

CONTRACT LAW

Agreement – Loan agreement – Memorandum of charge – Memorandum of variation charge – Whether interest charges waived – Whether separate letter admissible to show agreement to pay interest – Evidence Act 1950, section 91

Chan Kay Siew & Ors v Choo Ban Hong & Anor

[2017] 6 CLJ 22, Court of Appeal

Facts The Respondent¹ was the sister of the first appellant. The second and third appellants were the first appellant's daughter and son-in-law respectively. The Respondent obtained a loan ("the Loan") of MYR1.43 million from the appellants, and as a security, executed a memorandum of charge ("MOC") over two pieces of land ("the Lands"). The MOC was varied ("MOVC") and the section for "interest rate" was marked not applicable. In an attempt to settle the Loan, the Respondent's sons were shown a statement claiming redemption of over MYR4 million. The Respondent filed for a declaration to the effect that the amount owed was MYR 1.43 million. The appellants argued that the Loan was interest-free only if paid within a year. Otherwise, interest was payable as agreed by the Respondent in a separate document ("the Letter"). In allowing the Respondent's application, the High Court referred to section 91 of the Evidence Act 1950² and held that the court was permitted to have regard only to the terms contained in the MOC and MOVC. Thus the omission to mention interest was allegedly to avoid tax, which rendered the agreement illegal. Dissatisfied, the appellants appealed.

Issue The issue was whether the Letter was admissible to show the agreement to pay interest.

Held In allowing the appeal, the Court of Appeal held that the Letter was admissible and there was a valid contract between the parties for the payment of interest on the Loan. This was because the words "not applicable" in the MOVC only varied the period for the repayment of the Loan and that the agreement in the Letter to pay interest continued to be in force. Thus, the appellants effectively only agreed for the Loan to be interest-free for the duration of one year and that the interest became payable after the expiration of that one year.

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¹ The original plaintiff ("the Respondent") had, prior to the High Court decision, passed away and her sons, who were appointed as co-executors and trustees of her estate, had been substituted in her stead.

² Evidence of terms of contracts, grants and other dispositions of property reduced to form of document