IN THE HIGH COURT OF MALAYA AT KUALA LUMPUR
[CIVIL SUIT NO: WA-22NCvC-401-05/2021]

BETWEEN

FAUZI HASSAN & 10 ORS ... PLAINTIFFS

DAN

ABD HALIM HUSIN & 11 ORS ... DEFENDANTS

GROUNDS OF JUDGMENT

A. Introduction

[1] This claim concerns the affairs of Dewan Perniagaan Melayu Malaysia ("DPMM") and the dispute that arose between two factions within the said organization.

[2] The crux of the dispute between the Plaintiffs and the Defendants concerns the following: -

(i) Whether the Majlis Eksekutif Dewan ("MED") of DPMM supersedes or is capable of superseding the Undang-undang Tubuh dan Peraturan DPMM;

(ii) Whether the national Annual General Meeting held on 26-2-2020 is valid?

(iii) Which faction represents the valid MED of DPMM?

(iv) Whether the Plaintiffs have locus standi to file this suit against the Defendants concerning the affairs of MED?

(v) Whether DSSH's resignation from his position as President of DPMM is valid?

(vi) Whether the 1st Plaintiff, as the acting Deputy President of DPMM, becomes the acting President of DPMM due to the resignation of the then President, DSSH?

B. Order 33 rule 2 of the Rules of Court 2012

[3] This suit was fixed for trial on 12-12-2022, and this Court, having considered the pleadings, the documents filed and the issues before me, I find that this is a suitable case where the powers of the Court to determine the above issues be heard first under Order 33 rule 2 of the Rules of Court 2012.

[4] I find that the questions above concern the interpretation of the Undang-undang Tubuh dan Peraturan DPMM and do not involve any dispute on facts. The answers to these questions would resolve the issues raised by parties in their pleaded case before me.

[5] I exercise my powers under Order 33 rule 2 of the Rules of Court 2012 to have the questions identified in paragraph 2 with the concurrence of Counsels. Counsels from both sides have also agreed and submitted on the additional issues in their written submissions as well as during the hearing before me on 25-01-2023: -

5.1. *locus standi*,

5.2. the constitution of the MED,

5.3. the validity of the resignation of DSSH, and

5.4. the issue of the validity of the 1st Plaintiff's contention that he was acting validly as the acting President of DPMM.

[6] I am guided by the decision of the Federal Court in *Petroleum Nasional Bhd v. Kerajaan Negeri Terengganu* [2004] 1 MLJ 8, *Bato Bagi & Ors v. Kerajaan Negeri Sarawak & Anor appeal* [2011] 8 CL J 766 and the Court of Appeal in *Fauziah Ismail & Ors v. Lazim Kanan*

[2013] 7 CLJ 37. I do note that the decision of the Federal Court in these two cases, concerns Order 14A, but I am of the opinion that the dicta of the said cases are also applicable in this case when dealing with the powers to dispose claims pursuant to Order 33 of the Rules of Court 2012.

[7] I find that the undisputed facts of this case and the interpretation of the Constitution of DPMM as well as the relevant rules, together with the undisputed documents, would answer the questions posed in paragraph 2 and would put an end to the whole suit. This would therefore save time and costs, thus rendering the full trial of this claim including the Defendants' counterclaim unnecessary.

C. Undisputed Facts

[8] On 5-09-2019, the Executive Committees of 6 State DPMM were dissolved, and the following MED members were made in charge of the said 6 State DPMM.

DPMM State	Person in charge
Penang	1st Plaintiff
Kuala Lumpur	6th Plaintiff
Selangor	5th Defendant
Kelantan	2nd Defendant
Labuan	Datuk Awang Sham Bin Hj Amit
Sabah	Datuk Awang Sham Bin Hj Amit

The said 6 State DPMM did not hold their AGM before 26-2-2020.

[9] A special MED Meeting was held on 21-1-2020 where it was decided to hold the DPMM's Annual General Meeting on 26-2-2020.

[10] The MED met on 12-2-2020 and agreed (i) to proceed with the AGM on 26-2-2020 and (ii) that the 6 DPMM States would only be entitled to send observers at the Federal AGM on 26-2-2020.

[11] Before 25-2-2020 members of the MED of DPMM are as follows: -

Position	**Name**
President	Vacant
Deputy President	1st Plaintiff (Acting)
Vice President	1st Plaintiff
Vice President	1st Defendant
Vice President	2nd Defendant
Secretary General	4th Defendant
Treasurer	5th Defendant
DPMM Johor	2nd Plaintiff
DPMM Melaka	6th Defendant (representative)
DPMM Negeri Sembilan	Abdul Rahman bin Yaakub
DPMM Putrajaya	7th Defendant (representative)
DPMM Kuala Lumpur	-
DPMM Perak	8th Defendant (representative)
DPMM Kedah	Hj Badrol Hisham bin Mohd Rejab (representative)

DPMM Pulau Pinang	-
DPMM Perlis	7th Plaintiff (representative)
DPMM Kelantan	-
DPMM Terengganu	-
DPMM Pahang	-
DPMM Sabah	-
DPMM Labuan	-
Elected MED	11th Defendant
Elected MED	5th Defendant
Elected MED	Datuk Awang Sham bin Haji Amit
Elected MED	Mohd Yusrizal bin Omar
Elected MED	-
Appointed MED	-
Appointed MED	6th Plaintiff
Appointed MED	9th Defendant
Appointed MED	12th Defendant
Appointed MED	Azizi bin Kamaruddin
Chairperson of Dewan Muda	Kabul bin Idris
Chairperson of Dewanita	10th Plaintiff

[12] The then President of DPMM, Dato Syed Hussein ("DSSH") decided to resign and issued a letter dated 25-2-2020 to the 1st Plaintiff, as the acting Deputy President of DPMM. This letter was issued to the 1st Plaintiff instead of the MED. The MED was not furnished with an original copy of the said letter but DSSH has since affirmed an affidavit dated 02-06-2020 confirming his decision to resign from the position of President of DPMM.

[13] A meeting of the MED was held on 25-2-2020 at Royal Chulan Hotel where photocopies of the following documents were forwarded to the said body by the 6th Plaintiff: -

13.1. Letter of termination to the Secretary General.

13.2. Resignation letter by DSSH.

13.3. Notice of DSSH's resignation by the 1st Plaintiff to MED.

13.4. Letter directing to adjourn the AGM fixed on 26-2-2020.

[14] The notes of the said meeting states, *inter alia*: -

14.1. that the MED did not accept DSSH's resignation.

14.2. that the MED did not recognize the 1st Plaintiff's allegation that he now holds the position as the acting President of DPMM.

14.3. that show cause notices were issued to the 1st, 2nd and 7th Plaintiffs and that their membership were suspended.

[15] The Annual General Meeting was held on 26-2-2020.

[16] There are two competing MED's of DPMM. One faction is premised on the validity of the Annual General Meeting held on 26-2-2020 ie, the Defendants. Whereas the other faction is based on the

appointments made by the 1st Plaintiff premised on his alleged position as Acting President of DPMM.

D. Issue of Locus Standi − Whether the Plaintiffs are still members of DPMM and have locus standi to institute proceedings against the Defendants

[17] I find that the objection raised by the Defendants on the *locus standi* of the Plaintiffs is wrong.

[18] The Defendants contend that the Plaintiffs should have pursued remedies as required by the Constitution of DPMM before they filed proceedings concerning the affairs of DPMM.

[19] Learned Counsel for the Defendants refers to the following articles in DPMM's Constitution: -

> Article 12.22
>
> *"Menyelesaikan perselisihan yang berbangkit di dalam Dewan dan DPMM negeri dan/atau yang berkaitan dengan Dewan dan DPMM negeri yang berkenaan membabitkan Ahli mengikut budi bicara yang difikirkan sesuai oleh Majlis Eksekutif Dewan."*
>
> Article 8.12.5
>
> *'Ahli akan lucut keahliannya jika:*
>
> *Membawa apa jua perkara berkenaan dengan keahliannya atau Dewan ke Mahkamah sebelum mematuhi sepenuhnya peraturan Dewan,"*
>
> Article 27.6.6
>
> *"Seseorang ahli yang membawa apa-apa jua perkara Dewan atau DPMM Negeri atau hak keahliannya ke Mahkamah sebelum mematuhi sepenuhnya peraturan Dewan maka keahliannya di dalam Dewan dan/atau DPMM Negeri gugur dengan secara*

automatik. Walaubagaimanapun, beliau boleh membuat rayuan kepada Majlis Eksekutif Dewan berkuasa menerima balik keahliannya sekiranya Majlis Eksekutif Dewan berpuas hati dengan alasan ketidakpatuhannya tersebut."

[20] The Defendants also refers to the following authorities: -

20.1. *Datuk Amar James Wong Kim Min & Anor v. Dato' Sri Peter Tinggom Kamarau* [2003] 6 CL J 381.

20.2. *Datuk Pasamanickam & Anor v. Agnes Joseph R Narayanan* [1980] 2 MLJ 92.

[21] I agree with the general legal proposition suggested by the Defendants' counsel. As the Constitution of the societies constitute a valid binding agreement between members, the Plaintiffs are bound by the terms and conditions appearing in the Undang-undang Tubuh of DPMM. It is pertinent that I reproduce the judgment of Raja Azlan Shah FCJ (as he then was) in *Datuk Pasamanickam & Anor v. Agnes Joseph R Narayanan (supra)*, where his Lordship held: -

"There are provisions in the rules of powerful organisations such as trade unions and political organisations forbidding their members, as far as they can lawfully do, from submitting their disputes to the decision of the Courts unless and until certain conditions precedent are observed, for example until certain matters have been resolved by their domestic forums, upon which they themselves agree. The present case is a case in point. There have been others before the Courts. What reason can there be for saying that there is anything contrary to public policy in allowing members to enter into such contracts? It seems to us that it would be a most inexpedient encroachment upon the liberty of the subject if he were not to be allowed to enter into such contracts. Is there anything contrary to public policy in saying that such organisations shall not be harrassed

by Court actions, the costs of which might be ruinous, and in which the delay in coming to a final decision disastrous? Does it not make for speedy and economical determination to refer such disputes to a domestic forum? We can see not the slightest inconvenience or denial of justice that can flow from such agreements. On the other hand, we see great advantages that may arise from them. So long as the Courts retain sufficient hold over them to prevent and redress any injustice on the part of such organisations, and to secure that their decisions are in substance made in accordance with the requirements of natural justice and not with some home-made and arbitrary rules of the organisations the Courts will not interfere with their decisions. By allowing the disputes to be first decided according to the rules of the organisations Courts do not release real and effective control over them or allow them to be a law unto themselves or to give them a free hand to decide disputes according to their whims and fancies. No association is outside or above the law. ***But so long as at the appropriate moment recourse to the Courts is available to the members, the Courts can and will safely allow the members to organise their own affairs according to the terms and tenor of their agreements, but that appropriate moment will not have arrived until and unless the members have fully utilised their rights and privileges under such agreements.*** *We are satisfied that article 15(4) contains no indication of an intention to fetter the power of the Courts to enforce the contractual position of the parties. In our view it is not essentially different in character from ordinary statutory provisions limiting the time during which various procedural steps can be taken to enforce an action. Such provisions are generally speaking not designed to oust the jurisdiction of the Courts but may, at the option of the party sued, be set up to bar a remedy and correct a grievance until the grievance has been investigated in the proper forum."*

[22] However, as with all general rules there are always exceptions and I find that the undisputed facts of this case do not fall within the ambit of Article 12.22, Article 8.12.5 and Article 27.6.6 of Undang-undang Tubuh DPMM.

[23] I find that the said articles make it mandatory for any member of DPMM to refer any dispute or any issue he or she or it may have concerning the affairs of DPMM to the attention of the MED and to be dealt with in the manner prescribed fit by the MED. Failure to act in accordance with this process, will render an automatic termination of the membership of the said person or entity from MED.

[24] However, this requires the existence of a valid MED for the said dispute to be referred to or at the very least the existence of a mechanism by which such disputes were to be referred to. As the MED composition is at issue, surely it cannot be correct for the said issue to be referred to the same body for determination. The Constitution of DPMM had also failed to provide any independent body by which such issue concerning the validity of the composition of the MED could be determined. Thus, I find that the Plaintiffs' contention that they had no other avenue to pursue its challenge but to institute these proceedings in Court as being valid and do not cause their membership to be invalidated by virtue of Article 27.6.6 and Article 8.12.5 of Undang-undang Tubuh DPMM.

[25] I am also of the opinion that this objection by the Defendants is incorrect by virtue of the alleged illegality of the said Annual General Meeting that eventually led to the existence of the MED faction led by the Defendants. I find that it would be inefficacious for this Court to insist that the Plaintiffs refer the said subject matter as to the validity of the Annual General Meeting and the validity of the MED appointed to the same body for determination. It would be contrary to the principles of natural justice that this issue be referred to the same body where they would be directly or indirectly be affected by the outcome of the said decision. I refer to the decision of Lord Denning

in *B Surinder Singh Kandia v. The Government of Malaya* [1962] 28 MLJ 169 where he held: -

"The rule against bias is one thing. The right to be heard is another. Those two rules are the essential characteristics of what is often called natural justice. They are the twin pillars supporting it. The Romans put them in the two maxims: Nemo judex in causa sua and Audi alteram partem."

[26] I take guidance from the decisions of Courts concerning the availability of alternative remedies in proceedings concerning Judicial Review in Order 53 of the Rules of Court 2012. The Courts have held that even in proceedings concerning leave to institute proceedings where there exist alternative remedies, this does not bar a party from seeking more efficacious and fairer route through the Courts to challenge an alleged illegality. I refer to the decision of the Federal Court in *Majlis Perbandaran Pulau Pinang v. Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor dengan Tanggungan* [1999] 2 AMR 3529, where the Court observed: -

> *"Speaking generally, it is right to say, that if an applicant in judicial review proceedings can demonstrate illegality, that is to say unlawful treatment, it would be wrong to insist that he exhaust his statutory right of appeal where one is available. Why should illegal action be not nipped in the bud by the quicker, more convenient and adequate remedy of Judicial Review rather appeal? It is, of course, true that convenience in this context means convenience not only for the parties but also in the public interest. (R. v. Huntingdon D.C., ex p. Cowan [1984] 1 WLR 501 (a Licensing appeal)."*
>
> .....
>
> *"But more to the point, in the present case, the main grounds on which the Society sought judicial review were based on distinct*

principles of public law or general issues of law, in particular, the Society had clearly raised an arguable case that the Council, a public body, had acted unfairly, abused its powers, and had raised the general question of the extent to which representations can bind public bodies. These grounds involve a consideration of generalised principles of public law developed by the courts to control the exercise of power by public authorities and, as such, judicial review would be the appropriate route to follow rather than appeal.

(See, e.g. R. v. LR.C. ex p. Preston [1985] AC 835, R. v. LR.C. ex p. M.F.K. Underwriting Agencies [1990] 1 AII ER 91).”

[27] *A* similar approach could be seen from the decision of the Federal Court in *Muhyiddin Hj Mohd Yassin & Anor v. Doi la h Hj Salleh* [1990] 1 CLJ 274, a case concerning the failure of the member of society to exhaust internal processes before filing the claim in Court. In that case, one of the issues raised by the member concerns the constitutional validity or lack of jurisdiction of the orders made the disciplinary board of the society.

[28] In that case, Hashim Yeop Sani CJ (Malaya) held: -

“That may well be a valid argument but we should consider a more basic issue here. The respondent has come to the Court to ask for a declaration. The respondent's basic allegation was lack of jurisdiction on the part of JFA to extend its order beyond the boundary of the State area which was a “defined area” of its jurisdiction. It is in the discretion of the Court to grant or not to grant the declaration. Under the circumstances the respondent should not be denied access to the Court even if he had not exhausted his domestic remedy.”

[29] Therefore, I find that the decision by the Plaintiffs to file proceedings to seek the declarations prayed for in this suit does not

cause the revocation of the Plaintiffs membership due to the invocation of articles Article 12.22, Article 8.12.5 and Article 27.6.6 of Undang-undang Tubuh DPMM. At this juncture, it would be inappropriate and wrong to expect the Plaintiffs to refer the dispute to MED, the constituent of which depends on the validity of the Annual General Meeting complained of. More so, when the MED and the constitution of DPMM did not provide an independent body / tribunal or independent process to which such issues should be referred to. It is crucial that the constitutionality of the Annual General Meeting be determined by this Court, which will eventually determine the correct faction that should be recognized as the MED of DPMM.

[30] In the circumstances, I dismiss the Defendants' preliminary objection premised on the issue of locus standi of the Plaintiffs.

E. Whether the Annual General Meeting held 26-2-2020 is valid

[31] On the issue of the Annual General Meeting that was held on 26-2-2020,1 find that the said meeting was held contrary to the Undang-undang Tubuh DPMM.

[32] I reproduce the articles that are applicable concerning the validity of the said Annual General Meeting: -

> Article 6.1
>
> *"Tertakluk kepada Fasal 8.12 Undang-undang Tubuh Dewan, Jawatankuasa DPMM Negeri mestilah mengesahkan nama-nama ahli yang telah lucut keahliannya"*
>
> Article 21.1 to Article 21.1.3
>
> *"Mesyuarat Agung Dewan.*
>
> *21.1.1 Mesyuarat Agung Dewan adalah kuasa tertinggi Dewan yang akan menentukan wawasan, arah dan dasar Dewan.*

21.1.2 Mesyuarat Agung Tahunan Dewan hendaklah diadakan sekali dalam setahun. la hendaklah diadakan pada atau sebelum 30 Jun tahun yang berkenaan.

21.1.3 Notis Mesyuarat Agung Tahunan Dewan hendaklah dihantar kepada DPMM Negeri tiga puluh (30) hari sebelum tarikh Mesyuarat Agung tersebut diadakan. Agenda Mesyuarat, Laporan Tahunan dan Salinan Penyata Kira-Kira Dewan bagi tahun lalu yang telah diperiksa dan disahkan oleh Juruaudit hendaklah dieadarkan kepada DPMM Negeri sekurang-kurangnya tujuh (7) hari terlebih dahulu daripada tarikh Mesyuarat Agung Tahunan Dewan diadakan.

Article 21.2. to Article 21.2.2

"21.2 Mesyuarat Agung DPMM Negeri:

21.2.1 Mesyuarat Agung Tahunan DPMM Negeri hendaklah diadakan sekali dalam setahun pada atau sebelum 30 April tahun yang berkenaan.

21.2.2 Mana-mana DPMM Negeri yang gagal mengadakan Mesyuarat Agung Tahunan masing-masing pada atau sebelum 30 April tahun yang berkenaan, DPMM Negeri tersebut tidak akan dibenarkan untuk menghantar perwakilannya menurut Fasal 21.1.2 Undang-Undang Tubuh ini ke Mesyuarat Agung Tahunan Dewan tetapi bolehlah menghantar wakil yang bertaraf pemerhati sahaja.

Article 22.1 to Article 22.1.2

22.1 Perwakilan hendaklah terdiri daripada:

22.1.1 Ahli Majlis Eksekutif Dewan

22.1.2 Tertakluk kepada Fasal 8.3 Undang-Undang Tubuh ini, penama yang terdiri daripada Ahli Biasa yang dilantik oleh

Jawatankuasa DPMM Negeri di bawah Fasal 6.2 Undang-Undang Tubuh ini (untuk ahli-ahli di bawah Fasal 6.2.4, 6.2.5 dan 6.2.6 Undang-Undang Tubuh ini, mereka mestilah seorang Pengarah Syarikat/Koperasi Melayu/ dan dilantik serta disahkan Borang Proksinya oleh Lembaga pengarah Syarikat/Koperasi berkenaan) mengikut nisbah jumlah keahlian DPMM Negeri seperti formula yang diperincikan di bawah :

Jumlah Keahlian	*No Wakil*
Lima pul uh (50) ahli yang pertama	*7 wakil*
Lima puluh (50) ahli yang berikutnya dan	*2 wakil*
Setiap lima puluh (50) ahli yang seterusnya	*2 wakil*

Dengan syarat lagi bahawa setiap DPMM Negeri tidak boleh menghantar lebih daripada dua puluh (20) ahli perwakilan walaupun Jumlah keahlian mencukupi untuk lebih perwakilan mengikut formula di atas.

Article 22.3

"Ahli Majlis Eksekutif Dewan dan Perwakilan DPMM Negeri berhak mengundi, bersuara, dan dipilih untuk apa-apa jawatan di dalam Mesyuarat Agung Dewan".

Article 23.1 to 23.5.2

Fasal 23 Korum Mesyuarat

23.1 Sembilan (9) Ahli Majlis Eksekutif Dewan adalah dianggap sebagai mencukupi korum untuk Mesyuarat Majlis Eksekutif Dewan.

23.2 Tujuh (7) Ahli Jawatankuasa DPMM Negeri adalah

dianggap sebagai mencukupi korum untuk Mesyuarat Jawatankuasa DPMM Negeri.

23.3 Tiga (3) Ahli Jawatankuasa Pengurusan Dewan adalah dianggap sebagai mencukupi korum untuk Mesyuarat Jawatankuasa Pengurusan Dewan.

23.4 Tiga (3) Ahli Jawatankuasa Pengurusan DPMM Negeri adalah dianggap sebagai mencukupi korum untuk Mesyuarat Jawatankuasa Pengurusan DPMM Negeri.

23.5 Mesyuarat Agung Dewan dan Mesyuarat Agung DPMM Negeri tidak boleh berjalan melainkan adanya korum Ahli yang hadir.

23.5.1 Mesyuarat Agung Dewan mestilah mengandungi tidak kurang daripada satu perdua (1/2) perwakilan yang berhak mengundi yang sepatutnya hadir mesyuarat Agung tersebut.

23.5.2 Mesyuarat Agung DPMM Negeri mestilah mengandungi tidak kurang daripada lima puluh (50) Ahli Biasa yang telah menjelaskan Yuran Tahunan.

[33] It is trite law that the constitution of the society is a binding contract between its members. I refer to *Tharmalingam v. Sambanthan* [1961] ML J 63, where Thomson CJ held: -

"As has been said, all these questions of the relationship among members of an unincorporated association are matters of contract and the contract is to be found in the Rules or the Constitution of the association. If a member does not like the rules he has two courses open to him. Either he can refrain from joining the association, and in the present case I would observe in parenthesis that the Malayan Indian Congress has nothing in common with a trade union, membership of which may be a vital necessity if a person is to earn his livelihood. Or if he does join

he can attempt to persuade his fellow members to change the rules. But so long as he remains a member and so long as the rules are there his relationship with his fellow members falls to be regulated by them.

And these rules are to be interpreted like any other contract."

[34] I also refer to *Datuk Pasamanickam & Anor v. Agnes Joseph (supra)* and *Dato Hj Taalat bin Haji Husain v. Chak Kong Yin* [2004] 7 MLJ 295, where the Courts have reiterated the above as being the applicable law when dealing with the constitution of societies or clubs.

[35] It is also trite law that in interpretation of contracts, this Court must consider the following: -

"The principles may be summarised as follows

(1) Interpretation is the ascertainment of the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract.

(2) The background was famously referred to by Lord Wilberforce as the "matrix of fact, "but this phrase is, if anything, an understated description of what the background may include. Subject to the requirement that it should have been reasonably available to the parties and to the exception to be mentioned next, it includes absolutely anything which would have affected the way in which the language of the document would have been understood by a reasonable man.

(3) The law excludes from the admissible background the previous negotiations of the parties and their declarations of subjective intent. They are admissible only in an action for

rectification. The law makes this distinction for reasons of practical policy and, in this respect only, legal interpretation differs from the way we would interpret utterances in ordinary life. The boundaries of this exception are in some respects unclear. But this is not the occasion on which to explore them.

(4) The meaning which a document (or any other utterance) would convey to a reasonable man is not the same thing as the meaning of its words. The meaning of words is a matter of dictionaries and grammars; the meaning of the document is what the parties using those words against the relevant background would reasonably have been understood to mean. The background may not merely enable the reasonable man to choose between the possible meanings of words which are ambiguous but even (as occasionally happens in ordinary life) to conclude that the parties must, for whatever reason, have used the wrong words or syntax:

(5) That "rule" that words should be given their "natural and ordinary meaning" reflects the common-sense proposition that we do not easily accept that people have made linguistic mistakes, particularly in formal documents. On the other hand, if one would nevertheless conclude from the background that something must have gone wrong with the language, the law does not require judges to attribute to the parties an intention which they plainly could not have had. Lord Diplock made this point more vigorously when he said in Antaios Compania Naviera S.A. v. Salen Rederierna A.B. [1985] A. C. 191,201:

> *If detailed semantic and syntactical analysis of words in a commercial contract is going to lead to a conclusion that flouts business common sense, it must be made to yield to business common sense. "*

(Derived from the House of Lords decision in Investors Compensation Scheme Ltd v. IVest Bromwich Building Society [1998] 1 WLR 896.)

[36] I also refer to *Arnold v. Britton and others* [2015] UKSC 36 where Lord Neuberger stated: -

"[15] When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to 'what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean', to quote Lord Hoffmann in Chartbrook Ltd v. Persimmon Homes Ltd [2009] UKHL 38, [2009] 4 AII ER 677, [2009] AC 1101 (at [14]). And it does so by focusing on the meaning of the relevant words, in this case cl 3(2) of each of the 25 leases, in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (Hi) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence....

[16] For present purposes, I think it is important to emphasise seven factors.

[17] First, the reliance placed in some cases on commercial common sense and surrounding circumstances (eg, in Chartbrook, paras [16] [26]) should not be invoked to undervalue the importance of the language of the provision which is to be construed. The exercise of interpreting a provision involves identifying what the parties meant through the eyes of a reasonable reader, and, save perhaps in a very

unusual case, that meaning is most obviously to be gleaned from the language of the provision. Unlike commercial common sense and the surrounding circumstances, the parties have control over the language they use in a contract. And, again save perhaps in a very unusual case, the parties must have been specifically focusing on the issue covered by the provision when agreeing the wording of that provision.

[18] Secondly, when it comes to considering the centrally relevant words to be interpreted, I accept that the less clear they are, or, to put it another way, the worse their drafting, the more ready the court can properly be to depart from their natural meaning....

[19] The third point I should mention is that commercial common sense is not to be invoked retrospectively. The mere fact that a contractual arrangement, if interpreted according to its natural language, has worked out badly, or even disastrously, for one of the parties is not a reason for departing from the natural language, Commercial common sense is only relevant to the extent of how matters would or could have been perceived by the parties, or by reasonable people in the position of the parties, as at the date that the contract was made....

[20] Fourthly, while commercial common sense is a very important factor to take into account when interpreting a contract, a court should be very slow to reject the natural meaning of a provision as correct simply because it appears to be a very imprudent term for one of the parties to have agreed, even ignoring the benefit of wisdom of hindsight. The purpose of interpretation is to identify what the parties have agreed, not what the court thinks that they should have agreed....

[21] The fifth point concerns the facts known to the parties. When interpreting a contractual provision, one can only take

into account facts or circumstances which existed at the time that the contract was made, and which were known or reasonably available to both parties....

[22] Sixthly, in some cases, an event subsequently occurs which was plainly not intended or contemplated by the parties, judging from the language of their contract, in such a case, if it is clear what the parties would have intended, the court will give effect to that intention..."

[37] The above propositions have been adopted by our courts as seen in the judgment of the Federal Court in *SPM Membrane Switch Sdn Bhd v. Kerajaan Negeri Selangor* [2016] 1 CLJ 177 and the decision of the Court of Appeal in *Hewlett-Packard (M) Sdn Bhd v. Agih Tinta Sdn Bhd* [2022] 9 CLJ 15.

[38] I also refer to the judgment of Gopal Sri Ram JCA (as he then was) in *Sia Siew Hong & Ors v. Lim Gim Chian & Anor* [1996] 3 CLJ 26 where he stated: -

"But in the construction of contracts the Court is not bound by the labels that parties choose to affix onto the particular document.

In all such cases the duty of the Court is clear.

And that duty is to construe the document as a whole and to determine from its language and any other admissible evidence its true nature and purport.

As Jenkins LJ observed in Addiscombe Garden Estates Ltd. v. Crabbe [1958] 1 QB 513 at p. 528; [1957] 3 AII ER 563 at p. 570; [1957]3 WLR 980 at p. 991:

... the relationship is determined by the law, and not by the label which the parties choose to put on it, and that it is not necessary to go as far as to find the document a sham.

It is simply a matter of ascertaining the true relationship of the parties."

[39] This remains good law as seen in the decision of the Court of Appeal in *Low Chin Meng v. CIMB Islamic Bank Bhd* [2015] 5 CLJ 324, *Wasco Coatings (M) Sdn Bhd v. Nacap Asia Pacific Sdn Bhd* [2015] 5 CL J 462 and *Zuraimy Kushaili v. Sarawak Energy Berhad* [2021] 1 LNS 265.

[40] Therefore, having considered the above referred articles as produced in paragraph 32, I find that the said Annual General Meeting was wrongly held on 26-2-2020.

[41] I am of the opinion that it is mandatory that the Annual General Meeting be held after 30 April of each calendar year to enable each state DPMM to hold their own annual general meeting and be given ample opportunity to appoint their own representative for the Federal DPMM Annual General Meeting. I say this for the following reasons: -

41.1. Article 21.1.2 requires that the Annual General Meeting of the Federal DPMM must be undertaken at least once a year and must be held on or before 30 June of each calendar year.

41.2. Article 21.2.2 on the other hand makes it mandatory that the States DPMM hold their Annual General Meeting on or before 30 April of each calendar year.

41.3. Article 21.2.2 also states that fail to hold such annual meeting before 30 April, will not be able to send representatives to the Federal DPMM and could only send observers.

41.4. Articles 22.1 to 22.3 provides the identities of those entitled to vote at the said Federal DPMM Annual General Meeting and the rights of each State DPMM to send the number of representatives or delegates. Observers are not entitled to

vote, therefore precluding states that have not held their Annual General Meeting on 30 April of the said year.

[42] After taking into account the above clauses as a whole, I find that as each State DPMM is entitled to hold their Annual General Meeting latest on 30 April of each calendar year and that they are entitled to send their representatives or delegates if they comply with Article 21.2.2, it would be wrong for the Federal DPMM to hold its Annual General Meeting before the said states have been given their contractual right to hold their own Annual General Meeting before 30 April of the said year. This right is enshrined in the said article 21.2.2 and if they fail to do so before the said time frame, only then will they lose their right to have their own representatives or delegates attend and vote at the said Annual General Meeting.

[43] It would be wrong for the MED or any member of the MED, including the President, to remove this contractual right merely by bringing forward the said Annual General Meeting earlier. Each State DPMM is entitled to expect to be given their right to hold their own Annual General Meeting before the date enshrined in Article 21.2.2. The notice issued by the MED to have the dates earlier does not remedy this defect.

[44] The exact words that were utilized in Article 21.2.2 is that a State DPMM that fails to hold its own Annual General Meeting before 30 April will not be entitled to send representatives to the Federal DPMM. It would have been different if the drafters of the said constitution did not include the said date in to the said article and chose to add a clause that indicates that the State Annual General Meeting must be held before the Federal Meeting without specifying an exact date. That would mean that there is no expected right for each State DPMM to be given the opportunity to hold its own Annual General Meeting before the said date. Whereas in our case, the drafters chose to specify the exact date at which each State DPMM must hold failing which, the right to attend and vote is removed.

[45] I also find that to allow such disingenuous attempt to remove the right of each State DPMM would also mean that the States that fail to hold their Annual General Meeting even before the date prescribed by the MED, would lose their rights to vote and have their voice heard at the Annual General Meeting. This will also enable the MED to alter or control the coram of the Annual General Meeting as they deem fit, contrary to the intentions of the Undang-undang Tubuh DPMM. The MED may, as in this case, call for the Annual General Meeting to be held earlier, that will prevent each state DPMM the opportunity to hold their own internal Annual General Meeting despite the existence of Article 21.2.2. To allow this would be wrong, thus I find it contrary to the Undang-undang Tubuh DPMM.

[46] I have also considered that this is the intention of the said articles as if the President and the MED is entitled to hold an Extraordinary General Meeting under clause 21.3 that does not require the need for each state DPMM to hold their own annual general meeting under Article 21.2.2. This would mean that there is a reason why it is mandatory for each State DPMM to hold their own Annual General Meeting before 30 April under clause 21.2.2. I opine this surely to enable ample opportunity for each state to undertake their own Annual General Meeting before the said date and to enable each State the right to send their own representatives to the Federal Annual General Meeting. Whereas no such condition appears when dealing with an extraordinary general meeting.

[47] The Plaintiffs also argue that the fact that 6 Executive Committees of 6 State DPMM were dissolved by the MED and that the persons responsible for each State have yet to comply with rule 8.9 of the Perintah Peraturan DPMM to hold each State DPMM's Annual General Meeting within 6 months from the date of the dissolution. This obligation should have been fulfilled on or before 4-5-2020. Therefore, the Plaintiffs' opine that the MED should have

taken into consideration and hold the Annual General Meeting before the said date.

[48] I appreciate the contentions made by the Plaintiffs and their allegation of the ulterior motives that is shown by the push to have the Annual General Meeting earlier before these 6 states could hold theirs. However, I opine nothing turns on this argument as the most important consideration is the holistic interpretation of the Undang-undang Tubuh especially the articles identified in paragraph 32 earlier.

[49] I do note that the Defendants contend that the Plaintiffs had allegedly agreed to the validity of the Annual General Meeting and the timelines as seen in the notes of meetings of the MED referred to by the Defendants.

[50] However, I do not believe that the arguments raised by the Defendants are correct. I have to take into consideration that the agreement here is not your typical contract that binds between two parties alone but concerns the constitution of the association. The constitution of DPMM must be applied irrespective of the conduct of the members of the MED. The general members of DPMM have a valid right to have the constitution respected and complied with.

[51] Our Courts have also repeated that the subsequent conduct of parties cannot be used as a general tool to interpret terms of contract. The Court must look at the words used and interpret them objectively based on the surrounding circumstances at the time when the bargain was struck. The only exception is when the Court finds that the terms of the contract is unclear and the terms may be elucidated from the conduct of parties as seen in *Pinsia Development Sdn Bhd v. Hj Abdul Ahmad & Ors* [2005] 1 CLJ 416 and *Abracadabra Speculative Ventures Inc v. Colin David Patterson* [2016] 1 LNS 1094.

[52] I opine that the general rule on interpretation of contract applies to the facts at hand. I find that I can interpret the terms as they appear in the Undang-undang Tubuh DPMM as long they are clear and capable of being interpreted without the need to have recourse these extraneous facts occurring way after the said document was drafted. More so when this Court is dealing with a contract that is executed to constitute the Constitution and Rules of the association. They bind not just MED members but also other members of DPMM. It would be wrong to interpret the terms merely based on how the members of the MED has conducted themselves.

[53] Therefore, I find and declare that the Annual General Meeting held on 26-2-2020 invalid and I therefore declare that the said resolutions made at the said meeting void.

F. Consequences of the invalid Annual General Meeting

- Which faction represents the valid MED of DPMM?
- Whether DSSH's resignation from his position as President of DPMM is valid?
- Whether the 1st Plaintiff, as the acting Deputy President of DPMM, becomes the acting President of DPMM due to the resignation of the then President, DSSH?

[54] The above issues shall be dealt together as they overlap.

[55] As I have stated earlier, parties chose to argue the above issues that they agree will be resolved based on the interpretation of the Undang- undang Tubuh DPMM. This can be seen in the written submissions and during the hearing of this claim on 25-01-2023.

[56] Firstly, I find that the DSSH did resign from the position as the President of DPMM. I do note that DSSH did not comply with the strict requirements of Article 11.5.4 of the Undang-undang Tubuh DPMM, but in view of his affidavit affirmed on 02-06-2020, I find

that it is irrefutable that he has since chosen not to continue to act as the President of DPMM. He cannot be forced to continue to act as the President despite the consternations of the remaining members of the MED.

[57] However, that does not mean that the 1st Plaintiff, who was the Acting Deputy President takes over the office of President and becomes the Acting Deputy President by virtue of Article 11.4.2.3. After considering the arguments raised by the counsels and considering articles 11.1, 11.2, 11.3, 11.4.2, 11.4.3 to 11.4.3.6, I find that the Acting Deputy President could not take over the conduct of the President and that this vacancy should now be filled in accordance with Article 11.4.3.6.

[58] I opine that the fact that there is an Acting Deputy President does not mean that the said office is filled. The said person is only acting as a Deputy President and the said office remains vacant until such time these positions are filled by persons appointed at the Annual General Meeting in accordance with Article 11.3 of the Undang-undang Tubuh DPMM. Therefore, until such time the Annual General Meeting is held, the MED is the sole body empowered under Article 11.3 to appoint the acting President and Acting Deputy President.

[59] This is also in line with the words that appear in Article 11.6 to 11. 6.8. Any vacancy may only be filled upon the election into the said position at the Annual General Meeting. The fact that he or she is the Acting Deputy President does not mean that the rights provided in Article 11.4.2.3 also automatically flow to the said person. Those rights in Article 11.4.2.3 is only provided solely to a person who has been elected to the said position by virtue of Article 11.3. I do not find that the Acting Deputy President will become the Acting President when the office of President is vacant.

[60] My finding is further reinforced when I consider Article 11.4.3.6 and Article 11.6 to Article 11.6.3. These articles when read as a whole, mean the following: -

(i) If the President resigns or his office is vacant, then the duly elected Deputy President is appointed as Acting President.

(ii) if the Deputy President resigns or his office is vacant, then the MED will appoint an Acting Deputy President from the 3 elected VicePresidents. The said person will take the role as the Acting Deputy President and remains as Vice President of DPMM.

(iii) When the office of President and Deputy President is vacant, it is for the MED to appoint the acting President and acting Deputy President from the said 3 elected Vice-Presidents. The said persons remain merely acting as acting presidents and acting deputy presidents and remain merely as Vice-Presidents of DPMM.

(iv) The said office of Presidents and Deputy Presidents will only be filled once the Annual General Meeting elects' persons into the said body.

(v) If the Acting President or Acting Deputy Presidents have been elected either as president or acting deputy presidents at the Annual General Meeting, then their position as Vice-Presidents falls and will be filled in accordance with the Undang-undang Tubuh DPMM.

[61] Therefore, until such time when the Annual General Meeting is held, it is the MED that should appoint an acting President or an Acting Deputy Presidents when there are vacancies of such office. I find that the constitution of DPMM intended that, unless there is an elected person holding the position of a Deputy President, where there

is a vacancy the President's office, it should be filled temporarily based on the collective decision of the MED. The same applies to the Deputy President's office and the President's office.

[62] I also find that since the Annual General Meeting held on 26-2-2020 is invalid, the MED appointed pursuant to the resolution passed is also rendered invalid. The same would be applicable to any decisions and any resolutions passed at the Annual General Meeting on 26-2-2020 and any decisions made by the MED or any persons appointed after the said Annual General Meeting.

[63] Based on the above, I find the following: -

63.1 That the following constitutes the correct MED: -

Position	**Name**
President	Vacant
Deputy President	1st Plaintiff (Acting)
Vice President	1st Plaintiff
Vice President	1st Defendant
Vice President	2nd Defendant
Secretary General	4th Defendant
Treasurer	5th Defendant
DPMM Johor	2nd Plaintiff
DPMM Melaka	6th Defendant (representative)
DPMM Negeri Sembilan	Abdul Rahman bin Yaakub
DPMM Putrajaya	7th Defendant (representative)

DPMM Kuala Lumpur	-
DPMM Perak	8th Defendant (representative)
DPMM Kedah	Hj Badrol Hisham bin Mohd Rejab (representative)
DPMM Pulau Pinang	-
DPMM Perlis	7th Plaintiff (representative)
DPMM Kelantan	-
DPMM Terengganu	-
DPMM Pahang	-
DPMM Sabah	-
DPMM Labuan	-
Elected MED	11th Defendant
Elected MED	5th Defendant
Elected MED	Datuk Awang Sham bin Haji Amit
Elected MED	Mohd Yusrizal bin Omar
Elected MED	-
Appointed MED	-
Appointed MED	6th Plaintiff
Appointed MED	9th Defendant

Appointed MED	12th Defendant
Appointed MED	Azizi bin Kamaruddin
Chairperson of Dewan Muda	Kabul bin Idris
Chairperson of Dewanita	10th Plaintiff

63.2 DSSH did resign as the President of DPMM.

63.3 The 1st Plaintiff is not entitled to assume the position as Acting President of DPMM as he was not the elected Deputy President of DPMM and was only the Acting Deputy President at the material time.

63.4 Any letters and notices issued by the 1st Plaintiff in the capacity as Acting President of DPMM is void.

G. Whether MED could override the constitution of DPMM

[64] I note that the Defendants' counsels have accepted that the MED is not in a position to override the constitution of DPMM.

[65] I find that this admission is correct and is supported by authorities. I refer to *Dr Subramaniam a/l Suppiah v. Mumyandy a/l Pendiah* [2017] MLJU 518 where Hayatul Akmal JC (as she then was) held: -

*"**[34]** The question of membership had always been at the sole discretion of the committee or the board of directors of any organisation. Outsiders cannot force upon the committee to grant membership when the same is not recognised and/or approved by the committee. The general body of the society is governed by the Rules that they have subscribed to and registered with the ROS. It is a contract that binds them and the*

Society inter-se. They cannot conduct themselves contrary to the Rules that they have subscribed to."

[66] This is also reiterated by Heliliah J (as her ladyship then was) in *Goh Say Joo v. Dato Lim Ah Chap* [2004] MLJU 741.

[67] I also refer to the decision Chadwick J in *Wise v. Union of Shop, Distributive and Allied Workers* [1996] ICR 691, where he stated: -

"The starting point, as it seems to me, is that the source of the executive council's powers is the contract between all of the members which is embodied in the rules of the union. As it was put by Lord Wilberforce, when delivering the joint opinion of the House of Lords in Heaton's Transport (St. Helens) Ltd. v. Transport and General Workers' Union [1972] I.C.R. 308, 393:

"the original source of the shop stewards' authority is the agreement entered into by each member by joining the Transport and General Workers' Union. By that agreement each member joins with all other members in authorising specified persons or classes of persons to do particular kinds of acts on behalf of all the members, who are hereafter referred to collectively as the union. The basic terms of that agreement are to be found in the union's rule book."

Applying those observations to the circumstances of the present case, the basis upon which a member of the union — and, in particular, the two plaintiffs who are members of the union — agree to be bound by decisions of the executive council and agree that the executive council, the president and the general secretary shall be appointed to office in a particular way, is that those decisions will be made, and elections for those offices will be held, in accordance with the rules. A decision which is inconsistent with the rules or an election which is held in a manner inconsistent with the procedure prescribed by the rules

as they operate within the statutory framework is a decision or an election to which the member has not given his or her consent. The decision has been made, or the election held, in a manner which contravenes the contract into which the member has entered by joining the union. Accordingly, as it seems to me, the right of a member to complain of a breach of the rules is a contractual right which is individual to that member; although, of course, that member holds the right in common with all other members having the like right."

[68] I also refer to *Lee v. Showmen's Guild of Great Britain* [1952] 1 AII ER 1175, where Lord Denning held: -

"I repeat "on its true construction" because I desire to emphasize that the true construction of the contract is to be decided by these courts and by no one else. Counsel for the defendant guild argued that it was for the committee of the guild to construe the rules, and, so long as they put an honest construction on them, then their construction was binding on the members, even though it was a wrong construction. I cannot agree with this contention. The rules are the contract between the members. The committee cannot extend their jurisdiction by giving a wrong interpretation to the contract, no matter how honest they may be. They have only such jurisdiction as the contract on its true interpretation confers on them, not what they think it confers. The scope of their jurisdiction is a matter for the courts, and not for the parties, let alone for one of them. This is how the House of Lords approached the problem in the Carpenters' case, and I think we should follow their example.

In most of the cases that come before such a domestic tribunal the task of the committee can be divided into two parts—(i) they must construe the rules; (ii) they must apply the rules to the facts. The first is a question of law which they must answer

correctly if they are to keep within their jurisdiction. The second is a question of fact which is essentially a matter for them."

[69] I find that DPMM's MED is not entitled to disregard the constitution and hold the annual general meeting to their whims and fancies. I am aware that Article 12.14 of the Undang-undang Tubuh does provide wide powers to the MED and that the decision made by the said body will be final and binding on all members. This however does not allow the said body to disregard the Undang-undang Tubuh. The said body is still bound and must comply with the express rules of the said contract binding on all members of DPMM.

[70] Therefore, although Article 11.1 of the Undang-undang Tubuh DPMM does provide that DPMM's MED is the highest body that determines the administration and the application of the constitution of DPMM and that the wide powers provided under Article 12.14, I find it is irrefutable that the said MED is still bound by its constitution. The MED cannot act beyond the powers and the provisions stated in the said Undang-undang Tubuh of DPMM.

[71] Neither could the said MED amend the said constitution without complying with Article 36 of the constitution. Any amendments must be presented at an Annual General Meeting and passed by way of 2/3 majority of the votes from the delegates or representatives that are present and voting at the said meeting. Any amendments cannot be undertaken without complying with the said article merely through notices and decision of the MED.

[72] Based on the aforesaid, I make the following orders concerning this issue concerning the powers of the MED and the Undang-undang Tubuh DPMM: -

72.1 I declare that the MED cannot supersede the constitution of DPMM.

72.2 The notices and letters issued by the MED that confer any form of validity to the Annual General Meeting held on 26-2-2020 are declared to be void.

72.3 Any letters and notices issued by the MED or any person appointed into any official capacity as a result of the Annual General Meeting held 26-2-2020 are declared to be void.

72.4 The show cause notices issued by the Plaintiffs dated 2-3-2020 are declared to be void.

H. The Defendants' Counterclaim

[73] I note that the Defendants have also instituted a counterclaim against the Plaintiffs that could be summarized as follows: -

73.1 A claim for abuse of process – allegation that the Plaintiffs claim is premised for a collateral purpose.

73.2 A claim based on the tort of conspiracy to injure DPMM to scuttle the AGM.

73.3 This claim is premised on the purpose of protect the Plaintiffs' interests in DPMM Johor to the detriment of DPMM Johor and DPMM as a whole.

73.4 Termination or suspension of the membership of the Plaintiffs for attempting to scuttle or stop the Annual General Meeting on 26-2-2020 as seen in the notices dated 26-2-2020.

73.5 Unlawful attempts by the Plaintiffs and Dato Syed Hussain to scuttle the Annual General Meeting.

73.6 That DPMM did suffer damages in its reputation and has lost credibility.

[74] I find that the Defendants Counterclaim as enumerated above is premised on the validity of the Annual General Meeting dated 26-2020.

[75] The leading case on the tort of abuse of process in Malaysia is *Building Society Bhd v. Tan Sri General Ungku Nazaruddin Ungku Mohamed* [1998] 2 CLJ 340. In that case, Gopal Sri Ram JCA (as he then was) stated: -

> *"Every person who is aggrieved by some wrong he considers done him is at liberty to invoke the process of the court. Equally may a litigant invoke the process to enforce some claim which he perceives he has against another. When however, the process of the court is invoked, not for the genuine purpose of obtaining the relief claimed, but for a collateral purpose, for example, to oppress the defendant, it becomes an abuse of process. Where the court's process is abused, the proceedings complained of may be stayed, or if it is too late to grant a stay, the party injured may bring an action based on the tort of collateral abuse of process.*
>
> *The position has been neatly summed up by Lord Denning MR in his dissenting judgment in Goldsmith v. Sperrings Ltd & Ors [1977] 1 WLR 478, where at p 489 he said:*
>
> *In a civilized society, legal process is the machinery for keeping and doing justice. It can be used properly or it can be abused. It is used properly when it is invoked for the vindication of men's rights or the enforcement of just claims. It is abused when it is diverted from its true course so as to serve extortion or oppression: or to exert pressure so as to achieve an improper end. When it is so abused, it is a tort, a wrong known to the law. The judges can and will intervene to stop it. They will stay the legal process, they can, before any harm is done. If they cannot*

stop it in time, and harm is done, they will give damages against the wrongdoer.

Though a dissenting judgment, the principle enunciated by the Master of the Rolls has been accepted as authoritative of what constitutes an abuse of process.

Because it has been developed on a case by case basis as other common law wrongs have, the tort of abuse of process, its entry into the law of torts, has undergone change through history. The essential elements of the tort in present day context have been set out in the instructive judgment of the High Court of Australia in Williams v. Spautz 107 ALR 635.

...In my judgment, the essential elements of the tort of abuse of process are these:

(1) The process complained of must have been initiated;

(2) The purpose for initiating that process must be some purpose other than to obtain genuine redress which the process offers. In other words, the dominant purpose for which the process was invoked must be collateral, that is to say, aimed at producing a result not intended by the invocation of the process; and

(3) The plaintiff must have suffered some damage or injury in consequence.

It is to be stressed that neither malice nor the termination of the proceedings in the plaintiff's favour are necessary elements of the tort. To put it plainly, a plaintiff in an action for abuse of process need not prove that the defendant had invoked the process of the court maliciously. Neither does he have to prove that the proceedings terminated in his favour.

It is only upon proof of the elements that go to make up the tort of collateral abuse of process, that a plaintiff is entitled to an award of damages."

[76] This remains to be good law as seen in *Conweld Engineering Sdn Bhd & Ors v. Goh Swee Boh & Anor* [2023] 1 CLJ 323.

[77] I am also aware of the decision of the Court of Appeal in *Vivaganth Santharasilan v. Public Bank Bhd* [2019] 1 CLJ 605 as well as the Federal Court in *Sham Chin Yen & Ors v. Mansion Properties Malaysia Sdn Bhd* [2021] 1 CLJ 609, where our Superior Courts have held that where there are allegations of facts involved concerning the predominant purpose of a suit and the tort of abuse of process, this must be determined at trial.

[78] Nonetheless, I find as the Plaintiffs have shown to me that the impugned Annual General Meeting is void, it would be wrong for this Court to hold that the Plaintiffs had an ulterior motive in filing the said suit. Surely, having found there are merits to the Plaintiffs complaint, this Court cannot find that the litigants had an ulterior motive.

[79] I also find that the Plaintiffs has a right and a duty to ensure that the MED acts in accordance with the terms of the Undang-undang Tubuh. The MED cannot disregard the Undang-undang Tubuh and collectively agree to act contrary to what is prescribed in the said document. Therefore, the actions by the Plaintiffs to challenge the said Annual General Meeting is predicated by the need to ensure the said Undang- undang Tubuh is respected and complied with.

[80] I am guided by the decision of the Court of Appeal in *Casing Heights Sdn Bhd v. Aloyah Abd Rahman* [1996] 3 CLJ 695, where Mahadev Shankar JCA held: -

"When the action lies.

It is a tort to use legal process in its proper form in order to accomplish a purpose other than that for which it was designed and, as a result, to cause damage.

The plaintiff need not prove want of reasonable and probable cause, nor need the proceedings have terminated in his favour.

He must show that the defendant has used the proceedings for some improper purpose.

This tort differs from malicious prosecution in that proof of any special damage is sufficient (Grainger v. Hill [1938] 4 Bing NC 212. In Corbett v. Burge.

Warren and Ridley Ltd [1932] 48 TLR 626, it was said that loss of business profits was not a recoverable head of damage. (Emphasis mine).

It seems to me that some of the passages quoted from the text books require qualification. I therefore purpose to analyse the cases cited.

But before I do that I want to say in the most emphatic terms that if a litigant brings an action to protect his rights (as the defendants did in filing the motion) the use of all remedies afforded to him by the law cannot be an abuse of the Court's process.

Usually the reasons why an action has been brought is only determined at the conclusion of the proceedings.

....

As to what constitutes an abuse of process, it would salutary to remind ourselves that in Grainger v. Hill it was obvious that

the plaintiff knew he never had a cause of action in the first place.

Secondly, he proceeded with his action in order to extort a relief he was never entitled to in law.

The facts of this case are set out in Speed Seal Products Ltd. v. Paddington [1986] 1 AII Er 91 at p 98 from which it was apparent that the proceedings were commenced for a debt ***not yet due.*** *He then extorted the defendant's ship's register and prevented the ship from sailing.*

Apparently, the action (for recovery of the debt had been settled before) the debtor defendant brought a separate action for damages and the recovery of the register.

In my judgment, one can certainly go so far as to say that when a litigant sues to redress a grievance no object which he may seek to obtain can be condemned as a collateral advantage if it is reasonably related to the provision of some form of redress for that grievance.

On the other hand, if it can be shown that a litigant is pursing an ulterior purpose unrelated to the subject-matter of the litigation and that, but for his ulterior purpose, he would not have commenced proceedings at all, that is an abuse of process.

These two cases are plain, but there is, I think, a difficult area in between.

What if a litigant with a genuine cause of action, which he would wish to pursue in any event, can be shown also to have an ulterior purpose in view as a desired by-product of the litigation.

Can he on that ground be debarred from proceeding? I very much doubt it.

....

If the use of Court process is to expose a party to liability under this principle, the process must, in our judgment, have been used for a predominant purpose 'outside the ambit of the legal claim upon which the Court is asked to adjudicate' (cf Varawa v. Howard Smith Co. [1911] 13 CLR 35 at 91 per Isaacs J). Relief in tort under the principle of Grainger v. Hill is not, in our judgment, available against a party who, however dishonestly, presents a false case for the purpose of advancing or sustaining his claim or defence in civil proceedings."

[81] Secondly, I do not find that the Defendants have a valid legal claim for damages for lost of reputation and credibility. I refer to the decision of the Federal Court in *Lim Lip Eng v. Ong Ka Chuan* [2022] 5 CLJ 847, although a case concerning the law of defamation and registered societies, but the judgment is helpful when dealing with claims relating to loss of reputation and credibility by registered societies.

[82] I refer to the judgment of Zaleha Yusof FCJ:

*"**[86]** It is our view, before we can even properly consider the question of application of the Derbyshire principles, we cannot ignore the legal position of the respondent, that as a registered society, the respondent is not a legal entity which can sue and be sued in its own name. Consequently, it does not even have any reputation to complain about..."*

[83] Similarly, here, I cannot find any legal basis for the Defendants to complaint and claim for an alleged loss of reputation or loss of credibility as a cause of action in favour of a registered association.

[84] Another compelling reason that I find that the Defendants Counterclaim should be dismissed is that their claim revolves on the allegation that the Plaintiffs, or at least some of them who were

members of the MED, did not object to the holding of the Annual General Meeting and their failure to act collectively as a group in the best interest of DPMM.

[85] I find that the said allegation is circular in nature and is an attempt to evade on the issue of the legality of the Annual General Meeting. As I have found that the Annual General Meeting is invalid, surely it would be wrong for the Plaintiffs to ignore the said illegality and continue with the wrong collective decision of the MED. I also find that the 1st Plaintiff and Dato Syed Hussain did inform the MED of the said illegality and did try to hold it off. This could be seen in the letter dated 25-2-2020 issued by the 1st Plaintiff to the MED.

[86] Furthermore, as I have found that the Annual General Meeting is invalid, the Plaintiffs are entitled to the orders for interim relief, that were eventually obtained by way of a consent order, to prevent the continuation of the illegality and the actions of the MED that derived its powers from the resolutions issued at said meeting. The costs incurred to prevent the said illegality by DPMM would be justifiable and cannot be claimed against the Plaintiffs.

[87] The final issue I would like to address concerns the allegations by the Defendants that DPMM had suffered damages as a result of the said conspiracy and that this requires a trial of the claim. This the Defendants say arises from the interlocutory injunctions entered, the inability of DPMM to promote its activities and the attempts to scuttle the Annual General Meeting.

[88] I do not agree that this requires a trial and I believe that this issue can be dealt with based on my findings earlier. As the Annual General Meeting dated 26-2-2020 is invalid, the first step that DPMM now has to undertake is to have a new Annual General Meeting, not just at the Federal level but also at the State Level in accordance with the Undang- undang Tubuh. This meeting will then appoint the appropriate persons to hold the public office of DPMM and then

constitute the MED. It is this body and the coram attending the valid Annual General Meeting that will determine the plans to be undertaken by DPMM. This surely cannot be undertaken based on the decision of the MED that was appointed based on an invalid Annual General Meeting.

[89] Furthermore, the interlocutory orders were made on a consensual basis. Until such time this Court makes an order to enforce the said undertaking, then no damages will arise against the Plaintiffs. More so when, as I have said earlier, these orders were made in accordance with the consent of the Defendants. I refer to *Middy Industries Sdn Bhd & Ors v. Arensi-Marley (M) Sdn Bhd* [2012] 1 LNS 830 and *Elian Mooin & Anor v. Dato' Zainal Abidin Johan* [1997] 3 CLJ 455.

[90] For the above reasons, I dismiss the Defendants' Counterclaim.

[91] On the final issue of an alleged claim relating to the office of DPMM Johor, I feel that this claim if any, should be commenced by the office bearers of the said entity and not by the Defendants.

[92] Furthermore, the claim by the Defendants boils down to the alleged attempt and the continued attempt to scuttle the impugned AGM. As the AGM is invalid, I find there is no basis for the alleged counter claim.

I. Orders of this Court

[93] Pursuant to my powers under Order 33 rule 2 and rule 5 of the Rules of Court 2012, I make the following orders: -

93.1 I declare that the said Annual General Meeting was wrongly held on 26-2-2020.

93.2 I declare that DSSH's resignation is valid.

93.3 The MED of DPMM as of to date is made up of the following persons: -

Position	Name
President	Vacant
Deputy President	1st Plaintiff (Acting)
Vice President	1st Plaintiff
Vice President	1st Defendant
Vice President	2nd Defendant
Secretary General	4th Defendant
Treasurer	5th Defendant
DPMM Johor	2nd Plaintiff
DPMM Melaka	6th Defendant (representative)
DPMM Negeri Sembilan	Abdul Rahman bin Yaakub
DPMM Putrajaya	7th Defendant (representative)
DPMM Kuala Lumpur	-
DPMM Perak	8th Defendant (representative)
DPMM Kedah	Hj Badrol Hisham bin Mohd Rejab (representative)
DPMM Pulau Pinang	-
DPMM Perlis	7th Plaintiff (representative)
DPMM Kelantan	-
DPMM Terengganu	-
DPMM Pahang	-

DPMM Sabah	-
DPMM Labuan	-
Elected MED	11th Defendant
Elected MED	5th Defendant
Elected MED	Datuk Awang Sham bin Haji Amit
Elected MED	Mohd Yusrizal bin Omar
Elected MED	-
Appointed MED	-
Appointed MED	6th Plaintiff
Appointed MED	9th Defendant
Appointed MED	12th Defendant
Appointed MED	Azizi bin Kamaruddin
Chairperson of Dewan Muda	Kabul bin Idris
Chairperson of Dewanita	10th Plaintiff

93.4 The notices and letters issued by the MED that confer any form of validity to the Annual General Meeting held on 26-2-2020 are declared to be void.

93.5 Any letters and notices issued by the MED, or any person appointed into any official capacity, as a result of the Annual General Meeting held 26-2-2020, are declared to be void.

93.6 The show cause notices issued against the Plaintiffs and Defendants are declared to be void.

93.7 The notices and letters issued by the MED that confer any form of validity to the Annual General Meeting held on 26-2-2020 are declared to be void.

93.8 Any letters and notices issued by the MED or any person appointed into any official capacity as a result of the Annual General Meeting held 26-2-2020 are declared to be void.

93.9 The show cause notices issued by the Plaintiffs dated 2-3-2020 are declared to be void.

93.10 The Defendants' Counterclaim is dismissed.

93.11 DPMM is directed to hold an annual general meeting on or before the 30-6-2023 with the required notices to be issued. This will also enail that each State DPMM is required to hold their annual general meeting before 30-4-2023.

93.12 The Federal DPMM must be held after 30-4-2023 and if any State DPMM fails to hold its own annual general meeting before the said date, these bodies will only be allowed to send an observer in accordance with the Undang-undang Tubuh DPMM.

93.13 Any letters issued by the 1st Plaintiff as acting President are declared to be void.

93.14 No order as to cost.

Dated: 28 FEBRUARY 2023

(Mohd Arief Emran Arifin)
Judicial Commisioner
High Court Malaya Kuala Lumpur

Counsel:

For the plaintiffs - Malik Imtiaz Sarwar & Surendra Ananth; M/s Surendra Ananth
Advocates & Solicitors

For the defendants - Lavinia Kumaraendran & Avinash Kamalanathan; M/s Lavinia & Balan
Advocates & Solicitors
Kuala Lumpur)