

29/80

No.22 of 1979

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L
FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N :

TONG LEE HWA Appellant

- and -

LEE YOKE SAN Respondent

RECORD OF PROCEEDINGS

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

Solicitors for the
Appellants

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

Solicitors for the
Respondent

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

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B E T W E E N :

TONG LEE HWA Appellant

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RECORD OF PROCEEDINGS

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Affidavit of Tong Lee Hwa	29th April 1978
Notice of Motion	29th May 1978
Order	29th May 1978
Notice of Motion	24th August 1978
Affidavit of Tharumagnanam	24th August 1978
Order	26th September 1978
Exhibit T1	10th June 1978

No. 22 of 1979

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N :

TONG LEE HWA Appellant

- and -

LEE YOKE SAN Respondent

RECORD OF PROCEEDINGS

10

No. 1

Specially Indorsed Writ

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

CIVIL SUIT 1973 No. 3.

BETWEEN

Lee Yoke San Plaintiff

and

1. Tong Lee Hwa
2. Tong Young Fah Defendant

20

The Hon. Tan Sri Ong Hock Thye, PMN, PSM, DPMS,
Chief Justice of the High Court in Malaya, in the
name and on behalf of His Majesty the Yang di-
Pertuan Agong.

To Tong Lee Hwa
11 Fort Road,
Klang,
Selangor.

Tong Young Fah,
c/o M/s. Chi Liung & Sons Ltd.
No. 3 Station Street,
Klang, Selangor.

1.

In the High
Court

No. 1
Specially
Indorsed Writ
3rd January
1973.

In the High Court

No. 1
Specially Indorsed Writ
3rd January 1973.
(cont'd)

We command you, that within eight (8) days after the service of this Writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in an action at the suit of the Plaintiff.

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

Witness Noon Thoong Shin, Dist. Registrar of the High Court the 3rd day of January 1973.

10

Sgd. Illegible

Sgd. Illegible

Plaintiff Solicitors

Assistant Registrar.

High Court Kuala Lumpur.

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

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

20

A defendant appearing personally may, if he desires, enter his appearance by post, and the appropriate forms may be obtained by sending a Postal Order for \$3.00 with an addressed envelope to the Registrar of the High Court at Kuala Lumpur.

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

30

Statement of Claim

In the High
Court

Statement of
Claim - 3rd
January 1973
No. 2

1. The Plaintiff is a chartered surveyor and a member of the Institution of Surveyors (Malaysia).

2. By a letter dated 28th May 1970 the Defendants through their solicitors M/s. Richard Talalla & Co. instructed the Plaintiff to value a company known as Chi Liung & Sons Ltd. and also the value of its shares.

10 3. By a letter dated 1st of June the Plaintiff accepted the instructions of the Defendants and in pursuance thereof carried out the said valuation of the said Chi Liung & Sons Limited and also the value of its shares.

4. It was an express term of the contract that the Plaintiff should be paid a fee in accordance with the scale of the said Institution or alternatively a reasonable fee exclusive of out of pocket expenses.

20 5. The Plaintiff's fee in accordance with the scale of the said Institution for the valuation of the said company is £33,878.75 and in respect of the valuation of the shares is £1,500/- total £35,378.75 and out of pocket expenses £585.50 grand total £35,964.25. Alternatively the sum of £35,378.75 is a reasonable fee. Full particulars thereof are contained in Bills No. 215/71 and 107/72 a copy of each is attached hereto.

30 6. The Defendants have failed to pay the said sum of £35,964.25 or any part thereof or any sum at all.

And the Plaintiff claims:-

1. the sum of £35,964.25;
2. interest at the rate of 6% p.a. on the sum of:

- a) £33,878.75 and £585.50 total
£34,464.25 from 12th October, 1971
to date of payment or realisation;
alternatively from the date of
judgment to date of payment or
realisation;

40

In the High
Court
 Statement of
 Claim - 3rd
 January 1973
 (cont'd)
 No. 2

b) \$1,500/- from 9th March 1972 to date
 of payment or realisation;
 alternatively from the date of
 Judgment to date of payment or
 realisation.

3. Costs.

Dated the 3rd day of January 1973.

Sgd. Illegible.
 Plaintiff's Solicitors.

LEE YOKE SAN

10

First Floor, Selangor Hokkien Association Building,
 41 Jalan Klyne, Kuala Lumpur. Tel: 86233

Your Ref:
 Our Ref: 116/69 11th October, 1971.

To M/s. Chi Liung & Sons Ltd.,
 No. 3 Station Street,
 Klang.

Dr. to Lee Yoke San Bill No. 215/71

TO SERVICES RENDERED

A		PROPERTY UNDER VALUATION		Value (\$)	Fee (\$)	
TOWN OF KUALA LUMPUR						
I	Jalan Tuanku Abdul Rahman, Sec. 41 (Lots 694-702, 996, 997, 705-709, & 712)	1,200,000	<u>3,300.00</u>	3,300.00		20
TOWN OF KLANG						
II(1)	Jalan Meru, Sec. 24 (Lots 98-109)	324,500	1,111.25			
(2)	Jalan Meru, Sec. 21 (Lots 49-53 & 63)	70,000	<u>400.00</u>	1,511.25		30
III	Jalan Kapar, Sec. 22 (Lots 82-90 & 93-95)	360,000	<u>1,200.00</u>	<u>1,200.00</u>		
				Total Fee c/f	6,011.25	

		<u>Value(\$)</u>	<u>Fee(\$)</u>	
		Total Fee b/f		6,011.25
IV	(1)Jalan Nenas, Sec.22 (Lots 185-188)	165,000	712.50	
	(2)Jalan Nenas, Sec.21 (Lot 124)	377,000	1242.50	
	(3)Jalan Nenas, Sec.21 (Lot 385)	185,000	<u>762.50</u>	2,717.50
10	(4)Jalan Nenas, Sec.21 (Lots 195-200,202, & 203)	335,000	1137.50	
	(5)Jalan Nenas, Sec.21 (Lots 207-209)	95,000	<u>525,00</u>	1,662.50
V	(1)Jalan Nenas/Jalan Harper, Sec.21 (Lot 309)	50,000	300.00	
	(2)Jalan Nenas/Jalan Harper, Sec.21 (Lot 310)	600,000	1800.00	
20	(3)Jalan Nenas/Jalan Harper, Sec.21 (Lots 311-313)	21,000	155.00	
	(4)Jalan Nenas/Jalan Harper, Sec.21 (Lots 314 & 315)	14,000	120.00	
	(5)Jalan Nenas/Jalan Harper, Sec.21 (Lots 316-322)	49,000	295,000	2,670.00
30	(6)Jalan Nenas/Jalan Harper, Sec.21 (Lots 323-326)	28,000	190.00	
	(7)Jalan Nenas/Jalan Harper, Sec.21 (Lots 327-338)	84,000	470.00	
	(8)Jalan Nenas/Jalan Harper, Sec.21 (Lots 339-346)	170,000	725.00	<u> </u>
		Total fee c/f		13,061.25

In the High Court
No. 2
Statement of
Claim - 3rd
January 1973
(cont'd)

In the High Court

No. 2
Statement of
Claim - 3rd
January 1973
(cont'd)

		<u>Value(£)</u>	<u>Fee(£)</u>		
				Total Fee b/f	13,061.25
	(9)Jalan Nenas/Jalan Harper, Sec. 21 (Lots 347-350)	28,000	190.00		
	(10)Jalan Nenas/Jalan Harper, Sec. 21 (Lots 351-357)	255,000	<u>937.50</u>		2,512.50
VI	Jalan Goh Hock Huat, Sec. 22 (Lots 176-182)	175,000	<u>737.50</u>		737.50
VII(1)	Main Street, Sec. 1 (Lot 43)	17,000	135.00		
	(2)Jalan Raja Hassan, Sec.21 (Lots 205-206)	70,000	400.00		
	(3)Jalan Emas, Mukim of Klang (Lots 11359 & 11360)	20,000	<u>150.00</u>		685.00
	TOWN OF TANJONG KARANG				20
VIII(1)	Sec. 1 (Lots 70-81)	96,000	530.00		
	(2)Sec. 2 (Lot 35)	70,000	400.00		
	(3)Sec. 2 (Lots 36-46)	166,000	<u>715.00</u>		1,645.00
IX	MUKIM OF KLANG Lots 4498 & 4499	70,000	<u>400.00</u>		400.00
	PORT SWETTENHAM				
X	(1)Jalan Watson, Sec. 2 (Lots 558-564)	275,000	<u>987.50</u>		987.50
	(2)Off Jalan Watson, Sec.2 (Lots 381-384, 386 & 387)	152,000	<u>680.00</u>		680.00
	(3)Jalan Watson, Sec. 1 (Lots 140, 141, & 144-146)	225,000	<u>862.50</u>		<u>862.50</u>
				Total fee c/f	21,571.25

		<u>Value(\$)</u>	<u>Fee(\$)</u>	
		Total Fee b/f		21,571.25
				<u>In the High Court</u>
XI	<u>Jalan Van Tooren/Jalan Samy. Sec. 1</u>			No. 2
	(1)Lot 147	50,000	300.00	Statement of
	(2)Lot 148	50,000	300.00	Claim - 3rd
	(3)Lot 158	25,000	175.00	January 1973.
	(4)Lot 160	15,000	125.00	(cont'd)
	(5)Lot 28	200,000	<u>800.00</u>	1,700.00
	TOWN OF BANTING			
10	<u>Main Street, Sec. 1</u>			
XII	Lots 72-74 & 185-194	313,000	1,082.50	
XIII	Lots 6-17, 26, & 28	283,000	1,007.50	
XIV	Lots 30-44	333,000	1,132.50	
XV	Lots 45, & 47-54	233,000	882.50	
XVI	Lot 55	192,000	780.00	
20	XVII Lots 114-116 & 118-127	327,000	1,117.50	
	XVIII Lots 57-60 & 62-65	164,000	<u>710.00</u>	6,712.50
	XIX <u>Telok Bunut Road, Sec. 1</u>			
	(1)Lot 129	40,000	250.00	
	(2)Lot 66	434,000	1,385.00	
XX	(1)Lot 77	45,000	275.00	
	(2)Lot 1085	25,000	175.00	
	XXI <u>Main Street, Sec. 3</u>			
30	(1)Lots 22-26 & 28-129	130,000	625.00	
	(2)Lots 18 & 19	43,000	<u>265.00</u>	<u>2,975.00</u>
		Total fee c/f		33,958.75

In the High
Court

No. 2
Statement of
Claim - 3rd
January 1973.
(cont'd)

		<u>Value(\$)</u>	<u>Fee(\$)</u>	
			Total fee b/f	33,958.75.
	VILLAGE OF SUNGRI NANOOIS			
XXII(1)	Sec.3(Lot 12)	8,000	80.00	
	(2)Sec.2(Lot 2)	8,000	<u>80.00</u>	160.00
	DENGKIL			
XXIII	Mukim of Kajang (Lots 2580 & 2581)	50,000	<u>300.00</u>	300.00
	VILLAGE OF SUNGEI PELEK			
XXIV	Sec. 1 (Lots 21-23)	18,000	<u>140.00</u>	140.00 10
	MUKIM OF KLANANG			
XXV	Lot 1263	2,400	<u>75.00</u>	75.00
	VILLAGE OF BATU			
XXVI	Sec. 1, Lot 11	1,000	<u>75.00</u>	75.00
	MUKIM OF KLANG			
XXVI	Lots 1732 & 2171- 2173	24,000	<u>170.00</u>	170.00
B	<u>OUT OF POCKET EXPENSES</u>			
1.	TRAVELLING EXPENSES & MEALS			
	(1)Lee Yoke San, Sonny Lim, Tong Lee Wah & Clerk - Kuala Lumpur, Klang, P. Swettenham, Banting and inspection in each town -125 mls.-	150.00		20
	(2)Lee Yoke San, Sonny Lim and driver - P. Swettenham and Klang Town Council on inspection, planning details, etc. - 60 mls.-	24.00		
	Meals	20.00		30
			Total Fee c/f	<u>33,878.75</u>

Total Fee b/f \$33,878.75.

In the High Court

(3) Final inspection, Lee Yoke San.
Sonny Lim, and Driver

No. 2
Statement of
Claim - 3rd
January 1973
(cont'd)

(i) Kuala Lumpur, Deagkil,
Banting and outskirts, Klang,
and surrounding

-120 mls.- \$48.20

Meals - \$20.00

(ii) P. Swettenham, Batu Village,
(Ulu Langat), Mukim of Klanang,
Tanjong Karang, Sg. Pelek

-180 mls.- \$72.00

Meals - \$20.00 \$ 254.00

(Rate: 40¢ per mile)

2. TRAVELLING EXPENSES & MEALS

(1) Sonny Lim and Wang - Klang,
Chi Liung & Sons' Office, Town
Council, District Office, Survey
3 trips x 50

-150 mls.- \$45.00

3 Meals - \$12.00 57.00 311.00

(2) Sonny Lim and Wang - Klang, P.
Swettenham as above

1 trip x 55

- 55 mls.- \$16.50

1 Meal - \$ 4.00

(3) Sonny Lim and Wang - as above,
also Banting and surrounding

2 trips x 100

-200 mls.- \$60.00

2 Meals - \$ 4.00

(4) Sonny Lim and Wang - Sepang,
Dengkil

1 trip x 90

-90 mls. - \$27.00

1 Meal - \$ 4.00

(5) Mukim of Klanang, Village of
Batu (Ulu Langat) also Banting

1 trip x 120

=120 mls.- \$36.00

1 Meal - \$ 4.00

Total Fee c/f \$ 34,189.75

In the High
Court

Total Fee b/f \$ 34,189.75

No. 2
Statement of
Claim - 3rd
January 1973
(cont'd)

(6)Tanjong Karang, Klang and P.

Swettenham

1 trip x 100

-100 mls. = \$30.00

1 Meal = \$ 4.00

(Rate 30¢ per mile) \$ 189.50

3. SEARCH FEE

Receipt No.

B.917227 = \$50.00

10

B.917091 = \$ 5.00

B.917157 = \$10.00

B.916672 = \$10.00

406182 = \$10.00 \$ 85.00 274.50

TOTAL FEE \$34,464.25

=====

TOTAL FEE: \$34,464.25 (DOLLARS: THIRTY FOUR
THOUSAND, FOUR HUNDRED AND SIXTY FOUR AND
CENTS TWENTY FIVE ONLY).

Sgd. Lee Yoke-San)
(LEE YOKE-SAN)
CHARTERED SURVEYOR.

20

LEE YOKE SAN

Bangunan Persatuan Hokkien, Selangor, Tingkat 1,
41, Jalan Klyne, Kuala Lumpur.

192/71 84446/7/8
6th March 1972.

To: M/s. Chi Liung & Sons Sdnl. Bhd.
3 Station Street,
Klang.

DR. TO LEE YOKE SAN

Bill No. 107/72

30

To Services rendered

On estimate of value of shares of
Chi Liung & Sons Sdn. Berhad
as on 28th February, 1970 based
on Balance Sheet ending on that
date and including the value of
re-appraised landed properties \$1,500.00
=====

In the High
Court

No. 2
Statement of
Claim - 3rd
January 1973
(cont'd)

Dollars: One thousand five hundred only.

10

Sgd. Lee Yoke San
(LEE YOKE SAN)
CHARTERED SURVEYOR.

And the sum of \$ (or such sum as
may be allowed on taxation) for costs, and also in
case the Plaintiff obtains an order for substituted
service, the further sum of \$ (or such sum
as may be allowed on taxation). If the amount
claimed be paid to the Plaintiff or his advocate and
solicitor or agent within four days from the service
hereof, further proceedings will be stayed.

20

Provided that if it appears from the indorsement
of the Writ that the Plaintiff is resident outside
the scheduled territories as defined in the Exchange
Control Ordinance, 1953, or is acting by order or on
behalf of a person so resident, or if the defendant
is acting by order or on behalf of a person so
resident, proceedings will only be stayed if the
amount claimed is paid into Court within the said
time and notice of such payment in is given to the
plaintiff, his advocate and solicitor or agent.

30

This Writ was issued by M/s. S.G. Lim & Co., whose
address for service is at 4th Floor, Lee Ah Bank
Building, Medan Masar, Kuala Lumpur for the said
Plaintiff, who resides at 219 Jalan Pokililing,
Kuala Lumpur.

In the High
Court

No. 3

No. 3
Defence of
First
Defendant
30th January
1973.

Defence of First Defendant

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
CIVIL SUIT NO. 3 OF 1973

Between

Lee Yoke San Plaintiff

And

1. Tong Lee Hwa
2. Tong Young Fah Defendants

DEFENCE OF FIRST NAMED DEFENDANT

10

1. In reply to para. 1, 2, 3, 4, 5 and 6 of the Statement of Claim this Defendant says that at all material times of the claim he was the Managing Director of M/s. Chi Liung & Sons Sdn. Bhd. and contends that if any instructions were given to the Plaintiff to undertake the work it was done at the request of and on behalf of all the parties to the consent order of Probate Suit No. 3 of 1969 and not in his personal capacity.

2. This Defendant has knowledge of para. 5 of the Statement of Claim but denies that the sum of \$35,964.25 is due and owing by him individually and contends that in any event he cannot be held personally responsible for settlement of this sum as the work was done by the Plaintiff for and on behalf of all the respective parties to the consent order of Probate Suit No. 3 of 1969 and states that by reason thereof that the Statement of Claim is misconceived and is bad in law.

20

3. Save in so far as hereinbefore expressly admitted the First named Defendant denies each and every allegation of fact in the Statement of Claim as if the same were set forth herein seriatim and specifically stated.

30

4. And this Defendant prays that the action be dismissed with costs.

DEFENCE ON SECOND DEFENDANT

In the High
Court

No. 3
Defence of
First
Defendant
30th January
1973.
(cont'd)

1. In reply to para. 1, 2, 3, 4, 5 and 6 of the Statement of Claim this Defendant says that he has no knowledge and denies each and every allegations and facts therein in toto.

2. This Defendant further states that he is not a proper party to this suit and that the claim against him is misconceived and bad in law.

10 3. Save in so far as hereinbefore expressly admitted the Second Defendant denies each and every allegation of fact in the Statement of Claim as if the same were set forth herein seriatim and specifically stated.

4. And this Defendant prays that the action against him be dismissed with costs.

Dated this 30th day of January 1973.

Sgd.

Defendants' Solicitors

20 This Defence is filed by M/s. T. Tharau & Co., Advocates & Solicitors of No. 3 Station Street, (1st Floor), Klang, Solicitors for the Defendants above named.

No. 4

Summons-in-Chambers

No. 4
Summons-in-
Chambers with
Affidavit in
support
17th February
1973.

IN THE HIGH COURT IN MALAYA AT
CIVIL SUIT NO. 3 OF 1973

Between

Lee Yoke San

Plaintiff

And

30 1. Tong Lee Hwa
2. Tong Young Fah

Defendant

SUMMONS-IN-CHAMBERS

LET ALL PARTIES concerned attend before the

In the High Court

No. 4
Summons-in-Chambers with Affidavit in support
17th February 1973.
(cont'd)

Judge in Chambers at the High Court at K. Lumpur on Monday the 26th day of March 1973 at the hour of 9.30 O'clock in the forenoon for the hearing of an application on the part of the for final judgment in this suit against the Defendants abovenamed for the sum of \$35,964.25 with interest and cost.

Dated this 17th day of February, 1973.

Signed by Che Nadiah Salleh

Senior Assistant Registrar
High Court Kuala Lumpur.

10

To: The Defendants abovenamed or his solicitors
M/s. T. Tharu & Co.,
Advocates & Solicitors,
No. 3 Station Street,
1st Floor, Klang.

This summons is taken out by M/s. P.G. Lim & Company of 4th Floor Lee Wah Bank Bldg., Medan Pasar, K. Lumpur, solicitors for the Plaintiff. This Summons-in-Chambers is supported by affidavit of Lee Yoke San and is affirmed on the 16th day of February 1973.

20

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

CIVIL SUIT NO. 3 OF 1973

Between

Lee Yoke San

Plaintiff

And

1. Tong Lee Hwa
2. Tong Young Fah

Defendants

A F F I D A V I T

30

I, Lee Yoke San, chartered surveyor of No. 41, Jalan Klyne, Kuala Lumpur solemnly affirm and say as follows:-

1. I am the plaintiff abovenamed, a chartered surveyor and member of the Institute of Surveyors, Malaysia.

2. The defendants through their solicitors Messrs. Richard Talalla & Company instructed me by a letter dated 28th May 1970 to value a company known as Chi Liung & Sons Sdn. Bhd. and also the value of its shares. A copy of the said letter is annexed and marked "LYS 1".

In the High
Court
No. 4
Summons-in-
Chambers with
Affidavit in
support
17th February
1973.
(cont'd)

10 3. By a letter dated 1st June 1970 I accepted the abovementioned instructions and in pursuance whereof I valued the said company and the value of its shares. A copy of the said letter is annexed and marked "LYS 2".

4. The valuation report on the company was delivered to the defendants' solicitors on the 12th October 1971 together with my bill for fees No: 215/71 for \$34,464.25¢.

5. The valuation report on the shares of the said company was delivered to the defendants' solicitors on the 9th March 1972 together with my bill No. 107/72 for \$1,500/-.

20 6. Despite repeated demands by me and my solicitors the defendants have failed to pay the said sums of \$34,464.25¢ and \$1,500.00 - total \$35,964.25¢ or any sum at all.

7. The defendants are justly and truly indebted to me for the said sum of \$35,964.25¢.

8. I verily believe that there is no defence to this action.

30 AFFIRMED by LEE YOKE SAN } Signed Lee Yoke San
on the 16th day of }
February 1973 at 3.55p.m.)

Before me,

Signed Ho Wai Kwong

Commissioner for Oaths.

This Affidavit is taken out by Messrs. P.G. Lim & Company, Solicitors for the Plaintiff whose address for service is 4th Floor, Lee Wah Bank Building, Medan Pasar, Kuala Lumpur.

In the High
Court
No. 4
Summons-in-
Chambers with
Affidavit in
support
17th February
1973.
(cont'd)

RICHARD TALALLA & CO.

STAMPED RECEIVED
28 MAY 1970

No. 9 Jalan Gereja,
(Church Street),
(Fifth Floor),
Kuala Lumpur,
MALAYA.

28th May, 1970

Mr. Lee Yoke San,
Messrs. Modern Homes
Sdn. Bhd.,
41 Jalan Klyne,
KUALA LUMPUR

Mr. Khong Chia Soon,
Messrs. Khong & Co.,
Kwangtung Association Bldg.
KUALA LUMPUR.

10

Dear Sir,

re: Kuala Lumpur High Court Probate Suit
No. 3 of 1969

We act for Messrs. Tong Lee Hwa and Tong
Young Fah.

We enclose herewith a photostat copy of an
Order of Court dated 15th December, 1969 made in
the above Probate action together with a photostat
copy of the Schedule to the said Order.

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Pursuant to the said Order of Court an
agreement was executed a photostat copy whereof is
enclosed herewith the contents whereof are self
explanatory.

The first defendant Madam Chin Ah Kwi being
in default of completion the provisions of paragraph
5 of the Schedule to the said Agreement should take
effect.

Pursuant to paragraph 6 of the Schedule to the
said Agreement the valuers are to be yourselves.
Please let us know as soon as possible whether you
are prepared so to act.

30

Yours faithfully,

Sgd. Illegible

c.c. Messrs. Sothi & Ang,
Advocates & Solicitors,
M.C.A. Building,
Jalan Ampang,
Kuala Lumpur. Your ref: ACL/K/C/373/70

c.c. Messrs. Lovelace & Hastings, Advocates &
Solicitors, 57 Jalan Klyne,
Kuala Lumpur. Your ref: NAM/ccm/397/66(6)

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This is the exhibit marked "LYS1" referred to in
the affidavit of Lee Yoke San. Sworn/affirmed
before me this 16th day of February 1973.

Signed Ho Wai Kwong. - Commissioner for Oaths.

No. 5

Affidavit of Tong Lee Hwa

In the High
Court

No. 5
Affidavit of
Tong Lee Hwa
23rd March
1973.

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

CIVIL SUIT NO. 3 OF 1973

Between

Lee Yoke San

Plaintiff

And

1. Tong Lee Hwa

2. Tong Young Fah

Defendants

10

A F F I D A V I T

I, Tong Lee Hwa (I/C No. 3993571) of No. 21 Jalan Melawis, Kelang, hereby solemnly affirm as follows:-

1. I am the Defendant firstly named herein and make this Affidavit from my own personal knowledge having been a party to the High Court Probate Suit No. 3 of 1969. (hereinafter referred to as "the said Probate Suit")

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2. I have seen and read the Affidavit of Lee Yoke San affirmed on the 16th day of February 1973 (hereinafter referred to as "the said Affidavit") which purports to support the Summons-in-Chambers for leave to sign judgment dated the 17th day of February 1973 and both filed herein.

3. With regard to paragraphs 2, 3, 4, 5, 6, 7 and 8 of the said Affidavit, I crave leave to refer to my Statement of Defence dated the 30th day of January 1973 and filed herein.

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4. I say further that I was the second named Defendant in the said Probate Suit wherein a consent Order was made by the Kuala Lumpur High Court on the 15th day of December 1969 together with a schedule of the terms of the consent Order (hereinafter referred to as "the said Schedule") both of which are filed herein attached to Exhibit marked "LYS 1". Pursuant to this Court Order an agreement dated the 15th day of December 1969 was executed by all the respective parties to the said Probate Suit incorporating the

In the High Court

No. 5
Affidavit of
Tong Lee Hwa
23rd March
1973.
(cont'd)

terms of the said Schedule (hereinafter referred to as "the said Agreement"), a copy of which is filed herein attached to Exhibit marked "LYS 1".

5. As to the Plaintiff's claim for the sum of \$35,964.25 I say that he was appointed a joint valuer pursuant to clauses 5 and 6 of the said Schedule and Agreement to undertake certain valuation work for the purpose of determining the value of shares for the sale and purchase of the same pursuant to clause 5 of the said Schedule and Agreement. One, Tong Chong Fah, the Plaintiff in the said Probate Suit and myself are the named purchasers and Madam Chin Ah Kwi the first named Defendant in the said Probate Suit and one Tong Chow Hwa, a signatory to the said Agreement are the Vendors pursuant to clause 5 of the said Schedule and said Agreement. It is quite evident from clause 12 of the said Schedule and the said Agreement that the costs payable to the valuers in this respect shall be borne equally as to half by the Vendors and as to the other half by the Purchasers of the shares. By reason thereof I crave leave to refer to my Defence filed herein and reiterate that I am not individually liable for the sum of \$35,964.25 claimed by the Plaintiff herein and deny paragraphs 7 and 8 of the said Affidavit.

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6. In any event I am advised and verily believe that any dispute that may arise in respect of the said Probate Suit and that of the terms of the said Schedule and the said Agreement must be referred to arbitration pursuant to clause 13 of the said Schedule and the said Agreement.

30

Wherefore I am advised and verily believe that this honourable Court has no jurisdiction to hear this application to sign final judgment nor the civil suit No. 3 of 1973 both filed herein and by reason thereof is bad in law. In this respect I crave leave to refer to item G of page 13 and item A, B and C of page 14 of the Judgment delivered by the honourable Justice Gill in Federal Court Civil Appeal No. 41 of 1970, which reads:

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"Clause 13 of the schedule to the agreement provided that any dispute in the agreement was to be referred to arbitration. Clearly the arbitration clause would not apply in the case of a dispute as to the terms of the order made on December, 15, 1969, because this would be inconsistent with the liberty to apply to enforce the order. The arbitration clause,

however, became relevant once the agreement of December 15, 1969 was executed by all the parties. Thereafter, the intention of the parties clearly was that any dispute as to the terms of the agreement should be the subject of a reference to arbitration rather than a reference to court, as the court would have no jurisdiction to vary the terms of the agreement against the will of the contracting parties."

In the High Court
No. 5
Affidavit of
Tong Lee Hwa
23rd March
1973.
(cont'd)

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7. In view of the foregoing reasons I pray that this application be dismissed with cost.

Affirmed by the abovenamed Tong Lee Hwa at Klang in the State of Selangor this 23rd day of March 1973 at 2.25p.m.) Sd: Tong Lee Hwa)

Before me,

Sgd. Illegible
.....
Commissioner for Oaths,
Klang.

20

This affidavit is filed by Messrs. T. Tharu & Co., Advocates & Solicitors of No. 3 Station Street (1st Floor), Klang, the Solicitors for the Defendants abovenamed.

No. 6

Affidavit of T. Tharumaganum

No. 6
Affidavit of
T.
Tharumaganum
23rd March
1973.

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

CIVIL SUIT NO. 3 OF 1973

Between

30

Lee Yoke San Plaintiff

And

1. Tong Lee Hwa
2. Tong Young Fah Defendants

A F F I D A V I T

I, T. Tharumaganum of full age and care of

In the High Court

No. 3 Station Street, Klang, do hereby solemnly affirm as follows:-

No. 6
Affidavit of
T.
Tharumagnanum
23rd March
1973.
(cont'd)

1. Messrs. T. Tharu & Co. are the solicitors for the second named Defendant herein (hereinafter referred to as "the second Defendant") and I am the solicitor having charge of this matter and am intimately acquainted with the facts of this matter.

2. I have seen and read the Affidavit of Lee Yoke San affirmed on the 16th day of February 1973 (hereinafter referred to as "the said Affidavit") which purports to support the Summons-in-Chambers for leave to sign Judgment dated the 17th day of February 1973 and both filed herein.

10

3. With regards to paragraphs 2, 3, 4, 5, 6, 7 and 8 of the said Affidavit I crave leave to refer to the Statement of Defence of the second Defendant dated the 30th day of January 1973 and filed herein.

4. I am advised and verily believe that the second Defendant is not a proper party to this. I crave leave to refer to Affidavit of the first named Defendant herein affirmed on the 23rd day of March 1973 and filed herein in particular to paragraphs 4, 5 and 6 which is self-explanatory.

20

5. Although the second Defendant was one of the parties to the Probate Suit No. 3 of 1969, I am advised and verily believe he is not a purchaser or vendor of sale of shares pursuant to clause 5 of the Schedule to the consent Order dated the 15th day of December 1969 filed herein and attached to Exhibit marked LYS 1, and by reason thereof he cannot be held responsible for the sum of \$35,964.25 or any part thereof claimed by the Plaintiff herein.

30

6. In view of the foregoing I am advised and deny paragraphs 7 and 8 of the said Affidavit and pray that this application be dismissed with costs.

Affirmed by the abovenamed T.)
Tharumagnanum at K.L. in the)
State of Selangor this 23rd) Sd: T. Tharumagnanum
day of March at 3.32 p.m.)

Before me,
Sd: Illegible
Commissioner for Oaths,
High Court, K.L.

40

This Affidavit is filed by Messrs. T. Tharu & Co., Advocates & Solicitors No. 3 Station Street (1st floor), Klang, Solicitors for the Defendants herein.

No. 7
O R D E R

In the High
Court

No. 7
Order
26th March
1973.

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
CIVIL SUIT NO. 3 OF 1973

Between

LEE YOKE SAN

Plaintiff

And

1. TONG LEE HWA
2. TONG YOUNG FAH

Defendants

10

BEFORE THE HONOURABLE MR. JUSTICE MOHD. AZMI

THIS 26TH DAY OF MARCH 1973.

IN OPEN COURT

O R D E R

20

UPON HEARING Mr. Ong of Counsel for the Plaintiff abovenamed and Mr. Tharu of Counsel for the Defendants abovenamed AND UPON READING the Summons in Chambers dated the 17th day of February, 1973, the Affidavit of Lee Yoke San affirmed on the 16th day of February, 1973, the Affidavit of Tong Lee Hwa affirmed on the 23rd day of March, 1973 and the Affidavit of T. Tharumagnanam affirmed on the 23rd day of March 1973 and all filed herein IT IS ORDERED that the application herein be withdrawn with liberty to join the other parties involved in Probate Suit No. 3 of 1969 as Defendants AND IT IS ORDERED that no provision be made as to costs.

GIVEN under my hand and the Seal of the Court this 26th day of March, 1973.

Signed Illegible

30

Senior Assistant Registrar,
High Court, Kuala Lumpur.

This Order is taken out by Messrs. T. Tharu & Co., Solicitors for the above-named Plaintiffs, whose address for service is at 5th Floor, Oriental Plaza, Jalan Parry, Kuala Lumpur.

In the High Court

No. 8

No. 8
Notice of
Motion and
Affidavit in
Support
10th December
1976.

Notice of Motion and Affidavit in
support

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
CIVIL SUIT NO. 3 OF 1973

Between

Lee Yoke San

Plaintiff

And

1. Tong Lee Hwa
2. Tong Young Fah

Defendants 10

NOTICE OF MOTION

TAKE NOTICE that this Court will be moved before the Honourable Judge on Monday the 25th day of April 1977 at 10.30 o'clock in the forenoon for an order that the Defences of the First and Second Defendants herein be struck out as disclosing no reasonable answer and as being frivolous and vexatious and that the Plaintiff be at liberty to sign judgment against the First and Second Defendants in terms of the prayers in the Statement of Claim and for his costs of the action and of this application to be taxed. 20

Dated this 10th day of December 1976.

Sgd. Illegible

Senior Assistant Registrar
High Court, Kuala Lumpur.

Sgd. Illegible.
Plaintiff's Solicitors.

This Notice of Motion is filed by Messrs. Skrine & Co., Straits Trading Building, No. 4 Leboh Pasar Besar, Kuala Lumpur, Solicitors for the Plaintiff abovenamed. 30

The Affidavit of Lee Yoke San affirmed on the 7th day of December 1976 will be read in support of this application.

This Notice of Motion is to be served on:-

Messrs. T. Tharu & Co., Advocates & Solicitors,
No. 3 Station Street, (1st Floor), Klang.

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
CIVIL SUIT NO. 3 OF 1973

In the High
Court
No. 8
Notice of
Motion and
Affidavit in
support
10th December
1976.
(cont'd)

Between

Lee Yoke San

Plaintiff

And

1. Tong Lee Hwa
2. Tong Young Fah

Defendants

A F F I D A V I T

10

I, LEE YOKE SAN, of full age and Malaysian citizen of Tingkat 1, Selangor Hokkien Association Building, No. 41, Jalan Klyne, Kuala Lumpur, affirm and say as follows:-

1. I am the Plaintiff abovenamed. All the facts herein deposed to are within my own personal knowledge except such as are deposed to upon information given to me and my belief therein.

20

2. On the 28th May, 1970 I received from Messrs. Richard Talalla & Co. the letter a copy whereof is now produced and shown to me marked "LYS.1". The said letter was written by Messrs. Richard Talalla & Co. as solicitors acting for the First and Second Defendants herein and enquired whether I was prepared to act as valuer pursuant to paragraph 6 of the Schedule to an agreement a copy of which was supplied to me. There was also supplied to me a copy of an Order of Court dated 15th December, 1969 with a copy of the Schedule to that Order. There are now produced and shown to me marked "LYS.2" and "LYS.3" respectively copies of the agreement and of the Order of Court with attached Schedule which were supplied to me. The said letter did not purport to be issued on behalf of any persons other than the First and Second Defendants nor was the enquiry as to whether I was prepared to act addressed to me on behalf of any persons other than the First and Second Defendants. Although copies of the letter were apparently extended to Messrs. Sothi & Ang and Messrs. Lovelace and Hastings, I was not made aware of why copies were sent to these firms or what their position in the matter was. At no time did either of these firms issue any letter to me asking me to act on my person's behalf nor did they issue to me any letter confirming or in any way authorising

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40

In the High
Court

No. 8
Notice of
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Support
10th December
1976.
(cont'd)

or ratifying the letter sent to me by Messrs.
Richard Talalla & Co.

3. On the 1st June, 1970 I wrote to Messrs.
Richard Talalla & Co. accepting their offer of
appointment as valuer. A copy of my letter is now
produced and shown to me marked "LYS.4". My
acceptance was addressed only to Messrs. Richard
Talalla & Co. and not to any other person. I then
heard nothing further on the matter until the 21st
April, 1971 when I received a letter from Messrs.
Richard Talalla & Co. informing me that their
instructions were to request me to proceed with the
matter. A copy of the said letter is now produced
and shown to me marked "LYS.5". In this letter
Messrs. Richard Talalla & Co. did not purport to
instruct me on behalf of any persons other than
those named in their letter of 28th May, 1970 and
did not purport to authorise me to act for any
other persons. On the 22nd April, 1971 I wrote the
letter now produced and shown to me marked "LYS.6" in
acknowledgement of the instructions given to me.
My letter was addressed to Messrs. Richard Talalla
& Co. only and not to any other person.

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20

4. On the 1st July, 1971 I received from Messrs.
Richard Talalla & Co. the letter now produced and
shown to me marked "LYS.7" in which they stated
they were instructed to request me to value the
other assets and liabilities. In that letter
Messrs. Richard Talalla & Co. did not purport to
instruct me on behalf of any persons other than those
named in the letter of 28th May, 1970 and did not
purport to authorise me to act for any other persons.

30

5. On the 12th October, 1971 I sent to Messrs.
Richard Talalla & Co. three copies of my valuation
of the properties one being for their retention,
one being for Chi Liung & Sons Sdn. Bhd. who were
owners of the properties I had to value and one
being for Turquand Youngs & Co. who were auditors
of the company. A copy of my letter forwarding my
valuation is now produced and shown to me marked
"LYS.8". I did not make copies of the valuation
available for any persons other than those referred
to in my letter. With my letter I also enclosed my
bill 215/71 for a sum of \$34,464.25 which forms
part of the subject matter of this action.

40

6. On the 9th March 1972 I sent to Messrs. Richard
Talalla & Co. a copy of my valuation of the shares
in Chi Liung & Sons Sdn. Berhad in accordance with

their request contained in LYS.7". A copy of my letter forwarding the valuation is produced and shown to me marked "LYS.9". Two copies of my valuation were also sent to Chi Liung & Sons Sdn. Berhad since it was that company's shares which were being valued but I did not send a copy of the valuation to any other person. I also submitted my bill No. 107/72 in respect of this work for a sum of \$1,500 which forms the remaining part of the subject matter of this action.

In the High Court

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(cont'd)

7. Messrs. Richard Talalla & Co. verbally requested me to look to Chi Liung & Sons Sdn. Berhad for payment of my bills although that company had never given me any instructions and although that company was not a party made responsible for payment of my bills by the terms of the agreement "LYS.2" or the Court Order "LYS.3". Pursuant to Messrs. Richard Talalla & Co.'s request the bills were made out against the company and payment was demanded from the company. A copy of my letter of demand dated 11th April, 1972 is now produced and shown to me marked "LYS.10". The company never paid my bills or any part of them nor did it ever acknowledge or admit that it was liable to pay them.

8. By reason of the continued non-payment of my bills, I consulted my solicitors Messrs. P.G. Lim & Co. on the matter and they advised me to file the present action for recovery of payment. They further advised me that the action should be brought against the First and Second Defendants since these were the only persons who had ever requested me and authorised me to undertake the work and no other persons had ever requested or authorised me to act of their behalf. The writ was accordingly filed against the First and Second Defendants only.

9. I crave leave to refer to the defences filed herein by the First and Second Defendants. The First Defendant's defence is that any instructions he gave to me were given at the request of and on behalf of all the parties to the consent Order "LYS.3" and not in his personal capacity and that the bills are therefor not owing by him individually so that he cannot be held personally responsible for settlement as the work was done by me for and on behalf of all the parties. Because of this he maintains the action is misconceived and bad in law. The Second Defendant denies all knowledge and states he is not a proper party to the suit and that the

In the High Court

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(cont'd)

claim against him is misconceived and bad in law. In relation to these defences I am advised by my solicitors and verily believe:-

- (a) that in so far as the First Defendant's defence seeks to maintain that he is not liable to me because he is only one of several joint contracting parties his defence affords no answer in law to my claim against him;
- (b) that the First Defendant cannot deny that he gave me instructions in view of the contents of his solicitors' letter "LYS.1" and having given instructions he has no defence in law to my claim for payment of my fees; 10
- (c) that in so far as the First Defendant's defence purports to be based on misjoinder or non-joinder of parties, it is no defence in law to my claim against him;
- (d) that the Second Defendant cannot deny that he gave me instructions in view of the contents of his solicitors' letter "LYS.1" and having given instructions he has no defence in law to my claims for payment of my fees; 20
- (e) that in so far as the Second Defendant's defence purports to be based on misjoinder or non-joinder of parties it is no defence in law to my claim against him;
- (f) that even if the Second Defendant issued no instructions to me and is not liable to me the First Defendant has no answer in law to my claim against him; 30
- (g) that the defences of both the Defendants disclose no reasonable answer to my claim and are frivolous and vexatious.

AFFIRMED at Kuala Lumpur,)
this 7th day of December) Sgd. Lee Yoke San
1976 at 12.05 p.m.)

Before me,

Sgd. Ho Wai Kwong
Commissioner for Oaths. 40

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

RICHARD TALALLA & CO.

No. 9 Jalan Gereja,
(Church Street),
Fifth Floor),
Kuala Lumpur,
Malaya.

In the High
Court

STAMPED
RECEIVED 28 MAY 1970

28th May, 1970.

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1976.

(cont'd)

Our reference RT/TTK/231/66(6)

10 Mr. Lee Yoke San,
Messrs. Modern Homes Sdn.
Bhd.,
41, Jalan Klyne,
KUALA LUMPUR.

Mr. Khong Chia Soon,
Messrs. Khong & Co.,
Kwangtung Association
Bldgs.,
KUALA LUMPUR.

Dear Sir,

re: Kuala Lumpur High Court Probate
Suit No. 3 of 1969

We act for Messrs. Tong Lee Hwa and Tong
Young Fah.

20 We enclose herewith a photostat copy of an
Order of Court dated 15th December, 1969 made in the
above Probate action together with a photostat copy
of the Schedule to the said Order.

Pursuant to the said Order of Court an agreement
was executed a photostat copy whereof is enclosed
herewith the contents whereof are self explanatory.

The first defendant Madam Chin Ah Kwi being in
default of completion the provisions of paragraph 5
of the Schedule to the said Agreement should take
effect.

30 Pursuant to paragraph 6 of the Schedule to the
said Agreement the valuers are to be yourselves.
Please let us know as soon as possible whether you
are prepared so to act.

Yours faithfully,

c.c. Messrs. Sothi & Ang, Advocates & Solicitors,
M.C.A. Building, Jalan Ampang,
Kuala Lumpur. Your Ref: ACL/K/C/373/70

c.c. Messrs. Lovelace & Hastings, Advocates &
Solicitors, 57 Jalan Klyne,
Kuala Lumpur. Your ref: NAM/ccm/397/66(6)

40 This is the Exhibit marked "LYS.1" referred to in the
Affidavit of Lee Yoke San affirmed on the 7th day of
December, 1976. Sgd. Ho Wai Kwong.

Commissioner for Oaths.

In the High Court
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(cont'd)

THIS AGREEMENT is made pursuant to an Order of Court made on the 15th day of December, 1969, in Probate Suit No. 3 of 1969 in the High Court in Malaya at Kuala Lumpur between TONG CHONG FAH ("Chong Fah"), CHIN AH KWI, TONG LEE HWA ("Lee Hwa") TONG YOUNG FAH ("Young Fah") TONG LEE HWA as executor of the Estate of Fun Siew deceased TONG HUI PENG. TONG HUI SEE, LAM LAI HWA and TONG BAN MOOT together as administratrices of the estate of Tong Poh Hwa deceased, CHIN AH KWI alias CHIN FOONG OOI as sole surviving administratrix of the estate of Tong Ban Hwa deceased, TONG CHONG FAH and TONG LEE HWA as proposed administrators of the estate of Chi Liung deceased, TONG CHOW HWA, TONG KING all the foregoing of Klang and CHI LIUNG & SON SDN. BHD.

10

WHEREAS

1. Chong Fah, Chin Ah Kwi, Lee Hwa and Young Fah as parties to the said Probate Suit No. 3 of 1969 have agreed on terms of settlement particulars of which are set out in schedule hereto, the said terms having been made a Rule of Court pursuant to the Order made in the said Probate Suit on the 15th December, 1969.

20

2. The parties hereto being all the persons concerned with the effective carrying out of the said terms of settlement have agreed to give effect thereto.

NOW IT IS HEREBY AGREED as follows:-

The parties hereto either in their personal capacities or their representative capacities or both and each in consideration of the agreement by the other parties hereto to the terms hereof will take all such steps as may be necessary to give effect to the said terms of settlement as if each and every one of the parties hereto had been a party to the said terms of settlement.

30

SCHEDULE

1. The Estate of Chi Liung deceased to be administered as on intestacy by the Plaintiff and the Second Defendant as the first in order of entitlement.

40

2. Moneys lodged in Court in the interpleader proceedings between the Estate of Chi Liung deceased and Chi Liung & Son Limited (hereinafter called "the Company") to be released to the Company by appropriate Court Order forthwith.

3. The Plaintiff and the Second Defendant undertaking that the debts of the Company will not at the date of completion exceed \$3 million to procure the sale to the First Defendant or her nominees at a price of \$2,000.00 (Dollars Two thousand only) per share the following shares in the Company.

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	Tong Chong Fah	-	900
	Tong Lee Hwa	-	600
10	Tong Young Fah	-	600
	Estate of Fun Siew	-	150
	Tong Hui Peng	-	60
	Tong Hui See	-	60
	Estate of Tong Poh Hwa	-	150

20 And the beneficial interest of the above persons in the shares in the Company forming the entitlement of the estates of Chi Liung and Tong Yew Seng deceased. Provided that the Administrator of the Estate of Tong Yew Seng shall be allowed time to obtain any necessary Court Order that he may require beyond completion date as hereinafter provided.

4. Completion of three above to be on 29th February, 1970 time being of the essence.

30 5. In default of completion on 29th February, 1970 the Plaintiff and the Second Defendant to buy from the beneficial owners thereof all the shares of the Company not included in the sale contemplated by paragraph 3 above at a figure to be determined by an accountant and two qualified valuers to be appointed by the parties to act as arbitrators who shall be at liberty to co-opt any other necessary experts, the accountant in the event of dispute to act as umpire.

6. The accountant to be a member of the firm of Turquand Youngs & Company, Kuala Lumpur and the valuers who are to prepare a joint valuation to be Lee Yoke San of Modern Homes Sdn. Berhad and Khong Chia Soon of Kuala Lumpur.

40 7. Completion under 5 above to be four weeks after delivery of the arbitrators valuation to the parties.

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(cont'd)

8. All orders governing the Company's affairs to stand until completion and thereupon to be discharged, and pending completion all parties to have reasonable access to the Company's books and records.

9. No dividends to be declared by the Company until completion upon which all accumulated profits to be distributed to the shareholders by way of dividend immediately prior to completion, such distribution to be taken into account by the arbitrators under 5 above.

10

10. Directors who cease to be shareholders on completion to resign immediately thereafter.

11. Tong King to apply to be joined as Co-Administrator of the Estate of Tong Ban Hwa deceased.

12. No order for costs in these proceedings. Each party to bear his or her own costs; costs of the arbitrators and other experts appointed under 5 to be borne equally as to half by the Vendors and as to the other half by the Purchasers of the shares.

20

13. Any dispute under this Agreement to be referred to arbitration.

14. The parties hereto to execute and to procure the execution by all other necessary parties of an agreement embodying the terms of this Schedule.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands this 15th day of December, 1969.

SIGNED by the said)
TONG CHONG FAH in) Sgd. Tong Chong Fah
the presence of:-)

30

Signed: Illegible
Advocate & Solicitor
Kuala Lumpur.

SIGNED by the said)
CHIN AH KWI in the) Sgd.
presence of:-)

Signed: Illegible
Advocate & Solicitor
Kuala Lumpur.

40

SIGNED by the said)
TONG LEE HWA in the) Sgd. Tong Lee Hwa
presence of:-)

Signed: Richard Talalla
Advocate & Solicitor,
Kuala Lumpur.

In the High
Court

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Support
10th December
1976.
(cont'd)

SIGNED by the said)
TONG YOUNG FAH in the) Sgd. Tong Young Fah
presence of:-)

10 Signed: Richard Talalla
Advocate & Solicitor,
Kuala Lumpur.

SIGNED by the said)
TONG LEE HWA as)
executor of the Estate) Sgd. Tong Lee Hwa
of Fun Siew deceased)
in the presence of:-)

20 Signed: Richard Talalla
Advocate & Solicitor,
Kuala Lumpur.

SIGNED by the said)
TONG HUI PENG in the) Sgd. Tong Hui Peng
presence of:-)

Signed: Richard Talalla
Advocate & Solicitor,
Kuala Lumpur.

SIGNED by the said)
TONG HUI SEE in the) Sgd. Tong Hui See
presence of:-)

30 Signed: Richard Talalla
Advocate & Solicitor,
Kuala Lumpur.

SIGNED by the said LAM)
LAI HWA and TONG HAN)
MOOI as executrices of) Sgd. Lam Lai Hwa
the Estate of Tong Poh) Sgd. Tong Han Mooi
Hwa, deceased in the)
presence of:-)

40 Signed: Richard Talalla
Advocate & Solicitor,
Kuala Lumpur.

In the High Court
Court
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Notice of Motion and Affidavit in Support
10th December 1976.
(cont'd)

SIGNED by the said CHIN)
AH KWI @ CHIN FOONG OOI)
as sole surviving)
administratrix of the)
Estate of Tong Ban Hwa)
deceased in the presence)
of:-)
Sgd: Illegible
Advocate & Solicitor,
Kuala Lumpur.

10

SIGNED by the said TONG)
CHONG FAH and TONG LEE)
HWA together as proposed)
administrators of the)
estate of Chi Liung)
deceased in the presence)
of:-)
Sgd. Richard Talalla
Advocate & Solicitor,
Kuala Lumpur.

Sgd. Tong Chong Fah
Sgd. Tong Lee Hwa

20

SIGNED by the said TONG)
CHOW HWA in the presence)
of:-)
Sgd. Illegible
Advocate & Solicitor
Kuala Lumpur.

Sgd. Tong Chow Hwa

SIGNED by the said TONG)
KING in the presence of:))
Sgd. Illegible
Advocate & Solicitor
Kuala Lumpur.

Sgd. Tong King

30

SIGNED by TONG CHONG FAH)
for and on behalf of the)
said CHI LIUNG & SON SDN)
BERHAD in the presence)
of:-)
Sgd. Illegible
Advocate & Solicitor
Kuala Lumpur.

Sgd. Tong Chong Fah

This is the Exhibit marked "LYS2" referred to in
the Affidavit of Lee Yoke San affirmed on the 7th
day of December 1976.

40

Sgd. How Wai Kong
Commissioner for Oaths.

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

PROBATE SUIT NO. 3 of 1969

In the High
Court

No. 8
Notice of
Motion and
Affidavit in
Support
10th December
1976.
(cont'd)

Between

Tong Chong Fah

Plaintiff

And

1. Chin Ah Kwi (f) alias
Chin Poong Ooi (f)

2. Tong Lee Hwa

3. Tong Young Fah

Defendants

(by original action)

And Between the said

Chin Ah Kwi (f) alias
Chin Foong Ooi (f)

Plaintiff

And

1. Tong Chong Fah

2. Tong Lee Hwa

3. Tong Young Fah

Defendants.

BEFORE THE HONOURABLE MR. JUSTICE
CHANG MIN TAT, JUDGE, MALAYA.

IN OPEN COURT

O R D E R

The Judge having taken the oral evidence of the witnesses produced on behalf of the 1st Defendant and having heard Counsel thereon on behalf of the Plaintiff and the Defendants and the Plaintiff and the Defendants by their respective Counsel having agreed to the terms as set out in the Schedule hereto pronounced against the force and validity of the last Wills and Testaments of Chi Liung the deceased in this action bearing date respectively the 28th day of October 1965, the 4th day of May, 1966, the 2nd day of June 1966 and the 6th day of June 1966 and one Codicil to the said Will dated the 4th day of May 1966 bearing date the 21st day of May 1966 propounded in this action on behalf of the Plaintiff and the Defendants therein named and

In the High Court

No. 8
Notice of Motion and Affidavit in Support
10th December 1976.
(cont'd)

ordered that the Estate of the said Chi Liung deceased be administered as on an intestacy and ordered that the terms of settlement agreed to between the parties and annexed as a schedule to this order be filed and made a rule of Court and made no order as to costs save as insofar as is necessary to give effect to the said terms of settlement and gave liberty to all parties to apply.

Given under my hand and the seal of this Court this 15th day of December, 1969.

10

Sgd. Illegible
Senior Assistant Registrar,
High Court, Kuala Lumpur.

SCHEDULE

1. The Estate of Chi Liung deceased to be administered as on intestacy by the Plaintiff and the Second Defendant as the first in order of entitlement.

2. Moneys lodged in Court in the interpleader proceedings between the Estate of Chi Liung deceased and Chi Liung & Son Limited (hereinafter called "the Company") to be released to the Company by appropriate Court Order forthwith.

20

3. The Plaintiff and the Second Defendant undertaking that the debts of the Company will not at the date of completion exceed \$3 million to procure the sale to the First Defendant or her nominees at a price of \$2,000.00 (Dollars Two thousand only) per share the following shares in the Company.

30

Tong Chong Fah	-	900
Tong Lee Hwa	-	600
Tong Young Fah	-	600
Estate of Fun Siew	-	150
Tong Hui Peng	-	60
Tong Hui See	-	60
Estate of Tong Poh Hwa	-	150

And the beneficial interest of the above persons in

the shares in the Company forming the entitlement of the estates of Chi Liung and Tong Yew Seng deceased. Provided that the Administrator of the Estate of Tong Yew Seng shall be allowed time to obtain any necessary Court Order that he may require beyond completion date as hereinafter provided.

In the High Court

No. 8
Notice of Motion and Affidavit in Support
10th December 1976.
(cont'd)

4. Completion of three above to be on 29th February, 1970 time being of the essence.

10 5. In default of completion on 29th February, 1970 the Plaintiff and the Second Defendant to buy from the beneficial owners thereof all the shares of the Company not included in the sale contemplated by paragraph 3 above at a figure to be determined by an accountant and two qualified valuers to be appointed by the parties to act as arbitrators who shall be at liberty to co-opt any other necessary experts, the accountant in the event of dispute to act as umpire.

20 6. The account out to be a member of the firm of Turquand Youngs & Company, Kuala Lumpur and the valuers who are to prepare a joint valuation to be Lee Yoke San of Modern Homes sdn. Berhad and Khong Chia Soon of Kuala Lumpur.

7. Completion under 5 above to be four weeks after delivery of the arbitrators valuation to the parties.

30 8. All orders governing the Company's affairs to stand until completion and thereupon to be discharged, and pending completion all parties to have reasonable access to the Company's books and records.

9. No dividends to be declared by the Company until completion upon which all accumulated profits to be distributed to the shareholders by way of dividend immediately prior to completion, such distribution to be taken into account by the arbitrators under 5 above.

10. Directors who cease to be shareholders on completion to resign immediately thereafter.

40 11. Tong King to apply to be jointed as Co-Administrator of the Estate of Tong Ban Hwa deceased.

12. No order for costs in these proceedings.

In the High Court

No. 8
Notice of
Motion and
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Support
10th December
1976.
(cont'd)

Each party to bear his or her own costs; costs of the arbitrators and other experts appointed under 5 to be borne equally as to half by the Vendors and as to the other half by the Purchasers of the shares.

13. Any dispute under this Agreement to be referred to arbitration.

14. The parties hereto to execute and to procure the execution by all other necessary parties of an agreement embodying the terms of this Schedule.

10

This is the Exhibit marked "LYS.3" referred to in the Affidavit of Lee Yoke San sworn before me this 7th day of December 1976.

Sgd. Ho Wai Kwong.

116/69/412

1st June, 1970.

Messrs. Richard Talalla & Co.,
No. 9, Jalan Gereja,
(Church Street), (5th Floor),
Kuala Lumpur. Attention Mr. Richard Talalla

Dear Sirs,

20

re: Kuala Lumpur High Court
Probate Suit No. 3 of 1969

I thank you for your offer of appointment as valuer for above estate.

I am pleased to accept.

Yours faithfully,

Sgd.

(Lee Yoke San)

LYS/lmt.

This is the Exhibit marked "LYS 4" referred to in the Affidavit of Lee Yoke San affirmed on the 7th day of December 1976.

30

Sgd. Ho Wai Kwong
Commissioner for Oaths.

RICHARD TALALLA & CO.

No. 9 Jalan Gereja,
(Church Street),
(Fifth Floor),
Kuala Lumpur,
Malaya.

In the High
Court

No. 8
Notice of
Motion and
Affidavit in
Support
10th December
1976.
(cont'd)

Your reference 116/69/412
Our reference VPN/IF/231/66(6)

21st April 1971.

10 Mr. Lee Yoke San,
1st floor, Selangor Hokkien,
Association Bldg.,
41 Jalan Klyne,
Kuala Lumpur.

STAMPED
RECEIVED
21 APR 1971.

Dear Sir,

re: K.L. High Court Probate
Suit No. 3 of 1969

We refer to your letter of 1st June 1970.

20 Our instructions now are to request you to
proceed with the matter.

Yours faithfully,

Sgd. Illegible.

This is the Exhibit marked "LYS 5" referred to in
the Affidavit of Lee Yoke San affirmed before me
this 7th day of December 1976.

Sgd. Ho Wait Kwong.
Commissioner for Oaths.

LEE YOKE SAN

30 VPH/IF/231/66(6)
116/69

22nd April 1971.

M/s. Richard Talalla & Co.,
No. 9 Jalan Gereja,
Kuala Lumpur.

Dear Sirs,

Re: K.L. High Court Probate
Suit No. 3 of 1969.

In the High
Court

No. 8
Notice of
Motion and
Affidavit in
Support
10th December
1976.
(cont'd)

We note your letter of 21st April, 1971
instructing us to proceed with the valuation in K.L.
High Court Probate Suit No. 3 of 1969 and are now
proceeding with the matter.

We would be glad if you would give us a list
of all the itinerary to be valued under the Agreement
of 15th December, 1969 and pursuant to your
instructions of 21st April, 1971.

If such itinerary is in the possession of M/s.
Turquand Young & Co. would you please inform us so
that we may make the necessary arrangements.

10

Yours faithfully,

Sgd. Lee Yoke San
(LEE YOKE SAN)
CHARTERED SURVEYOR.

LYS/lmt

This is the Exhibit marked "LYS 6" referred to in
the Affidavit of Lee Yoke San affirmed before me on
the 7th day of December 1976.

Sgd. Ho Wai Kwong
Commissioner for Oaths.

20

Telephones: 89184 &
89492
Our Ref: VPN/IF/231/66(6)

RICHARD TALALLA & CO.
Advocates & Solicitors,
No. 9 Jalan Gereja,
Fifth Floor,
Kuala Lumpur, Malaya
and at Malacca.

1st July, 1971.

Mr. Lee Yoke San,
Bangunan Persatuan Hokkien Selangor,
41 Jalan Klyne,
Kuala Lumpur.

30

Dear Sirs,

re: K.L. High Court Probate
Suit No. 3 of 1969

Further to our letter of 8th May, 1971 our
instructions are to request you to value the other
assets and liabilities.

Yours faithfully,
Sgd.

40

This is the Exhibit marked "LYS.7" referred to in
the Affidavit of Lee Yoke San affirmed before me
this 7th day of December, 1976 Sd: Ho Wait Kwong
(Commissioner for Oaths)

Lee Yoke San,
Chartered Surveyor,
Bgn Persatuan Hokkien
Selangor,
Tingkat 1,
41 Jln Klyne,
Kuala Lumpur.

In the High
Court
No. 8
Notice of
Motion and
Affidavit in
Support
10th December
1976.
(cont'd)

Bil. Kami 116/69

12th October, 1971.

10 Messrs. Richard Talalla & Co.,
9 Jalan Gereja, (5th Floor),
Kuala Lumpur.

Dear Sirs,

Re: Valuation of Properties for
Chi Liung & Sons Sdn. Bhd.
K.L. High Court Probate
Suit No. 3 of 1969

20 Further to your letters of 28th May, 1970,
21st, April 1971 and subsequent, we enclose herewith
3 copies of the valuation of properties reference
the above. One copy is for your retention and one
copy each to Messrs. Chi Liung & Sons Sdn. Bhd. and
Turquand Youngs & Co.

Enclosed is also our Bill 215/71.

Please acknowledge receipt.

Yours faithfully,

Sgd.
(LEE YOKE SAN)
CHARTERED SURVEYOR.

30 Enc. 3 copies of Valuation Reports
69116/1 to XXVI.
Bill No. 215/71.

This is the Exhibit marked "LYS.8" referred to in
the Affidavit of Lee Yoke San affirmed before me
the 7th day of December, 1976.

Sd: Ho Wai Kwong
Commissioner for Oaths

In the High
Court
No. 8
Notice of
Motion and
Affidavit in
Support
10th December
1976.
(cont'd)

Bil.Kami: 192/71 Lee Yoke San - Chartered Surveyor
Valuation Estate Management &
Agency,
Licensed Auctioneer & Appraiser,
Bangunan Persatuan Hokkien Selangor,
Tingkat 1,
41 Jalan Klyne,
Kuala Lumpur.
9th March, 1972.

M/s. Richard Talalla & Co.,
No. 9, Jalan Gereja,
Kuala Lumpur.

10

re: Valuation of Properties for Chi Liung
& Son Sdn. Berhad - K.L. High Court
Probate Suit No. 3 of 1969

Valuation of Share Value of Chi Liung
& Son Sdn. Berhad for purpose of
purchase

As instructed in your letters dated 28th May,
1970, 21st April, 1971, and 1st July, 1971, we
have proceeded with and completed the valuation of
the whole company known as Chi Liung & Son Ltd.
(Chi Liung & Son Sdn. Berhad) of No. 3, Station Street,
Klang, Selangor and No. 24 Main Street, Banting,
Selangor.

20

We had despatched to you on the 12th of October,
1971 three copies of the valuation of the landed
properties owned by Chi Liung & Son Sdn. Berhad.
The value stated therein is \$8,759,900.

We now attached a further evaluation of the
estimated value of the shares of Chi Liung & Son Sdn.
Berhad.

30

The details of the valuation and the value of
the shares are contained in enclosure headed
"ESTIMATE OF VALUE OF SHARES OF CHI LIUNG & SON SDN.
BERHAD".

Our opinion of value of the shares is
approximately \$1,250/- (Dollars One thousand two
hundred and fifty only) per share or a total of
\$3,750,000 for the total of 3,000,000 shares.

40

Please acknowledge receipt.

Yours faithfully,

Sgd.

(LEE YOKE SAN)
CHARTERED SURVEYOR

Enc. Part I - Estimate of Value of Shares) one copy
of Chi Liung & Son Sdn.Bhd.) of each
Part II -) to

In the High Court
No. 8
Notice of
Motion and
Affidavit in
Support
10th December
1976.
(cont'd)

LYS/lmt. Two copies of
each to Chi
Liung & Son Sdn.
Bhd.

10 c.c. Chi Liung & Son Sdn. Bhd.

This is the Exhibit marked "LYS.9" referred to in the Affidavit of Lee Yoke San affirmed before me this 7th day of December 1976.

Sd. Ho Wai Kwong
Commissioner for Oaths.

20 LEE YOKE SAN
Chartered Surveyor
Bgn. Persatuan Hokkien,
Selangor, Tingkat 1,
41 Jalan Klyne,
Kuala Lumpur.

Bil Kami 192/71 11th April, 1972.

M/s Chi Liung & Sons Sdn. Bhd.,
3 Station Street,
Klang.

Dear Sirs,

30 re: Valuation of Properties for Chi
Liung & Son Sdn. Bhd. K.L. High
Court Probate Suit No; 3/1969
Bill Nos. 215/71 & 107/72

We refer to our outstanding bills (No. 215/71 dated 11th October 1971 and No. 107/72 dated 6th March, 1972) and we have been suggested by your lawyers, M/s Richard Talalla & Co. to write to you.

We would be grateful if you may make payment.

Yours faithfully,

Sgd:
(LEE YOKE SAN)
CHARTERED SURVEYOR.

40 This is the Exhibit marked "LYS.10" referred to in the Affidavit of Lee Yoke San affirmed before me this 7th day of December, 1976.

Sd: Ho Wai Kwong
Commissioner for Oaths.

In the High
Court

No. 9
Affidavit of
Tong Lee Hwa
21st April
1977.

No. 9

Affidavit of Tong Lee Hwa

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

CIVIL SUIT NO. 3 OF 1973

Between

Lee Yoke San

Plaintiff

And

1. Tong Lee Hwa

2. Tong Young Fah

Defendants

A F F I D A V I T

10

I, TONG LEE HWA, of full age and resident in Klang, Selangor, affirm and say as follows:-

1. I am the Defendant firstly-named herein and make this affidavit from my own personal knowledge having been a party to the High Court Probate Suit No. 3 of 1969.

2. I have seen the Notice of Motion dated the 10th day of December, 1976 and the supporting Affidavit of Lee Yoke San affirmed on the 7th day of December, 1976 both filed herein.

20

3. There is now produced and marked "TLH1" and exhibited hereto a true copy of the Summons-in-Chambers application dated the 17th day of February, 1973 filed by the then solicitors for the Plaintiff abovenamed, for leave to sign final judgment against the Defendants abovenamed in respect of the same matter.

4. I humbly crave the Court's indulgence in making reference to the Court file on this matter wherein it will be shown that the Summons-in-Chambers application referred to in paragraph 3 hereinabove was dismissed by the Honourable Mr. Justice Haji Azmi on the 26th day of March, 1973 whereof the said Honourable Judge ordered the abovenamed Civil Suit to be withdrawn by the Plaintiff with liberty to file afresh after the other parties to the High Court Probate Suit No. 3 of 1969 had been added on as Co-defendants as the said Honourable Judge was of the view that the other parties to the said Probate Suit should have been added as Co-defendants.

30

40

In the High Court

No. 9
Affidavit of
Tong Lee Hwa
21st April
1977.
(cont'd)

judgment nor the civil suit No. 3 of 1973 both
filed herein and by reason thereof is bad in law.

11. In view of the foregoing reasons I pray that
this application be dismissed with costs.

AFFIRMED at Kuala Lumpur,)
this 21st day of April,) Sgd. Tong Lee Hwa
1977 at 2.15 p.m.)

Before me,

Sgd. Tach Liang Peng
Commissioner for Oaths.

10

This Affidavit is filed by Messrs. T. Tharu &
Co., 5th Floor, Oriental Plaza, Jalan Parry, Kuala
Lumpur, Solicitors for the Defendants, abovenamed.

IN THE HIGH COURT IN MALAYA AT
CIVIL SUIT NO. 3 OF 1973

Between

Lee Yoke San

Plaintiff

And

1. Tong Lee Hwa
2. Tong Young Fah

Defendant

20

SUMMONS-IN-CHAMBERS

LET ALL PARTIES concerned attend before the
Judge in Chambers at the High Court at K. Lumpur
on Monday the 26th day of March 1973 at the hour of
9.30 o'clock in the forenoon for the hearing of an
application on the part of the
for final judgment in this suit against the
Defendants abovenamed for the sum of ~~£~~35,964.25¢
with interest and cost.

Dated this 17th day of February, 1973.

30

Signed by Che Nadiah Salleh
Senior Assistant Registrar.
High Court Kuala Lumpur.

To: The Defendants abovenamed or his solicitors
M/s. T. Tharu & Co., Advocates & Solicitors,
No. 3 Station Street, 1st Floor, Klang.

This summons is taken out by M/s. P.G. Lim & Company of 4th Floor, Lee Wah Bank Bldg., Medan Pesar, K. Lumpur solicitors for the Plaintiff. This Summons-in-Chambers is supported by Affidavit of Lee Yoke San affirmed on the 16th day of February 1973.

In the High Court

No. 9
Affidavit of
Tong Lee Hwa
21st April
1977.
(cont'd)

This is the Exhibit marked "TLH 1" referred to in the Affidavit of Tong Lee Hwa sworn before me this 21st day of April 1977.

10

Sgd. Theh Liang Peng.

No. 10

Affidavit of Adam Camille Rustum bin Mohd. Ibrahim

No. 10
Affidavit of
Adam C.M.
bin Mohd.
Ibrahim
21st April
1977.

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR.

CIVIL SUIT NO. 3 OF 1973

Between

Lee Yoke San

Plaintiff

And

- 1. Tong Lee Hwa
- 2. Tong Young Fah

Defendants

20

A F F I D A V I T

I, ADAM CAMILLE RUSTUM BIN MOHD. IBRAHIM of full age and a Malaysian citizen affirm and say as follows:-

1. I am an advocate and solicitor of the High Court in Malaya and am employed by M/s T. Tharu & Co., solicitors for the second Defendant abovenamed.

2. I am the person in charge of this matter and am duly authorised to make this Affidavit.

30

3. I have seen and read the Notice of Motion dated the 10th day of December, 1976 and the Affidavit of Lee Yoke San affirmed on the 7th day of December, 1976 and filed herein.

4. As regards paragraphs 2, 3, 4, 5, 6, 7, 8 and

Mr. Peddie: No defence. Refers to Tong Lee Hwa's affidavit.

In the High Court

Refers to Reichel v. Magrath 1889 14 A.C. p.665 at p.668; Remington v. Scoles 1897 2 Ch. p.1 at pages 4, 6 and 7; and Davey v. Bentinck 1893 1 Q.B. p.185 at p.187.

No. 11
PROCEEDINGS
23rd May
1977.
(cont'd)

10

Refers to Contract Act 1950 section 44(1) - joint promissor's liability. Plaintiff entitled to enforce remedy against any of the joint promisors. See sub-section (2) - a joint promisors' remedy.

No defence shown on pleadings.

Arbitration: Plaintiff has never been a party for purposes of Arbitration Act, 1952. First there must be a written agreement.

2nd defendant: Says he never engaged plaintiff - instruction in the name of both defendants.

No defence.

En Adam submits: Refers to 1st defendant's affidavit - paras 3 and 4 - no order.

20

Refers to O.64 rule 13 R.S.C. One month's notice has not been given to defendants to proceed.

Refers to China Insurance Co. Ltd. v. Yeong Ah Lan & Anor. 1973 2 MLJ p. 185 at p. 186.

Refers to plaintiff's affidavit para 2 - LYS 2 and LYS 3.

Res judicata - Refers to Macdougall v. Knight 1890 25 Q.B.D. p.1.

Mr. Peddie: Refers to O.64 r.13 R.S.C.

Court: Order in terms.

30

Sgd. Abdul Hamid
Judge
High Court Malaya
Kuala Lumpur.

Certified true copy
Sgd.
Secretary to Judge
Kuala Lumpur 29.7.77

In the High
Court

No. 12

No. 12
Order
23rd May
1977.

O R D E R

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

CIVIL SUIT NO. 3 OF 1973

Between

Lee Yoke San

Plaintiff

And

1. Tong Lee Hwa

2. Tong Young Fah

Defendants

BEFORE THE HONOURABLE MR. JUSTICE ABDUL HAMID,

10

THIS 23RD DAY OF MAY, 1977

IN OPEN COURT

O R D E R

UPON MOTION made unto this Court this day in the presence of Mr. S.D.K. Peddie of Counsel for the Plaintiff and Encik Adam Camille Rustum bin Mohd. Ibrahim of Counsel for the Defendants abovenamed AND UPON READING the Notice of Motion dated the 10th day of December, 1976, the Affidavit of Lee Yoke San affirmed on the 7th day of December, 1976, the Affidavit of Tong Lee Hwa affirmed on the 21st day of April, 1977 and the Affidavit of Adam Camille Rustum bin Mohd. Ibrahim affirmed on the 21st day of April, 1977 and all filed herein AND UPON HEARING the arguments of Counsel as aforesaid IT IS ORDERED that the Defences of the First and Second Defendants herein be and are hereby struck out as disclosing no reasonable answer and as being frivolous and vexatious AND IT IS ORDERED that the Plaintiff be and is hereby at liberty to sign judgment against the First and Second Defendants for the sum of 30 \$35,964.25 with interest on \$34,464.25 at the rate of 6% per annum from the 12th day of October, 1971 to the date of payment and interest on \$1,500/- at the rate of 6% per annum from 9th March, 1972 to the date of payment AND IT IS LASTLY ORDERED that the costs of this application be taxed by the proper Officer of this Court and be paid by the First and Second Defendants to the Plaintiff.

Given under my hand and the seal of the Court
this 23rd day of May, 1977.

40

Sgd. Illegible
Senior Assistant Registrar,
High Court, Kuala Lumpur.

In the High
Court

No. 14

No. 14
Affidavit of
Tong Lee Hwa
30th June 1977

Affidavit of Tong Lee Hwa

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

CIVIL SUIT NO. 3 OF 1973

Between

Lee Yoke San

Plaintiff

And

1. Tong Lee Hwa
2. Tong Young Fah

Defendants

A F F I D A V I T

10

I, Tong Lee Hwa, of full age and a Malaysian citizen resident at Klang in the State of Selangor affirm and say as follows:-

1. I am the first Defendant abovenamed.

2. I crave leave to refer to the Summons-in-Chambers application dated 10th December, 1976 and the affidavit in support thereof of Lee Yoke San affirmed on 7th December, 1976 and both filed herein.

3. I further crave leave to refer to my affidavit affirmed on 21st April, 1977 and the affidavit of Adam Camille Rustum bin Mohd. Ibrahim affirmed on 21st April, 1977 and both filed herein.

20

4. On the 23rd day of May, 1977 upon the hearing of the aforesaid Summons-in-Chambers application, judgment was delivered ordering that the Defence of the first and second Defendants abovenamed be struck off and that the Plaintiff abovenamed be given leave to sign final judgment for the sum claimed in the Statement of Claim filed herein.

5. I have since instructed my solicitors to appeal against the aforesaid judgment. A true copy of the Notice of Appeal filed into Court and served on the solicitors for the Plaintiff abovenamed is marked "TLH 1" and exhibited hereto.

30

6. I beg to refer to paragraphs 3, 4, 5 and 6 of my affidavit affirmed on 21st April, 1977 and

filed herein. I have been informed by my solicitors and do verily believe that on the hearing of this matter on 23rd May, 1977, the Court file, showing that a similar application by the Plaintiff in 1973 on the same issues was ordered to be withdrawn was missing.

In the High
Court

No. 14
Affidavit of
Tong Lee Hwa
30th June 1977
(cont'd)

10 7. I have been further informed by my solicitors and do verily believe that the Honourable Judge in deciding on this matter on 23rd May, 1977 consequently paid no regard to my plea that the matter was res judicate as between the parties as the Court file showing this was missing.

8. I have since caused my solicitors to apply for a certified copy of the Judge's Notes of Proceedings in this matter which was heard in 1973. There is now produced and marked "TLH 2" a true copy of the Judge's Notes of Proceedings of the proceedings held on 26th March, 1973.

20 9. I have been advised by my solicitors and do verily believe that I have good grounds for succeeding in the appeal of this action as the matter was res judicate as between the parties.

30 10. I do verily believe that if no stay of execution is granted pending the appeal of this matter, that there is a reasonable probability that I may be unable to recover the judgment sum paid to the Plaintiff notwithstanding that the appeal herein is successful. In this respect, I crave leave to refer to the Statement of Claim filed herein and to the judgment sum awarded to the Plaintiff.

11. I further state that I have sufficient assets within this Court's jurisdiction to satisfy the sum claimed herein and that I have no intention of escaping my liability hereunder in the event that the appeal is unsuccessful by disposing and removing these assets from within this Court's jurisdiction while the appeal is pending.

40 12. The aforesaid assets are however in the form of fixed assets and it would cause loss and hardship to me if no stay of execution is granted in this matter, consideration being had to my belief that there are good grounds for my succeeding in the appeal herein. I therefore pray for an Order in the terms

In the High Court

No. 14
Affidavit of
Tong Lee Hwa
30th June 1977
(cont'd)

of the Summons-in-Chambers application filed herein,
to which this affidavit is in support of.

AFFIRMED at Kuala Lumpur)
this 30th day of June) Sgd. Tong Lee Hwa
1977 at 11.00 a.m.)

Before me,

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

10

This Affidavit is filed by Messrs. T. Tharu
& Co., of 5th Floor, Bangunan Oriental Plaza, Jalan
Parry, Kuala Lumpur, Solicitors for the Defendants
abovenamed.

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA
LUMPUR

(APPELLATE JURISDICTION)
CIVIL APPEAL NO. OF 1977

Between

1. Tong Lee Hwa
2. Tong Young Fah Appellants

20

And

Lee Yoke San Respondent

(In the matter of Civil Suit No. 3 of 1973
in the High Court in Malaya at Kuala Lumpur)

Between

Lee Yoke San Plaintiff

And

1. Tong Lee Hwa
2. Tong Young Fah Defendants

30

NOTICE OF APPEAL

TAKE NOTICE that Tong Lee Hwa and Tong Young
Fah, the Appellants herein, being dissatisfied with

the decision of the Honourable Mr. Justice Dato Abdul Hamid given at Kuala Lumpur on the 23rd day of May, 1977 appeals to the Federal Court against the whole of the said decision ordering that the Defences of both the Appellants/Defendants be struck out and that the Respondent/Plaintiff be at liberty to sign final judgment against both the Appellants/Defendants for the sum claimed in the Statement of Claim herein.

In the High
Court

No. 14
Affidavit of
Tong Lee Hwa
30th June 1977
(cont'd)

10 Dated this 20th day of June 1977.

Sgd. Tharu & Co.

Solicitors for the Appellants

This is the Exhibit marked "TLH 1" referred to in the Affidavit of Tong Lee Hwa sworn to before me this 30th day of June, 1977.

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

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

and
to: The Registrar,
 The High Court in Malaya,
 Kuala Lumpur.

and
to: The Respondent/Plaintiff
 and/or its solicitors,
30 M/s. Skrine & Co.,
 3rd Floor, Straits Trading Bldg.,
 Kuala Lumpur.

The address for service of the Appellants is
M/s. T. Tharu & Co., 5th Floor, Bangunan Oriental
Plaza, Jalan Parry, Kuala Lumpur.

In the High
Court

No. 14
Affidavit of
Tong Lee Hwa
30th June 1977
(cont'd)

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

CIVIL SUIT NO. 3 OF 1973

Between

Lee Yoke San

Plaintiff

And

1. Tong Lee Hwa
2. Tong Young Fah

Defendants

IN OPEN COURT

26TH MARCH, 1973

NOTES OF PROCEEDING

BEFORE MOHD. AZMI J.

10

Mr. Ong for Plaintiff.

Mr. Tharu for Defendants.

Enclosure (5).

Mr. Ong: Refers to Solicitor's letter dated 28.5.1970.
They were instructed by the two Defendants.

Mr. Tharu: Under the terms of the consent order
which were made a Rule of Court and terms of the
schedule attached thereto - under para 5 only
Plaintiffs (Tong Chong Fah and Tong Lee Hwa) are
liable.

20

ORDER: Application withdrawn with liberty to join
other parties involved in Probate Suit No. 3 of
1969 as Defendants. No order as to costs.

Sd. Mohd. Azmi.

This is the Exhibit marked "TLH 2" referred to in
the Affidavit of Tong Lee Hwa sworn to before me
this 30th day of June, 1977.

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

30

Certified true copy
Sgd. Illegible
Secretary to Judge
Kuala Lumpur

No. 15

Summons-in-Chambers and Affidavit in
Support

In the High
Court

No. 15
Summons in
Chambers and
Affidavit in
Support
2nd July 1977

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

CIVIL SUIT NO. 3 OF 1973

Between

Lee Yoke San

Plaintiff

And

1. Tong Lee Hwa
2. Tong Young Fah

Defendants

SUMMONS IN CHAMBERS

LET ALL PARTIES CONCERNED attend the Judge of
the High Court, Kuala Lumpur in Chambers on Monday
the 15th day of August, 1977 at 9.30 o'clock in the
forenoon on the hearing of an application on the part
of the Defendants abovenamed for an Order that
execution under the Order of the Judge made on the
23rd day of May, 1977 in this action be stayed
pending an appeal by the said Defendants against the
said Order of the Honourable Judge.

Dated this 2nd day of July, 1977.

Sgd. Tharu & Co.
Solicitors for the
Defendants

Sgd. Illegible
Senior Assistant Registrar
High Court, Kuala Lumpur.

This Summons is taken out by M/s. T. Tharu &
Co., Advocates & Solicitors of 5th Floor, Bangunan
Oriental Plaza, Jalan Parry, Kuala Lumpur, for the
Defendants abovenamed and is supported by the
Affidavits of Tong Lee Hwa and Adam Camille Rustum
bin Mohd. Ibrahim affirmed on the 30th day of June,
1977 and 2nd day of July, 1977 respectively and
filed herein.

To: The Plaintiff abovenamed and/or
its Solicitors, M/s. Skrine & Co.,
Straits Trading Building, 3rd Floor,
KUALA LUMPUR.

In the High
Court

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

No. 15
Summons in
Chambers and
Affidavit in
Support
2nd July 1977.
(cont'd)

CIVIL SUIT NO. 3 OF 1973

Between

Lee Yoke San

Plaintiff

And

1. Tong Lee Hwa
2. Tong Young Fah

Defendants

A F F I D A V I T

I, Adam Camille Rustum bin Mohd. Ibrahim of full age a Malaysian citizen affirm and say as follows:-

10

1. I am an advocate & solicitor of the High Court in Malaya and am employed by M/s. T. Tharu & Co., solicitors for the second Defendant above-named.

2. I am the person in charge of this matter and am duly authorised to make this affidavit.

3. I crave leave to refer to the affidavit of Tong Lee Hwa affirmed on the 30th day of June, 1977 and filed herein and in particular to paragraphs 2, 3, 4, 5, 6, 7, 8, 9, and 10 of the said affidavit.

20

4. In the premises, I therefore pray for an Order in terms of the Summons-in-Chambers application filed herein, to which this Affidavit is in support of.

Affirmed by the said Adam Camille)
Rustum bin Mohd. Ibrahim at Kuala) Sgd.
Lumpur this 2nd day of July, 1977) Adam Camille
at 10.20 a.m.) Rustum

Before me,

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

30

This affidavit is filed by M/s. T. Tharu & Co., solicitors for the Defendants above named whose address for service is at 5th Floor, Bangunan Oriental Plaza, Jalan Parry, Kuala Lumpur.

In the High
Court

No. 16
Grounds of
Judgment
28th July 1977
(cont'd)

It is averred that Messrs. Richard Talalla & Co. verbally requested the plaintiff to secure payment from Chi Liung & Sons Sdn. Bhd. Pursuant to the request the plaintiff made out the bills against the company (see "LYS10"). The company did not pay the bills.

By reason of the matters aforesaid the plaintiff brought this action against both respondents since they authorised the work to be done on their behalf.

The defence of the first respondent states that he was the managing director of Messrs. Chi Liung & Sons Sdn. Bhd. and if any instruction was given it was done at the request and on behalf of all the parties to the consent order in Probate Suit No. 3 of 1969 and not in his personal capacity. He denies that a sum of £35,964.25 is due and owing and contends that in any event he is not personally liable.

10

The second respondent's defence is a total denial.

20

In the affidavit in reply to the affidavit in support of the application the first respondent has stated that there was a Summons in Chambers filed by the solicitors of the plaintiff to sign final judgment against the respondents in respect of the same matter. It is alleged that the application was dismissed and the Judge ordered the Civil Suit to be withdrawn with liberty to file afresh after other parties were added as co-defendants. From the court file it would appear that the Summons in Chambers was issued on February 17, 1973 but there is nothing to show that the application was heard.

30

In the circumstances I feel that it is not improper for me to hear the application and decide on its merits.

Mr. Peddie counsel for the applicant submitted that there is no defence disclosed and that it is within the inherent jurisdiction of the Court to strike out the Statement of Defence as frivolous and vexatious and an abuse of the procedure of the Court and enter judgment for the plaintiff (see Rev. Oswald Joseph Reichel v. Rev. John Richard Magrath (1). Mr. Peddie also cited the case of Remington v. Scoles (2) to show that where a

40

(1) (1889) 14 A.C. p. 665 at p.668.

(2) (1897) 2 Ch. p. 1 at pages 4, 6 and 7.

defendant delivered a Statement of Defence in which he either denied or refused to admit each of the allegations in the Statement of Claim but set up no case of his own, the Court may, in the circumstances of the case find the defence to be frivolous and vexatious and one which ought to be struck out as being an abuse of the procedure of the Court.

In the High
Court

No. 16
Grounds of
Judgment
28th July 1977
(cont'd)

10 Mr. Peddie also urged the Court to consider section 44(1) of the Contracts Act, 1950 concerning joint promisors' liability and the plaintiff's entitlement to enforce remedy against any of the joint promisors.

20 En. Adam counsel for the respondents argued that no notice was given in accordance with O.64 r. 13 of the Rules of the Supreme Court. To my mind this irregularity, if any, does not in the light of O.70 r.1(1) nullify the proceedings. Apart from this En. Adam also raised the question of res
judicata. In my view this question does not arise in the present case.

30 The question that really calls for determination in the present case is whether the respondents have shown any substantial defence. In so far as the second respondent is concerned he has completely failed to raise any defence. And as for the first respondent I find that he has also failed to show any real and substantial defence. The letters produced by the applicant in support of the application do show that the plaintiff did carry out the works pursuant to the request by the solicitors acting for both the respondents and in this respect the respondents have made no denial at all. The circumstances in the present case do show that the Statement of Defence of both the first and the second respondents to be frivolous and vexatious and an abuse of the process of the Court and I therefore see no reason whatever to disallow the application. For these reasons I
40 hereby order the defence of both respondents to be struck out and that final judgment be entered in terms prayed in favour of the applicant with costs.

Sgd. (Abdul Hamid)
Judge
High Court Malaya
Kuala Lumpur.

Dated July 28, 1977.

In the High Court

No. 16
Grounds of Judgment
28th July 1977
(cont'd)

Mr. S.D.K. Peddie of M/s. Skrine & Co. Kuala Lumpur for plaintiff/applicant.
En Adam C.R. Mohd. Ibrahim of M/s. T. Tharu & Co., Kuala Lumpur for defendants/respondents.

Certified true copy
Sgd.
Secretary to Judge
Kuala Lumpur.

No. 17
Affidavit of
Adam C.R. bin
Mohd. Ibrahim
9th August
1977.

No. 17

Affidavit of Adam C.R. bin Mohd. Ibrahim

10

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
CIVIL SUIT NO. 3 OF 1973

Between

Lee Yoke San

Plaintiff

And

1. Tong Lee Hwa
2. Tong Young Fah

Defendants

A F F I D A V I T

I, Adam Camille Rustum bin Mohd. Ibrahim, of full age and a Malaysian citizen resident at Petaling Jaya in the State of Selangor affirm and say as follows:-

20

1. I am an advocate and solicitor of the High Court in Malaya and am currently employed by solicitors for the Defendants, M/s. T. Tharu & Co.

2. I am the person having the conduct of this matter and am duly authorised by the Defendants abovenamed to affirm this affidavit on their behalf.

3. I crave leave to refer to the affidavit of Tong Lee Hwa affirmed on the 30th day of June, 1977 and filed herein, and in particular to paragraphs 6, 7 and 8 of the said affidavit.

30

4. Further to the abovesaid, I did cause a draft

Order stipulating the terms of the Court Order pursuant to the Plaintiff's application on 26th March, 1973 to be sent to the then solicitors for the Plaintiff, M/s. P.G. Lim & Co. of 4th Floor, Lee Wah Bank Building, Medan Pasar, Kuala Lumpur for their approval. There is now produced and marked 'ACR 1' and exhibited hereto a true copy of the Court Order in respect thereof.

In the High Court

No. 17
Affidavit of
Adam C.R. bin
Mohd. Ibrahim
9th August
1977.
(cont'd)

10

AFFIRMED at Kuala Lumpur)
this 9th day of August) Sgd. Adam Camille
1977 at 2.20 p.m.) Rustum

Before me,

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

20

This Affidavit is filed by Messrs. T. Tharu & Co., of 5th Floor, Bangunan Oriental Plaza, Jalan Parry, Kuala Lumpur, Solicitors for the Defendants abovenamed.

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
CIVIL SUIT NO. 3 OF 1973

Between

LEE YOKE SAN Plaintiff

And

1. TONG LEE HWA Defendants
2. TONG YOUNG FAH

BEFORE THE HONOURABLE MR. JUSTICE MOHD. AZMI

THIS 26TH DAY OF MARCH 1973

IN OPEN COURT

30

O R D E R

UPON HEARING Mr. Ong of Counsel for the Plaintiff abovenamed and Mr. Tharu of Counsel for the Defendants abovenamed AND UPON READING the Summons in Chambers dated the 17th day of February, 1973, the Affidavit of Lee Yoke San affirmed on the 16th day of February, 1973, the Affidavit of Tong Lee Hwa affirmed on the 23rd day

In the High Court

No. 17
Affidavit of
Adam C.R. bin
Mohd. Ibrahim
9th August
1977.
(cont'd)

of March 1973 and the Affidavit of T. Tharumaganum affirmed on the 23rd day of March, 1973 and all filed herein IT IS ORDERED that the application herein be withdrawn with liberty to join the other parties involved in Probate Suit No. 3 of 1969 as Defendants AND IT IS ORDERED that no provision be made as to costs.

GIVEN under my hand and the Seal of the Court this 26th day of March, 1973.

Signed Illegible
Senior Assistant Registrar,
High Court, Kuala Lumpur.

10

This Order is taken out by Messrs. T. Tharu & Co., Solicitors for the above-named Plaintiffs, whose address for service is at 5th Floor, Oriental Plaza, Jalan Parry, Kuala Lumpur.

This is the Exhibit marked "ACR 1" referred to in the Affidavit of Adam Camille Rustum sworn to before me this 9th day of August, 1977.

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

20

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

and to:
The Registrar,
The High Court in Malaya,
Kuala Lumpur.

30

and to:
The Respondent/Plaintiff
and/or its solicitors,
M/s. Skrine & Co.
3rd Floor, Straits Trading Bldg.,
Kuala Lumpur.

The address for service of the Appellants is M/s. T. Tharu & Co., 5th Floor, Bangunan Oriental Plaza, Jalan Parry, Kuala Lumpur.

No. 18

O R D E R

In the High
Court

No. 18
Order - 15th
August 1977

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

CIVIL SUIT NO. 3 OF 1973

Between

Lee Yoke San

Plaintiff

And

1. Tong Lee Hwa

2. Tong Young Fah

Defendants

10 BEFORE THE HONOURABLE MR. JUSTICE ABDUL HAMID

THIS 15TH DAY OF AUGUST, 1977

IN CHAMBERS

O R D E R

20 UPON HEARING Mr. Adam Camille Rustum bin
Mohd. Ibrahim of Counsel for the Defendants above-
named and Mr. Lee Tatt Boon of Counsel for the
Plaintiff abovenamed AND UPON READING the Summons
in Chambers dated the 2nd day of July, 1977, the
affidavit of Tong Lee Hwa affirmed on the 30th day
of June, 1977 and the two affidavits of Adam Camille
Rustum bin Mohd. Ibrahim affirmed on the 2nd day of
July, 1977 and the 9th day of August, 1977
respectively, and all filed herein, IT IS ORDERED
that execution under the Order of the Judge made
on the 23rd day of May, 1977 in this action be stayed
pending an appeal by the said Defendants against the
said Order of the Honourable Judge.

Given under my hand and the Seal of the Court
this 15th day of August, 1977.

30 Sgd. Illegible
Senior Assistant Registrar,
High Court, Kuala Lumpur.

This Order is taken out by Messrs. T. Tharu &
Co., Solicitors for the Defendants abovenamed whose
address for service is at 5th Floor, Bangunan
Oriental Plaza, Jalan Parry, Kuala Lumpur.

In the Federal
Court

No. 19
Memorandum of
Appeal - 6th
September 1977

No. 19

Memorandum of Appeal

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA
LUMPUR

(APPELLATE JURISDICTION)

CIVIL APPEAL NO. 127 OF 1977

Between

1. Tong Lee Hwa
 2. Tong Young Fah
- Appellants

And

10

Lee Yoke San

Respondent

(In the matter of Civil Suit No. 3 of 1973
in the High Court in Malaya at Kuala Lumpur)

Between

Lee Yoke San

Plaintiff

And

1. Tong Lee Hwa
 2. Tong Young Fah
- Defendants

MEMORANDUM OF APPEAL

Tong Lee Hwa and Tong Young Fah, the
appellants abovenamed appeal to the Federal Court
against the whole of the decision of the Honourable
Mr. Justice Datuk Abdul Hamid given at Kuala Lumpur
on the 23rd day of May, 1977 on the following
grounds:-

20

1. The learned judge misdirected himself in holding that there was no real defence raised by the Appellants.
2. The learned judge failed to direct his mind to or to attach sufficient importance to the particulars pleaded by the Appellants and the documents produced by them.
3. The learned judge, on finding that an earlier similar application had been issued on February 17, 1973, failed to have regard that the matter may in fact be res judicata as between the parties.

30

4. The learned judge erred in law in holding that non-compliance with Order 64 rule 13 of the Rules of the Supreme Court, 1957 was an irregularity which could be cured applying Order 70 rule 1(1) of the same Rules.

In the Federal
Court

No. 19
Memorandum of
Appeal - 6th
September 1977
(cont'd)

10 5. The learned judge failed to appreciate the true nature of the Appellants' defence that the work undertaken by the Plaintiff was done at the request of and on behalf of all the parties to the consent order of Probate Suit No. 3 of 1969 and not in his personal capacity.

6. The learned judge erred in fact and in law.

7. The learned judge should have dismissed the Respondent's application.

Dated this 6th day of September, 1977.

Sgd. T. Tharu & Co.
Solicitors for the Appellants.

20 To: 1. The Chief Registrar,
Federal Court,
Kuala Lumpur.

2. The Senior Assistant Registrar,
High Court, Kuala Lumpur.

30 3. The Plaintiff/Respondent,
and/or his solicitors,
M/s. Skrine & Co., 3rd Floor,
Straits Trading Building,
4 Leboh Pasar Besar,
Kuala Lumpur.

This Memorandum of Appeal is taken out by M/s. T. Tharu & Co., solicitors for the Appellants abovenamed, whose address for service is at 5th Floor, Oriental Plaza, Jalan Parry, Kuala Lumpur.

In the Federal Court

No. 20

No. 20
Notes of Lee Hun Hoe, C.J.
Borneo - 22nd March, 1978.

Notes of Lee Hun Hoe, C.J.
Borneo

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

Federal Court Civil Appeal No. 127 of 1977
(Kuala Lumpur High Court Civil Suit No. 3 of 1973)

Between

10

- 1. TONG LEE HWA
 - 2. TONG YOUNG FAH
- Appellants
- And
- LEE YOKE SAN Respondent

Coram: Lee Hun Hoe, C.J. Borneo;
Wan Suleiman: F.J.
Chang, F.J.

NOTES OF SUBMISSIONS

WEDNESDAY, 22ND MARCH, 1978

10.25 a.m. Encik Prasad S. Abraham for appellants. 20
Encik D.K. Peddie for respondent.

APPELLANT.

Ground 3.

Res Judicata.
Page 74 - Order made by Azmi, J.
Page 78.

Appeal against decision of trial Judge in striking out defence.

Res Judicata by Spencer Bower & Turner, 2nd Edition, page 136. 30

"170. A judicial decision
..... decision."

Dundas v. Waddell (1880) 5 A.C. 249 & 262.
Page 262.

Cairns, L.C. "The issue as to
..... place."

Henderson v. Henderson (1843) E.R. Vol.67,
p.319.

"In trying this question
..... time."

In the Federal
Court

No. 20
Notes of Lee
Hun Hoe, C.J.
Borneo - 22nd
March, 1978.
(cont'd)

COURT

Appeal dismissed with costs. Deposit to
respondent on account of taxed costs.

(Sgd) Lee Hun Hoe.
22/3/1978.

10

No. 21

O R D E R

No. 21
Order - 21st
March, 1978.

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

FEDERAL COURT CIVIL APPEAL NO. 127 OF 1977

Between

1. Tong Lee Hwa
2. Tong Young Fah Appellants

20

And

Lee Yoke San Respondent

(In the Matter of Civil Suit No. 3 of
1973 in the High Court in Malaya at
Kuala Lumpur

Between

Lee Yoke San Plaintiff

And

1. Tong Lee Hwa
2. Tong Young Fah Defendants)

30

In the Federal Court

No. 21
Order - 21st
March, 1978.
(cont'd)

CORAM: LEE HUN HOE, CHIEF JUSTICE, HIGH COURT, BORNEO
WAN SULEIMAN, JUDGE, FEDERAL COURT, MALAYSIA.
CHANG MIN TAT, JUDGE, FEDERAL COURT, MALAYSIA

IN OPEN COURT,

THIS 21ST DAY OF MARCH, 1978

O R D E R

THIS APPEAL coming on for hearing this day in the presence of Mr. Prasad S. Abraham of Counsel for the Appellants and Mr. S.D.K. Peddie of Counsel for the Respondent AND UPON READING the Record of Appeal filed herein AND UPON HEARING Counsel as aforesaid IT IS ORDERED that the Appeal be and is hereby dismissed AND IT IS ORDERED that the Appellants do pay to the Respondent the costs of this Appeal as taxed by the proper Officer of the Court AND IT IS FURTHER ORDERED that the sum of \$500.00 (Dollars Five hundred only) lodged in Court by the Appellants as security for the costs of the Appeal be paid out of Court to the Respondent towards their taxed costs of this Appeal.

10

20

Given under my hand and the Seal of the Court this 21st day of March, 1978.

Sgd. Illegible
Chief Registrar,
Federal Court,
Malaysia.

No. 22
Grounds of
Judgment
1st September
1978

No. 22

Grounds of Judgment

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

30

FEDERAL COURT CIVIL APPEAL NO. 127 OF 1977

Between

1. Tong Lee Hwa
2. Tong Young Fah
Lee Yoke San
Appellants
And
Respondent

In the Federal
Court

No. 22
Grounds of
Judgment
1st September
1978.

(cont'd)

appellants as disclosing no reasonable answer and as being frivolous and vexatious and to sign final judgment. At the hearing of the notice of motion, an order in terms was made. From that order, this appeal lay and it was said that the order of March 26, 1973 was a judgment in bar of the subsequent notice of motion.

At the hearing of the appeal, it was put to counsel for the appellants that to constitute a res judicata, the earlier judgment must, in terms of the Privy Council decision in Kok Hoong v. Leong Cheong Kweng Mines Ltd. (1) "necessarily and with precision" determine the point in issue, and he was asked to indicate to the Court how the earlier judgment did necessarily and with precision determine the liability of the appellants to pay the respondent for work done for them at their request. He did not do so. We do not, with respect, see how he could succeed.

10

We did not feel any necessity to call on counsel for the respondent and we accordingly dismissed the appeal.

20

CHANG MIN TAT.
(TAN SRI DATUK CHANG MIN TAT)
JUDGE,
FEDERAL COURT, MALAYSIA

Kuala Lumpur,
1st September 1978.

Date of Hearing. 22nd March, 1978.

Encik P.S. Abraham for Appellants.
Solicitors: Messrs. T. Tharu & Co.

30

Encik S.D.K. Peddie for Respondent.
Solicitors: Messrs. Skrine & Co.

(1) (1964) A.C. 993: (4) I.49 P.C.

No. 23

Order granting Final Leave to Appeal to
H.M. the Yang di-Pertuan Agong

In the Federal
Court

No. 23
Order granting
Final Leave to
Appeal to H.M.
the Yang di-
Pertuan Agong
14th December
1978.

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

FEDERAL COURT CIVIL APPEAL NO. 127 OF 1977

Between

1. Tong Lee Hwa
2. Tong Young Fah Appellants

And

Lee Yoke San Respondent

(In the Matter of Civil Suit No.3 of 1973
In the High Court in Malaysia at Kuala Lumpur

Between

Lee Yoke San Plaintiff

And

1. Tong Lee Hwa
2. Tong Young Fah Defendants)

CORAM: WAN SULEIMAN, JUDGE, FEDERAL COURT, MALAYSIA:
CHANG MIN TAT, JUDGE, FEDERAL COURT, MALAYSIA:
SYED OTHMAN, JUDGE, FEDERAL COURT, MALAYSIA.

IN OPEN COURT

THIS 14TH DAY OF DECEMBER 1978

O R D E R

UPON MOTION made unto Court this day by Mr.
G.T. Rajan of Counsel for the first named Appellant
in the presence of Mr. K. Thayalan of Counsel for
the Respondent herein AND UPON READING the Notice of
Motion dated 28th day of November, 1978 and the
Affidavit of Mr. Tong Lee Hwa affirmed on the 19th day
of October, 1978 and filed herein AND UPON HEARING
Counsel as aforesaid IT IS ORDERED that final leave

In the Federal Court

No. 23
Order granting
Final Leave to
Appeal to H.M.
the Yang di-
Pertuan Agong
14th December
1978.
(cont'd)

be and is hereby granted to the first named Appellant to His Majesty the Yang di-Pertuan Agong against the Judgment of the Federal Court given on the 21st day of March, 1978 AND IT IS ORDERED that the costs of this application be costs in the cause.

GIVEN under my hand and the Seal of the Court this 14th day of December, 1978.

Sgd. Illegible
Chief Registrar
Federal Court, Malaysia.
Kuala Lumpur.

10

IN THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N :

TONG LEE HWA

Appellant

- and -

LEE YOKE SAN

Respondent

RECORD OF PROCEEDINGS

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

Solicitors for the Appellants

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

Solicitors for the Respondent