

VEERAJAH GANAPATHY

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v.

MYSTIQUE BAY SDN BHD

HIGH COURT MALAYA, ALOR SETAR

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SOFIAN ABD RAZAK J

[CIVIL SUIT NO: 22-196-2008]

23 APRIL 2009

CIVIL PROCEDURE: *Injunction - Interim injunction - Application for - Restraining defendant from instituting execution proceeding on a charge - Whether defendant a financial institution as scheduled under Banking and Financial Institutions Act 1989 (BAFIA 1989) - Whether vesting order obtained by defendant valid and did not contravene BAFIA 1989 - Whether application dismissed - Banking and Financial Institutions Act 1989, ss. 4, 6(4), 19, 20, 49(1), 50(1), (3), (4), (6), (7)*

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BANKING: *Banks and banking business - Charge - Order for sale - Vesting order obtained by defendant - Whether valid and did not contravene Banking and Financial Institutions Act 1989 (BAFIA 1989) - Whether defendant a financial institution as scheduled under BAFIA 1989 - Banking and Financial Institutions Act 1989, ss. 4, 6(4), 19, 20, 49(1), 50(1), (3), (4), (6), (7)*

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This was an application by the plaintiff for an interim injunction to, *inter alia*, restrain the defendant from instituting execution proceeding on the charge and from disposing, charging or transferring or any business transaction whatsoever on a piece of property. The facts were that the plaintiff was the registered owner of a piece of property ('the said property') and the defendant was at all material times a company engaged in the business of acquiring non-performing loan from the financial institutions. At the time when the plaintiff acquired the said property, he had applied for a housing loan from Standard Chartered Bank Malaysia ('Standchart') to finance the said purchase. On 22 August 1997, Standchart had approved the housing loan for the sum of RM106,000 and secured by way of first party charge on the said property. The plaintiff had commenced monthly payment but later had defaulted. In November 2007, the plaintiff was informed by Standchart that it had sold off the non-performing loan of the plaintiff to the

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- A defendant. Subsequently, the plaintiff received a notice from the Land Administrator, Kulim, Kedah that the defendant had prayed for an order for sale of the said property charged as security for the housing loan. The defendant had also obtained a vesting order *vide* the Kuala Lumpur High Court in respect of the said loan.
- B In support of the application for an injunction, the plaintiff averred that the defendant was not a financial institution as scheduled under the Banking and Financial Institution Act 1989 ('BAFIA 1989') and was prohibited from applying for an order for sale from the Land Administrator to auction off the said property as it
- C deemed to be a banking business. The issue that arose for determination was whether the vesting order made by the Kuala Lumpur High Court transferring and vesting all rights, remedies and liabilities of Standchart in respect of the plaintiff's loan, security charge to the defendant was *ultra vires*, null and void and
- D of no effect as it contravened BAFIA 1989.

Held (dismissing plaintiff's application):

- (1) The law expressed in s. 50(1), (3), (4), (6) and (7) of BAFIA 1989 was to regulate the application of a vesting order and to facilitate the effectual transfer of the whole or part of the business, assets, rights and liabilities from the transferor to the transferee and not to set up hindrance to stand in the way of substantial justice. The vesting order made by the Kuala Lumpur High Court was valid and did not contravene BAFIA.
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- F The defendant's reference of scheduled business did not require it to be licenced under the BAFIA 1989. It was sufficient for Bank Negara Malaysia to grant an approval to the Sale and Purchase Agreement between Standchart and the defendant pursuant to s. 49(1) of BAFIA 1989. The
- G scheduled business undertaken by the defendant was factoring business pursuant to s. 19 and 20 of BAFIA 1989. The provisions of s. 4 and 6(4) of BAFIA 1989 did not apply in the instant case. There were no merits in the plaintiff's
- H argument and no triable issues for the court to determine herein. (paras 31, 33, 34 & 39)

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Case(s) referred to:

- Allen v. Jumbo Holdings* [1982] 2 All ER 502 (**refd**) A
Badiaddin Mohd Maidin & Anor v. Arab Malaysian Finance Bhd [1998] 2 CLJ 75 FC (**refd**)
Eu Finance Bhd v. Lim Yoke Foo [1982] 1 LNS 21 FC (**refd**)
Keet Gerald Francis Noel John v. Mohd Noor bin Abdullah & Ors [1995] 1 CLJ 293 CA (**refd**) B
Leong Moh Sawmill Co Sdn Bhd (In Liquidation) v. Standard Chartered Bank & Ors [1997] 2 CLJ 131 CA (**refd**)
Pantai Bayu Emas Sdn Bhd v. Southern Bank Bhd [2009] 2 CLJ 644 CA (**refd**)
Standard Chartered Bank Malaysia Bhd v. Eden Enterprise (M) Bhd [2003] 2 CLJ 671 HC (**refd**) C

Legislation referred to:

Banking and Financial Institutions Act 1989, ss. 2(1), 4, 6(4), 19(1), 20, 21(1), 49(1), (7), (9)(a), (b), 50(1), (3), (4), (6), (7), (8)

For the plaintiff - Peter Miranda; M/s Peter Miranda & Co
For the defendant - Mastura Masuad; M/s Arifin & Partners

Reported by Suhainah Wahiduddin

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JUDGMENT**Sofian Abd Razak J:**

- [1] This is an application (encl. 3) by the plaintiff for an interim injunction to restrain namely: F
- i) the defendant, its servants or agents from instituting execution proceeding on the charge created *vide* Presentation No: 5400/1997/Jil 162/Folio 85; G
 - ii) the defendant personally or by his servants or agents from disposing, charging or transfer or any business transaction whatsoever on property held under P.T. 4602 H.S.(MM) 769/93 Mukim Sungai Seluang Daerah Kulim, Kedah; H
 - iii) that the Land Administrator, Kulim, Kedah registered this order in the register book and to give effect to this order;
 - iv) that costs for this application be taxed and paid by the defendant to the plaintiff forthwith; I
 - v) any other relief deem fit by this Honourable Court.

A Factual Background

[2] It is essential to narrate the brief background of this case in order to understand and to give a proper perspective of this application. They are as follows:

B [3] The plaintiff was at all material times the registered owner of property held under P.T. 4602 Surat Hakmilik Sementara No: H.S. (M) 769/1993 Mukim Sungai Seluang, Daerah Kulim, Kedah Darul Aman with a postal address No: 41, Jalan Tiram 1, Taman Tiram, 09600 Lunas, Kulim, Kedah (hereinafter called the 'said property').

C The defendant was at all material times a company incorporated under the Companies Act 1965 engaged *inter alia* in the business of acquiring non-performing loan from the financial institutions.

D [4] At the time when the plaintiff acquired the said property, he had applied for a housing loan from Standard Chartered Bank Malaysia (hereinafter called 'Standchart') to finance the said purchase. On 22 August 1997, Standchart had approved the housing loan for the sum of RM106,000 interest at 9.5% per month, monthly instalment of RM958.75 and secured by way of first party charge on the said property. The plaintiff had commenced the monthly payment but later had defaulted on its monthly payment. On or about the month of November 2007, the plaintiff was informed by Standchart that it had sold off the non performing loan of the plaintiff to the defendant. On or about 15 January 2007, the plaintiff received a notice from the Land Administrator, Kulim, Kedah through the defendant's solicitor, that the defendant had prayed for an order for sale of the said property charged as security for the housing loan.

G [5] In the said letter, the defendant's solicitor also mentioned that it had obtained a vesting order dated 20 November 2007 *vide* KL High Court O.S. No: D4-24-323-2007 in respect of the said loan.

H [6] In support of the application for an injunction, the plaintiff further averred that the defendant was not a financial institution as scheduled under the Banking and Financial Institutions Act 1989 (hereinafter called 'the BAFIA 1989') and is prohibited from applying for an order for sale from the Land Administrator, Kulim,

I to auction off the said property as it deemed to be a banking

business. The defendant was not a licensed financial institution or a licensed money lender and therefore, has no right to impose interest on the non-performing loan of the plaintiff acquired from Standchart.

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[7] The plaintiff further stated that the vesting order dated 20 November 2007 transferred and vested all rights, remedies and liabilities of Standchart in respect of the plaintiff's loan, security charge to the defendant was *ultra vires*, null and void and of no effect as it contravened BAFIA 1989.

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[8] The defendant by relying on the vesting order and filing an application for an order for sale and claiming interest of the loan is wrong in law. The plaintiff had paid the sum of RM7,000 to the defendant on the mistaken belief that the defendant was entitled to claim for the said sum. The plaintiff averred that the defendant's servants or agents has been harassing the plaintiff if there were outstanding amount not paid and the said property would be auctioned off. As a result of the constant harassment by the servants or agents of the defendant, the plaintiff has suffered stress, anxiety, mental anguish and ill health.

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[9] In an application for an injunction, the principles that the court has to follow are clearly laid down in the Court of Appeal case of *Keet Gerald Francis Noel John v. Mohd Noor bin Abdullah & Ors* [1995] 1 CLJ 293, where Gopal Sri Ram JCA said at pp. 305-306:

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A judge hearing an application for an interlocutory injunction should:

- (1) ask himself whether the totality of the facts presented before him disclosed a *bona fide* serious issue to be tried. He must refrain from making any determination on the merits of the claim or any defence to it and identify with precision the issues raised and decide whether they are serious enough to merit a trial. If he finds that no serious question is disclosed, the relief should be refused. If, however, he finds that there are serious questions to be tried, he should move on to the next step of his inquiry;
- (2) having found that an issue has been disclosed that requires further investigation, he must consider where the justice of the case lies. He must take into account all relevant matters, including the practical realities of the case before him and weigh the harm the injunction would produce by its grant, against the harm that would result from its refusal; and

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- A (3) The judge must have in the forefront of his mind that the
remedy that he is asked to administer is discretionary,
intended to produce a just result for the period between the
date of the application and the trial proper and to maintain
the *status quo*. It is a judicial discretion capable of correction
on appeal. A judge should briefly set out in his judgment the
B several factors that weighed in his mind when arriving at his
conclusion.

C [10] It would therefore be appropriate for the court to consider
this application on the basis of the principles as laid in the above
case of *Keet Gerald Francis Noel John (supra)*.

D [11] Based on the above said principles, the first issue to be
determined was whether the plaintiff has succeeded in disclosing
bona fide serious issues to be tried. Before me, the learned counsel
for the plaintiff has put forward the following submissions namely:

- E a) Can the Minister approve the sale, disposal or transfer part of
the business of the licenced institution to a person who is not
licenced under s. 6(4) BAFIA 1989?
- F b) Is the Minister's approval conveyed by the letter dated 29
August 2007 *ultra vires* pursuant to s. 49(9)(a) of BAFIA
1989 and therefore null and void?
- F c) Is the vesting order dated 20 November 2007 *vide* KL High
Court O.S. No: D4-24-323-2007 *ultra vires* and null and void?
- d) Can the defendant enforce the rights vested under the vesting
order without having a banking licence?

G [12] Before the court embarks on considering the issues raised, it
would be pertinent at this juncture to reproduce the relevant
sections referred to by the learned counsel for the plaintiff namely:

Section 4

H **Banking finance company, merchant banking, discount house
and money-broking business to be carried on only under
licence.**

No person shall carry on:

- I (a) banking, finance company, merchant banking, or discount
house business, unless it is a public company; or

- (b) money-broking business, unless it is a corporation, and holds a valid licence granted under section 6(4) to carry on such business. A

Section 6(4)

Grant or refusal of application by Minister B

Upon receiving an application and the recommendation of the Bank under this section, the Minister may grant the licence, with or without conditions, or refuse the licence.

Section 49 C

Sanction required for reconstruction, etc. of licence institutions

- (1) No person shall enter an agreement or arrangement: D
- (a)
- (b) for the sale, disposal, or transfer howsoever, of the whole or any part of the business of a licenced institutions;

Unless: E

- (A) the proposed agreement or arrangement is in writing; and
- (B) all the parties thereto have first made an application in writing to the Minister for his approval of such agreement or arrangement and have obtained the Minister's approval thereto. F
- (9) An application under:
- (a) subsection (1)(b) **shall not be recommended** by the bank for approval and **shall not be approved** by the Minister where the agreement or arrangement would result in **the sale, disposal, or transfer** howsoever, of any part of the business of the licenced institution **to any person which is not a licenced institution**, except in relation to a part of the business, being a part which does not require to be licensed under this Act; G
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A Section 50**Application to High Court to facilitate agreement or arrangement for transfer of whole or part of business of licenced institution being given effect to**

- B** (2) Where the order of High Court under subsection (1) provides for the transfer of any property or business vested in or held by the transferor, either alone or jointly with any other person, then, by virtue of the order, that property or business shall, on and from the transfer date, become vested
- C** in or held by the transferee either alone or, as the case may be, jointly with such other person, and the order shall have effect according to its terms notwithstanding anything in any law or in any rule of law, and shall be binding on any person thereby affected regardless that the person so affected is not a party to the proceedings under this section or any
- D** other related proceedings, or had no notice of the proceedings under this section or of other related proceedings.

E [13] The learned counsel for the plaintiff submitted that from the affidavit of the defendant it was clear that the defendant is not a licenced institution and therefore the Minister shall not approve the application made by Standchart by virtue of s. 49(a)(b) of BAFIA 1989 unless of course if the defendant can show that it falls within the exception of s. 49(a)(b) that is except in relation to a part of the business, being a part which does not require to be

F licenced under BAFIA 1989.

G [14] The learned counsel for the plaintiff further submitted that the defendant in its affidavit never claimed that the non-performing loan it acquired from Standchart is within the exception of s. 49(a)(b) of BAFIA 1989. The letter of approval purportedly issued under s. 49(7) does not say that the business sold (ie, acquiring the non-performing loan) is within the exception of s. 49(9) (a) of BAFIA 1989.

H [15] The learned counsel for the defendant on the other hand made reference to ss. 2(1), 19, 21(1) and Third Schedule of BAFIA 1989 which are relevant to the defendant's case.

[16] The court will reproduce the relevant sections for easier reference in understanding the defendant's argument.

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- [17]** Section 2(1) interprets factoring business as: **A**
- (a) the business of acquiring debts due to any person; or
 - (b) such other business as the bank, with the approval of the Minister, may prescribe; **B**
- “scheduled business” means any business specified in the Third Schedule.
- [18]** Third Schedule BAFIA is as follows: **C**
- (Section 2(1), definition of “scheduled business”)
- 1. Building credit business
 - 2. Credit token business
 - 3. Development finance business **D**
 - 4. Factoring business
 - 5. Leasing business **E**
- [19]** Section 19(1) BAFIA is as follows: **E**
- Requirements for commencing or carrying on scheduled business
- (1) No person shall: **F**
- (a) after the effective date commence to carry on a scheduled business unless: **F**
 - (i) it is a company; and
 - (ii) it has first complied with the requirement of s. 21(1); **G**
or
 - (b) where it was carrying on a scheduled business immediately before the effective date, continue to carry on such business unless within ninety days after the effective date it has complied with the requirements of s. 21(1); **H**
- and has obtained a written acknowledgement from the bank in respect of such compliance. **I**

- A [20] Section 21(1) BAFIA is as follows:
Submission of documents, statements, etc.
- (1) A person or a foreign institution referred to in ss. 19(1) and 20(1) respectively, shall submit to the bank such documents, statements and information relating to such person or institution as are specified in paras (a) to (c) of s. 5(1) together with such fees as may be prescribed by the Minister on the recommendation of the bank.
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- C [21] The learned counsel for the defendant submitted that the defendant was incorporated on 27 April 2006 pursuant to the Companies Act 1965. In the Memorandum and Article of Association (hereinafter called 'the M & A'), the main object of the defendant is to carry on the business of acquiring debts and other business as stated in the M & A. The Standchart was at all material times a banking and financial institution incorporated and granted a licence by Bank Negara Malaysia to carry out a banking business. The Bank Negara Malaysia by letter dated 29 August 2007 had granted an approval to the sale and purchase agreement between Standchart and the defendant pursuant to s. 49(1) of BAFIA 1989. By letter dated 20 August 2007 to the defendant, the Bank Negara Malaysia had also confirmed that the defendant had complied with the necessary requirements to carry a scheduled business that is factoring business pursuant to ss. 19 and 20 of BAFIA 1989.
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- [22] On this issue, the learned counsel for the defendant further submitted that the nature of the defendant's business does not require it to be licenced under BAFIA 1989. It is sufficient for Bank Negara Malaysia to grant an approval to the sale and purchase agreement between Standchart and the defendant. Furthermore, Bank Negara Malaysia had confirmed that the defendant had complied with the necessary requirement to carry out the scheduled business in the nature of factoring business and therefore the provisions of ss. 4 and 6(4) of BAFIA 1989 does not apply in the instant case.
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- I [23] In reply to the learned counsel for the plaintiff's submission that the vesting order dated 20 November 2007 transferring and vesting all rights, remedies and liabilities of Standchart in respect of the plaintiff's loan, security and charge to the defendant was *ultra vires*, null and void and of no effect as it contravened BAFIA

1989, it was submitted for the defendant that the vesting order was a final order regularly obtained from another High Court of concurrent jurisdiction and the only exception to this rule is where the final judgment of the High Court could be proved to be null and void on ground of illegality or lack of jurisdiction. Reference was made to the case of *Badiaddin bin Mohd Maidin & Anor v. Arab Malaysian Finance Bhd* [1998] 2 CLJ 75.

[24] The learned counsel for the plaintiff further submitted that this court has the power and jurisdiction to set aside the vesting order made on 20 November 2007 made by the Kuala Lumpur High Court. The vesting order granted cannot vest and transfer the rights and liabilities of the plaintiff in Standchart to the defendant being an unlicensed institution under BAFIA 1989. Consequently the purported approval granted by Bank Negara Malaysia on 20 August 2007 was clearly *ultra vires* as the defendant was not a licensed institution or that the sale and purchase agreement falls within the exception of s. 49(9)(a) of BAFIA 1989. Learned counsel for the plaintiff referred to the case of *Standard Chartered Bank Malaysia Bhd v. Eden Enterprise (M) Bhd* [2003] 2 CLJ 671 where the court adopted the principles laid down by Abdoolcader J (as he then was) in the case of *Eu Finance Bhd v. Lim Yoke Foo* [1982] 1 LNS 21 as the correct guideline on the subject.

The general rule is that where an order is a nullity, an appeal is somewhat useless as despite any decision on appeal, such an order can be successfully attacked in collateral proceedings, it can be disregarded and impeached in any proceedings, before any Court or tribunal and whenever it is relied upon, in other words, it is subject to collateral attack. In collateral proceedings the Court may declare an act that purports to bind to be non-existent.

[25] The learned counsel for the plaintiff submitted that there are triable issues to be tried ie, whether the defendant is capable to execute against the plaintiff's property with the vesting order and whether the vesting order granted was *ultra vires* and null and void.

[26] The learned counsel for the plaintiff also submitted in the circumstances of the case, the balance of convenience lies with the plaintiff for if the property is auctioned off and if after the trial is concluded in favour of the plaintiff, the plaintiff would not be able to be restored in his original position. On the contrary, if the

A plaintiff's case is dismissed, the defendant can still recover the alleged debts by auctioning the property and to sue the plaintiff if there is a shortfall. Therefore, it is important that the *status quo* be maintained until the trial disposal of the matter.

B [27] The learned counsel for the plaintiff submitted further that
C the subject matter in question is where the plaintiff resides with
D his family. The hardship distress and mental anguish which the
plaintiff will undergo if the property is auctioned which cannot be
compensated with cost. The defendant's interest is only in the
loan and if the court decides against the plaintiff at the end of the
day, the defendant can still sell the property and recover the debt
and in the event of shortfall the defendant can sue for the
balance. The court should not deny the plaintiff of an injunction
because he is of limited financial means (refer to *Allen v. Jumbo
Holdings* [1982] 2 All ER 502).

E [28] The learned counsel for the defendant in reply submitted
F that there are no triable issues in this matter. The defendant's
action to foreclose the property was made pursuant to s. 50(8) of
BAFIA 1989. Clauses 4.3 and 4.10 of the vesting order specifically
provides that the property is vested in the defendant's name. The
order for sale made by the Land Administrator on 5 February 2008
was in the presence of the plaintiff and the Land Administrator
was *functus officio* soon after making the said order
save and except to postpone the sale ordered.

G [29] The learned counsel for the defendant submitted that the
plaintiff's financial problem could get worse if the plaintiff resisted
the foreclosure proceeding on the property as the interest
outstanding amount would increase. The plaintiff have also not
shown that he has the financial means as to the undertaking to
pay damages in the event that injunction was not allowed.
Therefore, the balance of convenience was in the defendant's
favour.

H Finding Of The Court

Are There Serious Questions To Be Tried?

I [30] One of the issues for determination by this court is whether
the vesting order made by the Kuala Lumpur High Court *vide* D4-
24-323-2007 transferring and vesting all rights, remedies and

liabilities of Standchart in respect of the plaintiff's loan, security charge to the defendant was *ultra vires*, null and void and of no effect as it contravened BAFIA 1989.

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[31] The court is of the view that the law expressed in s. 50(1), (3), (4), (6) and (7) of BAFIA 1989 was to regulate the application of a vesting order and to facilitate the effectual transfer of the whole or part of the business, assets, rights and liabilities from the transferor to the transferee and not to set up hindrance to stand in the way of substantial justice.

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[32] In the recent case of *Pantai Bayu Emas Sdn Bhd v. Southern Bank Bhd* [2009] 2 CLJ 644, the Federal Court affirmed the Court of Appeal's decision that the making of a single application to one High Court only and the vesting order made pursuant to the application would have effect throughout the whole of Malaysia.

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[33] The court is of the considered view that the vesting order made by the KL High Court *vide* D4-24-323-2007 was valid and does not contravene BAFIA 1989.

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[34] It is clear that the defendant's reference of scheduled business does not require it to be licenced under the BAFIA 1989. It is sufficient for Bank Negara Malaysia to grant an approval to the sale and purchase agreement between Standchart and the defendant pursuant to s. 49(1) of BAFIA 1989. The scheduled business undertaken by the defendant was factoring business pursuant to ss. 19 and 20 of BAFIA 1989 and the provisions of ss. 4 and 6(4) of BAFIA 1989 does not apply in the instant case.

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[35] In the case of *Leong Moh Sawmill Co. Sdn Bhd (In Liquidation) v. Standard Chartered Bank & Ors* [1997] 2 CLJ 131 where the facts briefly were that the dispute is whether a foreign bank, the Standard Chartered Bank ('the predecessor bank') can continue to pursue matter relating to foreclosure proceedings in its name after it had already sold all its banking business in Malaysia to Standard Chartered Bank Malaysia Bhd ('the successor bank') pursuant to a vesting order made under s. 50(1) of BAFIA 1989.

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[36] Siti Norma Yaakob JCA (later CJM) held *inter alia* as follows:

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- A a) the vesting order was such that there was no requirement for a formal order of substitution under Order 15 rule 7(2) of the Rules of the High Court 1980;
- B b) the successor bank was deemed to be a party in all proceedings initiated by or commenced against the predecessor bank; and
- C c) the transfer of any property or business pursuant to the vesting order shall on and from the transfer date become vested in or held by the transferee ie, a transmission of interest from one legal entity to another.

[37] The learned judge in *Standard Chartered Bank Malaysia Bhd (supra)* followed the decision in *Leong Moh Sawmill Co. Sdn Bhd (In Liquidation) (supra)* and held *inter alia* that:

- D (a) the defendant's contention that the vesting order was *ultra vires* BAFIA was a non-issue, in view of the clear provisions of BAFIA, particularly s. 50(3) providing non-challengeability of the vesting order made under s. 50(1) and
- E (b) that BAFIA 1989 is enabling in nature and not prohibitory in that it makes possible the transfer of the predecessor bank's business in Malaysia to the successor bank in a single application to the High Court, thereby obviating the need for a piecemeal transfer of assets and liabilities related to the business.
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[38] The learned counsel for the plaintiff's contention in the instant case is not exactly pertaining to the matter as held by the court as in both the cases but it is more on the *locus standi* of the defendant. The defendant is not an institution licenced under the BAFIA 1989 to benefit the provisions of BAFIA 1989. The defendant is not a banking institution as compared to Standchart. It was on this premise that the vesting order granted could not extend to the defendant. I could sense from the plaintiff's argument that if the vesting order was to transfer the liabilities, rights, etc to a licenced institution within BAFIA, it does not contravene BAFIA and was perhaps a non-issue.

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[39] With respect to the learned counsel for the plaintiffs, the court cannot agree with that proposition if ever it was raised by the plaintiff. The court is of the considered view that the vesting order granted by the KL High Court *vide* O.S. No: D4-24-323-

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07 was valid and does not contravene the BAFIA. Therefore, the court finds that there are no merits in the plaintiff's argument and no triable issues for the court to determine.

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[40] There is also no need to proceed to the second stage of the inquiry to decide on whose side the balance of convenience falls.

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[41] The plaintiff's application (encl. 3) is hereby dismissed with costs and an early date for trial is to be fixed.

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