

**DALAM MAHKAMAH RAYUAN MALAYSIA
(BIDANGKUASA RAYUAN)
RAYUAN SIVIL NO. W – 02– 982 – 2005**

ANTARA

LEASING CORPORATION SDN BHD
(No. Syarikat: 19644-D)

... PERAYU

DAN

INDAH LESTARI SDN BHD
(No. Syarikat: 308678-K)

... RESPONDEN

(Di Dalam Mahkamah Tinggi Malaya di Kuala Lumpur,
Wilayah Persekutuan
Guaman Sivil No: S1-22-680-2005

Antara

Indah Lestari Sdn Bhd
(No. Syarikat: 308678-K)

... Plaintiff

Dan

Leasing Corporation Sdn Bhd
(No. Syarikat: 19644-D)

... 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. By three agreements dated 16 October 2000, 16 November 2000 and 10 September 2003 the respondent company (plaintiff below) borrowed from the appellant (defendant below) a total sum of RM 9 million. As security for the loan, 540,000 shares in a public listed company were pledged by way Memorandum of Deposit also

dated 16 October 2000. Later, 88,000 shares were redeemed leaving a balance of 452,000 in the appellant's hands. Later still, disputes arose between the parties and the appellant as lender threatened to sell the security in his hand. The respondent filed suit and obtained an interlocutory injunction restraining the sale of the shares in question. The appellant now appeals against the decision of the High Court granting the injunction.

3. At the outset we formed the *prima facie* view that the learned judge was wrong in granting the injunction. The shares were freely available in open market and in accordance with the settled principles underlying section 11(2) of the Specific Relief Act 1950, injunctions are not usually granted in cases such as the present. For that reason we stopped appellant's counsel from arguing his appeal and called upon counsel for the respondent to submit why the appeal should not be allowed. However, having heard arguments from both sides we are now convinced that the preliminary view we entertained was wrong and that the appeal should be dismissed for the reasons which now follow.

4. Although a number of points were taken by the respondent in supporting the decision appealed against, only one merits discussion. It is this. The respondent's case is that the loan violates section 16 of the Moneylenders Act 1951 and is void. If a loan is void, then any security given as collateral for it is also void. See, **Kasumu v Baba Egbe [1956] AC 539**; **Subchent Kaur v Chai Sau Kian [1958] 24 MLJ 32**; **Overseas Union Finance Ltd v Lim Joo Chong [1971] 2 MLJ 124**.

5. Now, if the respondent is correct in its argument and the trial court finds the loan to be indeed illegal and unenforceable a prior forced sale by the appellant would *prima facie* destroy the specific security given by the respondent to secure that loan. When put in this fashion, it is plain to see where the justice of the case lies. It lies in granting interim relief to protect the respondent in respect of its security.

6. Although the reasons given by the learned judge for his decision do not coincide with our own, we are satisfied that discretion was correctly exercised having regard to the issue that we have discussed a moment ago. Since this is an interlocutory appeal, the less we say about the merits the better. For that reason we will not address at all the arguments advanced before us on whether the loan is illegal and on the appellant's argument as to whether the respondent is estopped from asserting its illegality given its conduct in all the circumstances of the case. These are matters strictly for the trial court to determine and we do not propose to usurp that function.

7. For the reasons already given, this appeal is dismissed with costs. The orders of the High Court are affirmed. The appellant shall pay the costs of this appeal to the respondent. The deposit to the respondent to the account of its taxed costs.

Judgment delivered in Open Court at the conclusion of arguments on 3 March 2009.

Counsel for the appellant: Fahri Azzat

Solicitors for the appellant: Tetuan Azzat & Izzat

Counsel for the respondent: C.K. Yeoh

Solicitors for the respondent: Tetuan Sidhu & Associates

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