

15/87

ON APPEAL
FROM THE FEDERAL COURT OF MALAYSIA

BETWEEN

HARRY TONG LEE HWA (Defendant) .. Appellant

- and -

YONG KAH CHIN (Plaintiff) .. Respondent

RECORD OF PROCEEDINGS

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

Solicitors for the Appellant

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

Solicitors for the Respondent

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

B E T W E E N
HARRY TONG LEE HWA (Defendant) .. Appellant
- and -
YONG KAH CHIN (Plaintiff) .. Respondent

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

No.	Description of Document	Date	Page
	<u>IN THE HIGH COURT</u>		
1	Writ and Statement of Claim	25th and 22nd July 1977	1
2	Statement of Defence	19th August 1977	5
3	Summons in Chambers	25th August 1977	7
4	Affidavit of Yong Kah Chin in support of No. 3	23rd August 1977	8
	Exhibits to Affidavit :		
	1. Option	4th November 1975	10
	2. Authority to sell	4th November 1975	11

No.	Description of Document	Date	Page
	3. Letter, K.C. Yong to Tong Lee Hwa	22nd April 1975	14
	Letter, Harry Tong Lee Hwa to K.C. Yong	29th April 1975	13
	4. Sub-option	6th November 1975	15
	5. Undertaking	6th November 1975	16
	6. Letter, Tharu & Co., to S.M. Yong & Co.	7th November 1975	17
	7. Confirmation of Commission	6th July 1976	18
	8. Receipt	29th December 1976	19
	9. Receipt	30th May 1977	20
5	Affidavit of Edmund Yong Joon Hong	21st September 1977	21
	Exhibits to Affidavit :		
	2. Letter, Tharu & Co., to S.M. Yong & Co.	12th November 1977	23
	3. Letter, S.M. Yong to Tharu & Co.	13th November 1977	24
	4. Agreement, Chong You and Others to Chong Mooi Lan	3rd March 1976	25
	5. Letter, S.M. Yong to Harry Tong Lee Hwa	8th June 1977	34
6	Affidavit of Harry Tong Lee Hwa	5th October 1977	35
	Exhibits to Affidavit :		
	C. Letter, T. Tharu & Co., to Chong Mui Lan	10th November 1975	38
	D2. Letter, G.T. Rajan & Co., to S.M. Yong	17th June 1977	39

No.	Description of Document	Date	Page
	D3. Letter, S.M. Yong to G.T. Rajan & Co.	20th June 1977	40
	D4. Letter, G.T. Rajan & Co., to S.M. Yong	27th June 1977	41
	D5. Letter, S.M. Yong to G.T. Rajan & Co.	29th June 1977	43
7	Affidavit of Ooi Lay Lee	10th October 1977	44
8	Grounds of Decision	14th October 1977	45
9	Judgment	14th October 1977	49
10	Order	14th October 1977	50
11	Notice of Appeal	17th October 1977	51
12	Affidavit of Thurumagnanam	17th November 1977	52
13	Proceedings	22nd February and 19th May 1978	54
14	Judgment of Vohrah J.	19th May 1978	61
15	Order	19th May 1978	63
	<u>IN THE FEDERAL COURT</u>		
16	Notice of Appeal	23rd May 1978	64
17	Memorandum of Appeal	24th June 1978	66
18	Judgment	27th November 1978	68
19	Order	17th November 1978	75
20	Order granting Conditional Leave to Appeal	14th December 1978	76

No.	Description of Document	Date	Page
21	Order granting Final Leave to Appeal to H.M. The Yang di-Pertuan Agong	19th March 1979	78

DOCUMENTS TRANSMITTED TO THE PRIVY COUNCIL
BUT NOT REPRODUCED

Description of Document	Date
<u>IN THE HIGH COURT</u>	
Exhibits to Affidavit of Harry Tong Lee Hwa of 5th October 1977 as follows :	
Photo copies of Title Deeds A1, A2, A3, A4, A5, A6 and A7	
B. Letter, T.Tharu & Co., to S.M. Yong & Co.	7th November 1975
D1. Letter, S.M. Yong to Harry Tong Lee Hwa	8th June 1977
Exhibits to Affidavit of Edmund Yong Joon Hong as follows :	21st September 1977
1. Letter, T.Tharu & Co., to S.M. Yong & Co.	7th November 1977
Letter, in vernacular, from Majlis Bandaran, Kelang	26th December 1974
Exhibits to Affidavit of Thurumagnanam as follows :	
Letter, T. Tharu & Co., to Chong Mui Lan	10th November 1975

IN THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL

No. 23 of 1979

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

B E T W E E N
HARRY TONG LEE HWA (Defendant) .. Appellant
- and -
YONG KAH CHIN (Plaintiff) .. Respondent

RECORD OF PROCEEDINGS

10

No. 1

In the High Court

WRIT AND STATEMENT OF CLAIM

No. 1

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
CIVIL SUIT NO. 2131 OF 1977

Writ and State-
ment of Claim

25th and 22nd
July 1977

BETWEEN :

YONG KAH CHIN

Plaintiff

- and -

HARRY TONG LEE HWA

Defendant

SPECIALLY INDORSED WRIT

20

The Honourable Tan Sri Sarwan Singh Gill, P.M.N.
P.S.M., Chief Justice of the High Court, Malaya, in the
name and on behalf of His Majesty, the Yang Dipertuan
Agung.

To :- Harry Tong Lee Hwa,
30-32, Jalan Susur/Jalan Sireh,
Off Persiaran Tengah,
Klang.

WE COMMAND YOU, that within eight (8) days after

In the High Court
No. 1

the service of this Writ on you, inclusive of the day of such service, you do cause an appearance to be entered for in an action at the suit of the Plaintiff(s) abovenamed.

Writ and State-
ment of Claim
25th and 22nd
July 1977
continued

AND TAKE NOTICE that in default of your so doing the Plaintiff(s) may proceed therein and judgement may be given in your absence.

WITNESS, Chuan Huan Eng, Senior Assistant Registrar of the High Court, Malaya.

Dated this 25th day of July, 1977.

M/S. Skrine & Co.,
Plaintiff's Solicitors.

Sgd. Chuan Huan Eng
Senior Assistant Registrar,
High Court, Kuala Lumpur.

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 date of such date and not afterwards.

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

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

20

If a Defendant enters an appearance he must also deliver a defence within fourteen (14) days from the last day of the time limited for appearance unless such time is extended by the Court or a Judge otherwise judgement may be entered against him without notice, unless he has in the meantime been served with a Summons for Judgement.

30

STATEMENT OF CLAIM

1. At all material times, the Plaintiff was a holder of an option for sale of lands held under EMR 8292, 4367, 4365, 4369, 6851 and 1230 for Lots 737, 738, 742, 741, 745, 5927 and 746 respectively all in the Mukim of Klang

at the price of \$65,000/- per acre.

In the High Court

No. 1

2. On 6th November, 1975 the Plaintiff gave a sub-option to the Defendant to purchase the above said lands at the price of \$65,000/- per acre.

Writ and State-
ment of Claim

3. The Defendant by letter dated 6th November, 1975 undertook to pay to the Plaintiff commission of $6\frac{1}{2}\%$ of the total consideration payable by the Defendant in the event of the Defendant successfully purchasing the above said lands in his name or in his nominee's name.

25th and 22nd
July 1977

continued

10 4. On 7th November, 1975, Solicitors for one Madam Chong Mui Lan who is the wife and the nominee of the Defendant, wrote to Solicitors for the Vendors exercising the option that was granted to the Plaintiff.

5. The above said lands were sold to the Defendant's nominee, Madam Chong Mui Lan, by Sale Agreement dated 3rd March 1976 entered into between the owners of the lands and the said Madam Chong Mui Lan at the purchase price of \$1,462,500/-.

20 6. After the completion of the sale, the Plaintiff had requested the Defendant to pay him a sum of \$95,062.50 being the $6\frac{1}{2}\%$ commission which he is entitled to. The Defendant however failed or neglected to pay the same.

And the Plaintiff claims against the Defendant for :

1. The sum of \$95,062.50;
2. Interest on the said sum of \$95,062.50 at the rate of 6% per annum from the 18th April 1977 (under Section 11 of the Civil Law Act 1956) up to date of payment; and
3. Costs.

30 Dated the 22nd day of July, 1977.

Sgd. M/s. Skrine & Co.,
Plaintiff's Solicitors.

And the sum of \$60/- (or such sum as may be

In the High Court
—
No. 1
Writ and State-
ment of Claim
25th and 22nd
July 1977
continued

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 as may be allowed on taxation). If the amount claimed be paid to the Plaintiff or its advocate and solicitor or agent within four days from the service hereof, further proceedings will be stayed.

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

10

This Writ was issued by Messrs. Skrine & Co., whose address for service is Straits Trading Building, No. 4, Leboh Pasar Besap, Kuala Lumpur, Solicitors for the said Plaintiff of No. 9, Sultan Lane, Kuala Lumpur.

20

This Writ was served by me at
. on the Defendant on the
. day of 1976 at the hour of .

Indorsed the day of 1976.

Signed :-

Address :-

No. 2

In the High Court

STATEMENT OF DEFENCE

No. 2

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

Statement of
DefenceCIVIL SUIT NO. 2131 OF 1977

19th August 1977

B E T W E E N :

YONG KAH CHIN

Plaintiff

- and -

HARRY TONG LEE HWA

DefendantSTATEMENT OF DEFENCE

- 10 1. The Defendant denies paragraph 1 of the Statement of Claim and puts the Plaintiff to strict proof thereof.

The Defendant further avers the Vendors never allowed the Defendant to exercise the alleged option for reasons inter alia the said option was defective.

2. As regards paragraph 2 of the Statement of Claim the Plaintiff's alleged option being defective as averred in paragraph 1 of the Statement of Claim and any alleged sub-option arising from the said option was also defective. The Defendant accepted the said sub-option in good faith.

- 20 3. As regards paragraph 3 of the Statement of Claim the Defendant admits that he did issue a letter dated 6th November, 1975 on the basis that the alleged option and/or sub-option was in order, and the commission undertaken to be paid was given provided the Defendant could exercise the said option and/or sub-option.

- 30 4. The Defendant denies paragraph 4 of the Statement of Claim. The Defendant would prove at the trial that the said alleged option and/or sub-option was defective and bad in law and fact and was also not allowed to be exercised by the Vendors.

5. As regards paragraph 5 of the Statement of Claim the facts averred therein are admitted and the Defendant avers the said Sale Agreement did not arise at all from the exercise

In the High Court

No. 2

Statement of
Defence

19th August 1977

continued

of the alleged option and/or sub-option of the Plaintiff.

7. The Defendant admits the Plaintiff demanded payment of \$95,062.50 (Dollars Ninety five thousand and Sixty-two and Cents Fifty only) and the Defendant avers the Plaintiff's claim is misconceived and the Defendant is under no obligation to pay the Plaintiff for reason inter alia for failure of consideration.

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

10

Wherefore the Defendant prays that the Plaintiff's claim be dismissed with costs.

Dated this 19th day of August, 1977.

Sgd. G.T. Rajan & Co.

Defendant's Solicitors.

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

20

No. 3

In the High Court

SUMMONS IN CHAMBERS

No. 3

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

Summons in
ChambersCIVIL SUIT NO. 2131 OF 197725th August
1977

B E T W E E N :

YONG KAH CHIN

Plaintiff

- and -

HARRY TONG LEE HWA

DefendantSUMMONS IN CHAMBERS

10 LET ALL PARTIES concerned attend the Senior Assistant Registrar In Chambers at the High Court, Kuala Lumpur on Friday the 7th day of October 1977 at 9.00 o'clock in forenoon at the hearing of an application on the part of the Plaintiff abovenamed for an Order that the Plaintiff abovenamed may be at liberty to sign final Judgment against the Defendant abovenamed for the sum of \$95,062.50 plus interest thereon at the rate of 6% per annum from the 18th of April 1977 (under Section 11 of the Civil Law Act 1956) up to date of payment and costs.

20 Dated this 25th day of August 1977.

Sgd. Chan Huan Eng

Senior Assistant Registrar,
High Court, Kuala Lumpur.

This Summons in Chambers was taken out by Messrs. Skrine & Co., Straits Trading Building No. 4, Leboh Pasar Besar, Kuala Lumpur, Solicitors for the Plaintiff abovenamed.

30 The Affidavit of YONG KAH CHIN affirmed on the 23rd day of August, 1977 and filed herein will be read in support of this application.

This Summons in Chambers is to be served on :-

Messrs. G.T. Rajan & Co.,
No. 1-A, Jalan Melayu,
Klang.

In the High Court

No. 4

No. 4

AFFIDAVIT OF YONG KAH CHIN IN SUPPORT OF No. 3Affidavit of Yong
Kah Chin in
support of No. 3

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

CIVIL SUIT NO. 2131 OF 197723rd August
1977

B E T W E E N :

YONG KAH CHIN

Plaintiff

- and -

HARRY TONG LEE HWA

DefendantA F F I D A V I T

I, YONG KAH CHIN, of full age, of No. 9, Lorong Sultan, Kuala Lumpur, affirm and state as follows :-

10

1. I am the Plaintiff herein.

2. On the 4th day of November, 1975, I was given an option (hereinafter referred to as the said option) to sell lands held under E.M.R. Nos. 8292, 4367, 4366, 4365, 4369, 6851 and 1230 for Lots 737, 738, 742, 741, 745, 5927 and 746 respectively, all in the Mukim of Klang (hereinafter referred to as the said lands) at the price of \$65,000/- per acre. This option was signed by one Yong Yoke Lin and one Chong You (F). Annexed hereto and marked "YKC-1" is a copy of the said option. The said Yong Yoke Lin was the registered owner of lands held under E.M.R. 4365, 4369 and 1230 for Lots 741, 745 and 746 respectively. Lands held under E.M.R. 8292, 4367 and 4366 were registered in the names of Yong Ah Kau @ Yong Kim Loong deceased, Yong Kim Foe @ Ying Sik Kaw deceased and Chong You (F). Land held under E.M.R. 6851 for Lots 5927 was registered in the name of Yong Yoke Peow @ Yong Yoke Piow deceased.

20

3. Annexed hereto and marked "YKC-2" is a copy of a letter of authority, by the surviving trustees of Yong Ah Kay @ Yong Kim Loong, Yong Kim Foe @ Ying Sik Kaw and Yong Yoke Peow @ Yong Yoke Piow deceased, to Yong Yoke Lin and Chong You (F) to dispose of lands held under E.M.R. Nos. 8292, 4367, 4366 and 6851 for Lots

30

736, 738, 742 and 5927 respectively at the price of \$65,000/- per acre.

In the High Court

No. 4

Affidavit of Yong
Kah Chin in
support of No. 3

23rd August
1977

continued

4. The Defendant has as early as April, 1975 approached me to act as a broker in an attempt to purchase the said lands. Annexed hereto and marked "YKC-3" are copies of correspondence between the Defendant and myself.

10 5. On obtaining the said option (referred to in paragraph 1 above) I approached the Defendant to ascertain whether he was interested in purchasing the said lands at \$65,000/- and if I was able to arrange for the complete transfer of the said lands to the name of the Defendant or his nominee, what percentage of commission will be paid to me. The Defendant was desirous of purchasing the said lands at \$65,000/- per acre and indicated to me that he will pay me 6½% of the total consideration of the sale price, by way of commission. As a result of this agreement, I executed a sub-option in favour of the Defendant and the Defendant executed an undertaking to pay me 6½% commission, on the 6th of November, 1975. Annexed hereto and
20 marked "YKC-4 & 5" are copies of the said option and the said letter of undertaking.

6. On the 7th of November, 1975, M/s. T. Tharu & Co., Solicitors for Madam Chong Mui Lan, the wife and nominee of the Defendant wrote to M/s. Dato S.M. Yong, Solicitors for the registered owners of the said lands exercising the said option. Annexed hereto and marked "YKC-6" is a copy of the said letter.

30 7. On the 3rd of March, 1976, an agreement was entered into between the registered owners of the said lands and the said Madam Chong Mui Lan, for the sale of the said lands to Madam Chong Mui Lan at the purchase price of \$1,462,500/-.

8. Annexed hereto and marked "YKC-7" is a copy of a letter dated 6th July, 1976 from Madam Chong You and Yong Yoke Lin confirming that both myself and Madam Ooi Lay Lee were the brokers who effected the sale of the said lands and confirming that both of us will be entitled to 1% (one per cent) commission each.

40 9. Annexed hereto and marked "YKC-8 & 9" are copies of receipts issued by me in respect of 1% (one per cent)

In the High Court

commission received.

No. 4

Affidavit of Yong
Kah Chin in
support of No. 3

23rd August
1977

continued

10. The Defendant is justly and truly indebted to me in the sum of \$95,062.50 being 6½% commission on the purchase price of \$1,462,500/- and was so indebted to me at the commencement of this suit.

11. I am advised and I verily believe that the Plaintiff have a good cause of action against the Defendant and that the Defendant has no defence to this action and had entered appearance merely to cause a delay.

12. I therefore pray that final judgement be entered against the Defendant for the sum of \$95,062.50 and interest thereon at the rate of 6.1 per annum, from 11th April, 1976 up to date of payment.

10

AFFIRMED at Kuala Lumpur,)
this 23rd day of August 1977) Sgd. Yong Kah Chin.
at 9.00 a.m.)

Sgd. Tneh Liang Peng.

Commissioner for Oaths.

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

20

Exhibit 1 -
Option

4th November
1975

EXHIBIT 1 - OPTION

OPTION

Mr. Yong Kah Chin,
Kuala Lumpur.

We, the undersigned, the Registered owners of the land Lot Nos. 5927, 737, 738, 741, 742, 743 and 745, Mukim of Klang, hereby confirm that one Ringgit has been fully paid and authorise you the option to sell our land at the price of \$65,000/- per acre (Ringgit Sixty Five Thousand) only.

30

Any costs regarding the proposed drainage system alongside the land, to be constructed by the Government shall be borne by the purchaser, and it is not vacated at

the deliverance.

It is hereby agreed in the event of the sale as stipulated herein, confirm that Mr. Yong Kah Chin shall be entitled 1% (one per cent), Md. Ooi Lay Lee shall be entitled 1% (one per cent), commission of the total amount of the sale price.

This option is valid for five days from 4th November 1975 to 8th November 1975.

Sgd. In vernacular

10

Signed by the Registered owners,

Mr. Yong Yoke Lin
Md. Cheong You

Date: 4th November 1975.

This is the Exhibit marked "YKC-1" referred to in the Affidavit of Yong Kah Chin affirmed by me this 23rd day of August 1977

20

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

EXHIBIT 2 - AUTHORITY TO SELL

To, Mr. Yong Yoke Lin.
Md. Cheong You.

Re: Properties EMR No. 8292 (Lot No. 737), EMR No. 4367 (Lot No. 738), EMR No. 4366 (Lot No. 742), EMR No. 6851 (Lot No. 5927) all in the Mukim of Kelang

30

We, the undersigned and the surviving trustees of the estates of the registered owners of the above mentioned land lots, hereby authorised Mr. Yong Yoke Lin and Md. Cheong You to sell our land at the price of \$65,000 (Ringgit Sixty five thousand only) per acre on our behalf.

In the High Court

No. 4

Exhibit 1 -
Option

4th November
1975

continued

Exhibit 2 -
Authority to sell

4th November
1975

In the High Court

No. 4
Exhibit 2 -
Authority to sell
4th November
1975
continued

Signed by SIN KOI @)
SIN TAI HOI (f) as the)
sole surviving trustee)
of the estate of)
YONG AH KAU @)
YONG KIM LOONG (deceased))

Sgd. In vernacular

Signed by LOH YOKE LAN (f))
as the trustee of the)
estate of YONG KIM FOE @)
YONG SIK KAW (deceased))

Sgd. In vernacular

10

Signed by YOUNG KIM POW)
as the surviving trustee of)
the estate of YONG NGUK PEOW)
@ YONG YOKE PEOW @)
YONG YOKE PIOW (deceased))

Sgd. In vernacular

Dated on 4th November 1975.

This is the Exhibit marked "YKC-2"
referred to in the Affidavit of Yong
Kah Chin affirmed by me this 23rd
day of August 1977

20

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

EXHIBIT 3 - LETTER, HARRY TONG LEE HWA TO
K.C. YONG

In the High Court

No. 4

HARRY TONG LEE HWA
Chairman & Managing Director
CHI LIUNG GROUP OF COMPANIES
Address: 30-32, Jalan Susur/Jalan Sireh,
Off Persiaran Tengah, Kelang
Tel: 391324, 391526, 391144, 391192, 391126, 391221

Exhibit 3 -
Letter, Harry
Tong Lee Hwa
to K.C. Yong
29th April 1975

Our Ref: MD/P/165/75

Date: 29th April 1975

10 Mr. K.C. Yong,
No. 9 Sultan Lane,
KUALA LUMPUR.

Dear Sir,

Land held under Lot Nos. 5927, 737, 738
741, 742, 743 & 745, Mukim of Kelang.
(Along Jalan Telok Gadong, Kelang.)

I refer to your letter of 22nd April 1975 and wish to remind you that all our previous dealings on the above properties had been a failure.

20 However, in view of the situation as stated in your letter and hoping that I could assist on the matter, I am prepared to reconsider. My offer for the above properties is at \$55,000/- (Dollars: Fifty-five thousand only) per acre on the terms and conditions to be set out by me.

If you can get the properties on the said price, then we may look further into the matter.

Thank you.

Yours faithfully,

30

TONG LEE HWA

TLH/lk

This is the Exhibit marked "YKC-3"
referred to in the Affidavit of Yong
Kah Chin affirmed by me this 23rd
day of August 1977

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

In the High Court EXHIBIT 3 - LETTER, K. C. YONG TO TONG LEE HWA

No. 4

REGISTERED

Exhibit 3 -

Letter, K.C.
Yong to Tong Lee
Hwa

22nd April 1975

Mr. Tong Lee Hwa,
30/32 Jalan Sireh
(Off Persiaran Tengah)
Kelang.

Mr. K.C. Yong,
9 Sultan Lane,
Kuala Lumpur.

Tel.No. 206578

22.4.1975

Dear Mr. Tong,

Re: Jalan Telok Gadong properties
in the Mukim of Kelang

10

Referring to the proceeding for the deal of the above mentioned properties, if you are still interested for it, I will try my very best to secure for the lowest price and the best term for you.

Recently I understand that one of the most important Trustees (Old Lady, she is related to my mother) frequently fall sick. If anything unpleasant happens to her, the said properties will be frozen for another few years and might cause great trouble for the whole family. And hence will affect our dealings.

20

Please advice me your further instruction.

Thank you.

Yours faithfully,

(Mr. K.C. Yong)

EXHIBIT 4 - SUB-OPTION

In the High Court

No. 4

Exhibit 4 - Sub-
option6th November
1975

I, YONG KAH CHIN, I/C No. 2982713 of No. 9, Sultan Lane, Kuala Lumpur, holder of an option to Lot Nos: 5927, 737, 738, 741, 742, 743 and 745, Mukim of Klang valid from 4th November 1975 to 8th November 1975 from the legal owners of the above lands (Yong Yoke Lin & Others), do hereby give the sub-option to Mr. Tong Lee Hwa or his nominees for the sale of the lands of the even date.

10 The above sale shall be subject to the price of \$65,000 (Dollars: Sixty-five thousand only) per acre and the terms and conditions which will be incorporated in a formal agreement to be executed by the vendors and the purchaser or purchasers.

(Sgd.) YONG KAH CHIN

Dated this 6th day of November 1975

20

This is the Exhibit marked "YKC-4" referred to in the Affidavit of Yong Kah Chin affirmed by me this 23rd day of August 1977

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

In the High Court

EXHIBIT 5 - COMMISSION UNDERTAKING

No. 4

Exhibit 5 -
Commission
Undertaking

6th November
1975

HARRY TONG LEE HWA
Chairman & Managing Director
CHI LIUNG GROUP OF COMPANIES
Address: 30-32, Jalan Susur/Jalan Sireh,
Off Persiaran Tengah, Kelang
Tel: 391324, 391526, 391144, 391192, 391126, 391221

Date 19

I, TONG LEE HWA, of No. 30-32 Jalan Susur/
Jalan Sireh, Off Persiaran Tengah, Klang, do hereby
give an undertaking to Mr. Yong Kah Chin of No. 9,
Sultan Lane, Kuala Lumpur, that upon the sale of the
properties on Lot Nos: 5927, 737, 738, 741, 742, 743
and 745, Mukim of Klang and upon execution of a formal
agreement and upon the sale being successful between
the Vendors and the Purchaser or Purchasers to me or
my nominee or nominees, a commission of 6½% (Six and
a half percent) of the total consideration of the sale price
will be paid accordingly.

10

(Sgd.) TONG LEE HWA

20

Dated this 6th day of November 1975

This is the Exhibit marked "YKC-5"
referred to in the Affidavit of Yong
Kah Chin affirmed by me this 23rd
day of August 1977

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

EXHIBIT 6 - LETTER, THARU & CO. TO
S. M. YONG & CO.

In the High Court

No. 4

Exhibit 6 -
Letter, Tharu &
Co. to S.M.
Yong & Co.

7th November
1975

T. THARU & COMPANY
Peguam Sadan Peguamcara
Advocates & Solicitors

Commissioners for Oaths
Pesuruhjata Sumpah

T. THARU MAGNANAM
(Bar-At-Law Middle Temple)

AHMAD MOOSDEEN
(LL. B. (Hons) S'pore)

10

Surat Tuan: JH/SS/C281/155/75

Surat Kami: TT/146/74

Date 7th November 1975

Messrs. S.M. Yong & Co.,
Advocates & Solicitors,
No. 52, Jalan Klyne,
(1st Floor),
Kuala Lumpur.

BY HAND

Dear Sirs,

20

re: Purchase of lands held under Lot 5927, 737, 738,
741, 742, 743 & 745 all in the Mukim of Klang

We act on behalf of Madam Chong Mui Lan of Kuala Lumpur who has instructed us to write to your good-office with regards to the purchase of the above-mentioned properties.

30

Our client is in receipt of an Option dated 4th November 1975 granted by Messrs. Yong Yoke Lin and others (the registered owners of the said lands) to one, Mr. Yong Kah Chin of Kuala Lumpur for the sale of the abovementioned lands. The price stated therein is at the rate of \$65,000/- per acre. We, therefore, have instructions from our client to write and confirm with your good-office that she intends to hereby exercise the aforesaid Option on the terms set out therein to purchase all that lands held under Lot 5927, 737, 738, 741, 742, 743 and 745 all in the Mukim

In the High Court

No. 4

Exhibit 6 -
Letter, Tharu &
Co. to S.M.
Yong & Co.

7th November
1975

continued

of Klang, at the price of \$65,000/- per acre. Would your good-office therefore kindly inform your good-clients i.e. the registered owners of the aforesaid lands of our client's acceptance.

We would prepare the Sale & Purchase Agreement and forward the same to you for your perusal.

Kindly acknowledge receipt by signing the duplicate copy of this letter.

Yours faithfully,

THARU & CO.

10

c. c. Client. This is the Exhibit marked "YKC-6" referred to in the Affidavit of Yong Kah Chin affirmed by me this 23rd day of August 1977

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

Exhibit 7 -
Confirmation
of Commission
6th July 1976

EXHIBIT 7 - CONFIRMATION OF COMMISSION

Kuala Lumpur

20

6th July, 1976

Madam Ooi Lay Lee &
Mr. Yong Kah Chin
Kuala Lumpur

We hereby confirm that both of you namely, Yong Kah Chin and Madam Ooi Lay Lee are the brokers who effected the sale of the lands held under E.M.R. Nos. 8292, 4367, 4366, 4365, 4369, 6851 and 1230 for Lots Nos. 737, 738, 742, 741, 745, 5927 and 746 respectively all in the Mukim of Klang to Chong Mooi Lan (f) and that we will pay to each of you one per centum (1%) of the purchase price as commission if and when the said sale

30

is completed and we have received the full purchase price therefor.

In the High Court

No. 4

Yours faithfully,

CHONG YOU (f)

YONG YOKE LIN

Exhibit 7 -
Confirmation of
Commission

6th July 1976

continued

This is the Exhibit marked "YKC-7"
referred to in the Affidavit of Yong
Kah Chin affirmed by me this 23rd
day of August 1977

10

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

EXHIBIT 8 - RECEIPT

OFFICIAL RECEIPT

Exhibit 8 -
Receipt

29th December
1976

Re: Properties Lot Nos. 5927, 737, 738, 741, 742, 745
& 746, all in Mukim of Klang

20

Received from Mr. Yong Yoke Lin and Madam Chong
You (acting for all the vendors of the above mentioned
properties) the sum of M\$4,387.50 (four thousand three
hundred & eighty seven Ringgit & cents fifty only) on Lee
Wah Bank, Kuala Lumpur cheque No. 106252 dated
29/12/76 being part payment of broker's commission of
1% (one percentage) of the total amount of the sales price
of the above mentioned properties.

Dated on 29/12/76

(Sgd.) YONG KAH CHIN.

30

This is the Exhibit marked "YKC-8"
referred to in the Affidavit of Yong
Kah Chin affirmed by me this 23rd
day of August 1977

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

In the High Court

EXHIBIT 9 - RECEIPT

No. 4

Exhibit 9 -
Receipt

OFFICIAL RECEIPT

30th May 1977

Re: Properties Lot Nos. 5927, 737, 738, 741, 742, 745 &
746, all in Mukim of Klang

Received from Mr. Yong Yoke Lin and Madam Chong You (acting for all the vendors of the above mentioned land properties) the sum of M\$10,237.50 (ten thousand two hundred & thirty seven Ringgit & cents fifty only) on Lee Wah Bank, Kuala Lumpur cheque No. 106529 dated 30/5/1977 being final payment of broker's commission of 1% (one percentage) of the total amount of the sale price of the above mentioned land properties.

10

(Sgd.)

Mr. Yong Kah Chin.

Dated on 30/5/1977

This is the Exhibit marked "YKC-9" referred to in the Affidavit of Yong Kah Chin affirmed by me this 23rd day of August 1977

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

20

No. 5

In the High Court

AFFIDAVIT OF EDMUND YONG JOON HONG

No. 5

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

Affidavit of
Edmund Yong
Joon HongCIVIL SUIT NO. 2131 OF 197721st September
1977

B E T W E E N :

TONG KAH CHIN

Plaintiff

- and -

HARRY TONG LEE HWA

DefendantA F F I D A V I T

10 I, EDMUND YONG JOON HONG, of full age, a Malaysian citizen of No. 52, Jalan Klyne, Kuala Lumpur, affirm and state as follows :-

1. I am an advocate and solicitor of the High Court in Malaya, and practice under the name of Syarikat Dato' SM. Yong.

20 2. In November 1974, I was retained by the owners of lands held under E.M.R. Nos. 8292, 4367, 4366, 4365, 4369, 6851 and 1230 for Lots Nos. 737, 738, 742, 741, 745, 5927 and 746 respectively in the Mukim of Klang (hereinafter referred to as "the said lands") as their solicitors to attend on them on the sale of the said lands.

3. On 7th November 1975, I received a letter from a firm of Solicitors known as T. Tharu & Co. of Bangunan Oriental Plaza, 5th Floor, Jalan Parry, Kuala Lumpur, written in their capacity as Solicitors for one Madam Chong Mui Lan. By this letter, the said Madam Chong Mui Lan exercised an option given to the Plaintiff by the registered owners of the said lands. Annexed hereto and marked "YJH-1" is a copy of the said letter.

30 4. On 12th November 1975, I received another letter from the same firm of solicitors, providing the terms of payment of the purchase price for the said lands.

In the High Court

No. 5

Affidavit of
Edmund Yong
Joon Hong

21st September
1977

continued

Annexed hereto and marked "YJH-2" is a copy of the said letter.

5. On 13th November 1975, I wrote a letter confirming that my clients were prepared to sell the said lands at \$65,000/- per acre on terms and conditions agreeable to them. Annexed hereto and marked "YJH-3" is a copy of the said letter.

6. On 3rd March 1976, a Sale and Purchase Agreement was entered into between my clients and the said Madam Chong Mui Lan, for the purchase of the said lands. Annexed hereto and marked "YJH-4" is a copy of the said Agreement.

10

7. The total consideration paid to my clients as purchase price is in the sum of \$1,462,500/-.

8. I confirm that the sale of the said lands to the said Madam Chong Mui Lan was as a result of the exercise of an option given to the Plaintiff on the 4th of November 1975 as stated in the letter exercising the option (YJH-1). At the request of my clients I wrote a letter dated 8th June 1977 to one Mr. Harry Tong Lee Hwa the husband of the said Madam Chong Mui Lan notifying him that my clients did give an option to the Plaintiff and that the sale of the said lands was as a result of exercise of the option granted to the Plaintiff herein. Annexed hereto and marked "YJH-5" is a copy of the said letter.

20

AFFIRMED at Kuala Lumpur,)
this 21st day of September,)
1977 at m.)

Before me,

Commissioner for Oaths.

30

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

EXHIBIT 2 - LETTER, THARU & CO. TO S.M. YONG & CO.

In the High Court

No. 5

T. THARU & COMPANY
Peouambena Dan Peguamcara
Advocates & Solicitors

Exhibit 2 -
Letter, Tharu
& Co. to S.M.
Yong & Co.

Commissioners for Oaths
Pesuruhjaya Sumpah

12th November
1975

T. THARU MAGNANAM
(Bar-at-Law, Middle Temple)
AHMAD MOOSDEEN
(LL. B. (Hons.) S'pore)

10

Surat Tuan: JH/SS/C281/155/75

Surat Kami: TT/146/74

Date: November 12, 1975.

Messrs. Dato' S.M. Yong & Co.
Advocates & Solicitors
52 Jalan Klyne (1st Floor)
Kuala Lumpur

BY HAND

Dear Sirs,

Purchase of lands held under Lot 5927, 737, 738,
741, 742, 743, & 745 all in the Mukim of Klang

20 We refer to our letter dated 7th November 1975 and to the telephone conversation between your Mr. Edmond Yong and our Mr. T. Tharu of the same date wherein it was confirmed that your clients have agreed to sell the abovementioned properties at the price of \$65,000.00 per acre.

We now have instructions from our client to append below the terms of payment as follows :-

30 (a) 10% by way of deposit and part payment upon execution of the Sale & Purchase Agreement to be held by your good offices as stakeholders and to be released upon obtaining the Court's approval or approvals for the sale of the said properties free from all encumbrances.

In the High Court

No. 5

Exhibit 4 -
Agreement
Chong You and
Others to Chong
Mooi Lan

3rd March 1976

continued

(hereinafter called "the Vendors") of the one part AND
CHONG MOOI LAN (f) (I/C No. 1476769) of No. 25,
Jalan Ru 7/1, Petaling Jaya (hereinafter called "the
Purchaser") of the other part

WHEREAS :

(1) The registered proprietors of the seven (7) pieces
of land more particularly described in the Schedule
hereto (hereinafter called "the said lands") are the
persons set out in the said Schedule;

(2) Yong Ah Kau @ Yong Kim Loong died on the 12th day
of September, 1965, and a Grant of Probate of his
estate was issued by the High Court at Kuala Lumpur
to Sin Koi @ Sin Tai Hoi (f) and Yong Kim Foo on the
5th day of July, 1967, and

10

The said Yong Kim Foo died on the 14th day of May,
1972 leaving the said Sin Koi @ Sin Tai Hoi (f) the
sole surviving trustees of the estate of Yong Ah Kau
@ Yong Kim Loong, deceased;

(3) Yong Kim Foe @ Ying Sik Kaw died on the 14th day
of May, 1972, and a Grant of Probate of his estate
was issued by the High Court at Kuala Lumpur to
Loh Yoke Lan (f) and Yong Yoke Lin on the 12th day
of July, 1974;

20

(4) Yong Nguk Peow @ Yong Yoke Peow @ Yong Yoke
Piow died on the 28th day of November, 1971, and a
Grant of Probate of his estate was issued by the High
Court at Kuala Lumpur to Chong You, Yong Kim Foe
and Young Kin Pow on the 27th day of October, 1972,
and

The said Yong Kim Foe died on the 14th day of May,
1972 leaving the said Chong You and Young Kim Pow
the surviving trustees of the estate of Yong Nguk Peow
@ Yong Poue Peow @ Yong Yoke Piow, deceased;

30

(5) The Vendors have agreed to sell and the Purchaser
has agreed to purchase the said lands at the price
and on the terms and conditions herein contained;

NOW THIS AGREEMENT WITNESSETH as follows:-

1. The Vendors hereby agree to sell and the Purchaser hereby agrees to purchase the said lands together with all buildings erected thereon (if any) free from all charges and encumbrances but without vacant possession and subject to all conditions of title whether express or implied at the agreed price of \$1,462,500 (Dollars one million four hundred and sixty-two thousand five hundred) payable in manner hereinafter provided and on the terms and conditions herein contained.

In the High Court

—
No. 5

Exhibit 4 -
Agreement
Chong You and
Others to Chong
Mooi Lan

3rd March 1976

continued

10 2. The purchase price of \$1,462,500 shall be paid by the Purchaser to the Vendors as follows :-

(a) Ten per centum (10%) of the purchase price amounting to \$146,250 (Dollars one hundred and forty-six thousand two hundred and fifty) shall be paid by the Purchaser to the Vendors' solicitors Messrs. Dato' S.M. Yong & Co., of No. 52, Jalan Klyne, Kuala Lumpur, on or before execution of this agreement (the receipt whereof the Vendors hereby acknowledge) to be dealt with by the Vendors' said solicitors in
20 manner hereinafter provided

(b) A further twenty per centum (20%) of the purchase price amounting to \$292,500 (Dollars two hundred and ninety-two thousand five hundred) shall be paid by the Purchaser to the Vendors' said solicitors four (4) months after the date of this agreement or upon the Vendors obtaining all necessary Court Orders approving the sale of the said lands whichever date shall be the later. On the date when such 20% becomes payable under this Clause whether such payment has actually been made or not, the 10% paid under Clause 2(a) hereof shall be paid out by the Vendors' said solicitors to the Vendors in such shares as the Vendors may at their absolute discretion decide. The 20% paid under this Clause shall likewise be immediately paid out by the Vendors' said solicitors to the Vendors in such shares as the Vendors may at their absolute discretion decide
30

(c) The balance of seventy per centum (70%) of the purchase price amounting to \$1,023,750 (Dollars one million twenty-three thousand seven hundred and fifty) shall be paid by the Purchaser to the Vendors' said solicitors nine (9) months after the date of this
40

In the High Court

—
No. 5

Exhibit 4 -
Agreement
Chong You and
Others to Chong
Mooi Lan

3rd March 1976

continued

agreement or five (5) months after the Vendors shall have obtained all necessary Court Orders approving the sale of the said lands whichever date shall be the later. The 70% paid under this Clause shall be released by the Vendors' said solicitors to the Vendors in such shares as the Vendors may at their absolute discretion decide one week after the Vendors shall have delivered to the Purchaser the documents mentioned in Clause 3 hereof

3. Provided that the Purchaser shall have paid the purchase price in full in accordance with Clause 2 hereof and shall have paid all other moneys payable under this agreement, the Vendors shall execute valid and registrable transfers of the said lands in favour of the Purchaser and deliver the same to the Purchaser together with the issue documents of title to the said lands, the necessary Court Orders and all other documents necessary to effect transfers of the said lands in favour of the Purchaser free from all charges and encumbrances. The Vendors shall at the same time deliver possession of the said lands to the Purchaser but subject to the rights of the tenants and other occupiers thereof (if any) 10
4. The Vendors shall as soon as possible after execution of this agreement deliver to the Purchaser a list of all persons who are to their knowledge in occupation of the said lands whether as tenants or otherwise but any failure or omission on the part of the Vendors to furnish a complete list shall not entitle the Purchaser to rescind this agreement 20
5. If for any reason whatsoever the Purchaser shall be in default of any of the provisions of Clause 2 hereof, the Vendors may, at any time after such default, by notice in writing, terminate this agreement. In such event the 10% of the purchase price paid under Clause 2(a) hereof shall be forfeited to the Vendors absolutely and no part thereof shall be refundable to the Purchaser. All other sums paid by the Purchaser under Clause 2 hereof up to the date of such termination shall be refunded to the Purchaser and this agreement shall be null and void and of no further effect and the Vendors shall be at liberty to sell or otherwise deal with the said lands as they may think fit 30 40
6. As soon as possible after execution of this agreement:-

- (a) SIN KOI @ SIN TAI HOI (f) as the sole surviving trustee of the estate of YONG AH KAU @ YONG KIM LOONG, deceased shall apply to Court for leave to sell all the estate's share in the said lands to the Purchaser
- (b) LOH YOKE LAN (f) and YONG YOKE LIN as trustees of the estate of YONG NGUK PEOW @ YONG YOKE PEOW @ YONG YOKE PIOW, deceased, shall apply to Court for leave to sell the estate's share in the said lands to the Purchaser and
- (c) CHONG YOU (f) and YOUNG KIM POW as the surviving trustees of the estate of YONG KIM FOE @ YING SIK KAW, deceased, shall apply to Court for leave to sell the estate's share in the said lands to the Purchaser

In the High Court

 No. 5
 Exhibit 4 -
 Agreement
 Chong You and
 Others to Chong
 Mooi Lan
 3rd March 1976
 continued

10

and on the above parties obtaining the Court's leave they agree to forthwith notify the Purchaser of the same

20

7. If for any reason whatsoever any of the applications mentioned in Clause 6 hereof is refused or not granted by the Court the Vendors shall forthwith notify the Purchaser of the same and the 10% of the purchase price paid under Clause 2(a) hereof shall immediately be refunded to the Purchaser and this agreement shall thereupon become null and void and of no further effect

30

8. If having obtained all the necessary leave of the Court, the Vendors refuse or any of them refuses to execute and effect transfers of the said lands to the Purchaser pursuant to Clause 3 hereof the Purchaser shall be at liberty to institute legal proceedings against the Vendors or any of them for either the recovery of all sums paid by the Purchaser to the Vendors under this agreement or for specific performance of this agreement

40

9. The Vendors hereby confirm and stipulate that they have not received any notice of intended acquisition of the said lands or any part or parts thereof and are not aware of any competent authority requiring the same to be acquired or surrendered. In any event if the Government or any other authority having power in that behalf acquires the said lands or any part or parts thereof for any purpose

In the High Court

No. 5

Exhibit 4 -
Agreement
Chong You and
Others to Chong
Mooi Lan
3rd March 1976
continued

whatsoever between the date of this agreement and the date when the Purchaser shall be registered as the proprietor of the said lands such acquisition shall not vitiate or annul the sale evidenced by this agreement nor shall the Purchaser be entitled to any reduction of the purchase price reserved herein but save as provided in Clause 10 hereof this agreement shall continue to bind the Vendors and the Purchaser as if such acquisition had not taken place. The Vendors undertake to notify the Purchaser of any acquisition proceedings served on them or any of them and authorise the Purchaser to exclusively negotiate with the Government or other acquiring authority in connection with such acquisition proceedings and the Purchaser shall be entitled to all compensation awarded by the Government or other acquiring authority for the acquisition

10

10. In the event that the Government or other authority having power in that behalf acquires the said lands or any part or parts thereof by publication in the Gazette of a notification under Section 4 or 8 of the Land Acquisition Act, 1960 then the Purchaser shall be entitled to make the payment under Clause 2(c) twelve (12) months after the date of this agreement or eight (8) months after the Vendors shall have obtained all necessary Court Orders approving the sale of the said lands whichever date shall be the later

20

11. Provided that the Purchaser shall not be in default of any of the terms and conditions of this agreement the Vendors shall upon the written request of the Purchaser and subject to the Purchaser indemnifying the Vendors against all costs, expenses and all other consequences whatsoever arising therefrom sign all plans, applications for planning approval and construction of roads, etc. and other documents which the Purchaser may consider necessary or desirable for the Purchaser's intended development of the said lands

30

12. All quit rents assessments and other outgoings in respect of the said lands shall be apportioned between the Vendors and the Purchaser as at the date when the Purchaser shall have paid the full purchase price for the said lands in accordance with Clause 2 hereof and any amount due by one part to the other shall be paid forthwith. Provided that all costs and other expenses

40

whatsoever for the construction of the monsoon drain as mentioned in a letter dated the 26th day of December, 1974 from Majlis Bandaran, Kelang and bearing reference (37) dlm. MBK(JB) 208/73 (a copy of which is annexed hereto) shall be borne and paid by the Purchaser and if any part or parts of such costs or other expenses has been or is hereafter paid by the Vendors or any of them then such part or parts shall be repaid by the Purchaser to the Vendors immediately on demand by the Vendors. The Vendors shall deliver to the Purchaser all receipts issued by the appropriate authorities in respect of which apportionments and repayments are hereby made

10

13. All costs of this agreement and the subsequent transfers, including stamping and registration fees and Vendors' and Purchaser's Solicitors' scale costs shall be borne and paid by the Purchaser save that all costs for obtaining the necessary Court Orders shall be borne and paid by the Vendors

20

14. The Vendors hereby authorise the Purchaser her agents and employees to enter upon the said lands for the purpose of viewing and surveying the same and to undertake works incidental thereto

15. Any notice required to be given under this agreement shall be served at the respective addresses above given and shall be deemed to be duly served in due course of post if the same is sent by registered post

16. Time wherever mentioned in this agreement shall be of the essence of the contract

30

17. This agreement shall be binding on the heirs personal representatives and assigns of both parties

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

SIGNED by the said CHONG YOU (f)) Sgd. In Vernacular
in the presence of :-)

K.C. YONG

In the High Court

No. 5

Exhibit 4 -
Agreement
Chong You and
Others to Chong
Looi Lan

3rd March 1976

continued

In the High Court

 No. 5

SIGNED by the said YONG NGEOK)
 LIN @ YONG NYOOK LIN @ YONG) Sgd. In Vernacular
 YOKE LIN in the presence of :-)

Exhibit 4 -
 Agreement
 Chong You and
 Others to Chong
 Looi Lan

Advocate & Solicitor
 Kuala Lumpur.

3rd March 1976
 continued

SIGNED by the said SIN KOI @ SIN)
 TAI HOI (f) as the sole surviving)
 trustee of the estate of YONG AH) Sgd. In Vernacular
 KAU @ YONG KIM LOONG) 10
 deceased in the presence of :-)

K. C. YONG

SIGNED by the said LOH YOKE)
 LAN (f) and YONG YOKE LIN as)
 the trustees of the estate of) Sgd. In Vernacular
 YONG KIM FOE @ YING SIK KAW)
 deceased, in the presence of :-)

Advocate & Solicitor
 Kuala Lumpur.

20

SIGNED by the said CHONG YOU)
 (f) and YOUNG KIM POW as the)
 surviving trustees of the estate of) Sgd. In Vernacular
 YONG NGUK PEOW @ YONG YOKE)
 PEOW @ YONG YOKE PIOW)
 deceased in the presence of :-)

K. C. YONG

SIGNED by the said CHONG MOOI) CHONG MOOI LAN
 LAN (f) in the presence of :-)

T. THARUMAGNANAM,
 Advocate & Solicitor,
 Kuala Lumpur.

30

SCHEDULE OF LANDS

In the High Court

(All in the Mukim of Klang)

No. 5

<u>EMR No.</u>	<u>Lot No.</u>	<u>Area</u>	<u>Proprietors</u>	Exhibit 4 - Agreement Chong You and Others to Chong Looi Lan 3rd March 1976 continued
8292	737	6a. 2r. 20p	Yong Kim Loong, dec'd (1/3) Yong Kim Foe, dec'd (1/3) Chong You (f) (1/3)	
4367	738	2a. 1r. 20p	Yong Kim Loonge, dec'd (1/3) Yong Kim Foe, dec'd (1/3) Chong You (f) (1/3)	
10 4366	742	4a. 1r. 20p	Yong Kim Loong, dec'd (1/3) Yong Kim Foe, dec'd (1/3) Chong You (f) (1/3)	
4365	741	2a. 1r. 05p	Yong Ngeok Lin	
4369	745	2a. 0r. 05p	Yong Ngeok Lin	
6851	5927	2a. 3r. 02p	Yong Yoke Piow, dec'd	
1230	746	2a. 0r. 08p	Yong Nyook Lin	

20

This is the Exhibit marked "YYH-4"
referred to in the Affidavit of
Edmond Yong Joon Hong affirmed
by me this day of August 1977

Commissioner for Oaths.

In the High Court

EXHIBIT 5 - LETTER, S.M. YONG TO HARRY
TONG LEE HWA

No. 5

Exhibit 5 -
Letter, S.M.
Yong to Harry
Tong Lee Hwa
8th June 1977

SYARIKAT DATO' S.M. YONG Peguam2Bela Dan Peguam2Cara YONG JOON HONG, M.A., LL.B. (Cantab.) Barrister-at-Law (England) Talipon No. 80122	52, Jalan Klyne, (First Floor) Kuala Lumpur 01-21 Malaysia 8th June, 1977
--	---

When replying please quote our Reference
 Our Ref. JH/SS/Y165/411/77 10
 Your Ref.

Mr. Harry Tong Lee Hwa,
 30-32, Jalan Susur/Jalan Sireh,
 off Pessiaran Tengah,
 Klang.

Dear Sir,

E.M.R.Nos. 8292, 4367, 4366, 4365, 4369, 6851
 and 1230 for Lots Nos. 737, 738, 742, 741, 745,
5927 and 746 respectively, Mukim of Klang.

We have received a copy of Mr. Yong Kah Chin's 20
 letter to you dated 7.6.77 on the subject of purchaser's
 commission payable by you to him on the sale of the above
 lands.

The Vendors of the said lands confirm that they did
 give an option to Mr. Yong Kah Chin to sell the said lands
 and that as a result of that option the said lands were sold
 to your nominee Madam Chong Mooi Lan (your wife).

As the sale of the above lands has been completed
 please pay to Mr. Yong Kah Chin the commission of $6\frac{1}{2}\%$ of 30
 the total purchase price. The total purchase price was
 \$1,462,500 and the commission amounts to \$95,062.50.

Yours faithfully,
 (Sgd.) Illegible.

cc to: Mr. Yong Kah Chin.

This is the Exhibit marked "YYH-5"
 referred to in the Affidavit of
 Edmond Yong Joon Hong affirmed
 by me this day of August 1977

Commissioner for Oaths.

No. 6

In the High Court

AFFIDAVIT OF HARRY TONG LEE HWA

No. 6

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

Affidavit of
Harry Tong Lee
HwaCIVIL SUIT NO. 2131 OF 1977

5th October 1977

B E T W E E N :

YONG KAH CHIN

Plaintiff

- and -

HARRY TONG LEE HWA

DefendantAFFIDAVIT - IN - REPLY

10 I, Harry Tong Lee Hwa, Malaysian Citizen of full age and residing at No. 1, Solok Loyang, Off Jalan Melawis, Klang, Selangor, affirm and state as follows :-

1. I am the Defendant abovenamed.

2. I have read the Affidavit filed by the Plaintiff and Mr. Edmond Yong Joon Hong in support of the Summons-In-Chambers dated 25th day of August, 1977, in respect of the aforesaid Civil Suit seeking for final judgment. I aver the contents set out in the said Affidavit in support of the validity of option are perverted and not true.

20 3. The alleged option held by the Plaintiff was inherently defective i. e. the option was not given by all the owners of the said land referred in para 2 of the Plaintiff's Affidavit, photo copies of the Title Deeds are annexed and marked as exhibits A1, A2, A3, A4, A5, A6 and A7 and they would be referred to at the hearing.

4. Further the alleged option was jointly held by the Plaintiff and another female Madam Ooi Lay Lee and the Plaintiff sub-option was given without the consent of the joint holder.

30 5. I was misled by the Plaintiff to believe that he was the holder of a genuine option and I in good faith accepted the sub-option with reservation as to price per acre vide

In the High Court

 No. 6

Affidavit of
 Harry Tong Lee
 Hwa
 5th October 1977
 continued

Plaintiff's exhibit YKC-4 and gave a letter of undertaking based on it dated 6th day of November 1975 vide Plaintiff's exhibit YKC-5.

6. On the 7th day of November, 1975, I instructed my then Solicitors Messrs. Tharu & Co., to exercise the said option on behalf of my nominee Madam Chong Mooi Lan and my said Solicitors accordingly wrote a letter on the said date requesting the acknowledgment and acceptance of the option to the Vendor Solicitors S.M. Yong & Co. but the said letter exhibit marked "B" was returned to my Solicitors refusing to accept the option saying that it was not a genuine option, in return my Solicitors sent me a letter dated 10th November, 1975 informing me of the same, vide exhibit marked as "C".

10

7. Thereafter the Sale Agreement in respect of the said land was entered into as a result of fresh negotiations and did not arise at all as a result of the exercise of option, subsequent letters that transpired between my Solicitors Messrs. Tharu & Co. and Vendor's Solicitors Syarikat S.M. Yong & Co. and the agreement of Sale itself would prove this point that mention of option was ever mentioned in these documents.

20

8. At all material time, I was only prepared to pay a price of \$55,000/- (Dollars Fifty-five thousand) per acre exclusive of commission, since the option was rejected by the Vendor's Solicitors as not genuine and I was under no obligation to pay the Plaintiff his commission for failure of consideration, in the circumstances I accepted the price per acre at \$65,000/-.

9. I was surprised to receive a letter from the Vendor's Solicitors dated 8th June, 1977 acting on behalf of the Plaintiff demanded commission of \$95,002.50 as Plaintiff's commission, on receipt of this letter I instructed my Solicitors Messrs. G.T. Rajan & Co. to reply to this, when this demand was challenged, Syarikat S.M. Yong denied acting for the Plaintiff.

30

Letters exchanged between my Solicitors and Syarikat S.M. Yong marked as D1, D2, D3, D4, D5 would prove that the Solicitors for the Vendors in fact were evasive when asked to confirm the contents of exhibit C above.

40

10. This is a case where the Defendant as Purchaser is being subject to demand of double commission.

In the High Court

No. 6

11. I annex the aforesaid Civil Suit proceedings as exhibit "E" and the Defence set out are triable issues of facts and law, without a trial and without cross-examination as to the credibility of witnesses, grave injustice would be caused.

Affidavit of
Harry Tong Lee
Hwa

5th October 1977

12. I aver the Plaintiff is desirous of taking short cut judgment, in fear, should the case go for trial the Plaintiff's claim would be proved as sham.

continued

10

13. I therefore humbly pray that the application for final judgment be dismissed with costs and the case be set down for hearing.

AFFIRMED at Klang by Tong)
Lee Hwa this 5th day of) Sgd. Tong Lee Hwa
October, 1977 at 4.00 p.m.)

Before me,

Sgd. David Anthony

Commissioner for Oaths.

20 This Affidavit-In-Reply is filed by M/s. G.T. Rajan & Co., Solicitors for the Defendant whose address for service is at No. 17, Jalan Sultan, Kelang, Selangor.

In the High Court

No. 6

Exhibit C -
Letter, Tharu
& Co. to Chang
Mui Lan10th November
1975EXHIBIT C - LETTER, THARU & CO. TO
CHANG MUI LANT. THARU & COMPANY
Peguambela Dan Peguamcara
Advocates & SolicitorsCommissioners for Oaths
Penuruhjata SumpahT. THARU MAGNANAM
(Bar-at-Law Middle Temple)AHMAD MOOHDEEN
(LL. B. (Hons.) S'pore)

10

Surat Tuan:

Surat Kami: TT/146/74

Date: 10th November 1975

Madam Chong Mui Lan,
No. 25, Jalan Ru 7/1,
Petaling Jaya.By HandURGENT

Dear Madam,

re: Purchase of Land held under Lot Nos. 5927, 737, 738,
741, 742, 743 & 745 all in the Mukim of Klang

We refer to your instructions with regards to the above-mentioned matter and enclose herewith a copy of the letter exercising the option which was sent to the Vendors' Solicitors, Messrs. S.M. Yong & Co. Mr. Edmond Yong of Messrs. S.M. Yong & Co., upon receipt of this letter refused to acknowledge receipt and spoke to our Mr. Tharu informing him that the purported option given to Mr. Yong was not a genuine option.

20

In any event, in view of the fact that he had the proper parties with him at the time, he was able to seek their confirmation that they are prepared to sell the said properties at the purchase price of \$65,000/- per acre. He has, therefore, requested us to let him have the terms of payment and other terms of the agreement so that he could get firm instructions from his clients.

30

We await your early instructions to proceed further in this matter.

Yours faithfully,

THARU & CO.

This is the Exhibit marked "C"
referred to in the Aff. -In-Reply of
Mr. Harry Tong Lee Hwa dated the
day of 1977

40

Enc.

tt/jw.

Registrar
Magistrate

A Commissioner for Oaths.

EXHIBIT D2 - LETTER, G. T. RAJAN & CO.
TO S. M. YONG

In the High Court

No. 6

JS/SS/Y165/411/77
GTR/BN/77

17th June, 1977

Exhibit D2 -
Letter, G.T.
Rajan & Co. to
S.M. Yong

17th June, 1977

A.R. REGISTERED

Syarikat Dato' S. M. Yong,
Advocates & Solicitors,
52, Jalan Klyne, (First Floor),
KUALA LUMPUR, 01-21.

10 Dear Sirs,

Re: E.M.R. Nos. 8292, 4367, 4366, 4365, 4369, 6851 and
1230 for Lot Nos. 737, 738, 741, 742, 745, 5927 and
746 respectively, Mukim of Klang.

We act for Mr. Harry Tong Lee Hwa of No. 30-32, Jalan Sumur, Persiaran Tengah, Klang. Our client has handed over your letter dated 8th June, 1977 with instructions to reply thereto.

20 We are to inform you that the sale of the aforesaid land did not arise from the alleged option and you have confirmed the same when you spoke to our client's previous Solicitors M/s. Tharu & Co. that the alleged option was not genuine.

It now surprises our client that for reasons unknown you should now deem it fit to confirm that the said option is genuine.

In any event the transaction did not arise from the alleged option and at no material time the option was allowed to be exercised and further the said option was legally defective.

30 In the premises above your client's claim for commission is misconceived in law for failure of consideration, therefore it cannot be entertained.

Please note all further correspondence in respect of this

In the High Court matter are to be directed to us.

No. 6

Yours faithfully,

Exhibit D 2 -
Letter, G.T.
Rajan & Co. to
S.M. Yong

Sgd. Illegible
c.c. to client.

This is the Exhibit marked "D2"
referred to in the Affidavit-In-
Reply of Harry Tong Lee Hwa
dated the day of 1977

17th June, 1977

continued

Registrar

Magistrate

A Commissioner of Oaths.

Exhibit D3 -
Letter, S.M.
Yong to G.T.
Rajan & Co.

EXHIBIT D3 - LETTER, S.M. YONG TO
G.T. RAJAN & CO.

10

20th June 1977

SYARIKAT DATO' S.M. YONG
Peguam2Bela Dan Peguam2Cara

52, Jalan Klyne,
(First Floor),
Kuala Lumpur 01-21,
Malaysia.

YONG JOON HONG,
M.A. LL.B. (Cantab.)
Barrister-at-Law (England)

Talipon No. 80122

20th June, 1977

Our Ref. JH/SS/C281/467/77
Your Ref. GRR/BN/77

20

Messrs. G.T. Rajan & Co.,
Advocates & Solicitors,
No. 1A, Jalan Melayu (Top Floor),
Kelang, Selangor.

Dear Sirs,

Re: E.M.R. Nos. 8292, 4367, 4366, 4365, 4369,
6851 and 1230 for Lots Nos. 737, 738, 742, 741,
745, 5927 and 746 respectively, Mukim of Klang

We have just received your letter dated 17th June,
1977.

30

Please note that we are not acting for Mr. Yong Kah
Chin. We wrote the letter dated 8th June, 1977 to your

client because we received a copy of a letter from Mr. Yong Kah Chin to your client dated 7.6.77. We wrote to your client hoping to clear up the matter.

We must point out to you however that our Mr. Yong did not say that the sale did or did not arise from the alleged option nor did our Mr. Yong say that the alleged option was or was not genuine.

We checked with our clients, the Vendors of the lands, whether they had given an option to Mr. Yong Kah Chin. On receiving the Vendors' confirmation that they did we wrote to your client our letter of 8.6.77.

Please write to Mr. Yong Kah Chin direct.

Yours faithfully,

S.M. YONG.

This is the Exhibit marked "D3" referred to in the Aff. -In-Reply of Mr. Harry Tong Lee Hwa dated the day of 1977

Registrar
Magistrate

A Commissioner of Oaths.

EXHIBIT D4 - LETTER G.T. RAJAN & CO.
TO SM. YONG

JH/SS/C281/467/77
GTR/BN/866/77

27th June, 1977

CERTIFICATE OF POSTING

Syarikat Dato' S.M. Yong,
Advocates & Solicitors,
52, Jalan Klyne, (1st Floor),
KUALA LUMPUR 01-21.

Dear Sirs,

Re: E.M.R. Nos. 8292, 4367, 4366, 4365, 4369, 6851
and 1230 for Lots Nos. 737, 738, 742, 741, 745,
5927 and 746 respectively, Mukim of Klang.

We acknowledge receipt of your letter dated 20th June, 1977,

In the High Court

No. 6

Exhibit D3 -
Letter, S.M.
Yong to G.T.
Rajan & Co.

20th June 1977

continued

10

20

30

Exhibit D4 -
Letter, G.T.
Rajan & Co. to
S.M. Yong

27th June, 1977

In the High Court

No. 6

Exhibit D4 -
Letter, G.T.
Rajan & Co. to
S.M. Yong

27th June, 1977

continued

and we are surprised to hear from you that you are not acting for Mr. Yong Kah Chin, if that be the case could you please clarify who gave you the instructions to demand commission of 6½% from our client to be paid to Mr. Yong Kah Chin.

Mr. Tharu of Messrs. Tharu & Co., Klang categorically stated that you spoke to him and informed him that the purported option given to Mr. Yong Kah Chin was not a genuine option and you in fact had the proper parties to negotiate Sale Agreement.

10

We enclose a photostat copy of Messrs. Tharu & Co.'s letter dated 10th November, 1975 to our client which is self-explanatory, would you therefore confirm whether the contents of the said letter are true.

Yours faithfully,

(Sgd.) Illegible

c. c. to : (1) client.
(2) M/s. Tharu & Co.,
Advocates & Solicitors,
KLANG.

20

This is the Exhibit marked "D4"
referred to in the Affidavit-In-
Reply of Harry Tong Lee Hwa
dated the day of
1977.

Registrar
Magistrate

A Commissioner of Oaths.

EXHIBIT D5 - LETTER, S.M. YONG TO G.T. RAJAN & CO.

In the High Court

SYARIKAT DATO' S.M. YONG
Peguam2Bela Dan Peguam2Cara

52, Jalan Klyne,
(First Floor),
Kuala Lumpur 01-21,
Malaysia.

No. 6

YONG JOON HONG,
M.A. LL.B. (Cantab.)
Barrister-at-Law (England)

Exhibit D5 -
Letter, S.M.
Yong to G.T.
Rajan & Co.

Talipon No. 80122

29th June, 1977

29th June 1977

Our Ref. JH/SS/C281/610/77

10 Your Ref. GTR/BN/866/77

Messrs. G.T. Rajan & Co.,
Advocates & Solicitors,
No. 1A, Jalan Melayu (Top Floor),
Kelang, Selangor.

Dear Sirs,

Re: E.M.R. Nos. 8292, 4367, 4366, 4365, 4369, 6851 and
1230 for Lots Nos. 737, 738, 742, 741, 745, 5927
and 746 respectively, Mukim of Klang.

Thank you for your letter dated 27th June, 1977.

20 We have already explained to you that we are not acting
for Mr. Yong Kah Chin. Mr. Yong Kah Chin did not give us
any instructions and we did not demand any payment from
your client. Please read the last paragraph of our letter
dated 8th June, 1977.

We cannot confirm whether the contents of Messrs.
T. Tharu & Co.'s letter of 10th November, 1975 are true.

Our Mr. Yong was not happy about the option because
it was not signed by all the proprietors of the land but only
by 2 of them.

30 We have since checked with the proprietors of the said
land who have confirmed that the 2 said owners were
authorised by them to give the option.

Yours faithfully,

Sgd. Illegible.

This is the Exhibit marked "D5"
referred to in the Aff. -In-Reply
of Mr. Harry Tong Lee Hwa dated
the day of 1977.

Registrar
Magistrate

40

A Commissioner of Oaths.

In the High Court

No. 7

No. 7

AFFIDAVIT OF OOI LAY LEEAffidavit of Ooi
Lay Lee

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

10th October
1977CIVIL SUIT NO. 2131 OF 1977

BETWEEN :

YONG KAH CHIN

Plaintiff

- and -

HARRY TONG LEE HWA

DefendantA F F I D A V I T

I, OOI LAY LEE (f) a Malaysian citizen of full age,
and residing at No. 107 Jalan SS 2/2, Petaling Jaya, affirm
and state as follows :

10

1. I refer to the Affidavit of the Plaintiff herein filed on
23rd August 1977 and exhibit "YKC-1" attached thereto. I
am the Madam Ooi Lay Lee mentioned in the said option as
being entitled to receive 1% (one per cent) commission of
the total amount of the purchase price of the lands referred
to in the said option.

2. I also refer to paragraph 4 of the Affidavit of the
Defendant filed on 5th October 1977 in which the Defendant
stated that the sub-option to him by the Plaintiff was given
without my consent. The said sub-option, a copy of which
appears as exhibit "YKC-4" in the Plaintiff's Affidavit
affirmed on 23rd August 1977 was given by the Plaintiff
with my knowledge and with my consent.

20

3. I further confirm that the sale of the lands in question
to the Defendant by the Vendors was effected as a result of
the option granted to the Plaintiff and myself (Exhibit
"YKC-1" of the Affidavit of the Plaintiff dated 23rd August
1977) and I further confirm that I have received the 1% (one
per cent) commission of the purchase price from the

30

Vendors of the lands in question.

In the High Court

AFFIRMED at Kuala Lumpur,)
this 10th day of October,) Sgd. Ooi Lay Lee
1977 at 4.00 p.m.)

No. 7

Affidavit of Ooi
Lay Lee

Before me,
Sgd. SOO KOK KWONG
Commissioner for Oaths.

10th October
1977

continued

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

No. 8

No. 8

GROUNDS OF DECISION

Grounds of
Decision

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

14th October
1977

CIVIL SUIT NO. 2131 OF 1977

BETWEEN :

YONG KAH CHIN

Plaintiff

- and -

HARRY TONG LEE HWA

Defendant

GROUNDS OF DECISION

20 This is an appeal by the defendant against my
decision in granting to the plaintiff leave to sign final
judgement.

The facts are fairly straight forward.

The plaintiff in this case is essentially a middleman
who negotiated the sale of several plots of land registered
in the various names of Yong Yoke Lin, Chong You (f),
Yong Ah Kau @ Yong Kim Loong (deceased) Yong Kim Foe
@ Ying Sik Kaw (deceased) and Yong Yoke Peow @ Yong

In the High Court

—
No. 8

Grounds of
Decision

14th October
1977

continued

Yoke Piow (deceased) (hereinafter referred to as the 'Owners') to the defendant.

Apparently, direct approach made by the defendant to the 'Owners' for the purchase of the said land had failed. It is equally apparent that the owners would only consider sale through an agent, namely the plaintiff. This was intimated by the plaintiff to the defendant in his letter dated 22.4.75. In reply thereto, the defendant indicated that a deal could be arranged (see Exhibit YKK3 in encl. 6). Subsequently an agreement was reached by the plaintiff and the defendant wherein the defendant would pay the plaintiff $6\frac{1}{2}\%$ of the total consideration for the lands concerned if the plaintiff could successfully arrange for a sale between the Owners and the defendant (see exhibit YKC5 in encl. 6).

10

In the meanwhile the plaintiff obtained from the owners and/or the trustees of the said lands an option to purchase at \$65,000/- per acre. The options was valid for 5 days from 4.11.75 to 8.11.75 (see exhibit YKC 1 and 2 in encl. 6).

20

Subsequent thereto, on 6.11.75 a sub-option was executed by the plaintiff in favour of the defendant or his nominees for the purchase of the said lands (see encl. 6 YKC4). A sale agreement was finally concluded on 3.3.76 wherein the lands concerned was sold to the Defendant for \$1,462,500/- The $6\frac{1}{2}\%$ commission due to the plaintiff was \$95,062.50. When the defendant refused paying this amount, this suit ensued.

In support of the plaintiff's contention, an affidavit in support was also filed by the solicitor acting for the Owners in the said sale, Mr. Edmond Yong. Mr. Yong confirmed that the owners did give to the Plaintiff an option to the plaintiff and that the sale materialised a result of the exercise of the said option (see encl. 8).

30

The defendant by his affidavit (encl. 9) resisted the claims on several grounds.

Firstly, it was contended that the sub-option given by the plaintiff to the defendant was not valid as the option was given to the plaintiff and another whereas the sub-

option was granted by the plaintiff alone. With respect, this to me appears to be an extremely desperate plea. The facts are speaking for themselves. It is very clear from the surrounding circumstances that the plaintiff had the apparent authority to grant the sub-option from the other holder of the option. As can further be seen, the sub-option was never challenged by anyone, least of all the joint holder. The defendant cannot now turn around and question the validity of the sub-option when they have accepted and acted on it and a sale was contracted as a result thereof.

10

In short, he cannot say the sub-option was bad but entered into a contract of sale and obtained the land when it was exercised. He contended that sale was concluded as a result of fresh negotiation.

The owners through their solicitor confirmed, however that sale was result of the exercise of the option. And the owners have no reason to pervert the facts.

20

The defendant further contended that the owners refused to accept the sub-option when they exercised it and produced a letter to that effect from M/s. Tharu & Co. to him (defendant). This contention is again in direct conflict with the owners' solicitor's letter referred to above (Exhibit D-1 in encl. 9).

It was also contended that Mr. Edmund Yong, the owners' solicitor had the facts perverted in the sense that he did not confirm or repute the allegation that he had refused to accept the exercise of the option when it was effected by M/s. Tharu & Co. the first time.

30

Mr. Edmund Yong had filed an affidavit stating that sale was concluded as a result of the exercise of the option. If there is any merit in the contention by the defendant that the exercise of the option was rejected at first, one wonders why someone from M/s. Tharu & Co. did not have the courage to say so on an affidavit.

Another diversion thrown in to avoid the main issue in the case was the defendant's contention that a Court order for sale of the land ought to precede the option. In other words, since some of the owners were holding the land as

In the High Court

No. 8

Grounds of
Decision14th October
1977

continued

In the High Court
—————
No. 8

trustees, they first must obtain leave to sell from the Court before they could give a valid option to sell the land.

Grounds of
Decision

14th October
1977

continued

With respect the circumstances turn this excuse into mere nonsense. A sale had taken place and there is no proof to show that a properly constituted tribunal of competent jurisdiction which declares or regard the sale as invalid for want of leave to sell the said lands. The defendant, cannot blow hot and cold at the same time.

In the final analysis, the root of the problem is still the question whether or not the sale entered into between the owners and the defendant. The circumstances and evidence conclusively answer the question in the affirmative.

10

Consequently, I am satisfied that there is no triable issue/s in this scale which merits a full scale trial. As such I allow the plaintiff to sign final judgement against the defendant for the sum claimed together with interests thereon and costs.

.....Sgd:.....

20

(SHARKAWI ALIS)
SENIOR ASST. REGISTRAR

No. 9

In the High Court

J U D G E M E N T

No. 9

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

Judgement

CIVIL SUIT NO. 2131 OF 1977

14th October
1977

BETWEEN :

YONG KAH CHIN

Plaintiff

- and -

HARRY TONG LEE HWA

Defendant

J U D G E M E N T

10 Pursuant to the Order of Court dated the 14th day of
October, 1977 whereby it was ordered that the Plaintiff be
and is hereby at liberty to sign final judgement against the
Defendant abovenamed for the sum of \$95,062-50 together
with interest thereon at the rate of 6% per annum from the
18th day of April, 1977 to the date of payment and costs of
suit be assessed at \$200/-

20 IT IS THIS DAY ADJUDGED that the Plaintiff above-
named do recover against the Defendant abovenamed the
sum of \$95,062-50 (Ringgit Ninety-five Thousand and
Sixty-two and cents Fifty only) with interest thereon at the
rate of 6% per annum from the 18th day of April, 1977 to
the date of payment and costs of suit be assessed at
\$200-00 (Ringgit Two hundred only).

Given under my hand and the Seal of the Court this
14th day of October, 1977.

Senior Assistant Registrar,
High Court, Kuala Lumpur.

In the High Court

No. 10

No. 10

O R D E R

Order

14th October
1977

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

CIVIL SUIT NO. 2131 OF 1977

BETWEEN :

YONG KAH CHIN

Plaintiff

- and -

HARRY TONG LEE HWA

Defendant

BEFORE THE SENIOR ASSISTANT REGISTRAR,
ENCIK SHARKAWI BIN ALIS.

10

IN CHAMBERS

THIS 14TH DAY OF OCTOBER, 1977

O R D E R

UPON HEARING Mr. Thayalan Kanathippillai of Counsel for the Plaintiff and Mr. G. T. Rajan of Counsel for the Defendant abovenamed AND UPON HEARING the Summons in Chambers dated the 25th day of August 1977, the Affidavits of Yong Kah Chin, Edmund Yong Joon Hong, Harry Tong Lee Hwa and Ooi Lay Lee (f) affirmed on the 23rd day of August 1977, 21st day of September 1977, 5th day of October 1977 and 10th day of October 1977 respectively and all filed herein IT IS ORDERED that the Plaintiff abovenamed be and is hereby at liberty to sign final judgement against the Defendant abovenamed for the sum of \$95,062-50 together with interest thereon at the rate of 6% per annum from the 18th day of April, 1977 to the date of payment and costs of suit be assessed at \$200-00.

20

Given under my hand and the Seal of the Court this 14th day of October, 1977.

Senior Assistant Registrar,
High Court, Kuala Lumpur.

30

No. 11

In the High Court

NOTICE OF APPEAL

No. 11

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

Notice of Appeal

CIVIL SUIT NO. 2131 OF 1977

17th October
1977

B E T W E E N :

YONG KAH CHIN

Plaintiff

- and -

HARRY TONG LEE HWA

Defendant

NOTICE OF APPEAL FROM REGISTRAR

10 TAKE NOTICE that the abovenamed Defendant intend to appeal against the decision of the Senior Assistant Registrar Encik Sharkawi Alis of the High Court, Kuala Lumpur given on the 14th day of October, 1977 giving leave to the Plaintiff to enter final judgment.

20 AND FURTHER TAKE NOTICE that you are required to attend the Judge in Chambers in the High Court at Kuala Lumpur on Wednesday the 30th day of November, 1977 at 9.30 o'clock in the forenoon on the hearing of an application by the abovenamed Defendant that the Judgment of the learned Senior Assistant Registrar be set aside and for an Order that unconditional leave be given to the Defendant to defend this suit.

AND FURTHER TAKE NOTICE that it is the intention of the abovenamed Defendant to attend by Counsel.

Dated this 17th day of October, 1977.

Sgd. G.T. Rajan & Co.

Sgd.

Solicitors for the Defendant

Senior Assistant Registrar
High Court,
Kuala Lumpur.

30 This Notice of Appeal from Registrar is filed by Messrs.

In the High Court

 No. 11

G. T. Rajan & Co., Solicitors for the Defendant above-named whose address for service is at No. 17, Jalan Sultan, (Top Floor), Kelang, Selangor.

Notice of Appeal
 17th October
 1977
 continued

- To: 1. The Senior Assistant Registrar,
 High Court,
KUALA LUMPUR.
2. The Plaintiff and/or his Solicitors,
 Messrs. Skrine & Co.,
 Straits Trading Bldg.,
 4, Leboh Pasar Besar,
KUALA LUMPUR 01-23.

10

No. 12

No. 12

Affidavit of
 Tharumagnanam

AFFIDAVIT OF THARUMAGNANAM

17th November
 1977

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
CIVIL SUIT NO. 2131 OF 1977

B E T W E E N :

YONG KAH CHIN

Plaintiff

- and -

HARRY TONG LEE HWA

Defendant

20

A F F I D A V I T

I, Tharumagnanam s/o Thambiah, of full age and a Malaysian Citizen residing at Petaling Jaya in the State of Selangor affirm and state as follows :-

1. I am an advocate & solicitor of the High Court in Malaya and practice under the name of T. Tharu & Co.

2. I have seen a copy of the Affidavit (undated) and purportedly sworn to by Edmund Yong Joon Hong in respect of Kuala Lumpur High Court Civil Suit No. 2131 of 1977.

3. I crave leave to refer to paragraph 3 of the aforesaid

30

Affidavit of Edmund Yong Joon Hong and state that upon receipt of the letter referred to as 'YJH-1' in the said Affidavit, that M/s S.M. Yong & Co. refused to acknowledge receipt of the said letter.

In the High Court

No. 12

Affidavit of
Tharumagnanam

17th November
1977

continued

10 4. Mr. Edmund Yong of M/s. S.M. Yong & Co. instead informed me over the telephone that the purported option given to the Plaintiff in this matter was not a genuine option. However Mr. Edmund Yong intimated to me during the course of the same conversation that as the registered proprietors of the properties concerned were then with him, that he would seek their instructions as to whether the properties concerned were available for sale.

5. As Mr. Edmund Yong had rejected the exercise of the purported option stating that it was not a genuine option, I therefore do verily believe that the negotiations entered into subsequent therein were fresh negotiations independent of the purported option given to the Plaintiff herein.

20 6. On being informed by Mr. Edmund Yong that the purported option was not a genuine option and upon confirmation by Mr. Edmund Yong that his clients were prepared to sell the properties concerned at \$65,000.00 per acre, I wrote a letter to Chong Mui Lan dated 10th November, 1975 informing her of the same. A copy of my said letter is marked 'A' and exhibited hereto.

30 7. It was pursuant to the contents of my letter exhibited herein and marked 'A' that I received instructions from Chong Mui Lan and issued by letter dated 12th November, 1975 and exhibited and marked 'YJH-2' in the aforesaid Affidavit of Edmund Yong Joon Hong.

8. The Defendant has informed me, that I do verily believe that he has previously attempted to contact me to affirm an affidavit in support of his affidavit-in-reply but was unable to do so as I was abroad at the relevant time.

AFFIRMED BY Tharumagnanam)
s/o Thambiah at Klang this 17th) Sgd. Tharumagnanam
of November, 1977 at 10.30 a.m) s/o Thambiah

40

Before me,
Sgd. David Anthony
Commissioner for Oaths.

In the High Court

No. 12

Affidavit of
Tharumagnanam

17th November
1977

continued

This Affidavit is filed by Messrs. G. T. Rajan & Co., Solicitors for the Defendant abovenamed whose address for service is at No. 17, Jalan Sultan, (Top Floor), Kelang, Selangor.

No. 13

Proceedings

22nd February
1978

No. 13

PROCEEDINGS

In the High Court in Malaya
at Kuala Lumpur

In Open Court

Before Vohrah J.

10

This 22nd day of February 1978

Civil Suit No. 2131/77

Mr. G. T. Rajan for Appellant/Defendant
Mr. K. Thayalan for Respondent/Plaintiff.

Enclosures (12) and (22).

Mr. Rajan:

I am proceeding with appeal first - (12). Appeal against O. 14 judgement of S.A.R. Appeal is that appellant has a defence to the claim and that there are triable issues and S.A.R. is wrong in giving O. 14 on merits as case stands.

20

I refer to judgement of S.A.R. - (16). At p. 4 he says Edmund Yong had filed an affidavit. Whole of the first paragraph. M/s. Tharu & Co. were acting for Appellant in the land deal. When matter was heard by S.A.R. Mr. Tharu was not in country and we could not get affidavit from him to disclose transaction between Yong and Tharu.

Subsequently on Tharu's return from abroad we acquired an affidavit to disclose the nature of case.

In the High Court

No. 13

Proceedings

22nd February
1978

continued

This affidavit was filed in Court - (14). This affidavit filed after S.A.R.'s decision - admissible. I refer to White Book 1962 Vol. p.252 5th paragraph. Things would have been different if this affidavit had been available.

10 Further there are other triable issues. In law an option given to the holder must be a valid option. My contention is that the option that was given was not valid. At the relevant date when it was given the alleged trustees had no authority to give the option. That option was not supported by order of Court for the sale of the property. The said option was given to two option holders. Only one of them gave a sub-option and not both. Further option-holder has no authority to give sub-option to any other person to exercise that particular option. The purported consideration is no consideration at all - option given without order of Court - it is trust property. I refer to Chitty on Contracts 22nd Edn. Vol. I p.60 paragraph 122 under "Impossible Consideration" - if at time formation of contract performance impossible - no consideration. Re sub-option without authority of donor of option. I refer to Halsbury's Vol. 23 3rd Edn. p.472 paragraph 1092. Unless it was the intention of donor to give the option-holder the authority to do so, option-holder cannot give sub-option. Further it is bad option in law as well as in fact. I refer to affidavit of Defendant - Encl. (9), D5 - Admission by Yong not happy with option.

20

30 On evidence there are two solicitors each supporting his side.

Plaintiff's option is further defective by reference to Plaintiff's affidavit - Encl. (6) YKC "1" - signed by Yong Yoke Lin and Chong You - they are alleged to have sold lands marked 'A1' and 'A5' - Encl. (9). 'A1' and 'A5' belong to Yong Yook Lin. No indication of this particular owner having given authority to sell land.

If option was exercised these two lands could not have been sold at all.

40 Would be eye opener to go into Plaintiff's case as it stands.

In the High Court

 No. 13
 Proceedings
 22nd February
 1978
 continued

Plaintiff's contention was that he gave option to the Defendant where the owners had accepted to receive a sum of \$65,000 for commission - (YKC-1). I refer to Edmund Yong's affidavit Encl. (8) 'YJH-2' - discloses Tharu's letter itself. The word 'No' in that letter shows veracity of Plaintiff's case is in question.

I refer to White Book p. 250 last paragraph 12th Line from bottom - Where there is fair probability of defence unconditional leave must be given.

I refer to Kok Swee Teng v. Perola Navigation & Trading Co. Ltd. (1969) 1 MLJ 95. Also Syn Lee & Co. Ltd. v. Bank of China (1961) MLJ 87. Also Avery-Laurence (S'pore) Pte. Ltd. v. Electrical Enterprises (1972) 2 MLJ 182. On this matter whole matter should be investigated. Also Alliance (Malaya) Engineering Co. Sdn. Bhd. v. San Development Sdn. Bhd. (1974) 2 MLJ 94. Even in case of sham defence Court gave conditional leave to defend.

10

Where two members of Bar have given contradictory evidence then there is triable issue.

20

Mr. Thayalan :

Plaintiff's case is for commission as agreed under a letter by the Defendant dated 6.11.75.

I refer to affidavit of Plaintiff dated 23.8.75 Encl. (6) paragraph 2, paragraph 3. Letter of authority to the 2 persons who gave the option. If at all anyone is to object that there was no authority for Yong Yoke Lin and Chong You, only those people as appear in YKC-2. Defendant is not public defender of registered proprietors of the land. Fact remains that the lands were sold and these 3 people signed the transfer. As early as April 1975 Defendant approached Plaintiff to negotiate a sale in this matter - YKC-3. YKC-3 is agreement to pay. Important point is the agreement to pay 6½% commission on any land transaction if a valid sale takes place as a result of Plaintiff's efforts.

30

If option is not exercised or no sale takes place, then this agreement cannot be enforced against the Defendant. It is completion of sale that is relevant. Completion can

In the High Court

No.13

Proceedings

22nd February
1978

continued

take place in pursuance of the right to exercise the option which is what happened here. This is clear from paragraph 6 Encl. (6). Whether that letter (YKC-6) was accepted or not is irrelevant. Question is was option exercised to give effect to agreement. Agreement appears in affidavit of Edmund Yong YJH-4 of Encl. (8) - signatories - 1st, 3rd & 4th party had signed agreement in front of Plaintiff. After sale has been completed Plaintiff asked for commission and that was denied. Relevant to note that option donors have confirmed that the sale between Defendant's nominee and themselves was as a result of the option - YKC-7. YKC-8 and YKC-9 are receipts given by the Plaintiff for 1% commission he received. This is Plaintiff's case. Defendant says option was not exercised. Submit this is not a defence because YJH-1 Encl. (8) was a letter exercising option by Defendant's nominee. Defendant's story is he sent the letter, Edmund Yong refused to accept this letter. Later there was a telephone conversation between Edmund Yong and Tharu at which Edmund Yong is alleged to have told Tharu that his clients would deal directly with Chong Mui Lan i. e. , it was a direct sale and not in exercise of option.

YJH-2 Encl. (8) was after telephone conversation - Nowhere stated there that in the telephone conversation Edmund Yong rejected the option.

If Edmund Yong said option was void Tharu would have written to say letter of 7th November was cancelled.

"No" in YJH-2 - Edmund Yong did not accept at that stage but at YJH-3. Never said dealing directly with Defendant.

In Encl. (9), D1.

D-5, Edmund Yong had doubt but in last paragraph shows 2 owners were authorised re option.

If option was rejected is it not reasonable for Defendant or lawyers to inform Plaintiff of it? That would be first thing to do.

Affidavit filed by Tharu is an afterthought and arose as a result of S.A.R. pointing that out at the hearing.

In the High Court

————
No. 13

Proceedings

22nd February
1978

continued

Action was filed in July 1977, Summons-in-Chambers in August 1977 - impossible that Tharu was away for 10 months. Mr. Rajan could have filed the affidavit before S.A.R. by cross-examining Edmund Yong on his affidavit. He did not. I refer to Encl. (9), D-2 written by Mr. Rajan.

Submit that Mr. Rajan knew that if his case was this could have cross-examined before S.A.R. No need for Tharu to have filed his affidavit. Right to cross-examine on affidavit available in O.14 proceedings - Mallal's p.142.

Edmund Yong was available outside the Chambers. Too late for Tharu to say something else. Does not matter what he says after the event. What is material is: "Do the documents before Court now confirm what he says?" Submit that if he can now file what conversation between him and Edmund Yong after letter of 7th September 1976, he was in far better position to have done so in letter of 12th September 1976.

10

Defendant is not person to object about option not being supported by Court order. Defendant took sub-option for what it was worth.

20

He accepts the option, exercises it and is estopped by it.

Only parties who could object to this are the beneficiaries of the trust. They have not objected.

Further there is no necessity to obtain Court order before option is given so long as the Court ratifies the sale of the land.

Defendant's wife is owner of these lands now. Even at time of direct negotiations there was no Court order to sell. Is Mr. Rajan saying that the transfer to client is void?

30

If option to sell is void because there is no Court order then the agreement to sell is also void for the same reason unless the law says you can ratify the act after the agreement has been entered. Cannot blow hot and cold.

Re option for 2 people but sub-option was given only by Plaintiff and not by other party - I refer to affidavit of

Ooi Lay Lee Encl. (11) - see paragraph 2. Only person who can object to it is other option holder.

In the High Court

No. 13

Proceedings

22nd February
1978

continued

All parties relevant to issue say O.K. Only person who says "No" is Defendant fighting case for option-holder and for beneficiaries. Cannot help feeling attempt to avoid liability - \$95,000/-

10 In 0.14 submission Court has right to see whether defence is a defence which could be proved. If sham defence or no defence at all then unconditional leave must be given to enter final judgement.

Issues here are very clear on affidavit.

Edmund Yong and Tharu cannot say anything more than what documents say.

This is a case where no need to go for trial.

If Court is of opinion that there are possible defences then I would like to address Court on that. I mean to refer to Federal Court decision of 1974 where conditions can be given for defence.

Mr. Rajan :

20 K. C. Yong witnessing YJH - that does not prove anything - that option was exercised.

YKC3, YKC4.

YKC5 does not say will pay 6½% commission.

Bone of contention - there is no consideration - no obligation to pay at all.

Not a valid option - not given by all the owners of the property.

Agreement was a conditional agreement but option was not.

30 Amount is too large for 0.14 by S.A.R. Ask for unconditional leave.

In the High Court

No. 13

Proceedings

22nd February
1978

continued

Willing to go for early trial.

Judgement reserved.

Enclosure (22): Order as prayed with regard to
prayer (i). Prayer (ii) stayed over until decision.

Sgd. L.C. Vohrah
Judge

High Court Malaya
Kuala Lumpur.

19th May 1978

In the High Court in Malaya
at Kuala Lumpur

10

In Open Court

Before Vohrah J.

This 19th day of May 1978.

Civil Suit No. 2131/77

Mr. G. T. Rajan for Appellant.

Mr. K. Thayalan for Respondent.

(12) Appeal dismissed with costs.

(22) Order for stay determined. Costs to Plaintiff.

Sgd. L.C. Vohrah
Judge

20

High Court Malaya
Kuala Lumpur.

No. 14

In the High Court

J U D G M E N T

No. 14

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

Judgment of
Vohrah J.CIVIL SUIT NO. 2131 OF 1977

19th May 1978

B E T W E E N :

YONG KAH CHIN

Plaintiff

- and -

HARRY TONG LEE HWA

DefendantJUDGMENT OF VOHRAH J.

10 This is an appeal by the defendant against the decision of the Senior Assistant Registrar granting leave to the plaintiff to sign final judgment against him in the sum of \$95,062.50 plus interest and costs under Order 14 of the Rules of the Supreme Court, 1957.

The facts leading to the action out of which this appeal has arisen are as follows. The defendant wished to purchase certain lands held under E.M.R. Nos. 8292, 4367, 4366, 4365, 4369, 6851 and 1230 for Lots 737, 738, 742, 741, 745, 5927 and 746 respectively, all in the Mukim of Klang (hereinafter referred to as "the land").

20 Negotiations for the purchase of the land were conducted through the plaintiff who on 4th November, 1975 obtained an option in writing in his favour for the sale of land at the price of \$65,000.00 per acre purportedly valid for five days from that date signed by Yong Yoke Lin and Chong You (f). On 6th November, 1975 the plaintiff executed a sub-option in favour of the defendant or his nominee(s) for the sale of this land operative for the same period at the same price. On the same date the defendant gave the plaintiff a written undertaking to pay the plaintiff a commission of 6½% of the total purchase price of the land upon the successful conclusion of the sale of the land to him or his nominee(s). In the event the land was sold to the defendant's wife and nominee, Chong Mui Lan, for the sum of \$1,462,500/-. Subsequently, the defendant having refused to pay, the plaintiff filed this action for the recovery of his commission of 6½% of this sum amounting to \$92,062.50.

30 In a nutshell, the defendant claimed in his defence that the

In the High Court

—
No. 14

Judgment of
Vohrah J.

19th May 1978

continued

sale did not take place as a result of the exercise of the option or sub-option both of which he claimed were defective and accordingly they could not have been exercised. Hence he was not liable to the Plaintiff.

It is commonplace that an application for summary judgement under Order 14 can be successfully resisted by a defendant if he manages to raise a bona fide triable issue, i. e. , a defence on the merits. In other words he must be able to raise a legal defence which if it is believed goes to the root of the claim. In the instant case it was not disputed that the land had been transferred to the defendant's wife/nominee. The Senior Assistant Registrar found on the documentary evidence before him that the sale was effected through the instrumentality of the plaintiff and with this finding I am in complete agreement. Irrespective of the validity or otherwise of the option and sub-option, it is perfectly clear that the defendant undertook in writing (as evidenced by Exhibit YKC-5 annexed to the plaintiff's affidavit of 23rd August, 1977) that he would pay the commission to the plaintiff on the successful conclusion of the sale. Counsel for the defendant contended that this undertaking had not been supported by any consideration. The short answer to this is that at the time of the making of this document by the defendant no contractual nexus existed in relation thereto between the plaintiff and the defendant. The consideration moving from the plaintiff was executory and the defendant was under no obligation to the plaintiff until that consideration was executed. But on the successful conclusion of the sale through the efforts of the plaintiff that consideration was executed and the defendant's obligation to pay the plaintiff the commission immediately arose. It would appear that it was also the contention by implication of Counsel for the Defendant that the exercise of a valid option and/or sub-option giving rise to the sale and purchase was a condition precedent to the liability of the defendant to pay the commission to the plaintiff. There was, however, no evidence before the Court to this effect even from the Defendant himself. I would imagine that the obvious reason for the plaintiff obtaining the option in his favour, valid or otherwise, was an attempt to ensure that at least for a limited period of a few days he had the exclusive right to find a purchaser and thus become entitled to brokerage. Similarly, the sub-option would have been desirable from the defendant's point of view to

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preclude the possibility of the plaintiff arranging a sale to some purchaser other than the defendant or his nominee(s).

In the High Court

—
No. 14

For the above reasons I am of the view that the Defendant has raised no triable issue which could amount to a defence to the plaintiff's claim. Accordingly it is clear that the order of the Senior Assistant Registrar granting leave to sign final judgement must stand. In the result this appeal is dismissed with costs. The stay of execution ordered by this Court on 22nd February, 1978 is hereby determined. I award costs of that application for stay to the plaintiff.

Judgment of
Vohrah J.

19th May 1978

continued

10

Sgd. (L.C. Vohrah)
Judge

High Court Malaya
Kuala Lumpur.

Dated 19th May, 1978.

Mr. K. Thayalan of M/s. Skrine & Co. Kuala Lumpur for Plaintiff. Mr. G.T. Rajan of M/s. G.T. Rajan & Co., Klang for Defendant.

20

No. 15

No. 15

O R D E R

Order

19th May 1978

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

CIVIL SUIT NO. 2131 OF 1977

B E T W E E N :

YONG KAH CHIN

Plaintiff

- and -

HARRY TONG LEE HWA

Defendant

BEFORE THE HONOURABLE MR. JUSTICE

L.C. VOHRAH

IN OPEN COURT

30

THIS 19TH DAY OF MAY, 1978.

O R D E R

UPON HEARING Mr. G.T. Rajan of Counsel for the

In the High Court

 No. 15
 Order
 19th May 1978
 continued

Defendant abovenamed and Mr. K. Thayalan of Counsel for the Plaintiff abovenamed AND UPON READING the Summons-In-Chambers dated the 25th day of August, 1977 seeking for final judgment and upon final judgment being given by the Senior Assistant Registrar on the 14th day of October, 1977 and upon Notice of Appeal From Registrar being filed by the Defendant on the 17th day of October, 1977 AND UPON HEARING arguments of both parties on the 22nd day of February, 1978 IT WAS ORDERED that this matter do stand adjourned for Judgment AND the same coming on for Judgment this day in the presence of Counsel aforesaid IT IS ORDERED that the Order made by the Senior Assistant Registrar on the 14th day of October, 1977 be and is hereby confirmed and the Appeal be dismissed with costs.

10

GIVEN under my hand and the Seal of the Court

In the Federal
 Court

 No. 16
 Notice of Appeal
 23rd May 1978

No. 16

NOTICE OF APPEAL

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT
 KUALA LUMPUR

20

(APPELLATE JURISDICTION)

CIVIL APPEAL NO. 83. OF 1978

B E T W E E N :

HARRY TONG LEE HWA

Appellant

- and -

YONG KAH CHIN

Respondent

(In the Matter of Kuala Lumpur High Court Civil
 Suit No. 2131 of 1977)

B E T W E E N :

YONG KAH CHIN

Plaintiff

30

- and -

HARRY TONG LEE HWA

Defendant)

NOTICE OF APPEAL

TAKE NOTICE that Harry Tong Lee Hwa, the

Appellant abovenamed being dissatisfied with the decision of the Honourable Mr. Justice L. C. Vohrah, High Court, Kuala Lumpur in respect of Judgement delivered on the 19th day of May, 1978 appeals to the Federal Court against the whole of the said decision.

In the Federal
Court

No.16

Notice of Appeal

23rd May 1978

continued

Dated this 23rd day of May, 1978.

Sgd. Harry Tong Lee Hwa

Sgd. G.T. Rajan & Co.

Appellant's signature

Solicitors for the
Appellant

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

To: The Senior Assistant Registrar,
High Court,
KUALA LUMPUR.

And To:

20 The Respondent abovenamed
and/or his Solicitors,
Messrs. Skrine & Co.,
Straits Trading Building,
4, Leboh Pasar Besar,
KUALA LUMPUR 01-23.

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

In the Federal
Court

No. 17

MEMORANDUM OF APPEAL

No. 17

Memorandum
of Appeal

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT
KUALA LUMPUR

24th June 1978

(APPELLATE JURISDICTION)

CIVIL APPEAL NO. 83 OF 1978

B E T W E E N :

HARRY TONG LEE HWA Appellant

- and -

YONG KAH CHIN Respondent 10

(In the Matter of Civil Suit No. 2131 of 1977
In the High Court in Malaya at Kuala Lumpur

B E T W E E N :

YONG KAH CHIN Plaintiff

- and -

HARRY TONG LEE HWA Defendant)

MEMORANDUM OF APPEAL

Harry Tong Lee Hwa, the Appellant abovenamed
appeals against the whole decision of the Honourable Mr.
Justice L. C. Vohrah given at Kuala Lumpur on the 19th day
of May, 1978 on the following grounds :- 20

1. The learned Judge failed to consider that Order 14 of
the Supreme Court Rules ought not to apply in the instant
case for reasons there are triable issues.

2. The learned Judge was wrong in law and fact to hold
that there are no triable issues particularly on the face of
conflicting facts averred in the Affidavits of Counsels and
parties in respect of the alleged transaction.

3. The learned Judge was wrong in law and fact to rely
on the Affidavits and exhibits filed by the Respondent with-
out testing the creditibility of the deponents of the said
documents, and the learned Judge further failed to consider 30

that reliance on documentary evidence alone does not lead to conclusive finding of fact.

In the Federal
Court

No. 17

Memorandum
of Appeal

24th June 1978

continued

4. The learned trial Judge failed to consider that the Respondent's alleged option was defective and the Appellant did not receive consideration from the Respondent, Affidavits filed in support thereof by the Respondent are result of afterthought.

10 5. The learned Judge ought to have set aside the Senior Assistant Registrar's final judgment and set down the case for trial so as to go into the merits of the case in the interest of justice.

20 6. The learned Judge even if he considers the Defence filed by the Appellant is a sham Defence (which is denied) ought to have ordered the payment of the money demanded by the Respondent in court, set aside the Senior Assistant Registrar's final judgment under Order 14 of the Rules of the Supreme Court and given conditional leave to the Appellant to defend the case which decision would not be in conflict with the decided authorities of the Courts of Superior jurisdiction.

Dated this 24th day of June, 1978.

Solicitors for the Appellant

- (1) The Chief Registrar,
Federal Court of Malaysia,
KUALA LUMPUR.
- (2) The Senior Assistant Registrar,
High Court,
KUALA LUMPUR.
- 30 (3) Messrs. Skrine & Co.,
Straits Trading Building,
4, Leboh Pasar Besar,
KUALA LUMPUR 01-23.
(Solicitors for the Respondent)

This Memorandum of Appeal is filed by Messrs. G. T. Rajan & Co., Solicitors for the Appellant herein whose address for service is at No. 17, Jalan Sultan, Kelang, Selangor.

In the Federal
Court

No. 18

No. 18

Judgment

27th November
1978

J U D G M E N T

IN THE FEDERAL COURT AT MALAYSIA HOLDEN AT
KUALA LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. 83 OF 1978

B E T W E E N :

HARRY TONG LEE HWA Appellant

- and -

YONG KAH CHIN Respondent 10

(In the Matter of Civil Suit No. 2131 of 1977
in the High Court in Malaya at Kuala Lumpur)

B E T W E E N :

YONG KAH CHIN Plaintiff

- and -

HARRY TONG LEE HWA Defendant)

CORAM: LEE HUN HOE, C.J., BORNEO
WAN SULEIMAN, F.J.
CHANG MIN TAT, F.J.

JUDGEMENT OF THE COURT 20

Both the Senior Assistant Registrar before whom the Order 14 application was set and the Judge on appeal to him considered that the appellant has shown no defence on the merits and had raised no triable issue. The appellant however contended that the claim should go to trial.

The claim of the respondent against the appellant was, if a little breath is blown to clear the smoke that legal arguments surround it with, nothing more or less than a claim for brokerage from the purchaser and is founded, in this case, not on practice or an implied promise but on an express promise from the respondent as purchaser. It is contained in a document given by the appellant on his own letterhead to the respondent and is in these words :

"I, TONG LEE HWA, of No. 30-32 Jalan Susur/
Jalan Sireh, Off Persiaran Tengah, Klang, do
hereby give an undertaking to Mr. Yong Kah Chin
of No. 9, Sultan Lane, Kuala Lumpur, that upon

30

the sale of the properties of Lot Nos: 5927, 737, 738, 741, 742, 743 and 745, Mukim of Klang and upon execution of a formal agreement and upon the sale being successful between the Vendors and the Purchaser or Purchasers to me or my nominee or nominees, a commission of 6½% (Six and a half per cent) of the total consideration of the sale price will be paid accordingly.

In the Federal Court

No.18
Judgment
27th November 1978
continued

10

Sgd.
TONG LEE HWA

Dated this 6th day of November, 1975"

20

This note is a clear and unqualified undertaking to pay brokerage in the event of the appellant successfully obtaining the property in question and though the commission of 6½% of the purchase price is considerably more than the customary purchaser's commission of, as we understand it, 2%, and on a sale price of \$1,462,500 it came to a substantial \$95,062.50¢, that was the bargain made by the appellant with the respondent and in the absence of any circumstance releasing him from his bargain, the appellant must ordinarily be held to it, on a successful sale to the appellant or his nominee.

On June, 1977, transfers by the living vendors and the personal representatives of the owners who were deceased were registered in the name of Chi Liung Holdings Sdn. Bhd. which, it is undisputed, is the nominee of the appellant. The sale was therefore successful, but the appellant contended, among other things, that the sale did not come about through the brokerage of the respondent.

30

The history of the events, largely undisputed, leading to the sale, is as follows: on November 7, 1975, that is, the day after the appellant had given the respondent the written undertaking to pay brokerage, a firm of solicitors M/s. T. Tharu & Co., acting on behalf of one Madam Chong Mui Lan who is the wife of the appellant wrote on instructions to the solicitors for the vendors the following letter :-

"7th November, 1975

40

Messrs. S.M. Yong & Co.,
Advocates & Solicitors,
No. 52, Jalan Klyne,

In the Federal
Court

No. 18

Judgment

27th November
1978

continued

(1st Floor),
KUALA LUMPUR.

Dear Sirs,

BY HAND

re: Purchase of lands held under Lot 5927, 737, 738,
741, 742, 743 & 745 all in the Mukim of Klang.

We act on behalf of Madam Chong Mui Lan of Kuala Lumpur who has instructed us to write to your good-office with regards to the purchase of the above-mentioned properties.

Our client is in receipt of an Option dated 4th November, 1975 granted by Messrs. Yong Yoke Lin and others (the registered owners of the said lands) to one, Mr. Yong Kah Chin of Kuala Lumpur for the sale of the abovementioned lands. The price stated therein is at the rate of \$65,000/- per acre. We, therefore, have instructions from our client to write and confirm with your good-office that she intends to hereby exercise the aforesaid Option on the terms set out therein to purchase all that lands held under Lot 5927, 737, 738, 741, 742, 743 and 745 all in the Mukim of Klang, at the price of \$65,000/- per acre. Would your good-office therefore kindly inform your good-clients i. e. the registered owners of the aforesaid lands of your client's acceptance.

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We would prepare the Sale and Purchase Agreement and forward the same to you for your perusal.

Kindly acknowledge receipt by signing the duplicate copy of this letter.

Yours faithfully,

Sgd.

c. c. Client."

30

The option referred to is as follows :

"OPTION

Mr. Yong Kah Chin,
Kuala Lumpur.

We, the undersigned, the Registered owners of the land Lot Nos. 5927, 737, 738, 741, 742, 743, and 745, Mukim of Klang, hereby confirm that one Ringgit has been fully paid and authorise you the option to sell our land at the price of \$65,000/- per acre (Ringgit Sixty Five thousand) only.

In the Federal Court

No.18

Judgment

27th November 1978

continued

Any costs regarding the proposed drainage system alongside the land to be constructed by the Government shall be borne by the purchaser, and it is not vacated at the deliverance.

10

It is hereby agreed in the event of the sale as stipulated herein, confirm that Mr. Yong Kah Chin shall be entitled 1% (one per cent), Mr. Ooi Lay Lee shall be entitled 1% (one per cent), commission of the total amount of the sale price.

This option is valid for five days from 4th November 1975 to 8th November 1975.

Sgd.

.....
Signed by the Registered owners,
Mr. Yong Yoke Lin
Md. Cheong You

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Dated: 4th November 1975."

It is undisputed that the grantors of this option did not themselves own all the lands. Yong Yoke Lin was at the relevant time the owner of Lots 741, 745 and 746 only. Madam Chong You was the registered owner of 1/3rd undivided share in 3 other pieces, Lots 737, 738 and 742. The other two owners were dead and their shares had been transmitted to trustees, Yong Yoke Lin being a co-trustee in the estate of one of the two deceased owners. The registered owner of the remaining piece Lot 5927 was also dead, and Madam Chong You was also one of the two trustees. It is correct, therefore, that, ex facie, the option did not appear to have been validly agreed or more correctly, validly granted over all the lands, but there is an earlier option to Mr. Yong Yoke Lin and Madam Chong You from these personal representatives in respect of these 4 pieces of lands which supplied the link and validated the option granted by Yong Yoke Lin and Madam Chong You for themselves and on behalf of the other owners to the respondent.

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In the Federal
Court

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No. 18

Judgment

27th November
1978

continued

But apparently the option that was shown to Mr. Edmund Yong of M/s. S.M. Yong & Co. was only the one given to the respondent. It led to a contretemps which the appellant then sought to make capital of. He rejected the option as not being genuine and he refused to acknowledge receipt of the letter giving notice of the exercise of the option. M/s. T. Tharu & Co. advised Madam Chong Mui Lan accordingly. But the price offered was what the vendors wanted for their lands and the suggestion between the solicitors was that the sale could be proceeded with. This was acceptable to the purported purchaser and M/s. T. Tharu & Co. addressed the following letter to M/s. S.M. Yong & Co.

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"November 12, 1975.

Messrs. Dato' S.M. Yong & Co.,
Advocates & Solicitors,
52, Jalan Klyne (1st Floor),
Kuala Lumpur.

Dear Sirs,

Purchase of lands held under Lot 5927, 737, 738,
741, 742, 743 & 745 all in the Mukim of Klang.

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We refer to our letter dated 7th November 1975 and to the telephone conversation between your Mr. Edmund Yong and our Mr. T. Tharu of the same date wherein it was confirmed that your clients have agreed to sell the abovementioned properties at the price of \$65,000/- per acre

The rest of the letter dealt with the terms of payment.

The offer was accepted, subject to approval of the suggested terms of payment. In the event, a formal agreement was drawn up between the vendors and Madam Chong Mui Lan giving effect to the sale and executed by all the parties. And it is to be noted that the respondent still played a part - he was the witness for some of the vendors.

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Subsequently when a dispute arose whether the appellant was bound to pay the commission or brokerage to the respondent, Mr. Edmund Yong wrote a letter on June 8, 1977 to the appellant advising that his clients, the vendors,

had confirmed to him that they did give the option to the respondent and that as a result of that option the lands were sold to his nominee, his wife. This was clearly a correction on his part but the appellant nevertheless contended that the option was not genuine and that the sale did not "arise from the alleged option."

In the Federal
Court

No. 18

Judgment

27th November
1978

continued

In his affidavit opposing the Order 14 application, the appellant gave another reason why he considered the option invalid. It was not held by the respondent alone. It was in the joint names of the respondent and another person Madam Ooi Lay Lee and the purported exercise of it by the respondent alone was therefore said not to be valid. He maintained this despite the affidavit of Madam Ooi Lay Lee that the exercise of the option by the respondent was with her full knowledge and consent. In his submission, he suggested that this evidence as well as that of the owners of the land on the genuineness of the option and the exercise of it should be tested in the witness box by cross-examination of the owners and possibly Mr. Edmund Yong, and that itself raised a triable issue which would defeat the application and justify an order that he be allowed to defend the action unconditionally.

The short answer, in our view and with respect, is that this is "res inter alios acta." It is no real concern of the appellant how or in what circumstances the option was given or exercised. These are matters between the donors and the donee. The actual question with which he was concerned was whether he had bought the lands through the medium or brokerage of the respondent.

And the answer to this question lies in the letter of his then solicitors of November 7, 1975. The part played by the respondent in effecting the purchase is clear and beyond argument. Confirmation, if necessary, can be found in the previous correspondence between the parties in person. The appellant has long desired to buy but could only do so through the respondent. Until April 1975, his efforts had failed. On April 29, 1975, he raised his offer to \$55,000, when it was suggested to him by the respondent that the matter was of some urgency since one of the owners to whom he was related was in frail health. The respondent later in November of the same year obtained the consent of all the owners directly and in some cases, indirectly, to a sale at \$65,000/- per acre and he succeeded

In the Federal
Court

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No.18

Judgment

27th November
1978

continued

in interesting the appellant at this price as evidenced by his accepting a so-called sub-option and giving his own promise to pay brokerage and by his instructing M/s. T. Tharu & Co. to buy at this price.

Neither the Senior Assistant Registrar nor the High Court Judge had any doubt about the part played by the Respondent. They could not understand how his introduction of the appellant's nominee to the vendors could be regarded as never having happened at all because of an initial mistake, later amply corrected, made in rejecting the option held by him.

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For ourselves, we would put the case thus: suppose the respondent never had any option at all, but the sale was effected in truth and in fact through his introducing the purchaser to the vendors or to borrow a term from the Stock Exchange, if a valid contract was the result of the 'marriage' of the vendors' offer to sell and the purchaser's offer (sic) buy through the intermediation of the broker arising from his knowledge or information gained by him that the vendors were prepared to sell at a certain price and the purchaser was agreeable to buying at that price, could the respondent be said not to be the broker who had brought about the sale and could he be denied the commission the purchaser had promised to pay?

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The appeal is dismissed with costs.

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

Kuala Lumpur,

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27th November, 1978.

Date of Hearing: 6th November, 1978.

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

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

No. 19

In the Federal
CourtO R D E R

No. 19

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT
KUALA LUMPUR

Order

(APPELLATE JURISDICTION)

27th November
1978FEDERAL COURT CIVIL APPEAL NO. 83 OF 1978

B E T W E E N :

HARRY TONG LEE HWA

Appellant

- and -

10 YONG KAH CHIN

Respondent(In the Matter of Civil Suit No. 2131 of 1977
In the High Court in Malaya at Kuala Lumpur)

B E T W E E N :

YONG KAH CHIN

Plaintiff

- and -

HARRY TONG LEE HWA

Defendant)CORAM: LEE HUN HOE, CHIEF JUSTICE, HIGH COURT,
BORNEO;
WAN SULEIMAN, JUDGE, FEDERAL COURT,
20 MALAYSIA;
CHANG MIN TAT, JUDGE, FEDERAL COURT,
MALAYSIA;... IN OPEN COURTTHIS 27TH DAY OF NOVEMBER, 1978O R D E R

THIS APPEAL coming on for hearing this 6th day of November, 1978 in the presence of Mr. G. T. Rajan of Counsel for the Appellant and Mr. K. Thayalan of Counsel for the Respondent AND UPON READING the Record of Appeal filed herein AND UPON HEARING Counsel as aforesaid IT WAS ORDERED that this Appeal do stand adjourned for Judgment and the same coming on for Judgement this day at Kuala Lumpur in the presence of Mr. G. T. Rajan of Counsel for the Appellant and Mr. K. Thayalan of Counsel for the Respondent IT IS ORDERED that this Appeal be and is hereby dismissed with costs AND IT IS ORDERED that the sum of \$500/-

In the Federal Court

No. 19

Order

27th November 1978

continued

(Ringgit Five hundred only) deposited by the Appellant in Court as security for costs be paid to Respondent towards taxed costs.

GIVEN under my hand and the Seal of the Court this 27th day of November, 1978.

.....
CHIEF REGISTRAR,
FEDERAL COURT,
KUALA LUMPUR.

No. 20

Order granting Conditional Leave to Appeal
14th December 1978

No. 20

ORDER GRANTING CONDITIONAL LEAVE TO APPEAL
IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT
KUALA LUMPUR
(APPELLATE JURISDICTION)
FEDERAL COURT CIVIL APPEAL NO. 83 OF 1978

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B E T W E E N :

HARRY TONG LEE HWA Appellant

- and -

YONG KAH CHIN Respondent

(In the Matter of Civil Suit No. 2131 of 1977
In the High Court in Malaya at Kuala Lumpur

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B E T W E E N :

YONG KAH CHIN Plaintiff

- and -

HARRY TONG LEE HWA Defendant)

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

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... IN OPEN COURT

THIS 14TH DAY OF DECEMBER, 1978.

O R D E R

UPON MOTION made unto Court this day by Mr. G. T.

Rajan of Counsel for the Appellant abovenamed in the presence of Mr. K. Thayalan of Counsel for the Respondent abovenamed AND UPON READING the Notice of Motion dated the 27th day of November, 1978 and the Affidavit of Mr. Tong Lee Hwa affirmed on the 27th day of November, 1978 and filed herein AND UPON HEARING Counsel aforesaid IT IS ORDERED that conditional leave be and is hereby granted to the Appellant abovenamed to appeal to His Majesty the Yang di-Pertuan Agong against the Judgement of the Federal Court given on the 27th day of November, 1978 upon the following conditions :-

In the Federal Court

No. 20

Order granting Conditional Leave to Appeal

14th December 1978

continued

- (a) that the Appellant do within three months from the date hereof enter into good and sufficient security to the satisfaction of the Chief Registrar, Federal Court, Malaysia in the sum of \$5,000/- (Ringgit Five thousand only) for the due prosecution of the appeal, and the payment of all such costs as may become payable to the Respondent in the event of the Appellant not obtaining an order granting the Appellant final leave to appeal, or if the appeal being dismissed for non-prosecution or of His Majesty the Yang di-Pertuan Agong ordering the Appellant to pay the Respondent costs of the appeal as the case may be;
- (b) that the Appellant abovenamed do within three (3) months from the date hereof take necessary steps for the purpose of procuring the preparation of the Record and for the despatch thereof to England.
- (c) that the sum of \$95,062.50 being the amount of the claim paid into Court to remain in court's custody until the outcome of this appeal;
- (d) that the execution and all further proceedings on the Judgement of this Honourable Court dated the 27th day of November, 1978, be stayed until the appeal therefrom to His Majesty the Yang di-Pertuan Agong shall have been heard and decided;

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AND IT IS FINALLY 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 14th day of December, 1978.

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.....
 CHIEF REGISTRAR,
 FEDERAL COURT, MALAYSIA.

In the Federal
Court

No. 21

ORDER GRANTING FINAL LEAVE TO APPEAL

No. 21

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

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT
KUALA LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. 83 OF 1978

19th March
1979

B E T W E E N :

HARRY TONG LEE HWA Appellant

- and -

YONG KAH CHIN Respondent 10

(In the Matter of Civil Suit No. 2131 of 1977
In the High Court in Malaya at Kuala Lumpur)

B E T W E E N :

YONG KAH CHIN Plaintiff

- and -

HARRY TONG LEE HWA Defendant)

CORAM: LEE HUN HOE, CHIEF JUSTICE, HIGH COURT,
BORNEO;

WAN SULEIMAN, JUDGE, FEDERAL COURT,
MALAYSIA; 20

ABDUL HAMID, JUDGE, FEDERAL COURT,
MALAYSIA.

... IN OPEN COURT

THIS 19TH DAY OF MARCH, 1979.

O R D E R

UPON MOTION preferred unto Court this day by Mr. G. T. Rajan of Counsel for the Appellant abovenamed in the presence of Mr. Vinayak Pradhan of Counsel for the Respondent herein AND UPON READING the Notice of Motion dated the 21st day of February, 1979 and the Affidavit of Tong Lee Hwa affirmed on the 8th day of February, 1979 and filed herein AND UPON HEARING Counsel as aforesaid IT IS ORDERED that final leave be and is hereby granted to the Appellant abovenamed to His Majesty the Yang di-Pertuan 30

Agong against the Judgement of the Federal Court given on the 27th day of November, 1978 AND IT IS ORDERED that the costs of this application be costs in the cause.

GIVEN under my hand and the Seal of the Court this 19th day of March, 1979.

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CHIEF REGISTRAR,
FEDERAL COURT, MALAYSIA.

In the Federal Court

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No. 21

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

19th March 1979

continued

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N

HARRY TONG LEE HWA (Defendant) .. Appellant

- and -

YONG KAH CHIN (Plaintiff) .. Respondent

RECORD OF PROCEEDINGS

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

Solicitors for the Appellant

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

Solicitors for the Respondent