



**IN THE HIGH COURT OF MALAYA AT KUALA LUMPUR  
(COMMERCIAL DIVISION)  
[SUIT NO. 22NCC-326-04/2013]**

**STANDARD CHARTERED BANK MALAYSIA BERHAD**

**v.**

**BIG SEED HYPER STORE SDN BHD & 2 ORS**

**GROUND OF JUDGMENT**

Enclosure 14 is the Plaintiff's application for summary judgment pursuant to Order 14 Rules of the Court 2012 (ROC) against the Defendant.

The Plaintiff's claim against the Defendant are as follows:

- “1. RM103,480.22 setakat 5.3.2013 berserta faedah seterusnya pada kadar 4.00% berdasarkan kiraan bulanan bermula dari 6.3.2013 sehingga tarikh penyelesaian penuh di bawah Akaun No. 4428 5108.
  
2. RM2,250,782.72 setakat 5.3.2013 berserta faedah seterusnya pada kadar 8.35% (1.75% + Kadar Pinjaman Asas semasa adalah 6.60%) setahun berdasarkan kiraan bulanan bermula dari 6.3.2013 sehingga tarikh

penyelesaian penuh di bawah Akaun No. 4426 6235; dan

3. RM5,528.92 setakat 5.3.2013 berserta faedah seterusnya pada kadar 9.10% (2.50% + Kadar Pinjaman Asas semasa adalah 6.60%) berdasarkan kiraan bulanan bermula dari 6.3.2013 sehingga tarikh penyelesaian penuh di bawah Akaun No. 2891 5633 3721; dan
4. Kos.”.

The application is supported by Affidavit in Support affirmed by Thayavathaney K. Ramchandran on 7.10.2013.

### **The Law**

For an application for Summary Judgment, this Court is guided by the principles laid down in *National Company for Foreign Trade v. Kayu Raya Sdn. Bhd.* [1984] 2 MLJ 300, where it was stated by the Federal Court as follows,

*“...We think it appropriate to remind ourselves once again that in every application under O14, the first considerations are (a) whether the case comes within the order and (b) whether the plaintiff has satisfied the preliminary requirements for proceeding under O 14. For the purposes of an application under O 14, the preliminary requirements -*

- (i) the defendant must have entered an appearance;*
- (ii) the statement of claim must have been served on the Defendant;*
- (iii) the affidavit in support of the application must comply with the requirements of r 2 of the O 14.*

*....If the Plaintiff fails to satisfy either of these considerations, the summons may be dismissed. If however, these considerations are satisfied, the plaintiff will have established a*



*prima facie case and he becomes entitled to judgment. This burden then shifts to the defendant to satisfy the court why judgment should not be given against him....”.*

The Plaintiff have satisfied the preliminary requirements as laid down in the *Kayu Raya*’s case that is,

- 1) the Defendants have entered appearance;
- 2) the Statement of Claim have been served on the Defendants; and
- 3) the Affidavit in Support is in compliance with O. 14 r. 2 Rules of the High Court (RHC).

The burden is now shifted to the Defendants to satisfy the Court why Judgment should not be entered against them.

In *Bank Negara Malaysia v. Mohd Ismail* [1992] 1 CLJ 627 the Supreme Court held that the duty of a Judge does not end as soon as the fact is asserted by one party, or denied or disputed by the other on affidavit. The Judge has a duty to reject such assertion or denial if such assertion or denial is equivocal or lacking in precision or is inconsistent with undisputed contemporary documents or is inherently improbable.

*“.....Under an O. 14 application, the duty of a Judge does not end as soon as a fact is asserted by one party, and denied or disputed by the other on affidavit. Where such assertion, denial or dispute is equivocal or lacking in precision or is inconsistent with undisputed contemporary documents or other statements by the same deponent or is inherently improbable in itself, then the Judge has a duty to reject such assertion or denial, thereby rendering the issue as not triable. In our opinion,*

*unless this principle is adhered to, a Judge is in no position to exercise his discretion judicially under an O. 14 application. Thus, apart from identifying the issues of fact or law, the Court must go one step further and determine whether they are triable. This principle is sometimes expressed by the statement that a complete defence need not be shown. The defence set up need only show that there is a triable issue...”.*

### **Triable issues raised by the Defendants**

**(i) The Affidavits in support by Thayavathaney K. Ramchandran.**

The said deponent is authorized to depose the Affidavit on behalf of the Plaintiff as evidenced by the Minutes of the Plaintiff’s Board of Directors.

Therefore there is no reason to reject the said Affidavits filed.

**(ii) The amount claim**

The Defendants have not shown that there is any manifest error in the Certificate of Indebtedness. The principle enunciated by Raja Azlan Shah CJ (Malaya) (as His Highness then was) in *Citibank N.A. v. Ooi Boon Leong & Ors* [1981] 1 MLJ 282 when he said *inter alia*:

*“We have often said in this court many a time that where the issues are clear and the matter of substance can be decided once and for all without going to trial there is no reason why the Assistant Registrar or the judge in chambers, or, for that matter, this court shall not deal with the whole matter under the R.S.C. Order 14 procedure. In the present case, the guarantee contains a clause which enables the bank by producing a certificate of indebtedness by its officer to dispense with legal proof of the actual indebtedness of the respondents. ...It means that, for the purpose of fixing liability*



*of the respondents, the company's indebtedness may be ascertained conclusively by a certificate."*

In the case of *Cempaka Finance Bhd v. Ho Lai Ying & Anor* [2006] 3 CLJ 551 it was held by the Federal Court that,

*"A certificate of indebtedness operates in the field of adjectival law. It excuses the plaintiff from adducing proof of debt. Such a certificate shifts the burden onto the defendant to disprove the amount claimed."*

In the present case the Certificate of Indebtedness adduced is clear and lucid. There is nothing to indicate or suggest any manifest error on the face of the said certificate.

**(iii) Guarantors**

The terms are very clear. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants are the Guarantors of the 1<sup>st</sup> Defendant. By clause 8 of the Guarantee, the Guarantors have agreed to be the principal debtors. The Guarantee is a continuing guarantee.

**(iv) Fraud**

It is contended by the Defendants that there is fraud in the issuing of the letter of offer dated 18.11.2008 issued by the Plaintiff. However, the Defendants did not see fit to raise this serious allegation when the said letter was issued. Instead the Defendants had accepted the offer.

**Conclusion**

The terms in the Agreement are very clear. There was a breach by the Defendant therefore the Plaintiff is entitled to file this Claim. I have considered the Affidavits, exhibits, the written submissions



as well as the authorities submitted by the Parties and I am of the considered view that the issues raised by the Defendants are not issues that need to be ventilated in a full trial. Enclosure 14 is allowed with cost.

**(HASNAH DATO' MOHAMMED HASHIM)**

Judge  
High Court of Malaya  
Kuala Lumpur.

**Dated:** 17 MARCH 2014



**COUNSEL:**

*For the plaintiff/respondent - Fadil Azuwan; M/s Arifin & Partners*

*For the defendants/appellants - ZS Cheong; M/s Allen & Associates*