

**IN THE HIGH COURT OF MALAYA IN KUALA LUMPUR
IN THE FEDERAL TERRITORY, MALAYSIA
[CIVIL SUIT NO: WA-24NCVC-610-04/2017]**

In the matter of Geran Mukim 6218 Lot 58527 No. Petak L12 Mukim Batu, Wilayah Persekutuan bearing the postal address of No. 12, Aman Kiara, Jalan Kiara 5, Bukit Kiara, Mukim Batu, 50480 Kuala Lumpur.

AND

In the matter of the Strata Management (Maintenance and Management) Regulations 2015.

AND

In the matter of the Third Schedule of the Strata Management Act 2013, Strata Management (Maintenance and Management) Regulations 2015 (Rules 5 and 28) and the Bylaws.

AND

In the matter of the House Rules of Aman Kiara.

AND

In the matter of Order 7 Rules of Court 2012.

BETWEEN



DATO' SRI LIM CHIN FUI

(NRIC NO: 790303-05-5201)

... PLAINTIFF

AND

AMAN KIARA MANAGEMENT CORPORATION

... DEFENDANT

GROUND OF JUDGMENT

1. BACKGROUND

- 1.1. Plaintiff is the registered owner for the property held under strata title with a bungalow with an address of Unit 12, Aman Kiara, No. 1 Jalan Kiara 5, Mont Kiara, wherein Aman Kiara is a gated residential area whereas Defendant is the Management Corporation of Aman Kiara.
- 1.2. On 26th October 2015, Plaintiff has applied for approval from the Defendant to carry out renovation works at the Plaintiffs unit which includes renovation works for tiling, plaster ceiling, cementing, furniture, dismantle work, electrical and hacking which was rejected by the Defendant *vide* Defendant's letter dated 20th April 2016. Further thereto, Defendant issued a stop work order against the Plaintiff's contractors to stop the said renovation works.
- 1.3. On 30th May 2016, Plaintiff re-submitted the renovation application together with the DBKL's approval but the said application was rejected by the Defendant on the same grounds *vide* Defendant's letter dated 30th June 2016.
- 1.4. During the meeting held between the Plaintiffs representatives and Defendant on 18th August 2016, the Plaintiff's representative insisted on the Plaintiff's rights to

proceed with the renovation works that are limited to the Plaintiff's units only, and insisted that it did not involve the common property area and accessory parcel. Nevertheless, Defendant rejected the Plaintiff's application.

2. RELIEFS PRAYED BY THE PLAINTIFF

Based on the Originating Summons dated 18th of April 2017, the reliefs prayed by the Plaintiff are as follows: -

- a) A declaration that the Defendant's decision in rejecting the Plaintiff's application for the approval to renovate the bungalow as per the approved plan by the DBKL is invalid and *void*;
- b) A declaration that the House Rules of Aman Kiara only applies to the "*sub-divided building*" and not to the "*sub-divided land*" such as property and bungalow held by the Plaintiff and as such, the House Rules of Aman Kiara is *ultra vires* the Strata Management Act 2013;
- c) A mandatory injunction order to compel the Defendant to give the approval to the Plaintiff to renovate as per the approved plan by the DBKL Approved No.: OSC (KK) B1 T1 151216-014(P2) by allowing the Plaintiff's worker and/or agent to enter the area to carry out and complete the renovation works;
- d) General damages for the period in starting the time Plaintiff was denied from using and enjoying the property and the bungalow;
- e) Other reliefs that are deemed appropriate; and
- f) Costs.

3. DOCUMENTS AND CAUSE PAPER

The following are the documents that are referred to by the parties in Court:-

- i) Originating Summons dated 18th April 2017 (Enclosure 1);
- ii) Plaintiff's Affidavit in Support affirmed by Lim Chin Fui on 29th of March 2017 (Enclosure 2);
- iii) Defendant's Affidavit in Reply affirmed by Khoo Boon Hing @Lee Boon Geok on 24th May 2017 (Enclosure 3);
- iv) Plaintiff's Affidavit in Reply affirmed by Lim Chin Fui on 14 June 2017 (Enclosure 5); and
- v) Defendant's Affidavit in Reply affirmed by Khoo Boon Hing @ Lee Boon Geok on 5th July 2017 (Enclosure 7)

4. COURT'S DECISION

Based on the cause papers together with the written submissions filed by the counsels for both parties, Plaintiff's Originating Summons (Enclosure 1) is dismissed with costs of RM3,000.00 subject to allocator fee of 4%.

5. GROUNDS OF JUDGMENT

The Court's decision in dismissing the Plaintiff's Originating Summons are pursuant to the following reasons:-

- 1. The Plaintiff has carried out the renovation works without obtaining a prior written approval from the Defendant wherein it is contrary to the law pursuant to Regulation 27 (1), Rule 28 Schedule 3, Part 7, Strata Management Act 2013, Strata Management (Maintenance and Management) Regulations 2015 ("Regulations").

2. The Plaintiff's property which is a bungalow held under the strata title is subject to the application of the said Regulations notwithstanding the property is an apartment, condominium or a detached house/bungalow.
3. Pursuant to para 2.1(b) of the House Rules of Aman Kiara, the usage and purpose of an accessory parcel is stated clearly and has been set specifically by the Defendant under the said para 2.1 of the House Rules:-

“An accessory parcel shall not be permitted to be used for any purpose whatsoever other than for the express purpose stipulated or designed for the accessory parcel.”

4. Further, pursuant to para 4.2 of the House Rules, the purpose of an accessory parcel is stated clearly and specifically as follows:-

“4.2 Accessory Parcels Designated for use as Terraces, Balconies/Lanai, Car Porches and Driveways, Basement Store, Patio, Yard and Private Garden

c) The owner and/or the Resident shall not erect any wall or any other form of structure of whatever nature or size on any accessory parcel forming part of a Parcel that is designated for use as a terrace, balconies/lanai, car porches and driveways, basement store, patio, yard and private garden...”

5. It is clear from the above provisions that an accessory parcel forming part of a parcel can be used as:-

“terraces, balcony, porches and driveways, basement store, patio, yard, private garden” only as stated.

6. Any renovation done to an accessory parcel forming part of a parcel requires prior approval from the Defendant as specifically provided under para 4.2 (c) of the House Rules.
7. The renovation works carried out by the Plaintiff on his unit clearly has change the “facade” of the Plaintiff’s original unit. It is obvious from the Exhibit F and H of the Defendant’s Affidavit In Reply which shows the pictures of the Plaintiff’s unit as a result of the renovation works. It is undisputed that the extension and the renovations done to the Plaintiff’s property is massive and it involved a part of the Plaintiff’s property where the patio, yard and private garden is located.
8. In this case, evetthough the renovation works were carried out massively, the Court found that the Plaintiff has failed to obtain prior written approval of the Defendant for the renovation works that were carried out which is clearly against Regulation 27(1) and Regulation 28 of the Third Schedule, Part 7, Regulations.
9. Besides, Plaintiff’s argument that the Plaintiff has obtained a prior written approval from DBKL prior to the commencement of the renovation works but was stopped by the Defendant is baseless because Defendant has rights to deny approval pursuant to Regulation 27(1) and Regulation 28, Regulations.
10. In this case, approval letter obtained by the Plaintiff from the DBKL dated 18.12.2015 clearly has expired wherein the Plaintiff has been informed to commence the construction

works within a year from the said date. Plaintiff did not produce any evidence to show the validity of the approval letter has been extended.

11. Under the two provisions, eventhough Plaintiff has obtained the approval from DBKL, Plaintiff is required to obtain the approval from the Defendant prior to the commencement of the renovation works. It is obvious from the Strata Management Regulations that only in force on 02.06.2016, which is after the application of the Strata Management Act 2015 in Federal Territories and Kuala Lumpur. Approval given to the Plaintiff by the DBKL on 18th December 2015 clearly did not applicable to the Plaintiff who requires prior written approval from the Defendant before the commencement of the massive renovation works to the Plaintiffs property.
12. In this case, the plaintiff's averment in relation to the submission of the modification plan that is approved by the DBKL to the Defendant has been successfully denied by the Defendant. Through the Defendant's letter dated 30.06.2016, the Defendant has disputed and denied Plaintiff's allegation and stated that no approved Modification Plan has been issued to the Plaintiff by the DBKL. Up until now, there is no documents disputing the Defendant's averment *vide* its letter to the Plaintiff dated 30.06.2016.
13. Besides, there are statements by the Plaintiff that appeared to be inconsistent with documentary evidence before this Court. Based on the Plaintiffs application form dated 09.01.2017, the value of the renovation works is clearly inconsistent with the Plaintiff's application wherein the value of the renovation works is said to be RM250,000.00 and the deposit for the said

renovation is RM12,500.00 compared to the amount of RM48,000.00 and the deposit is RM2,500.00 in the Plaintiff's application form.

14. In regard to the Plaintiff's argument in disputing the Defendant's rights to issue a stop work order, based on Para 9.6 (m) of the House Rules of Aman Kiara, the Defendant has the rights to issue stop work order to stop any renovation works carry out by the Plaintiff. In regard to the Plaintiff's argument that there is no evidence to show that the House Rules has been passed and valid, it is clearly baseless.
15. Plaintiff submits that the applicable act is the Strata Management Act 2013 which is in force since 2015. In this regard, the Court is agreeable with the Defendant's submissions that since the Defendant was established in 2019, the applicable act pursuant to Section 37 of the Strata Management Act provides that all references to the Act that has been repealed under any law, or document, when this Act comes into operation, be construed as references to this Act.
16. Further, Section 37(2) of the Act provides:-

“(2) Nothing in this Act shall affect the past operation of or anything done under the repealed Act before the date of coming into operation of this Act.”
17. In this regard, the Defendant referred to the case of *Nadia Management Corporation v. Yap Kuee Hong* [2014] 1 LNS 1539 where in this case the House Rules which was in existence prior to the dissolution of a joint management body, does not need to be approved and adopted as by-laws except during the general meeting of the said joint management body.

18. Next, the Plaintiff's argument in regard to the interpretation of "*Land exclude the Plaintiff's property*", based on Section 2 of the Strata Management Act 2013, there is no issue on this because the Plaintiff's property is a bungalow held under strata title as defined under Section 2 of Strata Management Act 2013.

6. CONCLUSION

Based on the abovementioned reasons, the Court hereby dismissed the Plaintiff's Originating Summons with costs of RM3,000.00 subject to the allocator fee of 4%.

DATED: 27 MARCH 2018

(NIK HASMAT NIK MOHAMAD)

HAKIM

MAHKAMAH TINGGI MALAYA

KUALA LUMPUR

COUNSEL:

For the Plaintiff - Haresh Mahadevan & Lee Kong Poh; M/s Haresh Mahadevan & Co

For the Defendant - Habizan Rahman & Sarina Alwi; M/s Rahman Rohaida

Case referred to:

Nadia Management Corporation v. Yap Kuee Hong [2014] 1 LNS 1539



Legislation referred to:

Strata Management (Maintenance and Management) Regulations
2015

Strata Management Act 2013