

Tetap Tiara Sdn Bhd

v

**Pengurusan Perbadanan Jaya One & 21 Ors
(and 2 Other Appeals)**

Court of Appeal – Civil Appeal Nos. W-02(IM)(NCvC)-72-01/2022,
W-02(IM)(NCvC)-73-01/2022 and W-02(IM)(NCvC)-74-01/2022
Vazeer Alam Mydin Meera, Gunalan Muniandy and Mariana Yahya JJCA

December 8, 2023

Building and common property – Management corporation – Rights and duties – Developer applied for injunction to restrain management corporation ("MC") from preventing it from voting in annual general meeting ("AGM") – MC applied for injunction to restrain its committee members, employees, property managers, and/or agents from convening, calling the AGM and extraordinary general meeting ("EGM") – Whether there were bona fide serious issues to be tried – Whether MC could injunct itself from proceeding with the AGM and/or any EGM – Whether injunction from calling AGM/EGM would adversely affect parcel owner's rights – Whether voting rights in AGM could be precluded on ground of alleged arrears – Courts of Judicature Act 1964, paragraph 8 of Schedule – Strata Management Act 2013, paragraph 21(1) of Second Schedule – Strata Management (Maintenance and Management) Regulations 2015 – Strata Titles Act 1985

Civil procedure – Injunctions – Interim injunction – Appeal – Developer applied for injunction to restrain management corporation ("MC") from preventing it from voting in annual general meeting ("AGM") – MC applied for injunction to restrain its committee members, employees, property managers, and/or agents from convening, calling the AGM and extraordinary general meeting ("EGM") – Whether there were bona fide serious issues to be tried – Whether MC could injunct itself from proceeding with the AGM and/or any EGM – Whether injunction from calling AGM/EGM would adversely affect parcel owner's rights – Whether voting rights in AGM could be precluded on ground of alleged arrears – Courts of Judicature Act 1964, paragraph 8 of Schedule – Strata Management Act 2013, paragraph 21(1) of Second Schedule – Strata Management (Maintenance and Management) Regulations 2015 – Strata Titles Act 1985

Three appeals were heard together which emanated from decisions of the High Court judge 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 Jaya One

Development which was statutorily due to be held by December 20, 2021; and dismissed the second defendant's application to injunct the first defendant from preventing it from voting in the AGM or any general meeting of the MC based on the disputed claim for the alleged outstanding sewerage charges, pending the disposal of Civil Suit No. WA-22NCvC-425-06/2021 ("suit 425"). Appeal 72 was filed by the second defendant while appeals 73 and 74 were filed by the second, third and seventh defendants respectively. The second to 22nd respondents/plaintiffs in suit 425 were registered proprietors of parcels held under separate strata titles in Jaya One, stratified integrated mixed commercial development in Petaling Jaya ("Jaya One parcel owners"). The first respondent/first defendant is the MC of Jaya One established under Strata Titles Act 1985. The second defendant was the developer of Jaya One and majority shareholder in the third defendant. The seventh defendant has an indirect substantial shareholding of 51% in the second defendant while being director of the second and third defendants and he was the first chairman of the joint management body ("JMB") and the MC. The plaintiffs filed suit 425 against the wrongdoings committed by the named defendants against the JMB/MC. They also filed an originating summons apart from suit 425 ("civil suits"). The civil suits involved issues relating to determination and imposition of maintenance charges and sinking fund contributions from 2009. Later, the first defendant discovered that there were outstanding dues owed by the second defendant for sewerage charges and the first defendant took steps to issue invoices accordingly.

The defendants filed an application to strike out suit 425 since the plaintiffs had no locus standi to file it and the first defendant should be party to the suit. The first defendant filed a notice to claim against the second to eighth defendants and/or 16th defendant for damages, contribution etc. ("the co-defendant action"). The same was not pursued by the first defendant. Pending the disposal of suit 425, the second defendant filed an injunction application to injunct the first defendant from preventing it from voting at the AGM or any general meeting of the MC based on disputed claim for alleged outstanding dues ("encl 174"); and the first defendant filed an injunction application restraining it by its committee members, employees etc. from calling the AGM ("encl 195") and from convening and calling the EGM ("encl 198"). The High Court allowed encls 195 and 198; and dismissed encl 174 on the grounds that it had become academic. Appeals 73 and 74 emanated from the decision in encls 195 and 198; while appeal 72 emanated from encl 174. The second, third and seventh defendants essentially argued that the calling of the AGM/EGM was a statutory right of all the parcel owners which could not be usurped by the court.

1 Issue(s)

1. Whether the first defendant could injunct itself from proceeding with the AGM or EGM.
2. Whether there existed bona fide serious issues for trial.

Held, allowing the appeals

1. (a) The first defendant as the MC is a creature of statute (the Strata Management Act 2013 ("the SMA")) and hence, it is the first 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"). The first defendant is to exercise the MC's powers under s 56(1) of the SMA and not to act against the SMA. The AGM is an annual statutory right of each and every parcel owner and it is important for the AGM to be held yearly. Based on the provisions of the SMA, the Schedule thereto and Strata Management (Maintenance and Management) Regulations 2015, the second, third and seventh defendants rightly contended that paragraph 8 of the Schedule to the Courts of Judicature Act 1964 was a general provision and could not be used to extend time in respect of the holding of any statutorily required AGM or EGM under the specific provisions of the SMA. There was no express provision in the SMA to allow for the AGM/EGM to be postponed or a blanket prohibition of any AGM/EGM until full and final disposal of the suit. [see p 511 para 31 - p 514 para 36; p 515 para 39]
- (b) The first defendant's contention that they were unable to ascertain which proprietors were in arrears and which ones were entitled to vote without resolving the issues in the civil suits, for the reason of which it initiated the injunction applications, was without merit. The plaintiffs' claim was based on a derivative action without the need to call an AGM/EGM, which could be pursued even after calling the AGM/EGM. There was no basis to injunct the AGM/EGM to the detriment of all the parcel owners. [see p 516 para 41; p 516 para 43; p 516 para 45 - p 517 para 45]
- (c) The first defendant undertook to pay damages if the injunction was wrongfully taken, which was actually the funds of the parcel owners who were affected. It was blatantly improper especially when the damage caused in taking away their rights by such

injunction could not be adequately compensated by damages. The High Court judge was plainly wrong in fact and law when she allowed encl 195 and encl 198. [see p 517 para 46; p 517 para 49]

2. (a) The invoices for the outstanding dues were issued after the first defendant's co-defendant action was filed and it never filed its own suit against the other defendants. The alleged arrears of sewerage charges were not proven as the first defendant's claim for the same was still before the court and pending determination from the court. The first defendant's action showed that the first defendant intended to use such purported outstanding sewerage charges to prevent the second defendant from voting in the AGM or any other general meeting of the MC. The said conduct showed that the co-defendant's action was wrong and premature without any invoices and it was not bona fide.

(b) Given that there was no final determination of arrears of sewerage charges if any, it was not right for the first defendant to not convene the AGM and/or EGM and allow the second defendant to exercise its voting right under paragraph 21(1) of the Second Schedule to the SMA. There would be no prejudice or injustice caused to the first defendant if they succeed in their co-defendant claim or even in allowing the second defendant's application. It would cause more prejudice and injustice to the second defendant by preventing it from voting which would be irreparable and could not be compensated by damages. The High Court judge failed to consider in fact and law that there were bona fide issues to be tried and the balance of convenience clearly favoured the grant for an injunction in favour of the second defendant. [see p 510 paras 26-27; p 519 paras 56-57; p 520 para 60 - p 521 para 63]

Case(s) referred to by the court

Keet Gerald Francis Noel John v Mohd Noor @ Harun b Abdullah & 2 Ors [1995] 1 AMR 373; [1995] 1 MLJ 193, CA (foll)

Nishimatsu Construction Co Ltd v Kecom Sdn Bhd (penerima dan pengurus dilantik) [2009] 1 AMR 706; [2009] 2 MLJ 404, CA (ref)

Perbadanan Pengurusan Anjung Hijau v Pesuruhjaya Bangunan Dewan Bandaraya Kuala Lumpur [2017] 4 AMR 254; [2017] 11 MLJ 554, HC (ref)

Shencourt Sdn Bhd v Prima Ampang Sdn Bhd & 4 Ors [2011] 4 AMR 449, HC (ref)

1 **Legislation referred to by the court**

Malaysia

Courts of Judicature Act 1964, Schedule, paragraph 8

5 Rules of Court 2012, Order 29, Order 29 r 1(2C)

Specific Relief Act 1950, ss 50, 51

Strata Management (Maintenance and Management) Regulations 2015,
reg 34, 34(1), (2)

10 Strata Management Act 2013, ss 1(7), 4(1), 56, 56(1), 143, Second Schedule,
paragraphs 10, 10(2), 11, 21(1), (2)

Strata Titles Act 1985

15 **Solicitors**

Justin Ty Voon and Melissa Chan Shyuk Wern (Justin Voon Chooi & Wing) for
appellant

20 *Raymond Mah, Lesley Lim, Aaron Liew and Carolyn Ng* (Mah Weng Wai &
Associates) for respondents

Appeal from High Court, Kuala Lumpur – Civil Suit Nos. WA-22NCvC-425-06/
2021, WA-22NCvC-425-06/2021 and WA-22NCvC-425-06/2021

25 *Judgment received: December 18, 2023*

30 **Mariana Yahya JCA**

Introduction

35 [1] There are three appeals before us and all are being heard together. The
three 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");

40 (iii) W-02(IM)(NCvC)-74-01/2022 ("appeal 74").

45 [2] Appeal 72 was filed by the appellant/second defendant whereas
appeal 73 and appeal 74 were filed by the appellant/second defendant,
appellant/third defendant and appellant/seventh defendant respectively.

[3] The appeals herein are against the whole decisions of the learned
High Court judge at Kuala Lumpur High Court on December 15, 2021 which

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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 December 20, 2021, pending the disposal of the Kuala Lumpur High Court Civil Suit No. WA-22NCvC-425-06/2021 ("suit 425").

[4] The appellant/defendant in appeal 72 also appeals against the whole decision of the High Court Kuala Lumpur which dismissed the appellant/second defendant's application to injunct the first respondent/first defendant from preventing the second 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 second defendant at the High Court (hereinafter referred to as "the second defendant") | 20 | 20 |
| (ii) | The second appellant (Bina Tetap Tiara Sdn Bhd) | - | the third defendant at the High Court (hereinafter referred to as "the third defendant") | 25 | 25 |
| (iii) | The third appellant (Wong Chee Kooi) | - | the seventh defendant at the High Court (hereinafter referred to as "the seventh defendant") | 30 | 30 |
| (iv) | The first respondent (Pengurusan Perbadanan Jaya One) | - | the first defendant at the High Court (hereinafter referred to as "the first defendant" OR "the MC") | 35 | 35 |
| (v) | The second to 22nd respondents | - | the first to 21st plaintiffs at the High Court (hereinafter referred to as "the plaintiffs") | 40 | 40 |

[6] We heard the appeals and unanimously allowed the appellants' three appeals with costs to follow the event at the High Court. We set aside the High Court order dated December 15, 2021 and we state our reasons for allowing the appellants' appeals as below.

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1 Salient facts

[7] The first 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 first to 21st plaintiffs also represent 52 other registered proprietors of parcels held under separate strata titles.

[8] The first 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 first defendant is named as a nominal defendant for purposes of benefit and/or compliance of the reliefs sought herein.

[9] The second 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 third 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 second 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 seventh 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 first chairman of the JMB as well the MC and member of the JMB and MC from August 21, 2009 to June 21, 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 first 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 second 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 seventh 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 first defendant discovered that there were outstanding sums due and owing by the second defendant for sewerage charges and took steps to issue the invoices accordingly.

[16] The defendants on August 27, 2021 filed an application (encl 42) to strike out the plaintiffs' whole suit because the plaintiffs had no locus standi to file the suit and the first defendant (MC) should be the party to file the suit under s 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 first defendant on September 22, 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.

1 [18] The facts show that neither did the first 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.

5 **At the High Court**

10 [19] At the High Court, while pending disposal of the main suit (suit 425),
the first and second defendants had filed encls 174, 195 and 198 for
injunctions as follows:

15 (i) *Enclosure 174*

20 The second defendant filed an injunction application dated
November 12, 2021, to injunct the first defendant from preventing the
second 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;

25 (ii) *Enclosure 195*

30 The first defendant filed an injunction application dated
November 23, 2021 restraining the first 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

35 (iii) *Enclosure 198*

40 The first defendant filed an injunction application dated
November 23, 2021 restraining the first defendant by its committee
members, employees, property managers, and/or agents from
convening, calling, and/or the EGM of the MC, pending the full and
final disposal of this suit and other prayers.

45 [20] These three injunction applications were heard together and on
December 15, 2021 the learned High Court judge gave the following orders:

50 (a) *For encl 174*

MAKA ADALAH DENGAN INI DIPERINTAHKAN BAHAWA:-

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

(b) Kos permohonan ini sebagai kos dalam kausa.

(b) *For encl 195*

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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; 5 5
2. Bahawa pihak-pihak mempunyai kebebasan untuk memohon untuk perintah dan arahan yang diperlukan dan selanjutnya; dan 10 10
3. Kos permohonan ini adalah kos dalam kausa. 15 15

(c) *For encl 198*

MAKA ADALAH DENGAN INI DIPERINTAHKAN seperti berikut:- 20 20

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; 25 25
2. Bahawa pihak-pihak mempunyai kebebasan untuk memohon untuk perintah dan arahan yang diperlukan dan selanjutnya; dan 30 30
3. Kos permohonan ini adalah kos dalam kausa. 35 35

Dissatisfied with the High Court's decisions, the second, third and seventh defendants appealed to the said decision. Hence, the present appeals to this court. 40 40

[21] The learned High Court judge in her grounds of judgment has allowed encls 195 (appeal 73) and 198 (appeal 74) and dismissed encl 174 (appeal 72) on the ground that encl 174 had become academic. We took the view that we shall address appeal 73 and appeal 74 first and thereafter appeal 72. 45 45

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1 **1 Analysis and findings**

Appeal 73 and appeal 74

5 **5 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:

10 (i) The learned High Court judge had erred in law and/or facts in not
15 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;

20 (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;

25 (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;

30 (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 first defendant was
misconceived as the monies of the first defendant belong to all parcel
owners of Jaya One; and

35 (v) The learned High Court judge had seriously erred in law and/or facts
when she did not consider that the first defendant had failed to fulfil
40 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 encls
45 195 and 198.

The law

50 [23] It is trite law that in an injunction application, the first defendant has to
satisfy and fulfil three criteria as specified in *Keet Gerald Francis Noel John v
Mohd Noor bin Abdullah & Ors* [1995] 1 AMR 373; [1995] 1 MLJ 193, that:

(i) there are bona fide serious issues to be tried;

(ii) balance of convenience is in favour of the first 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 encls 195 and 198 were not applied for by the plaintiffs (second to 22nd respondents) in the suit below but by the first 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 December 15, 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 first defendant also filed its co-defendant notice to claim against the said defendants through the plaintiffs' statement of claim. The first defendant never filed its own suit. In other words, the plaintiffs are suing on behalf of the first 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 at 461, *Nishimatsu Construction Co Ltd v Kecom Sdn Bhd* [2009] 1 AMR 706 at 708; [2009] 2 MLJ 404 at 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 first 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 first 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.

1 **1 Whether the first defendant can injunct itself from proceeding with the AGM and/or any EGM**

5 [28] The crux of the second, third and seventh defendants' submissions before this court was that the High Court has no jurisdiction to grant an injunction order to restraint the first defendant from convening, calling and/or holding any AGM and/or any EGM of the management corporation of Jaya One. The second, third and seventh defendants submit that the calling of an AGM and/or EGM is a statutory right of ail parcel owners including the said defendants and other parcel owners and cannot be usurped by the court.

15 [29] It is not disputed that the first defendant in both encls 195 and 198 had acknowledged that the AGM ought to be called latest by December 20, 2021 and not more than 15 months after the last AGM held on September 20, 2020. So, the proposed EGM ought to be called latest by December 17, 2022.

20 [30] It is the first 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:

- 25 (a) Order 29 r 1(2C) of the Rules of Court 2012,
- (b) Section 1(7) of the SMA,
- 30 (c) Paragraph 8 of the Schedule to the Courts of Judicature Act 1964; and
- (d) Sections 50 and 51 of the Specific Relief Act 1950.

35 The first defendant contended that the learned High Court judge had not erred in granting the injunction order for the AGM and EGM.

40 [31] The first defendant as the MC is a creature of statute (the SMA) and hence, it is the first 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 first defendant is to exercise the MC's powers under s 56(1) of the SMA and not to act against the SMA.

45 [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:

- 50 (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; 1 1

(iii) The right of each parcel owners to query/question the MC and/or its performance; and 5 5

(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 to the 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: 10 10

56. *Management committee* 15 15

(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. 20 20

(2) The provisions of the Second Schedule shall apply to the management corporation and the management committee. 25 25

[34] It is not disputed that paragraphs 10 and 11 of the Second Schedule to the SMA imposed a duty on the first 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 to the SMA further provide as follows: 30 30

10. *Annual general meeting* 35 35

(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. 40 40

(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. 45 45

(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. 50 50

11. *Extraordinary general meetings* 50 50

(1) A general meeting of the management corporation other than the annual general meeting shall be known as the extraordinary general meeting. 50 50

- (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 general meeting upon receiving a direction in writing from the Commissioner for the transaction of such business as the Commissioner may direct; 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 shall 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 subsubparagraph (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) Regulations 2015 ("SMR") also further provide and fortify the MC's position under paragraphs 10 and 11 of the Second Schedule that the

MC (first defendant) shall hold its AGM in accordance with subparagraph 10(2) of the Second Schedule to the Act. Whereas, reg 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 or to imprisonment for a term not exceeding three years or to both.

Section 34 provides as follows:

34. *Annual General Meeting*

- (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] Learned counsel for the first defendant refers to paragraph 8 of the Schedule to 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. Paragraph 8 of the Schedule states as follows:

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 learned counsel for the second, third and seventh defendants' submissions that paragraph 8 of the Schedule to 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 first defendant refers to s 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

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1 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.

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5 [38] Learned counsel for the first defendant also refers to the High Court's decision in *Perbadanan Pengurusan Anjung Hijau v Pesuruhjaya Bangunan Dewan Bandaraya Kuala Lumpur* [2017] 4 AMR 254; [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 to the CJA. The first defendant can no longer rely on *Anjung Hijau's* case because its decision had been reversed by the Court of Appeal vide order dated November 9, 2017. This clearly shows the opposite that no such power or jurisdiction exists.

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20 [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.

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25 [40] The second, third and seventh 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 first defendant relied heavily on the Commissioner of Building's (COB) letter dated October 11, 2021 that the COB in response to the first defendant's letter dated September 27, 2021 had advised the first defendant to apply to court for an injunction. On the contrary, COB by its letter dated November 15, 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.

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35 For ease of reference we reproduce paragraphs 7 and 8 in the said letter which inter alia stated as follows:

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40 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 laporan 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.

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50 8. Oleh itu, pentadbiran ini tidak akan berkompromi atas alasan yang diberikan sekiranya pihak tuan masih gagal untuk mengadakan mesyuarat agung tahunan berkenaan. Sekiranya pihak tuan dengan sengaja melengahkan dan meiamatkan 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.)

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[41] Based on the COB letter dated December 15, 2021, obviously COB had acknowledged the first 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 first 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 first 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 December 31, 2020 have been finalised and circulated to all the committee members since on or about August 30, 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 November 15, 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 learned counsel for the second, third and seventh 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 December 15, 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 learned counsel for the second, third and seventh 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

1 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.

5 [46] We also noted that the first 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 first 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.

15 [47] It is our respectful view that it is the statutory duty of the first 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.

25 [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 first defendant and the rights of other parcel owners.

35 [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 encl 195 and encl 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
December 15, 2021.

Appeal 72

45 [50] This is the second defendant's appeal against the High Court decision
dated December 15, 2021. The learned High Court judge had dismissed the
second defendant's application for an injunction (encl 174) against the first
defendant from preventing the second defendant from voting in the AGM or
50 any EGM of the MC of the Jaya One.

[51] The only reason given by the learned High Court judge in dismissing encl 174 is in paragraph 51(b) of the grounds of judgment and we reproduce as below:

51. (b) Consequently, since the AGM or EGM had been enjoined 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 November 12, 2021, the second defendant filed an application pursuant to Order 29 of the ROC (encl 174) for the following orders:

- (i) That the first defendant be enjoined from preventing the second 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 first 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 September 22, 2021 ("the said first defendant's notice of claim") against the second defendant;
- (ii) Pending the disposal of the first defendant's co-defendant claim pursuant to amongst others paragraph 17 of the said first defendant's notice of claim dated September 22, 2021 against the second defendant, the second 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 first defendant's co-defendant claim pursuant to amongst others paragraph 17 of the said first defendant's notice of claim dated September 22, 2021 against the second defendant and whilst the issue is pending before the court, the first 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 first defendant, in which case the costs shall be paid by the first defendant to the second defendant; and
- (v) Such further and/or other relief to the second defendant as this honorable court thinks fit.

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

5 [54] The first defendant issued the impugned invoices 1 for the sum of
RM1,464,900 and later replaced by the impugned invoices 2 for another
different sum i.e. RM1,458,061.44 to the second defendant as the alleged
outstanding sewerage charges owed by the second defendant to the first
defendant. The first defendant relied on paragraph 21(2) of the Second
Schedule to the SMA 2013 and said that the first defendant is not entitled to
vote if there are arrears in respect of the sewerage charges. Until and unless
the arrears had been paid seven days prior to the meeting, the second
defendant will be precluded from exercising its voting rights in the
upcoming AGM. We refer to paragraph 21(2) of the Second Schedule to 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.)*

25 [55] The second defendant disputed the impugned invoices 1 and 2 issued
by the first defendant, The second defendant contended that they have paid
the sewerage charges based on the pre-existing charges imposed on the
second defendant since year 2015 and no arrears were owed by the second
defendant. The second defendant denied the first defendant's notice to claim
as there was no invoice issued to the second defendant before the suit was
filed by the plaintiffs and certainly before the said first defendant's notice of
claim was filed.

35 [56] Both the impugned invoices 1 and 2 were only issued after the first
defendant's co-defendant action was filed. The first defendant never filed its
own suit against the other defendants. In fact, paragraphs 168 to 172 of the
first defendant's amended defence do not refer to any invoices.

40 [57] Most importantly, it is not proven that there are such sewerage charges
in arrears as the first defendant's claim for the same is still before the court
and pending determination from the court. The first defendant's action
shows that the first defendant intends to use such purported outstanding
sewerage charges to prevent the second defendant from voting in the AGM
and/or any general meeting of the MC. The aforesaid conduct by the first
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 second defendant's counsel's submission that the first 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 second defendant argued that the conduct of the first defendant was an afterthought and a clear tactical manoeuvre to preclude the second defendant from participating and voting in the AGM/EGM. It is trite law that the first 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 encl 174, Yeoh Yong Woi (the chairman of first defendant) in his affidavit in-reply affirmed on December 1, 2021 in paragraphs 13.1 to 13.4 (encl 10 of the record of appeal) contended that the first defendant has also filed encls 195 and 198 for the injunction of any general meeting. The first defendant agreed that one of the reasons encl 195 was filed is because the first 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 first defendant is involved in. As such, the first defendant is unable to ascertain which proprietors are in arrears and which are entitled to vote at any general meeting. Therefore, the first defendant had filed the applications to pray that no general meetings is convened until the disposal of the civil suits that the first defendant is a part of.

[60] In our view, these contentions by the first defendant support the second 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 first defendant not to convene the AGM and/or EGM and allow the second defendant to exercise its voting right under paragraph 21(1) of the Second Schedule to 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 second defendant in prayer 2 of encl 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 first defendant's co-defendant claim. There would be no prejudice or injustice caused to the first defendant if they succeed in their co-defendant claim or even in allowing the second defendant's application. On this point, we find that the learned High Court judge erred in law and/or facts when she did not

1 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 second defendant by
preventing the second 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 second defendant.
We see no reason that there would be prejudice caused to the first defendant
if encl 174 is allowed.

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

[65] We therefore unanimously allowed the second defendant's appeal and
allowed prayer (i), (ii) and (iii) of encl 174 with costs to follow the event at the
High Court. As for prayer (ii) in encl 174, we ordered that a sum of
RM1,458,061.44 be deposited within two weeks from the date of this order by
the second defendant into the second defendant's solicitor's firm account as
stakeholder until the disposal of this suit. We set aside the decision of the
High Court dated December 15, 2021.