Golden Plus Holdings Bhd & Ors v China Idea Development Limited & Ors [2021] MLJU 2532

Malayan Law Journal Unreported

HIGH COURT (KUALA LUMPUR)

ANAND PONNUDURAI JC

SUIT NO WA-22NCC-605-12 OF 2020

1 December 2021

P Gananathan (Yeoh Kai Ying, Alan Gomez and Khoo Sher Rynn with him) (Mohanadass Partnership) for the plaintiff.
Ng Sai Yeang (Azanida Alladin and Tan Shey Min with her) (Raja, Darryl & Loh) for the first and eighth defendants.
Sean Yeow (Hooi Chung Wai with him) (Lee Hishammuddin Alen & Gledhill) for the second, fifth, sixth, 13th and 14th defendants.
Serena Azizuddin (Shearn Delamore) for the third and 12th defendants.
Khoo Guan Huat (Gooi Yang Shuh with him) (Skrine) for the fourth and tenth defendants.
Tan Jee Tjun (Rachel Ng Li Hui and Michelle Chew Ai Phin with him) for the seventh defendant.
April Tay (Chow Kok Leing & Co) for the 11th defendant.
Oh Saw Khim (Oh Teik Aun & Co) for the 15th defendant.

Anand Ponnudurai JC:

GROUNDS OF JUDGMENT

(*Enclosures 53, 54, 55, 85, 94, 159, 160, 254*)
INTRODUCTION

[1]These proceedings commenced by the Plaintiffs against various Defendants relate to facts/transactions that have occurred over a period of 20 years and to *inter alia* allegations of fraud, breach of trust, breach of fiduciary duties, conspiracy to defraud and artificial creation of debts.

[2]The Plaintiffs who are various companies in and outside Malaysia are all part of the 1st Plaintiff ("**P1**") and will be referred to collectively as the Golden Plus group of companies where necessary. This chart depicts the link between the Plaintiffs:-

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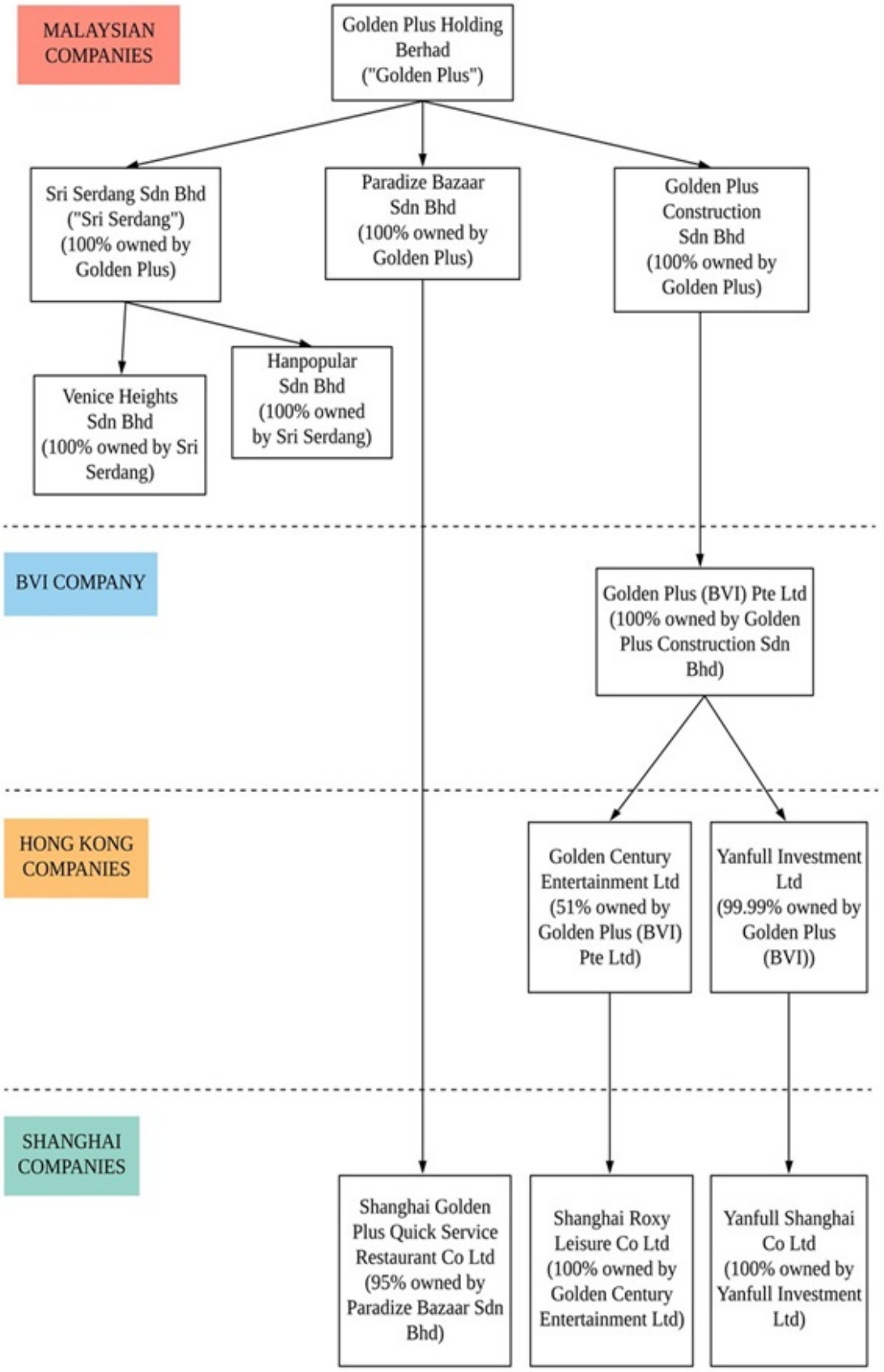

[3]The Plaintiffs have in their lengthy and substantive Re-amended Statement of Claim ("**RASOC**") set out the

background facts and the wrongful acts allegedly committed by the Defendants in what they describe as over 2 periods, the first being the period of 1997 to the demise of one Teh Soon Seng ("**TSS**") in March 2018 and the second period from March 2018 to date.

[4]As will become apparent in this Judgment, the late TSS is a central figure in this matter and apart from seeking various declarations and injunctions, it also seeks orders of access and tracing against the estate of TSS to discharge indebtedness.

[5]A peculiar feature of this case is that the late TSS had 4 last wills and testaments i.e. one each for his estates in Malaysia, Hong Kong, United Kingdom and China. I had vide an order dated 5th February 2021 pursuant to Order 15 r 6A of the Rules of Court 2012 ("**ROC**") made an order that D3, D13, D14 and D15 represent the estate under each will respectively.

[6]From a description of the parties in the title of this suit, it will become apparent that some are foreign companies and some are foreigners. A perusal of the Statement of Claim will also reveal that some of the facts/matters pleaded by the Plaintiff appear to have occurred in foreign countries.

[7]As such, it came as no surprise that after filing their respective Notice of Appearances, some of the Defendants had filed applications pursuant to Order 12 r 10 of the ROC disputing the jurisdiction of this Court. Some of the Defendants had also filed applications pursuant to Order 18 r 19 to strike out the claim against them on various grounds. All in all there were a total of 8 applications.

[8]Parties had filed many affidavits and also written submissions thereafter and oral hearings were conducted over several different days. I take this opportunity to thank all counsel for their meticulous submissions both written and oral which has assisted the Court in arriving at is decision on these various interlocutory applications.

[9]I will hereinafter set out in more detail the background facts, the pleadings and the various applications that have been filed. I will deal with the Order 12 r 10 applications first with each Defendants application and to render my decision on the same after analyzing the pleadings, facts and applicable law.

[10]I will then do likewise for the striking out applications.

THE VARIOUS APPLICATIONS AND THE ORDERS SOUGHT

[11]These Defendants filed the following applications pursuant to Order 12 r 10 ROC:-

	Defendants	**Application Enclosure No**
i)	D2 ("**Pacific Victor**")	Enclosure 53
ii)	D5 and D6 ("**Valarie**" and **Maria**")	Enclosure 54
iii)	D4 and D10 ("**Andrew**" and "**Yong Chooi Lan**")	Enclosure 55
iv)	D1 and D8 ("**CIDL**" and "**Huang**")	Enclosure 94
v)	D13 and D14 (jointly "**TSS**")	Enclosure 159

[12]I have noted that the Defendants' in Enclosures 55 and 94 seek, *inter alia* the following orders:-

i) an Order to set aside the Writ / Re-Amended Writ re- dated 16th February 2021 and Ad-Interim Injunction Order dated 23rd December 2020; and

ii) a declaration that this Court has no jurisdiction over the respective Defendants in relation to the subject matter of and remedies sought in this action against them.

[13]D2 (Enclosure 53), D5 and D6 (Enclosure 54) D13 and D14 (Enclosure 159), *inter alia*, apply to set aside the leave to serve the Notice of Writ on them and / or to stay the proceedings on grounds of forum *non conveniens*.

[14]D4 and D10 had apart from Enclosure 55 also filed an application through Enclosure 85 for the action against them be struck out pursuant to Order 18 r 19 ROC.

[15]D7 has filed Enclosure 160 to strike out pursuant to Order 18 r 19 ROC.

[16]Finally, D15 after filing the Statement of Defence had filed Enclosure 254 applying under both Order 12 r 10 ROC and Order 18 r 19 ROC simultaneously.

[17]I will in due course deal with each of the Plaintiffs' contentions in detail for opposing the various applications by the Defendants. However, for ease of convenience, I think it is apt to set the same out now in brief which are as follows:-

i) that this Court is seized with jurisdiction to hear and try the Plaintiffs' claim against the Defendants pursuant to section 23(1) of the Courts of Judicature Act 1964;

ii) that the causes of action pleaded against the Defendants in the RASOC arose in Malaysia, satisfying Section 23(1)(a) of the Courts of Judicature Act;

iii) that Section 23(1)(b) of the Courts of Judicature Act confers extra-territorial jurisdiction over foreign Defendants where one or several other Defendants reside in Malaysia;

iv) that the causes of action including but not limited to fraud and conspiracy to defraud Golden Plus and the GPLUS Group; the conspiracy to enable Andrew, Valarie, TSH and/or their nominee(s) to take control of Golden Plus and its subsidiaries, and to entrench themselves, with a view of taking control of Golden Plus' Hong Kong and Shanghai subsidiaries, and to subsequently wind-up Golden Plus are pleaded against not just the 'foreign Defendants', but also local Defendants including ST Goh, Tan Say Han, Shiu Fai Fong, and also Andrew and Yong Chooi Lan who are among the Applicants;

v) that the various causes of action which arose in Malaysia and pleaded against both the local and foreign Defendants are inextricably linked and intertwined and ought to be dealt with in the same forum, in Malaysia;

vi) that the relevant witnesses and documents are more easily accessible in Malaysia rendering this Court the forum conveniens to try this action and that this Court has the most real and substantial connection with the action; and

vii) that it is unjust and inappropriate to require the Plaintiffs to seek their relief elsewhere.

[18]It is further contended by the Plaintiffs as follows:

i) that Andrew (D4) and Yong Chooi Lan (D10) have submitted to the jurisdiction of this Honorable Court when they filed their application to, *inter alia*, strike out the Amended Writ and Amended Statement of Claim as against them in Enclosure 85 and as such, they have taken a step in these proceedings;

ii) that Andrew (D4) and the estate of TSS (D14) have also submitted to jurisdiction by reason of their commencement of other proceedings in Malaysia namely, Suits 443 and 560 pertaining to ownership of shares belonging to foreign companies which they claim belongs to the estate of TSS by reason of the Hong Kong Will. Valarie (D5) and Maria (D6) had also intervened and were added as Defendants in one of those Suits;

iii) that having sought to test the Hong Kong Will and claim ownership of shares in foreign companies in the Malaysian Court, these Defendants can no longer challenge the jurisdiction of this Honourable Court to, among others, restrain the distribution of assets of TSS' estate by relying on, *inter alia*, probate proceedings in foreign jurisdictions; and

iv) that the estate of TSS (D3 and D15) have also submitted to the jurisdiction of this Honourable Court.

[19]Prior to considering the various applications as set out above and the applicable law, to fully appreciate the rival submissions, it is necessary in my view to set out a summary of the Plaintiffs' claim which has been extensively set out in the RASOC. In this regard, it is settled law that at the point of determining jurisdiction, all allegations in the RASOC are to be presumed as true and that there should not be a trial on the affidavits. It was held by the Federal Court in *Joseph Bin Lantip & Ors v Unilever PLC* [2012] 7 CLJ 693 that:-

> *"[42] From the authorities, it is clear that there should not be a trial on the affidavits in determining whether the plaintiff has established a good arguable case. As stated by Gopal Sri Ram JCA in Matchplan (M) Sdn Bhd & Anor for the purpose of determining whether High Court at Kuala Lumpur has jurisdiction over the defendants, the allegations of the plaintiffs in the statement of claim must be assumed to be true.*
>
> *(per Arifin Zakaria, CJ)*

SUMMARY OF PLAINTIFFS' CLAIM AS GLEANED FROM THE RASOC AND AFFIDAVITS

[20]Golden Plus is a public company in Malaysia with over 4200 shareholders. The structure of the Malaysian companies as well as the other companies who are the Plaintiffs are as set out in the chart in paragraph 2 herein above.

[21]The Plaintiffs commenced this Action against the Defendants for *inter alia*, fraud, conspiracy to defraud and/or injure Golden Plus and the GPLUS Group; and breaches of fiduciary duties, trust and contract over the following 2 periods, spanning more than 2 decades cumulatively as follows:-

i) The First Period - from 1997 until TSS' demise in March 2018; and

ii) The Second Period - from TSS' demise to 2021.

[22]The first period encompasses acts of TSS (D3, D13, D14, D15), ST Goh (D7), Tan Say Han (D11), CIDL (D1), GQ Huang (D8), GY Huang (D9), Pacific Victor (D2), Maria (D6) and Yong Chooi Lan (D10) in, *inter alia*, siphoning monies out of the GPLUS Group to themselves and/or their nominees through:-

i) alleged management contracts, in particular the CIDL Management Agreement and the Manfield Lease Agreements; and

ii) artificial creation of debt by Golden Plus and some of its subsidiaries in favour of some of the aforementioned Defendants or their nominees, including but not limited to:-

a) the GPlus Loan - purportedly between CIDL (D1) and Golden Plus (P1);

b) the Sri Serdang Loan - purportedly between CIDL (D1) and Sri Serdang (P4);

c) the YCL Loan - purportedly between Yong Chooi Lan (D1) and GP BVI (P3); and

d) the Tenancy Agreements - purportedly between Pacific Victor (D2) and YIL (P8).

[23]The second period covers the continued perpetration of fraud against the GPLUS Group by continuing to siphon out the proceeds from the Royal Garden Project through CIDL, by Andrew (D4), ST Goh (D7) Tan Say Han (D11), CIDL (D1), GQ Huang (D8), GY Huang (D9), Pacific Victor (D2), Maria (D6), Valarie (D5), Yong Chooi Lan (D10) and Fai Fong (D12) by *inter alia*:-

i) conspiring to and/or protecting the interest of TSS' estate in the CIDL Management Agreement and the Manfield Lease Agreements;

ii) conspiring to and/or wrongfully entrenching themselves and/or their nominees in the GPLUS Group by, *inter alia*, causing the fraudulent issuance and allotment of 46,196,995 shares in Golden Plus without consideration; diluting the shareholding of Golden Plus, and creating a new single-block majority to be controlled by Andrew (D4), Valarie (D5) and/or Maria (D6);

iii) conspiring to and/or take possession of and/or convert issue document of titles belonging to Sri Serdang (P4), Venice Heights (P6) and Hanpopular (P7);

iv) conspiring to and/or further creating and/or acknowledging alleged debts by Golden Plus (P1) and Sri Serdang (P4) in Andrew's (D4) and/or CIDL's (D1) favour;

v) conspiring to and/or activating and enforcing the abovementioned artificial debts to assert control over Golden Plus and/or its subsidiaries; and

vi) conspiring to and/or converting the GPLUS Group's assets in Malaysia, Hong Kong and Shanghai and to thereafter proceed to wind-up Golden Plus and/or its subsidiaries.

[24]By reason of the fraud, conspiracy to defraud and the various wrongful acts of the Defendants as pleaded in the RASOC, the Plaintiffs contend that they have suffered loss and damage.

[25]In relation to the claim against the estate of TSS, it is significant to note exhibit WKW-3 of Enclosure 8 which is TSS's letter of appointment by Golden Plus dated 12th November 2002. In the same, it is expressly provided that TSS is the company's representative of Golden Plus's operations in China.

[26]The Plaintiffs have provided a diagram which gives an overall summary of their claims over the two periods. Such diagram is as follows:-

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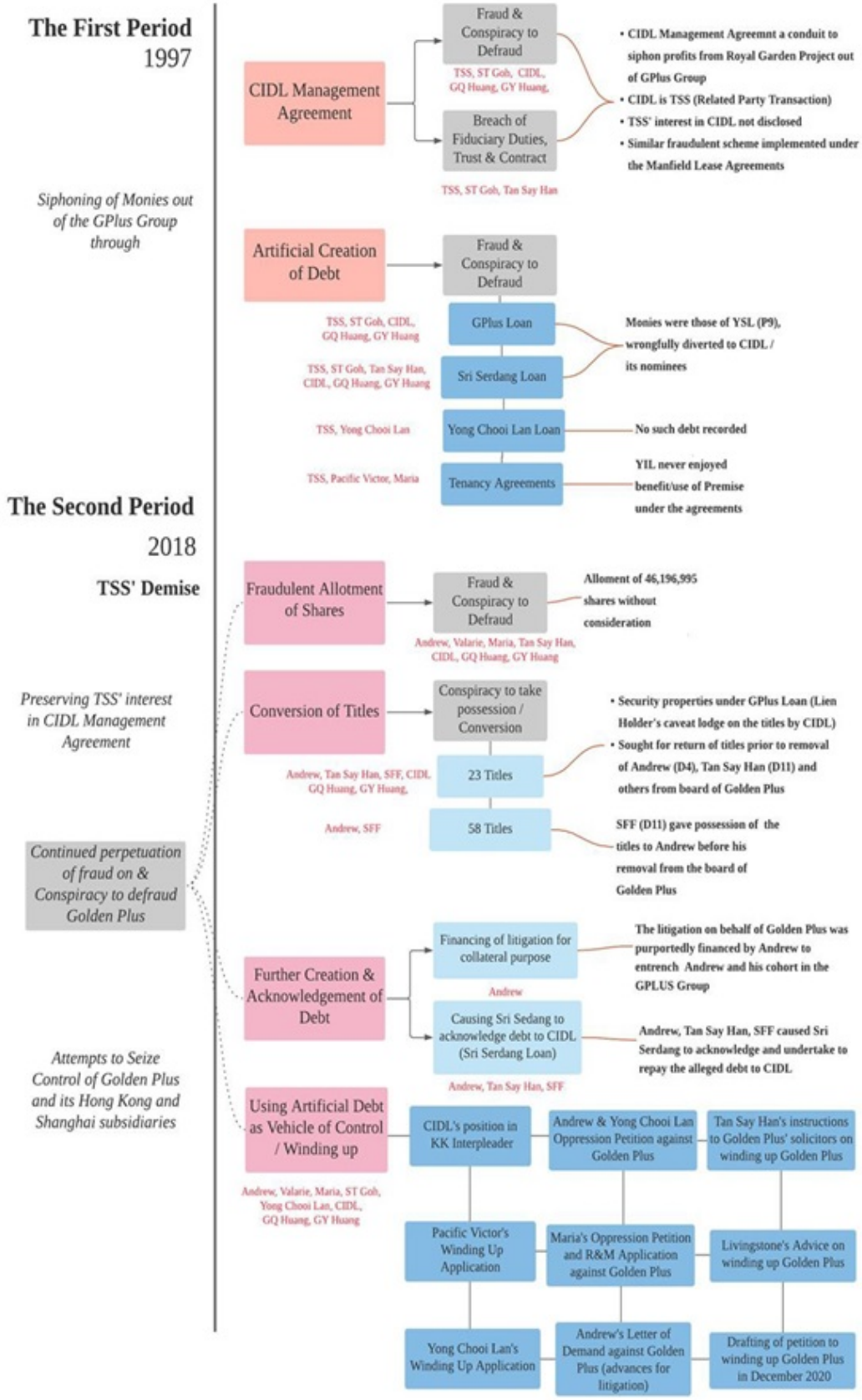

[27]Having set out the summary of the Plaintiffs' pleaded claim as well as the various applications, I will now

proceed to set out the applicable law in relation to Order 12 r 10 before examining the individual applications of each Defendant.

THE APPLICABLE LAW ON ORDER 12 r 10

[28]There is no doubt that Order 12 r 10 ROC allows a Defendant to dispute the jurisdiction of the Malaysian Courts based on the ground that it lacks jurisdiction and/or is not the forum conveniens to try this action.

[29]The issue of the Court's jurisdiction and the issue of forum conveniens are two separate matters which requires separate considerations. In *Kenichi Hattori & Anor v Minoru Yamashita & Anor* [2004] 1 CLJ 491, it was held that:-

> *"In the matter of the challenge to jurisdiction, it is the very authority of the Court to try the action is being challenged. On the question of forum, it is for the Defendant to satisfy the Court that notwithstanding that it has jurisdiction, there exists some other tribunal or Court of competent jurisdiction which is clearly and distinctly more appropriate than the Malaysian Court to try this action."*
>
> *Also Refer: Supreme Court in American Express Bank v. Mohamed Toufic Al-Ozeir* [1995] 1 MLJ 160 *at p. 166 (B to H)"*

[30]The starting point in determining the Applications is to ascertain whether this Court is seized with the jurisdiction to hear and try the Plaintiffs' case against the Defendants/Applicants. This, in my view, requires an examination of the Plaintiffs' pleaded claim in the RASOC, and to test it against Section 23(1) of the Courts of Judicature Act, 1964 ("**CJA**"), the provision governing the civil jurisdiction of the Malaysian High Court.

[31]This approach was taken by Hishamudin Mohd Yunus J (as he then was) in *ISC Technology Sdn Bhd v Premium Systems Technology Pte Ltd* [2008] 7 CLJ 239:-

> *"In my opinion, whether this court has the jurisdiction or not to adjudicate over the dispute must be determined by examining the content of the statement of claim and to test it against the provision of* s. 23(1) of the Courts of Judicature Act 1964" and it was fully endorsed by the Court of Appeal in *PT Gunung Madu Plantations v Muhammad Jimmy Goh Mashun* [2018] 3 MLJ 53 *at [6]."*

[32]Section 23(1) of the CJA provides that:-

> *"Subject to the limitations contained in Article 128 of the Constitution the High Court shall have jurisdiction to try all civil proceedings where—*
>
> (a) *the cause of action arose;*
>
> (b) *the defendant or one of several defendants resides or has his place of business;*
>
> (c) *the facts on which the proceedings are based exist or are alleged to have occurred; or*
>
> (d) *any land the ownership of which is disputed is situated, within the local jurisdiction of the Court and notwithstanding anything contained in this section in any case where all parties consent in writing within the local jurisdiction of the other High Court."*

[33]To establish jurisdiction of this Court, it is sufficient for the Plaintiffs to show that their action falls within any of the sub-paragraphs of Section 23(1) (see: *PT Gunung Madu Plantations v Muhammad Jimmy Goh Mashun* [2018] 3 MLJ 53 ("***PT Gunung Madu Plantations***" at [7]).

[34]Section 23(1)(b) of the CJA confers extra-territorial jurisdiction to the High Court in cases where foreigners overseas are sued as codefendants with local residents. This was explained by the Supreme Court in *Malayan Banking Bhd. v International Tin Council & another* [1989] 3 MLJ 286 at page 288, which was adopted by the Court of Appeal in ***PT Gunung Madu Plantations***:-

> "It must be pointed out further that it matters not that the respondent himself may be outside the jurisdiction of the High Court. In this respect, it ought to be emphasised that s 23(1)(b) of Act 91 merely requires one of the several defendants to be within the jurisdiction of the High Court and if that requirement is fulfilled, that would suffice and the Malaysian court should therefore have the jurisdiction to adjudicate over the dispute. To put it in other words, s 23(1)(b) of Act 91 plainly provides extra-territorial jurisdiction to the High Court in cases where foreigners are sued as co-defendants with local residents. The Supreme Court in *Malayan Banking Berhad v International Tin Council and another appeal* [1989] 3 MLJ

286; [1989] 1 CLJ Rep 87 had occasion to consider the question whether s 23(1)(b) of Act 91 created another exception to the general rule on extraterritorial jurisdiction of our court and held that s 23(1)(b) *of Act 91 'provides extra-territorial jurisdiction to the High Court in cases where oversea foreigners are sued as co-defendants with local residents'."*

(per Idrus Harun, JCA, as he was then)

[35]Alternatively, such jurisdiction is also conferred in Order 11, rule 1 of the Rules of Court, 2012, in the event an action does not fall within the ambit of Section 23(1) of the CJA. In *Petrodar Operating Co Ltd v Nam Fatt Corp Bhd (in liquidation) & Anor* [2014] 6 MLJ 189, the Federal Court held that:-

"The then Supreme Court case of *Malayan Banking Bhd v International Tin Council and another appeal* [1989] 1 CLJ 961 *in considering whether* s 23 of the CJA *confers extra-territorial jurisdiction had clearly highlighted that O11 of the RHC is clothed with the same powers. His Lordship Mohd Azmi SCJ in delivering the judgment of the court held that:*

Apart from O 11 r 1 of the Rules of the High Court 1980, s 23(1)(b) of the Courts of Judicature Act 1964 *provides extra- territorial jurisdiction to the High Court in cases where oversea foreigners are sued as co-defendants …*

(Emphasis added.)

[12] From the above quoted passage, it is clear that the then Supreme Court acknowledged the fact that O 11 of the RHC does confer jurisdiction. His Lordship Gopal Sri Ram JCA (as he then was) in the case of MatchPlan (M) Sdn Bhd & Anor v William D Sinrich & Anor [2004] 2 MLJ 424; [2004] 1 CLJ 810 *in referring to the then Supreme Court case of then Malayan Banking Bhd took pains to set out how O11 of the RHC and* s 23 of the CJA *are to be construed. His Lordship has this to say:*

Once the court is seized of extra-territorial jurisdiction by virtue of s 23(1) of the CJA, O 11 r 1 *ceases to be of jurisdictional relevance.*

The decision in Malayan Banking Berhad v International Tin Council make it plain that O 11 r 1 assumes jurisdictional importance only in cases falling outside the scope of s 23(1). Accordingly, in cases where s 23(1) applies, O 11 r 1 becomes a mere procedural formality to enable a plaintiff to effect service abroad. In the present case, if the plaintiffs are right in their argument on the facts, then this is a case that falls both under s 23(1)(a) and (c) of the Courts of Judicature Act as well as under par (h) of O 11 r 1 *which empowers the court to grant leave to a plaintiff to serve a writ out of jurisdiction 'if the action begun by the writ is founded on a tort committed within the jurisdiction'. So it does not really matter which of these provisions is relied upon to found jurisdiction in this case.*

[13] We see no necessity to regurgitate what had been so admirably explained by His Lordship Gopal Sri Ram in the case of MatchPlan Malaysia. As such, premised on the decision of Malayan Banking Berhad and MatchPlan Malaysia we are of the considered view that O 11 of the RHC does not only confers jurisdiction but that it stands independently on its own and is not predicated upon, s 23 of the CJA 1964.

(per Raus Sharif PCA, as he was then)

[36]In relation to the contentions of the Plaintiffs that some of the Defendants have submitted to jurisdiction, it is trite that a party can no longer contend that the Court should not assume jurisdiction when it has submitted to jurisdiction. The Supreme Court in *American Express Bank Ltd v Mohamed Toufic Al-Ozeir and Another* [1995] 1 MLJ 160 (at p.166 (C) explained:-

"At common law, it would mean that a Malaysian court would have jurisdiction over a foreign defendant, if he is present in Malaysia. If he is not present in Malaysia, the Malaysian court would still have jurisdiction, if the foreign defendant has submitted to jurisdiction, ie he has submitted to being sued in Malaysia."

[37]When a person voluntarily submits to the jurisdiction of the court, it is a recognition of the court's jurisdiction in respect of the claim which is the subject matter of the proceedings. Lord Goff LJ in the case of *Astro Exito Navegacion S.A. v. W.T. Hsu* [1984] 1 Lloyd's Rep 266 observed:-

"… Now a person voluntarily submits to the jurisdiction of the Court if he voluntarily recognizes, or has voluntarily recognized, that the Court has jurisdiction to hear and determine the claim which is the subject matter of the relevant

proceedings. In particular, he makes a voluntary submission to the jurisdiction if he takes a step in proceedings which in all the circumstances amounts to a recognition of the court's jurisdiction in respect of a claim which is the subject matter of those proceedings…

…

The effect of a party's submission to the jurisdiction is that he is precluded thereafter from objecting to the court exercising its jurisdiction in respect of such claim … "

[38]The submission to jurisdiction also extends to related matters where the courts will be astute in ensuring that procedural fairness i.e. taking the "rough with the smooth" is observed where parties have accepted their amenabilities to the process of the court in particular jurisdiction. Refer: *Swiss Life AG v. Moses Kraus* [2015] EWHC 2133 (QB) and *Adams and Others v. Cape Industries Plc. And Another* [1990] 1 Ch 433.
FORUM NON-CONVENIENS

[39]On the question of forum non-coveniens, the burden is on the Applicants to show that there exists another forum which is clearly and distinctly more appropriate to try this action. In ***American Express Bank Ltd*** (supra), the Supreme Court held as follows:-

"The fundamental principle in regards to the doctrine of forum non- conveniens is that there is some other tribunal, having competent jurisdiction, in which the case may be tried more suitably for the interests of all parties and also for the ends of justice. The word "conveniens" here, however, means suitability and appropriateness of the relevant jurisdiction and not one of convenience.

... it will be obligatory for a Malaysian Court to consider in any event, a most important factor i.e. whether "it would be unjust to the plaintiff to confine him to remedies elsewhere". It is indispensable when a Malaysian Court considers all cases in connection with forum non- conveniens.

The most important factor described above does arise, of course, out of a great variety of factors that a Malaysian Court ought to consider in applying the said doctrine; the prominent one being that whether any particular forum is one with which the action has the most real and substantial connection. One can easily visualize a large number of factors which overlap with one another."

(per Peh Swee Chin, FCJ)

See also: Petrodar Operating Co Ltd v Nam Fatt Corp Bhd (in liquidation) & Anor [2014] 6 MLJ 189 *at [20]"*

[40]While there are many factors to be considered, it is crucial to note that in the case of ***American Express Bank Ltd*** (supra), the Supreme Court had emphasized that the existence of a foreign jurisdiction clause in a contract in dispute does not ipso facto preclude a Malaysian Court from exercising its discretion to hear and try the action:-

"…..It would be clear that, notwithstanding such clauses, a Malaysian court, i.e. High Court below, could not be precluded simpliciter thereby from exercising the discretion, according to the doctrine of forum non conveniens, as to whether to hear the instant case or not, please see the Federal Court case of Globus Shipping and Trading Co (Pte) Ltd v Taiping Textiles Bhd [1976] 2 MLJ 154*. That said, such clauses would in any event, in some significant way, militate against any argument for the bank customers, ie the plaintiffs, that the Malaysian court was the most appropriate forum."*

Also Refer: Inter Maritime Management Sdn Bhd v. Kai Tai Timber Co Ltd, Hong Kong [1995] 1 MLJ 322 *at p. 337E – 338A.*

[41]Further, the Supreme Court went on to hold that a foreign choice of law clause does not amount to a submission to the jurisdiction of a foreign court :-

"It is desirable, in passing, to point out that had there been no choice of the Singapore courts in the said clauses, but only the choice of Singapore law, such choice of Singapore law agreed to by both parties would not have amounted to a submission to the jurisdiction of the Singapore courts"

[42]It is noteworthy to highlight that in *Globus Shipping and Trading Co (Pte) Ltd v Taiping Textiles Bhd* [1976] 2 MLJ 154 which was referred to and adopted in the case of ***American Express Bank Ltd*** (supra), the Federal Court was dealing with a submission to exclusive jurisdiction clause, and it held that:-

> *"As regards the general principles in relation to jurisdiction where parties have agreed to submit exclusively to a foreign jurisdiction, in the case of The Fehmarn* [1957] 2 All ER 707 *Wilmer J. said at page 710:*
>
> > *"Where there is an express agreement to a foreign tribunal, clearly it requires a strong case to satisfy this court that that agreement should be over-ridden and that proceedings in this country should be allowed to continue. However, in the end it is, and must necessarily be, a matter for the discretion of the court, having regard to all the circumstances of the particular case."*
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> *In the same case when it went up to the Court of Appeal* [1958] 1 All ER 333 *335 Lord Denning said:*
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> > *"The next question is whether the action ought to be stayed because of the provision in the bill of lading that all disputes are to be judged by the Russian courts. I do not regard this provision as equal to an arbitration clause, but I do say that the English courts are in charge of their own proceedings: and one of the rules which they apply is that a stipulation that all disputes should be judged by the tribunals of a particular country is not absolutely binding. Such a stipulation is a matter to which the courts of this country will pay much regard and to which they will normally give effect, but it is subject to the over- riding principle that no one by his private stipulation can oust these courts of their jurisdiction in a matter that properly belongs to them."*
>
> *….*
>
> *On the question of whether or not the court should exercise its jurisdiction in cases where the parties have agreed to refer any disputes to a foreign court, Brandon J. in The Eleftheria [1970] P 94 99; [1969] 2 All ER 641 645 said:*
>
> > *"The principles established by the authorities can, I think, be summarised as follows: (1) Where plaintiffs sue in England in breach of an agreement to refer disputes to a foreign court, and the defendants apply for a stay, the English court, assuming the claim to be otherwise within its jurisdiction, is not bound to grant a stay but has a discretion whether to do so or not. (2) The discretion should be exercised by granting a stay unless strong cause for not doing so is shown. (3) The burden of proving such strong cause is on the plaintiffs.*
> >
> > *(4) In exercising its discretion the court should take into account all the circumstances of the particular case. (5) In particular, but without prejudice to (4), the following matters, where they arise may properly be regarded: – (a) In what country the evidence on the issues of fact is situated, or more readily available, and the effect of that on the relative convenience and expense of trial as between the English and foreign courts. (b) Whether the law of the foreign court applies and, if so, whether it differs from English law in any material respects. (c) With what country either party is connected, and how closely. (d) Whether the defendants genuinely desire trial in the foreign country, or are only seeking procedural advantages. (e) Whether the plaintiffs would be prejudiced by having to sue in the foreign court because they would: (i) be deprived of security for their claim; (ii) be unable to enforce any judgment obtained; (iii) be faced with a time-bar not applicable in England; or (iv) for political, racial, religious or other reasons be unlikely to get a fair trial" (See also Halsbury's Laws of England, 4th Edition, Volume I, page 281, para. 440).*
> >
> > *It would seem abundantly clear from the authorities that where a cause of action in respect of any dispute in relation to a contract arises and is therefore properly within its jurisdiction, the court has a discretion whether or not to adjudicate upon the claim in the action even where the parties have agreed to refer such dispute to a foreign court, and that the question of jurisdiction is quite separate from the question of the proper law of the contract to be applied. From the reasons given by the learned judge in allowing the appeal in the present case it was clear that he had exercised his discretion in accordance with the well-established and recognized principles. We were therefore satisfied that he was right in allowing the appeal."*

[43]Lastly, in ***ISC Technology Sdn Bhd*** (supra), the Court held that it is procedurally inappropriate and legally wrong for a Defendant to apply to set aside the writ pursuant to Order 12 r 7 of the Rules of Court 1980 (the predecessor of Order 12 r 10 of the ROC), in a situation where the Defendant is merely relying on a dispute resolution clause but apart from that does not dispute that based on the pleaded facts and Section 23 of the CJA, Malaysian Courts do have jurisdiction over the matter. The Court underscored that:-

"whether or not Malaysian Courts have jurisdiction over the dispute, such an issue must only be judged and determined by reference to section 23(1) of the Courts of Judicature Act."

(per Hishamudin Mohd Yunus J, as he then was)

[44]Ultimately, when determining whether the Malaysian Court should assume jurisdiction, each case should be determined on its own facts and circumstances and involves an exercise of discretion by this Honourable Court (see the Court of Appeal decision of *Inter Maritime Management Sdn Bhd v. Kai Tai Timber Co Ltd, Hong Kong* [1995] 1 MLJ 322).

[45]Having set out all the above, I will now consider the facts and circumstances of each Defendants application. ENCLOSURES 53 (D2) and 54 (D5 & D6) & 159 (D13 & D14)

[46]D2 is a company incorporated in Hong Kong and at all material times (prior to its expiry thereof) a party to tenancy agreements dated 25th May 2017 and 27th April 2018 with P8 ("**YIL**").

[47]D5 (Valarie) is a UK citizen resident in London and a named executor of TSS's Hong Kong will. She is TSS's daughter with D6.

[48]D6 (Maria) is also a UK citizen residing in Hong Kong. She is a director and shareholder of D2 as well as named executor of TSS's UK will. She is TSS's wife and mother of D5.

[49]As highlighted earlier, D5 and D6 were also appointed as the personal representatives of the estate of TSS for the Hong Kong will as well as the UK will separately and are thus also D13 and D14 in such representative capacity.

[50]These enclosures seek to set aside the writ and for declarations that this court has no jurisdiction over them in respect of the subject matter or reliefs. Alternatively, they seek a stay of all proceedings against them on grounds that this court is not the most convenient or proper forum to try the dispute.

[51]These Defendants were all represented by learned counsel Mr Sean Yeow and his submissions in support of the said applications can be summarised as follows:-

a) That the allegations against the respective Defendants are far from being inextricably linked or closely connected and are separate causes of action by separate entities over different transactions entered by different parties at different times;

b) The causes of action have been wrongfully combined in this one suit and that they should have been commenced by the separate entities against the separate Defendants in their respective jurisdictions;

c) Even if the Court does have jurisdiction, the Court still has a discretion to apply the doctrine of forum non-conveniens and to hold that there is another more appropriate forum to try the matter. See case of ***American Express Bank Ltd*** (supra);

d) In so far as the Plaintiffs allegation in relation to the tenancies between D2 and P8, the companies are incorporated in Hong Kong and that all disputes in relation to the tenancy all revolve in Hong Kong and that D2 has already commenced an action against P8 for outstanding rental payments. It is thus submitted that the elements stipulated under Section 23 CJA or Order 11 ROC have not been met;

e) It is also contended that there is duplicity / multiplicity and the Plaintiff is trying to usurp the jurisdiction of the Hong Kong High Court;

f) Although the Plaintiffs' claim is one of the Defendants being joint tortfeasors for their respective involvement in schemes to defraud, such allegations are nor particularized against D2;

g) As such, D2 is not a proper or necessary party;

h) This Court has no jurisdiction to grant the reliefs sought against D2 and that the Hong Kong Courts are the more appropriate and convenient forum as it has the most real and substantive connection with the tenancy agreement claims;

i) In so far as D5 and D6 are concerned, it is submitted that by virtue of them being British citizens and not resident in Malaysia, then, Section 23 CJA and Order 11 ROC elements have not been met and that they are not necessary and proper parties;

j) Further, with reference to the RASOC, it is submitted that any cause of action against D5 and D6 arose in UK or Hong Kong and that the substantial majority of the Plaintiffs claim and allegations concern other matters and agreements and alleged schemes that do not concern D5 & D6;

k) In relation to the position of D13 & D14 as representatives of the UK and Hong Kong estates respectively, the assets are subject to the jurisdiction of the English and Hong Kong Courts. It is further contended that any injunctive relief sought against the estates from distributing assets which only such foreign probate courts have jurisdiction;

l) That in relation to the facts and allegations pleaded against TSS, all links including those with the various agreements and projects are with and in countries other than Malaysia i.e. in Hong Kong and China; and

m) Finally, apart from some of the agreements containing jurisdiction of Hong Kong Court or arbitration in Hong Kong clauses, even if this Court were to be seized with jurisdiction, the most appropriate forum would be the foreign Courts.

[52]Having set out the Defendants contentions above, I will now set out the Plaintiffs' contentions and thereafter analyze and state my agreement or otherwise with the same.

[53]The Plaintiff have submitted that Enclosure 53 and 54 ought to be dismissed for the following reasons:-

a) the Plaintiffs' case against Pacific Victor, Valarie and Maria are largely premised on fraud and the conspiracy inter se CIDL (D1), Andrew (D4), ST Goh (D7), Huang (D8), GY Huang (D9), Yong Chooi Lan (D10), Tan Say Han (D11), Fai Fong (D12) and TSS (D3, D13 to D15), causing injury to Golden Plus and/or its subsidiaries, was committed within the jurisdiction of this Honourable Court;

b) the causes of action against Pacific Victor, Valarie and Maria are interlinked and connected with the causes of action pleaded against the Defendants mentioned in (a) above, many of whom are residents in Malaysia and are necessary parties to this action;

c) at all material times, Pacific Victor was a vehicle utilized by TSS and Maria to artificially create a debt as part of a common modus operandi to facilitate the fraud and conspiracy on Golden Plus and the GPLUS Group;

d) Maria and her daughter, Valarie are being sued as Defendants in their own personal capacity as well as the appointed personal representatives of the estate of TSS in so far as the Hong Kong and UK Wills are concerned. Maria being the sole director and sole shareholder of Pacific Victor caused Pacific Victor to enforce a purported debt with the view of asserting control of Golden Plus and its subsidiaries and / or cause the winding up of YIL (P8). Maria and Valarie are also Defendants as part of the overall scheme to assert control over Golden Plus and its subsidiaries and to wind up Golden Plus, amongst others, in the fraud perpetrated in respect of the issuance and allotment of the 46 million shares in Golden Plus.

[54]In my opinion, it is necessary to set out and consider the relevant paragraphs in the RASOC and to consider the causes of action pleaded against other Defendants to see if there is a link to demonstrate an overall unlawful scheme perpetrated against the Plaintiffs. The categorization of the Plaintiffs' pleaded facts/claims may be conveniently referred to as:-

i) "Artificial Creation of Debt/ seizing control of GP group;

ii) and "fraudulent allotment of shares".

ARTIFICIAL CREATION OF DEBT/SEIZING CONTROL OF GOLDEN PLUS GROUP

[55]A perusal of paragraphs 47(vi) and (vii) of RASOC will reveal that the Plaintiffs have pleaded that TSS and, among others, Maria and Pacific Victor conspired to defraud Golden Plus and the GPLUS Group by agreeing to the artificial creation of debt by, *inter alia*, causing YIL to enter into Tenancy Agreements with Pacific Victor. It was further pleaded that possession of the Premises was never delivered to YIL and YIL did not receive any benefit and that as such, there was a total failure of consideration under the Tenancy Agreements causing YIL and the GPLUS Group to suffer loss. It is said that TSS failed to disclose his interest in the Tenancy Agreements. It is also pleaded that TSS had failed to disclose to YIL and/or Golden Plus his interest in the said tenancy agreement.

[56]It is then pleaded further at paragraph 51 of the RASOC that Valarie, Maria, Pacific Victor and among others in protecting the Defendants' interest including the estate of TSS and to continue perpetrating the fraud, conspired to take control of Golden Plus and its subsidiaries, to entrench themselves and to wind-up Golden Plus.

[57]Finally, at paragraph 64 (ii) of the RASOC it is pleaded that Maria caused Pacific Victor to issue a statutory notice of demand against YIL for the outstanding rentals purportedly due under the Tenancy Agreements. This has been particularized as one of utilizing the alleged debts as a vehicle of control.

[58]As seen earlier, these Defendants contend that the Plaintiffs' claim all merely revolved around a tenancy in Hong Kong. However, in my view, having perused the RASOC, the cause of action against Pacific Victor in this matter does not concern matters relating to the breach of Tenancy Agreements or otherwise per se. Instead, the claim against Pacific Victor is premised on fraud and conspiracy whereby it is contended that Pacific Victor was the vehicle utilized by the late TSS and Maria to artificially create a debt, which later saw Pacific Victor and Maria seeking to assert control over Golden Plus and / or to cause the winding up of its subsidiaries namely, YIL.

[59]It is also clear that the Plaintiffs' case against Pacific Victor and Maria in this context relates to the actions taken in the Second Period i.e. after TSS' demise to protect the interest of the estate of TSS in the CIDL Management Agreement and to continue siphoning out proceeds from the Royal Garden Project (see: paragraph 55 of RASOC). It is alleged to be an elaborate scheme perpetrated in the First Period for which Pacific Victor and Maria through their acts seek to preserve the Defendants' interest including the estate of TSS and further defraud Golden Plus and its subsidiaries.

[60]Having considered the above, in my view, this Court is indeed seized with jurisdiction to determine these complaints as the act of Pacific Victor and Maria causing the issuance of a statutory notice of demand in Hong Kong against YIL and the subsequent legal proceedings brought in Hong Kong was part of the overall fraudulent scheme which was conceived, planned and executed in Malaysia.

[61]Further, the act of enforcing the artificial debt created in favour of Pacific Victor by Pacific Victor and Maria took place after the issuance and allotment exercise had failed and after YIL had terminated the CIDL Management Agreement and treated it as null and void (see: paragraph 64 (ii) of RASOC).

[62]As such, I would agree with the Plaintiffs' submission that this Court has the most and real substantial connection with this action and is the most appropriate forum to try this action as opposed to the Hong Kong Courts. In my view, the Hong Kong Suit is an action for a pure breach of tenancy and cannot conceivably be treated as being able to encompass the causes of action brought against Pacific Victor and Maria as joint tort feasors not to mention the other Defendants named in this action for fraud and conspiracy.

[63]Having considered all matters and the contents of the RASOC in particular, in my view, all the connecting factors point towards this action being maintained against Pacific Victor and Maria in Malaysia. Furthermore, it is to be noted that most of the other Defendants, witnesses and documents are accessible in Malaysia.

[64]In relation to the issue of possible multiplicity, I am of the view that there is no such risk. The Plaintiffs contend herein that in actual fact, the very Tenancy Agreements entered into with Pacific Victor is itself fraudulent as it was a mere artificial creation of a debt which TSS had failed to disclose to the GPLUS Group. The Plaintiffs' pleaded position that there was no consideration received by YIL for the Tenancy Agreements is to demonstrate that the Tenancy Agreements are in effect a sham for purposes of creating an artificial debt. It has nothing to do with a breach thereof.

[65]Even assuming that there may be some overlap and duplication in litigation through parallel proceedings, as submitted by the Plaintiffs, this is an inherent risk which the Courts live with. It is only one of the factors to be considered and does not necessarily lead to a stay or setting aside. (See: the cases of *E.I. Du Pont de Nemours v. Agnew* [1987] 2 Lloyd's Rep 585 and *Deutsche Bank AG and another v. Highland Crusader Offshore Partners LP and others* [2010] 1 WLR 1023).

[66]Finally, on this issue, I have also noted from paragraph 65 (iiA) of the RASOC that Maria had also instituted proceedings pursuant to Section 346 of the Companies Act in OS: WA-24NCC-524-10/2019 where Maria has sought to seize control of Golden Plus by seeking the appointment of interim receiver and manager which was however dismissed.

FRAUDULENT ALLOTMENT OF SHARES

[67]At paragraph 54 of the RASOC, the Plaintiffs has pleaded that Maria and Valarie, among others, had conspired by unlawful means to defraud Golden Plus and its shareholders by causing the issuance and allotment of 46,196,995 shares in Golden Plus which effectively diluted the shareholding of the other shareholders to defeat any Court Order which may reconstitute the Board of Golden Plus.

[68]Further, the Plaintiffs have pleaded at paragraph 58 of the RASOC that Maria and Valarie, among others, have committed a fraud on Golden Plus by causing the issuance and allotment of 46,196,995 shares in Golden Plus to one Mr Eng for no consideration whatsoever.

[69]In my considered view, it is clear that the Plaintiffs' causes of action in respect of the issuance and allotment of the 46,196,995 Golden Plus shares arose in Malaysia. There is no other forum which is seized with jurisdiction or is better suited to try this issue. It is particularised extensively at paragraph 54 that Valarie and Maria conspired together with Andrew and TSH by unlawful means to defraud Golden Plus and its shareholders.

[70]Maria and Valarie contend that such allotment did not occur in Malaysia or that they are involved in the furtherance of this allotment. However, from the evidence adduced via emails and documents, the alleged fraud arising for the allotment appears to be perpetrated against Golden Plus through a Board Resolution dated 21st August 2020 as well as concerted acts of the Defendants including Maria and Valarie. (See: Valarie and Andrew's emails dated 25th August 2020 and 26th August 2020 and GPLUS Board Resolution dated 21st August 2020 – see exhibit WKW30 of Enclosure 11).

[71]The Defendants have also submitted that the Plaintiffs' claim ought to be viewed in isolation in order to determine jurisdiction. Reliance is placed on the Singapore Court of Appeal decision in the recent case of *MAN Diesel & Turbo SE and Another v IM Skaugen SE and Another* [2020] 1 SLR 327 for the proposition that separate claims by separate entities joined in a single suit are not to be considered as a single aggregate claim but are to be individually assessed to determine whether the court has jurisdiction over each claim standing alone.

[72]However, in my considered view, the ***MAN Diesel*** case can be distinguished on its facts. The dispute in ***MAN Diesel*** case involved 6 vessels which were fitted with engines manufactured by the Appellant. It was discovered 10 years later that the field acceptance tests carried out on the engines when they were first handed over by the Appellant in Germany could have been manipulated thereby attracting claims for fraudulent and negligent misrepresentation on the rate of fuel consumption of those engines by. The 6 vessels were owned by distinct entities at different periods of time, 3 of those entities from various jurisdictions assigned their respective claims to the Respondents. A total of 4 claims were brought by the Respondents in Singapore – 3 pursuant to the assignments, and only 1 claim was brought in the Respondents' own capacity for time and resources incurred to investigate the excessive fuel consumption of the vessels. The Respondents also commenced an action against the Appellants in Norway involving the exact same claims and issues, which proceedings were already at a much advanced stage.

[73]The Court of Appeal there overturned the decision of the High Court in treating these 4 claims as a single aggregate claim for the purpose of determining whether Order 11 r 1 is satisfied. The Court of Appeal held that the claims were distinct claims incurred by four different entities at four different periods of time. The mere act of assigning a claim cannot convert a claim which does not satisfy the jurisdictional requirement in Order 11 r 1 into a valid one. Otherwise, parties would effectively be allowed to circumvent Order 11 r 1 by assigning their alleged claims to a party whose own claim is able to satisfy Order 11 r 1. Each of the four claims, standing alone, has to satisfy Order 11 r 1.

[74]In my view, the claim in our case however is very different. To begin with, there is no assignment of any party's claim to the Plaintiffs in this Suit. The main claim by the Plaintiffs herein is conspiracy, which encompasses a series of acts by various Defendants with a common object of causing harm and injury to one or more parties. One cannot separate a series of conduct by various Defendants into separate pigeon holes requiring separate actions being brought. There is certainly merit in the Plaintiffs' contention that the various acts of the Defendants forming part of the same conspiracy in the manner pleaded in the RASOC should be treated as one for the purpose of determining jurisdiction.

[75]In my opinion, each of the Plaintiffs' claim, including their claim for conspiracy as pleaded against this group of Defendants does satisfy one or more jurisdictional gateways in Section 23 of CJA or Order 11 r 1 of the Rules of Court, 2012. The Plaintiffs have aptly set out in the following Appendix and have submitted that this Court does

indeed have jurisdiction when the contents of the RASOC are so tested and I agree with such submission. The said appendix is as follows:-

Paras in the RASOC	**Causes of Action FIRST PERIOD**	**S 23(1) / Order 11**
25 to 44 See 42 45 & 46	CIDL Management Agreement 1. Breach of fiduciary duties, trust and contract on the part of TSS (D3, D13, D14 & D15); ST Goh (D7) and Tan Say Han (D11). 2. Fraud and conspiracy to defraud on the part of TSS (D3, D13, D14 & D15), ST Goh (D7), CIDL (D1), GQ Huang (D8) and GY Huang (D9). □ D7 resides within the jurisdiction of this Honourable Court : see Encl 141 □ D3, D15, D7 & D11 have submitted to the jurisdiction. □ D3, D13, D14, D15 and D7 failed to disclose TSS' interests in the CIDL Management Agreement and Addendum to GPHB in Malaysia. □ TSS (D3, D13, D14 & D15), ST Goh (D7), CIDL (D1), GQ Huang (D8) and GY Huang (D9) denied GPHB in KL the proceeds of the Royal Garden Project.	S 23(1)(b) - *the defendant or* ***one of several defendants*** *resides or has his place of business*. O 11 r 1(C) - *if in the action begun by the writ* ***relief is sought*** *against a person domiciled or ordinarily resident or carrying on business within the jurisdiction.* O11 r 1 (H) - *if the action begun by the writ is founded on a tort committed within the jurisdiction*; O11 r 1 (J) - *if the action begun by the writ being properly brought against a person duly served within the jurisdiction, a person out of jurisdiction is a necessary or proper party thereto*.
47 (i) to (iv)	Artificial Creation of Debt *Golden Plus & Sri Serdang Loans* □ TSS (D3, D13, D14 & D15), ST Goh (D7), Tan Say Han (D11), CIDL (D1), GQ Huang (D8) and/or GY Huang (D9) conspired to defraud Golden Plus and the GPLUS Group by causing Golden Plus and Sri Serdang to enter into these Loan Agreements with CIDL, and thereby creating an artificial debt by Golden Plus and Sri Serdang to CIDL. □ Encl. 10 / Exhibit 18 / 553 @ 555, 563 & 564, 567, 572	s. 23(1)(a) - *the cause of action arose*; s. 23(1)(b) - *the defendant or* ***one of several defendants resides*** *or has his place of business*; s.23(1)(c) - *the facts on which the proceedings are based exist or are alleged to have occurred.* O 11 r 1(C) - *if in the action begun by the writ* ***relief is sought*** *against a person domiciled or ordinarily resident or carrying on business within the jurisdiction.* O11 r 1 (H) - *if the action begun by the writ is founded on a tort committed within the jurisdiction*;
47(v)	□ Encl. 10 / Exhibit 19 / 576 @ 577, 578, 579, 583, 584, 585, 588, 592 □ See also para 70(viii) of the RASOC	O11 r1(F) - *if the action begun by the writ is brought against a defendant to …* ***otherwise affect a***
	Yong Chooi Lan Loan 3. TSS (D3, D13, D14 & D15) and Yong Chooi Lan (D10) conspired to defraud Golden Plus and the GPLUS Group by agreeing to the artificial creation of debt by Golden Plus and GP BVI to Yong Chooi Lan, by causing GP BVI and/or Golden Plus to enter into an alleged Loan Agreement with Yong Chooi Lan. □ Encl. 10 / Exhibit 20 / 593	***contract****, … being … a contract which –(iii) by its terms, or by implication,* ***governed by the law of Malaysia***. O11 r 1 (H) - *if the action begun by the writ is founded on a tort committed within the jurisdiction*; O11 r 1 (J) - *if the action begun by the writ being properly brought against a person duly served within the jurisdiction, a person out of jurisdiction is a necessary or proper party thereto*.
47(vi) & (vii)	*Tenancy Agreements* 4. TSS (D3, D13, D14 & D15) and Maria Wu (D6) conspired to defraud Golden Plus and the GPLUS Group by agreeing to the artificial creation of debt by YIL to Pacific Victor, by causing YIL to enter into alleged Tenancy Agreements with Pacific Victor. □ Encl. 10 / Exhibit 23 / 642	
51	To, *inter alia*, continue perpetuating the fraud on the GPLUS Group by continuing to siphon out the proceeds from the Royal Garden Project through CIDL, Andrew (D4), Valarie (D5), Maria (D6), Tan Say Han (D11), ST Goh (D7), Yong Chooi Lan (D10), Pacific Victor (D2), CIDL (D1), GQ Huang (D8), GY Huang (D9), and/or Shui Fai Fong (D12) conspired to, and purported to enable Andrew, Valarie, Tan Say Han and/or	

Paras in the RASOC	Causes of Action FIRST PERIOD	S 23(1) / Order 11
	their nominees to take control of Golden Plus and its subsidiaries, and to entrench themselves, with a view to taking control of Golden Plus' Hong Kong and Shanghai subsidiaries, and to subsequently wind-up Golden Plus in, *inter alia*, the manner pleaded in Parts F to I of the RASOC.	
52 to 58	*F. Fraudulent Allotment of Shares* 6. Andrew (D4), Valarie (D5), Maria (D6), Tan Say Han (D11), conspired by unlawful means to defraud Golden Plus and its shareholders by causing the issuance and allotment of 46,196,995 shares in Golden Plus to Eng Hup Tat, thus diluting the shareholding of the majority faction of shareholders in Golden Plus from 28.81% to 21.92%, and creating a new single block majority	s. 23(1)(a) - *the cause of action arose*; s. 23(1)(b) - *the defendant or* ***one of several defendants resides*** *or has his place of business*; s.23(1)(c) - *the facts on which the proceedings are based exist or are alleged to have occurred.*
	amounting to 23.93%. This new majority block would be controlled by Andrew, Valarie, Maria and/or their nominees to maintain their control of the board of Golden Plus.	O 11 r 1(C) - *if in the action begun by the writ relief is sought against a person domiciled or ordinarily resident or carrying on business within the jurisdiction.* O11 r 1 (H) - *if the action begun by the writ is founded on a tort committed within the jurisdiction*;
64.	*I. Utilising the Alleged Debt As a Vehicle of Control* 7. Andrew (D4), Valarie (D5), Maria (D6), ST Goh (D7), Yong Chooi Lan (D10), CIDL (D1), GQ Huang (D8) and/or GY Huang (D9) conspired to further defraud Golden Plus and its subsidiaries by activating and seeking to enforce the purported debts as pleaded in Part D paragraph 47 and paragraph 61 of the RASOC, in a further attempt to assert control over Golden Plus and/or its subsidiaries and/or cause further injury to the GPLUS Group be seeking to burden them with the created debt.	O11 r 1 (J) - *if the action begun by the writ being properly brought against a person duly served within the jurisdiction, a person out of jurisdiction is a necessary or proper party thereto*. **** All these provisions apply to causes of action 6, 7 and 8 herein.*
65	8. In further breach of their fiduciary duties / contracts and trust, Andrew (D4), Tan Say Han (D11), and Shui Fai Fong (D12) conspired to injure Golden Plus by converting the assets of its Shanghai subsidiaries and those of Sri Serdang, and Andrew (D4), Valarie (D5), Maria (D6), Tan Say Han, ST Goh (D7) and Yong Chooi Lan (D10) conspired to defraud and/or acted fraudulently to take control of Golden Plus' Shanghai Companies and/or Golden Plus and cause the appointment of a receiver over Golden Plus and/or proceeding to wind-up Golden Plus all, *inter alia*, so as to perpetuate the fraud for purposes of preserving the interest of the estate of TSS.	
59 60	*G. The Interpleader & Conversion* 9. Andrew (D4), Tan Say Han (D11), and Shui Fai Fong (D12), CIDL (D1), GQ Huang (D8) and/or GY Huang (D9) conspired to take possession of and/or convert 23 issue document of titles of lands in Kajang belonging to Sri Serdang. 10. Shui Fai Fong (D12) has also given possession	s. 23(1)(a) - *the cause of action arose*; s. 23(1)(b) - *the defendant or* ***one of several defendants resides*** *or has his place of business*; s.23(1)(c) - *the facts on which the proceedings are based exist or are alleged to have occurred.* O 11 r 1(C) - *if in the action begun by the writ relief is sought against a person domiciled or ordinarily resident or carrying on business within the jurisdiction.* O11

Paras in the RASOC	Causes of Action FIRST PERIOD	S 23(1) / Order 11
	of a further 58 issue document of titles belonging to Sri Serdang (P4), Venice Heights (P6) and Hanpopular (P7) to Andrew (D4) on 14-8-2020. Despite demand, Andrew has denied being in possession of and control of any assets belonging to Sri Serdang (Andrew subsequently claimed that he had returned the 58 titles to Sri Serdang at its offices in Kajang), and hence has wrongfully converted the said 58 issue document of titles to his own use. See also paras 70(viii) and (ix) of the RASOC	r 1 (H) - *if the action begun by the writ is founded on a tort committed within the jurisdiction*; O11 r 1 (I) - *if in the action begun by the writ an injunction is sought ordering the defendant to do or refrain from doing anything within the jurisdiction, whether or not damages are also claimed in respect of a failure to do or the doing of that thing*.

[76]In the final analysis, I am of the considered view that there is no merit in Enclosures 53 and 54 and would dismiss the same. I am of the opinion that upon a total perusal/examination of the RASOC and when tested against Section 23 of the CJA as well as Order 11 ROC, this Court is indeed seized with jurisdiction to hear this matter. On the issue of forum non conveniens, it is my further view and conclusion that the Defendants have failed to discharge their burden of showing that there is another forum which is clearly and distinctly more appropriate to try this action. Applying the ratio in the cases such as ***American Express*** and ***Petrodar*** (supra), I am of the view that Malaysia is the particular forum which this action has the most and real substantial connection. In my opinion, it would be unjust to the Plaintiff to confine them to remedies elsewhere. Considering the totality and the nature of the Plaintiffs' pleaded case, I would conclude that this Court is the appropriate forum to hear this matter.

[77]The Defendants also rely on the decision of Nallini Pathmanathan J (as her Ladyship then was) in the case of *MBf Holdings Bhd, MBf Cards (Malaysia) Sdn Bhd v Deutsche Bank (Malaysia) Bhd, Deutsche Bank AG* [2011] MLJU 328 where an application under Order 12 was allowed by her Ladyship on the basis that the foreign defendant was not a necessary or proper party to the claim. In this regard, in my view, having considered the various causes of action of the Plaintiff as set out in the RASOC, these Defendants are necessary and proper parties to the claim herein.
ENCLOSURE 159

[78]Moving on to Enclosure 159. In so far as Enclosure 159 is concerned, I had set out earlier the basis of the Defendants' application. On the contrary, the Plaintiffs' submission on Enclosure 159 can be summarized as follows:-

i) that the Plaintiffs' case against D13 and D14's Application is largely premised on fraud and the conspiracy inter se CIDL (D1), Pacific Victor (D2), Andrew (D4), Valarie (D5), Maria (D6), ST Goh (D7), Huang (D8), GY Huang (D9), Yong Chooi Lan (D10), Tan Say Han (D11), Fai Fong (D12) and TSS (D3 and D15), causing injury to Golden Plus and / or its subsidiaries, was committed within the jurisdiction of this Court;

ii) D13 and D14 have submitted to jurisdiction of this Court;

iii) the action has been brought against the late TSS on the pleaded causes of action given that TSS is the central figure in among others, breaching fiduciary duties owed, perpetrating fraud and conspiracy, causing loss and damage to the GPLUS Group and Golden Plus as a holding company;

iv) the claim for fraud and conspiracy relates to the acts and conduct of TSS amongst others, to use CIDL and Manfield as conduits to siphon proceeds out of the Royal Garden Project and / or to divert funds from Shanghai Roxy and Shanghai QSR. Ultimately, this fraud and conspiracy was furthered after TSS' demise by the other Defendants including Maria and Valarie in their personal capacity and in their capacity as executrices of the estate of TSS under the UK and Hong Kong Wills.

[79]On the issue of submission to jurisdiction, the following facts are to be noted:

a) in August of 2019, Andrew as plaintiff together with one other had filed a suit in Kuala Lumpur High Court Suit No. WA-22NCC-443-08/2019 ("**Suit 443**"); The Amended Writ and Statement of Claim in Suits 443 have been exhibited in Encl 202, Exhibit WKW-2 in the Plaintiffs' Affidavit in Reply to oppose Enclosure 159;

b) Suit 443 was filed by Andrew to claim ownership of share in Rosa Bianca, as well as the Golden Plus shares held by Rosa Bianca;

c) it is Andrew's pleaded position in Suit 443 that his entitlement to those shares is purportedly derived from his late father TSS' Hong Kong Will, and he seeks, inter alia, for various declarations that those shares are held on behalf of the estate of TSS;

d) as far as the alleged assets of TSS' estate under the Hong Kong Will is concerned (shares belonging to foreign companies), Andrew purporting to act for the estate of TSS had not only submitted to but had invoked the jurisdiction of the Kuala Lumpur High Court to, *inter alia*, restrain the defendants in Suit 443 by injunction, from dealing with those shares;

e) Valarie and Maria successfully intervened in Suit 443 as defendants, and parties to the Malaysian proceedings on the ownership of the Rosa Bianca share claim brought by Andrew. Although no pleadings were filed, they nevertheless seek to support Andrew's claim to the Rosa Bianca share being part of the estate of TSS.

[80]In my view, having done so, D13 and D14 cannot now suggest that the Malaysian Courts have no jurisdiction to determine the claims in this action on account of the governing law of the Wills or matters relating to the probate in other jurisdictions. D13 and D14 cannot approbate and reprobate. I would also agree that given Maria and Valarie's position in representing the interest of the estate of TSS by their intervention in Suit 443, D13 and D14 have effectively submitted to jurisdiction.

[81]At this juncture, I would also agree with the Plaintiffs' submission that D13 and D14 are also necessary parties in respect of the relief being sought in this action including the restraining of the distribution of assets under TSS' estate which will be determined at the hearing of Enclosure 7 and at the trial of the action.

[82]In the circumstances, in my considered view, D13 and D14 are now effectively precluded from challenging the jurisdiction of this Court to hear this action.

[83]In considering the application, I would also have to take into account the causes of action against D13 and D14 to see if there is a link to the other Defendants which demonstrates an overall unlawful scheme perpetrated against the Plaintiffs. As I have highlighted earlier, the Plaintiffs have pleaded extensively the wrongful acts by the late TSS during the first period from 1997 and that such acts caused injury and damage to the Plaintiffs. It is then further pleaded that there were further acts of fraud and conspiracy perpetrated by the estate of TSS with the sole purpose of preserving and protecting the interest of TSS's estate to the detriment of the Plaintiffs. These acts are alleged to have been perpetrated in Malaysia and therefore clearly within the jurisdiction of this Court.

[84]D13 and D14 place reliance on the governing laws and jurisdiction clauses in various agreements including the CIDL Management Agreement and Manfield Lease Agreements and reference to probate proceedings in other jurisdictions. However, in my view, bearing in mind the causes of action in this matter, it is clear that we are not dealing herein with a disputed probate action nor are we concerned with any breaches of contracts pertaining to the CIDL Management Agreement and the Manfield Lease Agreements.

[85]Further, D13 and D14 reliance on the jurisdiction clause contained in the CIDL Management Agreement in my view, does not ipso facto preclude this Court from determining the dispute in this Action. As highlighted earlier when setting out the applicable law, a non- exclusive jurisdiction clause envisages that any party is entitled to bring proceedings in a Court of competent jurisdiction and does not preclude this Court from determining the claim for fraud and conspiracy or to have D13 and D14 being made parties for purpose of the relief sought.

[86]As such, for the above reasons I would also dismiss enclosure 159 with costs.
ENCLOSURE 55 (D4 & D10)

[87]Enclosure 55 is D4 and D10's application pursuant to O12 r 10 of the ROC.

[88]D4 is Andrew Teh Wei Kian ("**Andrew**") who is a Malaysian citizen residing in Kuala Lumpur and who is the son of TSS and the 10th Defendant ("**D10**"). D10 is also a Malaysian citizen residing in Kuala Lumpur who is D4's mother who the Plaintiffs pleads was one of TSS's mistresses. D4 and D10 are beneficiaries under the Malaysian, China and Hong Kong wills of TSS.

[89]It is clear that part of the Plaintiffs' pleaded case relates to D10 having entered into a loan agreement with P3 and that D10 has commenced proceedings in the BVI for the appointment of a liquidator over P3.

[90]The basis for D4 and D10's application can be summarized as follows:-

a) this Court has no jurisdiction over winding-up and/or liquidation actions that have been or may be taken against the Plaintiffs, as well as the purported causes of action involving purported attempts to take control of the Plaintiffs' subsidiaries in Hong Kong and Shanghai, who are all foreign companies incorporated out of jurisdiction;

b) the British Virgin Island ("**BVI**") Court has already seised jurisdiction over the dispute between D10 and P3, Golden Plus (BVI) Pte Ltd, a company incorporated in the BVI, involving a loan agreement governed by the laws of BVI;

c) as for the Plaintiffs who are local companies, this Court similarly does not have jurisdiction over winding-up and/or liquidation actions that have been or may be taken them, as these are all matters within the jurisdiction of the local Winding-up Courts.

[91]In relation to the contention that this Court has no jurisdiction over the winding up in a foreign country against a foreign Golden Plus company, reliance is placed by D4 and D10 on the High Court decision of *Chinadotcom Corp v E Planet Sdn Bhd & Anor* [2003] 4 MLJ 629 which held that an application to seek an injunction against foreign proceedings must be exercised with extreme caution. Similar reliance was placed on another High Court decision of *Wong Kie Chie & Ors v Kathryn Ma Wai Fong* [2015] 1 LNS 743 which held that the Court did not have the jurisdiction to grant the relief sought by the Plaintiff to restrain the Defendant from proceeding with the suit filed in a foreign country.

[92]It is further contended that since the BVI Court's jurisdiction has already been invoked by D10, this Court does not have the jurisdiction nor power to grant the relief of injunction to restrain such winding up proceedings in a foreign countries.

[93]It is similarly contended that this Court has no jurisdiction in relation to matters relating to winding up of the Malaysian companies which ought to rightfully be with the winding up Court. It is further argued that any order sought to restrain administrators of the estate of the late TSS from distributing the asset of the estate ought to be within the probate proceedings of those Courts be it overseas or in Malaysia.

[94]From the above, in my view, it is apparent that the basis and crux of Enclosure 55 is intricately connected to the ultimate relief sought by the Plaintiff as opposed to the causes of action which have been pleaded by the Plaintiff.

[95]The Plaintiffs at the outset contend that D4 and D10 have submitted to the jurisdiction of this Court by their conduct of having filed their Order 18 r 19 application in Enclosure 85. In any event and alternatively, it is contended that all causes of action pleaded against D4 and D10 arose in Malaysia and as such, this Court has jurisdiction.
SUBMISSION TO JURISDICTION

[96]On this issue, there is no dispute that Andrew and Yong Chooi Lan had on 1st March 2021 filed an application to strike out the Amended Writ and Statement of Claim as against them pursuant to Order 18, r 19 of the ROC. It is submitted by the plaintiffs that by doing so, Andrew and Yong Chooi Lan have taken a step in the proceedings and submitted to the jurisdiction of this Court.

[97]In a recent Court of Appeal judgment in *Kebabangan Petroleum Operating Co Sdn Bhd v Mikuni (M) Sdn Bhd & Ors* [2021] 1 MLJ 693, Suraya Othman, JCA held that the filing of an application to strike out constitutes a step in the proceedings and evidences an unequivocal intention to submit to the jurisdiction of the Court to adjudicate on the dispute, therefore the applicant was not entitled to a stay of proceedings to arbitrate the matter:-

> *"Second ground of appeal: The respondents had taken steps in the proceedings therefore, had willingly submitted to the court's jurisdiction to proceed with the civil suit/or had clearly evinced an unequivocal intention to participate in the court's proceeding in preference to arbitration*
>
> *[36] Apart from filing a stay application in encl 7 on 6 December 2017, the respondents on 15 February 2018, had also filed an application in encl 24 to strike out the appellant's Writ.*
>
> *…*
>
> *[38] In this, we felt that the learned judge had failed to appreciate that encl 24, being an application to strike out the appellant's writ on merits is an affirmation by the respondents of the court's jurisdiction to adjudicate on the dispute, thereby constituting a step in the proceedings.*

…

[41] Based on these reasons, we were of the view that the filing of encl 24 had clearly evinced an unequivocal intention on the part of the respondents to submit to the court's jurisdiction and proceed with the civil suit. The respondents act or conduct in filing encl 24 clearly indicated to us that they were willingly taking a step to participate in the proceedings in preference to arbitration.

(our emphasis)

[98]Further, it was held in *Kawasaki Kisen Kaisha Ltd v. Owners Of The Ship Or Vessel 'Able Lieutenant'* [2002] 6 MLJ 433, that the applicant therein was plainly wrong for:-

a) on one hand challenging the jurisdiction of the court (pursuant to Order 12, r 7, Rules of Court 1980); and

b) on the other hand, seeking the court's jurisdiction to investigate the merits of the plaintiff's claim as disclosed on the writ (pursuant to Order 18, r 19, Rules of Court 1980).

[99]The Court there held that the applicant was blowing hot and cold when it failed to make an election as to whether to challenge the jurisdiction or invoke the court's jurisdiction to hear the case on its merits. The application was dismissed by the Court, and the judge emphasized that:-

"If a party wishes for the court to set aside a writ or strike out the writ, it is incumbent upon that party to place before the court in clear unambiguous terms the expectation".

[100]For this reason, in my view, Andrew and Yong's Application in Enclosure 55 ought to be dismissed. Whilst the Defendants rely on the decision of *Zumax Nigeria Ltd vs First City Monument Bank PLC* [2016] EWCA Civ 567 to contend that the striking out application is not fatal to Enclosure 55, I am of the view that such decision does not assist them. The facts in ***Zumax*** involved a discovery application related to the purpose of determining jurisdiction and there was in fact an express reservation that it was without prejudice to the pending application to challenge jurisdiction. In our case at hand, no such express reservation was made by D4 and D10 in the striking out application.

[101]However, notwithstanding and in the event I am wrong on the above, I will nonetheless also proceed to consider if this Court has jurisdiction based on the pleaded case when tested against Section 23 CJA and /or Order 11 ROC.
THE PLAINTIFFS CONTENTIONSThe pleaded causes of action and did they arise in Malaysia The purported 'Yong Chooi Lan Loan'

[102]At paragraph 47 of RASOC it is pleaded that TSS and, among others, Yong Chooi Lan ("**D10**") conspired to defraud Golden Plus and the GPlus Group by agreeing to the artificial creation of debt by, inter alia, Golden Plus and/or GP BVI to alleged creditors which include, among others, Yong Chooi Lan. It is further pleaded that TSS and Yong Chooi Lan caused GP BVI and / or Golden Plus to enter into an alleged Loan Agreement with Yong Chooi Lan whereby GP BVI undertook to repay Yong Chooi Lan alleged advances amounting to USD 3 million by her to Golden Plus.

[103]Further, at paragraphs 61 and 64 of the RASOC it is pleaded that Andrew and, among others, Yong Chooi Lan conspired to defraud the GPLUS Group by activating and seeking to enforce purported debts artificially created by TSS and/or Andrew, in a further attempt to assert control over and caused further injury to the GPLUS Group.

[104]The Plaintiff contends and submits that the fabrication and back- dating of documents took place in Malaysia for the following reasons;

a) First, the purported loan agreement between Yong Chooi Lan and GP BVI and/or Golden Plus ("**the YCL Loan**"), and the documents necessary to enforce the alleged loan were fabricated and/or backdated in Malaysia.

b) The Plaintiffs recently discovered, after TSH ("**D11**") returned a Golden Plus Company handphone on 15th March 2021, that the YCL loan was part of, among others, TSS' contingency plan to wind-up Golden Plus. This plan was activated pursuant to an arrangement between, among others, one Krishna Kumar a/l Sivasubramaniam ("**Krish Kumar**"), TSH, and Andrew Teh.

c) It was agreed among them that Krish Kumar would, *inter alia*, fabricate and backdate documents to create and enforce the YCL Loan and for a fee of USD150,000, utilize the same to liquidate GP BVI, and thereafter take full control of Golden Plus' operations and assets in China, and appoint Andrew across the board in Golden Plus' Hong Kong and Shanghai subsidiaries.

d) As the creation and enforcement of the artificial YCL loan was done through fabrication and back-dating of documents in Malaysia, the causes of action pleaded in paragraphs 47 and 61 of the RASOC arose in Malaysia, and involve, *inter alia*, D4, D10 and D11, all of whom reside in Malaysia, with D11, Tan Say Han also having submitted to the jurisdiction of this Court.

[105]The Plaintiff also submits that in any event, this is a fraud which was perpetrated ultimately on Golden Plus, a Malaysian holding company. As such, it would appear that the causes of action arose in Malaysia.

[106]The Plaintiff contends that it is irrelevant that the fraudulent YCL Loan agreement contains a clause that the purported agreement shall be governed by and construed in accordance with the laws of the British Virgin Islands ("**BVI**"), particularly as the YCL Loan Agreement was created and/or activated by fabrication in Malaysia. On this issue, as highlighted earlier, a choice of law clause in the agreement is not an automatic submission to the jurisdiction of the Courts in the British Virgin Islands by the parties.

BVI INSOLVENCY PROCEEDINGS PART OF AND IN FURTHERANCE OF THE FRAUD

[107]Further, the Plaintiff submits that the commencement of the proceedings in the BVI by Yong Chooi Lan for the appointment of a liquidator over GP BVI is part of and in furtherance of the fraud pleaded by the Plaintiffs, which was conceived, planned and executed in Malaysia.

[108]Considering that the allegations are that the YCL Loan Agreement and other relevant documents were fabricated and back-dated in Malaysia, the people who conspired to do the same are resident in Malaysia, and that this was part of a larger conspiracy in Malaysia to defraud Golden Plus, in my view, this Court has the most real and substantial connection with this action and is clearly and distinctly the most appropriate forum to try this action, and not the BVI Courts.

[109]It should also be noted that Yong Chooi Lan had entered into a consent order to stay the BVI proceedings pending the disposal of Enclosure 7.

CONTINUED FRAUD ON THE GPLUS GROUP / FRAUDULENT ALLOTMENT OF SHARES

[110]It is then pleaded at paragraph 51 of the RASOC that, *inter alia*, the continued perpetuating of the fraud on the GPLUS Group by continuing to siphon out the proceeds from the Royal Garden Project through CIDL, Andrew (D4), Valarie (D5), Maria (D6), Tan Say Han (D11), ST Goh (D7), Yong Chooi Lan (D10), Pacific Victor (D2), CIDL (D1), GQ Huang (D8), GY Huang (D9), and/or Shui Fai Fong (D12) conspired to, and purported to enable Andrew, Valarie, Tan Say Han and/or their nominees to take control of Golden Plus and its subsidiaries, and to entrench themselves, with a view to taking control of Golden Plus Hong Kong and Shanghai subsidiaries, and to subsequently wind-up Golden Plus in, inter alia, the manner pleaded in Parts F to I of the RASOC.

[111]It is then pleaded at paragraph 52 to 58 of the RASOC that Andrew (D4), Valarie (D5), Maria (D6), Tan Say Han (D11), conspired by unlawful means to defraud Golden Plus and its shareholders by causing the issuance and allotment of 46,196,995 shares in Golden Plus to Eng Hup Tat, thus diluting the shareholding of the majority faction of shareholders in Golden Plus from 28.81% to 21.92%, and creating a new single block majority amounting to 23.93%. This new majority block would be controlled by Andrew, Valarie, Maria and/or their nominees to maintain their control of the board of Golden Plus.

[112]In my considered view, the Plaintiffs' causes of action on the continued perpetuation of fraud on Golden Plus and the GPLUS Group arose in Malaysia and that there is no other forum which is seized with jurisdiction or is better suited to try this issue.

[113]D4 contends that this issue relating to the allotment of shares have been raised in other proceedings and amount to a multiplicity of proceedings. The Plaintiff however submits that this contention is wholly misplaced as multiplicity of proceedings within the same forum, which is denied, is not a ground to dispute the jurisdiction of this Honourable Court.

[114]At paragraph 59 of RASOC, the Plaintiff pleads that Andrew conspired to take possession and/or convert 23 issue documents of titles of lands in Kajang belonging to D4, Sri Serdang.

[115]This is then followed by paragraph 60 of RASOC in that Andrew had wrongfully converted 58 issue documents of titles owned by Sri Serdang, Venice Heights and Hanpopular ("**58 Titles**") by refusing to return possession of the 58 Titles to the said companies.

[116]In my opinion, the conspiracy to take possession and/or the conversion of the 23 Titles and the 58 Titles pleaded against Andrew, among others, in paragraphs 59 and 60 of the RASOC respectively are causes of action which arose in Malaysia. In fact, the impugned titles are for lands belonging to P4, P6 and P7 all of which are situated in Malaysia.

[117]It has not escaped my attention that in the affidavits in support of Andrew and Yong's Application, Andrew claimed that he had returned the 58 Titles to Golden Plus at Sri Serdang's Kajang office and as such no further cause of action lies against him in relation to the said titles. However, the Plaintiffs had in their Affidavit in Reply denied that the 58 Titles were returned by Andrew, as those titles could not be found in the office as claimed. The Plaintiffs have also lodged a police report against Andrew and one Mercia Grace Simbaku, who Andrew claims he returned the titles to.

UTILIZING ARTIFICIAL DEBT AS VEHICLE OF CONTROL

[118]Apart from the pleaded case of activation and enforcement of the purported YCL loan referred to above, the Plaintiff then proceeds at Paragraph 64 to plead that Andrew (D4), Valarie (D5), Maria (D6), ST Goh (D7), Yong Chooi Lan (D10), CIDL (D1), GQ Huang (D8) and/or GY Huang (D9) conspired to further defraud Golden Plus and its subsidiaries by activating and seeking to enforce the purported debts as pleaded in Part D paragraph 47 and paragraph 61 of the RASOC, in a further attempt to assert control over Golden Plus and/or its subsidiaries and/or cause further injury to the GPLUS Group by seeking to burden them with the created debt.

[119]The purported debts which Andrew, among others, sought to activate, enforce and/or acknowledge in order to defraud, assert control over and/or injure Golden Plus and its subsidiaries is not confined only to the Purported YCL Loan but also includes, *inter alia*:-

i) the artificial debt created by Andrew for advancements he allegedly made to Golden Plus to substantially finance litigation on behalf of Golden Plus in Malaysia. He had caused Golden Plus to participate in such litigation for collateral purpose, not for the benefit of the company. Andrew had subsequently issued a letter demanding RM1,195,317.96 from Golden Plus for the purported advancement; and

ii) the Sri Serdang Loan. Andrew, Tan Say Han and Shiu Fai Fong caused Sri Serdang to acknowledge purported outstanding debt of RM2,503,315.80 with CIDL as at 26th July 2020 under the Facility Agreement between CIDL and Sri Serdang, and also caused Sri Serdang to undertake to commence repaying the amount to CIDL upon discharge of lien holders caveats lodged on the security properties under the said agreement (14 Titles); and

iii) the GPlus Loan. It is material to note that:-

   a) the fraudulent allotment of the 46,196,995 shares was premised on a Settlement Agreement whereby one Eng would settle Golden Plus' debt allegedly under the GPLus Loan by advancing RM9,239,399 in cash to CIDL, in consideration for the allotment of the 46,196,995 Golden Plus shares to Eng;

   b) the allotment took place upon CIDL's written confirmation of receipt of the said RM9,239,399 issued to Golden Plus, singed by GQ Huang upon Andrew's instructions;

   c) having subsequently lost control of Golden Plus and caused the fraudulent allotment of Golden Plus shares, CIDL (again upon Andrew's instructions) altered its position to claim that the GPlus loan had not been settled, and proceeded to seek for an Order that the 23 Titles be released to CIDL's solicitors.

[120]In my considered view, the foregoing events which form part of the Plaintiffs' cause of action in paragraph 51, clearly took place within the jurisdiction of this Court.

BREACH OF FIDUCIARY DUTIES, CONTRACT, TRUST / WINDING UP

[121]It has been pleaded at paragraph 65 of RASOC that Andrew in breach of his fiduciary duties / contracts and trust, conspired with, among others, Yong Chooi Lan, to injure Golden Plus by converting the assets of its subsidiaries and those of Sri Serdang and acted fraudulently to take control of Golden Plus Shanghai Companies and/or Golden Plus and cause the appointment of a receiver over Golden Plus and/or to proceeding to wind-up Golden Plus.

[122]Apart from conspiring with and/or causing Yong Chooi Lan to commence proceedings in the BVI to appoint a receiver over GP BVI pursuant to the Purported YCL Loan, it is pleaded that Andrew had breached his fiduciaries duties, contract and trust by, *inter alia*:-

i) along with Tan Say Han (D11) and Shiu Fai Fong (D12), instructing Golden Plus' solicitors in September 2019 to arrange for a purported independent shareholder of Golden Plus to move the Court for the appointment of a receiver over Golden Plus. Andrew was the managing director of Golden Plus at the material time;

ii) along with Yong Chooi Lan, filing an action pursuant to s. 346 of the Companies Act 2016 via Kuala Lumpur High Court Originating Summons No. WA- 24NCC-519-10/2019 ("**OS 519**") against Golden Plus and shareholders named therein complaining of oppressive conduct and unfair discrimination and seeking to restrain the shareholders from convening a general meeting of Golden Plus in October 2019 to change the composition of the Board which was later unanimously carried by members;

iii) along with Tan Say Han, causing Golden Plus to engage, sought and received advise from, among others, Livingstone Corporate Advisory & Finance, for Andrew, Valarie and/or Maria to take control of Golden Plus' Hong Kong and Shanghai companies, whether through CIDL or otherwise, and to subsequently appoint receivers or liquidators over and/or to wind-up Golden Plus; and

iv) conspiring with Fai Fong and Tan Say Han on or about 7th December 2020, to provide Tan Say Han with information on Golden Plus towards the winding up of Golden Plus.

[123]It is contended that Andrew's breach of fiduciary duties, contract and trust was committed in his capacity as the then director of Golden Plus, a Malaysian public company. Coupled with the fact that the attempts to appoint a receiver over Golden Plus, restrain the convening of general meetings of Golden Plus, and winding up of Golden Plus took place in Malaysia, there is no reason why this Court has no jurisdiction to determine these claims.

[124]Having perused the contents of the RASOC, In my considered view, not only are these causes of action pleaded against Andrew and Yong Chooi Lan inextricably intertwined with the causes of action pleaded against the remaining Defendants, the causes of action as discussed above (against Andrew and Yong) are also inherently intertwined. They form part of the conspiracy to seize control and entrench themselves in Golden Plus as pleaded in paragraph 51 to continue perpetuating the fraud against Golden Plus and the GPLUS Group.

[125]It is crucial to note that the pleaded actions and events from July to December 2020 are not isolated events / causes of action in that they appear to be part of the attempts with the common goal to remain in / seize control of Golden Plus and its subsidiaries to continue siphoning the proceeds of the Royal Garden Project out through CIDL. In my opinion, these causes of action should be dealt with collectively within the same forum, by this Court.

[126]As highlighted earlier, Andrew and Yong contend that this Court has no jurisdiction over the winding-up and liquidation of foreign Golden Plus Companies, in particular GP BVI. I don't find favour with such contention.

[127]In this regard, it is significant to note that the relief in Paragraph 70(v) of the RASOC *vis-à-vis* restraining the Defendants from, *inter alia*, winding-up the Plaintiffs are sought against Andrew and Yong Chooi Lan in their personal capacity. As I have opined above, this Court has jurisdiction over Andrew and Yong Chooi Lan on the causes of action pleaded against them. Accordingly, this Court has the jurisdiction to make any order which it deems fit and proper to restrain them from the continued perpetration of the fraud against Golden Plus and the GPLUS Group.

[128]In any event, I am of the view that this Court is clothed with the jurisdiction to restrain the Defendants from instituting winding up proceedings against foreign companies in foreign jurisdictions, by virtue of Sections 52 and 54 of the Specific Relief Act, 1950. In *BSNC Leasing Sdn Bhd v Sabah Shipyard Sdn Bhd & Ors* [2000] 2 MLJ 70, the Court of Appeal held that:-

> *"The power in our courts to perpetually restrain a defendant who is amenable to their jurisdiction from prosecuting a claim in a foreign court is founded upon statute. It is derived from a joint reading of* ss 52(3)(e) and 54(a) of the Specific Relief Act 1950. *These sections provide as follows:*
>
> *52(3) When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the court may grant a perpetual injunction in the following cases, namely:*

…

(e) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

54 An injunction cannot be granted —

(a) to stay a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such a restraint is necessary to prevent a multiplicity of proceedings.

…

In my judgment whether the institution or threatened institution of proceedings in a foreign court would be vexatious or oppressive would depend upon the peculiar facts of the particular case. When deciding this question, a court must have regard to all the circumstances of the case including such matters as comity, the interests of the parties, the connection that the dispute has with the alternative forums and the need to exercise caution when restraining foreign proceedings. (See, *Metall und Rohstoff AG v ACLI Metals (London) Ltd* [1984] 1 Lloyd's Rep 598*.)"*

(per Gopal Sri Ram, JCA, as he was then)

[129]On the issue of this Court's jurisdiction to restrain distribution of assets of the estate, in the Affidavits in support of Andrew and Yong's Application, they contend that this Court is not the proper forum and does not have jurisdiction to restrain the Personal Representatives of TSS' estate under his 4 wills from distributing the assets of the estate, as this Court did in paragraph (2) of the Ad-Interim Injunction Order. Andrew asserts that because the estate under the Malaysian and Hong Kong Wills is pending issuance of grant of probate, the distribution must be carried out in accordance with the grants of probate issued by the respective Courts.

[130]It should however be noted that in August and October 2019, Andrew had filed the following suits at the Kuala Lumpur High Court:-

i) Kuala Lumpur High Court Suit No.WA-22NCC-443-08/2019 ("**Suit 443**"); and

ii) Kuala Lumpur High Court Suit No. WA-22NCC-560-10/2019 ("**Suit 560**").

The Statement of Claim and Amended Statement of Claim in Suits 443 and 560 have been exhibited at Encl 87, Exhibit TWK-3 in Andrew's Affidavit in Reply to oppose Enclosure 7.

[131]Suits 443 and 560 were filed by Andrew to claim ownership of shares in several BVI companies, Rosa Bianca Investments Limited ("**Rosa Bianca**"), Classico Enterprises Limited ("**Classico**"), and Add Noble Enterprises Limited ("**Add Noble**") as well as the Golden Plus shares held by Rosa Bianca, Classico and Add Noble's wholly-owned subsidiary in Hong Kong, South Power Investment Limited ("**South Power**").

[132]It is Andrew's pleaded position in those Suits that his entitlement to those shares is purportedly derived from his late father TSS' Hong Kong Will, and he seeks, *inter alia*, for various declarations that those shares are held on behalf of TSS' estate. More importantly, he also seeks to have the sole share in Rosa Bianca, and the Golden Plus shares held by Rosa Bianca and previously held by South Power transferred to him and Valarie, and/or their nominees, as executrices and beneficiaries the TSS' Hong Kong Will.

[133]As far as the alleged assets of TSS' estate under the Hong Kong Will is concerned (shares belonging to foreign companies), Andrew had not only submitted to but had invoked the jurisdiction of the Kuala Lumpur High Court to, *inter alia*, restrain the Defendants in Suit 443 by injunction, from dealing with those shares. However, he appears to now be taking a diametrically inconsistent position in claiming that this Court lacks jurisdiction to restrain the distribution of TSS' estate in these proceedings. In my view, Andrew cannot approbate and reprobate.

[134]In any event, in my opinion, whether this Court has jurisdiction to restrain the distribution of the assets under TSS' estate is a question to be determined at the hearing of Enclosure 7. It bears repeating that for the purpose of these applications, the real and only questions to be determined by this Court is whether it has jurisdiction to hear and try the causes of action pleaded against the Applicants, and whether this Court should exercise its discretion to adjudicate this Action considering the principles of forum conveniens and all the circumstances of the case.

[135]Having considered all the facts and circumstances, for the reasons stated above, I would conclude that this court has the jurisdiction to hear and try the causes of action against D4 and D10. As such, Enclosure 55 is dismissed with costs.
ENCLOSURE 94 (D1 & D8)

[136]D1 is a company incorporated in Hong Kong whilst D8 is a Chinese National and a Director of D1.

[137]These Defendants contend that this Court has no jurisdiction in relation to the cause of matters pleaded against them and that in any event, the claim against D1 and D8 ought to be heard in the Hong Kong Court's as all facts and events arose in Hong Kong. Further, it is contended that a management agreement entered between the parties contained a clause where parties had agreed to submit to the jurisdiction of the Courts in Hong Kong. It is also contended that the leave granted to serve process on D1 and D8 on 17th December 2020 ought to be set aside on account of the material of non-disclosure i.e. not disclosing the governing law and dispute resolution clause.

[138]It is finally contended by D1 and D8 that there is multiplicity of proceedings and that the Plaintiff had acted in abuse of Court process as the Plaintiffs have sought reliefs against other parties in various proceedings that are pending and as such, there is overlapping relief and redress against different parties.

[139]As I have done in relation to the applications by other Defendants, I would also have to examine RASOC to ascertain the cause of action pleaded against these Defendants and to consider if this Court is seized with jurisdiction.

[140]The Plaintiffs contentions/submissions in opposing Enclosure 94 can be summarized as follows:-

i) the Plaintiffs' case against CIDL and Huang are largely premised on fraud and the conspiracy inter se CIDL (D1), Andrew (D4), Valarie (D5), Maria (D6), ST Goh (D7), Huang (D8), GY Huang (D9), Tan Say Han (D11), Fai Fong (D12) and TSS (D3, D13 to D15), to defraud Golden Plus, which was committed within the jurisdiction of this Court;

ii) the causes of action against CIDL and Huang are interlinked and connected with the causes of action pleaded against the Defendants mentioned in (i) above, which constitutes the majority of the Defendants, many of whom are residents in Malaysia and are necessary parties to this Action;

iii) at all material times, CIDL and Huang served as the conduit to TSS' scheme to siphon proceeds of the Royal Garden Project out of the GPLUS Group, and together with Andrew, Tan Say Han, Maria, Valarie and/or Shiu Fai Fong, caused the fraudulent allotment of shares in Golden Plus and the conspiracy to convert the 23 land titles belonging to Sri Serdang in Malaysia; and

iv) while CIDL is a company in Hong Kong and GQ Huang a resident in China, the documents necessary to facilitate the fraud on Golden Plus and the GPLUS Group in Malaysia was executed by GQ Huang for CIDL and communicated to Golden Plus and/or its solicitors in Malaysia, thus rendering this Court the appropriate forum to determine this Action.

[141]It will now be necessary to consider each of the causes of action pleaded against CIDL and Huang in turn. As seen earlier, since there is a significant overlap with the causes of action pleaded against TSS, Andrew, Yong, Valarie and Maria, I shall try to avoid repeating them.

[142]There is no dispute that the Plaintiffs main complaint against these Defendants relate to the alleged siphoning of profits from a project known as the Royal Garden Project.

[143]At paragraphs 25 to 33 of the RASOC, the Plaintiffs pleads extensively on the existence of the management agreement dated 25th July 2007 between CIDL and P8 in relation to the project undertaken by P9. At paragraph 45 of the RASOC, the Plaintiffs have pleaded that CIDL and GQ Huang, among others, committed fraud on Golden Plus and the GPLUS Group by, *inter alia*, causing YSL ("**P9**") to pay CIDL's alleged nominees for CIDL's alleged profit entitlement in the circumstances where CIDL was never involved in the management and development of the Royal Garden Project, and further causing loss and benefit to Golden Plus and the GPLUS Group by diversion of payments due to them, to TSS as the ultimate beneficiaries and/or his nominees.

[144]Of significance, the Plaintiffs at paragraph 34 of the RASOC have pleaded that CIDL is owned by TSS and that GQ Huang holds the shares in CIDL as TSS' nominee (such trust deed appears at exhibit WKW-8 of Enclosure 9). It is also pleaded that CIDL was never involved in the management of the Royal Garden Project and that by

causing YSL to pay CIDL's nominees for its alleged manager fee and profit entitlement under the Management Agreement, it enabled the profits from the project to be siphoned out of the GPLUS Group, and prevented the revenue earned from flowing back to YIL, and ultimately, Golden Plus Holdings Berhad. As such, it is contended that this was a fraud committed on Golden Plus whereby such cause of action arose in Malaysia.

[145]Section 23(1)(b) of the CJA confers extra-territorial jurisdiction over foreign Defendants in circumstances where one or more of the several Defendants being sued resides or has a place of business in Malaysia. The Plaintiffs' case herein against CIDL and GQ Huang in this Action falls squarely within the ambit of Section 23(1)(b), as the other parties they allegedly conspired with to injure, inter alia, Golden Plus and Sri Serdang are located and reside in Malaysia, viz Andrew, Tan Say Han, and Shiu Fai Fong.

[146]Significantly, it does appear to me that the Plaintiffs' pleaded claim against CIDL and GQ Huang in respect of the CIDL Management Agreement is inextricably linked to the Plaintiffs' pleaded case against TSS, ST Goh and/or Tan Say Han for, *inter alia*, fraud, breach of fiduciary duties, trust and contract in their implicit roles in causing YIL to enter into the CIDL Management Agreement, failing to protect Golden Plus' interests, failing to disclose TSS' interest in the CIDL Management Agreement to the board of Golden Plus, and Bursa Malaysia, among others. It is pertinent to note that ST Goh and Tan Say Han have in fact submitted to the jurisdiction of this Court to determine the claims in this Suit.

[147]As such, in my considered view, the mere fact that CIDL and GQ Huang are a foreign company and resident respectively, and that the Royal Garden Project is situated in China, does not alter the fact that the claims against the respective Defendants should be tried in the same forum and I would consider that this Court is the most appropriate forum to determine those claims.

GPLUS AND SRI SERDANG LOANS

[148]The next issue relates to GPlus and Sri Serdang Loans which relate to the Plaintiffs complaint of an artificial creation of debts. At paragraph 47 of the RASOC, the Plaintiffs have pleaded that CIDL and GQ Huang, among others, conspired to defraud Golden Plus and the GPLUS Group by agreeing to the artificial creation of debt purportedly owed by Golden Plus and Sri Serdang, among others, including, but are not limited to, the Facility Agreements known as the GPlus Loan and Sri Serdang Loan dated 18th October 2016 and 11th December 2017 respectively.

[149]At paragraph 64 of the RASOC, it is further pleaded that CIDL and GQ Huang, among others, conspired to defraud the GPLUS Group by activating and seeking to enforce purported debts artificially created by, among others, TSS and/or Andrew, including the GPlus Loan, in a further attempt to assert control over and cause further injury to the GPLUS Group.

[150]I have also noted from the Exhibits (WKW-18 and WKW-19) that the Facilities Agreements under the GPlus Loan and the Sri Serdang Loan were entered into between CIDL, Golden Plus and Sri Serdang respectively which are secured by land titles belonging to Sri Serdang in Malaysia.

[151]The Plaintiffs allege that TSS, ST Goh, TSH, CIDL, GQ Huang and/or GY Huang had caused Golden Plus and Sri Serdang to enter into these dubious agreements, when in fact monies for the purported loans were those of YSL, which were wrongfully diverted to CIDL or its nominees. Such monies should never have been diverted to CIDL and/or its nominees and should have instead formed part of the GPLUS Group's account. These, they claim, are artificial debts created to defraud Golden Plus and the GPLUS Group.

[152]By virtue of Section 23(1)(a) and (b) of the CJA, I am of the view that this Court is seized with jurisdiction to determine the dispute relating to the GPlus and Sri Serdang Loans as the fraud allegedly took place in Malaysia and concerns titles of Sri Serdang of which land is situated in Malaysia.

[153]The next issue involves the fraudulent allotment of GPlus's shares. At paragraphs 51 and 54 of the RASOC it is pleaded that CIDL and GQ Huang, among others, conspired to, and purported to enable among others, Andrew and/or their nominees to take control of Golden Plus and its subsidiaries, and to entrench themselves, with a view to taking control of Golden Plus' Hong Kong and Shanghai subsidiaries, and to subsequently wind-up Golden Plus, by among others, causing the issuance and allotment of 46,196,995 shares in Golden Plus, effectively diluting the shareholding of the other shareholders, to defeat any court Order which may reconstitute the Board of the Company.

[154]The documents before me reveal that the issuance and allotment of the 46,196,995 shares in Golden Plus without consideration was preceded and enabled by, *inter alia*:-

i) the entering of the Settlement Agreement on 25th August 2020 (between CIDL, Golden Plus and Eng) whereby Eng would purportedly settle Golden Plus' debt allegedly under the GPLus Loan by advancing RM9,239,399 in cash to CIDL, in consideration for the allotment of the 46,196,995 Golden Plus shares to Eng; and

ii) CIDL issuing a letter to the board of Golden Plus on 26th August 2020 confirming receipt of the said advance from Eng, informing Golden Plus that CIDL fully discharges Golden Plus from all liability under the GPLus Loan and advising Golden Plus that they were free to issue the said shares to Eng (see: Exhibit WKW-32) as follows:-

CHINA IDEA
DEVELOPMENT LIMITED
中創發展有限公司

Date: 26 AUG 2020

The Board of Directors
Golden Plus Holdings Berhad
No.11, Jalan KP1/3,
Kajang Prima,
43000 Kajang,
Selangor
Malaysia

Dear Sir,

RE : CONFIRMATION OF RECEIPT OF ADVANCE

We would like to acknowledge and confirm that the Advance from Mr Eng Hup Tat has been received pursuant to the Settlement Agreement.

We hereby fully discharge you from all liabilities to the Facility Agreement and its Supplementary Agreement dated 18 October 2016 and 28 February 2017 respectively in respect of the loan or debts as set out in the Settlement Agreement.

In consideration of Mr Eng Hup Tat's settlement with us, you are free to issue the relevant shares to Mr Eng Hup Tat in proportion to the advance as set out in the Settlement Agreement.

Thank you.

Yours sincerely
for China Idea Development Limited

Huang Guoquan
(Passport no.: EB7450450)
Director

iii) this was followed by the transfer of the 46,196,995 shares by Eng to Duwee via a Sales and Purchase Agreement (between CIDL, Eng and Duwee) to defeat any legal challenge on the validity of the allotment to Eng, all of which the Plaintiffs contend form part of the conspiracy between, *inter alia*, Andrew, Maria,

Valarie, Tan Say Han, CIDL, GQ Huang, and/or GY Huang to defraud and seize control of Golden Plus by creating a new single-block majority in the company, to be controlled by Andrew and Valarie.

[155]In my view, the above events leading to and surrounding the alleged fraudulent allotment of shares in Golden Plus and the said conspiracy to seize control of Golden Plus took place in Malaysia, and loss and damage were suffered ultimately by Golden Plus. As such, it would seem that the cause of action arose in Malaysia.

[156]Finally, there is also the issue of 23 Land Titles belonging to P4. The Plaintiffs have at paragraph 59 of RASOC pleaded that CIDL and GQ Huang, among others, conspired to take possession and/or convert 23 issue documents of titles of lands in Kajang belonging to P4, Sri Serdang.

[157]Further, I note that it is alleged that in his attempts to seek possession of the 23 titles, GQ Huang was taking instructions from Andrew and TSH, and signed, *inter alia*, letters and power of attorney on behalf of CIDL in favour of Andrew. Those documents were prepared by Andrew, TSH and/or their agents in Malaysia and were sent to GQ Huang merely for his execution. This can be seen in the Whatsapp conversation exhibited to the affidavits.

[158]It is apparent from those Whatsapp conversations that the only acts that took place outside of Malaysia was GQ Huang signing and stamping documents in China, which documents were then served on stakeholder solicitors in Malaysia to allow Andrew and Tan Say Han to take possession of the 23 Titles.

[159]For all the above reasons, I would conclude that this Court has jurisdiction to determine all of the Plaintiffs' claims against CIDL and Huang as pleaded in the RASOC. In this regard, I would also refer to the detailed examination of the various causes of action against D1 and D8 and as tested against Section 23 CJA and Order 11 (see: paragraph 75 above) and am satisfied that this Court does have the jurisdiction to adjudicate this dispute.

[160]As a consequence Enclosure 94 is also dismissed.

[161]In conclusion, although I have concluded that this court is seized with jurisdiction as the causes of action are interlinked, I am indeed mindful that the various allegations of conspiracy may have occurred at different times over a period of years. However, guided by the decision of the English court of appeal in the case of *Kuwait Oil Tanker Co Sak vs Al Bader and others* [2000] 2 AER, it is not necessary for the conspirators all to join the conspiracy at the same time. It is sufficient if two or more persons combine with common intention, deliberately combine, albeit tacitly, to achieve a common end. Having examined the Plaintiffs RASOC, that appears to be the substance of the Plaintiffs' claim herein.

[162]Having dealt with the Order 12 r 10 applications and dismissed them, I will now proceed to consider the striking out applications in Enclosures 85,160 and 254.

[163]In relation to the law applicable for striking out, the same is trite and I do not propose to set the same out extensively save to acknowledge that a claim is liable to be struck out only in plain and obvious cases where a claim is on the face of it obviously unsustainable or is otherwise an abuse of Court process and/or frivolous and vexatious (see: the case of *Bandar Builder Sdn. Bhd. & Ors v. United Malayan Banking Corporation Bhd* [1993] 4 CLJ 7).
ENCLOSURE 85 (D4 & D10 STRIKING OUT APPLICATION)

[164]As highlighted earlier, apart from filing an application pursuant to Order 12 in Enclosure 55, D4 and D10 had thereafter also filed an application pursuant to Order 18 r19 seeking orders that the Plaintiffs' claim against them be struck out and that they be removed as parties.

[165]The grounds relied on by D4 and D10 have been set out in Enclosure 85 itself and are as follows:-

i) the Plaintiffs' claim against D4 and D10 is scandalous, frivolous or vexatious and/or an abuse of process of Court;

ii) the Plaintiffs' claim against D4 in respect of a purported fraudulent allotment of shares amounts to a multiplicity of proceedings and an abuse of process. The claim and allegations at paragraphs 52 to 58 of the RASOC pertaining to a purported fraudulent allotment of shares are the subject of and issues in multiple proceedings filed previously by the Plaintiffs and/or their privies. The Plaintiffs are estopped from relitigating the same issues here. The Plaintiffs and/or their privies are filing multiple proceedings for collateral purposes with the aim of vexing D4 and D10 and/or for the purpose of forum shopping;

iii) the RASOC is an attempt to circumvent the jurisdiction of the proper/appropriate winding-up Courts and amounts to an abuse of process. The RASOC purports to seek among others under paragraph 70 prayer (v) relief to restrain D4 and D10 from taking winding-up and/or liquidation actions against the Plaintiffs and/or the Plaintiffs' subsidiaries. This Court is not the proper/appropriate forum to determine these issues for, among others, the following reasons:-

(a) P3, P8 and P9, are companies incorporated under, among others, the laws of BVI, Hong Kong and the People's Republic of China. Accordingly, this Court is not the proper forum and has no jurisdiction over the winding-up and liquidation actions that have been or may be taken against P3, P8 and P9;

(b) Any winding-up and/or liquidation actions that have been or may be taken against P1, P2 and P4 to P7 are within the powers and exclusive jurisdiction of the Winding-up Court and as such this Court cannot seise the jurisdiction of the Winding-Up Court.

iv) The claim against D10 based on an allegation of a purported artificial creation of debt is an abuse of process. The claim against D10 based on an allegation of a purported artificial creation of debt in relation to the Loan Agreement entered into by Golden Plus (BVI) Pte Ltd (P3) with D10. The said agreement is governed by and construed in all respects in accordance with the laws of BVI. BVI Courts have seised jurisdiction over this matter and the matter is now pending ongoing legal action commenced in the BVI by D10;

v) This Court is not the proper forum and has no jurisdiction over the distribution of the estate of the late TSS which are pending grant of probate. The Malaysian will and Hong Kong will of TSS are pending the issuance of a grant of probate by the respective Courts. The distribution of assets of the estate of TSS must carried out in accordance with the grants of probate issued by the respective Courts;

vi) The claim and allegations at paragraph 60 of RASOC discloses no reasonable cause of action against D4 as all the issues document of titles of the 58 lands referred to in Annexure D ("58 titles") of the RASOC have already been returned to D4 and are kept in P4's office (as of 20th August 2020).

[166]Having dealt with D4 and D10's application in enclosure 55 earlier and dismissing the same, it will become apparent that there is certainly some overlap on the grounds relied herein as well. However, the main contention in support of the application to strike out is that there is a multiplicity of proceedings.

[167]There is no dispute that prior to this suit being filed, there have been three previous proceedings which these Defendants contend were instituted by the Plaintiffs or their privies which overlap substantially with this suit.

[168]Before the present suit was instituted, the Plaintiffs and/or their privies had instituted proceedings which the Defendants contend overlap substantially with this present suit. These suits were as follows:-

OS 131

(a) On 6th March 2020, an Adjourned Extraordinary General Meeting; ("**Adjourned EGM**") of Golden Plus was convened by three of its members, Teo Kim Hui, Teo Han Tong and Lai Su-Chen (the "**Conveners**"). The resolutions proposed at the Adjourned EGM included resolutions to remove the entire Board of Directors of Golden Plus at the time, including Andrew and the 11th Defendant, Tan Say Han, and to replace them with three (3) new Directors, Chiew Keong On, Yapp Kiam Yen and Wong Koon Wai (the "**3 Directors**") ("**Proposed Resolutions**");

(b) The Adjourned EGM was adjourned by the Chairman of the Adjourned EGM. After the adjournment, a number of members remained at the meeting venue and continued with the Adjourned EGM whereby the Proposed Resolutions were passed;

(c) On 11th March 2020, the Conveners commenced an action under Kuala Lumpur High Court Originating Summons No. WA-24NCC-131-03/2020 ("**OS 131**") for, among others, a declaration that all acts of the then Board of Directors of Golden Plus taken subsequent to the Adjourned EGM are invalid;

(d) On 28th August 2020, OS 131 was allowed.

Suit 461

(e) On 26th August 2020, two days before the decision of OS 131 was delivered, the incumbent Board of Director's passed a resolution for 46,196,995 ordinary shares ("**Shares**") of Golden Plus to be allotted to one Eng Hup Tat

("**Eng**"). The allotment was made pursuant to a Settlement Agreement dated 25th August 2020 ("**Settlement Agreement**") between D1, China Idea Development Limited ("**CIDL**"), Golden Plus and Eng for settlement of a debt owed by Golden Plus to CIDL;

(f) Thereafter, the Conveners together with two of the 3 Directors have also separately filed an action under Kuala Lumpur High Court Civil Suit No. WA-22NCC- 461-09/2020 ("**Suit 461**") against Andrew which, among others, alleges that the allotment of the Shares was a fraud and that the Board of Directors of Golden Plus have acted in breach of their fiduciary duties in allotting the Shares to Eng;

(g) Golden Plus, who is the 15th Defendant in Suit 461, has filed a counterclaim against, among others, Andrew Teh also for conspiracy and fraud in respect of the allotment of the Shares.

OS 444

(h) Golden Plus also filed an action under Kuala Lumpur High Court Originating Summons No. WA-24NCC- 444-09/2020 ("**OS 444**") which sought to enforce OS 131 and invalidate the allotment of the Shares;

(i) On 15th January 2021, the High Court allowed OS 444 which invalidated and reversed the allotment of the Shares.

[169]As the issues of allotment of shares are subject matter in such other proceedings, these Defendants now contend that there is a multiplicity of proceedings and hence an abuse of process of Court. Learned counsel for D4 and D10 Mr Khoo Guan Huat referred me to various decisions such as that of *Yat Tung Investment Co Ltd vs Dao Heng Bank Ltd* [1975] AC 581 (see: paragraph 38 of Enclosure 238), *Henderson vs Henderson* (1843) 3 Hare 100, *115* and *Chemfort Sdn Bhd & Anor vs Lim Hua* [2010] 7 CLJ 491 and submits that cause of action estoppel applies in that the issue of the allotment of shares in the present suit have been raised in suit 461 as well as OS 131 and OS 444. In fact, in an attempt to persuade me that there are substantial overlaps, learned counsel has set out in an annexure a table juxtaposing the pleadings in this suit against the pleadings in suit 461 and OS131.

[170]Whilst Mr Khoo candidly concedes that the reliefs sought by the parties in all suits are different, he submits that cause of action estoppel still applies as there are duplication of issues and that by failing to pursue the remedies sought in this suit in the earlier proceedings, the Plaintiffs are to be considered as having abandoned such rights and remedies and relies on cases such as *Asia Commercial Finance (M) vs Kawal Teliti Sdn Bhd* [1995] 3 MLJ 189.

[171]It is also contended that in relation to the 58 Sri Serdang titles, there is no reasonable cause of action as they have been purportedly returned. In relation to the 23 tiles, it is contended that the same is subject matter of interpleader proceedings in the Kota Kinabalu High Court.

[172]I will now set out the Plaintiffs submissions and my views on the merits of this application.

[173]In response to this application, the Plaintiffs contentions can be summarized as follows,

i) there are reasonable and valid causes of action pleaded against Andrew and Yong Chooi Lan in the RASOC;

ii) despite Andrew's assertion that he had returned the 58 Titles to Sri Serdang (P4) (which is denied), the cause of action for conversion in respect of the said Titles is a live and triable issue, and should not be summarily determined based on conflicting material affidavit evidence;

iii) there is no multiplicity of proceedings in respect of the fraudulent allotment of 46,196,996 shares in Golden Plus. The issue on allotment in OS 131, Suit 461, OS 444 and in this Suit are distinct in terms of the nature, substance, effect, the relief sought and parties involved; and

iv) the issue of want of jurisdiction is wholly irrelevant in this application to strike out.

[174]I do not propose to set out all over again the various causes of actions pleaded by the Plaintiffs herein against all the Defendants in this suit nor those specifically against D4 and D10 as they have been referred to earlier when dealing with Enclosure 55.

[175]However, it appears to me that whilst D4 and D10 refer predominantly to the issue of the allotment of shares, they seem to have overlooked that the Plaintiffs have various other causes of action against them in particular to the allegation

of further creation and acknowledgment of debt to finance litigation and or utilizing artificial debts to attempt to wind up and appoint liquidators over the Plaintiffs.

[176]Having considered the pleadings and the rival contentions, I am not persuaded that there has been a duplicity or multiplicity of proceedings which amount to an abuse of Court process for the following reasons:-

i) while all these actions share some common facts vis- à-vis the allotment and/or transfer of the 46,196,995 shares, as they arose from the same transaction, the substance, character and effect of these actions are fundamentally different, as is apparent from the causes of action pleaded and relief sought therein;

The Committal Proceedings in OS 131

ii) OS 131 was commenced by 3 shareholders of Golden Plus (and not the Plaintiffs in this Suit) who were also the conveners of the Golden Plus' Extraordinary General Meeting on 16th October 2020 and Adjourned EGM on 6th March 2020;

iii) the Plaintiffs therein sought leave to apply for an Order for Committal against Andrew, TSH, Mohd Salleh bin Lamsin, Adey bin Liun, Tan Yen Siang (who were among the caretaker directors of Golden Plus at the material time of the fraudulent allotment), and one Duwee;

iv) the premise of the committal proceedings is the interference with the administration of justice, and in particular the interference of the implementation and/or subject matter of the High Court Order of 28th August 2020 in OS 131;

v) the action for contempt of court in OS 131 is by nature and its relief sought wholly distinct from the issue of conspiracy to defraud in this Suit. The fact that there are some overlap of allegations made in the affidavits in the committal proceedings and the RASOC in this Suit does not amount to a multiplicity of proceedings, nor does it render this Suit an abuse of court process;

Suit 461 (Main Suit)

vi) Suit 461 was commenced by 5 shareholders of Golden Plus (including the 3 convenors abovementioned) and not any of the Plaintiffs in this Suit for, *inter alia*, the following relief:-

a) that the allotment of the 46,196,995 Golden Plus shares be set aside;

b) that the transfer of the 46,196,995 Golden Plus shares from Eng to Duwee be declared null, void and/or invalid;

c) that the Registrar of Members and Record of Depositors be rectified to cancel the said allotment and transfer;

d) a declaration that Andrew, Tan Say Han and the rest of the caretaker board of Golden Plus at the time of the allotment acted in breach of the Company's constitution, their duties and/or for improper purpose in authorising Golden Plus to enter into the Settlement Agreement and/or allotting the 46,196,955 shares in Golden Plus to Eng;

e) a declaration that Duwee is not a bona fide purchaser for value without notice of the 46,196,995 Golden Plus shares; and

f) that the Plaintiffs be paid equitable compensation for any loss suffered by reason of, among others, the Defendants' breach of Golden Plus' Constitution and/or duties and/or contract and/or dishonest assistance and/or unlawful acts.

vii) the causes of action relied on by the Plaintiffs therein is, *inter alia*, improper purpose and breach of Golden Plus' constitution, contract and/or trust;

viii) none of the relief sought by the shareholders in Suit 461 are sought in this Suit;

Suit 461 (Counterclaim)

ix) it is material to note that Andrew has also applied to strike out Golden Plus' counterclaim in Suit 461 on the grounds of multiplicity of proceedings. If he succeeds, Golden Plus and the Plaintiffs' claims herein against Andrew in respect of the issue of allotment in Suit 461 and this Suit will be struck out, without him having to meet

any claims by Golden Plus or the GPLUS Group in respect of the issuance and allotment of the 46,196,995 Golden Plus shares;

x) in any event, even if there is a duplicity of proceedings in so far as this Suit and Suit 461 are concerned, this can easily be cured by having these suit(s) transferred, and consolidated and/or heard together.

NO MULTIPLICITY OF PROCEEDINGS - 23 TITLES

[177]As pleaded in the RASOC, the 23 Titles are security properties under the purported GPlus Loan and were held by Messrs Yap & Chin as stakeholders in Kota Kinabalu.

[178]Andrew, Tan Say Han, Fai Fong, CIDL and GQ Huang had made attempts to secure the immediate release of the 23 Titles to CIDL and later to Sri Serdang, on the basis that the GPlus Loan had been resolved. This occurred within 2 weeks before the High Court decision of 28th August 2020 in OS 131 on Andrew and Tan Say Han's removal, among others, from the board of Golden Plus. Due to the conflicting instructions from the said parties, Messrs Yap and Chin filed the Interpleader application at the Kota Kinabalu High Court.

[179]After the decision on 28th August 2020, and having subsequently lost control of Golden Plus and caused the fraudulent allotment of Golden Plus shares, CIDL altered its position to claim that the GPlus loan had not been settled, and proceeded to seek for an Order that the 23 Titles be released to CIDL's solicitors.

[180]The Interpleader proceedings before the Kota Kinabalu High Court, by its very nature only concerns the possession of the 23 Titles, in particular a determination of the party to whom the 23 Titles should be released to, by Messrs Yap & Chin.

[181]On this issue of alleged multiplicity of proceedings, I find instructive the recent decision of the Court of Appeal of *Tai May Chean vs New Way Capital and another appeal* [2020] 12 MLJ 471 which held as follows:

> *"[28] So, in our view, the question the learned judge ought to have asked himself was whether the instant OS amounted to oppressive and unnecessary litigation giving rise to the overwhelming supposition that it was an abuse of the court process. In our respectful view, considering the factual matrix in the present case, the answer to that question must invite a negative response. With respect, the learned judge had fallen into error by applying a rather formalistic and dogmatic approach to the issue for multiplicity of actions. We do not think the doctrine of res judicata or multiplicity should be applied in such an inflexible fashion. In this context, Lord Keith in the Arnold case, expressed the view (at p 109B): 'One of the purposes of estoppel being to work justice between the parties, it is open to courts to recognise that in special circumstances inflexible application of it may have opposite result'.*
>
> *[29] On this score, it is imperative to note that there are distinguishing factors between a minority oppression suit (then under* s 181 of the CA 1965 and now under s 346 of the Companies Act 2016 ('the CA 2016')) and a derivative action. A shareholder, like the plaintiff here, may find relief problematic due to the twin hurdles of the 'majority rule' and the 'proper plaintiff rule' as decided in the celebrated case of *Foss v Harbottle* [1843] 67 ER 189*.*
>
> *[30] The shareholder, in that event, can bring an oppression suit under* s 346 of the CA 2016. *That provision gives a wide latitude to the courts to fashion various remedies to bring to an end the oppressive conduct. Or the shareholder can bring a derivative action on behalf of the company. As it is an action brought on behalf of the company, the cause of action, as well as the remedy, is relevant to the company only. By protecting the company in this way, the shareholder benefits indirectly. Significantly, the relief available in this action may be different to that of an oppression action.*
>
> *[31] In this way, it may often be the case that the facts relied upon in each action are the same so that either action is possible on the same facts. However, the nature of the complaint and the appropriate relief sought may be different in each case. In Re a company* [1986] BCLC 68, Hoffman J refused to strike out the petition filed under s 459 of the UK Companies Act 1985 where the minority shareholders alleged that the company's assets were disposed of in a manner prejudicial to the interests of the petitioner. The UK s 459 provides relief to a member of a company. Hoffman J held that the fact that the petitioners could have brought a derivative action did not prevent them seeking relief under s 4591."

[182]Applying the above, in my view, having considered the various causes of actions in this case and the intertwining of the same amongst all the Defendants' as alluded to earlier in this Judgment, I cannot conclude that these proceedings are oppressive or unnecessary so as to give rise to a situation where it amounts to an abuse of

process. I acknowledge that there may be some overlap in the facts relied upon in this suit and the other proceedings, but in my opinion, the nature of the complaints and appropriate relief sought in this matter is certainly different.

[183]Finally, on the issue that there is no reasonable cause of action in relation to the 58 Sri Serdang on the basis that they have been returned, I have taken into account that the Plaintiffs have affirmed in their affidavits that they are unable to locate the same and have in fact made a police report. As such, as it stands, on the basis of such disputed fact, I cannot conclude that the Plaintiff has no reasonable cause of action for conspiracy to take possession of these titles as pleaded at paragraph 60 of the RASOC.

[184]In the upshot, having considered all matters, I am of the view that D4 and D10 have not succeeded in persuading me that the Plaintiffs have no reasonable cause of action against them or that there has been an abuse of process. Whilst the Plaintiffs certainly appear to have an onerous burden in proving their various causes of action/claims, the door to justice should not be shut and they should have the opportunity to prove their claim with the aid of a trial.

[185]As such, I would dismiss Enclosure 85 with costs.
ENCLOSURE 160

D7's application to strike out

[186]This is the application by D7 ("**ST Goh**") pursuant to Order 18 r19 ROC to strike out the claim against him. D7 is a Malaysian citizen residing in Malaysia and was appointed as Chief Operating Officer, Leisure Division of Golden Plus on 1st March 1997. The Plaintiffs have at paragraph 17 of the RASOC set out the positions held by the dramatis personae and lists the appointment of the Defendants as directors in the Plaintiff companies. From the same, it will become apparent that ST Goh was from as early as 1997 appointed as director in some of the Plaintiffs and remained as such for various periods of time up until 2020. He appears to be a common feature and was a Director at some point for all Plaintiffs save for P6. D7 remains a director of Shanghai Roxy Leisure Co Ltd in China till today.

[187]D7's basis to for this application can be summarized as follows:-

a) The plaintiffs claim against D7 is time barred;

b) The claim is barred by laches and acquiescence;

c) There are no particulars of fraud and conspiracy as against D7; and

d) There is no cause of action against D7 and /or obviously unsustainable and an abuse of process.

[188]On the contrary, the following is a summary of the Plaintiffs contentions in opposing Enclosure 160 and with reference to their pleadings:-

(a) that D7 acted in breach of his fiduciary duties / breach of trust / contract owed to Golden Plus and its respective subsidiaries;

(b) that these breach of fiduciary duties / breach of trust /contract on the part of D7 also amounted to fraud and conspiracy to defraud perpetrated against the Plaintiffs with a view to siphoning monies out;

(c) that D7 together with the other Defendants perpetrated further fraud and conspiracy to defraud by artificial creation of debts which was later used as a basis to appoint receiver and / or to wind up the Golden Plus and its subsidiaries;

(d) that D7 together with the other Defendants perpetrated fraud and conspiracy to protect their personal interest by seeking to entrench themselves on the board of Golden Plus and its subsidiaries to further siphon monies out to benefit themselves;

(e) all of the above actions by D7 acting by himself and / or in concert with the other Defendants caused loss and damage to the Plaintiffs.

[189]Having set out the rival contentions above, I will now analyse the same and set out my views and conclusion on my agreement with or rejection of such contentions/submissions.

[190]Again, I do not intend to set out in detail the various causes of action of the Plaintiff as set out in the RASOC.

Learned Counsel for D7 submits that whilst there is indeed a litany of allegations pleaded against the Defendants, there are only a few against D7 in relation to purported breach of his fiduciary duties. It is also submitted that general aspersions of fraud and conspiracy are devoid of particulars as against D7. Further and in any event, D7 submits that the allegation of fraud and conspiracy against D7 are unfounded and relies on the decision of *Maxbiz Corporation Bhd & Anor vs Public Investment Bank Bhd & Ors* [2012] MLJU 33 and submits that only general matters have been pleaded and that the Plaintiff has not pleaded "exactly" what D7 is supposed to have done in furtherance of such fraud and /or conspiracy.

[191]Having perused the RASOC in its totality, with respect, I do not agree with learned counsel for D7. In my considered view, sufficient particulars have indeed been pleaded against D7.

[192]The pleaded case of breaches of fiduciary duties, breach of trust / contract / fraud and conspiracy to defraud on the part of D7 involved 2 periods of time. D7 allegedly appears to be a key and active participant in the breach of fiduciary duties, breach of trust / contract, fraud and conspiracy to defraud and injure the Plaintiffs for the following reasons: -

(a) D7 together with TSS were the directors primarily in charge of the undertakings of the GPLUS Group in Hong Kong and Shanghai and responsible for all financial reporting and affairs pertaining to *inter alia*, YIL, YSL, and the Royal Garden Project to Golden Plus (see: paragraph 20 of the RASOC);

(b) D7 was the only Golden Plus director appointed to these positions save for Shanghai QSR. A duty of trust and confidence was reposed upon TSS and D7 to protect and act in the best interests of GPLUS Group (see paragraph 20 of the RASOC);

(c) D7 together with TSS were primarily responsible for the siphoning monies out of the GPLUS Group using the CIDL Management Agreement and the Manfield Lease Agreements as the instrument for doing so and D7 was a signatory to those agreements (see paragraphs 27 to 29 of the RASOC);

(d) D7 together with TSS caused unlawful payments by YSL to various entities (see paragraphs 45 and 46 of the RASOC);

(e) D7 was involved in the Related Party Transactions by his failure as the only other director of YIL and GCE by not disclosing to Golden Plus of the nature of TSS' interest in CIDL, CIDL Management Agreement, Manfield and Manfield Lease Agreements and thereby acting in conflict of interest and lacking in transparency (see paragraphs 40 and 42 of the RASOC);

(f) D7 has fraudulently misrepresented to the Board of Golden Plus on matters pertaining to the execution of Addendum and by his failure to inform and / or report to the Board of Golden Plus, PWC and Bursa that the Addendum to the CIDL Management Agreement had been executed without the amendments required by the Board of Golden Plus (paragraph 42 of the RASOC);

(g) D7 had a personal interest in protecting the estate of TSS given *inter alia*, his position as a beneficiary under the HK Will of all benefits pertaining to the Manfield Lease Agreements (see paragraph 49 of the RASOC);

(h) D7's actions and conduct in further perpetrating fraud and conspiracy to defraud and preserving the interest in Estate of TSS by taking control of Golden Plus in assisting and entrenching Andrew, Valarie, Tan Say Han and / or their nominees on the board of Golden Plus' Hong Kong and Shanghai subsidiaries (see paragraph 51 of the RASOC).

[193]It is clear that the plaintiffs have pleaded of D7's active participation with TSS during the first period and then acting in concert with the other Defendants in the second period to continue perpetrating the fraud so as to enable some of the other Defendants to entrench themselves. In my view, there certainly appears to be a nexus between the allegation of a breach of fiduciary duties and the allegation of fraud and conspiracy.

[194]It is significant to remember that the Plaintiffs' claim herein is premised on fraudulent acts and conspiracy to defraud committed by all Defendants including D7 acting in concert. It is the Plaintiffs case that D7 had in fact participated and carried out the acts together with the other Defendants with the purpose of protecting the interests of D7 and other Defendants for mutual benefit.

[195]As such, in my further view, the matters pleaded against D7 cannot be looked at in isolation but has to be considered in light of the various allegations as mentioned earlier. In my opinion all these are matters which can only be determined after a trial with the benefit of oral testimony.

[196]In this regard, D7 has also raised matters pertaining to the services provided to the Royal Garden Project, the execution of the addendums in 2012/2013 and that even though he was the only director of P1 appointed in all subsidiaries, that it was TSS who was the controlling mind of these companies and not him. Evidence of these in the voluminous affidavits are indeed conflicting and these fortifies my views that these issues can only be decided with the aid of a trial.

[197]As such, I am not persuaded by D7's contentions and cannot conclude that there has been no reasonable cause of action pleaded against him or that the Plaintiffs' claim against him obviously unsustainable.

[198]Moving on to the issue raised in relation to limitation. In this regard, D7 submits that the Plaintiffs causes of action and allegations on the addendum, management agreement as well as the MIL lease agreement all occurred in 2007 and 2012 and hence barred by Section 6 of the Limitation Act. Whilst seemingly so at first blush, in my view there is merit in the Plaintiffs retort that this claim against D7 is within time for the following reasons;

a) The Plaintiffs have averred in their affidavit in Enclosure 8 that they discovered these breaches by D7 upon the new directors taking office post the High Court decision in 2020 and upon reviewing all documents and records;

b) Similarly, the Plaintiff have also pleaded in paragraph 34 of the RASOC that they had only discovered in 2019 through an affirmation of oath in the Hong Kong will proceedings that CIDL was in fact TSS through a deed of trust;

c) The breach of fiduciary duties on the part of D7 formed the basis of acting in concert with the other defendants to perpetrate fraud and conspiracy to defraud.

[199]Thus, I find merits in the Plaintiffs placing reliance on section 29 of the Limitation Act 1953 which provides that time begins to run for limitation purposes upon discovery of the fraud i.e. 2020 in this case.

[200]Further on this issue, I do not find favour with D7's submission that there is acquiescence and the doctrine of laches applies on the basis that P1's board of directors had accepted the addendum in June 2013 which effectively means that they were aware of the purported breach of fiduciary duties. In my considered view, whilst the previous board may have accepted the addendum in 2013, there is certainly no evidence that the board approved the matters surrounding the non-disclosure of interest on the part of D7 and TSS.

[201]In the final analysis, as the causes of action revolve breach of fiduciary duties and fraud, the issues herein on non-disclosure, the Plaintiff first having knowledge of any alleged breach, whether there was acquiescence etc. cannot be decided on the basis of conflicting affidavit evidence and ought to tested and decided at trial.

[202]As such, I am certainly not prepared at this stage to conclude with any certainty that the Plaintiffs claim is time barred which warrants the Plaintiffs claim to be struck out.

[203]Finally, D7 also submits that there has been an abuse of process as the Plaintiffs are only suing D7 and TSS's personal representatives and hence are guilty of selective prosecution as they have not taken action against other directors of the Plaintiff who had at the material time approved the management agreement and addendum and relies on the High Court decision in *Peak Hua Industries Bhd vs Peak Hua Holdings Bhd* [2005] 6 MLJ 266.

[204]However, as I have highlighted in the earlier paragraphs, it is an important and significant aspect of the Plaintiffs' claim that it was D7 who had concealed the material fact of his involvement in the matters relating to the CIDL management agreement from the Board at that time. As such, I am not prepared to strike out the Plaintiffs' claim on this ground as I have not been persuaded that there has been an abuse of process.

[205]In the final analysis, having considered all matters and for the reasons above, I would similarly dismiss Enclosure 160 with costs.
ENCLOSURE 254D15's application under Order 12 r 10 and Order 18 r 19

[206]As highlighted at the outset of this Judgment, D15 had after filing its statement of defence then only filed Enclosure 254. Unlike some of the other Defendants, D15's application in Enclosure 254 was premised simultaneously on Order 12 r 10 as well as Order 18 r 19 and did not separate the applications.

[207]I would also state that Enclosure 254 was only filed on 10th September 2021 which is after hearing had begun

and submissions commenced by the other Defendants in the earlier enclosures. I nonetheless heard learned counsel for D15 and the Plaintiffs after I completed hearing the submissions on the earlier enclosures.

[208]To recap, pursuant to my order dated 5th February 2021, D15 was made a party as personal representative of the estate of TSS in relation to his China will. There is no dispute that D15 is one of the executors named in TSS's last will and testimony of the China will.

[209]The crux of D15's submission is that there is no pleaded case against D15 and that in any event, the most appropriate jurisdiction or forum conveniens in support of the Plaintiffs' claim against D15 is in China.

[210]At the outset, I think I can quite quickly dispose of this application in relation to the issue of jurisdiction under Order 12 r 10. I have in the earlier part of this Judgment dealt with the law/issue in relation to a parties submission to jurisdiction by conduct. In this case, quite apart from D15 having filed an application to strike out under Order 18 r 19, D15 had filed its statement of defence on 29th April 2021. As such, in my considered view, by virtue of having done so, D15 has submitted to the Court's jurisdiction by filing such defence which effectively was a step in these proceedings.

[211]In any event, as discussed earlier, when one considers the overall pleaded case of the Plaintiffs and examining the statement of claim as extensively highlighted in this Judgment, it is quite clear that this Court is the appropriate forum to try this action as majority of the claims relate to acts and conduct of TSS.

[212]As such, I see no merits in D15's application pursuant to Order 12 r 10 and would adopt a similar reasoning as that for my decision earlier when dismissing Enclosure 159.

[213]With regards D15's application pursuant to Order 18 r 19, D15 contends that there is no pleaded cause of action against him and that the dispute is between the Plaintiffs and the other Defendants and not as against the estate of TSS whereby D15 is now exposed to inconvenience.

[214]At the outset, it is imperative to bear in mind that D15 is not a party to the suit in his personal capacity. It was the peculiar circumstances of this case of TSS leaving 4 wills in 4 jurisdictions which necessitated this Court to appoint the 4 Defendants to represent the estate under each will. It is also significant that it is the Plaintiff's pleaded causes of action against the late TSS for his alleged wrongdoings committed during his lifetime which survive his demise. As TSS has since passed away, this action is brought against the personal representative of the late TSS and pursuant to Order 15 r 6(A) ROC is treated as having been brought against the estate.

[215]In my view and also to avoid repetition, as seen earlier, there have clearly been sufficient matters pleaded against TSS and that in any event, the relief sought through the statement of claim seeks declarations/orders against the assets and properties of the estate of TSS so that it may be applied to discharge the indebtedness of the estate of TSS to the Plaintiffs.

[216]As such, in my considered view there is also no merit in D15's application to strike out the claim against him and as a result, would dismiss Enclosure 254 with costs.

CONCLUSION

[217]For all the reasons stated above, Enclosures 53, 54, 55, 85, 94, 159, 160 and 254 are dismissed with costs and this matter is be set down for trial between the Plaintiffs and all the Defendants.

[218]In respect of costs, having considered all matters, I would order the Defendants in Enclosures 53, 54, 55, 85, 94 and 160 to pay the Plaintiff costs of RM7,500.00 (*subject to 4% allocator*) each respectively. As for the Defendants in Enclosures 159 and 254, since they are Defendants in their representative capacity, I would order that the costs to be paid to the Plaintiff for Enclosures 159 and 254 to be RM5,000.00 (*subject to 4% allocator*) each.