

LANDMARK LAND CASE OVERTURNED

On 21 January, the Federal Court finally ruled that the previous Federal Court decision in *Adorna Properties Sdn Bhd v Boonsom Boonyanit @ Sun Yok Eng [2001] 1 MLJ 241* ("Adorna Properties") had misconstrued a proviso of Section 340 of the National Land Code, 1965 ("NLC").

The decision in Adorna Properties has been strongly criticised by many and there has been countless calls for an amendment to the NLC to nullify the decision of Adorna Properties. This is because it had created a loophole in the law and allowed some unscrupulous people to falsely transfer titles¹ since it protected innocent buyers of properties, where the titles were forged, causing the principal registered landowners to lose their lands through scams.

However, nothing was done and the apex court only revisited Adorna Properties after more than nine years when the Federal Court granted leave in May last year to an appellant landowner Tan Yin Hong ("TYH") to appeal on the question of *"whether an acquirer of a registered charge or other interest or title under the [NLC] by means of a forged instrument acquires an immediate indefeasible interest or title."* It was reported in the press that without the knowledge of TYH, the Pahang State Government had 'mysteriously' alienated and issued the document of title of a plot of land in Kuantan in favour of him in 1976. TYH only came to know about the existence of the land in 1985 when he received a letter from the United Malayan Banking Corporation Bhd (now RHB Bank Bhd) demanding repayment of the sum of about RM300,000 being the outstanding loan sum granted by the RHB Bank Bhd to Cini Timber Industries Sdn. Bhd ("Cini Timber"). It was subsequently discovered that a conman, Tan Sian San, who cannot be traced had forged TYH's signature to create a forged power of attorney in favour of himself to charge the land to RHB Bank Bhd as security for the loan facilities granted to Cini Timber. Chief Justice Tun Zaki Azmi who led a five-member panel allowed TYH's appeal and said *"I am legally obligated to restate the law since the error committed in Adorna Properties is so obvious and blatant"*.

Following the recent apex court decision, the High Court in Shah Alam declared on 11 February, that a fraudulent land transfer in the case of a 71 year old retiree, Lye Piang Yin and his late brother Lye Kim against developers, Propaxis Trading Sdn Bhd was unlawful and ordered that the land be re-registered under the names of the rightful owners.

Although the grave error in Adorna Properties has now been put right and landowners can begin to see light at the end of the tunnel as more lower courts apply the latest Federal Court ruling when adjudicating similar cases of land disputes, we hope that such an 'obvious and blatant error' would not be made again and there would not be any unconscionable delays in rectifying any judicial injustice.

For further information and assistance, please contact the RL Property & Banking Team at T: + 603 2093 3939 ext. 260 or email: rexlex@raslanloong.com.

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ⁱ In 2006, there were 80 cases of fraud involving land worth RM4.9 million. Up to October 2007, the comparable numbers were 49 cases involving land worth RM10.4 million. See "Adorna overturned – a beginning, not the end", Tan Siok Choo, 8 February 2010, *The Sun*

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