TETAP TIARA SDN BHD v PENGURUSAN PERBADANAN JAYA ONE & ORS AND OTHER APPEALS

CaseAnalysis
[2023] MLJU 2953

Tetap Tiara Sdn Bhd v Pengurusan Perbadanan Jaya One & Ors and other appeals [2023] MLJU 2953

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COURT OF APPEAL (PUTRAJAYA)

VAZEER ALAM MYDIN MEERA, GUNALAN MUNIANDY AND MARIANA YAHYA JJCA

RAYUAN SIVIL NO W-02(IM)(NCVC)-72-01/2022

8 December 2023

Justin Ty Voon (with Melissa Chan Shyuk Wern) (Justin Voon Chooi & Wing) for the appellants.
Raymond Man (with Lesley Lim, Aaron Liew and Carolyn Ng) (Mah Weng Wai & Assoc) for the respondents.

Mariana Yahya JCA:

GROUNDS OF JUDGMENT

Introduction

[1] There are 3 appeals before us and all are being heard together. The 3 appeals are set out as follows;

i. W-02(IM)(NVCV)-72-01/2022 **(Appeal 72)**
ii. W-02(IM)(NVCV)-73-01/2022 **(Appeal 73)**
iii. W-02(IM)(NCVC)-74-01/2022 **(Appeal 74)**

[2] Appeal 72 was filed by the Appellant/2nd Defendant whereas Appeal 73 and Appeal 74 were filed by the 1st Appellant/2nd Defendant, 2nd Appellant/ 3rd Defendant and 3rd Appellant/7th Defendant respectively.

[3] The Appeals herein are against the whole decisions of the Learned High Court Judge at Kuala Lumpur High Court on 15 December 2021 which allowed an interlocutory injunction to injunct any Annual General Meeting **("AGM") (Appeal 73)** and another interlocutory injunction to injunct any Extraordinary General Meeting **("EGM") (Appeal 74)** of the Management Corporation **("MC")** of the Jaya One Development which was statutorily due to be held by 20 December 2021, pending the disposal of the Kuala Lumpur High Court Civil Suit No. WA-22 NCVC-425-06/2021 **("Suit 425").**

[4] The Appellant/2nd Defendant in Appeal 72 also appeals against the whole decision of the High Court Kuala Lumpur which dismissed the Appellant/2nd Defendant's application to injunct the **1st** Respondent/1st Defendant 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 the alleged outstanding sewerage charges pending the disposal of the Suit 425.

[5] For ease of reference we shall refer the parties as they were in the High Court as follows:

i. The Appellant **(*Tetap Tiara* Sdn Bhd)** - the 2nd Defendant at the High Court (hereinafter referred to as **"the 2nd Defendant")**

ii. The 2nd Appellant **(Bina *Tetap Tiara* Sdn Bhd)** - the 3rd Defendant at the High Court (hereinafter referred to as **"the 3rd Defendant")**

iii. The 3rd Appellant **(Wong Chee Kooi)** - the 7th Defendant at the High Court Hereinafter referred to as **"the 7th Defendant")**

iv. The 1st Respondent **(Pengurusan Perbadanan Jaya One)** - the 1st Defendant at the High Court (hereinafter referred to as **"the 1st Defendant" OR "the MC")**

v. The 2nd to 22nd Respondents - the 1st to 21st Plaintiffs at the High Court (hereinafter referred to as **"the Plaintiffs")**

[6] We heard the appeals and unanimously allowed the Appellants' 3 appeals with costs to follow the event at the High Court. We set aside the High Court Order dated 15.12.2021 and we state our reasons for allowing the Appellants' appeals as below.

Salient Facts

[7] The 1st to 21st Plaintiffs in the main action **(Suit 425)** are registered proprietors of parcels or individual units held under separate strata titles in Jaya One, a stratified integrated mixed commercial development located in Section 13, Petaling Jaya **("Jaya One Parcel Owners").** The 1st to 21st Plaintiffs also represent 52 other registered proprietors of parcels held under separate strata titles.

[8] The 1st Defendant is the Management Corporation **("MC")** of Jaya One established under the Strata Titles Act, 1985 **("STA")** with its registered address at 89-P2, Block H, Jaya One, No. 72A Jalan Universiti, 46200 Petaling Jaya. The MC is a body corporate having perpetual succession and a common seal and which may sue and be sued. The 1st Defendant is named as a nominal defendant for purposes of benefit and/or compliance of the reliefs sought herein.

[9] The 2nd Defendant **(*Tetap Tiara*)** is a company incorporated under the laws of Malaysia with a registered address at Suite 2302, 23rd Floor, Wisma Tun Sambathan, No. 2, Jalan Sultan Sulaiman Kuala Lumpur, 50000 Wilayah Persekutuan and at all material times was the developer of Jaya One **("the Developer").**

[10] The 3rd Defendant **(Bina *Tetap Tiara*)** is a company incorporated under the laws of Malaysia with a registered address at Suite 2302, 23rd Floor, Wisma Tun Sambathan, No. 2, Jalan Sultan Sulaiman Kuala Lumpur, 50000 Wilayah Persekutuan. The 2nd Defendant is the majority shareholder in of Bina ***Tetap Tiara*** with 98.42% of the issued and paid up shares with common shareholders and directors.

[11] The 7th Defendant is an individual with a last known address at 49, Jalan 5/42, 46000 Petaling Jaya **("Wong Chee Kooi").** Wong Chee Kooi has an indirect substantial shareholding of 51% in ***Tetap Tiara***, is a director of ***Tetap Tiara***, Bina ***Tetap Tiara***, Jaya One Car Park and Priority Class and was the 1st Chairman of the JMB as well the MC and member of the JMB and MC from 21.8.2009 to 21.6.2019.

[12] The Plaintiffs have brought the action against all the Defendants herein:

(a) by way of a derivative action in the name of and for the benefit of the 1st Defendant as management corporation ("MC") of Jaya One who, despite demands by the Plaintiffs, has failed, neglected and/or refused to take any action or meaningful action against the principal wrongdoers, namely the 2nd to 11th Defendants, in respect of the wrongs committed against the JMB and/or MC pleaded herein as the MC, under its Chairman, Richard Yeoh Yong Woi (the 12th Defendant), its Secretary Paul Kam Ming Yan (the 13th Defendant) and Leong Kwai Kuen (14th Defendant), have shown themselves to be controlled and/or subservient to the wishes of the wrongdoers. Particulars of the MC's refusal and/or failure to act are pleaded as well.

(b) in their personal capacities against the 7th Defendant, the 12th to 14th and the 17th to 30th Defendants as members of the Joint Management Body **("JMB")** and MC (collectively the **"Members of the JMB and MC")** for 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 (as the case may be) as well as to all proprietors in Jaya One collectively including the Plaintiffs and Jaya One Parcel Owners.

[13] The Plaintiffs in this case have also filed the Kuala Lumpur High Court Originating Summons No: WA-24NCvC-645-03/2021, which was later converted into a Writ Action and given the new Suit number of Kuala

Lumpur High Court Civil Suit No. WA-22NCvC-821 -11/2021 **("Suit 821").** Suit 425 and Suit 821 shall hereinafter be collectively referred to as **"the Civil Suits".**

[14] Among others, the Civil Suits involve issues relating to the determination and imposition of maintenance charges and sinking fund contributions **("Charges")** from 2009 to date.

[15] After the filing of Writ and Statement of Claim by the Plaintiffs and upon analysing the Plaintiffs' claim, the 1st Defendant discovered that there were outstanding sums due and owing by the 2nd Defendant for sewerage charges and took steps to issue the invoices accordingly.

[16] The Defendants on 27.8.2021 filed an application (Enclosure 42) to strike out the Plaintiffs' whole Suit because the Plaintiffs had no locus standi to file the Suit and the 1st Defendant (MC) should be the party to file the Suit under *section 143* of the *Strata Management Act 2013*.

[17] Whilst pending hearing of the Defendants' application to strike out the Plaintiffs Writ/Statement of Claim, the 1st Defendant on 22.9.2021 (in the same Suit) filed the "1st Defendant's Notice to Claim against the 2nd to 8th and/or 16th Defendants" (hereinafter referred to as **"the Co-Defendant's Action")** for damages, contribution and/or other reliefs or remedies which in substance duplicate the same reliefs in the Statement of Claim against the said Defendants.

[18] The facts show that neither did the 1st Defendant prosecute nor pursue the Co-Defendant action at the High Court apart from filing the said "Notice to Claim" for a Co-Defendant Action.

At the High Court

[19] At the High Court, while pending disposal of the main suit (Suit 425), the 1st and 2nd Defendants had filed Enclosure 174, 195 and 198 for injunctions as follows:

i. **Enclosure 174**

The 2nd Defendant filed an injunction application dated 12.11.2021, to injunct the 1st Defendant 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 this suit and other prayers;

ii. **Enclosure 195**

The 1st Defendant filed an injunction application dated 23.11.2021 restraining the 1st Defendant 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

iii. **Enclosure 198**

The 1st Defendant filed an injunction application dated 23.11.2021 restraining the 1st Defendant by its committee members, employees, property managers, and/or agents from convening, calling, and/orthe EGM of the MC, pending the full and final disposal of this suit and other prayers.

[20] These 3 injunction applications were heard together and on 15.12.2021 the Learned High Court Judge gave the following Orders;

a) **For Enclosure 174**

b) "MAKA ADALAH DENGAN INI DIPERINTAHKAN BAHAWA:-

(a) Notis Permohonan Defendan Ke-2 (Lampiran 174) ditolak; dan

(b) Kos permohonan ini sebagai kos dalam kausa".

c) **For Enclosure 195**

"MAKA ADALAH DENGAN INI DIPERINTAHKAN seperti berikut:-

1. Bahawa satu perintah injunksi diberikan untuk menghalang Defendan Pertama, melalui ahli jawatankuasanya, pekerja-pekerjanya, pengurus-pengurus hartanahnya *(property managers)* dan/atau ejen-ejennya, daripada bersidang, memanggil dan/atau mengadakan sebarang Mesyuarat Agung Tahunan Perbadanan Pengurusan Jaya One, sementara menunggu pelupusan penuh dan muktamad guaman ini;
2. Bahawa pihak-pihak mempunyai kebebasan untuk memohon untuk perintah dan arahan yang diperlukan dan selanjutnya; dan
3. Kos permohonan ini adalah kos dalam kausa."

d) **For Enclosure 198**

"MAKA ADALAH DENGAN INI DIPERINTAHKAN seperti berikut:-

1. Bahawa satu perintah injunksi diberikan untuk menghalang Defendan Pertama, melalui ahli jawatankuasanya, pekerja-pekerjanya, pengurus-pengurus hartanahnya *(property managers)* dan/atau ejen-ejennya, daripada bersidang, memanggil dan/atau mengadakan sebarang Mesyuarat Agung Luar Biasa yang diminta oleh Notis Permintaan untuk Mesyuarat Agung Luar Biasa bertarikh 5.11.2021 dan mana-mana Mesyuarat Agung Luar Biasa Perbadanan Pengurusan Jaya One yang lain sementara menunggu pelupusan penuh dan muktamad guaman ini
2. Bahawa pihak-pihak mempunyai kebebasan untuk memohon untuk perintah dan arahan yang diperlukan dan selanjutnya; dan
3. Kos permohonan ini adalah kos dalam kausa."

Dissatisfied with the High Court's decisions, the 2nd, 3rd and 7th Defendants appealed to the said decision. Hence, the present appeals to this court.

[21] The Learned High Court Judge in her grounds of judgment has allowed Enclosure 195 (Appeal 73) and 198 (Appeal 74) and dismissed Enclosure 174 (Appeal 72) on the ground that Enclosure 174 had become academic. We took the view that we shall address Appeal 73 and Appeal 74 first and thereafter Appeal 72.

Analysis and Findings

Appeal 73 and Appeal 74

Grounds of Appeals

[22] We have perused the Memorandum of Appeal in both Appeal 73 and Appeal 74 and in summary we state as follows;

i) The Learned High Court Judge had erred in law and/or facts in not properly considering that the holding of an AGM is mandatory and a statutory requirement under the statute i.e. the Strata Management Act 2013 and there is no jurisdiction by the Court to injunct the same in any manner;

ii) The Learned High Court Judge had seriously erred in law and/or facts in not taking into proper consideration that the issue of AGM and/or EGM is not pleaded in the pleading and there is no related alleged cause of action in the pleading;

iii) The Learned High Court Judge had seriously erred in law and/or facts in not properly considering that the granting of interlocutory injunction against the holding of the AGM and/or EGM would cause serious prejudice to all parcel owners of Jaya One;

iv) The Learned High Court Judge had seriously erred in law and/or facts in not properly considering that the purported undertaking as to damages given by the Chairman of the 1st Defendant was misconceived as the monies of the 1st Defendant belong to all parcel owners of Jaya One; and

v) The Learned High Court Judge had seriously erred in law and/or facts when she did not consider that the 1st Defendant had failed to fulfil the criteria for the grant of an interlocutory injunction, i.e. there are no serious issues to be tried when there is no pleaded cause of action to base the same, the balance of convenience is not in favour and interest of justice is against the granting of an injunction as prayed for in Enclosure 195 and 198.

The Law

[23] It is trite law that in an injunction application, the 1st Defendant has to satisfy and fulfil 3 criteria as specified in *Keet Gerald Francis Noel John v Mohd Noor bin Abdullah & Ors* *[1995] 1 MLJ 193*, that;

i. there are bona fide serious issues to be tried;

ii. balance of convenience is in favour of the 1st Defendant; and

iii. damages is not an adequate remedy.

Whether there are bona fide serious issues to be tried?

[24] Before we elaborate our reasons further, it is pertinent to note that Enclosures 195 and 198 were not applied for by the Plaintiffs (2nd to 22nd Respondents) in the Suit below but by the 1st Defendant who are the Management Corporation of the Jaya One Development (MC). In other words, the MC applied to injunct itself from proceeding with the AGM and/or any EGM.

[25] It is also pertinent to note that the Suit below filed by the Plaintiffs involved a personal claim, a derivative action and representative action against all Defendants. After the High Court's decision on 15.12.2021, the Plaintiffs then dropped both the personal claim and representative action and relied entirely on the derivative action for their Suit below. The Plaintiffs' claim in the derivative action on behalf of the MC on the alleged pleaded basis that the MC is controlled by the purported wrongdoers (the said Defendants). Further, the 1st Defendant also filed its Co-Defendant Notice to Claim against the said Defendants through the Plaintiffs' Statement of Claim. The 1st Defendant never filed its own Suit. In other words, the Plaintiffs are suing on behalf of the 1st Defendant, who is purportedly capable of suing on their own but never filed their own Suit against the said Defendants which should be the proper action.

[26] It is trite law that before granting an interlocutory injunction, there must be a pre-existing cause of action, i.e. there must be a main suit. Interlocutory injunction is ancillary to a cause of action. It cannot stand on its own. It is granted to preserve the status quo pending the ascertainment by the court of the rights of the parties (see *Shencourt Sdn Bhd v Prima Ampang Sdn Bhd* [2011] 4 AMR 449,461, *Nishimatsu Construction Co Ltd v Kecom Sdn Bhd* *[2009] 2 MLJ 404***, 406**).

[27] Applying the principles enunciated in the above cases, a perusal of the alleged causes of action of both Statement of Claim and the 1st Defendant's Co-Defendant Action clearly show that the alleged causes of action herein have got nothing to do with any alleged issue of AGM and/or EGM. Worse still, the injunction applications were filed by the 1st Defendant and not the Plaintiffs in the Suit below. In fact, the Plaintiffs can still pursue their claim against the Defendants even if the AGM and/or EGM is called.

Whether the 1st Defendant can injunct itself from proceeding with the AGM and/or any EGM

[28] The crux of the 2nd, 3rd and 7th Defendants' submissions before this court was that the High Court has no jurisdiction to grant an injunction order to restraint the 1st Defendant from convening, calling and/or holding any AGM and/or any EGM of the Management Corporation of Jaya One. The 2nd, 3rd and 7th Defendants submit that the calling of an AGM and/or EGM is a statutory right of all parcel owners including the said Defendants and other parcel owners and cannot be usurped by the court.

[29] It is not disputed that the 1st Defendant in both Enclosures 195 and 198 had acknowledged that the AGM ought to be called latest by 20.12.2021 and not more than 15 months after the last AGM held on 20.9.2020. So, the proposed EGM ought to be called latest by 17.12.2022.

[30] It is the 1st Defendant's submission that the High Court has inherent jurisdiction and powers to grant an injunction, including the EGM Injunction Order and is not bound by the provisions of the Strata Management Act 2013 **(SMA).** Several references were made to support its contentions namely;

a. O.29 r.1(2C) *Rules of Court 2012*,

b. *Section 1(7)*of the *SMA*,

c. Paragraph 8 of the Schedule of the Courts of Judicature Act 1964; and

d. *Sections 50*and *51* of the *Specific Relief Act*.

The 1st Defendant contended that the Learned High Court Judge had not erred in granting the injunction order for the AGM and EGM.

[31] The 1st Defendant as the MC is a creature of statute (the SMA) and hence, it is the 1st Defendant's duty as the MC to call an AGM every year and to call an EGM when required by relevant parcel owners with the requisite locus and/or by the Commissioner of Building **(COB).** Obviously, the 1st Defendant is to exercise the MC's powers under *s.56(1)* of the *SMA* and not to act against the SMA.

[32] It cannot be denied that the AGM is an annual statutory right of each and every parcel owner and it is important for the AGM to be held yearly for the purpose of, amongst others;

i. The accounts can be considered, be subject to query, be tabled, be considered and subsequently be approved;

ii. Election of new committee members and to maintain the current committee members;

iii. The right of each parcel owners to query/question the MC and/or its performance; and

iv. The right of each parcel owners to attend and raise any of their concerns and/or grievances, if any.

[33] The SMA and the Schedules of SMA 2013 provide the respective procedures and requirements for the AGM and/or EGM to be held by the MC. *Section 56* of the *SMA* provides as follows:

> **"56. Management committee**
>
> (1) Subject to subsection 63(4), the management corporation shall elect a management committee which, subject to any restriction imposed or direction given by the management corporation at a general meeting, shall perform the management corporation's duties and conduct the management corporation's business on its behalf, and may for that purpose exercise any of the management corporation's powers.
>
> (2) The provisions of the Second Schedule shall apply to the management corporation and the management committee."

[34] It is not disputed that paragraphs 10 and 11 of the 2nd Schedule of the SMA imposed a duty on the 1st Defendant to hold an AGM once in each year and/or EGM upon a requisition in writing made by the proprietors. It is a mandatory requirement under the law. Paragraphs 10 and 11 of the Second Schedule of SMA further provide as follows:

> **"Annual general meeting**
>
> **10.** (1**) The management corporation shall hold an annual general meeting** for the consideration of accounts, election of the management committee and the transaction of such other matters as may arise.
>
> (2) **The first annual general meeting shall be held within one month after the expiry of the initial period and the subsequent annual general meetings shall be held once in each year,** provided that not more than fifteen months shall lapse between the date of one annual general meeting and the next.
>
> (3) The holding of any annual general meeting out of time in breach of this paragraph shall not affect the validity of the annual general meeting.
>
> **Extraordinary general meetings**
>
> 11 .(1) A general meeting of the management corporation other than the annual general meeting shall be known as the extraordinary general meeting.
>
> (2) The management committee—
>
> (a) **shall convene an extraordinary general meeting upon a requisition in writing made by the proprietors** who are together entitled to at least one-quarter of the aggregate share units;

(b) shall convene an extraordinary genera! meeting upon receiving a direction in writing from the Commissioner for the transaction of such business as the Commissioner may direct; Page 95 and

(c) may convene an extraordinary general meeting on such other occasion as it thinks fit

(3) The requisition shall state the objects of the meeting and shali be signed by the requisitionist and deposited at the registered office of the management corporation, and may consist of several documents in like form each signed by one or more requisitionists.

(4) The extraordinary general meeting shall be held as soon as practicable but in any case not later than six weeks after—

(a) the requisition has been deposited at the registered office of the management corporation; or

(b) receiving a direction in writing from the Commissioner under sub-subparagraph (2)(b).

(5) If-

(a) the Commissioner is satisfied that the management committee has not been properly constituted; or

(b) the management committee fails to convene the extraordinary general meeting within the time period stipulated in subparagraph (4), the Commissioner may authorize in writing any person to convene an extraordinary general meeting for such purposes as may be approved by the Commissioner.

(6) In the case of a meeting convened pursuant to sub-subparagraph (5)(b), all costs incurred by the person in convening the meeting shall first be paid by the management corporation to that person and such costs shall be recoverable as a debt due from all the members of the management committee personally to the management corporation."

The word **"shall"** in the said paragraphs 10 and 11 above clearly dictates the mandatory nature and requirement of an AGM and/or EGM.

[35] Regulations 34(1) and (2) of the Strata Management (Maintenance and Management) Regulation 2015 **(SMR)** also further provide and fortify the MC's position under paragraphs 10 and 11 of the Second Schedule that the MC (1st Defendant) shall hold its AGM in accordance with subparagraph 10(2) of the Second Schedule to the Act. Whereas, Regulation 34(2) imposes a penalty for failure to hold any AGM by the MC. The failure to hold any AGM is an offence and shall on conviction be liable to a fine not exceeding RM50,000.00 or to imprisonment for a term not exceeding 3 years or to both.

Section 34 provides as follows;

"Annual General Meeting

"34, (1) A joint management body, management corporation or subsidiary management corporation, as the case may be, **shall hold its annual general meetings in accordance with subparagraph 10(2) of the Second Schedule to the Act.**

(2) **If any joint management body, management corporation or subsidiary management corporation fails to hold any annual general meeting,** the joint management body, **the management corporation** or subsidiary management corporation, as the case may be, **commits an offence and shall on conviction, be liable to a fine not exceeding fifty thousand or to imprisonment for a term not exceeding three years or to both." (emphasis added)**

[36] The learned counsel for the 1st Defendant refers to Paragraph 8 of the Schedule of the Courts of Judicature Act 1964 **(CJA)** and states that the Court has the power to extend time in respect of the holding of any statutorily required AGM and/or EGM under the specific provisions of the SMA. Earagraph 8 of the Schedule states as follows;

Time

"8. Time

> Power to enlarge or abridge the time prescribed by any written law for doing any act or taking any proceeding, although any application therefor be 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,"

Based on the provisions of the SMA, the Schedule and Regulation of SMA, we agree with the learned counsel for the 2nd, 3rd and 7th Defendants' submissions that paragraph 8 of the Schedule of the CJA is a general provision and cannot be used to extend time in respect of the holding of any statutorily required AGM and/or EGM under the specific provisions of the SMA.

[37] Counsel for the 1st Defendant refers to *Section 1 (7)* of the *SMA* and submits that the State Authority may suspend the operation of the SMA or any provision of the SMA for such period as it deems fit. In this case, we find that there was no evidence of such suspension of operation or any provision of the SMA being carried out by the State Authority. In fact, the COB, appointed by the State Authority under *s.4(1)* of the *SMA* was also vehemently against the postponement of the AGM or EGM.

[38] Learned counsel for the 1st Defendant also refers to the High Court's decision in *Perbadanan Pengurusan Anjung Hijau v Pesuruhjaya Bangunan Dewan Bandaraya Kuala Lumpur* *[2017] 11 MLJ, 554* ***(Anjung Hijau's case)*** which held that even if a statutory provision is mandatory, the court may still be able to extend time under paragraph 8 of the Schedule of the CJA. The 1st Defendant can no longer rely on Anjung Hijau's case because its decision had been reversed by the Court of Appeal vide Order dated 9.11.2017. This clearly shows the opposite that no such power or jurisdiction exists.

[39] Based on the provisions provided in the SMA and the Schedule, we are of the considered view that there is no express provision in the SMA to allow for the AGM and/or EGM to be postponed or a blanket prohibition of any AGM or EGM until full and final disposal of the Suit below.

[40] The 2nd, 3rd and 7th Defendants further submitted that there is no case authority to allow the court to order the MC to injunct itself from calling an AGM and/or EGM. We observed that both the Plaintiffs and the 1st Defendant relied heavily on the Commissioner of Building's (COB) letter dated 11.10.2021 that the COB in response to the 1st Defendant's letter dated 27.9.2021 had advised the 1st Defendant to apply to Court for an injunction. On the contrary, COB by its letter dated 15.11.2021 had stated their firm stand that they were objecting to any postponement of the AGM and there is no provision in the SMA to provide any power to do so. For ease of reference we reproduce paragraphs 7 and 8 in the said letter which inter alia stated as follows:

> "7. **Pentadbiran ini juga ingin menambah, tiada peruntukan di dalam Akta 757 yang memberi kuasa kepada pentadbiran ini dan memberi penangguhan kepada JMB/MC untuk membenarkan penangguhan mesyuarat AGM sekiranya telah melebihi 15 bulan. Sekiranya iaporan kewangan beraudit belum siap, maka pihak tuan dikehendaki untuk membentangkan akaun pentadbiran (management account) terlebih dahulu bagi menjelaskan keadaan kewangan terkini.** Setelah proses audit selesai, pihak tuan perlu mengadakan mesyuarat agung luar biasa bagi membentangkan akaun beraudit tersebut untuk makluman dan pengesahan oleh pembeli/pemilik petak.
>
> 8. Oleh itu, **pentadbiran ini tidak akan berkompromi atas aiasan yang diberrkan sekiranya pihak tuan masih gagal untuk mengadakan mesyuarat agung tahunan berkenaan.** Sekiranya pihak tuan dengan sengaja melengahkan dan melambatkan mesyuarat agung tahunan, maka pentadbiran ini akan menggunakan kuasa di Perenggan 11(5)(a) Akta 757 iaitu melantik pengendali mesyuarat agung luar biasa untuk perlantikan ahli jawatankuasa yang baru bagi skim pemajuan tuan." *(emphasis added)*

[41] Based on the COB letter dated 15.12,2021, obviously COB had acknowledged the 1st Defendant's reasons to postpone the said AGM and/or EGM. The contents of COB letter speak for themselves. We are of the view that the alleged rationale given by the 1st Defendant in its injunction application that they are unable to ascertain which proprietors are in arrears and which proprietors are entitled to vote without resolving the issues in the Civil Suits is without merits. In fact, the alleged recalculation of charges and sinking fund is not essentially the issue in the Suit below but in another Suit 821 which is not relevant to the Suit below.

[42] Further, the excuse given by the 1st Defendant that they are unable to prepare proper accounts for the AGM is again without basis. The record shows that the Report and Financial Statements of Jaya One Management

Corporation as at 31.12.2020 have been finalised and circulated to all the Committee Members since on or about 30.8.2021. Even if the financial report was not fully ready at the material time, the management account is sufficient enough for the AGM (see paragraph 7, COB letter dated 15.11.2021).

[43] Having perused the Plaintiffs' pleaded case, it is clear that the Plaintiffs' claim against the Defendants is based on derivative action without the need to call an AGM and/or EGM. The Plaintiffs can still pursue their claim even if the AGM and/or EGM is called. Therefore, we agree with the learned counsel for the 2nd, 3rd and 7th Defendants' submission that there is really no basis to injunct the AGM and/or EGM to the detriment of all parcel owners. Further, we are of the considered view that there can be no serious issues relevant for the injunctions ordered by the Learned High Court Judge.

[44] It is sufficed to say that since 15.12.2021 (High Court Order in allowing the injunction of AGM and/or EGM), until today, there was no AGM held for the Jaya One Development which consists of about 908 parcel proprietors and neither can any parcel proprietors call for any EGM to address any issues concerning the development which may not even concern this suit.

[45] We agree with the learned counsel for the 2nd, 3rd and 7th Defendants' submissions that there is simply no good reason to stop the AGM or EGM and instead there is grave prejudice and injustice caused to all parcel owners when their statutory rights are impinged upon and taken away without basis. Substantial injustice will be caused to all the parcel owners if AGM and/or EGM are to be injuncted.

[46] We also noted that the 1st Defendant applies to injunct themselves and at the same time undertake to pay damages which are actually funds of the parcel owners as a whole who are affected and are mainly not parties to this Suit and have no right to be heard. In effect, the 1st Defendant is using the parcel owners' monies to pay any damages in case the injunction is wrongly taken. In our view, this is blatantly improper and more so, when the damage caused by taking away their rights by such injunctions which cannot be adequately compensated by damages.

[47] It is our respectful view that it is the statutory duty of the 1st Defendant to hold the AGM yearly and to also hold the EGM required by parcel owners, instead of acting against its duty. The court should not defeat the mandatory requirement provided by the law. It is trite that the court will not condone or lend its hand to a party who takes advantage of its own wrongdoings and comes to Court without clean hands.

[48] We find that the Learned High Court Judge has erred in fact and law when she failed to address the real issues concerned without analysing that the serious issues to be tried in the claim itself have no relevance and do not support an injunction to stop an AGM and/or EGM. Not only that, the Learned High Court Judge also failed to properly consider the relevant statutory provisions of the SMA and the SMR in relation to the statutory duty of the 1st Defendant and the rights of other parcel owners.

[49] We have considered both appeals and we find that there are merits in the appeals. We are of the considered view that the Learned High Court Judge was plainly wrong in fact and law when she allowed Enclosure 195 and Enclosure 198, an order to injunct the AGM/EGM until the disposal of this Suit. We unanimously allowed both Appeals 73 and Appeal 74 with costs to follow the event at the High Court and set aside the decision of the High Court dated 15.12.2021.

Appeal 72

[50] This is the 2nd Defendant's appeal against the High Court decision dated 15.12.2021. The Learned High Court Judge had dismissed the 2nd Defendant's application for an injunction **(Enclosure 174)** against the 1st Defendant from preventing the 2nd Defendant from voting in the AGM or any EGM of the MC of the Jaya One.

[51] The only reason given by the Learned High Court Judge in dismissing Enclosure 174 is in para 51 (b) of the Grounds of Judgment and we reproduce as below:

> "51. (b) Consequently, since the AGM or EGM had been injuncted under enclosures 195 and 198, which effectively renders enclosure 174 redundant and no merits, enclosure 174 is dismissed with costs in the cause."

[52] On 12.11.2021, the 2nd Defendant filed an application pursuant to 0.29 of the ROC (Enclosure 174) for the following orders:

i. That the 1st Defendant be injuncted from preventing the 2nd Defendant from voting in the AGM 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;

ii. 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 of RM1,458,061.44 into court and/or as directed by this honorable court;

iii. 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 whilst the issue is pending before the court, the 1st Defendant be restrained from issuing further invoices for Sewerage Charges;

iv. 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; and

v. Such further and/or other relief to the 2nd Defendant as this honorable court thinks fit.

[53] This case involves inter alia, the issues of validity of the 1st Defendant's claim based on the alleged outstanding sewerage charges, the 2nd Defendant's statutory right to vote in the upcoming AGM and/or EGM as stipulated under SMA 2013 and the 1st Defendant's locus to file the claim against the 2nd Defendant.

[54] The 1st Defendant issued the Impugned Invoices 1 for the sum of RM1,464,900.00 and later replaced by the Impugned Invoices 2 for another different sum i.e. RM1,458,061.44 to the 2nd Defendant as the alleged outstanding sewerage charges owed by the 2nd Defendant to the 1st Defendant. The 1st Defendant relied on Paragraph 21(2) of the Second Schedule of the SMA 2013 and said that the 1st Defendant is not entitled to vote if there are arrears in respect of the sewerage charges. Until and unless the arrears had been paid 7 days prior to the meeting, the 2nd Defendant will be precluded from exercising its voting rights in the upcoming AGM. We refer to Paragraph 21(2) of the Second Schedule of the SMA 2013 which states 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 are In arrears." (emphasis added)**

[55] The 2nd Defendant disputed the Impugned Invoices 1 and 2 issued by the 1st Defendant. The 2nd Defendant contended that they have paid the sewerage charges based on the pre-existing charges imposed on the 2nd Defendant since year 2015 and no arrears were owed by the 2nd Defendant. The 2nd Defendant denied the 1st Defendant's Notice to Claim as there was no invoice issued to the 2nd Defendant before the Suit was filed by the Plaintiffs and certainly before the said 1st Defendant's Notice of Claim was filed.

[56] Both the Impugned Invoices 1 and 2 were only issued after the 1st Defendant's Co-Defendant Action was filed. The 1st Defendant never filed its own Suit against the other Defendants. In fact, paragraphs 168 to 172 of the 1st Defendant's Amended Defence does not refer to any invoices.

[57] Most importantly, it is not proven that there are such sewerage charges in arrears as the 1st Defendant's claim for the same is still before the Court and pending determination from the Court. The 1st Defendant's action shows that the 1st Defendant intends to use such purported outstanding sewerage charges to prevent the 2nd Defendant from voting in the AGM and/or any general meeting of the MC. The aforesaid conduct by the 1st Defendant shows that their Co-Defendant's Action is wrong and premature without any invoices and it was not bona fide. Based on the above reasons, we agree with the 2nd Defendant's counsel's submission that the 1st Defendant cannot rely on Paragraph 21(2) of the Second Schedule when the sums due under purported sewerage charges are disputed and sub-judice pending court proceedings.

[58] The 2nd Defendant argued that the conduct of the 1st Defendant was an afterthought and a clear tactical maneuver to preclude the 2nd Defendant from participating and voting in the AGM/EGM. It is trite law that the 1st Defendant cannot improve their claim by facts which purport to transpire after the date of the pleading.

[59] In opposing the Appellant's application of Enclosure 174, Yeoh Yong Woi (the Chairman of 1st Defendant) in

his Affidavit In-Reply affirmed on 1.12.2021 in paragraphs 13.1 to 13.4 (Enclosure 10 of the Record of Appeal) contended that the 1st Defendant has also filed Enclosures 195 and 198 for the injunction of any General Meeting. The 1st Defendant agreed that one of the reasons Enclosure 195 was filed is because the 1st Defendant is presently unable to provide accurate statements of accounts or audited accounts at an AGM pending the full and final disposal of the Civil Suits that the 1st Defendant is involved in. As such, the 1st Defendant is unable to ascertain which proprietors are in arrears and which are entitled to vote at any General Meeting. Therefore, the 1st Defendant had filed the applications to pray that no General Meetings is convened until the disposal of the Civil Suits that the 1st Defendant is a part of.

[60] In our view, these contentions by the 1st Defendant support the 2nd Defendant's contentions that at present, there is no final determination of arrears of sewerage charges if any. Therefore, it is not right for the 1st Defendant not to convene the AGM and/or EGM and allow the 2nd Defendant to exercise its voting right under Paragraph 21(1) of the Second Schedule of the SMA. Paragraph 21(1) provide as follows;

> **"Each proprietor who is not a co-proprietor shall have one vote in respect of each parcel** on a show of hands, and on a poll, shall have such number of votes as that corresponding with the number of share units or provisional share units attached to his parcel or provisional block."

[61] The 2nd Defendant in prayer 2 of Enclosure 174 has also offered to deposit the disputed claim of alleged outstanding sewerage charges of RM1,458,061.44 into the High Court pending the disposal of the 1st Defendant's Co-Defendant Claim. There would be no prejudice or injustice caused to the 1st Defendant if they succeed in their Co-Defendant Claim or even in allowing the 2nd Defendant's application. On this point, we find that the Learned High Court Judge erred in law and/or facts when she did not consider the evidence properly and failed to take into proper consideration the sum offered to be deposited in court.

[62] It will cause more prejudice and injustice to the 2nd Defendant by preventing the 2nd Defendant from voting by reason for the alleged sewerage charges which would be irreparable and cannot be adequately compensated by damages.

[63] The Learned High Court Judge has failed to consider in fact and law that there were bona fide serious issues to be tried and balance of convenience clearly favours the grant for an injunction in favour of the 2nd Defendant. We see no reason that there would be prejudice caused to the 1st Defendant if Enclosure 174 is allowed.

[64] We have considered the entire appeal of the 2nd Defendant and submissions by both parties and it is our considered view that the 2nd Defendant has satisfied all 3 criteria for an interlocutory injunction set out in *Keet Gerald's* case.

[65] We therefore unanimously allowed the 2nd Defendant's appeal and allowed prayer (i), (ii) and (iii) of End 174 with costs to follow the event at the High Court. As for prayer (ii) in End 174, we ordered that a sum of RM1,458,061.44 be deposited within 2 weeks from the date of this order by the 2nd Defendant into the 2nd Defendant's solicitor's firm account as stakeholder until the disposal of this Suit. We set aside the decision of the High Court dated 15.12.2021.

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