

**DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR  
BAHAGIAN SIVIL  
[GUAMAN NO. 24NCVC-1584-10/2013]**

Dalam perkara sebuah hartanah yang dikenali sebagai PH47, Nadia Parkhomes, No. 10, Persiaran Residen, Desa Parkcity, 52200 Kuala Lumpur di bawah hakmilik Geran 57369 No Petak L67 Mukim Batu, No. Lot 61965 Wilayah Persekutuan Kuala Lumpur

Dan

Dalam perkara Seksyen 43, 44 dan Jadual Ketiga Akta Hak Milik Strata 1985

Dan

Dalam perkara Nadia House Rules and Regulations (NHR 1.0.05/05)

Dan

Dalam perkara Akta Mahkamah Kehakiman 1964

Dan

Dalam perkara Aturan 7 dan 28 Kaedah-Kaedah Mahkamah 2012

**Antara**

**Nadia Management Corporation                      ... Plaintiff**

**Dan**

**Yap Kuee Hong    ... Defendan**  
[No. KP: 640129-10-7542]

**ALASAN PENGHAKIMAN**

[1] The plaintiff established under section 39 of the Strata Titles Act 1985 (“STA”) is the management corporation responsible for the management of a strata development scheme known as Nadia Park Homes and Condominium (“Nadia”) comprising terrace and apartment units as well as parks and common facilities (“the Development”).

[2] The defendant is the registered strata unit owner of a 2 storey terrace unit in Nadia known as Unit PH47 (“the Strata Unit”). The chronology of events leading to the defendant’s ownership of Strata Unit is as follows:

- a. By a sale and purchase agreement dated 8.6.2002 (“the Principal SPA”) the developer Perdana Parkcity Sdn Bhd (“the Developer”) sold the Strata Unit to

Zameema Banu bt Mohd Ariff and Jaseemuddeen bin Abu Bakar (“the Initial Purchasers”). Simultaneous with the Principal SPA, the Initial Purchasers had executed a Deed of Mutual Covenant (“DMC”) incorporating a set of house rules affecting the Development (“the DMC House Rules”).

- b. When the defendant bought the Strata Unit from the Purchasers, title to the Strata Unit was passed by way of a Deed of Assignment dated 28.11.2007 (“DOA”), as the individual strata title to the Strata Unit was yet to be issued. The defendant *vide* the DOA undertook and covenanted to perform and observe all and every of the covenants, stipulations, terms and conditions that were covenanted to be performed and observed by the Initial Purchasers in the Principal SPA between the Purchasers and the Developer. That would also include the terms of the DMC, as the DMC was entered into pursuant to the Principal SPA. Further clause 27 of the Principal SPA provides for common rights of the purchasers/strata

proprietors and stipulates that the Developer shall ensure that in the event of any transfer of any strata unit from any initial purchaser to a subsequent purchaser, the subsequent purchaser shall undertake to be bound by the covenants contained in the DMC. The DOA is the mechanism through which this is done.

- c. Upon issuance of the strata title the defendant was registered as the owner of the Strata Unit on 17.6.2011.

[3] The plaintiff complains that the defendant had without the plaintiff's approval carried out renovation works to the Strata Unit, in particular at the external patio where the existing sliding glass door was removed and relocated to cover the patio, thus affecting the original external facade of the building. The plaintiff avers that in carrying out this renovation works, the defendant had contravened several clauses of the Nadia House Rules and Regulations ("the Nadia House Rules") in force at the material time, particularly Rules 4.6, 5.3 and 7. Now, Rule

4.6 deals with the preservation of the exterior facade of the building for the purpose of maintaining its aesthetic integrity. Whereas Rule 5.3 deals with the usage of the electronic access control card issued to the owners/occupants to gain entry through the auto gate at the entrance of the Development. Whilst Rule 7 relates to the process and procedure to be followed by the owners in carrying out renovations to their strata units.

[4] The plaintiff further states that the defendant had failed to register the defendant's appointed contractor with the plaintiff as required under clause 7 of the House Rules and had allowed the contractor to gain access into Nadia on numerous occasions to carry out the renovation works with the use of the defendant's access card, which was in contravention of clause 5.3 of the House Rules. The plaintiff then proceeded to deactivate all but one of the defendant's access cards.

[5] The plaintiff states that appropriate notices had been given to the defendant to remedy the aforesaid breaches and to restore the facade of the Strata Unit to its original



state. However, the defendant did not accede to that demand. The plaintiff then instructed its solicitors to issue a notice of demand to the defendant to remedy the breaches and once again the defendant disregarded the demand. Hence, this action by the plaintiff claiming *inter alia* declaratory and injunctive relief enjoining the defendant to rectify the unapproved works that has changed the exterior facade of the building and to restore the facade to its original state.

[6] The defendant's primary defence is that:

- a. The defendant is not bound by the Nadia House Rules because a special resolution was not passed at the 1<sup>st</sup> annual general meeting of the plaintiff to make these house rules additional by-laws as stipulated in the STA.
- b. The DOA did not assign all the duties and liabilities of the Initial Purchasers under the DMC to the defendant and as such the defendant is not bound by the terms of the DMC and the DMC House Rules.

- c. The renovations carried out by the defendant are cosmetic in nature when compared to renovation works carried out by other parcel owners of Nadia.
- d. That the defendant has a constitutional right to deal with his property in any manner that he deems fit.

[7] I will first deal with the issue of whether the Nadia House Rules are valid and binding on the defendant. Historically, the Nadia House Rules finds its origin in the DMC House Rules. The plaintiff avers that in substance and content the Nadia House Rules and the DMC House Rules are one and the same. Recital 1.4 of the DMC states that the terms of the DMC are intended to govern the relationship between the Initial Purchaser (and their successors-in-title and permitted assigns), the Developer and other proprietors of strata units and reads:

Pending the establishment of the Management Corporation in accordance to the provisions of the Strata Titles Act, 1985 and in order to provide for the peaceful enjoyment and beneficial occupation of the said Parcel in common with the Vendor and all other purchasers ...

Article 3.2 of the DMC provides that:



The relationship between the Purchaser and the Vendor and that between the Purchaser and the purchasers of the other parcels comprised in the Project inter se shall be governed by the provisions of this Deed and all annexures annexed hereto and the House Rules and Regulations set out herein and/or to be adopted pursuant to these documents as the same may be amended or added from time to time.

[8] Further at Article 4.1 of the DMC, the Initial Purchasers covenant with the Developer and the other parcel owners to perform, observe and comply with the DMC House Rules as it exists, and as may be amended, added or substituted by the Developer at its sole discretion. It is obvious that by the terms of the DOA, the DMC shall be binding on the plaintiff herein as the DMC was entered into pursuant to the Initial SPA and the DOA provides that the plaintiff shall now perform all obligations of the Initial Purchasers under the Principal SPA. Therefore, there is a covenant on the part of the plaintiff to observe and perform the terms of the DMC House Rules.

[9] There were specific stipulation in the DMC House Rules pertaining to and regulating the manner and extent



to which renovations may be carried out by strata unit proprietors. Rule 6(b) of the DMC House Rules stipulates that:

Notwithstanding anything contained in this Deed, unless the prior written consent of the Vendor and the Appropriate Authority where applicable had been obtained (which consent may be granted or refused by the Vendor in its absolute discretion without assigning any reason thereto), the Purchaser shall not:-

- (i) make any additions renovation or alteration to the said Parcel which shall affect the external appearance of the said Parcel or the Building, including without limitation any installation of awnings shades screens or any other manner of enclosing any patio balcony or roof deck appurtenant to the said Parcel or grills whatsoever thereon or therein or any fixtures fittings or other structures on the said Parcel;
- (ii) ... ..
- (iii) ... ..
- (iv) ... ..
- (v) make any addition extension improvement renovation or alteration to the said Parcel which depart in any particular from any building plans or specifications which may have been approved by the Vendor and the Appropriate Authority in respect of the Building, save as permitted herein.

[10] Therefore, from the very beginning of the Development, it had been the intention of the parties that the DMC House Rules shall form the basis of the relationship *inter se* between the Developer and the owners of the strata unit. The DMC also provided that notwithstanding the formation of the management corporation pursuant to the STA, the DMC and in particular the DMC House Rules shall continue to be operational in addition to the rights, powers and duties contained in the STA. Rule 9 of the DMC House Rules states that:

The Purchaser hereby agrees that the Management Corporation to be established under the Strata Titles Act, 1985 shall upon its formation, in addition to the rights, powers and duties conferred thereunder, assume the rights powers and duties hereby created in favour of the Vendor herein and shall be entitled to and be responsible for the enforcement of the covenants created on the part of the purchasers of the parcels comprised in the Project ...

Therefore, by this contractual provision the plaintiff upon its formation shall assume the rights, responsibilities and duties of the Developer contained in the DMC as well

as the DMC House Rules and shall have the power to enforce them on behalf of the other parcel owners.

[11] After the execution of the DMC, an additional statute was enacted by parliament to govern strata properties. This was the Building and Common Property (Maintenance and Management) Act 2007 (“BCPMMA”). The BCPMMA came into operation in the Federal Territory of Kuala Lumpur on 12.4.2007, and in section 4 of the Act it provides for the formation of a Joint Management Body (“JMB”). The JMB comes into being by operation of law pursuant to the provisions of section 4 of the BCPMMA. The purpose of the formation of the JMB was to manage and maintain the strata scheme until the management corporation was established under the STA. The JMB was intended to be an *interim* stopgap measure to address problems plaguing strata schemes, particularly between developers/vendors and purchasers of strata parcels, pending the establishment of the management corporation.



[12] What then are the effect of this new statute and the formation of the JMB on the contractual rights and obligations contained in the DMC and the DMC House Rules? I am of the opinion that the coming into force of the BCPMMA or the formation of the JMB does not invalidate the existing house rules contained in the DMC House Rules. I say this because, section 44 of the BCPMMA states that on the coming into operation of the Act, the provisions of any written law, contracts or deeds relating to the maintenance and management of buildings and common property in so far as they are contrary to the provisions of that Act shall cease to have effect. As such only contractual stipulations that are contrary to the Act shall cease to have effect and not the entire contractual arrangements between the developer/vendor and purchaser. However, there is no evidence before me showing that any of the provisions in the DMC House Rules are contrary to the provisions of the BCPMMA.

[13] Therefore, it cannot be gainsaid that the DMC House Rules have ceased to have effect upon the coming into

operation of the BCPMMA and/or upon the formation of JMB. To that extend the High Court decision in *Wisma MPL JMB v. Malaysia Pacific Corp Bhd* [2013] 1 MLJ 712 is distinguished and the legal findings therein at page 731 is, with respect, inapplicable to the facts of this case. Therefore, the DMC House Rules would continue to contractually bind the defendant. The fact that the defendant did not sign a fresh Deed of Mutual Covenant with the Developer is of no consequence as the terms of the DOA would be sufficient for the purpose.

[14] Apart from the DMC House Rules, which would be contractually binding on the defendant through the DOA, there is an additional statutory manner in which the Nadia House Rules became binding on the defendant. When title to the Strata Unit was transferred to the defendant sometime on or about 28.11.2007 (ie, the date of the DOA), the maintenance and management of the Development was under the statutory purview of the JMB. Pursuant to sections 8(1)(h) and 8(2)(f) of the BCPMMA

the duties and powers of the JMB includes the power and duty to formulate and enforce house rules.

[15] This was reaffirmed by the High Court in *Wisma MPL JMB v. Malaysia Pacific Corp Bhd* [2013] 1 MLJ 712 at paragraph 111 of that judgment, where the court held that the plaintiff therein, being a Joint Management Body, was empowered by s. 8(2) of the BCPMMA to make house rules for the proper maintenance and management of the strata development. Sections 8(1)(h) and 8(2)(f) of the BCPMMA read as follows:

8 (1) The duties of the Body include the following:

... ..

(h) to enforce house rules for the proper maintenance and management of the building;

(2) The powers of the Body shall include the following:

... ..

(f) to make house rules for the proper maintenance and management of the building;

[16] In this regard, it is interesting to note that section 14(1)(a) of the BCPMMA statutorily mandates that the JMB shall keep a record of the house rules in force from time to time. It is not disputed that before the plaintiff

was established and during the period when the management and maintenance of the Development was under the purview of the JMB, there was indeed a set of house rules in force (“the JMB House Rules”). That set of the JMB House Rules is the same as the one that is exhibited as Exhibit “YCS-3” in the affidavit of Yap Chai Soon affirmed on 27.9.2013. And in Rule 1.1(d) of the JMB House Rules it is provided that:-

The House Rules set out herein shall be in addition but not in derogation to the terms and conditions stipulated in the Sale and Purchase Agreement and the Deed of Mutual Covenants executed between the Owner and Developer.

Therefore, apart from the DMC House Rules, the JMB had in force a set of house rules, which had the force of law by virtue of section 8(2)(f) of the BCPMMA.

[17] The evolution of the Nadia House Rules continued with the formation of the plaintiff under the provisions of the STA and the holding of its first annual general meeting. The plaintiff was formed automatically by operation of law on 12.6.2009 as the management corporation for the Development by virtue of the

provisions of section 39 of the STA. This is borne out by the Certificate of Establishment of Management Corporation exhibited as Exhibit “YCS-1” in the affidavit of Yap Chai Soon dated 27.9.2013. In relation to that formation, section 15 of the BCPMMA states that:

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

(2) The Body shall:-

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

(i) the house rules;

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

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

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

[18] Therefore, pursuant to section 15(1) of the BCPMMA the JMB would be deemed dissolved three months from the date of the first meeting of the plaintiff and there is





statutory requirement under section 15(2)(a)(i) of the BCPMMA that the JMB hands over the house rules in force for the Development, which would be the JMB House Rules, to the plaintiff not later than one month of that first meeting. The affidavit evidence shows that the JMB had, in compliance of this statutory requirement, handed over the JMB House Rules to the plaintiff well before its first annual general meeting. This is borne out by the fact that at the first annual general meeting of the plaintiff held on 19.3.2011 the JMB House Rules were discussed and were adopted by the general body to continue in its application as the house rules of the management corporation. This is the Nadia House Rules. The minutes of the first annual general meeting held on 19.3.2011 confirms and bears this out in the following words:

Mr Jasbar Singh (PH83a) informed that many residents do not follow the House Rules or don't know the House Rules at all as the House Rules were not circulated to them. Mr Charles Tan proposed that the existing House Rules be adopted in this AGM and be circulated to all Owners and Residents after the AGM. However, the newly elected Council shall look into improving the existing House Rules. All present was agreeable with this proposal. It was resolved that the existing House

Rules be adopted into the Management Corporation with a vote of 40 FOR and 0 AGAINST.

[19] There is evidence showing that the notice of the first general meeting was posted to the defendant. However, the defendant did not attend that first meeting. Subsequently, at the plaintiff's second annual general meeting held on 9.6.2012, the general body approved resolutions to amend 4 clauses of the Nadia House Rules. Notice of the second annual general meeting was posted to the defendant, but the defendant chose not to attend. Subsequently, at the plaintiff's third annual general meeting held on 7.9.2013, two motions to further amend two clauses of the Nadia House Rules were tabled for consideration of the general body and the same were approved. The defendant was given notice of the third general meeting together with the agenda of the meeting. However, once again the defendant chose not to attend.

[20] The minutes of the second and third annual general meetings annexed to the affidavit of Yap Chai Soon affirmed on 11.3.2014 confirms that the aforesaid resolutions pertaining to the Nadia House Rules were



passed by the general body and the attendance list shows that the defendant did not attend the meeting. The plaintiff has also tendered the post office's bulk post receipt as proof of postage of the notice of these meetings to the defendant.

[21] In the premise, I find the defendant's contention that she was unaware of the Nadia House Rules to be wholly inconsistent with the evidence adduced in the affidavits. In fact, the defendant had submitted an application form that is mandated by the Nadia House Rules for the purpose of seeking plaintiff's approval to carry out the aforesaid renovation to her Strata Unit. This shows that the defendant was fully aware of the existence of the Nadia House Rules for otherwise she would not have submitted this application form. Further, there is evidence that the plaintiff had brought the Nadia House Rules to the attention of all owners and residents from time to time through its periodical Newsletters, which were delivered to all owners and residents as well as posted on the plaintiff's bulletin board.



[22] The defendant contends that in order for the Nadia House Rules to have effect in law, these rules must be tabled at the plaintiff's general meeting and be approved by way of a special resolution as additional by-laws. The defendant's argument is that the Nadia House Rules are in effect by-laws and that these house rules ought to be approved by a special resolution pursuant to section 44(1) and (2) of the STA that reads:

(1) The by-laws set out in the Third Schedule shall, as and from the opening of a book of the strata register be in force for all purposes in relation to every subdivided building or land and shall not be amended by the management corporation.

(2) The management corporation may by special resolution make additional by-laws, or make amendments to such additional by-laws, not inconsistent with the by-laws set out in the Third Schedule, for regulating the control, management, administration, use and enjoyment of the subdivided building or land.

[23] To fully appreciate the import and meaning of the provisions of section 44(1) and (2) of the STA, one would have to have regard to the definition of the term "by-laws" as defined in section 4 of the STA, that reads:

In this Act, unless the context otherwise requires:-

“by-laws”, in relation to a subdivided building or land, means the by-laws which are in operation in respect of that building or land made under section 44 and as provided for in the Third Schedule;

A careful reading of sections 4 and 44 of the STA reveals that there are two categories of by-laws envisaged in the STA. The first are the by-laws found in the Third Schedule to the STA that comes into force upon the opening of the book of strata register for the strata scheme. The by-laws contained in the Third Schedule cannot be amended or varied by the management corporation. In so far as the management corporation is concerned the by-laws in the Third Schedule are etched in stone, unless repealed or amended by the legislature. The second category of by-laws are those made by the management corporation. These by-laws are termed as additional by-laws that come into lawful effect only if they are resolved and passed by a special resolution at a general meeting of the management corporation. The additional by-laws cannot be inconsistent with the by-laws set out in the Third Schedule. Though the management



corporation may not amend the by-laws in the Third Schedule, they may however by a special resolution amend or repeal any additional by-laws.

[24] Therefore, from the inception of the management corporation until its first general meeting, which pursuant to section 41(1) of the STA is to be held within one month of the expiration of the “initial period” as defined in section 4 of the STA, the by-laws that would be existing and operational would be only those contained in the Third Schedule. In the circumstance, at the first general meeting of the management corporation the question of amending any existing by-laws cannot arise, as by statute the by-laws in the Third Schedule cannot be amended or repealed by the general body. In this regard, the provisions of section 41(5) of the STA as regards the agenda for the first annual general meeting provides that:

(5) The agenda for the first annual general meeting shall include the following matters:

... ..

(d) to decide whether to amend the additional by-laws in force immediately before the holding of the meeting;

[25] As I have pointed out earlier, the only amendment to the by-laws in existence at the first general meeting of the management corporation, ie, the Third Schedule by-laws, that can be brought about by the management corporation at its first annual general meeting would be the additional by-laws that are passed by way of special resolution in accordance to section 44(1) of the STA.

[26] The defendant argues that the Nadia House Rules adopted by the management corporation at the first annual general meeting are in fact additional by-laws and that it would have required a special resolution to be effective in law. Now, section 4 of the STA defines “special resolution” as:-

“a resolution which is passed at a duly convened general meeting of a management corporation of which at least fourteen days’ notice specifying the proposed resolution has been given by the management corporation or by proprietors who together are entitled to not less than one-quarter of the aggregate share units and who together constitute not less than one-quarter of the membership of the management corporation”.

And the defendant submits that since the notice of the first annual general meeting was given less than fourteen days before the said meeting, no special resolution could have possibly been adopted at that meeting. Therefore, the defendant submits that the Nadia House Rules are not proper by-laws passed pursuant to section 44(1) of the STA. *A fortiori*, the defendant argues that the adoption of the Nadia House Rules at the first general meeting is *ultra vires* the STA and invalid in law.

[27] I find that there are several flaws in that argument. Firstly, house rules and by-laws are not one and the same. Professor Teo Keng Sood in his seminal work *Strata Title in Singapore and Malaysia* 4<sup>th</sup> Ed (2012), Lexis Nexus, at page 567 states that whilst:

“... the STA provides for additional by-laws to be made by the management corporation for the purpose of controlling and managing the use and enjoyment of the land, building(s) and the common property in the strata scheme, there is no necessity that every rule laid down by the management corporation must be made by way of by-laws.”

[28] Professor Teo finds support for that proposition in the Singapore High Court case of *Ezio Paganetto v. The MCST*



*No 1075* [1988] 2 MLJ 8 where Chao JC in considering an argument similar to that raised by the defendant herein had this to say:

It is abundantly clear that under paragraph 3 of the Second Schedule, the management corporation has a duty to control, manage and administer all the common property for the benefit of all the subsidiary proprietors. Under section 31(2)(e), the management corporation is given the power to do all things reasonably necessary for the enforcement of the by-laws set out in the second schedule. It must therefore follow that it is entitled to make house rules for those purposes. The fact that it could have made some of the house rules as by-laws does not mean that it may not make house rules just as house rules.

[29] The Singapore High Court in *Ezio Paganetto* recognised that there is no requirement in law that “every rule laid down by the management corporation has to be by way of by-laws”. The court further held that such a requirement would bring about undue hardship for the management corporation and held that rules necessary to regulate the everyday interaction of the community in a strata scheme can be done by way of house rules, so long as they do not contravene or contradict the statutory provisions in the Act and the by-laws in the Schedule.

[30] The argument raised by the defendant herein is similar to that raised by the plaintiff in the *Ezio Paganetto* case, that is the house rules are *ultra vires* the provisions of section 35 of the Land Titles (Strata) Act 1985, and accordingly are void and of no legal effect. The plaintiff in that case contended that the management corporation did not make the house rules in accordance to the procedure laid down in section 35(4) of the Singapore Land Titles (Strata) Act 1985 that reads as follows:

35.(1) Every subdivided building shown in a strata title plan shall be regulated by by-laws which shall provide for the control, management, administration, use and enjoyment of the lots and the common property.

(2) The by-laws shall include the by-laws set out in the Second Schedule which shall not be added to, amended or repealed by the management corporation.

(3) The by-laws set out in the Second Schedule shall, as and from the registration of a strata title plan, be in force for all purposes in relation to every subdivided building.

(4) The management corporation may by special resolution make by-laws, not inconsistent with the by-laws set out in the Second Schedule, for regulating the control, management, administration, use and enjoyment of the subdivided building.

[31] The provisions of section 35(4) of the Land Titles (Strata) Act 1985 are similar to the provisions of our section 44(2) of the STA. In analyzing the provisions of section 35(4) of the Land Titles (Strata) Act 1985, the learned judge in *Ezio Paganetto* had held that:

... there is nothing in section 35(4) which suggests that every additional rule, no matter how trivial, made by the management corporation for the orderly enjoyment of common property in the condominium must be made by way of by-laws. The discretion rests with the management corporation.

Chao JC further held that:

It is abundantly clear that under paragraph 3 of the Second Schedule, the management corporation has a duty to control, manage and administer all the common property for the benefit of all the subsidiary proprietors. Under section 31(2)(e), the management corporation is given the power to do all things reasonably necessary for the enforcement of the by-laws set out in the second schedule. It must therefore follow that it is entitled to make house rules for those purposes. The fact that it could have made some of the house rules as by-laws does not mean that it may not make house rules just as house rules. Section 35(4) talks of "may". Many of those things dealt with in the house rules are really matters of details and procedures, which may need to be altered from time to time in the light of experience gained to ensure an orderly enjoyment by all subsidiary proprietors of common

property. It is absurd to suggest that for every addition or amendment to the house rules, no matter how insignificant, the management corporation has to call a general meeting to effect a special resolution pursuant to section 35(4) of the Act. And until the by-laws are made or amended, nothing can be done about the problems faced by the condominium. This will be the result of the plaintiff's argument which I reject. It is totally unreasonable to suggest that the management corporation, in exercise of its functions and duties laid down in the Act, may not make rules for the day-to-day running of the common facilities of the condominium. The house rules are needed to avoid conflicts which could easily arise.

The learned judge concluded that in his opinion:

... there cannot be any doubt that paragraph 3 of the Second Schedule, read with section 31, gives authority to the management corporation to lay down all the detailed rules needed to ensure that the condominium is managed efficiently and that the common facilities are properly used and enjoyed fairly by all. The house rules are for the good of all the subsidiary proprietors/occupiers. To say that every rule laid down by the management corporation has to be made by way of by-laws would cause so much practical difficulties that it may undermine the very basis of condominium living. There must be flexibility in regard to these matters. It is plain good sense that only those rules which are important and which are not likely to be altered from time to time should be made as by-laws. After all, the management corporation is constituted not by anybody else but by the subsidiary proprietors themselves. If the council has not acted fairly or properly, an extraordinary general meeting can always be called by

subsidiary proprietors pursuant to paragraph 10(2) (a) of the First Schedule to the Act.

[32] Now, Section 31(2)(e) of the Land Titles (Strata) Act 1985 is similar to section 43(2)(f) of the STA which empowers the management corporation to do all things reasonably necessary for the enforcement of the by laws and a fortiori that would include the power to make detailed house rules for the effective management of the strata scheme. The legal reasoning relating to the interplay of the various sections of the Singapore Land Titles (Strata) Act 1985 as analysed and interpreted by Chao JC in *Ezio Paganetto* would be equally applicable to the interpretation of sections 43 and 44 of the STA as well as the Third Schedule to the STA. The Third Schedule by-laws in the STA are similar to the Second Schedule by-laws in the Singapore Land Titles (Strata) Act 1985.

[33] My opinion in this respect is fortified by the decision the Court of Appeal in *Perbadanan Pengurusan Endah Parade v. Magnificent Diagraph Sdn Bhd* [2014] 5 CLJ 881 at 903 where Mohamad Ariff Yusof JCA agreed with the

approach taken in *Ezio Paganetto* and applied the principles enunciated therein in the following terms:

We have been referred to the High Court decision in *Lai King Lung v. Perbadanan Pengurusan Anjung Hijau & Anor* [2012] 1 CLJ 1013, which in turn quotes the Singapore High Court decision in *Ezio Paganetto v. The Management Corporation Strata Title No 1075* [1988] 1 LNS 141; [1988] 1 SLR 268, and **the general principle that a management corporation should be allowed to act reasonably without undue insistence on the existence of specific by-laws to cover every practical difficulty. We agree such an approach will be unreasonable** and, to quote counsel for the appellant, "at most... highly technical and at its lowest... pedantic". [Emphasis added]

[34] Therefore, the “general principle that a management corporation should be allowed to act reasonably without undue insistence on the existence of specific by-laws to cover every practical difficulty” and for it to make house rules that are compatible with the Third Schedule and the provisions of the STA has been recognised by the Court of Appeal in *Perbadanan Pengurusan Endah Parade*. This means that house rules can exist side-by-side with the statutory by-laws found in the Third Schedule and those

made by the management corporation under section 44(1) of the STA.

[35] Learned counsel for the defendant has placed considerable reliance on the High Court decision of *John Denis de Silva v. Crescent Court Management Corp* [2006] 3 MLJ 631 where Abdul Malik Ishak J held that:

That in the absence of any evidence of a special resolution making the house rules a by-law in the Crescent Court condominium complex, all references and executions of house rules unilaterally made by the defendant must be deemed to be void ab initio because they are ultra vires the procedures and powers of the management corporation under the Strata Titles Act 1985.

Counsel therefore submits on strength of this pronouncement that since the house rules were not made into by-laws at the first annual general meeting, these house rules are void and inapplicable. I am unable to accept that contention for several reasons. Firstly, there is no reference in that case to the legal reasoning advanced in *Ezio Paganetto*, which reasoning has been accepted by the Court of Appeal. Secondly, that decision in *John Denis de Silva* was made before the coming into

force of the BCPMMA, which came into operation in the Federal Territory of Kuala Lumpur on 12.4.2007. With respect, the reasoning adopted by the learned judge in *John Denis de Silva* regarding the validity of house rules, which are not approved as additional by-laws in accordance to section 44(1) of the STA, is no longer valid in light of the provisions of the BCPMMA that come into statutory effect after that case was decided. I will discuss this issue in detail a little later.

[36] Additionally, counsel for the defendant on the strength of the High Court decision in *Lai King Lung v. Perbadanan Pengurusan Anjung Hijau & Anor* [2012] 1 CLJ 1013, submits that the house rules in existence before the coming in existence of the management corporation must necessarily be approved as by-laws by special resolution at a general meeting. In *Lai King Lung* the learned judge whilst agreeing with the principles enunciated in *Ezio Paganetto* held that:

... the house rules in question have not been issued by the 1<sup>st</sup> defendant but by the developer (referred to as the vendor) (see encl. 26 exh. FYL13). This is also clearly a violation of s.



44(2) which requires the 1<sup>st</sup> defendant to make additional by-laws. Therefore, the present set of house rules are at any rate *ultra vires* the Strata Titles Act. It is suggested that the 1<sup>st</sup> defendant take immediate steps by way of special resolution to adopt as by-laws these house rules and thereafter the 1<sup>st</sup> defendant would be in a position to issue house rules in respect of matters arising out of these by-laws.

[37] I am, with respect, unable to follow the reasoning in *Lai King Kung* and apply it to the instant case for the following reasons. Firstly, the factual scenario in *Lai King Kung* is very different from that presented in the case before this court. In *Lai King Kung* the house rules sought to be relied on was formulated by the developer and not the JMB, nor were they passed on to the management corporation by the JMB by virtue of the requirement in section 15(2)(a)(i) of the BCPMMA. Secondly, in *Lai King Kung* the court did not consider the effect of sections 8(1)(h), 8(2)(f), 14(1)(a) and/or 15(2)(a)(i) of the BCPMMA in coming to the decision that it did. In the present case, I am of the opinion that these statutory provisions are crucial for the determination of the issue at hand. The plaintiff has shown in the affidavit the historical origin of the house rules in the DMC, and its adoption by

the JMB as the statutory house rules pursuant to sections 8(1)(h), 8(2)(f), and 14(1)(a) of the BCPMMA. In fact the affidavit of Yap Chai Soon dated 11.3.2014 states that house rules were never changed from the time of its inception in the DMC, through the JMB and the first annual general meeting of the plaintiff when the general body adopted it. Amendments to the house rules were tabled and approved by the management corporation in its second and third annual general meetings, which are the only statutory general meetings that the management corporation has held to date. This fact was never refuted or challenged by the defendant.

[38] The JMB House Rules were formulated by the JMB pursuant to the statutory power granted under section 8(2)(f) and mandated by section 14(1)(a) of the BCPMMA. As such the JMB House Rules would have force of law, as they would in effect be subsidiary legislation made pursuant to powers granted under statute. Further section 8(1)(h) of the BCPMMA gives the JMB power to enforce the house rules made by the JMB. And these statutorily



formulated JMB House Rules are mandated by section 15(2)(a)(i) of the BCPMMA to be handed over to the management corporation not later than one month from the date of the management corporation's first annual general meeting. However, both the BCPMMA and the STA are silent as to what is to become of the JMB House Rules once it is handed over to the management corporation. In the absence of specific provisions in the STA as regards the JMB House Rules, what then is the effect in law of these JMB House Rules once handed over to the management corporation.

[39] Now, there is no stipulation in the BCPMMA or the STA that upon the handover of the JMB House Rules, it shall be tabled at the management corporation's general meeting and approved by a special resolution before it could be implemented. The court cannot read into the statute a requirement that JMB House Rules be adopted as such. In fact section 15(2)(a)(i) of the BCPMMA gives the JMB a period of one month after the first general meeting to handover the JMB House Rules to the

management corporation. Therefore, if the JMB house rules are handed over to the management corporation after first general meeting, the question of it being tabled at that general meeting and approved as a by-law in accordance to section 44(1) of the STA does not arise at all. When the JMB House Rules are handed over to the management corporation by virtue of the statutory requirement in section 15(2)(a)(i) of the BCPMMA, the statutory by-laws in the Third Schedule to the STA would be in operation. Therefore, there would now be in existence the Third Schedule by-laws and the JMB House Rules existing side by side. The by-laws in the Third Schedule relate to matters that are seen as very important and fundamental to the proper management and maintenance of the strata scheme to the extent that the legislature prohibits any amendments. The house rules on the other hand relates to more day to day operational matters and general rules of behaviour and conduct in the use of the common property and many other routine matters that are peculiar and necessary to

cater for the specific needs of the particular strata scheme.

[40] Though the BCPMMA directs the JMB to handover the JMB House Rules to the management corporation, both the BCPMMA and the STA are silent as to what the management corporation is to do with the JMB House Rules. What then is the effect and purpose of the handover of the JMB House Rules to the management corporation? It is trite that parliament does not legislate in vain. If the legislature had statutorily mandated that a person perform a specified act then it must be for an intended purpose. Having regard to the legislative framework established by the BPCMA and the STA, I am convinced that it is the intention of parliament that the JMB House Rules continue to have effect as the house rules for the strata scheme after the management corporation has held its first annual general meeting. If the legislature had intended that the JMB House Rules be passed and adopted at the general meeting of the management corporation as by-laws that are consistent

with those in the Third Schedule, then parliament would have stated so. The absence of such a provision is conspicuous and quite telling of parliament's intent.

[41] The Preamble to the STA states that the Act is to facilitate the subdivision of building or land into parcels and the disposition of titles thereto and for purposes connected therewith. Whilst the Preamble to the BCPMMA states that the Act is to provide for the proper maintenance and management of buildings and common property, and for matters incidental thereto. Therefore, any interpretation of the provisions of these two Acts would have to be done to give effect to the legislative purpose for which these Acts were enacted.

[42] A careful look at section 15(2)(a) of the BCPMMA reveals that the JMB House Rules are to be handed over to the management corporation together with the audited accounts of the Building Maintenance Fund; all the assets and liabilities of the JMB; together with all records related to and necessary for the maintenance of the building and its common property. These are crucial documents and

instruments that are important and necessary for the continuous smooth operation and management of the strata scheme. Surely there is a purpose in this. In my view the mandatory requirement for the handover of the JMB House Rules, without the need for any further action, shows clear legislative intent that the JMB House Rules shall continue to apply to the strata scheme in order to ensure proper continuity in the management and maintenance of the strata scheme. This also allows for the avoidance of any disruption in the maintenance and management of the strata scheme when it changes from the purview of the JMB to that of the management corporation. As such the JMB House Rules, which has gained force of law by virtue of it flowing from the statutory provisions in the BCPMMA, is clearly intended by parliament to continue to be in operation without the need for any further action. As such it cannot be gainsaid that at the first annual general meeting of the management corporation the JMB House Rules must be tabled for approval as additional by-laws under section 44(1) of the



STA, if the management corporation intends to implement the JMB House Rules.

[43] At the first annual general meeting, in following the statutorily mandated agenda, the management corporation in considering whether to make additional by laws had decided that it was not necessary to do so. However, one strata owner had voiced his concern that the strata owners and residents in Nadia were not complying with JMB House Rules in place and suggested that the JMB House Rules be adopted by the management corporation and circulated to all owners. The management corporation approved that suggestion unanimously. I do not see anything wrong in this, as the general body of the management corporation was merely reiterating that which is already in force by operation of law. The Nadia House Rules were subsequently amended twice. The first amendment was done at the second annual general meeting and the second amendment at the third annual general meeting of the management corporation. Now, if the defendant had any issues with the Nadia House Rules



she could have attended these general meetings like any other concerned owner and raised her concerns. If the defendant had felt that the Nadia House Rules were onerous or *ultra vires*, she could have raised it at these meetings. However, despite being served with notices of these meetings, the defendant did not attend them. It is now too late in the day for the defendant to argue, and dare I say by clutching onto straws, that the Nadia House Rules are not applicable to her by virtue of it being *ultra vires* the provisions of the STA.

[44] In the sort of community living that is envisaged in a strata scheme, with sharing of facilities and common property, house rules are absolutely essential to maintain peaceful living and harmonious coexistence among the owners, residents and management corporation. In this regard, it cannot be the intent of parliament to mandate that the JMB House Rules be handed over to the management corporation without any purpose; or for it to be kept just as an ornamental showpiece on the trophy cabinet. The intention of parliament is for the JMB House



Rules to continue having the force of law that it has and the management corporation is to enforce them by virtue of the statutory powers granted under the STA. This would include the management corporation doing all things reasonably necessary for the performance of its duties to manage and properly maintain the common property and keep it in a state of good and serviceable repair. The house rules are an essential component of the legislative scheme found in the STA and the BCPMMA as well as the legal framework that parliament has enacted for this purpose.

[45] Therefore, it is my considered view that the management corporation and the proprietors of the strata units, including the defendant, would be subject to the Nadia House Rules.

[46] Having settled the law let me now look at the factual circumstance of this case. The affidavit evidence shows that on 10.5.2013, the plaintiff's employee, one Mr. Mahesh, saw renovation works in progress at the defendant's Strata Unit. In particular contract works were

being carried out to fix a sliding glass door to cover the patio of the unit. This was in contravention of several stipulations in the Nadia House Rules. Firstly, under the Nadia House Rules, the defendant is required to obtain the prior approval of the plaintiff before carrying out renovation works. However, the defendant had in breach of Rule 7.2 of the Nadia House Rules failed to obtain such prior approval. Secondly, the said renovation works were in breach of Rules 4.6, 5.3 and 7 of the Nadia House Rules in that the works carried out by the defendant had changed the external facade of the building.

[47] There is specific prohibition against carrying out renovation works that would change the external façade of the building. In this regard Rule 4.6 of the Nadia House Rules provides that:

For the purpose of maintaining the aesthetic integrity of the Building and the Project, the exterior facade of the Building shall be preserved. As such, the Owner and/or the Occupant shall not:

(a) damage or deface the exterior walls doors windows or roof of the Parcel or effect any change to the facade of the

Parcel and/or Building and/or the Common Area or any part thereof;

(b) cause any balcony patio dry yard driveway or roof deck appurtenant to the Parcel and/or the Building or any exterior part thereof to be enclosed, covered by awnings, shades, screens, or Venetian blinds or otherwise, increased in size or altered in configuration, without the prior written approval of the Management. However, a roof cover may be installed on the ground floor patio of the Parkhome Parcel (Type 1) provided that such installation is in compliance with the standard design, size, colour and specifications stipulated by the Management, a copy of the approved drawings of the same is annexed hereto.

... ..

**[48]** The preservation of the building façade is of great importance in a strata scheme. Prof Teo Keng Sood in his book *Strata Title in Singapore and Malaysia* 4<sup>th</sup> Ed (2012), Lexis Nexus, at page 583 writes:

This ability of management corporations to regulate the carrying out of improvements by subsidiary proprietors in respect of their lots to ensure uniformity of the building façade is of importance because the changes will affect the appearance or external façade of buildings within the strata development, which has an impact on the value of the property.

[49] I accept that there is some value, both financially as well as aesthetically, in preserving the external façade of the building. The courts have recognised this and in appropriate cases where there is breach of a house rule regarding façade control, such as Rule 4.6 of the Nadia House Rules herein, the court can grant a mandatory injunction ordering the defendant to rectify the said breach by undoing the renovation works and putting back the façade to its original state (see *MCST Plan No 1378 v. Chen Ee Yueh* [1993] 3 SLR 630; and *The Proprietors Strata Plan No 464 v. Osborn & Anor* [1975] NSW Titles Cases 30-016). In fact in such a situation the provisions of section 53 of the Specific Relief Act 1950 would be applicable and it reads:

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.

[50] Strata owners must ensure that they abide by the provisions of the house rules for the greater good of the strata community. When any recalcitrant strata owner

refuses to follow house rules, they ought to be held responsible and made accountable for their breaches. In the instant case, the defendant has clearly breached the Nadia House Rules 4.6 by changing the exterior façade of the building by removing the sliding glass door at the patio and relocating the glass door to enclose the patio. This act of the defendant had changed the external appearance and original design of the Parkhomes. This could potentially impact the aesthetics and financial value of the strata parcels in Nadia. By this unauthorized act, the defendant had also brought about an increase in size of the area affected and/or had altered its configuration leading to the elimination of the patio altogether. The photographs adduced as evidence in the affidavits clearly bear out this fact.

[51] The plaintiff's then took immediate action requesting the defendant's contractor carrying out the renovation works to stop work forthwith. However, the contractor disregarded this request and continued to carry out the works well past 5.00pm, which is the cut-off time for

contractors to cease work as per Rule 7.4 of the Nadia House Rules.

[52] The defendant had also breached Rule 5.3 of the Nadia House Rules by using the electronic gate access card to bring in the contractor and his vehicles onto the strata scheme. The defendant had also failed to register the contractor with the plaintiff as required under Rule 7.5(a) and (b) of the Nadia House Rules. In addition thereto the defendant had failed to pay the renovation deposit of RM1,500.00 as required and mandated by Rule 7.3 of the Nadia House Rules. These are clear and wanton breaches of the Nadia House Rules by the defendant.

[53] The defendant argues that she has a constitutional right to deal with her property in any way she deems fit and that her constitutional rights cannot be shackled by the terms of the Nadia House Rules. I am afraid that I cannot accept that contention. She may be the proprietor of the Strata Unit, but that does not mean that she is entitled to deal with her property in any manner she likes, more so to the detriment of the other strata parcel

owners. Living in a strata community necessarily entails that the owners and occupants be regulated by rules and regulations that are permitted by law. Apart from the defendant's argument that the Nadia House Rules are void and invalid, which argument I have dismissed earlier, there is no evidence showing that the Nadia House Rules being relied on by the plaintiff to found this action is contrary or ultra vires to the provisions of law. In the premise, the defendant is bound by the Nadia House Rules and any breach thereof is actionable and the plaintiff is entitled to the relief that is claimed in the Originating Summons.

[54] Wherefore, I allowed the plaintiff's claim as prayers (1) to (7) of the Originating Summons with cost. Upon application of counsel for the plaintiff, I allowed the plaintiff to file its Bill of Cost as in Form 117 for the same to be taxed.



**Dated:** 11 NOVEMBER 2014

**(VAZEER ALAM MYDIN MEERA)**

Judicial Commissioner  
High Court of Malaya  
Kuala Lumpur.

**Counsel:**

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*For the defendant - C W Loh; M/s C W Loh & Associates  
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**Legislation referred to:**

Building an Common Property (Maintenance and Management)  
Act 2007, ss. 4, 8(2), 15, 44

Strata Title Act 1985, s. 31(2)(e), 39, 44(2)

Specific Relief Act 1950, s. 53