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Turning a Blind Eye to Forgery

Mohd Asri bin Abu Hanit v Small Medium Enterprise Development Bank Malaysia Berhad & Anor
(Kuala Lumpur High Court Application for Judicial Review No WA-25-212-05/2019)

On 13 February 2020, the High Court affirmed the Industrial Court's findings, among other things, that a branch manager as a keeper and guardian of the Bank's interests and property ought not to have conducted himself in such a manner as to create reasonable suspicion of dishonesty or untrustworthiness.

Prior to his dismissal, the employee held a position of trust in the Bank as the head of the Kota Kinabalu Enterprise Centre (**KKEC**) and had more than 13 years of experience in the banking industry. Around 2013, based on an investigation conducted by the Bank's Group Audit Division, it was discovered that, among other things, the employee had breached the Bank's Level of Authority Credit & Risk Management and ignored the conditions precedent before the release of facilities as imposed in the Letter of Offer for the financing granted to JCB Oil & Gas Services Sdn Bhd (**JCB**) in approving two tranches of disbursements of totalling more than RM20 million (**Disbursements**) when he had:

- (a) Approved a Memorandum of Changes which altered JCB's credit risk profile without obtaining prior sanction of the Bank's Credit Investment Committee;
- (b) Approved the Disbursements despite realising the elements of forgery and uncertainties within a Letter of Intent purportedly issued by Petronas Carigali Sdn Bhd (**Letter of Intent**) and Letter of Confirmation purportedly issued by Messrs Rajan Chettiar & Co (**Letter of Confirmation**), both of which were part of the conditions precedent;
- (c) Failed to ensure the formalisation of the appointment of a Monitoring Accountant which was part of the conditions precedent;
- (d) Ignored the advice from KKEC's Head of Credit Administration, who confirmed the incredible nature of the Letter of Intent and Letter of Confirmation; and

(e) Instructed his subordinates to proceed with the Disbursements despite the incredible nature of the Letter of Intent and Letter of Confirmation.

The Industrial Court was satisfied that the employee had acted beyond his authority in breach of the Bank's Level of Authority Credit & Risk Management, despite him knowing very well the legal implications and repayment risks to the Bank. However, it remains a mystery as to why he did it. In fact, during investigation, the employee in refusing to disclose the reason behind his blatant disregard of the Bank's procedures and rules had cited the safety of his family in view of threats from gangsters in Sabah.

The Industrial Court found that the employee knew and/or had been alerted on the forged Letter of Intent and Letter of Confirmation and, despite being an experienced banker, had acted imprudently and recklessly in proceeding with the Disbursements. It went on to hold that the employee's serious misconduct, which exposed the Bank to the repayment risk for an amount exceeding RM20 million, warranted and justified his dismissal.

In dismissing the employee's application for judicial review against the Industrial Court's decision, the High Court agreed that the employee was dismissed with just cause and excuse and further held that it had no reason to interfere with the findings of fact of the Industrial Court as they were supported by evidence.

The Industrial Court award may be viewed [here](#).

The Bank was represented by partner Shariffullah Majeed and associate Arissa Ahrom of [Lee Hishammuddin Allen & Gledhill](#).

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