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Delay of 13 Years Not a Barrier

Syed Abdul Rahman bin Tuan Kuning v Southeast Asia Special Asset Management Berhad

[Court of Appeal Civil Appeal No T-04(NCC)(W)-328-06/2019]

Last week, the Court of Appeal upheld the longstanding principle that when a guarantor executes an “on demand” guarantee, his liability ^[1] only arises upon a demand being made. This was even though the demand in question was issued in September 2016, some 13 years after the borrower first defaulted.

Some may ask, how is it possible that the claim was not time-barred? Also, wouldn't the extraordinarily long lapse of time result in the accumulation of excessive interest, causing grave injustice to the guarantor?

The Court of Appeal was not swayed by the guarantor's counsel's arguments along those lines. It was of the view that the delay in the issuance of the demand was immaterial and that time as against the guarantor only started to run from the date of the demand. Accordingly, the commencement of debt recovery proceedings in October 2016 was well within the six-year limitation period.

The company was represented by partner, Hoi Jack S'ng, along with associate, Lilian Lee, of Messrs [Lee Hishammuddin Allen & Gledhill](#).

Lilian Lee (lil@lh-ag.com)

If you have any queries or would like to know more about the case, please contact the author or **Hoi Jack S'ng** (hjs@lh-ag.com).

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[1]

Malayan Banking Bhd (formerly known as Mayban Finance Bhd) v Boo Hock Soon @ Boo Choo Soon [2013] 2 MLJ 843 (CA); *Soon Peng Yam & Anor v Bank of Tokyo-Mitsubishi (Malaysia) Bhd* [2004] 2 MLJ 31 (CA); and *Shinei Geotechnique (M) Sdn Bhd & Ors v Orix Credit (M) Sdn Bhd* [2014] 5 MLJ 478 (CA)