

# Chargee not liable to purchaser when order for sale is set aside

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Litigation, Malaysia

- 🕒 Introduction
- 🕒 Facts
- 🕒 Decisions
- 🕒 Comment

## Introduction

It has generally been understood that the purchase of property through statutory public auction conducted pursuant to a high court order of sale is a safe and protected transaction, as procedures for auction and sale are clearly stipulated in the National Land Code 1965 and Order 83 of the Rules of Court 2012. Thus, prospective purchasers have been keen to bid on public auction properties.

However, in *Singh v Malayan Banking Berhad* the Federal Court ruled that a chargee is not liable to compensate a successful purchaser when an auction sale is set aside for non-compliance with the rules of court and the purchaser may lose the property without compensation, save for a refund of the purchase price.

## Facts

As the chargee of the property, Malayan Banking Berhad obtained an order for sale by public auction from the Kuala Lumpur High Court. At auction, Ranjit Singh successfully bid on the property and paid the full purchase price. Unbeknownst to both parties, the chargor's daughter had lodged a caveat on the property and thus the transfer of the property could not be completed. Subsequently, the chargor applied to the high court to set aside the order of sale and the sale of the property on the grounds that it had not been notified that the hearing for the order for sale application had been adjourned.

## Decisions

The high court ruled in favour of the chargor and further ordered that the purchase price be refunded to Singh. It also held that the chargee bank had to pay damages to the chargor and Singh.

The chargee bank appealed before the court of appeal, but its claim was dismissed. The court of appeal agreed with the high court's judgment, except for certain damages, which were set aside. Aggrieved with the decision, the chargee bank applied for leave to appeal to the Federal Court to no avail.

Singh did not appeal to the Federal Court, but instead filed a new action with the high court against the chargee bank for damages. Singh claimed that there was a breach of contract, misrepresentation, negligence and a breach of duties on the part of the chargee bank, and that he was entitled to monetary compensation. The matter was eventually brought before the Federal Court, which held as follows:

- Since the order for sale was set aside, the subsequent contract was also null and void. Hence, the issue of breach of contract did not arise.
- The chargee bank was not guilty of misrepresentation, negligence or breach of duties, as the auction sale was made pursuant to a valid court order.
- Singh's action was time barred.

The Federal Court held that since Singh had not pursued the matter further after the court of appeal set aside the high court's order for certain damages in his favour, it was unconscionable for him to claim damages now. He was thus denied compensation as a result of his own actions.

### **Comment**

It is uncertain whether Singh would have received compensation for his losses had he filed the claim within the time limit. This is because the Federal Court emphasised the fact that the chargee bank's involvement in the public auction sale was pursuant to a valid order of sale at the time of contracting the sale; thus, the sale could not be completed because the order of sale was subsequently set aside. However, the Federal Court overlooked the fact that the order for sale was set aside because the chargee bank failed to notify the chargor that the hearing had been adjourned, in accordance with the rules of court. The Federal Court should have held the chargee bank liable for the setting aside of the order of sale which made the sale null and void.

The statutory provisions and rules governing public auctions should be amended so that this situation does not happen again. Purchasers that have successfully bid and paid for a property should not end up in the same position that they were in before the transaction took place, considering the time and effort involved. Damages and other relief should be awarded to purchasers for their losses and expenses – particularly when an order of sale has been set aside. Doing so would also ensure that chargees comply with the rules of court.

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