

JUDGMENT
15
1973

IN THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL

No. 27 of 1972

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

B E T W E E N :-

GOVERNMENT OF MALAYSIA

Appellant

- and -

LEE HOCK NING

Respondent

RECORD OF PROCEEDINGS

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
28 MAY 1974
25 RUSSELL SQUARE
LONDON W.C.1

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

GRAHAM PAGE & CO.,
51 Victoria Street,
London, SW1H 0EU.

Solicitors for the Appellant.

Solicitors for the Respondent.

(i)

IN THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL

No. 27 of 1972

O N A P P E A L
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Pawan Ahmed bin Ibrahim Rashid

23rd April 1970

E X H I B I T S

Exhibit Mark	Description of Document
"A" 1	Original Letter from P.W.D. Kuala Kangsar to Plaintiff
"A" 2	Receipt No. 854551 from P.W.D. Perak for \$1,525/-
"A" 3	Copy of Memograph from P.W.D., Kuala Kangsar to Plaintiff
"A" 4	Original letter from P.W.D., Ipoh to Plaintiff
"A" 5	Original Certificate of Non-Completion from P.W.D., Kuala Kangsar to Plaintiff
"A" 6	Original Certificate of Non-Completion from P.W.D., Kuala Kangsar to Plaintiff
"A" 7	Original letter from P.W.D., Ipoh to M/s Dharmananda & Co.
"A" 8	Copy of letter from M/s Dharmananda & Co. to P.W.D.
"A" 9	Original letter from P.W.D. Ipoh to M/s Dharmananda & Co.
"A" 10	Copy letter from M/s Dharmananda & Co. to P.W.D.
"A" 11	Original letter from P.W.D., Ipoh to M/s Dharmananda & Co.
"A" 12	Copy of registered letter from Plaintiff to Director of Public Works, Kuala Lumpur

Exhibit Mark	Description of Document
"A" 13	Copy of registered letter from Plaintiff to State Engineer, P.W.D., Ipoh
"A" 14	Original letter from P.W.D., Ipoh to Plaintiff
"A" 15	Original letter from P.W.D., Ipoh to Plaintiff
"A"16a	Copy of letter from M/s Yeap & Yeap to P.W.D., Ipoh
"A"16b	Original letter from P.W.D., Ipoh to M/s Yeap & Yeap
"A" 17	Copy of letter from M/s Yeap & Yeap to P.W.D., Ipoh
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"A" 21	Original letter from Controller of Posts, Ipoh to M/s Yeap & Yeap
"B" 1	Original letter from Jurutera Kerja Kanan, Kuala Kangsar to Plaintiff
"B" 2	Copy of letter from Plaintiff to Jurutera Kerja Kanan, Kuala Kangsar
"B" 3	Original letter from Jurutera Kerja Kanan, Kuala Kangsar to Plaintiff
"B" 4	Original letter from Jurutera Kerja Kanan, Kuala Kangsar to Plaintiff
"B" 5	Original letter from Jurutera Kerja Kanan, Kuala Kangsar to Plaintiff

Exhibit Mark	Description of Document
"B" 6	Copy of letter from Plaintiff to Jurutera Kerja Kanan, Kuala Kangsar
"B" 7	Original letter from Jurutera Kerja Kana, Kuala Kangsar to Plaintiff
"B" 8	Letter from Jurutera Kerja Kanan, Kuala Kangsar to Plaintiff
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"B" 12	Copy of letter from Plaintiff to Jurutera Kerja Kanan, Kuala Kangsar
"B" 13	Certified copy of Bill C No. 21498 from Kim Cheong to Plaintiff
"B" 14	Certified copy of Bill from Hock Wah Oil Mill, Sitiawan to Plaintiff
"B" 15	Certified copy of Bill No. 17611 from Tai Hong Mechanised Carpentry Limited, Ipoh to Plaintiff
"B" 16	Certified copy of Bill from Sin Yoong Seng Brick Factory, Chemor to Plaintiff
"B" 17	Certified copy of Bill from Yee Woh Sawmill, Lenggong to Plaintiff
"B" 18	Copy of Contract FED/PK/232 of 1963
"B" 19	Copy of Acceptance of Tender in Contract FED/PK/232 of 1963

Exhibit 6Mark	Description of Document
"B" 20	Copy of Notice of Tenders received in Notification No. 313 of the Federal Government Gazette
"B" 21	Copy of Report on Completion of a Contract in Contract No. FED/PK/208/64
"B" 22	Original letter from Jurutera Kerja Kanan, Kuala Kangsar to Plaintiff
"B" 23	Original letter from Jurutera Kerja Kanan, Kuala Kangsar to Plaintiff
"B" 24	Original letter from Jurutera Kerja Kanan, Kuala Kangsar to Plaintiff
"B" 25	Original letter from Jurutera Kerja Kanan, Kuala Kangsar to Plaintiff
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"B" 27	Copy of letter from Plaintiff to Jurutera Kerja Kanan, Kuala Kangsar
"B" 28	Original letter from Jurutera Kerja Kanan, Kuala Kangsar to Plaintiff
"B" 29	Copy of letter from Plaintiff to Jurutera Kerja Kanan, Kuala Kangsar
"B" 30	Copy of letter from Plaintiff to Jurutera Kerja Kanan, Kuala Kangsar
"B" 31	Original letter from Jurutera Kerja Kanan, Kuala Kangsar to Plaintiff
"B" 32	Copy of letter from Plaintiff to The Director, Public Works, Kuala Lumpur

Exhibit Mark	Description of Document
"B" 33	Copy of letter from Plaintiff to The Director, Public Works, Kuala Lumpur
"B" 34	Original letter from Jurutera Penguasa to Plaintiff

1.

IN THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL

No. 27 of 1972

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

B E T W E E N :-

GOVERNMENT OF MALAYSIA

Appellant

- and -

LEE HOCK NING

Respondent

RECORD OF PROCEEDINGS

10

No. 1

In the High
Court

SPECIALLY INDORSED WRIT

IN THE HIGH COURT IN MALAYA AT IPOH

CIVIL SUIT 1965 NO. 221

No. 1

Specially
Indorsed Writ
14th June 1965

Between:

Lee Hock Ning

Plaintiff

And

The Government of
The Federation of
Malaysia

Defendant

20

Dato' Syed Shoh Barakbeh, P.M.N., D.P.M.K.,
P.S.B., Chief Justice of the High Court in Malaya,
in the name and on behalf of His Majesty the Yang
di-Pertuan Agong.

To:

The Government of the
Federation of Malaysia.

In the High Court

No. 1

Specially Indorsed Writ
14th June 1965
(continued)

Amended this 29th day of July, 1965, pursuant to Order dated the 21st July, 1965.

Sd: A.F. Rajaratnam
Ag. Senior Asst. Registrar
High Court, Malaya, Ipoh.

WE COMMAND you, that within twelve 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 Lee Hock Ning.

10

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

WITNESS Raja Azlan Shah, Registrar of the High Court in Malaya.

Dated the 14th day of June, 1965.

Sd: Yeap & Yeap
Plaintiff's Solicitors
(L.S.)

Sd: A. F. Rajaratnam
Assistant Registrar
High Court,
Ipoh.

20

N.B. This Writ is to be served within twelve months from the date hereof, 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) if he/they wish/wishes to defend must appear hereto to entering an appearance (or appearances) either personally or by Solicitor at the Registry of the High Court at Ipoh.

30

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

3.

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, without notice, unless he has in the meantime been served with a summons for judgment.

BS. 979/65.

4.8.65.

In the High
Court

No. 1

Specially
Indorsed Writ
14th June 1965

(continued)

10

STATEMENT OF CLAIM

1. The plaintiff is a registered Government contractor and resides at No. K.15, Kampong Koh, Sitiawan, Perak.

20

2. By a contract in writing dated the 7th day of August, 1963 and styled as contract No. FED/PK/227 of 1963 entered into between the Senior Executive Engineer Central Perak acting for and on behalf of the Government of the then Federation of Malaya on the one part and the plaintiff on the other part it was agreed between the defendant and the plaintiff that the plaintiff shall erect for the defendant the buildings therein mentioned for the sum of \$11,315.00.

3. In accordance with the terms of the said contract a total sum of \$565.75 was paid to the defendant on the 12th day of October 1963 by way of security deposit for the due performance of the said contract.

30

4. The buildings referred to in the aforesaid contract were duly completed by the plaintiff and duly accepted by the defendant as such

40

5. By a contract in writing dated the 27th day of May 1963 and styled as contract No. S/PK/214 of 1963 entered into between the Senior Executive Engineer, Central Perak acting for and on behalf of the then Government of the Federation of Malaya on the one part and the Plaintiff on the other part, it was agreed between the defendant and the plaintiff that the plaintiff shall erect

In the High
Court

No. 1
Specially
Indorsed Writ
14th June 1965
(continued)

for the defendant the buildings therein mentioned for the sum of \$23,680.00.

6. The buildings referred to in the aforesaid contract were duly completed by the plaintiff and duly accepted by the defendant.

7. Under condition 15(d) of the aforesaid contract No. S/PK/214/63 the defendant was entitled to retain a sum of money for a period of 6 months from date of completion and did retain \$1,184.00 (hereinafter referred to as the Retention Money) such sum to be paid to the Plaintiff when all defects in the said buildings have been made good by the plaintiff. 10

8. The plaintiff did not receive any notice of any defect in the said building and is entitled to the payment of the Retention Money.

9. The defendant has failed to pay the plaintiff the said sum of \$11,315.00 due under the said contract No. FED/PK/227 nor refunded to him the said security deposit of \$565.75 referred to in clause 3 hereof. 20

10. The defendant has failed to pay to the plaintiff the Retention Money in spite of repeated requests to do so.

Wherefore the Plaintiff claims:-

- (i) the sum of \$11,315.00 being the sum due in satisfaction for the performance of the contract No. FED/PK/227/63 aforesaid; 30
- (ii) the sum of \$565.75 being deposit security paid for the aforesaid contract No. FED/PK/227/63;
- (iii) the sum of \$1,184.00 referred to in clause 7 hereof.
- (iv) costs;

(v) such further and other relief as the Court may grant.

In the High Court

Dated this 12th day of June, 1965.

No. 1

Sd: .. Yeap & Yeap ..
.....
Solicitors for Plaintiff.

Specially
Indorsed Writ
14th June 1965

(continued)

10 And the sum of \$60/- (or such as may be allowed on taxation) or costs, and also, in case the Plaintiff obtains an order for substituted service, the further sum of \$300/- (or such sum as may be allowed on taxation). If the amount claimed be paid to the 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 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.

 This Writ was issued by Messrs. Yeap & Yeap of Labrooy House, Ipoh whose address for service is Labrooy House, Post Office Road, Ipoh, Solicitors for the said plaintiff who resides at K.15, Kampong Koh, Sitiawan.

30 This Writ was served by me at Government of Malaysia, Kuala Lumpur on the defendant Government of Malaysia on Monday the 9th day of August, 1965 at the hour of 10.35 a.m.

Indorsed the 9th day of August, 1965.

(Signed) Sd: ?
.....
 Process Server

(Address) High Court, Kuala Lumpur

In the High Court

No. 2

NOTICE IN LIEU OF SERVICE

No. 2
Notice in
Lieu of Service
29th July 1965

IN THE HIGH COURT OF MALAYA AT IPOH

CIVIL SUIT NO. 221 OF 1965

Between:

Lee Hock Ning,
No. K.15, Kampong Kohn,
Sitiawan.

Plaintiff

And

The Government of the
Federation of Malaysia

Defendant

10

NOTICE IN LIEU OF SERVICE

To:

The Attorney General,
Legal Department,
Kuala Lumpur.

TAKE NOTICE that Lee Hock Ning of No. K.15, Kampong Koh, Sitiawan has commenced a suit against the Government of the Federation of Malaysia in our High Court in the above State by Writ of the Court, 20 dated the 14th day of June, 1965 which Writ is indorsed as follows:

1. The plaintiff is a registered Government contractor and resides at No. K.15, Kampong Koh Sitiawan, Perak.

2. By a contract in writing dated the 7th day of August, 1963 and styled as contract No. FED/PK/227 of 1963 entered into between the Senior Executive Engineer, Central Perak acting for and on behalf of the Government of the then Federation of Malaya on the one part and the plaintiff on the other part it was agreed between the defendant and the plaintiff that the plaintiff shall erect for the defendant the buildings therein mentioned for the sum of \$11,315.00

30

7.

3. In accordance with the terms of the said contract a total sum of \$65.75 was paid to the defendant on the 12th day of October, 1963 by way of security deposit for the due performance of the said contract.

In the High
Court

—————
No. 2

4. The buildings referred to in the aforesaid contract were duly completed by the plaintiff and duly accepted by the defendant as such.

Notice in
Lieu of Service
29th July 1965

(continued)

10 5. By a contract in writing dated the 27th day of May, 1963 and styled as contract No. S/PK/214 of 1963 entered into between the Senior Executive Engineer, Central Perak acting for and on behalf of the then Government of the Federation of Malaya on the one part and the plaintiff on the other part, it was agreed between the defendant and the plaintiff that the plaintiff shall erect for the defendant the buildings therein mentioned for the sum of \$23,680.00.

20 6. The buildings referred to in the aforesaid contract were duly completed by the plaintiff and duly accepted by the defendant.

7. Under condition 15(d) of the aforesaid contract No. S/PK/214/63 the defendant was entitled to retain a sum of money for a period of 6 months from date of completion and did retain \$1,184.00 (hereinafter referred to as the Retention Money) such sum to be paid to the plaintiff when all defects in the said buildings have been made good by the plaintiff.

30 8. The plaintiff did not receive any notice of any defect in the said building and is entitled to the payment of the Retention Money.

9. The defendant has failed to pay to the plaintiff the said sum of \$11,315.00 due under the said contract No. FED/PK/227 nor refunded to him the said security deposit of \$565.75 referred to in Clause 3 hereof.

40 10. The defendant has failed to pay to the plaintiff the Retention Money in spite of repeated requests to do so.

In the High Court

No. 2

Notice in Lieu of Service
29th July 1965
(continued)

Wherefore the plaintiff claims -

- (i) the sum of ~~£~~11,315.00 being the sum due in satisfaction for the performance of the contract No. FED/PK/227/63 aforesaid;
- (ii) The sum of ~~£~~565.75 being deposit security paid for the aforesaid contract No. FED/PK/227/63;
- (iii) The sum of ~~£~~1,184.00 referred to in Clause 7 hereof;
- (iv) Costs;
- (v) Such further and other relief as the Court may grant,

10

and you are required within 12 days after the receipt of this notice to defend the said suit by causing an appearance to be entered for you to the said suit; and, in default of your so doing, the said Lee Hock Ning may proceed therein and judgment may be given in your absence.

You may appear to the said writ by entering an appearance personally or by your Advocate and Solicitor at the Registry of the High Court at Ipoh.

20

By Order of the Court,

Sd: A.F. Rajaratnam
.....

Acting Senior Assistant Registrar,
High Court, Ipoh.

The 29th day of July, 1965.



9.

No. 3

In the High
Court

DUPLICATE APPEARANCE

No. 3

A.G. 3667

Duplicate
Appearance
17th August
1965

DUPLICATE APPEARANCE

IN THE HIGH COURT IN MALAYA AT IPOH

CIVIL SUIT 1965 NO. 221

Between:

Lee Hock Ning

PLAINTIFF

And

The Government of
the Federation of
Malaysia

DEFENDANT

10

MEMORANDUM OF APPEARANCE

Enter an appearance for the Government of
Malaysia, the defendant in this suit.

Dated this 17th day of August, 1965.

Senior Federal Counsel
for and on behalf of
the defendant whose
address for service is -
c/o Attorney General's
Chambers, Kuala Lumpur.

20

Filed this 18th day of August 1965.

Sd. A. F. Rajaratnam

Senior Assistant Registrar,
High Court,
Ipoh.

In the High
Court
No. 4
Defence and
Counterclaim
1st September
1965

10.

No. 4

DEFENCE AND COUNTER-CLAIM

IN THE HIGH COURT IN MALAYA AT IPOH

CIVIL SUIT NO. 221 OF 1965

Between:

Lee Hock Ning

PLAINTIFF

And

The Government of
the Federation of
Malaysia

DEFENDANT

10

D E F E N C E

1. The name of the defendant is Government of Malaysia and not the Government of the Federation of Malaysia as alleged.

2. Paragraphs 1, 2 and 3 of the Statement of Claim are admitted.

3. Paragraph 4 of the Statement of Claim is denied. The defendant says the plaintiff did not complete the works and buildings within the time stipulated in Contract No. FED/PK/227 of 1963, which was 30th December, 1963 but took an extra 37 days before the works and buildings were finally completed.

20

4. The defendant says that in consequence of the extra 37 days taken by the plaintiff as stated in para 3 above and pursuant to paragraph 12 of the Conditions of the Contract No. FED/PK/227 of 1963 the plaintiff had to pay to the defendant as liquidated and ascertained damages the sum of \$370.00.

30

5. Paragraphs 5, 6, 7 and 8 of the Statement of Claim are admitted. The defendant says that the plaintiff is indebted to the defendant in the sum of \$15,000/- as a result of defaults committed by the plaintiff in Contract No. FED/PK/232 of 1963 entered into

between the plaintiff and the defendant on the 7th August, 1963. The defendant further says that the defendant is entitled to set off the $\text{₹}1,184/-$ against the $\text{₹}15,000$ due from the plaintiff to the defendant.

In the High
Court

No. 4

6. Paragraphs 9 and 10 of the Statement of Claim are denied. The defendant says under Contract No. FED/PK/227 of 1963 the sum due to the plaintiff is:

Defence and
Counterclaim
1st September
1965
(continued)

10	$\text{₹}11,315.00$	(the sum contracted for)
	minus 370.00	(the liquidated and ascertained damages payable by the plaintiff)
	<hr/>	
	$\text{₹}10,945.00$	
	plus 565.00	(security deposit)
	<hr/>	
	$\text{₹}11,510.75$	
	<hr/>	

20 The defendant claims to set off this sum of $\text{₹}11,510.75$ against the sum of $\text{₹}15,000$ due from the plaintiff to the defendant as stated in paragraph 5 above.

7. The defendant says that under Contract No. FED/PK/232 of 1963 the plaintiff has deposited the sum of $\text{₹}1,525.00$ with the defendant as security deposit for due performance of the contract. This sum of $\text{₹}1,525.00$ is now one of the subject matters of Civil Suit No. 222 of 1965. The defendant claims to set off this sum of $\text{₹}1,525.00$ against the sum of $\text{₹}15,000/-$ due from the plaintiff.

30 8. The defendant says that after setting off the sums of $\text{₹}1,184.00$ (as stated in paragraph 5 above) $\text{₹}11,510.75$ (as stated in paragraph 6 above) and $\text{₹}1,525.00$ (as stated in paragraph 7 above) which made a total of $\text{₹}14,219.75$ against the sum of $\text{₹}15,000$ as stated in paragraph 5 above, the plaintiff is indebted to the defendant in the sum of $\text{₹}780.25$.

40 9. The defendant says that the plaintiff's claim are barred by section 2 of the Public Authorities Protection Ordinance 1946.

10. The defendant prays that the plaintiff's claims be dismissed with costs.

In the High Court

COUNTER - CLAIM

No. 4
Defence and Counterclaim
1st September 1965
(continued)

11. The defendant repeats the statements contained in the defence and claims \$780.25 being the balance of the amount due to the defendant as aforesaid after deducting the amount of the plaintiff's claims.

Dated this 1st day of September 1965.

Sd: ?
.....
Senior Federal Counsel

for and on behalf of the defendant
whose address for service is -
c/o Attorney-General's Chambers,
Kuala Lumpur.

10

Delivered this day of September 1965.

To:

Messrs. Yeap & Yeap,
Advocates & Solicitors,
Labrooy House,
Post Office Road,
Ipoh.

(Solicitors for the plaintiff)

20

No. 5

No. 5

Reply to
Defence and Counterclaim
14th September 1965

REPLY TO DEFENCE & COUNTER-CLAIM

IN THE HIGH COURT IN MALAYA AT IPOH

CIVIL SUIT NO. 221 of 1965

Between:

Lee Hock Ning

PLAINTIFF

And

The Government of
The Federation of
Malaysia

DEFENDANT

30

REPLY TO DEFENCE & COUNTERCLAIM

In the High Court

No. 5

Reply to
Defence and
Counterclaim
14th September
1965
(continued)

1. Save in so far as the Defence and Counter-claim consists of admissions the Plaintiff joins issue with the Defendant on its Defence and Counterclaim with the exception of paragraphs 3 and 4 thereof which are admitted.
2. With regard paragraphs 5, 6, 7 and 8 thereof the Plaintiff says that he is not indebted to the Defendant in the sum of \$15,000/- or at all and neither is the Defendant entitled to any set-off.
3. The Plaintiff denies that his claim is barred by section 2 of the Public Authorities Protection Ordinance, 1948 as the claim is not against any person for any act done in pursuance or execution or intended execution of any written law or of any public duty or authority or in respect of any alleged neglect or default in the execution of any such written law, duty or authority.
4. With regard to the counterclaim the Plaintiff repeats the averments above and prays that it be dismissed with costs.

Dated this 14th day of September 1965.

Sd: Yeap & Yeap
.....
Solicitors for the Plaintiff

Delivered this 16th day of September 1965.

To:

The Senior Federal Counsel
for and on behalf of the
Defendant whose address
for service is
c/o Attorney-General's Chambers,
KUALA LUMPUR.



14.

In the High Court

No. 6

SPECIALLY INDORSED WRIT

No. 6

IN THE HIGH COURT IN MALAYA AT IPOH

Specially Indorsed Writ
14th June 1965

CIVIL SUIT 1965 NO. 222

Between:

Lee Hock Ning

PLAINTIFF

And

The Government of
the Federation of
Malaysia

DEFENDANT

10

Dato' Syed Sheh Barakbah, P.M.N., D.P.M.K.,
P.S.B., Chief Justice of the High Court in
Malaya, in the name and on behalf of His Majesty
the Yang di-Pertuan Agong.

To:

The Government of the
Federation of Malaysia.

Amended this 29th day
of July, pursuant to
Order dated 21st July, 1965.

20

Sd: A.F. Rajaratnam
.....
Ag. Senior Assistant
Registrar,
High Court, Malaya,
Ipoh.

WE COMMAND You, that within twelve (12)
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 Lee Hock Ning.

30

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

WITNESS Raja Azlan Shah, Registrar, of the

High Court in Malaya.

In the High
Court

Dated the 14th day of June, 1965.

No. 6

Sd: Yeap & Yeap
Plaintiff's Solicitors,

(L.S.)

Sd: A.F. Rajaratnam
Assistant Registrar
High Court,
Ipoh.

Specially
Indorsed Writ
14th June 1965
(continued)

10 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) if he/they wish/wishes to defend must appear hereto to entering an appearance (or appearances) either personally or by Solicitor at the Registry of the High Court at Ipoh.

20 A defendant appearing personally, may, if he desire, enter his appearance by post, and the appropriate forms may be obtained by sending a Postal Order for \$3.00 with an address envelope to the Registrar of the High Court in Malaya.

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.

STATEMENT OF CLAIM

30 1. The plaintiff is a registered Government Contractor and resides at No. K15, Kampong Koh, Sitiawan, Perak.

40 2. By a Contract in writing dated the 7th day of August, 1963 and style as Contract No. FED/PK/232 of 1963 entered into between the Senior Executive Engineer, Central Perak acting for and on behalf of the then Government of the Federation of Malaya of the one part and the plaintiff of the other part it was agreed between the defendant and the plaintiff that the plaintiff shall erect for the defendant the buildings therein described for the

In the High Court

No. 6

Specially Indorsed Writ 14th June 1965 (continued)

sum of \$30,500/-.

3. In accordance with Clause 3 of the said Contract the plaintiff deposited with the Government, vide Receipt No. 854551 dated 7th November, 1963, a sum of \$1,525.00 being 5 per cent of the contract sum as security deposit for the due performance of the said contract.

4. In accordance with the terms of the said contract the date of completion of the project was agreed to as the 3rd day of March, 1964.

5. The plaintiff was prevented from the performance of the aforesaid contract by the letter of the defendant dated 7th December, 1963.

10

6. In consequence of the defendant's unilateral and arbitrary action the plaintiff has suffered damage.

PARTICULARS

Loss sustained in respect of Building Materials Ordered	\$5,000/-
Wages for Employees	<u>1,500/-</u>
	<u>\$6,500/-</u>

WHEREUPON the plaintiff claims:-

20

- (1) Damages;
- (2) Refund of the deposit of \$1,525.00 as per Clause 3 hereof;
- (3) Costs;
- (4) Such further and other relief as the Court may grant.

Dated this 12th day of June, 1965

Sd: Yeap & Yeap
Solicitors for Plaintiff

And the sum of \$60/- (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 \$300/- (or such sum

30

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.

In the High Court

No. 6

Specially Indorsed Writ
14th June 1965
(continued)

10

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 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.

20

This Writ was issued by Messrs. Yeap & Yeap of Labrooy House, Ipoh whose address for service is Labrooy House, Post Office Road, Ipoh, Solicitors for the said plaintiff who resides at No. K.15, Kampong Koh, Sitiawan.

This Writ was served by me at Government of Malaysia, Kuala Lumpur on the defendant Government of Malaysia on Monday the 9th day of August 1963 at the hour of 10.35 a.m.

Indorsed the 9th day of August 1965.

(Signed)?
.....
Process Server.

(Address) High Court,
K. Lumpur
.....

18.

In the High
Court

No. 7

No. 7

Notice in
Lieu of Service
29th July 1965

NOTICE IN LIEU OF SERVICE

IN THE HIGH COURT IN MALAYA AT IPOH

CIVIL SUIT NO. 222 OF 1965

Between:

Lee Hock Ning
K.15, Kampong Koh,
Sitiawan.

PLAINTIFF

And

The Government of
the Federation of
Malaysia

10

DEFENDANT

NOTICE IN LIEU OF SERVICE

To:

The Attorney-General,
Legal Department,
Kuala Lumpur.

TAKE NOTICE that Lee Hock Ning of K.15,
Kampong Koh, Sitiawan has commenced a suit
against the Government of the Federation of
Malaysia in our High Court in the above State by
Writ of the Court dated the 14th day of June, 1965
which Writ is indorsed as follows:- 20

1. The Plaintiff is a registered Government
Contractor and resides at No. K.15, Kampong Koh,
Sitiawan, Perak.

2. By a contract in writing dated the 7th day of
August 1963 and styled as Contract No. FED/PK/232
of 1963 entered into between the Senior Executive
Engineer, Central Perak, acting for and on behalf
of the then Government of the Federation of
Malaya of the one part and the Plaintiff of the
other part it was agreed between the Defendant
and the Plaintiff that the Plaintiff shall erect
for the Defendant the buildings therein described
for the sum of \$30,500/-. 30

3. In accordance with Clause 3 of the said Contract the Plaintiff deposited with the Government, vide Receipt No. 854551 dated 7th November, 1963 a sum of \$1,525.00 being 5 per cent of the contract sum as security deposit for the due performance of the said Contract.

In the High Court

No. 7

Notice in
Lieu of Service
29th July 1965
(continued)

4. In accordance with the terms of the said Contract the date of completion of the project was agreed to as the 3rd day of March, 1964.

10 5. The Plaintiff was prevented from the performance of the aforesaid Contract by the letter of the Defendant dated 7th December, 1963.

6. In consequence of the Defendant's unilateral and arbitrary action the Plaintiff has suffered damages,

20 and you are required within 12 days after the receipt of this notice to defend the said suit by causing an appearance to be entered for you to the said suit; and, in default of your so doing, the said Lee Hock Ning may proceed therein and judgment may be given in your absence.

You may appear to the said Writ by entering an appearance personally or by your Advocate and Solicitor at the Registry of the High Court at Ipoh.

Dated the 29th day of July, 1965.

By Order of The Court

(L.S.) Sd: A.F. Rajaratnam
Assistant Registrar,
High Court,
IPOH.

In the High Court

No. 8

DEFENCE AND COUNTERCLAIM

No. 8
Defence and Counterclaim
1st September 1965

IN THE HIGH COURT IN MALAYA AT IPOH

CIVIL SUIT NO. 222 of 1965

Between:

Lee Hock Ning

PLAINTIFF

And

The Government of
the Federation of
Malaysia

DEFENDANT

10

D E F E N C E

1. The name of the Defendant is Government of Malaysia and not the Government of the Federation of Malaysia as alleged.

2. Paragraphs 1, 2, 3 and 4 of the Statement of Claim are admitted.

3. Paragraphs 5 and 6 of the Statement of Claim are denied.

4. The Defendant says that the Plaintiff in spite of due notice being given to him failed to proceed with the works with reasonable diligence as stipulated in Contract No. FED/PK/232 of 1963, and had therefore committed a default under paragraph 13 of the conditions to the said contract which reads as follows:- 20

"13.(a) Default. - If the Contractor shall make default in any of the following respects, namely:-

(i) without reasonable cause wholly suspends the works before completion; 30

(ii) fails to proceed with the works with reasonable diligence;

(iii) refuses or to a substantial degree

persistently neglects after notice in writing from the Superintending Officer to remove defective work or improper materials;

In the High
Court

No. 8

then, if any such default shall continue for fourteen days after a notice sent by registered post to the Contractor from the Superintending Officer, the Superintending Officer may thereupon by notice sent by registered post determine this contract.

Defence and
Counterclaim
1st September
1965
(continued)

10

(b) Bankruptcy or Assignment. - If the Contractor commits an act of bankruptcy or becomes insolvent or compounds with or makes any assignments for the benefit of his creditors the Superintending Officer may by a notice sent by registered post determine this contract.

20

(c) In either of the above cases the Superintending Officer may complete the works by other means and all excess costs so incurred shall be payable by the Contractor."

5. The Defendant says that in consequence of the default of the Plaintiff, the Defendant caused the works to be completed by another contractor, Poh Thong, and the excess costs incurred amounting to \$15,000/-, pursuant to paragraph 13(c) of the Conditions to the Contract, became payable by the Plaintiff to the Defendant. The Defendant claims this sum of \$15,000/- from the Plaintiff.

30

6. The Defendant claims a set off of the \$1,525.00 as stated in paragraph 3 of the Statement of Claim against the \$15,000 due from the Plaintiff to the Defendant.

7. The Defendant says the Plaintiff's claims are barred by section 2 of the Public Authorities Protection Ordinance 1948.

8. The Defendant prays that the Plaintiff's claims be dismissed with costs.

COUNTER - CLAIM

40

9. The Defendant repeats the statements contained

In the High Court

No. 8

Defence and Counterclaim 1st September 1965 (continued)

in the Defence and claims \$13,475.00 being the balance due to him as aforesaid after deducting the amount of \$1,525.00 of the Plaintiff's claim.

Dated this 1st day of September, 1965.

Sd: ? Senior Federal Counsel for and on behalf of the Defendant whose address for service is - c/o Attorney-General's Chambers, Kuala Lumpur.

10

Delivered this day of September, 1965.

To:

Messrs. Yeap & Yeap, Advocates & Solicitors, Labrooy House, Post Office Road, Ipoh. (Solicitors for the Plaintiff)

No. 9

No. 9

Reply and Defence to Counterclaim 16th September 1965

REPLY AND DEFENCE TO COUNTERCLAIM
IN THE HIGH COURT OF MALAYA AT IPOH
CIVIL SUIT NO. 222 OF 1965

20

Between:

Lee Hock Ning PLAINTIFF

And

The Government of the Federation of Malaysia DEFENDANT

REPLY TO DEFENCE & COUNTERCLAIM

1. Save in so far as the Defence and Counterclaim consists of admissions the Plaintiff joins issue with the Defendant on its Defence and

30

Counterclaim.

In the High Court

No. 9

Reply and
Defence to
Counterclaim
16th September
1965
(continued)

2. With regard to paragraph 4 thereof the Plaintiff denies that he had committed a default under paragraph 13 of Contract No. FED/PK/232/63, and

3. Alternatively, if there was such default (which is denied) no notice was received by him notifying him of such default.

10 4. With regard to paragraph 5 thereof, the Plaintiff has no knowledge of the averments contained therein.

5. With regard to paragraph 6 thereof the Plaintiff says that since there is no money due to the Defendant the question of a set-off does not arise.

20 6. The Plaintiff denies that his claim is barred by section 2 of the Public Authorities Protection Ordinance, 1948 as the claim is not against any person for any act done in pursuance or execution or intended execution of any written law or of any public duty or authority or in respect of any alleged neglect or default in the execution of any such written law, duty or authority.

7. With regard to the Counterclaim the Plaintiff repeats the averments above and prays that it be dismissed with costs.

Dated this 14th day of September 1965

Sd: Yeap & Yeap.....

30 Delivered this 16th day of September, 1965.

To:

The Senior Federal Counsel for
and on behalf of the Defendant
whose address for service is
c/o Attorney-General's Chambers,
Kuala Lumpur.

In the High Court

No. 10

AMENDED STATEMENT OF CLAIM

IN THE HIGH COURT IN MALAYA AT IPOH

CIVIL SUIT NO. 222 OF 1965

No.10
Amended
Statement
of Claim
12th October
1968

Between:

Lee Hock Ning

PLAINTIFF

And

The Government of
the Federation of
Malaysia

DEFENDANT

10

AMENDED STATEMENT OF CLAIM

1. The Plaintiff is a registered Government Contractor and resides at No. K.15, Kampong Koh, Sitiawan, Perak.

2. By a contract in writing dated the 7th day of August, 1963 and styled as Contract No. FED/PK/232 of 1963 Perak acting for and on behalf of the then Government of the Federation of Malaya of the one part and the Plaintiff of the other part it was agreed between the Defendant and the Plaintiff that the Plaintiff shall erect for the Defendant the buildings therein described for the sum of \$30,500/-.

20

3. In accordance with Clause 3 of the said Contract the Plaintiff deposited with the Government, vide Receipt No. 854551 dated 7th November, 1963 a sum of \$1,525.00 being 5 per cent of the contract sum as security deposit for the due performance of the said Contract.

4. In accordance with the terms of the said contract the date of completion of the project was agreed to as the 3rd day of March, 1964.

30

5. The Plaintiff was prevented from the performance of the aforesaid contract by the letter of the Defendant dated 7th December, 1963.

6. In consequence of the Defendant's unilateral

and arbitrary action the Plaintiff has suffered damage.

In the High Court

7. Alternatively the Plaintiff avers -

No.10

(a) On or about the 7th day of August, 1963, the Plaintiff tendered for the construction of one block of office and seven classroom, lavatory block and septic tank at F.I.D.A. Scheme at Bersia, Grik, which tender was duly accepted.

Amended
Statement of
Claim
12th October
1968
(continued)

10 (b) The Plaintiff was requested by the Senior Executive Engineer Central, Perak, either expressly or impliedly to proceed with the said work and acting on the said request the Plaintiff ordered materials for the construction of the aforesaid project and employed workers to the value of \$6,500/-.

20 (c) The said work was to be commenced only after the execution of a formal Contract containing the terms and conditions for performance of the said work between the Plaintiff and the Defendant.

(d) The said formal Contract was not executed by the Defendant.

(e) The Plaintiff suffered damages by virtue of the Defendant's refusal to execute the said formal contract.

PARTICULARS

30	Loss sustained in respect of Building Materials ordered	\$5,000/-
	Wages for Employees	<u>\$1,500/-</u>
		<u>\$6,500/-</u>

WHEREUPON the Plaintiff claims:-

(1) Damage;

(2) Refund of the deposit of \$1,525.00 as per Clause 3 hereof;

In the High Court

No.10

Amended
Statement of
Claim
12th October
1968
(continued)

- (3) Costs;
- (4) Such further and other relief as the Court may grant.

Re-delivered this 12th day of October, 1968.

Sd: Yeap & Yeap
.....
Solicitors for the Plaintiff

No.11

Amended
Defence
13th February
1969

No.11

AMENDED DEFENCE

IN THE HIGH COURT IN MALAYA AT IPOH

CIVIL SUIT NO. 222 OF 1965

10

Between:

Lee Hock Ning

PLAINTIFF

And

The Government of
the Federation of
Malaysia

DEFENDANT

AMENDED DEFENCE

1. The name of the Defendant is Government of Malaysia and not the Government of the Federation of Malaysia as alleged.

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2. Paragraphs 1, 2, 3 and 4 of the Amended Statement of Claim are admitted.

3. Paragraphs 5 and 6 of the Amended Statement of Claim are denied.

4. The Defendant says that the Plaintiff in spite of due notice being given to him failed to proceed with the works with reasonable diligence as stipulated in Contract No. FED/PK/232 of 1963, and had therefore committed a default under paragraph 13 of the conditions to the said contract which reads as follows:-

30

"13.(a) Default - If the Contractor shall make default in any of the following

respects, Namely:

- (i) without reasonable cause wholly suspends the works before completion;
- (ii) fails to proceed with the works with reasonable diligence;
- (iii) refuses or to a substantial degree persistently neglects after notice in writing from the Superintending Officer to remove defective work or improper materials;

In the High
Court

No.11

Amended
Defence
13th February
1969
(continued)

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then, if any such default shall continue for fourteen days after a notice sent by registered post to the Contractor from the Superintending Officer, the Superintending Officer may thereupon by notice sent by registered post determine this contract.

20

(b) Bankruptcy or Assignment. - If the Contractor commits an act of bankruptcy or becomes insolvent or compounds with or makes any assignments for the benefit of his creditors the Superintending Officer may by notice sent by registered post determine this contract.

(c) In either of the above cases the Superintending Officer may complete the works by other means and all excess costs so incurred shall be payable by the Contractor."

30

5. The Defendant says that in consequence of the default of the Plaintiff, the Defendant caused the works to be completed by another contractor, Poh Thong, and the excess costs incurred amounting to \$15,000/-, pursuant to paragraph 13(c) of the Conditions to the Contract, became payable by the Plaintiff to the Defendant. The Defendant claims this sum of \$15,000 from the Plaintiff.

6. The Defendant claims a set off of the \$1,525.00 as stated in paragraph 3 of the Amended Statement of Claim against the \$15,000/- due from the Plaintiff to the Defendant.

40

7. The Defendant says the Plaintiff's claim are barred by section 2 of the Public Authorities Ordinance, 1948.

In the High Court

No.11

Amended
Defence
13th February
1969
(continued)

8. Save as is hereinbefore expressly admitted the Defendant denies each and every allegation of fact contained in the Amended Statement of Claim as if the same were set forth herein and specifically traversed.

9. The Defendant prays that the Plaintiff's claims be dismissed with costs.

AMENDED COUNTER-CLAIM

10. The Defendant repeats the statement contained in the Amended Defence and claims $\text{RM}13,475.00$ being the balance due to him as aforesaid after deducting the amount of $\text{RM}1,525.00$ of the Plaintiff's claim. 10

Dated this 13th day of February, 1969.

Sd: M. Mahalingham
Federal Counsel
for and on behalf of the
Defendant whose address for
service is -
c/o Attorney-General's Chambers 20
Kuala Lumpur.

Delivered this 14th day of February, 1969.

To:

Messrs. Yeap & Yeap,
Advocates & Solicitors,
Labrooy House,
Post Office Road,
Ipoh.
(Solicitors for the Plaintiff)

No. 12

AMENDED REPLY TO DEFENCE & COUNTERCLAIM

IN THE HIGH COURT IN MALAYA AT IPOH

CIVIL SUIT NO 222 OF 1965

In the High Court

No.12

Amended Reply to Defence and Counterclaim
19th May 1969

Between:

Lee Hock Ning

PLAINTIFF

And

The Government of
the Federation of
Malaysia.

DEFENDANT

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AMENDED REPLY TO DEFENCE & COUNTERCLAIM

1. Save in so far as the Defence and Counterclaim consists of admissions the Plaintiff joins issue with the Defendant on its Defence and Counterclaim.

2. With regard to paragraph 4 thereof the Plaintiff denies that he had committed a default under paragraph 13 of Contract No. FED/PK/232/63, and

20

3. Alternatively, if there was such default (which is denied) no notice was received by him notifying him of such default.

4. With regard to paragraph 5 thereof, the Plaintiff has no knowledge of the averments contained therein.

5. With regard to paragraph 6 thereof, the Plaintiff says that since there is no money due to the Defendant the question of a set-off does not arise.

30

6. The Plaintiff denies that his claim is barred by section 2 of the Public Authorities Protection Ordinance, 1948 as the claim is not against any person for any act done in pursuance or execution or intended execution of any written law or of any public duty or authority or in respect of any alleged neglect or default in the execution of any such written law, duty or authority.

In the High Court

No.12

Amended Reply to Defence and Counterclaim 19th May 1969 (continued)

6A. Or alternatively that the claim was made within twelve months from the actual date when the cause of action arose i.e. on the 21st November, 1964 when the demand for payment was finally rejected and when the continuance of injury or damage to the Plaintiff ceased.

7. With regard to the Counter-claim the Plaintiff repeats the averments above and avers further that since the document known as Contract No. FED/PK/232 of 1963 was not executed by the Senior Executive Engineer, Central Perak and that the Plaintiff is not bound by the terms and conditions contained therein and prays that it be dismissed with costs.

10

Dated this 19th day of May, 1969.

Sd: Yeap & Yeap Solicitors for the Plaintiff.

Redelivered this 19th day of May, 1969.

To:

The Senior Federal Counsel for and on behalf of the Defendant whose address for service is - c/o Attorney-General's Chambers, Kuala Lumpur.

20

No. 13

Order for Judgment 2nd May 1970

No.13

ORDER FOR JUDGMENT

IN THE HIGH COURT IN MALAYA AT IPOH

CIVIL SUIT NOS. 221 and 222 OF 1965

Between:

Lee Hock Ning

PLAINTIFF

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And

Government of Malaysia

DEFENDANT

And

Lee Hock Ning

PLAINTIFF

In the High
Court

And

No.13

Government of Malaysia

DEFENDANT

(Consolidated by Order of Court dated 11th
October, 1965)Order for
Judgment
2nd May 1970
(continued)BEFORE THE HONOURABLE MR. JUSTICE PAWAN AHMAD
BIN IBRAHIM RASHID

THIS 23RD DAY OF APRIL, 1970

24TH DAY OF APRIL, 1970

10 AND 2ND DAY OF MAY, 1970.

IN OPEN COURT

O R D E R

THIS CONSOLIDATED ACTION coming on for hearing on 23rd day of April, 1970; 24th day of April, 1970 and this 2nd day of May, 1970, in the presence of Mr. Gurdip Singh of Counsel for the Plaintiff abovenamed and Mr. M. Mahalingam of Counsel for the Defendant abovenamed AND UPON READING the pleadings delivered in the suits and the Order of Court dated 11th October, 1965 AND UPON HEARING the evidence adduced herein AND UPON HEARING Counsel aforesaid:

20

IT IS ORDERED that prayers 1 and 2 of Civil Suit No. 222/65, having been conceded by the Plaintiff as being barred by Section 2 Public Authorities Protection Ordinance, 1948, be dismissed.

IT IS FURTHER ORDERED that the sum of \$10,749.25 out of the Contract sum of \$11,315/- claimed in prayer 1 of Civil Suit No. 221/65 and the sum of \$565.75 being security deposit paid for the aforesaid contract claimed in prayer 2 of Civil Suit No. 221/65, be dismissed, as being barred by Section 2 Public Authorities Protection Ordinance, 1948.

30

IT IS FURTHER ORDERED that the Retention sum of \$565.75 out of the contract sum of \$11,315/- referred to in prayer 1 of Civil Suit No. 221/65 and the sum of \$1,184/- referred to in prayer 3 of Civil Suit No. 221/65 be paid to the Plaintiff by the Defendant, together with interest thereon at the rate of 6% per annum

40

In the High Court

No.13

Order for Judgment
2nd May 1970
(continued)

with effect from the 14th day of June, 1965.

AND IT IS FURTHER ORDERED that the counter-claims of the Defendant be dismissed.

AND IT IS LASTLY ORDERED that the Defendant do pay the Plaintiff cost of this action.

GIVEN under my hand and the Seal of the Court this 2nd day of May, 1970.

(L.S.) Sd: Nik Mohamed bin Nik Yahya
.....
Senior Assistant Registrar,
High Court,
Ipoh.

10

No.14

Grounds of Judgment
31st July 1971

No.14

GROUND OF JUDGMENT

IN THE HIGH COURT AT IPOH

Civil Suit No. 221 & 222 of 1965

Lee Hock Ning Plaintiff

And

The Government of Malaysia Defendant

GROUND OF JUDGMENT

The plaintiff is a registered Government contractor and the defendant is the Government of Malaysia. Both civil suits were instituted by the plaintiff against the defendant for damages arising out of an alleged breach of three contracts. Civil Suit No. 221 of 1965 relates to two contracts, namely, Contract No. S/PK/214 of 1963 (which I shall refer to as the 1st contract) and Contract No. FED/PK/227 of 1963 (which I shall refer to as the 2nd contract). Civil Suit No. 222 of 1965 relates to only Contract No. FED/PK/232 of 1963 (which I shall refer to as the 3rd contract).

20

30

The 1st contract was executed on 17th June 1963 and it was for the construction of one block of two units Class "F" quarters at Grik for the sum of \$23,680 and it was to be completed by 21st December 1963. The 2nd contract was executed on 3rd September 1963 and it was for the construction of

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one block of three classrooms and office, well and three Siamese W.Os. at Pelang for the sum of \$11,315/- and it was to be completed by 30th December 1963. The 3rd contract was executed on 18th September 1963 and it was for the construction of one block of office and seven classrooms, lavatory block, and septic tank at F.L.D.A. Scheme at Borsia for the sum of \$30,500.

In the High
Court

—————
No.14

Grounds of
Judgment
31st July 1971
(continued)

10 In Civil Suit No. 221 of 1965 the plaintiff is claiming for the recovery of the sum of \$1,184 being retention money due under the 1st contract and the sums of \$11,315 and \$565.75 being the contract sum and the security deposit respectively under the 2nd contract. In Civil Suit No. 222 of 1965 the plaintiff is claiming for damages and also for the refund of the deposit sum of \$1,525 due under the 3rd contract.

20 The defendant does not dispute the satisfactory completion of the works and buildings under the 1st and 2nd contracts but the defendant claims a set-off for loss suffered by the defendant against the alleged breach committed by the plaintiff in not performing the 3rd contract and therefore counterclaims in the sum of \$13,475. The defendant also raises the plea of limitation under section 2 of the Public Authorities Protection Ordinance 1948. The defendant is entitled to this plea of limitation by virtue of section 38 of the Government Proceedings Ordinance 1956 which
30 reads as follows:-

"Any written law relating to the limitation of time for bringing proceedings against public authorities may be relied upon by the Government as a defence in any civil proceedings against the Government."

40 In the present case section 2 of the Public Authorities Protection Ordinance 1948 on which the defendant relies and not disputed to by the plaintiff at the trial limits the plaintiff's period of instituting the proceedings to a period of less than 12 months next from the date of the neglect or default complained of. The issue on limitation for the consideration of the court in each of the civil suits is whether or not they were proceeded with within the limited period of less than 12 months.

In the High
Court

No.14

Grounds of
Judgment
31st July 1971
(continued)

At the trial Agreed Bundle of Documents "A" and Supplementary Agreed Bundle of Documents "B" as well as Agreed Facts "C" and "D" were by consent put in by the parties. Among other things, it was agreed by the parties that the works and buildings specified in the 1st and 2nd contracts had been duly completed by the plaintiff to the satisfaction of the defendant on 3rd February 1964 and 5th February 1964 respectively. It was also agreed that on the 1st contract the defendant was still holding back the retention money amounting to \$1,184. The defendant conceded that this sum was not statute barred and therefore the plaintiff is entitled to his claim on this sum. As to the Plaintiff's claim for the deposit of \$565.75 and subsequently agreed to as being retention money on the 2nd contract the defendant conceded that this sum was also not statute barred and therefore the plaintiff also succeeds in his claim for this sum. 10 20

In Civil Suit No. 221 of 1965 the court had also to consider whether the plaintiff's claim for the sum of \$11,315 for the due performance of the 2nd contract is statute barred or not. It is apparent from the evidence that the contract sum of \$11,315 includes the retention money of \$565.75 conceded to by the defendant. After the deduction of the said retention money there is therefore only the balance sum of \$10,749.25 to be considered. It was agreed by the parties that the 2nd contract was completed on 5th February 1964. The defendant therefore contended that it became automatically payable on that date. Since the suit for this claim was foled in court on 14th June 1965, after the lapse of the period of 12 months, the defendant contended that it was statute barred. The plaintiff on the other hand contended that time would only start to run against him from the date he received the letter of refusal dated 29th September 1964 from the defendant at page 19 of exhibit "A". The plaintiff submitted that as the writ for this claim was filed in court on 14th June 1965, a period of less than 12 months from the date the said letter of refusal was received the plaintiff was not barred by section 2 of the Public Authorities Protection Ordinance 1948. The plaintiff, however, did not quote any authority in support 30 40

of his proposition.

Paragraph 347 of Halsbury's Laws of England, 3rd Edition, Volume 24 at page 193 under the heading "Accrual of cause of action" states as follows:

10 "In general the period of limitation under the Limitation Act, 1939 begins to run when the cause of action accrues. Apart from any special statutory provision, a cause of action normally accrues when there is in existence a person who can sue and another who can be sued, and when all the facts have happened which are material to be proved to entitle the plaintiff to succeed."

20 In view of this provision I am of the opinion that the plaintiff's claim for the remaining sum of £10,749.25 accrued on 5th February 1964 when the 2nd contract was completed and not on 29th December 1964 the date of the letter of refusal. Since the plaintiff's claim for this sum was filed in court only on 14th June 1965, a period of more than 12 months from the date of accrual, the claim for this sum must necessarily fail by reason of the defence of limitation raised by the defendant.

30 As to the plaintiff's claim in Civil Suit No. 222 of 1965 his counsel conceded that it was barred by section 2 of the Public Authorities Protection Ordinance 1948 and it was accordingly dismissed.

40 I have now only to deal with the defendant's counterclaim for a set-off. The defendant submitted that due to the plaintiff's default in not commencing with the works under the terms of the 3rd contract in spite of several notices and warnings the defendant was compelled to terminate the contract and to employ another contractor to do it thereby incurring an excess of £15,000. The defendant therefore counter-claimed for this amount as a set-off against the plaintiff's claim. The defendant submitted that the 3rd contract was terminated under clause 13(A)(ii) of the conditions of the agreement. The defendant stated that a notice of intended termination under the agreement and dated 21st November 1963

In the High Court

—
No.14

Grounds of Judgment
31st July 1971
(continued)

In the High Court
No.14.
Grounds of Judgment
31st July 1971
(continued)

was sent to the plaintiff (page 5 of exhibit "B") and followed by termination notice dated 7th December 1963 was also sent to the plaintiff (page 8 of exhibit "B"). The plaintiff, however, submitted that the defendant had by inference withdrawn or at least waived his notice of intended termination by his letter dated 4th December 1963 (page 7 of exhibit "B") and therefore the said notice of termination was of no effect. I agree with the submission of counsel for the plaintiff and I therefore dismissed the defendant's counterclaim.

10

Therefore on the whole the plaintiff is only entitled to his claims for the retention money on the 1st contract amounting to \$1,184 and for another retention money on the 2nd contract amounting to \$565.75. There will therefore be judgment to the plaintiff for the total sum of \$1,749.75 and costs. Since this said sum has been withheld by the defendant without any reasonable cause I also awarded to the plaintiff an interest of 6% per annum on the said sum with effect from 14th June 1965, the date Civil Suit No. 221 of 1965 was filed in court to date of judgment.

20

(Sd.) Pawan Ahmad bin Ibrahim Rashid
.....
JUDGE
HIGH COURT
(PAWAN AHMAD BIN IBRAHIM RASHID)

31st July, 1971

30

Inche Gurdip Singh
(Yeap & Yeap) ... For plaintiff

Inche M. Mahalingam
Federal Counsel ... For defendant

TRUE COPY

(Sd) Ng Yeow Hean
.....
Secretary to Judge,
High Court, Ipoh
2/8/1971



In the Federal Court

No.15

Notice of Appeal
29th May 1970
(continued)

claims of the Defendant.

Dated this 29th day of May, 1970.

Sd: Maxwell, Kenion, Cowdy & Jones
Solicitors for the Appellant.

To:

- 1. The Chief Registrar,
Federal Court of Malaysia,
KUALA LUMPUR.
- 2. The Senior Assistant Registrar,
High Court,
IPOH.
- 3. The Senior Federal Counsel,
c/o Attorney-General's Chambers,
KUALA LUMPUR.
- 4. The Deputy Public Prosecutor,
Perak,
High Court Building,
IPOH.

10

The Appellant's address for service is care of Messrs. Maxwell, Kenion, Cowdy & Jones, Advocates & Solicitors of Mercantile Bank Chambers, Station Road, Ipoh.

20

No.16

Memorandum of Appeal
1st August 1971

No.16

MEMORANDUM OF APPEAL

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

FEDERAL COURT CIVIL APPEAL NO: 66 OF 1970

Between

Lee Hock Ning

APPELLANT

And

30

Government of Malaysia

RESPONDENT

(In the Matter of Civil Suits Nos. 221 of
1965 and 222 of 1965

In the Federal
Court

In the High Court in Malaya at Ipoh

No.16

Between

Lee Hock Ning PLAINTIFF

And

Government of Malayasia DEFENDANT

And

Lee Hock Ning PLAINTIFF

And

Government of Malaysia DEFENDANT

(Consolidated by Order of Court dated 11th
October, 1965))

MEMORANDUM OF APPEAL

Lee Hock Ning the Appellant abovenamed
appeals to the Federal Court, Malaysia (Appellate
Jurisdiction) against the whole of the decision
of the Honourable Mr. Justice Pawan Ahmad bin
Ibrahim Rashid given at Ipoh on the 2nd day of
May 1970 save and except so far as the same
pertains to the counterclaim of the Defendant on
the following grounds:-

1. With regard to the second contract and the
third contract, your petitioner submits with
respect that his then counsel was wrong in law in
conceding that the Public Authorities Protection
Ordinance, 1948 (hereinafter referred to as "the
Ordinance") applied thereto and that therefore
the instituting of proceedings was governed by
section 2 thereof and the learned trial judge
similarly erred in law in accepting the said
concession.

2. Your petitioner submits with respect that
an erroneous admission on a point of law is not
an admission of a thing so as to make the
admission a matter of estoppel and the Court is

In the Federal
Court

No.16

Memorandum
of Appeal
1st August 1971
(continued)

not precluded from deciding the rights of the parties on a true view of the law.

3. With regard to the second contract, your petitioner submits with respect that the learned trial judge having rightly found that there was a sum of ₹11,315/- due by the defendant (hereinafter referred to as "the Government") to your Petitioner in respect thereof:

- (a) erred in law in holding that your petitioner's claim was barred by section 2 of the Ordinance in respect of the sum of ₹10,749.25; and 10
- (b) ought to have held that the entire sum of ₹11,315/- being due to your petitioner for work and labour done, the Ordinance did not apply.

4. Alternatively, with regard to the second contract, your petitioner submits with respect that if the Ordinance did apply, then the learned trial judge was wrong in law in holding that the period of limitation began to run when the cause of action accrued and ought to have held that:- 20

- (a) time ran from the "alleged neglect or default" of payment, and time for such payment was governed by Clause 15(e) of the said contract.
- (b) time ran from the last acknowledgment by the Government of the money due to your petitioner on the said contract i.e. to say from 29th December 1964. 30

With regard to the third contract, your petitioner submits with respect that the learned trial judge ought to have found that the Ordinance did not apply:-

- (a) as the claim was for damages for breach of contract simpliciter, and not in substance one of tort, or
- (b) alternatively, as the Government in determining the contract was not acting in execution of a public duty but did it in the contractual 40

exercise of its rights reserved to itself under Clause 13 of the said contract.

In the Federal Court

Alternatively, as the learned trial judge having rightly found that there was no valid notice of the termination of the contract ought to have held that section 2 of the Ordinance did not apply as there was no effective date of the termination of the contract.

No.16

Memorandum
of Appeal
1st August 1971
(continued)

10 Dated this 10th day of August, 1971

.....?.....
Solicitors for the Appellant

To:

- 1. The Chief Registrar,
Federal Court of Malaysia,
KUALA LUMPUR.
- 2. The Senior Assistant Registrar,
High Court,
IPOH.
- 20 3. The Senior Federal Counsel,
c/o Attorney-General's Chambers,
KUALA LUMPUR
- 4. The Deputy Public Prosecutor,
Perak,
High Court Building,
IPOH

30 The address for service of the Appellant abovenamed is c/o Messrs. Maxwell, Kenion, Cowdy & Jones, Advocates & Solicitors, Mercantile Bank Building, Ipoh.

In the Federal Court

No. 17

NOTES OF ARGUMENT BY ONG C.J.

No.17

Notes of Argument by Ong C.J. 4th February 1972

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

Federal Court Civil Appeal No.66 of 1970

Between

Lee Hock Ning Appellant
and
Government of Malaysia Respondent

(In the matter of Ipoh High Court Civil Suits Nos. 221 and 222 of 1965 10

Between

Lee Hock Ning Plaintiff
and
Government of Malaysia Defendant
(Consolidated by order of Court dated 11th October, 1965)

Cor: Ong, C.J.
Gill, F.J.
Ong Hock Sim, F.J. 20

NOTES OF ARGUMENT RECORDED BY ONG, C.J.

N.T. Rajah for applt. 3rd Feb. 1972

A. Razak for respt.

Razak: Contract to build was a performance of a public duty. Criterion is whether the contract was made in execution of a public duty.

Govt. Proceedings Ord. - has no application. Refer-

Compton v. West Ham Borough Council. 30
(1939) 1 Ch. 771.

Firestone Rubber Co. v. Singapore Harbour Board (1952) 2 A.E.R. 219.

Littlewood v. George Wimpey & Co.
(1953) 1 A.E.R. 583

Adjd. to tomorrow.
Resumed 9.30 4.2.72.

In the Federal
Court

No.17

Razak submits written arguments.

Grds 1 and 2 - error of counsel.
P.50) concession only as to C.S. 222/65
p.74)
 (1938) M.L.J. 247.
 A.I.R. (1940) P.C. 90.
 1 L.R. 21 All. 285 @ 287.

Notes of
Argument by
Ong C.J.
4th February 1972
(continued)

10

Grds 3(a) & (b)
 5(a) & (b)

Strouds (3rd Ed.) Vol. 3 p.2376.
not every contract entered into by a public
body comes within s.2 of Public Authorities
Protection Ord. - but only such contract
made by a public authority in discharge of
a public duty, e.g. employment of a medical
of officer - not, however, in exercise of a
20 power, e.g. education authority building
schools.

Chartres: Public Authorities p.36 - 37

Sharpington v. Fulham Guardians
(1904) 2 Ch. 449 @ 454, 456.

Bradford Corpn. v. Myers
(1916) 1 A.C. 242 @ 246.

distinction btn "duty" and "power"
note p.247, 251, 254 (last para.), 264
(mid page).

In answer to respt's references:

30

Compton v. West Ham Borough Council
(1939) 1 Ch. 771 @ 778

Littlewood v. George Wimpey & Co.
(1953) 1 A.E.R. 583 @ 590, 587

Firestone Rubber Co. v. Singapore Harbour
Board (1952) 2 A.E.R. @ 224.

Re 3rd contract see p.70A.

Razak:

appln for leave to x-appeal.

appln dismissed.

40

As to appln of Public Authorities Protection

In the Federal Court

Ord. rely on the 3 cases.

C.A.V.

No.17

Sgd. H.T. Ong
4.2.72.

Notes of
Argument by
Ong C.J.
4th February 1972
(continued)

K.L. 22nd March 1972

Naidu for applt.

Razak for respt.

I read judgt.

Gill reads judgt agreeing.

Ali for H.S. Ong concurs.

10

Appeal allowed. Judgt of High Court set aside. Judgt for appellant in the sum of \$14,589.75 with interest at 6% p.a. from Jan. 1, 1965. Costs of the action and of this appeal to appellant - his deposit of \$500/- to be refunded.

Sgd. H.T. Ong
22.3.72

TRUE COPY

TNEH LIANG PENG.

.....
Secretary to Chief Justice
High Court,
Malaya
15th April, 1972

20

No.18

No.18

Notes of
Argument by
Gill F.J.

NOTES OF ARGUMENT BY GILL F.J.

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

FEDERAL COURT CIVIL APPEAL NO.66 OF 1970

Between

Lee Hock Ning

Appellant

And

30

Government of Malaysia

Respondent

(In the matter of Civil Suits Nos. 221 of

1965 and 222 of 1965 in the High Court
in Malaya at Ipoh

In the Federal
Court

Between

No.18

Lee Hock Ning

Plaintiff

And

Government of Malaysia

Defendant

And

Lee Hock Ning

Plaintiff

And

10 Government of Malaysia

Defendant

(Consolidated by Order of Court dated
11th October, 1965))

Cor: Ong, C.J.
Gill, F.J.
Ong Hock Sim, F.J.

Notes of
Argument by
Gill F.J.

(continued)

NOTES OF ARGUMENTS RECORDED BY GILL F.J.

3rd February 1972

Enche N.T. Rajah for Appellant

Enche Razak for Respondent.

20 Razak called upon to say whether he can support
the judgment.

The transaction is covered by section 2
of the Public Authorities Protection Ordinance.
The building of the school was in fact the
performance of a public duty. The question is
whether the contract was made in the performance
of a public duty and was incidental to the
performance of such a duty. The criterion is
whether what was done was the performance of a
30 public duty. The Government Proceedings
Ordinance has nothing to do with this case.

Refer to Compton v. Council of the
County Borough of West Ham (1939) 1 Ch. 771;
Firestone Tire and Rubber Co. (.S.S) Ltd. v.
Singapore Harbour Board (1952) 2 A.E.R. 219;
Littlewood v. George Wimpey and Co. Ltd.
British Overseas Airways Corporation (1953)
1 All E.R. 583. The contract entered into in
this case was an act done in the performance of

In the Federal
Court

No.18

Notes of
Argument by
Gill F.J

(continued)

a public duty. Refer to section 3 of the
Limitation Ordinance, 1953 and section 33 of the
same Ordinance. Refer also to Sections 7 and 38
of the Government Proceedings Ordinance, 1956.

Adjourned until 9.30 a.m.

S.S. Gill.

4th February, 1972

Hearing of appeal continued. Parties as before.

Rajah.

Submit written submissions. Read.

10

Turn to grounds 1 and 2 in the Memorandum of
Appeal. Read my grounds. What was conceded in
the Lower Court was that the third contract only
was affected by the Public Authorities Protection
Ordinance, 1948. Refer to page 50 and 74 of
record. Counsel for Defendant was under a mis-
apprehension as to the law when he made the
concession. Read my written submissions. Refer
to State of Perak v. Ruthukaruppan Chettiar (1938)
M.L.J. 247; Societe Belge De Banque v. Girdhari
Lal A.I.R. 1940 P.C.90; Jagwent Singh v. Silan
Singh 1 L.R. 21 All. 285, 287.

20

Now refer to the Public Authorities
Protection Ordinance, 1948. Grounds 3(a) and (b)
and 5(a) and (b) of the Memorandum of Appeal.
Refer to section 2 of the Public Authorities
Protection Ordinance. Refer to Stroud's Judicial
Dictionary (3rd edition) Vol. 3 p.2376. Not
every contract entered into by a Corporation
comes within the orbit of section 2. I agree
that section 2 could apply to certain contracts.
It can only relate to contracts entered into for
the discharge of a public authority. It cannot
relate to contracts entered into for the doing
of an act which the authority is authorised to do.
Refer to Chartress Public Authorities Protection
Act, 1883, pages 31 to 43. Refer to Sharpington
v. Fulham Guardians (1904) 2 Ch. 449, 454;
Bradford Corporation v. Myers (1916) 1 A.C. 242,
246 para 3, 247 para 3, 251 para 3, 254 para 3,
264 para 2.

30

40

I would now turn to the authorities relied
on by my learned friend. Refer to Compton's case
(1939) 1 Ch.771, 778. In this case the local
authority was required to appoint a relieving

officer. Refer to Littlewood's case(1953) 1 All E.R. 583, 590. Come to the Firestone Tire and Rubber Co. (S.S.) Ltd. (1952) 2 A.E.R. 219.

In the Federal Court

No.18

Read my written submissions at page 7. No valid notice of termination - page 75 of record. Good faith of contract, see pages 123 - 124. Damages - I would ask for retrial on this point (C.J. no damages were proved, much too late to repair omission).

Notes of Argument by Gill F.J.

(continued)

10 Razak:

I would ask for leave to cross-appeal, although I have made no formal application. I would ask for extension of time.

Court: Leave to argue on proposed cross-appeal refused.

I rely on my arguments yesterday.

C.A.V.

S.S. Gill.

23rd March, 1972 at Kuala Lumpur.

20 Enche Naidu on behalf of M/s Maxwell, Kenion, Cowdy & Jones for Appellant.

Enche Razak for Respondent.

Chief Justice reads the first judgment. I read my judgment. Ali, F.J. says that he has been authorised by Ong Hock Sim, F.J. to say that he concurs.

30 Appeal allowed. Judgment of High Court set aside. Judgment for the appellant in the sum of \$14,589.75 with interest at 6% per annum from January 1, 1965. Appellant to have cost of the action and of this appeal. Deposit to be refunded to Appellant.

S.S. Gill.

Certified true copy.

Sd. Illegible
Setia-usaha kapada Hakim
Mahkamah Persekutuan
Malaysia
Kuala Lumpur.

40 16.6.1972.

48.

In the Federal
Court

No. 19

No.19

Notes of
Argument by
Ong Hock Sim F.J.

NOTES OF ARGUMENT BY ONG HOCK SIM, F.J.

3rd February, 1972

FEDERAL COURT CIVIL APPEAL NO. 66 OF 1970

(Ipoh Civil Suits Nos. 221 and 222
of 1965)

Between

Lee Hock Ning

Appellant

and

Government of Malaysia

Respondent

10

Coram: Ong, Ag. L.P. Malaysia
Gill, F.J.
Ong Hock Sim, F.J.

NOTES RECORDED BY ONG HOCK SIM, F.J.

Mr. N.T. Rajah for Appt.

Inche Abdul Razak for Respt.

Inche Razak:

Govt. charged under Education Act with job
of building schools.

Compton v. Council of County Borough of West
Ham 1939 Ch. D. 771.

20

1952 2 A.E.R. 225 - Firestone Tire vs S'pore
Harbour Board.

1953 A.E.R. 583 - Littlewood vs Wimpey

Application for leave to cross-appeal is
dismissed.

Adj'd. to 9.30 a.m. 4.2.72.

Mr. Rajah:

Tenders written submission:

p.74 - concession re 3rd contract.

30

S. 2 Ord 19/48:

Stroud's 3rd Edn. Vol 3 p 2376

May apply where there is charged on authority a function.

But not where it is empowered to do a thing.

Bradford Corpn vs Myers 1916 A.C. 242 at 246, 247 and 251, 254.

Compton's case (cit) p. 778.

Littlewood (cit) p. 590.

Firestone Tire (cit)

In the Federal Court

No.19

Notes of Argument by Ong Hock Sim F.J.

(continued)

Inche Razak: Application for leave to X-appeal:

10 Application dismissed.

Rely on 3 cases in respect of appeal.

Judgment reserved

Salinan yang di-akui benar.

Sd: J.C. Fernandez,
Setia-usaha kepada Hakim
Mahkamah Persekutuan
Malaysia
Kuala Lumpur.

No. 20

JUDGMENT OF ONG C.J.

20

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

Federal Court Civil Appeal No. 66 of 1970

Between

Lee Hock Ning

Appellant

and

Government of Malaysia

Respondent

(In the matter of Ipoh High Court Civil
Suits Nos. 221 and 222 of 1965

Between

No. 20

Judgment of
Ong C.J.
23rd March 1972

In the Federal
Court

Lee Hock Ning

Plaintiff

and

No.20

Government of Malaysia

Defendant).

Judgment of
Ong C.J.
23rd March 1972
(continued)

(Consolidated by order of Court dated
11th October, 1965).

Cor: Ong, C.J.
Gill, F.J.
Ong Hock Sim, F.J.

JUDGMENT OF ONG, C.J.

The appellant was a building contractor. On 10
May 27, 1963 he entered into a written contract
No. 214/63 with the Malaysian Government to
construct certain works and buildings for the sum
of \$23,680/-. A second contract in writing,
No. 227/63, was made on August 7, 1963 between
the parties for other works and buildings costing
\$11,315/-. The works and buildings under both
contracts were duly completed to the satisfaction
of the Government. In respect of the first
contract, No. 214/63, the Government had withheld 20
as "retention moneys" the sum of \$1,184/-, as it
was entitled to do during the "defects liability
period" which in the instant case, was 6 months
from date of completion. The completion date
was February 3, 1964; hence this sum was lawfully
retained until August 3, 1964.

For the second contract, No. 227/63, the
appellant had paid the Government a sum of \$565.75
as "security deposit" upon acceptance of his 30
tender. This contract was completed by the
appellant on February 5, 1964 and, even
assuming that a portion of the contract price of
\$11,315/- could have been withheld as retention
moneys, the entire sum should have been paid to
the appellant by August 5, 1964, together with a
refund of his security deposit of \$565.75.

On June 14, 1965 the appellant was compelled
by the Government's neglect or default in payment,
to issue a specially indorsed writ in Civil
Action No. 221/65, claiming payment and refund 40
under the two said contracts of the three above-
stated sums of \$1,184/-, \$11,315/- and \$565.75,
totalling \$13,064.75.

By its defence the Government admitted that the appellant had a just claim to the sum of \$1,184/- under the first contract No. 214/63. But, in respect of the three named sums, totalling \$13,064.75, the Government counterclaimed the sum of \$370/- as agreed liquidated damages for 37 days' alleged delay in completion of the works and a further sum of \$15,000/- being damages payable by the appellant for breach of a third contract, No. 232/63, which was the subject matter of another Civil Action No. 222/65, filed by the appellant. The counterclaim exceeded the appellant's claims by \$780.25.

In the Federal Court

_____ No.20

Judgment of
Ong C.J.
23rd March 1972
(continued)

10

20

30

40

This third contract, also in writing, was dated August 7, 1963, for the works and buildings specified therein at the tendered price of \$30,500/-. The security deposit required from the appellant, as building contractor, was \$1,525/- which was paid by him on November 7, 1963. This contract was purportedly terminated by the Government's duly authorised agent, the Senior Executive Engineer, Central Perak, on December 7, 1963 and the execution of the same works and buildings given to another contractor at the contract price of \$45,500/-. The damages counterclaimed under this third contract was accordingly \$15,000/-. The security deposit made by the appellant of \$1,525/- was admittedly not repaid by the Government.

The defence in both actions pleaded section 2 of the Public Authorities Protection Ordinance 1948, which reads:-

"2. Where, after the coming into force of this Ordinance, any suit, action, prosecution or other proceeding is commenced in the Federation against any person for any act done in pursuance or execution or intended execution of any written law or of any public duty or authority or in respect of any alleged neglect or default in the execution of any such written law, duty or authority the following provisions shall have effect -

- (a) the suit, action, prosecution or proceeding shall not lie or be instituted unless it is commenced

In the Federal
Court

No.20

Judgment of
Ong C.J.
23rd March 1972
(continued)

within twelve months next after
the act, neglect or default
complained of or, in the case of a
continuance of injury or damage,
within twelve months next after
the ceasing thereof;"

This defence was put in issue by the
appellant's reply. But, at the trial of the
consolidated actions, learned counsel on both
sides surprisingly agreed that the section applied, 10
leaving it to the court to decide only whether
payment of the contract price claimed in the Civil
Suit No. 221/65 was barred by the limitation period
of 12 months. Entirely lost sight of was the fact
that section 2 of the Ordinance only comes into
operation when there is some act done "in pursuance
or execution or intended execution" of a statutory
or other public duty or authority, as also when
some neglect or default occurs "in the execution"
of a statutory or other duty or authority. 20
This point was never raised at all, the argument being
directed by both sides only to the date when the
payment should have been due and exigible for the
period of limitation to start running. In the
result the learned trial judge was content merely
to refer to section 38 of the Government Proceedings
Ordinance 1956 as importing the special period of
limitation to the proceedings before him. He
accordingly held that the appellant's claim was
barred to the extent of \$10,749.25. I need 30
hardly add that in doing so he was wrong.

The simple truth is that the act or default
complained of here was non-payment of the moneys
due. Can it be said that such non-payment was an
act done in pursuance or execution or intended
execution of any written law, or of any public
duty or authority, or an alleged neglect or
default in the execution of any such law, duty or
authority? Even assuming that the contracts in
this case were entered into in execution of a
public duty - as, of course, are all Government 40
contracts - it was, nevertheless, the non-payment
of the contract price, after work was completed
to the Government's satisfaction, that was the
act or neglect complained of. When the Govern-
ment, or any other public authority, is sued for
the price of goods sold and delivered or for work
and labour done, I cannot see how the refusal to

pay a just debt can be said to be an act or default in pursuance or execution of a public duty. What had the appellant done to justify the Government's refusal to pay him the contract price? Nothing, but for the counterclaim which failed. The non-payment, therefore, was not in pursuance of a public duty; consequently it could not have come within the provisions of section 2. As Lord Tucker said in Firestone Tyre & Rubber Co. (S.S.) Ltd. v. Singapore Harbour Board :- (1)

10

" It is essential to the protection afforded by the statute that the act or default in question should be in the discharge of a public duty or the exercise of a public authority. This assumes that there are duties and authorities which are not public. (See per Lord Buckmaster in the Bradford Corporation case)."

20

In Bradford Corporation v. Myers (2) Lord Shaw of Dunfermline said:-

20

" It is not enough that the neglect occurs in the doing of a thing which is authorised by statute, but the thing done is not every or any thing done but must be something in the execution of a public duty or authority, and it is only neglect in the execution of any such duty or authority that is covered by the statute. This restriction appears to me to be vital. The Act seems to say:-
there are many things which a public authority, clothed, say, with statutory power, may do, which the limitation will not cover; but when the act or neglect had reference to the execution of their public duty or authority - something founded truly on their statutory powers or their public position - to that, and that only, will the limitation apply. I gather that this is the view taken by my noble and learned friend on the woolsack, and while I concur in his views as a whole, I express my pointed agreement with him on this head."

40

In another decision of the House of Lords,

(1) (1952) M.L.J. 145, 147; (1952) A.C. 452, 464.
(2) (1916) A.C. 242, 262.

In the Federal Court

No.20

Judgment of
Ong C.J.
23rd March 1972
(continued)

In the Federal
Court

No. 20

Judgment of
Ong C.J.
23rd March 1972
(continued)

Griffiths v. Smith⁽³⁾ Lord Porter, referring to contracts entered into by a public authority, said:-

" In support of this argument such cases as Bradford Corporation v. Myers⁽²⁾ and Hawkes v. Torquay Corporation⁽⁴⁾ were called in aid.

Both were cases of contract and I think it is true to say that a private contract even if entered into in pursuance of an Act of Parliament is not thereby protected but an act which is done in performance of a public duty is still done in the execution of a public duty though it is performed through the medium of a contract. The cases last quoted are examples of the former principle. Edwards v. Metropolitan Water Board⁽⁵⁾ and Clarke v. Bethnal Green Borough Council⁽⁶⁾ of the latter." 10

The above decisions clearly show that in the view taken by counsel and the trial judge of section 2 they were all in error. Such error, of course, can be rectified, notwithstanding the admission of counsel for the plaintiff upon a mistaken view of the law. As Lord Denning M.R. said in Doyle Olby Ltd.⁽⁷⁾ 20

" We never allow a client to suffer for the mistake of his counsel if we can possibly help it. We will always seek to rectify it as far as we can. We will correct it whenever we are able to do so without injustice to the other side. Sometimes the error has seriously affected the course of the evidence, in which case we can best order a new trial. But there is nothing of that kind here." 30

(See also State of Perak v. Muthukaruppan Chettiar⁽¹⁸⁾ and Societie Belge v. Girdhari Lal⁽⁹⁾)

(3) (1941) A.C. 170, 208 (7) (1969) 2 All E.R.
(4) (1938) 4 All E.R. 16 119,121
(5) (1922) 1 K.B.291,299 (8) (1938) M.L.J.247,256
(6) (1939) 55 T.L.R. 519 (9) A.I.R. (1940)P.C. 90

As to the Government's counterclaim, the trial judge dismissed it on grounds which need not be recounted since there is no cross-appeal against his decision. The appellant's contention in this appeal is that his entire claims should have been allowed in both actions. The figures have not been challenged and the claims are unanswerable. There should be judgment accordingly for the sum of \$13,064.75 in the first action and for \$1,525/- in the second, making a total of \$14,589.75. I should add that, in Civil Action No. 221/65, the Government's counterclaim for \$570/- was never proved. On the other hand, counsel for the appellant had also neglected and failed to prove the general damages claimed in Civil Action No. 222/65. On that score such damages cannot be allowed either.

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The judgment of the High Court is accordingly set aside and judgment entered for the appellant in the total sum of \$14,589.75. For convenience, I think it will suffice for this sum to carry interest from January 1, 1965 at 6 per cent per annum. The appellant will have the costs of the action and of this appeal.

(Sgd.) H.T. ONG,
CHIEF JUSTICE,
HIGH COURT IN MALAYA.

Kuala Lumpur,
23rd March, 1972.

N.T. Rajah Esq. for appellant.
Enche Abdul Razak b. Dato Abu Samah for respondent.

No. 21

JUDGMENT OF GILL, F.J.

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

FEDERAL COURT CIVIL APPEAL NO.66 OF 1970

Between

Lee Hock Ning

Appellant

and

Government of Malaysia

Respondent

In the Federal
Court

No.20

Judgment of
Ong C.J.
23rd March 1972
(continued)

In the Federal Court

No.21

Judgment of
Gill F.J.
23rd March 1972
(continued)

(In the matter of Civil Suits Nos.
221 of 1965 and 222 of 1965 in
the High Court in Malaya at Ipoh

Between

Lee Hock Ning Plaintiff

and

Government of Malaysia Defendant

and

Lee Hock Ning Plaintiff

and

Government of Malaysia Defendant)

10

(Consolidated by Order of Court
dated 11th October, 1965)

Cor: Ong, C.J.
Gill, F.J.
Ong Hock Sim, F.J.

JUDGMENT OF GILL, F.J.

I had the advantage of reading the judgment in draft of the learned Chief Justice which has just been delivered. I entirely agree with the views which his Lordship has expressed and with the reasons which he has given for coming to his conclusion.

20

The only point taken by counsel for the respondent in support of the judgment of the Court below was that as the contract for the building of schools, out of which this action arose, was entered into in the performance of a public duty or was incidental thereto, section 2 of the Public Authorities Protection Ordinance 1948 applied, so that the action should have been brought within 12 months next after the act, neglect or default complained of in relation to that contract.

30

I do not consider that point to be of any substance. A short answer to it is that it is immaterial that the contract may have been entered into for the purpose of performing a statutory duty. If the act complained of is the breach of a contract, the statutory protection

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of the Ordinance cannot be invoked on the ground that the contract was entered into for the purpose of carrying out duties imposed by the Statute (see Chartress on Public Authorities Protection Act, 1893, page 38). Section 2 of our Ordinance is in pari materia with the relevant provision in the English Act.

In the Federal
Court

No.21

Judgment of
Gill F.J.
23rd March 1972
(continued)

10 The leading authority on the statement of
the law which I have just referred to is the
case, of Sharpington v. Fulham Guardians(1).
That was a case in which an action was brought by
a builder to recover by way of damages the cost
of extra work caused by negligence and repeated
changes of plans on the part of the defendants.
The works constructed by the defendants were
required by them for the purpose of carrying out
their public duties, but it was held that the
claim related to a private duty arising out of
a contract and not to any negligence in
20 performing a statutory duty, and that the Public
Authorities Act, 1893, did not apply. Farwell, J.
said at pages 454-455:

30 " Public authorities now perform many
functions which compel them to enter into
all sorts of contracts: but this is the
first time it has been suggested that on
any construction the Act could apply to
contracts of this nature. The defendants'
counsel had not the courage to follow their
argument to its logical conclusion, and
say that every contract entered into by a
public body is within the Act. But every
contract entered into by a public body is
necessarily in a sense entered into in
discharge of a public duty or under
statutory authority, for otherwise it
would be ultra vires. And I think it
would necessarily follow, if I decided in
the defendants' favour, that every contract
40 entered into by a public authority is an
act done in pursuance of a public duty or
authority, and therefore is one to which
the Act applies. I do not see where to
draw the line."

(1) (1904) 2 Ch. 449.

In the Federal
Court

—————
No.21

Judgment of
Gill F.J.
23rd March 1972
(continued)

After considering and distinguishing several cases cited on behalf of the defendants, the learned Judge continued at page 456:

" The present case seems to me quite different. The public duty which is here cast upon the guardians is to supply a receiving house for poor children; a breach or negligent performance of that duty would be an injury to the children, or possibly to the public, who might be injured by finding the children on the highway. In order to carry out this duty they have power to build a house or alter a house, and they accordingly entered into a private contract. It is a breach of this private contract that is complained of in this action. It is not a complaint by a number of children or by a member of the public in respect of the public duty. It is a complaint by a private individual in respect of a private injury done to him. The only way in which the public duty comes in at all is, as I have pointed out, that if it were not for the public duty any such contract would be ultra vires. But that would apply to every contract. I cannot find any ground for saying that this particular contract comes within the Act. I think it is clear that what is complained of is a breach of a private duty of the guardians to a private individual. The result is that, so far as this section is concerned, the action will lie."

10

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To use the words of Brett, M.R. in Midland Railways Company v. Withington Local Board(2), "where an action has been brought for something done or omitted to be done under an express contract, the section does not apply; according to the cases cited an enactment of this kind does not apply to specific contracts." That was a case in which the objection taken was that the action was brought without giving notice of action as required by section 264 of the Public Health Act, 1875, but the principle is the same. Brett, M.R., went on to say at page 794:

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(2) (1883) 11 Q.B.D. 788, 794

" Again, when goods have been sold, and the price is to be paid upon a quantum meruit, the section will not apply to an action for the price, because the refusal or omission to pay would be a failure to comply with the terms of the contract and not with the provisions of the statute."

In the Federal
Court

No.21

Judgment of
Gill F.J.
23rd March 1972
(continued)

10 On the cases decided under the Public
Authorities Protection Act, 1893 it would appear
to be settled law that where the act complained of
is purely a breach of agreement there is no right
to protection. As far as this case is concerned,
what was the only act complained of? The non-
payment of money under a series of contracts.
How can it be said that such non-payment was an
act done in pursuance or execution or intended
execution of any statute, or of any public duty or
authority, or an alleged neglect or default of
20 any such act, duty, or authority? The fact is
that the Ordinance, under which it is sought to
deny liability on the ground of non-compliance
with a provision of that Ordinance as regards
the period within which the action should be
brought, deals with cases of some wrong done by
a public authority whereas in the present case
the action is based on a contract to pay.

30 In my judgment the cases cited by counsel
for the respondent do not support his proposition.
The first of such cases is Compton v. Council of
the County Borough of West Ham(3) the headnote
to which reads:

40 " If a local authority commits any breach
of a contract which, under an Act of
Parliament it is its duty to make, then it
can claim the protection of the Public
Authorities Protection Act, 1893, if any
action or proceeding against it for the
breach of such a contract is not brought
within the limit of time laid down by the
Act."

The facts in that case were that a local authority
had appointed a relieving officer for a general

(3) (1939) 1 Ch 771

In the Federal
Court

—————
No.21

Judgment of
Gill F.J.
23rd March 1972
(continued)

relief district in its area. This was an appointment which they were bound to make under statutory authority. The relieving officer was absent from his duties owing to illness for six consecutive months. On an action by him to be paid the full amount of his salary for the entire period of absence, the local authority having only paid him half his salary for the last three months of his absence, it was held that this claim was barred under section 1 of the Public Authorities Protection Act, 1893 in respect of moneys which became due to him more than six months before the issue of the writ. In the course of his judgment in the case, Crossman J. said at page 778:

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" I think that a breach of a contract which a public authority is by statute bound to make does come within the Public Authorities Protection Act, 1893, and as the defendant council was by art.142, sub-cl.1, of the Public Assistance Order 1930, bound to make the appointment of the Plaintiff I hold that an action for breach of the terms of that appointment is an action within s.1 of the Act of 1893. Art.142 is this: 'The Council shall appoint a district medical officer for every medical relief district and a relieving officer for every general relief district formed pursuant to article 20.' So that the appointment of the plaintiff was an appointment which the defendant council was bound to make under the Act. The action here has arisen in consequence of that appointment, and I hold that s.1 of the Act applies to the action which is to remedy a breach of a contract which the defendant council was bound to make in pursuance of the Poor Law Act of 1930 and the regulations thereunder."

20

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The next case is the case of Firestone Tire and Rubber Co. (S.S.) Ltd. v. Singapore Harbour Board⁽⁴⁾ the headnote to which says:

40

" It is essential to the protection afforded by enactments prescribing limitation of action for the protection

(4) (1952) 2 A.E.R. 219

of public authorities that the act or default in question should be in the discharge of a public duty or the exercise of a public authority. In deciding whether the duty or authority has this public quality it is sometimes relevant to consider whether it arises out of or is imposed by a contract voluntarily entered into by the public authority with an individual with whom it is under no obligation to contract. The mere fact, however, that in the discharge of its duty or the exercise of its authority the public authority may have made a contract does not of itself deprive the duty or authority of its public quality. The existence or absence of a contract is not a decisive test. Effect must be given to the word 'authority'. This excludes the test of obligatory as opposed to permissive powers."

In the Federal
Court

—
No.21

Judgment of
Gill F.J.
23rd March, 1972
(continued)

The facts of that case were that the respondent board, a public authority constituted under a local ordinance, were authorised to construct, maintain and repair docks and wharves and to carry on, inter alia, the business of wharfingers and warehousemen at the port of Singapore, and to levy rates for the wharfage and storage of goods. In an action by the appellants against the board for damages for the loss of goods, the property of the appellants, which had been received by the board in one of their warehouses, but not delivered to the appellants, the board claimed that the action, not having been commenced within the prescribed period of limitation after the acts complained of, was barred by s.2(2) of the Public Authorities Protection Ordinance of the Straits Settlements, which was in substantially the same terms as the Limitation Act, 1939, s.21(1). It was held that the board having exercised their power to carry on the trade of wharfingers and warehousemen did not thereby cease to function as a harbour board and undertake some trading activity of a non-public or purely subsidiary nature; they were supplying facilities essential to the shipping community in one of the ways authorised by the ordinance by which they had been created a harbour board charged with the management and

In the Federal
Court

—
No.21

Judgment of
Gill F.J.
23rd March 1972
(continued)

control of the port, and were thus fulfilling one of the main purposes for which they had been given statutory powers; and, therefore, they were entitled to the protection of the ordinance. Lord Tucker in delivering the judgment of their Lordships of the Privy Council said at page 225:

"... the existence or non-existence of a contract is not a decisive test, and on the facts in the present case their Lordships are clearly of opinion that the question of contract is immaterial to their decision since, on any view, the board were exercising their permissive powers to perform a normal function of a harbour board, and in so doing were providing a service essential to the shipping and commercial community of Singapore, and, accordingly, were entitled to the protection of the Public Authorities Protection Ordinance."

10

The third case relied on by counsel for the respondents is the case of Littlewood v. George Wimpey and Co. Ltd. v. British Overseas Airways Corporation(5). That case clearly does not apply to the instant case, as the action there was for damages for negligence against the first defendants and for negligence and/or breach of statutory duty against the corporation. The judge found that the first defendants' servant had been negligent and that the corporation were in breach of their statutory duty to provide a safe system of work and that the work on which the plaintiff was engaged when he was injured was incidental to and necessary for the performance by the corporation of their public duty.

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(S.S.GILL)

Kuala Lumpur,
23rd March, 1972.

Judge
Federal Court

Enche N.T. Rajah, of M/S Maxwell, Kenion, Cowdy
& Jones, Ipoh, for appellant.

Enche Abdul Razak bin Dato Abu Samah for respondent. 40
Salinan yang di-akui benar.

Sd. K. GOVIND
Setiausaha kepada Hakim, Mahkamah Persekutuan,
Malaysia, Kuala Lumpur. 14 April, 1972

63.

No. 22

ORDER OF FEDERAL COURT

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

FEDERAL COURT CIVIL APPEAL NO. 66 OF 1970

In the Federal
Court

No.22

Order of
Federal Court
23rd March 1972

Between:

Lee Hock Ning Appellant

And

Government of Malaysia Respondent

10 (In the Matter of Civil Suits Nos. 221
of 1965 and 222 of 1965

In the High Court in Malaya at Ipoh

Between:

Lee Hock Ning Plaintiff

And

Government of Malaysia Defendant

And

Lee Hock Ning Plaintiff

And

20 Government of Malaysia Defendant

(Consolidated by Order of Court dated
11th October, 1965))

BEFORE: ONG HOCK THYE, CHIEF JUSTICE, HIGH COURT,
MALAYA; GILL, JUDGE, FEDERAL COURT, MALAYSIA;

AND

ONG HOCK SIM, JUDGE, FEDERAL COURT,
MALAYSIA:

THIS 23RD DAY OF MARCH, 1972

IN OPEN COURT

O R D E R

30 THIS APPEAL coming on for hearing on the 3rd
and 4th days of February, 1972, in the presence
of Enche N.T. Rajah of Counsel for the Appellant

In the Federal Court

No.22

Order of Federal Court
23rd March 1972
(continued)

abovenamed and Enche Abdul Razak bin Dato Abu Samah, Senior Federal Counsel for the Respondent abovenamed AND UPON READING the Record of Appeal filed herein AND UPON HEARING the arguments of Counsel as aforesaid IT WAS ORDERED that this Appeal do stand adjourned for Judgment AND the same coming on for Judgment this day in the presence of Enche M.S. Naidu of Counsel for the Appellant and Enche Abdul Razak bin Dato Abu Samah, Senior Federal Counsel for the Respondent:

10

IT IS ORDERED that the Appeal be and is hereby allowed, that the Judgment of the High Court, Ipoh dated the 2nd day of May, 1970 in favour of the Appellant be set aside and instead that Judgment for the Appellant in the sum of \$14,589.75 be and is hereby entered against the Respondent together with interest thereon at the rate of 6% per annum with effect from 1st January, 1965.

AND IT IS FURTHER ORDERED that the costs of this Appeal and also the costs of the Court below be paid by the Respondent to the Appellant as taxed by the proper officer of the Court.

20

AND IT IS LASTLY ORDERED that the sum of \$500/- (Dollars five hundred) paid into Court by the Appellant as security for costs of this Appeal be refunded to the Appellant.

GIVEN under my hand and the Seal of the Court this 23rd day of March, 1972.

Sd: Dato Sheikh Abdul Rahman,
CHIEF REGISTRAR,
FEDERAL COURT,
MALAYSIA.

30

No. 23

Notice of Motion
3rd May 1972

No. 23

NOTICE OF MOTION

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA LUMPUR

(Appellate Jurisdiction)

FEDERAL COURT CIVIL APPEAL NO. 66 OF 1970

Between

Lee Hock Ning	Appellant	In the Federal Court
And		
Government of Malaysia	Respondent	<u> </u> No.23 Notice of Motion 3rd May 1972 (continued)
(In the Matter of Civil Suits Nos. 221 of 1965 and 222 of 1965 In the High Court in Malaya at Ipoh		

Between

	Lee Hock Ning	Plaintiff
	And	
10	Government of Malaysia	Defendant
	And	
	Lee Hock Ning	Plaintiff
	And	
	Government of Malaysia	Defendant

(Consolidated by Order of Court dated
11th October, 1965))

NOTICE OF MOTION

20 TAKE NOTICE that the Court will be moved on
Monday the 12th day of June, 1972 at 9.30 o'clock
in the forenoon or as soon thereafter as counsel
can be heard by Abdul Razak bin Dato' Abu Samah,
Senior Federal Counsel for the above-named
Respondent for an Order:

- (1) that conditional leave be granted to
appeal to His Majesty the Yang Di-
Pertuan Agong against the decision
of this Honourable Court given on
the 23rd day of March, 1972;
and
- 30 (2) that the costs of and incidental to
this application be costs in the
cause.

Dated this 3rd day of May, 1972.

Sa.
ABDUL RAZAK bin DATO ABU SAMAH
Senior Federal Counsel,
for and on behalf of the
Respondent above-named

In the Federal Court

Dated at Kuala Lumpur this 11th day of May, 1972.

No.23

Notice of Motion
3rd May 1972
(continued)

Sd.
MOKHTAR BIN SIDIN
Deputy Registrar,
Federal Court, Malaysia,
Kuala Lumpur.

To:

Messrs. Maxwell, Kenion, Cowdy & Jones,
Mercantile Bank Building,
P.O. Box 42,
Ipoh, Perak.

10

(Solicitors for the Appellant)

This application is supported by the Affidavit of Enche Abdul Razak bin Dato Abu Samah affirmed on the 3rd day of May, 1972. This application was taken out by the Senior Federal Counsel for and on behalf of the Respondent whose address for service is c/o Attorney-General's Chambers, Kuala Lumpur.

Filed this 4th day of May, 1972.

Sd.
MOKHTAR BIN SIDIN
Deputy Registrar,
Federal Court, Malaysia,
Kuala Lumpur.

20

No.24

Affidavit of Abdul Razak bin Abu Samah
3rd May 1972

No. 24

AFFIDAVIT OF ABDUL RAZAK BIN ABU SAMAH

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA LUMPUR

(Appellate Jurisdiction)

FEDERAL COURT CIVIL APPEAL NO. 66 OF 1970

Between

30

Lee Hock Ning

Appellant

And

Government of Malaysia

Respondent

(In the Matter of Civil Suits Nos.
221 of 1965 and 222 of 1965

In the Federal
Court

In the High Court in Malaya at Ipoh

No.24

Between

Lee Hock Ning Plaintiff

and

Government of Malaysia Defendant

and

Lee Hock Ning Plaintiff

10

and

Government of Malaysia Defendant

(Consolidated by Order of Court dated
11th October, 1965)).

A F F I D A V I T

I, Abdul Razak bin Dato Abu Samah, of full
age, residing at 908, Folly Barat, Kuala Lumpur,
do solemnly affirm and state as follows:-

20

1. I am Senior Federal Counsel, Attorney-
General's Chambers, Kuala Lumpur, and am
authorised to act in this matter.

2. On the 23rd day of March, 1972, this Honour-
able Court delivered Judgment and allowed the
appeal by the appellant with costs in this
Honourable Court and the Court below.

3. I am desirous of appealing to His Majesty
the Yang di-Pertuan Agong against the said
Judgment of this Honourable Court as I am advised
that this is a fit and proper case to appeal.

30

4. The said judgment is a final order in a
civil matter where the matter in dispute in the
appeal amounts to the value of five thousand
dollars.

5. I am willing to undertake as a condition for
leave to appeal to enter into good and sufficient
security, to the satisfaction of this Court, in
such sum as this Court may duly prescribe and to

Affidavit of
Abdul Razak
bin Abu Samah
3rd May 1972
(continued)

In the Federal Court

No.24

Affidavit of Abdul Razak bin Abu Samah 3rd May 1972 (continued)

conform to any other conditions that may be imposed, under rule 7 of the Federal Court (Appeals from Federal Court) (Transitional) Rules, 1963. I pray that this Honourable Court will be pleased to grant me leave to appeal to His Majesty the Yang di-Pertuan Agong.

Affirmed by the above-named) Abdul Razak bin Dato Abu Samah at Kuala Lumpur this 3rd day of May, 1972 at 2.20 p.m.

Sd. ABDUL RAZAK BIN DATO ABU SAMAH

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Before me,

Sd. LOW JAU KIN, Pesurohjaya Sumpah, Mahkamah Tinggi, Kuala Lumpur.

No.25

No. 25

Order Granting Conditional Leave to Appeal to His Majesty the Yang di-Pertuan Agong 12th June 1972

ORDER GRANTING CONDITIONAL LEAVE TO APPEAL TO HIS MAJESTY THE YANG DI-PERTUAN AGONG

20

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA LUMPUR

(Appellate Jurisdiction)

FEDERAL COURT CIVIL APPEAL NO.66 OF 1970

Between

Lee Hock Ning

Appellant

And

Government of Malaysia

Respondent

(In the Matter of Civil Suits N. s. 221 of 1965 and 222 of 1965

30

In the High Court in Malaya at Ipoh

Between

Lee Hock Ning

Plaintiff

And

Government of Malaysia

Defendant

And
 Lee Hock Ning Plaintiff
 And
 Government of Malaysia Defendant

In the Federal Court

No.25

Order
 Granting
 Conditional
 Leave to Appeal
 to His Majesty
 the Yang di-
 Pertuan Agong
 12th June 1972
 (continued)

(Consolidated by Order of Court dated
 11th October, 1965))

CORAM: ONG, CHIEF JUSTICE, HIGH COURT IN MALAYA
 GILL, JUDGE, FEDERAL COURT, MALAYSIA;
 ALI, JUDGE, FEDERAL COURT, MALAYSIA.

10

O R D E R

UPON MOTION made unto Court this day by Inche Abdul Razak bin Dato' Abu Samah, Senior Federal Counsel for the Respondent abovenamed in the presence of Mr. M.S.Naidu of Counsel for the Appellant abovenamed AND UPON READING the Notice of Motion dated the 3rd day of May, 1972 and the Affidavit of Inche Abdul Razak bin Dato' Abu Samah affirmed on the 3rd day of May, 1972 filed herein in support of the Motion AND UPON HEARING Counsel as aforesaid IT IS ORDERED that leave be and is hereby granted to the Respondent abovenamed to appeal to His Majesty the Yang di-Pertuan Agong from the Order of the Federal Court of Malaysia dated the 23rd day of March, 1972 upon the following conditions:

20

30

40

- (a) that the Respondent do within three (3) months from the date hereof enter into good and sufficient security to the satisfaction of the Chief Registrar, Federal Court, Malaysia, in the sum of five thousand dollars (\$5,000/-) for the due prosecution of the appeal and the payment of all such costs as may become payable to the Appellant above-named in the event of the Respondent abovenamed not obtaining the order granting the Respondent final leave to appeal or of the appeal being dismissed for non-prosecution, or of His Majesty the Yang di-Pertuan Agong ordering the Respondent abovenamed to pay the Appellant costs of the appeal as the case may be; and
- (b) That the Respondent abovenamed do within the said period of three (3) months from

In the Federal Court

No.25

Order Granting Conditional Leave to Appeal to His Majesty the Yang di-Pertuan Agong 12th June 1972 (continued)

the date hereof take the necessary steps for the purposes of procuring the preparation of the record and for the despatch thereof to England:

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

GIVEN under my hand and the seal of the Court this 12th day of June, 1972

Sd: MOKHTAR BIN SIDIN,
DEPUTY REGISTRAR,
FEDERAL COURT,
MALAYSIA.

10

SEAL

No.26

Order granting Final Leave to Appeal to His Majesty the Yang di-Pertuan Agong 4th September 1972

No. 26

ORDER granting Final Leave to Appeal to His Majesty the Yang di-Pertuan Agong

AZMI, LORD PRESIDENT, FEDERAL COURT, MALAYSIA;
SUFFIAN, JUDGE, FEDERAL COURT, MALAYSIA;
ALI, JUDGE, FEDERAL COURT, MALAYSIA.

IN OPEN COURT
THIS 4TH DAY OF SEPTEMBER, 1972

20

O R D E R

UPON MOTION made unto this Court this day by Encik Abdul Razak bin Datuk Abu Samah, Senior Federal Counsel for the above-named Respondent in the presence of Mr. M.S. Naidu of Counsel for the Appellant abovenamed AND UPON READING the Notice of Motion dated the 26th day of August, 1972 and the Affidavit of Abdul Razak bin Dato Abu Samah affirmed on the 23rd day of August, 1972 and filed herein AND UPON HEARING Counsel as aforesaid for the parties IT IS ORDERED that final leave be and is hereby granted to the Respondent to appeal to His Majesty the Yang Di Pertuan Agong AND IT IS ORDERED that the costs of this application be costs in the cause.

30

GIVEN under my hand and the seal of the Court this 4th day of September, 1972.

(L.S.)

DEPUTY REGISTRAR
FEDERAL COURT,
MALAYSIA.

40

E X H I B I T SExhibit "B" 35

Exhibits

B 35Contract Form
7th August 1963

J.K.R.Pk.T.6/2/15/7

Tenders close on 7/8/63
at 3.00 p.m.CONTRACT FORM FOR PETTY WORKS NOT EXCEEDING
ESTIMATED COST OF \$50,000
CONTRACT NO. FED/PK/227 OF 1963

EXPENDITURE to be met from Consolidated Trust
Account Inter Administration Current
Account PWD.FM.Head 122 - Education
S/Hd. 1 - Primary Schools Programme
(S.E.Pk.Wt.No.EWS.14/63)

10

This TENDER must be delivered to the place and at
or before the time stipulated in the Tender Notice.

To:

The Senior Executive Engineer, Central Perak
(hereinafter called the "Superintending Officer")
for and on behalf of the Government of the
Federation of Malaya

The undersigned (hereinafter in the
Conditions called the "Contractor", which
expression shall also mean the Contractor's heirs,
executors, administrators, assigns, successors
and duly appointed representative) hereby offers
to provide, upon the Conditions herein, all the
labour, materials, workmanship, tools, machinery
and everything necessary for the entire
completion to the satisfaction of the
Superintending Officer of the works and services
in the execution of Construction of One Block of
three (3) Classrooms and Office and Well and
three (3) Siamese W.C.s. at Pelong, Grik and
described in the Specification and/or Drawings
marked and numbered SEE.CPk.812/X11-63,
M.E.63/1A and M.E.75/5 for the sum of dollars
Eleven thousand three hundred and fifteen
(\$11,315.00) (hereinafter referred to as the
Contract Sum) and undertakes to complete the work
within Sixteen (16) weeks from the date of
possession of site.

20

30

Dated this 7th day of August 1963

Exhibits

B 35
 Contract Form
 7th August 1963
 (continued)

(Sd) ? Illegible

 Witness

(Sd) Lee Hock Ning

 Tenderer

Address: Chop Kok Sing
 Hing
 Lekir Road,
 Sitiawan

Address: P.W.D.
 Contractor,
 Kampong Koh,
 Sitiawan

GOVERNMENT OF THE FEDERATION OF MALAYA
 STATE OF PERAK
 PUBLIC WORKS DEPARTMENT

Construction of One Block of three (3) Classrooms and Office, and Well and three (3) Siamese W.Cs. at Pelang, Grik 10

Details of Tender

<u>Item</u>	<u>Particulars of Works</u>	<u>Amount</u>	
A	The total amount for the site work for the construction of a three Classroom and Office Block, Well and three units Siamese W.Cs. in accordance with Drawings No.SEE.CPk.812/X11-63 is the Lump Sum of Dollars One thousand two hundred	£1,200.00	20
B	Ditto. construction of one block of three classrooms and office in accordance with Drawing No. SEE.CPk.812/X11-63 and M.E.63/1A is the Lump Sum of Dollars eight thousand three hundred	£8,300.00	
C	Ditto. construction of a Well complete with Pump in accordance with Drawing No.SEE.CPk.812/X11-63 and M.E.75/5 is the Lump Sum of Dollars Three hundred and ninety-five	£ 395.00	30
D	Ditto. construction of a Siamese W.Cs. in accordance with Drawing No.SEE/CPk.812/X11-63 and M.E.75/5 complete with Soil Pit (three units) is the Lump Sum of Dollars One thousand four hundred and twenty	£1,420.00	40
	Total carried to Form of Tender	£11,315.00	

(Sd) Lee Hock Ning

 Signature of Tenderer. 7.8.63

CONDITIONS

Exhibits

B 35Contract Form
7th August 1963
(continued)

Superin- 1. The term "Superintending Officer"
tending (or the initials "S.O.") shall be
Officer's deemed to include any person or persons
represent- who may be deputed by the Superinten-
tative ding Officer to act on his behalf.

Care of 2. The Contractor shall keep the site
Works. of the works clear of all rubbish and
in a clean and sanitary condition. He
shall conform to any bye-laws and/or
10 regulations of the Health Authorities
in this connexion, and shall give all
notices and pay all fees legally
demandable.

Variations 3. No variation shall vitiate this
contract. All variations and/or
extras duly authorised by the Superin-
tending Officer shall be measured and
valued at the rates in the Schedule of
Rates attached to the Specification or
20 if such rates are not applicable then
at rates to be agreed between the
Superintending Officer and the
Contractor and the Contract Sum shall
be adjusted accordingly.

Deductions 4. The Superintending Officer shall
from money be entitled to deduct any money the
due to Contractor shall be liable to pay
contractor under this contract to Government from
30 any sum that may become payable to the
Contractor hereunder.

Defects 5. Any defects, shrinkage or other
after faults either of materials or work-
complet- manship which may appear within such
ion period as is stated in the Appendix
hereto, or if none be stated within
three months of the certified date
of completion of this contract, and
40 herein referred to as the Defects
Liability Period, due to materials or
workmanship not being in accordance
with this contract shall within a
reasonable time after receipt of the
Superintending Officer's written
instruction be made good by the
Contractor at his own cost.

Exhibits
B 35
Contract Form
7th August 1963
(continued)

Sub-
contracting

6. The Contractor shall not without the written consent of the Superintending Officer first obtained assign this Contract or sub-contract all or any portion of the Works; provided that such consent shall not be unreasonably withheld to the prejudice of the Contractor. In the event of any portion of the Works being sub-contracted with the written consent of the Superintending Officer the Contractor shall be solely and personally responsible for the due observance by such authorised sub-contractors of all the terms, stipulations and conditions herein expressed

10

(a) The Contractor shall employ in the execution of the contract only Federal Citizens as workmen, unless he can show, to the satisfaction of the Minister of Works, Posts & Telecommunications, that in any particular trade or skill required to complete the contract insufficient Federal Citizens are available.

20

(b) The Contractor shall submit, at the request of the State Commissioner for Labour of the State in which this contract is performed or at the request of the Assistant State Commissioner for Labour of the area in which this contract is performed, such returns as may be called for from time to time in respect of labour employed by him and by his sub-contractors on the execution of the contract, under penalty of cancellation of his registration as a Government Contractor in the event of failure to make returns or of submission of false returns.

30

40

Fair
wages

7. (a) The Contractor shall in respect of labour employed either directly or indirectly in connexion with the performance of this contract, pay rates of wages and observe hours

and conditions of labour not less favourable than those established for the trade or industry in the district where the work is carried out.

Exhibits

B35

Contract Form
7th August 1963
(continued)

10 (b) In the absence of any rates of wages, hours and conditions of labour being established in such district the Contractor shall pay rates or wages and observe hours and conditions of labour which are not less favourable than the general level of wages, hours and conditions observed by other employers of labour whose general circumstances in the trade or industry in which the Contractor is engaged are similar.

(c) The Contractor shall recognise the freedom of all his workpeople to be members of trade unions.

20 (d) In the event of any dispute or difference arising as to the rates of wages to be paid or the conditions of employment to be observed in accordance with sub-clauses (a) and (b) hereof, such dispute or difference shall, unless otherwise disposed of, be referred to the Commissioner for Labour for decision, provided that in the event of any party being aggrieved an appeal shall lie to an Appeal Tribunal to be appointed by the Yang di-Pertuan Agong or the Ruler in Council as the case may be.

30

Damage to
persons
and
property

40 8. (a) Injury to persons - The Contractor shall indemnify Government in respect of any liability, loss, claim or proceedings whatsoever whether arising at common law or by statute in respect of personal injuries to or death of any person whomsoever arising out of or in the course of or caused by the execution of the works unless due to any act or neglect of Government or its servants.

Exhibits

 B 35
 Contract Form
 7th August 1963
 (continued)

- (b) Injury to property - The Contractor shall be liable for and shall indemnify Government in respect of any liability, loss, claim or proceedings and for any injury or damage whatsoever arising out of or in the course of or by reason of the execution of the works to any property real or personal due to any negligence, omission or default of himself, his agents or his servants or any authorised sub-contractor or to any circumstances within his control. 10
- Workmen's 9. The Contractor shall forthwith and as a condition precedent to the compensation commencement of any work under this contract take out at his own expense with an insurance company approved by the Superintending Officer in writing a policy or policies of insurance each specifically endorsed to provide indemnity to the Contractor and to the Government including for this purpose every officer and department thereof from all legal liabilities arising out of claims by any and every workman employed by the Contractor and by any sub-contractor in and for the performance of this contract for payment of compensation under or by virtue of the workmen's compensation legislation or any other law amending or replacing such legislation and from all costs and expenses incidental or consequential thereto. 20 30
- Employees' 9A. The Contractor shall comply with Provident all the provisions of the Employees' Fund Con- Provident Fund Ordinance 1951, tributions (F.M. Ordinance No.21 of 1951) as amended and with the provisions of all Regulations and Rules from time to time made thereunder and shall in particular be responsible for the payment into the Employees' Provident Fund of all contributions required under that Ordinance in respect of all persons employed by the Contractor 40

or any authorised sub-Contractor in and for the performance of this Contract.

Exhibits

B35

Contract Form
7th August 1963
(continued)

Fire insurance

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10. The Contractor shall insure with an insurance company approved by the Superintending Officer against loss or damage by fire all works and buildings constructed or in course of construction and all materials delivered on to the site and ready for incorporation in the work and shall keep the same insured until the works and buildings are handed over to the Superintending Officer.

Employment of Federal Citizens

20

(a) The Contractor shall employ in the execution of the contract only Federal Citizens as workmen, unless he can show to the satisfaction of the Minister of Works, Posts and Telecommunications, that in any particular trade or skill required to complete the contract insufficient Federal Citizens are available.

30

(b) The Contractor shall submit, at the request of the State Commissioner for Labour of the State in which this contract is performed or at the request of the Assistant State Commissioner for Labour of the area in which this contract is performed, such returns as may be called for from time to time in respect of labour employed by him and by his sub-contractors on the execution of the contract, under penalty of cancellation of his registration as a Government Contractor in the event of failure to make returns or of submission of false returns.

40

Default

11. In Case of failure by the Contractor to effect or renew the insurances referred to in clauses 9 and 10 hereof the Superintending Officer may himself effect or renew such insurances and deduct the amount so expended from any moneys due or to become due to the Contractor.

Exhibits

B 35
 Contract Form
 7th August 1963
 (continued)

- Damages for non-completion 12. Possession of the site shall be given on the date stated in the Appendix hereto. If the Contractor shall fail to complete the works by the date stated in the Appendix or within any extended time granted by the Superintending Officer, the Contractor shall pay to Government as liquidated and ascertained damages the sum named in the Appendix for each day or part of a day the works remain incomplete. 10
- Determination of contract 13. (a) Default - If the Contractor shall make default in any of the following respects, namely:
- (i) without reasonable cause wholly suspends the works before completion;
 - (ii) fails to proceed with the works with reasonable diligence;
 - (iii) refuses or to a substantial degree persistently neglects after notice in writing from the Superintending Officer to remove defective work or improper materials; 20
- then, if any such default shall continue for fourteen days after a notice sent by registered post to the Contractor from the Superintending Officer, the Superintending Officer may thereupon by notice sent by registered post determine this contract. 30
- (b) Bankruptcy or Assignment - If the Contractor commits an act of bankruptcy or becomes insolvent or compounds with or makes any assignments for the benefit of his creditors the Superintending Officer may by a notice sent by registered post determine this contract. 40
- (c) In either of the above cases the Superintending Officer may complete the

works by other means and all excess costs so incurred shall be payable by the Contractor.

Exhibits

B 35

Contract Form
7th August 1963
(continued)

Security
Deposit

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14. The Contractor shall if required by the Superintending Officer deposit with the Government within seven days of acceptance of his tender an amount equal to five per cent of the Contract Sum (hereinafter called the "Security Deposit"). The Superintending Officer shall be entitled to utilize the Security Deposit in payment of any amounts due to Government by the Contractor under the terms of this contract. The Security Deposit (or any balance thereof remaining for the credit of the Contractor) shall be refunded immediately after the certified date of completion under clause 5 hereof.

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Payments

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15. (a) When work to the value of 15 per cent of the Contract Sum (or less at the discretion of the Superintending Officer) has been satisfactorily completed the Contractor shall be paid the value of such completed work as certified by the Superintending Officer. Thereafter further payments shall be made once each month (or more at the discretion of the Superintending Officer) and at final completion of the works.

(b) Payments made under this clause may at the discretion of the Superintending Officer include 75 per cent of the value of unfixed materials stored on the site.

40

(c) All payments made to the Contractor under this clause shall be subject to a retention of 10 per cent until the amount of retention equals five per cent of the Contract Sum.

(d) The retention money shall not become payable to the Contractor during the Defects Liability Period

80.

Exhibits

B 35
Contract Form
7th August 1963
(continued)

and shall thereafter be paid to the Contractor only when all defects have been made good by the Contractor under Clause 5 hereof.

(e) When the works have been completed no payment shall be made on the final certificate issued under this clause until the Contractor shall have satisfied the Superintending Officer by means of either

10

(i) a statutory declaration made by or on behalf of the Contractor, or

(ii) a certificate signed by or on behalf of the Commissioner for Labour,

to the effect that the workmen who have been employed by the Contractor on the works including workmen employed by nominated sub-contractors and by authorised sub-contractors engaged directly by the Contractor have received all wages due to them in connection with such employment and that all dues under the Labour Code and all contributions to the Employees' Provident Fund required under the Ordinance have been paid.

20

APPENDIX

CLAUSE

30

5 and 15	Six months	Defects Liability Period (if none be stated, three months from date for completion)
12	₹10/- per day	Liquidated and ascertained damages at rate of ₹ per day
12	10th September 1963	Date for possession of site
12	30th December 1963	Date for completion

40

For and on behalf of the Government of The

Federation of Malaya I accept the foregoing Tender under the Conditions expressed.

Security Deposit, referred to in Clause 14 of the Conditions, is required.

(Sd) ? Illegible
SENIOR EXECUTIVE ENGINEER, CENTRAL PERAK
for and on behalf of the Government

Exhibits

B 35
Contract Form
7th August 1963
(continued)

.....
Official Designation

Date: 3rd September 1963

10

EXHIBIT "B" 36

J.K.R.Pk.T.12/2/92 Tenders close at the office of the J.K.R. K.Kangsar at 3 p.m. on 27.5.63

B 36
Contract Form
17th June 1963

CONTRACT FORM FOR PETTY WORKS NOT EXCEEDING ESTIMATED COST OF \$25,000
CONTRACT NO: S/PK/214 of 1963

EXPENDITURE to be met from Consolidated Trust Accounts State Development Fund 1963 - A - Public Works Item 15 - Quarters

20

(S.E.Pk.Wt.No.Dev.126/63)

This TENDER must be delivered to the place and at or before the time stipulated in the Tender Notice.

To:

The Senior Executive Engineer, Central Perak (hereinafter called the "Superintending Officer") for and on behalf of the Government of The State of Perak

30

The undersigned (hereinafter in the Conditions called the "Contractor", which expression shall also mean the Contractor's heirs, executors, administrators, assigns, successors and duly appointed representative) hereby offers to provide,

Exhibits

B 36
Contract Form
17th June 1963
(continued)

upon the Conditions herein, all the labour, materials, workmanship, tools, machinery and everything necessary for the entire completion to the satisfaction of the Superintending Officer of the works and services in the execution of Construction of One Block of Two Units Class 'F' Quarters at Grik and described in the Specification and/or Drawings marked and numbered SEE.CPk.301/X11-63, S.C.Pk.162/1, 162/2, B3-1/84 and SEE.CPk.42/X1-69 for the sum of dollars Twenty three thousand six hundred and eighty only (\$23,680.00) (hereinafter referred to as the Contract Sum) and undertakes to complete the work within six months from the date of possession of site.

10

Dated this 27th day of May, 1963.

Witness (Sd) ? Illegible Signature: (Sd) Lee Hock Ning
Address: 57, Lekir Road, Sitiawan
Tenderer

20

Address:
P.W.D. CONTRACTOR,
KAMPONG KOH, SITIAWAN

KERAJAAN NEGERI PERAK
JABATAN KERJA RAYA

The Erection of one block of two units
Class 'F' Quarters at Grik

Details of Tender

<u>Item No.</u>	<u>Description</u>	<u>Amount</u>
A	The total amount for the excavation of earthwork, clearing and levelling of area to required levels for the erection of one block of two units Class 'F' Qrs. at Grik in accordance with Drawing No. SEE.CPk.801/X11-63 is the Lump Sum of Dollars Four hundred and sixty two	462.00
B	- Ditto - for the erection of one block of two units	

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40

<u>Item No.</u>	<u>Description</u>	<u>Amount</u>	<u>Exhibits</u>
	Brought forward	462.00	B 36
	Class "F" Qrs. at Grik in accordance with Drs.No.SR.Pk. 162/1 and 162/2 is the Lump Sum of Dollars Twenty two thousand	22,000.00	Contract Form 17th June 1963 (continued)
10	C - Ditto - for the laying of sewerage pipes and manholes for connection of sanitary installation to Septic Tank in accordance with Drg.Nos. SEE.CPk.801/X11-63 and 43/X1-59 is the Lump Sum of Dollars Two hundred and seventy-one	271.00	
20	D - Ditto - for the construction of a Septic Tank for 30 persons and Filter Bed in accordance with Drg.Nos.SEE.CPk.801/X11-63 and S.E.Pk.83-1/8A is the Lump Sum of Dollars Nine hundred and forty-seven	947.00	
	Total carried forward to Form of Tender	<u>23,680.00</u>	

(Sd) Lee Hock Ning
.....
Tenderer

P.W.D. CONTRACTOR,
KAMPONG KOH, SITIAWAN

CONDITIONS

- 30 Superin-
tending
Officer's
represent-
ative
1. The term "Superintending Officer" (or the initials "S.O.") shall be deemed to include any person or persons who may be deputed by the Superintending Officer to act on his behalf.
- Care of
works
2. The Contractor shall keep the site of the works clear of all rubbish and in a clean and sanitary condition. He shall conform to any bye-laws and/or regulations of the Health Authorities in this connexion,

Exhibits

B36
 Contract Form
 17th June 1963
 (continued)

- and shall give all notices and pay all fees legally demandable.
- Variations 3. No variation shall vitiate this contract. All variations and/or extras duly authorised by the Superintending Officer shall be measured and valued at the rates in the Schedule of Rates attached to the Specification or if such rates are not applicable then at rates to be agreed between the Superintending Officer and the Contractor and the Contract Sum shall be adjusted accordingly. 10
- Deductions from money due to Contractor 4. The Superintending Officer shall be entitled to deduct any money the Contractor shall be liable to pay under this contract to Government from any sum that may become payable to the Contractor hereunder.
- Defects after completion 5. Any defects, shrinkage or other faults either of materials or workmanship which may appear within such period as is stated in the Appendix hereto, or if none be stated within three months of the certified date of completion of this contract, and herein referred to as the Defects Liability Period, due to materials or workmanship not being in accordance with this contract shall within a reasonable time after receipt of the Superintending Officer's written instruction be made good by the Contractor at his own cost. 20 30
- Sub-contracting 6. The Contractor shall not without the written consent of the Superintending Officer first obtained assign this contract or sub-contract all or any portion of the Works; provided that such consent shall not be unreasonably withheld to the prejudice of the Contractor. In the event of any portion of the Works being sub-contracted with the written consent of the Superintending Officer the Contractor shall be solely and 40

personally responsible for the due observance by such authorised sub-contractors of all the terms, stipulations and conditions herein expressed.

Exhibits

B 36

Contract Form
17th June 1963
(continued)

10

(a) The Contractor shall employ in the execution of the contract only Federal Citizens as workmen, unless he can show, to the satisfaction of the Minister of Works, Posts and Telecommunications, that in any particular trade or skill required to complete the contract insufficient Federal Citizens are available.

20

(b) The Contractor shall submit, at the request of the State Commissioner for Labour of the State in which this contract is performed or at the request of the Assistant State Commissioner for Labour of the area in which this contract is performed, such returns as may be called for from time to time in respect of labour employed by him and by his sub-contractors on the execution of the contract, under penalty of cancellation of his registration as a Government Contractor in the event of failure to make returns or of submission of false returns.

30

Fair
Wages

7. (a) The Contractor shall in respect of labour employed either directly or indirectly in connexion with the performance of this contract, pay rates of wages and observe hours and conditions of labour not less favourable than those established for the trade or industry in the district where the work is carried out.

40

(b) In the absence of any rates of wages, hours and conditions of labour being established in such district the Contractor shall pay rates of wages and observe hours and conditions of labour which are not less favourable than the general level of wages, hours

Exhibits

B 36
 Contract Form
 17th June 1963
 (continued)

and conditions observed by other employers of labour whose general circumstances in the trade or industry in which the Contractor is engaged are similar.

(c) The Contractor shall recognise the freedom of all his workpeople to be members of trade unions.

(d) In the event of any dispute or difference arising as to the rates of wages to be paid or the conditions of employment to be observed in accordance with sub-clauses (a) and (b) hereof, such dispute or difference shall, unless otherwise disposed of, be referred to the Commissioner for Labour for decision, provided that in the event of any party being aggrieved an appeal shall lie to an Appeal Tribunal to be appointed by the Yang di-Pertuan Agong or the Ruler in Council as the case may be.

10

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(e) The Contractor shall comply with all the provisions of the Employees Provident Fund Ordinance, 1951 (F.M. Ordinance No.21 of 1951), as amended and with the provisions of all Regulations and Rules from time to time made thereunder and shall in particular be responsible for the payment into the Employees' Provident Fund of all contributions required under that Ordinance in respect of all persons employed by the Contractor or any authorised sub-contractor in and for the performance of this contract.

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Damage
 to per-
 sons and
 property

8. (a) Injury to persons - The Contractor shall indemnify Government in respect of any liability, loss, claim or proceedings whatsoever whether arising at common law or by statute in respect of personal injuries to or death of any person whomsoever arising out of or in the course of or caused by the execution

40

of the works unless due to any act or neglect of Government or its servants.

Exhibits

B 36

Contract Form
17th June 1963
(continued)

- 10 (b) Injury to property - The Contractor shall be liable for and shall indemnify Government in respect of any liability, loss, claim or proceedings and for any injury or damage whatsoever arising out of or in the course of or by reason of the execution of the works to any property real or personal due to any negligence, omission or default of himself, his agents or his servants or any authorised sub-contractor or to any circumstances within his control.
- 20 Workmen's Compensation 9. The Contractor shall forthwith and as a condition precedent to the commencement of any work under this contract take out at his own expense with an insurance company approved by the Superintending Officer in writing a policy or policies of insurance each specifically endorsed to provide indemnity to the Contractor and to the Government including for this purpose every officer and department thereof from all legal liabilities arising out of claims by any and every workman employed by the Contractor and by any sub-contractor in and for the performance of this contract for payment of compensation under or by virtue of the workmen's compensation legislation or any other law amending or replacing such legislation and from all costs and expenses incidental or consequential thereto
- 30
- 40 Fire insurance 10. The Contractor shall insure with an insurance company approved by the Superintending Officer against loss or damage by fire all works and buildings constructed or in course of construction and all materials delivered on to the site and ready for incorporation in the work and shall keep the same insured until the works and buildings are handed over to the Superintending Officer.

Exhibits

B 36
 Contract Form
 17th June 1963
 (continued)

Default

11. In case of failure by the Contractor to effect or renew the insurances referred to in clauses 9 and 10 hereof the Superintending Officer may himself effect or renew such insurances and deduct the amount so expended from any moneys due or to become due to the Contractor.

Damages
 for non-
 completion

12. Possession of the site shall be given on the date stated in the Appendix hereto. If the Contractor shall fail to complete the works by the date stated in the Appendix or within any extended time granted by the Superintending Officer, the Contractor shall pay to Government as liquidated and ascertained damages the sum named in the Appendix for each day or part of a day the works remain incomplete.

10

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Deter-
 mination
 of
 contract

13. (a) Default - If the Contractor shall make default in any of the following respects, namely:

- (i) without reasonable cause wholly suspends the works before completion;
- (ii) fails to proceed with the works with reasonable diligence;
- (iii) refuses or to a substantial degree persistently neglects after notice in writing from the Superintending Officer to remove defective work or improper materials;

30

then, if any such default shall continue for fourteen days after a notice sent by registered post to the Contractor from the Superintending Officer, the Superintending Officer may thereupon by notice sent by registered post determine this contract.

40

(b) Bankruptcy or Assignment -
 If the Contractor commits an act of

bankruptcy or becomes insolvent or compounds with or makes any assignments for the benefit of his creditors the Superintending Officer may by a notice sent by registered post determine this contract.

Exhibits

B 36
Contract Form
17th June 1963
(continued)

10 (c) In either of the above cases the Superintending Officer may complete the works by other means and all excess costs so incurred shall be payable by the Contractor.

Security Deposit 14. The Contractor shall if required by the Superintending Officer deposit with the Government within seven days of acceptance of his tender an amount equal to five per cent of the Contract Sum (hereinafter called the "Security Deposit"). The Superintending Officer shall be entitled to utilize the Security Deposit in payment of any amounts due to Government by the Contractor under the terms of this contract. The Security Deposit (or any balance thereof remaining for the credit of the Contractor) shall be refunded immediately after the certified date of completion under clause 5 hereof.

20

30 Payments 15. (a) When work to the value of 15 per cent of the Contract Sum (or less at the discretion of the Superintending Officer) has been satisfactorily completed the Contractor shall be paid the value of such completed work as certified by the Superintending Officer. Thereafter further payments shall be made once each month (or more often at the discretion of the Superintending Officer) and at final completion of the works.

40

(b) Payments made under this clause may at the discretion of the Superintending Officer include 75 per cent of the value of unfixed materials stored on the site.

(c) All payments made to the

Exhibits

B 36
 Contract Form
 17th June 1963
 (continued)

Contractor under this clause shall be subject to a retention of 10 per cent until the amount of retention equals five per cent of the Contract Sum.

(d) The retention money shall not become payable to the Contractor during the Defects Liability Period and shall thereafter be paid to the Contractor only when all defects have been made good by the Contractor under clause 5 hereof. 10

(e) When the works have been completed no payment shall be made on the final certificate issued under this clause until the Contractor shall have satisfied the Superintending Officer by means of either

(i) a statutory declaration made by or on behalf of the Contractor, or 20

(ii) a certificate signed by or on behalf of the Commissioner for Labour,

to the effect that the workmen who have been employed by the Contractor on the works including workmen employed by nominated sub-contractors and by authorised sub-contractors engaged directly by the Contractor have received all wages due to them in connection with such employment, and that all dues under the Labour Code and all contributions to the Employees' Provident Fund required under the Ordinance have been paid. 30

Validity
 of
 contract

16. This contract is not valid unless accepted and signed by an officer duly authorised to do so on behalf of the Government.

Stamp
 Duty

17. The proper Stamp Duty, if any, on this contract will be borne by Government. 40

APPENDIX

Exhibits

CLAUSE

B 36
Contract Form
17th June 1963
(continued)

5 and 15	Six months	Defects Liability Period (if none be stated, three months from date for completion)
12	£10/- per day	Liquidated and ascertained damages at the rate of £ per day
10 12	22.6.1963	Date for possession of site
12	21.12.1963	Date for completion

For and on behalf of the Government of The State of Perak I accept the foregoing Tender under the Conditions expressed.

Security Deposit, referred to in Clause 14 of the Conditions, is required.

(Sd) ? Illegible
.....
SENIOR EXECUTIVE ENGINEER, CENTRAL PERAK
for and on behalf of the Government

20

Date: 17.6.1963

"C"
STATEMENT OF AGREED FACTS

"C"
Statement of
Agreed Facts
22nd April 1970

IN THE HIGH COURT IN MALAYA AT IPOH

CIVIL SUIT NO: 221 OF 1965

Between:

Lee Hock Ning

PLAINTIFF

And

The Government of The
Federation of Malaysia

DEFENDANT

30

AGREED FACTS

1. Two Contracts, namely S/PK/214 of 1963 and

Exhibits

"C"

Statement of
Agreed Facts
22nd April 1970
(continued)

FED/PK/227 of 1963 were duly entered into and executed by the Plaintiff and the Defendant.

2. (a) The works and buildings specified in the said 2 Contracts were duly completed by the Plaintiff, to the satisfaction of the Defendant.

2. (b) The works and buildings specified in Contract S/PK/214/63 were duly completed by the Plaintiff on the 3rd February 1964.

2. (c) The works and buildings specified in Contract FED/PK/227/63 were duly completed by the Plaintiff on the 5th February 1964.

10

3. (a) The Plaintiff took an additional 37 days to complete the said works and buildings in the said 2 Contracts.

3. (b) Under the said Contracts, a sum of \$10/- is payable as liquidated damages by the Plaintiff to the Defendant for each additional day.

4. At the time of signing the said first Contract namely S/PK/214 of 1963, the Plaintiff paid to the Defendant, the sum of \$1,184/- by way of Retention Money pursuant to Clause 14 of the said first Contract.

20

5. The said sum of \$1,184/- has not, been to date, refunded to the Plaintiff by the Defendant.

6. At the time of signing the said second Contract, namely FED/PK/227 of 1963, the Plaintiff paid to the Defendant, the sum of \$565.75 by way of Security Deposit pursuant to Clause 14 of the said second Contract.

7. The said sum of \$565.75 has not, been to date, refunded to the Plaintiff by the Defendant.

30

8. The said second Contract, namely, FED/PK/227 of 1963 was for the contract sum of \$11,315/-.

9. The said works and buildings specified in the said second Contract, namely FED/PK/227 of 1963, having been duly completed by the Plaintiff, the Plaintiff was entitled to the said sum of

RM11,315/- by virtue of the said Contract.

10. The said sum of RM11,315/- has to date not been paid to the Plaintiff by the Defendant.

Dated this 22nd day of April, 1970.

(Sd) Yeap & Yeap (Sd) M. Mahalingam
SOLICITORS FOR PLAINTIFF SOLICITORS FOR DEFENDANT

Exhibits

"C"
Statement of Agreed Facts
22nd April 1970
(continued)

"D"
STATEMENT OF AGREED FACTS

IN THE HIGH COURT IN MALAYA AT IPOH

"D"
Statement of Agreed Facts
21st April 1970

10 CIVIL SUIT NO: 222 OF 1965

Between

Lee Hock Ning PLAINTIFF

And

The Government of The Federation of Malaysia DEFENDANT

AGREED FACTS

1. A Contract, namely, FED/PK/232/63 was duly entered into and executed by the Plaintiff and the Defendant.
- 20 2. Vide letter dated 7th December, 1963, the Defendant purported to terminate the said Contract.
3. The said letter was received by the Plaintiff on the 9th December 1963.
4. There was no building material at the site as late as 6th December 1963.
5. Until 6th December 1963 neither the Plaintiff nor any person had commenced the work set out in the said Contract.
- 30 6. Pursuant to the said Contract, the Plaintiff, between September to November 1963, ordered goods and materials for delivery to site to the value of RM5,000/-

Exhibits

"D"

Statement of
Agreed Facts
21st April 1970
(continued)

7. By J.K.R. Tender Notice dated 7th December 1963, the Defendant invited tenders for the erection and completion of the works and buildings set out in the said Contract.

8. The Defendant accepted the tender of Pok Thong for the sum of \$45,500/-.

9. On 26th June 1964, the said Pok Thong completed the works and buildings specified in the said Contract.

10. The said Pok Thong was paid a sum of \$45,500/- by the Defendant for completion of the works and buildings specified in Contract No. FED/PK/232 of 1963.

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11. At the time of signing the said Contract, the Plaintiff paid to the Defendant a sum of \$1,525/- by way of Security Deposit pursuant to Clause 14 of the said Contract.

12. The said sum of \$1,525/- has not been refunded by the Defendant to the Plaintiff.

Dated this 21st day of April 1970.

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(Sd) Yeap & Heap
SOLICITORS FOR PLAINTIFF

(Sd) M.Mahalingam
SOLICITORS FOR DEFENDANT



IN THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL

No. 27 of 1972

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

B E T W E E N :-

GOVERNMENT OF MALAYSIA

Appellant

- and -

LEE HOCK NING

Respondent

RECORD OF PROCEEDINGS

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

Solicitors for the Appellant.

GRAHAM PAGE & CO.,
51 Victoria Street,
London, SW1H 0EU.

Solicitors for the Respondent