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DISTRICT JUDGE TAY JINGXI
26 JUNE 2026

IN THE STATE COURTS OF THE REPUBLIC OF SINGAPORE

[2026] SGDC 209

District Court Originating Claim No 1407 of 2023

Between

The Management Corporation
– Strata Title Plan No. 4502

… *Claimant*

And

Big Boys Bakery Pte. Ltd.

… *Defendant*

JUDGMENT

[Damages] – [Special damages]
[Land] – [Strata Titles] – [By-laws]
[Land] – [Strata Titles] – [Common property]
[Land] – [Strata Titles] – [Land Titles (Strata) Act]

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The Management Corporation – Strata Title Plan No. 4502
v
Big Boys Bakery Pte. Ltd.

[2026] SGDC 209

District Court Originating Claim No 1407 of 2023
District Judge Tay Jingxi
8-9 April, 26 May 2026

26 June 2026 Judgment reserved.

District Judge Tay Jingxi

Introduction.

1 The Claimant is the managing corporation of Robinson Suites, and was duly constituted under the Building Maintenance and Strata Management Act 2004 ("**BMSMA**").[1] The Claimant engaged Outocoz Property Services Pte Ltd ("**Outocoz**") as its managing agent at the material time.

[1] With effect from 1 October 2025, this Act has been renamed to "Building (Strata Management) Act". See https://www.stratatb.gov.sg/update-to-the-building-maintenance-and-strata-management-act/.

2 The Defendant is a company that operated a food and beverage business, "Pies & Pints", at level 1 of Robinson Suites at the material time.[2] I will henceforth refer to the unit from which Pies & Pints operated as the "**Unit**" for short. The Defendant's director and representative at trial was Mr Mark Richard Mottram ("**Mr Mottram**").[3] It is not disputed that the Defendant rented the Unit from Boon Trading Pte Ltd ("**Boon Trading**"), the subsidiary proprietor of the Unit,[4] from sometime in March or April 2023 to sometime in April 2025.[5]

3 The dispute in this case arises from the Defendant's act of placing items along the covered walkway outside the Unit. Although the Claimant's witnesses describe these items in greater detail than Mr Mottram does, the common denominator underlying their descriptions is that the items generally comprised furniture, including tables and chairs of various kinds. This is consistent with what the photographs at pages 373 to 374 of Volume 3 of the Agreed Bundle of Documents ("**3AB**") show. I shall therefore refer to these items collectively as the "**Outdoor Items**" and the covered walkway in question as simply the "**Walkway**". It is not disputed that the Outdoor Items belong to the Defendant,[6] nor that the Walkway forms part of the development's common property.[7]

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[2] Statement of Claim ("**SOC**") at [2]. Defence & Counterclaim (Amendment no. 2) ("**AD&CC**") at [1].

[3] Defendant's AEIC ("**DAEIC**") at [1].

[4] Defence to Counterclaim (Amendment no. 1) ("**ADTCC**") at [7A(a)(i)]. See too 3AB at 83, email dated 2 June 2023 at 3:55pm sent by Mr Mottram to operation@outocoz.com.

[5] The tenancy agreement was not tendered into evidence. DAEIC at [3]. Mr Ravi Murarka's ("**Mr Ravi**") AEIC at [12].

[6] AD&CC at [4A].

[7] AD&CC at [10]. ADTCC at [7A(a)(ii)].

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4 The Claimant's pleaded case is twofold. First, that the Defendant did not have the Claimant's approval to place the Outdoor Items along the Walkway.[8] Second, that the Defendant had in doing so breached the BMSMA, the Building Maintenance (Strata Management) Regulations 2005 (the "**Regulations**"), and the Claimant's House Rules and Regulations ("**MCST By-Laws**").[9] On these grounds, the Claimant seeks various orders, including damages calculated at $800 per month from 31 July 2023 to the date of removal of the Outdoor Items.[10]

5 The Defendant's pleaded case is threefold. First, it argues that the Outdoor Items in no way obstructed access along the Walkway.[11] Second, that the Claimant had failed and/or refused to negotiate with the Defendant to execute a formal agreement entitling the Defendant to place the Outdoor Items along the Walkway.[12] Third, that the Claimant had, via a voice message sent on 4 July in an unknown year, admitted that they "ha[d] no objection" to the Defendant using the Walkway in the manner in which it had done so.[13]

6 The Defendant also mounts a counterclaim based on the Claimant's "wrongful repudiation" and "breach of contract".[14] Because of this alleged conduct on the Claimant's part, the Defendant says that it suffered loss and damage arising from its inability to use the Walkway from 15 June 2023 to 31

[8] SOC at [3].

[9] SOC at [23].

[10] SOC at [24].

[11] AD&CC at [3].

[12] AD&CC at [8].

[13] AD&CC at [10].

[14] AD&CC at [24].

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July 2023 and from May 2024[15] to July 2024.[16] The total pleaded value of the counterclaim is $211,500.[17]

Issues to be decided.

7 Six key issues arise for my determination:

(a) Did the Defendant breach By-Law 3 of the Regulations by placing the Outdoor Items along the Walkway? ("**Issue 1**")

(b) Did the Defendant breach Clause 21 of Part 3A of the MCST By-Laws by placing the Outdoor Items along the Walkway? ("**Issue 2**")

(c) Did the Defendant breach ss 63(c) and (d) of the BMSMA by placing the Outdoor Items along the Walkway? ("**Issue 3**")

(d) Did the Defendant have any legal basis to use the Walkway in the manner it did? ("**Issue 4**")

(e) Arising from the Defendant's breaches, is the Claimant entitled to substantial damages? ("**Issue 5**")

(f) As regards the counterclaim, did the Claimant breach any contract so as to entitle the Defendant to damages for loss of use of the Walkway? ("**Issue 6**")

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[15] The Defendant clarified that the date "May **2025** to July 2024" in the header of [26] of the AD&CC is an editorial error, and that the correct date should be "May **2024** to July 2024" instead. See Notes of Evidence ("**NE**") on page 127, lines 14 to 20.

[16] *Ibid.*

[17] AD&CC at [25].

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8 Having considered the issues above, I give judgment in favour of the Claimant; however, as the Claimant is unable to prove and quantify its loss, I award only nominal damages of $1,000. I dismiss the counterclaim in its entirety.

9 My reasons are as follows.

Issue 1: Did the Defendant breach By-Law 3 of the Regulations by placing the Outdoor Items along the Walkway?

10 By-Law 3(1) of the Prescribed By-Laws under the Second Schedule to the Regulations (the "**Prescribed By-Laws**") states that:

> A subsidiary proprietor or an occupier of a lot **shall not obstruct the lawful use of the common property by any person**, **except on a temporary and non-recurring basis.**
>
> **[emphasis added]**

11 I will refer to the carve-out pertaining to obstructions on common property left on a temporary and non-recurring basis (see underlined portion above) as the "**Exception**".

12 Pursuant to s 32(2) of the BMSMA read with Reg. 20 of the Regulations, the Prescribed By-Laws under the Second Schedule apply to every parcel comprised in a strata title plan in respect of which a management corporation is constituted on or after 1 April 2005.

13 In the present case, the Claimant regrettably led no evidence as to the date of its constitution. Nevertheless, the Claimant is assisted by the transitional provisions contained in paragraph 14(1)(a) of Part 2 of the Fourth Schedule to the BMSMA. Those transitional provisions provide that the by-laws applicable to a parcel comprised in a strata title plan in respect of which a management

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corporation was constituted immediately before 1 April 2005 are to be found in the First Schedule to the now-repealed Land Titles (Strata) Act (Cap. 158, 1999 Revised Edition) (the "**LTSA**"). By-Law 9 of Part II to the First Schedule of the LTSA is materially similar to By-Law 3(1) of the Regulations, save for the Exception. It reads as follows:

> A subsidiary proprietor or occupier of a lot shall not obstruct the lawful use of the common property by any person.

14 It is immaterial whether the relevant by-law under the LTSA or the Regulations applies to this case – this is because the Defendant, in my view, is unable to make out the Exception. I also find that the Claimant is able to establish that the Defendant's Outdoor Items obstructed the Walkway in a manner that breached the relevant by-laws under both the LTSA and the BMSMA.

15 I begin by considering the meanings of "obstruction" and "lawful use" contained in By-Law 9 of the LTSA and By-Law 3(1) of the BMSMA (collectively, the "**By-Laws**"). Notwithstanding that Issue 1 plainly turns on the question "*what constitutes an obstruction of the common property?*", I have had little assistance from parties on this point of statutory interpretation. If the law does not consider the Outdoor Items to constitute such an obstruction, then the Claimant's case must fail, and the issue as to whether the Defendant is able to make out the Exception becomes moot.

16 Ascertaining the meanings that ought to be accorded to the terms "obstruction" and "lawful use" is a sufficiently straightforward exercise. To my mind, the following meanings ought to be ascribed to these terms:

(a) An "obstruction", in the context of By-Law 9 of the LTSA, should be interpreted in accordance with its "common and everyday"

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meaning (*Chong Kam Len and ors v DFS Singapore Pte Ltd* [1991] SGHC 133 ("***Chong Kam Len***")). The "common and everyday" meaning of the word, according to the Cambridge Dictionary, is something that blocks a road, passage, entrance, etc. so that nothing can go along it, or the act of blocking something in this way.[18] What constitutes an obstruction in any particular case, however, is a matter to be determined on the facts and circumstances of that case (see *Chong Kam Len*). In addition, the High Court in *Chong Kam Len* cautioned that the word "obstruct" should *not* be unduly restricted to mean "completely obstruct"; a partial obstruction would be within the meaning of that word if "by such obstruction the use of the common property has to an appreciable practical extent been interfered with".

(b) "Lawful use" should be read synonymously with the phrase "legal purpose". The Oxford English Dictionary defines "lawful" to mean "permitted by or in accordance with law; legal"[19] and "use" to mean the "act of putting something to work, or employing or applying a thing, for any... purpose"[20]. By way of illustration, and using the Walkway as an example, one lawful use of the said Walkway would be for a pedestrian – regardless of whether they are a subsidiary proprietor or occupier of a unit within Robinson Suites – to navigate the Walkway for the purpose of reaching a destination, be it within or outside of Robinson Suites. The Walkway is a public-facing area located on level

[18] https://dictionary.cambridge.org/dictionary/english/obstruction (accessed on 22 June 2026).

[19] https://www.oed.com/search/dictionary/?scope=Entries&q=lawful (accessed on 8 June 2026).

[20] https://www.oed.com/dictionary/use_n?tl=true (accessed on 8 June 2026).

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one of Robinson Suites, and it follows that such pedestrians are legally permitted to walk along it for the purpose of reaching their destination.

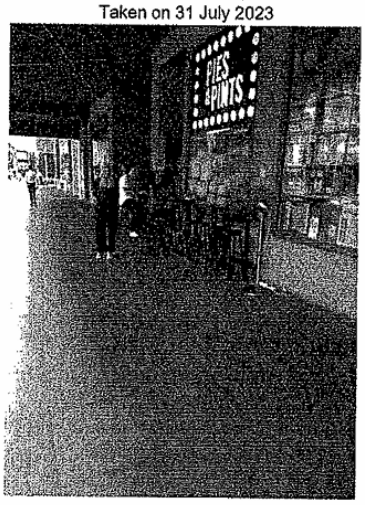
17 Applying the above interpretations, I find that the placement of the Outdoor Items along the Walkway partially obstructed pedestrians from walking along it. From the photographs appended to the Claimant's letter of 8 August 2023 addressed to the Defendant's then-solicitors, it is evident that the Outdoor Items encroached upon approximately *half* the width of the Walkway for roughly the length of the Unit.[21] I reproduce these photographs below to illustrate my point:

[21] Mr Ong's AEIC at pages 52 to 53. See argument raised at [11] of the CRS.

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Photographs of encroachment on common property

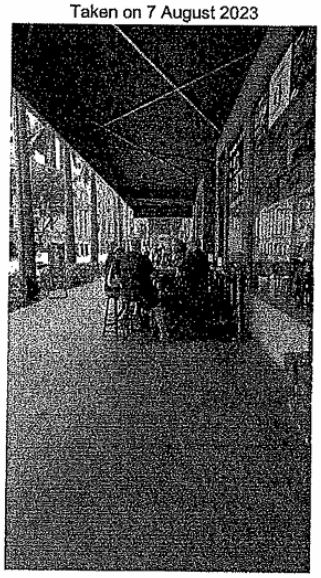
Taken on 31 July 2023



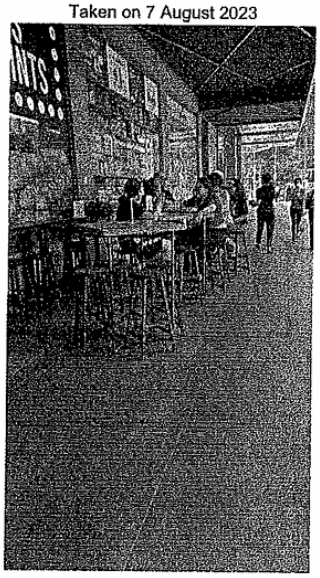
Taken on 3 August 2023



Taken on 7 August 2023

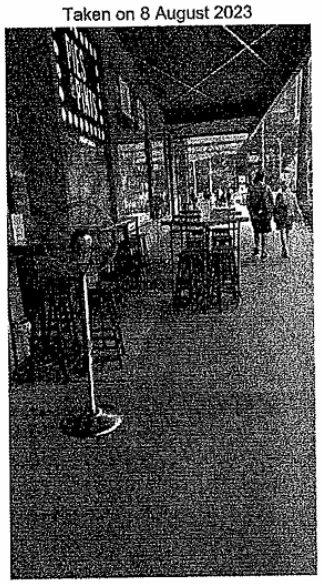


Taken on 7 August 2023



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Photographs of encroachment on common property
Taken on 8 August 2023



18 The extent of the encroachment is most plainly demonstrated by the photograph at page 379 of 3AB (the "**Photograph**"):

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19 Although the Photograph is undated, it must have been taken during the period the Defendant leased the Unit given that the Defendant's Outdoor Items are visible along the Walkway. Furthermore, it is neither party's case that the position or the location of the Outdoor Items differed materially day-by-day. Accordingly, I am satisfied that the Photograph provides a reasonable depiction of the position of the Outdoor Items along the Walkway during the term of the Defendant's lease with Boon Trading. The photographs referenced at [17] to [18] above reveal two consequences of the Outdoor Items' placement. First, approximately half of the Walkway was physically obstructed across the length of the Unit. Second, pedestrians lawfully using the Walkway would be forced to walk in the open air, unsheltered by the overhanging shelter in front of the Unit, by reason of the Outdoor Items' presence. Such pedestrians would consequently be deprived of the shelter's protection on rainy or exceptionally

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sunny days. I therefore reject the first prong of the Defendant's pleaded case (see [5] above).

20 Finally, contrary to the Defendant's assertion at [11] of its submissions, there is no requirement in law for a finding of obstruction made by the regulatory authorities before a Court may conclude that the Defendant's actions obstructed the Walkway under the relevant By-Laws. To start off, the Defendant's reference to the SCDF (the Singapore Civil Defence Force) is presumably a reference to the applicable fire safety laws under the Fire Safety Act 1993, which is administered by the Commissioner of Civil Defence, or the codes or regulations made thereunder. The Defendant's argument that the SCDF found no contravention of the relevant fire safety laws or codes – presumably in relation to the minimum width of a walkway – carries some weight, if true. Be that as it may, the fact that a walkway has sufficient accessible width for fire safety purposes does not necessarily mean that the same walkway has not been obstructed for the purposes of the LTSA or the BMSMA. The former is concerned with setting minimum fire safety standards, whereas the latter is concerned with regulating the proper maintenance and management of buildings. Whilst there can conceivably be an overlap in the manner in which both aims are achieved under the relevant statutes or codes, the breach of one does not automatically entail the breach of another.

21 As regards the Defendant's reference to the SFA (the Singapore Food Agency), I am unable to discern its relevance to the Defendant's case. The duties and functions of the SFA are prescribed in Section 5 of the Singapore Food Agency Act 2019, and I am unable to identify which of these are pertinent here. Nor has the Defendant identified any relevant function which would make the SFA's purported finding of non-contravention by the Defendant relevant to the present analysis.

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22 For the above reasons, the element of obstruction under the By-Laws is made out. The Defendant has therefore committed a *prima facie* breach of the By-Laws by placing the Outdoor Items along the Walkway. The question of how long the Outdoor Items remained on the Walkway will be addressed when considering the Exception later in this judgment (see [24] below).

23 Having found a *prima facie* breach of the By-Laws, the second question I must consider is whether the Outdoor Items were placed along the Walkway on a temporary and non-recurring basis; that is, whether the Exception to By-Law 3 of the Prescribed By-Laws is made out. If it is, the further question of whether the Exception similarly ought to be read into By-Law 9 of the LTSA would then arise. If it is not, then the Defendant would have no valid defence to a finding of breach of the By-Laws, and the inquiry would conclude accordingly.

24 In my judgment, the answer to the second question is no. My decision is premised on the following reasons:

(a) Despite the Claimant's somewhat indirect allusions to the non-temporary and recurring nature of the presence of the Outdoor Items on the Walkway, I find that it has, on balance, proved that the Defendant had placed these Items on the Walkway continuously over the period spanning 31 July 2023 to 3 April 2025 (the "**Period**"). Based on Mr Ong Yao Yong's ("**Mr Ong**") AEIC, the Defendant had placed the Outdoor Items along the Walkway from 2 June 2023 to an unknown date, removed the Outdoor Items at some point, and then placed them back on the Walkway from 31 July 2023 to the date Mr Ong's AEIC was

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affirmed (being 3 April 2025) (i.e., the Period).[22] The Period is sufficient to show that the obstruction was establish that the obstruction was neither temporary nor non-recurring. The Defendant also did not challenge Mr Ong's evidence that the Outdoor Items had been placed continuously along the Walkway over the Period.

(b) The Defendant is unable to prove the Exception for a number of evidential reasons. The Defendant has neither pleaded nor proved that the Outdoor Items were placed outside the Unit on a temporary or non-recurring basis. In fact, given the nature and purpose of the Outdoor Items, it is more likely than not that the Exception is *not* made out. Significantly, the Defendant was running a food and beverage business from the Unit. The Outdoor Items largely comprised furniture intended for use by its patrons. In order to serve their function, the Items would necessarily have been placed along the Walkway for at least the entirety of the business's operating hours. Even on the conservative assumption that Pies & Pints operated for several hours each day over several days each week, this would, in my view, be sufficient to prove that the Outdoor Items were placed on the common property on a *non-temporary* and *recurring* basis.

25 Accordingly, the Defendant has failed to establish the Exception, and regardless of whether the Exception also applies to By-Law 9 of the LTSA, it has no valid defence to its breach of the By-Laws. The Claimant has therefore established the Defendant's liability under the By-Laws.

[22] Mr Ong's AEIC at [11], [18], and [24].

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26 For completeness, I address the Defendant's argument on selective enforcement, or unfairness, as advanced at [20] to [45] of its submissions. This argument has two prongs. First, the Defendant argues that it ought to be accorded the same treatment as the previous tenant of the Unit in relation to the use of the Walkway. Digital Kitchen, the previous tenant, had operated a food and beverage business known as "Shake Farm" at the same Unit, and had in doing so used the Walkway in similar fashion as the Defendant over a period of five years without complaint from the Claimant.[23] Second, the Defendant argues that a stationery shop located next to Pies & Pints ("**Stationery Shop**") had also used the area of the Walkway immediately outside its unit to store boxes and other goods, and that this act drew no complaint from the Claimant and was not subject to the payment of "rent" for such use.[24]

27 As a preliminary point, this argument has not been pleaded by the Defendant. Nevertheless, because the Defendant's AEIC touches on this argument, and because the Claimant's counsel cross-examined the Defendant on this argument *and* dealt with it in its written submissions,[25] I will consider it on its merits. Having done so, I reject both prongs of the Defendant's argument.

28 In respect of Digital Kitchen's use of the Walkway, the Defendant failed to adduce any evidence on this point by virtue of his decision not to call Mr Daniel Paul Chambers ("**Mr Chambers**"), the director of Digital Kitchen,[26] as a witness.[27] Without any direct evidence from Mr Chambers as to the manner in

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[23] Mr Mottram's AEIC at [5].

[24] Mr Mottram's AEIC at [10].

[25] NE on page 109, line 16, to page 112, line 2; see too page 116, lines 1 to 28. See too Claimant's Closing Submissions ("**CS**") at [37] to [45].

[26] Mr Ravi's AEIC at [8].

[27] NE on page 147, lines 21 to 23.

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which Digital Kitchen supposedly used the Walkway and how the Claimant supposedly dealt with that use, the Defendant's argument fails at this first evidential step.

29 In respect of the Stationery Shop's use of the Walkway, I agree with the Claimant's submission that the Defendant is drawing an inapt comparison.[28] Based on the photographs at Tab 29 of 3AB, the manner in which the Stationery Shop used the portion of the Walkway in front of its premises is materially different from the way in which the Defendant did so.[29] Notably, the items that the Stationery Shop placed outside its unit took up significantly less surface area than the Outdoor Items did; the Photograph perfectly illustrates my point in this regard. Beyond the question of surface area, the photographs at Tab 29 of 3AB which the Defendant relied on are insufficient to show that these boxes were placed in a way that substantially blocked pedestrians' use of the Walkway so as to constitute an "obstruction" under the By-Laws.

30 Furthermore, there is credible basis to say, as the Claimant has,[30] that the Stationery Shop only placed these boxes along the Walkway on a temporary basis for the operational purpose of loading and unloading its stock. I arrive at this conclusion, not simply by taking Mr Ong's word for it,[31] but based on the objective photographic evidence at Tab 29 of 3AB. Although there is no evidence of the dates and times on which these photographs were taken, it is apparent from a review of these photographs that the types, positions, and numbers of boxes and other items left outside the Stationery Shop *differ* over

[28] CS at [41] to [42].

[29] NE on page 88, line 26, to page 89, line 23.

[30] CS at [41].

[31] For example, see NE on page 88, line 26, to page 89, line 23.

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time. For example, there are green boxes stacked outside the Stationery Shop as shown on, *inter alia,* pages 385, 387, and 389 of 3AB, but none on, *inter alia,* pages 379, 382, 403, 404 of 3AB. There are also trolley carts – the foldable sort meant for transporting medium to large objects – shown outside the Stationery Shop on, *inter alia,* pages 398 to 401, but none on *inter alia,* pages 387 to 388. In fact, in several of these photographs, these trolley carts are unfolded and items (including cardboard boxes) have been placed on them.[32]

31 What is the most reasonable inference I can draw from the contents of these images? Absent any argument that the boxes were placed outside by the Stationery Shop for aesthetic or other permanent purposes, it is highly plausible that the Stationery Shop was indeed using the Walkway outside its shop for loading and unloading purposes, and that the items being unloaded and loaded into the Shop were these very boxes seen in Tab 29 of 3AB. The trolley carts with boxes stacked on them were likely to be carrying stock to be transported into the Shop, and the fact that the types and numbers of the boxes outside the Stationery Shop changed over time strongly suggests that the presence of individual batches of boxes outside the Shop was only temporary. In other words, the ultimate destination of these boxes was *inside* the Stationery Shop, not the Walkway outside of it. The situation involving the Stationery Shop is thus completely different from the Defendant's, where the Outdoor Items were meant to be permanently left outside the Unit for the use and enjoyment of its customers. I therefore accept the Claimant's position that the temporary presence of the boxes and carts outside the Stationery Shop distinguishes that situation from the Defendant's.

[32] See, for example, 3AB at 417, 422, and 425.

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32 In sum, there is simply no basis for the Defendant to insist that it should be treated in the same way as Digital Kitchen and the Stationery Shop in relation to its use of the Walkway.

Issue 2: Did the Defendant breach Clause 21 of Part 3A of the MCST By-Laws by placing the Outdoor Items along the Walkway?

33 My finding that the Defendant had breached the By-Laws is sufficient to give judgment in favour of the Claimant. However, since the Claimant has also raised three other grounds to seek relief in this case, I will address them under Issues 2 to 4.

34 I start with the MCST By-Laws. Clause 21 of Part 3A of the MCST By-Laws[33] ("**Clause 21**") reads as follows:

> No goods or any other items shall be stored or kept in the common areas.

35 The Claimant's case based on Clause 21 of the MCST By-Laws fails for a fundamental reason. There is no evidence that a copy of these By-Laws was lodged with the Commissioner of Buildings as required by s 32(4) BMSMA. Section 32(4) of the BMSMA states that:

> Any by-laws made… under this section or section 33, **have no force or effect until a copy of the by-laws** or the amendment, addition or repeal (as the case may be) **has been lodged with the Commissioner**.
>
> **[emphasis added]**

36 I take it that the MCST By-Laws were made pursuant to s 32(3) BMSMA, as that provision specifically enables a management corporation to enact by-laws by way of special resolution for the purpose of, *inter alia,*

[33] Mr Ravi's AEIC at page 34.

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controlling and managing the details of any common property of which the use is restricted. That provision is directly applicable to the Walkway, Clause 21, and the dispute at hand. The Claimant contends that the MCST By-Laws were validly enacted and binding on, *inter alia,* the Defendant. Hence, pursuant to Section 105 of the Evidence Act 1893, the burden of proving this fact – including whether the statutory pre-condition to validity and enforceability under s 32(4) BMSMA has been fulfilled – falls on the Claimant. Because the Claimant did not tender any objective proof or even make any assertion as to the said lodgement, the requirement in s 32(4) BMSMA has not been fulfilled.

37 As a result, the Claimant has failed to prove that the MCST By-Laws have force or effect. It therefore cannot rely on those By-Laws to found a cause of action against the Defendant.

Issue 3: Did the Defendant breach ss 63(c) and (d) of the BMSMA by placing the Outdoor Items along the Walkway?

38 I start by setting out, in full, the relevant provisions the Claimant relies on for the purposes of Issue 3.

39 Section 63(c) of the BMSMA reads as follows:

> A subsidiary proprietor, mortgagee in possession (whether personally or by any other person), **lessee or occupier of a lot must not… use or enjoy the common property** in such a manner or for such a purpose **as to interfere unreasonably with the use or enjoyment of the common property by the occupier of any other lot** (whether that person is a subsidiary proprietor or not) **or by any other person entitled to the use and enjoyment of the common property**;
>
> **[emphasis added]**

40 Section 63(d) of the BMSMA reads as follows:

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> A subsidiary proprietor, mortgagee in possession (whether personally or by any other person), **lessee or occupier of a lot must not… use or enjoy the common property** in such a manner or for such a purpose **as to interfere unreasonably with the use or enjoyment of <u>any other lot</u> by the occupier of the lot** (whether that person is a subsidiary proprietor or not) **or by any other person entitled to the use and enjoyment of <u>that lot</u> ("Entitled Person").**
>
> **[emphasis added]**

41 As a preliminary point, s 63(d) BMSMA is not relevant to the present dispute at all. S 63(d) differs from s 63(c) in one material respect – the former covers unreasonable interference with the use or enjoyment of *any other lot* by the occupier *of that lot* or an Entitled Person, whilst the latter covers unreasonable interference with the use or enjoyment of the *common property* by the occupier of any other lot or any person entitled to the use and enjoyment of the common property. None of the Claimant's witnesses identified an occupier of a lot within Robinson Suites, or any Entitled Person, whose use or enjoyment of that lot was unreasonably interfered with by the Defendant's use of the Walkway. Indeed, it is not the Claimant's case that identifiable individuals or entities were affected by the Defendant's placing of the Outdoor Items along the Walkway.

42 Accordingly, I will only consider the Claimant's case in light of s 63(c) BMSMA.

43 Did the Defendant's act of placing the Outdoor Items along the Walkway amount to an "unreasonable interference" under s 63(c) BMSMA? For the same reasons set out in my findings under Issue 1 (see [17] to [25] above), I find that it did. By obstructing the Walkway with the Outdoor Items in the manner that it did over the Period, the Defendant (who was an occupier of the Unit) had unreasonably interfered with the use and enjoyment of the

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Walkway (which is common property) by pedestrians or patrons of other businesses located within Robinson Suites who are entitled to the use and enjoyment of the Walkway.

44 Accordingly, I find that the Defendant has, by its actions over the Period, also breached s 63(c) BMSMA.

Issue 4: Did the Defendant have any legal basis to use the Walkway in the manner it did?

45 Should the Defendant be able to prove a legal basis to use the Walkway, the Claimant's case will fail despite my earlier findings on the Defendant's breaches. This is where the second and third prongs of the Defendant's case fall to be considered (see [5] above).

46 Before I deal with the Defendant's arguments, I first set out some undisputed facts to establish context. It is an agreed fact that parties did not at any point enter into a written agreement permitting the Defendant to place its Outdoor Items along the Walkway.[34] Nor is it disputed that there was no oral agreement to this effect.[35] Indeed, the Defendant pleaded neither a written nor an oral agreement as its legal basis to use the Walkway as it did.

47 Given the above, the Defendant must establish a basis, besides one founded on contract, entitling it to use the Walkway as it had. In my judgment, the Defendant has failed to do so.

[34] NE on page 116, lines 17 to 21.

[35] NE on page 116, lines 26 to 28.

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48 The Defendant's second pleaded ground fails at the threshold as a matter of evidence. The evidence clearly demonstrates the Claimant's willingness to permit the Defendant to legitimately use the Walkway for its purposes through the means of a main licence agreement and a sub-licence arising therefrom. By way of a letter dated 30 August 2023 (the "**Letter**"), the Claimant stated that it was "agreeable to entering into a Licence Agreement with… Boon Trading for the use of the [Walkway]".[36] Though this potential licence did not directly involve the Defendant as a contracting counterparty, the Letter was addressed *to the Defendant*. The Letter also made specific references *to the Defendant*. For example, the Letter stated that the subsidiary proprietor, being Boon Trading, was to be responsible for the *Defendant's* compliance with the relevant by-laws, and that either the *Defendant* or Boon Trading was to pay the legal fees for the preparation of the licence agreement.[37] Importantly, the letter made it clear that any licence agreement would include an express term permitting Boon Trading to sub-licence the Walkway *to the Defendant*.[38]

49 It is clear that the intent of the Letter was to effectively permit the Defendant to use the Walkway in accordance with its terms through Boon Trading as a contractual conduit. My finding in this regard is reinforced by the factual context against which the proposal in this Letter was made. This context is provided by an email sent by Mr Mottram, which was ultimately received by Mr Ong, an employee of Outocoz, on 25 July 2023 (the "**25 July Email**"). That 25 July Email contained very similar terms to those stated in the Letter, and, critically, expressly conveyed Boon Trading's intent to sub-licence the

[36] 3AB at Tab 15.

[37] 3AB at 73, at [4d] and [4g].

[38] 3AB at 73, at [4h].

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Walkway to the Defendant to Mr Ong. The relevant paragraph containing this stated intent is replicated below[39]:

> My client wishes to propose on a without prejudice basis to license the space outside this unit with permission for my client to sub-license it to its current tenant. Therefore, my client will be the direct contract party of the MCST for the license agreement.

50 It therefore does not lie in the Defendant's mouth to say that the Claimant had failed or refused to negotiate with the Defendant the terms of a formal agreement entitling it to use the Walkway. The evidence, as set out above, proves otherwise.

51 For the avoidance of doubt, the Defendant cannot claim that the Claimant had, subsequent to the Letter, obstructed the execution of the licence agreement in any way. The Defendant was given a deadline of 4 September 2023 to respond to the Letter,[40] which it was aware of but did not abide by.[41] Although Mr Mottram claims to have replied to the writer of the Letter, Mr Parwani, there is no proof of any such reply before me.[42] In contrast, there is contemporaneous evidence recording the Defendant's failure to reply by the deadline in the form of a second letter sent by the Claimant to the Defendant on 5 September 2023.[43] That second letter informed the Defendant that the offer contained in the Letter had lapsed owing to the Defendant's failure to reply by 4 September 2023.[44] The Defendant did not produce any evidence of a reply

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[39] 3AB at 59.

[40] 3AB at 73, at [6].

[41] Mr Ong's AEIC at [20] to [21]. NE on page 121, lines 26 to 30.

[42] NE on page 122, lines 27 to 30.

[43] 3AB at Tab 16.

[44] 3AB at 76, at [2] to [3].

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made before the deadline in response to this statement, whether in correspondence with the Claimant or as evidence tendered at trial. Thus, the logical conclusion I draw from all this is that it was the Defendant's failure to reply by the deadline which frustrated the drafting and execution of the licence agreement rather than anything the Claimant had done.

52 As for the Defendant's third pleaded ground, I have little difficulty in rejecting the argument. The statement uttered by Mr Ong in the 4 July 2023 voice message tendered by the Defendant[45], being that "we don't really have any objections, more on the terms and conditions of the use of the space *mah*" (the "**Statement**"), was not an unequivocal expression of the Claimant's agreement to the Defendant using the Walkway for its purposes. That Statement was clearly qualified by the phrase "more on the terms and conditions of the use of the space". In fact, the Statement was not even made to the Defendant; it seems, from what Mr Ong said at the beginning of the voice message, that this was a message intended for Ms Penny Ang ("**Ms Ang**"), Boon Trading's property agent[46]. Although Mr Ong was not seriously cross-examined on what he meant by this Statement, he explained in re-examination that what he meant by "terms and conditions" was that parties should meet, sign an agreement, and move forward.[47]

53 Based on Mr Ong's explanation and the objective meaning of the words he had used in uttering the Statement, I find that the Statement can only be interpreted as meaning that the relevant party – whether Outocoz or the Claimant – did not have objections to the Defendant using the Walkway

[45] 3AB at Tab 19, clip file name AUD-20230714-WA0008.

[46] Mr Mottram's AEIC at [19].

[47] NE on page 95, lines 19 to 27.

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provided that the terms and conditions governing the use of that space were ironed out and a formal agreement containing these agreed terms was eventually executed. This is in fact corroborated by the contents of the Letter, wherein the Claimant reiterated its lack of objection, in principle, to the Defendant using the Walkway, provided that the Claimant and Boon Trading entered into a licence agreement containing specific terms which would also bind the Defendant (via a sub-licence). But the fact remains that parties did not succeed in agreeing on these terms and conditions, and no such licence agreement was ever executed. There is no basis for the Defendant to elevate the Statement to the level of a binding representation of the Claimant's position. In any case, the Defendant did not, in its submissions,[48] identify any legal doctrine which renders the Statement legally relevant to the defence.

54 Finally, I deal with the unpleaded argument of "legitimate expectation" that the Defendant raised for the first time in Mr Mottram's AEIC[49] and repeated at trial.[50] According to Mr Mottram, he thought that the Defendant was entitled to use the Walkway on the same terms that Digital Kitchen had based on representations made to him by Mr Chambers and Ms Ang.

55 I reject this argument for three reasons. First, the Defendant failed to plead the material facts underpinning this argument (that is, the alleged representations made by Mr Chambers and Ms Ang). Second, the Defendant did not call Mr Chambers and Ms Ang as witnesses to prove that they had in fact made these representations to Mr Mottram. Thus, as the Claimant points out,[51]

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[48] Defendant's Closing Submissions ("**DS**") at [22].

[49] Mr Mottram's AEIC at [6e].

[50] NE on page 106, lines 4 to 17.

[51] CRS at [20].

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these representations – whatever their actual contents may be – are hearsay, and are therefore inadmissible for the truth of their contents unless an exception under Section 32 of the Evidence Act 1893 can be proved. The Defendant did not advance any argument as to the admissibility of this hearsay evidence. Hence, these representations are not proved, and the Defendant has no factual basis on which it can found its argument of "legitimate expectation". Third and finally, the Defendant neither identified nor explained any legal basis on which its "legitimate expectation" argument is founded.

56 In short, this argument fails for want of pleading, proof, and legal principle.

Issue 5: Arising from the Defendant's breaches, is the Claimant entitled to substantial damages?

57 To recapitulate, I have found that the Defendant breached the By-Laws and s 63(c) BMSMA. Flowing from the Defendant's breaches, the Claimant seeks the following reliefs:

(a) Various orders compelling the Defendant to remove the Outdoor Items from the Walkway and to abate the "strong odour" allegedly originating from the Unit;

(b) An injunction restraining the Defendant and its servants, employees, and agents from placing any objects/items on the Walkway;

(c) Damages at $800 per month, to be calculated from 31 July 2023 to the date the Outdoor Items were removed; and

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(d) Further and/or in the alternative, damages to be assessed.[52]

58 In its submissions, the Claimant did not elaborate on or address any of the specific reliefs it sought (i.e., the mandatory injunctions and the prohibitory injunction set out at [57(a)] to [57(b)] above). It only asked for damages to be awarded.[53] In the premises, I take the Claimant to have abandoned its claims at [24a] to [24c] of its SOC.

59 I therefore proceed to consider the question of damages. Section 32(10) of the BMSMA entitles, *inter alia,* a management corporation to apply to Court to recover damages for any loss or injury to person or property arising out of the breach of any by-law from any person bound to comply with the said by-law. In the absence of any submission on the legal basis of its claim for damages, I proceed on the basis that the Claimant relies on s 32(10) BMSMA to seek damages from the Defendant for any breach it is found to have committed.

60 The analysis is not so straightforward when it comes to s 63(c) BMSMA. Section 63(c) of the BMSMA does not form part of the statutorily-enacted by-laws under the Regulations (as defined by s 2(1) BMSMA). Hence, s 32(10) BMSMA, which only applies to the breach of *by-laws,* cannot serve as the foundation for the damages sought for the breach of s 63(c) BMSMA. The difficulty is compounded by the fact that there is no statutory equivalent to s 32(10) BMSMA applicable to a breach of s 63(c) BMSMA in the context of a management corporation suing an occupier. It behoved the Claimant to address not only the legal basis for its claim for damages arising from a breach of s 63(c) BMSMA, but also the applicable measure of damages – whether in contract or

[52] SOC at [24a] to [24e].

[53] CS at [6].

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in tort – that ought to follow. Without any argument on this point, there is no principled way for me to determine whether and to what extent the question of loss is relevant to the damages analysis and what the aims of an award of damages for a breach of s 63(c) BMSMA ought to be. For all these reasons, I decline to consider the question of damages arising from the Defendant's breach of s 63(c) BMSMA.

61 I therefore confine my decision in relation to the question of damages only to the Defendant's breach of the By-Laws.

62 As alluded to at [60] above, before I can quantify the appropriate quantum of damages the Claimant is entitled to, I must ascertain the appropriate measure by which these damages ought to be calculated. Before I can do *that,* I must first resolve a foundational issue: what is the nature of an action founded on a breach of the statutorily-enacted By-Laws? Are these actions in tort or in contract? The answer to this question is critical because it will determine the correct measure of damages to apply and consequently impact on the quantification of damages.

63 There is appellate authority for the proposition that the by-laws contained in the LTSA and the BMSMA are statutorily-enacted contracts which bind the management corporation, subsidiary proprietors, and, *inter alia,* any occupiers of a lot or part thereof (*Choo Kok Lin and another v Management Corporation Strata Title Plan No 240* [2005] 4 SLR(R) 175 ("***Choo Kok Lin***") at [21] to [23]). Support for that proposition was derived from s 41(4) LTSA (see *Choo Kok Lin* at [21]). The equivalent provision under the BMSMA is s 32(6). I set out the relevant provisions I have referred to below:

s 41(4) LTSA	**s 32(6) BMSMA**

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Without limiting the operation of any other provision of this Act, the by-laws for the time being in force bind the management corporation and the subsidiary proprietors and any mortgagee in possession (whether by himself or any other person), or lessee or **occupier**, of a lot or part thereof **to the same extent as if the by-laws had been contained in properly executed agreements on the part of** – (a) the management corporation with each subsidiary proprietor, mortgagee, lessee and occupier of a lot or part thereof, respectively; and (b) each subsidiary proprietor, mortgagee, lessee and occupier of a lot or part thereof with the subsidiary proprietor, mortgagee, lessee or occupier of the other lots in the same parcel, **to observe and comply with all the by-laws**. **[emphasis added]**	Without limiting the operation of any other provision of this Act, the prescribed by-laws and any by-laws made under this section or section 33 for the time being in force bind the management corporation and the subsidiary proprietors and any mortgagee in possession (whether personally or by any other person), lessee or **occupier** of a lot **to the same extent as if the by-laws —** (a) **had been signed and sealed** by the management corporation, and each subsidiary proprietor and each such mortgagee, lessee and occupier, respectively; and **(b) contained mutual covenants to observe, comply and perform all the provisions of the by-laws.** **[emphasis added]**

64 Although the High Court in *Choo Kok Lin* was referring to s 41(4) LTSA, s 32(6) BMSMA is drafted in largely similar terms to s 41(4) LTSA. The substance of both provisions is the same, namely the mutual agreement or covenant between the management corporation and the occupier of a lot. Thus, I see no reason why the holding in *Choo Kok Lin* should not be applied to cases arising under s 32(6) BMSMA.

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65 Applying the principle in *Choo Kok Lin,* the Claimant's cause of action premised on the breach of the By-Laws is founded on contract. Flowing from this, the appropriate measure of damages is to put the victim, so far as money can do it, in the same situation as if the contract had been performed (*Wishing Star Ltd v Jurong Town Corp* [2008] 2 SLR(R) 909 at [28]). The relevant contract here being the By-Laws, the Claimant ought therefore to be restored, so far as damages can achieve it, to the position it would have been in had the Defendant abided by the By-Laws.

66 The problem the Claimant faces in this regard is that it would be in the same position, loss-wise, if the Defendant had abided by the By-Laws and had refrained from placing the Outdoor Items along the Walkway. There is no evidence that the Claimant had suffered any damage, pecuniary or otherwise, as a result of the Defendant's breach. There is also no evidence of the sum of money that would suffice to place the Claimant in the position it would have been in had the Defendant adhered to its obligations under the By-Laws. In fact, the Claimant effectively undermined its own position on damages by stating, in closing submissions, that "there may not be any identifiable financial loss".[54]

67 In this regard, I reject the Claimant's attempt to rely on the terms of the abortive licence agreement, contained in the Letter, to justify its quantification of its loss.[55] One of the terms in the said Letter was that the Claimant would charge an $800/month licensing fee for the use of the Walkway.[56] Without proving its entitlement to substantial compensation for the breach of the By-Laws to begin with (see [66] above), the Claimant cannot seek to circumvent

[54] CS at [52].

[55] CS at [54].

[56] 3AB at 72.

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the damages analysis by simply asserting that this putative licence fee, multiplied by the period over which the breach persisted, is the price of the loss it suffered as a result of the breach.

68 Accordingly, I find that the Claimant has failed to prove its entitlement to substantial damages.

69 Unable to articulate the amount of compensation required to restore it to its pre-breach position, the Claimant advances an alternative argument for *Wrotham Park* damages, based on the decision in *Wrotham Park Estate Co Ltd v Parkside Homes Ltd and others* [1974] 1 WLR 798 ("***Wrotham Park***"), to be awarded in the sum of $16,400.[57]

70 The claim for *Wrotham Park* damages cannot be sustained. The primary reason for this is the Claimant's failure to plead its claim for *Wrotham Park* damages. As the Appellate Division of the High Court held in *Phua Seng Hua and ors v Kwee Seng Chio Peter and anor* [2022] SGHC(A) 11 ("***Phua Seng Hua***") at [39] to [42], *Wrotham Park* damages are special damages which the law does not presume and *which must therefore be specifically pleaded*. Here, the Claimant failed to plead the facts it relies on to establish the first and third legal requirements to establish a claim for *Wrotham Park* damages.[58]

71 For the sake of clarity, I set out the three legal requirements which must be satisfied before an award of *Wrotham Park* damages can be made:

(a) First, as a threshold requirement, the court must be satisfied that orthodox compensatory damages (measured by reference to the

[57] CS at [50] to [54].

[58] CS at [52] and [54].

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plaintiff's expectation or reliance loss) and specific relief are unavailable;

(b) Second, it must generally be established that there has been (in substance, and not merely in form) a breach of a negative covenant; and

(c) Third, it cannot be irrational or totally unrealistic to expect the parties to bargain for the release of the relevant covenant, even on a hypothetical basis. In other words, it must be possible for the court to construct a hypothetical bargain between the parties in a rational and sensible manner (*Turf Club Auto Emporium Pte Ltd and others v Yeo Boong Hua and others and another appeal* [2018] SGCA 44 ("***Turf Club Auto***") at [217]).

72 In respect of the first requirement, the Claimant failed to plead material facts to establish why ordinary compensatory damages *and* specific relief are unavailable to it in this case. This first requirement is critical in establishing the threshold applicability of *Wrotham Park* damages. In fact, at the commencement of the present suit, the facts were consistent with specific relief – such as injunctive relief – being available to the Claimant if it were to succeed in its claim. Our Courts have indeed issued mandatory injunctions for breaches of the statutory by-laws in the Regulations committed by subsidiary proprietors (see, for example, *The Management Corporation Strata Title Plan No 3564 v Lian Fong Credit Holdings Pte Ltd and others* [2023] SLR(StC) 529 and *Management Corporation Strata Title Plan No 2567 v Tan Eng Siang and another* [2025] SGDC 55). For this reason alone, the claim for *Wrotham Park* damages must fail.

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73 In respect of the third requirement, the Claimant did not plead the facts relevant to the construction of the hypothetical bargain between the parties (see *Turf Club Auto* at [230]). For example, the Claimant neither pleaded the surface area of the Walkway encroached upon by the Defendant's Outdoor Items, nor facts relevant to establishing an objective rate of compensation for such use (e.g., the market rate for licensing the use of sheltered walkways which form part of a development's common property). This failure to plead deprived the Defendant of an opportunity to lead evidence to challenge the Claimant's methodology and relevant factors used in constructing the hypothetical bargain called for by the third requirement (see *Phua Seng Hua* at [47]).

74 Furthermore, the Claimant cannot simply rely on the proposed $800/month licence fee stated in the Letter to make out this third requirement.[59] The third requirement focuses on the *objective value* of the benefit received by the Defendant, which is determined by an *objective calculation* by reference to a hypothetical bargain rather than the actual subjective conduct and position of the parties (see *Turf Club Auto* at [130] and [193]). The putative $800/month fee falls under the latter category rather than the former. To compound matters, the Claimant has provided neither a basis nor an explanation for how it arrived at this figure of $800, both of which are relevant considerations under the objective analysis. To put the point plainly, it cannot be that whatever sum the Claimant proposed in the Letter, as part of the draft licence terms, is necessarily equivalent to the objective value of the Claimant's loss.

75 I therefore conclude that the Claimant is not entitled to *Wrotham Park* damages for the Defendant's breach of the By-Laws. I would add that, although the Defendant did not appear to raise any argument pertaining to the Claimant's

[59] AD&CC at [18].

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purported loss and the quantification thereof, the burden still rests on the Claimant to prove these aspects of its case on a balance of probabilities before substantial damages can be awarded. This it has failed to do.

76 In the circumstances, despite the Claimant succeeding on the issue of liability, it has not succeeded in proving its loss and the quantum of its loss. The Claimant is therefore only entitled to nominal damages (*Youprint Productions Pte Ltd v Mak Sook Ling* [2023] 3 SLR 1130 at [5]). I find a sum of $1,000 to be appropriate, and accordingly give judgment for the Claimant in respect of the claim for the sum of $1,000.

Issue 6: As regards the counterclaim, did the Claimant breach any contract so as to entitle the Defendant to damages for loss of use of the Walkway?

77 Finally, I turn to address the counterclaim. The counterclaim cannot be sustained because the cause of action on which it is premised – namely, repudiation or a breach of contract – is factually unsustainable.[60] There cannot be a breach or a repudiation of a non-existent contract, and there was simply never any contract between the parties permitting the Defendant to use the Walkway. The counterclaim therefore fails from the outset.

78 Even if the Defendant was able to establish a recognised cause of action against the Claimant, I agree with the Claimant that there is insufficient evidence to prove the quantum of the Defendant's loss.[61] It will be recalled that the Defendant sought damages for loss it had allegedly suffered over two separate periods (see [6]). In my judgment, the arguments the Defendant relies

[60] ADTCC at [7A(a)(iii)].

[61] CS at [57] to [66].

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on to compute its loss are undermined by evidential and conceptual problems, and I reject them for these two main reasons. I explain.

79 The claim for damages for the period 15 June 2023 to 31 July 2023 (the "**2023 period**") fails for two reasons. First, the Defendant failed to adduce any evidence in Mr Mottram's AEICs to establish the quantum of its loss or how that quantum was derived. Second, Mr Mottram's explanation at trial – being that he apparently took Digital Kitchen's turnover figures to calculate the *Defendant's* loss – is without merit.[62] At the risk of stating the obvious, Digital Kitchen and the Defendant are two distinct legal entities conducting two separate businesses. There is no basis for Digital Kitchen's turnover to be used as a substitute for evidence of the Defendant's projected turnover for the period in question. Accepting the Defendant's argument would be tantamount to treating the actual turnover of one food and beverage business as a reliable proxy for the projected turnover of an entirely different business. This the Court declines to do. In any case, even if I were minded to adopt this method of calculating the Defendant's loss, there is no evidence before me of Digital Kitchen's turnover[63] for the same 2023 period beyond Mr Mottram's unsubstantiated assertion,[64] which is not sufficient evidence at all.

80 The claim for damages for the period May 2024 to July 2024 (the "**2024 period**") fails due to evidential insufficiency and the conceptual inaccuracies within the Defendant's method of calculating its alleged loss for this period.

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[62] NE on page 127, line 27, to page 128, line 3.

[63] Being allegedly $1,500 per day – see AD&CC at [25].

[64] NE on page 128, lines 4 to 10.

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This is so even if I accept that the figures reflected on the system-generated point-of-sale documents tendered by the Defendant as accurate.[65]

(a) First, there is no explanation as to how the Defendant arrived at the total "loss of business" of $150,000 as pleaded at [26] of his AD&CC. No calculations or formulae were set out in Mr Mottram's AEICs, and Mr Mottram was unable to explain how he obtained this figure under cross-examination.[66] Moreover, even if I were to consider the calculations the Defendant *now* relies on in his closing submissions,[67] those calculations do not produce a total loss of $150,000. Rather, they generate an alleged total loss of $79,946, which is almost *half* the Defendant's pleaded figure. Put simply, the Defendant's pleaded loss of $150,000 remains unexplained at the end of trial.

(b) Second, the Defendant's failure to properly account for its expenses over the 2024 period means that any figure it advances as representing its profit for that same period is necessarily inaccurate.[68] As Mr Mottram conceded, the pleaded figure of $150,000 does not factor in the Defendant's expenses at all.[69] That figure is therefore, by definition, not *profit*. Furthermore, the *new* figure of $79,946 which the Defendant has come up with in its submissions only takes into account a notional estimated expense rate of 20%.[70] This 20% rate is supported neither by expert evidence nor by any proof of market research.

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[65] 3AB at 310 to 316.

[66] NE on page 139, line 25, to page 140, line 8.

[67] DS at [82] to [85].

[68] CS at [64].

[69] NE on page 139, line 31, to page 140, line 3.

[70] DS at [80] and [85].

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Accordingly, it cannot be based on anything more than Mr Mottram's own opinion, which is inadmissible given that Mr Mottram was not put forward as an expert witness on these matters.

81 For the above reasons, the counterclaim is dismissed.

Conclusion.

82 The claim is allowed, but I only award the Claimant nominal damages of $1,000.

83 The counterclaim is dismissed.

84 If parties are unable to agree on costs, they are to file written submissions on costs and disbursements, limited to five pages, within two weeks from the date of this judgment.

Tay Jingxi
District Judge

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Tan Jin Song & Ng Wan Yun, Deborah (Havelock Law Corporation) for the claimant;
Mark Richard Mottram (self-represented party) for the defendant.

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