IN THE HIGH COURT OF MALAYA AT KUALA LUMPUR
(COMMERCIAL DIVISION)
[ORIGINATING SUMMONS NO. WA-24NCC-519-10/2019]

In the matter of GOLDEN PLUS HOLDINGS BERHAD (Company No.: 113076-T);

And

In the matter of the Last Wills and Testaments of Teh Soon Seng dated 6.11.2017 and 11.11.2017

And

In the matter of Section 346 of the Companies Act 2016;

And

In the matter of Order 88 rule 2 of the Rules of Court 2012;

And

In the matter Order 7 of the Rules of Court 2012

And

In the matter of Order 28 of the Rules of Court 2012

BETWEEN

1. TEH WEI KIAN

(I/C. No.: 960531-43-5109)

2. YONG CHOOI LAN
(I/C. No.: 690802-10-5332) ... PLAINTIFFS

AND

1. GOLDEN PLUS HOLDINGS BERHAD
(COMPANY NO.: 113076-T)

2. TEO SUNG NGIAP
(NRIC No.: 601017-12-5007)

3. TEO KIM HUI
(NRIC No.: 940605-12-5261)

4. TEO KIM CHUANG
(NRIC No.: 920911-12-5499)

5. TEO SOON KEE
(NRIC No.: 701106-12-5349)

6. TEO HAN TONG
(NRIC No.: 311106-12-5089)

7. NG CHEE FON
(NRIC No.: 330610-12-5110)

8. LAI SU-CHEN
(PRC Passport No.: 306729784)

9. YANG JIN
(PRC Passport No.: E 60591500)

10. ZHENG YING
(PRC Passport No.: E 47440893)

11. AFFIN HWANG NOMINEES (TEMPATAN) SDN BHD
(Company No.: 41117-T) ... DEFENDANTS

GROUNDS OF JUDGMENT

Introduction

[1] This judgment concerns the following two (2) appeals filed by the Plaintiffs against this Court's decision delivered on 15.10.2019:

i. The first appeal was filed in relation to the dismissal of the Plaintiff's application for interim injunction as documented in enclosure 10 with costs; and

ii. The second appeal concerns the 2nd Defendant's application to strike out both the Originating Summons ("**OS**") and enclosure 10 as documented in enclosure 12 which was allowed with costs.

[2] The following are the Grounds of Decision of this Court.

Background facts

[3] The Plaintiffs and the 2nd to 10th Defendants are members of Teh/Teo family. The Teh/Teo family's connection with the First Defendant ("**the Company**") began with the late Teh Soon Seng ("**TSS**"), the father of the 1st Plaintiff and a common law husband of the 2nd Plaintiff.

[4] The Company is an investment holding company which owns a number of operations and businesses in the People's Republic of China through its subsidiaries. It was delisted from Bursa Malaysia on 14.4.2016.

[5] The 1st Plaintiff is the Executive Chairman and Director of the Company. The 2nd Plaintiff is his mother who currently holds 7,

339, 300 shares in the Company, equivalent to 4.998% of its shareholding.

[6] It is the Plaintiffs' case that the Company's substantial shareholders holding the shares as nominee for the late TSS as the date of his passing were:

i. The 9th Defendant, Yang Jin (biggest block of the Company's shares)-27, 325, 800 shares ("**Yang Jin Block**");

ii. Rosa Bianca Investments Limited, a company incorporated in the British Virgin Islands ("**BVI**") ("**Rosa Bianca**") (second biggest block of the Company's shares)-22, 012, 600 shares ("**Rosa Bianca Block**");

iii. South Power Investment Limited ("**South Power**"), a company incorporated in Hong Kong and a wholly owned subsidiary of another company incorporated in the BVI, Add Noble Enterprises Ltd ("**Add Noble**")-7, 339, 000 shares ("**South Power Block**"); and

iv. Classico Enterprises Ltd, a company incorporated in the BVI ("**Classico**")-7, 339, 100 shares ("**Classico Block**")

(Collectively known as "**TSS Shares**")

[7] The Defendants, as averred in the 1st Plaintiff's affidavit in support of the OS are:

2nd Defendant	The 1st Plaintiff's uncle and the brother of the late TSS who holds 5, 000, 000 shares in the Company
3rd Defendant	The 2nd Defendant's son who holds 3, 878, 500 shares in the Company
4th Defendant	The 2nd Defendant's son who holds 320, 000 shares in the Company. The Plaintiffs averred that the 4th Defendant now controls 21, 124, 300 shares in the Company. Out of 21, 124, 300 shares, 20, 804, 300 shares were fraudulently transferred to him from Rosa Bianca.
5th Defendant	The late TSS's brother The Plaintiffs averred that the 5th Defendant now controls 5, 338, 400 shares in the Company. Out of it, 2, 408, 300 shares were fraudulently transferred to him from Rosa Bianca and South Power.
6th Defendant	father of the late TSS, 2nd Defendant and 5th Defendant and is the grandfather of the 1st Plaintiff who holds 5, 447, 900 shares in the Company
7th Defendant	a) The mother of the late TSS, 2nd Defendant and 5th Defendant and is the grandmother of the 1st Plaintiff who initially held 1, 802, 000 shares in the Company. The Plaintiffs averred that the 7th Defendant by fraudulent means came to control the whole South Power Block before transferring 1, 200, 000 shares to the 5th Defendant and retained 6, 139, 000 shares to herself.

8th Defendant	She is the 6th Defendant's mistress who holds 7, 507, 000 shares in the Company
9th Defendant	She is the widow and beneficiary of the late TSS's estate and director of the Company. She holds Yang
10th Defendant	She is the widow and beneficiary of the late TSS's estate. She holds the sole share in Add Noble as a
11th Defendant	The Classico Block was previously maintained with RHB Nominees (Asing) Sdn Bhd. In or around

[8] The Plaintiff's main complaint is that the 2nd to the 11th Defendants have exercised or threatened to exercise voting rights over 64, 016, 500 shares (equivalent to 43.592% of the Company's shareholding) when 57, 185, 050 of those shares (equivalent to 38.941% of the Company's shareholding) ought to have come under the control of the 1st Plaintiff and his half-sister, Valarie Teh Chiao Eng ("**Valerie**").

[9] The 1st Plaintiff claims that he himself is entitled to exercise control over 32, 008, 250 of those shares (equivalent to 21.796% of the Company's shareholding) pursuant to the Last Wills and Testaments of the late TSS. The 1st Plaintiff submitted that the TSS Shares are covered in his Malaysian Will and Hong Kong Will.

[10] Under the Malaysian Will, Yang Jin Block is to be distributed in the following manner:

i. The 1st Plaintiff: 50%

ii. Wu Kwok Ying, Maria (as trustee for Valerie): 25%

iii. 2nd Defendant: 20%

iv. Low Thiam Hoe: 5%

[11] Whereas under the Hong Kong Will as construed by the Plaintiffs, 50% of all shares held by the late TSS's nominees in the BVI and Hong Kong which includes the Rosa Bianca Block, South Power Block and Classico Block are to be inherited by the 1st Plaintiff and the remaining 50% will be inherited by Valerie.

[12] The Plaintiffs contended the 2nd to the 11th Defendants had taken steps to remove TSS Shares away from the due administration of the Malaysian and Hong Kong Wills. It was submitted that by some fraudulent means, Rosa Bianca Block, South Power Block and Classico Block have ended up in the control of 4th , 5th , 7th and 11th Defendants.

[13] As regard to Yang Jin Block, the Plaintiffs argued that the 2nd Defendant and one Low Thiam Hoe, purportedly acting as co-executors of one of the Malaysian Will, refused to allow the 1st Plaintiff to exercise any control, including the voting rights attached to 50% of this block of shares.

[14] It was further contended by the Plaintiffs that the 3rd , 6th and 8th Defendants purported to exercise their rights as members of the Company to convene the EGM to remove all the current board members of the Company which includes the 1st Plaintiff and replace them with three (3) others aligned to them.

[15] As a result of the fraudulent transfers, the 1st Plaintiff argued that he lost control of 21.796% of the Company's shareholding and as such, any voting on the resolutions proposed by the 3rd , 6th and 8th Defendants or any of the 2nd to the 11th Defendants would only reflect the artificial will of the Company. The fraudulent transfers, as further contended by the Plaintiffs, were designed to defeat the terms of the Last Will and Testament of

the late TSS and to entrench the 2nd Defendant's position in the operational subsidiaries of the Company.

[16] In short, it is the Plaintiffs' argument that they had been robbed of their control over the Company because of the conduct of the 2nd to 11th Defendants.

[17] As a result, the Plaintiffs filed the present originating summons documented in enclosure 1 ("**the OS**") pursuant to section 346 of the Companies Act 2016 ("**the Act**") seeking the following orders, *inter alia*:

a) A declaration that the 2nd to the 10th Defendants are conducting the affairs of the Company in a manner that is oppressive to and/or disregard of the interest of the Plaintiffs and/or prejudicial to the Plaintiffs by exercising and/or threatening to exercise rights attached to the Rosa Bianca Block, South Power Block and Yang Jin Block;

b) A declaration that the 11th Defendant or alternatively the present account holder of Classico Block previously controlled by the nominee of the late TSS is conducting the affairs of the Company in a manner that is oppressive to and/or disregard of the interest of the Plaintiffs and/or prejudicial to the Plaintiffs by exercising and/or threatening to exercise rights attached to the Classico Block previously controlled by the nominee of the late TSS;

c) A declaration that the requisition to convene an extraordinary general meeting ("**EGM**") by way of the notice dated 12.9.2019 issued by the 3rd , 6th and 8th Defendants ("**the Requisitionists**") was a *mala*

fide exercise of a fiduciary power and is therefore void and unlawful;

d) A declaration that any resolutions passed at the EGM are void and unlawful;

e) A declaration that any exercise of the rights attached to the Rosa Bianca Block, South Power Block and Yang Jin Block at any general meeting of the Company by the Defendants is void and unlawful.

[18] The Plaintiffs consequently filed enclosure 10 seeking an order that the chairman of the EGM scheduled on 16.10.2019 be empowered to and shall declare the EGM to be adjourned as soon as reasonably practicable after the commencement of the EGM and in any event before any of the resolutions shall be put to the EGM, with immediate effect until the disposal of the OS ("**Injunction Application**").

[19] This Injunction Application was filed on the grounds that the EGM requisitioned by the Requisitionists was called for an improper purpose of removing the current board members which include the 1st Plaintiff and the 9th Defendant and to replace them with three (3) persons nominated by the Requisitionists. The result of the EGM without taking into accounts the Plaintiffs' voting rights and those aligned to them would circumvent the Last Wills and Testaments of the late TSS

[20] The 2nd Defendant thereafter filed enclosure 12 to strike out the OS and the Injunction Application pursuant to Order 18 rule 19 (1) (a) and/or (b) and/or (d) and Order 18 rule 19 (3) ("**Striking Out Application**").

[21] The Injunction Application and the Striking Out application were heard on 14.10.2019 and 15.10.2019. On 15.10.2019, this Court allowed the Striking Out Application and consequently, dismissed the Injunction Application. It follows that the OS is therefore struck out.

Contention of parties

[22] The Plaintiffs maintained that the 2nd to the 11th Defendants' conduct of exercising any voting rights over the TSS Shares that they have taken control of would deprive the 1st Plaintiff of his control of 21.796% shares. It would also render the 2nd Plaintiff's holding meaningless as even if she intends to vote together with the 1st Plaintiff, her votes would be defeated by the 2nd to the 11th Defendants' unlawful exercise of voting rights over shares which do not belong to them. Thus, it is the Plaintiffs' submission that the 2nd to the 11th Defendants' conduct were oppressive to the Plaintiffs.

[23] It was further submitted that the Injunction Application should be allowed as there are serious issues to be tried and balance of convenience lies in favour of the Plaintiffs. Damages would not be an adequate remedy for the Plaintiffs should the injunction not granted and the EGM proceeds.

[24] In resisting the OS and the Injunction Application, the Defendants maintained that the OS does not disclose any reasonable cause of action. It was submitted that the 1st Plaintiff has no *locus standi* to initiate this action and that the Plaintiffs failed to meet the requirements for minority oppression as can be found in section 346 of the Act. It was also argued that the Requisitionists of the EGM are shareholders of the Company

and do not possess any fiduciary powers or owe any such duties to the Plaintiffs.

[25] In so far as the Injunction Application is concerned, it was highlighted to this Court that there are no serious issues to be tried and justice of this case does not lie in favour of granting the injunction sought for by the Plaintiffs.

[26] The arguments put forward by the parties will be dealt with in the rest of this judgment.

Analysis and findings of this Court

Analysis on the Striking Out Application

[27] From the entitlement found in the OS, the Plaintiff seeks to apply section 346 of the Act (section 181 under the Companies Act 1965) in order to move this Court to grant the prayer found therein.

[28] Section 346 (1) of the Act states as follows:

> Remedy in cases of an oppression
>
> 346. (1) Any member or debenture holder of a company may apply to the Court for an order under this section on the ground –
>
> (a) that the affairs of the company are being conducted or the powers of the directors are being exercised in a manner oppressive to one or more of the members or debenture holders including himself or in disregard of his or their interests as members, shareholders or debenture holders of the company; or

(b) that some act of the company has been done or is threatened or that some resolution of the members, debenture holders or any class of them has been passed or is proposed which unfairly discriminates against or is otherwise prejudicial to one or more of the members or debenture holders, including himself.

[29] In order to succeed in an action brought under section 346 of the Act, Lord Wilberforce in the Privy Council case of *Re Kong Thai Sawmill (Miri) Sdn Bhd & Ors v. Ling Beng Sung* [1978] 1 LNS 170; [1978] 2 MLJ 227 held that the complainant must identify and prove oppression or disregard. There must exist a visible departure from the standards of fair dealing and a violation of the conditions of fair-play before a case can be made.

[30] The Federal Court in *Jet-Tech Materials Sdn Bhd & Anor v. Yushiro Chemical Industry Co Ltd & Ors & another appeal* [2013] 2 MLJ 297 speaking through Raus CJ reiterated requirement of the action needing to be anchored on the affairs of the company as follows:

> "*[37] It was alleged by the appellants that Yushiro's conduct in refusing to allow Chen to remove Gan and Firdaos as directors of the company amounted to a breach of the shareholders agreement. In this regard we are in agreement with the submission of learned counsel for the respondents that breaches of a shareholders agreement cannot be a basis for bringing a petition under s. 181. A complaint under s. 181 of the CA must be confined to matters relating to the affairs of the company. Shareholders' agreement and breach of the same clearly are not matters relating to the affairs of the company.*

> *They are private matters enforceable by the parties to the shareholders agreement. (see Beh Chun Chuan v. Paloh Medical Centre Sdn Bhd & Ors [1999] 7 CLJ 1, Tuan Haji Ishak Ismail v. Leong Hup Holdings Bhd & 5 Other Appeals [1996] 1 CLJ 393 and Russel v. Northern Bank Development Corp Ltd [1992] BCLC 1016).*"
>
> [Emphasis added]

[31] The crucial element is the oppressive acts must relate to the "affairs of the company".

[32] The 2nd Defendant in advancing its case to strike out the Plaintiff's action lists down two (2) major issues. Firstly, it was argued that the 1st Plaintiff did not have *locus standi* to initiate this action. Secondly, it was argued that the Plaintiffs could not show that the remedies sought had any relation to the alleged oppressive conduct of the Defendants. This Court will examine each contention in *seriatim.*

Locus Standi

The 1st Plaintiff

[33] It is undisputed that the 1st Plaintiff is not a member of the Company. His name as at the date of the filing of the application to this Court, was not on the Record of Depositors ("**ROD"**) which effectively meant that he was not a member of the company.

[34] The issue therefore is whether the 1st Plaintiff has *locus standi* to initiate the current action as a person qualified to do so given that he is not a member of the company.

[35] In contending that he has the requisite *locus standi* to act, the 1st Plaintiff relied on *Owen Sim Liang Khui v. Piasau Jaya Sdn Bhd & Anor* [1996] 1 MLJ 113 which was an action brought under section 181 of the Companies Act 1965. Several passages relied upon by the Plaintiffs include:

> "*We have, in stating the applicable rule as to standing under s. 181 taken great care in emphasising that what has been expressed is the general rule and not a universal rule.We have done so to bring home the point that there may be cases where an application of the general rule would be unfair or unjust.*
>
> *Take, for instance, the case of a person who has agreed to become a member, but whose name has been omitted from the register of members. If it transpires that prior to the dispute leading to the presentation of the petition, a company or its board had always treated the complainant as a member, it would not be open to them to assert that the petitioner lacked locus standi. Examples may be multiplied without any principle emerging from them. Take the facts of this very case. Here we have a fact pattern where the appellant's membership of the company had been terminated in circumstances which are being challenged by him on substantial grounds. The substantial ground he complains of is the deprivation of his membership in the Company. He says that the circumstances attending this deprivation of membership falls within the framework of s. 181(1)(a) and (b). It is the company, acting through its board, that had deprived the appellant of the status of a member. Can the company be now heard to say that the appellant is no longer a member and is therefore disentitled from moving the Court under s.*

181 of the Act and from questioning that very deprivation in proceedings brought under the section? We think not. For it does not lie in the mouth of the alleged wrongdoers to say that the appellant has no ground to stand on after having cut the very ground from under his feet.

The true principle which governs such cases as the present is housed in the doctrine of estoppel. The doctrine has reached a stage where it may be applied to prevent or preclude a litigant from raising the provisions of a statute in answer to a claim made against him in circumstances where it would be unjust or inequitable to permit him so to do.

...

It may therefore be quite safely stated that if facts emerge from which it may be determined that it is unjust or inequitable to permit a respondent to a petition under s. 181 to assert or to contend that a petitioner has no locus standi to move the Court, then, he will be estopped from so asserting. Stated in another fashion, a respondent who is guilty of unconscionable or inequitable conduct will not be permitted to raise or rely upon the requirement of membership in order to defeat a petitioner's standing as this would amount to his using statute as an engine of fraud. It does not matter how the proposition is formulated so long it has the effect adverted to.

We have earlier made our observations upon the conduct of the Company which by its own action had deprived the petitioner of membership and had then asserted his lack of standing to move a petition under s. 181. This conduct does not, in our judgment, entitle the company (for it was

the one who raised the issue) from asserting that the appellant lacks standing to present the petition. It matters not that it is the petitioner who relies upon the estoppel. For the true nature of the doctrine is not that it may not be used to found a cause of action, but that it may be invoked to prevent the respondents from asserting the existence or non-existence of facts, the existence or non-existence of which would destroy a cause of action.

Unfortunately, the learned Judge in the present case did not address his mind to the wider concepts that were applicable to the facts before him. Instead, he approached the case along narrow lines, causing him to fall into error and to misstate the relevant law. His finding, the effect of which was that the appellant lacked standing, was based upon a misunderstanding of s. 181 of the Act."

[36] The 1st Plaintiff claims "*because you took away my name*", it was therefore oppressive and they are therefore entitled to rely on ***Owen Sim.*** The Plaintiffs claim to have fulfilled both the requirements of being the rightful owners and the beneficial owners of the Company's shares.

[37] This Court finds the facts in ***Owen Sim*** clearly distinguishable. Briefly, ***Owen Sim*** concerns a complainant who was a beneficial owner of shares who was awaiting registration. While awaiting registration, his shares were forfeited by the majority who was in control of the company purportedly for the payment of debts due from the complainant. It was due to these oppressive acts of the majority that prompted the Federal Court to rule that it was unjust and inequitable for a respondent to assert that the complainant has no *locus standi* to move the court for relief from oppression. Owen Sim therefore recognised a non-member

as having the *locus standi* to initiate an action for oppression. Given the oppressive acts of the majority, the apex court applied the doctrine of estoppel to prevent the company from claiming that the complainant had no *locus standi* as they had previously treated him as if he was a member. The facts were peculiar to the case itself.

[38] The main contrasting feature of *Owen Sim* compared to the facts in the current case is the certainty of ownership. Be it in Hong Kong, Malaysia or the BVI, the entire shares have yet to be determined to enable the 1st Plaintiff to be registered as a member of the Company.

[39] In *Julian Suresh Candiah v. Axis IP Sdn Bhd & 4 Ors* [2013] 1 LNS 982, Nalini J (as she then was) did not apply the exception laid down in ***Owen Sim.*** This was despite the complainant in ***Julian Suresh Candiah*** claiming to have a beneficial ownership of the shares based on a draft shareholder's agreement discussed between the shareholders. The non-application of Owen Sim was based on an express finding that the facts were dissimilar to that in Owen Sim. It was held:

> *"… On the one hand it may be argued that as there is a clear entitlement to have the shares registered in his name, he is effectively a shareholder, albeit in equity. However his name would not appear on the register as member. He would enjoy no legal ownership in the shares as legal title would still elude him…"*

[40] The complainant in *Julian Suresh Candiah* could not show that he had any legal, beneficial and registrable interest in the company. The court also held that despite the shareholders' agreement, the complainant did not have the legal ownership of

the shares and his name will not appear in the register of members.

[41] Similarly, in *Soh Jiun Jen v. Advance Colour Laboratory Sdn Bhd & Ors* [2010] 5 MLJ 342, Ramly Ali J (as he then was) also reiterated the requirement of a person needing to be a member of a company before he is entitled to apply for relief under section 346 of the Act. His Lordship held that:

> *"The protection accorded under s. 181 is only given to the following persons, namely:*
>
> *a) member or shareholder of a company;*
>
> *b) holder of a debenture of a company; and*
>
> *c) in the case of a declared company under Part IX, the Minister (charged with responsibility for companies)*
>
> *Other than those stated above, no other persons can claim any protection or relief under s. 181, not even a director, executive or employee of a company.*
>
> *...*
>
> *[29] The s. 181 remedy is a creature of statute and basically, unless the applicant comes squarely within the section, the court ought not to entertain the action. This position has been succinctly stated by Siti Norma Yaacob J in Verghese Mathai v. Telok Plantation Sdn Bhd & Ors [1988] 3 MLJ 216 as follows:*
>
> *"As the petitioner's locus standi is regulated by statute, he must comply strictly with the mandatory provisions of s. 181..."*

(See also *Niord Pty Ltd v. Adelaide Petroleum NL & Ors* [1990] 2 ACSR 347 and *Danny Tan Yew Chon v. Skyboard Media Sdn Bhd & Ors* [2019] 9 MLJ 802)

[42] In *Khor Lye Hock & Anor v. Makassar Engineering & Construction Sdn Bhd & Ors* [2011] 8 CLJ 476 at p 480, Nallini J (as she then was) observed:

> *"It is a principle of the law relating to the grant of relief under s. 181 that mismanagement in itself is not actionable. Disputes relating to policy or management do not entitle a member to relief under the section. More significantly the oppression in question must affect the petitioning member qua member. The acts complained of must affect the member in his capacity as a member, (see Re Chi Liung & Son Ltd; Tong Chong Fah v. Tong Lee Hwa & Ors [1967] 1 LNS 145 and In The Matter Of Tong Eng Sdn Bhd [1994] 2 CLJ 775 per Selventhiranathan J. Prayer (a): This prayer relates to the removal of P1 as a Managing Director. It seeks to cancel the resolution dated 15 May 2009 that removed P1 as Managing Director. The complaint here and relief sought relates to P1's contractual position as Managing Director. It does not relate to his rights as a member. The Board of Directors, moreover is empowered under art. 91 of Table A to remove P1. It is significant that he has not been removed as a director nor has any attempt been made to adversely affect his shareholding. In The Matter Of Tahansan Sdn Bhd [1984] 1 LNS 1, Chan J quoted Plowman J in Re Lundie Brothers Ltd [1965] 1 WLR 1051: ... In my judgment he has wholly failed to do that. His main grievance is, as he admitted in the witness box, that he has been ousted as a working director. That, it seems to me, has nothing to do*

with his status as a shareholder in the company at all. The same thing is equally true in regard to his complaint that his remuneration as a director of the company has been reduced. That relates to his status as a director of the company, and not to his status as a shareholder of the company."

(Emphasis added)

[43] The line of authorities discussed above clearly does not support the Plaintiffs' case. At the risk of repetition, the crucial issue in determining *locus standi* is membership of the 1st Plaintiff. A member is defined in section 2 of the Act. It reads as follows:

"member" means-

(a) in the case of a company limited by shares, a person whose name is entered in the register of members as the holder for the time being of one or more shares in the company; or

(b) in the case of a company limited by guarantee, a person whose name is entered in the register of members;

[44] The 1st Plaintiff may still pursue an action against the Company and any other party that he is aggrieved by in any other civil suits which he may find suitable. However, on the pure facts of this case, this Court is of the firm view that he is not entitled to pursue an action for oppression under section 346 of the Act.

[45] Although the 1st Plaintiff claims that he is entitled to the shares of the Company currently registered under the various Companies in the BVI, Hong Kong and Malaysia, the fact remains that the 1st Plaintiff is not the legal owner of the

Company's shares. This Court does not find his "soon to be entitled claim" can avail him to redress under section 346 of the Act.

The 2nd Plaintiff

[46] The 2nd Plaintiff failed to demonstrate her interest in this current action. There is no complaint by her before this Court as she did not affirm any affidavit in support of this application. In a trial by affidavits such as this OS, the failure of the 2nd Plaintiff to state her complaint is fatal to her case. There is nothing before this Court that has shown how the interest of the 2nd Plaintiff has either been disregarded, oppressed, unfairly discriminated or prejudiced. As such, the 2nd Plaintiff has failed to persuade this Court to consider the application brought by her. There is no cause of action established by her.

Whether remedies sought by the Plaintiffs relate to oppression

[47] The 2nd Defendant contended that the remedies sought by the Plaintiffs have no relation to the oppressive conduct of the Defendants. This by itself disentitles the Plaintiffs from any of the remedies prayed in the OS.

[48] It is recalled that the complaint by the Plaintiffs relates to the threat of the Defendants exercising the voting rights over 64,016,500 shares (equivalent to 43.592% of the Company's shareholding) when 57, 185,050 of those shares (equivalent to 38.940%) ought to have come under the control of the 1St Plaintiff and his sister, Valerie. The 1st Plaintiff himself is entitled to exercise control over 32,008,250 of those shares (equivalent to 21.796 %).

[49] The 1st Plaintiff also claims that he is the rightful owner to the Classico Block currently held in the 11th Defendant's nominee account.

[50] In short, the 1st Plaintiff claims to have been unlawfully deprived of the said shares as a result of the acts of the 2nd to the 11th Defendants.

[51] However, given the undisputed fact that the 1st Plaintiff as at the date of filing is not a member of the Company, it has to mean that the complaint by the 1st Plaintiff is premised on a theoretical claim. This is due to the fact that the shares currently are not registered under the name of the 1st Plaintiff as they are currently the subject matter of several probate applications and lawsuits. There is no determination as to the rightful owner as yet.

[52] In determining whether the Plaintiffs can avail themselves to the remedies under the various prayers in the OS, it is pertinent to first determine if there is anything that can conclusively link the prayers to the purported oppressive act. Foremost is the consideration whether the Plaintiffs are facing with a real threat as pleaded.

[53] Prayer 1 of the OS pertains to Rosa Bianca Block, South Power Block and Yang Jin Block whom the 1st Plaintiff claims are all held on trust on behalf of the estate of TSS.

[54] Prayer 2 pertains to Classico Block which is currently in the nominee account held with the 11th Defendant.

[55] From the facts, it is established that the Rosa Bianca and Yang Jin Blocks are currently being injuncted. No dealings can be carried out with respect to the two (2) blocks of shares. This is

pursuant to the High Court Orders dated 27.8.2019 and 10.9.2019 in Suit No.: WA- 22NCC-443-08/2019 and Suit No.: WA-24NCVC-1800-08/2019 respectively. In the circumstances, it would be factually inaccurate for the Plaintiffs to claim that the Defendants are able to exercise any rights in particular voting rights against the Plaintiffs.

[56] With regards to the South Power Block and Classico Block, in order to seek remedy for oppression and the mandatory injunctory relief to postpone the EGM, the 1st Plaintiff must prove that the shares are legally under his name. This also applies to the Rosa Bianca and Yang Jin Blocks. A mere right to an interlocutory injunction does not equate the 1st Plaintiff legal rights over the shares.

[57] At the risk of repetition, it goes back to the issue of whether he has the *locus standi* to claim the reliefs under section 346 of the Act. He must resolve the said issue before coming to this Court. In ***Re J.N. 2 Ltd [1978] 1 WLR 183,*** Brightman J succinctly outlined the need for a complainant to resolve the dispute between a shareholder and another first before coming to court to mount an action against the company. His Lordship held as follows:

> "*In my judgment, this reasoning applies with even greater force to a petition by a person whose status as a contributory is in dispute. In the case of a disputed creditor's petition, the petitioner has at least an unsatisfied claim against the assets of the company. A person asserting that he is a contributory has not, in so asserting, any claim against the company's assets. It makes no difference whatever to the quantum of the company's assets whether the contributory succeeds or*

> *fails in his claim to be a shareholder. It therefore seems to me to be all the more important that he should not be permitted to present a petition and thereby interfere with dispositions by the company of its assets and risk damaging the financial standing of the company so long as his right to be a shareholder of the company is in dispute. Basically, the dispute is not between the company and a person claiming against the company but between a shareholder and a person claiming to be a shareholder. Let that dispute be settled first before the company is brought on to the scene by the presentation of a petition. By being brought on to the scene I mean of course as a substantial party.*
>
> [Emphasis added]

[58] Therefore, it is plain and obvious that the Plaintiffs have failed to demonstrate a real cause of action to entitle them for reliefs under prayers 1 and 2.

[59] It is this Court's firm view that prayers 3, 4 and 5 are not in any manner linked to any oppressive acts by the Defendants. There is nothing to show that the complaints relate to the affairs of the company as outlined in ***Jet-Tech Materials***.

[60] Instead, prayer 3 seeks to obtain relief for an alleged mala fide exercise of fiduciary powers by the Requisitionists who are the shareholders responsible for requisitioning the EGM pursuant to the notice dated 12.9.2019.

[61] The right to requisition a meeting of a company is a statutory right of a shareholder. The right is not fiduciary in nature. The Court of Appeal in *Tuan Haji Ishak Ismail v. Leong Hup Holdings Bhd* [1996] 1 MLJ 661 speaking through Mahadev

Shanker JCA clearly outlined the position in law in respect of powers of a shareholder not being fiduciary in nature. His Lordship held as follows:

> *"Kenanga Nominees and TA Nominees, the sixth and seventh respondents, were not directors of KCFM. Even assuming that they as shareholders would vote along with the other shareholders to expel the Lau Brothers, the power to vote in general meeting is not a fiduciary power, and a shareholder owes no duty to anybody as to how he exercises his vote: Northern Counties Securites v. Jackson & Steeple [1974] All ER 625. Since Leong Hup was contending that the first, second and third respondents should not be permitted to cast the votes they allegedly controlled it will be useful to reproduce two from the judgment of Walton J. The first is at page 635:*
>
> > *Putting this into less formal language, what counsel for directors submitted was that although it is perfectly true the act of the members in passing certain special types of resolutions binds the company, their acts are not the acts of the company. There would, he submitted, be no real doubt about this were it not for the use of the curious expression 'the company in general meeting' - which, in a sense, drags in the name of the company unnecessarily. What that phrase really means, he submitted, is 'the members (or corporators) of the company assembled in a general meeting', and that if the phrase is written out in full in this manner it becomes quite clear that the decisions taken at such a meeting, and the resolutions passed thereat, are decisions taken by, and resolutions passed by, the members of the*

company, and not the company itself. They are therefore in the position of strangers to the order and not in contempt by their act in voting as they please, whatever its effect may be.

In my judgment these submissions of counsel for directors are correct. I think that in a nutshell the distinction, is this. When a director votes as a director for or against particular resolution in a directors' meeting, he is voting as a person under a fiduciary duty to the company for the proposition that the company should take a certain course of action. When a shareholder is voting for or against a particular resolution he is voting as a person owing no fiduciary duty to the company who is exercising his own right of property to vote as he thinks fit. The fact that the result of the voting at the meeting (or a subsequent poll) will bind the company cannot affect the position that in voting he is voting simply as an exercise of his own property rights.

Perhaps another (and simpler) way of putting the matter is that a director is an agent, who casts his vote to decide in what manner his principal shall act through the collective agency of the board of directors; a shareholder who casts his vote in general meeting is not casting it as an agent of the company in any shape or form. His act, therefore, in voting as he pleases cannot in any way be regarded as an act of the company.

Transposed to s. 128(1) of our Act the proper meaning of "A public company may by ordinary resolution remove a

director...” means that a simple majority of the shareholders of the company may vote to remove a director and no agreement made by the directors or the company can fetter that right. The Courts will not interfere with the statutory right of shareholders to remove directors: Soliappan v. Lim Yoke Fan [1967] 1 LNS 164; [1968] 2 MLJ 21; Dato’ H.M. Shah & Ors. v. Dato’ Abdullah b. Ahmad [1990] 1 LNS 91; [1991] 1 MLJ 91 - a Supreme Court decision which applied s. 128(1) and upheld the shareholders’ right to terminate the appointment of the executive chairman and managing director of the company in the 9 month of a three-year contract with the company appointing him to those positions.

[Emphasis added]

[62] The right to convene a meeting is also fundamentally guaranteed under the constitution of the Company. The constitution of the company is the basic law of a company and guarantees the rights of members. Clearly an interpretation that goes against the constitution must be defeated. Exercising rights under the Act and the Company’s constitution cannot amount to oppression.

[63] Prayer 4 on the other hand relates to the shareholders exercising their voting rights. To urge this Court to declare any resolutions passed at the EGM to be null and void merits no consideration. The rights of shareholders include the right to vote. A shareholder has every right to vote freely and independently. It should not be fettered by any concern of interested parties in the company. This is a right exercisable by a shareholder in his private capacity. Any attempts by members of the company to frustrate this right must be frowned upon.

[64] Voting rights do not in any manner relate to the affairs of the company in the context of section 346 of the Act. In ***Re Unisoft Group Ltd (No 3) [1994] 1 BCLC 609*** Harman J held that:

> *"It is important to remember that shareholders' rights to deal with or vote their shares are separate from the rights of the company as a corporate entity and shareholders' relationships with it. Shareholders are entitled to sell their shares, to vote their shares, to take any course they like in general meeting without regard to any other person's rights or position. In my judgment the law is that a shareholder may act with malice in voting his shares against a particular resolution and there can be no objection to that, just as in Bradford Corp v. Pickles [1985] AC 587, a landowner acted on his own land with malicious intent to harm his neighbour, but was not in breach of any legal obligation. Of course, if a trustee holds shares on trust, he may have obligations to his beneficiaries which cause him to exercise the rights attached to those shares in the interest of the beneficiaries, but that is nothing whatever to do with an individual's position as a shareholder and his relationship with his co-shareholders.*
>
> *In my judgment, it is vitally important to hold that shareholders' disputes concerning dealings with their shares are not the same as unfair conduct of the company's business. Shareholders must be kept distinct from the company as far as their private position as shareholders is concerned.*
>
> *It is of course obvious that a company may act or conduct itself in a manner affecting a shareholder's rights in*

respect of his shares, for example the board may refuse to sanction a transfer of shares for improper reasons. The action of the board is conduct of the affairs of the company and so, if damage is alleged, may raise the ground of "unfair" prejudice, and a petition under section 459 (of the UK Companies Act 1985) may be presented to the court. Further, a shareholder by exercising his own private right to vote his shares may cause the company to act by the passing of some resolution in general meeting, in matter alleged to be unfairly prejudicial to some members. Again it is not the act of the shareholder in voting that will found a petition but the result of that act if it produces action, or inaction, the company. In my judgment the vital distinction between acts or conduct of the company and the acts or conduct of the shareholder in his private capacity must be kept clear. The first type of act will found a petition under section 459; the second type will not.

It is only when a shareholder is affected qua member of the company by the company's action which causes damage that s. 459 comes into operation. There is a clear and important distinction, in my judgment, to be drawn between actions by shareholders affecting other shareholders directly and actions by the company affecting shareholders. The whole of these paragraphs in the points of claim right on to para 23 are all, in my view, about shareholders' activities and are none, in my view, about activities of the company. Upon that basis they raise no cause of action within Order 18, r. 19(a) and they are not proper to be pleaded." (Emphasis added)

[65] It is therefore important to emphasize that the shareholders disputes concerning rights to shares, and dealings with their shares are not the same as unfair conduct of the company's business. The company must be kept impartial and not aligned to any member.

[66] Shareholders wield great powers as they can decide and approve resolutions at meetings. However, they must be kept distinct from the company as far as their private position as shareholders are concerned. Issues that relate to shareholders *inter se* cannot be "affairs of the company" to attract relief under section 346 of the Act.

[67] Prayer 5 is an extension of Prayer 1 and 2. Consequently, Prayer 5 fails for want of cause of action.

Conclusion on the Striking Out Application

[68] As it stands before this Court, there is nothing that shows the company or its officers were acting in an oppressive manner against the Plaintiffs. The irony of it all is the fact that the 1st Plaintiff is the Chief Executive Officer of the Company. To argue that a person who is administratively in-charge of the day to day affairs of the company is being oppressed by the very company he runs is a paradox by itself.

[69] As such the Plaintiffs have failed to show that the prayers relate to any oppressive acts by the Company. The Plaintiffs have no cause of action against the Defendants. This Court therefore allows the Striking Out Application under Order 18 rule 19 (1) (a) and (b) as per enclosure 12.

Analysis on the Injunction Application

[70] The Plaintiff filed an application for the Chairman of the EGM to declare the said EGM to be adjourned with immediate effect until the disposal of the current OS.

[71] It was argued by the Plaintiffs that the EGM was called for an improper purpose and that the 1st Plaintiff would be denied his substantive voting rights if the said EGM proceeds. Any resolution passed at the said EGM would reflect the artificial will of the Company and would circumvent the Last Will and Testaments of the late TSS.

[72] The case of the Plaintiff rests on the four (4) wills that TSS left namely:

i. the Malaysian Will dated 6.11.2017;

ii. the UK Will dated 6.11.2017;

iii. the China Will dated 11.11.2017; and

iv. the Hong Kong Will dated 11.11.2017.

[73] It was argued by the Plaintiffs that currently, the voting pattern as it lies, would favour the Defendants with 62.109% against the Plaintiff and other like-minded shareholders holding 5.157%. It was contended if the shares were to be distributed according to the Malaysian and Hong Kong wills, the Plaintiffs and other like-minded shareholders would control 44.541% while the Defendants will only have 22.239%.

[74] This Court is guided by the principles laid down in *Keet Gerald Francis Noel John v. Mohd Noor bin Abdullah & Ors* [1995] 1 MLJ 193. Essentially, the test whether an injunction should be

granted must be determined by examining firstly whether there are serious issues to be tried and whether the balance of convenience would favour issuance of the said injunction.

Whether there are serious issues to be tried

Locus standi

[75] This Court repeats its finding in enclosure 12 on the issue of *locus standi*. Therefore, the position that this Court takes is that the 1st Plaintiff has no *locus standi* to initiate this claim. This stems from the fact that he is not a member of the Company as at the date of filing of this application. The 2nd Plaintiff on the other hand failed to demonstrate a cause of action against the Defendants. She did not affirm any affidavit to demonstrate how the acts of the Defendants amounted to oppression as required under the Act.

[76] This were part of the findings of this Court in ruling that the Plaintiffs' case ought to be struck out given that it was plain and obvious that there is no cause of action established by the Plaintiffs for an action under section 346 of the Act.

The basis for requisitioning

[77] It is important for this Court to examine the source of authority which the Defendants are relying upon to convene the said EGM. As discussed previously, the right to convene the said EGM is a right conferred under the Act. Similarly, it is guaranteed under the Company's Constitution. This can be found in Articles 58, 72, 103, 105 of the said Constitution.

[78] It is therefore, clear that the act of requisitioning for a meeting and proposing of resolutions to be passed at a meeting cannot amount to oppression. The fact that the proposed resolution seeks the removal of several directors is not an act that is oppressive. It is a statutory right under section 206 of the Act. The said provision reads as follows:

> 206. Removal of directors
>
> (1) A director may be removed before the expiration of the director's period of office as follows:
>
> *(a)* subject to the constitution, in the case of a private company, by ordinary resolution; or
>
> *(b)* in the case of a public company, in accordance with this section.
>
> (2) Notwithstanding anything in the constitution or any agreement between a public company and a director, the company may by ordinary resolution at a meeting remove the director before the expiration of the director's tenure of office.
>
> (3) Special notice is required of a resolution to remove a director under this section or to appoint another person instead of the director at the same meeting.
>
> (4) Notwithstanding paragraph (1)*(b)*, if a director of a public company was appointed to represent the interests of any particular class of shareholders or debenture holders, the resolution to remove the director shall not take effect until the director's successor has been appointed.

(5) A person appointed as director in place of a person removed under this section shall be treated, for the purpose of determining the time at which he or any other director is to retire, as if he had become a director on the day on which the person in whose place he is appointed was last appointed a director.

[79] The Requisitionists are entitled to exercise their statutory and contractual rights (by virtue of the constitution) as members to remove and appoint any director. The said power is not a fiduciary power. A shareholder owes no duty to anybody including the company as to how he exercises his vote as outlined by the Court of Appeal in *Tuan Haji Ishak Ismail* (*supra*)**.**

[80] Given the above reasons, this Court finds that the Plaintiffs have failed to show that there are serious issues to be tried.

Whether the justice of the case lies in favour of granting the injunction

[81] Given the finding of this Court that there is no cause of action established by the Plaintiffs for an action under Section 346 of the Act, it must therefore follow that the Plaintiffs cannot support their argument for an injunction application.

[82] The right to apply for an injunction does not equate to a cause of action. This was determined in *Siskina (Owners of Cargo Lately Laden On Board) And Others v. Distos Compania Naviera S.A.* [1979] A.C. 210 at 256 [D-E] where Lord Diplock held as follows:

> *"A right to obtain an interlocutory injunction is not a cause of action. It cannot stand on its own. It is dependent*

upon there being a pre-existing cause of action against the defendant arising out of an invasion, actual or threatened by him, of a legal or equitable right of the plaintiff for the enforcement of which the defendant is amenable to the jurisdiction of the court. The right to obtain an interlocutory injunction is merely ancillary and incidental to the pre-existing cause of action. It is granted to preserve the status quo pending the ascertainment by the court of the rights of the parties and the grant to the plaintiff of the relief to which his cause of action entitles him, which may or may not include a final injunction".

[83] This Court finds that the Plaintiffs have failed to present a case that could persuade this Court to rule that the justice of the case would lie in the granting of the injunction.

The Grand Care Order

[84] The Plaintiff relied on *Grand Care Sdn Bhd v. KFC (Malaysia) Bhd* [1995] 4 CLJ 218 as the main authority to persuade this Court to allow the Injunction Application. In ***Grand Care*** a minority shareholder filed a petition to move the court for an order to empower the chairman of an EGM to adjourn the meeting if the chairman was prevented from accepting votes cast by any shareholder at the meeting. The court granted the order.

[85] It was contended by the Plaintiffs that the facts in ***Grand Care*** are similar to that of this case. The synopsis of the facts as laid down by the Plaintiffs in their submissions are as follows. Two (2) shareholders of KFC Holdings requisitioned for an EGM to remove three (3) directors ("**the Laus**") and to appoint one (1) new director. The Laus were directors and principal shareholders of Leong Hup Holdings Berhad ("**Leong Hup**"). Leong Hup held

29.7% of KFC Holdings shares. The requisition came up for board's consideration on 27.1.1995. The board did not convene the EGM. In the week prior and subsequent to a board meeting, one of the Laus threatened another shareholder of KFC Holdings, Ishak, that he would take steps to injunct certain shareholders from voting at the EGM, in particular Golden Plus Holdings Berhad (the Company in the present Suit when it held a substantial stake in KFC Holdings). Ishak and other shareholders collectively represented approximately 48.75% shares. The petitioner, being one of the two requisitionists, moved the court for the order described as it feared that if any of the shareholders were restrained from voting at the EGM, it would unfairly discriminate against or will otherwise unfairly prejudice the petitioner and those members, who, like the petitioner, intend to vote whilst one or more of the members of the company inclined to vote for the resolutions is or are disabled from so voting or at all.

[86] This Court in considering the arguments by the Plaintiffs finds that the facts in the current case does not fall within the parameters of ***Grand Care***. The rationale why the High Court allowed the "anticipatory" order by allowing the chairman of the EGM to suspend the meeting in ***Grand Care*** is to ensure that the will of the shareholders are not defeated by an order of a court. It has to be reminded that the party seeking to defeat the resolution in that case had threatened the other shareholders that they would obtain a court order to stop the rest of the shareholders from voting. This would effectively defeat the resolutions at the said EGM and deny the democratic will of the shareholders. In the current case, if this Court were to allow the said injunction, it would result in the suppression of the

democratic will of the shareholders. This was the very outcome which the High Court in ***Grand Care*** sought to avoid.

[87] This Court is in agreement with the Defendants that the ***Grand Care*** remedy is not available to the Plaintiffs especially when there are active actions being taken by the Plaintiffs to secure their rights to the shares as can be seen in the suits involving the Rosa Bianca, South Power, Yang Jin and Classico Blocks. In ***Grand Care***, there were no other actions taken by the requisitionists to exercise their rights apart from the proposed resolution at the EGM. As such, it was a clear situation that the members of the company would be deprived of exercising their voting rights by virtue of an *ex-parte* order by a court.

[88] In ***Grand Care*** the order were applied by the requisitionists of the meetings. In the current case, the order is being sought by parties who are seeking to stop the meeting.

[89] In ***Grand Care***, the parties that were challenging or opposing the resolution to remove the Laus were members of the company. In the current case, the 1st Plaintiff is not a member of the Company and has no voting rights. Although the 2nd Plaintiff is a member, but her inability to establish a cause of action for oppression by itself disqualifies her from the right to apply for the said injunction. Thus, the status of the feuding parties in ***Grand Care*** pales in comparison when compared to the current case before this Court. The facts are also clearly distinguishable.

[90] This Court is of the firm view that merely because the resolution sought by the Requisitionists seeks to remove the current set of directors is not sufficient basis to allow for an injunction. The allegation that if an injunction is not granted, the possibility that the Company would be run to the ground as a result of the manipulative acts of the 2nd Defendant is speculative. The

averment by the 1st Plaintiff that it would render the shares of the Company to be valueless is unsubstantiated. It is always open for the 2nd Plaintiff who is a member of the company to take up a derivative action under section 348 of the Act if the allegation of mismanagement and fraud against the Company is proven.

[91] It is also important to mention that the 32.9% shares held by the public is a relevant factor. Not only that it is a substantial percentage, it also means that the public shareholders may determine the outcome of the resolution. Who is to be removed or remain must be left to the will of the shareholders.

[92] In *China Investment Fund Co Ltd v. Guan Shen Investments Ltd* [2016] HKCU 1395 the Hong Kong Court of First Instance held as follows:

> "*(3) Thirdly, these are only proposed resolutions. The very point of an EGM is to see whether they have the support of the majority of the members. It is the members who own shares in the Company, and they are generally the most appropriate persons to decide what is best for themselves. Who should be removed from or appointed to the board of directors is a matter for the members, i.e. the Company in general meeting. The purposes of a meeting are for the members to come together so that competing views may be ventilated and debated and members left to vote in accordance with their persuasion. There would be nothing to prevent those opposing the defendant's proposed resolutions from trying to persuade the meeting to reject them, either because they would be disruptive to the Company's operations or for other reasons. Indeed, while the current management apparently took a dim view of the*

suitability of Ms Jenny Lin and Mr Fan Weiyong to be directors of the Company, they were prepared to put them forward for election at the AGM, because, as put in

Mr. Luk's 4th affirmation, "as long as [the fact that they were not recommended by the board and were put forward without prejudice to the Company's position that they were not suitable candidates] and full information of their background and experience is disclosed… the Company's and shareholders' risk will be minimized". It is difficult to see why the same could not be done at an earlier EGM.

(4) Fourthly, the defendants own only a small percentage of shares in the Company, but now about 5.9%. With that level of shareholding they are by no means likely to be able to dictate the outcome of the EGM. In fact there are shareholders with greater shareholdings than the defendants'. Mr. Sui Guangyi, one of the non-executive directors alone held 16.27% as at 11 March 2016. There is no evidence at all that Mr. Yao Yuan had control over a sufficient majority of the shares of the Company to secure an affirmative result for the proposed resolutions or could otherwise control the outcome of any general meeting."

(See also *Soh Jiun Jien* (*supra*))

[93] In the final analysis, the Court should be slow in granting injunctions to prevent shareholders from holding meetings. Meetings of the said nature is an expression of the shareholder's democratic right. It is the only avenue open to shareholders to exercise their rights as a member of the company.

[94] Shareholders would have to make informed decisions at meetings and it cannot be gainsaid that the trend today is one

where shareholders are very aware of the goings on in companies.

[95] While a shareholder has no right in the management of the day to day affairs of the company, the right of shareholders to vote at meetings to determine and approve proposals by the management or any other member of the company is the last bastion of governance in a company. It must not be overshadowed by any authority unconnected to the rights of the members at a meeting. The internal democratic process of the company must not be stifled and must be allowed to flourish.

[96] Shareholder activism would be stifled if courts interfere to stop meetings from being convened and carried out. It would be even more unjust if the decision of the court is based on the grievance put forward by a member without the benefit of a meeting of other members.

[97] It is for the aforesaid reasons that this Court finds that the justice of the case and the balance of convenience must lie against granting the injunction.

Conclusion on the Injunction Application

[98] The 1st Plaintiff has yet to establish his entitlement to the Company's shares held in the four (4) blocks of shares in Rosa Bianca, South Power, Yang Jin and Classico. The Plaintiffs also obtained injunctions for the Rosa Bianca and Yang Jin Blocks *via* the respective court orders. This equally denies the right of the 2nd to the 8th Defendants to their entitlement of the shares of the Company.

Such conduct disentitles the 1st Plaintiff to any assistance of this Court as provided under section 54 (j) of the Specific Reliefs Act 1950 as reproduced below:

> Injunction when refused
>
> 54. An injunction cannot be granted
>
> (j) when the conduct of the applicant or his agents has been such as to disentitle him to the assistance of the court; …

[99] In the foregoing, the Injunction Application in enclosure 10 is therefore dismissed with costs.

Dated : 20 MARCH 2020

(AHMAD FAIRUZ ZAINOL ABIDIN)
Judicial Commissioner
High Court of Malaya
Kuala Lumpur

COUNSEL:

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For the 1st defendant - K Shanmuga & Nasyrah Samir; M/s Kanesalingam & Co

For the 2nd defendant - Alan Adrian Gomez, Michael Yap, Mervyn Lai, Joshua Moghana (PDK) & Khoo Sher Rynn (PDK); M/s Tommy Thomas

For the 3rd , 6th and 8th defendants - Michael Chow & Wendy Yeong; Messrs Michael Chow

For the 4th defendant - P Gananathan, Yeoh Kai Ying & Iris Tan Li Chie; M/s Gananathan Loh

For the 5th & 7th Defendants - Lim Tuck Sun & Ariel On; M/s Chooi & Company + Cheang & Ariff

Legislation referred to:

Companies Act 2016, ss. 2, 206, 348, 346 (1)

Companies Act 1965, s. 181

Specific Reliefs Act 1950. s. 54 (j)

Federal Constitution, art. 58, 72, 103, 105

Rules of Court 2012, O. 18 r. 19 (1) (a) (b) (d), (3)