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A CRITIQUE OF THE STRATA MANAGEMENT ACT'S 'SOCIAL LEGISLATION' PURPOSE IDENTIFIED IN *INNAB SALIL v VERVE SUITES MONT' KIARA* [2020] 12 MLJ 16 (FC)

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Abstract

This case note provides a critique of the 'Social Legislation' purpose of the *Strata Management Act 2013* identified in *Innab Salil & Ors v Verve Suites Mont' Kiara* [2020] 12 MLJ 16 ('*Verve Suites*'). This case note suggests that the 'social legislation' purpose identified in *Verve Suites* achieved two purposes. First, it identified the Act's broad legislative purpose and guided its statutory interpretation. Second, it provided a normative rationale which justified why it should be read as taking precedence over other legislation. However, it is suggested that the words 'social legislation' applied to the *Strata Management Act 2013* may be a misnomer. It is proposed that the Federal Court should reconsider a restatement of its findings on the 'social legislation' purpose of the *Strata Management Act 2013*.

Keywords: Social Legislation, Strata Management Act, Statutory Interpretation, Harmonious Construction, *Lex Specialis*, *Generalibus Specialia Derogant.*

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SUATU KRITIKAN TERHADAP TUJUAN 'PERUNDANGAN SOSIAL' AKTA PENGURUSAN STRATA YANG TELAH DIKENAL PASTI DALAM *INNAB SALIL v VERVE SUITES MONT' KIARA* [2020] 12 MLJ 16 (FC)

Abstrak

Nota kes ini memberi kritikan terhadap tujuan 'Perundangan Sosial' Akta Pengurusan Strata 2013 yang terkandung dalam *Innab Salil & Ors v Verve Suites Mont' Kiara* [2020] 12 MLJ 16 (*'Verve Suites'*). Nota kes ini mencadangkan bahawa tujuan 'perundangan sosial' yang dikenal pasti dalam *Verve Suites* mencapai dua tujuan. Pertama, ia mengenal pasti tujuan perundangan akta yang lebih luas dan membantu tafsiran berkanun. Kedua, ia menunjukkan rasional normatif yang menegaskan mengapa ia perlu dibaca sebagai keutamaan berbanding perundangan yang lain. Walau bagaimanapun, adalah dicadangkan bahawa perkataan 'perundangan sosial' yang digunakan untuk *Akta Pengurusan Strata 2013* mungkin tidak bersesuaian. Mahkamah Persekutuan dicadangkan untuk mempertimbangkan semula pernyataan semula penemuannya mengenai tujuan 'perundangan sosial' *Akta Pengurusan Strata 2013*.

Kata Kunci: Perundangan Sosial, Akta Pengurusan Strata, Tafsiran Berkanun, Pembinaan Harmoni, *Lex Specialis, Generalibus Specialia Derogant.*

In *Innab Salil v Verve Suites Mont' Kiara*, the Federal Court, in resolving the apparent conflict between s 120 of the National Land Code and s 70 of the *Strata Management Act 2013*, emphatically stated that the *Strata Management Act 2013* was 'without doubt, a social legislation'.[1] This led to the Court deciding that the operation of s 70 of the *Strata Management Act 2013* should be read to supersede provisions of s 120 of the National Land Code.[2]

This case note provides a critique of the 'Social Legislation' purpose of the *Strata Management Act 2013* identified in *Innab Salil & Ors v Verve Suites Mont' Kiara* [2020] 12 MLJ 16 ('*Verve Suites*').

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1 *Innab Salil & Ors v Verve Suites Mont' Kiara Management Corporation* [2020] 12 MLJ 16 (FC), 28 [26].

2 Ibid 28 [23], 34 [49].

This case note suggests that the 'social legislation' purpose identified in *Verve Suites* achieved two purposes. First, it identified the Act's broad legislative purpose and guided its statutory interpretation. Second, it provided a normative rationale which justified why the *Strata Management Act 2013* should be read as taking precedence over other legislation. However, it is suggested that the words 'social legislation' applied to the *Strata Management Act 2013* may be a misnomer. It is proposed that the Federal Court should reconsider a restatement of its findings on the 'social legislation' purpose of the *Strata Management Act 2013*.

Part I provides an overview of the legislative framework surrounding strata short-stay lets. Part II analyses the types of legal issues that arise in Strata Management. Part III gives a summary of the Federal Court's decision in *Verve Suites*. Part IV provides a comment and critique of the Federal Court's decision in *Verve Suites*. Part V suggests that the Federal Court's finding that the *Strata Management Act 2013* was 'social legislation' is overly broad and may be a misnomer. Part VI concludes.

I AIRBNB REGULATION IN STRATA-TITLE SUBDIVIDED BUILDINGS AND LAND

The last decade saw the meteoric rise of the sharing economy and the use of private housing for short-stay letting – brought about predominantly by AirBnB's entry into Malaysia in 2013.[3] The use of private housing, and in particular, strata-title subdivided buildings, for

[3] Kashmirjit Kaur HS, "Airbnb & Malaysian Stratified Homes," Halim Hong & Quek Advocates and Solicitors, last modified 12 August 2018), accessed 25 December 2022, https://hhq.com.my/article/airbnb-malaysian-stratified-homes-2/ archived at https://perma.cc/AXP6-X5DT. See also, "Hosting on Airbnb gains momentum in Malaysia amidst growing appetite for travel," *Business Today*, 30 November 2022, accessed 25 December 2022, https://www.businesstoday.com.my/2022/11/30/hosting-on-airbnb-gains-momentum-in-malaysia-amidst-growing-appetite-for-travel/ archived at https://perma.cc/9XLU-2XFD.

short-stay letting, has not been without resistance, legal debate,[4] and pushes for public and private regulation.[5]

Given the paucity of specific legislation targeted at regulating short-stay lets,[6] short-stay lets are currently regulated through the application and interpretation of non-specific public sources of regulation – namely, strata title and strata management legislation and subsidiary legislation,[7] local government legislation and subsidiary

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4 Eg, Matdura S, "Are short term rentals like Airbnb legal? Here's 5 things property owners should know," iproperty.com.my, last modified 7 December 2021, accessed 25 December 2022, https://www.iproperty.com.my/guides/is-short-term-rental-airbnb-legal-74128 archived at https://perma.cc/QN7Z-VUYV; See also, eg, *O'Connor (senior) and others v The Proprietors, Strata Plan No. 51* [2017] UKPC 45.

5 Eg, Nor Asiah Mohamad, "Saying 'Yes' or 'No' to Short-Term Holiday Letting in Stratified Properties in Malaysia," *International Journal of Business and Society* 21(S1) (2020): 137; Matdura (n 4); Zafirah Al Sadat, Mun Yee Tong and Peter Aning Tedong, "Public Users Perception of Airbnb in Malaysia: Should we Regulate?," *Property Management* 38(5) (2020): 627; Cindy Co, "Illegal, Short-Term Rentals in your Condo?," C*hannel NewsAsia*, last modified 1 March 2020, accessed 25 December 2022, https://www.channelnewsasia.com/singapore/report-illegal-short-term-rentals-singapore-condo-airbnb-778781 archived at <https://perma.cc/XS4X-X32M.

6 May Fong Cheong, "Purposive Approach and Extrinsic Material in Statutory Interpretation: Developments in Australia and Malaysia," *Journal of the Malaysian Judiciary* (2018) (July): 1, 3 (n 12), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3411965; Nor Asiah Mohamad (n 5) 149-150.

7 Eg, Tan Liat Choon et al, "New Strata Rights in Malaysia" (paper presented at the 2nd Sustainability Initiatives: Case Studies in Malaysia, Philippines and Indonesia and International Conference on Urban Studies, 2016) https://people.utm.my/tlchoon/files/2015/08/38-New-Strata-Rights-in-Malaysia-SIMPI-2016.pdf. For further discussion on strata title and strata management, see eg, Jing Zhi Wong, "Towards Enforceable Standards, Rules and Rights in Strata Management: An Analysis," *International Islamic University Malaysia Law Journal* 27(2) (2019): 397, 401-410. I am grateful to the Penang Institute (in particular, Ong Siou Woon and Dato' Dr Ooi Kee Beng) and my parents for their support while parts of the research for that article were carried out between December 2018 and January 2019.

legislation,[8] and the National Land Code;[9] and private sources of specific regulation – namely, strata management corporation by-laws (which have binding force as a statutory contract).[10] Given the paucity of specific legislation targeted at regulating short-stay lets, strata management corporations have a significant role in the regulation of short-stay lets in strata-title communities, both as a source of regulation, and administrator of regulation. Typically, the strata management corporation is the site at which disputes about the way parcels in subdivided buildings are managed and regulated arise.[11]

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[8] See discussion in Jeyakuhan S K Jeyasingam, "Malaysia – Penang Proposes Guidelines Regulating Short-Term Accommodation – A Commentary," Conventus Law, last modified 1 December 2022, accessed 25 December 2022, https://conventuslaw.com/report/malaysia-penang-proposes-guidelines-regulating-short-term-accommodation-a-commentary/ archived at https://perma.cc/FD96-483J; See further, Nuramira Binti Mazlan and Amanda Pang, "Did the Federal Court Actually Ban Airbnb," Late Night Laws, last modified 26 October 2020, accessed 25 December 2022, https://latenightlaws.com/did-the-federal-court-actually-ban-airbnb/ archived at https://perma.cc/SMC8-UQKJ.

[9] The National Land Code was enacted to consolidate, amongst others, the laws relating to land and land tenure, registration of title to land and of dealings therewith. On the sources of law applicable to short-term lets, see discussion in Mohd Syahril Ibrahim and Azlina Mohd Hussian, "Pemakaian Undang-undang Terhadap Perkhidmatan Penginapan Kediaman Jangka Pendek di Malaysia," *International Journal of Law, Government and Communication* 6(25) (2021): 85; Nur Huzaifah Zainal et al, "Practicalities of Strata Lease Schemes in Malaysia" (paper presented at the 10th AMER International Conference on Quality of Life, Penang Malaysia, March 16-17, 2022) 233, 235-236, https://ebpj.e-iph.co.uk/index.php/EBProceedings/article/view/3271/1843; Rozlinda Abdullah et al, "Legal Issues Relating to the Relationship Between the Landlord and Tenant in Malaysia," *Malaysian Journal of Social Sciences and Humanities* 8(1) (2023): 1.

[10] *Strata Management Act 2013* (Act 757) s 70(2)-(3); See Wong (n 7) for further discussion.

[11] Further discussion, see eg, Wong (n 7) 420, 438; See also, Tan Wee Vern, "Proposed Framework for Two Tier Management Corporation for Integrated Strata Development" (PhD Thesis, Universiti Teknologi Malaysia, July 2022).

II TYPES OF LEGAL ISSUES IN STRATA MANAGEMENT DISPUTES AND THEIR RESOLUTION

Legal issues that arise before strata management corporations can be roughly aggregated into two categories.

The *first* category ('Questions of Statutory Interpretation') involves questions about whether a by-law made by a management corporation is valid vis-à-vis the *Strata Management Act 2013*. This typically involves statutory interpretation of the *Strata Management Act 2013* and characterization of the by-law;[12] including, one or more questions of whether the by-law in question:

1. Was inconsistent with the by-laws prescribed under the regulations made under section 150 of *Strata Management Act 2013*.[13]

2. Was made for the purposes of regulating the control, management, administration, use and enjoyment of the subdivided building or land and the common property, including matters

[12] For discussion on the relevant general principles, see *Sodalite Sdn Bhd & Ors v 1 Mont' Kiara and Kiara 2 Management Corp & Ors* [2021] 12 MLJ 116 (HC), [28], [50]; *Hong Leong Equipment Sdn Bhd v Liew Fook Chuan* [1996] 1 MLJ 481, 509-10 (Gopal Sri Ram JCA); for criticism that purposive construction of private contract (insofar as by-laws are private contracts given statutory force): *Luggage Distributors (M) Sdn Bhd v Tan Hor Teng* [1995] 1 MLJ 719, 752-3 (Gopal Sri Ram JCA, with whom VC George JCA agree).

[13] *Strata Management (Maintenance and Management) Regulations 2015*, P. U. (A) 107, rr 5, 28, sch 3; By contrast, the *Strata Management (Compounding of Offences) Regulations 2019* is not relevant here, because these regulations only concern the Commissioner of Buildings' power to compound offences. For further discussion on the 2019 regulations, see eg, Ainul Ashiqin Ahmad Shuhaimi et al, "Enforcements and Offences Under the Strata Management Act," *Planning Malaysia* 20(1) (2022): 36, 37 et seq; On statutory interpretation of a schedule (insofar as the prescribed by-law schedule of the Act is concerned) of an act of parliament, see *Hong Leong Equipment Sdn Bhd v Liew Fook Chuan* [1996] 1 MLJ 481, 542-5 (Gopal Sri Ram JCA).

enunciated in subsections 70(2)(a)-(i) of the *Strata Management Act 2013*.

3. Was inconsistent with the *Strata Titles Act 1985* or the *Strata Management Act 2013* (or contracting out of the provisions of the aforementioned legislations);[14] and

4. Touched upon excluded matters set out in section 70(5) of the *Strata Management Act 2013*.

The *second* category ('Questions of Statutory Construction') of issues arise where there is uncertainty about how a by-law is to be read in light of another legislation.[15] Such issues arise when, as was

[14] Eg, *Ekuiti Setegap v Plaza 393 Management Corporation* [2018] 3 MLRA 342, [33]-[38]; *Perbadanan Pengurusan Endah Parade v Magnificient Diagraph Sdn Bhd* [2013] 6 MLJ 343; *Muhamad Nazri Bin Muhamad v JMB Menara Rajawali and Denflow Sdn Bhd* [2018] 9 CLJ 547*; Muhamad Nazri Muhamad v JMB Menara Rajawali & Anor* [2019] 10 CLJ 547; *3 Two Square Sdn Bhd v Perbadanan Pengurusan 3 Two Square & Ors; Yong Shang Ming (Third Party)* [2018] 4 CLJ 458; *Management Corporation Strata Title Plan No 901 v Lian Tat Huat Trading Pte Ltd* [2018] SGHC 270; *Park Access Sdn Bhd & Ors v Badan Pengurusan Prima Avenue Dan DPCC Fasa 1 (Blok G, H, I) & Other Appeals* [2018] MLRAU 204; *Perbadanan Pengurusan 3 Two Square v 3 Two Square Sdn Bhd* [2017] MLJU 2258; *Yii Sing Chiu v Aikbee Timbers Sdn Bhd & Ors* [2022] MLJU 2365; See also, Wong (n 7) 419- 420.

[15] Eg, "Whether Section 11 of the Gas Supply Act 1993 brought by the Gas Supply (Amendment) Act 2016 contradicts and/or ultra vires Strata Management Act 2013: See discussion on *Perbadanan Pengurusan Solaris Dutamas v Suruhanjaya Tenaga Malaysia & Anor* [2022] 4 MLJ 397 (CA) in Ooi Xin Yi, "Federal Court: Management Corporation has No Power to Supply Natural Gas," Chee Hoe & Associates, last modified 9 December 2022, accessed 29 December 2022, https://cheehoe.com/federal-court-management-corporation-has-no-power-to-supply-natural-gas/ archived at https://perma.cc/B5UK-ZFQB; Ooi Xin Yi, "Does a Management Corporation have Power to Supply Natural Gas? Federal Court Granted Leave to Appeal on 9 Questions of Law," Chee Hoe & Associates, last modified 19 September 2022, accessed 29 December 2022, https://cheehoe.com/does-a-management-corporation-have-power-to-supply-natural-gas/ archived at

stated by the Court of Appeal in *Tebin bin Mostapa v Hulba-Danyal bin Balia*,[16] there is some conflict or contest between various 'parts or provisions of [a] statute or between two or more statutes'.[17] This category involves questions about the practical operation (or scope) of a by-law in context with other legislation applicable to the same facts to which the by-law applies.[18] The resolution of these questions typically involves the identification of the proper construction of the by-law vis-à-vis the other legislation, and the by-law's effect on the other legislation and vice-versa, if any.[19] The exercise of discovering the proper construction of one legislation vis-à-vis another involves the application of, in circumstances where it is open on the literal text of both legislation,[20] the doctrine of 'harmonious construction'.[21] This doctrine was given expression in *Tebin bin Mostapa*, namely that:

https://perma.cc/A6RZ-LHQT.

16 *Tebin bin Mostapa (as administrator of the estate of Hj Mostapa bin Asan, deceased) v Hulba-Danyal bin Balia & Anor (as joint administrators of the estate of Balia bin Munir, deceased)* [2017] 5 MLJ 771 (CA).

17 Ibid 796 [45]; See also, *Wan Khairani Binti Wan Mahmood v Ismail Bin Mohamad* [2008] 1 MLJ 164, 186 [44].

18 *Subramaniam A/L Vythilingam v The Human Rights Commission of Malaysia (Suhakam)* [2003] MLJU 94 (p 31), referring to *Berry v British Transport Commission* (1962) 1 QB 306, 326 (Devlin J); See also footnote 27.

19 *Tebin bin Mostapa* (n 16) 773, 789 [36], 794 [40]-799 [51]; See also, *Chan Kok Poh v Public Prosecutor* [2021] MLJU 2785, [57], [90]; *Lion Pacific Sdn Bhd v Pestech Technology Sdn Bhd* [2020] MLJU 2308, [20]; *Wee Nai Li v Sarawak Bank Employees Union* [2012] MLJU 1593, [56]-[60] et seq; *Chiu Wing Wa v Ong Beng Cheng* [1994] 1 MLJ 89.

20 Where, if the statutes are 'non-obstante' in nature: *Wee Nai Li v Sarawak Bank Employees Union* [2012] MLJU 1593, [60]; see also, 'purposive interpretation as suggested by learned counsel for the appellant does not arise as the provision of the law is very clear': *SCP Assets Sdn Bhd v Perbadanan Pengurusan PD2* [2021] MLJU 623, [43]; *Tham Sau Hoong v Perbadanan Pengurusan Pantai Emas Resort* [2021] MLJU 176.

21 *Tebin bin Mostapa* (n 16) 796 [45]; *Sugumar Balakrishnan v Pengarah Imigresen Negeri Sabah* [1998] 3 MLJ 289, 308; *Eng Seng Precast Pte Ltd v SLF Construction Pte Ltd* [2015] SGHC 252, [10], [29]; *Frontbuild Engineering & Construction Pte Ltd v JHJ Construction Pte Ltd* [2021] SGHC 72, [47]-[43].

(a) courts must avoid head on clash of seemingly contradicting provisions and they must construe the contradictory provisions so as to harmonise them; (b) the provision of one section cannot be used to defeat the provision contained in another unless the court, despite its effort, is unable to find a way to reconcile their differences; (c) when it is impossible to completely reconcile the differences in contradictory provisions, the courts must interpret them in such way so that effect is given to both the provisions as much as possible; (d) courts must also keep in mind that interpretation that reduces one's provision to a useless number or dead is not harmonious construction; and (e) to harmonise is not to destroy any statutory provision to render it fruitless.[22]

The application of the 'harmonious construction' doctrine, in turn, involves the application of cardinal maxims of construction, including, amongst others,[23] the *lex posterior* and *lex specialis* maxims.[24]

While the two categories of issues raise different questions, they both intrinsically involve a matter of interpretation about what the legislature had intended the words of the statutes to mean.[25] The

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22 *Tebin bin Mostapa* (n 16) 796 [45].

23 Including eg, the *ejusdem generis* maxim: *Buxton v Supreme Finance (M) Bhd* [1992] 2 MLJ 481, 486 (Harun Hashim SCJ); *Ng Men Soon v Pentadbir Tananh Daerah Muar* [2010] 8 MLJ 388, 394 [11] (Umi Kalthum PK).

24 *Lex posterior derogat priori*: *Raja Arshad Bin Raja Tun Uda v Director-General of Inland Revenue* [1990] 1 MLJ 106, 107 (Hashim Yeop Sani CJ, Harun Hashim and Gunn Chit Tuan SCJJ); *Re Wong Chong Siong; ex p Arab Malaysian Finance Bhd* [1998] 7 MLJ 208, 212; *lex specialis derogat legi generali*: *Tebin bin Mostapa* (n 16) 784 [29] (David Wong JCA), 796 [46] (Hamid Sultan JCA). The lex specialis maxim is also expressed "generalibus specialia derogant" meaning "where there are two provisions of written law, one general the other specific, then the special or specific provisions exclude the operation of the general provision": *Nabors Drilling (Labuan) Corporation v Lembaga Perkhidmatan Kewangan Labuan* [2020] MLJU 1557 (FC), [19] (Rhodzariah Bujang FCJ). See also, *Public Prosecutor v Chew Siew Luan* [1982] 2 MLJ 119, 119-20 (Raja Azlan Shah CJ); *Goh Leong Yong v ASP Khairul Fairoz bin Rodzuan* [2021] 5 MLJ 474 (FC), 547 [198] (Zabariah Yusof FCJ).

25 For further discussion, see eg, Antonin Scalia, *A Matter of Interpretation*

resolution of the two categories of issues may often, however, especially in the legislative context of the *Strata Management Act 2013*, involve a near identical approach to analysis. As will be discussed in Part III, the case of *Innab Salil v Verve Suites Mont Kiara* [2020] 12 MLJ 16 ('*Verve Suites*') is one exemplification of a set of facts that gave rise to both Questions of Statutory Interpretation and Questions of Statutory Construction,[26] but which employed a near identical approach to analysis in the resolution of both sets of questions – namely, the application of purposive statutory interpretation.[27] As will be further discussed in Parts IV and V, the employment of a such an approach of analysis to resolve the two different categories of issues, while confusing, was the correct approach in this case.

(New Jersey: Princeton University Press, 1997); Justice Nor Bee Ariffin, "The Interpretation of Laws: Whose Golden Rule?," *The Malaysian Judiciary Yearbook 2017*: 170; *Loh Kooi Choon v The Government of Malaysia* [1977] 2 MLJ 187, 188 (Raja Azlan Shah FJ); On the interpretive, declarative and enforcement functions of the Courts, see especially, the late Tan Sri Harun Hashim's decision in *Dragon & Phoenix Bhd v Kesatuan Pekerja-Pekerja Perusahaan Membuat Texstil Dan Pakaian Pilau Pinang* [1991] 1 MLJ 89, 90 (Harun Hashim SCJ); see also Lakshmi Natarajan, "Harun a fearless champion of justice," Badan Peguam Malaysia, last modified 1 October 2003, accessed 15 April 2023, https://www.malaysianbar.org.my/article/news/in-memoriam/in-memoriam/harun-a-fearless-champion-of-justice; see also, *Tengku Razaleigh Bin Tengku Mohd Hamzah v Election Judge for Election Petition No 33-6-1195* [1996] 4 MLJ 66, 74 (Arifin Zakaria J); On the interpretive function of the Courts and criticisms, see *Attorney General, Malaysia v Manjeet Singh Dhillon* [1991] 1 MLJ 167, 176-7 (Harun Hashim SCJ); Criticism of the "guise of interpretation": *Ng Cheah Cheong v Ong Sing Hock* [2002] 6 MLJ 481, 490 (VT Singham J); *Lim Kit Siang v Dato Seri Dr Mahathir Mohamad* [1987] 1 MLJ 383; *Dato Seri S Samy Vellu v Penerbitan Sahabat (M) Sdn Bhd* [2005] 5 MLJ 489, 528-9 (Abdul Malik Ishak J); *Lien Hock Seng v Sakkarai A/L Mookiah* [1985] 5 MLJ 251, 253-4 (Abdul Wahab J).

26 *Verve Suites* (n 1) 28-29 [26].

27 His Honour Abdul Malik Ishak J in *Subramaniam* (n 18) quoted: "'construction' [is] a word that embraces not only the interpretation of words used but also the ascertainment of the true intent of the statute, considered in relation to the branch of law with which it is dealing".

III *INNAB SALIL v VERVE SUITES MONT' KIARA*: A SUMMARY

In *Verve Suites*, the management corporation passed a house rule to regulate and prohibit the use of condominium units for short-stay lets. The appellants (parcel owners), in defiance of the house rule, continued to let out their units for short-stay lets. They were, in accordance with the house rule, fined RM200 by the management corporation for each day that they failed to comply with the house rule. Aggrieved by the house rule, the appellants challenged it on two grounds.

A *Question of Statutory Interpretation*

First, the appellants alleged that the house rule was made in violation of section 70(5) of the *Strata Management Act 2013*.[28] This posed, as a Question of Statutory Interpretation, the question of whether the restriction or prohibition on short-stay lets imposed by the by-law was a restriction or prohibition placed on parcel owners from 'dealing' (within the meaning of the *Strata Management Act 2013*) with their parcel.

Relevantly, section 70(5) of the *Strata Management Act 2013* provided that:

> "No additional by-law shall be capable of operating to prohibit or restrict the transfer, lease or charge of, or any other dealing with any parcel of a subdivided building or land. …"

In relation to the Question of Statutory Interpretation, the Federal Court found on the facts of the case that the appellants' short-stay lets amounted to nothing more than mere licenses and did not amount in law to 'dealings' within meaning of the *Strata Management Act 2013*.[29] The regulation and prohibition of such short-stay letting

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[28] *Verve Suites* (n 1) [1]-[9], [22].

[29] See *Verve Suites* (n 1) 35 [52] - 53 [113]; For further discussion, see Jagshey Pipariya, "What you need to know before signing a lease or tenancy agreement", Thomas Philip Advocates & Solicitors, last modified 29 June 2022, last accessed 26 December 2022, https://www.thomasphilip.com.my/articles/what-you-need-to-know-

arrangements in the by-law did not concern a 'dealing' within meaning of the *Strata Management Act 2013* and was thus not ultra vires section 70(5) of the *Strata Management Act 2013*.[30]

B *Question of Statutory Construction*

Second, the appellants alleged that the house rule was inconsistent with the National Land Code, and impermissibly burdened the operation of section 120 of the National Land Code. This posed, as a Question of Statutory Construction, the question of whether a house rule (a by-law having the force of a statutory contract) made by the management corporation under the auspices of section 70(2)-(3) of the *Strata Management Act 2013* that sought to regulate and prohibit short-term rentals like AirBnB may operate to trump approved land use expressly noted on the title of the land imposed by the state authority under section 120 of the National Land Code.[31] Put another way, the question asks whether a by-law made pursuant to section 70(2)-(3) of the *Strata Management Act 2013*, which has a binding effect on parcel owners as a statutory contract, can operate to restrict the use of land above and beyond the restrictions imposed on the land by the State Authority pursuant to section 120 of the National Land Code. Relevantly, section 120 of the National Land Code provides that the relevant State Authority may upon the alienation of land impose conditions and restrictions upon the land (including restrictions on land use, zoning of land, and approved land use).[32]

In relation to the Question of Statutory Construction, the Federal Court held that, in circumstances where section 120 of the National Land Code and section 70(2)-(3) of the *Strata Management Act 2013* do not literally and textually operate to limit the other or each other (in the sense that one law does not textually water-down the other nor amends the other) but otherwise result in apparent disharmony, the

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before-signing-a-lease-or-tenancy-agreement/ archived at https://perma.cc/XT2L-73C8. The distinction between a lease, tenancy and license, while decided in *Verve Suites*, will not be discussed in this case note.

30 *Verve Suites* (n 1) 53 [112].

31 *Verve Suites* (n 1) 28 [23], 29 [28].

32 *National Land Code* (Act 828) s 120(1).

apparent conflict was to be resolved by construing both provisions 'harmoniously such that they do not diametrically contradict each other'.[33] Implicit in the Federal Court's application of the 'harmonious construction' interpretive canon,[34] was the implication of a principle that "the grant of powers or rights by one particular provision in a law does not mean that such rights may not at the same time be restricted by other provisions of the law".[35] Reasoning by analogy with other judicial decisions where the operation of other provisions of the National Land Code vis-à-vis other laws were decided, such as *Hoh Kiang Ngan v Mahkamah Perusahaan Malaysia*[36] and *Ang Ming Lee v Menteri Kesejahteraan Bandar, Perumahan dan Kerajaan Tempatan* (and thus applying the interpretive canon of 'harmonious construction'),[37] the Federal Court found that the rights and interests imposed by section 120 of the National Land Code were not absolute, and capable of regulation through by-laws made pursuant to the *Strata Management Act 2013* for specific purposes:

> … simply because the state authority has issued conditions and restrictions of use in the title of the land [s 120 of the National Land Code], that does not preclude the management corporation from promulgating further rules, regulations or by-laws for the purposes provided for by law, in particular the purposes stipulated in s 70(2) of the [*Strata Management Act*] 2013.[38]

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33 *Verve Suites* (n 1) 30-31 [33].

34 See footnotes 12 and 13 above. For further discussion on this canon (but on constitutional interpretation), see, *Danaharta Urus Sdn Bhd v Kekatong Sdn Bhd & Anor* [2004] 2 MLJ 257 (FC) 269-270, [26]; *Dhinesh Tanaphll v Lembaga Pencegahan Jenayah* [2022] MLJU 576; Shad Saleem Faruqi, "Case Commentary on Suriani Kempe v Kerajaan Malaysia," [2021] 4 MLJ cxlix, cliii; *Mohamed Habibullah bin Mahmood v Faridah Bte Dato Talib* [1992] 2 MLJ 792, 823 (Gunn Chit Tuan SCJ); Hamid Sultan bun Abu Backer, "Is the Federal Court's interpretation of s 96(1) of the Courts of Judicature Act 1964 Inimical to Constitutional Guarantees and/or has it resulted in the Miscarriage of Justice?," [2001] 1 MLJ xlix, lvii; Mark Goh Wah Seng, "Are Corporations Protected under the Constitution during a Pandemic?," [2022] 2 MLJ cxcv, ccvi-ccvii.

35 *Verve Suites* (n 1) 30-31 [33].

36 [1995] 3 MLJ 369.

37 *Verve Suites* (n 1) 31 [34]-33 [43], especially 33 [43].

38 Ibid 31 [33].

The Federal Court then went on to further justify its decision to uphold the validity of the house rule under section 70 of the *Strata Management Act 2013* with reference to the National Land Code, by having recourse to (what appears to be, confusingly) purposive statutory interpretation.[39] This involved identifying, from the provisions enacted, the broad underlying purpose of the legislation.[40] Section 17A of the *Interpretation Acts 1948 and 1967* provides that:

> In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object.[41]

The Federal Court in *Verve Suites* found that the collective intention and wisdom of the legislature in enacting the *Strata Management Act 2013* was undoubtedly to enact 'social legislation',[42] and that the house rule was justifiable (in the sense that it is legally valid, not legitimately valid) 'on the basis that they exist for the good of the strata community'. In the Court's application of purposive statutory interpretation to the *Strata Management Act 2013*, it upheld the by-law and the interpretation of that Act that best aligned with the identified purpose of the *Strata Management Act 2013* (SMA), reasoning by analogy with *Weng Lee Granite* which had been decided on similar grounds:

> "The SMA 2013 is without a doubt, a social legislation. It was passed to facilitate the affairs of strata living for the good of the community or owners of the strata title. Being social in nature, the provisions of the SMA 2013 which safeguard community interests ought to receive a liberal interpretation and not a restricted or rigid one. Accordingly, where two different interpretations are possible, it is the one which

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39 *Interpretation Acts 1948 and 1967* (Act 388) s 17A; For statement of the law on the application of s 17A, see, *UDA Holdings Bhd v Bisraya Construction Sdn Bhd & Anor* [2015] 11 MLJ 499, [220]-[221]; See also, *SCP Assets Sdn Bhd v Perbadanan Pengurusan PD2* [2021] MLJU 623, [43].

40 *UDA Holdings Bhd v Bisraya Construction Sdn Bhd & Anor* [2015] 11 MLJ 499, [221].

41 Ibid [220]; *Interpretation Acts 1948 and 1967* (Act 388) s 17A.

42 *Verve Suites* (n 1) 28-29 [26].

> favours the interest of the community over the interest of the individual that is to be preferred. …"[43]

> "Extrapolating the logic of the case [in *Weng Lee Granite*] to the facts of the present one, we can infer, by parity of reasoning that rights and interests imposed by s 120 of the NLC are not absolute. When viewed in this context, s 70 of the SMA 2013 is no different from s 70A of the SDBA 1974. While in *Weng Lee Granite* s 70A of the SDBA 1974 was interpreted to ensure that the proprietary rights of the appellant over the subject lands are exercised in a proper and responsible manner so as not to harm or endanger the environment for the good of the public, so too here. By-laws passed pursuant to s 70 of the SMA 2013 for the reasons stipulated in sub-s (2) thereof are similarly justifiable on the basis that they exist for the good of the strata community. In other words, in the present appeal, even if the state authority permits the use of the land for commercial purposes, such use is still subject to other laws in force, in particular to s 70 of the SMA 2013. Hence, the passing of House Rule No 3 is not unlawful." [44]

The Federal Court's application of purposive statutory interpretation to the *Strata Management Act 2013* in resolving a Question of Statutory Construction involving the *Strata Management Act 2013* vis-à-vis the National Land Code is methodologically confusing. The Federal Court's decision did not appear to discover the proper construction of *Strata Management Act 2013* in light of the National Land Code (see discussion of methodology of Statutory Construction in Part II). The Federal Court, in its exercise of 'harmonious [statutory] construction' of the two legislation, appears to have accepted two related premises of the doctrine of harmonious construction (and *lex specialis* maxim): *first*, the grant of rights by one law does not mean that such rights may not at the same time be restricted another law; and *second*, a 'rule of recognition' that social legislation, where it was specifically enacted for the subject matter at hand, operates to the exclusion of the non-'social legislation'. This is further discussed in Parts IV and V.

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43 *Verve Suites* (n 1) 28-29 [26].

44 Ibid 33 [43], following *Weng Lee Granite Quarry Sdn Bhd v Majlis Perbandaran Seberang Perai* [2020] 1 MLJ 211.

IV COMMENT

A *Statutory Interpretation of the Strata Management Act*

The Federal Court's approach to the statutory interpretation of the *Strata Management Act 2013* in relation to the Question of Statutory Interpretation, as discussed in Part III.A above, is orthodox. There is nothing unorthodox about the Federal Court's application of the identified purpose of 'social legislation' of the *Strata Management Act 2013* to the interpretation of section 70(2) of that Act.[45] As the late Tan Sri Harun Hashim emphasised, the exercise of statutory interpretation of a provision of law involves ascertaining the intentions of parliament and the purposes to which parliament had sought to achieve by enacting that provision. This involves, as the late Tan Sri Harun Hashim's judgments clarify, an analysis of the language used by parliament,[46] in light of the provision's legislative history (including the intendment and purpose of statutory amendments, Hansard, and issues raised in and by case law),[47] and the broader context of its enactment.[48]

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45 *Verve Suites* (n 1) 53 [113].

46 *Chang Chong Foo v Shivanatham* [1992] 2 MLJ 473 (Harun Hasim SCJ), quoted and analysed in Dato P Balan, "Damages for Personal Injuries Causing Death: A Critical Survey," *Journal of Malaysian and Comparative Law* 31 (2004): 45, 53; *Nylex (M) Sdn Bhd v Alias bin Chek* [1985] 1 CLJ 185 (HC), 187-8 (Harun Hashim J), quoted and analysed in Sharifah Suhana Ahmad, "Section 69(1) of the Employment Act, 1955 – Judicial Misunderstanding of Legislative Intent," *Journal of Malaysian and Comparative Law* 16 (1989): 99: 104-5. See also, Mohd Altaf Hussain Ahangar, "Assessment of Damages for Loss of Future Earnings in Malaysia: An Appraisal of Judicial Ethics," *Vindobona Journal of International Commercial Law and Arbitration* 8 (2004):131, 138-140

47 *National Union of Commercial Workers v Societe des Matieres Premieres Tropicales* (Industrial Court of Malaysia, Award No 28 of 1981, Harun Hashim J), quoted and analysed in Kamal Halili Hassan, "Developments in Judicial Review in Malaysian Industrial Law," *Australian Journal of Asian Law* 8 (2006): 25, 58; *Mohamed Habibullah bin Mahmood* (n 34) 803-4 (Harun Hashim SCJ), quoted and analysed in Farid Sufian Shuaib, "Legislative History and Legislative Competency," *International Islamic University Malaysia Law Journal* 11 (2003): 97, 105-8.

48 *Mohamed Habibullah bin Mahmood* (n 34) 803-4 (Harun Hashim SCJ);

However, as will be discussed in Part V and VI, the 'social legislation' purpose identified as underpinning the *Strata Management Act 2013* in *Verve Suites* may be overly general, and is not an accurate statement of the legislative purpose of the whole of the *Strata Management Act 2013*. It is proposed, in Part V, that the application of that identified purpose in statutory interpretation of the *Strata Management Act 2013* should be confined to the facts in *Verve Suites* and reconsidered.

B *Statutory Construction of the National Land Code vis-à-vis the Strata Management Act*

The Federal Court's recourse to purposive statutory interpretation (which is the province of Questions of Statutory Interpretation) to support its' resolution of the Question of Statutory Construction (discussed in Part III.B above), while in this instance have led to the correct outcome, can be methodologically confusing. What the Federal Court in *Verve Suites* appears to have done in their decision, especially in their discussion of *Weng Lee Granite* (as quoted above towards the end of Part III.B), was to bring together two principles of law in the Court's exercise of statutory construction of the National Land Code vis-à-vis the *Strata Management Act 2013*:

1 *Automatic Displacement of the Literal Rule by the Purposive Rule where Social Legislation is Concerned*

First, a principle that where social legislation is involved, there is an automatic displacement of the literal rule in favor of the purposive rule; and said term or provision is interpreted in a way which ensures maximum protection of the class in whose favour the social legislation was enacted. In *Verve Suites*, the Federal Court proceeded on the basis that 'social legislation' ought to be given a liberal and purposive

Dunlop Malaysian Industries Bhd v DMIB Employees Union [1982] 1 ILR 161 (Harun Hashim J); Farid Sufian Shuaib (n 47) 105-8; Farid Sufian Shuaib, "The State List and the Jurisdiction of the Shari'ah Courts: The Jurisdictional Conflict Continues," *International Islamic University Malaysia Law Journal* 7 (1999): 41, 46-8; A L R Joseph, "The Doctrine of Separation of Powers Survives in Malaysia," *Singapore Journal of Legal Studies* [2007]: 380, 389.

interpretation and not a restricted or rigid one.[49] In *Verve Suites*, this meant that the provisions of the *Strata Management Act 2013*, being identified as 'social legislation' and which had been intended by parliament to safeguard community interests, ought to be given a liberal interpretation consistent with its legislative purpose. To the maximum extent possible, the Court has the obligation to ensure that the 'social legislation' is not read down by other sources of law. In *Verve Suites*, having stated that the *Strata Management Act 2013* ought to receive a liberal interpretation and not a restricted or rigid one, the Federal Court went on to state that:

> "Accordingly, where two different interpretations are possible, it is the one which favours the interest of the community over the interest of the individual that is to be preferred."[50]

The basis for the Federal Court's approach in *Verve Suites* was given expression and approved as a correct statement of law the following year in *Crystal Crown Hotel & Resort Sdn Bhd v Kesatuan Kebangsaan Perkeja-perkeja Hotel, Bar & Restoran Semenanjung Malaysia* ('*Crystal Crown*'). The Federal Court explained that the settled principles on the interpretation of 'social legislation' were that:

(i) Statutory interpretation usually begins with the literal rule. …

(ii) The literal rule is automatically displaced by the purposive rule when it concerns the interpretation of the protective language of social legislation.

(iii) For the avoidance of doubt, it is important to emphasise that even where a term or provision of a social legislation or a statutory contract enacted thereunder is literally clear or unambiguous, *the Court no less shoulders the obligation to ensure that the said term or provision is interpreted in a way which ensures maximum protection of*

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[49] *Verve Suites* (n 1) 28 [26]; cf strict interpretation in different statutory contexts: eg, *Ward v Malaysian Airlines System Bhd* [1991] 3 MLJ 317, 320 (Hashim Yeop Sani CJ, Mohamed Azmi and Harun Hashim SCJJ).

[50] *Verve Suites* (n 1) 28-29 [26].

the class in whose favour the social legislation was enacted (original italic emphasis, underline emphasis added).[51]

2 *Lex Specialis as a Maxim of Harmonious Statutory Construction*

Second, a principle that where an apparent conflict arises between the operation of two provisions of legislation – one general and the other specific, then whether or not these two provisions are to be found in the same or different statutes, the special or specific provision excludes the operation of the general provision, and the special or specific legislation takes precedence.[52]

The Federal Court in *Verve Suites* correctly stated that to resolve the apparent conflict between s 120 of the National Land Code and s 70 of the *Strata Management Act 2013*, the Court should apply the doctrine of harmonious construction.[53] Acknowledging that the correct approach was to apply doctrine of harmonious construction, the Federal Court stated that implicit in the application of this doctrine was a statement of law that "the grant of powers or rights by one particular provision in a law does not mean that such rights may not at the same time be restricted by other provisions of the law". The Federal Court then held that while the state authority had issued conditions and restrictions on the use of the land under s 120 of the National Land Code, that does not preclude further restrictions from being imposed on the use of the land through the operation of s 70 of the *Strata*

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[51] [2021] 3 MLJ 466 (FC), 487 [49]; *Yii Sing Chiu v Aikbee Timbers Sdn Bhd & Ors* [2022] MLJU 2365, [18]; for further discussion on judicially recognised social legislation, see eg, Joshua Wu Kai-Ming, "Judicially Recognised Social Legislation" Joshua Wu, last modified 6 January 2022, last accessed 27 December 2022, https://joshuawu.my/judicially-recognised-social-legislation/ archived at https://perma.cc/N6FN-3C32; See also, *Kee Yau Chong v S H Interdeco Pte Ltd* [2013] SGHC 218, [24], [45].

[52] See cases cited in footnote 24; See also, *Luggage Distributors (M) Sdn Bhd v Tan Hor Teng* [1995] 1 MLJ 719 (CA), 758-9 (Gopal Sri Ram JCA) 786 (Abu Mansor JCA); *Hariram* (n 60) 40; *Nabors Drilling (Labuan) Corporation v Lembaga Perkhidmatan Kewangan Labuan* [2020] MLJU 1557 (FC), [19] (Rhodzariah Bujang FCJ).

[53] *Verve Suites* (n 1) 30 [33].

Management Act 2013.[54] The Federal Court then went on to suggest that support for this proposition can be derived from Part 15, Chapter 1 of the National Land Code – provisions that more specifically relate to landowners' rights to grant leases and tenancies in land (as was the subject of the dispute) – as well as s 225 of the National Land Code, which expressly provides that the provisions of the National Land Code granting certain rights and protections in respect of leases and tenancies may be subject to other rules and conditions stipulated by any other written law.[55]

The Federal Court's decision in *Verve Suites* appears to endorse a principle that a more specific provision (to the subject matter of a dispute) should take precedence over a less specific provision. This is apparent from the Court's recourse to Part 15, Chapter 1 of the National Land Code in its decision, which appeared to recognize that these provisions applied more specifically to the dispute in issue, rather than s 120 of the National Land Code.[56] Further, the Court further recognized that the *Strata Management Act 2013* (compared to the National Land Code) was a more specific statute governing strata and all related matters,[57] and the consequence of the application of the 'harmonious construction' doctrine was that the rights and interest of an individual given by s 120 of the National Land Code should be read down to give precedence to a by-law made for the strata community under the auspices of s 70 of the *Strata Management Act 2013*, as a matter of course.

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54 Ibid 31 [33].

55 Ibid 31 [35]; On this point, see also, *Ling Sie Kiong, The Liquidator v SG & Sons Sdn Bhd* [2021] 8 MLJ 819, [26] (Nadzarin Wok Nordin JC); *Malaysia Building Society Bhd v Mohd Zainuddin bin Omar* [2019] MLJU 1354, [8] (Wong Kian Kheong J); *Tan Wek Piau v Hin Wong Huat Speed Boat* [2020] MLJU 2613, [24] (Wong Kian Kheong J).

56 On this point, see also, *Bank Pertanian Malaysia Bhd v Synergy Palm Sdn Bhd* [2019] MLJU 1015, [23] (Wong Kian Kheong J); *Hakubaku Co Ltd v Asiamega Food Manufacturers Sdn Bhd* [2018] MLJU 1820, [10] (Wong Kian Kheong J); *Syarikat Faiza Sdn Bhd v Faiz Sdn Bhd* [2016] MLJU 1046, [13] (Wong Kian Kheong JC); See also, cases cited in footnote 52.

57 *Verve Suites* (n 1) 29 [30].

By accepting the two related premises of the doctrine of harmonious construction (see discussion towards the end of part III.B) and applying the doctrine of harmonious construction, the Federal Court should be understood as averring to the legal maxim *lex specialis derogat legi generali* (latin for 'special laws repeal general laws'; also expressed *generalibus specialia derogant*) as a maxim of the harmonious construction doctrine of legislative interpretation[58] – the *lex specialis* maxim being an interpretive maxim for the systematic and harmonious construction of two conflicting norms situated within a legal system.[59]

3 *Bringing Together Two Principles of Law*

The corollary of the two principles of law described above (Part IV.B.1 and IV.B.2) brought together appears to be that where an apparent conflict arises between the operation of social legislation vis-à-vis non-social legislation, the operation of social legislation (being specifically enacted) should take precedence over the operation of the non-social legislation, such that full effect is accorded to the avowed social objectives of the social legislation.[60] Indeed, this appears to be the proposition of the Federal Court in its discussion of *Weng Lee Granite* (quoted above towards the end of Part III.B):

> "Extrapolating the logic of the case [in *Weng Lee Granite*] to the facts of the present one, we can infer, by parity of reasoning that rights and interests imposed by s 120 of the National Land Code (NLC) are not

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[58] See footnote 24; *Master Mulia Sdn Bhd v Sigur Rus Sdn Bhd* [2020] MLJU 1329 (FC), [41]; See also, *NV De Bataafsche Petroleum Maatschappij & Ors v The War Damage Commission* [1956] 1 MLJ 155, 172.

[59] ie, 'wholesome interpretation': *Asia Pacific Higher Learning Sdn Bhd v Majlis Perubatan Malaysia* [2020] 2 MLJ 1, 17 [24]; *Verve Suites* (n 1) [24]; *Alpine Return Sdn Bhd v Matthew Ng Hock Sing* [2021] MLJU 1923, [37]; See also discussion in Joshua Wu Kai-Ming (n 51); See also, *The "Big Fish"* [2021] SGHCR 7, [42]; *Leu Xing-Long v Public Prosecutor* [2014] SGHC 193, [19]; *AnAn Group (Singapore) Pte Ltd v VTB Bank (Public Joint Stock Company)* [2021] SGCA 112, [89]-[90]; See also, Ooi Xin Yi (n 15).

[60] See also, *Hariram A/L Jayaram v Sentul Raya Sdn Bhd* [2003] 1 MLJ 22 (HC), 42 (Abdul Malik Ishak J).

> absolute. When viewed in this context, s 70 of the SMA 2013 is no different from s 70A of the Street Drainage and Building Act 1974 (SDBA). While in Weng Lee Granite s 70A of the SDBA 1974 was interpreted to ensure that the proprietary rights of the appellant over the subject lands are exercised in a proper and responsible manner so as not to harm or endanger the environment for the good of the public, so too here. By-laws passed pursuant to s 70 of the SMA 2013 for the reasons stipulated in sub-s (2) thereof are similarly justifiable on the basis that they exist for the good of the strata community. In other words, in the present appeal, even if the state authority permits the use of the land for commercial purposes, such use is still subject to other laws in force, in particular to s 70 of the SMA 2013. Hence, the passing of House Rule No 3 is not unlawful." [61]

Verve Suites' discussion of *Weng Lee Granite* suggests that the Federal Court had fashioned and derived from the combination of the purposive rule of statutory interpretation of 'social legislation' (as affirmed in *Crystal Crown*) (see Part IV.B.1) and the *lex specialis* maxim of harmonious construction (see Parts II and IV.B.2) another principle of law – namely, that, a liberal construction of a social legislation vis-à-vis a non-social legislation that best promoted the social legislation's purpose was to be preferred *over* a construction that did not, so as to ensure maximum protection of the class in whose favour the social legislation was enacted *over* other classes. In this way, the Federal Court derived and accepted a 'rule of recognition' that social legislation, where it was specifically enacted for the subject matter at hand, operates to the exclusion of the non-'social legislation'.

In applying this modified doctrine of harmonious construction to resolve apparently conflicting constructions of the *Strata Management Act 2013* (identified as 'social legislation') and the National Land Code (through the process of harmonious construction), the Federal Court averred to and relied on its finding that the *Strata Management Act 2013* had been intended by parliament (and should be more fundamentally understood) as a form of specialised or specific legislation in the sense of a *lex specialis* that should take precedence over land use rights and norms in the National Land Code.[62] Further

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61 *Verve Suites* (n 1) 33 [43], following *Weng Lee Granite Quarry Sdn Bhd v Majlis Perbandaran Seberang Perai* [2020] 1 MLJ 211.

62 See *Verve Suites* (n 1) 30 [33].

support for this proposition can be drawn from the Federal Court's observations in *PJD Regency Sdn Bhd v Tribunal Tuntutan Pembeli Rumah & Anor*, a case decided a year after *Verve Suites*, "a social legislation is a legal term for a *specific set of laws* passed by the legislature …" (italic emphasis added).[63] In this sense, the primary governing legislation in the circumstance was the *Strata Management Act 2013* (not the National Land Code) and all disputes can be resolved with reference to the *Strata Management Act 2013* without the need to refer to the National Land Code.[64]

On this reading of *Verve Suites* and its discussion of *Weng Lee Granite*, the identification of the *Strata Management Act 2013* (and in particular, s 70 of that Act) as 'social legislation' in *Verve Suites* served two ends. First, it identified its broad legislative purpose and avowed social objectives and guided its statutory interpretation. Second, it provided a normative rationale for the application of the *lex specialis* maxim, which justified why the *Strata Management Act 2013* should be read as taking precedence over the National Land Code, why s 120 of the National Land Code should be read down in favor of s 70 of the *Strata Management Act 2013*,[65] and why the Question of Statutory

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[63] *PJD Regency Sdn Bhd v Tribunal Tuntutan Pembeli Rumah & Anor* [2021] 2 MLJ 60 (FC), 76 [31]; See also, *Sodalite Sdn Bhd & Ors v 1 Mont' Kiara and Kiara 2 Management Corp & Ors* [2021] 12 MLJ 116, [28], [50]; *Ng Boo Tan v Collector of Land Revenue* [2002] SGCA 36, [21].

[64] See footnote 65. Authority for this proposition can be drawn from *Hariram A/L Jayaram* (n 60), which was decided in such a manner: "It would be appropriate to refer to the specific legislation, namely the Housing Act and the Housing Regulations in adjudicating enc (1) without the need to refer to the general legislation in the form of the *Contracts Act 1950*".

[65] *Hariram A/L Jayaram* (n 60) 37, 42, 47-8 (Abdul Malik Ishak J) is also authority for the proposition that social legislation is *lex specialis*. In that case, Abdul Malik Ishank J considered that the Housing Act and the Housing regulations (as form of social legislation, see p 37) were *lex specialis* vis-à-vis the *Contracts Act 1950*: "It must be borne in mind that the Housing Act is a specific piece of social legislation to protect house byers or purchasers from unscrupulous developers. … It is axiomatic that in interpreting the specific piece of social legislation, … full effect must therefore be accorded to the ... Housing Act It would be appropriate to refer to the specific legislation, namely the Housing Act and the Housing

Construction is resolved with reference to only the *Strata Management Act 2013* without referring to the National Land Code.

However, as will be discussed in Part V, the identification of the purpose of the *Strata Management Act 2013* as 'social legislation' may be a misnomer. It will be argued that it may be prudent that the Federal Court reconsiders its finding on the 'social legislation' purpose of the *Strata Management Act 2013*, in view of the potential for inconsistent application of that identified purpose in purposive interpretation of the *Strata Management Act 2013*, and to preserve the coherency of the law.

V CRITIQUE: "SOCIAL LEGISLATION" PURPOSE IS A MISNOMER

> 'The SMA 2013 is without doubt, a social legislation. It was passed to facilitate the affairs of strata living for the good of the community or owners of the strata title. Being social in nature, the provisions of the SMA 2013 which safeguard community interests ought to receive a liberal interpretation and not a restricted or rigid one.'[66]

It is true that *Strata Management Act 2013* (and its predecessor legislation – the *Building and Common Property (Maintenance & Management) Act 2007* (Act 663)) was enacted to facilitate communal living in subdivided buildings and land.[67] However, the finding that the *Strata Management Act 2013* was enacted for the predominant purpose 'to facilitate the affairs of strata living for the good of the community or owners of the strata title' may not be an accurate summary of the broad purpose of the *Strata Management Act 2013* in its entirety. While it is true that the *Strata Management Act 2013* was enacted to remedy

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Regulations in adjudicating enc (1) without the need to refer to the general legislation in the form of the *Contracts Act 1950*"; See also, *House Buyer Tribunal v Unique Creations Sdn Bhd* [2014] 3 MLJ 850, 856-7 (Mohd Hishamudin JCA).

66 *Verve Suites* (n 1) [26].

67 See footnotes 65 and 66, as well as discussion in Wong (n 7) 405-406 et seq.

some mischiefs prevalent under the former legislative framework for subdivided buildings and land, including:

1. inadequate building maintenance funds caused by lack of effective legal mechanisms to compel unit owners to pay their maintenance charges and sinking fund contributions (remedied by powers of the management corporation to compel payment, distrain, and enforce and recover outstanding charges, contributions and debts from unit owners);[68] and

2. lack of good governance standards (which is in part remedied by introduction of standard schedule of by-laws),[69]

the *Strata Management Act 2013* and its predecessor statutes were enacted primarily to facilitate property ownership of parcels within subdivided buildings and land, and for the maintenance of common property.[70] At the highest, the finding that the *Strata Management Act 2013* 'is without doubt, a social legislation' and 'was passed to facilitate the affairs of strata living for the good of the community or owners of the strata title' holds true only for some aspects of the *Strata Management Act 2013*. As the Federal Court in *PJD Regency Sdn Bhd v Tribunal Tuntutan Pembeli Rumah & Anor* stated,[71]

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[68] Wong (n 7) 401-3, 424; Malaysia, *Dewan Rakyat*. 2012. *Parliamentary Debates*. 27 September, 22-3. Siti Mariah binti Mahmud; *Strata Management Act 2013* (Act 757) ss 29, 52, 68; *Perbadanan Pengurusan Pangsapuri Sri Lata v Foo Kok Keong* [2022] MLJU 2743 (Tribunal Pengurusan Strata) [3.4]: See also, *Yii Sing Chiu v Aikbee Timbers Sdn Bhd & Ors* [2022] MLJU 2365, [40*]; Palazzo Empire Sdn Bhd v Tiow Weng Theong & Ors* [2020] MLJU 1884 (HC), [20]-[25].

[69] *Strata Management (Maintenance and Management) Regulations 2015*, P. U. (A) 107, rr 5, 28, sch 3; Malaysia. *Dewan Rakyat*. 2012. *Parliamentary Debates*. 26 November, 83. Siti Mariah binti Mahmud; Malaysia. *Dewan Rakyat*. 2012. *Parliamentary Debates*. 26 November, 83-4, 92-3. Chor Chee Heung; Malaysia. *Dewan Rakyat*. 2012. *Parliamentary Debates*. 27 September, 41. Fong Kui Lun.

[70] See discussion in Wong (n 7) 401; See also, *Palazzo Empire Sdn Bhd v Tiow Weng Theong & Ors* [2020] MLJU 1884 (HC), [20]-[25].

[71] *PJD Regency Sdn Bhd v Tribunal Tuntutan Pembeli Rumah & Anor* [2021] 2 MLJ 60 (FC), 76 [31].

> All legislation is social in nature as they are made by a publicly elected body. That said, not all legislation is 'social legislation'. A social legislation is a legal term for a specific set of laws passed by the legislature for the purpose of regulating the relationship between a weaker class of persons and a stronger class of persons.

Indeed, the Federal Court in *Verve Suites* were acutely aware of this, and thus correctly limited the application of the finding that the *Strata Management Act 2013* was 'social legislation' to specific 'provisions of the SMA 2013 which safeguard community interests'.[72] Notwithstanding, the Federal Court's emphatic statement that '[t]he SMA 2013 is without doubt, a social legislation',[73] without qualification, may potentially and unwittingly be construed out of context.

Re Bandar Kinrara Properties Sdn Bhd (in liqudation)[74] is perhaps an exemplification of why the Federal Court should reconsider its' finding that the *Strata Management Act 2013* was 'without doubt, a social legislation'.

Re Bandar Kinrara Properties Sdn Bhd (in liquidation) concerned a developer of strata-title subdivided buildings who fell into liquidation.[75] It had been alleged by the Joint Management Body that parcel owners had been short-changed of five common areas promised in their Sales and Purchase Agreements with the developer and in the sale brochure, and that the developer, in breach of those Agreements, had sold these areas to third parties just prior to liquidation.[76] It had been also been alleged that the developer had owed monies to the Joint Management Body, as they had undertaken to pay on behalf on some parcel owners their maintenance charges and sinking fund fees.[77] The proceedings raised, amongst other things, the question about whether the Joint Management Body can be authorized to act on behalf of

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72 See *Verve Suites* (n 1) [26]; See also, *Pavilion Summit v Jaya One* [2022] 11 MLJ 206 (HC), [14].

73 *Verve Suites* (n 1) 28 [26].

74 [2021] MLJU 423.

75 *Re Bandar Kinrara Properties Sdn Bhd (in liquidation)* [2021] MLJU 423.

76 Ibid [26].

77 Ibid [29].

purchasers of the respective units in respect of the matters under the Sale and Purchase Agreements.[78]

The Joint Management Body contended that section 143 of the *Strata Management Act 2013* empowered the Joint Management Body to sue and be sued on matters pertaining to the common property and contended that the Joint Management Body had the right to represent all parcel owners in any matter pertaining to the common property.[79] Relevantly, section 143(2) speaks specifically that 'the proceedings may be taken - by or against the joint management body' where the 'parcel owners or proprietors of the parcels' are 'jointly entitled to take proceedings for or with respect to the common property'.[80]

On an interpretive analysis of the statutory functions of Joint Management Body in section 21 of the *Strata Management Act 2013*, the High Court held that section 21 did not state any express power for the Joint Management Body to assume the rights of the purchasers under the Agreements, and the parcel owners cannot by resolution in a general meeting delegate or assign their rights to the Joint Management Body.[81] Put simply, it was not open on the text of section 21 of the Act for the Joint Management Body to assume the purchaser's rights, and it was not a permitted function of the Joint Management Body to litigate on behalf of the parcel owners in respect of their respective Sale and Purchase Agreements.[82] The High Court held that on a proper interpretation of section 143, the word 'proceedings' do not refer to the right of the JMB to represent or assume the rights of the purchasers under the Agreements.[83] There were no such provisions in the Act that permitted the Joint Management Body to do as they had contended.[84]

The Joint Management Body contended that the *Strata Management Act 2013* was 'social legislation', relying on the dictum of the Federal Court in *Verve Suites* for the proposition that it was

78 Ibid [1].
79 Ibid [33].
80 Ibid [54].
81 Ibid [47]-[52].
82 Ibid [50]-[51].
83 Ibid [54].
84 Ibid [62].

entitled to sue on behalf of parcel owners in a class-action like manner – which beneficially promotes parcel owners' access to the Courts. The High Court correctly held such an interpretation was not open at all, and the application of the 'social legislation' purpose in *Verve Suites* should be confined to the facts in *Verve Suites*:

> A reading of Innab Salil (supra) will show that the said case centred on whether House Rules done by the JMB may override and supersede the express land use on the title imposed by the State Authority under section 120 of the National Land Code 1965 (NLC). I respectfully state that Innab Salil (supra) is to be confined to the questions posed to the Federal Court only, in particular the issue of the interpretation of the House Rules concerned when compared with the NLC. I also am of the view that the matter before me is not one 'where two different interpretations are possible' as the issue before me is one which concerns a statute i.e the SMA and one under contract i.e the SPA's.[85]

In *Re Bandar Kinrara*, the High Court's rejection of the plaintiff's application of the 'social legislation' purpose to permit the plaintiff to craft a purported statute-based remedy that was not open on the text of the *Strata Management Act 2013*, demonstrates that the 'social legislation' purpose identified in *Verve Suites* may not be universally applicable to all provisions of the *Strata Management Act 2013*, and has potential to produce unwitting implications of principle, which may in turn inadvertently precipitate the development of incoherent law.[86]

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[85] Ibid [61]; "The court must interpret legislation purposively and hence cannot import words that are not there. The purposive interpretation is permitted only to the extent as the law allows. Time and time again the courts are reminded that the courts do not legislate but merely interpret the law as intended by Parliament": *Protasco Bhd v Tey Por Yee* [2021] 6 MLJ 1, [83]; 'the task of the Courts is only to interpret the relevant statutes and declare the law, and it is certainly not the task of the Courts to pass judgment as to the wisdom or propriety of the statutory provisions. The redress to such issues is to be found elsewhere and not in the Courts": *Tengku Razaleigh* (n 25) 74; see also, footnote 25; *Ochroid Trading Ltd v Chua Siok Lui* [2018] SGCA 5, [206].

[86] Especially where 'each court, of course, is bound by the decisions of courts above it': *Sundralingam v Ramanathan Chettiar* [1967] 2 MLJ 211; *Alpine Return* (n 59) [51]; See also, discussion of *Yap Chee Meng v*

VI CONCLUSION

As discussed in Part IV.B.3 above, the Federal Court's identification of the broad purpose of the *Strata Management Act 2013* (and in particular, s 70 of that Act) as 'social legislation' in this case served two ends. First, it identified the Act's broad legislative purpose and guided its statutory interpretation. Second, it provided a normative rationale which justified why it should be read as taking precedence over the National Land Code, or why s 120 of the National Land Code should be read down in favor of s 70 of the *Strata Management Act 2013*. However, as demonstrated by Part IV.B.2, it was not strictly necessary for the Federal Court to find, as it did in *Verve Suites*, that the *Strata Management Act 2013* was 'social legislation'. The Federal Court's exercise of harmonious construction and the application of the *lex specialis* maxim to its resolution of the Question of Statutory Construction had been independent of its finding of the underlying purpose of the *Strata Management Act 2013* as 'social legislation'.[87] The Court's finding of the Act's 'social legislation' purpose guided the Court's interpretation of the *Strata Management Act 2013* and allowed the Court to reason by analogy with *Weng Lee Granite* on the basis that both *Verve Suites* and *Weng Lee Granite* concerned legislation for the public good. However, it appears that there had been sufficient reasons (ie, see Part IV.B.1 and IV.B.2) to decide the matter without further elaboration and application of the facts and decision in *Weng Lee Granite* to *Verve Suites* (ie, see Part IV.B.3).

As discussed in Part V, the 'social legislation' purpose of the *Strata Management Act 2013* identified in *Verve Suites* may not be universally applicable to all provisions of the *Strata Management Act 2013*. In light of the discussion in the preceding paragraph it is open and indeed may be prudent for the Federal Court to consider a restatement of the 'social legislation' purpose of the *Strata Management Act 2013* identified in *Verve Suites*, to provide greater clarity, preserve coherency in the law, and to put to rest criticisms and

Ajinomoto (Malaysia) Bhd [1978] 2 MLJ 249 (Harun Hashim J) in Abdul Majid et al, "Public Policy and the Decision on the Overtime Claim in Leung Ka Lau v Hospital Authority," *Hong Kong Law Journal* 44 (2014): 145, 165.

87 See specifically, *Verve Suites* (n 1) [30]-[43].

confusion stemming from the broad reference to 'social legislation' in the statutory interpretation and statutory construction of the *Strata Management Act 2013*. It is also an opportunity for the Federal Court to further develop the law on the harmonious construction interpretive canon, especially in fact matrices involving 'social legislation'.