

21

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N :

LEE KEE CHOONG

Appellant

- and -

1. EMPAT NOMBOR EKOR  
(N.S.) SDN. BHD.
2. EMPAT NOMBOR EKOR BHD.
3. LIM CHOOI SENG
4. CHONG WAH TAT
5. NG MEE FAH
6. LEE KUEN CHIN (f)

Respondents

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RECORD OF PROCEEDINGS

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WILSON FREEMAN,  
6/8 Westminster Palace Gardens,  
Artillery Row, London SW1P 1RL.  
Solicitors for the Appellants.

CHARLES RUSSELL & CO.,  
Hale Court, Lincoln's Inn,  
London, WC2A 3UL.  
Solicitors for the Respondents.

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

B E T W E E N :

LEE KEE CHOONG

Appellant

- and -

1. EMPAT NOMBOR EKOR  
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RECORD OF PROCEEDINGS

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Affidavit of Chew Him Fah	7th March 1973
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IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

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

B E T W E E N :

LEE KEE CHOONG

Appellant

- and -

1. EMPAT NOMBOR EKOR  
(N.S.) SDN. BHD.
2. EMPAT NOMBOR EKOR BHD.
3. LIM CHOOI SENG
4. CHOONG WAH TAT
5. NG MEE FAH
6. LEE KUEN CHIN (f)

Respondents

RECORD OF PROCEEDINGS

No. 1

In the High  
Court

SUMMONS IN CHAMBERS

No. 1  
Summons in  
Chambers  
6th August  
1973

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR  
COMPANIES WINDING UP PETITION NO. 3 OF 1973

In the Matter of Empat Nombor Ekor  
(Negri Sembilan) Sdn. Bhd.

And

In the Matter of the Companies  
Act 1965

10

Lee Kee Choong

Petitioner

SUMMONS IN CHAMBERS

LET ALL PARTIES CONCERNED attend the Judge-  
in-Chambers, High Court, Kuala Lumpur on Monday

In the High Court

No. 1

Summons in Chambers  
6th August 1973  
(continued)

the 10th day of September, 1973 at 9.30 o'clock in the forenoon on the hearing of an application on the part of the Petitioner for an Order that,

- (a) M/s. Price Waterhouse & Co. a firm of Chartered Accountants of No. 2, Jalan Ampang, Kuala Lumpur be approved to determine the fair and just price of the shares of the Petitioner and Mr. Lee Kee Min;
- (b) The said Price Waterhouse & Co. be at liberty to have access to all bills, papers, vouchers accounts and other documents of the Company which they consider relevant for the purpose of carrying out the valuation of the shares of the Petitioner and Mr. Lee Kee Min; 10
- (c) all consequential and necessary directions and Orders;
- (d) costs of this application be taxed and paid out of the assets of the Company. 20

Dated this 6th day of August, 1973.

Signed.

Senior Assistant Registrar,  
High Court, Kuala Lumpur

To:

The Empat Nombor Ekor (N.S.) Sdn. Bhd.,  
And the Opposing Contributories,  
M/s. S.Y. Chan & Co.,  
58, Jalan Silang,  
Kuala Lumpur.

30

This Summons will be supported by the Affidavit of Mr. Lee Kee Choong, affirmed on the 1st day of August, 1973.

This Summons was taken but by M/s. Chin, Sethu & Co., Solicitors for the Plaintiff whose address for service is at Second Floor, Nos. 113-115 Jalan Sultan, Kuala Lumpur. 01-25.

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3.

No. 2

AFFIDAVIT OF LEE KEE CHOONG  
IN SUPPORT OF NO. 1

In the High  
Court

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

No. 2

COMPANIES WINDING UP PETITION NO: 3 OF 1973

Affidavit of  
Lee Kee Choong  
in support of  
No. 1  
1st August  
1973

In the matter of Empat Nombor  
Ekor (Negri Sembilan) Sdn. Bhd.

And

In the matter of the Companies Act, 1965

Lee Kee Choong

Petitioner

10

A F F I D A V I T

I, Lee Kee Choong, of full age and of No.450,  
Bukit Rasah, Seremban do solemnly affirm and say as  
follows:

1. I am the Petitioner herein

20

2. On the 5th day of July, 1973 this Honourable  
Court made an order by consent for the purchase  
of the shares held by my brother, Lee Kee Min  
and I in the said Company at fair and just price  
to be determined by an Independent firm of  
Chartered Accountants to be approved by this  
Honourable Court.

30

3. On the 6th day of July, 1973 I caused my  
Solicitors to write to M/s. S.Y. Chan & Co., the  
Solicitors for the company and the opposing  
contributories proposing M/s. Price Waterhouse  
& Co., a firm of Chartered Accountants of No. 2  
Jalan Ampang, Kuala Lumpur to be approved by  
this Honourable Court to determine the fair and  
just price. A copy of the said letter is  
annexed hereto and marked "LKC 1".

40

4. On the 16th day of July, 1973 my solicitors  
received a letter from M/s. S.Y. Chan & Co.,  
suggesting the name M/s. Peat, Marwick, Mitchell  
& Co., I then inquired of my solicitors and the  
accountant advising them of this firm. In view  
of that advice and of the appointment of M/s.  
Peat, Marwick, Mitchell & Co., in another case  
pending in this Honourable Court I instructed  
my solicitors not to agree to their appointment.  
My solicitors accordingly wrote to M/s. S.Y. Chan



In the High Court

No. 2

Affidavit of Lee Kee Choong in support of No. 1 1st August 1973 (continued)

& Co., on 16th July, 1973.

6. M/s. S.Y. Chan wrote a letter dated 18th July, 1973 stating that M/s. Price Waterhouse & Co. was not acceptable at all and proposing M/s. Tan Kim Leong & Co.

7. The said Tan Kim Leong is known to me. He was one of those who had in the beginning negotiated with Mr. Lim Chooi Seng for the Seremban Agencies and failed.

8. I have had no dealings with M/s. Price Waterhouse & Co., nor the Company has had any dealings with Price Waterhouse & Co. Being completely unknown to all parties concerned and the firm I am informed and verily believe, has Chartered Accountants of long experience and standing, they are a suitable firm to be approved.

10

9. On the 16th day of July, 1973 I caused my solicitors to write to the firm of Price Waterhouse & Co., to inquire if they would agree to act as independent Chartered Accountants for the purpose of the Order of this Court dated 5th July, 1973.

20

10. On 18th July, 1973 they replied to my solicitors to say that they would act if all parties agree to their appointment.

11. I verily believe and am advised that the Company and the opposing contributories are just opposing the appointment of M/s. Price Waterhouse & Co., for the sake of opposing, they have not given any reasons why they should not be appointed. The object of the Company and the Opposing Contributories is just to delay and defeat my rights. Wherefore I pray for an Order in the terms of the summons.

30

Affirmed by the abovenamed )  
Lee Kee Choong at Seremban ) Sd. Lee Kee Choong  
this 1st day of August 1973)

Before me  
Sd. FOO JEE HOON  
Commissioner for Oaths, Seremban

40

This Affidavit is filed by M/s.Chin, Sethu && Co. Solicitors for the Petitioner whose address for service is at Second Floor, Nos. 113-115, Jalan Sultan, Kuala Lumpur 01-25.

COPY/

In the High  
Court

          
No. 2

Exhibit LKC 1

SYC/ENE-NS/1011/72

143(1)/72

M/s. S.Y. Chan & Co.,  
Advocates & Solicitors,  
58 Jalan Silang,  
Kuala Lumpur,  
Malaysia.

10

Dear Sirs,

Re: K.L. High Court Co. Winding-Up  
No. 3 of 1973

We refer to the above matter and to the  
consent order made on 5th July 1973.

Our client proposes Price Waterhouse &  
Co., Chartered Accountants, of 2 Jalan  
Ampang, Kuala Lumpur, to be approved by the  
Court for the assessment of the fair and  
just price of our clients' shares.

20

May we know if you have any objections  
to this firm?

Yours faithfully,

Sd.

This is the Exhibit marked "LKC 1"  
referred to in the Affidavit of Lee Kee  
Choong affirmed before me this 1st day  
of August, 1973.

Sd. FOO JEE HOON

Commissioner for Oaths.

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In the High  
Court

          
No. 3

Affidavit of  
Chew Him Fah  
6th September  
1973

6.

No. 3

AFFIDAVIT OF CHEW HIM FAH

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR  
COMPANIES WINDING UP PETITION NO. 3 OF 1973

In the matter of Empat Nombor Ekor  
(Negeri Sembilan) Sdn. Bhd.

And

In the matter of the Companies Act 1965

Lee Kee Choong

Petitioner

A F F I D A V I T

10

I, CHEW HIM FAH (NRIC No. 1128873) a  
Federal Citizen and of full age affirm and state  
as follows :-

1. I am the General Manager of Empat Nombor  
Ekor Berhad, one of the opposing contributories  
and the largest shareholder of Empat Nombor  
Ekor (Negeri Sembilan) Sdn. Bhd.

2. I have read the Affidavit of the  
Petitioner affirmed on the 1st day of August  
1973 and filed herein.

20

3. I have consulted the other opposing  
contributories on the matter and they are  
in favour of appointing Messrs. Peat, Marwick  
Mitchell & Co., a firm of Chartered Accountants  
who are not in anyway connected with the  
opposing contributories or the Empat Nombor  
Ekor (Negeri Sembilan) Sdn. Bhd., or the  
Petitioner.

4. As far as the opposing contributories  
are concerned we are unable to see any  
reasonable objection which the Petitioner may  
have in the appointment of the firm of Messrs.  
Peat, Marwick, Mitchell & Co., as the  
independent valuers.

30

5. The opposing contributories takes strong  
objection to the allegation of the Petitioner  
contained in paragraph 11 of his Affidavit and  
says that there is not an iota of truth in it.

7.

6. Wherefore the opposing contributories pray that Messrs. Peat, Marwick, Mitchell & Co. be appointed the independent valuers.

In the High Court

AFFIRMED by the abovenamed )  
CHEW HIM FAH at Kuala Lumpur )  
this 6th day of September ) Sd.  
1973 at 11.40 a.m. )

No. 3  
Affidavit of  
Chew Him Fah  
6th September  
1973  
(continued)

Before me

Sd.

10 (Ho Wai Kwong)  
Commissioner for Oaths  
Pesuruhjaya Sumpah  
Kuala Lumpur, Malaysia

This Affidavit is filed by Messrs. S.Y. Chan & Co., Advocates & Solicitors of No.58 Jalan Silang, (First Floor), Kuala Lumpur, Solicitors for the Empat Nombor Ekor (Negeri Sembilan) Sdn. Bhd.

No. 4

No. 4

AFFIDAVIT OF LEE KEE CHOONG

20 IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR  
COMPANIES WINDING UP PETITION NO: 3 OF 1973

Affidavit of  
Lee Kee Choong  
7th September  
1973

In the Matter of the Empat Nombor Ekor  
(Negeri Sembilan) Sdn. Bhd.

And

In the Matter of the Companies Act, 1965  
Lee Kee Choong Petitioner

A F F I D A V I T

30 I, Lee Kee Choong, of full age and of No. 450, Bukit Rasah, Seremban do solemnly affirm and say as follows :-

1. I have read what purports to be a copy of the Affidavit of Chew Him Fah affirmed on the 6th day of September, 1973.

In the High Court

No. 4

Affidavit of Lee Kee Choong 7th September 1973 (continued)

2. It is not true that M/s. Peat Marwick, Mitchell & Co., are unknown to me. In fact they are known to me by reason of the fact that I was (and still am) a 3 digit agent of the Totalisator Board and Peat Marwick, Mitchell & Co., were until April 1972 treasurers of that Board. I have been a 3 digit agent since inception about 10 years ago.

3. M/s. Peat Marwick, Mitchell & Co., were also Treasurers of the Selangor Turf Club for a long time and they are well known to Mr. Lim Chooi Seng, an Opposing Contributory by reason of his close association with the Turf Club.

10

Affirmed by the abovenamedd )  
Lee Kee Choong at Kuala Lumpur ) Sd. Lee Kee Choong  
this 7th day of September, 1973)

Before me,

Sd. W.P. Sarathy  
Commissioner for Oaths

This Affidavit is filed by M/s. Chin, Sethu & Co. Solicitors for the Petitioner whose address for service is at 2nd Floor, Nos. 113-115 Jalan Sultan, Kuala Lumpur 01-25.

20

No. 5

Order 10th September 1973

No. 5

ORDER

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR  
COMPANIES WINDING UP PETITION NO: 3 OF 1973

In the matter of the Empat Nombor Ekor (Negeri Sembilan) Sdn. Bhd.

And

30

In the matter of the Companies Act, 1965  
Lee Kee Choong Petitioner  
BEFORE THE HONOURABLE MR. JUSTICE MOHD. AZMI  
THIS 10th DAY OF SEPTEMBER, 1973

O R D E R

UPON HEARING Mr. R.R. Sethu of Counsel for the Petitioner and Mr. S.Y. Chan of Counsel for

the Company and the Opposing Contributories and UPON READING the Summons in Chambers dated the 6th day of August, 1973 and the Affidavits of Lee Kee Choong affirmed on the 1st day of August, 1973 and 7th day of September 1973 and Chew Him Fah affirmed on the 6th day of September 1973 IT IS ORDERED that M/s. Price Waterhouse & Co. a firm of Chartered Accountants of No. 2 Jalan Ampang, Kuala Lumpur be and are hereby approved to determine the fair and just price of the shares of the Petitioner and Mr. Lee Kee Min AND IT IS FURTHER ORDERED that the said Price Waterhouse & Co. be at liberty to have access to all bills, papers, vouchers, accounts and other documents of the Company which they consider relevant for the purpose of carrying out the valuation of the shares of the Petitioner and Mr. Lee Kee Min AND IT IS FURTHER ORDERED that the costs of this application be taxed and paid out of the assets of the Company

10

20

Given under my hand and the seal of the Court the 10th day of September 1973.

Senior Assistant Registrar,  
High Court, Kuala Lumpur

This Order is filed by M/s. Chin, Sethu & Co., Solicitors for the Petitioner whose address for service is at second floor Nos. 113-115 Jalan Sultan, Kuala Lumpur 01-25.

COPY SERVED ON US AT 10.55 a.m. ON 1X.9.73.

Sd. S.Y. CHAN & CO., Advocates & Solicitors  
No. 58 Jalan Silang, (Tingkat Satu) Kuala Lumpur.

30

In the High Court  
No. 5  
Order  
10th September  
1973  
(continued)

No. 6

SUMMONS IN CHAMBERS

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR  
COMPANIES WINDING UP PETITION NO: 3 OF 1973

In the matter of Empat Nombor Ekor  
(Negri Sembilan) Sdn. Bhd.

And

In the matter of the Companies Act, 1965  
Lee Kee Choong Petitioner

40

SUMMONS-IN-CHAMBERS

LET ALL PARTIES CONCERNED attend the Judge in

No. 6

Summons in  
Chambers  
4th February  
1974

In the High  
Court

No. 6

Summons in  
Chambers  
4th February  
1974  
(continued)

Chambers High Court, Kuala Lumpur on the 4th day  
of March, 1974 at 9.30 a.m. on the hearing of an  
application on the part of the Petitioner for an  
Order :-

(a) that the report of the Independent  
Chartered Accountants, M/s. Price  
Waterhouse rejected;

(b) such other order may be made as to the  
valuation of the shares of the Empat Nombor  
Ekor (N.S.) Sdn. Bhd.

(c) the costs of this application be taxed  
and paid out of the assets of the Empat  
Nombor Ekor (N.S.) Sdn. Bhd.

10

Dated this 4th day of February 1974.

(L.S.) Sd.

Senior Assistant Registrar,  
High Court, Kuala Lumpur.

To :

The Opposing Contributors,  
and the Empat Nombor Ekor (N.S.) Sdn.Bhd.  
or their Solicitors,  
M/s. S.Y. Chan & Co.,  
58 Jalan Silang,  
Kuala Lumpur.

20

This Affidavit of Lee Kee Choong affirmed on the  
2nd day of February, 1974 and filed herein will  
be read in support of the Application.

This summons is issued by M/s. Chin, Sethu  
& Co., Solicitors for the Petitioner whose  
address for service is at 2nd Floor, Nos.  
113-115 Jalan Sultan, Kuala Lumpur 01-25.

30

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In the High Court

No. 7

Affidavit of Lee Kee Choong in support of No. 6 2nd February 1974 (continued)

(d) the audited accounts do not show the unclaimed prize monies which should be charged to the profits;

(e) the independent chartered accountants have refused to disclose the basis of their valuation and it appears that they valued the share on the basis of a winding up and not as a going concern which should be the proper basis;

(f) on the basis of a going concern the valuation should be no less than \$6.00 for each share of \$1.00

10

5. I crave to refer to the letter of M/s. Robert Lim, Kwong & Co., the Chartered Accountant advising my Solicitors annexed hereto and marked "L K C 2".

6. In the circumstances I am advised and verily believe that the valuation of the shares by Price Waterhouse & Co., is wholly erroneous and misconceived and ought to be rejected.

20

7. In order to determine the fair and just price of the shares of the Company the special audit of the Company's accounts ought to be had and all improper expenditure and bonuses to directors and agents be taken as part of the profits. The premium paid on the shares and the unclaimed prize monies should also be taken to be part of the profits and the shares valued as a going concern.

Wherefor I pray for an order to reject the valuation of Price Waterhouse & Co. and that this Honourable Court might consider it just to order a special audit of the company's account and the shares valued as a going concern.

30

Affirmed by the abovenamed )  
Lee Kee Choong at )  
this 2nd day of February ) Sd. Lee Kee Choong  
1974 at 10.00 a.m. )

Before me,

Sd. W.P. Sarathy P.P.M.  
Commissioner for Oaths

40

This Affidavit is filed by M/s. Chin, Sethu & Co., Solicitors for the Petitioner whose address for service is at 2nd Floor, Nos. 113-115 Jalan Sultan, Kuala Lumpur.

EXHIBIT "L.K.C.1"

PRICE WATERHOUSE & CO.  
Chartered Accountants  
Certified Public Accountants (Malaysia)

Tel: 203833 Cables: PRICEWATER

P.O. Box 192,  
Chartered Bank Building,  
2 Jalan Ampang,  
Kuala Lumpur, Malaysia

In the High  
Court

—  
No. 7

Exhibit  
LKC 1 to No.7

PW/CTH/GC

1 December 1973

10 Chin, Sethu & Co.  
2nd Floor,  
Jalan Sultan  
KUALA LUMPUR

Dear Sirs,

EMPAT NOMBOR EKOR (NEGRI SEMBILAN)  
SENDIRIAN BERHAD,  
KUALA LUMPUR HIGH COURT COMPANIES  
WINDING UP PETITION NO: 3 OF 1973

20 We refer to your letter of 16 July 1973 and the  
court order of 10 September 1973 in which we  
were appointed to determine a fair and just  
price of the shares held by Mr. Lee Kee Chong and  
Mr. Lee Kee Min in Empat Nombor Ekor (Negri  
Sembilan) Sendirian Berhad.

2. For this purpose we have examined the following  
documents:

- a) The memorandum and articles of association of  
Empat Nombor Ekor (Negri Sembilan) Sendirian  
Berhad.
- 30 b) Photocopies of the audited accounts of Empat  
Nombor Ekor (Negri Sembilan) Sendirian  
Berhad for the following periods:
- i) Period from 29 January 1969 (date of  
incorporation) to 31 December 1969
  - ii) Year ended 31 December 1970
  - iii) Year ended 31 December 1971
  - iv) Year ended 31 December 1972
- c) Copy of the unaudited accounts of Empat  
40 Nombor Ekor (Negri Sembilan) Sendirian  
Berhad for the eight months ended 31 August

14.

In the High  
Court

1973 submitted by the accountant of Empat  
Nombor Ekor Berhad, Mr. Ch'ng Cheng Aun.

No. 7  
Exhibit  
LKC 1 to No.7  
(continued)

3. On the basis of this information we value the  
shares held by Mr. Lee Kee Chong and Mr. Lee Kee  
Min in Empat Nombor Ekor (Negri Sembilan)  
Sendirian Berhad as follows :-

Mr. Lee Kee Chong - 1,375 shares at \$184 per  
share = \$253,000

Mr. Lee Kee Min - 250 shares at \$184 per  
share = \$46,000.

10

Yours faithfully,

Sd.

c.c.  
Syarikat S.Y. Chan,  
Advocates & Solicitors,  
Kuala Lumpur.

This is the Exhibit marked "LKC 1" referred  
to in the Affidavit of Lee Kee Choong affirmed  
before me this 2nd day of February 1974.

Sd. W.P. Sarathy P.P.N.  
Commissioner for Oaths

20

EXHIBIT "L.K.C.2"

Exhibit  
LKC 2 to No.7

ROBERT LIM, KWONG & CO.  
Chartered Accountants  
Certified Public Accountants  
(Malaysia)

Wing On Life Bldg. (5th Floor)  
16 Jalan Silang, Kuala Lumpur.  
Tel: 25318/9

DESPATCHED

Our Ref: WSK/nsb 22nd January, 1974.

30

M/s. Chin, Sethu & Co.,  
113-115 Jalan Sultan, Kuala Lumpur.

Dear Sirs,

EMPAT NOMBOR EKOR (NEGRI SEMBILAN) SDN.BHD.

We refer to the interviews we had with your  
clients and from the information given by them,  
we have made the valuation of their holdings in  
the Company. Our valuation which is based on

the Company as a going concern is subject to the followings :-

In the High Court

- a) Substantiation of the information submitted by your clients.
- b) No material fluctuations in the accounts for eight months to 31st August, 1973, as compared to past periods (The 31st August, 1973 accounts were not presented to us for examinations).
- 10 c) There are no extraordinary matters other than those disclosed to us which would affect our valuation.

          
No. 7

Exhibit  
LKC 2 to No.7  
(continued)

The audited accounts presented to us for inspection were the photocopies in respect of the following periods:

- 2) Period from 29th January, 1969 (Date of Incorporation) - 31st December, 1969
- b) Year Ended 31st December, 1970.
- c) Year Ended 31st December, 1971.
- 20 d) Year Ended 31st December, 1972.

On the above basis we value the worth of each of the share of the Company at \$657/- and accordingly, the value of your clients' holdings at 10th September, 1973, were :

Mr. Lee Kee Chong - 1,375 shares at \$657/- per share  
= \$903,375

Mr. Lee Kee Min - 250 shares at \$657/- per share  
= \$164,250

Yours faithfully,

30 Sd. Robert Lim Kwong & Co.

COPY SERVED ON US AT 3.30 p.m. ON 6.2.74

Sd. for

S.Y. CHAN & CO., Advocates & Solicitors, No. 58  
Jalan Silang, (Tingkat Satu) Kuala Lumpur.

This is the Exhibit marked "L K C 2" referred to in the Affidavit of Lee Kee Choong affirmed before me this 2nd day of February, 1974.

Sd. W.P. Sarathy P.P.N.  
Commissioner for Oaths

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In the  
Supreme Court  
No. 3  
Annexure "A"  
(continued)

This is the Annexure referred to in the within  
affidavit of David Charles Raihman sworn this 27th  
day of July, 1971 and marked with the letter "F"

(Sgd.) H. Charan  
A Commissioner for Oaths.

PAY Morris Hedstrom Limited 24th February 1968

DEBIT Navua Trading Company 866136

Received from CRAIDS ENTERPRISES LIMITED  
Registered Office: Suva, Fiji

On account of Cash advance to you 23 - - 10

.....  
.....

The sum of twenty three pounds - shillings

- pence 23 - -

NAVUA TRADING CO.

..... (Sgd.) ?  
Passed for Payment Signature

(Sgd.) H. Charan  
A Commissioner for Oaths.

PAY NAVUA TRADING CO. 1st May, 1968 20

DEBIT -do-

Received from CRAIDS ENTERPRISES LIMITED  
Registered Office: Suva, Fiji

On account of Advance 280 - -

.....  
.....

the sum of Two hundred and eighty  
pounds - shillings - pence 280 - -

NAVUA TRADING CO.

..... (Sgd.) ?  
Passed for Payment Signature 30

dated 1st December 1973 and annexed to the Affidavit of the Petitioner affirmed on the 2nd day of February 1974 and marked "LKC 1". I am directed to say that Empat Nombor Ekor Berhad accepts the valuation of Messrs. Price Waterhouse & Co., which is a fair and just price of the shares and Empat Nombor Ekor Berhad is prepared to purchase the shares of the Petitioner and his brother, Mr. Lee Kee Min in the Company at the price assessed by Messrs. Price Waterhouse & Co.

In the High Court

—  
No. 8

Affidavit of  
Chew Him Fah  
22nd February  
1974  
(continued)

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6. As regards paragraph 4 of the Petitioner's Affidavit the matters alleged therein are irrelevant and have no bearing on the valuation of the shares and the Petitioner's opinion of the value of the shares cannot be accepted against the opinion of the experts.

20

7. I crave leave to refer to the letter of Messrs. Robert Lim, Kwong & Co., dated the 22nd January 1974 a copy of which is attached to the Affidavit of the Petitioner affirmed on the 2nd February, 1974 and marked "LKC 2". The said letter merely states that the accountants value the shares at \$657/- per share but does not state how they derived at the figure nor do they give any reasons that the valuation of Messrs. Price Waterhouse & Co. is erroneous.

30

8. The accounts on which Messrs. Price Waterhouse & Co., based their valuation have been duly audited and accepted by all concerned. Copies of the Annual Report and audited accounts was sent to the Petitioner and his brother, Mr. Lee Kee Min each year and neither he nor his brother has objected to the accounts which were presented and passed at the annual general meetings held each year.

9. Wherefore I pray that the Petitioner's application be dismissed with costs, the costs to be paid by the Petitioner and not out of the assets of Empat Nombor Ekor (Negeri Sembilan) Sendirian Berhad.

40

10. I further pray that the Petitioner and Mr. Lee Kee Min be ordered to comply with the Order made by this Honourable Court on the 5th day of July 1973 and to sell their shares in the Company to Empat Nombor Ekor Berhad at the fair and just price of \$184/- for each \$100/- fully paid share as assessed by the independent firm of Chartered Accountants, Messrs. Price Waterhouse & Co., approved

In the High Court

by the Court.

No. 8

Affidavit of Chew Him Fah 22nd February 1974 (continued)

Affirmed by the abovenamed Chew Him Fah at Kuala Lumpur, this 22nd day of February, 1974 at 10.00 a.m. } Sd. Chew Him Fah

Before me,

Sd. Ho Wai Kwong

Commissioner for Oaths

This Affidavit is filed by Messrs. S.Y. Chan & Co., Advocates & Solicitors of No. 58 Jalan Silang, (First Floor) Kuala Lumpur, Solicitors for the Empat Nombor Ekor (Negeri Sembilan) Sendirian Berhad.

10

No. 9

Grounds of Judgment 4th March 1974

No. 9

GROUPS OF JUDGMENT

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

COMPANIES WINDING UP PETITION NO: 3 OF 1973

In the Matter of Empat Nombor Ekor (Negeri Sembilan) Sdn. Bhd.

And

In the Matter of the Companies Act 1965

Lee Kee Choong

Petitioner

20

GROUPS OF JUDGMENT OF MOHD.AZMI J.

This is an application by the petitioner, Lee Kee Choong, by Summons-in-Chambers dated February 4, 1974 for an order that the valuation report of the chartered accountants, Messrs. Price Waterhouse & Company be rejected on the ground that the valuation made is wholly erroneous and misconceived. In their valuation report, the fair and just price of the shares held by the petitioner and his brother, Lee Kee Min, in the Empat Nombor Ekor (Negeri Sembilan) Sdn. Bhd. is valued at \$184/- per share. (See Exhibit

30

"LKCl"). I dismissed the application on the following three grounds :-

In the High Court

—  
No. 9

Grounds of Judgment  
4th March  
1974  
(continued)

10 (1) On July 5, 1973 a consent order was made by this Court whereby it was ordered that all the shares of the petitioner and his brother, Lee Kee Min, in the Empat Nombor Ekor (Negeri Sembilan) Sdn. Bhd. be purchased by any or all of the remaining contributories of the company at a fair and just price to be assessed by a firm of independent chartered accountants to be approved by the Court. By Summons-in-Chambers dated August 6, 1973, the petitioner applied, inter alia, for an order that Messrs. Price Waterhouse & Company, reputable firm of chartered accountants at No. 2, Jalan Ampang, Kuala Lumpur, be approved to determine the fair and just price of the shares of the petitioner and his brother, and that the said Messrs. Price Waterhouse & Company be at liberty to have access to all bills papers vouchers accounts and all other documents of the Empat Ekor Company which they consider relevant for the purpose of carrying out the valuation of the said shares. By paragraph 8 of the Petitioner's affidavit sworn on August 1, 1973, the petitioner affirmed that he had no dealings with Messrs. Price Waterhouse & Company and nor had the Empat Ekor Company any dealings with the said firm of chartered accountants; and being completely unknown to all parties concerned, he was informed and verily believed the said firm of chartered accountants have a long experience and standing and are suitable to be approved. Although Messrs. Price Waterhouse & Company were not acceptable to the opposing contributories who favoured the firm or Messrs. Peat, Marwick, Mitchell & Company of Messrs. Tan Kim Leong & Company, this Court on September 10 made an order in terms of the petitioner's Summons-in-Chambers. Since the appointment of Messrs. Price Waterhouse & Company was made at the instance of the petitioner, and having vouched for their experience and impartiality, in my view, it is unjust that the petitioner should now reject the valuation made by them as wholly erroneous and misconceived.

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30

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50 (2) In paragraph 4 of the affidavit in support of the present application, the petitioner states that he is dissatisfied with the valuation and gives his own opinion as to how the shares



In the High Court

No. 9

Grounds of Judgment  
4th March 1974  
(continued)

ought to have been valued. In my view, the petitioner's opinion of the value of the shares cannot be accepted against the expert opinion of Messrs. Price Waterhouse & Company- the experts whom he himself has chosen.

(3) The petitioner is relying on the valuation report of another firm of chartered accountants, namely Messrs. Robert Lim, Kwong & Company, as the basis of his allegation that the valuation made is erroneous. (See Exhibit "LKC2"). However, there is nothing in the said report to show in what way the valuation of Messrs. Price Waterhouse & Company is erroneous. The fact that the valuation made by Messrs. Robert Lim, Kwong & Company gives higher price to the shares does not, in my opinion, constitute sufficient ground for allowing the present application. In the absence of any specific allegation of partiality or any improper conduct on the part of Messrs. Price Waterhouse & Company, the petitioner should in the present case be bound to accept the valuation of these experts as fair and just.

10

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Under the circumstances, the application is dismissed and I order that the costs be paid by the petitioner himself.

Sd. Mohd. Azmi  
JUDGE HIGH COURT KUALA LUMPUR

Kuala Lumpur  
March 4 1974

30

Mr. R.R. Sethu of M/s. Chin, Sethu & Co. for petitioner

Mr. S.Y. Chan of M/s. S.Y. Chan & Co. for opposing contributories.

Mr. V. Dass, Sr. Asst. Official Assignee, for Official Assignee.

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21.

No. 10

ORDER

In the High  
Court

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

                      
No. 10

COMPANIES WINDING UP PETITION NO: 3 OF 1973

Order  
4th March  
1974

In the matter of Empat Nombor Ekor  
(Negeri Sembilan) Sdn. Bhd.

And

In the matter of the Companies Act, 1965

Lee Kee Choong

Petitioner

BEFORE THE HONOURABLE MR. JUSTICE MOHAMED AZMI

IN CHAMBERS

10

THIS 4TH DAY OF MARCH 1974.

ORDER

UPON HEARING Mr. R. R. Sethu, of Counsel  
for the Petitioner and Mr. S. Y. Chan of Counsel  
for the Opposing Contributories and the Company  
and UPON READING the Summons-in-Chambers dated  
4th day of February, 1974 and the Affidavit of  
Lee Kee Choong affirmed on the 2nd day of  
February, 1974 and the Affidavit of Chew Him  
Fah affirmed on the 22nd day of February 1974  
IT IS ORDERED Petitioner's application be and  
is hereby dismissed with costs.

20

Given under my hand and the seal of the  
Court this 4th day of March, 1974.

Senior Assistant Registrar,  
High Court, Kuala Lumpur

For your approval please

Sd. Chin Sethu & Co.  
(18.3.74)

30

S.Y. Chan & Co.

This order is filed by M/s. Chin, Sethu &  
Co., Solicitors for the Petitioners whose  
address for service is at 2nd Floor, Nos.  
113-115 Jalan Sultan, Kuala Lumpur 01-25.

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NOTICE OF APPEAL

In the Federal Court

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

No. 11

Notice of Appeal  
16th March 1974

CIVIL APPEAL NO: 37 OF 1974

Between

Lee Kee Choong

Appellant

And

- 1. Empat Nombor Ekor (N.S.) Sdn. Bhd.
  - 2. Empat Nombor Ekor Bhd.
  - 3. Lim Chooi Seng
  - 4. Chong Wan Tat
  - 5. Ng Mee Fah
  - 6. Lee Kuen Chin (f)
- Respondents

10

(In the matter of the Kuala Lumpur High Court Companies Winding-Up No: 3 of 1973)

In the matter of Empat Nombor Ekor (N.S.) Sdn. Bhd.

And

In the matter of Companies Act 1965

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Lee Kee Choong

Petitioner)

NOTICE OF APPEAL

TAKE NOTICE that Lee Kee Choong, the Appellant being dissatisfied with the decision of the Honourable Mr. Justice Mohamed Azmi given at Kuala Lumpur on the 4th day of March 1973 in Chambers appeals to the Federal Court against the whole of the said decision.

Dated this 16th day of March 1974.

Solicitors for the Appellant

30

To: The Chief Registrar,  
Federal Court,  
Kuala Lumpur.

And to: The Senior Assistant Registrar,  
High Court,  
Kuala Lumpur.

23.

And to : The Respondents abovenamed,  
or their Solicitors,  
M/s. S.Y. Chan & Co.,  
58 Jalan Silang,  
Kuala Lumpur.

In the Federal  
Court

\_\_\_\_\_  
No. 11

This Notice of appeal is filed by M/s. Chin,  
Sethu & Co., Solicitors for the Appellant whose  
address for service is at 2nd Floor, Nos. 113-  
115 Jalan Sultan, Kuala Lumpur 01-25.

Notice of  
Appeal  
16th March  
1974  
(continued)

No. 12

MEMORANDUM OF APPEAL

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA  
LUMPUR  
(APPELLATE JURISDICTION)  
CIVIL APPEAL NO: 37 OF 1974

No. 12

Memorandum of  
Appeal  
(undated)

BETWEEN

Lee Kee Choong

Appellant

AND

1. Empat Nombor Ekor (N.S.) Sdn. Bhd.

2. Empat Nombor Ekor Bhd.

3. Lim Chooi Seng

4. Chong Wan Tat

5. Ng Mee Fah

6. Lee Kuen Chin (f)

Respondents

(In the matter of the Kuala Lumpur High Court  
Companies Winding-up No: 3 of 1973

(In the matter of Empat Nombor Ekor  
(N.S.) Sdn. Bhd.

AND

30 In the matter of Companies Act 1965

Lee Kee Choong

Petitioner)

MEMORANDUM OF APPEAL

Lee Kee Choong the Appellant abovenamed

In the Federal  
Court

—  
No. 12

Memorandum of  
Appeal  
(undated)  
(continued)

appeals to the Federal Court against the whole of the decision of the Honourable Mr. Justice Mohamed Azmi given at Kuala Lumpur on the 4th day of March 1974 on the following grounds:

1. The learned Judge misdirected himself in holding

(i) that because the appointment of Messrs. Price Waterhouse & Company made at the instance of the Appellant and having vouched for their experience and impartiality it is unjust that the Appellant should reject the valuation made by them as wholly erroneous and misconceived; 10

(ii) that there is nothing in the report of Messrs. Robert Lim Kwong & Company to show in what way the valuation of Messrs. Price Waterhouse & Company is erroneous;

(iii) that in the absence of any specific allegation of partiality or any improper conduct on the part of Messrs. Price Waterhouse & Co., the Appellant is bound to accept the valuation. 20

2. The learned Judge should have held

(i) that it was open for the Appellant to have the valuation set aside on the ground that the valuation had been made under a mistake or on an erroneous principle or there has been a miscarriage of justice;

(ii) that the Appellant need not show partiality or improper conduct. 30

3. The learned Judge failed to attach sufficient importance to the valuation of Messrs. Robert Lim Kwong & Company.

4. The learned Judge failed to direct his mind to and appreciate the fact the valuation of Messrs. Price Waterhouse & Company is so inadequately small that it could have been arrived at only on the erroneous principle that the Company was not a going concern.

5. The learned Judge failed to appreciate that the audited accounts of the Company were inaccurate and that the Appellant had 40

challenged their accuracy in the petition for winding-up and that Messrs. Price Waterhouse & Company had erred in basing their valuation on those accounts.

In the Federal Court

No. 12

Dated this                    day of                    1974.

Appellant's Solicitors

Memorandum of Appeal (undated) (continued)

To: The Chief Registrar,  
Federal Court,  
Kuala Lumpur.

10 And to :  
M/s. S.Y. Chan & Co.,  
58 Jalan Silang,  
Kuala Lumpur,  
Solicitors for the Company and the  
Opposing contributories.

The address for service on the Appellant is care of M/s. Chin Sethu & Co., 2nd Floor, Nos: 113-115 Jalan Sultan, Kuala Lumpur 01-25.

No. 13

20 NOTICE OF MOTION FOR SUPPLEMENTARY RECORD

No. 13

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA LUMPUR (APPELLANT JURISDICTION)

Notice of Motion for Supplementary Record 26th August 1974.

FEDERAL COURT CIVIL APPEAL NO. 37 OF 1974

BETWEEN

Lee Kee Choong                    Appellant/Applicant

AND

- 1. Empat Nombor Ekor (N.S.) Sdn. Bhd.
- 2. Empat Nombor Ekor Bhd.
- 3. Lim Chooi Seng
- 30 4. Chong Wan Tat
- 5. Lee Kuen Chin (f)
- 6. Ng Mee Fah                    Respondents

(In the matter of the Kuala Lumpur High Court Companies Winding-up No. 3 of 1973)

In the matter of Empat Nombor Ekor (N.S.) Sdn.Bhd.

In the Federal Court

AND

In the matter of the Companies Act 1965

No. 13

Lee Kee Choong

Petitioner

Notice of Motion for Supplementary Record 26th August 1974. (continued)

decided by the Honourable Mr. Justice Mohd. Azmi at Kuala Lumpur on the 4th day of March 1974)

NOTICE OF MOTION

TAKE NOTICE that on Monday the 23rd day of September 1974 at 9.30 o'clock in the forenoon, or soon thereafter as he can be heard Mr. R.R. Sethu of Counsel for the abovenamed Lee Kee Choong Appellant/Applicant will move the Court for an Order that:

10

(a) the Supplementary Record filed on the 1st day of June 1974 be deemed to be part of the Original Record of Appeal and be used at the hearing of the Appeal; and

(b) the costs of this application be costs in the cause.

Sd.

Solicitors for the Appellant/Applicant

20

Dated this 12th day of June 1974

Dated Kuala Lumpur this 26th day of August 1974.

Sd. E.E. SIM

Chief Registrar,  
Federal Court  
Kuala Lumpur

To:

The Respondents abovenamed or their Solicitors M/s. S.Y. Chan & Co., No. 58 Jalan Silang, Kuala Lumpur.

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The address for service on the Appellant/Applicant is at Second Floor, Nos. 113-115 Jalan Sultan, Kuala Lumpur 01-25.







In the Federal Court

No. 14

Affidavit of Lee Kee Choong in support of No. 13 12th June 1974 (continued)

- 4. That the Record of Appeal was prepared and filed incorporating the documents set out in the approved index.
- 5. That the Respondent subsequent to the filing and service of the Record of Appeal wrote to my Solicitors to state that certain documents material to the appeal have not been included and that when they approved the draft index they had not seen the Grounds of Judgment and the Memorandum of Appeal.
- 6. That by letter dated 15th May 1974 the Respondents' Solicitors consented to the inclusion and filing of a Supplementary Record of the documents not included in the Original Record.
- 7. That a Supplementary Record was filed by on 1st June 1974 and a copy thereof service on the Respondents' Solicitors.
- 8. That I have been advised that the leave of this Honourable Court is necessary to treat the Supplementary Record as part of the Original Record and to use the Supplementary Record at the hearing of the appeal.
- 9. That in the circumstances of the case I pray for an Order in the terms of the Notice of Motion.

10

20

Affirmed by the abovenamed } LEE KEE CHOONG at } Kuala Lumpur this 12th day } of June 1974 at 2.00 p.m. }

30

Before Me,

Sd. W.P. Sarathy P.P.N. Commissioner for Oaths

This Affidavit is filed by M/s. Chin, Sethu & Co. Solicitors for the Appellant/Applicant whose address for service is at Second Floor, Nos. 113-115 Jalan Sultan, Kuala Lumpur 01-25.

29.

No. 15

NOTICE OF MOTION FOR LEAVE TO ADDUCE  
FURTHER EVIDENCE

In the Federal  
Court

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

No. 15

FEDERAL COURT CIVIL APPEAL NO. 37 OF 1974

Notice of  
Motion for  
leave to  
adduce further  
evidence  
28th September  
1974

BETWEEN

Lee Kee Choong Appellant/Applicant

AND

- 10
1. Empat Nombor Ekor (N.S.) Sdn. Bhd.
  2. Empat Nombor Ekor Bhd.
  3. Lim Chooi Seng
  4. Chong Wah Tat
  5. Ng Mee Fah
  6. Lee Kuen Chin (f) Respondents

(In the matter of the Kuala Lumpur High Court  
Companies Winding-Up No. 3 of 1973

In the matter of Empat Nombor Ekor (N.S.) Sdn. Bhd.

AND

In the matter of Companies Act 1965

20 Lee Kee Choong Petitioner)

NOTICE OF MOTION

TAKE NOTICE that the Court will be moved  
on Monday 30th day of September, 1974 at 9.00  
o'clock at the forenoon or so soon thereafter  
as Counsel can be heard, by Counsel for the above-  
named Lee Kee Choong Appellant/Applicant for an  
Order that :

- 30
- (a) the time for service of this Notice of  
Motion and the Affidavit of Lee Kee Choong  
affirmed to on the 26th day of September,  
1974 be abridged,
  - (b) that the Affidavit affirmed to by the  
abovenamed Lee Kee Choong on the 26th day  
of September, 1974 be admitted in evidence;  
and
  - (c) for such other and further relief as the

In the Federal Court

Court may deem fit.

Dated this 28th day of September 1974.

No. 15

Signed.

Solicitors for the Appellant/Applicant

Signed E.E. SIM

Chief Registrar,  
Federal Court,  
Malaysia

Notice of Motion for leave to adduce further evidence 28th September 1974

To:  
The Respondents abovenamed  
or their Solicitors,  
M/s. S.Y. Chan & Co.,  
58 Jalan Silang,  
Kuala Lumpur.

10

This Notice of Motion is filed by M/s. Chin, Sethu & Co., Solicitors for the Appellant/Applicant whose address for service is at Second Floor, Nos: 113-115 Jalan Sultan, Kuala Lumpur 01-25.

Filed this 28th day of September 1974

20

Sd. E.E. SIM  
Chief Registrar,  
Federal Court, Malaysia  
Kuala Lumpur

No. 16  
Affidavit of Lee Kee Choong 28th September 1974

No. 16

AFFIDAVIT OF LEE KEE CHOONG

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

FEDERAL COURT CIVIL APPEAL NO: 37 OF 1974

BETWEEN

30

Lee Kee Choong

Appellant/Applicant

AND

1. Empat Nombor Ekor (N.S.) Sdn.Bhd.
2. Empat Nombor Ekor Bhd.

3. Lim Chooi Seng  
 4. Chong Wan Tat  
 5. Ng Mee Fah  
 6. Lee Kuen Chin (f) Respondents

In the Federal  
 Court

—  
 No. 16

(In the matter of the Kuala Lumpur High Court  
 Companies Winding-Up No. 3 of 1973

Affidavit of  
 Lee Kee  
 Choong  
 28th September  
 1974  
 (continued)

In the matter of Empat Nombor Ekor (N.S.)Sdn.Bhd.

AND

In the matter of Companies Act 1965

- 10 Lee Kee Choong Petitioner)

A F F I D A V I T

I, LEE KEE CHOONG of full age and of No. 450  
 Bukit Rasah, Seremban do affirm and say as follows:

1. Further to and in amplification of paragraph  
 4 (b) of my Affidavit affirmed to on the 2nd day  
 of February 1974 and filed at the High Court,  
 Kuala Lumpur I set out the circumstances under  
 which the premiums were paid.
- 20 2. The Third Respondent who is the Chairman  
 and the promoter of the 1st Respondent Company  
 had offered me and my associates 2400 shares  
 of \$100/- each at per value of \$100/- plus  
 premium of \$200/- per share and my associates  
 and I had to pay \$720,000/-.
3. I had paid the said sum of \$720,000/- as  
 follows :-
- 30 (1) On or about 12.4.69 I paid the Third  
 Respondent in cash \$60,000/- and for which  
 he issued a receipt for \$20,000/- in my  
 name.
- (2) On or about 16.4.69 I paid the Third  
 Respondent in cash \$30,000/- and for which  
 he issued a receipt for \$10,000/- in the  
 name of my brother Lee Kee Min.
- (3) On or about 26.4.69 Mr. Chong Wan Fong,  
 the brother of the 4th Respondent had given  
 to me \$120,000/- in cash and I paid that sum  
 to the Third Respondent in cash. No receipts  
 were issued at the time of payment. A day

In the Federal  
Court

—  
No. 16

Affidavit of  
Lee Kee  
Choong  
28th September  
1974  
(continued)

or two later the Third Respondent issued 2 receipts for the sum of \$20,000/- each in the name of my brothers Lee Kee Ying and Lee Kee Fong

(4) On the same day 26th April 1969 I was given a bank draft for \$50,000/- by the Fifth Respondent to pay the Third Respondent. The Third Respondent refused to accept it. I telephoned the Fifth Respondent to come down to Kuala Lumpur from Seremban. He later came down to Kuala Lumpur on that day and cashed the draft at the United Malayan Banking Corporation, Jalan Mountbatten, and the sum of \$60,000/- was paid in cash to the Third Respondent who issued a receipt for 20,000/- in favour of the 5th Respondent. 10

(5) On 10.5.69 I paid \$90,000/- in cash to the Third Respondent and he issued a receipt in my name for \$30,000/-.

(6) On 3.6.69 I was given by the 6th Respondent's husband, Ng Kim Fong two banker's orders dated 3rd April, 1969 and 25th April 1969 for \$30,000/- each making a total of \$60,000/-. The Third Respondent issued a receipt for \$20,000/- therefore in the name of the sixth Respondent. 20

(7) On or about 10.6.69 I paid the Third Respondent \$90,000/- in cash and he issued a receipt for \$30,000/- in my name.

(8) On 11.6.69 I paid \$30,000/- in cash and \$180,000/- in 8 cheques referred to in paragraphs 7 and 8 herein to the Third Respondent who issued a receipt in the name of Chong Wan Tat, the Fourth Respondent. 30

4. The payments in cash referred to above were made in cash at the request of the Third Respondent.

5. My associates then apart from my brother Lee Kee Min, were the 4th, 5th and 6th Respondents.

6. I annex copies marked "L.K.C.1" of 6 receipts issued by the Third Respondent and these are as follows : 40

(a) No. 4 dated 12.4.65 for \$20,000/-

- (b) No. 6 dated 16.4.69 for \$10,000/-
- (c) No. 7 dated 26.4.69 for \$20,000/-
- (d) No. 8 dated 26.4.69 for \$20,000/-
- (e) No. 10 dated 10.5.69 for \$30,000/-
- (f) No. 12 dated 10.6.69 for \$30,000/-

In the Federal  
Court

—  
No. 16

Affidavit of  
Lee Kee  
Choong  
28th September  
1974  
(continued)

10 These are the only receipts issued in my favour and belong to me. The shares covered by the receipts in the name of Lee Kee Ying and Lee Kee Fong were in fact allotted to me because before the allotment of the shares they declined to become shareholders.

7. On 11.6.69 I gave the following cheques for \$179,400/- to the 3rd Respondent as part of the payment for my shares and I was later directed by the 3rd Respondent to pay these cheques into the account of the First Respondent at the Malayan Banking Bhd. Seremban:

- (a) cheque No. 072727 dated 11.6.65 for \$174,000/-, and
- 20 (b) cheque No. 072729 dated 11.6.69 for \$5,400/-

Copies of these cheques are annexed hereto marked "L.K.C.2"

8. I had also handed 6 cheques issued in the name of the 1st Respondent Company to the 3rd Respondent as part of the purchase price for my shares. The cheques are as follows:

- (a) No. 177531 dated 3.6.69 for \$100.00
- (b) No. 177532 dated 3.6.69 for \$100.00
- 30 (c) No. 177533 dated 3.6.69 for \$100.00
- (d) No. 177534 dated 3.6.69 for \$100.00
- (e) No. 177535 dated 10.6.69 for \$100.00
- (f) No. 177536 dated 10.6.69 for \$100.00

These cheques were issued in small amounts to enable the First Defendant Company to open accounts

In the Federal Court

No. 16

Affidavit of Lee Kee Choong 28th September 1974 (continued)

with various banks. Copies of these cheques are annexed hereto marked "L.K.C.3".

9. Copies of banker's orders dated 3.4.1969 and 25.4.1969 for \$60,000/- paid by Ng Kim Fong, husband of the 6th Respondent are annexed hereto marked "L.K.C.4"

10. A copy of the Bank draft dated 3rd April 1969 which was bought and cashed by Ng Mee Fah for \$60,000/- is annexed hereto and marked "L.K.C.5".

10

11. I had obtained copies of these cheques for use in proceedings in the Winding-Up petition and had also given notice to the Respondents to admit these documents (other than L.K.C.4 and 5). They were not admitted. I had subpoenaed the relevant banks to produce the originals at the hearing in the Court below on 5th July 1973. By reason of the order made on 5th July 1969 these were not gone into.

12. I had intended to use them in the Court below on my application to reject the valuation of Price Waterhouse as they are relevant to the determination of a fair and just price of the shares but was advised that these documents would have to be produced in open court on the hearing of my application and that for this purpose the application would be adjourned into open Court. The said premium of \$200/- per share is not stated in the accounts of the 1st Respondent Company.

20

30

13. Further I did not and still do not have the original cheques and I was advised that the originals would have to be produced by the bank officers and subpoenas to them should issue and this could only be done when a hearing takes place in open Court.

14. The 1st Respondent Company has been issued with a licence under the Pool Betting Act 1967. I and my said brother Lee Kee Min and my other associates were willing to pay in the first half of 1969 before the allotment of shares the said premium of \$200/- in addition to the par value of \$100/- per share in view of the said licence and the prospect involved in the said licence. The amount which ought to be paid as part of the just and fair price per share in view of the said licence and the prospects

40

involved in it on 5th July, 1973, the date of the Court's Order for valuation which should be the proper date for valuation or even on 10.9.1973 the date of the Court's reference to Messrs. Price Waterhouse & Co., would be very much more than \$200.00 per share. The value of the said licence or the prospects it involves is not included in the accounts of the First Respondent Company.

In the Federal  
Court

—  
No. 16

Affidavit of  
Lee Kee  
Choong  
28th September  
1974  
(continued)

- 10 15. Had the Court below adjourned this proceedings into open Court for hearing then all these matters would have been brought out.
16. By letter dated 16.7.1973 my Solicitors Messrs. Chin, Sethu & Co., inquired of Messrs. Price Waterhouse & Co. whether the letter would act as the independent Chartered Accountants to fix a fair and just price if approved by the Court. A copy of the said letter dated 16.7.1973 in annexed hereto marked "L.K.C.6".
- 20 17. By their reply dated 18.7.1973 Messrs. Price Waterhouse & Co. stated: "We ..... confirm that we are prepared to assist provided that all parties agree to our appointment". A copy of the said reply dated 18.7.1973 in annexed hereto marked "LKC 7".
18. By letter dated 5.12.1973 my said solicitors requested Messrs. Price Waterhouse & Co. to let the former know the particulars on the basis and mode of valuation. A copy of the said letter dated 5.12.1973 is annexed hereto marked "LKC 8".
- 30 19. Messrs. Price Waterhouse & Co. by their reply dated 6.12.1973 declined to disclose the basis and mode of valuation and declined to supply a copy of the unaudited accounts for the period 1.1.1973 to 31.8.1973 made use of by them as revealed in their valuation report dated 1.12.1973. A copy of the said reply dated 6.12.1973 in annexed hereto marked "LKC 9".
- 40 20. Copies of my said solicitors' letter dated 12.12.1973 to Messrs. Price Waterhouse & Co., and the latter's reply dated 24.12.1973 are annexed hereto marked "LKC 10" and "LKC 11" respectively.
21. Had the High Court adjourned into open Court for further hearing my application dated 4.2.1973



In the Federal Court

the matters set out in paragraphs 16 to 20 would also have been brought to the attention of the High Court.

No. 16

Affidavit of Lee Kee Choong 28th September 1974 (continued)

Affirmed by Lee Kee Choong ) at Kuala Lumpur this 28th ) day of September, 1974 ) at 9.05 a.m. )

Before me

Sd. W.P. SARATHY P.P.N. Persurohjaya Sumpah Commissioner for Oaths 1st Floor, 28 Jalan Mountbatten, Kuala Lumpur

10

This Affidavit is filed by M/s. Chin, Sethu & Co., Solicitors for the Appellant/Applicant whose address for service is at Second Floor, Nos. 113-115, Jalan Sultan, Kuala Lumpur 01-25.

20

Filed this 28th day of September 1974

Sd. E.E. SIM Chief Registrar Federal Court Malaysia


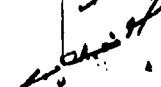



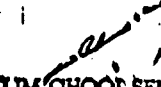
EXHIBIT "L.K.C.1"

In the Federal Court

No. 16

Exhibit L.K.C.1


  
 No. 4 12-4-1969
  
 Received from Mr. Lee Joo Chong
  
 the sum of Dollars Twenty thousand only
  
 being purchase of 20,000 shares in Empat
   
 Nombor Skop (Empat Sembilan) Sdn. Bhd.
   
\$20,000/-
  

  
 LIM CHOOI SENG


  
 No. 6 16-4-1969
  
 Received from Mr. Lee Joo Min
  
 the sum of Dollars Ten thousand only
  
 being purchase of 10,000 shares in Empat
   
 Nombor Skop (Empat Sembilan) Sdn. Bhd.
   
\$10,000/-
  

  
 LIM CHOOI SENG



No. 7 26/4/69
  
 Received from Lee Kee Ying
  
 the sum of Dollars Twenty thousand only
  
 being purchase of Twenty thousand shares
   
 in Empat Nombor Skop (Empat Sembilan) Sdn. Bhd.
   

  
\$20,000/-
  


EXHIBIT "L.K.C.1"

In the Federal Court

No. 16

Exhibit L.K.C.1 (continued)

No. 8 26/4/69

Received from Lee Kee Fong  
 the sum of Dollars Twenty Thousand only

being purchase of Twenty Thousand Shares  
in Empat Nombor (Nepi Sembilan) Sdn  
MALAYSIA Bhd.

\$20,000/-

LIM CHOOI SENG

No. 10 10<sup>th</sup> May 69

Received from Mr. Lee See Chong  
 the sum of Dollars Thirty Thousand only

being purchase of Thirty thousand shares  
in Empat Nombor (Nepi Sembilan) Sdn  
Berhad

\$30,000/-

LIM CHOOI SENG

No. 12 10 JUN 1969

Received from Mr. Lee See Chong  
 the sum of Dollars Thirty Thousand only

being purchase of Thirty thousand shares in  
Empat Nombor (Nepi Sembilan)  
Sdn Bhd.

\$30,000/-

LIM CHOOI SENG

EXHIBIT "L.K.C.2"

In the Federal Court

No. 16

Exhibit L.K.C.2

No. NPI 072727  
 No. 11-6-1969  
 33-30101  
 STAMP DUTY PAID  
 KUALA LUMPUR BRANCH  
 MALAYA  
 PAY Empat Ribu  
 PINGGIT  
 DOLLAR  
 47463-00  
 ALI PEMBAWA  
 BEARER  
 LEE EUGENE  
 ECHONG

No. NPI 072729  
 No. 11-6-1969  
 33-30101  
 STAMP DUTY PAID  
 KUALA LUMPUR BRANCH  
 MALAYA  
 BAYAR PA Empat Ribu  
 PINGGIT  
 DOLLAR  
 54001-00  
 ALI PEMBAWA  
 BEARER  
 LEE EUGENE  
 ECHONG

EXHIBIT "L.K.C.3"

In the Federal Court

No. 16

Exhibit L.K.C.3

af. 1194  
Kuala Lumpur



Malayan Banking Berhad  
 (INCORPORATED IN THE STATE OF MALAYA - HEAD OFFICE KUALA LUMPUR)  
 KUALA PILAH

Pay to the order of *Rayar Cash*

Ringgit One hundred only

2255

68-05-02  
3-6-69

PAID/ENTERED  
for LAI KWEN KWAI

af. 1220  
4 B  
Behau



Malayan Banking Berhad  
 (INCORPORATED IN THE STATE OF MALAYA - HEAD OFFICE KUALA LUMPUR)  
 KUALA PILAH

Pay to the order of *Rayar Cash*

Ringgit One hundred only

2255

68-05-02  
3-6-69

PAID/ENTERED  
for LAI KWEN KWAI

af. No 1212  
Kuala Pilah



Malayan Banking Berhad  
 (INCORPORATED IN THE STATE OF MALAYA - HEAD OFFICE KUALA LUMPUR)  
 KUALA PILAH

Pay to the order of *Rayar Cash*

Ringgit One hundred only

2255

68-05-02  
3-6-69

PAID/ENTERED  
for LAI KWEN KWAI

EXHIBIT "L.K.C.3"

In the Federal Court

No. 16

Exhibit L.K.C.3 (continued)

Port Buckson



No. 177534 ملايان بيڤكيج برحد 68-05-02  
 3-6-69  
**Malayan Banking Berhad**  
(INCORPORATED IN THE STATE OF MALAYA MALAYIA - HEAD OFFICE, KUALA LUMPUR) KUALA PILAH  
 Bayar Cash  
 Ringgit One hundred only  
 2255  
 \$100-00  
 for LAI KWEN KWAI

Gemas



No. 177535 ملايان بيڤكيج برحد 68-05-02  
 10-6-69  
**Malayan Banking Berhad**  
(INCORPORATED IN THE STATE OF MALAYA MALAYIA - HEAD OFFICE, KUALA LUMPUR) KUALA PILAH  
 Bayar Cash  
 Ringgit One hundred only  
 2255  
 \$100-00  
 for LAI KWEN KWAI

Amfain



No. 177536 ملايان بيڤكيج برحد 68-05-02  
 10-6-69  
**Malayan Banking Berhad**  
(INCORPORATED IN THE STATE OF MALAYA MALAYIA - HEAD OFFICE, KUALA LUMPUR) KUALA PILAH  
 Bayar Cash  
 Ringgit One hundred only  
 2255  
 \$100-00  
 for LAI KWEN KWAI









EXHIBIT "L.K.C.6"

143/72(1)

16th July, 1973

In the Federal  
Court

M/s. Price Waterhouse & Co.,  
2, Jalan Ampang,  
Kuala Lumpur.

          
No. 16Exhibit  
L.K.C.6

Dear Sirs,

Re: K.L. High Court Co. Winding-Up Petition  
No. 3 of 1973  
Empat Nombor Ekor (N.S.) Sdn. Bhd.

10

We act for the Petitioner, Mr. Lee Kee Choong  
and the supporting contributory, Mr. Lee Kee Min  
in the above matter.

The Petition was presented both under Sec.  
181 and 218 (i) of the 1965 Act.

At the hearing the Company and the Opposing  
Contributories conceded to our client's petition  
for relief under Sec. 181 viz. to purchase his  
shares at a fair and just price.

20

The Court has also ordered by consent that  
the fair and just price must be fixed by a firm  
of Independent Chartered Accountants to be  
approved by the Court.

Our client proposes to appoint your firm and  
to apply to the Court for approval of your firm.  
May we know if you would be agreeable to act as the  
Independent Chartered Accounts if approved by the  
Court.

The Court has also ordered that the cost of  
the Independent Chartered Accounts should come out  
of the asset of the Company.

30

Kindly let us have an early reply.

Yours faithfully,

Signed.

c.c. clients.

EXHIBIT "L.K.C.7"

In the Federal  
Court

          
No. 16

Exhibit  
L.K.C.7

PRICE WATERHOUSE & CO.,  
Chartered Accountants  
Certified Public Accountants (Malaysia)

P.O. Box 192,  
Chartered Bank Building,  
2 Jalan Ampang,  
Kuala Lumpur, Malaysia.

18th July, 1973.

Chin, Sethu & Co.,  
Second Floor,  
113-115 Jalan Sultan,  
Kuala Lumpur 01-25.

10

Dear Sirs,

K.L. High Court Co. Winding-up Petition  
No. 3 of 1973  
Empat Nombor Ekor (N.S.) Sdn. Bhd.

We acknowledge with thanks receipt of your  
letter of 16th July, 1973 and confirm that we are  
prepared to assist provided that all parties agree  
to our appointment.

20

Yours faithfully,  
SD.

EXHIBIT "L.K.C.8"

PW/NDW/eh

Exhibit  
L.K.C.8

PW/CTH/GG  
143/73

5th Dec. 1973.

Price Waterhouse & Co.,  
P.O. Box 192,  
Chartered Bank Building,  
2, Jalan Ampang,  
Kuala Lumpur.

30

Dear Sirs,

EMPAT NOMBOR EKOR (NEGRI SEMBILAN) SDN.BHD.  
KUALA LUMPUR HIGH COURT COMPANIES WINDING UP  
PETITION NO: 3 of 1973

We thank you for your letter dated 1st  
December, 1973 setting out the valuation.

47.

However before taking our client's instructions we shall be much obliged if you could kindly also let us know:-

In the Federal  
Court

          
No.16

Exhibit  
L.K.C.8  
(continued)

- (a) the particulars of the basis and mode of valuation
- (b) photostat copies of the audited accounts
- (c) what other information (if any) besides what is stated in your letter did you have access to and consider in arriving at your valuation.

10

As regards (b) we undertake to pay you the photostating charges.

Kindly let us have an early reply.

Yours faithfully,  
Signed.

c.c. M/s. S.Y. Chan & Co.

EXHIBIT "L.K.C.9"

PRICE WATERHOUSE & CO.,  
Chartered Accountants  
Certified Public Accountants (Malaysia)

Exhibit  
L.K.C.9

20

P.O. Box 192,  
Chartered Bank Building,  
2 Jalan Ampang,  
Kuala Lumpur, Malaysia.

6th December 1973.

Your ref: 143/73

PW/NDW/eh

Chin, Sethu & Co.,  
Second Floor,  
113-115 Jalan Sultan  
KUALA LUMPUR 01-25

30

Dear Sirs,

EMPAT NOMBOR EKOR (NEGRI SEMBILAN) SDN.BHD.  
KUALA LUMPUR HIGH COURT COMPANIES WINDING UP  
PETITION NO. 3 of 1973

Thank you for your letter of 5th December, 1973.

In the Federal  
Court

\_\_\_\_\_  
No. 16

Exhibit  
L.K.C.9  
(continued)

You will recall that we were appointed to determine the fair and just price of the shares. This we have done and our assignment has, therefore, been completed.

You will appreciate that valuing shares in a company is not an exact science and it is unlikely that any two firms of chartered accountants would arrive at exactly the same value. If we were to disclose the basis of our valuation, it is quite possible that one of the parties concerned would wish to dispute our valuation, in which case little useful purpose would have been served by our appointment. In this connection, we would draw your attention to our letter of 18th July, 1973 in which we advised that we were prepared to undertake the valuation provided that all parties concerned agreed to our appointment. We made this proviso because we have no wish to enter into arguments concerning the valuation.

10

20

With regard to item (b) of your letter, we are not certain that it would be in order for us to supply you with a copy of the unaudited accounts and suggest that you should obtain these either from the company direct or from Sharikat S.Y. Chan.

With regard to item (c) of your letter, we have itemised in our letter of 1st December, 1973 the information concerning the company's operations which we used for purposes of our valuation.

30

Yours faithfully,  
SD.

EXHIBIT "L.K.C.10"

Exhibit  
L.K.C.10

PW/CTH/GG.  
143/72

12th Dec. 1973

M/s. Price Waterhouse & Co.,  
P.O. Box 192,  
Chartered Bank Building,  
2, Jalan Ampang,  
Kuala Lumpur.

40

Dear Sirs,

EMPAT NOMBOR EKOR (N.S.) SDN. BHD.  
K.L. HIGH CT. COMPANIES WINDING UP  
PETITION NO. 3 of 1973

We thank you for your letter dated 6th December, 1973.

We would like to make it clear at the very outset that we are not challenging your integrity or otherwise.

In the Federal Court

As you know this is a matter which has to go back to the Court. The Judge has to be satisfied as well as the parties that there is no misapprehension of the Order or its interpretation.

                      
No.16  
Exhibit  
L.K.C.10  
(continued)

10 All that we wanted to know was what was the basis adopted for valuation. We doubt there are several ways of determining the valuation of shares in private companies e.g. by reference to book value or a winding up basis or as a going concern etc. It is for this purpose we wanted to know what basis you had adopted.

The other reason why we wanted to know was because our client had been challenging the accuracy of the accounts as it would appear from the Petition.

20 So we sincerely hope that at least you would indicate to us the basis of your valuation without reference to any details.

Kindly let us have an early reply,

Yours faithfully,  
Sd.

EXHIBIT "L.K.C.11"

Price Waterhouse & Co.,  
Chartered Accountants,  
Certified Public Accountants (Malaysia)

Exhibit  
L.K.C. 11

P.O. Box 192  
Chartered Bank Building,  
2 Jalan Ampang,  
Kuala Lumpur, Malaysia.

30

Your ref: 143/73

PW/NDW/eh

24th December, 1973.

Chin, Sethu & Co.,  
Second Floor,  
113-115 Jalan Sultan  
KUALA LUMPUR 01-25

Dear Sirs,

EMPAT NOMBOR EKOR (NEGRI SEMBILAN) SDN. BHD.  
KUALA LUMPUR HIGH COURT COMPANIES WINDING UP  
PETITION NO. 3 of 1973

40

We acknowledge with thanks receipt of your

In the Federal Court

letter of 12th December, 1973 but have nothing to add to our letter of 6th December, 1973.

No.16

Yours faithfully,

Exhibit  
L.K.C. 11  
(continued)

Sd.

No.17

No.17

NOTES OF ARGUMENT OF GILL AG.L.P.

Notes of argument of Gill Ag.L.P. 30th September 1974

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. 37 of 1974

Between

10

Lee Kee Choong ... Appellant

And

- 1. Empat Nombor Ekor (N.S.) Sdn. Bhd.
- 2. Empat Nombor Ekor Bhd.
- 3. Lim Chooi Seng
- 4. Chong Wah Tat
- 5. Ng Mee Fah
- 6. Lee Kuen Chin (f) Respondents

(In the matter of the Kuala Lumpur High Court Companies Winding-up No. 3 of 1973

20

In the matter of Empat Nombor Ekor (N.S.) Sdn. Bhd.

AND

In the matter of Companies Act 1965

Lee Kee Choong ... (Petitioner)

Coram: Gill, ag. Lord President,  
Ali, Ag. Chief Justice,  
H.S. Ong, Federal Judge.

NOTES OF ARGUMENT RECORDED BY GILL, Ag. LORD PRESIDENT

Kuala Lumpur

30th September 1974

30

Encik Palasuntharam with Encik R.R. Sethu for Appellant Encik S.Y. Chan for respondents.

Palasuntharam I have two motions. The earlier motion is not opposed (Encik S.Y. Chan confirms this). Order in terms. Costs in the cause.

In the Federal Court

\_\_\_\_\_  
No.17

I have a second motion. In order to deal with the second motion I have to outline the facts. Refer to Mulholland et al. v. Mitchell (1971) 2 W.L.R. 93 H.L. Judicature Act, 1964, Section 69

Notes of argument of Gill Ag. L.P. 30th September 1974 (continued)

10 The order appealed from is an interlocutory order, and section 69 allows me to introduce further evidence without leave. Refer to appeal record at page 48, Refer to Blakey v. Latham (1890) Ch. 23, 25; Spencer v. The Ancoats Vale Rubber Company Limited, (1888) 58 L.T. 363.

20 I submit that the order dated 4th March 1974 is an interlocutory order. It is one of the orders for working out the final order. I am therefore entitled to adduce fresh evidence. Refer to Jones v. Jones (1971) 1 W.L.R. 840 (valuation on an erroneous principle), Smith v. Gale (1974) 1 W.L.R. 9.

In the lower court there was only affidavit evidence and no oral evidence.

30 Chan: I was served with this application to add fresh evidence at 11.30 a.m. on Saturday, 28.9.74, so that I have not had the time to look into the law. On reading the affidavit and section 69 of the Judicature Act, I find that the appellant could only apply under Section 69(2). I say that the order appealed from is not an interlocutory order. The petition commenced for an order of winding up or alternative relief under the Companies Act. Winding-up was not enforced. A consent order was made to have the appellant's share valued. The valuation certificate has been delivered to the parties. It has not yet been brought before the Court for an order to be made thereon. It is not necessary for the order to be brought to Court. 40 The Order for purchase of the shares is in the order dated 5th July 1973 which still stands. I agree that if the order dated 10th September 1973 is an interlocutory order, it is left to the discretion of the Court to allow further evidence. Leave should not be granted where further evidence sought to be drawn was within the knowledge of the party at the time of the filing of the petition. In any event, the further facts sought to be



In the Federal  
Court

          
No. 17

Notes of  
argument of  
Gill Ag. L.P.  
30 September  
1974  
(continued)

introduced are not relevant to the appeal.

Palasuntharam: I refer to order 36, rules 54 and 55. These show that there must be a further order. Rules 54 and 55 apply if the reference is under Rule 45. But if the reference is under Order 37A, Rule 1, then Rule 2 of the same order applies. Refer to Kendjian v. Gumuchdjian (1923) W.N. 307 C.A.,

The Court holds by a majority that the order appealed from is a final order. In the circumstances we are of the opinion that this is not a case where in the exercise of our discretion we can grant the order on the second motion for further evidence to be adduced. The motion is therefore dismissed with costs.

10

(Sd. S.S. Gill)

Palasuntharam (arguing the appeal on merits)

I submit that the reference to Messrs. Price Waterhouse & Co. was without jurisdiction. I agree that this point was not raised in the Court below. My submission is that only a single person can be appointed as Court expert or referee. I can take this point, even though it was not taken in the Court below on the authority of Yong Mok Hin v. United Malay States Sugar Industries Ltd. (1967) 2 M.L.J. 9, 17.

20

Papadopoulos v. Papadopoulos (1930) P. 55 (want of jurisdiction cannot be cured by mere consent of the parties);

Colonial Bank of Australasia & Ors. v. William (1874) L.R. 5 P.C. 417, 442 (bottom of page):

30

Regina v. Inner London Quarter Sessions, ex parte D'Souza (1970) 1 W.L.R. 376.

Refer to Order 37A, rule 1 which must be read in conjunction with rule 9. Refer also to rule 3 and rule 4. The same rules apply to a reference under Order 36.

Refer to Smurthwaite & Ors. v. Hannay & Ors. (1894) A.C. 494, 506;

Norwich Corporation v. Norwich Electric Tramways Company Ltd. (1906) 2 K.B. 119, 125 (jurisdiction).

40

As regards the other grounds of appeal, I read ground 1(i), (ii) and (iii). Read ground 2(i) and (ii). Refer to the case of Dean v. Prince & Ors. (1954) 1 A.E.R. 749, 751, 753, 758 (the valuation was not taken on the basis of a going concern). Price here was so inadequately low; Carson & Co. Ltd. v. Dorothy Margaret Catherine Hulme-King A.I.R. (1938) P.C. 225, 226;

Smith v. Gale (1974) 1 W.L.R. 9, 13.

Adjourned until 9.30 a.m. tomorrow.

(Sd. S.S. Gill)

1st October 1974

Civil Appeal No. 37/74

Hearing continued. Counsel as before.

Palasuntharan: (continuing)

Yesterday I was dealing with grounds 1 and 2 in the memorandum of appeal.

Read grounds 3, 4 and 5 in the memorandum of appeal. Refer to Gore-Brown on Companies (42nd edition, 1972) page 567 and page 568.

Refer to Introduction to Company Accounts by Russell (5th Edition) page 19 under headings "Intangible Assets" and "Hidden Assets" under (a), (b) and (g). I emphasise licences, exclusive trading agreements and goodwill.

Refer to In re The Estate of Jacob Joseph (deceased) (1907) 26 N.Z.L.R. 81.

Refer to report of Price Waterhouse & Co. at page 9 of record. It is clear that they looked at only the balance sheets. Refer to the affidavit of the appellant starting at page 6. Read para. 4 of the affidavit and also para. 6 of Respondents' affidavit at page 14. There was undenied material on which the Court should have set aside the valuation. The intention was for the company to go on. The shares should have been valued on a going concern basis.

Waterhouse & Co. refused to disclose the basis of their valuation. Refer to Order 37A, rule 3. Once Waterhouse & Co. refused to disclose their

In the Federal Court

No.17

Notes of argument of Gill Ag. L.P. 30th September 1974 (continued)

1st October 1974

10

20

30

In the Federal  
Court

\_\_\_\_\_  
No.17

Notes of  
argument of  
Gill Ag. L.P.  
1st October  
1974  
(continued)

basis of valuation, no weight should be attached it. Refer to judgment of judge at page 21, para. (2). Refer again to para. 6 of affidavit at page 14 of record.

Refer to New Law Journal 1972 Vol. 122 page 632. Refer to judgment at page 22 of record. It is not necessary to show partial or improper conduct.

If this Court holds that the order appointing Price Waterhouse & Co. is a nullity then the order of 11th September 1973 and the order of 4th March 1974 should be set aside. There was undenied and uncontradicted material before the Court on the basis of which the report should have been set aside. The third alternative would be to send the matter back for the case to be argued in open Court.

10

Chan: On the question of jurisdiction, it is argued that the Court should not appoint a firm but a single person. Refer to Wright (Constructions) Ltd. & others v. Frodoor Ltd. & another (1967) 1 All E.R. 433, 440 in which a firm known as Cooper brothers were appointed as valuers and nothing was said by that being wrong.

20

The valuers were not bound to disclose the basis of their valuation. They were entitled to remain silent. Refer to Dean v. Prince & others (1953) 2 All-E.R. 636, 638. We are dealing here with valuers agreed to by the parties and not to a Court Expert. The report cannot be questioned except for fraud, mistake and miscarriage of justice.

30

Refer to Collier v. Mason (1858) 53 E.R. 613; Weekes v. Gallard (1869) 21 L.T. 655. The appellant has failed to show what is wrong with the valuers' report. Nothing in the affidavit to show either fraud or mistake or miscarriage of justice. Refer to Dean v. Prince (1954) 1 All E.R. 749, 752 759.

Palasuntharam (in reply)

The valuation in Wright's case and in Dean's case were not in pursuance of orders of Court. Once a valuer is appointed under an order of Court whether by consent of parties or not, then his reasons for his valuation are subject to examination by the Court

40

There are unchallenged facts by the appellant in this case.

Court adjourned and resumed after 30 minutes.

Appeal dismissed with costs. Deposit to respondents to account of taxed costs.

(Sd.) S.S. Gill

In the Federal Court

No. 17

Notes of argument of Gill Ag. L.P. 1st October 1974 (continued)

No. 18

Order

No. 18

Order 30th September 1974

10 IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. 37 of 1974

BETWEEN

Lee Kee Choong

Appellant

AND

- 1. Empat Nombor Ekor (N.S.) Sdn. Bhd.
- 2. Empat Nombor Ekor Berhad
- 3. Lim Chooi Seng
- 4. Chong Wah Tat
- 5. Ng Mee Fah
- 6. Lee Kuen Chin (f)

20 Respondents

(In the matter of the Kuala Lumpur High Court Companies Winding Up No. 3 of 1973

In the matter of Empat Nombor Ekor (N.S.) Sdn. Bhd.

AND

In the matter of Companies Act 1965

Lee Kee Choong

Petitioner)

CORAM: GILL, CHIEF JUSTICE, HIGH COURT IN MALAYA  
ALI, JUDGE, FEDERAL COURT, MALAYSIA  
30 ONG HOCK SIM, JUDGE, FEDERAL COURT, MALAYSIA

In the Federal  
Court

IN OPEN COURT

THIS 30TH DAY OF SEPTEMBER 1974

No. 18

O R D E R

Order  
30th September  
1974  
(continued)

UPON MOTION made unto Court this day by Mr. V.K. Palasuntharam (Mr. R.R. Sethu with him) of Counsel for the Appellant abovenamed in the presence of Mr. S.Y. Chan of Counsel for the Respondents abovenamed AND UPON READING the Notice of Motion dated the 28th day of September, 1974 and the Affidavit of Lee Kee Choong affirmed on the 28th day of September, 1974 and filed herein AND UPON HEARING Counsel for the Appellant and Counsel for the Respondents IT IS ORDERED that the Motion be and is hereby dismissed AND IT IS ORDERED that the costs of the Motion be paid by the Appellant to the Respondents as taxed by the proper officer of the Court.

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GIVEN under my hand and the Seal of this Court this 30th day of September, 1974.

L.S.

Signed. E.E. SIM

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CHIEF REGISTRAR

This Order was filed by Syarikat S.Y. Chan whose address of service is No. 58, Jalan Silang, (Tingkat Pertama), Kuala Lumpur, the Solicitors for the Respondents.

57.

No. 19

In the Federal  
Court

ORDER

          
No. 19

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA  
LUMPUR

Order  
30th September  
1974

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. 37 of 1974

BETWEEN

Lee Kee Choong

Appellant

AND

10

1. Empat Nombor Ekor (N.S.) Sdn.Bhd.
2. Empat Nombor Ekor Berhad
3. Lim Chooi Seng
4. Chong Wah Tat
5. Ng Mee Fah
6. Lee Kuen Chin (f)

Respondents

(In the matter of the Kuala Lumpur High Court  
Companies Winding Up No. 3 of 1973

In the matter of Empat Nombor Ekor (N.S.) Sdn. Bhd.

AND

20

In the matter of Companies Act 1965

Lee Kee Choong

Petitioner)

CORAM: GILL, CHIEF JUSTICE, HIGH COURT IN MALAYA  
ALI, JUDGE, FEDERAL COURT, MALAYSIA  
ONG HOCK SIN, JUDGE, FEDERAL COURT, MALAYSIA

IN OPEN COURT

THIS 30TH DAY OF SEPTEMBER, 1974

O R D E R

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UPON MOTION made unto Court this day by Mr.  
V.K. Palasuntharam (Mr. R.R. Sethu with him) of  
Counsel for the Appellant abovenamed in the presence  
of Mr. S.Y. Chan of Counsel for the Respondents above-  
named AND UPON READING the Notice of Motion dated  
26th day of August, 1974 and the Affidavit of Lee Kee  
Choong affirmed on the 12th day of June, 1974 and

In the Federal Court

No.19

Order  
30th September  
1974  
(continued)

filed herein AND UPON HEARING Counsel for the Appellant and Counsel for the Respondents IT IS ORDERED that the Supplementary Record of Appeal filed on the 1st day of June, 1974 be deemed to be part of the Original Record of Appeal and be used at the hearing of the Appeal AND IT IS ORDERED that the costs of the Motion be costs in the cause.

GIVEN under my hand and the Seal of the Court this 30th day of September, 1974.

L.S.

Signed: E.E. SIM

10

CHIEF REGISTRAR

This Order was filed by Syarikat S.Y. Chan whose address of service is No. 58, Jalan Silang, (Tingkat Pertama) Kuala Lumpur the Solicitors for the Respondents.

No.20

No. 20

Order dis-  
missing Appeal  
1st October  
1974

ORDER DISMISSING APPEAL

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA LUMPUR

(APPELLATE JURISDICTION)

20

FEDERAL COURT CIVIL APPEAL NO. 37 of 1974

BETWEEN

Lee Kee Choong

Appellant

AND

1. Empat Nombor Ekor (N.S.) Sdn.Bhd.
2. Empat Nombor Ekor Berhad
3. Lim Chooi Seng
4. Chong Wah Tat
5. Ng. Mee Fah
6. Lee Kuan Chin (f)

Respondents

30

(In the matter of the Kuala Lumpur High Court Companies Winding Up No. 3 of 1973

In the matter of Empat Nombor Ekor (N.S.) Sdn. Bhd.

AND

In the Federal  
Court

In the matter of Companies Act 1965

Lee Kee Choong

Petitioner)

No.20

CORAM: GILL, CHIEF JUSTICE, HIGH COURT IN MALAYA  
ALI, JUDGE, FEDERAL COURT, MALAYSIA  
ONG HOCK SIM, JUDGE, FEDERAL COURT, MALAYSIAOrder dis-  
missing Appeal  
1st October  
1974  
(continued)IN OPEN COURTTHIS 1ST DAY OF OCTOBER, 1974O R D E R

10        THIS APPEAL coming on for hearing on the 30th  
day of September, 1974 and on the 1st day of October,  
1974 in the presence of Mr. V.K. Palasuntharam (Mr.  
R.R. Sethu with him) of Counsel for the Appellant  
abovenamed and Mr. S.Y. Chan of Counsel for the  
Respondents above named AND UPON READING the Record of  
of Appeal herein AND UPON HEARING Counsel for  
the Appellant and Counsel for the Respondents IT  
20        IS ORDERED that this Appeal be and is hereby  
dismissed AND IT IS ORDERED that the costs of  
this Appeal be paid by the Appellant to the  
Respondents as taxed by the proper officer of the  
Court AND IT IS LASTLY ORDERED that the sum of  
\$500/- (Dollars Five hundred only) deposited in  
Court by the Appellant as security for costs of  
the Appeal be paid out to the Respondents towards  
as taxed costs.

GIVEN under my hand and the Seal of this  
Court this 1st day of October, 1974.

L.S.

Signed: E.E. SIM

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CHIEF REGISTRAR

This Order was filed by Syarikat S.Y. Chan whose  
address of service is No. 58, Jalan Silang,  
(Tingkat Pertama) Kuala Lumpur, the Solicitors for  
the Respondents.



In the Federal  
Court

No. 21

JUDGMENT

No.21  
Judgment  
8th January  
1975

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA  
LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. 37 of 1974

BETWEEN

Lee Kee Choong

Appellant

AND

- |    |                                    |             |
|----|------------------------------------|-------------|
| 1. | Empat Nombor Ekor (N.S.) Sdn. Bhd. | 10          |
| 2. | Empat Nombor Ekor Bhd.             |             |
| 3. | Lim Chooi Seng                     |             |
| 4. | Chong Wah Tat                      |             |
| 5. | Ng Mee Fah                         |             |
| 6. | Lee Kuen Chin (f)                  | Respondents |

(In the matter of the Kuala Lumpur High Court  
Companies Winding-Up No. 3 of 1973

In the matter of Empat Nombor Ekor (N.S.) Sdn.Bhd.

AND

In the matter of Companies Act 1965

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Lee Kee Choong

Petitioner)

Coram: Gill, Chief Justice, Malaya  
Ali, Judge, Federal Court  
Ong Hock Sim, Judge, Federal Court.

JUDGMENT OF THE COURT

On a Companies Winding-up petition to the High Court at Kuala Lumpur by the appellant to this appeal, Mohamed Azmi J. made a consent order on 5th July 1973 that all the shares of the appellant and his brother Lee Kee Min in Empat Nombor Ekor (Negeri Sembilan) Sendirian Berhad, the first respondent company, be purchased by any or all of the remaining contributories of the company, who are the other respondents to this appeal, at a fair and just price to be assessed by a firm of independent accountants to be approved

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by the Court.

In the Federal  
Court

—  
No.21

Judgment  
8th January  
1975  
(continued)

10 Following the consent order there was correspondence between the solicitors of the parties regarding the appointment of a firm of independent accountants. The appellant's solicitors wrote to suggest the appointment of Messrs. Price Waterhouse & Co. This was not acceptable to the respondents' solicitors who first wrote to suggest the appointment of Messrs. Peat, Marwick, Mitchell & Co. and later the appointment of Messrs. Tan Kim Leong & Co. The appellant's solicitors did not agree.

20 On 6th August 1973 the appellant made an application to the Court by way of summons in chambers for the appointment of Price Waterhouse. In his affidavit in support of the application, he referred to the correspondence which had passed between the solicitors for the parties and went on to say that as Price Waterhouse were completely unknown to all parties concerned and were chartered accountants of long experience and standing, they were a suitable firm to be appointed and had in fact agreed to act if all parties agreed to their appointment. He further said that Tan Kim Leong was known to him and was one of those who had in the beginning negotiated with Mr. Lim Chooi Seng, the third respondent, for the Seremban agencies and failed. In opposing the appellant's application one Chew Him Fah filed an affidavit on behalf of the respondents to say that the opposing contri-  
30 butories were unable to see any reasonable objection to the appointment of Peat, Marwick & Mitchell as independent valuers.

40 In the event, Mohamed Azmi J. made an order appointing Messrs. Price Waterhouse & Co. and he made a further order that they be at liberty to have access to all bills, papers, vouchers, accounts and other documents of the company which they considered relevant for the purpose of carrying out the valuation of the shares.

By a letter dated 1st December 1973 Price Waterhouse & Co. informed the appellant's solicitors that they valued the shares of the appellant and of his brother in the first respondent company at \$184/- per share. Thereafter the appellant's solicitors had an interview with another firm of chartered accountants known as Robert Lim, Kwang & Co. who on 22nd January 1974 sent a letter to the

In the Federal  
Court

appellant's solicitors to say they valued the shares at ~~8~~657/- per share.

          
No.21

Judgment  
8th January  
1975  
(continued)

On 4th February 1974 the appellant made an application to the Court that the valuation of Price Waterhouse be rejected and that such other order as the Court may deem fit be made as to the valuation of the share. The application was supported by the appellant's affidavit in which he stated that the valuation by Price Waterhouse was wholly erroneous and misconceived, that in order to determine the fair and just price of the shares of the company a special audit of the company's accounts ought to be had and all improper expenditure and bonuses to directors and agents be taken as part of the profits, and that the premium paid on the shares and the unclaimed price moneys should also be taken to be part of the profits and the shares valued as shares of a going concern.

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In opposing the application Chew Him Fah stated in his affidavit that Price Waterhouse were appointed as independent valuers on the insistence of the appellants, that the accounts on which Price Waterhouse based their valuation had been duly audited, that neither the appellant nor his brother had objected to the accounts which were presented and passed at the annual general meetings held each year and that Robert Lim, Kwang & Co. had not stated how they arrived at their valuation of ~~8~~657/- per share.

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This application too came up for hearing before Mohamed Azmi J. As stated in his grounds of judgment, the learned Judge dismissed the appellant's application on the following three grounds:-

- (1) Since the appointment of Price Waterhouse & Co. was made at the insistence of the petitioner who had vouched for their experience and impartiality, it was unjust that the appellant should reject their valuation as wholly erroneous and misconceived.
- (2) The appellant's opinion of the value of the shares could not be accepted against the expert opinion of Price Waterhouse & Co. whom he himself had chosen.
- (3) The fact that the valuation made by Robert Lim,

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Kwang & Co. gave a higher price to the shares did not constitute sufficient ground for allowing the appellant's application in the absence of any specific allegation of partiality or any improper conduct on the part of Price Waterhouse.

In the Federal  
Court

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No.21

It was from the order of dismissal of this application by Mohamed Azmi J. that the appellant brought his appeal to this Court.

Judgment  
8th January  
1975  
(continued)

10 At the hearing of the appeal, counsel for the appellant sought to adduce further evidence under section 69 of the Judicature Act 1964, which he contended he was entitled to do without leave of the court on the ground that the order appealed from was an interlocutory order. We ruled that the order was a final order and refused leave to adduce further evidence, as such further evidence was available to the appellant when the application to set aside the valuation of Price Waterhouse  
20 was made.

On the merits of the appeal, it was contended that the reference to Price Waterhouse for a valuation of the shares was made without jurisdiction. This point had not been raised in the court below, but we allowed it to be taken as it raised the question as to whether the court had jurisdiction to make the order appointing a firm of accountants instead of a single person for the purposes of a valuation report. But we rejected this contention as there have been cases, e.g., Frank H. Wright (Construction) Ltd. v. Fredoor Ltd., (1) in which a firm of accountants was appointed as valuers and nothing was said about that being wrong.

40 The main ground of appeal was that the learned Judge misdirected himself in dismissing the appellant's application for the reasons which he had stated. The other grounds of appeal, which are inter-related, were that the learned Judge failed to attach sufficient importance to the valuation of Messrs. Robert Lim, Kwang & Co., that he failed to direct his mind to and appreciate the fact that the valuation of Price Waterhouse was so inadequately small that it could have been arrived at only on the erroneous principle that the

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(1) (1967) 1 W.L.R. 506

In the Federal Court

No.21

Judgment  
8th January  
1975  
(continued)

company was not a going concern, and that he failed to appreciate that as the appellant had challenged the accuracy of the audited accounts of the company in the petition for winding up, the valuers had erred in basing their valuation on those accounts.

In dealing with all these grounds we had to consider the test to be applied in such cases as laid down in decided cases. In Collier v. Mason (2) Sir John Romilly, M.R. said:

"I cannot satisfy myself that I should be correct in saying that this is a contract which cannot be specifically performed.

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It is not proved that Mr. Englehart did not exercise his judgment and discretion in the best way he could. It may have been improvident as between these parties to enter into a contract to buy and sell property at a price to be fixed by another person, but that cannot avoid the contract. Here the referee has fixed the price, which is said to be evidence of miscarriage, but this Court upon the principle laid down by Lord Eldon, must act on that valuation, unless there be proof of some mistake, or some improper motive, I do not say a fraudulent one; as if the valuer had valued something not included, or had valued it on a wholly erroneous principle, or had desired to injure one of the parties to the contract; or even, in the absence of any proof of any one of these things, if the price were so excessive or so small as only to be explainable by reference to some such cause; in any one of these cases the Court would refuse to act on the valuation. But I am satisfied that it is not so here, the price does not come up to that; one person, it is true, has valued the property at £2634, and another of £2834, and it is said that the valuation of Mr. Englehart is nearly double; but I have frequently had to refer to the enormous discrepancy in bona fide valuations, when it is known by each valuer for what purpose the property is to be valued; it is impossible in such cases to avoid a species of bias. I find that £3100 was offered for the property

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(2) (1858) 25 Beav. 200; 53 E.R. 613,614.

and refused, and this is a test that the vendor did not consider that to be the value. The Plaintiff said he would not take less than £3500, and swears that he laid out £5200 on the property exclusive of the fixtures, and the valuation is £4957. It does appear to me a very high and perhaps an exorbitant valuation, but I cannot say it amounts to evidence of fraud, mistake or miscarriage."

In the Federal  
Court

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No.21

Judgment  
8th January  
1975  
(continued)

10 In Weeks v. Gallard (3) Lord Romilly had this to say:-

"This is a very unfortunate case, assuming the property to be valued too low, which seems probable. But that is no defence to the plaintiff's suit. The plaintiff and the defendant agreed to be bound by the valuation of two persons named in the agreement, and it is the duty of the court to enforce specific performance of such agreements. The court has really no discretion in the matter. The discretion of the court is bound, as Lord Ellenborough says, by fixed rules. In one case of this kind a house and furniture were valued at three times their value, and yet, there was a decree for specific performance. The only defence to such a suit would be fraud or collusion. There is no proof here that the valuers did not value the property as fairly as they could; there is no suggestion of fraud or collusion. There must, therefore be a decree for specific performance of the contract with costs".

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The test laid down in Collier v. Mason was cited with approval by the Court of Appeal in Dean v. Prince (4) That was a case in which the articles of association of a private company provided that a deceased director's shares could be purchased by the surviving directors at a price to be certified by an auditor as a fair value. A director who held a controlling interest in the company died. The auditor, having made a certified valuation, stated in writing that for the purpose of his valuation he had not regarded the company as a going concern but that he had valued

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(3) (1869) 21 LT 655

(4) (1954) All ER 749

In the Federal  
Court

\_\_\_\_\_  
No.21

Judgment  
8th January  
1975  
(continued)

on a "break-up" basis, because in his opinion the shares had no value on any other basis, having regard to the losses made by the company. At the trial before Harman J. a preliminary point was taken on the part of the defendants that the valuation was unchallengable in the courts since the shareholders had by the articles submitted the matter in question to the exclusive arbitrament of the auditor. The learned Judge disallowed this objection on the ground that by stating the reasons which had led him to arrive at his valuation, Mr. Jenkinson had exposed his certificate to examination by the courts into the validity of such reasons. There was no appeal from that part of the learned Judge's judgment. The Judge then proceeded to consider the basis of Mr. Jenkinson's valuation, and concluded in favour of the plaintiff that he, Mr. Jenkinson, had fallen into an error on a matter of principle or had made a material mistake in arriving at his figure, and so declared that the plaintiff was not bound by the certificate. 10 20

It was against that part of the learned Judge's judgment that the defendants appealed. The Court of Appeal held that a valuation could be impeached, not only for fraud but also for mistake or miscarriage of justice, e.g., if the expert made an arithmetical error or took something into account which he ought not to have taken into account or vice versa, or interpreted the agreement wrongly, or proceeded on some erroneous principle, even if the court could not be bound to actual error, nevertheless if the figure itself was so extravagantly large or so inadequately small that the only conclusion was that the expert must have made some error the Court would interfere; but, on the facts, bearing in mind particularly the precarious nature of the company's tenure of its premises, it could not be said that the auditor had erred, and, therefore, his valuation ought not to be disturbed. In other words, it was held that the auditor had correctly rejected the "going-concern" basis of valuation, as the Company had no expectation of profit making. 30 40

The dictum of Harman J. in Dean v Prince (5) was not followed in Smith v. Gale (6) in which

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(5) (1953) 2 All ER 636

(6) (1974) 1 W.L.R. 9

it was held that the accountant's certificate, having been founded on a mistaken interpretation of the agreement, was not binding on the plaintiff and the court had jurisdiction to go behind the certificate and correct the value shown therein. In Jones (M) v. Jones R.R. (7) Ungoed Thomas J. said that where a valuation is made on an erroneous principle, the valuation is vitiated and cannot be relied on even though it is not shown that the resultant valuation figure is wrong. That was a case in which the shares in the company and the assets were to be valued "as between a willing vendor and a willing purchaser of a business being carried on as a going concern", the valuation of the shares being directed to be made on "an assets basis".

In the Federal  
Court

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No.21

Judgment  
8th January  
1975  
(continued)

In the present case Price Waterhouse did not state in their valuation report the reasons which had led them to arrive at their valuation. There were no directions to them as to whether they were to value the shares on a going-concern basis or on the basis of a break-up valuation. There was nothing to suggest on what basis Robert Lim, Kwang & Co. arrived at their very much higher valuation of the shares. The order appointing Price Waterhouse directed that all the relevant accounts and books of the company were to be made available to them. This was done, and quite clearly their valuation was based on all the accounts, the accuracy of which had never been challenged by the appellant.

In all the circumstances of the case we could find no justification to go behind the valuation report or allow any further inquiries to be made as to the correctness or otherwise of such valuation. We therefore dismissed the appeal with costs.

8th January 1975.

Kuala Lumpur

(S.S.GILL)  
CHIEF JUSTICE

Encik Palasuntharam, Encik R.R. Sethu with him  
for Appellant.  
(Solicitors: Messrs. Chin, Sethu & Co.)

Encik S.Y. Chan for Respondents.  
(Solicitors: Messrs. S.Y. Chan & Co.)

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(7) (1971) 1 W.L.R. 840



In the Federal Court

No.22

ORDER GRANTING FINAL LEAVE TO APPEAL

No.22

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA LUMPUR

Order granting Final Leave to Appeal  
17th March 1975

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. 37 of 1974

BETWEEN

Lee Kee Choong

Appellant

AND

- 1. Empat Nombor Ekor (N.S.) Sdn. Bhd.
  - 2. Empat Nombor Ekor Bhd.
  - 3. Lim Chooi Seng
  - 4. Chong Wah Tat
  - 5. Ng Mee Fah
  - 6. Lee Kuen Chia (f)
- Respondents

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(In the matter of the Kuala Lumpur High Court Companies Winding-up No. 3 of 1973

In the matter of Empat Nombor Ekor (N.S.) Sdn. Bhd.

AND

In the matter of Companies Act 1965

20

Lee Kee Choong

Petitioner)

CORAM: SUFFIAN, LORD PRESIDENT, FEDERAL COURT, MALAYSIA:

ONG HOCK SIM, JUDGE, FEDERAL COURT, MALAYSIA:

CHANG MIN TAT, JUDGE, HIGH COURT, MALAYA.

IN OPEN COURT

THIS 17TH DAY OF MARCH, 1975

O R D E R

UPON MOTION unto Court this day by Mr. R.R. Sethu of Counsel for the Appellant in the presence of Mr. S. Venugopal of Counsel for the Respondents

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AND UPON READING the Notice of Motion dated the 25th day of February, 1975 and the Affidavit of Lee Kee Choong affirmed to on the 20th day of February, 1975 and filed herein in support of the Motion AND UPON HEARING Counsel as aforesaid IT IS ORDERED that final leave be and is hereby granted to the Appellant to appeal to His Majesty the Yang di-Pertuan Agong from the whole of the decision of the Federal Court of Malaysia given herein at Kuala Lumpur on the 1st day of October, 1974.

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GIVEN under my hand and the Seal of the Court this 17th day of March, 1975

CHIEF REGISTRAR.

This Order is filed by Messrs. Chin, Sethu & Co., Solicitors for the Petitioner whose address for service is at Second Floor, Nos. 113-115, Jalan Sultan, Kuala Lumpur 01.25.

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In the Federal Court

\_\_\_\_\_  
No.22

Order granting  
Final Leave to  
Appeal  
17th March  
1975  
(continued)

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N :

LEE KEE CHOONG

Appellant

- and -

1. EMPAT NOMBOR EKOR

(N.S.) SDN. BHD.

2. EMPAT NOMBOR EKOR BHD.

3. LIM CHOOI SENG

4. CHONG WAH TAT

5. NG MEE FAH

6. LEE KUEN CHIN (f)

Respondents

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RECORD OF PROCEEDINGS

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WILSON FREEMAN,  
6/8 Westminster Palace Gardens,  
Artillery Row, London SW1P 1RL.  
Solicitors for the Appellants.

CHARLES RUSSELL & CO.,  
Hale Court, Lincoln's Inn,  
London, WC2A 3UL.  
Solicitors for the Respondents.