

## 法庭辩护 PLEADING

在艰难险阻的情况下自我成长

“.....人类费最大力气、冒最大危险去追求的是什么？是爱情、自由、抑或财富？通通不是，是真相。警方要查出真相，记者要报道真相。科学家要发现有关宇宙和世界如何运作的客观、观察得到，甚至可以证明的真相(provable truth)，艺术家要呈现的，则是人类生存处境与生命本质的实相。”（摘自“被扭曲的新闻与真相”林沛理·亚洲周刊·2013-05-26）



*In the High Court of Malaya at Kuala Lumpur. Civil Suit No.S4 (S1)-22-504-2000 between  
LEE Kian Seng (Plaintiff) and KLCC, PETRONAS (Defendants) Full trial on 16<sup>th</sup> July 2008*  
原告李健省 VS 被告吉隆坡市中市公司和马来西亚国家石油

**Story :** The developer of the PETRONAS ( Malaysia) Twin Towers 'Kuala Lumpur City Centre Berhad ( KLCC, Malaysia )' had invited LEE Kian Seng ( 李健省) to design a sculpture for its tower precincts in August, 1994. Within a month, Lee submitted a proposal comprising the art concept, a metal model and a preliminary sketch of the proposed sculpture. However, KLCC never got back to Lee in response to his submission. He had been left completely in the dark as to whether his proposal was accepted or not. In spite of his repeated efforts at inquiry, the developer was never heard from again as if the company had ceased to exist, that is, until four years later. Only in June 1998 was he officially informed that his proposal had been turned down, but then his metal model and drawing of the proposed sculpture had gone missing. He did try to settle the matter with KLCC amicably, but not successful. Thoroughly dejected, he had no alternative but to resort to legal action against KLCC vide Kuala Lumpur High Court Writ Summons No.S4 (S1)-22-504-2000.

The case had been before the courts for a number of years before the Honourable Judge finally gave her verdict on November 3, 2008 in favour of Lee, who received RM20,000 in compensation together with cost. To the artist, the amount of compensation was hardly proportionate to the ten long years of painstaking struggle and agony he had endured fighting a legal battle in the courts. Nevertheless his hard-earned victory has been a tremendous boost to his psyche pushing him forward to yet greater and worthier causes. All that glitters is not gold. If anything, fame and wealth hold little appeal for him. What matters to him most is **Truth and Justice**, calling entrepreneurs to render the proper respect due to art and awakening greater solicitude for art and culture in the society as a whole. And in so doing, it is his hope that the level of culture in Malaysia would rise to greater heights in sync with the advance of science and technology in a fast developing global economy.

1994年8月,吉隆坡国油双塔(PETRONAS Twin Tower)发展商KLCC(Kuala Lumpur City Centre Berhad 吉隆坡市中市公司/简称KLCC)邀请李健省(LEE Kian Seng)设计雕塑品。李健省同年9月呈上设计建议书包括创作概念雕塑模型与素描。之后一直没有收到KLCC的答覆,完全不知他的创作概念是否被采用,多次询问犹如石沉大海音信全无。4年后的1998年6月,KLCC才正式回信不采用他的设计,而作品模型与素描也不知所踪。

类似诉讼案 Kuala Lumpur High Court Suit No. S4 (S1)-22-504-2000 between LEE Kian Seng (Plaintiff) and KLCC, PETRONAS (Defendants) 史无前例。1998年开始从林碧颜律师主持的仲裁庭(Kuala Lumpur Arbitration Centre, Malaysia)谈判到高等法庭的审讯下判全程10年。其间由3间律师楼接力承办代表李健省(LEE Kian Seng)本人。第二被告PETRONAS(马来西亚国家石油)于2002年11月8日获法庭批准跳出此民事诉讼(strike out)。2008年7月16日高等法庭审讯,同年11月3日法官下判原告李健省胜诉。

更多资料请浏览: [http://www.leekianseng.com/lee\\_BioNote.htm](http://www.leekianseng.com/lee_BioNote.htm)

***This file contains the following documents:***

- 1) The Amended Writ of Summons.
- 2) Reamended Statement of Claim
- 3) Reply
- 4) Ist Defendant's Amended Statement of Defence
- 5) 3 witness statements, 3 cross examination and 3 re-examinations
- 6) Judgement of 03 November 2008

(Note: The following copied documents (translation) are for reference only. The original duplicate of the following Full Trial documents can be obtained from the Kuala Lumpur High Court Malaysia for verification.)

## ***PLEADING***

(Translation)

This Writ summons is amended on  
2002 pursuant to  
the Order dated 2002  
Senior Assistant Registrar  
High Court Kuala Lumpur

In the High Court of Malaya at Kuala Lumpur.  
(Civil Division)  
Civil Division Civil Suit No.S4(S1)-22-504-2000  
Between  
Lee Kian Seng ...Plaintiff  
And  
1. Kuala Lumpur City Centre  
2. Petroleum Nasional Berhad ("PETRONAS") ...Defendants.

### **THE AMENDED WRIT OF SUMMONS**

THE HONOURABLE TAN SRI DATO'WAN ADNAN BIN ISMAIL,  
P.S.M.,S.P.M.T.,D.SM.T.,K.M.N.,J.P.,P.P.T.,THE CHIEF JUDGE OF MALAYA IN THE NAME AND ON  
BEHALF OF HIS MAJESTY THE YANG DI PERTUAN AGONG.

TO:

- 1) KUALA LUMPUR CITY CENTRE Level 136, Tower 2, Petronas Twin Towers  
Jalan Ampang, P O Box 13214, 50802 Kuala Lumpur.
- 2) PETROLIAM NASIONAL BERHAD ("PETRONAS")  
Tower 1, Petronas Twin Towers, Kuala Lumpur City Centre, 50088 Kuala Lumpur.

WE COMMAND YOU that within eight (8) days after the service of this Writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in a cause at the suit of LEE KIAN SENG and take notice that in default of your so doing; the Plaintiff may proceed therein to judgment and execution.

Witness Faiz Bin Dzyauddin Deputy Registrar of the High Court of Malaya in Kuala Lumpur the 19 day of July 2000

Memorandum to be Subscribed on the Writ

This Writ may not be served more than twelve (12) calendar months after the above date unless renewed by order of court.

The Defendant (or Defendants) may appear hereto by entering an appearance (appearances) either personally or by solicitors at the Registry of the High Court.

The Defendant appearing personally may, if he desires, enter his appearance by post, and the appropriate forms may be obtained by sending a postal order for RM10.00 with an addressed envelope to the Registrar, High Court at Kuala Lumpur.

Indorsement of Claim

The Plaintiff's claims are for the return of the Plaintiff's Work in its original condition which was submitted to the First Defendant on 26.9.1994, or alternatively, equivalent money value for damages in lieu of the loss of the exclusive use and copyright of the Plaintiff's Work; interest; cost of this action on solicitor and client basis and any further relief that this Honorable Court deems fit and suitable.

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This Amended Statement of Claim is reamended on 2002  
pursuant to the Order dated 2002  
dated on 2002  
Senior Assistant Registrar, High Court ,Kuala Lumpur

This Statement of Calim is amended on 12<sup>th</sup> September 2000  
pursuant to Order 20 rule 3(1) Rules of High Cout 1980  
-signed-  
Senior Assistant Registrar, High Court, Kuala Lumpur

In the High Court of Malaya at Kuala Lumpur.  
(Civiol Division)  
Civil Division Civil Suit No.S4(S1)-22-504-2000  
Between  
Lee Kian Seng ...Plaintiff  
And  
1. Kuala Lumpur City Centre  
2. Ptroleum Nasional Berhad (“PETRONAS”) ...Defendants

**REAMENDED STATEMENT OF CLAIM**

1. The Plaintiff is an individual citizen of Malaysia having his address at No. 57, Jalan Rajawali, Taman Bukit Raja, 41150, Klang, Selangor Darul Ehsan was and is a renowned artist in Malaysia and abroad.
2. The First Defendant is a public company incorporated in Malaysia having registered address at Level 36, Tower 2, Petronas Twin Towers, Jalan Ampang, P.O. Box 13214, 50802 Kuala Lumpur was at all material time the developer and contractor for the construction of the Petronas Towers (“Petronas”)
- 2A. Second Defedent is a public company incorporated in Malaysia having registered address at Tower 1, Petronas Twin Towers, Kuala Lumpur City Centre,50088 Kuala Lumpur ( “Petronas”).
3. On or about 23.8.94, the First Defendant vide a letter dated 23.8.1994 invited the Plaintiff to design and submit preliminary proposals for two (2) sculpture water features for Petronas.
4. Further thereto, in a brief document dated 26.8.1994 in respect of the invitation, under the paragraph *Schedule*, inter alia, stated that the completion / handover to Petronas shall be made on 31.8.1995.

5. By a letter dated 5.9.1994, the Plaintiff accepted the invitation and informed the First Defendant that he was in the process of designing and developing the idea of the sculpture water features.
6. Further, by a letter dated 26.9.1994, Plaintiff submitted to the First Defendant, inter alia, the following:
  - a) a metal model of the proposed sculpture
  - b) preliminary sketch and concept of the artwork relating thereto;
  - c) explanatory statements and commentary on design approach, visual impact, aesthetics, significance of the work of art when completed.

The above are collectively referred to as the “**Plaintiff’s Work**”.

7. Further, the contents of the said letter dated 26.9.1994 stated, inter alia, that:
  - i) No part of the Plaintiff’s Work may be reproduced or used in any form or by any means – graphic, electronic or mechanical, including photocopying, recording, taping or by using information storage and retrieval systems or otherwise and shall not be revealed to the public without the prior written permission of the Plaintiff.
  - ii) The Plaintiff’s Work should be returned to the Plaintiff in the event it is not acceptable to the Defendants.
8. The First Defendant had duly accepted and acknowledged receipt of the matters stated in paragraphs 6 above through its agent/ representative by signing the duplicate copy of the said letter dated 26.9.1994
9. Since the Plaintiff submitted the Plaintiff’s Work on 26.9.1994, the Plaintiff was kept in the dark about the fate of the Plaintiff’s Work despite of numerous written requests to the First Defendant to return the Plaintiff’s Work.
10. After several requests had been made to return the Plaintiff’s Work, the Plaintiff was informed via First Defendant’s letter dated 20.6.1998 which was addressed to the Plaintiff’s solicitor, Messrs. Alex & Co, that the Plaintiff’s Work had been rejected by the Defendants.
11. In the same letter dated 20.6.1998, inter alia, it was impliedly stated that the Plaintiff’s Work was lost and/or not in the First Defendant’s control.
12. Plaintiff states that at all material times the Defendants were the constructive trustees and bailees of the Plaintiff’s Work and were under a duty to the Plaintiff to ensure the safety of the Plaintiff’s Work and uphold its copyright and return the same in its original condition to the Plaintiff, in the event the Plaintiff’s Work is not accepted.

13. The loss of the Plaintiff's Work occurred entirely due to the Defendant's Defendants' negligence who were responsible for the care and custody of the Plaintiff's Work while it was under its the Defendants' control.
14. Further, or in the alternative, the loss of the Plaintiff's Work occurred was due solely to the Defendant's Defendants' breach of the express terms and/ or implied terms contained in the Plaintiff's letter dated 26.9.1994 which is referred in paragraph 6 and 7 above.
15. As long as it is needed, the Plaintiff will rely on Doctrine Res Ipsa Loquitur to establish the Defendant's Defendants' negligence.
16. In the circumstances aforesaid, the Plaintiff sustained loss and damage.

Particulars of Loss

- i) the exclusive use and enjoyment of the Plaintiff's Work;
- ii) the loss of the copyright in the Plaintiff's Work;
- iii) the benefit and/ or profit of the use of the Plaintiff's Work; and
- iv) other consequential loss.

WHEREFORE, the Plaintiff prays claims against the Defendants: -

- a) the return of the Plaintiff's Work in its original condition; or
- b) alternatively, equivalent money value for damages in lieu of the loss of the exclusive use and copyright of the Plaintiff's Work;
- c) general and special damages;
- d) interest;
- e) cost of this action on solicitor and client basis;
- f) any further relief that this Honorable Court deems fit and suitable.

~~Dated on 19 day of July 2000~~

Redated on 12<sup>th</sup> day of September 2000

.....  
Solicitor for the Plaintiff

Messrs. Cheang & Ariff

THIS REAMENDED STATEMENT OF CLAIM is filed by Messrs. *Cheang & Ariff* of 39 COURT, No. 39, Jalan Yap Kwan Seng, 50450 Kuala Lumpur, solicitors for the Plaintiff abovenamed whose address is at No. 57, Jalan Rajawali, Taman Bukit Raja, 41150 Klang, Selangor Darul Ehsan.

Our Ref: LSC

And RM225.00 (or such sum as may be allowed on taxation for costs and also, if the Plaintiff obtains an Order for Substituted Service, the further sum of RM68.00 (or such sum may be allowed on taxation). If the amount claimed and costs be paid to the Plaintiff or his solicitors within 8 days after service hereof (inclusive of the day of service) further proceedings will be stayed but if it appears from the endorsement on the Writ that the Plaintiff is resident outside the scheduled territories, as defined by the Exchange Control Act, 1953 or is acting by Order or on behalf of a person so resident, proceedings will only be stayed if the amount claimed and costs is paid into Court within the said time and notice of such payment in is given to the Plaintiff or his solicitors.

*Indorsement as to solicitor and address*

This Writ is issued by Messrs Cheang & Ariff of 39 COURT, No. 39, Jalan Yap Kwan Seng, 50450 Kuala Lumpur, solicitors for the Plaintiff whose address is at No. 57, Jalan Rajawali, Taman Bukit Raja, 41150 Klang, Selangor Darul Ehsan.

Indorsement as to service

This Writ was served by

By way of personal service (or as may) (state manner of service or in accordance with the terms of an order for substituted service) on the Defendant who is known to me/ who was pointed out to me by

/who admitted to me that he was \_\_\_\_\_ at

on the \_\_\_\_\_ day of \_\_\_\_\_, 2001.

Indorsed the \_\_\_\_\_ day of \_\_\_\_\_ 2001.

.....

Process Server

HCWritSummons



(TRANSLATION)

Amended pursuant to order from Court  
dated 13<sup>th</sup> August 2002  
Pursuant to the Order 20 Rule 5(1)  
And Order 92 Rule 4  
Rule of the High Court 1980

In the High Court of Malaya at Kuala Lumpur.  
(Civil Division)  
Civil Division Civil Suit No.S4(S1)-22-504-2000  
Between  
Lee Kian Seng ...Plaintiff  
And  
1. Kuala Lumpur City Centre  
2. Petroleum Nasional Berhad ("PETRONAS") ...Defendants

**1st DEFENDANT'S AMENDED STATEMENT OF DEFENCE**

1. The First Defendant does not make any admission of the Plaintiff's alleged renown in Malaysia and abroad as stated in paragraph 1 of the Statement of Claim.
2. Paragraph 2 and 2A of the Statement of Claim is admitted.
3. Save that by the said letter dated 23.8.1994 the 1st Defendant as the developer for the 2<sup>nd</sup> Defendant that is Petroliam Nasional Berhad ("Petronas") invited the Plaintiff to submit preliminary proposals for 2 sculpture water features for the 2<sup>nd</sup> Defendant ~~Petronas~~ the 1st Defendant will deny that the Plaintiff was invited to design the same as alleged in paragraph 3 of the Statement of Claim. The 1st Defendant will further state that at all material times the 1st Defendant was acting for and on behalf of the 2<sup>nd</sup> Defendant ~~Petronas~~, as the Plaintiff at all material times well knew.

4. Paragraph 4 of the Statement of Claim is admitted. The said document further provoked that the appointment of a sculptor is scheduled for 8.10.1994.
5. Save that by the said letter dated 5.9.1994 the Plaintiff thanked the 1<sup>st</sup> Defendant for the invitation and informed the 1<sup>st</sup> Defendant that the Plaintiff was in the process of developing an idea of the sculpture which the Plaintiff hoped will be acceptable to the 2<sup>nd</sup> Defendant ~~Petronas~~, the rest of paragraph 5 of the Statement of Claim is denied.
6. Paragraph 6 of the Statement of Claim is admitted.
7. Save that letter dated 26.9.94 states that the Plaintiff's Work should be returned to the Plaintiff in the event it is not acceptable to the 2<sup>nd</sup> Defendant ~~Petronas~~ the rest of paragraph 7 of the Statement of Claim is admitted. The 1<sup>st</sup> Defendant however denies that it agreed to the contents of the said letter or that it is bound by the same.
8. Save that the 1<sup>st</sup> Defendant acknowledged receipt of the Plaintiff's Work by signing the duplicate copy of the said letter dated 26.9.1994 the 1<sup>st</sup> Defendant denies the rest of paragraph 8 of the Statement of Claim.
9. Paragraph 9 of the Statement of Claim in respect of the Plaintiff's allegation of being kept in the dark of the fate of the Plaintiff's Work is denied. The Plaintiff was kept informed by the 1<sup>st</sup> Defendant of the same.
10. Paragraph 10 of the Statement of Claim is admitted.
11. Paragraph 11 of the Statement of Claim is denied. The said letter dated 20.6.1998 never implied the matters alleged.
  - 11.1 The Plaintiff's proposal was not accepted by the 2<sup>nd</sup> Defendant ~~Petronas~~ on or about October 1994.
  - 11.2 Due to the Plaintiff's failure to collect the Plaintiff's Work within a reasonable time thereafter, the 1<sup>st</sup> Defendant packed the Plaintiff's Work into boxes and stored the same in its offices.
  - 11.3 The 1<sup>st</sup> Defendant then moved offices to their current office at the Petronas Twin Towers and those boxes containing items which were not personal in nature to the 1<sup>st</sup> Defendant or its staff were stored in a holding area within the Petronas Twin Towers.

11.4 Due to the ongoing construction activities in or around the area access to the area was restricted and by the time the 1<sup>st</sup> Defendant was able to look for the box containing the Plaintiff's Work the same could not be found.

12. Paragraph 12 of the Statement of Claim is denied.

12.1 The 1<sup>st</sup> Defendant will state that it is not a constructive trustee of the Plaintiff's Work for the Plaintiff and will deny that it was a bailee of the Plaintiff's Works

12.2 The 1<sup>st</sup> Defendant will state that they never received the Plaintiff's Works on any term express or implied or on any understanding or undertaking that it would be returned to the Plaintiff.

12.3 Further or alternatively the 1<sup>st</sup> Defendant will state that the Plaintiff was obliged to collect the Plaintiff's Works from the 1<sup>st</sup> Defendant within a reasonable time after October 1994 and by reason of the Plaintiff failing to do so within such reasonable time the Plaintiff has lost all rights, if any to the Plaintiff's Work.

12.4 In any event the 1<sup>st</sup> Defendant will state the Plaintiff's Work were kept safely and the loss of the Plaintiff's Work occurred without any negligence default or want of care on the part of the 1<sup>st</sup> Defendant. In this respect the 1<sup>st</sup> Defendant will repeat the contents of paragraph 11 above.

12.5 The 1<sup>st</sup> Defendant denies that any copyright subsists in the Plaintiff's Work as alleged. In the alternative the 1<sup>st</sup> Defendant will state that even if such alleged copyright subsists or exists the 1<sup>st</sup> Defendant denies infringing the alleged or any copyright of the Plaintiff. The 1<sup>st</sup> Defendant will state that the Plaintiff's Work were never reproduced or used by the 1<sup>st</sup> Defendant or revealed by the 1<sup>st</sup> Defendant to the public.

13. Paragraph 13 of the Statement of Claim is denied. The 1<sup>st</sup> Defendant denies any negligence on its part for the loss of the Plaintiff's Work. The 1<sup>st</sup> Defendant will again state that the Plaintiff's Works were lost without any negligence default or want of care on the part of the 1<sup>st</sup> Defendant and will repeat the contents of paragraph 11 above.

14. The 1<sup>st</sup> Defendant denies paragraph 14 of the Statement of Claim. The 1<sup>st</sup> Defendant will state that they never received the Plaintiff's Works on any term express or implied or any understanding or undertaking that it would be returned to the Plaintiff. Further or alternatively, even if such term, understanding or undertaking existed, which is denied, the loss was without any negligence default or want of care on the part of the 1<sup>st</sup> Defendant and the 1<sup>st</sup> Defendant will repeat the contents of paragraph 11 above.

15. The 1<sup>st</sup> Defendant will state that the doctrine of res ipsa loquitur cannot be relied on by the Plaintiff as alleged in paragraph 15 of the Statement of Claim.
16. The 1<sup>st</sup> Defendant denies the loss and damage allegedly sustained by the Plaintiff as stated in paragraph 16 of the Statement of Claim and will put the Plaintiff to strict proof thereof.
17. Save as hereinbefore expressly admitted the 1<sup>st</sup> Defendant denies each and every allegation contained in the Statement of Claim as if the same were set forth herein and specifically traversed.
18. Wherefore the 1<sup>st</sup> Defendant prays that the Plaintiff's claim be dismissed with costs.

~~Dated this 30<sup>th</sup> day of October, 2000.~~

.....  
Solicitors for the Defendant

Dated this the 30<sup>th</sup> day of October 2000

Solicitors for the Defendant

~~This Statement of Defence is filed by Messrs Zul Rafique & Partners, whose address is at Suite 17.01, 17<sup>th</sup> Floor, Menara PanGlobal, 8 Lorong P Ramlee, 50250 Kuala Lumpur, solicitors for the Defendant.~~

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This Amended 1<sup>st</sup> Defendant's Statement of Defence is filed by Messrs Zul Rafique & Partners, whose address is at Suite 17.01, 17<sup>th</sup> Floor, Menara PanGlobal, 8 Lorong P Ramlee, 50250 Kuala Lumpur, solicitors for the Defendant.

SHA/sh/20001078[TK]  
D:/Data/TK/klcc/sod.doc

In the High Court of Malaya at Kuala Lumpur.  
(Civil Division)  
Civil Division Civil Suit No.S4(S1)-22-504-2000  
Between  
Lee Kian Seng ...Plaintiff  
And  
Kuala Lumpur City Centre...Defendants

## Reply

1. Save and except the Statement of Defence contained admission, Plaintiff joined issues with the Defendant in its Defence.
2. In reply refers to paragraphs 1, 3 and 4 of the Statement of Defence, the Plaintiff repeats paragraphs 1, 3 and 4 of the Statement of Claim.
  - 2.1 The Plaintiff avers that he was invited by the Defendant to design and submit preliminary proposals for 2 sculpture water features for Petronas due to his profile as the renown and high calibre artist in Malaysia and abroad.
3. In reply to paragraph 4 of the Statement of Defence, the Plaintiff states that although the appointment of a sculptor was scheduled on 8.10.1994, the Plaintiff was informed by the Defendant's worker/employee or representative by the name of Encik Zulbaharim Abd. Ghaffar ("the Encik Zulbaharim") that until mid of October 1994 the decision of the same had not been made and he had asked the Plaintiff to wait until further notice.
4. Further, the Plaintiff states that he had contacted the Encik Zulbaharim several times between 1995 to 1998 to ask for the status and the return of the Plaintiff's Work but no avail.

5. The Plaintiff denies the allegations in paragraph 7 and 8 of the Statement of Defence and repeats paragraph 7 and 8 of the Statement of Claim. Further, the Plaintiff states that it was clearly stated in the Plaintiff's letter dated 26.9.1994 that the Defendant is under obligation to return the Plaintiff's Work in the event its is not accepted by the Defendant and/or Petronas. In breach thereof, the Defendant without informing the Plaintiff whether the Plaintiff's Work was accepted or not and also failed to return the same to the Plaintiff.
6. The Plaintiff denies paragraph 9 of the Statement of Defence and put the Defendant to strict proof thereof. The Plaintiff asserts that the Plaintiffs was merely informed by the Defendant that the Plaintiff's Work had been rejected by Defendant's letter dated 20.6.1998 after several demands were made against the Defendant.
7. In reply to paragraph 11 of the Statement of Defence, the Plaintiff repeats paragraph 3 and 4 above.
  - 7.1 Further, the Plaintiff denies paragraph 11.2 of the Statement of Defence and states that paragraph 11.3 and 11.4 are matters which do not relieve the Defendant of its ability.
8. In reply to paragraphs 12 and 13 of the Statement of Defence, the Plaintiff repeats paragraph 12 to 14 of the Statement of Claim and paragraphs 3 and 4 above. Further, the Plaintiff states that: -
  - 8.1 The Defendant's admission in paragraph 11.4 in the Statement of Defence that the Plaintiff's Work cannot be found shows that the Defendant had breached its obligation to the Plaintiff.
  - 8.2 The Plaintiff states that the Plaintiff is entitled to the copyright of the Plaintiff's Work. The Defendant's negligence to take care of the Plaintiff's Work while it was under its control under and return the same to the Plaintiff in the event it is not accepted is clearly an infringement of the copyright of the Plaintiff's Work.
9. In reply to paragraph 14 of the Statement of Defence, the Plaintiff repeats paragraph 14 in the Statement of Claim and states that the loss of the Plaintiff's Work is due to the Defendant's negligence.
10. In reply to paragraph 15 of the Statement of Defence, the Plaintiff repeats paragraph 15 of the Statement of Claim.
11. In reply to paragraph 16 of the Statement of Defence, the Plaintiff repeats paragraph 16 of the Statement of Claim and further states that due to the loss and damage, the Plaintiff has a valid claim against the Defendant.

Dated this 20<sup>th</sup> November 2000.

.....  
Solicitor for the Plaintiff

Messrs. Cheang & Ariff

THIS REPLY is filed by Messrs. Cheang & Ariff of 39 COURT, No. 39, Jalan Yap Kwan Seng, 50450 Kuala Lumpur, solicitors of the abovenamed Plaintiff whose address at No. 57, Jalan Rajawali, Taman Bukit Raja, 41150 Klang, Selangor Darul Ehsan.

Our reference: LSC.RAF 20000594

In the matter of Kuala Lumpur High Court  
Writ Summon No: S4-22-504-2000

Between

Lee Kian Seng

And

Kuala Lumpur City Centre Berhad

**WITNESS STATEMENT**

**DETAILS OF WITNESS**

Name : Lee Kian Seng  
NRIC No : 480810-71-5119  
Age : 60 years old  
Address : No. 57, Jalan Rajawali, Taman Bukit Raja, 41150 Kelang, Selangor Darul Ehsan.  
Occupation : Artist / Sculptor

Q1. Did you receive an invitation to design and submit preliminary proposals for two sculpture water features for Petronas.

Ans: Yes

Q2. When did you receive this invitation?

Ans: On 23/08/1994

Q3. How was this invitation communicated to you?

Ans: By way of Letter sent to my residence

Q4. Who sent you this invitation?

Ans: Kuala Lumpur City Centre

Q5. Who signed the letter on behalf of KLCC?

Ans: En. Abdul Rahim Naim, Chief Operating Officer

Q6. Did you accept the invitation from KLCC?

Ans: Yes

Q7. How did you communicate your acceptance?

Ans: By way of letter dated 05/09/1994 addressed to Tuan Hj Abdul Rahim Naim and also informed them I was in the process of designing and developing the idea of the sculpture features.

Q8. Did you receive any further instructions in respect of the invitation for the water features?

Ans: Yes

Q9. When did you receive those further instruction?

Ans: On 08/09/1994

Q10. How was this communicated to you?

Ans: By way of letter posted to my residence.

Q11. Who signed this letter?

Ans: Ahmad Zubin Hitam, Graphic Coordinator

Q12. When did you Submit sculpture to KLCC?

Ans: On 26/09/1994

Q13. How did you submit this sculpture?

Ans: Personally by way of a cover letter dated 26/09/1994.

Q14. Did the Defendant acknowledge receipt of your sculpture?

Ans: Yes

Q15. Who acknowledged receipt of the sculpture and the Letter dated 26/09/1994?

Ans: Pn. Noor Rihan Harun

Q16. Please refer to page 13 of the Non-Agreed Bundle, is this the cover letter dated 26/09/1994?

Ans: Yes, please mark it as exhibit "PI")

Q17. Did you attach any condition when submitting your sculpture to KLCC?

Ans: Yes

Q18. Please inform the court about the condition

Ans: In the event design not acceptable KLCC must return the sculpture, preliminary sketch and concept and copy of information comprising Commentary, design approach and KLCC should not



reproduce the same in any form and shall not reveal to the public without the prior written permission from me.

Q19. Did you inform Pn Noor Rihan about these conditions when you submitted your model together with the accompanying materials on 26/09/1994?

Ans: Yes

Q20. Did Pn Noor Rihan read your said letter to confirm and verify the accompanying items?

Ans: Yes

Q21. Did the Defendant inform you about the fate of your work?

Ans: No.

Q22. Did you attempt to find out on the outcome of your design from Defendant?

Ans: Yes

Q23. Who did you liase with in the defendant's office in this matter?

Ans: En Zulfahrim

Q24. How did you liase with En Zulfahrim?

Ans: Through telephone

Q25. Throughout 1994 till June 1997 you liased with En. Zulfahrim via telephone?

Ans: Yes

Q26. Did En. Zulfahrim during these period inform you about the outcome of your design?

Ans: No, because he told me that no decision has been made yet.

Q27. Did En Zulfahrim provide any suggestion in how you can resolve your predicament?

Ans: Yes, he told me to write to the CEO in order to get an answer.

Q28. When did you write to the CEO, Tn Hj. Abdul Rahim Naim

Ans: On 09/07/1997.

Q29. Did the Defendant reply to your letter?

Ans: No but En. Zulfahrim called me on 16/07/97 and confirmed that my letter had been received and asked me to forward a copy of my letter dated 26/09/1994 which had been acknowledged by Pn Noor Rihan Harun and I forwarded the said letter to him on 18/07/1997.

Q30. Did you at any time during the numerous telephone conversation and written request asked for the return of your sculpture?

Ans: Yes

Q31. Did the Defendant inform you either by way of letter or telephone to collect your design/sculpture?

Ans: Never

Q32. What did you do after being unsuccessful in your attempt of knowing the fate of your sculpture?

Ans: I appointed M/s Alex Chang to act on my behalf.

Q33. Did M/s Alex Chang write to the Defendant?

Ans: Yes

Q34. When did M/s Alex Chang write to the Defendant?

Ans: On 07/05/1998

Q35. Did the Defendant reply to the letter dated 07/05/1998?

Ans: Yes

Q36. When did the Defendant reply?

Ans: On 20/06/1998

Q37. Please refer to page 5 of the Agreed Bundle. What was their reply?

Ans: Preliminary proposal for the sculptures not accepted and the sculpture would be returned as soon as it has been located.

Q38. Did the Defendant locate your sculpture and return it to you?

Ans: No.

Q39. Were you offered any compensation for the loss?

Ans: Yes, I was initially offered RM 1,000.00 and thereafter RM 7,500.00 on 20.3.99.

Q40. Did you accept the offer?

Ans: No, I rejected it.

Q41. Can you tell the court why you rejected the offer?

Ans: The offer made was unacceptable because they had not taken into the consideration of:-

- i. the value of Plaintiff's works as renown artist / sculptor
- ii. the loss of copyright in the Plaintiff's works
- iii. the benefit and /or profit of the use of the Plaintiff's works
- iv. the exclusive enjoyment of the Plaintiff's works
- v. other consequential loss

Q42. Mr. Lee how many years of experience you have in this field?

Ans: About 40 years

Q43. Have you participated in exhibitions overseas?

Ans: Yes

Q44. Can you tell this court which countries have invited you to participate in their exhibitions?

Ans: Japan, UK, USA, Australia, India, Brazil, Indonesia, Hong Kong. (Refer to Annexure 1)

Q45. Have you won any awards?

Ans: Yes.

Q46. Can you tell this court about the awards that you have won?

Ans: 11 national awards

- (Tokyo Creation Award Overseas Prize (Batik)
- (Sands sculpture 2<sup>nd</sup> prize- for Malaysia)
- (Refer to Annexure 2)

Q47. Have you represented Malaysia in art exhibition?

Ans: Yes

Q48. When and where did you attend these exhibitions?

- Ans:
1. 1984 – Jakarta – Asean Sculpture Symposium
  2. 1988 – Hong Kong – Sands Sculpture

Q49. Based on your expertise and experience what monetary value will you place on the lost work?

Ans: RM 300,000.00

Q50. Can you tell the Honourable court how you arrived at this sum?

Ans:

1. I spent time and effort and combined with my 40 years experience and conceptualizing the design through mind process which finally evolved the artwork i.e. water feature which although is a model it is actually a finished idea which is saleable.
2. I earn a living by this means since KLCC has lost the artwork my opportunity to gain or profit from this idea is diminished forever and now can be benefited by other party who may possess this artwork due to the negligence of KLCC.
3. Metal model / painting in itself are artwork which has a value not only aesthetically / intrinsically but most importantly monetarily
4. As I am considered as father of installation in the Malaysian history and as such my sculpture has monetary value due to my international standing and recognition.

Lee Kian Seng

(480810-71-5119)

Date:

DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR  
(BAHAGIAN SIVIL)  
GUAMAN NO: S4-22-504-2000

ANTARA

LEE KIAN SENG ... PLAINTIF

DAN

KUALA LUMPUR CITY CENTRE ... DEFENDAN

NOTA KETERANGAN

Dalam Mahkamah Terbuka  
Pada: 16.7.2008  
Dihadapan  
Y.A.Dato' Tengku Maimun binti Tuan Mat  
Hakim  
Mahkamah Tinggi Malaya  
Kuala Lumpur.

Encik M.Pani bersama dengan Cik Mathavi bagi pihak Plaintiff.  
Cik Norliza bagi pihak Defendan.

Untuk Bicara Penuh.

Ikatan Pleading A.

Ikatan Dokumen Dipersetujui B.

Ikatan Dokumen Tidak Dipersetujui C.

Fakta-fakta Yang Dipersetujui D.

Isu-isu Untuk Bicara E.

PW1 - Lee Kian Seng  
- 52, Jalan Rajawali  
Taman Bukit Raja  
4150 Klang  
Selangor.  
- 60 years old  
- Artist  
- Affirms and states in English

Examination-In-Chief: refers to witness statement – WS PW1

Page 13 of C – P1

Page 16 of C – P2

**Cross Examination:**

Q: You are a sculptor.

A: I am an artist sculptor.

Q: You do both.

A: Yes.

Q: In August 1994 you received an invitation from KLCC to submit proposal of design for sculpture with water feature to be placed in Petronas Twin Tower.

A: Yes.

Q: Page 1 of B. As this the invitation you received from KLCC.

A: Yes.

Q: You accepted this invitation and your acceptance is at page 4 of C.

A: Yes.

Q: In this letter do you agree that you did not specify that you wanted your model to be returned.

A: That is not in my letter.

Q: This letter is addressed to Tuan Haji Abd. Rahim Naim.

A: Yes.

Q: Subsequently you submitted your design on 26.9.1994.

A: Yes.

Q: When you submitted your proposal can you explain what are the items that you submitted.

A: My sculpture, drawing, quotation of price – All these items are described in my letter date 26.9.1994.

Q: Your cover letter is at page 13 of C – P1.

A: Yes.

Q: To whom was it addressed to.

A: Tuan Haji Abd Rahim Taib.

Q: Although it's addressed to Tuan Hj. Abd. Rahim you submitted all these to Puan Noor Rihan.

A: Yes.

Q: Did Puan Noor Rihan acknowledge receipt of your cover letter.

A: Yes.

Q: Prior to 26.9.1994 have you met Puan Noor Rihan before.

A: No.

Q: Do you agree that Puan Noor Rihan is not the addressee of the cover letter.

A: No, it doesn't say that. But Puan Noor Rihan represented KLCC.

Q: When you give the letter to Puan Noor Rihan, you say in Answer 19 and 20 of your witness statement that Puan Noor Rihan verified the items.

A: Yes.

Q: Did you ask Puan Noor Rihan whether she has the authority to accept additional items imposed by you in your cover letter – to return model to you.

A: I can't remember.

Q: Do you agree that your cover letter is addressed to Tuan Hj. Abd. Rahim and therefore Puan Noor Rihan have no authority to accept the condition in the cover letter.

A: I don't know.

Q: Page 15 of C refers at first line b. – fee – RM388,000. At (d) sizes in full scale. Correct?

A: Yes.

Q: Therefore your fee quote of RM 388,000 is for full size model of 1.5 meter.

A: Yes.

Q: But you submitted to KLCC was only a miniature of the full size model.

A: Yes.

Q: If you were appointed to do this job you would have produced the large model.

A: Yes.

Q: Do you agree that if you had made the full size sculpture you would have been paid RM 388,000.00.

A: Yes.

Q: Did KLCC at any time promised you that you will be appointed to do this sculpture.

A: Never.

Q: Do you agree that since KLCC never promised to appoint you, you are not entitled to payment of RM 388,000.00.

A: Correct.

Q: Page 1 of B refers at para 4. Do you agree that the model had to follow this concept stated by KLCC?

A: Yes.

Q: Do you agree that this model could not be used for any other client of yours. It's made for specific concept for Petronas.

A: Yes, at that time for Petronas.

Q: Witness statement refers at Question and Answer 42 and 50. In 1994 when you submitted the proposal how many years experience did you have?

A: I started in 1962 – 32 years.

Q: B refers at page 12. Is this a picture of the model that you made?

A: Yes part of it.

Q: Page 11 refers.

A: This is 2B form.

Q: If you were asked to make a similar model would you be able to.

A: Not exactly but I can copy from it.

Q: From this small model you would have to make full model. It can't be done exactly.

A: Nobody can do exactly. Very similar.

Q: So today if someone asked you to do model you can do something similar.

A: Yes.

Q: So do you agree the idea of this sculpture still remains with you.

A: Yes.

Q: Since the idea is still with you, KLCC should not be paying for this idea.

A: No, I don't agree.

Q: What was the cost of the materials for coming up with this model.

A: I forgot.

Q: Would you say it is in the region of RM 5,000.00.

A: I don't know. I forgot.

Q: Have you found anywhere in Malaysia or outside Malaysia a reproduction of your model exactly.

A: By part, not exactly.

Q: Therefore you have not found anywhere like this model.

A: The form is quite similar.

Q: But do you have any evidence of that in this Bundle.

A: No, I can provide you later.

Q: Page 1 of C refers. You also provided sculpture for Public Bank.

A: Yes.

Q: Fees for that sculpture is RM 130,000.00.

A: Yes.

Q: Page 33 refers. Cheque to you from Lembaga Amanah Balai Seni Lukis Negara. You did some work for them.

A: It is compensation.

Q: It is for RM 80,000.00.

A: Yes.

Q: You were asked to do this sculpture for KLCC in 1994.

A: Yes.

Q: Do you agree that you only required for return for sculpture in 1997.

A: No, I asked earlier since October 1994.

Q: Are you sure.

A: Yes.

Q: Who did you asked?

A: Encik Zulbahrim.

Q: Didn't he tell you that model was lost.

A: No.

Q: Page 5 of B refers. Alex Chong & Co was your lawyer.

A: Yes.

Q: Doesn't it say it that they can't locate your model.

A: Yes.

Q: You later discovered that sculpture was built by Latif Mohideen.

A: I didn't know that.

Q: Did you ultimately know who did the sculpture.

A: I didn't know. They never informed me.



Q: Question and Answer 39 refers and page 6 of B refers. Is this one of the proposal by KLCC offering you RM 7,500.00

A: Yes.

Q: Is this letter marked without prejudice.

A: Yes.

Q: Question and Answer 50 refers. I put it to you that Answer 50 is just speculation of what you think of your art work.

A: No.

t.t.

(Dato' Tengku Maimun binti Tuan Mat)

**Re-Examination:**

Q: Page 4 B refers. What is the date of the letter?

A: 5.9.1994.

Q: What were the contents of the letter?

A: I thank you for invitation and with assistance of Zulbahrim I had opportunities to visit site and I also made some researches – (witness reads out letter).

Q: The letter is confirming your acceptance of invitation.

A: Yes.

Q: At that point of time you have not developed any idea or set on to work on water feature design.

A: Yes, not yet.

Q: At that time there were no conditions to be set upon KLCC.

A: Yes.

Q: I believed you wrote that letter in response to invitation you received in page 1.

A: Yes.

Q: Page 1 refers at second last para of page 2. In that letter of invitation they wanted your confirmation whether you participate or not.

A: Yes.

Q: You duly sent letter at page 4 to accept.

A: Yes.

Q: When you sent document on 26.9.1994 you went there personally.

A: Yes.

Q: Page 7 – 10 of B refer at page 10. What does it state at item 4.  
A: Proposal to be submitted to Design Management Division of KLCC.

Q: Based on that you complied and you handed materials to Puan Noor Rihan.  
A: Yes.

Q: Was Puan Noor Rihan in the Design Management Division.  
A: She was appointed by KLCC to receive my proposal.

Q: So she was the person to receive your proposal on that day.  
A: Yes.

Q: So although your letter was addressed to Chief Executive Officer you had to hand over to Puan Noor Rihan.  
A: Yes.

Q: To your knowledge, you are supposed to submit it to Puan Noor Rihan.  
A: Yes.

Q: When you submitted this you also indicated your terms and conditions.  
A: Yes.

Q: Your full sculpture is worth RM 388,000.00.  
A: Yes.

Q: The value of RM 388,000.00 is related to what year if you were appointed.  
A: In 1994.

Q: When did you know you were not appointed?  
A: After so many correspondences I officially know in 1998.

Q: Since 1994 – 1998 you had no knowledge whether you are going to be appointed or not.  
A: No.

Q: When you are designing a model, what is the cost? Would it include only material or other factors?  
A: Other factors.

Q: What other factors would it entail  
A: It takes about 30 – 40 years experience and good quality that I had exhibited myself.

Q: Would you say that miniature just cannot look at the cost material but also your experience, your innovate process.  
A: Yes, not only physical parts but mental part of it. Eg. Picasso used canvas of 500.00, painting cost millions of ringgit. It involves heritage value.

Q: When you produce the miniature form you already got the mechanism to construct it.  
A: Yes.

Q: In the miniature form, you think it's worth RM 300,000.00

A: Yes.

Q: The work that you did for Public Bank. When did you do that.

A: In 1992 or 93.

Q: What was the art work that you sold?

A: It is 3D work.

Q: Your finished work had already a price before 1994.

A: Yes.

Q: So the idea that you conceptualise for Petronas although rejected, has that idea been found – you say parts of it had been found. Where?

A: Through the newspaper.

Q: When did you come across this.

A: After the submission – few years back.

Q: The lost of your art work would lead to reproduction in forms, in parts.

A: Possible.

Q: If it is being reproduced, can you reproduce the same thing again.

A: Possible.

Q: But it is not your work.

A: Yes.

Q: But initially it was yours.

A: Yes.

Q: Would this be your ultimate lost at the end of the day.

A: Yes because it is my creation.

Q: Is this what you are seeking from KLCC.

A: Yes. The lost of art work.

Q: Which may not remain with you forever.

A: Yes.

t.t.

(Dato' Tengku Maimun binti Tuan Mat)

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IN THE HIGH COURT OF MALAYA IN KUALA LUMPUR  
(CIVIL DIVISION)  
SUIT NO: (S3) S4-22-504-2000

BETWEEN

Lee Kian Seng ... Plaintiff

AND

Kuala Lumpur City Centre Berhad ... Defendant

AFFIDAVIT OF WITNESS STATMENT  
PURSUANT TO ORDER 35A OF THE RULES OF THE HIGH COURT 1980  
(for the Defenant)

I, Zulbahrim Bin Abd. Ghafar (holder of NRIC No. 600423-10-6341) aged 48 years and presently residing at No. 1, Jalan Ramal Suria 2, Taman Ramal Suria, 43000 Kajang in the State of Selangor, do hereby solemnly and sincerely make oath and statethat the evidence I shall give by way of answers to the questions raised hereinbelow is the truth, the whole truth and nothing but the truth, and are within my knowledge and/or derived from the records and documents of the Defendant kept and maintained by them in the ordinary course of their business, and to which I have unrestricted access.

1. What is your present employment and did you have any relationship with the Defendant especially in 1994?

I am now the Operations Manager of PETRONAS Twin Towers and Special Areas of KLCC Urusharta Sdn Bhd, a sister company of the abovenamed Defendant in this action. In 1994, I was employed by the Defendant as an executive in its Graphic Department.

2. Do you know of the Plaintiff in this matter? Have you met him before?

Yes, I know of the Plaintiff as an artist and a sculptor. I have met the Plaintiff before.

3. Are you aware of this claim by the Plaintiff herein against the Defendant?

Yes I am.

4. What do you know of the relationship if any between the Plaintiff and Defendant?

The Defendant was appointed by Petroliam Nasional Berhad (“PETRONAS”) as the developer and contractor of its building now known as the PETRONAS Twin Towers. In or about August 1994, the Defendant invited various local artists and art schools to submit a preliminary proposal for a design of a sculpture with water features to be placed within the PETRONAS Twin Towers. The Plaintiff was one of the local artists invited by the Defendant to submit a preliminary proposal of his designs of a sculpture with water features.

5. Please refer to pages 1 to 2 and 7 to 10 of the Agreed Bundle of Documents. What is this document?

At pages 1 to 2 is the standard invitation letter that was sent to the various artists including the Plaintiff. At pages 7 to 10 is the briefing document that was enclosed to all the invitation letters that were sent to the various persons selected.

6. Please look at page 1 of the Agreed Bundle of Documents at paragraph 4. What was the main criteria for the design sought by the Defendant?

The invited artists were required to design a sculpture with water features for PETRONAS which was to be inspired by the PETRONAS’s corporate status and image, its corporate objectives, the many activities of the parent company and its subsidiaries, its role in generating the nation’s economic growth and other sources of inspiration such as history, visions and achievements of PETRONAS.

7. Did the Plaintiff respond to the invitation?

Yes, the Plaintiff responded. In or about September 1994, he submitted a proposal of his design for a sculpture. His proposal was submitted by a cover letter dated 26<sup>th</sup> September 1994 together with a model design of the proposed sculpture, a preliminary sketch, a write-up on the concept of the artwork with explanatory statements and commentary of his design as well as his biodata.

8. Please refer to page 13 of the Non-Agreed Bundle of Documents. Is this the cover letter by the Plaintiff that accompanied the proposal?

Yes.

9. How as the Plaintiff required to submit the proposal and did he do so accordingly?

As may be seen at page 9 of the Agreed Bundle of Documents at paragraph 4.0 of the briefing document, the Plaintiff was to submit his design proposal to the Design Management Division of the Defendant. Noor Rihan Harun who was the design manager of the Defendant at the material time was designated as the person to accept all proposals of designs sent in pursuant to the invitation from the invitees. She was then required to pass on all the design proposals she received to the Graphics Department. The Plaintiff handed over his proposal to Noor Rihan who collected it from the Plaintiff. All design proposals were sent in to the Defendant's Site Office at Jalan Pinang.

10. Please refer to pages 14 to 15 of the Non-Agreed Bundle of Document. What is this document?  
This is the Plaintiff's commentary of his sculpture.

11. Please refer to pages 11 to 15 of the Agreed Bundle of Documents. Is this the picture of the model of the sculpture submitted by the Plaintiff?

Yes.

12. Please refer to page 13 of the Non-Agreed Bundle of Documents, that is the cover letter that accompanied the Plaintiff's proposal. Who's initial is that at the bottom of the letter?

That is Noor Rihan Harun's initials.

13. Why did Noor Rihan place her initial at the bottom of this letter?

Noor Rihan placed her initial to acknowledge receipt of the design proposal submitted by the Plaintiff as usually done in the ordinary course of the Defendant's business.

14. Did the Plaintiff seek to impose any conditions on his proposal pursuant to the cover letter at page 13 of the Non-Agreed Bundle of Documents?

Yes. It would appear that the Plaintiff in his cover letter stated that without his prior written permission, he did not wish for any part of his proposal to be reproduced or used in any form or for it to be revealed to the public. He also stated that he wanted all his materials to be returned to him if it was not acceptable to the Defendant.

15. Did the Defendant agree to these conditions stipulated by the Plaintiff in his letter?

No. These conditions were imposed by the Plaintiff unilaterally without the consent of the Defendant. In any event, the design proposal was created by the Plaintiff for the Defendant in accordance with the specified specifications as stated in the Briefing Document accompanying the Invitation letter. The Defendant need not return the proposals received by it.

16. The Plaintiff now says that the initial signifies the acceptance of the terms that he stipulated in the letter. Do you agree?

No, I disagree. The initials are merely an acknowledgement of receipt of the proposal sent in by the Plaintiff. Noor Rihan Harun who initialled the Plaintiff's letter had no authority to accept such terms and / or any terms and conditions imposed by the Plaintiff and / or by any other invitee. In fact, the cover letter was not addressed to Noor Rihan.

17. What happened then?

The Graphic Department reviewed all the proposals that were received and then prepared a brief summary of each proposal based on its suitability and the aesthetics of the sculpture as well as whether the proposal fulfilled the requirements of the project for presentation to the management committee of the Defendant. I was later informed that PETRONAS wanted the sculpture to be designed by Latiff Mohideen.

18. All in all how many proposals did the Defendant receive?

The Defendant received proposals from approximately 5 established artists/sculptors and 2 art schools.

19. Was the Defendant obliged to inform the Plaintiff of the outcome of the invitation sent to him and the design proposal he sent in?

No. The invitation terms did not require the Defendant to inform the Plaintiff of the outcome of the exercise. In any event, the Defendant would have known that his proposal was not accepted when he did not receive any response from the Defendant on or about 8 October 1994 that is the scheduled date of appointment of the sculptor as indicated in our briefing document attached with the invitation.

20. Was the Plaintiff aware of the outcome of the proposal submitted by him?

The Plaintiff did telephone the Graphic Department on and off to enquire on his proposal. I remember him telling me that he had heard rumours that Latif Mohideen was asked to do the sculpture. As such, the Plaintiff knew that he was not appointed to do the sculpture. Thereafter, by a letter dated 20 June 1998 addressed to the Plaintiff's previous solicitors Messrs Alex Chang & Co., the Plaintiff was informed that his proposal was not accepted.

21. Please refer to page 5 of the Agreed Bundle of Documents. What is this document?

This is the letter dated 20 June 1998 from the Defendant to Messrs Alex Chang & Co.

22. Whose sculpture was finally built at the PETRONAS Twin Towers?

The current sculpture done by Latif Mohideen was put up at the proposed site within the PETRONAS Twin Towers in or about September 1998.

23. Did the Plaintiff request for the return of his proposal?

Yes. Three years later by a letter dated 9 July 1997, the Plaintiff requested the return of his proposal. Thereafter by a letter dated 7 May 1998, the Plaintiff sought the return of his proposal vide his solicitors.

24. Was the Plaintiff's request soon after the proposed date of appointment of a sculptor?

The Plaintiff knew that a sculptor was to be appointed by 8 October 1994 as stated in the briefing document. However, he did not ask for the return of his design proposal in or about 8 October 1994 or within any reasonable time thereafter but only in July of 1997.

25. Please refer to page 16 of the Non-Agreed Bundle of Documents. What is this document?

This is the Plaintiff's letter dated 7 July 1997 in which he first sought the return of his proposal.

26. Did any of the other artists collect their design proposals?

Syed Ahmad Jamal did collect his model but none of the others did so.

27. Please refer to pages 17 to 19 of the Non-Agreed Bundle of Documents. What is this letter?

This is the letter dated 7 May 1998 from the Plaintiff's solicitors to the Defendant wherein he asked for the return of his proposal.

28. What happened to the Plaintiff's proposal?

In early 1997 the Graphics Design Department moved from the MNI Towers to the site office. All boxes containing items which were not personal in nature to the Defendant or its staff and no longer required was stored in a holding area within the site office. I believe the Plaintiff's proposal must have been stored in the holding area. However, the Defendant could not locate it when the Plaintiff requested for its return.

29. Did the Defendant finally find and return the Plaintiff's proposal?

I tried looking for the Plaintiff's proposal but I could not locate the Plaintiff's proposal. As such, the Defendant was unable to return the proposal.

30. To your knowledge, did the Defendant at any given time assume any responsibility to ensure the safe keeping of the Plaintiff's proposal?

No.

31. Did the Defendant intentionally lose the Plaintiff's proposal?

No.

32. You said earlier that the preliminary proposal of the design of the sculpture with water features was requested by the Defendant to be in accordance with the requirements of the project. Therefore, do you agree that the Plaintiff cannot sell, use, reproduce or reveal the design made for the Defendant to any other person?

Yes. The design was for the sole purpose of placing it at the PETRONAS Twin Towers and the Plaintiff should not use, sell or reproduce it for any other person.



33. Are you aware or do you know if the Plaintiff's work has been reproduced or used or revealed to the public?

No. To the best of my knowledge, I have not heard of any sculpture similar to that of the Plaintiff's anywhere. Certainly, the Defendant did not reproduce, use or intentionally reveal the Plaintiff's proposal to any member of the public. I have not come across a replica of the Plaintiff's model anywhere.

To an affidavit by one deponent  
Zulbahrim Bin Abd. Ghaffar  
Sworn on 14 July 2008  
At 2.30 pm  
At Kuala Lumpur  
(Interpretation no required)

This Affidavit of Zulbahrim Bin Abd. Ghaffar (Defendant's Witness) is affirmed on 14 July 2008 and filed on 14 July 2008 by Messrs. Zul Rafique & Partners of Suite 17.01, 17<sup>th</sup> Floor, Menara Pan Global, 8 Lorong P.Ramlee, 50250 Kuala Lumpur. (Our Ref: SHA/NRK/20001078)

Plaintiff close case.

DW1 - Encik ZULbahrim bin Abd Ghaffar  
- 48 years old  
- No. 1, Jalan Ramal Suria 2  
Taman Ramal Suria  
43000 Kajang  
Selangor.  
- Operation Manager of Petronas  
- Affirms and states in English

Examination-In-Chief: refers to witness statement – WS DW1

t.t.  
(Dato' Tengku Maimun binti Tuan Mat)

**Cross Examination:**

Q: Question and Answer 14 refers. When did you receive this proposal at your Department.

A: I can't remember exactly when.

Q: But did you receive it.

A: Yes.

Q: Did you receive it together with the cover letter.

A: I didn't remember.

Q: How did you know it contains conditions?

A: Letter was shown to me later.

Q: If it were shown to you later, and it was not addressed to Puan Noor Rihan, was the letter handed to Chief Executive Officer?

A: I do not know.

Q: Did you inform the plaintiff that conditions were not accepted.

A: I did not.

Q: You agree the plaintiff's art work were accepted together with the cover letter and you didn't inform the plaintiff that the conditions imposed were not accepted by the defendant.

A: Yes.

Q: Pages 7 – 10 B refer. What entails in this briefing document.

A: This is like a design brief to any designer where we would tell the purpose and reason and what is expected of a designer when he or she submits proposal. It relates very much to the architecture and design of the building.

Q: Does the briefing document given states that KLCC does not need to return proposal to the artist concerned.

A: No.

Q: What about at page 1 of B. Was there any qualification to that effect in your letter?

A: No.

Q: So from the time invitation was sent until the date you received proposal, there is no such statement or confirmation given to the plaintiff that KLCC is not obliged to return proposal.

A: No.

Q: Then how did you substantiate your answer in Question 15.

A: Because we did not state in the letter.

Q: But the plaintiff stated in his letter when he submitted his property.

A: Yes.

Q: If the defendant did not put any condition but plaintiff qualified and the defendant did not acknowledge, don't you think in all fairness the same should be returned to the plaintiff.

A: I'm not in the position to say whether we should or should not.

Q: But you have liaised with the plaintiff all along. Do you?

A: In all fairness, yes.

Q: Question and Answer 17 refers and page 9 B refers at para 24. When did you pass it on to the Management Committee.

A: Not too long after I received all proposals. Exactly when, I can't remember.

Q: Between 1 – 7 October 1994.

A: Yes.

Q: Was it sent.

A: No.

Q: When was it sent?

A: It was not sent at all.

Q: So how do you expect the plaintiff to know decision was made.

A: I didn't expect the plaintiff to know until we write to him.

Q: Answer 19 witness statement refers. I put it to you plaintiff at 8.10.1994 would not know.

A: Yes.

Q: From 1994-1997 the plaintiff liaised with you to know the outcome.

A: Yes.

Q: Did he liaise with you via telephone.

A: Yes.

Q: During that period of time was any decision made on the design submitted by all artists.

A: No.

Q: Would you agree then the plaintiff would not have requested for his design because there was no decision made until 1997.

A: Yes

Q: Because if a decision has been made and his design not accepted, would you agree he would ask for the return of his sculpture.

A: Yes.

Q: So in 1997. When he wrote on July 9<sup>th</sup>, it was not the first time but it was the time he knew no decision was made, nevertheless he asked for return. Correct?

A: Yes.

Q: Did you receive letter dated 9.7.1997 sent by the plaintiff.

A: I can't remember.

Q: Did you call the plaintiff on 16.7.1997 to tell him that you actually received the letter and for the plaintiff to forward letter dated 26.9.1994.

A: I can't remember.

Q: I put it to you, you have actually called him on 16.7.1997 to ask for his acknowledged letter.

A: I can't remember.

Q: Did you also tell the plaintiff to write to Chief Executive Officer to know of the outcome.

A: I can't remember that.

Q: Question and Answer 18 refers. Who are the other artists?  
A: I can remember Tn. Syed Abd Jamal, Ramlan Abdullah. I can't remember the others.

Q: You are in charge of summaries of proposal.  
A: Together with my superior.

Q: Was Latif Mohideen one of the person among the 5 artists.  
A: No.

Q: So the plaintiff was not in a position to know who are the other participants.  
A: Yes.

Q: Would it also be right to say only a select artist was invited to join this project.  
A: Yes.

Q: Not open to everyone in the industry.  
A: No.

Q: So those who were invited were respected in their own area in Malaysia and overseas.  
A: That is what I was told.

Q: What happened to the schedule in page 9. What happen to these art work.  
A: They were reviewed.

Q: It didn't reach Management for recommendation.  
A: No.

Q: The appointment were never made.  
A: No.

Q: Question and Answer 17 refers. When did you come to possess of this info.  
A: It was Mr. Lee the plaintiff who said that, when he called me in 1997 that he had heard.

Q: We are talking about Petronas in Question 17.  
A: I was not officially informed by Petronas.

Q: When was date and year at last?  
A: During construction in 1998.

Q: So KLCC was it still involved with Petronas after appointment of Latif Mohideen.  
A: Yes, we were.

Q: So invitation send out in August 1994 has been totally aborted and you have now come upon new arrangement.  
A: Yes, I agree.

Q: So would you agree then the approval of sculpture was only done in 1998, 4 years after you invited the plaintiff to submit the proposal.  
A: I can't say exactly whether appointment was in 1998 or perhaps earlier.

Q: Was Latif Mohideen's proposal also subjected to submission like the plaintiff.

A: No.

Q: From 1994 – 1997 although you did not know about Latif Mohideen did you at any time tell the plaintiff that his art work was lost.

A: No.

Q: **Question and Answer 26 refers. Why did you return to Syed Abd Jamal.**

A: Because he came to ask for it.

Q: Lee Kian Seng asked but he never got it.

A: Yes.

Q: After 1997 and around 1998 knowing that first invitation is no more in place did you write to the sculptors that project is off and asked them to collect the design.

A: No, none.

Q: **Right up to 1997 all those who took part were kept in the dark about their design.**

A: **True.**

Q: Question and Answer 32 refers and page 1 of B. Does it state such a condition on the intended artist who have been invited.

A: No.

Q: Pages 7 – 10 B. Have such condition been imposed on the Plaintiff that it shall not be used for any other person.

A: No.

Q: In what sense is your answer right here. Is it correct for you to say the Plaintiff cannot use it for any other person.

A: Yes.

Q: Did KLCC take any steps to safeguard this interest by way of disclaimer or non-disclosure letter.

A: None.

Q: So there was no such condition imposed on the Plaintiff when he submitted the art work on 26.9.1994.

A: Yes.

Q: From the summaries you produced from proposal you received, was it used later for sculpture of Twin Tower.

A: No.

Q: Not only in specification, in height.

A: Nothing.

Q: When Latif Mohideen was commissioned, you were still involved. What was your role.

A: I was not involved in submission.

Q: Do you agree that Latif Mohideen was just commissioned and construct it.

A: We project managed construction.

Q: Question and Answer 33 refers. How do you arrive at this Answer. What was your sources.

A: I go around to building. I read newspaper. I do pay attention to fine arts and lively arts.

Q: The entire document which did not belong to KLCC was kept in the holding area. Answer 28 refers. Why did you store in the holding area.

A: Because the office area that we had is small.

Q: Items not belonging to the Defendant is third party's. You had a duty to keep document not belonging to you. Do you agree the Plaintiff's design was also kept here in 1997?

A: Yes.

Q: What happened to the Plaintiff's art work which was kept in the holding area?

A: I could not locate it after I received calls from Mr. Lee.

Q: Were you in charge of all these document.

A: Not directly.

Q: What about in relation to the Plaintiff's art work.

A: As part of Graphic Department, yes.

Q: Do you agree that this art work is lost forever.

A: Yes.

Q: Until today no such return has been done.

A: Yes.

Q: The Plaintiff is deprived of the art work which is submitted.

A: Yes.

t.t.

(Dato' Tengku Maimun binti Tuan Mat)

**Re-Examination:**

Q: You said you couldn't locate the art work. Correct?

A: Correct

Q: You took all efforts to look for it.

A: Yes.

Q: If you found it you would have returned to the Plaintiff.

A: Yes.

Q: You did not intentionally lose it.

A: No.

Q: Appointment of sculptor – whether time line were complied with. Is it true that the Defendant was not compelled to appoint any sculptor pursuant to the project.

A: Yes.

Q: It could very well be none of sculptors were appointed.

A: Yes.

Q: Question and Answer 17 refers and Question and Answer 20. You remember the Plaintiff telling you he heard rumours about Latif Mohideen.

A: Yes.

Q: KLCC's announcement when Latif Mohideen was commissioned. Was KLCC involved specifically in appointing Latif Mohideen.

A: No.

Q: Is it true that KLCC was involved in the overall construction of the project.

A: Yes.

Q: Would you be able to explain who wanted Latif Mohideen.

A: It must be the client which is Petronas.

Q: Question and Answer 32 refers and 33. Isn't it true that since it is for Petronas it s implied that the design can't be used for any other purpose.

A: Yes.

Q: When was the first time Mr. Lee asked for the return of model.

A: In 1997.

Q: So between 1994-1997 there was no request.

A: I can't remember whether there was a request before 1997.

Q: Page 1 of B is the offer for proposal.

A: Yes.

Q: Page 4 B refers. Isn't this the Plaintiff's letter accepting invitation.

A: Yes.

Q: Letter at page 15 of C is after acceptance of letter at page 4 of B.

A: Yes.

Q: Is there anywhere implied or express that you need to return the model.

A: No.

Q: If you had found the model you would have returned it.

A: Yes I would.

t.t.

(Dato' Tengku Maimun binti Tuan Mat)

Mahkamah: - ke 2.30ptg

t.t.

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IN THE HIGH COURT OF MALAYA IN KUALA LUMPUR

(CIVIL DIVISION)

SUIT NO: (S3) S4-22-504-2000

BETWEEN

Lee Kian Seng ... Plaintiff

AND

Kuala Lumpur City Centre Berhad ... Defendant

**AFFIDAVIT OF WITNESS STATEMENT**

**PURSUANT TO ORDER 35A OF THE RULES OF THE HIGH COURT 1980**

**(for the Defenant)**

I, Noor Rihan Binti Harun (holder of NRIC No. 560912-08-6712) aged 52 years and residing at 47, Jalan 5, Bukit Kemansah, Hulu Kelang, Ampang, 68000 Ampang do hereby solemnly and sincerely make oath and statethat the evidence I shall give by way of answers to the questions raised hereinbelow is the truth, the whole truth and nothing but the truth, and are within my knowledge and/or derived from the records and documents of the Defendant kept and maintained by them in the ordinary course of their business, and to which I have unrestricted access.

Q1: What is your present employment?

A1: I am an Architectural Consultant.

Q2: What was your relationship with the Defendant especially in 1994?

A2: In 1992, I was employed with the Defendant in its Management Division and held the post of Design Manager. I resigned from the Defendant in April 1997.

Q3: Are you aware of this claim by the Plaintiff herein against the Defendant?

A3: Yes I am.

Q4: Do you know of the Plaintiff in this matter? Have you met him before?

A4: I have met the Plaintiff on one occasion in or about September 1994.

Q5: Please explain in what circumstance did you meet the Plaintiff?

A5: In 1994, the Defendant had invited various artists to submit model's of their proposed design for a sculpture with water features for the purposes of placing a water feature sculpture within the PETRONAS Twin Towers. The Plaintiff was one of the local artists invited to submit his proposal of a design. At the time, I was designated to receive the proposals sent in by the artists. On 26 September 1994, the Plaintiff came to submit his proposal and I accepted it.

Q6: Where did you meet the Plaintiff?

A6: The artists were to deliver their proposal at the site office of the Defendant at the time as described in the Briefing Document at page 7 of the Agreed Bundle of Documents. I was situated at the site office where I collected the proposal from the Plaintiff at the reception area of the site office.

Q7: Did the Plaintiff give to you anything else other than his sculpture?

A7: Yes. His design proposal was submitted with a model of the proposed sculpture, a preliminary sketch and concept of his artwork, a commentary on the artwork, a catalogue of the Plaintiff's biodata together with a cover letter date 26 September 1994.

Q8: Please refer to page 13 to 15 of the Non-Agreed Bundle of Documents. Is this the cover letter dated 26 September 1994?

A8: Yes.

Q9: Did you acknowledge receipt of the proposal?

A9: Yes, I did.

Q10: Please look at the right hand bottom cover of page 13 of the Non-Agreed Bundle of Documents. Is this your initial acknowledging receipt of the proposal?

A10: Yes.

Q11: Did you read the contents of the Plaintiff's letter dated 26 September 1994 when you placed your initial to acknowledge receipt?

A11: No, I did not. I acknowledged receipt of the letters as per my normal practice.

Q12: Did the Plaintiff highlight to you that he had in his cover letter dated 26 September 1994 stated a new term that he would like his proposal to be returned to him in the event the proposal was not accepted?

A12: No, he did not.

Q13: The Plaintiff now claims that by you placing your initial on the cover letter dated 26 September 1994 at page 13 of the Non-Agreed Bundle of Documents, you had agreed to the term stated in his letter that the Defendant is to return to him his proposal in the event it was not accepted by the Defendant. Do you agree?

A13: No, I do not agree. In fact, the letter was not addressed to me. I had no authority to accept any such term and I did not accept any such term. I merely collected the proposal from the Plaintiff and acknowledged receipt of the proposal on the cover letter dated 26 September 1994.

Q14: What did you do to the proposal after collecting it?

A14: I submitted it to the Graphics Department where it was kept with all other proposals sent in.

To an affidavit by one deponent

Noor Rihan Binti Harun

Sworn on 14 July 2008

At Kuala Lumpur

(interpretation not required)

This Affidavit of Noor Rihan Binti Harun is affirmed on 14 July 2008 and filed on 14 July 2008 by Messrs. Zul Rafique & Partners of Suite 17.01, 17<sup>th</sup> Floor, Menara Pan Global, 8 Lorong P.Ramlee, 50250 Kuala Lumpur. (Our Ref: SHA/NRK/20001078)

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(Dato' Tengku Maimun binti Tuan Mat)

2.30pm

Parties as before.

DW 2 - Puan Noor Rihan bt. Harun  
- 52 years  
- No. 47, Jalan 5, Bukit Kemensah  
Hulu Kelang  
Ampang  
- Architectural Consultant  
- Affirms and states in English

Examination-In-Chief: refers to witness statement – WS DW2

t.t.

(Dato' Tengku Maimun binti Tuan Mat)

**Cross Examination:**

Q: Question and Answer 7 refers. You received a cover letter on 26.9.1994.

A: Yes.

Q: That letter is at page 13 of C.

A: Yes.

Q: When you received the art work together with the cover letter, did you check the contents of the letter to confirm and verify the items that you received from the artist.

A: No, I didn't check.

Q: Pages 14 and 15 C refer. Did you initial this pages.

A: Yes.

Q: What is page 14?

A: It is a commentary.

Q: What is page 15?

A: Continuation of commentary.

Q: When you acknowledged receipt of the letter you did not go to check whether items conform to the letter.

A: No.

Q: I put it to you, you were designated to receive. So it was your duty to make sure whatever items you are receiving conform to the letter.

A: Yes.

Q: Does item form part of the letter.

A: Yes.

Q: Isn't it your duty to check the material is true as per letter.

A: I acknowledged the letter but not the items.

Q: Are you telling the court you were acknowledging only the letter and nothing else.

A: Yes.

Q: Why do you initial every part.

A: It is acknowledgement of letter but not the items.

Q: Plaintiff came personally to hand over the proposal.

A: Yes.

Q: Did the Plaintiff on that day explain to you or revealed to you all the items as per his letter.

A: No.

Q: Did you not on that day cross referred letter to accompanying items to make sure the items are there.

A: Cross refer to items, yes.

Q: So on that day your act was not merely acknowledging but you make sure accompanying materials were confirmed and verified in the presence of the Plaintiff.

A: Yes.

Q: When you do that did you not read part of the letter.

A: No.

Q: Did the Plaintiff on that day tell you that in the event his art work not accepted you are to return it to him.

A: No.

Q: I put it to you that you went on not only to read page 13, to glance through pages – 14 and 15 to accompany the entire act of receiving letter.

A: No.

Q: Question and Answer 13 refers. How did you know the letter was not addressed to you on 26.9.1994.

A: The letter in front of me was addressed to Chief Executive Officer.

Q: So I put it to you, you read the letter otherwise you wouldn't have known it wasn't addressed to you.

A: I read the letter.

Q: You only choose to read parts of the letter and not the entire content.

A: Yes.

Q: Is this letter very voluminous.

A: No.

Q: How many pages.

A: One page.

Q: You selectively read bits and pieces of it.

A: Yes.

Q: Is it your duty to read part and parcel of the letter ?.

A: No.

Q: I put it to you, you read the entire letter and you read the condition.

A: I do not remember. I remember reading first page.

Q: Paragraph 4 is on first page. Did you read.

A: I think I didn't read.

Q: You remember reading part of it.

A: I remember receiving the items.

Q: After reading in parts and collecting document what did you do.

A: I passed it to the Graphic Department.

Q: When did you pass to the Graphic Department.

A: I can't remember.

Q: Pages 2 and 9 of B refer. On 26.9.1994 was the date set by KLCC to receive.

A: Yes.

Q: Anyone who submits after that will not be entertained.

A: I'm not sure.

Q: When did you exactly sent proposals to the Graphic Department.

A: It's after that but I can't remember.

Q: When you sent this proposal was everything there.

A: I sent everything to the Graphic Department.

Q: When you said letter was not addressed to you, did you point out to the Plaintiff that this letter you cannot receive.

A: I don't remember.

Q: So you have acknowledged the letter though its not addressed to you.  
A: Yes.

Q: You acknowledged on part of the CEO.  
A: Yes.

Q: Did you at that time tell the Plaintiff that if his art work was not accepted, it would not be returned to him, on behalf of KLCC.  
A: No.

Q: Did the said letter received or was sent to CEO, to you knowledge. Was it brought to your attention?  
A: I don't remember.

t.t.  
(Dato' Tengku Maimun binti Tuan Mat)

**Re-Examination:**

Q: Whether you read contents of pages 13, 14 and 15 of C. Is it true that you were designated to go down and collect proposal.  
A: Yes.

Q: When you collect proposal you really check what the items are.  
A: Yes.

Q: In this case the Plaintiff highlighted to you items 1 – 4 and you just initialled the letter.  
A: Yes.

Q: Initialled is to merely acknowledged receipt of proposal.  
A: Yes.

Q: Beside accepting and submitting to the Graphic Department you have no other duties. Just to receive and to submit to the Graphic Department.  
A: Yes.

Q: When the Plaintiff met you with his proposal you only read item 1 – 4 of the letter. Isn't that true?  
A: Yes.

t.t.  
(Dato' Tengku Maimun binti Tuan Mat)

Defendant close case.  
Parties agree to put in written submission.

Mahkamah: - 15.8.2008 for Defendant to file in written submission.  
15.9.2008 for Plaintiff to reply.

6.10.2008 for Defendant to reply.

3.11.2008 for decision.

t.t.

(Dato' Tengku Maimun binti Tuan Mat)

16.7.2008

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**Judgment** (translation):

*on the 3<sup>rd</sup> Day of November, 2008) . This action having this day been called on for decision before Her Honour Ms Tengku Maimun Binti Tuan Mat, in presence of the solicitor's for Plaintiff, Mr. M. Pani of Messars Pani Normala & Co, and Ms. Norliza solicitors's for Defendant of Messers Zul Rafique & Partners and upon hearing the evidence adduced in court through the witnesses and after having read the written submissions duly filled by both solicitors for the Plaintiff and Defendant. It is this day adjudged that the Defendant do pay the Plaintiff for the sum of RM 20, 000 (Ringgit Malaysia Twenty Thousand only) as at 3<sup>rd</sup> November, 2008 till full and final settlement with the costs. Dated the 3<sup>rd</sup> day of November, 2008.*

DALAM MAHKAMAH TINGGI DI KUALA LUMPUR

(BAHAGIAN SIVIL)

GUAMAN NO : S4-22-504-2000

ANTARA

LEE KIAN SENG

...PLAINTIF

DAN

KUALA LUMPUR CITY CENTRE BERHAD

...DEFENDAN

DIHADAPAN YANG ARIF HAKIM  
DATO' TENGGU MAIMUN BINTI TUAN MAT  
MAHKAMAH TINGGIMALAYA DI KUALA LUMPUR  
PADA 3 HARIBULAN NOVEMBER 2008

DALAM KAMAR

PENGHAKIMAN

TINDAKAN INI setelah dipanggil untuk Keputusan pada hari ini di hadapan Yang Arif Dato' Tengku Maimun Binti Tuan Mat, Hakim Mahkamah Tinggi Kuala Lumpur dalam kehadiran En. M. Pani peguamcara bagi pihak Plaintiff dan Cik. Norliza Binti Rasool Khan peguamcara bagi pihak Defendan DAN SETELAH MENDENGAR keterangan saksi-saksi DAN SETELAH MEMBACA penghujahan bertulis kedua-dua pihak peguam Plaintiff dan Peguam Defendan.

MAKA ADALAH PADA HARI INI DIHAKIMI bahawa tuntutan Plaintiff dibenarkan dengan kos dan Defendan hendaklah membayar kepada Plaintiff :-

- a) jumlah wang sebanyak RM 20,000.00 sebagai gantirugi setakat 3 haribulan November, 2008 ;
- b) faedah keatas jumlah RM 20,000.00 pada kadar 8 % setahun dari tarikh 3 haribulan November sehingga ke tarikh penyelesaian penuh : dan
- c) kos tindakan ini



IN THE HIGH COURT OF MALAYA AT KUALA LUMPUR  
(CIVIL DIVISION)  
SUIT NO : S4-22-504-2000

BETWEEN

LEE KIAN SENG

...PLAINTIFF

AND

KUALA LUMPUR CITY CENTRE

...DEFENDANT

BEFORE THE HONOURABLE TENGKU MAIMUN BINTI TUAN MAT  
KUALA LUMPUR HIGH COURT JUDGE  
THE 3<sup>rd</sup> DAY OF NOVEMBER, 2008

IN OPEN COURT

DRAFT JUDGMENT

This action having this day been called on for decision before Her Honour Ms Tengku Maimun Binti Tuan Mat, in presence of the solicitor's for Plaintiff, Mr. M. Pani of Messrs Pani Normala & Co. and Ms. Norliza solicitor's for Defendant of Messrs Zul Rafique & Partners and upon hearing the evidence adduced in court through the witnesses and after having read the written submissions duly filed by both solicitors for the Plaintiff and Defendant.

It is this day adjudged that the Defendant do pay the Plaintiff for the sum of **RM 20,000.00** (Ringgit Malaysia: Twenty Thousand only) as at 3<sup>rd</sup> November, 2008 and interest at 8% p.a. on the said judgment sum from 3<sup>rd</sup> November, 2008 till full and final settlement with the costs.

Dated the 3<sup>rd</sup> day of November, 2008.

# 'Protect our art to preserve history'

BY DEVID RAJAH

**PETALING JAYA:** Artist-sculptor Lee Kian Seng fears that art pieces depicting the nation's history will vanish if they are not safeguarded.

Lee, whose works have gone missing on several occasions, said the management of all art galleries in the country should be reviewed and improved.

"A gallery lost my lithographs, one of them from the Hammer and Nail sculptor

series, and oil paintings; and some of them remain missing till today.

"Although the gallery compensated me for losing the lithographs at an exhibition overseas, works of art should be properly handled," said Lee, who wants the authorities to protect all works of art.

"Our national heritage will be lost forever if art pieces depicting historical events go missing," said Lee.

He was commenting on the

Auditor-General's 2004 Report that 127 pieces of art from the National Art Gallery could not be traced.

Lee believes the stolen art had gone on the black market.

"A collector called to inform me that one of my missing pieces was purchased from the black market," he said, but he could not pursue the matter due to lack of evidence.

Lee, an artist for over 40 years, said if art pieces were not properly documented and protected

it could alter the development of art history in the country.

"Works of art are the intellectual property of creative people and should be documented and protected," he said.

Lee, who is also known as the father of installation art, hopes the Culture, Arts and Heritage Ministry will hold dialogues with artists and associations representing them to improve the administration of art galleries and the protection of works of art.



Lee: 'Works of art should be properly handled'

<http://www.thestar.com.my/story.aspx?file=%2f2005%2f10%2f8%2fnation%2f12251249&sec=nation>

LEE Kian Seng (李健省) and Pani Normala @ 2008-07-15





- Source: *The Sun*, Malaysia / Saturday / March 3, 2001

*The Sun*, Malaysia Saturday March 3, 2001

**Artist sues KLCC for return of proposals** by N. Puspa Malar

Kuala Lumpur (Malaysia), Fri: One of the country's top artists is suing Kuala Lumpur City Centre Bhd (KLCC,) for the return of his preliminary proposals for two sculpture water features, now presumed to be lost, for Petronas Twin Towers.

Lee Kian Seng, said KLCC, the developer and contractor of the Twin Towers, had on August 23, 1994, invited him to design and submit preliminary proposals for two sculpture water features.

The invitation states that the completion and handover of the proposals shall be made on August 31, 1995, he said.

In his suit filed on July 19 last year, Lee said he accepted the invitation and informed KLCC that he was in the process of designing and developing the idea of the sculpture water features.

Along with a letter dated Sept 26, 1994, Lee said he submitted a metal model of the proposed sculpture, preliminary sketch and concept of the artwork, explanatory on the design approach, visual impact and significance of the artwork when completed.

He claimed to have made it clear to KLCC that no part of his work may be reproduced, used or revealed to the public without his permission and that his work should be returned to him in the event it is not accepted by KLCC.

*He said KLCC had accepted and acknowledged receipt of these terms through its agent or representative.*

*He asserted that ever since he submitted his proposals on Sept 26,1994, he was kept in the dark about the fate of his work despite numerous requests to return his work.*

*i°After several requests made seeking the return of my work, I was informed via a letter dated June 20,1998, that my work had been rejected by the defendant,± he said, adding that it was impliedly stated that his work was lost and not in KLCC's control.*

*Lee asserted that KLCC was at all time the constructive trustee and bailee of his work and was duty bound to ensure the safety of his work.*

*"The loss of my work occurred entirely due to the defendant's negligence who was responsible for the care and custody of my work while it was under KLCCs control."*

*He claimed to have suffered loss and damage.*

*Alternatively, Lee is seeking damages of equivalent value to the loss of the exclusive use and copyright of his work, interest and costs.*

*KLCC, in its defence dated Oct 30,last year, denied appointing the plaintiff to design the sculpture water features.*

*Although Lee had set out the terms in his letter dated Sept 26, 1994, KLCC denies having had accepted the conditions.*

*The defendant explained that Lee failed to collect his work within a reasonable time following Petronas rejection in October 1994.*

*KLCC said due to Lee's failure, it packed his work into boxes and stored them in its office.*

*However, when the company moved into its new premises at the Twin towers, the boxes containing non-personal items were stored in a holding area within the Twin towers and due to on-going construction activities, it was unable to find the box containing Lee's work.*

*KLCC denies infringing Lee's copyright as it never reproduced, used or revealed his work to the public.*

*Case management on the matter, before judge Datuk Dr R.K. Nathan is set for April 5.(2001)*

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*Sin Chew Daily Malaysia 2001-03-09*

*The Star, Malaysia March 3, 2001*

Source: March 3, 2001 *The Star*, Malaysia  
***Artist sues KLCC for not returning sculpture design***

*Kuala Lumpur: A man claiming to be a renowned local artist has filed a suit against Kuala Lumpur City Centre (KLCC) for not returning a sculpture design he submitted to the company seven years ago.*

*Lee Kian Seng, in his amended statement of claim filed in August last year, said he was invited by the defendant to design two sculptures for Petronas Tower in a letter dated Aug 23, 1994.*

*He claimed the company failed to return the design after rejecting it on June 20, 1998.*

*Lee said he submitted to the defendant on Sept 26, 1994, a metal model of the sculpture, a preliminary sketch and concept of the artwork, and explanatory statements and commentary on the design approach, visual impact, aesthetics and significance of the work when completed.*

*He said the defendant had since kept him in the dark on the fate of his artwork despite numerous written requests for its return.*

*The company, he said, wrote to him on June 20, 1998, saying it had lost his design and that the design was no longer under its control.*

*Lee claimed the defendant had been negligent in safeguarding his work and had breached the terms stated in his letter which was sent with the design.*

*As a result, he claimed he had suffered loss and damage including loss of copyright on his work and profit which could otherwise have been generated from the work.*

*Lee is seeking damages in lieu of copyright loss, costs and interest.*

*In its defense dated Oct 30, last year, the company denied negligence for the loss of Lee's work, saying it had not accepted any terms that the work, if rejected, would be returned to Lee.*

*It claimed that Lee was obliged to collect his work from the company within a reasonable time after October 1994, failing which, he would lose any rights to his work.*

*The case which was mentioned before Justice Datuk Dr R.K. Nathan on Thursday has been fixed for another case management on April 5.(2001)*

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## Artist sues KLCC over missing artwork

KUALA LUMPUR, Fri. — An artist is suing Kuala Lumpur City Centre for negligence over the "care and custody" of two proposed sculptures he designed for Petronas Twin Towers.

In his amended statement of claim filed in August last year, Lee Kian Seng said that on or about Aug 22, 1994, KLCC (the developer and contractor for the construction of the Petronas Twin Towers) invited him to design and submit preliminary proposals.

Lee said he accepted the invitation in a letter dated Sept 5, 1994, and submitted to KLCC on Sept 26, 1994, among others, a metal model of the proposed sculpture, preliminary sketch and concept of the artwork and explanatory statements.

He said he further stated in the same letter that no part of his work

may be reproduced and that it should be returned to him in the event it was not acceptable.

Lee claimed that after several requests, he was informed by a letter that his work had been rejected by KLCC, adding that the letter, among others, implied that his work was lost.

Lee claimed, among others, that at all material times, KLCC was the constructive trustee and bailee of his work, and had a duty to ensure the safety of his work and return it in its original condition in the event it was not accepted.

He is seeking the return of his work, or alternatively, an equivalent money value in damages, interest, cost and other relief.

In its defence dated Oct 30 last year, KLCC said it (as the developer for Petronas) had invited Lee to submit preliminary proposals but

denied that he was invited to design the artwork.

It said that at all material times it was acting for and on behalf of Petronas, which Lee knew, and it was not the constructive trustee of Lee's work.

KLCC said that Lee was obliged to collect his artwork within a reasonable time and since he failed to do so, Lee had lost all rights to his work, further denying that a copyright existed on Lee's work as alleged.

It stated that Lee's work was kept safely but had been lost after it moved offices.

In his reply dated Nov 20 last year, Lee said that due to the loss and damage he suffered, he had a valid claim against KLCC.

The suit has been fixed for April 5 for case management before High Court judge Datuk Dr R.K. Nathan.

- Source :News Straits Times Malaysia , Saturday March 3, 2001

### **Artist sues KLCC over missing artwork**

*Kuala Lumpur, Fri - An artist is suing Kuala Lumpur City Centre( Malaysia) for negligence over the "care and custody" of two proposed sculptures he designed for Petronas Twin Towers.*

*In his amended statement of claimed filed in August last year, Lee Kian Seng said that on or about Aug 22, 1994, KLCC (the developer and contractor for the construction of the Petronas Twin Towers) invited him to design and submit preliminary proposals.*

*Lee said he accepted the invitation in a letter dated Sept 5, 1994, and submitted to KLCC on Sept 26, 1994, among others, a metal model of the proposed sculpture, preliminary sketch and concept of the artwork and explanatory statements.*

*He said he further stated in the same letter that no part of his work may be reproduced and that it should be returned to him in the event it was not acceptable.*

*Lee claimed that after several requests, he was informed by a letter that his work had been rejected by KLCC, adding that the letter, among others, implied that his work was lost.*

*Lee claimed, among others, that at all material times, KLCC was the constructive trustee and bailee of his work, and had a duty to ensure the safety of his work and return it in its original condition in the event it was not accepted.*



He is seeking the return of his work, or alternatively, an equivalent money value in damages, interest, cost and other relief.

In its defence dated Oct 30 last year, KLCC said it (as the developer for Petronas) had invited Lee to submit preliminary proposals but denied that he was invited to design the artwork.

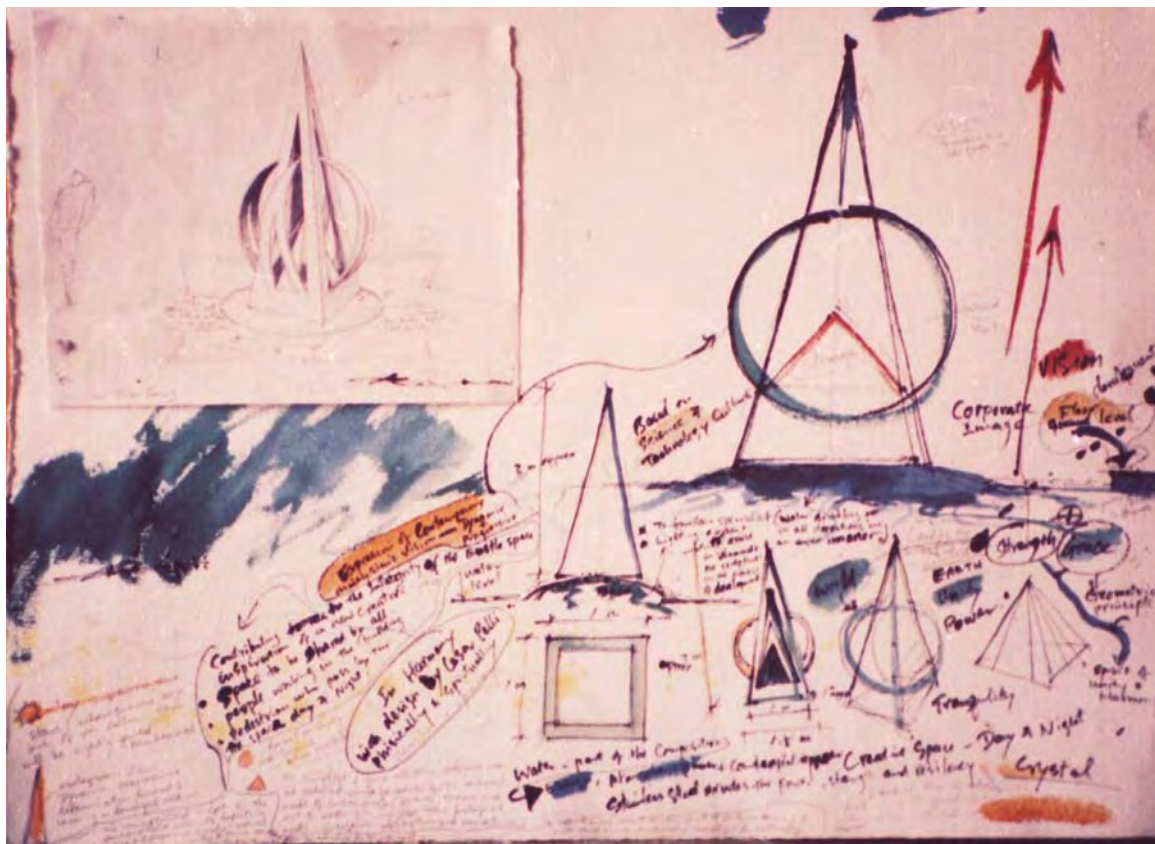
It said that at all material times it was acting for and on behalf of Petronas, which Lee knew, and it was not the constructive trustee of Lee's work.

KLCC said that Lee was obliged to collect his artwork within a reasonable time and since he failed to do so, Lee had lost all rights to his work, further denying that a copyright existed on Lee's work as alleged.

It stated that Lee's work was kept safely but had been lost after it moved offices.

In his reply dated Nov 20 last year, Lee said that due to the loss and damage he suffered, he had a valid claim against KLCC.

The suit has been fixed for April 5 (2001) for case management before High Court judge Datuk Dr R.K. Nathan. News Straits Times Malaysia , Saturday March 3, 2001



Drawing of the proposal

SIN WAW RANI  
013-2276703

DANG WAUK KLCC RPT NO: 9813/06

S/D NO: \_\_\_\_\_

TARIKH: 1/4/06

**Police Report**

I, Lee Kian Seng NRIC No. 480810-71-5119 was invited to submit a model and design proposal of a sculpture to Kuala Lumpur City Centre Berhad on 26 September 1994.

Since then, I have made numerous inquiries with regards to my submission and until to date I am in the dark as to what happened to my submission.

Now I am making a police report to recover my proposal submitted i.e.

1. One metal model of the proposed sculpture.
2. One preliminary sketch and concept of the same artwork.
3. One copy of relevant information comprising of:
  - a) Commentary on design approach and Commentary on aesthetics visual impact and significance when work of art is completed
  - b) Fee
  - c) Materials
  - d) Sizes in full scales
  - e) Others

I do not know what exactly has happened to the artworks and consequently KLCC are unable to return the artworks to me.

The situation left me with no alternative but to lodge this police report because whoever in the possession of the above mentioned artworks are in the possession of the artworks without my consent or approval and in the breach of my copyright in the said artworks.

Photographs enclosed (1) one original drawing by Lee Kian Seng Approx 53 cm x 73 cm  
Medium: Ink, Pencil, water colour & collaged (2) one original metal sculpture model approx 150cm x 24cm x 24cm



Approx 150cm x 24cm x 24cm



Approx 53 cm x 73 cm

DISAHKAN MENJADI SALINAN  
YANG SEBENARNYA

*Indee*  
KETUA POLIS BALAI  
41580 KLANG

LEE KIAN SENG (480810-71-5119).

NO. 12, Lintang Hilir 3,

Kaw 6, Taman Gembira

Klang 603-3372335-1

013-223-2878

01 April, 2006

9.00 p.m

UNTUK TINDAKAN SIVIL SAHAJA

01/04/06

Police report 2006-04-01

