FEDERAL TERRITORY OF KUALA LUMPUR

IN THE HIGH COURT OF MALAYA AT KUALA LUMPUR

CIVIL SUIT NO.: WA-22NCvC-178-03/2020

BETWEEN

AUM CAPITAL SDN BHD
(Company No.: 791177-H)

...PLAINTIFF

AND

MENARA UOA BANGSAR MANAGEMENT CORPORATION

...DEFENDANT

GROUNDS OF JUDGMENT

(Order 14A of the Rules of Court 2012)

A. INTRODUCTION

[1] The present case before this Court is essentially the Plaintiff's complaint that the Defendant, Menara UOA Bangsar Management Corporation **("Defendant-MC")**, who is the Management Corporation of the Menara UOA Bangsar **("the Property")** (which

the Plaintiff owns a unit in) has unlawfully utilised monies in the Maintenance Account to 'subsidise' the upkeep, maintenance, service, and operation of a Centralised air-conditioning Facility **("CACF")** which the Plaintiff alleges were not 'Common Property' as outlined under the Strata Management Act 2013 **("SMA 2013")**.

[2] It is well understood by all parties that the Plaintiff's claim here is not a monetary claim, and is for all intents and purposes to insist upon the Defendant to collect reimbursements from private parcel owners who have privately enjoyed the utility of the CACF in the confines of their own respective private parcels.

[3] The Plaintiff's case is succinctly that the CACF, although situated outside of any private parcels (and within the confines of Common Property Areas) cannot be considered as a Common Property as the utility and enjoyment of the CACF is only exclusive to some private parcels (and is not 'commonly' usable by other private parcels) **("CACF Issue")**.

[4] Initially, apart from the core CACF issue, the Plaintiff's cause of action also consisted of other issues regarding:

a. The use of the Maintenance Account Funds for the upkeep of 2 escalators linking the Property with the Bangsar LRT Station **("Escalator Issue")**; and

b. The Defendant-MC's practice of keeping and maintaining distinct and separate Bank Accounts (for the Maintenance and Sinking Fund Accounts) for each separate Tower A and Tower B of the Property, whilst charging varied rates of maintenance charges corresponding to the different sections of the Property **("Separate Accounts Issue")**.

[5] Nonetheless, both the Escalator Issue and the Separate Accounts Issue had been mutually resolved by both parties. The same resolution was accordingly mutually informed to and recorded by this Court. It was recorded that the Escalator Issue was resolved considering that the Defendant-MC was reimbursed the costs of maintenance of the 2 sets of escalators from UOA Real Estate Investment Trust on 1.9.2020.

[6] It was also recorded that the Separate Accounts Issue is already moot as the Defendant now only maintains a singular account for

the Management Charges. Thus, the singular remainder issue to be determined before this Court is only the CACF issue.

[7] Considering that the CACF issue is ultimately a question of law and construction of statutes, it is plain and obvious that the CACF issue is suitable and fit to be determined *vide* interlocutory means.

[8] Accordingly, the learned counsel for the Defendant-MC has filed the present Notice of Application **(Enclosure 16)** under **Order 14A** (as questions of law that could determine the suit via interlocutory means) or **Order 33 Rule 2 of the Rules of Court 2012 ("ROC 2012")** (as preliminary issues to be tried before main Trial).

[9] Nevertheless, both the Plaintiff and Defendant in their submissions share the same sentiment and agreement that the questions posed are fit and proper to be questions of law that can determine the suit fully *vide* interlocutory means. Therefore, this Court shall accordingly address and determine the questions posed as questions of law and construction under Order 14A of the ROC 2012:

a. **Question 1:** Whether components of the centralised air-conditioning facilities ("Centralised Air-Conditioning Facilities") which are not comprised in any individual parcel of Menara UOA Bangsar, form part of the "common property" of Menara UOA Bangsar as defined under Section 2 of the Strata Management Act, 2013 even if the utility or benefit of the Centralised Air-Conditioning;

b. **Question 2:** If the answer to Question (1) is in the affirmative, whether the statutory duty imposed by **Section 59(1)(a) of the Strata Management Act, 2013** on the Defendant, as the Management Corporation of Menara UOA Bangsar, to properly maintain and manage the common property and keep the same in a state of good and serviceable repair, requires the Defendant to bear the costs and expenses of operating and maintaining the Centralised Air-Conditioning Facilities, including the electricity and maintenance costs thereof,

c. **Question 3:** Whether the Defendant is empowered under the relevant laws (including the Strata Management Act, 2013) and obliged to seek full reimbursement from the private parcels owners of the Tower B, having incurred the costs and expenses

of maintaining the Centralised Air-Conditioning Facilities, including the electricity and maintenance costs thereof solely for the benefit of a particular private parcel owner, namely UOA REIT, in respect of the Centralised Air-Conditioning Facilities within Tower B of Menara UOA Bangsar;

d. **Question 4:** Whether the Defendant is negligent in failing to seek full reimbursement from the private parcels' owners of the Tower B, having incurred the costs and expenses of maintaining the Centralised Air-Conditioning Facilities, including the electricity and maintenance costs thereof expenses solely for the benefit of a particular private parcel owner, namely UOA REIT, in respect of the Centralised Air-Conditioning Facilities within Tower B of Menara UOA Bangsar; and

e. **Question 5:** In the event the answer to Questions (iii) and/or (iv) above is in the affirmative, the Defendant shall take all necessary steps to determine the sum for a full reimbursement for the costs and expenses of maintaining the Centralised Air-Conditioning Facilities, including the electricity and maintenance costs thereof as against DATS Management Sdn Bhd and/or Desa Bukit Pantai Sdn Bhd and/or Peninsular Home Sdn Bhd and/or UOA Asset Management Sdn Bhd and/or RHB Trustee Bhd, taking

into account the duration and amount of the expenses involved, and setting off the contribution made by UOA REIT.

[10] To this Court's mind, Questions 3, 4, and 5 above (proposed by the Plaintiff) all depend on the prior answers in Questions 1 and 2.

[11] Questions 1 and 2 will fully and effectively determine whether or not the Defendant-MC is entitled to use monies from the Maintenance Account to maintain the CACF as a Common Property under the purview of the SMA 2013. And if it has already been determined that the Defendant-MC is well within its rights and authority to upkeep and maintain the CACF as a Common Property under the SMA 2013, then it shall not be incumbent upon the Defendant-MC to pursue or claim for any reimbursement for the maintenance costs paid using the Maintenance Account funds.

[12] In any case, it is pertinent to first appreciate the facts of the case so as to build the appropriate foundation as well as context to properly determine the questions above.

B. FACTS OF THE CASE

[13] AUM Capital Sdn Bhd **("The Plaintiff")** is the registered proprietor of 1 parcel situated in **Tower A** of Menara UOA Bangsar.

[14] Menara UOA Bangsar is a mixed-development property which consists of 426 parcels in Office Tower A **("Tower A")**, 3 parcels in Office Tower B **("Tower B")**, 9 retail parcels in the podium, and 2 parcels of multi-storey elevated car parks.

[15] The Defendant-MC is a corporate entity incorporated on 5.6.2013 under Section 17 of the SMA 2013 and as mentioned earlier, is the Management Corporation setup for the Property.

[16] Apart from the Common Properties and Common Area of Tower B, the private parcels in Tower B are largely beneficially owned by UOA REIT (under the management of UOA Asset Management Sdn Bhd) and registered in the name of RHB Trustee Berhad as trustee for UOA REIT. The other Tower B private parcel owners also consist of Angkasa Restu Sdn Bhd and Desa Bukit Pantai Sdn Bhd. These Tower B parcel owners are not parties to the present suit.

Individual Air Conditioning Units (ACUs) in Tower A's Private Parcels & CACF feeding Tower B's Common Property and Private Parcels

[17] It is an undisputed fact that the entire 426 private parcels in Tower A do not come equipped with any centralised air-conditioning facilities. The CACF in Tower A only serves chilled air to the Common Property (being the lift lobbies, and the corridors of each floor). Thus, each private parcel owners in Tower A have and maintain in their own respective parcels, split and individual air-conditioning units **("Individual ACUs").** All the Individual ACUs in Tower A are situated within the area and border marked for each individual private parcel.

[18] Starkly different to Tower A, Tower B comes equipped with a large and intricate CACF system that serves chilled air not only to the common property, but also to the private parcels via air ducts. Thus, the private parcels in Tower B does not come equipped with Individual ACUs as the large CACF system in Tower B is already setup to serve chilled air to the entire Tower B.

[19] It also remains admitted and undisputed that the entirety of the large CACF System in Tower B (consisting of 3 cooling towers, a chiller plant room, and 349 chilled water fan coil units) **were all entirely installed and situated within Tower B's Common Property area**. Tower B's CACF system operates within the Common Property Area and ultimately channels chilled air via ventilation ducts to Common Properties and private parcels in Tower B. Although some private parcels in Tower B has Individual ACUs, it was undisputed that the Defendant-MC has never paid for the electricity charges of Tower B's Individual ACUs, as these Individual ACUs are paid for and maintained by the private parcel owners per se.

[20] Upon reading para 12 of the Plaintiff's Written Submission, the Plaintiff's sole complaint (as a Tower A private parcel owner) is that the CACF System of Tower B cannot be considered a "Common Property" under the SMA 2013, as the 'exclusive enjoyment or benefit' of the CACF also went beyond Common Property Areas and transcended into some private parcels in Tower B.

[21] Hence, the Plaintiff argues that the Defendant-MC ought not to use the Maintenance Account funds to pay the maintenance and electricity charges for the operation of the CACF in Tower B.

[22] Basically, the Plaintiff here cries foul that it is unjust that Tower A parcel owners would have to pay maintenance fees (and additionally having to bear the maintenance and electricity of their own Individual ACUs) while the Tower B parcel owners only have to pay maintenance fees (while the maintenance and electricity of the CACF are 'subsidised' by the Maintenance Account funds).

[23] The above background facts considered, the issue whether or not there is any merit in the Plaintiff's purported stance on the 'exclusive enjoyment' shall be dealt with further down this Judgment under the appropriate questions of law proposed by the parties.

C. QUESTION 1: Whether components of the centralised air-conditioning facilities ("Centralised Air-Conditioning Facilities") which are not comprised in any individual parcel of Menara UOA Bangsar, form part of the "common property" of Menara UOA Bangsar as defined under Section 2 of the Strata Management Act, 2013 even if the utility or benefit of the Centralised Air-Conditioning Facilities accrues in part to one or more proprietors and/or occupiers of private parcels.

[24] It is well encoded in **Section 59 (1) (a) of SMA 2013** that a Management Corporation alike the Defendant-MC is statute bound to his duty to:

"properly maintain and manage the subdivided building or land ***and the common property and keep it in a state of good and serviceable repair***.

[25] The only dissonance between the parties here is **whether or not the CACF system featured in Tower B, can be considered as "Common Property"** under the SMA 2013.

[26] Before this Court delves into the subjectivities of each parties' submission, it is prudent that this Court first highlights the statutory definition of "common property" as stipulated under the SMA 2013. In plain words, under **Section 2 of the SMA 2013**, a common property (in a subdivided building or land) can be defined as:

"(b) in relation to a subdivided building or land, means so much of the lot—

(i) ***as is not comprised in any parcel****, including any accessory parcel, or any provisional block as shown in a certified strata plan; and*

(ii) used or capable of being ***used or enjoyed by occupiers of two or more parcels****"*

[27] This Court cannot at its whims and fancy ascribe any interpretation beyond the plain and unambiguous definition prescribed under the provision above.

[28] It is immensely obvious that the first and primary denominator is a 'locational' issue. Only after the location of the impugned property is determined, only then the Court would proceed to examine the question of 'utility' of the property on whether or not it at least would be enjoyed by a minimum of **OCCUPIERS** of (two or more parcels).

[29] This Court underlines the statutory word of "Occupiers" to highlight that ownership of the parcels do not matter or is a non-issue in determining whether or not a property is common property.

[30] This Court identifies that the Plaintiff by and large attempts to impress that the parcels in Tower B is largely beneficially owned by one singular entity, being UOA REIT. Nonetheless, the statute is not concerned with the ownership of the parcels, and instead placed distinct focus on the occupiers or tenants of private parcels. Thus, even if an entity were to own the Tower B entirely, the statute shall still make the appropriate distinction between parcels based on the occupiers or tenants of the private parcels.

[31] So to demystify Question 1, this Court asks the first identification question which would be, where does the CACF comprise of or in other words, where is the CACF situated or located? As far as this Court is concerned, the answer is that the entire CACF system for Tower B is situated, located in, or comprised **outside of any private parcels**. In fact, it is the Plaintiff's purported argument that the CACF falls within a class of common property which are **"equipment and devices that resides on common property".**

[32] Nonetheless, this Court must emphasize that the classification and distinction between a common property (as in landed areas not marked private parcel) and common property (as in equipment and devices that resides on common property) is entirely baseless and was not supported by any authorities. Even the Plaintiff's Main Submission and Reply Submission does not furnish any authority on these 'classifications'.

[33] In fact, the similarity that the Plaintiff is attempting to draw (between the CACF and Water Supply Connection) only further dispels the Plaintiff's own case. Yes, undoubtedly the water supply systems in the property would geographically reside within common property

areas. The 'main line' of the water supply indeed is common property.

[34] However, undoubtedly there shall be faucets and water inlets **which resides within the private parcels** that draws water from the main line. With these inlets and faucets, it is apparent that these features must be situated within the private parcels, and indeed the private parcel occupiers are charged for their direct water utilisation.

[35] Tower B's CACF is no different than the water supply's 'main line'. It must be understood that the primary difference between an Individual ACU and a CACF system is that an Individual ACU (which is the feature of Tower A's private parcels) does not draw from a 'main line' of chilled air. An individual ACU would have its own rear 'compressor' to draw and chill air from the outside, and thereafter will directly supply the front 'blower unit' (situated in private parcel) with chilled air. The front blower unit then blows cold air into the private parcel. Both the rear compressor unit and the front blower unit resides within the private parcels.

[36] In contrast, a CACF system alike in Tower B means that private parcels come equipped with a universal and centralised 'main line' for chilled air. The CACF system which is entirely situated in the common property area (alike the water supply's main line) feeds chilled air to Tower B inclusive of the private parcels and the common property areas. This chilled air 'main line' supplies chilled air *vide* air ducts. Thereafter, the occupiers of private parcels in Tower B then would have its own 'faucet' and 'inlet' (the fan coil unit/blower) to draw the chilled air from the ducts of the CACF (which are still situated outside of private parcel areas). And similar to the water supply comparison, it is undisputed and admitted that the Defendant-MC does not pay the electricity charges for the use of the blower units situated in the private parcels in Tower B. Thus, the same way the water main line (although feeding private parcels) are 'hidden' or structured outside the private parcels, the setup, and location of the CACF also remains within common property area (outside private parcels) although feeding private parcels. The 'feeding' still happens within the area of common property. The 'draw' or the 'tapping' from the main line thereafter is within private parcels (which the Defendant-MC does not pay for).

[37] Thus, since the Plaintiff is adamant that the water supply main line system is similar to Tower B's CACF system, then the Plaintiff itself has inadvertently admitted that it is well within the Defendant-MC's duty and authority to pay the maintenance charges and electricity of the CACF system (as the chilled air main line).

[38] Apart from the Plaintiff's inadvertent admission above, this Court comes back to the locational issue of the CACF. Considering all of the above, it is plain and obvious that the CACF in Tower B is entirely located outside of any private parcels.

[39] The 2nd identification question then is whether the Tower B CACF System (which resides outside of the private parcels) are capable to be used, or enjoyed by at least occupiers of two or more private parcels. And the answer is a resounding positive. It is reiterated that the SMA 2013 is not concerned of the enjoyment of the common property by parcel owners, but instead specifically the enjoyment of the common property by occupiers of two or more private parcels. Thus, the Plaintiff's attempt to fashion the majority ownership of the parcels to be under one sole beneficial ownership of UOA REIT, remains a non-issue. The resolute fact remains that at the very least, some private parcels of Tower B are owned and occupied by 3

different occupiers, being UOA REIT, Angkasa Restu Sdn Bhd, and Desa Bukit Pantai Sdn Bhd. Thus, since the CACF would have benefited or be enjoyed by these three separate occupiers, then the CACF would have satisfied the 2nd identification question.

[40] This Court draws wisdom from the recent **Court of Appeal** decision in **Perbadanan Pengurusan 3 Two Square v 3 Two Square Sdn Bhd & Anor and another civil [2019] MLJU 1983** which has affirmed **Azizul Azmi Adnan J's** decision at the High Court in **3 Two Square Sdn Bhd v Perbadanan Pengurusan 3 Two Square & Ors [2018] MLJU 111.**

[41] This Court must stress that the facts and circumstances of the **3 Two Square case ("3TS case")** is largely in *pari materia* with the present case, and the landmark principles held in both the Court of Appeal and High Court fittingly apply *mutatis mutandis* in the present case.

[42] The complaint in the **3TS case** is exactly similar to the present case in that the Court of Appeal and the High Court also dealt with the complaint and argument that parcel owners of a block (without

CACF) ought not to be forced to pay maintenance charges to 'subsidise' the maintenance and electricity costs of a CACF system of another block.

[43] In the 3TS case, the development consisted of 6 Blocks. Only 1 of the 6 Blocks come equipped with a CACF system, which is the Crest Tower. It was argued that the CACF System in Crest Tower only and exclusively benefits the parcel owners in Crest Tower and was of no utility to the parcel owners of other Blocks within the same Development. Thus, the parcel owners of the other Blocks insisted that the CACF System in Crest Tower is not Common Property.

[44] In essence, the 3TS case, and the present case here both deal with the 'exclusive enjoyment' argument in a fallible attempt to deem a CACF system to not be a Common Property under the SMA 2013, or even the Strata Titles Act 1985. **Azizul Adnan J** at the High Court outlines:

"[28] The utility of these facilities accrues substantially (even if not exclusively) to the occupiers of Crest Tower. For example, ***unlike Crest Tower, none of the other blocks in 3TwoSquare has central air-conditioning. The parcels in these other blocks are cooled by split air-conditioning units installed by the respective parcel owners within their own parcels.*** *Thus, the costs*

of operation and maintenance of these split units fall to the respective parcel owners. ***By contrast, Crest Tower is installed with central air conditioning****, the costs of operating and maintenance of which are not insubstantial.* ***The argument was advanced on behalf of the first to eighth defendants that it would not be fair to the parcel owners of the other blocks in 3TwoSquare to contribute to the costs of operation and maintenance of the centralised air-conditioning system in Crest Tower, since they do not benefit from or enjoy the central air-conditioning.***

[45] At the High Court level, **Azizul Azmi Adnan J** also embarked to ask the same questions in determining whether or not the CACF system in Crest Tower is indeed Common Property. **Azizul Azmi Adnan J** astutely dismissed the 'exclusive enjoyment' argument, and stayed faithful to the statutory definition of a common property as already prescribed under the SMA 2013, and previously under Section 4 of the Strata Titles Act 1985 **("STA 1985")**. His Lordship similarly asked the 'locational question', whether or not the cooling tower (of the CACF) reside outside of the private parcel area. His Lordship concluded that there should not be complex labels or classifications other than what the statute has already stipulated. Anything that is outside of or not parcels, shall automatically be considered common property:

"[36] In my judgment, this contention fails because the definition of "common property" in the Strata Titles Act 1985 defines it by exclusion: common property is simply that which is not a parcel. Accordingly, there is no need for there to have been labels affixed to the relevant areas to be designated as common property; ***all the areas that are not identified as parcels will automatically be regarded as common property.***

[46] **His Lordship Vazeer Alam Mydin Meera JCA**, delivering the decision of the **Court of Appeal**, concurred with and shared the same sentiment as the High Court, in that a common property is simply any area which is not private parcel.

"[30] On the first point, we find that ***the definition of "common property" in s. 4 of the STA defines it by exclusion, that is, common property is simply that which is not comprised in any parcel*** *(including any accessory parcel), or any provisional block as shown in an approved strata plan. Hence, under s. 4 of the STA, by exclusion, all those areas not comprised in or demarcated as parcels would be common property. Thus,* ***we agree that the central cooling tower,*** *lifts and public toilets* ***in Crest Tower, which do not form part of the strata parcels or any accessory parcel are common property****."*

[47] On the 2nd identification question regarding the extent of utility of a common property, both the High Court and Court of Appeal were resolute in finding that it is not necessary that the utility, use, or

enjoyment of a common property must be wide enough so as to be able to be enjoyed by a large number of parcel occupiers between multiple or different blocks. What this means is that, a common property of one block would sufficiently be a common property, if the use and enjoyment of that common property is exclusive and limited to that same one block only. Thus, so long as the CACF in Tower B be able to enjoyed by two or more occupiers of private parcels in Tower B (alike the central cooling tower is exclusively used in the Crest Tower), the CACF shall be considered common property **even if the other parcel occupiers in Tower A (or any other blocks aside Tower B) do not benefit from the CACF in Tower B**.

[48] In dismissing the exclusive use argument, the High Court in the 3TS case aptly explained that the concept of 'exclusive or special use' was never a feature in either the SMA 2013 or the STA 1985:

"The second argument advanced for the Management Corporation was that, because the chiller and toilet facilities in Crest Tower were for the exclusive use of the plaintiff and its tenants in Crest Tower, such facilities cannot be considered common property.

...

this contention is not supported by the provisions of the Strata Titles Act 1985 nor that of other relevant statutes applicable at the material time. Nowhere is the concept of exclusive or special use provided for in the

relevant legislation. As we have seen, the Strata Titles Act 1985 simply provides that that which is not a parcel is common property..."

[49] His Lordship Azizul Azmi Adnan J then concluded that it is sufficient to consider the cooling tower at Crest Tower to be common property, although it can only be utilised exclusively by the parcel occupiers in Crest Tower. Other parcel occupiers or owners of other Blocks cannot protest against the maintenance and operational costs of the Cooling Tower on the argument that they do not share this 'commonality' or exclusive use that the Tower Crest occupiers enjoy:

"The question therefore is whether the facilities that are the subject matter of the dispute in this case are "capable of being used or enjoyed in common by all the occupiers in the building". I am of the view that the answer to this must be in the affirmative. Even though the plaintiff in the present case is the only proprietor of all the parcels in Crest Tower, the definition refers to "occupiers" rather than "proprietor". Thus, as long as the facility in question is capable of being enjoyed by the employees of the plaintiff and, say, the tenants of the plaintiff in Crest Tower, then such facilities must be considered common property."

[50] The High Court even went to the extent to explain that the fact that Crest Tower was wholly owned by one owner still does not negate the fact that the cooling tower was still common property.

"In addition, the fact that the plaintiff is the only proprietor of Crest Tower is simply circumstance. There is nothing to prevent the plaintiff from selling any one or more of its parcels to a ***third*** *party. If it does so, the facilities such as the centralised air-conditioning, as well as the lifts and toilets located at Crest Tower, would be capable being used by that* ***third*** *party as well as the plaintiff's employees, agents and tenants.* ***In my view, the proper categorisation of a facility as common property cannot depend on the identity of the proprietor in question, as an absurd result will arise of the facility is not considered common property on one day (and thus need not be maintained by the management corporation) but would be considered common property once the proprietor sells one of his parcels to a third party. It is well established that the court may favour an interpretation of statute that does not lead to an absurd result"***

[51] The **Court of Appeal** similarly dismissed the exclusive use argument and upheld the High Court's *ratio decidendi* in that there

is nothing in the statutes which provided that a common property is tethered to or limited by the specific identity of the parcel occupiers who benefited from the common property:

*[31] And **on the exclusive use argument, we agree with the findings of the learned High Court judge that even though the utility of these facilities accrue substantially (even if not exclusively) to the occupiers of Crest Tower, the cost of maintenance of such facilities cannot be left to the Plaintiff as strata parcel owners in that tower block. As these areas are common property, it would be the obligation of the Management Corporation to maintain such property** as set out in section 43(1)(a) of the STA..."*

[52] The **Court of Appeal** continued to explain that the concept of special use is nowhere found in the statutes and thus, so long as a block or a section of a building is part and parcel of one development, the common property specific to that block shall be considered common property to the entire development notwithstanding the fact that the common property is only common to one single block and none others:

*"[32] The issue of whether an area in a strata development is common property **cannot be construed by reference to its mere utility of these areas/facilities to certain parcel owners. Nowhere is the concept of***

***exclusive or special use provided for in the STA. Maintenance charges imposed on the parcel owners by the Management Corporation is for the maintenance and management of all the common areas in the strata development. Crest Tower is part and parcel of the 3 Two Square**, and it so happens that the Plaintiff owns all the strata units in Crest Tower, but that does not mean that the Plaintiff as proprietor of all strata parcel units in Crest Tower has to manage and maintain the cooling tower, lifts and public toilets in Crest Tower or for that matter any other common property in that tower block.*

[33] The fact that the Plaintiff is the only proprietor of the strata parcels in Crest Tower is simply a matter of circumstance. The Plaintiff is at liberty to dispose any one or more of its parcels to any third party. And if it does, the facilities in issue, such as the centralized air-conditioning, as well as the lifts and toilets located at Crest Tower would be capable of being used by these future owners in common with the Plaintiff, its employees, agents and tenants.

[53] And this Court certainly agrees that the 'exclusive use' argument was neither encoded within any statute nor would it make logical and legalistic sense. If (according to the Plaintiff) the 'commonality' of a common property is tethered to the specific identities of the parcel owners, then nothing would ever be truly common. A hypothetical lobby, lift or escalator of Block X would only be commonly used by parcel occupiers in Block X only. Can parcel occupiers in Block Y then protest and insist that the parcel occupiers

in Block X should install, maintain, and operate their 'own' lobby, lift, or escalator? This Court certainly thinks not. Such a principle would only lead to unnecessary hardship, confusion, and absurdity in the enforcement of the SMA 2013 or the STA 1985. Especially in the instance of a mixed-development property, it is absurd to narrowly define 'common property' only to be those common properties which are capable of being enjoyed by all occupiers in all blocks and sections of the development.

[54] The purported demarcation based on exclusivity of use would only lead to absurdity and is ultimately unhelpful. If that shall be the case, then the public toilets, lifts, and escalators situated outside of a parcel must not be common property, as those amenities will only be enjoyed by the occupiers of a particular tower separate from the other tower. Such exercise would only serve to unnecessarily blur and convolute the clear definition of "common property".

[55] Thus, the CACF system here (chilled air main line) is no different than the water main line, lobby areas, a hypothetical public *surau*, or public toilets situated in any of the floors within the common property area of a strata building. If this Court were to stringently accord common property to the specific parcel occupiers that enjoy

it, then a Management Corporation would unnecessarily be burdened with the arduous task to keep complicated tabs and specific records on the occupiers who supposedly enjoyed the common property at every floor of a strata development. It is exactly this mischief that this Court believes that the statutes are attempting to avoid.

[56] This Court intends to expand and address further on the supposed sentiment by the Plaintiff alleging that it has unjustly been forced to subsidise the CACF in Tower B which it has no benefit of. To this Court's mind it is ultimately common that different blocks, even in the same development would have varying features of common property. Prospective purchasers are presented these features and by their own volition would agree to the bargain. If the parcel or the block does not come equipped with centralised air-conditioning, then it is the bargain that the parcel owner shall bear his own cost to setup, install, maintain and pay the electricity for his own individual ACU. In contrast, if a parcel comes readily equipped with centralised air-conditioning, then it is the bargain that the parcel owner need not concern himself to the setup, installation, maintenance, and operation of an air-conditioner. It is simply the case of different units, different features. And it is ultimately a futile

exercise to compare and cry foul over the differences between the two bargains.

[57] At the end of the day, it is not this Court's place to improve the bargain for parcel occupiers of any tower. From the plan and particulars, parcel owners in Tower A would have already understood that their bargain (while having to pay Maintenance fees) does not include centralised air-conditioning, and that they are individually responsible to install, setup, and maintain their own Individual ACUs. On the other hand, from the plan and particulars, it would glean that the parcel purchasers of Tower B (while having to pay Maintenance fees) would enjoy the benefit of a centralised air-conditioning as part and parcel of common property. Thus, it was part of their bargain since the inception of the purchase contract that their parcel enjoys centralised air-conditioning which is maintained as common property by the previous Joint Management Body or the current Defendant-MC.

[58] All of the aforementioned deliberations considered, this Court answers the 1st question in the **AFFIRMATIVE, in that the CACF System indeed is a common property which ought to be maintained under the responsibility of the Defendant-MC**.

D. QUESTION 2: If the answer to Question (1) is in the affirmative, whether the statutory duty imposed by Section 59(1)(a) of the Strata Management Act, 2013 on the Defendant, as the Management Corporation of Menara UOA Bangsar, to properly maintain and manage the common property and keep the same in a state of good and serviceable repair, requires the Defendant to bear the costs and expenses of operating and maintaining the Centralised Air-Conditioning Facilities, including the electricity and maintenance costs thereof

[59] This Court does not intend to protract on this question as the answer to this 2nd question is *res ipsa loquitur* (speaks for itself) from the affirmative answer in the 1st question. To this Court's mind, to accord and force operational expenses inclusive of electricity **("opex")** of common properties upon specific private parcel occupiers would again, lead to an absurd reading of the statutes as it will deem no property to be common property. And it will directly transgress upon the Defendant-MC's duty and responsibility under the SMA 2013 and STA1985 to properly maintain the common property.

[60] The answer to question 2, can only be in the **AFFIRMATIVE**. To decide otherwise would mean this Court would have defeated the

intention of the parliament and statutes. The SMA 2013, and STA 1985 both intended that the Management Corporation to be responsible for the maintenance and management of the common property. Thus, any notion to 'delegate' or 'pass' that responsibility to specific parcel occupiers would mean to feign total ignorance to the law.

[61] The opex of a CACF is nothing different than of the opex of the lifts that serve Tower B or even Tower A. The lifts reside outside of private parcels and are utilised by the numerous occupiers in each respective towers. Now, can the Defendant-MC insist that parcel occupiers in Tower A cover the opex of the lifts in Tower A or vice versa, occupiers in Tower B cover the opex of the lifts in Tower B? This Court certainly does not think so. The statutes have already provided intricate management and maintenance protocols *vide* the collection of Maintenance Charges, and use of the Maintenance Account funds. This system can only mean that the statute intended that the opex of a common property shall be the responsibility of the Management Corporation.

[62] Thus, if the Plaintiff has no qualms with the Defendant-MC not chasing reimbursements for opex of the lifts in Tower A against the

Plaintiff, then the Plaintiff equally should not have any qualms with the Defendant-MC not chasing reimbursements for opex of the CACF in Tower B. The position is exactly the same. The lifts in Tower A is exclusively enjoyed by Tower A occupiers, while the CACF in Tower B is exclusively enjoyed by Tower B occupiers. Both the Tower A Lifts and Tower B CACF are common property being maintained with the Maintenance Account funds. Both common properties are limited to the enjoyment of each respective Tower's occupiers only. That be the case, then why should the Plaintiff expect this Court to find differently as against the CACF opex in Tower B? The Plaintiff's expectation is sorely misplaced and certainly erroneous.

[63] On this point, this Court finds great wisdom from our fellow Commonwealth neighbour's position in Australia in the **Supreme Court of Queensland's** decision in the unreported case of ***The Proprietors Astor Centre BUP No. 8932 v Julian-Armitage BCP9704782***. The Supreme Court here was tasked to determine whether or not the task of maintaining common property should include electricity costs. The Supreme Court aptly found that it is reluctant to find that electricity costs of operating lifts do not fall within the management corporation's power and responsibility:

"Para (j) implies a power in the body corporate to enter into lift maintenance agreements. (I doubt that it refers only to lift maintenance agreements existing at the date of the by-law). ***I am reluctant to conclude that the supplying of electricity to the lifts is not within the power of the body corporate as part of the function of controlling, managing and administering the common property.*** *(cf s37(a)).* ***The fact that no provision has been made in the by-law for the provision and cost of electricity suggests an expectation that the electricity for the lifts would come from the general electricity supply to the building and that the body corporate, as between itself and the provider of the electricity, would be responsible for meeting the cost of supply.***

[64] At Appeal, the Supreme Court's interpretation of the word "maintain" was affirmed by **Queensland's Court of Appeal** in *Angela Julian-* ***Armitage v The Proprietors Astor Centre BUP No. 8932*** **[1998] QCA 111:**

"The ***By-law does not refer specifically to the cost of the electricity used in operating it****. The omission may have been deliberate, or it may have been the result of accidental oversight. The appellant submits that that particular cost or expense is covered under paragraph (i) by the requirement in that paragraph that the privileged proprietors are at their own cost and expenses to "properly maintain and keep [the lifts] in a state of good and serviceable repair ...".* ***Without keeping the electric current flowing, the lifts, it is said, will not be***

either maintained or serviceable; in short, it will not be possible for those proprietors to operate the lifts, *which is what the first part* ***of By-law 56 expressly says that they are "permitted" to do. In effect, therefore, the expression "maintain" ought, it is submitted, to be read as meaning "maintain in operation".***

[65] Locally, the **Court of Appeal** in the 3TS case (although setting aside general damages for maintenance costs and electricity on the separate ground of unpleaded claim), the Court of Appeal still found that the management corporation could well have claimed for electricity and maintenance costs had it been appropriately pleaded and proved at trial:

"Therefore, we found ***the award of general damages for the cost of re-wiring, electricity bills for the cooling tower*** *and the cost of maintenance of the toilets in Crest Tower to be* ***beyond the Plaintiff's pleadings and unsustainable. If the Plaintiff had in fact incurred such cost and expense, it could have proved it at trial and claimed it."***

[66] In view of the precedents and deliberations above, this Court accordingly answers Question 2 in the **AFFIRMATIVE**. Indeed, the Defendant-MC's duty as management corporation also includes

paying for maintenance costs and electricity to maintain the CACF in good serviceable condition and in good operation.

E. QUESTIONS 3, 4, & 5: The Plaintiff's misconstrued reading of Sections 59(1), 59|(3)(b), & 59(6) of the SMA 2013

[67] Now, the 3 additional questions posed by the Plaintiff is what the Plaintiff had attempted to impress as a point of 'divergence' or 'departure' from the 3TS case. In essence, the Plaintiff insisted that the 3TS case is only relevant insofar as responsibility of maintenance and service of the CACF is concerned and that both the High Court and the Court of Appeal, had allegedly neither touched nor determined on the right to 'reimbursement' and 'recovery' by the Management Corporation by virtue of its 'powers' under **Sections 59(3)(b) and 59(6) of the SMA 2013.** These provisions read as follows:

"Where the Management Corporation ***performs any repairs, work or act authorized by the Act... wholly or substantially for the benefit of some of the parcels only... then it shall be recoverable by the Management Corporation*** *in an action in a court of competent jurisdiction as a debt due to it jointly or severally from the relevant proprietor of each of such parcels."*

[68] Essentially, the Plaintiff argued that even if this Court were to find that the CACF falls within the category of common property and the responsibility of the Defendant-MC, **Sections 59(3)(b) and 59(6) of the SMA 2013** would thereafter give the Defendant-MC the rights and authority to **claim reimbursements from specific private parcel owners (where the maintenance works would only benefit "SOME OF THE PARCELS ONLY")**

[69] The Plaintiff continued to argue that if Section 59(1) of the SMA 2013 were to be interpreted as per the Defendant-MC's understanding (in that the Defendant-MC is solely responsible to pay for the opex of the CACF as common property), then the subsequent **Sections 59(3)(b) and 59(6) of the SMA 2013** would be rendered null and inoperable, as any repair works which would benefit multiple occupiers, would automatically involve a common property. Thus, the Plaintiff argues that the Defendant-MC's power to claim reimbursement here would only be a 'toothless tiger'.

[70] Nonetheless, this Court does not hesitate to dismiss the Plaintiff's purported 'harmonious reading' of the Defendant-MC's duties to maintain under Section 59(1) of the SMA 2013, and the Defendant-

MC's 'rights' to seek reimbursements under Sections 59(3)(b) and 59(6) of the SMA 2013.

[71] First and foremost, this Court must explain the Plaintiff's misconception that there would never be a circumstance that the Defendant-MC would conduct works to the benefit of multiple parcels **which do not involve common property**.

[72] It must be truly appreciated that in essence, the Defendant's realm of responsibility is not just limited to the common property. A complete reading of Section 59(1) of the SMA 2013 would reveal that, apart from the common property, it still remains that the management corporation is also responsible to maintain and manage **"the subdivided building or land":**

"properly maintain and manage the subdivided building or land *and the common property and keep it in a state of good and serviceable repair*."

[73] Thus, is a management corporation empowered and authorised to do works and repairs in private parcels? Indeed, it is. Can repairs

be done within the confines of some private parcels (outside of common property areas) which only benefit those same private parcels? Indeed, it can be done without the involvement of common property. But different to works done in common property, can the Defendant-MC seek reimbursements for works done within private parcel areas? Indeed, it can, by the exact operation of Section 59(3)(b) and 59(6) of the SMA 2013.

[74] A good hypothetical situation would be a circumstance of leakages in the private bathrooms in between two or more parcels. Both the private bathrooms are **NOT COMMON PROPERTY**. But it is still within the Defendant-MC's authority and rights to undertake repairs of the private bathrooms to avoid further leakages and degradation of the strata building structures. The repairs were done within private parcels, and the benefit from the repairs can only be enjoyed by these two hypothetical parcel owners. Thus, the repair works were done in private parcels, and done to the enjoyment of "some parcels only". Furthermore, considering these repairs were not related to any common property, then under Section 59(3)(b) and 59(6) of the SMA 2013, the Defendant-MC can seek reimbursements from the two specific parcels with the leaky bathroom. Therefore, this

scenario squarely fits within the operability of Section 59(3)9b) and 59(6) of the SMA 2013.

[75] The Plaintiff's argument on the alleged disharmony of the Defendant-MC's interpretation of the provisions are completely and utterly baseless and erroneous.

[76] The proper harmonious reading of the provisions is simply the following:

a. Section 59(1) of the SMA 2013 imposes responsibility and authority upon the Management Corporation to maintain and manage **BOTH COMMON PROPERTY AND PRIVATE PARCELS**;

b. Section 59(3)(b) and Section 59(6) of the SMA 2013 adorns the Management Corporation with the authority to claim reimbursements **ONLY FOR WORKS NOT INVOLVING COMMON PROPERTY;**

c. Section 59(3) and Section 59(6) of the SMA 2013 **DOES NOT PROVIDE FOR REIMBURSEMENT FOR WORKS DONE ON COMMON PROPERTY;** and

d. Thus, **any works done within private parcels** to the **benefit of some parcels** are **indeed recoverable SO LONG AS IT DOES NOT INVOLVE COMMON PROPERTY**

[77] Thereto, it is upon the harmonious reading of the provisions above, that the law finds that a Management Corporation is responsible to pay the opex for common property but not for the works or repairs done to the benefit of multiple parcels which do not involve common property.

[78] In hindsight, it is the Plaintiff's alleged 'harmonious reading' which instead goes against the very fabric of the statute's design and intent. It is resolute under Section 59(3)(b) and 59(6) of the SMA 2013, that a Management Corporation's power to seek reimbursement **does not include reimbursements for work done in common property**. Furthermore, Section 59(1) of the SMA 2013 vividly placed the responsibility to maintain the common property onto the Management Corporation. Thus, it is extremely obvious

that the statute is resolute that the duty to maintain and responsibility to pay for the opex of a common property is a non-delegable duty of the Management Corporation.

[79] Thus, even if the High Court or even the Court of Appeal in the 3TS case had not addressed Sections 59(3)(b) and 59(6) of the SMA 2013, this Court still finds that the 3TS case is relevant, and especially binding on this Court.

[80] This Court is absolutely certain that the Courts in the 3TS case would have maintained the same findings and decisions, with or without alluding to Sections 59(3)(b) and 59(6) of the SMA 2013. Thereto, this Court answers questions 3, 4, and 5 in the **NEGATIVE** (in that it is not incumbent for the Defendant-MC to chase for reimbursements from any parcel occupiers for the costs of maintenance and electricity charges of the CACF in Tower B.)

F. THIS COURT'S DECISION

[81] Thus, it is this Court's decision, on the balance of probabilities that the Plaintiff's claim against the Defendant is devoid of any merits.

Thereto, the Defendant's Application in Enclosure 16 is accordingly allowed and the Plaintiff's claim in its entirety is hereby dismissed.

G. COSTS

[82] On the issue of costs, upon brief submissions from the counsels for both the Plaintiff and the Defendant, this Court hereby awards a global cost (Enclosure 1 & Enclosure 16) of RM40,000.00 to the Defendant-MC which shall be paid by the Plaintiff (subject to allocator).

(AZIMAH BINTI OMAR)

Judge

High Court of Kuala Lumpur

Dated 5th August 2022

For the Plaintiff	-	Messrs Lai, Goh & Associates
		Goh Peng Hong and Soh Ling Ling
For the Defendant	-	Messrs Tommy Thomas
		Ganesan Nethi and Rahayu Mumazaini
Plaintiff Representative	-	Prashant Patel