



DALAM MAHKAMAH TINGGI MALAYA IPOH

[RAYUAN SIVIL NO. AA-12BM-01-10/2017]

BETWEEN

MAYBANK ISLAMIC BERHAD

... APPELLANT

AND

1. LEOW ENG TENG

**2. TEOH SAM LOI (ADMINISTRATOR FOR THE ESTATE OF
LEOW KOON HOONG, THE DECEASED)... RESPONDENTS**

GROUND OF JUDGMENT

[1] The appeal by the Appellant before this Court was filed against the decision of the learned Sessions Court Judge (“HMS”) delivered on 12/10/2017 pursuant to a full trial.

[2] The HMS held, *inter alia*, as follows:

2.1 Mortgage Reducing Term Takaful (“MRTT”) is not a form of financing security. On the contrary, MRTT is part of the loan facility for the benefit of Leow Koon Hoong, the Deceased (“ LKH”);

2.2 the Appellant was negligent for its failure to effect the payment of the premium for the MRTT to the benefit of LKH, within a reasonable period;

2.3 the Appellant’s said failure had resulted in the subsequent rejection by Etiqa Takaful Bhd on the claims for MRTT



coverage to the benefit of LKH, that had caused the suffering of losses by LKH;

2.4 it shall be deemed that the Appellant had effected the payment of the premium for the MRTT within the reasonable period, and following that, the claims for the MRTT coverage to be paid by Etiqa Takaful Bhd to the benefit of LKH shall be allowed;

2.5 consequential to the findings above-'

(a) the Appellant is ordered to grant *ibra'* (rebate/set-off) to LKH, for the total profit sum for the loan account no. 458435-014224;

(b) the said loan account shall be declared as fully settled;.

(c) the Appellant shall not impose any late charges towards the said loan account;

(d) the Appellant shall surrender to the Respondents the original land title, the original sale and purchase agreement, and to discharge the mortgage and security claims on the land registered as Lot 337 (PT 255419), Meru Perdana 2, held under the individual ownership HS(D) 216859, PT 255419, Mukim Huiu Kinta, Perak ("the Property").

[3] Upon hearing arguments and submissions by the learned Counsels of both parties, and having perused the documents before this Court, the Appellant's appeal was disallowed and this Court further confirmed the orders of the HMS.



[4] The Appellant now appeals further against this Court’s decision. The following are the reasons alluded by this Court in arriving at the decision.

FACTS

[5] The brief facts and chronological events that led to the filing of the civil suit by the Appellant against the Respondent at the Court below were as follows:

5.1 16/4/2014 - LKH offered to purchase the Property from a developer, Zaman Teladan Sdn Bhd, by payment of a deposit sum of RM5,000.00;

5.2 7/8/2014 - vide the Appellant’s Letter of Offer (Letter of Offer”), LKH was offered a Commodity Murabahah Home Financing Facility (“the Property Loan”) totaling RM140,623.00 comprising an amount of RM139.000 to finance the purchase of the Property, and another amount of RM1,623.00 to finance the requisite MRTT premium (refer pp. 221-245, Rekod Rayuan Perayu Jilid 1);

5.3 Paragraph 2 of the Specific Terms and Conditions of the said Letter of Offer provided as below:

“The MRTT single contribution of RM1,623.00 for the coverage of RM139,000 and tenure of 12 years (inclusive of BICC period”) covered under Leow Koon Hong is to be taken up with Etiqa Takaful Berhad or from the Bank’s



panel of takaful companies or such other companies of your choice approved by the Bank and incorporated into the Facility amount....

“BICC period - Building in Cost Construction (BICC) is applicavle for under construction property only.”

- 5.4 20/10/2014 - LKH signed the Sale and Purchase Agreement of the Property with the said developer to purchase the Property at a price of RM 199,900.00 (refer pp. 194-214, Rekod Rayuan Perayu Jilid 1);
- 5.5 9/1/2015 and 25/2/2015 - LKH paid the requisite legal fees, stamp duties, and the differential sum to the Appellant’s and the developer’s lawyers respectively to enable the processing and hasty release of the Property Loan by the Appellant and the transfer of the title of the Property to LKH;
- 5.6 8/7/2015 - while he was brought to KPJ Ipoh Hospital via ambulance, LKH developed cardiac arrest in the ambulance;
- 5.7 9/7/2015 - LKH was transferred from KPJ Ipoh Hospital to the ICU, Hospital Raja Perempuan Permaisuri Bainun, Ipoh;
- 5.8 11/7/2015 - LKH was pronounced dead at the Hospital Raja Perempuan Bainun, Ipoh with cause of death stated as “subarachnoid hemorrhage and intraventricular hemorrhage secondary to ruptured



- cerebral aneurysm” (refer p. 387, Rekod Rayuan Perayu Jilid 1);
- 5.9 22/7/2015 - the Appellant’s solicitor registered the transfer and charge of the Property (refer p. 374, Rekod Rayuan. Perayu Jilid 1);
- 5.10 28/7/2015 - the Appellant released an amount of RM9,065.00 to the developer and an amount of RM1,623.00 to Etiqa Takaful Berhad for purposes of the MRTT (refer p. 339 Rekod Rayuan Perayu Jilid 1);
- 5.11 8/8/2015 - Etiqa Takaful Berhad issued the MRTT Certificate No. MT71003739251 dated 31/7/2015 to the benefit of LKH to cover the said Property Loan totaling RM140,623.00, for a period of 12 years with effect from 28/7/2015 until 27/7/2027 (refer pp. 388-397, Rekod Rayuan Perayu Jilid 1);
- 5.12 28/12/2015 and 30/3/2016 - Etiqa Takaful Berhad rejected the MRTT claims on the basis that the MRTT’s premium was paid on 31/7/2015, and as such the MRTT took effect only on 31/7/2015. It follows that LKH’s Property Loan is not covered by the MRTT as LKH had died on 11/7/2015, prior to the effective date of the MRTT (refer pp. 346, 381, Rekod Rayuan Perayu Jilid 1);
- 5.13 23/6/2016 - Etiqa Takaful Berhad returned the MRTT premium payment of RM1,623 and the policy was rescinded (refer p. 348, Rekod Rayuan Perayu Jilid 1). Consequently, the Respondents, being the next of kin of LKH, would be legally liable to pay the full



sum of the Property Loan at RM577.496.45 to the Appellant, as the said Property Loan was not covered by the MRTT;

5.14 5/12/2016 - the Respondents filed the Civil Suit against the Appellant at the Ipoh Sessions Court, and upon full hearing, led to the learned HMS deciding in favor of the Respondents on 12/10/2017 with decision and orders as enumerated earlier.

FINDING

When LHK did signed the Property Loan Agreement?

- [6] This Court could not trace any evidence or information showing when exactly did LKH and the Appellant signed the Commodity Murabahah Home Financing Facility Agreement (“the Property Loan Agreement”) with the terms and conditions as stipulated in the said Agreement as found at pp. 248-319, Rekod Rayuan Perayu Jilid 1.
- [7] This Court noticed that the Property Loan Agreement was rather “mysteriously” dated as 10/7/2015 - a day before the untimely death of LKH on 11/7/2015. It must have been that the said Property Loan Agreement was signed by the parties well before that date. And someone conveniently chose the date of that document to be a day before LKH’s death. As revealed in the earlier paragraph, on 10/7/2015 LKH was at the ICU ward of the Raja Perempuan Bainun Hospital Ipoh, fighting for his life.
- [8] Be that as it may, this Court further observed that the said Property Loan Agreement was sent for adjudication process on

that same date, 10/7/2015, and was duly stamped at the *Lembaga Hasti Dalam Negeri* on 13/7/2015.

- [9] As there was not an iota of information adduced on this issue, this Court could only make an assumption, based on other related information as explained in the paragraphs below, that LKH had duly signed the said Property Loan Agreement way back in March 2015. It was subsequently dated as 10/7/2015, the day the said Property Loan Agreement was sent for adjudication.
- [10] This presented the first line of finding that stood positively in favour of LKH.

Is the MRTT part of the security?

- [11] This issue was raised as part of the argument before this Court by the Appellant to demonstrate that being part of the requisite security for the disbursement of the Property Loan (a component of which is the financing for the MRTT premium), the Appellant is contractually not obliged to disburse the MRTT financing component until and unless it had obtained confirmation by its solicitors that all the prerequisite conditions had been fulfilled by all parties, particularly LKH.
- [12] The Appellant's contention is gravely erroneous and this Court must realign the Appellant back into the correct perspective.
- [13] Security document is defined in Clause A of the said Property Loan Agreement as "collectively means these security documents as stated in Item 15 of the First Schedule hereto and any other security documents executed and/or required to be executed as the Bank deems fit hereunder now and hereafter".



[14] Item 15 of the First Schedule to the said Property Loan Agreement provides that the “security documents” are-

- (i) Letter of Offer dated 7/8/2014;
- (ii) This agreement (the Property Loan Agreement);
- (iii) 1st party Legal Charge; and
- (iv) Asset Sale Agreement dated 27/11/2014.

[15] SD1, a Manager at the Appellant’s stipulated branch office, in his evidence at the trial before the HMS, answered in the affirmative when cross-examined by the counsel for the Respondents that MRTA is not part of the security documents as it was not mentioned anywhere as such in the Property Loan Agreement or the Offer Letter.

[16] The Property Loan Agreement provided to LKH totaling RM140,623.00 comprised an amount of RM139.000 for the Property Loan and an amount of RM 1,623.00 for the MRTT premium. To enable the Appellant to release the total sum of the Property Loan facility, among the conditions that must be fulfilled are that the “security documents”, as mentioned above had been duly executed, and that the conditions precedent had been duly fulfilled. It follows that to enable the portion of the Property Loan to pay the M R T T premium to be released, the security documents must have been procured and executed, and the conditions precedent have been fulfilled. Upon the payment of the M R T T premium, the M R T T would consequentially be issued and be in effect.

[17] Thus, it is unequivocally clear that the MRTT was never meant to be part of the security document. The facility is a secured loan, secured through those security documents, and through the



fulfillment of the conditions precedent. The contention by the Appellant that the MRTT is part of the security is totally unfounded.

[18] For this Court, this presented the second line of finding that stood positively in favour of LKH.

THE ISSUES TO BE DETERMINED

[19] In my view, the issues raised by the Parties culminate in the following two core issues to be determined in this appeal by this Court-

- (i) whether all the conditions precedent, on the part of LKH, for the disbursement of the MRTT, had been fulfilled by LKH; and
- (ii) if the answer to the first issue is in the affirmative, whether the Appellant failed to timeously disburse the apportioned sum to Etiqa Takaful.

Whether all the conditions precedent, on the part of LKH, for the disbursement of the MRTT, had been fulfilled by LKH

[20] “Conditions Precedent” (“CP”) is defined in Part A of the Property Loan Agreement as “the conditions referred to in Clause 9 herein which must be fulfilled and performed by the Customer before the Bank proceeds with its disbursement of the Facility” .

[21] The said Clause 9 provides:

“The obligation of the Bank to make any disbursement is subject to the Clause fulfillment in the manner satisfactory



to the Bank prior to the making of any disbursement, of the conditions precedent as set out in the Letter of Offer.

Pending the fulfillment in manner satisfactory to the Bank of the conditions hereinbefore stipulated, the Bank may at its absolute discretion terminate the Facility or any part thereof. It is further expressly acknowledged and declared that the conditions precedent are inserted for the sole benefit of the Bank and may therefore be waived wholly or in part by the Bank at the sole and absolute discretion of the Bank without prejudice the rights of the Bank from insisting on the Customer's compliance with any such waived conditions precedent at any subsequent time."

[22] The CPs as stated in Clause 9 above are found in Paragraph 1, Annexure 2, Part B of the Letter of Offer (See p 233-235, Rekod Rayuan Perayu Jilid 1).

[23] There are altogether six (6) CPs stated in that provision. Only the second CP, as found in subparagraph 1.2(b) in Annexure 2, Part B of the stated Letter of Offer, is relevant for purposes of this matter, as it directly relates to LKH. The said subparagraph 1.2(b) on second CP provides-

**1.2 The Faciity(s) shall be disbursed progressively or in lump sum payment subject to the following:*

(b) You having taken up MRTT with Etiqa Takafui Berhad or with any of the Bank's panel of takaful operators of your choice acceptable to the Bank to cover the Facility(s) Amount (if applicable);

[24] The Appellant's solicitor wrote a letter dated 24/7/2015 to inform that the Appellant could release LKH's Property Loan, as



all conditions, including the CPs, have been fulfilled (refer pp. 336- 338 Rekod Rayuan Perayu Jilid 1).

- [25] Pursuant to that confirmation, on 28/7/2015 the Appellant released an amount of RM9, 065.00 to the developer and an amount of RM1,623.00 to Etiqa Takaful Berhad for purposes of the MRTT. And further, on 15/2/2016 the Appellant issued a notice to LKH that the Property Loan had been fully disbursed on 15/2/2016 and LKH shall commence his monthly instalment of RM663.00 on 1/4/2016. (refer pp. 339 and 345, Rekod Rayuan Perayu Jilid 1).
- [26] This Court observed that the Appellant's solicitor's letter confirming that the Appellant could release LKH's loan sum as all conditions, including the CPs, had been fulfilled, was issued on 24/7/2015, which was 13 days after LKH's death. This Court found a palatable explanation on this through the evidence of SD2, the counsel from the firm of the Appellant's solicitor, whom had informed the HMS during the trial at the Court below that the Appellant's solicitor was advised about LKH's death only on 1/8/2015.
- [27] SD2 further confirmed in his evidence that although his firm was notified on LKH's death on 1/8/2015, SD2's firm only informed the Appellant on LKH's death on 1/9/2015. At that juncture, this Court was appalled to learn that although the Appellant was notified on 1/9/2015 by its solicitors on LKH's death, the Appellant on 15/2/2016, some 7 months after the demise of LKH, had mechanically issued a notice to LKH that the Property Loan had been fully disbursed and reminded LKH that he shall commence his monthly installment of RM663.00 on 1/4/2016! This presented the third line of finding that stood positively in favor of LKH.



- [28] -Returning back to the issue of LKH's fulfillment of his contractual obligations, this Court needs only to trace the positive actions taken by LKH in fulfilling his legal obligations. This Court is of the view that with regard to the CPs, there exist only one that relates to LKH, the fulfillment of the CP for LKH to **TAKE UP** MRTT with Etiqa Takaful Berhad or with any of the Bank's panel of takaful operators of LKH's choice acceptable to the Bank to cover the Property Loan amount, as provided in subparagraph 1.2(b) in Annexure 2, Part B of the Letter of Offer.
- [29] That provision, in this Court's interpretation, would be fulfilled simply by LKH having demonstrated that he had done the positive action **TO TAKE UP** the MRTT with Etiqa Takaful Berhad. That provision, in this Court's interpretation, does not state that for the CP to be regarded as being fulfilled by LKH, he must not only have taken up the MRTT but the said MRTT **SHALL BE IN FULL EFFECT AND SHALL HAVE COMMENCED**.
- [30] To interpret that provision in the manner described in the preceding paragraph immediately above, is illogical, to say the least, as the coming into effect or the commencement of the MRTT is beyond the reasonable control of LKH.
- [31] As highlighted in the paragraphs above, upon LKH being officially offered the Property Loan by the Appellant vide its Letter of Offer dated 7/8/2014, LKH proceeded to sign the Sale and Purchase Agreement of the Property with the said developer to purchase the Property at a price of RM199, 900.00 on 20/10/2014. Subsequently, on 9/1/2015 and 25/2/2015, LKH paid the requisite legal fees, stamp duties, and the differentiation sum to enable the processing and hasty release of



the loan facility by the Appellant and the transfer of the title of the Property to LKH.

[32] This fact was further reaffirmed by none other than the Appellant's branch manager, SD1, during cross-examination at the trial before the learned HMS. Clearly, LKH had fulfilled its legal obligations sometime in March 2015. In actual fact, evidence adduced at the trial before the learned HMS suggested that LKH had done and completed his part of the contractual obligations way before 19/3/2015, sometime in January 2015. It was the Appellant that took some time to counter-sign those documents.

[33] SD1, a Senior officer of the Appellant, gave evidence at the trial that between 19/3/2015 to 24/6/2015, nothing was done in respect of the documentations that had been duly executed by LKH, and between those dates the Appellant's solicitors failed to follow up with the developer's solicitor, which led to the land charge documentations being subsequently finalized and adjudicated only on 10/7/2015.

[34] This Court found that although the Appellant had, vide its letter dated 17/3/2015, advised its solicitor Messrs.' Sri, Ling & Associates that all the financing documents including the Legal Charge instrument had been duly executed and signed by the Appellant and LKH, the Legal Charge instrument was only adjudicated, stamped and presented for registration at the Land Registry on 22/7/2015 (refer pp. 333, and 336-338, Rekod Rayuan Perayu Jilid 1).

[35] SD2, a solicitor whose firm acted for the Appellant in preparing the documentations, reconfirmed the above. SD2 stated in his evidence at the trial at the Court below, that LKH had signed the security documents on 9/1/2015 and that his firm had forwarded

those signed security documents to the Appellant on 15/1/2015. Subsequently the Appellant returned the security documents only two months later, on 17/3/2015. SD2 stated further in his evidence that one of the security document, the Property Loan Agreement, could only be sent for adjudication on 10/7/2015 as his firm had to wait for confirmation from the developer on payment of the differential sum by LKH. But when cross-examined by the Counsel for the Respondents that the confirmation by the developer's solicitor on the differentiation sum had already been done in writing on 12/3/2015, SD2 answered that the charge was not done by him but by the developer's solicitor.

[36] Akin to SD1, SD2 too failed to offer any explanation as to what transpired between the time that LKH completed his part on 19/3/2015 until 24/6/2015.

[37] Based on the finding of facts as enumerated in the preceding paragraphs, this Court concided that between January-March 2015, LKH had positively taken all reasonable actions expected of him contractually, including his obligation to fulfill the CP for him to take up the MRTT. All contractual conditions on the part of LKH, for the disbursement of the MRTT, had been fulfilled by LKH.

Whether the Appellant failed to timeously disburse the apportioned sum to Etiqa Takaful

[38] This Court relied on the Court of Appeal's decision in *Soh Yen Ling v. Malayan Banking Berhad* [2017] 1 LNS 716, an authority that bears almost resemblance of facts with the facts in this matter in. In *Soh Yen Ling*, the defendant is the wife and administrative of the estate of her late husband Chan Yau Seng

(the deceased). The deceased passed away on 27.9.2012. The plaintiff is a housing developer. The third party is a bank. The salient facts was summarised by the Court of Appeal in the following chronology of events:

- 21.5.2012 - *Pursuant to a letter of offer the third party agreed to provide the deceased with a term loan of RM297, 037.00 (including MRTA of RM9,137.00 capitalised) to part finance the purchase of the house.*
- 25.5.2012 - *The deceased entered into sale and purchase agreement (“SPA”) with the plaintiff for the purchase of a house for RM338, 800.00.*
- 6.8.2012 - *The term loan to the deceased was formalised under a Facility Agreement whereby as security for the term loan, the deceased agreed to create a charge of the house in favour of the third party.*
- 23.8.2012 - *By a letter of undertaking of even date addressed to the plaintiff, the third party gave a conditional undertaking to pay to the plaintiff the progressive payments provided that all pre- disbursement conditions of the loan were fulfilled.*
- 3.9.2012 - *By a letter of even date, Messrs Annuar Hong & Ong (“the Loan Solicitors”) acting in the loan documentation transaction notified the third party that*



all the conditions precedent had been fulfilled. The following are some of the pertinent conditions precedent:

- i. The Facility Agreement had been stamped;*
- ii. The duly adjudicated and stamped memorandum of transfer had been presented at the land office for registration on 29.8.2012;*
- iii. The charge in favour of the third party had been duly presented at the land office-for registration on 29.8.2012;*
- iv. The property was free from encumbrances; and*
- v. The differential sum between the purchase price and the loan sum had been settled.*

Accordingly, the Loan Solicitors informed the third party that it is in order to for the third party to release the term loan facility progressively to the plaintiff/developer against the relevant architect's certificate of completion.

20.9.2012 - The plaintiff made a claim for payment of RM169,320.00 vide letter of even date supported by the architect's certificate.



- 27.9.2012 - *The deceased died in a road accident.*
- 12.11.2012- *The defendant complained to the third party about the third party's failure to make the progressive payments to the plaintiff and asked for an explanation within 14 days.*
- 22.5.2013 - *The Loan Solicitors informed the plaintiff that the third party would not be making any disbursement of the loan.*
- 5.8.2013 - *The plaintiff gave notice of delivery of vacant possession and asked for payment of the balance purchase price.*
- 30.10.2013- *The plaintiff informed that they had not received any progressive payments from the third party. The plaintiff gave the defendant an ultimatum to settle the outstanding sum of RM287I 900.00 within 14 days failing which the SPA will be terminated.*
- 14.11.2013- *The defendant was appointed as the administratrix of the estate of the deceased.*
- 19.11.2013- *The plaintiff informed the defendant that the SPA had been terminated due to the defendant's failure to settle the outstanding sum despite their letter of 30.10.2013.*

[39] His Lordship Vernon Ong JCA delivering the decision of the Court of Appeal said the following:

We also take the view that the third party's attempt to exonerate itself runs counter to its own Standard Operating procedure. It is incumbent upon the third party to make sure that once all the conditions precedent are satisfied, prompt and timeous steps should be taken for the disbursement of the loan; especially so where the omission to do so has prejudiced the deceased's rights under the SPA. On the totality of the evidence, the third party has failed to account for its omission to disburse the loan during the nine (9) working days between the fulfilment of the conditions precedent falling on 14.9.2012 and the date of the deceased's death on 27.9.2012.

[40] Granted, the Court of Appeal was dealing with a dispute related to a termination of a Sales and Purchase Agreement in that case. But the principle laid down by the Court of Appeal is succinct and applicable to the case before this Court. The Appellant has a certain accepted banking standard that sets out the timeline applicable for each stage of the facility processing. It is this Court's finding that, to quote the phraseology of the Court of Appeal, the Appellant's "attempt to exonerate itself runs counter to its own" applicable practice and standard. And consequent to that action, the Appellant, again to borrow the language used by the Court of Appeal, has failed to account for its actions, that resulted in the omission to disburse the loan, during the 4-month between LKH's fulfilment of his contractual obligations, particularly the CP on MRTT, falling on 17/3/2015, and the date of LKH's death on 11/7/20 15.



[41] This Court concludes that deceased LKH had duly performed all his obligations. The MRTT portion of the Property Loan should have been disbursed within weeks, or within the acceptable maximum period of 3 months, after LKH's fulfilment of his obligations in March 2015. If the Appellant had taken such actions within the reasonable period, the MRTT would have been in full effect for the benefit of LKH and his beneficiaries by the untimely death of LKH on 11/7/2015.

[42] Based on the all the above, the answer to the second issue is in the affirmative, in that the Appellant was totally to be blamed as it failed to timeously disburse the apportioned sum to Etiqa Takaful.

[43] Premised on all the consideration above, it is the finding of this Court that the decision of the HMS on 12/10/2017 was correct and is hereby affirmed.

[44] This Court further ruled that

44.1 The MRTT is not a form of financing security.

44.2 The Appellant failed to effect the payment of the premium for the MRTT to the benefit LKH, within a reasonable period.

44.3 The Appellant's said failure had resulted in the subsequent rejection by Etiqa Takaful Bhd on the claims for MRTT coverage that had caused the suffering of losses by LKH and/or his beneficiaries.

44.4 It shall be deemed that the Appellant had effected the payment of the premium for the MRTT within the reasonable period, and following that, the claims for the



MRTT coverage to be paid by Etiqa Takaful Bhd to the benefit of LKH shall be allowed.

44.5 Consequential to the findings above-

- (a) the Appellant is ordered to grant *ibraJ*(rebate/set-off) to LKH, for the total profit sum for the loan account no. 458435-014224;
- (b) the said loan account shall be declared as fully settled;
- (c) the Appellant shall not impose any late charges towards the said loan account;
- (d) the Appellant shall surrender to the Respondents the original land title, the original sale and purchase agreement, and to discharge the mortgage and security claims on the land registered as Lot 337 (PT 255419), Meru Perdana 2, held under the individual ownership HS(D) 216859, PT 255419, Mukim Hulu Kinta, Perak (“the Property”).

[45] The Appellant’s appeal is dismissed and this Court further orders that the Appellant pays the Respondents costs for this appeal at RM5.000.00

Dated: 27 SEPTEMBER 2018

(MOHD RADZI HARUN)
Judicial Commissioner
High Court Ipoh, Perak



COUNSEL:

For the plaintiff - Syed Fadhil Alhabshi & Noraini Yacob; M/s Sidek, Teoh, Wong & Denis

For the respondents - Hizri Hasshan; M/s Akram, Hizri Azad & Amir

Case(s) referred to:

Soh Yen Ling v. Malayan Banking Berhad [2017] 1 LNS 716