

**AL-MARHUM YANG AMAT MULIA  
PENGIRAN PUTERA NEGARA PENGIRAN HAJI OMAR  
BIN PENGARAH DATO PENGHULU PENGIRAN HAJI APONG**

**Appellant/Defendant**

AND

**MALAYAN BANKING BERHAD**

**Respondent/Plaintiff**

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**(Court of Appeal of Brunei Darussalam)  
(Civil Appeal No. 19 of 2024)**

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Steven Chong, C.J., Lunn and Sir Peter Gross JJAs.

**Date of Hearing: 30 October, 2025.**

**Date of Judgment: 19 November, 2025.**

*Headnote: Civil Law. Appeal against Judge's Order granting Respondent relief, including an Order for sale, in respect of a Memorandum of Charge on each of two separate parcels of land and Units built on land entered into to secure Trade Line Facilities for company, Panahome, dismissed with costs. Action arose from failure of Panahome to repay monies owed from use of those facilities. Appellant's deposit with Court of BND 1,000 as security for appeal released to Respondent in part-payment of costs.*

Pengiran Haji Saiful Hassanal Bin YAM Pengiran Putera Negara Pengiran Haji Omar as the Court appointed Representative of the Appellant.

Ms. Elaiza Hanum Merican (Messrs Abraham Davidson & Co.) for the Respondent.

**Lunn J.A.**

1. This is the Appellant's appeal against the Ruling of Haji Abdullah Soefri POKSM DSP Haji Abidin JC, dated 13 November 2024, in Originating Summons 54 of 2022 ("OS 54") and Originating Summons 55 of 2022 ("OS 55"), granting the relief sought by the Respondent, Malayan Banking Bhd. ("Maybank"), including orders for the sale of land, together with properties built on the land, (the "Properties") charged to Maybank.<sup>1</sup>

2. The Properties had been charged to the Respondent, as security for the repayment of Trade Line Facilities granted by Maybank to Panahome Electronics Sdn. Bhd. ("Panahome") by the Appellant's late father, Pengiran Putera Negara Pengiran Haji Omar PDP Pg Haji Apong ("the deceased"). Panahome defaulted in the repayment of monies lent pursuant to those banking facilities. On 6 October 2022, the Respondent obtained Judgment in Default of Appearance in proceedings brought in HCCS 19 of 2022 for repayment of those monies.<sup>2</sup>

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<sup>1</sup> ROA, pages 725-727.

<sup>2</sup> ROA, pages 644-646.

*OS 55-Lot 34028*

3. In OS 55, the Property charged to the Respondent was a parcel of land described as EDR No. BD 30068, Lot No. 34028, Kg. Beribi, Mukim Gadong, Brunei Muara District, together with two shophouses built on the land, Units 7 and 8, Bock Alai's ("Lot 32048"). The Memorandum of Charge between the deceased and Maybank, dated 14 July 2014<sup>3</sup>, was in respect of the principal limit of BND 750,000.00 and was registered on 2 April 2018.<sup>4</sup> The related Loan Agreement made between the deceased and Maybank was dated 16 May 2014 and was signed by Ang Shit Hock and the Appellant on behalf of Panahome.<sup>5</sup>

*OS 54-Lot 34027*

4. In OS 54, the Property charged was a parcel of land described as EDR No. BD 30067, Lot No. 34027 Kg. Beribi, Mukim Gadong, Brunei Muara District, together with two shophouses built on the land, Units 5 and 6, Block Alai's ("Lot 32047").<sup>6</sup> The Memorandum of Charge between the deceased and Maybank, dated 15 September 2016, was in respect of a principal limit of BND 1,150,000.00 and was registered on 30 May 2018.<sup>7</sup> The related Letter of Offer from Maybank to Panahome was dated 24 June 2014, accepted by Ang Shit Hock and the Appellant on 25 June 2014.<sup>8</sup> The Loan Agreement between Maybank and Panahome, dated 5 August 2014, signed by Ang Shit Hock and the Appellant on behalf of Panahome, reflected the increased Trade Line Facilities afforded to Panahome.<sup>9</sup>

*Trade Line Facilities*

5. The Trade Line Facilities provided to Panahome by Maybank were renewed or extended on numerous occasions, ultimately to a deadline for settlement of outstanding debts on 1 March 2021.<sup>10</sup>

*Proceedings by Maybank*

6. Panahome having failed to settle the outstanding amounts due to Maybank, the latter commenced proceedings against Panahome and its guarantors by filing writ HCCS No. 19 on 30 April 2022.<sup>11</sup> The deceased and the Appellant were guarantors. On 6 October 2022, Judgment in Default of Appearance was entered in favour of Maybank against Panahome and the several guarantors.

*OS 54 and OS 55*

7. Having given the deceased two months' notice, on 30 My 2022, of Maybank's intention to obtain an order of the Court for the sale of Lot 34027 and Lot 34028, Maybank commenced proceedings in OS 54 and OS 55 on 16 August 2022. The deceased having died in May 2023, the Appellant,

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<sup>3</sup> ROA, pages 322-350.

<sup>4</sup> ROA, page 322.

<sup>5</sup> ROA, pages 372-389.

<sup>6</sup> ROA, pages 80-129

<sup>7</sup> ROA, pages 75-78.

<sup>8</sup> ROA, pages 130-140.

<sup>9</sup> ROA, pages 141-160.A

<sup>10</sup> ROA, pages 162-227.

<sup>11</sup> ROA, pages 229-239.

Pengiran Haji Saiful Hassanal PPN Pengiran Haji Omar was made a party to the proceedings as the personal representative of the estate of the Chargor by an Order dated 21 September 2023.

*Maybank's case*

8. In the Affidavit in Support of OS 55 Sulaiman Bin Isa, the General Manager of Maybank, asserted that the Memorandum of Charge on the Property, dated 14 July 2014<sup>12</sup>, “... is intended for the repayment by Panahome...of all sums owing to the Plaintiff under the banking facilities granted by the Plaintiff to the Borrower... with a principal limit of BND 750,000.00”.<sup>13</sup> Similarly, in his Affidavit in Support of OS 54, he asserted that the Memorandum Charge on the Property, dated 15 September 2016, “... is intended for the repayment by Panahome...of all sums owing to the Plaintiff under the banking facilities granted by the Plaintiff to the Borrower”, but “...with an increased principal limit of BND 1,150,000.00”.<sup>14</sup>

*Appellant's case*

*Appellant's Affidavits in Opposition*

*OS 54*

9. In his Affidavit in Opposition in OS 54 of 2022, the Appellant took issue with the assertion in the Affidavit filed on behalf of Maybank that the charge on the Property was intended as security for the repayment by Panahome of all sums owing to the Plaintiff under the banking facilities granted by Maybank.<sup>15</sup> He asserted that:<sup>16</sup>

*“...this land property was for the purpose of extending the surety while waiting on the police case of criminal bridge (sic) of trust (CBT) whereby balance of funds from the facility has been swindle by previous share holder under the name of Ang Shit Hock. 28/10/2015 exhibit “A1” indicate the case”.*

*OS 55*

10. In his Affidavit in OS 55 of 2022, the Appellant asserted that the Property could not be sold because, “*The fact is the outstanding balance cannot be settled due to a police case of the swindling of Maybank's facilities.*” That explanation had been given to Maybank.<sup>17</sup>

*Respondent's Affidavits in Reply*

*OS 54*

11. In Maybank's Affidavits in Reply OS 54 Sulaiman Bin Isa took issue with the Appellant's assertion that the Memorandum of Charge, “*was for the purpose of extending the security while waiting on the police case of criminal bridge [sic] of trust*”. That was not true. Whilst acknowledging that the Appellant had informed Maybank on several occasions of the fact that he had lodged a complaint to the police against Ang Shit Hock for having cheated the Appellant,

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<sup>12</sup> ROA, pages 321-350.

<sup>13</sup> ROA, page 307.

<sup>14</sup> ROA, page 65.

<sup>15</sup> ROA, page 65.

<sup>16</sup> ROA, page 624.

<sup>17</sup> ROA pages 629-630.

Sulaiman Bin Isa denied that Maybank had been provided with the Appellant's police report. Notwithstanding that statement, it was asserted that, in any event, the police report had nothing to do with the debt owed by Panahome to Maybank. In particular, it was asserted that the allegations made by the Appellant against Ang Shit Hock appeared to be a matter between the Appellant and Ang Shit Hock, "*as shareholders and internal matters*" of Panahome.<sup>18</sup>

### *OS 55*

12. In his Affidavit in Reply OS 55 Sulaiman Bin Isa reiterated his assertion that Maybank had not been provided with the Appellant's police report. Maybank had no record or recollection of having received an explanation from the Appellant that settlement could not be made because of a police enquiry into the swindling of Maybank's facilities. He doubted that the explanation had been given. In any event, even if it had been given, it would have been reasonable for Maybank to have refused to accept it, given that the allegations concerned a dispute between shareholders and was an internal matter to Panahome.

### *Ruling*

13. Having conducted the hearing of both OS 54 and OS 55 together, the judge said:<sup>19</sup>

*"I am satisfied that the Defendant had failed to negate the Memorandum of Charge and its contents that were entered into and has failed to show any fact that would lead this Court to find that it would be unjust for this Court to grant the Plaintiff an order for the sale of the property and the ancillary relief that the Plaintiff seeks in this action."*

### *The appeal*

14. In the Petition of Appeal, it was contended that the judge failed "to ask the difference" between OS 55 of 2022 and OS 54 of 22. The facts that gave rise to OS 54 had occurred at a time when the facts relevant to OS 55 were already the subject of a police enquiry into the swindling by Ang Shit Hock of Maybank's facilities to settle his own debt, of which enquiry "Maybank was fully aware".<sup>20</sup> A "*temporary surety for facilities for trade of Panahome... to go on*" was given. That was the contention advanced by the Appellant in his Affidavit in Opposition in OS 54.

### *Written and oral submissions*

#### *Appellant's Police report: 28 October 2015*

15. In his written and oral submissions, the Appellant reiterated the assertion that he had made in his Affidavit in Opposition, namely that in November 2015 he had handed over to Maybank a copy of his report to the police, dated 28 October 2015. Maybank was alerted to the allegation of fraud against Ang Shit Hock. Finally, he reiterated his assertion that he had given an explanation to Maybank of the police case involving Ang Shit Hock. The bank acted improperly: first, in continuing to renew banking facilities in knowledge of the fraud; and secondly, then seeking to enforce the security given in the Memorandum of Charge. It ought not to have proceeded pending the resolution of the police enquiry.

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<sup>18</sup> ROA page 637-638.

<sup>19</sup> ROA, page 727.

<sup>20</sup> ROA, pages 740-748. Petition of Appeal, paragraph 5 .2.

*Delay*

16. The bank compounded that misconduct by delaying for seven years after they became aware of the fraud before seeking to enforce the Memorandum of Charge.

*Riba*

17. For the first time, in his written submissions and reiterated in his oral submissions the Appellant complained that the Loan Agreement between Panahome and Maybank and the related Memorandum of Charge was vitiated by Riba, namely impermissible usury and could not be enforced against a Muslim in Brunei Darussalam.

*Respondent's submissions**The ambit of the Memorandum of Charge for Lot 34027*

18. In opposing the appeal, Ms. Elaiza submitted that the text of the Memorandum of Charge on Lot 34027, dated 15 September 2016, clearly stated that it was given by the Chargor to secure the repayment of the Trade Line Facilities up to the principal limit of \$1,150,000 .00. It was not given only for the purposes of “*extending the surety*” pending completion of the police investigation into the alleged misappropriation of monies by Ang Shit Hock. The Judge was correct to reject the Appellant’s version, finding that the Appellant had “failed to negate the Memorandum of Charge and its contents that were entered into.”

19. Further, the Judge was correct to refuse to allow the Appellant to contradict or vary the contents of the Memorandum of Charge, dated 15 September 2016. None of the provisos to section 92 of the Evidence Act, Cap 108 applied to displaced the prohibition against contradicting or varying the written terms of that Memorandum of Charge.

20. The complaint that the Respondent was not permitted to enforce the charge whilst the police were the making enquiries into the conduct of Ang Shit Hock, following the Appellant’s complaint to the police on 28 October 2015<sup>21</sup> was to be rejected. Panahome remained liable to repay the loan from Maybank, irrespective of misappropriations of monies from Panahome by Ang Shit Hock. In any event, the Appellant’s statement to the police, dated 28 October 2015 was a complaint that monies he had invested in Panahome had been used to repay monies owed to Baiduri Bank. There was no reference to Maybank or its loans to Panahome.

21. The Respondent had acknowledged that Maybank was made aware on several occasions of the fact of the Appellant’s complaint to the police about a breach of trust committed by Ang Shit Hock. There was nothing to the point.

22. The Respondent was entitled to enforce the provisions of the two Memoranda of Charge, having given the requisite notice.

*Riba*

23. Ms. Elaiza pointed out that the Appellant’s complaint that the Loan Agreement and Memorandum of Charge were tainted by Riba considerations was not canvassed before the judge

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<sup>21</sup> ROA, page 627. Page 2 of the Appellant’s report was added to the ROA by Order of the Court on 25 October 2025.

nor was it in the Petition of Appeal. It was irrelevant. Maybank was a licensed bank permitted to charge interest and lend monies on the terms on which monies were lent by Maybank to Panahome.

*A consideration of the submissions*

*Loan Agreement and Memorandum of Charge-16 May 2014 and 14 July 2014*

24. Having accepted Maybank's offer of 24 April 2014 of the grant of banking facilities to a limit of \$750,000, Panahome entered a Loan Agreement with Maybank, dated 16 May 2014.<sup>22</sup> The Appellant was a signatory to that Loan Agreement. Clause 3 of that Agreement required, as a condition precedent to the advancing of the loan, various security documents, including a Memorandum of Charge over the Property at Lot 34028.<sup>23</sup> The deceased and Maybank entered into a Memorandum of Charge in respect of the Property at Lot 34028, dated 14 July 2014.<sup>24</sup>

25. The Memorandum of Charge recorded the deceased's declaration that the banking facilities granted to Panahome, the Borrower, had been made at his request and that, "...*whenever the Borrower draws on the principal sum or any part thereof and defaults for whatever reason to repay the same*", having given two months' notice to the deceased or the Borrower, Maybank was entitled to obtain an order for the sale of the Property.<sup>25</sup> The Memorandum of Charge was registered in the Registry on 2 April 2018.<sup>26</sup>

*Loan Agreement and Memorandum of Charge-5 August 2014 and 15 September 2016*

26. Having accepted Maybank's offer of 24 June 2014 to increase the banking facilities limit to \$1,150,000.00, Panahome entered a Loan Agreement with Maybank, dated 5 August 2014. The Appellant was a signatory to the Loan Agreement.<sup>27</sup> Clause 3 of that Agreement stipulated, as a condition precedent, that Maybank be provided with a Memorandum of Charge in respect of the Property, not only at Lot 34028 but also the Property at Lot 34027. The deceased and Maybank entered into a Memorandum of Charge in respect of Lot 34028 and Lot 34027, dated 15 September 2016.<sup>28</sup> Again, the Memorandum recorded the deceased's declaration that the banking facilities granted to Panahome, the Borrower, had been made at his request and that, in the event of "*defaults for whatsoever reason to repay*", having given two months' notice to the deceased or the Borrower, Maybank was entitled to obtain an order for the sale of the Property.<sup>29</sup> The Memorandum of Charge was registered in the Registry on 30 May 2018.<sup>30</sup>

*Renewal of Panahome's banking facilities*

27. By a series of agreements, in which Maybank's offer to renew the banking facilities made available to Panahome were accepted by Panahome, the banking facilities were extended until finally all monies became due and payable to Maybank on 1 March 2021. The Appellant was a

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<sup>22</sup> ROA, pages 372-389.

<sup>23</sup> ROA, pages 372-389.

<sup>24</sup> ROA, pages 322-350.

<sup>25</sup> ROA, page 323.

<sup>26</sup> ROA, page 322.

<sup>27</sup> ROA, pages 141-160.

<sup>28</sup> ROA, pages 80-108.

<sup>29</sup> ROA, page 81.

<sup>30</sup> ROA, page 80.

signatory on behalf of Panahome of each of those Agreements resulting from a Letter of Offer made by Maybank on:<sup>31</sup>

- (i) 1 December 2015;
- (ii) 16 July 2016;
- (iii) 19 September 2016;
- (iv) 4 May 2020;
- (v) 23 July 2020; and
- (vi) 2 September 2021.

*Panahome: Minutes of Meetings and Resolutions of the Board of Directors*

28. In relation to Maybank's Letters of Offer, dated 16 July 2016 and 23 July 2020, in accepting the Letter of Offer, Panahome provided respective Resolutions of its Board of Directors authorising acceptance of the offers. By those Resolutions, the Appellant was authorised to execute the respective Loan Agreement on behalf of Panahome. The Appellant was one of the two directors of Panahome who signed the respective Panahome Board Minutes.<sup>32</sup>

*Appellant's police statement-28 October 2015*

29. In his statement to the police, dated 28 October 2015, the Appellant claimed that he had bought over 50% of the shares of Panahome in late 2012. He understood that Panahome had no financial liabilities. In 2014, he received a final reminder letter from Baiduri Bank advising that it would take legal action for Panahome's failure to settle banking facilities that were due. He discovered that the funds that he had invested as his stake in the company have been used to pay previous debts of the company. He complained that he had been cheated by Ang Shit Hock, who had been the Managing Director of Panahome until 2014. The funds that he had invested in Panahome had been used, "...to pay off personal debts of my partner." He asserted that his approximate claim was for \$1.83 million.

*Memoranda of Charge*

30. The two Memoranda of Charge made clear and unambiguous provision for the rights of Maybank in the event of default in repayment of the borrowings made under the Trade Line Facilities by Panahome. Not surprisingly, the Memorandum of Charge, dated 15 September 2016, does not make any reference whatsoever to the *caveat*, contended for by the Appellant, that the security was subject to completion of a police investigation into an alleged fraud of monies by Ang Shit Hock.

31. As noted earlier, the Appellant was a signatory on behalf of Panahome in the Loan Agreement between Maybank and Panahome, dated 16 May 2014, and the Loan Agreement, dated 5 August 2014. Each of those Loan Agreements required, as a condition precedent to the grant of the loan, the execution of a Memorandum of Charge over stipulated Property: in respect of the Loan Agreement, dated 16 May 2014, that a Memorandum of Charge be executed over the Property at Lot 34028; and in respect of Maybank's Letter of Offer, dated 24 June 2014, reflected in the Loan Agreement, dated 5 August 2014, that a Memorandum of Charge be executed over the Property at Lot 34028 and Lot 34027.

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<sup>31</sup> ROA pages 162-227.

<sup>32</sup> ROA, pages 182 and 217.

32. Clearly, the Appellant was aware of the extent of the charge over the property of the deceased taken by the bank as security for the Trade Line Facilities granted to Panahome. Nevertheless, on behalf of Panahome over the period December 2015 to July 2020 the Appellant accepted the various offers of renewal of the Trade Line Facilities granted to Panahome by Maybank. Each one of those Letters of Offer made specific reference to the legal charge over the land and the two stipulated Units at each of Lot 34027 and Lot 34028.

33. In those circumstances, it beggars belief that the Appellant should complain now that Maybank had continued to renew Panahome Trade Line Facilities, having been informed of the fraud allegedly committed by Ang Shit Hock. It appears, that the Appellant was the prime driving force seeking the renewal of those Trade Line Facilities.

34. The Judge's finding that the Appellant had, "*failed to negate the Memorandum of Charge and its contents that were entered into*" is to be taken as a rejection of the attempts, to which the judge referred in his Ruling, by the Appellant, pursuant to section 92 of the Evidence Act, Cap. 108 to contradict or vary the contents of the Memorandum Charge dated 15 September 2016. With respect, the judge was correct. The Memorandum of Charge was clear and unequivocal and, given that there was no dispute that Maybank had complied with the conditions precedent, operated to entitle Maybank to an order of sale of the land and the two Units on each of Lot 34027 and Lot 34028. Clearly, Maybank was entitled to that, irrespective of knowledge of any alleged fraud committed by Ang Shit Hock on the Appellant and/or Panahome. That was irrelevant to enforcement by Maybank of its security on the property, in default of repayment of the borrowing by Trade Line Facilities by Panahome from Maybank.

#### *Riba*

34. There is no merit in the Appellant's belated argument that the borrowings under the Loan Agreements were tainted by Riba considerations, with the result that the Agreements and the security provided by the two Memoranda of Charge were void. Maybank is a licensed bank, permitted to loan monies on the terms contained in the Loan Agreements and to secure those loans by the two Memoranda of Charge.

#### *Conclusion*

35. Accordingly, we dismiss the appeal.

#### *Costs*

36. Having received the submissions of the parties at the conclusion of the hearing, we order that the Appellant pay the Respondent's costs, to be taxed if not agreed. The BND 1,000 deposit provided by the Appellant to the Court in order to file the appeal is to be paid to the Respondent as payment of part of the costs ordered in its favour.



**DATO SERI PADUKA STEVEN CHONG, C.J.**

A handwritten signature in cursive script, appearing to read "Michael Lunn".

**MICHAEL LUNN, J.A.**

A handwritten signature in cursive script, appearing to read "Peter Gross".

**SIR PETER GROSS, J.A.**