

**DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR
DI DALAM WILAYAH PERSEKUTUAN, MALAYSIA
(BAHAGIAN DAGANG)
GUAMAN SIVIL NO.: WA-22NCC-103-02/2024**

ANTARA

DATO' SRI ANDREW KAM TAI YEOW
(NO. K/P: 620202-10-6039)

... PLAINTIF

DAN

- 1. TAN SRI DATO' KAM WOON WAH**
(NO. K/P: 291129-10-5173)
- 2. LINDA KAM THAI ENG**
(NO. K/P: 580118-10-5048)
- 3. EDWARD KAM TAI KEONG**
(NO. K/P: 590701-10-6143)
- 4. DENNIS KAM THAI LEONG**
(NO. PASPORT SINGAPURA S6869979G/NO. K/P: 680314-10-5019)
- 5. CHEW TEE BENG**
(NO. K/P: 511009-10-5875)
- 6. DANIEL WONG CHAN WAI**
(NO. K/P: 840704-10-5129)
- 7. TAI SWE CHONG**
(NO. K/P: 591229-05-5235)
- 8. NG PUI KUEN**
(NO. K/P: 750109-10-5002)
- 9. BERJAYA REALTY SENDIRIAN BERHAD**
[NO. SYARIKAT: 197301000726 (14266-A)]

10. **COASTAL REALTY SDN BHD**
[NO. SYARIKAT: 197501001912 (23606-X)]
11. **GRANDFOODS SDN BHD**
[NO. SYARIKAT: 198801007468 (174825-D)]
12. **GRANNY'S KITCHEN SDN BHD**
[NO. SYARIKAT: 198801007469 (174826-A)]
13. **LEAD ENTERPRISES SDN BHD**
[NO. SYARIKAT: 198301002857 (105236-T)]
14. **UNITED RAUB OIL PALMS SDN BHD**
[NO. SYARIKAT: 196601000212 (6598-V)]
15. **WAHBUNGA REALTY SDN BHD**
[NO. SYARIKAT: 197501001166 (22613-P)]
16. **YUM SDN BHD**
[NO. SYARIKAT: 196101000021 (4076-A)]
17. **RAUB MINING & DEVELOPMENT COMPANY S/B**
[NO. SYARIKAT: 196201000202 (4708-A)]
18. **RAUB OIL MILL SDN BHD**
[NO. SYARIKAT: 197601000324 (26175-P)]
19. **CLASSIC RUSH SDN BHD** ... **DEFENDAN**
[NO. SYARIKAT: 202301008175 (1502096-H)] **DEFENDAN**

JUDGMENT

(Enclosures 18, 22, 38, 39, 40 and 48)

- [1]** This Judgment is in respect of the following applications:
- i) **Enclosure 22** - the Plaintiff's application for various injunctive reliefs.
 - ii) **Enclosure 18** - the 9th to 18th Defendants' application to strike out the Plaintiff's claim.

- iii) **Enclosure 38** - the 6th and 8th Defendants' application to strike out the Plaintiff's claim .
- iv) **Enclosure 39** - the 1st, 2nd and 4th Defendants' application to strike out the Plaintiff's claim.
- v) **Enclosure 40** - the 5th and 7th Defendants' application to strike out the Plaintiff's claim.
- vi) **Enclosure 48** - the 3rd and 19th Defendants application to strike out the Plaintiff's claim.

(collectively "**the Applications**")

- [2] Enclosures 18, 38, 39, 40 and 48 shall collectively be referred to as the "**Defendants' Application**" and Enclosure 22 as the "**Plaintiff's Application**".
- [3] The Applications were heard and decided together given that the Plaintiff's Application and the Defendants' Application are inter-related and the decision of one will inevitably affect the other. This is because, in the Plaintiff's Application, the Plaintiff was required to demonstrate to the Court that there were serious questions to be tried (**American Cyanamid Co. v. Ethicon Ltd [1975] AC 396**), whereas the Defendants, in the Defendants' Application, had to show the Court that the Plaintiff's claim was obviously unsustainable (**Seruan Gemilang Makmur Sdn Bhd v. Kerajaan Negeri Pahang Darul Makmur & Anor [2016] 3 MLJ 1**).
- [4] In the present case, I found that the Plaintiff's claim was obviously unsustainable and, therefore, allowed the Defendants' Application and dismissed the Plaintiff's Application, for the reasons set out below.

A] BACKGROUND

- [5] The roles of each party and their connection to the Plaintiff's case are as stated below.

- [6] The **Plaintiff** (Dato' Sri Andrew Kam Tai Yeow) is the son the 2nd Plaintiff. The 2nd to 4th Defendants are his siblings. The Plaintiff is asserting his beneficial ownership and interests in several companies forming the **RMDC Group** (consisting of the 9th to 18th Defendants). He claims that his shares and positions as a director were unlawfully diluted, transferred or vacated as part of a conspiracy involving the Defendants.
- [7] The **1st Defendant** (Tan Sri Dato' Kam Woon Wah), the father of the Plaintiff, is alleged to have played a primary role in the alleged conspiracy. The Plaintiff claims that the 1st Defendant is the trustee of the Plaintiff's shares and that he had breached his fiduciary duties by orchestrating the dilution and transfer of the Plaintiff's interests in the RMDC Group.
- [8] The **2nd Defendant** (Linda Kam Thai Eng) is the eldest daughter of the 1st Defendant and the **3rd Defendant** (Edward Kam Tai Keong) is the son of the 1st Defendant. The Plaintiff claims that they both conspired with their father (the 1st Defendant) and others to dilute the Plaintiff's interests. The 2nd and 3rd Defendants are alleged to have benefitted from the allocation of shares from the RMDC Group during the disputed transactions
- [9] The **4th Defendant** (Dennis Kam Thai Leong) is the youngest son of the 1st Defendant. The 4th Defendant is implicated as a beneficiary of the disputed transactions and accused of knowingly receiving unlawfully transferred shares.
- [10] The **5th Defendant** (Chew Tee Beng) is a director and manager in the RMDC Group. The 5th Defendant is alleged to have assisted in the improper execution of several actions that undermined the Plaintiff's interests, including fraudulent legal proceedings and share transactions.
- [11] The **6th Defendant** (Daniel Wong Chan Wai) is the secretary and officer for companies within the RMDC Group. He is implicated in facilitating administrative processes for the alleged fraudulent transactions.
- [12] The **7th Defendant** (Tai Swe Chong) is a director in the companies within the RMDC Group. The Plaintiff allege that he participated in the conspiracy by approving or failing to challenge actions detrimental to the Plaintiff.

- [13] The **8th Defendant** (Ng Pui Kuen) is the former secretary for companies within the RMDC Group and is alleged of being involved in corporate governance decisions that facilitated the dilution and transfer of shares.
- [14] The **9th to 18th Defendants** (the “**Corporate Defendants**” or “**RMDC Group**”) are the corporate entities within the RMDC Group. The Plaintiff asserts that their corporate structures and share transactions were manipulated as part of the alleged conspiracy.
- [15] The **19th Defendant** (Classic Rush Sdn Bhd) is a company said to be owned and controlled by the 3rd Defendant and is alleged to have been used as a vehicle to receive unlawfully transferred shares.
- [16] Each Defendant is alleged to have played a role in actions that resulted in the dilution or transfer of the Plaintiff’s shares and loss of his beneficial control in the RMDC Group. The Plaintiff seeks declarations, injunctions and damages to restore his position and hold the Defendants accountable.

B] THE PLAINTIFF’S CASE

- [17] The Plaintiff’s case is summarised below.

Interest in RMDC Group:

- [18] The Plaintiff asserts ownership and control over shares and directorship in companies within the RMDC Group (the “**companies**”), citing a registered 6.57% shareholding in the 17th Defendant (“**RMDC**”) and an agreement that entitles him to a 52% beneficial interest.
- [19] While the 1st Defendant had majority control (90.87%) over RMDC shares, the Plaintiff alleges that on **16.1.2017** an agreement was entered between the 1st Defendant and the Plaintiff which is said to provide the Plaintiff with:
- i) rights to 50% of the 1st Defendant’s entire interest in RMDC; and

- ii) priority options to purchase the remaining 50% of the 1st Defendant's interest in RMDC.

("Purported 2017 Agreement")

[20] The 1st Defendant denies the existence of the Purported 2017 Agreement. On 5.9.2017, the Plaintiff filed Kuala Lumpur High Court Suit No. WA-22NCvC-352-09/2017 ("**Suit 352**") to enforce the Purported 2017 Agreement. In Suit 352 the Plaintiff claimed to be the beneficial and/or indirect shareholder of some shares in the Corporate Defendants (RMDC Group) under the said Purported 2017 Agreement. The Plaintiff sought various remedies, including recognition of his ownership rights over the shares and control over the RMDC Group. Hence, the Purported 2017 Agreement is a subject matter of Suit 352.

Alleged Conspiracy and Wrongful Acts

[21] The Plaintiff claims that the 1st to 8th Defendants systematically orchestrated **legal and procedural** actions to dispossess him of his shares and directorships. These actions culminated in the alleged dilution of shares in the RMDC Group on 9.10.2023, which reduced the 1st Defendant's interest in RMDC to 3.87% ("**9.10.2023 Alleged Share Dilution**").

[22] The Plaintiff alleges that the Defendants:

- i) orchestrated his removal as a director in various companies within the RMDC Group without his consent or legitimate cause.
- ii) improperly transferred shares previously held by him to other entities or individuals. This includes:
 - a) The transfer of shares in the 11th, 12th and 13th Defendants, among others, to the 1st Defendant and others as part of a purported scheme.
 - b) The alleged large-scale dilution of shares on 9.10.2023, which reduced the Plaintiff's and the 1st Defendant's interests significantly. This is claimed to have been orchestrated without the Plaintiff's knowledge or

consent. The Plaintiff alleges that the 9.10.2023 Alleged Share Dilution would effectively nullify the Plaintiff's potential victory in Suit 352.

Misuse of Legal Proceedings (Actions Against the Plaintiff)

[23] The Plaintiff alleges the Defendants of misusing legal proceedings to exert financial and operational pressure on him, as follows:

- i) **Directorship Suit:** Between October to November 2019, various suits were filed by the 17th, 18th, 13th, 11th and 12th Defendants where they sought to declare that the Plaintiff ceased to be a director. The Plaintiff alleges these suits were filed to counter the Plaintiff's applications to inspect company records under Section 245 of Companies Act 2016.
- ii) **Suit 306:** Kuala Lumpur High Court Suit No. WA-22NCC-306-06/2019 filed by the 1st Defendant against the Plaintiff in which the 1st Defendant claimed the Plaintiff's shares in the 11th, 12th and 13th Defendants were held on trust for the 1st Defendant. As a result of Suit 306, the Plaintiff's shares in the above 3 companies were transferred to the 1st Defendant on 23.5.2022

[24] The Plaintiff claims that the Directorship Suit and Suit 306 culminated in the 9.10.2023 Alleged Share Dilution and that they were allegedly part of a coordinated effort to systematically remove the Plaintiff from his director and shareholder positions in some of the Corporate Defendants. The Plaintiff further claims that these actions, while seemingly lawful, were done with the predominant purpose of injuring him.

Reliefs

[25] The reliefs sought by the Plaintiff in his Statement of Claim are essential as follows:

- i) **A Declaration a Trust** to acknowledge the Plaintiff's ownership and control over his claimed shares.
- ii) **Rectification** by restoring the Plaintiff as a member and director across the RMDC Group.

- iii) **Compensation** and a full accounting to restitute the losses incurred due to the alleged conspiracy and wrongful actions.

Causes of Action

[26] The Plaintiff's causes of action are as follows:

- i) **Tort of Conspiracy:** The Plaintiff argues that the Defendants acted collectively with the primary intent to harm his financial interests.
- ii) **Breach of Fiduciary Duty:** Allegations against the 1st Defendant and the other Defendants for not adhering to fiduciary and trust obligations.
- iii) **Abuse of Process:** The Plaintiff claims that legal actions initiated by the Defendants were intended to cause financial harm, not legitimate redress.

[27] The Plaintiff's case fundamentally challenges the legitimacy of the Defendants' actions, asserting a pattern of conspiracy designed to dispossess him of his legitimate interests in the RMDC Group. This is the crux of the Plaintiff's case.

C] THE PLAINTIFF'S APPLICATION (ENCLOSURE 22)

[28] In **Enclosure 22**, the Plaintiff seeks essentially the following reliefs:

- i) Expedited Processes:
 - a) A shortened period for the Plaintiff to serve the Notice of Application and supporting affidavit.
 - b) A shortened period for the 1st to 8th Defendants to file their affidavits in opposition to this application.
- ii) Interim Injunctions to:
 - a) restrain the 2nd, 3rd, 4th and 19th Defendants from disposing of, pledging, assigning, transferring, or dealing with shares registered in their names in the relevant

companies (e.g. the 9th, 10th, 15th, 16th and the 17th Defendants (RMDC) as of the specific dates);

- b) restrain the 2nd, 3rd and 4th Defendants from dealing with shares in other companies (e.g. 11th, 12th and 13th Defendants) which were issued to them on 9.10.2023;
- c) restrain the 1st Defendant from dealing with his direct or indirect interests in shares or registered shares in companies related to the RMDC Group, including specific preference shares;
- d) restrain all relevant Defendants from causing or enabling any changes to the capital structure, shareholding, issuance or subscription of shares within the RMDC Group;
- e) prevent the Defendants and their affiliates from disposing of or encumbering RMDC Group assets, including specific properties located in Raub, Pahang.

D] THE DEFENDANTS' DEFENCE AND GROUNDS FOR STRIKING OUT THE PLAINTIFF'S CLAIM

[29] Each of Defendants have provided their specific defences and grounds to strike out the Plaintiff's claim. However, there is a considerable overlap between the arguments of the Defendants.

[30] At the hearing of the Applications, the majority of the arguments were presented by the 1st, 2nd and 4th Defendants, followed by the 9th to 18th Defendants. Therefore, the arguments presented by both the 1st, 2nd and 4th Defendants and the 9th to 18th Defendants can be **combined** into a unified set of arguments.

[31] The other Defendants **adopted** and relied on the above Defendants' arguments, in addition to presenting their own.

[32] I will begin with the arguments of the 1st, 2nd, and 4th Defendants, as they set the tone for the rest of the Defendants.

1st, 2nd and 4th Defendants' Argument

[33] The 1st, 2nd and 4th Defendants' grounds for striking and their key arguments are summarised below.

i) Collateral Attack on Previous Decisions

[34] Firstly, the Plaintiff lost his **directorship** through valid High Court declarations:

- i) Originating Summons no. WA-24NCC- 574-10/2019: 17th Defendant (RMDC) and 18th Defendant ("**ROM**") v. the Plaintiff ("**OS 574**").
- ii) Originating Summons no. WA- 24NCC-609-11/2019: 13th Defendant (Lead Enterprises Sdn Bhd) v. the Plaintiff ("**OS 609**").
- iii) Originating Summons no. WA-24NCC-642-11/2019: The 11th Defendant (Grandfoods Sdn Bhd) and the 12th Defendant (Granny's Kitchen Sdn Bhd) v. the Plaintiff ("**OS 642**").
- iv) These suits (OS 574, OS 609 and OS 642 collectively referred to as the "**Directorship Suits**") sought to formally remove the Plaintiff from his director positions based on the interpretation of the respective companies' Articles of Association.
- v) The High Court in the Directorship Suits ruled in favour of the Defendants, issuing Court orders on 30.3.2022. The Court determined that, based on the construction of the Articles of Association, the Plaintiff had retired and vacated his office as director in the 11th, 12th, 13th, 17th and 18th Defendants.
- vi) These Court orders had a significant legal impact as:
 - a) The orders formally declared the Plaintiff's **retirement**, effectively terminating his legal position as a director in these companies.
 - b) In addition to the declarations of retirement, the Court issued injunctions against the Plaintiff, prohibiting him

from acting or holding himself out as a director in the RMDC Group.

- c) Although the Plaintiff appealed against these decisions, the High Court orders remain in effect, pending the outcome of the appeals.

[35] The 1st, 2nd and 4th Defendants' submit that these Court orders support their argument that the Plaintiff's claims of conspiracy and abuse of process are unfounded because his removal as a director was the result of a valid legal process.

[36] Secondly, the High Court in Originating Summons No. WA-24NCC-396-07/2023 ("**OS 396**") **validated the transfer** of the Plaintiff's shares. In OS 396, the Plaintiff sought to challenge the validity of liens placed on his shares in certain companies (in the RMDC Group) and to prevent the sale of those shares. The High Court dismissed OS 396 on 14.8.2023.

[37] The 1st, 2nd and 4th Defendants' contend that the Court's decision in OS 396 has a substantial impact on the Plaintiff's current case for the following reasons:

- i) The dismissal of OS 396 effectively validated the liens on the Plaintiff's shares and allowed the RMDC Group companies to proceed with selling his shares to enforce those liens. This directly contradicts the Plaintiff's claim in the present case that the sale of his shares was part of a conspiracy to injure him.
- ii) The Plaintiff is attempting to relitigate the issue of the share sale in the present suit, which is barred by the doctrine of *res judicata*. The Plaintiff's current action constitutes an abuse of process because it seeks to overturn a decision already made by the High Court in OS 396.
- iii) While the Plaintiff appealed to the Court of Appeal against the High Court's decision in OS 396, his application for an *Erinford* injunction to halt the share sale was also dismissed by the Court of Appeal on 4.8.2023. The 1st, 2nd and 4th Defendants argue the Plaintiff's current claim is premature because it relies on overturning a High Court decision that is currently in effect.

- iv) In this regard, the 1st, 2nd and 4th Defendants further argue that Plaintiff's claim is also premature as the Plaintiff's appeal against the decision in OS 396 has not been decided.

[38] Therefore, instead of appealing or waiting for the outcome of the appeal, the Plaintiff improperly challenges these Court orders through conspiracy allegations vide this action.

[39] The 1st, 2nd and 4th Defendants' rely on, inter alia, the case of **CIMB Investment Bank Bhd v. Metroplex Holdings Sdn Bhd [2014] CLJ 1012** where the Federal Court had struck out an action on the ground that it was a collateral attack of an order for sale that was regularly obtained.

ii) ***Res Judicata* and Issue Estoppel (Suit 352)**

[40] The 1st, 2nd and 4th Defendant also rely on the grounds on *res judicata* and issue estoppel which are also related to the issue of collateral attack on the decisions of the Court as stated above.

[41] The 1st, 2nd and 4th Defendants' arguments on this ground of *res judicata* revolve around, inter alia, Suit 352 and the appeals that arose therefrom.

[42] The 1st, 2nd and 4th Defendants argue that:

- i) The Court of Appeal already ruled on the indirect shareholding issue.
- ii) The Plaintiff's conspiracy allegations could or should have been raised in Suit 352.
- iii) Same issues in the present case is being **repackaged** by the Plaintiff as conspiracy claims.
- iv) Hence the principle of *res judicata* applies to prevent the Plaintiff from relitigating these same issues.

[43] In Suit 352, the Corporate Defendants had applied to strike out the Plaintiff's claim against them. On 12.1.2022 the Court of Appeal allowed the Corporate Defendants appeals (Nos. W-02(IM)(NCC)-803-04/2018, W-02(IM)(NCC)-795-04/2018 W-02(IM)(NCC)-2007-10/2017 ("**Appeal 2007**") and W-02(IM)(NCC)-2009-10/2017

(“**Appeal 2009**”), and struck out the Plaintiff’s claim against the Corporate Defendants in Suit 352 and set aside the *ad interim* injunction dated 6.9.2017 as well as the injunction dated 29.3.2018, obtained by the Plaintiff.

[44] The Court of Appeal held that the shareholdings in RMDC, held by the holding companies, belonged to the companies themselves and not to their shareholder (the 1st Defendant). Additionally, the Court of Appeal ruled that there was no privity of contract between the Plaintiff and the Corporate Defendants.

[45] The Plaintiff’s application for leave to appeal against the Court of Appeal’s decision was dismissed by the Federal Court on 21.2.2023.

[46] The Defendants repeatedly emphasise that the Court of Appeal has already rejected the notion of the Plaintiff having an “indirect shareholding” in the RMDC Group. They cite the Court of Appeal’s decisions, which directly addressed this issue (in the context of Suit 352) where the Court of Appeal:

- i) rejected the Plaintiff’s claim of having an “indirect shareholding” in the RMDC Group.
- ii) determined that the shares belonged to the registered shareholders and not to the 1st Defendant.
- iii) ruled that the shares were not held on trust for the Plaintiff.

[47] In short, the Court of Appeal found that the shares in the companies belonged to the registered shareholders, not to the 1st Defendant. It also held that the 1st Defendant was not entitled to transfer those shares because he had no ownership rights over them. Therefore, the Plaintiff’s claim of an “indirect shareholding” based on the Purported 2017 Agreement, was deemed invalid.

[48] The 1st, 2nd and 4th Defendants argue that the Plaintiff’s allegations of conspiracy are essentially a rehash of issues that were already addressed or could have been raised in Suit 352.

[49] The 1st, 2nd and 4th Defendants submit that the crux of the Plaintiff’s current claim is that the Defendants **conspired to dilute** his interest in the RMDC Group which directly relates to the subject

matter of Suit 352, which involved a dispute over the Purported 2017 Agreement between the Plaintiff and the 1st Defendant concerning shares in the RMDC Group.

[50] Because the Plaintiff's claim of "indirect shareholding" was struck out against the Corporate Defendants in Suit 352, the 1st, 2nd and 4th Defendants argue that his current conspiracy allegations, which rely on this same claim, are fundamentally flawed.

[51] The 1st, 2nd and 4th Defendants rely on the *res judicata* principle established in **Henderson v. Henderson (1843) 67 ER 313** to support their argument that the Plaintiff is barred from relitigating matters that could or should have been raised in previous legal proceedings

iii) Premature Action

[52] The 1st, 2nd and 4th Defendants contend that Suit 352 regarding the Purported 2017 Agreement has not yet determined.

[53] Therefore, even if there is basis for the Plaintiff's claim, the alleged losses from the conspiracy allegation that the Plaintiff raised have not crystallised.

[54] The Plaintiff's claim in the present suit depends entirely on the outcome of Suit 352.

[55] Thus, it is improper for the Plaintiff to claim conspiracy before establishing his underlying rights which he raised in Suit 352.

iv) Multiplicity of Action and Abuse of Process

[56] The Plaintiff wrote to Justice Mohd Radzi bin Harun, the learned High Court judge presiding over Suit 352, complaining about the dilution of shares (9.10.2023 Alleged Share Dilution), which shares are the subject matter of Suit 352. Having failed to obtain a favourable response to their complaint the Plaintiff then filed this action.

[57] The 1st, 2nd and 4th Defendants further submit that the multiplicity of action and abuse of process grounds also stems from:

- i) the Plaintiff's failed injunction attempts, now recast as a conspiracy claim in this action;
- ii) a pattern of the Plaintiff's conduct which shows his attempt to pressure the Defendants through multiple proceedings.

[58] The current position is:

- i) The Court of Appeal has rejected the Plaintiff's "*indirect shareholding*" argument.
- ii) The Plaintiff is no longer a shareholder after valid share transfers that were decided by the High Court.
- iii) The Plaintiff cannot challenge corporate decisions without having shareholder status.
- iv) The previous suits established lack of privity with the Corporate Defendants.

9th to 18th Defendants' Argument

[59] The 9th to 18th Defendants' arguments **in addition** to those presented by the 1st, 2nd and 4th Defendants are summarised below.

[60] The 9th to 18th Defendants' focus on the "indirect shareholding" issue and heavily emphasise that the Plaintiff's entire claim hinges on the notion of "indirect shareholding" which has been explicitly rejected by the Court of Appeal in Appeal 2007 and Appeal 2009.

[61] The 9th to 18th Defendants' characterise the Plaintiff's attempt to revive this argument as an "*egregious challenge*" and "*brazen*" collateral attack on the Court of Appeal's findings.

[62] The 9th to 18th Defendants' provided a detailed breakdown of the Plaintiff's conspiracy allegations in the present suit, categorising them into "Group A" (actions affirmed by the Courts) and "Group B" (irrelevant matters or those decided in the Plaintiff's favour).

[63] The 9th to 18th Defendants' highlight that the Plaintiff has failed to plead agreement between the Defendants, the intention to injure and the resulting damage, which are the essential elements of the tort of conspiracy.

[64] The 9th to 18th Defendants also submit that that the Plaintiff's claim is premature because it relies on the outcome of Suit 352 and this amounts to an abuse of process.

3rd and 19th Defendants' Argument

[65] The 3rd and 19th Defendants **adopted** the combined arguments of the 1st, 2nd and 4th Defendants and the 9th to 18th Defendants, and in addition presented the following arguments:

- i) The Plaintiff's claim is based on the **flawed presumption** that he has a beneficial interest in the companies, which is still being disputed in Suit 352.
- ii) The Plaintiff's claim is **premature** because the Plaintiff's alleged beneficial ownership is contingent upon the outcome of Suit 352.
- iii) The Courts have **validated** the Defendants' actions, including the Plaintiff's removal as a director and the forfeiture of his shares and the present suit disregards these previous decisions.
- iv) The Plaintiff lack of **locus standi** to bring this action given the Plaintiff is **neither a director nor a shareholder**. Hence, the Plaintiff lacks the necessary standing to bring a claim for breach of fiduciary duties.

6th and 8th Defendants' (Company Secretaries) Argument

[66] The 6th and 8th Defendants **adopted** the combined arguments of the 1st, 2nd and 4th Defendant and the 9th to 18th Defendants, and additionally presented the following arguments:

- i) The 6th and 8th Defendants' plays a limited role as company secretaries and their duties were primarily **compliance-oriented** and did not involve decision-making.
- ii) The 6th and 8th Defendants' contend that the Plaintiff's claim against them is misguided ("*barking at the wrong tree*") because they had **no authority** to participate in the alleged conspiracy.
- iii) The Plaintiff's action is driven by a **collateral purpose** and amounts to harassment, as he has repeatedly filed similar injunction applications in Suit 352.

5th and 7th Defendants' (Directors) Argument

[67] The 5th and 7th Defendants **adopted** the combined arguments of the 1st, 2nd and 4th Defendant and the 9th to 18th Defendants, and presented the following additional arguments:

- i) The 5th and 7th Defendants, as directors, have acted in good faith and in the companies' best interests and acted in accordance with their statutory duties under the Companies Act 2016.
- ii) The 5th and 7th Defendants' **fiduciary duties** were owed to the companies, **not** the Plaintiff.
- iii) In any event there is **no** specific allegation or evidence to demonstrate they conspired to injure him.
- iv) The Plaintiff has failed to show a "predominant purpose" that the Defendants' actions were to injure him.

E] ANALYSIS AND FINDINGS

[68] The Plaintiff's claim centres on an alleged conspiracy by the Defendants to injure him through both legal and unlawful means. The Plaintiff's core allegations are that the Defendants engaged in a coordinated series of actions from 2019-2023 to:

- i) Remove him as director and shareholder.
- ii) Dispossess him of his shares through questionable means.
- iii) Dilute the company shares to defeat his beneficial interest claims.

[69] The Plaintiff alleges that the conspiracy culminated in the 9.10.2023 Alleged Share Dilution that reduced the 1st Defendant's interest from 90.87% to 3.87%, which effectively nullifies the Plaintiff's claim of beneficial ownership over the 1st Defendant's shares/interests under the Purported 2017 Agreement.

[70] While individual actions might appear legitimate, the Plaintiff argues their predominant purpose was to cause him injury and frustrate his rights under the Purported 2017 Agreement being litigated in Suit 352.

[71] Hence, the crux of the Plaintiff's case hinges on his claim of **"beneficial interest"** in shares of several companies, primarily the 17th Defendant (RMDC), which wholly owns the 18th Defendant (ROM). The Plaintiff argues this interest stems from the Purported 2017 Agreement made with his father, the 1st Defendant and a major shareholder in RMDC.

[72] Based on the Purported 2017 Agreement which is a subject matter of Suit 352, the Plaintiff essentially seeks:

- i) A declaration that the transfer of his shares in various companies to other Defendants between 14.8.2023 to 30.8.2023, is null and void.
- ii) Restoration of his shareholding in the companies and an account of those shares.
- iii) Reinstatement to his previous position within the companies.
- iv) The profits or benefits he believes he would have received arising from his position or interests in those companies.
- v) Damages for the alleged conspiracy and abuse of process.

- [73] Having examined the Plaintiff's claim in detail and the basis of his claim, I am inclined to agree with the Defendants on the arguments they raised, as stated earlier.
- [74] I will begin with the issue of collateral attack on the earlier decisions of the Court and *res judicata*. Both of these issues are interconnected, and it is appropriate to address them together.

Collateral Attack on Earlier Decisions and Res Judicata

- [75] The Plaintiff argues that the collateral attack doctrine does not apply because the Court of Appeal's decision and grounds of judgment in, inter alia, Appeal 2007 and Appeal 2009 ("**the COA Grounds**") only addressed the 1st Defendant's indirect shareholding, not the Plaintiff's. The Plaintiff also argue that his "indirect shareholding" was not a key issue in the COA Grounds.
- [76] However, all the Plaintiff's claims in this action **fundamentally relate** to his share **ownership rights** allegation in Suit 352.
- [77] The Court of Appeal has already ruled that Corporate Defendants own their RMDC shares directly, independently of the 1st Defendant. These shares are the said companies' assets, not the 1st Defendant's personal property. The relevant parts of the COA Grounds in Appeal 2007 and Appeal 2009 are reproduced below:

*"[36] In view of the fundamental principle that **a company is a separate entity distinct from its shareholders**, and that the **property owned by a company belongs to it and not its shareholders**, we find that the learned Judge has erred in law when she failed to give effect to the said principle.*

[37] The 4th to the 11th defendants' shareholdings in the 2nd defendant belong to them and not to the 1st defendant. As such, we agree with the defendants that since the 1st defendant has no ownership rights in those shares, he therefore has no rights to enter into an agreement dealing with the transfer of those shares. Consequently, we find that the plaintiff cannot sue the 4th to the 11th defendants for the purpose of enforcing the terms of the Shareholding Agreement between the plaintiff and the 1st defendant against them.

[38] *It is also the submission of the plaintiff that the 1st defendant holds the shares in the 2nd defendant, whether directly or indirectly through the 4th to the 11th defendants, in trust for him, based on the Shareholders Agreement. However, the plaintiff has failed to show if the Memorandum of Articles of the 2nd to 11th defendants allow the recognition of trusts. Even if the same is allowed by the Articles, the same must be read with section 110(4) of the Companies Act 2016, which reads:*

[39] *Therefore, a company does not take cognizance of trusts in respect of its shares. It only recognizes its registered shareholders. As such, we are of the considered opinion and we agree with the defendants that it is **not** the concern to the 4th to the 11th defendants as to whether or not the 1st defendant holds any of their shares registered in his name on trust for the plaintiff."*

(own emphasis added)

- [78] The issues concerning the shareholdings of the Corporate Defendants are *res judicata*. The Plaintiff is bound by the findings of the Court of Appeal and cannot be allowed to pursue a collateral attack on those decisions. The nature of this action is so overtly a collateral challenge that it does not even attempt to disguise its intent. Such conduct constitutes a blatant abuse of Court process. In **Penang Port Commission v. Kanawagi s/o Seprumaniam** [2008] 6 MLJ 686 the Court of Appeal aptly observed:

*"In my judgment, the abuse of process which the instant case exemplifies is the initiation of proceedings in a court of justice for the purpose of mounting a 'collateral attack' against the triable issue in the plaintiff's writ action that is awaiting trial at the High Court. The Originating Summons No R2-24-5 of 2000 was filed oblivious of the pending triable issue that should be fixed for hearing before the High Court. **And if that is not an abuse of the process of the court, I do not know what is.** According to the case of *Smith v Linskills* (a firm) and another [1996] 2 All ER 353, CA at p 35; [1996] 1WLR 763 at p 769, that the word '**collateral**' means '**an attack not made in the proceedings which gave rise to the decision which it is sought to impugn**'; not, in other words, an attack made by way of appeal in the earlier proceedings themselves'."*

(own emphasis added)

- [79] The Plaintiff relies on Section 8(6) of the Companies Act 2016 in paragraph 28 of the Statement of Claim to establish his indirect shareholding. However, it is also caught by *res judicata* whether

in the narrow or broad sense (**Pamol (Sabah) Ltd & Anor v. Joseph Bin Paululs Lantip & Ors [2012] 5 MLJ 616** at pages 59-72).

[80] In Suit 306, the High Court determined that the Plaintiff had executed old share transfer forms for shares in the 11th, 12th and 13th Defendants in favour of the 1st Defendant and held these shares on trust for the 1st Defendant. As a result, the Court issued a mandatory injunction compelling the Plaintiff to **retransfer** the shares to the 1st Defendant, which has since been executed. Although the matter is under appeal at the Court of Appeal, the decisions are final and constitute *res judicata* (**Hartecon JV Sdn Bhd v. Hartela Contractors Ltd [1997] 2 CLJ 104**). Furthermore, the Plaintiff's claim that Suit 306 is a false action to remove him as a shareholder of the 11th, 12th and 13th Defendants (to facilitate the 9.10.2023 Alleged Share Dilution exercise) without seeking to directly impeach the earlier decisions in Suit 306 is an impermissible **collateral attack** on those judgments. The net effect of the Plaintiff's claim in the present suit is to **reverse** the High Court's decisions in Suit 306 and this is despite the fact that there is an appeal pending on those decisions. Thus, the Plaintiff is attempting obtain a decision in his favourable through improper or illegitimate means.

[81] In OS 574, OS 609 and OS 642, the High Court determined that, based on a proper construction of the respective Articles of Association of the 17th (RMDC), 18th (ROM), 11th, 12th and 13th Defendants, the Plaintiff had **retired** as a director on 31.12.2017 and 31.12.2018, respectively. While these decisions are currently under appeal before the Court of Appeal, they remain final and constitute *res judicata*. Furthermore, the Plaintiff's assertion that OS 574, OS 609 and OS 642 are false actions and part of a coordinated effort to unlawfully remove him as a director of the 11th, 12th, 13th, 17th and 18th Defendants (to facilitate the 9.10.2023 Alleged Share Dilution exercise) is untenable. Without directly impeaching these decisions, this argument amounts to an impermissible collateral attack on the High Court's rulings.

[82] Regarding OS 396, the action was filed by the Plaintiff to challenge the validity of the liens and to restrain the sale of his shares by the 9th, 10th and 15th to 17th Defendants. The High Court dismissed OS 396 on 14.8.2023. The Plaintiff's application to the Court of Appeal for an *Erinford* Injunction to restrain the sale of his shares was also

dismissed by the Court of Appeal on 24.8. 2023. Pursuant to this, the relevant Corporate Defendants proceeded to enforce their lien by selling the Plaintiff's shares in accordance with the respective Articles of Association. Therefore, the Plaintiff's claim in this action seeking to restore the shares is without merit. Again, this is tantamount to an improper method of obtaining his lost shares and **disregards** the above High Court's and Court of Appeal's decisions.

[83] I summarise my findings on this issue of **collateral attack** and *res judicata* as follows:

i) Through this action the Plaintiff attempts to **undermine** the legal effect of the successful actions filed against him as detailed earlier. Since the Courts in those previous cases have ruled in favour of the Defendants, the Plaintiff is essentially seeking this Court to make a **contrary finding or ruling**. Through this action, the Plaintiff is effectively seeking to **overturn** those decisions by **improper or illegitimate** means. As shown in the cases referred to below, the Plaintiff cannot and should not be allowed to do this.

ii) The Plaintiff's framing of the Defendants' lawful actions, including corporate exercises (the 9.10.2023 Alleged Share Dilution) and enforcement of liens, as elements of a conspiracy amounts to a direct challenge to the validity of those prior Court decisions.

iii) Therefore, the Plaintiff's attempt to **repackage** those decided issues through **conspiracy allegations** in this action constitute an impermissible collateral attack. The Federal Court in **CIMB Investment Bank** (supra) held:

*"unless the order is a nullity in the sense as enunciated in Badiaddin, it could not be attacked in **collateral proceedings**."*

(own emphasis added)

iv) The Court of Appeal in **Penang Port Commission** (supra) referred to the case of **Smith v. Linskills (a firm) and another** [1996] 2 All ER 353, CA at p 35; [1996] 1WLR 763 to define what constitutes a "**collateral attack**" and held as follows:

"According to the case of Smith v Linskills (a firm) and another [1996] 2 All ER 353, CA at p 35; [1996] 1WLR 763 at p 769, that the word 'collateral' means 'an attack not made in the proceedings which gave rise to the decision which it is sought to impugn; not, in other words, an attack made by way of appeal in the earlier proceedings themselves'."

(own emphasis added)

- v) The present case is a clear instance of an impermissible "collateral attack" as held in **Penang Port Commission** (supra).
- vi) In **Development & Commercial Bank Bhd v. Aspatra Corp Sdn Bhd [1995] 3 MLJ 472** the Supreme Court held as follows on the issue of collateral attack on a decision of the court:

*"For our part, with great respect we were unable to agree with the learned judge for deciding in this manner by brushing aside the order of substituted service, for the learned judge was obviously considering the validity of the order of substituted service of the High Court dated 5 January 1986 when the same order was not a subject matter of an application before the learned judge or for that matter, before the learned registrar earlier for its discharge. The order of substituted service of the High Court, a superior court of competent jurisdiction, must be obeyed by everyone save in a few and rare exceptions and **it can only be challenged as regards its validity by the only way of having it set aside by proceedings instituted for the very purpose. It cannot be challenged thus collaterally in any proceedings as regards its validity save in a very few rare exceptions**, (such as a Bankruptcy Court going behind a judgment of any court on credibly raised issues of collusion, fraud, etc, only on hearing a bankruptcy petition), which all do not apply here. Please see *Pembinaan KSY Sdn Bhd v Lian Seng Properties Sdn Bhd [1991] 1 MLJ 100; Puah Bee Hong & Anor v Pentadbiran Tanah Daerah Wilayah Persekutuan Kuala Lumpur & Anor (Teo Keng Tuan Robert, intervener) and another appeal [1994] 2 MLJ 601 and Hadkinson v Hadkinson [1952] 2 All ER 567*. In this connection, it is immaterial that the said order of the High Court was actually made by the learned registrar and not a High Court judge. The learned registrar should be considered notionally to be making the order as if he were a deputy High Court judge.*

*With great respect, the learned judge was making a **similar error** as the learned judge in *Pembinaan KSY*, by adjudicating on the validity of the order of substituted service **not in actual proceedings filed for the very purpose of having the order for substituted service or service in pursuance thereof set aside.***

(own emphasis added)

- vii) The Court of Appeal in **Penang Port Commission** (supra) took the same position and found that the collateral attack issue also gave rise to the issue of **multiplicity of proceedings** and **res judicata** as they are all connected.
- viii) The cases cited demonstrate that Courts are willing to strike out suits that constitute collateral attacks on previous judgments, even when the plaintiff attempts to reframe the issues (**Pamol** (supra)).
- ix) Additionally, and in any event, the Plaintiff has not demonstrated how the alleged new events, such as the dilution of shares, create independent causes of action. The Plaintiff claims that the present action involves distinct legal issues, such as conspiracy and breach of fiduciary duty. However, these claims are **intrinsically tied** to the Plaintiff's assertion of "**indirect shareholding**", an issue that was dealt with by the Court of Appeal in Appeal 2007 and Appeal 2009. If the Plaintiff's claim is allowed it would undermine the finality of the Court of Appeal's decision and erode the principle of judicial consistency.
- x) Further, the **reliefs** the Plaintiff seeks in this action (for damages and injunctive reliefs) are **derivative** of the same factual matrix and legal rights adjudicated in, inter alia, Suit 352. The reliefs also **overlap** with the remedies sought in prior proceedings/earlier actions. As such, the current suit remains a collateral attack in disguise. The principle of *res judicata* also applies to the present action

[84] In the circumstances, I find that the present action is a collateral attack on previously decided cases and is caught by *res judicata*, either in the narrow or broader sense.

- [85] I find support for my finding in the case of **Dato' Ahmad Johari bin Tun Abdul Razak v. A. Santamil Selvi a/p Alau Malay @ Anna Malay & Ors and another appeal [2020] MLJU 562** where the earlier suit filed by the plaintiffs was struck out leading to the plaintiffs filing a second suit. The Court of Appeal held as follows:

*"[50] On the factual matrix of this case, we are of the view, that the 2nd present Suit is in fact no more than a repetition, in **thinly veiled new guise** of the cause of action of the 1st or earlier suit and the 2nd/present Suit was filed **with the intention to re-litigate and re-open the earlier suit** which was struck out and dismissed by the 1st Court. This is so since the parties, the facts of the case, the **causes of action and the reliefs sought by the Plaintiffs are identical, if not one and the same**. Even if the "continuing tort" as averred to in the 2nd/present Suit could be said to be a different cause of action, which we are of the view it is not; that cause of action was already present or in existence when the 1st Suit was filed on 9.6.2014 and **no reasons or explanations were proffered by the Plaintiffs as to why it was not pleaded and brought or filed together with the 1st Suit**. In light of the principle expounded by *Henderson v Henderson* (supra), that a party should bring forward once and for all every points which properly belonged to the subject of litigation and not to litigate by way of instalments, the 2nd/present Suit ought to be dismissed on the ground that it is *res judicata* in its **extended or broader sense** and an **abuse of the process of court**. The Learned HCJ's finding to the contrary is thus unsustainable."*

(own emphasis added)

Prematurity of the Plaintiff's Claim

- [86] It is important that I highlight from the outset that the prematurity argument and *res judicata* are **mutually exclusive**, each relying on a separate set of arguments and/or facts. The prematurity argument can be argued independently, in addition to the issue of *res judicata* or as an alternative to it, depending on the manner in which it is argued. In this regard, I disagree with the Plaintiff's argument that the Defendants are being inconsistent by raising both of these grounds. The Defendants are entitled to rely on both.
- [87] The Plaintiff argues this action is not premature because it deals with separate causes of action, such as conspiracy, abuse of court process, knowing receipt and knowing assistance, that arose

independently of the outcome of Suit 352. However, this argument is not tenable for the reasons stated below.

- [88] The Plaintiff's claims are **inextricably linked** to the outcome of Suit 352, which seeks to establish his beneficial interest in the RMDC Group. The Plaintiff acknowledges this connection in his submissions, stating that Suit 352 was necessitated by the 1st Defendant's refusal to recognise his beneficial interest. In the present case, the Plaintiff alleges a conspiracy to injure his interests in the RMDC Group. It is inherently **dependent** on the Court recognising those interests in the first place.
- [89] The Plaintiff is essentially trying to pre-empt the outcome of Suit 352. By alleging that the Defendants engaged in a conspiracy to injure his interests in the RMDC Group, the Plaintiff is assuming he *will* succeed and that his alleged interests have been recognised. This is a premature assumption, as the outcome of Suit 352 is still pending.
- [90] The reliefs sought in the instant case is directly dependent on the outcome of Suit 352. For example, the Plaintiff seeks the cancellation of new shares issued by the RMDC Group, a remedy that may be relevant *if* the Court in Suit 352 decides in the Plaintiff's favour and recognises his beneficial interest in those shares.
- [91] The Plaintiff's arguments regarding separate causes of action and his attempt to characterise his claims as independent of Suit 352 is a **strategic manoeuvre** to avoid the issue of prematurity. While the Plaintiff claims to be pursuing distinct causes of action, they all stem from the **same** underlying issue, that is his alleged ownership interest in the RMDC Group (**Penang Port Commission** (supra)).
- [92] The Plaintiff's argument hinges on the assumption that he will or has already succeeded in Suit 352, which is a presumptive and legally untenable position. Until the Court in Suit 352 determines the Plaintiff's beneficial interest in the RMDC Group, his claims of conspiracy, abuse of process, and other related actions remain premature and lack a proper foundation. The Plaintiff's attempts to separate these claims are artificial and designed to circumvent the fact that his right to pursue such claims is contingent on the outcome of Suit 352. Hence, this action is premature in this context.

Multiplicity of Proceedings

- [93] Similar to the Plaintiff's argument regarding the prematurity of his claim, the Plaintiff also argues that this action does not create a multiplicity of proceedings because this is the *only* action in which the Defendants are alleged to have conspired to injure the Plaintiff. However, this argument ignores key facts and legal principles demonstrating that his claim *does* constitute a multiplicity of proceedings as I will address below.
- [94] The Plaintiff's claim **revisits** issues already litigated in several previous cases, including Suit 306, OS 574, 609 & 642, OS 396, and the Directorship Suits. As detailed earlier, these actions involved similar disputes over share ownership, directorships, and actions taken by the RMDC Group. The Plaintiff's current attempt to frame these prior cases as evidence of a larger conspiracy cannot erase the fact that these issues have already been addressed in those Courts (**Penang Port Commission** (supra); **Pamol** (supra)).
- [95] The Plaintiff's suit attempts to relitigate matters that **were** or **could have** been raised in those previous actions. For example, the Plaintiff's claim that the enforcement of a lien on his shares violated the companies' Articles of Association was already litigated and dismissed in OS 396. Similarly, the Plaintiff's current allegations about the Defendants' actions could have been raised in earlier proceedings. Other than the 9.10.2023 Alleged Share Dilution, the other pleaded actions of the Defendants that form the Plaintiff's claim concern the Defendants' earlier actions. In any event the "indirect shareholding" issue remains the predominant point in the Plaintiff's claim and is the subject matter of Suit 352.
- [96] The Plaintiff's reliance on the alleged "predominant purpose" of the Defendants' actions is a tactic to circumvent the principles of *res judicata* and is an abuse of process. By framing this action as a conspiracy claim, the Plaintiff attempts to **repackage** issues already decided by the Court or issues that could have been raised earlier. This approach is an attempt to avoid the consequences of previous judgments against the Plaintiff and creates unnecessary duplication of legal proceedings. The Federal Court in **Joseph Paulus Lantip & Ors v. Unilever Plc** [2012] 7 CLJ 693 held as follows:

*"[30] Thus, for the doctrine of res judicata to apply, the **same issue must have been raised and decided in an earlier proceeding or action** in which the parties are represented. And for that reason, it is **not open** for the same issue to be litigated afresh **between the same parties**. This doctrine is based on the public policy that there must be finality and conclusiveness in judicial decisions and the right of the individual from being vexed by **multiplicity of suits** at the instance of an opponent. In *Satyadhyan Ghosal and others v. Smt. Deorajin Debi And Another* 1960 AIR SC 941, the Indian Supreme Court stated the principle as follows:*

(7) The principle of res judicata is based on the need of giving a finality to judicial decisions. What it says is that once a res is judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter - whether on a question of fact or a question of law - has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again."

*[31] In *Henderson v. Henderson* [1843] 3 Hare 100, 67 ER 313, Vigram VC expressed the view that "The plea of res judicata applies **not only** to points upon which the court **was actually required by the parties to form an opinion and pronounce a judgment**, but to every point which properly belonged to the subject of litigation, and **which the parties exercising reasonable diligent, might have brought forward at the time**." This statement came to be known as the rule in *Henderson v. Henderson*."*

(own emphasis added)

- [97]** The Plaintiff is ultimately seeking to challenge the outcome of various legal actions/decisions, some of which are still pending appeal. This raises the possibility of **conflicting judgments** which also supports the ground of multiplicity of proceedings.
- [98]** The principles regarding collateral attack on previous decisions, *res judicata* and multiplicity of proceedings are interconnected and can run parallel to each other (**Penang Port Commission** (supra); **Pamol** (supra)).
- [99]** The case of **Penang Port Commission** (supra) establishes that filing multiple suits that seek to adjudicate matters already in

dispute constitutes an abuse of process. The Plaintiff's current suit clearly falls within this definition, as it seeks to relitigate matters that have already been or could have been addressed in previous legal actions (see also **Pamol** (supra)).

- [100] The Plaintiff's attempt to portray this action as the only action dealing with the alleged conspiracy is disingenuous. The Plaintiff's claim is **inherently intertwined** with a series of prior legal proceedings that addressed many of the **same** underlying issues. By re-litigating these issues and challenging the outcomes of those prior cases, the Plaintiff's claim creates a clear multiplicity of proceedings that wastes judicial resources and undermines the efficient administration of justice.

Plaintiff Has No *Locus Standi* to Initiate this Suit

- [101] The Defendants' *locus standi* argument that the Plaintiff does not have legal standing to initiate this action is also connected to the *res judicata* and issue estoppel arguments.
- [102] The Plaintiff relies on his trust-based arguments to claim indirect or beneficial ownership over the shares in dispute. However, such claims are **not** recognised in corporate law where direct, registered ownership is determinative. This denies the Plaintiff standing to challenge share transfers.
- [103] The Plaintiff's claims regarding alleged breaches of fiduciary duty and conspiracy to injure should have been raised in other specific forums (e.g. as derivative actions on behalf of the companies). Failure to do so results in a lack of *locus standi* to bring such claims directly against the Defendants.
- [104] Additionally, I agree with the Corporate Defendants' (9th to 18th Defendants) argument that they are not parties to the 2017 Agreement or the underlying trust claims advanced in Suit 352. Therefore, the Plaintiff cannot enforce claims against them for conspiracy, breach of fiduciary duties or dilution of shares because they are not privy to the contractual or fiduciary relationships.
- [105] Further, given that the Plaintiff is neither a director nor a member of the RMDC Group, the Plaintiff does not have the requisite *locus*

standi to raise allegations against the individual Defendants who are or were directors in the RMDC Group for any purported breach of fiduciary duties in respect of these companies. The relevant individual Defendants do not owe any duty of care to the Plaintiff in respect of the same. The principle stated in **Pharmmalaysia Bhd v. Dinesh Kumar Jashbhai Nagjibha Patel & Ors [2004] 7 CLJ 465** applies to the present case:

*"Section 132(1) of the Companies Act 1965, in a nutshell, requires a director "to act honestly and use reasonable diligence in the discharge of the duties of his office. " As an officer of the company, the director is barred from making improper use of any information acquired by virtue of his position in the company in order to gain directly or indirectly any advantage for himself or for any other person or cause detriment to the company. What is required of a director to do under this provision of the law is in addition to and not in derogation of any written law or rule of law relating to the duty or liability of directors or officers of a company. **It is a correct statement of the law to say and I so say that directors owe fiduciary duties and certain duties of care to the company** (Low Tien Sang & Sons Holding Sdn. Bhd. & Ors. v. How Kem Chin & Ors.[1999] 1 LNS 163; [2000] 2 MLJ 334). The directors are obliged, by virtue of their position, to exercise their fiduciary power in the interest of the company in which they serve (Samuel Tak Lee v. Chou Wen Hsien[1984] 1 WLR 1202; Woodland Development Sdn. Bhd. v. Chartered Bank; PJTV & Densun (M) Sdn. Bhd. (Third Party)[1985] 1 LNS 161; [1986] 1 MLJ 84; and Teoh Peng Phe v. Wan & Co. [2001] 5 CLJ 222). It goes without saying that the **directors** are, by virtue of their position, in **a fiduciary position towards the company in general and the shareholders in particular** (Lim Ow Goik & Anor v. Sungei Merah Bus Company Ltd. [1969] 2 MLJ 101). At all times, the directors must act civilly and they are expected to exercise their vast powers and discretions for the benefit of the company (Ng Pak Cheong v. Global Insurance Co. Sdn. Bhd. [1995] 1 CLJ 223)."*

(own emphasis added)

The Statement of Claim Lacks Particulars

- [106] The Plaintiff's claim, particularly the allegations of conspiracy and abuse of process, are pleaded in a vague and general manner, lacking the requisite particularity to enable the Defendants to properly respond (**Shun Leong Kwong v. Toh May Fook [2021] 1 LNS 2049**).

[107] The Plaintiff failed to specify the actions of **each Defendant** and how they contributed to the alleged dilution of his purported interest. In connection with this, the following passages from **Bukit Baru Villas Sdn Bhd v. Yeoh Teen Earn & Ors [2017] MLJU 2058** is instructive:

*"[54] The **plaintiff must furnish the requisite particularity by pleading the circumstances of material facts** as to the questions of "who, what, where, when and how" of the alleged fraud and conspiracy in order to enable the defendants to provide a meaningful response. It cannot be emphasised enough that general statements which are vague and containing conclusory allegations do not satisfy the requirements of Order 18 r 7 and r 12. The statement of claim too cannot hide behind purported averments which in truth are nothing but merely a set of formulaic recitation of the ingredients of a cause of action.*

.....

*"[55] Pleadings sans particularisation is bad pleading because matters such as fraud and conspiracy cannot be expected to be inferred from statements which are vague and general in nature, more so as the concept of fraud itself is not immutable. Similarly, **when alleging fraud and conspiracy against more than one defendants, like presently, the plaintiff must specify, with particularity, each of the fourth and fifth defendant's offending conduct. The defendants cannot be grouped together without identifying which defendant has committed which wrong.**"*

(own emphasis added)

[108] In **Renault SA v. Inokom Corp Sdn Bhd & Anor and other appeals [2010] 5 MLJ 394**, the Court of Appeal sets out the elements for a cause of action in tort of conspiracy:

"[32] In regard to the tort of conspiracy, the following need to be satisfied at this interlocutory stage:

- (a) **an agreement between two or more persons** (that is an agreement between Tan Chong and others);*
- (b) **an agreement for the purpose of injuring Inokom and Quasar;***

(c) *that acts done in execution of that agreement **resulted in damage** to Inokom and Quasar; and*

(d) *damage is an essential element where damage is not pleaded the statement of claim may be struck out."*

(own emphasis added)

[109] In the present case, the Plaintiff failed to plead:

- i) the existence of any agreement between the Defendants. The nature of the agreement, whether expressed, implied, formal, or informal (**Tan Poh Yee v. Tan Boon Thien & Other Appeals [2017] 3 MLJ 244**, paragraphs 20 and 22);
- ii) the Defendant's intention to injure him and that the "predominant purpose" was to injure him (**Lonrho plc v. Fayed and others [1991] 3 All ER 303**);
- iii) that the Plaintiff's standing and right to pursue Suit 352 had been adversely affected and further that the worth of the alleged "trust property" had similarly been destroyed and reduced.

[110] The serious lack of specific pleadings is detrimental to the Plaintiff's case. It was also held in **Ocular Sciences Ltd & Anor v. Aspect Vision Care Ltd. & Ors; Geoffrey Harrison Galley v. Ocular Sciences Ltd [1997] RPC 289** that the Court "*may infer that the purpose of the litigation is harassment rather than the protection of the plaintiff's rights and may strike out the action as an abuse of process*" where the plaintiff fails to give "*full and proper particulars of all the confidential information on which he intends to rely in the proceedings.*"

The 6th and 8th Defendants

[111] In addition to the above, the 6th to 8th Defendants', as company secretaries, roles within the companies were limited to compliance matters and did not involve decision-making capacity that could have contributed to the alleged conspiracy.

[112] Further, the 6th and 8th Defendants' limited roles as company secretaries means that they lacked the decision-making power to participate in the alleged conspiracy. In this regard, the Plaintiff's was unsuccessful in his action against the 8th Defendant in Suit 352 which was on similar grounds. This shows pattern of harassment or oppression through litigation (**Ocular Sciences Ltd** (supra); **Jasa Keramat Sdn Bhd v. Monatech (M) Sdn Bhd** [1999] 4 CLJ 533).

[113] The Plaintiff's failure to plead or demonstrate how these Defendants could have participated in the alleged scheme further supports the argument for striking out his claim against them (**Bukit Baru Villas** (supra)).

The 5th and 7th Defendants

[114] In so far as the 5th and 7th Defendants are concerned there is a lack of a direct cause of action against them. Their roles as company directors did **not** make them personally liable for the alleged conspiracy. This goes back to the issue of the material defect in the Plaintiff's pleaded case.

[115] In any event the present action could have been included in previous actions (**Dato' Sivananthan a/l Shanmugam v. Artisan Fokus Sdn Bhd** [2016] 3 MLJ 122; **Asia Commercial Finance (M) Bhd v. Kawal Teliti Sdn Bhd** [1995] 3 MLJ 189; **Henderson** (supra)).

F] THE PLAINTIFF'S APPLICATION (ENCLOSURE 22)

[116] Given my above findings in the respect of the Defendants' Application there is no necessity for me to address the Plaintiff's Application for an injunction as his claim is obviously unsustainable (**Seruan Gemilang** (supra)).

G] CONCLUSION

[117] In my above analysis, the specific grounds the Defendants relied on such as collateral attack on earlier Court decisions, *res judicata* and multiplicity of proceedings have been held in the cases cited to be serious enough to warrant the Plaintiff's claim to be struck out (**Dato' Ahmad Johari** (supra); **Pamol** (supra)); **Asia Commercial Finance** (supra); **Seruan Gemilang** (supra))

[118] Apart from being frivolous and vexatious (**Technointan Holding Sdn Bhd v. Tetuan Tan Kim & Teh Hong Jet** [2006] 7 CLJ 541; [2007] 1 MLJ 163; **Middy Industries Sdn Bhd & Ors v. Arensi-Marley (M) Sdn Bhd** [2012] 1 LNS 830; [2013] 3 MLJ 511), I particularly find that the Plaintiff's claim is an abuse of the process of Court (**Penang Port Commission** (supra) **Pamol** (supra); **Dato' Ahmad Johari** (supra); **Jasa Keramat** (supra)).

[119] In **Jasa Keramat** (supra), the Court of Appeal specifically addressed the issue of abuse of process and held as follows:

*"Abuse of process in the context of a step taken in the proceedings would, in my judgment, include the use of interlocutory relief as an instrument of oppression. The law provides for remedies, both **interim and final**, to a litigant to set right, or to prevent, some harm or injury that has been done or may be reasonably apprehended. **It is plainly an abuse of the court's process where relief at law or in equity is used, not to remedy a genuine grievance, but as an instrument of oppression.** There have been instances before our courts where an interlocutory injunction has been found to have been used as an instrument of oppression. We have always intervened in such cases and set the matter right. See, for example, *Motor Sports International Ltd (Servants or agents at Federal Territory of Labuan) & Ors v. Delcont (M) Sdn Bhd* [1996] 3 CLJ 483; [1996] 2 MLJ 605; *Tsoi Ping Kwan v. Loh Lai Ngoh & Anor* [1997] 3 CLJ 552; [1997] 3 MLJ 165."*

(own emphasis added)

[120] In the present case, based on my findings, especially those concerning collateral attacks on previous Court decisions and the multiplicity of proceedings filed, it appears to me that the primary objective of this action was to use it as an instrument of oppression, intended to harass the Defendants and undermine certain Court decisions. It therefore constitutes an abuse of process.

Accordingly, it warrants not only the striking out of the action but also the imposition of a higher award of costs.

[121] For the reasons stated above, I dismissed the Plaintiff's Application with costs of RM20,000/- for each set of Defendants and allowed the Defendants' Application with costs of RM20,000/- for each set of Defendants.

Dated this 10th day of January, 2025

-SGD-

(WAN MUHAMMAD AMIN BIN WAN YAHYA)

Judge

High Court of Malaya,

Kuala Lumpur

(Commercial Division (NCC 3))

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LEGISLATION / RULES CITED

Companies Act 2016

- Section 8(6)
- Section 245

CASES CITED

1. American Cyanamid Co. v. Ethicon Ltd [1975] AC 396
2. Asia Commercial Finance (M) Bhd v. Kawal Teliti Sdn Bhd [1995] 3 MLJ 189

3. Bukit Baru Villas Sdn Bhd v. Yeoh Teen Earn & Ors [2017] MLJU 2058
4. CIMB Investment Bank Bhd v. Metroplex Holdings Sdn Bhd [2014] CLJ 1012
5. Development & Commercial Bank Bhd v. Aspatra Corp Sdn Bhd [1995] 3 MLJ 472
6. Dato' Ahmad Johari bin Tun Abdul Razak v. A. Santamil Selvi a/p Alau Malay @ Anna Malay & Ors and another appeal [2020] MLJU 562
7. Dato' Sivananthan a/l Shanmugam v. Artisan Fokus Sdn Bhd [2016] 3 MLJ 122
8. Geoffrey Harrison Galley v. Ocular Sciences Ltd [1997] RPC 289
9. Henderson v. Henderson (1843) 67 ER 313
10. Hartecon JV Sdn Bhd v. Hartela Contractors Ltd [1997] 2 CLJ 104
11. Joseph Paulus Lantip & Ors v. Unilever Plc [2012] 7 CLJ 693
12. Jasa Keramat Sdn Bhd v. Monatech (M) Sdn Bhd [1999] 4 CLJ 533
13. Lonrho plc v. Fayed and others [1991] 3 All ER 303
14. Middy Industries Sdn Bhd & Ors v. Arensi-Marley (M) Sdn Bhd [2012] 1 LNS 830; [2013] 3 MLJ 511
15. Ocular Sciences Ltd & Anor v. Aspect Vision Care Ltd. & Ors [1997] RPC 289
16. Penang Port Commission v. Kanawagi s/o Seprumaniam [2008] 6 MLJ 686
17. Pamol (Sabah) Ltd & Anor v. Joseph Bin Paululs Lantip & Ors [2012] 5 MLJ 616
18. Pharmmalaysia Bhd v. Dinesh Kumar Jashbhai Nagjibha Patel & Ors [2004] 7 CLJ 465

19. Renault SA v. Inokom Corp Sdn Bhd & Anor and other appeals [2010] 5 MLJ 394
20. Seruan Gemilang Makmur Sdn Bhd v. Kerajaan Negeri Pahang Darul Makmur & Anor [2016] 3 MLJ 1
21. Smith v. Linskills (a firm) and another [1996] 2 All ER 353; [1996] 1 WLR 763
22. Shun Leong Kwong v. Toh May Fook [2021] 1 LNS 2049
23. Tan Poh Yee v. Tan Boon Thien & Other Appeals [2017] 3 MLJ 244
24. Technointan Holding Sdn Bhd v. Tetuan Tan Kim & Teh Hong Jet [2006] 7 CLJ 541; [2007] 1 MLJ 163

