

**IN THE HIGH COURT OF MALAYA AT KUALA LUMPUR
(COMMERCIAL DIVISION)
CIVIL SUIT NO. WA-22NCC-21-01/2022**

BETWEEN

**ZAKRI AFANDI BIN ISMAIL
(NRIC NO. 670101-11-5767)**

... PLAINTIFF

AND

**1. IKWAN HAFIZ BIN JAMALUDIN
(NRIC NO. 870412-14-5185)**

2. ALPINE MOTION SDN BHD

(COMPANY NO. 201301042101/1071926-W) ... DEFENDANTS

HEARD TOGETHER WITH

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1. **IKWAN HAFIZ BIN JAMALUDIN**
(NRIC NO. 870412-14-5185)

2. **NUR ANIS BINTI JAMALUDIN**
(COMPANY NO.: 850516-14-6272)

3. **IVORY INSIGHTS SDN BHD**
(COMPANY NO. 201201021076/1005568-W) ... DEFENDANTS

JUDGMENT

A. Introduction

[1] There are two suits before this court, namely WA-22NCC-21-01/2022 (“Suit 21”) and WA-22NCC-23-01/2022 (“Suit 23”). They are heard together, as the issues in both suits are similar.

[2] The parties are referred to in the following manner:

- a. The plaintiff in Suit 21 and Suit 23, Zakri Afandi Ismail, is referred to as “Zakri”;

- b. The 1st defendant in Suit 21 and Suit 23, Ikwon Hafiz Jamaludin, is referred to as “Ikwon”;

- c. The 2nd defendant in Suit 21, Alpine Motion Sdn Bhd, is referred to as “Alpine Motion”;



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- d. The 2nd defendant in Suit 23, Nur Anis Jamaludin, is referred to as “Nur Anis”; and
- e. The 3rd defendant in Suit 23, Ivory Insights Sdn Bhd, is referred to as “Ivory Insights”.

[3] Zakri filed applications by way of enclosure 8 in Suit 21 and enclosure 9 in Suit 23. Details of the applications are set out below:

- a. Under enclosure 8 of Suit 21, Zakri sought an order to restrain Ikwan from dealing with, transferring and/or disposing of 2,040,000 shares held by Ikwan in Alpine Motion (“Alpine Motion Shares”), until the determination and disposal of Suit 21.
- b. Under enclosure 9 in Suit 23, Zakri sought an order to restrain Ikwan and Nur Anis from dealing with, transferring and/or disposing of two shares held by Ikwan and Nur Anis in Ivory Insights (“Ivory Insights Shares”), until the determination and disposal of Suit 23.

[4] Enclosure 8 in Suit 21 and enclosure 9 in Suit 23 are collectively referred to as the “Injunction Applications”. The Alpine Motion Shares and the Ivory Insights Shares are collectively referred to as the “Subject Shares”.

[5] I allowed the Injunction Applications, as I found that the balance of convenience lies in favour of Zakri. There is a need to preserve the existing state of affairs between the parties, to safeguard the integrity of



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Zakri's claim. I also found it to be more prejudicial to Zakri if the Injunction Applications are not allowed, as compared to the prejudice occasioned to Ikwan and Nur Anis if the Injunction Applications are allowed. This is especially so, taking into account that the injunctions would only apply to the Subject Shares, and not to all shares of Ivory Insights and Alpine Motion. The business and operations of these companies would not be affected.

B. Background Facts

[6] Zakri and the late Tan Sri Jamaludin Jarjis ("TSJJ") were in business together. Ikwan and Nur Anis are the children of TSJJ.

[7] TSJJ unexpectedly passed away in April 2015.

[8] The history of Ivory Insights and Alpine Motion began with the acquisition of NUR Power Sdn Bhd ("NUR Power") from its receivers and managers by Dulang Ekuiti Sdn Bhd ("Dulang Ekuiti") in 2012. As part of the acquisition, 40% of the shares in Dulang Ekuiti were issued to lenders that NUR Power was indebted to, namely Malayan Banking Berhad, CIMB Bank Berhad, RHB Bank Berhad and AmBANK (M) Berhad (collectively, the "Lenders"). The remaining 60% of the shares in Dulang Ekuiti were held by Teras Dara Sdn Bhd, a company owned by TSJJ.

[9] Zakri claimed that he played an instrumental role in the acquisition of NUR Power. However, he was not paid any monetary compensation for his role. He was appointed as director of NUR Power on 23 January 2013.



[10] Ivory Insights and Alpine Motion were special purpose vehicles acquired to purchase shares of the Lenders in Dulang Ekuiti. Consequent to the purchase of the Lenders' shares, Ivory Insights held 10.94% of the shares in Dulang Ekuiti, while Alpine Motion held 29.06% of the shares.

[11] Zakri was initially a shareholder and director of both Ivory Insights and Alpine Motion. He held one share in Ivory Insights, and Tengku Zahaimi Tuan Hashim held the other share. These shares are said to have been held on trust for individuals identified in a trust deed dated 13 May 2015 ("Trust Deed"). Zakri also held 2,040,000 shares in Alpine Motion.

[12] However, the Subject Shares were transferred to Ikwan and Nur Anis. This was reflected in directors' circular resolutions, as well as transfer forms dated 27 January 2017. Zakri did not sign the resolutions. He also denied signing forms to effect the transfer of the Subject Shares.

[13] Zakri was also said to have resigned as a director of Ivory Insights and Alpine Motion on 26 January 2017. Ikwan was appointed as a director of both companies, on the same date. Zakri claimed that he was wrongfully removed as a director.

[14] The transfer of the Subject Shares and his removal as a director prompted Zakri to commence Suit 21 and Suit 23. In these actions, he sought to recover the Subject Shares and to be reinstated as a director of Ivory Insights and Alpine Motion.



C. The Injunction Applications

[15] The applications are made under order 29 rule 1 of the Rules of Court 2012, which provides that:

“(1) An application for the grant of an injunction may be made by any party to a cause or matter before or after the trial of the cause or matter, whether or not a claim for the injunction was included in that party's originating process, counterclaim or third party notice, as the case may be.”

[16] The general purpose of an interlocutory injunction is to maintain or preserve the *status quo* of a matter, and to protect the rights of the parties pending the final disposal of the matter. In this case, Zakri sought the following orders in the Injunction Applications:

- a. In Suit 21, an order to restrain Ikwan from dealing with, transferring and/or disposing of the Alpine Motion Shares, until the determination and disposal of Suit 21; and
- b. In Suit 23, and order to restrain Ikwan and Nur Anis from dealing with, transferring and/or disposing of the Ivory Insights Shares, until the determination and disposal of Suit 23.

[17] In ***Keet Gerald Francis Noel John v Mohd Noor Bin Abdullah [1995] 1 MLJ 193***, the Court of Appeal held at page 206I that a judge



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hearing an application for an interlocutory injunction should undertake the following enquiries:

- “(1) he must ask himself whether the totality of the facts presented before him discloses **a bona fide serious issue to be tried**...*
- (2) having found that an issue has been disclosed that requires further investigation, he must consider **where the justice of the case lies**. In making his assessment, he must take into account all relevant matters, including the practical realities of the case before him. **He must weigh the harm that the injunction would produce by its grant against the harm that would result from its refusal** ...*
- (3) the judge must have in the forefront of his mind that the remedy that he is asked to administer is discretionary, intended to produce a just result for the period between the date of the application and the trial proper and **intended to maintain the status quo ... Accordingly, the judge would be entitled to take into account all discretionary considerations**, such as delay in the making of the application or **any adequate alternative remedy that would satisfy the plaintiff's equity, such as an award of monetary compensation** in the event that he succeeds in establishing his claim at the trial ...”*

(emphasis added)



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D. Considerations And Findings

Issues

[18] Guided by **Keet Gerald Francis**, I considered the following issues in determining that the Injunction Applications should be allowed:

- a. Issue 1: There are *bona fide* serious issues to be tried;
- b. Issue 2: The balance of convenience lies in favour of Zakri; and
- c. Issue 3: Damages would not be an adequate remedy.

Issue 1: There Are Bona Fide Serious Issues To Be Tried

[19] I found the statements of claim in Suit 21 and Suit 23 show that there are *bona fide* serious issues to be tried.

[20] I am in this regard guided by **Gan Kui Lan @ Gan Kee Lan v Chan Kar Loong (No: 1) [2002] MLJU 352**, where Abdul Malik Ishak J (as His Lordship then was) held as follows at page 44 of the judgment:

*“Applying **Keet Gerald Francis Noel John** to the fullest, it is my judgment after considering the totality of the facts presented through the affidavits that **the plaintiff here, being the applicant who is asking for an interlocutory injunction, must first and foremost have a cause of action before I will grant him any remedy.** This is especially so when this court is asked to grant an*



*interlocutory remedy without having the benefit of a full trial. I am acutely aware that the plaintiff is saying that in the event the plaintiff is denied the injunction sought by him, he would suffer grave injustice as the first defendant being the alleged tortfeasor would enjoy the benefit of their tort and that the second, third, fourth and fifth defendants would continue breaching the written agreements with impunity. With respect, **if the plaintiff cannot show to this court that he has a valid cause of action his application must surely fail** (see *RCA Sdn Bhd v Pekerja-Pekerja RCA Sdn Bhd & Ors* [1991] 1 MLJ 309; *Associated Newspapers Group v Insert Media Ltd* [1988] 2 All ER 420). On the other hand, **if the plaintiff can show to this court that he has prima facie a valid cause of action, he need not go on to show that he will definitely succeed in that cause of action. He needs only to show that there is a serious question to be tried.** In my judgment, when Lord Diplock uses the phrase 'a serious question to be tried' in the *American Cyanamid* case, he must have in mind that **the court must be satisfied that the claim is not frivolous or vexatious** ...”*

(emphasis added)

[21] From the statements of claim, it is revealed that Zakri's concerns started in 2016, when he was forwarded copies of directors' circular resolutions that state that he agreed to transfer the Subject Shares to Ikwan and Nur Anis. The resolutions do not contain his signature and he denied agreeing to transfer the Subject Shares. Zakri further contended that the transfers were effected fraudulently as he did not execute any



form to effect the transfer. He claimed that his signatures on the transfer forms are false.

[22] I also considered Zakri's contentions in light of the fact that:

- a. Zakri held shares in Ivory Insights on trust for individuals identified in the Trust Deed; and
- b. Zakri had provided a personal guarantee of RM23 million to finance Alpine Motion's purchase of shares in Dulang Ekuiti from three of the Lenders. The personal guarantee would have been undertaken in his capacity as a shareholder of Alpine Motion.

[23] The transfer of the Subject Shares to Ikwan and Nur Anis while the Trust Deed continued to subsist and while Zakri continued to be liable for the personal guarantee, raises *bona fide* serious issues that require further consideration.

[24] It is also to be noted that no share sale agreement was executed in respect of the Subject Shares, and the consideration of RM1 for the transfer was never paid to Zakri.

[25] The facts set out in the statements of claim show a *prima facie* cause of action and *bona fide* serious issues to be tried. Thus, I find the grant of the Injunction Applications to be warranted.



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Issues 2 And 3: The Balance Of Convenience Lies In Favour Of Zakri And Damages Are Not An Adequate Remedy

[26] I find that the balance of convenience lies in favour of Zakri, as the harm that would result from the grant of the injunctions outweighs the harm that would result from its refusal.

[27] The reason for this finding relates to the purpose of the acquisition of Ivory Insights and Alpine Motion after the acquisition of NUR Power. These companies were acquired to purchase the shares of the Lenders in Dulang Ekuiti. The result of the purchases is Ivory Insights and Alpine Motion owning 40% of Dulang Ekuiti. Dulang Ekiuiti in turn wholly owns NUR Power.

[28] Zakri was heavily involved in the acquisition of NUR Power in 2012, and has since overseen the execution of and project procurement for NUR Power. As he played a major role in this acquisition, in which he was not monetarily compensated, Zakri claimed that he has a legitimate expectation to become one of the owners of NUR Power, either directly or indirectly. This is reflected in this ownership of the Subject Shares, which ultimately translated into interests in NUR Power.

[29] In this regard, I am of the view that any transaction to sell, transfer, charge and/or deal with the Subject Shares by Ikwan or Nur Anis, would jeopardise Zakri's interests not only in Ivory Insights and Alpine Motion, but also in NUR Power.

[30] From this, my considered view is that if the Injunction Applications are not granted, Zakri's ability to continue his involvement in



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NUR Power would be affected. This leads to damage that is irreparable and that cannot be compensated by costs.

[31] Conversely, if the Injunction Applications are granted, and Ikwan and Nur Anis succeed in their defences, they would not be prejudiced in a manner that cannot be compensated by costs. The Injunction Applications seek to restrain them from dealing only with the Subject Shares. They are free to deal with the remainder of the shares in Ivory Insights and Alpine Motion. Further, the day-to-day running and operations of the companies would not be affected. The High Court in ***Sri Andrew Kam Tai Yeow v Tan Sri Dato' Kam Woon Wah & Ors [2018] MLJU 1883*** granted an injunction in respect of a shareholders' meeting, where the operations of the companies were not affected.

Issues Raised By Ikwan And Nur Anis

[32] Ikwan and Nur Anis raised two further issues in opposing the Injunction Applications. The first is the delay in the filing of Suit 21 and Suit 23. It is not disputed that the transfer of the Subject Shares occurred in 2017, but the suits were only filed in 2022.

[33] I am guided by ***Jaya Sudhir a/l Jayaram v Nautical Supreme Sdn Bhd & Ors [2019] 5 MLJ 1***, where the Federal Court held as follows, on the issue of delay:

“[84] It is trite ‘principle that while delay is a relevant factor in interlocutory proceedings for injunctive relief, not all delay is bad delay or, to be precise, inexcusable, as it may be explained or inevitable’ (Alor Janggus Soon Seng Trading Sdn Bhd &



*Ors v Sey Hoe Sdn Bhd & Ors [1995] 1 MLJ 241 at p 262). Further to the above principle, the High Court in **Lim Hean Pin v Thean Seng Co Sdn Bhd & Ors [1992] 2 MLJ 10** emphasised that delay may be of importance when the balance of convenience is being determined, but much will depend upon the particular circumstances of each case. In other words, **the delay is often explicable by reference to other circumstances**, for example, a plaintiff might have delayed the institution of proceedings because he wished to obtain better means of providing his case. Edgar Joseph J (as His Lordship then was) went on to find as a fact that such delay had been satisfactorily explained by counsel for the plaintiff. The Supreme Court in *Alor Janggus Soon Seng Trading Sdn Bhd*, also laid emphasis on the fact that **what was important to consider was not so much the length of the delay but whether the delay had in some way made it unjust to grant the injunction claimed**.*

[85] *The learned High Court judge in the instant appeal had exercised original discretion vested upon him in finding that there was no inordinate delay on the part of the appellant **and accepted the explanation proffered by him**. The learned judge had also expressly referred to the affidavit evidence of the appellant affirmed on 20 September 2017 on the issue of the alleged delay in particular para [23] thereof. The appellant in this regard had explained the various circumstances in the said affidavit as well as his first affidavit deposed on 29 August 2017 leading to the filing of this suit on 5 February 2017. Moreover, a perusal of the record of appeal reveals that the full extent of the first respondent's claims in the arbitration proceedings were reflected*



*in its points of claim which came about only on 28 March 2017. The injunction application was filed on 29 August 2017 the reason being that, **the appellant did not wish to escalate matters as there were ongoing without prejudice negotiations to resolve the impasse and settled the dispute globally as alluded to by the appellant in both affidavits. In short, the appellant viewed these negotiations ought to be given an opportunity to hopefully yield a positive result without any escalation of fresh proceedings.***

*[86] The Court of Appeal does not appear to have considered the explanation proffered by the appellant on the alleged delay in his affidavits and instead of doing so, the Court of Appeal, without assigning any reason found that there was no reasonable explanation provided by the appellant that would justify the delay of ten months. On the contrary, we ought to mention that the learned High Court judge had considered the affidavit of the appellant and found that the chronology of events justified why the application for the injunction was filed at the material time. Further mention must also be made of the fact that His Lordship did not disregard or hold that delay was not a material factor, instead he exercised his discretion accordingly which he was entitled to do so. There is clearly no misdirection on his part. With respect, the Court of Appeal fell into error on the issue of delay. **We are satisfied that the alleged delay is explicable and the forbearance of parties who are in the midst of settlement negotiations is an acceptable and satisfactory explanation in the circumstances of this case. It would be unreasonable for the appellant to rush off to the court the moment the disputes***



arose. He had ongoing relationship with the respondents and negotiations towards settlement of the disputes and we can understand as did the learned High Court judge, the reluctance on the part of the appellant to file the application for injunction. We accept such reluctance was for good reasons premised on a commercial reality ...”

(emphasis added)

[34] Similarly, in this case, Zakri had met with Ikwan at various times between 2017 to 2020. During these meetings, he claimed that he had sought the return of the Subject Shares, and his reinstatement as a director of Ivory Insights and Alpine Motion. Further, he was informed during one of these meetings that Ikwan and Nur Anis’ grandmother, Aminah Abdullah (“Aminah”) had commenced an action against them in relation to their shareholding in the companies. The suit was filed at Kuala Lumpur High Court Suit No. 22NCVC-7-01/2019 (“Aminah Suit”). Ikwan had allegedly requested for time from Zakri to resolve the Aminah Suit first, before working towards resolving Suit 21 and Suit 23.

[35] Zakri had also issued letters of demand dated 25 June 2020 to Ikwan and Nur Anis, through his solicitors. He claimed to have issued the letters based on discussions with Ikwan, and upon Ikwan’s representations that formal letters would facilitate the resolution of this matter. However, no action was taken by Ikwan or Nur Anis.

[36] Based on the above, although there had been a delay in the filing of Suit 21 and Suit 23, I do not find the delay to be inexcusable. There were discussions between the parties, which were not denied by Ikwan,



although the parties disagreed on the terms of the discussions. Correspondences were also exchanged between parties, indicating that they were genuinely working towards a resolution of this matter.

[37] Due consideration is also given to the parties' relationship. They are not strangers who entered into a commercial arrangement. They have a long-term relationship, as Zakri was a close friend of Ikwan's late father. Thus, it is expected that the parties would take steps to resolve issues arising in an amicable manner, to avoid litigation. With this in mind, any delay in the filing of Suit 21 and Suit 23, which was caused by the discussions and negotiations between the parties is in my view, justifiable and should not preclude the granting of the Injunction Applications.

[38] It is also pertinent to note that apart from the argument that the length of time of the delay is a basis to dismiss the Injunction Applications, no case was made out as to how the delay had prejudiced Ikwan and Nur Anis.

[39] The second issue raised in opposition to the Injunction Applications relates to the filing of the Aminah Suit. In the Aminah Suit, TSJJ's mother Aminah sought to amend the list of assets of TSJJ's estate, to include the shares of companies that TSJJ was involved in, including Ivory Insights and Alpine Motion. The shares in question in the Aminah Suit therefore also involve the Subject Shares.

[40] Ikwan and Nur Anis contended that as the learned High Court judge in the Aminah Suit had held that the Subject Shares belonged to them and do not form part of TSJJ's estate, this meant that the Subject Shares had been validly transferred to them.



[41] I do not agree. In the Aminah Suit, the learned judge held that Aminah had failed to prove on a balance of probabilities that the Subject Shares belonged to TSJJ at the time of his demise. The validity of the transfer of the Subject Shares and the removal of Zakri as a director were not addressed in the Aminah Suit. These issues are dealt with here, as they concern the management of Ivory Insights and Alpine Motion. They do not fit within the scope of the Aminah Suit, which is essentially a suit related to the estate of TSJJ. I am of the view that even if it is finally determined in the Aminah Suit that the Subject Shares form part of TSJJ's estate, the question of the validity of the transfer of the Subject Shares and the removal of Zakri as a director would still need to be determined separately in Suit 21 and Suit 23.

[42] In this regard, I find the contention of Ikwan and Nur Anis that Zakri should have intervened in the Aminah Suit to be without merit.

E. Decision

[43] In allowing the Injunction Applications, my key concern is the need to preserve the status quo, to safeguard the integrity of Zakri's claim. In this regard, I am of the view that the balance of convenience lies in the granting of the injunctions, to ensure that the status of the Subject Shares is maintained, pending the determination of Suit 21 and Suit 23.

[44] For the reasons set out above, the Injunction Applications were allowed with costs.



Dated 30 November 2022

- sgd -

Adlin Abdul Majid
Judicial Commissioner
High Court of Malaya
Commercial Division (NCC6)
Kuala Lumpur

Counsel:

Plaintiff in Suits 21 : Idza Hajar Ahmad Idzam (together with Nur
and 23 : Fatin Hafiza Hasham of Messrs. Zul Rafique
& Partners

Defendants in Suit 21 : S. Suhendran (together with Rodney Gan)
and 1st and 3rd : of Messrs. Sanjay Mohan
defendants in Suit 23

2nd defendant in : Damian Kiethan (together with U. Sashiraj)
Suit 23 : of Messrs. Raj, Ong & Yudistra

Legislation referred to:

Rules of Court 2012, order 29 rule 1

Cases referred to:

*Gan Kui Lan @ Gan Kee Lan v Chan Kar Loong (No: 1) [2002] MLJU
352*

*Jaya Sudhir a/l Jayaram v Nautical Supreme Sdn Bhd & Ors [2019] 5
MLJ 1*



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*Keet Gerald Francis Noel John v Mohd Noor Bin Abdullah [1995] 1 MLJ
193*

*Sri Andrew Kam Tai Yeow v Tan Sri Dato' Kam Woon Wah & Ors [2018]
MLJU 1883*



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