IN THE HIGH COURT OF MALAYA AT SHAH ALAM, SELANGOR DARUL EHSAN

CIVIL SUIT NO: BA-22C-30-05/2017

BETWEEN

PJ CENTRESTAGE JMB (Certificate of Establishment No.: 0337) **… PLAINTIFF**

AND

1. **CHERISH SPRINGS SDN. BHD.** (Co. No.: 833739-K)
2. **LEADMONT PROPERTIES SDN. BHD.** (Co. No.: 1099213-U)
3. **MAJLIS BANDARAYA PETALING JAYA**
4. **HONG LEONG BANK BHD.** (Co. No.: 97141-X)
5. **MALAYAN BANKING BHD.** (Co. No.: 196001000142) **… DEFENDANTS**

JUDGMENT

(After trial)

A. Introduction

1. This judgment concerns a mixed development project in a "*development area*" [as understood in s 2 of the Building and Common Property (Maintenance and Management) Act 2007 (**BCPA**)] in Petaling Jaya, Selangor known as "*Centrestage*" [**Development Area (Centrestage)**].

2. BCPA has now been repealed by the Strata Management Act 2013 (**SMA**) but the material facts in this case arose before the enforcement of SMA. Hence, the application of BCPA in this case.

B. Background

3. The first defendant company (**1st Defendant**) was -

(1) the original registered proprietor of two lots of 99 years leasehold land (**Lands**) held under the following titles -

(a) PN 101555, Lot 3, Section 13, Petaling Jaya Town, Petaling Jaya District, Selangor, measuring approximately 9289 square metres (**sm**); and

(b) PN 101556, Lot 72, Section 13, Petaling Jaya Town, Petaling Jaya District, Selangor, measuring approximately 5536 sm.

The Development Area (Centrestage) is situated on the Lands; and

(2) a "*developer*" (as defined in s 2 BCPA) of the Development Area (Centrestage).

4. On 24.6.2010, the local authority in this case, Majlis Bandaraya Petaling Jaya (**MBPJ**), granted "*planning permission*" for the 1st Defendant to develop the Development Area (Centrestage) (**Development Order**).

5. The 1st Defendant's building plans for the Development Area (Centrestage) had been approved by MBPJ on 26.4.2011 [**Approved 1st Defendant's Building Plans (26.4.2011)**]. According to the Approved 1st Defendant's Building Plans (26.4.2011), the 1st Defendant would build 1,141 ordinary car park bays and 20 "*Orang Kurang Upaya*" (**OKU**) car park bays.

6. According to the 1st Defendant's marketing brochure of the Development Area (Centrestage) (**1st Defendant's Marketing Brochure**), upon the completion of the Development Area (Centrestage), the Development Area (Centrestage) would consist of -

(1) two blocks of "*SOHO*" (Small Office/Home Office) designer suites of 11 and 14 storeys (totaling 789 units);

(2) one block of serviced apartments of 11 storeys (with 352 units) on top of a six-storey podium (**Podium**); and

(3) the Podium would comprise -

  (a) five storeys of shop lots (158 units);

  (b) commercial lots;

  (c) four levels of car park bays; and

  (d) two levels of basement.

7. The 1st Defendant sold "*parcels*" (as defined in s 2 BCPA) of SOHO, serviced apartments and retail/shop lots (referred collectively in this judgment as "**Parcels**") in the Development Area (Centrestage) to purchasers (**Purchasers**). With regard to the Parcels, the Purchasers had executed the following two agreements with the 1st Defendant:

   (1) Sale and Purchase Agreements (**SPAs**); and

   (2) Deed of Mutual Covenants (**DMCs**).

   The SPAs and DMCs had identical definitions of "*common property*" [**Common Property Definition (SPAs and DMCs)**] and "*strata plan*" [**Strata Plan Definition (SPAs and DMCs)**] as follows -

" ***"Common Property" in relation to the [Development Area (Centrestage)], means so much of the [Development Area (Centrestage)] as in not comprised in any parcel (including accessory parcels), such as the structural elements of the buildings,*** *stairs, stairways, fire escape , entrances and exits, corridors, lobbies, fixtures and fittings, lifts, refuse chutes, refuse bins, drains water tanks, sewers, pipes, wires, cables and ducts that serve more than one parcel, and all other facilities and installations and any part of the [Lands] used or capable of being used or enjoyed in common by all the occupiers of the Said Building, as shown in the Strata Plan.*

"Strata Plan" means a location plan and a storey plan and includes a plan of division or amalgamation of any parcels shown in the Strata Plan approved by the Appropriate Authority."

(emphasis added).

8. The 1st Defendant submitted amended building plans for the Development Area (Centrestage) which were approved by MBPJ on 10.4.2013 [**Approved 1st Defendant's Amended Building Plans (10.4.2013)**]. The Approved 1st Defendant's Amended Building Plans (10.4.2013) provided for the same number of ordinary car park bays and OKU car park bays as stated in the Approved 1st Defendant's Building Plans (26.4.2011).

9. Upon application by the 1st Defendant, MBPJ further approved amendments to the 1st Defendant's amended building plans for the Development Area (Centrestage) on 26.6.2013 [**Approved 1st Defendant's Amended Building Plans (26.6.2013)**]. According to the Approved 1st Defendant's Amended Building Plans (26.6.2013), the 1st

Defendant would provide for 1,155 ordinary car park bays and 30 OKU car park bays in the Development Area (Centrestage).

10. On 24.7.2014, the "*Certificate of Completion and Compliance*" (**CCC**) for the Development Area (Centrestage) had been issued. The CCC stated that, among others, the development of the Development Area (Centrestage) was completed based on the 1st Defendant's building plans which had been approved by MBPJ on 8.5.2014 [**Approved 1st Defendant's Building Plans (8.5.2014)**].

11. Vacant possession of the Parcels was delivered by the 1st Defendant to the Purchasers in or around June or July 2014.

12. By way of a SPA dated 3.5.2015 [**SPA (5th Floor Parcel, 1st Defendant-2nd Defendant)**] between the 1st Defendant and second defendant company (**2nd Defendant**), the 1st Defendant sold the following properties to the 2nd Defendant at a price of RM13,083,520.45 {**Price [SPA (5th Floor Parcel, 1st Defendant-2nd Defendant)]**}:

    (1) the parcel in the fifth floor in Block B [**5th Floor Parcel (Block B)**] of the Development Area (Centrestage) measuring 12,916.68 square feet (**sf**); and

    (2) the accessory parcel to the 5th Floor Parcel (Block B) measuring 13,250.36 sf

    {**Subject Matter [SPA (5th Floor Parcel, 1st Defendant-2nd Defendant)]**}.

13. The 1st Defendant entered into a SPA on 3.5.2015 with the 2nd Defendant [**SPA (6th Floor Parcel, 1st Defendant-2nd Defendant)**] whereby the 1st Defendant sold the following properties to the 2nd Defendant at a price of RM9,402,266.90 {**Price [SPA (6th Floor Parcel, 1st Defendant-2nd Defendant)]**}:

    (1) the parcel in the sixth floor in Block B [**6th Floor Parcel (Block B)**] of the Development Area (Centrestage) measuring 12,916.68 sf; and

    (2) the accessory parcel to the 6th Floor Parcel (Block B), namely the Rooftop of the 6th Floor (Block B)

    {**Subject Matter [SPA (6th Floor Parcel, 1st Defendant-2nd Defendant)]**}.

14. On 23.5.2015, the plaintiff (**Plaintiff**), the Joint Management Body (**JMB**) of the Development Area (Centrestage) was established under s 7(2) BCPA.

15. On 25.5.2015, the 1st Defendant applied to the Land Office for a subdivision of the Development Area (Centrestage).

16. From June to August 2015, in a progressive manner, the 1st Defendant handed over the management and maintenance of the Development Area (Centrestage) to the Plaintiff.

17. The 1st Defendant applied to MBPJ and obtained MBPJ's approval on 16.10.2015 for amendments to the 1st Defendant's amended building plans for the Development Area (Centrestage) [**Approved 1st Defendant's Amended Building Plans (16.10.2015)**]. The Approved 1st

Defendant's Amended Building Plans (16.10.2015) provided for the 1st Defendant to build 1,187 ordinary car park bays and 24 OKU car park bays in the Development Area (Centrestage).

18. The fourth and fifth defendant companies ("**4th Defendant**" and "**5th Defendant**") are "*licensed banks*" within the meaning of s 2(1) of the Financial Services Act 2013.

19. The following matters transpired between the 2nd and 4th Defendants:

(1) at the 2nd Defendant's request to refinance the 2nd Defendant's purchase of the 5th Floor Parcel (Block B) from the 1st Defendant, the 4th Defendant granted to the 2nd Defendant two Fixed Term Loans totalling RM8,250,000.00 ("**4th Defendant's Term Loans**");

(2) as security for the 4th Defendant's Term Loans -

(a) the 2nd Defendant executed a "*First Party Deed of Assignment*" on 13.6.2016 in favour of the 4th Defendant with regard to the the 5th Floor Parcel (Block B) [**Assignment (5th Floor Parcel, 2nd Defendant-4th Defendant)**]. According to the Assignment (5th Floor Parcel, 2nd Defendant-4th Defendant), the 2nd Defendant assigned absolutely to the 4th Defendant -

(i) the 2nd Defendant's title, rights and interest in the 5th Floor Parcel (Block B); and

(ii) the entire benefit of the 2nd Defendant in the SPA (5th Floor Parcel, 1st Defendant-2nd Defendant).

The 1st Defendant had consented to the Assignment (5th Floor Parcel, 2nd Defendant-4th Defendant);

(b) the 2nd Defendant had executed two tenancy agreements with two companies [**2 Tenants (5th Floor Parcel)**] in respect of certain parts of the 5th Floor Parcel (Block B) [**2 Tenancies (5th Floor Parcel)**]. On 28.6.2016, the 2nd Defendant entered into two "*Deeds of Assignment of Proceeds*" in favour of the 4th Defendant wherein the 2nd Defendant assigned absolutely to the 4th Defendant all the proceeds received by the 2nd Defendant from the 2 Tenants (5th Floor Parcel) pursuant to the 2 Tenancies (5th Floor Parcel) [**2 Assignments (Tenancy Proceeds, 2nd Defendant-4th Defendant)**]; and

(c) the 4th Defendant had registered -

(i) the Assignment (5th Floor Parcel, 2nd Defendant-4th Defendant); and

(ii) the 2 Assignments (Tenancy Proceeds, 2nd Defendant-4th Defendant)

\- with "*Suruhanjaya Syarikat Malaysia*" (**SSM**) as charges over the assets of the 2nd Defendant [**4th Defendant's Charges (2nd Defendant's Assets)**]; and

(3) the 4th Defendant's Term Loans have been fully disbursed to the 2nd Defendant and there remains a sum still due from the 2nd Defendant to the the 4th Defendant pursuant to the 4th Defendant's Term Loans.

20. As between the 2nd and 5th Defendants:

(1) upon the request of the 2nd Defendant to refinance partly the 2nd Defendant's purchase of the 6th Floor Parcel (Block B) from the 1st Defendant, the 5th Defendant granted to the 2nd Defendant a Term Loan in a sum of RM5,641,000.00 ("**5th Defendant's Term Loan**");

(2) to secure the 2nd Defendant's repayment of the 5th Defendant's Term Loan -

(a) the 2nd Defendant executed an "*All Monies Assignment*" on 14.9.2015 in favour of the 5th Defendant with regard to the the 6th Floor Parcel (Block B) [**Assignment (6th Floor Parcel, 2nd Defendant-5th Defendant)**]. According to the Assignment (6th Floor Parcel, 2nd Defendant-5th Defendant), the 2nd Defendant assigned absolutely to the 5th Defendant -

(i) the 2nd Defendant's title, rights and interest in the 6th Floor Parcel (Block B); and

(ii) the entire benefit of the 2nd Defendant in the SPA (6th Floor Parcel, 1st Defendant-2nd Defendant).

The 1st Defendant had consented to the Assignment (6th Floor Parcel, 2nd Defendant-5th Defendant);

(b) the 2nd Defendant granted a power of attorney to the 5th Defendant in respect of the the 6th Floor Parcel (Block B);

(c) the 2nd Defendant had executed one tenancy agreement with a company [**Tenant (6th Floor Parcel)**] with regard to a certain

part of the 6th Floor Parcel (Block B) [**Tenancy (6th Floor Parcel)**]. The 2nd Defendant executed a "*Deed of Assignment of Proceeds*" in favour of the 5th Defendant wherein the 2nd Defendant assigned absolutely to the 5th Defendant all the proceeds received by the 2nd Defendant from the Tenant (6th Floor Parcel) pursuant to the Tenancy (6th Floor Parcel) [**Assignment (Tenancy Proceeds, 2nd Defendant-5th Defendant)**];

(d) the following guarantees had been executed in favour of the 5th Defendant -

(i) a personal guarantee [**Personal Guarantee (WHC-WTJ)**] signed by Mr. Wong Hon Chong (**WHC**) and Mr. Wong Tzy Jian (**WTJ**), the directors of the 2nd Defendant; and

(ii) Leadmont Development Sdn. Bhd. (**LDSB**) gave a corporate guarantee. LDSB owned all the shares in the 2nd Defendant; and

(e) the 5th Defendant had registered with SSM -

(i) the Assignment (6th Floor Parcel, 2nd Defendant-5th Defendant); and

(ii) the Assignment (Tenancy Proceeds, 2nd Defendant-5th Defendant)

- as charges over the assets of the 2nd Defendant [**5th Defendant's Charges (2nd Defendant's Assets)**]; and

(3) there is full disbursement of the 5th Defendant's Term Loan to the 2nd Defendant and the 2nd Defendant still owes money to the the 5th Defendant under the 5th Defendant's Term Loan.

21. The Plaintiff's "*Joint Management Committee*" (**JMC**) [as understood in s 11(1) BCPA] subsequently discovered the following matters:

(1) the 1st Defendant had failed to hand over to the Plaintiff documents which were necessary for the maintenance and management of the Development Area (Centrestage) [**Documents (Centrestage)**]. Some of the Documents (Centrestage) are as follows -

(a) the Development Order;

(b) the Approved 1st Defendant's Building Plans (8.5.2014) and all the amendments to the Approved Building Plans (8.5.2014) which had been approved by MBPJ;

(c) the "*As-Built Plans*" and the amended As-Built Plans for the Development Area (Centrestage), including the revised approved "*As-Built Electrical Single-Line Diagrams (Post Modification)*"; and

(d) all agreements entered into by the 1st Defendant and third parties regarding the maintenance and management of the Development Area (Centrestage); and

(e) the owners' register;

(2) the 1st Defendant had failed to build sufficient car park bays and bus parking bays in the Development Area (Centrestage);

(3) the 1st Defendant had unlawfully applied for the Land Office to issue and register strata titles for the following common property of the Development Area (Centrestage) in the sole name of the 1st Defendant -

(a) 342 car park bays (221 car park bays in Basement 1 and 121 car park bays at Level 2 to Level 6) (**342 Car Park Bays**), namely, Accessory Parcels nos. A2 to A6, A10 to A34, A37 to A44, A46 to A48, A50 to A63, A65, A66, A225 to A228, A233, A236 to A241, A261 to A270, A471, A517 to A521, A742 to A747, A900 and A917 to Parcel no. 1153 (Designer Suite no. C-06-18) (**Parcel no. 1153**);

(b) seven areas containing parking installations, structures and signages in Basement 1 [**7 Areas (Basement 1)**], namely, Accessory Parcels nos. A7 to A9, A35, A36 A45 and A49 to Parcel no. 1153;

(c) the landscape area measuring approximately 808 sm, including driveways, which forms an integral part of the road reserve and the perimeter landscape area, namely Accessory Parcel no. A1 to Parcel no. 1153 (**Landscape Areas**);

(d) five units of administration office at Level 5 (**5 Administration Offices**);

(e) the reinforced concrete rooftop at Level 6, namely Accessory Parcel nos. A899 and A921 to Parcel no. 334 (**Level 6 RC Rooftop**);

(f) part of the reinforced concrete rooftop at Level 14, Block B [Level 14 of the Approved Building Plan (8.5.2014)], namely Accessory Parcel nos. A1289 to A1294 to Parcel no. 783 (**Level 14 RC Rooftop**);

(g) entrance and reception area on the retail ground floor of the Podium, namely Accessory Parcel no. A64 to Parcel no. 334; and

(h) five external side façade upon which billboards are erected at Levels 8, 10, 13, 15 and 17 [Levels 7, 9, 12, 14 and 16 of the Approved Building Plan (8.5.2014)] (**5 Façade Areas**), namely Accessory Parcel no. A925, A1016, A1152, A1243 and A1295 to Parcel no. 783

[this judgment shall refer to the above properties as the "**Common Property (Claimed by Plaintiff)**"]; and

(4) the 1st Defendant had unlawfully sold the Common Property (Claimed by Plaintiff) to the 2nd Defendant.

C. <u>This action</u>

22. On 22.5.2017, the Plaintiff has initially filed this suit (**This Action**) against the 1st Defendant, 2nd Defendant and MBPJ (as the third defendant).

23. On 14.11.2017, the learned High Court Judge, See Mee Chun J (as she then was), allowed the Plaintiff's application for an interlocutory injunction to restrain the 1st and 2nd Defendants from dealing with the the Common Property (Claimed by Plaintiff) pending the outcome of the trial of This Action (**Trial**).

24. Upon MBPJ's application, This Action was struck out against MBPJ because MBPJ has immunity from suits under s 95(2) of the Street, Drainage and Building Act 1974.

25. On 9.8.2019, the Kuala Lumpur High Court (**Winding Up Court**) had allowed a petition by a creditor of the 1st Defendant to wind up the 1st Defendant and to appoint a private liquidator for the 1st Defendant (**Liquidator**).

26. The Plaintiff had obtained leave of the Winding Up Court to continue This Action against the 1st Defendant.

27. The 4th and 5th Defendants obtained leave of this court to intervene in This Action.

C(1). <u>Plaintiff's claim</u>

28. In This Action, the Plaintiff's Re-amended Statement of Claim (**RSOC**) had prayed for the following relief, among others:

    (1) a perpetual mandatory injunction for the 1st Defendant to hand the Documents (Centrestage) to the Plaintiff within 14 days from the date of the court's judgment;

(2) a declaration that -

(a) the Common Property (Claimed by Plaintiff) is the common property of the Development Area (Centrestage) which is under the management and maintenance of the Plaintiff;

(b) the Common Property (Claimed by Plaintiff) shall not be the subject matter of any -

(i) strata title for any parcel in the Development Area (Centrestage); and

(ii) accessory parcel to be used in conjunction with a parcel;

(c) the strata titles, rights and interest in the Common Property (Claimed by Plaintiff) in the name of, initially the 1st Defendant and subsequently the 2nd Defendant, are not indefeasible;

(d) any agreement entered into by the 1st Defendant, 2nd Defendant and/or any third party in respect of the Common Property (Claimed by Plaintiff) is null and void;

(e) the Assignment (5th Floor Parcel, 2nd Defendant-4th Defendant) and Assignment (6th Floor Parcel, 2nd Defendant-5th Defendant) [referred collectively in this judgment as "**2nd Defendant's 2 Parcel Assignments (4th and 5th Defendants)**"] are null and void;

(f) the 2 Assignments (Tenancy Proceeds, 2nd Defendant-5th Defendant) with the exclusion of the Common Property (Claimed by Plaintiff), are valid and enforceable; and

(h) the Assignment (Tenancy Proceeds, 2nd Defendant-5th Defendant) is null and void;

(3) an order for the Registrar of Titles (**RT**) to cancel the entry of the Common Property (Claimed by Plaintiff) in the strata register as a parcel or an accessory parcel to a parcel;

(4) an order for the Registrar of Companies (**ROC**) to rectify SSM's records to exclude the Common Property (Claimed by Plaintiff) with regard to -

(a) the 4th Defendant's Charges (2nd Defendant's Assets); and

(b) the 5th Defendant's Charges (2nd Defendant's Assets);

(5) a perpetual mandatory injunction to compel the 2nd Defendant to prepare all necessary documents and do all necessary acts for the ROC to rectify SSM's records so as to exclude the Common Property (Claimed by Plaintiff) from -

(a) the 4th Defendant's Charges (2nd Defendant's Assets); and

(b) the 5th Defendant's Charges (2nd Defendant's Assets);

(6) a perpetual injunction to restrain the 1st, 2nd, 4th and 5th Defendants from disposing of and/or dealing in any manner with the Common Property (Claimed by Plaintiff);

(7) a perpetual mandatory injunction to compel the 1st and 2nd Defendants to deliver possession of the Common Property (Claimed

by Plaintiff) to the Plaintiff within 30 days from the date of service of the sealed judgment;

(8) an order for the 2nd Defendant to pay all income and rent collected by the 2nd Defendant from the Common Property (Claimed by Plaintiff) to the Plaintiff with effect from the date of the judgment of this case; and

(9) an order for the court to assess general damages to be paid by the 1st and 2nd Defendants to the Plaintiff regarding the net income derived by the 1st and 2nd Defendants from the operation and/or the letting of the Common Property (Claimed by Plaintiff).

29. In support of This Action, the Plaintiff has called the following three witnesses:

(1) Dr. Teh Chin Hoe (**SP1**), the former chairman of the JMC;

(2) Mr. Eng Kee Wat @ Ng Yee Siang (**SP2**), a member of the JMC and the previous secretary of the JMC; and

(3) Sr. Haji Ishak bin Ismail (**SP3**), a chartered surveyor, registered valuer and managing director of IM Global Property Consultants Sdn. Bhd.

30. According to SP1, among others -

(1) the 1st Defendant had failed to hand the Documents (Centrestage) to the Plaintiff [**1st Defendant's Omission (Documents)**]; and

(2) the Common Property (Claimed by Plaintiff) should be the common property of the Development Area (Centrestage) to be managed and maintained by the Plaintiff.

31. SP2 gave the following testimony, among others:

(1) in respect of car park bays -

(a) the development of the Development Area (Centrestage) is governed by the "*Manual Garis Panduan dan Piawaian Perancangan Negeri Selangor*" (**Manual**) which is issued by the Selangor Town and Country Planning Department;

(b) according to the Manual, due to the number of Parcels in the Development Area (Centrestage), the 1st Defendant should have provided 2,024 car park bays consisting of 1,994 ordinary car park bays and 30 OKU car park bays. However, a "*site audit*" of the Development Area (Centrestage) conducted by JMC members (including SP2) revealed that the 1st Defendant had only provided 1,173 car park bays consisting of 1,149 ordinary car park bays and 24 OKU car park bays. Hence, there was a shortfall of car park bays in the Development Area (Centrestage) [**Shortfall (Car Park Bays)**]; and

(c) the Shortfall (Car Park Bays) has caused loss and continues to cause loss to the owners and occupiers (including tenants) of the Parcels [**Owners/Occupiers (Parcels)**];

(2) the 1st Defendant did not obtain the Plaintiff's consent before the 1st Defendant applied to MBPJ and obtain the Approved 1st Defendant's Amended Building Plans (16.10.2015);

(3) with regard to the 342 Car Park Bays and 7 Areas (Basement 1) -

(a) the 1st and 2nd Defendants had unlawfully acquired the 342 Car Park Bays and 7 Areas (Basement 1) (totaling 43,150 sf) by registering the 342 Car Park Bays and 7 Areas (Basement 1) as accessory parcels to Parcel no. 1153 which measures only 301 sf!;

(b) the 1st and 2nd Defendants had not recorded the 342 Car Park Bays and 7 Areas (Basement 1) as "*stock in trade*" in their accounts and business records; and

(c) since the establishment of the Plaintiff -

(i) the Plaintiff has been managing and maintaining the 342 Car Park Bays and 7 Areas (Basement 1) at the Plaintiff's own expense; and

(ii) the 1st and 2nd Defendants have not paid to the Plaintiff any service charge and contribution to the Sinking Fund (**Service Charge/Sinking Fund Contribution**) for the 342 Car Park Bays and 7 Areas (Basement 1);

(4) the 1st and 2nd Defendants had unlawfully acquired the Landscape Areas because -

(a) the Manual required the Landscape Areas to be provided for the Development Area (Centrestage);

(b) one of the conditions for the Development Order was the provision of the Landscape Areas for the Development Area (Centrestage);

(c) according to the Approved 1st Defendant's Building Plans (26.4.2011), Approved 1st Defendant's Amended Building Plans (10.4.2013), Approved 1st Defendant's Amended Building Plans (26.6.2013) and Approved 1st Defendant's Amended Building Plans (8.5.2014), the 1st Defendant had agreed to provide the Landscape Areas for the Development Area (Centrestage);

(d) the 1st and 2nd Defendants have not recorded in their accounts and business records that the Landscape Areas are their stock in trade;

(e) from about March 2015 to February 2017, the 1st and 2nd Defendants had unlawfully used the Landscape Areas as valet parking areas [**Unlawful Use of Landscape Areas (1st and 2nd Defendants)**]. The 1st and 2nd Defendants admitted the Unlawful Use of Landscape Areas (1st and 2nd Defendants) by paying RM45,951.00 to the Plaintiff in respect of fees collected for the valet parking services with regard to the Unlawful Use of Landscape Areas (1st and 2nd Defendants) [**Admission (Unlawful Use of Landscape Areas by 1st and 2nd Defendants)**]; and

(f) the Service Charge/Sinking Fund Contribution for the Landscape Areas had not been paid by the 1st and 2nd Defendants to the Plaintiff;

(5) the following evidence and reasons prove that the 5 Administration Offices form part of the common property of the Development Area (Centrestage) -

(a) the strata plan for Level 5 [**Strata Plan (Level 5)**] showed that the 5 Administration Offices formed part of the Common Property of the Development Area (Centrestage);

(b) the strata titles of the 1st Defendant's parcels in the Development Area (Centrestage) do not include the 5 Administration Offices; and

(c) since 23.5.2015, the 1st Defendant had unlawfully occupied the 5 Administration Offices. However, upon the Plaintiff's demand on 14.8.2020, the 1st Defendant had surrendered possession of the 5 Administration Offices to the Plaintiff [**1st Defendant's Surrender (5 Administration Offices)**];

(6) the 1st and 2nd Defendants had unlawfully acquired the Level 6 RC Rooftop because -

(a) the SPAs do not state that the 1st Defendant is the proprietor of the Level 6 RC Rooftop;

(b) the Approved 1st Defendant's Building Plans (26.4.2011), Approved 1st Defendant's Amended Building Plans (10.4.2013),

Approved 1st Defendant's Amended Building Plans (26.6.2013) and Approved 1st Defendant's Amended Building Plans (8.5.2014) (upon which the CCC was issued) did not provide for the subdivision of the Level 6 RC Rooftop to be accessory parcels for Parcel no. 334;

(c) the Level 6 RC Rooftop has not been recorded in the accounts and business records of the 1st and 2nd Defendants as their stock in trade; and

(d) the 1st and 2nd Defendants have not paid Service Charge/Sinking Fund Contribution to the Plaintiff for the Level 6 RC Rooftop;

(7) Level 14 RC Rooftop had been unlawfully acquired by the 1st and 2nd Defendants due to the following evidence and reasons -

(a) the 1st Defendant's Marketing Brochure promoted the fact that the Development Area (Centrestage) would be equipped with a sauna room, swimming pool, gymnasium and jacuzzi for the Owners/Occupiers (Parcels);

(b) the Approved 1st Defendant's Building Plans (26.4.2011), Approved 1st Defendant's Amended Building Plans (10.4.2013), Approved 1st Defendant's Amended Building Plans (26.6.2013) and Approved 1st Defendant's Amended Building Plans (8.5.2014) (upon which the CCC was issued) -

(i) had stated that the Level 14 RC Rooftop was only meant to be a rooftop; and

(ii) did not provide for the subdivision of the Level 14 RC Rooftop to be accessory parcels for Parcel no. 783;

(c) the 1st and 2nd Defendants have not recorded the Level 14 RC Rooftop as stock in trade in their accounts and business records;

(d) the 1st and 2nd Defendants have not paid Service Charge/Sinking Fund Contribution to the Plaintiff for the Level 14 RC Rooftop; and

(e) the Owners/Occupiers (Parcels) were using the pool deck facilities at Level 14 RC Rooftop [**Pool Deck Facilities (Level 14 RC Rooftop)**] until November 2017 or thereabout {**Use of Pool Deck Facilities [Owners/Occupiers (Parcels)]**} when the 1st Defendant issued a notice which imposed "*subscription fee*" for the use of the Pool Deck Facilities (Level 14 RC Rooftop); and

(8) Accessory Parcel no. A64 and 5 Façade Areas should be part of the Common Property of the Development Area (Centrestage).

32. When SP3 gave expert evidence at the Trial, SP3 has been practising as a registered valuer for 23 years. According to SP3's expert opinion, based on the comparison method of valuation and the income method of valuation, from 23.5.2015 to 30.11.2018, the Plaintiff had suffered a loss of rental income from the 342 Car Park Bays and 5 Administration Offices in a sum of RM12,724,925.00 (**SP3's Expert Opinion**).

The 2nd Defendant's learned counsel objected to the admissibility of SP3's Expert Opinion due solely to the fact that SP3's Expert Opinion had not complied with O 40A of the Rules of Court 2012 (**RC**). I cannot accept such an objection because O 40A RC is not a mandatory provision which can exclude relevant evidence - please refer to **Ooi Cheng Huat & Ors v Sime Darby Property Bhd and other cases** [2024] MLJU 83, at [52].

C(2). <u>No evidence was adduced for 1st Defendant</u>

33. The Liquidator did not call any witness to testify at the Trial on behalf of the 1st Defendant.

C(3). <u>2nd Defendant's case</u>

34. The sole witness for the 2nd Defendant at the Trial was Ms. Phuan Tun Peng (**SD1**), the General Manager (Finance/Accounts) of Leadmont Development Sdn. Bhd. (**LDSB**). SD1 testified as follows, among others:

    (1) SD1 is in charge of daily financial matters and all finance-related matters in LDSB and 2nd Defendant;

    (2) all the shares in the 2nd Defendant are owned by LDSB;

    (3) both the 2nd Defendant and LDSB have common directors;

    (4) LDSB had performed construction work for the 1st Defendant. Consequently, the 1st Defendant owed money to LDSB [**1st Defendant's Debt (LDSB)**]; and

(5) LDSB "*wanted*" the subject matter of the SPA (5th Floor Parcel, 1st Defendant-2nd Defendant) and SPA (6th Floor Parcel, 1st Defendant-2nd Defendant) [referred collectively in this judgment as the "**2 SPAs (1st Defendant-2nd Defendant)**"] to be transferred by the 1st Defendant to the 2nd Defendant. With regard to the 2 SPAs (1st Defendant-2nd Defendant) -

(a) the total purchase price of the 2 SPAs (1st Defendant-2nd Defendant) was RM64,166,836.35 {**Total Purchase Price [2 SPAs (1st Defendant-2nd Defendant)]**};

(b) the Total Purchase Price [2 SPAs (1st Defendant-2nd Defendant)] was paid in the following manner -

(i) the 1st Defendant's Debt (LDSB) was set off (*contra*) from the Total Purchase Price [2 SPAs (1st Defendant-2nd Defendant)]; and

(ii) financing for part of the Total Purchase Price [2 SPAs (1st Defendant-2nd Defendant)] was provided by way of the 4th Defendant's Term Loans and 5th Defendant's Term Loan respectively [referred collectively in this judgment as "**2nd Defendant's Loans (4th and 5th Defendants)**"]; and

(c) the 2nd Defendant's repayment of the 2nd Defendant's Loans (4th and 5th Defendants) was secured by documents stated in the above paragraphs 19(2)(a) to (c) and 20(2)(a) to (e) [**Securities (4th Defendant's Term Loans/5th Defendant's Term Loan)**].

C(4). Case for 4th and 5th Defendants

35. The 4th Defendant called Ms. Wee Kah Hooi (**SD2**), the 4th Defendant's Head and Business Centre Manager of Commercial Banking (PJ City), Central Region, to give evidence at the Trial.

36. Mr. Karmukilan a/l Maniam (**SD3**), the 5th Defendant's Head of Jalan P. Ramlee Business Centre, testified on behalf of the 5th Defendant in This Action.

37. According to the evidence of SD2 and SD3, among others -

    (1) the 2nd Defendant's Loans (4th and 5th Defendants) had been fully disbursed to the 2nd Defendant;

    (2) the 4th and 5th Defendants were *bona fide* lenders of money to the 2nd Defendant because the 4th and 5th Defendants had no prior notice or knowledge of the Plaintiff's claims in This Suit before the -

        (a) disbursement of the 2nd Defendant's Loans (4th and 5th Defendants); and

        (b) the execution of the Securities (4th Defendant's Term Loans/5th Defendant's Term Loan); and

    (3) the 2nd Defendant still owes sums of money to the 4th and 5th Defendants pursuant to the 2nd Defendant's Loans (4th and 5th Defendants) respectively.

D. <u>Objections by 1st, 2nd, 4th and 5th Defendants to certain evidence of SP1 and SP2</u>

38. At the Trial, learned counsel for the 1st, 2nd, 4th and 5th Defendants objected to the admissibility of certain parts of the witness statements of SP1 and SP2 regarding Accessory Parcel no. A64 and 5 Façade Areas. According to learned counsel for the 1st, 2nd, 4th and 5th Defendants, the above evidence had not been pleaded in the RSOC [**Objection (1st, 2nd, 4th and 5th Defendants)**].

39. The RSOC had pleaded that, among others, the 1st and 2nd Defendants had acquired Accessory Parcel no. A64 and 5 Façade Areas contrary to, among others -

    (1) the definition of "*common property*" in s 2 BCPA;

    (2) s 45(1) and (2) BCPA;

    (3) the then applicable s 9(1)(g) of the Strata Titles Act 1985 (**STA**) [before the enforcement of the Strata Titles (Amendment) Act 2013 (**Act A1450**) in Selangor with effect from 1.6.2015]; and

    (4) s 340(2)(a) and (b) of the National Land Code (**NLC**)

    ("**Alleged Illegality**").

40. I have no hesitation to dismiss the Objection (1st, 2nd, 4th and 5th Defendants) with costs on the following grounds:

(1) the Plaintiff is not required by O 18 RC to plead the Alleged Illegality regarding Accessory Parcel no. A64 and 5 Façade Areas in RSOC. This is clear from the following judgments of our apex courts -

(a) a party may raise an issue on illegality at any stage of the proceedings, even at the appellate level. In **Keng Soon Finance Bhd v MK Retnam Holdings Sdn Bhd** [1989] 1 MLJ 457, at 460 to 462, the breach of s 5(1) of the Housing Development (Control & Licensing) Act 1966 was only raised for the very first time during the hearing of the appeal before the Privy Council (our highest court then). Despite the fact that the illegality issue had not been pleaded and raised in the High Court and the then Federal Court, the Privy Council in a judgment delivered by Lord Oliver, allowed such a question to be raised; and

(b) in **Lim Kar Bee v Duofortis Properties (M) Sdn Bhd** [1992] 2 MLJ 281, at 288, Peh Swee Chin SCJ has decided in the Supreme Court that illegality is not required to be pleaded;

(2) in the Court of Appeal case of **Ideal Advantage Sdn Bhd v Perbadanan Pengurusan Palm Spring @ Damansara and another appeal** [2020] 4 MLJ 93, at [46], Zabariah Yusof JCA (as she then was) has decided as follows -

> "*[46]* ***To this extent, [first defendant's] purpose and intent clearly constitutes a breach of ss 4, 34(2) and 69 [STA], which constitutes illegality. The court will not countenance an illegality at any stage of proceedings, even if it is not pleaded*** *(Merong*

Mahawangsa Sdn Bhd & Anor v Dato' Shazryl Eskay bin Abdullah *[2015] 5 MLJ 610) …*"

(emphasis added); and

(3) even if an illegality is not pleaded or raised by any party in a suit, the court is duty bound to take cognizance of any illegality and cannot enforce an illegal contract or transaction - please refer to **Dr HK Fong Brainbuilder Pte Ltd v SG-Maths Sdn Bhd & Ors** [2018] 11 MLJ 701, at [34].

E. Issues

41. The following questions arise in This Action:

(1) is the 1st Defendant required by s 15(1)(b)(iv) and (3)(g) SMA to hand over the Documents (Centrestage) to the Plaintiff?;

(2) with regard to the Plaintiff's claim for the Common Property (Claimed by Plaintiff) -

(a) could the Plaintiff file This Action when the Common Property (Claimed by Plaintiff) had been purportedly acquired by the 1st Defendant before the establishment of the Plaintiff under BCPA?;

(b) was the Plaintiff required to obtain MBPJ's approval before proceeding with This Action?;

(c) whether the Common Property (Claimed by Plaintiff) constitutes common property of the Development Area (Centrestage) in view of the following reasons -

(i) the definitions of "*common property*" and "*building*" in s 2 BCPA;

(ii) the 1st Defendant is prohibited by s 45(1) and (2) BCPA from circumventing the effect of the definitions of "*common property*" and "*building*" in s 2 BCPA. In this regard, can the 1st Defendant rely on the equitable estoppel doctrine to evade liability in This Action?;

(iii) the Common Property Definition (SPAs and DMCs);

(iv) the Strata Plan Definition (SPAs and DMCs);

(v) the Building Definition (SPAs and DMCs);

(vi) the Approved 1st Defendant's Building Plans (26.4.2011), Approved 1st Defendant's Amended Building Plans (10.4.2013), Approved 1st Defendant's Amended Building Plans (26.6.2013) and Approved 1st Defendant's Amended Building Plans (8.5.2014) did not provide that the Common Property (Claimed by Plaintiff) was owned by the 1st Defendant. In this regard, whether the 1st Defendant could rely on paragraph 3 of the recital to the SPA [**Paragraph 3 Recital (SPA)**] which seemingly allowed the 1st Defendant to vary unilaterally the Building Plans for the Development Area (Centrestage); and

(vii) the 1st Defendant's Marketing Brochure; and

(d) are the 1st Defendant's registered strata titles regarding the Common Property (Claimed by Plaintiff) [**1st Defendant's Registered Strata Titles (Common Property)**] indefeasible under ss 5(1), (2) and 34(1)(a) STA read with s 340(1) NLC? The resolution of this issue depends on the following questions -

(i) is it equitable for the 1st Defendant's Registered Strata Titles (Common Property) to be issued pursuant to the then applicable s 9(1)(g) STA?;

(ii) with regard to the registration of the 1st Defendant's Registered Strata Titles (Common Property), did the 1st Defendant commit actual fraud on the Purchasers within the meaning of s 340(2)(a) NLC?;

(iii) had the registration of the 1st Defendant's Registered Strata Titles (Common Property) been obtained by means of an "*insufficient or void instrument*" pursuant to s 340(2)(b) NLC?; and

(iv) whether the 1st Defendant's Registered Strata Titles (Common Property) had been unlawfully acquired by the 1st Defendant as understood in s 340(2)(c) NLC;

(3) for the purpose of the tort of negligence, did the 1st Defendant owe a duty of care to the Plaintiff regarding the Common Property (Claimed by Plaintiff)?;

(4) if the 1st Defendant is not entitled to the Common Property (Claimed by Plaintiff), can the 1st Defendant lawfully sell the subject matter of the 2 SPAs (1st Defendant-2nd Defendant) {**Subject Matter [2 SPAs (1st Defendant-2nd Defendant)]**} to the 2nd Defendant? In this regard -

(a) in accordance with the "*Concealment Principle*" as explained by Nallini Pathmanathan FCJ in the Federal Court case of **Ong Leong Chiou & Anor v Keller (M) Sdn Bhd & Ors** [2021] 3 MLJ 622, should the court exercise its discretion to lift the corporate veils of LDSB, the 1st and 2nd Defendants (**3 Companies**) so as to reveal the "*Wong Family*" as the "*alter ego*" or "*directing mind and will*" of the 3 Companies?;

(b) if the Wong Family is the "*alter ego*" or "*directing mind and will*" of the 3 Companies, are the 2 SPAs (1st Defendant-2nd Defendant) sham agreements which are invalid?;

(c) in view of the fact that the 1st Defendant's Registered Strata Titles (Common Property) are defeasible, can the 2nd Defendant acquire any indefeasible title to the Subject Matter [2 SPAs (1st Defendant-2nd Defendant)] under s 340(3)(a) NLC?; and

(d) whether the 2 SPAs (1st Defendant-2nd Defendant) are void under s 24(a) and/or (b) of the Contracts Act 1950 (**CA 1950**);

(5) was the Plaintiff required to call witnesses from MBPJ, Land Office and/or the architect of the Development Area (Centrestage) (**Architect**) and if "*yes*", whether the court can draw an adverse inference against the Plaintiff under s 114(g) of the Evidence Act 1950 (**EA**). The court will also discuss whether the Plaintiff is obliged to apply for discovery of documents from non-parties to This Action, namely, MBPJ, Land Office and/or Architect, pursuant to O 24 r 7A(2) RC [**Discovery Application (Non-Parties)**];

(6) if the 2 SPAs (1st Defendant-2nd Defendant) are invalid -

(a) what is the true nature of the contracts between the 2nd Defendant on the one part and the 4th and 5th Defendants on the other part? In this regard -

(i) whether the 4th and 5th Defendants only have an equitable security interest in the Subject Matter [2 SPAs (1st Defendant-2nd Defendant)], in particular the Securities (4th Defendant's Term Loans/5th Defendant's Term Loan), which secures the repayment of the 2nd Defendant's Loans (4th and 5th Defendants) by the 2nd Defendant [**Equitable Security Interest (4th and 5th Defendants)**]; or

(ii) is the 2nd Defendant a "*bare trustee*" holding the Subject Matter [2 SPAs (1st Defendant-2nd Defendant)] in trust for the benefit of the 4th and 5th Defendants?;

(b) are the 2nd Defendant's 2 Parcel Assignments (4th and 5th Defendants) void? Concerning this issue -

(i) is the Equitable Security Interest (4th and 5th Defendants) subject to statutory provisions in BCPA, STA, NLC and CA which apply to the Common Property (Claimed by Plaintiff)?;

(ii) can the 4th and 5th Defendants rely on the fact that the 4th and 5th Defendants were *bona fide* financiers who had granted the 2nd Defendant's Loans (4th and 5th Defendants) without any prior notice or knowledge of the unlawful acquisition of the Subject Matter [2 SPAs (1st Defendant-2nd Defendant)] by the 1st and 2nd Defendants?; and

(iii) whether the 4th and 5th Defendants can rely on an exception to the "*nemo dat quod non habet*" principle in sale of goods cases as provided in s 27(1) of the Sale of Goods Act 1957 (**SGA**);

(c) can the court sever the 2 Assignments (Tenancy Proceeds, 2nd Defendant-5th Defendant) so as to exclude the Common Property (Claimed by Plaintiff)?; and

(d) whether the court can order -

(i) RT to rectify the strata register pursuant to s 5(1), (2) STA and s 417(1) NLC; and

(ii) SSM's register of charges regarding the 4th Defendant's Charges (2nd Defendant's Assets) and 5th Defendant's Charges (2nd Defendant's Assets) to be rectified under s 361 of the Companies Act 2016 (**CA 2016**)

- so as to exclude the Common Property (Claimed by Plaintiff);

(7) should the court order the 2nd Defendant to pay to the Plaintiff all the income and/or rent collected by the 2nd Defendant with regard to the 342 Car Park Bays, and Level 6 RC Rooftop and Level 14 RC Rooftop?;

(8) whether the court should order an assessment of damages to be paid by the 1st and 2nd Defendants to the Plaintiff in the following manner -

(a) the court shall assess the total amount of income and/or rent received by the 1st and 2nd Defendants from their unlawful use and/or rental of the Common Property (Claimed by Plaintiff) [**Total Income/Rent (1st and 2nd Defendants)**];

(b) the total sum of expense incurred by the 1st and 2nd Defendants for their maintenance of the Common Property (Claimed by Plaintiff) shall be assessed by the court [**Total Expense (1st and 2nd Defendants)**]; and

(c) the 1st and 2nd Defendants shall pay to the Plaintiff the excess of the Total Income/Rent (1st and 2nd Defendants) over the Total Expense (1st and 2nd Defendants); and

(9) as an exception to the general rule that "*costs to follow the event*", should the court exercise its discretion under O 59 rr 2(2), 3(1), (2) and 8(b) RC as follows -

(a) the 4th and 5th Defendants shall not be liable for the costs of the Plaintiff in This Action; and

(b) the 2nd Defendant shall pay costs of the Trial incurred by the 4th and 5th Defendants?

F. <u>Should 1st Defendant hand over Documents (Centrestage) to Plaintiff?</u>

42. The relevant part of s 15 SMA is reproduced below:

> "*s 15.* ***Handing over by developer to the [JMB]***
>
> *(1)* ***A developer shall, before the developer's management period expires*** *-*
>
> *…*
>
> *(b)* ***hand over to the [JMB]*** *-*
>
> *…*
>
> *(iv)* ***all records relating to and necessary for the maintenance and management of the buildings or lands intended for subdivision into parcels and the common property of the development area****; and*
>
> *…*
>
> *(3)* ***Without prejudice to the generality of subparagraph (1)(b)(iv), the developer shall deliver to the*** *[JMB]* ***copies of all of the following documents****:*
>
> *…*
>
> *(g)* ***the register of all parcel owners of the buildings or lands intended for subdivision into parcels****; …*
>
> *…*
>
> *(4)* ***Any developer who fails to comply with subsection (1)****, (2) or* ***(3) commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment***

***for a term not exceeding three years or to both and, in the case of a continuing offence, to a further fine not exceeding five thousand ringgit for every day or part thereof during which the offence continues after conviction**.*"

(emphasis added).

43. I unhesitatingly decide that the 1st Defendant shall hand over the Documents (Centrestage) to the Plaintiff. My reasons are as follows:

    (1) a mandatory term "*shall*" is employed by Parliament in s 15(1) and (3) SMA. As such, s 15(1)(b)(iv) and (3)(g) SMA mandatorily require the 1st Defendant to hand over the Documents (Centrestage) to the Plaintiff. Any failure on the part of the 1st Defendant to comply with s 15(1)(b)(iv) and (3)(g) SMA constitutes an offence under s 15(4) SMA which is punishable with, among others, imprisonment up to 3 years and/or a fine not exceeding RM250,000.00; and

    (2) at the Trial, the Liquidator did not call any director or employee from the 1st Defendant to rebut the evidence of SP1 regarding the 1st Defendant's Omission (Documents). The Liquidator's failure to adduce evidence is significant in the following two aspects according to the Federal Court's judgment delivered by Gopal Sri Ram FCJ in **Takako Sakao v Ng Pek Yuan & Anor** [2009] 6 MLJ 751, at [4] and [5] -

        (a) if there is sworn evidence adduced by one party (**A**) in a trial against another party (**B**) and there is no evidence from B to rebut A's testimony, the court may presume A's evidence to be true; and

(b) the second consequence of B's failure to adduce any evidence at the trial to rebut A's evidence is that the court may draw an adverse inference under s 114(g) EA against B in favour of A.

44. In view of the decision in the above paragraph 43, this court exercises its discretion under s 53 of the Specific Relief Act 1950 (**SRA**) to grant a perpetual mandatory injunction to compel the 1st Defendant to hand over the Documents (Centrestage) to the Plaintiff within 14 days from the date of the Plaintiff's service of the sealed judgment of this case on the Liquidator. Section 53 SRA provides as follows:

> "*s 53.* ***Mandatory injunctions***
>
> ***When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the court is capable of enforcing, the court may in its discretion grant an injunction*** *to prevent the breach complained of, and also* ***to compel performance of the requisite acts***."

(emphasis added).

G. <u>Common Property (Claimed by Plaintiff)</u>

G(1). <u>Whether Plaintiff could file This Action when Common Property (Claimed by Plaintiff) had been purportedly acquired by 1st Defendant before establishment of Plaintiff</u>

45. The 2nd Defendant's learned counsel had submitted that the Common Property (Claimed by Plaintiff) had been acquired by the 1st Defendant before the establishment of the Plaintiff under BCPA. Hence, according

to the 2nd Defendant's learned counsel, the Plaintiff had no *locus standi* to claim for the Common Property (Claimed by Plaintiff).

46. I am unable to accept the above contention. My reasons are as follows:

(1) in the Court of Appeal case of **Malaysia Land Properties Sdn Bhd v Waldorf and Windsor Joint Management Body** [2014] 6 CLJ 821, at [36] to [40], [42] and [43], Mah Weng Kwai JCA has decided as follows -

> "*[36]* ***Be that as it may, the court is of the view that on the facts and the law the respondent has, in any event, the locus standi in this case. The respondent being a creature of statute established under s. 4(1)(b) [BCPA] is a body corporate having perpetual succession and a common seal (s. 4(2) [BCPA]). Accordingly, the respondent may sue and be sued in its name (s. 4(3) [BCPA])****.*
>
> *[37]* ***The respondent is also empowered under s. 8 [BCPA] "to do such things as may be expedient or necessary for the proper maintenance and management of the building". In our judgment, the respondent is not limited to mere maintenance and management of the W&W tower but also to ascertain and determine the overall common property areas of the W&W tower that need maintenance and management. A fortiori, the respondent will have the power under the scope of its duties and jurisdiction to challenge the appellant's claim to the whole of the 7th Floor including the disputed area as its property not being common property. The use of the management office located within the disputed area will be part and parcel of the respondent's duty to maintain and manage the W&W tower. Since the respondent is mandated by the purchasers, an issue***

not in dispute, to challenge the appellant on its claim, it will necessarily follow that the respondent has the locus to challenge the appellant on the validity of the strata title issued.

[38] ***Even as an interim body the respondent has the locus to sue in the meantime as the management corporation has not been formed to date.***

[39] ***The court does not see any conflict of interest arising in this suit merely because the respondent is taking an action against the appellant, which is a member of the respondent. This is because the respondent and appellant are separate entities under the law and there is no prohibition against the respondent from taking action against the appellant when the latter has acted unlawfully to the detriment of the purchasers acting through the respondent. Taking the appellant's argument to its logical conclusion will result in an absurd situation where a joint management body cannot have any recourse against the developer for any clear breaches of its obligations merely because the developer is also a member of the joint management body! This resulting scenario will clearly be an affront to [BCPA] read with [STA], the main purpose of which is to protect the interests of purchasers. If the appellant's contention is correct and followed then the converse should likewise apply and that is, the appellant should be precluded from suing the respondent as the appellant is a member of the respondent. This surely cannot be a correct proposition in law.***

[40] ***The respondent in challenging the validity of the strata title is proceeding under s. 340 [NLC] and not under s. 67A(1) [STA]. Thus the appellant's contention that "any dispute under [STA] can only be brought by a 'proprietor' being a person or body having a registered interest in a parcel" is misplaced. Granted, the respondent does not have a registered***

interest in a parcel but as the [JMB] of the W&W tower having the capacity to sue, we are of the view that the respondent has the locus to seek a declaration that the appellant's strata title was procured by fraud and/or misrepresentation*.*

…

[42] ***Lastly, the court is of the view that as the respondent is seeking a declaration in its counter claim, it need only show a sufficient interest to be clothed with locus. (See Russia Commercial and Industrial Bank v. British Bank of Foreign Trade Ltd*** *[1921] 2 AC 438).*

[43] ***The respondent has a real and not only a theoretical question for determination by the court. It has a real interest to raise it and the appellant as the proper contradictor has the interest to oppose the declaration sought. The determination of whether the disputed area is common property is a real issue to be determined, the result of which will determine whether the respondent can rightly discharge its duties/powers under s. 8 [BCPA] over the disputed area****.*"

(emphasis added); and

(2) if this court has accepted the above contention of the 2nd Defendant, this means that BCPA may be used as an instrument by developers to defraud purchasers of parcels in a development area by depriving those purchasers of the common property of the development area before the establishment of JMBs. According to the Federal Court's judgment given by Gopal Sri Ram JCA (as he then was) in **Owen Sim Liang Khui v Piasau Jaya Sdn Bhd & Anor** [1996] 4 CLJ 716, at 743, Equity will not permit a statute, including BCPA, to be used as an engine of fraud.

G(2). Is Plaintiff required to obtain MBPJ's approval to proceed with This Action?

47. The 2nd Defendant's learned counsel had submitted that MBPJ's approval was required before the Plaintiff could proceed with This Action. I decide otherwise because there is no such requirement in BCPA, RC and any other written law. Furthermore, this case concerns a dispute between the Plaintiff on the one hand and the 1st, 2nd, 4th and 5th Defendants on the other hand. This case does not involve MBPJ at all. In fact, this court had previously struck out This Action against MBPJ and the Plaintiff did not appeal to the Court of Appeal against this decision.

G(3). Whether Common Property (Claimed by Plaintiff) constitutes common property of Development Area (Centrestage)

48. I reproduce below the definitions of "*building*" and "*common property*" in s 2 as well as s 45 BCPA:

> " ***"building" means any object erected on the development area, and includes the common property of the building****;*
>
> *…*
>
> ***"common property", in relation to a development area, means so much of the development area as is not comprised in any parcel, such as the*** *structural elements of the building, stairs, stairways, fire escape ,* ***entrances and exits, corridors, lobbies,*** *fixtures and fittings, lifts, refuse chutes, refuse bins,* ***compounds****, drains water tanks, sewers, pipes, wires, cables and ducts that serve more than one parcel,* ***the exterior of all common parts of the building****, playing fields and* ***recreational areas****, driveways,* ***car parks and parking areas, open spaces, landscape areas****, walls and fences,* ***and all other facilities and***

installations and any part of the land used or capable of being used or enjoyed in common by all the occupiers of the building*;*

…

s 45. ***Contracting out prohibited***

(1) ***The provisions of this Act shall have effect notwithstanding any stipulation to the contrary in any agreement, contract or arrangement entered into after the commencement of this Act****.*

(2) ***No agreement, contract or arrangement, whether oral or wholly or partly in writing, entered into after the commencement of this Act shall operate to annul, vary or exclude any of the provisions of this Act****.*"

(emphasis added).

49. I am of the view that the Common Property (Claimed by Plaintiff) constitutes common property of Development Area (Centrestage). The following evidence and reasons support this decision:

(1) BCPA came into effect on 12.4.2007 (before the execution of SPAs and DMCs in this case). The 342 Car Park Bays and Landscape Areas fall within the meaning of "*common property*" (*car parks and parking areas, … landscape areas*) in s 2 BCPA [**Common Property Definition (BCPA)**]. This decision is supported by two Court of Appeal decisions as follows -

(a) in **Perantara Properties Sdn Bhd v JMC-Kelana Square & another appeal** [2016] 5 CLJ 367, at [1], [4] and [5], David Wong Dak Wah JCA (as he then was) gave the following judgment -

"*[1]* ***This appeal raises a short but an important and interesting point relating to the manner as to how provisions in a statute should be construed. The statute in question is the [BCPA]****.*

…

[4] ***The relevant provision of the sales and purchase agreements excluding the car parks is cl. 5.08 which reads as follows****:*

> *5.08* ***Retention of Car Park, Food Court and Deli***
>
> ***Notwithstanding the sale of the Unit to the Purchaser and the sale of the parcels of office and/or retail units comprised in the Shopoffice Project, the Purchaser agrees and confirms that all surface car parks and covered car parks (including the basement parking and any other parking) in the Shopoffice Project and the food court and deli situated on the ground level and plaza level respectively shall belong to the Vendor and shall not be included into the sale of the Unit herewith whether as an accessory unit or Common Property****.*

[5] ***When [BCPA] came into force on 12 April 2007, s 2 defined "common property" as this****:*

…

Parliament thus had seen it fit to make car parks in any development with common facilities as common property*.*"

(emphasis added).

It is to be noted that in **Perantara Properties** -

(i) the developer had entered into SPAs with purchasers before the enforcement of BCPA; and

(ii) clause 5.08 of the SPAs in **Perantara Properties** had expressly provided that car parks, food court and deli "*shall belong*" to the developer and "*shall not be included*" into the sale of the parcels, "*whether as an accessory unit or Common Property*"; and

(b) Zabariah Yusof JCA (as she then was) has applied the Common Property Definition (BCPA) in **Ideal Advantage**, at [67].

Learned counsel for the 4th and 5th Defendants had cited the following judgments to contend that the Common Property Definition (BCPA) should be given a restricted meaning due to the use of the words "*such as*" in the Common Property Definition (BCPA) -

(aa) Hamid Sultan Abu Backer JCA's judgment in the Court of Appeal case of **Presharta Sdn Bhd v Ahmad Kamal Md Alif & Ors** [2016] 1 LNS 255; and

(bb) the decision of Rozana Ali Yusoff JC (as she then was) in the High Court in **Armanee Terrace Joint Management Body v Saujana Triangle Sdn Bhd** [2016] 1 LNS 818.

I am not able to accept the above submission by learned counsel for the 4th and 5th Defendants. Firstly, the words in the Common

Property Definition (BCPA), ie., "*"common property", in relation to a development area, means so much of the development area as is not comprised in any parcel*" and "*and all other facilities and installations and any part of the land used or capable of being used or enjoyed in common by all the occupiers of the building*", clearly show Parliament's intention for the Common Property Definition (BCPA) to have a wide scope of application.

Secondly, the Court of Appeal in **Presharta** did not make any reference to the Common Property Definition (BCPA). Thirdly, the wide ambit of the Common Property Definition (BCPA) has been applied by the Court of Appeal in **Perantara Properties** and **Ideal Advantage**. I am bound by the *stare decisis* doctrine to follow the Court of Appeal's *ratio decidendi* in **Perantara Properties** and **Ideal Advantage** in preference to the High Court's judgment in **Armanee Terrace Joint Management Body**;

(2) Accessory Parcel no. 64 (entrance and reception area on the Podium's retail ground floor) constitutes "*entrances and exits, … lobbies*" as understood in the Common Property Definition (BCPA);

(3) the 7 Areas (Basement 1), 5 Administration Offices, Level 6 RC Rooftop, Level 14 RC Rooftop and 5 Façade Areas come within the following meanings of the Common Property Definition (BCPA) -

(a) "*so much of the development area as is not comprised in any parcel*";

(b) "*compounds, … the exterior of all common parts of the building, … recreational areas, … open spaces*"; and

(c) "*all other facilities and installations and any part of the land used or capable of being used or enjoyed in common by all the occupiers of the building*";

(4) the definition of "*building*" in s 2 BCPA [**Building Definition (BCPA)**] includes "*common property*" as defined in s 2 BCPA. In other words, the building in the Development Area (Centrestage) includes "*common property*" and this in turn includes the Common Property (Claimed by Plaintiff);

(5) by virtue of s 45(1) BCPA, the Common Property Definition (BCPA) and Building Definition (BCPA) "*shall have effect notwithstanding any stipulation to the contrary in any agreement, contract or arrangement entered into after the commencement of*" BCPA. The use of an imperative term "*shall*" in s 45(1) BCPA clearly shows the intention of Parliament for s 45(1) BCPA to have mandatory legal effect;

(6) according to s 45(2) BCPA, no "*agreement, contract or arrangement, whether oral or wholly or partly in writing, entered into after the commencement of*" BCPA "*shall operate to annul, vary or exclude*" the definitions of "*building*" and "*common property*" in s 2 BCPA. Consequently, the effect of the Common Property Definition (BCPA) and Building Definition (BCPA) cannot be annulled, varied or excluded by the following agreements -

(a) the 2 SPAs (1st Defendant-2nd Defendant);

(b) the 2nd Defendant's 2 Parcel Assignments (4th and 5th Defendants);

(c) the 2 Assignments (Tenancy Proceeds, 2nd Defendant-5th Defendant);

(d) the Assignment (Tenancy Proceeds, 2nd Defendant-5th Defendant);

(e) the 4th Defendant's Charges (2nd Defendant's Assets); and

(f) the 5th Defendant's Charges (2nd Defendant's Assets).

According to s 37(2) SMA, nothing in SMA "*shall affect the past operation of*" BCPA, including the Common Property Definition (BCPA), s 45(1) and (2) BCPA.

The 1st Defendant cannot rely on the defence of equitable estoppel to nullify the effect of the Common Property Definition (BCPA), Building Definition (BCPA), s 45(1) and (2) BCPA in this case. This is because there cannot be any room to invoke the doctrine of equitable estoppel against the application of statutory provisions - please refer to the judgment of the Supreme Court delivered by Hashim Yeop Sani CJ (Malaya) in **Hotel Ambassador (M) Sdn Bhd v Seapower (M) Sdn Bhd** [1991] 1 MLJ 404, at 407;

(7) the Common Property (Claimed by Plaintiff) fell within the wide ambit of the Common Property Definition (SPAs and DMCs). The

1st Defendant had executed the SPAs and DMCs. Consequently, the 1st Defendant is bound by the Common Property Definition (SPAs and DMCs).

It is to be emphasised that the SPAs in this case are statutory SPAs prescribed by the Housing Development (Control and Licensing) Regulations 1989 which are made under the Housing Development (Control and Licensing) Act 1966 (**HDA**). According to the Federal Court's judgment delivered by Tengku Maimun Binti Tuan Mat CJ in **Ang Ming Lee & Ors v Menteri Kesejahteraan Bandar & Anor and another appeal** [2020] 1 CLJ 162, at [40], as the HDA is a social legislation designed to protect home buyers, the interests of the purchasers shall be the paramount consideration against the developer [**Object (HDA)**].

It defeats the Object (HDA) to allow the 1st Defendant to renege from the definition of common property in SPAs;

(8) the Strata Plan Definition (SPAs and DMCs) did not provide for the 1st Defendant's ownership of the Common Property (Claimed by Plaintiff). The 1st Defendant is estopped from denying the effect of the Strata Plan Definition (SPAs and DMCs) because the 1st Defendant had executed the SPAs and DMCs. I also rely on **Malaysia Land**, at [20], as follows -

> "***Whether The Appellant's [developer] Strata Title In Respect Of The 7th Floor Of The W&W Tower Includes The Disputed Area That Is, Whether The Whole Of The 7th Floor Is Commercial Or Common Property***
>
> ...

> *[20]* ***On this point of demarcation of the disputed area, not being part of the area shown in the strata title plan alone would have been a sufficient ground for the court to dismiss the appellant's appeal as the appellant was praying for a declaration that it owned the whole of the 7th Floor including the disputed area when there was no evidence of title to it**.*"
>
> (emphasis added);

(9) the Approved 1st Defendant's Building Plans (26.4.2011), Approved 1st Defendant's Amended Building Plans (10.4.2013), Approved 1st Defendant's Amended Building Plans (26.6.2013) and Approved 1st Defendant's Amended Building Plans (8.5.2014) did not provide that the Common Property (Claimed by Plaintiff) was owned by the 1st Defendant.

Paragraph 3 Recital (SPA) stated as follows -

> "***The [1st Defendant] is desirous of developing the [Lands] into a mixed commercial development … in accordance with the Layout Plan and Building Plans to be approved by the Appropriate Authorities which shall include such amendments, alterations and modifications as may from time to time be made or stipulated by the [1st Defendant] or [1st Defendant's] Architect or the Appropriate Authority*** *…*"
>
> (emphasis added).

I am of the view that after the 1st Defendant had concluded SPAs and DMCs with the Purchasers, the 1st Defendant cannot rely on Paragraph 3 Recital (SPA) and unilaterally apply for approval from

MBPJ to amend building plans which deprive the Purchasers of their common property [**1st Defendant's Unilateral Amendment Application (Building Plans)**]. The following reasons support this decision -

(a) by virtue of s 45(1) and (2) BCPA, the Common Property Definition (BCPA) and Building Definition (BCPA) shall prevail over Paragraph 3 Recital (SPA); and

(b) the 1st Defendant's Unilateral Amendment Application (Building Plans) would have breached the SPAs and DMCs. Furthermore, the 1st Defendant's Unilateral Amendment Application (Building Plans) would defeat the Object (HDA). In this respect, I rely on the following judgment of Evrol Mariette Peters JC (as she then was) in the High Court case of **Chau Chee Sing & Ors v R & F Development Sdn Bhd** [2021] MLJU 2045, at [25] and [29] to [32] -

> "***Whether the amended development plan was in breach of the terms of the SPA***
>
> *[25]* ***Since it cannot be gainsaid that the development plan had been amended unilaterally and specifically to divide the phases from Phase 1 into Phase 1A and Phase 1B, the issue was whether such amendment amounted to a breach of the terms of the SPAs****. ...*
>
> *…*
>
> *[29]* ***In the present case, every aspect of the contract was rendered all the more binding as the SPAs were governed by the Housing Development (Control & Licensing) Act 1966 ("Housing Development Act") and***

Housing Development Regulations, and as such, the provisions in the SPA are not merely contractual but are statutory, as they are actually provisions of Schedule H to the Housing Development Regulations.

[30] ***The necessity for strict adherence to such statutory provisions was addressed in several cases including Encony Development Sdn Bhd v. Robert Geoffrey Gooch & Anor [2016] 1 CLJ 893, and Chinaya Ganggaya v. Sentul Raya Sdn Bhd*** *[2008] 3 CLJ 23. …*

[31] ***The Defendant further contended that the fact that it had used its construction expertise and knowledge to separate the works into Phases 1A and 1B did not amount to a breach as 'there will be many times during construction of a building or a project of this magnitude where a developer has to use his business sense, knowledge and expertise to adjust and act accordingly and that a developer cannot be expected to seek approval from each and every purchaser'.***

[32] ***I found this contention indefensible, these were, in my view, irrelevant considerations on whether there was a breach of the terms of the SPAs. Any opinion evidence, whether from experts or otherwise, adduced by the Defendant would not have any bearing on the issue of whether there had been a breach of the terms of the SPAs, as the determination of that issue was for the Court. The fact of the matter was that the Defendant had admitted to unilaterally amending the development plan to divide it from Phase 1 into Phases 1A and 1B. Regardless of its justification for doing so, this amounted to a breach of terms of the SPAs.***"

(emphasis added);

(10) the 1st Defendant's Marketing Brochure did not inform the Purchasers in particular and the public at large that the 1st Defendant would subsequently own the Common Property (Claimed by Plaintiff) after the completion of the Development Area (Centrestage). The importance of a developer's sales brochure has been highlighted in **Malaysia Land Properties**, at [55(d)] and [55(h)], as follows -

> "*[55](d)* ***The evidence clearly shows that the appellant's sales brochure which is to be read with the sale and purchase agreement, had represented that the disputed area was reserved for "luxurious facilities" including a spa and spa pool as can be seen in the submission drawing and the as-built drawing****;*
>
> *…*
>
> *(h)* ***The appellant's [developer] sales brochure, which is to be read with the sale and purchase agreement, clearly shows that the common facilities area are to be located on the whole of the 7th Floor and not just within the area delineated in the strata title plan. While the facilities are to be located on the 7th Floor, the commercial areas are to be found on the ground floor, 1st and 2nd floors only. Both DW7 and DW8 who are purchasers of units in the W&W tower have testified that before they purchased their respective units, it was represented to them that the recreational facilities would be located at the common areas on the 7th Floor****;*"

(emphasis added).

Learned counsel for the 4th and 5th Defendants had relied on the following judgment of Awang Armadajaya Awang Mahmud JC in the High Court case of **Musrin bin Ma'rof & Ors v Country Garden Danga Bay Sdn Bhd** [2020] MLJU 853, at [99] and [100] -

> "*[99]* ***Essentially, brochures and advertisements are commendations which at its highest, is an invitation to treat. The actual offer and acceptance and the intention to create a legal relationship are all culminated in the Sale and Purchase Agreement. Parties are duly bound to scrutinise the terms (small prints included) and do due diligence (if necessary)****.*
>
> *[100]* ***If brochures are binding, then a contract to the world is valid****.*"
>
> (emphasis added).

Firstly, **Musrin** did not take into account the earlier Court of Appeal's judgment in **Malaysia Land Properties** (which had considered the effect of a developer's sales brochure on the question of whether a particular part of a development area was the common property of the development area). Secondly, the contents of a developer's sales brochure in themselves do not bind the developer but the court may nonetheless consider such contents in deciding whether a particular part of a development area constitutes common property of the development area;

(11) if the 1st Defendant is entitled to the Common Property (Claimed by Plaintiff) -

(a) the 1st Defendant would have dutifully paid the Service Charge/Sinking Fund Contribution to the Plaintiff in respect of the Common Property (Claimed by Plaintiff); and

(b) the 1st Defendant's accounts and records would have recorded the Common Property (Claimed by Plaintiff) as its assets or stock in trade. It is decided in **Malaysia Land Properties**, at [55(b)], as follows -

> "*[55(b)]* ***If the 7th Floor had indeed been intended to be a commercial area to be sold at some point in time, it would have been part of the stock in trade of the appellant [developer] and entered into its accounts as such. DW6, the managing director of the appellant when subpoenaed as a witness was unable to produce the accounting records of the appellant to show that the disputed area was part of the appellant's stock in trade. The respondent had correctly discharged its evidential burden by calling DW6 to produce the accounts. Although DW6 was not personally in charge of the accounts and neither was he the financial controller or auditor, he was the managing director of the appellant and was in a position to do so but did not.***
>
> ***The appellant would have known before trial that the respondent had subpoenaed DW6 as a witness. The appellant thus had every opportunity to call rebuttal evidence to try to disprove the respondent's contention about the appellant's treatment of the accounts and what actually constituted "stock in trade" under s. 24(2)(a) of the Income Tax Act 1967. The appellant itself would have been in the best position to explain whether the disputed***

area was treated as common property or was to be treated as commercial area in their books. This is because the appellant as the developer would have all its areas in the development recorded as stock in trade for the purposes of its business activities. If the disputed area had been excluded from common property for the appellant's own use, then the area should be reflected as part of its fixed assets and equivalent value would have to be declared as its income for tax purposes. Failure to call rebuttal evidence on this material fact would justify the invocation of the adverse presumption rule under s. 114(g) [EA];"

(emphasis added);

(12) with regard to the 342 Car Park Bays, according to the Manual, the Plaintiff should own the 342 Car Park Bays. I should state that the contents of the Manual have no force of law but compliance with the Manual ensures, among others, a development which is in the public interest as well as the interest of developers and purchasers of units in the development area;

(13) in respect of the 342 Car Park Bays and 7 Areas (Basement 1) -

(a) an "*accessory parcel*" is defined in s 2 BCPA as "*an accessory parcel which is used or intended to be used in conjunction with a parcel*". The same definition of an "*accessory parcel*" is also provided in s 4 STA; and

(b) the total area of the 342 Car Park Bays and 7 Areas (Basement 1) is 43,150 sf. Parcel no 1153 only measures

301 sf. It is inconceivable for the 342 Car Park Bays and 7 Areas (Basement 1) measuring 43,150 sf to be "*used or intended to be used in conjunction with*" (within the meaning of the definition of "*accessory parcel*" in s 2 BCPA) Parcel no. 1153 with an area of 301 sf. In other words, the 1st Defendant had unlawfully acquired the 342 Car Park Bays and 7 Areas (Basement 1) as accessory parcels to Parcel no. 1153.

The following judgment in **Ideal Advantage**, at [40], [42], [44], [45] and [71], supports the above decision -

> "*[40]* ***A harmonious reading of the aforesaid provisions of [STA], shows that any accessory parcel to the main parcel of the condominium is not to be dealt with 'independently' or 'separately' from the main parcel and must be used in conjunction with the main parcel. These 'accessory parcels' are parcels shown in an approved strata plan as an accessory parcel which is used or intended to be used in conjunction with a parcel. The plain and ordinary meaning of the words in the relevant provisions reflects the true intent and purport of Parliament in legislating the [STA]***.
>
> …
>
> *[42]* ***D1's [purchaser of car park bays from developer (D2)] position has always been that they bought the 45 units together with the 439 accessory car park parcels and there is no legal restriction for an owner of one unit of condominium to purchase more than one accessory car park parcel. We agree that there is no legal restriction for an owner of a condominium to purchase more than one accessory car park parcel, so long as it is used in conjunction with the main parcel unit. From the evidence, the 45 parcel units were purchased by D1 together with the 439 accessory car park***

parcels and the evidence also shows that the whole intention and purpose of D1 purchasing 439 car parks from D2 [developer] was not to use these car parks in conjunction with 45 units of parcel condominiums respectively but to deal with the additional car parks independently and separately by renting it out to different individuals. There is no denial by D1 that they are renting out the car park parcels and that these car park parcels are being utilised for commercial purposes to generate a substantial income to D1. Clearly, the intention of D1 at the time of the purchase of the 439 accessory parcels together with the 45 units of condominium was to run a car park business at Palm Spring Condominium. It is never disputed that each of the condominium unit which is about 1,000 sq ft at most, would only require one or two car parks. Clearly, the remaining car parks attached to the particular unit were meant for D1's car park rental business. The same argument applies to the other condominium units which have between 8–15 accessory car park parcels attached. Therefore, the usage of these car park parcels, namely the excessive car parks, constituted a breach of ss 34(2) and 69 [STA], namely that the accessory car park parcels is used or intended to be used not in conjunction with a parcel unit and the same was dealt with, independently of the main parcel unit to which such accessory parcel has been made appurtenant thereof.

…

[44] ***The purpose, object and restriction in** ss 34(2) and 69 **[STA] prohibits the dealing/transfer of the accessory parcels separately or independently of the main parcel, as was done by D1 and D2. These car parks were transferred in bulk to D1 by D2. The Hansard of the parliamentary debate in the Senate during the tabling of the [STA] is testimony to this, which reads**:*

Petak Aksesori adalah istilah yang digunakan bagi petak-petak yang digunakan bersama-sama dengan petak yang didiami tetapi terletak di luar petak berkenaan ataupun di luar dari bangunan berkenaan, seperti tempat letak kereta.

[45] ***The word 'accessory' connotes the usage of the accessory car park parcel as attached or annexed, connected or dependent on and/or used or intended to be used with the main parcel. It is not independent on its own. To allow the carrying out of a business venture of renting out the accessory car park parcels independently of the parcel units of the condominium, as what was done by D1, would defeat the very purpose and intent of Parliament in legislating the [STA] with regards to accessory parcel.***

…

[71] ***Therefore the learned trial judge did not err when he found that the sale of the accessory car parks are illegal and falls within s 24(b) [CA].***"

(emphasis added);

(14) regarding the Landscape Areas -

(a) one of the conditions of the Development Order was for the provision of the Landscape Areas in the Development Area (Centrestage);

(b) if the 1st and 2nd Defendants own the Landscape Areas -

(i) the Admission (Unlawful Use of Landscape Areas by 1st and 2nd Defendants) would not have been made; and

(ii) this would be contrary to the Manual;

(15) in respect of the 5 Administration Offices -

(a) according to the Strata Plan (Level 5), the 5 Administration Offices form part of the common property of the Development Area (Centrestage);

(b) the strata titles of the 1st Defendant's parcels in the Development Area (Centrestage) do not include the 5 Administration Offices; and

(c) the 1st Defendant's Surrender (5 Administration Offices) would not have been made if the 1st Defendant was entitled to the 5 Administration Offices;

(16) if the 1st Defendant was entitled to the Level 14 RC Rooftop, the 1st Defendant would have demanded and/or claimed that that the Use of Pool Deck Facilities [Owners/Occupiers (Parcels)] was unlawful. No such demand and/or claim was however made by the 1st Defendant; and

(17) no director or employee from the 1st Defendant was called by the Liquidator to rebut the oral evidence of SP1 to SP3. Nor was there any explanation given why the Liquidator could not have applied to court for a subpoena to compel the 1st Defendant's director or employee to testify in this case. Accordingly -

(a) the testimonies of SP1 to SP3 are assumed to be true; and

(b) an adverse inference pursuant to s 114(g) EA is made against the 1st Defendant

- please refer to **Takako Sakao**.

I have not overlooked the evidence of SD1. Firstly, SD1's testimony did not allude to, let alone rebut, the above evidence and reasons which support the Plaintiff's entitlement to the Common Property (Claimed by Plaintiff). Secondly, SD1 is not a director or employee of the 1st Defendant. Thirdly, SD1 has no personal knowledge regarding the development of the Development Area (Centrestage). Lastly, SD1 had no custody or access to the 1st Defendant's accounts, records and documents. This is understandable because in view of the 1st Defendant's liquidation, the Liquidator should have taken custody of all the accounts, records and documents of the 1st Defendant.

50. Premised on the evidence and reasons stated in the above paragraph 49, the Plaintiff has proven on a balance of probabilities that the Common Property (Claimed by Plaintiff) constitutes common property of the Development Area (Centrestage) which is to be managed and maintained by the Plaintiff.

H. Are 1st Defendant's Registered Strata Titles (Common Property) indefeasible?

H(1). Whether it was equitable to register 1st Defendant's Registered Strata Titles (Common Property)

51. When STA was first introduced with effect from 1.6.1985, s 9(g) STA [**Original Section 9(g) STA**] states as follows:

> "*s 9.* ***Conditions for approval.***
>
> ***The [Director of Lands and Mines] shall not approve the subdivision of any building unless the following conditions are satisfied****:*
>
> *…*
>
> *(g)* ***that the proposed share units assigned to the parcels by the proprietor of the lot in his application in Form 1 are equitable****;*
>
> *…*"

(emphasis added).

52. With effect from 1.6.2015, by way of Act A1450, the original s 9 STA [including the Original Section 9(g) STA] has been replaced with the present s 9(1) to (4) STA. For the purpose of this case, the Original Section 9(g) STA applied to the 1st Defendant's Registered Strata Titles (Common Property).

53. I accept the submission by the Plaintiff's learned counsel that in view of the evidence and reasons stated in the above paragraph 49, it is inequitable under the Original Section 9(g) STA for the 1st Defendant's Registered Strata Titles (Common Property) to have been registered. On this ground alone, the 1st Defendant's Registered Strata Titles (Common

Property) is defeasible [**1st Defendant's Inequity [Original Section 9(g) STA]**].

H(2). Application of s 340 NLC

54. I reproduce below ss 5(1), (2), 34 STA and s 340 NLC:

> "*STA*
>
> *s 5.* ***Construction of [STA].***
>
> *(1)* ***[STA] shall be read and construed with the [NLC] as if it forms part thereof****.*
>
> *(2)* ***The [NLC] and the rules made thereunder, in so far as they are not inconsistent with the provisions of [STA] or the rules made thereunder, or are capable of applying to parcels, shall apply in all respects to parcels held under the strata titles****.*
>
> *s 34* ***Rights of proprietor in his parcel and common property.***
>
> *(1)* ***Subject to this section and other provisions of [STA], a proprietor shall have*** *-*
>
> *(a)* ***in relation to his parcel (in the case of a parcel proprietor,) the powers conferred by the [NLC] on a proprietor in relation to his land****; **and***
>
> *(b)* ***in relation to the common property, the right of user which he would have if he and the other proprietors were co-proprietors thereof****.*
>
> *(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****.*

NLC

s 340(1) ***The title or interest of any person or body for the time being registered as proprietor of any land, or in whose name any lease, charge or easement is for the time being registered, shall, subject to the following provisions of this section, be indefeasible*.**

(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*.**

(3) ***Where the title or interest of any person or body is defeasible by reason of any of the circumstances specified in sub-section (2)** -*

(a) ***it shall be liable to be set aside in the hands of any person or body to whom it may subsequently be transferred; and***

(b) ***any interest subsequently granted thereout shall be liable to be set aside in the hands of any person or body in whom it is for the time being vested**:*

***Provided that nothing in this sub-section shall affect any title or interest acquired by any purchaser in good faith and for valuable consideration, or by any person or body claiming through or under such a purchaser*.**"

(emphasis added).

55. By virtue of ss 5(1), (2) and 34(1)(a) STA read with s 340(1) NLC, the 1st Defendant's Registered Strata Titles (Common Property) is indefeasible unless the Plaintiff can discharge the legal and evidential burden to prove on a balance of probabilities that the 1st Defendant's Registered Strata Titles (Common Property) is defeasible within the meaning of s 340(1)(a), (b) and/or (c) NLC.

H(2A). <u>Did 1st Defendant commit actual fraud against Purchasers?</u>

56. "*Fraud*" in s 340(2)(a) NLC means "*actual fraud*" and not "*equitable fraud*" or "*constructive fraud*" - please refer to the Federal Court's judgment delivered by Lee Hun Hoe CJ (Borneo) in **Datuk Jagindar Singh & Ors v Tara Rajaratnam** [1983] 2 MLJ 196, at 200 to 201.

57. I find as a fact that the Plaintiff has proven on a balance of probabilities the 1st Defendant had committed actual fraud on the Purchasers within the meaning of s 340(1)(a) NLC by registering the 1st Defendant's Registered Strata Titles (Common Property). The following evidence and reasons support this factual finding:

    (1) by virtue of the Common Property Definition (SPAs and DMCs), the Purchasers have contractual rights under the SPAs and DMCs to use the Common Property (Claimed by Plaintiff) [**Purchasers' Contractual Rights to Use Common Property (SPAs and DMCs)**]. When the strata titles of the Purchasers have been registered under the STA, the Purchasers (as parcel owners) have a statutory right pursuant to s 34(1)(b) STA to use the Common

Property (Claimed by Plaintiff) (**Parcel Owners' Statutory Right to Use Common Property**).

The registration of the 1st Defendant's Registered Strata Titles (Common Property) had dishonestly deprived the Purchasers' Contractual Rights to Use Common Property (SPAs and DMCs) and Parcel Owners' Statutory Right to Use Common Property;

(2) the 1st Defendant's Unilateral Amendment Application (Building Plans) was done surreptitiously behind the backs of the Purchasers;

(3) the Purchasers were induced to buy their parcels in the Development Area (Centrestage) by, among others, the 1st Defendant's Marketing Brochure. It was less than honest for the 1st Defendant to misappropriate the Common Property (Claimed by Plaintiff) {**1st Defendant's Misappropriation [Common Property (Claimed by Plaintiff)]**} contrary to the 1st Defendant's Marketing Brochure;

(4) the 1st Defendant's Misappropriation [Common Property (Claimed by Plaintiff)] has caused and continues to cause loss to the Plaintiff by depriving the Plaintiff's right to earn income and rent from the use of the Common Property (Claimed by Plaintiff) {**Plaintiff's Loss [Income/Rental from Common Property (Claimed by Plaintiff)]**}. SP3's Expert Opinion supports the Plaintiff's Loss [Income/Rental from Common Property (Claimed by Plaintiff)]; and

(5) reliance is placed on the following judgment in **Malaysia Land Properties**, at [55(g)], [55(k)] and [55(m)] -

"*[55](g)* ***The court agrees with the finding of the learned trial judge that the appellant had wrongfully "carved out" the disputed area out of the entire area on the 7th Floor and treated it as its own private property. The appellant had done so unilaterally and without the consent of the respondent****;*

…

(k) ***In our judgment we are of the view that the appellant had obtained the strata title through fraud and/or misrepresentation perpetrated on the land office (and JUPEM) being the issuing authority. Had the land office not been wrongfully induced by the drawings and plans submitted by PW1 in respect of the whole of the 7th Floor which included the disputed area, it is without doubt that the land office would not have issued the strata title to the appellant****.*

…

(m) *…* ***Here, in the present case the court is satisfied beyond reasonable doubt that the appellant is guilty of fraud and/or false misrepresentation (and not just through mistake or negligence) when it submitted the drawings and plans effectively showing to the land office and JUPEM that the disputed area had been included as part of the whole of the 7th Floor of the W&W tower belonging to the appellant. The court therefore declares that the right, title and interest in and to "Area A" is not indefeasible****.*"

(emphasis added).

H(2B). Whether 1st Defendant's Registered Strata Titles (Common Property) are defeasible under s 340(2)(b) NLC

58. Section 69 STA provides as follows:

"*s 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."

(emphasis added).

59. I am of the view that the 1st Defendant has breached STA [**1st Defendant's Breaches (STA)**] as follows:

    (1) as explained in the above sub-paragraph 49(13), the 1st Defendant had breached the definition of "*accessory parcel*" in s 2 BCPA and s 4 STA by unlawfully acquiring the 342 Car Park Bays and 7 Areas (Basement 1) as accessory parcels to Parcel no. 1153; and

    (2) with regard to the Common Property (Claimed by Plaintiff), ss 34(2) and 69 STA had been contravened by the 1st Defendant when the 1st Defendant "*dealt with or disposed of*" accessory parcels "*independently of the parcel to which such accessory parcel has been made appurtenant*".

    The effect of the 1st Defendant's Breaches (STA) means that -

    (a) the registration of the 1st Defendant's Registered Strata Titles (Common Property) had been obtained by means of an "*insufficient or void instrument*" as understood in s 340(2)(b) NLC; and

    (b) the 1st Defendant's Registered Strata Titles (Common Property) is defeasible.

I rely on the following judgment in **Ideal Advantage**, at [18], [75], [93], [96] and [109] -

"*[18]* ***The complaint of the plaintiff [JMB] was that the registration of the strata title of Block J in favour of D2 [developer] by the Director of Land and Mines, Selangor and the sale of the same by D2 to Top Fresh Sdn Bhd was invalid, illegal and/or unlawful**.*

…

[75] ***In addition, we had stated earlier in this judgment that D1's [purchaser of car park bays from D2] purpose and intent clearly constitutes a breach of ss 4, 34(2) and 69 [STA], which leads to illegality. Given the aforesaid, we agree with the findings of the learned trial judge that the sale of the accessory car parks are illegal under s 24 [CA] and ought to be struck down as being void**.*

…

[93] ***Coming back to our present appeal, we form the view that as the instrument of dealing (ie the SPAs) effected pursuant to the transaction which is carried out are illegal, being in contravention of the [Development Order], the Country and Town Planning Act, [STA] read with the provisions of the NLC, the instrument of dealing falls under the category of being 'insufficient or void instrument'. Therefore, since the registration of D1's title is obtained by way of an insufficient or void instrument, it does not confer indefeasibility under s 340(2)(b) on the title or interest acquired by D1**.*

…

[96] ***Therefore, applying the principle as postulated in the aforesaid cases, the registration of the car parks in the strata titles had been obtained irregularly under the NLC, as there had been non-compliance with statutory provisions. We therefore agree with the submissions of the plaintiff that the excessive car parks registered in D1's name are null and void as the titles are obtained vide insufficient/void instrument or they are unlawfully acquired under s 340(2)(b) and (2)(c) [NLC] read together with s 5(1) and (2) [STA]**.*

…

[109] ***D1 argued that as the impugned car parks are already comprised as accessory parcels in the strata titles and therefore cannot be "common property". We have addressed this issue, but what needs to be taken note of is this; the fact that the car parks are already comprised in the strata titles alone, is not the determining factor that they do not form "common property". The facts of the case need to be scrutinized. If we are to agree with the submissions of the defendants in this regard, it will produce an absurd result, namely that, any party like a developer can take advantage of the situation by "accessorizing" property which should have been "common property" and then claim that it is indefeasible***.”

(emphasis added).

H(2C). Are 1st Defendant's Registered Strata Titles (Common Property) defeasible under s 340(2)(c) NLC?

60. As a corollary of -

(1) the 1st Defendant's Inequity [Original Section 9(g) STA]; and

(2) the 1st Defendant's Breaches (STA)

- premised on **Ideal Advantage**, at [96], I have no hesitation to decide that the 1st Defendant's Registered Strata Titles (Common Property) had been unlawfully acquired by the 1st Defendant “*in the purported exercise of any power … conferred by any written law*” as understood in s 340(2)(c) NLC.

I. Is 1st Defendant liable to Plaintiff under tort of negligence?

61. In view of the evidence and reasons explained in the above Parts G(3) and H(1) to H(2C) [which establish the 1st Defendant's liability to the Plaintiff regarding the Common Property (Claimed by Plaintiff)], it is not necessary for this court to decide whether the 1st Defendant is liable under the tort of negligence to the Plaintiff in respect of the Common Property (Claimed by Plaintiff).

J. Are 2 SPAs (1st Defendant-2nd Defendant) valid?

J(1). Should court lift corporate veil of 1st and 2nd Defendants?

62. In accordance with the "*Evasion Principle*", the court has a discretion to lift the corporate veil of a company if there is, among others, proof of actual fraud - please refer to the judgment of **Ong Leong Chiou**.

63. This court exercises its discretion to lift the corporate veil of the 3 Companies to ascertain who is the "*alter ego*" or "*directing mind and will*" of the 3 Companies. The following reasons support the exercise of this discretion:

    (1) the 1st Defendant had committed actual fraud on the Purchasers under s 340(2)(a) NLC by registering the 1st Defendant's Registered Strata Titles (Common Property) - please refer to the above paragraph 57;

    (2) as explained in the above sub-paragraphs 49(1) to (6), the court should not allow the 1st Defendant to circumvent the Common

Property Definition (BCPA), Building Definition (BCPA), s 45(1) and (2) BCPA; and

(3) as the 1st Defendant's Breaches (STA) had been committed (please see the above paragraph 59), the court should lift the corporate veil of the 3 Companies so as to ensure that the 2nd Defendant is not the beneficiary of any illegality committed by the 1st Defendant in this case.

64. The following evidence and reason reveal that the "*Wong Family*" is the "*alter ego*" or "*directing mind and will*" of the 3 Companies:

(1) according to SD1, the 1st Defendant's Debt (LDSB) was set off from the Total Purchase Price [2 SPAs (1st Defendant-2nd Defendant). If the "*Wong Family*" is not the "*alter ego*" or "*directing mind and will*" of the 3 Companies, when This Action was filed against the 2nd Defendant, if the 2nd Defendant was truly an entity which is separate from the 1st Defendant and LDSB, the 2nd Defendant would have filed third party proceedings for an indemnity or contribution from the 1st Defendant and LDSB under O 16 r 1(1)(a) RC;

(2) all the shares in the 1st and 2nd Defendants are owned by LDSB;

(3) the 1st and 2nd Defendants have two common directors, namely WHC and WTJ;

(4) WHC is the father of WTJ;

(5) the shares in LDSB are owned by WTJ, WHC and Madam Lai Kui Yin (**LKY**). LKY is WHC's wife and WTJ's mother;

(6) the Personal Guarantee (WHC-WTJ) had been given as security for the 2nd Defendant's repayment of the 5th Defendant's Term Loan. If an individual has no interest in a company, the individual would not have given a personal guarantee to a bank to secure the repayment of the company's loan to the bank;

(7) before the 1st Defendant's winding up, based on SSM's records -

(a) the 1st and 2nd Defendants shared the same registered address (25-1, Jalan PJU 1/42A, Block F2, Dataran Prima, 47301 Petaling Jaya, Selangor) and business address (3-10, Signature Office, The Boulevard, Mid Valley City, Lingkaran Syed Putra, 59200 Kuala Lumpur); and

(b) the same company secretary, Mr. Gong Wooi Kwong, acted for the 1st and 2nd Defendants; and

(8) WTJ, WHC and/or LKY did not testify in this case to rebut the inference that the "*Wong Family*" is the "*alter ego*" or "*directing mind and will*" of the 3 Companies. No evidence had been adduced by the 2nd Defendant on why WTJ, WHC and/or LKY could not have been compelled by subpoenas to give evidence in this case. The court therefore draws an adverse inference against the 1st and 2nd Defendants pursuant to s 114(g) EA for the suppression of the material evidence of WTJ, WHC or LKY.

The above decision is supported by the following judgment in **Ideal Advantage**, at [74] -

"*[74]* ***The dealing between D1 and D2 is exceptional and not in accordance with the terms of the SPA which could only happen when they have close relationship and/or association between the defendants. A pertinent fact is that both the defendants are controlled by the 'Lee family' where, inter alia****:*

(a) ***both defendants have the same registered address and share the same company secretary****;*

(b) ***both defendants also have the same office address****. This is evidenced from the SPAs;*

(c) one of D2's shareholders (Lee Yuk Hui) is also the director and shareholder of D1's company; and

(d) Lee Yuk Hui is the brother of Lee Bee Kee who is D1's managing director.

These evidence put to rest D1's allegation of the 'principle of separate corporate personality' (as can be found at para 4 of D's supplemental memorandum of appeal), between D1 and D2. There is more than sufficient evidence of such a 'sweetheart deal' between D1 and D2 and the lack of valuable consideration for the car park without the need to refer to such a principle*.*"

(emphasis added).

J(2). <u>Whether 2 SPAs (1st Defendant-2nd Defendant) are sham agreements</u>

65. The court has a discretionary power to decide whether a certain contract, document or transaction is genuine or a sham. It is decided in **Jemix Co Ltd & Anor v Jemix Heat Treatment (M) Sdn Bhd & Ors** [2019] 2 MLRH 276, at [29(2)(c)], as follows -

"*[29(2)(c)] … **In the English Court of Appeal case of Snook v London and West Riding Investments Ltd** [1967] 1 All ER 518, at 528, **Diplock LJ (as he then was) decided in the majority judgment that any agreement, document or transaction executed by a person is a "sham" if it is intended to give to third parties or to the Court an appearance of creating between the parties legal rights and obligations which are different from the actual legal rights and obligations which the parties intend to create. This meaning of a "sham" contract, document or transaction in Snook has been accepted by Gopal Sri Ram JCA (as he then was) in the Court of Appeal in Sri Kelangkota-Rakan Engineering JV Sdn Bhd & Ors v Arab-Malaysian Prima Realty Sdn Bhd & Ors** [2001] 1 CLJ 779, at 788-789.*"

(emphasis added).

66. This court decides that the 2 SPAs (1st Defendant-2nd Defendant) are sham contracts due to the following evidence and reasons:

    (1) the 1st and 2nd Defendants are not separate legal entities because the "*Wong Family*" is the "*alter ego*" or "*directing mind and will*" of the 3 Companies - please refer to the above paragraph 64;

    (2) the 2 SPAs (1st Defendant-2nd Defendant) were not genuine agreements made at arm's length between the 1st and 2nd Defendants because before the conclusion of the 2 SPAs (1st Defendant-2nd Defendant) -

        (a) no valuation of the Subject Matter [2 SPAs (1st Defendant-2nd Defendant)] was conducted by any one of the 3 Companies;

(b) there was no documentary evidence of any *bona fide* negotiation at arm's length among the 3 Companies; and

(c) no evidence of offer and acceptance by any one of the 3 Companies had been adduced in this case; and

(3) it cannot be coincidental for the 2 SPAs (1st Defendant-2nd Defendant) to be executed on the very same day, 3.5.2015.

J(3). <u>Can 2nd Defendant acquire indefeasible title for Subject Matter [2 SPAs (1st Defendant-2nd Defendant)]?</u>

67. I will now proceed on the assumption that -

(1) the Wong Family is not the "*alter ego*" or "*directing mind and will*" of the 3 Companies;

(2) the 1st and 2nd Defendants are separate legal entities; and

(3) the 2 SPAs (1st Defendant-2nd Defendant) are genuine agreements.

68. Due to the fact that the 1st Defendant's Registered Strata Titles (Common Property) are defeasible [please refer to the above Parts H(2A) to H(2C)], the 2nd Defendant cannot acquire any indefeasible title to the Subject Matter [2 SPAs (1st Defendant-2nd Defendant)] according to s 340(3)(a) NLC. This is because the 2nd Defendant is the subsequent transferee of the Subject Matter [2 SPAs (1st Defendant-2nd Defendant)] from the 1st Defendant and by virtue of s 340(3)(a) NLC, the 2nd Defendant's purported title, rights and/or interest in the Subject Matter [2 SPAs (1st Defendant-2nd Defendant)] "*shall be liable to be set aside*". It is

therefore clear that the 2nd Defendant cannot acquire any indefeasible title in the Subject Matter [2 SPAs (1st Defendant-2nd Defendant)].

J(4). Are 2 SPAs (1st Defendant-2nd Defendant) valid?

69. Section 24(a) and (b) CA provide as follows:

> "*s 24.* ***What considerations and objects are lawful, and what not***
> ***The consideration or object of an agreement is lawful, unless*** *-*
>
> *(a)* ***it is forbidden by a law****;*
>
> *(b)* ***it is of such a nature that, if permitted, it would defeat any law****;*
>
> *…*
> ***In each of the above cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void****.*"
>
> (emphasis added).

70. Firstly, it is this court's decision that the 2 SPAs (1st Defendant-2nd Defendant) are "*forbidden*" [as provided in s 24(a) CA 1950] by the Common Property Definition (BCPA), Building Definition (BCPA), s 45(1) and (2) BCPA. As such, the 2 SPAs (1st Defendant-2nd Defendant) are void under s 24(a) CA 1950.

71. Secondly, if the 2 SPAs (1st Defendant-2nd Defendant) are enforced, the 2 SPAs (1st Defendant-2nd Defendant) "*would defeat*" the following provisions of written law:

    (1) the Common Property Definition (BCPA), Building Definition (BCPA), s 45(1) and (2) BCPA;

(2) the definitions of "*accessory parcel*" in s 2 BCPA and s 4 STA [please see the above sub-paragraph 59(1)]; and

(3) ss 34(2) and 69 STA [please refer to the above sub-paragraph 59(2)].

Based on the above reasons, the 2 SPAs (1st Defendant-2nd Defendant) are invalid pursuant to s 24(b) CA 1950. In this respect, I rely on **Ideal Advantage**, at [75].

K. <u>Was Plaintiff required to call witnesses from MBPJ, Land Office and/or Architect?</u>

72. Learned counsel for the 2nd, 4th and 5th Defendants had invited the court to draw an adverse inference under s 114(g) EA against the Plaintiff due to the Plaintiff's failure to call witnesses from MBPJ, Land Office and/or Architect to testify at the Trial. I am unable to accede to this submission because -

(1) as explained in the above Parts G(3), H(1) to H(2C) and J(1) to J(4), the Plaintiff has proven on a balance of probabilities that the Common Property (Claimed by Plaintiff)] constitutes the common property of the Development Area (Centrestage). Hence, there is no necessity, let alone a requirement, for the Plaintiff to call witnesses from MBPJ, Land Office and/or Architect to give evidence at the Trial; and

(2) the court may only exercise its discretion to make an adverse inference pursuant to s 114(g) EA against a party who has

suppressed material evidence - please refer to the Supreme Court's judgment delivered by Mohd. Azmi SCJ in **Munusamy v Public Prosecutor** [1987] 1 MLJ 492, at 494. In this case, the Plaintiff has not suppressed any material evidence because the 2nd, 4th and 5th Defendants were entitled to apply to court for subpoenas to compel witnesses from MBPJ, Land Office and/or Architect to testify at the Trial. For reasons best known to the 2nd, 4th and 5th Defendants, they did not do so.

L. Whether Plaintiff was required to file Discovery Application (Non-Parties)

73. According to learned counsel for the 4th and 5th Defendants, the Plaintiff should have filed a Discovery Application (Non-Parties) against MBPJ, Land Office and/or Architect so as to obtain relevant documents for the purpose of This Action.

74. If a party (**Z**) does not file a discovery application, including a Discovery Application (Non-Parties), Z faces a risk that Z may not have documentary evidence to substantiate Z's averments. Having said that, the court cannot make any adverse inference under s 114(g) EA against Z for not making any discovery application. In this case, the Plaintiff has proven on a balance of probabilities that the Common Property (Claimed by Plaintiff)] constitutes the common property of the Development Area (Centrestage) - please refer to the above Parts G(3), H(1) to H(2C) and J(1) to J(4). Accordingly, the fact that the Plaintiff had not filed a Discovery Application (Non-Parties) against MBPJ, Land Office and/or Architect is of no consequence in This Action.

M. <u>Validity of 2nd Defendant's 2 Parcel Assignments (4th and 5th Defendants)</u>

M(1). <u>What was true nature of contracts between 2nd Defendant on the one hand and 4th and 5th Defendants on the other hand?</u>

75. In accordance with the judgment of Gopal Sri Ram FCJ's judgment in **Berjaya Times Squares Sdn Bhd (formerly known as Berjaya Ditan Sdn Bhd) v M Concept Sdn Bhd** [2010] 1 MLJ 597, at [10], the court shall give a commercially sensible construction of the following agreements between the 2nd Defendant on the one part and 4th and 5th Defendants on the other part:

    (1) the 2nd Defendant's Loans (4th and 5th Defendants);

    (2) the 2nd Defendant's 2 Parcel Assignments (4th and 5th Defendants);

    (3) the 2 Assignments (Tenancy Proceeds, 2nd Defendant-5th Defendant);

    (4) the Assignment (Tenancy Proceeds, 2nd Defendant-5th Defendant);

    (5) the 4th Defendant's Charges (2nd Defendant's Assets); and

    (6) the 5th Defendant's Charges (2nd Defendant's Assets)

    [collectively referred to as "**All Contracts (2nd, 4th and 5th Defendants)**"].

76. I have no doubt that a commercially sensible interpretation of All Contracts (2nd, 4th and 5th Defendants) shows as follows:

(1) the 4th and 5th Defendants only have an Equitable Security Interest (4th and 5th Defendants); and

(2) the 2nd Defendant is not a "*bare trustee*" who holds the Subject Matter [2 SPAs (1st Defendant-2nd Defendant)] in trust for the benefit of the 4th and 5th Defendants.

M(2). <u>Can Equitable Security Interest (4th and 5th Defendants) prevail over written law applicable to Common Property (Claimed by Plaintiff)?</u>

77. Generally, equitable titles and interest are subject to statutory provisions. As such, the Equitable Security Interest (4th and 5th Defendants) is subject to the following provisions of written law which apply to the Common Property (Claimed by Plaintiff):

(1) the Common Property Definition (BCPA), Building Definition (BCPA), s 45(1) and (2) BCPA - please refer to the above sub-paragraphs 49(1) to (6);

(2) s 340(2)(a), (b) and (c) NLC read with s 5(1), (2) and 34(1)(a) STA - please see the above Parts H(2) and H(2A) to H(2C); and

(3) s 24(a) and (b) CA 1950 - please refer to the above Part J(4).

In view of the effect of the above statutory provisions, the Equitable Security Interest (4th and 5th Defendants) is void even though the 4th and 5th Defendants are *bona fide* financiers who have granted the 2nd Defendant's Loans (4th and 5th Defendants) without any prior notice or knowledge of the unlawful acquisition of the Subject Matter [2 SPAs (1st

Defendant-2nd Defendant)] by the 1st and 2nd Defendants. In this respect, as admitted by learned counsel for the 4th and 5th Defendants, the 4th and 5th Defendants cannot rely on the proviso to s 340(3) NLC. This is because the Equitable Security Interest (4th and 5th Defendants) has not been registered under STA read with NLC.

M(3). <u>Whether 4th and 5th Defendants can rely on sale of goods cases</u>

78. Learned counsel for the 4th and 5th Defendants had cited a number of sale of goods cases which decided that in certain circumstances, a purchaser of goods can get a lawful title to the goods even though the vendor of the goods has no valid title to the goods (an exception to the "*nemo dat quod non habet*" principle).

79. I have no hesitation to reject the above contention due to the following reasons:

    (1) This Action concerns interest in immovable property and not "*goods*" which is defined in s 2 SGA as "*every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale*". Section 27(1) SGA has expressly provided for certain circumstances where a purchaser of goods (not immovable property) can obtain a valid title to the goods even though the vendor of the goods has no valid title to the goods. I reproduce below s 27(1) SGA -

"*s 27.* ***Sale by person not the owner.***

(1) ***Subject to [SGA] and of any other law for the time being in force, where goods are sold by a person who is not the owner thereof, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell****:*

Provided that where a mercantile agent is, with the consent of the owner, in possession of the goods or of a document of title to the goods, any sale made by him when acting in the ordinary course of business of a mercantile agent shall be as valid as if he were expressly authorized by the owner of the goods to make the same; provided that the buyer acts in good faith and has not at the time of the contract of sale notice that the seller has no authority to sell*.*"

(emphasis added).

BCPA had no provision which was equivalent to s 27(1) SGA; and

(2) if this court has decided that the Equitable Security Interest (4th and 5th Defendants) is valid, such a decision is contrary to the statutory provisions as stated in the above sub-paragraphs 77(1) to (3).

N. <u>What is appropriate relief for Plaintiff with regard to Common Property (Claimed by Plaintiff)?</u>

80. As this court has decided that the Plaintiff is entitled to recover the Common Property (Claimed by Plaintiff), this judgment shall henceforth

refer to the Common Property (Claimed by Plaintiff) as the "**Plaintiff's Entitlement (Common Property)**".

N(1). <u>Rectification of strata register</u>

81. I reproduce below s 417(1) NLC:

> "*s 417.* ***General authority of the Court***
>
> *(1)* ***The Court or a Judge may by order direct the Registrar or any Land Administrator to do all such things as may be necessary to give effect to any judgment or order given or made in any proceedings relating to land, and it shall be the duty of the Registrar or Land Administrator to comply with the order forthwith****.*"
>
> (emphasis added).

82. Reading together s 5(1) and (2) STA with s 417(1) NLC, I order RT to rectify the strata register so as to give effect to the Plaintiff's Entitlement (Common Property).

N(2). <u>Can court sever 2 Assignments (Tenancy Proceeds, 2nd Defendant-5th Defendant) so as to exclude Plaintiff's Entitlement (Common Property)?</u>

83. To give effect to the Plaintiff's Entitlement (Common Property), the court exercises its discretion to sever the 2 Assignments (Tenancy Proceeds, 2nd Defendant-5th Defendant) so as to exclude the Plaintiff's Entitlement (Common Property). In this respect, I rely on the following judgment of the Court of Appeal delivered by Mah Weng Kwai JCA in **Prudentdeals Sdn Bhd v YM Tengku Abdul Halim Ibni Almarhum Sultan Ibrahim** [2015] 2 MLJ 801, at [34] to [37], [39] and [40]:

“***Issue 3: whether cl 13 of the second PA could be severed***

[34] ***It was argued by counsel for the appellant that in the event it was held that Hassan could not have granted an irrevocable power of attorney to Mustapha, then the court could exercise its discretion and apply the principle of severability of a term in an agreement, and to sever cl 13 which provided that 'And the Donor declares this Power of Attorney to be irrevocable from the date hereof' from the second PA thereby converting it into a revocable power of attorney. We find favour with the submission of counsel and agree that cl 13 can be severed from the second PA to bring it in line with the scope and ambit of the first PA****.*

[35] ***The doctrine of severability owes its origin to the law of contracts which has been defined as '... if parts of the contract are held to be illegal or otherwise unenforceable, the reminder of the contract should still apply.'***

[36] ***The primary purpose of the doctrine of severability is to separate that portion in a document deemed to be void ab initio from the part or portion considered being of a valid nature. However, it is important that with the severance and invalidation of some section or cl in a document, it will not affect the validity of the remaining sections or cls. The Oxford Dictionary defines severability as '… a provision in a contract, statute or other legal document containing an exemption from one or more of its conditions and provisions' (see also Nordenfelt v Maxim Nordenfelt Guns and Ammunition Co Ltd*** *[1894] AC 535* ***on the origin of the doctrine of severability in England)****.*

[37] ***In the case of Dunkley v Evans*** *[1981] 3 All ER 285* **(QBD), *it was held by Ormrod LJ that where it is possible to sever an invalid part of an order, rule or regulation made in exercise of a power conferred by an Act of Parliament from a valid part of that order, rule or regulation then, unless the invalid part is inextricably***

interconnected with the valid part, the court is entitled to set aside or disregard the invalid part, leaving the rest intact. In His Lordship's judgment reference was made to one Halsbury's Laws (4th Ed), para 26 which sets out the general principle of severability*.*

…

[39] ***We are of the view that cl 13 of the second PA is not so inextricably mixed up or interwoven that it cannot be separated from the rest of the clauses in the second PA. The striking out of cl 13 would not invalidate the second PA in its entirety. Clause 13 is distinct and separate and even after the striking out, what remains in the second PA is in itself a complete power of attorney, without altering its main purpose****.*

[40] ***We are also of the view that while Dunkley v Evans case dealt with a statutory instrument, the same principle could, a fortiorari be applied to a contract and to the present case on the validity of the second PA****.*"

(emphasis added).

N(3). <u>Whether court can rectify register of charges</u>

84. Section 361 CA 2016 states as follows:

"*s 361. Extension of time and* ***rectification of register of charges***

The Court, on being satisfied that the *omission to register a charge, whether under this Act or any corresponding previous written law, within the time required or that the omission or* ***misstatement of any particular with respect to any such charge*** *or in a memorandum of satisfaction* ***was*** *accidental or* ***due*** *to inadvertence or* ***to some other sufficient cause*** *or is not of a nature to prejudice the position of creditors or shareholders* ***or that on other grounds it is just and equitable to grant relief****,* ***may, on the application of*** *the company or* ***any person interested and on***

__such terms and conditions as seem to the Court just and expedient__, including a term or condition that the extension or rectification is to be without prejudice to any liability already incurred by the company or any of its officers in respect of the default, __order__ that the time for registration be extended or that __the__ omission or __misstatement be rectified__."

(emphasis added).

85. I am of the view that the court should exercise its discretion under s 361 CA 2016 to rectify the register of charges so as to exclude the Plaintiff's Entitlement (Common Property) from the 4th Defendant's Charges (2nd Defendant's Assets) and 5th Defendant's Charges (2nd Defendant's Assets) [**Rectification (Register of Charges)**]. The following reasons support the Rectification (Register of Charges):

    (1) the Plaintiff falls within the meaning of the phrase "*any person interested*" in the 4th Defendant's Charges (2nd Defendant's Assets) and 5th Defendant's Charges (2nd Defendant's Assets);

    (2) the 4th Defendant's Charges (2nd Defendant's Assets) and 5th Defendant's Charges (2nd Defendant's Assets) contained "*misstatements*" regarding the Plaintiff's Entitlement (Common Property); and

    (3) in view of the above evidence and reasons to prove the Plaintiff's Entitlement (Common Property), the court should exercise its discretionary power under either one or both of the following two limbs of s 361 CA 2016 to rectify the register of charges so as to exclude the Plaintiff's Entitlement (Common Property) from the 4th

Defendant's Charges (2nd Defendant's Assets) and 5th Defendant's Charges (2nd Defendant's Assets) -

(a) there was "*some other sufficient cause*" for the Rectification (Register of Charges); **and/or**

(b) "*it is just and equitable*" for the court to order the Rectification (Register of Charges)

86. To give effect to the Rectification (Register of Charges) -

(1) this court issues a perpetual mandatory injunction under s 53 SRA to compel the 2nd, 4th and 5th Defendants to -

(a) execute all the required documents; and

(b) do all the required acts

\- within 30 days from the date of the judgment of this case (**Judgment**); and

(2) the cost of the Rectification (Register of Charges) shall be borne solely by the 2nd Defendant.

N(4). Plaintiff is entitled to possession of Plaintiff's Entitlement (Common Property)

87. This court unhesitatingly issues a perpetual mandatory injunction to compel the 2nd Defendant to deliver possession of the Plaintiff's Entitlement (Common Property) to the Plaintiff within 30 days from the date of the Judgment.

N(5). 1st, 2nd, 4th and 5th Defendants should be restrained from disposing of and/or dealing with Plaintiff's Entitlement (Common Property)

88. In view of the Plaintiff's Entitlement (Common Property), I issue a perpetual injunction to restrain the 1st, 2nd, 4th and 5th Defendants from -

(1) disposing of the Plaintiff's Entitlement (Common Property) in any manner; and/or

(2) dealing in any manner with the Plaintiff's Entitlement (Common Property).

N(6). Whether 2nd Defendant should pay to Plaintiff rent collected by 2nd Defendant from Plaintiff's Entitlement (Common Property)

89. As a consequence of this court's decision regarding the Plaintiff's Entitlement (Common Property), with effect from the date of the Judgment, I order the 2nd Defendant to pay to the Plaintiff all the income and/or rent collected by the 2nd Defendant in respect of the 342 Car Park Bays, and Level 6 RC Rooftop and Level 14 RC Rooftop [**Order (2nd Defendant's Payment of Income/Rent to Plaintiff)**]. The Order (2nd Defendant's Payment of Income/Rent to Plaintiff) is supported by the following judgment in **Ideal Advantage**, [108] and [110]:

> "*[108]* ***Once the 394 impugned car parks are found to be illegal and/or not lawful "accessory parcels", it would form part of common property. When the Court ordered the return of the 394 car parks to the plaintiff, it was returned as "common property" and any proceeds of rental from the said car parks could be used for the common good***

of the condominium and all parcel owners as opposed to the personal profit/gain accumulated by D1 alone, at the expense of the residents of Palm Spring Condominium @ Damansara. Such car parks are no longer part of a strata title and they are no longer accessory parcels and thus sections 4, 34 and 69 [STA] do not apply against the plaintiff, the Management Corporation.

…

[110] ***Another relief which is being sought for by the plaintiff is the refund of RM233,825.13 which was kept by D1's solicitors previously as stakeholder in Suit 58 which consists of previous rentals collected by the plaintiff over the disputed car parks and paid over to D1's solicitors vide a Court Order. The learned trial Judge found that this amount was due and payable to the plaintiff. Our scrutiny of Suit 58 with regard to this particular point, reveal that the Court there ordered in the following terms***:

…

We found that the learned trial Judge did not err in this respect and hence we do not disturb such findings."

(emphasis added).

N(7). Is Plaintiff entitled to assessment of damages from 1st and 2nd Defendants?

90. In view of the unlawful acquisition of the Plaintiff's Entitlement (Common Property) by the 1st and 2nd Defendants, the Plaintiff is entitled to an order for the court to assess damages to be paid by the 1st and 2nd Defendants to the Plaintiff for the wrongful dealing, use and enjoyment of the Plaintiff's Entitlement (Common Property) by the 1st and 2nd Defendants [**Assessment Order (Damages Payable by 1st and 2nd Defendants)**] - please refer to **Ideal Advantage**.

91. With regard to the Assessment Order (Damages Payable by 1st and 2nd Defendants) -

(1) the court shall assess the Total Income/Rent (1st and 2nd Defendants);

(2) the Total Expense (1st and 2nd Defendants) shall be ascertained by the court; and

(3) the 1st and 2nd Defendants shall pay to the Plaintiff the excess of the Total Income/Rent (1st and 2nd Defendants) over the Total Expense (1st and 2nd Defendants).

O. Costs

92. O 59 rr 2(2), 3(1), (2), 8(b), 16 and 19 RC provide as follows:

> "*r 2(2)* ***Subject to the express provisions of any written law and of these Rules, the costs of and incidental to proceedings in the Court, shall be in the discretion of the Court, and the Court shall have full power to determine by whom and to what extent the costs are to be paid***.
>
> *r 3(1)* ***Subject to the following provisions of this Order, no party shall be entitled to recover any costs of or incidental to any proceedings from any other party to the proceedings except under an order of the Court***.
>
> *r 3(2)* ***If the Court in the exercise of its discretion sees fit to make any order as to the costs of or incidental to any proceedings, the Court shall, subject to this Order, order the costs to follow the event, except when it appears to the Court that in the circumstances of the***

case some other order should be made as to the whole or any part of the costs*.*

r 8 ***The Court in exercising its discretion as to costs shall, to such extent, if any, as may be appropriate in the circumstances, take into account -***

…

(b) ***the conduct of all the parties, including conduct before*** *and during* ***the proceedings;*** *…*

O 59 r 16(1) ***In assessing the costs payable in relation to any item, the Court shall have regard to all relevant circumstances, and in particular to*** *-*

(a) ***the complexity of the item or of the cause or matter in which it arises and the difficulty or novelty of the questions involved****;*

(b) ***the skill, specialized knowledge and responsibility required of, and the time and labour expended by, the solicitor or counsel****;*

(c) ***the number and importance of the documents, however brief, prepared or perused****;*

(d) the place and circumstances in which the business involved is transacted;

(e) ***the importance of the cause or matter to the client****;*

(f) ***where*** *money or* ***property is involved, its*** *amount or* ***value****;*

(g) any other fees and allowances payable to the solicitor or counsel in respect of other items in the same cause or matter, but only where work done in relation to those items has reduced the work which would otherwise have been necessary in relation to the item in question.

(2) ***Subject to the other provisions of these Rules, the amount of costs which any party are entitled to recover is the amount allowed after determination of costs on the standard basis where*** *-*

(a) ***an order is made that the costs of one party to proceedings be paid by another party to those proceedings****;*

(b) an order is made for the payment of costs out of any fund; or

(c) no order for costs is required,

unless it appears to the Court to be appropriate to order costs to be determined on the indemnity basis*.*

(3) ***On an assessment of costs on the standard basis, there shall be allowed a reasonable amount in respect of all costs reasonably incurred and any doubts which the Court may have as to whether the costs were reasonably incurred or were reasonable in amount shall be resolved in favour of the paying party; and in these Rules, the term "the standard basis", in relation to the determination of costs, shall be construed accordingly****.*

O 59 r 19(1) ***The amount of costs (excluding disbursement) that are payable shall be at the discretion of the Court and shall be determined upon the conclusion of the trial****.*

(2) ***In fixing the costs payable, the Court shall have regard to the relevant circumstances including but not limited to the factors set out in the rule 16****.*"

(emphasis added).

93. In respect of the question of costs for the Trial [**Costs (Trial)**], I exercise my discretion as follows (**Costs Order**):

(1) in accordance with O 59 r 16(2)(a) RC, Costs (Trial) shall be payable on a "*party-to-party*" basis;

(2) Costs (Trial) shall be determined on a "*standard*" basis under O 59 rr 16(2) and (3) read with O 59 r 19(2) RC because there is no exceptional circumstance in this case which warrants the imposition of costs on an "*indemnity*" basis pursuant to O 59 r 16(2) and (4) read with O 59 r 19(2) RC;

(3) notwithstanding the fact that the 1st Defendant has been wound up, Costs (Trial) in a sum of RM10,000.00 shall be paid by the 1st Defendant to the Plaintiff because -

  (a) the Liquidator did not consent to This Action, especially to the Plaintiff's application for the Documents (Centrestage); and

  (b) the Liquidator supported the Objection (1st, 2nd, 4th and 5th Defendants) which was subsequently dismissed by the court;

(4) in respect of the 2nd Defendant -

  (a) as the Plaintiff is successful in this case against the 2nd Defendant, the 2nd Defendant shall pay Costs (Trial) to the Plaintiff in accordance with the general rule that "*costs to follow the event*" [as provided in O 59 r 3(2) RC] (**General Rule**); and

  (b) a sum of RM120,000.00 shall be paid by the 1st Defendant to the Plaintiff as Costs (Trial) due to the following reasons -

(i) this case concerned complicated matters regarding the Development Area (Centrestage);

(ii) novel questions of law arose at the Trial;

(iii) the Plaintiff was represented by a senior and experienced counsel;

(iv) this case involved voluminous "*Common Bundles of Documents*";

(v) this case is extremely important to the Plaintiff;

(vi) the value of the Common Property (Claimed by Plaintiff) is substantial; and

(vii) the Objection (1st, 2nd, 4th and 5th Defendants) was raised by, among others, the 2nd Defendant; and

(5) with regard to the 4th and 5th Defendants -

(a) despite the following facts -

(i) the Plaintiff was successful at the Trial against the 4th and 5th Defendants; and

(ii) the court had dismissed the Objection (1st, 2nd, 4th and 5th Defendants)

- I decline to apply the General Rule. Instead, I decide under O 59 rr 2(2), 3(1), (2) and 8(b) RC that the 4th and 5th Defendants shall not be liable for Costs (Trial) to the

Plaintiff because the 4th and 5th Defendants are *bona fide* financiers who have granted the 2nd Defendant's Loans (4th and 5th Defendants) without any prior notice or knowledge of the unlawful acquisition of the Subject Matter [2 SPAs (1st Defendant-2nd Defendant)] by the 1st and 2nd Defendants; and

(b) premised on the reasons stated in the above sub-paragraph (5)(a) and the unlawful conduct of the 2nd Defendant in acquiring the Subject Matter [2 SPAs (1st Defendant-2nd Defendant)] [please refer to O 59 r 8(b) RC], I order costs in a sum of RM15,000.00 to be paid by the 2nd Defendant to each of the 4th and 5th Defendants.

P. <u>Conclusion</u>

94. Premised on the above evidence and reasons, This Action is allowed with the following relief:

(1) a perpetual mandatory injunction is granted to compel the 1st Defendant to hand over the Documents (Centrestage) to the Plaintiff within 14 days from the date of service of the Judgment on the Liquidator;

(2) the following declarations are granted -

(a) the Common Property (Claimed by Plaintiff) constitutes the common property of the Development Area (Centrestage) which is under the management and maintenance of the Plaintiff [Plaintiff's Entitlement (Common Property)]; and

(b) the Plaintiff's Entitlement (Common Property) -

(i) shall not be the subject matter of any strata title; and

(ii) shall not be annexed as a parcel or an accessory parcel to any parcel;

(c) the 1st Defendant's Registered Strata Titles (Common Property) are defeasible;

(d) the 2 SPAs (1st Defendant-2nd Defendant) are invalid;

(e) the 2nd Defendant's 2 Parcel Assignments (4th and 5th Defendants) are void; and

(f) the 2 Assignments (Tenancy Proceeds, 2nd Defendant-5th Defendant) are only valid with the exclusion of the Plaintiff's Entitlement (Common Property);

(3) an order for -

(a) the RT to rectify the strata register so as to give effect to the Plaintiff's Entitlement (Common Property); and

(b) the Rectification (Register of Charges);

(4) the following perpetual injunctions are granted -

(a) mandatory injunctions to compel -

(i) the 2nd, 4th and 5th Defendants to give effect to the Rectification (Register of Charges); and

(ii) to compel the 2nd Defendant to deliver possession of the Plaintiff's Entitlement (Common Property) to the Plaintiff

- within 30 days from the date of the Judgment; and

(b) an injunction to restrain the 1st, 2nd, 4th and 5th Defendants from disposing of and/or dealing with the Plaintiff's Entitlement (Common Property) in any manner; and

(5) the following orders are made -

(a) the Order (2nd Defendant's Payment of Income/Rent to Plaintiff);

(b) the Assessment Order (Damages Payable by 1st and 2nd Defendants); and

(c) Costs Order.

95. This judgment sends a timely message that common property of development areas should not be misappropriated by developers to the detriment of JMBs (subsequently MCs) and Owners/Occupiers (Parcels).

WONG KIAN KHEONG

Judge

Court of Appeal, Malaysia

DATE: 19 FEBRUARY 2024

Counsel for Plaintiff:	*Mr. Raymond Mah Mun Kit,* *Mr. John Chan Chia Yoong,* *Cik Anis Binti Mohd Suhaimi &* *Ms. Rachael Ng Ker Chi* *(Messrs Mah Weng Kwai & Associates)*
Counsel for 1st Defendant's Liquidator:	*Mr. Dhanaraj S/O Sivasampu,* *Ms. Santhirakala a/p N. Ramasamy &* *Mr. Harneshpal Karamjit Singh* *(Messrs Hakem Arabi & Associates)*
Counsel for 2nd Defendant:	*Mr. Vaithylingam A/L Rajo &* *Ms. Shalini Devi A/P Vaithylingam* *(Messrs Yeong & Mak)*
Counsel for 4th & 5th Defendants:	*Ms. Ng Hooi Huang, Ms. Ooi Jia Liang &* *Ms. Deborah Lui Shien Mae* *(Messrs Shook Lin & Bok)*