

**DALAM MAHKAMAH TINGGI MALAYA KUALA LUMPUR
(BAHAGIAN SIVIL)**

GUAMAN NO: S5-22-1094-2007

ANTARA

RHB BANK BERHAD

.....PLAINTIF

DAN

1. BIN BIN KNITWEAR MANUFACTURER SDN BHD

2. LIM WEE YEOW

3. NG AH LAI (F)

..... DEFENDAN

GROUND OF JUDGMENT

This is the application by the Plaintiff for Summary Judgment against the Defendants for the sum of RM 3899.84 as at 2.9.2007 being a defaulted repayment of Bankers Acceptance Facility granted by the Plaintiff to the 1st Defendant whereby the 2nd Defendant and the 3rd Defendants are guarantors.

The Defendants raised the following as triable issues:

- a) The validity of the Statement of Accounts;
- b) The validity of the Certificate of Indebtedness;
- c) The amount of the claim is wrong;

- d) The amount of interest and the rate of interest was wrong;
- e) The use of the fixed deposit which had been pledged is wrong.

The validity of the Statement of Accounts

The validity of the Certificate of Indebtedness;

The amount of the claim is wrong

The Defendants submits that the Account Number in the Statement of Accounts is not stated in any of the documents or securities and neither is it stated in the Certificate of Indebtedness.

Therefore there is no nexus between the statement of account and the Plaintiff's claim.

This argument by the Defendants is misleading. The certificate of Indebtedness is final and conclusive of the amount claimed. (Refer to the case of **Bank of Tokyo-Mitsubishi (Malaysia) Bhd v Sim Lim Holdings Bhd & Ors** [2001] 2 CLJ 474 which cited the case of **Bangkok Bank Ltd v Cheng Lip Kwong** [1990] 1 CLJ 1017 which held that:

“so long as the certificate of indebtedness stated a date and the amount due and owing as at that date, it is conclusive evidence of the amount due and owing "for the time being" at the date mentioned therein. In this case, the certificate of indebtedness certified the amount due and owing under the fourth defendant's account as at 30 November 2000. In line with the above decision, it is conclusive evidence of the amount due and owing "for the time being" at the date mentioned therein.”

In our case the certificate of indebtedness shows the amount owing as of 2.9.2007. (Refer to exhibit LGT-13 of Enclosure 16).

In any event there is no requirement for the Plaintiff to state the Account Number of the 1st defendant on all the documents in relation to the Loan Facility. I accept the explanation by the Plaintiff in its affidavit that for purposes of client's confidentiality, the Plaintiff cannot insert the particulars of the Account Number on all the documents. In any event if the Defendants requires for such information, that particulars may be provided by the Plaintiff upon request, which the Defendants have failed to do, especially when exhibits LGT-10 and LGT-11 was sent to the defendants. As directors of the 1st Defendant the 2nd and 3rd Defendants would know of the particulars of the accounts of the 1st Defendant.

The amount of interest and the rate of interest was wrong

On this issue the defendant have failed to show how is the amount of the interest and the rate of interest is wrong. The defendant have to show that there is a manifest error in the calculation. Mere assertions without more cannot be accepted by the court.

The use of the fixed deposit which had been pledged is wrong.

The use of the fixed deposit to reduced the sum owing by the defendants was after the Plaintiff had given a notice to the 2nd and the 3rd Defendants, and there was no objection or complaints from both of them.

Therefore the Defendants are now estopped from raising this as an issue. (Refer to ***Boustead Trading (1985) Sdn Bhd v Arab Malaysian Merchant Bank Berhad*** [1995] 3 MLJ 331)

Conclusion

The issues raised by the Defendants are not triable issues at all. I therefore grant order in terms for Summary Judgment under O 18 RHC against the 2nd and 3rd Defendants with costs.

Datin Zabariah Mohd Yusof
Tarikh 3.7.2009

Bagi pihak Plaintiff : Puan Kavitha N
(Tetuan Anad & Noraini)

Bagi pihak Defendan : Encik Christopher Arun
(Tetuan Kamil Hashim Pury & Lim.)