

IN THE COURT OF APPEAL OF MALAYSIA

Coram: Nallini Pathmanathan, JCA; Suraya Othman, JCA; Yeoh Wee Siam, JCA

Park Access Sdn Bhd and 2 Others v Badan Pengurusan Bersama Prima Avenue dan DPCC Fasa 1 and 3 Other Appeals

Citation: [2018] MYCA 187 **Suit Number:** Civil Appeal Nos. W-02-(IM)(NCVC)-1857-10/2016, W-02-(IM)(NCVC)-1859-10/2016, W-02-(IM)(NCVC)-1860-10/2016 & W-02(IM)(NCVC)-1861-10/2016

Date of Judgment: 18 May 2018

JUDGMENT**INTRODUCTION**

[1] There were 4 Appeals heard together before this Court on 13.2.2018, namely:

- (1) Appeal No. 1, i.e. W-02(IM)(NCVC)-1857-10/2016;
- (2) Appeal No. 2, i.e. W-02(IM)(NCVC)-1859-10/2016;
- (3) Appeal No. 3, i.e. W-02(IM)(NCVC)-1860-10/2016; and
- (4) Appeal No. 4, i.e. W-02(IM)(NCVC)-1861-10/2016.

For ease of reference, the parties in this Judgment will be referred to according to the parties in the suit in the High Court.

BACKGROUND FACTS**The Parties**

[2] The Plaintiff is Badan Pengurusan Bersama Avenue and DPCC Phase 1 (Blocks G, H, I). It is the Joint Management Body (“JMB”) for Dataran Prima Phase 1 (“1st development”) and Prima Avenue (“2nd development”) (both referred to as “the 2 developments”). The Plaintiff was established on 11.3.2012 under the **Building and Common Property (Maintenance and Management) Act 2008** (“BCP Act”).

[3] The 1st Defendant is Puncak Kencana Sdn Bhd. The 1st Defendant is the registered owner of the piece of land on which the 2 developments are constructed.

[4] The 2nd Defendant is Park Access Sdn Bhd. The 2nd Defendant is the owner of the 60 car park bays in the 1st development. The 2nd Defendant had purchased the 60 car park bays together with an office unit in the 1st development from the 1st Defendant on 26.7.2011 vide a Sale and Purchase Agreement (“SPA”) (“SPA 1”). The 2nd Defendant also purchased an office unit in the 2nd development together with 1,311 car park bays and some equipment vide another SPA (“SPA 2”) dated 26.7.2011.

[5] On 26.7.2011, by 2 Deeds of Assignment entered between the 1st Defendant and the 3rd Defendant on 26.7.2011 and 2 Letters of Nomination dated 16.11.2011, the 1st Defendant assigned all its rights, title, interests and benefits in and to the properties stated in the SPA 1 and SPA 2, including the said car park bays to Topcode Marketing Sdn Bhd, i.e. the 3rd Defendant.

[6] With effect from 1.2.2012, the 2nd Defendant purported to sell and/or transfer the ownership of the car park bays of the 2 developments to the 3rd Defendant. The Plaintiff avers that the 3rd Defendant is holding and managing the total of 1,371 car park bays in and around the 2 developments on trust for the Plaintiff.

[7] The 4th Defendant is Prominent Excel Sdn Bhd. The 4th Defendant is the present and apparent car park operator and has continued to charge all owners and visitors for use of the car park bays.

The Plaintiff’s Claim

[8] In its Amended Statement of Claim, paragraph 58, the Plaintiff prays for the following declaratory orders:

- (1) that the accessory parcels of car park bays totalling 1,371 (“the 1,371 car park bays”) be declared as the common property of the 1st and 2nd developments respectively, and that the SPAs for the car park bays be declared null and void;
- (2) that any agreement which was entered into between the 1st Defendant, the 2nd Defendant, the 3rd Defendant and/or the 4th Defendant and any other third party involving the 1,371 car park bays and also all the motorcycle bays be declared null and void;
- (3) that the 1st Defendant acting through its directors, employees, agents and all successors-in-title be ordered to hand over vacant possession of the 1,371 car park bays on the ground floor of the 2nd development, all the motorcycle bays in and around the 2 developments, the open spaces in the 2 developments and also the 8 hawker lots in the 2nd development to the Plaintiff, as the common property of the 2 developments, within 7 days from the date of service of the sealed copy of the judgment of the Court;
- (4) for an Order that the 1st Defendant acting through its directors, employees, agents and all successors-in-title be ordered to supply to the Plaintiff a copy of each of the SPAs, which were

entered into between the 1st Defendant and the purchasers of the units in the 1st and 2nd developments, for the effective management of the 2 developments and for the collection of maintenance charges under the BCP Act; and

(5) that the 1st to the 3rd Defendants be held, jointly and severally, liable to pay to the Plaintiff general damages to be assessed by the Registrar of the High Court on the basis of the income that the 1st, 2nd, and/or 3rd Defendants had received from the operation of, or letting of the 1,371 car park bays to the 4th Defendant or any previous tenant/ car park operator at all material times until the delivery of vacant possession of the 1,371 car park bays less only the expenses incurred and proven by the 1st, 2nd and 3rd Defendants for electricity, water, cleaning, repairs and maintenance charges directly in connection with the letting of the 1,371 car park bays, but not including any financing costs or interest incurred by the 2nd and/or 3rd Defendants in their purported purchase of the 1,371 car park bays.

The properties claimed by the Plaintiff to be common property shall be referred to as “the Disputed Areas”.

THE 4 APPEALS BEFORE THIS COURT

[9] Appeal No. 1 is the appeal by the 2nd, 3rd and 4th Defendants against the decision of the High Court in dismissing their application to strike out the Plaintiff’s Amended Writ and Amended Statement of Claim (“Plaintiff’s Suit”) pursuant to O.18 r.19(1)(b) and (d) and O.92 r.4 of the **Rules of Court 2012 (“ROC”)**, and/or section 6 of the **Limitation Act (enclosure 226)**.

[10] Appeal No. 4 is the appeal by the 1st Defendant in respect of a similar application to strike out the Plaintiff’s suit (enclosure 423) which was dismissed by the High Court.

[11] Appeal No. 2 is the appeal of the 2nd, 3rd and 4th Defendants against the decision of the High Court which allowed the Plaintiff’s application in enclosure 384 to substitute the name of the JMB, as the Plaintiff, with the name of the Management Corporation (“MC”), namely “Prima Avenue and DPC (Block G, H, I) Management Corporation”, and to re-amend the Plaintiff’s Amended Writ and Amended Statement Claim.

[12] Appeal No. 3 is the appeal of the 1st Defendant against the decision of the High Court which allowed the Plaintiff’s application for amendment in the same enclosure 384.

OUR DECISION

[13] On 13.2.2018, we heard Appeals No. 1 and 4 first in respect of the 2 striking out applications. We made a unanimous decision to allow Appeals No. 1 and 4.

[14] Consequently, Appeals No. 2 and 3 do not require adjudication, and were therefore struck out.

GROUNDS FOR OUR DECISION

Striking out applications ought to be decided first

[15] We note from the Grounds of Judgment of the learned High Court Judge that, notwithstanding the submissions of the Defendants that the Court first determines the question of law on the *locus standi* of the Plaintiff to commence the 2014 OS and the instant suit, and then hear the 2 striking out applications, the learned Judge proceeded to hear the Plaintiff's amendment application in enclosure 384 first.

[16] On 5.9.2016, the High Court decided, *inter alia*, to allow enclosure 384. It also dismissed the preliminary objection of the Defendants and the 2 striking out applications in enclosures 226 and 423.

[17] In our respectful opinion, the two striking out applications in enclosures 226 and 423 ought to have been heard and decided first by the learned Judge before proceeding to hear enclosure 384. This is for the main reason that in regard to enclosures 226 and 423, the respective Defendants have raised the critical issue of the *locus standi* of the Plaintiff to bring this suit, and this issue is decisive on whether the Plaintiff's claim ought to be struck out on this ground alone without having to go for trial. In any case, enclosure 226 was filed before enclosure 384, and ought to have been given priority by the High Court and be heard first.

Whether the JMB has the *locus standi* to commence the suit by reason of the MC having been established on 24.1.2014 within the meaning of section 39 of the Strata Titles Act 1985 ("STA").

[18] The respective Defendants contend that notwithstanding the fact that the Plaintiff, i.e. the JMB, was established officially on 11.3.2012 under the BCP Act, it was intended to exist as an interim body. Thus, when the MC was established under section 39 of the STA, the Plaintiff, as the JMB, no longer has the *locus standi* to commence the suit herein, i.e. the OS on 4.6.2014 and the suit on 22.12.2014 respectively, which are on dates after the establishment of the MC.

[19] We observe that for enclosure 384, the learned Judge ruled that the 1st Defendant was estopped from raising its preliminary objection on the Plaintiff's lack of *locus standi* since the matter was not pleaded by the 1st Defendant in its Amended Statement of Defence. Similarly, when it came to High Court decision regarding the two striking out applications, the learned Judge stated that "the Court agreed with the plaintiff based on the reasons relied upon by the plaintiff that the plaintiff, viz the JMB, has the *locus standi* to file the 2014 OS on 4.6.2014 and the instant suit on 22.12.2014 when the MC was already established on 24.1.2014".

[20] We shall now examine the status of the Plaintiff as a JMB *viz-a-viz* the establishment of the MC.

Establishment of the JMB

[21] A joint management body (including the JMB) is established pursuant to section 4(1) of the BCP Act which provides:

"4 (1) Where a building or land intended for subdivision into parcels has been completed-

a) **before the commencement of this Act and vacant possession of the parcels has been delivered by the developer to purchasers but the management corporation has not come into existence, a Joint Management Body shall be established consisting of the developer and the purchasers upon the convening of the first meeting not later than twelve months from the commencement of this Act;** and

b) on or after the commencement of this Act, a Joint Management Body shall be established consisting of the developer and the purchasers upon the convening of the first meeting not later than twelve months from the date of delivery of vacant possession of the parcels to the purchasers.” (emphasis added)

[22] We agree with the submissions of the respective Defendants that BCP Act was intended to ensure the proper management and maintenance of a strata development pending the opening of a book of strata register and establishment of the MC. In this regard, when presenting the Bill for the second reading in the Dewan Rakyat on 12.12.2006, the Minister for Housing and Local Government had stated:

“Rang Undang-undang Bangunan dan Harta Bersama ini juga memperkenalkan satu elemen baru iaitu Badan Pengurusan Bersama dengan izin, Joint Management body atau JMB yang ditubuhkan dalam tempoh interim untuk mengambil alih tugas dan tanggungjawab pemaju **dalam menyelenggara dan mengurus harta bersama sesuatu bangunan itu sehinggalah hak milik strata diperolehi.**” (emphasis added)

(See ABOA Vol 1 pg 71, Tab 6)

[23] Thus, it is clear from the BCP Act that the JMB was only intended to serve as an interim body for the purpose of maintaining and managing the building until the strata title has been issued and upon the establishment of a MC under section 39(1) of the STA.

Establishment of the Management Corporation

[24] The MC is established by operation of law once a book of strata register is opened. Section 39(1) of the STA provides as follows:

“Establishment of management corporation

39. (1) Upon the opening of a book of the strata register in respect of a subdivided building there shall, by the operation of this section, come into existence a management corporation consisting of all the parcel proprietors including in the case of phased development, the proprietor of the provisional block or blocks.

(2) The management corporation established by subsection (1) shall be known by the name appearing in the book of the strata register relating to a subdivided building, and shall be a body corporate having perpetual succession and a common seal.

(2A) The management corporation may apply to the Registrar for a certificate certifying that the management corporation is a body corporate constituted under this Act on the day specified in the certificate.

(3) The management corporation may sue and be sued.

(4) The management corporation shall elect a council which, subject to any restriction imposed or direction given by the management corporation at a general meeting, shall perform the management corporation's duties and conduct the management corporation's business on its behalf, and may for that purpose exercise any of the management corporation's powers.

(5) The provisions of the Second Schedule shall have effect in relation to the management corporation and its council.”

[25] Section 42 of the **STA** further provides:

“Ownership of common property and custody of issue document of title

42. (1) The management corporation shall, on coming into existence, become the proprietor of the common property and be the custodian of the issue document of title of the lot.

(2) The management corporation shall have in relation to the common property the powers conferred by the National Land Code on a proprietor in relation to his land:

Provided that-

(i) except where it is specifically provided otherwise in this Act, those powers may be exercised only on the authority of a unanimous resolution; and

(ii) the corporation shall not have power to transfer any portion of the common property which forms part of the building or of the land on which the building stands.”

[26] It is an undisputed fact that the book of strata register was opened on 24.1.2014 and a certificate dated 24.1.2014 was issued pursuant to section 39(2A) of the **STA** certifying that the MC of the 2 developments has been established on 24.1.2014 (CCB Pt 1 Vol 1 pg 1-2).

[27] Pursuant to section 39(3) of the **STA**, once the MC is established by operation of law, the MC may sue and be sued. The MC is also empowered under section 39(4) of the same Act to elect a council to conduct the MC's business and exercise any of the MC's powers.

[28] Section 42(1) of the **STA** expressly provides that “on coming into existence”, the MC “shall become the proprietor of the common property” and be the custodian of the issue document of title of the lot.

The JMC ceased having authority and power upon the establishment of the MC on 24.1.2014

[29] Section 15(1) and (2) of the **BCP Act** provides:

“15. Dissolution of Joint Management Body.

(1) The body shall be deemed to be dissolved three months from the date of the first meeting of the management corporation for the building.

(2) The body shall-

(a) Not later than one month from the date of the first meeting of the management corporation, hand over to the management corporation-

(i) the house rules;

(ii) the audited accounts of the Building Maintenance Fund or, if such accounts have not been audited, the unaudited account;

(iii) all the assets and liabilities of the Body; and

(iv) records related to and necessary for the maintenance of the building and its common property; and

(3) if only unaudited accounts have been handed over under subparagraph (a)(ii); not later than three months from the date of the first meeting of the management corporation, hand over to the management corporation the audited accounts of the Body.”

The Plaintiff’s submissions

[30] The Plaintiff submits that notwithstanding section 15(1) of the **BCP Act** which provides that the JMB shall be deemed dissolved three months from the date of the first meeting of the MC, the JMB remains in existence and continues to function until it hands over to the MC and dissolution after the convening of the 1st AGM of the MC.

[31] We note that the **Strata Management Act 2013 (“SMA”)** came into operation on 1.6.2015. Section 37, which is the transitional and savings provision for the repeal of the BCP Act, provides:

“Transitional and saving provisions due to the repeal of the Building and Common Property (Maintenance and Management) Act 2007

References to repealed Act and savings provision

37. (1) All references to the repealed Act in any written law or document shall, when this Act comes into operation, be construed as references to this Act.

(2) Nothing in this Act shall affect the past operation of, or anything done under the repealed Act before the date of coming into operation of this Act.”

[32] Pursuant to section 37(2) of the **SMA**, anything done under the repealed BCP Act before the coming into operation of the SMA is not affected by the SMA. Therefore, the establishment of the MC in the present case on 24.1.2014 is not affected by the SMA. Since the High Court order regarding the 2 striking out applications were made on 5.9.2016, which is a date after the coming into operation of the SMA, this case is to be governed by the SMA. Thus, section 15 of the **BCP Act**, which was repealed on 1.6.2015, should no longer apply here. Instead, it is now replaced by section 27 of the **SMA** which is almost similar but not identical to the said section 15, in that there is now a new section 27(2)(b).

[33] Section 27 of the **SMA**, inter alia, provides:

“Dissolution of joint management body

27. (1) A joint management body shall dissolve three months from the date of the first annual general meeting of the management corporation for the development area.

(2) The joint management body shall, not more than one month from the date of the first annual general meeting of the management corporation-

(a) transfer all balances of moneys in the maintenance account and in the sinking fund account, after payment of all the expenditure which have been properly charged to the accounts, to the management corporation;

(b) hand over to the management corporation-

(i) any additional by-laws;

(ii) the audited accounts of the maintenance account and the sinking fund account or, if such accounts have not been audited, the unaudited accounts;

(iii) all the assets and liabilities of the joint management body;

(iv) all the documents delivered by the developer to the joint management body under subsection 15(3);

and

(v) all records relating to and necessary for the maintenance and management of the building or land intended for subdivision into parcels and the common property.

(3) If only unaudited accounts have been handed over under subparagraph (2)(b)(ii), the joint management body shall hand over to the management corporation the audited accounts of the joint management body not more than three months from the date of the first annual meeting of the management corporation.”

[34] The 1st Defendant convened the 1st AGM of the MC on 11.6.2016. The Management

Committee of the MC was formed at the 1st AGM on 11.6.2016 (section 58 of the **SMA** and section 41(5)(c) of the **STA**).

[35] The JMB is required to hand over, *inter alia*, all its assets and liabilities to the MC within 1 month of the 1st AGM of the MC [section 15(2)(a)(iii) of the **BCP Act**, which is now replaced by section 27(2)(b)(iii) of the **SMA**].

[36] In this case, the hand over was completed between 11.6.2016 and 11.7.2016. The JMB shall be automatically dissolved 3 months after the 1st AGM (section 15(1) of the **BCP Act** and section 27(1) of the **SMA**). In this case, the JMB was dissolved on 11.9.2016.

[37] The Plaintiffs submits that the JMB does not dissolve automatically upon the formation of the MC. The Plaintiff relied on paragraphs 110(49)(m)-(n) of the learned Judge's Grounds Of Judgment which states:

‘...the joint management body did not require to be conferred “powers under the STA” in order to enable it to bring a claim for unpaid maintenance charges, notwithstanding that the strata title register may and/or will be opened during the initial period and the joint management body shall continue to perform and carry out its duties imposed upon it and to exercise its powers conferred on it by s. 8 of the BCP (M&M) Act 2007 (Act 663);

My respectful view is that if **Parliament had intended that from the date of the opening of the strata title register with the conferment of powers on the management corporation by s.43 of the ST Act 1985 (Act 318), the joint management body shall automatically lose all the powers conferred on it by s.8 of the BCP (M&M) Act 2007 (Act 663) upon the formation of the management corporation, Parliament would have used clear words to that effect.** Therefore, my interpretation and understanding of the applicable law as stated earlier, which is that **the management corporation during the initial period neither has the locus standi nor the capacity to initiate any legal proceedings until the convening of its 1st AGM, is to be preferred ...**’ (emphasis added)

[38] The Plaintiff submits that there is no ambiguity or lacuna in how the legal framework set out in the BCP Act, STA and the SMA operates. Significantly, section 15(2)(a) of the **BCP Act** was repealed and replaced by section 27(2) of the **SMA**. This demonstrates that Parliament does not perceive there to be any ambiguity in the above law.

The Defendants' submissions

[39] Regarding the question of how section 15 of the **BCP Act** (now section 27 of the **SMA**) is to be read in the light of sections 39 and 42 of the **STA**, or whether the JMB and the MC can co-exist and act in the interest of the owners, the Defendants rely, *inter alia*, on the case of **Palm Spring Joint Management Body & Anor v Muafakat Kekal Sdn Bhd & Anor** [2016] 2 CLJ 665 where the Federal Court at pg 121-122 stated:

“[30] Therefore, under Act 663, the JMB was only an interim body established for the purpose of carrying out the functions of the MC pending the establishment of the MC and **once the MC is established, the JMB is automatically dissolved. This was expressly provided for in s 15 of Act 663...** which reads:

Dissolution of Joint Management Body

15(1) The Body shall be deemed to be dissolved three months from the date of the first meeting of the management corporation for the building.

[31] From the above, it is clear that the **MC and the JMB were never intended to co-exist side by side at one and the same time.**” (emphasis added)

(See also the decisions of the High Court in **Cayman Development (SP) Sdn Bhd (in winding up) v Badan Pengurusan Bersama Kompleks Cayman & Anor** [2014] 8 MLJ 894, and **Plaza Pekeliling Management Corporation v IGB Corporation Property Sdn Bhd** [2001] 6 MLRH 614).

[40] In **Badan Pengurusan Bersama Kondominium Cassia (Blok A) v Gold Shine Development Sdn Bhd & 5 ors** [2014] 1 LNS 1567 the High Court stated:

“[25] Section 15 of Act 318 provides the process of dissolution of the JMB and certainly does not confer any legal powers to the JMB pending the first meeting of a Management Corporation.”

[41] The decision of the High Court in **Kondominium Cassia** (supra) was affirmed by the Court of Appeal on 14.7.2015. The application for leave to appeal to the Federal Court by the JMB of the same case was dismissed on 27.4.2016.

(See also **Badan Pengurusan Bersama Sunrise Tower v Brijnandan Singh Gurcharan Singh** [2015] MLRHU 1 (pg163-164)).

[42] The Defendant further submits that had Parliament intended the JMB to have the power to sue in the period up to 3 months from the 1st AGM of the MC (upon the expiry of which it automatically dissolved), then sections 39 and 42 of the **STA** would have provided otherwise.

Our Opinion

[43] In our considered opinion, for the present case, while it is true that the JMB should continue to exist until the 1st AGM of the MC, and the JMB shall be not later than 1 month of the 1st AGM of the MC hand over to the AGM all matters stated in s.15(2) of the **BCP Act** (now section 27(2) of the **SMA**), including all the assets and liabilities of the body, it must be noted that nowhere in any of the applicable statutes did Parliament expressly provide that, notwithstanding sections 39 and 42(1) of the **STA**, in the interim period after the MC was established and up to the date of completion of hand over by the JMB of all matters, the JMB has the legal right to institute any action to recover common property or alleged proprietary rights which, in this case refer to the Disputed Areas of the 2 developments.

[44] Since Parliament is silent on such a right of the JMB, then the express provisions of the relevant laws should be given full effect. We are of the firm opinion that upon the establishment of the MC on 24.1.2014, by virtue of section 42(1) of the STA, from the time that the MC comes into existence, the MC becomes the proprietor of the common property. Therefore, even though the 1st AGM of the MC was held on 11.6.2016, and the assets and liabilities were to be handed over by the JMB to the MC before 11.7.2016, the fact remains that all proprietary rights in the common property of the 2 developments have already been statutorily vested in the MC on the date of establishment of the MC on 24.1.2014. The JMB then merely existed as a “caretaker” interim body for the sole purpose of smooth handing over of all matters to the MC once the Management Committee is appointed. However, the JMB has no proprietary rights over the common property. Thus, at any time after 24.1.2014, the JMB has lost its *locus standi* to sue on behalf of the Plaintiff to claim any proprietary rights over the common property or the Disputed Areas from the Defendants. The Plaintiff, by instituting these proceedings against the Defendants in its capacity as the JMB, when the MC is already established, has clearly acted contrary to the express provisions of the STA, in particular sections 39 and 42(1).

[45] In this case, the Plaintiff filed the OS on 4.6.2014 and the suit on 22.12.2014. This was at a date after the establishment of the MC on 24.1.2014. We therefore hold that the Plaintiff, as the JMB, has no *locus standi* to commence these proceedings against the Defendants.

[46] In the light of the statutory provisions and limits imposed by sections 39 and 42 of the STA on the Plaintiff as a JMB after the MC was established, we do not think that the Defendants should be estopped from raising the issue of locus standi of the Plaintiff even though such issue was not pleaded by the Defendants.

Plaintiff's claim is obviously unsustainable

[47] It is trite law that a plaintiff's claim can only be struck out in plain and obvious cases where the claim is obviously unsustainable (see Federal Court decision in **Bandar Builder Sdn Bhd v United Malayan Banking Corporation** [1993] 1 MLRA 611).

[48] In the present case, in view of our earlier ruling that the Plaintiff has no locus standi to commence and maintain these proceedings against the Defendants due to its lack of proprietary right over the common property, it is clear that the Plaintiff's claim is obviously unsustainable. Therefore, the Plaintiff's claim should be struck out under O.18 r.19(1)(b) and (d), and O.92 r.4 of the ROC.

Appeals no. 2 and 3

[49] Appeals no. 2 and 3 are regarding the amendments to be made to substitute for the name of the JMB, as the Plaintiff, with the name of the MC, and for other amendments to be made to the Plaintiff's pleadings.

[50] Since we have ruled that the Plaintiff's claim ought to be struck out, it follows that Appeals no. 2

and 3 have been rendered academic and, accordingly, should be struck out.

CONCLUSION

[51] After considering the submissions of all learned Counsels and upon a perusal of the Records of Appeal, we find merits in Appeals no. 1 and 4. We are satisfied that there are appealable errors in fact and in law made by the High Court which warrant our appellate intervention.

[52] Accordingly, we allowed Appeals no. 1 and 4, i.e. W-02(IM)(NCVC)-1857-10/2016 and W-02(IM)(NCVC)-1861-10/2016 respectively, and set aside the decision of the High Court.

[53] We struck out Appeals no. 2 and 3, i.e. W-02(IM)(NCVC)-1859-10/2016 and W-02(IM)(NCVC)-1860-10/2016 respectively.

[54] Costs of RM10,000 each for Appeals no. 1 and 4 (total RM20,000 for both) are to be paid by the Plaintiff to the respective Defendants, subject to payment of the allocator fee.

[55] Costs of RM7,500 each for Appeals no. 2 and 3 (total RM15,000.00 for both) are to be paid by the Plaintiff to the respective Defendants, subject to payment of the allocator fee.

[56] The deposits in all 4 Appeals are to be refunded to the respective Defendants.

[57] We further made a consequential order upon the oral application of learned Counsel for the Defendants in Appeals no. 3 and 4 that the High Court injunction order is discharged.

Dated: 18 May 2018

Sgd

YEOH WEE SIAM

Judge

Court of Appeal Malaysia

Putrajaya

COUNSEL

For the Plaintiff (Respondent): Raymond Mah, John Chan, Messrs Mah Weng Kwai & Associates

For the 1st Defendant (Appellant): Malik Imtiaz Sarwar, Arthur Wang Ming Way, Wong Chooi Mey, Hanan Bte Mohamad Kamal, Messrs Arthur Wang, Lian & Associates

For the 2nd, 3rd and 4th Defendants (Appellants): Zamani Bin Ibrahim, Helmi Bin Hamzah, Muhammad Ezwar Rusydan Bin Mohd Basir, Messrs Zamani Ibrahim

LEGISLATION REFERRED TO:

Building and Common Property (Maintenance and Management) Act 2008, Sections 4(1), 8, 15, 15(1), 15(2), 15(2)(a), 15(2)(a)(iii)

Limitation Act, Section 6

Rules of Court 2012, Order 18 Rule 19(1)(b) and (d), Order 92 Rule 4

Strata Management Act 2013, Sections 27, 27(1), 27(2), 27(2)(b), 27(2)(b)(iii), 37, 37(2), 58

Strata Titles Act 1985, Sections 39, 39(1), 39(2A), 39(3), 39(4), 41(5)(c), 42, 42(1)

JUDGMENTS REFERRED TO:

Badan Pengurusan Bersama Kondominium Cassia (Blok A) v Gold Shine Development Sdn Bhd & 5 ors [2014] 1 LNS 1567

Badan Pengurusan Bersama Sunrise Tower v Brijnandan Singh Gurcharan Singh [2015] MLRHU 1

Bandar Builder Sdn Bhd v United Malayan Banking Corporation [1993] 1 MLRA 611

Cayman Development (SP) Sdn Bhd (in winding up) v Badan Pengurusan Bersama Kompleks Cayman & Anor [2014] 8 MLJ 894

Palm Spring Joint Management Body & Anor v Muafakat Kekal Sdn Bhd & Anor [2016] 2 CLJ 665

Plaza Pekeliling Management Corporation v IGB Corporation Property Sdn Bhd [2001] 6 MLRH 614

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