

High Court Clarifies The Boundary Between Corporate Wrongs And Minority Shareholder Oppression

8 May 2026

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In shareholder disputes, the boundary between corporate wrongs and minority shareholder oppression remains one of the more nuanced and frequently contested issues. Whilst the Companies Act 2016 (CA 2016) provides distinct remedies for a derivative action under Section 347 of the CA 2016 for wrongs done to the company to that of an oppression action under Section 346 of the CA 2016 for conduct specifically targeting minority shareholders, the two often overlap in practice, leaving aggrieved shareholders uncertain as to the appropriate course of action.

In *Lee Tin Hui v GL Property Management Sdn Bhd & Ors* [2025] 11 MLJ 482, the High Court had the occasion to determine whether the majority shareholder-directors' conduct in withholding dividends, taking substantial interest-free loans and paying themselves excessive remuneration crossed the line from a corporate wrong into minority oppression.

Background Facts

The 1st Defendant, GL Property Management Sdn Bhd (Company), is a family-owned investment holding company that owns a single property from which it derives its rental income.

Following the death of the Plaintiff's father on 19 October 2017, his one share in the Company was distributed amongst his children, with the 2nd Defendant (D2) receiving 50% and the Plaintiff and her sister each receiving 25%. D2 was thereafter appointed as the director, followed by his wife, the 3rd Defendant (D3), in January 2018. The Plaintiff was only formally registered as a shareholder on 20 December 2022 following the administration of her late father's estate.

Between 2018 and 2021, D2 and D3 withdrew a total of RM925,101 from the Company as interest-free loans repayable on demand without prior shareholder approval. The first withdrawal in 2018 alone amounted to RM619,947, representing 95% of the Company's operating cash. Concurrently, D2 and D3 began drawing remuneration, which increased from RM30,000 in 2019 to RM60,000 in 2020, and subsequently to RM180,000 per annum from 2021 to 2023. The remuneration accounted for over 60% of the Company's revenue and led to its first operating loss in over a decade.

This stood in stark contrast to the Company's earlier years, during which the directors, including the Plaintiff's late father, drew no remuneration and instead declared regular dividends of RM200,000 in 2014, RM500,000 in 2015 and RM200,000 in 2016. Upon D2 and D3 assuming control, dividend declarations ceased entirely. A token dividend of RM50,000 was declared in 2023, which conveniently facilitated D2's partial repayment of his unauthorised loans through his RM37,500 entitlement.

On 23 July 2024, the Plaintiff commenced an oppression action under Section 346 of the CA 2016, seeking declarations of oppression, repayment of loans and remuneration, appointment of forensic auditors and independent valuers, and ultimately either a buyout of her shares or the winding up of the Company.

Decision Of The High Court

Relying heavily on the Federal Court's decision in *Low Cheng Teik & Ors v Low Ean Nee* [2024] 5 MLJ 580, the Defendants contended that the Plaintiff's grievances constitute mere corporate wrongs as the complaints were grounded on alleged breaches of directors' duties and misappropriation of company funds. Accordingly, the Defendants argued that the appropriate remedy lies in a derivative action under Section 347, rather than an oppression claim under Section 346 of the CA 2016.

In rejecting such argument, the High Court found that the Defendants had "oversimplified" the Federal Court's analysis in *Low Cheng Teik*. Upon a proper reading of *Low Cheng Teik*, the court observed that the legal test for a minority oppression claim requires that the act of oppression be targeted directly and specifically against one or more minority shareholders, resulting in injury to them in their personal capacity. The mere technical ability to frame certain aspects as breaches of directors' duties does not negate the fundamentally oppressive nature of the conduct when viewed as a whole.

In the present case, the High Court found that the following facts clearly demonstrated that minority oppression had occurred:

- Despite the Company's revenue remaining relatively constant from RM 330,000 in 2019 to RM 317,000 in 2023, the directors' remuneration increased six-fold from RM 30,000 to RM 180,000, with additional statutory contributions rising from RM 650 to RM 22,200. The Defendants' attempt to justify such increment by reference to their additional responsibilities in managing the Company without staff support was found

untenable, as the Company's business model had not fundamentally changed and such additional responsibilities were largely consequences of their own conduct.

- The remuneration was further taken without prior authorisation by the Company's constitution or approval by members in a general meeting. The subsequent attempts to ratify the remuneration through members' resolutions in 2023 and 2024 were held to be ineffective as the benefiting directors controlled the majority votes and such ratification amounted to nothing more than a reactive measure rather than proper corporate governance.
- The cessation of dividend declaration following D2 and D3's assumption of control was found to form part of the same oppressive pattern. The majority had deliberately structured their profit extraction through loans and remuneration accessible only to themselves as director, to the exclusion of the minority who had no equivalent means of obtaining any return from the Company save through dividend declarations.
- The declaration of a RM 50,000 dividend in 2023 did not mitigate the pattern of conduct. The dividend was declared at a time when the Company was operating at a loss and was structured in a manner that effectively facilitated D2's partial repayment of his unauthorised loans.

In the circumstances, the High Court found that the majority had made deliberate use of their controlling power to adopt a policy that benefitted only themselves at the expense of the minority. Viewed holistically, this revealed a conscious pattern of self-enrichment that specifically disadvantaged the minority, and the complaints accordingly fell squarely within the ambit of Section 346 of CA 2016.

Commentary

The decision in *Lee Tin Hui* offers several important takeaways for directors, shareholders and practitioners alike.

Firstly, minority shareholders who find themselves locked out of the benefits of their investment need not be confined to a derivative action under Section 347 of the CA 2016 merely because the impugned conduct can be framed as a breach of directors' duties. Where the pattern of majority conduct reveals a deliberate and targeted exclusion of the minority from the fruits of the company, an oppression claim under Section 346 remains an available and potent remedy.

Secondly, majority shareholders who elect to extract company profits through mechanisms accessible only to themselves, whilst minority shareholders remain entirely dependent on dividend declarations for any return, do so at considerable legal risk. Section 346 of the CA 2016 is intended to address such conduct, and the courts have shown little hesitation in intervening where the evidence discloses a conscious and sustained pattern of self-enrichment at the expense of the minority.

Thirdly, the judgment sends a strong signal that post-facto ratification is not a panacea. Directors cannot insulate themselves from scrutiny by retrospectively approving their own remuneration or transactions, particularly where they command the voting majority. The requirement for shareholder approval is not a procedural formality, but a substantive safeguard. Where that safeguard is undermined by control, any purported ratification will be viewed with scepticism and is unlikely to cure the underlying impropriety.

Taken together, *Lee Tin Hui* reinforces a fundamental principle: majority control is not a licence for self-enrichment. Where directors and controlling shareholders lose sight of their obligation to act fairly and in the interests of the company as a whole, the courts stand ready to intervene and to do so decisively.

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