

Procedural Compliance in Foreclosure Proceedings under the National Land Code: A Critical Analysis of Limra Fidem Sdn Bhd V E-Hong Holdings Sdn Bhd Case

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ABSTRACT

Charge enforcement under the National Land Code (“NLC”) continues to generate disputes between chargees and chargors over the procedural requirements for obtaining an order for sale. This paper examines case of Limra Fidem Sdn Bhd v E-Hong Holdings Sdn Bhd, which turned on two issues: whether the one-month notice period under Section 254(1) runs from the date of the Notice of Recall or from the actual date of default, and whether the chargor’s objections, an allegedly unregistered charge and claims of double interest, amounted to ‘cause to the contrary’ under Section 256(3). This paper adopts a doctrinal legal research methodology and analyses the court’s reasoning alongside key authorities, including Low Lee Lian v Ban Hin Lee Bank Bhd and Thameez Nisha Hasseem v Maybank Allied Bank Bhd, to trace how Malaysian courts treat the statutory notice requirement and the narrow grounds available to chargors resisting foreclosure. The court found that the Originating Summons was not premature, since the breach had commenced from the actual date of default rather than the recall notice, and that neither objection raised by the Defendant met the recognised categories of ‘cause to the contrary.’ These findings confirm that an order for sale is an action in rem, where the contractual disputes must be pursued separately as an action in personam rather than relied upon to resist foreclosure. The decision reaffirms that statutory timelines under Section 254 are tied to the actual breach, and that Section 256(3) must be interpreted narrowly. Thus, it reinforced certainty in Malaysian foreclosure proceedings while preserving the chargor’s right to separate civil remedies.

Keywords: National Land Code, order for sale, cause to the contrary, Form 16D notice, charge enforcement

INTRODUCTION

In Malaysia, a charge is a form of dealing commonly created over land to secure the repayment of a loan (Sharifah Zubaidah et al., 2023). Under Section 5 of NLC, ‘Charge’ is defined as a registered charge. It reads together with Section 243 of NLC where charges take effect upon registration. There is no transfer of the title to the land to the chargee; the legal title to or ownership of the said land remains vested in the registered proprietor (Teo & Khaw, 2012). The position of a registered chargee against purchasers under a sale and purchase agreement is well settled in Malaysian law. Once registered, the charge confers an indefeasible legal interest in the land upon the chargee. Disputes frequently arise in relation to the enforcement of charges. Upon default by the chargor, the chargee is entitled to invoke two statutory remedies under the NLC, namely to apply for an order for sale of the charged land by way of public auction under Section 253 or to take possession of the charged land under Section 271 (Kader, 2023).

In contrast, a purchaser under a sale and purchase agreement who has not yet been registered only possesses an equitable interest, even if the full purchase price has been paid to the chargor, usually the developer. Therefore, the courts will generally uphold the priority of the registered chargee as a secured creditor over the unregistered purchaser (Sharifah Zubaidah et al., 2023). As illustrated in *Tai Lee Finance Co Sdn Bhd v Official Assignee & Ors* [1983] 1 MLJ 81 and also in *Perwira Habib Bank (M) Bhd v Bank Bumiputra (M) Bhd* [1988] 3 MLJ 84, it

was held that the interest of a registered chargee is indefeasible by s 340(1) of the NLC unless it is made defeasible by s. 340(2).

This paper examines the order of sale procedures issues through the recent case of *Limra Fidem Sdn Bhd v E-Hong Holdings Sdn Bhd*, which addressed two central questions: whether the statutory notice period under Section 254 was properly complied with, and whether the chargor's objections amounted to sufficient cause to resist the order for sale.

METHODOLOGY

This paper adopts the normative juridical method, which focuses on the application and interpretation of statutory provisions and judicial reasoning in charge enforcement under the NLC. This approach involves examining the relevant provisions of the NLC, in particular Sections 254 and 256(3), together with decided landmark cases and related legal literature, to understand the legal principles governing the notice requirements and the scope of 'cause to the contrary' in applications for an order for sale in Malaysia. The data, comprising statutory provisions, case law, and academic commentary, is analysed qualitatively, with particular attention to the court's reasoning in *Limra Fidem Sdn Bhd*. It assesses the validity of the legal arguments raised by the parties and the consistency of the decision with established Malaysian jurisprudence on charge enforcement.

Case Background

Case Fact

The fact of the case is that the Plaintiff filed an Originating Summons dated 1 August 2025 under Sections 256 and 257 of the NLC and Order 83 of the Rules of Court 2012. They sought an order for sale of the Defendant's land by public auction.

The Plaintiff is a licensed moneylender under the Moneylenders Act 1951. The Defendant, as the registered proprietor, had charged the land 'Hakmilik Geran 47917, Lot 1959, Mukim Semenyih, Selangor' to the Plaintiff as security for a loan of RM46,167,394.00 granted under a moneylending agreement dated 9 November 2022.

After the Defendant defaulted in repayment, the Plaintiff issued a Notice of Recall and Termination on 13 June 2025 and subsequently a Form 16D Notice of Default on 30 June 2025. As the default remained unresolved, the Plaintiff applied for an order for sale of the charged land to recover the outstanding debt.



Figure 1: Illustration of the case fact

Legal Issue and Arguments of the Parties

Issue 1: Whether the one-month period under Section 254 should be calculated from the date of the Notice of Recall or from the Actual Date of Default.

The first issue that arose before the court was whether the Originating Summons ("OS") dated 1.8.2025 was premature under section 254 of the NLC. The Defendant contended that the Plaintiff had failed to comply with the statutory requirement, as the Form 16D Notice was issued less than one month from the date of the Notice of Recall. The central question was whether the one-month period under section 254 should be calculated from the date of the Notice of Recall or from the actual date of default.

The Defendant argues that the Notice of Recall was issued on 13 June 2025, but the Form 16D Notice of Default was issued on 30 June 2025, which was only 17 days later. Under Section 254 NLC, the breach must continue

for at least one month before the chargee may serve a Form 16D notice. Since the OS was filed on 1 August 2025, the Defendant submits that the application was approximately two weeks premature.

The Plaintiff relies on Clause 5 of the Moneylending Agreement, which governs the right of action. Under Clause 5(1)(a), the Plaintiff is entitled to terminate the agreement upon Defendant's default on any instalment or interest exceeding 28 days, while Clause 5(2) requires the Plaintiff to give 14 days' notice to remedy the breach. The Plaintiff states that the Defendant had already defaulted in repayment since 20.12.2023, and not from the date of the Notice of Recall issued on 13.6.2025, as the Defendant had been in default for the past two years. The Notice of Recall was therefore issued in accordance with Clause 5(1)(a) of the Moneylending Agreement. Subsequently, the Plaintiff issued the 16D Notice on 30.6.2025 in compliance with Clause 5(2), providing 14 days for the Defendant to remedy the breach. As the Defendant failed to remedy the breach within the stipulated period of one month, the Plaintiff proceeded to file the Originating Summons on 1.8.2025.

Issue 2: Existence of Cause to the Contrary under Section 256(3)

The second issue is whether the Defendant has shown any "cause to the contrary" under section 256(3) of the NLC to resist the Plaintiff's order for sale. The Defendant submits that the Plaintiff should not be allowed to proceed with the OS on two grounds. First, the Defendant argued that the Charge exhibited by the Plaintiff is incomplete as it does not show evidence of presentation or registration, and therefore the Plaintiff is allegedly enforcing an unregistered charge. Second, the Defendant contends that the Statement of Simple Interest shows instances of double interest being imposed, which was claimed to be contrary to Clause 2 of the Moneylending Agreement and results in sums not lawfully due, thereby constituting sufficient cause to the contrary under section 256(3), where the Plaintiff attempted to enforce an unregistered charge.

In response, the Plaintiff submits that the Charge has already been duly registered, as admitted by the Defendant and further supported by the land search exhibited in the affidavit showing registration on 30.11.2022. On the issue of interest, the Plaintiff denies any imposition of double interest and explains that the Statement of Simple Interest merely reflects the Defendant's default period on a month-to-month basis, where overlapping dates create an apparent duplication but not an actual additional charge. The Plaintiff further maintains that the issues raised do not amount to "cause to the contrary" under section 256(3), as the order for sale is an action in rem rather than an action in personam.

Decision And Grounds Of Judgment

Issue 1: Originating Summons was not Premature

The first issue before the court was whether the OS was premature in light of section 254(1) of the NLC, which requires that a breach must continue for at least one month before a Form 16D notice can be served and before proceedings for an order for sale may be initiated.

The court rejected Defendant's contention that OS was premature. The court began by interpreting section 254(1), which provides that a chargee may issue a Form 16D notice only after the breach has continued for at least one month, which specifies the breach, requires it to be remedied within one month, and warns that failure will result in proceedings for an order for sale. According to Section 254(3), if the breach is not remedied after the notice period, the entire sum secured becomes due and payable to the chargee, and the chargee may apply for an order for sale. Therefore, the critical inquiry was to determine the actual date when the Defendant's default commenced.

The Defendant argued that the Plaintiff breached Section 254, as the Form 16D Notice, issued on 30.6.2025, came less than one month after the Notice of Recall on 13.6.2025. It was held that the Defendant's breach did not commence on the date of the Notice of Recall. Instead, the Defendant had already been in default since 20.12.2023, as stated in the Notice of Recall. Accordingly, the statutory requirement under section 254(1) is assessed based on the continuation of the actual breach, not the timing of the recall notice.

The court further considered Clause 5 of the Moneylending Agreement, particularly Clause 5(1) which allows termination upon default exceeding 28 days, and Clause 5(2) which requires not less than 14 days' notice before

treating the agreement as repudiated. The court found that the Notice of Recall was issued in accordance with Clause 5(1) and the subsequent Form 16D Notice complied with Clause 5(2), as it was issued more than 14 days after the Notice of Recall.

Finally, the court held that the OS filed on 1.8.2025 was not premature, as it commenced more than one month after the Form 16D Notice. Therefore, all statutory requirements under section 254(1) had been satisfied.

To sum up, under Section 254(1) of NLC, a chargee may issue a Form 16D notice once the chargor's breach has continued for at least one month. After the Form 16D notice is served, the chargor must be given one month to remedy the breach, failing which the chargee may apply to the court for an order for sale under Section 256 NLC.

Issue 2: Cause to the Contrary under Section 256(3)

The second issue before the court was whether the Defendant had established any "cause to the contrary" under section 256(3) of the NLC to resist the Plaintiff's application for an order for sale. The Defendant raised two main objections: first, that the Plaintiff was attempting to enforce an unregistered charge; and second, that the Plaintiff had imposed double interest contrary to the Moneylending Agreement.

On the first objection, the court found that the land search clearly showed the Charge had been presented and registered, a fact which was also expressly admitted by the Defendant in its affidavit. Accordingly, the court rejected the Defendant's contention that the Plaintiff was enforcing an unregistered charge.

On the second objection, the court accepted the Plaintiff's explanation that no double interest had been imposed. The court held that the Statement of Simple Interest merely reflected the Defendant's default on a month-to-month basis, where overlapping dates between consecutive periods created an appearance of duplication. The court also accepted the Plaintiff's illustrative computation showing the breakdown of interest for specific default periods, which clarified the manner of calculation.

The court further held that the issues raised by the Defendant did not amount to cause to the contrary under section 256(3). Relying on *Hap Seng Credit Sdn Bhd v Rentak Arena (M) Sdn Bhd* [2017] 1 LNS 1 and the principles in *Low Lee Lian v Ban Hin Lee Bank Bhd* [1997] 1 MLJ 77, the court reaffirmed that unless a chargor is able to bring his case within one of the three recognised categories of "cause to the contrary," the court is obliged to grant an order for sale. Mere allegations of breaches of the loan agreement or terms of the charge are insufficient, as such claims may only give rise to an action in personam and cannot defeat the ad rem rights of a registered chargee to obtain an order for sale.

The *Limra* case followed *Jigarla K Doshi @ Jigarla a/l Kantilal Doshi v Resolution Alliance Sdn Bhd & Anor* [2013] 3 MLJ 61, the Court of Appeal held that in a foreclosure action, allegations of breaches of contractual obligations and challenges to the calculation of interest under the loan agreement are not relevant to resisting an order for sale. The court emphasised that the inquiry is strictly confined to the limited categories of "cause to the contrary" as set out in *Low Lee Lian v Ban Hin Lee Bank Bhd*, and any alleged contractual breaches or disputes over interest computation should instead be pursued in a separate civil action, rather than used to defeat the statutory right of the chargee to obtain an order for sale.

Therefore, under Section 256(3) of the NLC, the court must grant an order for sale of charged land unless the chargor can show "cause to the contrary." An application for an order for sale is considered an action in rem, meaning it is directed against the property itself rather than against the person.

DISCUSSION

Issue 1: Section 254: 1 Month Notice of Default

The Jurisdictional Prerequisite of Section 254: Procedural Sanctity and the Trigger of Limitation

According to Section 254(1) of the NLC, it provides that where a breach of a charge has continued for a period of at least one month, or such alternative period as specified in the charge but not being less than one month, the

chargee may serve on the chargor a notice in Form 16D by specifying the breach, requiring the breach to be remedied within one month from the date of service or such alternative period, and warning that failure to comply will result in proceedings being taken to obtain an order for sale (Teo & Khaw, 2012, p. 479). The chargor's default in payment of interest constitutes a clear breach of the agreement. If this default continues despite the chargee issuing a notice of default, the chargee may be entitled to seek an order for sale as a consequence (Yong, 1967, 285). Besides, the serving of notice is mandatory as shown in the case of Standard Chartered Bank Malaysia Bhd v Tunku Mudzaffar Bin Tunku Mustapha [2005] 1 MLJ 604, where Mohd Hishamudin J held that service of the Form 16D notice on the defendant is mandatory for the purpose of s 256 of the NLC.

In the Limra case, the court held that the Defendant's breach did not commence on the date of the Notice of Recall. Instead, the Defendant had already been in default since the actual date when the Defendant's default payment commenced. Before this, in the case of United Overseas Bank (Malaysia) Bhd. v Soon Kin Fah & Anor [2001] MLJU 329, Ramly HJ held that there must first be a valid breach, which only arises after a proper notice of demand is given and not complied with. The court further explained that Section 254(1) provides for two distinct grace periods before a chargee may apply for an order for sale. The first is the "pre-Form 16D" period, referring to the duration during which the breach has been accruing and continuing prior to the issuance of Form 16D. The second is the "post-Form 16D" period, which is the time given in the Form 16D notice itself for the chargor to remedy the breach, calculated from the date of service. The first period begins from the occurrence of a breach of the charge agreement, as contemplated under section 253(1) NLC. Such breach arises when the chargor fails to fulfil his obligation or liability, particularly the obligation to repay upon demand by the chargee.

The highlighted point is a notice of demand is essential to trigger the chargor's liability. If the chargor fails to comply with the demand, the first period starts from the expiry of the grace period given in the notice of demand and continues until the issuance of Form 16D. This period must be at least one month. Without such a notice of demand, the chargor cannot be said to be in breach, and the computation of the first period under section 254(1) cannot begin. In Peh Lai Huat v MBF Finance Bhd [2009] CLJ 69, the Court of Appeal stated at page 73 that '...the right to exercise the statutory remedy of an order for sale did not arise until after the appellant had failed to remedy the default specified in the Form 16D notice.'

The controversy regarding the Limitation Period further underscores the importance of Section 254. If the issuance of Form 16D is a mandatory 'condition precedent' for an Order for Sale, logic dictates that the cause of action only fully accrues once the notice period expires. However, courts must guard against lenders using the delay in issuing Form 16D as a tactic to indefinitely freeze the limitation clock, which would defeat the purpose of the Limitation Act 1953.

The Limra case stands's is supported by the Federal Court's decision in S & M Jewellery Trading Sdn Bhd & Ors v Fui Lian-Kwong Hing Sdn Bhd [2015] 5 MLJ 717 held that the limitation period must run from the date of breach, not from when the chargee issues the Form 16D notice. Otherwise, the requirement under section 253 of the NLC that the breach must continue for at least one month would be rendered meaningless. The court emphasised that allowing time to run only after the issuance of Form 16D would enable a chargee to delay enforcement indefinitely, which is inconsistent with the purpose of the law. As regards a chargee, the accrual of his right to receive the money is normally at the date when the money becomes due and payable to him. The money may become due and payable in accordance with the contractual terms in the charge (Wong, 1967).

Section 254(3) provides for the effect of such a notice as follows:

(3) If at the expiry of the period specified in any such notice the breach in question has not been remedied —

(a) the whole sum secured by the charge shall (if it has not already done so) become due and payable to the chargee; and

The words in brackets in paragraph (a) indicate that the sum secured by the charge may already have become due and payable according to the contractual terms agreed by the parties in the charge instrument. In such a situation, the money is not considered to become due at the later date provided under section 254(3)(a). Therefore, the chargee's right to receive payment will arise at the time specified in the contract itself, unless that right has not already accrued, in which case section 254(3)(a) will apply (Wong, 1967).

Similarly, the Court of Appeal of *Sivadevi a/p Sivalingam v CIMB Bank Bhd* [2018] 5 MLJ 82 held that if the 12-year limitation period were calculated only from the issuance of the Form 16D notice and the subsequent failure to remedy the default, it would undermine the statutory time requirements under section 253 of the NLC, which require at least a one-month default period (or other specified period in the charge). Such an interpretation would render those requirements ineffective. Instead, the Court emphasises that the limitation period should run from the date of breach of the charge agreement, when the right to receive payment first accrues. If otherwise, a chargee could delay action indefinitely potentially even for decades yet still retain the right to enforce the statutory remedy of an order for sale, which would be inconsistent with the purpose of limitation laws.

On the other hand, Ahmad Maarop PCA in the Federal Court case of *CIMB Bank Bhd v Sivadevi a/p Sivalingam* [2020] 1 MLJ 583 overturned the COA, held that while the limitation period applies to charge actions, the time begins to run only upon the chargor's failure to remedy the breach within the period specified in the Form 16D notice, and not from the initial default in repayment. He stated reasons as based on authorities including *Kimlin Housing Development Sdn Bhd v Bank Bumiputra (M) Bhd* [1997] 2 MLJ 805, *Tan Kong Min v Malaysian National Insurance Sdn Bhd* [2005] 3 CLJ 825 (FC), and *Perwira Affin Bank Bhd v Lim Weow* [1998] 3 MLJ 56, the right to receive the money accrues only after non-compliance with the Form 16D notice.

In *Lim Ban Hooi v Malayan Banking Bhd* [2018] 5 MLJ 421, the Court of Appeal held that there is a direct correlation between default and the issuance of a Form 16D notice, such that the notice cannot be issued unless there is an existing breach of the loan agreement. The court emphasised that the chargee's right to apply for an order for sale does not arise in isolation, but is triggered only upon a breach or default in the underlying contractual agreement. Accordingly, without a valid underlying breach, the chargee has no right to invoke the statutory remedy of sale, as the right cannot exist independently of the contractual relationship between the parties.

In a latest case of *Thameez Nisha Hasseem v Maybank Allied Bank Bhd* [2023] 5 CLJ 874, followed the principle in *Lim Ban Hooi* case, the Federal court held that a Form 16D notice cannot be issued without a prior default in repayment, and therefore the limitation period must run from the date of default, not from the failure to comply with the Form 16D notice. The court emphasised that certainty in limitation law requires a fixed and objective starting point, which is the date of failure to repay the debt, rather than the discretionary timing of issuing Form 16D. Relying on *Lim Ban Hooi*, the court rejected the view that time begins only after non-compliance with Form 16D, as this would undermine statutory requirements and allow indefinite delay by the chargee. Accordingly, the court concluded that under section 21(1) of the Limitation Act 1953, the limitation period begins from the date of default, ensuring fairness, certainty, and preventing abuse of rights. This case overturned the decision of *Sivadevi* case and Ahmad Maarop PCA in respect of the commencement of the limitation period.

In conclusion, the development of case law reflects a clear shift in the computation of limitation periods and the role of Form 16D. In *Sivadevi*, the Federal Court had supported the view that the limitation period only begins to run from the issuance of the Form 16D notice and the subsequent failure to remedy the default. However, this approach was later refined in *Thameez Nisha*, where the court clarified that a Form 16D notice cannot exist independently of a prior default in repayment. Accordingly, the limitation period must properly run from the date of actual default. This more recent position strengthens the reasoning in the present case of *Limra Fidem Sdn Bhd v E-Hong Holdings Sdn Bhd*, as it supports a more substantive and realistic approach to default under section 254. It reinforces that statutory timelines should be anchored to the actual breach rather than Notice of Recall.

Issue 2: Section 256(3) NLC

The Scope of “Cause to the Contrary” under Section 256(3) NLC

Under Section 256(3), the Court will order the sale of the land or lease to which the charge relates unless it is satisfied of the existence of cause to the contrary. It is for the chargor or any ‘cause to the contrary’ at the application for an order for sale. (Mat Ali et al., 2019) The court may reject an application for an order for sale in any of the following circumstances: (i) where proper notice has not been given or served on the chargor, or

where the notice demands a sum not lawfully due to the chargee; (ii) where the charge is defeasible under section 340(2) of the NLC, for instance due to fraud, forgery, or a void or insufficient instrument; and (iii) where the underlying loan agreement is unenforceable due to non-compliance with statutory requirements, such as those under the Moneylenders Act 1951 (Teo & Khaw, 2012).

In the Limra case, the court held that the Defendant's objections did not amount to "cause to the contrary" under section 256(3), as the allegation that the charge was unregistered was rejected after the land search confirmed that the Charge had in fact been duly registered. The court also rejected the claim of double interest. Consequently, the issues raised were insufficient to fall within the three categories of cases as laid down by the Supreme Court's case of *Low Lee Lian v Ban Hin Lee Bank Bhd* [1997] 1 MLJ 77 to defeat the Plaintiff's statutory right to an order for sale.

In the landmark case of *Low Lee Lian v Ban Hin Lee Bank Bhd*, the Federal Court in a judgment delivered by Gopal Sri Ram JCA, identified three categories of cases in which 'cause to contrary' under section 256(3) may be established. Firstly, where a chargor is able to bring his case within any of the exceptions to the indefeasibility principle under section 340 of the Code. In other words, a chargor who is able to demonstrate that the charge, the enforcement of which is sought, is defeasible upon one or more of the grounds specified under Section 340(2) and (4)(b) will be held to have established cause to the contrary under s 256(3). The decision of Smith J in *Subchent Kaur v Chai Sau Kian* [1958] MLJ 32, of the former Federal Court in *Phuman Singh v Kho Kwang Choon* [1965] 2 MLJ 189. In *Buxton & Anor v Supreme Finance (M) Bhd* [1992] 2 MLJ 481 at p 487, the Supreme Court affirmed that the interest of a registered chargee is indefeasible under section 340(1) of the National Land Code, unless it falls within the exceptions in section 340(2).

In *Overseas Chinese Banking Corp Ltd v Lee Tan Hwa & Anor* [1989] 1MLJ 261 (HC), the bank accepted a registered charge over the whole land despite having prior knowledge, through common solicitors, that portions of the land had already been sold to sub-purchasers. Upon the chargor's default payment, the bank applied for an order for sale under section 256 of the NLC. Although fraud was not established, Eusoff Chin J refused the application on the ground that it would be unconscionable to deprive the sub-purchaser, who had completed the purchase and taken possession, of the property purchased. The court held that the charge could not validly operate over property which was no longer absolutely owned by the chargor.

The decision illustrates that equitable considerations and obligations binding on the conscience of the chargee may, in exceptional circumstances, constitute "cause to the contrary" under section 256(3). However, the court in *Low Lee Lian v Ban Hin Lee Bank Bhd* cautioned that such relief will only be granted in strong and compelling cases. Absent exceptional circumstances, the court is bound to give effect to the mandatory language of section 256(3) read together with section 340(1) of the National Land Code.

This principle is also applied in the Court of Appeal case of *CIMB Bank Bhd v Suppiah a/l S Govindasamy & Ors* [2025] 2 MLJ 929, where Wong Kian Kheong JCA held that the plaintiff bank had fully disbursed the overdraft facility to the developer and therefore could not be regarded as unjustly enriched, but instead was also a victim of the fraud involving the chargors/developer. Therefore, it was concluded that *Low Lee Lian* categories did not apply on the facts, and the interveners had failed to establish any "cause to the contrary" under section 256(3) of the NLC.

Secondly, where the chargor is able to demonstrate the failure of the chargee to meet the conditions precedent for the making of an application for an order of sale, such as failure to serve a Form 16D notice, or to comply with the requirements of Order 83. Besides, it happened also where the notice demands sums not lawfully due from the chargee. However, in such a case, it would be open to the chargee to subsequently serve a notice or a proper notice as the case may be before commencing proceedings afresh as the cause shown to the contrary does not in substance affect the chargee's right to apply for an order for sale.

Thirdly, where a chargor is able to prove that granting an order of sale would be contrary to a statutory direction or some rule of common law or equity. This approach emphasizes the concept of fairness and justice between contracting parties (Markom et al., 2013). This principle originates from Aitken J in *Murugappa Chettiar v Letchumanan Chettiar* [1939] MLJ 296 at p 298, where the court recognised that a chargor may establish "cause

to the contrary” in both law and equity to resist an order for sale. The court held that even where there is a default, the sale may be refused if it would be unjust, particularly where circumstances show that the sale is unnecessary or inequitable. However, such injustice must be grounded in recognised principles of common law and equity, and not invoked too freely. It is thus clear that to fall within the scope of the principle in *Murugappa Chettiar's* case, the chargor must be able to point to a statutory direction or some rule of the common law or doctrine of equity operating in his favour and against which an order for sale would militate.

In *Phileoallied Bank (Malaysia) Bhd v Sakuntalathevy Manickavasagam* [2007] 1 MLJ 581, the court considered the chargor’s reliance on laches and acquiescence after a 10-year delay in charge’s enforcement. The High Court held that the chargee had provided a satisfactory explanation for the delay and further found that the chargor came to court with unclean hands, which disentitled her from relying on equitable defences in that case. However, the court clarified that equitable defences such as laches are not excluded in principle, therefore they may still be raised by a chargor depending on the facts.

This restrictive approach is reinforced by the Supreme Court in *Buxton & Anor v Supreme Finance (M) Bhd* [1992] 2 MLJ 481, where Harun Hashim SCJ reaffirmed that the interest of a registered chargee is indefeasible under section 340(1) unless it is rendered defeasible under section 340(2). The court held that the indefeasibility of a chargee’s interest is not affected by the chargor’s conduct, however unconscionable or deceitful it may be, unless there is collusion between the chargor and chargee to defeat the rights of a third party. Similarly, the rights of a bona fide purchaser for value cannot prevail over a registered charge (Mohamad, 2004).

In contrast, any sympathy for chargor is not recognized by court. In *Keng Soon Finance Bhd v MK Retnam Holdings Sdn Bhd* [1989] 1 MLJ 457 at p 460, the Privy Council held that section 256(3) of the National Land Code is mandatory, such that the court ‘shall’ grant an order for sale unless “cause to the contrary” is established. While the court acknowledged that “cause to the contrary” may include grounds based on law or equity, it emphasised that this does not extend to subjective considerations, such as sympathy for the chargor or disapproval of the chargee as arrogant, boorish or unmannerly conduct. Lord Oliver of Aylmerton further held that a registered interest prevails, and where a party has consented to the creation of the charge, such interest cannot be relied upon as cause to the contrary to resist an order for sale (Teoh & Chong, 1998).

In *Low Lee Lian*, the court reaffirmed that unless a chargor can bring his case within one of the recognised categories of “cause to the contrary” under section 256(3), the court is bound to grant an order for sale. The mere allegations of breach of contract by the chargee, whether under the loan agreement or the charge annexure, are insufficient to resist the application, as such complaints may only give rise to an independent action in personam but cannot defeat the chargee’s ad rem rights under a registered charge.

In *Limra Fidem* case, the court followed the landmark decisions in *Low Lee Lian* and *Hap Seng Credit Sdn Bhd* by reaffirming that a chargor may only establish “cause to the contrary” where: (a) the charge is defeasible under section 340; (b) the chargee failed to satisfy the statutory conditions precedent for an order for sale; or (c) the order for sale would be contrary to a rule of law or equity. Unless the chargor falls within these limited categories, the court is obliged to grant the order for sale and separate legislation will not be considered to ensure procedural mechanism under section 256 is intended to operate efficiently.

Action in Rem vs Action in Personam: Limiting Defences in Foreclosure Proceedings

The judge in *Limra* case rejected the Defendant’s allegations that the charge was unregistered and that double interest had been imposed. Accordingly, the issues raised did not establish “cause to the contrary,” as an order for sale is an action in rem.

First of all, *Hap Seng Credit Sdn Bhd v Rentak Arena (M) Sdn Bhd* [2017] 9 MLJ 169, the High Court emphasised that an order for sale under section 256(3) NLC is an action in rem directed against the charged property, not an action in personam between the parties. The court further highlighted that resisting an order for sale on the ground of “cause to the contrary” is strictly limited to the three recognised categories set out in *Low Lee Lian* case.

In *Low Lee Lian v Ban Hin Lee Bank Bhd* [1997] 1 MLJ 77 at p 86, the Federal Court distinguished between actions in rem and actions in personam in relation to registered charges under the NLC. An action brought to set aside a charge based on the grounds of defeasibility under section 340 is an action in rem, as it affects the chargee's rights against the world at large. In contrast, the chargor may proceed through an action in personam when he cannot challenge the validity of the charge under section 340 but can show that the chargee is bound by a personal or equitable obligation not to enforce the charge. Such an action operates personally against the chargee and may restrain the enforcement of the charge or deprive the chargee of rights under the registered charge, including the right to obtain an order for sale. The court referred to *Oh Hiam v Tham Kong* [1980] 2 MLJ 159 in support of this principle. Importantly, it is not incumbent upon the chargor to institute a separate action to enforce such an equitable obligation. The chargor may rely on it directly as a defence to an application under section 256 of the National Land Code to resist an order for sale.

The distinction was also recognised earlier by Thomson J in *Bachan Singh v Mahinder Kaur & Ors* [1956] MLJ 97, where His Lordship explained that a purchaser under a valid contract acquires a right ad rem and a right in personam against the vendor personally, but such right only becomes a real right in rem upon registration under the NLC. The judgment emphasised that registration transforms a personal or contractual interest into a proprietary interest enforceable against the world at large.

While mere allegations of breach of contract or non-compliance with the loan agreement or charge terms may support a separate action in personam, they do not affect the chargee's ad rem rights under a duly registered charge, including the statutory right to obtain an order for sale. As a result, the court in *Low Lee Lian* further reiterated that although the appellant failed to satisfy the legal threshold for "cause to the contrary" under section 256(3), this does not prevent the chargor from pursuing a separate action in personam for breach of contract against the chargee based on the alleged complaints, subject to proof of breach and any available defences, including limitation. Importantly, the court rejected the argument that such a subsequent claim would be barred by issue estoppel or res judicata. Therefore, no estoppel arises to prevent a separate personal action against the chargee.

'The proceedings result not in a judgment or decree, but in making or refusal of an order of sale.' The court does not decide the merits of underlying claims. As a result, issues raised in resisting the order do not amount to final determinations, and the chargor remains free to bring a separate action in personam based on the same facts.

Implications for Malaysian Land Law

One-Month Notice of Form 16D

Prior to the amendment of National Land Code (Amendment) Act 2008 to section 254(1), where inserted after the words 'in the charge' the words 'which shall not be less than one month', the Court of Appeal in *Citibank Bhd v Mohamad Khalid bin Farzalur Rahaman & Ors* [2000] 4 MLJ 96 had interpreted section 254(1) to allow contractual flexibility, including the possibility of a remedial period for Form 16D within that specified period of time of not less than one month. However, the 2008 amendment effectively displaced this interpretation by making the one-month minimum mandatory. As such, the earlier approach in the Court of Appeal's decision in *Citibank Bhd v Mohamad Khalid Bin Farzalur Rahaman & Ors* is no longer an applicable law.

This development clarifies the legal position by removing ambiguity regarding the minimum statutory grace period and reinforces the strict procedural safeguards required before a chargee may proceed with an order for sale. It therefore strengthens certainty in the enforcement process under Malaysian land law, while limiting judicial discretion to depart from the express statutory minimum period.

Narrow and Restrictive Interpretation of "Cause to the Contrary" under Section 256(3) NLC

In *United Malayan Banking Corp Bhd v Chong Bun Sun* [1994] 2 MLJ 221, Visu Sinnadurai J expressed concern over the broad interpretation of *Kandiah Peter v Public Bank Bhd*. His Lordship noted that allowing a chargor to relitigate the same issues in a fresh action after an order for sale risks undermining finality in foreclosure proceedings and may create uncertainty over the validity of auction sales. He warned that such an approach

could effectively give chargors a “second bite at the cherry” by enabling repeated challenges to orders for sale outside the appellate process. This would jeopardise the security of purchasers at auction and potentially delay enforcement of charges indefinitely (Goh, 2018).

His Lordship further observed that earlier authorities only contemplated limited post-sale challenges, such as appeals against the order for sale or objections to irregularities in the conduct of the auction, rather than re-opening issues already determined in foreclosure proceedings. He concluded by expressing that the Supreme Court decision had far-reaching implications and called for clarification to resolve the resulting uncertainty in the law.

Low Lee Lian court clarified that *Kandiah Peter v Public Bank Bhd* [1994] 1 MLJ 119 does not create any broad or novel principle. Instead, it merely reaffirms established law that proceedings under section 256 of the NLC are strictly limited to determining whether the chargor has shown “cause to the contrary” for resisting an order for sale. These proceedings are *in rem* and do not involve adjudication of contractual or equitable disputes between the parties. If the chargor fails in resisting the order for sale, he is still entitled to bring a separate action *in personam* for breach of contract or equitable relief, subject to available defences and the court’s discretion. However, such a subsequent action cannot be used to set aside or challenge an order for sale already granted, unless there is fraud in obtaining the order; the proper remedy in that situation is an appeal.

The court held that the requirement of mutuality or reciprocity for estoppel does not apply in proceedings under section 256 of the NLC. A chargee has multiple remedies to recover a debt: enforcing the statutory charge through an order for sale (*in rem*), suing the principal debtor on the personal covenant, and proceeding against guarantors either separately or concurrently. Because of this, a chargee is not barred by *res judicata* or estoppel from bringing an action *in personam* after obtaining an order for sale. Likewise, the chargor is not precluded from suing the chargee *in personam* for matters such as breach of contract or failure to account. This demonstrates that the estoppel doctrine lacks reciprocity in this context. The court further clarified that even where an order for sale is made in the absence of the chargor, the court is not ‘*functus officio*’ which means “having performed his or her office” for purposes of an application to set it aside, and such applications will still involve consideration of whether “cause to the contrary” exists. Overall, the court affirmed that these principles do not create confusion or open floodgates, and the appeal was dismissed with costs.

While United Malayan Banking Corp Bhd warned against chargors using subsequent actions to repeatedly challenge orders for sale and thereby undermining finality in foreclosure proceedings, Low Lee Lian drew a clearer distinction between actions *in rem* and actions *in personam*. It confirmed that foreclosure proceedings under section 256 NLC are confined only to determining whether “cause to the contrary” exists, whereas contractual disputes may still be pursued separately *in personam* without affecting the validity of the order for sale itself.

Critically, the decision in *Limra Fidem* reflects the judicial approach developed in Low Lee Lian, which clarified the uncertainty highlighted earlier by *Visu Sinnadurai J* in *United Malayan Banking Corp Bhd*. The *Limra* case demonstrates the practical application of this principle. The court refused to treat allegations relating to interest computation and contractual breaches as sufficient “cause to the contrary,” thereby reinforcing the narrow scope of section 256 proceedings. This strengthens certainty in Malaysian land law by preserving the efficiency and conclusiveness of foreclosure proceedings and protecting the security of registered chargees and auction purchasers, while still allowing chargors to pursue separate personal claims by civil way where appropriate. Thus, *Limra* illustrates how the courts have balanced the need for fairness to chargors with the commercial necessity of maintaining confidence in the land and credit system.

CONCLUSION

In conclusion, *Limra Fidem Sdn Bhd v E-Hong Holdings Sdn Bhd* reinforces the strict procedural and substantive framework governing charge enforcement under the National Land Code. In relation to section 254, the case demonstrated the importance of complying with the statutory notice requirements and affirms that the one-month notice period serves as a jurisdictional prerequisite before an order for sale may be sought. With respect to section 256(3), the decision reaffirms the narrow interpretation of “cause to the contrary” as

established in *Low Lee Lian v Ban Hin Lee Bank Bhd*. The court maintained the distinction between actions in rem and actions in personam by holding that allegations relating to contractual breaches or disputes over interest calculations are insufficient to defeat a registered chargee's statutory right to an order for sale. Overall, *Limra* strengthens legal certainty in Malaysian land law by preserving the efficiency, finality, and commercial reliability of foreclosure proceedings while still allowing chargors to pursue separate personal remedies where appropriate (Kader, 2023).

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