

REPORTED CASE LAWS BY PARTNERS OF JCW

- 1) Country Heights Marketing v Firstland Management (High Court) [1998] 3 CLJ 17

Justin was the counsel for Country Heights. This is a case on transfer of proceedings from the Subordinate Court to the High Court. A novel point was raised in the judgment in relation to Section 65(3) of the Subordinate Courts Act 1948 as to whether the application to transfer must first show that there is a refusal by the other side to agree under the said provision to enable the Sessions Court to have jurisdiction beyond the value limit. The High Court's decision that this provision must first be resorted to was overturned by the Court of Appeal. The Court of Appeal decision/order was also reported in [1999] 3 CLJ 299.

- 2) Tan Ah Chim & Sons Sdn Bhd v Lim Kean Siew & Others (High Court) [2000] 6 MLJ 670

Justin was the counsel for the plaintiff, Tan Ah Chim. In this case, the plaintiff successfully obtained a summary judgment against the defendant for negligence in failing to file the Record of Appeal within the prescribed time resulting in the Appeal being struck out.

- 3) Soda KL Plaza Sdn Bhd v Noble Circle (M) Sdn Bhd (High Court) [2002] 2 MLJ 367

Justin was the counsel for Soda KL Plaza. In this High Court decision, Justin has successfully set aside of an invalid Summons by the defendant which failed to comply with Form 1 of the relevant rules and also did not append a Notice of Appearance as required by the rules.

- 4) Jupiter Securities Sdn Bhd v Wan Yaakub bin Abd Rahman (High Court) [2002] 3 MLJ 264

Justin was the counsel for Jupiter Securities. This case is an authority for the legal principle that an application to amend the pleadings (the statement of defence) to add an allegation of fraud would not be allowed if the facts relating to the fraud were known by the party making the application at the time the original pleading was filed.

- 5) Andrew Charles Gomez v Harpal Singh Grewal & Others (High Court) [2002] 3 CLJ 469

Justin was the counsel for 4th & 5th defendants. In this case, Justin successfully extricated the 4th & 5th defendants from the suit at the Registrar level. The plaintiff filed a Notice of Appeal but did not serve it and adjourned the Appeal until much later. The Appeal was dismissed by the Court as the failure and delay to serve the notice is in breach of the rules which require service before the first appeal hearing date has prejudiced the 4th & 5th defendants as they thought that they are no longer parties to the suit.

- 6) Universiti Malaya & Anor v Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur (High Court) [2003] 3 MLJ 185

Justin was the counsel for Universiti Malaya ("UM") in relation to land acquisition of the land owned by UM which was subject to compulsory acquisition. This is one of the few reported cases where the Land Acquisition Court proceedings is not just between the (previous) landowner (who is interested to increase the market value of the subject land) and the Land Administrator but also involves the agency applying for the acquisition (who is interested to reduce the market value of the subject land).

- 7) Repco (M) Sdn Bhd v Tan Tho Fatt & Ors (High Court) [2003] 6 MLJ 146

Justin was the counsel for Repco. This is a case on application for an urgent hearing date, interrogatories and case management procedure in a case involving trade secrets/confidential information between the employer and employees.

- 8) Global Destar (M) Sdn Bhd v Kuala Lumpur Glass Manufacturers Co Sdn Bhd (High Court) [2004] 5 CLJ 167

Justin was the counsel for Global Destar. In this case, an application was made for judgment on admission for part of the claim pursuant to Order 27 rule 3 of the Rules of the High Court. The principles pursuant to such an application were extensively discussed in this case.

- 9) Chen Joon Onn v Kong Siew Kin (High Court) [2006] 4 AMR 435 / [2006] 7 CLJ 1

Justin was the counsel for Kong Siew Kin. This is a case on application to strike out an action in relation to a High Court suit filed to circumvent Session Court proceedings and the issue of duplicity of proceedings amounting to an abuse of process.

- 10) Multi-Purpose Bank Berhad v Uniphoenix Corporation Bhd (High Court) [2006] 5 AMR 545

Justin was the counsel for Uniphoenix. This is a case of winding up action by the Bank without a Judgment being struck out in favour of Uniphoenix. The issues that arose were inter-alia (a) whether the winding up proceedings herein constituted an abuse of process and ought to be struck off; (b) whether there were serious disputes raised by the respondent in relation to the whole of the petitioner's claim; and (c) whether the alleged debt was *bona fide* disputed on substantive grounds.

- 11) Chuah Teik Huat v Citibank Berhad (High Court) [2006] 7 CLJ 20
Chooi Peng was the counsel for Citibank Berhad. This is a case on striking out the writ and the statement of claim by the appellant that the declaration for sale of the property by the Bank is null and void.
- 12) Wong Yu Ke v Wong Yew Kwan (High Court) [2006] 7 CLJ 288
Justin was the counsel for Wong Yu Ke. This is a case on claiming vacant possession by Wong Yu Ke against alleged licensee and interpretation of Section 41 of the Specific Relief Act 1950.
- 13) Biopride Sdn Bhd v Malaysian Airline System Bhd (High Court) [2006] 8 CLJ 38
Justin was the counsel for MAS and assisted by Alvin. This is a case on contractual claim against MAS.
- 14) Metro Giant Group Sdn Bhd v Gala Sari Resources Sdn Bhd & Ors (High Court) [2007] 7 MLJ 52
Justin was the counsel for the first & third contemnors and assisted by Alvin. This is a case on contempt of Court. In this case, the issue was whether the filing of documents in Court which are intentionally back-dated letters would constitute contempt. The Court held that the mere ante-dating of the letters would not constitute contempt which requires an intention to use them to mislead the Court and this should be raised at the Trial and not at the discovery stage.

- 15) Raja Singam a/l Velu v Affin-Acf Finance Bhd & Others (High Court) [2007] 6 MLJ 430

Justin was the counsel for Affin-Acf Finance & 2 others. This case relates to a striking out application and hire-purchase. The legal principle of this case is that the plaintiff cannot resort to declarations in relation to public interests to further his private rights and that a declaration will not be allowed where it is useless or infructuous.

- 16) Kamra Jaya Sdn Bhd v Mulia Cemerlang Sdn Bhd (High Court) [2007] 3 CLJ 1993

Justin was the counsel for Mulia Cemerlang and assisted by Alvin. This is a case for removal of caveat lodged by Mulia Cemerlang on the land where the right to enter caveat was expressly agreed by the plaintiff in the various agreements executed with Mulia Cemerlang. The application is dismissed in favour of Mulia Cemerlang.

- 17) Excapt Services Sdn Bhd v New Heritage Limousine Services Sdn Bhd (High Court) [2008] 2 MLJ 419

Justin was the counsel for New Heritage and assisted by Alvin. This is a case on injunction and setting aside of ex-parte injunction in a loan transaction involving issues of fraud and forgery. The main principle in this case is in relation to an abuse of process and that a party cannot act on the Order without first serving it.

- 18) Sheila Sangar v Proton Edar Sdn Bhd (High Court) [2009] 8 CLJ 200/ 2 ILR 489

Justin was the counsel for Proton Edar and assisted by Alvin. This is a case on application for judicial review for an order of certiorari to quash the award of the Consumer Claims Tribunal.

- 19) HTC Global Service MSC Sdn Bhd v Kompakar Ebiz Sdn Bhd (High Court) [2009] 3 AMR 52

Justin was the counsel for HTC and assisted by Alvin. This is a case on an appeal of summary judgment in respect of recovery of sums due for services rendered and the High Court took into account and admitted e-mail correspondences to support the entry of summary judgment against the defendant.

- 20) Wong Yew Kwan v Wong Yu Ke & Anor (Court of Appeal) [2009] 2 MLJ 672

Alvin was the co-counsel for Wong Yu Ke. This is an appeal by the appellant against the decision of the High Court in favour of Wong Yu Ke where bare allegation of fraud is not a defence that could create exception under Section 340 of the National Land Code and cannot defeat the indefeasible title of Wong Yu Ke. The Court of Appeal dismissed the appellant's appeal.

- 21) Proton Parts Centre Sdn Bhd v Mohamed Zainal & Another Appeal (Court of Appeal) [2010] 1 CLJ 348/ 2 MLJ 207

Justin was the counsel for Proton Parts. This is an appeal to strike out the cause of action based on slander by the respondent. The Court of Appeal propounded the principle that conduct per se cannot amount to slander.

22) Albilt Resources Sdn Bhd v Casaria Construction Sdn Bhd (Court of Appeal) [2010] 3 MLJ 656

Justin was the counsel for Albilt Resources and assisted by Alvin. This is an appeal in relation to an application for stay of the proceedings and to refer the dispute to arbitration. The Court of Appeal held that all PAM contracts have an Arbitration clause and where the main letter of award referring to a PAM contract was adopted in the impugned letter of award, the Arbitration clause in the PAM contract is similarly adopted.

23) Giga Engineering & Construction Sdn Bhd v Yip Chee Seng & Sons Sdn Bhd & 2 Ors (High Court) [2010] 3 AMR 835

Justin was the counsel for second defendant and assisted by Alvin. This is a case relating to tender for building construction and whether there is cause of action by plaintiff against the defendants under a pre-tender agreement which was held to be void as a result of non-fulfillment of pre-conditions.

24) Taman Bandar Baru Masai Sdn Bhd v Dindings Corporations Sdn Bhd (High Court) [2010] 5 CLJ 83

Alvin was the co-counsel for Dindings Corporation. This is a case where the plaintiff applied to set aside an arbitration awards (where the arbitration proceedings were conducted by Justin and Alvin) obtained by Dindings against the plaintiff and the case was decided by the High Court in favour of Dindings.

25) Low Kim Cheong v SSF Curtain Sdn Bhd & Ors (High Court) [2010] 7 CLJ 877

Justin was the counsel for SSF Curtain. This is a case by the petitioner (a minority shareholder) who claimed oppression under Section 181 of the Companies Act 1965.

26) Amazing Place Sdn Bhd v Couture Homes Sdn Bhd & Anor (High Court) [2011] 7 MLJ 52

Justin was the counsel for Couture Homes and assisted by Alvin. This is a case on striking out a case and a dismissal of an application for interlocutory injunction against the defendant and the allegation that the plaintiff was induced by the defendant's oral representation to enter into the Sale and Purchase Agreement did not raise a cause of action. The case was decided in favour of Couture Homes.

27) Khor Lye Hock & Anor v Makassar Engineering & Construction Sdn Bhd & Ors (High Court) [2011] 8 CLJ 476

Justin was the counsel for 2nd, 3rd and 4th respondents. This is a case on striking out of certain prayers of a petition under Section 181 of the Companies Act 1965, as they are inter-alia not suitable under the said Section 181 jurisdiction.

28) Mersing Construction and Engineering Sdn Bhd v Kejuruteraan Bintai Kindenko Sdn Bhd & Ors (High Court) [2011] 3 MLJ 264

Alvin was the counsel for Mersing Construction. This is a case on a dispute as to whether the building contract is subject to arbitration or dispute adjudication board, which is a novel point in Malaysia.

- 29) Dato' Raja Azwane Raja Ariff v Dato' Man Mat & Ors (High Court)
[2011] 8 CLJ 633/ 9 MLJ 467

Justin and Chooi Peng were co-counsel in this case for Dato' Raja Azwane. This is a case on a dispute on whether the Director's Circular Resolutions seeking to "resign/remove" a director under the Companies Act 1965 is tainted with mala fides.

- 30) Affin Bank Bhd v MMJ Exchange Sdn Bhd & Anor (High Court) [2011]
2 AMCR 505

Chooi Peng and Alvin were the counsel for Affin Bank. This is a case for return of money remitted pursuant to forged remittance forms. After a full Trial, the Court ruled in favour of Affin Bank and this case canvass important principles such as "money had and received" and unjust enrichment.

- 31) Shencourt Sdn Bhd v Prima Ampang Sdn Bhd & 4 Ors (High Court)
[2011] 4 AMR 449

Justin was the counsel for 4th & 5th defendants and assisted by Alvin. This is a case on striking out of the plaintiff's case against the defendants based on alleged misrepresentation by the defendants to the public at large pursuant to a website and/or facebook under the Housing Development (Control & Licensing) Regulation 1989 and dismissal of an application for an interlocutory injunction against the defendants.

32) Re Chen Teck Foong & 2 Ors (and Another Petition) (High Court)
[2011] 4 AMR 557

Justin and Chooi Peng conducted this Probate Action which proceeded for Trial for the Petitioners and the issues involved *inter alia* the testamentary capacity of the Deceased in an alleged subsequent Will, whether the specific and mandatory requirements under Order 71 r 7(1) of the Rules of High Court 1980 for the original Will to be filed in court has been complied with, the credibility of witnesses and forgery.

33) MIDF Amanah Ventures Sdn Bhd v Bostonweb Academy Sdn Bhd & Ors (High Court) [2011] 5 CLJ 778

Alvin was the counsel for MIDF Amanah. This is a case on appeal by the defendants to set aside a judgment in default granted by the Senior Assistant's Registrar against them and the said Appeal was dismissed by the High Court.

34) Raja Singam a/l Velu v Affin-ACF Finance Bhd & 7 Ors (High Court)
[2012] 2 AMR 636 / [2012] 3 CLJ 906

Justin was the counsel for the defendants. This is an appeal against the Senior Assistant Registrar's decision on taxation of costs and interpretation of Order 59 r 20 of the Rules of High Court 1980.

35) Tan Ming Yeow & Anor v Lee Chuen Tiat & Anor (High Court) [2012] 8 MLJ 805

Justin was the counsel for the plaintiffs. This is a case on dispute of the legal fees payable to the defendant, a solicitor, for handling the plaintiff's case, which proceeded for Trial. The Court ruled based on Section 116 of the Legal Profession Act that unless the agreement on fees was in writing, it is not enforceable.

36) Lagenda Kencana Sdn Bhd v Peter's Holdings Sdn Bhd & Anor (Court of Appeal) [2012] 3 CLJ 824

Justin was the counsel for Lagenda and assisted by Alvin in this appeal to the Court of Appeal. This is a case on application to set aside consent order and the Court of appeal held that a consent order should be set aside when there was "grave injustice" caused and the lawyer who attended court on behalf of Lagenda has no locus to appear when his legal firm had been dissolved.

37) Plastech Industrial Systems Sdn Bhd v N & C Resources Sdn Bhd & Ors (High Court) [2012] 5 MLJ 258

Justin was the counsel for Plastech and assisted by Alvin. This is a case on infringement of copyright and action against the defendants for inter-alia passing off, and breach of fiduciary, where Plastech successfully proved this case for inter-alia passing off, breach of copyright, wrongful taking and using of Plastech's proprietary information, breach of duty of confidentiality and breach of fiduciary duties by the Directors/ Officers.

38) Thambiraja Annamalai v Mammoth Empire Construction Sdn Bhd (Industrial Court) [2012] 3 ILR 148

Alvin was the counsel for Mammoth Empire. This is a case on dismissal of an employee where the Industrial Court ruled that the dismissal by the company is with just cause and excuse as the company has successfully proven that the employee was found to have committed misconduct to the extent that the company's image was tarnished or caused financial loss to the company. The Industrial Court also further ruled that domestic inquiry is not compulsory in the circumstances if the misconduct by the employee is a very serious misconducts amounting to criminal offences.

- 39) Kha Seng Group Sdn Bhd (yang terdahulunya dikenali sebagai Mula Unggul Sdn Bhd) v Lee Mun Swee @ Lee Hing Chai & 9 Ors (High Court) [2012] 6 AMR 682

Alvin was the counsel for Kha Seng Group. This is a case on an application to set aside the judgment in default of appearance by the defendants which was dismissed by the Court and decided in favour of Kha Seng Group on the ground that it is not a good defence to defeat the landowner's right to the possession of the land by mere occupation on the land for a long period of time. The interest in equity also cannot defeat the landowner's right to the property. The Court ruled that whether or not the defendants are entitled to compensation and from whom is a separate and distinct issue which may be the subject matter of a separate and distinct suit and not relevant in this case.

- 40) Tetuan Ros, Lee & Co v Tan Ming Yeow (Court of Appeal) [2013] 1 AMR 156

Justin was one of the counsel for Tan Ming Yeow, the respondent. This is an appeal by the appellant against the High Court decision to strike out the appellant's claim for substantial legal fees against the respondent which was dismissed by the Court of Appeal based on the doctrine of res judicata on the "wider sense" and consideration of important legal issues relating to the recovery of legal fees, taxation and bill of costs.

41) Vivamall Sdn Bhd & 2 Ors v TDC Construction Sdn Bhd & 2 Ors (High Court) [2013] 1 AMR 279/ 8 MLJ 1

Justin was the counsel for Vivamall and assisted by Alvin. This is a case on an application for Quia timet injunction i.e. to restrain the defendants from approaching, interfering, contracting and harassing the plaintiffs and their family members arising from a commercial dispute which is pending arbitration. We believe this is the first reported case of such nature of injunction application allowed by Court in Malaysia in respect of a “commercial dispute” as most other cases relate to family/ private dispute.

42) Carl Zeiss Sdn Bhd v Delphax Sdn Bhd (High Court) [2013] 1 AMRC 550

Alvin was the counsel for Delphax (Respondent). This is a case on winding-up petition by the Petitioner against Delphax on the ground of Delphax’s “inability to pay” an undisputed judgment debt. Even though the case was not decided in favour of the Respondent, the Court has decided on points of law i.e. the procedural provisions including Rules 22, 25, 26 and 194 (1) of the Companies (Winding-Up) Rules 1972 and Sections 4, 12, 20, 127, 176, 218, 243 and 350 of the Companies Act 1965. The High Court also held that the test to be applied is the test of “inability to pay” and in the event the “white knight” is able to discharge the liability of the Respondent, the liquidator or any creditor or contributory of the Respondent may apply for a permanent stay of the winding-up proceedings under Section 243(1) of the Companies Act 1965.

43) Unijaya Teknologi Sdn Bhd v Syarikat Elektrik RBA Sdn Bhd & Ors (High Court) [2013] 9 MLJ 452

Justin was the counsel for Unijaya (Plaintiff) and assisted by Alvin. This is a building contract case where judgment was entered against all Defendants which include the Directors of Syarikat Elektrik RBA Sdn Bhd for a debt due to the Plaintiff. The Defendants appealed against the Senior Assistant Registrar (SAR)'s decision to disallow the "4th Defendant's" (which is not a party to the suit) application for an extension of time (encl 31) for the 2nd & 3rd defendants to file an application to set aside the judgment in default entered against them. The High Court dismissed the appeal on the ground that the SAR had a discretion to allow or disallow the defendant's oral application to withdraw encl 31 which is "defective".

44) Mutiara Mukara Sdn Bhd v Unijaya Teknologi Sdn Bhd (High Court) [2013] 9 MLJ 165

Justin was the counsel for Unijaya (Defendant). This is a case on claim for damages by the Plaintiff from the Defendant for sub-contract works allegedly done which was struck out due to the Plaintiff's failure to comply with courts' direction/ order on the case management and the Plaintiff's claim for payment from the Defendant was not in accordance to the agreement. The Defendant on the other hand counter claimed against the Plaintiff for failure to carry out the works and subsequently abandoning the project site which was allowed by the Court and substantial damages were assessed against the Plaintiff.

45) Giga Engineering & Construction Sdn Bhd v Yip Chee Seng & Sons Sdn Bhd & Ors (High Court) [2013] 10 MLJ 805

This case involves a dispute on pre-tender works. This is a case on application under Order 92 Rule 4 of the Rules of Court 2012 to review the amount of RM60,000 of the getting up fees awarded by the Senior Assistant Registrar (SAR) and sought for it to be increased to RM150,000 which was allowed by the Court on the grounds that there were many complicated issues involved in this case and the solicitor and/or counsel for the defendants had to prepare their clients' case in greater depth.

46) Plastech Industrial Systems Sdn Bhd v N&C Resources Sdn Bhd & Ors (High Court) [2013] 10 MLJ 837

Justin was the counsel for Plastech (the Plaintiff) and assisted by Chooi Peng. This is a case by the third defendant to set aside the ex-parte application for leave to commence committal proceedings against all the Defendants for failure to comply with the judgment and order granted by the Court against the Defendants earlier after a Full Trial. The Court dismissed the application on the grounds inter-alia, that the third defendant has constructive knowledge of the order and he has waived the right to object to the ex-parte order by his own action by filing 2 affidavits to oppose the Plaintiff's application for committal proceedings.

47) Lee Guek Sian v Kenanga Wholesale City Sdn Bhd [2014] 1 MELR 693

This is an Industrial Court case. Justin was the counsel for Kenanga (the Company) and assisted by Alvin. The case involved the Company's application to amend its Statement In Reply to inter-alia include purported misrepresentation as a ground for the Plaintiff's dismissal. More importantly, the novel point of law involved was whether the purported misrepresentation could be included as it was only discovered after the Claimant's dismissal. We took the issue on behalf of the Company that such matters discovered after the employee's dismissal is still relevant. The Court, in considering s30(5) of the Industrial Relations Act 1967, allowed the Defendant's application to amend its Statement in Reply, save for the paragraphs relating to this purported "misrepresentation" discovered after the dismissal of the Claimant has transpired.

Note : On appeal by the Company to the High Court for review on this point, where Alvin was the counsel, the judicial review application was allowed by the High Court and the purported misrepresentation was allowed to be included in the Statement In Reply even though this purported misrepresentation was only discovered after the employee's dismissal.

48) Ideal Advantage Sdn Bhd v Palm Spring Joint Management Body & another [2014] 1 AMR 49, [2014] 7 MLJ 812 & [2014] 1 CLJ 598

Justin was the counsel for the Defendants in this High Court matter. This is a novel and/ or landmark decision after a Trial involving, amongst others, the following findings/ issues :-

- (i) The legality of a sale of additional accessory carparks by the developer of units of condominium which comes up to 8-15 carparks each which are more than necessarily required for each condominium where the extra carparks are intended to be used for commercial rental to occupants of the residential condominium project for profit;
- (ii) The interpretation of Sections 34(2) and 69 of the Strata Titles Act 1985 and whether the word "dealt" in Sections 34(2) and 69 of the said Act include the act of "renting out" or "tenanting out", which was also answered in the affirmative;
- (iii) The interpretation of the phrase "used" or "intended to be used in conjunction with" in the definition of an "accessory parcel" in Section 4 of the Strata Titles Act will prohibit such acts of renting out not intended to be used with the main condominium unit;
- (iv) That the said sale of carparks contravened the Town and Country Planning Act 1976 by reason of breach of conditions of the Development Order;
- (v) There was no lawful consideration given under Section 24 of the Contracts Act 1950 for the sale of the said carparks;

- (vi) The issue of defeasibility of titles of the accessory parks where Section 5(1) of the Strata Titles Act 1985 read together with Section 340 of the National Land Code, where the Court held that by reason of the unlawful transfer of the accessory carparks, the registration of 394 accessory carparks in the name of the Plaintiff is unlawful and offended the Strata Titles Act, the Town and Country Planning Act and Sections 24 (a), (b) & (c) of the Contracts Act; and
- (vii) There was insufficient visitors' carparks for the Project and that some of these accessory carparks should be "Common Property" for the benefit of the Palm Spring Condominiums.

We believe that this is the first time that a case of this nature involving use of accessory carparks in a condominium for a **commercial purpose** and the **legality of transfer of titles** of a big number of carparks attached to a single unit of condominium, is decided in Malaysia. The High Court decided in favour of the Defendants where in essence the Plaintiff's claim was dismissed and the 1st Defendant's Counterclaim was allowed.

49) Seacera Development Sdn Bhd v Newlake Development Sdn Bhd & Anor; Antara Vista Sdn Bhd (Third Party) [2014] 2 MLRH 677

Alvin was the counsel for the Third Party, Antara Vista Sdn Bhd. This is a case on application by the Third Party to strike out the 1st Defendant's claim vide a Third Party Notice against the Third Party. The Court held that there cannot be any misrepresentation when there is no underlying contract between the 1st Defendant and the Third Party for the sale of the land. This is because misrepresentation must be made either by the other contracting parties or by an agent acting within the scope of his authority. The Court also further held that the particulars of misrepresentation ought to be pleaded in detail in the pleadings and any defect on the pleadings cannot be made good by affidavit of evidence. The Third Party's application to strike out the 1st Defendant third party action was successful because the 1st Defendant has no cause of action against the Third Party.

Note : The 1st Defendant appealed to the Court of Appeal, but their appeal was not successful.

50) Plastech Industrial Systems Sdn Bhd v N&C Resources Sdn Bhd [2014] 2 MLRH 231

Justin was the counsel for the Plaintiff in this contempt application filed at the High Court. The Court found that the contempt was proven beyond reasonable doubt and the Defendants committed and still continued to commit acts of contempt of Court when they failed and/or continued to fail to comply with the Judgment and the Order, in respect of inter-alia the mandatory injunctive orders therein.

- 51) Tiong Cheng Peng v Anor v Ker Min Choo & 6 ors [2014] 1 AMR 893 & [2014] 9 MLJ 311

Justin was the counsel for the first and second Respondent in the case. This case involved an application by the respondents to remove a liquidator appointed by the Courts upon the winding up of the company. In this unusual case, the liquidator had allowed 2 persons to attend the committee of inspection meeting. The Court ordered the removal of the Liquidator under s232(1) of the Companies Act 1965 on the basis that he had associated with and sought assistance of interested parties who were not independent and had therefore consciously or unconsciously placed himself in a position of conflict of interest. Further, an issue was raised as to the liquidator's conduct in altering the Form 75 which the Court inter-alia held to be a serious and grave misconduct.

- 52) Mohamed Sam Bin Sailan v Syarikat Asal Construction Sdn Bhd (High Court) [2014] 10 MLJ 293 & [2014] 2 MLRH 608

Justin was the counsel for Syarikat Asal Construction (the Defendant). The Plaintiff contended that in order for the Defendant to maintain its bumiputra status, the Defendant had purportedly re-appointed the Plaintiff after his retirement as a Director without his consent and knowledge and the Defendant had been forging the Plaintiff's signature. The Plaintiff therefore claimed that he was entitled to 37% from the profit earned from the relevant projects. After a full trial, the Court dismissed the Plaintiff's claim and inter-alia held that the Plaintiff failed to prove forgery without any handwriting expert evidence and further, since the Plaintiff disclaimed and disagree he was a shareholder, he could not claim for any profits in the form of dividends. The case involved the Plaintiff claiming for damages as well as profits and claimed the Defendant forged his signature to re-elect him as director of the company. The High

Court after a Full Trial found in favour of the Defendant, dismissing the Plaintiff's claim due to the lack of evidence on the side of the Plaintiff.

53) PKNS Engineering & Construction Bhd v Global Inter-Dream (M) Sdn Bhd [2014] 1 AMCR 883

Justin was the counsel for the Appellant in this Appeal before the Court of Appeal. This appeal involved a complicated building contract claim where the findings of the High Court were overturned by the Court of Appeal. The Court of Appeal allowed the Appeal and amongst other, held that :-

- (i) The Respondent/ Plaintiff's complaint on the failure by the Appellant to produce a "Method Statement" is not pleaded and the High Court Judge ought not to have considered this ground at all;
- (ii) Further, a careful examination of Clause 15 of the Instruction to Tenderers will reveal that it is not the Appellant's responsibility to produce the "Method Statement" but instead the responsibility of the Respondent;
- (iii) By various contemporaneous correspondences, the Appellant had made known to the Respondent of the delay of work and the only response was to request for an extension of time;
- (iv) The Respondent did not comply with the relevant clauses in the contract for extension of time; and

- (v) The complaint by the Respondent on the purchase of building materials is devoid of merits as the Respondent had agreed pursuant to Tender Questionnaire that all major building materials has to be purchased from the Appellant.

The Court of Appeal allowed the Appeal and after evaluating the evidence, were constrained to rule that this is a fit and proper case for Appellate intervention.

- 54) Azman bin Jufri v Medtronic Australasia PTY Limited [2015] 4 AMR 45; [2015] 5 CLJ 1026 (Court of Appeal) Chooi Peng was the counsel for the appellant/judgment debtor and assisted by Zhen Qi and Ryan Chu in this bankruptcy case. In this landmark Court of Appeal's decision, the Court set aside the service of the Bankruptcy Notice and Creditor's Petition on the ground that the application for substituted service of the Bankruptcy Notice and Creditor's Petition is invalid and ought to be dismissed; and consequently, the Order for substituted service of the Bankruptcy Notice and Creditor's Petition are null and void. The Court of Appeal held that for bankruptcy proceedings, the mandatory provision under rule 18(1) of the Bankruptcy Rules 1969 is for an application to be made by way of summons in chambers and not via a "notice of application". The judgment creditor's filing of a notice of application as opposed to a summons in chambers is a clear breach of the mandatory provision and the breach is not a mere irregularity or formal defect which is capable of being cured under Section 131 of the Bankruptcy Act 1967.

- 55) Medallion Development Sdn Bhd v Bukit Kiara Development Sdn Bhd (Court of Appeal) [2015] 4 MLJ 350 / [2015] 1 AMR 537

Justin was the counsel for the appellant/defendant and assisted by Zhen Qi. Dissatisfied with the High Court's decision, the Appellant appealed to the Court of Appeal and the High Court's decision was overturned by the Court of Appeal. In this

case, there was a Sale and Purchase Agreement of the development land and a Supplementary Agreement to deal with part of the purchase price of RM4 million to be paid in kind by contra of 2 units of property. The Supplementary Agreement provides that should the Purchaser (Appellant) fail to deliver the condominium units to the vendor (Respondent) within 36 months, the Appellant is liable to pay interest to the Respondent. The Appellant did not deliver the units to the Respondent within 36 months and the Respondent rescinded the agreement and demanded for payment of RM4 million. In this case, the Court of Appeal held that the respondent was only entitled to demand for the payment of interest for late delivery of condominium units, but not entitled to rescind the supplementary agreement purely because the appellant was not able to meet the deadline. A mere failure to meet the deadline of 36 month cannot in law amount to “total failure of consideration”. The appeal was decided in favour of the appellant/defendant.

- 56) Giga Engineering & Construction Sdn Bhd v Yip Chee Seng & Sons Sdn Bhd & 2 Ors (Court of Appeal) [2014] 4 AMR 409/ [2015] 2 MLJ 562

Justin and Alvin were the counsel for the second respondent/defendant in the Court of Appeal. The appeal was decided in favour of the second respondent/defendant. This is a case involving a claim in respect of the construction of a dam where the Pre-Tender Agreement was signed between parties. The Court of Appeal held that an invitation to participate in the joint venture to submit the tender, on its own, did not create a contractual relationship between the appellant/plaintiff and the first and second respondents/defendants. It was merely an invitation for a discussion and negotiation which culminated in the preparation and signing of the pre-tender agreement between parties. Further, the parties were not allowed to adduce evidence

to contradict and vary the Pre-Tender Agreement under Section 91 and 92 of the Evidence Act 1950. The Court of Appeal also re-affirmed the principle of law that a party who seeks the court's intervention to pierce the corporate veil must establish special circumstances to show that the company is a mere façade concealing the true facts.

- 57) Yong Lai Ling v Ng Seow Poe & 2 Ors (High Court) [2015] 8 MLJ 351/ [2014] 5 AMR 621

Justin was the counsel for the first and second defendants and assisted by Kho Zhen Qi. The 1st and 2nd Defendants were successful in their application to strike out the plaintiff's writ and statement of claim as well as the application to set aside the ex-parte injunction order obtained by the plaintiff. It is worth noting that this is also the first direct case where the Malaysian Court held that when the land is owned by two or more registered proprietors, only one of registered proprietors cannot sue without involving the other(s). Further, the plaintiff's failure to comply with the mandatory provision of Order 18 Rule 7 of the Rules of Court 2012 rendered the claim liable to be struck out and the breach of the mandatory rule cannot be cured under Order 1A or Order 2 Rule 3 of the Rules of Court 2012. This is also a novel case directly on the principle of law in respect of the prolixity and failure to plead material facts under Order 18 Rule 7 and the wrongful pleading of evidence leading to the striking out of the whole action.

- 58) Teu Shek Fai v Aarolyn Yip Yu Ming (sole ownership of Messrs Azlinda & Agnes Chan) (High Court) [2015] 8 MLJ 283

Justin was the counsel for the petitioner. In this case, the petitioner disputed the unsigned bills issued by respondent for legal fees. Thus, the petitioner commenced the Court proceeding to seek for declaration that the purported unsigned bills are void and unenforceable on the grounds that the purported bills were unsigned and the respondent failed to comply with the mandatory provisions of Section 124 of the Legal Profession Act 1976. The High Court held that the failure to sign the bill of cost is a breach of the mandatory provision of law. However, as the petitioner made some payments towards the bill and therefore acquiesced and acted upon the bill, the High Court allowed the petition in respect of the alternative prayer for taxation.

59) BRG Polo Haus Sdn Bhd & Anor v Blay International (M) Sdn Bhd & others (High Court) [2015] 8 MLJ 176

Alvin was the counsel for the defendants and assisted by Sam How. This is a judgment after a full trial involving a claim by the plaintiffs against the defendants for “money had and received”. The High Court was of the view that when there are 2 conflicting versions of the case between the 2 parties, the contemporaneous documents are more probable and reliable. The Court also held that the shareholders are not liable for the liability incurred by the Company. In respect of the counterclaim, the Court held that the defendants are entitled to claim against the plaintiff for the loss of the stocks and assets after the plaintiff abandoned the operation and business of the first defendant and refused to return the assets and stocks of the defendants. The High Court dismissed the plaintiff’s claim and allowed the defendant’s counterclaim. The case was decided in favour of the defendants.

60) Perbadanan Pengurusan Palm Spring @ Damansara v Muafakat Kekal Sdn Bhd & 2 Ors (High Court) [2015] 2 AMR 168

Justin was the counsel for the plaintiff and assisted by Ng Li Kian. In this case, the High Court dismissed the 1st Defendant's application to set aside the Court Order striking out the defendant's defence by reason of the 1st Defendant's delay in filling the witness statement and the breach of the Court's "Unless Order" by the 1st Defendant. The delay in filling the witness statement purportedly caused by the change of witnesses and "cuti raya" were unacceptable and not a good reason to justify the delay.

61) Chan Yew Mun & Anor v Faber Union Sdn Bhd (High Court) [2015] 4 CLJ 239

Justin was the counsel for the plaintiffs and assisted by Ng Li Kian. This case involved a bungalow unit which was not built by the developer (defendant) in accordance with the Sale and Purchase Agreement and the building plan in respect of the front car porch where the length of the car porch was reduced when the unit was delivered to the Purchasers (the Plaintiffs). Therefore, the plaintiffs (Purchaser) sued the defendant (Developer) for fraudulent misrepresentation and breach of contract in relation to the length of the car porch which was shorter than that of reflected in the Sale and Purchase Agreement and prayed for inter- alia rescission of the sale and purchase agreement and refund of the purchase price plus damages. However, the Court entered judgment in favour of the purchasers (plaintiffs) for damages for breach of the contract. The Court did not allow the prayer for rescission of the contract on the basis that the plaintiffs had renovated the property. The Court held that the evidence do not show consent by the purchasers to the changes of the layout plan and the mere initial or signature of the purchaser on the amended floor plan without anything more cannot signify consent to the changes but mere acknowledgement of receipt.

The plaintiffs are therefore entitled to damages against the developer for the breach of contract.

62) Tiong Cheng Peng & Anor v Ker Min Choo & Ors (High Court) [2015] 2 CLJ 720

Justin was the counsel for the first and second respondents ('Ker Boon Kee and Ker Min Choo'). This is a case concerning an application by the 1st and 2nd Respondents for committal order against the court appointed liquidator who was in contempt of the court. The High Court held that the applicants/respondents successfully proved the case of contempt of the Court against the liquidator who had tampered with the evidence by altering the Statutory Form 75 (the Liquidator's statement of accounts of receipts and payment). The act was done with the intention of influencing the outcome of the litigation.

63) Press Metal Sarawak Sdn Bhd v Etiqa Takaful Sdn Bhd (Court of Appeal) [2015] 4 CLJ 734

Justin and Alvin were the co-counsel for the appellant in this case where the counsel was Mr. Lim Kian Leong. This case concerning an appeal against the High Court's decision in allowing the Respondent's application under Section 10 of the Arbitration Act 2005 for stay of the proceedings pending the matter to be referred to arbitration. The Court of Appeal dismissed the appeal and decided that the question of whether the arbitration clause was part of the contract of insurance is a matter that goes to the jurisdiction of the arbitrator. The Court of Appeal considered Section 10(1)(b) of the Arbitration Act 2005 in the said Judgment.

64) Cottage Home Sdn Bhd v Wong Kau @ Wong Kon Lin & Anor (Court of Appeal) [2014] 3 MLJ 580

Chooi Peng was the counsel for the respondents/plaintiff in respect of a dispute between 2 landowners concerning the issue of encroachment and equitable right of way. The High Court allowed the respondents' / plaintiffs' claim for equitable right of way and encroachment and granted damages. On appeal, the Court of Appeal partially reversed the decision of the High Court and held that such claim for an equitable right of way was in the nature of an easement and not for a right of way under Section 390 of the National Land Code.