IN THE HIGH COURT OF MALAYA AT KUALA LUMPUR
IN THE FEDERAL TERRITORY, MALAYSIA
(COMMERCIAL DIVISION)
[SUIT NO.: WA-22NCC-204-05/2020]

BETWEEN

CHEN KHAI VOON
(I/C No.: 600924-10-6577) ... PLAINTIFF

AND

1. **LIM BENG GUAN**
   (I/C No.: 701125-04-5483)
2. **CHOONG KHOONG LIANG**
   (I/C No.: 701113-08-5883)
3. **AGATHIS ONE LTD.**
   (Company No.: ET-251902)
4. **AGATHIS MANAGEMENT LTD**
   (Company No.: ET-196298)
5. **AGATHISFOUR SDN BHD**
   (Company No.: 1077645-W) ... DEFENDANTS

GROUNDS OF JUDGMENT

(Enclosures 13 and 23)

Introduction

[1] It is trite that a claim for conspiracy cannot be sustained unless there is actual damage resulting from the conspiracy. Thus where no actual pecuniary loss is pleaded, the claim for conspiracy is fatally incomplete and susceptible to be struck out. A plea of conspiracy will also be struck out if there are insufficient particulars to support the necessary ingredients for the cause of action. Where a corporate entity is alleged to be a co-conspirator together with its directors, there is a greater need to give particulars of the circumstances where the corporate entity is alleged to have agreed to the conspiracy, whether the intention is imputed or otherwise, why and how the directors are alleged to be co-conspirators in their personal capacities. A general averment of conspiracy lumping the corporate entity and its directors together will not be enough.

Background Facts

[2] The Plaintiff ('**Aaron**') and the 1st Defendant ('**LBG**') have known each other for over 20 years. Aaron came to know LBG through Aaron's business associate, one Hamidon Abdullah ('**Hamidon**').

[3] Over the years, Aaron and LBG became close and trusted friends. LBG participated in some of Aaron's investments. One such investment was a public listed entity known as Nadayu Properties Berhad ('**Nadayu**'), a property development company. Aaron, Hamidon, LBG and the 2nd Defendant ('**Danny**') became directors and direct and / or indirect shareholders.

[4] Nadayu was the sole shareholder of an entity known as Pembangunan Mutiara Sdn Bhd ('**PBM**').

[5] Sometime in or around 2011, an opportunity was presented by LBG to invest and partake in the acquisition and development of 164 pieces of land located in Tambon Bang Kaew, Ambar Bang Phi, Samutprakarn Province, Thailand, with a total area of approximately 25.6 acres ('**the Land**'). The opportunity was to take up to 40% direct or indirect interest in a joint venture company which held the interest in the Land.

[6] LBG set up a special purpose fund company ie, the 3rd Defendant ('**Agathis One**') to take up the investment in the Land. LBG and Danny were the only directors of Agathis One. The assets and/or investment of Agathis One was managed by the 4th Defendant ('**Agathis Management**'). LBG and Danny were also the only directors of Agathis Management.

[7] Agathis One issued 10,800,000 non-voting redeemable preferred shares ('**RPS**') to invited investors and Agathis Management to take up at an issue price of USD1.00 each. The monies raised from the RPS would be utilised for the investment in the Land.

[8] Aaron had left all formalities and management of the investment in the Land to LBG.

[9] To the best of Aaron's knowledge, PBM, Agathis Management, one Jaskiran Singh and two other close associates of LBG became investors in Agathis One. PBM invested USD3,000,000.00 for 3,000,000 RPS in Agathis One. The investors executed Investment Agreements with Agathis One which governed their rights and obligations pertaining to the RPS.

[10] As between Agathis One and Agathis Management, there is a Fund Management Agreement dated 5.4.2011 executed governing the rights and obligations of Agathis Management as the Fund Manager. Thus, Agathis Management had 2 roles – as an investor and as Fund Manager of Agathis One.

[11] In or around 2012, Aaron personally took up a further 300,000 RPS for USD300,000.00. Aaron alleged that LBG had personally agreed to attend to all arrangements/formalities to have the RPS registered in Aaron's name. Aaron placed full trust and confidence in LBG.

[12] In 2013/2014, Nadayu was taken private. As part of the corporate exercise, PBM was to divest its assets and ultimately be liquidated.

[13] Sometime in 2014, PBM divested its 3,000,000 RPS in Agathis One. By a letter dated 9.5.2014, PBM pursuant to its divestment of the RPS wrote to Agathis One requesting the transfer of its 3,000,000 RPS to the following parties in the stated proportions:

Parties	No. of RPS
Aaron	1,200,000
Hamidon	1,200,000
Agathis Management	600,000

[14] So, by mid-2014, Aaron had ownership of 1,500,000 RPS. It is not disputed that Agathis Management was made the registered owner of Aaron's 1,500,000 RPS and that the beneficial ownership rests with Aaron.

[15] For years, Aaron received no information and/or documents pertaining to his investment in the Land from Agathis One.

According to Aaron, he did not raise any queries as he had placed full trust and confidence in LBG.

[16] However, there was a breakdown in Aaron's trust and confidence in LBG in 2019. It arose out of another venture that Aaron and LBG were involved in ie, the Papparich Group of Companies ('**Papparich Group**'). This will be elaborated later.

[17] Aaron was also informed by another co-investor in Agathis One that some pieces of land in the investment in the Land were sold and monies were received by Agathis One or Agathis Management which Aaron claimed no account had been received.

[18] As distrust had set in, Aaron wrote to Agathis Management on 11.2.2020 and instructed them to effect the immediate transfer of Aaron's 1,500,000 RPS to Aaron's name.

[19] The first letter elicited no response. A final reminder was sent on 25.2.2020. This elicited a response.

[20] Agathis Management's 2.3.2020 response copied to Agathis One and PBM was not what Aaron had expected. It was contended that Aaron's request to have the RPS transferred to his name triggered Clause 6.2 of the Investment Agreement, ie, that a first offer to sell the shares must be made to the other investors in Agathis One. Agathis Management further contended that it has an obligation to make the said pre-emptive offer at par value, causing greater distress to Aaron.

[21] This prompted Aaron to respond to Agathis Management that its intended pre-emptive offer to other investors is fraudulent, misconceived in law and an act of conversion. Confirmation was sought that Agathis Management would proceed to effect the

transfer of ownership and undertake not to sell, assign, transfer or otherwise dispose of or deal with Aaron's RPS.

[22] Aaron also wrote to Agathis One and Agathis Management seeking an account, status of the investment and quarterly unaudited management accounts.

[23] There was no response prior to the filing of the action herein. Aaron then filed this Suit seeking the following reliefs:

23.1 a declaration that the Defendants or combination of the Defendants conspired to injure and/or defraud Aaron;

23.2 a declaration that Agathis Management holds the 1,500,000 RPS on behalf of Aaron as a trustee;

23.3 a declaration that Aaron is the rightful owner of the 1,500,000 RPS;

23.4 a declaration that Agathis Management and/or LBG have breached their fiduciary duties and/or duties as trustee as set out in paragraphs 74 to 79 of the Amended Statement of Claim;

23.5 an order for specific performance that Agathis One do transfer the 1,500,000 RPS back to Aaron;

23.6 alternatively, in the event specific performance is no longer possible, damages in lieu of specific performance;

23.7 an account of all dividends and/or profits and/or any monies received by Agathis One, Agathis Management and/or LBG in respect of the investment in the Land;

23.8 an order that Agathis One, Agathis Management and/or LBG pay to Aaron those sums found to be due on the taking of the account;

23.9 damages for conspiracy;

23.10 general damages to be assessed;

23.11 aggravated and exemplary damages;

23.12 costs.

[24] Aaron's pleaded causes of action are as follows:

24.1 conspiracy to injure Aaron by lawful means;

24.2 conspiracy to injure Aaron by unlawful means;

24.3 conspiracy to defraud;

24.4 breach of trust; and

24.5 breach of contract.

[25] This Suit is but one of many suits that have been filed in the High Court by the parties against each other.

Suit No. WA-22NCC-118-03/2020 ('Suit 118')

[26] Suit 118 was initiated by Aaron against LBG. LBG has since obtained an order to join Agathisfour Sdn Bhd ('**Agathisfour**') (who is the 5th Defendant in this action) as a co-plaintiff in its Counterclaim.

[27] The dispute in Suit 118 centres around the venture in the Papparich Group.

[28] The Papparich Group essentially operates businesses in the food and beverage industry. It operates coffee shop style restaurants under the brand name "Papparich" and manufactures and sells coffee premix powder.

[29] The ultimate holding company is Papparich Group Sdn Bhd ('**PGSB**'). The owners of PGSB were Aaron and one Tan Theng Liang ('**Rich Tan**') in equal shares.

[30] PGSB has several subsidiaries, which handled business interests overseas and in Malaysia.

[31] Primarily, the Malaysian operations were operated by subsidiaries of Papparich Malaysia Sdn Bhd ('**PMSB**'). PGSB held a 70% stake in PMSB. Agathisfour held a 30%.

[32] From in or around March/April 2017, the relationship between Aaron and Rich Tan became strained. The dispute ultimately spawned litigation. Sometime in or around mid-2018, LBG managed to broker a settlement which ultimately resolved all the litigation.

[33] The settlement primarily involved the sale of Rich Tan's 50% shares in PGSB for a purchase consideration of RM 36,000,000.00.

[34] It is Aaron's case that Aaron and LBG purchased Rich Tan's 50% shares in PGSB in equal proportion through a special purpose vehicle, Adventure Driven Sdn Bhd ('**ADSB**').

[35] A loan of RM 21,000,000.00 was taken from OCBC Bank Berhad to partly finance the purchase. Most of the remaining purchase price was funded by Aaron initially.

[36] Due to LBG's failure to service the loan, Aaron had to pay the interest instalments.

[37] Suit 118 was initiated by Aaron to recover LBG's portion for the acquisition and the interest payments totalling more than RM 9,000,000.00.

[38] LBG's Counterclaim in Suit 118 is premised on LBG's contention that on 7.1.2019 ('**the January 2019 Agreement**'), Aaron had agreed to buy out LBG's shares in ADSB and also that of Agathisfour's 30% shares in PMSB for the sum of RM 75,000,000.00. Aaron denies any such agreement. LBG has sought damages for the breach of the January 2019 Agreement.

Originating Summons No. WA-24NCC-208-06/2020 ('OS 208')

[39] This is filed by Agathis Management and Agathisfour against PMSB and its directors and PGSB as the majority shareholder of PMSB for oppression citing, *inter alia*, various breaches of fiduciary duties and seeking a buy-out order.

Originating Summons No. WA-24NCC-104-02/2020 ('OS 104')

[40] This is an application filed by Agathisfour against PGSB for alleged breach of Shareholders Agreement and Share Sale and Subscription Agreement for the non-settlement of amounts due to Paparich Malaysia group of companies and its subsidiary Roti-Roti International Sdn Bhd by PGSB and its subsidiaries. Winding Up No. BA-28NCC-214-05/2020 ('WP 214') and Winding Up No. BA-28NCC-213-05/2020 ('WP 213')

[41] The WP 214 and WP 213 are winding up petitions presented by Aaron against Roti-Roti Malaysian Sdn Bhd ('**RRM**') and the PGSB in the High Court of Malaya at Shah Alam respectively.

[42] Aaron has successfully appointed an interim liquidator over RRM in WP 214.

Applications to strike out

[43] Before this Court are 2 applications, Enclosure 13 and Enclosure 23 to strike out the Plaintiff's action in its entirety under Order 18 Rule 19(1)(a), (b), (c) and (d) of the Rules of Court 2012 ('**the Rules**') and the inherent jurisdiction of the Court. Enclosure 13 is filed by the 1st, 3rd, 4th and 5th Defendants and Enclosure 23 is filed by the 2nd Defendant.

[44] After reading the parties' written submissions and hearing oral submissions from counsel via zoom, I allowed both Enclosures 13 and 23 with costs.

Court's Analysis and Decision

[45] In *Renault SA v. Inokom Corp Sdn Bhd & Anor and other appeals* [2010] 5 MLJ 394, our Court of Appeal allowed the appellants' appeal to strike out and held that the following must be satisfied in the interlocutory stage in a claim for conspiracy:

a. an agreement between 2 or more persons;

b. an agreement for the purpose of injuring the plaintiff;

c. that acts done in execution of the agreement resulted in damage to the plaintiff;

d. damage is an essential element and where damage is not pleaded, the statement of claim may be struck out.

[46] The Court of Appeal further held that the gist of the tort of conspiracy is not the conspiracy agreement alone but that agreement plus the overt acts causing damage.

> '[33] … the first element to be shown must be an agreement between two or more persons for the purpose of injuring Inokom and Quasar. 'Agreement' is not limited to a signed and sealed agreement but any informal agreement, including a combination of efforts of the alleged co-conspirators. After that, it has to be shown or at least alleged that acts were done in execution of that agreement which resulted in damage to Inokom and Quasar.'

[47] In *Lonrho Plc and Ors v. Fayed and Ors* [1993] 1 WLR 1489 at 1494, the UK Court of Appeal addressed the need to plead pecuniary damage in an action for conspiracy:

> 'A plaintiff in a civil action for conspiracy must prove actual pecuniary loss, though if he proves actual pecuniary loss the damages are at large, in the sense that they are not limited to a precise calculation of the amount of the actual pecuniary loss actually proved: see *Quinn v. Leathem* [1901] A.C. 495, especially the charge of the trial judge to the jury, as set out at p. 498, which was approved by Lord Halsbury L.C., at p. 508, and by other members of the House of Lords. As *Lord Diplock said in Lonrho Ltd v. Shell Petroleum Co Ltd (N. 2)* [1982] A.C 173, 188: "The gist of the cause of action is damage to the plaintiff." But, relying on the proposition that damages are at large, the plaintiffs had, until the opening of the hearing in this court, merely included in their statement of claim in its

> original form as amended, the broad conventional allegation, without any particulars as against the defendants, in paragraph 29 that "by reason of the matters set out above, the plaintiffs have suffered loss damage and injury."
>
> I have no doubt at all that was a grossly inadequate pleading.'
>
> Plaintiff suffered no pecuniary damage

[48] The Plaintiff's claim for conspiracy by unlawful means is set out in paragraphs 60 to 68 of the Statement of Claim. There are 2 conspiracy claims. The first conspiracy claim relates to a disputed agreement which purportedly took place in January 2019 where it is alleged that the Plaintiff had agreed to purchase Agathifour's 30% interest in PMSB. This is in fact the subject matter in the pending Suit 118.

[49] The object of the first conspiracy as pleaded in paragraphs 60 and 62 of the Amended Statement of Claim for the overt acts thereto, is to '*put pressure on Aaron to purchase Agathisfour's 30% interest in PMSB for the purchase of the Ransom Sum*'.

[50] But it is *not* the Plaintiff's pleaded case that the 'Ransom Sum' was paid to purchase Agathisfour's 30% interest in PMSB. Neither is it the Plaintiff's pleaded case that the Plaintiff had succumbed to the 'pressure'.

[51] The Plaintiff has not pleaded that he had suffered any pecuniary loss at all arising from the first conspiracy claim. Since the overt acts pleaded in paragraphs 60.1 to 60.6 of the Amended Statement of Claim did not result in actual damage to the

Plaintiff, the first conspiracy claim is plainly incomplete and unsustainable.

[52] In fact in paragraph 61 of the Amended Statement of Claim, the Plaintiff pleaded that the said overt acts were intended to disrupt the business of the Paparich Group and or to cause financial distress to the Paparich Group. These alleged overt acts are substantially based on acts that were directed at PGSB and its subsidiaries which cannot in law be equated to loss and or damage to the Plaintiff personally based on the principle of reflective loss [See: *Magdeev v. Tsvetkov* [2019] EWHC 1557 (Comm)].

[53] The Plaintiff's alternative and second conspiracy claim is pleaded in paragraph 63 which alleged the object of the conspiracy as '*to deprive Aaron of his rights, title, benefits and interests in connection with the 1,500,000 RPS in Agathis One, dividends and/or any monies due and or which ought to be paid to Aaron and or to conceal the unlawful and fraudulent acts of the said party in the performance of their duty as trustee and or as a Fund Company*'.

[54] Again, it is *not* the Plaintiff's pleaded case that the 1,500,000 RPS had been transferred out by the 4th Defendant to a third party. The fact that clauses 6.1 and 6.2 of the Investment Agreement have been invoked does not at all mean that the Plaintiff has lost his 1,500,000 RPS. The Plaintiff is challenging the application or otherwise of the said clauses. In fact, the Plaintiff had obtained a 'Stop Notice' to prohibit any transfer of the RPS. This fact is not disputed.

[55] Although the Plaintiff has pleaded wrongful refusal to account for all the dividends and or profits declared and or any monies received by Agathis One and or Agathis Management in respect

of the investment in the Land in Thailand, the Plaintiff has *not* pleaded *actual loss* of any dividend or profits or monies received in respect of the investment in the Land. The Plaintiff's case is merely that he had been kept in the dark over the accounts, finance and affairs of the investment. This does not equate to actual loss.

[56] The Plaintiff did not challenge the averment that no dividends and or profits had ever been declared in respect of the RPS. In fact, under the terms of the Investment Agreement, dividends are to be paid only after redemption of the RPS, which it is not disputed has not taken place.

[57] On the allegation that Agathis One had received proceeds from the sale of the investment in the Land in Bangkok, such proceeds have been properly accounted for in Agathis One's financial statements under 'account receivables' for the sum of RM 222,222.00. There is nothing to suggest that Agathis One is concealing the receipt of these proceeds.

[58] Learned counsel for the Plaintiff in an attempt to show that the Plaintiff had sustained pecuniary loss referred this Court to Agathis One's extension of the Investment Agreement to 2023. According to this submission, the Articles of Association of the company only permit the investment to be extended upon its maturity in 2018 for a maximum period of 2 years, ie, until 2020. So, the Agathis One's decision to extend the investment until 2023 is said to be invalid being unconstitutional. The loss to the Plaintiff as a result is that the Plaintiff is deprived of his right to cash out or redeem his investment.

[59] A short answer to this contention is simply that the complaint that such extension of the investment is invalid and unconstitutional and thus depriving the Plaintiff of his

entitlement to redeem was never pleaded in the Amended Statement of Claim. There is no reference to this issue in paragraphs 63 to 68 of the Amended Statement of Claim.

[60] It is true that in paragraph 59 of the Amended Statement of Claim, the Plaintiff did plead that the tenure of the investment matured in mid-April 2018 and that the Plaintiff had no knowledge of any extension to the same. This was a general averment which was not referred to in support of the claim for conspiracy.

[61] In any case, the decision to extend the investment had taken place in 2018 which preceded the alleged conspiracy agreement to injure the Plaintiff, said to occur sometime after January 2019.

[62] There is also no evidence that the Plaintiff has sustained actual pecuniary loss by reason of the extension.

[63] The Plaintiff has merely alleged that he has 'suffered loss and damage' but has not pleaded the particulars of these losses and damages. The use of such 'broad conventional allegation' has been held to be insufficient in a claim for conspiracy in *Lonrho PLC & Others v. Fayed and Others (No 5)* [1993] 1 WLR 1489 at p 1494.

[64] Thus, for the above reasons, the claim for the second conspiracy is also unsustainable and must be struck out.

[65] The claims under conspiracy by lawful means and conspiracy to defraud suffer from the same fatal inadequacies and for the same reasons, are struck out.

[66] Quite apart from the lack of damage, there are further reasons for striking out the conspiracy claims.

Lack of particulars of conspiracy

[67] It is trite that the particulars of conspiracy must be pleaded. The Court of Appeal in *Forest Steel Sdn Bhd v. Iconic Gateway Sdn Bhd & Anor* [2020] 7 CLJ 19 at 46 put it this way:

> '[108] It is trite that the particulars of fraud and conspiracy must be pleaded. In *CIMB Bank Bhd v. Veeran Ayasamy (Wakil Diri Kepada Letchimi Muthusamy, Si Mati)* [2015] 7 CLJ 289, the Court of Appeal made observation on the requirement to plead particulars on fraud and adopted the principle in *Davy v. Garrett* [1878] 7 Ch D 473 where Thesiger LJ at p. 489 acknowledged that:
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> > In the Common Law Courts no rule was more clearly settled than that fraud must be distinctly alleged and as distinctly proved, and that it was not allowable to leave fraud to be inferred from the facts … It may be not necessary in all cases to use the word "fraud" … It appears to me that a Plaintiff is bound to show distinctly that he means to allege fraud. In the present case facts are alleged from which fraud might be inferred, but they are consistent with innocence.
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> [109] The Court of Appeal also made reference to Mallal's Supreme Court Practice, 4th edn where it was stated at pp. 204 to 205:
>
> > Particulars of fraud must be pleaded. A general allegation of fraud, however strong the words used, where there is no statement of circumstances relied on as constituting the alleged fraud, is insufficient

> even to amount to an averment of fraud of which any court ought to take notice…'

:

:

[117] It is the law that to make out a case of conspiracy, Iconic must establish four elements as laid out in *Yap JH v. Tan Sri Loh Boon Siew & Ors* [1991] 3 CLJ 2960; [1991] 4 CLJ (Rep) 243 where Mohamed Dzaiddin J (as he then was) said at p. 245:

> In order to make out a case of conspiracy, the plaintiff must establish (1) an agreement between two or more persons, (2) an agreement for the purpose of injuring the plaintiff, and (3) that acts done in execution of that agreement resulted in damage to the plaintiff (Halsbury's Laws of England, 4th Edn., Viol 45, para 1527). Damage is an essential element and where damage is not pleaded, the statement of claim may be struck out – *Ward v. Lewis* [1955] 1 All ER 55 at p. 56, 57. Finally, the acts done which resulted in damage must be without justification or excuse (*Crofter Harris Tweed Co Ltd v. Veitch* [1942] 1 All ER 142)

[118] The Court of Appeal in *Renault SA v. Inokom Corporation Sdn Bhd & Anor and Other Applications* [2010] 5 CLJ 32; [2010] 5 MLJ 394 adopted the principles in *Yap JH v. Tan Sri Loh Boon Siew & Ors* (*supra*) and made the following observation at p. 49 (CLJ); p. 407 (MLJ):

> [33] It is clear that the very first element to be shown must be an agreement between two or more persons for the purpose of injuring Inokom and Quasar. 'Agreement' is not limited to a signed and sealed agreement but any informal agreement, including a combination of efforts of the alleged co-conspirators. After that, it has to be shown or at least alleged that acts were done in execution of that agreement which resulted in damage to Inokom and Quasar …

[119] At p. 51 (CLJ); p. 409 (MLJ), the Court of Appeal said that the statement of claim should set forth with clarity and precision the overt acts which are alleged to have been done by each of the alleged conspirators in pursuance and in furtherance of the conspiracy:

> [42] There is no allegation of any overt acts carried out by TC Euro in the pleadings and by necessary implication TC Euro had not carried out any overt acts.
>
> The gist of the tort of conspiracy is not the conspirational agreement alone but that agreement plus the overt acts causing damage (*Marrinam v. Vibrart* [1963] 1 QB 234; [1963] 1 QB 528).
>
> Pleading. The Statement of Claim should describe who the several parties are and their relationship with each other. It should allege agreement between the defendants to conspire, and state precisely what was the purpose or what were the objects of the alleged conspiracy. And it must then proceed to set forth, with clarity and precision, the overt acts which

are alleged to have been done by each of the alleged conspirators in pursuance and in furtherance of the conspiracy; and lastly, it must allege the injury and damages occasioned to the plaintiff thereby.'

[68] To the above I would add that where the conspiracy alleged involves corporate entity and their directors as co-conspirators, particulars must be pleaded to clarify, if:

i. in the case of individual directors who are parties to the agreement, whether the individual directors participated in the agreement in their personal capacity or in their capacity as directors of the corporate entity;

ii. in the case of the corporate entity, how the corporate entity had the requisite knowledge and intention to enter into the agreement;

iii. in the case of the overt acts, what are the distinct acts by each of the co-conspirators and whether the individual directors in performing the acts were merely discharging their duties as directors of the corporate entity;

iv. where the individual directors were acting in their capacity as directors, the facts relied upon to support or form the basis for the claim that the individual directors are personally co- conspirators with the corporate entity or that tortious liabilities ought to be imposed on them;

v. in the case of conspiracy by unlawful means, whether the overt acts involved the corporate entity's contractual breach or a tortious act.

[69] The aforesaid particulars are necessary because a claim of alleged conspiracy between a company and its directors raises

considerations which are different from a claim of conspiracy between natural persons. The former frequently requires clarity and involves the interplay between the following common law principles with the essential ingredients for conspiracy, namely:

(1) where the company whose 'mind' is said to be that of its controlling director, whether it is possible for the two to have 'combined' or 'agreed' to conspire. Whilst it has been held that it is conceptually possible for a company to conspire with a director who is its 'controlling and directing mind', the primary facts relied on to support the same must be pleaded [See: *Nagese Singapore Pte Ltd v. Ching Kai Huat* [2007] 3 SLR 265 and [2008] 1 SLR 80 and *Lim Leong Huat v. Chip Hup Hup Kee Construction Pte Ltd* [2009] 2 SLR 318];

(2) The presumptive rule that a director who authorises a company's breach of contract does not thereby incur tortious liabilities for the breach unless he has conducted himself otherwise than as the company's agent. This is established in *Said v. Butt* [1920] 2 KB 497. Hence, the facts relied on to justify a departure from this presumptive rule must also be pleaded.

[70] The current trend where only a general statement alluding to '*the company and its directors combining together to reach an agreement to injure*' with the view to casting personal liability on the directors under a conspiracy claim, without more, can no longer be countenanced as this is nothing more than a device to lift the corporate veil to hold directors personally liable when in most cases these individuals were merely acting *bona fide* in discharge of their duties and acting within the scope of their authority.

[71] The Singapore Court of Appeal in *PT Sandipala Arthaputra & Ors v. ST Microelectronics Asia Pacific Pte Ltd & Ors* [2018] 1 SLR 81 held that the *Said v. Butt* principle was also applicable in considering the liability of a director in a lawful means conspiracy. *Said v. Butt* principle was interpreted to exempt directors from personal liability from the contractual breaches of their company (whether through the tort of inducement of breach of contract or conspiracy) if their acts, in their capacity as directors, are not in themselves in breach of any fiduciary or other personal legal duties owed to the company. Reference was also made to the academic writing by Associate Professor Lee Pey Woan entitled "The company and its directors as co-conspirators" [2009] SAcLJ 409.

[72] The position is made complicated where you have a situation as in the present case where LBG is a director of Agathis One, Agathis Management and Agathisfour and is said to be the controlling mind and will of these companies. It is not always the case that LBG's knowledge can be imputed to these companies. In **Re Hampshire Land Co** [1896] 2 Ch 743 at 748, Vaughan Williams J held that the relevant test was:

> '… that the knowledge which has been acquired by the officer of one company will not be imputed to the other company unless the common officer, had some duty imposed upon him to communicate that knowledge to the other company, and had some duty imposed on him by the company which is alleged to be affected by the notice to receive the notice.'

[73] The Plaintiff's claims of conspiracy in paragraph 60 of the Amended Statement of Claim is merely pleaded as '*LBG and Danny by themselves and or utilising Agathis One, Agathis*

Management and Agathisfour' to injure the Plaintiff sometime after the Plaintiff's rejection of LBG's demand to purchase Agathisfour's 30% interest in PMSB for the Ransom Sum in January 2019.

[74] The heart of the conspiracy lies in an agreement or common design between the co-conspirators which forms the basis for the action they thereafter undertook. Whilst the agreement need not be manifested by an express formal agreement, it must reflect an understanding reached between the co-conspirators with intent to injure the plaintiff.

[75] Granted that direct evidence of an agreement may not be easily obtained [See: *Sivarasa Rasiah & Ors v. Che Hamzah Che Ismail & Ors* [2012] 1 MLJ 473 at page 479], nevertheless the Plaintiffs must still provide the circumstantial evidence in support of an agreement and specify the distinct roles played by each of the co-conspirators to the agreement. Paul McGrath QC in his book, Commercial Fraud in Civil Practice (2nd ed.) puts this point in this manner:

> '7.50 At the commencement of the proceedings, it will often not be possible to provide full and accurate details of the alleged agreement or understanding reached between the parties to carry out a conspiracy. The reality is that usually this has to be inferred from the relevant facts as known at that stage. This, in turn, requires a careful examination of the relevant conduct and whether the nature and manner of that conduct give rise to an inference that such conduct forms part of an understanding between the participants. In *Bank of Tokyo-Mitsubishi UFJ Ltd v. Baskan Gida Sanayi Briggs* J said that to determine whether someone was a party to a conspiracy:

> … the answer lies in a painstaking analysis of the extent to which the particular defendant shared a common objective with the primary fraudster and the extent to which the achievement of that objective was to the particular defendant's knowledge to be achieved by unlawful means intended to injure the claimant.
>
> 7.51 The potential range and ambit of the relevant activities from which an inference can be drawn is vast and can vary as the individual participation in a conspiracy can vary. In *Bird v. O'Neal* the House of Lord suggested 'looking to see what part, if any, each appellant played in connection with each specific incident when threats or intimidation had been used and then considering whether such part necessarily compelled the inference that the particular appellant was a party to a conspiracy to use unlawful means to further the object of the picketing and thereby creating a nuisance'. In another case, *Kuwait Oil Tanker Co SAK v. Al Bader*, the Court of Appeal was willing to draw an inference of a combination or understanding from the fact that the defendant failed to take any steps to prevent or stop the unlawful activities'.

[76] In the present case, the Amended Statement of Claim fails to plead any particulars as to the agreement forming the heart of the conspiracy. There are no particulars as to when and where the agreement was hatched, what were the contents of the agreement, what were the role(s) of each of the co-conspirators in implementing the agreement and how they intend to injure the Plaintiff and the facts relied upon to support the intention to injure.

[77] It is not clear from the Statement of Claim whether LBG and Danny were acting in their individual capacity or in their capacity as directors of Agathis One, Agathisfour and or Agathis Management in carrying out the overt acts pleaded. It is also unclear whether Agathis One, Agathisfour and Agathis Management are merely the 'means' for LBG and Danny to carry out their objectives to injure the Plaintiff or that they were also co-conspirators with LBG and Danny. Facilitating the doing of an act is different from procuring the doing of the act.

[78] In *Credit Lyonnais v. ECGD* [1998] 1 Lloyd's Rep 19 at 44, Hobhouse J cited with approval the summary of authorities undertaken by Aldous J in *PLG Research Ltd v. Ardon International Ltd* [1993] FSR 197, 238-239 as follows:

> '… the law distinguishes between facilitating and procuring a tort. A person who only facilitates a tort is not liable as a joint tortfeasor whereas a person who procures the tort is liable (See *CBS Songs v. Amstrad* [1988] RPC 567 and *BE Lavender v. Witten Industrial Diamonds* [1979] FSR 9). What amounts to facilitating tort will vary in case to case, but as Mellish LJ said in Townsend v, Haworth (1879) 48 LJ Ch 770 at 773:
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> > 'Selling materials for the purpose of infringing a patent to the man who is going to infringe it even though the party who sells it knows that he is going to infringe it and indemnifies him, does not by itself, make the person who sells an infringer. He must be party with the man who so infringes and actually infringe.'

[79] If it is intended that the companies are co-conspirators, there is a need to plead the primary facts setting out how and when each

of the companies had reached an agreement with LBG and Danny to injure the Plaintiff and or how the companies had come to have the requisite knowledge or intention to enter into the agreement.

[80] The Plaintiff has specifically pleaded that LBG was in full control of Agathis One and Agathis Management and was 'their directing mind and will'. In such circumstances, the pleadings need to address the issue whether and how 2 or more legal persons who may share one and the same mind could conspire as it is not always the case that the person who is 'the directing mind and will' of the company can conspire with the corporate entity.

[81] There is no factual foundation pleaded upon which the Defendants and the Court may infer the relevant intention to injure the Plaintiff. The reference to the 'unlawful acts' are in fact references to the subject matters of various on-going litigations filed in Court by the Defendants against the Plaintiff and the Paparich Group of companies. With respect to learned counsel for the Plaintiff, these legal actions do not support the inference of an intention to injure the Plaintiff at all as there are no facts to suggest that they are frivolous and or vexatious and or filed for the collateral purpose of injuring the Plaintiff. *Prima facie*, the only logical inference from these legal proceedings is that parties are seeking to enforce their respective legitimate rights.

[82] I agree with and adopt the observation by Toulson LJ in *Meretz Investments NV v. ACP Ltd* [2007] EWHC 774 (Ch); [2008] Ch 244 at [174] where His Lordship agreeing with Arden LJ, commented by way of *obiter dicta*:

> 'Although my conclusion on the issue of unlawful means makes it unnecessary to decide the point, I would support Arden LJ's view, at para 127, that it is a defence to an action for conspiracy to injure by unlawful means if the defendant not only acted to protect his own interests but did so in the belief that he had a lawful right to act as he did. Just as the tort of conspiracy to induce breach of contract us not committed if the defendant believes that the outcome sought by him will not involve a breach of contract … so a defendant should not be liable for conspiracy to injure by unlawful means if he believes that he has a lawful right to do what he is doing.

[83] Further, the overt acts which are pleaded in support of the conspiracy which combined LBG, Danny and Agathisfour together to cause various unlawful acts fail to particularise the parts played by LBG and or Danny in each of Agathisfour's alleged wrongful or unlawful acts. In a claim for conspiracy where the plaintiff seeks to hold directors of a company liable as co-conspirators with the company, it is incumbent upon the plaintiff to plead the facts to support why the principle established in *Said v. Butt*, namely that a director who is acting *bone fide* and within the scope of his authority cannot be liable to third party for the company's breach of contract and or wrongful actions, is not applicable to the claims.

[84] Without any facts pleaded to bring the Plaintiff's case out of the *Said v. Butt* principle, there is no basis to include the directors as co-conspirators to the overt acts. The absence of any plea that either LBG or Danny has acted in breach of their duties as director of Agathis Management or for that matter Agathis One, and given that Agathis Management has expressly confirmed in writing that it holds the RPS in question on trust for Aaron,

there is no room whatsoever to visit parallel contractual liabilities on LBG and or Danny in relation to the same subject matter namely the RPS.

[85] Also, no particulars are given as to who and how LBG was 'caused' to breach his oral agreement to pay for his half share in the acquisition of Rich Tan's 50% interest in PGSB. The Plaintiff has pleaded that LBG had full control of Agathis One and Agathis Management and that Danny was accustomed to acting under his direction and control. This plea is plainly inconsistent with the claim as it suggests that LBG being the 'master' and the dominant party was somehow 'caused' to breach his agreement by his 'servant'.

[86] Notably in paragraph 44 of the Amended Statement of Claim, the Plaintiff had specifically pleaded that it was *LBG himself* who had 'began a series of actions' including not honouring his '*financial commitment and obligation in the purchase of Rich Tan's shares in PGSB whilst still holding title to his 50% shares in ADSB*'.

[87] Similarly, in relation to the overt acts in support of the second conspiracy claim for the 1,500,000 RPS, there is a lack of particulars on the agreement for the conspiracy. Whether LBG and Danny came to an agreement in their capacity as directors of Agathis One and Agathis Management or in their respective individual capacities is not clear. There is no clarity as to how and when the companies had come to know of the agreement and how the companies arrived at their decisions to combine with LBG and or Danny. Again, there are no particulars as to the parts played by each of the co-conspirators in the conspiracy. There are no facts pleaded to establish that LBG and Danny had

acted outside the principle in *Said v. Butt* to justify treating them as co-conspirators for the action of the companies.

[88] It is simply too general and indeed wholly inadequate for the Plaintiff to merely plead in a general manner that '*LBG, Danny, Agathis One and Agathis Management*' had combined together to deprive the Plaintiff of his lawful claim as owner of 1,500,000 RPS and or that they had kept the Plaintiff in the dark over the accounts, finance and affairs of the investment when these are all *prima facie* acts by the companies through the agency of their directors.

[89] In the Singapore High Court case of *Otech Pakistan Pvt Ltd v. Clough Engineering Ltd* [2005] SGHC 98 at [35], Kan Ting Chiu J held:

> 'Where the allegation is that the defendant had conspired to and had induced the breach qua director, that without more, must imply that the defendant had been acting bone fide and within the scope of his office. '*Bona fide*' here is to be taken to mean that the defendant was acting in good faith in the discharge of his office, and not that he was acting in good faith in the action complained of; a director may believe that it is for the good of the company to breach a contract intentionally. In such a situation, the principle [in *Said v. Butt*] would operate to defeat the claim against the defendant as a matter of law.'

[90] It is therefore necessary that facts suggesting that the directors have themselves been guilty of some unlawful act or had acted in breach of their duty to the company be pleaded if the action is to include them as co-conspirators with the company.

[91] The second conspiracy claim on the RPS also suffers from the same infirmity in failing to plead the facts supporting the intention to injure the Plaintiff. The pleaded facts alluding to Agathis Management invoking clause 6 of the Investment Agreement and the non-account to the Plaintiff for the dividends or profits declared, if any, in respect of the RPS merely reflect the parties holding differing legal positions in respect of the pre-emption clause under the Investment Agreement. This, without more, cannot give rise to an inference of an intention to injure the Plaintiff. Learned counsel for the 1st, 3rd, 4th and 5th Defendants has demonstrated that the legal position taken by Agathis Management is far from frivolous and vexatious [See: *Walker v. Willis* [1969] VR 778, *Burns v. Steel & Ors* HC CHCH Civ 2005-409-1349].

[92] Learned counsel for the Plaintiff contended during oral submission that the invocation of clause 6 of the Investment Agreement was *mala fide* as the same clause was not invoked when the 1,200,000 RPS was transferred from PBM to Agathis Management. But there is an explanation for this, countered learned counsel for the 1st, 3rd, 4th and 5th Defendants. Clause 6 does not apply where it is merely a change in the trustees (See: New Zealand Court of Appeal case of *Richard John Ord and Colleen May Fenton v. Calan Healthcare Properties Ltd* CA 31/04 CA 165/04). Perhaps there is room in the present case for the Plaintiff to distinguish the wording of the pre-emption clause in that case – but this is not the point. In any case, this was also not the Plaintiff's pleaded case.

[93] For the conspiracy by lawful means, no particulars are provided to support the claim of a 'predominant intention' to injure the Plaintiff apart from a mere averment to a 'predominant intention'. The importance of identifying the predominant

purpose is stated by Christopher Butcher QC sitting as a High Court Judge in *AAI Consulting Limited & others v. The Financial Conduct Authority* [2016] EWHC 2812 (Comm) in this fashion:

> '47. As to the second form of the tort, conspiracy to injure, this is "actionable where the claimant proves that he has suffered loss or damage as a result of action taken pursuant to a combination or agreement between the defendant and another person or persons to injure him, where the predominant purpose of the defendants is to injure the claimant" (*Kuwait Oil Tanker Co. Sak v. Al-Bader* [2002] 2 All ER (Comm) 271 at [108]). In this regard:
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> (1) The object or purpose of the combination must be to cause damage to the claimant. It is not sufficient that the combiners acted knowing that damage will follow (*Crofter Hand Woven Harris Tweed Co Ltd v. Veitch* [1942] AC 435 at 444- 445). Malevolence, however, is not required (**Crofter** at 471 per Lord Wright).
>
> (2) Where the conspirators have more than one purpose, their predominant purpose must be to injure the claimant (Crofter at 445). The predominant purpose must be shared: it is not sufficient that one participant has the object of causing injury to the claimant if the others do not (see Clerk & Lindsell on Torts (21st ed) 24-112).'

[94] Hence, without sufficient particulars on the predominant purpose, how will the Defendants be in any position to challenge the same? The lack of particulars on the predominant purpose also meant that the necessary ingredients to establish the cause of action for conspiracy by lawful means have not been pleaded

[See: *Pacific Inter-Link Sdn Bhd v. Wilmar Trading Pte Ltd & Ors* [2013] 7 CLJ 312 per Lim Yee Lan J (as she then was)]

[95] Similarly, in paragraph 72.1 to 72.4 of the Amended Statement of Claim, while the word 'dishonestly' was pleaded, no primary facts upon which such 'dishonest intent' can be inferred are pleaded.

The House of Lords in *Three Rivers District Council v. Bank of England* [2001] UKHL 16, Lord Millet held the requirement in this way:

> '186. The second principle, which is quite distinct, is that as allegation of fraud or dishonesty must be sufficiently particularised, and that particulars of facts which are consistent with honesty are not sufficient. This is only partly a matter of pleading. It is also a matter of substance. As I have said, the defendant is entitled to know the case he has to meet. But since dishonesty is usually a matter of inference from primary facts, this involves knowing not only that he is alleged to have acted dishonestly, but also the primary facts which will be relied upon at the trial to justify the inference…'

[96] Accordingly, the Plaintiff's pleaded case for conspiracy in his Amended Statement of Claim is defective and wholly unsustainable and ought to be struck out. Claim for breach of trust and contract.

[97] This leave the causes of action for breach of trust and contract under paragraphs 74 to 89 of the Statement of Claim.

Claims against LBG

[98] The claim for breach of trust is made by the Plaintiff against both LBG and Agathis Management.

[99] In this regard, the Plaintiff has himself pleaded that LBG through Agathis Management had *vide* a letter dated 10.4.2015 expressly acknowledged the Plaintiff's beneficial interests in the 1,500,000 RPS in Agathis One and that prior to 2019, the Plaintiff had never raised any queries regarding the said RPS, assuming at all material times that no dividends or distributions were declared.

[100] That the 1,500,000 RPS are registered in the name of Agathis Management is not in dispute and by reason of its acknowledgment that the Plaintiff has beneficial interests in the same necessarily mean that Agathis Management holds the RPS in trust for the Plaintiff.

[101] However, it is less clear from the Amended Statement of Claim how LBG is said to be a trustee of the 1,500,000 RPS to the Plaintiff and therefore owes fiduciary duties and responsibility to the Plaintiff.

[102] That the legal title to the RPS is registered under Agathis Management is not disputed. LBG cannot be a trustee if the legal title to the RPS is not registered in his name.

[103] The fact that LBG 'had agreed to ensure the 1,500,000 RPS will be duly registered in Aaron's name' does not in law give rise to a trust relationship and or a fiduciary relationship.

[104] If the basis for the claim is that LBG is the '*controlling and directing mind of Agathis Management*' and therefore LBG is the alter ego of Agathis Management, there are no particulars in

the Statement of Claim to support the plea for the lifting of the corporate veil. The mere allegation that LBG is the controlling and directing mind of Agathis Management is, without more, insufficient to justify piercing of the corporate veil. This much was conceded by learned counsel for the Plaintiff.

[105] Accordingly, the Amended Statement of Claim does not contain sufficient facts to support the Plaintiff's cause of action against LBG for breach of trust and or fiduciary duties as the circumstances giving rise to the creation of a trust and or fiduciary relationship have not been established based on the pleadings.

[106] For the cause of action against LBG for breach of contract, the Plaintiff referred to 2 'Oral Agreements' – one relating to 300,000 RPS and the other the 1,200,000 RPS.

[107] Learned counsel for the Plaintiff contended that the existence of the Oral Agreements are not disputed. What is in dispute is whether there was a term that LBG would cause to have the RPS transferred to the Plaintiff when requested.

[108] At paragraph 22 of the Amended Statement of Claim, it is pleaded that LBG had agreed to arrange for the 300,000 RPS to be registered in the Plaintiff's name. This was stated to have taken place in 2012. No further particulars was pleaded on the date the oral agreement was formed.

[109] At paragraph 30 of the Amended Statement of Claim, it is pleaded that LBG was to arrange for the 1,200,000 RPS to be registered in the name of Agathis Management and that the Plaintiff would be registered as the legal owner upon his request. This was supposed to be in 2014 but no specific date was pleaded.

[110] The cause of action against LBG in respect of these 2 Oral Agreements is captured in paragraphs 85 to 87 of the Amended Statement of Claim. In essence, the cause of action is premised on an assumption of a personal obligation on the part of LBG to ensure that the 1,500,000 RPS are transferred and registered in the Plaintiff's name upon the Plaintiff's request.

[111] There is no dispute that at all material times, i.e in 2012 and 2014 when LBG attended to the Plaintiff's investment in the 300,000 RPS and the transfer of the 1,200,000 RPS from PBM to Agathis Management, LBG was a director of Agathis Management. All the correspondences relating to the 2 transactions were between the Plaintiff and Agathis Management and or Agathis One. LBG was clearly transacting on behalf of Agathis Management and or Agathis One in his capacity as its director. There is not a shred of evidence to support the claim that LBG had agreed to assume *personal* responsibility to Plaintiff at all. There are no particulars pleaded to support the assumption of personal liability. Bearing in mind that LBG was a director of Agathis Management, particulars are necessary to support a cause of action against LBG personally in addition to a claim against Agathis Management

[112] In *Tan Poh Yee v. Tan Boon Thien & Other Appeals* [2017] 3 CLJ 569 at 571, our Court of Appeal in a striking out application held the plaintiff to an action to an obligation to ensure that all the material particulars and facts necessary to establish his case had been acquired before the filing of the claim and where an oral agreement is pleaded, it is incumbent upon the plaintiff to plead the precise date upon which the agreement was entered into. Headnote (3) of the judgment states:

'(3) It was the respondent's obligation to ensure that all the material particulars and facts necessary to establish his case had been acquired before the filing of the claim. The respondent had failed to establish the existence of such purported 2004 agreement when the respondent could not provide or specify the precise date upon which it was entered into. The date for the conclusion of a valid contract, especially an oral one in the instant appeal, was pertinent and must be specific to achieve certainty. A party intending to rely on the oral agreement could not make an assumption of any date and failure to provide the precise date necessarily meant that the plaintiff had failed to prove the existence of the same. The respondent therefore had failed to plead and provide the material particulars as to the exact date of the purported 2004 agreement at this preliminary stage which was highly prejudicial to the appellants and fatal to the respondent's case'

[113] In fact, until the filing of this action, the Plaintiff had never made any claims against LBG on the 'Oral Agreements'. I agree that this claim is an afterthought. The claim against LBG in contract is obviously unsustainable.

Claim against Agathis Management

[114] The Plaintiff claims against Agathis Management for breach of trust and fiduciary duties. The reliefs sought against Agathis Management are:

i. A declaration that Agathis Management holds the 1,500,000 RPS in trust for the Plaintiff;

ii. A declaration that the Plaintiff is the rightful owner of the 1,500,000 RPS;

iii. A declaration that Agathis Management has breach its fiduciary duties and duties as trustee to the Plaintiff;

iv. An order for specific performance that Agathis One transfers the 1,500,000 RPS to the Plaintiff;

v. In the event that specific performance is no longer possible, damages in lieu;

vi. An account of all the dividends or profits received by Agathis Management in respect of the investment in the Land;

vii. An order that Agathis Management pay the Plaintiff in respect of sums found due on the taking of the aforesaid account.

[115] But there is no dispute that Agathis Management holds the 1,500,000 RPS in Agathis One in trust for the Plaintiff. Neither is there any dispute that the Plaintiff is the beneficial owners of the RPS. The Plaintiff expressly pleaded in paragraph 32 of his Amended Statement of Claim that Agathis Management had acknowledged his beneficial interests in the 1,500,000 RPS. There is therefore no purpose in this Court making the declarations sought for in respect of the Plaintiff's beneficial interest in the 1,500,000 RPS.

[116] There is also unchallenged evidence that there has not been any dividends or profits declared in respect of the 1,500,000 RPS. As alluded to above, under the Investment Agreement, no dividend is to be declared until the RPS are redeemed, an event

which has not happened. There is therefore nothing to account to the Plaintiff in respect of dividend paid under the RPS.

[117] As regards the account of monies received by Agathis One, Agathis Management and or LBG in respect of the investment in the Land, there is no legal basis pleaded to support a claim by a holder of the RPS to be entitled to such an account. The proceeds had been reflected in Agathis One's financial statement and there is nothing particularly questionable about that.

[118] The claim for specific performance to transfer the 1,500,000 RPS is directed at Agathis One and not Agathis Management. No attempts were made to amend the pleadings. This means there is no claim for specific performance against Agathis Management.

[119] The relief for specific performance arises from the facts pleaded in paragraphs 50 to 59 of the Amended Statement of Claim and relates to the invocation of the pre-emption rights under clause 6.2 of the Investment Agreement by Agathis Management. As trustee, Agathis Management will only be obliged to transfer the RPS to the Plaintiff as requested if the RPS are absolutely vested in Plaintiff. This is under the rule in *Saunders v. Vautier* [1841] Cr & Ph 240; 41 ER 482.

[120] The rule does not apply where the beneficiary is not entitled to the trust property indefeasibly and absolutely as in this case where the transfer is *arguably* subject to a pre-emption clause [See: *Burns v. Steel & Ors* HC CHCH Civ 2005-409-1349]. The effect of a pre-emption clause in the constitution of a company on a transfer of legal title in a share was considered in *Khoh Chen Yeh Shane (administrator of the estate of Ching Kwong Kuen, deceased)* ***v.*** *Seng Realty & Development Pte Ltd and another* [2017] SGHC 79.

[121] For our present purpose, suffice it to say that a claim for specific performance to transfer the RPS is pre-mature pending the determination of the issue relating to the application or otherwise of clause 6 of the Investment Agreement. The Plaintiff's action in this case is not based on a claim for breach of the Investment Agreement.

[122] Finally, the claim against Agathis Management for an account is a claim relating to the proceeds from the investment in the Land in Bangkok. This is plainly unsustainable as Agathis Management is only a trustee to the Plaintiff for the RPS. It had no legal duty to account to the Plaintiff for the proceeds from the sale of the investment in the Land.

[123] Accordingly, the causes of action for breach of trust and fiduciary duties Agathis Management are also struck out.

Conclusion

[124] Based on the aforesaid, prayers 1 of Enclosures 13 and Enclosure 23 are allowed with costs fixed at RM 20,000.00 for each Enclosures subject to the usual payment of allocator. The action against the Defendants is struck out.

Dated: 27 NOVEMBER 2020

(ONG CHEE KWAN)
Judicial Commissioner
High Court of Malaya, Kuala Lumpur,
Commercial Division, NCC2.

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