent has not made payment of the balance of the purchase price to me or my Solicitors.

20

12. I am advised and verily believe that the written undertaking given by the Respondent is clear and that the Respondent is in breach thereof by refusing to honour it. Further, although the Respondent was holding the balance of the purchase price as stakeholders, the last paragraph of his letter dated May 4, 1974, and annexed hereto as exhibit "D.5", shows that he was accepting instructions from his client, the Purchaser, not to make the payment.

30

13. In the premises, I humbly pray that the Honourable High Court do exercise its jurisdiction to enforce the written undertaking given by an Advocate and Solicitor of the High Court in Malaya and make an Order that the Respondent do forthwith pay to the Applicant the sum of \$182,200/- pursuant to his written personal undertaking contained in a letter dated March 6, 1974 written by the Respondent with interest thereon at the rate of 12% per annum from the 16th day of April, 1974 to date of payment and that the Respondent do pay the said Applicant the costs of and

40

(7) Exhibit "D.7" see page 61

IN THE HIGH COURT
IN MALAYA

No. 2

Affidavit of T.
Damodaran P.V.
Raman
23rd July 1974
continued

and occasioned by this application to be taxed.

AFFIRMED at Alor Star)
this 23rd day of July,) Sd: T. Damodaran s/o P.V.
1974 at 11.00 a.m.) Raman
I/C 4095551

Before me,

Sd: Ahmad bin Abdul Rahman

Commissioner for Oaths

10

This Affidavit was filed by Messrs. Skrine & Co., Straits Trading Building, 4 Leboh Pasar Besar, Kuala Lumpur, Solicitors for the Applicant abovenamed.

IN THE HIGH COURT
IN MALAYA

No. 3.

AFFIDAVIT OF CHOE KUAN
HIN

No. 3

Affidavit of
Choe Kuan Hin
2nd October 1974

A F F I D A V I T

I, CHOE KUAN HIN of full age (holder of N.R. I.C. No. 3843999) of No. 1-A Tingkat Satu 1561, Jalan Kota, Alor Star, Kedah do solemnly and sincerely affirm and say as follows :-

1. I am the Respondent abovenamed. I am an Advocate and Solicitor, practising in the name of Syarikat Choe at Alor Star.

2. I have read the copy of the Affidavit of the Applicant abovenamed dated the 23rd day of July, 1974 filed herein.

3. I have been and am still acting as Solicitor for United Realty Sendirian Berhad (hereinafter called the Company) the purchasers of the several lands referred in paragraph 2 of the Applicant's affidavit.

4. As to the averments in paragraph 2 of the said Affidavit I say that the Applicant represented to the Managing Director of the Company and myself that he was the beneficial owner of the said lands free from incumbrances and that he had a right to sell the said lands.

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10 5. It has now come to the notice of myself and the Company's directors that the said lands are encumbered in that one V.R. Vasudevan claims that the Applicant holds one half undivided share in the said lands in trust for him. The said V.R. Vasudevan has filed a Suit in the High Court at Alor Star being Civil Suit No. 256 of 1973 against the Applicant claiming specific performances of the trust and transfer of half undivided share in the said lands to himself.

20 6. In the said Suit, this Honourable Court made an Order dated the 20th day of December, 1973 for the registration of a lis-pendens in the Register of Title to the said lands. I shall at the hearing of this application crave leave to refer to the proceedings and the orders made therein. Up-to-now the Applicant has not yet filed his defence to the Claim.

7. The Applicant did not at any time disclose to me or to the directors of the Company that the said V.R. Vasudevan had made a claim to a half share in the said property. I was also not fully informed of the proceedings taken by the said V.R. Vasudevan since 30th December, 1973 and also of the said lis-pendens Order.

30 8. I say that the Applicant's affidavit does not set out all the material facts relating to the acquisition of the said lands by the Applicant.

40 9. On a search being made in the Register of Titles I discovered that on or about the 20th day of April, 1974 a lis-pendens order was duly registered against the titles to the said land. The Applicant had earlier on or about the 20th day of March, 1974 made an application to this Honourable Court to set aside the lis pendens order but the said application was dismissed. The Applicant has now lodged an appeal to the Federal Court against the dismissal of his application and the Appeal has not yet been heard.

10. On the instructions of the Managing Director of Company, I stopped payment of the said cheque for \$182,200/-. This was done to

IN THE HIGH COURT
IN MALAYA

No. 3

Affidavit of
Choe Kuan Hin
2nd October 1974
continued

protect the Purchaser's interest in the said lands until such time when the Applicant is able to give an unincumbered title to the said land.

11. I admit paragraphs 3 and 4 of the said Affidavit. I say that the undertaking was given and the cheque sent to the Applicant on the assurance of the Applicant that the lis-pendens order will be discharged and the title perfected. Since the Applicant has not yet adduced a good title to the said land free from encumbrances, the balance of the purchase price is not yet due to the Applicant.

10

12. As to paragraph 12 of the said Affidavit, I say that I acted for both the Applicant and the Respondent in respect of the Sale and transfer of the said lands, and the said sum of \$182,200/- is held by me a stakeholder until all encumbrances on the said lands are removed and the Company is vested with the legal title to the said lands.

Affirmed by the said)
CHOE KUAN HIN at) Sd. Choe Kuan Hin
Alor Star this 2nd)
day of October, 1974)
at 10-20 a.m./p.m.)

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Before me,

Sd. M.A.K. Cassim

Commissioner of Oaths

IN THE HIGH COURT
IN MALAYA

No. 4

FURTHER AFFIDAVIT OF
CHOE KUAN HIM

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No. 4

Further Affidavit
of Choe Kuan Him
5th March 1975

A F F I D A V I T

I, Choe Kuan Him of full age (holder of N.R. I.C. No. 3843999) of No. 1-A Tingkat Satu 1561, Jalan Kota, Alor Star, Kedah do hereby solemnly and sincerely affirm and say as follows :-

1. I am the Respondent abovenamed. I crave leave to refer to my affidavit dated the 2nd day of October, 1974 and filed herein and to the Affidavit of the Applicant dated the 23rd day of July, 1974 filed herein.

40

2. I have since applied for and obtained certified abstracts of title to Surat Putus No. 16830, 16831, 16832, 16833 and 31020 for Lots 141, 142, 143, 144 and 1003 in the Mukim of Sungei Pasir in District of Kuala Muda, Kedah from the Collector of Land Revenue, Kuala Muda, Kedah. I produce photostat copies of the said abstracts of title now shown to me marked Exhibits "C-1, 2, 3, 4 and 5" (1) respectively.

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3. From the said abstracts, it appears that the Lis Pendens Order of this Honourable Court made in Civil Suit No. 256 of 1973 was duly registered in the Registry of Title on the 22nd day of December, 1973 as Jilid No. 2 Folio. 27 and thereafter the said Lis Pendens Order was again re-registered on the 8th May, 1974 as Lis Pendens pursuant to an Order of Court dated 20th April, 1974 made in Civil Suit No. 256 of 1973.

20

4. I am advised and verily believe that the transfer registered on the 16th day of April, 1974 would not be effective to transfer the title in the said properties to the purchasers as the said Lis Pendens Order had already been registered in the Registry of Titles on the 22nd day of December, 1973.

5. I crave leave to refer to the Agreement of Sale dated the 2nd day of August, 1973 made between T. Damodaran (as the Vendor) and Andawan s/o Ayapen (as the purchaser) and the Assignment dated the 6th day of March, 1974 made between the said Andawan (as the Assignor) and the United Realty Sendirian Berhad (as the Assignee) and the said T. Damodaran (as the Vendor). I produce photostat copies of the said Agreement of Sale and the Assignment now shown to me marked Exhibits "C-6 and 7" (2) respectively.

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(1) Exhibit "C-1" see page 62
Exhibit "C-2" see page 63
Exhibit "C-3" see page 64
Exhibit "C-4" see page 65
Exhibit "C-5" see page 66

(2) Exhibit "C-6" see page 67
Exhibit "C-7" see page 71

IN THE HIGH COURT
IN MALAYA

No. 4

Further Affidavit
of Choe Kuan Him
5th March 1975
continued

6. Under clause 3 of the said Agreement, the said T. Damodaran covenanted that the property sold is to be free from all incumbrances whatsoever. I am informed and verily believe that the said Lis Pendens Order registered against the said properties have not yet been removed and is therefore an incumbrance on the title to the said property.

7. I further crave leave to refer to the pleadings filed in Civil Suit No. 256 of 1973 in this Honourable Court, photostat copies of which are now produced and shown to me in a bundle marked Exhibit "C-8". (3)

10

8. I say that since there is a dispute as to whether the said T. Damodaran held half share in the said properties in trust for the Plaintiff in the Suit, the title to the said properties can only be determined by the Judgment of this Honourable Court in the said Suit.

9. I am advised and verily believe that in view of the matters referred to above the registration of the transfer may be held to be void and be set aside by the Court, should the Plaintiff succeed in his claim that the said land is held in trust for him.

20

10. The Purchaser may then stand to lose the sum of \$182,200/- being the balance of the purchase price if the same is paid over to the said T. Damodaran. I am informed and verily believe that the said T. Damodaran is not a person of means and may leave Malaysia.

30

11. I am prepared to deposit the said sum of \$182,200/- into Court so that the same may be held by Court and to abide by any decision of the Court in the said Suit or until further order for the removal of Lis Pendens Order registered against the said title.

Affirmed by the said)
CHOE KUAN HIM at ALOR STAR) Sd. Choe Kuan Him
this 5th day of MARCH, 1975) (i/c No. 3843999)
at 3.20 p.m.)

40

Before me,

Sd. Illegible

(3) Exhibit "C-8" see page 74

No. 5.IN THE HIGH COURT
IN MALAYAJUDGMENT

No. 5

Judgment
14th July 1975

This is an application by way of originating summons for an order that the respondent, a solicitor in the firm of Syarikat Choe, do forthwith pay the sum of \$182,000/- to the applicant pursuant to his written undertaking contained in a letter dated 6th March, 1974, with interest at 12% per annum from 16th April, 1974, till the date of payment and for costs occasioned by this application to be taxed.

10

After hearing in Chambers, I allowed the application and ordered the respondent to pay to the applicant forthwith the sum stated above as prayed with costs. However, an application was made for the adjournment of the matter into Court for further argument under Order 54 rule 22A of the Rules of the Supreme Court. Mr. Wong Chong Wah appeared for the applicant and Mr. Jayadeva for the respondent. Further argument was heard in Open Court on 9th March, 1975. An objection by Mr. Wong for the filing of further affidavit by the respondent was overruled by me on the ground that no fresh evidence was adduced but it explained matters referred to in the earlier affidavit with a view to giving a clearer picture of the issues involved to the Court.

20

In his affidavit the applicant states that at the material time he was the registered owner of all five pieces of land as described at paragraph 2. He entered into a sale agreement with one Andavan s/o Ayapen who on 6th March, 1974, assigned the said land to United Realty Sdn. Berhad, the purchaser. In the course of the transaction the respondent in his capacity as solicitor for the purchaser issued a written undertaking dated 6th March, 1974, duly received by the applicant. (Ex. D1). The undertaking states as follows:-

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"This is to confirm that the sum of Ringgit Three hundred and thirty two thousand seven hundred and ninety two (\$332,792/-) being the balance of the purchase price of the above-said lands has been deposited with us and that the said sum will be released to you upon the transfer of the said lands being

IN THE HIGH COURT
IN MALAYA

No. 5

Judgment
14th July 1975
continued

duly registered in the name of the Purchaser Messrs. Syarikat Alor Merah Sdn. Bhd. or their nominee, nominees or assigns."

The transfer of the said land was registered on 16th April, 1974. The respondent paid the sum of \$150,000/- out of the purchase price of \$332,792/- to the chargor and a sum of \$182,000/- was paid to the applicant by cheque No. A.S.B. 038801 drawn on the United Malayan Banking Corporation Berhad, being part payment of the balance of the purchase price due. Payment of the said cheque, however, was stopped by the respondent. (See Ex. D2 and Ex. D3) attached to the affidavit - Enclosure (1) in file). Thereafter a series of correspondence ensued between the applicant's solicitors and the respondent's firm. The grounds advanced by both parties as contained in their respective affidavits and correspondence attached form the basis of the arguments before this Court. The main issue is whether the respondent is bound to pay the sum of \$182,000/- on the strength of his written undertaking as a solicitor. The applicant says he is; the respondent says he is not so bound. The applicant proceeds on the ground that the respondent's undertaking is clearly worded as to express his intention of releasing the mentioned sum being the balance of the purchase price deposited with his firm "upon the transfer of the said lands being duly registered in the name of the Purchaser Messrs. Syarikat Alor Merah Sdn. Berhad or their nominee, nominees or assigns". On the other hand, the respondent's counsel urged that the undertaking when read together with the agreement of sale and the assignment to United Realty Sdn. Berhad amounts to it being given by mistake in too wide terms and in the circumstances it cannot be enforced in so far as it was mistakenly given. (See Halsbury's Laws of England, 3rd Edn., Vol. 36, paragraph 266 at p. 196). He advanced several grounds as stated in the affidavits that the undertaking should only be released on compliance with other conditions involved, though they are not stated in the undertaking. They are as follows :-

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(i) Clause 3 of the agreement of sale between the applicant and Andavan states that "the property sold shall be free from all incumbrances whatsoever". The subsequent deed of assignment by Andavan to United Realty Sdn. Berhad incorporates

the agreement aforesaid. The respondent acted as solicitor for the company.

IN THE HIGH COURT
IN MALAYA

(ii) A transfer was registered on 6th April, 1974, with the company acting as nominee of the assignee. However, a lis pendens order registered earlier affects the validity of the said transfer and can only be decided upon after the decision of the Federal Court on an appeal against the order which has been lodged.

No. 5

Judgment
14th July 1975
continued

10 (iii) A civil suit in which there is a claim for specific performance of a trust and transfer of half undivided share in the said land by one Vesudevan against the applicant is still pending. (C.S. 256/73). Since that is trust property, there will be a resulting trust on the purchaser causing an incumbrance on the said land.

20 If I were to consider the documents annexed to the further affidavit as stated above, I have to do so on the basis that the respondent had no knowledge of the incumbrances concerning the land in dispute at the time he gave the undertaking on the ground that it was issued by mistake. In his affidavit at paragraph 8 of Enclosure (5), the respondent avers that the applicant has failed to set out all the material facts relating to the acquisition of the said land. He and the company's directors were not aware until now that the said land was incumbered.

30 A careful examination of the matter shows otherwise. The respondent was well aware of the agreement dated 2nd August, 1973, when he acted as solicitor for the company in the deed of assignment dated 6th March, 1974, during which date he issued the undertaking. With regard to the lis pendens in paragraph 11 of the same affidavit, the respondent states that the undertaking was given and the cheque sent to the applicant on the assurance of the latter that

40 the said order will be discharged and the title perfected. If that assurance was given, was there any good reason for the respondent to issue the cheque for \$182,000/- in favour of the applicant after the application to set aside the lis pendens was dismissed on 20th March, 1974, and three days after the said order was registered in the Registry of Titles on 20th April, 1974? He ought to have known that the incumbrance on the said land was still present. The respondent's

IN THE HIGH COURT
IN MALAYA

No. 5

Judgment
14th July 1975
continued

reason for stopping payment of the said cheque is that he was acting on the instruction of his client.

In relation to the pending civil suit, from record the respondent appeared on behalf of Skrine & Company for the applicant who succeeded in his application for the removal of a caveat filed by Vesudevan in connection with the pending suit on 20th December, 1973. In the circumstances, I am of the considered judgment that the respondent cannot succeed on the ground that it was issued by mistake. In his capacity as a solicitor he ought to have guarded himself against those events by embodying the conditions in the undertaking instead of relying "on the assurance of the applicant that the lis pendens order will be discharged and the title perfected".

10

Turning to the legal aspect of this application, there can be no denial that the applicant gave the written undertaking as a stake-holder and not as agent on behalf of his client. It was given by him as a solicitor and in his professional capacity as such and not as an individual. (See my quotation in Seah Choon Chye v. Saraswathy Devi). (1971) 1 M.L.J. 112 at p. 113; It is well known that solicitors in the course of their professional practice give numerous undertakings varying according to their requirements. Money is entrusted to them under those undertakings largely because they are solicitors and are deemed and found to be especially worthy of trust. (Per Hamilton, J. in United Mining and Finance Corporation, Ltd. v. Beecher). (1910) 2 K.B. 296 at p. 307; An undertaking given by a solicitor is very often the decisive factor in inducing its acceptance. Great care ought therefore to be paid to the wording of an undertaking both by the solicitor giving it and by the person accepting. It must be clearly worded so as to express the intentions of both parties and this is all the more so when the undertaking is given to a person who is not a solicitor. It is for him to consider the probable effect of such instrument before he signs it for the language of an instrument is to be taken most strongly against the party using it. (Per Bayley J. in Burrell v. Jones). (1819) 106 E.R. 580, 582. The fact that subsequent to the undertaking events occur which alter the position, such as his client withdrawing or changing his instructions before the undertaking has been honoured, will not entitle the solicitor

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to avoid liability unless he has expressly guarded against those events in the undertaking itself. The standard required is so high that the Courts have allowed only one defence, that of mistake.

IN THE HIGH COURT
IN MALAYA

No. 5

Judgment
14th July 1975
continued

10 Now, turning back to the written undertaking (Ex. D1), apart from what I have said earlier, the words are plain and unambiguous and does not call for any departure from the ordinary rules of interpretation. The intention is clear. When the undertaking is conditional the condition must be fulfilled before the undertaking will be enforced. Further, he ought to have included words which show clearly that he is not accepting personal liability but merely acting as agent of a particular party in the transaction. As a solicitor the respondent ought to have foreseen the consequences of such failure. He cannot now
20 turn back and say he was acting on the instructions of his client. He is the stakeholder and therefore bound by his undertaking.

With regard to the ground that the appeal on the *lis pendens* order is pending in the Federal Court, I am of the opinion that whatever the decision may be will not directly affect the undertaking in the circumstances.

30 Although I hold that the respondent is liable for the undertaking and in normal circumstances would order him to pay the purchase money to the applicant as prayed, yet in view of the pending civil action in which the applicant is involved as a defendant on a claim by Vesudevan the plaintiff as legal owner of half undivided share of the said land in dispute and in view of a pending application to institute the purchaser, United Realty Sdn. Berhad, as a co-defendant, I have no alternative
40 but to order the respondent to deposit the sum involved into Court forthwith. I do so in the interest of justice and in order to safeguard the interest of the plaintiff should he succeed in his claim. The respondent is ordered to pay costs and interest as prayed; the latter to be

IN THE HIGH COURT
IN MALAYA

No. 5

Judgment
14th July 1975
continued

deposited together with the sum involved.

(Sgd) SYED AGIL BARAKBAH

(DATO' SYED AGIL BARAKBAH)

JUDGE,

HIGH COURT, MALAYA

Alor Star,

14th July 1975.

Mr. Wong Chong Wah for Applicant.

10

Mr. A. Jayadeva for Respondent.

Certified true copy

Sgd: D.C. Haslam

SECRETARY TO JUDGE

21-7-75

IN THE HIGH COURT
IN MALAYA

No. 6

Order dated
14th July 1975

No. 6

ORDER

BEFORE THE HONOURABLE JUSTICE DATO SYED

AGIL BIN SYED HASSAN BARAKBAH, JUDGE, MALAYA

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IN OPEN COURT

THIS 14TH DAY OF JULY, 1975

O R D E R

THIS ORIGINATING SUMMONS coming on for hearing in Chambers on the 5th day of October, 1974 in the presence of Mr. Wong Chong Wah of Counsel for the Applicant and Mr. A. Jayadeva of Counsel for the Respondent AND UPON READING the Originating Summons dated the 30th day of July 1974 and the Affidavit of T. Damodaran s/o P.V. Raman affirmed on the 23rd day

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of July, 1974 and filed herein on the 30th day of July, 1974 and the exhibits therein referred to and the Affidavit of Choe Kuan Him affirmed and filed herein on the 2nd day of October, 1974 AND UPON HEARING Counsel as aforesaid IT WAS ORDERED that this application do stand adjourned for judgment and the same coming on for judgment on the 7th day of December, 1974 in the presence of Mr. Wong Chong Wah of Counsel for the Applicant and Mr. A. Jayadeva of Counsel for the Respondent IT WAS ORDERED that the Respondent, Choe Kuan Him, do forthwith pay to the Applicant, T. Damodaran s/o P.V. Raman, the sum of \$182,200/- with interest thereon at the rate of 12% per annum from the 16th April 1974 to the date of payment; and upon the application of the Respondent the Court ordered further argument in Court on a date to be fixed AND UPON HEARING such further argument in Court on the 8th day of March, 1975 in the presence of Mr. Wong Chong Wah of Counsel for the Applicant and Mr. A. Jayadeva of Counsel for the Respondent AND UPON READING the Affidavit of Choe Kuan Him affirmed on the 5th day of March 1975 and filed herein on the 6th day of March, 1975 and the exhibits therein referred to IT WAS ORDERED that judgment be reserved AND this action coming on this day for delivery of Judgment in the presence of Mr. Karpal Singh of Counsel for the Applicant and Mr. A. Jayadeva of Counsel for the Respondent IT IS ORDERED that the Respondent do pay forthwith the sum of \$182,200/- together with interest thereon at the rate of 12% per annum from the 16th April, 1974 to the date of payment into Court as deposit AND IT IS ORDERED that the costs of this application be taxed by the proper officer of the Court and be paid by the Respondent to the Applicant when so taxed.

Given under my hand and the Seal of the Court this 14th day of July, 1975.

Sgd: .

(SEAL) Assistant Registrar,
High Court, Alor Star.

IN THE HIGH COURT
IN MALAYA

No. 6

Order dated
14th July 1975
continued

IN THE FEDERAL COURT

No. 7

MEMORANDUM OF APPEAL

No. 7
Memorandum of Appeal
18th September 1975

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

FEDERAL COURT CIVIL APPEAL NO. 111 OF 1975

In the matter of the Advocates and Solicitors Ordinance, 1947

10

And

In the matter of Choe Kuan Him, gentleman, one of the Advocates and Solicitors of the High Court.

Between

T. Damodaran s/o P.V. Raman Appellant

And

Choe Kuan Him Respondent

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(In the matter of Originating Summons No. 677 of 1974 in the High Court in Malaya at Alor Star

Between

T. Damodaran s/o P.V. Raman Applicant

And

Choe Kuan Him Respondent)

MEMORANDUM OF APPEAL

T. Damodaran s/o P.V. Raman, the Appellant abovenamed appeals to the Federal Court against part of the decision of the Honourable Mr. Justice Syed Agil Barakbah given at Alor Star on the 14th day of July 1975 on the following grounds :-

30

1. That the learned Judge erred in law in making the order that the sum of \$182,200/- and interest thereon at 12% per annum from April 16, 1974, to the date of payment be deposited into Court by the Respondent instead of being paid to the

Appellant.

IN THE FEDERAL COURT

Dated this 18th day of September, 1975.

Sgd: Skrine & Co.
Solicitors for the Appellant

No. 7

To

Memorandum of Appeal
18th September 1975
continued

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The Registrar,
Federal Court,
Kuala Lumpur.

and to

Messrs. Jayadeva & Zahir,
Bangunan Bank Rakyat,
Jalan Langgar, Alor Star,
Solicitors for the Respondent
abovenamed.

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The address for service of the Appellant is
Messrs. Skrine & Co., Advocates and Solicitors,
Straits Trading Building, 4 Leboh Pasar Besar,
Kuala Lumpur.

No. 8

IN THE FEDERAL COURT

NOTICE OF APPEAL

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

No. 8

FEDERAL COURT CIVIL APPEAL NO. 111 OF 1975

Notice of Appeal
11th August 1975

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In the matter of the Advocates
and Solicitors, Ordinance,
1947

And

In the matter of Choe Kuan Him,
gentleman, one of the
Advocates and Solicitors of
the High Court

Between

T. Damodaran s/o P.V. Raman

Appellant

And

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Choe Kuan Him

Respondent

IN THE FEDERAL
COURT

(In the matter of Originating Summons No. 677
of 1974 in the High Court in Malaya at Alor
Star

No. 8

Between

Notice of Appeal
11th August 1975
continued

T. Damodaran s/o P.V. Raman

Applicant

And

Choe Kuan Him

Respondent)

NOTICE OF APPEAL

10

TAKE NOTICE that T. Damodaran s/o P.V. Raman,
the Appellant abovenamed, being dissatisfied with
the decision of the Honourable Mr. Justice Syed Agil
Barakbah given at Alor Star on the 14th day of July
1975, appeals to the Federal Court against that
part only of the said decision as decides that the
sum of \$182,000/- and interest thereon at 12% per
annum from April 16, 1974, to the date of payment
be deposited into Court by the Respondent instead
of being paid to the Appellant.

20

Dated this 11th day of August, 1975.

Sgd: Skrine & Co.

Solicitors for the Appellant

To:-

The Registrar,
The Federal Court,
Kuala Lumpur

and to -

The Registrar,
The High Court in Malaya at Alor Star

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and to -

Messrs. Jayadeva & Zahir,
Bangunan Bank Rakyat,
Jalan Langgar, Alor Star,
Solicitors for the Respondent
abovenamed.

The address for service of the Appellant is
Messrs. Skrine & Co., Advocates and Solicitors,
Straits Trading Building, 4 Leboh Pasar Besar, Kuala
Lumpur, Solicitors for the Appellant abovenamed.

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No. 9IN THE FEDERAL
COURTMEMORANDUM OF CROSS APPEAL

No. 9

Memorandum of
Cross Appeal
16th September
1975

10 Choe Kuan Him, the Respondent abovenamed appeals to the Federal Court against that part of the decision of the Honourable Mr. Justice Dato' Syed Agil Barakbah given at Alor Star on the 14th day of July, 1975 wherein it was ordered that the Respondent do pay the interest on the sum of \$182,000/- at the rate of 12% per year from the 16th day of April, 1974 to date of payment into Court and the costs of the application on the following grounds :-

1. The learned trial Judge erred in law and on the facts in ordering the Respondent to pay interest on the amount to be deposited in Court from the 16th day of April, 1974 until payment into Court.

20 The learned trial Judge in rejecting the Appellant's application for an order that the amount be paid to the Appellant ought to have held that interest at the rate of 6% per annum is only payable on the judgment from the date of the Order until payment into Court.

2. Under the Rules of the High Court the Appellant is only entitled to 5% or 6% per annum interest.

The learned trial Judge erred in law in awarding interest at the rate of 12% per year.

30 3. The learned trial Judge erred in law and on the facts in exercising his discretion to award costs against the Respondent.

The Respondent has resisted the application for the payment of the amount to the Appellant because there was a legal dispute as to the title of the Appellant to sell and transfer the lands to the Respondent's client. The learned trial Judge ought to have exercised his discretion in favour of the Respondent and order no costs.

40 Dated at Alor Star this 16th day of September, 1975.

Sgd: Jayadeva & Zahir

SOLICITORS for the RESPONDENT

IN THE FEDERAL
COURT

No. 9

Memorandum of
Cross Appeal
16th September
1975
continued

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

and to:

T. Damodaran s/o P.V. Raman,
the Appellant abovenamed or his solicitors,
Messrs. Skrine & Co.,
Straits Trading Building,
No. 4, Leboh Pasar Besar,
Kuala Lumpur, 01-23

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Address for service of the Respondent abovenamed
is at the Office of Messrs. JAYADEVA & ZAHIR,
Advocates and Solicitors, Bangunan Bank Rakyat
(1st Floor), Jalan Langgar, Alor Star, Kedah;
solicitors for the Respondent.

IN THE FEDERAL
COURT

No. 10

JUDGMENT OF SUFFIAN L.P.

No. 10

Judgment of
Suffian L.P.
20th August
1976

Coram, Suffian, L.P.;
Ali, F.J.;
Wan Suleiman, F.J.

20

The applicant (appellant before us) had some
lands in the mukim of Sungai Pasir, in Sungai
Patani, Kedah, totalling just over 40 relongs in
area. By agreement dated 2nd August, 1973 (exhibit
C6), he agreed to sell and Andawan agreed to buy
it for \$369,768. By clause 3 it was provided that
the property sold was "to be free from all
incumbrances whatsoever". Andawan paid a deposit
of \$36,976.

30

On 21st August, 1973, one Vesudevan entered
a private caveat against the lands and on 19th
December, 1973, he issued a writ in the Alor Star
High Court against the applicant (Civil Suit No.
256 of 1973) claiming that the applicant held
half the lands as trustee for him and that the
applicant had agreed to sell the lands to Andawan
without his consent. The applicant successfully
applied to have the caveat removed. Vesudevan
again caveated the lands. This time the
applicant not only successfully applied to have
the caveat set aside but also obtained an
injunction restraining Vesudevan from again

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caveating the lands.

IN THE FEDERAL
COURT

No. 10

Judgment of
Suffian L.P.
20th August
1976
continued

10 On 20th December, 1973, Vesudevan obtained an order from the Alor Star High Court that the right in the disputed land was in question and that that order remain in force as a lis pendens for 12 months or until the determination of the suit, whichever was the earlier, and on 22nd December, 1973, the lis pendens order was registered by the Land Office. That order was obtained ex parte and on 9th February, 1974, the applicant applied to have it set aside. On 27th April the judge dismissed this application, thus confirming the lis pendens order. The applicant appealed to the Federal Court.

All the while the sale agreement between the applicant and Andawan had not been completed and the lands still remained registered in the name of the applicant.

20 On 6th March, 1974 (i.e. while there was a lis pendens order against the lands) Andawan assigned the sale agreement to the Syarikat Alor Merah Sdn. Bhd. by assignment (exhibit C7). This document was signed by the applicant, by Andawan and the company. Mr. Choe Kuan Him, solicitor (respondent in the lower court and also here), acted for both the applicant and the company. At the same time the applicant received from Mr. Choe a written undertaking dated the same day (6th March, 1973) as follows:

30 " This is to confirm that the sum of ringgit three hundred and thirty two thousand seven hundred and ninety two (£332,792) being the balance of the purchase price of (the lands in question) has been deposited with us and that the said sum will be released to you (applicant) upon the transfer of (the lands) being duly registered in the name of the purchasers Messrs. Syarikat Alor Merah Sdn. Bhd. or their nominee, nominees or assigns."

40 The transfers of the lands into the names of the nominees of Alor Merah Sdn. Bhd. were duly registered on 16th April, 1974.

Out of the money held by him, Mr. Choe paid \$150,000 to the chargor of the lands. He also gave a cheque dated 23rd April, 1974, for the balance to the applicant, but subsequently Mr. Choe stopped payment of this cheque, because (as already stated)

IN THE FEDERAL
COURT

No. 10

Judgment of
Suffian L.P.
20th August
1976
continued

on 27th April, 1974, the judge had confirmed the lis pendens order against these lands and there would have been difficulty about the applicant transferring the lands free from incumbrances.

The applicant who had been represented by Mr. Choe at the time of the assignment switched lawyers and now retained Messrs. Skrine & Co. who by letter dated 30th April, 1974, wrote to Mr. Choe demanding payment of the money, as follows: 10

" We act for (the applicant) and are instructed to refer to your written undertaking to him of 6th March, 1974.

This undertaking states that the balance of the purchase price of the lands totalling \$332,792/- has been deposited with you.

The undertaking undertakes to release this sum to our client on the transfer being registered.

Our instructions are that the transfer has been registered and that you have refused to pay our client. This is a clear breach of the undertaking given. 20

We are instructed to request you to make the payment to our client within forty-eight (48) hours from the receipt of this letter failing which our instructions are to issue a Specially Indorsed Writ and to seek summary judgment against you in the High Court and to report the matter to the Bar Committee as a breach of your undertaking." 30

By letter dated 4th May, 1974, Mr. Choe wrote to Skrine & Co. explaining why he stopped payment of the cheque, as follows:

" Our letter of 6th March, 1974 was given on the understanding that your client (the applicant) will comply with all the terms of the Sales Agreement which he entered into with one Andavan s/o Ayapen in respect of the sale of the said lands which said Sales Agreement was assigned to our clients on 6th March, 1974. 40

One of the terms of the said Sales Agreement is that the said lands shall be free from all

encumbrances whatsoever. You are no doubt aware that a lis pendens is presently registered against the said lands and that your application to remove the same was we understand dismissed on 27th April.

IN THE FEDERAL
COURT

No. 10

Judgment of
Suffian L.P.
20th August
1976
continued

10

In any event in accordance with our undertaking and on your clients assurance that the lis pendens will be removed on 27th April we paid your client on 23rd April, the balance of the purchase price vide our U.M.B.C. cheques No. 049350 and 038801.

When the said lis pendens was not removed by 27th April we were instructed to and stopped payment on cheque No. 038801."

20

On 7th May, 1974, Skrine & Co. wrote to Mr. Choe reiterating their stand that Mr. Choe should pay over the money to the applicant now that the lands have been transferred to the assignee's nominees.

To return to the lis pendens order registered against the land at the instance of Vesudevan, on 8th May, 1974, the lis pendens order was re-registered by the Land Office against these lands and on 16th May, 1974, the applicant filed notice appealing to the Federal Court against the lis pendens order.

30

By originating summons dated 30th July, 1974, the applicant applied for an order that Mr. Choe pay him the money forthwith in accordance with his personal undertaking.

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Mr. Choe was willing to release the money, but not to the applicant. He said that he should pay it into court in view of the complication caused by the registration of the lis pendens order against these lands, the first time a lis pendens order has ever been registered in a Malay state. Mr. Jayadeva argued on his behalf that the undertaking had been given by mistake in too wide terms, that it must be read together with the agreement of sale and the assignment, that the assignment referred to the agreement of sale, that by the agreement of sale the applicant expressly agreed that the lands were to be sold free from all incumbrances, that the lis pendens order against the lands made the title

IN THE FEDERAL
COURT

No. 10

Judgment of
Suffian L.P.
20th August
1976
continued

imperfect, that Mr. Choe as a stakeholder undertook to release the money not just on the registration of the transfers in favour of United Realty but only if the titles so transferred were perfect in every way, and certainly not incumbered by a lis pendens order.

The applicant's application was considered in chambers on 5th October, 1974, and on 7th December, 1974, it was allowed. It was adjourned for further arguments in open court which were heard on 9th March, 1975, when the learned judge reserved judgment.

10

On 12th July, 1975, the Federal Court gave judgment in the appeal by the applicant in Civil Suit No. 256 of 1973 affirming the lis pendens order granted against these lands, see (1975) 2 M.L.J. 231.

Two days later the learned judge decided on the application of this applicant, but instead of ordering the money held by Mr. Choe to be paid to the applicant he ordered that it be paid into court, in view of the dispute caused by the lis pendens order.

20

The applicant appeals against that part of the judgment that ordered that the money be paid into Court. He says that it should be paid to him.

Mr. Choe himself cross-appeals against that part of the judgment that ordered that (a) he pay costs and (b) that he pay interest at 12% p.a. on the money from 16th April, 1974 (the date of the registration of these lands in favour of United Realty) until date of payment. Mr. Jayadeva on his behalf argues that as he was willing to pay the money into court and the court so ordered he had won and should not therefore have to pay costs. As to interest, if at all he should pay only the usual rate (6% p.a.) and not from 16th April, 1974, but from the date of judgment.

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The law and practice relating to solicitors' undertakings in Malaya in my opinion is the same as that in England.

Mr. Choe is an officer of the court and we should compel him to honour undertakings by him promptly to secure public trust and confidence in

IN THE FEDERAL
COURT

No.10

Judgment of
Suffian L.P.
20th August
1976
continued

10 the legal profession which is an ancient and
honourable one, and the language used by Mr. Choe
in this undertaking is clear, unambiguous and
unqualified and that any one reading it cannot
but get the impression that Mr. Choe undertook
to release the money in his hand the moment the
lands had been transferred into the name of the
Alor Merah Sdn. Bhd. or its assignees. But I
respectfully agree with the learned judge in
the court below that in the peculiar
circumstances of this case Mr. Choe should be
allowed to release it into court, as he
requests, and not to the vendor-applicant. I
agree with Mr. Jayadeva for Mr. Choe that the
undertaking should be considered not in
isolation, but in the light of the sale
agreement and the assignment. At the time of
the undertaking (on 6th March, 1974) the
applicant was not a stranger to Mr. Choe but
20 on the contrary he was Mr. Choe's client, the
applicant had by the sale agreement of 2nd
August, 1973, sold the lands promising to give
a good title free of all incumbrances, to the
purchaser Andawan or his assignees, the
applicant knew that there would have been some
difficulty about him giving an unincumbered
title because nearly three months before, on
19th December, 1973, Vesudevan had brought a
suit against him claiming a half share in the
30 lands, which suit was followed by litigation
concerning the caveat and lis pendens order
already referred to. If Vesudevan's claim is
dismissed, well and good. But what if it is
not? In that event, the purchaser's assignees
will not have obtained an unincumbered title as
promised by the vendor-applicant, and it is
certain that there will be a claim by the
purchaser's assignees against the applicant,
as well probably as one against Mr. Choe.
40 Would this be fair to Mr. Choe? I think not.

50 Did Mr. Choe when he gave the undertaking
know of the incumbrance or the applicant's
title? Probably so, because in his own letter
of 4th May, 1974, to Skrine & Co. on behalf of
the applicant he referred to it. That being
so, he could very well have so worded his
undertaking as to make it quite clear that he
would release the money in his hand not only
when a transfer had been registered in favour
of the purchaser or his assignees but also
after the lis pendens order has been removed.

IN THE FEDERAL
COURT

No. 10

Judgment of
Suffian L.P.
20th August
1976
continued

That he did not do so does not in my opinion matter in the peculiar circumstances of this case. By mistake Mr. Choe had expressed his undertaking in terms too wide, and the applicant knew or should have known this, and the court should not allow him to take advantage of Mr. Choe's mistake.

In the event I would dismiss this appeal so that the order of the lower court that Mr. Choe pay this money into court stand. As regards interest, I agree that Mr. Choe should pay only the usual rate, namely 6% p.a.; no case for changing the usual rate has been made out. Interest should in my judgment be paid from the date of judgment of the High Court, not from 16th April, 1974, when the transfers in favour of Andawan's assignee were registered. The applicant wanted the money for himself, Mr. Choe on the other hand wanted to pay into court. Until the application had been decided by the lower court, Mr. Choe was not sure to whom he should pay. He should pay interest only from the date when he was sure. That part of the judgment appealed from dealing with interest is accordingly amended.

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As regards costs, the applicant should pay the costs of this appeal. As regards costs below, it is true as stated by Mr. Jayadeva Mr. Choe has won his case that he pay the money into court and I therefore agree that the applicant should pay costs in the court below also.

30

Delivered in Kuala Lumpur
on 20th August, 1976

(Tun Mohamed Suffian)
LORD PRESIDENT, MALAYSIA.

Notes

1. Arguments in Alor Star on Saturday, 7th February, 1976.

2. Counsel:

For appellant - Mr. Wong Chong Wah of Skrine & Co., Kuala Lumpur;

40

For respondent - Mr. Jayadeva of M/s Jayadeva & Zahir, Alor Star.

3. Authorities cited:

(1) 43 English & Empire Digest 1964 edition,

p. 362 para. 3826.

IN THE FEDERAL
COURT

- (2) (1892) 2 QBD 440 Grey, p.443 4th line, p. 444, para. 2.
- (3) In re a Solicitor (1907) 2 K.B. 539
- (4) United Mining & Finance Corporation Ltd. (1910) 2 K.B. 296, 299, 300, 304.
- (5) Re a Solicitor (1966) 3 A.E.R. 52, 55.
- (6) Seah Choon Chye (1971) 1 M.L.J. 112.
- (7) Bank of Athem Societe Anonyme (1938) 1 K.B. 771
- (8) Ballemy v. Sabine (1857) 1 De G. @ J. 797.

No. 10

Judgment of
Suffian L.P.
20th August
1976
continued

10

- 4. Wan Suleiman F.J. concurs with Judgment of Suffian L.P.; separate dissenting judgment by Ali, F.J.

IN THE FEDERAL
COURT

No. 11

Judgment of
Suleiman F.J.
20th August
1976

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Certified true copy

Sgd:

Setia-usahah kepada Ketua Hakim Negara

Mahkamah Persekutan

Malaysia

Kuala Lumpur.

30

IN THE FEDERAL
COURT

No. 12

JUDGMENT OF ALI, F.J.

No. 12

Judgment of
Ali, F.J.
20th August
1976

Coram: Suffian, Lord President, Malaysia

Ali, Federal Judge, Malaysia

Wan Suleiman, Federal Judge, Malaysia.

Mr. Choe Kuan Him at all material times was and is an Advocate and Solicitor practising in the State of Kedah. In a letter dated March 6, 1974 addressed to the appellant he wrote as follows :-

10

"M/s. T. Damodaran s/o P.V. Raman,
No. 4211, Sungei Nyor Road,
Butterworth.

Re: Sale of lands held under Grant Nos:
31020 for Lot 1003, 16830 for Lot
141, 16831 for Lot 142, 16832 for
Lot 143, 16833 for Lot 144, all in
the Mukim of Sg. Pasir, District
of Kuala Muda.

20

This is to confirm that the sum of Ringgit Three hundred and thirty two thousand seven hundred and ninety two (₹332,792/-) being the balance of the purchase price of the above-said lands have been deposited with us and that the said sum will be released to you upon the transfer of the said lands being duly registered in the name of the purchaser Messrs. Syarikat Alor Merah Sdn. Bhd. or their nominee, nominees or assigns.

30

Dated this 6th day of March, 1974."

It was common ground that the appellant, Mr. T. Damodaran after having transferred the lands to the respondent's clients sometime in April, 1974 received a cheque for ₹182,200/- which was the nett balance of the purchase price due to him after ₹150,000/- had been deducted by the respondent to pay off the mortgages on the lands. However, for reason or reasons which will become apparent shortly payment on the cheque was stopped by the respondent. There followed an exchange of correspondence between them in the course of which

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it was pointed out to the respondent that his failure or refusal to pay amounted to a breach of a Solicitor's undertaking.

IN THE FEDERAL
COURT

Ultimately in July, 1974 the appellant applied by Originating Summons for an order to compel the respondent to pay the sum of \$182,200/- plus interest at 12% per annum and costs.

No. 12

Judgment of
Ali, F.J.
20th August
1976
continued

10 The English law on summary enforcement of Solicitor's undertakings as stated on page 195 of Halsbury's Laws of England, Third Edition, Vol. 36, is as follows:

20 "266. Enforcement of undertakings. Where a solicitor, who is acting professionally for a client, gives his personal undertaking in that character to the client, or to a third person, or if the undertaking is given to the court in the course of proceedings, that undertaking may be enforced summarily upon application to the court."

In re A Solicitor, Ex parte Hales (1) it was held thus :

30 "Where a solicitor in the course of legal proceedings makes a statement to a person even though not his client, that funds have been put into his hands for the purpose of payment to that person upon a certain event happening, and that upon the happening of the event he will pay the money, the personal undertaking of the solicitor is sufficient to enable the Court to exercise its summary jurisdiction to compel him to carry out the undertaking on the application of the person to whom it is given, although it is not a personal guarantee in the sense that the solicitor guarantees the payment of the money out of his (the solicitor's) own pocket."

40 Quite apart from these citations reference has also been made to the Guide by the English Law Society 1974 which makes it abundantly clear that an undertaking by a solicitor stands on a special footing in view of his special position under the law. The utmost reliance is placed on any promise or undertaking which he makes either to members of the public

(1) (1907) 2 K.B. 539

IN THE FEDERAL
COURT

No. 12

Judgment of
Ali, F.J.
20th August
1976
continued

or the Court. Failure to honour the promise or undertaking is regarded in law as professional misconduct. Under section 26 of our Advocates and Solicitors Ordinance, 147 the High Court having power of control over Advocates and Solicitors can order them to be struck off the Roll or suspended from practice for gross misconduct. In my opinion there is no difference between the law in England and here.

In the instant case the learned Judge, Syed Agil Barakbah, J., has found that the respondent's letter of March 6, 1974 was an undertaking by a solicitor and that the respondent's failure or refusal to pay the appellant the \$182,200/- was a breach of that undertaking. On that finding the learned Judge would have no alternative but to order the respondent to pay in accordance with the undertaking. But he did not so order. He directed the money to be deposited into Court for reasons as stated in the following passage of his judgment :

"Although I hold that the respondent is liable for the undertaking and in normal circumstances would order him to pay the purchase money to the applicant as prayed, yet in view of the pending civil action in which the applicant is involved as a defendant on a claim by Vasudevan the plaintiff as legal owner of half undivided share of the said land in dispute and in view of a pending application to institute the purchaser, United Realty Sdn. Berhad, as a co-defendant, I have no alternative but to order the respondent to deposit the sum involved into Court forthwith. I do so in the interest of justice and in order to safeguard the interest of the plaintiff should he succeed in his claim."

In this appeal the only question raised by the appellant is whether the learned Judge was right in making such an order, the effect of which clearly deprives the appellant of the immediate use of the money.

As for the reasons given by the learned Judge I must respectfully say that the civil action between Mr. Vasudevan and the appellant has no relevance whatsoever to the issue in the present proceedings. The issue was whether the respondent

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as a solicitor was liable for the breach of his undertaking. The undertaking was given on his own initiative.

IN THE FEDERAL
COURT

No. 12

Judgment of
Ali, F.J.
20th August
1976
continued

His reason for giving it was obviously to assure the appellant that on the transfer of the lands being completed he would be paid the balance of the purchase price. It was the logical thing to do as the balance had already been deposited with the respondent.

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Such assurance coming from a solicitor, as it were, would leave the appellant in no doubt that it would be honoured once the transfers were completed. But the respondent did not honour his words or undertaking. He tried to put up all sorts of excuses for not doing so. In one breath he brought up the question that the lands are not free from encumbrances in view of a lis pendens order obtained by Mr. Vasudevan. In another he said in paragraph 10 of his affidavit affirmed sometime in March, 1975 that if the balance of the purchase price was to be paid to the appellant his clients, the purchasers, would stand to lose the money as the appellant is not a person of means. He asked the Court to order the amount to be deposited into Court. Nothing that was said could have any relevance to the issue before the Court which was concerned only with his misconduct and his liability to carry out the undertaking.

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Since reference has been made to the lis pendens order it is necessary to point out that whatever may be its legal effect it can only arise in proceedings brought by the purchasers to recover the purchase money from the appellant. The argument by counsel for the respondent rested almost entirely on the possibility of such proceedings being brought by the purchasers. Such possibility had arisen merely because of Mr. Vasudevan's action against the appellant.

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Since neither the purchasers nor Mr. Vasudevan was before the Court I fail to see why the learned Judge should be so concerned about their interests.

On the facts and on the law applicable in these proceedings there was nothing to justify the order directing the money to be deposited into Court. The fact that the appellant had already been paid \$36,976/- as deposit and the fact that \$150,000/-

IN THE FEDERAL COURT

No. 12

Judgment of Ali, F.J. 20th August 1976 continued

had been used by the respondent to pay off the mortgages on the lands should be sufficient to show that the appellant has every right to be paid the balance of the purchase money even if the respondent had not given the undertaking. The appellant, in my view, had not done anything to be deprived of his right.

I would allow this appeal with costs and direct that the amount \$182,200/- and all other sums of money which may be payable to the appellant be paid out to him forthwith together with interest at 6% per annum from the date of this order to date of payment.

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Tan Sri Dato Justice Ali bin Hassan

Kuala Lumpur, 20th August, 1976.

(Ali bin Hassan)

Judge, Federal Court, Malaysia.

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Counsel -

Mr. Wong Chong Wah of Skrine & Co. for appellant.

Mr. Jayadeva of M/s Jayadeva & Zahir, for respondent.

Salinan yang di-akui benar,

Sd: Setia-usaha Hakim Kuala Lumpur.

IN THE FEDERAL COURT

No. 13

ORDER OF FEDERAL COURT

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No. 13 Order of Federal Court 20th August 1976

CORAM: SUFFIAN, LORD PRESIDENT, FEDERAL COURT, MALAYSIA:

ALI, JUDGE, FEDERAL COURT, MALAYSIA;

WAN SULEIMAN, JUDGE, FEDERAL COURT, MALAYSIA.

IN OPEN COURT

THIS 20TH DAY OF AUGUST, 1976

O R D E R

THIS APPEAL coming on for hearing on the 7th

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day of February, 1976 in the presence of Encik Wong Chong Wah of Counsel for the Appellant abovenamed and Encik A. Jayadeva of Counsel for the Respondent AND UPON READING the Record of Appeal filed herein by the Appellant and the Memorandum of Cross-Appeal filed herein by the Respondent AND UPON HEARING Counsel for the Appellant and the Respondent IT WAS ORDERED that this Appeal do stand adjourned for Judgment AND the same coming on for Judgment this day at Kuala Lumpur in the presence of Encik Wong Chong Wah of Counsel for the Appellant and Mr. G. Krishnan appearing on behalf of Counsel for the Respondent BY MAJORITY JUDGMENT IT IS ORDERED that the Appeal of the Appellant abovenamed be and is hereby dismissed AND IT IS ORDERED that the Cross-Appeal of the Respondent abovenamed be and is hereby allowed AND IT IS ORDERED that the Respondent do pay forthwith the sum of \$182,200/- (Ringgit One hundred and eighty two thousand and two hundred only) together with interest thereon at the rate of 6% per annum from the 14th day of July, 1975 to the date of payment into Court as deposit AND IT IS ORDERED that the costs of this Appeal and of the proceedings in the High Court be taxed by the proper officer of the Court and when so taxed be paid by the Appellant to the Respondent AND IT IS LASTLY ORDERED that the sum of \$500/- (Ringgit Five hundred only) paid into Court by the Appellant as security for costs of the Appeal be paid out to the Respondent towards his taxed costs.

GIVEN under my hand and the Seal of the Court this 20th day of August, 1976.

Sgd: illegible

CHIEF REGISTRAR,

FEDERAL COURT, MALAYSIA.

IN THE FEDERAL COURT

No. 13

Order of
Federal Court
20th August
1976
continued

IN THE FEDERAL COURT

No. 14

ORDER GRANTING CONDITIONAL LEAVE TO APPEAL TO H.M. THE YANG DIPERTUAN AGUNG

No. 14

Order Granting Conditional Leave to Appeal to H.M. The Yang Dipertuan Agung
15th November 1976

CORAM: ALI, JUDGE, FEDERAL COURT, MALAYSIA;
RAJA AZLAN SHAH, JUDGE, FEDERAL COURT, MALAYSIA
WAN SULEIMAN, JUDGE, FEDERAL COURT, MALAYSIA.

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IN OPEN COURT

THIS 15TH DAY OF NOVEMBER, 1976

O R D E R

UPON MOTION made unto Court this day by Mr. Wong Chong Wah of Counsel for the Appellant and Mr. A. Jayadeva of Counsel for the Respondent AND UPON READING the Notice of Motion dated the 29th day of October, 1976 and the Affidavit of Wong Chong Wah affirmed on the 23rd day of September, 1976 AND UPON HEARING Counsel as aforesaid IT IS ORDERED that leave be and is hereby granted to the Appellant to appeal to His Majesty the Yang Dipertuan Agung from the judgment of this Court given on the 20th day of August, 1976 upon the following conditions:

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

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- (2) that the Appellant do within the said

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period of three (3) months from the date hereof take the necessary steps for the purpose of procuring the preparation of the Record and for the despatch thereof to England.

IN THE FEDERAL COURT

No. 14

Order Granting Conditional Leave to Appeal to H.M. The Yang Dipertuan Agung 15th November 1976 continued

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

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Given under my hand and the seal of the Court this 15th day of November, 1976.

SGD: Illegible

DEPUTY REGISTRAR,
FEDERAL COURT, MALAYSIA.

No. 15

IN THE FEDERAL COURT

ORDER GRANTING FINAL LEAVE TO APPEAL TO H.M. THE YANG DIPERTUAN AGUNG

No. 15

Order Granting Final Leave to Appeal to H.M. The Yang Dipertuan Agung 4th April 1977

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT PENANG

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. 111 OF 1975

In the matter of the Advocates and Solicitors Ordinance, 1947

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And

In the matter of Choe Kuan Him, gentleman, one of the Advocates and Solicitors of the High Court

Between

T. Damodaran s/o P.V. Raman Appellant

And

Choe Kuan Him

(In the matter of Originating Summons No. 667 of 1974 in the High Court in Malaya at Alor Setar

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IN THE FEDERAL COURT

Between

T. Damodaran s/o P.V.
Raman Applicant

And

Choe Kuan Him Respondent)

No. 15

Order Granting
Final Leave
to Appeal to
H.M. The Yang
Dipertuan Agung
4th April 1977
continued

CORAM: GILL, CHIEF JUSTICE, HIGH COURT, MALAYA;

ONG HOCK SIM, JUDGE, FEDERAL COURT,
MALAYSIA;

RAJA AZLAN SHAH, JUDGE, FEDERAL COURT,
MALAYSIA;

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IN OPEN COURT

THIS 4TH DAY OF APRIL, 1977.

O R D E R

UPON MOTION made unto Court this day by Mr. N. Chandran on behalf of Counsel for the Appellant in the presence of Mr. A. Jayadeva of Counsel for the Respondent AND UPON READING the Notice of Motion dated the 7th day of March, 1977 and the Affidavit of Wong Chong Wah affirmed on the 8th day of February 1977 AND UPON HEARING Counsel as aforesaid IT IS ORDERED that Final Leave be and is hereby granted to the abovenamed Appellant to appeal to His Majesty the Yang Dipertuan Agung from the decision of this Honourable Court given on the 20th day of August, 1976 AND IT IS ORDERED that the costs of and incidental to this application be made costs in the cause.

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GIVEN under my hand and the Seal of the Court this 4th day of April, 1977.

Sgd: Illegible

DEPUTY REGISTRAR,
FEDERAL COURT, MALAYSIA.

AGREEMENT, T. DAMODARAN S/O P.V. RAMAN
AND ANDAWAN S/O AYAPEN

(L.S.)

EXHIBIT

C.6.

Agreement T.
Damodaran and
Andawan
2nd August 1973

AN AGREEMENT made the 2nd day of August 1973
Between T. Damodaran son of P.V. Raman (N.R.I.C.
No. 4095551) of No. 4211, Sungei Nyor Road,
Butterworth, Province Wellesley (hereinafter
called "the Vendor" which expression shall where
the context so admits, include his executors,
administrators and assigns) of the one part and
Andawan s/o Ayapen (N.R.I.C. No. 1927045) of
Kpg Thye Seng, Kuala Retil, Kedah, (hereinafter
called "the Purchaser" which expression shall
where the context so admits, include his
executors, administrators and assigns) of the
other part.

10

WHEREBY IT IS AGREED as follows :-

1. The Vendor will sell and the Purchaser
will buy all the land and hereditaments more
particularly described in the Schedule hereto
(hereinafter referred to as "the Property").

20

2. The purchase price of the Property shall
be Dollars Three Hundred and Sixty-Nine Thousand
Seven Hundred and Sixty Eight only (\$369,768/-)
calculated at the rate of \$8,000/- per relong,
and to account and as deposit whereof the sum
of Dollars Thirty Six Thousand, Nine Hundred
and Seventy Six only (\$36,976/-) is now paid
by the Purchaser to the Vendor (the receipt of
which sum the Vendor hereby acknowledges) and
the balance shall be paid on the date fixed
for completion of sale of the Property.

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3. The purchase shall be subject to :-

- a) the Vendor deducing a good, registerable
and marketable title to the Property
sold;
- b) The Property sold to be free from all
incumbrances whatsoever;
- c) Completion of the purchase and payment
of the balance purchase price to be
perfected on or before the 1st day of
February, 1974 and shall take place
at the office of Syarikat GB, Neoh,
Advocates & Solicitors of No. 17,
Jalan Pengkalan, Sungei Patani, Kedah;

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EXHIBIT

C.6.

Agreement T.
 Damodaran and
 Andawan
 2nd August 1973
 continued

d) Existing tenancies.

4. It is hereby expressly agreed that should the Purchaser be unable to complete the sale on or before the 1st day of November, 1973 the Purchaser shall pay a monthly interest of \$3327/- a month commencing the 1st day of November, 1973 to the 1st day of February, 1974, such interest becoming payable on the 1st day of December 1973 and thereafter on the 1st day of each succeeding month.

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5. On payment of the balance purchase price the Vendor shall execute a proper assurance or assurances of the Property sold to the Purchaser or his nominee or nominees such assurance or assurances shall be prepared and perfected at the expense of the Purchaser. All Vendor Solicitor's charges shall be borne by the Vendor.

6. As from the date of completion of the purchase of the Property, the Purchaser shall be entitled to the Property sold and the rents and profits thereof and he shall likewise from such date be liable for all outgoings in respect thereof, such rents and outgoings to be apportioned, if necessary.

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7. All monies due and payable to the Vendor by reason of the acquisition of a portion of the property by the National Electricity Board shall belong to the Purchaser and shall as soon as the same is received by the Vendor be paid to the Purchaser Provided further that the Vendor shall do all acts, and sign all documents as are necessary to ensure payment of the compensation to be effected to the Purchaser.

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8. If the title to the Property sold shall be a good registrable and marketable title and the Purchaser shall fail to complete the sale according to the terms and conditions contained in these presents then the sum of Dollars Thirty Six Thousand Nine Hundred and Seventy Six (\$36,976/-) so deposit as aforesaid together with the interest due and payable as specified in clause 4 hereof shall be forfeited to the Vendor as liquidated damages and no action whatsoever shall be taken upon these presents by either party and

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this Agreement shall become null and void.

EXHIBIT

C.6.
Agreement T.
Damodaran and
Andawan
2nd August 1973
continued

9. The said property is believed to be correctly described and the area thereof correctly given in the Schedule hereto and no error or misdescription or omission shall annul the sale or be the subject of compensation by either party.

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10. The said property is sold subject to all notices and requirements of Government or any duly constituted legal authority received or made on or after the date of sale and all such notices and requirements shall be complied with by and at the expense of the Purchaser who shall be deemed to buy with full notice thereof.

11. If the title to Property sold shall be a good and marketable title and the Vendor shall fail to complete the sale in accordance with the terms and conditions contained in these presents then the Purchaser shall be entitled to specific performance of this contract.

20

12. During the continuance of this Agreement the Vendor shall not sell, charge lease or part with the possession of the Property sold.

13. Time shall be of the essence of contract.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands the day and year first above written.

THE SCHEDULE ABOVE REFERRED TO

30

All those pieces of land comprised in Grant Nos. 31020 (portion 1003), 16830 (portion 141), 16831 (portion 142), 16832 (portion 143) 16833 (portion 144) Mukin of Sg. Pasir, District of Kuala Muda, Sg. Patani consisting of a total area of 46r. 107j. 00 sq. ft.

Signed and Delivered by)
the Vendor in the presence) T. Damodaran
of :)

Sgd: Illegible
Advocate & Solicitor
Penang.

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Signed and Delivered by)
the Purchaser in the) A. Andawan
presence of :)

EXHIBITASSIGNMENT, ANDAWAN S/O AYAPEN TO
UNITED REALTY SENDIRIAN BERHAD

C.7.
Assignment
Andawan to
United Realty
Sendirian
Berhad
6th March 1974

(L.S.)

AN ASSIGNMENT made this 6th day of March, 1974
BETWEEN ANDAWAN S/O AYAPEN (NRIC NO. 1927045) of
Kampong Thye Seng, Kuala Retil, Kedah (hereinafter
called the Assignor) of the one part and UNITED
REALTY SENDIRIAN BERHAD a limited liability company
incorporated in Malaysia and having a place of
business at Second Floor, No. 1527, Jalan Mahsuri,
Alor Star, Kedah (hereinafter called the Assignee)
of the other part

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WHEREAS by an agreement made on the 2nd day
of August, 1973 Between the Assignor of the
one part and one T. Damodaran s/o P.V. Raman
of the other part (hereinafter called the
Principal Agreement) the said T. Damodaran
agreed to sell to the Assignor and the
Assignor to purchase all the lands more
particularly described in the schedule hereto
(hereinafter called the said lands) at a
total purchase price of ₹369,768/-.

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AND WHEREAS the Assignor has paid the said
T. Damodaran a sum of ₹36,976/- only by way
of deposit and part payment of the purchase
price leaving a sum of ₹332,792/- remaining
to be paid to the said T. Damodaran.

AND WHEREAS the date of completion of the
sale as stated in the Principal Agreement
has by mutual consent of the Assignor and
the said T. Damodaran been amended and the
new date of completion is the day
of 1974.

30

AND WHEREAS the Assignor is now desirous
of assigning to the Assignee and the Assignee
is desirous of accepting all the Assignor's
rights title interest and benefits in the
Principal Agreement to the said lands.

NOW THIS AGREEMENT WITNESSETH as follows:-

1. In consideration of the sum of ₹36,976/- only
now paid to the Assignor by the Assignee (the
receipt of which the Assignor hereby
acknowledge) the Assignor hereby assigns unto
the Assignee absolutely all the benefits,
rights, title, interest, burdens and liabilities
in and to the said lands under the Principal
Agreement.

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2. The Assignee hereby further covenants with the Assignor but by way of indemnity only that the Assignee or the person or persons deriving title under them will henceforth at all times duly pay all payments becoming due under the Principal Agreement and observe and perform all covenants agreements and conditions therein contained.

10 3. This agreement shall be binding upon the executors, administrators, heirs, assigns and successors in title of the parties hereto.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands the day and year first above written.

SIGNED by the aforesaid Assignor)
 ANDAWAN S/O AYAPEN) A. Andawan
 in the presence of :-) (ANDAWAN S/O
 20 AYAPEN)

Sgd. Illegible

The Common Seal of)
 UNITED REALTY SENDIRIAN BERHAD)
 in the presence of :-)

Sgd. Illegible.

I, T. Damodaran s/o P.V. Raman (NRIC NO. 4095551) of No. 4211 of Sungei Nyor Road, Butterworth, Province Wellesley in consideration of the sum of [illegible] now agreed to be paid to me by the Assignor hereby consent to this Assignment and agree to accept the abovenamed UNITED REALTY SENDIRIAN BERHAD as purchaser in place of the said ANDAWAN S/O AYAPEN under the terms of the aforesaid agreement dated 2nd day of August, 1973 and confirm that I know that the address for service of notices to the purchaser pursuant to the aforesaid agreement shall be Second Floor, 1527, Jalan Mahsuri, Alor Star, Kedah, or such other address as may be notified by the said UNITED REALTY SENDIRIAN BERHAD from time to time.

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Dated this 6th day of March, 1974

Sgd. T. Damodaran
 (T. DAMODARAN S/O P.V. RAMAN)

EXHIBIT

C.7.
 Assignment
 Andawan to
 United Realty
 Sendirian
 Berhad
 6th March 1974
 continued

EXHIBIT

UNDERTAKING OF CHOE KUAN
HIM DATED 6TH MARCH 1974.

D.1.
Undertaking
of Choe Kuan
Him dated
6th March
1974

"D.1" This is the Exhibit marked "D.1"
referred to in the Affidavit of
T. Damodaran s/o P.V. Raman
affirmed before me this 23rd day
of July, 1974

Sgd: Illegible
Commissioner for Oaths

SYARIKAT CHOE
Peguambela Dan Peguamcara
Advocates and Solicitors

10

PETI SURAT 36, No. 1A, TINGKAT SATU 1561,
JALAN KOTA, ALOR SETAR, KEDAH TALIPON: 300
CHOE KUAN HIM LLB (Hon) ACII, AMBIM

To: M/s. T. Damodaran s/o P.V. Raman,
No: 4211, Sungei Nyor Road,
Butterworth.

Re: Sale of lands held under Grant
Nos: 31020 for Lot 1003, 16830
for Lot 141, 16831 for Lot 142,
16832 for Lot 143, 16833 for
Lot 144, all in the Mukim of
Sq. Pasir, District of Kuala Muda.

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This is to confirm that the sum of Ringgit
Three hundred and thirty two thousand seven hundred
and ninety two (~~£~~332,792/-) being the balance of
the purchase price of the above-said lands has been
deposited with us and that the said sum will be
released to you upon the transfer of the said lands
being duly registered in the name of the Purchaser
Messrs. Syarikat Alor Merah Sdn. Bhd. or their
nominee, nominees or assigns.

30

Dated this 6th day of March, 1974.

Sgd. Illegible.

CHEQUE OF CHOE KUAN HIM TO
T. DAMODARAN, \$182,200.00

EXHIBIT

"D.2" This is the Exhibit marked "D.2"
referred to in the Affidavit of
T. Damodaran s/o P.V. Raman affirmed
before me this 23rd day of July,
1974.

D.2.
Cheque, Choe
Kuan Him to
T. Damodaran
23rd April 1974

Sgd: Illegible
Commissioner for Oaths

NOT NEGOTIABLE
ONLY
銀行
有限公司

No. ASB 038801 No. MRA2 2693 DATE April 23rd 1974 91-02-13

شرکت یونیتد ملائیا
UNITED MALAYSIAN BANKING CORPORATION BHD.
 INCORPORATED IN MALAYSIA HEAD OFFICE: KUALA LUMPUR
 ALOR STAR, KEDAH

BAYAN
 新付
 PAY TO *Mr. T. Damodaran*

RINGGIT
 本銀幣
 DOLLARS *One hundred and eighty two thousand
 and two hundred*

\$182,200/2

PAYMENT STOPPED

ATAU PEMBAWA
 或 來 人
 OR BEARER

SYARIKAT CHOE
 Advocates & Solicitors
 ALOR SETAR

STAMP
 DUTY
 PAID

EXHIBIT

D.3.
Returned cheque
advice
30th April
1974

RETURNED CHEQUE ADVICE, UNITED
MALAYAN BANKING CORP. TO
DAMODARAN S/O P.V. RAMAN

"D.3" This is the Exhibit marked "D.3"
referred to in the Affidavit of
T. Damodaran s/o P.V. Raman affirmed
before me this 23rd day of July,
1974.

Sgd: Illegible
Commissioner for Oaths

10

شركة يونيتيد ملايان بى كى بى
合 衆 銀 行 有 限 公 司
UNITED MALAYAN BANKING CORP., BHD.
(INCORPORATED IN MALAYSIA. HEAD OFFICE: KUALA LUMPUR)

Returned Cheque Advice

B'worth Office, 30-4-74 19.

Dear Sirs

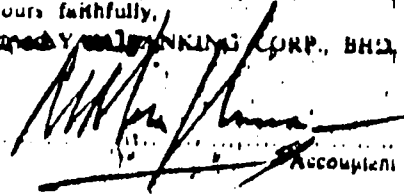
啟者，關於下列退還支票：
In respect of the following returned Cheque please note that:-

- 銀行已付.....行存款
 we have Debited your account with/through.....
請進行.....行存款
- You are requested to credit our account with.....
請將所存退還支票款項交還本行
Kindly sign and return to us the attached acknowledgement.

To: Damodaran s/o P.V. Raman,
A/C No. 624

戶 號 A/c No.	發票人及付款行 Drawer or Drawee Bank	支票號碼 Cheque No.	金額 Amount
	UMBC., Aler Star	038801 OC 662	\$182,200.00
退票理由原後頁第 (12) 項 Returned as per reason No. () on reverse side			

共計(文字正寫)
DOLLARS (in words) One hundred and eighty two thousand and two hundred and twenty

Yours faithfully,

Accomplish

64-4-1 (RETURN CHEQ. ADVICE)

LETTER, SKRINE & CO. TO SYARIKAT CHOE

EXHIBIT

"D.4" This is the Exhibit marked "D.4" referred to in the Affidavit of T. Damodaran s/o P.V. Raman affirmed before me this 23rd day of July, 1974.

D.4.
Letter Skrine
& Co. to
Syarikat Choe
30th April
1976

Sgd: Ahmad bin Abdul Rahman
Commissioner for Oaths

EXPRESS

10 A.R. REGISTERED

PM/TLH/31158/74

30th April, 1974

Syarikat Choe,
Advocates and Solicitors,
No. 1A, Tingkat Satu,
1561, Jalan Kota,
Alor Star.

Gentlemen,

20 re: Sale of Lands held under Grant
Nos. 31020 for Lot 1003, 16830
for Lot 141, 16831 for Lot 142,
16832 for Lot 143, 16833 for
Lot 144, all in the Mukim of
Sq. Pasir, District of Kuala Muda

We act for Mr. T. Damodaran s/o P.V. Raman and are instructed to refer to your written undertaking to him of 6th March 1974.

30 This undertaking states that the balance of the purchase price of the lands totalling £332,792/- has been deposited with you.

The undertaking undertakes to release this sum to our client on the transfer being registered.

Our instructions are that the transfer has been registered and that you have refused to pay our client. This is a clear breach of the undertaking given.

We are instructed to request you to make the payment to our client within forty-eight (48) hours from the receipt of this letter failing which our

EXHIBIT

D.4.
Letter Skrine
& Co. to
Syarikat Choe
30th April
1976
continued

instructions are to issue a Specially Indorsed Writ and to seek summary judgment against you in the High Court and to report the matter to the Bar Committee as a breach of your undertaking.

We may say that our client has been issuing cheques on the assumption that this money will be paid to him immediately after registration and that funds would therefore be available to meet the cheques. Owing to your breach of the undertaking there have been no funds to meet the cheques and we are instructed to inform you that our client holds you liable for damages. The position is a serious one and we trust that you will make immediate payment to our client with a view to preventing further damages occurring if not mitigating the damages already done.

10

Yours faithfully,

EXHIBIT

D.5.
Letter,
Syarikat Choe
to Skrine &
Co.
4th May 1974.

LETTER, SYARIKAT CHOE TO SKRINE
& CO.

20

"D.5" This is the Exhibit marked "D.5" referred to in the Affidavit of T. Damodaran s/o P.V. Raman affirmed before me this 23rd day of July, 1974.

Sd. Ahmad bin Abdul Rahman
Commissioner for Oaths

SYARIKAT CHOE
PEGUAMBELA DAN PEGUANCARA
ADVOCATES AND SOLICITORS

30

PETI SURAT 36, No. 1A, TINGKAT SATU 1561,
JALAN KOTA, ALOR SETAR, KEDAH TALIPON:
CHOE KUAN HIM LLB. (Hon) ACII, AMBIM

Your Ref: PM/TLH/311 58/74
Our Ref: CL/M/74

4th May, 1974

Messrs. Skrine & Co.
Straits Trading Building,
4, Leboh Pasar Besar,
Kuala Lumpur.

Received
6th May 1974

40

Dear Sirs,

Re: Sale of Lands held under Grant
 Nos. 31020 for Lot 1003, 16830
 for Lot 141, 16831 for Lot 142,
 16832 for Lot 143, 16833 for
 Lot 144, all in the Mukim of
Sg. Pasir, District of Kuala Muda.

EXHIBIT

D.5.
 Letter,
 Syarikat Choe
 to Skrine & Co.
 4th May 1974
 continued

We refer to your letter of the 30th ultimo.

10 Our letter of 6th March, 1974 was given on the understanding that your clients will comply with all the terms of the Sales Agreement which he entered into with one Andavan s/o Ayapen in respect of the sale of the said lands which said Sales Agreement was assigned to our clients on 6th March, 1974.

20 One of the terms of the said Sales Agreement is, that the said lands shall be free from all encumbrances whatsoever. You are no doubt aware that a lis Pendens is presently registered against the said lands and that your application to remove the same was we understand dismissed on 27th April.

In any event in accordance with our undertaking and on your clients assurance that the lis Pendens will be removed on 27th April we paid your client on 23rd April, the balance of the purchase price vide our U.M.B.C. cheques No. 049350 and 038801.

30 When the said lis Pendens was not removed by 27th April we were instructed to and stopped payment on cheque No. 038801.

Yours faithfully,

Sgd:

CKH/Osk.

EXHIBIT

LETTER, SKRINE & CO. TO SYARIKAT CHOE

D.6.
Letter
Skrine & Co.
to Syarikat
Choe
7th May 1976

"D.6" This is the Exhibit marked "D.6"
referred to in the Affidavit of T.
Damodaran s/o P.V. Raman affirmed
before me this 23rd day of July, 1974.

Sgd: Ahmad bin Abdul Rahman
Commissioner for Oaths

CL/M/74
PM/TLH/31158/74

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7th May, 1974.

Syarikat Choe,
Advocates & Solicitors,
No. 1A, Tingkat Satu,
1561, Jalan Kota,
Alor Setar.

Gentlemen,

re: Sale of Lands held under Grant
Nos. 31020 for Lot 1003, 16830
for Lot 141, 16831 for Lot 142,
16832 for Lot 143, 16833 for
Lot 144, all in the Mukin of
Sq. Pasir, District of Kuala Muda.

20

We thank you for your letter of 4th May.

The terms of your letter to our client are quite clear and there is no reservation whatever. You undertook expressly to pay the balance when the transfer was registered. There were no other conditions or limitations in your undertaking. The transfer was registered and there is therefore no excuse for retaining the money. There is a clear breach of your professional undertaking.

30

Your undertaking is unaffected by any consideration regarding lis pendens. No lis pendens order has been registered nor can it be. We have advised our client that in our opinion it is a nullity. The Judge is of a different opinion and there may be an appeal. Whatever the position may be on that the terms of your undertaking are unequivocal.

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We regret that we now have no alternative but to advise our client to proceed against you and to report the matter to the Bar Committee in

view of the seriousness of a breach of professional undertaking.

Yours faithfully,

EXHIBIT

D.6.
Letter
Skrine & Co.
to Syarikat
Choe
7th May 1976
continued

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LETTER, SYARIKAT CHOE TO T. DAMODARAN
S/O P.V. RAMAN

EXHIBIT

"D.7" This is the Exhibit marked "D.7" referred to in the Affidavit of T. Damodaran s/o P.V. Raman affirmed before me this 23rd day of July, 1974.

D.7.
Letter,
Syarikat Choe
to T. Damodaran
8th May 1974

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Sgd: Ahmad bin Abdul Rahman
Commissioner for Oaths

SYARIKAT CHOE
PEGUAMBELA DAN PEGUAMCARA
ADVOCATES AND SOLICITORS

PETI SURAT 36, No. 1A, TINGKAT SATU 1561, JALAN
KOTA, ALOR SETAR, KEDAH TALIPON: 723254
CHOE KUAN HIM LL.B. (Hon) ACII, AMBIM

A.R. REGISTERED.

Your Ref: PM/TLH/311 58/74
Our Ref: CL/M/74

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Mr. T. Damodaran s/o P.V. Raman,
No. 4211, Sungei Nyor Road,
Butterworth.

Re: Land held under Grant No:
31020 for lot 1003, 16830 for lot
141, 16831 for lot 142, 16832 for
lot 143, 16833 for lot 144 all in
mukim of Sungei Pasir, District
of Kuala Muda.

40

We act for M/S United Realty Sendirian Berhad who Purchased the above said lands from you by a deed of Assignment made on the 6th day of March, 1974.

It was a term of the sale that the said lands

EXHIBIT

D.7.

Letter,
 Syarikat Choe
 to T. Damodaran
 8th May 1974
 continued

shall be free from all encumbrances whatsoever. At the time of the sale the said lands were encumbered by a lis Pendens order obtained by one V.R. Vasudevan and registered against them on 22nd December, 1973. On your assurance and undertaking that the said lis Pendens order will be removed on or before the 27th day of April, 1974, our clients completed the sale and have the said lands transferred into their name and paid your part of the purchase price.

10

You have however to date failed to remove the said lis Pendens order and our clients are having difficulties dealing with the said lands because of the encumbrance on the same.

We are therefore instructed to give you notice which we hereby do that our client will withhold payment of the balance of the purchase price and will also hold you responsible for all losses expenses and costs sustained and incurred by them as a result of the said encumbrance on the said lands, until the said encumbrance is removed.

20

Yours faithfully,

Sgd:

c.c. M/s. United Realty Sendirian Berhad.

CKH/Lgh.

PLEADINGS, CIVIL SUIT No. 256 OF 1973

BUNDLE OF DOCUMENTS

I N D E X

1. AMENDED STATEMENT OF CLAIM
2. FURTHER & BETTER PARTICULARS OF STATEMENT OF CLAIM
3. STATEMENT OF DEFENCE
4. REPLY

EXHIBIT

PLEADINGS, CIVIL SUIT No. 256 OF 1973

C.8.
Pleadings,
Civil Suit
No. 256 of
1973

IN THE HIGH COURT IN MALAYA AT ALOR STAR

CIVIL SUIT NO: 256 OF 1973

(Writ issued on the 19th day of December, 1973)

Between

Vasudevan s/o Vazhappulli Raman
also known as V.R. Vasudevan

Plaintiff

10

And

T. Damodaran s/o P.V. Raman

Defendant

Amended Statement of Claim
(Order 28; rule 2)

1. In or about the month of January, 1964, the Plaintiff and Defendant (and others who do not now have any interest in the lands in question in these proceedings) jointly agreed to purchase in equal shares all those lands held under Surats Putus Nos: 16830, 16831, 16832, 16833 and 31020 for Lots 141, 142, 143, 144 and 1003 all in the Mukim of Sungei Pasir District of Kuala Muda, in the State of Kedah (hereinafter called "the said Lands") for the sum of \$97,083-60 and to develop the said lands, if thought desirable, and to sell the same or some part or parts thereof for profit.

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2. On or about the 20th January, 1964, an agreement for sale was, with the knowledge and consent of the parties hereto, entered into in the name of the Defendant as sole purchaser thereof.

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3. In consideration of the said sum of \$97,083-60 paid by the parties hereto in equal shares and proportions to the Vendors and by mutual consent, the said lands were, by a Transfer dated the 29th day of May, 1964 (Presentation No. 698/1964), Transfer No. 16/6 registered on 4th June, 1974) transferred

into the name of one N.K.V. Valliappa Chettiar son of Nagappa Chettiar of Klang, as nominee of both the Plaintiff and the Defendant.

4. By a Transfer dated the 23rd day of September, 1964, Presentation No. 1222/1964, Transfer No. 79/9, registered on 7th October, 1964) and by mutual consent of the parties hereto, the said lands were transferred by the said N.K.V. Valliappa Chettiar into the sole name of the Defendant with the knowledge and consent of the Plaintiff to the intent that the Defendant do hold a one half ($\frac{1}{2}$) undivided share right title and interest in and to the said lands in trust for the Plaintiff at all material times and to transfer the same to the Plaintiff or to his nominee whenever called upon to do so. The consideration for this transfer into the name of the Defendant was also \$97,083-60 but no money was paid to N.K.V. Valliappa Chettiar on this transfer.

5. There were diverse other intervening transactions.

6. The said lands though registered in the sole name of the Defendant and in his possession have at all material times been and still are held by the Defendant for himself and the Plaintiff in equal shares beneficially.

7. By reason of the matters hereinbefore pleaded, the Plaintiff will contend that the Defendant has at all material times held and still holds a one-half ($\frac{1}{2}$) share in the said lands in trust for the Plaintiff.

8. The Defendant, on the 23rd day of November, 1971, did also declare, acknowledge and admit in writing the Plaintiff's beneficial ownership of, in and to the said one half ($\frac{1}{2}$) share of the said lands as aforesaid.

9. On or about the 2nd day of August, 1973, without the Plaintiff's prior knowledge or consent, the Defendant entered into a contract to sell the whole of the said lands, including the said Plaintiff's one-half ($\frac{1}{2}$) undivided share right title and interest therein, to a third party, one Andawan son of Ayapen last known to be residing at Kampong Thye Seng, Kuala Ketil, Kedah.

10. On becoming aware of the wrongful and illegal

EXHIBIT

C.8.
Pleadings,
Civil Suit
No. 256 of
1973
continued

EXHIBIT

C. 8.
Pleadings,
Civil Suit
No. 256 of
1973
continued

contract entered into between the Defendant and the said Andawan, the Plaintiff took steps to protect his right and interest by, inter alia, immediately filing a Private Caveat (Reg. in Volume 2, Folio 11) against the said lands on the 21st August, 1973, which caveat was, however, subsequently discharged.

11. On or about the 24th day of October, 1973, the Defendant affirmed to an affidavit which was filed in this Honourable Court in Originating Motion No. 38 of 1973, and thereby deposed, inter alia, that Plaintiff's claim to be a co-owner as aforesaid is completely false.

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12. Wherefore the Plaintiff claims against the Defendant:-

(1) A Declaration that the Defendant holds a one-half ($\frac{1}{2}$) undivided share right title and interest of, in and to All those pieces of land comprised in Surats Putus Nos: 16830, 16831, 16832, 16833 and 31020, for Lots 141, 142, 143, 144 and 1003, Mukim of Sungei Pasir, District of Kuala Muda, State of Kedah, in trust for the Plaintiff, as acknowledged by the Defendant, expressly or impliedly, in writing dated the 23rd day of November, 1971.

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(2) A further Declaration that the Plaintiff is, therefore, the true and legal owner of the said one half ($\frac{1}{2}$) undivided share right title and interest of, in and to All those pieces of land comprised in Surats Putus Nos: 16830, 16831, 16832, 16833 and 31020, for Lots 141, 142, 143, 144 and 1003, Mukim of Sungei Pasir, District of Kuala Muda, State of Kedah.

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(3) An Order that the Defendant do forthwith execute a registrable transfer of the said one-half ($\frac{1}{2}$) undivided share right title and interest of, in and to All those pieces of land comprised in Surats Putus Nos: 16830, 16831, 16832, 16833 and 31020, for Lots 141, 142, 143, 144 and 1003, Mukim of Sungei Pasir, District of Kuala Muda, State of Kedah, to and in favour of the Plaintiff forthwith, and, on his failing to do so, that the Assistant Registrar of this

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Honourable Court do execute such transfer thereof to the Plaintiff; Alternatively, for an Order that the said one-half ($\frac{1}{2}$) undivided share right title and interest of, in and to All those pieces of land comprised in Surats Putus Nos: 16830, 16831, 16832, 16833 and 31020, for Lots 141, 142, 143, 144 and 1003, Mukim of Sungei Pasir, District of Kuala Muda, State of Kedah, do vest in the Plaintiff as the true and legal owner thereof absolutely free from all incumbrances whatsoever.

EXHIBIT

C.8.
Pleadings,
Civil Suit
No. 256 of
1973
continued

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- (4) An Injunction restraining the Defendant whether by himself or his agents or servants or any of them or otherwise be restrained by injunction until the further Order of this Honourable Court from doing the following acts or any of them, that is to say, from pledging, charging, selling, or in any way dealing with the said one-half ($\frac{1}{2}$) undivided share right title and interest of, in Surats Putus Nos: 16830, 16831, 16832, 16833 and 31020, for Lots 141, 142, 143, 144 and 1003, Mukim of Sungei Pasir, District of Kuala Muda, State of Kedah.

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- (5) In the alternative damages and/or any indemnity for breach of trust.

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- (6) Costs.
(7) Further or other relief.

Delivered this 20th day of March, 1974.

Redelivered this 7th day of December, 1974.

Sgd: Allen & Gledhill
Plaintiff's Solicitors.

EXHIBIT

IN THE HIGH COURT IN MALAYA AT ALOR STAR, KEDAH

C.8.
Pleadings,
Civil Suit
No. 256 of
1973
continued

CIVIL SUIT NO. 256 OF 1973

Between

VASUDEVAN s/o VAZHAPPULLI RAMAN
also known as V.R. VASUDEVAN Plaintiff

And

T. DAMODARAN s/o P.V. RAMAN Defendant

FURTHER AND BETTER PARTICULARS

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Served pursuant to request made by letter dated 25th April, 1974, from the Defendant's Solicitors.

The following are the particulars of the Statement of Claim:-

Under Paragraph 1.

The agreement was oral, made in or about January, 1964, at Penang. The parties to the agreement were the Plaintiff, the Defendant and Mr. K.K. Sharma.

Under Paragraph 2.

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The Plaintiff gave his consent orally in January, 1964, at Penang.

Particulars of persons present constitutes evidence.

Under Paragraph 3.

(i) Particulars in question constitute evidence.

(ii) The consent of the parties was given orally a few days before 29th May, 1964, at Messrs. Lim Huck Aik's office, Penang.

Particulars of persons present constitute evidence.

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(iii) N.K.V. Villiappa Chettiar was nominated by the Plaintiff orally in Penang, with the consent of the Defendant at Messrs. Lim Huck Aik's office on or about 29th May, 1964.

Under Paragraph 4.

The consent was given orally in Penang, at

Messrs. Presgrave & Matthews' office.

EXHIBIT

Under Paragraph 5.

Particulars of the transactions are :-

C.8.
Pleadings,
Civil Suit
No. 256 of
1973
continued

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- (1) Presentation No: 697/1964 (Rincik No: 94/1) Transfer to Lim Eng Keat & Koey Eng Keat and Koay Eng Huat as administrator of the Estate of Lim Chooi Hoe @ Lim Goo Lang - 2/3 share died on 23.12.59 pursuant to the Petition of Letters of Administration No: 192/1956 dated 4-6-64 (23-1-84) Time: 9.30 a.m.

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- (2) Presentation No: 1223/64 (Charge No: 85/1) By T. Damodaran s/o P.V. Raman I.C. No. 4095551 to N.K.V. Valliappa Chettiar s/o Nagappa Chettiar I.C. No. 1188921 presented on 7.10.64 (1.6.84) Time: 2.35 p.m.

- (3) Presentation No: 812/1967 (Rinchik No: 72/1) "Miscellaneous". Charge Presentation No: 1223/1964 has been completed presented on 16.8.1967 Time: 9.30 a.m.

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- (4) Presentation No: 813/1967 (Charge No: 71/1) Charge by T. Damodaran s/o P.V. Raman I.C. No: 7918112 presented on 16.8.1967. Time: 9.35 a.m.

Under Paragraph 6.

The Plaintiff will rely on all facts available to him in support of his claim.

Sgd: Allen & Gledhill.

Plaintiff's Solicitors.

Served this _____ day of _____, 1974, by Messrs. Allen & Gledhill of Room 203 (2nd Floor), Southern Banking Building, 21 Beach Street, Penang, Solicitors for the Plaintiff.

EXHIBIT

IN THE HIGH COURT IN MALAYA AT ALOR STAR

C.8.
Pleadings,
Civil Suit
No. 256 of
1973
continued

CIVIL SUIT NO. 256 OF 1973

Between

Vasudevan s/o Vazhappulli Raman
also known as V.R. Vasudevan Plaintiff

And

T. Damodaran s/o P.V. Raman Defendant 10

STATEMENT OF DEFENCE

1. The Defendant by agreement dated 20th January 1964 between himself and the owners of the lands referred to in paragraph 1 of the Statement of Claim agreed to purchase the said lands for the sum of \$97,083.60. The purchase price was paid by the Defendant partly with his own moneys and partly with money loaned by N.K.V. Valliappa Chettiar in whose name the transfer was taken. The said lands were transferred by N.K.V. Valliappa Chettiar to the Defendant on 23rd September 1964. 20

2. It is denied that the said lands were purchased for the Plaintiff or that N.K.V. Valliappa Chettiar transferred the said lands to the Defendant as to one-half in trust for the Plaintiff. The Defendant is and at all material times has been the sole beneficial owner.

3. The Defendant signed a letter dated 23rd November 1971 and addressed to one V.M.N. Menon in which it is stated that the Defendant is joint owner with the Plaintiff of the said lands. The said letter was written by the Plaintiff who asked the Defendant to sign. The statement that the Plaintiff was joint owner is untrue. 30

Filed at Alor Star this 25th day of January 1975.

Sgd.

High Court, Malaya 40
Alor Star.

4. It is admitted that the Defendant contracted on 2nd August 1973 to sell the said lands to Andawan. It is also admitted that the Plaintiff filed a caveat. The said caveat was removed by the Registrar.

EXHIBIT

C.8.
Pleadings,
Civil Suit
No. 256 of
1973
continued

5. Paragraph 11 of the Statement of Claim is admitted.

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6. Save as is expressly admitted herein the allegations made in the Statement of Claim are denied as if they were each set out herein and denied seriatim.

Dated this 22 day of January, 1975.

Sgd: Skrine & Co.

Defendant's Solicitors

This Statement of Defence was filed by Messrs. Skrine & Co., Straits Trading Building, 4 Leboh Pasar Besar, Kuala Lumpur, Solicitors for the Defendant abovenamed.

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IN THE HIGH COURT IN MALAYA AT ALOR STAR

CIVIL SUIT NO: 256 OF 1973

Between

Vasudevan s/o Vazhappulli Raman
also known as V.R. Vasudevan Plaintiff

And

T. Damodaran s/o P.V. Raman Defendant

R E P L Y

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1. The Plaintiff joins issue with the Defendant in his Defence save in so far as the same consists of admissions.

2. In further reply to paragraph 3 thereof, the Plaintiff avers that the Defendant is estopped from denying that the Plaintiff and the Defendant are joint owners of Lots No. 141, 142, 143, 144, and 1003, Mukim of Sungei Pasir, District of Kuala Muda, Sungei Patani, Kedah.

Dated this 29th day of January, 1975.

Sgd: Allen & Gledhill.
Plaintiff's Solicitors.

40

This Reply was filed by Messrs. Allen & Gledhill,

EXHIBIT

C.8.
Pleadings,
Civil Suit
No. 256 of
1973
continued

Plaintiff's Solicitors, of Room 203 (2nd Floor),
Southern Banking Building, 21 Beach Street,
Penang.

IN THE JUDICIAL COMMITTEE No. 24 of 1977
OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA
HOLDEN AT KUALA LUMPUR

IN THE MATTER of the ADVOCATES AND
SOLICITORS ORDINANCE 1947

- and -

IN THE MATTER of CHOE KUAN HIM,
gentleman, one of the Advocates and
Solicitors of the High Court

B E T W E E N :

T. DAMODARAN S/O P.V. RAMAN

Appellant
(Applicant)

- and -

CHOE KUAN HIM

Respondent
(Respondent)

RECORD OF PROCEEDINGS

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

Solicitors for the Appellant

PHILIP CONWAY THOMAS & CO.,
61 Catherine Place,
London,
SW1E 6HB

Solicitors for the Respondent