

**DALAM MAHKAMAH RAYUAN MALAYSIA
(BIDANGKUASA RAYUAN)
RAYUAN SIVIL NO. W – 02(IM) – 836 – 2005**

ANTARA

RHB BANK BERHAD

... PERAYU

DAN

1. NORDIN BIN SUBOH
2. JURIAH BINTI ABDUL RAHMAN

... RESPONDEN-
RESPONDEN

(Dalam Perkara Kes Mahkamah Tinggi Malaya
Di Kuala Lumpur (Bahagian Dagang)
Guaman Sivil No. D2-22-892-2003

Antara

1. Nordin bin Suboh
2. Juriah binti Abdul Rahman

... Plaintiff-
Plaintif

Dan

1. RHB Bank Berhad
2. Bank Islam Malaysia Berhad
3. Public Bank Berhad

... Defendan-
Defendan)

Coram: Gopal Sri Ram, F.C.J.
(sitting as a Judge of the Court of Appeal)
Sulong Matjeraie, J.C.A.
Ahmad bin Haji Maarop, J.C.A.

ORAL JUDGMENT

Gopal Sri Ram, F.C.J. delivering judgment:

1. This is the judgment of the Court.
2. The complaint in this appeal is that the High Court erred in granting an interlocutory injunction restraining the instant appellant

from selling by contract a unit of apartment purchased by the respondents from a housing developer who is not a party in the proceedings now before us. The brief facts are as follows. The appellant is a bank. The respondents borrowed money from it to purchase the apartment in question from developer. It took the developer about 6 years to complete construction. Later, the respondents took vacant possession of his property and let it out to a tenant. Later still, the respondents defaulted in making repayment and the appellant bank took steps to sell off the security, that is to say the apartment in question, to realise the money owing to it. We must now say a word about the security. This is not a case in which the apartment has a strata title. Indeed there is no title. What the respondents obtained from the developer was a sale and purchase agreement under which the parties acquired the apartment. The respondents' rights under the said agreement were absolutely assigned to the appellant bank to secure the monies in question. Returning to the narrative, when the appellant bank took steps to realise its security, the respondents took out an application for an injunction to restrain the appellant from its intended course of action. The High Court granted that injunction.

3. Now it has been said often enough that in an appeal of this nature the initial function of this Court is one review only. We have no original discretion of our own to exercise. That we may only do when it was demonstrated that the primary judge erred in exercising discretion. In other words we must be satisfied that the judge took into account irrelevant considerations or asked herself or himself the

wrong question or misdirected herself or himself on the facts or made an order that results in a miscarriage of justice. In the present case, the appellant was exercising its contractual power given it by the respondents under the terms of the assignment. So it was doing nothing illegal. The respondents on other hand had taken the benefit of the apartment, enjoyed it and obtained a financial advantage from the rent they collected. In these set of circumstances the question which the learned judge ought to ask herself is whether it was just and equitable for an injunction to issue against the appellant. Although we are disadvantaged in the present instance by the absence of written reasons, we are entirely satisfied that a reasonable tribunal armed with the facts and evidential material that was placed before the High Court, would not have granted an injunction in this case. In our judgment, the balance of justice plainly lies with the appellant. We are therefore of the view that the learned judge in the present case failed to take into account relevant considerations and to ask herself the correct question. This accordingly is a case in which appellate intervention is warranted.

4. For the reasons already given the appeal is allowed. The injunction is forthwith dissolved. There shall be an inquiry as to damages. But the appellant bank must take out a summons to have that done. This is not the end of the matter. Counsel for respondents quite rightly request an early disposal for this case. We are told that this suit has been set down for case management in June. That is clearly too far away. We therefore direct that the matter be brought forward to 5 May 2009 at 9.00 a.m. before the

managing judge to enable him to assign an early date for trial of the action. The appellant will have all the costs here and below. The deposit shall be refunded to the appellant.

Judgment delivered in Open Court at the conclusion of arguments on 27 April 2009.

Counsel for the appellant: Tan Weng Hung

Solicitors for the appellant: Tetuan Che Mokhtar & Ling

Counsel for the respondents: Dato' Harpal Singh Grewal
(Harwinder Kaur with him)

Solicitors for the respondents: Tetuan A.J Ariffin, Yeo & Harpal

Verified with Y.A. Gopal Sri Ram, F.C.J. and certified by me to be correct.