IN THE HIGH COURT OF MALAYA IN KUALA LUMPUR
IN THE FEDERAL TERRITORY OF KUALA LUMPUR
(CIVIL DIVISION)
[SUIT NO. : WA-22NCVC-773-11/2021]

BETWEEN

PERBADANAN PENGURUSAN FIRST RESIDENCE ... PLAINTIFF

AND

1. **TSI PROPERTY MANAGEMENT SDN BHD**
(No. Syarikat. 279973-W)

2. **TSI DOMAIN SDN BHD**
(No. Syarikat. 469797-M) **... DEFENDANTS**

(Consolidated with Suit No. WA-22NCVC-271-05/2022 pursuant to Court Order dated 5 September 2022)

IN THE HIGH COURT OF MALAYA IN KUALA LUMPUR
IN THE FEDERAL TERRITORY OF KUALA LUMPUR
(CIVIL DIVISION)
[SUIT NO.: WA-22NCVC-271-05/2022]

BETWEEN

WONG PENG HUNG
(No. K/P: 800222-08-5501)
(Plaintiff and also representative of Plaintiffs listed in Appendix A, Statement of Claim) **... PLAINTIFF**

AND

1. **TSI PROPERTY MANAGEMENT SDN BHD**
(No. Syankat. 279973-W)

2. **TSI DOMAIN SDN BHD** **...DEFENDANTS**

(No. Syankat. 469797-M)

INTRODUCTION

1. These consolidated suits concern a dispute over a 15.42 square meter utility room known as Utility 1 (also referred to in the proceedings as **'Utility 1"** or **"Lot 30")** together with 115 accessory carpark parcels (collectively referred to as **"the Property")**, all situated on Level 1 of a mixed residential and commercial development known as First Residence, Kepong, Kuala Lumpur (hereinafter referred to as **"the Development")**.

2. The Plaintiff in Suit 773 is Perbadanan Pengurusan First Residence or the First Residence Management Corporation (hereinafter referred to as "FRMC"), the Management Corporation of the Development. The Plaintiffs in Suit 271 are 94 individual purchasers of residential and commercial units in the Development (hereinafter referred to as **"the Purchasers")**. The First Defendant in both suits is TSI Property Management Sdn. Bhd. (hereinafter referred to as **"TSIPM")**, the registered proprietor of the Property. The Second Defendant in both suits is TSI Domain Sdn. Bhd. (hereinafter referred to as **"TSID")**, the licensed developer of the Development.

3. The Plaintiffs in both Suits Nos 773 and 271 seek, amongst other reliefs, declarations that the Sale and Purchase Agreement between TSID and TSIPM dated 18th May 2010 for the Property is void, that the strata title to the Property is defeasible and ought to be set aside under s.340(2) of the National Land Code 1965 (hereinafter referred to as **"NLC 1965")**, that the Property constitutes common property of the Development and for an order that the same be transferred to and vested in FRMC. The Plaintiff also seeks recovery of certain sums representing alleged car park fees collected as well as an account of profits. However, during submissions, the Plaintiff in Suit

773 stated that it effectively only wants a transfer of the Property to FRMC.

4. TSIPM counterclaims against FRMC in Suit 773 for trespass to the Property as well as nuisance and sought damages and injunctive relief.

5. The Purchasers' claim in Suit 271 was previously struck out by the Learned High Court Judge on the 2nd May 2023 but an appeal to the Court of Appeal was successful on the 12th November 2024.

6. Upon an application by FRMC in Suit 773, both these suits were ordered to be consolidated, and a full trial of both consolidated suits then proceeded before me spanning eight (8) hearing days between November 2025 and January 2026, including a judicial site visit to the Development on 9th January 2026. A total of 10 witnesses testified including two (2) experts.

7. I will hereinbelow set out the background facts, the respective parties' positions via their pleaded cases/submissions, and analyse the issues that arise with a view of determining if the parties have sufficiently proven on a balance of probabilities their claims and counterclaim respectively.

BACKGROUND FACTS

8. There were 3 Development Orders (hereinafter referred to as "the DOs") issued by Dewan Bandaraya Kuala Lumpur (hereinafter referred to as "DBKL") in respect of the Development as follows:

i. Development Order dated 20th October 2005 **("2005 DO");**

ADALAH DIBERITAHU bahawa permohonan

untuk cadangan pembangunan perumahan pangsapuri kos sederhana yang mengandungi:-

A. paras podium 4 tingkat mengandungi:
paras bawah - 29 unit kedai, tempat letak kereta serta kemudahan
paras 1 - 29 unit pejabat serta tempat letak kereta
paras 2 dan 3 - tempat letak kereta

B. 2 blok pangsapuri mengandungi 474 unit kediaman di tingkat 4 hingga 15/17 serta kemudahan-kemudahan kawasan landskap dan kolam renang

di atas Lot 57861 – Lot 57902 dan Tanah Kerajaan (Lorong Belakang/Tepi), Jalan 5/32A, Mukim Batu dalam Bandaraya Kuala Lumpur,

telah diberi kebenaran perancangan tertakluk kepada syarat-syarat berikut:-

ii. Development Order dated 3rd May 2006 **("2006 DO")** to amend the 29 units of "pejabat" to "kedai" on Level 1; and

ADALAH DIBERITAHU bahawa permohonan

untuk cadangan pindaan kepada pelan yang diluluskan melalui Perintah Pembangunan bertarikh 20.10.2005 bagi pembangunan perumahan pangsapuri kos sederhana yang mengandungi:-

A. Paras podium 4 tingkat mengandungi:-
Paras bawah - 29 unit kedai, tempat letak kereta serta kemudahan.
Paras 1 - 29 unit pejabat serta tempat letak kereta
Paras 2 dan 3 - tempat letak kereta

B. 2 blok pangsapuri mengandungi 474 unit kediaman di tingkat 4 hingga 15/17 serta kemudahan-kemudahan kawasan landskap dan kolam renang

kepada:
cadangan pembangunan perumahan pangsapuri kos sederhana yang mengandungi:

A. Paras podium 4 tingkat mengandungi:-
Paras bawah - 29 unit kedai, tempat letak kereta serta kemudahan.
Paras 1 - 29 unit kedai serta tempat letak kereta
Paras 2 dan 3 - tempat letak kereta

B. 2 blok pangsapuri mengandungi 474 unit kediaman di tingkat 4 hingga 15/17 serta kemudahan-kemudahan kawasan landskap dan kolam renang

di atas Lot 57861 – Lot 57902 dan Tanah Kerajaan (Lorong belakang/tepi), Jalan 5/32, Mukim Batu dalam Bandaraya Kuala Lumpur,

iii. Development Order dated 17th March 2010 **("2010 DO")** to include the addition of an extra floor of car parks on Level 3B of the Development;

ADALAH DIBERITAHU bahawa permohonan

untuk cadangan tambahan lantai untuk tempat letak kereta di paras 3 (3B) bagi cadangan pembangunan perumahan pangsapuri kos sederhana yang mengandungi:-

A. Paras podium 4 tingkat mengandungi:-
Paras bawah – 29 unit kedai, tempat letak kereta serta kemudahan;
Paras 1 – 29 unit kedai serta tempat letak kereta;
Paras 2 & 3 – Tempat letak kereta;

B. 2 blok pangsapuri mengandungi 474 unit kediaman di tingkat 4 hingga 15/17 serta kemudahan kemudahan kawasan landskap dan kolam renang;

di atas Lot 57861-57902 dan tanah kerajaan (lorong belakang/tepi), Jalan 5/32A, Mukim Batu dalam Bandaraya Kuala Lumpur,

9. On 18th May 2010, the TSIPM and Second Defendant TSID entered into a Sale and Purchase Agreement whereby TSIPM had purchased the following from the TSID:

a) Parcel No. A-01-1 which is a Type F Shop; and

b) Parcel No. Utility 1 accessorised with 115 car parks as accessory parcels.

10. Vacant possession of the units were delivered in July and September 2011.

11. The Certificate of Fitness for Occupation was issued by DBKL on 26th November 2011.

12. By way of a letter dated 11th October 2016, the Development Surveyor, Ukur Sekitar Sdn Bhd (hereinafter referred to as "USSB"), wrote to Jabatan Perancangan Bandar DBKL to rectify an error in the Development Order, which incorrectly stated "29 unit kedai" when in fact there are 30 parcels on Level 1:

2. Adalah dimaklumkan bahawa Datuk Bandar Kuala Lumpur di mesyuarat pada 14.10.2016 memutuskan **tiada halangan** terhadap pembetulan tajuk Perintah Pembangunan bertarikh 20.10.2005 kepada berikut :

> Cadangan pembangunan 2 blok pangsapuri kos sederhana 17 tingkat (474 unit) beserta 4 tingkat podium yang mengandungi 30 unit kedai, tempat letak kereta dan kemudahan di aras tingkat bawah dan 29 unit pejabat di aras 1 serta tempat letak kereta di aras 2 dan 3 di atas Lot 57861 – 57902 dan Tanah Kerajaan (lorong belakang/tepi), Jalan 5/32A, Mukim Batu, Kuala Lumpur".

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13. Jabatan Perancangan Bandar DBKL had responded by way of letter dated 28th October 2016 stating that they had no objections to the correction of the title of the 2005 DO:

14. The final Amended Approved Building Plans dated 17th June 2011 were issued.

15. The Schedule of Parcels and Certified Strata Plans were issued on 23rd February 2023.

16. Individual strata titles in respect of 533 units in the development were issued by PTGWPKL on 16th May 2018, and this included the strata title to the Property, registered in favour of TSIPM.

17. Prior to the formation of FRMC, TSIPM had entered into a series of agency agreements between 2014 to September 2020 with its predecessor i.e the Joint Management Body of the First Residence (hereinafter refered to as **"JMB")**.

18. The Defendants' pleads that the JMB had by way of these agreements agreed to handle the marketing and rental of TSIPM's 115 car park bays on the following terms:

a) to effectively promote the car park bays for rental to the residents of the Development;

b) to collect season parking fees in advance and in a timely manner;

c) to block the parking cards of season parkers who fail to pay season parking fees; and

d) to monitor and to take effective action to prohibit unauthorised parking at the car park bays.

19. In return, the JMB obtained a fee equivalent to 30% of the total revenue collected and enjoyed the use of five (5) complimentary car parks.

20. On 29th September 2020, TSIPM suggested to continue the agency relationship with FRMC, but was rejected on 4th December 2020.

21. TSIPM had also then discovered the following:

a) that its car parks were being trespassed upon whereby unauthorised third parties were allowed by FRMC to park at TSIPM's car parks without consent;

b) Utility 1 had been padlocked and items not belonging to TSIPM had been left in the room;

c) the entry points between the commercial units on the first floor and the car parks were locked shut by the FRMC; and

d) access to TSIPM's car parks by the patrons and/or commercial unit owners was restricted.

THE TRIAL

22. As highlighted earlier, a full trial of both consolidated suits proceeded on eight (8) non-consecutive days between November

2025 and January 2026 which included a judicial site visit to the Development with the parties' representatives and Counsels on the 9th January 2026.

23. The following witnesses gave evidence at trial:

For the Plaintiffs:

i. PW1 (Dato' Jayaselan A/L K.Navaratnam);

ii. PW2 (Sr. Mohd Nazri bin Mustaffa);

iii. PW3 (Dato' Lim Seng Kok, subpoenaed);

iv. PW4 (Chong Loong Seong);

v. PW5 (Wong Peng Hung); and

vi. PW6 (Ar. Steven Tang Boon Ann, expert witness).

For the Defendants:

i. DW1 (Sr. Sivaganam A/L Kanagaratanam, expert witness);

ii. DW2 (Eric Keng Wee Cheong);

iii. DW3 (Mohd Noor Hafiz bin Mohd Najib); and

iv. DW4 (Low Wing Fatt).

THE PARTIES RESPECTIVE PLEADED CASES AND POSITION

24. The Plaintiffs' pleaded claims in both Suit Nos. 773 and 271 contain substantially similar allegations which may be identified as follows:

(a) that Utility 1 and the 115 accessory car park parcels constitute common property;

(b) that Utility 1 and the 115 car park parcels were wrongfully created, sold and accessorised, rendering the Sale and Purchase Agreements between TSID and TSIPM void and the strata title liable to be set aside;

(c) that the car park parcels are not used in conjunction with Utility 1, in breach of Sections 34 and 69 of the Strata Titles Act 1985 (hereinafter referred to as **"the STA 1985")** thereby rendering such sale unlawful and liable to be set aside;

(d) that TSID breached local authority guidelines by failing to provide sufficient visitor car parks and OKU car parks; and

(e) that the 115 accessory carpark parcels are visitor and OKU carparks constituting common property which TSID was obliged to deliver to FRMC and which it wrongfully withheld and accessorized to the Property.

25. The individual purchasers in Suit 271 additionally claim that TSID breached the residential and commercial Sale and Purchase Agreements (hereinafter referred to as "the SPAs") and fraudulently misrepresented to them that the Development would have ample visitor parking and a 3-tier security system.

26. The Defendants' position on the above allegations can be summarised as follows;

a) that the strata title and transfer of Utility 1 and the 115 accessory car park parcels to TSIPM are valid and indefeasible;

b) that the accessorising and sale of the 115 car park parcels are lawful and not subject to any restriction;

c) that there have been no breaches of the STA 1985 or any other applicable laws;

d) that Utility 1 and the 115 car park parcels are not common property;

e) that there has been compliance with the DOs and other applicable laws in that there is no shortage of car parks;

f) that the Plaintiffs' have failed to join the relevant authorities as parties or call them as witnesses to substantiate their case.

g) that there has been no breach of either the residential or commercial SPAs by the Defendants.

THE ISSUES

27. Although parties had agreed to a lengthy list of issues to be tried separately for both suits, having considered the submissions, the Court is of the view that the central issues for determination in both Suits are as follows:

(a) whether TSIPM's registered title to the Property is indefeasible?;

(b) whether the Plaintiffs have established fraud or any other vitiating circumstance under S.340(2) of NLC 1965 so as to render TSIPM's title defeasible?;

(c) whether Utility 1 and the 115 accessory carpark parcels constitute common property of the Development?;

(d) whether TSID breached the residential and/or commercial SPAs, in particular with regard to visitor carparks and 3-tier security?;

(e) whether FRMC has the requisite locus standi to maintain Suit 773?; and

(f) whether TSIPM's counterclaim in trespass is made out/proven?

LOCUS STANDI OF FRMC

28. I will first consider the preliminary issue of *locus standi*. The Federal Court in *Datuk Bandar Kuala Lumpur v. Perbadanan Pengurusan Trellises & Ors* [2023] 5 CLJ 767 held, unequivocally, that the powers and duties of a management corporation established pursuant to Section 39 of the 1985 Act and Section 17 of the Strata Management Act 2013 (hereinafter referred to as the **"SMA 2013")** are circumscribed by statute and that a management corporation may only bring proceedings for or in in respect of common property and no more. This position was affirmed by the Federal Court in the oral grounds of judgment in FCCA No. 02(f)-17-04/2025, *Waldorf and Windsor Management Corporation v. Target Term Sdn Bhd*, which upheld the Court of Appeal's decision in *Target Term Sdn Bhd v. Waldorf and Windsor Management Corporation* [2025] 2 CLJ 386; [2024] 6 MLJ 508.

29. The fundamental difficulty I see/find with FRMC's position in Suit 773 is that the relief FRMC seeks is the transfer to itself of a strata title that is presently registered in TSIPM's name as an individual parcel. In my considered view, that is not a proceeding specifically "for or with respect to common property in that development area" or "for or with respect to any limited common property in that development area" within the meaning of S. 143 SMA 2013. It is a claim to acquire property that, on the face of the register, is not common property. With respect, FRMC cannot advance its way to standing by asserting that the property ought to be common property when the very question of whether it is common property is what falls to be determined.

30. The Plaintiffs sought to distinguish the cases of *DBKL v. Trellises (supra)* and *Target Term (supra)* on the basis that fraud is an issue in this case. I accept that fraud, if proven, may provide a different legal basis for challenging a registered title. However, locus standi goes to the jurisdiction of the court and cannot be conferred by the mere allegation of fraud, however seriously made. The proper parties to pursue a claim grounded in fraud are, as the Plaintiffs themselves concede, the individual Purchasers in Suit 271, who have both privity of contract with TSID and a direct personal interest in the outcome.

31. in fact, learned counsel for the Plaintiffs candidly agreed that FRMC had no locus standi to initiate Suit 773 as Utility 1 is an individual parcel Issued with strata title and that section 143 SMA 2013 only empowers it to initiate proceedings in relation to common property and that therefore, it is the Purchasers in Suit 271 who have the locus standi to recover Utility 1 based on fraud and misrepresentation.

32. I accordingly find that FRMC lacks locus standi to maintain Suit 773 insofar as it seeks the transfer of the strata title to Lot 30 to itself. This, finding alone is sufficient to dispose of Suit 773. However, given that substantially identical issues arise in Suit 271 and that these proceedings have been consolidated and fully argued, I shall proceed to determine the substantive merits of the Plaintiffs' claims in any event.

33. I shall now proceed to consider the important issue of indefeasibility of TSIPM's title.

INDEFEASIBILITY OF TSIPM'S TITLE

34. It is not disputed that TSIPM is the current registered proprietor of the Property. Section 89 of the NLC 1965 provides that every registered document of title duly registered shall be conclusive evidence that title to the land described therein is vested in the person named therein as proprietor. As the Federal Court observed in the case of *Leong Chye & Anor v. United Overseas Bank (Malaysia) Bhd* [2021] 6 CLJ 650, the words "indefeasibility of title or interest" in the Torrens system connote the measure of conclusiveness given to a title or interest in alienated land on registration of the dealing in statutory form. Hence, once a title or interest is registered, it cannot be set aside except on the grounds statutorily provided under S. 340(2) NLC 1965.

35. Section 340(2) of the NLC 1965 provides as follows:

"340. Registration to confer indefeasible title or interest, except in certain circumstances-

(2) . The title or interest of any such person or body shall not be indefeasible-

(a) in any case of fraud or misrepresentation to which the person or body, or any agent of the person or body was a party or privy; or

(b) where registration was obtained by forgery, or by means of an insufficient or void instrument; or

(c) where the title or interest was unlawfully acquired by the person or body in the purported exercise of any power or authority conferred by any written law.'

36. It is trite that the burden falls squarely on the Plaintiffs to establish the existence of one or more of these vitiating circumstances to the requisite standard. As established by the Court of Appeal in *Malaysia Land Properties Sdn Bhd v. Waldorf & Windsor Joint Management Body* [2014] 6 CLJ 821, fraud for the purposes of s. 340(2)(a) NLC 1965 must be actual fraud involving dishonesty of some sort committed prior to or at the time of registration. It does not include constructive or equitable fraud.

37. I turn now to consider and determine whether fraud has been established in this case.

HAS FRAUD BEEN ESTABLISHED?

38. Learned counsel for the Plaintiffs submits that its case for fraud is principally founded on a fraudulent misrepresentation by USSB in its letter to the authorities. In this regard, I immediately note that FRMC has not pleaded fraud in suit 773. Learned counsel for FRMC concedes this but submits that the material facts supporting a claim for fraud have been pleaded and that this is sufficient relying on the Federal Court authority in the case of *Letchumanan Chettiar Alagappan (as executor to SL Alameloo Achi (Deceased) v. Secure Plantation Sdn Bhd* [2017] 5 CLJ 418; [2017] 4 MLJ 697. However, I note that fraud has been expressly pleaded in suit 271.

39. On the issue of fraud, the Plaintiffs' rely on the expert evidence of PW6, Ar. Steven Tang Boon Ann, who opined that the Form 1 submitted by USSB to PTGWPKL falsely described Utility 1 as a "pejabat" when it was always a utility room, and that USSB's letter of 11 October 2016 to DBKL was deceiving and misleading. (See Notes of Proceedings dated 26th January 2026)

40. I have considered PW6's evidence carefully and with respect, I find that it is of limited assistance for the following reasons.

41. Firstly, PW6 is a qualified architect. However, a significant portion of his expert reports and witness statement consists of conclusions on matters of law rather than matters of fact or opinion within his area of professional expertise. He expressed opinions on the effect of the DOs on the validity of the SPAs, on whether Utility 1 constitutes common property as a matter of law, on whether the strata title is void, and on the applicability of various statutory provisions.

42. It is settled law that expert evidence on questions of law is inadmissible and ought to be disregarded. See the cases of *Gleeson v. J. Wippell & Co. Ltd* [1977] 1 WLR 510; *UEM Sunrise Bhd v. Majlis Perbandaran Johor Bahru Tengah* [2016] 11 MLJ 133. As emphasised in the case of *Perbadanan Pengurusan One Tanjong v. Province Valley Sdn Bhd* [2025] MLJU 1399; [2025] CLJU 1123, the primary purpose of expert evidence is to assist the Court in forming its own opinion. It is the responsibility of the Court to resolve the issues presented before it and not the expert. The primary role of PW6 as an expert is to inquire and report on any question of fact or opinion not involving questions of law or of construction. I therefore accordingly give little weight to those portions of PW6's evidence that venture into legal conclusions.

43. Secondly, on the present facts, I note that PW6's factual evidence contains statements that are either incorrect or unsubstantiated. As submitted by Learned counsel for the Defendants, I too observed that PW6 consistently referred to the Property as "Lot 30," a term applicable to land titles and not to strata parcels, demonstrating a degree of unfamiliarity with the strata title framework that is directly relevant to the subject matter of his evidence. He also erroneously described earlier DOs as having been "superseded" when the 2006 DO expressly stated that all terms of the 2005 DO continued to apply. Further, I note that PW6 also failed to account for DBKL's letter dated 28th October 2016, which confirmed that DBKL had no objections to the correction of the title of the 2005 DO.

44. Thirdly, I observed that PW6's overall evidence under cross-examination was equivocal and at times evasive. He was unable to provide clear and direct answers to some straightforward questions. I am therefore inclined to accord minimal weight to his evidence.

45. Moving on then to the other expert witness. The Defendants' expert, DW1 (Sr. Sivaganam a/l Kanagaratanam), *inter alia*, testified that there are no statutory provisions under any applicable law that mandate OKU carparks to be common property, and that the building plans and DO's prevail over guidelines (see Notes of Proceedings dated 27th January 2026). Based on my observation at trial, his evidence was measured, confined to matters within his expertise, and withstood cross-examination. As such, based on the overall circumstances of the present case as well as the evidence available before this Court, 1 find DW1's evidence consistent and ought to be accepted as being more reliable than that of PW6 where the two conflict.

46. Turning then to the substance of the fraud allegation, I make the following findings of fact.

47. The letter from USSB to DBKL dated 11th October 2016 indeed sought to correct an error in the DO, which stated "29 unit kedai" when there were in fact 30 parcels on Level 1. DBKL responded on 28th October 2016 confirming no objection to such correction. I find that this exchange is consistent with a genuine rectification and does not, on the evidence before me, establish that USSB was engaged in deliberate deception on the planning authorities.

48. The Approved Amended Building Plans dated 17th June 2011, which are in evidence, clearly show the existence of Utility 1. PW6's assertion that Lot 30 is "not in any of the approved plans" is therefore factually incorrect. The Certified Strata Plans issued on 23rd February 2023 expressly identify Utility 1 and its 115 accessory parcels. These plans were approved and certified by the relevant authorities.

49. In addition, the Defendants highlight that the Plaintiffs failed to call any officer from JUPEM, PTGWPKL, or DBKL's planning department to give evidence to the effect that they had been deceived or induced by any misrepresentation in approving the subdivision or issuing the strata title. This failure is arguably fatal to the allegation of fraud. To establish that a registered title was obtained by fraud upon the issuing authority, it is necessary not only to demonstrate what representations were made to that authority but also that the authority acted in reliance on those representations and would not have acted as it did but for them. Without evidence from the relevant officers, this Court is left entirely to speculation.

50. This concern is reinforced by the High Court's observations in the case of *Perbadanan Pengurusan 3 Two Square v. 3 Two Square Sdn Bhd* [2023] CLJU 2442, where it was held that for a Plaintiff to succeed in challenging the legality of a subdivision, it must support its claim with sufficient particulars demonstrating that the decisions of the Director of Lands and Mines and the Director of Survey were wrong in law and fact. For a proper determination to be made judicially, the relevant public authorities should necessarily have been brought as parties to the action, or at the very least, produced to testify as witnesses.

51. On the present facts and claim, the Plaintiffs did not include PTG, JUPEM, PTGWPKL or DBKL as parties to either suit. They chose not to call any officer from these authorities as witnesses or to seek any evidence from them on the alleged fraud. Having made that choice, with respect, they cannot now invite this Court to find that those authorities were deceived without the benefit of any evidence from the alleged victims of the purported fraud. I am therefore unable to make such a finding or conclusion.

52. The Plaintiffs also submit that the sale of Utility 1 by TSID to TSIPM was not an arm's length transaction as both were executed by Dato' Lim as Managing Director on behalf of each company. Yet, when Dato' Lim was subpoenaed by the Plaintiffs' themselves and he attended to testify as PW3, Plaintiff's counsel chose not to examine him at all. It is trite that companies are separate legal entities despite having a common director and in any event, such common directorship in TSID and TSIPM is insufficient in my view to impute or imply fraud. (See the case of *Law Kam Loy & Anor v. Boltex Sdn Bhd & Ors* [2005] 3 CLJ 355)

53. The Plaintiffs also highlight that Utility 1 was not reflected as an asset in TSID's accounts for the years 2010 and 2011. Firstly, as seen, the property was sold to TSIPM in 2010 and therefore might not be reflected as an asset anymore. Significantly, the documentary evidence adduced before this Court in the form of financial statements reveals that consideration was in fact made for the purchase.

54. Still on the issue of fraud, the Plaintiffs further submit as follows:

(a) that Utility 1 did not exist prior to 2018 and that TSIPM only started contributing maintenance charges and outgoings from 2018;

(b) that Utility 1 was an illegal structure on the basis that it does not appear in the Certificate of Fitness for Occupation and does not have any sanitary or electrical installations and therefore in breach of the By-Law 25 of the Uniform Building By-Laws 1984; and

(c) that Utility 1 does not have a post box or postal address.

55. In my view, the very fact that TSIPM paid all charges billed by FRMC and its predecessors, and the timing of when such billing commenced cannot give rise to an inference of fraud and does not constitute evidence that it was common property.

56. In the Court's further view, the Plaintiffs contention that Utility 1 is an "illegal" structure on the basis that it does not appear in the Certificate of Fitness for Occupation and that it does not have sanitary fittings and/or electricity installations is baseless and is unsupported by any statutory provision and/or authority. By-Law 25 of the UBBL as cited by the Plaintiffs does not prescribe any of the matters alleged by the Plaintiffs. It merely sets out when a Certificate of Fitness for Occupation shall be given. It reads as follows:

"(1) Certificate of fitness for occupation of a building shall be given when-

(a) the qualified persons during the course of the work have certified in form E as set out in the Second Schedule to these By-laws that they have supervised the erection of the building, that to the best of their knowledge and belief the building has been constructed in accordance with these By-laws and any conditions imposed by the local authority and that they accept full responsibility for those portions which they are respectively concerned with and the local authority or an officer authorised by it in writing for the purpose has inspected the building.

(b) all essential services, including access roads, landscape, car parks, drains, sanitary, water and electricity installation, fire lifts, fire hydrant and other where required, sewerage and refuse disposal requirements have been provided."

57. Further and in any event, DW2, the Development Architect, confirmed that nowhere in the relevant requirements is it stated that a parcel must have sanitary fittings or a prescribed number of electrical installations. He testified as follows during cross-examination:

NI Ok, paragraph 14 of the same DO at page 703. The plan for sanitary fittings has to be approved by DBKL.

ERIC Correct.

NI Can you confirm, or do you agree with me that this Lot No. 30 does not have any sanitary fittings or any sanitary facilities serving it?

ERIC No. 30, yes, no sanitary fittings.

NI It doesn't have independent electricity supply. Do you agree with me?

ERIC I can't remember whether, that is because that is handled by the MNE engineer. So, I can't remember whether there is a electric supply in the room or not.

NI What about independent water supply?

ERIC Water supply, no, not as not in my drawing.

NI It's not in your drawing.

ERIC Yes.

NI But all this has to be in place before you can apply for CFO. Correct?

ERIC Not necessary every room must have a water supply.

NI But there should be access to a water supply.

ERIC Not necessary.

NI Not necessary?

ERIC Not necessary. A parcel can be a room or a space, but doesn't have any water supply.

NI But it has to have at least a common place where you get the water supply.

ERIC Not necessary.

NI Not necessary?

ERIC Not necessary.

NI But it is stated in the UBBL.

ERIC It doesn't have to be a state in UBBL, because like for instance, your, I can have a library in my, let's say a facility for the residence. The library inside there I can have no water *also. It's just a library. It's just for them to use. But then doesn't need to must have water.*

NI What you mean is that, for a common property, it's not necessary.

ERIC Not to say common property. It's like, sanitary plan must submit when, all sanitary fittings that we put in the drawing must be approved by the sanitary department. But not every area that we have to assign the water for the usage. Like TNB substation, like for instance any, doesn't have water.

NI But then all that is common property.

ERIC Only residential unit will have water. So, the other units is up to the, up to us. If we want to put water, we can put water, if you don't want, then we can just leave it out.

NI Ok. So, it'll be correct for me to say that individual parcels, you have to have independent electricity, water and at least some form of sanitary fittings. For the condo, you did. For the shops, you did. Correct?

ERIC It's natural that you would provide some lightings in the room. But sometimes, it's this, you see, what we do in our drawing, we only concentrate on the residential area, for the units. Because we got to govern by the S&P. But for the common, or other general area, like the car park, or the what other areas, we leave it to the MNE engineer to assign the, when there's no, to assign the lightings to the-

JUDGE I see. So, because your S&P for the condo will say how many lights, how many this one all that.

ERIC Because-

JUDGE Common area you just see, engineer decide, ok this one I think this whole car park, five lights enough, no need 10 lights or whatever.

ERIC This is decide by the MNE engineer.

JUDGE Ok.

ERIC Not by us. So, they just assign according to, they think the lucks is there, then they assign. So sometimes they miss out. Because some development is so big, some area they miss out. Then sometimes we just add it after the CF, then we thought, this one too dark, then we add some lights there afterwards.

JUDGE Ok.

ERIC It doesn't need to get any approval.

[See Pages 139-142, DNOP, Vol. 5, Enclosure 187]

58. In relation to the Plaintiffs' allegation that Utility 1 does not have a postbox and is therefore in breach of Paragraph 28 of the 2005 DO, this contention appears to have no basis. Paragraph 28 of the 2005 DO does not contain any such requirement and only states as follows:

> *"Mengadakan peti-peti surat mengikut kehendak-kehendak Jabatan Perkhidmatan Pos di tingkat bawah bangunan sebelum Perakuan Menduduki Bangunan dikeluarkan."*

59. No requirements of the Malayan Postal Services Department have been referred to by the Plaintiffs.

60. Further, DW2, the Development Architect confirmed as follows:

JUDGE *This one the conditions for DO.*

***NI** One of the requirements is that every individual parcel must have a post box. Basically, a postal address.*

***ERIC** Not necessary every parcel must a have a post box.*

***NI** There it's stated here, "Mengadakan peti surat mengikut kehendak jabatan pos."*

***ERIC** Yes, it says that, you need to provide post box in accordance with the requirement from the jabatan pos only. But it doesn't say every parcel must have a post box.*

[See Page 142, DNOP, Vol. 5, Enclosure 187]

61. The Plaintiffs also allege and/or contend that TSID was prohibited by law to sell the 115 car parks to TSIPM and TSIPM prohibited from renting the same out thereafter. However, I find that the Plaintiffs' have failed to identify to the satisfaction of the Court any legal provision which places such a restriction and DW4 confirms this, (see Notes of Proceedings dated 28th January 2026)

62. I find no evidence that the eight (8) OKU car parks were ever rented out and this is also conceded by the Plaintiffs'. I also find the Plaintiffs' position on a prohibition of rental peculiar in view of FRMC's own conduct once the Management Committee was established in 2020. In this regard, there is in evidence that TSIPM had sent a proposal dated 29th September 2020 to FRMC stating therein that TSIPM was the legal and beneficial owner of the property and was prepared to appoint FRMC as agents to manage the said car parks (similar to the JMB for the prior 6 years) for a fee equivalent to 30% of the total revenue collected and the use of five (5) complimentary car parks. Interesting in my view was the reply from FRMC's property manager dated 4th December 2020. In it, whilst they declined the offer, I note that no challenge is made of TSIPM's ownership and even went on to inform that FRMC had directed all tenants to pay the car park rental to TSIPM directly.

63. In addition, even if there were to be any conflict between local planning laws or by-laws, I agree with the Defendants' submission that by virtue of the express provision in Section 108 of NLC 1965, the provisions of the NLC 1965 would prevail. Hence, in the Courts view, TSIPM's perfected title in respect of the property takes precedence over and cannot be defeated by any by-law as relied on by the Plaintiffs'.

64. The Plaintiffs' also contend that the 115 car park parcels are not being used in conjunction with Utility 1 and hence is a breach of Sections 34(2) and 69 of STA 1985.

65. Section 34(2) of STA 1985 reads as follows:

> *"34. Rights of proprietor in his parcel and common property*
>
> *(2) No rights in an accessory parcel shall be dealt with or disposed of independently of the parcel to which such accessory parcel has been made appurtenant."*

66. Section 69 of STA 1985 reads as follows:

> *"69. No dealing in accessory parcel independent of a parcel*
>
> *No accessory parcel or any share or interests therein shall be dealt with independently of the parcel to which such accessory parcel has been made appurtenant as shown on the approved strata plan."*

67. Section 4 of STA 1985 defines "accessory parcel" as follows:

> *"accessory parcel" means any parcel shown in a strata plan as an accessory parcel which is used or intended to be used in conjunction with a parcel;*

68. In relation to this issue, the recent Court of Appeal decision in the case of *Target Term (supra)* is instructive, as it concerns facts materially similar to those in the present case and is a decision heavily relied on by the Defendants'. .

69. Briefly, the relevant facts of *Target Term (supra)* are as follows:

a) a developer (Malaysia Land Properties) sold an apartment unit together with 420 car park lots to its related company (Target Term) to operate a car park business;

b) although the sale included 420 car park lots, only 414 were designated as accessory parcels to the apartment unit under the strata plan;

c) the management corporation of the apartment later billed Target Term for unpaid management charges and sinking fund contributions in large sums;

d) Target Term challenged the claim asserting that it incurred its own funds to maintain the car park units and asserted its rights over the car parks;

e) the management corporation countered that the sale was unlawful under the STA, arguing the accessory parcels could not be dealt with separately from the main parcel contravening Sections 34(2) and 69 of the STA;

f) the High Court held that the sale and purchase agreement was void, finding that the car park lots were not valid accessory parcels but instead constituted common property;

g) the Court ruled that renting out the car park lots amounted to an unlawful independent "dealing" in breach of the STA, and thus Target Term could not claim ownership; and

h) Target Term appealed against the High Court's decision.

70. The Court of Appeal in allowing the appeal held inter alia as follows:

a) the act of renting out the car park parcels was not properly characterised as a "dealing". The term "dealt with" in Sections 34(2) and 69 of STA 1985 does not include granting a temporary licence to customers to occupy the car park lots. The customers using the car park lots were merely licensees, not tenants, and granting such licences did not amount to a "dealing" in the accessory parcels;

b) accordingly, there was no contravention of Sections 34(2) and 69 of the STA, and no breach of the development order. Target Term's operation of a car park business did not contravene the said provisions. As a result, the SPA was not illegal or void, and Target Term's title to the car park accessory parcels remained unaffected;

c) the 414 car park parcels were not common property. Under the STA, common property excludes parcels and accessory parcels in an approved strata plan. Since the Certified Strata Plan clearly identified the car park units as accessory parcels, they could not be treated as common property; and

d) The STA 1985 does not provide that an accessory parcel loses its character and becomes common property merely because it is not used or intended to be used in conjunction with the main parcel. Any such consequence must be clearly provided for in the legislation. The phrase "used or intended to be used in conjunction with" simply refers to the accessory parcel being appurtenant to the main parcel.

71. The following passages from the Court of Appeal's judgment are material:

"[23] Applying this test to the facts of the present case, we are under no doubt that the permission granted to a driver of a motorcar to enter into, and park in, the area designated as a carparking area for visitors would constitute no more than a licence and cannot be construed as a tenancy*. While the driver is given permission, at the point of entry, to park his car in any available parking lot, that parking lot is not identified at the point of contract formation. It is only when he parks his car that the lot becomes identified. In this sense, he is not given exclusive possession of any parking lot upon his entry. Of course, once he had made his selection, no other motorcar may be parked in the parking lot so chosen, but this does not mean that other persons are prohibited from entering into the rectangular space marked out by the parking lot lines. Another person parking in an adjacent carpark lot, for example, may need to open her car door in a manner that will encroach into his chosen carpark lot.*

In any event, it is clear beyond peradventure that the contractual relationship between Target Term as the operator of the carpark and its customers was not intended to confer upon the latter rights and obligations consistent with those of tenants under tenancy laws.

[24] The learned judge in the court below considered the Federal Court decision in Innab Salil & Ors v Verve Suites Mont' Kiara Management Corp, but elected to follow the decision in Ideal Advantage Sdn Bhd v Perbadanan Pengurusan Palm Spring @ Damansara and another appeal on the basis that the latter case dealt specifically with ss 34(2) and 69 of the Strata Titles Act 1985. The High Court stated as follows:

> *With respect to the plaintiff's counsel, Innab Salil's case only deals with s. 70(5) of the SMA and not with ss 4, 34(2) and 69 of the STA where the Federal Court clearly*

stated that its interpretation of dealing is for the purposes of s. 70(5) of the SMA.

[25] *While is it is true that Innab Salil & Ors v. Verve Suites Mont' Kiara Management Corp dealt with s. 70(5) of the Strata Management Act 2013, nonetheless the principles laid down by the Federal Court to distinguish between tenancies and licences are of general application. When those principles are applied to the facts of the present case, the inescapable conclusion must be that the carpark customers are mere licensees and not tenants.*

[26] *In coming to this conclusion, we consider ourselves bound by the subsequent decision of the Federal Court in Innab Salil & Ors v Verve Suites Mont' Kiara Management Corp. We are of the view that this decision has the effect of impliedly overruling the earlier decision of the Court of Appeal in Ideal Advantage Sdn Bhd v Perbadanan Pengurusan Palm Spring @ Damansara and another appeal, in so far as it pertains to the true construction of the contractual relationship between a carpark customer and its operator.*

[27] *It therefore follows that the construction of carpark rentals as a 'dealing' cannot be correct. The cognate expression 'dealt with' in ss. 34(2) and 69 of the Strata Titles Act 1985 does not encompass the act of granting licences for temporary occupation to carpark customers.*

[28] *For these reasons, we are of the view that the act of operating a commercial carpark business on the accessory parcels does not constitute dealing in those accessory parcels, and accordingly does not contravene the statutory prohibition in ss. 34(2) and 69 of the Strata Titles Act 1985 against independent dealing of accessory parcels.*

[29] We are of the further view that accessory parcels constituted by the ***414 carpark units cannot metamorphose into common property****. In the Strata Titles Act 1985, common property is defined in s. 4 in the following manner:*

'common property' means so much of the lot as is not comprised in any parcel (including any accessory parcel), or any provisional block as shown in an approved strata plan;

[30] The term common property is thus defined by way of exclusion in the Strata Titles Act 1985. Common property is that which is not identified as a parcel in the strata plan.

[31] The expression 'accessory parcel' is in turn defined in s. 4 of the Strata Titles Act 1985 the following manner:

'accessory parcel' means any parcel shown in a strata plan as an accessory parcel which is used or intended to be used in conjunction with a parcel; (Emphasis added.)

[32] In this case, the certified strata plan that has been exhibited in evidence clearly shows the 414 carpark units being identified as being accessory parcels. Accordingly, once they have been identified as accessory parcels, they cannot in law be construed as common property.

[33] Much as has been by counsei for the respondents of the phrase 'which is used or intended to be used in conjunction with a parcel'. We were urged to conclude that, if the accessory parcel has not been used or was not intended to be used with the parcel to which it is appurtenant, then that accessory parcel loses its characterisation as a parcel and becomes subsumed into the common property of the building.

[34] We are unable to agree with this conclusion. First, nowhere in the Strata Titles Act 1985 is this legal consequence provided. Second, it is a fundamental rule of drafting (and consequently of construction) that definitions are not to contain the operative provisions of written law.

If rights and obligations are intended to be created or annulled by a provision of law, then it must be set out in the body of the legislation. For this reason, we are of the considered view that the phrase 'an accessory parcel which is used or intended to be used in conjunction with a parcel' simply refers to an accessory parcel that has been made appurtenant to a parcel.

[35] It will be recalled that in the case of Ideal Advantage Sdn Bhd v Perbadanan Pengurusan Palm Spring @ Damansara and another appeal, it was held that there had been contravention by the developer of the terms of the development order. This was one of the factors taken into account by the Court of Appeal to conclude that the sale of the carpark units in that case had been tainted with illegality.

[36] The present case is distinguishable on its facts.

[37] The initial terms of the development order dated 20 June 2002 issued to Mayland's architect imposed a condition that there be 700 carpark units. The subsequent development order issued on 27 September 2005 increased the requirement for carparks to 79 7 units. A re-amended development order was issued on 26 March 2008, which did not impose any requirement for any increase in the number of carparks, but reiterated the need for adequate carparks within the development area.

[38] The development orders issued in this case did not specify any breakdown between the carpark units to be made

available for residents and for visitors. Nor was there any requirement imposed on the number of carpark units that were to be made appurtenant to a parcel.

Furthermore, there was no suggestion by the evidence on record that the number of carpark units were insufficient either for the use of residents or visitors.

[39] There was thus no contravention in the present case of the terms of the development orders. Even if breach of the terms of a development order regarding the allocation of carpark units could have the effect invalidating the title of a proprietor to those carpark units, on the facts of the present case there was no such breach established.

[41] In summary:

(a) because the act of letting out of a carpark unit as part of a business merely amounts to a licence to the carpark customer to use a unit of carpark, it does not amount to an act of dealing in the accessory parcels comprising the carpark units. For this reason, there was ***no contravention of the_ prohibition against independent dealing of accessory parcels contained in ss 34(2) and 69 of the Strata Titles Act 1985;***

(b) on the facts of the present case, there was ***no contravention of the development orders that had*** *been issued for the development of the subject building; and*

(c) ***as a consequence of the findings in the preceding subparagraphs, the SPA was not illegal or void, and Target Term's title to the accessory parcels remains unaffected."***

(emphasis mine)

72. Therefore, applying the Court of Appeal's decision in *Target Term (supra)* to the present facts, the 115 car park parcels, which are reflected in the Certified Strata Plans as accessory parcels appurtenant to Utility 1, remain valid and properly constitute accessory parcels.

73. Further, the operation of a commercial car park business on the accessory parcels does not constitute a "dealing" in those parcels and therefore does not contravene Sections 34(2) and 69 of the STA 1985.

74. Therefore, in the Court's view, TSIPM's management and rental of the 115 accessory car park lots does not amount to an unlawful dealing or transfer, and the parcels retain their legal character as accessory parcels appurtenant to the principal strata lots.

75. The Plaintiffs on the other hand rely heavily on the Court of Appeal decision of *Malaysia Land Properties Sdn. Bhd. v. Waldorf & Windsor Joint Management Body* [2014] 6 CLJ 821 where the Court there was of the view and concluded that the registered proprietor had obtained its strata title through fraud. However, and with respect, I find the case of *Malaysia Land Properties (supra)* distinguishable on its facts. In that case, the disputed area on the 7th floor had been clearly and expressly designated as common property in the approved drawings, plans and sales brochures which supported the contention that it was indeed common property as held by the Court of Appeal. The present facts are fundamentally different in that Utility 1 and the accessory parcels were never identified in any drawing as common property and never listed as common facilities in the SPAs. I find that the Plaintiffs' have failed to produce any documentary evidence to the contrary.

76. The Plaintiffs' further reliance on other decided cases such as *Malayan Banking Bhd v Tho Siew Wah & Anor and Another Appeal* [2017] 7 CLJ 573 and *Setiakon Engineering v. Mak Yan Tai & Anor*

[2024] 8 CLJ 190 is also, with respect, misplaced. In those cases, there was clear evidence of forgery involving fabricated documents or nonpayment of purchase monies whereby the Courts there found actual fraud at the root of the transaction. In this case, there are no allegations of forgery and the evidence reveals that TSIPM did in fact pay TSID for the Property.

77. I therefore find that the Plaintiffs case at best is premised on mere allegations as to irregularities in planning approvals and a general dissatisfaction with the Development and these fall way short of establishing fraud or fraudulent misrepresentation to the requisite standard. As highlighted by learned counsel of the Defendants' relying on the decision of the Court of Appeal in the case of *Perbadanan Pengurusan One Tanjung v. Province Valley Sdn Bhd (supra)*, if FRMC has issues with a local authority approving building plans which breached the provisions of UBBL or issues with the Certificate of Fitness for Occupation, any action should thus be directed to the local authority or relevant authorities as they are the ones responsible for ensuring compliance and would have to be accountable.

78. In the upshot, the Court concludes that TSIPM's title to the Property remains indefeasible.

IS THE PROPERTY COMMON PROPERTY?

79. Having found that fraud has not been successfully established by the Plaintiffs', I turn to the next issue or question of whether the Property constitutes common property of the Development, independently of the fraud issue. This is a central bone of contention where the Plaintiffs' contend that it is whilst the Defendants' contend that it is not.

80. The definition of "common property" under S. 4 STA 1985 means so much of the lot as is not comprised in any parcel, (including any accessory parcel), or any provisional block as shown in an approved strata plan. The legal framework is therefore clear in that once a parcel is identified as such in the approved strata plan, it is by definition excluded from common property.

81. The Court of Appeal's decision in *Target Term (supra)* is again directly applicable and binding on this Court. In that case, on materially similar facts, the Court of Appeal found as follows:

(a) once carpark units are identified as accessory parcels in the Certified Strata Plan, they cannot in law be construed as common property;

(b) an accessory parcel cannot metamorphose into common property merely because it is allegedly not used in conjunction with the main parcel. No such legal consequence is provided for anywhere in the STA;

(c) the act of operating a commercial carpark business on accessory parcels does not constitute a "dealing" in those parcels and therefore does not contravene Sections 34(2) and 69 STA 1985.

(d) the 414 car parks were not common property since the Certified Strata Plans clearly identified them as accessory parcels and hence could not then be construed as common property

82. Applying the findings of the case of *Target Term (supra)* to the present facts, the Schedule of Parcels and Certified Strata Plans in evidence before this Court expressly identify Utility 1 and the 115 carpark lots as individual and accessory parcels respectively. At all material times, they were never designated as common property anywhere in those documents nor were Utility 1 and the 115 car parks ever represented to the Purchasers as common property. On the authority of *Target Term*, that is determinative. Thus, in my view, the Property is clearly not common property.

83. Further, and still on this issue, the Court will also refer to some other decided cases.

84. In the case of *Teh Tiong Khim & Anor v. Sime Darby Brunsfieid Damansara Sdn Bhd & Anor* [2023] CLJU 2978; [2023] 1 LNS 2978, the Court there held as follows:

> *"[41] It is therefore not difficult to agree that* ***the schedule of parcels and/or the strata plans submitted and endorsed by the authorities are the appropriate documents to identify which are the main parcels, accessory parcels and the common property*** *in the Medalla Serviced Apartment.*
>
> *[46] My examination and analysis of the Endorsed Schedule of Parcels tendered in this case reveals that the car park lot in question is an accessory parcel to the Plaintiffs' apartment unit No. D2-808. The unit No. D2-808 is identified as Parcel No. 568.*
>
> *It can also be seen that the car park lot which is identified as Accessory Parcel No. A220 has been accessorised to the Plaintiffs' Parcel No. 568. Below is the extract of the Endorsed Schedule of Parcels dated 16 January 2020 (B2 p 16) for Level 9 and Level 2 of the Medalla Serviced Apartment.*
>
> *[71] To my mind* ***the 2nd Defendant is estopped from denying the veracity of the contents of the Schedule of Parcels*** (*see Boustead Trading [1985] Sdn Bhd v. Arab-Malaysian Merchant Bank Bhd [1995] 4 CLJ 283; [1995] 3 MLJ 331).* ***The 2nd Defendant shall not be permitted to adopt an inconsistent stand with the documentary*** *evidence. For that reason, it does not lie now in the mouth of the 2nd Defendant to conveniently argue that since the car park lot L-18 is marked and painted as "Visitor", it therefore must be treated as common property.*

> *[79] In my view there is no way from escaping the fact that the documentary evidence in particular the Schedule of Parcels and the strata plans that were submitted and endorsed by the authorities have confirmed the locations of the main parcel, the accessory parcel as well as the common property in the development. The Endorsed Schedule of Parcels have shown that the car park lot in question is not common property.*
>
> *It is unwarranted and untenable to argue that the criteria whether or not the car park lot is common property or otherwise is to rely on the physical markings placed on it. I reiterate that it must be determined by the Endorsed Schedule of Parcels and/or the certified strata plans. I reject the 2nd Defendant's arguments to justify their refusal to accede to the Plaintiffs' claim as it does not stand to reason in light of proof shown that the car park lot No. L1-18 is an accessorized parcel and not common property."*

(emphasis mine)

85. The High Court in the case of *Saluran Projek Sdn Bhd & Anor v. Badan Pengurusan Bersama Krystal Point* [2016] CLJU 728; [2016] 1 LNS 728 held as follows:

> *"44. In this regard, the* ***JMB did not produce the certified strata plan to prove that the car parking bays were neither parcels nor accessory parcels****, probably by reason that the relevant certified strata plan was not in existence at the time when the sale and purchase agreements of the Krystal Point Project were executed.*
>
> *Notwithstanding the JMB's contentions, I am of the view that* ***it is immaterial that the approved building plans did not designate the car parking bays as accessory parcels because***

> ***the relevant plan is the certified strata plan and not the approved building plan***.
>
> *It therefore follows that the car parking bays could not have been conclusively intended to be common property. I have also noted that clause 31(c) of the standard sale and purchase agreement of the apartment units of Krystal Villa has the definition of "common property" to mean "so much of the land that in not comprised in any parcel (including any accessory parcel) or any provisional block and the fixtures and fittings including lifts, refuse chutes, drains, sewers, pipes, wires, cables and ducts and all other facilities and installation used or capable of being used or enjoyed in common by all the purchasers." It is clear to me this clause did not specifically include car parks and parking areas."*

86. In light of the foregoing, it is clear and fortifies a conclusion that the legal characterisation of any parcel within a strata development must be determined strictly by reference to the approved Schedule of Parcels and the Certified Strata Plans, which are conclusive and binding.

87. In the present case, Utility 1 and its accessory parcels are expressly identified as accessory parcels and not common property in the approved Schedule of Parcels and Certified Strata Plans.

88. As such, they cannot in law be reclassified or treated otherwise.

89. Any contention to the contrary would in the Court's view be inconsistent with established authority and documents approved by the authorities in line with statutory requirements.

90. I will now proceed to consider the definition of common property in the SPAs and to analyse the status of Utility 1 and the 115 car parks.

SALE AND PURCHASE AGREEMENTS DO NOT LIST UTILITY 1 AND THE 115 CAR PARKS AS COMMON PROPERTY

91. "Common Property" is defined as follows in the SPAs entered into between TSID and the residential unit owners **("Residential SPA")** as follows;

> *(d) "common property" means so much of the land as is not comprised in any parcel (such as any accessory parcel), or any provisional block and the fixtures and fittings including lifts, refuse chambers, drains, sewers, pipes, wires, cables and ducts and all other facilities and installations used or capable of being used or enjoyed in common by all the purchasers";*

92. Common facilities as listed in the Second Schedule of the Residential SPA are as follows:

SECOND SCHEDULE

COMMON FACILITIES AND SERVICES

(a) List and description of common facilities serving the said housing development.

- Swimming Pool
- Kid's Pool
- Interactive Fountain
- Toddler's Cycling Track
- Playground
- Alfresco Dining Area
- Reflexology Path
- Kid's Putting Green
- Kid's Maze Garden
- Audio Music Room
- Multipurpose Hall
- Games Room
- Outdoor Chess Board
- Indoor Play Area
- Male / Female Changing Room
- Surau
- Laundry
- Tadika/Nursery
- Ice Cream Kiosk
- Cafeteria
- Suspended Gymnasium
- Reading/Tutorial Room
- Management Office
- Games Room /Library
- Aerobic Room
- Yoga Room
- Home Theather

93. "Common Property" is defined as follows in the SPAs entered into with the commercial unit owners **("Commercial SPA")]:**

> *(e) "Common Property" means so much of the Said Lot as is not comprised in any parcel or any accessory parcel or any provisional block, the corridor, staircases and the fixtures and fittings including refuse chutes, drains, sewers, pipes, wires, cables and ducts and all other facilities and installations in the Building used or capable of being used in common by each and every of the Purchaser"*

94. Common facilities are not listed in the Commercial SPA.

95. The Court of Appeal's decision in the case of *Prestaharta Sdn Bhd v. Ahmad Kamal bin Md Alif & Ors* [2016] 4 MLJ 39 is applicable to the facts of the present case.

96. The brief facts in the case *Prestaharta Sdn Bhd* are that the Plaintiffs (purchasers and owners) of units in Riviera Bay Resort Condominium (RBRC) had brought a suit against the Defendant who had purchased 149 units and certain parts of the development from Danaharta. The Plaintiffs alleged that the sale was illegal, void and unenforceable because it was not in the form prescribed in Schedule H of the Housing Developers Regulations 1989.

As such, the Plaintiffs argued that the common property remained vested in the original developer and that the Defendant had no right to use or occupy it. At the time when the plaintiffs entered into a sale and purchase of the RBRC, there was no statutory control as to how the common property was to be used, divided or reserved by the developer. The Defendant therefore relied on the Deed of Mutual Covenant which specifically listed certain facilities.

97. The Court of Appeal held as follows:

a) the Plaintiffs had signed both the SPA and Deed of Mutual Covenant, which should be read together as one transaction, and these agreements made clear that the common property was not part of what they purchased. The Defendant, however, had acquired the 22 additionai resort facilities together with the 149 parcels;

b) the Court of Appeal found that the Trial Judge's failure to make reference to the Deed of Mutual Covenant was a material non-direction as he had mischaracterised these facilities as common property;

c) the Plaintiffs had agreed in the Deed of Mutual Covenant that the RBRC was to operate as a resort and that certain additional facilities would not form part of the common property, but later disregarded the agreement when bringing the present action; and

d) the Plaintiffs acted inconsistently with their earlier agreements, claiming the facilities as common property despite previously accepting otherwise, and were therefore estopped from going against the terms of the SPA and Deed of Mutual Covenant.

98. Applying the abovementioned to our present case, Utility 1 and the 115 car parks were never listed as common facilities in the sale and purchase agreements, and therefore cannot be treated or characterised as common property. Their status must instead be determined by reference to the Schedule of Parcels and Certified Strata Plans, which do not designate them as such.

99. The Court of Appeal in the *Prestaharta (supra)* held as follows:

> *"[8] We have read the appeal record and the able submission of the parties. After giving much consideration to the same, we take the view that the appeal must be allowed and our reasons are as follows:*

(c) ***Under the S&P, the plaintiffs were fully appraised of the fact that the common property or facilities of the Riviera Bay Resort Condominium ('the RBRC') only consisted of the facilities specified in the Second Schedule thereto****. These facilities were being enjoyed* ***by*** *the plaintiffs. An important point to note is that these common facilities do not form part of the subject property comprising 22 facilities with an area of 78,943 sq ft acquired by the defendant together with 149 parcels from Pengurusan Danaharta Nasional Berhad ('Danaharta'). The subject property in fact, relates to the 'Additional Facilities', 22 altogether, set out in the Second Schedule to the DMC being facilities for the resort.*

These additional facilities were excluded from the common property defined in the S&P. The *learned judge therefore made a fundamental mistake when His Lordship found that these additional facilities were common property of the RBRC. There is clearly a distinction between the common property or facilities with the additional facilities..."*

100. The above position taken by the Court of Appeal in *Prestaharta* was followed by the Court of Appeal in the case of *Sri Keladi Sdn Bhd (in liquidation) v. Bukit OUG Condominium Joint Management Body* [2023] 1 MLJ 34.

101. The case of *Sri Keladi* involved an appeal by a housing developer against a High Court decision that surplus car parks in a condominium were common property intended for the use of parcel owners. After the developer was wound up, 149 unaccounted car parks were identified and the liquidator's attempt to sell them led the JMB to claim that they belonged as common property. The dispute centred on whether the car parks were governed by the sale and purchase agreements and whether they qualified as common property, given that strata titles had not yet been issued. On appeal, the key issues were to determine which document governed ownership of the car parks and whether the car parks fell within the definition of common property under the sale and purchase agreements.

102. The Court of Appeal in the case of *Sri Keladi* held as follows:

> *"[33] It should be clear from the above case, that the determination of whether the car parks should be considered as common property would depend on the terms of the SPA. Thus, it is important to note the relevant provisions of the same in order to decide on the issue. This brings us to the second issue below."*
>
> *"[34] The HC referred to cl 31(c) of the SPA for a parcel owner with the facility of a car park and without a car park. The clause states:*
>
>> *'common property' means so much of the land as is not comprised in any parcel (including any accessory parcel), or any provisional block and the fixtures and fittings including lifts, refuse chutes, drains, sewers, pipes, wires, cables, and ducts and all other facilities and installations used or capable of being used or enjoyed in common by all the purchasers.*
>
> *[35] As seen above, 'common property' means so much of land that is not comprised in any parcel including accessory parcel. It is also so much land not comprised in any provisional block and fixtures and fittings. These includes refuse chutes, drains and sewers. It also includes other facilities and installations used or capable of being used or enjoyed in common by all the purchasers.*

[36] The definition of common property above must mean it could not include additional car parks in this case. It ought to be emphasised that the purchasers who bought the parcel units with car parks have been catered for with the same. The issue in this case concerned not these car parks but the additional 149 car parks. The definition of common property as seen above cannot include additional or surplus 149 car parks. Since it is 'additional', it exists more than what is required. Therefore, it cannot and must not be enjoyed by all as 'common property'. Hence it should follow the respondent has no right and interest to manage the same.

[37] Further, the novel construction as suggested by the respondent that what is not stated as 'common property' should by default nonetheless be included as the same, is with respect misconceived. This construction is not supported by any authorities and would mean that everything else not defined as common property would have to be included. This with respect, would the very least be absurd. It would mean everything that is not stated as 'common property' could be enjoyed by every unit purchaser, tenant or visitor of the condominiums. This is too wide a definition of 'common property'. In common parlance, this is 'anything under the sun'.

…

[43] Clause 31(c) of the SPA must be read together with the Second Schedule of Schedule H of the SPA. Reading both together, it becomes clearer that these additional car parks should not be considered as common property. ***This schedule lists down common facilities and services for_ the development and it does not include car parks****.*

(a) 1 swimming pool and wading pool;

(b) 1 putting green;

(c) 2 tennis courts;

(d) 4 squash courts;

(e) 1 gymnasium room;

(f) 1 sauna;

(g) 1 child care centre;

(h) 1 reading room/library;

(i) 1 restaurant;

(j) 1 lounge;

(k) 1 fishing pond;

(1) 1 skating/multipurpose ring; .

(m) 5 children playgrounds;

(n) BBQ pit;

(o) Housing development surrounded by greenery and jogging track;

(p) 24-hour security;

(q) lntercom system;

(r) Multipurpose hall;

(s) Shops.

[44] The learned HC judge took this into account and found it does not include the unaccounted or additional car parks in her grounds of judgment.

Yet, with respect, she erroneously said the 149 car parks form part of the common property.

Thus, the learned HC judge's finding is with respect, in error and inconsistent with the plain and clear words of the above schedule. We are of the considered opinion that we ought to intervene in correcting the error made in this respect.

[45] Further, even the respondent's witness in a court testified to the effect that the above schedule listed the common facilities. As we have earlier stated, this schedule does not mention car parks as common facilities. This means the 149 surplus car parks should also not be considered as common facilities or common property for the development.

WFM: Now, I want you to took at page 23 now and page 23 and preamble of the Sale and Purchase Agreement. Look at preamble No. 4, it says, 'Whereas the vendor is developing the said land, as housing development known as Bukit OUG Surian Wangi Condominiums and it is complete thereon with common facilities as in the Second Schedule'. My question is, do you agree that from the preamble, it is very clear that the common facilities in the Bukit OUG Condominium are the facilities as mentioned in the Second Schedule?

YOUNG: Correct.

WFM: Correct. Now, I want you to look now at Clause 15 at page 30 where again it says that 'the vendor shall at its own cost and expense construct or cause to be constructed the common facilities serving the housing development and provide services' and then, there are a few things, 'as specified in the Second Schedule'. Right, so this Clause again, is very clear, that what the developer needs to construct a common facility *and do you agree that the common facilities are those specified in the Second Schedule?*

YOUNG: Agree.

[46] *If the car parks are intended to be considered as common property under the SPA, they would have been listed in the Second Schedule of Schedule H of the SPA as shown above. This proposition is consistent with what was found in the Court of Appeal case of Prestaharta Sdn Bhd v. Ahmad Kamal bin Md Alif & Ors [2016] 4 MLJ 39; [2016] CLJU 255; [2016] 1 LNS 255."*

103. The Court of Appeal in the same case further held the same in respect of the commercial unit owners:

"[52] Further, this cl 32 ought to be read with the Fifth Schedule. This schedule in turn lists all the common facilities as follows:

(a) Swimming Pool and Wading Pool;

(b) Putting Green;

(c) Tennis Court;

(d) Squash Court;

(e) Gymnasium Room;

(f) Sauna;

(g) Creche;

(h) Reading Room;

(i) Cafeteria;

(j) Fishing Pond;

(k) Skating/Multipurpose Ring;

(l) Children Playgrounds;

(m) BBQ Pit;

(n) Housing development surrounded by greenery and jogging track;

(o) Security Service;

(p) Multipurpose Hall.

[53] As seen, car parks are not listed in the above schedule. Therefore, car parks should not be considered as common property under the SPA for commercial units."

(emphasis mine)

104. In the case of *Plaza Pekeliling Management Corporation v. IGB Corporation Berhad & Anor* [2003] MLJU 216 the Learned Judge there after referring to the definition of common properties in Section 4 of the STA remarked as follows;

> *"Put it in a simpler language, "common property" ? means that there is no title to it. If there is title then it is not a "common property"*

105. Based on the above decided cases, where car parks or facilities are not expressly listed or designated as common property in the SPAs, they cannot be treated or inferred to be common property in law.

106. Applying this to the present facts, at no material time was Utility 1 and the 115 car parks ever listed or identified as common facilities in the Residential and Commercial SPAs or their schedules, let alone in any document before this Court.

107. Instead, the documents that are available show that ownership of Utility 1 and its accessory parcels belong with TSIPM.

108. In the absence of any document identifying Utility 1 and its accessory parcels as common property, the Plaintiff(s) allegation that the parcel was unlawfully carved out of common property is, with respect, entirely speculative and unsupported by the documentary evidence.

109. The Court therefore concludes that the Plaintiffs have failed to establish the fundamental premise of their claim, namely that Utility 1 was ever common property in the first place.

110. I will now proceed to consider the Plaintiffs' complaint of an alleged shortage of car parks and the issue in relation to the eight (8) OKU car parks within the Development.

DEVELOPMENT ORDERS AND ALLEGED SHORTAGE OF CARPARKS

111. To recap, the Plaintiffs' allege that TSID failed to provide a sufficient number of visitor and OKU carparks as required by the DO's and applicable guidelines.

112. In this regard, on the available evidence, I find that none of the three (3) DOs i.e the 2005 DO, the 2006 DO, or the 2010 DO ever expressly or impliedly specify the number of visitor or OKU car parks required to be provided within the Development. This was confirmed by PW5, the Plaintiffs' own witness, under cross-examination. PW5 himself confirmed that each of the DOs he was shown did not specify any number of OKU or visitor carparks.

113. PW6, the Plaintiffs' expert, also conceded during cross-examination that the DBKL guidelines on visitor carpark ratios that he sought to rely upon were from 2011 and could not have applied to a Development Order dated 2005.

114. The unchallenged evidence of DW4 establishes that the Development contains a total of 909 carparks, substantially exceeding the total requirement of 742 carparks stipulated in the 2005 DO. On these facts, there is no evidence of any shortage of carparks resulting from the accessorising of 115 carpark bays to Utility 1. I will now consider the DOs and the specific evidence that was led on this issue of car parks.

115. As highlighted earlier, there were three (3) DOs issued by DBKL as follows:

i. the 2005 DO **[See Page 7, CCB (Vol. 1), Enclosure 198];**

ii. the 2006 DO **[See Page 17, CCB (Vol. 1), Enclosure 198];** and

iii. the 2010 DO **[See Pages 19-20, CCB (Vol. 1), Enclosure 198 (dated copy)/Pages 21-22, CCB (Vol. 1), Enclosure 198 (undated copy)]**.

116. The 2005 DO stipulates as follows:

5. Jumlah ruang letak kereta yang diperlukan bagi pembangunan ini sebanyak 742 ruang letak kereta (656 ruang letak kereta untuk kediaman dan 86 ruang letak kereta untuk perdagangan) hendaklah diperuntukkan.

117. The 2005 DO, 2006 DO and the 2010 DO issued by DBKL did not specify or prescribe the number of visitor or OKU car parks required to be provided within the Development.

118. The Plaintiffs" expert, PW6 confirmed this:

STEVEN *Should be, because so long you're complying with the 20%, sure.*

JUDGE *Yes.*

STEVEN *Any extra you can sell or whatever, as accessory parcel.*

JUDGE *Alright.*

KN *Ok. Just to be clear, there are actually, there are over 900 car parks in the development. Physically now.*

JUDGE *Are you aware how many physical car parks there in the apartment?*

STEVEN *After 2011, yes, 900. They're adding 115 into it, I think. Yes.*

KN *So, there are over 900 car parks there.*

STEVEN Yes.

[See Page 112, DNOP, Vol. 4, Enclosure 186]

119. On this issue, the Defendants' expert witness, DW1 testified during cross examination as follows:

NI *Mr Siva, although the development order did not specify the exact number of visitor carparks, it is actually mentioned in the approved building plans, 20% visitor carparks.*

SIVA *Yes, it was mentioned there, but there is a letter of exception by the authorities, ok, based on the date of 03/02/2017. It says since it was not mentioned, so, there's no requirement to allocate a visitor's carpark.*

[See Page 52, DNOP, Vol. 5, Enclosure 187]

120. The Plaintiffs' own witness, PW5 also confirms this during his cross examination:

JUDGE *Which one? Sorry, page?*

MG *Page 700, My Lord. Bundle B2.*

JUDGE *Alright, I've got it. This is what? A DO, is it?*

MG *Yes, My Lord. Mr Wong, I put to you that within this DO, it doesn't specify the number of OKU carparks or visitor carparks to be provided by D1.*

WONG Yes.

MG *Ok, Mr Wong, if you can just move to page 710 on the same bundle.*

WONG Yes.

MG This is an amended DO issued by the DBKL, dated 03/05/2006.

WONG *Yes.*

MG *Does it specify a number of OKU or visitor carparks?*

WONG No.

MG *Moving on to page 712 of the same bundle.*

WONG *Yes.*

MG *Kebenaran mendirikan bangunan dated 16/10/2008, issued by DBKL.*

WONG *Yes.*

MG *Does it specify the number of OKU carparks or visitor carparks required?*

WONG *No.*

MG *And then the next page, Mr Wong. 714, please.*

WONG *Yes.*

MG *This is a further amended DO dated 17/03/2010, issued by DBKL. Does this amended DO specify the number of OKU carparks and visitor carparks required by the development?*

WONG *Excuse me, I don't see the dated.*

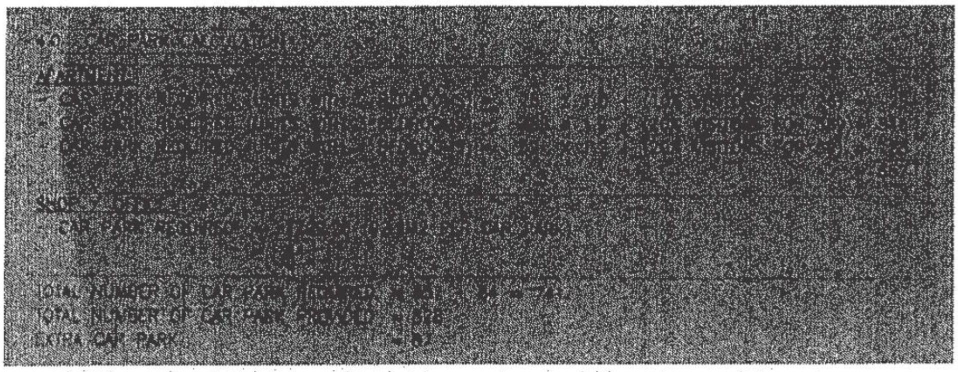
JUDGE The date? This seems to be undated. Page 714.

MG *Sorry, Mr Wong. Ok, I'll just refer to the document itself. This amended DO. When I can confirm the date, I'll come back to you. But does this DO at pages, amended DO at pages 714 and 715, does it specify any number of OKU carparks or visitor carparks to be provided within the development?*

WONG No.

[See Pages 75-76, DNOP, Vol. 3, Enclosure 185]

121. The Court then notes that the Development Schedule of the 2005 DO stipulates as follows [See **Page 23, CCB (Vol. 1), Enclosure 198]**.


TOTAL NUMBER OF CAR PARK REQUIRED
TOTAL NUMBER OF CAR PARK PROVIDED
EXTRA CAR PARK

122. PW5 further confirms this during cross examination:

MG This is page 4 0/87, My Lord.

JUDGE Ok, alright.

MG Mr Wong, can you confirm that at 4.0 for apartment, it says that the number of carparks to be provided is 664?

JUDGE Yes?

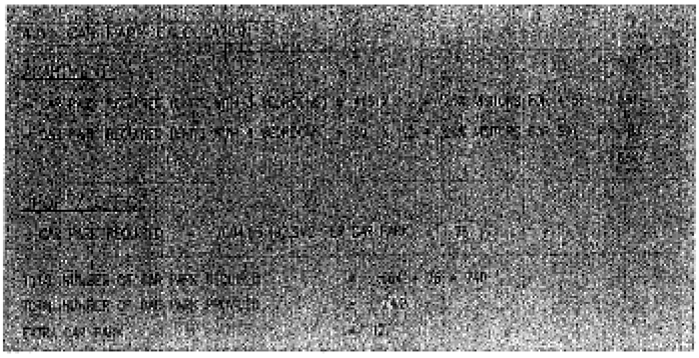
WONG Yes, correct.

MG And then just below for shop/office, the number of carparks to be provided is 76. Can you confirm that?

WONG Yes

[See Pages 77-78, DNOP, Vol. 3, Enclosure 185]

123. The Development Schedule of the 2008 DO stipulates as follows [See **Page 28, CCB (Vol. 1), Enclosure 198]:**



124. PW5 also confirms this:

MG Ok, then I will move on to page 8 which is the approved BP issued dated 16/10/2008. So, it's page 8ofB7.

WONG Yes.

MG So, in the 2008 plans, can I confirm that for apartment carparks, what was required was 664 lots?

WONG Yes.

MG And for shop office, what was required was 76?

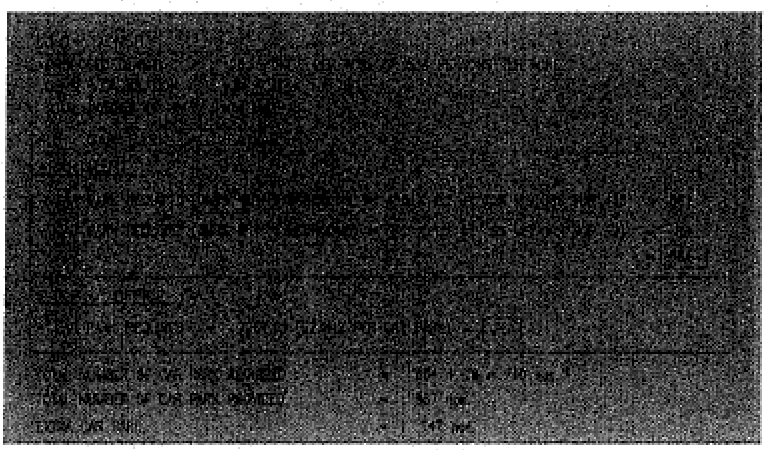
WONG Yes.

MG And total number of carparks required was 740?

WONG Yes.

[See Page 78, DNOP, Vol. 3, Enclosure 185]

125. The Development Schedule of the 2010 DO stipulates as follows [See Page 32, CCB (Vol. 1), Enclosure 198]:



126. PW5 then also confirms this during cross examination:

MG Page 12, My Lord.

JUDGE Yes.

MG Ok, the oarparks required was similar to the previous one we were looking at. Apartment required carparks, 664 lots.

WONG Yes, correct.

MG Shop or office, 76 lots.

WONG Yes.

MG And total number of carparks required, 740 lots?

[See Page 79, DNOP, Vol. 3, Enclosure 185]

127. The Defendants' expert witness, DW1 explained in his report that the ratios are only set to ensure adequate parking is provided and no explicit number or breakdown is stated or required. The following is the extract from his report **[See Pages 32-33, CCB (Vol. 3), Enclosure 200]:**

64	The formula from the amended approved building plan 2011 used to determine the total number of car parks required. The formula used takes into account the elements necessary to deriver ths total car parks required for residential and commercial units. Ratio of Car Park: The plan specifies the different required ratio of car parks per residential unit and per commercial. This ratio Is based on ths requirements set by OBKL to ensure adequate parking Is provided. Percentage of Visitor: The percentage factor of visitor Is used far residential units in determination the total number of rar parts allocation Total Required Car Parks; By applying the specified ratios and visitor car part percentage to the total number of residential and commercial units, the plan calculates the overall number of car parks needed. note: The approved calculation does not explicitly state

	the number of visitor car parks Instead the formula demonstrates the total car park provision requirement.

128. It is TSID's position that the total number of car parks provided within the development is 909 car parks. Evidence was provided on the breakdown by the Defendants' witnesses, and which was unchallenged by the Plaintiffs' counsel during cross-examination [See **Pages 10-11, WS-DW(4A), Enclosure 176]:**

25. Q: How many car parks did the Second Defendant provided for the Development?

A: The Second Defendant has provided a total of 909 car parks consisting of 725 residential car parks, 144 commercial car parks and 40 car parks for visitors. The comparison between the requested and provided car parks is as follows:

	Required car parks (DO)	Provided car parks	Surplus car parks provided
Residential car parks	656	725	69
Commercial car parks	86	144	58
Common Property car parks	-	40	40
Total car parks	742	909	167

10

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129. The Plaintiffs have continuously alleged that there is a shortage of car parks without providing any evidence to substantiate such a claim.

130. If at all there is such a shortage, in the Court's opinion, it is the Plaintiffs' own refusal to cooperate and to allow TSIPM to manage the car parks that has in fact contributed to any perceived shortage.

131. Critical as well in the Court's view on the issue of the parking lots is USSB's letter to DBKL dated 24th January 2017 and DBKL's reply dated 3rd February 2017 wherein DBKL informed that from a planning perspective, there were no specifications for visitor carparks as common property. These two letters are reproduced here for easy reference;

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UKUR SEKITAR SDN BHD (Company No. 213261-D)

Licensed Land & Strata Title, Mining, Hydrographic,
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-Land Development Consultants

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email : usskjb@gmail.com

Your Ref: (88) dlm.DBKL.JPRB.5853/2003
Our Ref:

24hb Januari, 20 17

JABATAN PERANCANGAN BANDARAYA
Tingkat 7-14, Menara DBKL 1,
Jalan Raja Laut,
50350 Kuala Lumpur

Haji Zulkurnain Hassan,

Tuan,

Per : Permohonan Untuk Memecah Bahagi Bangunan bagi First Residence Di Atas Lot 67231 (PN 45882), Mukim Batu, Wilayah Persekutuan Kuala Lumpur.
~Keperluan Tempat Letak Kereta Pelawat Dalam Cadangan Pelan Strata (CPSP)~

Merujuk kepada perkara di atas, kami adalah Jurukur Tanah Berlesen bagi permohonan di atas.

2. Merujuk kepada surat tuan bertarikh 23 Disember 2016 yang ditujukan kepada Jabatan Ukur dan Pemetaan WPKL, kami ingin mendapatkan pengesahan daripada pihak tuan seperti berikut :

a. Tempat letak kereta pelawat bukan sebagai harta bersama.
b. Tiada syarat dalam Perintah Pembangunan yang mengatakan keperluan tempat letak kereta pelawat hendak dijadikan sebagai harta bersama.

3. Maklum balas daripada pihak tuan terhadap perkara yang tersebut di atas amat kami hargai dan didahului dengan ucapan ribuan terima kasih.

Sekian, harap maklum.

Yang Benar,
Bagi Pihak
UKUR SEKITAR SDN. BHD. (213261-D)

LEE KWONG HOO M.I.S(M). M.A.A.L.S
B. Sc. (Hons) Surveying Sciences & Mapping (London)
Jurukur Berlesen
Dibawah Akta 458 (Dipinda 1991)

WE HEREBY ACKNOWLEDGE RECEIPT OF THE ABOVE ORIGINAL DOCUMENT
DITERIMA
AUTHORISED SIGNATORY:
NAME:
DESIGNATION: TIMB. PENGARAH KANAN JAB. PERANCANGAN BANDARAYA DEWAN BANDARAYA KUALA LUMPUR
DATE:

c.c. En. Malik
Jabatan Ukur dan Pemetaan Wilayah Persekutuan KL.

DITERIMA
02 FEB 2017
Jabatan Ukur Wilayah Persekutuan Kuala Lumpur / Putrajaya
Surat Pengesahan ini tidak menyatakan untuk membuat tuntutan kepada LJT

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726

DEWAN BANDARAYA KUALA LUMPUR

JABATAN PERANCANGAN BANDARAYA
Tingkat 7-14, Menara DBKL 1
Jalan Raja Laut
50350 KUALA LUMPUR
Telefon : 03-26179000
Faks : 03-26910442
http://jprb.dbkl.gov.my

PEMENANG ANUGERAH ... PBT 2010

Rujukan Kami : (92) dlm. DBKL.JPRB.5853/2003

Tarikh : 3 FEB 2017

Tetuan Ukur Sekitar Sdn. Bhd.
Suite 558-4-9, Tingkat 4, Kompleks Mutiara,
Batu 3 ½, Jalan Ipoh,
51200 Kuala Lumpur
(u.p.: Sr. Lee Kwong Joo)

Tel. : 03-6250 3377
Faks: 03-6250 9339

Tuan,

Permohonan untuk Memecah Bahagi Bangunan bagi First Residence di atas Lot 57231 (PN 45992), Mukim Batu, Wilayah Persekutuan Kuala Lumpur.
- Keperluan Tempat Letak Kereta Pelawat dalam Cadangan Pelan Strata (CPSP)

Dengan hormatnya saya diarah merujuk kepada perkara dan surat tuan bertarikh 24.1.2017.

2. Untuk makluman tuan, pembangunan di atas telah diberikan kelulusan melalui Perintah Pembangunan bertarikh 20.10.2006 dan 3.5.2009.

3. Berdasarkan kepada Syarat No. 5 pada Perintah Pembangunan bertarikh 20.10.2006, bilangan ruang letak kereta yang diperlukan bagi pembangunan ini adalah sebanyak 742 ruang letak kereta yang merangkumi 656 ruang letak kereta untuk kediaman dan 86 ruang letak kereta untuk perdagangan.

4. Berdasarkan syarat tersebut, tidak menyatakan secara terperinci bilangan tempat letak kereta untuk tujuan pelawat. Oleh yang demikian, dari segi perancangan, tiada ketetapan dibuat pada ketika itu untuk penyediaan tempat letak kereta pelawat sebagai harta bersama.

Sekian, terima kasih.

132. Based on all the above, I accordingly find that TSID has complied with all applicable DOs and that there is no established breach of any applicable laws arising from the provision of carparks in the Development.

133. On this issue of OKU carparks, the Court notes that there are 8 designated OKU carpark bays on Level 1. Learned counsel for the

Plaintiff conceded that there is nothing that stipulates that such OKU carparks must be common property and that there is no evidence that such OKU carparks were being rented out.

134. I will now proceed to consider the various individual purchasers' claim in Suit 271 i.e that of a breach of the SPAs and fraudulent misrepresentation. To recap, the complaints relate to a lack of ample parking and the provision of 3-tier security system.

BREACH OF THE RESIDENTIAL AND COMMERCIAL SPAs Visitor Carparks and "Ample Parking"

135. The Purchasers in Suit 271 allege that TSID breached the residential SPAs by failing to provide ample visitor parking as represented in the sales brochure.

136. With respect, I find that such claim is not made out. At the outset, I note that during cross-examination, neither PW4 nor PW5 were able to provide any figure as to what number of carparks would constitute "ample" parking. PW5 accepted that he could not give the Court any number whatsoever. In the Court's view, a claim for breach of contract based on a failure to provide "ample" parking must be supported by some evidential basis establishing what "ample" requires numerically. That evidence is entirely absent before this Court.

137. Moreover, the evidence adduced establishes that the Development has over 900 carparks in total which was in excess of that stipulated in the DO. In the absence of any evidence that the number of carparks actually provided falls short of what was represented, this aspect of the claim fails.

3-Tier Security System

138. The Plaintiffs' allegation of fraudulent misrepresentation with respect to the 3-tier security system is, in my judgment, also entirely without merit on the evidence.

139. Both PW4 and PW5 admitted under cross-examination that the 3-tier security system was in fact provided by TSID and continues to exist and functions as intended to this day. PW5 confirmed that the system has always functioned as it should and that the existence of the carparks at Level 1 does not threaten the 3-tier security system. PW4 also confirmed that the 3-tier security system was indeed delivered at the date of vacant possession.

140. The Plaintiffs' grievance in reality relates to a proposal tabled at an Annual General Meeting to relocate the ground floor guardhouse to Level 2. PW4 however confirmed that this motion was never approved. The 3-tier security system therefore remains intact and was never removed. In the Court's opinion, a representation cannot be rendered fraudulent by a subsequent proposal that was never implemented. The Plaintiffs have also highlighted that TSIPM's counterclaim in Suit 773, if allowed, will then undermine the 3-tier security system and I will deal with this issue when considering the Defendants' counterclaim later.

141. As such, I find that TSID did not fraudulently misrepresent the 3-tier security system to the Purchasers and that there has been no breach of the SPA's in this respect.

Consent for Deviations from Building Plans

142. The Purchasers then also allege/contend that TSID failed to obtain their prior written consent before deviating from the approved Building Plans by creating Utility 1 as a parcel and accessorising 115 carparks to it.

143. The Defendants' position, via the evidence of their expert witness, which I accept, is that Utility 1 is within the commercial area of the

Development and is not subject to the consent provisions of the Housing Development (Control and Licensing) Act 1966.

144. In any event, having found that the Property is not and has never been common property, and that the Certified Strata Plans lawfully identify it as an individual and accessory parcel, there is no basis upon which the Purchasers can claim that the creation of Utility 1 constituted an unlawful deviation from the Building Plans that required their consent.

Commercial SPAs

145. The two commercial Plaintiffs (Plaintiffs 97 and 98) have failed to produce their respective SPAs. They should not be able to sustain a claim for breach of contract without placing the relevant contractual terms before the court.

146. In any event and nonetheless, significant in the Court's view is that PW4, a commercial unit owner had testified during cross examination that he had proceeded to buy his commercial unit in 2020 with full knowledge of the Development's commercial car park arrangements.

KN So, in 2020 when you purchased the shop, you were familiar with the development?

CHONG Yes.

KN And you were aware of the commercial car parking arrangements there?

TRANSL Commercial parking arrangement?

KN Of the commercial car parking arrangements in 2020.

CHONG Yes.

KN And you've already said this was important to you?

CHONG Yes.

KN So, in 2020, you would have been satisfied with the commercial car park arrangements?

CHONG Disagree.

KN Why do you disagree?

CHONG The reason I bought the shop lot is not because of the commercial parking, but it was because I am staying there.

JUDGE So, you bought it even knowing there is no commercial car park?

CHONG Yes.

[See Page 37, DNOP, Vol. 2, Enclosure 184]

147. In his witness statement, PW4 also complains that his unit bears an "office" title rather than a shop title **[See Q&A 28, Pages 6-7, WS-PW4, Enclosure 163]**. However, he admits in cross examination that he is presently operating the unit as an optical shop:

KN So, in your witness statement you have said that you received an office rather than a shop.

JUDGE Which question and answer?

KN That is at question and answer 28.

JUDGE "I bought a shop but they delivered an office title to me", ok.

CHONG Yes.

KN But you use it as a shop, don't you?

CHONG Yes.

[See Page 15, DNOP, Vol. 2, Enclosure 184]

148. As such, I find no breaches of the SPAs by TSID and also find no fraudulent misrepresentation. In my considered view, based on the available evidence before this Court, I find and conclude that the Plaintiffs' herein have failed to establish their claim of fraud or fraudulent misrepresentation as well as breach of contract to the satisfaction of the Court.

THE PLAINTIFFS' VALUATION REPORT

149. On one of the final days of trial, the Plaintiffs sought to introduce a valuation report on the market value of the Property prepared by one Transasia Property Consultancy Sdn Bhd. The Defendants objected on the grounds of prejudice as they had no prior notice of the report and no opportunity to respond.

150. I uphold such objection. This action was commenced in 2021. The Plaintiffs had nearly five years in which to obtain and disclose any valuation evidence they wished to rely upon. Such a late attempt should not be allowed or condoned. (See the case of *Aman Setia Land Sdn Bhd v. Beng Choo Ventures Sdn Bhd* [2025] MLJU 279). In addition, and importantly, the maker of the report was not called to testify. No weight or evidential value can therefore be attached to a report whose maker has not been called to give evidence and be subject to cross-examination. (See the case *of Agromate (M) Sdn Bhd v. KTS Trading Sdn Bhd* [2017] CLJU 1707; [2017] 1 LNS 1707; [2017] MLJU 1815. I accordingly disregard this report entirely.

CONCLUSION ON PLAINTIFFS' CLAIMS.

151. Having regard to all the matters above and the totality of the evidence adduced before this Court, the inevitable conclusion is that the Plaintiffs' have failed to prove on a balance of probabilities their various claims against the Defendants' and the Court therefore dismisses both claims in Suit 773 and Suit 271.

TSIPM'S COUNTERCLAIM FOR TRESPASS AND NUISANCE

152. I turn now to TSIPM's counterclaim in Suit 773 for trespass as well as nuisance and related reliefs. In this regard, TSIPM plead that FRMC padlocked the door to Utility 1 and blocked access to the Level 1 car park and thus trespassed on its property.

153. In this regard, PW-5 admitted under cross-examination that FRMC did not respond to TSIPM's correspondence complaining about the padlocking of Utility 1 and the blocking of access to the car parks. During the judicial site visit on 9th January 2026, this Court observed that wooden planks had been placed to obstruct the doorway providing access from the first-floor shop units to the carpark, and these had to be physically removed to enable access. The Court also observed that Utility 1 was no longer locked that day.

154. However, upon conclusion of trial and oral submissions by learned counsel, (and prior to the Court delivering its decision) solicitors for the Defendant had via their letter to Court dated 10th June 2026 informed that they had obtained the Defendants instructions to withdraw its counterclaim in Suit 773 but on the basis that no order is made as to costs in respect of the same. They also attached thereto a letter of response from the Plaintiff's solicitors informing that the Plaintiff had no objections to the withdrawal of the counterclaim but sought costs for the counterclaim. Under such circumstances, solicitors for the Defendant informed the Court that they were not seeking any remedy via their counterclaim save for an order of damages in respect of trespass.

155. Having considered all matters as above and notwithstanding that I have found that TSIPMs title is indefeasible, I would dismiss the counterclaim for the following reasons.

156. Firstly, I find that TSIPM has not discharged the burden of proving that FRMC padlocked the door. Significantly, FRMC denies padlocking it. Further, TSIPM's conduct is telling in that they allowed the door to remain locked. Their reluctance to unlock the door seems consistent with an awareness that the doors status was a matter being contested in Court and appears inconsistent with the conduct of a rightful owner seeking to exercise property rights.

There is also insufficient evidence before the Court that it was FRMC who allowed unauthorised vehicles to park. In fact, TSIPM continues to rent those car parks whilst this Suit is pending. Further, and in any event, TSIPM themselves admit that the Utility room was never used as an office as they had always used the car parks through the agency agreement with the previous JMB.

157. Secondly, the relief sought in TSIPM's counterclaim, to wit, the order to open the door between the shops and the level 1 podium would, as correctly pointed out by the Plaintiffs', necessarily compromise the 3-tier security system of the development. Such security system was a contractual representation made to all purchasers. DW4 himself admitted that if the fire staircase door were opened, it would have to remain unlocked, thus giving members of the public potential access to the property and some facilities.

158. Thirdly, FRMC is arguably not the proper party to the counterclaim in any event. I say this because the 3-tier security system is a common facility of the development and as we have seen, FRMC's powers and duties are only confined to the "management" of common property. Hence, if TSIPM wish to seek an order affecting the security facilities, the proper defendants should also be the individual purchasers and not FRMC alone.

159. As such, in the upshot, TSIPM's counterclaim is dismissed.

SUMMARY OF FINDINGS

160. For all the reasons set out above, I make and/or summarise the following findings/conclusions:

a) FRMC lacks the requisite locus standi to maintain Suit 773 insofar as it seeks the transfer of the strata title of the Property to itself;

b) the Plaintiffs have failed to establish fraud or any vitiating circumstance under s.340(2) NLC 1965. TSIPM's title to the Property is indefeasible;

c) Utility 1 and the 115 accessory carpark parcels are not common property of the Development, as determined by reference to the Certified Strata Plans and Schedule of Parcels in accordance with the principles enunciated in the case of ***Target Term*** **(supra);**

d) TSID has complied with all applicable DCs. No shortage of carparks has been established;

e) TSID has not breached the residential or commercial SPAs. The 3-tier security system was provided and continues to function.

f) the Plaintiffs' claim in respect of visitor carparks is unsupported by evidence; and

g) TSIPM's Counterclaim against FRMC is without basis.

ORDERS

161. It is accordingly ordered as follows:

a) The Plaintiffs' claims in both Suit WA-22NCVC-773-11/2021 and Suit WA-22NCVC-271-05/2022 are hereby **dismissed;**

b) TSIPM's Counterclaim in Suit WA-22NCVC-773-11/2021 is also **dismissed;**

c) As for Suit 271, bearing in mind that they are individual purchasers, and as it was FRMC themselves who applied to have the Suit consolidated with Suit 773, the Court sees it fit to make no order as to costs for Suit 271;

d) As for Suit 773, considering that both the Plaintiffs' claim and the counterclaim have been dismissed, the Court nonetheless is of the view that the Defendants' are entitled to costs. In this regard, the Court orders FRMC to pay costs in the amount of RM 60,000.00 to the Defendants subject to allocator.

Dated: 25 JUNE 2026

(ANAND PONNUDURAI)
Judge
High Court Kuala Lumpur

Counsel:

For the plaintiffs - Neela Laduray; M/s Neela

For the defendants - Kamraj Nayagam, Maya Gayathri & Rosemary Ting; M/s Kamariyah & Philip Koh

Case(s) referred to:

Datuk Bandar Kuala Lumpur v. Perbadanan Pengurusan Trellises & Ors [2023] 5 CLJ 167.

Target Term Sdn. Bhd. v. Waldorf and Windsor Management Corporation [2025] 2 CLJ 386; [2024] 6 MLJ 598

Teh Tiong Khim & Anor v. Sime Darby Brunsfieid Damansara Sdn Bhd & Anor [2023] CLJU 2978; [2023] 1 LNS 2978

Leong Chye & Anor v. United Overseas Bank (Malaysia) Bhd. [2021] 6 CLJ 650.

Malaysia Land Properties Sdn. Bhd. v. Waldorf & Windsor Joint Management Body [2014] 6 CLJ 821.

Letchumanan Chettiar Alagappan (as executor to SL Alameloo Achi (Deceased) v. Secure Plantation Sdn Bhd [2017] 5 CLJ 418; [2017] 4 MLJ 697

Gleeson v. J. Wippell & Co. Ltd [1977] 1 WLR 510.

UEM Sunrise Bhd. v. Majlis Perbandaran Johor Bahru Tengah [2016] 11 MLJ 133.

Perbadanan Pengurusan 3 Two Square v. 3 Two Square Sdn. Bhd. [2023] CLJU 2442 '

Law Kam Loy & Anor v. Boltex Sdn Bhd & Ors [2005] 3 CLJ 355

Malayan Banking Bhd v. Tho Siew Wah & Anor and Another Appeal [2017] 7 CLJ 573

Setiakon Engineering v. Mak Yan Tai & Anor [2024] 8 CLJ 190

Perbadanan Pengurusan One Tanjung v. Province Valley Sdn. Bhd. [2025] CLJU 1123

Saluran Projek Sdn. Bhd. & Anor v. Badan Pengurusan Bersama Krystal Point [2016] CLJU 728; [2016] 1 LNS 728

Prestaharta Sdn. Bhd. v. Ahmad Kamal bin Md Alif & Ors [2016] 4 MLJ 39

Plaza Pekeliling Management Corporation v. IGB Corporation Berhad & Anor [2003] MLJU 216

Sri Keladi Sdn. Bhd. (in liquidation) v. Bukit OUG Condominium Joint Management Body [2023] 1 MLJ 34

Aman Setia Land Sdn Bhd v. Beng Choo Ventures Sdn Bhd [2025] MLJU 279

Agromate (M) Sdn Bhd v. KTS Trading Sdn. Bhd. [2017] CLJU 1707; [2017] 1 LNS 1707