IN THE COURT OF APPEAL OF MALAYSIA

(APPELLATE JURISDICTION)

CIVIL APPEAL NO: W-02(NCC)(W)-1459-09/2023

BETWEEN

1. TEY POR YEE
(NRIC NO. 760202-14-5147)

2. OOI KOCK AUN
(NRIC NO. 670307-07-5561) … APPELLANTS

AND

PROTASCO BERHAD
(COMPANY NO. 548078-H) … RESPONDENT

[In the matter of the High Court of Malaya at Kuala Lumpur
(Commercial Division)
Suit No. 22NCC-362-09/2014

Between

PROTASCO BERHAD
(Company No. 548078-H) … Plaintiff

And

1. PT ANGLO SLAVIC UTAMA
(Company Registration No. 09)

2. TEY POR YEE
(NRIC No. 760202-14-5147)

3. OOI KOCK AUN
(NRIC No. 670307-07-5561) … Defendants]

CORAM:

RAVINTHRAN PARAMAGURU, JCA.
CHOO KAH SING, JCA.
AHMAD FAIRUZ BIN ZAINOL ABIDIN, JCA.

JUDGMENT

Introduction

[1] This is an appeal against the decision of the High Court that granted judgment in favour of Protasco who was the plaintiff. The case of Protasco was that it was defrauded by the second and third defendants (the appellants herein) into parting with USD27 million by investing in a company known as PT Anglo Slavic Indonesia (PT ASI). The first defendant (PT Anglo Slavic Utama or PT ASU) was the company that owned PT ASI. The case against PT ASU was stayed pending arbitration and was not tried in the High Court. The first

appellant (the second defendant) is Tey Por Yee whereas the second appellant (the third defendant) is Ooi Kock Aun. They were referred to as Larry Tey and Adrian Ooi in the High Court judgment.

[2] The High Court found for Protasco after a full trial and entered judgment against the appellants in the sum of RM84,643,170.00 after conversion of USD27 million as at the date of decision. The appellants have appealed against this decision while Protasco has filed a cross-appeal against the refusal of the High Court to award exemplary damages and aggravated damages.

The claim

[3] The case of Protasco in summary is as follows. Sometime in November 2012, the first appellant introduced an investment opportunity to Protasco. It was in the Oil and Gas sector in Indonesia. It involved purchase of 76% of the shares of PT ASI from PT ASU by Protasco. At that time, PT ASI owned and controlled 49% of the shares of a company known as PT Firman Andalan Sakti (PT FAS) which in turn owned 70% of the shares of PT Hase Bumou Aceh (PT Haseba). PT Pertamina had granted rights to PT Haseba to develop and extract oil and gas in the Kuala Simpang Timur oil field in Aceh through a Production Management Partnership Agreement (PMPA).

[4] The investment by Protasco was made through two agreements to purchase the shares of PT ASI. The first Sale and Purchase Agreement (SPA 1) was executed on 28 December 2012 for a consideration of USD55 million. After an extended period of due

diligence on PT ASU, an amended Sale and Purchase Agreement (SPA 2) was executed on 29 January 2014 for a reduced purchase consideration of USD22 million and for 63 % of the shares of PT ASI instead of the original 76%. The said PT ASI shares were transferred to Protasco on 24 March 2014. Protasco was also required to make a further payment of USD5 million as shareholder's advance to PT ASI because of the representation by the second appellant that it was needed to, inter alia, to re-activate oil wells and to secure a 10-year extension of the PMPA between PT Haseba and PT Pertamina.

[5] Protasco had paid an initial deposit of RM50 million when SPA 1 was signed. Later, after SPA 2 was executed, the differential sum of USD5,659,437 (equivalent to RM18,393,170) between the said deposit and the reduced purchase of price of USD22 million was paid to PT ASU because of the second appellant's representation that Conditions Subsequent in SPA2 were attainable. In addition, the said USD5 million was paid to PT ASI because of the second appellant's representation that it was needed to extend the PMPA between PT Haseba and Pertamina. In total, pursuant to SPA 2, Protasco paid a total USD27 million to PT ASU and PT ASI.

[6] Security for the payment by Protasco was provided by at third-party, namely Acclaim Investments Ltd (Acclaim) which is a company incorporated in the British Virgin Islands. Its sole director was Lim Sue Fern. The security comprised shares in PT Inovisi Infracom TBK (PT Inovisi). The second appellant was the Chief Financial Officer of PT Inovisi. Acclaim held 8.3% of the total shareholding of PT Inovisi which at that time was listed in the Indonesian Stock Exchange.

Acclaim wrote a letter to PT Brent Securities on 14 December 2012 to block the said shares that constituted security for the investment of Protasco and hence the shares were referred to as the "Blocked PT Inovisi Shares" in the High Court. PT Brent was the Indonesian securities company that held the PT Inovisi Shares. The second appellant subsequently emailed Protasco on 25 December 2012 to enclose a legal opinion from Indonesian solicitors on the blocking of the PT Inovisi shares. On 8 April 2014, PT Brent Securities wrote to Acclaim to confirm that 297,142,000 shares of PT Inovisi had been blocked. Another company by the name PT Green Pine was the single largest shareholder of PT Inovisi.

[7] It was the case of Protasco that the "Blocking Letters" signed by one Lim Sue Fern were relied upon by the former to justify the terms of the acquisition as announced to Bursa Saham Malaysia and were in fact inducement to enter into the transaction with PT ASU.

[8] Protasco ultimately terminated SPA 2 on 4 August 2014 because of unfulfilled conditions and demanded return of the USD27 million from PT ASU. One of the conditions was for a 10 year extension of the PMPA which was not granted by PT Pertamina. Protasco attempted to sell the Blocked PT Inovisi shares when PT ASU did not respond to the termination letter. Protasco's case was that the first appellant prevented it from realising its security in the Blocked PT Inovisi Shares.

[9] An Investigation Committee (IC) set up by Protasco found that the appellants were the beneficial owners of PT ASU, PT ASI,

Acclaim, PT Inovisi and PT Green Pine. Tjoe Yudhis who was the President Director of PT ASU had acted as nominee for the appellants and took instruction from them. Dedi Francis was the nominal owner and commissioner of PT ASU but the person who controlled it was the first appellant.

[10] The cause of action pleaded against the appellants were for breach of fiduciary and statutory duties as directors particularly for breach of section 131 and 132 of the Companies Act 1965 and for deception, fraud and for conspiracy to defraud Potasco. It was alleged that the appellants breached their fiduciary and statutory duties by failing to disclose their personal interests in PT ASU, PT ASI, Acclaim, and PT Inovisi and by inducing it to make payments based on misrepresentations. It was also Protasco's case that the first appellant had made the investment in PT ASI as pre-condition for his purchase of 27.11% of shares in Protasco. Furthermore, the USD27 million paid to PT ASU and PT ASI was appropriated by the appellants using various corporate vehicles, fronts and nominees.

[11] The claim against PT ASU was grounded in conspiracy, fraud and breach of contract. However, as we said earlier this action has been stayed pending arbitration proceedings.

[12] Protasco called 14 witnesses to support its case. Both appellants gave evidence in their defence. In addition, they called one Andy Yong Siew Vui and Dedi Francis, the alleged nominal owner of PT ASU. The trial was lengthy and extended to 42 days.

Defence of the appellants

[13] The appellants pleaded that Dato Sri Chong Ket Pen (CKP) who was the executive vice chairman of Protasco had approached a company known as Global Capital Limited (Global Cap) to procure a purchaser for a controlling stake in Protasco and that they would jointly develop the said oil and gas project in Aceh. Following that, CKP and Global Cap entered into an Investment Agreement on 3 November 2012. The first appellant executed the Investment Agreement on behalf of Global Cap. He was described as the "co-founder" of Global Cap in the Investment Agreement. Subsequently, a master agreement which is the said SPA 1 was entered into by Protasco and PT ASU. A suit was later filed by Global Capital Limited against CKP for breach of the Investment Agreement but it was dismissed by the High Court on 3 November 17 August 2020.

[14] Global Cap was subsequently unable to secure sufficient investors. Therefore, the first appellant participated in the project by agreeing to purchase 27.11% of the shares of Protasco through his corporate vehicle, Kingdom Seekers. The Share Sale Agreement was executed on 26 November 2012. Subsequently, the first appellant was appointed as a director of Protasco on 10 March 2014. He ceased being a director on 27 November 2014 upon removal in an Extraordinary General Meeting.

[15] As for the second appellant, he was appointed as a director of Protasco on 10.12.2012 after the first appellant bought 27.11% of the shares of Protasco through his corporate vehicle, Kingdom Seekers.

He was also removed as a director on 27 November 2014. However, the second appellant pleaded that he was not involved in the negotiations and discussions with respect to the said Investment Agreement. With respect to SPA 1 and SPA 2, both appellants pleaded that they were not involved in the negotiations and discussions leading up to its execution.

[16] As for the allegations of Protasco with respect to breach of fiduciary duties, statutory duties and fraud, the appellants pleaded as follows in summary.

[17] CKP and his son Kenny Chong, exercised control over the transaction. Protasco's board of directors was under the control of CKP. They conducted extensive due diligence, were actively involved in negotiations and possessed full knowledge of the terms and risks associated with SPA1 and SPA2. In particular, it was alleged that CKP failed to disclose the Investment Agreement to Protasco's board, thereby breaching his fiduciary duties. The appellants were not the beneficial owners of PT ASU, PT Inovisi, Acclaim or PT Green Pine. The owner of PT ASU was Dedi Francis and its director was Tjoe Yudhis. Accordingly, the defendants deny any misrepresentation, breach of fiduciary duties, inducement or deception in relation to the payment of USD27 million.

[18] Furthermore, Protasco was legally represented but nonetheless proceeded with the transaction, including revising the purchase price and seeking an extension of the right to exploit oil and gas for 10 years. It was also alleged by the appellants that Protasco

failed to fulfil its own obligations that was necessary to secure such extension, thereby frustrating performance of the contractual conditions by PT ASU.

[19] With respect to the Investigation Committee, it was alleged that its report was not produced or presented to the board of directors of Protasco and no queries were addressed to the appellants. It was also pleaded that the suit was filed at the behest of CKP and that the senior management had derived financial benefits in the sum of RM10 million from the transaction through an entity known as RS Maha Niaga Sdn Bhd. This allegation was the subject of a derivative by Kingdom Seekers which is a company owned by the first appellant against others including CKP and Protasco. This action was filed on 27 October 2014, i.e. after the instant suit was filed on 22 September 2014. The derivative action was struck out by the High Court 21 April 2015. The decision was affirmed by the Court of Appeal on 21 October 2015 and leave to appeal to the Federal Court was dismissed on 24 August 2016.

Decision of High Court

[20] The learned High Court Judge first dealt with some preliminary issues in her written judgment pertaining to alleged insufficient pleadings and admission of evidence. She gave her reasons for dismissing the said objections. Her Ladyship identified the principal issues as whether the appellants breached their fiduciary or statutory duties as directors and whether they conspired to defraud Protasco. She determined the said issues in favour of Protasco and found on a

balance of probabilities that the Protasco had proven its claim. She found that the appellants controlled PT ASU and PT ASI. Her findings of fact on this critical issue was summed up in paragraph [311] of the judgment reads as follows:

> There is sufficient evidence and justification to support the conclusion or inference that Larry and Adrian (either themselves or through their staff) had caused the transfer of the RM50 million deposit, the differential sum and the Shareholder's Advance and they had direct knowledge of the transfer of funds from PT ASU to a web of companies and had personally profited from the transaction when some of the funds originating from Protasco ended up in their own accounts or were utilized to purchase shares on their behalf in Malaysian public listed entities in which they had an interest in. There was no credibility at all to their case that Dedi Francis is the owner of inter alia PT ASU, Acclaim, Telecity, Fast Global and PT Green Pine. Dedi Francis being owner of these companies simply could not be reconciled with the total body of evidence adduced.

Issues

[21] Numerous grounds of appeal have been raised by the appellants in the memorandum of appeal and during arguments. These include the right to fair trial as written grounds followed oral grounds, alleged insufficient pleadings that occasioned prejudice to the appellants, improper admission of evidence and errors in findings of facts. We shall consider the main issues under the following sub-headings.

Fair trial and breach of rules of natural justice

[22] After concluding the trial and calling for submissions, the learned High Court Judge delivered her decision on 30 August 2023. That was the date Her Ladyship fixed for clarification and decision. She gave oral grounds which are 11 pages long and are captured in the notes of proceedings when the decision to allow the claim of Protasco was pronounced. In the course of delivering the oral grounds which Her Ladyship termed as "very brief grounds", the learned High Court Judge sought some clarification from the parties about the marking of documentary exhibits and also invited submission on the appropriate reliefs. Two months later on 29 October 2023, Her Ladyship issued a her full grounds which is 196 pages long.

[23] Firstly it was argued by the appellants that the High Court fixed the matter on 28 August 2023 for clarification and oral submission. However, the learned trial judge proceeded to give decision with Broad Oral Grounds. In relation to this argument, it was submitted the learned High Court Judge conducted herself in a manner that suggested that she considered some issues for the first time when she delivered her Brief Oral Grounds.

[24] We find no merit in this ground. When the trial concluded on 12 May 2023, the learned High Court Judge gave directions for filing and exchange of written submissions and fixed 30 August 2023 for "clarification cum decision". Since the learned High Court Judge had

afforded the parties full opportunity to present both their principal and reply submissions, we are of the view that any further clarification by counsel was not a matter of right but rather one to be permitted at the court's discretion if further assistance is required. In the present case, the learned Judge considered it appropriate to invite oral submissions by way of clarification only on specific matters. In the circumstances, there was no breach of the principles of natural justice or failure to accord a fair trial to the parties.

[25] Secondly, in respect of the argument that the learned High Court Judge may have not have properly considered some relevant issues before delivering the Brief Oral Grounds, we also find no merit in it. All relevant issues were already before the learned High Court Judge in the lengthy and comprehensive written submissions. The clarification sought was mainly in relation to the marking of documentary evidence.

Whether Brief Oral Grounds is the full judgment?

[26] We shall now consider the appellant's argument that the 11 page Brief Oral Grounds is the "true judgment" or "full judgment" and not the 196 page written grounds delivered two months later.

[27] In our view, the 11 page Brief Oral Grounds of the learned High Court Judge were merely "broad grounds" that were followed up by full written grounds that reviewed the evidence in depth and with more detailed reasons for the findings on various issues. Therefore, the 196

page written judgment was not in substitution or supplemental to the Brief Oral Grounds as argued by counsel for the appellants.

[28] Counsel for the appellants cited Order 42 rule (1) of the Rules of Court 2012 and some authorities to support his argument that the oral grounds delivered by the learned High Court Judge in this case is the full judgment. Order 42 rule 1(1) reads as follows:

> (1) Every judgment, after the hearing of a cause or matter in open Court, shall, subject to paragraphs (3) and (4), be pronounced in open Court either on the conclusion of the hearing or on a subsequent day of which notice shall be given to the parties.

[29] Citing the case of *Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor Dengan Tanggungan Berhad v Majlis Perbandaran Pulau Pinang* [1996] 3 CLJ 335, counsel for the appellant submitted that the pronouncement of a judgment requires the court to state its reasons.

[30] We are not persuaded by counsel for the appellant's argument that the Brief Oral Grounds delivered in the instant case is the full judgment for the following reasons. The observation of the Court of Appeal in the above cited authority that a "judgment" in ordinary and even legal parlance "is taken to mean both the intellectual process of arriving at a decision" may well be true. However, we do not think a "judgment" pronounced in open court under Order 42 rule (1) is necessarily or always such a judgment. To hold otherwise would mean that every judgment pronounced under Order 42 rule 1, however brief and even if consisting of a single line, would constitute

a reasoned judgment or the “true grounds of judgment” as argued by learned counsel for the appellant.

[31] In the Rules of Court 2012 and the Rules of the Court of Appeal 1994, there are references to “judgment”, “judgment or order”, “written judgment”, “grounds of judgment” and “grounds of decisions”. We find that there is a difference as to the meaning depending on the context in which they are employed. We shall examine them below.

[32] In Order 42, although rule 1(1) refers to pronouncement of “judgment” in open court, rule 1(2) states that “whenever a written judgment” is to be delivered, the court may direct copies to be handed to parties upon payment of appropriate charges. This means, it is not always that the court will necessarily deliver “a written judgment” when pronouncing a decision. Furthermore, Order 42 rule 10 (1)-(4) says that the judgment given must be “drawn up” by a party and “entered” and “filed”. It is a clear allusion to the “judgment” being a decision or an order and not a written reasoned judgment with reasons attached. This is the reason that “judgment” is referred to as “judgment or order” in the other sub-rules of Order 42. Order 55 rule 1 that governs appeals from Subordinate Courts to High Court also says that “decision” includes “judgment, order or decree”. Order 55 rule 3(5) says a party may apply for “grounds of judgment” after notice of appeal is filed. This is a reference to a reasoned judgment after delivery of “decision”.

[33] In the Rules of the Court of Appeal as well, the reference to “judgment” is not necessarily to a reasoned judgment at the point of

pronouncement. Rule 24 is similarly worded as Order 43 rule 1(1). However, Rule 25 reads as follows:

> 25. Certificate of grounds of judgment
>
> On the application of any person who has within the time limited given notice of appeal against any judgment or order, the Judge of the High Court who gave or made the same shall, *unless the judgment was written, certify in writing the grounds of such judgment* or order; but delay or failure so to certify shall not prevent the appellant from proceeding with his appeal. (emphasis supplied)

[34] The above mentioned rule refers to a point of time after delivery of judgment and after an appeal is filed. Thus, it clearly envisages that grounds of judgment may come after the pronouncement of judgment. For that reason, we do not agree with counsel for the appellants that "judgment" in Order 42 rule 1(1) of the Rules of Court 2012 and Rule 24 of the Rules of Court of Appeal 202 refers to a reasoned judgment. It follows that what is delivered orally by the judge is not necessarily the full grounds of judgment. It may well be that in some instances the court would have delivered a full written grounds of judgment when pronouncing judgment. In those instances, the "written judgment" or "grounds of decision" or "grounds of judgment" or by whatever name it is called should stand as the full judgment and later substitution of another written judgment or supplemental judgment should not be countenanced. We shall now turn to the authorities cited by the parties on this issue for guidance.

[35] In *Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor Dengan Tanggungan Berhad v Majlis Perbandaran Pulau Pinang* (supra), the High Court not only pronounced judgment but delivered a written judgment. Subsequently, the learned High Court Judge issued another written judgment to supplement the first written judgment. This is clear from following passage of the judgment of the Court of Appeal:

> But supplementary grounds after a written judgment has been delivered may well affect judicial credibility because they could easily be mistaken for the wisdom of hindsight rather than representing the actual decision making process. Consequently we agree it is undesirable to have two written judgments in the same case.

[36] However, Court of Appeal did not disapprove of the practice of giving short reasons and longer written reasons when an appeal is filed. The relevant passage is as follows:

> Clearing the backlog of cases however has become the top priority, with the result that Judges nowadays tend to give short oral reasons for their decisions at the end of the trial.
>
> Courts should tell litigants where they have gone wrong.
>
> Longer written reasons are only supplied when the filing of a notice of appeal makes them absolutely necessary to achieve optimum time utilization.

[37] Thus, what was disapproved was issuance of supplemental written grounds in substitution of the earlier written judgment. In the

instant case, it is clear that the learned High Court Judge only delivered Brief Oral Grounds that was captured by the audio-recording system to broadly explain the decision. It would only be an issue if it directly conflicts with the subsequent full written judgment. We shall consider later whether that is the case.

[38] The second authority on this point that was cited by counsel for the appellants is *Dato' Seri Anwar Ibrahim v PP* [2010] 9 CLJ 625. Counsel for the appellant said that the Federal Court concluded that the "broad grounds" read out at the end of the hearing by the Court of Appeal constituted the grounds of judgment and that it was not open for the apex court to direct delivery of further grounds.

[39] However, our reading of the case is that the Federal Court did not say that "broad grounds" necessarily constitute the full written judgment. Counsel for the appellants has argued otherwise. Thus, we find it necessary to advert to the background facts of that case. In the course of a criminal trial in the High Court, the appellant applied for the statement of the complainant that was recorded under section 112 of the Criminal Procedure Code. The High Court refused the application. An appeal was mounted by the appellant against this ruling. In the Court of Appeal, the prosecution argued that the ruling of the High Court did not constitute a "decision" within the meaning of section 3 of the Court of Judicature Act 1964. The Federal Court affirmed this decision.

[40] It was argued by counsel for the appellant that the Court of Appeal only furnished "broad reasons" and therefore the appellant

was prejudiced in putting up the Petition of Appeal. The learned Solicitor General II argued that the “broad reasons” actually constituted the grounds of judgment in that case. It was urged that the court should look at the content and not the label assigned by the Court of Appeal. The Federal Court agreed with this submission after perusing the “Broad Reasons”. It concluded that for all intents and purposes it was the grounds of judgment. The Federal Court speaking through Arifin Zakaria CJ (Malaya) said as follows:

> **[6]** In this connection, we wish to state that grounds or reasons for a judgment are required so that parties, particularly the unsuccessful one, would know why the judge arrived at the decision the way he did. The reason need not be long especially when the outcome is obvious. It can be obvious when facts are not in dispute and the law is well established. In such a case, all that is needed is the conclusion and his reason in support of the same. This is not to say that in all cases judgments should be brief and concise. Where facts are disputed, the judge has to discuss and analyse them. Where the law is seriously doubtful, he should argue it out before arriving at a decision. More often than not, judgments become long because facts which are sometimes unnecessary are repeated. Laws and authorities which are well established are recited over and over in the same judgment. Statements are often repeated in different ways. Sometimes, this is intentionally done to stress a point. It only makes the grounds long and unwieldy. Having said that, this is not to discourage judges from writing comprehensive grounds, if they have the ability and time to do so.
>
> **[7]** In this appeal before us, the grounds of the Court of Appeal though described as "broad reasons" are to us clear and comprehensive, it contains all the ingredients of a speaking judgment. Anyone, familiar with the facts and background of this

> case would understand why the Court of Appeal arrived at the decision.

[41] It is clear from the reasoning of the Federal Court that there was one issue of law only before the Court of Appeal, i.e. whether the "ruling" was an appealable decision. Having perused the "Broad Reasons", the Federal Court found that it constituted a speaking judgment and the Court of Appeal had "discharged its duty". In the premises, this authority must be read in the context of the particular facts that underpinned the reasoning of the Federal Court. It is not an authority that states that all "Broad Grounds" delivered during pronouncement of a decision will constitute the full or final grounds of judgment.

[42] The background facts of the "Broad Oral Grounds" in the instant case are vastly different. The 11 page "Broad Oral Grounds" were not issued to explain the reasoning of the High Court in respect of a sole issue of fact or of law. It was issued to explain a decision after a full trial that involved numerous and multifaceted issues of fact and law and several causes of action. The reasons were stated to be very "brief" by the learned trial judge and it came immediately after final clarification. As we said earlier, the 196 page judgment was issued only two months later. In the premises, *Dato' Seri Anwar Ibrahim v PP* can be readily distinguished.

[43] We find that the Brief Oral Grounds given by learned trial judge as a prelude to the full written grounds were not unusual nor irregular. As stated in *Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor*

Dengan Tanggungan Berhad v Majlis Perbandaran Pulau Pinang (supra) and we repeat here that judges often deliver broad grounds orally to inform litigants where they have gone wrong before furnishing longer written grounds of judgment at a later stage. This practice was again endorsed more recently by the Court of Appeal in the case of *Tegas Sejati Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat & Anor and another appeal* [2023] 3 MLJ 795 at p.720 paragraphs [70] to [74]. In this case as well, the learned trial judge delivered broad grounds which were followed up by detailed grounds of judgment. The appellant argued that the High Court had supplemented his first judgment and therefore the second judgment was "void". In rejecting this argument, the Court of Appeal noted that the High Court had qualified the first judgment as merely a summary pending full grounds of judgment. We note that in the instant case as well, at the time of delivering decision, the learned trial judge had qualified the 11 page broad grounds by saying that she only "got very brief grounds".

[44] For the above reasons, we disagree that the learned trial judge in the instant case had supplemented the first 11-page Brief Oral Grounds with the second judgment 196-page judgment. Therefore, we reject the argument of the counsel for the appellants that the 11 page Brief Oral Grounds is the "operative" or "full" grounds of judgment. They were broad grounds in the true sense of the term and consistent with the practice of the courts as stated in the above mentioned cases. For the above reasons as well, the principle of *functus officio* was not breached when the comprehensive 196 page judgment was delivered two months later.

Discrepancy and omissions in the Broad Grounds

[45] Counsel for the appellant also argued that some important issues raised on behalf of the appellant were not considered by the learned trial judge in the Brief Oral Grounds. We find no merit in this argument because the Brief Oral Grounds were followed by the comprehensive 196-page grounds of judgment that addressed almost all the issues raised by the parties. It does not mean that the trial court is supplementing gaps in the Brief Oral Grounds.

[46] We also find that there are no discrepancies or contradictions between the Brief Oral Grounds and the written judgment. Counsel for the appellant set out 13 alleged "discrepancies" between the same. We agree with counsel for Protasco that mere omission to address something in the Brief Oral Grounds does not amount to discrepancy or a divergence.

[47] We are mindful that some matters were not mentioned or expounded in detail in the Brief Oral Grounds. However, as explained in the authorities that we cited earlier, courts sometime issue broad grounds to let litigants know when they have gone wrong generally. Therefore, it cannot be a comprehensive judgment. Thus, it would not be appropriate to engage in a minute dissection of alleged omissions in the Brief Oral Grounds or to place undue emphasis on minor divergences between those grounds and the full written judgment so as to impugn the final decision.

[48] It follows that there was no miscarriage of justice that warrants remitting the case for retrial under section 71 of the Court of Judicature Act 1964.

Whether essential issues not considered in the judgment?

[49] It was also argued that two essential issues were not addressed at all in the full judgment , i.e. the incorporation documents of PT ASU and the nature of Protasco's claim. We find no merit in this submission for the following reasons.

[50] It is clear in paragraph 195 of the judgment that the learned trial judge was aware that as per the incorporation documents, Dedi Francis was the Commissioner of the company and that Tjoe Yudhis was the President Director. However, Her Ladyship considered the evidence elicited during cross-examination of Dedi Francis and the evidence in chief of Tjoe Yudhis and concluded both of them took instructions from the appellants. Her Ladyship also made a finding that although Dedi Francis was the owner of PT ASU according to the incorporation documents, the beneficial owners were the appellants who had full control of the company. In the premises, it is inaccurate to say that the learned trial judge did not consider the incorporation documents.

[51] The second issue was that the learned trial judge allegedly did not consider the defence of the appellants that Protasco made an independent and considered decision to enter into SPA 1 and SPA 2

and therefore it was “a commercial decision” for which the appellants cannot be liable.

[52] We find no merit in the above ground. It is true that the term “commercial decision” was not used by the learned trial judge in rejecting the defence of the appellants and allowing the claim of Protasco. However, from reading the judgment, it is clear that the defence was rejected because of the appellant’s non-disclosure of their interest in PT ASU and the other related companies. In paragraph [316] of the judgment that was cited by counsel for Protasco, the learned trial judge said as follows:

> [316] I am inclined to agree with Protasco's counsel that the lack of disclosure by Larry and Adrian as being related persons with PT ASU and being in control of Acclaim and therefore correspondingly being in a position of conflict, had a direct consequence on Protasco proceeding with the transaction and making the necessary payments pursuant thereto. The lack of disclosure had a direct consequence on the integrity of announcement made by Protasco to Bursa and on the audit conducted by Protasco's auditors on the transaction.

[53] In the premises, we find no merit in the ground of appeal that an essential defence was not considered by the learned trial judge.

Sufficiency of pleadings

[54] Counsel for appellants argued that the claims of the Protasco were not supported by sufficient particulars as required under Order

18 rule 12 of the Rules of Court 2012. This allegedly occasioned prejudice to the defence. This ground of appeal is premised on the following arguments.

[55] The argument that Protasco claim lacked the particulars and specificity necessary for a claim based on fraud, deception and deceit was raised in the High Court at the outset and at the conclusion of the trial. Throughout the trial as well, objections were taken by the appellants to evidence on the basis that they were outside the pleaded case.

[56] After correctly setting out the law on the duty of a plaintiff to give sufficient notice in the pleadings to the defendant with respect to the case that the latter has to meet, the learned trial judge noted that the Protasco had pleaded distinct causes of action, i.e. breach of fiduciary duty in paragraphs 60 to 62, breach of section 132E of the Companies Act 1965 in paragraph 65 and fraud and conspiracy in paragraphs 45 to 59 and paragraphs 66 to 67 of the statement of claim.

[57] Her Ladyship agreed with Protasco's counsel that the paragraphs in the statement of claim setting out the various causes of action do not stand-alone but should be read holistically. Thus, it would not matter if the ingredients of the said causes of action are not set out in consecutive paragraphs in the statement of claim. Her Ladyship directed herself based on the authority of *Letchumanan Chettiar Alagappan @ L Allagappan (as executor to SL Alameloo Achi alias Sona Lena Alamelo Acho, deceased) & Anor v. Secure*

Plantation Sdn Bhd [2017] 5 CLJ 418 that the correct test for a valid plea of fraud is whether or not the facts to support fraudulent conduct is pleaded even if the word “fraud” is not specifically pleaded.

[58] The learned trial judge noted that the Protasco’s essential pleading in relation to fraud was as follows. Protasco was deceived into paying the deposit of RM50 million under SPA 1 and the differential sum under SPA 2 because it was misled by the second appellant into believing that the conditions precedent in SPA 1 and the conditions subsequent in SPA 2 were attainable. The appellants also misrepresented that the USD5 million was needed for the oil well reactivation and securing of the 10 year extension of the lease of the PMPA from Pertamina. The appellants also induced Protasco to accept the PT Inovisi shares as good security for the said payments. Both of them knew that SPA 1 and SPA 2 were a scam to defraud Protasco. They did not disclose their beneficial ownership and control of PT ASU, PT ASI, PT Inovisi and PT Green Pine. They misappropriated USD27 million and breached their fiduciary, equitable and statutory duties. Tjoe Yudhis acted as nominee of the appellants and did not sign any of the PT ASU letters attributed to him.

[59] Her Ladyship noted that the appellants were able to respond to the case set out in the statement of claim without asking for further or better particulars. We agree with Her Ladyship. The summary of the defence of appellants is as follows. They contended that the acquisition of PT ASU by Protasco was an arm’s-length transaction negotiated independently by the parties without any

misrepresentation or inducement on their part. They maintained that all payments were authorised by Protasco's board or management. The appellant's role was limited to introducing PT ASU to Protasco. The first appellant denied any involvement beyond the introduction. The second appellant pleaded that his role was confined to following up with status of negotiation on SPA 2. He was not involved in the discussions between Protasco and PT ASU.

[60] In our view, the learned trial judge made no error with regard to the pleading point. It bears repeating that at the heart of Protasco's case was the contention that the appellants failed to disclose the material fact that they had beneficial ownership or exercised control over PT ASU and the other companies, i.e. PT ASI, Acclaim, PT Inovisi and PT Green which were directly or indirectly involved in the transaction in question that resulted in losses for Protasco. This is clearly pleaded in paragraphs 51 to 59 of the statement of claim. The pleading was duly considered by the learned trial judge. Therefore, Her Ladyship's rulings to allow the admission of evidence to support the above pleadings of Protasco cannot be in anyway be faulted. If there was anything unclear in the pleadings with respect to the averment, as the learned trial judge observed, an application for better and further particulars should have been made at the outset.

[61] We also find no merit in the argument that there was no specific averment in the statement of claim that the appellants had committed forgery with regard to the letters signed off by PT ASU. The main claim against the appellants is fraud premised non-disclosure of the interests in PT ASU and the other companies in

question. The use of documents not signed by Tjoe Yudhis is only one of the means of committing the fraud. In any event, it was pleaded that the appellants authored or caused to be authored the said PT ASU letters with fraudulent design. The learned trial judge gave this averment careful consideration and found as a fact that Tjoe Yudhis did not sign the said letters. Since there is a clear and specific pleading that the appellants caused the issuance of the letters with fraudulent design, we cannot say that the assertion of Protasco at the trial that the appellants committed forgery is a "radical departure" from the statement of claim that warranted the exclusion of evidence related to it.

[62] With respect to particulars, the appellants also raised the issue that the Protasco did not plead specifically that it would not have taken up the Blocked PT Inovisi Shares as security if the appellants had disclosed their alleged interest in Acclaim which is the company that provided it. We see no merit in this ground of appeal. We find that various paragraphs of the statement of claim relating to fraud and inducement, if read holistically gave sufficient notice that the Protasco would not have entered into the investment venture if not for the non-disclosure in question on the part of the appellants. Our reasons are as follows.

[63] In paragraph 31 of the statement of claim, it is averred that Acclaim provided security in the form of the Blocked Shares in PT Inovisi. In paragraph 51(e), Protasco pleaded that both Acclaim, PT Invovisi and PT ASU were beneficially owned by the appellants. This averment comes under the subheading of "Particulars of Fraud" and

it is stated as a fact discovered after investigation. In paragraph 52, Protasco averred that it is “evident” it became a victim of deception and fraud. In paragraph 57, the Protasco pleaded that the securities provided for by Acclaim was “inducement” to pay the deposit of RM50 million. In paragraph 59, it is again pleaded that the appellants controlled or were the alter ego of Acclaim. Critically, in paragraph 60 of the statement of claim, Protasco pleaded that 60(d) that the appellants that the appellants “had a duty to disclose all information in their possession that may affect its decision in connection with the transaction.” In paragraph 62 (b), Protasco specifically stated that the appellants failed to disclose their interest in Acclaim and the other companies in question.

[64] The above paragraphs in summary state as follows. Acclaim provided security to the Protasco for the transaction. Protasco was induced by the said security to entered into the transaction (paragraph 57). However, Protasco did not know that Acclaim was controlled by the appellants particularly the first appellant who introduced the investment in the first place. Reading all the above-mentioned paragraphs together, it is plain to us that the appellants, for the purpose of mounting their defence would have had reasonable notice that Protasco’s case is that they would not have entered into the transaction if they knew that the appellants were behind the transaction and behind Acclaim as well. In the premises, the failure by Protasco to specifically state that they would not have purchased the shares in PT ASI if it knew of the interest of the appellants in the security provider, i.e. Acclaim is of no consequence. Furthermore, the appellants responded to the statement of claim by pleading that they

did not commit deception and fraud and that the Protasco entered into the transaction with its eyes open by making a commercial decision. In the premises, we fail to see how the defence would have been materially different even if Protasco had specifically pleaded that it would not have entered into the transaction had it known that the appellants were in control of Acclaim which was the security provider.

[65] With respect to the execution of SPA 1 and SPA 2, the appellants made a similar argument, i.e. that there is no specific plea that Protasco would not have entered into the said agreements had it been made aware of the alleged interest of the appellants in PT ASU and the other companies in question. It was also appellants' case that Protasco had conducted a due diligence exercise before the said agreements were signed. In our view, this argument has no merit for similar reasons given in the foregoing passages. There is sufficient pleading that it was the first appellant who acted as the introducer for the investment of Protasco in PT ASI and he never disclosed his interest in PT ASU and other companies in question. Thus, Protasco was led to believe that it was an arms-length transaction when it was not. In the premises, irrespective of the due diligence exercise undertaken by Protasco, it is plain from the pleadings that it would not have proceeded with the transaction had the appellants made full and frank disclosure of their interests at the outset.

[66] Next, the appellants argument on the insufficient particulars point was in relation to the misappropriation of USD27 million. In paragraph 62(f) of the statement of claim, it was pleaded that the monies were misappropriated for benefit of the appellants or third

parties using various corporate vehicles, fronts and nominees. It was argued that there were no particulars as to the third-parties. We find no merit in this argument as the main companies are particularised in paragraph 59 of the statement of claim. The learned trial judge was also of the opinion in paragraphs [29] and [30] that material facts in relation to the misappropriation of the monies were pleaded. Her Ladyship dismissed the objection that other entities were mentioned in evidence and said as follows:

> [29] These questions and answers allude to PT NRR, Fast Global and Telecity as entities that were connected or related to Larry and Adrian whereas the pleaded case of Protasco refer only PT ASU, PT ASI, Acclaim and PT Green Pine as the entities under control of and/or related to and/or being the alter ego of Larry Tey andAdrian Ooi.
>
> [30] The objection is untenable as I find the evidence sought to be adduced in these questions and answers are relevant and will throw light on where the money which emanated from Protasco's payments to PT ASU flowed to - facts to support the material facts already pleaded in paragraphs 51(e), 59, 62(b) and (f), and 67(g) that: (i) the money went to various other entities; (ii) were utilized for the benefit of Larry Tey and Adrian Ooi, (iii) that they are in fact the beneficial owners of, amongst others, PT ASU and PT ASI, PT Inovisi and PT Green Pine; and (iv) they have misappropriated the USD27million in breach of their of their fiduciary, equitable and statutory duties.

[67] With respect to the deception practised by the appellants, counsel for the appellant submitted that no particulars were provided with respect to the manner in which the second appellant carried it

out and that there was contradiction in the pleadings between paragraphs 45 to 47 and paragraphs 62 and 67 of the statement of claim. This argument is found in paragraph 24.4 of the main submission of the appellants. It reads as follows:

> Thirdly, seeming separate from the 2 other methods by which the Fraud was effected, the Statement of Claim alleged in paragraphs 45 to 47 that Adrian (without Larry) had deceived the Respondent into paying the USD27 million.
>
> a. No particulars were provided as to the manner in which the deception was carried out.
>
> b. Larry was not involved in this pea, which contradicted the plea made in other parts of the statement of claim, particularly paragraphs 62 and 67, where both the Appellants, i.e. Larry and Adrian, were said to have effected the deception.

[68] In paragraphs 45 and 46, the Protasco pleaded that it was deceived into making payments because it was led to believe by the second appellant that the Conditions Precedent in SPA 1 and Conditions Subsequent in SPA 2 were attainable. In paragraph 47, Protasco pleaded that it was deceived into paying USD5 million as Shareholders' Advance on the ground that it was urgently needed as working capital. In paragraph 62, Protasco pleaded particulars with the breach of duty on the part of the appellants as its director. In paragraph 67, Protasco pleaded particulars with respect to the conspiracy committed by the appellants and PT ASU (the first defendant).

[69] When objections were raised during the trial with respect to averments of inducement and representation by the appellants in the in witness statement, the learned trial judge dealt with them by reading all the relevant paragraphs of the statement of claim together. For example, Her Ladyship said as follows in paragraph [28]:

> The objections to these questions were premised on Order 18 rule 12 of ROC 2012 on insufficient particulars. These questions and answers relate to the representations made by Larry and Adrian pertaining to the fulfilment of the conditions precedent in SPA 1, the fulfilment of conditions subsequent in SPA 2, the involvement of Larry and Adrian in the negotiation process, the inducement by the provision of securities to guarantee the payments made towards the transaction which led Protasco to believe that it would be able to dispose of the securities and recover the purchase consideration and Shareholders' Advance. I find no merits to the objection as the material facts necessary for the purpose of formulating Protasco's cause of action in relation to these questions have been pleaded in the Statement of Claim at paragraphs 45, 46, 47, 57, 62(a), and (e), 67(c) and (e). There is no reason why evidence on facts relied upon to support the material facts should not be allowed.

[70] We see no contradiction in the pleadings of Protasco with the respect to the individual acts or the combined acts of the appellants if the statement of claim is read holistically and in the context of the causes of action in fraud and conspiracy. Therefore, we see no merit in the above mentioned argument of the appellants.

Whether radical departure from statement of claim?

[71] We find no merit in this ground of appeal either. We would agree as per the authorities submitted by counsel for the appellants, a radical departure or expansion from the pleaded case by a plaintiff at the trial would occasion prejudice the defendant. However, we do not find that to be case here. We will not address every single purported departure here. The learned trial judge considered every single objection taken on the evidence that they were outside the pleaded case during the course of the trial and dismissed them. In the written judgment, Her Ladyship considered this issue in paragraph [19] onwards. We agree with her. Broad facts to support elements in relation to fraud, deception, inducement, shadow, representations, non-disclosure of interest and shadow directorship in critical companies, and dissipation of monies on the part of appellants have been pleaded in the statement of claim.

[72] As we said earlier, the learned trial judge correctly directed herself on the law in relation to the pleadings before dealing with the various objection with regard to sufficiency of particulars and departure from the pleaded case before admitting or giving treatment to the admitted evidence.

Whether privileged evidence wrongly considered?

[73] This issue is in relation to the section 112 statements recorded by Insp. Mohd Suffian bin Abdul Rashid under section 112 of the Criminal Procedure Code in the course of police investigations. The

statements were recorded from various individuals including the appellants. Protasco relied on this section 112 statements at the trial to show the money trail.

[74] The section 112 statements were exhibited in an affidavit sworn by Insp. Mohd Suffian in support of a Mareva injunction by Protasco. However, by consent order dated 11 April 2018, the said affidavit was expunged. The appellants argued that these statements are inadmissible as they are privileged documents and the affidavit exhibiting them had been expunged. This argument was not raised in the High Court by the appellants and thus not addressed by the learned trial judge.

[75] The learned trial judge referred to the section 112 statements and allowed cross-examination of the appellants with respect to the same. The learned trial judge also made reference to the section 112 statements of other witnesses at the trial, namely of Dedi Francis, Mohd Ablyniyam, Yong Chieh, Mohd Zamzuri and Faizatul Ikmi.

[76] We are of the view that the consent order did not completely bar the admission of the section 112 statements exhibited in the affidavit of Insp. Mohd Suffian as the consent order provided an important qualification. It allowed presentation of evidence that has been obtained by discovery or through other means allowable by the law. The relevant paragraph of the consent order read as follows:

> (c) Undertake not to tender in evidence, or disclose the impugned evidence (i.e.. paragraphs 77,78,82 to 85, Exhibits HAJ-28, HAJ-29

and HAJ-30 of Enclosure 159) sought to be expunged via Enclosure 215 and Enclosure 218 save and except that nothing herein shall restrict the Plaintiff from presenting the evidence at trial or in any proceedings in Court or in any arbitration evidence including the impugned evidence sought to be expunged which has been obtain via the discovery process or through other means allowable by the provisions of the law.

[77] Furthermore, Enclosure 159 was brought into the evidence in the trial court by the appellants as they used it for the purpose of an application to strike out the suit and for a stay application. The affidavit was included in the trial bundles. As the affidavit including the section 112 statements formed part of the evidence in the trial, they come within the qualification provided in the consent order. Furthermore, as we said earlier, no issue was raised about the privileged nature of the section 112 statements in the trial court.

[78] As for the argument that section 112 statements are for the purpose of criminal investigations and cannot be used in civil proceedings, we are not persuaded that it is absolutely prohibited; especially if police investigations are completed or if there are no criminal proceedings afoot. The issue of tampering with witnesses which is a concern in criminal trials may not be relevant anymore. Even in criminal cases, in the recent Court of Appeal case of *Siti Aisyah v PP* [2019] 7 27, it was held that section 112 statements of prosecution witnesses are not absolutely privileged. Furthermore, in the old case of *Ooi Choon Lye v Lim Boon Kheng & Ors* [1972] 1 MLJ 153, the former Federal Court acknowledged that previous statements made to police may not constitute substantive evidence

but can be used for cross-examination in a civil proceeding. Gill FJ speaking for the Federal Court said as follows:

> It may be argued that this statement was taken in the course of a police investigation under the provisions of the Criminal Procedure Code, and that as such it could be used only in criminal proceedings*. I do not think there is any prohibition against its use in a civil case, so long as it is relevant to the subject matter of the case.* The police may refuse to furnish a party to a civil action with a copy of such a statement, which I think they are entitled to do, but that is no reason why, if the deputy public prosecutor chooses to supply it, as he did in this case, it cannot be used for the purpose of cross-examination. (emphasis ours)

[79] In the case of *Kasai Reiko v Annie Lor Lee Fong & Ors* (Public Bank Bhd, Intervener) [2014] 7 MLJ 652, the High Court relied on the above mentioned authority to admit a section 112 statement.

Findings of fact by High Court

[80] We see no error in the finding of facts by the High Court that led to the decision to allow the claim of the Protasco. The principles of appellate intervention on facts are trite and were restated with clarity in the Federal Court case of *Ng Hoo Kui v Wendy Tan Lee Peng (administratrix for the estate of Tan Eve Kwang, deceased) & Ors* [2020] 12 MLJ 67. In the instant case, the learned trial judge had given careful consideration to the evidence and arguments presented on behalf of Protasco and the appellants in the lengthy judgment. We have not been persuaded that any finding of Her Ladyship that is "repugnant to common sense" or perverse. The appellants'

contention that Protasco entered into the investment as a matter of its own commercial judgment was, in substance, considered by the learned trial Judge, although not articulated in so many words. But what is clear is that the appellants had not been honest from the outset about their interests, control or influence in the Indonesian companies and Acclaim that were critical to the investment of Protasco. It was established that Protasco would not have participated in the oil and gas investment if it knew that the first appellant who had introduced it in the first place was also pulling the strings of the critical companies in question together with the second appellant. Evidence was led that the monies paid by Protasco were siphoned out through a web of companies under the control of the appellants. The learned trial judge found the Protasco's witnesses more credible after careful evaluation. She said as follows in paragraph [325]:

> **[325]** In deciding the matter, I have preferred the evidence of the Plaintiff's witnesses whom I viewed as 'more credible' in support of the Plaintiff's contentions, as compared to the Defendants' witnesses whom I found 'evasive' when troubling questions were put to them, and were not credible at all. The Defendants' witnesses' evidence were riddled with contradictions and simply do not add up. Even if there were discrepancies in the Plaintiff's witnesses' evidence, if at all, were minor and not relevant, and on the whole, their evidence was comprehensive, quite compelling, convincing and consistent with the documents and the overall probabilities. In the context of the entirety of the evidence before the court, any lingering doubts that I have, I would resolve in favour of the Plaintiff.

[81] In our view, the plain findings of fact do not warrant appellate interference. We have also considered all the myriad issues raised in the very lengthy written submissions not directly addressed in this judgment but we see no reason to overturn the decision of the High Court.

[82] For the above reasons, we unanimously dismiss the appeal of the appellants wholly with costs of RM150,000.00 in favour of the Protasco.

[83] As for the cross-appeal of Protasco for the failure of the learned trial judge decision not to award exemplary and aggravated damages, we see no reason to interfere with her discretion. The cross-appeal of Protasco is unanimously dismissed with no order as to costs.

Dated: 9th March 2026

SGD

(RAVINTHRAN PARAMAGURU)

Judge

Court of Appeal

Parties Appearing:

For the Appellants	:	Dato' Malik Imtiaz Sarwar C. Vignesh Kumar R. Jayasingam Lim Yvonne Rubanyah Sedopathy Chen Jia Ern [Messrs B H Lawrence & Co.]
For The Respondent	:	Peter Skelchy Joycelyn Teoh Tan Zhixin How Chen Hee [Messrs Cheah Teh Su]