

## LAND LAW

### Indefeasibility of title and interests – Forged charge – Immediate or subsequent purchaser – Whether chargee within meaning of ‘purchaser’ under section 340(3) National Land Code 1965 – Whether immediate or subsequent purchaser – Whether interest protected – National Land Code 1965, section 340(3)

#### *CIMB Bank Bhd v AmBank (M) Bhd & Ors*

[2017] 9 CLJ 145, Federal Court

**Facts** Two individuals, Chin Ting Seng and Chin Chong Lup (“the Chins”) executed a charge over their land (“the property”) in favour of Southern Bank Berhad (SBB) as security for a banking facility. The banking business of SBB was vested with the appellant, CIMB Bank Bhd (CIMB). An individual, Wong Chee Keong (“Wong”) then applied for a loan from the first respondent, AmBank (M) Berhad (AmBank) to finance the purchase of the property which would be used as security for the loan. AmBank’s solicitors prepared the necessary documentation including the creation of charge over the property in favour of AmBank. The purported discharge of charge, memorandum of transfer by the Chins to Wong, and the memorandum of charge by Wong in favour of the first respondent together with the purported original document of title was presented for registration. The land office effected the discharge of the appellant’s charge and registered Wong as the registered proprietor of the property, with AmBank as chargee of the property. It was later discovered that the discharge of the appellant’s charge was forged and that there were two titles over the property. The appellant commenced proceedings to declare the charge in favour of the first respondent null and void, and to reinstate its charge of the said land. The High Court held in favour of the appellant. The Court of Appeal reversed the decision. Hence, this appeal.

**Issue** The main issues were (i) whether a chargee comes within the meaning of ‘purchaser’ under the proviso of section 340(3)<sup>1</sup> of the National Land Code 1965 (NLC), (ii) if so, whether AmBank is an immediate or subsequent purchaser; and (iii) whether the interest is protected by the proviso of section 340(3) of the NLC.

**Held** In dismissing the appeal, the majority of the Federal Court held that a chargee does come within the meaning of ‘purchaser’ under the proviso of section 340(3) of the NLC. Since AmBank had derived interest as chargee of the property from Wong and not the appellant, and that the appellant’s charge was discharged before Wong was registered as the proprietor of the property, AmBank was held to be a subsequent purchaser. Therefore, AmBank, being a chargee was a holder of subsequent interest in the property and is thus protected by the proviso of section 340(3) of the NLC.

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<sup>1</sup> Section 340 of the NLC deals with registration to confer indefeasible title or interest, except in certain circumstances.