

**BANGI RESORT & DEVELOPMENT CORPORATION SDN
BHD**
v.
HIMPUNAN SINAR SDN BHD

High Court Malaya, Shah Alam
Khadijah Idris J
[Civil Suits No: BA-22NCvC-508-12/2021]
27 April 2026

Case(s) referred to:

Ab Latef & Associates (M) Sdn Bhd v. Govindasamy Suppiah [2016] 4 MLRA 163; [2016] 5 MLJ 508; [2016] 10 CLJ 1 (refd)
Amm Joy v. Chuan Seng Sdn Bhd [2018] MLRAU 134; [2018] 5 MLJ 255 (refd)
Inverugie Investments Ltd v. Hackett [1995] 3 All ER 841 (refd)
Manakee v. Brattle [1970] 1 WLR 1607 (refd)
Public Bank Berhad v. Paul Cheah & Associates; Frankie Tan Lyn Seang (Third Party) [2012] MLRHU 1509 (refd)
Tenaga Nasional Berhad v. Bukit Lenang Development Sdn Bhd [2019] 1 MLRA 255; [2019] 1 MLJ 1; [2019] 1 CLJ 42; [2018] 8 AMR 372 (refd)
Terra Damansara Sdn Bhd v. Nandex Development Sdn Bhd [2006] 3 MLRH 443; [2006] 6 MLJ 24; [2006] 8 CLJ 657 (refd)
Tindok Besar Estate Sdn Bhd v. Tinjar Co [1979] 1 MLRA 81; [1979] 2 MLJ 229 (refd)
Wtwat Sdn Bhd v. Chew Meu Jong & Ors & Another Appeals [2018] MLRHU 1136 (refd)
Zen Courts Sdn Bhd v. Bukit Jalil Development Sdn Bhd & Ors [2019] MLRHU 1296 (refd)

Legislation referred to:

National Land Code, s 396(2)
Rules of Court 2012, O 40A r 3

Counsel:

For the plaintiff: Chok Zhin Teng (Alicia Ng Xin Yun with him); M/s Cheah Teh & Su
For the defendant: Elaine Foong Hui Ling; M/s Elaine, Yun & Associates

[Allowing Plaintiff's claim with costs of RM50,000.00.]

JUDGMENT

Khadijah Idris J:

(After Full Trial)



Introduction

[1] This is an action by the plaintiff, the registered proprietor of a parcel of land against the defendant, the owner of an adjoining parcel of land described for trespass.

[2] The plaintiff seeks, *inter alia*, a mandatory injunction requiring the defendant to remove the alleged encroaching structures, a prohibitory injunction to restrain further trespass, vacant possession of the encroached area, as well as damages and mesne profits arising from the alleged encroachment.

[3] The dispute between the parties proceeded for full trial. After considering the pleadings, evidence before this court and submissions of parties, this court allowed the plaintiff's claim and entered judgment in favour of the plaintiff. The reasons are stated below.

Factual Background

[4] The plaintiff is at all material times the registered proprietor of the land held under H.S.(D). 36944, P.T. No 30358 Mukim Kajang, District of Ulu Langat, Selangor ("Bangi Land").

[5] The plaintiff owns and operates a golf course known as "Bangi Golf Resort" on the Bangi Land and is at all material times in possession of the Bangi Land.

[6] The defendant is a private limited company incorporated in Malaysia. At all material times the registered proprietor of the land held under H.S.(D) 37172 P.T No 30536 Mukim Kajang, District of Ulu Langat, Selangor bearing the address No 47, Lorong Cempaka 2, Bangi Golf Resort, 43650 Bandar Baru Bangi, Selangor Darul Ehsan ("Bungalow Land").

[7] The defendant acquired the Bungalow Land pursuant to a Sale and Purchase Agreement entered into with the developer with the plaintiff and Perbadanan Kemajuan Negeri Selangor (see Bundle B pp 15–48 of the Common Bundle of Documents ("CBOD"))

[8] It is not in dispute that the Bangi Land and the Bungalow Land are adjoining parcels sharing a common boundary.

[9] The defendant constructed a bungalow on the Bungalow Land between 2006 and 2008. It is common ground that the construction of the bungalow itself was carried out with the requisite approvals and with the knowledge of the plaintiff.

Parties' Positions

[10] The plaintiff's case is that the defendant has, without consent, encroached onto the Bangi Land by constructing



(a) a brick-metal fencing and concrete wall ("Fencing"), thereby extending the defendant's back garden and/or landscape ("Garden") beyond the boundaries of the Bungalow Land and onto the Bangi Land; and

(b) drainage pipes from the Bungalow Land that extend onto the Bangi Land for discharging water onto the Bangi Land ("Drainage Pipes").

[11] The plaintiff relies on survey evidence, including the survey plan prepared by its licensed surveyor and the survey conducted by Jabatan Ukur dan Pemetaan Malaysia, which it says conclusively establishes the existence and extent of the encroachment. The plaintiff further contends that such encroachment constitutes a continuing trespass, entitling it to injunctive relief, vacant possession, and damages.

[12] The defendant denies that any encroachment has occurred and challenges the accuracy and reliability of the plaintiff's survey evidence. Alternatively, The defendant contends that the plaintiff had knowledge of and consented to the constructions, which it says were carried out as part of the development of the Bungalow Land. The defendant further asserts that the plaintiff's claim is premature on the basis that the land is held under qualified title, and in any event is barred by limitation and/or laches.

Issues And Findings

[13] The issues for determination are those set out in encl 16, which are reproduced below verbatim:

Penyata Isu-Isu Untuk Dibicarakan

1. Sama ada defendan telah tanpa kebenaran dan/atau kelulusan plaintif, membina:

1.1 Pagar ("Pagar") atas Tanah Bangi (seperti yang ditafsirkan di para 2 Pernyataan Tuntutan), dan dengannya memperluaskan (extended) taman belakang dan/atau landskap ("Taman") melebihi sempadan Tanah Banglo (seperti yang ditafsirkan di para 5 Pernyataan Tuntutan) dan mencerobohi ke atas Tanah Bangi; dan

1.2 Banyak paip-paip saliran bawah tanah daripada Tanah Banglo yang diperluaskan ke atas Tanah Bangi untuk pembuangan air ke atas Tanah Bangi ("Paip-paip Saliran")?

2. Sama ada terdapat sebarang pencerobohan dan/atau pencerobohan berterusan oleh defendan ke atas Tanah Bangi ("Pencerobohan") dan sama ada defendan telah dan/atau terus dalam pemilikan salah Kawasan Yang Dicerobohi (seperti yang ditafsirkan di para 14 Pernyataan Tuntutan)?



3. Sekiranya Soalan 2 dijawab secara afirmatif, di manakah lokasi dan apakah saiz kawasan-kawasan Tanah Bangi yang telah dicerobohi dan terus dicerobohi oleh defendan?
4. Sama ada plaintif telah berpengetahuan dan bersetuju akan kesemua binaan yang dibina oleh defendan di atas Tanah Banglo?
5. Sama ada plaintif telah mengalami sebarang kerugian dan/atau kerosakan disebabkan oleh Pencerobohan?
6. Apakah relif-relif yang plaintif berhak kepada?
7. Sama ada tuntutan plaintif terhadap defendan adalah premature memandangkan hak milik yang dipegang oleh defendan adalah hak milik sementara.
8. Sama ada tuntutan dan/atau saman yang difailkan oleh plaintif adalah dihalang/diberhentikan oleh Akta Had Masa dan laches?

[14] This court's analysis and findings on the aforesaid issues are set out below. Given that certain issues are closely interrelated both factually and legally, they will be considered together where appropriate.

Issues 1, 4 and 7 - Whether the defendant constructed The Fence, Garden And Drainage Pipes Beyond The Boundary Of The Bungalow Land Onto The Bangi Land, And If So, Whether Such Constructions Were Carried Out With The Plaintiff's Knowledge And Consent And Whether the Plaintiff's claim Is Premature By Reason Of the Defendant Holding A Qualified Title.

[15] The plaintiff contends that the impugned structures, namely the fence, garden and drainage pipes were constructed beyond the boundary of the Bungalow Land and onto the Bangi Land without its consent.

[16] The defendant disputes this and contends, *inter alia*, that the boundary between the two parcels is uncertain as both lands are held under qualified title. Such contention is without merits.

[17] The evidence of PW 1, an officer from Jabatan Ukur dan Pemetaan Malaysia is that the boundaries of both the Bangi Land and the Bungalow Land are determined by reference to the respective Pelan Akui. In his re-examination PW 1 confirmed that both parcels have final titles and that their boundaries and areas are derived from the Pelan Akui, which reflect measurements that have been surveyed and finalised. PW 1 also explained the significance of a Pelan Akui:

CZT: Terima kasih. Dan sekarang ini saya ingin merujuk kepada Bundle B6, ms 152, saya akan share screen. Dan jika En Hafizzuddin ingat, ini adalah pelan yang disediakan oleh private surveyor pihak Plaintif. Ada kenyataan di sana bahawa luas tanah Bangi adalah



32.3323 hektar dan rujukan perbandingan telah dibuat dengan hak milik sementara tanah tersebut di ms 152. Saya akan share screen. Dan ada perbezaan dibuat yang ditunjukkan. En Hafizzuddin boleh jelaskan kenapa ada perbezaan tersebut tak?

Hafiz [PW 1]: Ok, untuk perbandingan, ok, hak itu hak milik sementara adalah sebelum hak milik kekal. **Hak milik sementara kita tak, Pejabat Tanah tidak buat ukuran lagi.** So, untuk makluman semua, lot banglo dan juga lot Bangi ini telah pun mempunyai hak milik kekal, final title, sudah ada final title. So, dalam final title itu dah ada keluasannya. **Keluasan ini sama seperti mana dalam PA-PA yang dinyatakan...**

Judge: PA itu apa?

Hafiz: Yang Arif, yang PA itu adalah Pelan Akui. Pelan Akui yang mana tercatat di dalamnya luas tanah-tanah yang telah diukur. Manakala, sementara ini adalah luas yang belum diukur. Dan saya nak nyatakan dekat sini bahawa kedua-dua lot tadi, lot banglo dan juga lot **Bangi** telah pun mempunyai hak milik final title. Maknanya sebelum ini, **lot-lot tersebut telah pun diukur halus. Sudah ada luas yang muktamad dah.** So, dalam pelan tadi itu, **pelan pelbagai tadi, adalah menyatakan luas—yang daripada Pelan Akui, bukannya luas daripada hak milik sementara yang belum diukur.**

[Emphasis Added]

[18] PW 2 (a licensed land surveyor) likewise testified that his survey was conducted based on the Pelan Akui rather than the provisional measurements in the qualified title.

CZT: Peguam Defendan menunjukkan perbezaan tersebut dan mencadangkan pelan anda tidak tepat. Anda tidak bersetuju. Boleh jelaskan kenapa tidak bersetuju?

Fauzi [PW 2]: **Sebab pelan kita berdasarkan kepada Pelan Akui yang dikeluarkan oleh Jabatan Ukur.** Sedangkan keluasan yang dipaparkan dalam hak milik sementara adalah just random daripada Pejabat Tanah. Keluasan ini belum final. Keluasan yang final adalah daripada Pelan Akui dari Jabatan Ukur. Mengikut ukuran kita dan keluasan itu berdasarkan kepada Pelan Akui oleh Jabatan Ukur."

CZT: Maksud erti kata, En Fauzi pernah melihat Pelan Akui tersebut?

FAUZI: Ya, kita, **ukuran kita berdasarkan Pelan Akui daripada Jabatan Ukur.** "

[Emphasis Added]

[19] The critical documentary evidence, namely the Pelan Akui for the Bangi



Land and the Pelan Akui for the Bungalow Land can be found at CBOD Bundle B6 p 14 and CBOD Bundle B1 p 7 respectively, both of which were relied upon in the preparation of the survey plans.

[20] In this respect reference is made to s 396 of the National Land Code which provides as follows:

396 Manner in which survey is to be carried out

(1) For the purposes of this Act, land shall not be taken to have been surveyed until:

(a) its boundaries have been determined by right lines;

(b) its boundaries as so determined have been demarcated on the surface of the land by boundary marks or, if by reason of the configuration thereof or for any other cause the placing of boundary marks on the actual line of the boundary is to any extent impossible or impracticable, boundary marks have been so placed as to enable that line to be ascertained;

(c) the **area enclosed by its boundaries as so determined has been calculated;

(d) a ***lot number has been assigned thereto by the Director of Survey and Mapping; and

(e) a certified plan, showing the situation of the land, the position of its boundaries as so determined and of the boundary marks placed thereon and the area and lot number thereof, has been approved by the Director of Survey and Mapping.

(2) **Any plan approved by the Director of Survey and Mapping under para (1)(e) shall be filed in his office, and (without prejudice to the operation of s 49 in the case of land subsequently affected by any advance of the shoreline or of the bed of any river) shall be conclusive evidence of the boundaries and boundary marks of the land to which it refers, and of the *area and the *lot number thereof.**

[Emphasis Added]

[21] Premised on PW 1's oral testimony and the documentary evidence as in the Pelan Akui for the Bangi Land and Pelan Akui for the Bungalow Land and pursuant to s 396(2) of the NLC, these plans constitute conclusive evidence of the position and extent of the boundaries.

[22] This court also observes that the defendant did not adduce any expert or technical evidence to demonstrate that the boundaries are indeterminate or incapable of being fixed. No alternative survey or contrary plan was produced



to challenge the boundaries as reflected in the Pelan Akui.

[23] In the absence of such evidence, and in light of the statutory conclusiveness accorded to the Pelan Akui, this court is satisfied that the boundaries of the respective lands are sufficiently certain for the purpose of determining encroachment.

[24] Accordingly, this court finds that the plaintiff's claim is not premature.

[25] This court now turns to whether the impugned structures are located beyond those boundaries. The plaintiff relies on the survey evidence of PW 2 and the independent survey conducted by Jabatan Ukur dan Pemetaan Malaysia.

[26] PW 2, a licensed surveyor appointed by the plaintiff, prepared the survey plan entitled "Pelan Ukuran Demarkasi Dan Butiran Di Atas Sebahagian Lot 41079 (PT 30358), Bandar Baru Bangi, Daerah Ulu Langat, Selangor Darul Ehsan" dated August 2019 ("Survey Plan") of part of the Bangi Land. The Survey Plan together with the relevant photos is annexed as exh MF-2 to PW 2's affidavit encl 25 prepared pursuant to O 40A r 3 of the Rules of Court 2012 ("RoC 2012").

[27] The Survey Plan delineates the boundary between the Bangi Land and the Bungalow Land and identifies the encroached areas shaded in green and red. PW 2 states in encl 25 at para 5 that these shaded areas represent the encroachments. The said plan shows that these areas extend beyond the boundary of the Bungalow Land into the Bangi Land.

[28] PW 2 also prepared an aerial photo plan entitled "Pelan Foto Udara Bagi Gambaran Kedudukan Sebahagian Lot 41079 (PT 30358), Bandar Baru Bangi, Daerah Ulu Langat, Selangor Darul Ehsan" dated Jan 2023 ("Aerial Photo Plan") with the encroached areas marked as "lanskap" and "struktur binaan". Me a copy of the Aerial Photo Plan and the drone footage (in CD format) respectively annexed herewith and marked as exh MF-4 and exh MF-5 to encl 25.

[29] The findings of PW 2 are independently corroborated by the survey conducted by Jabatan Ukur dan Pemetaan Malaysia. The said Department's letter dated December 2022 ("JUPEM's letter") confirms that there is an encroachment measuring 244.980 square metres. A screenshot of the said letter is reproduced below:





[30] The physical existence of the structures is further corroborated by the photographs annexed to PW 2's Survey Plan (encl 25 at p 17, Photos 1–4) and the drone footage (encl 25 at p 19), which depict fencing and landscaped garden areas extending beyond the boundary.

[31] The defendant mounted several challenges to the plaintiff's survey evidence:

(a) It was contended that the areas shaded in green are merely described as "kebun" and are not labelled as encroachment. This argument is misconceived. The label attached to a feature does not determine its legal character. The issue is whether the feature lies beyond the boundary, and the plan clearly shows that it does.

(b) The discrepancy between PW 2's measurement (approximately 241 square metres) and the Jabatan Ukur dan Pemetaan's measurement (244.980 square metres) amounts to approximately 3.98 square metres



or about 1.6%. In this regard, the burden lies on the defendant to demonstrate that The discrepancy is material and falls outside any acceptable margin of error in surveying practice. In the present case, no evidence was adduced whether by way of expert testimony or recognised surveying standards to establish that a variance of this nature is impermissible or indicative of any error in the Jabatan Ukur dan Pemetaan measurement. In the absence of such evidence, this court is not in a position to conclude that The discrepancy is significant. On the contrary, the difference appears minor and has not been shown to affect the accuracy or reliability of the surveyed area. Accordingly, this court finds that The discrepancy is not material.

(c) The defendant's contention that PW 2's Survey Plan was not prepared for encroachment determination is contradicted by PW 2's affidavit (encl 25) that the plaintiff had instructed Juruukur FH Consultant to prepare a survey plan to determine whether there has been any encroachment by the defendant into the Bangi's Land.

(d) The defendant challenges the photographs in the survey plan on the basis that they do not exclusively depict its land. This court is satisfied with PW 2's explanation that Photos 1 to 4 relate to the defendant's structures. In any event, the identification of encroachment is primarily based on the survey measurements rather than the photographs.

[32] Crucially, the defendant did not call any expert surveyor nor produce any alternative survey plan. In the absence of rebuttal evidence, the plaintiff's survey evidence stands unchallenged in substance.

[33] Having found that the structures extend beyond the boundary, this court now considers The defendant's contention that such constructions were carried out with the plaintiff's knowledge and consent.

[34] The defendant contends that all works were completed between 2006 and 2008. In stark contrast, the defendant's own solicitors' letter dated 9 December 2019 ("Defendant's 2019 letter") states that the Fencing and Garden were constructed in 2014 and the Drainage Pipes were installed in 2019. Given that the defendant's letter is a critical contemporaneous document, a screenshot of the said letter is reproduced below





ELAINE, YUN & ASSOCIATES
Advocates & Solicitors
Registrants & Practising
Registered Trademark Agents
Company Secretarial Services

Elaine Foong Hui Ling
林清玲
LLB (Hons), Solicitor-at-Law (Middle Temple)

Ng Kang Yui
黃廣輝
LLB (Hons), LLAMU

Chen Chin Kook
曾鎮福
Solicitor-at-Law (Malaya)

Office Address:
No. 122 & 124, 2124/2,
Semenyang, 47301 Petaling Jaya,
Selangor Darul Ehsan, Malaysia

Tel: +603 7997 2338/2339
Fax: +603 7996 9388
e-mail: eyn@elaineyun.com

Operating Hours: 100am - 5.30pm

<p>KETUA PECAWAI KORPORAT</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; text-align: center;">PUSA</td> <td style="width: 50%; text-align: center;">FUSE</td> </tr> <tr> <td style="width: 50%; text-align: center;">FPP</td> <td style="width: 50%; text-align: center;">FVB</td> </tr> <tr> <td style="width: 50%; text-align: center;">FPU</td> <td style="width: 50%; text-align: center;">FVS</td> </tr> <tr> <td style="width: 50%; text-align: center;">FPC</td> <td style="width: 50%; text-align: center;">FVP</td> </tr> </table> <p>MAJLIS LELAKSI SILA BERCANG SILA TELATI TUNJANGAU PERKATAAN</p>	PUSA	FUSE	FPP	FVB	FPU	FVS	FPC	FVP	<p>PERHAT KONTROL KEKAWAJAN SELATAN PERSEKUTUAN KEAJARAN NEGARA SELATAN</p> <p style="font-size: 1.2em; font-weight: bold;">16 DEC 2019</p> <p>PERSEKUTUAN KEAJARAN NEGARA SELATAN "THE COLLEGE" TUNJANG PERKATAAN</p>
PUSA	FUSE								
FPP	FVB								
FPU	FVS								
FPC	FVP								

Ruj. Tuar: (Sila Nasihat)

Ruj. Kami : EY/CRJ.5/19/PGM/EP

9hb Disember, 2019

Perbadanan Kemajuan Negeri Selangor
Bangunan Ibu Pejabat PKNS,
No. 2, Jalan Indah 14/8,
Sesyen 14,
40000 Shah Alam,
Selangor Darul Ehsan.

Serahan Tanggap

(M. 14-h Sili Subaidan)

TANPA PREJUDIS

Per: Pemohonan Ubahsua Struktur Cerun Persempadanan Sebahagian Tanah Hakmilik P.T. No. 30358, Mukim Kajang, Daerah Hulu Langat, Negeri Selangor ("Hartanah tersebut") Perjanjian Jual Beli Bertarikh 15th November 2005

Kami dengan hormatnya merujuk kepada perkara di atas di mana kami bertindak bagi pihak Himpunan Sinar Sdn Bhd.

Untuk makluman Tuan anakkuam kami merupakan pemilik berdaftar bagi Hartanah tersebut yang beralamat di No. 47, Lorong Cempaka 2, Bangi Golf Resort, 43650 Bandar Baru Bangi, Selangor Darul Ehsan. Anakkuam kami telah membeli dan mendirikan sebuah Banglo di atas Hartanah tersebut pada tarikh 15th November 2005. Pihak Pengurusan Bangi Golf Resort & Development Corporation Sdn Bhd telah menebang dan memotong pokok-pokok di lereng bukit di bahagian belakang dan bahagian tepi rumah anakkuam beberapa bulan lepas dan kerja-kerja ini telah menyebabkan hakisan yang teruk dan pergerakan tanah berlaku di sekeliling Hartanah tersebut, kerja-kerja ini juga telah menyebabkan kawasan di lereng tersebut terbakis dan salah satu pokok telah tumbang ke bahagian dalam rumah anakkuam kami dan telah menyebabkan tetapan kersakan pada tembok, atap dan lantai tembok, kejadian ini menjadi lebih teruk apabila tibanya musim hujan. Maka oleh kejadian ini anakkuam kami terpaksa membuat saluran paip yang ditusam sedalam 3 ke 4 kaki kedalam tanah bersula dari atas lereng menuju turun ke lereng bawah dan disambungkan ke longkang utama, dan paip saluran itu juga telah ditutup dengan baik oleh pihak anakkuam kami.

Untuk pengetahuan tuan, longkang utama di bawah lereng juga tidak diselenggara dengan baik oleh pihak Bangi Golf Resort, dan ini menyebabkan air hujan tidak dapat disalurkan dengan baik dan ini juga menyebabkan hakisan di lereng tersebut, tujuan saluran paip ini dibuat adalah kerana tidak mahu terjadi sesuatu yang buruk dan diluar jangkaan yang mungkin boleh menyebabkan rumah anakkuam kami runtuh atau mengakibatkan kehilangan nyawa.

Untuk pengetahuan tuan juga, pihak Bangi Golf Resort ingin menbuang struktur konkrit yang telah dibina oleh anakkuam kami pada tahun 2014, pihak Bangi Golf Resort juga telah mengetahui struktur konkrit tersebut telah dibina pada masa tersebut dan pihak pengurusan Bangi Golf Resort tidak memberi apa-apa halangan ataupun amaran apabila kerja itu dilaksanakan, dan pihak anakkuam saya menganggap ini sebagai tidak halangan dari pihak Bangi Golf Resort.

...2



-2-

Struktur kokkrit itu telah dibina di atas lereng bersebelahan kawasan rumah anakkuam kami (sila rujuk pada gambar) dan tiada apa-apa aktiviti di kawasan tersebut, tempat tersebut juga tiada gangguan bagi pemain-pemain golf kerana tempatnya di puncak bukit yang curam. Struktur kokkrit itu juga tidak menghalang aktiviti dan kerja harian bagi pihak pengurusan dan pekerja Bangi Golf Resort.

Sehubungan dengan itu, pihak Bangi Golf Resort & Development Corporation Sdn Bhd telah mengemukakan anakkuam kami supaya meruskan struktur tembok tersebut melalui satu surat tawaran bertarikh 18 November 2019.

Berdasarkan yang dinyatakan di atas, surat balasan dan arahan dari peguam Bangi Golf Resort, anakkuam kami mencadangkan perbincangan penyelesaian secara baik dimana kawasan yang telah dibina tembok tersebut dijual dengan harga bersesuaian kepada anakkuam kami. Keluasan yang kami cadangkan untuk penyelesaian adalah lebih kurang 1,013 kaki persegi dan kami cadangkan harga RM8 satu kaki persegi sahaja. Cadangan harga ini adalah berdasarkan kecuraman tanah tersebut yang tidak boleh dipergunakan bagi pihak tuan tanah untuk apa-apa pembinaan yang akan mendatangkan keuntungan komersil kerana terletak di atas puncak lereng bukit yang curam.

Pihak anakkuam kami juga akan mempertimbangkan cadangan harga yang bersesuaian dari pihak tuan.

Jesabail dan kebulutan agers pihak PKNS adalah sangat kami harapkan supaya tiada prasangka buruk pada pembeli lot yang juga adalah client PKNS yang baik.

Yang benar,

s.k. anakkuam

[35] In *Tindok Besar Estate Sdn Bhd v. Tinjar Co* [1979] 1 MLRA 81; [1979] 2 MLJ 229, the Federal Court cautioned that where oral testimony conflicts with contemporaneous documentary evidence, the latter ought to be preferred, as subsequent recollection is inherently less reliable especially if the witness has a personal interest or their oral account conflicts with documentary evidence (see also *Ab Latef & Associates (M) Sdn Bhd v. Govindasamy Suppiah* [2016] 4 MLRA 163; [2016] 5 MLJ 508; [2016] 10 CLJ 1 (CA); *Wtwt Sdn Bhd v. Chew Meu Jong & Ors & Another Appeals* [2018] MLRHU 1136).

[36] This is further supported by The evidence of PW 4 that no such encroachments were observed in 2013 and were only discovered in 2019.

[37] In these circumstances, this court finds that the impugned structures were constructed after the completion of the defendant's bungalow and were not part of the original approved works.

[38] Having found that the structures extend beyond the boundary, this court now considers The defendant's contention that such constructions were carried out with the plaintiff's knowledge and consent.

[39] The defendant's case is that all constructions were carried out between 2006 and 2008 and were known to and approved by the plaintiff.

[40] This court accepts that the plaintiff had knowledge of the construction of



the bungalow between 2006 and 2008. However, the critical question is whether such knowledge extends to the impugned structures.

[41] On the totality of the evidence, this court finds that the fence, garden and drainage pipes were not part of the original bungalow construction but were constructed subsequently. The basis of such findings is as follows:

- (a) Defendant's 2019 letter expressly states that the fencing and garden works were carried out in 2014 and that the drainage pipes were installed in 2019;
- (b) The approved building plans as at 2010 do not reflect the presence of any fencing or extended garden beyond the boundary, indicating that such structures were not part of the original approved work;
- (c) The evidence of PW 4 (see Q & A 5 of PW 4's witness statement encl 45) is that no such encroachments were observed in 2013 and that the encroachments were only discovered in 2019. This evidence is consistent with the timeline set out in the defendant's contemporaneous correspondence ie Defendant's 2019 letter and has not been displaced by any credible contrary evidence.

[42] In law, consent to trespass must be clearly established. As stated in *Terra Damansara Sdn Bhd v. Nandex Development Sdn Bhd* [2006] 3 MLRH 443; [2006] 6 MLJ 24; [2006] 8 CLJ 657, trespass is constituted by entry or placement of objects on land without lawful justification.

[43] This court finds that the defendant has failed to establish any consent by the plaintiff to the construction of the impugned structures. There is no documentary evidence of approval, no correspondence evidencing consent, and no witness testimony that the plaintiff agreed to any extension of structures beyond the boundary. The Defendant's 2019 letter does not assert any express approval but indicates that the works were carried out on the defendant's own initiative. This court further accepts The evidence of PW 4 that the encroachments were only discovered in 2019, and in the absence of prior knowledge, the defence of acquiescence cannot arise.

[44] The defendant's argument on acquiescence is likewise not made out. This court accepts PW 4's evidence that the encroachments were only discovered in 2019. In the absence of knowledge, there can be no acquiescence.

[45] Further, the Defendant's 2019 letter indicates that it proceeded on an assumption that there would be no objection. Such an assumption does not amount to consent in law.

[46] In the premises, this court finds that the fence, garden and drainage pipes were constructed beyond the boundary of the Bungalow Land and onto the Bangi Land, and that such constructions were carried out without the plaintiff's knowledge or consent.



[47] Accordingly, this combined issue is answered in favour of the plaintiff.

Issues 2, 3 And 8 – Whether The Defendant's Acts Constitute Trespass And/Or Continuing Trespass, Whether The Defendant Is In Wrongful Possession Of The Encroached Area, The Location And Extent Of The Encroachment And Whether The Plaintiff's Claim Is Barred By Limitation And/Or Laches

[48] Having found that the defendant constructed the fence, garden and drainage pipes beyond the boundary of the Bungalow Land and onto the Bangi Land without the plaintiff's consent, the next issue is whether such acts constitute trespass in law and whether the defendant is in wrongful possession of the encroached area.

[49] The law on trespass is well established. In *Tenaga Nasional Berhad v. Bukit Lenang Development Sdn Bhd* [2019] 1 MLRA 255; [2019] 1 MLJ 1; [2019] 1 CLJ 42; [2018] 8 AMR 372, the Federal Court affirmed that trespass consists of any unlawful and direct interference with land in the possession of another, including the placing or fixing of objects on such land.

[50] Similarly, in *Terra Damansara Sdn Bhd (supra)* this court held that trespass includes entering upon land, remaining on it, or projecting objects onto it without lawful justification.

[51] Applying these principles, this court finds that the defendant's acts in erecting fencing, extending its garden and landscaping, and installing drainage pipes onto the Bangi Land constitute direct physical intrusions onto the plaintiff's land. The location of these encroachments is clearly established by PW 2's Survey Plan, which delineates the boundary between the Bungalow Land and the Bangi Land and shows that the defendant's fence, garden and related features extend beyond that boundary into the Bangi Land.

[52] The size and extent of the encroachment are also clearly proved. PW 2's Survey Plan and affidavit (encl 25) identify the encroached portions by reference to the shaded areas extending beyond the boundary, and this is independently corroborated by the JUPEM survey and its accompanying letter, which confirms that approximately 244.980 square metres of the Bangi Land have been encroached upon.

[53] Taken together, the survey evidence establishes that a substantial and quantifiable portion of the Bangi Land which is approximately 241 to 244.980 square metres has been encroached upon by the defendant. This constitutes a clear and direct physical intrusion onto the plaintiff's land.

[54] In the absence of any lawful justification or consent, this court finds that the defendant's acts amount to trespass.

[55] This court finds that the trespass is continuing in nature. This is established by PW 2's Survey Plan and the JUPEM's survey as confirmed in JUPEM's letter the presence of the encroaching structures at the time of



surveys conducted in 2019, 2021, and 2022 respectively. There is no evidence before this court that the defendant has removed the fence, the extended garden, or the drainage pipes. The defendant's own case, namely that no encroachment exists, necessarily implies that the structures remain in situ.

[56] Significantly, the defendant does not assert that the structures have been dismantled. Instead, it maintains that no encroachment exists. This position necessarily implies that the structures remain in situ.

[57] In *Terra Damansara Sdn Bhd (supra)*, it was held that where objects remain on another's land without consent, the trespass continues for as long as those objects remain, giving rise to a fresh cause of action from day to day.

[58] Applying this principle, this court finds that the defendant's trespass is a continuing trespass.

[59] This court also finds that the defendant is in wrongful possession of the encroached area.

[60] PW 2's Survey Plan shows that the encroached portion has been enclosed within the defendant's fencing and incorporated into its garden. PW 2 confirmed in cross examination that the green shaded area represents the defendant's "kebun". By enclosing and utilising that portion of land, the defendant has exercised exclusive control over land belonging to the plaintiff without lawful authority. Such occupation constitutes wrongful possession.

[61] The next related issue is The defendant's contention that the plaintiff's claim is barred by limitation and/or laches.

[62] The defendant's limitation defence is premised on the ground that the impugned constructions were completed between 2006 and 2008. However this court has already found based on, *inter alia*, the Defendant's 2019 letter, that the Fence and Garden extension were constructed in 2014 and the Drainage Pipes in 2019.

[63] This is further supported by The evidence of PW 4 that no such encroachments were observed in 2013 and were only discovered in 2019, as well as The approved building plans which do not show the impugned structures.

[64] Accordingly, the factual premise underlying the defendant's limitation defence is not made out.

[65] More fundamentally, this court has found that the trespass is continuing in nature.

[66] This court finds that the plaintiff's claim is not time-barred. The encroachment, comprising the Fence, Garden extension and Drainage Pipes identified in PW 2's Survey Plan and confirmed by the JUPEM's letter, remained on the Bangi Land up to the time of the filing of the action and the



trial. In law, where a trespass consists of the continued presence of structures on another's land, each day that those structures remain constitutes a fresh cause of action. The plaintiff's claim is therefore not time-barred.

[67] As regards laches, the defendant bears the burden of establishing delay, knowledge, and prejudice.

[68] This court finds merit in The evidence of PW 4 that the plaintiff only became aware of the encroachment in 2019. This evidence is consistent with the absence of such structures in The approved building plans and has not been displaced by any contrary evidence. Following such discovery, the plaintiff engaged surveyors and commenced the present action. There is no evidence of inordinate delay or of any prejudice suffered by the defendant arising from the timing of the plaintiff's claim.

[69] Further, the defendant has not demonstrated any prejudice arising from the alleged delay. There is no evidence that the defendant altered its position in reliance on any conduct of the plaintiff.

[70] In these circumstances, the defence of laches is not made out.

[71] In the premises, this court finds that the defendant has committed trespass, that such trespass is continuing in nature, and that the defendant is in wrongful possession of the encroached area. This court further finds that the plaintiff's claim is neither barred by limitation nor defeated by laches.

Issues 5 And 6 – Whether the Plaintiff Has Suffered Loss And/Or Damage As A Result Of The Encroachment, And The Reliefs To Which the Plaintiff Is Entitled

[72] Having found that the defendant has encroached onto the Bangi Land without the plaintiff's consent and that such encroachment constitutes a continuing trespass, this court now considers whether the plaintiff has suffered loss and/or damage and the appropriate reliefs to be granted.

[73] The plaintiff contends that it has suffered loss arising from the deprivation of the use and enjoyment of the encroached area, as well as the adverse impact of water discharge from the defendant's drainage pipes onto the Bangi Land.

[74] Under the law, trespass to land is actionable *per se* and it is not necessary for a plaintiff to prove actual damage in order to establish liability. Nevertheless, this court finds, on the evidence, that there has been actual interference with the plaintiff's proprietary rights.

[75] The encroachment is established by the survey evidence of PW 2 and the survey stated in JUPEM's letter which confirms that approximately 241 to 244.980 square metres of the Bangi Land have been encroached upon. PW 2's Survey Plan further shows that this area has been enclosed and utilised by the defendant as part of its garden, described as "kebun".



[76] This court finds that by reason of such encroachment, the plaintiff has been deprived of the use and enjoyment of that portion of its land. The evidence shows that the defendant has exercised exclusive physical control over the encroached area by enclosing it within its fencing and incorporating it into its landscaped garden. This constitutes a direct interference with the plaintiff's possessory rights.

[77] This court also takes into account the evidence relating to the Drainage Pipes. PW 2 states in his affidavit encl 25 that underground Drainage Pipes extend from the Bungalow Land into the Bangi Land, and the plaintiff's pleaded case is that these pipes discharge water onto the Bangi Land. Although the precise extent of the area affected by such discharge is not quantified, the existence of the Drainage Pipes and their discharge constitutes a further interference with the condition and use of the land.

[78] The defendant has not adduced any evidence to rebut the plaintiff's case on interference. In particular, there is no evidence that the encroached area remained accessible to or usable by the plaintiff, nor any evidence contradicting the existence of the drainage discharge.

Injunctive Reliefs

[79] The plaintiff sought for a mandatory injunction requiring the defendant to remove the impugned structures, namely the fence, the extended garden and landscaping, and the drainage pipes encroaching onto the Bangi Land.

[80] This court is satisfied that this is an appropriate case for the grant of a mandatory injunction. The encroachment involves a defined and substantial portion of the plaintiff's land, as established by PW 2's Survey Plan and the survey conducted by Jabatan Ukur dan Pemetaan as stated in JUPEM's letter and remains under the control of the defendant.

[81] This court finds that damages alone would not be an adequate remedy. To permit the defendant to retain the encroached land upon payment of damages would effectively sanction a continuing invasion of the plaintiff's proprietary rights. The plaintiff, as registered proprietor, is entitled to the restoration of its land.

[82] There is no evidence before this court that the removal of the structures would cause such disproportionate hardship to the defendant as to justify refusing injunctive relief. The structures in question, namely fencing, landscaping, and drainage pipes, are capable of removal and do not present any insurmountable practical difficulty.

[83] In these circumstances, it is just and equitable to require the defendant to remove all structures erected on the Bangi Land and to restore the affected portion of the land.

[84] This court also finds that a prohibitory injunction is warranted. In view of the defendant's continued denial of encroachment and its ongoing occupation



of the disputed area, there is a real risk of further interference in the absence of such an order.

[85] The plaintiff is further entitled to vacant possession of the encroached area, being approximately 241 to 244.980 square metres of the Bangi Land, upon removal of the offending structures.

General Damages

[86] As regards damages, the plaintiff is entitled to general damages for trespass.

[87] It is well established that trespass to land is actionable *per se*. A plaintiff is therefore entitled to damages even in the absence of proof of actual loss. More specifically, the law recognises that a trespasser who makes wrongful use of another's land is liable to pay a reasonable sum for such use.

[88] In *Amm Joy v. Chuan Seng Sdn Bhd* [2018] MLRAU 134; [2018] 5 MLJ 255, the Court of Appeal, adopting the Privy Council decision in *Inverugie Investments Ltd v. Hackett* [1995] 3 All ER 841 affirmed the "user principle", namely that a plaintiff is entitled to recover a reasonable rent for the wrongful use of his property, even if no actual loss is proven and even if the trespasser derives no actual benefit. The measure of damages is therefore the reasonable value of the use of the land.

[89] The plaintiff relies on the valuation evidence of PW 3, a qualified valuer and a Director of AJC Property Surveyors Sdn Bhd who prepared a report assessing the annual market rental for the encroached area measuring approximately 241 square metres. The valuation report is attached as exh SS-2 ("Valuation Report") to PW 3's affidavit encl 24 prepared pursuant to O 40A r 3 of the RoC 2012. The Valuation Report includes a detailed table setting out the annual rental values from 1 January 2013 to 14 July 2013 together with the methodology and adjustments applied.

[90] This court is satisfied that the relevant period for the assessment of damages ought to commence from the time the encroachments were constructed. Based on the Defendant's 2019 letter which this court has accepted as more reliable than the defendant's oral assertions, the Fence and Garden were constructed in 2014. Accordingly, the plaintiff is entitled to general damages calculated from 2014 until the date the encroachments are removed.

[91] The defendant challenged the Valuation Report on several grounds. This court finds that these challenges are without merit:

- (a) The defendant contends that the encroached area has no commercial value because it is a steep slope. This contention is not supported by evidence. The photograph in Appendix E of the Valuation Report does not depict a near-vertical slope as alleged. More importantly, PW 3 testified in re-examination that sloping land



may still have substantial value, citing examples of high-value residential areas such as Bukit Tunku and Country Heights, where properties on sloping terrain command premium value due to factors such as view and exclusivity. This court finds the explanation of PW 3 to be credible.

(b) The defendant contends that the Valuation Report is flawed because it is based on PW 2's Survey Plan and does not account for the gradient of the land. This argument is misconceived. PW 2's Survey Plan is relied upon to identify the boundaries and extent of the encroachment, not to determine valuation. The valuer's role is to assess the value of the land based on its characteristics, and there is no requirement that the survey plan account for gradient.

(c) The defendant submits that the Valuation Report is unreliable because it was prepared based on instructions from the plaintiff and does not rely on tenancy comparables. This court finds no merit in this contention. It is entirely proper for a valuer to prepare a report based on instructions. PW 3 has explained in his report that he applied a yield-based approach, including adjustments to derive a fair and reasonable annual rental value. The absence of direct tenancy comparables does not render the valuation unreliable where a reasoned methodology has been applied.

(d) The defendant challenges the use of comparables from around 2013. In this respect this court is inclined to accept PW 3's explanation (in his affidavit encl 24) that the valuation was carried out over a long period, and that year-by-year adjustments were incorporated into the rental assessment. The use of earlier comparables does not invalidate the valuation where appropriate adjustments have been made.

(e) The defendant contends that the Valuation Report improperly calculates a lump sum as though the land were sold. This is a mischaracterisation. The valuation table provides a structured basis for determining annual rental values over time, consistent with the user principle, and does not amount to a sale valuation.

[92] Crucially, the defendant did not adduce any expert valuation evidence to rebut the plaintiff's valuer's report. This court is therefore left with unchallenged expert evidence on the appropriate measure of damages. In these circumstances, this court accepts the valuation evidence of PW 3 as a reasonable basis for assessing general damages.

[93] Accordingly, this court awarded general damages in form of market rental of the land encroached namely 241 square metres as set out in the Table at p 29 of PW 3's Valuation Report, from 2014 until the encroachment is removed.

Special Damages

[94] At para 16.2 of their statement of claim the plaintiff claims the sum of



RM499.57 being fees paid to Jurukur FH Consultant before the pleadings were filed. This item has been strictly proved, based on the following evidence:

(a) Testimonial evidence: para (iii)(a) of Q&A12 in the witness statement of PW4 (CBOD Bundle E.45 pp 12–13);

(b) Documentary evidence:

(i) Invoice issued by Jurukur FH Consultant (CBOD Bundle B6 p 107); and

(ii) Proof of payment (CBOD Bundle B6 p 79).

[95] The evidence clearly establishes that the said sum was incurred and paid prior to the commencement of the action. There is no challenge to the authenticity of these documents.

[96] Accordingly, the plaintiff's claim for RM499.57 is allowed.

[97] This court has considered the plaintiff's claim for recovery of expenses incurred for further investigation and for the attendance of experts at trial. The established principle is that a successful party may recover, as part of costs, expenses reasonably and necessarily incurred for the conduct and proof of its case, provided that such expenses are not separately claimed as damages.

[98] In *Manakee v. Brattle* [1970] 1 WLR 1607, it was recognised that expenses relating to witnesses, including those which might otherwise have been claimed as damages, may be recoverable as costs so long as they are proper and justified in quantum. This approach has been adopted locally. In *Public Bank Berhad v. Paul Cheah & Associates; Frankie Tan Lyn Seang (Third Party)* [2012] MLRHU 1509, the High Court allowed, in addition to costs, expenses incurred for expert reports and the attendance of experts in court. Similarly, in *Zen Courts Sdn Bhd v. Bukit Jalil Development Sdn Bhd & Ors* [2019] MLRHU 1296, costs relating to the preparation of expert reports and securing expert attendance were permitted.

[99] In the present case, this court finds that the plaintiff has adduced sufficient evidence to establish that it incurred costs in engaging experts for purpose of preparing reports and securing the expert attendance in court. Such engagement was necessary to identify, verify, and quantify the encroachments.

[100] The plaintiff engaged Jurukur FH Consultant, being its appointed surveyor, to prepare a survey report and aerial drone footage of the fencing and garden. The evidence of PW 4 at paras (iii) (a) and (iii) (b) of Q & A 12 in his witness statement confirms that the plaintiff paid a sum of RM3,361.57 for these services. This is supported by the invoices and receipts exhibited at p 107 of CBOD Bundle B6 and CBOD Bundle B7 at pp 10 and 13. This court accepts that these services were necessary to ascertain the existence and extent of the encroachment. The plaintiff's claim under this head is therefore allowed.



[101] The plaintiff engaged Jabatan Ukur dan Pemetaan Malaysia to conduct an independent survey. PW 4 confirmed at para (iii) (c) of Q & A 12 in his witness statement that a sum of RM1,000.00 was paid for this purpose. This is corroborated by JUPEM's letter which sets out the survey findings. This court finds that the engagement of the Jabatan Ukur dan Pemetaan Malaysia provided independent verification of the encroachment and was therefore reasonably incurred. The plaintiff's claim under this head is therefore allowed.

[102] The plaintiff engaged AJC Sdn Bhd, being its valuer, to prepare a valuation report. PW 4 testified at para (iii) (d) of Q & A 12 in his witness statement that the plaintiff paid RM2,000.00 and remains liable for an outstanding sum of RM2,611.00 for these services. This is supported by the proof of payment and invoice at pp 8–9 of CBOD Bundle B7. The valuation report was necessary to assess the value of the encroached land and the damages arising therefrom. This court therefore finds that these costs were reasonably incurred. The plaintiff's claim under this head is therefore allowed.

[103] The plaintiff also relies on evidence that it has agreed to pay attendance fees for its experts PW 2 (surveyor) and PW 3 (valuer) to testify in court.

[104] This court accepts that the plaintiff has incurred and is contractually liable to incur, attendance fees for its experts, namely RM1,300.00 per day for PW 3 (valuer) and RM4,800.00 per day for PW 2 (surveyor), as evidenced by the letters dated 24 August 2022 (CBOD Bundle B7 at p 5) and 9 July 2020 (CBOD Bundle B7 at p 3). The evidence shows that both PW 2 and PW 3 attended Court and testified. In the absence of any challenge by the defendant as to the reasonableness of these rates and there being no evidence that such sums are excessive, this court finds that these attendance costs were reasonably incurred and are recoverable as part of the plaintiff's costs. The plaintiff's claim under this head is therefore allowed.

Conclusion

[105] Premised on the foregoing reasons, this court allowed the plaintiff's claim and made the following orders:

- (a) Reliefs as prayed for in paras 22.1, 22.2, and 22.3 of the statement of claim dated 17 December 2021;
- (b) General and special damages as set out in paras 86–104 above;
- (c) Pre-judgment and post-judgment interest on the sums awarded for General and special damages at the rates as prayed for in paras 22.4 (ii) and 22.4 (iii) of the statement of claim dated 17 December 2021; and
- (d) Costs fixed at RM50,000.00 to be paid to the plaintiff.

