

**DALAM MAHKAMAH RAYUAN MALAYSIA**

**(BIDANGKUASA RAYUAN)**

**RAYUAN NO: W-02-438-2000**

ANTARA

WOODSVILLE SDN BHD

...

PERAYU

DAN

1. TIEN IK ENTERPRISES SDN BHD

2. DAVID KUOK KHOON HIN

3. IRENE KUOK

4. HELEN KUOK

...

RESPONDEN-

5. BERNARD KUOK

RESPONDEN

(Dalam Perkara Penggulungan Syarikat No. D2-28-187-1990  
Dalam Mahkamah Tinggi Malaya di Kuala Lumpur

ANTARA

WOODSVILLE SDN BHD

...

PEMPETISYEN

DAN

1. TIEN IK ENTERPRISES SDN BHD

2. DAVID KUOK KHOON HIN

3. IRENE KUOK

4. HELEN KUOK ... RESPONDEN-  
5. BERNARD KUOK ... RESPONDEN

DALAM MAHKAMAH RAYUAN MALAYSIA  
(BIDANGKUASA RAYUAN)  
RAYUAN NO: W-02-438-2000

ANTARA  
WOODSVILLE SDN BHD ... PERAYU  
DAN

1. TIEN IK CREDIT SDN BHD  
2. DAVID KUOK KHOON HIN  
3. IRENE KUOK  
4. HELEN KUOK ... RESPONDEN-  
5. BERNARD KUOK ... RESPONDEN

(Dalam Perkara Penggulangan Syarikat No. D2-28-192-1990  
Dalam Mahkamah Tinggi Malaya di Kuala Lumpur

ANTARA  
WOODSVILLE SDN BHD ... PEMPETISYEN  
DAN

1. TIEN IK CREDIT SDN BHD
2. DAVID KUOK KHOON HIN
3. IRENE KUOK
4. HELEN KUOK ... RESPONDEN-
5. BERNARD KUOK ... RESPONDEN

DALAM MAHKAMAH RAYUAN MALAYSIA  
(BIDANGKUASA RAYUAN)  
RAYUAN NO: W-02-438-2000

ANTARA

WOODSVILLE SDN BHD ... PERAYU

DAN

1. GILTSPUR HOLDING SDN BHD
2. DAVID KUOK KHOON HIN
3. IRENE KUOK
4. HELEN KUOK ... RESPONDEN-
5. BERNARD KUOK ... RESPONDEN

(Dalam Perkara Penggulangan Syarikat No. D2-28-197-1990  
Dalam Mahkamah Tinggi Malaya di Kuala Lumpur

ANTARA

WOODSVILLE SDN BHD ... PEMPETISYEN

DAN

1. GILTSPUR HOLDING SDN BHD
2. DAVID KUOK KHOON HIN
3. IRENE KUOK
4. HELEN KUOK ... RESPONDEN-
5. BERNARD KUOK ... RESPONDEN

DALAM MAHKAMAH RAYUAN MALAYSIA

(BIDANGKUASA RAYUAN)

RAYUAN NO: W-02-438-2000

ANTARA

WOODSVILLE SDN BHD ... PERAYU

DAN

1. TIEN IK SDN BHD
2. DAVID KUOK KHOON HIN
3. IRENE KUOK
4. HELEN KUOK ... RESPONDEN-
5. BERNARD KUOK ... RESPONDEN

(Dalam Perkara Penggulangan Syarikat No. D2-28-202-1990  
Dalam Mahkamah Tinggi Malaya di Kuala Lumpur



amendment to the Memorandum of Appeal.

- [2] We heard this application on 13 May 2008 and we were unanimous in our decision in dismissing the application. We now give the reasons for our decision.
- [3] The background facts may be stated as follows. The following four companies have been wound up by the Kuala Lumpur High Court on 3 June 1994 :-
- (a) Tien Ik Enterprises Sdn Bhd (“TIESB”);
  - (b) Tien Ik Credit Sdn Bhd (“TICSB”);
  - (c) Giltspur Holdings Sdn Bhd (“GHSB”); and
  - (d) Tien Ik Sdn Bhd (“TISB”).
- [4] The appellant applied to remove the common liquidators of the four companies involved under section 323(1) of the Companies Act 1965 (“the removal application”) on the following grounds:-
- (a) the liquidators’ alleged failure to exercise their duty to investigate the affairs of the 4 companies;
  - (b) the liquidators’ alleged failure to collect and realise the assets of the 4 companies;

- (c) the liquidators' alleged misdirection and misconception of their powers and duties; and
- (d) the liquidators' alleged failure to maintain a proper record of the liquidation and incompetence in the discharge of their duties.

[5] On 31 May 2000 the High Court dismissed the removal application and on 26 June 2000 the appellant filed This Appeal.

[6] In GWN's Affidavit he stated in paragraph 16 that –

“16 In response to paragraphs 17 to 20 of the Petitioner's Affidavit, I verily state as follow:-

- (a) In respect of the Removal application, I only affirmed 2 Affidavits, the first on 25.8.1998 and the second on 21.10.1998 (hereinafter referred to as “my 1<sup>st</sup> Affidavit” and “my 2<sup>nd</sup> Affidavit” respectively);
- (b) I verily state that when I affirmed my 1<sup>st</sup> Affidavit and 2<sup>nd</sup> Affidavit on 25.8.1998 and 21.10.1998 respectively, I did not know that TTDM was the beneficial owner of the 3 pieces of land located at Tanjong Tualang (hereinafter referred to as the “Tanjong Tualang Lands”). This is based on the investigations carried out as well as the following documents:-
  - (i) the result of the company search of TTDM dated 25.7.1995 which was exhibited in my 1<sup>st</sup> Affidavit and marked as “GWN-15” which did not show that the Tanjong Tualang lands belonged to the company;

- (ii) the result of the company search of TTDM dated 6.5.1998 which was exhibited in my 2<sup>nd</sup> Affidavit and marked as “GWN-27” which did not show that the Tanjong Tualang lands belonged to the company; and
  - (iii) the result of the land search in respect of the Tanjong Tualang Land dated 16.10.1998 which was exhibited in my 2<sup>nd</sup> Affidavit and marked as “GWN-28” which showed that in fact, the Tanjong Tualang lands were owned by Tanjong Tin Dredging Limited.
- (c) However, in early November 1998, I received a telephone call from the 2<sup>nd</sup> Respondent who informed me that TTDM was the beneficial owner of the Tanjong Tualang Lands. This conversation was confirmed by me in a letter to the 2<sup>nd</sup> Respondent dated 5.11.1998. In my said letter, I informed the 2<sup>nd</sup> Respondent that from recent land searches, the Tanjong Tualang lands are still registered under Tanjong Tin Dredging Limited. As such, I had requested that the 2<sup>nd</sup> Respondent arrange for the transfer of the Tanjong Tualang lands to TTDM. A copy of the said letter is produced and shown to me and it exhibited herein and marked as “GWN-1”;
- (d) As I did not receive a reply to my aforesaid letter, I wrote a second letter to TTDM dated 7.12.1998. A copy of the second letter is produced and shown to me and is exhibited herein and marked as “GWN-2”;
- (e) I verily state that TTDM only replied my aforesaid letters via a letter dated 11.12.1998 enclosing the original titles of the Tanjong Tualang lands. A copy of TTDM’s letter is produced and shown to me and is exhibited herein and marked as “GWN-3”. Therefore, I verily state that it was only on receipt of TTDM’s letter that I was able to confirm that TTDM was the beneficial owner of the Tanjong Tualang lands;

- (f) Thereafter, I instructed my then solicitors, Messrs. Lee Hishammuddin that I was informed and was only able to confirm on 11.12.1998 that TTDM was the beneficial owner of the Tanjong Tualang lands. I verily state that my then solicitors advised me that the beneficial ownership of the Tanjong Tualang lands was not a material issue and not relevant before this Honourable Court in the Removal application and it was therefore not necessary for me to disclose the same to this Honourable Court;
- (g) As such, based on the said advice from my then solicitors, I did not affirm any further Affidavit.”

[7] The appellant filed the present application on 26 June 2000. It was supported by an affidavit affirmed by Kuok Khoon Hwong (“KKH’s Affidavit”), a director of the appellant. The grounds of the application may be summarised as follows –

- (a) The new evidence is GWN’s Affidavit which was filed in the High Court under Winding Up No: D2-28-187-1990.
- (b) In his affidavit Gong Wee Ning admitted that the liquidators had discovered that certain immovable properties, namely the Tanjong Tualang lands existed, that they were beneficially owned by a subsidiary of one of the Companies under Winding Up and that this discovery was made not later than 11.12.1998. Gong Wee Ning also admitted that the liquidators deliberately chose not to inform the court of this discovery.

- (c) This is a significant admission as in the course of the proceedings to remove the liquidators which are presently being appealed, the appellants alleged that the liquidators had failed to investigate the ownership of the Tanjong Tualang lands but the liquidators claimed that they had investigated and found no evidence of the Tanjong Tualang lands.
- (d) In his judgment, the learned High Court Judge accepted the liquidators' evidence and was clearly influenced against the appellants. Indeed the learned High Court Judge referred to the petitioners' insistence that the Tanjong Tualang lands existed several times and in the context of being unreasonable and "against revealed facts".
- (e) If the liquidators had informed the learned High Court Judge of their discovery that the Tanjong Tualang lands in fact existed this would have corrected the serious misapprehension that the appellant was acting unreasonably and would have fundamentally altered the learned High Court Judges appreciation of the appellants.
- (f) Gong Wee Ning made the admission of his knowledge in the affidavit which is the new evidence sought to be admitted after the decision being appealed from and hence the new evidence could not have been obtained before the decision.

- (g) The additional ground proposed is necessary given the existence of the new evidence disclosed in GWN's Affidavit.
- (h) By reason of the aforesaid the additional ground based on the aforesaid additional evidence has a high likelihood of influencing the decision in respect of the appellant's application for removal of the liquidators and the hearing of This Appeal.
- (i) The said additional evidence is relevant and credible.

[8] All the respondents opposed the application. Gong Wee Ning affirmed an affidavit-in-reply for the 1<sup>st</sup> respondent and Wong Heng Khong affirmed an affidavit-in-reply for the 2<sup>nd</sup> to 5<sup>th</sup> respondents.

[9] Learned counsel for the appellant submitted that the significance of the liquidators' admission of discovery and knowledge before the delivery of the High Court judgment is as follows:-

- (a) the fact that the liquidators were wrong on the Tanjong Tualang lands' ownership based on their nominal investigation speaks for itself on the liquidators' competency in discharging their duty to investigate the affairs of the Companies and their duty to locate the Companies' assets;

- (b) the liquidators continued to mislead the Court into believing that their investigation was properly conducted and that the Appellant/Peter Kuok's claims were baseless by concealing their discovery;
- (c) the liquidators knew that the evidence given during the hearing did not represent the true position and that there was a risk that judgement would be given on a basis that was no longer true;
- (d) the liquidators have successfully 'colored' the Court's perception of the Appellant/Peter Kuok's character as a result of the liquidators' willful omission of material facts;
- (e) the High Court did not have the benefit of the truth of the Tanjong Tualang lands' ownership and the correctness of the Appellant/Peter Kuok's claims;
- (f) the liquidators have breached their legal and ethical duties as officers of the court;

[10] It is the contention of the appellant's counsel that under section 69(2) of the Courts of Judicature Act 1964 and Rule 7(2) Rules of the Court of Appeal 1994 GWN's Affidavit should be admitted as a matter of course since this affidavit was affirmed after This Appeal was filed. However, the appellant was directed by the Court of Appeal to file an application for leave together with the application to amend the Memorandum

Of Appeal as a matter of formality.

- [11] With regard to the application to amend the Memorandum of Appeal he submitted that it would only be consequential to the inclusion of GWN's Affidavit as fresh evidence.
- [12] In his submission learned counsel for the appellant cited the case of **Mid Valley City Sdn Bhd & Anor v Akited Tenggara Sdn Bhd [2003] 1 MLJ 66** and **Vernon v Bosley [1996] 3 W.L.R. 683**.
- [13] In response to that learned counsel for the 2<sup>nd</sup> to 5<sup>th</sup> respondents submitted that the fresh evidence sought to be adduced could have been obtained if reasonable diligence had been exercised by the appellant. The liquidators' knowledge of the ownership of the Tanjong Tualang lands concerned an event which transpired in 1998, whereas the High Court judgment was only delivered on 31 May 2000.
- [14] Learned counsel for the 2<sup>nd</sup> to 5<sup>th</sup> respondents further submitted that this fresh evidence would not have had any influence on the result of the removal application. The issue that needs to be considered is whether the liquidators have reasonably investigated the matter at the material time of the complaint to which the learned High Court judge found in the affirmative. The High Court reached its findings after having considered the various company and land searches conducted on Tanjong

Tin Dredging (Malaysia) Sdn. Bhd. (“TTDM”) by the liquidators. Even if it was shown that the liquidators were later aware of the property ownership of the Tanjong Tualang lands, it would not detract the finding that the liquidators had indeed discharged their duties in investigating the same.

[15] Learned counsel for the 1<sup>st</sup> respondent submitted that the appellant had known that the liquidators were aware of the Tanjong Tualang lands as early as April 2000. As such the appellant could have adduced that evidence to the High Court before the High Court delivered its decision in the removal application.

[16] Learned counsel for 1<sup>st</sup> respondent also contended that GWN’s Affidavit has no “determining influence” on the High Court judgment. He submitted that the test of “determining influence” in rule 7(3A)(b) of the Rules of the Court of Appeal 1994 is more stringent than the English Common Law test of “important influence”

[17] According to him the appellant did not raise the land ownership and concealment issues in the removal application before the High Court judge. The High Court judge never considered the land ownership issue in his judgment. Furthermore, the setting aside of committal proceedings by the winding-up High Court clearly showed that there was no concealment by the liquidators in respect of the land ownership issued. The

removal applications concerned 4 companies and the land ownership and concealment issues only concerned one of the 4 companies, TIESB.

[18] Learned counsel for 1<sup>st</sup> respondent also submitted that the liquidators should not be deprived of their right to have land ownership and concealment issues decided by the High Court. According to him section 232(l) of the Companies Act 1965 confers a discretion on the winding-up High Court to decide whether to remove a liquidator or not.

[19] Finally, learned counsel for the 1<sup>st</sup> respondent submitted that the appellant has been guilty of inordinate delay in filing the application as this application was made more than 5 years and 3 1/2 months after the High Court's judgment.

[20] It is to be noted that the appellant made this application pursuant to section 69(2) and (3) of the Courts of Judicature Act 1964 and rule 7(2) and (3) of the Rules of the Court of Appeal 1994. Section 69(2) and (3) of the Courts of Judicature Act 1964 provides—

“69(1) .....

(2) The further evidence may be given without leave on interlocutory applications, or in any case as to matters which have occurred after the date of the decision from which the appeal is brought.

- (3) Upon appeals from a judgment, after trial or hearing of any cause or matter upon the merits, the further evidence, save as to matters subsequent as aforesaid, shall be admitted on special grounds only, and not without leave of the Court of Appeal.”

Rule 7(2) and (3) of the Rules of the Court of Appeal 1994 provides –

- “(2) Such further evidence may be given without leave on interlocutory applications, or in any case as to matters which have occurred after the date of the decision from which the appeal is brought.

- (3) Upon appeals from a judgment, after trial or hearing of any cause or matter upon the merits, such further evidence, save as to matters subsequent as aforesaid, shall be admitted on special grounds only, and not without leave of the Court.

- (3A) At the hearing of the appeal further evidence shall not be admitted unless the Court is satisfied that –

- (a) At the hearing before the High Court or the subordinate court, as the case may be, the new evidence was not available to the party seeking to use it, or that reasonable

diligence would not have made it so available; and

- (b) The new evidence, if true, would have had or would have been likely to have had a determining influence upon the decision of the High Court or the subordinate court, as the case may be.”

[21] As GWN’s Affidavit was affirmed on 12 December 2001 which was more than 18 months after the decision of the High Court on 31 May 2000 the first issue to be decided is whether the new evidence could be given without leave of court and as a matter of right pursuant to section 69(2) of the Court of Judicature Act 1964. Counsel for the respondents submitted that the appellant has to satisfy the conditions stated under rule 7(3A) of the Rules of the Court of Appeal 1994.

[22] In **Sin Heap Lee – Marubeni Sdn Bhd v Yip Shou Shan [2005] 1 MLJ 515**, the appellant sought to adduce fresh evidence at the appeal stage to show to the court that the damages suffered by the respondent could be minimised taking into consideration the alternative access road that was to be made available. The application was dismissed by a majority decision. Mokhtar Sidin JCA, speaking for the majority, said at p.525 –

In order for the application to be allowed the appellant had to satisfy the conditions as stated in para 3A. There is no doubt in my mind that what the appellant attempted to produce was a happening after the facts.....

And at p.529, the learned judge said –

In my view, the application did not satisfy the conditions imposed by r 7 of the Court of Appeal Rules. For that reason, by majority decision, we dismissed the application by the appellant.

[23] However, Abdul Aziz Mohamed JCA, in his dissenting judgment held at p.549 that –

[82] The changes brought about by para (3A) have not been made to s 69. Since para (3A) seeks to cling to r 7, and since r 7 has no existence, life or force of its own, but is merely an echo of s 69, r (3A) is nothing more but an attempt by subsidiary legislation to modify s 69. The attempt is ultra vires because subsidiary legislation is not capable of modifying an Act of Parliament, except by express authority of Parliament, which did not exist here.

[83] I was of the view, therefore, that s 69 is not affected by para (3A) and further evidence as to post-decision matters may still be given, and as of right. Therefore,

merely as a formality to dispel any doubt, leave should be given to the appellants to give the further evidence that they sought to give. The question of its weight and effect would be matters to be considered in the appeal itself.

[24] In view of the majority decision in **Sin Heap Lee – Marubeni Sdn. Bhd.’s** case we are unable to agree with the submission of learned counsel for the appellant that the appellant’s application in the instant case should be allowed as of right. As such the appellant has to satisfy the conditions as stated in rule 7(3A) of the Rules of the Court of Appeal 1994.

[25] We will deal with the first condition first. It says that at the hearing before the High Court the new evidence was not available to the appellant or that reasonable diligence would not have made it so available.

[26] Learned counsel for the appellant said that the purpose of adducing GWN’s Affidavit is to show that the liquidators knew that TIESB owned the Tanjong Tualang lands through its subsidiary (“TTDM”) since 11 December 1998 which was before the High Court delivered its judgment where the Tanjong Tualang lands was an issue.

[27] The judgment of the learned High Court judge was delivered on 31 May 2000 which was more than 18 months later. In paragraph 7(b) of the 1<sup>st</sup> respondent's affidavit-in-reply, the 1<sup>st</sup> respondent averred that the appellant had knowledge of the contents of GWN's Affidavit concerning the Tanjong Tualang Lands as early as April 2000 and as such the appellant should have applied for leave of the High Court to file an affidavit in respect of the Tanjong Tualang lands before the judgment was delivered.

[28] It is to be noted that the appellant had not rebutted this material averment made by the 1<sup>st</sup> respondent by any affidavit. It is trite law that where a case is to be decided on a contest of affidavits, material allegations which are not contradicted are deemed to be admitted. (See **Sunrise Sdn Bhd v First Profile (M) Sdn Bhd & Anor [1997] 1 AMR 1J**). The appellant has the legal and evidential burdens to satisfy this court that the information relating to the beneficial ownership of Tanjong Tualang lands could not have been obtained with reasonable diligence for use at the hearing of the removal application. The appellant failed to explain why they did not provide the information relating to the beneficial ownership of Tanjong Tualang lands to the learned High Court Judge before the decision was delivered. In our view the appellant should have exercised reasonable diligence and apply for leave of the High Court to file an affidavit in respect of

Tanjong Tualang lands before the High Court's judgment was delivered. As the evidence relating to Tanjong Tualang lands was in possession of the appellant before the judgment in the removal case was delivered it would be wrong for us to exercise our discretion in favour of the appellant. As such, we hold that the appellant has not satisfied the first condition to rule 7(3A) of the Rules of the Court of Appeal 1994.

[29] With regard to the second condition to the said rule, the appellant has to show that the new evidence, if true, would have had or would have been likely to have had a determining influence upon the decision of the High Court.

[30] In paragraph 5, 6 and 7 of KKH's Affidavit, the appellant averred as follows –

“5. In the Appellant's application under Enclosure 108 which is the subject matter of this Appeal, the failure and or omission by the Liquidators to investigate the TTDM lands was one of the grounds relied upon by the Appellant in support of its application. In particular, at paragraph 63 of the affidavit affirmed by Kuok Khoon Hwong on 10.8.1998, the Petitioner had averred as followed:-

63. There is no evidence that the Liquidators have taken any steps towards investigating the various wrong doings by David Kuok which I had outlined to them on or about 12.5.1995. In particular, Tien Ik Enterprises hold all the shares in one Tanjong Tin Dredging (M) Sdn Bhd and to the best of my belief this company owned immovable properties in Tualang in the state of Perak. Investigation should be conducted to see and determine these immovable properties, if any. ....”

6. In reply to the aforesaid, the Liquidators had affirmed an affidavit on 25.8.1998 stating, in particular, at paragraph 55 therein, the following:-

55. In respect of the Petitioner's belief that Tanjong Tin Dredging (M) Sdn Bhd ("TTD") own immovable properties in Tualang, the Liquidators have conducted investigation on the same and the results of such investigation do not show the existence of such properties. This is also reflected in the results of a company search conducted on TTD. Now

shown and produced to me are the results of the Company Search conducted on TTD and are hereby marked and exhibited herein as "GWN-15".

7. The learned High Court Judge had accepted the explanation by the Liquidators above. In his grounds of judgment His Lordship states thus :

At p.6

Complaint No. 10 was that Tanjong Tin Dredging (Malaysia) Sdn Bhd, a wholly owned subsidiary of Tanjong PLC, owned immovable properties in Tualang, in the State of Perak, and David had asked the third, fourth and fifth respondents to give these to him.

Peter avers that there is no evidence that the Liquidators have taken steps to investigate these complaints, in particular complaints No. 9 and 10.

.....As to complain No. 10, they [the Liquidators] say that the investigation conducted by them does not show the existence of immovable properties in Tualang Tin Dredging (Malaysia) Sdn Bhd and they exhibit the results of a company search in further support of the fact.....

At pg.7

..... Peter's response to the liquidators' explanation is to disbelieve the explanation. He maintains, I think as a matter of belief, that the liquidators never made any

meaningful attempts to investigate his complaints other than to conduct a company search....

At pg. 9

.....My finding on the matter of the complaints is simply this. By affidavit, Peter puts his case against the liquidators as that there is no evidence that they have taken steps to investigate his complaints Nos. 9 and 10. The liquidators have shown that they have looked into and followed up on the complaints as far as circumstances permitted, and have resolved some of them. (emphasis added).

At p. 27 to 29

.....There is an instance in the petitioners' written submission of an allegation made contrary to revealed facts. It concerns the immovable allegation made contrary to revealed facts. It concerns the immovable properties allegedly owned by Tanjong Tin Dredging (M) Sdn Bhd in Tualang, Perak, a matter about which I have made mention. The matter is raised in paragraph 63 of Peter's main affidavit, where Peter says to the effect that there is no evidence that the liquidators have taken any steps to investigate David's alleged wrongdoings, including steps to determine the existence of such lands. In paragraph 55 of their main affidavit, the liquidators say that they have conducted an investigation but it did not show the existence of such properties.....

Annexed hereto and marked exhibit "A-2" is a true copy of the Grounds of Judgment by the learned High Court judge,"

[31] The removal application was based on 4 grounds as stated earlier. With regard to the ground of failure to exercise duty to investigate the affairs of the companies the appellant, through Kuok Khoo Hwong, gave to the liquidators a list dated 12 May 1995 of twelve complaints, mainly of alleged wrongdoings by the

2<sup>nd</sup> respondent. Complaint no. 10 was that TTDM owned the Tanjong Tualang lands and the 2<sup>nd</sup> respondent asked the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents to give these lands to him.

[32] The liquidators conducted a land search and it did not reveal that TTDM owned the Tanjong Tualang lands. Instead, the land search showed that the registered owner of the Tanjong Tualang lands was at all material times Tanjong Tin Dredging Limited. The liquidators said that the investigation conducted by them did not show the existence of immovable properties in Tanjong Tualang belonging to TTDM and they exhibited the results of a company search in further support of the fact. In his judgment the learned High Court judge held that the liquidators have shown that they have looked into and followed up on the complaints as far as circumstances permitted.

[33] The issue relating to the Tanjong Tualang lands is one of the twelve complaints raised by the appellant to the liquidators which has been considered by the learned High Court Judge. The issue for determination by the High Court then was whether the liquidators had reasonably investigated the matter at the material time of the complaint. As such the fresh evidence sought to be adduced would, in our view, have no determining influence on the learned High Court decision as it would not detract from the finding that the liquidators had indeed discharged their duties in

investigating the same. Furthermore, TTDM is not one of the companies in liquidation. The removal applications involved four companies. The fresh evidence sought to be adduced only concerned one of the four companies, TIESB, which owned share in TTDM which in turn beneficially owned Tanjong Tualang lands.

[34] In our view the appellant's application did not satisfy the conditions stated under rule 7(3A) of the Rules of Court of Appeal 1994. We therefore found that there was no merit in the appellant's application before us to adduce the fresh evidence and we had accordingly dismissed the application with costs.

Dated this 13<sup>th</sup> April 2009.

Hasan Bin Lah  
Judge  
Court of Appeal Malaysia

Counsel for the appellant:  
Lim Lian Leong (Ong Chee Kwan with him)

Solicitors for the appellant:  
Messrs Lee Ong & Kandiah

Counsel for the 1<sup>st</sup> respondent:  
Kumar Kanagasingam (Andrew Chie with him)

Solicitors for the 1<sup>st</sup> respondent:

Messrs Lee Hishammuddin Allen & Gledhill

Counsel for the 2<sup>nd</sup> to 5<sup>th</sup> respondents:

N. Nagarajah (Sudesh Singh with him)

Solicitors for the 2<sup>nd</sup> to 5<sup>th</sup> respondents:

Messrs Shook Lin & Bok