IN THE HIGH COURT OF MALAYA AT KUALA LUMPUR
(COMMERCIAL DIVISION)
ORIGINATING SUMMONS NO.: WA-24NCC-233-05/2021

In the matter of M3 Technologies (Asia) Berhad (Company No. 199901007872 (482772-D) and its Constitution

And

In the matter of s. 346, s. 213, s. 218, s. 220 and s. 351 of the Companies Act 2016

And

In the matter of s. 41 and s. 53 of the Specific Relief Act 1950

And

In the matter of Orders 7, 29, 88 and 92 Rules of Court 2012

BETWEEN

1. LIM SENG BOON
(NRIC No.: 571211-07-5221)

2. VOON SZE LIN
(NRIC No.: 700528-10-5183) ... PLAINTIFFS

AND

1. CHEW SHIN YONG, MARK
(Singapore Passport No. : E6480448L)

2. NICHOLAS WONG YEW KHID
(NRIC No. : 810105-10-5701)

3. KENNETH VUN @ VUN YUN LIUN
(NRIC No. : 740618-12-5213)

4. M3 TECHNOLOGIES (ASIA) BERHAD
[Company No. : 199901007872 (482772-D)] ...DEFENDANTS

GROUNDS OF JUDGMENT

Introduction

[1] The Originating Summons ("OS") in Enclosure ("Enc") 1 was filed on 18.5.2021 as an oppression action by the Plaintiffs pursuant to section 346 of the Companies Act 2016 alleging that the affairs of the 4th Defendant, a public listed company ("the Company") had been conducted by the 1st and 2nd Defendants ("D1" and "D2") (as directors) and the 3rd Defendant ("D3") (as shadow director) in a manner oppressive and prejudicial to the Plaintiffs or in disregard to the Plaintiffs interests as members of the Company through the issuance of new shares in the Company.

[2] On 5.11.2021, leave was granted to the Plaintiffs to cross-examine the deponents of the Defendants' affidavits, namely the D1 and D3 in respect of the following issues –

2.1 whether D1 and D2 as executive directors of the Company are in fact the nominees of D3;

2.2 whether D1 and D2 took instructions from D3; and

2.3 whether the Employee Share Option Scheme ("ESOS") undertaken and the private placement threatened were done at the behest of D3.

[3] Cross-examination of D1 and D3 respectively were conducted virtually online by using the Zoom video conferencing platform on 21.2.2022 and on 28.2.2022.

[4] I had on 6.5.2022 dismissed the Plaintiffs' claim with costs. This judgment contains the full reasons for my decision.

Background and Parties

[5] The background facts are culled from the cause papers and submissions of the parties.

[6] The 1st Plaintiff ("P1") was the founder and former managing director of the Company. He was a director since the inception of the Company in 1999 until his retirement on 11.2.2021. P1 holds 57,105,000 shares in the Company. The 2nd Plaintiff ("P2") is also a shareholder of the Company.

[7] D1 and D2 are directors of the Company.

[8] D3 is alleged to be shadow director of the Company and that he holds shares in the Company through proxies.

[9] On 25.11. 2015, the shareholders of the Company approved various corporate proposals which included the ESOS. The criteria for ESOS were laid down in a Circular to the Company's shareholders and the by-laws for the ESOS.

The Plaintiffs' case

[10] The Plaintiffs sought the following reliefs against the Defendants:

10.1 a declaration that the 1st, 2nd and 3rd Defendants have conducted the affairs of the 4th Defendant in a manner oppressive, prejudicial and in disregard to the interest of the Plaintiffs as members of the Company;

10.2 a declaration that the 3rd Defendant is a shadow director of the Company;

10.3 an injunction preventing the 1st, 2nd and 3rd Defendants as well as the Company and the directors/employees/agents of the Company from implementing the Employee Share Option Scheme (ESOS) of the Company which are in breach of the terms of the By-Laws approved by shareholders of the Company on 25.11.2015 or to take such steps which have the effect of implementing the ESOS scheme in breach thereof;

10.4 an injunction preventing the 1st, 2nd and 3rd Defendants as well as the Company and the directors/employees/agents of the Company from implementing any corporate exercise or transactions of the Company which have the effect of diluting the majority of the Plaintiffs had in the Company;

10.5 the 1st, 2nd and 3rd Defendants shall pay damages, including punitive and exemplary damages to the Plaintiffs; and

10.6 costs of Encl. 1 to be borne by the 1st, 2nd and 3rd Defendants on full indemnity basis.

[11] The crux of the Plaintiffs' complaints is that D1 and D2 (as directors) and D3 (as shadow director) have conducted the affairs of the Company in a manner oppressive and prejudicial to the Plaintiffs or in disregard to the Plaintiffs interests as members of the Company through the proposed private placement threatened (as hereinafter defined) and the issuance of new shares in the Company through the following acts:

11.1 the implementation of the Company's ESOS on 4.3.2021, 15.6.2021 and 1.7.2021 was not in accordance with the terms of the By-Laws approved by the shareholders of the Company:

11.1.1 although D1 was not offered any ESOS shares on 4.3.2021, 80,982,365 ESOS shares were offered to only one employee, D1 on 15.6.2021 which D1 accepted to the exclusion of every other employee of the Company; these shares were offered to D1 against a backdrop of the private placement being voted down by the Plaintiffs; and upon the requisition of a general meeting of shareholders of the Company to remove D1, D2 and 2 other directors with both events having occurred in April 2021); D1's shareholdings thus increased 10 times from 8,325,000 shares (about

1% of the capital) to 89,307,365 shares (10.479% of the capital);

11.1.2 D1 sold the entire ESOS shares at a loss within a short span 10 market days and after completely selling the 80,982,365 shares on 1.7.21, on the same day, D1 was offered a further 41,838,081 ESOS shares;

11.1.3 these ESOS shares offered to D1 were listed and traded to frustrate the Plaintiffs' above requisition of a general meeting;

11.1.4 the Plaintiffs alleged that the losses were not for D1's account but that of D3. Upon completion of the sale, a new shareholder in XOX Berhad became the controlling shareholder.

11.2 the issue of 232,145,000 shares or approximately 30% new shares under a proposed private placement announced by the Company on 15.3.2021 ("proposed private placement") was not for the purposes declared in the Circular to Shareholders dated 2.4.2021; this proposed private placement was shot down at the EGM on 19.4.2021;

11.3 the announcement to Bursa Malaysia that subsequent to the Company's discovery/investigation of "dubious transactions conducted" by P1, as a former director, the Company was served with a Notice to convene EGM where

the Plaintiffs sought to remove 4 existing directors (including D1,D2) and to be replaced by P2 and 3 others; and in filing Suit WA-24NCC-212-05/2021 ("Suit 212") and obtaining an interlocutory injunction to stop the EGM being called by the Plaintiffs, the Company was being used illegally by D1 and D2 to stifle the Plaintiffs' rights as shareholders to call for a meeting.

Defendants' contentions to the allegations of oppression

D1, D2 and D4

[12] D1, D2 and D4 asserted that:

12.1 there are no oppressive acts against the Plaintiffs because:

12.1.1 issuance of ESOS shares is common for public listed companies and it is the Company's right, subject to compliance with all necessary requirements, to undertake any corporate exercise and to issue such shares. The Company ought not be stifled in its ordinary conduct of business *(Seah Eng Toh Daniel & Anor v Kingsley Khoo Hoi Leng & 3 Ors [2015] MLJU 2353* at [34] and [37]*;*

12.1.2 the ESOS scheme was introduced by P1 way back in 2015 during his tenure as Managing Director ("MD") of the Company and approved by the shareholders and by Bursa Malaysia;

12.1.3 the Company had cash flow problems as averred by P1 in his own affidavit at Enc. 34 para 34 where he is still owed salaries of RM316,535;

12.1.4 the issuance of the ESOS shares is not to dilute the Plaintiffs' majority (which is denied), D1 had testified that he took up the ESOS shares and sold them at a loss as the Company was badly in need of funds:

Cross examination Notes of proceedings Enc. 102 pg 66

"CKH Alright. But then, why did you sell your shares at a loss?

CHEW I have been with this company for so long. As I said during one of the meetings, that I am sorry, I don't know how to refer the opposing counsel, the learned opposing counsel mentioned, he said, I said, in a conversation that I sacrificed myself. And that is how I felt. The company was run into the ground by Mr Lim Seng Boon. We didn't have enough money to pay all the staff, not just his salary. And we were being chased by for amounts left, right and centre. So, the company had to come up with cash. And I said, fine, I will take up the ESOS, the company will have the cash. If it is a few hundred thousand loss, I think I can bear it. But I can't come up

with a few million to pump into the company.";

12.1.5 employees knowing that the Company is in financial straits are unlikely to subscribe to the ESOS shares;

12.1.6 there is no unfair discrimination against the Plaintiffs as the issuance of the ESOS shares affects all shareholders of the Company and not merely the Plaintiffs alone over and above other shareholders - *Soh Jiun Jen v Advance Colour Laboratory Sdn Bhd & Ors [2010] 4 CLJ 897; [2009] MLJU 1549;*

12.1.7 the evidence of Maisarah binti Sahran (former Chief Operating Officer) who resigned within a month of P1's retirement is suspect as she is embroiled in litigation with the Company's subsidiary, M3 Group over infringement of M3 Group's Confidential Information and Trade Secrets. M3 Group had obtained an Anton Piller Injunction against her, P1 and 4 others in Kuala Lumpur High Court Suit No. WA-22IP-41-07/2021. She allegedly helm Amaz Digital Sdn Bhd, which was incorporated on 17.3.2021, a mere 2 days after she left the Company;

12.1.8 the proposed private placement which was rejected by shareholders, did not take place and

cannot constitute an act of oppression; mere use of voting power, whether at board or general meeting, to pass resolutions opposed by the Plaintiffs would not be sufficient to justify a finding of oppression - *Hoy Pak Kwai v Leong Kon Fah [2007] 1 MLJ 508* at [66];

12.1.9 an investigation into P1's misconduct as MD and ex-employee of the Company cannot constitute oppressive conduct against P1 qua shareholder; the investigation into P1's previous conduct as MD cannot conceivably constitute an act of oppression against P2;

12.1.10 the injunction against the proposed EGM requisitioned by the Plaintiffs was not oppressive but warranted as the EGM was unlawfully requisitioned; Suit 212 filed by the Company was rendered academic and dismissed due to the Plaintiffs withdrawing the Notice of EGM;

12.2 the allegation that D3 is a shadow director of the Company is baseless:

12.2.1 the Exhibits relied upon by Plaintiffs and the evidence elicited from cross-examination do not show D1 or D2 taking instructions from D3 or that D3 controls the Company;

12.2.2 D1 and D2 do not form the majority on the Board as the Board have 6 directors; D1 and D2's acquaintance does not render D3 a shadow director is not relevant;

12.2.3 there is nothing to show let alone alleged that the other 4 directors of the Company are mere puppets of D1, D2 or D3.

12.3 The Plaintiffs are not entitled to any injunction against the ESOS scheme which had expired on 14.9.2021, rendering the matter academic - *Lim Eye Thun v Majlis Peguam Malaysia & Anor [2010] 2 MLJ 444* at [66] and [67]; in any case, there was no breach of any ESOS by-laws. 2 prior attempts by the Plaintiffs to injunct the ESOS on an *ex parte* basis were dismissed;

12.4 The Plaintiffs have not proven that they have a majority of the shares in the Company let alone show that such majority was diluted; at the EGM held on 19.7.2021, 147,449,442 shares voted for the resolutions proposed by the Plaintiffs whilst 390,311,757 shares voted against the resolutions, translating into the Plaintiffs lost by 242,862,315 shares. If the 122,365,446 ESOS shares (i.e., 80,982,365 shares on 16.6.2021 and 41,383,081 shares on 1.7.2021) exercised by D1 are subtracted from the 242,862,315, the Plaintiffs would still have lost by a wide margin and made plain the issuance of new shares under ESOS is immaterial and did not affect the outcome of the EGM;

12.5 These proceedings are brought in bad faith and an abuse of process as P1 and several ex-employees of the Company are involved in another new company operating a similar/competing business using the Company's intellectual property; coupled with the fact that:

12.5.1 the OS is filed against only 2 (D1&D2) out of the total of 6 Board members of the Company; and

12.5.2 the Plaintiffs are seeking to restrain the Company from implementing any corporate exercise or transactions of the Company which have the effect of diluting the majority of the Plaintiffs had in the Company is to stifle the Company.

D3's case

[13] D3 asserted that:

13.1 he is neither a shareholder nor a director of the Company; nor the recipient of any of the ESOS options that were offered on 4.3.2021, 15.6.2021 and 1.7.2021; also the Proposed Private Placement was not approved by the Company's shareholders during the Extraordinary General Meeting on 19.4.2021;

13.2 D3 is not a shadow director as defined by s. 2(1) of the Companies Act 2016;

13.3 The Company search at exhibit B in Enc. 2 shows the Company has 5 directors after P1 retired on 11.2.2021; the other 3 directors (apart from D1 and D2) are not named in the present proceedings and there is no allegation that these other 3 directors are nominees of the 3rd Defendant or that they are accustomed to take directions or instructions from the 3rd Defendant;

13.4 As the Plaintiffs have not shown that D3 is a shadow director, the action must necessarily fail:

13.4.1 D1 and D2 have both stated on oath they are not D3's nominees and they do not take instructions from D3;

13.4.2 there is no evidence that D3 was involved in the implementation of the ESOS on 4.3.2021, 15.6.2021 and 1.7.2021. Indeed, the ESOS was approved by the Company's shareholders on or about 25.11.2015 when the 1st Plaintiff himself was still the Company's MD;

13.4.3 the documents produced by the Plaintiffs do not support the Plaintiffs' contention that the 3rd Defendant is a shadow director of the Company;

13.4.4 the statements contained in the Edge Malaysia article entitled "*Special Report: Hidden hands behind penny stock surge*" did not say D3 is a

shadow director; and at any rate, hearsay and inadmissible in evidence – *Public Prosecutor v. Dato' Seri Anwar bin Ibrahim (No 3) [1999] 2 MLJ 1*;

13.4.5 there is no evidence to show that D3 has benefited from the ESOS options that were offered, neither is there evidence that he was involved in the Proposed Private Placement which was not implemented.

Some General Principles on Oppression

[14] Section 181 of the Companies Act 1965 ("CA 1965") is the predecessor of s. 346 of CA 2016. This will become relevant when considering the cases decided under s. 181 CA 1965 such as *Re Kong Thai Sawmill (Miri) Sdn Bhd & Ors. v Ling Beng Sung [1978] 2 MLJ 227; Pan-Pacific Construction Holdings Sdn Bhd v Ngiu-Kee Corp (M) Bhd & Anor [2010] 6 CLJ 721*; *[2010] MLJU 269.*

[15] S. 346 CA 2016 is produced for ease of reference and for its scope. It reads:

"S. 346. Remedy in cases of an oppression.

(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.

(2) If on such application the Court is of the opinion that either of those grounds is established, the Court may make such order as the Court thinks fit with the view to bringing to an end or remedying the matters complained of, and without prejudice to the generality of subsection (1), the order may—

(a) direct or prohibit any act or cancel or vary any transaction or resolution;
(b) regulate the conduct of the affairs of the company in the future;
(c) provide for the purchase of the shares or debentures of the company by other members or debenture holders of the company or by the company itself;
(d) in the case of a purchase of shares by the company, provide for a reduction accordingly of capital of the company; or
(e) provide that the company be wound up.

(3)...
(4)...
(5) ….
(6)……. ”

[16] *Re Kong Thai Sawmill (supra)* is the leading authority on s. 181 where the Privy Council explained the approach to be taken (at page 229):

"...for the case to be brought within s 181(1)(a) at all, **the complaint must identify and prove 'oppression' or 'disregard'**. The mere fact that one or more, of those managing the company possess a majority of the voting power and, in reliance upon that power, make policy or executive decisions, with which the complainant does not agree, is not enough. **Those who take interests in companies limited by shares have to accept majority rule.** It is only when majority rule passes over into rule oppressive of the minority, or in disregard of their interests, that the section can be invoked. As was said in a decision upon the United Kingdom section **there must be a visible departure from the standards of fair dealing and a violation of the conditions of fair play which a shareholder is entitled to expect before a case of oppression can be made (*Elder v Elder & Watson Ltd*):** Their Lordships would place the emphasis on 'visible'. And similarly **'disregard' involves something more than a failure to take account of the minority's interest**: there must be awareness of that interest and an evident decision to override it or brush it aside or to set at naught the proper company procedure (per Lord Clyde in *Thompson v Drysdale*). Neither 'oppression' nor 'disregard' need be shown by use of the majority's voting power to vote down the minority: either may be demonstrated by a course of conduct which in some identifiable respect, or at an identifiable point in time, can be held to have crossed the line.

... in a number of United Kingdom decisions it has been held that for s 210 to apply the complainant must show oppression continuing up to the date of proceedings (eg, In *Re Jermyn Street Turkish Baths Ltd*); where there has been oppression in the past the section does not bite. Their Lordships agree that the wording of the section (and the same is true of s 181(1)(a)) relates to a present state of affairs: 'are being conducted', powers 'are being exercised' are grammatically clear: the language may be contrasted with that of s 181(1)(b) which refers to an act of the company which has been done or threatened. But this argument must not be taken too far. What is attacked by sub-s (1)(a)) is not particular acts but the manner in which the affairs of the company are being conducted or the powers of the directors exercised. And

these may be held to be 'oppressive' or 'in disregard' even though a particular objectionable act may have been remedied. A last minute correction by the majority may well leave open a finding that as shown by its conduct over a period, a firm tendency or propensity still exists at the time of the proceedings to oppress the minority or to disregard its interests so calling for a remedy under the section. This point is well brought out in *Re Bright Pine Mills Pty Ltd*."(emphasis added);

[17] The Federal Court decision of *Pan-Pacific Construction Holdings Sdn Bhd v Ngiu-Kee Corp (M) Bhd & Anor (supra)* sets out some important principles in order for one to succeed in an oppression petition pursuant to then s. 181 CA 1965. I produce them in extenso:

"[22] But in order to better appreciate the core issue it may be appropriate to first examine the principles of law on the application of section 181 in relation to a company which is not in the nature of quasi-partnership. Meanwhile, it is trite law that in order to succeed in its petition the burden is upon a petitioner on the balance of probability to establish all the elements required to be proven under section 181.

[23] This Court in *Owen Sim Liang Khui v Piasau Jaya Sdn Bhd & Anor* [1996] 1 MLJ 113 briefly reviewed the genesis of judicial intervention in the internal affairs of incorporated companies. It said that 'Traditionally, courts have been reluctant to interfere with matters relating to the internal management of incorporated companies… Two landmark decisions settled the law upon the subject for all time. The first of these was *Foss v Harbottle* (1843) 67 ER 190; the second was *Mozley v Alston* (1847) 41 ER 833 … In time it was accepted that what has come to be known as the rule in *Foss v Harbottle*.'

[24] The judgment went on to say that the effect of such legislative provisions as section 210 of English Companies Act 1948 (later section 459 of the UK Companies Act 1985 and presently section 994 UK Companies Act 2006) which is similar but not in pari materia with section 181 of the Act which is

wider in scope, 'was not to abrogate but to introduce limited exceptions to the rule in *Foss v Harbottle*'. Thus, it is fair to say that oppression for instance in company law is not a free-floating common law concept but a legislative creature.

[25] Therefore, in order to succeed in its Petition pursuant to section 181 the Petitioner has to establish and 'must eminently be determined according to the facts' of this case that the affairs of the Company are being conducted or that the powers of the directors are being exercised in an oppressive manner or in disregard of its interests, or to its prejudice some unfairly discriminatory or prejudicial act of the Company has been done or threatened, or that some resolutions of the members, debenture holders or any class of them has been passed or is proposed to be passed.

[26] In other words section 181 permits judicial remedy on four categories of conduct, namely, oppressive conduct, conduct in disregard of interests, unfairly discriminatory conduct or prejudicial conduct.

[27] It may also be noted that from the wordings of section 181 its basic theme is 'unfairness'. However, unfairness 'does not mean that the court can do whatever the individual judge happens to think fair. The concept of fairness must be applied judicially and the content which it is given by the courts must be based upon rational principles. "The court...has a very wide discretion, but it does no sit under a palm tree"'. (*See: O'Neil v Philips* [1999] 2 All E R 961).

[28] In *Re Saul D Harrison & Sons plc* [1995] 1 BCLC it was explained (Hoffmann LJ [as he then was]) that in 'deciding what is fair or unfair for the purposes of s. 459, it is important to have in mind that fairness is being used in the context of a commercial relationship. The articles of association are just what their name implies: the contractual terms which govern the relationships of the shareholders with the company and each other. They determine the powers of the board and the company in general meeting and everyone who becomes a member of a company is taken to have agreed to them. Since keeping promises and honouring agreements is probably the most important

element of commercial fairness, the starting point in any case under s. 459 will be to ask whether the conduct of which the shareholder complains was in accordance with the articles of association…The answer to this question often turns on the fact that the powers which the shareholders have entrusted to the board are fiduciary powers, which must be exercised for the benefit of the company as a whole… But the fact that the board are protected by the principle of majority rule does not necessarily prevent their conduct from being unfair within the meaning of s. 459'.

[29] Thus, in *Re Kong Thai Sawmill (Miri) Sdn Bhd* [1978] 2 MLJ 227 the term 'disregard of interests' is to be understood to mean 'unfair disregard' while 'oppression' denotes an 'unfairly prejudicial conduct' which means a conduct 'departing from standards of fair dealing and a violation of conditions of fair play'. But 'a member of a company will not ordinarily be entitled to complain of unfairness unless there has been some breach of the terms on which he agreed that the affairs of the company should be conducted'. And 'trivial or technical infringements of the articles were not intended to give rise to petitions under s. 459'. (*See: Re Saul D Harrison & Sons Plc* (supra)).

[30] The principles of law are therefore quite settled in a non-quasi-partnership company. However, where it is (in the nature of quasi-partnership) as in this case there is an added factor which members are obliged in law to observe, namely, to act in good faith to one another."

[18] The meaning of 'oppression' is beyond universal definition - *Kumagai Gumi Co Ltd v Zenecon-Kumagai Sdn Bhd & Ors and another application* [*1994] 2 MLJ 789* at pg 804–806, citing Re *Tivoli Freeholds Ltd* [1972] VR 445; *Jaya Medical Consultants Sdn Bhd v Island & Peninsular Bhd & Ors* [*1994] 1 MLJ 520* at pg 398. Viscount Simmonds in the House of Lords in *Scottish Cooperative Wholesale Society Ltd v. Meyer [1958] 3 All ER 66*; [*1959] AC 324* at pg 342 accepted that

according to the dictionary, ‘oppression’ means ‘burdensome, harsh and wrongful’.

[19] Whether there was oppression or disregard or unfair discrimination or whether the conduct complained of was ‘otherwise prejudicial’ is one that must eminently be determined according to the facts of each particular case - *Owen Sim Liang Khui v Piasau Jaya Sdn Bhd & Anor [1996] 1 MLJ 113* FC. This principle was reiterated by the Federal Court 14 years later in *Pan - Pacific Construction Holdings Sdn Bhd v Ngiu - Kee Corporation (M) Sdn Bhd & Anor (supra)* which also discussed the scope of Section 181 at [25].

[20] The same Federal Court explained what “unfairness’ meant in the context of Section 181 at [27] as adverted to earlier.

[21] Whether the affairs of the company are being conducted in a manner oppressive to some part of the members including the Plaintiff, is a question of fact for the Court to decide, to be answered not by a consideration of events in isolation, but *“to events considered as part of a consecutive story” - Kumagai Gumi Co Ltd v Zenecon-Kumagai Sdn Bhd & Ors* [*1994] 2 MLJ 789*; *Genisys Intergrated Engineers Pte Ltd v UEM Genisys Sdn Bhd & Ors [2008] 6 MLJ 237* CA .

[22] The latest position on the subject is that of the Federal Court in *Looh Siong Chee v. Numix Engineering Sdn Bhd & Ors and Other Appeals [2015] 4 MLJ 561* where the Federal Court was invited to reconsider the test under s. 181 CA 1965 in the light of the decisions in *O'Neill v. Phillips [1999] 2 BCLC 1* and *Re Saul D Harrison & Sons*

Plc [1995] 1 BCLC 14. The Federal Court declined to reconsider the test and stated in para 33,34 & 35 as follows -

> "[33] For the above reasons, we have no choice, but to answer the question posed in the negative. There is no valid reason, either in law or on the facts, for this court to reconsider the test under s. 181 of the Companies Act. To recapitulate: In *Pan-Pacific Construction*, this court had specifically accepted the proposition by Lord Hoffman in *O'Neill and Another v. Phillips and Others* and *Re Saul D Harrison & Sons Plc* that the concept of fairness should be applied judicially and that fairness would mean "commercial fairness". This was endorsed by the later case *Jet-Tech Materials*.
>
> [34] From the above decisions of this court, it is now trite law that the applicable test under s. 181 is the principle as laid down in *Re Kong Thai Sawmill* and that the basis to determine fairness was that of "commercial fairness" as explained in *O'Neill and Another v. Phillips and Others* and *Re Saul D Harrison*. This court has been consistent on this matter and there is no incompatibility between the tests in *Re Kong Thai Sawmill* and the English cases cited in the leave question.
>
> [35] In view of the above, we find that there is no question on the need to "reconsider" the *Re Kong Thai Sawmill* test in the light of the decisions in *O'Neill and Another v. Phillips and Others* and *Re Saul D Harrison* because both have already been adequately considered by this court earlier, as explained above."

[24] The burden of proof is on the Plaintiffs to show there was oppression or disregard or unfair discrimination or whether the conduct complained of was 'otherwise prejudicial' – see (i) *Re Kong Thai Sawmill (Miri) Sdn Bhd v Ling Beng Sung (supra)* at p. 229 and (ii) *Pan - Pacific Construction Holdings Sdn Bhd v Ngiu - Kee Corporation (M) Sdn Bhd & Anor (supra) at* [25].

[25] Whether unfair conduct falls within s. 346 is an objective test. In *Jaya Medical Consultants Sdn Bhd v Island & Peninsular Bhd & Ors (supra)*, Siti Norma J (later CJM) adopted an objective test for unfairness referring at pg 536 E-H to Brennan J's judgement in the Australian case of *Wayde & Anor v. New South Wales Rugby League Ltd (1985) 10 ACLR 87; (1985) 59 ACLR 798.* In *Re R A Noble & Sons (Clothing) Ltd, [1983] BCLC 273*, Norse J adopted the test laid down by Glade J in *Re Bovey Hotel Ventures Ltd* and said at pg 291*:*

> "The test of unfairness must, I think, be an objective, not a subjective, one. In other words it is not necessary for the petitioner to show that the persons who have had de facto control of the company have acted as they did in the conscious knowledge that this was unfair to the petitioner or that they were acting in bad faith; the test, I think, is whether a reasonable bystander observing the consequences of their conduct, would regard it as having unfairly prejudiced the petitioner's interests."

[26] Here, bearing in mind the above principles, considering the entire story as a whole from the evidence adduced both oral and documentary and the affidavits before the Court, the issues are:

26.1 Whether D1 and D2 (as directors of the Company) and D3(as shadow director) had managed the affairs of the Company in a manner oppressive to the Plaintiffs through the issue of the ESOS shares; and the threatened private placement?; and

26.2 Whether D3 is a shadow director of the Company?

[27] I propose to deal with the 2nd issue first as it is inextricably intertwined with the 1st issue.

Whether D3 is a shadow director of the Company?

[28] Central to this complaint, is the question whether in fact D3 is a director as defined by s. 2(1) CA 2016. It defines a director as:

> "'director' includes any person occupying the position of director of a corporation by whatever name called and includes **a person in accordance with whose directions or instructions the majority of directors of a corporation are accustomed to act** and an alternate or substitute director" (emphasis added).

[29] To characterize D3 as a shadow director, the Plaintiffs have to prove that he is a person "whose directions or instructions the majority of directors" of the Company are accustomed to act in accordance with. This is fortified by 2 cases which Counsel for D3 helpfully drew the Court's attention to:

29.1 *Re Hydrodam (Corby) Ltd [1994] 2 BCLC 180*, where Millett J (as he then was) held at 183A-E:

> "A de facto director is a person who assumes to act as a director. He is held out as a director by the company, and claims and purports to be a director, although never actually or validly appointed as such. To establish that a person was a de facto director of a company it is necessary to plead and prove that he undertook functions in relation to the company which could properly be discharged only by a director. It is not sufficient to show that he was concerned in the management of the company's affairs or undertook tasks in relation to its business

which can properly be performed by a manager below board level.

A de facto director, I repeat, is one who claims to act and purports to act as a director, although not validly appointed as such. **A shadow director, by contrast, does not claim or purport to act as a director. On the contrary, he claims not to be a director. He lurks in the shadows, sheltering behind others who, he claims, are the only directors of the company to the exclusion of himself. He is not held out as a director by the company. To establish that a defendant is a shadow director of a company it is necessary to allege and prove: (1) who are the directors of the company, whether de facto or de jure; (2), that the defendant directed those directors how to act in relation to the company or that he was one of the persons who did so; (3) that those directors acted in accordance with such directions; and (4) that they were accustomed so to act. What is needed is first, a board of directors claiming and purporting to act as such; and secondly, a pattern of behaviour in which the board did not exercise any discretion or judgment of its own, but acted in accordance with the directions of others**." (Counsel's emphasis).";

29.2 In *Re Unisoft Group Ltd (No 3) [1994] 1 BCLC 609*, Harman J held at 620E-F:

"In my view, there can be no way in which the acts of any one of several directors of a company in complying with the directions of an outsider could constitute that outsider a shadow director of that company. Of course, if the board of the company be one person only and that person is a 'cat's paw' for an outsider, the outsider may be the shadow director of that company. But in a case such as this, with a multi-member board, **unless the whole of the board, or at the very least a governing majority of it –**

> **in my belief the whole, but I need not exclude a governing majority – are accustomed to act on the directions of an outsider, such an outsider cannot be a shadow director**. Further, there must be, as I say, more than one act and a course of conduct." (emphasis added).".

[30] This accusation that D3 is a shadow director of the Company was denied by both D1 and D2 on oath that they are not D3's nominees and they do not take instructions from D3. D1 and D2 as appearing from the search at Enc. 2 pg 49 are only 2 out of the 5 directors of the Company; they do not constitute the majority of directors as required under s. 2(1) CA 2016. I ought to mention that the Plaintiffs' reliance on *Sazean Engineering & Construction Sdn Bhd v Bumi Bersatu Resources Sdn Bhd [2019] 1 MLJ 495* is flawed. In that case, the Court of Appeal held that the law does not permit Allan, the so-called *de facto* director to fill the vacancy of a director when one of the two directors was an undischarged bankrupt, hence breaching the mandatory statutory requirement under section 122(1) of the CA 1965, which mandates a company to have at least two directors. That case was decided under the CA 1965 where the old s.4 of the CA 1965 define a director as:

> "'director' includes any person occupying the position <u>of director of a corporation by whatever name called and includes a person in accordance with whose directions or instructions the **directors** of a corporation are accustomed to act</u> and an alternate or substitute director;" (emphasis added)

[31] In my respectful view, the sum total of Exhibits A10 to A22 produced by the Plaintiffs as well as the evidence elicited from cross-examination of D1 and D3 do not suggest that D1 and D2 take instructions or act according to D3's bidding even though they are his acquaintances. Even

assuming and taking the Plaintiffs' case to the highest, that D3 has a close relationship with D1 as pleaded in paragraph 13(b)(vi) of D3's Defence in Kuala Lumpur High Court Suit WA-22NCC-54-01/2022 which allegedly contradicts D1's evidence under cross examination in the instant proceedings, I am not prepared to assume that just because D1 is close to D3, as such D1 must be acting under D3's instructions. In my utmost respectful opinion, a close relationship without more, cannot be conflated into one acting under the directions of another.

[32] It is also to be noted that the Plaintiffs' failed to 'put' their case to D3 and D1 in cross-examination on their allegation of whether the ESOS undertaken and the private placement threatened were done at the behest of D3. This attracts the application of the principle of *Browne v Dunn(1893) 6 R 67* and accepted by the Court of Appeal in *Aik Ming (M) Sdn Bhd & Ors v Chang Ching Chuen & Ors and another appeal [1995] 2 MLJ 770* and in *Sivalingam a/l Periasamy v Periasamy & Anor [1995] 3 MLJ 395* - it must be taken that the Plaintiffs have abandoned their pleaded claim. The Court of Appeal in *Aik Ming (supra)* applied the principle in Browne *v Dunn* and said:

> "Now, all this is contrary to two fundamental rules of procedural fairness that operate in the environment of private law. The first of these rules relate to the pleaded case while the second has to do with the cross-examination of witnesses. ... The content of the second rule may be stated thus. It is essential that a party's case be expressly put to his opponent's material witnesses when they are under cross-examination. A failure in this respect may be treated as an abandonment of the pleaded case and if a party, in the absence of valid reasons, refrains from doing so, then he may be barred from raising it in argument. It is quite wrong to think that this rule is confined to the trial of criminal causes. It applies with equal force in the trial of civil causes as well.".

[33] The Plaintiffs have not persuaded me that the contents of the various email and screen shots produced by the Plaintiffs link D3 with the ESOS and/or the private placement. I also hold the view that the mere production of the Edge Malaysia article is not admissible as evidence, and ought not to be given weight following *Public Prosecutor v Dato' Seri Anwar bin Ibrahim (No 3) [supra]* where, Augustine Paul J held at pg 183:

> "The issue that arose for determination with regard to these exhibits was whether the press statements can be taken in proof of the truth of their contents in the absence of the persons who gave the statements being called as witnesses. The defence, in its well presented argument, referred to s 81 of the Evidence Act 1950 and some Indian authorities to argue that with the calling of the reporters, the press statements are admissible to establish the truth of the statements made. The prosecution contended that, in the absence of the makers of the statements being called as witnesses, the press statements amount to hearsay.
>
> The answer to the rival contentions lies, as argued by the defence, in s 81 of the Evidence Act 1950 which reads as follows:
>
> > The court shall presume the genuineness of every document purporting to be the Gazette, a State Gazette or the London Gazette, or the Government Gazette of any part of the Commonwealth, or to be the Gazette issued by the local Government of any part of the Commonwealth, or to be a newspaper or journal, or to be a copy of a private Act of Parliament printed by Her Britannic Majesty's Printer, and of every document purporting to be a document directed by any law to be kept by any person, if the document is kept substantially in the form required by law and is produced from proper custody.
>
> For the purpose of the argument before me, the part of the section that is relevant is only the part which deals with the presumption of genuineness of newspapers. It must first be observed that the presumption contained in this section is rebuttable pursuant to s 4(2) of the Evidence Act 1950. **On the**

evidential value of a newspaper report, a mere production of it is not proof of the truth of its contents (see Bawa Sarup Singh v Crown AIR 1925 Lah 299). In this regard, the Supreme Court of India observed in Samont N Balakrishna v George Fernandez [1969] 3 SCR 603:

> **A newspaper report without any further proof of what had actually happened through witnesses is of no value. It is at best a second-hand secondary evidence. It is well-known that reporters collect information and pass it on to the editor who edits the news item and then publishes it. In this process, the truth might get perverted or garbled. Such news items cannot be said to prove themselves although they may be taken into account with other evidence if the other evidence is forcible**.

As the Indian Supreme Court said in Laxmi Raj Shetty v State of Tamil Nadu AIR 1988 SC 1274, it is now well settled that a statement of fact contained in a newspaper is merely hearsay and therefore inadmissible in evidence in the absence of the maker of the statement appearing in court and deposing to have perceived the fact reported. In order to render the newspaper report admissible in evidence to prove its contents, the person who made the speech, or the person in whose presence the speech was made, or the reporter of the newspaper, who heard the speech and sent the report to be published in the newspaper, must be produced (see Khilumal v Arjundas AIR 1959 Raj 280)." (emphasis added).

[34] I have not overlooked that the Plaintiffs on the contrary have argued that newspaper reports are admissible if corroborated by other evidence, citing *Pacific Centre Sdn Bhd v United Engineers (Malaysia) Bhd [1984] 2 MLJ 143,* Edgar Joseph Jr J held that at pg 151:

> "These newspaper reports were undoubtedly admissible as the application before me is interlocutory, but I appreciated that they were in the nature of conclusions drawn by the author. Nevertheless, it was submitted that the allegations contained therein were serious and called

> for rebuttal by the Defendants and yet none was forthcoming. The explanation given by the Defendants now is that there was no need for them to make any reply because their duty was merely to shareholders and not to the public at large. But I should have thought that the Defendants would have been concerned to ensure that their commercial reputation was not tarnished by a failure to rebut such serious allegations."

[35] However, no satisfactory evidence was produced by the Plaintiffs to corroborate the contents of the Edge Malaysia report.

[36] As for Maisarah's affirmation on affidavit that D1 told her that the Company was financed by D3, a very rich person and that D3 was angry with P1 for not carrying out D3's instructions, this allegation was not put to D1 when he was cross examined. That puts paid the allegation. In addition, I am of the opinion that the police report made by the Plaintiffs does not add to the Plaintiffs' case at all.

[38] Even assuming for argument's sake that from the documents produced by the Plaintiffs, it can be inferred that D1 and D2 are accustomed to act according to the directions of D3, it was not the Plaintiffs' pleaded case neither do a review of the facts, or the evidence when analysed, show that in any event that D3 was in a position to exert influence and power over the other directors or at least a majority of them; these other directors are also not named in the OS. Evidentially, I find there is a paucity of evidence to show that the majority of directors of the Company are accustomed to act on D3's directions or that D3 was the directing mind and will of the Company, or that D3 was the person in control of all material aspects of the Company's affairs and its principal

decision-maker such that when D3 pulled the strings, the majority of the directors of the Company jump to his bidding.

[39] In short, in my judgment, based on the entire evidence before the Court, the Plaintiffs have not proven on a balance of probability that D3 ruled the roost or is a shadow director of the Company.

Whether D1 and D2 (as directors of the Company) and D3 (as shadow director) had managed the affairs of the Company in a manner oppressive to the Plaintiffs through the issue of the ESOS shares; and the threatened private placement?

[40] This issue presupposes that D3 is a shadow director which I find he is not. The only complaint raised against the ESOS is the fact that the ESOS was issued to D1 solely; and in turn, this allegedly diluted the Plaintiffs' majority in the Company. To begin with, did the Plaintiffs' have a majority in the Company in the first place?

[41] I find this complaint bereft of merits. Firstly, I find the majority held by the Plaintiffs was not satisfactorily demonstrated. A clear example is the EGM held on 19.7.2021, where 147,449,442 shares voted for the resolutions proposed by the Plaintiffs and 390,311,757 shares voted against; subtract the 122,365,446 ESOS shares (i.e. 80,982,365 shares and 41,383,081 shares issued on 16.6.2021 and 1.7.2021 respectively) will show clearly shareholders holding 267,946,311 voted against the Plaintiffs' resolutions. The results would not have been any different to the Plaintiffs' alleged majority if the ESOS shares were not issued.

[42] Second, it is trite law that the issuance and placement of shares belong to the internal management or affairs of the company. Primacy of

a Board of directors' judgment is not to be willy nilly disavowed. It is a general rule that the Court has no jurisdiction to interfere with the internal management of companies so long as they are being managed in accordance with the law:

42.1 in *Burland v Earle [1902] AC 83* at p 93, Lord Davey, when delivering the advice of the Privy Council expressed the proposition in the following words:

> "It is an elementary principle of the law relating to joint stock companies that the court will not interfere with the internal management of companies acting within their powers, and in fact has no jurisdiction to do so.";

42.2 in *Owen Sim (supra)*, the Federal Court stated:

> "Traditionally, courts have been reluctant to interfere with matters relating to the internal management of incorporated companies. Through a series of decisions of the Court of Chancery in the mid-nineteenth century, they administered unto themselves a jurisdictional prohibition from entering upon domestic disputes between corporators. Two landmark decisions settled the law upon the subject for all time. The first of these was *Foss v Harbottle* (1843) 67 ER 190; the second was *Mozley v Alston* (*1847) 41 ER 833*."

This principle in *Owen Sim (supra)* was echoed by the same court in the Pan-*Pacific case (supra)* at [23].

[43] Thirdly, I accept D1's evidence in cross-examination that the issuance of the ESOS shares was not to dilute the Plaintiffs' majority

(which majority was not proven in the first place) but to create additional funds for the Company which was badly in need of cashflow to pay staff and creditors, even though he sold the shares at a loss. I find that although the ESOS shares were offered only to D1, in the circumstances, it was evident in D1's testimony that other employees were unlikely to subscribe as the Company was in financial straits. Added to that, the Plaintiffs did not do themselves any favour as P1 in his own affidavit at Enc.34 para 34 averred to the fact that the Company has cashflow problems and he is still owed salaries of RM316,535. This averment do not lend support to the Plaintiffs' posit that there were ulterior motives or a collateral purpose in issuing the ESOS as contended by the Plaintiffs particularly when the ESOS was also engineered under P1's watch as MD of the Company and approved by shareholders in 2015. It is true that there was speed in which the ESOS shares were listed for trading and then sold by D1. It is also understandable why the Plaintiffs might question the timing of the issuance and suspect its purpose. In my view however, these aspects alone do not equal to lack of *bona fides*. When funds are needed, to me, it is unrealistic to expect D1 or D2 for that matter to loan monies to the Company for its working capital. The Plaintiffs have not shown that the dominant purpose of offering the ESOS shares to D1 is to dilute the Plaintiffs' alleged majority shareholding.

[44] The Court is satisfied that absent any requirement that it is incumbent on the Board of Directors to consult shareholders' including the Plaintiffs on whom the ESOS shares should be offered to, the Board of Director's discretionary decision to offer the ESOS shares to D1 is entitled to deference. The shares were not offered for D1's personal gain or done stealthily. Coupled with the fact that there was a bona fide business need for funds, this Court will detest interfering with a

management decision properly within the purview and authority of the Company and its Board of Directors. I thus find the offer of ESOS shares to D1 do not constitute commercial unfairness nor amount to any of the four categories of oppressive conduct, conduct in disregard of interests, unfairly discriminatory conduct or prejudicial conduct against the Plaintiffs under s.346 CA 2016.

[45] I should also deal with other alleged oppressive acts which would have made no difference to my conclusion, to wit:

45.1 the announcement made to Bursa Malaysia pertaining to an investigation into P1's misconduct as Managing Director, I am of the view that the complaint do not relate to a distinct injury to the Plaintiffs in their capacity qua shareholder to constitute oppressive conduct. In *Khor Lye Hock Anor Tan Soon Keh v Makassar Engineering & Construction Sdn Bhd & Ors [2011] 8 CLJ 476; [2010] MLJU 18* it was held:

> "[10] It is a principle of the law relating to the grant of relief under section 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. [1968] 1 MLJ 97* and Re *Tong Eng Sdn. Bhd. [1994] 1 MLJ 451, 457* 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. <u>The complaint here and relief sought relates to P1's contractual position as Managing Director. It does not</u>

relate to his rights as a member. The Board of Directors, moreover is empowered under Article 91 of Table A to remove PL 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 MLJ 204,211 Chan J. quoted Plowman J. in In re Lundie Brothers Ltd [1965] 1WLR105:

> "...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."

Chan J. then went on to hold:

> The fact that the petitioner in the present case was ousted as a director and that he was deprived of his directors' remuneration relates only to his status as a director, and not to his status as a shareholder. The court, therefore is not given jurisdiction in a situation like this to make an order under section 181." (emphasis added)

See also *Koh Jui Hiong @ Koa Jui Heong & Ors v. Ki Tak Sang @ Kee Tak Sang and another* appeal *[2014] 3 MLJ 10 FC* at [24] and *Hoy Pak Kwai v Leong Kon Fah & Ors [2007] 1 MLJ 508; [2007] 1 CLJ 121* CA at [66].

45.2 as for the complaint about the Company bringing Suit 212, in my respectful view, it is a non issue as the Notice to

convene EGM was withdrawn by the Plaintiffs themselves; the matter is already resolved by the Court concerned, and irrelevant to the instant proceedings. There are no merits to this complaint; and

45.3 these further acts of oppression are in my view to be treated as abandoned as the Plaintiffs' submissions do not cover these areas.

[46] In the main, it is the memorandum and articles of association that govern the affairs of the company, including the issuance of ESOS shares in this case.

[47] The words by the Privy Council in *Re Kong Thai Sawmill (supra)* are to be heeded, that "Those who take interests in companies limited by shares have to accept majority rule". This principle was reiterated recently by the Federal Court in Auspicious *Journey Sdn Bhd v Ebony Ritz Sdn Bhd & Ors [2021] 3 MLJ 549* at para [69], [70] and [71] as follows:

> [69] Majority rule supports the position that it is legitimate for a majority of the shareholders to control the company through the appointment of directors, who in turn, have the responsibility of running the business of the company. If the majority are unhappy with the directors then they oust them. If they are prepared to overlook the wrong, then the majority principle dictates that it is not for the court to interfere with that decision of the majority (*Foss v Harbottle* (1843) 2 Hare 461; 67 ER 189).
>
> [70] The second principle of a company being a separate legal entity, separate from its members and its management, further insulated the conduct of the affairs of a company from being scrutinised by the judiciary. The concern was that the courts were not equipped to deal with, or assess business decisions, and interference would jeopardise the company's independent status and

> business. Therefore, if the company itself chose not to sue, then it was generally not appropriate for others to sue on its behalf (see *Foss v Harbottle*).
>
> [71] These two principles coupled with judicial non-interference, resulted in minority shareholders having very little recourse against acts of the majority which were oppressive or detrimental to the minority in their capacity as shareholders (the common law did provide remedies prohibiting fraudulent or oppressive conduct. And the rule in *Foss v Harbottle* was rendered less harsh by the development of several exceptions particularly where there was a fraud on the minority).

[48] I cannot find, based on the complaints as borne out by the evidence adduced, to paraphrase the words of Lord Wilberforce in *Re Kong Thai Sawmill (supra)* that there had been in the conduct of the affairs of the Company a visible departure from the standards of fair dealing and a violation of the conditions of fair play which the Plaintiffs as shareholders in the Company were entitled to expect; or that in so acting the majority had crossed the line which divides rule by the majority from tyranny of the majority.

[49] Instead, I find the facts and evidence do not engage the intervention of this Court under s. 346 CA 2016. The law as set out by the Federal Court in Pan - *Pacific Construction Holdings Sdn Bhd v Ngiu - Kee Corporation (M) Sdn Bhd & Anor (supra, at para 25)* in this regard bears repetition:

> "... in order to succeed in its petition pursuant to s.181 the petitioner has to establish and 'must eminently be determined according to the facts' of this case that the affairs of the company are being conducted or that the powers of the directors are being exercised in an oppressive manner or in disregard of its interests, or to its prejudice some unfairly discriminatory or prejudicial act

> of the company has been done or threatened, or that some resolutions of the members, debenture holders or any class of them has been passed or is proposed to be passed".

[50] For the sake of completeness, I will also state that with the ESOS scheme having expired on 14.9.2021, the injunction sought in prayer 3 of the OS to restrain implementation of ESOS has been rendered academic. In *Husli @ Husly bin Mok v. Superintendent of Lands and Surveys & Anor [2014] 6 MLJ 766* the Federal Court clearly stated this trite law as follows:

> "[27] We shall now deal with question (2) posed in this appeal. We are of the view if question (1) is answered in the affirmative and the plaintiff's right to recovery of damages barred by limitation, the declarations sought for by the plaintiff would be futile. The grant of declaration is in the discretion of the court. The court will not act in vain and grant declarations that are of no utility or in regard to matters which are no longer 'live issue' or has become academic…"

See also *Sun Life Assurance Co of Canada v Jervis [1944] 1 All ER 469* at pp 470–471 as applied by the Federal Court in *Metramac Corp Sdn Bhd v Fawziah Holdings Sdn Bhd [2006] 4 MLJ 113* ; *Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors v Karpal Singh [1992] 1 MLJ 147, Lim Eye Thun v Majlis Peguam Malaysia & Anor [2010] 2 MLJ 444* at [66] and *Expro Marine Sdn Bhd v Amalgamated Plant Engineering Sdn Bhd [2020] MLJU 2440* at [35], [55] to [56].

[51] The injunction sought at Prayer 4 of the OS to prevent the 1st, 2nd and 3rd Defendants as well as the Company and the directors/employees/agents of the Company from implementing any corporate exercise or transactions of the Company which have the effect

of diluting the majority of the Plaintiffs in the Company cannot be countenanced as the Court firstly, will not interfere with the Company's internal management so long as any intended corporate exercises are carried out in accordance with law; secondly, and a matter of grave concern is that such an injunction sought is for an indeterminate period, has the contagion effect of handcuffing future stakeholders of the Company, burdensome and oppressive to the Company.

[52] For the reasons given, the Plaintiffs' OS is dismissed with costs.

Dated: 3rd July 2022

-sgd-
……..
Liza Chan Sow Keng
Judicial Commissioner
High Court of Malaya at
Kuala Lumpur

COUNSEL:

For the Plaintiff:	Mohd Rizal Bahari bin Md. Nor (together with him, Mohd Amir Farid bin Mohd Nawawi)
For the 1st, 2nd & 4th Defendants:	Jaslyn Saw Wei Wen (together with her, Cheah Kha Mun)
For the 3rd Defendant:	Alex Tan Chie Sian (together with him, Cheah Kha Mun)

CASES REFERRED:

Seah Eng Toh Daniel & Anor v Kingsley Khoo Hoi Leng & 3 Ors [2015] MLJU 2353

Soh Jiun Jen v Advance Colour Laboratory Sdn Bhd & Ors [2009] MLJU 1549 [2010] 4 CLJ 897

Hoy Pak Kwai v Leong Kon Fah [2007] 1 MLJ 508

Lim Eye Thun v Majlis Peguam Malaysia & Anor [2010] 2 MLJ 444

Public Prosecutor v Dato' Seri Anwar bin Ibrahim (No 3) [1999] 2 MLJ 1

Re Kong Thai Sawmill (Miri) Sdn Bhd & Ors. v Ling Beng Sung [1978] 2 MLJ 227

Pan-Pacific Construction Holdings Sdn Bhd v Ngiu-Kee Corp (M) Bhd & Anor [2010] 6 CLJ 721; [2010] MLJU 269

Kumagai Gumi Co Ltd v Zenecon-Kumagai Sdn Bhd & Ors and another application [1994] 2 MLJ 789

Re Tivoli Freeholds Ltd [1972] VR 445

Jaya Medical Consultants Sdn Bhd v Island & Peninsular Bhd & Ors [1994] 1 MLJ 520

Scottish Cooperative Wholesale Society Ltd v. Meyer [1958] 3 All ER 66; [1959] AC 324

Owen Sim Liang Khui v Piasau Jaya Sdn Bhd & Anor [1996] 1 MLJ 113

Genisys Intergrated Engineers Pte Ltd v UEM Genisys Sdn Bhd & Ors [2008] 6 MLJ 237

Looh Siong Chee v. Numix Engineering Sdn Bhd & Ors and Other Appeals [2015] 4 MLJ 561

Re R A Noble & Sons (Clothing) Ltd, [1983] BCLC 273

Re Hydrodam (Corby) Ltd [1994] 2 BCLC 180

Re Unisoft Group Ltd (No 3) [1994] 1 BCLC 609

Sazean Engineering & Construction Sdn Bhd v Bumi Bersatu Resources Sdn Bhd [2019] 1 MLJ 495

Browne v Dunn (1893) 6 R 67;

Aik Ming (M) Sdn Bhd & Ors v Chang Ching Chuen & Ors and another appeal [1995] 2 MLJ 770

Sivalingam a/l Periasamy v Periasamy & Anor [1995] 3 MLJ 395

Pacific Centre Sdn Bhd v United Engineers (Malaysia) Bhd [1984] 2 MLJ 143

Burland v Earle [1902] AC 83

Khor Lye Hock Anor Tan Soon Keh v Makassar Engineering & Construction Sdn Bhd & Ors [2011] 8 CLJ 476; [2010] MLJU 18

Koh Jui Hiong @ Koa Jui Heong & Ors v. Ki Tak Sang @ Kee Tak Sang and another appeal [2014] 3 MLJ 10

Hoy Pak Kwai v Leong Kon Fah & Ors [2007] 1 MLJ 508; [2007] 1 CLJ 121

Auspicious Journey Sdn Bhd v Ebony Ritz Sdn Bhd & Ors [2021] 3 MLJ 549

Sun Life Assurance Co of Canada v Jervis [1944] 1 All ER

Husli @ Husly bin Mok v. Superintendent of Lands and Surveys & Anor [2014] 6 MLJ 766

Metramac Corp Sdn Bhd v Fawziah Holdings Sdn Bhd [2006] 4 MLJ 113

Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors v Karpal Singh [1992] 1 MLJ 147

Expro Marine Sdn Bhd v Amalgamated Plant Engineering Sdn Bhd [2020] MLJU 2440.

STATUTES/LEGISLATION REFERRED:

s. 4, s. 122(1), s. 181 of the Companies Act 1965

s. 346, s. 213, s. 218, s. 220 and s. 351 of the Companies Act 2016

s. 41 and s. 53 of the Specific Relief Act 1950

Orders 7, 29, 88 and 92 Rules of Court 2012