

1st Deft; Datuk Haji Mohammad Tufail bin Mahmud: 9th:

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Suit No. 783 of 2012/L

Between

TANAKA LUMBER PTE LTD
(RC No. 198700304K)

... Plaintiff

And

1. **DATUK HAJI MOHAMMAD TUFAIL BIN MAHMUD**
(Malaysia) Identification Card No. 520928135025

2. **DATO TING CHECK SII**
(Malaysia) Identification Card No. 510814135503
... Defendant(s)

And

1. **DATO TING CHECK SII**
(Malaysia) Identification Card No. 510814135503

2. **LING HOE KIEH @ LING CHUN KAI**
(NRIC No. S25397161)
... Third Party(s)

AFFIDAVIT OF EVIDENCE-IN-CHIEF OF
DATUK HAJI MOHAMMAD TUFAIL BIN MAHMUD

I, **DATUK HAJI MOHAMMAD TUFAIL BIN MAHMUD** (Malaysia)
(Identification Card No. 520928135025), care of Level 26-27, Wisma Sanyan,
No.1 Jalan Sanyan, P.O. Box 841, 96008 Sibul, do solemnly and sincerely
swear/affirm and say as follows:-

1. I am the above-named 1st Defendant in Suit No. 783 of 2012/L (“**the Suit**”).
I have also initiated third party proceedings against the 2nd Defendant/1st Third Party and the 2nd Defendant.

2. My designation and shareholding in the relevant companies mentioned in this Suit are as follows:-

(a) Plaintiff:

I have been a director of the Plaintiff since 05.02.1987. I am also a 33.3% shareholder of the Plaintiff, holding 1 share.

(b) Goodmatch Sdn Bhd

I have been a director of Goodmatch Sdn Bhd since 09.10.2002. I am approximately a 55% shareholder of Goodmatch Sdn Bhd holding 2,243,999 shares.

(c) Sanyan Wood Industries Sdn Bhd:

I have been a director since 02.08.1991 and managing director since 25.07.2003. I am a 21% shareholder of SWI holding 4,200,000 SWI shares.

(d) Sanyan Holdings Sdn Bhd:

I have been a director since 10.12.1996 and managing director since 17.06.2003. I am an 83.25% shareholder of Sanyan Holdings Sdn Bhd holding 13,320,000 shares in Sanyan Holdings Sdn Bhd.

(e) Pelita Towerview Sdn Bhd:

I have been a director since 01.04.1989 and am a shareholder of 0.17% of the shares in Pelita Towerview Sdn Bhd. Sanyan Holdings Sdn Bhd is a 98.6% shareholder in Pelita Towerview Sdn Bhd, holding 11,830,000 shares.

(f) Sanyan Sdn Bhd

I have been a director since 19.02.1982 and am a shareholder of 33.33% of the shares in Sanyan Sdn Bhd, holding 33.334 shares.

Annexed hereto and marked as "HMTM-1" to "HMTM-6" are copies of the Company Profile Search from ACRA of the Plaintiff and Corporate Information from the Companies Commission of Malaysia of the Malaysian companies per the order set out above.

A. **Plaintiff's Claim and 2nd Defendant's Defence**

3. The Plaintiff's claim in this action primarily centres on an alleged breach of trust by the 2nd Defendant and I. Briefly, the Plaintiff has alleged as follows in its Statement of Claim (Amendment No.1) dated 26.08.2013 ("SOC"):

- (a) Between 27.05.1992 to 26.03.1996, the Plaintiff transferred the sum of USD7,939,549.73 from its HSBC Bank Account No. 250-000486-186 ("**Plaintiff's Account**") to HSBC Joint Account No. 260-005111-600 that was held jointly by the 2nd Defendant and myself ("**Defendants' Account**") as trustees for the alleged purposes of investing in two Malaysian companies, Sanyan Wood Industries Sdn Bhd ("**SWI**") through Goodmatch Sdn Bhd and Pelita Toweview Sdn Bhd, through Sanyan Holdings Sdn Bhd, in Sarawak, Malaysia.
- (b) Subsequently, between the period of 28.07.1992 to 27.11.997, the 2nd Defendant and I allegedly transferred the sum of USD7,939,549.73 from the Defendants' Account to SWI and Pelita Towerview Sdn Bhd.
- (c) Pursuant to 2 purported directors' resolutions of the Plaintiff dated 03.01.1993 and 15.12.1994 (the "**1993 Directors' Resolution**" and the "**1994 Directors' Resolution**" respectively), the 2nd Defendant and I purportedly understood that the sum of USD7,939,549.73 and

any investments made using the sum were to be held on trust by both of us for the benefit of the Plaintiff.

4. In other words the Plaintiff claims to be the beneficial owner of any shares or land purchased by myself and the 2nd Defendant in or through the SWI, Goodmatch Sdn Bhd, Sanyan Holdings Sdn Bhd and/or Pelita Towerview Sdn Bhd.
5. The Plaintiff has also alleged that I have breached my fiduciary duty as director and trustee of the funds transferred by the Plaintiff to the Defendants' Account - by failing to provide an account of the funds transferred by the Plaintiff to the Defendants' Account and failing to return the proceeds and/or the principal sum allegedly paid by the Plaintiff to me as trustee.
6. Accordingly, the Plaintiff has claimed the following relief:-
 - (a) A declaration that:-
 - (i) the funds transferred by the Plaintiff from its account to the Defendants' Account was held on trust for the Plaintiff;
 - (ii) the 2nd Defendant and I owed fiduciary duties to the Plaintiff to use the funds transferred by the Plaintiff in the manner set out in the purported 1993 Directors' Resolution and 1994 Directors' Resolution.

- (b) An account by the 2nd Defendant and I of the funds transferred by the Plaintiff to the Defendants' Account including all investments made using such funds;
- (c) An order that I bear the costs of conducting an independent audit;
- (d) An order that:-
 - (i) the Plaintiff be at liberty to apply for orders against the 2nd Defendant and I arising from the account given;
 - (ii) further and in the alternative, that the 2nd Defendant and/or I pay to the Plaintiff the sum equivalent to the principal sum transferred by the Plaintiff to the Defendants' Account i.e. USD7,939,549.73.

7. The 2nd Defendant filed his Defence dated 21.01.2013 (“Defence”) generally in agreement with the Plaintiff’s position. However, he has claimed that he is unable to provide an account of the funds transferred by the Plaintiff to the Defendants’ Account, including all investments made using these funds, as these funds and investments are allegedly under the control and management of myself and/or my nominees.

B. 1st Defendant’s Defence, Counter-claim and Third Party proceedings

- 8. I set out broadly my Defence, before I deal with each issue in detail below.
 - (a) The Plaintiff does not have any real and/or substantial business operations. The Plaintiff served as a repository to accumulate funds

for the personal purposes of the 2nd Defendant and myself and to limit Sanyan Sdn Bhd's exposure to tax liability in Sarawak, Malaysia. Any monies held in the Plaintiff's Account represented the profit and tax savings gained by the 2nd Defendant and myself in Malaysia.

- (b) At all material times, the directors and shareholders of the Plaintiff were aware that any funds held in the Plaintiff's Account belonged to the 1st Defendant and I and were eventually meant to be transferred to our joint account (i.e. the Defendant's Account) for our personal use.
- (c) The authenticity of the purported 1993 Directors' Resolution and 1994 Directors' Resolution, amongst other directors' resolutions and minutes referred to below, is disputed. As a director of the Plaintiff, I was not given prior notice of any such directors' meetings where the purported resolutions / minutes were allegedly signed and I deny signing the purported 1993 and 1994 Directors' Resolutions.
- (d) Further and/or in the alternative, if an alleged trust is created by the purported 1993 Directors' Resolution and 1994 Directors' Resolution (which is denied), the purpose of such an alleged trust is illegal and/or contrary to Malaysian public policy and its enforcement would be

contrary to Singapore public policy since the alleged trusts were created to conceal from the Malaysian authorities, the true identity of the beneficial owner or shareholder of the purported investments in Goodmatch Sdn Bhd, SWI, Sanyan Holdings Sdn Bhd and/or Pelita Towerview Sdn Bhd and thereby defeat the statutes, laws or policies of Malaysia.

9. The subject matter of this action concerns the ownership and control of SWI, Pelita Towerview Sdn Bhd, Goodmatch Sdn Bhd and Sanyan Holdings Sdn Bhd (“the Malaysian Companies”). The issue of ownership and control of the aforesaid companies has already been the subject of extensive litigation in Sarawak Malaysia, between the 2nd Defendant and I since 2006.
10. In those Malaysian proceedings, the 2nd Defendant has, inter alia, consistently taken the position that he is the rightful owner of his proportion of the shares in Goodmatch Sdn Bhd / SWI and Sanyan Holdings Sdn Bhd. The 2nd Defendant has never mentioned in the Malaysian litigation that he and/or I were holding these purported investments on trust for the Plaintiff.
11. Thus far, the 2nd Defendant has not succeeded in his main claims concerning the Malaysian Companies brought before the High Court of Sabah and Sarawak and the Court of Appeal of Malaysia. As a last resort, the 2nd

Defendant, the Plaintiff and/or the 2nd Third Party have by unlawful means and/or with the sole and predominant intention of injuring me, conspired and combined wrongfully together to commence the current action against me. These proceedings have been commenced in bad faith and/or unconscionably without any genuine belief in its merits and/or for a collateral purpose.

12. In this regard, I have also counter-claimed against the Plaintiff and have instituted third party proceedings against the 2nd Defendant / 1st Third Party and the 2nd Third Party for damages, as a result of combining together to institute this unmeritorious action on the basis of fabricated documents, to cause me financial harm and to unlawfully benefit or profit themselves.

C. Background: Relationship with the 2nd Defendant and its deterioration

13. The 2nd Defendant and I first became acquainted sometime in or around 1974 when he was working at a timber moulding factoring known as Ding Brothers Sdn Bhd in Sarawak, Malaysia. At that time, the 2nd Defendant was employed as a foreman while I was and still am a director on the Board of the company.
14. As the 2nd Defendant and I were around the same age (in our 20s), we were able to relate to each other and quickly formed a close friendship. Subsequently, I introduced my younger brother, the late Datuk Mohammad

Arip bin Mahmud (“**Datuk Arip**”) to the 2nd Defendant and the three of us became close friends.

15. From about 1981 onwards, the three of us began to venture into a variety of businesses including transportation, sawmilling, logging, plywood manufacture and property development and management. For these purposes, we incorporated the following companies in Malaysia:-

- (a) **Sanyan Wood Industries Sdn Bhd** - a company set up pursuant to a joint venture agreement with two Japanese companies for the purposes of manufacturing veneer/plywood and other products.
- (b) **Goodmatch Sdn Bhd** - a company incorporated to represent the Malaysian component of the joint venture with the Japanese companies in SWI
- (c) **Pelita Towerview Sdn Bhd** - a property holding company which is the registered owner and/or proprietor of a parcel of land known as Lot 699, Block 5 in Sibul, Sarawak on which stands a 27-storey commercial and office complex known as the Wisma Sanyan building
- (d) **Sanyan Holdings Sdn Bhd** - an investment holding company owning 98.5% of the shares in Pelita Towerview Sdn Bhd
- (e) **Sanyan-Soon Hup Sdn Bhd** - a joint venture company with Soon Hup Sdn Bhd that was the main contractor for the construction of Wisma Sanyan

- (f) **Sanyan Sdn Bhd** – a company providing transport services, which mainly concerned the export of timber from Sarawak, Malaysia to foreign countries
 - (g) **Binta Corporation Sdn Bhd** - a marine transportation services company based in Bintulu, Sarawak
 - (h) **Marine Utama Sdn Bhd** – a marine transportation services company based in Bintulu, Sarawak
 - (i) **Pembangunan Hasil Baik Sdn Bhd** - an investment holding company which owns a shop house in Sibul that was formerly used as our main office
 - (j) **Mansang Holdings Sdn Bhd** - an investment holding company which owns a parcel of land in Kuching
 - (k) **Sanyan Development Sdn Bhd** – an investment holding company which owns a shop house in Kuching
 - (l) **Sanyan Sawmill Sdn Bhd** - a timber sawmilling company
 - (m) **Sarachi Services Sdn Bhd** - an investment holding and timber trading company which owns two parcels of land in Kuching
 - (n) **Mylink Communications Sdn Bhd** - a communications services company
 - (o) **Resource Corridor Sdn Bhd** - a log trading company
 - (p) **Espirit Wealth** - a company managing various development projects
16. At that time, when we started out, the shares in the Malaysian companies were more or less equally apportioned between us, with my brother (the late

Datuk Arip) and I holding a slightly larger proportion than the 2nd Defendant. However the 2nd Defendant ran the whole show in respect of the Malaysian companies.

17. Of the above-mentioned companies, the ones that are the focus of this Suit are SWI and Sanyan Holdings Sdn Bhd (which is a 98.5% shareholder of Pelita Towerview Sdn Bhd) as these companies are significantly profit-making.
18. Until sometime in mid-2003, I was not actively involved in the day-to-day management of these Malaysian companies. We were in a close relationship for over 20 years and the 2nd Defendant was known to me as a hard-working man. So, I had left the management of the Malaysian companies to the 2nd Defendant and did not worry about the companies as I had completely trusted him. In any event, from time to time, the 2nd Defendant would consult with and update me on the important business matters of the various Malaysian companies. At all material times, I remained one of the compulsory bank signatories to these Malaysian companies' bank accounts.
19. Also, I whole-heartedly supported the 2nd Defendant's political career.

20. Sometime in 2003, the 2nd Defendant voluntarily relinquished his position as Managing Director of SWI and Sanyan Holdings Sdn Bhd to dedicate more time to politics and related commitments.
21. Therefore on 17.06.2003, the 2nd Defendant signed a circular resolution of Sanyan Holdings Sdn Bhd resolving that the 2nd Defendant would resign as managing director and that I would be appointed the new managing director in his place. Annexed hereto and marked as "HMTM-7" is a copy of the extract of the directors' circular resolution / directors' resolution for Sanyan Holdings Sdn Bhd dated 17.06.2003.
22. On 25.07.2003, at a board of directors' meeting of SWI, I informed the board that the 2nd Defendant had expressed his interest to dedicate more time to politics and related commitments. The 2nd Defendant had decided to relinquish his position as managing director of SWI to me. The board of directors then unanimously resolved to appoint me as the Executive Chairman and Managing Director of SWI, while the 2nd Defendant was appointed Deputy Executive Chairman of the company. Annexed hereto and marked as "HMTM-8" is a copy of the notice of board of directors' meeting dated 09.07.2003 and copy of the minutes of the board of directors meeting of SWI dated 25.07.2003.

23. At the material time, the 2nd Defendant continued to hold the positions of Chairman and Deputy Executive Chairman of Sanyan Holdings Sdn Bhd and SWI respectively.
24. However, although the 2nd Defendant had voluntarily resigned as managing director he attempted to retain power and control over the Malaysian companies by disrupting their management; the 2nd Defendant would not attend board meetings and he would disagree with my decisions at every turn to hamper the progress of these companies.
25. Our relationship deteriorated when I no longer supported the 2nd Defendant in his political career. This coupled with his failure to be renominated by the party that he was and is still with, the Sarawak United People's Party, in 2006, led to further hostility between the 2nd Defendant and I.
26. The hostility between the 2nd Defendant and I eventually culminated in the 2nd Defendant's refusal to participate or cooperate in the management of the Malaysian companies and his commencement of various lawsuits in Sarawak, Malaysia disputing ownership, management and/or control of these companies and threatening the winding-up of SWI and Sanyan Holdings Sdn Bhd. For convenience and ease of reference, I list the Malaysian lawsuits that have been instituted in Malaysia:-
 - (a) Dato Ting Check Sii v Datuk Haji Mohammad Tufail Mahmud & 8 Ors

[Originating Petition No. 26-05-2006-II]

- (b) Dato Ting Check Sii v Pelita Towerview Sdn Bhd & Sanyan Holdings Sdn Bhd [Suit No. 22-109-2006 I]
- (c) Datuk Haji Mohammad Tufail Mahmud & 5 Ors v Dato Ting Check sii & 9 Ors [Suit No. 22-29 of 2006]
- (d) Dato Ting Check Sii v Datuk Haji Mohammad Tufail & Sanyan Holdings Sdn Bhd [Companies (Winding Up) No. 28-32-2006-II]
- (e) Goodmatch Sdn Bhd v Dato Ting Check Sii, Draman @ Morshidi bin Omar & Sanyan Wood Industries Sdn Bhd [Suit No. 22-64-2009]
- (f) Sanyan Lumber Sdn Bhd v Sanyan Wood Industries Sdn Bhd [Suit No. 22-33-2006]
- (g) Dato Ting Check Sii v Sanyan Wood Industries [Orignating Summons 24-96-2006]
- (h) Sanyan Sdn Bhd v Sanyan Lumber Sdn Bhd [Suit No. KCH 28-36/9-2011]
- (i) Datuk Haji Mohammad Tufail bin Mahmud & 4 Ors v Dato Ting Check Sii & 8 Ors [Companies (Winding Up) Petition Suit No. KCH28-13/3-2012]
- (j) Dato Ting Check Sii v Sarachi Services Sdn Bhd & Datuk Haji Mohammad Tufail bin Mahmud [Companies (Winding Up) Petition No. SBW 29-4/6-2012]
- (k) Dato Ting Check Sii v Sanyan Wood Industries Sdn Bhd [Suit No. 22-49/9-2012]

27. Suffice it to say that the 2nd Defendant failed in the substantial claims he commenced against me with respect to SWI and Sanyan Holdings Sdn Bhd.
- (a) In Originating Petition No. 26-05-2006-II (commenced on 22.08.2006), the 2nd Defendant brought a claim for minority oppression and sought, amongst other relief, his reinstatement as managing director of SWI and in the alternative, a buy out or winding up of SWI;
- (b) In Companies (Winding Up) No. 28-32-2006-II (commenced on 11.12.2006), the 2nd Defendant sought the winding up of Sanyan Holdings Sdn Bhd on just and equitable grounds.
28. In both these cases, the 2nd Defendant failed at first instance and before the Court of Appeal in Sabah & Sarawak. The 2nd Defendant sought leave to appeal to the Federal Court of Malaysia against the dismissal of both appeals. With respect to Originating Petition No. 26-05-2006-II leave to appeal to the Federal Court was denied on 1.10.2012. With respect to Companies (Winding Up) No. 28-32-2006-II, the 2nd Defendant withdrew his application for leave on 09.04.2012.
29. In all of the Malaysian litigation, no mention was made of the alleged “trust arrangement” with the Plaintiff pursuant to the 1993 and 1994 Directors’ Resolutions. I verily believe that there was no mention of the purported

“trust” since none exists and has been referred to in this action in Singapore as an afterthought.

30. In fact, the 2nd Defendant had adopted the contrary position in the Malaysian litigation claiming that he “owned” the shares in SWI and that he had “personally paid for” these shares.
31. I verily believe that the 2nd Defendant’s failure in his claims to wrest back control in the Malaysian Companies or to wind-up the Malaysian Companies before the High Court of Sabah and Sarawak and the Court of Appeal of Malaysia, has led to the 2nd Defendant’s use of the Plaintiff in this action together with the 2nd Third Party in an attempt to achieve those ends.

D. Background pertaining to the set-up of the Plaintiff

32. Sometime in or about 1986, the 2nd Defendant proposed the setting up of the Plaintiff for the purpose of limiting our tax exposure in Malaysia in respect of Sanyan Sdn Bhd. This would provide the 2nd Defendant and me funds to use as we wished.
33. Sanyan Sdn Bhd is a Malaysian company incorporated on 24.09.1977. The 2nd Defendant and I were appointed as directors in 1982. I was one of the 3 shareholders of the company, along with the late Datuk Arip (who was my brother) and the 2nd Defendant. The shareholders of Sanyan Sdn Bhd are as follows:-

- | | |
|-------------------------------|---------------|
| (a) Datuk Arip | 33,334 shares |
| (b) 1 st Defendant | 33,334 shares |
| (c) 2 nd Defendant | 33,332 shares |

See "HMTM-6" which is a copy of the corporate information of Sanyan Sdn Bhd dated 20.02.2013 per the Companies Commission of Malaysia.

34. I went along with the 2nd Defendant's suggestion to set up the Plaintiff together with the 2nd Defendant because the 2nd Defendant and I had successfully established several business ventures together in Sarawak, Malaysia prior to setting up the Plaintiff and I trusted the 2nd Defendant.
35. The 2nd Third Party, who was the brother-in-law of the 2nd Defendant and a permanent resident in Singapore, was simply included as a director and shareholder for convenience since I was told by the 2nd Defendant that it was necessary at that time to have one locally resident director to set up a company in Singapore. Also, for convenience we used the 2nd Third Party's home address as the Plaintiff's office address. By way of example, annexed hereto and marked as "HMTM-9" is a copy of the Plaintiff's invoice disclosed by the 2nd Defendant
36. Pursuant to our discussions, the Plaintiff was incorporated in Singapore on 05.02.1987. On the same date, the 2nd Third Party, the 2nd Defendant, Datuk Arip and I were appointed as directors. The Plaintiff has an authorised and

paid up share capital of SGD 3.00 divided into 3 ordinary shares of SGD 1.00 each. The shareholding of the Plaintiff is as follows:-

- | | | |
|-----|-----------------------------|---------|
| (a) | 1 st Defendant | 1 share |
| (b) | 2 nd Defendant | 1 share |
| (c) | 2 nd Third Party | 1 share |

See "HMTM-1" which is a copy of the ACRA company search for the Plaintiff.

37. After the Plaintiff was incorporated, the 2nd Defendant and 2nd Third Party set up the Plaintiff's bank account and attended to other administrative matters. To the best of my knowledge, the 2nd Third Party recommended that we should set up the bank accounts with HSBC as the 2nd Third Party himself already had bank accounts with the bank. Thereafter, the 2nd Defendant and the 2nd Third Party were responsible for setting up the Plaintiff's Account and the Defendants' Account. However, I signed the relevant papers in respect of the Plaintiff and Defendants' Accounts as and when requested to do so by the 2nd Defendant.

38. Since incorporation, I was not actively involved in the conduct of the Plaintiff as I reside in Sarawak, Malaysia. However, I would sign the cheques that the 2nd Defendant presented to me when necessary and advised to do so by the 2nd Defendant.

39. Between 1990 and 1997, the Plaintiff was used in the following way:-
- (a) After Sanyan Sdn Bhd negotiated the sale of timber and agreed directly with its foreign purchaser (“**Sanyan’s purchaser**”) as to the price, quantity and delivery/shipping of the timber to be sold and exported, instead of issuing an invoice for the agreed price (“**the Actual Price**”) in the name of Sanyan Sdn Bhd directly to Sanyan’s purchaser, Sanyan Sdn Bhd would issue an invoice to the Plaintiff for a price at a fraction or lower than the Actual Price (“**the Lower Price**”).
 - (b) The Plaintiff would issue an invoice to Sanyan’s purchaser at the Actual Price.
 - (c) Sanyan’s purchaser would pay the Plaintiff the Actual Price and the Plaintiff would in turn pay Sanyan Sdn Bhd the Lower Price.
 - (d) The difference between the Actual Price and the Lower Price for each of such transactions (“**the transferred monies**”) remained with the Plaintiff in its HSBC account. In this manner, the 1st Defendant and 2nd Defendant were able to use the transferred monies for their own investment or business purposes and limit Sanyan Sdn Bhd’s exposure to tax liability in Sarawak, Malaysia.

As far as I am aware, this was the only purpose for which the Plaintiff was used.

40. The relationship between Sanyan Sdn Bhd and the role of the Plaintiff is further explained in the affidavits of evidence-in-chief of Mr Hitoshi

Miyamoto and Mr Wong Suk Chiew filed in these proceedings, who were directly involved in and have personal knowledge of the transactions that involved Sanyan Sdn Bhd, the Plaintiff and the foreign purchaser.

41. To the best of my knowledge, the 2nd Defendant and I stopped using the Plaintiff as a tool to avoid paying income tax to the Malaysian tax authorities sometime in 1997. Thereafter, since 1997 till the present date, the Plaintiff ceased all business and has remained dormant.
42. The main reason why the Plaintiff ceased trading was because sometime in 1997 Sanyan Sdn Bhd was sanctioned by Inland Revenue Malaysia for the understatement of income from the period of 1991 to 1996.
43. Around that time, Inland Revenue Malaysia had conducted investigations and had subsequently discovered and penalised many timber export companies in Sarawak, Malaysia for the under-declaration of income and Sanyan Sdn Bhd was one of such companies.
44. Subsequently, Sanyan Sdn Bhd entered into a settlement agreement with Inland Revenue Malaysia to pay tax and penalties for the years of assessment of 1991 to 1996 for the understatement of income during that period. The 2nd Defendant had actively negotiated and obtained the settlement from the authorities on Sanyan Sdn Bhd's behalf. Annexed

hereto and marked as "HMTM-10" is a copy of the settlement agreement between Sanyan Sdn Bhd and Inland Revenue Malaysia.

45. The monies in the Plaintiff's Account belonged solely to the 2nd Defendant and me. Monies kept in the Plaintiff were used by the 2nd Defendant and I for our own purposes some of which included investing (in our personal capacities) in SWI through Goodmatch Sdn Bhd and Pelita Towerview Sdn Bhd through Sanyan Holdings Sdn Bhd. I also used some of the monies kept in the Plaintiff (and sent to the Defendants' Account) amongst other things, to purchase property in Upper Bukit Timah, Singapore. Similarly, the 2nd Defendant had also purchased an apartment next to mine in Upper Bukit Timah at the same time. The monies kept in the Plaintiff's Account never belonged to the Plaintiff and the 2nd Defendant and I withdrew monies from the Defendants' Account as and when necessary for our own personal use. This is clear from the fact that the 2nd Third Party was never made a co-signatory to the Plaintiff's Account even though he was a director and shareholder of the Plaintiff from the outset.
46. Based on a purported directors' resolution dated 02.03.2012 disclosed by the 2nd Defendant (which authenticity is disputed), it appears that the Plaintiff had resolved to appoint Mr Prabhakaran A/L Ramasamy ("**Mr Ramasamy**") and the 2nd Defendant's son, Dr Ting Sing Dean, as directors of the Plaintiff. Annexed hereto and marked as "HMTM-11" is a copy of

the purported minutes of meeting and directors' resolution dated 02.03.2012 disclosed by the 2nd Defendant (which authenticity is disputed).

47. While the ACRA search shows that Mr Prabhakaran A/L Ramasamy (“**Mr Ramasamy**”) was appointed to the board of the Plaintiff on 02.03.2012, the purported appointment of the 2nd Defendant’s son is not reflected in the said search. I do not know Mr Ramasamy personally but I believe him to be affiliated to and a nominee of the 2nd Defendant. See “**HMTM-1**”.
48. It also appears that on 15.06.2012, Mr Ngui Ngee Tee (“**Mr Ngui**”) was appointed to the board of the Plaintiff. I know Mr Ngui personally. He is also the 2nd Defendant’s brother-in-law and was the manager for Sanyan Lumber Sdn Bhd since the commencement of business of Sanyan Lumber Sdn Bhd.
49. The appointments of Mr Ramasamy and Mr Ngui as directors are neither proper nor valid. As director of the Plaintiff, I was neither notified nor aware of the appointments of Mr Ramasamy and Mr Ngui (or Dr Ting Sing Dean) as directors of the Plaintiff.
50. Per the Company Profile search of the Plaintiff, there are now 5 directors, out of which 3 are the nominees of the 2nd Defendant i.e. Mr Ramasamy, Mr Ngui (the 2nd Defendant’s brother-in-law) and the 2nd Third Party (also the 2nd Defendant’s brother-in-law).

51. Since the 2nd Defendant is able to exert control over 3 out of the 5 directors on the board of the Plaintiff, he has de facto control over the decision-making of the Plaintiff.

E. **Background facts in relation to SWI and Pelita Towerview Sdn Bhd**

SWI

52. On or about 1991, two Japanese companies in the business of importing round logs and manufacturing and distributing plywood, being Noda wood Company Limited (“**Noda Wood**”) and Ishinomaki Plywood Manufacturing Company Limited (“**Ishinomaki**”) expressed interest in establishing a company in Malaysia to manufacture and export veneer and plywood on a joint venture basis.
53. The 2nd Defendant and I, amongst others, met with and negotiated with a representative of Noda Wood and Ishinomaki to achieve a commercial arrangement on the terms on which the proposed joint venture would operate.
54. In anticipation of a positive outcome of the said negotiations, on 02.08.1991, SWI was incorporated with the 2nd Defendant and myself as subscriber shareholders and directors, each holding 1 subscriber share. It was intended that SWI would eventually be used as the joint venture vehicle with the Japanese companies. See HMTM-3, a copy of the corporate

information of SWI dated 06.02.2013 per the Companies Commission of Malaysia.

55. On 27.04.1993, a joint venture agreement was entered into between Goodmatch Sdn Bhd on the one part and Noda Wood and Ishinomaki on the other (“JVA”). Annexed hereto and marked as “HMTM-12” is a copy of JVA.
56. Goodmatch Sdn Bhd represented the local Malaysian component of the joint venture. Noda Wood and Ishinomaki represented the foreign Japanese component of the joint venture. The rights, duties and obligations of both the Malaysian and Japanese components as between themselves and each other were to be defined and regulated by the terms and conditions of the JVA and SWI’s Articles of Association.
57. SWI, as the joint venture vehicle, was used for the purposes of: (a) constructing, processing and operating a factory and facilities and to manufacture veneer/plywood and other products as may be decided by SWI; (b) selling products produced by SWI; and (c) other business incidental thereto.

Applications for manufacturing licences and pioneer status incentives on behalf of SWI

58. I am aware that SWI had applied for and was granted manufacturing licences for plywood and coated plywood and was granted pioneer status in respect of these products. However, I was not involved in the application process till mid-2003. The 2nd Defendant handled all documentation in respect of applications for pioneer status incentives, manufacturing licences and the transfers of shares at the material time.
59. I crave leave to refer to Mr Philip Tong's affidavit of evidence-in-chief who is the external auditor for SWI and was involved in and assisted with the applications for pioneer status incentives and manufacturing licence on behalf of SWI since his appointment on 30.05.1994.

SWI shareholding

60. Pursuant to and to give effect to the terms of the JVA, on 28.12.1994, the authorised and paid up capital of SWI was increased to RM 8,000,000.00 with the shareholding after the allotment of shares as follows:-

- Goodmatch 4,080,000 shares
- Noda Wood 392,000 shares
- Ishinomaki 3,528,000 shares

61. On 14.06.1997, the authorised and paid up capital of SWI was increased to RM 20,000,000.00 and the resulting shareholding after the allotment of shares as follows:-

- Goodmatch 10,200,000 shares
- Noda Wood 980,000 shares
- Ishinomaki 8,820,000 shares

62. On or about 14.03.1998, I purchased 4,200,000 ordinary shares of SWI from Goodmatch which resulted in the shareholding of SWI as follows:-

- Goodmatch 6,000,000 shares
- Noda Wood 980,000 shares
- Ishinomaki 8,820,000 shares
- Myself 4,200,000 shares

Collectively annexed hereto and marked as "HMTM-13" is are copies of the Form 32A, Transfer of Securities dated 14.03.1998, the letter dated 07.02.1998 sent by SWI to MITI seeking approval for the transfer and the letter dated 25.07.1998 from MITI granting approval for the said transfer.

63. On 31.12. 1999. I purchased a further 1,000,000 ordinary shares of SWI from Goodmatch which resulted in the shareholding of SWI as follows:-

- Goodmatch 5,000,000 shares
- Noda Wood 980,000 shares

- Ishinomaki 8,820,000 shares
- Myself 5,200,000 shares

Collectively annexed hereto and marked as "HMTM-14" are copies of the Form 32A, Transfer of Securities dated 31.12.1999, the letter dated 14.08.1999 sent by SWI to MITI seeking approval for the transfer and the letter dated 17.12.1999 from MITI granting approval for the said transfer.

64. On 26.02.2001, Goodmatch transferred its following shares in SWI to the following:-

- 2nd Defendant 4,000,000 shares
- Dayang Siti Aminah Bt Abang Bolhassan 150,000 shares
- Hajjah Bte Hj Mohd Kaka 122,000 shares
- Majidah Bt Mohd Fauzi 100,000 shares
- Tinya Ak Ajang 75,000 shares
- Dayang Hadijah Bt Awang Kadir 75,000 shares
- Draman @ Morshidi Bin Omar 78,000 shares

Collectively annexed hereto and marked as "HMTM-15" are copies of Form 32A, Transfer of Securities dated 26.02.2001, the letter dated 27.09.2000 from SWI to MITI seeking approval for the transfer and the letter dated 14.12.2000 from MITI granting the approval for the said transfer of shares.

65. On 17.06.2003, I transferred 1,000,000 of my shares in SWI to Hanifah Hajah Taib. Collectively annexed hereto and marked as "HMTM-16" is are copies of Form 32A, Transfer of Securities dated 17.6.2003, letter dated 1.4.2003 from SWI to MITI seeking approval for the transfer and letter dated 25.4.2003 from MITI to SWI granting approval for the said transfer of shares.
66. On 10.01.2004, Noda Wood transferred its entire shareholding in SWI to Ishinomaki. Collectively annexed hereto and marked as "HMTM-17" is are copies of Form 32A, Transfer of Securities dated 10.01.2004, the letter dated 27.10.2003 from SWI to MITI seeking approval for the transfer and letter dated 14.11.2003 from MITI granting approval for the said transfer of shares.
67. The current shareholding of SWI is as follows:-
- Myself 4,200,000 shares
 - 2nd Defendant 4,000,000 shares
 - Ishinomaki 9,800,000 shares
 - Goodmatch 400,000 shares
 - Dayang Siti Aminah Abang Bolhassan 150,000 shares
 - Masjidah Binti Mohamad Fauzi 100,000 shares
 - Draman @Morshidi Bin Omar 78,000 shares

- Hapipah Bt Mohd Kaka, Hajjah 122,000 shares
- Dayan Hadijah Binti Awang Kadir 75,000 shares
- Tinya Ak Ajang 75,000 shares
- Hanifah Hajar Taib, Datin 1,000,000 shares

See "HMTM-3" a copy of the corporate information of SWI per the CCM dated 06.02.2013.

Timber concessions

68. The Plaintiff has alleged that pursuant to the 1993 Directors' Resolution on or about 25.06.1997, Goodmatch Sdn Bhd purchased a "timber concession". The Plaintiff also understands that this "timber concession" has since been disposed of. This is incorrect.
69. On 25.06.1997, an Agreement for Sale and Purchase of Timber Logs including the Extraction of such Logs ("**First S&P Agreement**") was entered into between Goodmatch Sdn Bhd and Sarawak Timber Industry Development Corporation ("**STIDC**"). Annexed hereto and marked as "HMTM-18" is a copy of the First S&P Agreement.
70. STIDC is a body corporate established in Sarawak under the Sarawak Timber Industry Development Corporation Ordinance 1973, is the lawful holder of Forest Timber Licence No. T/3343 ("**the Licence**"). The Licence conferred upon STIDC the rights and privilege to fell, extract, harvest, and

remove timber from the licensed area. The said Licence is valid for a period of 20 years commencing 17.06.1997 and expiring 16.06.2017. Annexed hereto and marked as "HMTM-19" is a copy of the Licence.

71. Per the First S&P Agreement, inter alia:-
- (a) STIDC permitted the purchase of all merchantable timber logs found in the licensed area by Goodmatch Sdn Bhd.
 - (b) Goodmatch Sdn Bhd was obliged at its own costs and expense to fell, extract, remove and transport from the licensed area, all the timber logs sold or intended to be sold by STIDC to Goodmatch Sdn Bhd pursuant to the First S&P Agreement.
 - (c) Throughout the period of the validity of the First S&P Agreement, the Licence would remain with STIDC.
72. The First S&P Agreement was subsequently superseded by a subsequent agreement between STIDC and Goodmatch Sdn Bhd dated 01.01.2001 ("**Second S&P Agreement**") in similar terms to that of the First S&P Agreement. The 2nd Defendant signed the Second S&P Agreement on behalf of Goodmatch Sdn Bhd. Annexed hereto and marked as "HMTM-20" is a copy of the Second S&P Agreement.
73. By virtue of an Agreement for Sale and Purchase of Timber Logs including the Extraction of such Logs dated 02.01.2001, entered into between

Goodmatch Sdn Bhd and Continuous Gain Sdn Bhd, Continuous Gain Sdn Bhd was granted the sole and exclusive right to fell, extract, harvest, sell and remove all merchantable timber logs affected one half (1/2) of the licensed area (Camp B). The 2nd Defendant signed the Agreement for Sale and Purchase of Timber Logs including the Extraction of such Logs dated 02.01.2001 on behalf of Goodmatch Sdn Bhd. Annexed hereto and marked as "HMTM-21" is a copy of the Power of Attorney dated 02.01.2001.

74. By virtue of an Agreement for Sale and Purchase of Timber Logs including the Extraction of such Logs dated 27.02. 2007, between Goodmatch Sdn Bhd and Solid Hartabina Sdn Bhd, Solid Hartabina Sdn Bhd was granted the sole and exclusive right to harvest, sell and remove all the timber logs from the other one-half (1/2) of the licensed area (Camp A). Annexed hereto and marked as "HMTM-22" is a copy of the Power of Attorney and Agreement with Solid Hartabina Sdn Bhd dated 27.02.2007.
75. By reason of the aforesaid, Goodmatch Sdn Bhd remains the buyer of all merchantable timber found in the licensed area and the main contractor for the felling, extraction, removal and transportation of timber logs from the licensed area.
76. The "timber concession" i.e. Licence, at all times remained with and continues to remain with STIDC. Accordingly, there is no issue of "disposal" of the "timber concession" as alleged by the Plaintiff.

77. In any event, I reiterate that any investment in Goodmatch Sdn Bhd and/or SWI was made in our personal capacities and the Plaintiff has no interest in the same.

Pelita Towerview Sdn Bhd

78. In early 1988, the 2nd Defendant and I commenced the acquisition of plots of land for the purposes of building a commercial complex in Sibu Town.
79. On 16.03.1989, Towerview Sdn Bhd was incorporated and soon thereafter, the 2nd Defendant, the late Datuk Arip and I were made directors and shareholders of the same.
80. In or about 1994/1995, the 2nd Defendant and I engaged in negotiations with the Land Custody and Development Authority of Sarawak (Pelita) to set up a joint venture to develop a commercial complex in Sibu Town (“**the Development**”).
81. On 29.07.1995, Towerview Sdn Bhd changed its name to Pelita Towerview Sdn Bhd in anticipation of the joint venture. Pelita Towerview Sdn Bhd was intended to be a joint venture vehicle for the Development.
82. Pursuant to plans and proposals submitted to the relevant authorities by Pelita Towerview Sdn Bhd, in 1996, the various plots of land (i.e. Lot 112,

Lot 54066, Lot 1338, Lot 350 (Partial) Block 5 S.T.D.) were amalgamated to form a parcel of land known as Lot 699, Block 5 in Sibul Town District (“the Parcel”) for the purposes of the Development.

83. On 10.12.1996, Sanyan Holdings Sdn Bhd was incorporated. Sanyan Holdings Sdn Bhd was a 98.5% shareholder in Pelita Towerview Sdn Bhd. See Corporate Information of Sanyan Holdings Sdn Bhd and Pelita Towerview Sdn Bhd at “HMTM-4” and “HMTM-5” respectively.
84. Pelita Towerview Sdn Bhd as the vehicle for the Development was the owner or the registered proprietor of the Parcel. It is the property holding company. On the other hand, Sanyan Holdings Sdn Bhd dealt with the supervision and management of the Development, the undertaking of obligations and liabilities in connection with the Development and other such operational matters.
85. On or about 28.01.1997, a bank loan of RM 105 million was obtained to finance the building project and both the 2nd Defendant and I were, and still remain, joint and several guarantors for the loan, in our personal capacities. The RM 105 million loan has been paid and only an overdraft of approximately RM 6-7 million remains guaranteed personally by the us. Annexed hereto and marked as “HMTM-23” is a copy of the letter of offer from Eon Bank on credit facilities of RM 105 million dated 18.01.1997 and as “HMTM-24” is a copy of the Pelita Towerview Sdn Bhd minutes of the

board of directors' meeting dated 28.01.1997 approving the acceptance of the letter of offer dated 18.01. 1997.

86. Further, to raise capital to assist with the Development, the capital of Pelita Towerview Sdn Bhd was increased on 31.05.1997 which resulted in the following shareholding:-

- Myself 20,000 shares
- 2nd Defendant 15,000 shares
- Late Datuk Haji Mohamad Arip Bin Mahmud 15,000 shares
- Dato' Haji Ibrahim Bin Mahmud holding 120,000 shares
- Sanyan Holdings Sdn Bhd 11,830,000 shares

87. The result of such a share allocation was that Sanyan Holdings Sdn Bhd became the holder of 98.5% of the paid up shares in Pelita Towerview Sdn Bhd.

88. Under the supervision and management of Sanyan Holdings Sdn Bhd the Development progressed and was completed on or about 1997. The Development comprised a 27 level complex known as Wisma Sanyan built on the Parcel ("Wisma Sanyan"). Wisma Sanyan was commercially successful and Pelita Towerview Sdn Bhd, through the management of Sanyan Holdings Sdn Bhd, sold many of the commercial units in the building.

89. Subsequently, in or about early 2003, given the commercial success of Wisma Sanyan I had proposed that the office tower of Wisma Sanyan be extended by a further 3 floors (“the **Proposed Extension Project**”). Thereafter, I had also proposed to increase the paid-up capital to part finance the Proposed Extension Project. Despite attempts to call an EGM to pass a resolution for such an increase, this was not passed due to the 2nd Defendants’ failure to attend the EGMs called.
90. Thereafter, sometime in 2008, I also proposed that a Sanyan walkway be constructed in addition to the Proposed Extension Project. Once again to part finance these proposed construction projects, I proposed to increase the share capital of the Sanyan Holdings Sdn Bhd and this resolution was eventually passed on 01.12.2009. The 2nd Defendant did not subscribe to such increased share capital.
91. The share capital of Sanyan Holdings Sdn Bhd was increased from RM 5 million to RM 16 million and the current shareholding is:-

(a) Mohammad Tufail Bin Mamud Dato’ Haji	13,320,000
(b) Ting Check Sii (2 nd Defendant)	2,200,000
(c) Mohammad Yakub Bin Mohammad Tufail	240,000
(d) Mohammad Farouk Bin Mohamad Tufail	240,000

F. Any transferred monies were not held on trust for the Plaintiff

92. The Plaintiff has alleged that from about 27.05.1992 to 26.03.1996, the Plaintiff purportedly transferred a total of USD7,939,549.73 from the Plaintiff's Account to the HSBC Joint Account (i.e. the Defendants' Account) held by the 2nd Defendant and I. This sum of money was purportedly transferred to the 2nd Defendant and I to hold as trustees for the alleged specific purpose of investing in SWI (through Goodmatch Sdn Bhd) and Pelita Towerview Sdn Bhd (through Sanyan Holdings Sdn Bhd). This is not correct.
93. The Plaintiff has gone further to state how the sum of USD 7,939,549.73 was purportedly transferred to the Defendants' Account and thereafter transferred to SWI and Pelita Towerview Sdn Bhd.
94. Neither the 2nd Defendant nor I held any monies in the Defendants' Account, or otherwise, as trustees for the Plaintiff. In any event, any and all monies in the Plaintiff's Account belonged to the 2nd Defendant and me.
95. Furthermore, I recall having used my personal funds from other sources apart from the monies from the Defendants' Account to also invest in SWI and/or Pelita Towerview Sdn Bhd.

96. I also understand that the payment vouchers disclosed by the 2nd Defendant, which are supposed to support the purported transfers from the Plaintiff's Account to the Defendants' Account (per the tranches in paragraph 13 of the Amended SOC), the monies were primarily to the account of "Sanyan Sdn Bhd". Annexed hereto and marked as "HMTM-25" are copies of the payment vouchers.

G. Plaintiff is a mere tool used by the 2nd Defendant for collateral purposes

97. As stated above, in this action, I verily believe that the Plaintiff simply serves as a tool for the 2nd Defendant to obtain the reliefs and/or control over SWI and Sanyan Holdings Sdn Bhd / Pelita Towerview Sdn Bhd that he could not obtain through the Malaysian Litigation.

98. SWI and Pelita Towerview Sdn Bhd are the only 2 companies that generate major profits for the rest of the Malaysian companies jointly incorporated by the 2nd Defendant and me. These two assets are the business of manufacturing timber products carried on by SWI and Wisma Sanyan owned by Pelita Towerview Sdn Bhd which is in turn owned by Sanyan Holdings Sdn Bhd.

99. Until 2003, the 2nd Defendant had control of SWI and Sanyan Holdings Sdn Bhd as managing director. After he resigned from his position as managing director of both companies and I was appointed in his stead, the 2nd

Defendant realised that he had lost control of the two companies that were generating major profits.

100. Thus the 2nd Defendant commenced the Malaysian lawsuits, amongst other purposes, with a view to wresting back control of these 2 companies from me. Having failed to achieve his objectives of gaining control of these two companies through the Malaysian lawsuits, the 2nd Defendant has now conspired with the 2nd Third Party and/or the Plaintiff to commence the current action against me in a back-door attempt to gain control of the 2 companies.

101. I verily believe that the 2nd Defendant has attempted to gain control over SWI and Pelita Towerview Sdn Bhd in this action by carrying out the following-

- (a) By instructing the Plaintiff on its purported claim in these proceedings. Annexed hereto and marked as "HMTM-26" copies of the correspondence between the Plaintiff's solicitors and the 2nd Defendant and/or his solicitors;
- (b) By fabricating the purported 1993 and 1994 Directors' Resolutions that form the basis of the Plaintiff's action (as well as other purported Directors' Resolutions, minutes and correspondence);
- (c) By alleging that the shares held by the 2nd Defendant and I in SWI, Goodmatch Sdn Bhd, Pelita Towerview Sdn Bhd and Sanyan Holdings Sdn Bhd were held on trust for the Plaintiff;

- (d) By seeking the transfer of legal title to all investments, including the shares held by the 2nd Defendant and I in SWI, Goodmatch Sdn Bhd, Pelita Towerview Sdn Bhd, and Sanyan Holdings Sdn Bhd to the Plaintiff and any land purportedly purchased with the Plaintiff's monies.
- (e) By admitting to the Plaintiff's claim in the Defence filed by the 2nd Defendant on 21.01.2012.
- (f) By controlling the board of directors of the Plaintiff through the appointment of his nominees who are likely to act in accordance with his wishes.

H. Authenticity of the Plaintiff's directors' resolutions / alleged correspondence from the 2nd Defendant to me disputed

102. I have disputed the authenticity of several directors' resolutions, minutes and correspondence produced by the Plaintiff, the 2nd Defendant and/or the 2nd Third Party in this action. Of the disputed documents I focus here on the following purported directors' resolutions/minutes which pertain to the alleged investment by the Plaintiff in the Malaysian Companies (which is denied):-

- (a) Directors' Resolution dated 31.10.1991 (all versions) See HMTM-27
- (b) Directors' Resolution dated 19.09.1992 (all versions) See HMTM-28
- (c) Directors' Resolution dated 03.01.1993 (all versions) i.e. 1993 Directors' Resolution See HMTM-29

- (d) Directors' Resolution dated 15.12.1994 (all versions) i.e. 1994
Directors' Resolution See HMTM-30
- (e) Directors' Resolution dated 02.01.1995 See HMTM-31
- (f) Directors' Resolution dated 29.08.1995 See HMTM-32
- (g) Minutes of the Board of Directors' Meeting dated 13.12.1999 See
HMTM-33

Collectively annexed hereto and marked as "HMTM 27-33" are copies of the aforesaid purported Directors' Resolutions/Minutes.

103. Apart from the evidence of the document forensic expert who has analysed, inter alia. the purported resolutions/minutes set out above, I state below my reasons for disputing the authenticity of the above purported directors' resolutions/minutes.

104. As explained above, the Plaintiff was utilised to limit Sanyan Sdn Bhd's exposure to tax liability in Sarawak, Malaysia and to segregate the monies accumulated there for personal or business use by me and the 2nd Defendant through the Defendants' Account. The Plaintiff did not carry out any operations and had no assets. Its only existence was to "park" the monies received from the "transfer pricing" scheme. Therefore from 1992 to 1997 there were no formal board meetings ever held by the Plaintiff. There was no need for any board meetings because no actual operations or work was carried out by the Plaintiff.

105. In light of the fact that the 2nd Defendant and the 2nd Third Party (the directors and shareholders of the Plaintiff since inception) were aware that the Plaintiff was only utilised for such purpose, it is impossible that the Plaintiff would have caused to pass the purported Directors' Resolutions stating that the monies in the Plaintiff's Account were held on trust by the Defendants and to make investments on the Plaintiff's behalf. At all material times, all parties were aware that these monies belonged to the 2nd Defendant and myself and were to be used for our own personal, investment or business purposes.
106. Also, I had no knowledge of the existence of the purported directors' resolutions prior to receiving copies of the same in the course of these proceedings. In this regard, I first had sight of:
- (a) the purported 1993 Directors' Resolution and 1994 Directors' Resolution when I received the same from the Plaintiff's solicitors pursuant to a Notice to Produce filed and served on 10.01.2013;
 - (b) the purported Directors' Resolutions dated 31.10.1991 and 19.09.1992 when I received a copy of the 2nd Third Party's affidavit dated 12.03.2013 filed on behalf of the Plaintiff. The said resolutions were exhibited at LHK-1 and LHK-2 respectively;
 - (c) the purported Directors' Resolution dated 02.01.1995 when I received copies of the 2nd Third Party's affidavit dated 21.03.2013 and Mr

Ngui's affidavit dated 21.03.2013 exhibiting the same at LHK-5 and NNT-16 respectively;

- (d) the purported Directors' Resolution dated 29.08.1995 when I received a copy of the 2nd Defendant's affidavit dated 21.03.2013 which exhibited the same at DTCS-1; and
- (e) the remaining purported directors' resolutions/minutes, referred to above, when I received copies of the documents disclosed by the Plaintiff, 2nd Defendant and 2nd Third Party in this action.

107. The 2nd Defendant has alleged that he personally saw me sign the 1993 and 1994 Directors' Resolutions and Directors' Resolution dated 02.01.1995. This is again false. As stated above, prior to these proceedings I have never seen the aforesaid resolutions and I dispute their authenticity.

108. Furthermore, both the 2nd Third Party and Mr Ngui (on behalf of the Plaintiff) have stated that pursuant to the purported Directors' Resolution dated 02.01.1995 it was allegedly resolved that I keep "*all original copies of resolutions in writing pertaining to the investment in Sanyan Wood Industries Sdn Bhd and Sanyan Holdings Sdn Bhd*". This is false. I never kept the originals of the purported directors' resolutions of the Plaintiff or originals or copies of any other documents of the Plaintiff.

109. I have not kept any of the Plaintiff's documents (originals or copies) including the audited accounts, the administrative resolutions or the resolutions for which I have disputed the authenticity, the invoices with the foreign purchaser or Sanyan Sdn Bhd for the reasons below:-

(a) I had left the running of the Plaintiff to the 2nd Defendant. I was not involved in the management and affairs of the Plaintiff. When I was told to sign certain documents such as administrative resolutions relating to the bank account in Singapore and the Plaintiff's accounts, the 2nd Defendant would either hand them to me or mail them to me for my signature in Sibul and I would return them by post to Singapore or hand them back to the 2nd Defendant if he was in Sibul. None of the documents were kept by me in Sibul.

(b) Also, I do not live in Singapore. The Plaintiff's documents should have been kept with the 2nd Third Party at his home which was used as the Plaintiff's office address. This is especially since, the 2nd Defendant and the 2nd Third Party had clearly kept the originals of the Plaintiff's invoices, copies of the audited accounts, the Plaintiff's bank statements, the Plaintiff's hard cover book containing resolutions etc which they have disclosed in these proceedings.

110. The Plaintiff, 2nd Defendant and 2nd Third Party are well aware that I do not have the originals of the purported directors' resolutions.

111. I verily believe that these purported directors' resolutions have been fabricated by the 2nd Defendant, the Plaintiff and/or the 2nd Third Party and this is the reason why the originals have not been produced in this action. The assertion by the Plaintiff, the 2nd Defendant and the 2nd Third Party that I held the originals of the purported directors' resolutions in relation to the alleged trust arrangement and Malaysian investments is simply a convenient way to exclude from production and scrutiny the originals of these purported resolutions and to blame this non-production on me.
112. As previously stated, if there was indeed a trust arrangement between the Plaintiff and the Defendants (which is denied), no mention of this arrangement was made in the Malaysian Litigation.
113. Also, if indeed I was aware of these resolutions and kept originals of them (which is denied), I would have disclosed these myself in the Malaysian litigation to contradict the position that the 2nd Defendant had taken in the Malaysian litigation, particular in Suit 22-64-2009 where the 2nd Defendant alleged that he had personally paid for the shares in SWI.
114. In this regard, the 2nd Defendant and the Plaintiff have also disclosed in this action purported correspondence from the 2nd Defendant, addressed to me, which make mention of the alleged trust arrangement with the Plaintiff, namely:-

- (a) Letter dated 18.5.2005 from the 2nd Defendant to me;
 - (b) Letter dated 28.3.2007 from the 2nd Defendant to me;
 - (c) Letter dated 20.5.2007 from the 2nd Defendant to me; and
 - (d) Letter dated 10.2.2010 from the 2nd Defendant to me,
- (collectively hereinafter referred to as the “**Purported Trust Letters**”).
- Collectively annexed hereto and marked as “HMTM-34” are copies of the letters dated 18.5.2005, 28.3.2007, 20.5.2007 and 10.02.2010 from the 2nd Defendant addressed to me.

115. Prior to the 2nd Defendant’s disclosure of the above-mentioned correspondence in these proceedings, I had neither seen nor received such correspondence and the 2nd Defendant is put to strict proof. It never featured in the litigation in Malaysia.

116. I verily believe that the Purported Trust Letters have only been produced or manufactured for the purposes of these proceedings. In this regard, if I had received such correspondence at the material time, I certainly would have responded to the same, particularly when I deny the existence of any alleged trust arrangement with the Plaintiff. The 2nd Defendant has not produced any response to the 2nd Defendant’s letters by me.

117. In all of the documents submitted by the 2nd Defendant to the Malaysian authorities, no mention is made of the purported investment by the Plaintiff

in the Malaysian companies. In fact, the 2nd Defendant states clearly the manner in which shares are held in SWI. By way of example, please see:-

- (a) SWI's application for manufacturing licence under the Industrial Coordination Act 1975 and tax incentives under the Promotion of Investment Act 1986 (Form ICA 1 Application). Annexed hereto and marked as "HMTM-35" is a copy of Form ICA 1;
- (b) Letter dated 07.02.1998 SWI seeking approval from MITI for the transfer of 4,200,000 SWI shares from Goodmatch Sdn Bhd to Datuk Haji Mohammad Tufail Bin Mahmud (1st Defendant) See HMTM-13;
- (c) Letter dated 14.08.1999 SWI seeking approval from MITI for the transfer of shares in SWI from Goodmatch Sdn Bhd to Datuk Haji Mohammad Tufail Bin Mahmud (1st Defendant). See HMTM-14
- (d) SWI's application for incentives under the Promotion of Investment Act 1986 for expansion and/or diversification project by a licensed manufacturer. Annexed hereto and marked as "HMTM-36" is a copy of letter dated 21.08.2000 from SWI to MIDA enclosing Form ICA3(97).
- (e) Letter dated 27.09.2000 SWI seeking approval from MITI for the transfer of SWI shares from Goodmatch Sdn Bhd to Dato Ting Check Sii (2nd Defendant) and others. See HMTM-15

118. Finally, it is also evident from our conduct vis-à-vis the Malaysian Companies that the Companies were clearly set up and invested in our personal capacities. For instance:-

- (a) With respect to SWI, the 2nd Defendant and I met with the Japanese companies and negotiated the joint venture (i.e. SWI) which was set up to manufacture and export veneer and plywood.
- (b) With respect to Sanyan Holdings Sdn Bhd and Pelita Towerview, the 2nd Defendant and I acquired various plots of land for the purposes of building a commercial complex in Sibuluan District, Sarawak. The 2nd Defendant and I also engaged in negotiations with the Land Custody and Development Authority of Sarawak (Pelita) to set up a joint venture to develop a commercial complex in Sibuluan.
- (c) With respect to Sanyan Holdings Sdn Bhd and Pelita Towerview Sdn Bhd, on or about 21 January 1997 a bank loan of RM 105 million was obtained to finance the building project and the 2nd Defendant and I were, and still remain, joint and several guarantors for the loan, in our personal capacities. I provided the personal guarantee on the basis that I had invested in Sanyan Holdings Sdn Bhd and Pelita Towerview Sdn Bhd in my personal capacity.

I. Purported scheme in the 1993 and 1994 Directors' Resolutions are contrary to Malaysian law and public policy

119. Without any admission as to the validity and the veracity of the 1993 Directors' Resolution and the 1994 Directors' Resolution, I am advised and verily believe that the schemes set out in the two Directors' Resolutions sought to deceive the relevant Malaysian government authorities of by concealing the true beneficial shareholders in SWI and Sanyan Holdings Sdn Bhd in order to gain the benefits of tax exemptions and owning land in Sarawak. This is addressed by the experts, Datuk JC Fong and Mrs Santha B Menon in their reports.

J. Conspiracy

120. The Plaintiff, the 2nd Defendant and/or the 2nd Third Party combined to unlawfully fabricate the purported 1993 and 1994 Directors' Resolutions with the intention of commencing this action to gain benefits they are not entitled to and thereby cause me financial harm and damage.

121. The fabrication of the purported 1993 and 1994 Directors' Resolutions is addressed in Dr Steven Strach's report.

122. The Plaintiff, the 2nd Defendant and/or the 2nd Third Party have clearly combined together and have agreed to institute this action on the basis of the

fabricated 1993 and 1994 Directors' Resolutions and this may be gathered from the following circumstances:-

- (a) The 2nd Defendant has de facto control over the Plaintiff's board. See paragraphs 46-51 above.
- (b) It is the Plaintiff's, 2nd Defendant's and 2nd Third Party's case that the purported 1993 and 1994 Directors' Resolutions were signed by the parties and that the purported investments were made pursuant to the 1993 and 1994 Directors' Resolutions;
- (c) The Plaintiff, 2nd Defendant and 2nd Third Party allege that I have kept the originals of the purported 1993 and 1994 Directors' Resolutions to avoid disclosing the purported originals (if any);
- (d) The Plaintiff's representative (and brother-in-law of the 2nd Defendant), Mr Ngui Ngee Tee, has stated in his affidavit dated 21.03.2013 that he has no reason to believe that the purported 1993 and 1994 Directors' Resolutions are not genuine;
- (e) The Plaintiff has launched this litigation pursuant to information and documents provided by the 2nd Defendant. A copy of a letter dated 13.09.2012 from M/s Drew & Napier LLC (the Plaintiff's solicitors) to M/s Hafarizam Wan & Aisha Mubarak (the 2nd Defendant's Malaysian solicitors) is at HMTM-26.
- (f) The Plaintiff, the 2nd Defendant and the 2nd Third Party are well aware that the purported 1993 and 1994 Directors' Resolutions are not genuine.

- (g) The Plaintiff, the 2nd Defendant and/or the 2nd Third Party have also fabricated other purported directors' resolutions, minutes and correspondence by the 2nd Defendant in order to substantiate and perpetuate the alleged trust arrangement with the Plaintiff. See paragraphs 102-118 above.
- (h) For the reasons stated at paragraphs 92-101 above, the Plaintiff, 2nd Defendant and 2nd Third Party are well aware that there is no trust arrangement with the Plaintiff.

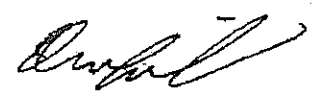
123. I verily believe that the 2nd Defendant and/or the 2nd Third Party as the shareholders and directors of the Plaintiff at the material time, have made use of the Plaintiff to commence the present action against me to profit themselves or obtain benefits they are not entitled to and have thereby caused me financial harm.

124. For the reasons stated at paragraphs 92-118 I have explained why this Suit has no merit. In spite of this, the Plaintiff, the 2nd Defendant and/or the 2nd Third Party have commenced this action to obtain benefits they are not entitled and thereby cause me financial harm and damage.

K. Conclusion

125. For the aforesaid reasons, I humbly pray that the Plaintiff's claims against me be dismissed and my claims in the third party action against the 2nd Defendant and the 2nd Third Party be allowed with costs.

AFFIRMED by the abovenamed)
DATUK HAJI MOHAMMAD TUFAIL BIN MAHMUD)
In Kuching, Sarawak.)
On this 8th day of October 2014)



Before me, 

A NOTARY PUBLIC
YAP HAN BOON
ADVOCATE
NOTARY PUBLIC
MESSRS. REDDI & CO.
REDDI BUILDING,
NO. 393, JALAN DATUK ABANG ABDUL RAHIM,
93450 KUCHING.

