

8/83

No. 32 of 1980
IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

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

B E T W E E N :

KIM GUAN AND COMPANY
SENDIRIAN BERHAD

Appellant
(Plaintiff)

- and -

YONG NYEE FAN & SONS
SENDIRIAN BERHAD

Respondent
(Defendant)

RECORD OF PROCEEDINGS

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Respondent

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INDEX OF REFERENCE

No.	Description of Document	Date	Page No.
<u>IN THE HIGH COURT OF MALAYA AT IPOH</u>			
<u>VOLUME NO. 1</u>			
1	Statement of Claim	2nd May 1973	1
2	Amendment to Statement of Claim	19th October 1973	5
3	Statement of Defence and Counterclaim	9th May 1973	6
4	Reply to Defence and Counterclaim	6th May 1973	8
<u>Plaintiff's Evidence</u>			
5	Yap Fook Sen	19th, 20th October 1976	9
6	Tan Phang Nam	20th, 21st October 1976	21

No.	Description of Document	Date	Page No.
<u>Defendant's Evidence</u>			
7	Yong Toong Liew	21st October 1976	26
8	Lee Yau Shin	21st October 1976	29
9	Yong Su Hian	21st, 26th October 1976	29
10	Ho Khoon Hee	26th October 1976	35
11	Lan Mee Hin	26th October 1976	36

12	Judgment of Datuk Hashim Yeop A. Sani J.	14th December 1976	37
13	Order	14th December 1976	63
<u>IN THE FEDERAL COURT OF MALAYSIA</u>			
14	Notice of Appeal	10th January 1977	65
15	Memorandum of Appeal	26th February 1977	66
16	Order granting leave to add further grounds of appeal	14th February 1978	69
17	Judgment of the Court (Chang Min Tat and Syed Othman, F.J.J. and Eusoffe Abdoolcader J. per Chang Min Tat, F.J)	15th November 1978	70
18	Order	15th November 1978	87
19	Order granting final leave to appeal to His Majesty the Yang di-Pertuan Agong	9th July 1979	88

EXHIBITS

Exhibit Mark	Description of Document	Date	Page No.
10(6)	Agreement between TAN PHANG NAM and YAP FOOK SENG and KIM GUAN & COMPANY SND. BHD.	24th March 1955	90
10(24)	Letter from CHIN FOOK YEN to KIM GUAN & CO.	29th May 1970	97
10(25)	Letter from CHINN SWEE ONN & CO. to YONG NYEE FAN & SONS	10th April 1973	98
10(27)	Letter from CHINN SWEE ONN to CHIN FOOK YEN	26th April 1973	100
10(28)	Letter from CHIN FOOK YEN TO CHINN SWEE ONN	27th April 1973	101
10(29)	Letter from CHINN SWEE ONN to CHIN FOOK YEN	3rd May 1973	102
10(30)	Letter from CHIN FOOK YEN to CHINN SWEE ONN	5th May 1973	103
10(31)	Letter from CHINN SWEE ONN to YONG NYEE FAN & SONS	7th May 1973	104
10(32)	Letter from CHIN FOOK YEN to CHINN SWEE ONN	9th May 1973	105
10(34)	Extracts from Minute Books of Directors' Meeting of Kim Guan & Co. minuting meetings held or resolutions passed on dates in next column	25th February 1955 5th August 1955 18th March 1956 28th July 1956 5th December 1956 28th January 1957 5th February 1957 11th March 1957 13th March 1957 28th July 1957	107 109 111 112 114 115 116 118 119 120

Exhibit Mark	Description of Document	Date	Page No.		
10(34)	Extracts from Minute Books of Directors' Meeting of Kim Guan & Co. minuting meetings held or resolutions passed on dates in next volumn	25th August 1957	122		
		23rd March 1958	123		
		15th November 1958	125		
		14th February 1959	126		
		11th April 1959	128		
		17th October 1959	130		
		20th February 1960	132		
		2nd March 1960	134		
		7th April 1960	135		
		1st July 1960	137		
		3rd September 1961	139		
		25th September 1961	143		
		10(34)	Notice of EGM of KIM GUAN & CO. on 29th October 1961	30th September 1961	144
10(36)	Extracts from Minute Books of General Meetings of Kim Guan & Co. minuting meetings held on dated in next column.	16th April 1955	149		
		18th March 1956	150		
		10th March 1957	151		
		23rd March 1958	153		
		29th March 1959	155		
		27th March 1960	157		
		26th June 1960	159		
		30th April 1961	160		
		29th October 1961	161		
10(37)	Receipts given by YONG NYEE FAN & SONS LTD. to KIM GUAN & CO. LTD.	15th February 1955	163		
		12th March 1955	164		
		4th April 1955	164		
		4th May 1955	165		
		4th June 1955	165		
		1st July 1955	166		
		1st August 1955	166		
		1st September 1955	167		
		6th October 1955	167		
		1st November 1955	168		
		12th December 1955	168		
		4th January 1956	169		
		2nd March 1957	169		
		4th January 1967	170		
11(19)	Resolution of Directors of Yong Nyee Fan & Sons	28th October 1954	171		

Exhibit Mark	Description of Document	Date	Page No.
11(20)	Resolution of Directors of Yong Nyee Fan & Sons	29th December 1956	172
11(21)	Certified copy of Memorandum of Transfer of 26 Hugh Low Street from Chin Thin Voon to Yong Nyee Fan & Sons	28th October 1954	173
11(22)	Letter from Thong Sang Woh to Yong Nyee Fan & Sons	30th November 1954	175
11(23)	Letter from Yong Nyee Fan & Sons to Kim Guan & Co.	20th July 1956	177
11(27)	Notice of EGM of KIM GUAN & CO. on 8th October 1961	19th September 1961	178
11(38)	Letter from Maxwell Kenion Cowdy & Jones to Kim Guan & Co.	23rd January 1967	180
11(39)	Letter from Yong Nyee Fan & Sons to Kim Guan & Co.	3rd February 1967	181
12	Balance Sheet of Kim Guan & Co.	22nd March 1958	182
14	Letter from Yong Su Hian to Kim Guan & Co.	26th August 1961	184
15	Letter from Maxwell Kenion Cowdy & Jones to Yong Su Hian	12th September 1961	185
16	Letter from Kim Guan & Co. to Yong Su Hian	15th September 1961	188

Exhibit Mark	Description of Document	Date	Page No.
17	Letter from Yong Su Hian to Kim Guan & Co.	16th September 1961	189
18	Notice to Kim Guan & Co. requisitioning Extraordinary General Meeting	16th September 1961	190
20	Letter from Maxwell Kenion Cowdy & Jones to Yong Su Hian enclosing: Copy letter from Maxwell Kenion Cowdy & Jones to Kim Guan & Co. enclosed in last Exhibit	2nd October 1961	195
21	Letter from Maxwell Kenion Cowdy & Jones to Yong Su Hian	7th October 1961	197
22	Letter from Maxwell Kenion Cowdy & Jones to Yong Su Hian enclosing: Copy letter from Das & Co. to Maxwell Kenion Cowdy & Jones	9th October 1961 7th October 1961	198 199
23	Letter from Maxwell Kenion Cowdy & Jones to Yong Su Hian	18th October 1961	200
24	Letter from Yong Su Hian to Maxwell Kenion Cowdy & Jones	19th October 1961	201

Exhibit Mark	Description of Document	Date	Page No.
30	Letter from Maxwell Kenion Cowdy & Jones to Kim Guan & Co.	24th October 1961	202
25	Letter from Maxwell Kenion Cowdy & Jones to Yong Su Hian	26th October 1961	203
26	Receipt for payment of Quit Rent with certified and agreed translation Translation	29th January 1973	204
27	Request for payment of assessment in respect of 26 Hugh Low Street (with certified and agreed translation) Translation	24th March 1973	206 207
28	Receipt for payment of assessment in respect of 26 Hugh Low Street (with certified and agreed translation) Translation	27th March 1973	208 209

Documents transmitted to Privy Council but not reproduced

Document	Date
Writ of Summons and Indorsement of Claim	19th April 1973
Notes of Evidence before Dqtuk Hashim Yeop A Sani J.	19th October 1976 to 14th December 1976
Minutes and Resolutions of Board of Directors Meetings of Kim Guan & Co. Ltd.	2nd February 1958 10th May 1958 8th June 1958 12th July 1958 24th August 1958 18th September 1958 18th October 1958 7th December 1958 25th January 1959 2nd March 1959 29th November 1959 20th December 1959 28th May 1960 4th October 1960 20th November 1960 5th January 1961 9th April 1961 14th June 1961
Minutes of Extraordinary General Meeting of Kim Guan & Co. Ltd.	8th October 1961
Notices of Motion, Affidavit & Order by Lee Hun Hoe, Chief Justice Wan Suleiman J & Abdul Hamid J.	
Exhibits 11(24)	Various 2nd May 1960 to 4th December 1961
(25) Letters from Kim Guan & Co. to Yong Nyee Fan & Sons (with translations of letter of letter of 4th June 1960)	
11(26) Letter from Maxwell Kenion Cod Cowdy & Jones to Kim Guan & Co.	12th September 1961
11(28) to Letters from Kim Guan (37) & Co. to Yong Nyee Fan & Sons.	Various 3rd January 1962 to 2nd April 1963
List of Shareholders of Kim Guan & Co. for the year 1964	

Documents transmitted to Privy Council but not reproduced

Document	Date
Annual Returns of Kim Guan & Co. for the years 1966 - 73.	
Order extending period of Caveat	18th January 1974
Recorded delivery advice.	20th September 1961

INDEX OF EXHIBITS
SEPARATELY REPRODUCED
(NUMBERED 10(1) to 10(37))

Exhibit Mark	Description of Document	Date	Page
10(1)	Memorandum and Aritcles of Association of KIM GUAN & COMPANY SDN BHD	29th January 1955 and 12th February 1955	1
10(2)	Statutory Declaration of Compliance with Companies Ordinances 1940-1946	29th January 1955	22
10(3)	Statutory List of Directors	29th January 1955	23
10(4)	Statutory Notice of situation of registered office	29th January 1955	24
10(5)	Return of allotment of shares in compliance with Companies Ordinance 1940	20th April 1955	25
10(7) - 10(12)	Annual returns of KIM GUAN & COMPANY SDN BHD for years 1955, 1956, 1959-1962 inclusive		26
10(35)	Share registers of KIM GUAN & CO. LTD.		80
11(1) - 11(9)	Certified copies of annual returns of YONG NYEE FAN & CO from date of incorporation to 6th December 1960		94
11(10)- 11(15)	Certified copies of annual returns of KIM GUAN & CO from date of incorporation to 10th April 1960		130
11(16)	Property account of YONG NYEE FAN & CO	1st September 1953 - 14th November 1955	155
11(17)	Bank Statement of YONG NYEE FAN & CO 30th September 1954 - 31st December 1959		156
11(18)	Statement of sums paid in respect of 26 Hugh Low Street between 15th February 1955 and 4th April 1973		158

No. 32 of 1980

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N :

KIM GUAN AND COMPANY SENDIRIAN
BERHAD

Appellant
(Plaintiff)

- and -

10 YONG NYEE FAN & SONS SENDIRIAN
BERHAD

Respondent
(Defendant)

RECORD OF PROCEEDINGS

No. 1

STATEMENT OF CLAIM

IN THE HIGH COURT IN MALAYA AT IPOH
Civil Suit 1973 No.113

In the High
Court at Ipoh

No.1
Statement
of Claim
dated 2nd
May 1973

Between

20 Kim Guan & Company Sdn. Berhad,
No.26, Hugh Low Street,
Ipoh.

Plaintiff

And

Yong Nyee Fen & Sons Sdn. Berhad,
No.1, Brewster Road,
Ipoh.

Defendant

STATEMENT OF CLAIM

1. The Plaintiff is a limited company incorporated in the States of Malaya and has its registered office at No.26, Hugh Low Street, Ipoh.

In the High Court at Ipoh

No.1
Statement of
Claim
dated 2nd
May 1973
(continued)

2. The Defendant is a limited company incorporated in the States of Malaya and has its registered office at No.1, Brewster Road, Ipoh.

3. The Plaintiff Company before its conversion and incorporation into a limited company on 12th February 1955 was a partnership business carried on under the name and style of Kim Guan & Company at No.65, Hugh Low Street, Ipoh, and the partners thereof were Tan Peng Nam and Yap Fook Seng. The Chairman of the Defendant Company at that time and at all material times was ne Yong Nyee Fan (since deceased).

10

4. Sometime in 1954, the said Yong Nyee Fan made an arrangement with the said Yap Fook Seng and Tan Peng Nam whereby the said Kim Guan & Company was to be converted into a private limited company (hereinafter referred to as the New Company) in which he and/or his Company, namely, the Defendant Company, and/or his/its nominees were to hold shares therein.

20

5. It was agreed that premises No.26, Hugh Low Street, Ipoh, held under Certificate of Title No.5768 for Lot No.98^S be purchased, vacant possession thereof to be obtained, and the said premises to be renovated so that the business of the New Company could be carried on at the said premises which were then owned by one Chin Thin Voon and occupied by Chop Toong Sang Woh as Tenants.

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6. Under the said arrangement, the said Yong Nyee Fan agreed that he would advance for the purchase of the said premises No.26, Hugh Low Street, Ipoh, and that the said Tan Peng Nam and Yap Fook Seng would advance the money for compensation to Chop Toong Sang Woh for giving up vacant possession of the said premises No.26, Hugh Low Street, Ipoh, and that the said premises when so acquired for such use were to be held in trust for the New Company.

40

7. The New Company was formed and incorporated under the name of Kim Guan & Company Limited, which is the Plaintiff Company.

8. Pursuant to the above arrangement, the said premises were purchased for \$35,000/- (Dollars thirty-five thousand) and the amount agreed upon as having been expended by the said Yong Nyee Fan as expenses in connection with such purchase was agreed at \$2,000/- (Dollars two thousand).

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9. Pursuant to the said arrangement, the said Tan Peng Nam and the said Yap Fook Seng advanced \$19,000/- (Dollars nineteen thousand) as compensation to Chop Toong Sang Woh for giving up vacant possession of the said premises to the New Company which since then and is now in occupation thereof.
10. The Plaintiff Company was incorporated on the 12th day of February, 1955, and upon its incorporation, the said Yong Nyee Fan who was also Chairman of the Defendant Company became a director of the Plaintiff Company. Pursuant to the arrangement agreed upon between the said Yong Nyee Fan, the said Tan Peng Nam and the said Yap Fook Seng, shares in the Plaintiff Company were allotted and issued to the said Yong Nyee Fan and his nominees. At all material times, the said Yong Nyee Fan and one of his sons, namely Yong Su Hian, who were directors of the Defendant Company, were also directors of the Plaintiff Company.
11. The said premises were to be transferred to the Plaintiff Company on the Plaintiff Company reimbursing the said Yong Nyee Fan in the sum of \$37,000/- (Dollars Thirty-seven thousand) but when it was ascertained that the said Yong Nyee Fan had purchased the said premises in the name of the Defendant Company, the said Tan Peng Nam wanted to have the New Company wound up but a settlement was effected by the Plaintiff Company agreeing to pay \$45,000/- (Dollars forty-five thousand) to the Defendant Company in respect of the trust aforesaid being the demand made by the said Yong Nyee Fan.
12. The Plaintiff Company avers that the Defendant Company had been and is fully aware of the trust aforesaid.
13. The Plaintiff Company had requested the said Yong Nyee Fan during his lifetime and the Defendant Company after his death to have the said land held under Certificate of Title No.5768 for Lot No.98^S Township of Ipoh with premises No.26, Hugh Low Street, Ipoh, erected thereon transferred to the Plaintiff Company on payment to the Defendant Company of the said sum of \$45,000/- (Dollars forty-five thousand) but the Defendant Company has delayed the matter and has now finally refused to do so.
14. The Plaintiff Company avers that by such

In the High Court of Ipoh

No.1
Statement of
Claim
dated 2nd
May 1973
(continued)

refusal, the Defendant Company has committed a breach of the trust in respect of the said premises.

The Plaintiff Company claims :-

- a) a declaration that the Defendant Company holds an undivided 19/56 share in the land held under Certificate of Title No.5768 for Lot No.98^S in the Township of Ipoh in the District of Kinta with premises No.26, Hugh Low Street, Ipoh, erected thereon (hereinafter collectively referred to as the said property) in trust for the Plaintiff Company; 10
- b) a declaration that the Defendant Company holds the remaining undivided 37/56 share in the said property in trust for the Plaintiff Company subject to the payment to the Defendant Company of \$45,000/- (Dollars forty-five thousand); 20
- c) an order that the Defendant Company do transfer the whole of the said property to the Plaintiff Company free from all encumbrances on payment to the Defendant Company of the sum of \$45,000/- (Dollars forty-five thousand);
- d) an injunction to restrain the Defendant Company from dealing with the said property or taking any steps to dispossess the Plaintiff Company of its possession thereof pending the final disposal of this suit; 30
- e) such further or other reliefs as this Honourable Court deems fit to make;
- f) costs.

Dated at Ipoh this 2nd day of May 1973.

Sd: Chinn Swee Onn & Co.
Solicitors for the Plaintiff.

No. 2

In the High
Court at Ipoh

AMENDMENT TO PARAGRAPH 11
OF THE STATEMENT OF CLAIM

No.2
Amendment to
Statement of
Claim dated
19th October
1973

IN THE HIGH COURT IN MALAYA AT IPOH
Civil Suit 1973 No.113

Between

Kim Guan & Company Sdn. Berhad,
No.26, Hugh Low Street,
Ipoh.

Plaintiff

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And

Yong Nyee Fan & Sons Sdn. Berhad,
No.1 Brewster Road,
Ipoh.

Defendant

AMENDMENT TO PARAGRAPH 11 OF
THE STATEMENT OF CLAIM

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11. The said premises were to be transferred to the Plaintiff Company on the Plaintiff Company reimbursing the said Yong Nyee Fan ~~in the sum of \$37,000/- (Dollars thirty-seven thousand)~~ for what was paid for the said house but when it was ascertained that the said Yong Nyee Fan had purchased the said premises in the name of the Defendant Company, the said Tan Peng Nam wanted to have the New Company wound up but a settlement was effected by the Plaintiff Company agreeing to pay ~~\$45,000/- (Dollars forty-five thousand)~~ \$37,000/- (Dollars thirty-seven thousand) to the Defendant Company in respect of the trust aforesaid being the ~~demand made by the said Yong Nyee Fan. The said amount was in 1957 increased to and agreed at \$45,000/-.~~

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Amendment made this 19th day of October, 1976.

Sd: Chinn Swee Onn & Co.

In the High Court at Ipoh

No.3
Statement of
Defence and
Counterclaim
dated 9th
May 1973

No. 3

STATEMENT OF DEFENCE AND
COUNTERCLAIM

IN THE HIGH COURT IN MALAYA AT IPOH
Civil Suit No. 113 of 1973

Between

Kim Guan & Company Sdn. Berhad,
No 26, Hugh Low Street,
Ipoh. Plaintiff

And

10

Yong Nyee Fan & Sons Sdn. Berhad,
No.1, Brewster Road,
Ipoh. Defendant

STATEMENT OF DEFENCE

1. The Defendant admits paragraphs 1 and 2 of the Statement of Claim.
2. The Defendant denies that Yong Nyee Fan (since deceased) was the Chairman of the Defendant Company at all material times.
3. The Defendant has no knowledge of what is alleged in paragraph 4 of the Statement of Claim. 20
4. As for paragraphs 5, 6 and 7 of the Statement of Claim, save that the said premises was owned by the person mentioned in paragraph 5 and occupied by the tenants mentioned in paragraph 5, the Defendant denies the rest of the allegations.
5. As for paragraph 8 of the Statement of Claim, the Defendant denies that the said premises was purchased pursuant to the alleged arrangement and states that the said premises was bought for the sole benefit of the Defendant. 30
6. Further as regards paragraph 8 of the Statement of Claim, the Defendant denies the alleged agreement for expenses.
7. As for paragraph 9 of the Statement of Claim, the Defendant has no knowledge as to the alleged payment of compensation and states that if any compensation was paid, which is not 40

admitted, it was not paid pursuant to the alleged arrangement, which is denied.

In the High Court at Ipoh

8. Further as regards paragraph 9 of the Statement of Claim, the Defendant admits that the Plaintiff is now in occupation of the said premises and states that the Plaintiff has been in occupation since December, 1954 as the Defendant's tenant at the rent of Dollars Two hundred and twenty (\$220.00) per month which was increased to \$300.00 per month since September, 1956.

No. 3
Statement of Defence and Counterclaim dated 9th May 1973

(continued)

9. As for paragraph 10 of the Statement of Claim, the Defendant admits that the said Yong Nyee Fan became a Director of the Plaintiff Company but denies that it was pursuant to the alleged arrangement and states that for the shares allotted payment was made in cash.

10. As for paragraph 11 and 12 of the Statement of Claim, the Defendant denies the allegation therein and states that at all material times, the Defendant was the absolute owner of the said premises and became the registered proprietor on or about the 3rd day of November, 1954 and denies the alleged or any other trust.

11. As regards paragraph 13 of the Statement of Claim, the Defendant denies the alleged request and states that the first time that the Plaintiff had made a claim was on the 10th day of April, 1973, through its solicitors, after the Defendant had filed proceedings on the 5th day of January, 1973 with the Rent Tribunal Board for recovery of possession of the said premises for purposes of development and during the lifetime of the said Yong Nyee Fan who died on 15th day of July, 1960, the Plaintiff had made no mention of the alleged trust.

12. The Defendant will contend that the Plaintiff's claim is barred by limitation and/or by laches and acquiescence.

13. Each and every allegation of the Plaintiff unless specifically admitted hereinabove is denied as if the same were traversed and set up in seriatim.

COUNTER-CLAIM

14. The Defendant repeats paragraph 11 of the Statement of Defence and states that due to the Plaintiff's contention, the said Tribunal had

In the High Court at Ipoh

No.3
Statement of
Defence and
Counterclaim
dated 9th
May 1973
(continued)

adjourned the proceedings therein until the final disposal of this suit. Due to the indefinite delay to the Defendant in effecting development of the said premises, the Defendant suffers damages. The Defendant claims damages.

WHEREFORE the Defendant prays that the Plaintiff's claim be dismissed with costs. Further the Defendant claims damages.

Dated this 9th day of May, 1973.

10

Sd: Chinn Swee Onn & Co.
Solicitors for Defendant.

No.4
Reply to
Defence and
Counterclaim
dated 6th
May 1973

No. 4

REPLY TO DEFENCE AND
COUNTERCLAIM

IN THE HIGH COURT IN MALAYA AT IPOH
Civil Suit No. 113 of 1973

Between

Kim Guan & Company Sdn. Berhad,
No.26, Hugh Low Street,
Ipoh.

Plaintiff

20

And

Yong Nyee Fan & Sons Sdn. Berhad,
No.1, Brewster Road,
Ipoh.

Defendant

REPLY TO DEFENCE AND COUNTERCLAIM

1. The Plaintiff joins issue with the Defendant on the Defence.
2. As to the Counterclaim, the Plaintiff avers that the application to the Rent Tribunal to effect development of the said premises was not made bona fide but was only a pretext to get the Plaintiff out of the said premises.
3. The Plaintiff denies that it has caused

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the Defendant any damage.

Wherefore the Plaintiff prays that the Counterclaim be dismissed.

Dated this 6th day of July, 1973.

Sd: Chinn Swee Onn & Co
Solicitors for Plaintiff.

In the High
Court at Ipoh

No.4
Reply to
Defence and
Counterclaim
dated 6th
May 1973
(continued)

10 This Reply to Defence and Counterclaim was filed by Messrs. Chinn Swee Onn & Co. of No.202, Second Floor, Asia Life Building, Hale Street, Ipoh, Solicitors for the Plaintiff abovenamed.

No. 5

TRANSCRIPT OF EVIDENCE
(Relevant parts) BEFORE
DATUK HASHIM YEOP A. SANI J.
EVIDENCE OF YAP FOOK SEN

Plaintiff's
Evidence

No.5
Yap Fook Sen
dated 19th,
20th October
1976

P.W.1 Yap Fook Sen a/s Hakka

20 I am 61 years old, I am a cloth merchant living at 224 Jalan Pasir Puteh, Ipoh. I am managing director of Kim Guan Co.Ltd. Registered address of this company is 26, Hugh Low Street, Ipoh. Business also carried out there.

30 I know one Tan Phang Nam (id). He and I formed a company Kim Guan & Co. This business was carried on at 65, Hugh Low Street, Ipoh. This partnership with Tan started in 1949, I know one Yong Nyee Fan. In 1949 I attended a meeting held at the association in Ipoh. That association meeting was for purpose of discussing a clumb Chan Keng Yen Yi Sa. It was a social club. The members were the same Association members. Yong Nyee Fan was president of the club. I was exco member and treasurer of the club. We met often. In 1950 I and Yong formed a mining company - Yong Nyee Fan Mining Co. I took shares also founder member. Tan Pang Nam held shares too.

Kim Guan & Co. at 65, Hugh Low Street made good money. In 1950 Yong made suggestion -

In the High Court at Ipoh
Plaintiff's Evidence

No.5
Yap Fook Sen
dated 19th,
20th October
1976

(continued)

after Korean war cloth business flourishing - he suggested he joined Kim Guan. I told him I had to consult Tan, my partner. I consulted Tan -he decided that the company did not need a third partner as the company had sufficient capital. This was around 1950. Yong again brought up the subject again at a meeting in the social club. He told me premises No.26, Hugh Low Street offered for sale. This was about 1954. He asked me to discuss with Tan to have the business of Kim Guan expended and also convert it to limited company in order he could have shares. The three of us had a discussion at the club. During the discussion Yong told us premises 26, Hugh Low Street belonged to one Chin, offered for sale at \$35,000/-. After discussion 3 of us agreed to purchase this premises. Yong then told us the new company if formed he would bring out the \$35,000/- to purchase this house. This particular shophouse was rented out to Chop Tong Chin Woh, a sundry shop. The rental was \$180/-. The purchase did not include vacant possession. Then Yong appointed Tan and I to discuss the vacant possession with the Chop. If vacant possession obtainable then the new company could be formed. If vacant possession not obtained the new company could not be formed. There was a second discussion between 3 of us at the club. During the discussion Tan told us that the Chop was prepared to vacate the premises for \$30,000/-. After haggling we managed to bring it down to \$19,000/-. Then Yong suggested that the deal could be completed as the figure was acceptable. Then Tan and I raised the amount of \$19,000/- on behalf of the new company. Yong agreed to advance \$35,000/- for the purchase of the premises. The 3 of us agreed that the two sums were advanced to the new company. The purchase of the shophouse was to be made on behalf of the new company. Tan and I advanced the \$19,000/-. After obtaining vacant possession we had the third discussion at the same club to form the new company. Yong suggested to convert Kim Guan & Co. into Kim Guan & Co.Ltd. The capital was \$500,000/-. The subscribed capital was \$299,000/-. Out of that I was to be allotted \$100,000/-. Tan \$100,000/-. Yong and his nominees \$99,000/-. This was so because Yong told Tan and I that \$1,000/- was for registration fee if the subscribed capital was \$300,000/-. Yong told me he was court interpreter before. He was also C.C. in legal firm. The business of the new company to be attended by Tan and I. Yong was to be treasurer of the new company and responsible to appoint the

secretary. All these were agreed to. Tan and I were responsible for vacant possession. Yong was responsible for purchase of the house. All these done on behalf of the new company to be formed.

After we obtained the house we had it registered and renovated. This took about 50 over days. The business of the new company started on 3.1.55 at the new premises.

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In February 1955 Yong presented the company with a bill. (pg.264 of A) (Receipt). He wanted rent. Tan and I objected to this because right from the beginning money was advanced to the new company. Therefore the new company need not pay rent. The premises belonged to the company and not to Yong & Sons Ltd. Then only we found the shop was purchased in the name of Yong & Sons Ltd. So Tan and I decided to withdraw from the partnership as Yong did not keep his word. At that time we had not received the certificate of registration. We wanted to wind up the business. Afterwards Yong agreed to the following :-

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1. To transfer the premises to the company at \$37,000/-. The \$37,000/- made up of \$35,000/- for purchase price and \$2,000/- for incidental fees.
2. Yong said he had advanced \$37,000/- and wanted interest at \$220/- on that amount as it was chargeable as a bank rate - which worked out at 6%. Temporarily the \$220/- interest was to be treated as rent. It was only a temporary measure.
3. The company was to pay assessment and quit rent because all agreed premises was to be transferred to the company.

40

I have been paying the assessment ever since but through Yong & Sons. I asked Yong when he would transfer. Yong said business just began, more funds required for the business. The transfer to be effected when there was sufficient funds.

In July 1956 I received a letter from Defendant company (pg.77 in B). As soon as I received it I saw Yong. He told me since bank rate had increased the \$220/- should be increased to \$300/-. , i.e. 6% to 8% I was agreeable to pay the enhanced rate of interest as from 1.9.56.

In the High
Court at Ipoh
Plaintiff's
Evidence

No.5
Yap Fook Sen
dated 19th,
20th October
1976

(continued)

In the High Court at Ipoh
Plaintiff's Evidence

No.5
Yap Fook Sen
dated 19th,
20th October
1976

(continued)

(pag.64 in B). At the end of 1956 I discussed with Tan on the transfer of the house to the company. We found it to be difficult and intended to end the business. We conveyed this to Yong because he was also director. After telling him he told us it was easy to transfer the house to the company and asked us not to worry.

At the beginning of 1957 he tendered resignation as director. We were handed the letter. He said that Yong & Sons Ltd. had decided to transfer the house to the company at \$45,000/-. (sic)

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Adjourned to 2.30 p.m.

(Sd) Datuk Hashim Yeop A. Sani

At 2.30 p.m.

P.W.1 Yong wanted to resign as I believe he did not receive salary of \$600/-. He spoke to me about the salary 2 months after the company began business. Tan and I did not agree because Tan did not agree because one Toong Liew daughter of Yong was receiving salary from the company. We had a clerk in charge of the accounts. He was employed by the company. Yong Nyee Fan appointed treasurer and also receiving salary. Tan did the most work for the management of the company. His working hours were from 8 a.m. - 6 p.m. I went to Singapore to place the order and did business in Penang, K.L. and Alor Star. Yong did nothing as far as the business was concerned.

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When Yong said he was prepared to transfer the premises for \$45,000/- the company held a directors' meeting on 5.2.57. At that meeting one of the resolutions was to retain Yong as one of the directors of the company. The Board agreed to have the house transferred at \$45,000/- instead of \$37,000/- because it was a benefit to the company. The money was to be raised. The Board empowered the managing director to charge the house to Chung Khiaw Bank to raise \$30,000/- after it was transferred to the company. The balance of \$15,000/- to be raised. Board directed Tan and I to raise it also from Chung Khiaw Bank by way of overdraft. The minutes of this meeting was drawn up by secretary, Madam Yong Toong Liew, daughter of Yong. She had been secretary since incorporation. The nature of resolution appears in page 173 of A. Yong Kee Poon is uncle of Yong. After this

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meeting I chased after Yong for the title deed for the purpose of the transfer to the company. He told me not to worry as it was all written in the minutes of the meeting.

In the High Court at Ipoh
Plaintiff's evidence

10 Yong left Malaya for visit to China in 1957. During his absence Yong Su Hian was appointed alternate director. After his return his health was bad. He could not walk. He suffered pain in one leg. I did not ask him about the house.

No.5
Yap Fook Sen
dated 19th,
20th October
1976

(continued)

20 In 1959 Yong telephoned me and asked me to go to his house. I went. In his house he asked me why the house 26, Hugh Low Street not yet transferred to the company. He said Kim Guan had 3 founder members. They were Tan and Yong and myself. Tan and I received \$600/- he said why he did not receive \$600/- p.m. Because of that he said he did not transfer the house. I told him he did not object to our drawing \$600/- p.m. from the company. I asked Yong whether or not he received the \$600/- and then only willing to transfer the shop. I told him to take care of his health. When fully recovered the company would pay him the \$600/-. On hearing this he was happy and I left him. I returned to the shop and related this to Tan. Tan was with me on this. Tan added, because of the transfer of the house Yong wanted \$600/- he could come to the shop anytime to take it.

30 Yong's sickness became worse and he died in 1960.

40 Sometime after his death in 1961, Yong & Sons Ltd. sent a notice to Kim Guan Company Ltd. (pg. 100 in B). It gave notice to clear out. So the directors requisitioned E.G.M. (page 101 in B). (pg. 263 in A) - The minutes of the E.G.M. Mr. Yong Su Hian stated on behalf of Yong & Sons Co.Ltd. that the letter should not have been sent. He did not mention what was the misunderstanding. But the letter was withdrawn. Yong Su Hian said it was result of misunderstanding between both parties. He also said each party would forgive the other party. He also requested the notice be returned to him. The meeting resolved to return the notice. That was the end of the matter. Yong Su Hian, to settle the matter, donated \$1,000/- to the social club.

50 Yong Su Hian in 1961 said the rent was to be raised to \$700/-. I did not agree. He told me the house valued at \$45,000/- then. Now

In the High Court at Ipoh
Plaintiff's Evidence

No.5
Yap Fook Sen
dated 19th,
20th October
1976

(continued)

the value gone up to over \$70,000/- I requested Yong Su Hian to transfer the house at \$45,000/- as stated in the minutes of the meeting.

Yong Su Hian asked me to reconsider. I did not consider the proposal of the rent because it was contrary to the resolution. I reported to Tan. We kept on sending rent at \$300/-.

When I found this attitude of Yong & Sons Co.Ltd. I did not file any suit because we Chinese if avoidable would not come to court. For \$300/- receipts were issued. It benefitted the company. But to get the transfer at \$45,000/- no way but through the court. It is not beneficial to a company to litigate. But not to litigate the company had to pay over \$70,000/- to get the house.

On 23.1.67 (pg. 188 of B) we received letter from the company Yong & Sons. On 3.2.67 we received another letter from Yong Su Hian (pg.189 of B) about the fair rent. I went to see him because rent would be raised to \$700/- and also threatening action. I told him he was one of the directors of the company, better for him to act according to the resolution. Stated in the resolution house was to be transferred at \$45,000. The \$300/- paid by company also appeared in the resolution. So must act accordingly. He said he already said earlier the house to be transferred only at \$70,000/-.

On 29.5.70 I received letter from Messrs. Chin Fook Yen (pg.140 in A). The letter gave year's notice. On 10.4.73 I instructed my lawyer to write letter to Yong & Sons Co.Ltd. (pg.141 in A). No reply to this letter. In 1973 the defendant company took proceedings against my company for development. Because of that I have filed this suit.

After receiving letter from Yong Su Hian in 1967 I was very much troubled by the letter because rent to be increased and action to be taken against the company. A few days after that I sent my cheque for \$300/- to Yong & Sons Co.Ltd. A few days later I got receipt for the \$300/-. A month later company sent another receipt for it. This went on for several months. My impression was that they would not raise the rent nor take any action. When I said rent it was understood to be the interest. I had the impression he would carry out what his father

had agreed.

If I wanted to get the house at \$45,000 we must involve in litigation. If we had to pay \$70,000/- or over, it is more advantageous to pay the \$300/- p.m.

(Pg. 233 in A). Madam Leong Vong Moi is eldest daughter-in-law of Yong.

(Pg. 234 in A) eldest grandson of Yong.

(Pg. 235 " ") second son.

(Pg. 236 " ") eldest daughter.

(Pg. 237 " ") one of the sons.

(Pg. 238 " ") another son of Yong.

(Pg. 239 " ") daughter.

(Pg. 240 " ") son of Yong.

(Pg. 241 " ") wife (now widow).

(Pg. 243 " ") daughter.

(Pg. 244 " ") son.

(Pg. 245 " ") daughter.

(Pg. 246 " ") Yong & Sons Ltd.

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All the Yongs sold their shares in 1961. Yong Kee Foon in 1964.

Tan retired in 1962.

Plaintiff company shares now owned by me and my family.

(Sd) Datuk Hashim Yeop A.Sani

Adjourned to 9.30 tomorrow.

(Sd) Datuk Hashim Yeop A. Sani

20TH OCTOBER, 1976

Counsel and parties as before.

30

Counsel for plaintiff tenders amended Statement of Claim paragraph 11 as approved yesterday.

P.W.1 reaffirmed states in Makka.

XXD In 1955, on or about 15.2.55 Yong Nyee Fan handed me a rent receipt and demanded rent from plaintiff company. He came to me with

In the High
Court at Ipoh

Plaintiff's
Evidence

No.5
Yap Fook Sen
dated 19th,
20th October
1976

(continued)

In the High Court at Ipoh
Plaintiff's Evidence

No.5
Yap Hook Sen
dated 19th,
20th October
1976

(continued)

rent receipt prepared. The owner was the defendant company. That was first time I noticed it. I was rather surprised and immediately I objected. During our previous discussions at the social club Yong never mentioned the company Yong Nye Fan & Sons. I am sure. He never said he was spokesman of the company. He spoke in his own private capacity. He never mentioned the company Yong & Sons Ltd. At one stage I wanted to wind up the company. Tan was also with me. The dispute did not settle immediately but over a period of days - one or two days not exceeding 3 days. Eventually my company continued to occupy the premises. The terms were we pay \$220/- to the Defendant company. My company was to pay assessment. I am not clear about the quit rent. I paid a certain sum to Defendant company to pay all these. I was told we had to pay assessment and quit rent. 10 20

It is not true we pay assessment and they pay quit rent. I never saw the receipts though.

Every month they collect money. On these terms our company occupy the premises. All these terms were oral - no written agreement.

(Pg. 160 in A) (First meeting of Plaintiff company). This was held not long after the dispute. At that time registration not received. (Witness shown minutes in pg. 150). Nothing mentioned about the dispute with Yong Nye Fan. No mention that No.26 was trust property. 30

(Witness shown 162 and 163 in A).

No written agreement of the advances on repairs and renovations. Only my words against the deceased. Not discussed in the resolutions. Yong calculated the bank's interest amounted to \$220/- p.m. Transfer effected in the name of Yong Nye Fan but he promised to transfer it back to Kim Guan. Not reflected in the minutes or resolution because we were satisfied with the arrangement. Yong was a Perak State Assemblyman. We thought he would never cheat us. I looked upon him as our adviser. 40

(Pg. 78 in B). This was letter forwarding rent from our company.

(Pg. 79 in B). I signed it - same rent payment.

(Pg. 78 - 187 in B) (all rentals from Plaintiff company).

In the High Court at Ipoh

(Pg. 180 in B) payment for assessment.

Plaintiff's Evidence

I agree I have been sending rentals and assessment to Defendant company. I receive receipts for these payments (Pg. 64 in B).

No.5
Yap Fook Sen
dated 19th,
20th October
1976

10 In July 1956 I received letter from Defendant company. (Pg. 77 in B). The increase due to bank rate. We wanted to wind up the company. I did not write a letter to Yong to that effect but discussed with him face to face. Tan Phang Nam was present. I did not reveal this at subsequent directors meeting in 1956 as the discussion was at end of 1956. I brought it up in 1957.

(continued)

(Pg. 173 in A). Yau Yit Ping was then a teacher. I don't know if he knew English.

20 Pg.174 in A). Minutes of previous meeting on the purchase of the property adopted. Yau Yit Ping also present. When previous minutes read over I can't remember if Yau objected to the item on No.26. It was adopted. The minutes were explained in Chinese. I can't remember who explained. I can't remember if one of the directors explained or the secretary. At that meeting (pg. 174 in A) item (a) under matters arising explained at next meeting (pg. 177).

30 In the minutes at pg. 173 in A no mention of trustees on subject of No.26 instead of "owner".

Also in pg. 177 in A "owner" not trustee. Chinese business depends on trust. All dealings with Yong I did verbally.

Second time we wanted to wind up the business. I still had faith in Yong. He always assured me he would transfer, only delay. I regarded him as a leader.

40 Beginning of 1957 Yong tendered his resignation because he did not receive \$600/- as salary.

In 1959 he telephoned me to go to his house when he returned from China.

Yong died in 1960. I don't know if it was 15th July. In 1959 he telephoned me in the

In the High Court at Ipoh
Plaintiff's Evidence

No.5
Yap Fook Sen
dated 19th,
20th October
1976
(continued)

middle around August 1959. In a few months he died. It is important the shop be transferred but Yong had promised. I did not press him as he was sick.

(No mention of the transfer or the \$600/- in minutes of meeting of Board after August 1959 to the time Yong died).

No mention of the property in the directors' meeting since 28.7.57 (pg. 177 in A).

I had good relationship with Yong long time. We share mining company. In 1957 he was sick and confined to the house. 10

(Pg. 263 in A). This was an E.G.M. Chairman was Tan. Secretary was Leong. "Misunderstanding" there Mr. Yong Su Hian did not elaborate on it. Yong Nyee Fan and family had shares in Kim Guan previous to 1961. Some-time in 1961 Yong Su Hian wanted to sell his shares in Kim Guan to somebody and also shares belonging to members of his family. At the initial stage Kim Guan refused to register those transfers but I would not say refused but the procedure was wrong. Yong Su Hian engaged Maxwell Kenion and wrote and I replied. Eventually this misunderstanding solved but not that the company agreed to register the transfers but procedure wrong - the shares not transferred to shareholders but outsiders - not according to the articles of association. The misunderstanding was not settled. It was not about the shares. The "long-drawn discussion" was on the notice. 20 30

Yong Su Hian paid \$1,000/- to Social Club. His money. I took the notice to Dass & Dass replied. I was then called by Maxwell Kenion. When I arrived there I was informed by the lawyer that the notice issued was wrong. I was also informed by officers of the club that Yong Su Hian had paid \$1,000/- to the club. So when it was brought up at the meeting I agreed that the matter be dropped. 40

I am not telling lies. It is not true the beginning of the misunderstanding was the transfer of the shares. No letter from Maxwell Kenion about the transfer of the shares - no letter on shares. Not correct Yong Su Hian wanted to call E.G.M. to amend the articles. I never agreed to pay for Yong Su Hian the legal fees. It is not true this was the \$1,000/- paid to the club as Yong did not want it. I 50

can cut cockerel's head. The feelings between my group and Yong Nyee Fan's group still same, still good friends.

In the High Court at Ipoh

Plaintiff's Evidence

I disagreed to raise rental to \$700/-. Both Tan and I agreed not to reconsider the increase. I continued sending rental at \$300/-.

No.5
Yap Fook Sen
dated 19th,
20th October
1976

10 I never wrote letter to Defendant company to transfer shop. At E.G.M. (pg. 263 in A) it was not raised as trust property.

(continued)

20 (Pg. 188 of B). When I received this letter I took the letter personally to Yong Su Hian the next day. I told him our company does not accept the increase. I also told him he was also one of the directors and knew of the resolution for \$300/-. I also asked him to follow what his father had said - to transfer the shop to Kim Guan. He said price had gone up to \$70,000/-. I told him to follow the resolution. He asked me to go back and reconsider. I returned and felt uneasy. A few days later I sent him \$300/- by cheque. 2 or 3 days later I got receipt for the amount. Following months same thing. At that time I thought he would not follow the notice. I felt a little easier. He continued to collect \$300/-. I can't remember where the resolution for \$300/- (Put - there is no resolution). I promised \$300/-. There is resolution to transfer the shop at \$45,000/-. The resolution is pg. 173 of A. Not necessary to write letter. It is important. (By consent - tendered balance sheet of Kim Guan - D1). \$3,600/- paid by company was for rental. It is audited account. In Income Tax returns also exhibited as rental.

30

(Pg. 140 in A). Upon receipt of this notice I did not write a reply. I did not see Yong Su Hian. We did not convene any meeting.

(Pg. 189 of B). I did not reply.

40

On 5.1.73 Defendant company instituted proceeding under section 18 of the Control of Rent Act. Following that I lodged a caveat. Then I instituted present suit.

On 3.5.73 through my solicitors sent \$300/- and for the first time stated as "interest" (pg. 154 in A).

(Pg. 209 in A). On investment on rubber estates - to purchase 240 acres.

In the High Court at Ipoh

Plaintiff's Evidence

No.5

Yap Fook Sen dated 19th, 20th October 1976

(continued)

(Pg. 210 in A).

(Pg. 213 in A) under matters arising.

(Sd) Datuk Hashim Yeop A. Sani.

Adjourned to 2.30 p.m.

At 2.30 p.m.

P.W.1.

RXD Madam Yong was secretary of the company. She is daughter of Yong Nyee Fan. The minutes were in English. She drew out the minutes. Ordinarily she also interpreted the minutes.

10

Two terms of the settlement on the rent -

The \$220/- stated as rent actually was interest. The other term was \$37,000/- to go to the transfer of the house to the company. The house was purchased by Yong with an advance from him.

On the transfer of some shares by Yong Su Hian (pg. 230 in A). 34 shares to Lee Kee Seng was discussed at meeting on 3.9.61. It was agreed at this meeting as stated at page 231. The directors did not agree because Lee Kee Seng was outsider. Eventually these shares sold to one of the shareholders.

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I was asked about a reply to this so-called transfer by Mr. Dass. I went to Mr. Dass concerning a notice in 1961 - (pg. 100 in B). Because of this I requisitioned E.G.M. (Pg. 101 in B). I went to Dass about this and told him in detail about Yong's advance of \$37,000/- and Tan and I advanced \$19,000/-. I told him of the arrangement between three of us. I instructed Dass to reply. I know there was a reply. I did not have a copy. Dass office was closed long time ago. The original would be with Maxwell Kenion.

30

(Pg. 173 in A). On the purchase of the house it was interpreted to me in Makka most probably by the secretary. As far as I can remember the interpretation was that the grant of the shophouse was to be transferred to Kim Guan for \$45,000/-. Even though the price had been increased from \$37,000 as originally agreed it would still be advantageous to buy over. The Board agreed. That was the real thing that happened.

40

(Pg. 174 of A) item (a) says about the house. We decided to have the grant transferred to Kim Guan.

In the High Court at Ipoh
Plaintiff's Evidence

(Pg. 177 of A) also about the shop. What was agreed was that we must have the grant transferred to the company immediately.

No.5
Yap Fook Sen
dated 19th,
20th October
1975

(Pg. 173) prepared and explained by Secretary.

(continued)

10

(Pg. 174 and 177) also prepared and explained by Secretary.

(Pg. 263 in A). This was E.G.M. called only for one purpose, i.e. to discuss notice of one year.

Assessment and quit rent paid by Yong & Sons and we reimbursed.

(Pg. 89 in B). We used "rent" because the grant not yet transferred therefore treated as rent.

(Sd) Datuk Hashim Yeop A. Sani.

20

No. 6

Plaintiff's Evidence

TAN PHANG NAM

No.6
Tan Phang Nam
dated 20th,
21st October
1976

P.W.2. Tan Phang Nam A/s in Teochew:

I am 72 years old, businessman. I live at Jalan Mohd Salleh, Greentown. I am a cloth merchant. I have known P.W.1. for more than 40 years. In 1949 P.W.1 and I started a cloth business. This was at 65, Hugh Low Street, Ipoh. It was Kim Guan & Co. I had also interests in Yong Nyee Fan Mining Company.

30

In 1950 Yong wanted a share in our cloth business. P.W.1 and I were doing cloth business then. In 1954 Yong brought this up again. In 1954 I met Yong at the social club at Cockman Street. At one meeting with him he brought up subject of shophouse. He said shop 26, Hugh Low Street was for sale. He said suitable for cloth business. He also suggested the company to be a limited company. He said the shop should be brought for the company.
40 There was a meeting between 3 of us. We decided

In the High Court at Ipoh
Plaintiff's Evidence

No.6
Tan Phang Nam
dated 20th,
21st October
1976

(continued)

he was responsible for the purchase of the house for the company. The owner was one Chin Kim Boon. Tenant was a Chop Tong Seng Woh. The rental was \$180/-. P.W.1 and myself were responsible for vacant possession of the premises. We succeeded to get vacant possession after we compensated the tenant for \$19,000/-. We told Yong about it. We discussed first before we acted.

Three of us discussed the formation of the new company first. The capital was \$500,000/-, \$299,000/- paid up capital. Of this amount I got allotted \$10,000, P.W.1 same amount, Yong \$99,000/-. This was to be a family affair of Tan, Yap and Yong. We can nominate our family members as nominees.

10

Both P.W.1 and I paid \$19,000/- to Chop Tong Seng Woh. When we got possession we renovated. The sundry shop family still upstairs.

20

Then we applied for registration of the company. Yong was responsible for appointment of Treasurer and Secretary. P.W.1 and I responsible for running of the business.

In middle of February (pg. 264 of A) - 1955 Yong handed this receipt to us - rent for December 1954 to January and February 1955. It was written as rent but it was not so. P.W.1 and I disagreed because that house was bought for Kim Guan Co. Ltd.

30

When I found the house registered in name of Yong & Sons Co. Ltd., I asked Yong why have it in his company's name. He said never mind, later will be transferred to the company. If he did not agree I would have left the company. This was settled by the well wishes of both sides. The settlement was that as he had purchased it he should be compensated by way of interest to take form of rent. Kim Guan had to pay \$35,000/- but other expenses \$2,000/- totalling \$37,000/-. The assessment of the house was to be paid by Kim Guan as it was the company's house. The quit rent was also to be paid by Kim Guan. Few months after commencement of business Yong asked for \$600/- salary since P.W.1 and I also got same salary. I disagreed and P.W.1 also. My work in the shop was manager - 8.00 a.m. - 6.00 p.m. P.W.1 was working same hours attending work in buying and selling and going outstation. Yong did nothing.

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50

Sometime in July 1956 I received letter terminating tenancy and increasing rent to \$300/- (pg. 77 in B). Yong came to discuss this. He said bank interest had increased. Actually it was raising interest.

In the High Court at Ipoh
Plaintiff's Evidence

When P.W.1 and I found house not transferred to Kim Guan we asked Yong. He said the company just started needing money, later on can transfer.

No.6
Tan Phang Nam
dated 20th,
21st October
1976

(continued)

10 At end of 1956 because of the delay I thought of winding up the company. Yong suggested not and not to worry about the transfer. Eventually he wanted \$45,000/- for the transfer. On 5.2.57 our Board of Directors held a meeting (pg. 173 of A). The \$45,000/- was to be raised by charging the grant to Chung Khiaw Bank for \$30,000/-. The balance of \$15,000/- to be raised by P.W.1 and I.

20 All the minutes of these meetings in English. They were drawn up by secretary, Madam Yong Toong Liew. She usually interpreted the contents to us. I don't know English. What I gather was what was interpreted not what was written. Yong fell ill in 1958 or 1959. Sometime in 1959 P.W.1 reported to me a meeting he had with Yong Nyee Fan. This was usual on all matters of Kim Guan & Co. P.W.1 told me Yong requested for \$600/- before and refused, so he delayed the transfer. I said if he

30 were to transfer the shop we would give the \$600/-. He died in 1960 - not long after that.

(Sd) Datuk Hashim Yeop A. Sani

Adhourned to tomorrow at 9.30 a.m.

(Sd) Datuk Hashim Yeop A. Sani

21ST OCTOBER, 1976

Counsel and parties as before.

P.W.2 re-affirmed states in Teochew:

40 Round about 12.9.71 Kim Guan received notice at pg. 100 in B, to vacate No.26 within a year. As soon as we received it P.W.1. and I had a meeting. We consulted Dass & Co. We told Dass that the house bought for the company. We told him everything. We explained in detail and told him we were not going to move out. Dass replied to the notice. I don't have a copy of it. We only instructed him.

In the High
Court at Ipoh
Plaintiff's
Evidence

No.6
Tan Phang Nam
dated 20th,
21st October
1976

(continued)

I have no doubt he replied. Dass died and the company now not in existence. As result of the notice we called for E.G.M. (pg. 101 of B). Meeting held the E.G.M. The minutes are in pg.263 of A. As result Yong & Sons Co.Ltd. withdrew the notice.

In 1962 I and my family withdrew from the company. I have no interest whatever in Kim Guan now.

XXD - I had discussion with Yong Nyee Fan before formation of the company. I have no document or record pertaining to the arrangements. I agree it is my words against a dead man. But that is how Chinese conduct business. 10

The rental of former tenant was \$180/-, not \$220/-. I asked the tenant then. On or about 15.2.55 Yong handed me the rent receipt for 3 months (264 in A). Kim Guan was incorporated in February 1955. I agree 12.2.55.

Before incorporation Kim Guan already moved into the premises. It did not pay rent until incorporated. At beginning of November 1954 we renovated and moved into the house. Renovation completed in January 1955 and ready to do business. I did not expect rent as the company bought the shop. I deny we agreed that the rent should be collected only after incorporation because of accounting. It is not true because of accounting as all accounts can be temporarily noted down before incorporation. 20 30

At our first directors' meeting on 25.2.55 (100 in A), nothing about this house I agree. Because Yong said \$220/- not to be taken as rent only as interest and also he said not to worry it will be transferred. So we did not raise it at the meeting. It is important I agree. But Yong was one of the directors and we took his word. Even important thing like we wanted to wind up not raised in the meetings.

Being company's property the company paid the assessment. Yong collected both the assessment and quit rent. 40

(Witness shown D1) I agree recorded only payment of assessment. It must be entered in another form. (Witness insists it must be in the accounts book).

We received notice (pg. 77 in B) in 1956. It was to be increased due to increased bank

rate. This was not raised in any meeting only our words.

In the High Court at Ipoh

Plaintiff's Evidence

No.6

Tan Phang Nam dated 20th, 21st October 1976

(continued)

Yau Yit Ping was one of the directors. I know him. He knows both English and Chinese, he is a graduate.

(Witness referred to 173 in A). Yau Yit Ping attended.

(Witness referred to 174 in A). He also attended. The previous minutes adopted that day.

10

The minutes in 174 in A was adopted in minutes in 177 in A. The minutes in 180 in A adopted it. Yau Yit Ping also present. In these minutes I agree Yong & Sons Co.Ltd. mentioned as owners but I don't agree to that.

We later agreed to pay Yong \$600/- provided he transferred the property. I agree not revealed in any meeting. It was matter of promise by word of mouth.

20

I referred the notice in 100 in B to Mr. Dass. Important. I called E.G.M. also. I agree meeting Dass not noted in E.G.m. minutes because it was admitted the notice was a mistake.

The misunderstanding referred to was that the shophouse was Kim Guan's property. That was the misunderstanding. I am telling what I know. I am not interested in the company anymore. I deny the misunderstanding was on the shares of Yong which they transferred to outsiders. The E.G.M. on 8th October 1961 never discussed the shares of Yong. I don't agree the shares were the misunderstanding. The shares of Yong not connected with the arrangements.

30

RXD - Meeting on 3.9.61 (229 in A) had reference to these shares of Yong. This was where discussion on shares, selling to non-shareholders against the articles.

(263 in A). The misunderstanding referred to there was the claim on the shop.

40

Yau Yit Ping was director of the company because he bought shares from Kim Guan out of Yong's allotment. The word rent used meant interest.

I have no interest whatever in the case.

In the High
Court at Ipoh

Plaintiff's
Evidence

No.6
Tan Phang Nam
dated 20th,
21st October
1976

(continued)

(Sd) Datuk Hashim Yeop A. Sani

Case for plaintiff.

(Sd) Datuk Hashim Yeop A. Sani

Defendant's
Evidence

No.7
Yong Toong
Liew
given on
21st October
1976

No. 7

TRANSCRIPT OF EVIDENCE
(relevant parts) before
DATUK HASHIM YEOP A. SANI J.
EVIDENCE OF YONG TOONG LIEW

D.W.1. Yong Toong Liew a/s in English:

I am 48 years old. I am a staff nurse
attached to University Hospital, K.L. 10

Yong & Sons Ltd. in 1954 I was one of the
directors. One Madam Leong Vong Moi was also
director and secretary of the company. In
connection with the purchase of No.26, Hugh Low
Street, Ipoh, it was offered for sale. Madam
Leong asked whether we would buy it. I told
her I would discuss with my mother. Our
conclusions were we would buy because it was
on main street. We decided but out of respect 20
to my father we discussed this again during
dinner. At that time my father was present.
My father is Yong Nyee Fan. He also agreed it
was a good buy. As result we decided to buy it.
Madam Leong did the administrative side.

(Witness shown pg. 72 in B). Our company
passed resolution to buy the property.

(Witness shown pg. 62 in B). This was
Yong & Sons Ltd. accounts dated 28.10.54.

(Witness shown pg. 63 in B) withdrawal 30
of \$35,000/- from bank. All expenses on the
purchase all paid by the company.

(Witness shown pg. 74 in B). I signed
as one of the directors. At time of purchase

this property was occupied. The rental was \$220/- (Witness shown rent receipt dated 23.11.54 - D2). The company purchased for its own benefit. My company paid the purchase money.

In the High
Court at Ipoh
Defendant's
Evidence

10 In 1954, my father was not a director of the company. He was a shareholder until April 1954. We purchased the property in October. I never authorised my father to be spokesman for the company. All decisions by the directors. Only out of respect I consulted him. I don't know how the vacant possession came about. Madam Leong was responsible for the administrative side. Later the premises let out to Kim Guan. The terms were monthly rental or \$220/- p.m. Kim Guan Co. paid assessment. Our company paid quit rents.

No.7
Yong Toong
Liew
given on
21st October
1976
(continued)

20 My directorship in Yong & Sons Co.Ltd. ceased sometime about September 1955. After that I don't know what that company did.

When plaintiff company formed I was appointed secretary in March 1955. I was present at the first Board meeting of Kim Guan (pg. 160 in A). During this meeting I was appointed secretary. I can't remember if I was present. (Witness referred to pg. 173 in A).

30 On 5.2.57 I was no more connected with Yong & Sons Co. I remember item on 26, Hugh Low Street, Ipoh. This was discussed and decided. I believe I drew up the minutes.

(Witness referred to 174 in A). I was in attendance. The minutes of the last meeting was read by me in English. Mr.Yau Yit Ping translated.

(Witness referred to 177 in A). I was also secretary. The last minutes adopted I read the minutes. Yau translated.

40 (Witness referred to 180 in A). I read the minutes of last meeting. Mr. Yau also translated.

In all meetings I read but I never explained, usually translated by Mr. Yau. When my father present he translated. English to Hakka. I know Yau Yit Ping. He spoke well in both languages.

During all the period when I was secretary of Kim Guan I never head property No.26,

In the High
Court at Ipoh
Defendant's
Evidence

No.7
Yong Toong
Liew
given on
21st October
1976
(continued)

although registered in Yong & Sons was held in trust for Kim Guan. I resigned from Kim Guan in 1959.

XXD - All daughters of Yong educated in Chinese except me. I speak Hakka.

The shareholders of Yong & Sons all confined to the family - (pg. 8 of B). shareholders in 1952. I can't remember if all. These people in pg. 8 also had shares in Kim Guan.

10

(Witness referred to pg. 33 of A). except the last 2 all were shareholders in Kim Guan. All our shares given under allotment of my father. All our shares in Yong & Sons all paid for by my father. I don't know what purpose he gave us the shares. As far as my shares in Kim Guan paid by my father but as regards the others I don't know. I don't know if all others also paid by father.

Yong Nyee Fan Mines Ltd. I had shares there, incorporated in 1951, founders of the company were my father and Yap Fook Seng (seen the original memorandum).

20

My father was court interpreter. He was working as C.C. in a legal firm. He became rich through mining. He was a member of State Council, in the mining company I think I paid half of the shares given to me.

My father and Yap (P.W.1) were friends.

As far as I remember I never explained the minutes. When I drafted the minutes it is possible I showed them to my father.

30

I said earlier first "supposed" monthly rental. It was not interest.

We bought the premises for our company Yong & Sons Co. for investment.

RXD - I wanted to use "supposed" rental because the rental was month to month.

(Sd) Datuk Hashim Yeop A.Sani

No. 8

LEE YAU SHIN

In the High
Court at Ipoh

Defendant's
Evidence

D.W.2 Lee Yau Shin a/s English -

No.8

Lee Yau Shin
given on
21st October
1976

I am 51 years old. I am an engineer living at 17, Hale Street, Ipoh.

10 I and one Mr. Foo are partners of consulting engineering firm. I received instructions from Yong & Sons Co. Ltd. to plan for building 2 storey shophouse at No.26, Hugh Low Street. This was in November 1971. I completed the plan and plan approved by Municipality of Ipoh. They have paid me fees for the work leading to the approval of the plan. So far they have paid \$330/-. This construction was delayed in that the period stipulated in the approval expired. Renewal incurred expenses all in the \$330/-. The plan had to be withdrawn because the Municipality asked us to comply with new planning requirements. I was paid \$700/- for the
20 plan work. The plan is now of no value. If they want to do it again they have to get a new plan. The cost of building it would be \$54,072/-. The same building now would cost \$65,131/-. The original building would have commenced in 1973. The new by-laws commenced in 1976.

XXD - Nil

(Sd) Datuk Hashim Yeop A. Sani

No. 9

YONG SU HIAN

Defendant's
Evidence

30

D.W.3 Yong Su Hian a/s English.

No.9

Yong Su Hian
given on 21st,
26th October
1976

I am 41 years old. I am a businessman at No.1, Brewster Road, Ipoh.

40

I became director of Yong & Sons Co. Ltd. since 1955. No.26, Hugh Low Street, Ipoh, belongs to our company. I never heard it was trust property for Kim Guan & Co.Ltd. I have been receiving rentals from the plaintiff company. Whenever they send rentals to the company I received no complaints it was not

In the High
Court at Ipoh

Defendant's
Evidence

No.9

Yong Su Hian
given on 21st,
26th October
1976

(continued)

rental but interest. I became director of
Kim Guan in March 1957 (176 in A).

(Witness referred to 177 in A). I
attended this meeting. The minutes of the last
meeting on 11.3.57 read by the secretary in
English and explained in Hakka by Yau Yit Ping,
one of the directors. This minute was read out
(referring to 174 in A) and adopted. (177 in
A) under item (a) under matters arising. I
was asked if Yong & Sons wanted to sell. I
said no. I agree to the minutes. Never said
that it was property of Kim Guan.

10

(180 in A) I attended this meeting also.
The previous minutes read and explained as
usual and adopted. All the directors should
have understood. No mention of the trust
property.

(Witness referred to 100 in B). My
company instructed Maxwell Kenion to issue
the notice. What made me to instruct the
issue of this notice was as follows. The
background reason was this. On 26th of April
I wrote a letter to Kim Guan asking to transfer
my shares to some one. I also indicated should
the Board of Directors find anybody who wanted
it, have it. I have copy of my letter
(tendered 1 D3). In the meantime the letter
was handed through one Ho (ie. Ho Koon Hee).
He informed me the Board of Directors refused
to accept the transfer. So I went to see
Maxwell Kenion. After consultation I gave
instruction to send a letter terminating
tenancy of Kim Guan This was 100 in B.
Besides I was also advised on the alteration
of articles of association (tendered - D4).

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I went to the extent of terminating the
tenancy to force Kim Guan to accept the
transfer of my shares. I hope a compromise
would come about.

I really wanted to get them out if they
won't compromise. Subsequently I got a reply
on 15.9.61 informing me from the plaintiff
company (D5).

40

I replied the letter (D6). At same time
I drafted proposal to amend articles of the
company Kim Guan - (D7, D7A - A.R.Card). They
had not done anything in the meantime. Again
I went to my lawyer. On 2.10.61 my lawyer sent
another letter copies to me - (D8). I received
another letter from my lawyer about settling

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10 a dispute - (D9). A few days later I received a letter replied by Dass & Co. in respect of my request for transfer of shares - (D10). My lawyer again wrote to me asking what happened to the registration - (D11). I replied registration still carried out - (D12). On 26th October my lawyer wrote again - (D13). Apart from this series of correspondence, upon receipt of 100 in B there was a meeting. The minutes of this meeting is in 263 in A. The misunderstanding was not actually with plaintiff company but between my family and Tan and Yap. The misunderstanding was on the transfer of shares. The mistake I meant was about the misunderstanding not on the question of No.26, Hugh Low Street. I stood up to apologise as courtesy for having forced them to attend the meeting. This would not happen if no misunderstanding.

In the High Court at Ipoh
Defendant's Evidence

No.9
Yong Su Hian given on 21st, 26th October 1976

(continued)

20 Mr. Ho also knew of this misunderstanding. Many others. If this misunderstanding could be resolved the notice could be withdrawn. All suggested to resolve amicably. Finally we agreed to find a way to settle. We mean myself and Mr. Yap's group. I withdrew the notice. That was the end of about the tenancy.

30 (Witness referred to 230 in A). The last sentence about transfer to Lee Kee Seng. The transfer was not agreed. Subsequently I managed to dispose of my shares.

40 I donated \$1,000/- to the social club. The final settlement between us was made through effort of one Leong Kok Hon who was at that time one of the advisers of the social club. The terms were we transfer our shares in Kim Guan to families of Yap and Tan. On their side they transferred their shares to Yong Nyee Fan Mine. The balance was to settle by cash about \$22,500/-. On top, the group was to reimburse my legal fees. I in expression of gratitude to the social club, donated \$1,000/- which was the compensation for legal fees. The \$1,000/- was not settled out from my pocket. The property No.26 does not belong to Kim Guan.

All along plaintiff company paid the assessment. Our company paid quit rent.

(Receipt for quit rent - D14)

(Receipt for assessment - D15 A,B)

I and Yap discussed the \$700/- rent. It

In the High Court at Ipoh

Defendant's Evidence

No.9
Yong Su Hian
given on 21st,
26th October
1976

(continued)

was merely increase of rental. He offered \$400/-. He never said about transfer of the shophouse to Kim Guan.

(Witness referred to 188 in B). I (sic) instructed Maxwell Kenion to write this. No reply from Yap.

On 3.2.67 (189 in B) a letter by me. Subsequently Yap came to see me. I told him old rental for long time already. Kim Guan was doing quite well. We as investment company wanted reasonable returns. The property was worth about \$70,000/-. Therefore basing on 10% we wanted rental \$700/-. Yap disagreed. He never said about transfer at \$45,000/-. I said pay \$70,000/- and I transfer it to you. I said alternatively you buy. Not profitable to collect only \$300/- p.m. I would rather have \$70,000/-. It was not because understanding that was property of Kim Guan. 10

In 1973 I again instructed my solicitors to give notice for development (140 in A). I had so far 3 - 4 notices. But I did not take action. In the first instance they agreed increasing the rental to \$300/-. The second notice was settled because transfer of shares was settled. The third one in 1967 increasing rental to \$700/-. My lawyers told me could not proceed for the fair rent as \$300/- was about the fair rent. Only possible by way of development. 20 30

I never received any letter before this from plaintiff company about trust property. The first time since my company bought this property I heard an assertion of this claim was from Chinn Swee Onn (pg. 141 in A). A suit was filed after that.

(154 in A) first time rental said to be interest.

Adjourned to 26.10.76 at 9.30 a.m.

(Sd) Datuk Hashim Yeop A. Sani 40

26TH OCTOBER, 1976

Parties and Counsel as before.

D.W.3 re-affirmed states in English

XXD - Yong Nyee Fan Co.Ltd. incorporated in 1952. My father was Chairman. He and my mother

turned alternately as Chairman. All the shares paid up by my father. In case of Kim Guan Co.Ltd. my father paid for all minor ones but for full age I am not sure. He paid for my shares too.

In the High Court at Ipoh
Defendant's Evidence

No.9

Yong Su Hian given on 21st 26th October 1976

(continued)

10

I am also director of Yong Nyee Fan & Sons Ltd. I became director in 1955. I became director of Kim Guan in 1957, i.e. when I became alternate director in place of my father. I ceased to be Kim Guan director end of 1959. In my place I proposed Ho Khoon Hee (pg. 253 in A).

In Yong Nyee Fan Co. my father was the moving spirit but I disagree this was so even when he ceased to be director.

20

In 1957 he was ill. 26, Hugh Low Street, Ipoh, was purchased by my company not by my father. I don't know how my father became shareholder of Kim Guan. I presume he made the arrangement to be the shareholder.

In 1954 when he became the shareholder I didn't know the arrangement on the rental. In 1954 I did not know that rental would be interest. My sister would know, Yong Toong Liew. (She did say first time the amount was supposedly for rental). I disagree that it was supposedly for rental. It was rental.

30

Yong Kee Foon is my uncle. (pg.173, 174 and 177 of A). (reference made to the house 26, Hugh Low Street in these minutes). I was not at that meeting. We never decided to sell the house. (Witness referred to 177 in A). "Yet" is not right. We never had any intention of selling. Ours is investment company and brokers come to make offers. I was present in the meeting at 177. But the minutes must be understanding.

40

How the house was bought I don't know but the company bought it not as trust property. I don't know how Kim Guan came into occupation.

(Witness referred to 77 in B). I was responsible for this letter - signed by me. This was controlled premises. My impression the law allowed me to raise the rent if the tenant agreed. It is total lie that it was only to increase from 6% to 8% interest rate to follow the bank rate. It was increase of rental and done by me.

In the High
Court at Ipoh
Defendant's
Evidence

No.9
Yong Su Hian
given on 21st,
26th October
1976

(continued)

After my father's death in 1960 Yap did not see me until 1967. I correct in 1961 as a result of the misunderstanding after the meeting. The misunderstanding was on the transfer of shares. No other misunderstanding.

(Witness shown D12). This is my letter to Mr. Huntsman. On 23.10.61 it was settled. The agreement was at the E.G.M. No settlement on 19th October. We transferred our shares in Kim Guan to Yap and Tan. They transferred their shares in the mining company to us. That was reached on 23.10.61. Before that no settlement. The Yap and Tans had to pay us about \$22,000/-. In addition they paid my legal fees. I never got any letter from their lawyers. I correct they had their lawyers for their shares. They paid for my lawyer's fees. I don't know why but that was agreed. I requisitioned an E.G.M. (257 in A). (262 in A). I suppose our resolution not accepted. (Witness shown pg. 103 in minutes of Kim Guan - P16). I was not present at the meeting which rejected the resolution.

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(Witness shown pg. 100 in B). I wanted them to clear out. (pg. 101 in B) E.G.M. was called and minutes of that meeting at pg.263 in A. The only thing considered at the meeting was my notice. I agreed to withdraw because we agreed to settle. This notice was only to apply pressure to them. The shares problem settled only on 23rd October. But in principle we agreed to settle at the E.G.M. It is true shares and the house two different things. It is not true Maxwell Kenion received reply from Dass that we had no right to issue the notice.

30

Yap did not come to see me about the \$45,000/- price of the house. He came and offered raising the rent to \$400/-. He never sent the \$400/- because we did not agree. I still accepted \$300/- as my lawyers advised not to refuse until plan for development ready.

40

(pg. 188 in B). I cannot remember what I told the lawyer. No action taken until 1973. I wanted him out at any cost. My application to rebuild is bona fide but it is the only way to get them out.

I was annoyed with Yap because he approached a number of people to see me to settle this.

RXD - (pg. 101 in B and 263 in A). I withdrew the notice at the meeting before real settlement. All agreed to settle in principle.

In the High Court at Ipoh
Defendant's Evidence

10 (pg. 173, 174, 177 in A). Under pg.173 under purchase of 26, Hugh Low Street. I did not attend the meeting. Pg. 174 I did not attend either. Pg.177 I attended. Yap asked if my company decided to sell. I replied no. I said earlier we are investment company and therefore brokers came to make offers to us to buy property or to sell property. From time to time we also gave feelers to test the market. This is business practice of the company.

No.9
Yong Su Hian given on 21st, 26th October 1976
(continued)

(Sd) Datuk Hashim Yeop A. Sani

No. 10

HO KHOON HEE

Defendant's Evidence

D.W.4. Ho Khoon Hee a/s Hakka

No.10
Ho Khoon Hee given 26th October 1976

20 I am 71 years old. I am a retired miner residing at Labroy Road, Ipoh. At one time I was one of directors of Kim Guan. (pg. 212 in A) I became director in 1960 and withdrew in 1961. I was proposed in 1960. (pg. 253 in A). I had shares much earlier. During my directorship I did not know that 26, Hugh Low Street belonged to the company. I did not know that it was held in trust by Yong & Sons Ltd. The house is not in the balance sheet of the company. (Witness referred to pg. 100 of B).
30 Subsequent to this notice E.G.M. held. In connection with this I saw Yap and Tan (P.W.1 and P.W.2). I saw them in connection with the transfer of Yong Su Hian's shares. He wanted to transfer his shares to one Lee Chee Seng. I wanted to settle the matter. This was discussed at Chinese restaurant. P.W.1 did not agree. I did not attend the E.G.M. because I saw how Yap and Tan behaved. The E.G.M. was to
40 discuss the notice of termination of Kim Guan tenancy. I did not attend because that shop did not belong to Kim Guan.

XXD - I was looking after engines formerly. I was working for Yong Nyee Fan Mining Co. Ltd. but for others as well.

In the High
Court at Ipoh
Defendant's
Evidence

No.10
Ho Khoon Hee
given 26th
October 1976
(continued)

I was carrying on mining on small scale. I was tributor of Yong Nyee Fan Mining. I know the Yong family quite well. I am shareholder of Yong Nyee Fan Mining Co. I got shares in Kim Guan through allotment of Yong Nyee Fan. I was sponsored as director of Kim Guan by Yong Su Hian.

In 1960 - 1961 the Board of Directors concentrating on the business of the company. Several meetings of the directors I did not attend. I sold off my shares in Kim Guan in 1962 or so. I don't know all the Yongs left also. They left and I also left. My shares were \$3,000/-.

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I don't know Kim Guan lawyers wrote to Yong Nyee Fan & Co. they had no right to terminate the tenancy. (Witness shown pg.101 in B). The notice was about the shop. It was important. I did not attend because I only wanted them to settle. I was trying to assist Yong to transfer the shares. I was not interested in the business.

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RXD - Nil.

Defendant's
Evidence

No.11
Lau Mee Hin
given on 26th
October 1976

No. 11

LAU MEE HIN

D.W.5 Lau Mee Hin a/s English.

I am clerk attached to Maxwell Kenion Cowdy & Jones. In 1961 I was also in the same firm.

(Pg. 100 in B) I was in charge of the file. My initial there. I received no letter from Kim Guan. Subsequently I gave reply withdrawing the notice. I have copy of the letter (Witness produces copy - D17) (no objection by plaintiff.

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XXD - If we received any letter from Dass & Co. it would have gone into this file.

RXD - Nil.

(Sd) Datuk Hashim Heop A. Sani

Case for Defendant.

Adjourned to 2.30 pm.

(Sd) Datuk Hashim Yeop A. Sani

In the High
Court at Ipoh

Defendant's
Evidence

No.11
Lau Mee Hin
given on 26th
October 1976

(continued)

No.12

JUDGMENT OF DATUK HASHIM
YEOP A. SANI J. of 14th
December 1976

In the High
Court at Ipoh

No.12
Judgment of
Datuk Hashim
Yeop A. Sani J.
of 14th
December 1976

IN THE HIGH COURT IN MALAYA AT IPOH
Civil Suit No. 113 of 1973

10

Between

Kim Guan & Company Sdn. Berhad Plaintiff

And

Yong Nyee Fan & Sons Sdn. Berhad Defendant

JUDGMENT

DATUK HASHIM YEOP A. SANI J.

20

The Plaintiff company began as a partnership business dealing in textiles under the name and style of Kim Guan & Company with its registered office at No.65, Hugh Low Street, Ipoh, the partners being Yap Fook Sen and Tan Phang Nam, i.e. P.W.1 and P.W.2 respectively. In early 1955, the company was converted into a limited company on incorporation under the name and style of Kim Guan & Company Senderian Berhad and has since then been having its registered office at No.26, Hugh Low Street, Ipoh. The first directors of the new company were P.W.1, P.W.2 and one Yong Nyee Fan (since deceased). What will shortly be unfolding is the story of these three business associates.

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In 1949 a social club for Chinese businessmen of the town of Ipoh was formed for social as well as for business purposes. There is

In the High Court at Ipoh

No.12
Judgment of
Datuk Hashim
Yeop A. Sani J.
of 14th
December 1976
(continued)

evidence from P.W.1 and P.W.2 that they frequently met at the club during the early part of 1950s. P.W.1, P.W.2 and the said Yong Nye Fan were obviously close business associates throughout the period of the 1950s. This must be so for it is in their evidence that both P.W.1, Yap Fook Sen and P.W.2., Tan Phang Nam had been associated with the said Yong Nye Fan in another mining company called Yong Nye Fan Mining Company which they formed in 1950.

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It would appear from the evidence of P.W.1 and P.W.2 that the incorporation of the plaintiff company was preceded by several informal meetings between these three persons. According to their version the said Yong Nye Fan became interested in the textile business because he himself said that there was good prospect in that business due to the Korean war. This was said to be sometime in 1954. Although Yong Nye Fan first showed interest around 1950 it was only in 1954 that something materialised from their meetings at the social club. It would also appear that another company of the said Yong Nye Fan had also been formed by then and this was Yong Nye Fan & Sons Company Limited, the defendant company, which is an investment company. P.W.1 said he discussed with P.W.2 who at first did not seem to be interested to have another partner in their textile business but after a further discussion at the club the said Yong Nye Fan told them that premises No.26, Hugh Low Street, Ipoh, was being offered for sale at \$35,000/- and that the shop would be a good site for the proposed company. It was then that the said Yong Nye Fan told them that if the new company was formed he himself would bring out the \$35,000/- to purchase the premises. Apparently P.W.2 had by then already accepted the idea of taking in a new partner. According to the evidence of P.W.1. and P.W.2. it was further agreed between them that P.W.1 and P.W.2 would be responsible for vacant possession of the premises (which in effect meant paying "tea money" to induce the tenant to vacate the premises) and all these monies were to be expended on behalf of the proposed company. The version of the plaintiff can best be expressed in the testimony of P.W.1 which was as follows :-

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" There was a second discussion between 3 of us at the club. During the discussion Tan told us that the Chop was

10 prepared to vacate the premises for
\$30,000/-. After haggling we managed to
bring it down to \$19,000/-. Then Yong
suggested that the deal could be completed
as the figure was acceptable. Then Tan
and I raised the amount of \$19,000/- on
behalf of the new company. Yong agreed to
advance \$35,000/- for the purchase of the
premises. The 3 of us agreed that the
two sums were advanced to the new company.
The purchase of the shophouse was to be
made on behalf of the new company. Tan and
I advanced the \$19,000/-. After obtaining
vacant possession we had the third
discussion at the same club to form the new
company. Yong suggested to convert Kim
Guan & Co. into Kim Guan & Co.Ltd. The
capital was \$500,000/-. The subscribed
capital was \$299,000/-. Out of that I was
20 to be allotted \$100,000/-. Tan \$100,000/-.
Yong and his nominees \$99,000/-. This was
so because Yong told Tan and I that \$1,000/-
was for registration fee if the subscribed
capital was \$300,000/-. Yong told me he
was court interpreter before. He was also
C.C. in legal firm. The business of the
new company to be attended by Tan and I.
Yong was to be treasurer of the new company
and responsible to appoint the secretary.
30 All these were agreed to. Tan and I were
responsible for vacant possession. Yong
was responsible for purchase of the house.
All these done on behalf of the new company
to be formed."

40 So the plaintiff company was formed and it
started business at the new premises on 3rd
January, 1955. In February, 1955, the said
Yong Nyee Fan presented a bill which was in fact
a prepared receipt for rental in respect of the
premises [(264) in A.7] According to P.W.1 both
P.W.2 and he objected to this receipt as it
was understood that the premises "belonged to
the company" and therefore there was no question
of rental. According to PW.1 this was also the
first time that he came to know that the premises
had in fact been bought in the name of Yong
Nyee Fan & Sons Company Limited and not in the
name of Yong Nyee Fan himself on behalf of the
proposed company. Apparently according to P.W.1.
50 he and P.W.2 decided to withdraw from the
partnership as in his own words "Yong Nyee Fan
did not keep his word." But after some
discussion P.W.1 said Yong Nyee Fan agreed to
transfer the premises to the company at
\$37,000/- being the amount made up of the purchase

In the High Court at Ipoh

No.12
Judgment of
Datuk Hashim
Yeop A. Sani J
of 14th
December 1976
(continued)

price (\$35,000/-) and other expenses which amounted to \$2,000/-. According to P.W.1. Yong Nyee Fan also agreed that in the interim period pending the transfer a sum of \$220/- per month should be paid by the plaintiff company to the defendant company not as rental but as a sum reflecting the interest according to the bank rate at 6 per cent. According to P.W.1 it was also agreed then that the plaintiff company was to pay the assessment and quit rent since ultimately title of the premises was to be transferred into the name of the plaintiff company. According to P.W.1 Yong Nyee Fan also said that since their business had just begun the plaintiff company needed funds more urgently for other purposes and as such there was no hurry in respect of the \$37,000/- to transfer the premises into the name of the plaintiff company.

10

In July, 1956, P.W.1 said he received a letter from the defendant company [(77) in B] which in fact is a very formal letter terminating the tenancy of the plaintiff company as on 31st August, 1956. The second part of that letter however stated that the defendant company was prepared to grant a new tenancy as from 1st September, 1956, at a new rental of \$300/- per month. P.W.1 said he was alarmed when he received this letter and saw Yong Nyee Fan straightaway but was told by the latter that the increase was due to the increase in the bank rate from 6 per cent to 8 per cent (which amount if calculated basing on \$37,000/- would indeed come to the round figures of \$220/- and \$300/- per month respectively). P.W.1 said he was agreeable to the enhanced rate of interest and so was Tan, P.W.2. It was at this juncture that P.W.1 said he had discussions with P.W.2 on the transfer of the premises to the plaintiff company but found it "to be difficult" and decided again to end the partnership with Yong Nyee Fan. According to P.W.1 they conveyed this to Yong Nyee Fan but the latter assured them that they should not worry.

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In the meantime, however, the said Yong Nyee Fan deteriorated in health. The last time Yong Nyee Fan attended the directors meeting of the plaintiff company was on 28th January, 1957 - [(172) in A] and on 13th March, 1957 he was replaced by his son Yong Su Hian, D.W.3, as alternate director. [(176) in A]

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After his appointment as alternate director D.W.3 attended meetings of the directors of the

10 plaintiff company on behalf of his father Yong
Nyeo Fan. However sometime between the
directors meeting held on the 28th January,
1957, [(172) in A.] (attending by Yong Nyeo Fan)
and the following directors meeting held on
5th February, 1957, [(173) in A.] (not attended
by Yong Nyeo Fan) something would seem to have
transpired between Yong Nyeo Fan and P.W.1 and
P.W.2. According to P.W.1 it was at this time
that Yong Nyeo Fan threatened to resign as
director because he was not paid \$600/- per
month as in the case of P.W.1 and P.W.2. But
P.W.1 and P.W.2 were not agreeable to the
plaintiff company paying Yong Nyeo Fan the salary
of \$600/- per month because the actual day to
day running of the business of the company was
being done by P.W.1 and P.W.2; P.W.1 was in
charge of purchases and sales and travelled
widely throughout the country and P.W.2 was the
20 manager and worked every day from 8.00 a.m. to
6.00 p.m. at the shop. They claimed that Yong
Nyeo Fan did nothing beyond preparing for the
setting up of the company and furthermore his
daughter Yong Toong Liew, D.W.1, was already
receiving a salary from the company as Secretary.
In addition Yong Nyeo Fan also the company's
treasurer and receiving a salary. It was at
this time according to P.W.1 that Yong Nyeo Fan
also told him that his company would now be
30 prepared to transfer the premises to the plaintiff
company at \$45,000/- instead of \$37,000/- to
which they said they agreed. This price of
\$45,000/- appeared in the minutes of the meeting
of the directors held on 5th February, 1957
[(173) in A.] However from what can be gathered
from the records the minutes at that date only
stated that the directors present "realised that
it would be advantageous to the company if the
company buys over the shop." After a discussion
40 at that meeting there was apparently unanimous
agreement to purchase the premises for that sum.
The latter part of the minutes on the subject
dealt with the manner in which the sum was to be
raised between P.W.1 and P.W.2. According to
P.W.1 he did chase after Yong Nyeo Fan for the
title deed after that meeting for the purpose of
the transfer of the premises into the name of
the plaintiff company. But again Yong Nyeo Fan
told him not to worry as all were recorded in
50 the minutes of the meetings of the directors.
Soon thereafter Yong Nyeo Fan left for China for
medical treatment.

To continue with the story, in 1959 Yong
Nyeo Fan returned from China and soon after that
according to P.W.1 he received a telephone call.

In the High
Court at Ipoh

No.12
Judgment of
Datuk Hashim
Yeop A.Sani J
of 14th
December 1976
(continued)

from Yong Nye Fan who asked him to go to his house. Apparently Yong Nye Fan was then already very ill and P.W.1 went to the house as requested. There Yong Nye Fan told him that the delay in transferring the premises to the plaintiff company was actually because his feelings had been hurt by the company not allowing him to receive the salary of \$600/- per month as in the case of P.W.2. P.W.1 said he assured Yong Nye Fan that the company would pay him the salary he wanted so much when he recovered from his illness. This he said was also agreed to by P.W.2. Unfortunately Yong Nye Fan died in 1960 without recovering from his illness. 10

After Yong Nye Fan's death D.W.3. took over where the late father had left. In respect of the plaintiff company the first action taken by D.W.3 was to demand for the increase in rental in 1961 from \$300/- to \$700/- per month on the ground that the value of the premises had increased to \$70,000/-. In his own words D.W.3 said that the defendant company was an investment company and he wanted reasonable returns. D.W.3 also admitted that he was prepared to transfer the premises to the plaintiff company then not at \$45,000/- but at \$70,000/- and it would not be profitable to collect only \$300/- rental per month. However P.W.1 and P.W.2 disagreed with the proposed increase in rental but continued to pay \$300/- per month. A notice to vacate was sent by the defendant company to the plaintiff company which resulted in an Extraordinary General Meeting by the Board of Directors of the plaintiff company held on 8th October, 1961. This meeting will be dealt with later in this judgment. After the meeting things appeared to quieten down between the plaintiff company and the defendant company until 1967 when on 3rd February, 1967, the defendant company wrote a letter to the plaintiff company asking for a "fair rental" obviously under the newly legislated Control of Rent Act, 1966. [(189) in B.] The letter stated that the existing rental was "far too out of place with the investment value of the premises" and that in order to obtain a reasonable investment return the defendant company might be "forced to rebuild the premises." It was admitted there was a discussion subsequent to that between D.W.3 and P.W.1. On 29th May, 1970, D.W.3 again instructed his solicitors to give a notice for development. [(140) in A.] This notice envisaged eviction under a provision in the Control of Rent Act, 1966 to effect development and the 20 30 40 50

notice gave one year's grace for the plaintiff company to give vacant possession of the said premises. On 5th January, 1973, the defendant company instituted action under section 18 of the Control of Rent Act, 1966 and the plaintiff company responded by lodging a caveat followed by the institution of the present suit. The plaintiffs solicitors sent a letter to the defendant company [(141) in A_7] setting out their version of their position with regard to the said premises.

In the High Court at Ipoh

No.12
Judgment of
Datuk Hashim
Yeop A.Sani J
of 14th
December 1976
(continued)

Let us first consider some documents in the Agreed Bundles A and B where statements pertaining to the relevant facts are recorded in writing.

First, the minutes of the meetings of the directors of the plaintiff company. The first meeting of the directors was held on 25th February, 1955 [(160) in A_7] at which meeting D.W.1 was appointed secretary although D.W.1 in her evidence said she could not remember whether she was actually present at that meeting. At this meeting it is clearly recorded that the first directors of the company were in fact P.W.1, P.W.2 and the said Yong Nyee Fan. The only reference made at this meeting to the premises in question is under the item "Registered Office" where it was confirmed that the registered office of the company would be at "No.26 Hugh Low Street, Ipoh." No reference was made to the premises in question in subsequent meetings until the meeting of the directors held on 5th February, 1957. [(173) in A_7] Apparently the subject came under discussion and the following appears in the minutes :

"Purchase of 26, Hugh Low Street, Ipoh
for \$45,000/-"

Messrs. Yong Nyee Fan & Sons Limited, the owner of this premises decided to sell this premises for the sum of \$45,000/-. The directors realized that it will be advantageous to the Company if the Company buys over this shop. After much discussion it was unanimously agreed to buy 26, Hugh Low Street, Ipoh, for the sum of \$45,000/-"

"Grant of 26, Hugh Low Street, Ipoh"

The directors gave power to the Managing Director to hand over the grant of the above premises to the Chung Khiaw Bank

In the High
Court at Ipoh

No.12
Judgment of
Datuk Hashim
Yeop A.Sani J
of 14th
December 1976

(continued)

"Limited, Ipoh as surety for the loan of \$30,000/-. Should the sum of \$30,000/- be insufficient to make up for the purchase price of this premises, Mr. Tan Phang Nam and Mr. Yap Fook Sen would be empowered to get a further loan of \$15,000/- from the Chung Khiaw Bank Limited, Ipoh."

The meeting following held on the 11th March, 1957, [(174) in A_] also discussed the said premises under Matters Arising and the following appears under that item: 10

"(a) Purchase of 26, Hugh Low Street, Ipoh

The Directors decided to have the transfer of this property put through when Messrs. Yong Nyee Fan & Sons Limited decided to do so."

At a subsequent meeting held on 28th July, 1957, [(177) in A_] the said premises came under discussion again under Matters Arising and the following appears under item (a): 20

"(a) Purchase of 26, Hugh Low Street, Ipoh

This item has not been carried out as the owner of this property has not decided to sell it yet. Meantime this item is to be left in abeyance for the time being."

Secondly, the minutes of the Extraordinary General Meeting of the directors of the plaintiff company held on 8th October, 1961, attended by the directors including P.W.1, P.W.2 and D.W.3 made reference to the matter under discussion simply as follows [(263) in A_]. 30

" Mr. Yong Su Hian states on behalf of Messrs. Yong Nyee Fan & Sons Ltd. that this notice should not have served on this Company but for the misunderstanding between Kim Guan & Co.Ltd.and the members of his family, and suggests that if the misunderstanding could be cleared up, he would like to withdraw the said notice with the consent of the Meeting. 40

After long-drawn discussion it is unanimously decided that the matter be dropped as the notice is not well conceived and hastily drawn up and that some way be sought out for the misunderstanding."

10 Thirdly, all the receipts issued by the
defendant company to the plaintiff company for
what P.W.1 and P.W.2 referred to as "interests"
for the sum expended by Yong Nyee Fan but what
the defendant company maintained as rental in
respect of the said premises appeared clearly
as receipts for rental. [(264) etc. in A 7
A sum per month had been diligently paid by
the plaintiff company to the defendant company
since February 1955 right up to April 1973
[(64) to (70) in B 7. The amount began as
\$220/- per month up to August 1956 and the
amount was increased to \$300/- per month until
the end. The increase from \$220/- per month to
\$300/- per month was obviously the result of
the letter [(77) in B 7 which contained a threat
to terminate the tenancy unless the rental was
increased. This event has already been referred
to earlier. Related to these payments is also
20 a number of other documents in the Agreed Bundles
during relevant period [(78) onwards in B 7
where these payments were referred to by the
plaintiff company expressly as "rents" although
some of these letters also contain reference
to payment of assessments together with the
rentals in respect of the said premises.

30 Fourthly, it would appear that P.W.1 himself
was the author of some of these letters among
which is (79) in B which was a letter written
in Chinese referring to the amount as "rentals."
Under this same category is also a document in
the form of a letter (76) in B from the tenant
of the premises in question at time of purchase
and before occupation by the plaintiff company
to the effect that he (the tenant) "surrendered"
the premises to the defendant company and that
the defendant company was "at liberty to let it
to Kim Guan Company Ipoh."

40 Fifthly, the defendant company gave in
all three notices to vacate to the plaintiff
company. The first was in (77) in B which at
the same time asked for the increase of rental
referred to earlier. The second was (100) in B
which was one year's notice to vacate which
notice resulted in the requisition of the
Extraordinary General Meeting held on 8th
October, 1961. The third was the letter from
the solicitors of the defendant company asking
for the fair rent but since this letter was not
50 replied by the plaintiff company another letter
was sent to the plaintiff company about ten days
later threatening eviction. [(189) in B 7. The
final one was a notice from the new solicitors
of the defendant company giving the plaintiff

In the High Court at Ipoh

No.12
Judgment of
Datuk Hashim
Yeop A. Sani J
of 14th
December 1976
(continued)

company one year's notice with a view to take over the premises for development. [140] in A/.

Sixthly, the annual returns of Yong Nyee Fan & Sons Co.Ltd. [1] - (36) in B/ disclose that it started very much as a family company of the late Yong Nyee Fan. According to D.W.3 his father was the Chairman and his mother the alternate Chairman in the early years since the incorporation of the company in 1952. The other shareholders in the early period were also close members of the family including D.W.1 and D.W.3. It is an investment company.

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Finally, the statement of the property accounts of the defendant company [62] in B/ shows that -

- (a) against the date 28th October, 1953, a sum of \$35,000/- was expended for the purchase of No.26, Hugh Low Street (the said premises);
- (b) against the date 4th November, 1953, another sum of \$700/- is shown to have been expended as commission in respect of the premises;
- (c) against the date 5th November, 1953, a further sum of \$200/- shown expended as solicitors fees in respect of the same transaction; and finally
- (d) against the date 11th November, 1953, a sum of \$544.40 is shown to have been expended for stamp and legal fees; all in all making a total of \$36,444.40 which sum can be rounded up to \$37,000/-.

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In normal cases it would have been easier to go through these documents either as basis or corroboration as to which of the versions of what actually happened during the material period is the more probable one. But apparently it is not the case here and I say this for the following reasons. One thing is clear so far and that is this - what is contained in some of the documentary evidence is not quite the same as what is said by the witnesses. Because their versions are diametrically opposed there is then the question of how to get a clear picture of what actually happened. On going through the oral evidence and the documentary evidence in this case there is therefore in my view a need (for other reasons as well which

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will be shown later) to reconcile their oral evidence with the documentary evidence. The directors of the plaintiff company during the material period including P.W.1 and P.W.2 did not understand English and although the proceedings of the directors meetings held must therefore have been in the Hakka language the minutes were recorded in English. Minutes of these meetings were read again in English and translated in Hakka to the directors at the subsequent meetings. It would appear from the evidence of D.W.1 and D.W.3 that only one directors apart from D.W.3 himself (Yong Su Hian) understood English and this director was one Yau Yit Ping. According to D.W.1 (Yong Toong Liew) she was the secretary of the various meetings during the material period. She was the secretary to all the directors meetings (except for 2 months when she went on leave in the latter part of 1957 -(see (179) in A) and the last meeting when she served as secretary was held on 14th February, 1959 - (199) in A. During that period she herself said she drew up the minutes but the minutes were explained and translated to the other directors by the said Yau Yit Ping. Yau Yit Ping however was not called to give evidence to this effect. From all these one thing emerges and that is, one will not get a clear and true picture of what actually happened unless a finding is made first on the credibility of each of the witnesses concerned. In arriving at a finding on credibility the court must also bear in mind the business custom and practice obtaining in the community to which the witnesses belong. These to my mind are the unique features of this case. For these reasons I propose now to set out briefly the standing of each of the witnesses who gave evidence for the plaintiff and the defendant:-

- (1) P.W.1 - He is a sixty-one year old cloth merchant and from the evidence it is disclosed that he has been a cloth merchant throughout his business life except for his participation in the mining company of Yong Hye Fan in 1950. He was undoubtedly a close business associate of the said Yong Nye Fan. The plaintiff company started off with P.W.1, the said Yong Nye Fan and P.W.2 as the first directors in 1955. The Yong family left the plaintiff company and sold out their shares in that company in 1961 leaving only one Yong Kee Foon

In the High
Court at Ipoh

No.12
Judgment of
Datuk Hashim
Yeop A. Sani J
of 14th
December 1976
(continued)

In the High Court at Ipoh

No.12
Judgment of
Datuk Hashim
Yeop A.Sani J
of 14th
December 1976
(continued)

(an uncle of D.W.3) who however also left the plaintiff company in 1964. The family of P.W.2 left the plaintiff company in 1962. At present the plaintiff company is owned by P.W.1 and his family and P.W.1 is the managing director. Prima facie P.W.1 must therefore be regarded as a witness who has an interest to advance in the case.

- (2) P.W.2 - This seventy-two year old cloth merchant was in his own words a close business associate of P.W.1 whom he had known for more than forty years. In 1949 P.W.2 together with P.W.1 started a cloth business at 65, Hugh Low Street, Ipoh. This was the old company which was converted into the new company of Kim Guan & Company Sdn. Berhad, the plaintiff company. P.W.2 also had interests in the mining company of Yong Nyee Fan and therefore must have been a close business associate of Yong Nyee Fan too. Apart from the alleged joint contribution of the sum of \$19,000/- for the purpose of acquiring vacant possession of premises No.26, Hugh Low Street, Ipoh, together with P.W.1, P.W.2, has now no further interest in the plaintiff company since he and his family left the company in 1962. This witness in his testimony corroborates substantially the testimony of P.W.1 in matters pertaining to the alleged trust and as to the events that followed. One aspect of P.W.2's evidence material for consideration is that which is diametrically opposed to the evidence of D.W.1 (Yong Toong Liew) the secretary of the plaintiff company during the relevant period in that according to P.W.2 not only were the minutes of the directors meetings of the plaintiff company drawn up by D.W.1 but she also usually interpreted the contents to the members of the board who could not (except for one) speak English. Another aspect of P.W.2's testimony which he maintaining strenuously was that the plaintiff company had agreed to be responsible for payment of not only the assessment but also the quit rent of the said premises. He could not however explain why in the statement of account of the defendant company only the payment

of assessment was included. He said in his cross-examination:

In the High Court at Ipoh

" Being company's property the company paid the assessment. Yong collected both the assessment and quit rent. (Witness shown D1.) I agree record only payment of assessment. It must be entered in another form."

No.12
Judgment of
Datuk Hashim
Yeop A. Sani J
of 14th
December 1976
(continued)

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P.W.2 insisted that it must have been recorded elsewhere. At the end of his cross-examination he said :

" I am telling what I know. I am not interested in the company anymore. I have no interest whatever in the case."

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- (3) D.W.1 - She is a forty-eight year old staff nurse attached to the University Hospital, Kuala Lumpur. She is one of the surviving daughters of Yong Nyeo Fan. Her shares in both the plaintiff company and the defendant company were paid for by the late father Yong Nyeo Fan. Her account of how the defendant company came to purchase the said premises was that one Madam Leong enquired whether the company would buy the property which was offered for sale. Whereupon D.W.1 said she told Madam Leong she would discuss the matter with her mother. Apparently after the discussion they decided it was a good proposition to purchase the premises as it was on the main street. However she said they decided "out of respect" to the father to discuss this with Yong Nyeo Fan and they discussed this matter during dinner and the father agreed that it was a good proposition. She insisted that the defendant company never authorised her father to be the spokesman of the company and that the decision to purchase were the decision of the directors of the company and it was only out of respect that Yong Nyeo Fan was consulted. D.W.1 was appointed secretary of the plaintiff company at its first meeting of directors and apparently after 14th February, 1959 /((199) in A7 D.W.1 was no longer connected with the plaintiff company.

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In the High Court at Ipoh

No.12
Judgment of
Datuk Hashim
Yeop A. Sani J
of 14th
December 1976
(continued)

One aspect of her testimony which was diametrically opposed to P.W.2's was that she denied that the minutes of the meetings of the directors of the plaintiff company were interpreted by her to the directors although the minutes were read by her in English and the interpretation was done by one Mr. Yau Yit Ping who "knew both English and Chinese well." The credibility of this witness must be assessed according to her position during the relevant period viz-a-viz the plaintiff company and the defendant company and of paramount importance to my mind was the fact admitted by her that her shares in both the plaintiff and defendant companies were paid for by the father Yong Nyee Fan.

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- (4) D.W.2 - This witness is only relevant in respect of the counterclaim by the defendant company. 20
- (5) D.W.3 - This forty-one year old businessman and director of the defendant company since 1955 is one of the surviving sons of Yong Nyee Fan. His version of what actually happened was a consistent denial of all the allegations of the plaintiff's witnesses. He maintains that the said premises belonged to the defendant company and he has never heard that it was trust property for the plaintiff company. He has been receiving rentals from the plaintiff company and there was no complaint it was not rental but interest. D.W.3 also admitted in his evidence that all his shares in both the plaintiff company and the defendant company were paid for by his late father Yong Nyee Fan. In his evidence he admitted also that Yong Nyee Fan was the "moving spirit" in the defendant company although he disagreed that this was so even when the late father ceased to be a director. 30
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- (6) D.W.4 - This seventy-one year old retired miner was at one time one of the directors of the plaintiff company but he withdrew in 1961. According to his testimony, during his directorship i.e. for period 1960 1961, he did not 50

know that No.26, Hugh Low Street, Ipoh, was held in trust by the defendant company. He knew of the Extraordinary General Meeting which was requisitioned after the notice to vacate. [(100) in B7]. D.W.4 said he did see P.W.1 and P.W.2 in connection with the transfer of D.W.3's shares in the plaintiff company as he wanted to settle the matter. But according to him P.W.1 did not agree and therefore he did not attend the Extraordinary General Meeting because he saw there was no point in him attending. On this point his testimony read as follows :

In the High Court at Ipoh

No.12
Judgment of
Datuk Hashim
Yeop A.Sani J
of 14th
December 1976
(continued)

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" I did not attend the E.G.M. because I saw how Yap and Tan behaved. The E.G.M. was to discuss the notice of termination of Kim Guan tenancy. I did not attend because that shop did not belong to Kim Guan."

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The credibility of this witness must be considered in the light of his own admission that he was a tributor of Yong Nyee Fan Mining Company. He also admitted that he knew the Yong family quite well and he is also a shareholder of Yong Nyee Fan Mining Company. He also admitted that he obtained shares in the plaintiff company through the allotment of Yong Nyee Fan. He also admitted that he was sponsored as director of the plaintiff company by D.W.3. He sold off his shares in the plaintiff company in 1962 roughly about the same time as the Yong family left the plaintiff company.

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D.W.5 - This witness is only relevant in the matter of the solicitors letter purportedly sent on behalf of the plaintiff company to the defendant company.

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It can be seen that from the very beginning right up to the time of his death the said Yong Nyee Fan was a dominant figure in the affairs of the plaintiff company. Apparently Yong Nyee Fan was not only dominant in the affairs of the plaintiff company but also in the affairs of the family company of Yong Nyee Fan & Sons Limited (the defendant company). D.W.3 himself

In the High Court at Ipoh

No.12
Judgment of
Datuk Hashim
Yeop A. Sani J
of 14th
December 1976
(continued)

said that his father "was the moving spirit" although he disagreed it continued to be so after the father ceased to be director. Evidence adduced would indicate that Yong Nyee Fan exercised considerable influence in the management of the defendant company until he died. Why shouldn't he for from the fact (admitted) most, if not all, the shares in that company were in reality paid for by him on behalf of the close members of his family including Yong Su Hian (D.W.3) his son and Yong Toong Liew (D.W.1) his daughter.

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To get a true picture of what actually happened the recorded minutes and the other documents in the Agreed Bundles A and B should therefore in my view be viewed bearing the following in mind -

(1) When we consider the minutes of Kim Guan directors meetings during the material period regard must be had to the fact that D.W.1 (daughter of Yong Nyee Fan) was the secretary and that in her own evidence she said she drew up the minutes and then showed the draft minutes to the father first before finalising them. She also said she never interpreted the minutes to the others in the Hakka language although she admits in her own evidence that she speaks Hakka and therefore could also have interpreted the minutes to the directors herself. The said Yau Yit Ping was not called to corroborate this although it is said that this person is still around;

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(2) It is true that nowhere in the minutes of the Kim Guan directors meetings is the question of the premises being a trust property recorded. But it would seem clear from their evidence that P.W.1 and P.W.2, the two surviving business associates, had all along followed the traditional Chinese way of doing business, i.e. dealings based on mutual trust. On going through their testimonies I do not think that I would be fair to reject outright all what they said in the witness box. P.W.1 said that all his dealings with Yong Nyee Fan had been based on what he described as his "faith in Yong" and that he regarded the latter "as a leader". He also described in his

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10 cross-examination the method of
business dealings he followed when
he said that - "Chinese business
depends on trust. All dealings with
Yong I did verbally" P.W.1 and
P.W.2 are both past 60 years of age
and I believe them when they said that
being the old type Chinese businessmen
they followed the traditional Chinese
method of doing business and it is
also common knowledge that this method
is generally followed especially by
the older Chinese business people.
Evidence that P.W.1 and P.W.2 paid
\$19,000/- for vacant possession of the
premises was not challenged. But
strangely enough no reference can be
found in any of the financial state-
ments of the defendant company
20 [(1) - (36) in B] to any payment made
to obtain vacant possession which
payment (normally referred to as "tea-
money") has always been an accepted
custom and practice in the local
society. It is in this light that I
view the letter (76) in B where the
tenant purported to surrender the said
premises to the defendant company.

30 The credibility of D.W.3 (Yong Su Hian)
can best be assessed from his own testimony.
To my mind he represents the new type of
businessman who believes only in what is written
down. The amount paid must be rental and not
interest because the receipts say they are
rentals. The minutes of Kim Guan directors
meetings had already been explained to the
directors including P.W.1 and P.W.2 in the
Hakka language and they were accepted and
approved at subsequent meetings. Therefore
40 P.W.1 and P.W.2 cannot now be allowed to argue
against these minutes. Nowhere in the minutes
is any mention made of the premises in question
as a trust property so that question does not
arise.

50 Looking at the evidence however D.W.3
would also seem to be a person, at least in
1957, who did not mean what he himself put in
writing. This refers to the evidence on the
notice to the plaintiff company to vacate the
premises within one year. [(100) in B] Of this
notice he said in his own words as follows :

" I went to the extent of terminating
the tenancy to force Kim Guan to accept

In the High
Court at Ipoh

No.12
Judgment of
Datuk Hashim
Yeop A.Sani J
of 14th
December 1976
(continued)

the transfer of my shares. I hoped a compromise would come about. I really wanted to get them out if they won't compromise."

Somewhere else he also said the notice was only to "apply pressure" to P.W.1 and P.W.2. The compromise referred to is (according to D.W.3) to enable him to transfer his shares in the plaintiff company.

There are other inconsistencies in the testimony of D.W.3. For example, referring to the letter from the solicitors of the defendant company to the plaintiff company dated 29th May, 1970 [140] in A he said under cross-examination:

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" I wanted him out at any cost. My application to rebuild is bona fide but it is the only way to get them out."

Again in reply to the question why he withdrew the notice [100] in B before real settlement was arrived at he replied :

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" I withdrew the notice at the meeting before real settlement. All agreed to settle in principle."

Judgment from his demeanour and his testimony as a whole I do not think that P.W.3 is the sort of person who would have withdrawn the notice before any real settlement was arrived at. Furthermore as to the transfer of shares proposed by D.W.3 (which was in any case against the by-laws of the company) it would be difficult to believe that the settlement arrived at would have resulted in the donation of one thousand dollars by D.W.3 (admitted by him in his evidence as reflecting the amount of legal fees involved) to the social club as a goodwill gesture. In many instances therefore in my assessment D.W.3 would appear to be not truly a witness of truth.

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Another aspect of D.W.3's evidence which I find a little difficult to believe is the reason given for the Extraordinary General Meeting of the plaintiff company held on 8th October, 1961, and his explanation of the word "misunderstanding" in the minutes of the Extraordinary General Meeting [263] in A. He said that the Extraordinary General Meeting was called not because of his notice to vacate but because of his problem on the transfer of his shares in the plaintiff company. This in my

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view is contrary not only to the evidence of P.W.1 and P.W.2 and the notice of requisition of the Extraordinary General Meeting [(101) in B7] but also contrary to common sense. The time and the manner in which the Extraordinary General Meeting was requisitioned (the date of notice of termination of tenancy was 12th September, 1961, and the date of notice of requisition of Extraordinary General Meeting was 19th September, 1961) must have been for the purpose of discussing the notice to vacate and in the Extraordinary General Meeting the directors could not have discussed any other topic except the notice itself. D.W.3 himself said that the only thing discussed at the Extraordinary General Meeting was the notice. He said this in his cross-examination:

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" The only thing considered at the meeting was my notice. I agreed to withdraw because we agreed to settle. This notice was only to apply pressure to them. The shares problem settled only on 23rd October. But in principle we agreed to settle at the E.G.M. It is true shares and the house two different things."

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Notice of requisition of Extraordinary General Meeting by members of the defendant company was only made on 30th September, 1961 [(262) in A7] which was of course on the proposed amendments to the company's articles connected with the problem of the share transfer.

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The plaintiff company claims, firstly, for a declaration that the defendant company holds an undivided 19/56 share in the said premises in trust for the plaintiff company and secondly, for a declaration that the defendant company holds the remaining undivided 37/56 share therein in trust for the plaintiff company subject to the payment by the plaintiff company to the defendant company, a sum of \$45,000/- and finally, for an order that the defendant company do transfer the whole of the said property to the plaintiff company free from all encumbrances upon payment of the said \$45,000/-. The application for injunction against the defendant company was abandoned at the commencement of the hearing in view of the fact that a caveat in respect of the said premises was still in force. The defendant company in their statement of defence has also made a counter-claim for damages against the plaintiff company for the delay in effecting development of the said premises as a result of the proceeding by

In the High
Court at Ipoh

No.12

Judgment of
Datuk Hashim
Yeop A. Sani J
of 14th
December 1976

(continued)

In the High
Court at Ipoh

No.12
Judgment of
Datuk Hashim
Yeop A.Sani J
of 14th
December 1976
(continued)

the plaintiff company.

It has been found difficult to give a satisfactory definition of a trust but it has been accepted that the most satisfactory definition is by Professor Keeton which definition is that a trust is the relationship which arises wherever a person called the trustee is compelled in Equity to hold property, real or personal, and whether by legal or equitable title, for the benefit of some persons (of whom he may be one) or for some object permitted by law, in such a way that the real benefit of the property accrues, not to the trustee, but to the beneficiaries or other objects of the trust.

10

In this case it seems obvious on going through the evidence of the various witnesses that it is really a matter of credibility. Apart from P.W.1 P.W.2 has also given evidence of the alleged trust and the fact that P.W.2 has no more interest in the plaintiff company from as far back as 1962 when he and members of his family withdrew from Kim Guan and that he appeared to me to be a witness of truth provides a lot of weight to the plaintiff's version of what actually took place between the three persons involved. The plaintiff's version of what actually took place seems to be the more probable. It can also be said that every one of the defence witnesses has something or some interest to protect. As regards D.W.1 even her shares in Kim Guan were paid for by her father. In Yong Nyee Fan Company Yong Nyee Fan was in fact in the words of D.W.3 the moving spirit although he denied he continued to be so after he ceased to be director. Thus the circumstances under which the defendant company acquired the property in question were such that the defendant company must have acquired the said property as a constructive trustee. After all a constructive trust is a trust which is imposed by equity in order to satisfy the demands of justice and good conscience. It arises in a situation similar to the situation of this case where a person acquired the property in such circumstances that the holder of the legal title thereof may not in good conscience retain the beneficial interest.

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Apart from mere denial that there was any trust involved in respect of the property in question express or implied it is also a basis of the defence that the plaintiff company's claim is barred by limitation and/or by laches

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10 or acquiescence. Since the claim is based on an alleged implied trust and for the recovery of the trust property and that the plaintiff company is a beneficiary under the trust section 22(1) of the Limitation Ordinance 1953 excludes the period of limitation of action prescribed by that Ordinance. No statutory period of limitation would apply to an action by a beneficiary if it can be shown that the action is under a trust and for the recovery from the trustee trust property previously received but converted to his use. That leaves us only with the question of laches and acquiescence. Section 32 of the Limitation Ordinance, 1953 provides that nothing in that Ordinance shall affect any equitable jurisdiction to refuse relief on the ground of acquiescence, laches or otherwise.

In the High Court at Ipoh

No.12
Judgment of
Datuk Hashim
Yeop A. Sani J
of 14th
December 1976
(continued)

20 To set out the general principles first, it is an established rule of equity that a plaintiff in equity is bound to prosecute his claim without undue delay. A court of equity would refuse its aid to stale demands, i.e. where the plaintiff has slept upon his right and acquiesced for a great length of time. For "laches" literally means negligent inactivity. He is then said to be barred by his laches. (Halsbury's 3rd Ed. Vol.14, p.641). In
30 determining whether there has been such delay as to amount to laches the main points to be considered are acquiescence on the part of the plaintiff and secondly whether any change of position has occurred on the defendant's part. Of course acquiescence depends on "knowledge, capacity and freedom." It is not necessary however that the plaintiff should have known the exact relief to which he was entitled. As
40 regards the change in the defendant's position regard must be had whether the defendant has lost the evidence necessary for meeting the claim, for a court of equity will not allow a dormant claim to be set up when the means of resisting it have perished.

50 In Weld-Blundell v. Petre⁽¹⁾ a number of previous authorities on the subject were discussed in the judgment of the Court of Appeal. In that case the plaintiffs claimed to be entitled to the equity of redemption in certain shares in a limited company for redemption, the defendants being the executors of the mortgagee. Redemption was resisted on the ground that, owing to the delay and laches of the plaintiffs, either their right to

(1) (1928) All E.R. Rep. 564 C.A.

In the High
Court at Ipoh

No. 12
Judgment of
Datuk Hashim
Yeop A.Sani J
of 14th
December 1976
(continued)

redemption had been lost or the court should withhold its assistance by refusing to order redemption. Application of the doctrine of laches was discussed in that case and one particular point which should be mentioned first as highly material in the present suit is the lapse of time between the date that the alleged trust was created and the date that the claim was made. In this case the period of lapse is about nineteen years. In dealing with long period of delay Lord Hanworth M.R. in Weld-Blundell v. Petre (supra) at page 571 said:

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" Further, I am clearly of opinion that there is no rigid rule that every equity must be acted upon at the utmost within twenty years, and if not so acted upon will be barred. Every case must obviously depend upon its own circumstances and counsel for the defendants freely admitted that he could not support any such hard-and-fast rule."

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Thus the main question left to be asked is whether anybody has been prejudiced by the delay. On this Lord Campbell, L.C. said in Archbold v. Scully (2) :

" The real question in the case seems to me to be, whether the appellant is barred by the lapse of time between 1835 and 1857 when his bill or cause petition was filed. If any new rights had been created in this interval, or if anyone would be prejudiced by the delay, that is, by the Appellant being now enabled to make good his claim, I should be clearly of opinion that he is barred by laches or acquiescence or whatever name may be given to his long sleep over his rights. But I do not discover any obstacle of this sort to the relief which he prays."

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The difference between acquiescence and laches was also clearly pointed out by the House of Lords in Archbold v. Scully (supra) in which Lord Wensleydale said :

" So far as laches is a defence I take it that where there is a statute of limitation the objection of simple laches does not apply until the expiration of the time allowed by the statute. But

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(2) 9 H.L. Cas. at p.371

acquiescence is a different thing; it means more than laches. If a party, who could object, lies by and knowingly permits another to incur an expense in doing an act under the belief that it would not be objected to, and so a kind of permission may be said to be given to another to alter his condition, he may be said to acquiesce: but the fact, of simply neglecting to enforce a claim for the period during which the law permits him delay, without losing his right, I conceive cannot be any equitable bar."

In the High Court at Ipoh

No.12
Judgment of
Datuk Hashim
Yeop A.Sani J
of 14th
December 1976

(continued)

The principle applicable to a case where long delay is set up as a defence is also cited in the judgment of the Privy Council in Lindsay Petroleum Co. v. Hurd: (3)

" The doctrine of laches in Court of equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where, by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of those cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay, of course, not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances always important in such cases are the length of the delay and the nature of the acts done during the interval, which might effect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy."

In Erlanger v. New Sombrero Phosphate Co. (4)
Lord Blackburn, after quoting the above passage, said :

" I have looked in vain for any authority which gives a more distinct and definite rule than this; and I think, from the nature of the inquiry, it must always be a question of more or less, depending on the

(3) L.R. 5 P.C. at p.239

(4) (1878) 3 App.Cas.1218

In the High
Court at Ipoh

No.12
Judgment of
Datuk Hashim
Yeop A.Sani J
of 14th
December 1976
(continued)

degree of diligence which might reasonably be required, and the degree of change which has occurred, whether the balance of justice or injustice is in favour of granting the remedy or withholding it. The determination of such a question must largely depend on the turn of mind of those who have to decide, and must therefore be subject to uncertainty; but that, I think, is inherent in the nature of the inquiry."

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To sum up, there can be no hard-and-fast rule in equity. The application of the doctrine of laches or acquiescence must depend on the facts and circumstances of each case. In the ultimate analysis therefore the determination of these questions must largely depend on the court who has to decide whether the balance of justice or injustice is in favour of granting the remedy or withholding it. Equity would look primarily at the conduct of parties, sacrificing certainty and inconsistency in order to do justice according to the type of relief sought and the circumstances - see Limitation of Actions (Michael Franks) page 233). The length of the period of inactivity of the plaintiff is no doubt of material consideration but cannot and should not be the sole consideration. Of course the delay must not be unreasonable but what is reasonable is a question of fact. According to the plaintiff's witnesses attempts to settle the dispute had been made on several occasions including involving certain influential personalities of the Chinese community. These attempts were consistent with the old fashioned way in which the people of that community go about in their business. The philosophy of this class of people has always been - The Court is the last resort, to be avoided if possible.

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Can it be said that P.W.1 and P.W.2 had acquiesced in these years at least during the period when Yong Nyee Fan was still alive? Beneficiaries who actively or passively acquiesce in a breach of trust can, it is said, obtain no relief against the trustee if at the time of their concurrence or acquiescence they were of full age, not under any incapacity or not acting under any undue influence. It is clear from the evidence that Yong Nyee Fan was a man much respected by P.W.1 and P.W.2. He was also a sort of adviser to them. In fact Yong was one of the prime movers of the new

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company of Kim Guan. His dominance in the plaintiff company at its inception can even be seen in my view by the cables code of Kim Guan & Co.Ltd. which was "Yonifan" (his name was "Yong-Nyee-Fan") sanctioned to be used even in 1960. [(79) in A]. He was above all a member of the State Legislature and therefore must have been highly regarded by members of his community. In fact in the words of Yap (P.W.1) Yong was a "leader" and "adviser" to them. The plaintiff in this case has, in my opinion, explained satisfactorily on the delay of about nineteen years before the writ was filed. Therefore it is my view that the defence of acquiescence cannot succeed in this case.

In the High
Court at Ipoh

No.12

Judgment of
Datuk Hashim
Yeop A.Sani J
of 14th
December 1976

(continued)

Equity's "most valuable creation" is the trust, whereby the management of property could be separated from its enjoyment by regarding as owner in equity someone other than the person in whom the legal title is vested. Equity adopts what is called the "metaphysical" approach and has a preference for substance over form and equity pays greater attention to the intention of the parties and the method used in arriving at an arrangement - see Keeton and Sharidan's Equity. This general principle was expressed by Romilly, M.R. in Parkin v. Thorold (5) :

" Courts of Equity made a distinction in all cases between that which is matter of substance and that which is matter of form; and if it find that insisting on the form, the substance will be defeated, it holds it to be inequitable to allow a person to insist on such form and thereby defeat the substance."

On the evidence adduced both oral and documentary and in consequence upon my finding as to the credibility of the witnesses involved, the following facts would seem to have been proved on the balance of probabilities :

- (a) P.W.1, P.W.2 and the said Yong Nyee Fan had in fact agreed between them prior to the formation of the plaintiff company that the following expenditure be made on behalf of the proposed company, that is to say, the said Yong Nyee Fan to pay first for the purchase of the premises in the sum of \$35,000/- and P.W.1 and P.W.2 to pay to the tenant of the premises then

In the High Court at Ipoh

No.12
Judgment of
Datuk Hashim
Yeop A.Sani J
of 14th
December 1976
(continued)

for vacant possession in the sum of \$19,000/-. It was agreed between the parties concerned then that in addition to the purchase price of \$35,000/- a further sum of a round figure of \$2,000/- was to be added as expenditure incidental to the purchase, also to be regarded as paid on behalf of the proposed company; and these payments were in fact made; 10

(b) Sometime between the directors meeting held on 28th January, 1957, and the directors meeting held on 5th February, 1957, the parties concerned also mutually agreed that the sum of \$37,000/- be increased to \$45,000/- following the increase in the value of the property;

(c) The increase from \$45,000/- to \$70,000/- proposed by D.W.3 in 1961 was not agreed to by the other parties concerned. 20

I have also found that the defence on limitation and/or laches and acquiescence cannot be sustained. Because of my finding that the trust has been proved, the counterclaim is therefore without basis.

Based on all the foregoing the plaintiff's claim is allowed and the following orders made :-

- (1) It is hereby declared that the defendant company holds an undivided 19/56 share in the land held under Certificate of Title No.5768 for Lot No.98^S in the Township of Ipoh, in the District of Kinta, with premises No.26, Hugh Low Street, Ipoh, erected thereon in trust for the plaintiff company; 30
- (2) It is hereby also declared that the defendant company holds the remaining undivided 37/56 share in the said property in trust for the plaintiff company subject to the payment by the plaintiff company to the defendant company of \$45,000/-; 40
- (3) It is hereby ordered that the defendant company do transfer the whole of the said property to the plaintiff company free from all encumbrances upon

payment of the said \$45,000/-;

(4) The defendant company's counterclaim is hereby dismissed;

(5) Costs to the plaintiff.

Dated this 14th day of December, 1976.

Sgd. Datuk Hashim Yeop
A.Sani
Judge
High Court, Malaya,
Ipoh.

In the High
Court at Ipoh

No.12
Judgment of
Datuk Hashim
Yeop A. Sani J
of 14th
December 1976
(continued)

10

Mr.Chinn Swee Onn (Mr. Soo Wai San with him)
of Messrs. Chinn Swee Onn & Co., for the
Plaintiff Company.

Mr. Chin Fook Yen of Messrs. Chin Fook Yen & Co.
for the Defendant Company.

No.13

ORDER OF THE HIGH COURT AT
IPOH OF THE 14th December 1976

No.13
Order dated
14th December
1976

IN THE HIGH COURT IN MALAYA AT IPOH
CIVIL SUIT NO. 113 of 1973

Between

Kim Guan & Company Sdn.Berhad,
No.26, Hugh Low Street,
Ipoh.

Plaintiff

And

Yong Nye Fan & Sons Sdn.Berhad,
No.1, Brewster Road,
Ipoh.

Defendant

BEFORE THE HONOURABLE MR. JUSTICE HASHIM BIN
YEOP A. SANI

THIS 14TH DAY OF DECEMBER, 1976

O R D E R

This suit coming on for hearing the 19th,

30

In the High Court at Ipoh

No.13
Order dated
14th December
1976

(continued)

20th, 21st and 26th days of October, 1976 in the presence of Mr. Chinn Swee Onn (with him Mr. Soo Wai Sun) of Counsel for the Plaintiff Company, and Mr. Chin Fook Yen of Counsel for the Defendant Company.

And upon reading the pleadings and hearing the evidence adduced for the Plaintiff Company and for the Defendant Company AND UPON hearing Counsel for the parties

This Court did on the 26th day of October 1976 Order that this Suit should stand for judgment. 10

And this Suit standing this day in the paper for judgment in the presence of Mr. Chinn Swee Onn of Counsel for the Plaintiff Company and Mr. Chin Fook Yen of Counsel for the Defendant Company.

IT IS ORDERED AND DECLARED that the Defendant Company holds an undivided 19/56 share in the land held under Certificate of Title No.5768 for Lot No.98^S in the Township of Ipoh in the District of Kinta with premises No.26, Hugh Low Street, Ipoh, erected thereon (hereinafter collectively referred to as the said property) in trust for the Plaintiff Company. 20

IT IS ALSO ORDERED AND DECLARED that the Defendant Company holds the remaining 37/56 share in the said property in trust for the Plaintiff Company subject to the payment to the Defendant Company of a sum of \$45,000/- (Dollars forty-five thousand). 30

IT IS FURTHER ORDERED that the Defendant Company do transfer the whole of the said property to the Plaintiff Company free from all encumbrances on payment to the Defendant Company of the said sum of \$45,000/- (Dollars forty-five thousand).

AND IT IS FURTHER ORDERED that the counterclaim of the Defendant Company be and is hereby dismissed 40

AND IT IS LASTLY ORDERED that the Defendant Company do pay to the Plaintiff Company the costs of this suit and of the counterclaim as taxed by the Senior Assistant Registrar of this Honourable Court.

GIVEN under my hand and the Seal of the

Court this 14th day of December, 1976.

Sd: Illegible
Senior Assistant Registrar,
High Court, Ipoh.

(S E A L)

In the High
Court of Ipoh

No. 13
Order dated
14th December
1976
(continued)

No. 14

NOTICE OF APPEAL
dated 10th January 1977

IN THE FEDERAL COURT IN MALAYA AT KUALA LUMPUR
CIVIL APPEAL No. _____ of 1977

Between

Yong Nyee Fan & Sons Sdn. Bhd. Appellant

And

Kim Guan & Company Sdn. Bhd. Respondent

(In the matter of Civil Suit No. 113 of 1973 in
the High Court in Malaya at Ipoh

Between

Kim Guan & Company Sdn. Bhd. Plaintiff

And

Yong Nyee Fan & Sons Sdn. Bhd. Defendant

NOTICE OF APPEAL

TAKE NOTICE that the Appellant abovenamed
being dissatisfied with the decision of the
Honourable Judge of the High Court, Ipoh, given
on the 14th day of December, 1976 appeals to
the Federal Court Kuala Lumpur against the
whole of the said decision.

Dated this 10th day of January, 1977.

Sd: Skrine & Co.
Solicitors for the Appellant

To:

1. The Chief Registrar,
Federal Court,
Kuala Lumpur
2. The Senior Assistant Registrar,
High Court,
Malaya,
Ipoh.

In the Federal
Court of
Malaysia

No. 14
Notice of
Appeal dated
10th January
1977

In the Federal
Court of
Malaysia

No.14
Notice of
Appeal dated
10th January
1977
(continued)

3. Kim Guan & Company Sdn.Bhd.,
No.26, Hugh Low Street,
Ipoh.

Or to

Its Solicitors Messrs. Chinn Swee Onn &
Co. Advocates and Solicitors,
Room 202, Second Floor,
Asia Life Building,
Hale Street,
Ipoh.

10

The address for service of the Appellant
is c/o Messrs. Skrine & Co., Straits Trading
Building, No.4, Leboh Pasar Besar, Kuala Lumpur,
Solicitors for the Appellant abovenamed.

No.15
Memorandum of
Appeal dated
26th February
1977

No. 15

MEMORANDUM OF APPEAL
dated 26th February 1977

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT IPOH
(APPELLATE JURISDICTION)
FEDERAL COURT CIVIL APPEAL NO. 15 OF 1977

20

Between

Yong Nyee Fan & Sons Sdn. Bhd. Appellant

And

Kim Guan & Company Sdn. Bhd. Respondent

(In the matter of Civil Suit
No.113 of 1973 in the High Court
in Malaya at Ipoh

Between

Kim Guan & Company
Sdn. Bhd. Plaintiff 30

And

Yong Nyee Fan & Sons
Sdn. Bhd. Defendant)

MEMORANDUM OF APPEAL

Yong Nyee Fan & Sons Sdn. Bhd., the

Appellant abovenamed appeals to the Federal Court against the whole of the decision of the Honourable Mr. Justice Hashim bin Yeop A. Sani given at Ipoh on the 14th day of December, 1976 on the following grounds :-

In the Federal Court of Malaysia

No.15
Memorandum of Appeal dated 26th February 1977

(continued)

1. The learned Judge was wrong in holding that the Defendant Company held the shophouse No.26, Hugh Low Street, Ipoh, on a constructive trust for the Plaintiff Company.

10 2. The finding that there was a constructive trust was not supported by the weight of the evidence produced at the trial. On the contrary the documentary evidence adduced which was not contested by either P.W.1. or P.W.2 showed that on the balance of probabilities the Defendant Company was the beneficial as well as the legal owner of the said shophouse.

20 3. The onus of proof was on the Plaintiff Company and the evidence adduced by it was insufficient to discharge that onus.

4. The learned Judge ought to have held that the weight of evidence indicated that the monthly sum of \$220/- paid by the Plaintiff Company to the Defendant Company was rent and that the oral testimony of P.W.1 and P.W.2 was against the weight of evidence and in particular was negatived by the rent receipt of the previous tenant and the accounts of the Plaintiff Company itself.

30 5. There was no evidence to support the finding that the Plaintiff Company owned 19/56 share of the said shophouse. Evidence was adduced from P.W.1 and P.W.2 that \$19,000/- was paid out by them to obtain vacant possession from the previous tenant. There was no evidence that the Plaintiff Company paid this sum and no evidence that the Plaintiff Company had paid or ever intended to pay it to P.W.1 and P.W.2 nor did this amount ever appear in
40 the accounts of the Plaintiff Company as a debt to P.W.1 and P.W.2 or otherwise.

50 6. The learned Judge failed to give sufficient weight to the documentary evidence which is entirely against the finding that the Defendant Company holds 37/56 share of the shophouse in trust for the Plaintiff Company. No documentary evidence of any kind was produced by the Plaintiffs to support this claim which rested on the bare oral testimony of P.W.1 and P.W.2, one of whom had a direct interest in the matter

In the Federal
Court of
Malaysia

No.15
Memorandum of
Appeal dated
26th February
1977

(continued)

and the other of whom was his close associate.

7. The Defendant Company became the registered owner in 1954 and no steps of any kind were taken to establish or enforce the alleged rights of the Plaintiff Company until 1973 and then only after and admittedly because the Defendant Company had intimated that it intended to take eviction proceedings. In the premises and in view of the fact that the Plaintiff's claim relies solely on oral testimony from P.W.1 and P.W.2 as to what was arranged by them with the treasurer of the Defendant Company who is now dead and unable to testify the learned Judge ought to have upheld the Defendant Company's plea that the claim was barred by laches.

10

8. The learned Judge ought to have held that there was no evidence or no sufficient evidence that the late Yong Nyee Fan was acting on behalf of the Defendant.

9. On the balance of probabilities on the evidence adduced the learned Judge ought to have dismissed the Plaintiff Company's claim with costs.

20

Dated this 26th day of February, 1977.

Sd.

Appellant's Solicitors

To:-

The Chief Registrar,
Federal Court,
Kuala Lumpur.

30

The Senior Assistant Registrar,
High Court, Ipoh.

M/s Chinn Swee Onn & Co.,
Room 202, Asia Life Building (2nd Floor),
Hale Street, Ipoh.

No. 16

ORDER GRANTING LEAVE TO ADD
FURTHER GROUNDS OF APPEAL
dated 14th February 1978

In the Federal
Court of Malaysia

No.16
Order granting
Leave to add
further
grounds of
Appeal dated
14th February
1978

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT IPOH
(APPELLATE JURISDICTION)
FEDERAL COURT CIVIL APPEAL NO: 15 OF 1977

Between

10 Yong Nyee Fan & Sons Sendirian
Berhad APPELLANT

And

Kim Guan & Company Sendirian Berhad RESPONDENT

(In the matter of Civil Suit No.113
of 1973 in the High Court in
Malaya at Ipoh

Between

Kim Guan & Company
Sendirian Berhad PLAINTIFF

And

20 Yong Nyee Fan & Sons
Sendirian Berhad DEFENDANT)

CORAM: GILL, CHIEF JUSTICE, HIGH COURT IN
MALAYA;
ONG HOCK SIN, JUDGE, FEDERAL COURT,
MALAYSIA;
RAJA AZLAN SHAH, JUDGE, FEDERAL COURT,
MALAYSIA

IN OPEN COURT

THIS 14TH DAY OF FEBRUARY 1978

30 O R D E R

UPON MOTION preferred unto Court this day
in the presence of Mr.Lim Chye of Counsel for
the appellant and Mr. Chinn Swee Onn of counsel
for the respondent AND UPON READING the Notice
of Motion dated 6th February, 1978 filed herein
AND UPON HEARING counsel as aforesaid IT IS
ORDERED that the appellant be at liberty to add
the following additional grounds of appeal :-

(10) The learned Judge should have held
that paragraph 11 of the statement of

In the Federal
Court of
Malaysia

No16

Order granting
Leave to add
further grounds
of Appeal
dated 14th
February 1978
(continued)

claim was an admission that the
alleged trust was at an end, even
assuming that there were a trust as
alleged.

- (11) The learned Judge should have held
that the Limitation Ordinance applied
or, alternatively, that laches and
acquiescence barred the claim.
- (12) The learned Judge should have held
that the respondents were estopped
from denying that they were paying
rent because of the rent receipts.

10

AND IT IS ORDERED that the costs of and
occasioned by this application be costs in the
cause.

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

Sd: Illegible

CHIEF REGISTRAR,
FEDERAL COURT,
MALAYSIA.

20

This order is filed by Messrs. Kean Chye &
Sivalingam of Malayan Banking Chambers, First
Floor, 12 Station Road, Ipoh, Solicitors for
the appellant.

No.17

Judgment of
the Court
(Chang Min Tat
and Syed Othman
F.J.J. and
Eusoffe
Abdoolcader J.
per Chang Min
Tat F.J.)
dated 15th
November 1978

No. 17

JUDGMENT OF THE COURT (CHANG MIN
TAT AND SYED OTHMAN F.J.J. and
EUSOFFE ABDOOLCADER J. per CHANG
MIN TAT F.J.) dated 15th November
1978

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IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT IPOH

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. 15 OF 1977

Between

Yong Nyee Fan & Sons Sdn.Bhd.

APPELLANT

And

Kim Guan & Company Sdn.Bhd.

RESPONDENT

(In the matter of Civil Suit No.113
of 1973 in the High Court in Malaya
at Ipoh

Between

Kim Guan & Company Sdn.Bhd. PLAINTIFF

And

Yong Nyee Fan & Sons Sdn.
Bhd. DEFENDANT)

10 Coram: CHANG MIN TAT, FEDERAL JUDGE
SYED OTHMAN, FEDERAL JUDGE
EUSOFFE ABDOOLCADER, JUDGE

In the Federal
Court of
Malaysia

No.17
Judgment of
the Court
(Chang Min Tat
and Syed Othman
F.J.J. and
Eusoffe
Abdoolcader J.
per Chang Min
Tat F.J.)
dated 15th
November 1978
(continued)

JUDGMENT OF THE COURT

20 House No.26 Hugh Low Street, Ipoh (house
No.26) the subject matter of this action, was
bought on October 28, 1954 for \$35,000 and
registered in the name of Yong Nyee Fan & Sons
Sdn.Bhd. (Yong & Co.), a company incorporated
in 1952. The accounts of Yong & Co. showed
that the money for the purchase came from the
company and the property was regarded as an
asset of the company and declared as such.

30 Kim Guan & Co. Sdn.Bhd. however claimed
that Yong Nyee Fan was the purchaser and that
he had bought house No.26 on a trust in their
favour and in the action which was only
commenced on April 19, 1973, some 18 years
after the purchase, succeeded in obtaining an
order from the High Court at Ipoh declaratory
of this trust. The order was in two parts.
Firstly it declared that Yong & Co. held an
undivided 19/56th share in the property in
trust for Kim Guan & Co. Sdn.Bhd. (Kim Guan &
Co.) and secondly it declared that Yong & Co.
held the remaining undivided 37/56th share
similarly in trust for Kim Guan & Co. There
was a consequential order that Yong & Co.
transfer the house to Kim Guan & Co. on payment
of \$45,000.

40 Yong & Co. made a counter-claim for
damages for being deprived of the possession
of the house. On the finding of the trial
Court, it necessarily stood dismissed. It
formed part of their appeal but learned counsel
for Yong & Co. on taking further instructions,
abandoned the appeal from the dismissal of the
counter-claim. This Court is therefore only

In the Federal
Court of
Malaysia

No17
Judgment of
the Court
(Chang Min Tat
and Syed Othman
F.J.J. and
Eusoffe
Abdoolcader J.
per Chang Min
Tat F.J.)
dated 15th
November 1978
(continued)

concerned with the appeal from the finding
and declaration of a trust.

The twin declarations of trust were made
as the result of Kim Guan & Co. alleging that
they had for their own part paid \$19,000 by
way of tea-money to the sitting-tenant of
house No.26 at the time of the purchase by
Yong & Co. in order to obtain vacant
possession of the premises, and that this
payment was for the house. The total cost
of the house was therefore assessed at
\$56,000, made up of \$35,000 for the purchase,
\$1,444.40¢ for legal fees and other disburse-
ments involved in the transfer, rounded off
to \$2,000 (one would have thought, rather
generously, for the hard-headed businessman
that the claimants were) and \$19,000 for
obtaining vacant possession. The property
was then divided into 56 undivided shares.
It was not a matter of serious dispute that
Kim Guan & Co. did pay this \$19,000 to the
tenant in occupation otherwise they would
not have been able to obtain vacant possession
of the premises which were protected under
the then Control of Rent Ordinance 1948.
This payment was clearly not made out towards
the land but it was put forward as Kim Guan
& Co.'s contribution to the total cost and
accepted by the learned Judge as such.

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The claim of a trust in favour of Kim
Guan & Co. was founded on an alleged agreement,
which as set out in paragraph 6 of the state-
ment of claim was as follows :-

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"6. Under the said arrangement, the said
Yong Nyee Fan agreed that he would
advance for the purchase of the premises
No.26, Hugh Low Street, Ipoh, and that
the said Tan Peng Nam and Yap Fook Seng
would advance the money for compensation
to Chop Toong Sang Woh (the sitting
tenant) for giving up vacant possession
of the said premises and that the said
premises when so acquired for such use
were to be held in trust for the New
Company."

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The new company referred to was Kim Guan & Co.
which at that time was not formed. It was
incorporated only on February 12, 1955.

Paragraph 11 of the statement of claim
(as amended) reads :

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10 "11. The said premises were to be transferred to the Plaintiff Company on the Plaintiff Company reimbursing the said Yong Nyee Fan in the sum of \$37,000/- (Dollars thirty seven thousand) for what was paid for the said house but when it was ascertained that the said Yong Nyee Fan had purchased the said premises in the name of the Defendant Company, the said Tan Peng Nam wanted to have the New Company wound up but a settlement was effected by the Plaintiff Company agreeing to pay \$37,000/- (Dollars thirty seven thousand) to the Defendant Company in respect of the trust aforesaid being the demand made by the said Yong Nyee Fan. The said amount was in 1957 increased to and agreed at \$45,000/- "

In the Federal Court of Malaysia
No.17
Judgment of the Court (Chang Min Tat and Syed Othman F.J.J. and Eusoffe Abdoolcader J. per Chang Min Tat F.J.) dated 15th November 1978
(continued)

20 To establish this alleged trust Yap Fook Seng, P.W.1 (Yap), one of the founder-directors of Kim Guan & Co., gave evidence of the arrangement referred to in paragraph 6 of the statement of claim. He further testified that when Yong Nyee Fan in February 1955 presented him and his associate Tan Peng Nam (Tan) with a demand for 3 months rent for November 1954 when Kim Guan & Co. moved into occupation to
30 January 1955, he and Tan then and only then found out that house No.26 had been purchased in the name of Yong & Co. and they then decided to withdraw from Kim Guan & Co. But according to him, a compromise (the 1955 settlement) was reached on the following terms :

1. To transfer the premises to the company at \$37,000/-. The \$37,000/- made up of \$35,000/- for purchase price and \$2,000/- for incidental fees.
- 40 2. Yong said he had advanced \$37,000/- and wanted interest at \$220/- on that amount as it was chargeable as a bank rate - which worked out at 6%. Temporarily the \$220/- interest was to be treated as rent. It was only a temporary measure.
3. The Company was to pay assessment and quit rent because all agreed premises was to be transferred to the company."

50 It was common to both sides that Kim Guan & Co. throughout paid the assessment on the premises, but it was not uncommon for tenants

In the Federal
Court of
Malaysia

No.17

Judgment of
the Court
(Chang Min Tat
and Syed Othman
F.J.J. and
Eusoffe
Abdoolcader J.
per Chang Min
Tat F.J.)
dated 15th
November 1978
(continued)

to pay assessments and the fact of this
payment by Kim Guan & Co. was not conclusive
one way or the other of the status of Kim Guan
& Co.

The monthly payment of \$220/- was by
demand in writing made by Yong Nyee Fan with a
threat to terminate the tenancy unless agreed
to, increased to \$300/- as from September 1,
1954. Kim Guan & Co. denied however that this
was an increase in the rent for the premises
and claimed that this increase was the result
of the rise in the bank rate from 6% to 8%. 10

Kim Guan & Co. also averred that they
made another attempt in 1956 at having the
house transferred to them.

In 1957, another crisis arose. Yong Nyee
Fan threatened to resign as a director of Kim
Guan & Co. In the settlement reached (the
1957 settlement), he made an offer to sell the
house to the company for \$45,000/-, which offer 20
the company accepted. They proposed to raise
a loan of \$30,000/- from a bank to effect the
purchase. The offer and acceptance were
recorded in the minutes of Kim Guan & Co. on
March 11, 1957 in these words :-

"PURCHASE OF 26, HUGH LOW STREET, IPOH
FOR \$45,000/-"

Messrs. Yong Nyee Fan & Sons Limited,
the owner of this premises decided to
sell this premises for the sum of 30
\$45,000/-. The directors realized that
it will be advantageous (sic) to the
Company if the Company buys over this
shop. After much discussion it was
unanimously agreed to buy 26, Hugh Low
Street, Ipoh for the sum of \$45,000/-.

GRANT OF 26, HUGH LOW STREET, IPOH

The directors gave power to the
Managing Director to hand over the grant
of the above premises to the Chung Khiaw
Bank Limited, Ipoh as surety for the loan 40
of \$30,000/-. Should the sum of \$30,000/-
be insufficient to make up for the
purchase price of this premises, Mr. Tan
Phang Nam and Mr. Yap Fook Seng would be
empowered to get a further loan of
\$15,000/- from the Chung Khiaw Bank
Limited, Ipoh."

This incidentally was the first mention in the minutes of Kim Guan & Co. of any interest in house No.26, and Yong & Sons sought to place great emphasis on it in resisting the claim of a trust.

But it would appear that the offer was only tentative as on July 28, 1957 the Board of Kim Guan & Co. recorded that

"(a) Purchase of 26, Hugh Low Street, Ipoh

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The Directors decided to have the transfer of this property put through when Messrs. Yong Nyee Fan & Sons Limited decided to do so."

In the event no such purchase was effected.

Yong Nyee Fan died in 1960.

So at the trial it became, as Yap admitted under cross-examination, a matter between the word of two living persons and a dead man who could not now speak for himself. But there is no rule of law that a claim against a dead person cannot be entertained or that in the case of a conflict of evidence between living and dead persons there must be corroboration to establish a claim by a living person against the estate of a deceased person. As Sir James Hannen said in In re. Hodgson (1) at p.183:

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"Now, it is said on behalf of the Defendants that this evidence is not to be accepted by the Court because there is no corroboration of it, and that in the case of a conflict of evidence between living and dead persons there must be corroboration to establish a claim advanced by a living person against the estate of a dead person. We are of opinion that there is no rule of English law laying down such a proposition. The statement of a living man is not to be disbelieved because there is no corroboration, although in the necessary absence through death of one of the parties to the transaction, it is natural that in considering, the statement of the survivor we should look for corroboration in support of it; but if the evidence given by the living man brings conviction to the tribunal which has to try the question, then there is no rule of law which prevents that conviction being acted upon."

(1) (1886) 31 Ch.D. 177 C.A.

In the Federal Court of Malaysia

No.17

Judgment of the Court (Chang Min Tat and Syed Othman F.J.J. and Eusoffe Abdoolcader J. per Chang Min Tat F.J.) dated 15th November 1978

(continued)

In the Federal
Court of
Malaysia

No.17
Judgment of
the Court
(Chang Min Tat
and Syed Othman
F.J.J. and
Eusoffe
Abdoolcader J.
per Chang Min
Tat F.J.)
dated 15th
November 1978
(continued)

Lord Denning M.R and Phillimore L.J. in
In re.Cummings Dec'd (2) agreed. the former
citing the above-quoted passage.

A slightly earlier case is In re. Garnett (3)
where Brett M.R said at pp. 8-9:

"Another point was taken. It was said
that this release cannot be questioned
because the person to whom it was given
is dead, and also that it cannot be
questioned unless those who object and
state certain facts are corroborated,
and it is said that was a doctrine of
the Court of Chancery. I do not assent
to this argument; there is no such law.
Are we to be told that a person whom
everybody on earth would believe, who is
produced as a witness before the Judge,
who gives his evidence in such a way that
anybody would be perfectly senseless who
did not believe him, whose evidence the
Judge, in fact, believes to be absolutely
true, is, according to a doctrine of the
Courts of Equity, not to be believed by
the Judge because he is not corroborated?
The proposition seems unreasonable the
moment it is stated. There is no such law.
The law is that when an attempted is made
to charge a dead person in a matter, in
which if he were alive he might have
answered the charge, the evidence ought
to be looked at with great care; the
evidence ought to be thoroughly sifted,
and the mind of any Judge who hears it
ought to be, first of all, in a state of
suspicion; but if in the end the truth-
fulness of the witnesses is made perfectly
clear and apparent, and the tribunal which
has to act on their evidence believes
them, the suggested doctrine becomes
absurd. And what is ridiculous and
absurd never is, to my mind, to be adopted
either in Law or in Equity."

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Plowman J. in Thomas v. Times Book Co. Ltd. (4)
at pp. 915-6 adopted this dictum of Brett, M.R.

These authorities establish that though
the case for the claimants of a trust against
a dead man needs no corroboration, it must be
approached with suspicion.

- (2) (1972) 1 Ch. 62 C.A.
(3) (1886) 31 Ch. D.1 C.A.
(4) (1966) 1 W.L.R. 911

10 It is convenient at this stage to examine the incorporation of Kim Guan & Co. The authorised capital was \$500,000, but at the incorporation, the subscribed capital was \$299,000, made up of 2990 shares of \$100 each. The number of shares allotted for consideration other than cash was 1782 and these shares went equally to Yap and Tan in consideration of Kim Guan & Co. taking over the assets of the partnership business hitherto carried out at No.65, Hugh Low Street, Ipoh at a valuation of \$178,200. Yap and Tan paid in cash \$21,800 for the remaining 218 from the 2000 shares allotted to them while Yong Nyee Fan paid \$99,000 fully for his 990 shares. Yong Nyee Fan became at all relevant times a director of Kim Guan & Co.

In the Federal Court of Malaysia

No.17
Judgment of the Court (Chang Min Tat and Syed Othman F.J.J. and Eusoffe Abdoolcader J. per Chang Min Tat F.J.) dated 15th November 1978
(continued)

20 The claim of a trust was based on the oral evidence entirely of Yap and Tan, the two partners in the business of Kim Guan which was commenced in 1949, and the two founder-directors of Kim Guan & Co. In their evidence, when it came to expanding their partnership business, they thought of acquiring new premises and forming a limited company. House No.26 was found suitable and they and Yong Nyee Fan agreed to purchase it. Yong Nyee Fan was to purchase it for \$35,000 while they were to pay to the tenant a sum which was eventually reduced to \$19,000 for vacant possession. The purchase of house No.26 in October 1954 was for the business and they were unpleasantly surprised when in February 1955, Yong Nyee Fan demanded rents for the 3 previous months. Their confrontation of Yong Nyee Fan led to the 1955 settlement.

40 Yap and Tan, however, agreed that in the minutes of their Board meetings, no mention whatsoever was made of the purchase of house No.26 for the company and that the first indication of any interest they might have in the premises other than as tenants was the tentative offer to sell the premises to them in the 1957 settlement. In the meantime they had paid monthly sums by way of rents and in certain months, the tender of rents was made by Yap by letter written in Chinese, a language which he could not deny he understood. His explanation however was that the payments were meant as interest-payments. When he said rents, he meant interest.

50 When asked to explain the absence in the minutes of their Board meetings of any mention of trust right from the inception of the company, Yap ventured no explanation but Tan, who at the

In the Federal
Court of
Malaysia

No.17
Judgment of
the Court
(Chang Min Tat
and Syed Othman
F.J.J. and
Eusoffe
Abdoolcader J.
per Chang Min
Tat F.J.J.)
dated 15th
November 1978
(continued)

trial was no longer connected with the Company and who, as he stressed, had no more interest, least of all his own, to serve, charged the secretary Madam Yong Toong Liew with falsifying the minutes or misinterpreting them, and another director Yau Yit Ping who acted as interpreter in the Board meeting leading to the 1957 settlement with falsely interpreting what was recorded in the minutes. This is by its nature a serious charge. If it was not an afterthought advanced only at the trial, the case of Kim Guan & Co. against Yong Nyee Fan was one of fraud and the pleadings of Kim Guan & Co. should have been such as to let the defendants know the true case they had to meet. When it is realized that Madam Yong Toong Liew is the daughter of Yong Nyee Fan, the charge must be seen to be a charge of conspiracy to defraud Kim Guan & Co. Yet when she gave evidence for the defence, she was not charged with conspiracy or with falsifying the minutes during her cross-examination and that is a matter of some relevance. Now, Yau Yit Ping was not called by either side. The learned Judge held the failure to do so against the Defendants but with respect, it was Kim Guan & Co. which alleged that the minutes were wrongly interpreted and therefore the onus was on them to call Yau Yit Ping if they were to avoid having the adverse presumption under section 114(g) Evidence Act 1950 drawn against them.

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However, on further reflection, it must be seen that there is absolutely no substance in the charge of falsifying the minutes or misinterpreting them. Apart from the first mention of house No.26 in the minutes of March 11, 1957 which was the offer to sell Kim Guan & Co. the house for \$45,000 and which Yap and Tan knew all about so that there was in this instance a correct record and a faithful oral translation, the charge was really one of omission and not infidelity, since at all Board meetings previous to this, the matter was never brought up and discussed. And from the evidence of Yap himself who said that in the manner and custom of Chinese businessmen (of which there was no evidence), they trusted one another, they did not require any records and they did not discuss the matter of the premises at the Board meetings, it does appear that the charge of falsely recording and translating the minutes was itself false.

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It goes without saying that the claim of

10 a trust against Yong Nyee Fan could only succeed on evidence of what he said or did in his lifetime in relation to this house and Kim Guan & Co, from which a trust could be inferred. This meant relevant evidence before his death in 1960. Evidence contemporaneous with the transaction, or shortly before and shortly afterwards, must be seen to be much more important than the evidence of events after the death of the person who was alleged to have constituted himself the trustee.

All the documentary evidence from the absence of any mention in Kim Guan & Co. and from the positive assertions in Yong & Co. was against a trust. The only evidence for it was the oral testimony of Yap and Tan and this evidence has, on the authorities above quoted, to be treated with suspicion and to be set against all the other evidence.

20 For ourselves, we have not been able to understand why if the money for the purchase of the house and for the expenses incurred in the purchase had to be advanced by Yong Nyee Fan, 370 of the shares he took in Kim Guan & Co. representing a cash value of \$37,000 could not have been issued as other than by payment in cash or, if his \$99,000 cash contribution was needed for operating capital, a further
30 allocation of 370 shares as fully paid up could or should not have been made out to him. And, by the same token, if the \$19,000 tea-money paid by Yap and Tan to the sitting tenant was to be treated as payment to and for the house, why could not Yap and Tan pay this sum less and get 190 shares as fully paid up or be issued with another 190 additional shares?

40 Insofar as the payment of the co-called interest was concerned, evidence was led that the actual rent paid by the previous tenant was \$180 p.m. to induce the Court to believe that the \$220 paid per month was for interest, but this oral evidence was completely refuted by the receipt held by the previous tenant. And, as interest, the arithmetic of Kim Guan & Co. was all wrong and their counsel at the appeal before us was unable to assist us in understanding how the various sums were arrived at. Interest
50 payments have customarily been calculated at a percentage of the principal owing and as a matter of fact, Kim Guan & Co. solemnly averred that the first rate was 6%. They suggested that at 6% on \$37,000, the interest payment came to \$220 rounded off from \$222 per month and that was

In the Federal Court of Malaysia

No.17
Judgment of the Court (Chang Min Tat and Syed Othman F.J.J. and Eusoffe Abdoolcader J. per Chang Min Tat F.J.) dated 15th November 1978
(continued)

In the Federal
Court of
Malaysia

No.17
Judgment of
the Court
(Chang Min Tat
and Syed
Othman F.J.J.
and Eusoffe
Abdoolcader J.
per Chang Min
Tat F.J.)
dated 15th
November 1978
(continued)

the actual sum paid. But 6% per month would mean a preposterous 72% p.a. and on \$37,000 a sum of \$26,640 in interest for 12 months. However, it was clear, as counsel for Yong & Co. pointed out, the rate of interest claimed was described as the prevailing bank rate and that would mean 6% p.a. If so, it would make for greater confusion, as 6% p.m. on \$37,000 would mean a monthly payment of \$185 and on \$35,000 a monthly figure of \$175. Neither figure tallied with or even approached the \$220 actually paid. The sum of \$220 paid by Kim Guan & Co. tallied however with the rent paid by the previous tenant.

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When it came to the payment of \$300 p.m., counsel for Kim Guan & Co. thought he was on surer ground as the increase was paid to be the result of an increase in the bank rate from 6% to 8% (of which, there was, incidentally, no proof adduced) and in his calculation as he suggested to us, 8% p.a. of \$45,000 came to an exact \$300 p.m. If 8% was the yearly rate and \$45,000 the sum owing, he was arithmetically right. But his facts were, with respect, all wrong. The increase to \$300 was demanded in August 1956 and paid as from September 1, 1956. The offer to sell the house for \$45,000 was made rather later, in the 1957 settlement, so that the alleged increased bank rate of interest was made to bear not on \$45,000 but on \$37,000 and that worked out at only \$256.67¢ p.m. In any event, a lender has been known to increase the rate of interest charged but where interest has been regularly paid, this Court is unable to understand how he may increase the capital sum owing, but this was what Kim Guan & Co. accused Yong Nyee Fan of doing.

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The conclusion is inevitable that the sums paid are not reconcilable with any bank rate of interest on the capital expended in the purchase of the house, as contended by Kim Guan & Co.

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It is also to be noted that in the course of his oral evidence in Court, Yap quite often, perhaps unconsciously, slipped back to calling the monthly tenders of money as rents or rentals, and he admitted that in the accounts of Kim Guan & Co. as well as in their income tax returns, the payments were treated as rents.

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The learned trial Judge observed that the

oral evidence of Yap and Tan was "diametrically opposite" to their own documentary evidence. But it was not merely that. It was wholly inconsistent in itself. Now this evidence he was enjoined by authority to treat with caution and suspicion, but his actual approach was to see how far the oral evidence altered the documentary evidence. It was stated in these words :-

In the Federal Court of Malaysia

No.17
Judgment of the Court (Chang Min Tat and Syed Othman F.J.J. and Eusoffe Abdoolcader J. per Chang Min Tat F.J.) dated 15th November 1978
(continued)

10 "In normal cases it would have been easier to go through these documents either as basis or corroboration as to which of the versions of what actually happened during the material period is the more probable one. But apparently it is not the case here and I say this for the following reasons. One thing is clear so far and that is this - what is contained in some of the documentary evidence is not quite
20 the same as what is said by the witnesses. Because their versions are diametrically opposed there is then the question of how to get a clear picture of what actually happened. On going through the oral evidence and the documentary evidence in this case there is therefore in my view a need (for other reasons as well which will be shown later) to reconcile their oral evidence with the documentary
30 evidence."

His reasons were that Yap and Tan did not understand English. The minutes were all written in English, mostly by Yong Nyee Fan's daughter and they might have been falsified. Therefore

40 "From all these one thing emerges and that is, one will not get a clear and true picture of what actually happened unless a finding is made first on the credibility of each of the witnesses concerned."

With great respect, this is not the right approach in the somewhat special circumstances of this case.

50 It has been said time and time again that an appellate Court should not lightly differ from the trial Judge's findings of fact or his rating of credibility of the witnesses whom he had the distinct advantages of seeing and hearing in the witness box. If it is a matter of credibility, then this Court would long

In the Federal
Court of
Malaysia

No.17
Judgment of
the Court
(Chang Min Tat
and Syed Othman
F.J.J. and
Eusoffe
Abdoolcader J.
per Chang Min
Tat F.J.)
dated 15th
November 1978
(continued)

hesitate before it purported to overrule the findings of the trial Judge and even then it would be skating on thin ice. But perhaps fortunately for the appellants, it is not a matter of credibility but it is a matter of inferences to be drawn from the evidence. And in such a matter, an appellate Court is in as good a position as the trial Court.

In the case in hand, no amount of rationalisation or explanation can, it seems to us, convert the declared tender of rents into payment of interest. There can be no doubt as to the correct answer to the question whether the coat should be cut to fit the body or the body be chopped to fit the coat, but throughout, the case for Kim Guan & Co. gives the distinct impression that the surgical operation is to be preferred to the sartorial. And if we may say so without disrespect, Counsel for Kim Guan & Co. floundered hopelessly in trying to explain how the interest was calculated. Refuge behind the screen of faith in the integrity of Yong Nyee Fan which Yap and Tan advanced as the reason why the contemporary written records were so strangely and so completely silent on any matter of trust or even interest in the house and which prevailed so persuasively with the Judge, must, even on the ordinary judicial assessment of evidence, fail to establish a trust where none was anywhere else shown to exist. If the more stringent test of caution and suspicion which authority enjoined the Court to apply was applied and he had directed his mind to the probabilities and the arithmetics of the case, it is a matter of some uncertainty that the learned judge would have come to the same decision. Where, as here, the contemporary records were not shown to be other than correctly written up in the ordinary course of business, they must be preferred to the oral evidence of witnesses with an interest of their own to serve, more particularly so where the oral testimony was in itself so clearly inconsistent and unreasonable.

As Bowen L.J. said in Re. Postlethwaite⁽⁵⁾
at p.520:

".....if the correspondence and facts are capable of a reasonable explanation consistent with the validity of the transaction, one ought not to draw in the dark inferences which would really be guesses. So long as a reasonable explanation is

(5) (1888) 60 LT 514 CA

possible we ought not to draw inferences in favour of the invalidity of the transaction. The general presumption which the law makes is in favour of the good faith and validity of transaction, and not against them, and that presumption ought to acquire, and does acquire, weight from the length of time during which a transaction has subsisted. Having regard to the date of the transaction and the death of the parties, I think we should be acting on guesses, and not upon legal grounds, if we were to displace this transaction now."

In the Federal Court of Malaysia

No.17
Judgment of the Court (Chang Min Tat and Syed Othman F.J.J. and Eusoffe Abdoolcader J. per Chang Min Tat F.J.) dated 15th November 1978

(continued)

If the legal gloss which was put over the purchase of the house is removed, then the contention of Kim Guan & Co. must be seen to be nothing more or less than an alleged agreement with Yong Nyee Fan that the latter was to buy the house and later sell it to Kim Guan & Co. That promise, if founded on fact and if given for good consideration, could possibly give rise to a claim in contract subject, of course, at this stage to any defence on limitation, but it did not fit in with the classical case of a purchase being taken in the name of a stranger, which would constitute the nominal purchaser a resulting trustee for the one who provided the purchase money. Nor did this alleged promise to sell constitute Yong Nyee Fan a constructive trustee, since it did not establish that the property was acquired through the medium of a trust. It is settled law that the Court will not impute a legal relationship on the strength of what one party thought of the matter, where there was no intention whatsoever to create such a relationship.

If there was any claim at all in 1954, it was a claim in contract against Yong Nyee Fan or against his estate but it could not be against Yong & Co. the registered proprietor of the land. At the time of the alleged promise, Yong Nyee Fan was neither a director nor a shareholder of Yong & Co. and any promise he made would be in his personal capacity. He might well be the dominant character in his family, but that did not alter the situation in regard to the actual relationship between the parties.

We now turn to the evidence of events occurring after the death of Yong Nyee Fan which was led by both sides and considered by the learned Judge. It was common to both

In the Federal
Court of
Malaysia

No.17
Judgment of
the Court
(Chang Min Tat
and Syed Othman
F.J.J. and
Eusoffe
Abdoolcader J.
per Chang Min
Tat F.J.)
dated 15th
November 1978
(continued)

sides that a son of Yong Nyeo Fan, one Yong Su Hian by name, took his place on the Board of Kim Guan & Co. after his death and that shortly afterwards, Yong Su Hian issued a notice to Kim Guan & Co. to quit the premises.

On receipt of this notice, Yap said he instructed his then solicitors, Das & Co. to write to Yong & Co. claiming that the property was trust property. The office copy of this letter which would ordinarily be retained by the solicitors is now untraceable as Das & Co. was closed shortly afterwards by the unfortunate death of one of the partners of the firm, but Yong & Co. adduced evidence, for what it was worth, that their solicitors did not receive any such letter.

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But on receiving representations from Yap and possibly Tan as well, Yong Su Hian retracted the notice to quit, and instead demanded an increase of rent to \$700/- p.m. The increase in rent was not paid, and no action taken to enforce it, probably because it was illegal, but at the same time Yap admitted that neither did he take any action, even at that stage, to enforce the alleged trust. It was, according to him, not in the nature of the Chinese to resort to action.

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However something came out of all this. The relationship between the parties had by then become strained and it was thought that the time had come for the parting of the ways. On October 23, 1961 a settlement (the 1961 settlement) was reached whereby Yong Su Hian and members of his family transferred their shares in Kim Guan & Co. to Yap and Tan and in turn Yap and Tan and members of their families transferred their shares in the Yong Nyeo Fan Mining Co.Ltd. to Yong Su Hian and his relations. There was also a cash adjustment arising from the valuation of the respective shares. Yap and Tan paid Yong Su Hian \$22,000 as well as his legal fees. Yap and Tan said however that the 1961 settlement contained an acknowledgment of their right (of which there was no written evidence) to house No.26, but Yong Su Hian said that the settlement did not extend beyond the exchange of shares.

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Despite what Yap and Tan contended, Yong Su Hian in 1967 asked for fair rent and at a Board meeting, offered to transfer the house to Kim Guan & Co. for \$70,000. NO record exists of the reactions of Yap and Tan to this

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offer.

In the Federal
Court of
Malaysia

No.17

Judgment of
the Court
(Chang Min Tat
and Syed Othman
F.J.J. and
Eusoffe
Abdoolcader J.
per Chang Min
Tat F.J.)
dated 15th
November 1978
(continued)

10 Then on May 29, 1970, Yong Su Hian served on Kim Guan & Co. a year's notice to quit, preparatory to an application to the Rent Tribunal for re-possession of the premises for rebuilding and in 1973 Yong Su Hian applied for re-possession. This was the traditional last straw. Kim Guan & Co. consulted solicitors and their solicitors on April 10, 1973 formulated a claim based on the alleged trust. And it is to be remarked that in all the voluminous documents possessed by the respondents, this was the very first in which a claim of this nature was made. Three days later, apparently without waiting for a reply, Kim Guan & Co. took the action which hitherto Yap had, and he said, been so loathed to take, as being not in his character.

20 This action so long-delayed laid Kim Guan & Co. wide open to a charge of laches which the appellants dutifully made both at the Court of first instance and before us.

30 Now it is abundantly clear that all this evidence post-mortem Yong Nyee Fan which the learned Judge considered is of no probative value whatsoever in deciding the central issue whether or not Yong Nyee Fan was the trustee of house No.26 for Kim Guan & Co. Ltd. It was not in any way evidence of what Yong Nyee Fan did or acknowledged. If of any value at all, it was evidence of consistency in the view of the family of Yong Nyee Fan that house No.26 was let to Kim Guan & Co. The learned Judge however apparently considered Yong Su Hian as not a witness of truth and his evidence as inconsistent. But it is obvious that Kim Guan & Co. stood to succeed or fail by their own evidence and by such evidence by way of admissions or otherwise from the other side that they could get and they could not succeed merely on the defect of Yong Su Hian as a witness or on his default and that of his other witnesses.

50 Reading the judgment of the learned Judge as a whole, we seem that he really could not and did not find any evidence pointing to Yong Nyee Fan constituting himself the trustee of House No.26 for Kim Guan & Co. He dealt with the case on this basis and perhaps it is just as well if we do so, too. It relieves us of the necessity to consider the implications of the registration of the title in the name of

In the Federal
Court of
Malaysia

No.17
Judgment of
the Court
(Chang Min Tat
and Syed Othman
F.J.J.and
Eusoffe
Abdoolcader J.
per Chang Min
Tat F.J.)
dated 15th
November 1978
(continued)

Yong & Co. and the indefeasibility of title that is the key-stone of the Torrens system of registration. We too can find no such evidence on the record. We have already indicated that we do not, with respect, consider the approach adopted by the learned Judge and his acceptance of the faith alleged to have been placed by Yap and Tan in Yong Nyee Fan sound. In the absence of evidence, the alleged trust could not be said to have been proved, even on a balance of probabilities. The appeal must be allowed with costs here and in the Court below. The claim of Kim Guan & Co. stands dismissed.

10

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

Kuala Lumpur,
15th November, 1978.

Dates of Hearing: 23rd and 24th October, 1978

20

Encik Lin Kean Chye (Encik Chin Fook Yen with him) for Appellant.
Solicitors : Messrs. Kean Chye & Sivalingam.

Encik Chinn Swee Onn (Encik Soo Wai Sun with him) for Respondent.
Solicitors: Messrs.Chinn Swee Onn & Co.

Salman yang diakui benar

Sd:

.....
Setiausaha Hakim
Kuala Lumpur.

30

20/11/78.

No. 18
ORDER ALLOWING APPEAL
WITH COSTS AND NO ORDER
ON COUNTERCLAIM dated
15th November 1978

In the Federal
Court of
Malaysia

No.18
Order allowing
Appeal with
costs and no
Order on
Counterclaim
dated 15th
November 1978

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT IPOH
(APPELLATE JURISDICTION)
FEDERAL COURT CIVIL APPEAL NO. 15 OF 1977

Between

10 Yong Nye Fan & Sons Sendirian
Berhad APPELLANT

And

Kim Guan & Company Sendirian
Berhad RESPONDENT

(In the matter of Civil Suit No.113
of 1973 in the High Court in Malaya
at Ipoh

Between

20 Kim Guan & Company
Sendirian Berhad PLAINTIFF
No.26 Hugh Low Street,
Ipoh

And

Yong Nye Fan & Sons
Sendirian Berhad
No.1, Brewster Road,
Ipoh DEFENDANTS

30 CORAM: CHANG MIN TAT, JUDGE, FEDERAL COURT,
MALAYSIA
SYED OTHMAN, JUDGE, FEDERAL COURT,
MALAYSIA
EUSOFFE ABDOOLCADER, JUDGE, HIGH COURT,
MALAYA

IN OPEN COURT

THIS 15TH DAY OF NOVEMBER, 1978

O R D E R

40 THIS APPEAL coming on for hearing on the
23rd and 24th days of October 1978 in the
presence of Encik Lim Kean Chye (Encik Chin
Fook Yen with him) of Counsel for the Appellant
abovenamed and Encik Chin Swee Onn (Encik Soo
Wai Sun with him) of Counsel for the Respondent

In the Federal Court of Malaysia

No.18
Order allowing Appeal with costs and no Order on Counterclaim dated 15th November 1978
(continued)

abovenamed 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 Judgment this day in the presence of Counsel as aforesaid IT IS ORDERED that this appeal be and is hereby allowed AND IT IS ORDERED that the costs of this appeal and of the High Court be taxed and paid by the Respondent to the Appellant AND IT IS FURTHER ORDERED that there shall be no order on the counterclaim and that there be no costs of the counterclaim in the appeal and in the Court below AND IT IS LASTLY ORDERED that the sum of \$500/- (Ringgit five hundred only) paid into the Court by the Appellant as security for costs of this appeal be refunded to the Appellant.

10

GIVEN under my hand and the seal of the Court this 15th day of November 1978.

20

Sd: Haji Wan Mohamed bin
Haji Wan Mustapha
.....

CHIEF REGISTRAR,
FEDERAL COURT,
MALAYSIA.

L.S.

No.19
Order granting Final Leave to Appeal to His Majesty the Yang di Pertuan Agong dated 9th July 1979

No. 19

ORDER GRANTING FINAL LEAVE TO APPEAL TO HIS MAJESTY THE YANG DI-PERTUAN AGONG dated 9th July 1979

30

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

FEDERAL COURT CIVIL APPEAL NO. 15 OF 1977

Between:

Yong Nyee Fan & Sons Sendirian Berhad
APPELLANT

And

Kim Guan & Company Sendirian Berhad
RESPONDENT

(In the matter of Civil Suit No.113 of 1973
In the High Court in Malaya at Ipoh

In the Federal
Court of
Malaysia

Between:

Kim Guan & Company Sendirian Berhad
No.26, Hugh Low Street,
Ipoh

PLAINTIFF

And:

Yong Nye Fan & Sons Sendirian Berhad
No.1 Brewster Road,
Ipoh

DEFENDANT)

No.19
Order granting
Final Leave to
Appeal to His
Majesty the
Yang di Pertuan
Agong dated
9th July 1979
(continued)

CORAM: RAJA AZLAN SHAH, CHIEF JUSTICE, HIGH COURT, MALAYA
SALLEH ABBAS, JUDGE, FEDERAL COURT, MALAYSIA
EUSOFFE ABDOOLCADER, JUDGE, HIGH COURT, MALAYA

IN OPEN COURT

THIS 9TH DAY OF JULY, 1979

O R D E R

UPON MOTION made unto this Court this day by Encik Chinn Swee Onn (with him Encik Soo Wai Sun) of Counsel for the Respondent abovenamed in the presence of Encik A. Irithaya Raj of Counsel for the Appellant abovenamed AND UPON READING the Notice of Motion dated the 27th day of June, 1979 and the Affidavit of Yap Fook Seng affirmed on the 19th day of June, 1979 and filed in support of the said Motion AND UPON HEARING Counsel as aforesaid

IT IS ORDERED that final leave be and is hereby granted to the Respondent abovenamed to appeal to His Majesty the Yang di-Pertuan Agong from the judgment of the Federal Court dated the 15th day of November, 1978.

AND IT IS FURTHER ORDERED that the costs of this application be costs in the cause.

GIVEN under my hand and the Seal of the Court this 9th day of July, 1979.

Sd: Illegible

DEPUTY REGISTRAR,
FEDERAL COURT, MALAYSIA

EXHIBIT

10(6)

Agreement
between Tan
Phang Nam and
Yap Fook Seng
and Kim Guan
& Company
Sdn. Bhd.
dated 24th
March 1955

EXHIBIT

10(6)

AGREEMENT BETWEEN TAN PHANG
NAM and YAP FOOK SENG and
KIM GUAN & COMPANY SDN. BHD.
dated 24th MARCH 1955

CERTIFIED TRUE COPY

Sd.

(Teoh Siang Eng)
Asst. Register of Companies
Malaysia
4.7.1974

10

THIS INDENTURE is made the 24th day of March 1955, between Tan Phang Nam and Yap Fook Seng All of Ipoh (hereinafter called the Vendors) of the one part and Kim Guan & Company Limited, a company incorporated in the Federation of Malaya and having its Registered Office at No. 26, Hugh Low Street, Ipoh, (hereinafter called the Company) of the other part

20

WHEREAS the Vendors have been carrying on together in partnership the business of general merchants under the name or style of Kim Guan Company, at No. 26, Hugh Low Street, Ipoh (hereinafter called the said partnership).

AND WHEREAS the Vendors have agreed to sell to the Company and the Company have agreed to purchase from the Vendors the business of the Vendors as a going concern together with the furniture and other assets of the said partnership enumerated in the schedule hereto (hereinafter referred to as the said property) at a price of \$178,200 (Dollars one hundred & seventy eight thousand two hundred only) free from all encumbrances but subject to the debts and other liabilities of the said partnership as enumerated in the schedule hereto (hereinafter called the said debts and liabilities

30

AND WHEREAS as the consideration of the said sale the Company have agreed to allot to the Vendors one thousand seven hundred and eighty two (1782) shares of \$100 (Dollars one hundred) each fully paid-up, of the Company's share capital on the terms and conditions as hereinafter appearing:

40

NOW IT IS HEREBY MUTUALLY AGREED by and between the parties hereto as follows :-

1. That in consideration of the premises and of the company's undertaking to allot to the Vendors and/or their nominees One thousand seven hundred

50

& eighty two (1782) shares of \$100 (Dollars one hundred) each, fully paid-up on the Company's share capital the Vendors hereby sell, transfer and assign unto the Company the business of Kim Guan & Co. together with the property and assets free from all encumbrances but subject to the said debts and other liabilities as from the 1st day of January, 1955 to hold the same unto the company absolutely.

EXHIBIT

10(6)

Agreement between Tan Phang Nam and Yap Fook Seng and Kim Guan & Company Sdn. Bhd. dated 24th March 1955

(continued)

10 2. That in consideration of the sale, transfer and assignment mentioned in Clause 1 hereof the Company shall within one month from the date hereof allot to the Vendors and/or their nominees One thousand seven hundred and eighty two shares (1782) of \$100/- each (Dollars one hundred) each, fully paid-up, of the Company's share capital in the following proportion, that is to say:

- 20 (a) Tan Phang Nam
and/or his nominees 891 shares
- (b) Yap Fook Seng
and/or his nominees 891 shares
1782 shares

3. That the Share Certificate for the said shares shall be issued to the Vendors and/or their nominees in terms of the Company's Memorandum and Articles of Association.

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

30 SIGNED and DELIVERED)
by the Vendors in the) Tan Phang Nam
presence of :-) (in Chinese)

L.J. Peace
1 Hale Street
Accountant Ipoh

SIGNED and DELIVERED)
by the Vendors in the) Yap Fook Seng
presence of :-) (in Chinese)

40 L.J. Peace
1 Hale Street
Accountant Ipoh

CERTIFIED TRUE COPY
Sd.
(Teoh Siang Eng)
Asst. Registrar of Companies
Malaysia
4.7.1974

50 The Common Seal of)
Kim Guan & Company)
Limited is hereby) L.J. Peace
affixed hereto in) 1 Hale Street
the presence of :-) Accountant Ipoh

Yong Nyee Fan Directors SEAL
Tan Phang Nam (in Chinese) Yap Fook Seng
Yong Toong Liew Secretary (in Chinese)

EXHIBIT

10(6)

Agreement
between Tan
Phang Nam and
Yap Fook Seng
and Kim Guan &
Company Sdn.
Bhd. dated
24th March 1955
(continued)

The Schedule of Assets and Liabilities referred
to in Agreement dated the 24th day of March
1955.

Between Tan Phang Nam and Yap Fook Seng and
Kim Guan & Company Limited

A S S E T S

Stock of Goods on hand - \$61,361.64

Furniture

Show Cases	\$6,868.87	
One Iron Safe	400.00	
One Clock	39.00	10
Two Writing Tables	100.00	
Three Fans	400.00	
Ten Chairs	100.00	
Kitchen Utensils	<u>240.00</u>	- 8,147.87

Motor Car

15.6 H.P. Vauxhall Vyeru
Registration No. AA.8563
purchased 9.1.54 for \$5,620/- - 4,475.19

Sundry Debtors

Shee Toi	\$1,377.45	20
Foong Fong	1,448.00	
Wan Thye	1,512.90	
Nam Thye	1,050.00	
Nam Onn	5,667.05	
Yoon Hin Yap	2,077.45	
Nam Kong	1,712.05	
Chiap Fatt	2,859.30	
Koong Ping	3,163.00	
Loh Chow	2,263.05	
Khee Sin	2,981.40	
Pooi Cheng	1,163.90	30
Poh Cheong Loong	240.00	
Mow Hin	5,018.40	
Shin Lee	1,189.90	
Sin Wah	619.55	
Sin Foo	3,464.70	
Kim Loong	1,700.20	
Min Seng	135.00	
Kwong Loon	713.35	
Sin Sin	100.00	
Sin Kong	1,063.50	40
Heap Mow	3,454.35	
Cheon Siew Thong	486.85	
Hoi Cheong	398.85	
Yew Kong	604.50	
Sum Tut, Taiping	6,322.20	
Wan Hin, Gr'k	463.60	
Phan Yin Chuk	3,324.50	

C/forward

\$73,984.70

EXHIBIT

10(6)

	Lee Yoon Ken	1,376.79
	Societe Commissionaria	
	Di Estorazione E.Di	
	Importazione	520.00
	Yee Yue Shin	471.50
	Toong Hin	422.10
	Mo Dern	619.95
10	Wah Sin	184.45
	Wah Sin	285.25
	Wah Onn	452.85
	Wah Hin	265.95
	Wah Chun	483.50
	Yong Kim Sin	206.05
	Thai Toong	58.70
	Lian Wah	228.35
	Wah Shin	198.10
	Ha Chai Seng	137.90
20	Yee Voon Shong	50.45
	Mee Kong	836.75
	Shiew Too	125.70
	Yoon Hin	39.15
	Chiew Sin	425.35
	Yee Hin Foh	77.60
	Nyee Leong	43.10
	Tet Chow	303.25
	Shee Sin	444.60
	Kolinki Singh	558.40
	Chow Chiew Sow	197.15
30	Thai Sin	15.00
	Sin Kong	347.75
	Soo Chong	105.00
	Shee Toi	122.75
	M. Lal Store	1,440.08
	Lai Wah	369.00
	Wah Mee	76.35
	Voon Fook	66.25
	Tai Sin, Teluk Anson	1,835.35
40	Hoi Seng	3,377.50
	Mee Hin	2,027.90
	Choong Tai	2,078.65
	Ng Chun	68.85
	Po Siew	700.50
	Tai Sin, Tapah	311.45
	Lok Kee	1,198.05
	Kwong Seng, Bidor	481.05
	Yew Sin	568.00
	Lee Ngee	519.30
	Sin Choong Wah	978.30
50	Wah Lee	389.45
	Thye Loo	2,212.85
	Pooi Sow	638.75
	Ha Seng	694.25
	Sin Kong	1,682.50

Agreement
between Tan
Phang Nam and
Yap Fook Seng
and Kim Guan &
Company Sdn.
Bhd. dated
24th March 1955
(continued)

Certified true copy

Sd:
(Teoh Siang Eng)
Asst.Registrar of
Companies,
Malaysia
4.7.1974

EXHIBIT

C/forward

\$73,984.70

10(5)	Phin Wah Shin	1,763.30	
Agreement	Foong Seong	409.65	
between Tan	Kong Yen Hin	76.35	
Phang Nam and	Sum Mee	444.65	
Yap Fook Seng	Swee Foh	460.80	
and Kim Guan &	Kwong Seng	388.45	
Company Sdn.	Cheah Wai Sin	380.20	
Bhd. dated	Yoon Yick	199.10	
24th March 1955	Nam Kok	385.75	10
(continued)	Hon Hin	279.65	
	Wah Toong	90.15	
	Chow Wah	551.80	
	Choon Kean Yin	432.00	
	Foh Sin	513.05	
	Lee Foong Chun	111.95	
	Hiew Choong Pow	2,229.75	
	Toong Cheong	1,040.05	
	Kwong Lian Hin	165.95	
	Nam Cheong	323.15	20
	Wan Ngen	999.80	
	Cheong Kok	179.40	
	Sin Cheong	907.25	
	Nyit Loong	86.10	
	Foh Fatt	1,860.80	
	Tai Sin, Kuala		
	Kangaar	134.80	
	Kwong Sin	750.95	
	Min Wah	1,706.60	
	Lian & Co.	1,594.95	30
	Oi Tet Thong	1,204.40	
	Swee Loong	1,094.15	
	Kee Yap	373.70	
	Ngen Cheong	64.00	
	Kwong Tai Cheng	1,310.55	
	Tet Hin	2,922.55	
	Mee Tut	2,452.60	
	Chee Foh	2,560.20	
	Lian Foong	515.65	
	Sun Tut, Bukit		40
	Mertajam	920.00	
	Tai Sin, Bukit		
	Mertajam	5,316.70	
	Kok Fah	5,788.03	
	Wan Foong	1,191.60	
	Chee Seng	345.00	
	Kwong Tai Toong	1,312.20	
	Soon Seng	607.80	
	Kim Seng	1,652.85	
	Yew Seong	966.33	50
	Sin Kong, Kedah	1,925.60	
	Mee Hin, Kedah	946.30	
	Mow Fatt	350.00	
	Min Seng	4,901.35	

C/forward

\$73,984.70

EXHIBIT

10(6)

Agreement
between Tan
Phang Nam and
Yap Fook Seng
and Kim Guan &
Company Sdn.
Bhd. dated
24th March 1955

(continued)

	Thye Chong	2,472.95
	Fook Soon	2,241.20
	Yik Seng Loong	2,276.80
	Kwong Seong Hin	1,812.30
	Moy Seng	44.00
	Yue Seng	990.00
	Tai Cheong	319.25
	Thye Kit	4,746.80
10	Tai Seng, Menglembu	91.80
	Poon Fah	260.95
	Pitt Kong	123.50
	Foh Hin	131.45
	Lim Mah	490.90
	Koon Loon	167.40
	Fook Onn Thong	5,444.00
	Fook Thye	567.70
	Wah Seng	997.70
	Yong Kee Yew	501.70
20	Nyim Fook Kee	100.00
	Wong Voon Kim	1,975.55
	Yue Koh	102.70
	Tai Seng, Ayer Tawar	535.30
	Loke Yoon Choy	322.15
	Min Sin	274.80
	Nam Kong, Simpang Ampat	1,142.75
	Wah Nee	1,833.00
	Yew Lian	2,607.90
30	Yoon Chee Nyuk Hock	1,358.90
	Yoon Wah	85.00
	Hien Chee Min	386.60
	Lee Peng Khee	1,152.60
	Yee Yen Ken	24.50
	Wan Hin, Pangkor	220.00
	Kien Hin	398.60
	Wah Hin	157.10
	Keong Sin	148.45
40	Yoong Liew	120.00
	Kiew Sin	16.50
	Pin Choon	175.40
	Yin Kong	31.50
	Relatives & Friends	456.30

\$182,386.78

Deduct

Allowance for
bad Debts

3,147.52

179,239.26

Goodwill

100,000.00

353,223.96

CERTIFIED TRUE COPY

Sd:

(Teoh Siang Eng)
Asst. Registrar of
Companies Malaysia
4.7.1974

EXHIBIT

C/forward

\$353,223.96

10(6)

Agreement
between Tan
Phang Nam and
Yap Fook Seng
and Kim Guan &
Company Sdn.
Bhd. dated
24th March 1955
(continued)

Liabilities

Chim Mee Foong	2,028.00	
Lee Say	\$18,175.92	
Foong Mee, Singapore	38,696.51	
Chim Yeow Seng, Singapore	1,575.80	
Kwong Fook Thye	6,992.90	
Chai Cheong	4,017.79	10
Chin Fatt	780.00	
Kwong Seng Cheong	1,500.00	
Sin Loon	3,578.60	
Chin Hon Seng	1,105.04	
Sin Ngen	2,024.78	
Chin Yang Yoon	1,629.35	
Toong Wah	1,800.00	
Yee Ngen	3,224.50	
Rickwood & Co.Ltd.	1,685.56	
Label (China) Ltd.	19,150.86	20
Moluccas Trading Co.Ltd.	713.47	
G.Ramchand	818.95	
V.M.S.Abdul Razak & Co.Singapore	6,369.16	
Thye Loong	2,811.92	
Mee Loon	712.20	
Joo Keng, Penang	11,739.58	
Wan Mee	7,716.00	
Yik Onn	2,730.00	30
Choong Nam	3,408.00	
Koong Sin	2,148.00	
Kim Teck Nee	9,777.15	
Thye Hin Loong	2,691.24	
Foong Mee, K.Lumpur	3,716.11	
Chun Mee	1,032.18	
Chun Joo	2,853.35	
Chen Peng Leong	1,630.00	
Chim Yeow Seng, K.Lumpur	670.02	40
Sin Fatt	1,098.50	
Label (China) Ltd. K.Lumpur	2,798.26	
Heap Mee	<u>1,624.26</u>	
		<u>\$175,023.96</u>

CERTIFIED TRUE COPY
Sd:
(Teoh Siang Eng)
Asst. Registrar
of Companies
Malaysia
4.7.1974

Purchase
considera-
tion

\$178,200.00

EXHIBIT

10(24)

LETTER FROM CHIN FOOK YEN
TO KIM GUAN & CO.LTD.
dated 29th May 1970

EXHIBIT

10 (24)

Letter from
Chin Fook Yen
to Kim Guan &
Co.Ltd.
dated 29th
May 1970.

CHIN FOOK YEN
ADVOCATE & SOLICITOR

(Room A) First Floor,
1 Brewster Road,
Ipoh

10 Your ref: Date 29th May, 1970
My Ref: CCS/PM/Misc/Y/70

Messrs. Kim Guan & Co. (Sdn) Berhad,
No.26, Hugh Low Street,
Ipoh

Dear Sirs,

Re: Premises No.26 Hugh Low Street,
Ipoh

I act for Messrs. Yong Nyee Fan & Sons Sdn.
Bhd. of Ipoh, the registered owners of the
above premises.

20 My instructions are to inform you that my
clients require the said premises for the purpose
of development and such proposed development is
in the course of preparation and for the purpose
of effecting such development, the present
premises is to be demolished.

I am now instructed to and do hereby give
you one year's notice to quit requiring you to
give up vacant possession of the said premises
on or before the 31st day of May, 1971.

30 Yours faithfully,
Sd: Chin Fook Yen

c.c.
Messrs. Yong Nyee Fan & Sons Sdn.Bhd.
No.1, Brewster Road,
Ipoh.

EXHIBIT

10(25)

Letter from
Chin Swee Onn
& Co. to Yong
Nye Fan &
Sons dated
10th April
1973

EXHIBIT

10(25)

LETTER FROM CHINN SWEE ONN &
CO. TO YONG NYEE FAN & SONS
dated 10th April 1973

CHINN SWEE ONN & CO.

202 Second Floor,
Asia Life Building,
Hale Street,
Ipoh

Your ref:

Our ref: 59/73

Date 10th April, 1973

10

Messrs. Yong Nye Fan & Sons Sdn.Berhad,
No.1, Brewster Road,
Ipoh

Dear Sirs,

Re: Ipoh C.T.5768 for Lot 98^S
with premises No.26, Hugh
Low Street, Ipoh, erected
thereon

We act for Messrs. Kim Guan & Company Sdn.
Berhad of No.26, Hugh Low Street, Ipoh.

20

We are instructed to write to you about
the above matter.

Client says that the late Mr. Yong Nye Fan
when he was Chairman of Yong Nye Fan & Sons
Limited, approached the partners of Kim Guan &
Company, namely, Yap Fook Seng and Tan Peng Nam,
to have the said Kim Guan & Company converted
into a private limited company in which he
and/or his Company, namely, Yong Nye Fan & Sons
Limited, and or his/its nominees were to hold
shares therein. It was arranged that the above
premises be purchased, vacant possession thereof
to be obtained and the premises renovated so
that the business of the new Company could be
carried on at the said premises which were then
owned by one Mr.Chin Thin Voon and occupied by
Chop Toong Sang Woh.

30

Under the said arrangements, Mr. Yong Nye
Fan agreed that he would advance for the purchase
of the said premises and that Mr. Yap Fook Seng
and Tan Peng Nam would advance the money for
compensation to Chop Toong Sang Woh for giving
up vacant possession of the said premises and
that the said premises when so acquired for such

40

use were to be held in trust for the New Company to be formed. The New Company was formed and incorporated under the name of Kim Guan & Company Limited.

EXHIBIT

10 (25)

Letter from
Chin Swee Onn
& Co. to Yong
Nyeo Fan &
Sons dated
10th April
1973

(continued)

10

The said premises were purchased for \$35,000/- and the amount agreed upon as having been expended by Yong Nyeo Fan as expenses for such purchase, such as brokers' commissions, legal fees and charges and stamp duties, were \$2,000/- (Dollars two thousand).

Mr. Yap Fook Seng and Mr. Tan Peng Nam advanced \$19,000/- (Dollars nineteen thousand) as compensation to Chop Toong Sang Woh for giving up vacant possession of the said premises to the New Company.

Our clients were later informed that the purchase of the said premises was made in your name.

20

Clients say that the said premises were to be transferred to Kim Guan & Com Sdn. Bhd. (our clients) on our clients reimbursing your Company for what it had spent but the amount of such reimbursement was later agreed at \$45,000/- (Dollars forty-five thousand).

30

Though our clients had requested for the transfer of the said premises to them on payment of the reimbursement of \$45,000/- the said Yong Nyeo Fan, for whom you acted as his nominees for the purchase of the said property, delayed over this matter.

Your Company is fully aware of this trust. At all material times, the said Yong Nyeo Fan and one of his sons who were directors of Yong Nyeo Fan & Sons Sdn. Berhad were also directors of Kim Guan & Company Sdn. Berhad.

40

Clients say that you hold 19/56 share in the said property in trust for them and as to the remaining 37/56 share thereof you hold the same in trust for them subject to your being reimbursed the agreed sum of \$45,000/-

We are instructed to request you to cause a transfer of the said premises to be executed in favour of our clients free from all encumbrances on reimbursement to you of the said sum of \$45,000/-.

Please let us know if and when you are prepared to do so.

EXHIBIT

10 (25)

Letter from
Chin Swee Onn
& Co. to Yong
Nyee Fan &
Sons dated
10th April
1973

(continued)

If you are not prepared to do so, we regret that our clients' instructions are to take out a Writ against you for the necessary reliefs and for costs.

We trust that such a course of action would not be necessary.

Yours faithfully,

Sd: Chinn Swee Onn & Co.

c.c. Clients
CSO/yck

10

EXHIBIT

10 (27)

Letter from
Chinn Swee Onn
to Chin Fook
Yen dated
26th April
1973

EXHIBIT

10 (27)

LETTER FROM CHINN SWEE ONN
TO CHIN FOOK YEN dated
26th April 1973

CHINN SWEE ONN & CO.
ADVOCATES & SOLICITORS

202 Second Floor,
Asia Life Building,
Hale Street,
Ipoh

Our ref: 59/73

Your ref:

Date 26th April, 1973

20

M/s Chin Fook Yen & Co.,
Advocates & Solicitors,
1 Brewster Road,
Ipoh.

Dear Sirs,

Re: Ipoh High Court Civil
Suit No.113 of 1973

We are instructed by our clients, the Plaintiffs herein, to forward to you as Solicitors for your clients, the Defendants herein, a cheque for \$45,000/- pursuant to the trust herein respect of premises No.26, Hugh Low Street, Ipoh, held under Certificate of Title No. 5768 for Lot No.98^S, Township of Ipoh.

30

We are instructed to request your clients to execute in favour of our clients a transfer

of the above title free from all encumbrances.

Yours faithfully,
Sd: Chinn Swee Onn & Co.

cc. Clients.

Encl: Cheque No.645568 drawn on
Mercantile Bank Ltd., Ipoh
for \$45,000/-

CSO/smc.

EXHIBIT

10 (27)

Letter from
Chinn Swee Onn
to Chin Fook
Yen dated
26th April
1973
(continued)

EXHIBIT

10 (28)

Letter from
Chin Fook Yen
to Chinn Swee
Onn dated
27th April
1973

10

EXHIBIT

10 (28)

LETTER FROM CHIN FOOK YEN
TO CHINN SWEE ONN dated
27th April 1973

CHIN FOOK YEN & CO.
ADVOCATES & SOLICITORS

No.1 Brewster Road
(First Floor)
Ipoh

Your ref: 59/73
Our ref: CFY/PM/50/73 27th April, 1973

20

Messrs. Chinn Swee Onn & Co.,
Advocates & Solicitors,
202 Hale Street,
Ipoh

Dear Sirs,

Re: Ipoh High Court Civil
Suit No.113/73

We are in receipt of your letter dated
26th April, 1973.

30

We return herewith your clients' cheque
for \$45,000.00. In this connection we refer
you to our letter dated April 17, 1973.

Yours faithfully,
Sd: Chin Fook Yen & Co.

c.c. Clients
Encl:

EXHIBIT

10 (29)

Letter from
Chinn Swee Onn
to Chin Fook
Yen dated
3rd May 1973

EXHIBIT

10 (29)

LETTER FROM CHINN SWEE ONN
TO CHIN FOOK YEN dated
3rd May 1973

CHINN SWEE ONN & CO.
ADVOCATES & SOLICITORS

202 Second Floor,
Asia Life Building,
Hale Street,
Ipoh.

Our ref: 59/73
Your ref:

Date: 3rd May, 1973

10

M/s Chin Fook Yen & Co.,
Advocates & Solicitors,
No.1, Brewster Road,
Ipoh

Dear Sirs,

We are instructed by our clients, Messrs.
Kim Guan & Co. Sdn. Berhad of No.26, Hugh Low
Street, Ipoh, to forward to you as Solicitors
for your clients, Messrs. Yong Nyee Fan & Sons
Sdn. Bhd., a cheque for \$300/- (Dollars three
hundred) in respect of interest payable to
your clients on the sum of \$37,000/- (Dollars
thirty-seven thousand) advanced by your clients
for the purchase of premises No.26, Hugh Low
Street, Ipoh.

20

By arrangement with your clients' former
Chairman, the late Mr. Yong Nyee Fan, it was
agreed that the interest on the said sum of
\$37,000/- (Dollars thirty-seven thousand) was
to appear as if it was for rent on the said
premises payable to your clients.

30

Kindly acknowledge receipt.

Yours faithfully,

Sd: Chinn Swee Onn & Co.

c.c. Clients
Encl:

EXHIBIT

10 (30)

LETTER FROM CHIN FOOK YEN
TO CHINN SWEE ONN dated
5th May 1973

EXHIBIT

10 (30)

Letter from
Chin Fook Yen
to Chinn Swee
Onn dated
5th May 1973

CHIN FOOK YEN & CO.
ADVOCATES & SOLICITORS

No.1, Brewster Road,
(First Floor)
Ipoh

10 Your ref: 59/73
Our ref: CPY/CSI/50/73 5th May, 1973

Messrs. Chinn Swee Onn & Co.,
Advocates & Solicitors,
202 Hale Street,
Ipoh

Dear Sirs,

Re: Ipoh High Court Civil
Suit No.113 of 1973

Your letter dated 3rd May, 1973 refers.

20 We return herewith the enclosed cheque
for \$300.00 mentioned therein, as we have
instructions not to accept same.

Yours faithfully,

Sd: Chin, Fook Yen & Co.

c.c. Clients.

EXHIBIT

10 (31)

Letter from
Chin Swee Onn
to Yong Nyee
Fan & Sons
dated 7th May
1973

EXHIBIT

10 (31)

LETTER FROM CHIN SWEE ONN
TO YONG NYEE FAN & SONS
dated 7th May 1973

CHINN SWEE ONN & CO.
ADVOCATES & SOLICITORS

202, Second Floor,
Asia Life Building,
Hale Street,
Ipoh

Our ref: 59/73

Your ref:

Date: 7th May, 1973

10

Messrs. Yong Nyee Fan & Sons
Sdn. Berhad,
No.1 Brewster Road,
Ipoh.

Dear Sirs,

Re: Premises No.26, Jalan Hugh Low,
Ipoh

We act for Messrs. Kim Guan & Company Sdn.
Berhad of the above address.

20

We forward you copies of our letter dated
3rd May, 1973 to your Solicitors Messrs. Chin
Fook Yen & Co., and their reply thereto dated
5th May, 1973.

In these circumstances we are instructed
to forward you the said cheque for \$300/-.

Kindly acknowledge receipt.

Yours faithfully,

Sd: Chinn Swee Onn & Co.

c.c. Clients (2 copies)
Encl:
CSO/mai.

30

EXHIBIT

10 (32)

LETTER FROM CHIN FOOK YEN
TO CHINN SWEE ONN dated
9th May, 1973

EXHIBIT

10 (32)

Letter from
Chin Fook Yen
to Chinn Swee
Onn dated
9th May 1973

CHIN FOOK YEN & CO.
ADVOCATES & SOLICITORS

No.1, Brewster Road,
(First Floor),
Ipoh.

10 Your ref: 59/73
Our ref: CFY/HWC/50/73 9th May, 1973

Messrs. Chinn Swee Onn & Co.,
Advocates & Solicitors,
202, Asia Life Building,
Hale Street,
Ipoh.

Dear Sirs,

Re: Premises No.26 Jalan Hugh Low,
Ipoh

20 Your letter dated 7th May, 1973 and
addressed to our clients has been handed to us
together with the enclosure namely a cheque
mentioned therein.

We have instructions to return herewith
the said cheque for \$300.00 as our clients
deny that there has been any such arrangement.

Yours faithfully,

Sd: Chin Fook Yen & Co.

c.c. Clients
Encl:

EXHIBIT

10 (34)

Extracts from Minute Books of
Directors' Meetings of KIM GUAN &
CO. LTD., minuting meetings held
or resolutions passed on dates as
shown in the column of dates in
the Index.

KIM GUAN & CO. LTD.

EXHIBIT

10 (34)

Minutes of the First Meeting of the Directors held on Friday the 25th February 1955 at 10.25 a.m. No.1, Hale Street, Ipoh.

Minutes of First Meeting of Directors of Kim Guan & Co. Ltd. on 25th February 1955

PRESENT: Mr. Yong Nyee Fan
Mr. Tan Peng Nam
Mr. Yap Fook Seng

In Attendance Mr. L.J.Peace representing Messrs. Payne, Davis & Co. Mr. Wong Hon Choong of Messrs. Payne, Davis & Co. as interpreter.

10

1. DIRECTORATE: Messrs. Yong Nyee Fan, Tan Peng Nam and Yap Fook Seng signified their acceptance of office of Directors as specified in the Articles and Memorandum of Association of the Company.

It was agreed that, meantime, no additional Directors should be appointed.

20

2. ARTICLES AND MEMORANDUM OF ASSOCIATION: Tabled the "signature" copy thereof.

3. CERTIFICATE OF INCORPORATION: Mr. Peace advised Messrs. Cheang Lee & Ong Solicitors, had stated that the Certificate of Incorporation sent to them by the Registrar of Companies had not been received by them and a certified copy had been asked for.

30

4. COMMON SEAL OF THE COMPANY: The Common Seal of the Company was tabled together with an imprint which was approved as correct.

5. SALE AGREEMENT BETWEEN THE VENDORS AND THE COMPANY Tabled but signing was deferred pending receipt of the Certificate of Incorporation of the Company and completion of the schedule of Assets and Liabilities.

6. REGISTERED OFFICE: It was confirmed that the Registered Office was No.26, Hugh Low Street, Ipoh. Tabled copy of relevant advice to the Registrar of Companies.

40

7. BOOKS OF RECORD AND ACCOUNT: Mr. L.J. Peace advised that the matter of obtaining the books of record and account was receiving active attention.

EXHIBIT

10 (34)

Minutes of
First Meeting
of Directors
of Kim Guan &
Co.Ltd. on
25th February
1955

(continued)

8. SECRETARY: Miss Yong Toong Liew was appointed Secretary of the Company with effect from 1st March 1955.

9. BANKERS: It was confirmed that the Company's Bankers were The Hong Kong and Shanghai Banking Corporation, Ipoh. The following Resolutions were made :-

"RESOLVED:- That a Banking Account for the Company be opened with The Hongkong and Shanghai Banking Corporation Ipoh, and that the said Bank be and is hereby empowered, whether the Company's Account is in credit or not, to honour cheques, bills of exchanges and promissory notes drawn, accepted, or made on behalf of the Company by any one of the three Directors and the Secretary and to act on any instructions and to accept any receipts or other documents relating to the account, transactions or affairs of the Company, if so signed on behalf of the Company".

10

20

"RESOLVED:- That all cheques, bills, promissory notes and other documents requiring endorsement on behalf of the Company be endorsed by any one of the Directors and the Secretary on its behalf."

10. AUDITORS: Messrs. Payne, Davis & Co. were appointed Auditors and to deal meantime with the matter of Returns and organisation of the Accounting system including Income Tax.

30

11. ALLOTMENT OF SHARES: Tabled list of Allottees and Applicants for share for cash aggregating 299,000 shares of which 178,200 shares are to allottees and 120,800 for cash.

It was agreed that one certificate should be issued to each allottee or applicant covering the total number of shares opposite his/her name.

40

12. BUSINESS REGISTRATION: Tabled copy of Licence for the year ended 31st December, 1955

There being no further business the Meeting terminated at 11.15 a.m. with a vote of thanks to the Chair.

Confirmed

Sd: Tan Peng Nam (In Chinese)

5.8.55

50

KIM GUAN & COMPANY LIMITED

EXHIBIT

Minutes of a Directors' Meeting held on Friday, 5th August 1955 at 2 p.m. at 26, Hugh Low Street, Ipoh.

PRESENT: Mr. Tan Phang Nam (Chairman)
Mr. Yap Fook Seng
Mr. Yong Nyee Fan

In attendance: Miss Yong Toong Liew, the Secretary

10 (34)
(continued)
Minutes of Directors' Meeting of Kim Guan & Co. Ltd. on 5th August 1955

10

1. MINUTES

The Minutes of the First Directors' Meeting held on Friday 25th February 1955 at No.1, Hale Street, Ipoh were read and confirmed.

2. BUSINESS

(i) Report on Business

20

Mr. Yap Fook Seng, the Managing Director gave a general report on the business as from January to July 1955. He reported that the total sales for the seven months amounted to \$1,122,854.25 and the total expenses to \$65,064.55

(ii) Future plans for running the business

The board agreed after discussion, that in future the following conditions should be followed in the conduct of the business :-

30

(a) From the record book, it was found that there are still about \$55,000/- worth of goods ordered but which have not arrived so it was decided to order no more goods till the end of the year. The Managing Director will only order goods that are exceptionally good and in great demand.

(b) The Board agreed not to sign any contract that contains any terms that are unfavourable to the Company

40

(c) The Company should not owe their Creditors more than what their Debtors owe them

(d) The Company should not sell any goods on credit to debtors who have not paid

EXHIBIT

10 (34)

Minutes of
Directors'
Meeting of
Kim Guan & Co.
Ltd. on 5th
August 1955
(continued)

up their debts within three months
time.

(e) All goods already ordered if not
arrived by the end of December 1955
should be cancelled.

3. FINANCE

Mr. Yap Fook Seng reported that as at 31st
July the financial position of the Company is
as follows :-

Due to Sundry Creditors	\$304,422.26	10
Due from Sundry Debtors	<u>242,757.35</u>	
Excess of Creditors over Debtors	<u>61,664.91</u>	
Bank Accounts		
Hong Kong Bank, Ipoh Balance	\$ 11,299.97	
- do - Singapore -do -	<u>282.32</u>	
Total balance in Bank	<u>\$ 11,582.29</u>	
Loan to Yong Loy Toong	900.00	
Total Stock in hand	\$240,720.85	

There being no other business the Meeting
terminated at 4.15 p.m. with a vote of thanks
to the Chair. 20

Confirmed,
Sd: Tan Phang Nam
Chairman

KIM GUAN & COMPANY LIMITED

EXHIBIT

Minutes of the Meeting of the Board of Directors of Kim Guan & Company Limited, held at No.46, Cockman Street, Ipoh, on Sunday 18th March 1956 at 3.00 p.m.

10 (34)
(continued)
Minutes of the Meeting of the Board of Directors of Kim Guan & Co. Ltd. on 18th March 1956

PRESENT: Mr. Tan Phang Nam (In the Chair)
Mr. Yap Fook Seng
Mr. Yong Nyee Fan
Mr. Yong Kee Foon
Mr. Yau Yit Ping

10

IN ATTENDANCE: Miss Yong Toong Liew, the Secretary

MINUTES:

Minutes of the last Directors' Meeting held on Friday, 5th August 1955 at 2.00 p.m. at 26 Hugh Low Street, Ipoh, were read, confirmed and signed by the Chairman as a correct record of the proceedings thereat.

MATTERS ARISING OUT OF THE MINUTES:

20

Mr. Yap Fook Seng pointed out that it was impossible not to sign contracts that contained terms that are unfavourable to the Company as the firms with which we have dealings cannot change those terms to suit the Company. After much discussion it was decided that Mr. Yap Fook Seng be empowered to sign such contracts without using the Company's chop. If any misfortune should arise as a result of signing such contracts, the Company will accept full responsibility.

30

ELECTION OF CHAIRMAN AND MANAGING DIRECTOR:

It was unanimously agreed that Mr. Tan Phang Nam should continue as Chairman and Mr. Yap Fook Seng as Managing Director for the ensuing year.

REPORT ON FINANCE:

Mr. Yap Fook Seng gave a general report on the finance of the Company for January and February 1956.

40

The Management of the business was also discussed.

There being no other business the Meeting terminated at 4.15 p.m. with a vote of thanks

EXHIBIT

10 (34)

Minutes of the Meeting of the Board of Directors of Kim Guan & Co. Ltd. on 18th March 1956

(continued)

to the Chair.

Confirmed.

Sd: Tan Phang Nam (In Chinese)
Chairman

10 (34)
(continued)

Minutes of Meeting of Directors of Kim Guan & Co. Ltd. on 28th July 1956

KIM GUAN & COMPANY LIMITED

Minutes of the Meeting of the Directors of this Company held at 26, Hugh Low Street, Ipoh on Saturday 28th July 1956 at 2 p.m.

PRESENT: Mr. Tan Phang Nam (In the Chair)
Mr. Yap Fook Seng
Mr. Yong Nyee Fan
Mr. Yong Kee Foon
Mr. Yau Yit Ping

10

IN ATTENDANCE:

Miss Yong Toong Liew, the Secretary

MINUTES:

The minutes of the last Directors' Meeting held on Sunday, 18th March 1956 at 3 p.m. at 46, Cockman Street, Ipoh, were read and confirmed without amendment.

20

MATTERS ARISING OUT OF THE MINUTES:

Mr. Tan Phang Nam pointed out that it was not practicable to carry out the instruction given at the last Directors' Meeting, that is to sign orders without using the Company's chop, as the firms concerned would not agree to this. Mr. Yong Nyee Fan strongly objected to the practice of using the Company's chop to sign orders with onerous conditions. He also said that if the Managing Director still continues doing this, he shall be held personally responsible. This matter was discussed at great length and it was finally agreed that another chop should be made for the signing of such orders. The wording of the chop should be as follows :-

30

We reserve the right to cancel this order

if the goods ordered is not delivered by
.....

EXHIBIT

10 (34)

Kim Guan & Co. Ltd.,
Ipoh

Minutes of
Meeting of
Directors of
Kim Guan & Co.
Ltd. on 28th
July 1956

(continued)

REPORT:

10

Mr. Tan Phang Nam gave a general report on the business activities for the first half year, and also gave a rough account of the financial position of the Company. According to his report the Company has made a fair progress for the first half year.

BUSINESS:

The Managing Director reported that there is a danger of future business deteriorating because of the present emergency regulations. The future running of the business was discussed generally. It was decided to call another directors' Meeting to discuss matters should business suddenly become worse.

20

There being no other business the Meeting terminated at 3.55 p.m. with a vote of thanks to the Chair.

Confirmed,
Sd: Tan Phang Nam (In Chinese)
Chairman

EXHIBIT

KIM GUAN & COMPANY LIMITED

10 (34)
(continued)
Minutes of the
Meeting of
Directors of
Kim Guan & Co.
Ltd. on 5th
December 1956

Minutes of the Meeting of the Directors
of this Company held at 26, Cockman Street,
Ipoh on Wednesday, 5th December 1956 at
2.40 p.m.

PRESENT: Mr. Tan Phang Nam (In the Chair)
Mr. Yap Fook Seng
Mr. Yong Kee Foon
Mr. Yau Yit Phin

IN ATTENDANCE:

10

Miss Yong Toong Liew, the Secretary.

TRANSFER OF 50 SHARES OF THIS COMPANY

Resolved that Transfers Nos.2 to 5
inclusive from Mr. Wong Kim Cheong of 3,
Main Road, Bruas covering 50 shares be passed
and that Share Certificates Nos.47, 48, 49
and 50 be issued and signed as hereunder
enumerated and the Common Seal of the Company
affixed thereto.

<u>Name of New Shareholders.</u>	<u>No. & Distinc- tive Nos.</u>	<u>Certificate Nos.</u>	20
Leong Kheun Chong	10 801 - 810	47	
Chew Ying Seong	20 811 - 830	48	
Lim Gone Hing	10 831 - 840	49	
Yong Kee Foon	10 841 - 850	50	

Sd: Tan Phang Nam (In Chinese)
Director

Sd: Yap Fook Seng (In Chinese)
Director

Sd: Yong Kee Foon (In Chinese) 30
Director

Sd: Yau Yit Phin
Director

KIM GUAN & COMPANY LIMITED

EXHIBIT

Minutes of the Meeting of the Directors of this Company held at 46, Cockman Street, Ipoh on Monday 28th January 1957 at 3.15 p.m.

10 (34)
(continued)

Minutes of the Meeting of Directors of Kim Guan & Co. Ltd. on 28th January 1957

PRESENT: Mr. Tan Phang Nam (In the Chair)
Mr. Yap Fook Seng
Mr. Yong Nyee Fan
Mr. Yong Kee Foon
Mr. Yau Yit Ping.

10 IN ATTENDANCE:

Mr. Anthony Moo (Secretary)

1. MINUTES

The Minutes of the last Directors' Meeting held on 28th July 1956 at 26, Hugh Low Street, Ipoh, were read and passed unanimously without amendment.

2. MATTERS ARISING OUT OF THE MINUTES:

20 Mr. Tan Phang Nam reported that business of the Company was improving in the second half of the year inspite of the emergency restrictions.

3. NEW ACCOUNT WITH THE CHARTERED BANK

The Managing Director informed the Meeting that as our present Bankers do not allow facilities for documentary bills it is proposed to open an account with the Chartered Bank, Ipoh where such facilities are available. This was agreed to.

4. REPORT ON THE FINANCIAL POSITION OF THE COMPANY

30 The Chairman gave a brief report on the financial position of the Company for 1956, and also informed the Meeting that a small profit was made last year.

5. OTHER MATTERS
(a) EMPLOYEES SALARIES:

It was agreed that the Managing Director be empowered to increase the salaries of the employees according to their merits.

(b) MANAGING DIRECTOR'S LEAVE

40 Mr. Yap Fook Seng, the Managing Director

EXHIBIT

10 (34)

Minutes of the Meeting of Directors of Kim Guan & Co. Ltd. on 28th January 1957
(continued)

applies for three months leave from March to May 1957 to visit Hong Kong. This was approved. The Directors agreed that during his absence, Mr. Tan Phang Nam will act in his place and Mr. Yong Nyee Fan was asked to advise and assist in running the business.

There being no other business, the Meeting adjourned at 9.00 p.m. with a vote of thanks to the Chair.

Confirmed

10

Sd: Tan Phang Nam (In Chinese)
Chairman

10 (34)
(continued)

KIM GUAN & COMPANY LIMITED

Minutes of the Meeting of the Board of Directors of Kim Guan & Co. Ltd. on 5th February 1957

Minutes of the Meeting of the Board of Directors of Kim Guan & Company Limited, held at No.26, Hugh Low Street, Ipoh on 5th February 1957 at 2 p.m.

PRESENT: Mr. Tan Phang Nam (In the Chair)
Mr. Yap Fook Seng
Mr. Yong Kee Foon
Mr. Yau Yit Phin.

20

MINUTES:

Minutes of the last Directors' Meeting held on 28th January 1957 were read and adopted with amendment.

MR. YONG NYEE FAN'S RESIGNATION LETTER:

This letter was read and discussed. It was finally decided that the other four directors should write a letter to Mr. Yong Nyee Fan to ask him not to resign from being a director of this Company, as his service is needed in this Company.

30

PURCHASE OF 26, HUGH LOW STREET, IPOH, FOR \$45,000/-

Messrs. Yong Nyee Fan & Sons Limited, the owner of this premises decided to sell this premises for the sum of \$45,000/-. The directors realized that it will be advantageous to the Company if the Company buys over this shop. After much discussion it was unanimously agreed

40

to buy 26, Hugh Low Street, Ipoh for the sum of \$45,000/-.

EXHIBIT

10 (34)

GRANT OF 26, HUGH LOW STREET, IPOH

Minutes of the Meeting of the Board of Directors of Kim Guan & Co. Ltd. on 5th February 1957

10

The directors gave power to the Managing Director to hand over the grant of the above premises to the Chung Khiaw Bank Limited, Ipoh as surety for the loan of \$30,000/-. Should the sum of \$30,000/- be insufficient to make up for the purchase price of this premises, Mr. Tan Phang Nam and Mr. Yap Fook Seng would be empowered to get a further loan of \$15,000/- from the Chung Khiaw Bank Limited, Ipoh.

(continued)

DEPOSIT OF MONEY WITH THE COMPANY

20

It was agreed, after much discussion, that shareholders of this Company and outsiders should be allowed to deposit money with this Company. The consent of the Directors is necessary for such practice. Any person who has deposited more than \$2,000/- with this Company and wishes to withdraw should give notice to the Company one week before hand.

There being no other business the Meeting terminated at 3.30 p.m. with a vote of thanks to the Chair.

Confirmed

Sd: Tan Phang Nam (In Chinese)

Chairman

EXHIBIT

KIM GUAN & COMPANY LIMITED

10 (34)
(continued)

Minutes of the Meeting of the Board of Directors of Kim Guan & Co. Ltd. on 11th March 1957

Minutes of the Meeting of the Board of Directors of this Company held at 26, Hugh Low Street, Ipoh on Monday 11th March 1957 at 3.50 p.m.

PRESENT: Tan Phang Nam (In the Chair)
Yap Fook Seng
Yau Yit Ping
Yong Kee Foon

IN ATTENDANCE: Madam Yong Toong Liew, the Secretary.

10

MINUTES: Minutes of the last Directors' Meeting held on 5th February 1957 were read and adopted with slight amendment.

MATTERS ARISING OUT OF THE MINUTES:

(a) Purchase of 26, Hugh Low Street, Ipoh

The Directors decided to have the transfer of this property put through when Messrs. Yong Nyee Fan & Sons Limited decided to do so.

20

(b) Deposit of Money with the Company

Any person who deposits money with the Company will be issued with a free booklet bearing the Company's chop together with the signatures of a Director and that of the Treasurer on every deposit. Deposits will be accepted from 1.4.57. This deposit should not exceed \$50,000/-.

ELECTION OF MANAGING DIRECTOR AND THE CHAIRMAN

30

The Directors decided that Mr. Yap Fook Seng and Mr. Tan Phang Nam should continued as Managing Director and Chairman respectively.

FINANCIAL POSITION OF THE COMPANY

The Managing Director, Mr. Yap Fook Seng, gave a general report of the financial position of the Company. According to his report the Company debit balance at the end of January 1957 is \$87,000/- The Managing Director thinks that the Company will not run into financial difficulties.

40

There being no other business the Meeting terminated at 4.20p.m. with a vote of thanks to the Chair.

Confirmed,

Sd: Tan Phang Nam (In Chinese)
Chairman

28.7.57

EXHIBIT

10 (34)

Minutes of the Meeting of the Board of Directors of Kim Guan & Co. Ltd. on 11th March 1957
(continued)

KIM GUAN & CO. LTD.

10

Resolution of the Directors of Kim Guan & Co. Ltd. passed this 13th day of March 1957.

" RESOLVED that, during the absence of Mr. Yong Nyee Fan from Malaya, Mr. Yong Su Hian shall be and hereby is appointed to act as his Alternate on the Board of the Company. "

Sd: Yap Fook Seng (In Chinese)
(Director)

Sd: Yau Yit Ping
(Director)

20

Sd: Yong Kee Foon (In Chinese)
(Director)

Sd: Tan Phang Nam (In Chinese)
(Director)

Sd: Yong Nyee Fan
(Director)

EXHIBIT

10(34)

(continued)

Resolution of Directors of Kim Guan & Co. Ltd. passed on 13th March 1957

EXHIBIT

KIM GUAN & COMPANY LIMITED

10 (34)
(continued)

Minutes of the Meeting of the Board of Directors of Kim Guan & Co. Ltd. on 28th July 1957

Minutes of the Meeting of the Board of Directors of this Company held at 26, Hugh Low Street, Ipoh on Sunday, 28th July 1957, at 11.10 a.m.

PRESENT: Tan Phang Nam (In the Chair)
Yap Fook Seng
Yau Yit Ping
Yong Kee Foon
Yong Su Hian representing Yong Nyee Fan 10

IN ATTENDANCE: Yong Toong Liew, the Secretary

MINUTES: Minutes of the last Directors' Meeting held on 11th March 1957 were read and adopted with slight amendment.

MATTERS ARISING OUT OF THE MINUTES:

(a) Purchase of 26, Hugh Low Street, Ipoh

This item has not been carried out as the owner of this property has not decided to sell it yet. Meantime this item is to be left in abeyance for the time being. 20

(b) Deposit of money with the Company

It was unanimously decided to retain this deposit for a further period of three months.

REPORT:

(a) On Business for the first half of the year:

The Managing Director, Mr. Yap Fook Seng, reported that as usual business is not so good for the first half of the year as for any second half of the year. However, the Flu Epidemic obviously did affect business during this first half-year. Further particulars of the report are as follows :- 30

Net Profit for first half of the year about.....	\$10,000/-	
Amount owing by Creditors	\$306,234.15	
Amount owing by Debtors.....	\$186,754.44	
Deposit from Shareholders with the Company.....	\$24,000/-	40
Stock at the end of June 1957.....	\$287,134.36	

Mr. Yap Fook Seng surmised that with Merdeka coming in August, the business of the Company should be improved. The only fear is that should there be trouble in any of the small towns in which the Company have dealings, the Company may be affected.

EXHIBIT
10 (34)
(continued)
Minutes of the Meeting of the Board of Directors of Kim Guan & Co. Ltd. on 28th July 1957

(b) Bad Debts:

10 (i) Mee Foh - \$1,033.88. Mr. Hiew Choong Poh has written to us promising to pay us 10% of this debt in due course.

(ii) Sin Kwong - \$2,100/-. According to hearsay other Creditors of the Company could only recover 20% of their debts, but since this Company still wants the Lun Chong goods from us we may get back a higher percentage of our debts.

20 (iii) Thye Chee of Kampar- \$200/-. We may not be able to recover anything from this debtor. Since our Company has profitted over \$400/- from business with this person, this loss of \$200/- does not affect our Company very much.

(c) Finance:

Balance in Bank at date of Meeting.....	\$ 8,569.91
Balance in hand at date including post-dated cheques.....	\$18,165.71

OTHER MATTERS:

30 The Secretary's Maternity Leave:

It was unanimously agreed that when the Secretary takes her maternity leave, Mr. Anthony Moo be appointed Acting Secretary temporarily, which duties include the signing of cheques.

The Bank is to be notified of this temporary arrangement when the times comes.

40 There being no other business to discuss the Meeting terminated at 12.30 p.m. with a vote of thanks to the Chair.

Confirmed,
Sd: Tan Phang Nam (In Chinese)
Chairman 25.8.57

EXHIBIT

KIM GUAN & COMPANY LIMITED

10 (34)
(continued)

Minutes of the Meeting of the Board of Directors of Kim Guan & Co. Ltd. on 25th August 1957

Minutes of the Meeting of the Board of Directors of this Company held at 26, Hugh Low Street, Ipoh on Sunday 25th August 1957, at 2.10 p.m.

PRESENT: Tan Phang Nam (In the Chair)
Yap Fook Seng
Yong Kee Foon
Yau Yit Ping
Yong Su Hian representing Yong Nye Fan 10

IN ATTENDANCE: Yong Toong Liew, the Secretary

MATTERS ARISING OUT OF THE MINUTES:

Bad Debts: Mr. Yap Fook Seng reported that :-

- (a) Mee Foh have promised to call on 26/8/57 to discuss their debt outstanding
- (b) Sin Kwong: have paid up \$600/0 of their debt to date.

Secretary's Leave: 20

Resolution for the Secretary's two months leave as from 15th October 1957 has been unanimously approved and signed together with a letter to the Company's Bankers informing them of the appointment of the temporary secretary as from that date.

THE MANAGING DIRECTOR'S REPORT ON:

(a) The Financial Position of the Company:

Balance in hand including post dated cheques as at date - \$19,758.75 30

At date the amount owing to Creditors by the Company is approximately equivalent to the amount owing by the Debtors

(b) Business and the Ordering of Goods:

The Managing Director reported that since the last Directors' Meeting business to date has not been improved. At present there is still about \$20,000/- worth of goods on hand for the retail department, and there is also a considerable amount of goods already ordered that will arrive at the end of the year. Considering the

10 present financial position of the Company and the amount of stock in hand, the Managing Director suggested that further ordering of goods for the time being should be stopped. This matter was discussed very fully and it was unanimously agreed that the Company should not order any more goods for the time being. A directors' Meeting will be called when it is decided to order further goods.

EXHIBIT
10 (34)
(continued)
Minutes of the Meeting of the Board of Directors of Kim Guan & Co. Ltd. on 25th August 1957

OTHER MATTERS:

Income Tax for January and February 1955

20 This Company was registered on 1.3.55 but took over the business from 1.1.55. The Company has paid income tax only for the period from 1.3.55 to 31.12.55. The amount of tax for January and February 1955 was charged to the partners of the former business. It is now decided to repay to the partners of Kim Guan & Co. whatever amount of tax they have paid for the period.

There being no other matters the Meeting terminated at 4.00 p.m. with a vote of thanks to the Chair.

Confirmed,
Sd: Tan Phang Nam (In Chinese)
Chairman

KIM GUAN & COMPANY LIM

30 Minutes of the Meeting of the Board of Directors of this Company held at 46, Cockman Street, Ipoh on Sunday, 23rd March 1958 at 2.00 p.m.

PRESENT: Tan Phang Nam (In the Chair)
Yap Fook Seng
Yong Kee Foon
Yau Yit Ping
Yong Su Hian

EXHIBIT
10 (34)
(continued)
Minutes of the Meeting of the Board of Directors of Kim Guan & Co. Ltd. on 23rd March 1958

BY INVITATION: Mr. Yong Nyee Fan

40 MINUTES:

Minutes of the last Directors' Meeting

EXHIBIT

10 (34)

(continued)

Minutes of the Meeting of the Board of Directors of Kim Guan & Co. Ltd. on 23rd March 1958

held on 2nd February 1958 were read and adopted.

MATTERS ARISING OUT OF THE MINUTES:

Ordering of Goods: Mr. Yap Fook Seng further explained the importance of continuing orders from Lebel (China) Limited. He said that if we stop ordering goods from this Company our Agency for certain goods will be terminated.

REPORT ON :-

- (a) Business: According to Mr. Yap Fook Seng's report, goods ordered up to date that have not arrived is estimated to be over \$10,000/-. All these goods will arrive before June 1958. No goods have been ordered for arrival after June 1958. 10
- (b) Finance: Up to date debts including bad debts were estimated at \$182,000/-. The Company owes Creditors the sum of approximately \$194,700/-. Cash and post-dated cheques in hand is estimated at \$23,600/-. 20
- (c) Sin Lee: This Company owes our Company \$4,497.05. The manager suggested paying us only 20% in settlement. This is one of the goods debtors going bankrupt. It is feared that many other shops may go bankrupt. With this in mind it was decided to collect back as much debts as possible and in future to do credit sales within the sum of \$150,000/- monthly. 30

FUTURE MANAGEMENT OF BUSINESS

This matter was carefully discussed. It was then decided that :-

- (a) Credit Sales should be done in a smaller scale.
- (b) Debtors should be kept within the \$150,000/- limit.
- (c) Since times are bad the Directors should Meet at least once a month and the Meetings are to be held on the 1st Sunday of every month. 40
- (d) The ordering of goods is to be decided by the Board of Directors during their monthly Meetings.

There being no other business the Meeting terminated at 3.00 p.m. with a vote of thanks to the Chair.

Chairman
Sd: Tan Phang Nam (In Chinese)
Confirmed

KIM GUAN & COMPANY LIMITED

EXHIBIT

Minutes of the Meeting of the Board of Directors of this Company held at 26, Hugh Low Street, Top Floor, Ipoh on Saturday, 15th November, 1958 at 2.30 p.m.

10 (34)
(continued)
Minutes of the Meeting of the Board of Directors of Kim Guan & Co. Ltd. on 15th November 1958

PRESENT: Mr. Tan Phang Nam (In the Chair)
Mr. Yap Fook Seng
Mr. Yong Kee Foon
Mr. Yau Yit Ping
Mr. Yong Su Hian

10

IN ATTENDANCE: Madam Yong Toong Liew, the Secretary.

MINUTES: Minutes of the Directors' Meeting held on 18th October, 1958 were read and adopted.

MATTERS ARISING OUT OF THE MINUTES:

(a) Sen Yit and Sum Tut. Mr. Yap Fook Seng reported that Sen Yit has asked us to accept 15% in settlement of his debts. Mr. Yap agreed to this verbally, but also told Sen Yit that if he wanted to continue business he should pay us in full. Sum Tut however, paid up his 15% in settlement.

20

(b) Bank of China, Penang. Mr. Yap Fook Seng informed the Board that at present when we order less than £300/- worth of goods from Shanghai we need not open a Letter of Credit; we can pay them on receipt of their Invoice. An account with this Bank facilitates this kind of payment.

MANAGING DIRECTOR'S REPORT ON BUSINESS DONE IN OCTOBER 1958

30

Purchases, duty etc.	\$230,926.12	Sales	\$159,018.24
Expenses	6,243.12	Debtors	174,073.52
Creditors	251,402.14	Payment by Debtors	69,232.87
		Cash Sales	51,434.54
		Receipts	120,667.41
Balance in hand including post-dated cheques			10,485.74
Balance in Chung Khiaw Bank, Ipoh			3,839.03
Balance in Bank of China, Penang			3,679.65

40

According to the Report the amount owing to Creditors and the amount owing by Debtors have both increased. This is due to the increase in business done during that month. Purchases were almost double the previous month's due to the purchases of certain Chinese goods which are at present prohibited from entering the Federation.

EXHIBIT

10 (34)
(continued)

Minutes of the Meeting of the Board of Directors of Kim Guan & Co. Ltd. on 15th November 1958

Expenses also increased by about \$200/- due to the renewal of Car Licence and Car tyres.

OTHER MATTERS:

Mr. Yap Fook Seng asked the Board to advise him on the future running of the business. Mr. Yong Kee Foon advised that when there is an opportunity of making money in purchasing certain goods, the Managing Director should just act immediately and not wait for the Board to hold a Meeting to decide, because in doing so he may miss the good opportunity. Mr. Yap Fook Sang pointed out that on account of Kim Guan's Goodwill, we can get any amount of goods on credit at any time.

10

There being no other matters to discuss, the Meeting terminated at 3.10 p.m. with a vote of thanks to the Chair.

Confirmed,

Sd: Tan Phang Nam (In Chinese)

Chairman

7.12.58

20

EXHIBIT

10 (34)
(continued)

Minutes of the Meeting of the Board of Directors of Kim Guan & Co. Ltd. on 14th February 1959

KIM GUAN & COMPANY LIMITED

Minutes of the Meeting the Board of Directors of this Company held at 26, Hugh Low Street, Ipoh on Saturday, 14th February 1959 at 3.15 p.m.

PRESENT: Mr. Tan Phang Nam (In the Chair)
Mr. Yap Fook Seng
Mr. Yong Kee Foon
Mr. Yau Yit Ping
Mr. Yong Su Hian

30

IN ATTENDANCE: Madam Yong Toong Liew, the Secretary.

MINUTES: Minutes of the Directors' Meeting held on 25th January 1959 were read and adopted.

MATTERS ARISING OUT OF THE MINUTES:

Bad Debts: Mr. Yap Fook Seng reported that he consulted Mr. Wong of Payen Davis & Co. who advised that the Income Tax Department may not allow such a large sum to be written off for one year. Mr. Wong will come to the shop one day

40

to check up the books and point out debts to be written off.

EXHIBIT

10 (34)
(continued)

10 EMPLOYEES' BONUS: Mr. Yap Fook Seng reported that the matter of distribution of bonus to employees had already been dealt with and paid to the employees after consulting the Board of Directors at a previous Meeting. He said that those present at the Meeting namely Mr. Tan Phang Nam, Mr. Yap Fook Seng, Mr. Yong Kee Foon and Mr. Yau Yit Ping had considered the distribution of bonus as recommended by him to be fair. Minutes of the previous Meeting were not recorded. Mr. Yong Su Hian was in Singapore at that time and he was not informed about the particulars. Mr. Yap Fook Seng then read out the list containing the employees bonus generally. Mr. Yap said that he had recommended the distribution of bonus to employees according to the amount of time each employee worked in the shop. Mr. Yong Su Hian was not very much in favour of the method of distributing employees' Bonus as recommended by the Managing Director and advocated by the other three Directors. Since decisions were made at a Meeting which he was unable to be present on medical grounds, and bonus had been distributed to the employees Mr. Yong Su Hian did not want to make further comments on this matter.

Minutes of the Meeting of the Board of Directors of Kim Guan & Co. Ltd. on 14th February 1959

20
30 MANAGING DIRECTOR'S REPORT ON BUSINESS FOR JANUARY 1959

Sale C	\$226,630.59
Creditors	280,222.16
Debtors	199,943.37
Loan by Shareholders	12,700.00
Balance in Bank	5,033.03
Purchases	118,217.00

40 Mr. Yap Fook Seng explained that he will not purchase any more goods for the time being until he has visited our customers in the different parts of the Federation to see what goods are most needed. Mr. Yap also mentioned that there is still a large amount of Chinese goods for wholesale business in stock, which he hopes will give a greater profit later on.

THE SECRETARY'S RESIGNATION LETTER:

50 The Chairman tabled the letter, interpreted by Mr. Yau Yit Ping. The Secretary has already told Mr. Yau Yit Ping part of the reasons why she wished to resign when he visited her some days before the Meeting, so at the Meeting she did not give further reasons for her resignation.

EXHIBIT

10(34)
(continued)

Minutes of the Meeting of the Board of Directors of Kim Guan & Co. Ltd. on 14th February 1959

Mr. Yong Kee Foon, on behalf of the Board expressed the wish that the Secretary should withdraw her resignation. After much persuasion from the Board of Director that she should accept back per position as Secretary, the Secretary said that she would have to **reconsider** the case and if she wished to stay she would let the Directors know.

There being no other business to discuss, the Meeting terminated at 5,10 p.m. with a vote of thanks to the Chair. 10

Confirmed,

Sd: Tan Phang Nam (In Chinese)
Chairman

2.3.59

EXHIBIT

10 (34)
(continued)

Minutes of the Meeting of the Board of Directors of Kim Guan & Co. Ltd. on 11th April 1959

KIM GUAN & COMPANY LIMITED

Minutes of the Meeting of the Board of Directors of this Company held at No.26, Hugh Low Street, Ipoh, on Saturday, 11th of April, 1959 at 3.00 p.m. 20

PRESENT: Mr. Tan Phang Nam (In Chair)
Mr. Yap Fook Seng
Mr. Yong Kee Foon
Mr. Yau Yit Ping
Absent: Mr. Yong Su Hian

Attendance: Mr. Leong Kheun Chong

MINUTES: Minutes of the Directors' Meeting held on 2nd March, 1959 were read and adopted.

MATTERS ARISING OUT OF THE MINUTES:

(a) Chairman informed the Meeting that M/s. Payne, Davis & Co. was not in a position to act as the Secretary of the Company, as it was not in accordance with the lawful requirement. Now Mr. Leong Kheun Chong will act in this capacity. 30

(b) Mr. Yong Kee Foon proposed that M/s. Tan Phang Nam and Yap Foo, Seng be re-elected as Chairman and the Managing Director respectively and Mr. Yau Yit Ping seconded. It was unanimously carried out.

(c) In his capacity as Managing Director, Mr. 40

Yap Fook Seng reported business for February 1959 :-

Purchase	\$94,114.38
Sales	12,348.63
Receipts	103,971.97
Cash in Bank	6,656.93

Business for March 1959 :-

Purchase	\$92,417.52
Sales	117,700.68
Receipts	125,673.79
Cash in Bank	10,975.12

EXHIBIT

10 (34)
(continued)

Minutes of the Meeting of the Board of Directors of Kim Guan & Co. Ltd. on 11th April 1959

Owing to short period of business in February, the business was not so good as expected. But that of April was making good progress.

(d) Chairman expressed his opinion that the development and progress of the Company would be the same as the previous year.

(e) Re resignation of Mr. Yong Su Hian as a Director of the Co.

It is agreed and decided that Mr. Yong Su Hian be requested to remain in office, and that in the event of his non-acceptance, the position will be left vacant until the following ordinary general meeting of shareholders.

There being no other matters to discuss, the Meeting was terminated at 5.00 p.m. with a vote of thanks to the Chair.

Confirmed,

Sd: Tan Phang Nam (In Chinese)

Chairman

31.5.59

EXHIBITKIM GUAN & COMPANY LIMITED

10 (34)
(continued)
Minutes of the
Meeting of
Board of
Directors of
Kim Guan & Co.
Ltd. on 17th
October 1959

Minutes of the Meeting of the Board of
Directors of this Company held at No.26 Hugh
Low Street, Top Floor, on Saturday, 17th October
1959 at 3.00 p.m.

Present: Mr. Tan Phang Nam (In the Chair)
Mr. Yap Fook Seng
Mr. Yong Kee Foon
Mr. Yau Yit Ping

Attendance: Mr. Leong Kheun Chong

10

Minutes: Minutes of the Directors' Meeting held
on 31st May, 1959, were read and
adopted.

Matters arising out of the Minutes:

The Managing Director, Mr. Yap Fook Seng,
reported business for June as follows :-

Purchases	\$115,083.43	Cash Sales	\$ 81,222.41	
Return Inward		Credit Sales	50,894.53	
on Goods	8,776.39	Total Sales	<u>\$132,116.94</u>	
Duty	3,024.29	Discounts		
Transport	176.40	received	505.14	20
Wrapping				
materials	<u>29.30</u>			
	<u>\$ 127,089.81</u>		<u>\$132,622.08</u>	

Balance in Chung Khiaw Bank Ltd., Ipoh
as on 30.6.1959 = \$24,721.27 Business for July
1959 as follows :-

Purchases	\$ 99,825.92	Cash Sales	\$ 55,965.47	
Return Inward		Credit Sales	81,890.74	
on goods	8,338.83	Total sales	<u>\$137,865.21</u>	30
Duty	5,141.62	Discounts		
Transport	177.80	received	1,846.19	
Wrapping				
materials	<u>422.08</u>			
	<u>\$113,926.25</u>		<u>\$139,702.40</u>	

Balance in Chung Khiaw Bank Ltd., Ipoh,
as on 31.7.59 = \$4,557.83 Business for August
1959 as follows :-

Purchases	\$138,946.27	Cash Sales	\$ 57,217.18	
Return Inward		Credit Sales	81,435.98	
on goods	6,626.63	Total Sales	<u>\$138,653.16</u>	40
Duty	6,487.08	Discounts		
Transport	115.50	received	493.62	
Wrapping				
materials	<u>56.90</u>			
	<u>\$152,232.38</u>		<u>\$139,146.78</u>	

Balance in Chung Khiaw Bank Ltd. Ipoh, as on 31.8.59 = \$18,943.22
Balance on Overseas-Chinese Bank, Bukit Mertajam as on 31.8.59 = \$328.01

EXHIBIT
10 (34)
(continued)

Business for September 1959 as follows :-

Minutes of the Meeting of the Board of Directors of Kim Guan & Co. Ltd. on 17th October 1959

Purchase	\$178,720.82	Cash Sales	\$ 55,213.94
Return Inward		Credit Sales	75,627.84
on goods	8,141.07	Total Sales	\$130,841.78
Duty	7,410.66	Discounts	
Transport	107.00	received	629.70
Wrapping materials	80.29		
	<u>\$194,459.84</u>		<u>\$131,471.48</u>

Balance in Chung Khiaw Bank Ltd. Ipoh, as on 30.9.59 = \$17,525.18
Balance in Overseas-Chinese Bank, Bukit Mertajam as on 30.9.59 = \$2,774.74

20 Mr. Yap Fook Seng also mentioned that throughout this year the largest purchase of goods is in the month of September due to the fact that some of the goods may not arrive in time for sale at Christmas and the Chinese New Year.

30 Mr. Yap Fook Seng reported that at present it is not necessary to place further orders with other firms as the goods already ordered are worth approximately \$55,000.00, of which \$20,000.00 worth of goods will arrive towards the end of this year and the balance of \$35,000.00 will arrive sometime beginning of next year until April.

There being no other matters to discuss, the Meeting was terminated at 5.00 p.m. with a vote of thanks to the Chair.

Confirmed,
Sd: Tan Phang Nam (In Chinese)
Chairman
29.11.59

EXHIBITKIM GUAN & COMPANY LIMITED

10 (34)
 (continued)
 Minutes of the
 Board of
 Directors of
 Kim Guan & Co.
 Ltd. on 20th
 February 1960

Minutes of the Board of Directors of this
 Company held at No.26 Hugh Low Street, Top
 Floor, on Saturday the 20th February, 1960
 at 2.00 p.m.

Present: Mr. Tan Phang Nam (In the Chair)
 Mr. Yap Fook Seng
 Mr. Yong Kee Foon
 Mr. Yau Yit Ping

Attendance: Mr. Leong Kheun Chong 10

Minutes:

Minutes of the Directors' Meeting held
 on 20th of December, 1959, were read and
 adopted.

Matters arising out of the Minutes

The Managing Director, Mr. Yap Fook Seng,
 reported business situation as follows :-

Turnover for 1959	\$1,813,406.02	
Reduction on goods	9,691.61	
Stock at hand as on		20
31.12.1959	<u>176,147.98</u>	
	\$1,999,245.61	
Stock at 1.1.1959	\$ 296,085.60	
Purchases	1,402,165.37	
Return Inwards on goods	106,821.26	
Duty on Goods	84,636.45	
Transport	1,931.66	
Wrapping Materials	<u>3,915.32</u>	
	\$1,895,555.66	

To Bad Debts	\$ 5,980.30	
To expenses	<u>84,741.88</u>	30
	<u>\$90,722.18</u>	

By Gross Profit	\$97,709.65
Net Profit for	
'59	<u>12,967.77</u>
	<u>\$110,677.42</u>

Finance:

(Cash Book Balance (Cash, due cheques and post-dated Cheques)	\$13,109.68
--	-------------

Balance in Chung Khiaw Bank,
Ipoh, as on 31.12.1959 \$20,291.49

Balance in Oversea-Chinese
Bank, Bukit Mertajam as on
31.12.1959 \$21.86

EXHIBITS
10 (34)
(continued)
Minutes of the
Board of
Directors of
Kim Guan & Co.
Ltd. on 20th
February 1960

Bad Debts

The Managing Director, Mr. Yap Fook Seng reported as follows :

- 10 (1) Nam Kwet, Malim Nawar, absconded with \$449.40
- (2) Sin Lee, Teluk Anson, has declared bankruptcy at Supreme Court, Kuala Lumpur, \$4,497.05 has been involved.
- (3) Mee Foh, Kuala Kangsar, - the whereabouts of its proprietor is unknown and old account amounting to \$1,033.85 cannot be recovered. The total amount of \$5,980.30 has been written off as bad debts.

20 Investment on Rubber Estates

It has been resolved that the Chairman, Mr. Tan Phang Nam and Managing Director, Mr. Yap Fook Seng, are authorised to the purchase of a rubber estate of 240 acres at Jelapang.

To appoint a date for the Annual Shareholders' Meeting

It has been decided that the 27th of March be fixed for the coming annual Shareholders' Meeting.

- 30 There being no other matters to discuss, the Meeting was terminated at 3.35 p.m. with a vote of thanks to the Chair.

Confirmed,

Sd: Tan Phang Nam (In Chinese)
Chairman

2.3.60

EXHIBIT

KIM GUAN & COMPANY LIMITED

10 (34)
(continued)

Minutes of the Meeting of the Board of Directors of Kim Guan & Co. Ltd. on 2nd March 1960

Minutes of the Meeting of the Board of Directors of this Company held at No.26, Hugh Low Street, Top Floor, on Wednesday, the 2nd of March, 1960, at 3.00 p.m.

Present: Mr. Tan Phang Nam (In the Chair)
Mr. Yap Fook Seng
Mr. Yong Kee Toon
Mr. Yau Kit Ping

Attendance: Mr. Leong Kheun Chong 10

Minutes:

Minutes of the Directors' Meeting held on 20th February, 1960, were read and adopted.

Matters arising out of the Minutes

The Managing Director, Mr. Yap Fook Seng reported that the rubber estates to be bought by the Company are comprised of Grants for Land Nos. 13051, 13113 and C.T. 5663 Lots Nos. 22374, 22375 and 25459 Mukim of Ulu Kinta in total area of 241a. 1r. 06p for the consideration of \$285,000/- from A.M. Periasamy in the presence of two directors and countersigned by the Secretary. 20

The Chairman, Mr. Tan Phang Nam, reported that a Company of \$300,000/- will be established for this purpose. The total sum received to-day is about \$100,000/- from other sources. Kim Guan & Co.Ltd, will be responsible for the balance of \$200,000/-. At the present moment our funds are insufficient, and we have decided to mortgage the grants to the Mercantile Bank, Ipoh in order to raise a loan of \$120,000/- if available. 30

It is resolved that because the Kim Guan & Co.Ltd. is the big shareholder, having \$200,000/- in shares, Messrs. Tan Phang Nam and Yap Fook Seng be authorised to obtain the necessary loan from the Mercantile Bank, Ipoh

The Managing Director, Mr. Yap Fook Seng, also reported that the share of \$1,000/- of Mr. Koit Poey Seong, is to be transferred to Mr.Wong Wang Keang on behalf of his guardian Mr.Wong Kim Cheong. 40

There being no other matters to discuss, the Meeting was terminated at 5.00 p.m. with a vote of thanks to the Chair.

EXHIBIT

10 (34)
(continued)

Confirmed,
Sd: Tan Phang Nam (In Chinese)
Chairman
7.4.60

Minutes of the Meeting of the Board of Directors of Kim Guan & Co. Ltd. on 2nd March 1960

KIM GUAN & COMPANY LIMITED

EXHIBIT

10 (34)
(continued)

10 Minutes of the Meeting of the Board of Directors of this Company held at Top Floor, No.26, Hugh Low Street, Ipoh, on Thursday, the 7th of April 1960 at 3.00 p.m.

Minutes of the Meeting of the Board of

Present: Mr. Tan Phang Name (In the Chair)
Mr. Yap Fook Seng
Mr. Yau Yit Ping
Mr. Yong Kee Foon
Absent: Mr. Ho Khoon Hee
In Attendance: Mr. Leong Kheun Chong

Directors of Kim Guan & Co. Ltd. on 7th April 1960

Minutes:

20 Minutes of the Directors' Meeting held on 2nd March 1960, were slightly amended.

Matters arising out of the Minutes:

In regard to the investment of \$200,000/- by the Company and the loan of \$120,000/- from the Mercantile Bank, Ipoh, it has been decided to drop this matter as the said loan was not available from the bank.

30 An agreement was made between the Vendor Mr. A.M. Persiasamy and Kim Guan & Co. Ltd. on 6th April 1960 to transfer the name into Kim Guan & Co. Ltd. The Grant is still under the custody of Messrs. Maxwell Kenion Cowdy & Jones, Ipoh. An initial payment of \$20,000/- was made to Messrs. Maxwell Kenion Cowdy & Jones on 1.3.1960, a further sum of \$37,000/- on 3.3.1960, and another sum of \$100,000/- on 6.4.1960 and a post-dated cheque of \$28,000/- on 20.4.1960, amounting to \$185,000/-. The balance of \$100,000/- will be settled on 30.6.1960.

40 After the full settlement of this purchase,

EXHIBIT

10 (34)
(continued)

Minutes of the
Meeting of the
Board of
Directors of
Kim Guan & Co.
Ltd. on 7th
April 1960

the estate will be in the name of Sin Yee Estate Ltd. As at present the proposed name has not yet been registered, it is deemed proper that it should be under the control and supervision of Kin Guan & Co.Ltd. With effect from 1.7.1960 any income which derives from the said estate will be the property of Sin Yee Estate Limited.

It has been decided by the Directors that a sum of \$100,000/- be invested on Sin Yee Rubber Estate. Any increase on the investment will be dealt with at the next meeting.

10

Financial Position:

The Managing Director, Mr. Yap Fook Seng, advised that old stock be cleared as much as possible in order to meet any financial difficulty.

It has been decided too to open current accounts with Mercantile Bank, Ipoh, and Chartered Bank, Ipoh, as it is more convenient for the transaction of business. At present, we have our account with Chung Khiaw Bank, Ipoh, only.

20

Other Matters:

The Managing Director, Mr. Yap Fook Seng, reported that the system of Retail Sales at No.65, Hugh Low Street, has been changed and will follow that of 1959, as the present system is not practicable.

30

The Chairman, Mr. Tan Phang, proposed that Messrs. Yau Chee Yoon and Mor Kee Yoong will be responsible to check any goods supplied to No.65, Hugh Low Street, and also towards the sales of these goods.

There being no other matters to discuss, the Meeting was terminated at 4.45 p.m. with a vote of thanks to the Chair.

Confirmed,

Sd: Tan Phang Nam (In Chinese)

40

Chairman
25.5.60

KIM GUAN & COMPANY LIMITED

EXHIBIT

Minutes of the Meeting of the Board of Directors of this Company held at Top Floor, No.26, Hugh Low Street, Ipoh, on Friday, the 1st of July 1960, at 3.00 p.m.

10 (34)
(continued)
Minutes of the Meeting of the Board of Directors of Kim Guan & Co. Ltd. on 1st July 1960

Present: Mr. Tan Phang Nam (In the Chair)
Mr. Yap Fook Seng
Mr. Yau Yit Ping
Mr. Yong Kee Foon
Mr. Ho Khoon Hee

10

In attendance: Mr. Leong Kheun Chong

Minutes:

Minutes of the Directors' Meeting held on 28th May 1960 were read and adopted.

Matters arising out of the Minutes:

The Managing Director, Mr. Yap Fook Seng, reported business for May 1960 as follows :-

Purchases	\$ 97,964.55	Cash Sales	\$ 49,540.55
Return Inward		Credit Sales	101,406.86
on goods	9,188.68	Total Sales	\$150,947.41
Duty	2,998.46	Discount	
Transport	87.25	received	899.95
Wrapping materials	109.45		
	<u>\$110,278.39</u>		<u>\$151,847.36</u>

20

30

40

Total expenses for the month is	\$ 6,291.04
Sundry Creditors Ledger as on 31.5.1960	\$397,945.66
Sundry Debtors Ledger as on 31.5.1960	\$213,972.77
Balance in Chung Khiaw Bank Ltd. Ipoh as on 31.5.1960	\$ 2,367.85
Balance on Oversea-Chinese Bank Ltd. Bukit Mertajam as on 31.5.1960	\$ 417.45
Bank overdraft from the Mercantile Bank Ltd. Ipoh as on 31.5.60	4,270.10
Investment on Sin Yee Estate as on 31.5.1960	\$ 94,665.89
Balance in Boon & Co., Penang as on 31.5.1960	\$ 159.36
Cash Book Balance as on 31.5.1960	7,923.80

Business for June 1960 as follows :-

EXHIBIT
 10 (34)
 (continued)
 Minutes of the
 Meeting of the
 Board of
 Directors of
 Kim Guan & Co.
 Ltd. on 1st
 July 1960

Purchases	\$87,054.91	Cash Sales	\$ 65,137.52
Return inward		Credit	
on goods	8,755.77	Sales	65,298.03
Duty	3,108.75	Total Sales	\$130,435.55
Transport	90.75	Discount	
Wrapping	99.80	received	734.95
	<u>\$99,109.98</u>		<u>\$131,170.50</u>

Total expenses for the month of June is	\$ 6,403.84	
Sundry Creditors Ledger as on 30.6.1960	\$389,020.82	10
Sundry Debtors Ledger as on 30.6.1960	\$192,193.93	
Balance in Chung Khiaw Bank Ltd., Ipoh as on 30.6.1960	\$ 72.67	
Balance in Oversea-Chinese Bank Ltd. Bukit Mertajam as on 30.6.1960	\$ 1,569.88	
Balance in Mercantile Bank Ltd. Ipoh, as on 30.6.1960	\$ 2,206.68	20
Investment on Sin Yee Estate as on 30.6.1960	\$136,582.02	
Balance in Boon & Co. Penang as on 30.6.1960	\$ 50.58	
Cash Book Balance as on 30.6.1960	\$ 9,995.27	

Mr. Yap Fook Seng reported the sum of \$100,000/- being the balance of \$285,000/- of the purchase price of Sin Yee Rubber Estates had been paid to Messrs. Maxwell Kenion Cowdy & Jones on 29.6.1960. These estates were under the supervision of Kim Guan & Co.Ltd. until 29.6.1960, as the registration of the said estate was received from the Registrar of Businesses in connection with the transfer of name from Kim Guan & Co. Ltd. to Sin Yee Estate Ltd. was effected on 29.6.1960 by Messrs. Maxwell Kenion Cowdy & Jones, Ipoh. With effect from 1.7.1960, Kim Guan & Co.Ltd. have no dealings whatsoever with transaction of this estate.

There being no other matters to discuss, the Meeting terminated at 4.30 p.m. with a vote of thanks of the Chair.

Confirmed,
 Sd: Tan Phang Nam (In Chinese)
 Chairman 4.10.60

KIM GUAN & COMPANY LIMITED

EXHIBIT

Minutes of the Meeting of the Board of Directors of this Company held at No.26, Hugh Low Street, Ipoh on Sunday, the 3rd of September, 1961 at 12.00 noon.

10(34)
(continued)
Minutes of Meeting of Board of Directors of Kim Guan & Co. Ltd. on 3rd September 1961

Present: Mr. Tan Phang Nam (In the Chair)
Mr. Yap Fook Seng
Mr. Yau Yit Ping
Mr. Yong Kee Poon
Mr. Ho Khoon Hee

10

In attendance: Mr. Leong Kheun Chong

Minutes:

Minutes of the Directors' Meeting held on 4th of June 1961 were read and adopted.

Matters arising out of the Minutes:

The Managing Director, Mr. Yap Fook Seng, reported business for the month of June 1961 as follows :-

20	Purchases	\$ 79,785.59	Cash Sales	\$ 62,931.59
	Return Inward		Credit Sales	61,533.64
	on goods	11,445.92		<u>\$124,465.23</u>
	Duty	3,566.66	Discount	
	Transport	77.30	Received	2,423.38
	Wrapping			
	Materials	68.20		
		<u>\$ 94,943.67</u>		<u>\$126,888.61</u>

	Total expenses for the month of June 1961 is	\$ 7,429.51
30	Sundry Creditors Ledger as on 30.6.1961	\$374,446.87
	Sundry Debtors Ledger as on 30.6.1961	\$173,300.60

	Balance in Oversea-Chinese Bank Ltd. Bukit Mertajam as on 30.6.1961	\$ 786.94
	Bank Overdraft from the Mercantile Bank Ltd. Ipoh as on 30.6.1961	\$ 5,503.46
40	Bank Overdraft from the Chung Khiaw Bank Ltd. Ipoh as on 30.6.1961	\$ 9,521.44
	Bank Overdraft from the United Malayan Banking Corp.Ltd. Ipoh as on 30.6.1961	\$ 48,345.66

EXHIBIT

10 (34)
(continued)
Minutes of
Meeting of
Board of
Directors of
Kim Guan & Co.
Ltd. on 3rd
September 1961

Loan of \$6,400/- from Sin Yee Estates Ltd.
as on 30.6.1961

Savings at our Company of Mr. Yong Kee Foon as on 30.6.1961	\$1,400.00	
Savings at our Company of Mr. Lee Kwan Kheun as on 30.6.1961	\$1,800.00	
Savings at our Company of Madam Wong Siew Kuen as on 30.6.1961	\$5,000.00	10
Investment of Sin Yee Estate Ltd. as on 30.6.1961	\$150,000.00	
Cash Book Balance as on 30.6.1961	\$ 10,230.77	

Business for the month of July 1961 as follows:

Purchases	\$ 51,839.98	Cash Sales	\$ 50,279.11
Return Inward		Credit Sales	50,058.61
on goods	2,848.85		<u>\$100,337.72</u>
Duty	1,126.10	Discount	
Transport	83.33	received	1,484.01
Wrapping			
materials	<u>600.53</u>		
	\$ 56,498.79		<u>\$101,721.73</u>

Total expenses for the month of July 1961	\$ 7,241.02	
Sundry Creditors Ledger as on 31.7.1961	\$327,137.27	
Sundry Debtors as on 31.7.1961	\$167,922.44	30
Balance in the Oversea- Chinese Bank Ltd. Bukit Mertajam as on 31.7.1961	\$ 606.94	
Bank Overdraft from the Mercantile Bank Ltd. Ipoh as on 31.7.1961	\$ 7,983.93	
Bank Overdraft from the Chung Khiew Bank Ltd. Ipoh as on 31.7.1961	\$ 9,894.30	
Bank Overdraft from the United Malayan Banking Corp. Ltd. Ipoh as on 31.7.1961	\$ 56,450.76	40
Savings at our Company of Mr. Yong Kee Foon as on 31.7.1961	\$ 1,400.00	
Savings at our Company of Mr. Lee Kwan Kheun as on 31.7.1961	\$ 1,800.00	
Savings at our Company of Madam Wong Siew Kuen as on 31.7.1961	\$ 5,000.00	50

Loan of \$3,400/- from Sin Yee Estate Ltd.
as on 31.7.1961

EXHIBIT

10 (34)
(continued)

Investment on Sin Yee Estate
Ltd. as on 31.7.1961 \$150,000.00
Cash Book Balance as on
31.7.1961 \$ 51,049.65

Minutes of
Meeting of
Board of
Directors of
Kim Guan & Co.
Ltd. on 3rd
September 1961

Business for the month of August 1961 as
follows :-

10	Purchases	\$ 95,800.91	Cash Sales	\$ 53,465.19
	Return Inward		Credit Sales	73,455.07
	on goods	7,081.20		<u>\$126,920.26</u>
	Duty	1,426.34	Discount	
	Transport	175.75	received	1,747.68
	Wrapping materials	<u>44.00</u>		
		\$104,528.20		<u>\$128,667.94</u>

Total expenses for the month
of August 1961 \$

20	Balance in the Oversea- Chinese Bank Ltd. Bukit Mertajam as on 31.8.1961	\$ 1,579.52
	Bank Overdraft from the Chung Khiaw Bank Ltd. Ipoh as on 31.8.1961	\$ 6,563.81
	Bank Overdraft from the Mercantile Bank Ltd. Ipoh as on 31.8.1961	\$ 9,408.18
	Bank Overdraft from the United Malayan Banking Corp. Ltd. as on 31.8.1961	\$54,381.88
30	Sundry Creditors Ledger as on 31.8.1961	\$276,475.91
	Sundry Debtors Ledger as on 31.8.1961	\$170,464.17
	Savings at our Company of Mr. Yong Kee Foon as on 31.8.1961	\$ 1,400.00
	Savings at our Company of Mr. Lee Kwan Kheun as on 31.8.1961	\$ 1,800.00
40	Savings at our Company of Madam Wong Siew Kuen as on 31.8.1961	\$ 5,000.00
	Savings at our Company of Mr. Yap Fook Seng as on 31.8.1961	\$ 54,000.00

Loan of \$900/- from Sin Yee Estate Ltd. as
on 31.8.1961

50	Investment on Sin Yee Estate Ltd. as on 31.8.1961	\$150,000.00
	Cash Book Balance as on 31.8.1961	\$ 22,779.14

EXHIBIT

10 (34)
(continued)

Minutes of
Meeting of
Board of
Directors of
Kim Guan & Co.
Ltd. on 3rd
September 1961

A letter of 1st September 1961 received from Madam Yong Toong Liew in respect of her \$5,000/- share for sale, and another letter received from Mr. Yong Su Hian in connection with his transfer of share to Mr. Lee Kee Seng were upon the table.

The request for the transfer of 34 shares by Mr. Yong Su Hian to Mr. Lee Kee Seng was discussed at the Directors' Meeting on 3.9.1961.

10

After some discussions among the Directors in respect of Madam Yong Toong Liew and Mr. Yong Su Hian's share for sale and transfer, it was agreed that they would be informed of the would-be buyers among the shareholders in due course.

There being no other matter to discuss, the Meeting was terminated at 1.35 p.m. with a vote of thanks to the Chair.

Confirmed,

20

Sd: Tan Phang Nam (In Chinese)

Chairman
25.9.1961

KIM GUAN & COMPANY LIMITED

EXHIBIT

10 (34)
(continued)

Minutes of the Board of Directors' Special Meeting of the Company held at the Registered Office, on Monday, the 25th September 1961 at 3.00 p.m.

Minutes of Board of Directors' Special Meeting of Kim Guan & Co. Ltd. on 25th September 1961

Present: Mr. Tan Phang Nam (In the Chair)
Mr. Yap Fook Seng
Mr. Yau Yit Ping
Mr. Yong Kee Foon

10

Absent: Mr. Ho Khoon Hee
In attendance: Mr. Leong Kheun Chong, the Secretary

Minutes:

Minutes of the Directors' Meeting held on 3rd of September 1961 were read and adopted.

Matters arising out of the Minutes:

20

The Secretary in the first instance reported that a letter of 16.9.1961 concerning the amendments and additions of Articles of Association of the Company was received from Messrs. Yong Su Hian and others amounting to one-tenth of the Shareholders, with a request that an extraordinary General Meeting be convened to discuss and, if possible to adopt them.

30

After lengthy discussion, it has been unanimously decided that the Board is not in a position to comply with their request and that Messrs. Das & Co., be authorized to draft for the Company in a reply thereto, so that the Secretary on behalf of the Board may sign and despatch it.

There being no other matter to discuss, the Meeting was terminated at 3.55 p.m. with a vote of thanks to the Chair.

Confirmed,

Sd: Tan Phang Nam
(In Chinese)

Chairman
21.10.61

EXHIBIT

10 (34)

Notice of
Extraordinary
General Meeting
of Kim Guan &
Co.Ltd.convened
on the 29th
October 1961
dated 30th
September 1961

EXHIBIT

10 (34)

NOTICE OF EXTRAORDINARY GENERAL
MEETING OF KIM GUAN & CO. LTD.
CONVENED IN PURSUANCE OF
REQUISITION ON THE 29TH OCTOBER
1961 dated 30th September 1961

NOTICE OF EXTRAORDINARY GENERAL MEETING
CONVENED IN PURSUANCE OF REQUISITION

KIM GUAN & CO. LTD.

10

NOTICE IS HEREBY GIVEN that, in pursuance
of a requisition lodged at the registered
office of the company on the 20th day of
September, 1961 by Messrs. Yong Nyee Fan & Sons
Ltd., Leong Vong Moi, Yong Su Yoong, Yong Su
Hian, Yong Lip Hian and Yong Khuik Yee, an
extraordinary general meeting of the company
will be held at No.26, Hugh Low Street, Ipoh,
on Sunday the 29th day of October, 1961 at
11 o'clock in the forenoon when the subjoined
resolution will be proposed as a special
resolution.

20

RESOLUTION

"That the Articles of Association of the
Company be altered in manner following, that is
to say, by deleting Articles 31 to 46 (inclusive)
of the present regulations of the Company and by
inserting in substitution therefor the following
new articles to be number in manner shown :-

31. The right of member to transfer their
shares shall be restricted as follows :-

30

(a) No transfer shall be registered unless
a proper instrument of transfer has
been delivered to the Company.

(b) The instrument of transfer of any share
shall be executed both by the transferor
and the transferee, and the transferor
shall be deemed to remain the holder of
such share until the name of the trans-
feree is entered in the Register in
respect thereof.

40

(c) By the provisions of Articles 32 to
401 below.

32. A share may be transferred by a member or other person entitled to transfer to any member selected by the transferor; but save as aforesaid and save as provided by Articles 36 and 38 hereof, no share shall be transferred to a person who is not a member so long as any member is willing to purchase the same at a fair value.

EXHIBIT

10 (34)

Notice of
Extraordinary
General Meeting
of Kim Guan &
Co.Ltd. convened
on the 29th
October 1961
dated 30th
September 1961

(continued)

10 33. Except where the transfer is made pursuant to Articles 36 or 38 hereof, the person proposing to transfer any share (hereinafter called "the proposing transferor") shall give notice in writing (hereinafter called a "transfer notice") to the Company that he desires to transfer the same. Such notice shall specify the sum he fixes as the fair value, and shall constitute the Company his agent for the sale to any member of the Company willing to purchase the share (hereinafter called the 'purchasing member') at the price so fixed. A transfer notice may include several shares, and in such case shall operate as if it were a separate notice in respect of each. A transfer notice shall not be revocable except with the sanction of the directors.

20 34. If the Company shall within the space of one month after being served with a transfer notice, find a purchasing member and shall give notice thereof to the proposing transferor, he shall be bound upon payment of the fair value as fixed by him in accordance with Articles 33 hereof to transfer the shares to the purchasing member.

30 35. If in any case the proposing transferor, after having become bound as aforesaid, makes default in transferring the share, the Company may receive the purchase money, and the proposing transferor shall be deemed to have appointed any one director or the secretary of the Company as his agent to execute a transfer of the share to the purchasing member, and upon the execution of such transfer the Company shall hold the purchase money in trust for the proposing transferor. The receipt of the Company for the purchase money shall be a good discharge to the purchasing member, and after his name has been entered in the register in purported exercise of the aforesaid power, the validity of the proceedings shall not be questioned by any person.

40 50 36. If the Company shall not, within the

EXHIBIT

10 (34)

Notice of
Extraordinary
General Meeting
of Kim Guan &
Co.Ltd. convened
on the 29th
October 1961
dated 30th
September 1961
(continued)

space of one month after being served with a transfer notice, find a purchasing member and give notice manner aforesaid, the proposing transferor shall at any time within three months thereafter be at liberty, subject to Article 39 hereof, to sell and transfer the share (or where there are more shares than one those not placed) to any person at a price which shall, in any event not be less than the fair value as fixed by him pursuant to Article 37 hereof :-

10

37. The shares specified in any transfer notice given to the Company as aforesaid shall be offered by the Company in the first place to the members, other than the proposing transferor, as nearly as may be in proportion to the existing shares held by them respectively, and the offer shall in each case limit the time within which the same, if not accepted, will be deemed to be declined, and may notify to the members that any member who desires an allotment of shares in excess of his proportion should in his reply state how many excess shares he desires to have; and if all the members do not claim their proportions, the unclaimed shares shall be used for satisfying the claim in excess. If any shares shall not be capable, without fractions, of being offered to the members in proportion of their existing holdings, the same shall be offered to the member, or some of them, in such proportion or in such manner as may be determined by lots to be drawn under the direction of the directors.

20

30

38. Subject to Article 39 hereof, any share may be transferred by a member to any child or other issue, son-in-law, daughter-in-law, father, mother, brother, sister, nephew, niece, wife or husband of such member, and any share of a deceased member may be transferred by his executors or administrator to any child or other issue, son-in-law, daughter-in-law, father, mother, brother, sister, nephew, niece, widow or widower of such deceased member and shares standing in the name of a deceased member or his legal personal representatives may be transferred to the trustees of his will, and shares standing in the name of the trustees of the will of any deceased member may be transferred upon any change of trustees to the trustees for the time being of such will, and the restriction in Article 32 hereof shall not apply to any transfer authorised by this Article.

40

50

39. The directors may refuse to register any transfer of a share where the Company has a lien on the shares.

40. The instrument of transfer of any share shall be in writing in the usual form or as near hereto as the circumstances will admit.

10 40. A. The Directors shall not in any case be bound to inquire into the validity regularity effect or genuineness of any instrument of transfer produced by a person claiming as transferee of any share in accordance with these Articles and whether they abstain from so inquiring or do so inquire and are misled the transferor named in the transfer shall have no claim whatever upon the Company in respect of the share the subject of such transfer except for dividend (if any) previously declared in respect thereof. And the remedy (if any) of the transferor shall be only against the transferee or the person claiming to be such.

20

40. B. No transfer shall be made to an infant, bankrupt or person of unsound mind provided that it shall not be necessary for the Directors to make any inquiries with regard thereto before allowing any transfer.

30 40. C. Every instrument of transfer accompanied by the certificate of the shares to be transferred and such other evidence as the Directors may require to prove the title of the transferor or his right to transfer the shares or the nationality of the transferee shall be left for registration at such place as the Directors may from time to time prescribe.

40. D. A fee of one dollar (\$1.00) may be charged for each transfer and shall, if required by the Directors, be paid before the registration thereof.

40 40. E. All instrument of transfer which shall be registered shall be retained by the Company but any instrument of transfer which the Directors may decline to register shall (except in case of fraud) be returned to the person depositing the same.

40. F. The transfer books and register of members may be closed during such time or times as the Directors may think fit not exceeding in the whole thirty days in each year.

EXHIBIT

10 (34)

Notice of
Extraordinary
General Meeting
of Kim Guan &
Co.Ltd.convened
on the 29th
October 1961
dated 30th
September 1961

(continued)

EXHIBIT

10 (34)

Notice of
Extraordinary
General Meeting
of Kim Guan &
Co.Ltd.convened
on the 29th
October 1961
dated 30th
September 1961
(continued)

40. G. The executors or administrators of a deceased member (not being one of several joint holders) shall be the only persons recognised by the Company as having any title to the shares registered in the name of such member, and in case of the death of any one or more of the joint registered holders of any registered shares, the survivors shall be the only persons recognised by the Company as having any title to or interest in such shares. 10

40. H. Any person becoming entitled to shares in consequence of the death or bankruptcy of any member upon producing proper evidence of the grant of probate or letters of administration or such other evidence that he sustains the character in respect of which he proposes to act under this clause or of his title as the Directors think sufficient (a) may with the consent of the Directors (which they shall not be under any obligation to give) be registered as a member in respect of such shares or (b) may subject to the requisitions as to transfers hereinbefore contained transfer such shares. This clause is hereinafter referred to as the "transmission clause." 20

40. I. Except where the transfer is made pursuant to Article 38 hereof, the Directors shall have the same right to refuse to register a person entitled by transmission to any shares or his nominee as if he were the transferee named in an ordinary transfer presented for registration." 30

Note - A member entitled to attend and vote at the meeting is entitled to appoint an attorney or proxy to attend and vote in his stead.

Dated this 30th day of September, 1961.

By order of the Board

Sd: Leong Khuen Chong
Secretary

40

Kim Guan & Co.Ltd.
No.26 Hugh Low Street,
Ipoh, Perak.

EXHIBIT

10 (36)

EXTRACTS FROM MINUTE BOOKS OF
GENERAL MEETING OF KIM GUAN & CO.
LTD. MINUTING MEETINGS HELD ON DATES
AS FROM 16TH APRIL 1955 up to
29TH OCTOBER 1961

EXHIBIT

10 (36)

Extracts from
Minute Book of
General Meeting
of Kim Guan &
Co.Ltd. held
on the 16th
April 1955 up
to 29th October
1961

KIM GUAN & COMPANY LIMITED

10

Minutes of the First Meeting of the
Shareholders of Kim Guan & Company Limited held
on Saturday 16th April 1955 at 2 p.m. at 26,
Hugh Low Street, Ipoh.

PRESENT: Mr. Tan Phang Nam (Chairman)

Yap Fook Sen

Yong Nyee Fan

Yau Yit Ping

Yong Su Hian

Chew Yin Seong

Yap Ching

20

Soon Tat Yoong

Koit Poey Seong

Yap Fook Sang

Madam Leong Vong Moi

Miss Yong Toong Liew (the Secretary)

1. REPORT OF SALES AGREEMENT

30

Mr. Yau Yit Ping read the Schedule attached
to the Sales Agreement to the Shareholders.
Mr. Yap Fook Sen on behalf of Kim Guan the old
Company said that by the end of December 1955
if the debts of \$179,239.26 as stated in the
Sales Agreement is not paid up by the debtors
then, the shareholders of the old Kim Guan
& Company will make good this amount to the new
Company.

2. REPORT OF BUSINESS SINCE FORMATION

40

Mr. Tan Phang Nam gave a general report
on the business dealings since its formation.
He advised that since it is now the beginning
of the year the business is not very good but
he expects the business will be better in a
few months time.

3. ALLOCATION OF DUTIES OF STAFF

Mr. Yap Fook Sen was appointed manager of
all the wholesale department while Mr. Tan Phang

EXHIBIT

10 (36)

Extracts from Minute Book of General Meeting of Kim Guan & Co.Ltd. held on the 16th April 1955 up to 29th October 1961

(continued)

Nam, the manager of the retail department. Messrs. Yap Fook Sen and Tan Phang Nam accepted their appointment.

4. FINANCE

The Meeting authorised the directors to obtain an overdraft of \$10,000/- from the Company's bankers in case of necessity.

The meeting terminated at 3.15 p.m. with a vote of thanks to the Chair.

Confirmed,

10

Chairman

EXHIBIT

10 (36)

(continued)

Extract from Minute Book of General Meeting of Kim Guan & Co. Ltd. held on the 18th March 1956

KIM GUAN & COMPANY LIMITED

Minutes of the First Annual General Meeting of the above Company held at No.46, Cockman Street, Ipoh on Sunday, 18th March 1956 at 2.00 p.m.

PRESENT: Mr. Tan Phang Nam (Chairman) in the Chair
Mr. Yap Fook Seng (Managing Director)

20

Mr. Yong Nyee Fan
Mr. Yau Yit Ping
Mr. Yong Kee Foon
Mr. Yap Fook San
Mr. Yap Su Hian

Madam Leong Vong Moi
Miss Yong Toong Liew

BY INVITATION: Mr. L.J. Peace of Messrs. Payne, Davis & Company.

ACCOUNTS: The Report and Accounts for the year ended 31st December 1955 were adopted on the proposal of Mr. Yong Su Hian and seconded by Mr.Yap Fook San. 30

DIRECTORATE:

Mr. Yap Fook Seng retired by rotation and was re-elected on the proposal of Mr. Yong Nyee Fan and seconded by Madam Leong Vong Moi. The Managing Director suggested that the number of directors should be increased from 3 to 5, and this was unanimously agreed. On the proposal 40

of Mr. Yap Fook Seng and seconded by Mr. Tan Phang Nam, Mr. Yong Kee Foon was elected; and Mr. Yau Yit Ping was elected on the proposal of Mr. Yap Fook San and seconded by Mr. Yong Su Hian.

EXHIBIT
10 (36)
(continued)

Extract from Minute Book of General Meeting of Kim Guan & Co. Ltd. held on the 18th March 1956

The Directors waived any remuneration in respect of the year ended 31st December 1955.

10 AUDITORS: The Managing Director, on behalf of the Company thanked Mr. L.J. Peace for the valuable services rendered to this Company and expressed the hope that he will do his best in dealing with the Company's Income Tax.

Messrs. Payne, Davis & Company was unanimously re-appointed auditors for the ensuing year.

There being no other business, the Meeting terminated at 3.00 p.m. with a vote of thanks to the Chair.

Confirmed,

20 Sd: Tan Phang Nam (In Chinese)
Chairman

KIM GUAN & COMPANY LIMITED

EXHIBIT
10 (36)
(continued)

Minutes of the Second Annual General Meeting of the Company held at 26, Hugh Low Street, Ipoh on Sunday, 10th March 1957 at 11.15 a.m.

Extract from Minute Book of General Meeting of Kim Guan & Co. Ltd. held on the 10th March 1957

PRESENT: Tan Phang Nam (Chairman) in the Chair

30 Yap Fook Seng
Yau Yit Ping
Leong Khuen Chong
Yap Meow Seng
Yong Su Hian
Ho Khoon Hee
Choo Nyuk Chow
Yong Toong Liew
Yong Kee Foon
Hong Nyee Fan

40 Dr. Chung Hoy Chan representing Yong Loy Heong

BY INVITATION:

Mr. L.J. Peace of Messrs. Payne, Davis and Company.

EXHIBIT

10 (36)
(continued)

Extract from
Minute Book of
General Meeting
of Kim Guan &
Co. Ltd. held
on the 10th
March 1957

ACCOUNTS:

The Report and Accounts for the year ended
31st December 1956 were read, discussed and
adopted.

DIRECTORATE:

Messrs. Tan Phang Nam and Yong Nyee Fan
both retired by rotation and were unanimously
re-elected.

The Directors waived any remuneration in
respect of the year ended 31st December 1956.

10

AUDITORS:

The Meeting thanked Mr. L.J. Peace of
Messrs. Payne, Davis & Company for the valuable
services he has rendered to this Company during
1956.

Messrs. Payne, Davis & Company were
re-appointed auditors for the ensuing year.

OTHER MATTERS:

The Managing Director, Mr. Yap Fook Seng,
informed the Meeting that some shareholders and
other desired to deposit money with the Company
for safe custody. As this practice will be
advantageous to the Company, the Meeting agreed
to the proposal. The total amount deposited was
however, to be limited to a maximum of
\$50,000/-. This Deposit account is to be closed
every three months for thorough revision.

20

There being no other business the Meeting
terminated at 12.10 p.m. with a vote of thanks
to the Chair.

30

Confirmed,
Sd: Tan Phang Nam (In Chinese)
Chairman

KIM GUAN & COMPANY LIMITED

EXHIBIT

Minutes of the Third Annual General Meeting of the Company held at 26, Hugh Low Street. Ipoh on Sunday, 23rd March 1958 at 11.30 a.m.

10 (36)
(continued)

Extract from Minute Book of General Meeting of Kim Guan & Co.Ltd. held on the 23rd March 1958

PRESENT: Tan Phang Nam (Chairman)
Yap Fook Seng
Yau Yit Ping
Yong Kee Foon
Yong Nyee Fan
Yong Su Hian
Yap Moow Seng
Yap Cheang
Chew Ying Seong
Leong Khuen Chong
Yong Toong Liew

10

BY INVITATION: Mr. L.J.Peace of Messrs. Payne, Davis & Co.

MINUTES:

20

The Minutes of the Second Annual General Meeting held on 10th March 1957, were read and adopted without corrections.

REPORT AND ACCOUNTS:

30

Mr.Yap Fook Seng reported that business for the first half of 1957 was dull especially with the Flu Epidemic. Therefore during the first half of the year business was conducted at a loss, but business for the second half of the year was better and that made up for the bad business during the first half year.

40

The Accounts were carefully discussed. Mr.L.J. Peace mentioned that no reserve for possible bad debts had been provided for in last year's accounts. It was proposed to have 10% of the debts written off in the current year's accounts. Mr. L.J.Peace also mentioned that the Ledger showed that a number of debtors have had their debit balances increased by a few thousand dollars since the end of 1956. On the proposal of Mr. Yong Nyee Fan and seconded by Mr. Yap Fook Seng, the Accounts were adopted.

DIRECTORATE:

Messrs. Yau Yit Ping and Yong Kee Foon both retired by rotation, and offered themselves for re-election On the proposal of Mr. Leong

EXHIBIT

10 (36)
(continued)

Extract from
Minute Book of
General Meeting
of Kim Guan &
Co.Ltd. held
on the 23rd
March 1958

Kheun Chong and seconded by Mr. Yong Su Hian, Mr. Yau Yit Ping was re-elected. Mr. Yong Kee Foon was also re-elected on the proposal of Mr. Yap Meow Seng and seconded by Mr. Chew Ying Seong. Mr. Yong Su Hian joined the Board on the proposal of Mr. Yap Fook Seng and seconded by Mr. Yau Yit Ping.

AUDITORS:

Mr. Yap Fook Seng, on behalf of the Company, thanked Mr. L.J. Peace for the services rendered the Company since its formation. 10

Messrs. Payne Davis & Co. were unanimously re-appointed auditors for the ensuing year. As Mr. L.J. Peace has a better understanding of our Company's financial position, it was decided to let him fix the remuneration for Messrs. Payne Davis & Co.

OTHER MATTERS:

(a) Business: Mr. Yap Fook Seng mentioned that business for 1958 may be bad if not worse than the previous year, and that many shops went bankrupt last year. Having regard to this point of view it was decided to do business on a smaller scale, especially the Credit Sales. If the Company should make a profit this year, it was decided to declare a dividend. 20

(b) Interest on Capital

Since the formation of the Company, no dividend has been declared, and thus Shareholders are in suspense as to when to expect a dividend. It was decided that 4% interest be paid to Shareholders before 31st December every year. 30

(c) BONUS:

It was decided that whenever a dividend is declared :-

- (i) Five (5%) per cent on the total dividend payable to Shareholders to be paid to the Managing Director.
- (ii) Ten (10%) per cent of the total dividend to be paid to all the staff including directors, excluding the Managing Director. The amount of bonus payable to each member of the staff shall be decided by the Board of Directors on the recommendation of the 40

Managing Director.

There being no other business the Meeting terminated at 12.45 p.m. with a vote of thanks to the Chair.

Confirmed,

Sd: Tan Phang Nam (In Chinese)

Chairman

29.3.59

EXHIBIT

10 (36)
(continued)

Extract from Minute Book of General Meeting of Kim Guan & Co.Ltd. held on the 23rd March 1958

KIM GUAN & COMPANY LIMITED

EXHIBIT

10 (36)
(continued)

10 Minutes of the Fourth Annual General Meeting of the Company held at No.26, Hugh Low Street, Ipoh, on Sunday 29th March 1959, at 11:40 a.m.

Extract from Minute Book of General Meeting of Kim Guan & Co.Ltd. held on the 29th March 1959

Present: Mr. Tan Phang Nam (In the Chair)
Mr. Yap Fook Seng
Mr. Yau Yit Ping
Mr. Yong Kee Foon
Mr. Ho Khoon Hee
Mr. Lee Hee Soon
Mr. Yap Meow Seng
Mr. Chew Ying Seong
Mdm. Choo Myuk Chew
Mr. Leong Kheun Chong

20

By Invitation:

Mr.L.J.Peace of Messrs. Payne Davis & Co.

Minutes:

The Minutes of the Third Annual General Meeting held on 23rd March 1958 were read and adopted with slight amendment.

30

Interest on Principal

The proposal that a dividend of 4% interest be declared on the principal of each share was deemed unworkable. So it was unanimously agreed to drop it out. As all other matters were passed, the minutes were confirmed and signed by the Chairman.

EXHIBIT

10 (36)
(continued)

Extract from
Minute Book of
General Meeting
of Kim Guam &
Co.Ltd. held on
the 29th March
1959

Report on Accounts:

Mr.Yap Fook Seng reported the accounts for the year 1958. On the proposal of Mr. Lee Hee Soon and seconded by Mr. Ho Khuon Hee, the accounts were adopted.

Directorate:

Messrs. Yap Fook Seng and Tan Phang Nam retired by rotation, and offered themselves for re-election. On the proposal of Mr. Yong Kee Foon and seconded by Mr. Choo Ying Seong, Mr. Tan Phang Nam was re-elected as Director for a period of two years. Mr. Yap Fook Seng was also re-elected as Director for the same period on the proposal of Mr. Yau Yit Ping and seconded by Mr. Yap Meow Seng.

10

Auditors:

Mr.Yap Fook Seng proposed Messrs. Payne, Davis & Co. to be the Company's Auditor for the ensuing year as Mr. L.J.Peace is more conversant with our accounts and financial position. Messrs. Payne Davis & Co., were unanimously re-appointed. Mr. Yap Fook Seng on behalf of all the Directors and shareholders thanked Mr. L.J.Peace for his valuable services rendered to the Company.

20

Chairman looked forth the Business Position of 1959

He hoped that all the Directors and members of the staff will give their full support and co-operation to the Company in order that we will not only achieve a reputation but also prosperity.

30

Other Matters

Mr.Yap Fook Seng reported that it was announced by Mr. Moo Soo Noong a few days ago that the share of \$5,000.00 belonging to Madam Yong Toong Liew offered for sale. After some discussion, it was agreed that she would be informed of the would-be buyers among the shareholders.

There being no other business, the Meeting was terminated at 1.40 p.m.with a vote of thanks to the Chair.

40

Confirmed,
Sd: Tan Phang Nam (In Chinese)
Chairman 27.3.60

KIM GUAN & COMPANY LIMITED

EXHIBIT

Minutes of the Fifth Annual General Meeting of the Company held at No.26, Hugh Low Street, Ipoh, on Sunday 27th March 1960, at 11.15 a.m.

10 (36)
(continued)

Extract from
Minute Book of
General Meeting
of Kim Guan &
Co.Ltd. held on
the 27th March
1960

Present: Mr. Tan Phang Nam (In the Chair)
Mr. Yap Fook Seng
Mr. Yau Yit Ping
Mr. Yong Kee Foon
Mr. Ho Khoon Hee
Mr. Yong Su Hian
Mr. Yong Lip Hian
Mr. Chew Ying Seong
Mr. Lee Meow Seng

10

In attendance: Mr. Leong Kheun Chong

By Invitation: Mr. L.J. Peace of Messrs. Payne Davis & Company.

Minutes:

The Minutes of the Fourth Annual General Meeting held on 29th March 1959 were read and adopted without corrections.

20

Report on Accounts:

Mr. Yap Fook Seng requested the Secretary to read the particulars concerning the financial position of 1959. After some discussions among the shareholders, the accounts were proposed by Mr. Lee Meow Seng and seconded by Mr. Chew Ying Seong as correct and were passed accordingly.

Directorate:

Messrs. Yau Yit Ping and Yong Kee Foon both retired by rotation, and offered themselves for re-election. On the proposal of Mr. Chew Ying Seong and seconded by Mr. Ho Khoon Hee, Mr. Yau Yit Ping was re-elected as Director for a period of two years. Mr. Lee Meow Seng proposed Mr. Yong Kee Foon and seconded by Chew Ying Seong, Mr. Yong Kee Foon was re-elected as Director for a period of two years.

30

Regarding the resignation of Mr. Yong Su Hian as a Director, the vacancy has not been filled until this General Shareholders' Meeting. Mr. Yap Fook Seng proposed that Mr. Yong Su Hian be elected to continue as a Director but the proposal was not accepted by the latter. In turn, Mr. Yong Su Hian proposed Mr. Ho Khoon Hee, and seconded by Mr. Yong Lip Hian. Thus, Mr. Ho Khoon Hee was elected as Director for the period of two years.

40

EXHIBIT

10 (36)
(continued)

Extract from
Minute Book of
General Meeting
of Kim Guan &
Co.Ltd. held on
the 27th March
1960

Auditors:

Mr. Yap Fook Seng proposed Messrs. Payne, Davis & Co., to be the Company's Auditor for the ensuing year as Mr. L.J.Peace is more conversant with our accounts and financial position. Messrs. Payne Davis & Co., were unanimously re-appointed.Mr. Yap Fook Seng on behalf of all the Directors and Shareholders thanked Mr. L.J.Peace for his valuable services rendered to the Company.

10

Mr.Yap Fook Seng reported investment on rubber estates:

The Managing Director, Mr.Yap Fook Seng, reported the procedure of Investment on rubber estates. He said that since we had received a sum of approximately \$100,000/- from other sources, our Company had the capacity of purchasing rubber estates. If funds were found to be insufficient, we would mortgage our Grants to the Bank and if no such assistance was available from any of the Banks, we would dispose of the estate immediately and would divide equally among the shareholders of the estates the sum realised from the sale of the estate.

20

Mr. Yong Su Hian inquired the Managing Director as to how it was possible to purchase such a large estate, knowing that our Company had only made a small profit approximately \$10,000/- last year and furthermore our Sundry Creditors' account showed \$350,000/- while the Sundry Debtors' showed \$180,000/-.

30

Mr. Yap Fook Seng replied that the repayments to the creditors' account could be prolonged to three months' period instead of one or two months.

Mr. Yong Su Hian replied that if this was practicable, then the matters should be left in the hands of Mr. Yap Fook Seng.

Mr.Tan Phang Nam reported that income from the rubber estate would be just as good as that derived from business. Mr. Yong Kee Foon finally agreed to the points put forth by the Managing Director as well as by the Chairman. The proposal, when put to vote, was passed unanimously.

40

There being no other business to discuss, the Meeting was terminated at 1.47 p.m. with a vote of thanks to the Chair.

Confirmed,
Sd.Tan Phang Nam (In Chinese)
Chairman 30.4.61

Minutes of the Special Shareholders' Meeting of the Company held at No.26, Hugh Low Street, Ipoh, on Sunday, 26th June 1960 at 11.15 a.m.

EXHIBIT

10 (36)
(continued)

Extract from Minute Book of General Meeting of Kim Guan & Co.Ltd. held on the 26th June 1960

10

Present: Mr. Tan Phang Nam (In the Chair)
Mr. Yap Fook Seng
Mr. Yau Yit Ping
Mr. Yong Kee Foon
Mr. Ho Khoon Hee
Mr. Chew Ying Seong
Mr. Yap Meow Seng
Mr. Lee Hee Soon
Mr. Yap Chiang representing
Mr. Yap Kwek Pin

In attendance: Mr. Leong Kheun Chong

To discuss the rate of interest on the principal:

20

Mr. Yap Fook Seng reported that the interest on principal at 4% mentioned at the General Shareholders' Meeting on 23.3.1958, was not practicable. Thus this subject was unanimously dropped by all the Shareholders.

To distribute the bonus to the staff

All the Shareholders present agreed that the annual nett profit less the Income Tax be distributed as follows :-

30

35% towards Reserve Fund
7½% towards Managing Director
17½% towards Staff Bonus
40% towards Shareholders
100% on nett profit

Mr. Yap Fook Seng added that the increased rate of staff bonus would encourage the staff to put more efforts to the performance of their duties and better business would result therefrom.

There being no other business to discuss, the Meeting was terminated at 12.40 p.m. with a vote of thanks to the Chair.

Confirmed,

Sd: Tan Phang Nam
Chairman
20.4.61

40

EXHIBIT

KIM GUAN & COMPANY LIMITED

10 (36)
(continued)
Extract from
Minute Book of
General Meeting
of Kim Guan &
Co.Ltd. held on
the 30th April
1961

Minutes of the Sixth Annual General Meeting of the Company held at No.26, Hugh Low Street, Ipoh on Sunday 30th April, 1961 at 11.20 a.m.

Present: Mr. Tan Phang Nam (In the Chair)
Mr. Yap Fook Seng
Mr. Yau Yit Ping
Mr. Yong Kee Foon
Mr. Ho Knoon Hee
Mr. Tan Poh Gee
Mr. Lee Goow Seng
Mr. Yap Meow Seng
Mr. Chew Ying Seong
Mr. Yong Lip Hian
Mr. Yap Chiang representing Mr. Yap Kwek Phin

10

In attendance: Leong Kheun Chong, the Secretary

By Invitation: Mr. L.J.Peace of Messrs. Payne Davis & Company.

20

Minutes:

The Minutes of the Fifth Annual General Meeting held on 27th March 1960 were read and adopted without corrections.

Report on Accounts

Mr. Yap Fook Seng reported that the money for the purchase price of the rubber estate was derived from goods on credit.

Mr. Yong Lip Hian raised a query as to the mode of checking of goods. Mr. Yap Fook Seng replied to him, saying that it was based on the current price and cost price. After some discussions among the Shareholders the advocacy of the accounts were proposed by Mr. Lee Meow Seng and seconded by Mr. Yap Meow Seng as correct and were passed accordingly.

30

Directorate:

Messrs. Tan Phang Nam and Yap Fook Seng both retired by rotation, and offered themselves for re-election. On the proposal of Mr. Yong Kee Foon seconded by Mr. Ho Khoon Hee, Mr. Tan Phang Nam was re-elected as Director for a period of two years. Proposed by Mr. Lee Meow Seng seconded by Mr. Chew Ying Seong Mr. Yap Fook Seng was re-elected as Director for a period of two years.

40

Auditors

10 Mr. Yap Fook Seng proposed Messrs. Payne Davis & Co., to be the Company's Auditors for the ensuing year as Mr. L.J.Peace is more conversant with our accounts and financial position. Messrs. Payne Davis & Co. were unanimously re-appointed. Mr. Yap Fook Seng on behalf of all the Directors and Shareholders thanked Mr. L.J.Peace for his valuable services rendered to the Company.

EXHIBIT

10 (36)
(continued)
Extract from
Minute Book of
General Meeting
of Kim Guan &
Co.Ltd. held on
the 30th April
1961

Other Matters:

Mr. Yap Fook Seng briefly reported that the business for the year 1961 would be expanded extensively, and that he would seek ways and means to proceed, otherwise there would be no profit for this year.

There being no other business to discuss, the Meeting was terminated at 1.15 p.m. with a vote of thanks to the Chair.

20

Confirmed,
Sd: Tan Phang Nam
Chairman

KIM GUAN & COMPANY LIMITED

Minutes of the Extraordinary General Meeting of the Company held at No.26, Hugh Low Street, Ipoh, on Sunday the 29th of October 1961 at 11.00 a.m.

30

Present: Mr. Tan Phang Nam (In the Chair)
Mr. Yap Fook Seng
Mr. Wong Hon Choong
Mr. Tan Poh Gee
Mr. Yap Kok Phin
Mr. Yong Kee Foon
Mr. Chew Ying Seong
Mr. Yap Meow Seng

In attendance: Mr.Leong Kheun Chong, the Secretary

40

After the Secretary had read the Notice of Extraordinary General Meeting convened in pursuance of requisition in writing by Messrs. Yong Su Hian etc. of 20th September 1961 in connection with the deletion of Articles 31 to 46 of the Association of the Company, it was unanimously decided that the deletion of the Articles 31 to 46 was not accepted by the present

EXHIBIT

10(36)
SUB NO.29
(continued)
Extract from
Minute Book of
an Extraordi-
nary General
Meeting of
Kim Guan & Co.
Ltd. held on
the 29th
October 1961

EXHIBIT

10(36)

SUB NO.29

(continued)

Extract from
Minute Book of
an Extraordi-
nary General
Meeting of
Kim Guan & Co.
Ltd. held on
the 29th
October 1961

Shareholders and that the Memorandum and
Articles of Association of the Company of 1955
should remain unchanged.

There being no other business to discuss,
the Meeting was terminated at 12.35 a.m. with
a vote of thanks to the Chair.

Confirmed,

Sd: Yau Yit Ping

Chairman

25/3/62

10

EXHIBIT

10 (37)

RECEIPTS GIVEN BY YONG NYEE FAN
& SONS LIMITED TO KIM GUAN &
COMPANY LIMITED

EXHIBIT

10 (37)

Receipt given
by Yong Nyee
Fan & Sons Ltd.
to Kim Guan &
Co.Ltd. for 600
dollars dated
15th February
1955
No.1356

No 1356

RECEIPT.

YONG NYEE FAN & SONS LTD.
(INCORPORATED IN MALAYA)

Received from *Kim Guan Co. & Ltd.*

the sum of Dollars *six hundred & sixty only*

being rent for No. *26* *Hugh Low St.*

for the month of *Dec. 1954* & *Jan. 1955* & *Feb. 1955.*

Dated this *15th* day of *February* 1955

\$660/-



YONG NYEE FAN & SONS LTD.

Leong Yung Mai
Secretary

A.A.P.I. 5912

EXHIBIT

10 (37)

Receipt given by Yong Nyee Fan & Sons Ltd to Kim Guan & Co. Ltd. for 220 dollars dated 12th March 1955 No. 1370

No 1370

RECEIPT.

YONG NYEE FAN & SONS LTD.

(INCORPORATED IN MALAYA)

Received from Kim Guan Co & Ltd
the sum of Dollars Two hundred & twenty only
being rent for No. 26 Hugh Low St.
for the month of March 1955

Dated this 12th day of March 1955

\$220/-



YONG NYEE FAN & SONS LTD.

Leong Yong Moi
Secretary.

EXHIBIT

10 (37)

Receipt given by Yong Nyee Fan & Sons Ltd. to Kim Guan & Co. Ltd. for 220 dollars dated 4th April 1955 No. 1379

No 1379

RECEIPT.

YONG NYEE FAN & SONS LTD.

(INCORPORATED IN MALAYA)

Received from Kim Guan Co & Ltd
the sum of Dollars Two hundred & twenty only
being rent for No. 26 Hugh Low St.
for the month of April 1955

Dated this 4th day of April 1955

\$220/-



YONG NYEE FAN & SONS LTD.

Leong Yong Moi
Secretary.

No 1401

RECEIPT.

YONG NYEE FAN & SONS LTD.
(INCORPORATED IN MALAYA)

Received from *Kim Guan Co & Ltd*

the sum of Dollars *Two hundred & twenty only*

being rent for No. *26* *Hugh Low St*

for the month of *May* *1955*

Dated this *4th* day of *May* 1955

YONG NYEE FAN & SONS LTD.

\$220/-



Leong Yung Moi
Secretary

EXHIBIT

10 (37)

Receipt given by Yong Nyee Fan & Sons Ltd. to Kim Guan & Co.Ltd. for 220 dollars dated 4th May 1955
No. 1401

No 1423

RECEIPT.

YONG NYEE FAN & SONS LTD.
(INCORPORATED IN MALAYA)

Received from *Kim Guan Co & Ltd*

the sum of Dollars *Two hundred & twenty only*

being rent for No. *26* *Hugh Low St*

for the month of *June* *1955*

Dated this *14th* day of *June* 1955

YONG NYEE FAN & SONS LTD.

\$220/-



Leong Yung Moi
Secretary

EXHIBIT

10 (37)

Receipt given by Yong Nyee Fan & Sons Ltd. to Kim Guan & Co.Ltd. for 220 dollars dated 4th June 1955
No. 1423

EXHIBIT

10 (37)

Receipt given
by Yong Nye
Fan & Sons
Ltd to Kim
Guan & Co.Ltd.
for 220
dollars dated
1st July 1955
No. 1440

N^o 1440

RECEIPT.

YONG NYEE FAN & SONS LTD.
(INCORPORATED IN MALAYA)

Received from Kim Guan Co. & Ltd
the sum of Dollars Two hundred & Twenty only
being rent for No. 26 Hugh Low St
for the month of July
Dated this 1st day of July 1955

\$ 220/-



YONG NYEE FAN & SONS LTD.

Leong Vong moi
Secretary.

A.A.P.I. 5912

EXHIBIT

10 (37)

Receipt given
by Yong Nye
Fan & Sons
Ltd to Kim
Guan &
Co.Ltd. for
220 dollars
dated 1st
August 1955
No. 1460

N^o 1460

RECEIPT.

YONG NYEE FAN & SONS LTD.
(INCORPORATED IN MALAYA)

Received from Kim Guan Co. & Ltd
the sum of Dollars Two hundred & twenty only
being rent for No. 26 Hugh Low St
for the month of August 1955
Dated this 1st day of August 1955

\$ 220/-



YONG NYEE FAN & SONS LTD.

Leong Vong moi
Secretary.

A.A.P.I. 5912

No 1475

RECEIPT.

YONG NYEE FAN & SONS LTD.
(INCORPORATED IN MALAYA)

EXHIBIT

10 (37)

Receipt given by Yong Nyee Fan & Sons Ltd. to Kim Guan & Co. Ltd. for 220 dollars dated 1st September 1955 No. 1475

Received from Kim Guan Co. & Ltd.

the sum of Dollars Two hundred & twenty only

being rent for No. 26 Hugh Low St.

for the month of September 1955

Dated this 1st day of September 1955

\$ 220/-



YONG NYEE FAN & SONS LTD.

Leong Vong moi
Secretary

No 1501

RECEIPT.

YONG NYEE FAN & SONS LTD.
(INCORPORATED IN MALAYA)

EXHIBIT

10 (37)

Receipt given by Yong Nyee Fan & Sons Ltd. to Kim Guan & Co. Ltd. for 220 dollars dated 6th October 1955 No. 1501

Received from Kim Guan Co. & Ltd.

the sum of Dollars Two hundred & twenty only

being rent for No. 26 Hugh Low St.

for the month of October 1955

Dated this 6th day of October 1955

\$ 220/-



YONG NYEE FAN & SONS LTD.

Leong Vong moi
Secretary

EXHIBIT

10 (37)

Receipt given by Yong Nyee Fan & Sons Ltd to Kim Guan & Co. Ltd. for 220 dollars dated 1st November 1955 No. 1521

No 1521

RECEIPT.

This tenancy is subject to the conditions stated overleaf.

YONG NYEE FAN & SONS LTD.
(INCORPORATED IN MALAYA)

Received from Kim Guan Co Ltd

the sum of Dollars Two hundred and twenty only

being rent for No. 26 High Street

for the month of November 1955

Dated this 1st day of November 1955

\$ 220/-



YONG NYEE FAN & SONS LTD.

Leong Yung Mai
Secretary

A.A.P.I. 5912

EXHIBIT

10 (37)

Receipt given by Yong Nyee Fan & Sons Ltd to Kim Guan & Co. Ltd. for 220 Dollars dated 12th December 1955 No. 1536

No 1536

RECEIPT.

This tenancy is subject to the conditions stated overleaf.

YONG NYEE FAN & SONS LTD.
(INCORPORATED IN MALAYA)

Received from Kim Guan Co Ltd

the sum of Dollars Two hundred & twenty only

being rent for No. 26 High Street

for the month of December 1955

Dated this 12th day of December 1955

\$ 220/-



YONG NYEE FAN & SONS LTD.

Leong Yung Mai
Secretary

A.A.P.I. 5912

No 1558

RECEIPT.

This tenancy is subject to the conditions stated overleaf

EXHIBIT

10 (37)

YONG NYEE FAN & SONS LTD.
(INCORPORATED IN MALAYA)

Receipt given by Yong Nye Fan & Sons Ltd to Kim Guan & Co. Ltd. for 220 dollars dated 4th January 1956 No. 1558

Received from Kim Guan Co. Ltd.

the sum of Dollars Two hundred & twenty only

being rent for No. 26 High Street

for the month of January 1956

Dated this 4th day of January 1956

YONG NYEE FAN & SONS LTD.

\$ 220/-



Leong Yung Man
Secretary

EXHIBIT

10(37)

Receipt given by Yong Nye Fan & Sons Ltd. to Kim Guan & Co. Ltd. for 300 dollars dated 2nd March 1957 No. 1235

RECEIPT

THIS TENANCY IS SUBJECT TO THE CONDITIONS STATED OVERLEAF No 1235

YONG NYEE FAN & SONS LTD.
(Incorporated in the Federation of Malaya.)

茲收到 Received from Kim Guan Co. Ltd.

來銀 the sum of Dollars Three hundred only

係運 being rent for No. 26 High Street

for the month of March 月份 1957年

Dated this 2nd day of March 1957



YONG NYEE FAN & SONS LTD.

\$ 300/-
現銀 Cash
~~支票 Cheque~~

Wong Yung
Secretary

EXHIBIT

10 (37)

Receipt given by Yong Nye Fan & Sons Ltd to Kim Guan & Co. Ltd. for 300 dollars dated 4th January 1967 No. 4237

RECEIPT

THIS TENANCY IS SUBJECT TO THE CONDITIONS STATED OVERLEAF

No. 4237

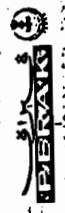
YONG NYEE FAN & SONS LTD.

(INCORPORATED IN THE FEDERATION OF MALAYA.)



茲收到 from 吳. 金 官 & 公. 限. 來銀 the sum of Dollars 三百 元 being rent for No. 20, Ampang Road Street. for the month of January 1967 年

MALAYSIA 4th day of Jan 1967



YONG NYEE FAN & SONS LTD.

\$ 300/-
C. K. B.
Cheque 14/226.

Secretary 秘書

EXHIBIT

11(19)

RESOLUTION OF DIRECTORS OF
YONG NYEE FAN & SONS dated
28th October 1954

EXHIBIT

11(19)

Resolution of
Directors of
Yong Nyee Fan
& Sons dated
28th October
1954

YONG NYEE FAN & SONS LIMITED

10 Resolution of Board of Directors
pursuant to Article 120 of the Articles of
Association passed on the 28th day of October
1954.

Resolved that the Company doth purchase
from Mr. Chin Thin Voon the land held under
Certificate of Title 5768 for Lot No. 98S
together with a house known as 26, Hugh Low
Street, Ipoh for a sum of \$35,000/- and the
Common Seal of the Company be and is hereby
authorised to be affixed to the Memorandum of
Transfer therefor in the presence of one of
the Directors and countersigned by the Secretary.

20 It is further resolved that the Company
doth pay the brokers a commission of two per
cent (2%) on the said purchase price of
\$35,000/-.

Sd: Leong Vong Moi Director

Sd: Ng Kui Yin Director

Sd: Yong Toong Liew Director

EXHIBIT
11 (20)

Resolutions of
Directors of
Yong Nyee Fan
& Sons dated
29th December
1956

EXHIBIT
11 (20)

RESOLUTIONS OF DIRECTORS
OF YONG NYEE FAN & SONS
dated 29th December 1956

YONG NYEE FAN & SONS LIMITED

Three Resolutions of the Directors made
this Twenty-ninth day of December 1956.

- (a) Resolved that Transfer No. 2 for
100 fully paid shares of \$100/- each 10
registered in the name of Madam
Ng Kui Yin numbered :-

11 to	20 inclusive	=	10	Shares
2031	" 2050	"	=	20 "
3131	" 3200	"	=	70 "
		Total	100	Shares

of the Co. be passed and that
Certificate No. 50 for the above
shares issued in the name of Mr. Yong
Nyee Fan be signed and the Seal of 20
the Company affixed thereto.

- (b) Resolved that the Company shall and
hereby does purchase from Madam Ng
Kui Yin 20 shares of \$100/- each
fully paid Nos: 551 to 570 inclusive
in Kim Guan & Co. Ltd. for the sum
of \$2,000/- and in pursuance thereof
that the relevant transfer deed be
executed and the Seal of the Company
affixed thereto. 30

- (c) Resolved that the Company shall and
hereby does purchase from Madam Ng
Kui Yin 83 shares of \$100/- each fully
paid in Yong Nyee Fan Tin Mines
Ltd numbered -

EXHIBIT

11(20)

Resolutions of
Directors of
Yong Nyee Fan
& Sons dated
29th December
1956

(continued)

891 to 900 inclusive = 10 shares
2741 " 2810 " = 70 "
2494 " 2496 " = 3 "
Total 83 Shares

for the sum of \$8,300/- and in
pursuance thereof that the relevant
transfer deed be executed and the Seal
of the Company affixed thereto.

10

Sd: Ng Kui Yin Director

Sd: Yong Ngiam Tay Director

Sd: Leong Vong Moi Director

Sd: Yong Su Hian Director

Sd: Leong Yong Moi Secretary

EXHIBIT

11 (21)

CERTIFIED COPY OF MEMORANDUM
OF TRANSFER OF 26 HUGH LOW
STREET FROM CHIN THIN VOON
TO YONG NYEE FAN & SONS dated
28th October 1954

20

Stamp to the value
of \$350/-
Stamp Office, Ipoh
29.10.54

EXHIBIT

11 (21)

Certified copy
of Memorandum
of Transfer of
26 Hugh Low
Street from
Chin Thin Voon
to Yong Nyee
Fan & Sons
dated 28th
October 1954

GOVERNMENT OF PERAK
MEMORANDUM OF TRANSFER

SCHEDULE XX

(Under section 110 of The Land Code,
Cap. 138) Presentation No. 3704/54
Transfer Vol. 467 Folio 83

30

I, CHIN THIN VOON of No.5, Brewster Road,
Ipoh being registered as the proprietor subject
to the leases charges or other registered
interests stated in the document of title thereto

EXHIBIT

11 (21)

Certified copy
of Memorandum
of Transfer of
26 Hugh Low
Street from
Chin Thin Voon
to Yong Nyee
Fan & Sons
dated 28th
October 1954

(continued)

of the whole of the land held under Certificate of Title No.5768 for Lot No.98S in the Township of Ipoh in the district of Kinta in area One thousand and nine hundred (1900) square feet in consideration of (a) the sum of Dollars Thirty five thousand (\$35,000/-) only paid to me by YONG NYEE FAN & SONS LIMITED, a Company incorporated in the Federation of Malaya, having its registered office at No.2, Gopeng Road, Ipoh the receipt of which sum I do hereby acknowledge (a) do hereby transfer to the said YONG NYEE FAN & SONS LIMITED all my right title and interest in the said land.

10

Sgd. Chin Thin Voon

Signature of transferor

I, YONG NYEE FAN & SONS LIMITED of Ipoh accept this transfer in the terms stated.

Sgd. Leong Vong Moi
Secretary

Sgd. Yong Toong Liew
Director

20

Signature of transferees

Dated this 28th day of October, 1954.

Memorial made in the register of C.Ts. volume 27A folio 168 this 3rd day of November, 1954 at 12.25 p.m.

Sgd.
Registrar of Titles,
State of Perak

SCHEDULE XXXVIII (a)

30

(Under Section 178 of the Land Code,
Cap.138)

I hereby testify that the signature of the transferor above written in my presence on this 28th day of October, 1954 (a) to my own personal knowledge the true signature of Chin Thin Voon of Ipoh who has acknowledged to me Bimal Kumar, as Advocate & Solicitor of the Supreme Court of the Federation of Malaya, that he is of full age and that he has voluntarily executed this instrument.

40

Witness my hand.

Sgd. Bimal Kumar Das
Advocate & Solicitor, Ipoh

SCHEDULE XXXVIII (b)

(Under section 178 of The Land Code,
Cap. 138)

10 I, Bimal Kumar Das, an Advocate &
Solicitors of the Supreme Court of the
Federation of Malaya hereby certify that on
this 28th day of October, 1954, the Common
Seal of YONG NYEE FAN & SONS LIMITED was duly
affixed to the above written instrument in my
presence in accordance with the regulations
of the said Company.

Witness my hand.

Sgd. Bimal Kumar Das
Advocate & Solicitor,
Ipoh

SALINAN SAH
Sd. Illegible
PENDAFTAB HAKMILEK,
PEDAK

EXHIBIT

11 (21)

Certified copy
of Memorandum
of Transfer of
26 Hugh Low
Street from
Chin Thin Voon
to Yong Nyee
Fan & Sons
dated 28th
October 1954

(continued)

20

EXHIBIT

11 (22)

LETTER FROM THONG SANG WOH
TO YONG NYEE FAN & SONS
dated 30th November 1954

Thong Sang Woh,
26, Hugh Low Street,
Ipoh

30th November, 1954

30 M/s Yong Nyee Fan & Sons Ltd.,
2, Gopeng Road,
Ipoh.

Dear Sirs,

No. 26, Hugh Low Street

I wish to surrender the above premises to
you as from 1st December, 1954.

You are at liberty to let it to Kim Guan
Company Ipoh.

EXHIBIT

11 (22)

Letter from
Thong Sang Woh
to Yong Nyee
Fan & Sons
dated 30th
November 1954

EXHIBIT

11 (22)

Letter from
Thong Sang Woh
to Yong Nyee
Fan & Sons
dated 30th
November 1954

(continued)

Yours faithfully,

Sd: Thong Sang Woh
in Chinese

(Signature of the proprietor
of Thong Sang Woh)

EXHIBIT

11 (23)

LETTER FROM YONG NYEE FAN &
SONS LTD. TO KIM GUAN & CO.
dated 20th July 1956

20th July 1956

M/s Kim Guan & Co. Ltd.,
26, Hugh Low Street,
Ipoh.

10 Sirs,

26, Hugh Low Street, Ipoh

We hereby give you one month notice
terminating your tenancy as on the 31st August,
1956.

However we are prepared to grant you a
new tenancy as from 1st September, 1956 at a
new rental of \$300/- per month.

Yours faithfully,

Sd. Illegible

20

Yong Nyee Fan & Sons Ltd.

EXHIBIT

11 (23)

Letter from
Yong Nyee Fan
& Sons Ltd.
to Kim Guan
& Co. dated
20th July
1956

EXHIBIT

11(27)

Notice of
Extraordinary
General Meeting
of Shareholders
of Kim Guan &
Co.Ltd. on the
8th October
1961 dated
19th September
1961

EXHIBIT

11 (27)

NOTICE OF EXTRAORDINARY GENERAL
MEETING OF SHAREHOLDERS OF KIM
GUAN & CO.LTD. ON THE 8TH
OCTOBER 1961 dated 19th September
1961

KIM GUAN & CO. LTD.
(incorporated in the Federation of
Malaya)
Head Office: 26 Hugh Low Street, Ipoh

10

NOTICE is hereby given that An Extra-ordinary General Meeting of Shareholders of the Company will be held at the Company's Reg. Office No.26, Hugh Low Street, Ipoh, on Sunday the 8th day of October, 1961 at 12.00 o'clock noon.

The special purpose of convening this Meeting is to discuss the tenant notice received from Messrs. Maxwell, Kenion, Cowdy and Jones on behalf of Yong Nyee Fan & Sons Ltd. to the effect that the tenancy of the Premises is to be terminated on the 31st day of October 1962.

20

As this question concerns deeply the existence of the Company in general and their hard-earned capitals in particular, all the Shareholders are therefore requested to make it a point to attend without fail.

By Order of the Board,
Leong Khuen Chong
Secretary

30

Ipoh - 19th September

EXHIBIT

11 (27)

Notice of
Extraordinary
General Meeting
of Shareholders
of Kim Guan &
Co. Ltd. on the
8th October
1961 dated
19th September
1961

怡保錦源有限公司通告

茲訂於一九六一年十月八日星期日正午十二時
在本公司註冊辦事處舉行股東特別大會。

本會議召集之目的在於討論是項潤時狀卸樓代

表揚汝極及子司所致送之租戶通知書據謂本公司

營業地之舖屋租約決於一九六二年十月廿日解除

祇因此問題普通地關係本公司之存亡而特別地

影響於人如未得妥善

股東先生屆時踴躍出席共策進行俾獲結果祈勿

吝玉為幸

此致

列位股東先生

奉董事會命

秘書梁璋昌謹啟

一九六一年十月十九日

EXHIBIT

11(38)

Letter from
Maxwell Kenion
Cowdy & Jones
to Kim Guan &
Co. dated 23rd
January 1967

EXHIBIT

11(38)

LETTER FROM MAXWELL KENION
COWDY & JONES TO KIM GUAN &
CO. dated 23rd January 1967

MAXWELL KENION COWDY & JONES,
P.O. Box No. 42,
Mercantile Bank Building,
Ipoh, Perak,
Malaysia

10

IN REPLY PLEASE QUOTE:

MS/NH/13116

23rd January, 1967

A.R. Regd.

Messrs. Kim Guan & Co. Ltd.,
26, Hugh Low Street,
Ipoh.

Dear Sirs,

Re:- Premises No.26, Hugh Low
Street, Ipoh

1. We act for Yong Nyee Fan & Sons Ltd. of
No. 1, Brewster Road, Ipoh, which is the landlord
of the above-captioned premises of which you
are the tenancy occupying the whole premises
paying a sum of \$300/- as monthly rent in
addition to which you also pay assessments.

20

2. As you are aware the said premises are
covered by the new Control of Rent Act 1966. Our
client has instructed us to write to you and
commence negotiations with you, to determine the
fair rent of the whole of the said premises under
the provision of section 7(1) of the said Act.

30

3. Our client has assessed the fair rent of the
said premises at the sum of \$700/- per month
excluding the continued payment of assessment by
you. We shall be pleased if you would kindly let
us know, on or before 14th February, 1967 whether
you agree with our client's assessment of the fair
rent. If you fail to communicate with us as
requested, our client will presume that you
dispute the said assessment of the fair rent by
our client and our client will thereafter
commence proceedings under Section 7(3) of the
said Act.

40

Yours faithfully,

Sd: Maxwell, Kenion Cowdy & Jones

c.c. Yong Nyee Fan & Sons Ltd.,
No. 1, Brewster Road,
Ipoh

EXHIBIT

11(39)

LETTER FROM YONG NYEE FAN &
SONS TO KIM GUAN & CO. dated
3rd February 1967

3rd February, 1967

Messrs. Kim Guan & Co. Ltd.,
26, Hugh Low Street,
Ipoh

10 Dear Sirs,

Enclosed is a receipt for February rental.

By now you must have received our Solicitors
letter dated 23rd January, 1967 to which we have
not your reply. However please note that unless
a fair rental is reached within this month, we
shall not be in a position to receive any further
payment of rental from you.

20

We are sure you realise the present rental
is far too out of place with the investment
value of the premises. In order that we may get a
reasonable investment return for our premises,
we may be forced to rebuild the premises which
means that you will have to be ejected from the
premises.

Perhaps you would care to come to see us to
discuss about the fair rental for the premises.

Yours truly,

Signed. Yong Su Hian

YONG NYEE FAN & SONS LTD.

30

No. 1301

Date 23/11/1954

Amount \$220/-

From whom Thong Sang Woh

House No. 26, Hugh Low St.

For the Month of Nov. 1954

\$220/-

EXHIBIT

11(39)

Letter from
Yong Nyee Fan
& Sons to Kim
Guan & Co.
dated 3rd
February 1967

EXHIBIT

12

Balance Sheet of Kim Guan & Co. dated
22nd March 1958 (continued)

TRADING ACCOUNT FOR THE YEAR ENDED 31st DECEMBER 1957.

To Stock at 1. 1. 57		8237,844.90
" Purchases	81,588,481.50	
Loss Returns Outwards and Discounts	<u>8,168.60</u>	1,579,992.90
" Duty		102,886.44
" Packing Expenses		3,078.04
" Transporting Goods Charges		1,712.44
" Gross Profit carried to Profit and Loss Account		<u>82,307.48</u>
		<u>82,007,822.20</u>

By Sales	81,805,075.97
Loss Returns Inwards	<u>83,878.52</u>
" Stock at 31. 12. 57	1,811,197.45
	<u>196,624.75</u>
	<u>82,007,822.20</u>

PROFIT AND LOSS ACCOUNT FOR THE YEAR ENDED 31st DECEMBER 1957.

To Salaries and Wages		840,855.00
" Staff Allowances		626.00
" Housing		13,517.60
" Employees Provident Fund		1,481.50
" Outstation Expenses		1,728.45
" Travelling Expenses		2,292.55
" Insurance		1,207.43
" Shop Rents -		
No. 26, High Low Street		33,600.00
No. 65, High Low Street		<u>1,440.00</u>
" Assessment		5,040.00
" Postages		594.40
" Stationery		427.15
" Telephone Charges and Telegrams		468.60
" Water and Light		1,747.80
" Newspapers		2,160.40
" Advertising		210.00
" Sundry Expenses		214.00
" Entertainment and Refreshment		561.70
" Firewood		177.90
" Donations and Subscriptions		385.00
" Sundry Repairs to		159.00
Furniture and Fixtures		511.30
Interest on Loans		257.20
" Bank Charges and Commission		1,179.00
" Interest on Overdraft		92.64
" Legal Expenses		31.84
" Accountancy, Audit Fee and General Services		1,200.00
" Depreciation -		
Furniture and Fixtures	1,000.00	
Electrical Equipment	140.00	
Sanitary Equipment	135.00	
Motor Car	<u>412.00</u>	1,595.00
" Bad Debts - Chip Teong & Co., Leping		<u>6,340.21</u>
		<u>885,017.67</u>

By Gross Profit from Trading Account	82,307.48
" Loss for the Year carried to Appropriation Account	<u>2,710.19</u>

PROFIT AND LOSS APPROPRIATION ACCOUNT

To Income Tax for Assessment Year 1957 -		82,892.47
Amount under-provided		2,710.19
" Loss for the Year		<u>70.20</u>
" Balance carried forward		<u>85,672.86</u>

By Balance brought forward	85,672.86
	<u>85,672.86</u>

Ah L

EXHIBIT

14

Letter from
Yong Su Hian
to Kim Guan
& Co. dated
26th August
1961

EXHIBIT

14

LETTER FROM YONG SU HIAN
TO KIM GUAN & CO. dated
26th August 1961

26th August, 1961

The Board of Directors,
Kim Guan & Co. Ltd.,
26, Hugh Low Street,
Ipoh

10

Dear Sirs,

I offer to you and shareholders of Kim Guan & Co., Ltd. for sale of my one hundred (100) shares in Kim Guan & Co. Ltd., at \$100/- per share.

Should my shares not wanted by any of the shareholders of Kim Guan & Co. Ltd. I apply to you to allow me to transfer thirty four (34) shares of mine to Mr. Lee Kee Sing of 36, Jalan Datch, Kuala Kangsar and hereafter to proceed offering my shares to people other than shareholders of Kim Guan & Co. Ltd.

20

Yours truly,

Sd.

Yong Su Hian

EXHIBIT

15

LETTER FROM MAXWELL KENION
COWDY & JONES TO YONG SU
HIAN dated 12th September
1961

EXHIBIT

15

Letter from
Maxwell Kenion
Cowdy & Jones
to Yong Su Hian
dated 12th
September 1961

MAXWELL, KENION, COWDY
& JONES
Advocates & Solicitors

P.O. Box No.42
Mercantile Bank
Building,
Ipoh
Federation of Malaya

10

Our reference:
WJH/LKH/851

12th September, 1961

Yong Su Hian,
2, Gopeng Road,
Ipoh

Dear Su Hian,

Re: Kim Guan & Co. Ltd.

20

I have now had an opportunity of giving some consideration to the matter of your recent instructions to me, which has arisen out of the unfortunate dispute between yourself and the above-named company, the directors of whom refused to sanction a transfer of certain shares in that company already executed by you.

30

You are no doubt fully aware that Section 115 of the Companies Ordinance, notwithstanding anything to the contrary which shall appear in any Articles of Association of any company, require the directors of any company incorporated in Malaya to convene an Extraordinary General Meeting of that company on the requisition of not less than one tenth of the holders of the paid up capital of that company. The requisition must be in writing and must state the objects of the meeting, and must be signed by the requisitioner and deposited at the registered office of the company. If the directors of any company on whom such a requisition has been served fail to convene such a meeting within 21 days from the date of the deposit of the requisition, the requisitionists or any of them representing more than one half of the total voting rights of all of them may proceed to convene their own meeting; but such meeting must be held within 3 months of the date of deposit

40

EXHIBIT

15

Letter from
Maxwell Kenion
Cowdy & Jones
to Yong Su Hian
dated 12th
September 1961
(continued)

of the original requisition.

It seems to me that all you really want to do is to have the Articles of Kim Guan & Co. Ltd. changed so that the present Board of its directors cannot prevent you from transferring your shares to anyone whom you may like provided they are unable to find any other person willing to take up the shares which you wish to transfer.

I am annexing to this letter a draft of a requisition which you can conveniently deposit at the registered office of the company as soon as it has been completed in the manner explained by me below. In the first place you must be quite certain that the persons who sign the requisition control, between them, more than one tenth of the total issued capital of the company in question. In addition to that the requisition must be signed personally by each of the requisitionists and where any shares are registered in the name of two or more persons then each of the joint shareholders must sign the requisition. In the case of a company such as your family company (Yong Nyee Fan & Sons Ltd.) being one of the requisitionists then it would, in my opinion, be better for the company to affix its Seal to the Notice of Requisition in the presence of a Director and its Secretary, or in such other manner as is provided by the Articles of the requisitioning company.

10

20

30

You have told me that Mr. Yap Fook Seng, the Director on the Board of Kim Guan & Co. Ltd. who is particularly hostile to you and your family group controls more than 33% of the issued capital of Kim Guan & Co. Ltd. This means that it will be impossible for you to have the company's Articles altered in the manner that you desire if Mr. Yap should decide to vote against the resolution, which you and your friends, intend to propose at the forthcoming requisition meeting. You will appreciate that the Articles of Association of the company can only be altered by the passage of a special resolution. Such a resolution requires at least 21 days' notice, and also to be passed by at least 75% of the persons then present and voting at the meeting at which the resolution is proposed. Furthermore, if a poll is demanded then the resolution must be passed on a share count of at least 75%. This as you will appreciate from what I have said above, will make it impossible for you and your

40

50

10 friends to alter the Articles in the manner
that you desire in the event of Mr. Yap
utilising his large block of shares to vote
against you. In the event, as will probably
prove to be the case, of the resolution to be
proposed by you at the forthcoming requisitioned
meeting being rejected there is nothing to
stop you and your friends requisitioning another
meeting at which a resolution can be proposed
to lead to Mr. Yap's removal from the Board.
20 In the event of that resolution failing; as it
probably will, you and your friends can continue
by requisitioning another meeting at which a
resolution is proposed to wind up the company.
In other words so far as I can see there is
nothing to prevent you and your friends making
life as difficult as possible for the present
Board of the company until such time that you
and they get your own way or, alternatively,
cease to be members of Kim Guan & Co. Ltd.

I do sincerely hope that what I have said
in this letter will be of some assistance to
you in dealing with and disposing of this matter,
and furthermore you will eventually be successful
in being able, with your other friends, to get
out of Kim Guan & Co.Ltd. by the sale of your
shares at a fair and reasonable price.

30 Finally, may I suggest that before you send
the requisition to the company you first show it
to me so that I can satisfy myself that it is
completely in order.

Yours sincerely,

Sd. Illegible

EXHIBIT

15

Letter from
Maxwell Kenion
Cowdy & Jones
to Yong Su Hian
dated 12th
September 1961
(continued)

EXHIBIT

16

Letter from
Kim Guan & Co.
to Yong Su Hian
dated 15th
September 1961

EXHIBIT

16

LETTER FROM KIM GUAN & CO.
TO YONG SU HIAN dated 15th
September 1961

TELEPHONE: HEAD OFFICE 3810 P.O.Box 214,
BRANCH OFFICE 3833 Ipoh, Perak

KIM GUAN & CO. LTD.

(Incorporated In The Federation of Malaya) 10
Head Office: 26, Hugh Low Street
Branch: 65, Hugh Low Street

15th September, 1961

Mr. Yong Su Hian,
No.2, Gopeng Road,
Ipoh, Perak.

Dear Sir,

We are in receipt of your letter of 26th
August 1961, contents which have been carefully
noted. 20

Your request had been mentioned at our
Directors' Meeting held on 3-9-1961. After some
discussion, it was agreed that you would be
informed of the would-be buyers among the share-
holders.

We would let you know the successful buyer
in due course.

Yours faithfully,
Sd. Yeong Khuen Chong

EXHIBIT

17

LETTER FROM YONG SU HIAN
TO KIM GUAN & CO. dated 16th
September 1961

EXHIBIT

17

Letter from
Yong Su Hian
to Kim Guan &
Co. dated 16th
September 1961

16th September, 1961

10 The Board of Directors,
Kim Guan & Co. Ltd.,
26, Hugh Low Street,
Ipoh

Dear Sirs,

I am in receipt of your letter dated 15th
September, 1961.

20 As I have on 26th August, 1961 submitted
with that letter of mine dated 26th August, 1961
instrument of transfer and my Share Certificate
No.3 for registration I shall be thankful if
you will have it registered before the end of
this month if my offer to members of Kim Guan &
Co, of my share is not accepted by any of the
members.

Yours truly,

Sd.

Yong Su Hian

EXHIBIT

18

Notice to Kim
Guan & Co.
requisitioning
Extraordinary
General Meeting
dated 16th
September 1961

EXHIBIT

18

NOTICE TO KIM GUAN & CO.
REQUISITIONING EXTRAORDINARY
GENERAL MEETING dated 16th
September 1961

No.2, Gopeng Road,
Ipoh

16th September, 1961

The Board of Directors,
Kim Guan & Co. Ltd.,
26, Hugh Low Street,
Ipoh

10

We, the undersigned representing more than one tenth of the total voting rights of all the members of the Company having at the date hereof a right to vote at General Meetings of the Company hereby require you forthwith to proceed to convene an Extraordinary General Meeting of the Company for the purpose of considering and (if thought fit) passing the following resolution, such resolution to be proposed as a special resolution, that is to say :-

20

That the Articles of Association of the Company be altered in manner following, that is to say, by deleting Articles 31 to 46 (inclusive) of the present regulations of the Company and by inserting in substitution therefor the following new articles to be numbered in manner shown :-

31. The right of members to transfer their shares shall be restricted as follows :-

30

- (a) No transfer shall be registered unless a proper instrument of transfer has been delivered to the Company.
- (b) The instrument of transfer of any share shall be executed both by the transferor and the transferee, and the transferor shall be deemed to remain the holder of such share until the name of the transferee is entered in the Register in respect thereof.
- (c) By the provisions of Articles 32 to 401 below.

40

32. A share may be transferred by a member or other person entitled to transfer to any member selected by the transferor; but save as aforesaid and save as provided by Articles 36 and 38 hereof, no share shall be transferred to a person who is not a member so long as any member is willing to purchase the same at a fair value.

EXHIBIT

18

Notice to Kim Guan & Co. requisitioning Extraordinary General Meeting dated 16th September 1961

10 33. Except where the transfer is made pursuant to Articles 36 or 38 hereof, the person proposing to transfer any share (hereinafter called 'the proposing transferor') shall give notice in writing (hereinafter called a 'transfer notice') to the Company that he desires to transfer the same. Such notice shall specify the sum he fixes as the fair value, and shall constitute the Company his agent for the sale to any member of the Company willing to purchase the share (hereinafter called the 'purchasing member') at the price so fixed. A transfer notice may include several shares, and in such case shall operate as if it were a separate notice in respect of each. A transfer notice shall not be revocable except with the sanction of the directors.

(continued)

30 34. If the Company shall within the space of one month after being served with a transfer notice, find a purchasing member and shall give notice thereof to the proposing transferor, he shall be bound upon payment of the fair value as fixed by him in accordance with Articles 33 hereof to transfer the shares to the purchasing member.

40 35. If in any case the proposing transferor, after having become bound as aforesaid, makes default in transferring the share, the Company may receive the purchase money, and the proposing transferor shall be deemed to have appointed any one director or the secretary of the Company as his agent to execute a transfer of the share to the purchasing member, and upon the execution of such transfer the Company shall hold the purchase money in trust for the proposing transferor. The receipt of the Company for the purchase money shall be a good discharge to the purchasing member, and after his name has been entered in the register in purported exercise of the aforesaid power, the validity of the proceedings shall not be questioned by any person.

50 36. If the Company shall not, within the space of one month after being served with a transfer notice, find a purchasing member and

EXHIBIT

18

Notice to Kim
Guan & Co.
requisitioning
Extraordinary
General Meeting
dated 16th
September 1961

(continued)

give notice in manner aforesaid, the proposing transferor shall at any time within three months thereafter be at liberty, subject to Article 39 hereof, to sell and transfer the share (or where there are more shares than one those not placed) to any person at a price which shall, in any event not be less than the fair value as fixed by him pursuant to Article 37 hereof :-

37. The shares specified in any transfer notice given to the Company as aforesaid shall be offered by the Company in the first place to the members, other than the proposing transferor, as nearly as may be in proportion to the existing shares held by them respectively, and the offer shall in each case limit the time within which the same, if not accepted, will be deemed to be declined, and may notify to the members that any member who desires an allotment of shares in excess of his proportion should in his reply state how many excess shares he desires to have; and if all the members do not claim their proportions, the unclaimed shares shall be used for satisfying the claim in excess. If any shares shall not be capable, without fractions, of being offered to the members in proportion to their existing holdings, the same shall be offered to the members, or some of them, in such proportion or in such manner as may be determined by lots to be drawn under the direction of the directors. 10
20
30

38. Subject to Article 39 hereof, any share may be transferred by a member to any child or other issue, son-in-law, daughter-in-law, father, mother, brother, sister, nephew, niece, wife or husband of such member, and any share of a deceased member may be transferred by his executors or administrators to any child or other issue, son-in-law, daughter-in-law, father, mother, brother, sister, nephew, niece, widow or widower of such deceased member and shares standing in the name of a deceased member or his legal personal representatives may be transferred to the trustees of his will, and shares standing in the name of the trustees of the will of any deceased member may be transferred upon any change of trustees to the trustees for the time being of such will, and the restriction in Article 32 hereof shall not apply to any transfer authorised by this Article. 40
50

39. The directors may refuse to register any transfer of a share where the company has

a lien on the shares.

EXHIBIT

18

40. The instrument of transfer of any share shall be in writing in the usual form or as near hereto as the circumstances will admit.

Notice to Kim
Guan & Co.
requisitioning
Extraordinary
General Meeting
dated 16th
September 1961

10

40.A. The Directors shall not in any case be bound to inquire into the validity regularity effect or genuineness of any instrument of transfer produced by a person claiming as transferee of any share in accordance with these Articles and whether they abstain from so inquiring or do so inquire and are misled the transferor named in the transfer shall have no claim whatever upon the Company in respect of the share the subject of such transfer except for dividends (if any) previously declared in respect thereof. And the remedy (if any) of the transferor shall be only against the transferee or the person claiming to be such.

(continued)

20

40.B. No transfer shall be made to an infant, bankrupt or person of unsound mind provided that it shall not be necessary for the Directors to make any inquiries with regard thereto before allowing any transfer.

30

40.C. Every instrument of transfer accompanied by the certificate of the shares to be transferred and such other evidence as the Directors may require to prove the title of the transferor or his right to transfer the shares or the nationality of the transferee shall be left for registration at such place as the Directors may from time to time prescribe.

40.D. A fee of one dollar (\$1.00) may be charged for each transfer and shall, if required by the Directors, be paid before the registration thereof.

40

40.E. All instruments of transfer which shall be registered shall be retained by the Company but any instrument of transfer which the Directors may decline to register shall (except in case of fraud) be returned to the person depositing the same.

40.F. The transfer books and register of members may be closed during such time or times as the Directors may think fit not exceeding in the whole thirty days in each year.

40.G. The executors or administrators of a deceased member (not being one of several joint holders) shall be the only persons

EXHIBIT

18

Notice to Kim
Guan & Co.
requisitioning
Extraordinary
General Meeting
dated 16th
September 1961
(continued)

recognised by the Company as having any title to the shares registered in the name of such member, and in case of the death of any one or more of the joint registered holders of any registered shares, the survivors shall be the only persons recognised by the Company as having any title to or interest in such shares.

40.H. Any person becoming entitled to shares in consequence of the death or bankruptcy of any member upon producing proper evidence of the grant of probate or letters of administration or such other evidence that he sustains the character in respect of which he proposes to act under this clause or of his title as the Directors think sufficient (a) may with the consent of the Directors (which they shall not be under any obligation to give) be registered as a member in respect of such shares or (b) may subject to the regulations as to transfers hereinbefore contained transfer such shares. This clause is hereinafter referred to as the "transmission clause".

10

20

40.I. Except where the transfer is made pursuant to Article 38 hereof, the Directors shall have the same right to refuse to register a person entitled by transmission to any shares or his nominee as if he were the transferee named in an ordinary transfer presented for registration.

Yours truly,

30

Sd. Yong Lip Hian
(Yong Lip Hian)

Sd. Yong Su Hian
(Yong Su Hian)

Sd. Illegible
(Yong Nyee Fan & Sons Ltd.)

Sd. V.M. Leong
(Leong Vong Moi)

Sd. Yong Sz Goong
(Yong Sz Goong)

40

Sd. Yong Khuik Yee
(Yong Khuik Yee)

EXHIBIT

20

LETTER FROM MAXWELL KENION
COWDY & JONES TO YONG SU HIAN
dated 2nd October 1961
AND ENCLOSING COPY LETTER
FROM MAXWELL KENION COWDY &
JONES TO KIM GUAN & CO.
ENCLOSED IN LAST EXHIBIT ALSO
DATED 2nd October 1961

10

MAXWELL KENION COWDY
& JONES
Advocates & Solicitors

P.O. Box No.42,
Mercantile Bank
Building,
Ipoh.
Federation of
Malaya

Our reference:
WJH/LKH/8519

2nd October, 1961

20

Yong Su Hian Esq.,
2, Gopeng Road,
Ipoh

Dear Su Hian,

Kim Guan & Co. Ltd.

I enclose herewith a copy of a letter that
I have sent to Kim Guan & Co.Ltd. I hope that
its contents meets with your full approval.

Yours sincerely,

Sd.

WJH/LKH/8519

2nd October, 1961

30

Kim Guan & Co. Ltd.,
26, Hugh Low Street,
Ipoh.

A.R. REGISTERED

Dear Sirs,

We act on behalf of Mr. Yong Su Hian of
No.2, Gopeng Road, Ipoh, Perak.

EXHIBIT

20

Letter from
Maxwell Kenion
Cowdy & Jones
to Yong Su Hian
dated 2nd
October 1961
and enclosing
copy letter
from Maxwell
Kenion Cowdy &
Jones to Kim
Guan & Co.
enclosed in last
exhibit also
dated 2nd
October 1961

EXHIBIT

20

Letter from
Maxwell Kenion
Cowdy & Jones
to Yong Su Hian
dated 2nd
October 1961
and enclosing
copy letter
from Maxwell
Kenion Cowdy &
Jones to Kim
Guan & Co.
enclosed in
last exhibit
also dated 2nd
October 1961
(continued)

On or about the 26th of August last our client sent to you all necessary documents in respect of a transfer of 34 shares in your undertaking to Mr. Lee Kee Sing.

We have been instructed that no written communication of any sort has been received by our client as to whether or not the share transfer has been or will be registered.

We particularly invite your attention to Section 69 of the Companies Ordinance which reads as follows :- 10

"(1) If a company refuses to register a transfer of any shares or debentures, the company shall, within one month after the date on which the transfer was lodged with the company send to the transferee notice of the refusal.

"(2) If default is made in complying with this section, the company and every director, manager, secretary or other officer of the company who is knowingly a party to the default shall be liable to a fine not exceeding fifty dollars for every day during which the default continues." 20

As no notice has been received by the transferee pursuant to that Section we must presume that this particular share transfer has been or will be registered. Our client has instructed us to demand from you within 48 hours written confirmation that this particular share transfer has been registered by you or will be registered before the end of the current week. Failure, on your part, to supply the confirmation demanded by this letter will lead to a complaint being lodged by us, on behalf of our client, with the Registrar of Companies in order that the necessary proceedings may be instituted against your directors, manager and secretary pursuant to the provisions of that Section. 30 40

We now invite your attention to Section 99 of the Companies Ordinance and require you, within 10 days commencing on the date following the receipt of this letter by you, to supply us with a copy of your Register of Members. Please accept this letter as our promise and undertaking to pay you the proper amount for the copy of your register demanded herewith; such amount to be computed in accordance with the provisions of the Section in question. 50

Yours faithfully,

EXHIBIT

21

LETTER FROM MAXWELL KENION
COWDY & JONES TO YONG SU
HIAN dated 7th October 1961

EXHIBIT

21

Letter from
Maxwell Kenion
Cowdy & Jones
to Yong Su Hian
dated 7th
October 1961

MAXWELL KENION COWDY
& JONES
Advocates & Solicitors

P.O. Box No. 42,
Mercantile Bank
Building,
Ipoh
Federation of Malaya

10

Our reference:
WJH/LKH/8519

7th October, 1961

Yong Su Hian Esq.,
2, Gopeng Road,
Ipoh

Dear Su Hian,

Kim Guan & Co. Ltd.

20

I feel that I must write and tell you that
a tentative approach has been made to me
concerning the settlement of the dispute between
your family and the directors of Kim Guan & Co.
Ltd.

It had been proposed to me that I write
and suggest that you telephone Mr. Yeap and
suggest that a meeting take place between the
two of you to see if this dispute can be
settled. These negotiations, so I have been
told, may prove to be fruitful.

Yours sincerely,

30

Sd. Illegible

EXHIBIT

22

Letter from
Maxwell Kenion
Cowdy & Jones
to Yong Su Hian
dated 9th
October 1961

EXHIBIT

22

LETTER FROM MAXWELL KENION
COWDY & JONES TO YONG SU HIAN
dated 9th October 1961

MAXWELL KENION COWDY
& JONES
Advocates & Solicitors

P.O. Box No.42,
Mercantile Bank
Building,
Ipoh
Federation of Malaya 10

Your reference:
WJH/LKH/8519

9th October, 1961

Yong Su Hian Esq.
2, Gopeng Road,
Ipoh

Dear Su Hian,

Kim Guan & Co. Ltd.

Further to my letter of the 7th instant
I enclose herewith a photostat of a letter that
I have just received from M/s. Das & Co., the
contents of which you will find self explanatory. 20

I have written to Das & Co. acknowledging
receipt of their letter and, at the same time,
telling them I will write further in due course.

Will you kindly call at my office at your
early convenience, to discuss this particular
matter further.

I sincerely hope that any negotiations
which you may have with Mr. Yeap will lead to
a satisfactory conclusion and this unfortunate
dispute can be ended once and for all. 30

Yours sincerely,
Sd. Illegible

DAS & CO.
Advocates & Solicitors

5 - 10 Station Road,
Ipoh, Malaya.

EXHIBIT

22

Our reference:
BKD/LCC/647/61

7th October 1961

PO Box No.231

Messrs. Maxwell, Kenion, Cowdy & Jones,
Advocates & Solicitors,
Mercantile Bank Chambers,
I P O H

Being copy
letter from
Das & Co. to
Maxwell Kenion
Cowdy & Jones
enclosed with
letter from
Maxwell Kenion
Cowdy & Jones
to Yong Su Hian
dated 7th
October 1961

10 Dear Sirs,

(continued)

Re: Kim Guan & Co. Ltd.

Messrs. Kim Guan & Co Ltd., have handed
to us your letter of 2nd October, 1961 written
on behalf of Mr. Yong Su Hian with instructions
to reply.

20 It is not true that your client forwarded
to the Company a transfer of his 34 shares in
favour of Mr Lee Kee Sing and his share
certificate with his letter of 26th August. By
his letter of that date he only offered to sell
his shares to any existing members of the
Company at par with an intimation that if such
offer was not accepted by any member he intended
to sell the shares to Mr. Lee Kee Sing, who is
not a member. This letter was placed before
the directors at a meeting held on 3rd September,
1961. Your client was advised by letter of 15th
September that he would be informed in case any
of the shareholders were interested in purchasing
30 the shares.

40 At that meeting of the directors Mr. Ho
Khoon Hee, a director, produced a transfer
purported to have been executed by your client
in favour of Mr. Lee Kee Sing, which, he said,
had been given to him by your client. Mr. Ho
informally inquired of the other directors what
their attitude would be if they were not
favourably disposed to agree to any such transfer
and told Mr. Ho to that effect. Mr. Ho took
back the transfer with him. No formal decision
by the directors was called for at that stage
for no formal transfer had been deposited at
the Company's offices required by S.34. Further
Mr. Ho did not produce the share certificate, if
it was given to him, of which the other directors
have no knowledge.

EXHIBIT

22

Being copy letter from Das & Co. to Maxwell Kenion Cowdy & Jones enclosed with letter from Maxwell Kenion Cowdy & Jones to Yong Su Hian dated 7th October 1961

(continued)

We note that you draw our clients' attention to section 69 of the Companies Ordinance; we would like you to re-read the section; no notice is required to be given to the proposed transferor for whom alone you act. The threat of complaint contained in your letter is entirely unjustified and our clients take very strong objection to the tone of your letter.

As regards copies of the register of members these are now ready and can be obtained from the Company's office on payment of \$7.50.

Yours faithfully,

Sd. Das & Co.

10

EXHIBIT

23

Letter from Maxwell Kenion Cowdy & Jones to Yong Su Hian dated 18th October 1961

EXHIBIT

23

LETTER FROM MAXWELL KENION COWDY & JONES TO YONG SU HIAN dated 18th October 1961

MAXWELL KENION COWDY & JONES
Advocates & Solicitors

P.O. Box No.42
Mercantile Bank Building
Ipoh
Federation of Malaya

20

Our ref: WJH/LKH/8519

18th October, 1961

Yong Su Hian Esq.,
2, Gopeng Road,
Ipoh

Dear Su Hian,

Kim Guan & Co.Ltd.

I refer to my letter of the 9th instant and will be extremely interested to ascertain what has further transpired in connection with this particular dispute.

30

Yours sincerely,

Sd. Illegible

EXHIBIT

24

LETTER FROM YONG SU HIAN
TO MAXWELL KENION COWDY &
JONES dated 19th October
1961

19th Oct, 1961

10 W.J. Huntsman, Esq.,
Maxwell, Kenion, Cowdy & Jones,
P.O.Box No.42,
Ipoh

Dear Mr. Huntsman,

Kim Guan & Co. Ltd.

Many thanks for your letters dated 7th,
9th and 18th instant.

20 As I have spoken to you on the phone the
other day I have had a preliminary negotiation
with the other party. If Mr.Yap is sincere
and be realistic in our negotiation I think a
settlement can be achieved when I meet him on
Sunday, 22nd Oct., 1961.

I shall phone you up on the 23rd about
the outcome of our negotiation. I am deeply
grateful to you for helping me out of the
matter.

Yours sincerely,

Sd.

EXHIBIT

24

Letter from
Yong Su Hian
to Maxwell
Kenion Cowdy &
Jones dated
19th October
1961

EXHIBIT

30

Letter from
Maxwell Kenion
Cowdy & Jones
to Kim Guan &
Co. dated
24th October
1961

EXHIBIT

30

LETTER FROM MAXWELL KENION
COWDY & JONES TO KIM GUAN
& CO. dated 24th October 1961

LYH/LKG/8511

24th October, 1961

Kim Guan & Co.Ltd.,
26, Hugh Low Street,
Ipoh

Dear Sirs,

10

Yong Nyee Fan & Sons Ltd.
re: Premises No.26, Hugh Low Street,
Ipoh

Our clients have instructed us to withdraw
the notice sent to you on 12th September, 1961,
terminating the tenancy of the above premises.
Please treat the said notice as cancelled.

Yours faithfully,

Sd. Maxwell Kenion Cowdy & Jones

EXHIBIT

25

LETTER FROM MAXWELL KENION
COWDY & JONES TO YONG SU HIAN
dated 26th October 1961

MAXWELL KENION COWDY
& JONES
Advocates & Solicitors

P.O.Box No.42.
Mercantile Bank Building
Ipoh
Federation of Malaya

EXHIBIT

25

Letter from
Maxwell Kenion
Cowdy & Jones
to Yong Su
Hian dated
26th October
1961

10 Ourreference: WJH/LKH/8519

26th October, 1961

Yong Su Hian Esq.,
2, Gopeng Road,
Ipoh

Dear Su Hian,

Kim Guan & Co. Ltd.

20 I was indeed delighted to receive your
letter dated the 24th instant advising me that
you have reached a satisfactory and amicable
settlement concerning the unfortunate dispute
between yourself and the other members of your
family and the directors of Kim Guan & Co.Ltd.

In these circumstances I do feel that this
is possibly a convenient time to bill you for
the work that I have undertaken on your behalf
in connection with this matter. I enclose
herewith a note of my charges which I trust
you will find in order.

Yours sincerely,

30

Sd.

EXHIBIT

26

Receipt for payment of Quit Rent with agreed translation dated 29th January 1973

EXHIBIT

26

RECEIPT FOR PAYMENT OF QUIT RENT WITH AGREED TRANSLATION dated 29th January 1973

014

14

26/1/1973

PEJABAT TANAH IPOH, PERAK
CHUKAI TAHUNAN, PELAJARAN, PARIT DAN TALAYA

BILIPP N° 90546

INGATAN:
CHUKAI dikehendaki di-jelaskan sa-belum 1hb Jun tiap tahun. Jika tidak di-jelaskan hingga tarikh tersebut, bayaran lewat akan dikenakan serta merta. Sa telah itu satu notis tuntutan akhir akan dikeluarkan dan bayaran keluar notis juga di-kenakan. Sekiranya tiada jua di-jelaskan di-dalam tempoh sa-bulan daripada tarikh serahan notis tersebut maka tanah yang terkandung di-dalam Suratn Hakmilk ini akan berbalak kepada milik Kerajaan menurut seksyen 100 Kanun Tanah Negara.

DAERAH	MUKIM	HAKMILEK	TAHUN
Kinta	Ipol	G.B.L. 5763 Lot 203	1973
350.00 CHUKAI TAHUNAN A	CHUKAI PELAJARAN B	Chukai Parit dan Talayer D	JUMLAH 350.00

K { Bayaran Notis ..
Denda Lewat ..
JUMLAH BESAR ..

356 29 JAN 73 0050.00 TL

Chek untuk bayaran di atas hendaklah di-tulis dengan nama Pemungut, Khazanah Tanah, Ipoh dan jua mesti-lah di palang "A/C Payee only".
Ketika hendak membayar chukai, rest pembayaran bagi tahun yang lepas mesti-lah dibawa bersama.
Akuan Terima Wang akan di-chap di sini dengan jentera wang pejabat ini dan jika tiada berchap demikian maka nambaharan tidak-lah di-beri.

Receipt for
payment of
Quit Rent
(translation
agreed) dated
29th January
1973

LAND OFFICE TPOH, PERAK

ANNUAL DRAINAGE & IRRIGATION AND EDUCATION TAX

BILL IPP NO. 90546

(continued)

REMINDER:

Taxes must be settled before 1st June of every year. If it is not settled by that date, late payment will be imposed immediately. After that a final claim notice will be issued and the fee for the issue of the notice will be levied. If there is no settlement within one month from the date of serving the said notice then the Land stated in the Title will be forfeited to the Government under Section 100 of the National Land Code.

District	Mukim	Title	Year
Kinta	Ipoh	G.B.L. 5763 Lot: 98 S	1973
\$50.00			TOTAL
ANNUAL TAX	EDUCATION TAX	DRAINAGE & IRRIGATION TAX	\$50.00
A	B	D	

(Notice Fee ..
K (Late Penalty..

Grand Total

Cheques for the above payment must be written in the name of the Collector of Land Revenue, Ipoh and must be crossed 'A/C Payee' only.

When paying tax, payment receipt for the previous year must be brought together.

Acknowledgment of payment will be printed here with the meter cash printing machine and without which payment will not be acknowledged.

*This is the certified Translation
of the original document produced
for Translation in Ipoh High Court
Jurnalation (illegible)*

No

12.3.81

Interpreter
High Court, Ipoh

TRUE COPY
(illegible)

Chief Registrar
Federal Court, Malaysia
Kuala Lumpur

EXHIBIT

27

Requests for payment of Assessments in respect of 26 Hugh Low Street with agreed translations dated 24th March 1973

EXHIBIT

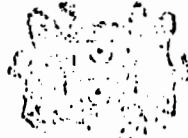
27

REQUESTS FOR PAYMENT OF ASSESSMENTS IN RESPECT OF 26 HUGH LOW STREET WITH AGREED TRANSLATIONS dated 24th March 1973

D154

D.154

MAJLIS PERBANDARAN IPOH
CUKAI TANPA KENA BAYAR BAGI
SETEGAH TAHUN YANG PERTAMA 1973



NAMA
ALAMAT
HARTA

2-72-10, YONG NYEE FAN & SONS LTD.,
2, SOPENG ROAD, IPOH 7-70-5
26, HUGH LOW STREET, IPOH H7-58-5

NO. I.O.	NILAI TAHUNAN
98 S	2640



CUKAI AWAN	CUKAI KEMERDIAAN	JUMPAH CUKAI & JUMPAH	CUKAI KENA BAYAR BAGI 3 TAHUN	1 TAHUN
23.6	23.6	623.04	311.52	

CAMPUR BENCUKAN
BAYARAN NOTIS
BAYARAN WAJIB

HUMAH KENA
BAYAR 3

311.52

*Termasuk Cukai Perumahan yang dikenakan oleh Kerajaan Pusat Malaysia dibawah Acta Pelajaran (Pindaan) 1963.

Keut rasmi akan diberi di atas ini setelah siap. Tidak akan diterima sebagai keterangan pembayaran kecuali terdapat dengan Nota Rasmi Perbandaran.

L.M.H.

MAJLIS PERBANDARAN IPOH

24-MAR-73 / 59859 -CHQ 1 ***31152

Request for payment of Assessment in respect of 26 Hugh Low Street with agreed translation dated 27th March 1973

MUNICIPALITY OF IPOH
ASSESSMENT OF TAX PAYABLE FOR THE
FIRST HALF OF THE YEAR 1973

NAME : ~~2-73-10~~ YONG NYEE FAN & SONS LTD.,
ADDRESS : 2, GOPENG ROAD, IPOH 7-70-5
PROPERTY : ~~26, HUGH LOW STREET, IPOH H7-58-5~~

Translation
(continued)

LOT NO

ANNUAL VALUE

98 S

2640

GENERAL TAX %	DEVELOPMENT TAX %	TOTAL TAXABLE %	TAX PAYABLE FOR	
			ONE YEAR	HALF YEAR
23.6	23.6		623.04	311.52
ADD ARREARS NOTICE FEE WARRANT FEE				
TOTAL PAYABLE			\$	311.52

AMOUNT PRINTED BELOW RECEIVED BY THE IPOH MUNICIPALITY

24-SEPT-73 81301 - CHQ 1 \$...311.52

- Inclusive of Education Tax levied by the Malaysian Central Government under the Education Act (Amendment) 1968

Official receipt will be given on this side of the bill. will not be accepted as acknowledgement of payment except with Machine Printed Receipt of the Municipality.

This is the certified translation of the original document produced for translation in Ipoh High Court Translation (illegible)

No. of A...

Interpreter High Court

TRUE COPY

207.

(illegible)
Chief Registrar
Federal Court, Malaysia
Kuala Lumpur
19/3/81

TRANSLATION

EXHIBIT

28

MUNICIPALITY OF IPOH
ASSESSMENT TAX PAYABLE FOR THE FIRST
HALF OF THE YEAR 1973

Receipt for
payment of
Assessment in
respect of
26 Hugh Low
Street with
agreed trans-
lations dated
27th March 1973

(continued)

NAME : 2-73-10 YONG NYEE FAN & SONS LTD.,
ADDRESS : 2, GOPENG ROAD, IPOH 7-70-5
PROPERTY : 26, HUGH LOW STREET, IPOH H7-58-5

LOT NO

ANNUAL VALUE

98 S

2640

GENERAL TAX %	DEVELOP- MENT TAX %	TOTAL TAXABLE %	TAX PAYABLE FOR	
			ONE YEAR	HALF YEAR
23.6		23.6	623.04	311.52
ADD ARREARS NOTICE FEE WARRANT FEE				
TOTAL PAYABLE			\$	311.52

AMOUNT PRINTED BELOW RECEIVED BY IPOH MUNICIPALITY

24-MAR-73 59859 CHQ 1 ..\$311.52

Inclusive of Education Tax levied by
the Malaysian Central Government
under the Education Act (Amendment) 1968

Official receipt will be given on this side of the
bill. Bill will be signed as acknowledgement of payment
and returned with the bill to the Receiver of the Municipality.

*This is the certified
Translation of the original
document produced for Translation
in Ipoh High Court Translation (illegible)
No.*

12 3 81

(illegible)
Interpreter
High Court, Ipoh

True copy
(illegible)

208.

Chief Registrar
Federal Court, Malaya
Kuala Lumpur
19/3/81

No. 32 of 1980
IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

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

B E T W E E N :

KIM GUAN AND COMPANY
SENDIRIAN BERHAD

Appellant
(Plaintiff)

- and -

YONG NYEE FAN & SONS
SENDIRIAN BERHAD

Respondent
(Defendant)

RECORD OF PROCEEDINGS

GRAHAM PAGE & CO.
11 Stone Buildings,
Lincolns Inn,
London WC2A 3TH.

Solicitors for the
Appellant

GASTERS,
44 Bedford Row,
London, WC1R 4LL

Solicitors for the
Respondent