BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT 2004

BUILDING MAINTENANCE AND STRATA MANAGEMENT (STRATA TITLES BOARDS) REGULATIONS 2005

STB No. 23 of 2023

In the matter of an application under **section 101** of the Building Maintenance and Strata Management Act in respect of the development known as **Beauty World Centre** (MCST Plan No. 2121)

Between

THE MANAGEMENT CORPORATION STRATA TITLE PLAN NO. 2121

... Applicant(s)

And

(1) LIM MEOW LOKE

(2) LEE PON YEN

(3) LIM KAN KAN

… Respondent(s)

GROUNDS OF DECISION

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9 and 10 October 2023

23 November 2023

Coram:	Mr Alfonso Ang	President
	Mr Richard Tan Ming Kirk	Member
	Ms Sim Kai Li	Member

BACKGROUND

1 The Applicant is the Management Corporation Strata Title Plan No. 2121 of the development known as Beauty World Centre ("**BWC**") (the "**Applicant**").

2 The Respondents are the joint subsidiary proprietors ("**SP**") of 144 Upper Bukit Timah Road #XX-XX Singapore 588177, a strata unit known as Lucky Departmental Centre ("**LDC**") situated within BWC (the "**Respondents**").

3 The present application concerns the Respondents' repeated encroachment onto BWC's common property.

4 Since the Respondents' relocation to BWC in 1983 and the constitution of the Applicant in 1997, the Respondents have been displaying a portion of their goods for sale along the corridor immediately outside of LDC. This is primarily achieved through the use of various moveable display racks that, when fully set up, cumulatively span LDC's entire shopfront. To this end, the aforementioned goods are only displayed whenever the Respondents are open for business (for less than half of every 24 hours) and are otherwise kept within the confines of LDC at the close of each business day.[1]

5 On 28 December 2022, the Applicant, through its Complex Manager Mr Brian Elegarle Ladrillo ("**Brian**"), sent a notice to the Respondents requesting their cooperation in putting an end to their continued encroachment of BWC's common property (the "**1st Notice**").[2] This was done as part of the Applicant's renewed efforts towards addressing the longstanding issue of encroachment that has plagued BWC since its opening in 1983. When the Respondents failed to act on the 1st Notice, a second notice was sent by Brian to the Respondents on 18 January 2023 (the "**2nd Notice**"),[3] reminding the Respondents once again of their obligations under s63 of the Building Maintenance and Strata Management Act 2004 (the "**BMSMA 2004**"). When it then became clear to Brian, and by extension the Applicant, that the 2nd Notice was similarly ineffective at prompting the Respondents' compliance with s63 BMSMA 2004, a third and final notice was sent by Brian to the Respondents on 2 February 2023 (the "**3rd Notice**").[4] This, unlike the two notices that came before it, imposed upon the Respondents a 2-week deadline within which compliance with s63 BMSMA 2004 had to be achieved.

6 Flowing from the Respondents' subsequent failure to comply with the 3rd Notice, a letter of demand was issued against the Respondents by the Applicant's solicitors on 23 February 2023 (the "**LOD**").[5] In the LOD, it was contended by the Applicant's solicitors that the Respondents had encroached onto BWC's common property by their placement of goods along the corridor immediately outside of LDC. In this regard, the Respondents were given until 28 February 2023 to comply with s63 BMSMA 2004 and Paragraph 3(1) of the Second Schedule to the Building Maintenance (Strata

[1] Applicant's Opening Statement ("**A6**") at [16]-[17]; Respondents' Opening Statement ("**R5**") at [23].
[2] Applicant's AEIC of Brian Elegarle Ladrillo ("**A2**") at Tab 4, p.23-26.
[3] ibid at Tab 4, p.27-30.
[4] ibid at Tab 4, p.31-32.
[5] ibid at Tab 4, p.33.

Management) Regulations 2005 (the "**Encroachment By-law**").[6] In their response to the LOD dated 7 March 2023 (the "**Response**"),[7] the Respondents contended through their solicitors that the Applicant could not compel them to remove their displays. Said contention was premised on the following arguments:

(a) Other SPs have similarly "*...placed item(s) and fixtures along the common corridor ... clearly obstructing the common corridor as well*";[8]

(b) The Respondents' displays are compliant with Clause 9.5.2(b)(3) of the Singapore Civil Defence Force Code of Practice for Fire Precautions in Building 2018 (the "**SCDF Regulations**");[9] and

(c) The Respondents' displays "…did not cause a nuisance or hazard to the occupier of any other lot…".[10]

7 As the parties were unable to resolve the matter, the Applicant filed an application with the Strata Titles Boards on 25 April 2023.

ORDERS SOUGHT BY THE APPLICANT

8 The Applicant seeks the following Orders from the Board:

(a) Pursuant to section 101(1)(c) BMSMA 2004:[11]

i. The Respondents are to remove their goods and/or belongings that are placed outside of the green area as shown in Annex-A within 3 days from the date of the order; and

ii. The Respondents shall not place, display and/or store their goods and/or belongings outside the green area as shown in Annex-A.

ISSUES BEFORE THE BOARD

9 The main issues before the Board are as follows:

(a) Whether the Board has the jurisdiction to grant the orders sought by the Applicant (the "**Jurisdiction Issue**");

(b) Whether the Respondents breached s63(c) BMSMA 2004 and the Encroachment By-law by displaying their goods along the corridor immediately outside of LDC during business hours (the "**Encroachment Issue**");

(c) Whether the Respondents were unfairly targeted by the Applicant in its enforcement action such that injunctive relief should nevertheless be refused (the "**Unfair Targeting Issue**");

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[6] ibid.
[7] ibid at Tab 5, p.35-48.
[8] ibid at Tab 5, p.35.
[9] ibid at Tab 5, p.36.
[10] ibid.
[11] Application for an Order by a Strata Titles Board (Amendment No.1) (the "**Amended Form 9**") at p.3, 49; Applicant's Closing Submissions ("**ACS**") at [2],[4]; Respondents' Closing Submissions ("**RCS**") at [10].

(d) Whether the Board ought to exercise its discretion to grant the mandatory injunction sought by the Applicant (the "**Mandatory Injunction Issue**"); and

(e) Whether the Board ought to exercise its discretion to grant the prohibitory injunction sought by the Applicant (the "**Prohibitory Injunction Issue**").

THE APPLICANT'S CASE

10 The Applicant's primary case is that the Respondents have failed to perform their duties as SPs pursuant to s63(c) BMSMA 2004 and the Encroachment By-law by persistently placing their goods/belongings on the common property immediately outside of LDC during their operating hours. In this regard, the Applicant contends that the Respondents' displays amount to both an unreasonable interference within the meaning of s63(c) BMSMA 2004 and an obstruction within the meaning of the Encroachment By-law for the following reasons:

(a) The common property encroached upon sees extremely high foot traffic owing to the nature of the Respondents' business and its location within BWC;[12]

(b) The Respondents' displays present a significant impediment to foot traffic in the common corridor outside of LDC as it extends 1.8m and 2.7m onto BWC's common property when measured from the strata line bordering LDC's long and short faces respectively;[13]

(c) The substantial vertical height of the Respondents' displays is unsightly and may be potentially prejudicial to the SPs whose units have become less visible as a direct result of said encroachment;[14]

(d) The Respondents' displays poses a safety hazard given its proximity to a kindergarten and its potential effect on visibility during emergencies;[15] and

(e) The Respondents' displays both completely obstruct the Applicant's access to the telecom riser and interferes with the Applicant's access to the common pipes during the Respondents' operating hours.[16]

11 Further, the Applicant contends that the exception found in the Encroachment By-law will not apply to excuse the Respondents' encroachment as the Respondents' goods have, since 1983, been persistently displayed during their operating hours from 9:30 a.m. to 8:00 p.m., on all seven days a week.[17]

12 Finally, the Applicant contends that the injunctive reliefs sought should not be refused on account of the following reasons:[18]

(a) It is undisputed that the Respondents have encroached onto BWC's common property in breach of s63(c) BMSMA 2004 and the Encroachment By-law;

[12] A6 at [12]; ACS at [47]-[48].
[13] A6 at [12]; ACS at [49]-[52].
[14] ACS at [53]-[58].
[15] ibid at [59]-[62].
[16] A6 at [12]; ACS at [37]-[45].
[17] A6 at [17]; ACS at [34]-[36].
[18] A6 at [25]-[27].

(b) The Applicant has been impartial and even handed in its enforcement of the by-laws; and

(c) The Applicant is, in the interest of saving costs, able to commence a "test case" solely against the Respondents as a warning to the other SPs per the District Court's finding at [75] in *The Management Corporation Strata Title Plan No 681 v Tan Yew Huat* [2015] SGDC 118.[19]

THE RESPONDENTS' CASE

13 The Respondents' primary case is that the status quo should be preserved. To this end, the Respondents' position is predicated on the following contentions:

(a) Preliminarily, the Respondents contend that the present application ought to be dismissed as the Board lacks the necessary jurisdiction to grant the injunctive reliefs sought by the Applicant.[20] In this regard, the Respondents argue as follows:

i. Unlike s32(10) BMSMA 2004, s101(1)(c) BMSMA 2004's silence as to the Board's jurisdiction to grant an order "restraining the breach" of any by-law meant that the Board has no jurisdiction to grant the injunctive reliefs sought by the Applicant;[21]

ii. Pursuant to s19(3)(b) State Courts Act 1970, "*Just as the District Court does not have the power to grant mandatory or prohibiting orders, it should follow that the Strata Titles Board similarly would not have such a power*";[22]

iii. The "…*Board's powers to order a subsidiary proprietor to do or refrain from doing specified acts* [under s117(2)(d) BMSMA 2004] *are intended to be in the nature of ancillary or consequential orders to the main orders to be granted under sections 101, 108, 114 and 115 of the* [BMSMA 2004]. *In this case, where the main order is in itself a mandatory or prohibitory injunction … the Board has no such power to grant the same*";[23] and

iv. The fact that s32(10) BMSMA 2004 "*…clearly directs an applicant to apply to court if it is looking for an injunctive order …"* meant that the Board "*…should decline to exercise its powers, if any which is denied, to make similar orders, for the reasons set out in* [*Prem N Shamdasani v Management Corporation Strata Title Plan No 920* [2022] SGHC 280 ("***Prem***")]".[24]

(b) Next, the Respondents contend that the Applicant's prayers are misconceived.[25] In support of this contention, the Respondents argue as follows:

[19] Applicant's Bundle of Authorities ("**A7**") at p.48.
[20] R5 at [5]-[21]; RCS at [162]-[180].
[21] R5 at [6]-[12]; RCS at [163]-[168].
[22] R5 at [13]; RCS at [169]; Respondents' Bundle of Authorities ("**R6**") at p.24.
[23] R5 at [14]-[18]; RCS at [170]-[174].
[24] RCS at [177]-[180]; Respondents' Supplemental Bundle of Authorities ("**RSBOA**") at p.125 to 127.
[25] R5 at [22].

i. The mandatory injunction sought is unnecessary and will be ineffective as the Respondents regularly keep their displayed goods back within the confines of LDC at the close of each business day;[26]

ii. The prohibitory injunction sought should not be granted as the Respondents' displays do not constitute a breach of s63(c) BMSMA 2004 and the Encroachment By-law;[27] and

iii. The prohibitory injunction sought should similarly not be granted as the Applicant's conduct would make it unjust for the Board to grant said injunctive relief.[28]

(c) Further, the Respondents contend that their displays do not constitute a breach of s63(c) BMSMA 2004 and the Encroachment By-law. According to the Respondents, the following arguments demonstrate why this is so:

i. The Respondents' display of goods on BWC's common property "*…is an established course of conduct that the Applicant has been prepared to accept, at least since its incorporation in 1997…*" such that "*…it is inequitable for the Applicant to now demand (after 40 years of the same course of conduct) that the Respondent remove all his goods overnight*".[29]

ii. The Respondents' displays are compliant with all relevant governmental regulations;[30]

iii. There have been no complaints made by the members of the public as to the Respondents' displays;[31]

iv. Even with the Respondents' displays, there is still more than enough space to accommodate the volume of human traffic that BWC's 4th floor may see at all times. This is so even with the recent opening of the Rifle Range Nature Park;[32]

v. The Respondents' goods are only displayed temporarily as said goods are kept within the confines of LDC at the close of each business day; and [33]

vi. There have neither been any complaints made by the Respondents' neighbouring units as to the Respondents' displays nor any accidents involving the Respondents' displays to date.[34]

(d) Finally, the Respondents contend that the Applicant's conduct would make it unjust for the Board to grant the injunctive reliefs sought. This, according to the Respondents, is premised on the following arguments:

[26] ibid at [23]; RCS at [12].
[27] R5 at [25]-[38]; RCS at [50]-[67].
[28] R5 at [24], [39]-[63]; RCS at [68]-[135].
[29] RCS at [36]-[44].
[30] ibid at [45]-[49], [53]-[54]; R5 at [36].
[31] RCS at [55].
[32] R5 at [30]-[35]; RCS at [56]-[59].
[33] R5 at [38]; RCS at [61].
[34] RCS at [66]-[67].

i. The Applicant has been inconsistent with its determination and enforcement of the extent to which SPs may acceptably utilise the common property bordering their respective units;[35]

ii. The Applicant is estopped by convention from restraining the Respondents' encroachment;[36]

iii. The Applicant is time-barred from pursuing the present application;[37]

iv. The Applicant has acquiesced to the Respondents' encroachment;[38]

v. The Applicant has unfairly targeted the Respondents;[39] and

vi. The injunctive reliefs would impose substantial hardship on the Respondents with no counter-balancing benefit to the Applicant.[40]

THE BOARD'S FINDINGS

14 The Jurisdiction Issue:

(a) On this first issue, the Board disagrees with the Respondents' contention that it lacks the necessary jurisdiction to grant the injunctive reliefs sought by the Applicant. As is clear from the High Court decision of *Chong Ken Ban (alias) Chong Johnson) and anor v Management Corporation Strata Title Plan No 1395* [2004] SGHC 110 ("***Chong Ken Ban***"), because s32(10)(a) BMSMA 2004 does not operate to confer upon the courts an exclusive jurisdiction to restrain the breaches of any by-law, the Board is similarly able to restrain the breaches of any by-law pursuant to s101(1) BMSMA 2004. This can be seen from when Lai Kew Chai J held as follows (at [13] of *Chong Ken Ban*):[41]

"*The other point made by counsel for the appellants in his oral submissions was that under s 41(14)(a) of the Act* [present day s32(10)(a) BMSMA 2004]*, only a court could issue a mandatory injunction. The short answer is that the terms of the provisions did not support his argument.* ***I could find no words in that paragraph which expressly conferred exclusive jurisdiction in the courts of our legal system. On the contrary, s 103(1)*** **[present day s101(1) BMSMA 2004]** ***expressly empowers the strata titles board to "make an order for … the rectification of a complaint, with respect to … the failure to … perform, a … duty … imposed by … the by-laws relating to the subdivided building"***.

(Our emphasis in bold)

(b) Thus, on the authority of *Chong Ken Ban*, the Board finds that it has the jurisdiction to grant the orders sought by the Applicant.

[35] ibid at [68]-[76].
[36] ibid at [77]-[81].
[37] ibid at [82]-[84].
[38] ibid at [85]-[88].
[39] ibid at [76],[89]-[135]; R5 at [49]-[63].
[40] RCS at [153]-[161]; R5 at [40]-[48].
[41] Applicant's Bundle of Authorities (Closing Submissions) ("**ABOA(CS)**") at p.51.

15 The Encroachment Issue:

(a) On this second issue, the Board finds that the Respondents have encroached onto BWC's common property in breach of s63(c) BMSMA 2004 and the Encroachment By-law. This is undisputed on the facts as the evidence clearly shows that the Respondents' displays have encroached onto BWC's common property by approximately 1.8m and 2.7m when measured from the strata line bordering LDC's long and short faces respectively.[42] In this regard, because Brian has testified in his cross examination that the aforementioned measurements were derived from stickers that had been placed during the Respondents' operating hours to demarcate the outer limits of the Respondents' encroachment, there is little reason why said measurements should not be accepted as a reliable approximation of the Respondents' encroachment onto BWC's common property.

(b) As it relates to the finding above, the Board firstly disagrees with the Respondents' contention that their displays do not amount to an unreasonable interference/obstruction of BWC's common property on account of:

i. Its minimal effect on the overall corridor space and the flow of foot traffic on BWC's 4th floor (the "**Space Argument**");[43] and

ii. The absence of any accidents relating to said displays to date (the "**Without Incident Argument**").[44]

In this regard, not only is it clear from Mr Chng Jia Zhen's ("**John**") testimony and Affidavit of Evidence-In-Chief ("**AEIC**") that the Space Argument is untenable as the Respondents' displays have prevented the Applicant from placing the SafeEntry gantry (the "**Gantry**") wherever it wanted to along the common corridor,[45] the Without Incident Argument is also clearly untenable as the possibility of an accident involving the Respondents' displays can never be ruled out.

(c) Next, the Board also disagrees with the Respondents' contention that their encroachment does not amount to an unreasonable interference/obstruction of BWC's common property as their goods are only displayed on a temporary basis.[46] In this regard, while the Respondents' goods are kept within the confines of LDC at the close of each business day, the fact that the Respondents operate daily from 9:30 a.m. to 8:00 p.m. meant that their displays were effectively permanent to the extent that it is not "non-recurring" for the purposes of the exception found in the Encroachment By-law. Support for this can be seen from *The Management Corporation Strata Title Plan No 3564 v Lian Fong Credit Holdings Pte Ltd and ors* [2022] SGDC 200 ("***Lian Fong***") when the District Court held as follows (at [24] and [31] of *Lian Fong*):[47]

[42] A2 at Tab 1, p.11.
[43] R5 at [30]-[35]; RCS at [56]-[59].
[44] RCS at [66]-[67].
[45] Applicant's AEIC of Chng Jia Zhen ("**A4**") at [16].
[46] R5 at [38]; RCS at [61].
[47] ABOA(CS) at p.86-87, 89; RSBOA at p.73-74, 76.

"*24 Based on the photographs of the common property surrounding the Defendants' units,* ***I found that the Defendants had obstructed lawful use of parts of the common property when they caused their goods, items and vehicles to remain on the common property for extended periods of time (up to eight hours) daily (except Sundays)****. ...*

31 To the extent the Defendants now seeks to rely on Statutory By-Law 3 to justify its usage of the common property, the relevant by-law only had a single exception, ie, where the obstructions were temporary and nonrecurring. On our facts, ***even if the obstructions could be said to be temporary, they could not be said to be of a non-recurring nature. It was not disputed that the Defendants' use of the space in front of their units happens on a daily basis from 7.00am to at least 12.00pm, and on occasions up to 3.00pm, Sundays excepted. The obstructions were recurring, and hence Statutory By-Law 3 is of no assistance to the Defendants****".*

(Our emphasis in bold)

(d) Further, the Board also disagrees with the Respondents' contention that the status quo should be preserved on account of its compliance with both the relevant governmental regulations and the practices that had existed at BWC prior to the Applicant's constitution in 1997.[48] Not only is it incontestable that SPs should not be able to rely on external regulations to circumvent by-laws that may be inconvenient to them, the Applicant's discharge of its duties under the BMSMA 2004 should not also be curtailed by practices that predate its constitution. Support for the latter can be seen in the High Court decision of *Choo Kok Lin and another v Management Corporation Strata Title Plan No 2405* [2005] SGHC 144 ("***Choo Kok Lin***"), when Judith Prakash J held as follows (at [23],[27] of *Choo Kok Lin*):[49]

"*23* ***Since the by-laws are statutorily constituted contracts between the management corporation and the subsidiary proprietors and between the subsidiary proprietors inter se, it would appear logical to hold that the by-laws cannot take effect until these persons come into existence****. ... This argument is fortified by the fact that the provisions of the Act make it very clear when the management corporation comes into existence and when persons who have purchased units in a development can be considered to be subsidiary proprietors of a subdivided building. The very term "subdivided building" can only be applied from a specified time.*

...

27 ***Once the strata title plan is registered therefore, all the ingredients necessary for the operation of the by-laws will exist****: there will be a subdivided building which will be managed by an extant management corporation and occupied by subsidiary proprietors or persons deriving rights from them.* ***These persons would all be bound by the "by-laws for***

[48] R5 at [36]; RCS at [36]-[49],[53]-[54].
[49] A7 at p.20-23; R6 at p.33-36.

> ***the time being in force" as provided in s 41(4)*** [present day s32(6) BMSMA 2004]. *This would mean that the by-laws could not bind anyone before the management corporation came into existence and before the purchasers of the units were entitled to be termed "subsidiary proprietors".* ***The terms of the statutory contract might, depending on the language used, indicate that it was intended to have retrospective effect. As the appellants contended, however, the use of the words "for the time being in force" make it clear that the statutory contract created by s 41(4) operates prospectively only****. Additionally, the by-laws impose penal sanctions for infringement and penal provisions are not applied retrospectively unless there is very clear language to that effect.*"
>
> (Our emphasis in bold)

(e) Finally, the Board also disagrees with the Respondents' contention that, in any event, the Applicant:

i. Is estopped by convention from restraining the Respondents' encroachment (the "**Estoppel Argument**");[50]

ii. Is time-barred from pursuing the present application (the "**Time-Bar Argument**");[51] and

iii. Has acquiesced to the Respondents' encroachment (the "**Acquiescence Argument**");[52]

The Estoppel Argument

(f) As it relates firstly to the Estoppel Argument, it is clear from the evidence that it is untenable for the following reasons:

i. The Applicant and the Respondents were labouring under differing misapprehensions as to the extent to which encroachment was permissible under the "implicit understanding"; and

ii. The Respondents' have not come to the Board with entirely "clean hands". This being on account of Mr Lim Meow Loke's ("**Meow Loke**") former position of influence within the Applicant's management council (for a number of terms),[53] and the verbal threat that he had made against John.[54]

The Time-Bar Argument

(g) The same can be said for the Time-Bar Argument as although the Respondents' encroachment onto BWC's common property occurs daily, said encroachment nevertheless ends at the close of each business day. Because of this, as the Respondents' encroachment can be viewed as a series of individual daily breaches rather than a single continuous breach of s63(c) BMSMA 2004 and the Encroachment By-law that dates back to the Applicant's constitution in 1997, a

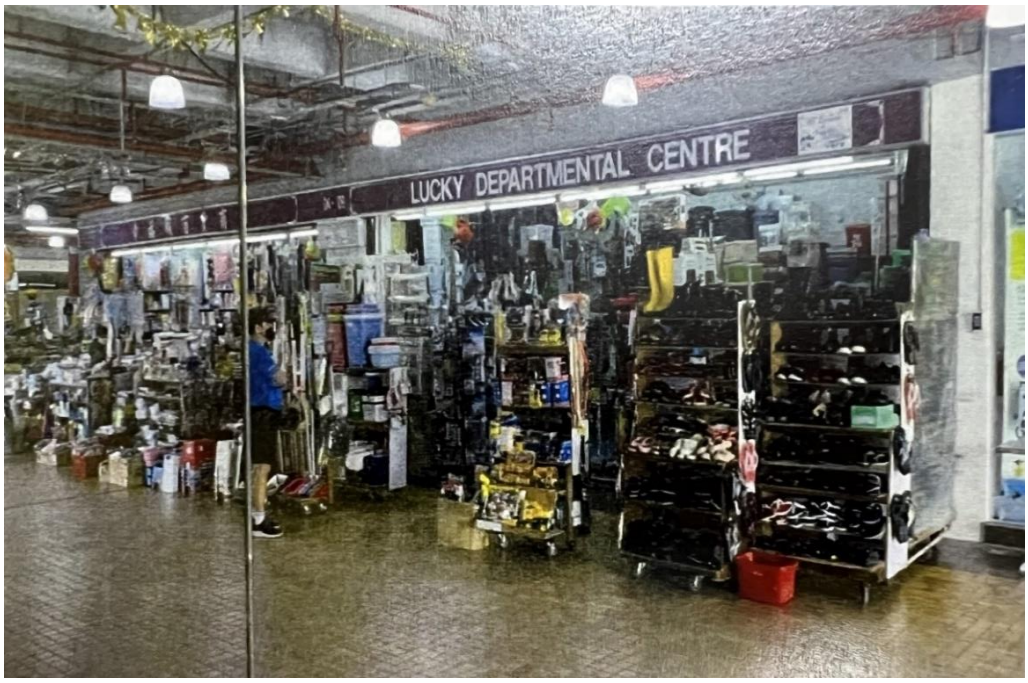
[50] RCS at [77]-[81].
[51] ibid at [82]-[84].
[52] ibid at [85]-[88].
[53] ACS at [72]-[76].
[54] A2 at [7]; A4 at [16]-[17]; ACS at [78]-[79].

new cause of action for the Respondents' encroachment arises each and every day the Respondents operate such that the Applicant is not time-barred from pursuing the present application.

The Acquiescence Argument

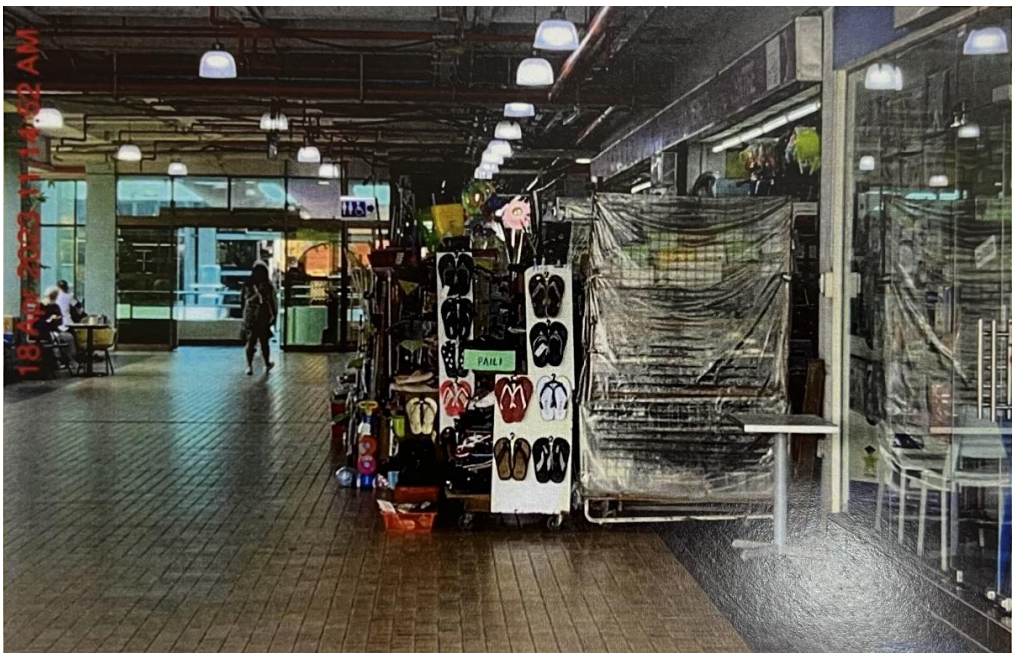
(h) Finally, the Acquiescence Argument is also untenable as the Respondents' have not shown that the Applicant took no action against them in the 40 years that they have been encroaching onto BWC's common property. To the contrary, although legal proceedings have not been brought against the Respondents prior to the present application, the evidence clearly shows that the Applicant has been anything but inactive in its attempts at obtaining the Respondents' compliance with s63(c) BMSMA 2004 and the Encroachment By-law. In this regard, the Applicant's use of multiple written notices from as early as 16 April 1999,[55] and the Applicant's adoption of a "soft approach" against the Respondents in 2018 and 2021,[56] militates against the finding of acquiescence.

(i) The following photographs show the extent of the encroachment:

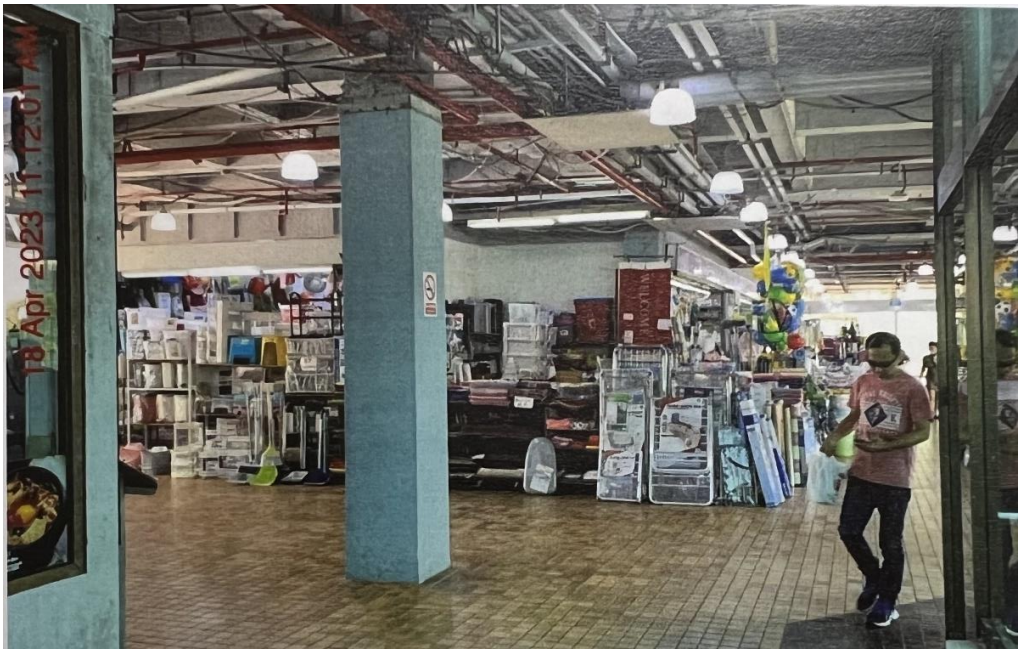


Photograph of the front profile of LDC's shopfront as seen in exhibit JC-1, Tab 1, Page 13 of John's AEIC ("**A4**").

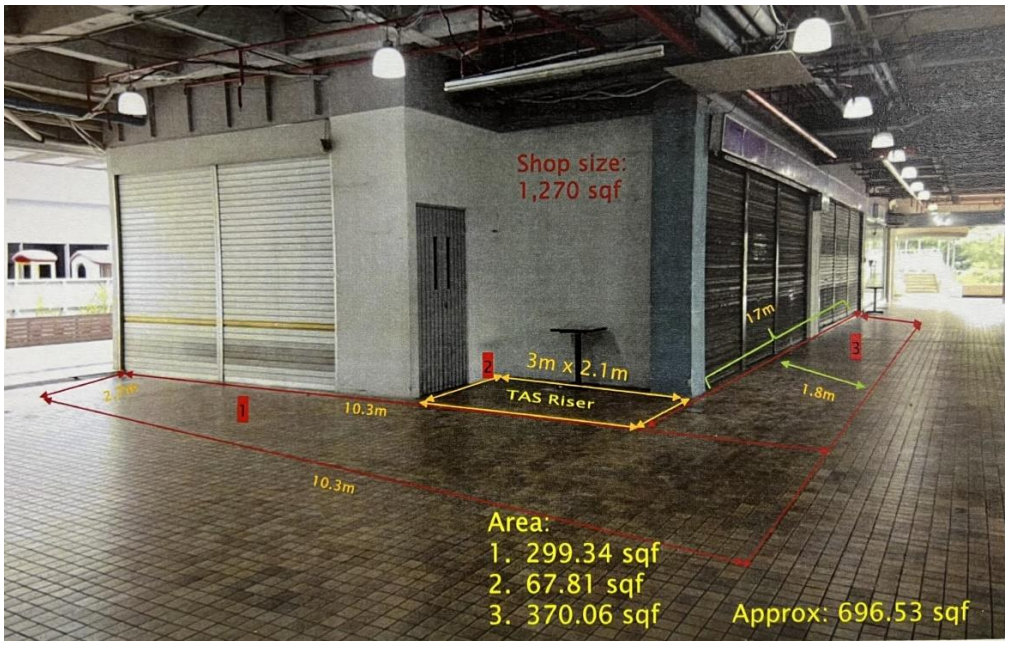
[55] A2 at Tab 2, p.17-19, Tab 4, p.23-32.
[56] A4 at [14],[16]; ACS at [77]-[78].



Photograph of the side profile of LDC's shopfront dated 18 April 2023 as seen in exhibit JC-1, Tab 1, Page 15 of A4.



Photograph of the telecom riser with the Respondents' goods displayed dated 18 April 2023 as seen in exhibit JC-1, Tab 1, Page 16 of A4.



Photograph of the telecom riser without the Respondents' goods displayed as seen in exhibit JC-1, Tab 1, Page 14 of A4.

16 The Unfair Targeting Issue:

(a) On this third issue, there is from the outset no definitive evidence to suggest that the enforcement action was unfairly motivated by the Applicant's suspicion of and desire to punish the Respondents for their actions in the events surrounding the termination of the outdoor refreshment area's (the "**ORA**") unauthorised lease of the common property in front of Unit #XXX (the "**ORA Issue**").

(b) In this regard, though the Respondents have contended that the speed and timing of the enforcement action suggests that the Applicant has unfairly targeted them,[57] the Respondents have not however definitively shown that said enforcement action was indeed motivated by both the Applicant's suspicion as to their complaint to the Urban Redevelopment Authority, and the Applicant's desire to retaliate against them for highlighting the Applicant's failings in the 2 December 2022 Annual General Meeting. Because of this, as the possibility remains that the enforcement action could, despite its timing, have simply been commenced by the Applicant as a matter of course irrespective of the ORA Issue, the Board is unable to accept the Respondents' contention above. Support for this finding can be seen from the fact that the Respondents have previously been specifically identified as an "extreme case" of encroachment by the Applicant's 16th Management Council in its 4th council meeting held on 14 July 2015.[58]

(c) Next, it is also unlikely that the Applicant has unfairly targeted the Respondents with its enforcement action as the evidence shows that the Respondents have acted unreasonably despite their encroachment onto BWC's common property. On this point, it should be noted that the Board has placed more significance on the evidence of Brian and John as not only were they more likely to be impartial

[57] R5 at [55]-[56]; RCS at [94]-[95].
[58] A4 at Tab 3, p.26; ACS at [90], [93].

given their impermanent position as the Applicant's Managing Agent, their testimonies given on 9 and 10 October 2023 respectively were also demonstrably more helpful. That said, the Board finds that the Respondents have acted unreasonably for the following reasons:

i. First, it is clear from John and Brian's testimonies and AEICs that the Respondents' encroachment actively and unreasonably obstructs the Applicant's free access to the telecom riser which forms part of the common property. Because of this, the Applicant has to always seek the Respondents' permission to clear a path to the telecom riser whenever access to it is needed. While Meow Loke has testified that he would always agree to giving the Applicant access to the telecom riser whenever he is asked for it, this is beside the point as it plainly unreasonable for the Respondents to limit the Applicant's access to the telecom riser in this manner.

ii. Next, the Respondents have also refused to allow the Applicant to carry out certain works if said works fell within the Respondents' operating hours and required access to any part of the encroached common property. As is clear from John's testimony and his AEIC, this would typically be the case for any cabling and lighting works that needed to pass over the encroached common property.[59] Because of this, and as corroborated by Brian in his testimony, the Applicant has had to incur additional operating costs just to have these works completed outside of the Respondents' operating hours.[60]

iii. Finally, Meow Loke had on one occasion, also verbally threatened John that he had a knife in his shop when he was asked to keep his goods back into LDC to facilitate the implementation of the Gantry.[61] This was corroborated by Brian, in his testimony and AEIC, who was with John at the time the verbal threat was made.[62] According to John's testimony, it was necessary to ask Meow Loke to keep his goods back into LDC as although the Gantry was to be installed in the middle of the walkway at least 3 metres away from LDC's strata boundary line, provisions nevertheless had to be made as this was to be the only way through which goods can be delivered into BWC. In this regard, although Meow Loke has testified that his reference to the knife was only made figuratively, this cannot be accepted as the possibility remains that people may nevertheless perceive his reference to the knife as being a threat that is made against them. Indeed, this appears to be the case in the present application as both John and Brian have independently testified that they perceived Meow Loke's statement as being a verbal threat at the time it was made.

iv. Finally, despite the Respondents' contention that they have been singled out by the Applicant despite there being other instances of encroachment within BWC, the Board finds no evidence to support this. From the evidence, it is

[59] A4 at [15].
[60] ibid; ACS at [40].
[61] A4 at [16]-[17]; ACS at [78]-[79].
[62] A2 at [7].

clear that the Applicant has taken active steps to mitigate the encroachment of the other SPs as well. As can be seen from Brian's testimony and AEIC, while the compliance of the other SPs have mostly been achieved either through dialogue or lease agreements for the use of the common property (e.g. Giant[63]), reminder letters, similar to those sent to the Respondents, have also been sent to uncooperative SPs.[64] Not only that, the evidence also shows that the Applicant has not shied away from taking more drastic measures against the other SPs when the situation calls for it. In this regard, not only has Giant had it property confiscated by the Applicant in 2019 after failing to comply with its third and final reminder, the Applicant has also recently commenced enforcement action (STB No. 68/2023) against Unit #XX-XX for encroachment as well.[65]

(d) Thus, in light of the discussion above, the Board finds that the Applicant did not unfairly target the Respondents in its enforcement action such that injunctive reliefs sought should, despite the Respondents' encroachment, nevertheless be refused.

17 The Mandatory Injunction Issue:

(a) On this fourth issue, it is clear from *Choo Kok Lin* that mandatory injunctions are granted to redress breaches of negative covenants unless either of the following limbs apply (at [56] of *Choo Kok Lin*):[66]

"*(a) the* [Applicant's] *own conduct would make it unjust to do so; or*

(b) the breach was trivial or had caused no damage or no appreciable damage to the [Applicant] *and a mandatory injunction would impose substantial hardship on the* [Respondents] *with no counter-balancing benefit to the* [Applicant]."

(b) Turning to *Choo Kok Lin's* first limb, the Respondents contend that the Board should withhold its grant of a mandatory injunction on account of the Applicant's unfair targeting of the Respondents in its enforcement action. In this regard, seeing as the Board has already found that the Respondents have not been unfairly targeted by the Applicant, the Board finds that *Choo Kok Lin's* first limb does not apply to the present application.

(c) Turning then to *Choo Kok Lin's* second limb, the Respondents contend that the Board should also withhold its grant of a mandatory injunction for the following reasons:

i. Firstly, the Applicant could not have suffered any tangible damage from the Respondents' displays as not only has no action been taken against the Respondents for 4 decades,[67] the issue of the Respondents' displays too did not feature in any of the Applicant's meetings leading up to the present

[63] ACS at [97].
[64] A2 at [14].
[65] ibid at [15].
[66] A7 at p.34; ABOA(CS) at p.75; R6 at p.47.
[67] R5 at [45]; RCS at [158].

application.[68] This, according to the Respondents, is further supported by the Applicant's allocation of display spaces to all SPs as the fact that said display spaces fell within BWC's common property signalled that "… *the Applicant has clearly considered that there is no issue of damage caused to others by encroachment*" (the "**Tangible Damage Argument**").[69]

ii. Secondly, while the Applicant will not derive any tangible benefit from the mandatory injunction, the Respondents' business will however be adversely affected by it (the "**Adverse Effect Argument**"). [70]

The Tangible Damage Argument

(d) As it relates to the Tangible Damage Argument, it is clear from the testimonies of Mr Chong Chye Shing ("**Chye Shing**"), John and Brian that the Applicant has in fact suffered tangible damage from the Respondents' displays. In this regard, not only has the Applicant's maintenance cost grown as a result of the Respondents' insistence that maintenance work be undertaken outside of their operating hours, the Respondents' failure to pay rent for their use of the common property in excess of the allowable limits too constitutes tangible damage that the Applicant has suffered from the Respondents' displays. Because of this, the Board is unable to agree with the Respondents that the Applicant could not have suffered any tangible damage from their displays.

The Adverse Effect Argument

(e) As it then relates to the Adverse Effect Argument, though the Board acknowledges that the Respondents' business might be affected by the imposition of a mandatory injunction, the Board cannot however agree with the Respondents that their business would be adversely affected by it. This is because it is clear from the testimonies of Chye Shing, John, and Brian that the option to lease approved portions of the encroached area nevertheless remains available to the Respondents, subject to its impact on BWC's crowd flow and its compliance with the SCDF Regulations. Further, the Board is also unable to agree with the Respondents that the Applicant will not derive any tangible benefits from the imposition of a mandatory injunction. As is clear from John and Brian's testimonies and AEICs, said mandatory injunction will likely prove beneficial for the Applicant as, by solidifying their authority with respect to the management of BWC's common property, it would present the Applicant with a valuable opportunity to reign in BWC's longstanding issue of encroachment.[71] Indeed, the Board believes that this is likely to be the case as Chye Shing has testified that the present application has already led to the compliance of 33 of the 40 SPs who have been identified by the Applicant as having encroached onto BWC's common property.

[68] R5 at [45].
[69] R5 at [48]; RCS at [160].
[70] R5 at [46]; RCS at [161].
[71] A4 at [20]-[21]; A2 at [16].

(f) Thus, it is for the aforementioned reasons and on the lack of evidence to that effect that the Board finds that *Choo Kok Lin's* second limb does not apply to the present application.

18 The Prohibitory Injunction Issue:

(a) Finally, on this fifth issue, the Court of Appeal has made it clear in *RGA Holdings International Inc v Loh Choon Phing Robin and anor* [2017] SGCA 55 ("***RGA Holdings***") that prohibitory injunctions will readily be granted whenever a respondent is about to breach or has already breached a negative covenant in a contract (at [32] of *RGA Holdings*).[72] To this end, the Court of Appeal has held that not only is the balance of convenience test inapplicable to such cases (at [33] of *RGA Holdings*), the following principles are also applicable to the Board's determination (at [32] of *RGA Holdings*):[73]

> "*(a)* ***A prohibitory injunction to restrain the breach of a negative stipulation in a contract is normally granted as a matter of course****.*
>
> *(b) The* ***court is not concerned with the balance of convenience****. That damages would be an adequate remedy is not generally a relevant consideration.*
>
> *(c)* ***As the remedy is an equitable one, it is in principle discretionary, and it may be refused on the ground that it would cause particular hardship as to be oppressive to the defendant. But the burden caused by having to observe the contract does not qualify as hardship****.*
>
> *(d) These* ***principles above apply equally to the grant of a final injunction as they do to the grant of an interim injunction***."
>
> (Our emphasis in bold)

(b) In this regard, the Board does not agree with the Respondents' contention that aforementioned principles should not apply to the present application.[74] This is so for the following reasons:

i. *RGA Holdings* stands as a Court of Appeal decision as to the test that is to be applied whenever a respondent is about to breach or has already breached a negative covenant in a contract. Granted the Respondents' contention that in "*... all the reported Court or STB cases there is no precedent for this case (or test) being applied in similar alleged encroachment cases*",[75] the fact nevertheless remains that *RGB Holdings* should apply as it is still good law;

ii. The principles as set out in *RGA Holdings* will apply to the present application as Judith Prakash J has made it clear in *Choo Kok Lin* at [23] that the prescribed by-laws (as stated in the Second Schedule to the Building Maintenance (Strata Management) Regulations 2005) "…*are*

[72] A7 at p.61; ABOA(CS) at p.128.
[73] A7 at p.61-62; ABOA(CS) at p.128-129.
[74] RCS at [13]-[24].
[75] ibid at [14].

statutorily constituted contracts between the management corporation and the subsidiary proprietors …";[76] and

iii. The Respondents' argument that the Encroachment By-law is both a permissive and a negative covenant such that a prohibitory injunction ought not to be granted as a matter of course in accordance with *RGA Holdings* is untenable.[77] In this regard, not only would accepting the Respondents' argument that the Encroachment By-law "*…specifically allows the use of the common property … as well subject to certain conditions*" strip the Encroachment By-law of its intended purpose,[78] it is also clear that the Encroachment By-law only intended for its use of "*…except on a temporary and non-recurring basis*" to serve as a means of clarifying when encroachment would not occur.

(c) Thus, as it is undisputed from the facts that the Respondents have encroached onto BWC's common property in breach of s63(c) BMSMA 2004 and the Encroachment By-law, the Board finds that it ought to grant the prohibitory injunction sought by the Applicant.

THE BOARD'S DECISION

19 To conclude, the Board finds that it has the jurisdiction to grant the orders sought by the Applicant.

20 Further, the Board also finds the following largely proven or undisputed:

(a) That there was a significant daily and recurring encroachment on the common property by the Respondents (during their operating hours) over the last 4 decades;

(b) That the Respondents' encroachment has caused difficulties for the Applicant's staff or authorised persons as it relates to their ability to access and maintain the common property (e.g. to access the telecom riser or to maintain the common pipes);

(c) That although there have been no apparent safety hazard problems in the past relating to the Respondents' encroachment, it is nevertheless impossible to rule out the possibility of such hazards arising in the future seeing as the Respondents' encroachment may potentially obstruct the fire escape route;

(d) That the Respondents are misconceived about their rights over BWC's common property; and

(e) That the Applicant has been taking action against other defaulting SPs such that the Respondents were/are not the only ones who have been subject to the Applicant's action.

[76] A7 at p.21; R6 at p.34; ABOA(CS) at p.62.
[77] RCS at [20]-[24].
[78] ibid at [20].

21 Thus, in light our findings above, the Board grants the following orders:

(a) The Respondents are to remove their goods and/or belongings that are placed outside of the green area as shown in Annex-A within 3 days from the date of the order; and

(b) The Respondents shall not place, display and/or store their goods and/or belongings outside the green area as shown in Annex-A.

22 The Board will hear parties on costs.

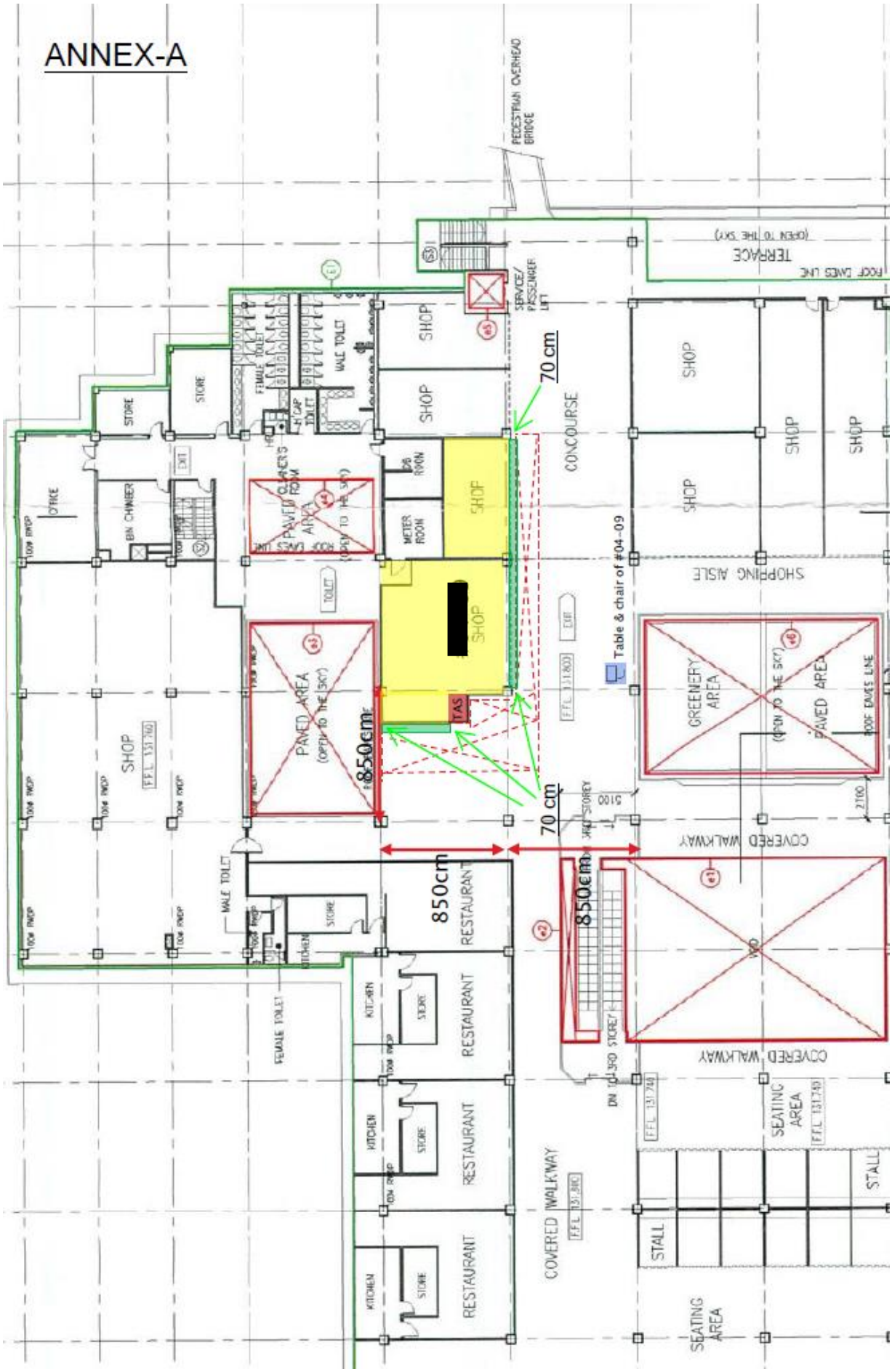
Dated this 23rd day of November 2023

_____
Mr Alfonso Ang
President

_____
Mr Richard Tan Ming Kirk
Member

_____
Ms Sim Kai Li
Member

Ms Lim Bee Li and Mr Wong Zhen Yang (Chevalier Law LLC) for the Applicant.
Ms Vicki Loh and Ms Fiona Oon (Legal Solutions LLC) for the Respondents.


ANNEX-A
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