

IN THE HIGH COURT OF MALAYA KUALA LUMPUR

(CIVIL DIVISION)

SUIT NO. 86-22-516-2004

BETWEEN

**LEE SWEE ENG
(NRIC: 550904-04-5145)**

... PLAINTIFF

AND

**1. DATUK NOR AZAH BINTI AWIN
(NRIC: 531220-05-505B)**

**2. GAMMA PERMATA SON BHD
(Company No.: 198351-A)**

... DEFENDANTS

GROUND OF JUDGMENT

Enclosure 24 is an application by the Plaintiff seeking inter alia an order for:-

- (i) An injunction restraining Datuk Nor Azah (hereinafter referred to as "Datuk Nor") who is the first Defendant from disposing or dealing with her shares in Gamma Permata Sdn Bhd (hereinafter referred to as "GPSB"); and
- (ii) An injunction restraining Datuk Nor from causing or allowing GPSB to dispose or deal with a property held under HS(D) 1069, P116, Mukim Ampang, Daerah Kuala Lumpur (hereinafter referred to as "the Property").

Enclosure 25 is an application by the Plaintiff seeking inter alia Court's order on the followings:

- (i) The writ of summons be amended pursuant to Order 15 r 6 (2) (b) of the Rules of High Court, 1980 ("ROHC") by adding GPSB as a defendant; and
- (ii) An injunction restraining GPSB from disposing or dealing with the Property.

Enclosure 36 is an application by GPSB inter alia to set aside the ex parte order granted on 20.12.2005 pursuant to Enclosure 25.

BACKGROUND OF THE PLAINTIFF'S CLAIM IN THIS SUIT

The Plaintiff alleged that in 1999 he had given a sum of RM 2,000,000.00 to Datuk Nor as a friendly loan to assist Datuk Nor in undertaking a corporate restructuring exercise of one Denko Industrial Corporation Berhad (hereinafter referred to as "Denko"), where Datuk Nor was then one of the shareholder.

The Plaintiff also alleged that at that time Denko was in financial difficulties and the Plaintiff agreed to lend a hand based on the Plaintiff's good relationship with Datuk Nor and her now estranged husband, Dato' Haji Ahmad Anuar Bin Mohamad for many years. The Plaintiff even affirms that in fact, it was Dato' Haji Ahmad Anuar who approached him on behalf of Datuk Nor for the alleged loan.

BACKGROUND OF THE PROCEEDINGS

In April 2004, based on the above allegation the Plaintiff filed this suit against Datuk Nor claiming inter alia the repayment of the alleged loan. Datuk Nor entered appearance and contested the claim on the ground inter alia that the money was paid to her as an investment advise fees and was subject to the term and condition of a letter of Personal Guarantee dated 17.6.1999 as well as two (2) other supplementary Agreements dated 24.2.2000 and 25.10.2000.

On 16.12.2004, a summary judgment was recorded against Datuk Nor in this suit by the learned Senior Assistant Registrar. Dissatisfied with the decision, Datuk Nor filed an appeal to the Judge In Chamber against the said Summary Judgment and the appeal is now pending hearing date.

On 19.12.005, more than one (1) year after the Plaintiff obtained the Summary Judgment against Datuk Nor, the Plaintiff filed an Ex-Parte application in Enclosure 24 against Datuk Nor and an ex-parte application in Enclosure 25 against GPSB. Both enclosures 24 and 25 were heard ex-parte on 20.12.2005 in which an order-in-term was granted by the Court on that day.

Both enclosures 24 and 25 are now before this Honourable Court for inter-parte hearing. After hearing submissions from both parties, I granted Order in term with costs for Enclosure 24 and 25 with costs and dismissed Enclosure 36. Dissatisfied with my decision, the Defendant appeal. Herein is my grounds.

Enclosure 25 consists of two (2) main prayers, namely:

- (i) Joinder - to add GPSB as the 2nd Defendant; and .
- (ii) Injunction - presumably if prayer (i) is allowed, an order to restrain GPSB from disposing and dealing with its Property.

(i) Addition of GPSB as the 2nd Defendant

The law

O15 r 6 (2) (b) of RHC provides that:

“(2) At any stage of the proceedings in any cause or matter the Court may on such terms as it thinks just and either of its own motion or on application

- (a) ...
- (b) order any of the following persons to be added as a party,
...”

Defendant’s Contention

The Defendant submits that although O. 15 r. 6(2) of RHC states that such an application could be made at any stage of the proceedings, its scope should be limited to an application made before final judgment had been entered and not after the proceedings, as it would then have come to an end.

The Defendant cited various case authorities which illustrates the meaning of “at any stage of the proceedings” which are as follows:

- The case of ***Shell Malaysia Trading Sdn Bhd v Leong Yuet Yeng & Ors*** [1990] 3 MLJ 254, where an application

was made to substitute a party under this rule after a default judgment had been entered. The Court held that O 15 r 6 must necessarily only apply to proceedings where the substitution of any of the parties to the cause or matter was made before final judgment.

- Subsequently, the Court of Appeal in the case of ***Tai Choi Yu v Syarikat Tingan Lumber Sdn Bhd*** [1998] 4 MLJ 275 cited with approval the case of ***Shell Malaysia Trading*** and held that:

“(I) Although O 75 r 6(2) of the Rules of the High Court 1980 states that an application to intervene could be made 'at any stage of the proceedings', this does not mean that such application can be made 'after final judgment had been entered.”

- In ***Nite Beauty Industries Sdn. Bhd. & Anor. v. Bayer (M) Sdn. Bhd.*** [2000]) CLJ 757, an unsecured creditor, who was bound by the scheme of arrangement and compromise approved by an order of court, applied to be added as a party to the proceedings before the court and also to declare, inter alia, the order a nullity. The application was also made under O. 15 r. 6(2) of the RHC 1980. Jeffrey Tan J, inter alia held:

“(3) Enclosure 10 was filed without any proceedings in existence. Thus, it was not an application made "at any stage of the proceedings" as required by O. 15 r. (2) RHC. The court has no further jurisdiction to make any order under O. 15 r. 6(2) RHC”

- ***Tai Choi Yu V Syarikat Tingan Lumber Sdn Bhd*** [1998] 4 MLJ 275;
- In the recent case of ***Hong Leong Bank Bhd v Staghorn Sdn Bhd & Other Appeals*** [2008] 2 CLJ 121, Federal Court the Federal Court held that:

“(2) An application for leave to intervene in order to set aside an order for sale by a party not already a party to the proceedings must be made under O. 15 r. 6 RHC. The application may be made "At any stage of the proceedings" meaning before judgment, otherwise the proceedings have concluded and there is no longer a proceeding in existence for the party to intervene in. The judge also becomes functus officio. ”

In our present case, the Plaintiff had on 6.12.2004 obtained a summary judgment against Datuk Nor as the only Defendant in this suit then. More than a year later, the Plaintiff applied to add GPSB as a 2nd Defendant in this suit. The Defendant submits that by the said summary judgment, the Court had become functus officio. Once the judgment is entered, the proceeding has come to an end and the Court had no power under any application in this suit to alter, vary or add a party.

Submission of the Plaintiff

The Plaintiff submits that as far as our present case is concerned after the Summary Judgment was obtained , there had not been any satisfaction on the judgment yet. Moreover the appeal to the Judge in Chambers had not been heard. Therefore the matter is still pending and hence the application to add GPSB as the 2nd Defendant should be allowed.

The Plaintiff submits that based on the shareholdings and also the identities of the members of GPSB's board of directors, there is a clear inference that GPSB is the alter ego of Datuk Nor and/or, that it holds the said Premises to the use and upon the direction of Datuk Nor. In this regard, it is to be noted that the Defendant holds 999,999 of the 1,000,000 issued shares of GPSB. The other share holder, apparently the brother of Datuk Nor, holds the other 1 share.

As such, the Plaintiff submits that GPSB is a necessary party to the proceedings and its presence before the Court is required to ensure that all matters in dispute can be effectively dealt with.

Findings of the Court as to addition of GPSB as the 2nd Defendant

The cases cited by the Defendant, needs to be distinguished as to why the courts did not allow the application for the parties to intervene. All the cases except ***Shell Malaysia Trading Sdn Bhd v Leong Yuet Yeng & Ors*** involves situation whereby the application to intervene was by non party in the respective suits after final order have been obtained. Those orders are not monetary judgment.

In the case of ***Nite Beauty Industries Sdn Bhd*** it is an attempt by creditors to be added as a party to the proceedings, who was bound by a scheme of arrangement and compromise approved by an order of the court on 14 May 1999. The unsecured creditor claimed that it was affected both legally and financially by the said scheme of arrangement and compromise. The unsecured creditor also applied to nullify the said court order. The issue was whether O 15 r 6 (2) of the RHC was applicable. It was held :

“ [1] When the court approved the scheme of arrangement and compromise on 14 May 1999, there was nothing further to be done in the proceedings all matters had been effectually and completely adjudicated upon on that date. The only thing left to be done, which in the event was done, was for the petitioners to perfect and extract the order dated 14 May 1999.

[2] Without a proceeding and without a matter in dispute, there cannot be a 'person whose presence before the court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon' or a 'person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter. There was nobody possibly within the terms of O. 15 r. 6(2) RHC to be added. (*emphasis mine*)

[3] Enclosure 10 was filed without any proceedings in existence. Thus, it was not an application made "at any stage of the proceedings" as required by O. 15 r. (2) RHC. The court has no further jurisdiction to make any order under O. 15 r. 6(2) RHC.”

The case of ***Tai Choi Yu V Syarikat Tingan Lumber Sdn Bhd*** it was an attempt by a minority shareholder to intervene after default judgment had been entered by a company against the defendant. The Board of Directors of the defendant had earlier by a majority resolved that no action be taken by the company to set aside the default judgment or to oppose the winding up proceedings filed against the defendant. In this case it was held that before the court can grant leave to intervene, the applicant must show that he has an interest directly related to the subject matter of the action. A mere shareholder, a fortiori, a minority shareholder has no such interest, legal or equitable, in the property of a Company . Hence the application to intervene was not allowed by the Court.

The case of ***Hong Leong Bank Berhad*** was an application to intervene by a third party after an order for sale have been made. The issue on 0 15 r 6 RHC was discussed and Abdul Aziz Mohamad FCJ states that the intended intervener must have an interest in the subject matter of the case, in order for him to intervene. It is to be noted that there is no provision for an order for sale to be set aside.

The issue to be considered at this point is whether the order under 0 14 granted by the learned Senior Assistant Registrar is a final judgment or whether it can still be considered as a cause or matter which is still “pending”.

For this I refer to the case of ***Salt v Cooper*** [1881] C.A. 544 the court was confronted with the issue of whether in an action brought

in the High Court, where judgment has been obtained against a debtor and it appears that the debtor is possessed of property, which by reason of the existence of a prior mortgage vesting in the legal estate, cannot be taken by the sheriff under a writ of *elegit*, the court in which the action is brought can grant a receiver on motion only in the original action or whether it is absolutely necessary that there should be another writ with the same plaintiff and the same defendant. The judgment of the case at page 551 states as follows:

“A cause is still pending even though there has been final judgment given, and the Court has very large powers in dealing with a judgment until it is fully satisfied. It may stay proceedings on the judgment, either wholly or partially, and the cause is still pending, therefore, for this purpose, as it appears to me, and must be considered as pending, although there may have been final judgment given in the action, provided that judgment has not been satisfied.....

.....The case before me is simply this. It is an action for a money demand, in which the plaintiff asks a Court of Justice to compel the defendant, by means of legal process, to pay what is due to the defendant, by means of legal process, to pay what is due to him. That is the meaning of the action. The plaintiff comes to the Court for no other purpose than to ask the Court to use that constraint which the law can impose upon the defendant to compel payment to the plaintiff of his money demand. The question in dispute in such an action may sometimes be the amount due, but it more often is the mode of obtaining payment. That being so, the Court gives judgment against the defendant, by which it declares and ascertains the amount due, and orders the defendant to pay it. The defendant disobeys the order of the Court, and then the Court is asked to compel him to pay; and the only mode which, as a general rule, the law now recognises of compelling him to pay, is by taking

away his property, realizing it, and applying the proceeds in payment of the plaintiff's demand. I leave out of consideration the exceptional case of attachment, because, as a general rule, that is not the mode necessary to be adopted. The mode I have stated of compelling payment, we call execution; it is the obtaining in some shape or other, by legal process, possession of the defendant's lands or goods, selling them, paying the consequent expenses, and out of the proceeds paying the demand. This mode of enforcing payment seems to me to be plainly "a proceeding in the cause or matter" ; and the claim brought forward by the plaintiff that he may be paid the amount of his demand out of the proceeds of the goods or lands of his debtor, when the possession of or title to those lands or goods is disputed, is certainly a "claim brought forward" and I should say " properly brought forward" -" in the cause or matter."

Thus this case illustrates that although there is final judgment, however, so long as the judgment is not satisfied the matter is still considered "pending". Further, the case of ***Metramac Corporation Sdn Bhd v Fawziah Holdings Sdn Bhd*** [2006] 3 CLJ 177 at page 195 which quoted the case of ***Goh Teng Hoon & Ors v Choi Hon Ching*** [1987] 1 MLJ 95 where Sinnathuray J said at page 96:

"As to what is a cause or proceeding 'pending' within Judicature Act 1873. now Judicature Act 1925. a cause is 'pending' even after final judgment. So long as such judgment remains unsatisfied,"

Another case which should be taken note of is the case of ***C Inc. v L*** [2001] 2 Lloyd's Report 459 at page 476 where the court made conclusions on the court's legal power to grant freezing orders over the assets of a non party against whom there is no claim for substantive relief, where the word "proceedings" was given a broad interpretation which is:

“[83]the word "proceedings.. should be given a broad interpretation in CPR Part 19.4. It should embrace all stages of an action from the time it has been started until it becomes finally complete or moribund. There are many "proceedings" in which a judgment is obtained but it is not satisfied. At that stage further action may be needed in order to enforce the judgment. The "proceedings" have not finished at that point. A claimant may wish to either by way of equitable execution to get in the assets of the defendant to satisfy the judgment. Or he may wish to obtain a freezing order in aid of execution. The "proceedings" must still be continuing in those instances.....”

Similarly, in our case although Summary Judgment had been entered against one defendant, but it is still subject to appeal to the Judge in Chambers which have not been disposed off. The judgment is certainly not satisfied yet. Based on the above authorities, the proceedings in our present case is still pending and have not finished at this point. As the Plaintiff is at liberty to apply to this court for ancillary matters pertaining to enforcing the judgment.

Further support can be found in the case of ***TSB Private Bank International SA v Chabra and Another*** [1992] 2 AER 245 where it was held that :

‘Where the presence of a third party before the court was necessary to ensure that all matters in a dispute were effectively dealt with, the court was entitled to join the third party as a proper party to the proceedings pursuant to RSC Ord 15 r 6(2) (b) (ii), even though there was no cause of action against the third party.’

Merit of Plaintiff's application for joinder

The Defendant submits that GPSB is a limited liability company and a separate legal entity from Datuk Nor. The fact that Datuk Nor own almost all shares in GPSB does is not relevant as Datuk Nor and GPSB is still in law a different and separate entity.

It was not disputed that the alleged transaction was entered between Datuk Nor and Plaintiff and not between Plaintiff and GPSB. GPSB was not privy to the transaction and there was no averment and evidence of any relationship whatsoever between GPSB and the Plaintiff. The Defendant submits that since GPSB is not a party to the transaction, it cannot be bound by any of the terms of the alleged transaction and consequently cannot be liable for any breach of the terms of that transaction. Therefore, there is no question of "lifting the corporate veil" in this case. The alleged transaction was openly entered by Datuk Nor as individual. She did not use any 'corporate veil' to conceal her identity. Thus, there is no "corporate veil" - so to speak, for this Court to pierce into.

Thus, the Defendants submits that, to add GPSB into this suit would clearly go against the established principle of law.

I disagree with the submission of the Defendant although I do not dispute the principle of separate entity between GPSB and Datuk Nor. The Plaintiff submits and correctly so, that on the shareholdings and the identities of the members of GPSB's board of directors, there is a clear inference that the GPSB is the alter ego of the Datuk Nor and/or that it holds the said Property to the

use and upon the direction of Datuk Nor. It is to be noted that Datuk Nor holds 999,999 of the 1,000,000 issued shares of GPSB, The other share holder, apparently the brother of the Defendant, holds the other 1 share. It is clear that GPSB is a necessary party to the proceedings and its presence is necessary before the court to ensure that all matters will be effectively dealt with.

(ii) Injunction against Datuk Nor and GPSB

Submission by the Plaintiff

The Plaintiff states that unless otherwise restrained, there is a risk that the Defendants may dispose of the said Premises and this will prejudice the Plaintiff's rights under the Judgment. There were evidence that Datuk Nor had transferred her shares to her children during the time when the Plaintiff was trying to serve the writ of this action on her. The whereabouts of Datuk Nor is unknown.

Submission by the Defendant

Besides submitting on the issue of the separate entity between GPSB and Datuk Nor, the Defendant submits that the Plaintiff had failed the tests as propounded in ***Keet Gerald Francis Noel John v Mohd Noor & Ors.*** [1995] 1 CLJ 293

The Defendants submit that there is no serious issue to be tried. As an obvious consequence of the separate legal entity principle that GPSB may own property distinct from the property of its members (Datuk Nor), Datuk Nor do not have a proprietary interest in the property of GPSB. Members only own shares in the company. Therefore the Defendant submits that Plaintiff cannot

seek this Court assistance to get his hand on the property of GPSB on the ground that there is a debt owing by its shareholder to the Plaintiff. (Refer to ***Macaura v Northern Assurance Co Ltd*** [1925] AC 619)

Further, there is no evidence produced or even an averment made by the Plaintiff that GPSB is holding the property on trust for Datuk Nor or on behalf of Datuk Nor. Clearly, there is no serious issue to be tried.

A consideration of balance of convenience involves the Court weighing the risk of success or failure and the consequential harm that each party may suffer if the injunction is granted or refused. See ***Alor Janggus Soon Seng Trading Sdn. Bhd. & Ors. v Sey Hoe Sdn. Bhd. & Ors*** [1995] .

The fact that GPSB is the registered owner of the Property does not by itself entitle the Plaintiff to an injunction. There must be a risk of disposal. The Defendant submits that there was no threat that GPSB is trying to dispose off its property. In fact, the Plaintiff is aware that the property is charged to a finance institution and is pending litigation. The property cannot be sold by GPSB anyway. No harm will arise onto Plaintiff if the injunction is refused.

On the other hand, it is highly prejudicial for GPSB to be restraint from dealing with its property. GPSB is a going concern. And like any other company, its assets are subject to fixed and floating charges in favour of its creditors. The injunction on its asset by itself is capable of triggering a breach on existing contract on the

part of GPSB as against such creditors. If interlocutory injunction is granted but the Plaintiff fail at the trial, GPSB in the meantime have suffered harm and inconvenience which is uncompensable. The Defendants submit that justice demand that on this ground the injunction should not be allowed.

Further the Defendant submits that the Plaintiff had only come to Court for injunction more than 1 year after the suit has been filed and judgment had been obtained against Datuk Nor. This throws considerable doubt upon the reality of Plaintiff's alleged injury and his urgent need for an order to preserve the status quo.

The Courts Findings on the Injunction application against Datuk Nor and GPSB

The sole question to be decided by the court for the application of the injunction herein is whether the Plaintiff had made out a case warranting the grant of the injunction i.e. whether there is a real risk of Datuk Nor dissipating the assets.

In the case of ***Orwell (Erection and Fabrication) v Asphalt and Tarmac (UK) Ltd*** [1985] 3 AER 747, where Farquharson J stated in his judgment:

“Plainly an injunction will only be granted where the plaintiff can adduce evidence of a kind which normally supports an application for a Mareva injunction. namely that there are grounds for believing that the judgment debtor will dispose of his assets to avoid execution. Perhaps such grounds may be more readily established after judgment than before it.”

Mareva Injunction can be used to freeze assets prior to trial and also after judgment or registration of a foreign judgment, in support of execution. In the case of ***Stewart Chartering v C & O managements S.A.*** [1980] 1 W.L.R. 460, mareva had been ordered to be continued after judgment and in the case of ***Orwell (Erection and Fabrication) v Asphalt and Tarmac (UK) Ltd*** [1985] 3 AER 747, mareva was granted between judgment and execution.

But first I will deal with the issue of the separate entity and the lifting of the corporate veil as raised by the Defendant in opposing this application to restrain GPSB/Datuk Nor. My considered view is that, there is no necessity to invoke the doctrine of “lifting the corporate veil” and to peep behind the veil in the present case. The reason why courts lift the veil is to enable the court to obtain information on certain features of the company to ascertain the composition, shareholdings and control of the company. However that is not necessary in our case. What is in evidence is that Datuk Nor holds 999,999 of the 1,000,000 issued shares of the GPSB. GPSB also holds the said Property to the use and upon the direction of Datuk Nor. GPSB is definitely the alter ego of Datuk Nor. Datuk Nor manages and controls GPSB. The composition, shareholding and control of GPSB stood in front of the veil and there was no need to lift the veil to unveil them. I refer to the case of ***Sunrise Sdn Bhd v First Profile (M) Sdn Bhd*** [1996] 3 MLJ 533 where it was ruled that it was not necessary to invoke the doctrine of lifting the corporate veil in the particular facts and

circumstances of the case in question, when it was so obvious as to who have control of the company in question.

A point to note at this juncture is that, there is no affidavit in opposition to the application herein. Therefore the material averments contained in the Plaintiff's affidavits filed in support of the application must be taken to have been admitted. (Refer to **Ng Hee Thoong & Anor v Public Bank Bhd** [1995] 1 MLJ 281). Further the fact demonstrates that Datuk Nor bought the premises/property using GPSB's resources.

Datuk Nor's daughter, Munira Erwina Binti Mohd on 30.5.2005 had affirmed an affidavit on 30.5.2005 (Enclosure 21)) that Datuk Nor had on 26.5.2004 transferred to her children substantially her entire interests in the Denko comprising 4,075,000 ordinary shares. The said transfer coincided with the attempts made by the Plaintiff to serve the Writ of Summons on the Datuk Nor.

Since there was uncontroverted evidence that Datuk Nor controls and manages GPSB, the fear of the Plaintiff that there is a possibility that there is also a similar risk that the Datuk Nor, may also dissipate/or cause GPSB to dispose of its assets, is not unfounded.

There is also the evidence of the whereabouts of Datuk Nor which according to the Plaintiff is unknown. The Plaintiff alleged that the Plaintiff does not have any other information pertaining to the assets and whereabouts of Datuk Nor. Information made available on the Bursa Malaysia Webpage, shows that Datuk Nor had been

removed as Chairman of Denko on 3.11.2004 and she had vacated her position as director of the said company on 1.4.2005 on account of persistent absence from meetings of board of directors. (Refer to exhibit P-18 of Enclosure 23) All these averments have not been contradicted by the Defendant.

The Hansard of Dewan Negara suggest that the 1st Defendant was no longer a Senator of the Dewan Negara on/about December 2005. (Refer to Enclosure 23 - Exhibit "P-19" and "P-20")

The Plaintiff's averment that Datuk Nor does not appear to have been back in the country, shows that there is a clear risk of dissipation by her of her assets within the jurisdiction so as to frustrate the execution of the said Judgment has not been rebutted.

As to the submission of the Defendant that states that there is no serious issues to be tries, and hence the application for injunction should fail; this argument is certainly flawed. As had been stated in the previous paragraph, mareva Injunction can be used to freeze assets prior to trial and also after judgment. Furthermore, the Summary Judgment obtained against the Defendant is still the subject of an appeal which had not been disposed off. There is also no stay order on the Summary Judgment.

On the issue that the assets had been charged to the Bank, the court had ordered on 28.4.2006 that the Bank is at liberty to deal with the property including to proceed with sale after foreclosure

and the proceeds therefrom would be held by the solicitors until disposal of this matter. (Refer to Enclosure 33).

Although GPSB was not a party earlier when the Summary Judgment was obtained, that in itself would not prevent the court from granting an injunction to restrain GPSB from disposing of its assets. This is illustrated in the case of ***TSB Private bank International SA v Chabra and Another***. [1992] 2 AER 245, where the court in that case had granted an injunction against a company against whom there is no cause of action but it is in support of and in respect of action against another individual, who was a major shareholder in the said company.

Thus applying the principles of the above cited cases, I am of the view that the Plaintiff had shown substantial grounds that there is real risks of the assets may be dissipated by Datuk Nor, pending the disposal of the matter herein. Although there is no cause of action against GPSB, there is credible evidence, not contradicted by the Defendant, that assets apparently the property of GPSB, may in fact, be assets of Datuk Nor and therefore available to satisfy a judgment obtained against Datuk Nor. In these circumstances, if an injunction against Datuk Nor is inadequate to protect the Plaintiff from the risks that assets vested in GPSB may become unavailable to satisfy the judgment obtained against Datuk Nor, an injunction should also be made against GPSB to prevent it from dissipating its assets.

As for the submission of the Defendant that there is considerable doubt upon the reality of Plaintiff's alleged injury and his urgent

need for an order to preserve the status quo as it took the Plaintiff 1 year after the suit had been filed and after summary judgment had been obtained, I am satisfied that the Plaintiff had shown that there is a real risk and likelihood that Datuk Nor may dissipate her/ GPSB's assets if not restrained, despite the delay of 1 year.

Thus, from the above stated reasons, and applying the principles therefrom, I am of the view that balance of convenience lies in granting the injunction. The Defendants would not suffer irreparable harm which is incompensable, if the injunction is granted.

Therefore, I order in term for enclosure 24 and 25 with costs. Enclosure 36 is no longer relevant and is dismissed with costs.

t.t. Datin Zabariah Mohd Yusof
Tarikh : 18.5.2009

Bagi pihak Plaintiff : Michael Chow
Tetuan Michael Chow

Bagi Defendan-Defendan : Cik Haryaty Ibrahim
Tetuan PM Tan Yaty Chin