

**BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT
(CHAPTER 30C)**

STB No. 82 of 2008

In the matter of an application under section 101 (1) (a) and section 111 (1) (a) of the Building Maintenance And Strata Management Act (Cap. 30C) in respect of the development known as **77 High Street Plaza** (MCST Plan No. 599)

Between

GANGES PORTFOLIO PTE LTD
(Company Registration No. 200801942G)

... Applicant

And

MCST NO. 599
(No. Identification Number)

... Respondent

| | | |
|---------------|---|---|
| Coram | : | MR TAN LIAN KER President |
| Panel Members | : | MR LEO CHENG SUAN MR FRANKIE CHIA SOO HIEN |
| Counsel | : | Mr Balachandran s/o Ponnampalam for the Applicant (M/s Robert Wang & Woo LLC) Mr Ng Thin Wah for the Respondent (M/s Timothy Ong Lim & Partners) |

GROUND OF DECISION

1. The Applicant is a Singapore registered company which owns Unit (#XX X) ("the Unit") High Street Plaza 77 High Street Singapore 179433 ("the Building").

2. The Respondent is the Management Corporation Strata Title Plan No. 599, High Street Plaza.
3. The Applicant filed this application on 9 October 2008 and sought two orders from the Board, namely that:
 - (a) The Respondent relocates the security counter from its current position (at the entrance to the Building and adjacent to the Unit) to another location which will not obstruct the line of sight of view (from and into the Unit) from the glass wall on the side facing the entrance to the Building; and
 - (b) The Respondent approves the Applicant's application dated 4 October 2008 for installation of a roller shutter on the glass wall side of the Unit with a new opening.
4. The Applicant relies on section 101 (1) (c) and section 111 (a) of the Building Maintenance And Strata Management Act (Cap 30C) ("the Act") which state:

Section 101 (1) (c)

"Subject to subsections (4), (6) and (7), a Board may, pursuant to an application by a management corporation or subsidiary management corporation, a subsidiary proprietor, mortgagee in possession, lessee or

occupier of a lot in a subdivided building, make an order for the settlement of a dispute, or the rectification of a complaint, with respect to -

- (c) the exercise or performance of, or the failure to exercise or perform, a power, duty or function conferred or imposed by this Act or the by-laws relating to the subdivided building or limited common property, as the case may be."*

Section 111 (a)

"Where, pursuant to an application by a subsidiary proprietor, a Board considers that the management corporation or subsidiary management corporation to which the application relates —

- (a) has unreasonably refused to consent to a proposal by that subsidiary proprietor to effect alterations to the common property or limited common property.... the Board may order that the management corporation or subsidiary management corporation, as the case may be, consents to the proposal.*

BACKGROUND

5. The Applicant purchased the Unit, which is a shop unit, pursuant to a sale and purchase agreement made between the Applicant and M/s Koghar & Sons ("Koghars"), the previous owners of the Unit. The completion date for the sale and purchase was 7 July 2008.
6. The Unit is a shop unit at the main entrance of the Building.

7. The Unit has glass frontage with a glass door facing High Street, glass wall with glass doors at the rear which faces the internal corridor of the ground floor of the Building and a glass wall adjoining the main entrance passageway ("**the glass wall**"). (The plan of the Unit is annexed hereto as Annexure A).
8. Before the Applicant purchased the Unit, the glass wall of the Unit adjoining the main entrance passageway was hoarded up on the other side, for use as the Building Signage by the Respondent. The Respondent also placed a security counter about two-thirds of the length of the glass wall. A room on the common property was also created (under the escalator/next to the glass wall) to house things for security guards ("**the security room**").
9. The tenants of Koghars had also blocked the inside of glass wall of the Unit by black plastic sheets and furniture for privacy. The tenants used the Unit essentially as an office and not a shop.
10. After purchasing the Unit, the Applicant sub-divided the Unit into 3 sub-units, with each sub-unit having its own entrance, with the consent of the Respondent. The Applicant also removed the black sheets stuck on the inside of the Unit's side glass wall by the tenants of Koghars. However,

the view of the outside of the side glass wall was obstructed by the hoarding against the glass wall and the security room.

11. The Applicant requested the Respondent to remove the hoarding and security room and this was done after the mediation hearing before the Board on 19 December 2008. The hoarding has been removed and that is no longer an issue now. The substantial easement of light issue has been resolved.
12. The Applicant applied on 4 October 2008 to install a roller shutter by removing a section of the Unit's side glass wall. On 6 October 2008 the Respondent refused the application.
13. At a general meeting called by the Respondent and held on 14 April 2009, resolutions proposed by the Respondent were passed to refuse the relocation of the Security Counter and the roller shutter application.
14. It is significant to note that the Applicant's director Mr Paviter Singh Bajaj, was a council member of the Respondent since 1990, and the secretary of the Respondent from around 2004 to 2008; and was removed as secretary by a petition on or about 3 September 2008. During Mr Paviter Singh's tenure as secretary, the features of the Security Counter were

enhanced by the council, by putting up partitions and various surveillance equipment on the Security Counter.

15. There are effectively 3 issues before the Board:
- (a) Relocation of the **Security Counter**
 - (b) Allowing **roller shutter** to be installed at the Applicant's unit
 - (c) Allowing the Applicant to replace the fixed glass wall at the side with **a new opening** via the roller shutter

Security Counter

16. The Applicant's submissions on the Security Counter can be summarised as follows:
- (a) The Security Counter "*obstruct the line of sight*" and interferes with the right to the use and enjoyment of the Unit.
 - (b) The said obstruction by the Security Counter and the activities thereat further constitute a nuisance to the Applicant.
17. The Applicant contends that because the Unit came with full length glass in the front, back and side, the Unit will have the right to enjoy all the design feature approved by the Building Control Authority including the light and exposure from glass walls and doors.

18. The Applicant concedes that a 2 feet by 3 feet Security Counter was placed against the pillar at the front of the Building which abuts the side glass wall of the unit, for about 10 years. The Respondent states that a security counter has been located at the front entrance for some 30 years, without any objection from any subsidiary proprietors. Mr Chugh Vijay Thakudes, a Council member of the Respondent states that the Security Counter was placed at its current location for at least 10 to 12 years. In 2005/2006, the Respondent upgraded the Security Counter and hoarded up the side wall of the Unit.

19. The Applicant cited section 19 (1) (a) of the Land Titles (Strata) Act which provides as follows:

"In respect of each lot and common property there shall be implied in favour of the subsidiary proprietor of the dominant tenement and against the subsidiary proprietor of the servient tenement -

(a) easement of uninterrupted access and use of light to or for any windows, doors or other apertures existing and enjoyed at the date of the relevant strata title plan,"

and submits that it implies an easement in favour of "uninterrupted access" and "use of light" existing or enjoyed at the date the relevant strata title plan was registered. The side glass wall allows light in. At the date of the registration of the strata title plan for the Building there was no security counter at the side glass wall of the Unit. Further when the

Applicant installs the roller shutter there will be another access at the glass wall side to which they will be entitled to the uninterrupted access and light.

20. However, the Board notes that in the first place, because of the original glass wall, there was no access through the glass wall side for the Applicant to assert such right..
21. The Applicant was prepared to pay \$5,000.00 to relocate the Security Counter, but the offer was not taken up by the Respondent.
22. The Applicant cited Express Print Pte Ltd v Monocrafts Pte Ltd [2000] 3 SLR 545 as a proposition of law that a party must not use his property in a manner which is a nuisance to another owner. Whilst that is good law, its application must be read in the light of a right of support of adjoining properties, against the context of a development under the Building Maintenance And Strata Management Act (where the subsidiary proprietors are co-owners of the common property, and stakeholders with the interests of the well being of the development). .
23. The Respondent's Council met on 3 August 2008, 8 August 2008 and 19 September 2008 to discuss the Respondent's application to relocate the Security Counter. The Applicant raise the argument that the draft minutes

of the Council meeting held on 14 August 2008 showed that the majority of Council was in agreement to the proposed relocation of the Security Counter. However, Mr Chugh for the Respondent testified that the recorder (Mr Adnan of the Managing Agent) of the draft minutes did not understand the language which was used during the meeting, and that there was no such agreement. In any event, the final minutes did not reflect such agreement. In the absence of any evidence to the contrary, the Board accepts the final version of the Minutes.

24. The Applicant alleges that the Respondent's former solicitors were replaced because the Respondent did not want the matter to be properly investigated and the Council members properly advised. The Respondent's rebuttal was that the former solicitor was replaced due to costs consideration. From the evidence tendered, there is nothing to support the Applicant's allegations. On the contrary, by the Respondent's former solicitors' emails of 12 August 2008 and 24 September 2008, the former solicitors were of the view that it was arguable that the Security Counter was for the benefit of all subsidiary proprietors and that the present location of the Security Counter can be justified on safety and security concerns.
25. The Applicant asserts that the Council was bias and prejudiced against Mr Paviter, and removed him as the Council's secretary. As the issue of why

Mr Paviter was removed as secretary was not argued before the Board, there is no evidence to show that Mr Paviter was unfairly removed or that there was prejudice by the Council members against him. The Council has not prevented the Applicant from sub-dividing the Units.. The Board is unable to find the nexus to link the removal of Mr Paviter as secretary, to the issues at hand.

26. Under section 29 (1) (a) of the Building Maintenance And Strata Management Act, the management corporation is to control, manage and administer the common property for the benefit of all the subsidiary proprietors. For the common good and benefit of all subsidiary proprietors, a management corporation may locate or place things on the common property, be it meter boxes, seats/chairs, dustbins, letter or post boxes, lightings, signboards, Bank ATM cash dispensers, telephone and plants, so long as any subsidiary proprietor's rights are not materially prejudiced.
27. The Board members visited the site on 23 June 2009 and found that there is space constraint to relocate the Security Counter elsewhere. If the Respondent relocates the Security Counter, other subsidiary proprietors may also complain about the Security Counter being placed close to their units, or obstructing their access or obstructing their light.

28. The Applicant knew that there was an existing security counter when it purchased the Unit. The Security Counter has been there for more than 10 years, and even possibly more than 30 years (the evidence is not clear on this), albeit it was apparently only a smaller 2 feet by 3 feet table then.
29. It is critical to note that when Mr Paviter Singh was the secretary to the Respondent's Council, he did not deem it fit to object to the location of the Security Counter then. It was apparently only after the Applicant had purchased the Unit, and wanted a new side opening, that he raise the issue.
30. The Board finds that any disruption or interference with light by the Security Counter is minimal or will not detract from the use or enjoyment of the Unit by a reasonable subsidiary proprietor. There is minimal obstruction to lights. No subsidiary proprietor ought to have a complete say on the amount of light available. If that is allowed, any other subsidiary proprietor can make similar demand and the security counter cannot be located anywhere or at the most appropriate site facing the entrance. It will be difficult to manage the common property if every subsidiary proprietor insists on full access to light and totally unobstructed access.

31. The Board's site visit confirms that due to space constraint on the site, it will be difficult to relocate the security counter to another location, without other subsidiary proprietors complaining.
32. However, there is no necessity to have such a large security counter. Judicious use of space will enable the cutting down of the security counter size to an approximately 2 feet by 3 feet table.
33. In the Board's opinion there will be little obstruction to the Applicant's access if the Security Counter is reduced to 2 feet by 3 feet and relocated next to the tiled wall near the glass wall.
34. To allow the Applicant's request may open a floodgate for subsidiary proprietors in other Management Corporations to seek the removal of similar security counters.
35. At the Annual General Meeting held on 15 April 2009, the general body is in favour of the present location of the existing security counter and rejection of the proposed roller shutter in place of the glass wall, by a vote of 3,913 share values against 626 share values.

38. After due deliberation the Board orders that the existing Security Counter be reduced in size to about 2 feet by 3 feet, and re-located next to the tiled wall near the glass wall, as marked "X" in the Plan in Annexure A.

The Roller Shutter Application

39. The Applicant applied by letter dated 4 October 2008 to replace a part of the side glass wall of the Unit with a roller shutter. The Respondent rejected the application on the ground that a metal shutter right at the front of the building lobby will be an eye sore, especially when the other units in the main corridor all have glass doors.
40. The Applicant submits that the Respondent's defence that the roller shutter will be an eyesore has no factual basis because:
- (a) Several units including one owned by Shanker Emporium (which is a business controlled by Mr Bhojwani), facing High Street and the Treasury Building, have metal or aluminium roller shutters.
 - (b) Internal shop units have also metal roller shutters.
 - (c) The sundry goods retail shop facing the back of the Unit has no glass door but only a metal roller shutter. Whatever the size of that unit (which is not common property but owned by a subsidiary proprietor leased to the tenant), the fact is that a roller shutter is being used with approval of the Respondent.

- (d) There was no uniformity in types of doors and use of roller shutters (some had and others did not). Also, some shop units had their glass walls hoarded or covered up so that the units are used as offices or offices cum shops.

39. The Board notes that extra security devices are permitted under the Second Schedule of the Building Maintenance (Strata Management) Regulations, Prescribed By-Law 5 (3) (a) which states:

"This by-law shall not prevent a subsidiary proprietor or an occupier of a lot, or a person authorised by such subsidiary proprietor or occupier from installing —

- (a) any locking or other safety device for protection of the subsidiary proprietor's or occupier's lot against intruders or to improve safety within that lot"*

40. The Board also notes that the roller shutters installed at other units (shown to the Board during the site visit) did not create new opening.

41. In the circumstances, for safety and security reasons, the Board holds that the Applicant should be permitted to install roller shutter within the Unit, of a type and design acceptable to the Respondent.

New Side Opening

42. The real issue is whether it was reasonable for the Respondent to refuse the Applicant to have a new side opening.

43. The Management Corporation has control over the glass panel. Section 29 (1) (b) (ii) and (iii) of the Building Maintenance And Strata Management Act states:

"Except as otherwise provided in subsection (3), it shall be the duty of a management corporation —

(b) to properly maintain and keep in a state of good and serviceable repair (including, where reasonably necessary, renew or replace the whole or part thereof) —

(i) the common property;

(ii) any fixture or fitting (including any pipe, pole, wire, cable or duct) comprised in the common property or within any wall, floor or ceiling the centre of which forms a boundary of a lot, not being a fixture or fitting (including any pipe, pole, wire, cable or duct) that is used for the servicing or enjoyment of any lot exclusively;

(iii) any fixture or fitting (including any pipe, pole, wire, cable or duct) which is comprised within a lot and which is intended to be used for the servicing or enjoyment of the common property;

(iv) each door, window (defined under section 2 to include glass panel, glazed door and any other building material which

emits natural light directly from outside a building into a room or interior of the building) *and other permanent cover over openings in walls where a side of the door, window or cover is part of the common property.*

44. Section 37 (3) and 4 (c) of the Building Maintenance And Strata Management Act states:

- "(3) Except pursuant to an authority granted under subsection (4), no subsidiary proprietor of a lot that is comprised in a strata title plan shall effect any other improvement in or upon his lot for his benefit which affects the appearance of any building comprised in the strata title plan.*
- (4) A management corporation may, at the request of a subsidiary proprietor of any lot comprised in its strata title plan and upon such terms as it considers appropriate, authorise the subsidiary proprietor to effect any improvement in or upon his lot referred to in subsection (3) if the management corporation is satisfied that the improvement in or upon the lot —*
- (a) will not detract from the appearance of any of the buildings comprised in the strata title plan or will be in keeping with the rest of the buildings; and*
- (b) will not affect the structural integrity of any of the buildings comprised in the strata title plan."*

45. Chia Sok Kheng Kathleen v The Management Corporation Strata Title Plan No. 669 [2004] 4 SLR 27 (a case cited by the Applicant) involved a case of a subsidiary proprietor in City Plaza suing the Management Corporation for, *inter alia*, refusal to replace a wall with an opening using a roller shutter. The action was rejected by the Honourable Justice Kan Ting Chiu who held:

"37. *I do not think that the Plaintiff can complain that the Defendant had not acted responsibly in deciding on her application. There was no suggestion that the decision was tainted by prejudice, malice or indifference.*

38. *Having said that, the Defendant would have done better if it had informed the Plaintiff of the reasons for its decisions. I appreciate that the Defendant might have wanted to encourage council members to speak freely in confidence, but subsidiary proprietors should be informed of the reasons for decisions (as distinguished from the deliberations leading to them), so that subsidiary proprietors can decide whether to raise further grounds in support of applications or to modify the applications. In this instance, for example, if the plaintiff had been told the reasons, she might have pointed out that, for reason (a), it was not undesirable to create a precedent as there are good precedents and bad precedents and only the latter should be discouraged. The Plaintiff could have*

addressed reason (b) by undertaking that the proposed opening was to be used solely for human access, and that goods and refuse would continue to be moved along the existing approved routes.

39. *Nonetheless, looking at the totality of the evidence, I find that the Defendant acted honestly and responsibly in dealing with the application."*

46. In Fu Lu Shou Complex v The Management Corporation Strata Title Plan No. 959 [1991] SGSTB 6, the Strata Titles Board allowed the application to have fixed glass panels to be replaced by an opening with a roller shutter, because other existing units have such openings created.

47. In Mark Wheeler v The Management Corporation Strata Title Plan No. 751 (STB 44 of 2002), the Strata Titles Board quoted with approval Proprietors SP No. 464 v Oborn, Supreme Court of New South Wales: *"the Defendant, without giving notice to the Body Corporate, removed the whole of the window frames and windows on the eastern side of their lot and replaced them with western red cedar frames fitted with tinted glass. In granting an injunction to order the removal of the frames and windows, Holland J said:*

In my opinion the body corporate has, by the Defendant's breach, suffered an injury which is not trivial. Even though no physical damage was done to the building and the work exposed the body corporate to no financial

outlay or present liability, the Defendant's action spurned the authority of the body corporate and the council and disregarded the by-laws by which all the proprietors are bound. If it went without challenge and goes without redress, their authority is undermined and their hands tied in deciding future action with respect to the preservation and appearance of the building and the performance of their duty to act in the common interest of all proprietors.

Decisions which affect any part of the common property are entrusted to the body corporate and the council. They cannot be left to, or dictated by, the decision of an individual with respect of his own lot. The result could be chaos. It is for the body corporate, acting within its power, to decide whether there will be uniformity in the external appearance of the building, either total or in particular respects. If the Defendants are permitted to retain the replacement they have chosen, it will be difficult to refuse any other proprietor his own individual choice. Also, proprietor may be encouraged to act first and deal with the council afterwards, as the Oborns did.

If replacement of external structure or fixtures are needed, it is for the body corporate or the council to decide the time and manner of carrying them out. Here they may decide to do the whole building at the one time, or to do it lot by lot over a period, as the need of each lot or proprietor of each lot requires. In either case they may or may not decide to adopt the same materials for replacement as the Defendants' choice but if they

decided against the Defendants' choice, they would be faced with one discordant lot if the Defendants were permitted to retain their own choice. If it was decided to effect a general replacement at later date, they might wish to specify as conforming style of replacement for those required to be replaced urgently in the meantime, but any attempt to maintain interim uniformity remains confronted with the Defendants' non-conformity if it is allowed to continue."

48. The Applicant has no automatic right to have new side access opening for the Unit. The Unit was originally served by 2 entrances: one facing The Treasury/main road and the other inside the building. The Respondent has already approved one new opening. There is no hardship to the Applicant if the requested further new opening, by removing the glass wall, is not allowed. By not allowing a new side opening, the Applicant is not deprived in any way of the use of the Unit as was originally planned and approved.
49. Although the Applicant and the Council may not be on the best terms, there is no evidence that the Applicant has been unfairly treated by the Respondent, or that the rejection to have a new opening is tainted with prejudice, malice or indifference. There is also no evidence that the Respondent has acted with uneven hands and allowed other subsidiary proprietors or tenants to have such new openings, whilst unfairly denying

the Applicant's request. In fact, the Respondent had acted fairly and approved the Applicant's submission to sub-divide the Unit into 3 sub-units with 3 entrances.

50. To allow the new opening would not be in keeping with the appearance of the rest of the building, and the Respondent will not be to stop other subsidiary proprietors from having similar new openings. To hold otherwise would mean that other subsidiary proprietors can do whatever they want with the glass panels of their units, and the uniformity or character of the building can be marred or altered or destroyed.

Conclusion

51. The Board therefore orders as follows:
 - (a) The Respondent is to reduce the size of the Security Counter to no more than 2 feet by 3 feet, and relocate the Security Counter to next to the tiled wall near the glass wall, as marked by "X" in the Plan in Annexure A. The Respondent may also place a chair for a security guard.
 - (b) The Applicant may install a roller shutter within the Unit, without removing the glass wall, subject to the roller shutter design and type being approved by the Respondent, which approval shall not be unreasonably withheld.

- (c) As both parties have succeeded in part, no costs will be awarded to either party. Accordingly the Board makes no order as to costs.

Dated this 20th day of August 2009

MR TAN LIAN KER

President

Strata Titles Boards

MR LEO CHENG SUAN

Member

Strata Titles Boards

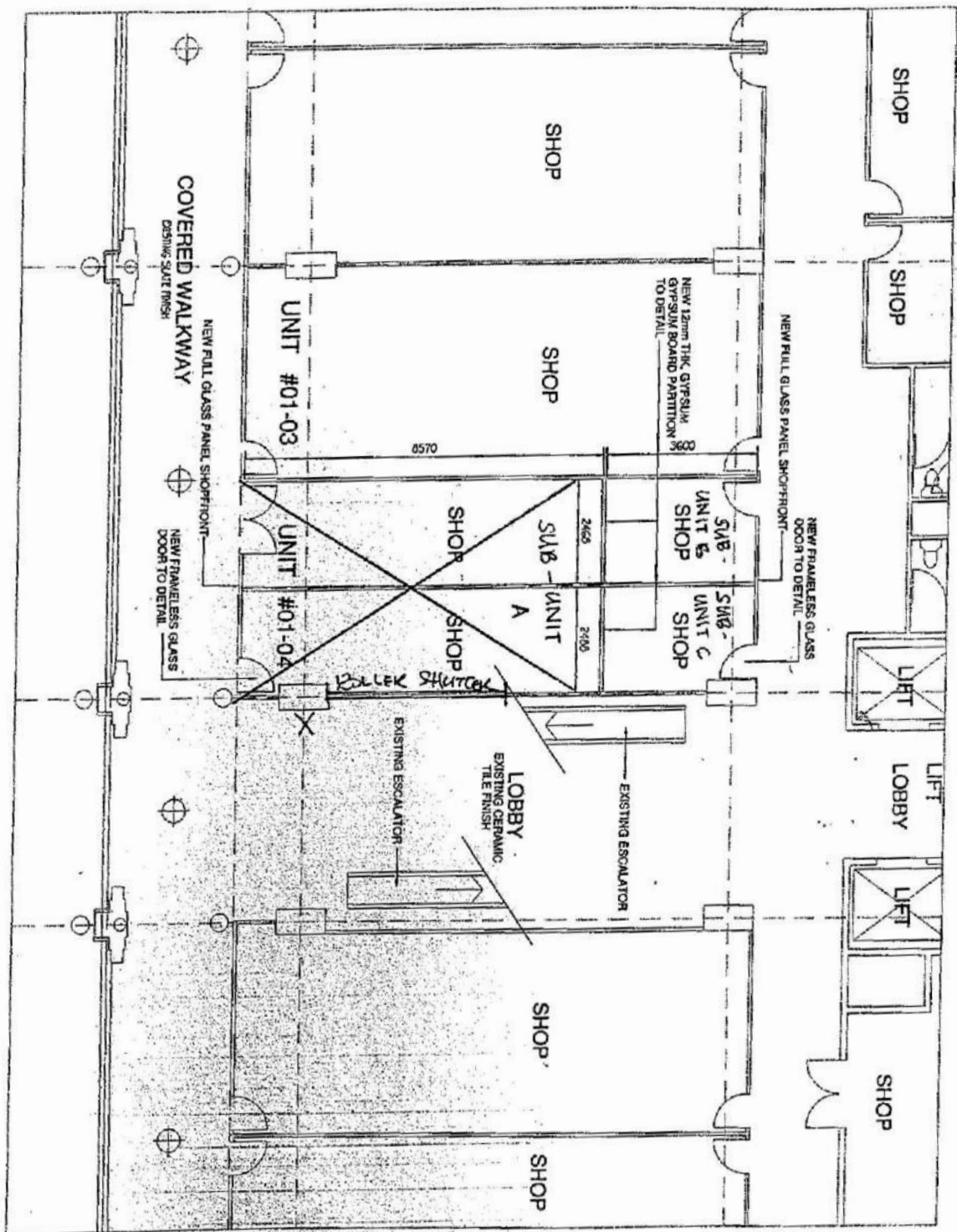
MR FRANKIE CHIA SOO HIEN

Member

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1ST STOREY PLAN

SCALE 1:100



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PROJECT TITLE
**HIGH STREET PLAZA
UNIT #01-04**

THERE SHALL BE NO DEVIATIONS FROM THE DETAILS.
CHANGES ON SITE, IF NEEDED, THEY ARE TO BE VERIFIED
AND APPROVED BY THE ARCHITECT AND ANCHORED
DETAILS SHALL BE ISSUED BEFORE PROCEEDING.
CONTRACTORS SHALL WORK FROM FIGURED DIMENSIONS
ONLY. CONTRACTORS MUST CHECK ALL DIMENSIONS ON
SITE. DISCREPANCIES MUST BE REPORTED IMMEDIATELY
TO THE ARCHITECT.

DRAWING DESCRIPTION
SHOP PARTITION PLANS
FIRST ISSUED 08.09.11
SCALE 1:48 INDICATED
DRAWN BY: COLE, JAY, JO, HA

| REVISION INDEX & DATES | |
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