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To Members of the Malaysian Bar

### **Highlights from the Appellate Courts (No 7/2026)**

The Publications Committee is pleased to circulate the seventh edition of this case note series for the year.

The cases covered in this edition are as follows:

**(1) Perak Integrated Network Services Sdn Bhd v PINS OSC & Maintenance Services Sdn Bhd & Anor (FC)**

*Company law – Winding up – Derivative action – Quantum – Limitation of period of quantum to be assessed – Assessment of value of joint venture company*

Written by Jessie Lee Suan Cui

**(2) Silvery Dragon Prestressed Materials Co Ltd Tianjin v Kerajaan Malaysia & 2 Ors (CA)**

*Trade and commodities – Anti-Dumping measures – Judicial review challenge of determination on anti-dumping – Claims of inadequate disclosure and computation errors – Processes related to trade remedy investigations*

Written by Ryan Ng Chin Wern

**(3) Saravanan Sangaralingam & Anor v Majlis Bandaraya Ipoh & Anor (CA)**

*Administrative law – Judicial review – Legal effect and character of guidelines – Legitimate expectation – Allegation that judicial review was a collateral attack against a consent order*

Written by Iqbal Harith Liang

The case notes may be accessed [here](#) (see page 2 onwards).

Sincerely,

**Gregory Das  
Co-Chairperson  
Publications Committee**

# Highlights from the Appellate Courts

## ***Perak Integrated Network Services Sdn Bhd v PINS OSC & Maintenance Services Sdn Bhd & Anor (FC)***

*Company law – Winding up – Derivative action – Quantum – Limitation of period of quantum to be assessed – Assessment of value of joint venture company*

### **Panel:**

Rhodzariah Bujang, FCJ  
Ahmad Terrirudin Mohd Salleh, FCJ  
Lee Swee Seng, FCJ

### **Introduction**

In ***Perak Integrated Network Services Sdn Bhd v PINS OSC & Maintenance Services Sdn Bhd & Anor (Civil Appeal No.: 02(i)-26-08/2024(W))***, three appeals were heard together before the Federal Court, raising two issues.

First, whether the winding up of a joint-venture company, after it obtained a liability judgment in a derivative action but before quantum was assessed, limits the quantum to the period ending on the winding up date. This issue will be referred to in this note as the 'winding up issue'.

Second, whether the assessment of quantum should be based on gross revenue, or should also take into account costs and expenses incurred in generating that revenue. This issue will be referred to in this note as the 'deductions issue'.

### **Background facts**

The appellant, PINS, was awarded a Concession Contract by the Perak State Government to construct and maintain telecommunications towers. PINS incorporated OSC as a joint-venture company. PINS alongside another entity called UDSB were equal shareholders of OSC. OSC was appointed as the exclusive management and maintenance company for the telecommunication towers.

The parties entered into management agreements, pursuant to which, PINS was to pay OSC maintenance fees derived from rental proceeds collected from telco operators.

PINS failed to pay OSC the maintenance fees and unilaterally took over OSC's functions without notice or formal termination. Deadlock arose between PINS and UDSB as they were equal shareholders of OSC. No resolution could be passed for OSC to bring proceedings in its own name. UDSB commenced a common law derivative action on OSC's behalf against PINS for loss of profit arising from the breach of the management agreements.

### **High Court**

The trial was bifurcated. The High Court found PINS liable for the breach of the management agreements, and PINS was found to have wrongfully withheld maintenance fees payable to OSC. However, PINS had a counterclaim against OSC, that is for MCMC license fees which PINS had to pay to prevent termination of its own license, being an obligation OSC had to undertake under the management agreements.

The Senior Assistant Registrar in assessing the quantum ordered PINS to disclose all rental proceeds and payments collected from the telcos until the last work orders for the telecommunication towers. Parties appealed to the Judge in Chambers, who allowed PINS' appeal in part and limited the period of assessment of quantum to the date of OSC's winding up order.

### **Court of Appeal**

Parties appealed to the Court of Appeal on the two issues above i.e. the winding up issue and the deductions issue. The Court of Appeal decided as follows.

On the winding up issue, the Court of Appeal held that the subsequent winding up of OSC was irrelevant to the period of liability. PINS was estopped from raising this issue, given that the fact of OSC's winding up was known to PINS during the liability stage, and that PINS itself contributed to OSC's winding up by withholding payment of maintenance fees. The Court of Appeal restored the Senior Assistant Registrar's order to extend the period of assessment until even after the date of winding up of OSC.

On the deductions issue, the Court of Appeal upheld the Judge in Chamber's decision, holding that any ambiguity in relation to liability should have been raised in the liability proceedings and not at the quantum stage.

### **Federal Court**

PINS filed three appeals, two concerning the winding up issue and one concerning the deductions issue.

On the winding up issue, the Federal Court granted leave for this question of law:

*"Whether a Court in assessing quantum should take into account events occurring after the date of the breach of contract and/or the date of the Order for assessment, including a terminating event that would reduce or eliminate loss, having regard to Golden Strait Corporation v. Nippon Yusen Kubishika Kaisha [2007] 2 AC 353, Bunge SA v. Nidera BV [2015] 3 All ER 1082, The "STX Mumbai" and another matter [2015] 5 SLR 1 and iVenture Card Ltd and others v. Big Bus Singapore Sightseeing Pte Ltd and others [2022] 1 SLR 302?"*

While the Federal Court found that the winding up event is an issue which straddles both liability and quantum, the Federal Court agreed with the Court of Appeal on its merits that winding up is not a relevant event in determining quantum. This

is because the compensatory principles require that the innocent party be placed in the position it would have been in, had the contract been performed. Had PINS complied with the management agreements and paid OSC regularly, OSC would not have been wound up. PINS could not take advantage of its conduct, and limit the quantum it owed to OSC.

On the deductions issue, the Federal Court granted leave for the following questions of law:

*"(1) Whether, in construing an Order of Court, reference should be had to the background of the case, the pleadings and the grounds of judgment, having regard to Newacres Sdn Bhd v. Sri Alam Sdn Bhd [2000] 2 MLJ 353 (FC) or whether construing an Order of Court requires the application of established principles of law and practice other than those merely relating to construction, having regard to Sujatha v. Prabhakaran Nair [1988] 1 SLR(R) 631 and Hoban Steven Maurice Dixon & anor v. Scanlon Graeme John & ors [2007] 2 SLR(R) 770?; and*

*(2) Whether the proposition in SPM Membrane Switch Sdn Bhd v. Kerajaan Negeri Selangor [2016] 1 MLJ 464 that in an assessment of damages, expenses and costs are to be deducted, also applies to an account of profits for a breach of contract or otherwise?"*

The Federal Court held that a Court order had to be construed contextually having regard to the background of the case, the pleadings, the grounds of judgment, and the underlying agreements. By the time of assessment of quantum, PINS had taken over all of OSC's functions and OSC was no longer required to perform the works. It would be a windfall to compensate OSC based on gross revenue without deducting the costs and expenses that would have been incurred in earning the revenue.

The Federal Court dismissed PINS' appeals on the winding up issue with costs of RM40,000 to be paid by PINS to UDSB, but allowed PINS' appeal on the deductions issue, with costs of RM100,000 to be paid by UDSB to PINS.

The Federal Court directed for the matter to be remitted back to the High Court for quantum to be assessed, and for the same expert witness to prepare a further expert report within three months. The assessment should now extend to the period after OSC's winding up, and to include the deduction of costs and expenses. The Federal Court further directed that the said expert be deemed to be a court-appointed expert whose determination is final save for patent and perverse errors. If the said expert witness is unable to provide the expert report within the prescribed time frame, subject to any extension as the High Court may allow, the High Court is empowered to appoint another Court-appointed expert as parties may agree or otherwise from a list of their preferred experts.

Written by  
Jessie Lee Suan Cui  
Member, Publications Committee

## ***Silvery Dragon Prestressed Materials Co Ltd Tianjin v Kerajaan Malaysia & 2 Ors (CA)***

*Trade and commodities – Anti-Dumping measures – Judicial review challenge of determination on anti-dumping – Claims of inadequate disclosure and computation errors – Processes related to trade remedy investigations*

### **Panel:**

Wong Kian Kheong, JCA

Choo Kah Sing, JCA

Ong Chee Kwan, JCA

### **Introduction**

#### ***Silvery Dragon Prestressed Materials Co Ltd Tianjin v Kerajaan Malaysia & 2 Ors (Civil Appeal No.:***

**W-01(A)-407-06/2024**) concerned a challenge by the Appellant against an anti-dumping duty imposed by the Malaysian Government on its products. The central issues were whether the Government had followed fair procedures and whether its calculations were correct.

### **Background Facts**

The Appellant was the producer of prestressed steel wires used in construction ("**Products**"). Following a petition by a third party, the Investigation Authority ("**IA**") conducted an anti-dumping investigation over the said Products.

In December 2021, the 1<sup>st</sup> Respondent imposed a 9.47% anti-dumping duty on the Products for a period of 5 years. The Appellant, having flagged calculation errors but received no response, filed a judicial review application to quash the said decision. The High Court dismissed the application, and the Appellant appealed.

### **The Court of Appeal's Decision**

The Court of Appeal set aside the High Court Order and held, among others, as follows:

#### **(1) Duty to Disclose Detailed Dumping Margin Calculation Sheet - Procedural Impropriety**

The Respondents were under a legal duty to disclose the essential facts and reasoning, including the detailed dumping margin calculation methodology.

In addition, as the purpose of the disclosure is participatory and not forensic, the disclosure of this essential information or data must occur before the final determination was made or at the very least at a stage where the affected party still has an opportunity to respond. Disclosure after the decision is made defeats this purpose.

Accordingly, the Court of Appeal agreed with the Appellant's counsel that being in the nature of a quasi-judicial investigation, participation by the exporter is only possible if the exporter can understand why its sales were treated as "profitable" or "unprofitable" in arriving at the "normal value", afforded the opportunity to challenge the logic and consistency of the benchmarks applied, and to provide alternative calculations or explanation.

#### **(2) Irrationality and/or Wednesbury Unreasonableness - The IA Committed Errors When Calculating the Export Price and the Weighted Average Export Price (WAEP)**

The IA committed two fundamental errors in its calculation. First, the "net value" was used as the "gross value". Secondly, the IA deducted insurance and ocean freight costs from a figure stated on a Free on Board (FOB) basis, meaning it had already excluded insurance and ocean freight costs. These errors resulted in artificially depressed export prices, distorting the weighted average export price and inflating the dumping margin.

Anti-dumping margins are arithmetically sensitive, and an error at the price selection or adjustment stage will propagate throughout the calculation and taint the legality of the outcome. Accordingly, a determination based on a flawed method is irrational, illegal, and liable to be quashed.

#### **(3) Wednesbury Unreasonableness, Irrationality and/or Illegality - The IA Failed To Take into Account the Difference in "Price Comparability"**

The Appellant produced steel strands in three different diameters, each with different specifications, applicability and value. The IA should have calculated three different normal values for each steel strand and then made a comparison with the corresponding export price and quantity. Instead, it lumped all three together. If a fair and rational comparison had been made based on the respective diameters of the steel strands, the result would show that there was no dumping by Silvery Dragon in Malaysia.

#### **(4) Wednesbury Unreasonableness - The IA Made Contradictory Findings on Material Injury Based on the Same Data**

The IA made contradictory findings as to whether the domestic industry had in fact suffered material injury in terms of cash flow due to the purported dumping of the Products. In some instances, the IA stated that the domestic industry did not suffer material injury in terms of cash flow. In some other instances, the IA stated that there was material injury to the domestic industry through, among others, cash flow. A reasonable investigating authority would not have arrived at such contradictory findings based on the same set of data obtained in the same investigation.

### **Conclusion**

The Court of Appeal allowed the appeal, set aside the High Court's decision, and quashed the Respondents' decisions. The Respondents were ordered to refund all monies paid pursuant to the impugned decision. No order as to costs was made with the consent of the parties.

Written by  
Ryan Ng Chin Wern  
Member, Publication Committee

## **Saravanan Sangaralingam & Anor v Majlis Bandaraya Ipoh & Anor (CA)**

*Administrative law – Judicial review – Legal effect and character of guidelines – Legitimate expectation – Allegation that judicial review was a collateral attack against a consent order*

### **Panel:**

Mohamed Zaini Mazlan, JCA  
Ahmad Kamal Md. Shahid, JCA  
Nadzarin Wok Nordin, JCA

### **Facts**

In **Saravanan Sangaralingam & Anor v Majlis Bandaraya Ipoh & Anor (Civil Appeal No.: A-01(A)-574-09/2024)**, the Appellants and the 2<sup>nd</sup> Respondent, Yoga, were neighbours. Around March 2020, the Appellants carried out renovations including the extension of their wet kitchen ("**the Extension**") and increasing the height of an interface wall ("**the Wall**") between the two houses to 9 feet. No prior approval was obtained from Majlis Bandaraya Ipoh ("**MBI**") or Yoga, which was contrary to the Street, Drainage and Building Act 1974 ("**SDBA**").

MBI issued a notice to the Appellants under s. 70(13)(b) SDBA, informing that the Extension had resulted in a deviation from the approved building plans, and required the House be reinstated ("**the Demolition Notice**"). The Demolition Notice raised no issue regarding the Wall.

On 12 November 2021, Yoga filed judicial review proceedings against MBI seeking mandamus to demolish or reassess the safety of the Wall ("**JR 31**"). The Appellants were not parties. MBI initially opposed JR 31, arguing no evidence of danger or nuisance. MBI also stated that they had obtained consent from the Public Prosecutor to charge the Appellants for the Extension, and was in process of instituting charges against them. Yoga produced a report supporting his contention that the Wall was unsafe.

While JR 31 was pending, MBI on 25 March 2022 commenced summons against the Appellants for deviating from the approved building plans ("**the Summons**"). On 30 March 2022, Appellants pleaded guilty and paid a RM10,000 fine. During the hearing of the Summons, the Appellants' counsel informed that they would submit a new application for planning permission reflecting the actual state of the construction after the Summons had been disposed of. MBI then wrote to the Appellants requiring the said application to be submitted for approval by 30 July 2022, failing which it would proceed to demolish the Extension.

On 25 August 2022, the Appellants applied for planning permission for both the Extension and the Wall. On 26 September 2022, MBI approved the Appellants' planning permission application ("**Approval**"). This Approval was valid for one year, and was renewable.

On 22 March 2023, MBI issued a notice requiring the Wall to be reduced from 9 ft to 4 ft, citing Yoga's complaint in JR 31, as well as paragraph 4.15 of *Garis Panduan Pemutihan Pengubahsuaian Bangunan* ("**the Garis Panduan**"), i.e. that the Wall caused nuisance and danger to public ("**the Impugned Decision**").

In JR 31, MBI and Yoga entered a Consent Order where MBI agreed to demolish/reduce the wall to 4 ft if Appellants failed to comply by 30 June 2023.

Aggrieved, the Appellants filed a judicial review application in the High Court, contending that the Impugned Decision was unlawful, arbitrary, and inconsistent with the Approval. The Appellants also argued that the Consent Order should not bind them as they were not parties to JR 31.

### **Decision of the High Court**

The High Court dismissed the Appellants' judicial review application, holding:-

- (1) MBI acted lawfully under ss. 70 & 72 SDBA to enforce the 4 foot height limit under the Ipoh City Local Plan;
- (2) The approval was temporary in nature and hence did not confer a permanent right or vested interest;
- (3) No legitimate expectation arose from conditional/temporary approval;
- (4) The Consent Order was valid and enforceable; although the Appellants were not parties to JR 31, they had knowledge of it and chose not to intervene. The present JR is therefore an impermissible collateral attack on a court approved settlement; and
- (5) MBI acted within its statutory powers, exercised its discretion reasonably and proportionately, and complied with procedural fairness.

### **Decision of the Court of Appeal**

The Court of Appeal allowed the appeal, setting aside the High Court's decision. These are its key findings:

#### **Garis Panduan Has No Force of Law**

- (1) The Garis Panduan was issued to provide guidelines on the regularisation of building alterations and structures for residential units. It was also not enacted under any statutory provision. Hence, it was merely an administrative guideline with no force of law.

#### **Nuisance and Danger Not Established**

- (2) Paragraph 4.15 of the Garis Panduan requires *both* nuisance and danger to the public. There was no evidence from MBI proving that the Extension and/or the Wall poses a nuisance or danger to the public.
- (3) Given the absence of nuisance or danger to the public, and the lack of evidence to prove the same, MBI did not have a basis to revoke the Approval under para. 4.15 of the Garis Panduan. MBI had therefore acted in excess of the powers conferred under the Garis Panduan.

### **Estoppel**

- (4) Following the decision of the Court of Appeal in *Wan Senik bin Wan Omar v Majlis Perbandaran Selayang* [2017] 6 MLJ 229, when MBI granted the Approval, the inference must be that MBI had accepted and approved the Wall at the existing height. Hence, MBI is estopped from further requiring the Wall to be reduced to a height of 4 feet.

### **Legitimate Expectation**

- (5) The Approval and MBI's sworn statements in JR 31 created a clear, unambiguous representation that the Wall could be lawfully maintained at its height. The Appellants had relied on said representations to maintain the Wall at its existing height.
- (6) Hence, the Impugned Decision had violated the Appellants' legitimate expectation.

### **No Collateral Attack on Consent Order**

- (7) The Impugned Decision was made on 22 March 2023, i.e. before the Consent Order which was made on 12 June 2023.
- (8) Consent Order is a contract between the parties to JR 31 and does not bind non parties such as the Appellants. It is also not a final judicial determination on the merits of a dispute.
- (9) Hence, as the present JR challenged the Impugned Decision and not the Consent Order, it cannot be said to be a collateral challenge.

### **Conclusion**

The Court of Appeal unanimously allowed the appeal, set aside the High Court's decision, and ordered each Respondent to pay RM20,000 in costs to the Appellants (subject to allocator). The Court found MBI's impugned decision unlawful, irrational, and procedurally flawed.

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