

IN THE HIGH COURT OF MALAYA AT KUALA LUMPUR

(COMMERCIAL DIVISION)

SUIT NO: _____ 2006

BETWEEN

1. Roziwati Binti Mohd Rashid
2. Bee Boon Sing
3. Shamsul Haq Bin Md Noh
4. Hamidah Bin Othman
5. Faizul Johan Bin Abdul Manaf
6. Mohd Noor Roslan Bin Kandan
7. Siti Kasiam Binti Omar
8. Hanizah Binti Abd. Wahab
9. Muhamad Fuad Bin Arsad
10. Indram A/L G Sundram
11. Roshima Binti Mohd Sharif
12. Muhammad Bin Isykandar Bin Ibrahim
13. Mohd Kamal B. Mohd Hussin
14. Muhamad Hamdan Bin Mohd Yusof
15. Othman Bin Ahmad
16. Mustakim Mohd Adnan
17. Siti Azma Binti Jusoh @ Yusof
18. Norashikin Binti Shaari
19. Noor Baizura Binti Sofian
20. Md Safawat Hossain
21. Munawirah Binti Pardi
22. Abdul Rahman Bin Yusof

23. Zainal Ariffin Bin Abd Hamid
24. Abdullah Bin Mamat
25. Azmi Bin Zakaria
26. Roseni Binti Abdullah
27. Mohamed Amin Bin Alias
28. Nur Liyana Gan Binti Abdullah
29. Tee Boon Chew
30. Chen Hooi Teng
31. Mariyani Binti Mohd Yussof
32. Hanapiah Bin Zainal
33. Ab Rahim Bin Ab Rahman
34. Shukri Bin Hassan
35. Ahmad Fadzwan Bin Abdul Wahab
36. Norhayati Binti Md Jamil
37. Mohamad Rozaidi Bin Mohammad Ramly
38. Sa'diah Binti Md Said
39. Wong Moi
40. Teoh Lie Wan
41. Low Choon Bee
42. Wong Mun Khuan
43. Lee Whay Cheng
44. Chin Yin Leng
45. Thirgahrajah A/L Poopalarajah
46. Khasmanizar Bin Khaironi
47. Badrishah Bin Khaironi

48. Ranjit Singh A/L Dharam Singh
49. Abdul Latiff Bin Badaruddin
50. Zurinah Binti Sofian
51. Che Rozilan Bin Ab Rahim
52. Morgan A/L Saminathan
53. Indrani A/P Marimuthu
54. Lim Chen Yao
55. Koay Chun Chong
56. Fauezah Binti Mohd Zahami
57. Fadzilah Binti Mohd Zahami
58. Mohd Fakarudin Bin Mohd Zahami
59. Syuhaizat Bin Md Ali
60. Ida Zafrina Binti Azizul Hasan
61. Hairulnizam Bin Harun
62. Jelani Bin Othman
63. Chandra Mohan A/L Shanmughan
64. Mohd Kamal Airein Bin Mohd Kaus
65. Fansuri Bin Sheikh Feruq
66. Faizal Bin Sheikh Feruq
67. See Tho Kok Hong
68. Ezuria Binti Md Nazri
69. Megat Zahiran Bin Megat Hashim
70. Norzalina Binti Ramli
71. Siti Rashidah Binti Mohd Rasid
72. Azlina Binti Mohd Rasid

73. Deen Izwan Bin Abas
74. Zuraida Binti Alias
75. Alikin Bin Ahmad
76. Aidel Bin Johari
77. Faizul Azli Mohd Rahim
78. Maria Binti Madon
79. Norliz Azlina Binti Arbain
80. Noreena Binti Azam
81. Norleen Binti Azam
82. Azam Bin Daud
83. Abdul Aziz Bin Rosidi
84. Normah Binti Borhan
85. Nordin Bin Hj. Hitam
86. Khairani Binti Omar
87. Razali Bin Mat Ail
88. Azizah Binti Osman
89. Kesavan A/L Letchumanan
90. Khairuddin Bin Yunus
91. Tumi Khairina Binti Khairuddin
92. Khairul Hafiz Bin Khairuddin
93. Mohd Firdaus Bin Ismail
94. Ng Foong Keun
95. Jamal Bin Paiman
96. Siti Nor Dailah Binti Abd Talip
97. Norashikin Binti Shaari

98. Yew Foo Chun
99. Mohamed Amin Bin Alias
100. Mohd Riddhuan Bin And Malek
101. Siti Safura Binti Mohamad Nazir
102. Chee Moi Hsia ... PLAINTIFFS

AND

1. DATARAN MANTIN SDN BHD
(Company No.: 239702-W)
2. TANG CHAI YOONG
3. OOI CHONG SEONG
4. PANTAI LEGENDA MANAGEMENT SDN BHD
(Company No.: 445092-A)
5. MULTIMEDIA NERVOUS SYSTEM SDN BHD
(Company No.: 513929-T)
6. YAP SHOW KUM
7. MAJLIS PERBANDARAN NILAI
(previously known as MAJLIS DAERAH SEREMBAN)
8. BUMIPUTRA COMMERCE BANK BERHAD (Company No.: 13491-P)
9. SOUTHERN BANK BERHAD (Company No.: 5303-W)
10. AFFIN BANK BERHAD (Company No.: 25046-T)
11. AMBANK (M) BERHAD (Company No.: 8515-D)
12. EON BANK BERHAD (Company No.: 92351-V)
13. MALAYAN BANKING BERHAD (Company No.: 3813-K)
14. PUBLIC BANK BERHAD (Company No.: 6463-H)
15. STANDARD CHARTERED BANK MALAYSIA BERHAD
(Company No.: 115793-P)
16. BANK ISLAM MALAYSIA BERHAD (Company No.: 98127-X)
17. MALAYSIA BUILDING SOCIETY BHD (Company No.: 9417-K)

18. RHB BANK BERHAD (Company No.: 6171-M)

...DEFENDANTS

STATEMENT OF CLAIM

I. The Parties

A. *The Plaintiffs*

1. The Plaintiffs are Malaysian citizens having an address for service at No. 157-1, Jalan Segambut, Kuala Lumpur. Further particulars of the Plaintiffs are set out in Annexure A attached to the Writ of Summons.

B. *The Defendants*

(i) The Development Parties

2. The 1st Defendant is a private limited company having a registered address at 83A, Jalan SS15/5A, Subang Jaya, Selangor. The 1st Defendant maintains its principal place of business at Lot 1.01, First Floor, Level 3, Plaza Uncang Emas, 85, Jalan Loke Yew, Kuala Lumpur. The 1st Defendant's principal business activities are property development and investment holding.
3. The 2nd and 3rd Defendants were and are at all material times the directors of the 1st Defendant. The 2nd Defendant was further at all material times the Chief Executive Officer of the 1st Defendant.
4. The 4th Defendant is a private limited company having a registered address at 79B-2, Jalan SS 15/5A, Subang Jaya, Selangor. The 4th Defendant maintains its principal place of business at Lot 1.01, First Floor, Level 3, Plaza Uncang Emas, 85, Jalan Loke Yew, Kuala Lumpur.

5. The 5th Defendant is a private limited company having a registered address at 83A, Jalan SS15/5A, Subang Jaya, Selangor. The 5th Defendant maintains its principal place of business at Lot 1.01, First Floor, Level 3, Plaza Uncang Emas, 85, Jalan Loke Yew, Kuala Lumpur.
6. The 6th Defendant was at all material time, and still is, a shareholder and director of the 5th Defendant at all material times. The 6th Defendant was a director of the 1st Defendant from 12.10.1999 to 16.01.2001. The 6th Defendant is the wife of the 2nd Defendant.
7. The 7th Defendant is the local government authority responsible for the administration of the local authority area of the following district ('mukim') in the state of Negeri Sembilan:
 - (a) Mukim Setul;
 - (b) Mukim Labu;
 - (c) Mukim Rantau;
 - (d) Mukim Lenggeng;
 - (e) Mukim Pantai;
 - (f) a part of Rasah;
 - (g) a part of Ampangan; and
 - (h) a part of Seremban.

7.1 The 7th Defendant's predecessor was Majlis Daerah Seremban ('MDS').

7.2 MDS was established on 01.03.1979 by virtue of Negeri Sembilan Government Gazette 128/1979. MDS arose through the amalgamation of 6 local authorities, namely, Majlis Tempatan Pajam, Majlis Tempatan Mantin, Majlis Tempatan Lembaga Bandaran Rantau, Majlis Tempatan Lembaga Bandaran Nilai,

Majlis Tempatan Lembaga Bandaran Nilai and Majlis Tempatan Lembaga Bandaran Labu.

- 7.3 The local authority area of MDS was upgraded to a 'township' on 02.02.2002 vide Negeri Sembilan Government Gazette No. 6 of 2002 and the 7th Defendant was thereafter named and styled the Municipal Council of Nilai.
 - 7.4 Under the administration of the 7th Defendant, the local area of Mantin is now part of District ('Mukim') of Setul.
 - 7.5 To that end, the 7th Defendant was at all material times vested by law under the Local Government Act, 1965 and all subsidiary legislation enacted thereunder, with the necessary powers. The 7th Defendant was further under the duty to act responsibly in law and within the purview and purpose of the said legislation.
8. The 2nd Defendant was and is the controlling mind and will behind the 1st Defendant and the other companies in the group of companies connected with the 1st Defendant. Further or in the alternative, the directors of the said companies were and are accustomed to act in accordance with the directions or instruction of the 2nd Defendant and/or were accustomed to acting in concert with each other. The said companies are:
- 8.1 the 4th Defendant;
 - 8.2 the 5th Defendant;

- 8.3 Kumpulan Langkawi Resort Capital Sdn Bhd (Company No. 240391-M). The 2nd and 3rd Defendants are directors of Kumpulan Langkawi Resort Capital Sdn Bhd;
 - 8.4 Dataran Capital Holdings Sdn Bhd (Company No. 430255-M). The 2nd and 6th Defendants are shareholders and directors of Dataran Capital Holdings Sdn Bhd;
 - 8.5 Kolej Legenda Sdn Bhd (Company No. 060518-A) which owns 100% of the shareholding of the 4th Defendant;
 - 8.6 Langkawi Resorts Development Sdn Bhd (Company No. 161650-W) which acted and still act as the project manager of the service apartments of BUTL (this reference is defined at paragraph 15 below); and
 - 8.7 Ample United Construction (M) Sdn. Bhd (Company No. 145786-W) which was the contractor of BUTL (this reference is defined at paragraph 15 below).
9. The companies set out in paragraph 8 above represent themselves as belonging to the Kumpulan Langkawi Resorts Group of Companies (“KLR group of companies”). The 2nd and 3rd Defendants were the founders of the KLR group of companies.
 10. The 3rd and 6th Defendants at all material times acted on the instructions or directions of and/or otherwise in concert with the 2nd Defendant.
 11. The 2nd, 3rd and/or 6th Defendants at all material times had acted as agents of the 1st, 4th and/or 5th Defendants.

(ii) The Financial Institutions

12. The 8th to 18th Defendants are registered financial institutions in Malaysia (the “Banks”).

12.1 The 8th Defendant has a registered address at 6, Jalan Tun Perak, 50050 Kuala Lumpur.

12.2 The 9th Defendant has a registered address at Level 3, Menara Southern Bank, 83, Medan Setia 1, Plaza Damansara, 50490 Kuala Lumpur.

12.3 The 10th Defendant has a registered address at 17th Floor, Menara Affin, 80, Jalan Raja Chulan, 50200 Kuala Lumpur.

a. BSN Commercial Bank (Malaysia) Berhad’s business and operations merged with those of Perwira Affin Bank Berhad in August 2000 to form the 10th Defendant sometime in or around January 2001.

b. By reason of the said merger, all rights and liabilities of, *inter alia*, BSN Commercial Bank (Malaysia) Berhad were assigned to the 10th Defendant.

12.4 The 11th Defendant has a registered address at 22nd Floor, Bangunan Ambank Group, No. 55, Jalan Raja Chulan, 50200 Kuala Lumpur.

- a. MBf Finance Berhad's business and operations merged with those of Arab Malaysian Finance Berhad in or around June 2002.
- b. Arab Malaysian Finance Berhad subsequently changed its name to AmFinance Berhad and on 01.06.2005 merged with AmBank Berhad to form the 11th Defendant.
- c. By reason of the foregoing, all rights and liabilities of, *inter alia*, the following financial institutions were assigned to the 11th Defendant:
 - i. MBf Finance Berhad; and
 - ii. Arab Malaysian Bank Berhad.

12.5 The 12th Defendant has a registered address at 12th Floor, Wisma Cycle Carri, 288, Jalan Raja Laut, 50350 Kuala Lumpur.

12.6 The 13th Defendant has a registered address at 14th Floor, Menara Maybank, 100, Jalan Tun Perak, 50050 Kuala Lumpur.

- a. Mayban Finance Berhad's business and operations were vested over and merged with those of the 13th Defendant on 01.10.2004.
- b. By reason of the said merger, all rights and liabilities of, *inter alia*, Mayban Finance Berhad were assigned to the 13th Defendant.

- 12.7 The 14th Defendant has a registered address at 27th Floor, Menara Public Bank, 146, Jalan Ampang, 50450 Kuala Lumpur.
- 12.8 The 15th Defendant has a registered address at No. 2, Jalan Ampang 50450 Kuala Lumpur.
- 12.9 The 16th Defendant has a registered address at 14th Floor, Darul Takaful, Jalan Sultan Ismail, Kuala Lumpur.
- 12.10 The 17th Defendant has a registered address at Tingkat 11, Wisma MBSB, 48, Jalan Duncun, Damansara Heights, Kuala Lumpur.
- 12.11 The 18th Defendant has a registered address at Level 10 Tower one, RHB Centre, Jalan Tun Razak, Kuala Lumpur.

II. Essential Facts

A. Agreement to develop the Land

13. The 7th Defendant was at all material times the owner of PT No. 3920, PT No. 3927, PT No. 3932, PT No. 3928, PT No. 3977, PT No. 3976, PT No. 3978, PT No. 3982, PT No. 3984, PT No. 3986, PT No. 3925, P.T. 3916 and PT No. 3933, Batu 12 in the Mukim of Setul, Daerah Seremban, Negeri Sembilan (collectively referred herein as the “Lands”).
14. The 1st Defendant and the 7th Defendant purportedly entered into a joint-venture agreement to develop the Lands. To that end, a power of attorney was purportedly executed by the 7th Defendant in favour of the 1st Defendant (the “PA”).

B. *Offer for sale of Apartments to the Plaintiffs*

15. Subsequently, in or around 2000, a development project called Bandar Universiti Teknologi Legenda (“BUTL”) was launched in connection with the Lands in which apartments were offered for sale jointly by the 1st and 7th Defendants. The 1st Defendant was the developer of the project. Development works were completed in the period of 2002 to 2004. In or around the same period certificates of fitness were issued.
16. In order to induce the Plaintiffs into purchasing the said apartments, the 1st Defendant, and its agents including the 2nd, 3rd and 6th Defendants with the acquiescence of the 7th Defendant, in effect directly and/or indirectly represented that:
 - 16.1 the apartments were ‘serviced apartments’;
 - 16.2 the apartments were being developed as part and parcel of a larger development described as a university township. The university township is known as Bandar Universiti Teknologi Legenda (“BUTL”);
 - 16.3 a university or university campus would be located in BUTL;
 - 16.4 public and/or private universities would set up campuses in BUTL;
 - 16.5 the universities set out in 16.3 and 16.4 would be built, managed and/or operated by the 1st Defendant and/or companies under KLR Group of Companies and/or with association with other companies;

16.6 the fact that BUTL was intended to be a university township translated into gains for potential purchasers as:

a. the apartments were worth the value and price being paid for by the Plaintiffs;


b. the value of the apartments would keep or appreciate. In this regard:

i. the apartments, being 'serviced apartments' would have commercial value as opposed to normal apartments which are merely residential;

ii. BUTL and the apartments would be equipped with infrastructure to facilitate campus-wide networking and internet access;

iii. BUTL would have commercial developments including a hotel and recreational parks such as a theme park and/or a water park;

iv. the 1st Defendant would only develop and build limited units of apartments in BUTL, i.e., 3804 units only and that there would be sufficient demand for these units;

v. the purchasers of the apartments would have access to recreational facilities such as a clubhouse with  facilities (with free membership), playgrounds,

sport fields and racquet-ball courts and a lake garden;

and

- c. there would be assured rental from persons involved with the university facility including students and staff. In this regard:
 - i. there would an immediate student population of 6,000 in BUTL upon completion of the apartments;
 - ii. there would be a steady increase in student population in BUTL thereafter; and
 - iii. by 2005, the student population would reach 15,000 to 20,000;

16.7 the 1st Defendant was prepared to guarantee returns on the investment at the rate of 8% of the purchase price per annum for a finite period of up to 15 years;

16.8 based on the foregoing, it was represented that the purchase of the apartments was a sound investment. Further in connection with the above, it was represented that:

- a. the 1st Defendant would have the first option to buy back the apartments at market value. The Plaintiffs were as such assured that there was a ready buyer for their apartments;

- b. the Plaintiffs would enjoy free stays in the apartments for up to 7 days a year. This was attractive to the Plaintiffs in view of the claim of future developments of BUTL including the building of recreational facilities and a water park and/or a theme park;
- c. the legal fees for the sale and purchase agreements would be paid for by the 1st Defendant;
- d. the apartments' maintenance fees for the first year of possession would be waived;

16.9 further to the foregoing:

- a. electrical fittings would be installed for certain apartments free of charge;
- b. the 1st Defendant would apply for bank loans on behalf of the purchasers.

17. The said representations were contained in various promotional materials and/or made orally on various occasions (including media events) to the Plaintiffs by agents of the 1st Defendant including the 2nd, 3rd and 6th Defendants, with the acquiescence of the 7th Defendant. The 1st Defendant, with the acquiescence of the 7th Defendant, was and is directly/indirectly responsible for the said representations. Further and in any event, the said representations were to be inferred from and/or supported by the existence of the various materials, promotional or otherwise, which the 1st Defendant, with the acquiescence of the 7th Defendant, was and is directly/indirectly responsible.

18. As further inducements and with a view to creating an impression of viability and credibility, the 1st Defendant, with the acquiescence of the 7th Defendant, had:

18.1 promised commissions to purchasers who successfully introduced friend(s) to purchase the apartments. Additional commissions were also promised in respect of subsequent onward successful introductions which were related to the initial successful introduction;

18.2 carried out a lucky draw contest for the purchasers;

18.3 carried out an extensive marketing exercise including media events, road shows and advertising campaign in various media;

18.4 engaged and/or exploited, *inter alia*, the following public and political figures to endorse directly/indirectly the project in BUTL:

a. the then Chief Minister of Negeri Sembilan Dato' Seri Utama Tan Sri Haji Mohd Isa bin Dato' Haji Abdul Samad who *inter alia* officiated the launching of BUTL project on 27.02.2000, issued an undated foreword supporting the BUTL project and allowed the same to be used in promotional materials distributed by the 1st Defendant in the sale of the apartments with the acquiescence of the 7th Defendant;

b. the then President ("Yang Dipertua") of the 7th Defendant Ahmad Zakki bin Yahya who *inter alia* issued an undated

foreword under the letterhead of the 7th Defendant stating the 7th Defendant's direct involvement in the BUTL project and its support of the same and allowed the same to be used in promotional materials distributed by the 1st Defendant in the sale of the apartments with the acquiescence of the 7th Defendant;

- c. the then Vice Chancellor of University Technology of Malaysia, Datuk Dr. Ahmad Zaharudin b. Idrus who *inter alia* issued an undated foreword under the letterhead of University Technology of Malaysia endorsing BUTL and allowed the same to be used in promotional materials distributed by the 1st Defendant in the sale of the apartments with the acquiescence of the 7th Defendant;
- d. the then Deputy Minister of Energy, Communications and Multimedia Datuk Tan Chai Ho who *inter alia* officiated the launching of the 2nd phase of the BUTL project in or around April 2000;
- e. the then Deputy Minister of Education, Dato' Hon Choon Kim who *inter alia* officiated the launching of the building of an academic centre in BUTL on 31.03.2001.

19. The sale by the 1st Defendant of the apartments was carried out in stages and in phases within the stages.

19.1 Some 3804 units of apartments were sold in two stages. The first stage had 9 phases involving some 2000 units. The launch of the second stage, involving some further 1000 units was carried out sometime in April 2000.

19.2 At each of the phases, the 1st Defendant with the acquiescence of the 7th Defendant would represent that the previous units on offer were all sold out. This was done to induce the Plaintiffs to purchase the apartments.

C. *Purchases of apartments by the Plaintiffs*

20. Pursuant to the foregoing:

20.1 sales were made by the 1st Defendant with the acquiescence of the 7th Defendant through:

- a. direct sales by representatives of the 1st Defendant;
- b. agents appointed for that purpose for commissions; and
- c. direct selling methods involving payments of commissions;

20.2 in connection with paragraph 20.1 above, the 1st and 7th Defendants entered into Sale and Purchase Agreements and Deeds of Mutual Covenants with the Plaintiffs (collectively referred to as the "SPAs"). Details of the SPAs of each of the Plaintiffs are set out in Annexure B to the Statement of Claim;

20.3 the 4th Defendant, in actuating, and/or as a mechanism for, the representations made by the 1st Defendant regarding assured rentals, entered into Guarantee Return Scheme Agreements with the Plaintiffs ("GRS"). Details of the GRS of each of the Plaintiffs are set out in Annexure B to the Statement of Claim;

- a. in procuring the execution of the GRS Agreements by the Plaintiffs, the 1st Defendant had acted in complicity with the 4th Defendant. The 2nd Defendant had played an integral role by representing that the termination provision contained in the GRS Agreements was intended to apply only to force majeure situations and that in any event the 1st and/or 4th Defendants would honour the obligation set out under the GRS Agreements fully. These representations were later made by other agents of the 1st and/or 4th Defendants;
- b. further, or alternatively the Plaintiffs will contend that by reason of the said representations and the circumstances set out above and the consequent reliance upon them, collateral contracts had come into existence as regard recourse to the said termination provision and/or the 4th Defendant was at all material times and still is estopped from relying on the same;

20.4 the SPAs and the GRS were signed at the same time mostly in the 1st Defendant's office. The Plaintiffs were not afforded an opportunity to obtain independent legal advice;

20.5 further, the 5th Defendant entered into agreements with some of the Plaintiffs for the purpose of fitting out the apartments purchased by the Plaintiffs with the necessary infrastructure for networking with a view to enhancing the value of the apartment units purchased.

D. Endorsement by the 8th, 9th, 10th, 15th and 18th Defendants

21. The 8th, 9th, 10th, 15th and 18th Defendants (the “endorsing Banks”) endorsed the development project by acquiescing to the 1st Defendant with the acquiescence of the 7th Defendant presenting the development project as being one which was supported by the endorsing Banks.

21.1 In this regard, the endorsing Banks had *inter alia* allowed themselves to be cited and presented as banks associated with the BUTL project in the 1st Defendant’s promotional materials including advertisements in major newspapers.

E. *Financing*

22. The Plaintiffs obtained end financing (all types of financing including Islamic banking financing) from the Banks for the purpose of financing the purchase of the apartments. Particulars of this are set out in Annexure C to the Statement of Claim. The end financing agreements entered into included loan agreements, assignments and loan cum assignment agreements, and where the end financing were Islamic banking financing, property purchase agreements and property sale agreements.

22.1 Hak-hak Plaintiff-plaintif di bawah SPA telah diserahkan sebagai sekuriti kepada Bank-bank tersebut.

22.2 Di mana pembiayaan kewangan akhir merupakan pembiayaan kewangan perbankan Islam, perjanjian atau pengurusan di bawah pembiayaan kewangan perbankan Islam yang dipraktis di Malaysia terpakai.

F. *Events after purchase*

23. Subsequent to such purchase:

23.1 the university township has to date not been established. In this regard:

- a. there is no university or university campus in BUTL;
- b. there are no campuses of public and/or private universities in BUTL. There are however private colleges operated by the KLR group of companies of which the student population is negligible;
- c. as a result of, and subject to, the foregoing, there are no university students studying and/or residing in BUTL;
- d. the so-called university campus merely consists of the apartments, now characterised as student hostels and several buildings, used by the private colleges, without any universities or students;

23.2 the apartments are not worth the value attached to them. In this regard:

- a. they are of a quality other than as represented and/or in any event of an inferior quality;
- b. the contextual circumstances promised to add value to the apartments have not materialised. In particular:
 - i. the amount of population residing in BUTL is very low and not as represented by the 1st Defendant, with the acquiescence of the 7th Defendants;

- ii. the number of apartments in BUTL is overwhelmingly high compared to the population in BUTL;
- iii. there are very few commercial developments in BUTL which are of no real commercial impact. There are no recreational parks;
- iv. the recreational facilities provided in BUTL are very limited and not as represented. In particular, no clubhouse has been built for use by the Plaintiffs;
- v. the foregoing has resulted in no, or very low, demand for tenancy and/or forward sales of the apartments to third parties;
- vi. the foregoing has further resulted in the 7 day free stay option having no value or very little value, contrary to the representations of the 1st Defendant, with the acquiescence of the 7th Defendants;

23.3 the foregoing has further resulted in no, or very low, demand for commercial developments in BUTL;

23.4 a significant number of the apartments are not occupied and left vacant due to a lack of demand. This is despite efforts on the part of some of the Plaintiffs to rent out or sell the apartments;

23.5 the Plaintiffs are as such not able to realise the value of the apartments as represented;

- 23.6 further, the apartments are not 'serviced apartments';
- 23.7 the payments due under the GRS were made arbitrarily by the 4th Defendant. In most instances, the payments were not made promptly but were delayed by months. At the time of filing of the writ, outstanding payments remain due for certain Plaintiffs. In some instances, no payments have been made at all. In other instances, the GRS was terminated summarily and in bad faith for there being no basis for the same;
- 23.8 some of the Plaintiffs have attempted to re-sell the apartments to the 1st Defendant but their offers were not accepted;
- 23.9 most of the Plaintiffs had to pay the apartments' maintenance fees for the first year of possession despite the representation that the same would be waived;
- 23.10 the purchasers of the apartments including the Plaintiffs have effectively funded the BUTL project for the 1st Defendant and/or the KLR group of companies;
- 23.11 the Plaintiffs are encumbered with bad outstanding liabilities to the Banks pursuant to their financing obligations;
- 23.12 further to the foregoing, the Plaintiffs who were initially promised free electrical fittings were made to pay for the same.
24. Further, the Plaintiffs have made, and continue to make, payments for maintenance charges to the 1st Defendant, statutory charges to the 7th

Defendant and/or other relevant parties and utility charges to the relevant utility providers.



25. The 1st and 7th Defendants did not fully or did not appraise the Plaintiffs of the risks involved in purchasing the apartments which were intended to be used primarily for as student hostels for a university township.

G. Adjacent Development on another Plot of Land

26. The 14th and 34th Plaintiffs had further purchased another apartment offered for sale by the 1st Defendant built on land held under Geran 75044 Lot No. 1502 Mukim Sentul, Daerah Seremban, Negeri Sembilan Darul Khusus (the 'DM Land').

27. In this regard, save as that the DM Land belongs to the 1st Defendant, the 14th and 34th Plaintiffs repeat paragraphs 14 to 25 above with references to the Land substituted with the Adjacent Land save references to the 7th Defendant.

H. Previous Similar Scheme

28. The 1st to 6th Defendants had on a previous occasion through their KLR group of companies carried out similar transactions to the forego  in Langkawi, Kedah (the "Langka  project"). The 1st to 6th Defendants either by themselves or through their KLR group of companies made similar representations:

28.1 that the development would be used to serve universities and private colleges;

28.2 that the development would translate into gains for potential purchasers as:


- a. the value of the properties would keep or appreciate; and
- b. there would be assured rental from persons involved with the university and private colleges facility including students and staff.

29. The Langkawi project is now abandoned. The private colleges have now moved to BUTL.

III. Legal Contentions

A. Power of Attorney

30. The 1st Defendant carried out the following purportedly pursuant to a power of attorney executed by the 7th Defendant in favour of the 1st Defendant on 27.11.1992 (the "PA"):

30.1 executed  necessary documents as attorney for the 7th Defendant in respect of the development of the Lands;

30.2 executed all SPAs with the Plaintiffs in respect of the development for itself as well as attorney for the 7th Defendant;

30.3 executed all necessary documents as attorney for the 7th Defendant for the purpose of raising bridging finance for the purposes of the development; and

- 30.4 executed all land dealings in relation of the Lands on behalf of the 7th Defendant in respect of the development.
31. Further to the foregoing, no officer of the 7th Defendant executed any of the legal documentation relevant to any aspect of the Development, i.e. the BUTL project.
32. In this regard, the PA:
- 32.1 was purportedly deposited with the High Court of Malaya at Seremban and registered as 1126-92 by the registry of the court;
- 32.2 was a power of attorney given by the 7th Defendant expressed to be irrevocable in favour of the 1st Defendant;
- 32.3 was not duly authenticated or attested within the meaning of sub-sections 3(1) and (2) of the Powers of Attorney Act 1949 (Revised 1990) (the "PA Act");
- 32.4 was not complete in that while:
- a. reference was made to a purported Joint Venture Agreement, the date of the same was not specified. The agreement in question was therefore uncertain; and/or
 - b. the subject matter of the PA was uncertain as though reference was made to an annexure purportedly identifying the Lands, no such annexure was annexed to the PA.

33. Further to the foregoing, the said PA amounted to a sale or an alienation of the Lands by the 7th Defendant to the 1st Defendant. In this regard:

33.1 the 7th Defendant did not obtain the State Authority, in this case the Yang di-Pertuan Besar's consent as required under proviso (i) to section 101(r) of the Local Government Act;

33.2 the monies received by the 7th Defendant from the sale or other alienation of property were not credited to a Local Authority Fund as required under proviso (ii) to section 101(r) of the Local Government Act.

34. In view of the foregoing, the Plaintiffs contend that the 7th Defendant did not have the power in law to give the PA in favour of the 1st Defendant under the Local Government Act, 1976 and subsidiary legislation. Further or in the alternative, the PA was, in any event, insufficient in law. The 1st Defendant as such did not as a matter of law have the capacity to enter into the SPAs. The SPAs are as such void.

34.1 The Banks were expected in law to know this as a matter of law and as such, all end financing agreements are similarly void as instruments arising out of, or otherwise connected with, the SPAs.

34.2 The Banks were not in law empowered or authorised to act in any manner contrary to law. Providing end financing in these circumstances was a breach of banking laws and/or the licences under which the Banks operated.

34.3 The endorsing Banks were further under a duty of care to the Plaintiffs with regard entering into the end financing relationships they did. This duty was founded on the fact of the Banks having endorsed the development and having entered the end financing relationships in the circumstances set out above. The endorsing Banks breached their duty of care for not having appraised the Plaintiffs of the fact that the 7th Defendant had no legal right to act through the 1st Defendant and in the circumstances, and in any event, by reason of it being unconscionable, are estopped from asserting their rights under the end financing agreements in connection with the foregoing.

B. Division 5, Companies Act, 1965

35. Further and in the alternative, the Plaintiffs contend that:

35.1 the offer for sale of apartments in BUTL on the basis of a GRS scheme amounted in law to an issue or offer to the public for subscription or purchase or an invitation to the public to subscribe for or purchase any interest within the meaning of Division 5 of the Companies Act, 1965 (the "CA"); and

35.2 the purchase of units by the Plaintiff of the said apartments amounted in law to a purchase of an interest within the meaning of Division 5, CA.

36. The Plaintiffs further contend the said offer and the subsequent sale to the Plaintiffs were in contravention of Division 5, CA for the reasons that follow:

- 36.1 DM was and is not a public company;
 - 36.2 No prospectus was issued in connection with the offer for sale of units in the Development; and/or
 - 36.3 No approved deed within the meaning of sections 85 and 86, CA was in force at any point in time.
37. By reason of the foregoing, the offer of units and the consequent sale of units to the Plaintiffs was void for being:
- 37.1 illegal in the light of such offer and sale being a criminal offence under section 94, CA; and/or
 - 37.2 contrary to public policy. In this regard:
 - a. the legislative aim underlying Division 5, CA was the protection of the investing public in schemes of this nature;
 - b. the nature of the events that transpired and forming the foundation of the action herein were of the type of events that Division 5, CA was intended to safeguard against;
 - c. the Plaintiffs have suffered injury of the nature that Division 5, CA was intended to safeguard against.
38. As a consequence of the foregoing:
- 38.1 the scheme was and is illegal;

38.2 further or alternatively, the scheme was contrary to public policy;

38.3 the Banks were expected in law to know this as a matter of law. The matters set out in paragraphs 34.1 to 34.3 above are repeated herein but in the context of Division 5, CA.

C. *Fraudulent misrepresentations*

39. Further or in the alternative, the 1st Defendant made fraudulent misrepresentations to the Plaintiffs which became the basis of the Plaintiffs agreement to purchase the apartments. This was done with the acquiescence of the 7th Defendant. The Plaintiffs repeat paragraphs 16 to 18 and 20 above. The representations were false, as set out in paragraph 23 above.

40. In this regard, the 1st Defendant had no basis for any real belief in the representations made and/or had acted with reckless indifference to the possibility that the representations might not be true.

40.1 This was done with the acquiescence of the 7th Defendant.

40.2 The endorsing Banks by acquiescing to their being linked with the development and as such endorsing the development had in this way been a party to the fraudulent misrepresentations. The endorsing Banks had no basis for belief in the truth of the representations made. In the circumstances, and in any event, by reason of it being unconscionable, the endorsing Banks are estopped from asserting their rights under the end financing agreements.

D. *Conspiracy to Injure*

41. Further or in the alternative, the 1st to 7th Defendants had acted in conspiracy to injure the Plaintiffs having employed wrongful means to defraud the Plaintiffs and/or having employed legitimate means with the dominant motive of injuring the Plaintiffs by taking the Plaintiffs monies through the sale of undervalued properties with no prospect of returns on investments either through capital appreciation or through returns by way of rentals.

PARTICULARS

- 41.1 The 1st Defendant with the acquiescence of the 7th Defendant induced the Plaintiffs into purchasing the said apartments by making directly and/or indirectly certain representations. These representations are set out in paragraphs 16 and 17 and 20.3 above.
- 41.2 The 1st Defendant with the acquiescence of the 7th Defendant had further induced and with a view to creating an impression of viability and credibility by carrying out certain acts. The same is set out in paragraphs 18 and 19 above.
- 41.3 The Plaintiffs repeat paragraphs 28 and 29 above.
- 41.4 The Plaintiffs repeat paragraphs 8 to 11 above.
- 41.5 The 3rd and 6th Defendants at all material times acted on the instructions or directions of and otherwise in concert with the 2nd Defendant.

- 41.6 The 2nd, 3rd and/or 6th Defendants at all material times had acted as agents of the 1st, 4th and/or 5th Defendants.
- 41.7 The 1st, 3rd and 6th Defendants were involved in planning and execution of the BUTL project. In this regard, the 3rd and 6th Defendants were made directors of the 1st Defendant on 12.10.1999. The 2nd Defendant was made a director of the 1st Defendant on 16.01.2001 and the 6th Defendant resigned as a director of the 1st Defendant on the same day.
- 41.8 The representations were false, as set out in paragraph 23 above.
- 41.9 The 1st to 7th Defendants had no basis for any real belief in the representations made or had acted with reckless indifference to the possibility that the representations might not be true. In this regard, the 1st to 6th Defendants knew or ought have known the same in view of *inter alia* their association with the companies under the KLR Group of Companies which were to built, operate and manage the universities which were to be located in BUTL.
- 41.10 Further, the 1st and 7th Defendants knew or ought to have known throughout that there were significant risks involved in building the apartments which intended to be used primarily for as student hostels for a university township and that the Plaintiffs were not appraised of the same. On the contrary, the 1st Defendant with the acquiescence of the 7th Defendant had throughout induced the Plaintiffs to form the opposite conclusion.

42. The endorsing Banks by acquiescing had lent themselves to the conspiracy. In the circumstances, and in any event, by reason of it being unconscionable, the endorsing Banks are estopped from asserting their rights under the end financing agreements.
43. Further or in the alternative, the 1st to 6th Defendants had acted in conspiracy to injure the Plaintiffs having employed wrongful means to defraud the Plaintiffs and/or having employed legitimate means with the dominant motive of injuring the Plaintiffs by taking the Plaintiffs monies through the installation of home networking facilities at highly disproportionate sums with no prospect of returns on investments either through capital appreciation or through returns by way of rentals.

PARTICULARS

- 43.1 The 5th Defendant is an associate company of the 1st Defendant, who in turn owns almost 75% shares of the 5th Defendant. The other shareholders include the 3rd and 6th Defendant.
- 43.2 The 2nd and 6th Defendants are directors of the 5th Defendant.
- 43.3 The 5th Defendant was established 10.05.2000 while the BUTL project was launched sometime in late 1999.
- 43.4 The 5th Defendant, with the complicity and/or acquiescence of the 1st Defendant, represented to the purchasers of the apartments inviting the purchasers to install home networking facilities in their apartments stating that the university campus would be set up with a complete campus-wide area networking connecting the entire campus in BUTL and with other campuses nationwide and worldwide through the internet. The home

networking facilities would allow the purchasers to access the campus-wide area networking and the internet.

43.5 The 5th Defendant further represented that the home network installation would enhance the value of the apartments.


43.6 The 5th Defendant further entered into an arrangement with the 4th Defendant regarding payment of the installation fees by way of deduction under the GRS. This payment option was similarly represented to the purchasers.

43.7 The fee of the installation ranged from RM 8,000 to RM 12,000 per unit. A premium was imposed for payments by way of deduction under the GRS and was incorporated into the fee.

43.8 Pursuant to the said representations, the 5th Defendant installed a network of Cat 5 cable or its equivalent in the apartments of the Plaintiffs who opted for the said installation.

43.9 The costs of the home networking installation would be around the region of RM 500 or less per unit.

43.10 The Plaintiffs who opted for the said installation can only use the said home networking to access the local area network but not to the internet.

43.11 Having installed  the home networking facilities, the value of the apartments was not enhanced.

E. Negligent Misrepresentation

44. Further or in the alternative, the 1st Defendant with the acquiescence of the 7th Defendant made representations to the Plaintiffs negligently and/or recklessly, which became the basis of the Plaintiffs agreement to purchase the apartments. The Plaintiffs repeat paragraphs 16 to 18 above. The representations were false, as set out in paragraph 23 above.
45. At the time of making the said representations, the 1st Defendant with the acquiescence of the 7th Defendant intended and they well knew or ought to have known that:
- 45.1 the Plaintiffs were interested to purchase the apartments;
- 45.2 the Plaintiffs would rely upon the said representations; and
- 45.3 the Plaintiffs would be induced thereby to purchase the apartments.
46. In the premises, the 1st Defendant with the acquiescence of the 7th Defendant were under a duty to take care in the making of the said representations to the Plaintiffs.
47. In breach of the said duty, the 1st Defendant with the acquiescence of the 7th Defendant were guilty of negligence in making the said representations.

PARTICULARS

- 47.1 Making the said representations without any or any proper factual foundation in support of the same.
- 47.2 Failing to make a proper assessment of the future demand for the apartments and/or university.

- 47.3 Failing to make a proper valuation of the apartments.
- 47.4 Failing to take any or any reasonable steps to ascertain the true worth of the apartments.
48. In this regard, the endorsing Banks by acquiescing to their being linked with the development and as such endorsing the development had similarly been a party to the negligent misrepresentations in that the endorsing Banks did not have any basis for belief in the truth of the representations made. In the circumstances, and in any event, by reason of it being unconscionable, the endorsing Banks are estopped from asserting their rights under the end financing agreements in connection with the foregoing.

F. Unjust Enrichment

49. The 1st to 6th Defendants had enriched themselves in unjust circumstances by way of the scheme outlined above at the expense of the Plaintiffs.

PARTICULARS

- 49.1 The Plaintiffs repeat paragraph 20 above. The 2nd, 3rd and 6th Defendants had benefited by reason of their position and association to the 1st, 4th and 5th Defendants.
- 49.2 Pursuant to the foregoing, the Plaintiffs have expended substantial amount of monies.

49.3 The circumstances, in which the 1st to 6th Defendants enriched themselves were unjust. In this regard, the Plaintiffs repeat and adopt paragraphs 16 to 20, 23 to 41 and 43 to 47 above.

G. *Damage / Injury*

50. The Plaintiffs have expended substantial amount of monies.

51. Further or in the alternative, as a result of the matters set out above, the Plaintiffs have suffered injury and loss.

IV. Relief or Remedy

Wherefore the Plaintiffs pray for the following prayers (headers are inserted purely for convenience of reference):

A. *Power of Attorney*

1. A declaration that the Power of Attorney executed by the 7th Defendant on 27.11.1992 in favour of the 1st Defendant and registered in the Seremban High Court as 1126-92 was and is null and void in law;
2. A consequential declaration that the 1st Defendant had no capacity to enter into the SPAs with the Plaintiffs as attorney of the 7th Defendant and that the SPAs entered into by the 1st Defendant in its own capacity and as attorney for the 7th Defendant pursuant to the PA are null and void in law;
3. A consequential declaration that the end financing agreements entered into entered into between the Plaintiffs and the 8th to 18th Defendants in connection with the said SPAs including the loan agreements,

assignments and loan cum assignment agreements, and where the end financing are Islamic banking financing, property purchase agreements and property sale agreements (details of the same are set out in Annexure C) are null and void in law;

4. In the alternative to prayer 3, a declaration that the 8th to 18th Defendants are estopped from asserting their rights under the end financing agreements;

B. Division 5, Companies Act

5. A declaration that the SPAs were entered into in contravention of Division 5, Companies Act 1965 and are null and void in law for being illegal and/or contrary to public policy;

6. A declaration that the end financing agreements entered into between the Plaintiffs and the 8th to 18th Defendants in connection with the said SPAs the loan agreements, assignments and loan cum assignment agreements, and where the end financing are Islamic banking financing, property purchase agreements and property sale agreements (details are set out in Annexure C) are null and void in law;

7. In the alternative to prayer 6, a declaration that the 8th to 18th Defendants are estopped from asserting their rights under the end financing agreements;

C. Relationships between 2nd Defendant and 1st, 4th and 5th Defendants

8. A declaration that the 2nd Defendant was and is the controlling mind and will of the following companies:

8.1 the 1st Defendant;

- 8.2 the 4th Defendant;
 - 8.3 the 5th Defendant; and
 - 8.4 Kumpulan Langkawi Resort Capital Sdn Bhd;
 - 8.5 Dataran Capital Holdings Sdn Bhd;
 - 8.6 Kolej Legenda Sdn Bhd;
 - 8.7 Langkawi Resorts Development Sdn Bhd; and
 - 8.8 Ample United Construction (M) Sdn. Bhd;
9. A declaration that the 3rd and 6th Defendants acted on the instructions of and otherwise in concert with the 2nd Defendant;
- D. *Unjust enrichment*
10. A declaration that the 1st and/or 2nd and/or 7th Defendants had unjustly enriched themselves, or any one of them, at the expense of the Plaintiffs and further that, pursuant to this, the said parties, or any one of them, are constructive trustees over monies received by 1st and/or 7th Defendants in connection with the sale of apartments to the Plaintiffs for the benefit of the Plaintiffs and/or any other party this Honourable Court deems fit and/or otherwise appropriate;
11. A further declaration that the 1st and/or 2nd and/or 5th Defendants had unjustly enriched themselves, or any one of them, at the expense of the Plaintiffs and further that, pursuant to this, the said parties, or any one

of them, are constructive trustees over monies received by 1st and/or 5th Defendants in connection with the installation of networking facilities in apartments of the Plaintiffs for the benefit of the Plaintiffs and/or any other party this Honourable Court deems fit and/or otherwise appropriate;

12. The 1st and/or 2nd and/or 5th and/or 7th Defendants do within fourteen days from the date hereof provide an account by way of affidavit to the Plaintiffs of all monies received by the them or any one of them in connection with the sale of apartments to the Plaintiffs together with all benefits, income, profit or interest that might have been derived from the same;

13. The 1st and/or 2nd and/or 5th and/or 7th Defendants disgorge all monies accounted for pursuant to prayer 12 above to the Plaintiffs or such party as this Honourable Court deem fit and/or otherwise appropriate;

E. Conspiracy

14. A declaration that 1st to 7th Defendants had acted in furtherance of a conspiracy to injure the Plaintiff by fraud;

15. A declaration that the 8th to 18th Defendants are estopped from asserting their rights under the end financing agreements;

F. Other contentions

16. Alternatively, specific performance of the GRS agreements and/or damages in addition to and/or in lieu to the said specific performance;

17. Damages;

18. Equitable Damages;
19. Interest on damages or any other sum of money order to be paid or disgorged by this Honourable Court at the rate of 8% per annum from the date of an order hereof to full and final settlement of the same;
20. Costs; and/or
21. Any further and/or other order this Honourable Court deems fit and/or otherwise appropriate.

Dated this _____, 2006.

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Solicitors for the Plaintiffs

This STATEMENT OF CLAIM is filed by Messrs Ngeow & Tan of 157-1, Jalan Segambut, 51200 Kuala Lumpur solicitors for the said Plaintiffs, whose address for service is at 157-1, Jalan Segambut, 51200 Kuala Lumpur.

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