

MALAYSIA
IN THE HIGH COURT IN SABAH AND SARAWAK AT KOTA KINABALU
SUIT NO. K22-46 OF 2003

BETWEEN

MERCES BUILDERS (S) SDN BHD
(Company No. 317893-T)

... PLAINTIFF

AND

WONG YIT MING
(NRIC No. 531116-12-5335)

... DEFENDANT

STATEMENT OF AGREED FACTS

A. WINMART SDN BHD

SHAREHOLDERS

| <u>NO.</u> | <u>DATE</u> | <u>EVENTS</u> | <u>SHAREHOLDERS</u> | <u>NO. OF SHARES HELD</u> |
|-------------------|--------------------|---|--------------------------------------|--------------------------------------|
| 1. | 2-Dec-89 | Formation of Company | Datuk Wong Pak Hiung Wong Yit Fui | 1 1 |
| 2. | 5-Aug-96 | Transfer from Datuk Wong Pak Hiung & Wong Yit Fui to Ragam Handal Sdn Bhd | Ragam Handal Sdn Bhd | 2 |
| 3. | 12-Feb-97 | Allotment of 299,998 shares to increase to 300,000 shares | Ragam Handal Sdn Bhd | 300,000 |
| 4. | 5-May-97 | Transfer from Ragam Handal S/B to Mercedes Builders (S) S/B | Merces Builders (S) S/B | 300,000 |
| 5. | 7-Jul-98 | Transfer from Mercedes Builders (S) S/B to Maple Phoenix Sdn Bhd | Maple Phoenix Sdn Bhd | 300,000 |

DIRECTORS

| <u>NO.</u> | <u>NAME</u> | <u>DATE OF APPOINTMENT</u> | <u>DATE OF RESIGNATION</u> |
|------------|-----------------------|---|----------------------------|
| 1. | Wong Pak Hiung | Named in the Articles of Association 08-12-89 | 09-12-96 (Deceased) |
| 2. | Wong Yit Fui | Named in the Articles of Association 08-12-89 | 02-08-96 |
| 3. | Wong Yit Ming | 13-05-96 | |
| 4. | Sim Kiang Chiok | 09-12-96 | 11-03-97 |
| 5. | Lee Wai Sam | 09-12-96 | 11-03-97 |
| 6. | Vetty Ng Oi Tng | 11-03-97 | 09-05-97 |
| 7. | Lee Wai Sam | 09-05-97 | 16-06-97 |
| 8. | Sim Kiang Chiok | 01-07-97 | 30-04-01 Removed |
| 9. | Pua Hua Keong | 16-06-97 | |
| 10. | Lee Wai Sam | 30-04-01 | 21-11-01 Deceased |
| 11. | Charles Wee Boon Beng | 07-12-01 | |

Present Directors: Wong Yit Ming
 Pua Hua Keong
 Charles Wee

B. RAGAM HANDAL SDN BHD**SHAREHOLDERS**

| <u>NO.</u> | <u>DATE</u> | <u>EVENTS</u> | <u>SHAREHOLDERS</u> | <u>NO. OF SHARES HELD</u> |
|------------|-------------|---|---|-------------------------------|
| 1. | 15-Aug-94 | Formation of company | Ng Choon Leng Ng Sau Fan | 1 1 |
| 2. | 13-Sep-94 | Transfer of shareholder | Chung Nyuk Fah Chin Lip Kong | 1 1 |
| 3. | 08-Jan-96 | Allotment of 299,998 shares to increase to 300,000 shares | Chung Nyuk Fah Chin Lip Kong Bennes Engineering (S) S/B | 1 1 299,998 |
| 4. | 25-Jun-96 | Transfer from Mercedes Builders (S) Sdn Bhd (formerly known as Bennes Eng (S) Sdn Bhd) to Wong Yit Ming | Chung Nyuk Fah Chin Lip Kong Wong Yit Ming | 1 1 299,998 |
| 5. | 10-May-97 | Transfer from Wong Yit Ming to Mercedes Builders (S) S/B | Chung Nyuk Fah Chin Lip Kong Wong Yit Ming Merces Builders (S) S/B | 1 1 119,998 180,000 |
| 6. | 13-May-97 | Transfer from Chin Lip Kong & Chong Nyuk Fah to Wong Yit Ming | Wong Yit Ming Merces Builders (S) S/B | 120,000 180,000 |

| <u>NO.</u> | <u>DATE</u> | <u>EVENTS</u> | <u>SHAREHOLDERS</u> | <u>NO. OF SHARES HELD</u> |
|------------|-------------|---|------------------------------------|-------------------------------|
| 7. | 07-Jul-98 | Transfer from MB (S) S/B to Maple Phoenix S/B | Wong Yit Ming Maple Phoenix S/B | 120,000 180,000 |
| 8. | 16-Dec-98 | Allotment of 700,000 additional shares | Wong Yit Ming Maple Phoenix S/B | 400,000 600,000 |
| 9 | 26-Feb-02 | Allotment of 750,000 additional shares to raise capital | Wong Yit Ming Maple Phoenix S/B | 1,150,000 600,000 |

DIRECTORS

| <u>NO.</u> | <u>NAME</u> | <u>DATE OF APPOINTMENT</u> | <u>DATE OF RESIGNATION</u> |
|------------|------------------------------------|--|----------------------------|
| 1. | Ng Choon Leong | Named in the Articles of Association 15-08-1994 | 13-09-94 |
| 2. | Ng Sau Fan (F) | Named in the Articles of Association 15-08-1994 | 13-09-94 |
| 3. | Chung Nyuk Fah | 13-09-94 | 03-04-96 |
| 4. | Chin Lip Kong | 13-09-94 | 03-04-96 |
| 5. | Thien Pit Yin Thien Pit Yun (F) | 03-04-96 | 01-07-97 |
| 6. | Long Pak Chu | 03-04-96 | 24-03-98 |
| 7. | Wong Yit Ming | 13-05-96 | |

| | | | |
|-----|--------------------------|----------|------------------------|
| 8. | Sim Kiang Chiok | 01-07-97 | 02-05-01 (Removed) |
| 9. | Pua Hua Keong | 02-05-01 | |
| 10. | Lee Wai Sam | 02-05-01 | 21-11-01 (Deceased) |
| 11. | Lee Tai Loi | 06-09-01 | |
| 12. | Charles Wee Boon Beng | 06-09-01 | |

Present Directors: Wong Yit Ming Lee Tai Loi
 Pua Hua Keong Charles Wee

- | <u>NO.</u> | <u>DATE</u> | |
|------------|-------------|--|
| 1. | 1.8.1996 | Plaintiff and Defendant enter into an Agreement for the sale of 180,000 shares in Ragam Handal Sdn Bhd belonging to the Defendant to the Plaintiff in consideration for the sum of RM1,000,000 and upon the terms and conditions stated therein. |
| 2. | 1.8.1996 | Datuk Wong Pak Hiung and Wong Yit Fui ("the Sellers") enter into an Agreement with Ragam Handal Sdn Bhd ("the Purchaser") for the sale of the Seller's two shares in Winmart Sdn Bhd in consideration of the sum of RM1,200,000.00 and upon the terms and conditions stated therein. |
| 3. | Undated | Plaintiff issues a Letter of Undertaking to Datuk Wong Pak Hiung and Wong Yit Fui undertaking to pay to them the |

purchase consideration of 1,200,000.00 for the sale of their two shares in Winmart Sdn Bhd to Ragam Handal Sdn Bhd.

4. 28.08.1996 Lembaga Pembangunan Perumahan Dan Bandar ("LPPB") execute a Memorandum of Agreement with Winmart Sdn Bhd to appoint WSB to design, construct, finance, manage and sell a housing scheme comprising 431 units of residential premises at Kuala Menggatal, Kota Kinabalu, Sabah (hereinafter referred to "**the Winmart Project**") upon the terms and conditions stated therein.
5. 25.11.1996 Winmart awarded the Winmart Project to the Plaintiff to inter-alia carry out the works at the contract price of RM17,521,935.00.
6. 5.05.1997 LPPB entered into a Sale and Purchase Agreement with Ragam Handal Sdn Bhd whereby LPPB agreed to purchase 560 units of low cost flats built by RH on CL. 2858 at Menggatal upon the terms and conditions stated therein ("**the Additional RH Project**").
7. 5.05.1997 LPPB grants a Power of Attorney to RH and appoints RH as its attorney to carry out the several obligations of RH in respect of the Additional RH Project.
8. 1.07.1997 Sale and Purchase Agreement between Defendant and Joanes Bin Lakim with the Plaintiff to sell the Defendant and Joanes Bin Lakim's two shares in Asal Firasat Sdn Bhd to the Plaintiff in consideration of RM1,600,000.00 and five (5) units of Bungalows ("**1st Asal Firasat Agreement**").

9. 11.07.1997 Recission Agreement of 1st Asal Firasat Agreement.
10. 11.07.1997 Sale and Purchase Agreement between Defendant and Joanes Bin Lakim with the Plaintiff to sell two (2) shares in Asal Firasat Sdn Bhd belonging to the Defendant and Joanes Bin Lakim to the Plaintiff in consideration of RM2.00 ("2nd Asal Firasat Agreement").
11. 12.07.1997 Recission Agreement of the 2nd Asal Firasat Agreement.
12. 12.07.1997 Sale and Purchase Agreement between Defendant and Joanes Bin Lakim with the Plaintiff to sell two (2) shares in Asal Firasat Sdn Bhd belonging to the Defendant and Joanes Bin Lakim to the Plaintiff in consideration of RM1,600,000.00 and 5 units of Bungalows ("3rd Asal Firasat Agreement").
13. 10.08.1997 Letter of Award - addendum No. 1 from Winmart Sdn Bhd to Plaintiff in respect of the Winmart Project.
14. 01.09.1997 Letter of Award by Ragam Handal Sdn Bhd to Mercedes Builders Sdn Bhd for turnkey project for 1000 units of 2-storey terrace houses and infrastructure works for RM31,131,520.00 ("**the RH Project**").
15. 01.11.1997 Deed of Indemnity between Plaintiff and Defendant whereby the Plaintiff agreed to indemnify the Defendant and his personal representative etc to the limit of RM5.0 million in respect of a guarantee given by the Defendant (jointly and severally with two others) to guarantee the

repayment of banking facilities totaling RM5.0 million by Sabah Bank Berhad to Winmart Sdn Bhd.

16. 04.12.1997 Agreement between LPPB and Ragam Handal Sdn Bhd whereby LPPB appointed RH to build 1000 units of 2-Storey Terraces at Kinarut, Sabah upon the terms and conditions stated therein ("the RH Project").
17. 24.12.1997 Supplementary Agreement between LPPB and Winmart Sdn Bhd to amplify, add or vary the terms of the Winmart Project.
18. 12.08.1998 Supplementary Agreement between LPPB and Ragam Handal Sdn Bhd to supplement the agreement dated 04.12.1997 in respect of the RH Project.
19. 01.02.1999 Letter of Award - Supplementary Contract No. 1 - issued by Ragam Handal Sdn Bhd to Mercedes Builders Sdn Bhd.
20. 01.03.1999 Deed of Novation entered between Ragam Handal Sdn Bhd, Mercedes Builders Sdn Bhd and the Plaintiff whereby the interest of Mercedes Builders Sdn Bhd in the Ragam Handal Project was novated to the Plaintiff upon the terms and conditions stated therein.
21. 03.06.1999 Planning Approval granted by Majlis Perbandaran Kota Kinabalu to Ragam Handal Sdn Bhd for the Additional RH Project.
22. 06.10.1999 Second Supplementary Agreement entered into between LPPB and Ragam Handal Sdn Bhd supplemental to the

Agreement dated 04.12.1997 and First Supplementary Agreement dated 12.08.1998 in respect of the RH Project.

23. 22.03.2000 Approval of Building Plan by DBKK for the Additional RH Project.
24. 27.07.2001 Letter from Winmart Sdn Bhd to the Plaintiff accepting the repudiation by the Plaintiff of the Winmart Project.
25. 27.08.2001 Letter from Ragam Handal Sdn Bhd to the Plaintiff accepting the repudiation by the Plaintiff of the Ragam Handal Project.

26. Money was remitted into the Defendant's Hongkong and Shanghai Bank Account No. 392-156584-001 on the following dates:

| | |
|------------|--------------------|
| 28.12.1995 | RM7,895.00 |
| 10.02.1996 | RM3,000.00 |
| 14.05.1997 | RM15,000.00 |
| 13.11.1997 | RM50,000.00 |
| 8.12.1997 | RM50,000.00 |
| 7.03.1998 | RM50,000.00 |
| 19.09.1998 | RM50,000.00 |
| 27.01.1999 | RM5,000.00 |
| 20.08.1999 | RM25,000.00 |
| UNDATED | RM18,000.00 |
| 24.01.2000 | RM13,000.00 |
| 28.01.2000 | RM10,000.00 |
| Total: | <hr/> RM296,895.00 |

27.

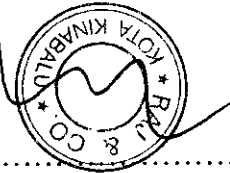
Cash payment was made to the Defendant (pursuant to the payment voucher acknowledged by the Defendant) on the following dates:

| | |
|------------|---------------------|
| 10.12.1996 | RM150,000.00 |
| 08.10.1997 | RM150,000.00 |
| 23.11.1997 | RM200,000.00 |
| Total: | <u>RM500,000.00</u> |

Dated the 21st day of April 2006.



Messrs. MG Seneviratne Chambers
Advocates for the Plaintiff



Messrs. Raj & Co
Advocates for the Defendant

MALAYSIA
IN THE HIGH COURT IN SABAH AND SARAWAK AT KOTA KINABALU
SUIT NO. K22-46 OF 2003

BETWEEN

MERCES BUILDERS (S) SDN BHD
(Company No. 317893-T)

... PLAINTIFF

AND

WONG YIT MING
(NRIC No. 531116-12-5335)

... DEFENDANT

ISSUES FOR TRIAL

1. Whether the Plaintiff had on diverse dates advanced personally to the Defendant the sum of RM1,051,895.00 or any other sum upon the request of the Defendant.
2. Whether the sum of monies allegedly paid by the Plaintiff to the Defendant stated in the Statement of Claim were advances personally to the Defendant or pursuant to other arrangements/agreements between the parties.
3. Whether the Defendant had requested the payment of the monies stated in the Statement of Claim.
4. Further or alternatively whether the alleged sum of RM1,051,895.00 was paid to the Defendant as an advance in consideration of the Plaintiff being awarded the job as main contractors for the projects of Ragam Handal Sdn Bhd And Winmart Sdn Bhd.
5. Whether the alleged advance of RM1,051,895.00 paid to the Defendant should be refunded or repaid by the Defendant to the Plaintiff on the ground that there has been a total failure of consideration as the contracts between the Plaintiff and Ragam Handal Sdn Bhd and Winmart Sdn Bhd had been terminated.
6. Whether the sum of RM15,000.00 paid to the Defendant on 14.05.1997 was for the purchase of Sabah Boleh Sdn Bhd or personal advances to the Defendant.

7. Whether the following cash advances was made to the Defendant:-

- (a) RM195,000.00 (Plaintiff's Payment Voucher dated 01.05.1996)
- (b) RM10,000.00 (Plaintiff's Payment Voucher dated 08.05.1996)
- (c) RM50,000.00 (Plaintiff's Payment Voucher dated 10.10.1997)

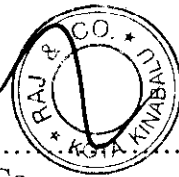
COUNTERCLAIM

- 8. Whether the Plaintiff is liable to the Defendant for the sum of RM1,200,000.00 or any other sum outstanding pursuant to an agreement in writing made between Wong Pak Hiung and Wong Yit Fui with Ragam Handal Sdn Bhd dated 1.08.1996 read together with an undated Letter of Undertaking by the Plaintiff to pay the sum of RM1,200,000.00 to Wong Pak Hiung and Wong Yit Fui and a Deed of Assignment dated 6.08.1996 between the Defendant and Wong Pak Hiung and Wong Yit Fui.
- 9. Whether the Plaintiff is liable to the Defendant for the sum of RM1,560,000.00 or any other sum outstanding pursuant to an Agreement in writing between the Plaintiff and the Defendant dated 1.08.1996 for the sale of the Defendant's 180,000.00 shares in Ragam Handal Sdn Bhd read together with the Sale and Purchase Agreement dated 5.05.1997 and 4.12.1997 between Ragam Handal Sdn Bhd and Lembaga Pembangunan Perumahan Dan Bandar.
- 10. Whether the Plaintiff is liable to the Defendant for the Tort of the Abuse of the Process of Court in respect of the institution of the present action.

Dated the 21st day of April 2006.



.....
Messrs. M. G. S. W. A. Chambers
Advocates for the Plaintiff



.....
Messrs. Raj & Co
Advocates for the Defendant