

**IN THE HIGH COURT OF MALAYA AT KUALA LUMPUR
IN THE FEDERAL TERRITORY OF KUALA LUMPUR, MALAYSIA
(COMMERCIAL DIVISION)**

[CIVIL APPEAL NO. WA-12AM-4-01/2025]

(HEARD TOGETHER WITH)

[CIVIL APPEAL NO. WA-12AM-3-01/2025]

BETWEEN

OOI SWEE KING

(NRIC No. 820320-08-5175)

... APPELLANT

AND

**STANDARD CHARTERED SAADIQ
BERHAD**

(Company No. 200801022118)

... RESPONDENT

[In the Matter of the Sessions Court at Kuala Lumpur
In the Federal Territory of Kuala Lumpur, Malaysia
Suit No.: WA-B52M-937-06/2024

BETWEEN

**STANDARD CHARTERED
SAADIQ BERHAD**

(Company No. 200801022118)

... PLAINTIFF

AND

OOI SWEE KING

(NRIC No. 820320-08-5175)

... DEFENDANT

GROUND OF JUDGMENT

INTRODUCTION

[1] This matter concerns two interlocutory appeals, the decisions of which

were handed down on 22 May 2025, namely:

- (a) **Appeal No. WA-12AM-4-01/2025** - the appellant's ("**defendant**") appeal against the learned Sessions Court Judge's ("**SCJ**") decision dated 14 January 2025, which allowed the respondent's ("**plaintiff**") application for summary judgment under Enclosure 8, with costs of RM1,500.00; and
- (b) **Appeal No. WA-12AM-3-01/2025** - the defendant's appeal against the learned SCJ's decision dated 14 January 2025, which allowed the plaintiff's application in Enclosure 7 to strike out the defendant's counterclaim, with costs of RM1,500.00.

BACKGROUND FACTS

- [2] Pureman Venture Sdn Bhd ("**Pureman Venture**") was a customer of the plaintiff bank, who had applied for financing. Based on an Offer Letter dated 28 September 2018, the plaintiff granted Pureman Venture with a BizFinancing-i Commodity Murabahah facility amounting to RM500,000.00 under account No. 60070226 ("**Facility**"). Pursuant to a Guarantee dated 28 September 2018 ("**Guarantee**"), the defendant has agreed to guarantee all outstanding payments of the said Facility.
- [3] The chronology of material events and procedural developments is as follows:
 - (a) The plaintiff commenced proceedings against Pureman Venture and the defendant in the Sessions Court via Writ of Summons filed on 30 April 2021 in Suit No. WA-B52M-121-04/2021 ("**Suit 121**");
 - (b) On 30 June 2021, judgment in default of appearance was entered against both Pureman Venture and the defendant;
 - (c) Pureman Venture was subsequently wound up on 26 June 2022;
 - (d) The defendant's application to set aside the default judgment was

dismissed by the Sessions Court on 16 December 2022;

- (e) On appeal (Appeal No. WA-12AM-11-12/2022), the High Court, on 20 March 2023, set aside the default judgment against defendant on the ground that the Statement of Claim served on the defendant in Suit 121 was undated. The Court further directed the plaintiff to re-serve duly sealed, signed, and dated cause papers within 14 days;
- (f) However, instead of re-filing or amending the Statement of Claim, the plaintiff's solicitors unilaterally inserted a date and re-served the Writ and Statement of Claim via registered post on 13 April 2023. This act prompted the defendant to file a striking-out application, contending that the Writ in Suit 121 had expired and the Statement of Claim remained procedurally defective;
- (g) On 12 July 2023, the Sessions Court allowed the defendant's striking-out application with cost of RM3,000.00 to the defendant. Plaintiff was nevertheless granted liberty to file a fresh action;
- (h) The defendant's appeal against the Sessions Court's grant of liberty to refile was dismissed by the High Court on 20 October 2023 (see: Appeal No. WA-12AM-7-07/2023; *Ooi Swee King v Standard Chartered Saadiq Bhd* [2024] 2 CLJ 476 (HC)). The defendant's subsequent appeal to the Court of Appeal was unanimously dismissed on 12 August 2024 (Appeal No. W-04(IM)(MUA)-462-11/2023);
- (i) Pursuant to that liberty, the plaintiff issued a fresh letter of demand cum termination against the defendant on 4 December 2023;
- (j) Subsequently, on 14 June 2024, the plaintiff commenced the present suit against the defendant (**"Suit 937"**);

- (k) The defendant filed his defence and counterclaim in Suit 937 on 11 September 2024;
 - (l) The plaintiff filed both the summary judgment application (Enclosure 8) and the application to strike out the defendant's counterclaim (Enclosure 7) concurrently on 11 October 2024;
 - (m) On 14 January 2025, the learned SCJ allowed the plaintiff's application for summary judgment (Enclosure 8) in the sum of RM551,864.35 as at 10 June 2024, and also granted the plaintiff's application to strike out the defendant's counterclaim (Enclosure 7); and
 - (n) Aggrieved, the defendant filed notices of appeal to the High Court against both decisions on 22 January 2025.
- [4] The appeals were heard on 28 April 2025. Following careful consideration of the submissions presented, I delivered my decision on 22 May 2025, dismissing both appeals. Costs were awarded in the sum of RM3,000.00 for the appeal concerning Enclosure 8, and RM1,500.00 for the appeal concerning Enclosure 7. These grounds are now prepared in conjunction to the applicant's notices of appeal dated 9 June 2025.

ISSUES

- [5] Appeal No. **WA-12AM-4-01/2025** concerns the issue of whether the defendant has raised genuine disputes of material fact that warrant a full trial.
- [6] Appeal No. **WA-12AM-3-01/2025** concerns the issue of whether the defendant's counterclaim ought to be struck out on the ground that it is plainly and obviously unsustainable.

COUNSELS' CONTENTIONS

(i) Defendant's contentions

- [7] With regards to the issue of summary judgment application (Appeal No. WA-12AM-4-01/2025), learned counsel for the defendant, Lum Kok Kiong submits there is a delay of one (1) month in applying for summary judgment, citing *Krishnamurthy & Anor v Malayan Finance Corporation Bhd* [1986] 2 MLJ 134 (SC) wherein any delay must be explained.
- [8] On the merits, counsel argues that the Guarantee was procured through fraud and misrepresentation. Dilating on the issue, counsel contends that there was active concealment by the respondent, as the Offer Letter dated 28 September 2018 expressly stated that the financing facility was to be secured solely by Syarikat Jaminan Pembiayaan Perniagaan (SJPP)'s corporate guarantee, with no reference whatsoever to a personal guarantee.
- [9] Relying on *Blue Nile Co Ltd v Emery Customs Brokers (S) Pte Ltd* [1990] 2 MLJ 385 (HC Singapore), the learned counsel of the defendant argues that the defendant was misled into signing incomplete documents.
- [10] In support of his allegation of forgery, the appellant lodged a police report on 11 September 2024. Counsel explains the timing of the report as being due to the plaintiff's earlier suit (Suit 121) having been struck out, wherein the delay is excusable.
- [11] Learned counsel for the defendant further asserts that the Certificate of Indebtedness is tainted by manifest error, as it imposes interest at the rate of 13%, which he claims is in direct contradiction to a prior court order capping interest at 5%, referring to *Credit Corp (M) Bhd v Lucky Height Development Sdn Bhd & Ors* [1996] 4 MLJ 556 (HC).
- [12] Lastly, counsel argues that the serious nature of the fraud allegations raises triable issues that warrant a full trial, in accordance with the principle set out in *Concentrate Engineering Pte Ltd v United Malayan*

Banking Corp Bhd [1990] 3 MLJ 1 (HC Singapore).

- [13] With regards to the striking out application (Appeal No. WA-12AM-3-01/2025), learned counsel submits that the learned SCJ erred in allowing the plaintiff's striking-out application, as the case did not meet the high threshold required under Order 18 rule 19 of the Rules.
- [14] Counsel contends that the allegations of fraud raised in the counterclaim ought to have been ventilated at trial, consistent with the principle in *Seruan Gemilang Makmur Sdn Bhd v Kerajaan Negeri Pahang* [2016] 3 MLJ 11 (FC), which affirms that claims involving fraud are generally unsuitable for summary disposal.
- [15] Counsel further argues that the Offer Letter's express reference to the SJPP corporate guarantee, without any mention of a personal guarantee, gives rise to the presumption that no such personal obligation was intended, invoking the canon of construction *expressio unius est exclusio alterius*, as applied in *Era Kemuncak Jaya (M) Sdn Bhd v Tenaga Switchgear Sdn Bhd* [2021] MLJU 1855 (HC).
- [16] Moreover, it is argued that the plaintiff's striking-out application was procedurally flawed, as it relied on multiple limbs of Order 18 rule 19 without clearly identifying the basis relied upon, contrary to the approach endorsed in *Razshah Enterprise Sdn Bhd v Arab Malaysian Finance Bhd* [2009] 2 MLJ 102 (CA). Accordingly, learned counsel for the defendant contends that this was not a plain and obvious case warranting summary disposal of the counterclaim.

(ii) Plaintiff's contentions

- [17] With regards to the issue of summary judgment application (Appeal No. WA-12AM-4-01/2025), learned counsel for the plaintiff, Tay Yeong Hui contends that the learned SCJ was correct in granting summary judgment, as the appellant failed to raise any bona fide triable issue.

- [18] It is submitted that the Guarantee is binding and the appellant's signature thereon constitutes unequivocal evidence of assent, as affirmed in *CCM Chemicals Sdn Bhd v Wan Muhamad Ibrislam Wan Ibrahim* [2011] CLJU 1011; [2011] 1 LNS 1011 (HC).
- [19] Further, the appellant's allegations of fraud, raised only after default and coinciding with the filing of the Defence, lack credibility and appear to be a tactical afterthought, consistent with the observations in *RHB Bank Bhd v Majmekar Holdings Sdn Bhd & Ors* [2009] 2 MLJU 0272 (HC).
- [20] Counsel also maintains that there is no manifest error in the Certificate of Indebtedness. The 13% per annum is not based on any interest rate but instead an agreed profit rate and is in line with Shariah Advisory Council (SAC) guidelines. Without any manifest error the certificate issued is deemed conclusive, as upheld in *Cempaka Finance Bhd v Ho Lai Ying & Anor* [2006] 3 CLJ 544 (FC).
- [21] Ultimately, counsel argues that the defendant's purported defences amount to nothing more than bare denials, which fall short of the threshold required to resist a summary judgment application under Order 14.
- [22] With regards to the striking out application (Appeal No. WA-12AM-3-01/2025), learned counsel for the respondent submits that the learned SCJ was correct in striking out the appellant's counterclaim, as it was plainly and obviously unsustainable within the meaning of *Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corp Bhd* [1993] 3 MLJ 36 (SC).
- [23] Counsel contends that the defendant's allegations of fraud amounted to nothing more than bare assertions, unsupported by any credible or contemporaneous evidence. Most notably, there was no affidavit from Vince Yap (the plaintiff's representative) and no forensic analysis to substantiate claims of forgery.

- [24] Counsel further points out that the police report alleging fraud was lodged only in 2024, more than two years after the issuance of the bankruptcy notice, suggesting it was a belated afterthought intended to derail proceedings, as cautioned in *Datuk Hj Ishak Ismail v Kenanga Investment Bank Berhad & Ors* [2011] CLJU 1358 (HC).
- [25] In any event, the plaintiff contends that the Guarantee remains valid and enforceable, as parties are bound by signed documents regardless of whether they were read prior to execution, in accordance with *Elephant Gypsum Sdn Bhd v Elevic Trading Sdn Bhd & Ors* [2001] 7 CLJ 405 (HC).
- [26] Counsel also contends that the existence of SJPP’s corporate guarantee does not absolve the defendant from personal liability, as the defendant is a principal debtor under the Guarantee, consistent with the principle in *Andrew Lee Siew Ling v United Oversea Bank (M) Berhad* [2013] 1 CLJ 24 (FC).

COURT’S FINDINGS

- [27] The appropriate approach for this court in determining whether to allow or dismiss an appeal against the lower court's interlocutory decisions would be by way of re-hearing. In *Ruslan Baharin Industries Sdn Bhd & Ors v Kerajaan Malaysia* [2010] 7 CLJ 713 (CA), Suriyadi Halim Omar JCA (as His Lordship then was) held as follows:

“[21] In *United Malayan Banking Corporation Berhad v Pembinaan KSY Sdn Bhd & 2 Ors* [1993] 3 CLJ 612 likewise the Supreme Court had occasion to discuss the principles of interference by an appellate court in an O.14 appeal. Mohamed Dzaidin, SCJ in dismissing the appeal held:

The approach to be taken by an appellate court in Order 14 appeal has been settled. The appellate court should not regard the appeal as reviewing the exercise of the judge’s discretion but approach the appeal as a

rehearing. This principle was accepted by this court in *Koh Siak Poo v Perakayan OKS Sdn Bhd & Ors* [1989] 2 CLJ 1 (Rep); [1989] 1 CLJ 30; [1989] 3 MLJ 164, following *Malayan Insurance (M) Sdn Bhd v Asia Hotel Sdn Bhd* [1987] CLJ Rep 182; [1987] 1 CLJ 246; [1984] 2 MLJ 300 and *European Asia Bank v Punjab & Sind Bank (No 2)* (CA) [1983] 1 WLR 643; [1983] 2 All ER 508, 516.”

Put simply, the summary judgment application is in effect a re-heard afresh.”

[28] Guided by these principles, the Court proceeds to analyse the issues raised in both appeals:

(a) **Summary Judgment (Appeal No. WA-12AM-4-01/2025)**

(i) ***Whether Unexplained Delay Defeats an Order 14 Application***

[29] On the issue of delay, the plaintiff filed their order 14 application on 11 October 2024. As the defendants filed his defence on 11 September 2024, the defendant takes objection on the unexplained delay of one (1) month. The plaintiff in their written submissions did not respond to the issue of delay.

[30] The defendant relies on the Supreme Court case of **Krishnamurthy & Anor v Malayan Finance Corp Bhd** (*supra*) where the court adopted what they considered to be the *ratio decidendi* in *McLardy v Slateum* [1890] 24 QBD 504. This is what they said (at p 1351-B):

“In the second place the law as to the time when an application for an O. 14 judgment could be made is settled law. The application must be made after an appearance has been entered and it could be made either before or after the delivery of defence provided that where it was made after the delivery of the defence, the plaintiff must explain the delay. If

this explanation was not accepted by the court no O. 14 judgment could be signed.”

[31] The Supreme Court made explicit what was implicit in **McLardy**, that where there is delay, the plaintiff must offer an explanation. If the explanation is unsatisfactory, summary judgment ought not to be granted. In the absence of any explanation, the application must necessarily fail.

[32] Then again, there is the case of *Perkapalan Shamelin Jaya Sdn Bhd & Anor v Alpine Bulk Transport New York* [1997] 3 MLJ 818 (CA) wherein conditional leave to defend was granted by the Court of Appeal despite an unexplained delay of 6 months. NH Chan JCA held as follows:-

“An application for leave to sign judgment under O. 14 r 1 of the Rules of the High Court 1980 need not necessarily be made before the defendant has delivered his defence. A defendant may show cause by 'affidavit or otherwise' and the term 'or otherwise' allows the defendant to do so by delivering a defence. Therefore, delay in applying for O. 14 is no ground for defeating the plaintiff's right to summary judgment under O. 14 when there is no real defence disclosed.”

[33] In *Lee Wah Bank Ltd v Chee Kong Electrical Engineering Sdn Bhd & Ors* [1999] 6 MLJ 153 (HC), the divergence of viewpoints between the Supreme Court in **Krishnamurthy** (*supra*) and the Court of Appeal in **Perkapalan Shamelin Jaya** (*supra*) was considered wherein Abdul Aziz J held that an unexplained delay of 9 months is no bar to summary judgment. Abdul Aziz J quite rightly pointed out that the proposition that delay is not a relevant matter in an application for summary judgment was decided in *Brinks Ltd v Abu-Saleh & Ors (No 1)* [1995] 4 All ER 65 (HC) at pp. 68f-69c wherein Jacob J held as follows:

“What then is the rule as regards delay and O. 14? It is said

that the plaintiffs have delayed so much, and the case is so close to trial, that I should regard the application as an abuse of process. Now it is true that normally plaintiffs used O. 14 shortly after they commence proceedings, normally, but not always, before a defence is filed. But there is nothing in the rules precluding an application at a later stage in the proceedings. I do not see why delay, of itself, should be a relevant matter. If there is 'no defence to the claim' or the defendant cannot show that there is an 'issue or question in dispute which ought to be tried or that there ought for some other reason to be a trial of that claim' then delay can make no difference. Of course in some circumstances delay in proceeding summarily, coupled with an adoption of the procedures for full trial, may well suggest a weakness in the plaintiff's case or may even sometimes suggest some other reason for trial. But it would be that weakness or reason, not the delay itself, which led to refusal of the application. Moreover the plaintiff may well, having indicated an intention to go to full trial and then having incurred his own costs and caused the defendant to incur his in going down that route, have to suffer a penalty in costs if he brings his O. 14 application late. But otherwise I can see no objection to a late application for judgment under O. 14. Indeed, in some cases, and I think this is one, its use may be commendable as saving both the extra costs and time involved in a full trial. If these defendants truly have no defence it is worse and pointless for them to be present at the trial, which will be complex enough without them. The plaintiffs are right to clear the decks as far as possible before trial.

The only case which counsel could find on delay in instituting O. 14 proceedings was from 1890. It was *McLardy v Slateum* [1890] 24 QBD 504, where the issue was whether or not an application for O. 14 relief could be made after a defence had

been served. It was held that it could, but Pollock B added, obiter (at pp 506-507):

'If a plaintiff makes his application after the ordinary time, the onus is on him to shew that the delay is justifiable under the special circumstances of the case.'

He gave no reason for so saying. Whilst that may well have been apposite in the 1890s, when trials were quicker and cheaper and I suspect O. 14 was more restricted in its use, I do not think it appropriate today.”

[34] Having considered these authorities, I am of the view that the unexplained one-month delay should not serve as a bar to the plaintiff’s application for summary judgment. The divergent judicial approaches canvassed above, along with the evolving context of procedural law call for a more nuanced approach that weighs the specific circumstances rather than solely focusing on the element of delay.

(ii) Whether SJPP’s Corporate Guarantee Discharges the Defendant

[35] The Court is of the view that the existence of SJPP’s guarantee does not operate to discharge the defendant’s personal liability under the Guarantee. The terms of clause 9 of the ‘Standard Terms & Conditions Governing BizFinancing-i Facility’ within the Offer Letter make clear that the Customer remains primarily liable for the facility, while SJPP (defined as the Guarantee Service Provider (GSP)) undertakes a concurrent obligation to the Bank under the *Kafalah* contract. In the event of default, the plaintiff is entitled to recover the outstanding sum from either the defendant or SJPP, at its discretion. There is no requirement to proceed against one before the other. The guarantee remains in force until it is discharged by full settlement, set-off, waiver, or expiry of the guarantee period.

[36] If SJPP makes payment to the plaintiff, clause 9(f) entitles SJPP, through subrogation, to take over the plaintiff’s rights under the

facility and related securities for recovery purposes, while clause 9(h) preserves SJPP's contractual right of recourse against the defendant. Together, these provisions ensure that the defendant ultimately bears the debt. This arrangement gives the plaintiff two concurrent avenues of enforcement, enabling it to maximise recovery while maintaining the defendant and Pureman Venture as the ultimate debtors.

[37] The plaintiff is therefore entitled to pursue the corporate guarantee under SJPP as well as from the customer and guarantor (defendant) concurrently, including action against the defendant as guarantor, a position upheld in the case of *RHB Islamic Bank Bhd v Amazon Pillar Enterprise Sdn Bhd dan Iain-Iain* [2025] MLJU 19 (HC) per Mohd Rosli Yusoff JC.

(iii) Whether the Guarantee Was Obtained Through Concealment and Fraud

[38] On the merits, first, this Court is of the view that the learned SCJ is correct in his findings that there is no merit in the defendant's challenge to the validity of the Guarantee. This is so as the defendant's allegation that the Guarantee was procured by concealment is unsubstantiated. The Offer Letter and the Guarantee are separate instruments, and the mere absence of a personal guarantee clause in the Offer Letter does not negate the existence or enforceability of the executed Guarantee. As established in **Elephant Gypsum Sdn Bhd v Elevic Trading** (*supra*), the two documents serve distinct functions and are not mutually dependent.

[39] Moreover, the Guarantee was duly signed by the defendant in his capacity as director of Pureman Venture. His failure to read or understand its contents does not relieve him of the legal consequences of his signature, consistent with the principle in **L'Estrange v F Graucob Ltd** (*supra*).

[40] In *Maybank Islamic Bhd v Kamarulzaman Mohamed Nordin* [2013] 10

CLJ 488 (HC) Asmabi Mohamed JC (as Her Ladyship then was) held that a party who signs a document is generally bound by its terms, and mere allegations of inconvenience or later regret do not suffice to escape contractual obligations. The principle is clear in that the law does not offer sanctuary to those who, having had every opportunity to read and understand a document, later claim to have misunderstood its effect. This principle is well supported by authority, including *Polygram Records Sdn Bhd v Hillary Ang & Ors (Collectively Known as "The Search") & Anor* [1994] 3 CLJ 806 (HC) (per *Visu Sinnadurai J*) and *Serangoon Garden Estate Ltd v Marian Chye* [1959] 1 MLJ 113 (per Chua J, Singapore District Court Appeal), which affirm that parties who formally execute an agreement are bound by its terms.

[41] Turning to defendant's argument regarding discrepancies between the terms of the Offer Letter and the Guarantee, I find no inconsistency between these documents. Clause 2(B)(b) of the 'Standard Terms & Conditions Governing BizFinancing-i Facility' within the Offer Letter explicitly mentions the need for the "*execution of relevant guarantee and/or security documents on terms acceptable to the Bank and perfection of the security*". In any event, I hold that the Guarantee is a standalone and binding agreement, independent of the Offer Letter. While the Offer Letter may provide context, any alleged discrepancies do not affect the enforceability of the Guarantee.

[42] Further, it is trite law that guarantees are generally construed independently of other documents unless expressly incorporated. A guarantee is basically a promise by one person ('surety' or 'guarantor') to answer for the default of another ('principal debtor') to a third person ('creditor'). Section 79 of the Contracts Act 1950 defines it a "a contract to perform the promise, or discharge the liability, of a third person in case of his default". The essential characteristic of a guarantee is that the guarantor's liability is collateral to the principal's liability, and fully dependent upon the principal debtor's primary liability and contingent upon his default. Based on Section 81 of the

Contracts Act 1950, although guarantor's liability is co-extensive with the principal debtor, parties are free to otherwise provide by way of contract.

[43] Based on clause 2(a)(i) & (ii) of the Guarantee and Indemnity, defendant's liability is categorized as 'principal obligor' and are liable 'upon demand'. Further to defendant being principally liable upon demand, clause 2(a)(iii) of the Guarantee states as follows:

“Each Guarantor irrevocably and unconditionally:

....

(iii) agrees to indemnify the Bank immediately on demand against any cost, loss or liability suffered by the Bank in any of the Guaranteed Obligations or purported obligations guaranteed by it is or becomes unenforceable, invalid or illegal. The amount of the costs, loss or liability under this indemnity will be equal to the amount the Bank would otherwise have been entitled to recover. This indemnity constitutes a separate and independent obligation from any other obligations in this Guarantee, shall give rise to a separate and independent cause of action and shall remain in full force despite any waiver, indulgence, judgment or order given in respect of any sum due under this Guarantee.”

[44] This clause underscores the dual obligations of the defendant, both as a guarantor and an indemnitor. Section 77 of the Contracts Act 1950 defines indemnity as a promise to hold another harmless from loss arising out of a transaction or resulting from the conduct of another. Such a clause offers greater protection to the plaintiff in the event of the borrower's default, as it imposes liabilities that are more difficult to displace than those arising under a guarantee.

[45] Unlike guarantees, indemnity clauses survive the termination or material variation of the underlying contract. Based on Section 78 of

the Contracts Act 1950, they also provide broader compensation than damages, as they are not necessarily subject to the principle of co-extensiveness, which limits a guarantor's liability to the scope of the principal debtor's obligations.

[46] The defendant's fraud allegations are further undermined by the timing of the police report, which was lodged more than two years after the default and only after litigation had commenced. This significant delay, absent any credible explanation or contemporaneous evidence, renders the allegation suspect and indicative of an afterthought, as recognised in **CCM Chemicals Sdn Bhd v Wan Muhamad Ibrisam** (*supra*). Accordingly, I am of the view that it is correct for the learned SCJ to find that this argument is not triable.

(iv) *Whether the Plaintiff's Claim is Substantiated by the Certificate of Indebtedness.*

[47] On this issue of quantum, I find that the Guarantee contain conclusive evidence clause pertaining to the bank's statement of account as well as certification. This can be seen in clauses 11.1 and 11.2 of the Guarantee which states as follows:

11.1 Accounts

Accounts maintained by the Bank in connection with the Guaranteed Obligations are prima facie evidence of the matters to which they relate for the purpose of any litigation or arbitration proceedings.

11.2 Certificates and determinations

Any certification or determination by the Bank of a rate or amount under this Guarantee will be, in the absence of manifest error, conclusive evidence of the matters to which it relates."

[48] Conclusive evidence clauses operate to establish that a determination

of the amount owed by a debtor is, for all intents and purposes, final and binding as to the sum payable. Such provisions effectively preclude the need for protracted inquiries into the precise calculation of outstanding debts, sparing the parties the necessity of combing through financial records in search of potential discrepancies.

[49] In *Citibank N.A. v Ooi Boon Leong & Ors* [1981] 1 MLJ 282 (FC) at page 284, Raja Azlan Shah CJ (Malaya) held that the indebtedness of the borrower may be ascertained conclusively by such certificate:

“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. Clause 19 provides thus “A certificate by an officer of the bank as to the money and liabilities for the time being due or incurred to the bank from or by the customer shall be conclusive evidence in any legal proceedings against us or any one of us or our personal representatives.” **It means that, for the purpose of fixing liability of the respondents, the company’s indebtedness may be ascertained conclusively by a certificate:** see *Dobbs v National Bank of Australasia Ltd* [1935] 53 CLR 643; *Bache & Co v Banque Vernes* [1973] 2 LLLR 437.

In the circumstances the respondents are bound under clause 19 to accept the certificate of indebtedness duly executed by the Assistant Vice-President of the Branch as conclusive evidence of the debt due to the bank. On this footing the bank would be entitled to judgment as prayed for.”

(Emphasis added)

[50] Lord Denning MR in *Bache & Co (London) Ltd v Banque Vernes Et Commerciale De Paris SA* [1973] 2 Lloyd's Rep 437 (CA) had this to

say at page 440:

"[t]hat, as a matter of principle, the conclusive evidence clause was binding according to its terms and, if notice of default was given in pursuance of the conclusive evidence clause it was binding according to its terms, the clause was not contrary to public policy."

[51] The Federal Court in **Cempaka Finance Bhd v Ho Lai Ying (trading as KH Trading) & Anor** (*supra*) through the judgment of Steve Shim CJSS quoted with approval of the case of *Dobbs v National Bank of Australasia* [1953] 53 CLR 643 (HC), where the High Court of Australia made the following observation:

"... The bank could recover without the production of a certificate if, by ordinary legal evidence, it proved the actual indebtedness of the customer. But the (conclusive evidence) clause, if valid, enables the bank by producing a certificate to dispense with such proof. It means that for the purpose of fixing the liability of a surety, the customer's indebtedness may be ascertained conclusively by a certificate.... But the manifest object of the clause was to provide a ready means of establishing the existence and amount of the guaranteed debt and avoiding an inquiry upon legal evidence into the debits going to make up the indebtedness".

[52] Steve Shim CJSS in **Cempaka Finance Bhd** case also held that "a *certificate of indebtedness operates in the field of adjective law. It excuses the plaintiff from adducing proof of debt. Such a certificate shifts the burden onto the defendant to disapprove the amount claimed*". (at paragraph 11).

[53] The reference to "manifest error" nevertheless would allow a comeback if there is a material mistake in the calculations. In the case of *Amey Birmingham Highways Ltd v Birmingham City Council* [2018]

EWCA Civ 264 (CA), the English Court of Appeal held as follows:

- “83. Is this a case of manifest error? There are two helpful recent authorities on this issue, namely *IIG Capital LLC v Van Der Merwe* [2008] EWCA Civ 542; [2008] 2 All ER (Comm) 1173 and *North Shore Ventures Ltd v Anstead Holdings Inc* [2011] EWCA Civ 230; [2012] Ch 31.
84. IIG was a claim for payment against guarantors. The defendants had bound themselves to pay on demand, absent manifest error. Lewison J, the trial judge, rejected the suggestion that there was manifest error. He said that a manifest error was **"one that is obvious or easily demonstrable without extensive investigation"**. The Court of Appeal approved the judge's approach to that issue and upheld his decision: see the judgment of Waller LJ at [33] to [35]. Lawrence Collins and Rimer LJJ agreed.
85. North Shore was an action by a lender against the two guarantors of the loan. Clause 3.4 of the guarantee stated that a certificate signed by the claimant for the amount of the indebtedness was conclusive evidence against the guarantors, unless manifestly incorrect. The Court of Appeal approved the test for manifest error formulated by Lewison J in IIG. The court held that the certificate was invalidated by manifest error, because it did not take into account an agreed variation in the rate of interest.
86. At [61] Smith LJ said:
- "On reflection I have come to the conclusion that for a party to rely on a manifest error in a certificate does not

depend upon his ability to demonstrate the error immediately and conclusively. **In the present case, the guarantors were able to recognise immediately that the certificate was based upon the interest rates as set out in the original loan agreement and not as varied in November 2004. They could see that it was manifestly incorrect. They could not immediately demonstrate that conclusively; they could not do so until the court had determined the issue of variation. But they were right, as this court has now held. I would hold that the certificate was manifestly incorrect and was of no effect."**

87. Finally, in relation to the law, I should refer to *IG Index v Colley* [2013] EWHC 748 (QB). In a very thorough judgment Stadlen J reviewed the authorities on manifest error. At [813] to [814] he held that **the court could have regard to extrinsic evidence."**

[54] This principle is reaffirmed in *Flowgroup Plc v Co-Operative Energy Ltd* [2021] EWHC 344 (Comm) (HC), wherein the English High Court held that for a challenge based on a manifest error clause to succeed, there must be a plain and obvious mistake. However, whether such an error has indeed occurred is a matter of fact, and need not be glaringly apparent from the face of the certificates themselves. In the **Flowgroup** case, the error in issuing the certificates only came to light once the underlying contractual obligation was properly scrutinized.

[55] In applying these authorities, it is clear that in determining the existence of a manifest error, consideration must be given to the fact that certain errors may only come to light upon the court reaching a specific legal conclusion. Although it may not be feasible to demonstrate the errors as "immediately and conclusively" incorrect at first glance, they may nevertheless still amount to manifest errors.

- [56] In the present case, neither Pureman Venture, nor the defendant raised any objections to the quantification of the debt. Nevertheless, guided by the authorities cited earlier, it is incumbent upon this Court to scrutinize the certificates issued with due care, ensuring not only that they are free from manifest errors but also that the calculation of such charges free from the element of misconduct, negligence and/or breach of the terms and conditions outlined in the Offer Letter.
- [57] Based on the evidence presented, I am of the considered view that, contrary to the defendant’s allegations, no interest (*riba*) is imposed on the said Facility. This is a Shariah-compliant financing arrangement governed by Islamic banking principles, which strictly prohibit *riba*. A review of the Offer Letter shows that the facility is subject to profit charges of 13% per annum.
- [58] I further note that the provision for *ta’widh* was mutually agreed upon by the parties in clause 32 of the ‘Standard Terms & Conditions Governing BizFinancing-i Facility’ within the Offer Letter and must accordingly be given effect. The agreed terms provide for a compensation charge of 1% per annum on overdue amounts prior to maturity. In the event of default beyond maturity, an additional *ta’widh* may be imposed at a rate not exceeding Bank Negara Malaysia’s prevailing Islamic Interbank Money Market Rate (“IIMM-rate”).
- [59] With regard to the issue of *ibra’*, Clause 8 of the ‘Standard Terms & Conditions Governing BizFinancing-i Facility’ within the Offer Letter, such rebate is to be provided in the event of early settlement, that is, payment made prior to the maturity date. This is in line with clause 6.1 of the **Guidelines on Ibra’ (Rebate) for Sale-Based Financing** published by Bank Negara Malaysia (2011-2013).
- [60] In applying the principles laid down in *HSBC Bank Malaysia Bhd (formerly known as Hong Kong Bank Malaysia Bhd) v LH Timber Products Sdn Bhd (formerly known as Ho Lim Sawmill Sdn Bhd) & Ors* [2005] 6 MLJ 625 (HC) (per Abdul Malik Ishak J, as His Lordship then

was), the plaintiff is well within its rights to impose the charges as per the agreement entered into by the parties.

- [61] I also rely on *Public Bank Berhad v Fu Poh Trading Sdn Bhd & Others* [2004] MLJU 133 (HC), where Abdul Wahab Said Ahmad JC (as His Lordship then was) dismissed the defendants' contention that the interest charged was excessive, given that they had expressly agreed to terms allowing for such variations. The court held that merely asserting errors in calculation, without providing specific details, was insufficient to challenge the certificate of indebtedness.
- [62] In any event, I am of the considered view that the defendant as director of Pureman Venture had ample opportunity to review the terms of the agreements or to seek independent legal or Shariah advice, yet chose to raise no objections until the initiation of the plaintiff's claim.
- [63] Upon careful examination of the certificate of indebtedness at Exhibit SCB-7 (page 116 of the Appeal Records), and having cross-referenced it with the statement of accounts at Exhibit SCB-8 (pages 99 to 115) and the sum demanded upon termination as shown in Exhibit SCB-5 (pages 92 to 95), I find no manifest error attributable to the plaintiff.
- [64] The alleged discrepancy, namely the omission of RM3,000.00 in costs awarded by the Sessions Court on 12 July 2023 (see pages 146 to 147 of Appeal Records), does not, in my view, undermine the validity of the certificate. This sum may be treated in one of two ways: the plaintiff may either apply it as a deduction from the outstanding amount, or omit it altogether from the statement of account. This is so as clause 6(a) of the Standard Terms & Conditions Governing the BizFinancing-i Facility, incorporated in the Offer Letter, stipulates that any variation to the instalments due under the facility requires the bank's express consent. This necessarily includes the application of any set-off arising from court-awarded costs.
- [65] While the defendant may assert a right of set-off, the absence of an

express directive in the cost order requiring the amount to be applied toward the outstanding indebtedness means that the omission does not constitute a manifest error. At most, it is a clerical oversight, insufficient to impeach the integrity of the certificate, in line with the principle affirmed in *RHB Bank Berhad v Seni Maju Sdn Bhd & Ors* [2012] CLJU 530; [2012] 1 LNS 530 (HC).

[66] I am therefore satisfied that the learned SCJ rightly concluded that the issue of the quantum due does not raise any triable issue warranting further judicial scrutiny.

(b) Striking Out (Appeal No. WA-12AM-3-01/2025)

(i) *Whether the Striking Out Application is Defective*

[67] The defendant argues that the respondent relied specifically on Order 18 rule 19(1)(b), (c), and/or (d) of the Rules in their notice of application. Having framed its application on those grounds, it is argued that the respondent cannot now shift its position to invoke Order 18 rule 19(1)(a), nor can it contend that the appellant's counterclaim discloses no reasonable cause of action.

[68] In support of the contention of defective application, the defendant relies on the case of **Razshah Enterprise Sdn Bhd v Arab Malaysian Finance Bhd** (*supra*) which applied the case of *Sambu (M) Sdn Bhd v Stone World Sdn Bhd & Anor* [1996] MLJU 510 (HC) which held that:

“The word ‘or’ appears between (a), (b), (c) and (d) of O. 18 r 19(1) of the RHC and in ordinary usage the word ‘or’ is said to be disjunctive (*Uddin v Associated Portland Cement Manufacturers Ltd* [1965] 2 QB 582; *R v Surrey Quarter Sessions, ex parte Commissioner of Metropolitan Police* [1963] 1 QB 990). In my judgment, the second defendant when resorting to O. 18 r 19(1) of the RHC must be very specific and must not cumulatively add (a), (b), (c), (d) together and lump them as one as it would run counter to the

explicit provisions of r 19(2) of O. 18 of the RHC.”

[69] To address this issue, this Court need only refer to the decision of the Court of Appeal in *See Thong & Anor v Saw Beng Chong* [2013] 3 MLJ 235 (CA), where Ramly Ali JCA (as His Lordship then was) clarified the position under Order 18 rule 19 of the Rules as follows:

“[9] An applicant for striking out under O. 18 r 19 can rely on any one or more than one sub-paras (a)-(d). So far, there is no authority to say otherwise. *Halsbury’s Laws of Malaysia* clearly confirms that an applicant under this rule is entitled to rely on any or all of the grounds specified in the rule. An application under this rule is not void and ineffective merely because sub-para (a) had been pleaded together with sub-paras (b)-(d). The only limitation imposed under sub-r (2) is that for an application under sub-para (a), no evidence is admissible. However, where the court proceeds to decide an application under any other sub-paragraph, affidavit evidence should be admissible. Even though sub-paras (b)-(d) are to be read disjunctively, it does not mean that an applicant cannot rely on more one sub-paragraph in his application, (see *Malayan United Finance Bhd Iwn Cheung Kong Plantation Sdn Bhd dan Iain-lain* [2000] 2 MLJ 38; [2000] 2 CLJ 601; *Pegasus Engineers Sdn Bhd v Sambu (M) Sdn Bhd* [1998] 4 MLJ 129 and *Malaysian Court Practice* 2007 Desk Edition (High Court) p 239).

[10] In the present case since the application by the respondent is also based on sub-para (1)(a), the learned judge should have dealt with the said sub-para notwithstanding the fact that both parties had filed their respective affidavits. Those affidavits are actually to be used for the other two sub-paras (b) and (d). What the learned judge should have done is to deal with the issue under sub-para (a) first and to

ignore completely the two affidavits filed by the parties; before proceeding to deal with sub-paras (b) and (d).

[11] The learned judge must bear in mind that striking out a claim for no reasonable cause of action under sub-para (1)(a) is only appropriate in a plain and obvious case. The learned judge must be satisfied that the statement of claim as it stands is insufficient, even if proved, to entitle the plaintiffs to the relief which they asked for. The procedure is a summary procedure. It should only be adopted when it is conspicuously clear that the claim on the face of it is obviously unsustainable. Just look at the statement of claim. The test to be applied is whether on the face of the statement of claim, the court is prepared to conclude that the cause of action is obviously unsustainable (see *Federal Court decision in New Straits Times (Malaysia) Bhd v Kumpulan Kertas Niaga Sdn Bhd & Anor* [1985] 1 MLJ 226).

[Emphasis added]

- [70] The Court of Appeal in **See Thong & Anor v Saw Beng Chong** (*supra*) affirmed that an applicant under Order 18 rule 19(1) may rely on one or more of its limbs. The sole procedural limitation lies in rule 19(2), which prohibits the admission of affidavit evidence when the application is made under sub-paragraph (a), namely, that the pleading discloses no reasonable cause of action. In this case, the plaintiff expressly invoked only sub-paragraphs (b), (c), and (d), all of which permit the use of affidavit evidence. The striking out application, therefore, properly proceeded under those limbs and not under sub-paragraph (a).
- [71] Order 18 rule 19(1) prescribes four distinct, though occasionally overlapping, grounds for striking out a pleading, each with its own jurisprudential foundation and scope:

- (a) Sub-paragraph (a) - Pleading discloses no reasonable cause of action or defence

This is the most specific and narrowly confined ground. It addresses only the legal sufficiency of the pleading on its face, assuming all pleaded facts are true. The question is whether, on that basis alone, the cause of action or defence is legally sustainable. As the inquiry is strictly confined to the pleadings, rule 19(2) bars the use of affidavit evidence. This makes sub-paragraph (a) a clear-cut procedural tool for cases where the defect is apparent from the statement of claim or defence itself.

- (b) Sub-paragraph (b) - Pleading is scandalous frivolous or vexatious.

Broader in scope, this ground targets pleadings that, while perhaps formally disclosing a cause of action, are substantively unsustainable, hopeless, or brought for an improper purpose. “Scandalous” refers to irrelevant or offensive matters that needlessly prejudice the opposing party; “frivolous” to claims without merit; and “vexatious” to those intended to harass. Under this limb, the court may consider affidavit evidence in determining whether the pleading should be struck out.

- (c) Sub-paragraphs (c) and (d) - Catch-all provisions

These limbs provide the widest discretion. Sub-paragraph (c) addresses pleadings that would prejudice, embarrass, or delay the fair trial of the action, for example, through incoherence, inconsistency, or obscuring the real issues. Sub-paragraph (d) is directed at abuses of the court’s process, such as duplicative proceedings, relitigation of determined matters, or using the litigation process for collateral purposes. Both permit affidavit evidence and invite a broad, practical assessment of what justice requires.

- [72] In summary, sub-paragraph (a) is confined to defects apparent on the face of the pleadings, sub-paragraph (b) extends to meritless or improper claims, and sub-paragraphs (c) and (d) operate as residual safeguards to prevent the misuse of court process in its various forms.
- [73] While the plaintiff’s affidavit contains averments that might overlap with matters under sub-paragraph (a), there are elements within it that satisfies sub-paragraphs (b), (c) and (d). Most importantly, the learned SCJ’s decision to strike out was firmly grounded in sub-paragraphs (b), (c), and (d). His findings were as follows:

“Berdasarkan alasan dan dapatan mahkamah di atas, tuntutan balas Defendan adalah **remeh** atau ia boleh **menjejaskan, menghalang atau melengahkan perbicaraan tindakan dengan adil** dan/atau **suatu penyalahgunaan proses mahkamah**. Permohonan Plaintiff adalah jelas yang boleh dicatat penghakiman terus. Pembelaan Defendan gagal menimbulkan isu-isu untuk dibicarakan.” [Emphasis added]

- [74] Accordingly, there is no procedural impropriety, and the defendant’s assertion that the application is defective for incorporating grounds under sub-paragraph (a) without expressly pleading them in the prayers of the notice of application is without foundation.

(ii) Whether the Defendant’s Counterclaim Ought to be Struck Out

- [75] Ramly Ali FCJ in *Tan Wei Hong (A Minor Suing Through Guardian Ad Litem And Next Friend Chuang Yin E) & Ors v. Malaysia Airlines Bhd And Other Appeals* [2019] 1 MLJ 59 (FC) laid out the test for the striking out of pleadings; wherein his lordship referred to the case of **Bandar Builders Sdn Bhd. v United Malayan Banking Corporation** (*supra*) and held as follows:

“The tests for striking out application under O. 18 r. 19 of the ROC, as adopted by the Supreme Court in *Bandar Builders* are, inter alia, as follows :

- (a) it is only in plain and obvious cases that recourse should be had to the summary process under the rule;
- (b) this summary procedure can only be adopted when it can be clearly seen that a claim or answer is on the face of it obviously unsustainable;
- (c) it cannot be exercised by a minute examination of the documents and facts of the case in order to see whether the party has a cause of action or a defence;
- (d) if there is a point of law which requires serious discussion, an objection should be taken on the pleadings and the point set down for argument under O. 33 r. 3 of the ROC; and
- (e) the court must be satisfied that there is no reasonable cause of action or that the claims are frivolous or vexatious or that the defences raised are not arguable.”

[76] The Court of Appeal, in *Sivarasa Rasiah & Ors v. Che Hamzah Che Ismail & Ors* [2012] 1 MLJ 473 (CA) adopted the well-settled principle of striking out in the following passage:-

“A striking out order should not be made summarily by the court if there is issue of law that requires lengthy argument and mature consideration. It should also not be made if there is issue of fact that is capable of resolution only after taking viva voce evidence during trial (see: *Lai Yoke Ngan & Anor v. Chin Teck Kwee & Anor* [1997] 3 CLJ 305; [1997] 2 MLJ 565 (Federal Court)).”

[77] Based on the defendant’s Statement of Defence and Counterclaim, the core elements of the defendant’s counterclaim may be summarised as follows:

- (a) Allegation of Fraud and Misrepresentation in the Guarantee.

The defendant contends that the execution of the guarantee was tainted by misrepresentation and/or fraudulent inducement. It is alleged that the plaintiff, through its officers or agents, failed to disclose material facts or made representations that misled the defendant into executing the guarantee.

(b) Challenge to Enforceability of the Guarantee

As a result of the alleged fraud and misrepresentation, the Defendant seeks to impugn the validity and enforceability of the guarantee. It is asserted that the guarantee should be set aside or declared void on equitable grounds.

(c) Claim for Declaratory and Ancillary Relief

The defendant seeks declaratory relief that the guarantee is invalid or unenforceable and prays for consequential orders, including the dismissal of the plaintiff's claim and possible damages or restitution, though the precise quantification of such relief is not clearly pleaded.

[78] Overall, the counterclaim hinges on allegations of fraud and misrepresentation. Nevertheless, based on the grounds analysed during the summary judgment application, the facts leading to the allegation now contained in the counterclaim is belatedly made and a clear afterthought.

[79] The police report lodged by the defendant, coinciding with the filing of his counterclaim, was not followed up with any credible investigation or supporting forensic analysis (such as referral to the Chemistry Department). In light of its timing and lack of follow-through, the report appears more tactical than genuine, consistent with the reasoning in **RHB Bank Bhd v Majmekar Holdings Sdn Bhd & Ors** (*supra*) wherein Nallini Pathmanathan J (as Her Ladyship then was) held as follows:

“[16] In examining both parties' affidavits, I have reminded myself that it is not acceptable for the court in summary judgment proceedings to undertake any sort of trial by affidavit. There can be no 'weighing' of the relative truth or otherwise of each parties' affidavits. If the defendant shows a 'triable' issue, that is sufficient to entitle him to leave to defend.

[17] However there is a minimum evidential threshold that a potential defendant has to attain to enable him to procure leave to defend. He has to show the court that he genuinely harbours a case which warrants going to trial. It cannot be sufficient to simply make an allegation of 'fraud' or 'forgery' without more, and expect that that one allegation in itself will ensure that the matter goes to trial. To so hold would be to open the floodgates to debtors in the commercial world alleging 'fraud' and 'forgery' in response to genuine claims made against them with a view to delaying repayment of duly owed debts. The net effect on the commercial world would be detrimental.

[18] The issue in this case is whether D3 has in fact discharged the minimum threshold limit to show that he has a genuine and credible defence, as a consequence of which leave to defend should be granted. **When his affidavits are pared down to their essence, it is evident that the only fact of any real value that he affirms to is the bare assertion that he did not sign the guarantee. There is no response to the fact of third parties having affirmed seeing him attest the guarantee. There is no factual matrix surrounding the signing of the guarantee that appears to warrant investigation.**

[19] Apart from this it is also material that **it is only after proceedings had been commenced that he denied that he**

had signed the guarantee. When the letter of demand dated 15 June 2006 was sent to D3, he did not deny signing the guarantee. It was only in March 2008 that he made a police report stating that a third party had forged his signature as guarantor. If D3 did not sign the guarantee, he would be expected to have complained about his wrongful inclusion as a guarantor at a considerably earlier time, and certainly by 15 June 2006.”

[Emphasis added]

- [80]** While it is trite that allegations of fraud generally warrant ventilation at trial, mere bare assertions without sufficient factual foundation or evidentiary support do not justify a full hearing, as underscored in **CCM Chemicals Sdn Bhd v Wan Muhamad Ibrisam** (*supra*).
- [81]** The Guarantee itself was unequivocally signed by the defendant, and as a company director, he is presumed to understand the contents of documents he executes, in line with the authority of **L’Estrange v F Graucob Ltd** (*supra*).
- [82]** In the absence of sufficient particulars, the counterclaim amounts to nothing more than bare assertions. Accordingly, the plaintiff is entitled to invoke Order 18 rule 19(1)(b) to strike out the counterclaim on the basis that it is frivolous, vexatious, and plainly unsustainable.
- [83]** Furthermore, the circumstances in which the counterclaim was filed suggest that it is more likely a tactical response to resist the plaintiff’s claim rather than a bona fide challenge to the validity of the guarantee. The guarantee had remained unchallenged until the plaintiff initiated recovery proceedings.
- [84]** There is no indication that the defendant had previously taken steps to set aside or otherwise dispute the guarantee in independent proceedings. In these circumstances, the counterclaim appears to fall within sub-paragraph (c) as one that would prejudice, embarrass, or

delay the fair trial of the action, and within sub-paragraph (d) as an abuse of the court's process. It does not advance a genuine defence but serves to delay enforcement and add unnecessary complexity to the proceedings. The striking out application is therefore properly founded by the learned SCJ on sub-paragraphs (b), (c), and (d).

DECISION

[85] Having carefully considered the submissions of both parties, I have reached the following conclusions:

- (a) Appeal No. WA-12AM-4-01/2025, brought against the decision of the learned SCJ in granting summary judgment, is hereby dismissed with costs of RM3,000.00; and
- (b) Appeal No. WA-12AM-3-01/2025, brought against the decision of the learned SCJ to strike out the defendant's counterclaim, is likewise dismissed with costs of RM1,500.00.

Dated: 8 AUGUST 2025

(YUSRIN FAIDZ BIN YUSOFF)

Judicial Commissioner
High Court of Malaya
Kuala Lumpur

ARTICLE / BOOK REFERENCE

1. Bank Negara Malaysia (2011-2013). Guidelines on Ibra' (Rebate) for Sale-Based Financing.

Counsel:

For the appellant / second defendant - Lum Kok Kiong & Jocelyn Phua Han Ling; M/s Lum Kok Kiong & Co

For the respondent/plaintiff - Tay Yeong Hui; M/s Arifin & Partners

Cases referred to:

Amey Birmingham Highways Ltd v. Birmingham City Council [2018] EWCA Civ 264

Andrew Lee Siew Ling v. United Oversea Bank (M) Berhad [2013] 1 CLJ 24

Bache & Co (London) Ltd v. Banque Vernes Et Commerciale De Paris SA [1973] 2 Lloyd's Rep 437

Bache & Co v. Banque Vernes [1973] 2 LLLR 437

Bandar Builder Sdn Bhd & Ors v. United Malayan Banking Corp Bhd [1993] 3 MLJ 36

Blue Nile Co Ltd v. Emery Customs Brokers (S) Pte Ltd [1990] 2 MLJ 385

Brinks Ltd v. Abu-Saleh & Ors (No 1) [1995] 4 All ER 65

CCM Chemicals Sdn Bhd v. Wan Muhamad Ibrisam Wan Ibrahim [2011] CLJU 1011; [2011] 1 LNS 1011

Cempaka Finance Bhd v. Ho Lai Ying & Anor [2006] 3 CLJ 544

Citibank N.A. v. Ooi Boon Leong & Ors [1981] 1 MLJ 282

Concentrate Engineering Pte Ltd v. United Malayan Banking Corp Bhd [1990] 3 MLJ 1

Credit Corp (M) Bhd v. Lucky Height Development Sdn Bhd & Ors [1996] 4 MLJ 556

Datuk Hj Ishak Ismail v. Kenanga Investment Bank Berhad & Ors [2011] CLJU 1358

Dobbs v. National Bank of Australasia [1953] 53 CLR 643

Dobbs v. National Bank of Australasia Ltd [1935] 53 CLR 643

Elephant Gypsum Sdn Bhd v Elevic Trading Sdn Bhd & Ors [2001] 7 CLJ 405

Era Kemuncak Jaya (M) Sdn Bhd v. Tenaga Switchgear Sdn Bhd [2021] MLJU 1855

European Asia Bank v. Punjab & Sind Bank (No 2) (CA) [1983] 1 WLR 643; [1983] 2 All ER 508, 516

New Straits Times (Malaysia) Bhd v. Kumpulan Kertas Niaga Sdn Bhd & Anor [1985] 1 MLJ 226

Flowgroup Plc v. Co-Operative Energy Ltd [2021] EWHC 344

HSBC Bank Malaysia Bhd (formerly known as Hong Kong Bank Malaysia Bhd) v. LH Timber Products Sdn Bhd (formerly known as Ho Lim Sawmill Sdn Bhd) & Ors [2005] 6 MLJ 625

IG Index v. Colley [2013] EWHC 748

IIG Capital LLC v. Van Der Merwe [2008] EWCA Civ 542; [2008] 2 All ER (Comm) 1173

Koh Siak Poo v. Perakayuan OKS Sdn Bhd & Ors [1989] 2 CLJ 1 (Rep); [1989] 1 CLJ 30; [1989] 3 MLJ 164

Krishnamurthy & Anor v. Malayan Finance Corporation Bhd [1986] 2 MLJ 134

Lai Yoke Ngan & Anor v. Chin Teck Kwee & Anor [1997] 3 CLJ 305; [1997] 2 MLJ 565

Lee Wah Bank Ltd v. Chee Kong Electrical Engineering Sdn Bhd & Ors [1999] 6 MLJ 153

Malayan Insurance (M) Sdn Bhd v. Asia Hotel Sdn Bhd [1987] CLJ Rep 182; [1987] 1 CLJ 246; [1984] 2 MLJ 300

Malayan United Finance Bhd lwn. Cheung Kong Plantation Sdn Bhd dan Iain-lain [2000] 2 MLJ 38; [2000] 2 CLJ 601

Maybank Islamic Bhd v. Kamarulzaman Mohamed Nordin [2013] 10 CLJ

488

McLardy v. Slateum [1890] 24 QBD 504

North Shore Ventures Ltd v. Anstead Holdings Inc [2011] EWCA Civ 230;
[2012] Ch 31

Ooi Swee King v. Standard Chartered Saadiq Bhd [2024] 2 CLJ 476

Pegasus Engineers Sdn Bhd v. Sambu (M) Sdn Bhd [1998] 4 MLJ 129

Perkapalan Shamelin Jaya Sdn Bhd & Anor v. Alpine Bulk Transport New York [1997] 3 MLJ 818

Polygram Records Sdn Bhd v. Hillary Ang & Ors (Collectively Known as "The Search") & Anor [1994] 3 CLJ 806

Public Bank Berhad v. Fu Poh Trading Sdn Bhd & Others [2004] MLJU 133

R v. Surrey Quarter Sessions, ex parte Commissioner of Metropolitan Police [1963] 1 QB 990

Razshah Enterprise Sdn Bhd v. Arab Malaysian Finance Bhd [2009] 2 MLJ 102

RHB Bank Berhad v. Seni Maju Sdn Bhd & Ors [2012] CLJU 530; [2012] 1 LNS 530

RHB Bank Bhd v. Majmekar Holdings Sdn Bhd & Ors [2009] 2 MLJU 0272

RHB Islamic Bank Bhd v. Amazon Pillar Enterprise Sdn Bhd dan Iain-Iain [2025] MLJU 19

Ruslan Baharin Industries Sdn Bhd & Ors v. Kerajaan Malaysia [2010] 7 CLJ 713

Sambu (M) Sdn Bhd v. Stone World Sdn Bhd & Anor [1996] MLJU 510

Seruan Gemilang Makmur Sdn Bhd v. Kerajaan Negeri Pahang [2016] 3

MLJ 11

Sivarasa Rasiah & Ors v. Che Hamzah Che Ismail & Ors [2012] 1 MLJ 473

Tan Wei Hong (A Minor Suing Through Guardian Ad Litem And Next Friend Chuang Yin E) & Ors v. Malaysia Airlines Bhd And Other Appeals [2019] 1 MLJ 59

Thong & Anor v. Saw Beng Chong [2013] 3 MLJ 235

Uddin v. Associated Portland Cement Manufacturers Ltd [1965] 2 QB 582

United Malayan Banking Corporation Berhad v. Pembinaan KSY Sdn Bhd & 2 Ors [1993] 3 CLJ 612

Serangoon Garden Estate Ltd v. Marian Chye [1959] 1 MLJ 113

Legislation referred to:

Rules of Court 2012, O. 14 rr. 1, 3, O. 8 r. 19

Contracts Act 1950, ss. 77, 78, 79, 81