IN THE HIGH COURT OF MALAYA AT KUALA LUMPUR
IN THE FEDERAL TERRITORY OF WILAYAH PERSEKUTUAN
(COMMERCIAL DIVISION)
[SUIT NO. WA-22NCC-444-11/2017]

BETWEEN

WAN ZAIZUL ADLI WAN ZULKIFLI
(NRIC NO.: 700511-03-5449) ... PLAINTIFF

AND

1. **NTP WORLD CORPORATION SDN BHD**
   (COMPANY NO.: 744564-D)

2. **DATUK NG THIEN PHING**
   (NRIC NO.: 750204-03-5313)

3. **CHUA HEE BOON**
   (NRIC NO.: 731020-05-5079)

4. **SKYWORLD DEVELOPMENT SDN BHD**
   (COMPANY NO.: 753970-X) ... DEFENDANTS

GROUNDS OF JUDGMENT

Background facts

[1] The trial for this action took 14 non-consecutive days. There were 8 witnesses for the Plaintiff (the Plaintiff himself, an expert witness, and 6 subpoena witnesses) and 4 witnesses for the Defendants (the 2nd Defendant himself, an expert witness, and 2 witnesses).

[2] The Plaintiff claims that 400,000 shares (the '**Subject Shares**'), representing 40% of the entire shareholdings in the 1st Defendant which were originally registered in his name on 19.6.2009 were wrongfully and fraudulently transferred to the 2nd Defendant. He contends that this wrongful transfer was achieved through forgeries of his signature on 2 share transfer forms dated 31.3.2011 (the '**Share Transfer Forms**').

[3] The Plaintiff based his action against the Defendants on conspiracy by unlawful means to fraudulently deprive the Plaintiff of the Subject Shares, conversion and detinue.

[4] The Defendants, on the other hand, claim that the Subject Shares were merely registered in the Plaintiff's name in order for the 1st Defendant to meet the requirement as a bumiputra company which was a prerequisite to the 1st Defendant being awarded any development project from Dewan Bandaraya Kuala Lumpur ('**DBKL**').

[5] According to the Defendants, in truth, the Plaintiff was a nominee for the 2nd Defendant in respect of the Subject Shares and towards this end, the Plaintiff had prior to 2011, executed blank transfer forms in respect of the Subject Shares for the 2nd Defendant's safekeeping ('**unused blank transfer forms**').

[6] Notwithstanding the aforesaid unused blank transfer forms, the 2nd Defendant claims that sometime on 25.3.2011 or 31.3.2011, the Plaintiff had attended at his office and signed the Share Transfer Forms. The execution of the Share Transfer Forms was duly witnessed by one Lim Kok Kwang.

[7] The Plaintiff absolutely denies signing the Share Transfer Forms claiming that he had only discovered that the Subject Shares had been transferred sometime in 2012 after he conducted a check at the Companies Commission of Malaysia ('**SSM**') following a

reduction of monthly allowance paid to him by the 1st Defendant.

[8] Despites repeated requests made to the 1st Defendant to explain the whereabout of the Subject Shares and to produce copies of the Share Transfer Forms that allegedly used to effect the transfer of the Subject Shares, no satisfactory replies were provided to the Plaintiff.

[9] On 25.04.2014, the Plaintiff instituted Civil Suit No. 22NCVC-212- 04/2014 (‘**Civil Suit 212’**) against the 1st Defendant, one Professional One Stop Management Services Sdn Bhd (‘**POSMS**’) and one Zafidi bin Mohamad (‘**Zafidi Mohamad**’) (DW2). The subject matter of Civil Suit 212 was the same as the claim herein wherein the Plaintiff claimed that he had been wrongfully dispossessed of the Subject Shares by the defendants named therein.

[10] The 2nd Defendant here was not joined as a defendant in the Civil Suit 212.

[11] Pursuant to striking-out applications by POSMS and Zafidi Mohamad on 24.04.2015 and 26.11.2014 respectively, the Civil Suit 212 against them were ordered to be struck out. The Plaintiff did not appeal against these decisions. At the trial of Civil Suit 212, the Plaintiff withdrew his claim against the 1st Defendant with liberty to file afresh, and the claim was struck off on 25.06.2015.

[12] The Plaintiff then lodged a complaint with the SSM on 23.06.2015 for the loss of the Subject Shares. It is not in dispute that CCM had since completed its investigation on the Plaintiff’s complaint and has classified the complaint as requiring ‘No Further Action’ (**NFA**). In its letter dated 21.02.2017, the CCM explained that based on its investigation,

"*tiada bukti kukuh untuk mengasaskan bahawa terdapat pemalsuan pada pemindahan saham-saham yang diadukan*".

[13] In fact, the Plaintiff called one Encik Izi Rohaizat bin Abdul Shukor ('**Encik Izi**'), a "Penolong Pendaftar" at CCM, as a witness (PW1). Encik Izi testified that to his knowledge, "*TPR (Timbalan Pendakwa Raya) menyatakan terdapat saksi bebas yang melihat En Wan Zaizul (the Plaintiff) menandatangani borang 32A (the Share Transfer Forms). Oleh yang demikian, TPR memutuskan untuk NFA kes.*" Encik Izi testified that he was agreeable to that decision.

[14] The Plaintiff had further lodged a police report on 22.06.2015 accusing the 1st, 2nd and 3rd Defendants for his loss of the Subject Shares. Again, it is not disputed that the Commercial Crimes Department (*Jabatan Siasatan Jenayah Komersil*) had since completed their investigation. The *Keputusan Penyiasatan Kes* dated 21.02.2018 stated as follows:

(1) The police investigation into the Plaintiff's police report had been completed and the investigation papers had been submitted to the Deputy Public Prosecutor on 17.01.2018;

(2) Upon perusing the investigation papers, the Deputy Public Prosecutor decided that:

i) "*Tiada saksi untuk menyokong keterangan/dakwaan*";

ii) "*Tiada sebarang kesalahan jenayah telah berlaku*";

iii) "*Tiada keterangan yang kukuh untuk membuktikan kes terhadap tertuduh*"; and

iv) "*Kes tidak diteruskan*".

[15] On 6.11.2017, the Plaintiff filed this present action. The claim against the 3rd Defendant was struck out by this Honourable Court on 26.04.2018.

[16] In his Statement of Claim, the Plaintiff made the following pleas in support of how the Subject Shares were offered to him by the 2nd Defendant, as the agent of the 1st Defendant and the nature of the roles he was expected to play for the Subject Shares ('**the Oral Agreement**'):

> **Sumbangan dan Peranan Plaintif di dalam Syarikat Defendan Pertama Untuk Memperolehi Hak Ke Atas Tanah Berkeluasan 42 Ekar Milik Dewan Bandaraya Kuala Lumpur Untuk Menjalankan Projek Pembangunan**
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> 8. Sebelum daripada itu, pada sekitar penghujung tahun 2008, wakil Defendan Pertama iaitu Defendan Kedua telah bertemu dengan Plaintif bagi mengusulkan suatu cadangan projek pembangunan di atas sebidang tanah milik Dewan Bandaraya Kuala Lumpur (DBKL), Lot 193, Jalan Kolam Air Kuala Lumpur seluar 4.93 ekar yang mana wakil Defendan Pertama tersebut telah meminta Plaintif agar menggunakan akses dan kenalan Plaintif bagi mendapatkan mandat melalui surat sokongan dari Yang Amat Berhormat Perdana Menteri bagi tujuan pembangunan hartanah di atas tanah milik DBKL tersebut kepada Defendan Pertama.
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> 9. Di dalam pertemuan dan perbincangan di antara Defendan Kedua dengan Plaintif, suatu persetujuan telah dicapai di mana Plaintif bersetuju dengan permintaan Defendan Kedua tersebut untuk Plaintif menggunakan pengalaman perniagaan, kemahiran,

kenalan, akses dan pengalaman serta kemahiran interpersonal dan teknikal Palintif bagi membantu syarikat Defendan Pertama bagi mendapatkan tanah tersebut untuk dibangunkan projek pembangunan dengan syarat tertentu iaitu Plaintif akan menguasai 40% pegangan saham di dalam syarikat Defendan Pertama, khusus bagi tujuan untuk memudahkan urusan dalam memperoleh kelulusan tersebut dan sebagai balasan perkhidmatan dan sumbangan Plaintif tersebut.

10. Antara tugas Plaintif secara khususnya ialah untuk menggunakan kepakaran dan jaringan kenalan Plaintif untuk membuat permohonan khas kepada Yang Amat Berhormat Perdana Menteri Malaysia untuk mendapat sokongan beliau supaya tanah projek yang dicadangkan diberi kepada Defendan Pertama untuk dimajukan. Di samping itu, Plaintif menjalankan pelbagai tugas lain membantu Defendan Pertama memperoleh peluang dan hak membangunkan hartanah yang strategik dan menguntungkan tersebut.

11. Selanjutnya, usul projek pembangunan tanah DBKL tersebut di bawa oleh Plaintif kepada Mohd Nazifuddin bin Datuk Seri Mohd Najib Tun Razak yang merupakan kenalan rapat Plaintif yang dikenali sewaktu sama-sama bertugas di Hong Kong pada tahun 2007 – 2009 bagi tujuan lanjut untuk kerja-kerja promosi dan akses kepada pihak- pihak yang berkaitan.

12. Plaintif menegaskan bahawa persefahaman yang dipersetujui dengan Defendan Kedua tersebut terutamanya persetujuan Plaintif bagi memperoleh

sebanyak 40% pegangan saham di dalam syarikat Defendan Pertama adalah khusus sebagai balasan bagi sumbangan dan usaha-usaha yang telah dilakukan oleh Plaintif melalui kemahiran perniagaan serta teknikal, kemahiran diplomasi professional, pengalaman, kenalan, kemahiran serta hubungan rapat serta baik Plaintif dengan pelbagai pihak bagi memperoleh mandat atau sokongan dari Yang Amat Berhormat Perdana Menteri Malaysia dan Dewan Bandaraya Kuala Lumpur (DBKL) bagi persetujuan untuk mendapatkan tanah milik DBKL untuk pembangunan projek hartanah dan cadangan pembangunan hartanah di atas tanah tersebut akan dimajukan oleh Defendan Pertama yang mana dengan adanya Plaintif selaku antara pemegang saham utama di dalam syarikat Defendan Pertama tersebut akan membantu dan memudahkan urusan-urusan sokongan dan kelulusan pemerolehan tanah untuk tujuan pembangunan tersebut.

13. Sementara itu, wakil kepada Defendan Kedua iaitu Zafidi bin Mohamad (No. KP: 731024-03-5347) menguasai sebanyak 60% pegangan saham di dalam syarikat Defendan Pertama dan menguruskan hal-hal berkaitan pengurusan teknikal, operasi & kewangan projek pembangunan hartanah tersebut.

14. Selanjutnya, Plaintif menegaskan selaras dengan persetujuan dan persefahaman tersebut, Plaintif telah menjadi Pengarah dan pemegang saham penting di dalam syarikat Defendan Pertama dengan pegangan sebanyak 40% saham berkuatkuasa dari 19.06.2009 melalui sijil-sijil saham bernombor: 04 (1 unit saham); sijil saham bernombor: 07 (280,000 unit

saham); sijil saham bernombor: 08 (119,999 unit saham) yang mana jumlah keseluruhan saham yang dipegang oleh Plaintif adalah sebanyak 400,000 unit saham di dalam syarikat Defendan Pertama tersebut.

15. Plaintif kemudiannya giat menjalankan kerja-kerja seperti perkhidmatan yang direpresentasikan di atas termasuk kerja meyakinkan dan melobi bagi mendapatkan sokongan dan kelulusan projek pembangunan di atas hartanah yang dicadangkan seperti menghadiri mesyuarat dengan Menteri Wilayah dan Kesejahteraan Bandar pada masa itu, Raja Nong Chik bin Raja Zainal Abidin, mesyuarat bersama Dato' Bandar Kuala Lumpur (pada masa itu) Tan Sri Ahmad Fuad bin Ismail dan beberapa mesyuarat dalaman DBKL lain.

16. Setelah berusaha bersungguh-sungguh atas pelbagai strategi perniagaan maka akhirnya suatu Surat Hasrat bagi cadangan pembangunan di atas Lot 193, Jalan Kolam Air telah dihantar kepada Yang Amat Berhormat Perdana Menteri Malaysia pada 22.6.2009 dan akhirnya, cadangan projek pembangunan tersebut telah mendapat sokongan jitu dan restu daripada Yang Amat Berhormat Perdana Menteri Malaysia.

17. Walaubagaimanapun kemudiannya, berlaku pertindingan sokongan kelulusan di atas lot tanah yang sama daripada pihak yang berbeza menyebabkan kesukaran dalam aspek kelulusan. Plaintif kemudiannya mengusulkan kepada Defendan Pertama untuk membuat suatu permohonan baru. Plaintif menjalankan semula usaha-usaha yang giat bagi membolehkan Defendan Pertama membuat permohonan menjalankan pembangunan di atas

tanah- tanah lain milik DBKL sebagai alternatif kepada tanah asal yang dirancangkan tersebut. Plaintif juga akan mendapatkan restu dari Yang Amat Berhormat Perdana Menteri Malaysia, Dato' Seri Najib bin Tun Abdul Razak bagi memastikan tanah baru yang dimohon mendapat sokongan beliau.

18. Tanah-tanah lain milik DBKL yang dicadangkan/ dimaksudkan mempunyai kelusasan yang lebih besar iaitu 30 ekar dan 12 ekar menjadikan jumlahnya 42 ekar yang mempunyai nilai pembangunan yang amat tinggi dan kedudukan yang amat strategik. Alternatif tersebut, diperlukan untuk memberi laluan permohonan asal untuk tanah 4.93 ekar itu diberikan kepada pihak yang telah juga mendapatkan sokongan YAB Perdana Menteri yang telah mengakibatkan pertindihan sokongan tersebut.

19. Melalui surat bertarikh 22.7.2009 oleh Defendan Pertama kepada Yang Amat Berhormat Perdana Menteri Malaysia, Defendan Pertama telah membuat permohonan untuk kelulusan bagi membangunkan tanah milik DBKL di atas Lot 17899 dan Lot 28372 secara usahasama yang mana antara cadangan pembinaan di atas hartanah tersebut melibatkan pembinaan rumah teres berbagai jenis, rumah bandar, kedai pejabat, kilang-kilang berbentuk Semi-D dan kilang-kilang berbentuk teres yang boleh menjana pulangan ekonomi yang besar kepada Dewan Bandaraya Kuala Lumpur dan negara amnya serta membuka ruang pekerjaan kepada orang ramai.

20. Plaintif telah berusaha mendapatkan kepercayaan daripada pihak berkuasa seperti DBKL dan Kerajaan Malaysia dan telah banyak menghadiri mesyuarat-

mesyuarat utama yang melibatkan hala tuju projek ini dengan pihak-pihak pengurusan atasan DBKL dan pihak Kementerian termasuklah perjumpaan dengan Yang Berbahagia Dato' Raja Nong Chik bin Raja Zainal Abidin, Menteri Pembangunan Luar Bandar dan Wilayah pada masa itu dan juga Dato' Bandar Kuala Lumpur, Tan Sri Ahmad Fuad bagi mencapai maksud tersebut.

21. Cadangan awal pembangunan yang dicadangkan secara usahasama di atas tanah milik DBKL di Lot 17899, Mukim Setapak yang mempunyai luas tanah sebanyak 27.65 ekar melibatkan pembinaan bangunan-bangunan berikut:

    i. Kompleks Sukan 1 Malaysia;

    ii. Pembangunan Komersial;

    iii. 3 Blok Kondominium; dan

    iv. Asrama Sukan.

22. Bagi cadangan pembangunan awal di atas Lot 28372, Mukim Setapak yang mempunyai keluasan hartanah seluas 12.25 ekar, pembangunan awal yang dicadangkan ialah untuk pembangunan bangunan perindustrian (*premium factory outlet*).

23. Melalui siri-siri pembentangan kertas kerja dan rujukan perkembangan projek di DBKL khususnya yang mana Plaintif sendiri menghadirkan diri, keuntungan projek pembangunan tersebut dianggarkan pada waktu ini bernilai sekitar RM 1,500,000,000.00 - RM 3,500,000,000.00 billion bagi nilai pembangunan kasar atau *Gross Development*

Value (GDV) yang mana kemudiannya barulah diangkat ke kabinet untuk pertimbangan dan kelulusan.

24. Selanjutnya, setelah Plaintif dan kumpulan perniagaan strategik beliau berusaha dan berikhtiar maka akhirnya cadangan projek pembangunan mapan tersebut juga mendapat sokongan dan restu penuh daripada Yang Amat Berhormat Perdana Menteri Malaysia. Berikutnya selepas itu juga pihak DBKL secara rasmi telah meluluskan cadangan pembangunan di lot-lot tanah milik DBKL tersebut kepada syarikat Defendan Pertama. Cadangan pembangunan dijalankan di atas tanah milik DBKL iaitu di atas Lot 17899 (30 ekar) dan lot 28372 (12 ekar), iaitu pembangunan rumah teres pelbagai jenis, rumah bandar, rumah kilang, kilang-kilang teres moden, stadium tertutup bertingkat dan pusat beli belah di lot-lot tersebut yang terletak di Setapak, Jalan Air Jerneh Kuala Lumpur dengan keluasan 42 ekar (30 ekar + 12 ekar).

25. Dengan demikian itu maka Plaintif telah menunaikan tanggungjawab beliau sebagaimana persetujuan di dalam pertemuan dengan Defendan Kedua yang telah mewakili Defendan Pertama pada peringkat awal dahulu.

26. Plaintif memplidkan bahawa tanpa sokongan daripada Yang Amat Berhormat Perdana Menteri dan jika Plaintif tidak memainkan peranan beliau, amat mustahil untuk Defendan Pertama mendapat hak pembangunan atas tanah yang dicadangkan memandangkan Defendan Pertama hanya mempunyai modal berbayar sebanyak RM 1,000,000.00 sahaja

pada waktu itu dan juga tiada pengalaman dalam membangunkan projek pembangunan sebelum ini untuk mendapatkan tanah tersebut.

27. Tanah yang dicadangkan untuk dibangunkan oleh Defendan Pertama juga mempunyai nilai pasaran yang tinggi dan tanpa kemahiran, pengalaman dan kepakaran serta jaringan kenalan yang dimiliki oleh Plaintif, ianya sukar bagi Defendan Pertama memperoleh projek tersebut.

28. Pada pertengahan tahun 2010, wakil Defendan Pertama tersebut iaitu Ng Thien Phing yang juga Defendan Kedua telah bertemu dengan Plaintif dan menyatakan bahawa kerja dan sumbangan utama Plaintif dalam projek ini telah pun disempurnakan dan terlaksana iaitu setelah mendapatkan sokongan YAB Perdana Menteri Malaysia untuk mendapatkan tanah milik DBKL (Lot 17899 dan Lot 28372) kepada Defendan Pertama bagi pembangunan hartanah. Oleh itu, bagi memudahkan urusan dan persetujuan-persetujuan serta rancangan-rancangan lanjut khususnya berkenaan urusan teknikal dan kewangan yang akan dilakukan oleh Defendan Pertama, Defendan Kedua mencadangkan kepada Plaintif untuk berhenti daripada menjadi Pengarah dalam syarikat Defendan Pertama kerana peranan selebihnya membangunkan hartanah tersebut akan dijalankan oleh Defendan dan Plaintif hanya menunggu keuntungan dan balasan kewangan atau ganjaran yang dijanjikan sahaja.

[emphasis added]

[17] The Defendants in their Defences categorically deny any arrangement or agreement made with the Plaintiff where the Plaintiff were to provide any lobbying services to the Government of Malaysia, in particular, the then Prime Minister of Malaysia to procure a development project for the 1st Defendant with DBKL as contended in the Statement of Claim. It is contended that any such agreement, if at all, would be illegal and void against public policy.

[18] On the contrary, according to the 2nd Defendant, the agreement with the Plaintiff was for the Plaintiff, who professed to be a person who has knowledge of the processes and procedures in respect of applications to DBKL in matters of joint venture with DBKL, to provide his services to the 1st Defendant who was at that time keen on going into a joint venture with DBKL to develop a piece of land known as Lot 193 Jalan Kolam Air, Kuala Lumpur **('Lot 193')** belonging to DBKL.

[19] In consideration for the Plaintiff's aforesaid services, the Plaintiff would:

(1) be paid a monthly allowance of RM 10,000.00;

(2) issued 400,000 shares of the 1st Defendant to hold as nominee of the 2nd Defendant and appointed a director of the 1st Defendant;

(3) act as shareholder and director of 1st Defendant at the exclusive discretion of the 2nd Defendant.

('**the Nominee Agreement**')

[20] According to the 2nd Defendant, the Plaintiff was made his nominee shareholder and a director of the 1st Defendant because he was advised by the Plaintiff that all applications for land to DBKL needed to be made by a bumiputra status company.

[21] It is the Defendants' pleaded case that sometime in late March 2011, the Plaintiff had agreed, at the 2nd Defendant's request, to resign as a director of the 1st Defendant and had also signed the Share Transfer Forms to the 2nd Defendant.

[22] It is not disputed that:

(1) the Plaintiff did not pay any monies for the 400,000 shares, ie, the Subject Shares, that were issued to him;

(2) the Plaintiff was paid a sum of RM 10,000.00 a month from 19.6.2009. The said sum continued to be paid to the Plaintiff even after he resigned as a director of the 1st Defendant on 25.3.2011 until early 2012 when the amount was reduced to RM 5,000 a month;

(3) apart from the Plaintiff, the other nominee shareholder of the 2nd Defendant in the 1st Defendant was one Zafidi bin Mohamad ('**Zafidi**') who held the balance 600,000 shares.

[23] At the trial, both parties also procured handwriting experts to determine the issue as to whether the signatures of the Plaintiff on the Share Transfer Forms are genuine or forged.

Legal and Factual Issues for determination

[24] Based on the aforesaid facts, the following legal and factual issues require determination of this Court, namely:

(1) whether there was the Oral Agreement as alleged by the Plaintiff;

(2) whether there was the Nominee Agreement as alleged by the 2nd Defendant;

(3) whether the Oral Agreement or the Nominee Agreement are illegal and void against public policy;

(4) whether the Plaintiff did in fact sign the Share Transfer Forms.

Whether there was the Oral Agreement or the Nominee Agreement

[25] According to the Plaintiff, the Subject Shares were the condition that he had negotiated from the 2nd Defendant as consideration for his agreement to render his services to the 1st Defendant as requested by the 2nd Defendant.

[26] The services that were requested were, as pleaded by the Plaintiff, '*menggunakan akses dan kenalan Plaintif bagi mendapatkan mandat melalui surat sokongan dari Yang Amat Berhormat Perdana Menteri bagi tujuan pembangunan hartanah di atas tanah milik DBKL tersebut kepada Defendan Pertama*'.

[27] It is not disputed that the Plaintiff did not pay any monies for the Subject Shares at all. The Subject Shares were issued to the Plaintiff sometime on 19.6.2009. At the time the Subject Shares were issued to the Plaintiff, the other registered shareholder of the 1st Defendant was Zafidi, who was issued with 600,000 shares. It is not disputed by the Plaintiff that Zafidi in fact was a mere nominee of the 2nd Defendant in respect of the said 600,000 shares.

[28] Apart from the aforesaid, it is significant that:

(1) the Plaintiff was never in possession of the share certificates in respect of the Subject Shares;

(2) the Plaintiff was paid RM 10,000 each month as allowance and this payment had continued even after the Plaintiff had resigned as a director of the 1st Defendant on 25.3.2011;

(3) the Plaintiff had resigned as a director of the 1st Defendant immediately after, as the Plaintiff himself pleaded, '*kerja dan sumbangan utama Plaintif dalam projek ini telah pun disempurnakan dan terlaksana iaitu setelah mendapatkan sokongan YAB Perdana Menteri Malaysia untuk mendapatkan tanah milik DBKL (Lot 17899 dan Lot 28372) kepada Defendan Pertama bagi pembangunan hartana*h';

(4) almost immediately after the Plaintiff resigned as a director of the 1st Defendant, the Subject Shares were transferred from the Plaintiff to the 2nd Defendant on 25.3.2011 or 31.5.2011;

(5) notwithstanding the Plaintiff's alleged substantial shareholding, there is no evidence that the Plaintiff was even made an authorised signatory to the 1st Defendant's checking accounts.

[29] The Plaintiff has not demonstrated that he had any experience at all in the area of development of property. All that he had shown was that he was a close friend of one Mohd Nazifuddin bin Datuk Seri Mohd Najib Tun Razak, who was the son of the then Prime Minister of Malaysia, which relationship provided the Plaintiff with direct access to the Prime Minister himself. The following testimony from the Plaintiff is telling:

> *'Yang Arif, dalam awal perbincangan saya dengan Defendan Kedua, berkenaan dengan Defendan Satu iaitu syarikat, perjanjian awal adalah mewujudkan satu syarikat baru ataupun JV syarikat untuk dibawa hajatnya untuk membangunkan projek pembangunan hartanah.* ***Antara syarat, menunjukkan kebolehan saya. Saya telah membawa Nazifuddin Najib iaitu anak mantan Perdana***

Menteri ke pejabat Defendan Satu bertemu dengan Defendan Dua dan yang lain.

Asal perjanjian Yang Arif adalah untuk pihak saya mendapatkan tanah-tanah di bawah DBKL untuk dibangunkan secara runding terus.'

'*Yang Arif, selepas membawa Nazifuddin Najib dan memperkenalkan rangkaian beliau kepada Defendan Dua, iaitu Defendan Satu, mereka Defendan Dua dan Defendan-Defendan Dua yakin bahawa usul yang akan saya bawa kepada mantan Perdana Menteri akan berjaya sebab usul juga memastikan projek itu mendatangkan manfaat kepada kerajaan dan juga pihak syarikat. Dan dengan adanya sokongan mantan Perdana Menteri, Datuk Bandar lebih senang untuk melepasnya sebagai direct nego atas tanah tersebut. Dan tanah tersebut tidak diberikan kepada syarikat-syarikat lain walaupun syarikat kita syarikat Defendan Satu adalah syarikat yang amat baru.'*

[30] The testimony of the Plaintiff that he had insisted on being a shareholder and a director of the 1st Defendant because ' *... saya mestilah memiliki saham syarikat dan peranan sebagai pengarah syarikat kerana saya mahu memastikan saya adalah pemilik ekuiti dalam organasasi korporat yang ingin saya majukan bersama ...* '

[31] However, if this were in fact true, the Plaintiff would have insisted on remaining as a director of the 1st Defendant throughout the development of the joint venture project with DBKL instead of resigning immediately upon request by the 2nd Defendant without any protestation at all.

[32] In fact, the Plaintiff's own pleaded case suggests that the Plaintiff's role was only to secure for the 1st Defendant a

development project on the land owned by DBKL. This was achieved by the Plaintiff when he secured the support from the then Prime Minister for the Lot 17899 and Lot 28372 owned by DBKL to be given to the 1st Defendant for development.

[33] I also accept the testimony of the 2nd Defendant that it would not have made commercial sense for the 2nd Defendant to give the Plaintiff the Subject Shares which represent 40% of the entire shareholding of the 1st Defendant while the 2nd Defendant was expected to fund the costs for the entire development.

[34] Moreover, it is unlikely that the 2nd Defendant would have agreed to issue and give full ownership of the Subject Shares to the Plaintiff on 19.6.2009 when the Plaintiff had not even shown that he was able to deliver on his promised services. For this reason, I accept the 2nd Defendant's testimony that the Subject Shares were in the possession and control of the 2nd Defendant at all times and that the Plaintiff had in fact executed the unused transfer forms in blank which were kept in the custody of the 2nd Defendant.

[35] I also accept the testimony of Zafidi who testified that both the shares of the 1st Defendant that were registered in his name and in the name of the Plaintiff were in fact held by them as nominee for the 2nd Defendant. Zafidi informed the Court that the shares had to be registered in both their names in order to reflect to DBKL and the authorities that the 1st Defendant was a 100% bumiputra company. His testimony was not effectively challenged by learned counsel for the Plaintiff. This was what Zafidi said:

> ***'ZAFIDI**: Pada masa itu, polisi daripada DBKL mengatakan perlu syarikat bumiputera.*
>
> ***MS**: Ya.*

ZAFIDI: *Tu, sebab itu lah En Ng nominee kan saya, dan juga Plaintif dalam syarikat ini.'*

[36] The aforesaid facts are more consistent with the testimony of the 2nd Defendant that the Subject Shares were never intended to be beneficially owned by the Plaintiff and that the Plaintiff was merely a nominee of the 2nd Defendant.

[37] Accordingly, it is my judgment that there was in fact no such Oral Agreement as alleged by the Plaintiff. On the contrary, I find that there was the Nominee Agreement as testified by the 2nd Defendant.

[38] The rejection of the Oral Agreement necessarily means that the Plaintiff's claims in this Action must fail as the Plaintiff was never the beneficial owner of the Subject Shares at all times.

Legality of the Nominee Agreement

[39] As I have found above, under the terms of the Nominee Agreement, the Plaintiff had offered to use his close relationship and access to the then Prime Minister of Malaysia to procure for the 1st Defendant the land owned by DBKL for development by the 1st Defendant. As consideration, the Plaintiff was paid a sum of RM 10,000 a month.

[40] It is my judgment that such an agreement was in truth and in substance an influence peddling agreement or a contract for lobbying services.

[41] It is settled that contracts for lobbying services are void for being unlawful pursuant to section 24(e), Contracts Act 1950 ('**CA**') [See: *Merong Mahawangsa Sdn Bhd & Anor v. Dato' Shazryl Eskay Abdullah* [2015] 8 CLJ 212 (FC), *John Ambrose v. Peter Anthony & Anor* [2017] 6 CLJ 465 (COA), and *JR Joint*

Resources Holdings Sdn Bhd v. Norhana Sharkhan [2021] 1 LNS 1413 (HC).

[42] As observed by Tengku Maimun JCA (as she then was) in **John Ambrose**, at p.485:

> '[51] In the instant appeal, it is clear from the evidence that the plaintiff has the position, influence and good relationship with the Prime Minister cum Minister of Finance, Minister of Higher Education and various officers and that it was through the plaintiff's acquaintance and good relationship with the above personalities that he succeeded in procuring the UMS projects for the second defendant. Hence, notwithstanding the fact that the plaintiff did not state expressly in his evidence that he had used his influence or good relationship with the Government, we find that the principles enunciated in Merong Mahawangsa are applicable to the instant appeal. We are thus constrained to uphold the findings of the trial judge that the oral agreements are illegal under s. 24(e) of the Act.'

[43] As such, it is my judgment that the Nominee Agreement amounts to an illegal lobbying agreement. In **Merong Mahawangsa**, Jeffrey Tan FCJ said, at pp.245-246:

> '[76] It is opportune to 'pigeon-hole' the service rendered by the respondent, and pronounce on the legality or otherwise of the letter of undertaking. The letter of undertaking stated (i) that the respondent, at the request of the appellant, had agreed "to render his services for the purpose of procuring and securing from the Government of Malaysia the award of the project known as 'Cadangan Pembinaan Jambatan Menggantikan Tambak Johor secara Penswastaan' in favour of the Consortium called Suria

Kalbu Sdn Bhd... in which the (appellant) has a 60% equity participation in the issued share capital", (ii) that through the (respondent's) "services aforesaid the Unit Perancang Ekonomi Jabatan Perdana Menteri by letter dated 22 June 1998 has awarded in principle the project to the consortium", (iii) that "in consideration of the services aforesaid rendered by the (respondent)... Merong Mahawangsa Sdn Bhd... undertakes and agrees to pay (the respondent) the sum of Ringgit Malaysia Twenty Million only (RM20,000,000) being the agreed remuneration payable on or before 3 November 1998" and (iv) that the undertaking "shall remain valid so long as the award for the project remains valid and subsisting and should the award be withdrawn and or terminated for any reasons whatsoever the aforesaid sum of RM20,000,000 or any part thereof shall be refunded without interest immediately".

[77] There could be no mistake about it, the RM20 million was intended as payment for service rendered by the respondent to secure the bridge project for the Consortium. But what sort of service was rendered by the respondent? In the instant case, the answer was provided by the respondent. The respondent pleaded that he "used his influence and good relationship with the Government of Malaysia to procure the original bridge project (SIG project) for the benefit and interest of the (first appellant)". In his amended statement of claim at 164-166 AR, the respondent particularised his close relationship with named Federal Ministers and his dealings with Federal Ministers with respect to the bridge project. But it was not in pleadings alone that influence peddling was admitted by the respondent. In his witness statement (see 564- 580AR), the respondent affirmed his pleaded facts and even provided further details of his influence and the

manner in which he exerted his influence and convinced those Federal Ministers (in particular, see 569-571AR). "An agreement, the object of which is to use the influence with the Ministers of Government to obtain a favourable decision, is destructive of sound and good administration. It showed a tendency to corrupt or influence public servants to give favourable decisions otherwise than on their own merits. Such an agreement is contrary to public policy. It is immaterial, if the persons intended to be influenced are not amenable to such recommendations" (Mulla Indian Contract and Specific Relief Acts 13th edn, vol. 1 at 702-703). On the facts and on the face of it, it was so plain and obvious that the consideration was unlawful, and that the letter of undertaking was void. On that ground, the claim should have been dismissed.'

[44] In fact, the nature of the 'services' offered by the Plaintiff is evident from the Statement of Claim itself, the relevant paragraphs of which I have reproduced in *extenso* above. In particular, the Plaintiff himself describes his role in the following manner:

(1) the 2nd Defendant had asked that the Plaintiff used his 'akses dan kenalan' to secure a letter of support from the Prime Minister for the purpose of development of a piece of land owned by DBKL for the 1st Defendant (paragraph 8);

(2) the Plaintiff's task specifically was to use his 'kepakaran dan jaringan kenalan Plaintif untuk membuat permohonan khas' to the Prime Ministerfor his support so that the 'tanah projek yang dicadangkan deberi kepada Defendan Pertama…' (para graph 10);

(3) Further, 'usul projek pembangunan tanah milik DBKL tersebut dibawa oleh Plaintif kepada Mohd Nazifuddin bin Datuk Seri Mohd Najib Tun Razak yang merupakan kenalan rapat Plaintif' (paragraph 11);

(4) Immediately after the Plaintiff had secured the 'sokongan dan restu penuh daripada Yang Amat Berhormat Perdana Menteri Malaysia' and after DBKL had 'secara resmi telah meluluskan cadangan pembangunan di lot-lot tanah milik DBKL tersebut kepada Defendan Pertama', the Plaintiff had considered his tasks had been discharged under his agreement with the 2nd Defendant (paragraphs 24 and 25).

[45] In fact, the Plaintiff had expressly pleaded in paragraph 26 of his Statement of Claim that 'tanpa sokongan daripada Yang Amat Berhormat Perdana Menteri dan jika Plaintif tidak memainkan peranan beliau, amat mustahil untuk Defendan Pertama mendapat hak pembangunan atas tanah yang dicadangkan memandang Defendan Pertama hanya mempunyai modal berbayar sebanyak RM 1,000,000.00 sahaja pada waktu itu dan juga tiada pengalaman dalam membangunkan projek pembangunan sebelum ini untuk mendapatkan tanah tersebut'.

[46] The aforesaid is a plain and clear admission that but for the Plaintiff providing his lobbying services, the 1st Defendant on its own merits would not have secured the project land.

[47] This Court is obliged to treat these statements pleaded by the Plaintiff as judicial admissions. See: *Yam Kong Seng & Anor v. Yee Weng Kai* [2014] 6 CLJ 285 (FC), paragraph 16; *Zulpadli bin Mohammad & Ors v. Bank Pertanian Malaysia Bhd* [2013] 2 MLJ 915 (COA), paragraphs 20 to 23.

[48] In fact, the Plaintiff had confirmed his pleaded position at the trial during his cross examination and re-examination.

[49] Learned counsel for the Plaintiff sought to canvas the argument that there was no illegality on the ground that the Plaintiff was already made a shareholder and a director of the 1st Defendant on 19.6.2009 even before any lobbying services were rendered. Whatever services rendered and or efforts put in by the Plaintiff to secure for the 1st Defendant the project land from the Prime Minister was nothing more that what any major shareholder and director of a development company would have done in order to further the interest of the company to secure projects for the company. Such 'marketing' and 'lobbying' actions could not possibly be illegal and void as contended by the Defendants. To quote learned counsel for the Plaintiff from his written submission"

> 'Perbuatan mencari peluang perniagaan untuk syarikat sendiri yang ditermakan dengan banyak banyak terma seperti melobi atau memasarkan adalah bukan satu kesalahan kerana melobi adalah sama dengan pemasaran atau *marketing* bagi syarikat Plaintif sendiri. Malah semua orang dalam kapasiti selaku pengarah dan pemegang saham akan cuba melobi atau memasarkan syarikat mereka kepada semua orang yang berpotensi memberi peluang perniagaan atau pelaburan demi kepentingan terbaik syarikat masing-masing.'

[50] With respect to learned counsel for the Plaintiff, the contention put forth is premised upon the Plaintiff in fact owning the Subject Shares in his own right. This was never the case. The Plaintiff was merely the 2nd Defendant's nominee in respect of the beneficial ownership of the Subject Shares at all material times.

[51] The fact that the Plaintiff had so willingly resigned as a director of the 1st Defendant almost immediately after securing the letter of support from the Prime Minister is inconsistent with the

Plaintiff's stance that he had considered himself as an integral part of the 1st Defendant. Most telling was the Plaintiff's admission that his 'tasks' were completed once the project land was secured for the 1st Defendant.

[52] The payment of RM 10,000.00 was never tied to the Plaintiff's position as a director or shareholder of the 1st Defendant, notwithstanding the Plaintiff's contention otherwise. This is plain since the Plaintiff had continued to received the monthly sum even after the Plaintiff had resigned as a director of the 1st Defendant on 25.3.2011. In fact, even after the Subject Shares were transferred to the 2nd Defendant, the Plaintiff was still receiving his monthly payment.

[53] Learned counsel for the Plaintiff referred this Court to various statements that were allegedly made by the 2nd Defendant to the local newspapers where he had maintained that the project land was properly and legally procured by the 1st Defendant from DBKL as rebuttal to the Defendants' contention on the issue of illegality.

[54] With respect, what the 2nd Defendant may have stated to the press is of no significance to this Court's determination on the issue of illegality.

[55] In fact, there is another reason that the Nominee Agreement is illegal. The arrangement was a device by the parties to give the relevant authority the impression that the 1st Defendant was a 100% bumiputra owned company when in truth it was not.

[56] In *Suntoso Jacob v. Kong Miao Ming* [1986] SLR 59, the appellant (an Indonesian) held 95% of the paid up capital of a Singapore company while the balance was held by the respondent, a Singaporean. The appellant decided to purchase a tugboat for the purpose of chartering it to Pertamina. In order to

obtain financing, the tugboat had to be registered as a Singapore vessel. This could not be done under the then administrative guidelines laid down if the tugboat was foreigned owned. In order to facilitate the vessel as a Singapore vessel, the appellant transferred sufficient shares to the respondent to enable the latter to be the majority shareholder. It was agreed that the respondent was only holding the shares in trust for the appellant. However, when the respondent subsequently refused to transfer the shares, the appellant commenced proceedings to enforce the trust. The Singaoore Court of Appeal refused to give effect to the trust holding that the appellant had practised a deception on the public administration.

[57] The decision in **Suntoso Jacob** has been applied with approval by our Courts [See: *Aik Ming (M) Sdn Bhd & Ors v. Chang Ching Chuen & Ors* [1995] 2 MLJ 770, *Cheong Huey Charn v. Pang Mun Chung & Anor* [2018] 7 MLJ 612].

[58] The facts in the present case are substantially similar to **Suntoso Jacob** in that the 2nd Defendant had procured both the Plaintiff and Zafidi to be the registered shareholders of the 1st Defendant to hold their respective shares in trust for him in order to represent to DBKL that the 1st Defendant was a 100% bumiputra owned company. The following testimonies of by Zafidi put this beyond doubt:

> ***MS**: Betul. Di perenggan kedua, setuju saya cadangkan ya ada dinyatakan di sini NTP World Corporation adalah sebuah syarikat pemaju hartanah berstatus bumiputera. Jadi setuju saya cadangkan pada masa itu antara plus point ataupun point-point utama, penting yang ingin diberi penekanan kepada perdana menteri pada masa itu dalam surat hasrat ialah NTP World, sebuah syarikat pemaju hartanah berstatus*

bumiputera? Itu yang kita nak PM tahu mula-mula sekali.

ZAFIDI: *Benar.*

MS*: Malah kalau kita, kalau pejabat PM membuat carian pada SSM, mereka juga pasti akan dapati pengarah, dua orang pengarah adalah bumiputera, Melayu dan pemegang saham juga 100% bumiputera Melayu.*

ZAFIDI: *Benar*

MS*: Tak ada langsung dalam surat ini yang menyatakan dakwaan En Zafidi tadi, En Zafidi cuma nominee bagi seorang yang bukan bumiputera – seorang berbangsa, bukan berbangsa Melayu – tapi kita tak masuk dalam surat ini. Betul?*

ZAFIDI: *Betul.*

MS: *Kita tak masukkan semua itu, saya cadangkan, kerana kita nak Yang Amat Berhormat Perdana Menteri bagi peluang kepada syarikat bumiputera peluang untuk membangunkan lot-lot tersebut. Betul?*

ZAFIDI: *Benar.*

MS: *En Zafidi, syarikat khuatir kalau Yang Amat Berhormat Perdana Menteri tahu syarikat ini En Zafidi 60% saham itu, En Zafidi kata adalah nominee untuk seorang yang bukan bumiputera, syarikat takut tidak mendapat sokongan. Sebab itu kita tak tulis nominee-nominee ini, betul?*

ZAFIDI: *Sebab dimaklumkan oleh Plaintif bahawasanya masa itu.*

MS: *Ya.*

ZAFIDI: *Pada masa itu, polisi daripada DBKL mengatakan perlu syarikat bumiputera.*

MS: *Ya.*

ZAFIDI: *Tu, sebab itu lah En Ng nominee kan saya, dan juga Plaintif dalam syarikat ini.'*

[59] Accordingly, it is my judgment that the Nominee Agreement that was entered into between the 2nd Defendant and the Plaintiff was in fact and in law an illegal contract and is thus void and unenforceable.

Whether the Plaintiff's signatures on the Share Transfer Forms were forged

[60] When determining the question whether a particular signature in a document is genuine or otherwise, the Court will prefer the *direct* evidence of a witness who testifies that he had personally see the person who now disputes the authenticity of the signature in question signing the document to that of a handwriting expert who opined to the contrary. This witness however must be a disinterested witness and must be found to be credible even after being subject to cross examination.

[61] Indeed, in *Lee Ing Chin @ Lee Teck Seng & Ors v. Gan Yook Chin & Anor* [2003] 2 MLJ 97, 137, the Court of Appeal enunciated the principle as follows:

> "**We consider it to be a well-established general guide to the judicial appreciation of handwriting evidence that where there is a sharp conflict between the direct testimony of a disinterested witness on the one side and that of a handwriting expert on the other as to the genuineness of the execution of a document, then it is a**

safe course for a court to prefer the direct evidence. Thus, in *Newton v. Ricketts* [1861] 11 ER 731, it was held as follows:

'Where the genuineness of handwriting to a deed is contested in Chancery, if an affidavit is produced from the sole attesting witness alive that he knew the persons executing the deed, and saw them execute it, and then wrote his own attestation, the fact that persons skilled in handwriting declare their belief, formed on inspection, that the handwriting is not genuine, does not call on that court to grant an issue to try the disputed fact; but it may determine that fact on the opposing affidavits.'

Newton v. Ricketts was applied in *Kameswara Rao v. Suryaprakasarao* AIR [1962] AP 178, a case concerning the challenge as to the genuineness of a will, where it was held as follows:

'The opinion of a handwriting expert is, no doubt admissible under s. 45 [Evidence Act]. What value is to be attached to that opinion in a given case is, however, entirely a different matter. An expert's opinion with respect to handwriting must always be received with great caution. There certainly may be, and perhaps are cases where the handwriting expert's opinion may be of assistance to the court in coming to a conclusion as to the genuineness of disputed handwriting. But the art of forming opinion by comparison of handwriting is essentially empirical in character and error is seldom inseparable from such opinions. **Where however, there is direct and trustworthy evidence of persons who had actually seen the signing of the document by the testatrix, it is not necessary to refer to or rely on the expert opinion'**.

[emphasis added]

[62] The aforementioned proposition was affirmed on appeal by the Federal Court [See: *Gan Yook Chin (P) & Anor v. Lee Ing Chin @ Lee Teck Seng* [2005] 2 MLJ 1, 19 – 20 at paragraphs 34 – 38]. The Court of Appeal in *Eu Boon Yeap & Ors v. Ewe Kean Hoe* [2008] 2 MLJ 868, 909 – 910 @ paragraphs 76 – 77 also applied the said principle.

[63] Similarly, in *George Abraham Vadakathu v. Jacob George* [2009] SGHC 79, the Singapore High Court held:

> [65] In the present case, the expert opinions were not unanimous. Dr Ngui did not agree with Dr N, although he gave his evidence in a less assertive fashion. The law is clear in cases where the expert witnesses disagree: the court may place greater weight on factual witnesses (see Mahendran ([37]; supra) at [38]).

[64] Section 68 of the Evidence Act provides that where a document is required by law to be attested, the primary evidence of execution of the document is the testimony of an attesting witness to the document. See: *Sabarudin Othman & Anor v. Malayan Banking Berhad* [2018] 1 LNS 357 (COA), paragraph 32.

[65] The Share Transfer Forms were documents required by law to be attested. They were in fact attested by Lim Kok Kwang. Lim Kok Kwang testified that he did in fact witness the Plaintiff's execution of the Share Transfer Forms.

[66] Though counsel for the Plaintiff had sought to suggest during cross- examination of Lim Kok Kwang that his evidence was "*an afterthought, it's a made-up story, for the sole purpose of assisting your old friend, [the 2nd Defendant]*", Lim Kok Kwang remained unshaken during cross-examination.

[67] It is my judgment that Lim Kok Kwang was a disinterested and credible witness. [See: *Lee Ing Chin & Ors v. Gan Yook Chin & Anor* [2003] 2 CLJ 19 (COA), pp.57-58].

[68] The fact that Lim Kok Kwang and the 2nd Defendant were friends, without more, does not mean that Lim Kok Kwang was prepared to commit perjury in Court which is a serious criminal offence. There is also no evidence that Lim Kok Kwang would derive some personal gain or profit by risking perjury to testify that he had witnessed the Plaintiff signing the Share Transfer Forms contrary to the truth. Neither has the Plaintiff suggested any credible motive for Lim Kok Kwang to give false evidence against the Plaintiff. On the issue as to what constitutes 'an interested' witness, the Federal Court case of *Magendran Mohan v. Public Prosecutor* [2011] 6 MLJ 1; [2011] 1 CLJ 805 is instructive:

> "It is clear to us that from her testimony she was an interested witness with a grudge against the appellant and had a prupose of her own to serve. In our judgment her evidence must be treated with caution and requires corroboration. In *Liow Siow Long v. Public Prosecutor* [1970] 1 MLJ 40; [1969] 1 LNS 98, Raja Azlan Shah J (as His Highness then was) had this to say (at p 41) in respect of interested witnesses:
>
> > Testimony of close relations is not tainted if it is otherwise reliable in the sense that the witnesses and competent witnesses who were at the scene of the occurrence and could have seen what had happened. But if it is proved that they are not entirely disinterested witnesses, eg. They are either partisans of the complainant or are in any way inimical to the accused, then their testimony is tainted and requires corroboration if to be acted upon.

> The fact that most if not all, the players knew each other because the events took place on an auspicious occasion in the vicinity of all these people's homes or the homes of their relatives, where they along with numerous other devotees had gathered for the night. Therefore the fact that the eye-witnesses knew both the victims and the three accused persons, *per se* does not automatically mean that their evidence is tainted with bias. In *Balasingam v. Public Prosecutor* [1959] MLJ 193 it was said:
>
> > After all there is no legal presumption that an interested witness should not be believed. He is entitled to credence until cogent reasons for disbelief can be advanced in the light of evidence to the contrary and in the surrounding circumstances.

And in the Law of Crimes by Ratanlal and Dhirajlal (2nd Ed), at p 1455 the following is said in respect of 'related witnesses':

> 'Related' is not equivalent to 'interested'. The term 'interested' postulates that the person concerned has some direct interest in the result of the litigation such as interest in decree in a civil case or in seeing that the accused is punished. A witness who is a natural one but relative of the victim cannot be termed as interested. Close relationship of witness to the deceased is no ground to reject his testimony if otherwise it is reliable. On the contrary, close relative of the deceased would normally be most reluctant to spare the real assailant and falsely implicate an innocent one. (*Kalki* AIR [1981] SC 1390).

[69] In further support of the foregoing, the 2nd Defendant had explained that the Plaintiff had previously pre-signed a set of transfer forms but these had been thrown away as they were not attested. This corroborates the evidence of Lim Kok Kwang.

There was no sound tactical reason for the 2nd Defendant to concoct a side narrative about a separate set of share transfer forms that were pre-signed by the Plaintiff without attesting witness that have been thrown away.

[70] Accordingly, it is the finding of this Court that the Plaintiff did in fact attend before the 2nd Defendant to sign the Share Transfer Forms which were witnessesed and attested by Lim Kok Kwang.

[71] Whilst I note that Lim Kok Kwang had referred to 31.3.2011 as the date the Plaintiff had signed the Share Transfer Forms which is 6 days later than the date the 2nd Defendant stated the Plaintiff had attended before him to sign the same, i,e 25.3.2011, nevertheless, I do not think that the discrepancy in the date necessarily mean that both their testimonies are to be rejected. It should be borne in mind that both Lim Kok Kwang and the 2nd Defendants were giving their recollection of an event that had taken place more than 10 years ago. The discrepancy is insufficient to destroy their credibility.

[72] In fact, the 2nd Defendant had provided a plausible explanation for the discrepancy during his cross examination on this point:

> ***SAA*** *Yes. Just to recall Datuk, because Lim Kok Kwang also said in his witness statement that it was transferred on the 31st March. But you said during cross earlier that you recall it being signed on the 25th. Could you just explain why the, why was it put it to you there was inconsistency and you denied it was inconsistent.*
>
> ***NG*** *Very simple. Because on 25th, I asked him to resign that time, I remember very clearly, he signed together with transfer of the share. But when you transfer the share already, the people put the date*

maybe put on 31st. But all the Court document must base on the letter black and white. So 31st of March. So that is what, as for me he's resigned. The date different is because of maybe technical issue only. So on 25th he signed, am I right? Because he signed together with resign. He resigned and he transfer the share is together. That one I remember very clearly, you see. So, when you go to the Court document everything, you must put base on the date 31st of March. So leave it be. Because the Court document put there 31st of March. Because there is a difference between 25th of March and 31.03.2011.

But mine I remember very clearly, I only ask him to come once to sign which is resigned and also transfer the share together. So cannot be, if I put I agree with 31st of March mean that I ask him to come two time. No, only one time only. But everybody is referring 31st of March because of the document chop there, put the date there 31st of March. So for me, my understanding, both are same.

[73] The 2nd Defendant has been consistent in his testimony that the Plaintiff had attended to him only once where the Plaintiff had tendered his resignation as a director and had signed the Share Transfer Forms in front of the 2nd Defendant and Lim Kok Kwang. The fact that the date '31.3.2011' could have been inserted on Share Transfer Forms a few days later is not inconceivable.

[74] For the reasons above, I reject the testimony of the Plaintiff that his signatures on the Shares Transfer Forms were forged.

[75] Before I proceed to comment on the opinions tendered by both the parties' handwriting experts, I must address the complaints

by the Plaintiff that the Defendants had conspicuously avoided providing the Plaintiff with copies of his Share Transfer Forms despite repeated demands for the same from 2012.

[76] Whilst I agree that the 2nd Defendant could have been more 'transparent' in his dealings with the Plaintiff's requests for copies of the Share Transfer Forms, nevertheless, I accept the explanation by the 2nd Defendant that he had decided to ignore the Plaintiff's repeated requests because he had concerns regarding the Plaintiff's intention in asking for the same.

[77] More specifically, from the perspective of the 2nd Defendant, the agreement with the Plaintiff was that the Subject Shares were to be held by the Plaintiff only as a nominee for the 2nd Defendant. For this arrangement, the 2nd Defendant had caused the 1st Defendant to pay the Plaintiff a sum of RM 10,000.00 a month from June 2009 until sometime in 2012 (even after the Plaintiff had resigned as a director on 25.3.2011). When the Plaintiff resigned as a director, the Plaintiff had also agreed to sign the Share Transfer Forms in the same month of all the Subject Shares back to the 2nd Defendant. Thus, as far as the 2nd Defendant was concerned, the Plaintiff would have nothing more to do with the 1st Defendant after March 2011.

[78] However, sometime in late 2013, it must have come as a surprise to the 2nd Defendant that the Plaintiff was now making enquiries regarding the Subject Shares and the Share Transfer Forms when in the 2nd Defendant's mind, the Plaintiff knew full well what had happened to the Subject Shares.

[79] In the circumstances, the 2nd Defendant took the decision of ignoring all the Plaintiff's requests. This is clear from the following testimonies given by the 2nd Defendant:

'... Because you are no more a director, two years later, what you want, actually. What is the intention? So my logic is very simple, you are no more in the company, you have no right to access to the company documents. That is my stand'.

'Why should I answer that (the Plaintiff's letter)? You are representing the Plaintiff. Plaintiff already know that I take back the shares then why should I tell back the Plaintiff this, this back I take back. Orally I already tell him already what'.

[80] Accordingly, I am unable to agree with the contention by learned counsel for the Plaintiff that the conduct of the 2nd Defendant in ignoring the Plaintiff's repeated requests for copies of the Share Transfer Forms must give rise to an inference that the Share Transfer Forms were forged.

[81] I now come to the evaluation of the handwriting experts' reports and testimonies.

[82] In this regard, the Plaintiff's expert, Mr Teo Chee Hau ('**Mr Teo'**) who is from the Department of Chemistry, Malaysia (Jabatan Kimia Malaysia) had concluded in his report dated 13.8.2018 ('**Teo Report**') that:

'The questioned signatures [on the Share Transfer Forms] showed **sufficient significant differences** in handwriting characteristics from the specimen signature "S" ... I am of the opinion that **these questioned signatures were not written by the writer of the specimens**'

[83] However, during cross-examination, Mr Teo had conceded, at least on 3 separate occasions, that had he had the benefit of the additional specimens relied on by the Defendants' expert witness. Mr Siow Kwen Sia ('**Mr Siow**'), he may have

concluded that the "*significant difference*" he identified (and stated in the conclusion of the Teo Report) "*could actually be a natural variation*".

[84] The Defendants had called Mr Siow as their expert witness (DW4). Mr Siow had prepared the following documents, for the purposes of the proceedings herein (collectively, the "**Siow Reports**"):

(1) Signature Verification Report dated 15.03.2019 (the '**Main Report**');

(2) Comments on TCH's Report dated 22.03.2019 (the '**Supplementary Report**'); and

(3) Comments on TCH's Worksheets dated 01.09.2020 (the '**Rebuttal Report**').

[85] Crucially, in preparing the Main Report, Mr Siow had requested for more specimens and was given these by the Defendants' solicitors. One of the criticisms raised by Mr Siow in the Supplementary Report is that Mr Teo should have asked for more specimens.

[86] In the Siow Reports, Mr Siow had referred to specimens 'N9' and 'NN1' (which were additional). When these specimens were shown to Mr Teo, he admitted as follows:

> "*My Lord for example the specimen signatures* ***N9*** *and NN1 if they are submitted for me for analysis and it is a specimen recognised by [the Plaintiff] then* ***it may affect my result and my finding*** *for example if these two specimen signatures were submitted the significant differences that I previously listed in my worksheet could now appeared as one of the natural variation for the person*"

[87] This admission by TCH is crucial. The specimen signature N9, as recorded in the Supplementary Report by Mr Siow, was the Plaintiff's '*resignation letter in the same month as Q's (Questioned Signatures in the Share Transfer Forms)*'.

[88] The said resignation letter was signed by the Plaintiff on or around 25.03.2011, contemporaneous to the signing of the Share Transfer Forms. Its authenticity is not disputed. Instead, for the purpose of the Teo Report, Mr Teo was only provided with specimen signatures of the Plaintiff, 'S1' to 'S15', which he had enlarged using the Video Spectral Comparator 6000. Some of the specimens 'S1' to 'S15' were not contemporaneous to the Share Transfer Forms in that the signatures therein were written in 2018 which is more than 7 years from the date of the impugned signatures. In fact, these were signatures made after the Plaintiff had filed his legal action against the Defendants. Yet, notwithstanding this, Mr Teo had opined that such specimens would still be acceptable for comparison. The relevant testimony is reproduced:

> ***'MI*** *November 2017 so the case started November 2017 these specimen were signed in July 2018 did you know that the case had already started*
>
> ***TCH*** *I didn't know*
>
> ***MI*** *Had you known the case has started would you have accepted this sample*
>
> ***TCH*** *Yes My Lord I would still accept the sample because it will not affect the analysis*
>
> ***MI*** *But you wouldn't know whether that sample was signed in a particular way to support what's being said in the case isn't it*

TCH *Yes My Lord I wouldn't know*

MI *So would you agree with me that those specimens requested specimens in that sense could be said to be unreliable*

TCH *I would not agree My Lord*

MI *You would not agree. So you said notwithstanding the possibility that the person whose signature is to be verified signs this after having started the case where he says certain signatures were forgeries you would still not have a problem relying on those specimens*

TCH *My Lord for this case it would not be a problem to me'*

[89] I find that Mr Teo contradicted himself when he first testified that the specimen signatures ought to be contemporaneous with the impugned signatures (ie, the specimen signatures should be executed about 1 year before or after the impugned signatures) and yet he very readily accepted specimen signatures that were executed more than 7 years after the impugned signatures and significantly, after the Plaintiff had filed the action.

[90] Further, Mr Teo also did not state the 'natural variations' from the specimens in his worksheets and or report. Nor did he provide his reasons for his conclusion. When asked by this Honourable Court as to "*why the workings are not reflected or incorporated in [the TCH Report]*", Mr Teo sought to explain that he merely followed the standard operating procedures of the Chemistry Department.

[91] In fact, Mr Teo had only purported to rely on his worksheet and comparison diagram, in **Exhibits P19 and P20** for the first-time

during examination-in-chief. This had unfairly placed the Court and the Defendants in a distinct disadvantage. Such an approach was cautioned against by the Court in *United Asian Bank Bhd v. Tai Soon Heng Construction Sdn Bhd* [1993] 2 CLJ 31 (SC) where Annuar J (as he then was, sitting in the Supreme Court) said at pp.36-37:

> 'Mr. Joginder Singh has attacked Mr. Phan's evidence on the ground that he did not give reasons for coming to his conclusion that the signatures on each of the 97 cheques had been forged and in support of his submission relied on a passage in the text book "The Identification of Handwriting and the Cross-examination of Experts" by M.K. Mehta where the learned author states (at p. 23 of the text):
>
> > It is common failing in a number of experts that they do not clearly state their reasons on which they base their opinions while submitting the reports to the courts. The result is that the courts as well as the lawyers suffer from a distinct disadvantage. It is extremely difficult for them in such cases to test and verify the correctness of the opinions given. The mere opinion of the expert that a particular writing or signature is written or not written by the writer whose standard admitted writings or signatures were supplied to him for comparison, without any cogent reason, is not enough. The function of the expert is to give his honest opinion and place before the court all the data on which he bases his opinion, because it is the court who has to decide the case and accept or reject his opinion. In the absence of a clear and precise statement of his reasons, it is difficult for the court to appreciate the opinion of the expert. It is

> also not fair to the opposite side who is to cross-examine the expert on the correctness of his opinion. Any opinion given without stating the reasons is valueless and is of no use as evidence.
>
> We entirely agree with the passage cited. In a civil case and more so in a criminal case, the evidence of an expert on handwriting unsupported by cogent data showing the process by which he came to his conclusion is not worth the paper on which it is written and any reliance upon such evidence would, in our judgment, constitute a serious misdirection warranting interference by an appellate tribunal.'

[92] Order 40A rule 2, Rules of Court 2012 ("**ROC**") provides that it is the duty of an expert to assist the Court, and such a duty overrides any obligation to the person from whom he has received instructions or by whom he is paid.

[93] Order 40A rule 3, ROC provides that expert evidence is to be given in a written report, and that the expert shall give reasons for his opinion in the said report, unless the Court otherwise directs.

[94] Regrettably, **Exhibits P19 and P20** were clearly not prepared for the benefit of the Court as they were mere internal notes and sketches of Mr Teo.

[95] Accordingly, and with respect to Mr Teo, for the reasons which I have outlined above, I find the Teo Report to be unreliable, unhelpful and will not give much weigh to the opinion contained therein.

[96] In contrast, I find the Siow Reports to be thorough and comprehensive. On the basis of the matters stated therein, Mr Seow concluded, in the Main Report, that "*both the questioned*

signatures of [the Plaintiff in the Share Transfer Forms] are very likely to be of SAME authorship as the specimen signatures".

[97] Despite a vigorous cross-examination, Mr Siow maintained his view and was unshaken in cross-examination. I find greater comfort in relying on his reports.

Conclusion

[98] As I have found that the Nominee Agreement is an illegal contract, this Court will not lend its hands to assist the Plaintiff in his claims. The Plaintiff is seeking to impermissibly take advantage of what would, in effect, have been his own wrongdoing. The loss must lie where it falls [See: *Singma Sawmill Co Sdn Bhd v. Asian Holdings (Industrialised Buildings) Sdn Bhd* [1980] 1 MLJ 21 (FC), pp.24-25].

[99] In any case, the Plaintiff himself had executed the Share Transfer Forms.

[100] For the above reasons, the Plaintiff's claims are dismissed with costs fixed at RM 75,000.00 subject to payment of the allocator.

Dated: 7 APRIL 2022

(ONG CHEE KWAN)
Judicial Commissioner
High Court of Kuala Lumpur, NCC2

COUNSEL:

For the plaintiff - Moharji Selamat & Muhd Asif Zahari; M/s Mohaji Hazury & Ismail (Shah Alam)

For the 1st, 2nd & 4th defendants - Malik Imtiaz Sarwar, Surendra Ananth, Wong Chee Wai & Khoo Suk Chyi; M/s Chang.Haryat (Kuala Lumpur)

Case(s) referred to:

Merong Mahawangsa Sdn Bhd & Anor v. Dato' Shazryl Eskay Abdullah [2015] 8 CLJ 212 (FC)

John Ambrose v. Peter Anthony & Anor [2017] 6 CLJ 465 (COA)

JR Joint Resources Holdings Sdn Bhd v. Norhana Sharkhan [2021] 1 LNS 1413 (HC)

Yam Kong Seng & Anor v. Yee Weng Kai [2014] 6 CLJ 285 (FC)

Zulpadli bin Mohammad & Ors v. Bank Pertanian Malaysia Bhd [2013] 2 MLJ 915 (COA)

Suntoso Jacob v. Kong Miao Ming [1986] SLR 59

Aik Ming (M) Sdn Bhd & Ors v. Chang Ching Chuen & Ors [1995] 2 MLJ 770

Cheong Huey Charn v. Pang Mun Chung & Anor [2018] 7 MLJ 612

Lee Ing Chin @ Lee Teck Seng & Ors v. Gan Yook Chin & Anor [2003] 2 MLJ 97

Gan Yook Chin (P) & Anor v. Lee Ing Chin @ Lee Teck Seng [2005] 2 MLJ 1

Eu Boon Yeap & Ors v. Ewe Kean Hoe [2008] 2 MLJ 868

George Abraham Vadakathu v. Jacob George [2009] SGHC 79

Sabarudin Othman & Anor v. Malayan Banking Berhad [2018] 1 LNS 357 (COA)

Lee Ing Chin & Ors v. Gan Yook Chin & Anor [2003] 2 CLJ 19 (COA)

Magendran Mohan v. Public Prosecutor [2011] 6 MLJ 1; [2011] 1 CLJ 805

United Asian Bank Bhd v. Tai Soon Heng Construction Sdn Bhd [1993] 2 CLJ 31 (SC)

Singma Sawmill Co Sdn Bhd v. Asian Holdings (Industrialised Buildings) Sdn Bhd [1980] 1 MLJ 21 (FC)

Legislation referred to:

Contracts Act 1950, s. 24(e)

Evidence Act, s. 68

Rules of Court 2012, O. 40A rr. 2, 3