

**IN THE HIGH COURT OF MALAYA AT KUALA LUMPUR  
IN THE FEDERAL TERRITORY, MALAYSIA  
(COMMERCIAL DIVISION)**

**ORIGINATING SUMMONS NO: WA-24NCC-292-05/2019**

In the matter of G&P Structures  
Sdn Bhd (Company No.:  
622641-U)

and

In the matter of Section 346 of  
the Companies Act 2016

and

In the matter of the Company  
Policy dated 29.7.2003,  
Shareholders' Agreement dated  
15.9.2004, Supplementary  
Shareholders' Agreement and  
Trust Deeds dated 29.10.2013

and

In the matter of Order 88 of the  
Rules of Court 2012

**BETWEEN**

1. **DATO' GUE SEE SEW**  
**(NRIC NO.: 530503-04-5189)**
2. **TAN YEAN CHIN**  
**(NRIC NO.: 680229-07-5177)**
3. **LIEW SHAW SHONG**  
**(NRIC NO.: 680911-12-5595)**

**... PLAINTIFFS**

**AND**

1. **HENG TANG HAI**  
(NRIC NO.: 610918-01-5539)
2. **NG TAK KEE @ WONG TAK KEE**  
(NRIC NO.: 640417-10-5955)
3. **G&P STRUCTURES SDN BHD**  
(COMPANY NO.: 622641-U) ... DEFENDANTS

## **GROUND OF JUDGMENT**

### **Preliminary**

- [1] This Originating Summons No. WA-22NCC-292-05/2019 (**'OS 292'**) is an oppression suit filed by the Plaintiffs against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants under s 346 of the Companies Act 2016 (**'CA 2016'**) concerning the conduct in the affairs of the 3<sup>rd</sup> Defendant, G&P Structures Sdn Bhd (**'G&P Structures'**).
- [2] The judgment deals with, *inter alia*, the issue of *locus standi* of beneficial owners of shares in G & P Structures to commence an oppression action and whether breaches of shareholders' agreement and company policy can be grounds for oppression.

### **Background Facts**

- [3] About 20 years ago, the 2<sup>nd</sup> Plaintiff (**'Tan'**) and the 3<sup>rd</sup> Plaintiff (**'Liew'**) joined the 1<sup>st</sup> Plaintiff (**'Dato' Gue'**) to form Gue & Partners Sdn Bhd, which is now known as G&P Geotechnics Sdn Bhd (**'G&P Geotechnics'**). G&P Geotechnics' principal business is to

undertake and execute geotechnical engineering consultancy services in most fields of engineering.

[4] Over the years, Dato' Gue brought in experts from a variety of other engineering fields and the Plaintiffs formed a number of specialist companies for the purpose of providing those various engineering consultancy services (**'G&P Professionals Group'**). They would offer the respective experts some shares in the company (around 50% to 70%) in which they would provide their services and be responsible for the day-to-day operation of the newly formed company. These experts will then hold the remaining shares for one or more of the Plaintiffs as trustees (**'Trust Arrangement'**).

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[5] Upon the incorporation of the respective specialist companies, the Plaintiffs would then oversee their operation and management. For example, either one or more of the Plaintiffs will also be involved in the affairs of the specialist companies by looking into, amongst others, the profit of the respective company, bonus and salary to the directors and staffs. The companies operate on a group basis to support and complement the business of one another as opposed to a parent-subsidary structure. In essence, the business relationship is based on mutual trust and confidence, the understanding and the Trust Arrangement outlined above.

[6] The G&P Professionals Group has expanded tremendously with the objective of offering and providing a one-stop value added professional engineering consulting services to its clients. To date,

the specialist companies within the G&P Professionals Group comprise:

- (1) G&P Professionals Sdn Bhd;
- (2) G&P Geotechnics;
- (3) G&P Structures;
- (4) G&P Infra Sdn Bhd;
- (5) G&P Claims & Contract Sdn Bhd;
- (6) G&P Project Management Sdn Bhd;
- (7) G&P Water & Maritime Sdn Bhd;
- (8) G&P Highways & Transportation Sdn Bhd;
- (9) G&P Dams & Water Services Sdn Bhd;
- (10) NGI – G&P Sdn Bhd;
- (11) G&P M&E Sdn Bhd;
- (12) G&P Professionals (Sarawak) Sdn Bhd; and
- (13) G&P Professionals (Sabah) Sdn Bhd.

[7] The business of the G&P Professionals Group has also extended from Malaysia to Singapore and Cambodia. The G&P Professionals Group has its presence overseas through G&P R International (Cambodia) Co. Ltd, G&P Water (Singapore) Pte. Ltd and G&P – AA International Consultant Joint Stock Company.

### **The 1<sup>st</sup> Defendant's entry into the G&P Professionals Group**

[8] Sometime in 2003, the 1<sup>st</sup> Defendant approached and informed Dato' Gue that he had left Meinhardt (M) Sdn Bhd in which he was a director at the time. As the 1<sup>st</sup> Defendant specialises as a structural engineer, which is one of the sub-disciplines of civil engineering, Dato' Gue then invited the 1<sup>st</sup> Defendant to join the

G&P Professionals Group by forming a company that mainly deals in structural engineering. The 1<sup>st</sup> Defendant agreed to join the G&P Professionals Group based on the broad terms and understanding above, including the Trust Arrangement.

[9] Following that, on 23.7.2003, the 1<sup>st</sup> Defendant and Tan formed the 3<sup>rd</sup>. Defendant, (**'G&P Structures'**) (known as G&P Engineering Consultants Sdn Bhd at the time) and they held 1 subscriber's share each. Both of them became the first directors of the company. G&P Engineering Consultants Sdn Bhd later changed its name to G&P Structures on 26.7.2006.

[10] As G&P Structures was intended to operate like a partnership based on good faith, mutual trust and confidence, the understanding and the Trust Arrangement set out above, the Articles of Association of G&P Structures do not set out the rights and interests of the parties exhaustively. In addition to the Articles of Association, the parties have entered into collateral agreements and drawn up policy document to regulate their relationship with respect to the affairs of G&P Structures. The collateral agreements and policy document are described in detail below.

### **The Company Policy**

[11] Shortly after the incorporation of G&P Structures, the 1<sup>st</sup> Defendant together with the Plaintiffs jointly drafted and approved the Company Policy. The 1<sup>st</sup> Defendant and the Plaintiffs signed the Company Policy on 29.7.2003.

[12] The Company Policy sets out, amongst others, as follows:

- (a) The founder Managing Director of G&P Structures is the 1<sup>st</sup> Defendant. Clause 2.0 of the Company Policy reads:

**“2.0 Structures of the Company**

The organization of the company will be decided with by the Management of G&P Engineering Consultants Sdn Bhd (G&P-EC). The founder Managing Director of the G&P-EC is Ir. Heng Tang Hai

The normal hierarchy of the company for technical side shall be as follows:

1. Managing Director
2. Director(s)
3. Associate Director(s)
4. Associate(s) or Principal Engineer(s)
5. Senior Engineer(s)
6. Engineer(s)
7. Technician(s) or Engineering Assistant(s)
8. Senior Draftperson(s)
9. Draftperson(s)

Any change in the structure of the Company shall only be made with a 2/3 majority vote of shareholders.

The company is targeted to obtain ISO9001:2000 certification within 3 years after forming. The ISO documents entail compulsory checking, reviewing and audit shall be ready and start implementing within 1 year after formation.”

(b) The distribution of shares when G&P Structures first started was as follows:

- (i) 1<sup>st</sup> Defendant – 51%;
- (ii) Tan – 49% (who holds 29.4% shares on trust for Dato' Gue, 9.8% shares for Liew).

Clause 3.0 of the Company Policy reads:

**“3.0 Distribution of Shares**

The distribution of shares when the company first started is as follows:

Founder Major Share Holder (Fmajor)	= 51%
Founder Minor Share Holder (Fminor)	= 49%
Total	= 100%

Fmajor is Ir. Heng Tang Hai

Fminor is Ir. Tan Yean Chin who hold under trust 29.4% of the share for Ir. Dr. Gue See Sew and 9.8% for Ir. Liew Shaw Shong.

Future individual shareholder (not the founders) shall not own more than any of the Founder Share Holders (Fmajor & Fminor) unless the founder shareholders wish to release his share but required the approval of the 3/4 majority of shareholders (75% of the total amount of share).

Any shares to be sold to outsiders shall have the approval of 3/4 majority of the shareholders (75% of the total amount of share).”

- (c) The accounts of G&P Structures are open to all shareholders to review. Clause 3.3 of the Company Policy reads:

**“3.3 Price of Shares and Share Holders Meeting**

The account of company is open to all shareholders to review.  
The price of shares shall be either:

1. Last audited Account Book Value if notice of selling is given within 6 months after the last yearly audit.
2. If the notice is given after 6 months of the yearly audit, then it shall be based on the half yearly audit.

There shall be monthly shareholder meeting.

The following items shall be discussed:

1. Monthly financial statement (monthly) including the following indices:
  - Payments and expenditures for each month.
  - Claim statements for each month & outstanding claims
  - Professional fees secured for each month.
  - Statistical indices of the financial status of the company
2. Expenses & Cash flow (monthly)
3. Profit and loss (Quarterly)
4. Balance sheet (Quarterly)
5. Report of entertainment, gifts that are more than RM200.00.”

- (d) There shall be a monthly shareholders’ meeting to discuss financial related matters as provided under Clause 3.3 of the Company Policy.



- (e) As provided under Clause 3.3 of the Company Policy, the authorised signatures shall be by either of the following 2 groups:
- (i) 1<sup>st</sup> Defendant and Dato' Gue;
  - (ii) 1<sup>st</sup> Defendant and Tan (only if Dato' Gue is not available).
- (f) Policy for company reserve, dividend and staff bonus and the applicable formulas. Clause 6.0 of the Company Policy reads:

"6.0 POLICY FOR COMPANY RESERVE, DIVIDENT AND STAFF BONUS

The formulae for distributing net profits:

(A) Share Holders' Return = 15% of Share Holders' Fund

Balance Net Profit = Company's Net Profit – Share Holders' Return

(B) Before Total Company Saving exceeded 6 months of company overhead:

Company's Saving = 60% of Balance Net Profit

Staffs' Bonuses + Incentives = 40% of Balance Net Profit

(C) After Total Company Saving exceeded 6 months of company overhead:

Extra Dividend to shareholders = 40% of Balance Net Profit

Staffs' Bonuses + Incentives = 60% of Balance Net Profit

The above distribution shall not be changed unless approved by  $\frac{3}{4}$  majority of shareholders (75%)."

- (g) There shall be at least a management meeting and staff meeting every month. The management meeting will be chaired by the managing director and attended by all shareholders (including the Plaintiffs). Clause 11.0 of the Company Policy reads:

"11.0 MANAGEMENT & STAFF MEETINGS

There shall be at least a Management Meeting and Staff Meeting every month. The Management Meeting will be chaired by the Managing Director and attended by all shareholders (including HTH, GSS, TYC, LSS, etc). In the future, the Management Meeting will be attended by Directors(s) and Associate Director(s). The Staff Meeting will also be chaired by Managing Director and attended by all staff. Any gifts/presents exceed RM200.00 shall be approved by the Management."

- [13] The Plaintiffs have reposed trust and confidence in the 1<sup>st</sup> Defendant as the Managing Director in the running of the business of G&P Structures and expect the 1<sup>st</sup> Defendant to conduct the affairs of G&P Structures in good faith.

**The parties' shareholdings prior to the 2<sup>nd</sup>. Defendant's entry into the G & P Professionals Group**

- [14] On or about 20.10.2003, G&P Structures allotted shares to the 1<sup>st</sup> Defendant and the Plaintiffs as follows:

Number of Shares Allotted

(a)	1 <sup>st</sup> Defendant	50,999
(b)	Dato' Gue	29,400
(c)	Tan	9,799
(d)	Liew	9,800

[15] Consequent to the allotment, the parties' shareholdings as at 20.10.2003 were as follows:

		<u>Number of Shares Allotted</u>
(a)	1 <sup>st</sup> Defendant	51,000
(b)	Dato' Gue	29,400
(c)	Tan	9,800
(d)	Liew	9,800

[16] Subsequently, the shares held by Dato' Gue and Liew were transferred to Tan. Thereafter, Tan held 49,000 shares in G&P Structures in which 29,400 shares and 9,800 shares were held on trust for Dato' Gue and Liew respectively in accordance with the trust arrangement under clause 3.0 of the Company Policy.

### **The Shareholders' Agreement**

[17] Besides the Company Policy, the Shareholders' Agreement was entered into between the 1<sup>st</sup> Defendant, being the founder and the Plaintiffs as the promoters to regulate the parties' relationship with respect to the affairs of G&P Structures.

[18] In line with the objective of the G&P Professionals Group, the 1<sup>st</sup> Defendant and the Plaintiffs through the Shareholders' Agreement recognise that G&P Structures is a member of the G&P

Professionals Group consisting of specialist companies in the various fields of engineering consultancy. Clause 1.1 of the Shareholders' Agreement reads:

"1.1. The Specialist Company (called "the Company") is a member of a conglomerate consisting of specialist companies in the various fields of engineering consultancy and other fields associated together under G&P Professionals S/B ("the Umbrella Consultancy Company" or called "the Group")."

[19] The Shareholders' Agreement further confers upon the Plaintiffs the right to participate in management of G&P Structures. It sets out, amongst others, as follows:

(a) The board of directors shall consist of the Promoters and the Founder. Clause 4.4 of the Shareholders' Agreement reads:

"4.4 The Board of Directors of the Specialist Company shall consist of:

- a. the persons who created and formed the company and at the same time are also the original shareholders of the company when it was first formed ("the Promoters").
- b. the original shareholders of the company when it was first formed ("the Founder") and
- c. other persons appointed by the shareholders following the Second Schedule."

- (b) There shall be a monthly meeting of the directors. Clause 4.6 of the Shareholders' Agreement reads:

"4.6 There shall be monthly meeting of the Directors of the Company and the standard agenda shall be discussed and the relevant reports and accounts listed the First Schedule shall be provided by the respective Managing Directors of the Specialist Company. First schedule may be refined or improved subject to 2/3 majority by the Board of the Umbrella Consultancy Company."

- (c) The Managing Director's salary, allowances and other benefits shall be approved by the Shareholders following the Second Schedule and also with the approval from 2/3 majority of the shareholders of the Group. Clause 6.4 of the Shareholders' Agreement reads:

"6.4 The Managing Director's salary; allowances and other benefits shall be approve by the Shareholders following the Second Schedule and also with the approval from 2/3 majority of the shareholders of the Group."

- (d) The board of directors shall meet at least once a month. Clause 9.2.3 of the Shareholders' Agreement reads:

"9.2.3 Frequency of Meeting

The Board of Directors shall meet at least once a month."

- (e) All the arrangements in the Shareholders' Agreement are of a binding nature and each party agrees to execute such further documents as necessary to put into effect the

arrangements in the Shareholders' Agreement. Clause 17 of the Shareholders' Agreement reads:

"17 Binding Nature

All the arrangement above are of a binding nature. Each party agrees to execute such further documents as necessary to put into effect the arrangements above."

- (f) Other than the terms of the Shareholders Agreement, the standard Articles of Association of a company as contained in Table A of the Companies Act 1965 shall apply. Clause 18 of the Shareholders' Agreement reads:

"18 Table A

Other than the above, the standard Articles of Association of a company as contained in Table A of the Companies Act 1965 shall apply."

### **The 2<sup>nd</sup>. Defendant's entry into the G & P Professionals Group**

[20] Sometime in December 2004, upon the recommendation of the 1<sup>st</sup> Defendant, the 2<sup>nd</sup> Defendant who also has expertise in structural engineering joined the G&P Professionals Group.

[21] On 23.12.2004, the 2<sup>nd</sup> Defendant signed an acknowledgment on the Shareholders' Agreement expressly acknowledging that he has read the Shareholders' Agreement and fully understood and agreed with its contents. The 1<sup>st</sup> Defendant and all the Plaintiffs

agreed to, and witnessed, the 2<sup>nd</sup> Defendant's acknowledgment on 23.12.2004.

[22] Subsequently, on 3.10.2005, the 2<sup>nd</sup> Defendant was made a director of G&P Structures. Tan resigned as a director with effect from the same date and the 49,000 shares held by Tan were also transferred to the 2<sup>nd</sup> Defendant.

### **The 2005 Trust Deeds**

[23] After the 2<sup>nd</sup> Defendant joined the G&P Professionals Group, in line with the Trust Arrangement, 4 trust deeds (**'2005 Trust Deeds'**) were made between the parties on 7.10.2005 to formalise the Trust Arrangement. Under the 2005 Trust Deeds:

- (a) The 1<sup>st</sup> Defendant agreed to hold 5,100 shares in G&P Structures which is equivalent to approximately 5.1% of its paid-up capital in trust for Dato' Gue;
- (b) The 2<sup>nd</sup> Defendant agreed to hold 21,360 shares in G&P Structures which is equivalent to approximately 21.36% of its paid-up capital in trust for Dato' Gue;
- (c) The 2<sup>nd</sup> Defendant agreed to hold 8,820 shares in G&P Structures which is equivalent to approximately 8.82% of its paid-up capital in trust for Tan; and

(d) The 2<sup>nd</sup> Defendant agreed to hold 8,820 shares in G&P Structures which is equivalent to approximately 8.82% of its paid-up capital in trust for Liew.

[24] Therefore, under the 2005 Trust Deeds, the total number of shares held in trust by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants for the Plaintiffs is 44,100 shares which is equivalent to approximately 44.1% of the paid-up capital of G&P Structures ('**2005 Trust Shares**'). The trust arrangement is tabulated below.

2005 Trust Deeds				
Trustee	Beneficiary			Total
	P1	P2	P3	
D1	5,100 (5.1%)	-	-	-
D2	21,360 (21.36%)	8,820 (8.82%)	8,820 (8.82%)	-
Total	26,460 (26.46%)	8,820 (8.82%)	8,820 (8.82%)	44,100 (44.1%)

[25] As agreed under the 2005 Trust Deeds, amongst others:

(a) the 1<sup>st</sup> and 2<sup>nd</sup> Defendants shall act as trustees for the Plaintiffs in respect of the 2005 Trust Shares and shall have no right, title and interest whatsoever in the 2005 Trust Shares, and shall hold the same including all other rights, interests, bonus shares, dividends pertaining to the 2005 Trust Shares presently and/or in the future for the Plaintiffs;



- (b) the 1<sup>st</sup> and 2<sup>nd</sup> Defendants shall at the request for the Plaintiffs execute and do all acts, deeds and things to transfer the 2005 Trust Shares to the Plaintiffs or their nominees;
- (c) the 1<sup>st</sup> and 2<sup>nd</sup> Defendants executed blank forms of transfer of securities (Form 32A) with a pre-determined consideration sum and shall be retained by the Plaintiffs as beneficiaries until such time when the 2005 Trust Shares have been transferred to the Plaintiffs absolutely or to such other person as the Plaintiffs shall direct in writing absolutely;
- (d) the 1<sup>st</sup> and 2<sup>nd</sup> Defendants undertake to deliver possession of the share certificate to the Plaintiffs and/or their nominees as the Plaintiffs shall direct in writing absolutely.

### **The Supplementary Shareholders' Agreement and the 2013 Trust Deeds**

[26] Subsequently, sometime in October 2013, the 2<sup>nd</sup> Defendant indicated his intention to purchase 14% extra shares in G&P Structures for himself. All the parties agreed to the 2<sup>nd</sup> Defendant's purchase of the additional shares at a discounted price. Following that, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and the Plaintiffs entered into a Supplementary Shareholders' Agreement on 29.10.2013 (**'Supplementary Shareholders' Agreement'**).

[27] As a result of the 2<sup>nd</sup> Defendant's purchase of 14% additional shares, the parties' shareholdings and the 2005 trust arrangement

were revised. A new set of trust deeds were entered into on 29.10.2013 ('**2013 Trust Deeds**') between the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and the Plaintiffs. Except for the revised trust shares, the terms of the 2013 Trust Deeds are similar to the 2005 Trust Deeds. Under the 2013 Trust Deeds:

- (a) The 1<sup>st</sup> Defendant agreed to hold 12,100 shares in G&P Structures which is equivalent to approximately 12.1% of its paid-up capital in trust for Dato' Gue;
- (b) The 2<sup>nd</sup> Defendant agreed to hold 10,160 shares in G&P Structures which is equivalent to approximately 10.16% of its paid-up capital in trust for Dato' Gue;
- (c) The 2<sup>nd</sup> Defendant agreed to hold 7,420 shares in G&P Structures which is equivalent to approximately 7.42% of its paid-up capital in trust for Tan; and
- (d) The 2<sup>nd</sup> Defendant agreed to hold 7,420 shares in G&P Structures which is equivalent to approximately 7.42% of its paid-up capital in trust for Liew.

[28] Thus, under the 2013 Trust Deeds, the total number of shares held in trust by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants for the Plaintiffs was revised to 37,100 shares which is equivalent to approximately 37.1% of the paid-up capital of G&P Structures. This trust arrangement is tabulated below.

2013 Trust Deeds				
Trustees	Beneficiaries			Total
	P1	P2	P3	
D1	12,100 (12.1%)	-	-	-
D2	10,160 (10.16%)	7,420 (7.42%)	7,420 (7.42%)	-
Total	22,260 (22.26%)	7,420 (7.42%)	7,420 (7.42%)	37,100 (37.1%)

[29] The 2013 Trust Deeds superseded the 2005 Trust Deeds and cancelled the blank Forms 32A executed by the parties in 2005. The Plaintiffs executed another set of blank forms of transfer of securities (Form 32A) in favour of the Defendants respectively to reflect the revised trust arrangement.

### **The Plaintiff's participation in management**

[30] Pursuant to the understanding between the parties and as formalised in the Company Policy and Shareholders' Agreement, the Plaintiffs have always participated in the management of the affairs of G&P Structures together with the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. Below is an extract of the minutes of meeting on 5.10.2005 which shows the participation of the Plaintiffs in the management of G&P Structures:

## Minutes of the 905 Management Meeting held on 5 October, 2005 at 3:45 pm

Present :     Ts Hang Tang Hai                     (HTH)  
               E. D. Cheong Sai Seng             (CSS)  
               F. Liaw Shaw Shong             (LSS)  
               E. Ng Tak Kee                     (NTK)  
               Ms. Han Lee San                   (HLS)

Absent with :  F. Tan Yean Chin             (TYO)  
 apologies

Matters discussed are as follows:

1.0	PROPOSALS / PROJECTS	
1.1	The Breakdown of Proposals / Projects Secured since July, 2003	INFO

[31] At the management meetings of G&P Structures, the Plaintiffs and the 1<sup>st</sup> and 2<sup>nd</sup> Defendants would discuss and decide on matters including proposals and projects secured, staffing/benefits, equity/partner, computer/hardware, financial/cashflow, ISO/training, sub-committee, office maintenance, website and R&D presentation.

[32] The Plaintiffs' beneficial ownership of the shares in G&P Structures are also expressly recorded and recognised in the minutes of the management meetings. The minutes of the management meetings are confirmed by the 1<sup>st</sup> Defendant as the Managing Director. Below is an extract of the minutes of meeting on 5.10.2005 (and other dates) which show the confirmation by the 1<sup>st</sup> Defendant:

**G&P STRUCTURES SDN BHD****Paid up Capital**

In. Heong Tang Hai Promoters	45.00%	51.00%
In. Ng Tak Kee Promoters	10.00%	49.00%
	39.00%	

**Payments received for the period from 1 Jan 2009 to 31 Jan 2009**

09/01/09	Reliable Capacity Sdn Bhd	25,000.00
12/01/09	RK Bina Sdn Bhd	17,859.00
12/01/09	Gebung Wajah Sdn Bhd	24,581.37
14/01/09	Ibarat Dunia Sdn Bhd	114,510.85
14/01/09	Ibarat Dunia Sdn Bhd	89.88
14/01/09	Srihisa Alifhara Sdn Bhd	

### The Plaintiffs' entitlement to dividend

[33] Further, pursuant to the Company Policy, the Shareholders' Agreement and the 2013 Trust Deeds, the Plaintiffs are entitled to receive dividend as beneficial owners of the trust shares. In this regard, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants as trustees have always recognised the Plaintiff's right and entitlement to dividend. Whenever G&P Structures declared dividend to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants as the registered shareholders, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants would certify on the overleaf of the dividend notification that Plaintiffs are the beneficial owners of the dividend declared. The payment for the dividend would be made directly to the Plaintiffs as approved by the 1<sup>st</sup> Defendant as the Managing Director. These are not disputed. Below is an extract of one sample payment voucher and dividend made to the Plaintiffs.



Serial No. 4

Dividend No. 3

G&P STRUCTURES SDN. BHD.  
 (COMPANY NO. 63041 - U)  
 11-5 (SUITE 1), 5<sup>TH</sup> FLOOR,  
 MEDAN AVENUE 1,  
 105, JALAN TEN RAZAK,  
 50400 KUALA LUMPUR.  
 31<sup>st</sup> October, 2008.

IR. NG TAK KEE @ WONG TAK KEE  
 NO. 47, JALAN SENGAI BERING,  
 33-70, BUKIT AHMAD,  
 46400 SEKAI ALAM,  
 SELANGOR DARUL KEHATAN

Dear Sir/Madam,

We have the pleasure in advising that an Interim / Final Dividend of RM5947796 has accrued to the benefit declared in respect of the year ending / ended 31st December, 2008.

The amount due in respect of shares registered in your name on 23<sup>rd</sup> October, 2008 is as follows:-

Dividend on 21,260 shares	RM	17,214.00
Less : 20% Malaysia Income Tax	RM	4,076.13
Net amount due to you	RM	13,137.87

We hereby certify that income tax deducted as above has been or will be accounted for by us to the Comptroller-General of Inland Revenue, Malaysia.

Yours faithfully,  
 G&P STRUCTURES SDN. BHD.

  
 Ir. Hoeng Tung Hai  
 Director

This notification constitutes the certificate required under section 108(3) of the Income Tax Act, 1967, Malaysia.

I hereby certify that the Beneficial Owner of the Dividend referred to above is  
 Ir. Ng Tak Kee @ Wong Tak Kee  
 (IC No. 840677-10-2002)

[34] Below is a tabulation of the dividends declared and paid out to the Plaintiffs from 2008 until 2018:

Dividend pay out to the 1 <sup>st</sup> and 2 <sup>nd</sup> Defendants and onward payment to the Plaintiffs as Beneficial Owners					
For financial year ending	Declared on	Dividend No.	Beneficial Owners		
			P1	P2	P3
31.12.2008	23.10.2008	3	3,041.80 12,739.77	5,260.52	<i>Not Available</i>
31.12.2009	28.8.2009	4	6,087.79 25,497.09	<i>Not available</i>	
31.12.2010	27.9.2010	5	26,620.76 6,356.08	10,992.28	<i>Not Available</i>
31.12.2010	8.11.2010	6	2,646.11 11,082.54	4,576.22	<i>Not Available</i>
31.12.2010	23.12.2010	7	8,058.00 33,748.80	<i>Not available</i>	13,935.60
31.12.2011	30.9.2011	8	45,002.08 10,744.88	<i>Not available</i>	18,582.32
31.12.2012	30.8.2012	9	14,558.30 60,973.57	25,177.29	25,177.29
31.12.2013	8.7.2013	10	17,668.87 74,001.39	30,556.75	30,556.75
31.12.2014	22.8.2014	11	53,929.97 45,283.34	33,071.10	33,071.10
31.12.2015	25.11.2015	12	60,500.00	37,100	37,100



5	4		50,800.00		
31.12.201	4.12.2015	13	65,674.98	40,273.4	40,273.4
5			55,145.27	1	1
31.12.201	23.9.2016	14	98,706.70	59,916.0	59,916.0
6			82,041.32	1	1
31.12.201	2.10.2017	16	87,104.07	63,613.4	63,613.4
7			103,736.1	1	1
			5		
31.12.201	8.10.2018	17	21,123.03	12,953.1	12,953.1
8			17,736.37	3	3

[35] Based on the aforesaid facts, the Plaintiffs alleged that the 1<sup>st</sup>. and 2<sup>nd</sup>. Defendants have carried out conduct in a manner oppressive to the Plaintiffs and or in disregard of the Plaintiffs' interests as beneficial shareholders of G & P Structures and that the Plaintiffs are therefore entitled to the reliefs sought pursuant to section 346(2) of the Companies Act 2016 ('CA 2016').

### **Court Analysis and Determination**

[36] Section 346(1) of the CA 2016 provides:

'346(1) Any member or debenture holder of a company may apply to the Court for an order under this section on the ground –

(a) That the affairs of the company are being conducted or the powers of the directors are being exercised in a manner oppressive to one or more of the members or debenture holders

including himself or in disregard of his or their interests as members, shareholders or debenture holders of the company;  
or

(b) That some act of the company has been done or is threatened or that some resolution of the members, debenture holders or any class of them has been passed or is proposed which unfairly discriminates against or is otherwise prejudicial to one or more of the members or debenture holders, including himself.

[37] A 'member' is defined in the CA 2016 in Section 2(1) to mean:

'member' means –

(a) In the case of a company limited by shares, a person whose name is entered in the register of members as the holder for the time being of one or more shares in the company; or

(b) In the case of a company limited by guarantee, a person whose name is entered in the register of members.'

[38] In the present case, the Plaintiffs are not persons whose names are registered in the register of members as the holder for the time being of any shares in G & P Structures.

[39] Therefore, in reliance on the Federal Court decision of **Jet-Tech Materials Sdn Bhd & Anor v. Yushiro Chemical Industry Co Ltd & Ors and another appeal** [2013] 2 MLJ 297, the Defendants contended that the Plaintiffs have no *locus standi* to present the

present OS 292. The Federal Court in that case held at para [20] as follows:

[20] At the outset the Court of Appeal was of the considered view that Chen, lacked the necessary locus standi to seek a remedy under s.181 of the CA. In this regard the Court of Appeal was of the view that a person who claims to have a beneficial interest in the shares of a company through a registered member, does not have the locus standi to present a petition under s.181 of the CA (the Federal Court case of *Yeng Hing Enterprise Sdn Bhd v. Liow Su Fah* [1979] 2 MLJ 240 was referred as the authority to this proposition)

[40] In **Yeng Hing Enterprise Sdn Bhd v. Liow Su Fah** [1979] 2 MLJ 240 Abdoolcader J held :

‘The relief under that section [section 181] would only be available to the respondent as a member of the appellant but he however holds only one share in it. His claim in these proceedings appears however to be predicated on his would-be entitlement to 1,200,000 or 1,999,999 shares in it but in respect of which he is not a member. The ground for relief under section 181(1)(b) would only be available to him in respect of any act which unfairly discriminates against or is otherwise prejudicial to him as a member of the appellant. ...The respondent must be aggrieved as a member *ex vi termini* and not as a person claiming only equitable interest in shares held by some other member of the appellant, in this case the 1<sup>st</sup>. defendant, and article 10 of the appellant’s articles of association makes the position clear *ob majorem cautelam*’.

[41] More recently, in **Ng Kok Pool v. Brunswood ID Sdn Bhd** [2006] 7 MLJ 365, the High Court held:

‘In the instant case, the petitioner was not a registered shareholder or member of the first respondent. The petitioner was unable to demonstrate that his name appears on the first respondent’s company register at the date of the presentation of the petition. The 1.181 remedy is a statutory remedy and unless the applicant came squarely within the section, the court could not entertain his action’.

[42] However, in **Owen Sim Liang Khui v Piasau Jaya Sdn Bhd & Anor** [1996] 1 MLJ 113, the Federal Court when construing s 181 of the Companies Act 1965 held that the requirement that a petitioner must be a ‘member’ is a general and not a universal rule. There might be exceptional situations where the application of the general rule will be unfair or unjust. At pp 133-134, the Federal Court held:

“We next turn to consider the category of persons within a company who may invoke the provisions of s 181 of the Act. It is an obvious and simple point on which comment would ordinarily have been unnecessary. But we are compelled to deal with this issue because it is one of the points relied upon by the judge for striking out the appellant’s petition.

Section 181 opens with the words: ‘Any member’. There then follows a recital of the other persons who are declared to be entitled to move the court under the section. The expression ‘member’ is not defined in s 4 of the Act. However, the meaning of that term is to be found in s 16(6) of the Act which provides as follows:

The subscribers to the memorandum shall be deemed to have agreed to become members of the company and on the incorporation of the company shall be entered as members in its register of members, and every other person who agrees to become a member of a company and whose name is entered in its register of members shall be a member of the company.

A reading of s181 reveals that in the latter part of para (a) of sub-s (1) to that section, the legislature has used the expression 'members, shareholders ... of the company'. However, it does not require much intellectual exercise to realize that the subsection, read as a whole, when using the term 'member' and 'shareholder' refers to the same category of persons within the company. **The result, therefore, is that, as a general rule, only one who comes within the terms of s 16(6) of the Act may present a petition under s 181. Put another way, in general, a petitioner who applies under the section must be able to demonstrate that his name appears on a company's register of members at the date of presentation of the petition: if he is unable to do so, then he has no standing to invoke the jurisdiction conferred upon the court by the section.** In this respect, the section differs materially from s 459 of the Companies Act 1985 of the United Kingdom, for under the latter provision, past members have been expressly given locus standi to apply for relief under it.

**We have, in stating the applicable rule as to standing under s181, taken great care in emphasizing that what has been expressed is the general rule, and not a universal rule. We have done so to bring home the point that there may be cases where an application of the general rule would be unfair or unjust.**

Take, for instance, the case of a person who has agreed to become a member, but whose name has been omitted from the register of members. If it transpires that prior to the dispute leading to the presentation of the petition, a company or its board had always treated the complainant as a member, it would not be open to them to assert that the petitioner lacked locus standi. Examples may be multiplied without any principle emerging from them. Take the facts of this very case. Here, we have a fact pattern where the appellant's membership of the company had been terminated in circumstances which are being challenged by him on substantial grounds. The substantial ground he complains of is the deprivation of his membership in the company. He says that the circumstances attending this deprivation of membership falls within the framework of s181(1)(a) and (b). It is the company, acting through its board, that had deprived the appellant of the status of a member. Can the company be now heard to say that the appellant is no longer a member and is therefore disentitled from moving the court under s 181 of the Act and from questioning that very deprivation in proceedings brought under the section? We think not. For it does not lie in the mouth of the alleged wrongdoers to say that the appellant has no ground to stand on after having cut the very ground from under his feet.

The true principle which governs such cases as the present is housed in the doctrine of estoppel. The doctrine has reached a stage where it may be applied to prevent or preclude a litigant from raising the provisions of a statute in answer to a claim made against him in circumstances where it would be unjust or inequitable to permit him so to do." [Emphasis added.]

[43] In Kitnasamy s/o Marudapan v Nagatheran s/o Manogar & anor [2000] 1 SLR(R) 542, the petitioner was made a director of the company and contributed his expertise towards the business. He was promised shares in the company but this was not done. Subsequently, the petitioner's removal as director was sought. The Singapore Court referred to Owen Sim and held that the circumstances of the case would make it unjust and unfair for the respondents to take advantage of their conduct. At p 550:

“27 On the facts as pleaded by the appellant, even if he was not a registered shareholder, it seemed to us that this was an instance where the appellant had agreed to become a shareholder of the company and had rendered invaluable services to it and due to the default of those responsible for the administration of the company, including the respondents, the appellant's name as a shareholder was not entered in the register of the company. The belief of the appellant that he was a member was reinforced by the fact that the notice of an EGM scheduled for 14 January 2000, together with a proxy form, were despatched to him. Such documents are only despatched to members. The respondents were thus estopped from asserting that the appellant was not a member.”

[44] I agree with learned counsel for the Plaintiffs that in the circumstances of this case, it will be unjust and inequitable if the Plaintiffs are precluded from presenting this OS on the ground that their names are not entered in G & P Structures' register of members.

- [45] It is beyond peradventure that prior to the commencement of the OS 292, the 1<sup>st</sup>. and 2<sup>nd</sup>. Defendants have acted in a manner recognising the Plaintiffs as members of G & P Structures. The 2013 Trust Deeds entitled the Plaintiffs to be registered members. In fact, the 1<sup>st</sup>. and 2<sup>nd</sup>. Defendants have even executed blank transfer forms in favour of the Plaintiff in respect of the shares under the 2013 Trust Deeds. These 2013 Trust Deeds have been found to be valid in Originating Summons No. WA-24 NCC-168-04/2019 ('OS 168').
- [46] Learned counsel for the 1<sup>st</sup>. and 2<sup>nd</sup>. Defendants' contention that the OS 292 is pre-mature as the Plaintiffs ought to have presented to transfer forms first to the Board of Directors to approve the same in my mind is disingenuous. The 1<sup>st</sup>. and 2<sup>nd</sup>. Defendants have filed an appeal against the decision in OS 168. It will be inconsistent for the Board of Directors to approve the transfer under the 2013 Trust Deeds when the 1<sup>st</sup>. and 2<sup>nd</sup>. Defendants are maintaining that the 2013 Trust Deeds are invalid.
- [47] The Plaintiffs and the 1<sup>st</sup>. and 2<sup>nd</sup>. Defendants met regularly as shareholders. The 1<sup>st</sup>. and 2<sup>nd</sup>. Defendants have themselves treated the Plaintiffs as shareholders and abided by the provisions of the Shareholders' Agreement, in particular, clause 6.4 where certain issues, namely, the Managing Director's salary, allowances and other benefits shall require the Plaintiffs' approval.
- [48] Further, the Plaintiffs are entitled to receive dividends. Whenever dividends are declared, the 1<sup>st</sup>. and 2<sup>nd</sup>. Defendants would not only certify on the overleaf of the dividend notifications that the Plaintiffs



are the beneficial owners of the dividends declared but such dividends were paid directly to the Plaintiffs.

[49] Learned counsel for the Plaintiffs have also sought to argue that 'member' should also include 'a person who is entitled to be registered as a member of a company' under section 345(a) of the CA 2016 which reads:

'345 Interpretation

For the purposes of this Division, "complainant" means –

(a) a member of a company, or a person who is entitled to be registered as a member of the company;'

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[50] However, learned counsel for the Defendants drew the attention of the Court to the fact that section 345(a) is a definition of 'complainant' and not 'member'.

[51] Ever quick in his response, learned counsel for the Plaintiffs referred me to the 'Review of the Companies Act 1965 – Final Report by the Corporate Law reform Committee (CLRC)' by the Suruhanjaya Syarikat Malaysia chaired by Dato' K C Vohrah where at 'Part C - Members' Rights and Remedies', under paragraph 12.03, the report stated thus:

'As noted in Owen Sim Liang Khui v. Piasau Jaya Sdn Bhd. It is not right for a company to assert that a person has no locus standi when it is the company which had deprived the person of membership and it is this conduct which is alleged to be oppressive. In this situation, a former member who has been

deprived of membership should be given locus standi. The CLRC does not intend that all former members should be given locus standi but that this should be only given in limited circumstances as was envisaged in Owen's case. Whilst there is support for the UK Law Commission's view as discussed in CD 6 that former members have alternative remedies and therefore should not be given the locus standi under section 181, the CLRC endorse the view of the majority that former member simpliciter should not be given locus standi but that a former member should be allowed to petition under section 181 if the oppression relates to the circumstances in which he ceased to be a member. Where beneficial owners of shares are concerned, they should be given the right to bring an action under section 181 only where their membership has yet to be perfected. This reflects the dicta in *Owen Sim Liang Khui v. Piasau Jaya Sdn Bhd*'.

[52] Learned counsel for the Plaintiffs urged this Court to adopt the definition of 'member' in section 246(1) to include 'person who is entitled to be registered as member' to reflect the desire of the CLRC to extend the categories of persons entitled to bring an oppression action.

[53] With respect, the words in section 345(1) is clear and unambiguous. The section is targeted only at the word 'complainant' which is different from 'member' which is separately defined under section 2(1) of the CA 2016.

[54] Having determined that the 1<sup>st</sup>. and 2<sup>nd</sup>. Defendants are estopped from challenging the Plaintiffs' *locus standi* based on **Owen Sim**

Liang Khui's case, the next issue to be determined is whether the Plaintiffs have made out a case for oppression.

- [55] The guiding principles in determining oppression under the statutory provision has been well established in various cases. The landmark case is Re Kong Thai Sawmill (Miri) Sdn Bhd [1978] 2 MLJ 227 in which the Privy Council at p 229A held:

“As was said in a decision upon the United Kingdom section **there must be a visible departure from the standards of fair dealing and a violation of the conditions of fair play which a shareholder is entitled to expect before a case of oppression can be made** (Elder v. Elder & Watson Ltd.): their Lordships would place the emphasis on “visible”. And similarly “**disregard**” involves something more than a failure to take account of the minority’s interest: there must be awareness of that interest and an evident decision to override it or brush it aside or to set it at naught the proper company procedure (per Lord Clyde in Thompson v. Drysdale).”  
[Emphasis added.]

- [56] The Federal Court in Pan-Pacific Construction Holdings Sdn Bhd v Ngiu-Kee Construction (M) Sdn Bhd & Anor [2010] 6 CLJ 721, while dealing with s 181 of the Companies Act 1965, stressed that the underlying theme of the section is ‘unfairness’:

“[25] Therefore, in order to succeed in its petition pursuant to s. 181 the petitioner has to establish and ‘must eminently be determined according to the facts’ of this case that the affairs of the company are being conducted or that the powers of the directors are being exercised in an oppressive manner or in disregard of its interests, or to its prejudice some unfairly

discriminatory or prejudicial act of the company has been done or threatened, or that some resolutions of the members, debenture holders or any class of them has been passed or is proposed to be passed.

[26] In other words s. 181 permits judicial remedy on four categories of conduct, namely, oppressive conduct, conduct in disregard of interests, unfairly discriminatory conduct or prejudicial conduct.

**[27] It may also be noted that from the wordings of s. 181 its basic theme is 'unfairness'. However, unfairness 'does not mean that the court can do whatever the individual judge happens to think fair. The concept of fairness must be applied judicially and the content which it is given by the courts must be based upon rational principles. "The court... has a very wide discretion, but it does not sit under a palm tree". (See: O'Neil v. Philips [1999] 2 All ER 961).**

[29] "the term 'disregard of interests' is to be understood to mean 'unfair disregard' while 'oppression' denotes an 'unfairly prejudicial conduct' which means a conduct 'departing from standards of fair dealing and a violation of conditions of fair play'. But 'a member of a company will not ordinarily be entitled to complain of unfairness unless there has been some breach of the terms on which he agreed that the affairs of the company should be conducted'. And 'trivial or technical infringements of the articles were not intended to give rise to petitions under s. 459'." [Emphasis added.]

[57] The contention by learned counsel for the 1<sup>st</sup>. and 2<sup>nd</sup>. Defendants is that the present disputes by the Plaintiffs are basically disputes

among shareholders under the Shareholders' Agreement which have no relation to the affairs of the company. In support, learned counsel cited the Federal Court case of **Jet-Tech Materials Sdn Bhd v. Yushiro Chemical Industry Co Ltd & Ors and another appeal** [2013] 2 MLJ 297 where it was held:

'It was alleged by the appellants that Yushiro's conduct in refusing to allow Chen to remove Gan and Firdaos as directors of the company amounted to a breach of the shareholders agreement. In this regard we are in agreement with the submission of learned counsel for the respondents that breaches of a shareholders agreement cannot be a basis for bring a petition under s. 181. A complaint under s. 181 of the CA must be confined to matters relating to the affairs of the company. Shareholders' agreement and breach of the same clearly are not matters relating to the affairs of the company. They are private matters enforceable by the parties to shareholders agreement'.

[58] The complaints in this case involve not only the Shareholders' Agreement but also the Company Policy. In both these documents, what were encapsulated therein relate to the affairs of the company and the specific rights of the Plaintiffs as shareholders of the company to participate in the management decisions of the company and to have certain controls over the directions and financial matters of the company. There are also expectations that the Plaintiffs would be consulted, and approval given before certain decisions are made.

[59] Clearly the breaches of the matters agreed upon by the 1<sup>st</sup>. and 2<sup>nd</sup>. Defendants in the Shareholders' Agreement and the Company Policy are not mere breaches of shareholders' rights *simpliciter* affecting only the shareholders *inter se* but these breaches have relation to the manner in which the affairs of the company are being conducted and or how the powers of the directors are being exercised.

[60] In **Jet-Tech** (*supra*), the alleged breach of the shareholders' agreement therein related to the respondents' conduct in refusing to allow the removal of certain directors of the company. This was a pure breach of a shareholder's contractual obligation governing how one should vote in certain matters. Such breach and other breaches including, for example, an agreement by one shareholder to purchase the shares of another based on certain accounting method, are more properly claims that are to be made in contract. An oppression action stands on an entirely different proposition. This was why the Federal Court opined that 'A complaint under s. 181 ... must be confined to matters relating to the affairs of the company'.

[61] It is in the above context that the Federal Court's statement that 'Shareholders' agreement and breach of the same clearly are not matters relating to the affairs of the company. They are private matters enforceable by the parties to the shareholder['] agreement...' must be understood. This statement is not to be taken as a general principle that all breaches of the shareholders agreement can never be grounds for an oppression action.

[62] Where the breaches result in an unfairness in the context of the agreement and conduct expected of the parties which is prejudicial or unfairly discriminatory to the complainant as a member of the company or a blatant disregard of the interests of the agreed procedure to the detriment of the minority shareholder, such breaches, notwithstanding that they are breaches of a shareholders' agreement can be relied upon for an oppression action. In such a circumstance, the court will consider the parties' legitimate expectations arising from agreements and understanding of the members among themselves to determine if the breaches 'departs from standards of fair dealing and a violation of condition of fair play'. [See : **Jaya Medical Consultants Sdn Bhd v. Island & Peninsular Bhd & Ors** [1994] 1 MLJ 520 and **Re Kong Thai Sawmill (Miri) Sdn Bhd** [1978] 2 MLJ 227]

[63] In the instant case, the 1<sup>st</sup>. and 2<sup>nd</sup>. Defendants have by their conduct sought to exclude the Plaintiffs completely from the management and affairs of the company. The Plaintiffs' status as members of the company is completely denied by the 1<sup>st</sup>. and 2<sup>nd</sup>. Defendants notwithstanding previous acknowledgment and actions where the 1<sup>st</sup>. and 2<sup>nd</sup>. Defendants had clearly treated the Plaintiffs as full members.

[64] In fact, the 1<sup>st</sup>. and 2<sup>nd</sup>. Defendants have by their action in filing the legal suit under the OS 168 sought to expropriate the Plaintiffs' entire shares which if successful would result in the 1<sup>st</sup>. and 2<sup>nd</sup>. Defendants gaining 100% control and ownership of the

company contrary to the agreements with the Plaintiff under the Shareholders' Agreement and the Company Policy.

[65] I agree with the submission by learned counsel for the Plaintiffs that the 1<sup>st</sup>. and 2<sup>nd</sup>. Defendants' conduct in bringing the OS 168, whilst it is technically lawful, nevertheless, constitutes an unfair and prejudicial conduct within the meaning of section 346(1) of the CA 2016. In **Re Saul D Harrison & Sons plc** [1995] 1 BCLC 14, Hoffman J(as he then was) at p. 19 held:

'Not only may conduct be technically unlawful without being unfair; it can also be unfair without being unlawful. In a commercial context, this may at first seem surprising. How can it be unfair to act in accordance with what the parties have agreed? As a general rule, it is not. But there are cases in which the letter of the articles does not fully reflect the understandings upon which the shareholders are associated.'

[66] Thus, in this case, the bringing of the OS 168 is a conduct disregarding the entire agreement and understanding that constituted the very basis of the commercial relationship formed at the genesis of the formation of the company.

[67] Even before the filing of the OS 168, the 1<sup>st</sup>. and 2<sup>nd</sup>. Defendants have carried out a series of acts to completely exclude the Plaintiffs from the management of the company. These include:

(a) The 1<sup>st</sup> and 2<sup>nd</sup> Defendants surreptitiously caused the company secretary (Law Cheok Yin) to resign on 12.3.2019



and appointed a new company secretary on the same date. This change was done without the Plaintiffs' knowledge and consent. As a result, the former company secretary was unable to provide any documents to the Plaintiffs as the books and records have been handed over to the new company secretary.

- (b) The 1<sup>st</sup> and 2<sup>nd</sup> Defendants surreptitiously changed the registered address of G&P Structures to A-3A-7, Centrio Pantai Hillpark No. 1, Jalan Pantai Murni, 59200 Kuala Lumpur. Again, this change was effected without the Plaintiffs' knowledge and consent.
- (c) The 1<sup>st</sup> and 2<sup>nd</sup> Defendants surreptitiously instructed Alliance Bank to remove the Plaintiffs as authorised signatories for G&P Structures' Alliance Account. The Plaintiffs were never informed of the change.
- (d) The Plaintiffs wrote to the Defendants and the bank on 18.4.2019 to protest about the change of signatories. On 19.4.2019, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants caused a legal firm i.e. Messrs Gan, Lee & Tan, to write on behalf of G&P Structures to respond to the Plaintiffs' letter stating that the change of bank signatories was made pursuant to a board of directors' resolution. The Plaintiffs were not made aware of such board of directors' resolution.
- (e) The Plaintiffs have been kept in the dark about the affairs of the company. Usually, the 1<sup>st</sup> Defendant's secretary would

contact Dato' Gue's secretary before scheduling a management meeting to check and confirm his availability. However, since the last management meeting held in December 2018, Dato' Gue has not been notified of any management meeting of G&P Structures. Neither have the 1<sup>st</sup> and 2<sup>nd</sup> Defendants informed nor updated the Plaintiffs about the business of the company.

- (f) The 1<sup>st</sup> and 2<sup>nd</sup> Defendants notified all the clients, consultants, contractors and associates of G&P Structures by one Tan Boon Cheong's email dated 13.5.2019 that the email addresses of theirs and the staff have been changed. Even the general email of the company has been changed. The clients, consultants, contractors and associates of G&P Structures are requested to send all the future correspondence to the new email addresses. These changes were done without the Plaintiffs' knowledge and consent. The changes are as follows:

1	From <u>thheng@gnpgroup.com.my</u> to <u>thheng@gpsstructures.com.my</u>	Heng Tang Hai (1 <sup>st</sup> Defendant)
2	From <u>tkng@gnpgroup.com.my</u> to <u>tkng@gpsstructures.com.my</u>	Ng Tak Kee (2 <sup>nd</sup> Defendant)
3	From <u>gps-account@gnpgroup.com.my</u> to <u>gps-</u>	Account / Boyce Tiu

	<u>account@gpsstructures.com.my</u>	
4	From <u>gnp- struc@gnpgroup.com.my</u> to <u>gnp- struc1@gpsstructures.com.my</u>	General E-mail
5	From <u>bctan@gnpgroup.com.my</u> to <u>bctan@gpsstructures.com.my</u>	Tan Boon Cheong

[68] The aforesaid conduct by the 1<sup>st</sup>. and 2<sup>nd</sup>. Defendants are clearly a breach of the Plaintiffs' legitimate expectation that they have the right to participate in the management of the company and in disregard of the Plaintiffs' interests as the beneficial owners of the shares. Given that throughout the years, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants have always recognised and acknowledged the Plaintiffs' rights and interest under the Company Policy and the Shareholders' Agreement in relation to the affairs of G&P Structures, the conduct is oppressive and come within the section 346(1) of the CA 2016.

[69] The Court has very wide discretion under s 346(2) of the CA 2016 in respect of the remedies to be granted: **Re Neath Rugby Club (No 2)** [2009] 2 BCLC 427 at [88]-[91]. In this case, apart from the declaration that the 1<sup>st</sup>. and 2<sup>nd</sup>. Defendants are conducting the affairs of G & P Structures and or are exercising their powers as directors in a manner oppressive to the Plaintiffs and or in disregard of their interests as beneficial shareholders of G & P

Structures, I also order that the 1<sup>st</sup>. and 2<sup>nd</sup>. Defendants purchase the shares of G & P Structures beneficially owned by the Plaintiffs under the Trust Deeds dated 29.10.2013. Towards this end, I adopt the terms proposed by learned counsel for the Plaintiffs on the mechanics of valuation for the Court's determination which are fair and not opposed by learned counsel for the Defendants. These terms shall be incorporated into prayer 12 of OS 292 and are as follows:

12A. That the Plaintiffs and the 1<sup>st</sup> and 2<sup>nd</sup> Defendants nominate one professional valuer each for the purpose of the appointment by the Court and such nomination shall be done within 14 days from the date of this Order;

12B. That for the purpose of the valuation of the Plaintiffs' Shares, there shall be no discount for minority holding;

12C. That the date of the valuation shall be the date of this Order;

12D. That the independent valuer shall have unhindered access to all the books, records and financial information of the 3<sup>rd</sup> Defendant wherever such may be kept and in whatever form and with whomsoever, including the auditor of the 3<sup>rd</sup> Defendant, at any time and from time to time;

12E. That the parties are entitled to appoint a professional adviser each who shall have the same right of unhindered access to all the books, records and financial information of the 3<sup>rd</sup> Defendant wherever such may be kept and in whatever form and with whomsoever, including the auditor of the 3<sup>rd</sup> Defendant, at any time and from time to time

which bear upon the value of the Plaintiffs' Shares and the parties' professional advisers shall have the right to make written representations to the independent valuer and/or the Court on matters which have bearing on the fair value of the Plaintiffs' Shares;

12F. That the independent valuer shall complete the valuation exercise within 3 months from the date of this Order;

12G. That the independent valuer shall submit a valuation report to this Honourable Court and the parties' solicitors within 3 months from the date of this Order;

12H. That the valuation report shall contain reasons for valuation on the fair value of the Plaintiffs' Shares;

12I. That the costs of the independent valuer shall be paid by the 3<sup>rd</sup> Defendant;

12J. That the 1<sup>st</sup> and 2<sup>nd</sup> Defendants make full payment of the purchase price of the Plaintiffs' Shares at such price as determined by the Court within 14 days of such determination;

[70] The above reliefs will achieve the objective of putting an end to the matters complained of by the Plaintiffs [See: **Kumagai Gumi Co Ltd v Zenecon-Kumagai Sdn Bhd & Ors And Another Application** [1994] 2 MLJ 789].

[71] For completeness and to avoid any doubt, the prayers ordered are in terms of prayers 1, 2, 3, 5 to 11, 12 (revised to include the

mechanics of valuation under 12A to 12J as proposed and agreed above), 14, 18 and 20 with costs fixed at RM 35,000.00 to be paid by the company, G & P Structures Sdn Bhd.

Dated: 02<sup>nd</sup> January 2020



(ONG CHEE KWAN)

Judicial Commissioner

High Court of Malaya, Kuala Lumpur,

Commercial Division, NCC2

**COUNSEL:**

1. Mr. Kelvin Seet with Mr. James Khong, Ms. Lim Lay Yee and Mr Leon Low Tsung Shen (PDK) for Plaintiffs.  
(Messrs. Chooi & Company + Cheang & Ariff)
2. Mr. Lim Kee Wai for 1st and 2nd Defendants.  
(Messrs. Gan, Lee & Tan)

**LEGISLATION REFERENCE:**

1. Section 2(1), 246(1) , 345 (a) , 345(1), 346(1), 346(2) of the Companies Act 2016.
2. Section 181 of the Companies Act 1965

## CASE REFERENCE:

1. *Jet-Tech Materials Sdn Bhd & Anor v. Yushiro Chemical Industry Co Ltd & Ors and another appeal* [2013] 2 MLJ 297
2. *Yeng Hing Enterprise Sdn Bhd v. Liow Su Fah* [1979] 2 MLJ 240.
3. *Ng Kok Pool v. Brunswood ID Sdn Bhd* [2006] 7 MLJ 365.
4. *Owen Sim Liang Khui v Piasau Jaya Sdn Bhd & Anor* [1996] 1 MLJ 113.
5. *Kitnasamy s/o Marudapan v Nagatheran s/o Manogar & anor* [2000] 1 SLR(R) 542.
6. *Re Kong Thai Sawmill (Miri) Sdn Bhd* [1978] 2 MLJ 227.
7. *Pan-Pacific Construction Holdings Sdn Bhd v Ngiu-Kee Construction (M) Sdn Bhd & Anor* [2010] 6 CLJ 721.
8. *Jaya Medical Consultants Sdn Bhd v. Island & Peninsular Bhd & Ors* [1994] 1 MLJ 520.
9. *Re Saul D Harrison & Sons plc* [1995] 1 BCLC 14.
10. *Re Neath Rugby Club (No 2)* [2009] 2 BCLC 427.
11. *Kumagai Gumi Co Ltd v Zenecon-Kumagai Sdn Bhd & Ors And Another Application* [1994] 2 MLJ 789].