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

[2021] SGHC 180

Tribunal Appeal No 18 of 2020

Between

(1) Mu Qi
(2) Lim Swee Joo

… *Appellants*

And

The Management Corporation
Strata Plan No 1849

… *Respondent*

JUDGMENT

[Land] — [Strata titles] — [Common property]
[Land] — [Strata titles] — [Strata Titles Board]

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v
Management Corporation Strata Plan No 1849

[2021] SGHC 180

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22 July 2021 Judgment reserved.

Ang Cheng Hock J:

1 This is an appeal by two subsidiary proprietors ("SPs") of a 15th floor unit in the condominium development located at 170 Lentor Loop called "Bullion Park" (the "development"). This appeal, made under s 98(1) of the Building Maintenance and Strata Management Act (Cap 30C, 2008 Rev Ed) (the "BMSMA"), concerns certain points of law arising from a decision of the Strata Titles Board ("STB") in STB No 87 of 2019 ("STB 87/2019").

2 In its decision, the STB found that certain SPs of 14th floor units had erected permanent structures on the common property of the development without the required 90% approval under s 33(1)(*c*) of the BMSMA.[1] However, the STB declined to order the respondent, which is the management corporation

[1] STB's Grounds of Decision dated 2 November 2020 ("STB's Decision") at para 14: Record of Proceedings ("ROP") at p 2266.

(or "MCST") of the development, to remove the unauthorised structures because the affected 14th floor SPs were not parties to STB 87/2019.[2] Whether the STB erred in law in coming to this conclusion is the main issue in the appeal before me.

3 Other related issues that arise for my consideration in this appeal are the legal effect of certain resolutions passed by the SPs at general meetings in 2018 and 2019, and whether these resolutions granted approval for the already erected structures on the common property *for a period of only three years from the date of the resolutions*, when the undisputed fact is that the structures in question are permanent in nature, and the resolutions as worded did not specify any temporal limits.

Facts

Background to the dispute

4 As mentioned, the appellants are the two SPs of a unit on the 15th floor of the development.[3] They are husband and wife.[4] They have stayed there since 2011.[5]

5 In mid-December 2011, they noticed that their neighbour in the 14th floor unit below them was installing fixed awnings for the balconies at the front

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2 STB's Decision at paras 16–17: ROP at p 2266.

3 1st Affidavit of Evidence-in-Chief of Mu Qi dated 29 June 2020 ("Mu's 1st Affidavit") at para 5: ROP at p 532.

4 Mu's 1st Affidavit at para 4: ROP at p 532.

5 Mu's 1st Affidavit at para 5: ROP at p 532.

and rear of the 14th floor unit.[6] I should explain that there are six blocks in the development, and that none of the units in each of the blocks have balconies save for the 14th floor units. For each block, there is only one unit above the 14th floor unit, and that is the 15th floor unit. As such, it is primarily the SPs of the 15th floor units that are most affected by the installation of awnings over the 14th floor units' balconies.

6 I should also add that the awnings in question were being affixed to the external walls of the development.[7] That these external walls are common property was not disputed by the parties in the proceedings before the STB.[8] The STB decision also proceeded on the basis that these awnings were affixed to common property.[9] That premise is clearly correct: see [52]–[55] below.

7 On 30 December 2011, the appellants wrote to the respondent to ask for, *inter alia*, the by-laws and documentation in relation to the erection of the awnings.[10] However, all the respondent provided was a renovation form signed by the SP of the 14th floor unit,[11] which was approved by the estate manager of the development.[12] The description of works set out in the renovation form did not refer to the erection of awnings.[13]

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6 Mu's 1st Affidavit at para 12: ROP at p 534.

7 Mu's 1st Affidavit at para 8: ROP at p 533.

8 Mu's 1st Affidavit at para 8: ROP at p 533; 2nd Affidavit of Evidence-in-Chief of Kwang Chong Haw and Ng Kim Eng, Benjamin dated 14 July 2020 ("Kwang and Ng's 2nd Affidavit") at para 7: ROP at p 1112.

9 STB's Decision at para 2: ROP at p 2264.

10 Mu's 1st Affidavit at para 13 and p 61: ROP at pp 534 and 591.

11 Mu's 1st Affidavit at para 14 and pp 62–71: ROP at pp 534 and 592–601.

12 Kwang and Ng's 2nd Affidavit at para 21 and p 41: ROP at p 1116 and 1150.

13 Mu's 1st Affidavit at para 14 and pp 62–71: ROP at pp 534 and 592–601.

8 The appellants replied to point out, *inter alia*, that there did not appear to be the necessary approval by the MCST pursuant to s 37 of the BMSMA for the affixing of the awnings on the common property of the development.[14] It also appears from the evidence of the management council meeting minutes in 2012 that no approval was ever granted by the council for the installation of the awnings, let alone a general meeting approval by the SPs.[15] In the council meetings in 2012, there were discussions about the need to obtain approval from the council and also from the Building Control Authority ("BCA") for the installed awnings to remain in place.[16] Eventually, it appears that the council also recognised that approval of the SPs via a resolution at a general meeting was required.[17]

9 At the 18th Annual General Meeting ("AGM") of the SPs held on 10 November 2012 (the "November 2012 AGM"), the following *ordinary* resolution for the creation of a by-law was passed with 87.3% voting in favour of it:[18]

> To consider and if thought fit to resolve by way of ordinary resolution that:-
>
> (a) Subsidiary proprietors and/or residents are not allowed to erect/construct/install/attach any permanent/temporary structures/fixtures/objects (for example roof over balconies, air-con compressors on ledges/common area walls, clothes hangers) on or to the external walls, unless the same has been approved by a special resolution of members passed at a general meeting;

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14 Mu's 1st Affidavit at para 15 and pp 72–73: ROP at pp 535 and 602–603.

15 Mu's 1st Affidavit at pp 74–117: ROP at pp 604–647.

16 Mu's 1st Affidavit at pp 82–83: ROP at pp 612–613.

17 Mu's 1st Affidavit at pp 89 and 109: ROP at pp 619 and 639.

18 Mu's 1st Affidavit at pp 120–122: ROP at pp 650–652.

> (b) The MCST will continue to allow those that had already been erected/constructed/installed/attached prior to the date hereof which had been previously approved by the Management Council in writing, for the life span of the item here mentioned.
>
> However, in future no such replacement, alteration, addition or new installation would be approved by the MCST. In cases where such installations become unsafe, they must be removed immediately.
>
> (c) Residents who have installed/erected/constructed/attached any permanent/temporary structures/fixtures/objects (for example roof over balconies, air-con compressors and cloth hangers on ledges) on or to the external walls, shall remove such structures/fixtures/objects and reinstate the external walls back to their original condition before selling off their unit (notwithstanding that such structures/fixtures/objects may have been previously approved by the MCST). Failing to do so, the Management Council shall be authorised and empowered to remove them or cause them to be removed (and for that purpose to have access to the unit in question for the duration of the removal works), and thereafter recover the cost of such removal plus an administration fee of $200.00 as a debt from the subsidiary proprietor(s) of the unit in question.

10 That the resolution was put forward as an ordinary resolution was somewhat surprising given what transpired at the meeting. The appellants had sent a proxy to attend the meeting, who informed the meeting that item (b) above required a 90% resolution, and that item (c) above required a special resolution.[19] The minutes of the November 2012 AGM do not record any explanation for the appellants' proxy's caution. Nonetheless, it may be surmised that the appellants and/or the proxy were likely of the view that item (b) required a 90% resolution because it came under s 33(1)(*c*) of the BMSMA (see below at [64]). Similarly, the appellants and/or the proxy likely considered that item (c) required a special resolution either under s 32 of the BMSMA by virtue of being a by-law relating to common property, or under s 29(1)(*d*) as it pertained to the removal of structures from common property. However, in

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[19] Mu's 1st Affidavit at pp 121–122: ROP at pp 651–652.

spite of this, the then chairman of the management council indicated that the council had taken legal advice and was content to proceed by way of an ordinary resolution for items (a) to (c) above.[20]

11 After the November 2012 AGM, the first appellant was given a copy of the by-law created by the ordinary resolution (the "November 2012 by-law").[21] She was assured by the respondent that the SPs of the 14th floor unit below her would, *inter alia*, remove the awnings before selling off their unit.[22] She was also assured that, if this was not done, the management council was empowered to remove the awnings and recover the costs of such removal from the SPs of the 14th floor.[23]

12 Upon receiving this assurance, the appellants decided not to pursue any legal recourse in relation to the awnings.[24] As the first appellant explained, she decided to wait "patiently" for the SPs of the 14th floor unit to sell their unit.[25]

13 On or around 22 June 2018, the first appellant learnt that the SPs of the 14th floor unit below hers were either selling or had sold their unit.[26] She then informed the estate manager of the development to ensure that the awnings were removed as per the by-law that she was shown after the November 2012 AGM.[27]

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20 Mu's 1st Affidavit at p 122: ROP at p 652.

21 Mu's 1st Affidavit at para 49 and p 123: ROP at pp 544–545 and 653.

22 Mu's 1st Affidavit at para 49: ROP at p 544.

23 Mu's 1st Affidavit at para 49: ROP at pp 544–545.

24 Mu's 1st Affidavit at para 50: ROP at p 545.

25 Mu's 1st Affidavit at para 50: ROP at p 545.

26 Mu's 1st Affidavit at para 53: ROP at p 545.

27 Mu's 1st Affidavit at para 53: ROP at p 545.

However, despite assurances from the estate manager that the SPs had been told to remove the installed awnings, the structures remained.[28]

14 On 13 August 2018, in response to the first appellant's request for documents pertaining to the erection of the awnings for the 14th floor unit below the appellants' unit,[29] the respondent replied to state, *inter alia*, that "[a]s BCA was unable to acknowledge our lodgement of By-Law, the motion passed in 2012 has expired because it was an Ordinary Resolution".[30] Quite understandably, the appellants were upset to discover that this fact had not been disclosed to them until now. Pursuant to s 32(4) of the BMSMA, any by-laws passed would have had to have been acknowledged by the BCA before they become legally effective. Since there was no such acknowledgment, the November 2012 by-law never came into effect.

15 It appears that the BCA had not acknowledged the by-law in relation to the requirement for SPs to remove the awnings because it had not been passed as a special resolution at a general meeting of the MCST.[31] Instead, it was passed as an ordinary resolution, despite the appellants' proxy at the November 2012 AGM specifically pointing out that it had to be, at least in part, passed by a special resolution.[32]

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28 Mu's 1st Affidavit at paras 54–57: ROP at p 546.

29 Mu's 1st Affidavit at pp 124 and 126–127: ROP at pp 654 and 656–657.

30 Mu's 1st Affidavit at p 132: ROP at p 662.

31 1st Affidavit of Evidence-in-Chief of Kwang Chong Haw and Ng Kim Eng, Benjamin dated 2 April 2020 ("Kwang and Ng's 1st Affidavit") at p 44: ROP at p 968.

32 Mu's 1st Affidavit at pp 121–122: ROP at pp 651–652.

16 By this time in 2018, it was not only the appellants' downstairs neighbours who had modified their external walls. Other 14th floor SPs had begun attaching their own awnings to their external walls, or removing part of their external walls to install sliding doors.[33] This in turn caused other 15th floor SPs some unhappiness, culminating in a joint letter from the SPs of eight 15th floor units (including the appellants) to the respondent dated 17 September 2018.[34] In this letter, the 15th floor SPs described at length their concerns over the modification of the development's façade, and various inconveniences caused by the awnings such as heat reflection, noise during rain and the loss of the view from their windows.[35]

17 At the 24th AGM of the MCST held on 17 November 2018, the respondent passed the following resolution by 86.6% approval (the "November 2018 resolution"):[36]

> To consider and if thought fit, to resolve by way of special resolution in allowing Management Council to approve application for the installation of fixed shelter at balcony private enclosed space (PES) area at level 14 as per design approved by a Qualified Person; with consideration to the health concern, cleanliness, heat reflection, noise, safety and security as well as view of their neighbours; subjected to the rules and regulations governing the renovation work and the final approval from the relevant government authorities.
>
> This will be the only design guideline approved and accepted by Bullion Park. All non-conforming design will have to be removed upon sale of unit.
>
> (Please refer to [schematics for awnings] attached.)

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33 Mu's 1st Affidavit at paras 92–94 and 124: ROP at pp 556 and 563.

34 Mu's 1st Affidavit at pp 164–166: ROP at pp 694–696.

35 Mu's 1st Affidavit at pp 164–166: ROP at pp 694–696.

36 Kwang and Ng's 1st Affidavit at pp 58–62: ROP at pp 982–986.

18 In the course of 2019, the appellants and the respondent traded letters through their solicitors about, *inter alia*, the legal effectiveness of the November 2018 resolution in permitting the permanent structures to remain on the common property.[37] In the course of these exchanges, the respondent's solicitors candidly admitted in a letter dated 13 June 2019 that obtaining a 90% vote for the approval of the awnings installed by the 14th floor units' SPs would be "almost impossible".[38] The respondent's solicitors explained that the November 2018 resolution allowed the awnings to remain affixed on the common property until the resolution "expires" in three years, or until the SPs reach an amicable resolution, whichever is earlier.[39]

19 Given the impasse, the appellants commenced STB 87/2019 against the respondent. In those proceedings, they mainly sought orders (a) for the respondent to remove the awnings installed on the external walls on the development by the SPs of various 14th floor units, including the unit that was directly below the appellants' unit; (b) for the invalidation of the November 2018 resolution; and (c) for the respondent to reinstate the external walls of the development that had been demolished by the SPs of the 14th floor units and replaced with sliding glass doors.[40]

20 After STB 87/2019 had been commenced, the respondent sought to pass yet another resolution at the 25th AGM of the MCST on 16 November 2019

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37 Mu's 1st Affidavit at paras 82–87: ROP at pp 552–555.

38 Mu's 1st Affidavit at p 160: ROP at p 690.

39 Mu's 1st Affidavit at p 160: ROP at p 690.

40 ROP at pp 8–9.

(the "November 2019 AGM") to create another by-law in relation to common property.[41]

> "UNAUTHORIZED ADDITIONS, ALTERATIONS AND IMPROVEMENT WORK WITHIN UNIT"
>
> The Management Council shall have the authority to record all additions, alterations or improvements made in or upon Common Property as of 2nd January 2020 and take all actions as provided in this by-law.
>
> All subsidiary proprietors (SPs) are required to submit a list of additions, alterations or improvements made in or upon Common Property that are closest to or even found in their units. Additions, alterations or improvements referred to herein shall include but not be limited to awnings, gates, cabinets, air-con units, aluminium louvers, clothing pole supports, etc. (whether or not the current SPs are the ones who installed them). The list shall be submitted to the management office by 2nd January 2020 at the latest. Exceptions to this requirement are approved windows at the kitchens and permitted safety equipment under and governed by the current section 37A of the Building Maintenance and Strata Management Act ("the Act").
>
> Additions, alterations or improvements made in or upon the Common Property that are provided by the SPs to and recorded by the management office by 2nd January 2020 shall be allowed for the duration of this special resolution as governed by the Act. Additions, alterations or improvements made in or upon the Common Property that are not provided to the management office by 2nd January 2020 shall be considered as unauthorised.
>
> Notwithstanding the foregoing, all additions, alterations or improvements allowed as aforesaid shall be removed completely and the remaining wall or other structure that is not unauthorised be reinstated by the relevant SPs no less than thirty (30) days before the completion of the sale of their unit. Such SPs are to also inform prospective buyers of their units in writing about this condition even before any option to purchase is signed.
>
> All additions, alterations or improvements made in or upon Common Property that are not recorded by the management office on or before 2nd January 2020 but discovered by the Management Council after 2nd January 2020 shall be deemed

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41 Kwang and Ng's 1st Affidavit at pp 11–12: ROP at pp 935–936.

> unauthorised and the relevant SP who made such addition, alteration or improvement or, failing such determination by the Management Council on which SP made the addition, alteration or improvement, the SP whose unit is closest to such addition, alteration or improvement, shall within thirty (30) days of written notification to do so by the Management Council, remove the same completely and the remaining wall or other structure that is not unauthorised be reinstated.
>
> If the relevant SP fails to take the relevant appropriate action by the relevant deadlines in either case of authorised or unauthorised additions, alterations or improvements made in or upon Common Property as aforesaid, the Management Council shall have the authority to remove such additions, alterations or improvements and carry out rectification and reinstatement work at the relevant SPs' expense.
>
> Additions, alterations or improvements made in or upon the SPs' lots shall be governed by the relevant provision of the ACT (e.g. current section 37), including but not limited to the actions that may be taken by the MCST as provided in section 37(4A) of the Act.

At the November 2019 AGM, this resolution was passed by 89% of the votes (the "November 2019 resolution").[42]

21 By this by-law, the respondent was asking all SPs to submit a list of all the additions, alterations and improvements that they might have made on the common property of the development by 2 January 2020. This would include, of course, the awnings installed by the 14th floor units' SPs. The management council would then record all these additions, alterations and improvements made on the common property, and these would, in accordance with the resolution, be considered to be authorised, while those that were *not* provided to the management council by 2 January 2020 would be considered as unauthorised and would be liable for removal.

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42 Respondent's written submissions dated 3 March 2021 ("RWS") at para 34.

The STB decision

22 STB 87/2019 was heard over the course of several dates in July, September and October 2020. For the appellants, the first appellant, the appellants' daughter, the owner of another 15th floor unit, and an expert witness gave evidence at the hearing. For the respondents, the current chairman of the management council, the current estate manager, the current SP of the 14th floor unit below the appellants, and two expert witnesses gave evidence.

23 On 2 November 2020, the STB gave its decision and provided written grounds. The STB found that there had been no 90% resolution passed which authorised the installation of the awnings on the external walls and, in some cases, the removal of the external walls.[43] It was not disputed that these external walls are common property of the development.[44]

24 The STB found as a fact that there was insufficient evidence to show that there was a "killer litter" problem in the development,[45] and thus this did not provide an exception to the 90% resolution requirement for the installation of the fixed awnings by the 14th floor units' SPs. Although not explained by the STB in its decision, this is a reference to an exception recognised in a series of STB cases (*eg*, *Rosalina Soh Pei Xi v Hui Mun Wai and The Management Corporation Strata Plan No 4396* [2019] SGSTB 5) where it has been held that awnings are "safety devices" under para 5(3) of the Second Schedule to the Building Maintenance (Strata Management) Regulations 2005 (S 192/2005), dealing with prescribed by-laws, which permits an MCST to allow the

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43 STB's Decision at para 14: ROP at p 2266.

44 Kwang and Ng's 2nd Affidavit at para 7: ROP at p 1112.

45 STB's Decision at para 23: ROP at p 2267.

installation of a "safety device" on common property for the safety of the occupiers of the strata lot.

25 However, the STB found that the 14th floor units' SPs, who had installed awnings and/or removed the external walls, had proceeded on the basis that the respondent had authorised them to do so, and the respondent did not deny that they had given such authority.[46]

26 The STB found that, while the awnings and sliding glass doors "might be unauthorised structures", the affected 14th floor units' SPs should be "given an opportunity to raise any possible defence and/or counterclaim against the [respondent] if the [respondent] is to take action against them".[47]

27 As such, the STB decided against granting the orders against the respondent to take the necessary action to remove the unauthorised structures, because that "would be tantamount to [the STB] ordering the [14th floor units' SPs] to demolish their awnings without affording them an opportunity to be heard".[48]

28 The STB also made reference to the by-law passed in the November 2019 resolution and suggested that it "may well make the disputed awnings etc. to be authorised structures as they stand now".[49] However, the STB stated that

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46 STB's Decision at para 15: ROP at p 2266.

47 STB's Decision at para 16; ROP at p 2266.

48 STB's Decision at para 17; ROP at p 2266.

49 STB's Decision at para 19; ROP at p 2267.

it was not making any finding in this regard as the by-law was passed *after* the commencement of STB 87/2019.[50]

29 The STB also found that the November 2012 by-law had no force or effect because it was not acknowledged by the BCA or lodged with the Commissioner of Buildings (the "Commissioner"), as required by s 32(4) of the BMSMA.[51]

30 As for the November 2018 resolution, the STB found that the resolution did not address the issue of the awnings installed by the 14th floor units' SPs at their balconies.[52]

31 The STB found that the SPs of the 14th floor unit directly below the appellants had breached s 63 of the BMSMA because the awnings that had been installed by the previous owners caused a nuisance to the appellants.[53] In this regard, it accepted the expert evidence tendered by the respondent that the awnings reflected heat and caused glare which affected the unit upstairs, that the awnings were a source of dirt, and that the awnings caused "noise disturbance" during the rain.[54] The STB ordered the respondent to take the necessary action against the SPs of the unit below the appellants to rectify the nuisances caused to the appellants.[55] This would have involved treating the

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50 STB's Decision at para 19; ROP at p 2267.

51 STB's Decision at para 21; ROP at p 2267.

52 STB's Decision at para 22; ROP at p 2267.

53 STB's Decision at para 25; ROP at p 2267.

54 STB's Decision at paras 26–28; ROP at p 2268.

55 STB's Decision at para 28; ROP at p 2268.

awnings with an off-white polyurethane coating, and washing the awnings twice a year.[56]

32 Even though the STB had dismissed all the prayers sought by the appellants, it expressed the view that it would be inequitable for the appellants to be penalised by any costs orders.[57] This was because the appellants' case was "not without merit" and the respondent was "not without fault".[58]

The appeal under s 98(1) of the BMSMA

33 The appellants have filed this appeal against the STB's decision under s 98(1) of the BMSMA. Under that section, it is provided that:

> **Appeal to General Division of High Court on question of law**
>
> **98.**—(1) No appeal shall lie to the General Division of the High Court against an order made by a Board under this Part or the Land Titles (Strata) Act (Cap. 158) except on a point of law.

34 In *Ng Eng Ghee and others v Mamata Kapildev Dave and others (Horizon Partners Pte Ltd, intervener) and another appeal* [2009] 3 SLR(R) 109, the Court of Appeal held that points of law subject to appeals under s 98(1) of the BMSMA include *ex facie* errors of law, and cited *Halsbury's Laws of England* vol 1(1) (Butterworths, 4th Ed Reissue, 1989) at para 70 for examples of such errors (at [90], [91] and [101]):

> Errors of law include misinterpretation of a statute or any other legal document or a rule of common law; asking oneself and answering the wrong question, *taking irrelevant considerations into account or failing to take relevant considerations into account when purporting to apply the law to the facts*; admitting

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56 STB's Decision at para 27; ROP at p 2268.

57 STB's Decision at para 31; ROP at p 2268.

58 STB's Decision at paras 32–33; ROP at p 2269.

> inadmissible evidence or rejecting admissible and relevant evidence; exercising a discretion on the basis of incorrect legal principles; giving reasons which disclose faulty legal reasoning or which are inadequate to fulfil an express duty to give reasons, and misdirecting oneself as to the burden of proof.
>
> [emphasis in original omitted; emphasis added in italics]

35 The various points of law set out in the appellants' Originating Summons all relate to the STB either having taken irrelevant considerations into account or having failed to take relevant considerations into account. They therefore all concern *ex facie* errors of law, and are points of law susceptible to appeal under s 98(1) of the BMSMA. While numerous points of law were raised, I find that they were worded rather clumsily and in a confusing manner. After reviewing the written submissions and the oral arguments of counsel, there was more clarity. I found that the points of law in question could be grouped into the following two categories.

36 The first point of law is whether the STB erred in not granting the orders sought by the appellants in relation to the removal of the awnings and the restoration of the external walls despite its findings that (a) there was no 90% approval for the SPs of the relevant 14th floor units to carry out such works on the common property of the development, and (b) there was no "killer litter" problem in the development.[59] Put another way, the alleged error of law is that the STB, in deciding against ordering the respondent to take steps to restore the common property, took into account the irrelevant consideration that the affected SPs of the 14th floor units ought to have been given a chance to be heard and to raise any possible defences and/or counterclaims against the respondent.

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[59] Originating Summons (Amendment No 1) for HC/TA 18/2020 dated 17 March 2021 ("OS") at prayers 2, 3, 4, 5, 7, 8, 9 and 10.

37 In respect of this point of law, the respondent argues that the STB's decision would stand even if the issue of the affected SPs of the 14th floor had not been considered by the STB. First, it argues (contrary to its stance before the STB) that the external walls are *not* common property after all, and there was therefore no need for approval via resolution under s 33 of the BMSMA for the works to be carried out. Second, even if the external walls are common property, the November 2018 and November 2019 resolutions had provided the necessary approval for the works. I shall deal with these arguments by the respondent in the course of dealing with this point of law.

38 The second point of law raised by the appellants is whether the STB had erred in failing to consider a whole host of the appellants' alternative arguments as to why the structures installed on, and the alterations made to, the common property are illegal and should be ordered to be removed and/or restored.[60] Amongst these, the appellants had raised before the STB the argument that the respondent had breached s 37(4) of the BMSMA, which deals with improvements in or upon lots comprised in a strata plan that affect the appearance of the development's buildings. The appellants also raised before the STB an argument to the effect that the respondent, through its conduct, was estopped from resiling from its representation that it would enforce the November 2012 resolution. These various alternative arguments, which were not considered by the STB, will be dealt with in the course of this judgment, if it becomes necessary for me to do so.

39 I should also mention that, while it was raised as a point of law that was being appealed against in the Originating Summons, the appellants eventually

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[60] OS at prayer 11.

did not pursue the submission before me that the November 2012 by-law had legal effect and had been breached. I therefore proceed on the basis that the November 2012 by-law had no legal effect.

Whether the affected subsidiary proprietors of the 14th floor units ought to have been heard

40 The issue of whether the SPs of the 14th floor units might have had some defence and/or a counterclaim against the respondent, if the latter is ordered to take steps to remove the unauthorised structures and/or restore the external walls that had been demolished, was central to the STB's decision not to grant the orders sought by the appellants (see [25]–[27] above).

41 In STB 87/2019, the appellants had commenced proceedings against the respondent. They had not named the 14th floor SPs who had installed awnings and/or demolished the external walls as respondents in their application. The question that arises is whether the appellants were obliged to do so.

42 First, let me examine the statutory provisions and the role of the MCST in relation to common property.

43 The form and functions of an MCST are prescribed by s 24 of the BMSMA:

> **Constitution of management corporation**
>
> **24.**—(1) The management corporation constituted by virtue of the Land Titles (Strata) Act (Cap. 158) in respect of a strata title plan shall —
>
> (*a*) comprise the subsidiary proprietors from time to time of all lots comprised in that strata title plan;

> (*b*) be a body corporate capable of suing and being sued and having perpetual succession and a common seal; and
>
> (*c*) be called "The Management Corporation — Strata Title Plan No.____" (the number to be specified being the number of the strata title plan).
>
> (2) A management corporation for a strata title plan may —
>
> (*a*) sue and be sued on any contract made by it;
>
> (*b*) sue and be sued in respect of any matter affecting the common property;
>
> (*c*) sue in respect of any loss or damage suffered by the management corporation arising out of a contract or otherwise; and
>
> (*d*) be sued in respect of any matter connected with the parcel for which the subsidiary proprietors are jointly liable.
>
> (3) A management corporation constituted in respect of a strata title plan shall have the powers, duties and functions conferred or imposed on it by or under this Act, or by the by-laws in respect of the parcel comprised in that strata title plan and, subject to this Act, shall have the control, management and administration of the common property comprised in that strata title plan.
>
> …

44 A key part of the MCST's duties is the maintenance and administration of common property. Section 29 of the BMSMA provides that:

> **Duties and powers of management corporation in respect of property**
>
> **29.**—(1) Except as otherwise provided in subsection (3), it shall be the duty of a management corporation —
>
> (*a*) to control, manage and administer the common property for the benefit of all the subsidiary proprietors constituting the management corporation;
>
> (*b*) to properly maintain and keep in a state of good and serviceable repair (including, where reasonably necessary, renew or replace the whole or part thereof) —

> (i) the common property;
>
> …
>
> (*d*) when so directed by a special resolution, to do all or any of the following for the purpose of improving or enhancing the common property:
>
> (i) install, remove, replace or add any facility on the common property;
>
> (ii) change the use of the common property;
>
> (iii) erect, remove, replace or add to a structure on the common property;
>
> (*e*) to comply with any notice or order made by any relevant authority or public authority requiring the abatement of any nuisance on the common property or ordering repairs or other work to be done in respect of the subdivided building or common property;
>
> …
>
> (2) Except as otherwise provided in subsection (3), a management corporation may —
>
> (*a*) enter into an agreement, upon such terms and conditions (including terms for the payment of consideration) as may be agreed upon by the parties thereto, with a subsidiary proprietor or occupier of a lot for the provision of amenities or services by it to the lot or to the subsidiary proprietor or occupier thereof; and
>
> (*b*) do all things reasonably necessary for the performance of its duties under this Part and for the enforcement of the by-laws.

45 In *Management Corporation Strata Title Plan No 1272 v Ocean Front Pte Ltd (Ssangyong Engineering and Construction Co Ltd and others, third parties)* [1994] 3 SLR(R) 787, Warren L H Khoo J, in considering the predecessor of the present s 24(2) of the BMSMA, the now-repealed s 33(2) of the Land Titles (Strata) Act (Cap 158, 1988 Rev Ed) (the "LTSA"), held that it is the management corporation which should normally sue and be sued in regard to common property in general:

> 26 Defendants' counsel argues that because the ownership of the common property is by s 13(1) of the Act vested in the subsidiary proprietors as tenants in common and not in the management corporation, it is the subsidiary proprietors, rather than the management corporation, who have the right to sue the developer for any defects in the common property that might be attributable to the developer.
>
> 27 I respectfully disagree. In the first place, if counsel's argument is correct, there would have been no necessity to enact s 33(2) giving the management corporation the power to sue in respect of any matter affecting the common property. The subsection contains no limitation as to the type of matters concerning the common property in respect of which the management corporation can sue or be sued or as to the circumstances in which such suits may be brought by or against the management corporation. Secondly, the common property is under the control, management and administration of the management corporation, and it is also the management corporation, rather than the individual subsidiary proprietors, who have the duty to keep it in good and serviceable repair. Thirdly, it is obviously more convenient for the management corporation, operating under well-defined decision-making procedures prescribed by the Act and bye-laws, to take proceedings in respect of any matter concerning the common property, rather than for the subsidiary proprietors as individual subsidiary proprietors to do so. There is no reason for any particular subsidiary proprietors whose property is not specially affected by defects in the common property, to take the initiative of suing. This is of special relevance in a large condominium with many subsidiary proprietors, some of whom might be more affected by the defects than others.
>
> 28 I am therefore of the view that it is consistent with the purpose and objective of the Act that, in regard to common property in general, it is the management corporation, rather than the subsidiary proprietors, which should normally be the party to sue and to be sued. Such proceedings are for the account of the management corporation as management corporation.

46 In sum, it is the MCST that is the statutorily empowered body that manages the common property of the development. Further, it is clear from the authorities that the MCST is the correct party, in form and substance, to defend a claim that relates to the common property of the development. The MCST

can be sued in respect of common property, and any judgment obtained against them takes effect as a judgment against all the SPs of the development. The purpose of the statutory provisions is to simplify the procedural aspects of legal proceedings, so that there is no need to name all the SPs of the development as defendants.

47 In my judgment, there was no procedural defect in the proceedings commenced before the STB. The appellants have taken issue with the installation of fixed awnings on the external walls, and also the demolishing of some external walls of the development, within the balcony areas. There was no dispute between the appellants and the respondent in the STB proceedings that these external walls of the development are common property. That being the case, the respondent, being the MCST, is the correct party to be named as the party to defend the STB proceedings.

48 I do not think that it was necessary for the appellants to have named the affected 14th floor units' SPs as respondents in the proceedings, because there was no dispute that what they had done was to install structures and make alterations to the *common property* of the development.

49 While it certainly is true that the 14th floor SPs would be significantly affected if the respondent is ordered to take steps to remove the structures and to procure the restoration of the external walls, I find that this simply followed from the fact that these SPs had erected illegal structures on the common property, and in some cases, demolished common property. The STB made the point that the affected 14th floor SPs ought to be heard in their defence. I agree to the extent that, insofar as they *might* have some claim against the MCST for having misled them into believing that their additions and alterations were legal

and authorised, these affected 14th floor SPs would be entitled to bring claims against the MCST to seek legal recourse. However, it does not follow that they have a defence, if the MCST is ordered to take steps to remove the illegal structures and/or restore the external walls. In other words, I do not see how they can successfully resist any order which requires the common property to be restored to its original form. They cannot insist on keeping their fixed awnings, and their sliding glass doors, since these were constructed on common property without the proper approvals as required under s 33(1)(*c*) of the BMSMA. The only possible defence is if a particular 14th floor SP can show that he requires his awnings for reasons of safety, for instance if his unit suffers from a "killer litter" problem; this is a point I will deal with in making my orders.

50 Thus, I am of the view that the STB erred in not granting the orders sought by the appellants in respect of the common property of the development.

51 In any event, I noted that, in the STB proceedings below, one of the SPs of the 14th floor unit below the appellants gave evidence as a witness for the respondent. As such, it could not be said that, for at least this SP, he was not heard as to why the fixed awnings that were installed for his unit should not be removed. His evidence was to the effect that the fixed awnings which covered his balcony should not be removed because of the risk of "killer litter", and because it prevented the ingress of water into his unit during torrential rain.[61] While the STB did not address the issue of water ingress, it made a finding that the development did not have any "killer litter" problem. As such, even if I am

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[61] Affidavit of Evidence-in-Chief of Chow Kim Ghee dated 6 August 2020 at paras 31 and 33: ROP at p 1355.

wrong in holding that it was not necessary for each affected SP to be heard in relation to whether the alterations that they made to the common property should be restored, this consideration should not apply to the SPs of the 14th floor unit directly below that of the appellants' unit, as it is clear that their evidence had been heard and considered by the STB.

Common property

52 In the appeal, the respondent belatedly attempted to argue that the external walls of the development that were within the balcony areas of the 14th floor units were actually *not* common property, but owned by the individual SPs of the units. As such, it is argued that there was no requirement for the respondent to procure a 90% resolution under s 33 of the BMSMA (see [64] below) to permit the 14th floor SPs to make alterations to the external walls on a permanent basis. Counsel for the respondent suggested that I should not follow the decision of Chan Seng Onn J in *Wu Chiu Lin v Management Corporation Strata Title Plan No 2874* [2018] 4 SLR 966 ("*Wu Chiu Lin*"), where he held that the external walls of the strata development in that case were common property (at [58]–[76]).

53 I start by considering the statutory definition of "common property". Section 2(1) of the BMSMA defines "common property" as follows:

> "common property", subject to subsection (9), means —
>
> > (*a*) in relation to any land and building comprised or to be comprised in a strata title plan, such part of the land and building —
> >
> > > (i) not comprised in any lot or proposed lot in that strata title plan; and
> > >
> > > (ii) used or capable of being used or enjoyed by occupiers of 2 or more lots or proposed lots;

> (*b*) in relation to any other land and building, such part of the land and building —
>
> (i) not comprised in any non-strata lot; and
>
> (ii) used or capable of being used or enjoyed by occupiers of 2 or more non-strata lots within that land or building; or
>
> (*c*) in relation to any land and building mentioned in paragraph (*a*) or (*b*), any of the following whether or not comprised in a lot, proposed lot or non-strata lot:
>
> (i) the pipes, wires, cables or ducts which are used, or capable of being used or enjoyed, by occupiers of 2 or more lots, proposed lots or non-strata lots (as the case may be) within that land or building, or are used or capable of being used for the servicing or enjoyment of the common property;
>
> (ii) the cubic space enclosed by a structure enclosing pipes, wires, cables or ducts mentioned in sub-paragraph (i);
>
> (iii) any structural element of the building;
>
> (iv) the waterproof membrane attached to an external wall or a roof …

54 Section 2(1) of the BMSMA also provides a number of examples under subsection (*c*) of the definition of "common property". Of these examples, example (*b*) (which appears to be an instance of a "structural element of the building") is "[a]n external wall … of a building which is used or enjoyed, or capable of being used or enjoyed, by occupiers of 2 or more lots, proposed lots or non-strata lots".

55 Based on the photographs that were produced in evidence,[62] it is clear to me that the external walls to which the awnings were affixed contributed to the appearance of the building, and were hence capable of being enjoyed by some

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62 ROP at pp 143 and 580–583; RWS at paras 16–17.

or even all subsidiary proprietors of the development: *Sit Kwong Lam v Management Corporation Strata Title Plan No 2645* [2018] 1 SLR 790 at [59]. I therefore find it quite indisputable that the external walls form part of the common property of the development.

56 Given the plain words used in the legislation, there is no need for me to deal with the submissions by counsel for the respondent on the decision in *Wu Chiu Lin*. I note only that, at the time of that decision, the definition of "common property" in the BMSMA included only the subsections (*a*) and (*b*) set out above, and that the correctness of that decision has clearly been reinforced with the addition of subsection (*c*) and its attendant examples on 1 February 2019, when certain amendments to the BMSMA came into effect.

57 Even leaving all this aside, I find that it may be too late for the respondent to raise these arguments about external walls not being common property at this stage of the legal proceedings.

58 First, I noted that, from the time this matter was raised by the appellants in 2011 until the STB hearings, there was consensus between the appellants and the respondent that the awnings had been affixed on common property. In other words, the respondent had consistently taken the position that the external walls of the development were common property.[63] In fact, even before the case of *Wu Chiu Lin*, there was a decision by the STB in *Mark Wheeler v The Management Corporation Strata Title Plan No 751 and another* [2003] SGSTB 5 which held that the external walls of a condominium development were common property (at [31]). This probably explains why the respondent

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63 Kwang and Ng's 2nd Affidavit at para 7: ROP at p 1112.

attempted in 2012, 2018 and 2019 to procure the passing of resolutions to permit the affixing of these structures on common property, but failed to achieve a 90% resolution in all three attempts.

59 Second, at the STB hearing, the respondent unequivocally took the position that the external walls of the development were common property, and the matter proceeded on that basis.[64] This was noted by the STB in its decision.[65] I accept the submission by the appellants that they will be prejudiced if the court is now to entertain the contention that the external walls might not be common property. As pointed out by counsel for the appellants, the case could well have proceeded differently below, in that counsel could, *eg*, have attempted to elicit evidence from the respondent's witnesses as to who was responsible for maintaining and painting the external walls of the development in order to persuade the STB that the external walls are common property. Such evidence is now not before me because of the concession by the respondent that the external walls are common property. Also, the appellants might have focused more on their arguments in relation to s 37(4) of the BMSMA, to show that the MCST was wrong in granting the 14th floor SPs permission to make improvements to their lots because the MCST did not consider whether these additions and alterations affected the façade of the development.

60 For these reasons, I reject the respondent's contention that the external walls of the development are not common property, and find that s 33 of the BMSMA is in fact applicable.

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64 Kwang and Ng's 2nd Affidavit at para 7: ROP at p 1112.

65 STB's Decision at para 14: ROP at p 2266.

The resolutions

61 I now turn to the respondent's other argument as to why the STB's decision should stand, namely that even if s 33 of the BMSMA were to apply, the November 2018 and November 2019 resolutions sufficed for the purposes of that section to authorise the installation of the awnings and the modification of the walls. I begin with the November 2019 resolution, as it appears to have carried more weight in the view of the STB.

The November 2019 resolution

62 The STB suggested that the special resolution, for the creation of a by-law, passed with 89% vote at the November 2019 AGM, might provide the basis of a possible defence by the affected 14th floor SPs, if the respondent were to take action to enforce any order for the removal of the fixed awnings, or to restore the demolished external walls. It appears to me that this was an additional reason the STB declined to make an order for the removal of the awnings or the restoration of the external walls. The STB was of the view that the by-law passed by the November 2019 resolution "may well make the disputed awnings etc. to be authorised structures as they stand now."[66]

63 I am unable to agree with the views expressed by the STB. This special resolution passed at the November 2019 AGM was a clear attempt to provide a blanket whitewash approval in respect of *all* unauthorised structures on the common property of the development. This is readily apparent from the plain wording of the by-law. It allows SPs to submit a list of all hitherto unauthorised structures on common property, or all hitherto unauthorised alterations to

[66] STB's Decision at para 19; ROP at p 2267.

common property, to the office of the management by 2 January 2020, and once recorded by the management office staff, these structures or alterations would be *deemed* authorised. But, if the structure or alteration, of whatever nature, is not reported to the management office by 2 January 2020, they would be *deemed* to be unauthorised.

64 In my view, this is a rather cynical abuse of the approach envisaged by Parliament and set out in s 33 of the BMSMA for the grant to exclusive use or special privileges over common property. Section 33 provides, in its material parts, as follows:

> **Exclusive use by-laws**
>
> **33.**—(1) Without prejudice to section 32, with the written consent of the subsidiary proprietor of the lot concerned, a management corporation may make a by-law —
>
> (*a*) pursuant to an ordinary resolution, conferring on the subsidiary proprietor of a lot specified in the by-law, or on the subsidiary proprietors of the several lots so specified, for a period not exceeding one year —
>
> (i) the exclusive use and enjoyment of; or
>
> (ii) special privileges in respect of,
>
> the whole or any part of the common property, upon conditions (including the payment of money at specified times or as required by the management corporation, by the subsidiary proprietor or subsidiary proprietors of the lot or several lots) specified in the by-law;
>
> (*b*) pursuant to a special resolution, conferring on the subsidiary proprietor of a lot specified in the by-law, or on the subsidiary proprietors of the several lots so specified, for a period which exceeds one year but does not exceed 3 years and cannot be extended by exercise of any option of renewal to exceed an aggregate of 3 years —
>
> (i) the exclusive use and enjoyment of; or
>
> (ii) special privileges in respect of,

> the whole or any part of the common property, upon conditions (including the payment of money at specified times or as required by the management corporation, by the subsidiary proprietor or subsidiary proprietors of the lot or several lots) specified in the by-law;
>
> (*c*) pursuant to a 90% resolution, conferring on the subsidiary proprietor of a lot specified in the by-law, or on the subsidiary proprietors of the several lots so specified, for a period which exceeds 3 years —
>
> (i) the exclusive use and enjoyment of; or
>
> (ii) special privileges in respect of,
>
> the whole or any part of the common property, upon conditions (including the payment of money at specified times or as required by the management corporation, by the subsidiary proprietor or subsidiary proprietors of the lot or several lots) specified in the by-law; or
>
> (*d*) amending, adding to or repealing a by-law made in accordance with paragraph (*a*), (*b*) or (*c*), as the case may be.

(2) A by-law referred to in subsection (1) shall either provide that —

> (*a*) the management corporation shall continue to be responsible to carry out its duties under section 29(1), at its own expense; or
>
> (*b*) the subsidiary proprietor or proprietors of the lot or lots concerned shall be responsible for, at the subsidiary proprietor's or subsidiary proprietors' expense, the performance of the duties of the management corporation referred to in paragraph (*a*),

and in the case of a by-law that confers rights or privileges on more than one subsidiary proprietor, any money payable by virtue of the by-law by the subsidiary proprietors concerned —

> (i) to the management corporation; or
>
> (ii) to any person for or towards the maintenance or upkeep of any common property,

shall, except to the extent that the by-law otherwise provides, be payable by the subsidiary proprietors concerned proportionately according to the relevant proportions of their respective share values.

> …
>
> (7) A by-law made pursuant to subsection (1) —
>
> (*a*) need not identify or define the common property which is the subject of the grant of exclusive use and enjoyment or special privileges provided that the by-law prescribes a method of identifying or defining the common property; and
>
> (*b*) may authorise the transposition of an identified or defined area of the common property from one subsidiary proprietor of a lot to another subsidiary proprietor of a lot at any time and from time to time on receipt of written notice to the management corporation from both such subsidiary proprietors.

65 In *Poh Kiong Kok v Management Corporation Strata Title Plan No 581* [1990] 1 SLR(R) 617, Chan Sek Keong J (as he then was), in describing s 41(8) of the LTSA, the predecessor of the present s 33(1) of the BMSMA, observed (at [16]) that "[s]ection 41(8) contains an implied recognition of the rights of the co-proprietors to the use and enjoyment of the common property". Section 41(8) of the LTSA embodied this by requiring a unanimous resolution for a by-law to confer on an SP exclusive use or special privileges. While the present s 33(1) of the BMSMA does not go quite so far, the gradated approach it takes, which matches the length of time over which a resolution extends with the threshold required for the passing of that resolution, demonstrates that same implied recognition of other SPs' rights. This gradated approach sets out a carefully considered balance between the rights of the SPs as a whole to the use and enjoyment of the common property and the conferring of rights of exclusive use or special privileges over common property to individual SPs, by requiring higher majority approvals for longer periods of exclusive use or special privileges over common property. To preserve this balancing of rights, the requirements of s 33 must be strictly complied with whenever exclusive use of, or special privileges over, common property in a development is contemplated.

66 In my judgment, it is clear that, under s 33 of the BMSMA, the resolution in question which confers on a SP the exclusive use of, or special privileges over, the common property, must identify the SP in question, *ie*, the SP of which unit. It should also specify the period of time over which the exclusive use, or special privilege accorded, should last. It should obviously also identify clearly the nature of the exclusive use or the special privilege, *eg*, the fixture of awnings to shelter the balcony of the particular unit, or permission to demolish the external walls in the balcony of the particular unit. I find that the November 2019 by-law flouts all these requirements. It gives *carte blanche* to the SPs to submit a list of all the exclusive uses of the common property they wish to enjoy, or special privileges over the common property which they wish to exercise, and allows the management office to effectively grant them to the SPs, who are not even named in the by-law, without further question. In my view, this is undoubtedly an invalid resolution, insofar as it is one that is passed purportedly to comply with s 33 of the BMSMA.

67 In addition, as already noted, the by-law does *not* specify the duration which the exclusive use of, or special privileges over, the common property, whatever they might be, are to last. According to the respondent, the intent behind the by-law, which was passed after the appellants commenced STB 87/2019, was to authorise the installed fixed awnings, and the demolition of the external walls, for the period of three years, starting from the date of the November 2019 AGM,[67] which was 16 November 2019.[68] This was the evidence of the management council's current chairman and the current estate manager (both of whom I will refer to as the respondent's representatives),

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67 Kwang and Ng's 1st Affidavit at para 34(c): ROP at pp 936–937.

68 RWS at para 34.

whose testimony was to the effect that the by-law's effect was to preserve the status quo for that three-year period.[69] Counsel for the respondent urges me to accept that the November 2019 by-law is effective in allowing the alterations to the common property to remain in place for this three-year period. This is in spite of the fact that this three-year period is not even stated in the by-law. He explains that parties would continue to attempt to resolve the dispute during this period, or perhaps even attempt to pass 90% resolutions to authorise the alterations to the common property which are the subject of these legal proceedings. While counsel for the respondent assures me that there would be no further attempt to pass yet another special resolution to "authorise" the changes for a further three-year period because s 33(1)(*b*) would "not allow for such an extension", he candidly accepts that this restriction on further attempts was not apparent from the wording of the by-law. I note, however, that the affidavits of the respondent's representatives were silent as to whether there would be another attempt to pass a special resolution upon or close to the expiry of the initial three-year period, that is, November 2022, to authorise the changes to the common property for another three years.

68 I cannot accept this submission. First, the structures erected and the changes to common property that are intended to be addressed by the November 2019 by-law, that is, the affixing of the awnings on the external walls, and the demolition of part of external walls, are clearly intended by the relevant 14th floor SPs to be permanent in nature. There is no doubt that those SPs' real intent is to keep these changes for more than three years. In fact, for the 14th floor unit below the appellants' unit, the fixed awnings have been in place since 2011, without any proper approvals. Some of the changes to the common property,

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[69] Kwang and Ng's 1st Affidavit at para 34(c): ROP at pp 936–937.

by which I mean, the demolition of the common walls, are in their very nature clearly intended to be permanent, unless there is a change in ownership of the unit, where the new SPs may wish to reinstate those demolished walls. All this being the case, it is incumbent for the by-law to be passed pursuant to a 90% resolution. Following the failure to pass the by-law with a 90% resolution, the fixed awnings and the demolished walls cannot be then simply deemed authorised for a period of three years under s 33(1)(*b*) of the BMSMA, without any mention of this under the by-law. In my view, they are and continue to be unauthorised structures affixed onto common property of the development.

69 Secondly, it would be an improper and illegal use of the procedures set out in s 33(1) of the BMSMA, if one could effectively accord to SPs exclusive use of, or special privileges over, common property *indefinitely* by the passing of *special*, but not 90%, resolutions, every three years, in cases where the intended use or privilege involves changes to the common property that are permanent in nature. In my view, this appears to be the true intent of the respondent, whose management council members do not want to face up to the realities of the situation they are presently in, and to accept the fact that the previous management council members might not have carried out their duties in accordance with what is required by the BMSMA.

70 For the above reasons, I find that November 2019 by-law is not legally effective insofar as it purports to authorise the fixed awnings installed by the 14th floor SPs, or the demolition of the external walls of the development.

The November 2018 resolution

71 As for the special resolution passed by the SPs in November 2018, I agree with the STB[70] that, on its plain wording, it did not deal with the fixed awnings that had been installed by the 14th floor SPs, or the demolition of the external walls of the development. That special resolution would have, if passed, allowed the management council to approve applications for the "installation of fixed shelter at balcony private enclosed space (PES) area at level 14". It is not unambiguously stated in this resolution that it applies to the affixing of awnings on the external walls of the development. As such, I agree with the STB's decision that this special resolution did not deal with existing awnings installed by the 14th floor SPs.

72 However, even if the November 2018 resolution can be read to apply to the awnings installed by the 14th floor SPs at the balconies for their units, it suffers from the same infirmities as the November 2019 resolution, in that it did not specify any SPs, the nature of the exclusive use or the special privilege, or the period of time over which this use or privilege was to last (see above at [66]). Not only that, insofar as it purports to grant permission for the 14th floor SPs to keep their awnings affixed on common property on a permanent basis, the resolution was not passed by the requisite 90% approval as required by s 33(1)(*c*) of the BMSMA.

Alternative arguments not considered by the STB

73 As mentioned, the appellants also raise in this appeal several points of law which were canvassed before the STB, but not dealt with in its decision.

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70 STB's Decision at para 22; ROP at p 2267.

However, given my view that the STB erred in not granting the orders sought by the appellants because the 14th floor SPs were not parties to the STB proceedings, there is no need for me to consider these alternative arguments. It suffices for me to say that I am of the view that a number of the points raised by the appellants are not quite sustainable.

74 As an example, the appellants assert that the respondent breached s 37(4)(*a*) of the BMSMA by allowing the 14th floor SPs to install the fixed awnings and/or demolish parts of the external walls of the development without considering whether it would detract from the appearance of any of buildings in the development.[71] Under s 37(4) of the BMSMA, the respondent may authorise the SP to effect improvements "in or upon his lot" if it is satisfied that the improvements will not detract from the appearance of the building, or are in keeping with the appearance of the rest of the buildings in the development, and also if those improvements will not affect the structural integrity of any of the buildings comprised in the strata title plan in question. There is no requirement that the SPs vote at a general meeting in favour of the making of such improvements by any requisite majority.

75 In the present matter, the appellants' case is that the 14th floor SPs had effected alterations to the common property by affixing the awnings to the external walls and/or by demolishing part of the external walls. As already mentioned, there was agreement between the parties before the STB that the external walls are common property.[72] That being the case, I am of the view that s 37(4) of the BMSMA has no application to the facts, because that section

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71 Appellant's written submissions dated 16 March 2021 ("AWS") at para 150.

72 Kwang and Ng's 2nd Affidavit at para 7: ROP at p 1112.

does not apply to the grant of exclusive use or privileges over common property, which is governed by s 33 of the BMSMA. This was in fact accepted by counsel for the appellants in the course of the oral arguments before me. Otherwise, an MCST could simply circumvent the requirements for obtaining resolutions set out in s 33 of the BMSMA, by simply considering itself satisfied as to the conditions set out in s 37(4) of the BMSMA.

76 Another example is the appellants' point regarding estoppel. According to this argument, the appellants had been misled by the representations by the management council of the respondent made after the November 2012 AGM that there was a by-law that would require the 14th floor unit's SP below theirs to remove his awnings if he should sell his unit.[73] The appellants relied on these representations and waited for six years only to discover that the representations were false, because the by-law was never acknowledged by the BCA, and thus had no force or effect. I can appreciate the appellants' criticisms that have been levelled against the respondent and its management council at that time, and also the frustration that the appellants must feel. The conduct of the management council was quite poor in this regard. However, as rightly acknowledged by counsel for the appellants himself at the hearing, these circumstances, while certainly lamentable, do not give rise in law to any cause of action or right to relief against the respondent.

Conclusion and orders made

77 For the reasons set out in this judgment, I find that the STB erred in not granting the orders sought by the appellants against the respondent for the

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[73] AWS at para 180.

removal of the fixed awnings and/or the restoration of the demolished external walls.

78 At the oral hearing before me, counsel for the respondent submitted that, even if the court were to order the removal of the fixed awnings and/or the restoration of the demolished external walls, the respondent should be given some time to make one final effort to obtain 90% resolutions for these exclusive uses of the common property by the 14th floor units' SPs. The respondent also argued that it needed some time to explain the legal impact of any adverse decision to the SPs as a whole, including the resulting claims that may be brought against the respondent by the affected 14th floor SPs.

79 In reply, counsel for the appellants argued that the respondent should at most be given up to a month to remove the awnings and restore the demolished external walls. Counsel pointed out that the respondent has had more than sufficient opportunities to obtain the required 90% resolutions and each time it was attempted, the 90% approval threshold could not be reached. In the meantime, since 2011, the appellants have had to endure living with the nuisance caused by the unauthorised awnings just outside their windows.

80 In my judgment, a period of three months would be sufficient time for the respondent to carry out what it needs to do before proceeding to take steps to remove the fixed awnings and restore the demolished external walls. As such, pursuant to s 98(2) of the BMSMA, I remit this matter to the STB for it to make the necessary orders for the respondent to remove the fixed awnings and restore the demolished external walls if, within a period of three months from the date of this judgment, the necessary 90% resolutions for the installation of the

awnings and the demolition of the external walls for each of the affected 14th floor units have not been obtained.

81 In the meantime, the orders made by the STB in relation to s 63 of the BMSMA are stayed for the time being, with liberty to the appellants to apply to the court to lift the stay in the event that a 90% resolution for the installation of the awnings is in fact obtained in respect of the 14th floor unit directly below the appellants' unit.

82 In the event that the awnings have to be removed and the external walls restored, I appreciate that the respondent may require the necessary orders from the STB in order to get the 14th floor SPs to comply. Should that need arise, the respondent should make the necessary applications to the STB. If an affected 14th floor SP claims that his unit suffers from a "killer litter" problem, and he can raise fresh evidence of this not already dealt with by the STB in the proceedings below, then the STB can decide whether the exception does actually apply to his unit such that the MCST should authorise the maintenance of that SP's awnings for reasons of safety. Obviously, this would not apply to the 14th floor SPs below the appellants' unit given that their claim about "killer litter" had already been rejected by the STB.

83 I will also grant the respondent liberty to apply in the event that more time is needed to comply with this judgment. However, I must stress that strong cause must be shown before any extension of the three-month deadline will be granted.

84 I will deal separately with the issue of costs.

Ang Cheng Hock
Judge of the High Court

Lee Xiancong (Taylor Vinters Via LLC) for the appellants;
Lim Seng Siew and Lip Wei De Eric (OTP Law Corporation) for the respondent.
