IN THE HIGH COURT OF MALAYA AT SHAH ALAM
IN THE STATE OF SELANGOR DARUL EHSAN
ORIGINATING SUMMONS NO: BA-24NCVC-238-03/2021

In the matter of Sections 8, 17, 21, 23, 25, 32 and First Schedule of the Strata Management Act 2013.

And

In the matter of the Third Schedule of the Strata Management (Maintenance and Management) Regulations 2015.

BETWEEN

SUNTHARALINGAM A/L V VELUPPILLAI
(NRIC No: 571014-10-5591)

DAN 215 LAIN-LAIN
(As Per Annexure A of the
Amended Originating Summons) **...PLAINTIFFS**

DAN

1. **ICON CITY JMB**
(Serial No: 0369)

2. **ICON CITY DEVELOPMENT SDN BHD**
(Before this known as Sierra Peninsular Development Sdn Bhd)
(Company No: 731177-K)

3. **PELABURAN HARTANAH BERHAD**
(Company No: 200601013065 (732816-U)) **...DEFENDANTS**

GROUNDS OF JUDGMENT

INTRODUCTION

1. This is the Plaintiffs' application in their Amended Originating Summons (OS) in Enclosure 101 for a declaration that the Special Resolution 1, 1st AGM Resolution 3, EGM Resolution, 2nd AGM Resolution 4, 3rd AGM Resolution 5, and 4th AGM Resolution 4, which have established and imposed different maintenance charge rates on various parcels in Icon City since 1 May 2017 for the purpose of granting exclusive use or enjoyment of the common property, are ultra vires the Strata Management Act 2013 (SMA 2013), unlawful, null, and *void ab initio*.

FACTUAL BACKGROUND

2. The dispute centred on a stratified development called Icon City, situated in Selangor. The development was described as a mixed-

use development including residential, office, and commercial components.

3. The Plaintiffs were parcel proprietors within Icon City. They initiated these proceedings seeking declaratory and consequential reliefs concerning how maintenance charges and sinking fund contributions were imposed within the development.

4. The First Defendant was the Joint Management Body (JMB) of Icon City, established pursuant to the SMA 2013.

5. The Second Defendant was the developer of Icon City and was responsible for the development structure, the sale and purchase arrangements, and the initial documentation governing the development.

6. The Third Defendant was a parcel proprietor within Icon City, holding parcels categorised as en bloc components, and did not have access to certain facilities available to other components within the development.

7. Icon City consisted of several distinct components, including:

   a. shop offices and shop lots;

   b. residential towers known as Tower 1 and Tower 2;

   c. office towers known as Tower 3 and Tower 3A; and

d. other components such as Volt, Arc, car park, and MSU, some of which were treated as en bloc parcels.

8. It was undisputed that the various components served different functions (residential, office, commercial, or en bloc use) and were not identical in design or use.

9. The Defendants stated that within Icon City, certain facilities were designated as Limited Common Property for the exclusive use and enjoyment of specific components. In particular:

a. Shop offices and shop lots were stated not to have designated Limited Common Property;

b. Towers 1 and 2 (residential towers) were stated to enjoy exclusive access to facilities such as swimming pools, gymnasium, sauna, roof garden, BBQ deck and picnic areas;

c. Towers 3 and 3A (office towers) were stated to enjoy exclusive access to business centres, executive lounges and gymnasium facilities; and

d. En bloc components such as Volt, Arc, car park and MSU were stated not to enjoy the Limited Common Property designated for the residential or office towers.

10. The Plaintiffs did not dispute the physical existence of these facilities but contested the legal implications arising from such designation.

11. The First and Second Defendants stated that the development structure, including the designation of Limited Common Property and exclusive use, was disclosed and provided for in the Sale and Purchase Agreements (SPAs) entered into between the developer and the purchasers, including but not limited to Clauses 15.1 and 15.8 of the SPAs.

12. The Defendants further stated that the Deeds of Mutual Covenants (DMCs), which were agreed upon and executed by parcel proprietors, included provisions relating to-

    a. the limited common facilities and Limited Common Property for the exclusive use and enjoyment of respective components; and

    b. the obligation of parcel proprietors enjoying such exclusive use to contribute additional maintenance charges and sinking fund contributions (Clause 5.1).

    Other relevant clauses in the DMCs include Clauses 1.1, 3.1, 4, 4.3, 4A.1, 4A.7, and 5, as well as the associated schedules outlining the common facilities, common services, Limited Common Facilities, and Limited Common Property.

13. The Plaintiffs acknowledged entering into SPAs and DMCs governing their parcels, but argued that contractual provisions could not override or contradict the statutory regime under the SMA 2013.

14. Following the delivery of vacant possession and the establishment of the JMB, the JMB convened its First Annual General Meeting (1st AGM).

15. At the 1st AGM, a Special Resolution was passed. The Special Resolution approved-

    a. the making of additional by-laws regulating the use and enjoyment of common property; and

    b. the imposition of additional maintenance charges on parcel proprietors who have exclusive use of Limited Common Property.

16. Thereafter, the JMB held subsequent AGMs and an EGM over the years.

17. At these meetings, resolutions were passed approving:

    a. annual operating budgets;

    b. the continuation of different maintenance charge rates for different components; and

    c. matters related to the management and maintenance of the development.

18. The Plaintiffs identified and challenged several specific resolutions passed at the 1st AGM, EGM, 2nd AGM, 3rd AGM, and 4th AGM,

arguing that these resolutions led to the imposition of different maintenance charge rates.

19. The First Defendant stated that it prepares operating expense budgets for Icon City annually.

20. According to the Defendants, the budgets differentiate between expenses related to common property shared by all parcel proprietors and expenses related to the Limited Common Property facilities designated for exclusive use by specific components.

21. The Defendants stated that maintenance charges and sinking fund contributions were imposed in accordance with the approved budgets and the resolutions passed at general meetings.

22. The Plaintiffs did not dispute that budgets were prepared or that charges were imposed in accordance with resolutions. Their complaint was directed on the legality of applying different rates, rather than the arithmetic or process involved in budgeting.

THE DISPUTE

23. The Plaintiffs argued that under the SMA 2013, the JMB was legally required to impose a single uniform rate of maintenance charges and sinking fund contributions applicable to all parcels, regardless of component type or facility usage.

24. The Plaintiffs asserted that the imposition of different rates was ultra vires the SMA 2013 and that the resolutions approving such rates were null and void.

25. In support of their position, the Plaintiffs primarily relied on the Court of Appeal decision in **Muhamad Nazri Muhamad v JMB Menara Rajawali & Anor (2019) 10 CLJ 547 (CA) (Menara Rajawali)**, which they argued established that only one maintenance charge rate could be imposed by a JMB.

26. The Defendants disputed this interpretation and relied on:

    a. the structure of Icon City as a mixed development;

    b. the designation of Limited Common Property;

    c. the contractual arrangements under the SPAs and DMCs; and

    d. the later Court of Appeal decision in **Aikbee Timbers Sdn Bhd & Anor v Yii Sing Chiu & Anor and Another Appeal (2024) 3 CLJ 177 (Pearl Suria)**.

27. The Defendants argued that the maintenance charge structure implemented by the JMB reflected the differing facilities and benefits enjoyed by different components and was consistent with the statutory framework.

28. The issues raised in the OS related to questions of statutory interpretation and legality, rather than disputes of primary fact.

29. The Court was therefore called upon to determine whether the impugned resolutions and maintenance charge structure were lawful under the SMA 2013.

THE PLAINTIFFS' ARGUMENTS

30. The Plaintiffs argued that the SMA 2013 mandated maintenance charges to be calculated strictly in proportion to allocated share units, which necessarily implied a single uniform rate applicable to all parcels.

31. They heavily relied on the Court of Appeal decision in **Menara Rajawali**, arguing that it conclusively established that a JMB had no power to impose different maintenance rates on different parcel types.

32. The Plaintiffs further contended that:

    a. The exclusivity of facilities was legally irrelevant because Parliament had already considered differences through share unit allocation.

    b. Resolutions passed at AGMs or EGMs could not legitimise an act that was ultra vires the statute.

    c. The DMCs were void under section 148 of the SMA 2013; and

e. **Pearl Suria** was distinguishable because it related to the Management Corporation (MC) stage rather than the JMB stage.

THE DEFENDANTS' ARGUMENTS

33. The Defendants collectively submitted that:

a. Icon City was a mixed development with fundamentally different parcel categories and facility entitlements.

b. The concept of Limited Common Property and exclusive use was explicitly recognised by the SMA 2013, subsidiary legislation, SPAs, and DMCs.

c. **Menara Rajawali** was fact-specific and did not involve Limited Common Property, additional by-laws, SPAs or DMCs;

d. The governing authority was the later Court of Appeal decision in **Pearl Suria**, which clarified the proper approach to determining maintenance charges in mixed developments.

e. The Defendants contended that the position propounded by them in this suit aligns with the decision in **Pearl Suria**. They argued that the strata scheme envisages and provides as follows:

i. The rates of charges must reflect the "actual or expected expenditure" derived from the budget prepared for the development area and approved at an annual or extraordinary general meeting, within the framework of a joint management body. As in this case, the relevant provisions are Section 23(3) and Section 24(2) of the SMA 2013.

ii. The share units for calculating rates of charges are fixed, similar to the formula for determining charges provided in Clause 19, Fifth Schedule, Schedule H of the Housing Development (Control and Licensing) Regulations 1989.

iii. The exclusive use of common facilities as specified in the respective SPAs and DMCs signed by both commercial and residential purchasers should be clearly segregated, and its respective expenditures apportioned accordingly; and

iv. The test to determine or nullify the rates of charges is that the rate must not be inadequate, excessive, or unreasonable, which the Plaintiffs in the current case have entirely failed to acknowledge or prove.

FINDINGS OF THE COURT

34. The main issue in this case is whether the JMB is entitled to determine and impose different maintenance charges on different

parcels within Icon City for the purpose of granting exclusive use or enjoyment of Limited Common Property, and whether the charges imposed are just and equitable within the meaning of the SMA 2013.

35. After carefully reviewing the application, affidavits filed, and considering the detailed and extensive written submissions as well as the lengthy oral submissions from all parties, I find merit in the Defendants' arguments. Consequently, I dismissed the Plaintiffs' application in the Amended OS at Enclosure 101. My reasons are set out below.

36. It was the Plaintiffs' primary contention that the decision of **Menara Rajawali** is binding on the present dispute. However, it is my considered view that the present case is clearly distinguishable from **Menara Rajawali**. The facts, the development structure, and the statutory provisions examined in **Menara Rajawali** are materially different from those before this Court. The conclusion reached in **Menara Rajawali**, namely that there could only be one uniform rate for all parcels, must therefore be confined strictly to its own factual and legal context.

37. Icon City is a stratified mixed commercial and residential development comprising ten (10) distinct components, with Limited Common Property allocated according to these components, as follows:

    a. For shop offices and shop lots – there is no Limited Common Property.

b. For Tower 1 and Tower 2 (residential towers), the Limited Common Property includes the swimming pool, sauna, gymnasium, roof garden, BBQ deck, and picnic terrace.

c. For Tower 3 and Tower 3A (office towers), the Limited Common Property includes a business centre with video conferencing facilities, an executive club with a lounge, and a gymnasium.

d. For Volt, Arc, the car park, and MSU – these components are an en bloc parcel.

38. In contrast, **Menara Rajawali** involved a single building development without any designation of Limited Common Property or exclusive common property. There was no differentiation of facilities by component, nor any allocation of exclusive use and enjoyment to specific parcels.

39. By way of a Special Resolution passed at the 1st AGM, the First Defendant approved an additional by-law granting exclusive use and enjoyment of specific common property to designated parcels. The resolutions were also passed at the AGMs to impose additional maintenance charges on parcel owners who enjoy such exclusive use of the Limited Common Property, as provided for under the SPAs and DMCs.

40. The additional by-law was enacted pursuant to section 32 of the SMA 2013. Section 32(3) explicitly authorises a JMB, by special resolution, to make additional by-laws regulating the control,

management, administration, use, and enjoyment of the building or land intended for subdivision into parcels and the common property, including:

> "**(b) details of any common property of <u>which the use is restricted;</u>**"
>
> [emphasis added]

41. Section 32(4) further provides that such additional by-laws made under subsection (3) shall bind the JMB, parcel owners, and subsequent owners or occupiers.

42. This statutory framework was not considered in **Menara Rajawali**. In that case, no additional by-laws were made by the JMB, and the operation and effect of section 32(3) of the SMA 2013 were not ventilated before the court.

43. Further, by-law 4, read together with by-law 2(1)(a) of the Third Schedule to the Strata Management (Maintenance and Management) Regulations 2015, explicitly permits the JMB, through a written agreement with a specific proprietor, to grant exclusive use and enjoyment of part of the common property or special privileges over the common property, subject to terms and conditions stipulated by the JMB.

44. In this case, by executing their respective DMCs, the Plaintiffs were fully aware of and explicitly agreed to the concept of Limited Common Property for exclusive use, as well as their obligation to

pay additional charges for the maintenance and management of such exclusive use of the Limited Common Property.

45. The Plaintiffs argued that the DMC is null and void pursuant to section 148 of the SMA 2013. I do not agree with this argument. The terms of the DMCs are not in conflict with the provisions of the SMA 2013. Furthermore, the Court of Appeal in **Prestaharta v Ahmad Kamal Md Alif & Ors [2016] 1 LNS 255 (CA)** held that DMCs entered into by the parties are binding on them.

46. In addition, the proprietors of the commercial parcels had, under their respective SPAs, expressly agreed to the designation of Limited Common Property for the exclusive use and enjoyment of each parcel and to impose additional charges for its maintenance and management (Clause 15.8.2).

47. Once again, these contractual features were absent in **Menara Rajawali**. The issues concerning the SPA and DMC were neither raised nor considered in that case.

48. I agree with the Defendants that the doctrine of estoppel applies. Having agreed in their respective SPAs and DMCs to designate Limited Common Property for exclusive use and enjoyment, and to pay additional service charges and contributions for its maintenance, it would be unconscionable for the Plaintiffs to now insist that the maintenance costs of such exclusive facilities be borne by all parcel owners, including those who have no access to or benefit from them.

49. The most significant distinguishing feature between the present case and **Menara Rajawali** lies in the designation of Limited Common Property for exclusive use and enjoyment by specific components. This concept was expressly recognised and affirmed by the Court of Appeal in the recent case of **Pearl Suria**.

50. In interpreting the SMA 2013, the Court of Appeal in **Pearl Suria** held that the statutory framework permits both a developer, during the preliminary management period, and subsequently the MC to impose different rates of maintenance charges and sinking fund contributions in mixed developments. This is particularly so where the parcels within the same development are used for significantly different purposes, such as residential units on the one hand and commercial parcels on the other.

51. The Court explained that where different categories of parcels do not enjoy the same common facilities, especially where certain facilities are exclusively reserved for residential use, it would be unjust, unreasonable and contrary to the underlying philosophy of the SMA 2013 to require commercial parcel owners to contribute towards the upkeep of facilities they do not use or benefit from. In Pearl Suria, the residential component was provided with multiple exclusive facilities, including recreational, leisure, security, and social amenities, which were not available to the commercial parcels. The Court held that to compel commercial parcel owners to subsidise such facilities would result in unfairness and inequity and would not reflect a proper construction of social legislation.

52. The governing test, as affirmed by the Court of Appeal, is that contributions and rates must be "just and reasonable" under the SMA 2013 and "fair and justifiable" under the SPA. The Court explained that charges are "just" when parcel owners contribute to expenses for facilities they are entitled to enjoy, and "reasonable" when such expenses are not excessive or disproportionate to the benefit derived. The approach therefore requires a contextual and equitable assessment, rather than a rigid uniform rate.

53. The Court also held that the statutory formula under the SMA 2013 did not mandate a single uniform rate in all circumstances. Instead, where parcels are used for significantly different purposes, the SMA 2013 expressly permits a differentiated rate structure, whether imposed by the developer under section 52 during the preliminary period or by the MC under section 60(3)(b) upon establishment. The phrase "significantly different purposes" was interpreted according to the nature of the use (i.e. residential versus commercial), and not contingent upon any subsequent or altered change of use.

54. The Court further distinguished the earlier decision in **Menara Rajawali**, noting that the finding in that case turned on the specific method of allocating share units under the statutory weightage formula, whereas **Pearl Suria** concerned share units allocated under a SIFUS approved by the land authority. The Court clarified that **Menara Rajawali** does not preclude differential rates where the statutory language and factual matrix justify them.

55. The Court also placed weight on the fact that the Commissioner of Buildings (COB) did not object to the differential rates, indicating regulatory acceptance of the approach taken and reinforcing that the rates imposed in that case were fair, reasonable and legally permissible.

56. The decision in **Pearl Suria** is significant. It clarified, for the first time at the appellate level, that the SMA 2013:

a. accommodates flexible and differentiated management fee structures in mixed developments;

b. prevents commercial parcel owners from being burdened with the costs of maintaining facilities exclusively enjoyed by residential owners;

c. promotes fairness and equity within strata communities; and

d. ensures that contributions are aligned to actual expenditure, benefit and use.

57. The decision also emphasised that the SMA 2013 is social legislation grounded in fairness and consumer protection, and must be read purposively to avoid injustice.

58. Ultimately, the Court of Appeal overturned the High Court's conclusion that a single rate must apply to all parcels. It affirmed that in mixed developments, fairness under the SMA 2013 depends not merely on share units, but also on the type of parcel, the nature of

the facility enjoyed, and the proportionality of the expenses incurred. Differential rates are therefore lawful where they reflect an equitable allocation of responsibility aligned to actual use and benefit.

59. The Court of Appeal stated that:

> **"[43] The Developer and CP owner are excluded from using and enjoying the exclusive common facilities or common property which are exclusively for the use of the owners of the residential parcels. Therefore, it is only the residential parcels' owners who should be responsible to share the expenses or estimated expenses for the maintenance and management of the exclusive common facilities as this would represent the fair and justifiable proportion of the costs and expenses for the maintenance and management of the common property and services as provided in Clause 18(2) of the SPA.**
>
> **[44] With regard to the chargeable rates applicable to the Developer and the CP owner, the expenses or estimated expenses for the maintenance and management of the exclusive common facilities have to be excluded from the total expenses for the purpose of calculation of the applicable chargeable rates. In this way, the chargeable rates for the maintenance charges would be in fair and justifiable proportions for the**

owners of the residential parcels as well as to the commercial parcels' owners."

[emphasis added]

60. Having carefully examined the reasoning in **Pearl Suria**, I find that the Court of Appeal recognised a clear shift in approach towards formulating maintenance charges that fairly and justifiably reflect the proportion of expenses related to different types of parcels, especially in mixed developments. For the first time, the Court directly correlated charges to the exclusivity of areas and facilities enjoyed, a consideration that did not arise in **Menara Rajawali**.

61. The Plaintiffs argued that **Pearl Suria** is not binding on this Court because the issue raised concerned the MC stage. I respectfully disagree. **Pearl Suria** addressed both the developer's stage and the MC stage, and the Court of Appeal expressly recognised that even during the developer's phase, different charges may be imposed for the exclusive use and enjoyment of the Limited Common Property.

62. Guided by the Court of Appeal's approach, and bearing in mind that the SMA 2013, Housing Development Act 1966 (HDA 1966), and Housing Development Regulations 1989 (HDR 1989) are social legislation, due regard must be given to the particular facts of a mixed development such as Icon City.

63. Similar to **Pearl Suria**, the SPAs in this case referred to the Building and Common Property (Maintenance and Management) Act 2007 as the governing law for the collection of maintenance charges and sinking fund contributions.

64. Again, as in **Pearl Suria**, the formula in the First Schedule (section 8) of the SMA 2013 was not applicable in this case. The formula was instead set out in the SiFUS dated 4 April 2018 pursuant to paragraph 9(4) of the Strata Titles (Selangor) Rules 2015. In any event, the parties confirmed that the calculation of share units is not in dispute.

65. As in **Pearl Suria**, the present case similarly includes clause 18(2) in the SPAs under Schedule H, which states that-

> **"From the date the Purchaser takes vacant possession of the said Parcel, the Purchaser shall pay a <u>fair and justifiable</u> proportion of the costs and expenses for the maintenance and management of the common property and for the services provided..."**
>
> [emphasis added]

66. The parcel owners of shop offices, shop lots, Volt, Arc, the car park (the Third Defendant), and MSU (owners without Limited Common Property) do not have exclusive rights to the Limited Common Property enjoyed by owners of Towers 1, 2, 3, and 3A. The facilities in those towers are reserved solely for the use and enjoyment of their respective owners, including the Plaintiffs.

67. The JMB prepared detailed and comprehensive operating expense budgets, pinpointing expenditures related to shared common property and Limited Common Property. These budgets illustrate the actual and projected costs needed to maintain and manage the

respective facilities. It is also important to note that the Plaintiffs did not raise any dispute or objection to the expenditures or budgets prepared by the JMB.

68. Requiring parcel owners without Limited Common Property to contribute towards expenses incurred solely for exclusive facilities they cannot access would be inequitable. Although share units are allocated across the development, the rights attached to those parcels are not identical.

69. Since the Limited Common Property is exclusively for the use and enjoyment of owners of Towers 1, 2, 3, and 3A, it is just and equitable that only those owners should bear the relevant expenses. This demonstrates a fair and justifiable proportion of costs as outlined under clause 18(2) of Schedule H of the SPAs.

70. In **Pearl Suria**, the Court of Appeal further held as follows:

> **"[51] SMA 2013 is a social legislation. Likewise, the HDA 1966 and HDR 1989 are also social legislation. They are intended to achieve a common goal for the common good of the society. We are of the view that the formula in the Fifth Schedule of the SPA or the current Schedule H cannot be applied mechanically without giving due consideration of the peculiar facts in a mixed development.**

[52] The term "total expenses" has to be understood to be corresponding to the relevant expenses for the relevant parcels' owners. For example, item 13 in the form of charge statement which refers to "swimming pool maintenance". Swimming pool is one of the exclusive common facilities provided under the Second Schedule of the SPA. Therefore, the expenses to upkeep the swimming pool are only relevant for the overall expenses for the residential parcels' owners. The expenses to upkeep the swimming pool should not be included as part of the expenses for the commercial parcels' owners. Therefore, in order to formulate a rate to represent a fair and justifiable proportion of the expenses for maintenance and management of the common property, it is important to look at the type of expenses which are relevant and correspond to the type of parcels where there are more than one type of parcels. If a development has only one type of parcel, namely only residential parcels, then all residential parcels' owners would have common rights. They will have to share the expenses as a whole, and contribute to the expenses based on their proportion to the share units assigned or allocated to them.

[53] In a mixed development, like the one before us, the exclusive common facilities are

exclusively for the benefit and enjoyment of the residential parcels' owners. The expenditure for the maintenance and management of these exclusive common facilities which are exclusively for the benefit of the residential parcels' owners should not be included in the formula for the chargeable rate for the commercial parcels owners who have no right to enjoy such exclusive common facilities. The rigid imposition of only one chargeable rate for maintenance charges for residential parcels and commercial parcels would not reflect the true construction of a social legislation.

[54] Section 52(2) of the SMA 2013 states as follows:

> **(2) During the preliminary management period, the amount of the Charges to be paid under subsection (1) shall be determined by the developer in proportion to the share units assigned to each parcel.**
>
> [emphasis added]

[55] As explained earlier, the "total expenses" must be understood in the context as expenses relevant to the parcels concerned and to be shared in proportion to the share units assigned to each parcel relevant to those expenses in the whole development. The developer is, therefore,

tasked to determine the chargeable rate based on the total expenses which are relevant to the relevant parcels concerned in the whole development. Otherwise, there is no need for the law to state that the amount of charges (or the rate) to be paid "shall be determined by the developer." If there can only be one amount of charges (or one rate), the law would have been worded in this way: "During the preliminary management period, the amount of the charges to be paid under sub-s. (1) shall be in proportion to the share units assigned to each parcel."

[56] Section 52(6) of the SMA 2013 allows a proprietor who is not satisfied with the sums determined by the developer to apply to the Commissioner of Buildings for a review. The Commissioner is empowered to review the sums chargeable and may: (a) determine himself the sum to be paid as the charges (including the contribution to the sinking fund); or (b) instruct the developer to appoint a registered property manager to recommend the sum payable as charges (including the contribution to the sinking fund) by submitting a report to the Commissioner. Upon receiving the report, sub- s. (7) states that the Commissioner shall determine the sum payable as he thinks just and reasonable.

[57] Reading sub-s. 52(6) and (7) together proffers: (i) the formula for the calculation of the charges (or the rate) is not rigid, otherwise, there is no reason to give the Commissioner of Buildings the power to review the charges that have been determined by the developer; (ii) the use of the word "sums" in sub-s. (6), ie, "Any proprietor who is not satisfied with the sums ...", connotes there could be more than one rate of charges for maintenance charges or contribution to the sinking fund; (iii) the appointment of a registered property manager to recommend the sums payable as charges simply means there could be more than one way of tabulating what could be the expenses to be included and/or excluded in the total expenses which are relevant to determine the charges (the rate); and lastly, (iv) there should not be a rigid application of the formula. The determination of the charges (the rate) must be based on the principle of just and reasonable under the SMA 2013 and fair and justifiable under the SPA in this present case to determine the proportions with respect to different parcels' owners having regard to the rights of use of the common facilities of the parcels concerned in a mixed development.

[58] Based on the above analysis, reading the SMA 2013 together with the SPA, and considering the relevant Schedules of the HDR 1989 and the HDA 1966, we find that the developer was entitled in law to impose different chargeable rates between the residential parcels and commercial parcels for the maintenance charges and contribution to the sinking fund in the development during the preliminary management period. Therefore, our answer to the first question of law is in the affirmative.

[emphasis added]

71. It is worth noting that the wording of section 52(2) of the SMA 2013 mirrors that of section 25(3), which regulates the JMB period, and section 12(3), which pertains to the developer's period. Section 25(3) states as follows:

> "**(3) The amount of the Charges to be paid under subsections (1) and (2) <u>shall be determined by the joint management</u> body from time to time in proportion to the allocated share units of each parcel.**"
>
> [emphasis added]

72. Section 52(2) of the SMA 2013 states as follows:

> "**(2) During the preliminary management period, the amount of the Charges to be paid under subsection (1) shall be determined by the developer in proportion to the share units assigned to each parcel.**"
>
> [emphasis added]

73. Accordingly, the interpretation given by the Court of Appeal to the phrase "shall be determined by the developer" in section 52(2) of the SMA 2013 must, in my view, equally apply to section 25(3) of the SMA 2013, which operates during the JMB period. Consistent with the Court of Appeal's reasoning, the JMB is therefore tasked with the responsibility of determining the chargeable rate based on the total expenses relevant to the parcels concerned within the development. This necessarily means that the JMB may determine different rates where expenses relate to different parcels, to be shared in proportion to the share units assigned to each parcel in respect of those relevant expenses throughout the development.

74. In furtherance of the above, as stated earlier, the Court of Appeal in **Pearl Suria** also accorded due weight to the role of the COB in the determination of charges where there is a dispute or dissatisfaction by proprietors. Sections 12(7) and (8), as well as sections 52(6) and (7) of the SMA 2013, explicitly permit any proprietor dissatisfied with the sum fixed by the developer to request a review by the COB. Upon such a request, the COB is authorised to decide the payable sum as he considers just and reasonable. Importantly, the

emphasis, as underscored by the Court of Appeal, is on ensuring the rate imposed is "just and reasonable".

75. The Court of Appeal further stated that, considering the powers granted to the COB, the method for calculating the charges should not be applied rigidly. They emphasised that a mechanical or inflexible application of the formula would conflict with the statutory framework.

76. Similarly, in the case before this Court, both the COB and the Ministry of Housing and Local Government (KPKT) had informed the JMB that different rates of charges could be imposed for different facilities, provided such rates are approved at a general meeting. In the present case, the JMB had duly obtained the required approval at the AGMs (see Enclosure 39, Exhibits KCC 25 and KCC 26, pages 95-103). Therefore, this fact warrants due consideration in this case.

77. Therefore, the overriding principle, as affirmed by the Court of Appeal, is that the determination of the charges or rate must be just and reasonable under the SMA 2013 and fair and justifiable under the SPAs, taking into account the rights of use and enjoyment of common facilities in a mixed development.

78. Additionally, after reviewing the budget and expenses prepared by the JMB, which the Plaintiffs did not contest, this Court finds that the different chargeable rates approved by the resolutions at the AGMs and applied to the respective component parcels are fair and reasonable. The apportionment has a basis.

79. It is trite that the interests of justice must remain the paramount consideration. The function of the Court is, ultimately, to administer justice according to law, having regard to the substantial merits and circumstances of each case.

80. Therefore, having regard to the facts and circumstances of this case, and based on the foregoing analysis, a holistic reading of the SMA 2013 together with the respective SPAs and DMCs entered into by the proprietors in this development, the relevant Schedules under the HDR 1989 and the HDA 1966, and guided by the decision of the Court of Appeal in **Pearl Suria**, I find that the JMB was entitled to impose different maintenance charges and sinking fund contributions across the different components based on the exclusive use and enjoyment of the Limited Common Property.

81. On the issue of the Plaintiffs' locus standi, I am guided by the view taken by the Court of Appeal in **Pearl Suria**. The question of law before me has significant public interest, particularly for purchasers who have acquired the property. Therefore, I regard the locus standi issue as secondary to the more vital issues raised in this case. I have proceeded to hear the case on its merits, keeping in mind the public interest element in the dispute.

82. Regarding the counterclaim by the JMB, the JMB has withdrawn its claim.

83. For the reasons stated above, I therefore ordered that the Plaintiffs' application in the Amended OS at Enclosure 101 be dismissed with costs of RM10,000.00 to each set of Defendants. Accordingly, the

JMB's counterclaim was struck out with liberty to file afresh. No order as to costs.

Dated 19 December 2025

JAMHIRAH ALI

JUDGE

HIGH COURT OF MALAYA

SHAH ALAM

SELANGOR DARUL EHSAN

To the parties' solicitors:

For the Plaintiffs	:	Raymond Mah & Christopher Guo (Messrs Mah Weng Kwai)
For the First Defendant	:	Aimee Liew, An Yong Wai Nyan & Joanna Woo (Messrs Y.H. Teh & Quek)

For the Second Defendant	:	Lai Chee Hoe, Angeline Ang & Mah Mun Yan (Messrs Ricky Tan & Co)
For the Third Defendant	:	Anita Sockalingam & Hanna Suhaila Haizal (Messrs Zain & Co)