The Legal Review eLaw.my JE 38/2026 18 September 2026

JUDGMENT Express

HO PHOY KWANG & ANOR

v.

THE SUMMIT SUBANG USJ MANAGEMENT CORPORATION & ORS

Court of Appeal, Putrajaya
Azhahari Kamal Ramli, Ahmad Kamal Md Shahid, Nadzarin Wok Nordin JJCA
[Civil Appeal No: B-02(NCvC)(A)-1344-08-2024]
26 June 2026

Land Law: *Management corporation — Maintenance charges — Appellants seeking declarations that resolutions imposing different rates of maintenance charges were ultra vires the Strata Titles Act 1985 and the Strata Management Act 2013 — Whether management corporation could determine and impose different rates of maintenance charges and sinking fund contributions for different types of parcels within a single commercial development, comprising retail, office, hotel and car park parcels — Whether management corporation could designate 'exclusive common property' and 'shared common property' for designated parcel proprietors to justify determination and imposition of different rates of charges for different types of parcels — Whether appellants barred from bringing application for failure to exercise statutory rights and remedies under the Strata Management Act 2013*

The appellants were co-proprietors of a parcel in The Summit Subang USJ ("The Summit"), a commercial development comprising 556 parcels used as retail, hotel, office and car park units. The 1st respondent was the management corporation of The Summit. The 2nd respondent was the trustee for AmFIRST Real Estate Investment Trust, and the proprietor of various parcels in The Summit, comprising 822,590 (87%) of the aggregate of 943,610 share units. Between the 1st annual general meeting on 15 December 2012 and the extraordinary general meeting (EGM) on 4 August 2018, and at subsequent annual general meetings in 2019 and 2020, the management corporation passed resolutions determining and imposing different rates of maintenance charges and sinking fund contributions for the retail, office, hotel and car park components of The Summit. At the EGM of 4 August 2018, the management corporation also passed a resolution designating certain common property as 'exclusive common property', that the exclusive common property would be under the control and management of the proprietor receiving it, and that the portions not included in the said exclusive common property would be 'shared common property'. The appellants did not exercise their statutory rights under the Strata Management Act 2013 (SMA) to challenge those resolutions by convening an EGM or seeking the Commissioner of Buildings' assistance, and did not object to the operational budget when it was tabled at the 4 August 2018 EGM. On 30 April 2021, the appellants commenced proceedings against the respondents vide originating summons (OS) seeking *inter alia* declarations that the resolutions imposing different rates of maintenance charges were *ultra vires* the Strata Titles Act 1985 (STA) and the SMA, and were unlawful and void ab initio; an order imposing a single rate of maintenance charges in proportion to the allocated share units for each parcel; the appointment of an administrator under s 76 of the SMA, and an order that the management corporation should comply and cooperate with the administrator's requests and instructions in the performance of the administrator's duties. The application was supported by the 3rd to 16th respondents who were parcel proprietors. The High Court dismissed the OS, and the appellants appealed. The issues before the Court of Appeal were: (i) whether the management corporation could determine and impose different rates of maintenance charges and sinking fund contributions for different types of parcels within a single commercial development, comprising retail, office, hotel and car park parcels; and (ii) whether the management corporation could designate 'exclusive common property' and 'shared common property' for designated parcel proprietors to justify the determination and imposition of different rates of charges for different types of parcels.

Held (dismissing the appeal):

(1) Section 60(3)(b) of the SMA was clear and unambiguous in that the management corporation could at a general meeting determine from time to time the amount to be raised in respect of a maintenance account under s 50(3) of the SMA, impose charges on proprietors in proportion to the share units or provisional share units, and determine different rates of charges to be paid in respect of parcels used for significantly different purposes and in respect of the provisional blocks. The words 'in proportion to the share units' in the said provision fell to be interpreted as 'in accordance with the share units', since Parliament had intended to confer statutory power on the 1st respondent to determine different rates of charges for components that utilised significantly different facilities, and it was not Parliament's intention that only one uniform rate was to apply. (paras 18-19)

(2) Applying *Aikbee Timbers Sdn Bhd v. Yii Sing Chiu & Anor* and *AUM Capital Sdn Bhd v. Menara UOA Bangsar Management Corporation*, the management corporation was permitted to set and charge multiple rates in accordance with s 60(3)(b) and (4) of the SMA where the parcels were used for 'significantly different purposes'. (para 22)

(3) *Muhamad Nazri Muhamad v. JMB Menara Rajawali & Anor,* which was relied on by the appellants, was inapplicable, as it concerned a joint management body rather than a management corporation, and the weightage factor therein had been assigned under the First Schedule and s 8 of the SMA, whereas the charges in the present case were determined in accordance with the Certificate of Share Units formula (SIFUS) certified by the Director of Lands and Mines (PTG) under the STA. On the facts and as SIFUS had been issued by the PTG, the charges were therefore validly imposed by the management corporation. (paras 23, 25 & 26)

(4) The Summit was a mixed development consisting of fundamentally different categories of retail, office, hotel and car park parcels, which were accordingly different types of parcels under the First Schedule of the SMA and qualified for different rates of charges under s 60(3)(b) of the SMA. The different chargeable rates imposed were not only justified but just and reasonable. Contrary to the appellants' contention, the share units for The Summit could not be calculated based on the formula in the First Schedule of the SMA and r 10 and Schedule IV of the Strata Titles Rules (State of Selangor) 2015 based on 'weighted factors' for 'different types of parcels' reflecting 'frequency of usage & general maintenance of common property' which were policy decisions of Parliament and the State Assembly and were not intended to reflect relative costs of maintaining the common property. The management corporation had not exercised unlimited power or abused its powers under the SMA in imposing different maintenance charges for parcels used for significantly different purposes. (paras 41-42)

(5) The appellants, having failed to exercise their statutory rights and remedies under reg 11(2)(a) and (b) of the Second Schedule to the SMA, were barred from making the application under the OS herein. (paras 34 & 36)

(6) Regulation 4 of the Third Schedule of the Strata Management (Maintenance and Management) Regulations 2015 authorised the management corporation to control, manage and administer the common property for the benefit of all proprietors, and to enter into a written agreement with a proprietor to grant the exclusive use and enjoyment of a specified part of the common property for a defined period. The management corporation thus, had the discretionary right at a general meeting to raise charges, and its operational budget and the multiple rates imposed and passed at the 4 August 2018 EGM were therefore proper and in accordance with the SMA. (paras 37 & 40)

(7) In the circumstances, the issue of the appointment of an administrator did not arise and was moot and academic. The High Court had not erred in its decision, and there was nothing to warrant appellate interference. (paras 43-44)

Cases referred to:

Aikbee Timbers Sdn Bhd & Anor v. Yii Sing Chiu & Anor And Another Appeal [2024] 2 MLRA 196 (folld)

AUM Capital Sdn Bhd v. Menara UOA Bangsar Management Corporation [2024] 3 MLRA 428 (folld)

Ekuiti Setegap Sdn Bhd v. Plaza 393 Management Corporation [2018] 3 MLRA 342 (refd)

Muhamad Nazri Muhamad v. JMB Menara Rajawali & Anor [2020] 4 MLRA 288 (distd)

Ng Hee Thoong & Anor v. Public Bank Berhad [1995] 1 MLRA 48 (refd)

Pathmanabhan Nalliannen v. PP & Other Appeals [2017] 3 MLRA 247 (refd)

Perbadanan Pengurusan 3 Two Square v. 3 Two Square Sdn Bhd & Anor & Another Appeal [2019] 7 MLRA 773 (refd)

Rovin Joty Kodeeswaran v. Lembaga Pencegahan Jenayah & Ors And Other Appeals [2021] 3 MLRA 260 (refd)

Sia Hiong Tee & Ors v. Chong Su Kong & Ors [2015] 3 MLRA 652 (refd)

Legislation referred to:

Evidence Act 1950, s 103

Strata Management Act 2013, ss 2, 8, 12, 50(3), 52, 59, 60(3)(b), (4), 70(3),76(2), 151, 2nd Schedule

Strata Management (Maintenance and Management) Regulations 2015, Third Schedule, reg 4

Strata Titles Act 1985, ss 18, 36, 43, 45, 56, 63, 66

Strata Titles Rules (State of Selangor) 2015, r 10, Schedule IV

Counsel:

For the appellant: Raymond Mah (Carolyn Ng with him); M/s Mah Weng Kwai & Associates

For the respondent: Samuel Tan Lih (Muhammad Izzat Zainal with him); M/s Shook Lin & Bok

[For the High Court judgment, please refer to *Ho Phoy Kwang & Anor v. The Summit Subang USJ Management Corporation & Ors (Encls 1, 35, 100, 162 & 175)* [2024] MLRHU 1779]

JUDGMENT

Nadzarin Wok Nordin JCA:

The Appeal

[1] This is an appeal against an Order of the High Court dated 5 July 2024 dismissing the Appellants' application in the Originating Summons dated 30 April 2021 ("OS") for *inter alia*:

a. a declaratory relief that the resolutions passed at the Summit Subang USJ General Meeting on 4 August 2018 ("4 August 2018 General Meeting") approving multiple rates be declared unlawful, null and void *ab initio*.

b. a declaration that all decisions made and/or resolutions passed at the Management Corporation's Annual General Meetings ("AGM") and Extraordinary General Meeting ("EGM") (including the following resolutions) respectively determining different rates of maintenance charges for different parcels in The

Summit Subang USJ, are *ultra vires* the Strata Titles Act 1985 ("STA") and Strata Management Act 2013 ("SMA"), unlawful, null and void *ab initio*:

i. Resolution 4 passed at the Management Corporation's 1st AGM on 15 December 2012;

ii. Ordinary Resolution passed at the Management Corporation's EGM on 4 August 2018;

iii. Resolution 4 passed at the Management Corporation's 6th AGM on 24 August 2019; and

iv. Resolution 5 passed at the Management Corporation's 7th AGM on 15 August 2020.

c. a declaration that any proposed resolution determining different rates of maintenance charges for different parcels in The Summit Subang USJ passed at any AGM or EGM convened before this judgment is *ultra vires* the STA and SMA, unlawful, null and void *ab initio*;

d. a declaration that a single maintenance charges rate per share unit per month be imposed in proportion to the allocated share units for each parcel in The Summit Subang USJ for each respective management period as follows:

i. Between 1 January 2013 to 31 August 2018 shall be RM2.55 per share unit per month (10% of which shall be for sinking fund contribution);

ii. Between 1 September 2018 to 31 August 2019 shall be RM1.96 per share unit per month (10% of which shall be for sinking fund contribution);

iii. Between 1 September 2019 to 30 September 2020 shall be RM1.96 per share unit per month (remain unchanged) (10% of which shall be for sinking fund contribution);

iv. Between 1 October 2020 to 31 October 2020 shall be RM1.98 per share unit per month (10% of which shall be for sinking fund contribution); and

v. Between 1 November 2020 until the date before the next management period commences as resolved by the Management Corporation at a general meeting shall be RM1.98 per share unit per month (10% of which shall be for sinking fund contribution).

e. an order under s 76 SMA that an administrator for the Management Corporation ("Administrator") be appointed for a fixed period. For purposes of the appointment of the Administrator:

   i. The Appellants and Management Corporation shall, within 14 days from the date of this judgment, each nominate 1 person to be the Court-appointed Administrator;

   ii. In the event a party fails to nominate a person to be the Court-appointed Administrator within 14 days from the date of this judgment, that party shall be deemed to have waived his/her right of nomination;

   iii. The parties' nomination of the persons as the Court-appointed Administrator shall also include the relevant information of the persons appointed for the Court's consideration, including qualifications, experience and fee quotation;

   iv. The Court shall consider and appoint 1 out of the 2 persons nominated by the parties as the Administrator;

   v. The Administrator shall file with the Commissioner of Buildings an office copy of the Court order making his appointment within 3 days from the date of his/her appointment order.

f. an order that the Administrator shall perform the following duties of the Management Corporation:

   i. That the Management Corporation (through the administrator) shall (i) recalculate, and update all parcel proprietors' maintenance and sinking fund accounts and balances based on the single maintenance charges rate for each management period as declared by the Court and thereafter (ii) issue to all parcel proprietors their respective parcel's updated statements of account and debit or credit notes (where applicable), within 14 days from the date of the Administrator's appointment by the Court;

   ii. That the Management Corporation (through the administrator) shall refund to all parcel proprietors the excess of maintenance charges and sinking fund contribution payments standing to their credit in their respective updated accounts, if any, within 21 days from the date of the Administrator's appointment by the Court;

   iii. That the Management Corporation (through the administrator) shall do all things necessary pursuant to the SMA to collect and recover the outstanding maintenance charges and sinking fund contribution payments standing to the debit of the updated accounts of the parcel proprietors/defaulters in The Summit Subang USJ, if any, within 60 days from the date of the Administrator's appointment by the Court; and

iv. That the Administrator shall file and serve an *affidavit* specifically detailing the Administrator's compliance with and completion of (or reasons for non-compliance with or non-completion of, if any) the paragraphs above within 7 days from the completion of the work mentioned above.

g. an order that the Management Corporation (through its committee members, building managers, employees, agents, administrator and/or successors-in-title) shall comply and cooperate with the Administrator's requests and instructions in performing the Administrator's duties pursuant to the paragraphs above;

h. an order that the Management Corporation (through its committee members, building managers, employees, agents, administrator and/or successors-in-title) shall pay the Administrator's fees, remuneration and/or expenses from the Management Corporation's maintenance account pursuant to s 76(2) SMA; and

i. an order that the Management Corporation (through the parcel proprietors and its committee members, building managers, employees, agents, administrator and/or successors-in-title) shall determine (at future general meetings) and impose only a single rate of maintenance charges per share unit per month for all parcels for all its future management periods pursuant to the SMA.

Background Facts

[2] The Summit Subang USJ ("The Summit") is a commercial development comprising 556 parcels.

2.1 The type of use (jenis kegunaan) of all 556 parcels is "perniagaan";

2.2 The 556 parcels are currently being used and/or operated as retail units, hotel, office and car parks respectively.

Parties

[3] The Appellants are the co-proprietors of Parcel No. M1/4/523 in The Summit.

[4] The 1st Respondent ("R1") is the Management Corporation of The Summit.

[5] The 2nd Respondent ("R2") is the trustee for AMFIRST Real Estate Investment Trust ("AmFIRST REIT"). The 2nd Respondent is the proprietor of various parcels in The Summit, including the hotel, car park, office and retail parcels, comprising 822,590 (87%) of the aggregate of 943,610 share units.

[6] The 3rd to 16th Respondents ("R3 – R16") are parcel proprietors of The Summit who were in support of the Appellants' Originating Summons in the High Court.

MC General Meetings and Resolutions

[7] A total of 943,610 aggregate share units have been allocated for all 556 parcels in The Summit.

[8] R2 is the registered proprietor of 822,590 share units in The Summit and therefore has a substantial 87% majority control of the Management Corporation:

Parcel Nos. (type of parcel)	**Share Units in The Summit**	**Share Units owned by 2nd Respondent**
2 to 165, 167 to 542 & 556 (retail)	395,609	279,200 (70%)
543 to 555 (office)	58,240	53,760 (92%)
166 (hotel)	152,955	152,955 (100%)
1 (car park)	336,675	336,675 (100%)
TOTAL	**943,610**	**822,590 (87%)**

Summary of General Meeting Resolutions

[9] Based on the Minutes of Meetings of all the AGM and the EGM, the following rates of Charges were determined and imposed by the Management Corporation:

	Rates of Charges imposed at AGM/EGM								
Parcel Nos. (use)	**1st AGM** Dec 2012	**2nd AGM** March 2014	**3rd AGM** May 2015	**4th AGM** April 2017	**5th AGM** June 2018	**EGM** Aug 2018	**6th AGM** Aug 2019	**7th AGM** Aug 2020	**Nov 2020 onward**
2 to 165, 167 to 542 & 556 (retail)	RM2.55	RM2.55	RM2.55	RM2.55	RM2.55	RM3.05	RM3.05	RM0.52	RM3.05
543 to 555 (office)	RM1.88	RM1.88	RM1.88	RM1.88	RM1.88	RM2.23	RM2.23	RM1.20	RM2.23
166 (hotel)	RM0.00	RM0.00	RM0.00	RM0.00	RM0.00	RM0.05	RM0.05	RM0.05	RM0.05
1 (car park)	RM0.00	RM0.00	RM0.00	RM0.00	RM0.00	RM0.09	RM0.09	RM0.09	RM0.09

[10] It was alleged by the Appellants that during the 1st, 2nd, 3rd, 4th, 5th and 6th AGMs, the Management Corporation did not present or approve any annual and/or operational budget.

[11] Additionally, the Appellants allege that during the EGM held on 4 August 2018, the Management Corporation passed a resolution that designated parts of the common property in The Summit would be considered as "Exclusive Common Property", and the portions not included in those portions would be "Shared Common Property". The Management Corporation further passed a resolution that the "Exclusive Common Property' would be under the control and management of the proprietors receiving it.

Issues on Appeal

[12] In essence, the key issues surrounding this appeal are as follows:

12.1 Whether the MC can determine and impose different rates of maintenance charges and sinking fund contributions for different types of parcels in the commercial development *vis-à-vis* The Summit, comprising retail, office, hotel and car park parcels; and

12.2 Whether the MC can designate "Exclusive Common Property" and "Shared Common Property" for the purpose of granting "exclusive use or enjoyment" for designated parcel proprietors to justify the determination and imposition of different rates of Charges for different types of parcels.

[13] The Appellants *inter alia* submit:

a. that imposing different rates is illegal for different types of commercial parcels as it will be in breach of the Strata Titles Act 1985 and the Strata Management Act 2013 and is therefore null and void, illegal and unenforceable;

b. the designation of "Exclusive Common Property" and "Shared Common Property" does not make the different rates of charges legal or enforceable;

c. rely on the Court of Appeal decision in *Muhamad Nazri Muhamad v. JMB Menara Rajawali & Anor* [2020] 4 MLRA 288;

d. the MC must charge in accordance to the proportion in share units as per ss 36 and 43 of the STA and ss 59 and 60 of the SMA;

Section 36 of the STA provides that:

The value of each parcel, except in the case of an accessory parcel where no share value shall be allotted, shown in the schedule of share units shall be taken as the share unit entitlement, and in the case of a provisional block the value shall be taken as the provisional share unit entitlement. The share units of a parcel or the provisional share units in the case of a provisional block as specified in the strata title or in the provisional strata title, as the case may be, shall determine:

(a) the voting rights of the proprietors;

(b) the quantum of the undivided share of each proprietor in the common property; and

(c) the proportion payable by each proprietor of the contribution levied by the management corporation pursuant to ss 45, 63 or 66."

Section 43 of the STA provides that:

(1) The duties of the management corporation include the following:

(a) to manage and properly maintain the common property and keep it in a state of good and serviceable repair;

(b) to insure and keep insured the subdivided building to the replacement value thereof against fire and such other risks as may be prescribed under this Act;

(c) to effect such other insurance of the subdivided building as may be required by law;

(d) to insure against such other risks as the proprietors may by special resolution direct;

(e) to apply insurance moneys received by it in respect of damage to the subdivided building in rebuilding and reinstating it in so far as it may be lawful to do so, subject to any order made by the court under s 56;

(f) to pay premiums on any insurance effected by it; (g) to comply with any notices or orders given or made by any competent public or statutory authorities requiring the abatement of any nuisance on the common property, or ordering repairs or other work to be done in respect of the common property or any building or other improvements on the lot;

(h) to comply with any such notices or orders as are referred to in paragraph (g) given or made in respect of any of the parcels, if the proprietor fails to do so within a reasonable time;

(i) to prepare and maintain a strata roll for the subdivided building; and

(j) to pay the rent of the lot.

(2) The powers of the management corporation shall include the following:

(a) to recover from any parcel proprietor any sum expended by the management corporation in respect of that proprietor's parcel in complying with any such notices or orders as are referred to in paragraph (h) of subsection (1);

(b) to purchase, hire or otherwise acquire movable property for use by the parcel proprietors in connection with their enjoyment of the common property;

(c) to borrow moneys required by it in the exercise of its powers or the performance of its duties;

(d) to secure the repayment of moneys borrowed by it and the payment of interest thereon by negotiable instrument or by a charge of unpaid contributions to the management fund, (whether already levied or not) by a charge of any property vested in it or by a combination of any of those means;

(e) to collect during the initial period by way of contributions from parcel proprietors, in proportion to the share units of their respective parcels; and

(f) to do all things reasonably necessary for the performance of its duties under this Part and for the enforcement of the by-laws set out in the Third Schedule.

(3) The management corporation shall be deemed:

(a) for the purposes of effecting any insurance under paragraph (b) or (c) of subsection (1), to have an insurable interest in the subdivided building equal to its replacement value; and

(b) for the purposes of effecting any insurance under paragraph (d) of subsection (1), to have an insurable interest in the subject matter of the insurance.

(4) A policy of insurance taken out by the management corporation under this section in respect of the subdivided building shall not be liable to be brought into contribution with any other policy of insurance, except another policy taken out under this section in respect of the same subdivided building.

(5) Where the management corporation performs any repairs, work or act that is required or authorised by or under this Part or by or under any other written law to perform (whether or not the repairs, work or act were or was performed consequent upon the service on it by any Government or statutory authority of any notice or order), but the repairs, work or act were or was wholly or substantially the liability or the responsibility of the proprietor of a parcel only, or wholly or substantially for the benefit of some of the parcels only, any money expended by the management corporation in performing the repairs, work or act shall:

(a) in the case where the repairs, work or act were or was wholly or substantially the liability or the responsibility of the proprietor of a parcel only, be recoverable by the management corporation in an action in a court of competent jurisdiction as a debt due to it jointly and severally from:

(i) the relevant proprietor of the parcel at the time when the repairs, work or act were or was performed; and

(ii) the relevant proprietor of the parcel at the time when the action was commenced; or

(b) in the case where the repairs, work or act were or was wholly or substantially for the benefit of some of the parcels only, or wholly or substantially the liability or the responsibility of the proprietors of some of the parcels only, be recoverable by the management corporation in an action in a court of competent jurisdiction as a debt due to it jointly and severally from:

(i) the relevant proprietor of each of such parcels at the time when the repairs, work or act were or was performed; and

(ii) the relevant proprietor of each of such parcels at the time when the action was commenced,

the amount payable by any proprietor and former proprietor in respect of any parcel being not more than the proportion of the debt which the share unit of the parcel then bears to the total share units of all those parcels.

(6) A proprietor of a parcel who is not the proprietor of the parcel at the time when the repairs, work or act referred to in subsection (5) were or was performed shall not be liable to pay the management corporation any amount due under that subsection if he has, at any time on or within twenty-one days before the date he acquired the title or interest in the parcel, made a requisition in writing to the management corporation to inquire about the amount (if any) recoverable by the management corporation under that subsection in respect of the parcel and the management corporation has:

(a) certified that no amount is recoverable by the management corporation in respect of the parcel; or

(b) not given a reply to the requisition at any time within fourteen days of the date of the service of the requisition.

(7) Where the management corporation incurs any expenditure or performs any repairs, work or act that it is required or authorised by or under this Part or by or under any other written law to perform (whether or not the expenditure was incurred or the repairs, work or act were or was performed consequent upon the service on it by any Government or statutory authority of any notice or order) and the expenditure or the repairs, work or act were or was rendered necessary by reason of any wilful or negligent act or omission on the part of, or breach of any provision of its by-laws by, any person or his tenant, lessee, licensee or invitee, the amount of that expenditure or any money expended by it in performing the repairs, work or act shall be recoverable by it from that person as a debt in an action in any court of competent jurisdiction.

(8) The generality of this section shall not be prejudiced by any other provision in this Part conferring a power or imposing a duty on the management corporation.

e. there are only 3 different types of use i.e. residential, commercial & industrial use, recognised by the SMA. The MC can thus only charge different rates for parcels which are 'used for significantly different purposes' and not 'different types of parcels' pursuant to s 60(3)(b) of the SMA, which states that, (3) Subject to s 52, for the purpose of establishing and maintaining the maintenance account, the management corporation may at a general meeting:

(a) determine from time to time the amount to be raised for the purposes mentioned in subsection 50(3);

(b) raise the amounts so determined by imposing Charges on the proprietors **in proportion to the share units** or provisional share units of their respective parcels or provisional blocks, **and the management corporation may determine different rates of Charges to be paid in respect of parcels which are used for significantly different purposes** and in respect of the provisional blocks; and

(c) determine the amount of interest payable by a proprietor in respect of late payments which shall not exceed the rate of ten per cent per annum.

[Emphasis Added]

f. The words "use" and "purpose" are adopted in s 2 of the SMA in the definition of "developer" which makes reference to the development of land "for the purpose of residential, commercial or industrial use", and the Appellants rely on *Aikbee Timbers Sdn Bhd & Anor v. Yii Sing Chiu & Anor And Another Appeal* [2024] 2 MLRA 196 where the MC was permitted to impose one rate of charges for all residential parcels and one other rate for all commercial parcels (both retail and car park);

g. The purpose of use in s 60(3)(b) of the SMA does not mean different 'types of parcels', and refers to the 1st Schedule of the SMA which includes 4 different types of parcels in The Summit namely retail, office, hotel and car park parcels (items 3, 2, 4 and 6 of Table 1 in s 3 1st Schedule);

h. The types of parcels in The Summit i.e. "retail, office, hotel and car park" parcels are all used for commercial purposes. The MC cannot impose different rates for them;

i. Share units for The Summit are to be calculated based on the formula in the 1st Schedule SMA and r 10 and the Schedule IV Strata Titles Rules (State of Selangor) 2015 based on 'weighted factors' for 'different types of parcels' reflecting 'frequency of usage & general maintenance of common property' which are policy decisions of Parliament and the State Legislative Assembly, and are not intended to reflect the relative costs of maintaining the common property;

j. If MC impose different charges for different types of parcels, voting power policy will be up ended i.e. large share unit owners (e.g. hotel & car park owners) will have large voting powers while paying disproportionately low charges;

k. The SMA allows subsidiary MC for different types of parcels which allows each subsidiary MC to maintain and manage its own "limited common property". This is the legislative solution for different types of parcels that want to manage their own expenses while avoiding paying to maintain the "limited common property" of other subsidiary MCs;

l. There will be prejudice to owners who pay higher rates as they will not agree to creation of subsidiary MC;

m. SMA is social legislation and should be applied to protect interest of all proprietors including minority share unit holder;

n. Exclusive Common Property does not justify different rates, concept of 'exclusive' and 'shared' are not recognised by the SMA. See the Court of Appeal in *Perbadanan Pengurusan 3 Two Square v. 3 Two Square Sdn Bhd & Anor & Another Appeal* [2019] 7 MLRA 773

> [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 if 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.

and the case of *AUM Capital Sdn Bhd v. Menara UOA Bangsar Management Corporation* [2024] 3 MLRA 428, where the "exclusive use" was not recognised by SMA as the SMA only allows restriction of use and access s 70 of the SMA and by written agreement 'exclusive use' of common property under para 4 of the Third Schedule of the Strata Management (Maintenance and Management) Regulations 2015;

o. Only the State Authority and the Minister of Housing and Local Government have the power and/or jurisdiction to allow the MC to impose different rates of charges under s 151 of the SMA. The Court cannot condone breaches of the SMA;

p. The MC has not made any application for suspension / exemption;

q. Illegal AGM resolution unenforceable. Resolutions are in breach of statute and are invalid, null and void. See the Court of Appeal in the cases of *Muhamad Nazri (supra)* and *Ekuiti Setegap* [*Ekuiti Setegap Sdn Bhd v. Plaza 393 Management Corporation* [2018] 3 MLRA 342];

[14] In response the 1st and 2nd Respondents (R1 & R2) have submitted *inter alia* that:

a. reliance on *Muhamad Nazri (supra)* by the appellants is inaccurate as the case there involved a Joint Management Body (JMB) and not a MC;

b. The above case is inapplicable as there the weightage factor was assigned to share units computed in 1st Schedule s 8 of the SMA whereas here charges were determined by the MC not under weightage factor but in accordance with the Certificate of Share Units formula (SIFUS) certified by the Director of Lands and Mines under the STA as the SMA was not enacted when the share units were assigned by the Pengarah Tanah & Galian (PTG);

c. Section 43 STA (pre-amendment) & s 59 SMA contradict the Appellants' contention that the word 'in proportion' means only 1 uniform maintenance rate; here the Appellants had ignored words 'in proportion to the share units'. The only reasonable interpretation of 'in proportion to the share units' would be 'according to share units';

d. The Appellants' interpretation would render s 60 of the SMA an absurdity. Parliament did not expressly state as contended by the Appellants.

Findings & Decision of This Court

[15] After hearing and reading the extensive oral and written submissions of counsels for the respective parties before us and duly considering the same, our decision, which is unanimous, is as follows.

[16] Our starting point is that a Management Corporation (MC) is established and incorporated by way of the Strata Management Act 2013 (SMA). Thus, the MC is a creature of statute and its power, duties, rights and obligations are to be found within the 4 corners of the SMA and, where applicable, the Strata Titles Act 1985 (STA). To put it in other words, the MC is a body corporate and may only exercise powers conferred on it by the said statutes.

[17] Section 60(3)(b) of the SMA provides that:

(3) Subject to s 52, for the purpose of establishing and maintaining the maintenance account, the management corporation may at a general meeting:

(a) determine from time to time the amount to be raised for the purposes mentioned in subsection 50(3);

(b) raise the amounts so determined by imposing Charges on the proprietors **in proportion to the share units** or provisional share units of their respective parcels or provisional blocks, **and the management corporation may determine different rates of Charges to be paid in respect of parcels which are used for significantly different purposes** and in respect of the provisional blocks; and

(c) determine the amount of interest payable by a proprietor in respect of late payments which shall not exceed the rate of ten per cent per annum.

[Emphasis Added]

[18] A plain reading of the aforesaid s 60 of the SMA shows that the section is clear and unambiguous in that the MC can,

i. at a general meeting determine from time to time the amount to be raised in respect of a maintenance account under s 50(3);

ii. raise the amounts so determined by imposing Charges on the proprietors in proportion to the share units or provisional share units; and

iii. determine different rates of Charges to be paid in respect of parcels which are used for significantly different purposes and in respect of the provisional blocks.

[19] We further hold that the words in s 60(3) of the SMA "in proportion to share units" are in our view to be interpreted as "in accordance with the share units" on the basis that Parliament had intended to confer statutory powers on R1 to determine different rates of charges for components that utilize significantly different facilities and that it was not Parliament's intention that only one uniform rate was to be applicable. This is grounded on the fact that Parliament would otherwise have expressly provided as such in the SMA.

[20] In the case of *Aikbee* Case *(supra),* the eminent panel of JCAs consisting of Lee Swee Seng JCA (as he then was), Mohd Nazlan JCA (as he then was), and Dr Choo Kah Sing JCA held, through a unanimous decision pronounced by the latter, that

"[54] In a mixed development, like the one before us, the exclusive common facilities are exclusively for the benefit and enjoyment of the residential parcels' owners. The expenditure for the maintenance and management of these exclusive common facilities which are exclusively for the benefit of the residential parcels' owners should not be included in the formula for the chargeable rate for the commercial parcels owners who have no right to enjoy such exclusive common facilities *[Aikbee Timbers Sdn Bhd & Anor v. Yii Sing Chiu & Anor And Another Appeal [2024] 2 MLRA 196* at p 210]. The rigid imposition of only one chargeable rate for maintenance charges for residential parcels and commercial parcels would not reflect the true construction of a social legislation.

...

[65] The plain meaning in s 60(3) of the SMA 2013 proffers that, first, the management corporation may increase the amount to meet the actual or expected general or regular expenditure necessary in respect of the expenditure spelled out in s 50(3)(a)-(n) of the SMA 2013. Secondly, if the amount is increased, the management corporation is to adjust the chargeable rate based on the increased amount. Thirdly, the management corporation 'may determine different rates of the Charges to be paid in respect of parcels which are used for significantly different purposes' and also 'in respect of the provisional blocks'. Lastly, the management corporation is to determine the interest chargeable for late payments.

[66] Different rates are allowed to be imposed for parcels in relation to a subdivided building which are used for significantly different purposes and for provisional blocks.

...

[68] With regard to strata titled parcels in a subdivided building, if there are parcels within the subdivided building which are used for significantly different purposes, then the management corporation is empowered to impose different chargeable rates for parcels which are used for significantly different purposes. Likewise, if there are provisional blocks, the management corporation is empowered to impose different chargeable rates for the provisional blocks. It is to be noted that both the words 'parcels' and 'blocks' were used in plural form. This connotes that the law has envisaged a situation like the instant case, where a building is subdivided into parcels with separate strata titles, and the parcels are used for more than one type of purposes, such as parcels for residential purpose and parcels for commercial purpose within single development, then the management corporation is permitted in law to charge different rates for parcels that are used for significantly different purposes.

...

[85] Within the regime of our own strata title law, it could be distilled from ss 12(8) and 52(7) of the SMA 2013 that the test for determining chargeable rates or different chargeable rates, as the case may be, is 'just and reasonable'. The sums charged must be just in the sense that one must pay for what one is entitled to enjoy and to share his responsibility with those who share the same rights and benefits. The sums charged must be reasonable in the sense that the identified expenses for the common property must not be excessive or unreasonable."

[21] The Court of Appeal in *AUM Capital Sdn Bhd v. Menara UOA Bangsar Management Corporation* [2024] 3 MLRA 428 had in fact also stated that,

> "[45] We agree with the submission of counsel for the Management Corporation that the practice of charging different rates of service charges to take into account the specific amount of usage of different elements of common property for example, lifts and swimming pools does not accord with the legislative intent of the 2013 Act which requires the management corporation to impose a single rate of service charges on all parcels according to their share units, **unless those parcels are used for "substantially different purposes" according to s 60 of the 2013 Act**."
>
> [Emphasis Added]

[22] Applying the above authorities, to which not only do we agree but to which we are also bound, the MC is thus permitted to set and charge multiple rates in accordance with s 60(3)(b) and (4) of the SMA if the parcels are used for 'significantly different purposes'.

[23] In the appeal before us, the Appellants had placed great reliance on *Muhamad Nazri (supra),* but a reading of the said case will show that the facts therein concerned and involved a Joint Management Body (JMB) and not an MC.

[24] The aforesaid case had in fact in its grounds of judgment stated, and we quote,

> "[38] There is also no provision under the SMA 2013 and the STA 1985 which empowers **the JMB** to fix different rates for different types of parcels. In contrast, such a power is expressly conferred on a MC in respect of two specific situations: (i) parcels which are used for significantly different purposes, and (ii) provisional blocks; sub-s 60(3)(b) of the SMA 2013. Therefore, if Parliament had intended for the JMB to have the power to fix different rates of maintenance charges, that intention would have been clearly reflected in the provisions of the SMA 2013; and because there is no such provision it must have been Parliament's presumed intention and wisdom not to confer such power on the JMB."
>
> [Emphasis Added]

[25] Following from the same, we agree with counsel for the Respondents that the *Muhamad Nazri* case is also inapplicable in our instance, as in *Muhamad Nazri* the weightage factor was assigned to share units computed in accordance with the 1st Schedule and s 8 of the SMA whereas in our matter herein, the facts show that the charges determined by the MC were not pursuant to the weightage factor but in accordance with the Certificate of Share Units formula (SIFUS) certified and assigned by the Director of Lands and Mines (PTG) under the STA. This was done by the PTG based on the fact that the SMA (which came into force on 1 June 2015 in Selangor) was not enacted at that point in time when the share units were assigned by the PTG pursuant to s 18 of the Strata Titles Act 1985, which provides:

> Every parcel shall have a share value as approved by the Director and expressed in whole numbers to be known as share units.

[26] The above is further corroborated by R1's EGM dated 4 August 2018 as seen in p 1325 of encl 10 and the Court of Appeal in *Pearl Suria* para 49 of the grounds therein, where the Court of Appeal therein accepted the calculation of the share units in the development therein based on the SIFUS dated 13 April 2016 that was approved by the Director of Land and Mines of the Federal Territory of Kuala Lumpur. This Court thus accepts that, based on the facts of the case herein and as the SIFUS has been issued by the PTG, we hold that the charges were validly imposed by the MC.

[27] For the avoidance of doubt, the evidence in our matter shows that the share units were assigned to different components based on a weightage ratio following the 'panduan unit syer' issued by Jabatan Ketua Pengarah Tanah dan Galian Wilayah Persekutuan i.e. for office, factor 4, for commercial & car parks (commercial), both factor 5. Our matter also shows that these were never challenged by the Appellants in their *Affidavit* In Reply or at trial and are thus in law to be deemed accepted by the Appellants, see the Federal Court in *Pathmanabhan Nalliannen v. PP & Other Appeals* [2017] 3 MLRA 247, the Court of Appeal in *Ng Hee Thoong & Anor v. Public Bank Berhad* [1995] 1 MLRA 48, the Federal Court in *Rovin Joty Kodeeswaran v. Lembaga Pencegahan Jenayah & Ors And Other Appeals* [2021] 3 MLRA 260 and *Sia Hiong Tee & Ors v. Chong Su Kong & Ors* [2015] 3 MLRA 652.

[28] From the facts shown to us, we also find that each component of The Summit utilizes significantly different facilities as evidenced by

a. the *Affidavit* of the expert appointed by R1 containing the expert report *vis-à-vis* the method and rationale for the calculation of the multiple rates assigned to each component and showing different uses of facilities for each component, as well as the evidence of the suppliers of facilities to the individual components such as the cleaning services, lift maintenance, security services, waste disposal services etc. and the proprietors of the Office Tower, the Hotel and the retail podium in The Summit.

b. The unrebutted expert's, suppliers' & proprietors' *affidavit* evidence which had shown:

    i. By the suppliers of facilities to the individual components of the Summit affirmed affidavits of the respective facilities supplied by them to each individual component of the Summit as follows:

(page number and Enc in RR)	Suppliers	Facilities	Component	Charges per month
(p. 907, Enc. 8)	Acres Growth Sdn Bhd	Supplying O & M works for Chiller Plant & Chilled water	Retail mall only	RM 53,000.00 per month
(p. 916, Enc. 8)	Amalgamated Facility Services Sdn Bhd	Cleaning services **23 Cleaners for retail mall** **3 cleaners for Office Tower [Exhibit B p.5 Enclosure 167]**	Retail mall Office tower	RM74,200.00 RM11,872.00 Total RM 86,072.00
(p. 925 Enc. 8)	Antah Schindler Sdn Bhd	Lift maintenances	Office Tower only	RM 6,277.12
(p. 935 Enc. 8)	JKS Security Sdn Bhd	Security services **21 Guards Shopping Complex** **3 guards office tower** **4 in fire control room** **2 guards in security control room** **2 supervisors** **[Enclosure 19, Exhibit C Schedule A p. 3201]**	retail podium Office Tower	RM 88,066.92
p. 944 Enc. 8	KONE Elevator (M) Sdn Bhd	Non-comprehensive maintenance of KONE escalators (10 units), KONE travellators (3 units) and KONE elevators (9 units)	retail mall only	RM 13,059.12
(p. 977, Enc. 9)	Perkhidmatan Indera	Sewerage and Grease Line Cleaning	retail podium hotel office tower	RM 2,200.00
(p. 986, Enc. 9)	Ruebni Enterprise	Waste disposal services	retail podium office tower	RM 7,500.00
(p. 995, Enc. 9)	SNVP ENTERPRISE	Landscape Services	Retail podium Office Tower Hotel Parking lots	RM5,500.00
(p.1035, Enc. 9)	United Lift (M) Sdn Bhd	Escalator maintenance services	Retail mall	RM 30,000.00
(p.1119, Enc.9)	Ong Yoke Lin Sdn Bhd	Servicing and repairing of the air conditioning system	Retail podium Office towers	RM 7,500.00

ii. By the Proprietors of individual Components in The Summit Affirmed Affidavits of The Facilities Supplied to their respective Component as follows:

Page No. & Enclosure	Proprietor	Facilities supplied by the summit	Component	Charges per month RM
(p. 961, Enc. 9)	The Summit Office Tower Lot No. PCS-10 **(Office Tower)**	1. Walkway and corridor from the lift lobbies into own parcel and from parcel to AHU room, fire exit staircase, pantry and washroom 2. Fire fighting services such as centralised fire control and public address system, fire hydrants and extinguishers, fire exit staircases and fire sprinkler and alarm system, smoke detection system, fireman intercom and smoke spill fans	Office-tower only	RM 11,588.87
		3. Lift lobby services on every floor from ground floor to 18th floor 4. Car park lift lobbies from ground floor to basements 1,2 and 3 5. Male and Female washroom from 6th floor to 18th floor 6. Centralized air-conditioning system 7. Surau at level 6 8. Pantry on every floor from 6th floor to 18th floor 9. External rubbish chamber 10. Waste disposal services. 11. Sewerage discharge system 12. Main entrance drop-off area 13. Elevator (lifts) from the ground floor to the 18th floor. 14. Perimeter driveway services surrounding the summit including all equipment situated and facilities provided at the perimeter area 15. CCTV system 16. Gondola services. 17. Pest control services. 18. Security services.(3 guards assigned daily to office tower) 19. Cleaning services.(4 cleaners assigned		

		daily to office tower) Facilities also inclusive of electrical, mechanical, plumbing, structural maintenance of the facilities supplied.		
(p.1004, Enc. 9)	Summit Hotels Management Sdn Bhd **(Hotel)**	1. Perimeter driveway including landscaping, CCTV, signages lightings 2. Sewerage discharge system service 3. Supply of centralized liquefied petroleum gas (LPG) service 4. Perimeter driveway services surrounding the summit building including the driveway used by visitors to the mall, office tower and hotel, landscape, signages lighting services. 5. Fire fighting services including water pumps, fire exit stair cases, fire hydrants, centralised fire control and public address system 6. Sewerage main discharge pipe line 7. Water tanks and pump for the fire sprinkler system. 8. staircase leading from rooftop (6th floor) to Basement 3 & fire exit staircase 3 leading from 5th floor to	Hotel	RM 8,871.42

		basement 1 of the hotel *The Hotel engages several other services at their own expense in maintaining the hotel as in the list at* ***paragraph 7 Enclosure 171 (p.1016, Enc.7)***		
(p.1018, Enc. 9)	Lot F1.46 in retail podium **(Retail Mall)**	1. Walkways and corridors 2. Lift lobbies 3. Male and female washrooms. 4. Centralized air conditioning system 5. Surau (praying room) services 6. Fire fighting services such as centralised fire control and public address system, fire hydrants and extinguishers, fire exit staircases and fire sprinkler and alarm system, smoke detection system, fireman intercom and smoke spill fans 7. External rubbish chamber 8. Waste disposal services 9. Sewerage disposal system 10. Main entrance Drop off area 11. Elevator (lifts) services from basement 3 to 5th floor 12. Escalator from basement 2 to Lower Ground Floor	Retail podium	RM 972.98.

		13. Travelators services 14. Sump pump at level basement 3 15. Perimeter driveway surrounding the summit including all equipment situated and facilities provided at the perimeter area 16. generator set for emergency power supply 17. supply of liquefied petroleum gas field services 18. Lightning arrestor 19. CCTV system 20. Gondola services 21. Pest control services 22. Security services 23. Cleaning services 24. Electrical, mechanical, plumbing, and structural maintenance services Facilities also inclusive of electrical, mechanical, plumbing, structural maintenance of the facilities supplied.			

c. The above affidavits were never rebutted by the Appellants at the hearing of the matter at the High Court as the Appellants had chosen not to cross examine the said witnesses despite being given an opportunity to do so after the Court of Appeal had on 18 September 2023, before a different panel, ordered and directed that the Appellants were to be given an opportunity to do so. The Appellants would in our view have thus waived their rights to now assert otherwise and we hold that R1 and R2 have thus discharged their burden of proof with regards the same in accordance with s 103 of the Evidence Act 1950 which provides:

"103. Burden of proof as to particular fact

The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person."

d. the Appellants' failure to object to the Operational Budget at the EGM held on 4 August 2018;

e. the Appellants having also admitted at the trial under cross examination that each individual component of The Summit utilizes significantly different facilities.

[29] A review of the Expert Report further shows different uses of facilities for each component, which can be seen *inter alia* by,

a. the commercial car park having no common property save for the fire escape staircases;

b. there are different levels of rent / income and expenditure for the different components;

c. the proprietors of the hotel tower and the car park manage and maintain their respective hotel tower and car park at their own expense; they also absorb their own electricity consumption at their own expense.

[30] An example of the inequality for the proprietors of the car park, hotel and office tower to pay for facilities that they do not utilize as raised in the said Expert Report and by the Respondents, and we respectfully quote and reproduce the written submissions of the Respondents on this point, where

19. A review of the total operating expenditure in Exhibit "C" will show that, on the basis of one uniform rate of Charges, the total operating expenditure of RM22,167,685.00 per annum is apportioned by share units to the proprietors of the hotel tower and the car park at RM3,593,284.00 per annum and RM7,909,311.00 per annum respectively where the bulk of which are actually not their own operating expenditure as shown in the Table F below. A closer study of the Table F will reveal that the proprietors of the hotel tower and the car park bear 16% and 36% respectively (proportionate to their share units) of the shopping complex's operating expenditure of RM19,475,672.00 per annum and the office tower's operating expenditure of RM2,071,332.00 per annum which have nothing to do with them in the first place.

Table F: Total Operating Expenditure in Exhibit "C"

No.	Description	Shopping Complex	Office	Hotel	Carpark	Total
1	Total parcels	540	13	2	1	556
2	Total share units	395,740	58,240	152,955	336,675	943,610
		42%	6%	16%	36%	100%

	Total Operating Expenditure (RM per annum)					
3	Total Operating Expenditure in Exhibit "C"	19,475,672	2,071,332	158,732	461,949	22,167,685
4	Apportionment of annual total by share units under the one uniform rate basis	9,296,891	1,368,199	3,593,284	7,909,311	22,167,685

[31] We have further observed that at the EGM on 4 August 2018, R1's expert had explained that the maintenance charges are only imposed on common property that is actually used by the proprietors of the individual components and not for common property of another parcel/component. An instance shown to us is where the retail mall proprietors are not required to pay maintenance for common property which is only common between the office tower and hotel blocks.

[32] Reference to the above can be found in paragraph 2 of the minutes of meeting of the 4 August 2018 EGM where the proprietors discussed and deliberated on s 70(3) of the SMA the rationale behind the use of exclusive common property as follows:

> "2. Special Resolution
>
> ... In order to affect that to each group of proprietors, the proposal would use s 70 of SMA to pass additional by-law by way of special resolution in the EGM. Under s 70(3) of the SMA, an additional by-law that is passed by special resolution in a general meeting of the management corporation will bind the management corporation and the proprietors... Therefore if such additional by-law is passed, the MC can grant the exclusive use and enjoyment of the designated part of the common property in a component block to the group of proprietors of the component block where such designated part of the common property will still be controlled, managed and maintained by MC.
>
> ...
>
> Take for example the office tower where all the designated parts of the common property inside the office tower will be granted exclusive use and enjoyment to the proprietors of the office tower where they will pay the direct cost for the management and maintenance of such designated parts of the common property in the office tower. Likewise, for the shopping complex where the shopping will pay for the costs for the management and maintenance of all the designated parts of the common property in the complex. The remaining parts of the common property will be shared by the 4 components or 3 components or 2 components, as the case may be and then the maintenance cost will be apportioned accordingly. Basically that is the concept.
>
> ...
>
> Sr. Wong explained that for example the office tower has 13 parcels; and all the designated parts of the common property in the office tower will be granted exclusive use by the MC to the proprietors of the 13 parcels in the office tower who will bear the direct cost of the management and maintenance of such

> designated parts of the common property that is carried out by the MC. The same applies to the shopping complex. That is basically the concept...
>
> ...
>
> Sr. Wong explained to the meeting that the proposed additional by-law would have to be passed by special resolution by the MC at the EGM under s 70 of the SMA."

[33] In coming to our decision in this Appeal, we also quote and apply what the Court of Appeal had stated in *Aikbee Timbers Sdn Bhd (supra)* that,

> "[52] SMA 2013 is a social legislation. Likewise, the HDA 1966 and HDR 1989 are also social legislation. They are intended to achieve a common goal for the common good of the society. We are of the view that the formula in the Fifth Schedule of the SPA or the current Schedule H cannot be applied mechanically without giving due consideration of the peculiar facts in a mixed development."

[34] On another point, we also note that in the case before us, the Appellants had failed to exercise their statutory rights & remedies under reg 11(2) (a) and (b) of 2nd Schedule of the SMA to convene an EGM or to seek the Commissioner of Building (COB) assistance to call for another meeting to challenge or oppose the said resolutions and the Charges but did not do so.

[35] This was despite the fact that since the 1st AGM of R1 held on 15 December 2012 right up to the EGM held on 4 August 2018, the maintenance charges assigned to each individual component of the Summit remained unchanged and were tabled and adopted unanimously by the proprietors. The documents before us further evidence that at the EGM on 4 August 2018 the Operational budget was not objected to by the Appellants and was passed by way of a majority of 823,958 votes for and 1013 votes against the said resolution.

[36] This failure by the Appellants to extinguish themselves of the available statutory remedies would in our considered view bar the Appellants from making the application under the OS herein.

[37] We further hold that reg 4 of the Third Schedule of the Strata Management (Maintenance and Management) Regulations 2015 ("SMR"), authorises R1 to control, manage, and administer the common property for the benefit of all proprietors. R1 may, however, enter into a written agreement with a proprietor to grant the exclusive use and enjoyment of a specified part of the common property, or special privileges in relation to the common property or any part thereof, for a defined period and subject to terms and conditions imposed by R1.

[38] Regulation 4 of the Third Schedule of the SMR reads as follows:

4. Common property for common benefit

The management corporation shall control, manage and administer the common property for the benefit of all the proprietors provided that the management corporation may, by written agreement with a particular proprietor, grant him for a defined period of time, the exclusive use and enjoyment of part of the common property or special privileges in respect of the common property or part of it subject to appropriate terms and conditions to be stipulated by the management corporation.

[39] From the facts before the High Court we find that the minutes of the meeting of the 4 August 2018 EGM evidence that the proprietors had discussed and deliberated on s 70(3) of the SMA and the rationale behind the use of exclusive common property.

[40] We further hold in the circumstances before us that the MC has the discretionary right during the General Meeting to raise charges and that R1's operational budget and the multiple rates imposed and passed at the 4 August 2018 EGM were proper and in accordance with the SMA.

[41] On the basis of all of our reasons above, we hold that

a. the genesis of the matter before us evidences that The Summit is a mixed development consisting of fundamentally different categories of retail, office, hotel and car park parcels. Hence, they are different types of parcels under 1st Schedule of the SMA and thus qualify for different rates of Charges under s 60(3)(b) of the SMA;

b. we are thus respectfully unable to agree with the Appellants that the share units for The Summit are to be calculated based on the formula in the 1st Schedule of the SMA and r 10 and Schedule IV Strata Titles Rules (State of Selangor) 2015 based on 'weighted factors' for 'different types of parcels' reflecting 'frequency of usage & general maintenance of common property' which are policy decisions of Parliament & the State Assembly and are not intended to reflect relative costs of maintaining the common property;

c. we are satisfied that the different chargeable rates in the matter before us are not only justified but are just and reasonable.

[42] We further hold, as did the learned High Court Judge in our matter, that having viewed the evidence *in toto* and in particular the various affidavits filed therein, the MC did not exercise unlimited power or abuse its powers under the SMA in imposing different maintenance charges for different types of parcels which are used for significantly different purposes.

[43] Thus, from our grounds above, we do not propose to go into the issues of the appointment of an Administrator in the Appeal before us as this point is now moot and academic.

Decision

[44] In the circumstances, after having carefully read the Learned High Court's grounds of judgment in the matter before us, we find that the Learned High Court Judge did not err in her decision and thus there is nothing which warrants this Court to interfere with said decision. Accordingly, the Appeal is dismissed with costs of RM30,000.00.