IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2025] SGHC 185

Originating Application No 608 of 2025 and Summons No 1687 of 2025

In the matter of Section 29(1) of the Building Maintenance and Strata Management Act 2004

And

In the matter of Sections 97A, 98 and 99 of the Land Titles Act 1993

Between

The Management Corporation
Strata Title Plan No 561

… *Claimant*

And

Kosma Holdings Pte Ltd

… *Defendant*

JUDGMENT

[Evidence — Admissibility of evidence — Secondary evidence when the original subdivision plan has been lost]
[Land — Easements — Rights of way — Section 97A of the Land Titles Act 1993 (2020 Rev Ed)]

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[Land — Easements — Rights of way — Section 99 of the Land Titles Act 1993 (2020 Rev Ed)]
[Injunctions — Mandatory injunction — Order to remove structures that have been installed]
[Injunctions — Prohibitory injunction — Order to restrain from impeding or obstructing entry of vehicles]

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Management Corporation Strata Title Plan No 561
v
Kosma Holdings Pte Ltd

[2025] SGHC 185

General Division of the High Court — Originating Application No 608 of 2025 and Summons No 1687 of 2025
Philip Jeyaretnam J
18 July, 18 August 2025

17 September 2025 Judgment reserved.

Philip Jeyaretnam J:

1 Difficulties may arise where ownership of different parts of a development is split between different entities. In this case, the service road between the public road and the loading bay of a mall is owned not by the management corporation of the mall but by a separate company, which is also the subsidiary proprietor of the mall's carpark. A dispute has arisen concerning access via the service road to the loading bay (which includes the mall's bin centre). Traditionally, the approach to such situations had been to look only at the respective rights of the two property owners. Absent an easement that had arisen by prescription, grant or implication, the only restraint on the owner of the property that controls access to the other property would have been one of neighbourliness and good sense. This changed in 2019 when the legislation was amended to empower the court to create an easement where this is reasonably necessary for the effective use of the property in favour of which the easement

is sought. By these proceedings, the mall owner seeks either the implication of an easement based on the certified plan or the creation of an easement relying on this newer legislative provision empowering the court to grant an easement where this is reasonably necessary for the effective use of land. The first remedy depends on a backward-looking analysis of the parties' property rights. The second remedy is forward-looking, vesting the court with the power to solve difficulties that if left unresolved would impair the responsible and optimal development and use of land, subject to the statutory conditions being fulfilled.

Facts

2 Parklane Shopping Mall (the "Mall") was built in the 1970s. The common property is vested in the mall's management corporation, Management Corporation Strata Title Plan No 561 (the "MCST"), which is the claimant in this application. Part of the common property is the development's loading/unloading bay (the "Loading Bay"), and the rubbish bin centre that is co-located within the Loading Bay. Pursuant to its duty under s 29(1)(*a*) of the Building Maintenance and Strata Management Act 2004 (2020 Rev Ed) to "control, manage and administer the common property for the benefit of all the subsidiary proprietors constituting the management corporation", the MCST manages the Loading Bay and the bin centre. The MCST has contracted with a private waste management company for refuse collection.

3 While the Mall faces the main road which is Selegie Road, the Loading Bay can only be accessed by vehicles first turning in through the smaller public road which is Kirk Terrace. Vehicles would then have to pass through a stretch of road adjacent to the rear of the Mall and joined to Kirk Terrace, which is a service road in private hands (the "Service Road"). Vehicles going to the multistorey carpark (the "Carpark"), which is further past the Loading Bay,

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would also have to pass through Kirk Terrace and then the Service Road. To illustrate this, a schematic diagram prepared by the parties can be found at Annex A of this judgment.

4 At the time of these proceedings, a single entity, namely the defendant KOSMA Holdings Pte Ltd ("KOSMA"), is both subsidiary proprietor of the Carpark and registered proprietor of the Service Road.[1] KOSMA has a wholly owned subsidiary, K Parking Pte Ltd ("K Parking") which manages and operates the Carpark and the Service Road.[2]

5 In the past, the Mall and the Service Road were part of a single lot. That lot was subsequently subdivided as illustrated by the certified plan dated 16 April 1982 (the "Certified Plan"),[3] so that the Mall is on Lot TS19-319V ("Lot 319") and the Service Road is on Lot TS19-320M ("Lot 320").[4] A schematic plan and schedule illustrating and recording this subdivision is attached as Annex B to this judgment. After the subdivision, the Service Road was sold to a series of proprietors before it was eventually acquired by KOSMA on 4 February 2021.[5]

6 An electronic parking system ("EPS") gantry was installed at the entrance of the Service Road by the previous proprietor.[6] The previous proprietor's practice was that its staff would open the EPS gantry for the refuse collection trucks, permitting them to enter the Service Road without any

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1 Lim Guang Yang Jordan's 1st Affidavit dated 12 June 2025 ("LGYJ-1") at para 7.

2 Lim Sian Leong's 1st Affidavit dated 10 July 2025 ("LSL-1") at para 15.

3 Lim Guang Yang Jordan's 3rd Affidavit dated 16 July 2025 at p 5.

4 LGYJ-1 at para 7 and p 31.

5 LGYJ-1 at para 10.

6 LSL-1 at para 16.

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charges.[7] Other vehicles using the Loading bay, such as delivery vehicles, were charged the "Lorry/Service Road" parking rates of $5.56 per half hour.[8] K Parking "continued this practice out of goodwill" until December 2024, when it began charging the refuse collection trucks the same parking rates at $5.56 per half hour.[9]

7 Apart from no longer allowing refuse collection trucks free entry, KOSMA also implemented other measures to "protect its property".[10] These include the installation of a fence and a bollard on the Service Road, grills below the EPS gantry, as well as the extension of the arm of the EPS gantry.[11] The extension of the gantry arm appears to have been designed to stop people from pushing rubbish bins past the gantry to refuse collection trucks parked on Kirk Terrace. KOSMA also began imposing administrative fees of $1,000 for each count of unauthorised entry.[12] Most recently, KOSMA has provided for a chain between the Loading Bay and the Service Road to be fastened at specified hours of the day and indicated that, on top of the parking fee charged at the gantry, it will charge administration fees for access to the Loading Bay throughout the day ranging from $20 to $100 a time.[13] On 28 February 2025, KOSMA sent to the MCST its revised rates by a notice which included the following statements:[14]

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7 LSL-1 at para 22.

8 LSL-1 at para 16, p 46.

9 LSL-1 at paras 22, 45.

10 KOSMA's Written Submissions dated 14 July 2025 ("DWS") at paras 16–17 and 27–28; LSL-1 at paras 13, 23–32.

11 LGYJ-1 at paras 12.1, 12.3, 12.4; LSL-1 at paras 37, 43.

12 LSL-1 at para 47.

13 LSL-1 at paras 18, 20.

14 LGYJ-1 at p 178.

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(a) "No access on ALL Sundays and Public Holidays";

(b) "Permission to access the service road is at the discretion of the Carpark's Management"; and

(c) "All subsidiary proprietors and/or their tenants must register their suppliers and/or contractors to enter the loading/unloading bay from our service road and NEED to provide an insurance policy of $1.0M covering for Public Liabilities including damages to properties, accidents, deaths, injuries, nuisance and etc. in favour of the carpark owner, Kosma Holdings Pte Ltd."

8 In short, having purchased the Service Road, KOSMA has taken steps to fully monetise its ownership of the Service Road by charging for the first time access fees for refuse collection trucks. KOSMA enforces this by installing structures to prevent the alternative method of pushing the wheeled refuse bins out to Kirk Terrace and by charging vehicles fees specifically for access to the Loading Bay in addition to the charge incurred by passing through the EPS gantry into the Service Road.

9 Unsurprisingly, these measures have created great difficulty for the Mall's daily refuse removal and caused significant delay to the delivery of goods for the subsidiary proprietors of the Mall.[15] The MCST primarily seeks either:[16]

(a) the implication of an easement under s 99(1) of the Land Titles Act 1993 (2020 Rev Ed) ("LTA"); or

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15 LGYJ-1 at paras 29, 33.

16 See MCST's Written Submissions dated 14 July 2025 ("AWS") at para 40.

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(b) the creation of an easement under s 97A(1) of the LTA.

10 Consequential on the grant of either of these remedies, the MCST also seeks:

(a) a permanent prohibitory injunction which restrains KOSMA from impeding and/or obstructing the entry of vehicles into the Loading Bay by any means, including through the installation of structures such as kerbs, bollards, fences and chains;[17]

(b) a permanent mandatory injunction which orders KOSMA to remove the structures which have already been installed on the Service Road;[18] and

(c) a declaration that the $6,000 imposed by KOSMA on the MCST for alleged unauthorised entries into the Service Road on six occasions is "an irrecoverable penalty and unenforceable".[19]

11 The MCST has also filed HC/SUM 1687/2025 ("SUM 1687") seeking the prohibitory and mandatory injunctions at [10(a)] and [10(b)] above, albeit on a temporary basis until the conclusion of the proceedings or further order by the court.[20] Both HC/OA 608/2025 and SUM 1687 were heard together on 18 July 2025 due to the overlap in issues canvassed.

12 I now consider each of the MCST's claims in turn.

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17 HC/OA 608/2025 Originating Application filed 17 June 2025 ("Originating Application") at Prayer 1.

18 Originating Application at Prayer 2.

19 Originating Application at Prayer 5.

20 HC/SUM 1687/2025 Summons filed on 17 June 2025.

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Section 99 of the LTA

13 Section 99 of the LTA provides for the implication of easements, including rights of way, where land has been developed and subdivided as may be necessary for the reasonable enjoyment of the now subdivided lots (or buildings on them) in so far as these have been "appropriated or set apart" on the subdivision plan.

14 The Court of Appeal noted in *Management Corporation Strata Title Plan No 549 v Chew Eu Hock Construction Co Pte Ltd* [1998] 2 SLR(R) 934 ("*Chew Eu Hock*") (at [34]) that:

> … As set out in the Explanatory Statement to the Land Titles Bill No 36/92, the purpose of s 99 was 'to impose statutory easements in respect of parts of a development which are commonly used by the owners of separate building lots within the development, for example, roads serving the development'.

15 Section 99(1) provides:

> Where the competent authority has approved the development and subdivision of any land comprised in an estate before or after 1 March 1994 and the subdivision plan has been submitted to the competent authority, there is implied, in respect of each lot of the estate which is used or intended to be used as a separate tenement, in favour of the registered proprietor of the lot and as appurtenant thereto, all the easements referred to in subsection (1A).

16 Section 99(1A) provides:

> The easements which are implied under subsection (1) are all such easements of way and drainage, for party wall purposes and for the supply of water, gas, electricity, sewerage and telephone and other services to the lot on, over or under the lands appropriated or set apart for those purposes respectively on the subdivision plan submitted to the competent authority relating to the estate, as may be necessary for the reasonable enjoyment of the lot and of any building or part of a building at any time thereon.

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17 Thus, where the development and subdivision of a piece of land has been approved by the competent authority, an easement of way to the relevant subdivided lot will be implied over the land "appropriated or set apart" for that purpose on the subdivision plan submitted to the competent authority "as may be necessary for the reasonable enjoyment" of that lot.

18 Accordingly, the starting point is to look to the subdivision plan submitted to the competent authority. The Court of Appeal in *Muthukumaran s/o Varthan v Kwong Kai Chung and others and another matter* [2016] 1 SLR 1273 ("*Muthukumaran*") held (at [53]) that the party seeking to imply an easement would need to adduce the subdivision plan in evidence and show that the easement is appropriated or set apart on it.

19 In this case, the subdivision plan has not been adduced in evidence. The MCST relies on the Certified Plan as constituting or evidencing the contents of the subdivision plan. The MCST then says that the label "service road" appropriates or sets aside the land constituting the Service Road for the purpose of a right of way.[21]

20 KOSMA contends that the Certified Plan does not equate to the subdivision plan and also argues that the words "service road" on it do not operate to set apart any right of way for access to the Loading Bay.[22]

21 The Certified Plan is not the Mall's subdivision plan. Unlike subdivision plans, which are required to show or indicate the drainage, party wall and supply lines and which need to be submitted to the Registrar of Titles, there are no such

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21 AWS at paras 42–43.

22 DWS at paras 51; KOSMA's Supplementary Written Submissions dated 18 August 2025 ("DSWS") at para 5.

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requirements for certified plans. In this case, neither party was able to produce the subdivision plan. There is no reason to doubt that best efforts had been made to this end. It may be that as the Mall's subdivision predated the enactment of this provision, no subdivision plan was in fact lodged with the Registrar of Titles. The Court of Appeal in *Chew Eu Hock* held (at [34]) that this requirement was procedural and directory (not mandatory):

> The reference to a copy of the approved plan being deposited with the Registrar of Titles appears in an incidental way in the definition of an 'estate' in s 99(8), and in our view, is merely descriptive of the approved subdivision plan. Having regard to the context in which such reference is stated, we are of the opinion that the deposit of a copy of the approved plan of subdivision with the Registrar of Titles is *purely a procedural and directory requirement*. The purpose of this requirement undoubtedly is to facilitate easy reference by any interested party. It is *not a requirement under s 99 which must be complied with before an easement as contemplated under sub-s (1) thereof can be implied*. If such a lodgement is essential to the implication of an easement under that sub-section, the Legislature would have said so expressly. We are reinforced in our view by the fact that s 99(8) is silent as to who is to lodge the approved plan – whether it is the owner of the dominant tenement or the owner of the servient tenement. The subsection is also silent as to the time of the lodgment of a copy of the approved plan. In our judgment, *the omission to deposit a copy of the approved plan does not preclude the implication of an easement under s 99(1) from arising*.
>
> [emphasis added]

22 Thus, non-submission of a subdivision plan is not of itself fatal to the application. Nonetheless, there is a further question of the land for the easement being "appropriated or set apart" on the subdivision plan. In the absence of the subdivision plan, the question arises whether land for the easement was indeed set apart or appropriated on it. The Court of Appeal in *Muthukumaran* (at [59]) was prepared to proceed on the basis of a certified plan (similar to what has been produced in this case), although as they ultimately held against the party seeking to imply the easement on other grounds (at [60]), they did so without making a

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definitive finding. The Court of Appeal did not explain why they were prepared to proceed on the basis of the certified plan. The point could be that any indication on the certified plan of the right of way would be secondary evidence of what was appropriated or set apart on the approved subdivision plan.

23 While there was no detailed argument before me on the legal basis for permitting such an inference, it would appear that the present case falls within the meaning of s 67(1)(*c*) of the Evidence Act 1893 (2020 Rev Ed) ("Evidence Act 1893") since the subdivision plan has been lost. As such, secondary evidence may be given of the contents of the subdivision plan.

24 The next question is whether certified plans fall within the definition of "secondary evidence" and for this, I turn to the permitted categories of secondary evidence. Several are listed in s 65 of the Evidence Act 1893, which reads:

> **Secondary evidence**
>
> **65.** Secondary evidence means and includes —
>
> (*a*) certified copies given under the provisions hereinafter contained;
>
> (*b*) except for copies referred to in Explanation 3 to section 64, copies made from the original by electronic, electrochemical, chemical, magnetic, mechanical, optical, telematic or other technical processes, which in themselves ensure the accuracy of the copy, and copies compared with such copies;
>
> (*c*) copies made from or compared with the original;
>
> (*d*) counterparts of documents as against the parties who did not execute them;
>
> (*e*) oral accounts of the contents of a document given by some person who has himself or herself seen it.

25 The relationship of the certified plan to the subdivision plan does not fit within any of these listed categories of secondary evidence. The operative words

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of the definition used in s 65 is the archaic pairing "means and includes". This differs from the more common combination of these terms where a word is stated to mean X and include A, B and C. Instead, they are used together in s 65. The first word connotes that what follows is an exhaustive definition while the second connotes that what follows is non-exhaustive. This expression is a clumsy combination that is no longer used for drafting modern legislation. Regardless of its clumsiness however, it has conventionally been understood to convey that the list that follows is exhaustive: see, *eg*, the Indian Supreme Court decision in *P. Kasilingam v P. S. G. College of Technology* 1995 AIR 1395 at [19].

26 In this case, had it been open to me to do so, I would have accepted that the Certified Plan was secondary evidence in order to establish the inference that the approved subdivision plan (like the Certified Plan) used the label "service road" and in the same manner. This would have been because it can properly be inferred that the Certified Plan drew upon what was in the approved subdivision plan. However, I do not consider that such a course is open to me given the limitation on secondary evidence contained in s 65 of the Evidence Act 1893.

27 Nonetheless, for completeness and in case this matter goes further, I go on to consider what the words "service road" mean in the Certified Plan. I regard the meaning given to this phrase in the Land Transport Authority's Code of Practice for street work proposals relating to development works (the "Code of Practice") as reflective of the ordinary meaning of these words in the Singapore context: see Land Transport Authority, *Code of Practice: Street Work Proposals Relating to Development Works* (Version 2.0, Apr 2019) <https://www.lta.gov.sg/content/dam/ltagov/industry_innovations/industry_matters/development_construction_resources/Street_Work_Proposals/codes_of_

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practice/RT-COP_V2.0_April_2019.pdf> (accessed 29 August 2025) at p 149. The Code of Practice describes "service roads" as follows:

> Service roads are safeguarded to cater for developments' servicing needs such as bin centre, loading/unloading, sub-station etc., and provide access to localised parking facilities of shophouses and commercial buildings.

28 Notwithstanding that the Code of Practice post-dates the development of the Mall and the subdivision which took place in the 1970s, I accept that the words likely bore the same meaning in Singapore even at that earlier point in time. I also find that the Service Road specifically catered to the servicing needs of the Loading Bay (including the bin centre).

29 If the subdivision plan looked the same as the Certified Plan, then the phrase "service road" would have applied to the entirety of the road, including Kirk Terrace. For this reason, KOSMA contended that there was therefore no appropriation or setting apart for access to the Loading Bay. KOSMA suggested that the absence of dotted lines from the entrance of the road to the Loading Bay negated any implication of an easement of right of way.[23] I do not accept this contention. There was no need to set apart only a portion of the road because the whole of the Service Road served the Mall.

30 However, there would still be a further hurdle of determining the nature and scope of the easement of way that is necessary for the reasonable enjoyment of the Mall.

31 As a matter of law, limited rights of way can and have been granted. Halsbury's sets out a number of examples of limited rights of way (as opposed to general rights of way where there are no restrictions other than the necessary

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[23] Minute Sheet for 18 July 2025 at p 5.

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qualifications by nature or by law): *Halsbury's Laws of Singapore - Land* vol 14 and 14(2) (LexisNexis Singapore, 2024) at para 170.0447. The examples are as follows:

> A right of way is said to be 'limited' when its use is restricted to certain times in the day, certain seasons or period or to the duration of the purposes for which it was created. It may be limited also in respect of the part of the area of the servient tenement over which it may be exercised, or the mode in which the right of way may be used, say in respect of the nature of the traffic. The user of the way may also be limited in respect of its special purposes or of the persons who are entitled to use it.

32 The almost infinite variety of rights of way is also explained in Gale on Easements (Jonathan Gaunt & Paul Morgan, *Gale on Easements* (Sweet & Maxwell, 22nd Ed, 2025) ("Gale on Easements") at para 9-01):

> Rights of way are at once the most familiar and the most important of the class of affirmative easements, which impose upon the owner of the servient tenement the obligation to submit to something being done within the limits of his own property.
>
> Rights of this nature are susceptible of almost infinite variety: they may be limited as to the intervals at which they may be used – as a right to be exercised during daylight, or (formerly) as a way for a parson to carry away his tithe. Again, they may be limited as to the actual extent of user authorised – a footway, horseway, carriageway, or driftway. Or they may be limited as to the purposes for which they may be exercised; thus there may be a way for agricultural purposes only, or for the carriage of coals only, or for the carriage of all articles except coals, or for the purpose of access to and egress from a property in connection with its use as a single private dwelling house.

33 An example of a limited right of way is that in the case of *Lim Hong Seng v East Coast Medicare Centre Pte Ltd* [1994] 3 SLR(R) 680, which concerned the interpretation of a right of way under an express grant. The High Court considered the circumstances surrounding the execution of the instrument in deciding whether it was a general right of way or limited to a right of footway (at [34]). The High Court held that it was an easement of right of way across a

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bridge limited to persons on foot or bicycle as no evidence was adduced to show that motorised access across the bridge was possible (at [44]).

34 Before proceeding to determine the scope of the easement, it would be prudent to note that in relation to easements, the common law has developed an approach where either owner could expend the cost of maintaining the way, but neither was obliged to do so. This is summarised in Gale on Easements (at para 9-111).

> The following summary of the law has been described as 'settled for centuries' and uncontroversial. Subject to contrary agreement,
>
> (1) the grantee may enter the grantor's land for the purpose of making the grant of the right of way effective viz. to construct a way which is suitable for the right granted to him;
>
> (2) once the way exists, the servient owner is under no obligation to maintain or repair it;
>
> (3) similarly, the dominant owner has no obligation to maintain or repair the way;
>
> (4) the servient owner (who owns the land over which the way passes) can maintain and repair the way, if he chooses;
>
> (5) the dominant owner (in whose interest it is that the way be kept in good repair) is entitled to maintain and repair the way and, if he wants the way to be kept in repair, must himself bear the cost;
>
> (6) he has a right to enter the servient owner's land for the purpose but only to do necessary work in a reasonable manner.

35 This approach to maintenance of the easement is very much a rights-based approach which has little regard to the public interest in the optimal use of scarce land. Such optimal use has become a sharper concern in Singapore over time.

36 In considering the *proper scope* of any such easement, it would be material to have regard to KOSMA's point that vehicles accessing the Loading

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Bay had been charged even before it purchased the Service Road. This was acknowledged in the MCST's By-Laws where under the heading "Parking of Vehicles at Loading Bay Area" it is stated at By-Law 3(f) that:[24]

> All car-park charges will be borne by the sub-proprietors, occupier, agent or supplier delivering or receiving goods at Parklane Shopping Mall as the car-park is privately owned and all fees are set by the car-park owners.

37 While the By-Laws were first passed in 1990 and adopted in 1995, it is not clear when By-Law 3(f) was first passed since amendments have been made to the By-Laws since 1990.[25] Nonetheless, it shows that the management council of the MCST at some point did not hold the view that there was a general right of way free of charge to the Loading Bay. Nonetheless, the practice until the recent change of ownership indicates acceptance of a limited right of way for the purpose of refuse collection.

38 The approach I would have taken if the subdivision plan had been adduced in evidence and had looked the same in relevant respects as the Certified Plan would have been to consider what was necessary for the reasonable enjoyment of the Mall, in accordance with s 99(1A) of the LTA. On the evidence adduced, I would have accepted that it was necessary that there be implied a right of way to and from the bin centre located within the Loading Bay, albeit *limited to refuse trucks*, such that either refuse trucks could enter without charge or the rubbish bins could be wheeled out.

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24 Letter from counsel for KOSMA dated 17 July 2025 ("17 July 2025 KOSMA Letter") at p 7.

25 17 July 2025 KOSMA Letter at pp 9–11.

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Section 97A of the LTA

39 Having concluded that in the absence of the approved subdivision plan, it is not open to the MCST to rely on s 99 of the LTA to imply an easement of right of way to the Loading Bay, I turn to the contention that the court should create an easement of way under s 97A(1) of the LTA.

40 Section 97A(1) provides:

> The court may, on application by an interested person (called in this section the applicant), make an order creating an easement over registered land if the easement is reasonably necessary for the effective use or development of other land (whether registered or unregistered) that will have the benefit of the easement.

41 Section 97A(2) further provides:

> An order under subsection (1) may be made only if the court is satisfied —
>
> (*a*) that the use of the land to which the benefit of the easement is to be made appurtenant will not be inconsistent with the public interest;
>
> (*b*) that the proprietor of the land to be burdened by the easement can be adequately compensated for any loss or other disadvantage that will arise from the creation of the easement; and
>
> (*c*) that all reasonable attempts have been made by the applicant to obtain the easement or an easement having the same effect directly from the proprietor of the land to be burdened by the easement.

42 At the second reading of the Land Titles (Amendment) Bill (Bill No 4/2014), the Senior Minister of State for Law Ms Indranee Rajah (as she then was) described the new provision in the following terms (Singapore Parl Debates; Vol 91, Sitting No 3; Pages 40−42; [17 February 2014] (Indranee Rajah, Senior Minister of State for Law):

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> Mdm Speaker, this Bill seeks to amend the Land Titles Act to improve our laws on land administration and for greater operational efficiency.
>
> The amendments proposed in this Bill were arrived at after consultation with the relevant Government departments, the Law Society of Singapore, experienced conveyancing lawyers and they are also in response to public feedback.
>
> The Bill does several things. It empowers the Court to create easements and to vary or extinguish existing easements. It improves the remedies available to a property owner in response to a caveat lodged on his property. It introduces a list of dealings in respect of which registration cannot be prevented by a caveat. It makes miscellaneous changes for greater clarity or consistency and for better administration of the Land Titles Act.
>
> The Bill also makes related amendments to the Building Maintenance and Strata Management Act (BMSMA) and the Conveyancing and Law of Property Act (CLPA).
>
> …
>
> At present, access by non-owners through another person's property is established by use over a long period of time or the landowner granting a right of way, also known as an easement.
>
> When land is re-parcelled and developed, it can give rise to situations where previous easements are affected or new easements are required. For example, owners who previously had access to a main road may now find their access blocked, or the historical easement may now no longer serve its original purpose. This results in less efficient use of the land.
>
> The Court, currently, does not have the power to vary or create easements under the existing provisions of the Land Titles Act.
>
> In the recent local case of *Botanica Pte Ltd v Management Corporation Strata Title Plan No 2040*, the High Court suggested that in light of increased activity in the redevelopment of properties, it was perhaps timely for the Legislature to consider the need for the Court to have an express power to modify easements.
>
> My Ministry has considered this issue and we are of the view that it would be useful to give the courts power to modify easements. This is addressed in the Bill.
>
> The Bill will empower the Court to create, vary or extinguish an easement over land if it is reasonably necessary for the effective use or development of the land that will have the benefit of the easement or that is affected by the easement and if it is consistent with the public interest.

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> Where necessary, the Court may also award compensation to any party affected by the Court's order.
>
> The Land Titles Act deals with registered land. Related amendments will be made to the CLPA to confer similar powers on the Court in respect of the creation, variation or extinguishment of easements over unregistered land. We envisage that these amendments will facilitate more efficient and optimal use of land.
>
> They also align our practices with those of Commonwealth jurisdictions, such as Australia – for example, New South Wales and Queensland – New Zealand and Canada, which have similar provisions.

43 I highlight that the purpose of the amendments was to "facilitate more efficient and optimal use of land".

44 The first question is whether an easement of a right of way over the Service Road to the Loading Bay (including the bin centre) is reasonably necessary for the effective use of the Mall.

45 This question was considered in *Huber's Pte Ltd v Hu Lee Impex Pte Ltd* [2025] 3 SLR 85 ("*Huber's*") in the context of an application for temporary easements that would facilitate redevelopment of the land. Among other things, an easement was required to install scaffolding, hoardings and a dust-and-noise barrier during the redevelopment. Judicial Commissioner Alex Wong (as he then was) drew upon case law from New South Wales (given that s 97A of the LTA is *in pari materia* with s 88K of the New South Wales Conveyancing Act 1919), in formulating three questions to be considered when deciding whether the creation of an easement is reasonably necessary. He set out the three questions and described them as considerations rather than prerequisites (at [23]):

> (a) Whether the proposed use or development of the land was *reasonable* as compared to possible alternative uses and developments (the "Reasonable Use Question").

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> (b) Whether the proposed easement was reasonably necessary for that proposed use or development of the land … This entails a consideration of whether the use or development *with* the easement was *substantially preferable* to an alternative use or development *without* the easement (the "Substantially Preferable Question").
>
> (c) The effect of the grant of the easement on the owner of the affected land.
>
> [emphasis in original]

His concern and formulation related to proposed uses of the land, involving a comparison of the proposed use of the land with the easement to alternative uses without it.

46 First, Wong JC held that redevelopment of the land which has been approved by Jurong Town Council was a reasonable use (*Huber's* at [32]). Secondly, Wong JC held that the applicant had not shown how the method of redevelopment it proposed was substantially preferable to alternative methods as it had failed to adduce any expert evidence on the alternative methods, although this factor alone was not conclusive in deciding whether the creation of an easement was reasonably necessary (*Huber's* at [33]–[40]). Thirdly, Wong JC held that the health and safety concerns arising as a result of the redevelopment did not mean that the easement was not reasonably necessary, particularly since additional costs incurred could be claimed by way of compensation (*Huber's* at [41]–[49]). Considering the three questions holistically and notwithstanding his conclusion adverse to the applicant on the second question, Wong JC decided that the creation of the easement was reasonably necessary (*Huber's* at [50]).

47 I would add the following observations:

(a) The qualifier "reasonably" applied to the word "necessary" loosens the requirement of necessity as compared to s 99 where there is

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no such qualifier. Something would be reasonably necessary even if there was some potential workaround, so long as such workaround was unduly onerous or burdensome.

(b) The phrase "effective use" focuses the inquiry on the impact on the land in question. Moreover, it carries an additional consideration as compared to the words "reasonable enjoyment" employed in s 99. The adjective "effective" is gradable: it admits of degree. This means that the court is entitled to consider the extent to which the easement if created would improve the effectiveness of the use of the land. This is different from the phrase "reasonable enjoyment": while there is a range of instances of reasonable enjoyment there is no question of grading such instances against each other. In short, there is either reasonable enjoyment or not.

(c) The provision for adequate compensation allows the creation of an easement even where it entails some loss or other disadvantage to the proprietor of the land to be burdened by it. This provision recognises that the property rights of that proprietor are necessarily affected but permits this to happen where there can be adequate compensation. This promotes the efficient allocation of resources and optimal use of land.

(d) Nonetheless, the court should exercise caution in the creation of easements under this section given that their creation against the will of the burdened proprietor is a limitation on property rights.

48 The case before me concerns the existing use of land rather than any development of the land or change to a new use. It relates to use of the Service Road for loading and unloading purposes. The Mall as it was built was and is

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dependent on access via the Service Road to the Loading Bay (including the bin centre). Even though the MCST has been unable to produce the subdivision plan, it is plain from the Certified Plan that without access to the Loading Bay via the Service Road, the Mall cannot effectively function for its built purpose as a mall. While it may not be physically impossible to wheel the rubbish bins through the Mall and past the neighbouring development along Selegie Road (yet without stepping onto Selegie Road which would cause an obstruction to traffic and would also be against the flow of traffic) to meet refuse trucks backing into Kirk Terrace, one has only to envisage this process to realise it is completely impractical. Similarly, loading and unloading cannot take place via Selegie Road. In my view, use of the Service Road in connection with *refuse collection* is categorically necessary while use of the Service Road for *loading and unloading* is at the very least reasonable and substantially preferable to alternative methods of loading and unloading.

49 Moreover, the evidence shows and I have found (at [27]–[28] above) that the Service Road was always intended to serve the Loading Bay (including the bin centre) and the Carpark.

50 The comparison has been between the scenario where KOSMA refuses access to the Service Road and the scenario where KOSMA permits such access freely. In my view, this is the primary comparison, because in the absence of the easement KOSMA or a subsequent proprietor could refuse access completely or impose such conditions on access as to make things very difficult for the effective use of the Mall. Indeed, KOSMA's conduct described at [7] above has been unreasonable and has impaired the effective use of the Mall. I repeat the two particularly egregious examples mentioned at [8] above, namely:

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(a) Altering the gantry arms to stop even the manual wheeling out of refuse bins; and

(b) Charging additional and exorbitant administrative fees to lower the new chain that restricts access to the Loading Bay.

51 Thus, I find that an easement of way over the Service Road to the Loading Bay is reasonably necessary for the use of the Mall, satisfying s 97A(1) of the LTA. Turning to s 97A(2)(*a*), it is obvious that the use of the Mall as a mall is not inconsistent with the public interest. It is also clear in relation to s 97A(2)(*b*) that KOSMA can be adequately compensated for the creation of the easement. The loss or disadvantage to KOSMA would be the wear and tear on the Service Road caused by delivery vehicles and refuse trucks. In my view, in assessing adequate compensation under this subsection the court may determine on whom the duty to maintain would lie. This contrasts with the common law position noted above at [34]. Part of the context that must be considered is that the Service Road is in any event also used by vehicles passing through to the Carpark, whose use of the Service Road is apparently absorbed by KOSMA within the parking charges but which would contribute to wear and tear of the Service Road.

52 Turning to s 97A(2)(*c*), this requires the applicant to make all reasonable attempts to obtain the easement prior to the court making the order. The correspondence produced in court shows the MCST seeking reasonable solutions to the difficulty posed by, among other steps, KOSMA's actions in imposing a charge on refuse trucks and altering the gantry arms.[26] However, the correspondence does not directly address the question of creating an easement.

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[26] See, *eg*, LGYJ-1 at pp 121–122 and 172.

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This is a consequence both of a lack of clarity on the MCST's part and an uncompromising approach from KOSMA. My reading of the subsection is that it is not a condition precedent to the application but to the making of the order, and consequently it is open for me to give the MCST time to fulfil s 97A(2)(*c*). This will also offer KOSMA the opportunity to consider adequate compensation for the creation of the easement. Thereafter, I will hear both parties on the scope of the easement including any limitations on it and on compensation for its creation, as well as in respect of the consequential orders, including the recoverability of the penalty imposed. For example, once an easement is created, KOSMA will not be entitled to charge administration fees for access to the Loading Bay or to keep in place physical barriers that hinder or prevent such access.

Conclusion

53 Thus, having decided that the court will not imply an easement but will create an easement if s 97A(2)(*c*) of the LTA is fulfilled, I grant parties time to exchange proposals concerning the easement and leave to file supplementary submissions within six weeks of the date of this judgment. I will also deal with SUM 1687 at that juncture.

54 For the avoidance of doubt and in line with O 19 r 4 of the Rules of Court 2021, the time for an appeal will only run from the date on which any

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order to create an easement is made, together with the ancillary and consequential orders, including costs.

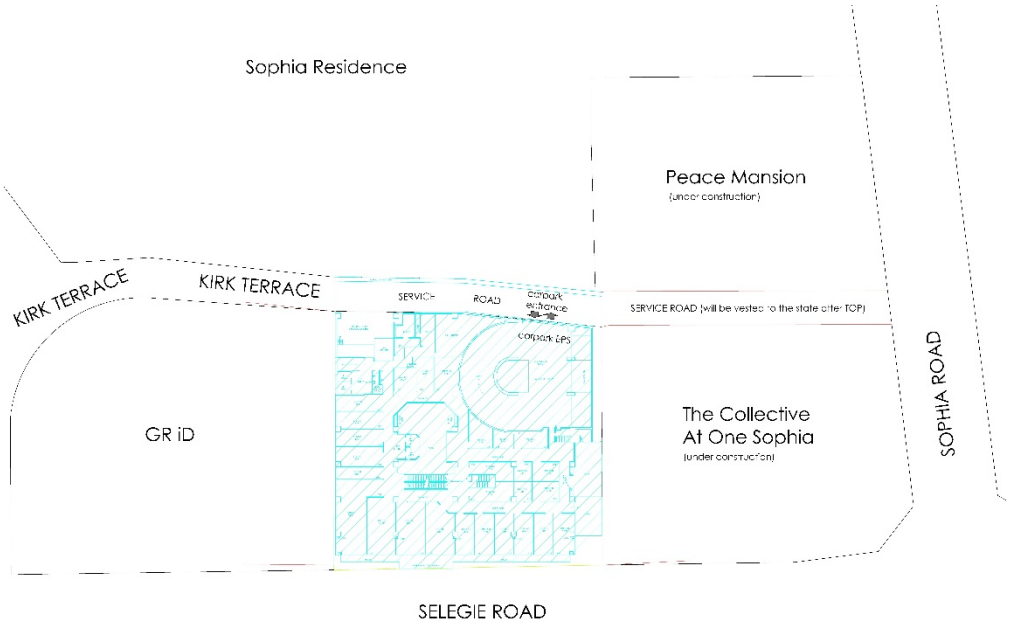
Philip Jeyaretnam
Judge of the High Court

Subir Singh Grewal, Shermaine Ng Shi Min and Wang Tianyi (Aequitas Law LLP) for the claimant;
Kishan Pillay s/o Rajagopal Pillay and Shannon Lim Qi (Breakpoint LLC) for the defendant.

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Annex A

A.1 Annex A has been referred to at [3] of the judgment for illustration purposes. It contains a schematic diagram of the relevant lots and roads in this matter.



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Annex B

B.1 Annex B has been referred to at [5] of the judgment. It contains two diagrams extracted from the Certified Plan dated 16 April 1982. Diagram 1 is a schematic plan of the development, with the Mall on Lot 319 and the Service Road on Lot 320. Diagram 2 is a schedule in the Certified Plan recording the subdivision of the initial lot into Lots 319 and 320.

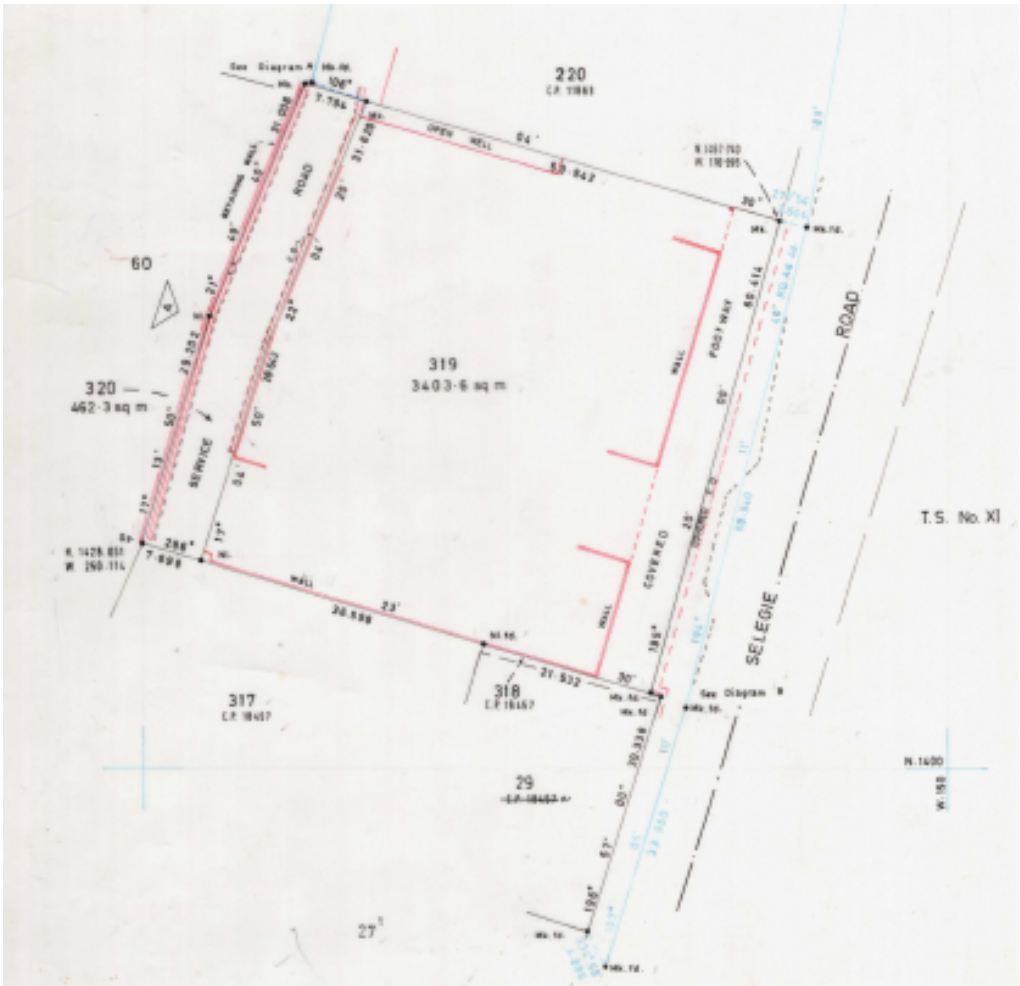


Diagram 1. Schematic plan in Certified Plan

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Lot No.	On Plan	Here Subdivided Into Lots	S.D.S.	L.O.	Remarks
285	16098	319 320	341 - 74	(A)108/74 Pt.A	

Diagram 2. Schedule in Certified Plan illustrating subdivision of lots

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