Lim Titt Huat & Anor v Tan Say Keng & Ors [2026] MLJU 1576

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HIGH COURT (KUALA LUMPUR)

MUHAMMAD ADAM @ EDWARD ABDULLAH JC

ORIGINATING SUMMONS NO WA-24NCC-118-03 OF 2024

1 March 2026

Isaac Hong Chun Hao (with Michelle Tan Yung Yin) (Chim & Hong) for the plaintiffs.
Nurul Nadhirah bt Muhammad Raizal (Riswana & Co) for the defendants.

Muhammad Adam @ Edward Abdullah JC:

GROUNDS OF JUDGMENT

(Enclosure 1)
INTRODUCTION

[1] This is an application by the Plaintiffs under Section 346 of the Companies Act 2016 ("**CA**") seeking relief on the ground that the affairs of the 4th Defendant, Roda Berlian (M) Sdn Bhd ("**the Company**") have been conducted in a manner oppressive to, unfairly prejudicial to, or unfairly discriminatory against them as members.

[2] The Plaintiffs' case is that the Company is a closely-held family company which, in substance and operation, bears the characteristics of a quasi-partnership. By reason of the history of the Company's formation, the relationship between the parties, and the Plaintiffs' long-standing involvement in its management, the Plaintiffs contend that they possessed a legitimate expectation of continued participation in the conduct of the Company's business.

[3] The principal complaint centres on the removal of both Plaintiffs as directors on 21 April 2021. The Plaintiffs assert that this removal resulted in their complete exclusion from management and marked the beginning of a course of conduct which they characterise as oppressive. The Plaintiffs further contend that subsequent to their removal, the 1st, 2nd and 3rd Defendants (hereinafter collectively termed as "the Defendants") assumed exclusive control over the affairs of the Company and conducted its business without adequate transparency, including alleged failures to account properly to convene meetings, and to provide access to financial information and corporate records.

[4] It is also the Plaintiffs' position that they were excluded from management without any reasonable offer to purchase their shares, thereby leaving them locked into the Company while deprived of meaningful participation in its affairs.

[5] The Plaintiffs therefore contend that the cumulative effect of these acts and omissions falls within the ambit of Section 346 CA 2016 and warrants the intervention of this Court.

[6] The statutory inquiry under Section 346 CA, is whether the affairs of the Company have been conducted in a manner oppressive to, or in disregard of, the interests of a member. The focus is on commercial unfairness, assessed objectively and in context.

[7] Having read the affidavits and written submissions of the parties, I found that a case for oppression has been made out.
BACKGROUND FACTS

[8] This case concerns more than the mechanics of company law. It concerns the breakdown of a relationship, a family enterprise built on trust, confidence and shared endeavour, and whether the majority may, by the exercise of legal power, exclude the minority from the very enterprise they helped to build.

[9] The Company is a private limited company incorporated as a family business. The shareholding structure comprises members of the same family, and for many years the Tan family and the Lim family were all involved in the management and operation of the Company.

[10] The 1st Plaintiff and the Defendants were appointed directors of the Company and were actively engaged in its business affairs. The 2nd Plaintiff was likewise involved in the Company's management and operations. The Plaintiffs contend that the Company was managed on the basis of mutual trust and understanding, with all principal shareholders participating in decision-making.

[11] The Plaintiffs state that for a substantial period, the Company's affairs were conducted collectively, with the directors jointly overseeing financial matters, business operations, and corporate decisions. The Plaintiffs assert that there was no prior indication that their role in management would be curtailed.

[12] Difficulties arose following certain events relied upon by the Defendants, including a warehouse fire in 2014 and subsequent disputes within the family. Notwithstanding these events, the Plaintiffs maintain that they continued to discharge their functions as directors and were not removed from office at that time.

[13] On 21 April 2021, an Extraordinary General Meeting was convened at which resolutions were passed removing both Plaintiffs as directors of the Company. The Plaintiffs contend that the removal was effected without proper justification and without prior engagement in any meaningful dialogue aimed at resolving internal disputes.

[14] Following their removal, the Plaintiffs assert that they were excluded from participation in the management of the Company and were denied access to information relating to its financial position and business affairs. They further contend that meetings were not convened in the ordinary course and that corporate information was not made available to them as shareholders.

[15] The Plaintiffs also aver that no reasonable offer was made to purchase their shares after their removal. They contend that they were thereby left in a position where they remained shareholders but were deprived of any meaningful role in the Company's management or access to its internal affairs.

[16] It is the Plaintiffs' case that the cumulative effect of their removal, exclusion from management, and the subsequent manner in which the Company's affairs were conducted has resulted in prejudice to their interests as members, including concerns relating to the value and management of the Company's assets.

[17] These factual matters form the foundation of the Plaintiffs' contention that the affairs of the Company have been conducted in a manner oppressive and unfairly prejudicial to them within the meaning of Section 346 CA 2016.

PLAINTIFFS' CASE

[18] The Plaintiffs' allegations of oppressive conduct may be summarised as follows:

i. Removal of the Plaintiffs as directors through majority- requisitioned Extraordinary General Meeting.

ii. Unilateral diversion or investment of RM3.45 million redemption proceeds without board approval.

iii. Acting without proper corporate authority in handling Company funds.

iv. Exclusion of the Plaintiffs from management and access to information.

v. Dismantling of the historical “check and balance” governance structure between the two families.

vi. Exercise of strict legal rights in a manner inequitable in a quasi-partnership company.

vii. Use of litigation and majority control to marginalise the minority.

viii. Frustration of legitimate expectations of joint management and a fair exit.

[19] The Plaintiffs' case is that the Company was never a mere commercial vehicle governed solely by the strict letter of Company Law. It was, they contend, a family enterprise founded upon mutual trust between the Lim and Tan families, operating in substance as a quasi-partnership. For decades, management, financial control, and strategic decisions were conducted on the basis of mutual consultation, parity of representation and a system of internal “check and balance” between the two families.

[20] The Plaintiffs emphasise that historically, no major financial decision was undertaken unilaterally. Cheques required cross-family signatories. Board composition reflected balance. No outsider was introduced into management. The Plaintiffs therefore assert that there existed a shared and legitimate expectation that both family factions would participate meaningfully in the management and financial affairs of the Company so long as they remained shareholders.

[21] Against that historical backdrop, the Plaintiffs complain that the majority shareholders, principally the 2nd and 3rd Defendant have dismantled that equilibrium and exercised their strict legal powers in a manner that is inequitable and oppressive.

[22] The *gravamen* of the complaint centres on the handling of surplus proceeds arising from the sale and redemption of the Company's property. The Plaintiffs allege that approximately RM3.4 to RM3.45 million, which ought properly to have been credited back into the Company's Public Bank account, was instead directed by the 1st Defendant to be placed into an investment account with Affin Hwang Asset Management. This, they say, was done without a valid board resolution, without consultation with them as directors, and in disregard of the long-standing governance practice requiring cross- family participation in financial decisions.

[23] The Plaintiffs contend that this unilateral diversion or investment of substantial corporate funds represents not merely a disagreement in business judgment but a fundamental breach of the mutual trust that underpinned the Company's governance structure.

[24] Shortly thereafter, the Plaintiffs were served with a notice of an Extraordinary General Meeting convened at the requisition of the majority shareholders. The agenda included their removal as Directors and the appointment of the 2nd and 3rd Defendant in their stead. The Plaintiffs contend that this removal was not motivated by the interests of the Company but was a retaliatory measure designed to silence their objections regarding the handling of corporate funds and to consolidate majority control.

[25] Although the removal may have been effected in accordance with statutory procedure, the Plaintiffs argue that, in a quasi-partnership company, the exercise of majority power must be scrutinised for fairness. They submit that the removal amounted to a "freeze-out" of the minority and a repudiation of their legitimate expectation to participate in management.

[26] Following their removal, the Plaintiffs assert that they were excluded from the management and decision-making processes of the Company, denied access to financial information, and reduced to passive shareholders without voice or influence. They contend that this exclusion destroyed the substratum of mutual confidence upon which the enterprise was founded.

[27] The Plaintiffs further rely on the broader history of disputes and litigation between the parties, contending that corporate machinery has been used strategically to entrench majority dominance rather than to preserve the Company's welfare. They assert that attempts at valuation and discussion of shareholding positions were frustrated, and that instead of negotiating a fair exit, the majority opted to expel them from management while retaining control of the Company's assets.

DEFENDANTS' CASE

[28] The Defendants do not dispute that the Company is a family- incorporated private company originally founded and operated within a framework of mutual trust between members of the Lim and Tan families. However, the Defendants emphasise that the current shareholding structure reflects legitimate corporate restructuring undertaken after a fire incident affecting the Company's warehouse premises in 2014. The Defendants rely on the records of the Companies Commission of Malaysia to show that the shareholding adjustments and changes in directorship were formally regularised and properly lodged.

[29] In particular, it is averred that on 29 January 2018, there was a transfer of 600,000 shares from the 1st Defendant to the 3rd Defendant. As at the material time, the shareholding comprised as follows:

i. 1st Plaintiff - 300,000 shares

ii. 2nd Plaintiff - 300,000 shares

iii. 3rd Defendant - 300,000 shares

iv. 2nd Defendant - 600,000 shares

[30] The Defendants contend that this structure reflected a commercial reorganisation necessitated by operational realities and the evolving management structure of the Company.

[31] They rely on records lodged with the Companies Commission of Malaysia to demonstrate that share transfers and restructuring were formally documented and regularised following operational changes necessitated after the 2014 fire incident.

[32] The Defendants contend that:

i. Share transfers effected on 29 January 2018 were lawful and properly recorded;

ii. The existing shareholding reflects legitimate commercial reorganisation; and

iii. No clandestine dilution occurred.

[33] The Defendants assert that the 1st Plaintiff was not a key operational decision-maker but functioned largely as a "non- executive" or "sleeping" director.

[34] A substantial component of the Defendants' case rests upon criminal proceedings instituted against the 1st Plaintiff in 2019. Police reports were lodged and charges preferred under Section 465 of the Penal Code Act 574. The 1st Plaintiff pleaded guilty and was fined.

[35] The Defendants contend that:

a. The 1st Plaintiff dishonestly caused the Company's funds to be transferred to personal accounts;

b. The Company suffered quantifiable losses; and

c. The criminal conviction justified corporate action to protect the Company.

[36] They rely upon Section 198(1)(e) of the Companies Act 2016, to contend that a conviction involving dishonesty may disqualify a director from holding office.

[37] The Defendants maintain that:

a. The Extraordinary General Meeting removing the 1st Plaintiff was lawfully convened;

b. Notice was given;

c. The 1st Plaintiff attended and addressed the meeting; and

d. The resolution was properly passed.

[38] On the issue concerning investment of corporate funds, the Defendants assert that the deposit of proceeds into an Affin Hwang Asset Management account was a *bona fide* commercial decision intended to generate a return for the Company.

[39] The Defendants deny diversion of corporate opportunity or exclusion from information, contending instead that restriction of access followed the breakdown of trust precipitated by the 1st Plaintiff's misconduct.

[40] The Defendants' overarching position is that any breakdown in relations was caused by the Plaintiffs' own actions and that the present application is misconceived.

ANALYSIS AND DECISION

Is the Company a Quasi-Partnership?

[41] The concept of a quasi-partnership derives from *Ebrahimi v Westbourne Galleries Ltd* [1973] AC 360, where the House of Lords recognised that in small, relationship-based companies, equitable considerations may restrain the exercise of strict legal rights. Lord Wilberforce observed that such companies are often "associations formed or continued on the basis of a personal relationship, involving mutual confidence".

[42] In small, closely-held companies of this nature, the articles of association tell only part of the story. Behind the corporate form stand individuals who have ventured their capital, labour, and often their family relationships. Where the foundation of mutual confidence is removed, the structure may remain but its spirit is gone.

[43] In the present case, parties agree that the Company is a quasi- partnership but the Defendants submit that the partnership came to an end when the shared warehouse of the Company and Whai Cheng was destroyed by fire in July 2014 as well as when the 1st Plaintiff was convicted of two criminal offences under Sections 465 and 471 of the Penal Code Act 574. Subsequently, there were discussions between the parties to end their business venture. However, that discussion did not come to fruition. In the meantime, the Plaintiffs continued to be actively involved in the management of the Company until April 2021.

[44] Partnership is a legal concept. The existence of a partnership is to be gleaned from the facts of the case including how the parties said to be partners have dealt as between them. The fire has no doubt destroyed a common property belonging to the Company but it has no effect in so far as the legal concept of partnership is concerned. Once the existence of a partnership is established, it is to be put to an end either by agreement of the partners or by operation of law.

[45] In the present case, I hold that neither the fire nor the 1st Plaintiff's criminal conviction had the effect of ending the partnership. The Plaintiffs continued to be involved in the management of the Company after the fire incident and post the 1st Plaintiff's convictions. The Defendants failed to adduce any evidence in their affidavits showing a clear intention by the parties to put an end to their partnership.

Removal of the Plaintiffs as Directors due to Criminal Conviction

[46] The central complaint is the removal of both Plaintiffs as directors on 21 April 2021, which resulted in their complete exclusion from the management.

[47] The Defendants seek to justify the removal by reference to the 1st Plaintiff's criminal convictions and alleged misconduct, and rely on provisions relating to disqualification under the Companies Act 2016.

[48] The disqualification of an individual from holding office as a director post criminal conviction is found in Section 198 of the Companies Act 2016. The section provides as follows:

> 1) A person shall not hold office as a director of a company or whether directly or indirectly be concerned with or takes part in the management of a company, if the person-
>
> (a) …;
>
> (b) …;
>
> (c) has been convicted of an offence involving bribery, fraud or dishonesty;
>
> (d) has been convicted of an offence under sections 213, 217, 218, 228 and 539; or
>
> …
>
> 3) Notwithstanding subsection (1), a person who has been disqualified under paragraph (1)*(a)* may be appointed or hold office as a director with the leave of-
>
> (a) the Official Receiver; or
>
> (b) the Court provided that a notice of intention to apply for leave has been served on the Official Receiver and the Official Receiver is heard on the application.
>
> …
>
> 7) Any person who contravenes this section commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding one million ringgit or to both.

[49] I pause to make two pertinent observations. First, while the disqualification is mandatory, it is still permissible for a disqualified director to seek leave to be appointed or to continue to hold office. Second, under Subsection (7) of the provision, any contravention of the above provision results in penal consequences for the individual transgressor; not the company.

[50] The 1st Plaintiff's two criminal convictions under Sections 465 (offence relating to forgery) and 471 (using a forged document as genuine) of the Penal Code Act 574, took place on 25 October 2019 and 17 December 2020.

Yet, no action was taken until 2021. There is also no evidence of any application being made under the statutory disqualification provisions prior to the removal of the 1st Plaintiff.

[51] The 2nd Plaintiff, meanwhile, was not shown to have been implicated in any wrongdoing. Thus, in the circumstances, there was no basis for the Company to remove the 2nd Plaintiff on the basis of the 1st Plaintiff's convictions. Such an act is manifestly unfounded and unreasonable. It lends credence to the submission of the Plaintiffs that the Defendants intended to have the Plaintiffs removed from the management of the Company in any event.

[52] The 1st Plaintiff has furnished his explanation in his Affidavit in Reply as to the circumstances surrounding his convictions.

[53] In respect of the first offence, the 1st Plaintiff states that in 2014, following a fire which destroyed the shared warehouse of the Company and Whai Cheng, he made several payments on behalf of the Company. These included, inter alia, payments to the Malaysian Volunteer Corps Department (RELA) to secure the perimeter of the site pending the arrival of the insurer's loss adjuster, as well as auctioneer's fees for the disposal of scrap metal.

[54] At the material time, the board of the Company comprised the 1st Plaintiff, the 2nd Plaintiff and the 1st Defendant. Owing to what was described as a unique internal arrangement among the directors, it was mutually understood and agreed that the relevant invoices would serve as supporting documents for the reimbursement of the sums advanced by the 1st Plaintiff on the Company's behalf. The subsequent reimbursements by the Company were jointly approved by the 1st Plaintiff and the 1st Defendant.

[55] The 1st Plaintiff asserts that several years later, when relations between members of the Lim and Tan families deteriorated, particularly over disagreements concerning the valuation of their respective shareholdings in the Company and Whai Cheng, the 1st Defendant lodged a police report in 2019 alleging, among other matters, the issuance of false invoices against the 1st Plaintiff and the 2nd Plaintiff. In order to protect the 2nd Plaintiff and certain former employees of the Company whom he claims were unfairly implicated, the 1st Plaintiff states that he accepted responsibility and pleaded guilty to a charge under Section 465 of the Penal Code, for forgery. He maintains that he was never charged with criminal breach of trust or misappropriation in relation to the reimbursements, as those payments had been approved by the 1st Defendant. He further contends that he was a victim of circumstances arising from the 1st Defendant's alleged bad faith, which he says was aimed at securing leverage for members of the Tan family and the 3rd Defendant to compel him and the 2nd Plaintiff to purchase the Tan family's shares in the Company and Whai Cheng at an inflated and arbitrary price.

[56] As for the second offence, the 1st Plaintiff states that in 2016, his close friend, the late Seet San Hong, advanced funds on behalf of Whai Cheng to repay Public Bank Berhad when the maturity date of Whai Cheng's Banker's Acceptance facility was approaching. At the time, the board comprised the 1st Plaintiff and 1st Defendant, and it was allegedly agreed that invoices issued by a business known as Green Ocean Marketing would serve as documentation to support Whai Cheng's repayment to the late Seet San Hong. The repayment was subsequently approved by both the 1st Plaintiff and the 1st Defendant.

[57] The 1st Plaintiff contends that, following the same deterioration in relations between the Lim and Tan families, the 1st Defendant lodged another police report in 2019 alleging the issuance of false invoices. He states that in order to protect his deceased friend and certain innocent employees and former employees of Whai Cheng, he pleaded guilty to a charge under Section 471 of the Penal Code, for using a forged document as genuine. He maintains that he was never charged with misappropriation of Whai Cheng's funds in respect of the repayment, as the payment had been approved by 1st Defendant. Once again, he asserts that he was a victim of circumstances brought about by 1st Defendant's alleged bad faith, purportedly intended to obtain leverage for members of the Tan family to pressure him and the 2nd Plaintiff into purchasing their shares in the Company and Whai Cheng at an inflated and arbitrary valuation.

[58] The above-detailed explanation was not rebutted by the Defendants. All the Defendants say in response is that the 1st Plaintiff has pleaded guilty and the explanations amount to an after- thought.

[59] I find that the timing and surrounding circumstances raise a serious question as to whether the convictions were the true reason for the exclusion, or whether they were invoked subsequently to justify what was, in substance, a removal aimed at consolidating control. The 1st Defendant lodged the police report in 2019 and yet no meeting of the Company was requisitioned to remove the 1st Plaintiff. No immediate action was taken to remove

the 1st Plaintiff post-conviction. There was also an absence of any internal inquiry from the Company against the 1st Plaintiff concerning the allegations levelled against him.

[60] I find that these factors point irresistibly to the conclusion that the explanations advanced by the 1st Plaintiff as to events leading to his conviction, and his allegation that the police reports were lodged as leverage in a broader commercial dispute, to wit, getting the Plaintiffs to purchase the Defendants' shares in the Company and Whai Cheng at an inflated price, carry significant weight.

[61] In order for the criminal convictions of the 1st Plaintiff to be used as a justification for his removal, it is necessary that such conviction has sufficient nexus to the equity which the Plaintiffs are now seeking from this Court.

[62] In *Moody v Cox and Hatt* [1917] 2 CH 71, the Court held:

> "...equity will not apply the principle about clean hands unless the depravity, the dirt in question on the hand, has an immediate and necessary relation to the equity sued for."

[63] I find the case of *Blackmore v Richardson* [2006] BCC 276 to be instructive. In that case, the Company was a quasi-partnership comprising three equal shareholders, all of whom were also directors. The petitioner managed the business as its managing director. The respondents wished to retire and sell their shares, whereas the petitioner did not. In an attempt to reduce the respondents' price expectations, the petitioner forged a letter for that purpose, though this did not achieve the desired effect. The respondents subsequently sold their shares to a competitor of the company without the petitioner's knowledge or consent. Following the sale, the petitioner was removed from management and relegated to a minority position, with a stranger becoming the majority shareholder, resulting in a substantial diminution in the value of his shareholding.

[64] While the Court was highly critical of the petitioner's conduct, it nevertheless found that such conduct lacked a sufficient nexus to the respondents' unfair conduct and therefore did not justify the Court exercising its discretion against granting a compulsory purchase order.

[65] In oppression proceedings, the mere fact that an act is legally permissible does not answer the question. The Court must ask whether the act was fair in the context of the parties' relationship. In a quasi-partnership setting, exclusion from management strikes at the heart of the relationship and is capable of constituting oppression.

[66] It is trite law that the lawfulness of an act does not preclude a finding of oppression. As Lord Hoffmann explained in *O'Neill v Phillips* [1999] 1 WLR 1092, the question is whether the conduct is unfair, having regard to the parties' relationship and legitimate expectations.

[67] The Defendants plead that conviction per se is sufficient to justify removal. I find that too simplistic a view. Given the circumstances surrounding the conviction, the detailed explanations proffered by the 1st Plaintiff, absent any credible rebuttal as well as internal inquiry by the Defendants, the irresistible conclusion is that the Defendants were bent on removing the Plaintiffs following the breakdown in their relationship. Having regard to the foregoing, it is my finding that the 1st Plaintiff's criminal convictions were neither sufficiently serious nor sufficiently connected to the unfairly prejudicial conduct of the Defendants.

[68] Exclusion from management in a quasi-partnership company is not a mere rearrangement of corporate roles. It is, in substance, a severance of the bond upon which the association was formed. While the law permits the majority to vote, it does not permit them to vote away fairness.

Plaintiffs' Legitimate Expectations to Remain as Directors of the Company

[69] Having rejected the Defendants' primary justification for removal, I must next consider whether, independently of the criminal convictions, the Plaintiffs had a legitimate expectation to participate in the management of the Company and whether that expectation was unfairly defeated.

[70] The *locus classicus* for the proposition that a member of a company may have legitimate expectations to be involved in, and to remain part of a company so long as they remain shareholders of that company is the House of Lords decision in *Ebrahimi*. The Court held that there is room in Company Law for recognition of the fact that behind a company, or amongst it, there are individuals, with rights, expectations and obligations *inter se* which are not necessarily submerged in the company structure. Hence, equity enables the court to subject the exercise of legal rights to equitable considerations; considerations, that is, of a personal character arising between one individual

and another, which may make it unjust, or inequitable, to insist on legal rights, or to exercise them in a particular way.

[71] The reliance on legitimate expectations, a concept found in the realm of public law, being used in the field of company law is neither novel nor unfounded. In *O'Neill*, Lord Hoffmann went on to explain the concept what he meant by "legitimate expectation" with regard to his example in an earlier decision as follows:

> "In *Re Saul D Harrison & Sons plc* [1995] 1 BCLC 14 at 19 I used the term 'legitimate expectation', borrowed from public law, as a label for the 'correlative right' to which a relationship between company members may give rise in a case when, on equitable principles, it would be regarded as unfair for a majority to exercise a power conferred upon them by the articles to the prejudice of another member. I gave as an example the standard case in which shareholders have entered into association upon the understanding that each of them who has ventured his capital will also participate in the management of the company. In such a case it will usually be considered unjust, inequitable or unfair for a majority to use their voting power to exclude a member from participation in the management without giving him the opportunity to remove his capital upon reasonable terms. The aggrieved member could be said to have had a 'legitimate expectation' that he would be able to participate in the management or withdraw from the company."

[72] In *Tay Bok Choon v Tahansan Sdn Bhd* [1987] 1 MLJ 433, the Privy Council held as follows:

> "Viewing the facts as a whole their Lordships are satisfied, as the trial judge was satisfied, that the petitioner was led to believe, even in the absence of any express assurance, that he would participate in the management of the company and that he would in any event be entitled to a seat on the board so long as he held one quarter of the issued share capital of the company … Although no specific undertakings may have been given an obligation is to be implied or inferred from the conduct of the parties to allow the petitioner to participate in management and to be a director unless by withdrawal of his support or for some other good reason a change in management and control became necessary."

[73] In the present case, the Plaintiffs have been involved in the management of the Company since its incorporation for a period of 27 years. The underlying understanding, gleaned from the facts, shows that both the Lim and Tan families have been part of the management of the Company since its incorporation. There was never a period of time when only one family managed the Company except when the Plaintiffs were removed.

[74] I therefore find that it is safe to infer that the Plaintiffs have at all material times, a legitimate expectation to be involved and remain in management so long as they remain shareholders of the Company. (see: *Sim Chin Hu v Kerk Han Meng & Ors* [2022] MLJU 3404).

[75] The removal of a shareholder-director in a quasi-partnership company, absent a compelling and proportionate justification and without an accompanying offer for a fair exit, strikes at the very foundation of the mutual understanding upon which such a company is formed. In such circumstances, exclusion from management is not merely a corporate act; it is a breach of the equitable substratum of the relationship.

[76] In the present case, I find the Plaintiffs' removal from the management of the Company in the circumstances as described above amounts to oppression of the minority by the majority. The unfairness of the actions of the majority is affirmed by their failure to make a reasonable offer to the Plaintiffs for the purchase of the Plaintiffs' shares. Thus, the Plaintiffs are left with their shares in the Company without the ability to take part in the management notwithstanding the fact that the 1st Plaintiff was a founding shareholder of the Company. It is also not disputed that both Plaintiffs have been in the management of the Company for more than two decades.

Peripheral Issues

[77] The Plaintiffs also complained about the conduct of the majority in selling certain assets of the Company and using the proceeds to make investments in an asset management company and a used car business. The Defendants meanwhile contend that this was a business judgment of the Company and any loss in the used car business was a direct result of the Covid-19 pandemic.

[78] I bear in mind that Courts do not sit as a supervisory board over commercial decisions. The mere fact that a business decision yields a loss does not convert it into oppression. Something more, namely, unfairness in the exercise of power, must be shown.

[79] The Plaintiffs submit that the Company has generated no revenue since the Plaintiffs' exclusion from the management of the Company. Coupled with the fact that the investments of the Company yielded no tangible profit

and the assets being sold, the Plaintiffs contend that these are a direct result of the 1st Defendant's mismanagement of the Company and which caused the Plaintiffs' shares in the Company to be unfairly diluted and significantly diminished. The Plaintiffs rely on the cases of *In Re a company (No 00314 of 1989), Ex Parte Estate Acquisition and Development Ltd and Others* [1991] BCLC 154 and *Re Elgindata Ltd* [1991] BCLC 959.

[80] The cases of *In Re a Company* and *Re Elgindata* do not fit squarely with the propositions the Plaintiffs are making in the present case. In *Re a Company*, the Court was considering a striking out of a winding up petition premised under minority oppression. The Court held that the allegations that the petitioner had an arguable claim that the affairs of the company was being carried out in an unfairly prejudicial manner to the petitioner. Therefore, the petition was not liable to be struck out summarily. In *Re Elgindata*, the Court held while one way (and not the only way) to show value of share being diminished is by reason of by conduct of those in control of the company, on the facts, the shares of the company fluctuated in line with the fortunes of the company concerned.

[81] On the affidavit evidence before me, I am not prepared to hold that the value of the Plaintiffs' shares was diminished by sheer mismanagement of the 1st Defendant. I accept that it is entirely plausible that the used car business did not provide the expected returns due to the Covid-19 pandemic and the other decisions of the Company with respect to investments were part of the business judgment of the Defendants. It is entirely in accord with the law that certain latitude must be given to a company and the individuals managing the company in deciding what is best for the company. At the end of the day, each case on whether an act or acts of the company accords with business judgment must turn on its peculiar facts. In cases where a claim made is premised on oppression, one must not be quick to jump to a conclusion that every failure of a company's investment is premised on the intention of the majority to dilute the shares of those claiming to be oppressed

[82] The Plaintiffs also complain that there has been a continuous failure by the Defendants to hold the Annual General Meeting of the Company. The Plaintiffs rely on *Guan Seng Co Sdn Bhd & 3 Ors v Tan Hock Chan & 2 Ors* [1990] 4 MTC 179. However, the case of Guan Seng held that a contravention of the law in failing to hold the Annual General Meeting, while amounting to a disregard for the interests of the minority shareholders, cannot amount to an oppression.

[83] While I have held that the allegations relating to investment losses, the sale of assets, and the failure to convene Annual General Meetings do not, when viewed in isolation, amount to oppressive conduct within the meaning of Section 346 of the CA, the inquiry under Section 346 is not a compartmentalised exercise. Oppression jurisprudence requires the Court to examine the conduct of the majority in its totality and to assess its cumulative effect upon the minority (see: *Re Kong Thai Sawmill (Miri) Sdn Bhd* [1978] 2 MLJ 227 (FC); *Re Saul D Harrison & Sons PLC* [1995] 1 BCLC 14 (CA) and *Re London School of Electronics Ltd* [1986] CH 211).

[84] Corporate misjudgment alone is not oppression, and the law accords latitude to directors in matters of commercial decision- making. However, where such decisions are made in a context where the minority has been excluded from management in a quasi- partnership company, deprived of participatory rights, and rendered unable to influence or scrutinise the Company's affairs, those same decisions assume a different complexion. The sale of assets, reinvestment of substantial proceeds without minority involvement, the absence of revenue generation following the Plaintiffs' exclusion, and the failure to adhere strictly to corporate governance norms may not independently satisfy the statutory threshold. Yet, when viewed against the backdrop of the Plaintiffs' legitimate expectation to remain in management and the unilateral exercise of majority power to remove them, these matters collectively reinforce the inequity of the situation. They demonstrate a pattern of majority control exercised without meaningful regard to the minority's position. It is this cumulative impact rather than any single peripheral act that supports the conclusion that the affairs of the Company have been conducted in a manner oppressive to the Plaintiffs.

[85] In any event, a single act is sufficient to constitute oppression. This proposition is supported by high authority. In *Owen Sim Liang Khui v Piasau Jaya Sdn Bhd* [1996] 1 MLJ 113, the Federal Court held as follows:

> "Section 181(1)(a) of the Act looks to the effect and consequence of the wrong done in determining whether there is oppressive conduct in any other given case… Where attention is called to particular acts or omissions, it is sufficient that the effects of a single act or omission are such that they persist at the date of presentation of the petition."

[86] The *gravamen* in this case is not mismanagement, nor investment losses, nor technical non-compliance. It is exclusion. Once the Plaintiffs were removed from management in circumstances lacking equitable justification, and left without fair exit, the substratum of the quasi-partnership was destroyed. That was enough to constitute oppression.

[87] In the end, this case turns not on technicalities, but on fairness. The Plaintiffs were excluded from the management of a company which they had helped build and sustain for decades. They were left with shares, but without voice. Equity cannot leave them there.

[88] The majority may have had the votes. They did not have the equity.

Delay

[89] The Defendants have urged this Court to hold that there has been delay in moving the Court as the Plaintiffs were removed in 2021. The present application was filed in 2024. The Plaintiffs explained that this delay was caused by the Plaintiffs having to prioritise their limited financial resources during the Movement Control Order amidst the Covid-19 pandemic. In the meantime, they were entangled in two other civil suits involving one or more of the Defendants. Hence, while the Defendants had the use of the Company's fund to sustain the litigation, the Plaintiffs were left to look for their own source of funds to the tune of RM400,000.

[90] I find the explanation plausible. In any event, the Plaintiffs have constantly objected to the actions of the Defendants by registering their protests with the Company, through police reports and reports to the Companies Commission of Malaysia. Hence, this is not a case of the Plaintiffs' easy slumber on their rights. Equity does not punish those who struggle to vindicate their rights in difficult times. Additionally, there is no time limit when a claimant may move the Court under the provisions of Section 346 of the CA.

[91] Given the peculiar facts of this case, I find that delay did not defeat the Plaintiffs' claim.

Remedy

[92] The Court has very wide powers under the provisions of Section 346(2) of the Companies Act 2016, on the remedy it may provide in cases of oppression. The wordings of the provision use the words "..make such order as the Court thinks fit.." which shows that the Court is not limited to the reliefs listed in Subsection 2(a) to (e) of the provision.

[93] The Plaintiffs sought the following reliefs in their Originating Summons:

i. A declaration that the 1st Defendant, the 2nd Defendant and the 3rd Defendant, or any one or more of them, whether jointly and/or severally, have conducted the affairs of the 4th Defendant and/or exercised the powers of directors in a manner oppressive to the Plaintiffs and/or in disregard of the Plaintiffs' interests as members of the 4th Defendant;

ii. A declaration that the 1st Defendant, the 2nd Defendant and the 3rd Defendant, or any one or more of them, whether jointly and/or severally, have achieved and/or caused to be done and/or threatened to achieve or caused to be done to the 4th Defendant and/or the Plaintiffs which unfairly discriminates against or is otherwise prejudicial to the Plaintiffs as members of the 4th Defendant;

iii. Pursuant to paragraphs (i) and (ii) above or by any means whatsoever, any order which this Honourable Court may grant for the purpose of remedying the matters complained of herein, including but not limited to:

    a. That the Plaintiffs shall sell all their shares in the Company, and the 1st Defendant and/or the 2nd Defendant and/or the 3rd Defendant shall purchase and/or cause and procure the purchase of the Plaintiffs' shares at a fair and equitable value, such value to be determined by an Independent Auditor appointed in accordance with paragraph (b) or (c) below;

    b. That an Independent Auditor shall be agreed upon and appointed by the Plaintiffs and the 1st Defendant and/or the 2nd Defendant and/or the 3rd Defendant within two (2) weeks from the date of the Order of this Honourable Court, for the purpose of valuing and determining the price of the Plaintiffs' shares in the Company;

    c. That in the event the Plaintiffs and the 1st Defendant and/or the 2nd Defendant and/or the 3rd Defendant are unable to agree on the appointment of an Independent Auditor within the said period, either party shall be at liberty to apply to this Honourable Court to propose an Independent Auditor, and the Court shall appoint such Independent Auditor for the purpose of valuing and determining the price of the Plaintiffs' shares in the Company;

    d. That any Independent Auditor appointed pursuant to paragraphs (b) and (c) above shall be permitted by the Defendants to enter the offices and premises of the Defendants, and to take possession of all

minute books, accounting records, books, documents and correspondence of the Company, and to make copies thereof, for the purpose of valuing and determining the price of the Plaintiffs' shares in the Company;

e. That the Independent Auditor appointed pursuant to paragraphs (b) and (c) above shall complete the valuation of the Plaintiffs' shares in the Company within two (2) months from the date the Auditor takes possession of the relevant books, records, documents and correspondence of the 4th Defendant;

f. That upon completion of the valuation and determination of the price of the Plaintiffs' shares in the Company by the Independent Auditor appointed pursuant to paragraphs (b) and (c) above, the 1st Defendant and/or the 2nd Defendant and/or the 3rd Defendant shall purchase and/or cause the purchase of the Plaintiffs' shares in the Company within one (1) month from the date of such determination;

g. Alternatively, the Company shall purchase and/or cause the purchase of the Plaintiffs' shares in the Company within one (1) month from the date the Independent Auditor determines the price of the Plaintiffs' shares, by way of a reduction of the capital of the Company;

h. The costs of the Independent Auditor and the valuation of the Plaintiffs' shares in the Company shall be borne by the 1st Defendant, the 2nd Defendant and the 3rd Defendant;

i. For the purposes of paragraphs (b) to (g) above, the Independent Auditor appointed pursuant to paragraphs (b) or (c) shall determine the price of the Plaintiffs' shares in the Company as at 21.04.2021;

iv. Further to paragraph (c) above, an order that the 1st Defendant, the 2nd Defendant and the 3rd Defendant shall cause the Company, and in any event the Company shall itself, to release the Plaintiffs as personal guarantors for any and all banking, loan or trading facilities of the Company;

v. An inquiry into the damages suffered by the Plaintiffs;

vi. An order that the 1st Defendant, the 2nd Defendant and the 3rd Defendant, or any one or more of them, whether jointly and/or severally, shall pay the costs of this application together with all consequential and incidental costs incurred by the Plaintiffs;

vii. That the parties be at liberty to apply to this Honourable Court;

viii. That the Order made herein be endorsed with a notice in Form 83 pursuant to Order 45 rule 7 of the Rules of Court 2012; and

ix. Any other order and/or relief that this Honourable Court deems fit and just.

[94] Parties confirmed that the Plaintiffs are not personal guarantors for any banking, loan or trading facilities of the Company. I did not grant this relief. The other reliefs sought were granted as it was just and fair in the circumstances of this case.

[95] In particular, I allowed the price of the Plaintiffs' shares in the Company to be valued as at 21 April 2021 as that was the date they were removed from the management of the Company. As I found that the Plaintiffs have a legitimate expectation to take part in the management of the Company, it is just and equitable that the valuation of their shares ought to be as at the date they ceased to have management control, and by extension, any business decision of the Company which would have a negative impact on the value of the Plaintiffs' shares in the Company.

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