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BAN HIN LEE BANK BERHAD v. TAN CHONG KEAT SDN BHD & 1 ORS  
HIGH COURT, PULAU PINANG  
ABDUL HAMID MOHAMAD J  
GUAMAN SIVIL NO. 22-142-90  
19 SEPTEMBER 1996  
[1996] 1 LNS 537

**Case(s) referred to:**

*1 Tan Chong Keat v. Ban Hin Lee Bank, Penang High Court O.S. No. 24-681-95.*

*2 OCBC Bank (M) Berhad v. Tan Chong Keat & Khaw Siew Suan [1996] 1 LNS 543; Penang High Court Civil Action No. 23-110-88.*

*3 Bank Hin Lee Bank Berhad v. 1. Ocean Hill Plantations Sdn. Bhd. & Liow Su Wah Penang High Court Civil Suit No. 22(23)-298-88.*

*4 Co-operative Central Bank Limited v. Che Ismail b. Che Wan Mohd Yusof & 3 Ors [1993] 2 AMR 34.*

**Counsel:**

PEGUAMBELA DAN PEGUAMCARA.

*1. En. Harjit Singh Sangay (Tetuan Harjit Singh Sangay) bagi pihak Perayu.*

*2. Cik Annie Ong Guat Ean (Tetuan Wong-Chooi & Mohd. Nor) bagi pihak Perayu.*

**JUDGMENT**

**(Lampiran 35)**

The Plaintiff, a bank, commenced this action on 16th April 1990 claiming for the sum of RM4,453,833.14 (as at 20th March 1990), interests and costs. The Plaintiff had granted overdraft and other banking facilities to the First Defendant, the company. The Second Defendant, its Director, was the guarantor.

Defence was filed on 1st August 1990. With it was a counterclaim, inter alia, for a declaration that the guarantee was invalid. The Plaintiff filed its Reply and Defence to Counterclaim on 30th August 1990. On 12th September 1990, the Plaintiff filed a Summon in Chambers (Enc. 8) praying for an order that the Defendant and the Counterclaim of the

Defendants be struck out under [Order 18 rule 19 of the Rules of the High Court 1980](#) (RHC 1980) or the Court's inherent jurisdiction. There were other applications but they do not concern us now.

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On 27th May 1996, the Senior Assistant Registrar dismissed the Plaintiff's application (Enc. 8). The Plaintiff appealed to the Judge in Chambers - this appeal before me.

This application was made under [Order 18 rule 19 of the RHC 1980](#). It is only in plain and obvious cases that recourse should be made to this procedure. The application should not be allowed unless the defence and the counterclaim are obviously unsustainable.

The Statement of Claim is brief and to the point. It said that the Plaintiff was a bank and the First Defendant its customer. At the request of the First Defendant, the Plaintiff agreed to grant overdraft facilities to the First Defendant. By a Guarantee dated 20th October 1982, the Second Defendant guaranteed payment to the Plaintiff on demand of all sums of money owed by the First Defendant to the extent of RM2,400,000.00. In pursuance of the said Guarantee the Plaintiff granted advances, credit or other banking facilities to the First Defendant. As on 20th March 1990, the sum owing inclusive of interest was RM4,453,833.14.

As security for the said banking facilities, the Second Defendant executed two legal charges. By a notice dated 9th February 1990, the Plaintiff through its solicitors demanded payment of the sum owed by the [Page 3] Defendants. The Defendants had failed to pay the Plaintiff and the Plaintiff claimed for the said sum together with interests.

The Defendants had put up a rather long defence. I shall only state the main grounds, as argued by learned counsel for the Defendants before me.

First, it was argued by learned counsel for the Defendants that the letter of offer did not say that guarantee was required. This "defence" was also raised in para 4 of the Statement of Defence of the Defendants. However, the Defendants admitted that overdraft facilities were given by the Plaintiff to the First Defendant.

The Plaintiff exhibited the Letter of Guarantee signed by the Second Defendant - Exhibit THB 3, Enclosure 7. I am of the view it does not matter whether the two letters of offer exhibited by the Defendants (Exhibits A and B of the Second Defendant's Affidavit, (Enclosure 4)), but later referred to by the Assistant Manager of the Plaintiff in his affidavit, mentioned that the Guarantee was required or not. The point is that the Second Defendant signed the Letter of Guarantee.

However, I suppose that this point was brought up in view of the next ground which is "past consideration". In para 8 and 9 of the Statement of Defence, the Second Defendant, alleged that the Letter of Guarantee was null [Page 4] and void as there was no consideration for it since the facilities had already been utilised. Even if there was, it was past consideration.

This same "defence" was raised in two other cases involving the same Second Defendant (in this case). They are *Tan Chong Keat v. Ban Hin Lee Bank*,<sup>1</sup> and [OCBC Bank \(M\) Berhad v. Tan Chong Keat & Khaw Siew Suan \[1996\] 1 LNS 543](#)<sup>2</sup>. As regards the law, I have given my reasons at length especially in the first-mentioned case. I do not wish to repeat. I am still of

the same view. See also *Bank Hin Lee Bank Berhad v. 1. Ocean Hill Plantations Sdn. Bhd. & Liow Su Wah*<sup>3</sup> (Dzaiddin J. as he then was), and *Co-operative Central Bank Limited v. Che Ismail b. Che Wan Mohd Yusof & 3 Ors*<sup>4</sup>.

All I wish to say now is that the guarantee clearly says:

"In consideration of your opening or continuing an account with us making advances or otherwise giving credit or accommodation to Tan Chong Keat Sdn. Bhd of (hereinafter called "the Customer") at my/our request I/We Tan Chong Keat of the undersigned hereby jointly and severally agree with and guarantee you as follows, that is to say:-

1. I/We will pay you on demand

(i) all moneys which now are or may during the operation of this agreement be owing to you from the Customer or remain unpaid on the general balance of the Customer's account with you

**[Page 5]**

Two points should be noted. First, it was a continuing account. Secondly, the facilities were given at the request of the Defendants.

This argument really has no merits.

Further, it was submitted that not all the issues raised by the Defendants were replied to by the Plaintiff. Learned Counsel for the Defendants said that the Plaintiff only replied to paragraphs 13, 16 and 20 of the Second Defendant's Affidavit in Reply (Enclosure 23A) but not the others. He did not elaborate.

I do not intend to discuss "those other points" in detail as the learned Counsel for the Defendants himself did not deem it fit to argue them. However, I have read the pleadings and the affidavits together with the exhibits therein. It is clear to me that this is a very simple case of a bank giving overdrafts, to the First Defendant over a period of time. The Second Defendant was the Guarantor. Demand for repayment had been made, but the Defendants had failed to repay. I do not find any merit in the defences raised. The Plaintiff's case is plain and obvious. The Counterclaim merely repeated the Statement of Defence. Nothing else need to be said. In the circumstances I allowed the Plaintiff's appeal, struck out the Defence and Counterclaim and gave judgment for the Plaintiff with **[Page 6]** costs.

**Dato' Abdul Hamid bin Hj. Mohamad**

Hakim, Mahkamah Tinggi

Pulau Pinang.

**PEGUAMBELA DAN PEGUAMCARA.**

1. En. Harjit Singh Sangay (Tetuan Harjit Singh Sangay) bagi pihak Perayu.
2. Cik Annie Ong Guat Ean (Tetuan Wong-Chooi & Mohd. Nor) bagi pihak Perayu.

**SENARAI KES YANG DIRUJUK.**

1 *Tan Chong Keat v. Ban Hin Lee Bank*, Penang High Court O.S. No. 24-681-95.

2 [\*OCBC Bank \(M\) Berhad v. Tan Chong Keat & Khaw Siew Suan \[1996\] 1 LNS 543\*](#); Penang High Court Civil Action No. 23-110-88.

3 *Bank Hin Lee Bank Berhad v. 1. Ocean Hill Plantations Sdn. Bhd. & Liow Su Wah* Penang High Court Civil Suit No. 22(23)-298-88.

4 *Co-operative Central Bank Limited v. Che Ismail b. Che Wan Mohd Yusof & 3 Ors [1993] 2 AMR 34.*

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