

**DALAM MAHKAMAH RAYUAN DI MALAYSIA
(BIDANG KUASA RAYUAN)
RAYUAN NO. W-03-152-2003**

ANTARA

CARTA BINTANG SDN BHD

(No. Syarikat: 317217-W)

.. PERAYU

DAN

RHB CAPITAL BERHAD

(No. Syarikat: 312952-H)

.. RESPONDEN

**(Dalam Perkara Mahkamah Tinggi Malaya di Kuala Lumpur
(Bahagian Dagang)
Guaman No. D3-1822-2001**

Antara

RHB Capital Berhad

(No. Syarikat: 312952-H)

.. Plaintiff

Dan

Carta Bintang Sdn Bhd

(No. Syarikat: 317217-W)

.. Defendan)

**DALAM MAHKAMAH RAYUAN MALAYSIA
(BIDANG KUASA RAYUAN
RAYUAN NO. W-03-147-2003**

ANTARA

RHB CAPITAL BERHAD

(No. Syarikat: 312952-H)

.. PERAYU

DAN

**CARTA BINTANG SDN BHD
(No. Syarikat: 317217-W)**

.. RESPONDEN

**(Dalam Perkara Mahkamah Tinggi Malaya di Kuala Lumpur
(Bahagian Dagang)
Guaman No. D3-22-1822-2001**

Antara

**RHB Capital Berhad
(No. Syarikat: 312952-H)**

.. Plaintiff

Dan

**Carta Bintang Sdn Bhd
(No. Syarikat: 317217-W)**

.. Defendan)

**DALAM MAHKAMAH RAYUAN MALAYSIA
(BIDANG KUASA RAYUAN)
RAYUAN NO. W-03-153-2003**

ANTARA

**CARTA BINTANG SDN BHD
(No. Syarikat: 317217-W)**

.. PERAYU

DAN

**RHB CAPITAL BERHAD
(No. Syarikat: 312952-H)**

.. RESPONDEN

**(Dalam Perkara Mahkamah Tinggi Malaya di Kuala Lumpur
(Bahagian Dagang)
Guaman No. D3-22-1822-2001**

Antara

**RHB Capital Berhad
(No. Syarikat: 312952-H)**

.. Plaintiff

Dan

Carta Bintang Sdn Bhd
(No. Syarikat: 317217-W)

.. Defendan)

CORAM:

**LOW HOP BING, JCA
HELILIAH BT. MOHD YUSOF, JCA
RAMLY ALI, JCA**

RAMLY ALI, JCA

(DELIVERING JUDGMENT OF THE COURT)

1. There are three (3) related appeals before us, namely:
 - (a) W-03-152-2003;
 - (b) W-03-153-2003; and
 - (c) W-03-147-2003.

However, the disposal of appeal No. W-03-152-2003 (Appeal 152) would dispose of the other two appeals.

2. Appeal 152 is by Carta Bintang Sdn Bhd (Carta Bintang) against the decision of the learned High Court judge who had

affirmed the decision of the learned Deputy Registrar in granting RHB Capital Bhd (RHB) summary judgment for the return of a sum of money amounting to RM32.8 million with interest and costs.

3. Appeal No. W-03-153-2003 (Appeal 153) is by Carta Bintang against the decision of the learned High Court judge who had dismissed its appeal for damages against RHB arising from the delay in returning the share certificates to Carta Bintang.
4. Appeal No. W-03-147-2003 (Appeal 147) is by RHB against the decision of the learned High Court judge who had affirmed the decision of the learned Deputy Registrar for the return of the share certificates and transfer forms to Carta Bintang.
5. This case involves the issue of sale and purchase of shares whereby RHB agreed to buy and Carta Bintang agreed to sell 60 million ordinary shares in SJ Securities of which Carta Bintang was the sole shareholder. The Sale of Shares

Agreement (SSA) was executed on 7.11.2000. The sum of RM32.8 million (the subject matter of Appeal 152) was the deposit which had been paid by RHB to Carta Bintang for the said purchase, being 10% of the purchase price.

6. It is a condition precedent to the SSA that approvals from the Foreign Investment Committee (FIC), Securities Commission (SC) and the Kuala Lumpur Stock Exchange (KLSE) for the transaction must be obtained within three (3) months from the date of the agreement as stipulated under clauses 4.01 and 4.05 thereto. As clearly stated under clause 4.05 of the SSA, if such approvals are not obtained within the three months period or a mutually agreed extended period (which must be in writing), the agreement shall lapse and cease to have effect and the 10% deposit paid thereunder shall be refunded by Carta Bintang to RHB within 14 days from the cut-off date. The parties would then be released from all further obligations to each other.

7. On 7.2.2001, which was three months after the execution of the SSA, no approval had been obtained under the agreement. No evidence of any mutually agreed extension (in writing) of the SSA. In the circumstances the agreement has lapsed and ceased to have effect and consequently the parties should be placed in the same position prior to the execution of the said agreement.

8. As stipulated in clause 4.05 of the SSA, RHB requested Carta Bintang for the return of the 10% deposit of RM32.8 million as the SSA has lapsed. Carta Bintang refused to return the said sum as demanded on the ground that the agreement has not lapsed but was unlawfully repudiated by RHB.

9. The learned High Court judge held that the agreement has lapsed due to the absence of approvals, and consequently Carta Bintang is obliged to refund the 10% deposit to RHB, and RHB is to return the share certificates and the transfer forms to Carta Bintang. The parties are restored to their original position before the agreement and there was no

ground for Carta Bintang to obtain damages arising from the delay in returning the share certificates as claimed.

10. In dealing with this matter the Court is guided by the principle highlighted by the Supreme Court in **Bank Negara Malaysia v. Mohd. Ismail & Ors [1992] 1 MLJ 400** in the following passages:

“Under an O. 14 application, the duty of a judge does not end as soon as a fact is asserted by one part, and denied or disputed by the other in an affidavit. Where such assertion, denial or dispute is equivocal, or lacking in precision or inconsistent with undisputed contemporary documents or other statements by the same deponent, or is inherently improbable in itself, then the judge has a duty to reject such assertion or denial, thereby rendering the issue not triable. In our opinion, unless this principle is adhered to, a judge is in no position to exercise his discretion judicially in an O 14 application.”

11. “Triable issue” must relate to relevant issue or matter pleaded by the Defendant in his statement of defence. The issue must be relevant in order to defeat the Plaintiff’s claim or to support the Defendant’s defence. Parties are bound by their pleadings. Not every issue raised is a triable issue. The issue must be relevant to the proceedings and the determination of the issue must only be by way of full trial which involves examination, cross-examination and re-examination of witnesses. An issue may be relevant, but if the determination can be done by way of affidavit evidence (as in Order 14 application) then such an issue is not a “triable issue”; and therefore cannot be used to frustrate an application for summary judgment.
12. In the present case, Carta Bintang claimed that the SSA was wrongly repudiated by RHB, and therefore it was entitled to forfeit the deposit and claim damages against RHB.
13. Carta Bintang has attempted to raise a herd of irrelevant issues to evade its contractual obligations under the SSA.

Carta Bintang is essentially relying on an alleged collateral contract allegedly entered into prior to the SSA and other purported representations made by RHB to Carta Bintang. Based on such collateral contract and representations, Carta Bintang said that RHB is not entitled to insist on the 'technical cut-off date' as contained in clause 4.05 of the SSA.

14. In this case, the Court is of the view that the parties' obligations and rights are derived from the SSA and the Supplemental SSA, which are the sole and only agreements for the purpose of the sale and purchase of the shares in question. Such obligations and rights are set out within the four corners of the SSA and Supplemental SSA, nowhere else. RHB's application for summary judgment is clearly based on such obligations and rights. Carta Bintang cannot prevent RHB from relying on the four corners of the relevant agreements by raising all irrelevant and baseless issues, which are not supported by a single written agreement or other contemporary documents. When the agreements are clear and unambiguous (as in this case) the Court should not

introduce or add new terms to the agreements. (see: Supreme Court decision in **Koh Siak Poo v. Perkayuan OKS Sdn Bhd [1989] 3 MLJ 154**).

15. The issues raised by Carta Bintang are wholly inconsistent with the undisputed written agreements between the parties, namely the SSA and Supplemental SSA. In any event, the fact simply remains that by the three months period, the SSA had lapsed and, by virtue of clause 10.08 of the same, any extension of the period after the cut-off date would have to be mutually agreed in writing. Clause 10.08 of the SSA stipulates that the parties “*may make such amendments or variations to this Agreement as they may mutually agree in writing*”. There was no such agreement in writing.
16. The root of the issue in the present appeal (Appeal 152) is found in clause 4.05 of the SSA. The interpretation of clause 4.05 is clear and straightforward. It states that if the approvals mentioned at clause 4.01 are not obtained or fulfilled within three months from the date of the SSA (i.e. by

7.2.2001) or *'such other later date as may be reasonably required and mutually agreed upon in writing between the parties hereto (which agreement shall not be unreasonably withheld) despite all reasonable efforts by the parties hereto'*, then the SSA shall *'lapse and be of no further effect'*. Carta Bintang is then obliged to refund the deposit to RHB within 14 business days from the cut-off date and the parties are to be released from all further obligations.

17. The issue of *'such other later date as may be reasonably required and mutually agreed upon in writing between the parties hereto despite reasonable efforts by the parties hereto'* can summarily be determined by the Court by way of affidavit evidence and thus need not go for full trial. The affidavit evidence as well as other undisputed contemporary documents are sufficient to assist the Court to determine the issues at hand. Therefore it is not a triable issue as claimed by Carta Bintang.

18. There is simply no triable issue raised in relation to RHB's claim in these proceedings. There is no reason why this case should be disposed of at trial. The learned High Court judge was correct in granting summary judgment in favour of RHB ordering Carta Bintang to return the 10% deposit to RHB; in ordering that RHB to return the share certificates and transfer forms to Carta Bintang, and in dismissing Carta Bintang's claim for damages.

19. Clause 3.04 of the Supplemental SSA is clear that where Carta Bintang (as Vendor) is obliged to refund the deposit to RHB (as Purchaser) under clause 4.05, Carta Bintang shall pay the deposit with interest accrued thereon to RHB and the transfer documents shall then be returned by the Stakeholder to Carta Bintang.

20. In our view, this is a plain and obvious case for summary judgment to be entered under **Order 14 of the Rules of the High Court 1980**.

21. We therefore unanimously dismissed all the three appeals herein and affirmed the decisions of the learned High Court judge. No order as to costs in these appeals. Deposit to the respective Appellants.

22. By consent, two other additional appeals (in respect of stay applications) i.e. Appeal No. W-712-2004 and Appeal No. W-713-2004, are struck out with no order as to costs.

Dated this 22nd day of May 2009

**RAMLY ALI
JUDGE
COURT OF APPEAL MALAYSIA**

Solicitors:

1. **Dhinesh Bhaskaran (with N. Segaram and
Razman Abdul Rahim)
Tetuan Shearn Delamore & Co. .. for RHB**

2. Dato' Cyrus V. Das (with Mathevi Balakrishnan)

.. for Carta Bintang

Cases Referred to:

1. Bank Negara Malaysia v. Mohd. Ismail & Ors [1992] 1 MLJ

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2. Koh Siak Poo v. Perakayan OKS Sdn Bhd [1989] 3 MLJ

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Legislation Referred to:

Rules of the High Court 1980: Order 14