

**Omega Securities Sdn Bhd v LT Gen (B) Tan Sri Mohamed Bin Ngah Said [2011]
MLJU 1378**

Malayan Law Journal Unreported

COURT OF APPEAL (PUTRAJAYA)

LOW HOP BING, SURIYADI HALIM OMAR, ALIZATUL KHAIR OSMAN
KHAIRUDDIN JJCA

CIVIL APPEAL NO W-02-1891-2009

29 July 2011

*Bahari Yeow (Lee Hishamuddin Allen & Glenhill) for the appellant
D. Paramalingam (Krish Maniam & Co) for the respondent*

Suriyadi Halim Omar JCA:

DISSENTING JUDGMENT OF SURIYADI HALIM OMAR, JCA

The facts are as follows. It was alleged that an agreement was executed between the plaintiff and the defendant whereby the plaintiff was to deal with the purchase and sale of shares. The agreement was a non-margin facility. It was agreed that the plaintiff was to sell when required and the defendant to indemnify the plaintiff when the need arises. The plaintiff did comply with the agreement but the defendant failed to indemnify when losses arose. The plaintiff then terminated the agreement. The plaintiff subsequently took up action against the defendant for contra losses of RM 33, 258,017.27 at the High Court.

During the proceedings PW1 testified that the defendant had signed the individual application form whereupon the shares were bought. Unfortunately, the very person who received the instruction of the transaction was not called. After a full trial the plaintiff lost and filed this appeal.

I dismissed the appeal on the basis that there was no error on the findings of the High Court. I agreed with the High Court's findings that:

- (i) the agreement i.e. P10 was not dated and stamped. S 52 of the Stamp Act 1949 (Consolidated and Revised 1989) provides that such document is inadmissible in court as evidence;

- (ii) this agreement pertained to a Margin Agreement whilst the plaintiff's claim was based on a Non-Margin Account;
- (iii) the Power of Attorney was not dated and was not properly executed;
- (iv) the document was not filled up; and
- (v) the authorization letter did not mention the authorized person who would deal with the account.

For the above reasons, I concluded that the the agreement was not properly executed. P1 did not establish the existence of a non-margin facility agreement. I was not convinced that the defendant had applied for the facility hence my dismissal of the claim.