SIBU SLIPWAY SDN BHD v. YII CHEE MING & ORS AND OTHER APPEALS

COURT OF APPEAL, PUTRAJAYA
ALIZATUL KHAIR OSMAN JCA
NALLINI PATHMANATHAN JCA
ZABARIAH MOHD YUSOF JCA
[CIVIL APPEALS NO: B-02(NCC)(A)-628-04-2016, B-02(NCC)(A)-629-04-2016 & B-02(NCC)(A)-630-04-2016]
26 AUGUST 2016

COMPANY LAW: *Winding up – Stay – Application for permanent stay of winding up orders pursuant to s. 243(1) of Companies Act 1965 – Whether petitioners had suppressed and concealed material facts – Whether winding up petitions filed for collateral purpose to frustrate application for preservation of assets – Failure to disclose change of registered addresses of companies – Whether there was abuse of court process – Whether court had inherent capacity to intervene and provide redress in respect of perfected and sealed winding up order – Whether court retained inherent jurisdiction to permanently stay winding up orders*

The Yii/Yu family, which comprises six brothers, has more than 30 companies in their family business empire. Three of the companies that were alleged to comprise a part of the family companies include Sibu Slipway Sdn Bhd ('Sibu Slipway') and its two fully-owned subsidiaries namely Lambang Sinar Mas Sdn Bhd ('Lambang Sinar') and Ensengei Palm Oil Mill Sdn Bhd ('Ensengei') ('the three companies'). These three companies comprised the subject matter of the appeals herein. There were disputes between the first and second respondents and Dato Yu Chee Hoe ('Dato Yu') and Tony Yu Yuong Wee ('Tony') in relation to the sharing of the family assets and companies between the brothers which led to nine sets of court proceedings being jointly tried in the Kuching High Court. Of these nine suits, the 16/3 suit ('16/3 suit') was between Dato Yu, Tony and the three companies on the one part ('the plaintiffs in the 16/3 suit') and the first and second respondents on the other part. In the 16/3 suit, Tony sought a declaration that he was the legal and beneficial owner of one share in Sibu Slipway registered in his name. The first and second respondents filed counterclaims on grounds that these three companies were at all material times part of the Yii/Yu family companies and more pertinently that Dato Yu and Tony were holding the shares in the three companies on trust for all the Yii/Yu brothers. Shortly before the commencement of these joint trials, the first and second respondents became aware that Dato Yu and Tony had realised the assets of Lambang and Ensengei to Koperasi Permodalan Felda Malaysia Berhad for a consideration totalling RM60 million. The first and second respondents were concerned about a potential dissipation of these monies and sought to obtain an order for the preservation of a one third share of the net proceeds of the sale. This application for a preservation order was scheduled on 21 September 2015. On that date, however, the plaintiffs in the

16/3 suit requested for an adjournment on grounds that the plaintiffs intended to file an affidavit in relation to the status of the three companies. The status of the three companies were not disclosed to the Kuching High Court at the time the adjournment was sought. On 25 September 2015, the plaintiffs served an affidavit that stated that the three companies had been wound up by the Shah Alam High Court and thus submitted that the Kuching High Court had no jurisdiction to hear or determine the application for a preservation of the assets. The respondents then filed an application in the Shah Alam High Court under the winding up petitions for a permanent stay of the winding up orders pursuant to s. 243(1) of the Companies Act 1965 ('the Act'). The High Court Judge, in granting the respondents' application, concluded that the petitioners in these winding up proceedings had suppressed and concealed material facts with regard to the beneficial ownership of the shares and assets in these three companies and had deliberately transferred the registered office of the three companies to Shah Alam with the intention of defeating the ongoing proceedings in the Kuching High Court. Hence, this appeal. It was the appellants' case that they had acted well within the purview of the law in moving the registered addresses of these companies and that they had a legitimate right to wind up these companies as they were the registered shareholders. The pertinent issue that arose was whether the court could invoke its inherent jurisdiction to set aside, rescind or grant a permanent stay of the three winding up petitions.

Held (dismissing appeal)
Per Nallini Pathmanathan JCA delivering the judgment of the court:

(1) There was active concealment and/or suppression of material facts to the Shah Alam High Court with regards to (i) the respondents' claim to a beneficial interest in the shareholding and assets of the three companies in suit 16/3; (ii) the existence of pending proceedings in the Kuching High Court including 16/3, which had been ordered to be jointly tried; and (iii) the existence of an *inter partes* preservation of assets application before the Kuching High Court involving the three companies. There was a further failure to disclose to the Kuching High Court that the appellants had changed the registered office of the three companies from Kuching to Shah Alam, and were in the process of winding up these three companies in Shah Alam. This would have had a material effect on the preservation application as it went to the issue of jurisdiction. The foregoing failures therefore amounted to an abuse of the process of the court. (paras 18-20)

(2) The winding up petitions were filed for a collateral purpose, namely to frustrate firstly the application for a preservation of assets in suit 16/3 and secondly the joint trial of the nine suits in the Kuching High Court. Notwithstanding the lack of express statutory provisions in the Act and the Rules, this did not affect the inherent jurisdiction of the court to intervene and provide redress even in respect of a winding up

order that had been perfected and sealed. The court always retains a residuary power in its inherent capacity to intervene and remedy wrongs, particularly when there is an abuse of process. Therefore, this court retained the inherent jurisdiction to permanently stay the winding up orders made by the Shah Alam High Court. Thus, the order of the High Court was varied so as to grant a permanent stay under the inherent jurisdiction of the court rather than under s. 243(1) of the Act. (paras 25-36)

Bahasa Malaysia *Headnotes*

Keluarga Yii/Yu, yang terdiri daripada enam adik-beradik lelaki, mempunyai lebih 30 syarikat dalam empayar perniagaan keluarga mereka. Tiga syarikat yang didakwa sebahagian syarikat keluarga tersebut termasuk Sibu Slipway Sdn Bhd ('Sibu Slipway') dan dua anak syarikat yang dimiliki sepenuhnya iaitu Lambang Sinar Mas Sdn Bhd ('Lambang Sinar') dan Ensengei Palm Oil Mill Sdn Bhd ('Ensengei') ('tiga syarikat'). Tiga syarikat ini adalah hal perkara dalam rayuan-rayuan ini. Terdapat pertikaian antara responden pertama dan kedua dan Dato Yu Chee Hoe ('Dato Yu') dan Tony Yu Yuong Wee ('Tony') berhubung dengan perkongsian aset keluarga dan syarikat antara adik-beradik tersebut yang membawa kepada sembilan set prosiding mahkamah yang dibicara bersama di Mahkamah Tinggi Kuching. Daripada sembilan guaman ini, guaman 16/3 ('16/3') adalah antara Dato Yu, Tony dan tiga syarikat pada satu pihak ('plaintif-plaintif dalam guaman 16/3') dan responden pertama dan kedua pada pihak yang lain. Dalam guaman 16/3, Tony menuntut perisytiharan bahawa dia pemilik sah dan benefisial satu saham dalam Sibu Slipway yang didaftarkan atas namanya. Responden pertama dan kedua memfailkan tuntutan balas atas alasan tiga syarikat tersebut adalah, pada setiap waktu material, sebahagian syarikat keluarga Yii/Yu dan bahawa Dato Yu dan Tony memegang saham dalam tiga syarikat tersebut sebagai amanah untuk adik-beradik Yii/Yu. Sebelum permulaan perbicaraan bersama, responden pertama dan kedua mendapat tahu Dato Yu dan Tony telah merealisasikan aset-aset Lambang dan Ensengei kepada Koperasi Permodalan Felda Malaysia Berhad untuk balasan berjumlah RM60 juta. Responden pertama dan kedua khuatir wang tersebut berpotensi lesap dan menuntut untuk memperolehi perintah pemeliharaan satu pertiga saham hasil kutipan jualan. Permohonan untuk perintah pemeliharaan dijadualkan pada 21 September 2015. Pada tarikh itu, walau bagaimanapun, plaintif-plaintif dalam guaman 16/3 meminta penangguhan atas alasan plaintif-plaintif berniat memfailkan afidavit berhubung dengan status tiga syarikat itu. Status tiga syarikat itu tidak diberikan kepada Mahkamah Tinggi Kuching pada waktu penangguhan itu dituntut. Pada 25 September 2015, plaintif-plaintif menyerahkan afidavit menyatakan bahawa tiga syarikat itu telah digulung oleh Mahkamah Tinggi Shah Alam dan oleh itu menghujahkan bahawa Mahkamah Tinggi Kuching tidak mempunyai bidang kuasa mendengar dan memutuskan permohonan untuk pemeliharaan aset-aset. Responden-responden seterusnya memfailkan

permohonan di Mahkamah Tinggi Shah Alam bawah petisyen penggulungan untuk penangguhan tetap perintah penggulungan bawah s. 243(1) Akta Syarikat 1965 ('Akta'). Hakim Mahkamah Tinggi, dalam membenarkan permohonan responden-responden, memutuskan bahawa pempetisyen dalam prosiding penggulungan ini telah menyekat dan menyembunyikan fakta-fakta material berhubung dengan milikan benefisial saham dan aset-aset dalam tiga syarikat ini dan telah dengan sengaja memindahkan pejabat berdaftar tiga syarikat itu ke Shah Alam dengan niat menggagalkan prosiding di Mahkamah Tinggi Kuching. Oleh itu, rayuan ini. Adalah kes perayu bahawa mereka bertindak dalam skop undang-undang apabila memindahkan alamat berdaftar tiga syarikat tersebut dan mereka mempunyai hak yang sah untuk menggulung syarikat-syarikat ini kerana mereka adalah pemegang saham berdaftar. Isu yang timbul adalah sama ada mahkamah boleh menjalankan bidang kuasa inheren untuk mengetepikan, membatalkan atau membenarkan penangguhan tetap ketiga-ketiga petisyen penggulungan itu.

Diputuskan (menolak rayuan)

Oleh Nallini Pathmanathan HMR menyampaikan penghakiman mahkamah:

(1) Terdapat penyembunyian dan/atau sekatan fakta-fakta material ke Mahkamah Tinggi Shah Alam berkenaan (i) tuntutan responden kepentingan benefisial dalam milikan saham dan aset-aset tiga syarikat dalam guaman 16/3; (ii) kewujudan prosiding yang masih tergantung di Mahkamah Tinggi Kuching termasuk guaman 16/3, yang diperintahkan dibicarakan bersama; dan (iii) kewujudan permohonan *inter parte* pemeliharaan aset-aset di hadapan Mahkamah Tinggi Kuching yang melibatkan tiga syarikat itu. Terdapat kegagalan mendedahkan kepada Mahkamah Tinggi Kuching bahawa perayu-perayu telah menukarkan alamat berdaftar tiga syarikat tersebut dari Kuching ke Shah Alam. Ini akan membawa kesan material atas permohonan pemeliharaan kerana menyentuh isu bidang kuasa. Kegagalan-kegagalan di atas dengan itu adalah satu penyalahgunaan proses mahkamah.

(2) Petisyen-petisyen penggulungan difailkan untuk tujuan cagaran, iaitu untuk menggagalkan permohonan pemeliharaan aset dalam guaman 16/3 dan perbicaraan bersama sembilan guaman di Mahkamah Tinggi Kuching. Meskipun tiada peruntukan statutori dalam Akta atau Kaedah-Kaedah, ini tidak menjejaskan bidang kuasa mahkamah sedia ada mahkamah untuk mencelah dan menyediakan pembetulan berhubung perintah penggulungan yang telah disempurnakan dan dimeterai. Mahkamah akan selalu mengekalkan kuasa dalam keupayaan sedia ada untuk mencelah dan memperbetulkan kekhilafan, khususnya apabila terdapat penyalahgunaan proses. Oleh itu, mahkamah ini mengekalkan bidang kuasa inheren untuk penangguhan tetap perintah-perintah

penggulungan yang dibuat oleh Mahkamah Tinggi Shah Alam. Perintah Mahkamah Tinggi diubah untuk membenarkan penangguhan tetap bawah bidang kuasa inheren mahkamah dan bukan bawah s. 243(1) Akta.

Case(s) referred to:
Badiaddin Mohd Mahidin & Anor v. Arab Malaysian Finance Bhd [1998] 2 CLJ 75 FC ***(refd)***
Jasa Keramat Sdn Bhd & Anor v. Monatech (M) Sdn Bhd [1999] 4 CLJ 533 CA ***(refd)***
Megah Teknik Sdn Bhd v. Miracle Resources Sdn Bhd [2010] 6 CLJ 745 CA ***(refd)***
Panaron Sdn Bhd v. Univac Switchgear Sdn Bhd [2015] 2 CLJ 286 HC ***(refd)***
Re Bambi Restaurants Ltd [1965] 2 All ER 79 ***(refd)***
Re Garage Door Associates Ltd [1984] 1 All ER 434 ***(refd)***
In Re JN 2 Ltd [1978] 1 WLR 183 ***(refd)***

Legislation referred to:
Companies Act 1965, s. 243(1)

(Civil Appeals No: B-02(NCC)(A)-628-04-2016)
For the appellant - Malik Imtiaz Sarwar, Siva Ganish, Surendra & Ananth; M/s Markiman & Assocs
For the 1st & 2nd respondents - Sri Gopal Sri Ram & CK Lim David; M/s Chooi, Saw & Lim

(Civil Appeals No: B-02(NCC)(A)-629-04-2016)
For the appellant - Malik Imtiaz Sarwar, Siva Ganish, Surendra & Ananth; M/s Markiman & Assocs
For the 1st & 2nd respondents - Sri Gopal Sri Ram & CK Lim David; M/s Chooi, Saw & Lim

(Civil Appeal No: B-02(NCC)(A)-630-04-2016)
For the appellant - Malik Imtiaz Sarwar, Siva Ganish, Surendra & Ananth; M/s Markiman & Assocs
For the 1st & 2nd respondents - Sri Gopal Sri Ram & CK Lim David; M/s Chooi, Saw & Lim
For the 3rd respondent - Shamesh Jeevaretnam; M/s Jeevaretnam & Co

[Editor's note: Appeal from High Court, Shah Alam; Petition (Winding-Up) No: 28CC-400-08-2015 (varied).]

Reported by Suhainah Wahiduddin

JUDGMENT

Nallini Pathmanathan JCA:

Introduction

[1] There are nine sets of court proceedings currently being jointly tried in the High Court of Sabah and Sarawak at Kuching ('the Kuching High Court'). They relate to the Yii/Yu family that comprises six brothers (two of whom are deceased). The full factual matrix has been set out in the first and second respondents' chronology of facts. Their family business

empire has more than 30 companies. Three of the companies that are alleged to comprise a part of the family companies include Sibu Slipway Sdn Bhd and its two fully-owned subsidiaries namely Lambang Sinar Mas Sdn Bhd and Ensengei Palm Oil Mill Sdn Bhd ('the three companies'). These three companies comprise the subject matter of the appeals before us.

Salient Facts

[2] There have been disputes between the first and second respondents on the one part and Dato' Yu Chee Hoe and Tony Yu Yuong Wee on the other part in relation to the sharing of the family assets and companies between the brothers. This has led to the nine court proceedings that are being jointly tried as mentioned earlier. Of these nine suits, Civil Suit No. KCH-22NCVC-16/3-2014 ('the 16/3 suit') is a suit between Dato' Yu Chee Hoe, Tony Yu Yuong Wee and the three companies on the one part ('the plaintiffs in the 16/3 suit') and the first and second respondents on the other part.

[3] In the 16/3 suit, Tony Yu Yuong Wee sought a declaration that he was the legal and beneficial owner of one share in Sibu Slipway Sdn Bhd registered in his name. The first and second respondents filed counterclaims on the grounds that these three companies are and were at all material times part of the Yii/Yu family companies and, more pertinently, that Dato' Yu Chee Hoe and Tony Yu Young Wee are holding the shares in the three companies on trust for all the Yii/Yu brothers.

[4] Pending the trial of some of the other suits, the Kuching High Court allowed *ex parte* applications taken out by the first respondent and his brother-in-law for injunctions to preserve the shares of two other companies, namely one Megapron Engineering Sdn Bhd and one Megakina Shipping Sdn Bhd. These injunctions were affirmed *inter partes* by the High Court on 19 November 2014, and the High Court's decision was affirmed by this court on 25 June 2015.

[5] On 19 November 2014 when these orders were affirmed *inter partes*, the Kuching High Court further ordered that all nine suits be heard jointly.

[6] Shortly before the commencement of these joint trials, the first and second respondents became aware that Dato' Yu Chee Hoe and Tony Yu Yuong Wee had realised the assets of Lambang Sinar Mas Sdn Bhd and Ensengei Palm Oil Mill Sdn Bhd to Koperasi Permodalan Felda Malaysia Berhad for a consideration totalling RM60 million (RM5 million for Lambang Sinar Mas Sdn Bhd, RM55 million for Ensengei Palm Oil Mill Sdn Bhd). The first and second respondents were concerned about a potential dissipation of these monies and sought to obtain an order for the preservation of a one-third share of the net proceeds of the sale.

[7] This application for a preservation order in Suit No. KCH-22NCVC-16/3-2014 was fixed for hearing on 13 July 2015 but rescheduled to 21 September 2015. On that date, the first and second respondents' advocate was ready to proceed with the hearing of the application. However, the

advocate for the plaintiffs in the 16/3 suit requested for an adjournment on the grounds that the plaintiffs intended to file an affidavit in relation to the status of the three companies. The status of the three companies was not disclosed to the Kuching High Court at the time the adjournment was sought. However, it was stressed that the status of these companies was very material to the hearing of the application for a preservation order. The hearing was then adjourned to 25 September 2015.

[8] On 25 September 2015, the advocate for the plaintiffs in the 16/3 suit sought a further adjournment till the afternoon. The advocate then served an affidavit that stated that three companies had been wound up by the High Court in Shah Alam on 18 September 2015. This was the first time that the respondents were made aware of the winding up of these three companies. The three companies had always had their registered address in Kuching until less than a month prior to the filing of the winding up petitions. But they found that the registered addresses of these three companies had been moved to Shah Alam approximately a month prior to the presentation of the three winding-up petitions.

[9] Having produced these orders evidencing the fact that the three companies were wound up, the advocate then submitted that the Kuching High Court had no jurisdiction to hear or determine the application for a preservation of the assets. The application, therefore, could not proceed to be heard and determined by the Kuching High Court.

[10] The joint trial of the nine suits was also aborted/delayed by the winding up of the three companies.

[11] It is not in dispute that no disclosure was made to the Shah Alam High Court of:

(a) the application for a preservation order in relation to the sales proceeds of the two subsidiaries of Sibu Slipway Sdn Bhd;

(b) the basis for such claim, namely that the respondents contended that Dato' Yu Chee Hoe and Tony Yu Yuong Wee were holding the shares in these companies on trust for all the brothers; and

(c) the joint trial of the nine suits in the Kuching High Court.

The Parties' Submissions On The Factual Matrix

[12] The respondents maintain that it is not only non-disclosure but active suppression or concealment of highly material facts. They have termed it fraudulent and/or intentional concealment of material facts by the petitioner presenting the winding up petition. In relation to the holding company, Sibu Slipway Sdn Bhd Dato' Yu Chee Hoe and Tony Yu Yuong Wee were the petitioners. They are the registered shareholders of Sibu Slipway. (Tony Yu is the administrator for his late father's estate and hence is a registered shareholder on behalf of the estate).

[13] The appellants, on the other hand, maintain that they have acted well within the purview of the law in moving the registered addresses of these companies and subsequently winding them up. They maintain that these companies were wound up because the sub-stratum of the companies no longer existed. They further state that they have complied fully with the legal requirements for the presentation of these winding up petitions. In short, they deny any form of wrongdoing. They maintain that they have a legitimate right to wind up these companies as they are the registered shareholders. The respondents, they maintain, have no rights unless and until the Kuching High Court finds in their favour.

[14] The appellants also contend that the change of registered address of the three companies was necessitated as the liquidator resided in Selangor, and that accordingly nothing sinister is to be inferred from such change of address.

The Decision Of The High Court

[15] The respondents then filed an application in the Shah Alam High Court under the winding up petitions for a permanent stay of the winding up orders, pursuant to s. 243(1) of the Companies Act 1965 ('the Act'). Alternatively, they invoked the inherent jurisdiction of the court to grant a permanent stay.

[16] The learned High Court Judge concluded that the petitioners in these winding up proceedings had suppressed and concealed material facts with regard to the beneficial ownership of the shares and assets in these three companies. His Lordship further found that the petitioners had deliberately transferred the registered office of the three companies to Shah Alam with the intention of defeating the ongoing proceedings in the Kuching High Court. He further found that the act of filing the three suits within a month after the change of registered office of the three companies from Kuching to Shah Alam substantiated his finding. Furthermore, the petitioners' address is in Kuching. Finally, he found that the factual matrix clearly showed that the petitions were filed in a rush to obtain the winding up orders in Shah Alam without disclosing the proceedings in the Kuching High Court which have a direct nexus.

[17] In view of his findings, the learned judge granted the respondents' application for a permanent stay under s. 243(1) of the Act.

Analysis By The Court Of Appeal

[18] It must be said at the outset that we agree with the findings of the learned High Court Judge. There appears to be no reason to interfere with his findings in relation to the factual matrix of the case. In short, we concur that there was active concealment and/or suppression of material facts to the Shah Alam High Court with regards to:

(i) The respondents' claim to a beneficial interest in the shareholding and assets of the three companies in suit 16/3 in the Kuching High Court;

(ii) The existence of pending proceedings in the Kuching High Court including 16/3, which had been ordered to be tried jointly; and

(iii) The existence of an *inter partes* preservation of assets application before the Kuching High Court, involving the three companies. Further, that the preservation order was sought by the respondents and was disputed by the appellants.

[19] There was a further failure to disclose to the Kuching High Court that the appellants had changed the registered office of the three companies from Kuching to Shah Alam, and were in the process of winding up these three companies in Shah Alam. This would have had a material effect on the preservation application as it went to the issue of jurisdiction.

[20] To our minds, the foregoing failures, particularly when viewed cumulatively, amounted to an abuse of process of the court.

[21] Before us at the hearing of the appeal, the thrust of the submissions by both counsel for the appellants and the respondents centred around the issues of:

(a) The proper definition to be accorded to a 'contributory' under the Act;

(b) The proper or valid application of s. 243(1) of the Act for the granting of a permanent stay.

[22] We were however, of the view that since we concurred with the learned High Court Judge that the factual matrix of this case amounted to an abuse of process of the court, the pertinent issue before us was whether the court could invoke its inherent jurisdiction to set aside, rescind or grant a permanent stay of the three winding-up petitions.

[23] The issue of material non-disclosure or suppression of material facts in the course of court proceedings is of fundamental importance in the administration of justice. It is not possible for this court to gloss over facts that disclose deliberate attempts to mislead the court into granting the winding up orders. Apart from causing prejudice to the respondents, and breaching the rules of natural justice, these acts or omissions amount to an abuse of process of the court.

[24] The concept of an abuse of the court's process is aptly set out in the case of *Jasa Keramat Sdn Bhd & Anor v. Monatech (M) Sdn Bhd* [1999] 4 CLJ 533 ('*Jasa Keramat*'). In that case, Gopal Sri Ram JCA (as he then was) explained it as follows:

> It is trite that a person who has a legitimate grievance may invoke the court's process to obtain redress. But cases may arise where the true purpose of invoking the court's process is something other than to obtain a remedy provided by law. It may be to oppress a defendant. Or it may

be to apply pressure upon him which the law regards as illegitimate. Or it may be to merely commence an action and let it hang over the head of the defendant with no intention of bringing it to a conclusion ...

…. Since the circumstances in which the court's process may be abused are varied and numerous, the categories of such cases are therefore not closed. Whether the institution of an action or its continuation or a step taken therein amounts to an abuse of process depends on particular and individual circumstances. Where an action is found to be an abuse of the court's process, it may be struck out or stayed. If it is too late to do this, the party aggrieved may bring an action based upon the tort of abuse of process ...

... The position has been neatly summed up by Lord Denning MR in his dissenting judgment in *Goldsmith v. Sperrings Ltd & Ors* [1977] 1 WLR 478, where at p. 489 he said:

> In a civilised society, legal process is the machinery for keeping and doing justice. It can be used properly or it can be abused. It is used properly when it is invoked for the vindication of men's rights or the enforcement of just claims. It is abused when it is diverted from its true course so as to serve extortion or oppression or to exert pressure so as to achieve an improper end. When it is so abused, it is a tort, a wrong known to the law. The judges can and will intervene to stop it. They will stay the legal process, if they can, before any harm is done. If they cannot stop it in time, and harm is done, they will give damages against the wrongdoer.

Though a dissenting judgment, the principle enunciated by the Master of the Rolls has been accepted as authoritative of what constitutes an abuse of process ...

... It is plainly an abuse of the court's process where relief at law or in equity is used, not the remedy a genuine grievance, but as an instrument of oppression. There have been instances before our courts where an interlocutory injunction has been found to have been used as an instrument of oppression. We have always intervened in such cases and set the matter right.

[25] The foregoing paragraphs explain succinctly the definition of an abuse of process of the court. Applied to the facts of our case, as stated earlier, it is clear that the windingup petitions were filed for a collateral purpose, namely to frustrate firstly, the application for a preservation of assets in suit 16/3, and secondly, the joint trial of the nine suits in the Kuching High Court.

[26] What are the remedies available to this court? It is apparent from the case-law cited above that the court retains an inherent jurisdiction to intervene and set right or remedy the wrong that has occurred.

[27] However, learned counsel for the appellant submitted that this court had no inherent jurisdiction to remedy the abuse of process (although they denied that it amounted to an abuse of process) because these were petitions to wind up three companies, and there was no provision in the Act to set aside or rescind a windingup order after it had been perfected.

[28] We agree that this would be the general position in law. However what is to be done when the provisions of the Act are utilised for a collateral purpose or with ulterior motive, in an attempt to frustrate or defeat pending proceedings?

[29] It is evident from the factual matrix that the respondents were not in a position to appeal against these orders as they were out of time. They took the other option of filing an application for a permanent stay either under s. 243(1) or the inherent jurisdiction of the court.

[30] Therefore, the issue for consideration is whether this court retains an inherent jurisdiction to set aside or rescind or stay winding up orders which have been obtained in circumstances amounting to an abuse of process of the court, given that these proceedings are determined under the Act and the Companies (Winding-up) Rules 1972 ('the Rules'). The Act and the Rules make no provision for setting aside or rescinding a winding up order. Does it follow therefore that this court has no inherent jurisdiction to intervene?

[31] We conclude that this court has the inherent jurisdiction to intervene and set right or remedy an abuse of process in winding up proceedings, notwithstanding the lack of an express provision in the Act. In the case of *Megah Teknik Sdn Bhd v. Miracle Resources Sdn Bhd* [2010] 6 CLJ 745 ('*Megah Teknik*') this court recognised, *albeit* by way of *obiter*, that the winding up court has inherent jurisdiction. At para. 25 of the judgment, Abu Samah Nordin JCA (now FCJ) stated, *inter alia* as follows:

> [25] There is no express provision in the Companies Act 1965 or the Companies (Winding Up) Rules 1972 similar to r. 7.47(1) of the Insolvency Rules 1986. In the United Kingdom, before the Insolvency Rules 1986 came into force a winding up order could not be rescinded after it had been drawn up. The only remedy was to apply for a stay: ... or appeal ...
>
> Until a similar provision is introduced into our Companies Act 1965 or Companies (Winding Up) Rules 1972 we are of the considered view that a winding up which has been perfected and duly sealed cannot be set aside or rescinded **save in those circumstances where the court may exercise its inherent jurisdiction** ....
>
> (emphasis added)

[32] Clearly, therefore, this court recognised that notwithstanding the lack of express statutory provisions in the Act and the Rules, this did not affect the inherent jurisdiction of the court to intervene and provide redress even in respect of winding-up order that had been perfected and sealed.

[33] *Megah Teknik* has been applied by the High Court in the case of *Panaron Sdn Bhd v. Univac Switchgear Sdn Bhd* [2015] 2 CLJ 286 ('*Panaron*'). Although the facts are completely different and do not relate to abuse of process, the fundamental position in law was recognised, namely that the court always retains a residuary power in its inherent capacity to intervene and remedy wrongs, particularly when there is an abuse of process.

[34] In this context, the case of *Badiaddin Mohd Mahidin & Anor v. Arab Malaysian Finance Bhd* [1998] 2 CLJ 75 ('*Badiaddin*') p. 93 midway from paras. f-h, Mohd Azmi FCJ stated as follows:

> ... The discretion to invoke the inherent jurisdiction should also be exercised judicially in exceptional cases where the defect is of such a serious nature that there is a real need to set aside the defective order to enable the court to do justice. In all cases the normal appeal procedure should be adopted to set aside a defective order, unless the aggrieved party could bring himself within the special exception.

[35] Although *Badiaddin* does not apply to a winding up petition, the principle to be gleaned from the said paragraph is of universal application.

[36] Therefore, we conclude that this court does indeed retain the inherent jurisdiction to permanently stay the winding up orders made by the Shah Alam High Court and we so order.

[37] Given our conclusion, we do not need to adjudicate on the issue of the definition to be accorded to 'contributory' in the Act.

[38] Alternatively, we consider that it is most prudent that the first and second respondents' claims that they are beneficial shareholders of the three companies in suit 16/3 be determined prior to the presentation of winding-up petitions in respect of the three companies. (See *Re Bambi Restaurants Ltd* [1965] 2 All ER 79, *Re JN 2 Ltd* [1978] 1 WLR 183 and *Re Garage Door Associates Ltd* [1984] 1 All ER 434.)

[39] We, therefore, dismiss the appeal and vary the order of the High Court so as to grant a permanent stay under the inherent jurisdiction of the court rather than under s. 243(1) of the Companies Act 1965.