DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR
DALAM WILAYAH PERSEKUTUAN, MALAYSIA
[PETISYEN PEMULA NO.: 26NCC-26-2011]

Dalam perkara Telemont Sdn Bhd (No.: Syarikat: 533734-U)

Dan

Dalam perkara Seksyen 181 Akta Syarikat, 1965

Dan

Dalam perkara Kaedah-Kaedah Syarikat (Penggulungan) 1972

Dan

Dalam perkara Aturan 88 Kaedah-kaedah Mahkamah Tinggi 1980

ANTARA

KHOO PENG LAI ... PEMPETISYEN
(NRIC No.: 530915-10-6195)

DAN

1. **TAN AH HIN**
   (NRIC No.: 570328-10-6189)

2. **KHO AH TEE**
   (NRIC No.: 480316-71-5025)

3. **KHO YOW MING**
   (NRIC No.: 840820-14-5785)

4. TE SOH PENG
(NRIC No.: 750401-10-5800)

5. DATO' NIK ISMAIL NIK YUSOFF
(NRIC No.: 460902-03-5497)

6. DATO' ABDUL LATIF MOHAMAD
(NRIC No.: 480630-03-5183)

7. LIM NEOW HWA
(NRIC No.: 570603-03-5080)

8. TELEMONT SDN BHD
(COMPANY No.: 533734-U) ... RESPONDEN-RESPONDEN

DI HADAPAN
YANG ARIF TUAN MOHD NAZLAN BIN MOHD GHAZALI
PESURUHJAYA KEHAKIMAN

JUDGMENT

Introduction

[1] This case involves an application (Enclosure 100) filed by the Respondents to vary an Order dated 12 September 2014 previously granted by this Court.

[2] After having heard submissions by parties at the hearing on 9 March 2016, I dismissed the application and stated my broad grounds for so deciding. This judgment contains the full grounds for my decision.

Key Background Facts

[3] The present proceedings found their origin in a petition filed by the Petitioner pursuant to Section 181(1) of the Companies Act 1965 ("the CA") ("the Petition"). The Petitioner is a shareholder, holding 10% of the share capital of the 8th Respondent company. He was also a former

director on the Board of the 8th Respondent and had resigned on 2 July 2007. The 1st to the 7th Respondents are directors of the 8th Respondent at the material time. The Petitioner had in essence alleged that the Respondents, amongst others, had oppressed his rights as a minority shareholder by excluding him from the management of the 8th Respondent company, Telemont Sdn Bhd ("Telemont").

[4] On 28 February 2013, after a full trial, this Court gave judgment for the Petitioner and granted, amongst others, for purposes relevant to this judgment, the following orders:

"(a) Pendaftar Syarikat Malaysia dan/atau Suruhanjaya Syarikat Malaysia diperintahkan mengemaskini (rectify) daftaran (the register) untuk menggambarkan pegangan saham sebenar Pempetisyen dalam Responden Ke-8 (Telemont Sdn Bhd (No. Syarikat: 533734-U), yakni 3,150,000 saham-saham 'ordinary shares' bernilai RM1.00 setiap satu;

(a) Seorang Juru Odit bebas daripada firma KPMG dilantik untuk menyiasat dan mengodit akaun-akaun Telemont Sdn Bhd (No. Syarikat: 533734-U) bermula dari tahun 2005 sehingga tarikh Perintah yang dibuat di dalam ini;

………………………

(f) Pengarah-Pengarah Telemont Sdn Bhd diperintahkan untuk membenarkan kesemua rekod-rekod Telemont Sdn Bhd diperiksa oleh Pempetisyen dan Pempetisyen diberikan kebenaran (leave) untuk mengambil apa-apa langkah-langkah yang diperlukan demi melindungi kepentingan Telemont Sdn Bhd;

………………………………………

(h) Bahawa pihak-pihak diberikan kebenaran untuk membuat permohonan lanjut kepada Mahkamah yang mulia ini untuk arahan dan/atau perintah yang lanjut dan/atau yang lain untuk tujuan perlaksanaan sewajarnya ke atas perintah-perintah di dalam ini."

[5] The Order dated 28 February 2013 ("the Original Order") thus grants the Petitioner the right to access the company accounts and documents of the 8th Respondent, in pursuance of which, the Petitioner had taken steps to enforce the Original Order by requesting the Respondents to grant him access to the accounts and documents of the 8th Respondent and its subsidiaries. However, since the Original Order, as can be seen from the above, did not expressly provide for the inspection of accounts and documents of the 8th Respondent's subsidiaries, nor indeed make mention of the existence of any of the 8th Respondent's subsidiaries, the Respondents did not comply with the Petitioner's request.

[6] The Petitioner then successfully obtained an order from this Court on 12 September 2013 amending the Order with the inclusion of the words *'....dan kesemua anak-anak syarikatnya'* into prayers (b) and (f) of the Order ("the Amended Order"), which as a result now reads as follows:-

"(b) Seorang Juru Odit bebas daripada firma KPMG dilantik untuk menyiasat dan mengodit akaun-akaun Telemont Sdn Bhd (No. Syarikat: 533734-U) dan kesemua anak-anak syarikatnya bermula dari tahun 2005 sehingga tarikh Perintah yang dibuat di dalam ini;

………………………………………

(f) Pengarah-Pengarah Telemont Sdn Bhd diperintahkan untuk membenarkan kesemua rekod-rekod Telemont Sdn Bhd dan kesemua anak-anak syarikatnya diperiksa dan disalinkan oleh Pempetisyen dan/atau juruodit / juruakaun /

professional-profesional yang dilantik olehnya dan Pempetisyen diberikan kebenaran (leave) untuk mengambil apa-apa langkah-langkah yang diperlukan demi melindungi kepentingan Telemont Sdn Bhd;...”

[7] The Respondents appealed against the Original Order and the Amended Order (both dated 28 February 2013 and 12 September 2013 respectively). The Court of Appeal however dismissed the same.

[8] It ought to be noted that both the Orders do not name the specific subsidiaries. The dispute between the parties however is precisely on whether certain identified companies are subsidiaries of the 8th Respondent. As such the Petitioner had continued to insist on access to the accounts and documents of companies which the Respondents on the other hand assert are not the 8th Respondent’s subsidiaries. This then witnessed the Petitioner successfully filing an application for leave to commence committal proceedings against the Respondents for their failure to abide by the Amended Order to grant the Petitioner access to the accounts and documents of those companies said to be the 8th Respondent’s subsidiaries.

[9] Pending the hearing for the order of committal, and in addition to filing an application to set aside leave for committal, the Respondents filed the present application for variation of the Amended Order, to specifically include the names of the subsidiaries of the 8th Respondent, which according to the Respondents are easily determinable based on public records.

Primary Contentions of Parties

[10] The Petitioner is insisting on the accounts and documents of the following companies which he claims to be subsidiaries of the 8th Respondent:-

(a) Modal Jati Berhad (Company No.: 103729-X) ("MJB");

(b) MJB Forestry Sdn Bhd (Company No.: 663624-W) ("MJBF");

(c) Jejaka Makmur Sdn Bhd (Company No.: 313510-W) ("JMSB");

(d) Sindiyan Sdn Bhd (Company No.: 388706-T) ("SSB"); and

(e) Alifya Forestry Sdn Bhd (Company No.: 348623-H) ("AFSB")
(collectively, "the Disputed Companies")

[11] The Respondents on the other hand are asserting that at all material times, the Disputed Companies, which were never named as parties to the Petition, are not subsidiaries of 8th Respondent. In particular, they maintain that:-

(a) MJBF, JMSB, SSB and AFSB were never the direct subsidiaries of the 8th Respondent; they were instead subsidiaries of MJB.

(b) MJB was previously a subsidiary of the 8th Respondent but had ceased to be a subsidiary since November 2010, when the 8th Respondent had disposed of its shares in MJB. Since the Petition was filed on 19 April 2011, and the Original Order was given on 28 February 2013 and the Amended Order was allowed on 12 September 2013, at all these material dates, MJB was therefore no longer a subsidiary of the 8th Respondent in that 8th Respondent or Telemont no longer owned any shares in MJB.

[12] The Respondents thus insisted that at all relevant times including presently, neither MJB nor any of the Disputed Companies are

subsidiaries of the 8th Respondent, and that the 8th Respondent does not own any shares in any of the Disputed Companies, as can be seen from the records as filed at the Companies Commission of Malaysia.

Evaluation and Findings by this Court

Res Judicata

[13] It cannot be disputed that having been fully adjudicated and determined by the Court *via* the Original Order, and varied in the Amended Order, as well as appealed to and dismissed by the Court of Appeal, the application by the Respondents to again amend the Order given previously, as per the present Enclosure 100 is in my view plainly not competent as the issues in contention – that concerning the identities of the subsidiaries of the 8th Respondent are manifestly already *res judicata*.

[14] The classic definition of res judicata is as stated in Black's Law Dictionary (7th Edition), in turn referred to in the judgment of the Federal Court in *Manoharan a/l Malayalan v. Menteri Dalam Negeri, Malaysia & Anor* [2009] 2 MLJ 660, as follows:-

> "**[6]** *Res Judicata* is defined in *Black's Law Dictionary*, 7th edition as follows:-
>
> > [Literally in Latin 'a thing adjudicated']
> >
> > 1. An issue that has been definitively settled by judicial decision.
> >
> > 2. An affirmative defence barring parties from litigating a second lawful lawsuit on the same claim, or any other claim arising from the same transactions and that could have been - but was not raised in the first suit. The three essential elements are (1) an earlier decision on the issue (2) a final

judgment on the merits, and (3) the involvement of the same parties, or parties in privity with the original parties

[7] George Spencer Bower and Sir Alexander Turner in their book "*The Doctrine of Res Judicata*" 2nd edition at p.1 defined *res judicata*, *inter alia*, as follows:-

•21. In English jurisprudence a *res judicata*, that is to say a final judicial decision pronounced by a judicial tribunal having competent jurisdiction over the cause or matter in litigation, and over the parties thereto, disposes once and for all of the matters decided, so that they cannot afterwards be raised for re-litigation between the same parties or their privies.

[8] The common law doctrine of *res judicata* has been incorporated into the statute law in Malaysia as can be found in s. 25(2) of the Courts of Judicature Act 1964 ("CJA") which confers additional powers to the High Court as set out in item 11 of the schedule to the CJA as follows:-

11. Power to dismiss or stay proceedings where the matter in question is *res judicata* between the parties, or by reason of multiplicity of proceedings in any Court or Courts the proceedings ought not to be continued."

[15] There cannot thus be any argument about the direct relevance of *res judicata* in the instant case as the matters in the proceedings concerning the Original Order and the Amended Order have been adjudicated and with a number of decisions having been made by the High Court and the Court of Appeal, being the relevant competent judicial tribunal, between the same parties in dispute.

[16] Furthermore, it is trite and well settled in local jurisprudence that the principle of res judicata is of wider remit, and extends to matters which are part of the subject matter of a litigation which ought to have been raised even if not actually raised to be determined, due either to inadvertence, negligence or deliberately. The Supreme Court made it clear in *Asia Commercial Finance (M) Berhad v. Kawal Teliti Sdn Bhd* [1995] 3 MLJ 189 that there are two kinds of *estoppel per rem judicatum*, namely cause of action estoppel and issue estoppel. The relevant passages from the judgment of Peh Swee Chin SCJ read as follow:-

> "**[1]** The significance of *res judicata* lies in its effect of creating an *estoppel per rem judicatum*, which may take the form of either cause of action estoppel or issue estoppel. The cause of action estoppel arises when rights or liabilities involving a particular right to take a particular action in Court for a particular remedy are determined in a final judgment and such right of action, that is the cause of action, merges into the said final judgment. The issue estoppel, on the other hand, means simply an issue which a party is estopped from raising in a subsequent proceeding.
>
> **[2]** The doctrine of *res judicata* is not confined to causes of action or issues which the Court is actually asked to decide or has already decided. It covers also causes of action or issues or facts which, though not already decided as a result of the same not being brought forward due to negligence, inadvertence or deliberately, are so clearly part of the subject matter of the litigation and so clearly could have been raised, that it would be an abuse of the process of the Court to allow a new proceeding to be started in respect of them". [emphasis added]

[17] The Supreme Court in that case referred to and applied the following common law principles in its clarification of the scope of the doctrine of res judicata. First, the passage by Wigram VC in the case of *Henderson v. Henderson* [1843] 3 Hare 100 at p 115 which reads:-

"The plea of *res judicata* applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the same subject of litigation and which the parties, exercising reasonable diligence might have brought forward at the time".

[18] In addition, the meaning of the words in the said statement, i.e, *"every point which properly belonged to the subject of litigation"* was explained by *Somervell LJ in Greenhalgh v. Mallard* [1947] 2 All ER 255 at p 257 as follows:-

> "....*res judicata* for this purpose is not confined to the issues which the Court is actually asked to decide, but.... it covers issues or facts so clearly could have been raised that it would be an abuse of the process of the Court to allow a new proceeding to be started in respect of them".

[19] There are a number of other local cases which have since followed this principle (see the Court of Appeal decisions in *Huawei Tech Investment Co. Ltd. v. Transition Systems (M) Sdn Bhd* [2013] 5 MLJ 396 *and OCBC Bank (Malaysia) Bhd v. Kredin Sdn Bhd* [1997] 2 CLJ 534).

[20] Accordingly, the issue raised by the Respondents in the instant application, such as on the exact identities of the subsidiaries of the 8th Respondent would manifestly fall within the scope of res judicata because firstly the issue had been judicially determined in the Original Order (see further below) and secondly, even if it was not (which I disagree), the issue could have been specifically raised (namely to set out the names of each of the subsidiaries) in the proceedings that resulted in the Amended Order. As such the issue cannot be further and again adjudicated upon. The Respondents are therefore estopped from raising the same issue concerning the identities of the subsidiaries of the 8th Respondent in the instant application, which would otherwise tantamount to an abuse of the process of the Court should it be allowed to be pursued.

Functus Officio

[21] Furthermore, at the same time, this Court would also be *functus officio* in respect of the judgments as pronounced in the Orders. In *Gan Hin Hin Refrigeration Sdn Bhd v. Kamanis Holdings Sdn Bhd* [2004] 4 CLJ 232, the Court of Appeal held as follows:-

> In the present case, the consent judgment dated 20 September 1996 had been drawn up and perfected. It was recorded in the presence of the parties in the course of the trial. In the circumstances, the learned judge having rightly dismissed the respondent's summons in chambers, was *functus officio*, and therefore he could not alter, vary or set aside the judgment as he had no jurisdiction under the application to do so, except under the slip rule as set out in O. 20 r. 11 of the Rules of the High Court 1980 (the RHC). The Federal Court in the case of *Hock Hua Bank Bhd v. Sahari Murid* [1980] 1 LNS 92; [1981] 1 MLJ 143 ruled:
>
> > (1): the learned judge was *functus officio*;
> >
> > (2): the court had no power under any application in the same action to alter vary or set aside a judgment regularly obtained after it had been entered or an order after it had been drawn up, except under the slip rule, so far as is necessary to correct errors in expressing the intention of the court, unless it is a judgment by default or made in the absence of a party at a trial or hearing".

[22] In the instant case, the Orders having been perfected, and the variations sought for not being on the basis of the slip rule under Order 20 of the Rules of Court 2012, the Court is thus already *functus officio*.

Liberty to Apply Clause Inapplicable

[23] It is the contention of the Respondents that Enclosure 100 is filed pursuant to relief (h) of the Amended Order, which according to the Respondents, allows the parties the liberty to apply for further directions or other orders necessary to give effect to the Amended Order. In the High Court decision of *Zen Courts Sdn Bhd v. Bukit Jalil Development Sdn Bhd & Ors* [2014] 11 MLJ 592, Mary Lim J (as she then was) in considering the liberty to apply clause, stated this:-

> "**[13]** In my view, the second respondent is right. Pursuant to the order of court dated 27 March 2012, while parties are at liberty to apply to court after the valuation report has been filed, it is only on matters pertaining to the 'working out of the actual terms of the order'; and not on matters that the court has already ruled or ordered. This is regardless of which 'liberty to apply' term is now invoked and even where this term is repeatedly used in the order. Such term is only in respect of matters that are 'necessary to carry' the order of the court of 27 March 2012 into effect – *Cristel v. Cristel* at p 730". [emphasis added]

[24] Thus the liberty to apply clause should rightfully only be allowed to be invoked in circumstances that amount to the requirement to work out the terms of the Court order, and not on matters that the Court has ruled on. In order to justify a variation, the terms of the order that need to be worked out in my view cannot legitimately be anything other than purely consequential in nature to the import and purport of the order, for otherwise, such a change could have the effect of potentially impinging on, if not actually altering the very substance of the principal relief already pronounced in the original order. In the instant case, whilst the Original Order against the 8th Respondent could reasonably be expected to extend to its subsidiaries, that aspect had since been addressed in the form of the Amended Order. Any further disagreement on the issue, such as prevailing

at present on which entities are the true subsidiaries of the 8th Respondent at the material time in my view is no longer a purely consequential matter necessary to work out the terms of the Amended Order for it has at the same time instead transformed into a substantive issue of dispute. Thus, yet another reliance on the liberty to apply clause by the Respondents in this instant application is untenable and cannot be countenanced.

Specific Finding of Fact already made on the Disputed Companies

[25] I am further fortified in arriving at this finding by the important point that the Original Order has actually set out the identities of the subsidiaries of the 8th Respondent. Crucially this includes the Disputed Companies. This is also the reason, as I alluded to above, that the matter is plainly res judicata as it was an express finding of fact as made by the learned judge in respect of the Original Order.

[26] The Respondents argued that there was no pronouncement by the Court that the Disputed Companies are subsidiaries of the 8th Respondent, for the statement in the grounds of decisions is merely facts mentioned in passing without reference to the official public records. What amounts to a subsidiary is defined in Section 5 of the CA, and anything short of that cannot, in law, amount to a subsidiary.

[27] It is to be observed that in *Chung Chen Phin v. Siew Nyet Moi @ Sopiah Abdullah* [2014] 2 MLJ 79, Hamid Sultan Bin Abu Backer JCA, delivering the judgment of the Court of Appeal had this to say:-

> "This appeal relates to finding of facts. As a general rule finding of facts of a trial court is rarely disturbed by the appellate court more so when it relates to physical facts. As long as the trial judge had directed his mind to the relevant issues, and had acted in accordance with the law and the decision passes the test of reasonableness, the finding of facts relating to physical facts

will not be ordinarily disturbed notwithstanding that the judgment is brief and direct to the point".

[28] This was also recently followed in the Court of Appeal decision in *Universiti Utara Malaysia v. KIC Management Sdn Bhd* [2015] 10 CLJ 147. Indeed, the leading text of Sarkar on Evidence (18th Edition) contains the following statement which is no less instructive:-

> "Matters of judicial record are unquestionable. They are not open to doubt. Judges cannot be dragged into the arena. Judgments cannot be treated as mere counters in the game of litigation. We are bound to accept the statement of the Judges recorded in their judgments, as to what transpired in Court. The statement of the judges cannot be allowed to be contradicted by statements at the Bar or by affidavit and other evidence. If the judges say in their judgment that something was done, said or admitted before them, that has to be last word on the subject".

[29] The Respondents asserted that what is stated in the course of proceedings cannot displace the mandatory statutory provisions of the Companies Act and the true and proper facts that are based on official public records as maintained with the Companies Commission of Malaysia on the corporate structure and shareholding of the Disputed Companies at the material times. In truth, surely, based on the law, no submission however forceful could displace what is now well and truly a matter of judicial record as to the fact as positively stated in the judgment of the learned judge dated 10 June 2013 on the issue of the identities of the subsidiaries of the 8th Respondent. A careful scrutiny of the Court records show that in addition to the affidavit of the Petitioner which made such averments, the evidence given by the 1st Respondent who was a shareholder of the 8th Respondent and director of MJB (being one of the Disputed Companies and the holding company of the other four Disputed Companies), too

confirmed that MJB was at the time of his giving evidence during trial still a wholly owned subsidiary of the 8th Respondent. This therefore renders the argument of the Respondents that the CCM public record documents referred to during the proceedings of the Petition on the status of the Disputed Companies were out-dated to be of much lesser significance, if at all.

The Denial of Subsidiary Status Raised Much Later – An Afterthought

[30] It must also be noted that the judgment was issued by the learned judge on 10 June 2013, which was plainly well prior to the date of the Amended Order of 12 September 2013, in respect of which, it will be readily recalled that the Respondents had been successful in procuring the Amended Order which only change was to extend the relevant reliefs to the subsidiaries of the 8th Respondent, albeit without naming them. It would not have been necessary to identify them because they had already been identified in the proceedings and found as such as recorded in the judgment. But despite the existence of the judgment which identifies the Disputed Companies as subsidiaries of the 8th Respondent, the Respondents never raised the same as an issue but proceeded instead to apply for the Amended Order in terms it was granted. In fact the Respondents only raised the matter about the Disputed Companies not being the subsidiaries of the 8th Respondent when the Petitioner sought to enforce the Amended Order by way of committal. It is thus difficult not to conclude that the present Enclosure 100 to vary the Amended Order is one that may justifiably be characterized as a convenient afterthought.

Wide Definition of Subsidiary under Companies Act

[31] It is of course true, as the Respondents submitted, that the definition of a subsidiary is found in Section 5 of the CA. But the Respondents' follow up statement that the question of whether a company is a subsidiary of another is thus easily determined by reference to public records available is in my view not entirely accurate. First is the practical issue that the records may not represent the latest and current position, as indeed was highlighted by the Respondents themselves. Secondly, and more crucially, as Section 5 of the CA makes it plain, the statutory considerations of whether one is a subsidiary of another company are also dependent on factors subjective in nature. The relevant parts of Section 5 state the following:-

> (1) For the purposes of this Act, a corporation shall, subject to subsection (3), be deemed to be a subsidiary of another corporation, if-
>
> *(a)* that other corporation-
>
> (i) <u>controls the composition of the board of directors of the first-mentioned corporation;</u>
>
> (ii) <u>controls more than half of the voting power of the first-mentioned corporation;</u> or
>
> (iii) holds more than half of the issued share capital of the first-mentioned corporation (excluding any part thereof which consists of preference shares); or
>
> *(b)* the first-mentioned corporation is a subsidiary of any corporation which is that other corporation's subsidiary.

(2) For the purposes of subsection (1), the composition of a corporation's board of directors shall be deemed to be controlled by another corporation if that other corporation by the exercise of some power exercisable by it without the consent or concurrence of any other person can appoint or remove all or a majority of the directors, and for the purposes of this provision that other corporation shall be deemed to have power to make such an appointment if-

(a) a person cannot be appointed as a director without the exercise in his favour by that other corporation of such a power; or

(b) a person's appointment as a director follows necessarily from his being a director or other officer of that other corporation.

……………………………………………….”

[32] In other words, in order to determine if one is a subsidiary of another pursuant to the definition in Section 5(1) (a) (ii) and especially paragraph (ii) surely cannot be on the basis of the information filed at CCM which is invariably premised on the holding of shares. It has not escaped my attention, and this was not raised by parties, that the Respondents have carefully formulated their submission to provide more emphasis on the point that the Disputed Companies through MJB are not the subsidiaries of the 8th Respondent by stressing that the 8th Respondent no longer holds shares in them. This still leaves open the possibility that these entities remain subsidiaries of the 8th Respondent, apart from in terms of the straightforward shareholding criterion, by virtue of fulfilling the tests of control of Board composition or of voting power.

[33] In fact, it is the contention of the Respondents that the Disputed Companies are no longer the subsidiaries of the 8th Respondent because MJB, being the holding company amongst the Disputed Companies had been disposed of to the 1st Respondent and the 2nd Respondent no less. Both purchasers are common directors to both the 8th Respondent and MJB themselves. As if the doubtful legality of this transaction (which is bereft of the relevant and adequate documentary support, reeks of a conflict of fiduciary duty especially considering the selling consideration of RM10 million despite having been acquired by 8th Respondent more than twice that price at RM25 million, and in the absence of a shareholders' approval to boot) is still not enough to discredit the case of the Respondents, the possibility of the argument that the Disputed Companies still remain as subsidiaries of the 8th Respondent by virtue of the latter, through the said relevant common directors controlling the Boards of the former additionally surely cannot be dismissed.

[34] The Respondents' insistence on the Disputed Companies having ceased to be subsidiaries of the 8th Respondent is also misplaced for one other reason. It is this. The Respondents alleged that the sale of MJB took place on 1 November 2010 prior to the filing of the petition. But the Amended Order clearly stipulates in item (b) the need for an audit to be undertaken in respect of the 8th Respondent and its subsidiaries from the year 2005 until judgment date. Although I am aware that of the practice that the entire statutory and other records of a company would usually be transferred to the buyer of the company upon the sale thereof, in the instant case it is not unreasonable to expect that some of the records pre-2010 may still be retained with the 8th Respondent, that is assuming the sale was genuine and lawfully made in the first place.

Conclusion

[35] For the myriad of reasons as I have analyzed and discussed above, it is my judgment that the Respondents have not successfully proven their case on a balance of probabilities to justify their application which seeks to vary the Amended Order and specifically name the companies which form the subsidiaries of the 8th Respondent. Accordingly, I dismiss Enclosure 100 with costs to the Petitioner.

Dated: 24 MAY 2016

(MOHD NAZLAN MOHD GHAZALI)
Judicial Commissioner
High Court NCC1
Kuala Lumpur

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Case(s) referred to:

Manoharan a/l Malayalan v. Menteri Dalam Negeri, Malaysia & Anor [2009] 2 MLJ 660

Asia Commercial Finance (M) Berhad v. Kawal Teliti Sdn Bhd [1995] 3 MLJ 189

Huawei Tech Investment Co. Ltd. v. Transition Systems (M) Sdn Bhd [2013] 5 MLJ 396

Henderson v. Henderson [1843] 3 Hare 100

Somervell LJ in Greenhalgh v. Mallard [1947] 2 All ER 255

OCBC Bank (Malaysia) Bhd v. Kredin Sdn Bhd [1997] 2 CLJ 534

Gan Hin Hin Refrigeration Sdn Bhd v. Kamanis Holdings Sdn Bhd [2004] 4 CLJ 232

Zen Courts Sdn Bhd v. Bukit Jalil Development Sdn Bhd & Ors [2014] 11 MLJ 592

Chung Chen Phin v. Siew Nyet Moi @ Sopiah Abdullah [2014] 2 MLJ 79

Universiti Utara Malaysia v. KIC Management Sdn Bhd [2015] 10 CLJ 147

Legislation referred to:

Companies Act 1965, ss. 5 (1)(a)(ii), 181(1)

Rules of Court 2012, O. 20

Rules of the High Court 1980, r. 88