Upon learning that he had been adjudged a bankrupt, the appellant went to the respondent bank to complain that he had never signed any guarantee agreement involving the hire-purchase loan in question.

In October 2010, on the application of the respondent bank, the adjudication order was annulled and the receiving order against the appellant was rescinded.

However, the appellant never applied to set aside the default judgment obtained by the respondent bank against him.

The Court of Appeal agreed with the learned High Court judge that the appellant's claim for negligence was time barred as it was not filed within six years from the date of the alleged act of negligence.

The appellant alleged that the act of negligence occurred when the respondent bank in processing the hire-purchase documentation failed to ensure that there was no fraud and that the signature in the guarantee agreement dated 7 May 1997 was indeed that of the appellant.

The Court of Appeal held that if at all there was any negligent act on the part of the respondent bank in failing to ensure the possibility of fraud happening in the processing of the hire-purchase loan was minimised, or in failing to detect any irregularity or fraudulent act in the hire-purchase approving process, that negligent act could only have occurred around 7 May 1997. So the six year period began from 7 May 1997 and the appellant was clearly time barred as he filed the writ action only on 26 May 2011, that is to say, some 14 years later.

The appellant relied on s 29(a) of the Limitation Act to support his contention that the period of limitation did not begin to run until the appellant discovered the alleged fraud in March 2010. The appellant's said contention was rejected by the Court of Appeal because the appellant's claim was not based on fraud.

The appellant's appeal was also dismissed because the appellant failed to show that the respondent bank owed him a duty of care since the appellant was not a customer of the respondent bank and did not have any account with the respondent bank. In other words, it was the appellant's pleaded case that he is a stranger to the respondent bank and had nothing to do with the guarantee agreement or hire purchase agreement. Since the appellant adopted such a position, the Court of Appeal was of the view that clearly there was no commercial relationship or some kind of proximity between the appellant and the respondent bank. Hence, the appellant could not in the same breath claim that the respondent bank owed him a duty of care.

According to the Court of Appeal, the appellant's claim for malicious prosecution by reason of the bankruptcy proceedings commenced against him by the respondent bank was correctly dismissed by the High Court. This was so because there was in existence a valid default judgment, as the appellant had not applied to set aside the same. And as long as there was a valid judgment on which the bankruptcy proceedings were based, the respondent bank had a valid basis for commencing the bankruptcy proceedings against the appellant.

Corporate

Tan Chee Hoe v. Code Focus Sdn. Bhd. (Federal Court Civil Appeal No. 02(F)-32-06/2013(W)

Federal Court considers the validity of a share sale agreement where the contracting parties have agreed to waive the statutory requirement under section 132C(1) of the Companies Act 1965 for shareholders' approval in a general meeting.

On 4 March 2014, the Federal Court, in the case of Tan Chee Hoe v. Code Focus Sdn. Bhd. (Federal Court Civil Appeal No. 02(F)-32-06/2013(W), was invited to answer various questions affecting the validity of a share sale agreement involving the disposal of the total issued and paid-up shares of Choo Hoe Sdn. Bhd. ("the Company"), which represented the Company's substantial property.

In this case, the Appellant ("the Vendor") agreed to sell the shares of the Company to the Respondent ("the Purchaser"), for the sum of RM16million and the Purchaser proceeded to pay the deposit of RM1.6million to the Vendor pursuant to the terms of the Share Sale Agreement ("SPA"). At the time of execution of the SPA, both the Vendor and the Purchaser agreed to, *inter alia*, waive the requirement under section 132C(1) of the Companies Act 1965 of obtaining the Company's shareholders' approval for the transaction under the SPA.

As the Purchaser had failed to pay the balance purchase price, the Vendor forfeited the deposit paid. The Purchaser filed a suit in the High Court disputing the forfeiture of the deposit and further claimed that it was the Vendor who had breached the terms of the SPA and thus, the Vendor was obliged to pay agreed liquidated damages to the Purchaser.

The High Court held in favour of the Vendor that the forfeiture of the deposit by the Vendor was valid and dismissed the Purchaser's claim. The Court of Appeal however unanimously reversed the decision of the High Court and held that the mandatory statutory requirement under section 132C(1) of the Companies Act 1965 could not be waived by agreement of the parties, thus rendering the SPA voidable at the option of the Purchaser.