CAPITAL CITY PROPERTY SDN BHD

v.

TEH SWEE NEO & ANOR

Court of Appeal, Putrajaya
See Mee Chun, Wong Kian Kheong, Ismail Brahim JJCA
[Civil Appeal No: J-02(NCvC)(W)-649-04-2023]
9 February 2026

Company Law: *Lifting of corporate veil — Claim against 1st and 2nd defendants for breach of tenancy agreements ('TAs') and sale and purchase agreements — Plaintiff seeking to pierce corporate veil of 1st defendant and impose 1st defendant's liability under TAs on 2nd defendant — Whether court could pierce corporate veil of one company and impose liability incurred by that company on another company — Distinction between court's discretionary power to lift corporate veil and piercing*

The appellant ('2nd defendant') had sold commercial units in a mall built by it to various purchasers who then rented out their units to the 1st defendant pursuant to the tenancy agreements ('TAs') entered into between them. The respondents ('plaintiffs') commenced the instant representative/class action on behalf of the unit purchasers against the defendants jointly and severally, claiming rent which had not been paid for 97 units pursuant to the TAs. The plaintiffs sought to impose the 1st defendant's liability under the TAs on the 2nd defendant. The 1st defendant counterclaimed a declaration that the plaintiffs had breached the TAs by failing to pay various charges due to the 2nd defendant under the respective sale and purchase agreements ('SPAs') and sought damages for the alleged breaches. The 2nd defendant in turn counterclaimed for various charges due under the SPAs. The Judicial Commissioner ('JC') allowed the plaintiffs' claim and dismissed both counterclaims. The JC lifted the corporate veil of both defendants and found them jointly liable to the plaintiffs for the rent. The JC found *inter alia* that there existed a special circumstance in that the 1st defendant was incorporated as the 2nd defendant's vehicle to avoid liability to the plaintiffs for the rent, and that the lifting of the 2nd defendant's corporate veil was justified as the 2nd defendant had 'effective control' over the 1st defendant. The 1st defendant did not appeal against the said decision. The 2nd defendant however, appealed only against the finding that it was liable to the plaintiffs for the rent and did not appeal against the dismissal of its counterclaim. The 2nd defendant contended *inter alia* that the JC had erred in law in failing to apply the doctrine of privity of contract, that the TAs should not be construed based on the SPAs, that it had not guaranteed payment of the rent by the 1st defendant, and that there was no evidence of fraud to justify the piercing of the 1st defendant's corporate veil and imposing of liability on the 2nd defendant for the rent due to the plaintiffs.

Held (allowing the appeal):

(1) As was stated in *Chanel v. Melwani2 International Sdn Bhd & Ors And Other Cases* ('*Chanel*'), there was a distinction between the court's lifting of a company's corporate veil and its piercing. Based on *Chanel*, the JC should have pierced and not merely lifted the 1st defendant's corporate veil to impose the 1st defendant's liability on the 2nd defendant. (para 15)

(2) Premised on *ARL Associates Sdn Bhd & Ors v. Bank Kerjasama Rakyat Malaysia Berhad* and *SPM Energy Sdn Bhd & Anor v. Multi-Discovery Sdn Bhd*, the court's piercing of one company's corporate veil so as to impose that company's liability on another company could only be invoked if the party applying for the same could discharge the legal and evidential burden under ss 101(1), (2) and 102 of the Evidence Act 1950 to prove on the balance of probabilities, one of two sets of exceptional or special circumstances ('2 exceptions') namely, that actual fraud had been committed, and that there existed equitable fraud or constructive fraud. Where the 2 exceptions did not apply, the court's piercing of the corporate veil could not be invoked. (paras 20 & 35)

(3) The court's discretionary power to lift or pierce a company's corporate veil was not a cause of action in itself. (para 21)

(4) The SPAs and TAs were genuine agreements that were purely commercial in nature, and were not intended by the parties thereto to 'give to third parties or to the court the appearance of creating between the parties legal rights and obligations different from the actual legal rights and obligations (if any) which the parties intend to create'. (paras 22 & 24)

(5) The defendants had the right to arrange their corporate affairs provided that such corporate arrangement did not involve any actual or potential illegality or was not intended to deprive any person of that person's existing right(s) [not future right(s)]. Based on the documentary evidence, the defendants' right to arrange their corporate affairs had been lawfully exercised. (paras 25, 26, & 30)

(6) Actual fraud committed by the defendants was not pleaded by the plaintiffs so as to justify the piercing of the 1st defendant's corporate veil and imposition of the 1st defendant's liability under the TAs on the 2nd defendant. Additionally, the plaintiffs had failed to discharge the legal/evidential burden of proving on a balance of probabilities the invocation of the equitable/constructive fraud exception in this instance. (paras 31-34)

(7) Without proof of the said 2 exceptions, the JC had erred in law by imposing the 1st defendant's liability under the TAs on the 2nd defendant by relying on one or more of the following circumstances namely, evasion of liability, abuse of corporate personality, special/exceptional circumstances; circumstances (interest of justice) and/or control of one company by another company. (para 35)

(8) Where the 2 exceptions did not apply, s 115 of the Evidence Act 1950 and the doctrine of equitable estoppel could not be a basis for the court's piercing of one company's corporate veil to impose the liability of that company on another company. (paras 37-38)

(9) In the circumstances, the JC had erred in fact and in law in piercing the 1st defendant's corporate veil and imposing the 1st defendant's liability on the 2nd defendant, thus warranting appellate intervention. (para 39)

(10) The doctrine of privity of contract could not be relied on by the 2nd defendant to support its appeal because the plaintiffs were not enforcing the TAs against the 2nd defendant. On the contrary, the plaintiffs had applied to pierce the 1st defendant's corporate veil and impose the 1st defendant's liability under the TAs on the 2nd defendant. (para 41)

Case(s) referred to:

ARL Associates Sdn Bhd & Ors v. Bank Kerjasama Rakyat Malaysia Berhad [2013] 3 MLRA 370 (folld)

Chanel v. Melwani2 International Sdn Bhd & Ors And Other Cases [2017] 6 MLRH 175 (refd)

Koh Tian Boo v. Tengku Ibrahim Petra bin Tengku Indra Petra [2013] MLRHU 920 (refd)

Lazarus Estates Ltd v. Beasley [1956] 1 All ER 341 (refd)

Macronet Sdn Bhd v. RHB Bank Berhad [2002] 1 MLRH 745 (refd)

Master Strike Sdn Bhd v. Sterling Heights Sdn Bhd [2005] 1 MLRA 276 (refd)

Ong Leong Chiou & Anor v. Keller (M) Sdn Bhd & Ors [2021] 4 MLRA 211 (refd)

Paul Murugesu Ponnusamy Sebagai Wakil Nalamah Sangapillay (P) (Si Mati) v. Cheok Toh Gong & Ors [1996] 1 MLRA 128 (refd)

PJTV Denson (M) Sdn Bhd & Ors v. Roxy (Malaysia) Sdn Bhd [1980] 1 MLRA 562 (folld)

Rasiah Munusamy v. Lim Tan & Sons Sdn Bhd [1985] 1 MLRA 150 (refd)

Snook v. London and West Riding Investments Ltd [1967] 1 All ER 518 (refd)

SPM Energy Sdn Bhd & Anor v. Multi-Discovery Sdn Bhd [2025] 3 MLRA 744 (folld)

SPM Membrane Switch Sdn Bhd v. Kerajaan Negeri Selangor [2016] 1 MLRA 1 (refd)

Sri Kelangkota-Rakan Engineering JV Sdn Bhd & Ors v. Arab-Malaysian Prima Realty Sdn Bhd & Ors [2001] 1 MLRA 16 (refd)

Takako Sakao v. Ng Pek Yuen & Anor [2009] 3 MLRA 74 (refd)

Legislation referred to:

Companies Act 2016, ss 4(1), 20

Evidence Act 1950, ss 91, 92(a), (b), (c), (d), (e), (f), 101(1), (2), 102, 115

Housing Development (Control and Licensing) Act 1966, s 3

Housing Development (Control and Licensing) Regulations 1989, Schedules G, H, I, J

Counsel:

For the appellant: Joshua Kevin (Leng Wie Mun & Yap Zhen Yun with him); M/s Kevin & Co

For the respondents: Lim Chang; M/s Lim Chang & Soo

[For the High Court judgment, please refer to *Teh Swee Neo & Anor v. CCRM Management Sdn Bhd & Anor* [2024] MLRHU 375]

JUDGMENT

Wong Kian Kheong JCA:

A. Novel Issues

[1] This case discusses whether the court could pierce the corporate veil of one company (Company X) and impose liability incurred by Company X on another company (Company Y) when-

(1) Company Y had developed commercial lots in a shopping mall (Lots) and sold the Lots to various purchasers (Purchasers);

(2) the Purchasers and Company X had entered into tenancy agreements wherein the Purchasers rented the Lots to Company X (Tenancy Agreements);

(3) Company X was liable to the Purchasers for the unpaid rent of the Lots under the Tenancy Agreements (Unpaid Rent);

(4) Company Y was not a party to the Tenancy Agreements;

(5) the Purchasers had obtained a final judgment against Company X for the Unpaid Rent [Purchasers' Final Judgment (Company X)]; and

(6) Company X is solvent; and

(7) the Purchasers' Final Judgment (Company X) is not a "paper judgment" and can be executed against Company X.

The above question also discusses the following matters-

(a) with regard to a group of companies [Group (Companies)], in view of the separate legal personality of each member company in the Group (Companies) as well as the right of the Group (Companies) to arrange its corporate affairs among the member companies of the Group (Companies), how should the court exercise its discretionary power to pierce

the corporate veil of Company X and impose Company X's liability on Company Y? In this regard, whether the court can exercise its discretionary power to pierce a company's corporate veil when-

(i) actual fraud had been committed;

(ii) there existed equitable fraud or unconscionability;

(iii) Company Y was evading its liability for the Unpaid Rent;

(iv) there was an abuse of the corporate personality of Company X;

(v) there existed special or exceptional circumstances;

(vi) it was in the interest of justice to pierce the corporate veil of Company X; and/or

(vii) Company Y controlled, managed and/or directed Company X;

(b) the effect of an entire agreement clause and bilateral written variation clause in the SPAs;

(c) the application of ss 91 and 92 of the Evidence Act 1950 (EA) as well as the provisos (a) to (f) of s 92 EA;

(d) whether Company X and Company Y were estopped by s 115 EA and the case law doctrine of equitable estoppel from denying Company Y's liability to the Plaintiffs for the Unpaid Rent; and

(e) the relationship between the application of the doctrine of privity of contract and the court's discretionary power to pierce the corporate veil of a company.

B. Background

[2] I will refer to the parties as they were in the High Court.

[3] The 2nd defendant company (2nd Defendant) built a shopping mall named "Capital City Mall" (Mall).

[4] By way of Sale and Purchase Agreements (SPAs), the 2nd Defendant sold commercial units in the Mall (Units) to various purchasers (Unit Purchasers). The contents of the substantive provisions in the SPAs were identical.

[5] The 1st defendant company (1st Defendant) entered into tenancy agreements with the Unit Purchasers wherein the 1st Defendant rented Units from the Unit Purchasers (TAs). The substantive provisions in the TAs were identical.

C. Proceedings In The High Court

[6] This suit in the High Court (This Suit) was a representative or class action filed by two plaintiffs on behalf of Unit Purchasers of 97 Units (Plaintiffs) against both the 1st and 2nd Defendants (collectively referred to in this judgment as the "Defendants").

[7] In This Suit-

(1) the Plaintiffs claimed that both the Defendants were jointly and severally liable to the Plaintiffs for rent (Rent) which had not been paid by the Defendants for the 97 Units pursuant to the TAs (Original Action);

(2) the 1st Defendant denied the Original Action and filed a counterclaim against the Plaintiffs for the following relief-

(a) a declaration that the Plaintiffs had breached the TAs [Alleged Plaintiffs' Breaches (TAs)] by failing to pay various charges due to the 2nd Defendant pursuant to the SPAs; and

(b) an order for the Plaintiffs to pay damages to the 1st Defendant as a result of the Alleged Plaintiffs' Breaches (TAs)

(1st Defendant's Counterclaim); and

(3) the Original Action was denied by the 2nd Defendant. Furthermore, the 2nd Defendant counterclaimed from the Plaintiffs for various charges due from the Plaintiffs to the 2nd Defendant pursuant to the SPAs (2nd Defendant's Counterclaim).

[8] After a trial (Trial), the learned Judicial Commissioner (JC) (as he then was) decided as follows, among others (High Court's Decision):

(1) the Original Action was allowed and the Defendants were adjudged to be liable, jointly and severally, to the Plaintiffs for the Rent in a total sum of RM9,970,692.81 [Total Rent (TAs)];

(2) the Defendants shall pay interest at the rate of 5% per annum on the Total Rent (TAs) on a daily basis from the date of the High Court's Decision until full payment of the Total Rent (TAs);

(3) both the 1st Defendant's Counterclaim and 2nd Defendant's Counterclaim were dismissed; and

(4) each of the Defendants shall pay costs of RM15,000.00 to the Plaintiffs.

[9] The following grounds were given for the High Court's Decision in the learned JC's grounds of judgment (GOJ):

(1) the Original Action was allowed against the 1st Defendant because the 1st Defendant had breached the TAs by not paying any Rent to the Plaintiffs — paras 27 to 41 GOJ;

(2) in paras 42 to 50 GOJ, the High Court decided that both the Defendants were estopped by s 115 EA and the doctrine of estoppel from denying their liability to the Plaintiffs for the Rent. The following reasons were provided-

(a) the Plaintiffs had-

(i) executed the SPAs and TAs simultaneously; and

(ii) paid the full purchase prices of the 97 Units to the 2nd Defendant

- because the 1st Defendant had agreed to pay Rent to the Plaintiffs for a fixed term of two years;

(b) the Plaintiffs had authorised the 1st Defendant to pay whatever outstanding charges regarding the 97 Units by setting off such charges from the Rent due to the Plaintiffs; and

(c) it would be unjust for the Defendants to "depart from their position" with regard to the Rent;

(3) the 1st Defendant's Counterclaim was dismissed on the following grounds-

(a) the Plaintiffs had not breached any of the provisions in the TAs — paras 51 to 65 GOJ;

(b) in paras 66 to 75 GOJ, the learned JC found as a fact that the 1st Defendant's sole witness at the Trial, Dato' Muhammad Fauzi bin Mohd Johan (SD1), was not a credible witness; and

(c) the High Court applied the "parol evidence" rule in s 92 EA and decided that SD1 could not rely on matters which were not provided in the SPAs and TAs — paras 76 to 79 GOJ;

(4) the learned JC lifted the corporate veils of both the Defendants and found both of them to be jointly liable to the Plaintiffs for the Rent (High Court's Lifting of the 2 Defendants' Corporate Veils)-

(a) five reasons were given for the High Court's Lifting of the 2 Defendants' Corporate Veils, namely-

(i) the 2nd Defendant avoided its obligations owed to the Plaintiffs — paras 81, 82, 91, 93, 130, 134, 135 and 152 GOJ;

(ii) to prevent an abuse of the 1st Defendant's corporate personality — paras 81 GOJ;

(iii) in the interest of justice — para 92 GOJ;

(iv) there existed a "special circumstance" in this case, ie., the 1st Defendant was incorporated "just for the purpose of making [the 1st Defendant] as [the 2nd Defendant's] vehicle for the purpose of the [TAs]" and this would enable the 2nd Defendant to avoid its liability to the Plaintiffs for the Rent pursuant to the TAs — para 134 GOJ; and

(v) the fact that the 2nd Defendant had "effective control" over the 1st Defendant, justified the lifting of the 2nd Defendant's corporate veil — para 141 GOJ;

(b) the following evidence was relied on to support the High Court's Lifting of the 2 Defendants' Corporate Veils-

(i) the 2nd Defendant was incorporated on 14 June 2013 with a capital sum of RM5,000,000.00. The 1st Defendant was incorporated on 26 December 2013 with a capital sum of RM100.00 only, just two days before the official launch of the Mall's construction on 28 December 2013;

(ii) both the Defendants have the same words "Capital City" in their names;

(iii) the Defendants have a common director, ie., Mr Siow Chien Fu (SD2);

(iv) the Defendants have the same registered office at no 17A-1, First Floor, Jalan Camar 1/1, Taman Perling, 81200 Johor Bahru, Johor;

(v) the Defendants share the same business address at no 01-02-01 and 01-02-02, Pangsapuri Jentayu, Jalan Tampoi, Kawasan Perindustrian Tampoi, 81200 Johor Bahru;

(vi) the Defendants employ the same company secretaries, namely, Dr Sivamoorthy a/l Shanmugam, Koh Chin Koon and Ng Swee Chin;

(vii) all the SPAs and TAs were signed on the same day;

(viii) the same authorised signatories for the Defendants signed on behalf of the Defendants [Authorised Signatories (Defendants)];

(ix) the same witnesses attested to the signing of the SPAs and TAs by the Authorised Signatories (Defendants);

(x) the same solicitor, Mr Lim Man Yong, acted for the Defendants with regard to the SPAs and TAs;

(xi) the "essential terms" of the TAs were also contained in the documents and publications by the 2nd Defendant, ie., "Offer to Purchase", "Offer to Rent", "General Terms and Conditions",

"Flow Chart", YouTube videos, brochures, flyers, an article in "Capital City" Website and an article in "Capital World Annual Report 2017";

(xii) SD2 is an executive director and Chief Executive Officer of a Singapore company named Capital World Ltd (CWL). The 2nd Defendant is a subsidiary of CWL which was incorporated to construct and develop the Mall;

(xiii) SD2 is a qualified architect who has established an architecture company known as RDC Arkitek Sdn Bhd (RDC). SD2 is a director of RDC and RDC was the Mall's project architect. A director of RDC, Mr Tan Choon Kiat, had signed the Mall's "Certificate of Completion and Compliance" of the Mall; and

(xiv) the 1st Defendant had changed its name to "CCRM Management Sdn Bhd." while SD2 had resigned as a director of the 1st Defendant. Hence, the "inevitable inference" made by the High Court was that there was an "intention for [the 1st Defendant] to distance itself from [the 2nd Defendant]" and for the 2nd Defendant to distance itself from the 1st Defendant; and

(c) based on the evidence stated in the above sub-paras (4)(b)(i) to (xiv), the High Court found that-

(i) the 2nd Defendant was incorporated by SD2 to construct and develop the Mall;

(ii) the 1st Defendant was "managed, directed and controlled" by the 2nd Defendant to enter into the TAs with the Plaintiffs; and

(iii) the 1st Defendant was a nominal or "an empty shell company with a capital sum of RM100.00 only" which was incorporated by SD2 to "absorb the contractual liabilities incurred under the [TAs]" and "to evade or avoid [the 2nd Defendant's] liability for the payment of [the Rent]"; and

(5) the learned JC dismissed the 2nd Defendant's Counterclaim because in paras 144 to 152 GOJ, the learned JC made a factual finding that SD2 was not a credible witness.

D. Sole Appeal To The Court of Appeal By The 2nd Defendant Against The High Court's Decision

[10] The 1st Defendant did not appeal to the Court of Appeal against the High Court's Decision. Consequently, the High Court's Decision as against the 1st Defendant [High Court's Judgment (1st Defendant)], is final and *res judicata*.

[11] This appeal to the Court of Appeal was filed by the 2nd Defendant against only a part of the High Court's Decision (This Appeal), namely, the High Court's judgment that the 2nd Defendant was liable to the Plaintiffs for the Rent [High Court's Judgment (2nd Defendant)]. The 2nd Defendant did not

file an appeal to the Court of Appeal against the High Court's dismissal of the 2nd Defendant's Counterclaim.

E. Submissions By The Parties

[12] In support of This Appeal, the 2nd Defendant's learned counsel had contended as follows:

(1) the High Court had committed an error of law when the learned JC failed to apply the doctrine of privity of contract as laid down in appellate cases;

(2) the TAs should not be construed based on the SPAs;

(3) the 2nd Defendant had not provided a guarantee to the Plaintiffs for the payment of the Rent by the 1st Defendant to the Plaintiffs;

(4) both the SPAs and TAs were purely commercial in nature;

(5) clause 39 SPAs [Clause 39 (SPAs)] had expressly stated that the SPAs constituted the "sole and entire agreement between the parties hereto in relation to its subject matter and shall supersede all prior agreements and understandings, whether oral or written, with respect to such subject matter and it is hereby expressly declared that no variations or amendments of this [SPA] shall be effective unless made by the parties hereto in writing and signed by all parties hereto". The High Court had failed to take into account cl 39 (SPA) in this case;

(6) there was no evidence of actual fraud (or Common Law fraud), equitable fraud and/or abuse of the 1st Defendant's corporate personality in this case, to justify the piercing of the 1st Defendant's corporate veil and impose liability on the 2nd Defendant for Rent due to the Plaintiffs;

(7) the learned JC failed to distinguish between-

   (a) the 1st Defendant's business to manage the retail business and operations of the Mall; and

   (b) the construction and development of the Mall by the 2nd Defendant; and

(8) the 1st Defendant was not a nominal or shell company because there were pictures, flyers, schedules, floor plans and advertisements regarding the 1st Defendant's conduct and promotion of various events in the Mall, eg., "Johor Bahru Mayor's Boxing Club 2018", "Karnival Bitara Kesateria Negara", "Kejohanan Muay Thai" and "Yamaha Musikita 1st Annual School Concert" [Documentary Evidence on the 1st Defendant's Events (Mall)].

[13] The Plaintiffs' learned counsel had relied heavily on the GOJ to resist This Appeal. Additionally, the Plaintiffs' learned counsel advanced, among others, the following submission:

(1) the Plaintiffs had paid the full purchase prices for the 97 Units to the 2nd Defendant and vacant possession of the 97 Units had been delivered to the 1st Defendant. Yet, the Rent for the 97 Units was not paid to the Plaintiffs;

(2) the Plaintiffs' solicitors had sent to the Defendants two notices of demand on 25 April 2019 and 11 June 2019 for the unpaid Rent (Plaintiffs' 2 Demands). Notwithstanding the Plaintiffs' 2 Demands, the Defendants still refused to pay the Rent;

(3) after the expiry of the TAs, the Defendants failed to re-deliver vacant possession of the 97 Units to the Plaintiffs;

(4) in respect of This Suit, the Defendants were initially represented by the same firm of solicitors. The Defendants had earlier filed a joint defence and counterclaim (DCC). Subsequently, the 1st and 2nd Defendants changed solicitors and each of the two Defendants was thereafter represented by different solicitors. The Defendants applied for and obtained leave of the High Court to amend their DCC. Hence, a separate DCC was filed for each of the two Defendants; and

(5) the learned JC had not made any "plain error of fact" in-

(a) lifting the corporate veil of both the Defendants;

(b) applying the doctrine of estoppel against the Defendants; and

(c) making a factual finding that SD2 was not a credible witness.

Our Decision

F. The Court's Discretionary Power To Lift Or Pierce A Company's Corporate Veil

F(1). Company's Own Legal Personality

[14] Section 20 of the Companies Act 2016 [CA (2016)] provides as follows:

"section 20. **Separate legal entity**

A company incorporated under this Act is a body corporate and shall -

(a) **have legal personality separate from that of its members; and**

(b) **continue in existence until it is removed from the register.**"

[Emphasis Added]

It is clear that by virtue of s 20 CA (2016), a company is a legal person in itself (Company's Own Legal Personality). In a Group (Companies), each company in the Group (Companies) is a legal person who is separate from the other companies in the Group (Companies).

F(2). Is There A Distinction Between The Court's Discretionary Power To Lift A Company's Corporate Veil And Its Piercing?

[15] Many cases do not distinguish between the court's discretionary power to-

(1) lift a company's corporate veil; and

(2) pierce the corporate veil of a company.

There are also cases which have used the phrase "lifting a corporate veil" interchangeably with the phrase "piercing a corporate veil".

I am of the view that there is a distinction between the court's lifting of a company's corporate veil and its piercing. I refer to the High Court's judgment in *Chanel v. Melwani2 International Sdn Bhd & Ors And Other Cases* [2017] 6 MLRH 175, at [16(3)], as follows:

> "[16(3)] **there is a difference between the piercing of a corporate veil and its lifting. A company's corporate veil is pierced by a party when the party seeks to impose personal liability on an individual who may or may not be the company's director, shareholder or employee. The Court lifts the corporate veil of a company to ascertain the true factual position without imposing any personal liability on a particular individual (please see Staughton LJ's judgment in the English Court of Appeal case of *Atlas Maritime Co SA v. Avalon Maritime Ltd (The Coral Rose) (No 1)* [1991] 4 All ER 769, at 779, which was followed in *KTL Sdn Bhd & Anor v. Leong Oow Lai & Another Appeal* [2014] MLRHU 1014).**"
>
> [Emphasis Added]

In this case, the Plaintiffs sought to impose the 1st Defendant's liability for the Rent due under the TAs [1st Defendant's Liability (TAs)] on the 2nd Defendant. Based on the above judgment in *Chanel* (which ironically was relied on by the Plaintiffs' learned counsel to oppose This Appeal), the learned JC should have pierced (not merely lifted) the 1st Defendant's corporate veil so as to impose the 1st Defendant's Liability (TAs) on the 2nd Defendant. Having said that, I should add that This Appeal is not decided on the fact that the High Court in this case should have used the phrase "piercing a corporate veil" instead of the phrase "lifting a corporate veil".

F(3). Piercing A Company's Corporate Veil To Impose Liability On An Individual

[16] It is clear from the judgment of Nallini Pathmanathan FCJ in the Federal Court case of *Ong Leong Chiou & Anor v. Keller (M) Sdn Bhd & Ors* [2021] 4 MLRA 211 that the court has a discretion to pierce a company's corporate

veil so as to impose the company's liability on individual(s) (not to impose liability on another company) {Court's Piercing of Corporate Veil [Liability on Individual(s)]}.

[17] In this case, the Plaintiffs did not seek to invoke the Court's Piercing of Corporate Veil [Liability on Individual(s)].

F(4). Piercing Company X's Corporate Veil So As To Impose Liability Of Company X On Company Y

[18] In this case, the Plaintiffs had applied for the 1st Defendant's Liability (TAs) to be imposed on the 2nd Defendant and this application was acceded to by the learned JC. This case therefore concerns the court's discretionary power to pierce the corporate veil of one company so as to impose that company's liability on another company [Court's Piercing of One Company's Corporate Veil (Liability on Another Company)];

[19] With regard to the Court's Piercing of One Company's Corporate Veil (Liability on Another Company), I refer to the following judgment of the Court of Appeal in *SPM Energy Sdn Bhd & Anor v. Multi-Discovery Sdn Bhd* [2025] 3 MLRA 744, at [51] and [52]:

> "[51] **Based on our understanding of Malaysian case law -**
>
> (1) **in view of the General Rule (Separate Corporate Persons) premised on the Company's Own Legal Personality and Company's Limited Liability, the Court's Piercing Corporate Veil (Liability on Individual) should not be invoked as a matter of general application but instead, should only be exercised in the following exceptional circumstances -**
>
> (a) **there is proof of -**
>
> (i) **actual fraud; or**
>
> (ii) **Equitable/Constructive Fraud**
>
> **- please refer to *Ong Leong Chiou*; and**
>
> (b) **in accordance with the "Evasion Principle", the court imposes liability on an individual (Y) for the liability incurred by X Company when -**
>
> (i) **Y is X Company's "alter ego";**
>
> (ii) **Y is the "directing mind and will" of X Company; and/ or**
>
> (iii) **Y controls X Company — please refer to the Federal Court's judgment delivered by Chong Siew Fai CJ (Sabah & Sarawak) in *Sunrise Sdn Bhd v. First Profile (M) Sdn Bhd & Anor* [1996] 2 MLRA 147. In *Sunrise*, there was**

undisputed evidence that the holding company controlled the subsidiary company and consequently, the Federal Court ordered an interlocutory injunction to restrain the holding company from disposing lands held in the name of the subsidiary company;

(2) **by way of the Court's Piercing Corporate Veil (Liability on Individual), in accordance with the Evasion Principle, justice is attained by ensuring that Y's personal liability for X Company's liability, is not evaded; and**

(3) **the Court's Piercing Corporate Veil (Liability on Individual) cannot be exercised merely in the interest of justice (in the absence of actual fraud or Equitable/Constructive Fraud) because such a wide application of the Court's Piercing Corporate Veil (Liability on Individual) will undermine the General Rule (Separate Corporate Persons).**

[52] **In addition to the Court's Piercing Corporate Veil (Liability on Individual), the court has a discretionary power to pierce the corporate veil of X Company and impose liability on another company (Z Company). We shall refer to the exercise of such an exceptional discretion as the "Court's Piercing Corporate Veil (Liability on Another Company)". With regard to the Court's Piercing Corporate Veil (Liability on Another Company), we express the following view:**

(1) **premised on the General Rule (Separate Corporate Persons), the Court's Piercing Corporate Veil (Liability on Another Company) should only be applied exceptionally. If otherwise, the General Rule (Separate Corporate Persons) will be undermined, if not rendered redundant;**

(2) **in UK, Slade LJ delivered the following judgment of the Court of Appeal in *Adams & Ors v. Cape Industries Plc & Anor* [1990] Ch 433, at 542 and 544 -**

> **"The question of law which we now have to consider is whether the arrangements regarding N.A.A.C., A.M.C. and C.P.C. made by Cape with the intentions which we have inferred constituted a facade such as to justify the lifting of the corporate veil so as that C.P.C.'s and A.M.C.'s presence in the United States of America should be treated as the presence of Cape/Capasco for this reason if no other.**
>
> …
>
> **… Mr Morison submitted that the court will lift the corporate veil where a defendant by the device of a corporate structure attempts to evade (i) limitations imposed on his conduct by law; (ii) such rights of relief against him as third parties already possess; and (iii) such rights of relief as third parties may in the future acquire. Assuming that the first and second of these three conditions will suffice in law to justify such**

a course, neither of them apply in the present case. It is not suggested that the arrangements involved any actual or potential illegality or were intended to deprive anyone of their existing rights. Whether or not such a course deserves moral approval, there was nothing illegal as such in Cape arranging its affairs (whether by the use of subsidiaries or otherwise) so as to attract the minimum publicity to its involvement in the sale of Cape asbestos in the United States of America. As to condition (iii), we do not accept as a matter of law that the court is entitled to lift the corporate veil as against a defendant company which is the member of a corporate group merely because the corporate structure has been used so as to ensure that the legal liability (if any) in respect of particular future activities of the group (and correspondingly the risk of enforcement of that liability) will fall on another member of the group rather than the defendant company. Whether or not this is desirable, the right to use a corporate structure in this manner is inherent in our corporate law. Mr Morison urged on us that the purpose of the operation was in substance that Cape would have the practical benefit of the group's asbestos trade in the United States of America without the risks of tortious liability. This may be so. However, in our judgment, Cape was in law entitled to organise the group's affairs in that manner and (save in the case of A.M.C. to which special considerations apply) to expect that the court would apply the principle of *Salomon v. A. Salomon & Co Ltd* [1987] AC 22 in the ordinary way.

...

We reject the "corporate veil" argument."

[Emphasis Added]

According to *Adams*, a group of companies is entitled to arrange its corporate affairs in any manner so as to avoid future legal liability provided that such a corporate arrangement -

(a) **does not involve any actual or potential illegality; or**

(b) **is not intended to deprive any party of the party's existing right(s) [not future right(s)]**

[Right of Group of Companies (Corporate Arrangement)];

(3) **the Right of Group of Companies (Corporate Arrangement) as laid down in *Adams* had been adopted by Ramly Ali JCA (as he then was) in the Court of Appeal case of *ARL Associates Sdn Bhd & Ors v. Bank Kerjasama Rakyat Malaysia Berhad* [2013] 3 MLRA 370, at [22] to [24], as follows -**

"[22] **It is also trite law that a parent company and a subsidiary company (even a one hundred percent wholly owned by**

the parent company), are distinct legal entities. The parent company is neither the agent of the subsidiary company nor is it responsible for the acts or defaults of the subsidiary company (see: *Ebbw Vale Urban Dist Council v. South Wales Traffic Licensing Authority* [1951] 1 All ER 806).

[23] **In applying the above principles of law, we can safely conclude that the 1st Defendant, even though 20% of its shares were held indirectly by the Respondent (through its wholly owned subsidiaries) at the relevant time, was clearly a separate and distinct entity from the Respondent.**

[24] **Members, shareholders or even a parent company (being majority shareholders) as a general rule are not liable and cannot be held responsible for any liability of the company in question either in contract or in tort. They are being shielded by the corporate veil, which can only be lifted in exceptional circumstances where there is fraud involved. There must be exceptional circumstances such as fraud at common law or some inequitable or unconscionable conduct amounting to fraud in equity to lift the corporate veil (see: *Adams & Ors v. Cape Industries Pic & Anor* [1990] Ch 433; and *Law Kam Loy & Anor v. Boltex Sdn Bhd & Ors* [2005] 1 MLRA 521, Court of Appeal).**"

[Emphasis Added]; and

(4) **from the viewpoint of the *stare decisis* doctrine, the Court of Appeal is bound by its own previous decisions — please refer to the Federal Court's judgment delivered by Peh Swee Chin FCJ in *Dalip Bhagwan Singh v. PP* [1997] 1 MLRA 653. Accordingly, until our Federal Court overrules *ARL Associates*, we are constrained by the doctrine of *stare decisis* to follow *ARL Associates* and apply the Right of Group of Companies (Corporate Arrangement)**."

[Emphasis Added]

[20] Premised on two precedents established by the Court of Appeal in *ARL Associates Sdn Bhd & Ors v. Bank Kerjasama Rakyat Malaysia Berhad* [2013] 3 MLRA 370 and *SPM Energy*, we express the following view on the Court's Piercing of One Company's Corporate Veil (Liability on Another Company):

(1) a Group (Companies) has a right to arrange its corporate affairs among the member companies of the Group (Companies) in any manner so as to avoid future legal liability provided that such corporate arrangement-

(a) does not involve any actual or potential illegality; or

(b) is not intended to deprive any person of that person's existing right(s) [not future right(s)]

[Right of Corporate Arrangement (Group of Companies)];

(2) in view of-

(a) a Company's Own Legal Personality [please refer to s 20 CA (2016) and the above para 14];

(b) the fact that each member company in the Group (Companies) has a legal personality which is distinct from the other member companies in the Group (Companies); and

(c) the Right of Corporate Arrangement (Group of Companies) the Court's Piercing of One Company's Corporate Veil (Liability on Another Company) can only be invoked if a party applying to invoke the Court's Piercing of One Company's Corporate Veil (Liability on Another Company) (Z) can discharge the legal and evidential burden under ss 101(1), (2) and 102 EA (Legal/Evidential Burden) to prove on a balance of probabilities one of the following two sets of exceptional or special circumstances (2 Exceptions)-

(i) "actual fraud" had been committed (Actual Fraud Exception). In this regard, I rely on the meaning of "actual fraud" as explained by Raja Azlan Shah CJ (Malaya) (as His Majesty then was) in the Federal Court case of *PJTV Denson (M) Sdn Bhd & Ors v. Roxy (Malaysia) Sdn Bhd* [1980] 1 MLRA 562:

> "**Whether fraud exists is a question of fact, to be decided upon the circumstances of each particular case. Decided cases are only illustrative of fraud. Fraud must mean "actual fraud, ie dishonesty of some sort" for which the registered proprietor is a party or privy. "Fraud is the same in all courts, but such expressions as 'constructive fraud' are… inaccurate;" but "'fraud'… implies a wilful act, on the part of one, whereby another is sought to be deprived, by unjustifiable means, of what he is entitled." (per Romilly M.R. in *Green v. Nixon* (1857) 23 Beav 530 535 53 ER 208). Thus in *Waimiha Sawmilling Co Ltd v. Waione Timber Co Ltd* [1926] AC 101 & 106 it was said that "if the designed object of a transfer be to cheat a man of a known existing right, that is fraudulent**..." "
>
> [Emphasis Added]

The rationale of the Actual Fraud Exception is understandable. As explained by Denning LJ (as he then was) in the English Court of Appeal case of *Lazarus Estates Ltd v. Beasley* [1956] 1 All ER 341, at 345, "fraud unravels everything". In this regard, the following judgment in *Lazarus Estates* is reproduced-

> **"We are in this case concerned only with this point: Can the declaration be challenged on the ground that it was false and fraudulent? It can clearly be challenged in the criminal courts. The landlord can be taken before the magistrate and fined £30 (see Sch 2, para 6) or he can be prosecuted on indictment, and (if he is an individual)**

sent to prison (see s 5 of the Perjury Act, 1911). The landlords argued before us that the declaration could not be challenged in the civil courts at all, even though it was false and fraudulent, and that the landlords can recover and keep the increased rent even though it was obtained by fraud. If this argument is correct, the landlords would profit greatly from their fraud. The increase in rent would pay the fine many times over. I cannot accede to this argument for a moment. No court in this land will allow a person to keep an advantage which he has obtained by fraud. No judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything. The court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved it vitiates judgments, contracts and all transactions whatsoever; see, as to deeds, *Collins v. Blantern* (1767) (2 Wils. KB 342), as to judgments, *Duchess of Kington's Case* (1776) (1 Leach 146), and, as to contracts, *Master v. Miller* (1791) (4 Term Rep 320). So here I am of opinion that, if this declaration is proved to have been false and fraudulent, it is a nullity and void and the landlords cannot recover any increase of rent by virtue of it."

[Emphasis Added]; and

(ii) there existed equitable fraud or constructive fraud (Equitable/Constructive Fraud Exception). Equitable/Constructive Fraud had been explained in two judgments of our apex courts.

In the Supreme Court case of *Rasiah Munusamy v. Lim Tan & Sons Sdn Bhd* [1985] 1 MLRA 150, Mohd Azmi SCJ had decided as follows-

"**It is not a fraud in the common law sense, but an unmeritorious and unconscionable conduct which is known as constructive or equitable fraud (see *Spry on Equitable Remedies*,** 2nd edn, at p 236)."

[Emphasis Added]

In *Takako Sakao v. Ng Pek Yuen & Anor* [2009] 3 MLRA 74, Gopal Sri Ram FCJ delivered the following judgment of the Federal Court-

"**The "fraud" of which Lord Halsbury spoke in *Salomon v. A Salomon & Co Ltd* includes equitable fraud. In the recent Australian case of *The Bell Group Ltd (In liquidation) v. Westpac Banking Corporation (No 9)* [2008] WASC 239; 70 ACSR 1, Owen J discussed the distinction between equitable fraud and fraud at common law. His Honour said:**

4849 "**One of the leading Australian texts on equitable principles is *R Meagher, D Heydon and M Leeming, Meagher, Gummow and Lehane'sEquity Doctrines and Remedies* [4th Edn 2002]. When I refer to this text from time to time in these reasons I will do so by the shortened phrase 'Meagher Gummow and Lehane'. At [12-050] the authors set out a non-exhaustive list of factual and legal situations that have traditionally been treated as species of equitable fraud. They include:**

(a) **misrepresentation by persons under an obligation to exercise skill and discharge reliance and trust (for example in *fiduciary* relationships), and inducements to contract or otherwise for the representee to act to his detriment in reliance on the representation;**

(b) **the use of power to procure a bargain or gift, resulting in disadvantage to the other party;**

(c) **conflict of interest against a duty arising from a *fiduciary* relationship; and**

(d) **agreements which are *bona fide* between the parties but in fraud of third persons.**

4850 All of these categories can be seen, to varying degrees, in the claims brought by the plaintiffs in the equitable fraud causes of action. The last category is of particular interest because it encompasses the imposition and deceit species referred to as the Earl of Chesterfield fourth limb. I will come to that doctrine shortly.

22.2.1.2. **Equitable fraud and common law fraud compared**

The term common law fraud is often used to describe the tort of deceit, or the making of fraudulent misrepresentations. The tort of deceit is said to encompass cases where the defendant knowingly or recklessly makes a false statement, with the intention that another will rely on it to his or her detriment.

4852 *Derry v. Peek* [1889] UKHL 1; (1889) 14 App Cas 337 illustrates the principle that honesty is a duty of universal obligation, existing independently of contract or *fiduciary* obligations. In Derry v. Peek, the House of Lords rejected the argument that a claim of negligence would support an action for fraudulent misrepresentation. In so doing, their Lordships set the standard for common law fraud. Lord Herschell said, at 374, that to succeed, a plaintiff must prove 'that a false representation has been made (1) knowingly, or (2) without belief in its truth or (3) recklessly, careless whether it be true or false'. In other words, there must be a lack of an honest belief in the truth of the representation.

In *Armitage v. Nurse* [1997] EWCA Civ 1279; [1998] Ch 241; [1997] 3 WLR 1046, Millett LJ discussed the meaning of 'actual fraud' in the context of an exemption clause. At 1053, His Lordship described actual fraud as connoting, at least, 'an intention on the part of the trustee to pursue a particular course of action, either knowing that it is contrary to the interests of the beneficiaries or being recklessly indifferent whether it is contrary to their interests or not'.

This, then, marks out a significant difference between common law fraud and equitable fraud. The latter does not require proof of an actual intention to deceive."

To summarise, a plea of fraud at common law will not succeed absent proof of an intention to deceive. Such an intention is not an ingredient of equitable fraud which is, essentially speaking, unconscionable conduct in circumstances where there exists or is implied or imposed a relationship of trust or confidence."

[Emphasis Added];

(3) when the 2 Exceptions apply, the following circumstances are inevitably present-

(a) there was an evasion of liability by one member company of the Group (Companies) [Evasion (Liability)];

(b) there was an abuse of the corporate personality by one member company of the Group (Companies) [Abuse (Corporate Personality)];

(c) there existed special or exceptional circumstances (Special/ Exceptional Circumstances);

(d) it was in the interest of justice for the court to apply the 2 Exceptions [Circumstances (Interest of Justice)]; and/or

(e) the company which had incurred liability, would be controlled by the company which had sought to evade liability (Control of One Company by Another Company);

(4) it is to be emphasised that when the 2 Exceptions do not apply, the Court's Piercing of One Company's Corporate Veil (Liability on Another Company) cannot be invoked due to the mere fact that there could be present any one or more of the following circumstances-

(a) Evasion (Liability);

(b) Abuse (Corporate Personality);

(c) Special/Exceptional Circumstances;

(d) Circumstances (Interest of Justice); and/or

(e) Control of One Company by Another Company.

This is because if the Court's Piercing of One Company's Corporate Veil (Liability on Another Company) can apply in the circumstances stated in the above sub-paras (4)(a) to (e) without the presence of the 2 Exceptions, this will undermine the following three considerations which are fundamental in our company law [3 Fundamental Aspects (Company Law)]-

(i) a Company's Own Legal Personality as provided in s 20 CA (2016) (please refer to the above para 14);

(ii) each member company in the Group (Companies) has its own legal personality which is distinct from the other member companies in the Group (Companies); and

(iii) the Right of Corporate Arrangement (Group of Companies) — please refer to the above sub-para (1); and

(5) when the 2 Exceptions do not apply, the mere fact that one company controls, manages and/or directs another company, in itself, cannot be a basis for the application of the Court's Piercing of One Company's Corporate Veil (Liability on Another Company). The reasons for this view are stated in the above sub-paras (4)(i) to (iii). Furthermore, in a Group (Companies), it is neither uncommon nor sinister for a "holding company" (Holding Company) [as understood in s 4 CA (2016)] to control, manage and/or direct a "subsidiary" (Subsidiary) within the meaning of s 4(1) CA (2016). At the risk of repetition, the Court's Piercing of One Company's Corporate Veil (Liability on Another Company) can only be invoked to decide that a Holding Company is liable for the Subsidiary provided that any one or both of the 2 Exceptions apply.

F(5). Is The Court's Power To Lift Or Pierce A Company's Corporate Veil A Cause Of Action In Itself?

[21] It has to be borne in mind that the court's discretionary power to lift or pierce a company's corporate veil, is not a cause of action in itself. Once again, we cite the following judgment in *Chanel*, at [16(4)]:

> "[16(4)] **piercing or lifting a company's corporate veil is not a cause of action in itself — please see Nallini Pathmanathan J's (as she then was) judgment in the High Court case of** *Deepak Jaikishan Jaikishan Rewachand & Anor v. Intrared Sdn Bhd & Anor* [2012] MLRHU 1182."
>
> [Emphasis Added]

G. Whether The Court's Piercing Of One Company's Corporate Veil (Liability On Another Company) Could Be Invoked In This Case

G(1). What Was The True Nature Of The SPAs and TAs?

[22] Firstly, the Plaintiffs did not plead that the SPAs and TAs were sham contracts. Nor did the Plaintiffs adduce any evidence in this case that the SPAs and TAs were sham agreements. In respect of the question of whether a contract

is a sham or otherwise, we cite the following judgment of Gopal Sri Ram JCA (as he then was) in the Court of Appeal in *Sri Kelangkota-Rakan Engineering JV Sdn Bhd & Ors v. Arab-Malaysian Prima Realty Sdn Bhd & Ors* [2001] 1 MLRA 16:

> "Counsel for the appellant made two submissions on this point which I consider to be important. **His first submission is that evidence is admissible to show that a transaction is a sham. He says that he is using the expression "sham" in the limited sense ascribed to it by Lim Beng Choon J, in** *Kuppusamy Berapans v. Anggamah Ramasamy & Anor* [1991] 2 MLRH 359:
>
> > **Even if I am wrong in holding that the plaintiff's June 1986 agreement is invalid, I have no hesitation in holding that the said tenancy agreement is a sham agreement deliberately entered into between Ramasamy and the plaintiff to deprive the rights of the 2nd defendant as landlord of the plaintiff. 'Sham' has been defined as 'a false label in which the express purpose does not correspond with the true purpose'. The clearest statement of the principle is that provided by Diplock LJ in *Snook v. London and West Riding Investments Ltd* [1967] 2 QB 786 at p 802:**
> >
> > > **… acts done or documents executed by the parties to the 'sham' which are intended by them to give to third parties or to the court the appearance of creating between the parties legal rights and obligations different from the actual legal rights and obligations (if any) which the parties intend to create. But one thing, I think, is clear in legal principle, morality and the authorities (see *Yorkshire Railway Wagon Co v. Maclure* ([1882] 21 Ch D 309) and Stoneleigh Finance Ltd v. Phillips [1965] 2 QB 537)), that for acts or documents to be a 'sham', with whatever legal consequences follow from this, all the parties thereto must have a common intention that the acts or documents are not to create the legal rights and obligations which they give the appearance of creating. No unexpressed intentions of a 'shammer' affect the rights of a party whom he deceived.**
> >
> > **The court in order to determine whether a document or transaction is a sham ought to have regard to all the circumstances — both before and at the time of the execution of the document or creation of the transaction.**"
> >
> > [Emphasis Added]

It is clear in this case that both the SPAs and TAs were genuine agreements because-

(1) the Plaintiffs had purchased and obtained vacant possession of the 97 Units from the 2nd Defendant;

(2) by way of the TAs, the Plaintiffs had rented the 97 Units to the 1st Defendant; and

(3) based on the judgment of Diplock LJ (as he then was) in the English Court of Appeal case of *Snook v. London and West Riding Investments Ltd* [1967] 1 All ER 518, at 528, the SPAs and TAs had not been intended by all the parties to the SPAs and TAs to "give to third parties or to the court the appearance of creating between the parties legal rights and obligations different from the actual legal rights and obligations (if any) which the parties intend to create".

[23] At this juncture, with regard to the written SPAs and TAs, I need to refer to ss 91 and 92 EA regarding the admissibility of "extrinsic evidence" (oral and documentary evidence which are not contained in a written contract). Sections 91 and 92 EA provide as follows:

"**Evidence of terms of contracts**, grants and other dispositions of property **reduced to form of document**

section 91. **When the terms of a contract** or of a grant or of any other disposition of property **have been reduced by or by consent of the parties to the form of a document**, and in all cases in which any matter is required by law to be reduced to the form of a document, **no evidence shall be given in proof of the terms of the contract**, grant or other disposition of property or of the matter **except the document itself**, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

...

Exclusion of evidence of oral agreement

section 92. **When the terms of any such contract**, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, **have been proved according to s 91, no evidence of any oral agreement or statement shall be admitted as between the parties to any such instrument or their representatives in interest for the purpose of contradicting, varying, adding to, or subtracting from its terms**:

Provided that-

(a) **any fact may be proved which would invalidate any document** or which would entitle any person to any decree or order relating thereto, such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, the fact that it is wrongly dated, want or failure of consideration, or mistake in fact or law;

(b) the existence of any separate oral agreement, as to any matter on which a document is silent and which is not inconsistent with its terms, may be proved, and in considering whether or not this proviso applies, the court shall have regard to the degree of formality of the document;

(c) the existence of any separate oral agreement constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved;

(d) the existence of any distinct subsequent oral agreement, to rescind or modify any such contract, grant or disposition of property, may be proved except in cases in which the contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents;

(e) any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description may be proved if the annexing of any such incident would not be repugnant to or inconsistent with the express terms of the contract; and

(f) any fact may be proved which shows in what manner the language of a document is related to existing facts."

[Emphasis Added]

By virtue of proviso (a) to s 92 EA (any fact may be proved which would invalidate any document), any oral and/or documentary extrinsic evidence which shows that an agreement is a sham, in my view, is admissible to contradict the contents of the agreement.

[24] Secondly, the nature of the SPAs was purely commercial in nature. The SPAs were not the subject matter of a "social legislation" in the form of the Housing Development (Control and Licensing) Act 1966 (HDA). This is because the SPAs in this Appeal concerned commercial Units and not "housing accommodation" as defined in s 3 HDA as follows-

" **"housing accommodation" includes any building, tenement or messuage which is wholly or principally constructed, adapted or intended for human habitation or partly for human habitation and partly for business premises and such other type of accommodation as may be prescribed by the Minister from time to time to be a housing accommodation pursuant to s 3A;**"

[Emphasis Added]

It is beyond peradventure in this case that the contents of the SPAs were not required to be in the form of "statutory contracts" as prescribed in Schedules G, H, I or J to the Housing Development (Control and Licensing) Regulations 1989 (HDR) (which provide that every contract for the sale of a "housing accommodation" shall be in a form as prescribed in the HDR).

G(2). The Right Of The Defendants To Arrange Their Corporate Affairs

[25] As explained in *ARL Associates* and *SPM Energy* [please refer to the above sub-para 20(1)], the Defendants had a right to arrange their corporate affairs

[Defendants' Right (Arrangement of Corporate Affairs)] provided that such corporate arrangement-

(1) did not involve any actual or potential illegality; or

(2) was not intended to deprive any person of that person's existing right(s) [not future right(s)].

[26] In this case, the Defendants' Right (Arrangement of Corporate Affairs) had been exercised as follows:

(1) the 2nd Defendant would construct and develop the Mall;

(2) the 2nd Defendant would sell the Units in the Mall by way of the SPAs;

(3) by way of the TAs, the 1st Defendant would rent the Units from the Unit Purchasers; and

(4) the 1st Defendant's business was to manage the retail business and operations of the Mall.

I have no hesitation to decide that the Defendants' Right (Arrangement of Corporate Affairs) could be lawfully exercised because the Defendants' Right (Arrangement of Corporate Affairs)-

(a) did not involve any actual or potential illegality; or

(b) was not intended by the Defendants to deprive the Plaintiffs and/ or any person of their existing right(s) [not future right(s)].

I further decide that in view of the Documentary Evidence on the 1st Defendant's Events (Mall) which had not been rebutted by the Plaintiffs at the Trial, the Defendants' Right (Arrangement of Corporate Affairs) had indeed been lawfully exercised.

H. Could The High Court Pierce The 1st Defendant's Corporate Veil And Impose The 1st Defendant's Liability (TAs) On The 2nd Defendant?

[27] A court's decision to pierce a company's corporate veil is a finding of mixed law and fact. This is clear from *SPM Energy*, at [53], as follows:

> "[53] **Both the Court's Piercing Corporate Veil (Liability on Individual) and Court's Piercing Corporate Veil (Liability on Another Company) involve the court's decision on a question of mixed law and fact because -**
>
> (1) **whether there is a sufficient ground in law for the court to pierce the corporate veil of X Company and impose liability on Y or Z Company is a question of law; and**

(2) **whether the court should exercise its discretion to pierce X Company's corporate veil and impose liability on Y or Z Company depends on the particular facts of the case in question.**"

[Emphasis Added]

[28] For an appellate court to set aside a trial court's finding of mixed law and fact, it was decided in *SPM Energy*, at [57], as follows:

"[57] **We can only set aside the High Court's Finding of Mixed Law and Fact (2nd Defendant) [with regard to the Court's Piercing Corporate Veil (Liability on Another Company)] if -**

(1) **the legal basis for the High Court to impose liability on the 2nd Defendant for the 1st Defendant's Liability was an error of law; and/or**

(2) **the factual basis for the learned High Court Judge to exercise his discretion to pierce the 1st Defendant's corporate veil, was plainly erroneous (within the meaning laid down in *Ng Hoo Kui*).**"

[Emphasis Added]

H(1). The Defendants' Right (Arrangement Of Corporate Affairs)

[29] The written judgment of the Court of Appeal in *SPM Energy* was delivered on 20 February 2025. Consequently, before the High Court's Decision, the learned JC and counsel for both parties did not have the benefit of the Court of Appeal's judgment in *SPM Energy*. Nonetheless, it is regrettable that the parties' learned counsel in this case did not refer the learned JC to the Court of Appeal's decision in *ARL Associates* which was binding on the High Court from the perspective of the doctrine of *stare decisis*.

[30] As explained in the above Part G(2), the Defendants' Right (Arrangement of Corporate Affairs) had been lawfully invoked. As such, I have no hesitation to decide that the High Court had committed an error of law in failing to take into account the Defendants' Right (Arrangement of Corporate Affairs).

H(2). Could The Plaintiffs Rely On The Actual Fraud Exception In This Case?

[31] The Statement of Claim (SOC) filed by the Plaintiffs in This Suit did not plead that there was actual fraud committed by the Defendants in this case so as to justify the High Court's piercing of the 1st Defendant's corporate veil and the imposition of the 1st Defendant's Liability (TAs) on the 2nd Defendant. Paragraph 9 SOC merely pleaded as follows (in our National Language):

"9. **Walaupun Perjanjian-Perjanjian Sewa tersebut adalah dilaksanakan di antara [*sic*] Defendan Pertama dan Plaintif-Plaintif dan Pemilik-Pemilik tersebut, namun demikian Defendan Kedua dan Defendan Pertama hendaklah secara bersama dan/atau berasingan bertanggungan (liable) membayar wang sewa Unit-unit tersebut kepada Plaintif-Plaintif dan**

Pemilik-Pemilik tersebut menurut undang-undang dan/atau ekuiti dan/atau doktrin "estoppel" dan/atau kepentingan keadilan (interest of justice),..."

[Emphasis Added]

In any event, the Plaintiffs did not adduce any evidence at the Trial for the learned JC to pierce the 1st Defendant's corporate veil based on the Actual Fraud Exception.

H(3). Whether The Plaintiffs Could Rely On The Equitable/Constructive Fraud Exception

[32] Firstly, the SOC did not rely on the application of the Equitable/Constructive Fraud Exception. Paragraph 9 SOC only pleaded that the 2nd Defendant was jointly and severally liable with the 1st Defendant for the Rent on the following four grounds:

(1) law;

(2) equity;

(3) estoppel doctrine; and/or

(4) in the interest of justice.

[33] Notwithstanding the omission in the SOC to plead the application of the Equitable/Constructive Fraud Exception, I have no hesitation to decide that the following evidence and reasons proved that the Plaintiffs could not rely on the Equitable/Constructive Fraud Exception in this case:

(1) the High Court's Judgment (1st Defendant) had been obtained in the Plaintiffs' favour. There is no evidence to show that-

   (a) the 1st Defendant is insolvent and cannot satisfy the High Court's Judgment (1st Defendant); and

   (b) the High Court's Judgment (1st Defendant) is a paper judgment which cannot be executed against the 1st Defendant;

(2) as explained in the above para 22, the SPAs and TAs were genuine;

(3) the Documentary Evidence on the 1st Defendant's Events (Mall) clearly proved on a balance of probabilities that the 1st Defendant was not a nominal or shell company of the 2nd Defendant. A nominal or shell company would generally be a dormant company which does not conduct any genuine business and/or commercial transaction. Furthermore, the Plaintiffs had not adduced any evidence at the Trial to rebut the Documentary Evidence on the 1st Defendant's Events (Mall);

(4) Clause 39 (SPA) had two material provisions, namely-

(a) the SPAs constituted the "sole and entire agreement between the parties hereto in relation to its subject matter and shall supersede all prior agreements and understandings, whether oral or written, with respect to such subject matter" [Entire Agreement Clause (SPA)]; and

(b) "it is hereby expressly declared that no variations or amendments of this [SPA] shall be effective unless made by the parties hereto in writing and signed by all parties hereto" [Bilateral Written Variation Clause (SPA)].

(5) the effect of the Entire Agreement Clause (SPA) has been explained in the following trilogy of cases (Trilogy)-

(a) in the Court of Appeal case of *Master Strike Sdn Bhd v. Sterling Heights Sdn Bhd* [2005] 1 MLRA 276, Nik Hashim JCA (as he then was) had decided that an "entire agreement" clause "constitutes a binding agreement between [the parties] with regard to all matters mentioned in the contract and... the contract does not permit any term to be implied or import any other consideration not in the contract";

(b) the Court of Appeal in *Master Strike* had affirmed the following judgment of Abdul Aziz J (as he then was) in the High Court in *Macronet Sdn Bhd v. RHB Bank Berhad* [2002] 1 MLRH 745 -

> "**My opinion is simply this. The entire agreement clause was an agreement between the plaintiffs and the defendants. In agreeing to the clause, the parties must be presumed to have known of the existence of s 92 and of the exceptions in it and to have intended what the clause intended, that is to exclude any attempt to vary the agreement by an oral agreement or statement, which attempt can only be made through the exceptions in s 92. By agreeing, therefore, to the entire agreement clause, the plaintiffs agreed not to resort to any of the exceptions in s 92. They cannot, therefore, be allowed to prove the second precontractual representation or the oral agreement and to rely on them.**"
>
> [Emphasis Added]; and

(c) the judgment of Mohd Ariff Md Yusof J (as he then was) in the High Court case of *Koh Tian Boo v. Tengku Ibrahim Petra bin Tengku Indra Petra* [2013] MLRHU 920, at 9, as follows-

> "**To this extent, I find that the plaintiffs counsel's submission based on** *Macronet Sdn Bhd v. RHB Bank Berhad* [2002] 1 MLRH 745 **relevant. The sale and purchase agreement contains an entire agreement clause in the form of cl 10.5, which reads**

that the agreement embodies the entire understanding of the parties and there are no express or implied terms, warranties or conditions other than those contained herein. Sections 91**and** 92 [EA] **should therefore be applied.**"

[Emphasis Added]

By virtue of the Entire Agreement Clause (SPA), ss 91 and 92 EA (as explained in the Trilogy)-

(i) the SPAs contained the entire agreement between the Plaintiffs and 2nd Defendant. In other words, the SPAs did not provide for the 2nd Defendant to be liable to the Plaintiffs for the Rent pursuant to the TAs; and

(ii) the SPAs "shall supersede all prior agreements and understandings, whether oral or written, with respect to" the Units. Hence, even if there was/were any "prior agreements and understandings", oral and/or written, regarding the rental of the Units or the Rent, the SPAs shall supersede such "prior agreements and understandings".

Ironically, the learned JC applied s 92 EA in deciding that SD1 could not rely on matters which were not provided in the SPAs and TAs. Yet, the High Court did not apply ss 91 and 92 EA in this case. Needless to say, in respect of the SPAs, the Plaintiffs could not rely on any one of the provisos (a) to (f) of s 92 EA;

(6) the Bilateral Written Variation Clause (SPA) was not a novel contractual provision. The Bilateral Written Variation Clause (SPA) only embodied settled law in contracts, ie., a contract can only be lawfully varied by way of a bilateral variation between the contracting parties and a unilateral variation of the contract by only one party is invalid — please refer to the judgment of the Supreme Court delivered by Peh Swee Chin FCJ in *Paul Murugesu Ponnusamy Sebagai Wakil Nalamah Sangapillay (P) (Si Mati) v. Cheok Toh Gong & Ors* [1996] 1 MLRA 128.

According to the Bilateral Written Variation Clause (SPA), the 2nd Defendant could only be liable to the Plaintiffs for the Rent if both the 2nd Defendant and Plaintiffs had agreed in writing for the 2nd Defendant to be liable as such and all parties had signed such bilateral variation. In this case, there was no such written and signed bilateral variation of the SPAs;

(7) the TAs did not provide for the 2nd Defendant to pay the Rent to the Plaintiffs. When the High Court pierced the 1st Defendant's corporate veil and imposed the 1st Defendant's Liability (TAs) on the 2nd Defendant, such an addition to the TAs was prohibited by ss 91 and 92 EA. Moreover, with regard to the TAs, the Plaintiffs

could not prove the application of any one of the provisos (a) to (f) of s 92 EA; and

(8) the SPAs and TAs were purely commercial in nature — please refer to the above para 24. Consequently, the SPAs and TAs should be construed by the court in a manner which makes business common sense [Business Common Sense Interpretation (Commercial Contract)]. The application of the Business Common Sense Interpretation (Commercial Contract) had been applied in the following judgment of the Federal Court delivered by Zainun Ali FCJ in *SPM Membrane Switch Sdn Bhd v. Kerajaan Negeri Selangor* [2016] 1 MLRA 1, at [78]:

> "[78] **Thus the nub of this appeal is, when one has to choose between two competing interpretations, the one which makes more commercial sense should be preferred if the natural meaning of the words is unclear. It is noteworthy that the same approach was taken by Lord Hodge (in the majority decision of *Arnold v. Britton*), where His Lordship accepted the unitary process of construction in *Rainy Sky SA v. Kookmin Bank*** [2011] 1 WLR 2900 para 21 that:
>
> > '... **if there are two possible constructions, the Court is entitled to prefer the construction which is consistent with business common sense and to reject the other.**'"
>
> [Emphasis Added]

The High Court's Decision in imposing the 1st Defendant's Liability (TAs) on the 2nd Defendant, had the effect that the payment of the Rent to the Plaintiffs was guaranteed by the 2nd Defendant [Alleged Guarantee (2nd Defendant)]. A Business Common Sense Interpretation (Commercial Contract) of the SPAs and TAs did not support the existence of the Alleged Guarantee (2nd Defendant).

[34] Additionally or alternatively, due to the evidence and reasons stated in the above para 33, the Plaintiffs had failed to discharge both the Legal/Evidential Burden to prove on a balance of probabilities the invocation of the Equitable/Constructive Fraud Exception in this case.

H(4). Did The High Court Apply The Wrong Test In Piercing The 1st Defendant's Corporate Veil?

[35] As explained in the above paras 19 and 20, the learned JC could only pierce the corporate veil of the 1st Defendant if the Plaintiffs could prove in this case the application of at least one of the 2 Exceptions. Without proof of the 2 Exceptions, the High Court had erred in law by imposing the 1st Defendant's Liability (TAs) on the 2nd Defendant by relying on the following five considerations:

(1) Evasion (Liability);

(2) Abuse (Corporate Personality);

(3) Special/Exceptional Circumstances;

(4) Circumstances (Interest of Justice); and/or

(5) the fact that the 2nd Defendant controlled, managed and/or directed the 1st Defendant.

H(5). Could The High Court Rely On Section 115 EA And The Doctrine Of Equitable Estoppel To Pierce The 1st Defendant's Corporate Veil?

[36] Section 115 EA provides as follows:

"section 115. **Estoppel**

When one person has by his declaration, act or omission intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, otherwise than but for that belief he would have acted, neither he nor his representative in interest shall be allowed in any suit or proceeding between himself and that person or his representative in interest to deny the truth of that thing."

[Emphasis Added]

[37] I am of the view that the learned JC had misapplied s 115 EA and the case law doctrine of equitable estoppel (Section 115 EA/Equitable Estoppel Doctrine) in this case. My reasons are as follows:

(1) when the 2 Exceptions did not apply, s 115 EA/Equitable Estoppel Doctrine cannot be a basis for the Court's Piercing of One Company's Corporate Veil (Liability on Another Company) — please refer to the above paras 19 and 20. If the Court's Piercing of One Company's Corporate Veil (Liability on Another Company) can be invoked due solely to s 115 EA/Equitable Estoppel Doctrine, this will undermine the 3 Fundamental Aspects (Company Law) as explained in the above sub-para 20(4)(i) to (iii); and

(2) there is no room to apply s 115 EA/Equitable Estoppel Doctrine in this case because-

(a) the Plaintiffs could enforce the High Court's Judgment (1st Defendant). Hence, there was no injustice to the Plaintiffs if the court did not invoke s 115 EA/Equitable Estoppel Doctrine in this case; and

(b) the Plaintiffs had agreed to be bound by cl 39 (SPA) which embodied the Entire Agreement Clause (SPA) and Bilateral

Written Variation Clause (SPA) — please refer to the above sub-paras 33(4) to (6).

[38] In view of the fact that the High Court had erroneously applied s 115 EA/Equitable Estoppel Doctrine in this case, nothing turns on the following matters:

(1) the failure of the 2nd Defendant to deny the Plaintiffs' 2 Demands; and

(2) the fact that the Defendants were initially represented by the same firm of solicitors who had filed one joint DCC.

H(6). Was There A Plain Error Of Mixed Law And Fact In This Case?

[39] In view of the evidence and reasons explained in the above Parts H(1) to H(5), I have no hesitation to decide that the High Court had made a plain error of mixed fact and law by piercing the 1st Defendant's corporate veil and imposing the 1st Defendant's Liability (TAs) on the 2nd Defendant. Accordingly, appellate intervention is warranted in This Appeal and I am constrained to set aside the High Court's Judgment (2nd Defendant).

I. Whether The 2nd Defendant Could Rely On The Doctrine Of Privity Of Contract To Support This Appeal

[40] According to the doctrine of privity of contract, only a party to a contract can enforce the contract against the other contracting party and not against strangers to the contract. Accordingly, the Plaintiffs could only claim for the Rent pursuant to the TAs from the 1st Defendant (who was a party to the TAs) and not from the 2nd Defendant (who was not a party to the TAs).

[41] With respect to the 2nd Defendant's learned counsel, the 2nd Defendant could not rely on the doctrine of privity of contract to support This Appeal. This is because, the Plaintiffs were not enforcing the TAs against the 2nd Defendant (stranger to the TAs). On the contrary, the Plaintiffs had applied to court to pierce the 1st Defendant's corporate veil and impose the 1st Defendant's Liability (TAs) on the 2nd Defendant.

J. Conclusion

[42] Premised on the above reasons, we allow This Appeal with the following order:

(1) the High Court's Judgment (2nd Defendant) is set aside; and

(2) the Plaintiffs shall pay to the 2nd Defendant costs here and below in a sum of RM30,000.00 (subject to allocatur fee).

[43] When a draft of this judgment (Draft) was prepared, the learned Chairperson of this panel, See Mee Chun JCA, had retired. I had forwarded the Draft to my learned brother, Ismail Brahim JCA, who had expressed his agreement with the Draft.