Pavilion Summit Sdn Bhd & Ors (suing in their personal capacity as well as by way of representative action for all other parcel owners of Jaya One and derivative action for and on behalf of the Jaya One Management Corp) v Jaya One Management Corp & Ors

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO WA-22NCVC-425–06 OF 2021
HAYATUL AKMAL J
7 MARCH 2022

Civil Procedure — Injunction — Interim injunction — Application for interim injunction pending full and final disposal of suit — First and second defendants applied three different applications for determination — Whether interim injunction ought to be granted

The plaintiffs were registered proprietors of parcels or individual units held under separate strata titles in Jaya One. Jaya One was a stratified mixed development managed by Jaya One joint management body ('JMB'). The JMB, via its joint management committee, managed Jaya One development for several years before setting up the management corporation ('MC') ie the first defendant ('D1'). The plaintiffs took out this action against the defendants, inter alia, on alleged misconducts, breach of duty, manipulations of the MC, conflict of interest, related party transactions, imposition of discriminatory rates on the charges, and the sinking fund of Jaya One, under billings, not invoicing, involving sums allegedly in excess of RM20m over the years. Efforts to determine these alleged issues internally had been futile, resulting in the suits being taken in the courts. Consequently, the plaintiffs pursued this derivative action in the name of and for the benefit of D1, the MC, who was alleged to have failed, neglected, and/or refused to take any action or meaningful action against the principal wrongdoers, namely the second to eleventh defendants, regarding alleged wrongs committed against the JMB and/or MC, under the chairmanship of the twelfth defendant, its secretary the thirteenth defendant, and the fourteenth defendant. While this suit was still pending, D1 and the second defendant ('D2') filed three different applications for determination: (a) encl 174 filed by D2 ie D1 be injuncted from preventing D2 from voting in the annual general meeting ('AGM') or any general meeting of the MC based on the disputed claim for alleged outstanding sewerage charges pending the disposal of this suit and other prayers; (b) encl 195 filed by D1 ie an injunction restraining D1 by its committee members, employees, property managers, and/or agents from convening, calling the AGM of the MC, pending the full and final disposal of this suit and

other prayers; and (c) encl 198 filed by D1 ie an injunction restraining D1 by its committee members, employees, property managers, and/or agents from convening, calling, and/or the extraordinary general meeting ('EGM') of the MC, pending the full and final disposal of this suit and other prayers.

Held, allowing encls 195 and 198; and dismissing encl 174:

(1) The issues raised by the plaintiffs and D1 met the required threshold for an injunction pending the determination of this suit as decided in *Keet Gerald Francis Noel John v Mohd Noor Bin Abdullah & Ors* [1995] 1 MLJ 193 ('*Keet Gerald* test'). These issues were bona fide and serious questions to be tried. The arguments of the defendants in resisting encls 195 and 198 were technical issues best left for determination during the substantive hearing of this suit when appropriate evidence could be adduced by parties and considered sufficiently. There was no suppression of material facts in D1 application for the injunctions. The facts presented had been given in an undistorted picture of the material facts required to meet the threshold requirements. The injunction merely deferred the holding of the AGM/EGM pending the determination of all legal issues affecting Jaya One development. There were merits in D1 and the plaintiffs arguments and therefore encls 195 and 198 to injunct the holding of the AGM/EGM of Jaya One by the MC pending the determination of all issues at the substantive hearing of this suit were granted with costs against the defendants (see paras 41–42 & 44–46).

(2) Since the court had injuncted the holding of the AGM/EGM by the MC of Jaya One in encls 195 and 198, the need to injunct the MC from prohibiting D2 from voting at the said AGM/EGM did not arise as a consequence. The application was rendered academic or redundant. There were undoubtedly serious issues in dispute. Until the issues relating to the charges and contribution to the sinking fund were determined, it would be appropriate for the AGM and EGM to be injuncted in maintaining and preserving the status quo. D2 could not now insist that the AGM and EGM proceeded and voted therein until the court had entirely appraised the issues of charges and contribution, which would eventually decide the true extent of the defendants arrears in charges and, consequently, their right to vote in the general meeting. The issue of injuncting the MC did not arise, and it constituted an abuse of process in the circumstances. There were no merits in the defendants arguments and it did not meet the threshold requirement in the *Keet Gerald* test. Therefore, encl 174 to injunct the MC from preventing D2 from exercising its voting rights was dismissed (see paras 47–49).

[Bahasa Malaysia summary

Plaintif adalah pemilik berdaftar petak atau unit individu yang dipegang di bawah hakmilik strata berasingan di Jaya One. Jaya One ialah pembangunan

campuran berstrata yang diuruskan oleh badan pengurusan bersama Jaya One ('JMB'). JMB, melalui jawatankuasa pengurusan bersamanya, menguruskan pembangunan Jaya One selama beberapa tahun sebelum menubuhkan perbadanan pengurusan ('MC') iaitu defendan pertama ('D1'). Plaintif mengambil tindakan ini terhadap defendan, antara lain atas dakwaan salah laku, pelanggaran kewajipan, manipulasi MC, konflik kepentingan, urus niaga pihak berkaitan, pengenaan kadar diskriminasi ke atas caj, dan dana terikat Jaya One, di bawah pengebilan, bukan invois, melibatkan jumlah yang didakwa melebihi RM20 juta selama ini. Usaha untuk menentukan isu yang didakwa ini secara dalaman telah gagal, menyebabkan saman dibawa ke mahkamah. Akibatnya, plaintif meneruskan tindakan derivatif ini atas nama dan untuk faedah D1, MC, yang didakwa telah gagal, mengabaikan, dan/atau enggan mengambil sebarang tindakan atau tindakan bermakna terhadap pesalah utama, iaitu defendan kedua hingga kesebelas, mengenai dakwaan kesalahan yang dilakukan terhadap JMB dan/atau MC, di bawah pengerusi defendan kedua belas, setiausahanya defendan ketiga belas, dan defendan keempat belas. Semasa saman ini masih belum selesai, D1 dan defendan kedua ('D2) memfailkan tiga permohonan berbeza untuk penentuan: (a) lampiran 174 yang difailkan oleh D2 iaitu D1 dikenakan injunksi daripada menghalang D2 daripada mengundi dalam mesyuarat agung tahunan ('AGM') atau mana-mana mesyuarat agung MC berdasarkan tuntutan yang dipertikaikan untuk dakwaan caj pembetungan tertunggak sementara menunggu penyelesaian saman ini dan permohonan lain; (b) lampiran 195 yang difailkan oleh D1 iaitu injunksi yang menghalang D1 oleh ahli jawatankuasa, pekerja, pengurus harta, dan/atau ejennya daripada bersidang, memanggil AGM MC, sementara menunggu penyelesaian penuh dan muktamad saman ini dan permohonan lain; dan (c) lampiran 198 yang difailkan oleh D1 iaitu injunksi yang menghalang D1 oleh ahli jawatankuasa, pekerja, pengurus harta, dan/atau ejennya daripada mengadakan, memanggil, dan/atau mesyuarat agung luar biasa ('EGM') MC, sementara menunggu penyelesaian penuh dan muktamad saman ini dan permohonan lain.

Diputuskan, membenarkan lampiran 195 and 198; and menolak lampiran 174:

(1) Isu yang dibangkitkan oleh plaintif dan D1 memenuhi ambang yang diperlukan untuk injunksi sementara menunggu penentuan saman ini seperti yang diputuskan dalam *Keet Gerald Francis Noel John v Mohd Noor Bin Abdullah & Ors* [1995] 1 MLJ 193 ('ujian *Keet Gerald*'). Isu-isu ini adalah soalan yang bona fide dan serius untuk dibicarakan. Hujahan defendan dalam menentang lampiran 195 dan 198 adalah isu teknikal yang sebaiknya dibiarkan untuk penentuan semasa pendengaran substantif saman ini apabila keterangan yang sesuai boleh dikemukakan oleh pihak-pihak dan dipertimbangkan dengan secukupnya. Tiada penindasan fakta material dalam permohonan D1 untuk injunksi. Fakta

yang dibentangkan telah diberikan dalam gambaran yang tidak diputarbelitkan tentang fakta material yang diperlukan untuk memenuhi keperluan ambang. Injunksi itu sekadar menangguhkan penganjuran AGM/EGM sementara menunggu penentuan semua isu undang-undang yang menjejaskan pembangunan Jaya One. Terdapat merit dalam hujahan D1 dan plaintif dan oleh itu lampiran 195 dan 198 untuk menghalang pengadaan AGM/EGM Jaya One oleh MC sementara menunggu penentuan semua isu pada pendengaran substantif saman ini telah diberikan dengan kos terhadap defendan (lihat perenggan 41–42 & 44–46).

(2) Memandangkan mahkamah telah menghalang pengadaan AGM/EGM oleh MC Jaya One dalam lampiran 195 dan 198, keperluan untuk menghalang MC daripada melarang D2 daripada mengundi pada AGM/EGM tersebut sebagai akibatnya tidak timbul. Permohonan telah menjadi akademik atau berlebihan. Tidak dinafikan terdapat isu serius yang dipertikaikan. Sehingga isu berkaitan caj dan sumbangan kepada dana terikat ditentukan, adalah wajar AGM dan EGM dihalang dalam mengekalkan dan memelihara status quo. D2 kini tidak boleh menegaskan bahawa AGM dan EGM diteruskan dan diundi sehingga mahkamah menilai sepenuhnya isu-isu caj dan sumbangan, yang akhirnya akan memutuskan tahap sebenar tunggakan defendan dalam caj dan, akibatnya, hak mereka untuk mengundi dalam mesyuarat agung. Isu menghalang MC tidak timbul, dan ia merupakan satu penyalahgunaan proses dalam keadaan tersebut. Tiada merit dalam hujahan defendan dan ia tidak memenuhi keperluan ambang dalam ujian *Keet Gerald*. Oleh itu, lampiran 174 untuk menghalang MC daripada mencegah D2 daripada melaksanakan hak mengundinya telah ditolak (lihat perenggan 47–49).]

Cases referred to

Alor Janggus Soon Seng Trading Sdn Bhd & Ors v Sey Hoe Sdn Bhd & Ors [1995] 1 MLJ 241; [1995] 1 AMR 549; [1995] 1 CLJ 461, SC (folld)

Amity One Sdn Bhd v Binjai Residency Management Corporation [2021] MLJU 200, HC (refd)

Asia General Equipment and Supplies Sdn Bhd & Ors v Mohd Sari bin Datuk Okk Hj Nuar & Ors [1998] MLJU 423; [1998] AMEJ 0027; [1998] 1 LNS 5, HC (refd)

Cheng Hang Guan & Ors v Perumahan Farlim (Penang) Sdn Bhd [1988] 3 MLJ 90; [1988] 1 CLJ Rep 435, HC (refd)

Datuk M Kayveas v Pv Das (for himself and on behalf of People's Progressive Party of Malaysia [1997] 3 MLJ 671; [1997] 4 AMR 3912; [1997] 4 CLJ 544, CA (refd)

Dunggon Jaya Sdn Bhd v Aeropod Sdn Bhd & Anor and another appeal [2019] 4 MLJ 466; [2019] 3 AMR 729; [2019] 9 CLJ 734, CA (folld)

Ekuiti Setegap Sdn Bhd v Plaza 393 Management Corp (established under The Strata Titles Act 1985) [2018] 4 MLJ 284, CA (refd)
Gerak Indera Sdn Bhd lwn Farlim Properties Sdn Bhd [1997] 3 MLJ 90; [1997] 4 AMR 4244, CA (refd)
Innab Salil & Ors v Verve Suites Mont' Kiara Management Corp [2020] 12 MLJ 16, FC (refd)
Jaks Island Circle Sdn Bhd v Star Media Group Bhd & Anor for another appeal [2020] 10 MLJ 386; [2019] 6 AMR 638; [2020] 1 CLJ 839, HC (refd)
Jasa Keramat Sdn Bhd & Anor v Monatech (M) Sdn Bhd [1999] 4 MLJ 637, CA (refd)
Jaya Sudhir a/l Jayaram v Nautical Supreme Sdn Bhd & Ors [2019] 5 MLJ 1; [2019] 7 CLJ 395, FC (refd)
Kay Synergy Sdn Bhd v Malayan Banking Bhd [2007] 6 MLJ 159, HC (refd)
Keet Gerald Francis Noel John v Mohd Noor bin Abdullah & Ors [1995] 1 MLJ 193, CA (folld)
Lian Keow Sdn Bhd & Anor v Overseas Credit Finance (M) Bhd & Ors [1982] 2 MLJ 162, FC (refd)
Lim Hean Pin v Thean Seng Co Sdn Bhd & Ors [1992] 2 MLJ 10; [1992] 2 CLJ 828, HC (refd)
Matang Holdings Bhd & Ors v Dato Lee San Choon & Ors [1985] 2 MLJ 406 (refd)
MGG Pillai v Tan Sri Dato' Vincent Tan Chee Yioun [1995] 2 MLJ 493, CA (refd)
Muhamad Nazri bin Muhamad v JMB Menara Rajawali & Anor [2020] 3 MLJ 645, CA (refd)
Perbadanan Pengurusan Anjung Hijau v Pesuruhjaya Bangunan Dewan Bandaraya Kuala Lumpur [2017] 11 MLJ 554, HC (refd)
Perbadanan Pengurusan Endah Parade v Magnificent Diagraph Sdn Bhd [2013] 6 MLJ 343, CA (refd)
Raja Zainal Abidin Raja Tachik & Ors v British American Life & General Insurance Bhd [1993] 3 MLJ 16, SC (refd)
Roxy Electric Industries (Malaysia) Bhd v Syarikat Nominee Bumiputra Sdn Bhd [1989] 3 MLJ 231, HC (refd)
Sadhan Kumar Ghosh v Bengal Brick Field Owners' Association & Ors CS No 145 of 2008 (unreported), HC (folld)
SCP Assets Sdn Bhd v Perbadanan Pengurusan PD2 [2021] MLJU 623, HC (refd)
Shencourt Sdn Bhd v Prima Ampang Sdn Bhd and Ors [2011] MLJU 650; [2011] 4 AMR 449, HC (refd)
Tahan Steel Corp Sdn Bhd v Bank Islam Malaysia Bhd [2004] 6 MLJ 1, HC (refd)
Tenaga Nasional Bhd v Teobros Development Sdn Bhd [2008] 6 MLJ 391; [2008] 5 AMR 310, CA (refd)
Yukilon Manufacturing Sdn Bhd & Anor v Dato' Wong Gek Meng & Ors (No

4) [1998] 7 MLJ 551, HC (refd)

Legislation referred to

Building and Common Property (Maintenance and Management) Act 2007 (repealed by Strata Management Act 2013)
Courts of Judicature Act 1964 Schedule, para 8
Strata Management Act 2013 ss 1(7), 34(1), 56, 56(1), 59(1)(f), 76, 43, 143, Second Schedule, paras 2(4), 10, 10(2), 11(4)(a), 21, 21(2),
Strata Management (Maintenance and Management) Regulations 2015
Strata Titles Act 1985 ss 17(3), 17A

Wong Guo Bin (with Zack Lim) (Izral & Partnership) for the plaintiffs.
Raymond Mah (with Lesley Lim) (MahWeng Kwai & Assoc) for the first, 12th and 26th defendants.
Justin Voon (with Lin Pei Sin) (Justin Voon Chooi & Wing) for the second, third and seventh defendants.
Chew Chun Wei (Han & Partners) for the fourth, fifth, sixth, eighth and 16th defendants.
Tan Shang Wei (Tan & Yan Leong) for the ninth, tenth and 11th defendants.
Esther Geetha Jayaraja (with Lee Heng Siang) (Chew Das & Jayaraja) for the 14th defendant.
Vincent Ngoo (CP Ngoo & Co) for the 15th defendant.
Ang Cheong Chek (BK Soong & Ng) for the 17th, 18th, 22nd, 25th and 28th defendants.
Chong (Ranjit Ooi & Robert Low) for the 19th defendant.
Lai Chee Hoe (with Angeline Ng) (Chee Hoe & Assoc) for the 13th defendant.

Hayatul Akmal J:

[1] The first to 21st plaintiffs ('plaintiffs') are registered proprietors of parcels or individual units held under separate strata titles in Jaya One. The plaintiffs claimed that they also represent 52 other registered proprietors of parcels held under separate strata titles (Jaya One parcel owners). Over the years, parties before this court had been locked in legal conflict over issues affecting Jaya One concerning the determination and imposition of the rate of maintenance charges and sinking fund contributions from 2009 to date. It is alleged that all these years, the rate imposed is inequitable and not in conformity with the relevant legislation.

[2] Jaya One is a stratified mixed development, comprising serviced apartments, office towers, and retail units in Section 13, Petaling Jaya, Selangor. The mixed development was managed by Jaya One Joint Management Body ('JMB'), which was set up on 21 August 2009 at the first AGM of the JMB by the developer of Jaya One (D2: Tetap Tiara Sdn Bhd).

[3] The JMB, via its joint management committee, managed Jaya One development for several years before setting up the management corporation (MC). The MC was established on 8 July 2015 with the opening of Jaya One strata register under s 17(3) of the Strata Titles Act 1985 ('the STA') and maintained the strata roll under s 59(1)(f) of the Strata Management Act 2013 ('the SMA').

[4] The MC held its first AGM on 8 October 2016, and the current management committee of the MC are members elected at the fourth AGM of the MC on 20 September 2020. On 11 June 2021, the plaintiffs took out this action against the defendants, inter alia, on alleged misconducts, breach of duty, manipulations of the MC, conflict of interest, related party transactions, imposition of discriminatory rates on the charges, and the sinking fund of Jaya One, under billings, not invoicing, involving sums allegedly in excess of RM20m over the years. Efforts to determine these alleged issues internally had been futile, resulting in the suits being taken in the courts.

[5] Consequently, the plaintiffs pursued this derivative action in the name of and for the benefit of the first defendant (D1), the management corporation of Jaya One (MC), who is alleged to have failed, neglected, and/or refused to take any action or meaningful action against the principal wrongdoers, namely the second to 11th defendants, regarding alleged wrongs committed against the joint management board (JMB) and/or MC, under the chairmanship of Richard Yeoh Yong Woi (12th defendant), its secretary Paul Kam Ming Yan (13th defendant), and Leong Kwai Kuen (14th defendant). The plaintiffs have also taken action in their personal capacities against the seventh, 12th to 14th, and 17th to 30th defendants, who as members of the JMB and MC ('members of the JMB and MC') for alleged breach and/or failure to reasonably discharge their fiduciary duties including the exercise of due care and skill owed to the JMB and/or MC, to the plaintiffs and Jaya One parcel owners.

[6] The principal defendants:

(a) the first defendant (D1) is Jaya One Management Corp (MC), established under the Strata Titles Act, 1985 with its registered address at 89-P2, Block H, Jaya One, No 72A Jalan Universiti, 46200 Petaling Jaya;

(b) the second defendant (D2) Tetap Tiara Sdn Bhd, a company incorporated under the Companies Act 1965 with a registered address at Suite 2302, 23rd Floor, Wisma Tun Sambathan, No 2, Jalan Sultan Sulaiman Kuala Lumpur, 50000 Wilayah Persekutuan who was the developer of Jaya One; and

(c) the seventh defendant (D7) is Wong Chee Kooi, who, according to the plaintiffs, has a substantial indirect shareholding of 51% in D2 and was

A the first chairman of the JMB and the MC, and member of the JMB and MC from 21 August 2009 to 21 June 2019. The JMB was formed at its first AGM on 21 August 2009 to undertake the proper maintenance and management of Jaya One under the Building and Common Property (Maintenance and Management) Act 2007.

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[7] While this suit is still pending, D1 and D2 filed three different applications for determination:

(a) encl 174 (notice of application filed by D2 on 12 November 2021):
C D1 be injuncted from preventing D2 from voting in the Annual General Meeting ('AGM') or any General Meeting of the Management Corporation of the Jaya One ('MC') based on the disputed claim for alleged outstanding sewerage charges pending the disposal of this suit and other prayers.

D

(b) encl 195 (notice of application filed by D1 on 23 November 2021):
An injunction restraining D1 by its committee members, employees, property managers, and/or agents from convening, calling the AGM of the MC, pending the full and final disposal of this suit and other prayers; and
E

(c) encl 198 (notice of application filed by D1 on 23 November 2021):
An injunction restraining D1 by its committee members, employees, property managers, and/or agents from convening, calling, and/or the
F Extraordinary General Meeting ('EGM') of the MC, pending the full and final disposal of this suit and other prayers.

[8] These applications were heard simultaneously (with no objections from the parties) on 15 December 2021. After perusing the cause papers, parties' written/oral submissions, I allowed D1 applications in encls 195 and 198 and injunctive reliefs as prayed were granted with costs, but I find no merit in encl 174, and so it was accordingly dismissed with costs in the cause.
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H **[9]** Dissatisfied with the decisions:

(a) D2, D3, and D7 are now appealing against the decisions in encls 195 and 198, respectively; and

(b) D2 is now appealing against the decision in dismissing encl 174.

I For convenience and to save time, I will only prepare a single judgment for all the appeals, and my reasons are as follows:

BRIEF FACTS

[10] The plaintiffs filed the following suits against D1 and the other defendants in the High Court, and I have been apprised of the following:

(a) Originating Summons WA-24NCVC-645–03 of 2021 (which owing to substantial disputes in facts, I had it converted into a writ action on 9 December 2021 ('Suit 645')). In this suit, there is pending legal determination as to the validity of charges and contributions to the sinking fund that were levied and imposed by the MC since 2009, based on non-compliance with the provisions of the Building and Common Property (Maintenance and Management) Act 2007 ('the BCPA'), the SMA and the STA;

(b) it has been argued that the final determination of such issues would lead to the potential adjustments to charges levied on parcel proprietors, resulting in arrears or overpayments;

(c) at this juncture, the MC is not in a position to definitively determine or state with certainty which parcel proprietors are in arrears and to determine which parcel proprietors are entitled to vote during the AGM and/or EGM if convened, thus rendering the AGM and EGM wholly inappropriate and is a futile exercise given the circumstances;

(d) para 21(2) of the Second Schedule of the SMA is clear that, a proprietor 'shall not be entitled to vote if, on the seventh day before the date of the meeting, all or any part of the charges, or contribution to the sinking fund. or any other money due and payable to the management corporation in respect of his parcel is in arrears';

(e) in the present suit (WA-22NCvC-425–06 of 2021 — ('Suit 425')), there are allegations as to the arrears of charges owed by D2 (Tetap Tiara) and D3 (Bina Tetap Tiara) to the MC, which according to the MC, extends to approximately RM21m in arrears, and that too, arising from the conduct of D2 to D8, including them, having allegedly benefited from under billings and undercharging, which are issues pending determination in this action; and

(f) there are also serious concerns that the defendants are attempting to use the platform of the AGM to take hold of the MC and Jaya One based on their 52% shareholding when they have expressly stated that they intend to use the AGM as a platform to deliberate on the allegations of wrongdoings levelled against them and to put to the vote whether there is any basis of such allegations, all bearing in mind that they currently holding approximately 52% of the total share units in Jaya One.

[11] After navigating through the maze of information and lengthy submissions, and to save time and for clarity purposes, I have segregated the facts into Part A for encls 195 and 198, while Part B is for encl 174.

Enclosures 195 and 198

An injunction restraining D1 by its committee members, employees, property managers, and/or agents from convening or calling the AGM (encl 195) and an EGM (encl 198) of the MC, pending the full and final disposal of this suit and other prayers.

Events concerning the AGM (encl 195):

(a) statutory requirement of para 10 of the Second Schedule to the Strata Management Act 2013 ('the SMA') necessitates an AGM be held to table and consider the audited accounts and election of the management committee of the MC and any such matters arising. The meeting is to be held annually (not more than fifteen months shall lapse between the date of one AGM and the next) and on record, the fourth AGM of the MC was last held on 20 September 2020;

(b) owing to the ongoing civil suits, on 27 September 2021, the present MC wrote to the commissioner of buildings ('COB') seeking time to submit the audit report for the year 2020 and the fifth MC AGM for the year 2021 to a more suitable date pending the determination by the court of the civil suits, and where the MC can arrive at an accurate computation of charges applicable in accordance to the relevant statue; and

(c) in its written reply on 11 October 2021, COB was of the view that the MC should secure an injunction to postpone the AGM until the court fully determines the civil suits and said as follows:

> ... pentadbiran ini berpandangan pihak tuan dinasihatkan supaya memohon suatu Perintah Injunksi daripada mahkamah supaya menangguhkan AGM sehingga perbicaraan selesai.

Events concerning the EGM (encl 198):

(a) approximately 25 days (on 5 November 2021), after the receipt of the COB's reply, the MC received a 'notice of requisition for an extraordinary general meeting' ('requisition') from 33 registered proprietors of Jaya One, who owns a total of 383,516 share units, which is equivalent to 53% of the aggregate share units in Jaya One. The 33 registered proprietors include the second, third, 16th, 17th, and 22nd defendants;

(b) the said requisitionists proposed an EGM to deliberate and to pass the necessary resolutions (as set out in the Annexure to the said notice) for the formation of a Subsidiary Management Corporation (sub-MC) for the mixed developments of Jaya One under s 17A of the Strata Titles Act 1985; and

(c) the requisition above involves the holding of an EGM by the MC latest by 17 December 2021, as required in para 11(4)(a), Second Schedule of the SMA whereby the EGM requested to be held not later than six weeks after the requisition is deposited at the registered office.

The injunction:

(a) D1 is seeking to injunct MC by its committee members, employees, property managers, and/or agents, from convening, calling, and/or holding any AGM and EGM respectively, pending the full and final disposal of the civil suits, prompted by the said letter from the COB and the requirements of para 10, Second Schedule of the SMA; or

(b) in the alternative, an injunction is granted restraining D1, by its committee members, employees, property managers, and/or agents, from allowing motions to be voted on by members, either by a show of hand or by-poll, at any AGM or EGM that may be convened, called and/or held by D1, pending full and final disposal of the civil suits; and

(c) D2, on the other hand, seeks to injunct D1 from prohibiting it from exercising its voting rights at the general meeting of the Jaya One pending the determination of the issue of alleged arrears in sewerage charges on the part of D2.

Submissions of the first defendant (D1) and the plaintiffs

[12] D1 argued that s 1(7) of the SMA read together with para 8 of the Schedule of the Courts of Judicature Act 1964 ('the CJA'), empowers the court to extend the time and postpone the holding of an MC's AGM despite the provisions of para 10(2), Second Schedule of the SMA.

Section 1(7) of the SMA reads:

> 1 Short title, application, and commencement
>
> (7) The State Authority may if in its opinion it would not be contrary to the public interest and the interest of the purchasers to do so, suspend the operation of this Act or any provision of this Act in any local authority area or any part of any local authority area or any other area for such period as it deems fit.

Paragraph 8 of the Schedule of the CJA reads:

> Power to enlarge or abridge the time prescribed by any written law for doing any act or taking any proceeding, although any application, therefore, is not made until after the expiration of the time prescribed; Provided that this provision shall be without prejudice to any written law relating to limitation.

[13] D1 submitted that the issues in encls 195 and 198 pertain to the maintenance charges of Jaya One on a running account, ie, the entire outstanding balance refreshes every month. In the circumstances, the D1 claims are not barred by limitation, as argued. In support, D1 cited (among the cases cited):

Ekuiti Setegap Sdn Bhd v Plaza 393 Management Corp (established under The Strata Titles Act 1985) [2018] 4 MLJ 284 (CA):

> [32] Before we proceed with the main issues, we wish to state at the outset that we find no appealable error in respect of the learned judge's finding that the plaintiff's claim is based on a running account. In *Wembley Industries Holdings Bhd*, it was held:
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> > ... a running account is a single account and not a composite of its various parts. A payment made on account of a running account is in respect of the entire outstanding balance, with the result that time is extended for the whole of the debt. It appears, therefore, that a running account will become statute-barred only if more than six years elapse between the supply of the last article under it and the last payment on account.
>
> [33] Consequently, we agree with the learned judge that the plaintiff's claim is not barred by limitation under s 6 of the Limitation Act 1953. We also agree that s 45(3)(c) of the STA allows the plaintiff to charge and claim interest of 10%pa for the late payment of the maintenance charges.

Perbadanan Pengurusan Anjung Hijau v Pesuruhjaya Bangunan Dewan Bandaraya Kuala Lumpur [2017] 11 MLJ 554 (HC):

> [26] Thus, I am compelled to the view that since under s 1(7) of the Act the defendant has the requisite power to suspend the operation of the Act in whole or in part, and for any area or duration of time, in the public interest or the interest of purchasers, the stand taken in the defendant's letter dated 5 October 2016 that they have no power to adjourn the AGM is plainly wrong.
>
> [27] As a matter of law, they do have such powers, and given the circumstances obtaining the Anjung Hijau Apartment, the defendant ought, in my view, to have exercised their power to suspend the operation of the Act until such time that litigation matters between the feuding factions are resolved or determined by the courts.
>
> [28] Since the defendant is oblivious to their own powers, it now falls upon this court to consider whether to exercise its power to extend the time as prayed for by the plaintiffs in the originating summons. The fact that defendant had asked the plaintiff to make an application to the court for the appropriate order is a tacit

recognition that there are compelling grounds for an adjournment of the AGM. The other compelling factor here is that defendant had delayed in their response to the plaintiff, and had they responded promptly, the plaintiff may have even proceeded with the AGM before 8 August 2016, and the present originating summons may have been unnecessary. Therefore, it is unfair for defendant to now oppose the plaintiff's application. But to be fair to defendant, they are only opposing the application on the question as to whether there is power under the Act to postpone the AGM.

[29] As such, taking all of the surrounding circumstances and in light of my finding that there is power under s 1(7) of the Act for defendant to suspend the application of the Act to the Anjung Hijau Apartment, it is my ruling that based on s 1(7) of the Act read together with para 8 of the Schedule of the Courts of Judicature Act 1964, the plaintiff's application ('encl 1') should as a matter of fairness and justice, be allowed.

[14] D1 submitted that *Perbadanan Pengurusan Anjung Hijau* is similar to the present case, with ongoing litigation, and would be in the interest of justice that D1 be injuncted from holding the AGM and the EGM as it concerns issues of facts and law that would impact the parcel proprietors' eligibility to vote. The SMA 2013 is a social legislation, and it is within the purview of this court to grant the injunctions sought by D1 to safeguard the interests of the community and parcel proprietors of Jaya One. In support D1 cited:

Innab Salil & Ors v Verve Suites Mont' Kiara Management Corp [2020] 12 MLJ 16 (FC):

[25] A statute is said to be a 'social legislation' when Parliament passes the statute for a beneficent reason with the intention to ease or facilitate the affairs of, or protect a certain section or group of persons (see *Hoh Kiang Ngan v Mahkamah Perusahaan Malaysia & Anor* [1995] 3 MLJ 369; *Veronica Lee Ha Ling & Ors v Maxisegar Sdn Bhd* [2011] 2 MLJ 141).

[26] The SMA 2013 is, without doubt, a social legislation. It was passed to facilitate the affairs of strata living for the good of the community or owners of the strata title. Being social in nature, the provisions of the SMA 2013, which safeguard community interests ought to receive a liberal interpretation and not a restricted or rigid one. Accordingly, where two different interpretations are possible, it is the one that favors the interest of the community over the interest of the individual that is to be preferred. This is in line with the aforementioned decisions in *Ang Ming Lee* and *Hoh Kiang Ngan*.

The filing of encl 195 was under the COB's advice (dated 11 October 2021) as set out above. The AGM and EGM cannot be held without determining the parcel proprietors' voting eligibility. In the circumstances, the court is empowered to injunct the holding of the AGM and or the EGM until the legal and factual issues between the parties are determined.

[15] In support of D1 (in encls 195 and 198), the plaintiffs asserted:

(a) there are serious allegations as to the arrears of charges owed by D2 (Tetap Tiara) and D3 (Bina Tetap Tiara), which runs into the millions allegedly caused by under billings and undercharging. They had created the situation to insist on the calling of the AGM and/or EGM and subsequently vote to exonerate themselves with the majority vote they presently hold. These principal defendants proposed to use the AGM to take control of the MC and Jaya One based on their 52% shareholding. If this is not addressed, it would be detrimental and prejudicial to the plaintiffs and other parcel proprietors in Jaya One; and

(b) accordingly, it would be fair and just for the AGM and EGM to be injuncted to maintain and preserve the status quo. D2 cannot now insist for the AGM and EGM to proceed and to vote until and unless the court has entirely determined the issues of charges and contribution to the sinking fund, which will eventually determine the true extent of the principal defendants' arrears in charges and consequently, their right to vote. To permit otherwise would allow the wrongdoers to take advantage of their wrongdoings by voting at the AGM and EGM. The plaintiffs cited *Tahan Steel Corp Sdn Bhd v Bank Islam Malaysia Bhd* [2004] 6 MLJ 1 (HC), Abdul Malik J said that since injunctions are a discretionary remedy, parties must come to this court with clean hands, for he who comes to equity must come with clean hands. The court will not come to his aid when there is a pending breach of pre-existing one.

[16] By referring to requirements for injunction as decided in *Keet Gerald Francis Noel John v Mohd Noor bin Abdullah & Ors* [1995] 1 MLJ 193 (CA), D1 argued that there are serious issues to be tried that warrant an injunction restraining the AGM and EGM pending the full and final disposal of the suits. D1 takes the position that the maintenance charges and sinking fund contributions ('charges') should be calculated on a share unit basis; and the JMB and MC are only allowed to determine and impose one single rate of charges (in proportion to the share units of each parcel) for all types of parcels. charges should be calculated on a share unit basis. The legislation on the imposition and collection of charges mandates that such collection is calculated on a share unit basis and not the inequitable rate as presently imposed on the parcel owners of Jaya One. In the circumstances, the JMB and MC of Jaya One must calculate the charges since the establishment of the JMB on 21 August 2009 on a share unit basis (and not on a per square foot basis). Its failure to do so for the years 2009 to 2021 constitutes a breach of the powers of the JMB and MC under the BCPA and/or the SMA and, consequently, null, void, and illegal. One rate of charges shall be determined and imposed for all types of parcels. D1 cited in support (among the cases cited):

Perbadanan Pengurusan Endah Parade v Magnificent Diagraph Sdn Bhd [2013] 6 MLJ 343 (CA):

> In this respect, we agree with the proposition advanced by the respondent that the management corporation as a body incorporated under statute can only levy payments which are mandated by the statute. It will be ultra vires its powers for the management corporation to levy payments which are not sanctioned by the statute.

Muhamad Nazri bin Muhamad v JMB Menara Rajawali & Anor [2020] 3 MLJ 645 (CA), upheld by the Federal Court (Civil Appeal No 08(f)-442–11 of 2019(W):

> [27] We, therefore, take the view that on a proper construction of the said sections, the JMB is required to determine and fix only a single rate of maintenance charges to be applied to all types of parcels in proportion to the allocated share units. Accordingly, we do not think that the JMB's resolution in fixing different rates for different types of parcels conforms with ss 21 and 25 of the SMA 2013.

D1 submitted that although the *Menara Rajawali*'s case concerned a joint management body, D1 submits that the same principle applied to management corporations and cited (among the cases):

Amity One Sdn Bhd v Binjai Residency Management Corporation [2021] MLJU 200 (HC):

> [29] Sections 21 and 25 of SMA 2013 impose duties and powers upon a JMB which are similar to duties and powers imposed upon a management corporation under ss 52 and 59 of SMA 2013. Accordingly, the ratio decidendi of *Muhamad Nazri* should equally apply to a management corporation as well. As such, I answered Question 11 in the affirmative.

SCP Assets Sdn Bhd v Perbadanan Pengurusan PD2 [2021] 1 MLJU 623 (HC):

> [61] Having considered the parties' submissions and the case authorities and the relevant statutory provisions, this court agrees with the parties' common position and answers Question 4(i) in the negative, namely, the management corporation is not allowed to impose or levy different rates of service charges or sinking fund contributions in respect of different parcel owners for the same type of use of the parcels.

[17] D1 asserts that as no subsidiary management corporation(s) has been created in Jaya One and limited common property by way of comprehensive resolution has not been properly designated according to s 17A of the STA, the JMB and MC are only allowed to determine and impose one single rate of charges (in proportion to the share units of each parcel) for all types of parcels. D1 further argued that due to the ongoing civil suits, it is unable to ascertain which proprietors are in arrears and to determine which proprietors are entitled to vote on motions tabled during the AGM and EGM, as required under para 21, Second Schedule of the SMA. D1 further submitted that if the declarations in Writ 645 is allowed, D2 and D3 would be in significant arrears of their charges to approximately RM16,831,504 and if an AGM or EGM is convened and the plaintiffs or D1 succeeds in proving that the D2, D3, and D7 and/or its subsidiary or related companies (with common directors and/or

shareholders) are indeed in arrears, the motions that were passed in the AGM or EGM that were voted on or resolved in favor of D2 and/or its subsidiary or related companies would subsequently be invalid or unlawful as a consequence. Some actions taken according to the invalid resolutions resolved in the AGM or EGM may be irreversible and would cause D1 to suffer severe prejudice where damages would not be an adequate remedy.

[18] D1 submitted that if an AGM is convened, likely, D2, D3, and/or D7 (and/or their other related companies and individuals) will resolve to change the current makeup of the MC to abandon the civil suits that have been filed against them. Section 56 of the SMA 2013, and under para 2(4), Second Schedule of the same Act, provides that all members of the MC shall be elected at the AGM. It is a fact that D2, D3, and D7 and/or its subsidiary or related companies own a total of 383,516 share units, which voting rights are equivalent to 53% of the aggregate share units in Jaya One can be exercised by-poll. There is nothing before the court would say or suggest that they will not exonerate themselves in the circumstances. There are also no materials before the court to show how they would be prejudiced if encls 195 and 198 are allowed, and the AGM or EGM is held at a later date. And no proprietors will be prejudiced if the AGM and EGM are delayed or postponed. Parties will be at liberty to table and vote on the motions presented in the AGM and EGM after the full and final disposal of the civil suits. Hence, the contention that parcel proprietors will be prejudiced as their statutory rights are curtailed is misguided and without basis. D1 concluded that they had made full and frank disclosures to the court of all pertinent facts and circumstances in the present case, and undertakes to pay damages to the injured party if the court subsequently found that the injunction should not have been made. Once the Civil Suits (425 and 645) are entirely and finally disposed of, the voting rights of each parcel proprietor of Jaya One can be determined with accuracy, and a fair, just, and equitable solution can be achieved. The balance of convenience clearly lies in favor of granting the injunctions. In the circumstances, D1 prays for encls 195 and 198 to be allowed with cost.

Submissions of D2, D3 and D7 (referred as the defendants)

[19] The plaintiffs has been filing multiple suits ie Suit 645 (converted from OS 645) which was filed in March 2021 and the present Suit 425 was filed in June 2021. They and their solicitors had been engaging in various Zoom sessions with parcel owners (without the proper channel of a general meeting) to raise funds and prejudice the said defendants while the cases are pending in court. All this with D1 blessings (exh F: encl 217). The whole objective is monetary and to place significant pressure on the defendants (WhatsApp message distributed to parcel owners of Jaya One by Stacie Tan Siew Ching (director and majority shareholder of first plaintiff) dated 19 October 2021 which stated, inter alia:

> It is therefore of great importance that we continue to maintain the momentum and pressure of both the OS and writ action. The sum of RM21,014,251.63, if successfully recovered for the MC, would be of benefit to us all and can be used to reduce our service charges and contribution to sinking fund in years to come.

[20] After Suit 425 was filed, the defendants promptly via encl 42 applied to strike it out on the basis that the plaintiffs had no legal standing to file this suit since the prerogative lies with the MC (D1) under s 143 of the SMA after calling a general meeting to sanction the legal action. D1 reacted by filing a co-defendant action seeking contribution for damages against D2, D3, D4, D5, D11, and/or D15, which in substance has similar reliefs in Suit 425. If encl 42 is allowed, Suit 425 and D1 co-defendant action will be struck off, forcing the plaintiffs to apply to stay encl 42 pending the disposal Suit 645. Stay was granted on 18 October 2021. In good faith, the defendants did not object to the stay on the belief that there be no other development until the court duly determines encls 42 and 93. The defendants filed encl 179 in the meanwhile to stay encl 93 since this would follow pending disposal of encl 42. At that time, the said defendants did not know of:

(a) encl 187 (the plaintiffs' application to appoint an administrator for Jaya One MC: D1 under s 76 of the SMA pending determination of Suit 645;

(b) encl 195 (injunct AGM in Suit 425); and

(c) encl 198 (injunct EGM in Suit 425).

[21] During the case management ('CM') on 9 November 2021, both the plaintiffs and D1 merely wanted to move ahead with encls 187, 195, and 198, ignoring the defendants' encls 42 and 93. Due to alleged urgency, D1 and the plaintiffs secured a hearing for encls 195 and 198 on 15 December 2021. Both the plaintiffs and D1 have conspired against the defendants. As a result, they indulge tactical manoeuvers, which in effect turn the proceedings into a 'circus' and encls 195 and 198 are part of this circus. The said defendants are being 'attacked' on both fronts. The chronology of this collaboration between them is set out in D7's supplementary affidavit (2) found in exh 'G' of encl 217 (particularly pp 37–61 of encl 221).

[22] In a nutshell, it was argued that, like in Suit 645, the plaintiffs in this Suit 425 alleged that the defendants controlled D1 and/or its committee members. This allegation is the basis of their 'derivative action' herein. In both suits, instead of being 'neutral,' D1 supported the plaintiffs by filing a co-defendant's action to duplicate the reliefs prayed for by the plaintiffs after D2, D3, and D4 filed their striking out applications. D1 is on the offensive in both suits to prejudice D2, D3, and D4 and the said defendants in this suit. D1 and the plaintiffs propose to injunct the defendants from exercising their

voting rights in the AGM with a sudden excessive billing of RM1.4m in sewerage charges, indicating D2 is in arrears and cannot vote. D2 filed encl 174 to injunct D1 from preventing this with an offer to place the disputed arrears in court. The plaintiffs wrote a letter dated 9 November 2021 (exh H, p 230: encl 221) that they wish to withdraw prayer (e) of Suit 645 and somehow transfer the said prayer (e) to this Suit 425. D1 followed suit to inform the court they wish to withdraw prayers (5) and (6) of their co-defendant's action in Suit 645 in line with the said prayer (e) and want to apply for an 'interim rate' instead vide D1 affidavit on 'interim rate' filed in the said Suit 645 (exh I, pp 236–320: encl 221). The plaintiffs and D1 also conspired to enter into a consent judgment for prayers (a)–(d) of Suit 645 to exclude the other said defendants. D2, D3, and D4 in Suit 645 had to file a notice of application to prevent it from happening (exh J, pp 325–382: encl 221). It is trite that conspiracy need not be proven by direct evidence, but it can be by circumstantial evidence if it can be inferred. The defendants cited in support:

MGG Pillai v Tan Sri Dato' Vincent Tan Chee Yioun [1995] 2 MLJ 493 (CA) at p 515:

> Conspiracy is a tort that is not always capable of proof by direct evidence. Like so many other facts, an agreement to do an unlawful act or a lawful act by unlawful means may be established by the evidence of circumstances from which such an agreement may be inferred: *Barindra Kumar Ghose & Ors v The Emperor* (1909) 14 CWN 1114. It is axiomatic that there must be proof and not mere conjecture. In the present case, there was sufficient evidence from which a conspiracy could be properly inferred. The learned judge was, therefore, right in drawing the inferences he did. In this state of affairs, it is not surprising that the ground of appeal directed upon this point was not pursued.

[23] The defendants further submitted that the plaintiffs and D1 are fearful that in the upcoming AGM/EGM, the committee members of D1 (who are presently allied to them) will be voted out. By injuncting the holding of the AGM and/or EGM, they will continue to keep the parcel owners of Jaya One as a whole in the dark about this suit and avoid any proper discussion in a general meeting, and it renders encls 195 and 198 an abuse of process. The defendants cited in support:

Jasa Keramat Sdn Bhd & Anor v Monatech (M) Sdn Bhd [1999] 4 MLJ 637(CA) at pp 645–647:

> Since the circumstances in which the court's process may be abused are varied and numerous, the categories of such cases are therefore not closed. Whether the institution of an action or its continuation or a step taken therein amounts to an abuse of process depends upon particular and individual circumstances. Where an action is found to be an abuse of the court's process, it may be struck out or stayed. If it is too late to do this, the party aggrieved may bring an action based upon the tort of abuse of process. Sometimes abuse can be shown by the very steps being taken in the courts ... At other times, the abuse can only be shown by extrinsic evidence that

the legal process is being used for an improper purpose. On the face of it, in any particular case. the legal process may appear to be entirely proper and correct.

[24] The defendants submitted that this suit has nothing to do with the issue of AGM or EGM. The statement of claim will show that the alleged causes of action herein have got nothing to do with any alleged 'power struggle' or 'internal tussle' within D1 or the AGM/EGM. It is trite law that an injunction application alone is not a cause of action. The defendants cited in support (among the cases cited):

Shencourt Sdn Bhd v Prima Ampang Sdn Bhd and Ors [2011] MLJU 650; [2011] 4 AMR 449:

> [84] It is trite law that before granting an interlocutory injunction, there must be a pre-existing cause of action, ie, there must be the main suit. An interlocutory injunction is ancillary to a cause of action. This has been explained in the cases of *Kanawagi Seperumaniam v Penang Port Commission* [2001] 5 MLJ 433; [2002] 1 AMR 195; *American Cyanamid Co v Ethicon Ltd* [1975] AC 396.

[25] Enclosures 195 and 198 are improper applications where D1 in both applications seeks to injunct itself from holding the AGM and EGM. The issues in relation to such AGM/EGM are simply not pleaded, and parties are bound by their pleadings. D1 should not be allowed to make out a 'new case' based on an injunction to prevent an AGM/EGM. These items happening after the date of the writ can never be pleaded in the writ and statement of claim and can never form part of the pleaded case nor any alleged cause of action herein and pray that encls 195 and 198 to be dismissed. The defendants cited in support (among the cases cited):

Kay Synergy Sdn Bhd v Malayan Banking Bhd [2007] 6 MLJ 159 at p 184:

> [33] It is a well-established principle of law that a case must be decided on issues raised by the pleadings which bind the parties. A party is bound by his pleadings, and his case is confined to the issues raised on the pleadings. The court is not entitled to decide a suit or matter on which the parties have raised no issue.

[26] The defendants also argued that this issue of injuncting an AGM and/or EGM is a separate substantive issue that ought to be filed in a different suit, even if D1 has the locus standi and/or any cause of action to do so (which are denied). The relevant parties and stakeholders, including the commissioner for building (COB) and appropriate parcel owners of Jaya One, should be made parties to the applications in encls 195 and 198. The COB wrote a letter to D1 on 5 November 2021 and 15 November 2021 (exh 'C' of encl 217, particularly on pp 9–12 of encl 219) on the EGM and that the AGM must be statutorily called. The domestic remedy of calling a general meeting to involve all parcel owners to discuss is not exhausted. There is a basic and fundamental breach of

natural justice, and there ought to be no hasty injunction to injunct an AGM/EGM which affects all rights of all parcel owners who are not yet heard. In *Perbadanan Pengurusan Anjung Hijau v Pesuruhjaya Bangunan Dewan Bandaraya Kuala Lumpur* [2017] 11 MLJ 554 (HC), the application to postpone the AGM was via a fresh suit, ie, an originating summons with the COB made a party to that Suit as a defendant. Section 34(1) of the SMA and its Regulations thereof requires D1 to hold the AGM under sub-para 10(2) of the Second Schedule of the SMA once a year and not more than 15 months after the last AGM, and failure to do so is an offence under s 34(2). Although D1 referred to the COB letter dated 11 October 2021 (exh YYW6 of encl 196) that D1 should apply to the court for an injunction, this does not mean that such an application is correct.

[27] D2 had filed a separate suit via OS WA-24NCVC-2310–11 of 2021 against D1 on 17 November 2021 to compel it to hold the AGM before encls 195 and 198 were filed. There is already a proper forum for this, which D1 ignored. There is no basis nor locus standi for D1 to injunct itself from calling an AGM/EGM. The calling of an AGM is a statutory right of the defendants and other parcel owners and cannot be usurped by the court. The defendants disagree with the case of *Anjung Hijau*(HC), that para 8 of the CJA empowers the court to extend the time for the calling of an AGM, especially when the Strata Management (Maintenance and Management) Regulations 2015 makes it an offence for the MC not to hold the AGM. D1 cannot injunct itself from its statutory duty, especially when it involves the commission of an offence.

[28] There are no merits in encls 195 and 198. The arguments by D1 that it is presently unable to ascertain which proprietors are in arrears and which proprietors are entitled to vote without resolving the issues in the civil suits (Suits 645 and 425). The voting by proprietors and/or parcel owners is based on share units. The status quo currently in respect of charges and sinking fund levied for the past 12 to 13 years from 2009 is based on rates approved in general meetings of the joint management body ('JMB') and/or management corporation ('MC'). The attempt by the plaintiffs and D1 to change this status quo vide the Suit 645 has not yet been allowed by the court, and neither has any claim or relief in the civil suits herein been allowed by the court. The current status quo, including the holding of the AGM and/or EGM and any right to vote therein, should be preserved while the plaintiffs and D1 had yet to prove their claim. They should not be allowed to use the pending lawsuits to recalculate charges and sinking funds for the last 12 to 13 years as a basis to stop any future AGM and/or EGM. The report and financial statements of the MC as of 31 December 2020 has been finalized and circulated to all the committee members since or about 30 August 2021 (exh D: encl 217 (particularly pp 17–45 of encl 219).

[29] In the circumstances, there are no serious issues to be tried. There is also no full and frank disclosure of all material facts by D1. The balance convenience cannot favor the injunctions prayed. The bare allegation of no prejudice to proprietors of Jaya One does not make sense when their statutory rights to an AGM and EGM are being curtailed. Such damage caused is irreparable and/or cannot be duly compensated by damages alone. The defendants cited in support (among the cases cited):

Matang Holdings Bhd & Ors v Dato Lee San Choon & Ors [1985] 2 MLJ 406:

> Upon these facts, it does not seem to me that if the Annual General Meeting of February 3, 1985, were to proceed, it would render the Civil Suit herein nugatory as claimed by the plaintiffs. On the other hand, it would be doing substantial justice to all the shareholders for the opportunity to re-elect the plaintiffs as directors by the whole assembly of members of the company as opposed to the limited number of members present on December 19, 1984. On the facts of this case, in my view, the application for injunction also fails ...

[30] The undertaking as to damages by D1 does not make sense, primarily when D1 seeks to injunct itself. If there are any damages, D1, ie, all parcel owners will bear the burden, although they are neither privy nor parties to this suit nor consulted in a general meeting. There is no 'power struggle' or 'tussle' save as that created by the plaintiffs and D1 when D1 refused to recognize Mr Charles Wong as a committee member in place of Lee Chee Meng. D1, Yeoh Wong Woi and those committee members aligned with him unilaterally decided to hold their committee meetings without the other three valid committee members. SCM, who hosted the meeting, was promptly 'sacked' and replaced with another property manager called 'VPC.' The COB has clarified this issue via its letter dated 7 December 2021 (exh K, p 79 of encl 246), where it clearly stated that Mr Charles Wong had been validly appointed as a representative of D3 (Bina Tetap Tiara Sdn Bhd), who is a valid management committee member of D1 duly elected under the previous AGM. Therefore Mr Lee Chee Meng is no longer a valid representative. Yeoh Wong Wai, however, still insists that Lee Chee Meng is the valid representative. The alleged 'power struggle' or 'tussle' is not real and another sham allegation thrown in to justify an application for an administrator or stop any AGM/EGM. It is trite law that a party cannot take advantage of their wrong.

[31] The allegation for the need to recalculate charges and sinking fund from 2009 till 2021 to determine the arrears and who can vote is a premature and frivolous reason to avoid the calling of an AGM and EGM when this is a subject matter under Suit 645 that is yet to be ventilated. D1 kept insisting on an 'interim rate' based on the single rate as if it had already won the case and is entitled to this as of right. This proposed 'interim rate' is in Suit 645 (which was proposed recently to be a new prayer after purportedly dropping prayer (e) and related prayers in Suit 645) and not in this Suit 425.

[32] This withdrawal and addition of new prayers without a formal application to amend is being challenged in Suit 645. It is a new cause of action not pleaded anywhere in this Suit 425. D1 did not come with clean hands, and the court will not lend assistance to such a party. Based on the above arguments, the defendants prayed that encl 195 and 198 be dismissed with costs.

Enclosure 174

[33] D2 filed encl 174 for injunctive relief, and for easy reference, I reproduced as follows:

(a) That the 1st defendant be injuncted from preventing the 2nd defendant from voting in the Annual General Meeting or any General Meeting of the Management Corporation of the Jaya One based on the disputed claim for alleged outstanding sewerage charges pending the disposal of the 1st defendant's Co-defendant Claim pursuant to amongst others paragraph 17 of the 'The 1st defendant's Notice to Claim Against The 2nd, 3rd, 4th, 5th, 6th, 7th, 8th and/or 16th defendants for Damages, Contribution and/or Other Reliefs or Remedies' dated 22/9/2021 ('the said 1st defendant's notice of claim') against the 2nd defendant;

(b) Pending the disposal of the 1st defendant's Co-defendant Claim pursuant to amongst others paragraph 17 of the said 1st defendant's notice of claim dated 22/9/2021 against the 2nd defendant, the 2nd defendant shall deposit the disputed Claim of alleged outstanding sewerage charges of RM1,458,061.44 into Court and/or as directed by this Honourable Court;

(c) Pending the disposal of the 1st defendant's Co-defendant Claim pursuant to amongst others paragraph 17 of the said 1st defendant's notice of claim dated 22/9/2021 against the 2nd defendant and while the issue is pending before the Court, the 1st defendant be restrained from issuing further Invoices for sewerage charges;

(d) The costs of this application be costs in the cause unless contested by the 1st defendant, in which case the costs shall be paid by the 1st defendant to the 2nd defendant;

(e) Such further and/or other relief to the 2nd defendant as this Honourable Court thinks fit.

Submissions by the second defendant (D2)

[34] The plaintiffs and D1 are colluding and conspiring in this suit, with a concerted effort via encls 187 (appointment of administrator), 195 (injunct AGM), and 198 (injunct EGM) to avoid and scuttle the AGM and/or the proper convening of the said AGM. There is a concerted effort to block D2 from voting in the upcoming AGM by belatedly raising the purported sewerage charges invoices (encl 217, particularly at encl 221, p 50–51). Shortly

after the meeting on 12 June 2021, D1 started issuing all kinds of belated invoices to D2 and D3. D2 was hit with RM1.4m in sewerage charges beginning on/or about 11 October 2021. As a result, D2 had to file for an injunction on 12 November 2021 in encl 174 to ensure its right to vote is not prejudiced. While this suit is ongoing, the plaintiffs and D1 keep trying to change the status quo and/or infringe on fundamental rights of parties via new applications (encls 187, 195, and 198) and also via issuing invoices after this suit had been filed and after they filed their alleged D1 co-defendant action against the defendants. The defendants applied to strike out this co-defendant action in encl 93. In its effort to derail D2, D1 relies on para 21(2) of the Second Schedule of the SMA whereby D2 is not entitled to vote if any part of the charges and/or monies is due and payable to the management corporation are 'in arrears.' It is not yet proven that there are such sewerage charges in arrears since it is still before the court and pending determination. This is an abuse of process that the court should prevent. D2 cited in support the case of *Raja Zainal Abidin Raja Tachik & Ors v British American Life & General Insurance Bhd* [1993] 3 MLJ 16.

[35] D2 further argued that the invoices belatedly issued by the D1 against D2 are invalid. It would be unfair and prejudicial to D2 if it is precluded from participating and voting at the coming AGM based on the disputed claim for alleged outstanding sewerage charges (which were never raised until after the filing of this suit herein). Although D1 had mainly duplicated the plaintiffs claim against D2, D3, and D7, it had also added a prayer against D2 in para 17 of the said D1 notice of claim dated 22 September 2021. D2 proposes to deposit the disputed outstanding sewerage charges of RM1,458,061.44 in court and/or as directed by this court. D1 position is therefore secured, and they will not be prejudiced should this court agree with their claim later. On the other hand, D2 will be severely prejudiced if it is wrongly prevented from voting at the AGM and deprived of its rights as a parcel owner. There is no prejudice to D1, which cannot be compensated, whereas D2 will suffer irreparable harm if its voting rights are curtailed. Therefore, the interests of justice and balance of convenience favor the interim injunction prayed for in encl 174.

[36] The defendants submits that they have satisfied the criteria set in *Keet Gerald Francis Noel John v Mohd Noor bin Abdullah & Ors*, that on the totality of the facts presented discloses a bona fide serious issue to be tried. In the circumstances of the case, justice lies in granting the injunction to preserve the status quo of the parties and keep intact the voting rights of D2 from being curtailed by D1, or else it will suffer irreparable harm. The balance of convenience favors D2, and an injunction should be granted. In *Lim Hean Pin v Thean Seng Co Sdn Bhd & Ors* [1992] 2 MLJ 10; [1992] 2 CLJ 828, held:

> The right to vote is one of a member's fundamental rights. Excluding the proxy and thus preventing the plaintiff from exercising his statutory right to vote was not a mere procedural irregularity curable by the majority but an illegality since it was an abuse of power or oppression of the minority, which vitiated and therefore rendered null and void the AGM and all resolutions passed thereat ...

D2 asserts that it had paid the sewerage charges based on the pre-existing charges imposed since 2015, and there are no arrears as claimed by D1, which only came about after the filing of this suit. A claim for sewerage charges must be backed by invoices issued before the claim. In this case, there is no invoice to support the claim by D1. The claim of the alleged outstanding sewerage charges is from 2015 and even includes periods outside the limitation period (ie, more than six years ago). Paragraphs 168 to 172 of D1 defense does not refer to any invoices, thereby not supporting any cause of action against D2. According to the doctrine of relation back, D1 cannot improve their claim by facts that purport to transpire after the pleading date. D2 cited in support (among the cases cited):

Lian Keow Sdn Bhd & Anor v Overseas Credit Finance (M) Bhd & Ors [1982] 2 MLJ 162 (FC):

> An interlocutory injunction is a temporary and discretionary remedy. To consider whether to grant it or refuse it, the court is not concerned with the chances of success or failure of the appellants in proving their civil suit at the forthcoming trial. Neither is the court's function to evaluate the evidence and materials before it for that purpose. The court is simply concerned with what it has to do in the meantime to protect the right of the parties so that no irreparable injury would be caused to either of them.

Based on the above arguments, D2 submitted that it had fulfilled the criteria for granting an interlocutory injunction and prayed for order in terms.

D1 and the plaintiffs' submissions opposing encl 174

[37] Before the issues and allegations were raised by the plaintiffs in this Suit 425, D1 (represented by the current committee members) was not aware that such an amount (RM1,458,061.44) for sewerage charges was outstanding. This was because the property manager at the material time was D4. D4, the property manager of Jaya One at the time, is a wholly-owned subsidiary of D2 with common shareholders and directors in D2 and D3, D7, and D8. The JMB and D1 relied on the D4 to execute their duties properly. However, D4 acted for and in the interest and benefit of D2, D3, D4, D7, and/or D8 and did not issue the relevant invoices for sewerage charges. To avoid repetition, in opposing encl 174, the plaintiffs relied on their arguments in encls 195 and 198 above. The invoices for sewerage charges are based on the motion tabled by Charles Wong (D8) that was tabled and approved by majority votes during the EGM of the JMC held on 4 July 2015 ie 'To approve the imposition of monthly contribution known as 'monthly sewerage and oil & grease treatment

service charge (RM45,000)'. These 'monthly sewerage and oil & grease treatment service charge' ('sewerage charges') were to be effected from 1 July 2015. D2 had voted in favor of the imposition and rates of the Sewerage Charge during the said EGM. Perusing Suit 425, D1 discovered that since the sewerage charges were implemented on 1 July 2015, D2 had only made payment of RM3,320 regarding such sewerage charges and that invoices had yet to be issued to D2 for the sewerage charges by D4. D1 then took steps to issue the invoices dating back to July 2015, which D4 should have issued to D2 for each respective period.

[38] D1, in carrying out its duties and responsibilities under the SMA and as approved by the EGM on 04 July 2015, issued the invoices for each respective period to include them in D1's accounting records to reflect the amounts due and owing by D2. On 11 October 2021, D1 issued a letter to D2 with Invoice No PMIS0000020432 and Invoice No PMIS0000020433. The particulars of the outstanding amount of the sewerage charges totaling RM1,434,000 (inclusive of SST). Subsequently, D1 was advised that billing should be issued on the individual parcels. As such, D1 issued its letter dated 09 November 2021 to D2, giving Credit Note No PRCN000000096 and PCRN000000097 dated 8 November 2021 as the invoices in the 11 October 2021 letter was billed on a lump sum basis of D2 186 parcels in 'the school,' and that the billing is now individually based on D2 parcel numbers. SST is charged effective 1 May 2019 following the approval letter from Jabatan Kastam Diraja Malaysia dated 30 April 2019 (exh WCK3, pp 300–491: encls 176–177). It is irrefutable that since the sewerage charges were implemented on 1 July 2015, D2 has yet to make any payment (except RM3,320) to D1 regarding such charges for D2's parcels. Before the appointment of SCM Property Services Sdn Bhd (the property manager appointed by D1 after the resignation of D4), all previous invoices issued by D1 were prepared by D4. The failure by D4 to properly discharge its duties to issue the invoices for sewerage charges to D2 is evident that it was not acting in the interest of D1 but instead for the benefit of D2. Seemingly, there was unlawful collusion between D4 and D2 (including their common shareholders and directors in D2, D3, D7, and D8), which had prejudiced D1.

[39] The limitation period issue does not apply as the outstanding sewerage charges, like outstanding management charges, are part of a running account. In the circumstances and based on the above arguments, D1 and the plaintiffs pray that encl 174 be dismissed with cost.

THE LAW

[40] An interim injunction may be granted if the requirements in *Keet Gerald Francis Noel John v Mohd Noor bin Abdullah & Ors* is met. The Federal

Court in *Jaya Sudhir a/l Jayaram v Nautical Supreme Sdn Bhd & Ors* [2019] 5 MLJ 1; [2019] 7 CLJ 395(FC), overturned the Court of Appeal's decision and reinstated the injunction granted in the High Court. It was held that the applicable test for the grant of interim injunctions is the '*Keet Gerald Francis* test':

(a) there must be a serious question to be tried:

The applicant must satisfy the court that there is a serious question to be tried. That is, the claim is not frivolous or vexatious. The court is not required to decide on the merits of the claim. Instead, it will consider whether the issues are serious enough to warrant a trial.

(b) damages not an adequate remedy:

If damages are an adequate remedy and the defendant is financially able to pay such damages, an interim injunction will not be granted regardless of how strong the plaintiff's claim appears to be. The onus is on the applicant to establish that damages are not an adequate remedy (see: *Gerak Indera Sdn Bhd lwn Farlim Properties Sdn Bhd* [1997] 3 MLJ 90; [1997] 4 AMR 4244 (CA)). If the court is in doubt as to the adequacy of damages, it should proceed on the basis that damages are not an adequate remedy and move to consider the balance of convenience (see *Tenaga Nasional Bhd v Teobros Development Sdn Bhd* [2008] 6 MLJ 391; [2008] 5 AMR 310 (CA)).

(c) the balance of convenience lies in favor of the injunction:

The test of balance of convenience is that the court should take whichever course that appears to carry the lower risk of injustice (see *Alor Janggus Soon Seng Trading Sdn Bhd & Ors v Sey Hoe Sdn Bhd & Ors* [1995] 1 MLJ 241 at p 270; [1995] 1 AMR 549; [1995] 1 CLJ 461 at p 488 (SC)):

(i) the risk that if the interlocutory injunction is refused and the plaintiff succeeds at trial, the harm, inconvenience, and monetary loss suffered by the plaintiff cannot be adequately compensated by damages; and

(ii) the risk that if the interlocutory injunction is granted and the plaintiff later fails at trial, the harm and inconvenience suffered by the defendant is not compensable (see *Tenaga Nasional Berhad v Teobros Development Sdn Bhd*). Public interest has been a relevant consideration in weighing the balance of convenience between the parties.

(d) the applicant can meet its undertaking in damages financially:

The applicant is required to provide an undertaking as to damages to mitigate the 'obvious risk of unfairness' to the party against whom an injunction is ordered at a time when the issues have not been entirely

determined and when usually the merits have not been thoroughly ventilated. Failure to provide an undertaking or the inability to pay damages could be adverse to the applicant (see *Jaks Island Circle Sdn Bhd v Star Media Group Bhd & Anor for another appeal* [2020] 10 MLJ 386; [2019] 6 AMR 638; [2020] 1 CLJ 839):

(i) some evidence of the ability to give effect to an undertaking as to damages should be included when the financial ability is challenged (see *Asia General Equipment and Supplies Sdn Bhd & Ors v Mohd Sari bin Datuk Okk Hj Nuar & Ors* [1998] MLJU 423; [1998] AMEJ 0027; [1998] 1 LNS 5 (HC); *Yukilon Manufacturing Sdn Bhd & Anor v Dato' Wong Gek Meng & Ors (No 4)* [1998] 7 MLJ 551); and

(ii) the inability of the plaintiff to give a viable undertaking as to damages is not a determining factor in refusing an injunction. In a case where the injustice to the plaintiff is so manifest, the court may dispense with the usual undertaking as to damages (see *Dunggon Jaya Sdn Bhd v Aeropod Sdn Bhd & Anor and another appeal* [2019] 4 MLJ 466; [2019] 3 AMR 729; [2019] 9 CLJ 734).

FINDINGS OF THIS COURT

Enclosures 195 (AGM) and 198 (EGM)

After considering all cause papers and the lengthy arguments of parties respectively, I find as follows.

[41] I find merits in the plaintiffs and D1 arguments for injunctive relief in encls 195 and 198. The grounds adduced deserved serious consideration and legal scrutiny and it must be addressed and ventilated adequately at the substantive hearing. The '*Keet Gerald*'s test' requires the plaintiffs and D1 to satisfy the court that there is a serious question to be tried, ie, the claim is not frivolous or vexatious. In the circumstances, I find that the issues raised by them meet the required threshold for an interim injunction pending the determination of this suit. There are serious allegations of statutory non-compliance, manipulations, conflict of interests, related party transactions, abuse of position or power, under billings, non-issuance of billings, impropriety, and several other discriminatory or inequitable practices during the JMB and MC period. It is my considered finding that these issues are bona fide and serious questions to be tried.

[42] This legal predicament has gone on long enough and must be legally determined for all parties concerned. The burden lies on D1 and the plaintiffs to establish the claim, and I will consider the merits at the substantive hearing

of this suit hereof. I am not convinced with the arguments of the defendants (technical and/or otherwise) in resisting encls 195 and 198 at this juncture of the proceeding. The question of the legal standing of D1 and the plaintiffs to sustain or pursue these proceedings, alleged collusions between them, unlawful attempts to curtail the defendants voting rights, cause of action, and limitation are technical issues best left for determination during the substantive hearing of this suit when appropriate evidence can be adduced by parties and considered sufficiently. It is not suitable to be summarily determined or disposed of at this juncture. Parties must have their day in court for a just solution. I take cognizance in all of the materials put forth by the defendants; they have not appropriately addressed the allegations on the inequitable determination and imposition of charges to the proprietors or parcel owners of Jaya One development using a formula not in conformity with the relevant legislation resulting in lower rates for D2 and D3 while higher rates for the rest. The defendants merely responded that it was already voted in by the JMB or the MC. If so, the court has to determine whether a JMB or the MC via a resolution in a general meeting can avoid, depart or circumvent a legislative formula in computing the rates imposed, with the discriminatory result. The law is subject to specific exceptions; one cannot contract out of the statute.

[43] Though D1 has given its required undertaking for damages, there is resistance from the defendants as set out in their arguments. The law is trite that damages are not the determinative consideration. The inability of the applicant to give a viable undertaking as to damages is not the deciding factor in allowing or disallowing an injunction. In cases where the injustice is so apparent, the court may dispense with the usual undertaking as to damages. I find support in the Court of Appeal case of in *Dunggon Jaya Sdn Bhd v Aeropod Sdn Bhd & Anor and another appeal*, citing *Cheng Hang Guan & Ors v Perumahan Farlim (Penang) Sdn Bhd* [1988] 3 MLJ 90; [1988] 1 CLJ Rep 435. In any event, it has also been ruled that if the court is in doubt as to the adequacy of damages, it should proceed on the basis that damages are not an adequate remedy and move to consider the balance of convenience (see *Tenaga Nasional Berhad v Teobros Development Sdn Bhd*).

[44] Consequently, I am guided by the Supreme Court in *Alor Janggus Soon Seng Trading Sdn Bhd & Ors v Sey Hoe Sdn Bhd & Ors*, on the issue of balance of convenience, that the court should take whichever course that appears to carry the lower risk of injustice. I also consider the interests of other registered proprietors and parcel owners in Jaya One development in weighing the balance of convenience between the parties in this suit. A legal determination of the issues before this court will directly impact their position in Jaya One development. I do not doubt that the balance of convenience in the circumstances and facts of the case as presented lies in favor of granting the injunctions as prayed for in encls 195 and 198. I find no suppression of

material facts alleged by the defendants in D1 application for the injunctions (see *Datuk M Kayveas v Pv Das (for himself and on behalf of People's Progressive Party of Malaysia* [1997] 3 MLJ 671 at p 678; [1997] 4 AMR 3912; [1997] 4 CLJ 544 at p 551 (CA). Contrary to the defendants arguments, I find that the facts presented have been given in an undistorted picture of the material facts required to meet the threshold requirements.

[45] There is no issue of this court denying the holding of the AGM/EGM of Jaya One development and parcel owners from exercising their voting rights. The injunction merely defers the holding of such meetings pending the determination of all legal issues affecting Jaya One development as apprised to this court by the parties. This will ensure that all parties' position, statutory conformity, rights, and obligations are justly addressed and in place, before such a general meeting is held and for them to vote in.

[46] Having considered all of the evidence before me, I find merits in D1 and the plaintiffs arguments and I hold that it meets the threshold requirement in the *Keet Gerald* test. Therefore, encls 195 and 198 to injunct the holding of the AGM/EGM of Jaya One by the MC pending the determination of all issues at the substantive hearing of this suit are granted with costs against the defendants.

Enclosure 174

After considering the all cause papers and the arguments of parties respectively, I find as follows.

[47] Since the court has injuncted the holding of the AGM/EGM by the MC of Jaya One, in encls 195 and 198 herein, the need to injunct the MC from prohibiting D2 from voting at the said AGM/EGM does not arise as a consequence. The application is rendered academic or redundant. In addition, at this juncture of the proceeding, I find no merits in encl 174. The issue of arrears in sewerage charges of over RM1m against D2, any deliberate attempt not to invoice D2 for the said amount by alleged impropriety on the part of D4 (the property manager of Jaya One at the material time, that is a wholly-owned subsidiary of D2 with common shareholders and directors in D2 and D3, D7, and D8), and limitation, should all be ventilated and duly determined at the trial of this suit. The legal provision in the SMA in para 21(2) of the Second Schedule is clear that if the arrears are proven true, then D2 will not be entitled to vote if any part of the charges and/or monies is due and payable to the management corporation are 'in arrears.' Whether D2 can or cannot vote must be decided after the issue of the alleged sewerage charges arrears has been determined. With this issue remaining undetermined, it would not be correct to simply injunct the MC from prohibiting D2 in exercising its right to vote, as that is the provision of the law on all parcel owners. In any event, there is no

AGM/EGM to be held for D2 to exercise its voting rights while the injunction is in place pending the determination of all issues besieging the parties herein.

[48] I agree with the submissions of the plaintiffs that there are undoubtedly serious issues in dispute. Until the issues relating to the charges and contribution to the sinking fund, including the under billings, undercharging, and sewerage charges, are determined, it would be appropriate for the AGM and EGM to be injuncted in maintaining and preserving the status quo. As such, D2 cannot now insist that the AGM and EGM proceed and vote therein until the court has entirely appraised the issues of charges and contribution, which will eventually decide the true extent of the defendants arrears in charges and, consequently, their right to vote in the general meeting.

[49] Regarding the argument of collusion between the plaintiffs and D1 in the circumstances, I refer to what was said *Tahan Steel Corp Sdn Bhd v Bank Islam Malaysia Bhd* [2004] 6 MLJ 1 (HC), that injunction is a discretionary remedy, parties must come to this court with clean hands, for he who comes to equity must come with clean hands. The court will not come to his aid when there is a pending breach or a pre-existing one. The right to vote by D2 remains intact if it is not in arrears and would, as a consequence, be denied by the legislation if it is. The issue of injuncting the MC does not arise, and it constitutes an abuse of process in the circumstances. I find no merits in the defendants arguments and hold that it does not meet the threshold requirement in the *Keet Gerald* test. Therefore, encl 174 to injunct the MC from preventing D2 from exercising its voting rights is dismissed.

[50] The issues brought before this court must be fully canvassed by the parties and sufficiently ventilated to justly determine their rights, responsibilities, and obligations under the relevant legislation as alluded by them. The MC, a body corporate with a common seal under the STA, can sue and be sued, it has statutory duties and powers under the Malaysian strata laws in financial management, common property management, record keeping, meeting practice and procedure, governed by-laws, rules/regulations, that affect the management of strata property. Significantly, JMB and MC hold funds on trust and administer substantial financial assets on behalf of property owners and must do so equitably, honestly, and correctly. The MC retains the power to do all things reasonably necessary to perform its duties and enforce the by-laws. Its decision-making process is where the MC committee members duly elected, take a management decision in the running of the MC at its scheduled or periodic meeting. The management committee performs the duties and conducts the MC's business on its behalf (s 56(1) of the SMA). For a resolution at the general meeting (AGM/EGM), members vote at the said general meeting where votes are allocated according to parcels or parcel entitlements and not by the number of individuals. In the present suit, what

has been alluded to the court, is that the defendants allegedly purport to use its majority voting percentage at the proposed AGM/EGM to reconstitute the MC committee members and oppressed efforts to exonerate the alleged wrongdoings as asserted in the civil suits. It has been argued by the plaintiffs and the D1 on the necessity to injunct the calling or holding of Jaya One AGM/EGM pending the determination of this suit. There is no doubt that the court is empowered to ensure that a just resolution is achieved in the circumstances of the case. Zakaria Yatim J in *Roxy Electric Industries (Malaysia) Bhd v Syarikat Nominee Bumiputra Sdn Bhd* [1989] 3 MLJ 231 said that the court would grant an injunction to prevent a general meeting if the provisions of the law were not complied with or to prevent a clear abuse of powers on the part of the directors. The plaintiffs must have a strong case to restrain the shareholders' meeting. I also find guidance in Sanjib Banerjee J, in *Sadhan Kumar Ghosh v Bengal Brick Field Owners' Association & Ors* CS No 145 of 2008 (unreported), in the High Court at Calcutta Ordinary Original Civil Jurisdiction (August 2010), a suit in the form of a derivative action complaining alleged illegalities perpetrated on the first defendant company by those in control thereof. In the classical derivative action, the plaintiff does not seek any personal relief save the indirect consequence as a member of the company after the company is rid of the illegality complained of. The relief, when granted, is enjoyed by the company and, through it, by all its members. The learned justice said:

> There is considerable force in such submission. In any event, a charge of illegality against those in control of a company brought by way of a civil suit cannot, ordinarily, be resisted on the grounds of prejudice or the conduct of the plaintiff. If an act is illegal or is contrary to the governing statute, no misdemeanor or acquiescence on the part of the plaintiff, or those who may have set up the plaintiff, may wish away the challenge. If the company and its directors had no legal right to do something, the conduct of the complaining party or the weather outside would be of no relevance. It is thus that the challenge as to the legality of the company having convened the 64th AGM of the company for the year ended March 31, 2007, on July 21, 2008, has to be assessed.

CONCLUSION

[51] In the premise, anchored on the *Keet Gerald* test in granting an injunction and from the facts as disclosed from all the cause papers and the evidence before me, I find:

(a) there are sufficient bona fide issues that merit a trial to rightfully and judiciously determine the true position and rights of the parties concerned in encls 195 and 198. This legal dispute, inter alia, on alleged non-compliance with statutory requirements on the computations of charges as set out must be determined once and for all for the benefits of all parties in Jaya One development. If inequities are involved, they must be resolved legitimately and corrected at the substantive hearing of this

suit. In the circumstances, it would be prudent to preserve the parties' status quo to attain a just conclusion to this suit. D1 application for an injunction in encls 195 and 198 is hereby granted for prayers (1), (3), and (4) respectively in the said encls, together with the insertion of a penal clause. Costs are granted to D1 in the circumstances; and

(b) consequently, since the AGM or EGM had been injuncted under encls 195 and 198, which effectively renders encl 174 redundant and no merits, encl 174 is dismissed with cost in the cause.

Enclosures 195 and 198 allowed; and encl 174 dismissed.

Reported by Ahmad Ismail Illman Mohd Razali