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

[2026] SGHC 25

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*

SUPPLEMENTAL JUDGMENT

[Land — Easements — Rights of way — Section 97A 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

[2026] SGHC 25

General Division of the High Court — Originating Application No 608 of 2025 and Summons No 1687 of 2025
Philip Jeyaretnam J
24 December 2025, 28 January 2026

30 January 2026 Judgment reserved.

Philip Jeyaretnam J:

Introduction

1 This supplemental judgment follows from my decision in *Management Corporation Strata Title Plan No 561 v Kosma Holdings Pte Ltd* [2025] SGHC 185 ("Judgment"). This was a case where the management corporation of Parklane Shopping Mall ("Mall"), Management Corporation Strata Title Plan No 561 ("MCST"),[1] primarily sought an easement of right of way through a service road ("Service Road"), which was the only way through which vehicles could access the Mall's loading/unloading bay ("Loading Bay"). The MCST's application for an easement was prompted by the Service Road's registered proprietor, KOSMA Holdings Pte Ltd ("KOSMA"),[2] charging refuse

[1] Lim Guang Yang Jordan's 1st Affidavit dated 12 June 2025 ("LGYJ-1") at para 6.

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

collection trucks parking fees for entry into the Service Road and installing structures which impeded the entry of vehicles into the Loading Bay. The facts can be found in the Judgment at [2]–[11].

2 In the Judgment (at [51]–[52]), I indicated that I would create an easement of right of way over the Service Road on Lot TS19-320M to the Loading Bay of the Mall on Lot TS19-319V: s 97A(1) of the Land Titles Act 1993 (2020 Rev Ed) ("LTA"). However, the third and final requirement under s 97A(2)(*c*) of the LTA, which requires the MCST to make all reasonable attempts to obtain the easement prior to the court making the order, was not yet satisfied. I thus granted "parties time to exchange proposals concerning the easement and leave to file supplementary submissions": Judgment at [53].

3 In this supplemental judgment, I will address four issues:

(a) the scope of the easement to be created under s 97A(1) of the LTA, including any conditions for or limitations on the easement and any compensation for its creation;

(b) interim prohibitory and mandatory injunctions sought by the MCST under HC/SUM 1687/2025 ("SUM 1687") until the conclusion of the proceedings or further order by the court;[3]

(c) whether 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";[4] and

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3 HC/SUM 1687/2025 Summons filed on 17 June 2025 ("Summons").

4 HC/OA 608/2025 Originating Application filed on 17 June 2025 ("Originating Application") at Prayer 5.

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(d) costs.

Events following release of the Judgment

4 Following my release of the Judgment on 17 September 2025, I met with counsel during a Judge's Case Conference on 29 September 2025 to check on their exchange of proposals for the easement. At the time, parties had yet to exchange proposals.

5 Parties exchanged proposals in October and November 2025: the MCST first sent its proposal on 17 October 2025, KOSMA then responded with a counter-proposal on 5 November 2025, and the MCST and KOSMA sent their final responses on 14 and 24 November 2025 respectively.[5] While parties were unable to reach a complete agreement on the scope of the easement, I am satisfied that through these communications, the MCST has made all reasonable attempts "to obtain the easement or an easement having the same effect directly from" KOSMA and s 97A(2)(*c*) of the LTA is satisfied.

6 Notably, parties were able to settle two issues. First, that the bollard located to the right of the Loading Bay be removed. KOSMA removed the bollard on or around 28 September 2025.[6] Second, KOSMA has also agreed to remove the barrier located between the Loading Bay and the Service Road (see the bollard circled in red in Diagram 1).[7]

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5 MCST's Supplementary Written Submissions dated 1 December 2025 ("CSWS") at Appendix 1; KOSMA's Supplementary Written Submissions dated 1 December 2025 ("DSWS") at paras 4–7.

6 DSWS at para 15; Annexes to KOSMA's Submissions ("DSWS Annexes") at p 8 (Letter from KOSMA's counsel dated 5 November 2025 ("5 November 2025 KOSMA Letter") at para 6.2); CSWS at para 10.

7 DSWS at para 16; DSWS Annexes at p 9 (5 November 2025 KOSMA Letter at para 7.2); CSWS at paras 11–12.

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Diagram 1: Photograph of barrier to be removed by KOSMA

Consequently, all the structures referred to by the MCST in its affidavit have either been or will be removed,[8] negating the need for the imposition of a mandatory injunction ordering KOSMA to remove the structures installed on the Service Road.[9]

Scope of easement and other orders

Disputed issues

7 I begin with the first issue on the scope of the easement and other orders concerning access to the Loading Bay. Parties were unable to reach an agreement on five points:

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8 DSWS Annexes at p 46 (Letter from MCST's counsel dated 14 November 2025 ("14 November 2025 MCST Letter") Annex-1 at S/N 2, Claimant's Comments), referencing LGYJ-1 at pp 126, 142, 143.

9 Originating Application at Prayer 2; Summons at Prayer 2.

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(a) whether the scope of the easement should include access to the Loading Bay by refuse collection trucks, contractors serving the collective benefit of subsidiary proprietors of the Mall, and/or delivery vehicles;

(b) whether the easement should be registered;

(c) whether there should be a provision for pedestrian access over the Service Road (*ie*, that KOSMA be required not to "impede or obstruct the entry of pedestrians");[10]

(d) whether the easement should expressly prevent KOSMA from imposing any further impediments or obstructions; and

(e) whether the MCST should be required to compensate and/or mitigate damage caused to the Service Road as a result of vehicles entering and leaving the Loading Bay.

8 I will give my decision on each of the issues in turn, keeping in mind that the easement to be created must be "reasonably necessary for the effective use" of the Mall, the use of the Mall must not be "inconsistent with the public interest" and KOSMA "can be adequately compensated for any loss or other disadvantage that will arise from the creation of the easement": ss 97A(1), 97A(2)(*a*), 97A(2)(*b*) of the LTA.

Access to the Loading Bay

9 I will first address access to the Loading Bay.

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[10] CSWS at para 13.

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10 The MCST's primary proposal is for KOSMA to relocate the electronic parking system ("EPS") gantry (along with the island it is on and the accompanying signpost) inwards by 6.5 metres along the Service Road towards the carpark ("Carpark"), of which KOSMA is also the subsidiary proprietor,[11] so as to allow vehicles to access the Loading Bay without being obstructed by the EPS gantry.[12] In support of this proposal, the MCST points to how the existing EPS gantry is non-compliant with the Land Transport Authority's Code of Practice for Vehicle Parking Provision in Developments (2019 Revised Edition) for failing to be located as far inside the development to achieve the longest queue and failing to meet the minimum dimensions for a lane, and how the current EPS gantry will be made redundant as the Service Road will become a road with two-way access once the construction of Peace Mansion is completed:[13] see Annex A of the Judgment.

11 If the EPS gantry is not relocated, the MCST's alternative proposal is that (a) the refuse collection trucks and contractors serving the collective benefit of subsidiary proprietors of the Mall (*eg*, renovation works for the Mall) be allowed to enter the Service Road without charge, and (b) any fees and charges for entry into the Service Road, such as for delivery vehicles, not exceed the parking rates for entry into the Carpark, with the allowance of a ten-minute grace period.[14]

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11 LSL-1 at para 10.

12 DSWS Annexes at pp 3–4 (Letter from MCST's counsel dated 17 October 2025 ("17 October 2025 MCST Letter") at para 6(d)).

13 CSWS at paras 20–21.

14 DSWS Annexes at p 47 (14 November 2025 MCST Letter at S/N 4, Claimant's Comments); CSWS at paras 23, 25.2, 37–38.

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12 KOSMA rejects MCST's primary proposal for the relocation of the EPS gantry, contending that it is an "entirely unreasonable proposal" which "disregards [KOSMA's] ownership rights over the Service Road". KOSMA submits that the presence of the gantry has "never caused obstruction or otherwise affected entry of vehicles into the Loading Bay".[15]

13 KOSMA also rejects the MCST's secondary proposal.

(a) For refuse collection trucks, KOSMA maintains that it is "open to a seasonal parking fee for refuse collection trucks (which is what the parties had previously agreed to)".[16] This refers to the seasonal parking fee of $500 payable per quarter which was first proposed by the MCST and that parties eventually agreed on sometime in or around January 2025,[17] before relations broke down between the parties.

(b) KOSMA rejects the MCST's proposal to allow "contractors serving the collective benefit of the subsidiary proprietors of the Mall" to enter the Service Road without charge. KOSMA contends that the present proceedings arose due to a dispute over access for refuse collection trucks, and the MCST had not raised any issues with its rates for other vehicles.[18] In any case, KOSMA further contends that a right of way for such contractors is "vague and unworkable" as there is no

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15 DSWS at para 22; DSWS Annexes at pp 9, 55 (5 November 2025 KOSMA Letter at para 7.4; Letter from KOSMA's counsel dated 24 November 2025 ("24 November 2025 KOSMA Letter") at S/No 4–6, Defendant's Further Comments para 1).

16 DSWS at para 23.

17 LGYJ-1 at para 47; LSL-1 at paras 49–52.

18 DSWS Annexes at p 55 (24 November 2025 KOSMA Letter at S/No 4–6, Defendant's Further Comments para 3).

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rational way of identifying who falls into the category and of specifically permitting the entry/exit of such contractors without charge.[19]

(c) For delivery vehicles, KOSMA confirms that it will maintain the current rate of $7.00 per half hour (or part thereof).[20] KOSMA confirms that "any future increase in rates will be at a reasonable level, taking into consideration prevailing commercial and market conditions".[21]

(d) KOSMA rejects the MCST's proposal for a ten-minute grace period. KOSMA contends that the MCST had not raised any issues with the absence of a grace period for entry to the Service Road prior to the commencement of proceedings. KOSMA also highlights examples of other developments which do not extend grace periods for access to their loading bays.[22]

14 The MCST's primary proposal involving relocation of the EPS gantry goes beyond what can said to be "reasonably necessary for the effective use" of the Mall. As the registered proprietor of the Service Road, the decision of where to locate the EPS gantry should remain KOSMA's prerogative. Compliance with the Land Transport Authority's Code of Practice is not directly relevant in this application. There are other ways to allow access to the Mall's Loading Bay and it is to these which I now turn.

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19 DSWS Annexes at p 56 (24 November 2025 KOSMA Letter at S/No 4–6, Defendant's Further Comments para 5).

20 DSWS Annexes at p 9 (5 November 2025 KOSMA Letter at para 7.4).

21 DSWS at para 23; DSWS Annexes at pp 9, 55 (5 November 2025 KOSMA Letter at para 7.4; 24 November 2025 KOSMA Letter at S/No 4–6, Defendant's Further Comments para 2).

22 DSWS Annexes at p 55 (24 November 2025 KOSMA Letter at S/No 4–6, Defendant's Further Comments paras 3–4).

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15 First, I address the *type of vehicles* for which an easement of right of way over the Service Road to the Loading Bay should be granted. I will address this in three categories. The first category is that of refuse collection trucks. The second is that of vehicles of contractors serving the collective benefit of subsidiary proprietors of the Mall. The third category is that of vehicles which the MCST accepts will have to pay a charge to enter the Service Road (*eg*, delivery vehicles).

16 For the first category, I accept that the easement of right of way must apply to refuse collection trucks. Excluding refuse collection trucks is the paradigm example of impairing the effective use of the Mall: Judgment at [50]. No charge is to be made for the entry of refuse collection trucks for the purpose of collecting refuse from the Bin Centre that is co-located with the Loading Bay.

17 In respect of the second category of vehicles of "contractors serving the collective benefit of the subsidiary proprietors of the Mall", an example would be contractors loading or unloading personnel or materials for the purpose of maintenance or repair of common property. This is a less common occurrence than the entry of refuse collection trucks. There is no reason why the right of way for such vehicles should not be conditional on payment of entry charges of some kind. Indeed, time-based charges for this category of vehicles would rightly incentivise efficient use of the Loading Bay, and by extension of the Service Road.

18 I would align vehicles in the third category (*eg*, vehicles delivering to subsidiary proprietors) with those in the second category. Again, the right of way for such vehicles should be conditional on payment of entry charges of some kind.

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19 As KOSMA points out, the MCST has not adduced evidence showing that the rates are prohibitively excessive or otherwise causing issues with the subsidiary proprietors of the Mall.[23] I place little weight on the practices adopted by other malls for parking rates and grace periods,[24] which say nothing about whether an easement is "reasonably necessary for the effective use" of the land in question without any condition imposed.

20 However, that does not mean that KOSMA should be free to charge whatever it wants for vehicles in the second and third categories. Recognising this point, KOSMA has represented that "any future increase in rates will be at a reasonable level, taking into consideration prevailing commercial and market conditions".[25] This proposal however leaves too much room for future dispute. A simpler approach commends itself, namely that the right of way of vehicles going to the Loading Bay is conditional on paying entry charges that are to be no higher than 1.5 times the rates imposed by KOSMA for vehicles going to the Carpark. This is a simple self-policing approach. The demands of the market will inform how KOSMA prices entry to the Carpark. Pegging the price for entry to the Loading Bay to 1.5 times that for the Carpark will ensure that "prevailing commercial and market conditions" will always be considered by KOSMA (or any subsequent owner of the Carpark and Service Road). At the same time, allowing the rate to use the Loading Bay to be slightly higher than that for the Carpark will incentivise users of the Loading Bay

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23 DSWS Annexes at p 55 (24 November 2025 KOSMA Letter at S/No 4–6, Defendant's Further Comments paras 2–3).

24 CSWS at paras 26, 28; DSWS Annexes at pp 55–56 (24 November 2025 KOSMA Letter at S/No 4–6, Defendant's Further Comments para 4).

25 DSWS at para 23; DSWS Annexes at p 9, 55 (5 November 2025 KOSMA Letter at para 7.4; 24 November 2025 KOSMA Letter at S/No 4–6, Defendant's Further Comments para 2).

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Registration of easement

21 The second issue is whether the easement to be created should be registered. The MCST contends that the easement should be registered in accordance with s 97 of the LTA and KOSMA "shall do or fulfil, or procure to be done or fulfilled, all actions, conditions and things necessary for the said registration of the Easement as soon as reasonably practicable".[26] KOSMA contends that it is not necessary for the easement to be registered and leaves it to the court's determination.[27]

22 I agree with the MCST that the easement must be registered for it to be binding. Section 97A(5) of the LTA makes clear that even an easement created by the court through the exercise of its powers under s 97A of the LTA would not "bind the land to which the benefit of the easement is to be made appurtenant *until it has been registered in accordance with section 97*" [emphasis added]. I thus order that the easement created shall be registered in accordance with s 97 of the LTA.

23 However, I do not think it necessary at this stage to impose any obligations on KOSMA with respect to registration. This is because the MCST has neither shown why it is unable to do and/or fulfil the "actions, conditions and things necessary" for registration of the easement under s 97 of the LTA on its own, nor has it shown any evidence supporting an inference that KOSMA would not co-operate with registering the easement. However, I grant parties

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[26] CSWS at p 21, S/N 1; DSWS Annexes at p 3 (17 October 2025 MCST Letter at para 6(a)).

[27] DSWS Annexes at p 54 (24 November 2025 KOSMA Letter at S/No 1, Defendant's Further Comments).

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liberty to apply should they be unable to settle the terms of the easement or effect the registration.

Pedestrian access

24 The third issue is whether the easement to be created should include a right of way for pedestrians. The MCST contends that a right of way for pedestrians is reasonably necessary as there are no restrictions against pedestrian entry via the Loading Bay. Additionally, the MCST contends that a right of way for pedestrians is also reasonably necessary to cater for the event that collection trucks, delivery vehicles and/or contractors carrying out works at the Mall are unable to pass through the EPS gantry "for whatsoever reason", such that cleaners, delivery personnel and/or workers have to enter the Service Road by foot to carry out their duties or works.[28] KOSMA contends that a right of way for pedestrians is "unnecessary" as (a) the Service Road and Loading Bay were never intended to be used by pedestrians (as is evident from the lack of any pedestrian footpath or walkway along the road leading up to the Service Road (*ie*, Kirk Terrace) and the Service Road), (b) there are manned 24-hour service phonelines for technical issues with the gantry arms and the gantry arms can be raised if required in any situation of emergency, and (c) allowing pedestrians would instead open KOSMA up to liability arising from injury caused to pedestrians.[29]

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[28] CSWS at pp 23–24, S/N 3; DSWS Annexes at pp 3, 46 (17 October 2025 MCST Letter at para 6(c); 14 November 2025 MCST Letter at S/N 3, Claimant's Comments); CSWS at paras 13–14, 16–18.

[29] DSWS Annexes at pp 9, 54 (5 November 2025 KOSMA Letter at para 7.3; 24 November 2025 KOSMA Letter at S/No. 3, Defendant's Further Comments); DSWS at paras 20–21.

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25 I agree with KOSMA that a right of way for pedestrians is unnecessary in these circumstances. The easement is not intended to cater for every possibility, but only for what is "reasonably necessary for the effective use" of the Mall. Pedestrian access is available from the main entrance at Selegie Road, while the Service Road was intended for *vehicles* entering the Loading Bay or the Mall's Carpark. The MCST has also failed to expressly specify the circumstances under which "cleaners, delivery personnel and/or workers have to enter the Service Road by foot to carry out their duties or works".[30] The mere possibility of technical issues with the EPS gantry is insufficient in view of the measures implemented by KOSMA (such as the 24-hour service phonelines and emergency mechanism for the gantry arms), as well as the lack of evidence showing a history of technical issues with the EPS gantry. Thus, the easement does not extend to a right of way for pedestrians.

Further impediments or obstructions

26 The fourth issue is whether the court should make an order expressly preventing KOSMA from imposing any *further* impediments or obstructions.

27 The MCST seeks an order restraining KOSMA "from impeding and/or obstructing the entry of vehicles into the [MCST]'s loading / unloading bay and rubbish bin centre by any means … including but not limited to the [KOSMA]'s installation of structures such as kerbs, bollards, fences and chains".[31] The MCST contends that such an order is necessary in view of KOSMA's previous actions to obstruct access to the Loading Bay, including installing a fence and a bollard on the Service Road (see [6] above), imposing administrative fees of

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30 DSWS Annexes at p 46 (14 November 2025 MCST Letter at S/N 3, Claimant's Comments); CSWS at paras 13–14, 16–18.

31 Originating Application at Prayer 1.

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$1,000 for each count of unauthorised entry, and charging access fees for refuse collection trucks: Judgment at [7]–[8].[32]

28 KOSMA contends that such an order is not necessary, highlighting that it has removed all obstructing structures, that it "will have no ability to chain up the Loading Bay and charge administration fees for access to the Loading Bay", and that it will in any case be implicit in the easement that the future installation of structures around the Loading Bay is prohibited.[33]

29 Impediments or obstructions to the exercise of the right of way will be impliedly prohibited by the grant of the easement. It is not necessary to go beyond this and grant an express order to that effect.

Contribution by the MCST

30 The fifth issue is whether the MCST should be required to compensate and/or mitigate damage caused to the Service Road as a result of vehicles entering and leaving the Loading Bay.

31 KOSMA seeks two types of contribution from the MCST, namely (a) contribution towards the future costs of maintenance, repairs and replacements of the portion of the Service Road fronting the Loading Bay, and (b) implementation of measures to mitigate or cover the damage being caused to the Service Road.[34] I address each of these in turn.

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32 CSWS at para 15.

33 DSWS at paras 17–19.

34 DSWS at paras 29–32.

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Future costs of maintenance, repairs and replacements

32 KOSMA seeks a condition that the MCST *equally* share the future costs of maintenance, repairs and replacements of the portion of the Service Road fronting the Loading Bay, where reasonably incurred.[35] KOSMA relies on the Australian case of *Rainbowforce Pty Ltd v Skyton Holdings Pty Ltd* [2010] NSWLEC 2 ("*Rainbowforce*") where the court granted an easement in the form of a right of carriageway. This was done under s 88K of the Conveyancing Act 1919 (NSW), which is *in pari materia* with s 97A of the LTA. In particular, the Land and Environment Court of New South Wales set out various factors to be considered in determining the "adequate compensation" under s 88K(2)(b) of the Conveyancing Act 1919 (NSW) (which is *in pari materia* with s 97A(2)(*b*) of the LTA) to be ordered in favour of the land to be burdened. This includes the costs of "subsequent repair and maintenance from time to time": *Rainbowforce* at [113].[36] KOSMA contends that the MCST should similarly compensate it for the damage caused to the Service Road arising from the easement, particularly from the spillage of dirty water from refuse collection trucks, the washing of rubbish bins within the Loading Bay, and vehicles improperly turning out of the Loading Bay and colliding with KOSMA's equipment.[37] KOSMA submits that the amount of such future costs cannot be assessed at this stage and thus proposes for costs to be shared equally, rather than being set at a fixed amount.[38]

33 The MCST proposes that it contributes a sum of $945 per year as compensation for maintenance of the Service Road. This quantum is based on

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35 DSWS at para 32.

36 DSWS at paras 25–26.

37 DSWS at paras 27–29.

38 DSWS at para 32.

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half the cost of resurfacing a 6.4m stretch of the Service Road fronting the Loading Bay (which is estimated at $18,900), amortised over ten years.[39] The MCST contends that parties should not be ordered to share the costs equally as KOSMA is already collecting revenue from the entry of vehicles and a large proportion of the traffic through the Service Road comprises vehicles entering KOSMA's Carpark.[40]

34 I agree with the MCST that KOSMA's collection of revenue from the larger proportion of traffic using the Service Road is significant in assessing any compensation for creation of the easement. However, the additional wear-and-tear from entry of refuse collection trucks is what needs to be considered. I proceed on the basis of the limited evidence adduced. I agree with the MCST that it is principally the 6.4m stretch of the Service Road fronting the Loading Bay that will be affected. In my view, it will be sufficient for it to be a condition of the easement that the MCST is to *equally* share the costs of subsequent maintenance, repairs and replacements incurred by KOSMA (or subsequent owners of the Service Road) in relation to this 6.4m portion only.

Measures to mitigate or cover the damage being caused to the Service Road

35 KOSMA seeks orders that the MCST implements a series of measures to mitigate damage that may be caused to the Service Road due to the establishment of the easement, including:[41]

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39 CSWS at paras 6.6, 30.

40 CSWS at para 31.

41 DSWS at paras 30–31.

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(a) restricting the entry of vehicles into the Loading Bay to certain timings, with the details of all delivery vehicles and personnel logged by the Mall's security guards;

(b) using smaller-sized refuse collection trucks; and/or

(c) procuring and maintaining an insurance policy covering any loss or damage caused to KOSMA's property or equipment located within the vicinity of the Loading Bay that is caused by any acts of third parties.

36 In my view, these measures go beyond the scope of what constitutes adequate compensation for KOSMA. Therefore, I do not grant orders in respect of these measures sought by KOSMA.

SUM 1687

37 Having dealt with the parameters of the permanent injunction and easement in HC/OA 608/2025 ("OA 608"), I now turn to the interim injunctions sought by the MCST in SUM 1687. The MCST filed SUM 1687 on 17 June 2025, which was the same day that it filed the originating application.

38 In SUM 1687, the MCST seeks the same injunctions as in the originating application (*ie*, (a) prohibitory injunction restraining KOSMA from impeding and/or obstructing the entry of vehicles into the Loading Bay, and (b) mandatory injunction ordering KOSMA to remove the structures installed on the Service Road), albeit on a temporary basis "in the meantime and prior to the conclusion of the proceedings in the present Originating Application or further order by the Court":[42] Judgment at [10]–[11]. The MCST sought these injunctions to allow for renovation works to the Mall's common area toilets to

[42] Summons at Prayers 1, 2.

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progress smoothly.[43] The MCST projected that these renovation works were "expected to commence in July 2025" and "last for approximately 6 months".[44]

39 SUM 1687 has been overtaken and superseded by my dealing with the main application. Accordingly, there is no need to make any orders on the summons and I decline to do so.

Whether $6,000 is a penalty

40 The MCST also seeks an order declaring that the $6,000 claimed by KOSMA for six counts of unauthorised entry into the Service Road is "an irrecoverable penalty and unenforceable".[45]

41 For context, KOSMA imposes an administrative fee of $1,000 for each count of unauthorised entry into the Service Road.[46] KOSMA alerts users of the Service Road to this through signs that it has put up on the Service Road (including at the EPS gantry).[47] The six counts of unauthorised entry asserted by KOSMA are for the refuse collection trucks contracted by the MCST evading payment for access to the Service Road on 5, 6, 9, 12, 13 December 2024 and 4 April 2025.[48]

42 The MCST contends that the administrative fee amounts to a penalty, which is unenforceable. The MCST contends that this court should consider the

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43 Lim Guang Yang Jordan's 2nd Affidavit dated 17 June 2025 ("LGYJ-2") at paras 12, 16.

44 LGYJ-2 at paras 15, 16, 18.

45 Originating Application at Prayer 5.

46 LSL-1 at para 47.

47 LSL-1 at pp 71–72.

48 LSL-1 at paras 46–47; LGYJ-1 at paras 46.2, 46.11.

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same factors that the UK Supreme Court in *ParkingEye Limited (Respondent) v Beavis* [2015] UKSC 67 ("*ParkingEye*") considered when determining whether a parking charge of £85 imposed for overstaying a two-hour time limit constituted an unenforceable penalty: *ParkingEye* at [100]. These factors include:

(a) whether the amount of £85 was "a sum which would be out of all proportion to [the carpark management's] interest or that of the landowner for whom it is providing the service";

(b) whether the motorists were "constrained to use this carpark as opposed to other parking facilities"; and

(c) whether the "payment structure in its carparks (free for two hours and then a relatively substantial sum for overstaying) and the actual level of charge for overstaying (£85) are common in the UK".

43 While the UK Supreme Court found that the £85 charge did not constitute a penalty, the MCST argues that the present case can be distinguished from *ParkingEye* as:

(a) the charge of $1,000 per unauthorised entry is out of proportion for the mere service of opening the EPS gantry for the refuse collection trucks to make a three-point turn to exit the Service Road. The MCST contends that a genuine estimation of the reasonable parking fees payable by the MCST for the entries by the refuse collection trucks could not exceed $500 per quarter, which is a sum that KOSMA had itself agreed to previously (see [13(a)] above);[49]

[49] MCST's Written Submissions dated 14 July 2025 ("CWS") at paras 54–55.

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(b) refuse collection trucks are constrained to use the Service Road as it is the only road through which the Loading Bay can be accessed by vehicular traffic and the only way for the refuse collection trucks to exit the Service Road is by making a three-point turn past the EPS gantry;[50] and

(c) the charge of $1,000 per unauthorised entry is a "far cry from the common practice of carpark charges in Singapore". The MCST raises the parking fees charged by the previous owner for each parking session of between $3.21 and $5.31 as an example.[51]

44 Preliminarily, KOSMA contends that the declaration cannot be granted as the administrative fees are claimed by K Parking Pte Ltd ("K Parking"), which is KOSMA's wholly-owned subsidiary, and not KOSMA. KOSMA relies on how the invoices for these fees were issued by K Parking and how it was K Parking that had commenced Small Claims Tribunal proceedings against the MCST over these fees.[52] In any case, KOSMA contends that, applying the principles in *Dunlop Pneumatic Tyre Co, Ltd v New Garage and Motor Co, Ltd* [1915] AC 79 (which were endorsed in *Denka Advantech Pte Ltd v Seraya Energy Pte Ltd* [2021] 1 SLR 631),[53] the administrative fee does not constitute a penalty as:

(a) the $1,000 fee imposed by K Parking for each unauthorised entry is not an extravagant or unconscionable amount. KOSMA relies on how "there have been numerous instances where the EPS gantry arm was

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50 CWS at para 56.

51 CWS at para 54.

52 KOSMA's Written Submissions dated 14 July 2025 ("DWS") at para 84.

53 DWS at paras 85–89.

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tampered with" by the MCST or the refuse collection company contracted by the MCST, and the cost to replace a damaged gantry arm is around $900;[54]

(b) since K Parking has put up clear signs stating the conditions of entry, users of the Service Road are taken to have acknowledged and accepted K Parking's terms (including payment of the administrative fees for any vehicle that evades payment) by choosing the enter the Service Road;[55] and

(c) the MCST and the refuse collection workers it has contracted should face the consequences for vandalising and/or committing fraud against K Parking and/or KOSMA for evading parking fees and potentially damaging the EPS gantry equipment.[56]

45 I invited counsel to file supplementary submissions on the question of agency which they did on 28 January 2026. In my view, this court has the power to grant the declaration against KOSMA, even though KOSMA was not the party who issued the invoices for the administrative fees. This is because K Parking had issued the invoices in its capacity as KOSMA's *agent*. KOSMA had appointed its wholly-owned subsidiary, K Parking, to manage and operate its Carpark and Service Road.[57] Even though the agreement between KOSMA and K Parking has not been put into evidence, it is sufficient that the principal has manifested assent to the agent acting on his behalf: Tan Cheng Han, *The Law of Agency* (Academy Publishing, 2nd Ed, 2017) at para 3.011. In

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54 DWS at para 87.

55 DWS at para 88.

56 DWS at para 89.

57 LSL-1 at para 15.

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subsequent correspondence with the MCST regarding the unauthorised entries, the letters were sent under KOSMA's letterhead. It was KOSMA who made the decision to "accept MCST's proposal of paying a seasonal parking fees [*sic*] of $500 per quarter" and mention was also made of "Our Management" as a collective body.[58] In law, K Parking is not KOSMA's tenant but its managing agent. Access to the Service Road is thus managed by K Parking on KOSMA's behalf. Therefore, the declaration (if any) may rightly be ordered against KOSMA as the registered proprietor of the Service Road.

46 I agree with the MCST that the administrative fee of $1,000 for each count of unauthorised parking constitutes an unenforceable penalty.

(a) I first highlight that the scope of the administrative fees, as stated on the signs put up by KOSMA, is limited to "[a]ny motorist who evades payment of parking fees by tailgating".[59] Contrary to KOSMA's assertions, the loss in question is not for damage caused to the EPS gantry arm, but rather for unpaid parking fees. Seen in this light, the administrative fee of $1,000 is extravagant and unconscionable in comparison with the greatest loss that could conceivably be proved to have followed from a motorist's failure to pay for parking fees. KOSMA's own parking fees for the Service Road and the Loading Bay is presently fixed at $7.00 per half hour (or part thereof),[60] such that a vehicle would have to be parked at the Loading Bay for close to three full days for the parking fees to amount to $1,000.

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58 LGYJ-1 at pp 169–171.

59 LSL-1 at pp 71–72.

60 LSL-1 at para 18.

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(b) Although motorists are aware of the risk of having to pay the high administrative fee, vehicles accessing the Loading Bay and/or the rubbish bin centre (such as the refuse collection trucks) are constrained as there is no other manner of access. Thus, I do not place much weight on the motorists' knowledge of the high administrative fee as evidence of its reasonableness: *cf ParkingEye* at [100].

(c) KOSMA has also failed to adduce any evidence demonstrating that such a high administrative fee for the evasion of parking fees is common in Singapore.

47 Therefore, I grant the declaration that the sum of S$6,000 claimed against the MCST on 5 December 2024, 6 December 2024, 9 December 2024, 12 December 2024, 13 December 2024 and 4 April 2025 is an irrecoverable penalty and unenforceable.

Costs

48 On the issue of costs, the MCST argues that KOSMA should be ordered to pay costs of $35,000 and disbursements totalling $3,500 to it for both OA 608 and SUM 1687.[61] For OA 608, the MCST contends that costs should be awarded in its favour due to KOSMA's unreasonable conduct which necessitated the commencement of proceedings,[62] and how it had succeeded in its primary remedy of the creation of an easement.[63] For SUM 1687, the MCST submits for

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61 MCST's Supplementary Written Submissions on Costs dated 16 December 2025 ("CSWSC") at paras 32–33.

62 CSWSC at paras 5–15, 19–21.

63 CSWSC at paras 16–18.

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costs to be in the cause, with it being entitled to costs due to the overlap in issues between OA 608 and SUM 1687.[64]

49 KOSMA by contrast argues that the MCST be ordered to pay costs of $30,000 (all-in) to it for both OA 608 and SUM 1687. For OA 608, KOSMA contends that there are no special reasons for the court to depart from the general position under s 97A(4) of the LTA – that costs for an application for a court-ordered easement under s 97A of the LTA ought to be borne by the applicant regardless of its outcome.[65] KOSMA argues that the MCST itself was unreasonable during the exchange of proposals regarding the easement and prior to the commencement of proceedings,[66] while KOSMA had conducted its defence reasonably.[67] The MCST also commenced its application based on a number of bare assertions, without providing any evidence to support its contentions.[68] For SUM 1687, KOSMA contends that the MCST should be ordered to pay costs as the MCST did not succeed in its application and there was also a clear lack of merits to SUM 1687.[69]

50 As pointed out by parties, where an easement is created by the court under s 97A, s 97A(4) of the LTA provides that "[t]he costs of the proceedings are payable by *the applicant*, unless the court otherwise orders" [emphasis added]. The crux of the inquiry lies in whether the respondent had "conducted its *defence* in a manner that was so unreasonable as to disentitle it to costs to

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64 CSWSC at paras 24–26.

65 KOSMA's Supplementary Written Submissions on Costs dated 24 December 2025 ("DSWSC") at paras 2.1, 3–4.

66 DSWSC at paras 5–12.

67 DSWSC at paras 17–18.

68 DSWSC at paras 13–16.

69 DSWSC at paras 19–20.

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which it was entitled" [emphasis added]: *Huber's Pte Ltd v Hu Lee Impex Pte Ltd* [2025] 3 SLR 85 at [79].

51 I agree with KOSMA that it had not conducted its defence in a manner that was so unreasonable that it should be deprived of costs. KOSMA had raised fair arguments on whether an easement and the injunctions should be granted and their appropriate scope and also agreed to some of the MCST's proposals (see [6] above). The MCST also did not succeed in SUM 1687. However, I do accept that KOSMA had taken some arguments further than it should. Moreover, I ruled in the MCST's favour on the point of the $6,000, which is separate from the arguments concerning the creation of an easement. In the round, I order costs to be paid by the MCST to KOSMA in the sum of $10,000, all-in.

Conclusion

52 In this case, the grant of the easement of right of way involves only the Service Road, which is any event used by vehicles accessing the Car Park. The right of way does not impair KOSMA's use of the Service Road. KOSMA is therefore adequately compensated for any loss or disadvantage arising from the creation of the easement by being permitted to impose charges on vehicles other than refuse collection vehicles accessing the Loading Bay and by providing that the MCST share costs of subsequent maintenance, repairs and replacement in the limited way that this judgment specifies.

53 In summary, I grant the following orders:

(a) An easement of right of way is granted over the Service Road for access to the Mall's Loading Bay and co-located bin centre:

(i) for refuse collection vehicles without charge; and

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(ii) for other vehicles needing access to the Loading Bay, on condition of payment of charges no higher than 1.5 times those applicable for the time being for entry to the Carpark.

(b) An order that it be a further condition of the easement that the MCST is to equally share the costs of subsequent maintenance, repairs and replacements incurred by KOSMA (or subsequent owners of the Service Road) in relation only to the 6.4m stretch of Service Road adjacent to the Loading Bay.

(c) A declaration that the sum of S$6,000 claimed against the MCST on 5 December 2024, 6 December 2024, 9 December 2024, 12 December 2024, 13 December 2024 and 4 April 2025 is an irrecoverable penalty and unenforceable.

(d) Costs to be paid by the MCST to KOSMA in the sum of $10,000, all-in.

Philip Jeyaretnam
Judge of the High Court

Subir Grewal and Shermaine Ng Shi Min (Aequitas Law LLP) for the claimant;
Kishan Pillay s/o Rajagopal Pillay (Breakpoint LLC) for the defendant.

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