

**STANDARD CHARTERED BANK v. KWONG HING TRADING SDN BHD & ORS**  
HIGH COURT, KUALA LUMPUR  
VC GEORGE; J  
CIVIL SUIT NO D-1-22-83 OF 1990  
12 OCTOBER 1993

**Counsel:**

*Mastura Ma'sud (Arifin & Partners) for the plaintiff/appellant.*

*Fiona M Bodipalar (Sri Ram & Co) for the defendants/respondents.*

**JUDGMENT**

[In respect of encl.(4)]

In this O.14 application 3 matters were presented as being triable issues.

The first of this is the alleged 1st settlement agreement and the alleged breach of it. The settlement agreement was said to have been arrived with one Frances Huang representing the plaintiff bank. Apparently it was agreed that in consideration of the 2nd defendant depositing the title deed in respect of a lot of land in Ampang the bank had agreed not to exercise any rights in respect of a claim it had against the 2nd defendant in respect of moneys owed by a company referred to as Crocodile Garments until the bank had exhausted all means of [2] recovering the money by other means. The 2nd defendant says that at the time that that agreement was arrived at, the plaintiff had also agreed not to recall the facilities afforded to the 1st defendant.

Now the 2nd defendant took the trouble to place on record the alleged discussion. This is his letter to the bank dated the 12th March 1987. He even obtained Frances Huang's confirmation of the contents in a duplicate copy of the letter exhibited as LFK.13 to encl.(5). Significantly that letter only refers to the Crocodile Garments matter and no mention at all is made of the amounts owing by the 1st defendant. The bank denies the alleged agreement and it also relies on the said LFK.13 in support of its contention that there was no such agreement. The 2nd defendant does not even try to explain his having left out of his letter the fact of agreement having been arrived at in respect of what was owing by the 1st defendant.

What is alleged is inherently unbelievable. I cannot see a bank saying that it will not ever recall the facility as stated by the 2nd defendant. If he had said they were withholding recalling it for a specified time or for the time being and 2nd defendant having taken the trouble to place what had been agreed on record had also included that in his [3] letter (or provided an acceptable explanation as to why he did not) perhaps it could be said that *per se* that provided a triable issue. As it is I see no bona fide triable issue on the alleged 1st settlement agreement.

The second triable issue said to be available is the alleged 2nd settlement agreement. This is alleged in encl.(5) para 5.40 - that by letter dated the 25th May 1988 the bank confirmed that all credit facilities would be reinstated. The letter which is LFK.31 to encl.(5) shows that what was agreed was that subject to the finalisation of the additional security the bank was prepared to allow the reutilisation of the facility up to any amount repaid per month. The additional security was to be the provision of a charge created over two adjoining 3 storey shophouses in Mentakab and further securities to bring the security cover to not less than RM500,000. Twelve monthly payments of RM100,000 each commencing on the 28th May 1988 would be made to settle the outstanding account. There were other terms. There was written confirmation of the agreement executed by the 2nd defendant - LFK.32 - 4 units of shophouses in Mentakab was offered as security. [4]

It is common ground that there was delay in providing the additional security. By letter dated the 3rd October 1988 LFK.36, the 2nd defendant writing on behalf of the 1st defendant encloses a title to land in Si Rusa "for simple deposit as a temporary security pending finalisation to charge our proposed property to you." The 1st defendant was allowed the re-utilisation of the facility to the extent of the L.C. This was issued. The 1st defendant says it was dishonoured. Plaintiff says it was never negotiated. It was for the defendants to demonstrate that in fact it was negotiated and dishonoured. This they have not done.

The bank says that as the additional security was not provided the bank proceeded to sue. It seems to me unarguable that as the agreed additional security was not provided the contention that the bank is

estopped from suing is unsustainable. The alleged 2nd settlement does not provide a triable issue.

The 3rd point raised as a triable issue is based on the contention that the bank is being sued by one Monsia Investments Pte. Ltd. for RM500 million and that the bank had requested the 2nd defendant to cooperate in their defence of the suit. Apparently the 2nd defendant was interested in taking control of [5] a company called Kuala Lumpur Landmark Sdn. Bhd. because it owed certain lands that the 2nd defendant was interested in. The land had been charged to the plaintiff bank and at the instance of the 2nd defendant, Landmark had entered into a redemption agreement with the bank but Monsia have obtained an injunction restraining the Landmark from completing the redemption agreement. In the meanwhile the bank in apparent breach of the redemption agreement, had taken steps to enforce the charge on the Landmark lands.

Having set out those facts in the affidavit opposing the O.14 application the 2nd defendant contends that the plaintiff's action in recalling the facilities of the 1st defendant is *mala fide* and an abuse of the process and is motivated by the plaintiff's intention to obtain the co-operation of the 2nd defendant against Monsia. The bringing of the instant action is also, it is contended, to obtain the co-operation of the 2nd defendant. This makes no sense. Monsia's purported cause of action is based on matters that, as far as the facts disclosed to the court show, do not have anything at all to do with the defence herein. And I fail to see how recalling the facility or suing the defendants herein could result in obtaining the co-operation of the 2nd defendant. [6]

This 3rd point raises nothing.

There is no dispute in respect of the quantum claimed to be owing to the bank. There will be an order in terms of encl. (4).

[1993] 1 LNS1 301[1993] MLJU 440

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