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1. [Southeast Asia Special Asset Management Berhad v Popular Acres Sdn Bhd](#)
[\[2012\] MLJU 1766](#)

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SOUTHEAST ASIA SPECIAL ASSET MANAGEMENT BERHAD v
POPULAR ACRES SDN. BHD

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| [2012] MLJU 1766

Southeast Asia Special Asset Management Berhad v Popular Acres Sdn
Bhd
[2012] MLJU 1766

Malayan Law Journal Unreported

HIGH COURT (KUALA LUMPUR)

YEOH WEE SIAM J

ORIGINATING SUMMONS NO 24 NCvC-3264-12/2011

8 October 2012

*Mohammad **Akram** (Che Mokhtar & Ling) for the appellant.*
SY Yap (Tai King & Partners) for the defendant.

Yeoh Wee Siam J:

JUDGMENT

(In respect of enclosure 11)

Enclosure 11

Enclosure 11 is the Defendant's application to set aside the Order for sale granted to the Plaintiff on 29.2.2012.

Court's Decision on 27.9.2012 regarding enclosure 11

The Defendant's application in enclosure 11 is dismissed with costs of RM2,000.00.

Reasons for the Court's Decision

[1]O.42 r.13 of the Rules of Court 2012 ("the ROC 2012") requires an application to set aside an order or judgment to be made within 30 days after receipt of such order or judgment.

The Defendant admitted that about 1 month after the Order for sale was granted by the Court on 14.3.2012 (note: the correct date should be 29.2.2012 according to the Court records), the Plaintiff's Solicitors wrote to Messrs Chan Leong & Co. *i.e.* Solicitors for the borrowers, Lee Chan Kok and Teng Kat Ming, in the Shah Alam High Court Civil Suit No. S22- 67-2008 to inform them of the Order. The Plaintiff contended that the Order for sale was served on the Defendant on 17.4.2012. From the evidence adduced, it can be deduced that the Order for sale was therefore served on or received by the Defendant on 17.4.2012 or sometime in April 2012. The Defendant did not deny receipt of such Order for sale.

This application was filed on 25.7.2012 *i.e.* after 30 days from the date of receipt of the Order for sale granted

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pursuant to enclosure 1. No reasonable explanation was given by the Defendant for the delay in filing this application other than to say that the Defendant needed time to get the cause papers and to study the complexity of this case and to compare it with the 2009 action i.e. OS No. S-24-411-2009 and the Shah Alam Civil Suit. No attempts were made by the Defendant before this to apply for extension of time to file the application to set aside the Order dated 29.2.2012. Since O.42 r.13 of the ROC 2012 has not been complied with, the Defendant's application cannot be considered on its merits and the application ought to be dismissed on this ground alone (See Court of Appeal decisions in *Ng Han Seng & Ors V. Scotch Leasing Sdn. Bhd.* [2003] 4 CLJ 533 and *Koperasi Belia Nasional Bhd. V. Storage Enterprise (Port Klang) Sdn. Bhd.* [1998] 3 CLJ 335).

[2]The Defendant cited s.256(3) of the National Land Code 1965 ("the NLC") in this application without citing in the intitulement under what Order or rule of the ROC 2012 that he is relying on in order to make this application. On this ground too, the application is dismissed (see Court of Appeal decision in *Cheow Chew Khoon V. Abdul Johari Bin Abdul Rahman* [1995] 1 MLJ 457).

[3]Under s.256(3) of the NLC, the Court shall order the sale of the land unless it is satisfied of the existence of "cause to the contrary". No cause to the contrary has been shown by the Defendant to the satisfaction of the Court:

- (a) The Defendant is unable to rebut the Plaintiff's evidence that the application in enclosure 1 with all the cause papers together with Form 16D were served on the Defendant at his last known address i.e. the registered address and business address of the Defendant which address was stated in the Presentation of Charge no. 1561/2006 registered on 26.1.2006, and which was also based on an official search with the Companies Commission of Malaysia dated 13.9.2011. The Defendant therefore cannot plead ignorance of these proceedings since service of the documents on them is regular.
- (b) The Plaintiff's previous action in Originating Summons No. S- 24-411-2009 in the Kuala Lumpur High Court, against the Defendant and Atlanta Terrace (M) Sdn. Bhd., was struck out on 27.10.2011 when both parties were not present in Court pursuant to the show cause letter issued by the Court. That Originating Summons was not heard on its merits by the Court. Therefore, it does not preclude the Plaintiff from filing afresh the present Originating Summons for an Order for sale.
- (c) The Plaintiff is at liberty to file the Civil Suit in the Shah Alam High Court and the present Originating Summons. Both actions are separate from each other and involve different Defendants. In the Shah Alam case the Defendant is the borrower, whereas in the present case the Defendant is the chargor (see also *Co-Operative Central Bank Berhad V. Belaka Suria Sdn. Bhd.* [1991] 3 MLJ 43, and *Wee Huay Fong V. Pentadbir Tanah, Klang & Anor* [2002] 6 CLJ 512).
- (d) The Defendant relied heavily on its objections to the vesting Order dated 15.1.2010 where the liabilities, assets, interests, rights and remedies of CIMB Bank Berhad ("CIMB") were transferred to the Plaintiff. The Defendant also contended that the Plaintiff does not have the necessary licence to operate a banking or financial institution. The Plaintiff therefore cannot take over from CIMB all matters under the vesting Order, including the rights of the chargee in the present case.
- (e) It must be noted that a vesting Order made under [s.50\(1\)](#) of the [Banking and Financial Institution Act 1989](#) has the effect as stated in [s.50\(3\)](#) of the same Act i.e. the Order shall be binding on any person thereby affected, regardless of whether the person so affected is a party to the proceedings or had no notice of the proceedings (see also *Alliance Bank Malaysia Bhd. V. MCK Development Sdn. Bhd.* [2005] 5 CLJ 77).
- (f) The vesting Order was never set aside by any Court or over- turned by the Court of Appeal. As such, it is binding on all relevant parties. The Plaintiff has satisfied the Court that the Plaintiff had published in the local media about the existence of the vesting Order. This Court can take judicial notice of such vesting Order.
- (g) It is not the function of this Court to re-adjudicate the issues in the vesting Order but to give effect to it in so far as the rights of the Plaintiff are concerned in relation to the charge in the present case.

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- (h) The Defendant alleged breach of contract and misrepresentation by the Plaintiff regarding giving the redemption sum which should be based on individual bungalow lots out of the 66 bungalow lots. However, there is no conclusive evidence on this. What is important here is that, in view of the charge executed by the Defendant, the Defendant is not relieved from its liability to pay the Plaintiff the sums due under the loan facilities.
- (i) Since there is no proof by the Defendant that the sums due to the Plaintiff have been paid, it follows that the Plaintiff is entitled to exercise its rights under the charge and obtain the Order for sale granted by the Court on 29.2.2012.

In *Low Lee Lian V. Ban Hin Lee Bank Bhd.* [\[1997\] 1 MLJ 77](#), the Federal Court, *inter alia*, held:

“A judge hearing an application under s.256 of the Code must bear in mind that the procedure under the section is meant to be speedy and summary in nature. He is first concerned with whether the chargee has given the appropriate statutory notices as stipulated in the Code. Next, he is concerned with the very question whether the material produced before him by the chargor constitutes cause to the contrary. If the Courts of this country interpret the phrase ‘cause to the contrary’ appearing in s.256(3) of the Code liberally, then, institutional lenders would lose confidence in their right to realize their security through an order for sale. Financial institutions would then become reluctant to lend money to *bona fide* entrepreneurs. Commerce would come to a standstill No judgment of this Court will be designed to produce such a consequence”.

As further stated in the above Federal Court case, even with a narrow interpretation of s.256(3) of the National Land Code, and if the chargor is unable to satisfy the Court of cause to the contrary, the chargor is not left without remedy. Allegations that fail to amount to cause to the contrary may nevertheless form the basis of an action in personam against the chargee.

In the present case, I find that the Defendant has failed to meet the requisite legal test of what amounts to a cause to the contrary to justify setting aside or revoking the Order for sale dated 29.2.2012.

Based on the above considerations, I ordered accordingly.