THE END OF THE PERPETUAL CHARGE: ASSESSING THE STRATEGIC IMPACT OF *THAMEEZ NISHA* ON THE MALAYSIAN BANKING SECTOR

Liew Zhi Leng*

ABSTRACT

The decision of the Federal Court in *Thameez Nisha Hasseem (As the Administrator of the Estate of Bee Fathima @ Dll, Deceased) v Maybank Allied Bank Berhad [2023]* represents a landmark shift in the enforcement of registered charges in Malaysia. The Court imposed a strict twelve-year limitation period, requiring financial institutions to commence foreclosure proceedings within a time limitation that begins on the date of default (breach). This article discusses the ruling's implications in banking litigation, including the applicability of section 21(1) of the Limitation Act of 1953, the determination of when a cause of action accrues, the doctrine of a fresh accrual and the ultimate extinguishment of a chargee's rights under the National Land Code.

Keywords: Registered charge, Section 21(1) Limitation Act 1953, twelve years limitation, Order For Sale

ABSTRAK

Keputusan Mahkamah Persekutuan dalam *Thameez Nisha Hasseem (selaku Pentadbir Harta Pusaka Bee Fathima @ Dll, Si Mati) lwn Maybank Allied Bank Berhad* [2023] membawa perubahan penting kepada penguatkuasaan gadaian berdaftar di Malaysia. Mahkamah menetapkan bahawa prosiding bagi mendapatkan perintah jualan hendaklah dimulakan oleh institusi kewangan dalam tempoh had dua belas tahun yang bermula pada tarikh kemungkiran. Artikel ini meneliti implikasi keputusan tersebut terhadap litigasi perbankan, termasuk pemakaian subseksyen 21(1) Akta Had Masa 1953, penentuan tarikh punca tindakan terakru, doktrin akruan baharu serta keadaan yang menyebabkan hak pemegang gadaian terhapus secara muktamad di bawah Kanun Tanah Negara.

Kata kunci: gadaian berdaftar, subseksyen 21(1) Akta Had Masa 1953, tempoh had dua belas tahun, perintah jualan

* An Advocate and Solicitor at Messrs Arthur Lee & Company. Email: arthurlee.co@arthurlee.my

INTRODUCTION

The security provided by a registered charge under the National Land Code ("NLC") has traditionally been regarded as the cornerstone of the Malaysian banking industry. Prior to the Federal Court's ruling in *Thameez Nisha Hasseem (As the Administrator of The Estate of Bee Fathima @ Dll, Deceased) v Maybank Allied Bank Berhad*[1] ("the *Thameez* case"), the prevailing legal doctrine suggested that a bank's right to enforce its security was virtually immune to the passage of time, provided the charge remained registered. The ruling in *CIMB Bank Bhd v Sivadevi a/p Sivalingam*[2] affirmed that the twelve-year limitation period does not begin until a statutory notice in Form 16D expires. This interpretation effectively gave creditors exclusive control over the limitation window, and banks had complete discretion over when to issue such notices.

However, these principles were fundamentally overturned by the Federal Court in the *Thameez* case which marks a significant judicial departure from when time starts to run vis-a-vis section 21 of the Limitation Act 1953 to recover monies secured by a mortgage or charge. Banks can no longer "sleep on their rights" or wait as long as they like to take action. The Court ruled that the time within which legal remedies could be taken begins once a borrower defaults on the payment.

The article examines the far-reaching implications of the *Thameez* case on the Malaysian banking sector. The discussion will be structured based on four major issues:

Part 1: The applicability of the Limitation Act 1953 to an application for an Order for Sale.

Part 2: When does the limitation period begin to run?

Part 3: Methods to circumvent the 12 years limitation.

Part 4: Extinguishment of right by operation of law in s.340 National Land Code.

---

1 [2023] 4 MLJ 145.
2 [2020] 1 MLJ 583.

THE APPLICABILITY OF THE LIMITATION ACT 1953 TO AN APPLICATION FOR AN ORDER FOR SALE

Generally, when a chargor fails to repay the amount secured by the charge, a chargee has the right to realise its security by applying for an Order for Sale under section 256 NLC[3] or apply to the Land Administrator under section 260 NLC[4].

The first challenge in any limitation argument is figuring out which statute applies to the case. When it comes to banking foreclosure, the main focus is section 21(1) of the Limitation Act 1953 ("LA 1953") which states[5]:

> Limitation of actions to recover money secured by a mortgage or charge or to recover proceeds of the sale of land
>
> 21. (1) No action shall be brought to recover any principal sum of money secured by a mortgage or other charge on land or personal property or to enforce such mortgage or charge, or to recover proceeds of the sale of land or personal property after the expiration of twelve years from the date when the right to receive the money accrued.

The plain wording of section 21(1) LA 1953 bars any action to recover money secured by a charge, or to enforce the charge, twelve years after the right to receive the money has accrued.

Defining "Action"

The critical determination is whether an Order for Sale application constitutes an "action" within the ambit of section 2 LA 1953 or merely the exercise of a *sui generis* statutory remedy under the NLC. Section 2 LA 1953 broadly defines an "action" to include "a suit or any other proceeding in a court of law[6]."

For decades, the banking sector maintained that foreclosure was a unique statutory procedure designed to realise a security interest, rather than a "suit" to recover a debt. This distinction played a crucial role in protecting banks from the twelve-year statute of limitations.

---

3 National Land Code (Malaysia) (Act 828), s 256.
4 National Land Code (Malaysia) (Act 828), s 260.
5 Limitation Act 1953 (Malaysia) (Act 254), s 21 (1).
6 Limitation Act 1953 (Malaysia) (Act 254), s 2.

Position before the *Thameez* case: Order for Sale is a statutory remedy

Before the *Thameez* case, the prevailing judicial position was that a chargee applying for an Order for Sale was just enforcing a statutory remedy and not commencing an "action," so the twelve-year limitation would not apply. For example, in the case of *Peh Lai Huat v MBf Finance Bhd*,[7] Abdul Aziz Mohamad FCJ held that:

> [12] "The only reason why I decided that the appeal should be dismissed was the reason that is stated in para 3 of the judgment of my learned brother Gopal Sri Ram FCJ, that is, that
>
> s21(1) of the Limitation Act 1953 did not apply to the respondent's action because it was not an action brought to recover any principal sum of money secured by a charge but was an action in exercise of the right to the statutory remedy of an order for sale. It was, however, not with the benefit of having read the two authorities cited by my learned brother in the said paragraph that I conceived that reason."

Similarly, it was decided in *Kandiah Peter v Public Bank Berhad*[8] ("*Kandiah Peter*") that an Order for Sale application is an enforcement of rights under a registered charge rather than seeking a judgment for a debt. The Court stated that an Order for Sale itself is neither a judgment nor a decree, and that substantive issues are not decided during the hearing. According to the case:

> "A chargee who makes an application for an order for sale in foreclosure proceedings under s 256 of the Code does not commence an action. He merely enforces his rights as a chargee by exercising his statutory remedy against the chargor in default. The chargee, therefore, does not sue for a debt. It is also clear that his claim for an order for sale is not based upon a covenant but under the registered charge. The order for sale when made under s 256 of the Code is not a judgment or a decree. The court hearing the application for foreclosure

7 [2011] 3 MLJ 470 at [12].
8 [1994] 1 MLJ 119.

> does not make, and in any event ought not to make, any adjudication upon any substantive issue."

The case of *Kandiah Peter* should nevertheless be distinguished from the *Thameez* case as it was primarily concerned with the doctrine of res judicata, which requires a prior final judgment or decree. While it successfully argued that foreclosure does not culminate in a final judgment for res judicata purposes, it did not directly address the question of "action" for limitation purposes.

The Shift in the *Thameez* case: Order for Sale is an "action"

The Federal Court in the *Thameez* case acknowledged that an Order for Sale is a statutory remedy:[9]

> [77] There is no dispute that an order for sale is a statutory remedy provided by the NLC to the chargee in respect of the charged land (*Kandiah Peter; Dhanoa; Chong Bun Sun; Wong Soon Kion; Low Lee Lian; Peh Lai Huat; Jigarlal; VRKRS Chettiappah; and M&J Frozen Food Sdn Bhd & Anor v Siland Sdn Bhd & Anor* [1994] 1 MLJ 294).

The Federal Court nevertheless went further and held that due to the cumulative effect of the NLC, the Rules of Court 2012 ("ROC 2012"), the LA 1953 and the Courts of Judicature Act 1964 ("CJA 1964"), an Order for Sale application is undeniably an "action" under section 2 LA 1953 and is therefore caught by section 21(1) LA 1953. The Court reasoned that because section 256(2) of the NLC[10] mandates that applications follow civil procedure laws (specifically Order 83 of the ROC 2012), and because proceedings begun by Originating Summons fall under the definition of "proceeding" in the ROC and CJA, the definition of "action" in section 2 LA 1953[11] is satisfied. Consequently, High Court Order For Sale applications are now firmly caught by the twelve-year limitation period[12].

---

9 *Thameez Nisha Hasseem (As the Administrator of The Estate of Bee Fathima @ Dll, Deceased) v Maybank Allied Bank Berhad* [2023] 4 MLJ 145 at [77].

10 National Land Code (Malaysia) (Act 828), s 256(2).

11 Limitation Act 1953 (Malaysia) (Act 254), s 2.

12 Ibid at [70] and [78].

> [70] "Briefly, it was submitted that the phrase 'Any application for an order for sale' shall be made to the court in accordance to the law relating to civil procedure in s 256(2) brings the application of the ROC — which law is given a statutory force by s 447(1) of the NLC. Order 83, in particular r 1(1)(b) relating to the 'sale of the charged property' is relevant. In this respect, O 5 rr 1 and 3 mandate that the 'proceedings' relating to the application for an order for sale of charged property shall be begun by Originating Summons; and the meaning of 'proceeding' as contained in O 1 r 4(1) of the ROC is 'any proceedings whether in open court or in chambers and includes an application at any stage of a proceeding …'. Thameez also highlighted ss 16 and 17 of the CJA in respect of the making of the rules of court and the definition of 'action', 'cause' and 'Court' in s 3 of the CJA. The definition of 'action' in s 2 of the LA 1953 includes 'a suit or any other proceeding in a court of law'.
>
> [78] That said, it must nevertheless be borne in mind that such statutory remedy cannot be enforced without there being 'any application' first made to court according to the required procedure prescribed in O 83 of the ROC. In this regard, we agree with the argument submitted by Thameez that the cumulative effect of reading the relevant provisions in the NLC, the ROC, the LA 1953 and the CJA means that the application for an order for sale pursuant to s 256 of the NLC is an 'action' falling under the definition of 'action' in s21(1) of the LA 1953."

Ambiguity regarding Land Office Titles

A lingering question remains: Does section 21(1) LA 1953 apply to Order for Sale applications before the Land Administrator under section 260 of the NLC? Given that "action" under section 2 LA 1953 is confined to proceedings in a "court of law," a strict interpretation might exclude Land Office proceedings.

According to the Federal Court in the *Thameez* case, this question was clarified in *Wan Zubaidah Wan Mahmood & Anor v. CIMB Bank Berhad*[13] ("*Wan Zubaidah*") where a Land Office title is

[13] [2019] 2 MLRA 167.

subject to section 21(1) LA 1953. This reliance, however, may be questionable. The central question in *Wan Zubaidah* was whether a Certificate of Reference to Court under section 265(3)(b) NLC constituted an accrual of a cause of action. The Court did not specifically determine whether the LA 1953 applied to the original Land Office proceedings:[14]

> [36] "It might be argued by the Bank that the correct date from which to compute the limitation period is the date when the Form 16D was issued in respect of the commencement of proceedings under s 256 of the NLC, after the issuance of the "Sijil Rujukan Mahkamah" by the Land Administrator on 4 May 2004. However, it has to be borne in mind that the substitution of the proceedings pursuant to s 265(3)(b) of the NLC to order for sale proceedings in the High Court pursuant to s 256 does not amount to the accrual of a cause of action as is envisaged in computing when time begins to run for the purposes of limitation."

Therefore, even though the High Court's position has been resolved, there is still room for argument and future legal challenges over the applicability of limitation to Land Office Order for Sale applications.

WHEN DOES THE LIMITATION PERIOD BEGIN TO RUN?

In order to determine the commencement of the twelve-year limitation period, one first needs to understand the legal statutory process that a chargee must follow under the NLC before an Order for Sale can be granted.

The process is started by a default event. When a borrower has continued to default on repayment for at least one month, the chargee has the right to deliver a statutory notice in Form 16D or Form 16E under NLC sections 254[15] or 255.[16] This notice gives the chargor another month to remedy the specified breach. If the chargor fails to

---

14 *Wan Zubaidah Wan Mahmood* [2019] 2 MLRA 167 at [36].
15 National Land Code (Malaysia) (Act 828), s 254.
16 National Land Code (Malaysia) (Act 828), s 255.

remedy the breach after the expiry of statutory notice, the chargee bank may apply for an Order for Sale.

The Pre-*Thameez* Conflict: A Dispute Among Malaysia Authorities

Prior to the Federal Court's landmark decision in the *Thameez* case, the Malaysian judiciary was split between two opposing views of the exact trigger date for the twelve-year limitation period. This division resulted in significant ambiguity for both legal professionals and financial institutions.

Position 1: Notice Dependent Approach

According to this perspective, the statute of limitation only starts when the statutory notice expires. As demonstrated in the Federal Court decision of *CIMB Bank Bhd v. Sivadevi* [2020], the majority of judges were of the view that a cause of action only "accrues" when all procedural requirements are met[17]:

> [24] "A breach by the chargor of the agreement in the charge, even one which has been continuing for one month or for such alternative period shall not be less than a month, does not make 'the right to receive the money accrued'. Cause of action does not arise yet to entitle the chargee to apply for an order for sale … If at the expiry of the period specified in the notice in Form 16D, the breach in question has not been remedied, then the 'whole sum secured by the charge shall become due and payable to the chargee'; (ss 254(3)(a) of the NLC). Thus, it is clear to me that it is on this date that 'the right to receive the money accrued'. It is on this date that the cause of action arises …"

It was opined that since a bank is legally barred from filing an Order for Sale until the Form 16D expires, the "right to receive the money" is inextricably linked to the legal capacity to enforce the charge.

Position 2: The Default-based Approach

The opposing view argued that limitation commences at the earliest point at which a debt could have been recovered. In *Wan Zubaidah v*

---

17 *CIMB Bank Bhd v Sivadevi a/p Sivalingam* [2020] 1 MLJ 583 at [24].

CIMB Bank Berhad [2019], the court held that the right to receive money accrues on the date the borrower defaults on repayment obligations[18]:-

> [34] "The date when the right to receive the money accrued must mean the date when the borrower defaulted in his repayment obligations resulting in a recall or termination of the facilities. In the instant case, this would appear to have occurred in 1987."

This stand was reinforced by the court in *Lim Ban Hooi & Anor v Malayan Banking Berhad* [2018], which followed the principle in *Nasri v Mesah* [1971], asserting that "a cause of action" arises when the debt could first have been recovered by action. The right to bring an action may arise on various events; but it has always been held that the statute runs from the earliest time at which an action could be brought"[19]. Under this view, Form 16D is merely a procedural "enforcement tool" rather than the origin of the substantive right itself.

The Resolution in the *Thameez* Case

In the *Thameez* case, the Federal Court decisively adopted the second position, ruling that limitation under section 21(1) LA 1953 begins from the date of failure to repay the debt, not the failure to remedy a Form 16D notice[20]:-

> [112] "… limitation in s 21(1) begins from the date of the failure to repay the debt and not from the failure to remedy the 16D notice."

This position aligns with the earlier Court of Appeal decision in *Wan Zubaidah*[21] and as decided in the case of *Lim Ban Hooi*, the time

---

18 *Wan Zubaidah Wan Mahmood & Anor v. CIMB Bank Berhad* [2019] 2 MLRA 167 at [34].

19 *Lim Ban Hooi & Anor v. Malayan Banking Berhad* [2018] 6 MLRA 327.

20 *Thameez Nisha Hasseem (As the Administrator of The Estate of Bee Fathima @ Dll, Deceased) v Maybank Allied Bank Berhad* [2023] 4 MLJ 145 at [112].

21 *Wan Zubaidah Wan Mahmood & Anor v. CIMB Bank Berhad* [2019] 2 MLRA 167 at [34].

should commence "from the earliest time at which an action could be brought."[22]

The Federal Court emphasised that the law of limitation must be certain. Adopting the second position of law would grant banks an unfettered discretion to decide when to trigger the clock and may be potentially unfair to the borrower, potentially enabling the bank to "sleep on their rights" for decades. Such a position would render the time requirements in the NLC meaningless and defeat the public policy objective of the Limitation Act, which is to ensure finality and prevent the litigation of stale claims.

Furthermore, the "Date of Default" rule provides objective certainty as a provable fact recorded in the loan agreement and statement of accounts, whereas the issuing of a statutory notice is a subjective administrative decision made by a bank's recovery department[23]. The law guarantees that the time frame is determined by the parties' real behaviour rather than the creditor's administrative convenience by applying limitation to the act of default.

This point was also noted by the Court of Appeal in the case of *Lim Ban Hooi*:[24]

> [65] "If the time period of 12 years runs only from when the chargee decides to issue the Form 16D notice … the time requirements of 'at least one month or such other alternative period as may be specified in the charge' mentioned in s 253, would have been rendered meaningless and of no effect … a chargee may well decide not to do anything for the next 100 years, and still be in time to enforce the ad rem right of order of sale."

In summary, financial institutions must be made aware that the current position is not bank-friendly vis-a-vis in recovery of debt due by a borrower; the twelve-year limitation will run from the first instalment default. Banks do not have any discretion as to when to issue

---

22 *Lim Ban Hooi & Anor v. Malayan Banking Berhad* [2018] 6 MLRA 327.

23 *Thameez Nisha Hasseem (As the Administrator of The Estate of Bee Fathima @ Dll, Deceased) v Maybank Allied Bank Berhad* [2023] 4 MLJ 145 at [111].

24 Ibid at [111].

the statutory notice and apply for an Order for Sale because the twelve-year limitation period has started to run.

Operational Implications for Banks

The ruling in the *Thameez* case implies a radical change in the way financial institutions handle their non-performing loans (NPLs).

In standard banking practice, the financier rarely initiates legal action upon a single missed instalment. The bank would issue a Letter of Demand after the borrower has been in default for several months. If the default continues, the financial institution then proceeds to exercise its contractual right to terminate and recall the facility making the entire facility immediately due and payable.

Nonetheless, the Court has made it clear that "recall" arrangements in contracts cannot delay the statutory time frame. These days, each NPL will have to set an "expiry date" that is determined by the first instalment default. Banks can no longer afford to prioritise complicated issues while neglecting past-due accounts. The "wait-and-see" approach that was popular during the *Sivadevi* era is now a dangerous risk. Banks must now start and commence legal action, or take action to "restart" the statute of limitations, well within the twelve years in order to guarantee that the security is still enforceable.

In summary, the twelve-year limitation will run from the first instalment default, not from later events such as issuance of a demand, termination or recall. Contractual provisions making all sums "immediately due and payable" upon default in payment may postpone the Bank's enforcement steps practically; then again, this can only be confirmed after due process upon declaration by the court.

CIRCUMVENTING THE 12 YEARS LIMITATION.

Although the twelve-year limitation starts on the first day of default, this term is not a definitive deadline. Whenever a borrower or chargor makes a partial payment or gives a formal acknowledgment of the debt, the statute of limitations may be restarted under section 26 of the LA

1953 through a fresh accrual of action. Section 26 LA 1953 provides that:[25]

> Fresh accrual of action on acknowledgment or part payment
>
> (1) Where there has accrued any right of action to recover land or to enforce a mortgage or charge in respect of land or personal property, and …
>
> (b) in the case of any such action by a mortgagee or chargee the person in possession as aforesaid or the person liable for the debt secured by the mortgage or charge makes any payment in respect thereof, whether principal or interest, the right shall be deemed to have accrued on and not before the date of the acknowledgment or last payment.
>
> (2) Where any right of action has accrued to recover any debt or other liquidated pecuniary claim, or any claim to the personal estate of a deceased person or to any share or interest therein, and the person liable or accountable therefor acknowledges the claim or makes any payment in respect thereof, the right shall be deemed to have accrued on and not before the date of the acknowledgment or the last payment …

Accordingly, any payment or acknowledgement after the first default resets the twelve-year limitation period. Once the chargor acknowledges the debt or makes any payment towards it, the limitation period will restart on the date of acknowledgement or part payment.

This principle was affirmed in *Yam Kong Seng & Anor v Yee Weng Kai* [2014] that the right of action in cases where the debtor acknowledged the claim, or made any payment in respect thereof, shall be deemed to have accrued on and not before the date of the acknowledgement[26].

> [8] "In allowing the appeal the Court of Appeal, inter alia, adjudged that s 26(2) of the Act recognised the right of action in cases where the debtor acknowledged the claim, or made any payment in respect thereof, which shall be deemed to have accrued on and not before the date of the

---

25 Limitation Act 1953 (Malaysia) (Act 254), s 26.

26 *Yam Kong Seng & Anor v Yee Weng Kai* [2014] 4 MLJ 478 at [8].

> acknowledgement. In short, in order to constitute a valid acknowledgement for the purpose of s 26(2) of the Act there must be evidence to show that there was an unequivocal admission of a subsisting debt by the respondent at the time of the acknowledgment."

For such acknowledgement or part-payment to constitute a fresh accrual under s.26, it must comply with the formal requirements in section 27 LA 1953:[27]

> Formal provisions as to acknowledgments and part payments
>
> (1) Every such acknowledgment as is referred to in section 26 or in the proviso to section 16 of this Act shall be in writing and signed by the person making the acknowledgment.
>
> (2) Any such acknowledgment or payment as is referred to in section 26 or the proviso to section 16 of this Act may be made by the agent of the person by whom it is required to be made under that section, and shall be made to the person, or to an agent of the person, whose title or claim is being acknowledged or, as the case may be, in respect of whose claim the payment is being made.

Acknowledgment in Writing

For the bank to rely on an acknowledgment to restart the twelve-year limitation period, the acknowledgment must fulfil the strict criteria under section 27 LA 1953 which requires the acknowledgment to be in writing, signed by the borrower or his authorised agent and the acknowledgment must be made to the Bank or its agent[28]. Given these requirements, the bank should also consider requesting written acknowledgement of debt from the borrower and/or chargor if feasible.

In contemporary practice, the traditional requirements of "writing" and "signatures" have evolved. The Federal Court established in *Yam Kong Seng & Anor v Yee Weng Kai*[29] that the Electronic Commerce Act 2006 ("ECA 2006") bridges the gap between LA 1953 and modern technology, and held that an SMS, constituting

---

27 Limitation Act 1953 (Malaysia) (Act 254), s 27.
28 Limitation Act 1953 (Malaysia) (Act 254), s 27.
29 [2014] 4 MLJ 478 at [26].

an "electronic message," can fulfil the statutory writing requirement. According to the case:

> "Section 8 of the Electronic Commerce Act 2006 ('ECA') provides that where any law requires information to be in writing, the requirement of the law is fulfilled if the information is contained in an electronic message that is accessible and intelligible so as to be usable for subsequent reference. In a word, a message from an SMS, with all the attributes of s 8 being present viz accessibility, intelligible and extractable for subsequent reference, such an electronic message is as good as in writing …"

It was further held that signatures need not be written and the acknowledgment is deemed signed if there is any mark, regardless of whether written or not, that identifies the party's actions, possibly in the form of a mark or a distinguishing characteristic unique to that individual. Similarly, traditional paperwork mostly replaced by mobile phones, which have features that can save information or transmissions in the same way as SMS, with the phone number indicating the caller or sender. Since the sender was sufficiently identifiable, the legal necessity for a signature was satisfied.[30]

In the modern digital age, "writing" and "signatures" are no longer limited to pen and paper. Electronic or E-signature is widely used in the current digital era. Thus, the bank does not need to obtain a written acknowledgement from the borrower in order to restart the twelve-year limitation. Section 9[31] of the ECA 2006 stipulates that an electronic signature is valid and legally enforceable if:[32]

(a) it is attached to or logically associated with the electronic message;

---

30 *Yam Kong Seng & Anor v Yee Weng Kai* [2014] 4 MLJ 478 at [35].

31 Electronic Commerce Act 2006 (Malaysia) (Act 658), s 9.

32 G Vijay Kumar and Chan Mun Yew, JUNE 22, 2021, "The Age of Digital Documents: Understanding Electronic Signatures," Lee Hishammuddin Allen & Gledhill, accessed December 27, 2025, https://lh-ag.com/wp-content/uploads/2022/11/The-Age-of-Digital-Documents_Understanding-Electronic-Signatures_LHAG-Insights-20210622.pdf.

(b) it provides adequate identification of the person, and indicates the person's approval of the information to which the signature relates;
(c) it is "as reliable as it is appropriate" for the purposes and circumstances in which the signature is needed, in the sense that:
    (i) The means of creating the electronic signature is linked to and under the control of that person only;
    (ii) After signing the document, changes to the electronic signature and/or the document, as a whole, are detectable.

Section 5 ECA 2006 defines "electronic message" as an information generated, sent, received or stored by electronic means[33]. An email clearly falls within this definition as it is an electronic message that is typically accessible, intelligible and usable for subsequent reference, thus fulfilling the requirement of "writing" under section 8 ECA 2006.

Consequently, financial institutions need not rely solely on physical paperwork. A well-documented digital trail of acknowledgement can effectively refresh the twelve-year limitation period, provided these acknowledgments fulfil the requirements in ECA 2006.

Part-Payment

Payment is regarded as the most objective form of acknowledgment. Based on section 26 LA 1953, any payment toward the principal sum or interest due is sufficient to trigger a fresh accrual[34]; the payment does not have to be in full. Thus, even a partial payment towards the account is sufficient to cause the right to enforce the charge deemed to have accrued. In consideration of these requirements, the bank must request borrowers and/or chargors for at least token payments, even for a minimal amount, as part-payment automatically restarts the limitation period under section 26 LA 1953.

---

33 Electronic Commerce Act 2006 (Malaysia) (Act 658), s 5.
34 Limitation Act 1953 (Malaysia) (Act 254), s 26.

EXTINGUISHMENT OF RIGHT BY OPERATION OF LAW IN SECTION 340(4)(b) NATIONAL LAND CODE

With regards to the status of registered charges upon expiration of the twelve years limitation period, the *Thameez* case critically departed from traditional principles. The Federal Court moved beyond the view that limitation is merely a defense and declared that it can lead to the total extinguishment of a registered interest (i.e. the chargee's registered interest in the property).

Judicial Conflict: Remedy vs Right

The Federal Court in the *Thameez* case declared that the right in the registered charge had been extinguished by operation of section 21(1) LA 1953 and the discharge of the charge shall take effect by operation of law (court order)[35].

> [133] "When the statutory limitation period lapses and is successfully established, the court is legally empowered to determine the question of title or interest by operation of law in s 340(4)(b) of the NLC — which determination has the effect on the indefeasibility or otherwise of the title or interest. The facts and circumstances of the present case illustrate the application of the statutory limitation in the operation of the 'determination of title or interest by operation of law'.
>
> [134] Having answered the questions of law as per the above, we now make the order that the appellant is legally entitled for the return of the issue document of title. Accordingly, we make the following consequential orders: (a) a declaration that the said third- party charge and the said chargee (MABB) shall cease to have any estate or interest whatsoever in the said land and MABB's right to enforce the said third-party charge has been extinguished by operation of law; …"

Prior to this ruling, a chargee bank might have argued that their interest remained on the title even though the statutory remedy of Order for Sale was barred by limitation. However, the Federal Court rejected

---

35 *Thameez Nisha Hasseem (As the Administrator of the Estate of Bee Fathima @ Dll, Deceased) v Maybank Allied Bank Berhad* [2023] 4 MLJ 145 at [133] & [134].

this and declared that upon successful establishment of the statutory limitation under the LA 1953, section 340(4)(b) of the NLC is engaged, allowing for the determination of title or interest by operation of law. Thus, a chargor is entitled to defeat and remove the registered interest of the chargee pursuant to section 340(4)(b) of the NLC and consequently obtain the return of a clean land title.

This approach nevertheless contradicts the well-established legal principle that the limitation statute only bars the remedy to recover the debt, but does not extinguish the underlying rights.

The Supreme Court of India in *Bombay Dyeing and Manufacturing Company Limited v. State of Bombay*[36] established that the "statute of limitation only bars the remedy but does not extinguish the debt". Moreover, the English case of *Ronex Properties v John Laing Construction*[37] also held that "it is trite law that the English Limitation Acts bar the remedy and not the right, and furthermore, that they do not even have this effect unless and until pleaded."

In Malaysia, the subsequent Federal Court decision in *Julian Chong Sook Keok & Anor v. Lee Kim Noor & Anor*,[38] involving two of the same judges who presided over the *Thameez* case (Hasnah Mohammed Hashim FCJ and Mary Lim FCJ), reiterated the general rule that limitation is procedural and affects only the remedy.

> [35] "That bar, however, bars only the right to judicial relief or remedies but not the cause of action which remains complete and not extinguished. Limitation merely takes away the judicial remedy as a defendant may choose not to raise limitation. Thus, until limitation is pleaded or raised as a defence (see s. 4 of the Act 254), a plaintiff's cause of action is not regarded as time-barred."

However, *Julian Chong* made no reference to the *Thameez* case, especially on the doctrine of extinguishment. This omission highlights a significant inconsistency within the Federal Court on whether limitation affects substantive rights and creates confusion for the public and financial institutions that rely on registered land charges.

---

36 [1957] SC 361; [1957] 2 SCR 609.
37 [1983] QB 393.
38 [2024] 5 CLJ 519 at [35].

Statutory Omissions: Section 279 of the NLC

The *Thameez* case decision has also been criticised for its procedural bypass of the NLC's discharge mechanisms. Instead of declaring a discharge by operation of law, the Court should have followed the standard Torrens system procedure of ordering the chargor to pay a redemption payment to the bank, followed by a formal discharge via Form 16N.

Even assuming the Federal Court intended to rely on section 340(4)(b) NLC to determine the registered charge, it is notable that the Court made no reference to section 279 NLC, which governs the Registrar's authority to discharge a charge[39].

Section 279 NLC provides that:

> Discharge by payment to Registrar in cases of death, absence or disability.
>
> (1) Any chargor may apply to the Registrar for relief under this section on the grounds that he is entitled to pay off the charge but-
>
> (a) the chargee is dead, or cannot be found within the Federation, or evades or refuses to accept payment thereof, or is under a legal disability, and
> *(b)* he is unable to trace any person or body authorised to receive payments on the chargee's behalf.

The statutory scheme under section 279 NLC clearly contemplates payment as a prerequisite to obtaining a discharge. However, in the *Thameez* case, the Court ordered the discharge without requiring any redemption payment on the basis that the right to enforce had already been extinguished. This omission creates uncertainty as to the legal basis for discharging a registered charge without payment and without invoking section 279 NLC or any analogous statutory mechanism.

If a chargor relies on the *Thameez* case to extinguish the registered charge, the chargee bank should defend its rights by emphasising that limitation affects only remedies, not the underlying

39 National Land Code (Malaysia) (Act 828), s 279.

registered charge. The conflicting signals from the Federal Court suggest that the decision in *Thameez* must be revisited to restore the core principles of the Torrens system.

CONCLUSION

After the Federal Court's ruling in the *Thameez* case, Malaysian banks are no longer able to treat registered charges as lifelong securities. The decision indicates a shift away from the security of a mortgage or charge in real property, towards one that prioritises limitationand the Court clearly stated that the Limitation Act and National Land Code must be interpreted simultaneously. In order to prevent land titles from being burdened by inactive debts that have lost their ability to be enforced, the phrase "by operation of law" under section 340(4)(b) of the NLC acts as a crucial safety valve to the chargor.

For financial institutions and legal professionals, the decision in *Thameez* brings major implications. The commencement of the twelve-year limitation is now an absolute certainty, beginning with the first default. Banks are no longer able to pause or postpone the start of the limitation period by using recall processes or the strategic delays of Form 16D statutory notices.

A chargee's primary response against these recent developments is to keep a close eye on its debts, especially ones that have been inactive for a long period and to make active use of section 26 LA 1953. By securing a written acknowledgment or part-payment, a chargee can refresh the timeline and trigger a fresh accrual of action. In the modern landscape, ECA 2006 is an essential instrument. As long as email or e-signed agreements meet the requirements of section 9 ECA 2006, they provide the "written and signed" proof required by section 27 LA 1953, thus effectively restarting the calculation of limitation.

Finally, this landmark ruling serves as an unambiguous alert to all chargees: that the law does not protect those who sleep on their rights. Unlike other areas of law, where limitation merely bars the remedy, its connection with section 340(4)(b) of the NLC indicates that the bank's security right over real property can be extinguished and removed. The bank loses its registered interest in the land as well as its opportunity to appear in court by sleeping for twelve years and the

decision in *Thameez* has chosen to punish the lender who sleeps on its rights.