

**DALAM MAHKAMAH RAYUAN MALAYSIA  
(BIDANGKUASA RAYUAN)  
RAYUAN SIVIL NO. B – 02 – 834 – 2006**

Dalam Perkara Safuan Holdings  
Sdn Bhd

Dan

Dalam Perkara Seksyen 218 Akta  
Syarikat 1965

ANTARA

SAFUAN HOLDINGS SDN BHD

... PERAYU

DAN

1. MALAYAN BANKING BERHAD
2. STANDARD CHARTERED BANK  
MALAYSIA BERHAD
3. ORIENTAL BANK BERHAD
4. BANK PEMBANGUNAN MALAYSIA  
BERHAD
5. RHB BANK
6. DANAHARTA MANAGERS SDN BHD
7. DANAHARTA URUS SDN BHD

... PEMPETISYEN-  
PEMPETISYEN

(Dalam Perkara Kes Mahkamah Tinggi Malaya Di Shah Alam  
No. Penggulangan Syarikat: 28-269-1999

Antara

1. Malayan Banking Berhad
2. Standard Chartered Bank Malaysia  
Berhad
3. Oriental Bank Berhad
4. Bank Pembangunan Malaysia Berhad
5. RHB Bank
6. Danaharta Managers Sdn Bhd
7. Danaharta Urus Sdn Bhd

... Pempetisen-  
Pempetisyen

Dan

Safuan Holdings Sdn Bhd

... Responden)

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. This appeal is directed against the order of the High Court winding up the appellant. The brief background to this appeal is as follows. As long ago as 4 February 1991 the parties to this dispute entered into a consent judgment pursuant to which the instant appellant was to pay a consortium of lenders (respondents before us) a sum of RM66 million. Later, in May 1993 as a result of negotiations, the parties entered into an agreement whereby the consortium agreed to accept a sum of RM36 million as the redemption sum for the discharge of the appellant from its liability and also for the discharge of charges over 3 parcels of land belonging to a third party. At the end of the day, a sum of RM10,808,300.00 remained due and owing. Nothing further appears to have been said about this sum. In October 1999 the consortium presented a petition to wind up the appellant on the ground that it had failed to meet a demand served on it pursuant to s. 218(2) of Companies Act 1965. The appellant resisted the petition on the ground that the consent judgment had been overtaken by the settlement arrived at between

the parties in May 1993. The High Court found for the consortium and made an order winding up the appellant.

3. Before us, reliance was placed on the decision of the Supreme Court in **Datuk Mohd Sari bin Datuk Haji Nuar v Norwich Winterthur Insurance (M) Sdn Bhd [1992] 2 MLJ 344**. In that case it was held that a separate agreement entered into by parties to litigation after judgment had been entered operated to estop the creditor from issuing a bankruptcy notice. However, in our judgment, that case is clearly distinguishable on its facts. For, there it was not in dispute that a concluded agreement had been arrived at that overtook the judgment earlier entered. The documents in the present case do not however support that conclusion. Quite the opposite. As pointed out by learned counsel for respondent, no settlement agreement was ever reached in respect of the RM10,808,300.00.

4. In **The Law and Practice of Compromise** by David Foskett, (5<sup>th</sup> edn), p 148, the learned author has this to say:

“Given the normal meaning, purpose and effect of a compromise, the natural inference is that the common intention of the parties is that the compromise will henceforth govern their legal relationship in connection with the disputes in which they had been engaged and that, accordingly, those disputes would still be regarded as ‘dead’ even in the event of breach of the compromise. In these circumstances, it is

submitted that recourse to the original claims will not be permitted unless, upon a true construction of the compromise, it is clear that this is what the parties intended. In this context, whilst the matter is primarily one of construction, the nature of the consideration furnished by the party answering the claims being made by the claimant will operate as a pointer.”

5. We accept the foregoing passage as a correct statement of law. What is required to be ascertained by the court in a given case is whether it was the common intention of the parties to over ride a prior dispute by way of the particular settlement agreement. Such an intention is absent here because, as earlier observed, there was no compromise in respect of the RM10,808,300.00.

6. In the circumstances that were presented to her the learned judge had no alternative but have to make the order she did. We agree with her decision. The appeal is accordingly dismissed with costs. The deposit shall be paid out to the respondents to account their taxed costs.

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

Counsel for the appellant: Venkateswara

Solicitors for the appellant: Tetuan David Lingam & Co.

Counsel for the petitioners: Andrew Chiew (C.B. Loh with him)

Solicitors for the petitioners: Tetuan Lee Hishamuddin Allen & Gledhill

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