

Contact Partners:

Lambert Rasa-Ratnam  
T: +603 6208 5859  
E: [lr@lh-ag.com](mailto:lr@lh-ag.com)

**BANKING & INSOLVENCY**

Kumar Kanagasingam  
T: +603 6208 5803  
E: [kk@lh-ag.com](mailto:kk@lh-ag.com)

Sean Yeow Huang-Meng  
T: +603 6208 5867  
E: [yhm@lh-ag.com](mailto:yhm@lh-ag.com)

Andrew Chiew Ean Vooi  
T: +603 6208 5852  
E: [ac@lh-ag.com](mailto:ac@lh-ag.com)

Mong Chung Seng  
T: +603 6208 5864  
E: [mcs@lh-ag.com](mailto:mcs@lh-ag.com)

Hoi Jack S'ng  
T: +603 6208 5908  
E: [hjs@lh-ag.com](mailto:hjs@lh-ag.com)

**CONSTRUCTION**

Dato' Nitin Nadkarni  
T: +603 6208 5866  
E: [nn@lh-ag.com](mailto:nn@lh-ag.com)

Darshendev Singh  
T: +603 6208 5845  
E: [ds@lh-ag.com](mailto:ds@lh-ag.com)

**CORPORATE & COMMERCIAL DISPUTES**

Rosli Dahlan  
T: +603 6208 5804  
E: [rd@lh-ag.com](mailto:rd@lh-ag.com)

G Vijay Kumar  
T: +603 6208 5870  
E: [vkq@lh-ag.com](mailto:vkq@lh-ag.com)

SM Shanmugam  
T: +603 6208 5865  
E: [ssm@lh-ag.com](mailto:ssm@lh-ag.com)

Ang Hean Leng  
T: +603 6208 5809  
E: [ahl@lh-ag.com](mailto:ahl@lh-ag.com)

Ho Ai Ting  
T: +603 6208 5907  
E: [hat@lh-ag.com](mailto:hat@lh-ag.com)

23 NOVEMBER 2018

**Chargee's Delay May Bar Auction of Charged Property**

*Dato' Haji Muhammad bin Hamzah v RHB Bank Bhd*  
(Court of Appeal Civil Appeal No B-02-(IM) -173-01/2018)

| by Lee Yi Ting |

In May 2002, the Bank obtained an order for sale of the Borrower's property charged to them as a security for loans granted. Despite the order for sale and directions for the auction of the property, the Bank did not carry out the auction for more than 12 years.

Approximately 15 years after the order for sale was made, the Borrower applied to restrain the Bank from proceeding with the auction of the property on the ground that more than 12 years had lapsed since the order for sale was made, and that any action by the Bank to auction the property falls outside the 12 years' period prescribed by the Limitation Act 1953<sup>[1]</sup> for enforcement of the charge or recovery of the proceeds of the sale of the property.

The Court of Appeal held that:

- (a) An application for directions for an auction is a distinct and separate proceeding from the charge action.
- (b) After failing to take any steps to auction the property for more than 12 years, any further step by the Bank to auction the property would be beyond the 12-year period prescribed under s 21(1) of the Limitation Act, and is therefore barred by limitation.
- (c) In any case, the enforcement of the order for sale is also barred by s 6(3) of the Limitation Act<sup>[2]</sup> which provides for the limitation period of 12 years.

This decision appears to be inconsistent with the earlier decision of the Court of Appeal in *Perwira Affin Bank Bhd v Lim Weow*,<sup>[3]</sup> where it was held that there is no time bar as to when an auction can be

conducted following an order for sale.

The Bank has applied for leave to appeal to the Federal Court against the decision of the Court of Appeal.

The grounds of judgment of the Court of Appeal may be viewed [here](#).

Lee Yi Ting ([lyt@lh-ag.com](mailto:lyt@lh-ag.com))

If you have any queries on the auction of charged property, please contact the author or her team partner [Mong Chung Seng \(mcs@lh-ag.com\)](mailto:mcs@lh-ag.com).

Lee Hishammuddin Allen & Gledhill

Level 6, Menara 1 Dutamas  
Solaris Dutamas  
No. 1, Jalan Dutamas 1  
50480 Kuala Lumpur  
Malaysia

T +603 6208 5888  
F +603 6201 0122/0136  
E [enquiry@lh-ag.com](mailto:enquiry@lh-ag.com)  
W [www.lh-ag.com](http://www.lh-ag.com)

Published by the Dispute Resolution Practice Group

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<sup>[1]</sup> Limitation Act 1953, s 21(1):

“No action shall be brought to recover any principal sum of money secured by a mortgage or other charge on land or personal property or to enforce such mortgage or charge, or to recover proceeds of the sale of land or personal property after the expiration of twelve years from the date when the right to receive the money accrued.”

<sup>[2]</sup> Limitation Act 1953, s 6(3):

“An action upon any judgment shall not be brought after the expiration of twelve years from the date on which the judgment became enforceable and no arrears of interest in respect of any judgment debt shall be recovered after the expiration of six years from the date on which the interest became due.”

<sup>[3]</sup> [1998] 3 MLJ 56 (CA)