

**DALAM MAHKAMAH RAYUAN MALAYSIA
(BIDANGKUASA RAYUAN)
RAYUAN SIVIL NO. P – 02– 714 – 2003**

ANTARA

CHEN, LEONG & COMPANY
(Sebuah firma)

... PERAYU

DAN

SRI NAKA JAYA ENTERPRISE SDN BHD

... RESPONDEN

(Dalam Mahkamah Tinggi Malaya di Pulau Pinang
Guaman Sivil No: 22-1046-1998 (MT.1))

Antara

Sri Naka Jaya Enterprise Sdn Bhd

... Plaintiff

Dan

Chen, Leong & Company
(Sebuah firma)

... Defendan)

Coram: Gopal Sri Ram, J.C.A.
Ahmad bin Haji Maarop, J.C.A.
Kang Hwee Gee, J.

ORAL JUDGMENT

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

1. This is the judgment of the Court.
2. This appeal is directed against the order of the High Court in Penang finding the appellants liable to pay interest on monies held by them in respect of a conveyancing transaction. The relevant facts are as follows.
3. The appellant is a firm of solicitors. By a letter dated 13 June 1997 written by the firm of Saw & Teoh, advocates and solicitors, a sum of RM1,629,876.05 was paid to the appellants on their

undertaking to – and we quote – “forthwith forward us both the original issue documents of title to the above referred properties before remitting the said sum to the vendors”. There was also a provision for retention of real property gain tax. It is not in dispute that the transaction was terminated on 24 July 1998. In the meantime the cheques that had been sent under cover of the letter of 13 June 1997 had cleared on 16 June 1997. The appellant refunded the principal sum and interest on it from the date of termination until the date of settlement. They however disputed the claim for interest for the period between 16 June 1997 and 24 July 1998.

4. The primary ground on which the defendant’s claim was resisted in the court below was that the appellants had received the sum in question as a stakeholder. In repeating before us the submission he made in the court below, learned counsel for the appellant relies on the case of **Toh Theam Hock v Kemajuan Perwira Management Corporation Sdn Bhd [1988] 1 MLJ 116** where the Supreme Court adopted the following passage in **Sorrell v Finch [1977] AC 728**:

“If an estate agent or solicitor, being duly authorized in that behalf, receives a deposit ‘as stakeholder’, he is under a duty to hold it *in medio* pending the outcome of a future event. He does not hold it as agent for the vendor, nor as agent for the purchaser. He holds it as trustee for both to await the event: see *Skinner v. Trustee of Property of Reed* [(1967) 2 All E.R 1286 at 1289],

per Cross J. Until the event is known, it is his duty to keep it in his own hands; or to put it on deposit at the bank; in which case he is entitled to keep for himself any interest that accrues to it; see *Harington v. Hoggart* [(1830) 1 B. & Ad. 577]. If the purchaser should become entitled to the return of his deposit, he must sue the estate agent or solicitor for it: see *Eltham v. Kingsman* [(1818) 1 B. & Ad. 683] and *Hampden v. Walsh* [(1876) 1 Q.B.D. 189]. He cannot sue the vendor, because the vendor has never received it, or become entitled to receive it.”

5. The only issue before the High Court was whether, at the time the appellants received the money in question, they were acting as a stakeholder. The High Court both before the registrar and learned judge on appeal held that the appellants were not a stakeholder at the material time. In our respectful view that finding is consistent with the terms of the letter dated 13 June 1997 and the surrounding circumstances of the case. One particular fact that stands out is that at the time of the receipt of the money no appointment as stakeholder had been made. The transaction was at an early stage. There is material on record to show that the vendor was not capable of making title to the subject property after the execution of the relevant agreement. **Toh Theam Hock v Kemajuan Perwira Management Corporation Sdn Bhd** is also authority for the proposition that the court must have regard to all the circumstances of a particular case

when determining whether the receiver of money, be it as a solicitor or an estate agent, holds the same as a stakeholder. That is the exercise that the High Court carried out at both levels.

6. It is crystal clear from the documents presented to the court below that the money in question was not received by the appellants as stakeholder. In those circumstances the claim for interest was plainly sustainable.

7. For the reasons already given we find ourselves in agreement with the High Court. The appeal is therefore dismissed with costs. The deposit shall be paid out to the respondent to account of its taxed costs.

Judgment delivered in Open Court at the conclusion of arguments on 2 March 2009.

Counsel for the appellant: Kanesan Muthusami

Solicitors for the appellant: Tetuan M. Kanesan & Associates

Counsel for the respondent: M. Thayalan

Solicitors for the respondent: Tetuan Ban Eng, Anual & Foong

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