

IN THE HIGH COURT OF MALAYA AT KUALA LUMPUR
IN THE FEDERAL TERRITORY, MALAYSIA
(COMMERCIAL DIVISION)
ORIGINATING SUMMONS NO: WA-24NCC-559-12/2020

In the matter of Thai Odyssey Sdn Bhd
and its group of companies or
companies related thereto

And

In the matter of the Joint Venture
Agreement dated 21.5.2004

And

In the matter of the trademark “Thai
Odyssey” and its equivalent in Chinese
Characters and/or other trademarks or
marks related thereto

And

In the matter of Section 346 of the
Companies Act 2016

And

In the matter of Orders 7, 11 and 88 of
the Rules of Court 2012

BETWEEN

1. **CHUAH SEONG KEAT**
(NRIC NO. :- 650228-08-5835)
2. **PAU KAA THIAM**
(NRIC NO. :- 640422-10-7509)
3. **THUAN CHEW BOON**
(NRIC NO. :- 730623-06-5113)
4. **LAI YIP POON**
(NRIC NO. :- 650409-08-5463)

...PLAINTIFFS

AND

1. **DIN TAN YONG CHIA**
(NRIC NO. :- 930223-14-6551)
2. **DION TAN YONG CHIEN**
(NRIC NO. :- 900107-14-6127)
3. **JARED ANG TZER SHEN**
(NRIC NO. :- 860623-56-6423)
4. **DIANA TAN SHEIK NI**
(NRIC NO. :- 860611-56-6274)
5. **JEFFREY TAN SIEW YANG**
(NRIC NO. :- 730508-04-5061)
6. **WONG MON FONG**
(NRIC NO. :- 850524-14-5958)
7. **THAI ODYSSEY SDN BHD**
(CO. NO. :- 199401025563 (311244-V))
8. **SPA ODYSSEY SDN BHD**
(CO. NO. :- 201001023990 (907762-V))
9. **THAI ODYSSEY GROUP SDN BHD**
(CO. NO. :- 201001038163 (922087-M))
10. **THAI ODYSSEY SPA & CAFE SDN BHD**
(CO. NO. :- 201701026680 (1240846-U))
11. **SPA ODYSSEY GROUP SDN BHD**
(CO. NO. :- 201801005904 (1267918-V))
12. **SPA ODYSSEY PROCUREMENT SDN BHD**
(CO. NO. :- 201901011381 (1320709-W))
13. **SPA ODYSSEY JV SDN BHD**
(CO. NO. :- 201901032715 (1342045-X))
14. **SPA ODYSSEY VENTURE BERHAD**
(CO. NO. :- 201701037084 (1251255-M))
15. **STELLAR REGION SDN BHD**
(CO. NO. :- 200501032516 (714654-K))

16. **TOUCHES DE SIAM SDN BHD**
(CO. NO. :- 200301003335 (605755-W))
 17. **DASAR POTENSI SDN BHD**
(CO. NO. :- 200201006992 (574655-U))
 18. **DAY DREAM SDN BHD**
(CO. NO. :- 200701036855 (794884-P))
 19. **RIBUAN BUDAYA SDN BHD**
(CO. NO. :- 200501006611 (683658-T))
 20. **REGION BEYOND SDN BHD**
(CO. NO. :- 200401000320 (638823-K))
 21. **BAAN KUN YA SDN BHD**
(CO. NO. :- 201501014431 (1139763-A))
 22. **FOOD COUTURE BERHAD**
(CO. NO. :- 201801034510 (1296537-T))
- ...DEFENDANTS**

GROUND OF JUDGMENT

[D7 and D11's Striking Out Application - Encl. 15]

Introduction

- [1] The Originating Summons dated 16.11.2020 ('**OS**') is an oppression action filed by the Plaintiffs under section 346 of the Companies Act 2016 ('**the CA 2016**').
- [2] **Enclosure 15** is the 7th Defendant's ('**D7**') and the 11th Defendant's ('**D11**') application to strike out certain prayers in the OS and certain paragraphs in the Affidavit in Support affirmed by the 1st Plaintiff ('**P1**')

on 16.11.2020 (**'P1 AIS'**) on the ground that these are matters pertaining to personal claim of trademarks and domain name by P1 which are outside the ambit of an oppression action under the CA 2016 (the **'Trademark Claims'**).

Background Facts

- [3]** The oppression action stems from alleged breaches of the fundamental understanding between the founding shareholders of the Thai Odyssey business, which is operated through *inter alia* the 7th to 22nd Defendants (**'the Thai Odyssey Group'**).

- [4]** The Thai Odyssey business was initially commenced by P1 in 2003, under a company known as Touches De Siam Sdn Bhd, offering Thai massage services.

- [5]** After the initial expansion of the business, the 1st to 3rd Plaintiffs entered into a joint venture with one Tan Sri Danny Tan to further expand the Thai Odyssey business. Tan Sri Danny Tan's involvement in this business venture was through his proxies, Sze Tho Kok Onn and Teh Saik Hin (**'the Proxies'**).

- [6]** The Thai Odyssey joint venture started with 2 companies (namely the D7 and the 20th Defendant (**'D20'**)), which were owned by the 1st to 3rd Plaintiffs on the one part and the Proxies on the other.

[7] The principal terms of the joint venture of the Thai Odyssey business were set out in the following agreements:-

- a) the Joint Venture Agreement dated 21.5.2004 between the P1 and the Proxies in respect of D20 (**JV-RBSB**);
- b) the Joint Venture Agreement dated 21.5.2004 between the 1st to 3rd Plaintiffs and the Proxies in respect of D7(**JV-TOSB**).

(**‘the JV Agreements’**)

[8] Some of the key terms of the joint venture are as set out in the following clauses, reproduced from JV-RBSB:-

“3. DIRECTORS AND DIRECTORS’ MEETING

...

3.3 *The Chairman of the Board of Directors of the Company shall be Chuah Seong Keat...*

...

9. SERVICES PROVIDED BY THE FIRST PARTY

9.1 *In consideration that the First Party shall be in charge of the management, operation and administration of the Company and day to day running of the business...*

...

19. CHANGE OF TRADING/BUSINESS NAME

19.1 *The parties agree that the trading name of the Business shall be known as “Thai Odyssey” and the parties further hereto agree that the name of the Company shall be changed to exclude the name “Thai Odyssey” upon the First Party ceasing to be a shareholder of the Company.*

19.2 *The name change shall be effected not later than sixty (60) days from the date the First Party ceases to be a shareholder of the Company.*

19.3. *Notwithstanding anything to contrary contained in the foregoing provisions, the Company shall from the date of the First Party ceasing to be a shareholder of the Company immediately discontinue any previously permitted use of the name “Thai Odyssey” and any trade mark or logo of the First Party.*

19.4 *The Company shall have no right to any compensation for goodwill, customers’ profits, expenses or for any other loss or damage arising as a result of the provisions contained in this Clause.*

...

26. SUCCESSORS BOUND

26.1 *This Agreement shall endure for the benefit of and be binding on each of the parties hereto and their respective successors in title and permitted assigns.”*

[emphasis added]

[9] In essence, the fundamental terms which form the basis of the Plaintiffs’ association with the Thai Odyssey business are as follows:-

- 1) The P1 is in charge of the management, operation, administration and day to day running of the Thai Odyssey business.
- 2) The P1 shall be the Chairman of the Board of Directors for the companies.

- 3) The trading name of the business venture shall be known as “Thai Odyssey”.
- 4) In respect of the usage of the trade/business name of “Thai Odyssey” and its associated trademarks and logos, the parties agreed that:-
 - a) upon P1 ceasing to be a shareholder and/or the business venture, the relevant companies shall discontinue any previously permitted usage of “Thai Odyssey”; and
 - b) there shall be no right to any compensation for goodwill, customers’ profits, expenses or for any other loss or damage arising from the cessation of the use of “Thai Odyssey”.

(‘the JV Terms’).

[10] At all material times, the JV Terms regulated:-

- a) the relationship and interests of all existing and future shareholders and joint venture partners in the Thai Odyssey business; and
- b) the conduct of the business affairs of all the companies within the Thai Odyssey Group.

[11] The Plaintiffs claim that the present majority shareholders of D7 and the 9th Defendant ('D9'), namely the 1st Defendant ('Din Tan'), the 2nd Defendant ('Dion Tan') and the 4th Defendant ('Diana Tan')], are successors in title to the Proxies, and are therefore bound by the JV Terms. Din Tan, Dion Tan and Diana Tan are all children of Tan Sri Danny Tan, and are presently in control of the Board of the TOSB and TOGSB.

[12] In this connection, the Plaintiffs further claim that consistent with the JV Terms, the operations and management of the Thai Odyssey Group were controlled and led by P1 from the inception of the joint venture until recently, when he was wrongfully ousted from such role. Tan Sri Danny Tan on the other hand (either by himself or his proxies) did not play any active role in the management of the Thai Odyssey business, and was merely in the role of an investor.

[13] P1's role in managing TOSB and the Thai Odyssey Group is also reflected in the letter dated 1.11.2010 appointing P1 as the Managing Director, which confirms that P1 had and shall continue to manage the daily operations of TOSB, see Appendix A of the letter of appointment dated 1.11.2010:-

*"It was agreed and acknowledged that **you shall continue to manage, run the daily operations of the Company, have the final say** and perform decision-making in the best interest of the Company, involved in employing of workforce and **also perform decision making for new openings of Thai Odyssey outlets.** However, you will report and advise this decision-making*

development to the Board of Directors and shareholders and/or any other person(s) as designated by the Company”

[Emphasis added]

- [14]** As a result of P1’s role, as founder and in spearheading the Thai Odyssey Group, it is said that P1 has been recognised both domestically and internationally as the face and driving force behind the extremely successful Thai Odyssey business.
- [15]** The Plaintiffs claim that upon the involvement of Din Tan in D7 and D20 in 2019, P1 was subsequently side-lined from his management role over the affairs of the Thai Odyssey business and was eventually wrongfully ousted from his role as Managing Director of D7 and/or the Thai Odyssey Group.
- [16]** The Plaintiffs claim that subsequent to P1’s wrongful and/or unlawful ouster from the management of Thai Odyssey Group, steps were also taken by 1st to 6th Defendants to unfairly dilute the Plaintiffs’ shareholding in the Thai Odyssey Group.
- [17]** In the circumstances, the Plaintiffs contend that there exists a fundamental breach of the mutual understanding between the parties and/or the legitimate expectation of the Plaintiffs with regard to the manner the affairs of the company should be conducted.
- [18]** As a result, the Plaintiffs filed the oppression action seeking a dissolution of their association in the Thai Odyssey joint venture, which is to be carried out either by:-

- a) winding up the 7th to 22nd Defendants; or alternatively
- b) compelling the 1st to 6th Defendants to purchase the Plaintiffs' shares in the Thai Odyssey Group.

[19] Various consequential orders are prayed for in the action to facilitate the exit of the Plaintiffs from the Thai Odyssey business, which includes *inter alia* orders in respect of the Trademarks claimed to be beneficially owned by P1.

D7 and D11's grounds for striking out

[20] D7 and D11's main arguments for Enclosure 15 are as follows:

- a) The OS is filed under Order 88 of Rules of Court 2012 (**'the Rules'**), which concerns shareholders' disputes arising from the conduct of the company's affairs. The pleaded facts and legal considerations are to be determined within the ambit of company laws under Section 346 of the CA 2016;
- b) The Trademark Claims are personal claims by P1 in his personal capacity based on alleged beneficial ownership and trust with some other parties who are not before this Court. The facts pleaded by P1 in support of the Trademark Claims are wholly separate and distinct from the shareholders' disputes. These claims did not arise from the alleged oppression nor did they concern the conduct of the company's affairs;

- c) The Trademark Claims involve separate causes of actions, facts and laws from the oppression complaints. The material parties to determine the Trademark Claims or the alleged trust are not parties in this action;

- d) D7 & D11 are the registered proprietors of the Trademarks since 2005 and are presently operating no less than 51 “Thai Odyssey” outlets in Malaysia. It is plain and obvious case to strike out the Trademark Claims as it is an abuse of process and will certainly delay a fair trial of the oppression action.

Plaintiffs’ position in opposing Enclosure 15

[21] The Plaintiffs contentions against Enclosure 15 are that the Trademark Claims are nothing more than factual narratives of the manner in which Thai Odyssey joint venture culminating in, *inter alia*, D7 and D20 were conceived and implemented and that the reliefs sought in respect of the Trademark Claims were mere consequential relief in the event that the Plaintiffs are successful in the oppression action under the OS.

[22] After hearing the oral submissions from counsel and based on the relevant cause papers and written submissions filed by the respective counsel, this Court allowed the application in Enclosure 15 with some modifications.

Court's deliberation

[23] This oppression action is commenced pursuant to Order 88 of the Rules which deals specifically with proceedings under the Companies Act 1965, now the CA 2016.

[24] Particularly, the Plaintiffs in this oppression action are seeking reliefs and remedies under Section 346 of the CA 2016. In gist, the Plaintiffs claim oppression by the majority shareholders principally in relation to D7 and D14.

[25] However, in the oppression action, the Plaintiffs have also sought for this Court to determine several trademark and domain name related issues and to grant several trademark and domain name related prayers based on trust and for declarations, injunctions and the assignment of those Trademarks (**'the Trademark Prayers'**).

[26] In support of the Trademark Prayers, P1 has dedicated a substantive portion of the P1 AIS for averments made in relation to the Trademark Claims.

[27] *Vis a vis* the Trademark Claims:-

- a) P1 essentially claims to be the legal and beneficial owner and the lawful proprietor of the Trademarks and Domain Name;
- b) P1 alleges that D7 and D11 are holding the Trademarks and Domain Name on trust for him.

[28] Learned counsel for D7 and D11 submitted that the oppression complaints and Trademark Claims deal with separate causes of action which concern different parties, facts and laws. They are factually and in law independent of each other and are wholly separate altogether.

[29] More specifically, section 346 of the CA 2016 is enacted to protect the rights of the shareholders against commercial unfairness or unfair departure of fair dealings in the management of a company's affairs. The leading Privy Council decision in Re Kong Thai Sawmill (Miri) Sdn Bhd & Ors v. Ling Beng Sung [1978] 2 MLJ 227 had this to say at para 1 :-

*“Secondly, for the case to be brought within section 181(1)(a) at all, the complaint must identify and prove "oppression" or "disregard". The mere fact that one or more of those managing the company possess a majority of the voting power and, in reliance upon that power, make policy or executive decisions, with which the complainant does not agree, is not enough. Those who take interests in companies limited by shares have to accept majority rule. It is only when majority rule passes over into rule oppressive of the minority, or in disregard of their interests, that the section can be invoked. As was said in a decision upon the United Kingdom section **there must be a visible departure from the standards of fair dealing and a violation of the conditions of fair play which a shareholder is entitled to expect before a case of oppression can be made** (Elder v Elder & Watson Ltd 1952 SC 49): their Lordships would place the emphasis on "visible". And similarly "disregard" involves something more than a failure to take account*

of the minority's interest: there must be awareness of that interest and an evident decision to override it or brush it aside or to set at naught the proper company procedure (per Lord Clyde in Thompson v Drysdale 1925 SC 311 315)."

[30] From the reading of the provision itself, it is clear that Section 346 of the CA 2016 only regulates corporate impropriety and wrongs in the realm of company law. Specifically, it provides for a statutory shareholders' remedy and focuses on the manner in which the affairs of the company are being conducted or the powers of the directors exercised.

"(1) Any member or debenture holder of a company may apply to the Court for an order under this section on the ground-

- (a) that the **affairs of the company are being conducted or the powers of the directors are being exercised in a manner oppressive to one or more of the members or debenture holders including himself or in disregard of his or their interests as members, shareholders or debenture holders of the company;** or*
- (b) that **some act of the company has been done or is threatened or that some resolution of the members, debenture holders or any class of them has been passed or is proposed which unfairly discriminates against or is otherwise prejudicial to one or more of the members or debenture holders, including himself.**"*

[Emphasis added]

[31] Only if and when a case of oppression is established within the ambit of **Section 346(1)(a) and (b)**, would the Court be vested with the powers to grant remedies within the purview of Section 346(2) of the CA 2016 and with an aim to “bringing to an end or remedying the matters complained of”.

[32] The remedies granted must have the effect and serve the underlying principle of bringing to an end the effects of a proven oppressive conduct and not more than that:-

*“9-16 The guiding statutory principle **in the language of S 346 is that the general discretionary power must have the effect, or serve the purpose, of remedying or bringing to an end the effects of oppressive conduct.** If a complainant asks for reliefs that do not have that effect, the Court will give reliefs having that effect as required under the section. **Similarly, if a petitioner asks for reliefs that are disproportionate to the purpose of the remedial jurisdiction, the Court will fashion appropriate reliefs no further than necessary to end the effects of established oppressive conduct.”***

[Emphasis added]

[33] The Federal Court in **Koh Jui Hiong @ Koa Jui Heong & Ors v Ki Tak Sang @ Kee Tak Sang and another appeal** [2014] 3 MLJ 10 expounded the intent of Section 181 of the CA 1976 (now Section 346 of the CA 2016) as follows:-

“[15]...To obtain relief, the petitioner must prove ‘that the affairs of the company are being conducted or the powers of the directors

are being exercised in a manner oppressive to one or more of the members or holders of debentures including himself or in disregard of his or their interests as members, shareholders or holders of debentures of the company; or that some act of the company has been done or is threatened or that some resolution of the members, holders of debentures or any class of them has been passed or is proposed which unfairly discriminates against or is otherwise prejudicial to one or more of the members or holders of debentures (including himself)'. **For relief to be granted, first there must be a finding of oppression or unfair discrimination as aforesaid.** That was emphasised in *Re Kong Thai Sawmill (Miri) Sdn Bhd v Ling Beng Sung* [1978] 2 MLJ 227, where Lord Wilberforce, **delivering the advice of the Privy Council, said that s 181 must be applied according to its terms and its purpose.** Lord Wilberforce also pronounced that 'if a case of 'oppression' or 'disregard' is made out, the s 181 applies and it is no answer to say that relief might also have been obtained in a minority shareholders' action'.

This section can trace its descent from s 210 of the United Kingdom Companies Act 1948 which was introduced in that year in order to **strengthen the position of minority shareholders in limited companies.** It also resembles the rather wider s 186 of the Australian Companies Act 1961. But s 181 is in important respects different from both its predecessors and is notably wider in scope than the United Kingdom section. In sub-s (1)(a) it adds disregard of the interests of members, etc to oppression as a ground for relief in this respect making explicit what was already inherent in the section (see *Re HR Harmer Ltd* [1959] 1 WLR 62 at p 75). It introduces a new ground in sub-s (1)(b) and, most importantly, in sub-s 2, which sets out the kinds of relief which may be granted, it

provides for 'remedying the matters complained of and states as a specific type of relief that of winding up of the company.'

[Emphasis added]

[34] The typical reliefs provided for under Section 346(2) are within the domain and context of company law. For instance :-

- a) order of shares buy-out;
- b) winding up as a relief of last resort;
- c) alteration of articles of association;
- d) Only in very limited circumstances and context, would the Courts be minded to order compensation to the oppressed shareholder. This also on the premise that the element of compensation ought to be incidental to the main relief of purchase of shares as part of the share price, with a view of bringing to an end the oppressive acts complained of.

[35] Based on the aforesaid, I agree with learned counsel for D7 and D11 that the remedial order(s) sought and granted should be arising from or in relation to the oppressive act complained of and with the ultimate aim of ending or remedying such proven oppression. Simply put, the orders granted under Section 346 ought to be with the intention of redressing an oppressive act. The Federal Court case of **Koh Jiu Hiong** had extensively explained the purport and intent of Section 181 (now Section 346), which is enacted specifically to provide remedies to shareholders who are “oppressed” as caught by the section and the limitation of remedy is such that it must end the matters rightly complained of by the members of a company:-

“[55] Walter Woon on Company Law at para 5.82 asked whether issue had been raised to the 'extent to which s 216 of the Singapore Companies Act may be used to outflank the rule in *Foss v Harbottle* and its statutory analogue s 216A'. In point of fact, that was answered by the Singapore Court of Appeal in *Kumagai Gumi Co Ltd v Zenecon Pte Ltd & ors and other appeals* [1995] 2 SLR 297 :

*In our opinion, there is a limitation on the order which the court can make under s 216. **The order to be made must be made 'with a view to bringing an end or remedying the matters complained of' and we agree that 'the matters complained of' mean matters rightly complained of**. Nevertheless, **subject to this limitation**, the jurisdiction to make an order under that section is very wide. Much depends on the matters complained of and the circumstances prevailing at the time of hearing. (Emphasis added.)*

*[56] **There is a limit to the extent to which s 181 could be used to outflank the rule in *Foss v Harbottle*. The order to be made must be made with a view to bringing an end or remedying the matters complained of under s 181**. The derivative action elements should be an incident of the matters complained of under s 181. **It would be an abuse of s 181 where the nature of the complaint was misconduct rather than mismanagement** (see *Re Chime Corporation* per Lord Scott). **'To allow corporate claims to be pursued via the oppression remedy would effectively denude the statutory derivative action of much of its intended effect'** (A Reconsideration of the Shareholder's Remedy for*

Oppression in Singapore by Pearlie M C Koh, CLWR 42 1(61) 1 March 2013)...”

[Emphasis added]

[36] To this end, the Plaintiffs’ pleaded complaints of purported oppressive conduct essentially involve matters as summarized below:

- a) Termination of P1 as Group MD;
- b) Appointment of additional directors;
- c) Salaries and allowances to directors;\
- d) Capital call in the company.

(collectively known as ‘**Oppressive Acts**’)

[37] Plainly, the Trademark Claims are wholly separate issues not arising from or contingent upon the Oppressive Acts and *vice versa*. The Trademark Claims are personal claims of P1 involving a different set of facts and laws and not *qua* shareholder. A closer examination at the Plaintiffs’ pleaded case will show that:-

- a) The facts giving rise to the alleged Oppressive Acts are separate and distinct from the Trademark Claims. They are unrelated to the Trademark Claims and have nothing to do with the facts giving rise to the Trademark Claims and vice versa;
- b) The Trademark Claims did not originate from the oppression complaints against the majority shareholders. There is no pleaded complaint against the companies (D7 and D11) giving rise to the Trademark Claims;

- c) The Trademark Claims are personal claims of P1 against the companies which are not founded on Section 346;
- d) The Trademark Prayers do not redress the alleged Oppressive Acts under Section 346;
- e) The trust in respect of the Trademark Claims is disputed.

[38] On the other hand, the trademark rights are obtained by way of registration with the relevant Intellectual Property Office. In the instant case, the Trademarks in Malaysia were registered and/or applied under the Trade Marks Act 1976 ('**TA 1976**'). Although Trademarks Act 2019 ('**TA 2019**') has repealed the TA 1976 on 27.12.2019, the rights under the TA 1976 are preserved under the TA 2019 which is now the main legislation governing trademarks in Malaysia, subject to certain transitional provisions.

[39] The TA 2019 provides for various matters on trademarks including but not limited to the procedures for registration, rights of a registered proprietor, trust relating to trademarks, and invalidation action.

[40] *Vis a vis* the Trademark Claims, P1 premised his Trademark Claims on two grounds. Essentially, (i) P1 claims that he is entitled to the Trademarks based on beneficial ownership and (ii) that D7 and D11 are purportedly holding the Trademarks on trust for him.

[41] D7 and D11 claimed that P1's contention is untenable and that they are the legal and beneficial owner of the respective Trademarks. The formal documents clearly show that D7 & D11 are the registered proprietors and/or applicants of the Trademarks. Further, for the registered Trademarks in Malaysia, D7 has been the registered proprietor for more than 5 years. As such, the registrations are deemed conclusive under the Trademarks Act 2019.

[42] Thus, as it stands, D7 and D11 are the legal and beneficial owner of the respective Trademarks and that they categorically denied holding the trademark in trust for any other parties.

[43] In this connection, learned counsel for D7 and D11 conceded that both beneficial ownership and trust in relation to trademarks may be recognized under TA 2019. Section 66(3) of the TA 2019 provides that subject to the Act, equities in respect of a registered trademark may be enforced in like manner as in respect of other personal or movable property.

[44] However, this OS is not filed under the TA 2019. P1 neither relied on this express provision nor filed his claims under Order 87 of the Rules. Instead, he seeks to argue the issue of alleged beneficial ownership and trust relating to the Trademarks under the oppression action.

[45] The Trademark Claims also cover Domain Names as defined under para. 8(c) of the OS. Disputes relating to domain names are mainly governed by the **Uniform Domain Name Dispute Resolution Policy**

(UDRP), (adopted by the Internet Corporation for Assigned Names and Numbers (ICANN)) as well as MYDRP Policy.

[46] Under Paragraph 4 of the UDRP, a complaint may be submitted against a domain name if it is identical or confusingly similar to the complainant's trademark; or where the registrant has no rights or legitimate interest to the domain name. Alternatively, one may commence a court action against a domain name registration on the grounds of trademark infringement and/or passing off.

[47] It is clear from the paragraphs above that both the Trademarks and the Domain Name are governed by their respective laws. The Trademark Claims are neither governed nor related to Section 346 of the CA 2016.

[48] Learned counsel for the Plaintiffs' contention that the Trademark Claims are merely factual narratives of the Thai Odyssey joint venture. However, the reliefs sought by the Plaintiffs which include declaration, injunction and assignment of the Trademarks belie the assertion.

[49] Even if the Plaintiffs were to prevail in the oppression action, the issue relating to the beneficial and legal ownership of the Trademarks will still have to be determined. Whilst I agree that this Court certainly has jurisdiction to make such determination, nevertheless, this would convert this OS into a different character from an oppression action.

It will also cause unnecessary delay to the determination of the oppression action.

[50] Further, the prayers or orders on ownership and assignment of trademarks would not have been within the purport, purview and intent of Section 346.

[51] The Trademark Claims are also not claims made by P1 *qua* shareholder.

[52] For the above reasons, I accept the submission of learned counsel for D7 and D11 that the Trademark Claims which are based on separate cause(s) of action, involving different jurisprudence and being independent to the central plank of the oppression action ought to be struck out.

[53] Learned counsel for D7 and D11 also made extensive submissions on the lack of merits in the P1's claim of the existence of a trust in respect of the Trademarks.

[54] In view of my holding above, there is no necessity for this Court to deal with the merits of P1's claims. In fact, it is not appropriate for the Court in this oppression action to make such determination. Such claims should be heard separately and more conveniently by the Intellectual Property Court.

Conclusion

[55] In the premises, this Court ordered that paragraphs 5(b) (iii) and paragraphs 8 to 12 of the OS be struck out. Paragraphs 36 to 49 and any part thereof of the Affidavit affirmed on 16.11.2020 by P1 be struck out.

[56] The Plaintiffs to pay D7 and D11 costs fixed at RM 10,000.00 subject to allocator.

Dated: May 12, 2021



ONG CHEE KWAN

Judicial Commissioner

High Court of Kuala Lumpur, NCC2

COUNSEL:

1. Mr. Alvin Tang together with Mr. Tan Chong Lii, Mr. Eng Chee and Ms. Teo Ju-Li for Plaintiffs
Messrs. Tan Chong Lii & Co. (Petaling Jaya)
2. Mr. H R Dipendra together with Ms. Hoo Kit Yee, Mr. Gary Yap and Ms. Tong Joe Jye for 1st - 6th Defendants
Messrs. Koh Dipendra Jeremiah Law (Kuala Lumpur)
3. Mr. Yee Mei Ken with Ms. Caitlin Tan and Ms. Elisia Engku Kangon for 7th -10th and 15th-21st Defendants
Messrs. Shearn Delamore & Co. (Kuala Lumpur)

4. Mr. Yee Jun Hong for 11th-14th Defendants
Messrs. JH Yee & Co. (Kuala Lumpur)
5. Ms. Kelly Khoo with Julia John and Jack Lee (PDK) for Proposed Interveners

CASE REFERENCE:

1. *Re Kong Thai Sawmill (Miri) Sdn Bhd & Ors v. Ling Beng Sung* [1978] 2 MLJ 227
2. *Koh Jui Hiong @ Koa Jui Heong & Ors v Ki Tak Sang @ Kee Tak Sang and another appeal* [2014] 3 MLJ 10

LEGISLATION REFERENCE:

1. Section 346 of the Companies Act 2016
2. Trade Marks Act 1976.
3. Trademarks Act 2019.