

33 / 81

No. 15 of 1980

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N :

HOE JOO SAWMILLS (sued as a firm) Appellant
(Defendant)

- and -

SIGMA (AIR CONDITIONING) SDN BHD Respondent
(Plaintiff)

RECORD OF PROCEEDINGS

GRAHAM PAGE & CO.
24 John Street,
London WC1N 2DA.

Solicitors for the Appellant

SIMMONS & SIMMONS,
14 Dominion Street,
London EC2M 2RJ.

Solicitors for the Respondent

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 :

HOE JOO SAWMILLS (sued as a firm) Appellant
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(Plaintiff)

RECORD OF PROCEEDINGS

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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 :

HOE JOO SAWMILLS Appellant
(Defendant)

- and -

10 SIGMA (AIR CONDITIONING) Respondent
(Plaintiff)
SDN BHD

RECORD OF PROCEEDINGS

No. 1

Writ of Summons and Statement of
Claim - 17th January, 1978

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

CIVIL SUIT NO. 167 OF 1978

Between

Sigma (Air-Conditioning) Sdn.Bhd. Plaintiff

And

20 Hoe Joo Sawmills
(Sued as a firm) Defendant

WRIT OF SUMMONS
(Generally Indorsed)

THE HONOURABLE TAN SRI SARWAN SINGH GILL,
P.M., P.S.M. Chief Justice of the High Court,
Malaya, in the name and on behalf of His Majesty
the Yang Di Pertuan Agong.

To: Hoe Joo Sawmills
(Sued as a firm)
30 470-471, Jalan Ipoh,
Kuala Lumpur.

In the High
Court

No. 1
Writ of
Summons and
Statement of
Claim - 17th
January 1978

In the High Court

No. 1
Writ of
Summons and
Statement of
Claim - 17th
January 1978
(cont'd)

WE COMMAND you that within eight days after service of this Writ on you inclusive of the day of such service you do cause an appearance to be entered for you in an action at the suit of Sigma (Air Conditioning) Sdn. Bhd. of No. 537, Jalan Tiong, Off 3rd Mile, Jalan Ipoh, Kuala Lumpur.

AND TAKE NOTICE that in default of your so doing the Plaintiff may proceed therein and judgment may be given in your absence. 10

WITNESS ZAITUN ZAWIYAH BT. PUTEH Senior Assistant Registrar of the High Court in Malaya this 17th day of January, 1978.

L.S. Sgd: Illegible

Plaintiff's Solicitors Senior Assistant Registrar,
High Court, Malaya,
Kuala Lumpur.

N.B. This Writ is to be served within twelve months from the date thereof or if renewed within six months from date of last renewal including the day of such date and not afterwards. 20

The Defendant (or Defendants) may appear hereto by entering an appearance (or appearances) either personally or by solicitor at the Registry of the High Court at Kuala Lumpur.

A Defendant appearing personally may if he desires enter his appearance by post and the appropriate forms may be obtained by sending a Postal Order for \$3.00 with an addressed envelope to the Registrar of the High Court at Kuala Lumpur. 30

INDORSEMENT OF CLAIM

The Plaintiff claims:-

- a) a declaration that the Defendant and/or its servants or agents are carrying on business and/or residing on the said property known as C.T. 11881, Lot 112, Section 83, Town and District of Kuala Lumpur (hereinafter referred to as 'the said property'), without the Plaintiff's consent or licence and are therefore in wrongful possession thereof as trespassers. 40

- b) an Order that the Defendant and all persons holding through or under it do forthwith quit and vacate the said property unlawfully occupied by them.
- c) An injunction to restrain the Defendant by itself or its servants or agents from remaining on or using or occupying the said property.
- d) damages.
- 10 e) costs.
- f) further or other relief as the Honourable Court may deem fit and just in the premises.

In the High Court

No. 1
Writ of
Summons and
Statement of
Claim - 17th
January 1978
(cont'd)

Dated this 17th day of January 1978.

Sgd.

SOLICITORS FOR THE PLAINTIFF

20 This Writ is issued by Messrs. Chor Pee & Hin Hiong whose address for service is at 3rd Floor, Bangunan Ming, Jalan Bukit Nanas, Kuala Lumpur solicitors for the Plaintiff whose registered office is at 537, Jalan Tiong, Off 3rd Mile, Jalan Ipoh, Kuala Lumpur.

This Writ was served by me at
on the on the.....
day of 197... at the hour of...

Indorsed this day of..... 1978

(Signed).....

(Address).....

STATEMENT OF CLAIM

30 1. The Plaintiff is a private limited company having its registered office at No. 537 Jalan Tiong, Off 3rd Mile, Jalan Ipoh, Kuala Lumpur and was at all material times to this action the registered owner of property known as C.T.11881, Lot 112, Section 83, Town and District of Kuala Lumpur together with buildings erected thereon and known as No. 470-471, Jalan Ipoh, Kuala Lumpur (hereinafter referred to as 'the said property').

40 2. The Defendant carries on business and/or permits its servants or agents to reside on the said property.

In the High
Court

No. 1
Writ of
Summons and
Statement of
Claim - 17th
January 1978
(cont'd)

3. The Plaintiff has not requested any payment of rent nor acknowledged the Defendant and/or its servants or agents as its Tenant or Tenants since the Plaintiff became the legal owner of the said property.

4. On the 19th day of November 1977 the Plaintiff by a letter gave the Defendant one (1) month's notice to quit the said property.

5. The Defendant has wrongfully continued to carry on business and/or permits its servants or agents to reside on the said property since the notice to quit and still continues to do so.

10

And the Plaintiff claims:-

- a) a declaration that the Defendant and/or its servants or agents are carrying on business and/or residing on the said property without the Plaintiff's consent and licence and are therefore in wrongful possession thereof as trespassers.
- b) an Order that the Defendant and all persons holding through or under it do forthwith quit and vacate the said property unlawfully occupied by them.
- c) an Injunction to restrain the Defendant by itself or its servants or agents from remaining on or using or occupying the said property.
- d) damages.
- e) costs.
- f) further or other relief as the Honourable Court may deem fit and just in the premises.

20

30

Dated this 17th day of January 1978

Sgd.

SOLICITORS FOR THE PLAINTIFF

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

CIVIL SUIT NO. 167 OF 1978

BETWEEN

Sigma (Air Conditioning) Sdn. Bhd Plaintiffs

And

Hoe Joo Sawmills (sued as a firm) Defendants

10

STATEMENT OF DEFENCE

1. The defendant has no knowledge of paragraph 1 of the Statement of Claim and puts the plaintiffs to strict proof thereof.

2. The defendant admits paragraph 2 of the Statement of Claim.

20

3. As regards paragraph 3 of the Statement of Claim the defendant admits only that the plaintiffs have not requested any payment of rent from the defendant at any times but says that the defendant paid the quit rent and assessment for the said land at all times with the knowledge of the plaintiffs.

4. The defendant admits receiving the Notice to quit dated the 19th November 1977 from the plaintiffs but denies that the plaintiffs are entitled to possession of the said land.

30

5. The plaintiffs at the time of purchase of the said land from one Yee Wai Fong (f) were aware of the defendant's occupation of the said land and were further aware of the fact that in selling the said land to the plaintiffs the said Yee Wai Fong (f) was acting in fraud of the defendant's partners and/or in breach of an oral trust of the said land created by one Low Hoo Siew sometime on or around the 4th December 1971 prior to the said Low Hoo Siew's decease on the 7th December, 1971.

40

6. The said Low Hoo Siew was the registered proprietor of the said land and the Managing Partner of the defendant Sawmill. Sometime on or about the 4th December 1971 pursuant to discussions and/or negotiations between the said Low Hoo Siew and one Ng Chee Cheong, the husband

In the High
Court

No. 2
Statement of
Defence and
Counterclaim
15th February
1978.
(cont'd)

and/or agent at all material times of the said Yee Wai Fong (f), the said Low Hoo Siew transferred the said property to the said Yee Wai Fong (f) to be held in trust by her for the defendant and the partners thereof on certain terms and conditions including the condition that the said land was not to be transferred, sold or let out to any Third Party without the consent of all the partners thereto.

7. The said Yee Wai Fong (f) in breach of the said condition purported to sell the said land to the plaintiffs without the consent or knowledge of all the partners of the defendant Sawmill and the plaintiffs in spite of their knowledge of the said breach agreed to purchase the said land from the said Yee Wai Fong (f). 10

8. In these circumstances the defendant claims that he is entitled to set aside the said sale of the said land by the said Yee Wai Fong (f) to the plaintiffs. 20

9. Further or in the alternative the defendant says that even if it is held that the said Sale is valid and that the plaintiffs are entitled to vacant possession of the said land then the defendant maintains:-

(i) that it was at all material times a Licensee on the said land and is entitled to a reasonable time and reasonable compensation to vacate the said land; and/or 30

(ii) the defendant will further or in the alternative claim an indemnity from the said Yee Wai Fong (f) and/or Ng Chee Cheong for such damages as the defendant may be ordered to pay the plaintiffs and for such losses and damages as the defendant may suffer as a consequence of the said Yee Wai Fong (f)'s said breach of trust.

10. Save as hereinbefore expressly admitted the defendant denies each and every allegation against him contained in the Statement of Claim and prays that the plaintiffs' claim be dismissed with costs. 40

COUNTER - CLAIM

11. The defendant repeats paragraphs 4, 5, 6, 7 and 8 of the Defence herein.

12. And the defendant claims:-

- (a) a declaration that the sale of the said land by Yee Wai Fong (f) to the plaintiffs is and was null and void and/or
- (b) an Order that:
- i) the sale of the said land by Yee Wai Fong (f) to the plaintiffs and the registration thereof be set aside and,
- 10 ii) the said land be transferred back by the said Yee Wai Fong (f) to Hoe Joo Sawmill or to Low Chin Pan as the Executor of the Will of Low Hoo Siew (deceased)
- (c) Damages
- (d) Costs.
- (e) Such other relief which this Honourable Court deems fit and proper to grant.

In the High Court
No. 2
 Statement of Defence and Counterclaim
 15th February 1978.
 (cont'd)

Dated this 15th day of February, 1978.

20 Sgd.
 Solicitors for the defendant.

This Statement of Defence & Counterclaim is filed by M/s. Ambiavagar & Co. Solicitors for the defendant above-named and whose address for service is at Mah Sing Building, 112-114, Jalan Pudu, Kuala Lumpur.

No. 3

Reply and Defence to Counterclaim
 22nd February 1978

No. 3

Reply and Defence to Counterclaim
 22nd February 1978

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

30 CIVIL SUIT NO. 167 OF 1978

Between

Sigma (Air-Conditioning) Sdn.Bhd. Plaintiff

And

Hoe Joo Sawmills (sued as a firm) Defendant

REPLY AND DEFENCE TO COUNTER-CLAIM

R E P L Y

In the High
Court

No. 3
Reply and
Defence to
Counterclaim
22nd February
1978.
(cont'd)

1. The Plaintiff joins issue with the Defendant on its Defence in so far as the same consists of admissions.
2. In reply to paragraph 3 of the Statement of Defence the Plaintiff has no knowledge of the payment of the quit rent or any rent as alleged or at all.
3. In reply to paragraph 5 of the Statement of Defence the Plaintiff has no knowledge of the said Low Hoo Siew or the alleged fraud or oral trust as alleged or at all. 10
4. In reply to paragraph 6 of the Statement of Defence the Plaintiff contends and will contend that at the material time of the purchase of the said property the property was registered in the name of the said Madam Yee Wai Fong and there had not and at any time any trusts registered upon the said title to the said property and therefore the conveyance thereof from the said Madam Yee Wai Fong to the Plaintiff was in so far as the Plaintiff is concerned legal. 20
5. In reply to paragraph 7 of the Statement of Defence the Plaintiff says that it is not aware of the alleged breach and further states that at all times it has been negotiating with the registered owner of the said property, the said Madam Yee Wai Fong, prior to the purchase.
6. In reply to paragraph 9(i) of the Statement of Defence the Plaintiff denies that the Defendant is entitled to reasonable time nor compensation to vacate from the Plaintiff. And in reply to paragraph 9(ii) thereof the Plaintiff says that the question of the said indemnity is not in any way related to this action nor is the Plaintiff bound under the circumstances to compensate the Defendant. 30

DEFENCE TO COUNTER-CLAIM

7. The Plaintiff repeats the foregoing.
8. With regard to paragraph 12 of the Counter-Claim the Plaintiff states that the seeking of the said declaration or that the registration of the transfer from the said Madam Yee Wai Fong to the Plaintiff to be set aside or that the land itself be transferred back to the Defendant and/or the said Low Chin Pan from the said Madam Yee Wai Fong are not in any way related to this action. 40
9. Save as aforesaid the Plaintiff denies

each and every allegation contained in the Counter-Claim as if the same were herein specifically set out and traversed seriatim and therefore prays that the Counter-Claim be dismissed with costs.

Dated this 22nd day of February 1978.

Sgd.

SOLICITORS FOR THE PLAINTIFF

In the High Court

No. 3
Reply and
Defence to
Counterclaim
22nd February
1978.
(cont'd)

No. 4

Summons in Chambers - 16th March 1978

No. 4

Summons in
Chambers -
16th March
1978

10

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

CIVIL SUIT NO. 167 OF 1978

Between

Sigma (Air-Conditioning) Sdn. Bhd. Plaintiff

And

Hoe Joo Sawmills (sued as a firm) Defendant

SUMMONS-IN-CHAMBERS

20

LET ALL PARTIES concerned attend before the Judge in Chambers on the 10th day of April 1978 at 9.30 o'clock in the forenoon on the hearing of an application on the part of the Plaintiff for an Order that the Statement of Defence and Counterclaim of the Defendant abovenamed be struck out and that the Plaintiff be at liberty to sign judgment against the Defendant forthwith as prayed for in the Statement of Claim.

Dated this 16th day of March 1978.

Sgd.

L.S. Sgd. Illegible

SOLICITORS FOR THE
PLAINTIFF

SENIOR ASSISTANT REGISTRAR,
HIGH COURT, KUALA LUMPUR

30

This Summons is taken out by Messrs. Chor Pee & Hin Hiong, solicitors for the Plaintiff whose address for service is at 3rd Floor, Bangunan Ming, Jalan Bukit Nanas, Kuala Lumpur.

This Summons will be supported by the

In the High Court

No. 4
Summons in
Chambers
16th March
1978.
(cont'd)

Affidavit of Tan Kim Leng affirmed on the 16th day of March, 1978 and filed herein.

This Summons is intended to be served on:-

The Defendant abovenamed and/or its solicitors:-
Messrs. Ambiavagar & Co.,
Advocates & Solicitors,
Mah Sing Building,
112-114 Jalan Pudu,
Kuala Lumpur.

No. 5

Order striking out Defence and Counterclaim and giving leave to enter Judgment and to appeal to Federal Court 13th April 1978.

No. 5

Order striking out Defence and Counterclaim and giving leave to enter Judgment and to appeal to Federal Court - 13th April 1978

10

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

CIVIL SUIT NO. 167 OF 1978

Between

Sigma (Air-Conditioning) Sdn. Bhd. Plaintiff

And

Hoe Joo Sawmills (Sued as a firm) Defendant

20

BEFORE THE HONOURABLE MR. JUSTICE HARUN
THIS 13th DAY OF APRIL 1978 IN OPEN COURT

O R D E R

UPON HEARING Mr. Andrew Ho of Counsel for the Plaintiff and Miss Ambiavagar of Counsel for the Defendant AND UPON READING the Summons-in-Chambers dated the 16th day of March 1978 and the Affidavit of Tan Kim Leng affirmed on the 16th day of March 1978 and the Affidavit of Law Ding Hock affirmed on the 7th day of April 1978 and the Affidavit of Low Chin Pan affirmed on the 7th day of April 1978 and the Affidavit of K. Mahendran affirmed on the 7th day of April 1978 and filed herein AND UPON HEARING the arguments of Counsel aforesaid IT IS ORDERED that the Statement of Defence and Counterclaim of the Defendant abovenamed be and is hereby struck out AND IT IS FURTHER ORDERED that the Plaintiff be and is hereby at liberty to sign final judgment against the Defendant as follows:-

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40

- a) that the Defendant and/or its servants or agents are carrying on business and/or residing on the said property without the Plaintiff's consent and licence and are therefore in wrongful possession thereof as trespassers;
- b) that the Defendant and all persons holding through or under it do forthwith quit and vacate the said property unlawfully occupied by them;
- c) damages to be assessed and paid forthwith by the Defendant;
- d) costs to be taxed by the Proper Officer of the Court and when so taxed to be paid by the Defendant to the Plaintiff.

In the High Court
No. 5
 Order striking out Defence and Counter-claim and giving leave to enter Judgment and to appeal to Federal Court
 13th April 1978
 (cont'd)

AND IT IS LASTLY ORDERED that the Defendant be given leave to appeal to the Federal Court against the whole of the decision.

GIVEN under my hand and the Seal of the Court this 13th day of April 1978.

Sgd.

SENIOR ASSISTANT REGISTRAR,
 HIGH COURT, KUALA LUMPUR.

No. 6

Judgment of Harun J. - 13th April 1978

No. 6

Judgment of Harun J.
 13th April 1978

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

CIVIL SUIT NO. 167 OF 1978

Between

Sigma (Air-Conditioning) Sdn. Bhd. Plaintiff

And

Hoe Joo Sawmills (Sued as a firm) Defendant

J U D G M E N T

The Defendant having appeared to the Writ of Summons herein and the Plaintiff having by the Order of this Honourable Court dated 13th day of April 1978 obtained leave to sign final judgment against the Defendant as follows:-

In the High Court

No. 6

Judgment of

Harun J.

13th April 1978

(cont'd)

- a) that the Defendant and/or its servants or agents are carrying on business and/or residing on the said property without the Plaintiff's consent and licence and are therefore in wrongful possession thereof as trespassers.
- b) that the Defendant and all persons holding through or under it do forthwith quit and vacate the said property unlawfully occupied by them. 10
- c) damages to be assessed and paid forthwith by the Defendant.
- d) costs to be taxed by the Proper Officer of the Court and when so taxed to be paid by the Defendant to the Plaintiff.

IT IS THIS DAY ADJUDGED that the Defendant and/or its servants or agents are carrying on business and/or residing on the said property without the Plaintiff's consent and licence and are therefore in wrongful possession thereof as trespassers and that the Defendant and all persons holding through or under it do forthwith quit and vacate the said property unlawfully occupied by them and that the Defendant do pay to the Plaintiff damages to be assessed and that the Defendant do also pay to the Plaintiff the costs of this suit to be taxed by a Proper Officer of the Court. 20

GIVEN under my hand and the Seal of the Court this 13th day of April 1978.

Sgd.

SENIOR ASSISTANT REGISTRAR,
HIGH COURT, KUALA LUMPUR.

No. 7

Notice under
Order 47
9th May 1978

No. 7

Notice under Order 47 - 9th May
1978

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

CIVIL SUIT NO. 167 OF 1978

Between

Sigma (Air-Conditioning) Sdn. Bhd. Plaintiff

And

Hoe Joo Sawmills (Sued as a firm) Defendant

NOTICE UNDER ORDER 47 RULE 1 (2)
OF THE RULES OF THE SUPREME COURT 1957

In the High Court

(Pursuant to the Order of the Court dated 13th April 1978)

No. 7
Notice under
Order 47
9th May 1978
(cont'd)

To: The Defendant abovenamed
and all persons interested in premises
No. 470-471, Jalan Ipoh,
Kuala Lumpur.

10 TAKE NOTICE that possession of premises
No. 470-471, Jalan Ipoh, Kuala Lumpur will be
delivered to the Plaintiff abovenamed, Sigma
(Air-Conditioning) Sdn. Bhd. unless within ten
(10) days the Court on the application of any
persons interested shall otherwise order.

AND FURTHER TAKE NOTICE that if no such
application as aforesaid be made within ten (10)
days the Plaintiff abovenamed will be put in
possession of the said premises.

Dated this 9th day of May, 1978.

20

Sgd.

SENIOR ASSISTANT REGISTRAR,
HIGH COURT, KUALA LUMPUR.

No. 8

In the Federal Court

Notice of Appeal - 25th April, 1978

Notice of
Appeal
25th April
1978.
No. 8

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

FEDERAL COURT CIVIL APPEAL NO. 62 OF 1978

BETWEEN

Hoe Joo Sawmills (sued as a firm) Appellant

AND

Sigma (Air Conditioning) Sdn. Bhd Respondent

(In the matter of Kuala Lumpur High Court
Civil Suit No. 167/78)

BETWEEN

Sigma (Air Conditioning) Sdn. Bhd Plaintiff

AND

Hoe Joo Sawmills (Sued as a firm) Defendant

30

In the Federal
Court

NOTICE OF APPEAL

Notice of
Appeal
25th April
1978.
(cont'd)
No. 8

TAKE NOTICE that the Appellant/defendant abovenamed being dissatisfied with the Order of the Learned Judge, High Court, Kuala Lumpur given on the 13th day of April, 1978 appeals to the Court of Appeal against the whole of the decision of the Learned Judge in which the application made by the plaintiff/Respondent for an Order that the Statement of Defence & Counterclaim of the defendant was struck out and final judgment was given in favour of the plaintiff/Respondent and that the costs to be paid by the Appellant/Defendant to the Respondent/Plaintiff and also against the decision of the Learned Judge in which the Learned Judge made no order on the application by the Appellant/Defendant for leave to issue a Third Party Notice against one Yee Wai Fong (f) and/or Ng Chee Cheong.

10

Dated this 25th day of April, 1978.

20

Sgd.

Solicitors for the Appellant/defendant

To: The Registrar,
Federal Court,
Kuala Lumpur.

Senior Assistant Registrar,
High Court,
Kuala Lumpur.

The Respondent abovenamed and/or
his Solicitors,
M/s. Chor Pee & Hin Hiong,
Bangunan Ming,
(3rd Floor), Jalan Bukit Nanas,
Kuala Lumpur.

30

The address for service of the Appellant/
Defendant care of Messrs. Ambiavagar & Co.,
Advocates & Solicitors, Bangunan Mah Sing
Building, 112-114, Jalan Pudu (4th Floor),
Kuala Lumpur.

No. 9

Affidavit of G. Ambiavagar - 29th
May 1978

In the Federal
Court

No. 9
Affidavit of G.
Ambiavagar
29th May 1978

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

FEDERAL COURT CIVIL APPEAL NO. 62 OF 1978

BETWEEN

Hoe Joo Sawmills (Sued as a firm) Appellant

AND

10 Sigma (Air Conditioning) Sdn. Bhd Respondent

(In the matter of Kuala Lumpur High Court
Civil Suit No. 167/78)

Sigma (Air Conditioning) Sdn. Bhd. Plaintiff

AND

Hoe Joo Sawmills (Sued as a firm) Defendant

A F F I D A V I T

I, G. AMBIAVAGAR (f) of full age, an
Advocate & Solicitor of the High Court, Malaysia,
do solemnly affirm and say as follows:-

- 20 1. I am the Solicitor in Charge having the
conduct of this matter.
2. On the 13th April 1978 His Lordship
Justice Harun on the Respondent's Application
struck off the Defendant's Defence & Counterclaim
fixed herein on the 15th February 1978 and
granted the Respondent leave to sign final judgment
against the Appellant.
- 30 3. On the 13th April 1978 on my application
to His Lordship, His Lordship granted the Appellant
leave to appeal to the Federal Court in Kuala
Lumpur against his said decision.
4. On the 27th April 1978 I filed Notice of
Appeal on behalf of the Appellant. It was only
on the 16th May 1978 that we received a letter
from the High Court informing us of the Civil
Appeal number herein and giving us notice under
Rule 19(6) of the Federal Court (Civil Appeal)
(Transitional) Rule 1963.
- 40 5. On the 27th April 1978 however, I had also
caused to be filed in the High Court on behalf of

In the Federal
Court

No. 9
Affidavit of G.
Ambiavagar
29th May 1978
(cont'd)

the Appellant a Notice of Motion for Stay of Execution pending appeal. This application was fixed for hearing on the 26th June 1978 but on the 15th May 1978 was brought forward for hearing on the 18th May, 1978.

6. On the 5th May 1978 the said Notice of Motion for stay of Execution was served on the Respondent's Solicitors.

7. I had left instructions with my Chief Clerk to serve on the Respondent's Solicitors the Notice of Appeal and was not aware at the time that due to an oversight by her the Notice of Appeal had not been served on the Respondent's Solicitors at the time of service on them of the application for Stay of Execution. When I was informed of this by her later on the 5th May 1978, I instructed her to send the Notice of Appeal by registered post to the Respondent's Solicitors as there was a back-log of urgent work for the service clerk to complete as my previous Service clerk had left my employ without notice and had failed to complete a number of urgent matters. 10 20

8. It was not until the 17th May 1978 however, when a copy of the Affidavit filed by the Respondent's Solicitors in reply to the said Application for Stay of Execution, that I became aware that the Notice of Appeal had not been received by the Respondent's Solicitors. It was only at that time on checking with my Chief clerk that I became aware that the Notice of Appeal had been sent by ordinary post instead of by registered post. 30

9. I respectfully submit however that the Respondent has not been put to any inconvenience or disadvantage even if the Respondent's Solicitors had not received the Notice of Appeal as they were fully aware on the receipt of the Application for Stay of Execution that Notice of Appeal herein had already been filed on behalf of the Appellant/defendant. 40

10. In fact on the 15th May 1978 when I met the Respondent's Solicitors Mr. Andrew Ho of M/s. Chor Pee & Hin Hiong, he did not inform me that they had failed to receive the Notice of Appeal although on the same day, he knew that I was applying for the Application for Stay of Execution to be heard within that week and in fact accompanied me when I made this request to the Learned Judge's Secretary. 50

11. It was pursuant to this request for an

early date for the hearing of this application that His Lordship Justice L.C. Vehrah agreed to and did in fact hear the said application on the 18th May 1978 when he granted an Order in Terms of the Application, cost to be costs in the Cause.

In the Federal Court

No. 9
Affidavit of G. Ambiavagar
29th May 1978
(cont'd)

12. In the above circumstances I humbly pray for an Order in terms of my application herein.

10 Solemnly affirmed by the said)
G. AMBIAVAGAR (f) at Kuala)
Lumpur this 29th day of May) Sgd. G. Ambiavagar
1978 at 2.30 p.m.)

Before me,
(FOJA SINGH)
Commissioner for Oaths
Kuala Lumpur, Malaysia.

No. 10

Notice of Motion - 15th June, 1978

No. 10

Notice of
Motion - 15th
June 1978

20 IN THE FEDERAL COURT IN MALAYA HOLDEN AT KUALA LUMPUR (APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. 62 OF 1978

BETWEEN

Hoe Joo Sawmills (Sued as a firm) Appellant

AND

Sigma (Air Conditioning) Sdn. Bhd. Respondent

(In the matter of Kuala Lumpur High Court
Civil Suit No. 167/78)

BETWEEN

Sigma (Air Conditioning) Sdn. Bhd. Plaintiff

AND

30 Hoe Joo Sawmills (Sued as a firm) Defendant

NOTICE OF MOTION

TAKE NOTICE that the Court will be moved on the 10th day of July 1978 at 9.30 o'clock in the forenoon or as soon thereafter as Counsel for the above-named defendant/Appellant can be heard for an Order that:-

In the Federal Court

No. 10
Notice of
Motion - 15th
June 1978
(cont'd)

- (a) the service of the Notice of Appeal on the Respondent/Plaintiff herein on the 5th May, 1978 be deemed a valid and effectual service of the same on the Respondent/plaintiff, OR
- (b) the time for service of the Notice of Appeal on the Respondent/Plaintiff be extended on the grounds appearing in the Affidavit filed in support hereof.
- (c) That the costs of this application be costs in the Cause. 10

Dated this 15th day of June 1978

Sgd. Chief Registrar,
High Court,
Kuala Lumpur.

Sgd.
Solicitors for the Appellant/defendant

This Notice of Motion is taken out by M/s. Ambiavagar & Company, Solicitors for the defendant/Appellant abovenamed and whose address for service is at Mah Sing Building, 112-114, Jalan Pudu (4th floor), Kuala Lumpur. 20

This Application will be supported by the Affidavit of G. Ambiavagar (f) affirmed on this day of May 1978 and filed herein.

This Application is intended to be served on the Plaintiff/Respondent's Solicitors at:-

M/s. Chor Pee & Hin Hiong,
Bangunan Ming,
Jalan Bukit Nanas,
(3rd Floor),
Kuala Lumpur. 30

No. 11

Affidavit of
Andrew Hock
Lye - 28th
June 1978.

No. 11

Affidavit of Andrew Hock Lye - 28th
June 1978

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

FEDERAL COURT CIVIL APPEAL NO. 62 OF 1978

Between

Hoe Joo Sawmills (Sued as a firm)	Appellant	In the Federal Court
And		
Sigma (Air-Conditioning) Sdn. Bhd.	Respondent	No. 11
(In the matter of Kuala Lumpur High Court Civil Suit No. 167 of 1978)		Affidavit of Andrew Hock Lye - 28th June 1978.
Between		(cont'd)
Sigma (Air-Conditioning) Sdn. Bhd.	Plaintiff	
And		
Hoe Joo Sawmills (Sued as a firm)	Defendant	

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A F F I D A V I T

I, ANDREW HO HOCK LYE of full age a Malaysian Citizen of 3rd Floor, Bangunan Ming, Jalan Bukit Nanas, Kuala Lumpur do hereby affirm and say as follows:-

1. I am a Legal Assistant in the employ of Messrs. Chor Pee & Hin Hiong, solicitors for the Respondent abovenamed and am personally in charge of the conduct of this matter.

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2. I crave leave to refer to the Affidavit of Miss G. Ambiavagar affirmed on the 29th day of May 1978 and filed herein.

3. In reply to paragraph 4 of the said Affidavit I say I have no knowledge of any Notice of Appeal being filed in the High Court as no such Notice has ever been served on me or on us.

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4. In reply to paragraph 7 I say that throughout this action service of documents had been made by way of personal service. In fact the Appellants Motion for Stay of Execution was served on us by way of personal service by Messrs. Ambiavagar & Co.'s clerk or person in their employ on 5.5.1978 at about 11.00 a.m. There had been ample time between 8.30 a.m. and 5.00 p.m. (the normal business hours) on the said day for the Appellant's solicitors to serve the said Notice on me or on us. Further there had been several days from 5.5.1978 and 12.5.1978 (the date line within which the Notice could also be served) to check to ascertain if the said Notice had been received by the Respondent's solicitors if the same had been served by the alleged ordinary post.

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5. In fact till to date I do not know if the Appellant is appealing against the whole or part of the Learned trial Judge's decision as the Notice has not even at this stage been served on

In the Federal
Court

No. 11
Affidavit of
Andrew Hock
Lye - 28th
June 1978
(cont'd)

me or us in spite of having known that it has not been received by me or by us.

6. In reply to paragraphs 9 and 10 the question of inconvenience or disadvantage is entirely different altogether as it has no relevance to Order 58 Rule 2 of the Rules of the Supreme Court and Rule 7 of the Federal Court (Civil Appeals) (Transitional) Rules 1963. Even if the Respondent's solicitors were aware that the Notice of Appeal has been filed it is not for the Respondent's solicitors to point it out to the Appellant's solicitors that it should be served on the Respondent's solicitors but it is for the Appellant's solicitors to ensure that the relevant Rules are complied with in the proceedings. 10

7. In reply to paragraph 11 of the Affidavit the early date had to be obtained for the Appellant to comply with a Notice dated 9th May 1978 served on the Appellant pursuant to Order 47 Rule 1(2) of the Rules of the Supreme Court 1957. 20

8. Further it is also not known if the Appellant's solicitors have applied for the relevant documents from the High Court to compile the Appeal Record.

9. In the circumstances the Appellant's Motion for and Order to deem the service of the alleged service by ordinary post, valid and effectual and another Order for extension of time to serve the same only appears frivolous. 30

10. I therefore humbly pray that the Appellant's Motion be dismissed with costs and that the Order for Stay of Execution granted be set aside and that the Respondent be permitted to enforce the Order of the High Court dated 13th April 1978.

AFFIRMED at Kuala Lumpur)
in the Federal Territory)
this 28th day of June 1978) Sgd. Andrew Ho Hock Lye 40
at 11.30 a.m.)

Before Me,
Sgd. Yee Soon Kwong
Pesurohjaya Sumpah
Commissioner for Oaths.

This Affidavit is filed by Messrs. Chor Pee & Hin Hiong solicitors for the Respondent whose address for service is at 3rd Floor, Bangunan Ming, Jalan Sukit Nanas, Kuala Lumpur.

No. 12

Affidavit of G. Ambiavagar - 4th
July 1978

In the Federal
Court

No. 12
Affidavit of
G. Ambiagavar
4th July 1978

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

FEDERAL COURT CIVIL APPEAL NO. 62 OF 1978

BETWEEN

Hoe Joo Sawmills (sued as a firm) Appellant

AND

10 Sigma (Air Conditioning) Sdn. Bhd. Respondent

(In the matter of Kuala Lumpur High
Court Civil Suit No. 167/76)

BETWEEN

Sigma (Air Conditioning) Sdn. Bhd. Plaintiff

AND

Hoe Joo Sawmills (sued as a firm) Defendant

A F F I D A V I T

20 I, G. Ambiavagar (f) of full age, residing
at c/o Magnum House, 111 Jalan Pudu, Second Floor,
Room 203, Kuala Lumpur, do hereby affirm and say
as follows:

1. I am the Solicitor for the Appellant/
defendant abovenamed and am personally in charge
of the conduct of this matter.

2. I crave leave to refer to the Affidavit of
the Respondent's Solicitor Mr. Andrew Ho Hock Lye
affirmed on 28th June 1978 and filed herein
(hereinafter referred to as "the said Affidavit").

30 3. In reply to paragraphs 3 and 5 of the said
Affidavit, I refer to paragraphs 5, 6, 8 and 9 of
Low Chin Pan's Affidavit affirmed on the 27th
April 1978 and filed in Kuala Lumpur High Court
Civil Suit No. 167/78 on behalf of the Appellant/
defendant wherein he stated that I had filed Notice
of Appeal against the whole of His Lordship's
Order given on the 13th April, 1978 pursuant to
the leave to appeal granted by His Lordship Justice
Harun on the said date. The said Low Chin Pan also
40 stated therein that I had filed Notice of Appeal
against that part of His Lordship Justice Harun's
Order making no Order on the Appellant/defendant's

In the Federal
Court

No. 12
Affidavit of
G. Ambiagavar
4th July 1978
(cont'd)

application to join Yee Wai Fong and Ng Chee
Cheong as third Party to this action.

4. On the 13th day of May 1978 at about 4.00
pm the Respondent's Solicitors served on the said
Low Chin Pan a Notice under Order 47 Rule 1(2)
of the Rules of Supreme Court although when I
met the Respondent's Solicitor Mr. Andrew Ho in
Court on the 15th May 1978 and enquired from
him why this Notice had been served when there
was an appeal against His Lordship's Order and
an application for Stay of Execution pending that
Appeal pending in the High Court, he informed me
that in fact he had left instructions with his
clerk to serve this Notice much earlier but it
had not been served until that day.

10

5. When the Respondent's Solicitor accompanied
me to see the Senior Assistant Registrar, Mr.
Singam for an early date for the hearing of the
Application for Stay of Execution pending Appeal
he never inform me at any time that he had not
received the Notice of Appeal and in fact misled me
into believing that all was in order by joining
with me in asking the Senior Assistant Registrar
whether His Lordship had written the grounds of
judgment in Civil Suit 167/78 as His Lordship was
then on leave, and also in joining with me when
I informed the Senior Assistant Registrar that
we would be grateful if the grounds of judgment
could be ready as quickly as possible so that the
Appeal could be heard at the soonest possible.
It was only when Tan Kim Leng filed and served
his Affidavit dated 17th May, 1978 on behalf of
the Respondent on me that I became aware that
the Notice of Appeal had not been received by
the Respondent's Solicitors.

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6. As regards paragraph 4 of the Respondent's
Solicitors affidavit, I refer to paragraphs 7
and 8 of my Affidavit sworn herein on the 29th
May, 1978 in explanation of how the Notice of
Appeal came to be served by post and not by
personal service and also as to why I did not
check to ascertain if the Notice of Appeal had
been received by the Respondent's Solicitors.
Further, the reason I did not even check on the
15th May, 1978 when I met the Respondent's
Solicitors as aforesaid was because of the facts
as stated in paragraphs 5 and 6 of this my
Affidavit.

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7. In reply to paragraph 8 of the said
Affidavit I am surprised at the contents thereof
as the Respondent's Solicitors have been sent
copies of the correspondence between my firm, the
Ketua Pendaftar, Federal Court, and the

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Respondent's Solicitors themselves applying for the relevant documents and asking for an extension of time to file the Petition of Appeal and in fact the Respondent's Solicitors had even consented to my Application for an extension of time to file the Petition of Appeal on the grounds that the Notes of Evidence and grounds of Judgment had not yet been prepared. Copies of the correspondence are annexed hereto and marked as Exhibits A1, A2, A3, A4 and A5 respectively. A copy of the reply received from the Secretary to His Lordship Justice Harun informing us that these documents are not ready is annexed hereto and marked as Exhibit A6.

In the Federal Court

No. 12
Affidavit of
G. Ambiagavar
4th July 1978
(cont'd)

8. Further I verily believe that the Appeal filed herein against the Learned Judge's Order has merits namely inter alia:

- (i) that the Appellant's Defence to the plaintiff's claim for vacant possession for an injunction to restrain the Appellant from remaining on or using or occupying the property known as C.T. 11881 Lot 112 Section 83 Town and District of Kuala Lumpur and for damages was three-fold namely:
- (a) that the plaintiffs were aware of the defendant's occupation of the said land and of the fact that in selling the said land to the plaintiffs the said Yee Wai Fong was acting in fraud of the defendant's partners and/or in breach of an oral trust of the said land created by one Low Hoo Siew sometime on or around the 4th December 1971 and that the defendant was therefore entitled to set aside the said sale of the said land to the plaintiff;
- (b) In the alternative that even if the said sale was held to be valid that the defendant maintains that they were at all material times licensees of on the said land and entitled to a reasonable time and reasonable compensation to vacate the said land in view especially of the fact that the defendants occupied business premises and in these circumstances the Notice to quit dated 19th November 1977 purportedly given by the Plaintiff to the defendants was bad in law and; and

In the Federal
Court

No. 12
Affidavit of
G. Ambiavagar
4th July 1978
(cont'd)

(c) Further and/or in the alternative a claim for indemnity from the said Yee Wai Fong and Hg Chee Cheong for such damages as the defendants may be ordered to pay the plaintiff, in the event that the Honourable Court order that vacant possession be given to the plaintiff.

- (ii) The Learned Judge however struck off the defendant's defence after having considered only the first point raised in the defence namely that the sale should be set aside. The Learned Judge however failed to take into consideration the other defences raised by the defendant. 10
- (iii) Further, even in considering the defect that the sale should be set aside the Learned Judge erred in holding that it was unnecessary for him to consider the Affidavits of Low Chin Pan, Low Ding Hock and K. Mahendran sworn and filed therein on the 7th April 1978 (hereinafter referred to as "the said 3 Affidavits") in making his decision on the Respondent's said application to strike out the Defence and Counterclaim. The said 3 Affidavits were not in the Court file on the hearing date although they had been filed on the 7th April 1978 and the Learned Judge declined to read the said Affidavits although I handed him copies of the same. 20 30
- (iv) The Learned Judge further erred in holding that the Appellant was precluded from adducing any evidence, which had not been adduced before the Honourable Court in an earlier proceeding regarding the said land in Originating Summons 620/76 wherein the said Low Chin Pan's claim as against the said Fee Wai Fong for an extension of a Caveat lodged by him with respect to the said land was dismissed in spite of the fact that the Respondents herein had not pleaded either *res judicata* or *estoppel* in their Reply and Defence to Counterclaim. 40

9. In these circumstances I humbly pray for an Order in terms of this application.

Solemnly affirmed by the said)
G. Ambiavagar (f) at Kuala)
Lumpur this 4th day of July) Sgd. G. Ambiavagar
1978 at 3.30 p.m.) 50

Before me,
(YEE SOON KWONG)
Pesuruhjaya Sumpah - Commissioner for Oaths.

This Affidavit is filed by M/s. Ambiaavagar & Co. Solicitors for the Appellant/defendant abovenamed and whose address for service is at Magnum House, 2nd Floor, 111 Jalan Pudu, Room 203, Kuala Lumpur.

In the Federal Court

No. 12
Affidavit of
G. Ambiaavagar
4th July 1978
(cont'd)

No. 13

Affidavit of Sally Lim - 3rd August
1978

No. 13

Affidavit of
Sally Lim
3rd August 1978

10 IN THE FEDERAL COURT IN MALAYA HOLDEN AT
KUALA LUMPUR (APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. 62 OF 1978

BETWEEN

Hoe Joo Sawmills (sued as a firm) Appellant

AND

Sigma (Air Conditioning) Sdn. Bhd Respondent

(In the matter of Kuala Lumpur High
Court Civil Suit No. 167/78)

BETWEEN

Sigma (Air Conditioning) Sdn. Bhd Plaintiff

AND

20 Hoe Joo Sawmills (sued as a firm) Defendant

A F F I D A V I T

I, SALLY LIM of full age, a Federal citizen, residing at Kuala Lumpur, do solemnly affirm and say as follows:-

1. I am in the employ of M/s. Ambiaavagar & Company, Advocates & Solicitors, Magnum House (Second Floor), Room 203, 111 Jalan Pudu, Kuala Lumpur.

30 2. I have read the Affidavit of the Respondent's Solicitors affirmed on the 17th May 1978 and 28th June 1978 respectively (hereinafter referred to as "the Respondent's Solicitors' said Affidavit").

3. I crave leave to refer to the Affidavit of Miss G. Ambiaavagar filed and affirmed on the 29th May, 1978 (hereinafter referred to as "the said Appellant's Solicitors' Affidavit").

In the Federal Court

No. 13
Affidavit of
Sally Lim
3rd August 1978
(cont'd)

4. I am the person referred to in paragraph 7 of the Appellant's Solicitors' said Affidavit.

5. I also crave leave to refer to paragraphs 4 to 8 of the Appellant's Solicitors said Affidavit and confirm that the circumstances in which the Notice of Appeal was served on the Respondent's Solicitors by ordinary post and not by registered post were as stated therein and that I posted the said Notice of Appeal on the 5th May, 1978 and recorded the fact of my having posted the same in the firm's postage book. Copies of the extract from the postage book and covering letter forwarding the said Notice of Appeal are annexed hereto and marked as Exhibits A1 and A2 respectively.

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Solemnly affirmed by the said)
SALLY LIM at Kuala Lumpur) Sgd. Sally Lim
this 3rd day of August, 1978)
at 2.50 p.m.

Before me,

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Sgd. Yee Soon Kwong
Pesuruhjaya Sumpah
Commissioner for Oaths

This Affidavit is filed by M/s, Ambivagar & Company, Solicitors for the Appellant/defendant above-named and whose address for service is at Magnum House, Second Floor, Room 203, 111 Jalan Pudu, Kuala Lumpur.

No. 14

Order - 26th
September 1978

No. 14

Order - 26th September 1978

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

FEDERAL COURT CIVIL APPEAL NO. 62 OF 1978

BETWEEN

Hoe Joo Sawmills (sued as a firm) Appellant

AND

Sigma (Air-Conditioning) Sdn. Bhd. Respondent

In the matter of Kuala Lumpur High Court
Civil Suit No. 167/78

BETWEEN

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Sigma (Air-Conditioning)
Sdn. Bhd.

Plaintiff

In the Federal
Court

AND

Hoe Joo Sawmills (sued as
a firm)

Defendant

No. 14
Order - 26th
September 1978
(cont'd)

CORAM: LEE HUN HOE, CHIEF JUSTICE, HIGH COURT,
BORNEO.
RAJA AZLAN SHAH, JUDGE, FEDERAL COURT,
MALAYSIA
10 WAN SULAIMAN, JUDGE, FEDERAL COURT,
MALAYSIA.

IN OPEN COURT

THIS 26TH DAY OF SEPTEMBER, 1978

O R D E R

20 UPON MOTION made unto Court this day by
Mr. Khoo Eng Chin of Counsel for the Appellant
abovenamed in the presence of Raja Addruse (Mr.
Andrew Ho with him) of Counsel for the Respondent
abovenamed AND UPON READING the Notice of Motion
dated the 15th day of June 1978 and the Affidavit
of G. Ambiavagar affirmed on the 29th day of May
1978, the Affidavit of Andrew Ho Hock Lye
affirmed on the 28th day of June 1978 and the
Affidavit of Sally Lim affirmed on the 3rd day
of August 1978 all filed herein AND UPON HEARING
Counsel as aforesaid IT WAS ORDERED that the
said Notice of Motion be amended in the terms of
the Amended Notice of Motion dated the 26th day
of September 1978 AND UPON READING the said
30 Amended Notice of Motion and the aforesaid
Affidavits AND UPON HEARING Counsel as aforesaid
IT IS ORDERED that the application made by the
said Amended Notice of Motion be and is hereby
dismissed AND IT IS ORDERED that the Appellant
do pay to the Respondent the costs of and
incidental to this application as taxed by the
proper officer of this Court AND IT IS LASTLY
40 ORDERED that the sum of \$500.00 deposited in
Court by the Appellant as security for costs be
paid to the Respondent towards its taxed costs.

GIVEN under my hand and the Seal of the
Court this 26th day of September 1978.

Sgd.

CHIEF REGISTRAR.
FEDERAL COURT, MALAYSIA.

In the Federal Court

No. 15

No. 15
Order granting leave to appeal against Order of 26th September 1978. 6th November 1978.

Order granting leave to appeal against Order of 26th September 1978 - 6th November, 1978

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

FEDERAL COURT CIVIL APPEAL NO. 62 OF 1978

BETWEEN

Hoe Joo Sawmills (Sued as a firm) Appellant

AND

Sigma (Air Conditioning) Sdn. Bhd. Respondent

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(In the Matter of Kuala Lumpur High Court Civil Suit No. 167 of 1978)

BETWEEN

Sigma (Air Conditioning) Sdn. Bhd. Plaintiff

AND

Hoe Joo Sawmills (Sued as a firm) Defendant)

CORAM: LEE HUN HOE, CHIEF JUSTICE, HIGH COURT, BORNEO;

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WAN SULEIMAN, JUDGE, FEDERAL COURT, MALAYSIA;

CHANG MIN TAT, JUDGE, FEDERAL COURT, MALAYSIA.

IN OPEN COURT

THIS 6TH DAY OF NOVEMBER 1978

O R D E R

UPON MOTION made unto Court this day by Mr. Khoo Eng Chin of Counsel for the Appellant and in the presence of Raja Aziz Addruse of Counsel for the Respondent AND UPON READING the Notice of Motion dated the 18th day of October, 1978 the Affidavit of G. Ambiavagar affirmed on the 18th day of October, 1978, the Affidavit of Low Chin Pan affirmed on the 18th day of October, 1978, the Affidavit of Andrew Hoe Hock Lye affirmed on the 2nd day of November 1978 and the Affidavit of Tan Kim Leng affirmed on the 2nd day of November, 1978 all filed herein AND UPON HEARING the arguments of Counsel as aforesaid IT IS ORDERED that leave be and is hereby granted

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to the Appellant to appeal to His Majesty the Yang di-Pertuan Agong against the Order of the Federal Court made on the 26th day of September 1978 upon the following Conditions:-

In the Federal Court

No. 15
Order granting leave to appeal against Order of 26th September 1978
6th November 1978.
(cont'd)

10 (a) that the Appellant do within three months from the date hereof enter into good and sufficient security to the satisfaction of the Chief Registrar, Federal Court, Malaysia in the sum of \$5,000.00 (Ringgit Five thousand only) for the due prosecution of the appeal and the payment of such costs as may become payable to the Respondent in the event of the Appellant not obtaining an Order granting final leave to appeal or of the appeal being dismissed for non prosecution or of His Majesty the Yang di-Pertuan Agong ordering the Appellant to pay the Respondent costs of the Appeal as the case may be;

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(b) that the Appellant do within the said period of three months from the date hereof take the necessary steps for the purposes of procuring the preparation of the record and of the despatch thereof to England

30 AND IT IS FURTHER ORDERED that execution of the Judgment given on the 13th day of April 1978 be and is hereby stayed pending the disposal of the Appeal AND IT IS LASTLY ORDERED that the costs of and incidental to this Application be costs in the cause.

GIVEN under my hand and the Seal of the Court this 6th day of November, 1978.

Sgd.
CHIEF REGISTRAR,
FEDERAL COURT, MALAYSIA.

40 This Order is filed by M/s. Ambiavagar & Company Solicitors for the Appellant abovenamed and whose address for service is at Magnum House, 111 Jalan Pudu, Second Floor, Room 203, Kuala Lumpur.

In the Federal
Court

No. 16

No. 16
Judgment of
Raja Azlan
Shah, C.J.
3rd February
1979.

Judgment of Raja Azlan Shah, C.J.
3rd February 1979

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

FEDERAL COURT CIVIL APPEAL NO. 62 OF 1978

(K. Lumpur High Court Civil Suit No. 167/78)

Between

HOE JOO SAWMILLS (sued as a firm) Appellant

And

SIGMA (Air Conditioning) SDN. BHD. Respondent

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APPELLANT'S MOTION FOR EXTENSION OF TIME
TO SERVE THE NOTICE OF APPEAL ON THE
RESPONDENT OUT OF TIME

Coram: Lee Hun Hoe, C.J. Borneo
Raja Azlan Shah, F.J.
Wan Suleiman, F.J.

GROUND OF JUDGMENT OF THE COURT

The substantial question that arose in the Motion before this court is that of service of the notice of appeal by the applicant qua appellant on the respondent. Leave having been granted to the applicant to appeal from an interlocutory judgment on April 13, 1978 on the same day it was entered, the applicant was required by Rule 7 Federal Court (Civil Appeals) (Transitional) Rules 1963 to file in the registry his notice of appeal within one month from the judgment and serve a copy of the same on the respondent at the same time. "At the same time" does not mean simultaneously. So long as the service on the respondent was effected within one month of the judgment sought to be appealed from, the service was effective: Tan Ting Kok v. Cheong Lep Keen & Anor. (1) But unless both filing and service are effected within this period, the appeal has not been brought to the Federal Court, and no appeal lies except by the special leave of the full Federal Court: Rule 13.

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(1) (1969) 1 MLJ. 153 F.C.

No difficulty presents itself over the filing of the notice of appeal in the Registry of this Court. It was done on April 27, well within the one month allowed. But there is some dispute over the service on the respondent. The respondent averred that up to the present, it has not been served. The appellant would appear to contend that it effected the service by ordinary post on May 5. What it really contended was that it put through the post a copy of the notice for postal delivery to the respondent but it was obviously unable to say with any certainty whether the letter was in fact delivered and if so, when. It is to be remembered that it had to be delivered on or before May 13, 1978. The appellant nevertheless considered that it had effected the service on the respondent but notwithstanding this contention, applied by Notice of Motion for an order that:

(a) the service of the notice of appeal on the respondent/plaintiff herein on 5th May 1978 be deemed as valid and effectual service of the same on the respondent, or

(b) the time for service of the Notice of Appeal on the respondent be extended,

and by an amendment (c) for special leave.

With respect the first order prayed for appears to be an inconsistency. Service is a question of fact. If the notice was served within time, the service was good and no necessity arises for any prayer in aid. But apparently it was thought that service by ordinary post failed to comply with the requirements of Rule 32(1) which reads:

"Service of any document under these Rules may be effected by:

(a) Handing the document to the solicitor for the party to be served or to any person employed by the said solicitor or, where the party has no solicitor, to the said party in question; or

(b) Posting the document by prepaid registered post addressed to the solicitor for the party, or where the party has no solicitor to the party at the address for service of the party furnished under rule 31 of these Rules".

and therefore it was necessary to seek an order in

In the Federal Court

No. 16
Judgment of
Raja Azlan
Shah, C.J.
3rd February
1979.
(cont'd)

In the Federal Court

No. 16
Judgment of
Raja Azlan
Shah C.J.
3rd February
1979.
(cont'd)

terms of the first prayer. However, Mr. Khoo for the appellant contended that the word "may" in the said rule is not mandatory but permissive. I agree that this rule does not prescribe the mode of service. It merely prescribes a method which effectively produces evidence of service from the acknowledgment of the respondent on the registration-reply card which would ensure that the appeal has been brought to this court. Service by ordinary post would be substantial compliance with the requirements of the rule, if there is irrefutable evidence other than the mere fact of posting that the letter was in fact delivered and the delivery was within time, and as has been earlier observed, even the appellant in the quandary it now finds itself is unable to assert affirmatively the actual delivery and the date of the delivery. The prayer is of its nature a rule of procedure which only the Rules Committee can make.

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But apart from the inconsistency of the appellant's argument, it has also to be realised that it is predicated on the supposition that the letter was in fact put through the post on May 5. Be that as it may, there is some considerable doubt on the evidence produced. The evidence is contained in an affidavit of the solicitor in charge of the appeal. He was not the one who would have posted the letter if in fact it was posted, so that any assertion by him to this effect would be hearsay and inadmissible and not probative of the fact of posting. The proper person to make the affidavit would be the clerk who posted the notice but if there was such a person, he or she did not affirm anything of this sort. Insofar as the solicitor's affidavit is concerned, what happened on May 5 was that the appellant's solicitors filed and served a notice of motion for a stay of execution on the respondent's solicitors. This service was personal. The respondent's solicitors raised the question of whether any appeal had been brought only in an affidavit affirmed on May 17, 1978. The appellant's solicitor conceded that this affidavit made him aware that the notice of appeal had not been received by the other side. This was entirely conceivable but he went on to say that on May 5, his clerk had realised after the service of the notice of an application for a stay that the notice of appeal had not been previously served, that she had told him so and that he had instructed her to send the said notice by registered post and that later on May 17, he had learned that instead of the registered post, ordinary posting was used. How the chief clerk realised on May 5 the failure to serve the notice

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has not been explained, neither was any reason given to explain why if she had come to this realisation, she had not repaired the omission herself or through a member of the staff by personal service on the solicitors who were within easy reach, if not on the same day, at least, on the next day when it would have been entirely within time, rather than risk a confession of an omission to her employer and the ordinary post instead of the registered post. It would appear that the odds are against the events that are alleged to have occurred on May 5 after the service of the notice for a stay of execution and in favour of a finding that the appellant's solicitor did not realise the failure to serve the notice until May 17, that is, until the one month had fully expired. If so, any remedial action would be too late.

In the Federal Court

No. 16
Judgment of
Raja Azlan
Shah, C.J.
3rd February
1979.
(cont'd)

But the question of whether an appeal has been brought or not stands to be determined by whether the notice had been served on the respondent within time. As observed earlier, the appellant could not and did not contend that it had been so served and as the rules now stand, there is no appeal brought before this court: see the judgment of this court in Tong Lee Hwa & Anor. v. Malayan Banking Berhad. (2) In the absence of any provision in favour of solicitors as there is in favour of any office of the High Court in Order 67 rule 3, Rules of the Supreme Court, the posting of the notice if effected on May 5 cannot by itself be deemed or considered to be sufficient service, (see also Order 67 rule 2), and this court not being a Rules Committee cannot make an order in terms of the first prayer.

As for the alternative prayer, the reason given was the fault of the solicitor's clerk and this has been decided to be insufficient for the granting of special leave: Hendry v. De Cruz. (3) What the appellant should have prayed for is the special leave of the full Federal Court. But unless it could advance other grounds that this court can properly regard as deserving the special leave, it would fail. It almost certainly realises it could not. It therefore abandoned this prayer. For the same reason, no special leave could be granted.

The motion was dismissed with costs.

(RAJA AZLAN SHAH)

AG. CHIEF JUSTICE, MALAYA.

Kuala Lumpur, February 3, 1979

(2) (1978) 1 M.L.J. 257

(3) (1949) M.L.J. Supp. 25

In the Federal Court

Arguments in Kuala Lumpur on 26th September, 1978.

No. 16
Judgment of
Raja Azlan
Shah, C.J.
3rd February
1979.
(cont'd)

Counsel: Encik Khoo Eng Chin of Messrs.
Ambiavagar & Co., Kuala Lumpur, for
appellant.

Y.M. Raja Aziz of Messrs. Chor Pee &
Hin Hiong of Kuala Lumpur, for
respondent.

No. 17

Notice of
Motion - 6th
March 1979.

No. 17

Notice of Motion - 6th March, 1979

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

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FEDERAL COURT CIVIL APPEAL NO. 62 OF 1978

BETWEEN

Hoe Joo Sawmills (Sued as a firm) Appellant

AND

Sigma (Air Conditioning) Sdn. Bhd. Respondent

(In the Matter of Kuala Lumpur High
Court Civil Suit No. 167/78

BETWEEN

Sigma (Air Conditioning) Sdn. Bhd Plaintiff 20

AND

Hoe Joo Sawmills (Sued as a firm) Defendant)

NOTICE OF MOTION

TAKE NOTICE that on Monday the 19th day
of March 1979 at the hour of 9.30 o'clock in
the forenoon, or as soon thereafter as she can
be heard Miss G. Ambiavagar of Counsel for the
Appellant abovenamed will move the Court for an
Order that the time limited by the Order of this
Honourable Court dated the 6th November 1978 for
appealing to His Majesty the Yang di-Pertuan
Agong against the whole of the Judgment and
Order of the Federal Court of Malaysia given
on the 26th day of September 1978 be extended
to three (3) months from the date of the
receipt by the Appellant's Solicitors of the
certified copies of the Notes and Grounds of

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Judgment of the Judges of the Federal Court or for such other time as to this Honourable Court may seem proper.

Sgd.
Appellant's Solicitors

Dated at Kuala Lumpur this 6th day of March 1979.

Sgd.
Chief Registrar, Federal Court,
Kuala Lumpur.

In the Federal Court

No. 17
Notice of
Motion - 6th
March 1979.
(cont'd)

10 To: The Respondent abovenamed or their Solicitors,
M/s. Chor Pee & Company,
Advocates & Solicitors,
Bangunan Ming, Jalan Bukit Nanas,
Kuala Lumpur.

The address for service of the Appellant's Solicitors is at Room 203, (Second Floor), Magnum House, 111 Jalan Pudu, Kuala Lumpur.

Filed this 5th day of February, 1979.

20 Sgd.
Chief Registrar,
Federal Court, Malaysia,
Kuala Lumpur.

No. 18

Order granting leave to file Record of Appeal and Notes - 19th March 1979

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

FEDERAL COURT CIVIL APPEAL NO. 62 OF 1978

BETWEEN

Hoe Joo Sawmills (Sued as a firm) Appellant

AND

Sigma (Air Conditioning) Sdn. Bhd. Respondent

(In the Matter of Kuala Lumpur High Court Civil Suit No. 167/78)

BETWEEN

Sigma (Air Conditioning) Sdn. Bhd. Plaintiff

AND

Hoe Joo Sawmills (Sued as a firm) Defendant)

No. 18

Order granting leave to file Record of Appeal and Notes - 19th March 1979.

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In the Federal Court

No. 18
Order granting leave to file Record of Appeal and Notes - 19th March 1979.
(cont'd)

CORAM: LEE HUN HOE, CHIEF JUSTICE, HIGH COURT, BORNEO;
WAN SULAIMAN, JUDGE, FEDERAL COURT, MALAYSIA;
ABDUL HAMID, JUDGE, FEDERAL COURT, MALAYSIA

IN OPEN COURT

THIS 19TH DAY OF MARCH, 1979

O R D E R

UPON MOTION made unto Court this day by Miss G. Ambiavagar of Counsel for the Appellant and in the presence of Mr. Andrew Ho Hock Lye of Counsel for the Respondent AND UPON READING the Notice of Motion dated the 6th day of March 1979 and the Affidavit of G. Ambiavagar (f) affirmed on the 2nd day of February 1979 and all filed herein AND UPON HEARING the Counsel for the Appellant aforesaid BY CONSENT IT IS ORDERED that the Appellant be and is hereby granted leave to file the Record of Appeal within three (3) months upon receipt of the Grounds of Judgment and Notes of Evidence AND IT IS FURTHER ORDERED that costs be costs in the Cause.

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GIVEN under my hand and the Seal of the Court this 19th day of March 1979.

Sgd.

CHIEF REGISTRAR,
FEDERAL COURT,
MALAYSIA.

This Order is filed by M/s. Ambiavagar & Company, Solicitors for the Appellant abovenamed and whose address for service is at Magnum House, 111 Jalan Pudu, Second Floor, Room 203, Kuala Lumpur.

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No. 19

Order granting Final Leave to Appeal to H.M. The Yang Di Pertuan Agong 19th September 1979.

No. 19

Order granting Final Leave to Appeal to H.M. The Yang Di Pertuan Agong - 19th September 1979

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

FEDERAL COURT CIVIL APPEAL NO. 62 OF 1978

BETWEEN

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Hoe Joo Sawmills (sued as a firm)	Appellant	In the Federal Court
AND		
Sigma (Air Conditioning) Sdn. Bhd.	Respondent	No. 19
(In the matter of Kuala Lumpur High Court Civil Suit No. 167 of 1978)		Order granting Final Leave to Appeal to H.M. The Yang Di
BETWEEN		
Sigma (Air Conditioning) Sdn. Bhd.	Plaintiff	Pertuan Agong
AND		
Hoe Joo Sawmills (sued as a firm)	Defendant	19th September 1979.
		(cont'd)

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CORAM:- RAJA AZLAN SHAH,
ACTING LORD PRESIDENT, MALAYSIA
CHANG MIN TAT,
JUDGE, FEDERAL COURT, MALAYSIA
IBRAHIM BIN ABD. MANAN,
JUDGE, FEDERAL COURT, MALAYSIA.

IN OPEN COURT

THIS 19TH DAY OF SEPTEMBER 1979

O R D E R

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UPON MOTION made unto Court this day by Miss G. Ambiavagar of Counsel for the Appellant and mentioning on behalf of Mr. O.C. Lim of Counsel for the Respondent AND UPON READING the Notice of Motion dated the 22nd day of August 1979, the Affidavit of Low Chin Pan affirmed on the 14th day of May 1979 and all filed herein. IT IS ORDERED that final leave be granted to the abovenamed Appellant to appeal to His Majesty The Yang Di Pertuan Agong against the Judgment of this Honourable Court given on the 26th September 1978 AND IT IS LASTLY ORDERED that the Costs of and incidental to this Application be costs in the Cause.

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Given under my hand and the seal of the Court this 19th day of September, 1979.

Sgd.
Chief Registrar,
Federal Court, Malaysia,
Kuala Lumpur.

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This Order is filed by M/s Ambiavagar & Co. Solicitors for the Plaintiff abovenamed and whose address for service is at Suite 203, 2nd Floor, Magnum House, 111, Jalan Pudu, Kuala Lumpur.

EXHIBITS

A.1.

Annexures to
G. Ambiavagar's
affidavit d.d.
4th July 1978
Letter to High
Court - 23rd
May 1978.

EXHIBITS

A.1.

Annexures to G. Ambiavagar's
affidavit d.d. 4th July 1978
Letter to High Court - 23rd May
1978

(2) dlm.F.C.C.A. /78
(3) dlm.F.C.Civil Appeal No. 62/78
1B/A/ELSHS/77(SL)

May 23, 1978.

Ketua Pendaftar,
Jabatan Kehakiman,
Mahkamah Persekutuan,
Kuala Lumpur.

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Tuan,

re: Kuala Lumpur High Court Civil Suit No. 167/78
Sigma (Air Conditioning) Sdn. Bhd. vs. Hoe Joo
Sawmills(Sued as a firm)

We refer to the above matter and thank you for your
letter dated 5th May 1978.

We regret to inform that we are unable to forward
the Petition of Appeal by the 8th June 1978 as we
have yet to receive the Ground of Judgment from
your Honourable Court.

20

Yours faithfully,
Sgd.

c.c. M/s. Chor Pee & Hin Hiong.

This is the exhibit marked A.1 referred to in the
affidavit of G. Ambiavagar sworn before me this
4th day of July 1978.

Sgd. Yee Soon Kwong,
Pesuruhjaya Sumpah
Commissioner for Oaths

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EXHIBITS

A.2.

Letter to Federal Court - 6th June
1978

(2) dlm.F.C.C.A. /78
(3) dlm.F.C.C. Appeal 62/78
113/A/ELSHS/77/SL

81062

June 6, 1978

BY HAND

10 Ketua Pendaftar,
Federal Court,
Kuala Lumpur.

Tuan,

re: Kuala Lumpur High Court Civil Suit 167/78
Sigma (Air Conditioning) Sdn. Bhd. Hoe
Joo Sawmills (Sued as a firm)

We refer to the above matter and to our letter
dated May 23, 1978.

20 We shall be most obliged if you could grant us
an extension of time to file the Record of
Appeal as we have not yet obtained the Notes of
Evidence and the grounds of Judgment from His
Lordship Justice Harun.

Yours faithfully,
Sgs.

This is the exhibit marked A.2 referred to in the
affidavit of G. Ambivagar sworn before me this
4th day of July 1978

30 Sgd. Yee Soon Kwong
Pesuruhjaya Sumpah
Commissioner for Oaths.

EXHIBITS

A.3.

Annexures to
G. Ambiavagar's
affidavit d.d.
4th July 1978.
Letter to
Secretary to
Harun J. - 6th
June 1978.

June 6, 1978.

Secretary to Justice Harun,
High Court,
Kuala Lumpur.

Tuan,

re: Kuala Lumpur High Court Civil Suit No.
167/78 - Sigma (Air Conditioning) Sdn. Bhd.
Vs. Hoe Joo Sawmills (sued as a firm)

We refer to our letter dated 23rd May 1978 and
to our conversation of 5th June 1978.

We have filed the Notice of Appeal and have been
told to file the Petition of Appeal by the 8th
June 1978.

Could you therefore kindly let us have a copy of
the Notes of Evidence and the grounds of Judgment
of His Lordship at the earliest possible.

We undertake to pay the fees for the same.

Thanking you,

Yours faithfully,
Sgd.

This is the exhibit marked A.3 referred to in the
affidavit of G. Ambiavagar sworn before me this
4th day of July 1978.

Sgd. Yee Soon Kwong
Pesurohjaya Sumpah
Commissioner for Oaths

EXHIBITS

A.3.

Letter to Secretary to Harun J.
6th June 1978

A/113/ELSHS/77/SL

82061

BY HAND

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EXHIBITS

A.4.

Letter to Chor Pee - 12th June 1978

329-77

A/11/ELSHS/77/SL

June 12, 1978.

10 M/s. Chor Pee & Hin Hiong,
Advocates & Solicitors,
3rd Floor, Bangunan Ming,
Jalan Bukit Nanas,
Kuala Lumpur.

Dear Sirs,

re: Kuala Lumpur High Court Civil Suit No. 167
Sigma (Air Conditioning) Sdn. Bhd. vs. Hoe
Joo Sawmills (Sued as a firm)

20 Further to the conversation between your Mr.
Andrew Hoe and our Miss G. Ambiavagar we confirm
that you have no objection and have consented to
our request for the extension of time to file the
Record of Appeal.

Yours faithfully,
Sgd.
c.c. The Registrar,
Federal Court,
Kuala Lumpur.

This is the exhibit marked A.4. referred to in
the affidavit of G. Ambiavagar sworn before me
this 4th day of July 1978.

30 Sgd. Yee Soon Kwong
Pesurohjaya Sumpah
Commissioner for Oaths

EXHIBITS

A.4.

Annexures to
G. Ambiavagar's
affidavit d.d.
4th July 1978.
Letter to Chor
Pee - 12th
June 1978.

EXHIBITS

A.5.

Annexures to
G. Ambiavagar's
affidavit d.d.
4th July 1978.
Letter from
Registrar
Federal Court
24th June 1978.

EXHIBITS

A.5.

Letter from Registrar Federal Court
24th June 1978

(d) dlm.F.C.C.A. /78
(3) DLM.F.C.C. Appeal 62/78
111/A/ELSHS/77/SL

June 24, 1978

Ketua Pendaftar,
Federal Court,
Kuala Lumpur.

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Tuan,

re: Kuala Lumpur High Court Civil Suit 167/78
Sigma (Air Conditioning) Sdn. Bhd. vs.
Hoe Joo Sawmills (sued as a firm)

We refer YOur Honour to the above matter and to
our letters dated May 23 and June 28, 1978
respectively.

As the Secretary to Justice Harun had informed
us the notes of Evidence and the grounds of
judgment are not ready as yet, we shall be
pleased if Your Honour could kindly grant us an
extension of time to file the Record of Appeal.

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Thanking you,

Yours faithfully,
Sgd.
c.c. M/s. Chor Pee & Hin Hiong.

This is the exhibit marked A.5. referred to in
the affidavit of G. Ambiavagar sworn before me
this 4th day of July 1978.

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Sgd. Yee Soon Kwong
Pesuruhjaya Sumpah
Commissioner for Oaths.

EXHIBITS

A.6.

Letter from Secretary to Harun J.
12th June, 1978

Judicial Department,
High Court.

Telegram: REGCOURT
Telephone: K.L. 8414/5/6

A/113/ELSHS/77/SL
HKH.14

12th June 1978

M/s. Ambiavagar & Co.,
Advocates & Solicitors,
2nd floor, Magnum House,
111 Jalan Pudu,
Kuala Lumpur.

Tuan,

re: K.L. High Ct. Civil Suit 167/78

Your letter of June 6, 1978 refers.

This is to inform you that the notes of
evidence and the grounds of judgment as requested
by you are not ready and I shall let you know when
these documents are available.

Saya yang menurut perintah,

Sgd.

(Setiausaha kpd Hakim Datuk Harun)

This is the exhibit marked A.6. referred to in
the affidavit of G. Ambiavagar sworn before me
this 4th day of July 1978.

Sgd. Yee Soon Kwong
Pesuruhjaya Sumpah
Commissioner for Oaths.

EXHIBITS

A.6.

Annexures to
G. Ambiavagar's
affidavit d.d.
4th July 1978.
Letter from
Secretary to
Harun J. - 12th
June 1978.

EXHIBITS

A.1.

Annexures to
Sally Lim's
affidavit d.d.
3rd August
1978 - Extract
of Postage Book
May 1978

EXHIBITS

A.1.

Annexures to Sally Lim's affidavit
d.d. 3rd August 1978 - Extract of
Postage Book - May 1978

May 1978

<u>Date</u>	<u>Particulars</u>		<u>Date</u>	
5.5.78	Wong Kim Yin, 3rd Mile Jlu Sikit, P.D.	15	9.5.78	
-do-	Pengerah Hal Ehwah, 293- 295 Jlu Ipoh, K.L.	15		10
JABATAN PERKHIDMATAN POS. MALAYSIA.				
	No. 425	Dialamatkan kepak		
PERINSURAN SEBANYAK	Victor Jau Seah Hue			
A.R.	Ag. Delek,			
5.5.78	M/s Chor Pee & Hin Hiong, Ming Bldg. 3rd Floor, K.L.	15		
8.5.78	Registrar of Births & Deaths, P.J. Enclosed cheq Hong Kong & Shanghai Bank No. 470645 for \$2/-	15	10.5.78	20
8.5.78	Mr. Choy Ngan, 8-11, 1 Jalan Cheras, Batu 3½, K.L.	15		
8.5.78	M/s Malayan Motor & General, 16th floor, Oriental Plaza, Jln Parry, K.L.	15	11.5.78	
8.5.78	Times distributors Sdn. Bhd. 2nd floor, Bangunan Tan Chee Hoe, 293-295, Jln Ipoh, K.L.	15	11.5.78	30
8.5.78	Mr. Wong Seng, K8B-3-11, Setapak Garden	15	11.5.78	

This is the Exhibit marked A.1. referred to in
the Affidavit affirmed on the 3rd day of August,
1978. Before me,

Sgd. Yee Soon Kwong,
Pesuruhjaya Sumpah
Commissioner for Oaths.

EXHIBITS

A.2.

Letter to Chor Pee and Hin Hiang - 5th
May 1978

A/113/ELHS/77(SL)

May 5, 1978.

10 M/s. Chor Pee & Hin Hiong,
Advocates & Solicitors,
Bangunan Ming,
3rd Floor, Jalan Bukit Nanas
Kuala Lumpur.

Dear Sirs,

Re: Federal Court Civil Appeal No. /78
(K.L. High Court C. Suit 167/78) Sigma
(Air Conditioning) Sdn. Bhd. vs.
Hoe Joo Sawmill

We refer to the above matter.

20 We forward herewith a copy of the Federal Court
Notice of Appeal duly filed by us by way of
service on you as Solicitors for the Respondent/
plaintiff in the above suit.

Kindly acknowledge receipt.

Yours faithfully,
Sd: (A. & Co.)

Encl.

This is the Exhibit marked A.2 referred to in
the Affidavit affirmed on the 3rd day of August,
1978. Before me,

30 Sgd. Yee Soon Kwong,
Pesuruhjaya Sumpah,
Commissioner for Oaths.

EXHIBITS

A.2.

Annexures to
Sally Lim's
affidavit d.d.
3rd August
1978 - Letter to
Chor Pee and
Hin Hiang - 5th
May 1978

EXHIBITS

'A'

Annexures to
Tan Kim Leng's
affidavit 16th
March 1978 (Not
reproduced)
Certificate of
Title No.11,881.

EXHIBITS

'A'

Annexures to Tan Kim Leng's affidavit
16th March 1978 (Not reproduced)
Certificate of Title No. 11,881

GOVERNMENT OF THE STATE OF SELANGOR

CERTIFICATE OF TITLE

(Schedule VII - Section 61 of the Land Code, Cap 138)
No. 11,881

Presentation No. 19365 Register of certificates
of title volume CIV folio 81. 10

Annual rent \$6/70 (Dollars six and cents
seventy only) until revision takes place under
section 31 of the Land Code (Cap. 138) or other
provision of law in that behalf.

Low Hoo Siew of No. 1165 Campbell Road
Kuala Lumpur, as to an undivided 1/3 share, Che
Chahbinti Haji Mohamed Amin of No. 2 Treocher
Road, Kuala Lumpur, as to an undivided 1/3 share,
and Joafar bin Sirun of Kalumpang, as to an
undivided 1/3 share - are proprietors subject to 20
the conditions and agreements expressed or implied
in Grant for Land No. 10648 and to such
restrictions in interest expressed therein and
shown by memorial hereon, and to such registered
interests as are shown by memorial hereon and to
the payment of the annual rent of dollars six and
cents seventy only until revision takes place
under section 31 of the Land Code (Cap. 138) or
other provision of law in that behalf - of all 30
that piece of land being lot No. 112 Sec. 83 in
Town of Kuala Lumpur in the district Of Kuala
Lumpur containing by measurement 1a 3r. 005p.
more or less which said piece of land with the
dimensions abuttals and boundaries thereof is
delineated on revenue survey plan No.19792
deposited in the office of the Chief Surveyor for
the State of Selangor being part of the land
originally alienated under the said Grant for
Land No. 10648 to Yap Kon Keow (f), Kho Chye
Huon & Khoo Soen Keong as Trustees. 40

In Witness whereof I have hereunto signed
my name and affixed my seal at Kuala Lumpur in
the State of Selangor this 3rd day of September
one thousand nine hundred and forty one at 2.47p.m.

L.S. Sgd.
Registrar of Titles,
State of Selangor.

No. 19511 Transfer Volume CLXXV Folio 84 from
Che Chah bouti Haji Mohamed Amin & Jacafar bin
Sirun (an undivided 2/3 share)
To: Low Hoo Siew (now sole proprietor)
PRESENTED & REGISTERED AT K. Lumpur 25th
September 1941 at 11.05 o'clock in the
forenoon.

Sgd.

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In accordance with the provisions of
section 31 of the Land Code, Cap. 138, the
rent reserved by the State in this title has
been revised and a new rent of \$19/- Dollars
Nineteen only has been fixed by the Ruler in
Council as the rent so reserved with effect from
the 1st January 1952 until further revision
takes place under section 31 of the said Land
Code or other provision of law in that behalf.

Dated at Kuala Lumpur this 26th day October 1951.

Sd: S. Raja Ratnan

20

Dy. Registrar of Titles
State of Selangor.

The land herein described is subject to
the conditions of the approved plan deposited
in this office, under section 1478 of the Town
Boards Enactment (Cap. 187) as No. 5/1956.

Dated 22nd November 1956.

Sd. S. Raja Ratnan
Dy. Registrar of Titles.
State of Selangor.

30

I here certify that the above are the true copies
of the memorandum made in the Register of this
title.

No. 35371 Transfer Volume CDLXXVII Folio 18 from
Low Hoo Siew
To: Yee Wai Fong (f)
PRESENTED & REGISTERED AT KUALA LUMPUR 9th
December 1971 at 10 o'clock in the forenoon.

Sgd.

40

No. 35872 Charge Volume CCLIII Folio 186 from
Yee Wai Fong (f)
To: Bangkok Bank Limited
PRESENTED & REGISTERED AT KUALA LUMPUR 9th
December 1971 at 10 o'clock in the forenoon.

Sgd.

EXHIBITS

'A'

Annexures to
Tan Kim Leng's
affidavit 16th
March 1978 (Not
reproduced)
Certificate of
Title No. 11,881.
(cont'd)

EXHIBITS

No. 198/77
JILD 35 Folio 148
'A' Melepaskan Gadaian Pada Gadaian No. 35372
Annexures to Jilid CCLIII Folio 186
Tan Kim Leng's Oleh Bangkok Bank Ltd.
affidavit 16th Diperserahkan & Didaftarkan Di Jaktaban
March 1978 (Not Tanah Wilayah
reproduced) 1972 7.52 pagi.
Certificate of Sgd.
Title No.11,881.
(cont'd) 199/77 Pindahmilik Jilid 61 Folio 2 10
Yee Wai Fong (f)
Sigma (Air Conditioning) Sdn. Bhd.
10th January 1977, 9.54 pagi.
200/77 51 Folio 184
Sigma (Air Conditioning) Sdn. Bhd.
The Hongkong and Shanghai Banking Corporation.
10th January 1977 7.56
No. 199/77 Jilid 61 Folio 2
Dari Yee Wai Fong (f)
Kepada Sigma (Air Conditioning) Sdn. Bhd. 20
Pada 10th Januari, 1977 9.54
Sgd.
No. 200/77 Gadaian Jilid 51 Folio 184
Sigma (Air Conditioning) Sdn. Bhd.
The Hongkong and Shanghai Banking Corporation
Pada 10th Januari 1977. 9.56 Pgi.
Sgd.
This is the Exhibit marked "A" referred to in
the Affidavit of Tan Kim Leng affirmed before
me this 16th day of March, 1978. 30
Before me,
Sgd. Then Liang Peng
COMMISSIONER FOR OATHS,
Kuala Lumpur, Malaysia.

GOVERNMENT OF THE STATE OF SELANGOR

(Land Code 9)

CERTIFICATE OF TITLE

Section VII - Section 61 of the Land Code, (Cap. 113)

EXHIBIT 'A'

Annexure to Affidavit of Tan Kim Leng dated 16th March 1978 Copy of Certificate of Title No. 11881

No. 11881

Presentation No. 19365 Register of certificates of title volume CIV folio 31

Annual rent 86/70 (Dollars six and cents seventy only) until revision takes place under section 31 of the Land Code (Cap 113) or other provision of law in that behalf.

Low 106 S2W of No. 1165 Campbell Road Kuala Lumpur, as to an undivided 1/3 share, Che Chah bin Haji Mohamed Amin of No 2 Teacher Road Kuala Lumpur, as to an undivided 1/3 share, and Joo Fa bin Sirun of Kalumpang, as to an undivided 1/3 share.

Proprietors subject to the conditions and agreements expressed or implied in Grant for Land No. 10648 and to such restrictions in interest expressed therein and shown by memorial hereon, and to such registered interests as are shown by memorial hereon and to the payment of the annual rent of dollars six and cents seventy only until revision takes place under section 31 of the Land Code (Cap 113) or other provision of law in that behalf.

of all that piece of land being lot No. 112 Sec. 83 in the District of Kuala Lumpur

in the Town of Kuala Lumpur containing by measurement 10.0000

more or less which said piece of land with the dimensions abstracts and particulars thereof is delineated on revenue survey plan No. 19792 of the State of Selangor

at the Lot No. 10648 in the District of Kuala Lumpur

In witness whereof I have hereunto signed my name and affixed my seal at Kuala Lumpur in the State of Selangor this 3rd day of September 1978

19511 Transfer... Che Chah bin Haji Mohamed Amin... Land 10648... (Land Code Proprietor)...

Signature of Registrar of Titles, SELANGOR



Presented & Registered at the Office of the Registrar of Titles at Kuala Lumpur on the 26th day of October 1978

Sd. S. Raja Ratnam, Dy. Registrar of Titles

RECORDS SECTION... 16th March 1978... This is the Exhibit marked 'A' returned to the Affidavit-Person of Tan Kim Leng signed before me this 16th day of March 1978.

Signature of Registrar of Titles, Selangor

* If no word "lot" or "part" as the case may be. * Here "part" is the part or share for 5/16 the land in division of which the certificate is issued. * Here "part" is the part or share for 1/16 the land in division of which the certificate is issued. * Here "part" is the whole or "part" as the case may be.

EXHIBITS

'B'

Annexures to
Tan Kim Leng's
Affidavit 16th
March 1978 (Not
reproduced)
Letter to Hoe
Joo Sawmill
19th November
1977.

EXHIBITS

B.

Letter to Hoe Joo Sawmill - 19th
November 1977

AH/ml/KL 392-77

19th November, 1977

Hoe Joo Sawmill,
Nos. 470 & 470-1
3rd Mile, Jalan Ipoh,
Kuala Lumpur.

A.R. REGISTERED

Dear Sirs,

10

re: Lot No. 112, Section 83
Town & District of Kuala Lumpur

We act for Sigma (Air Conditioning) Sdn. Bhd.

We have been instructed by our clients that you
are at present trespassing on their property,
Nos. 470 and 470-1, Jalan Ipoh, Kuala Lumpur.
We have also been instructed by our clients that
in spite of previous notices verbally given and
also given in writing by previous solicitors,
you have not taken any steps to return the said
property the rightful owners, which is our
clients.

20

Please take notice that unless you take measures
to quit the premises peacefully within one (1)
month from date hereof, we have been instructed
by our clients to take legal proceedings in
evicting you from the said premises.

Yours faithfully,

c.c. Clients.

This is the Exhibit marked 'B' referred to in
the Affidavit of Tan Kim Leng affirmed before
me this 16th day of March, 1978.

30

Before me,
Sgd. Then Liang Peng
Commissioner for Oaths.
(Pesuruhiaya Sumpah)
Kuala Lumpur, Malaysia.

PERSATUAN KAUM HAN ANN LOW, MALAYSIA.
Persatuan-Suku-Kaum-Ann-Low-Tanah-Melayu

MALAYSIA 會公氏劉安南亞來馬

MALAYA NAM ANN LOW CLANSMEN ASSOCIATION, Unexed to

樓三B號七十牌門(內士節)也黎訖爾老坡任吉

No. 17-B, Jalan Gereja, (Church Street) 2nd Floor,

KUALA LUMPUR.

PHONE: 86468 八六四六八：話電

EXHIBITS
A1

Widair's Day of
Low Chin Pan
dated 27.4.1976.
Remembrance

Date, 14-7-1976.
as to Malayan Nam
Ann Low Clansmen
Association
dated 14.9.1976

運啟者頃接 令嫂、令弟婦暨 令侄等聯

署來函投訴有閱售賣令

先尊遺下之和裕電鋸板廠地產用以償還所

負債務而 先生違背所作承諾以及要求

先生公開和裕電鋸板廠賬目亦受拒絕等情

特致函請求本會予以排解

根據本會對為會員調解糾紛規章須雙

方來函表示同意為此爰特據情掛號函達

查照 茲希在兩星期時間內(即由本函發出日計起)

來函 示覆 倘蒙同意接受由本會効力者請

蒞臨本會簽具老願書接納本會對排解事

件所作之判斷如何之處尚乞

早覆是盼 此致

本會會員

振邦宗先生

會長

一九七六年七月十四日

EXHIBITS

A.1.

Annexures to
Low Chin Pan's
Affidavit d.d.
27.4.78 (not
reproduced) -
Memorandum as
to Malayan Nam
Ann Low
Clansman
Association
dated 14th
September 1976
Translation.

EXHIBITS

A.1.

Memorandum as to Malayan Nam Ann Low
Clansman Association dated 14th
September, 1976 - Translation

MALAYA NAM ANN LOW CLANSMAN ASSOCIATION
No. 17-B, Jalan Gereja (Church Street),
2nd Floor, Kuala Lumpur.

Date 14-9-1976

Mr. Chin Pang Clansman,
Member of this Association.

10

We wish to inform you that we have just
received a jointly signed letter from your elder
sister-in-law (elder brother's wife), your
younger sister-in-law (younger brother's wife) and
nephews complaining about the sale of your late
father's legacy the Hoe Joo Electric Sawmill
landed property in order to settle the debts,
that you had breached the promise you made, and
that their request to you to disclose the accounts
of the Hoe Joo Electric Sawmill had been refused,
etc. They specially wrote to request this
Association to mediate for them.

20

According to the Rules of this Association
concerning mediation for members, both parties
should write to us indicating their consent. As
such, in reference to above, this letter is sent
to you by registered post for your information.
It is hoped that you would, within a period of
two weeks (that is, from the date of issued of
this letter) write to us in reply. If you are
kind enough to consent to accept the services
of this Association, please call at the
Association to sign a letter of consent,
accepting the decision to be made by this
Association in the mediation.

30

You are requested to give us an early reply
of your intention.

Dated 14th September, 1976.

President: (Sgd) Low Siew Eng
(Seal) Malaysia Nam Ann Low Clansmen
Association, Kuala Lumpur.

40

EXHIBITS

A.1-T

Annexures to Low Chin Pan's affidavit
d.d. 27.4.78 (not reproduced) - Reply
by Low Chin Pan Trading dated 24th
September 1976

LOW CHIN PAN TRADING

No. 470, 3rd mile, Jalan Ipoh,
Kuala Lumpur. c/o Hoe Joo Sawmill.

Date: 24.9.1976

EXHIBITS

A.1-T

Annexures to
Low Chin Pan's
affidavit d.d.
27.4.78 (not
reproduced)
Reply by Low
Chin Pan Trading
dated 24th
September 1976.

10 Mr. Low Siew Eng, J.P.,
President, The Low Clan Association,
of Nam Ann, Malaysia.

Dear Sir,

I beg to state in reply to your letter of
14th September which I received yesterday, and
the contents of which I have noted.

20 With regard to my late father's estate
which gave rise to a family dispute and which was
finally referred to the association, I am most
apologetic for the trouble.

It is alleged that I have gone back on my
word and that I am being unreasonable. I did
mention at that time that once the estate matter was
settled, the property would be sold in order to
redeem the landed property of the Hoe Joo Sawmill.

30 Touching on the question of refusing to
disclose the account of Hoe Joo Sawmill, since 1970
until the time the sawmill ceased functioning, Low
Teng Hock also had a hand in the running of the
business. Teng Hock knows all about the account
mentioned and this matter can be inquired of him.
Moreover, there was also the Income Tax Return
which was prepared annually by the Accountants,
Messrs. Chan Chee Hong & Co.

40 On 15th February this year, it was agreed
among the three partners of the Hoe Joo Sawmill,
and witnessed by mediator/s, to have it rented out
to Low Chin Pan Trading to operate the business with
effect from 1st of March. \$10,000.00 was to be
paid as deposit and the monthly rental was fixed
at \$3,000.00. Out of this amount a sum of \$1,250.00
was to be utilised in settlement of the debts
incurred by Hoe Joo Sawmill. If the amount was
insufficient to meet the debts Low Chin Pan would

EXHIBITS

A.1-T

Annexures to Low Chin Pan's affidavit d.d. 27.4.78 (not reproduced) Reply by Low Chin Pan Trading dated 24th September 1976. (cont'd)

help to pay on behalf of those concerned. Whatever amount incurred towards this would be attended to at a later date. Another sum of \$1,500.00 was to be distributed among the three partners namely, Seah Ai Khim, Ng Tiat Phui and Tee Hu Yong(my wife) of \$500.00 each as cost of living. A further sum of \$250.00 as suggested by the mediator/s was to be paid to Low Chin Han as allowance up to the month of February 1977 (for a period of one year only).

10

Among the estate of my late father there were also rubber and oil-palm plantations. I had, in 1971, handed the matter to Messrs. Low & Lee, Advocates & Solicitors, to deal with it. The government has since not been able to assess the amount and the estate duty payable is therefore not known. The entire estate cannot now be interfered with. Until such time when the duty payable is made known the estate would then be sold to settle once and for all the assets and liabilities of the legacy.

20

In the circumstances I feel it is difficult to mediate between the two parties. I have, however, to thank you for your kind regards,

Your member,
Low Chin Pan

24th September 1976.

A.D.1

Annexures to K. Mahendran's affidavit d.d. 7.4.78 (not reproduced) Extract from diary - December 1977/78

EXHIBITS

A.D.1

Annexures to K. Mahendran's affidavit d.d. 7.4.78 (not reproduced) Extract from diary - December 1977/78

30

DECEMBER 1977/JANUARY 1978

26 MONDAY in K.L.

Yesterday met with Michical Lai & Lawyer, Robert Khoo at the Regent at 1 p.m. Lau opened the talk by asking if they believed that the Hoe Joo land was the Low's family land. They agreed. He then went on to explain how it was in Ng's

40

wife's name. Michael Lai agreed that he knew all about the land and Ng's involvement. We further discussed possible ways of settlement but could not come to any conclusion.

27 TUESDAY in K.L.

Lai left for Mentera today.

28 WEDNESDAY in K.L.

I have started the discussion with Laimal for the formation of a company to trade with M - E. Gopl & Aquar are to be included.

EXHIBITS

A.D.1.

Annexures to K. Mahendran's affidavit d.d. 7.4.78 (not reproduced) Extract from diary - December 1977/78 (cont'd)

10

EXHIBITS

A.1.

Annexures to G. Ambiavagar's affidavit d.d. 2.2.79 (not reproduced) - Letter to Federal Court - 6th December 1978

A.1.

Annexures to G. Ambiavagar's affidavit d.d. 2.2.79 (not reproduced) - Letter to Federal Court - 6th December 1978.

(Pl dlm.FCC.Appeal No. 167/78
(62/78)
A/113/ELHS/77/SL

December 6, 1978.

20

The Chief Registrar,
Federal Court,
Kuala Lumpur.

Tuan,

re: Federal Court Civil Appeal No. 62/78
Hoe Joo Sawmill

We refer Your Honour to the above matter and to our letter dated November 11, 1978.

30

We shall appreciate it, if Your Honour could kindly let us know when the Grounds of Judgment could be ready to enable us to prepare the Record of Appeal.

If the same cannot be ready in time for the preparation of the Record of appeal, we would like to request for an extension of time to file the Petition of Appeal.

Yours faithfully,
Sgd.

EXHIBITS

A.1.

Annexures to G. Ambavagar's affidavit d.d. 2.2.79 (not reproduced) - Letter to Federal Court - 6th December 1978.

- c.c. 1. M/s. Cher Pee & Hin Hiong, (yr ref: AH/pc/KL 392-77)
- 2. M/s. Khoo & Sidhu.

This is the Exhibit marked A1 referred to in the Affidavit affirmed on 2nd February 1979.

Before me,

Sgd. Tneh Lieng Peng
Commissioner for Oaths.
Kuala Lumpur, Malaysia.

A.2.

Letter to Secretaries of the three Federal Judges - 7th December 1978

EXHIBITS

A.2.

Letter to Secretaries of the three Federal Judges - 7th December 1978

(12)dlm.FCC Appeal No. 167/78
(62/78)

A/113/ELHS/77(SL)

December 7, 1978.

- 1. Secretary to Hon'ble Lee Hun Hoe, Chief Justice High Court, Kuching.
- 2. Secretary to Hon'ble Raja Azlan Shah, F.J., Federal Court, Kuala Lumpur.
- 3. Secretary to Hon'ble Wan Suleiman, F.J. Federal Court, Kuala Lumpur.

Tetuan,

re: Federal Court Civil Appeal No. 62/78 - Hoe Joo Sawmill

We refer Your Honour to the above matter and to our letter dated November 11, 1978.

We shall appreciate it, if Your Honour could kindly let us know when the grounds of judgment could be ready to enable us to prepare the Record of Appeal.

If the same cannot be ready in time for the preparation of the Record of Appeal, we would like to request for an extension of time to file the Petition of Appeal.

Yours faithfully,
SD: (AMBIAVAGAR & COMPANY)

- c.c. 1. M/s. Chor Pee & Hin Hiong
(your ref: AH/pc/KL 392-77)
2. M/s. Khoo & Sidhu
Advocates & Solicitors, K.L.

This is the Exhibit marked A2 referred to in the Affidavit affirmed on the 2nd day of February 1979.

10

Before me,

Sgd. Tneh Liang Peng
Commissioner for Oaths.
Kuala Lumpur, Malaysia.

EXHIBITS

A.2.

Annexures to G. Ambiaavagar's affidavit d.d. 2.2.79 (not reproduced) - Letter to Secretaries of the three Federal Judges 7th December 1978.

EXHIBITS

A.3.

Letter to Federal Court - 11th November 1978

EXHIBITS

A.3.

Letter to Federal Court 11th November 1978.

20

(12)dlm.FCC Appeal No.167/78
(62/78)
A/113/ELHS/77(SL)

November 11, 1978.

The Chief Registrar,
Federal Court,
Kuala Lumpur.

Tuan,

ref: Federal Court Civil Appeal No. 62/78 -
Hoe Joo Sawmill (Appellant) vs. Sigma
(Air Conditioning) Sendirian Bhd.
(Respondent)

30

We refer Your Honour to the above matter which application came up for hearing on the 6th November, 1978.

As our clients have been granted Conditional Leave to appeal to Privy Council against the Order of the Federal Court made on the 26th September, 1978, we shall be very grateful if Your Honour could kindly let us have the Grounds of Judgment for the purposes of preparing the Record of Appeal.

Thanking you.

40

Yours faithfully,
Sgd.

EXHIBITS

A.3.

Annexures to G. Ambavagar's affidavit d.d. 2.2.79 (not reproduced) - Letter to Federal Court 11th November 1978. (cont'd)

c.c. 1) M/s Chor Pee & Hin Hiong (your ref: AH/po/KL 392-77)

2) M/s. Khoo & Sidhu.

This is the Exhibit marked A3 referred to in the Affidavit affirmed on the 2nd day of February 1979.

Before me,

Sgd. Tneh Liang Peng
COMMISSIONER FOR OATHS.
Kuala Lumpur, Malaysia.

EXHIBITS

A.4.

Letter to Secretaries of the three Federal Judges - 4th January 1978

EXHIBITS

A.4.

Letter to Secretaries of the three Federal Judges - 4th January 1978

10

(12)dlm. F.C. Civil Appeal No. 167/1978
A/113/ELHS/77(SL)

January 4, 1978.

1. - Secretary to Hon'ble Lee Hun Hoe, Chief Justice High Court, Kuching.
2. Secretary to Hon'ble Raja Azlan Shah, F.J., Federal Court, Kuala Lumpur. 20
3. Secretary to Hon'ble Wan Suleiman, F.J., Federal Court, Kuala Lumpur.

Dear Sirs,

re: Federal Court Civil Appeal No. 62/78

We refer Your Honour to the above matter and to our letters dated November 11, and December 7 1978 respectively.

30

We would be very grateful if you could kindly let us have the Grounds of Judgment at your soonest convenience.

We undertake to pay for any charges so incurred in this regards,

Thanking you.
Yours faithfully, Sgd.

c.c. M/s. Chor Pee & Hin Hiong

EXHIBITS

This is the Exhibit marked A4 referred to in the Affidavit affirmed on the 2nd day of February 1979.

A.4.

Annexures to G. Ambiavagar's affidavit d.d. 2.2.79 (not reproduced) - Letter to Secretaries of the three Federal Judges - 4th January 1978 (cont'd)

Before me, Sgd. Tneh Liang Peng
Commissioner for Oaths
Kuala Lumpur, Malaysia.

EXHIBITS

A.5.

10

Letter to Secretary to Hon'ble
Wan Suleiman, F.J. - 17th January
1978

A.5.

Letter to
Secretary to
Hon'ble Wan
Suleiman -
17th January
1978.

(12)d/m.P.C. Civil Appeal No. 62/78
C.S.167/78
A/113/ELHS/77(SL)

January 17, 1979.

Secretary to the Hon'ble Wan Suleiman F.J.,
Federal Court,
Kuala Lumpur.

20

Tuan,

re: Federal Court Civil Appeal No. 62/78
Hoe Joo Sawmill

We refer to the above matter and to our letters addressed to you on November 11, December 7, 1978 and January 4, 1979 respectively.

30

We understand from the respective Secretaries to the Hon'ble Raja Azlan Shah, F.J. and The Hon'ble Lee Hun Hoe, Chief Justice High Court, Kuching that they will not be preparing the Grounds of Judgment for this matter.

We would therefore be very grateful if you could kindly let us know when the Grounds of Judgment could be ready to enable us to prepare the Petition of Appeal. In the event that the Grounds of Judgment cannot be ready in time, we would like to request for an extension of time to file the Petition of Appeal.

Thanking you.

EXHIBITS

A.5.

Annexures to G.
Ambiavagar's
affidavit d.d.
2.2.79 (not
reproduced) -
Letter to
Secretary to
Hon'ble Wan
Suleiman -
17th January
1978.
(cont'd)

Yours faithfully,

Sgd.

c.c. M/s Cher Pee & Co.

M/s Khoo & Sidhu

The Chief Registrar, Fed. Court, K.L.

This is the Exhibit marked A5 referred to in the
Affidavit affirmed on the 2nd day of February 1979.

Before me,

Sgd. Tneh Liang Peng

Commissioner for Oaths

Kuala Lumpur, Malaysia.

10

A.6.

Letter to
Secretary to
Hon'ble Wan
Suleiman F.J.
23rd January
1978.

EXHIBITS

A.6.

Letter to Secretary to Hon'ble Wan
Suleiman dated 23rd January 1978

AMBIAVAGAR & CO.

Advocates & Solicitors,

Room 203, 2nd Floor,

Magnum House,

111 Jalan Pudu,

Kuala Lumpur.

20

Your ref: (12)dlm. F.C. Civil Appeal No. 62/78
C.S. 167/78

Our ref: A/113/eLHS/77(SL)

January 23, 1979

Secretary to the Hon'ble Wan Suleiman F.J.,
Federal Court,
Kuala Lumpur.

Tuan,

Ref: Federal Court Civil Appeal No. 62/78
Hoe Joo Sawmill

30

Further to our letter dated 17th January, 1979
addressed to your good office, we understand
that His Lordship The Hon'ble Wan Suleiman F.J.
will be preparing the Grounds of Judgment and
Notes of Evidence in this matter.

We shall be very grateful if you could kindly
confirm whether the above documents could be
ready and forwarded to us before 6th February,
1979 which is the last day for filing the
Petition of Appeal.

40

We undertake to pay for any charges so incurred in this regard.

Thanking you for your very kind co-operation.

Yours faithfully,
Sgd.
c.c.

This is the Exhibit marked A6 referred to in the Affidavit affirmed on the 2nd day of February 1979.

10 Before me, Sgd. Tneh Liang Peng
Commissioner for Oaths,
Kuala Lumpur, Malaysia.

EXHIBITS

A.6.

Annexures to G. Ambiavagar's affidavit d.d. 2.2.79 (not reproduced) - Letter to Secretary to Hon'ble Wan Suleiman F.J. 23rd January 1978. (cont'd)

EXHIBITS

A.1.

Annexures to G. Ambiavagar's affidavit dated 16.2.79 (not reproduced) Correspondence between Ambiavagar and Chor Pee as to extension of time dated 23rd January and 2nd February 1979.

20 PPS/pmf/KL 39-77(AH)
A/113/ELHS/77(SL)

January 23, 1979.

M/s. Chor Pee & Company,
Advocates & Solicitors,
Bangunan Ming,
Bukit Nanas,
Kuala Lumpur.

Dear Sirs,

30 re: Kuala Lumpur Federal Court of C. Appeal
No. 62/78

We refer to the above matter and to all our carbon copy letters addressed to The Chief Registrar and also to the respective secretaries to Their Lordships The Hon'ble Lee Hun Hoe, Raja Azlan Shah and Wan Suleiman respectively from time to time.

40 As the time for filing the Petition of Appeal is running short, we have to date yet to receive the Notes of Evidence and Grounds of Judgment from the Secretary to The Hon'ble Wan Suleiman F.J., we shall be obliged if you could kindly confirm whether you have any objection to our

EXHIBITS

A.1.

Annexures to G. Ambiavagar's affidavit dated 16.2.79 (not reproduced) Correspondence between Ambiavagar and Chor Pee as to extension of time dated 23rd January and 2nd February 1979.

EXHIBITS

A.1.

Annexures to G. Ambiavagar's affidavit dated 16.2.79 (not reproduced) Correspondence between Ambiavagar and Chor Pee as to extension of time dated 23rd January and 2nd February 1979.
(cont'd)

request for an extension of time to file the Petition of Appeal.

If you have no objection please return a carbon copy of this letter duly signed by you. Thank you.

Yours faithfully,
Sgd.

I have no objection to the above:- Sgd.

Chor Pee & Company

CHOR PEE & CO.

10

AH/j1/KL 392-77
A/113/ELHS/77(SL)

2nd February 1979.

Messrs. Ambiavagar & Co.,
Advocates & Solicitors,
KUALA LUMPUR.

Dear Sirs,

Kuala Lumpur Federal Court Civil
Appeal No. 62/78 - Hoe Joo Sawmill

We refer to the above matter and to your letter of 23rd January, 1979.

20

We herein return the carbon copies duly signed.

Yours faithfully,

Sgd.
encs.

This is the exhibit marked A1 referred to in the affidavit of G. Ambiavagar sworn before me this 16th day of February 1979.

(Yee Soon Kwong)
Commissioner for Oaths.

IN THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL

ON APPEAL
FROM THE FEDERAL COURT OF MALAYSIA

BETWEEN :

HOE JOO SAWMILLS Appellant
(sued as a firm) (Defendant)

- and -

SIGMA (AIR CONDITIONING) Respondent
SDN BHD (Plaintiff)

RECORD OF PROCEEDINGS

GRAHAM PAGE & CO.,
24 John Street,
London WC1N 2DA.

Solicitors for the Appellant

SIMMONS & SIMMONS,
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