

**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

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

Lunn J.A.

Date of Ruling: 25 October 2025.

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

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

RULING

Lunn J.A.

1. By a Notice of Motion filed with the Court on 23 September 2025, the Appellant's seeks leave to adduce into evidence various documents and audio recordings at the hearing of the Appellant's appeal against the decision of Haji Abdullah Soefri POKSM DSP Haji Abidin JC, dated 13 November 2024, in Originating Summons 54 of 2022 and Originating Summons 55 of 2022, granting orders for the sale of land, together with properties built on the land (the "Properties") charged to Malayan Banking Bhd. ("Maybank"), to the Respondent.

2. The Properties had been charged to the Respondent, as security for the repayment of banking 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. Panahome defaulted in the repayment of monies lent pursuant to those banking facility. On 6 October 2022, the Respondent obtained Judgment by default in proceedings brought in HCCS 19 of 2022 for repayment of those monies.

3. By Originating Summons 54 of 2022 and Originating Summons 55 of 2022, in which the Appellant's late father was the Defendant, filed with the Court in August 2022, Maybank sought orders that, as registered Chargee of the respective parcels of land ("the Property"), they be entitled to sell the respective Property to recover the sum secured by the respective charges. Following the death of the Appellant's father, by order of the Court on 6 October 2023, the Appellant was made a party to the proceedings as the representative of his late father's estate.

Appellant's Affidavit in Opposition

OS 54

4. In his Affidavit in Opposition to the Affidavit in Support of Originating Summons 54 of 2022, the Appellant took issue with the assertion in the Affidavit in Support 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.¹ He asserted that:²

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

OS 55

5. In his Affidavit in Opposition to the Affidavit in support of Originating Summons 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 facilities.”*³

Respondent’s Affirmations in Reply

6. In Maybank’s Affirmations in Reply, 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 his father and Panahome, Maybank denied that it had been provided with the 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.⁴

Hearing on 20 May 2024

7. At the hearing before Hj. Abdullah Soefri, JC on 20 May 2024, the Appellant took issue with the statement in the Affirmation in Reply of Maybank in OS 55 of 2022 that the Appellant had not handed to Maybank a copy of his complaint to the police, dated October 2015. That was a lie. He had done so.⁵ The Appellant adopted a similar position in respect of similar statements made in the Affirmation in Reply of Maybank in OS 54 of 2022.⁶

Ruling

8. Having conducted the hearing of both OS 54 and OS 55 together, in a Ruling delivered on 13 November 2024, having summarised the submissions of the parties, the judge concluded:

“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 factor 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.”

Appellant’s Affidavit in Support of the Notice of Motion

9. In an Affidavit in Support of the Notice of Motion, dated 22 September 2025, for leave to adduce evidence at the hearing of the appeal the Appellant exhibited copies of the documentary evidence sought to be adduced, together with a pen-drive recording and a transcript/translation of audio recordings of conversations between the Appellant and others on various occasions.

10. Of the issue of whether the police report he made in October 2015 alleging criminal breach of trust by Ang Shit Hock was delivered to Maybank, the Appellant asserted: *“..this report was*

¹ ROA, page 65.

² ROA, page 624.

³ ROA page 630.

⁴ ROA page 637-638 and 671-672.

⁵ ROA, page 758.

⁶ ROA, page 761.

delivered in person to Bobby Sia (Head, Business Banking and Transaction Banking) and Ken Chow (Senior Relationship Manager)”. He complained that with that, “direct knowledge of the 2015 police report”, nevertheless Maybank “proceeded to renew restructure and perfect facilities on 18 December 2015 and thereafter.”

The evidence the Appellant seeks to adduce before the Court of Appeal

11. The Appellant’s Affidavit in Support of the Notice of Motion for leave to adduce fresh evidence at the hearing of the appeal exhibited the material the Appellant sought to adduce.

- *Exhibits A-C* are letters, dated 30 March, 2020, 27 April 2020 and 8 June 2020 from the Appellant on behalf Panahome to Maybank.
- *Exhibit D* is a two-page statement to the police by the Appellant, dated 28 October 2015.
- *Exhibit E* is a pen drive containing conversations between the Appellant and others in the overall period 11 September 2017 to 3 December 2022, together with a transcript and translation.
- *Exhibit F* is one-page of the letter of offer of banking facilities made by the Respondent to Panahome, dated 15 December 2015.
- *Exhibit G* is a Statutory Declaration made by the Appellant, dated 20 September 2025, stating that he handed a copy of the police report he made on 28 October 2015 to Ken Chow, an officer of Maybank, on a day between 2 November 2015 and 5 November 2015.

12. *Exhibit H* is comprised of various documents, including: (i) a report to the police, dated 26 June 2022, complaining of inaction in the investigation of his original report in 2015; and (ii) statements to the police signed by the Appellant beneath the usual declaration as to truth:

- (a) *26 June 2022*, in which he complained about being unable to attend a meeting with Maybank’s counsel, of delay in the police enquiry into the original complaint and of his father’s illness, he being “*a principal witness in this matter*”;
- (b) *12 November 2022*, in which he repeated his claim that a large part of the \$2 million owed by Panahome to Maybank had been embezzled by Ang Shit Hock and his complaint of delay in the investigation;
- (c) *26 January 2023*, in which he complained that he had been compelled to pay \$1.8 million to Baiduri Bank to stave off legal proceedings from debts that arose from misuse of Panahome’s funds by Ang Shit Hock; and
- (d) *30 March 2023*, in which he explained that Ang Shit Hock had used monies obtained from Maybank to make payments due to Baiduri Bank and complained of the delay in the police investigation.

(iii) handwritten notes;

(iv) the Appellant’s letters:

- (a) to the Ministry of Religious Affairs-26 April 2020, in which he described his dire financial situation and described his complaint of the misappropriation of funds from Panahome and of the failure of the Authorities to take any action in consequence;

(b) to the Criminal Justice Division-7 April 2022 and 20 June 2022, in which he complained of the lack of progress in the investigation of his complaint of October 2015; and

(c) to the Commissioner of Police-5 December 2022, in which he articulated the same complaint;

(v) Sequence of Events (2012-2022) dealings with Guan Electrical; and Debtor Ageing Schedule-November 2020-May 2025.

Supplemental Motion

13. In addition to the evidence identified earlier that the Appellant's sought to adduce at the hearing of his leave to appeal, attached to the Appellant's Affidavit was '**Annex1**' entitled '**Supplemental Motion.**' It asserted a claim for damages for harm, distress and death suffered by the Appellant's father as a result of Maybank's conduct, namely: breach of fiduciary duties under Banking Order, Cap. 163; violation of statutory limitation provisions; and enforcement of Riba-tainted facilities, contrary to the Constitution and Syariah Penal Code Order 2013. The relief sought included: damages for the deceased's heirs for pain and suffering to the deceased and for loss of dependency; aggravated damages for oppressive conduct; a stay of enforcement of charges on the land until completion of the police investigation and restructure facilities in Syariah-compliant form; and a determination that bankruptcy proceedings against the deceased's heirs be set aside as being based on void and unlawful facilities.

14. In response to the Court's enquiries as to the purpose of the Court receiving the supplemental Motion, the applicant accepted that he invited the Court treated as causes of action, in which the relief there articulated was sought.

The Respondent's submissions

15. For the Respondent, Ms. Elaiza, with one exception, opposed the Appellant's application. She reminded the Court that Order 57 r. 13 (2) of the Rules of the Supreme Court required that in appeal from a judgment after a trial or hearing, an appellant seeking leave to adduce further evidence in an appeal, other than evidence relating to matters which occurred after the trial, is required to demonstrate "*special grounds.*" The phrase "*special grounds*" had been construed as referring to the three requirements set out in the judgment of the Court of Appeal of England and Wales in *Ladd v Marshall*, namely: first, that it be shown that the evidence could not have been obtained with reasonable diligence for use at trial; secondly, that the evidence must be such, if given, it would probably have an important influence on the result of the case, but need not be decisive; and thirdly, that the evidence be such as is presumed to be believed, but it need not be incontrovertible.

16. Ms. Elaiza invited the Court to note that in its judgment in this Court in *Messrs Ho & Siong v Ting Jack Chai*⁷, in endorsing the rigours of the requirements of *Ladd v Marshall*⁸, Sir Peter Gross had said that the Court's discretion would be exercised in "*exceptional circumstances only*". She submitted the application of that test resulted in the Appellant's application failing on the first and second tests and there were no '*exceptional grounds*' on which the Court should exercise its discretion.

⁷ *Messrs Ho & Siong Advocated & Solicitors v Ting Jack Chai* (COACV 10 of 2024-unreported 16 December 2024).

⁸ *Ladd v Marshall* [1954] 1 WLR 1489.

17. Noting that page 1 of the Appellant's report to the police dated 28 October 2015 was in evidence already, Ms. Elaiza said that the Respondent did not object to the second and final page of that police report being adduced into evidence, albeit that there was no evidence that it was not available to the Appellant, particularly when he adduced the first page of the report into evidence. On the contrary, it was to be inferred that it was available.

18. Of the other material, Ms. Elaiza said that there was no dispute that the Appellant was the author of many of the documents, which were dated prior to trial, and it was to be inferred that they were available to him to adduce at trial. Clearly, that applied to the Appellant's letters to the Respondent dated March, April and June 2020. Similarly, it applied to the multiple statements made to the police by the Appellant in 2022 and 2023. Equally, it applied to the audio recordings of conversations held by the Appellant with others in the years 2017 to 2022, from which a transcript and translations had been made. There was no evidence that those documents and the recording were not available. Rather, it was to be inferred that they were available.

19. Ms. Elaiza submitted that nothing turned on the lack of progress in the police investigation of the alleged breach of trust by Ang Shit Hock and his alleged wrongdoing in relation to Panahome's banking facilities with Maybank. That evidence was not relevant to Panahome's liability to Maybank for its debt to Maybank.

20. Similar considerations of relevance applied to the audio recordings of conversations with the employees of Maybank and the three letters written by the appellant to Maybank. There was material in evidence of the regular renewal of the Maybank banking facilities from 1 December 2015 to 21 March 2021.

21. The final page of Maybank's letter of offer of banking facilities to Panahome, dated 1 December 2015, (exhibit F) was not new evidence. The letter had been adduced in evidence in Maybank's affidavit in support of OS 54 of 2022⁹ and OS 55 of 2022¹⁰.

Appellant's Supplemental Motion

22. Ms. Elaiza submitted that insofar as it appeared that the Appellant's inclusion in his Affidavit in Support of the Motion of a Supplemental Motion (Annex 1) was intended to seek the Court's leave to advance his case on the contents of the motion, the Court should reject any such application.

The Appellant's oral submissions

Availability of the material before or at the time of trial

23. Of the issue of availability of the material before or at the time of trial, at the hearing of his application the Appellant acknowledged that the material he now sought to adduce into evidence was in his possession/available to him before and at the time of the hearing. He had made the audio recordings of conversations he had with various persons. He wrote the letters to various persons. He had not sought to produce the material before or at the hearing because of what he had been told by the Court's Legal Assistant: he could put in a copy of the police

⁹ ROA, pages 162-164.

¹⁰ ROA, pages 425-427.

report, dated 28 October 2015, but the other documents should be put in by him at the hearing when the judge asked for his submissions.

24. Of the fact that the hearing had concluded on 20 May 2024, with the judge indicating that he would adjourn and reserve his Ruling, without the Appellant having sought to adduce the material, the Appellant said that he had not been able to hear what the Judge had said and did not understand what was meant by ‘Ruling’.

Relevance of the police report of Ang Shit Hock’s fraud

25. The Appellant repeated his contention that the relevance of Maybank’s knowledge of the allocation of the fraud committed by Ang Shit Hock was that it required Maybank to suspend its’ claim pending resolution of the police enquiry.

Respondent’s reply to oral submissions

26. Of the Appellant’s contention that he had not sought to adduce the evidence before the Court because of guidance that he had been given by a Legal Assistant of the Court, Ms. Eliza said that she was not in a position to make any submissions. On the other hand, she invited the Court to note that the Notes of proceedings of the hearing on 20 May 2024 indicated that the Appellant had addressed the Court at length on many different topics.¹¹ He had every opportunity to raise the issue of the evidence that he now sought to adduce.

27. Of the Appellant’s assertion that he not realise the import of the Judge adjourning the case on 20 May 2024 for a Ruling, Ms. Eliza pointed out that there was a subsequent hearing on 9 September 2024 at which the judge indicated that he was not in a position to deliver the Ruling and adjourned the case yet again. The Appellant had every opportunity to raise the issue of the other evidence he wished to adduce.

A consideration of the submissions

The law

28. The law relevant to the granting of leave to adduce further evidence in the circumstances faced by the Appellant is as described earlier in the submissions of Ms. Elaiza, as set out in the judgment of Denning LJ, in *Ladd v Marshall* as he was then, which grant was noted by this Court to be “exceptional.”

29. I readily accept the submissions of Ms Elaiza that the material that the Appellant seeks to adduce in evidence was available to him at the time of the trial. Clearly that applies to all the documents of which the Appellant was an author, as it does to the audio recordings, which were contemporaneous with events which occurred prior to the trial. The fact that those conversations may have been transcribed and translated subsequently is nothing to the point. The Statutory Declaration made by the Appellant is clearly one he could have made prior to the trial. Clearly, the Appellant has failed to satisfy the first test of *Ladd v Marshall*.

30. The Appellant had every opportunity at the hearing on 20 May 2024 to raise with the Court the issue of the material which he now seeks to adduce at the hearing of the appeal. As Ms. Eliza submitted, the Appellant has offered no reasonable excuse for not having sought to do so.

¹¹ ROA, pages 758-764.

31. In addition, it is clear that the Appellant has failed to satisfy the second test of *Ladd v Marshall*. The material would not have had an important influence on the result. In particular, the fact that the Appellant had alleged to the police in his statement, dated 28 October 2015, that the funds which he had invested in Panahome had been used by Ang Shit Hock to pay previous debts of the company and a pay-off personal debts, so that he had been cheated was not relevant to the issue of the liability of Panahome to Maybank for its debts in the banking facility granted to it or, more particularly, Maybank's right to exercise its rights against the Appellant as the personal representative of his father arising from the charging of the Properties to secure those banking facilities.

Conclusion

32. In the result, I refuse the application for leave to adduce fresh evidence at the hearing of the appeal, save for the second page of the Appellant's statement to the police, dated 28 October 2015.

Costs

33. In her written submissions, Ms. Eliza asked for an order of costs in favour of Maybank if the application was refused, which application she repeated in her submissions today.

Appellant's submissions

33. The Appellant opposed the application for an order of costs and said that he had no income.

Order

34. I order that the Appellant pay the Respondent's costs of this application, to be taxed if not agreed.

Lunn J.A