

5 **IN THE HIGH COURT IN MALAYA AT IPOH**
IN THE STATE OF PERAK DARUL RIDZUAN
ORIGINATING SUMMONS NO.: AA-24NCVC-514-10/2024

10 In the matter of **LOHMAN**
HOLDINGS SDN BHD
Company No.: **197501000990**
(22702W)

A N D

15 In the matter of Article 57 and
Article 60 of the Memorandum and
Article of Association (M & A) of
Lohman Holdings Sdn Bhd

20 **A N D**

25 In the matter of Section 327,
Section 336 and Section 458 of the
Companies Act 2016

BETWEEN

30 **LOH SIEW CHOONG**
[NRIC NO.: 480117-08-5008]

... PLAINTIFF

AND

35 **KHOO CHOOI THUAN**
[NRIC NO.: 440528-07-5043]
LIQUIDATOR, LOHMAN HOLDINGS SDN. BHD.
(In Members' Voluntary Liquidation))
Tujuan Management Consultants Sdn Bhd
No. 87 (2nd Floor), Jalan Bercham
Bandar Baru Tasek, 31400 Ipoh, Perak

.... DEFENDANT



GROUNDS OF JUDGMENT

Introduction

[1]. This judgment pertains to the defendant's application in Enclosure 11 to strike out the plaintiff's originating summons filed against the defendant in his capacity as Liquidator of Lohman Holdings Sdn Bhd (in Members' Voluntary Liquidation). The defendant asserts that the plaintiff's action is frivolous, vexatious, and an abuse of court process due to procedural non-compliance and lack of merit. The defendant moves the Court under **Order 18 Rule 19(1)(a), (b), (c), and/or (d)** and the Court's discretionary powers under **Order 92 Rule 4 of the Rules of Court 2012**, read together with **Sections 451(2), 456, 458(1)(a), Eleventh Schedule, and Twelfth Schedule of the Companies Act 2016, Section 145A of the Companies Act 1965**, as well as **Rules 114 and 118 of the Companies (Winding-Up) Rules 1972**.

Background Facts

[2]. The plaintiff, a contributory of Lohman Holdings Sdn Bhd, has raised objections concerning the manner in which a General Meeting of the company was conducted on October 14, 2024. The meeting was convened by the defendant, the appointed Liquidator, and held online via Zoom. The defendant justified this mode of conducting the meeting, citing reasons of efficiency and the benefits of leveraging technological advancements to facilitate participation.

[3]. However, the plaintiff contends that the meeting violated **Articles 57 and 60 of the Company's Memorandum and Articles of Association (M&A)**. **Article 57** requires the physical presence of



members to constitute a quorum, while **Article 60** stipulates that the chairman of the directors, or a director chosen by the members, should preside over general meetings. The plaintiff alleges that these provisions were not adhered to in the online meeting. Consequently, the plaintiff seeks relief for the general meeting to be reconvened and held physically, in compliance with the M&A, and for the defendant to be barred from chairing future meetings.

[4]. In response, the defendant filed an application to strike out the plaintiff's originating summons. The defendant argues that the plaintiff's claims are procedurally flawed due to non-compliance with legal requirements, particularly the failure to obtain leave to commence action against a company in liquidation. The defendant also asserts that the issues raised by the plaintiff lack substantive merit and do not warrant further judicial intervention. This striking-out application forms the central dispute in the present proceedings.

Plaintiff's Submissions

[5]. The plaintiff contends that leave under **Section 451(2) of the Companies Act 2016** is not required for a member's voluntary liquidation, distinguishing it from a creditors' voluntary liquidation. She further argues that the defendant breached **Articles 57 and 60 of the Company's Memorandum and Articles of Association (M&A)** by conducting the meeting online and assuming the role of chairman. The plaintiff claims that the online virtual meeting prejudiced her rights due to technical difficulties and limited engagement. As the reliefs sought to extend to future meetings, the



plaintiff asserts that the issue remains live and is not merely academic.

Section 451(2) of the Companies Act 2016 provides:

95 *“451 (2) After the commencement of the winding up, no action or proceeding shall be proceeded with or commenced against the company except by leave of the Court and subject to such terms as the Court may impose.”*

100 **Defendant’s Submission**

[6]. The defendant contends that leave under **Section 451(2) of the Companies Act 2016** is a mandatory prerequisite for any action against a company in liquidation. In addition, **Rule 118 of the Companies (Winding-Up) Rules 1972** empowers the liquidator to chair meetings he convenes. The defendant further submits that

105 **Section 327 of the Companies Act 2016** allows meetings to be held online, and the General Meeting that was held on 14.10.2024, was lawfully conducted. The plaintiff’s participation in the Zoom meeting estops her from later disputing its validity. Plaintiff’s actions

110 are seen as an attempt to obstruct the liquidation process with malice and ulterior motives.

Issues

a) Whether leave of the court was required for the plaintiff to commence legal action against a company in members’

115 voluntary liquidation.



- b) Whether the defendant, as Liquidator, was empowered to chair the General Meeting.
- c) Whether the General Meeting conducted via Zoom complied with the provisions of the **Companies Act 2016** and the Company's M&A.

Whether leave of the court was required for the Plaintiff to commence legal action against a company in Members' Voluntary Liquidation

[7]. At the instants of plaintiff filing an interim injunction application in Enclosure 3, it was dismissed on October 14, 2024, due to the plaintiff's failure to obtain leave under **Section 451(2) of the Companies Act 2016** before initiating proceedings against Lohman Holdings Sdn Bhd, a company in liquidation. The Court held that obtaining prior leave from the winding up is a mandatory procedural safeguard for actions against companies in liquidation, as affirmed in *Hanifah Hamzah & Ors v. Syarikat Utusan Melayu (Malaysia) Bhd (Dalam Penggulangan Sukarela Pemiutang) & Other Appeals* [2024] 10 CLJ 206; [2025] 1 MLJ 323; [2025] 1 MLRA 221; [2024] AMEJ 1589, [2023] MELRU 899, *Westech Sdn Bhd v. Thong Weng Lock* [2017] AMR 246; [2017] 5 MLJ 368; [2017] 8 CLJ 257, [2013] 7 MLRA 135, and *Ganda Setia Cemerlang Sdn Bhd & Anor v. Maika Holdings Bhd* [2017] 7 AMR 525; [2018] 2 CLJ 401; [2017] 6 MLJ 661; [2017] MLRAU 419. These cases state that **Section 451(2) of the Companies Act** applies to all forms of liquidation, whether voluntary or involuntary, ensuring proper judicial supervision over the liquidation process. The provision ensures all claims go through one court, preventing multiplicity of actions being



filed in different courts, leading to confusion, protects the company's assets from unnecessary litigation costs, and aims to consolidate disputes into a single forum for efficient and equitable resolution.

[8]. In ***Westech Sdn Bhd (supra)***, the respondent argued that leave was not required under **Section 263(2) of the Companies Act 1965 (which is in *pari materia* with Section 451 of the Companies Act 2016)**. The respondent contended that this provision applied only to insolvent companies, not those in members' voluntary liquidation. Since the company was voluntarily wound up by its members and had declared solvency under **Section 257 of the Companies Act 1965**, the respondent contended that leave under **Section 263(2)** did not apply to such cases.

[9]. However, the Court of Appeal in holding that leave is required disagreed with the views expressed by the respondent in that case. Justice Abdul Aziz Abdul Rahim (*as His Lordship then was*) stated this:-

"[34] In our view the language in section 263(2) of the Companies Act 1965 is patently clear that no action or proceeding is to be commenced or proceeded with against a company after the commencement of a winding up is made except with leave of the Court. The section makes no distinction between a voluntary winding up by members of the company or winding up by a creditor on the ground of the company's insolvency. The rationale for this section is explained by Seah SCJ in Mosbert Berhad (In Liquidation) v Stella D'cruz [1985] 2 MLJ 446 (at p 447) as follows:



175 *“But in our opinion, this practice of the Court*
(referring to the decision of Jessel M.R. in Re
Western & Brazilian Telegraph Co v Bibby
(1880) 42 LT 821) should be adopted and
followed for these reasons, viz., it cannot be
disputed that the primary object of winding up is
the collection and distribution of the assets of
the company pari passu amongst unsecured
creditors after payment of preferential debts.
180 *And the purpose of the statutory provision is to*
ensure that all claims against the company in
liquidation which can be determined by cheap
and summary procedure available in a winding
up are not made the subject of expensive
185 *litigation. The provision is designed to prevent*
unnecessary multiplicity of suits which may
result in dissipating the assets of the company”.

190 *[35] On this point we disagree with the view expressed*
by learned counsel for the plaintiff that s 263 of the
Companies Act 1965 does not apply to voluntary
winding up. Case laws have established that the test for
an application of s 263 of Companies Act 1965 is not
whether the winding up is voluntary by members or
195 *otherwise. The real test is as laid down by the then*
Supreme Court in Mosbert Bhd(supra) which is stated
in this form:

200 *In Re Cuthbert Lead Smelting Co Ltd it was held*
that if the applicant could obtain all the relief in
the winding up leave would be refused. In short,
the Court will always give an applicant leave if



his claim cannot be dealt with adequately in the winding up or if the remedy he seeks cannot be given to him in a winding up proceedings.”

[10]. In another Court of Appeal case of **Ganda Setia Cemerlang Sdn Bhd (supra)**, the respondent was voluntarily wound up by its members. Justice Mary Lim (as *Her Lady then was*) observed that leave is required before initiating or continuing legal action against a company in liquidation, whether wound up by the court or voluntarily, as mandated under **Sections 226(3) and 263(2) of the Companies Act 1965**. Her ladyship said in these words:

“In law, a company may be wound up either by the Court [14] In law, a company may be wound up either by the court or voluntary by the company itself — see s 211 of Division 1. Once a company has been wound up by the court, or once the winding up court has appointed a provisional liquidator, s 226(3) mandates that leave of the winding up court must be procured either before an action or proceeding is commenced or if already commenced, proceeded with.

[15] Where the company is wound up voluntarily, and that may be by special resolution of the company, or due to the expiration of the duration of the company fixed either in its memorandum or articles of association and a general resolution has been passed to that effect (see s 254) or even on grounds of insolvency and a statutory declaration to that effect has been lodged with the registrar of companies and with the official receiver (see s 255), s 263(2) carries a similar requirement on leave as that found in s 226(3).”



[11]. Previously, the plaintiff's application for an injunction in Enclosure 3 was dismissed by this Court on the ground that leave of the winding-up Court was not obtained. That decision was not appealed by the plaintiff and remains binding on her. Similarly, the plaintiff's failure to secure leave before filing the current originating summons contravenes the statutory requirement under **Section 451(2) of the Companies Act 2016**, rendering the action procedurally defective. This procedural safeguard serves not only to protect the integrity of the liquidation process but also to ensure fairness and transparency for all stakeholders involved. The dismissal of Enclosure 3 by this court reinforces the plaintiff's inability to maintain any action against the company in liquidation without first obtaining the statutory prerequisite leave.

Whether the Defendant, as Liquidator, was empowered to chair the General Meeting

[12]. Without even considering other issues, the plaintiff's originating summons cannot and should not be entertained, as leave was not obtained. Be that as it may, for the sake of completeness, this court will proceed to consider the remaining issues in the event of a contrary finding on appeal.

[13]. The defendant's authority to chair the general meeting is expressly provided for under **Rule 118 of the Companies (Winding-Up) Rules 1972**, which states that a liquidator who summons a meeting has the authority to act as the chairman of that meeting. The defendant relied on this provision to chair the General Meeting convened on 14 October 2024. This rule grants liquidators statutory



260 authority to manage meetings effectively during the winding-up
process, ensuring that procedural requirements are met in
accordance with the law.

“Rule 118 of the Companies (Winding-Up) Rules 1972:

265 *Where a meeting is summoned by the liquidator, he, or
someone nominated by him in Form 69, shall be
chairman of the meeting. At every other meeting of
creditors or contributories the chairman shall be such
person as the meeting by resolution shall appoint.”*

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[14]. The plaintiff, however, argues that **Article 60 of the Company’s Memorandum and Articles of Association (M&A)** was breached by the defendant's actions. **Article 60** stipulates that the chairman of the board of directors, or another director chosen by the members, should preside over general meetings. The plaintiff contends that this provision does not grant the liquidator authority to chair such meetings. However, this interpretation fails to take into account the statutory powers conferred upon liquidators under rule 118, which overrides the M&A in cases where the liquidator is acting within their statutory duties during the winding-up process. This position between statutory powers and procedural rules supports the defendant’s contention that the liquidator has the authority to preside over meetings he convenes.

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Whether the Meeting Conducted Online (via Zoom) is Valid

285 [15]. The validity of the General Meeting held on October 14, 2024, via Zoom, is the complaint by the plaintiff. The defendant argues that **Section 327 of the Companies Act 2016** permits the use of



technology for meetings, provided all members have a reasonable opportunity to participate. The defendant maintains that the meeting was conducted in compliance with this provision, offering efficiency and inclusivity. However, the plaintiff contends that the meeting violated **Articles 57 and 60 of the Company's Memorandum and Articles of Association (M&A)**, which she argues require physical presence. The plaintiff further claims that the online meeting prejudiced her rights, citing technical difficulties and limited opportunities for meaningful participation. I am of the view that the plaintiff's reliance on **Articles 57 and 60 of the M&A** does not override the statutory provisions that allows virtual meetings. Plaintiff's allegations of prejudice are unsubstantiated, and no evidence was produced to show that she was denied the opportunity to participate meaningfully. Accordingly, the plaintiff's objections on this ground are without merit.

Whether the Plaintiff's Application is Malicious Due to Her Prior Failure to Remove the Defendant from Office

[16]. This Court finds merit in the defendant's submission that the plaintiff's current application is tainted with malice and amounts to an abuse of the court process. The plaintiff had previously attempted to remove the defendant as Liquidator, which prompted him to initiate proceedings via OS No. AA-24NCC-19-09/2023, before Justice Abdul Wahab, to preserve the status quo. In that case, Justice Abdul Wahab made a clear finding that the plaintiff's repeated attempts to obstruct and delay the liquidation process were not motivated by a bona fide concern for the company, but by an ulterior motive. The Court further held that the plaintiff's actions



315 were intended to disrupt the defendant's lawful administration of the
company. In the present case, the same pattern of interference
persists. This Court is satisfied that the filing of the current
Originating Summons, without leave and based on substantially
similar grounds, is vexatious. The Court finds that the present action
320 is a continuation of the plaintiff's obstructive conduct and amounts
to a collateral attack on earlier judicial findings.

Conclusion

[17]. The plaintiff's originating summons is procedurally flawed for want
of leave under **Section 451(2) of the Companies Act 2016** and
325 substantively lacks merit. The defendant acted within his statutory
powers, and the plaintiff's claims are unsustainable. Accordingly,
the defendant's application in Enclosure 11 is allowed, and the
plaintiff's originating summons is struck out with costs for enclosures
1, 3 and 11.

330 [18]. Costs of RM 10,000.00 are subject to allocator.

Date: 9 April 2025

Moses Susayan

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MOSES SUSAYAN
Judicial Commissioner
High Court in Malaya
at Ipoh, Perak



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(Notice: This Grounds of Decision is subject to official editorial revision)

Headnotes:

Company Law — Winding-up — Action against company under members' voluntary liquidation — Whether leave of court required — Section 451(2)
360 of Companies Act 2016 — Section 263(2) of Companies Act 1965 — Whether proceedings commenced without leave are procedurally defective — Rationale for requiring leave — To prevent overlapping claims and protect company assets — Whether Plaintiff's application filed with malice — Vexatious and abuse of court process — Whether online meeting
365 valid — Section 327 of Companies Act 2016 — Whether Liquidator's statutory powers override company's Articles — Rule 118 of Companies (Winding-Up) Rules 1972 — Whether Liquidator may chair meeting.



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