

BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT
BUILDING MAINTENANCE AND STRATA MANAGEMENT
(STRATA TITLES BOARD) REGULATIONS 2005

STB No. 21 of 2016

In the matter of an application under **section 101(1)**
and 117(2) of the Building Maintenance and Strata
Management Act in respect of the development
known as **Gallop Gables** (MCST Plan No. 2440)

Between

MCST Plan No. 2440

... Applicant(s)

And

Ee Min Kiat/ Eileen Tan @ Tan Ai Lian

... Respondent(s)

Coram: Mr Remedios F.G (Deputy President)

Mr Frankie Chia (Member)

Mr Ter Kim Cheu (Member)

Counsel: i) Mr Lim Tat/ Mr Subir Singh Grewal/ Ms Jamin Kang (Aequitas Law
LLP) for the Applicants

ii) Mr Leonard Chia/ Mr Eugene Hong/ Ms Ng Liu Qing (Asia Ascent
Law Corporation) for the Respondents

GROUNDINGS OF DECISION

1. This is an application by the Management Corporation Strata Title Plan No. 2440 (“applicant”) against Mr Ee Min Kiat and Ms Eileen Tan @ Tan Ai Lian (“respondents”), for the Board to order the respondents to remove unauthorised additions and/or alterations carried out at the respondents’ lot at 70 Farrer Road #03-02 Gallop Gables, Singapore 268850 and thereafter to reinstate and restore the lot to its original condition.

Background

2. The applicant is the management corporation (“MC”) of a residential development comprising 140 residential lots, known as Gallop Gables, situated at Farrer Road, Singapore. The respondents are subsidiary proprietors of a strata lot in the development.
3. Gallop Gables was developed in 1997. According to the respondents, the original windows and sliding door at the balcony of their lot were in a very poor condition when a renovation application form was submitted to the MC on the 24 June 2013. The application was for other renovations in addition to the windows and sliding door at the balcony. In the column where the respondents were to provide a description of the works in connection with the renovation of the windows and sliding door they entered

Possible sliding door and window frame

4. With regard to the poor condition of the windows and sliding door, it was said that there was discoloration of the window casements and sliding door frames; damaged rubber linings of the windows and door; water seepage from the windows and door; improper functioning due to age - unable to secure and close properly, resulting in a safety risk.
5. On 3 July 2013, Ms Kuah Beng Hui (“KBH”), a representative of the managing agent (“MA”), spoke to co-respondent Ms Eileen Tan (“ET”) and requested that the proposed design for the sliding door at the balcony be submitted for approval before

proceeding with the works. There is no evidence that this was done and on 5 July 2013, KBH spoke to ET in connection with the replacements. After the conversation, KBH sent an email to ET. Inter alia ET was informed “*We are very consistent with the façade of the estate. We do this to maintain the look of the estate and protect the integrity of the design and the intended material used by the architect who designed the estate. As such no variation in the material, design, look and finish will be permitted.*”

6. ET sent a reply on the same day. Inter alia she said “*I am 100% in agreement to the facade requires by the management and it is also our utmost interest to protect the integrity of the design and the value of the estate. However in regards to the material use, how can management stop me from using a far superior material that gives the façade a longer life span without compromising the current outlook... Appreciate if you could highlight to me under which by law where the type of material is allowed specifically*”. She continued by asking if the by-law mentioned that only painted/ powdered aluminum could be used and queried the strength of the aluminum

7. According to ET, on 9 July 2013, one Simon Lee (“SL”), whom she said was KBH’s superior, apologised to her and said that there were no provisions in the by-laws and house rules in connection with materials that were to be used for replacements and agreed to the respondents’ proposals after the respondent reiterated that there would be no noticeable differences between the replacements for the original windows and door and the original. On the same day KBH sent an email to ET. Inter alia KBH said “*... We refer to your conversation with Simon and yourself this afternoon. As requested we attached the following photos comparing the current and proposed material and design. We thank you for your understanding to use powder coated (white) aluminum for the balcony doors and windows*”. According to ET, this (use of aluminum) was contrary to what was agreed between her and SL and on the same day she, inter alia responded “*... we wish to assure you that the overall façade of the estate will not be affected as there will be no different in design/look/colours to the overall appearance to the existing design...even if we use*

aluminum, there is no guarantee that we can find something 100% identical...Also we assure you that nobody will notice any difference to the material use either it is aluminum or PVC unless you physically come and touch it...We are talking of the façade of the building, and not the fine details....". On 10 July 2013, ET sent an email defining and confirming the respondents' stand "*... we are not using aluminum, we are using fersina window with the same design and colour as the existing window*".

8. KBH, on 17 July 2013, inter alia informed ET "*... we appreciate your assurance that the façade of the estate will not be affected...the change of the windows and balcony doors need to comply with the by-laws of the estate.*" ET's attention was drawn to the By-laws of the estate ("EBL") "*...Para 6.7.1 Any work, which may affect the external façade of the building, shall not be carried out without prior approval from the Management6.7.2 The SP shall not erect any structure or make any alteration to the external façade without the prior written consent of the Management....6.7.4 The existing designs and opening styles of all windows, doors and fences as designed by the architects of the estate shall remain status quo and shall not be changed.*" KBH went on to inform that whilst ET had not been stopped from replacing the balcony windows and doors, the replacements had to comply with the by-laws. ET was informed that her request for her proposal to be forwarded to the MC would be accommodated and that the council was not in a position to decide on the respondents' alterations and that she was required "*to seek the House's approval at the Annual General Meeting. In the meantime, you should not proceed with the proposed installation if they do not comply with the rules...*". ET replied on 18 July 2013 that by-laws 6.7, 6.7.2, and 6.7.4 had been complied with and continued "*...We have already repeatedly told you the façade of the estate will not be compromised. It seems you have a understanding problem what it means by façade of the estate. Also we had in our last email informing you that the sliding door in the living room and some of the windows are already giving problems. Are you asking me to wait and not to proceed with the replacements till your Annual General Meeting? And God knows when the Annual General Meeting is going to be. Are you going to responsible for the damage if there is water seepage or break in*

into my apartment if should that happen? And not to forget we are giving only sixty days to complete the renovations.”

9. On 25 July 2013, KBH, via an email, informed that during a routine inspection it was noted respondents had removed their balcony doors. ET was further informed “...*Please take note that the issue with regard to the material and type of groove lines has yet to be resolved. We will not stop anyone from changing their door but we wish to reiterate that the changes should not deviate from the original specification. We understand that you have some problem finding the type of material (Aluminum) and instead proposed the ‘Fersina Windows’ as well as the grooved line. We will like to assist by checking with some of our contractors if they are able to help source the aluminum balcony door and aluminum window with grooved lines. We understand your situation and we wish to pre-empt that if you proceed to install your balcony door with the ‘Fersina Windows’ and that in the event of queries or challenges raised by the members of the House, there may be a need to substantial the changes in the material and probable consequences too.*”
10. According to ET, KBH could not find a source that could supply aluminum balcony doors and windows with grooved lines and in view of the timeline allowed for the completion of the renovation works, the respondents proceeded to carry on with the renovations. Work commenced on or about 8 August 2013.
11. On 19 August 2013, KBH sent an email to the respondents. The contents were similar to that of the email sent on 25 July 2013 “...*we noticed that your contractors are in the process of removing the windows. We understand that the windows will be changed to ‘Fersina Windows’. We would like to reiterate that the issue with regard to the type of material and grooved lines has yet to be resolved. We will not stop anyone from changing their windows but we wish to reiterate that the changes should not deviate from the original specification.*” KBH went on to inform that the council wanted to have a meet up session with the respondents. The respondents met up with members of the council on 26 August 2013 and at the meeting the respondents were invited to table the matter at the upcoming 13th AGM.

12. It is recorded in the *Minutes of the 4th Council Meeting of the 12th Management Council* held on 26 August 2013 that the respondents had presented their reasons for changing the balcony doors and windows from the current aluminum frames to Fersina Window frames and the respondents' attention was drawn to Clause 6.7.4 of the By-Laws which provides "*The existing designs and opening styles of all windows doors and fences as designed by the architects of the estate shall remain status quo and shall not be changed*". It is recorded that the council was prepared to table the matter with regard to balcony doors and windows at the coming 13th AGM and the co-respondent, Mr Ee Min Kiat ("EMK"), assured the council that he and his wife would adhere to the decision made at the AGM.
13. Following the meeting with the council on 26 August 2013, it is the case for the respondents that there was no further correspondence between them and the MC or objections from anyone until the completion of the renovation works in September 2013.
14. On 17 March 2014, KBH, on behalf of the MA, wrote to the respondents and referred to the meeting with the council members on the 26 August 2013. Inter alia, she referred to the fact that the respondents had installed balcony sliding doors and windows that differed from the original. Details with regard to the differences were itemised.

The differences were as follows:

"1. Your balcony sliding doors vary from the original, i.e.,

(a) the way the balcony doors are collapsed. Only two of the four balcony doors are collapsible. They can now be opened only in the centre instead of on both sides.

We note that only two doors are collapsible instead of being collapsed and stacked to one pane on either side of the balcony door opening.

(b) the doors are now aligned to rather than recessed with the top glass panel windows,

(c) the centre vertical panel of the top panel window is smaller than the original,

(d) the sides of the top panel windows and doors are broader than the original top panel windows and doors,

(e) the size of the glass panes are smaller than the original,

(f) there are two tracks instead of four tracks in the original design and

(g) the construction material used is polyvinylchloride instead of aluminum

2. The windows at your apartment vary from the original i.e.

(a) the centre vertical panel of the window is smaller than the original,

(b) the sides of the windows are broader than the original windows and

(c) the glass panes are smaller than the original doors and windows.

(d) the construction material used id polyvinylchloride instead of aluminum. Please see photo attached.”

15. The respondents were advised to table a resolution at the AGM scheduled on 26 April 2014 in connection with the variations made by the respondents to their balcony doors and windows. A reply was sent by the respondents on the 27 March 2014. In the reply, the respondents said that they had previously informed that it was not possible to replace their balcony doors and windows with doors and windows that were identical to the original; that they had to replace their doors and windows because they old, discolored, unsightly, could not be closed properly and had been given 60 days to complete renovation works. For these reasons and also because they were not informed as to the date of the next AGM, they could not accept the suggestion to postpone their renovations until the next AGM. It was also their view that the differences between the newly installed balcony doors and windows and the original were minor. KBH, on behalf of the MA, sent a letter to the respondents on 14 April 2014. Inter alia, she referred to the respondents' view that the differences between the newly installed balcony doors and windows were minor and explained that “...we are not in a position to assume that the general body (House) would perceive the variances to the façade in the same way. This is

precisely the reason why we all agreed with you to seek the consent from the House for the variances at the AGM”.

16. At the AGM on 26 April 2014, the meeting discussed the variations made by the respondents to the aluminum windows and balcony sliding doors. Inter alia, there were comments with regard to *“integrity of the façade; integrity of the estate; current regulations governing the façade are comprehensive and encompassing; value of the property”*. The chairperson also shared that *“Apart from material, if the design is maintained and there is no deviation visually a different material may be accepted. But unfortunately in this case the design is different”*. The Board notes that the comment was in order as it did not appear that there are any prohibitions in the by-laws in connection with materials used.
17. One of the subsidiary proprietors viz Roland Feser (“AW2”), who was present at the meeting, testified at the hearing before the Board. He, after being shown photographs of the variations carried out to the sliding doors and windows at the respondents unit, expressed his view that the design of the balcony sliding door seemed different from the other units and that it would affect the façade and the value of the property. Another subsidiary proprietor, Leong Chung Yan (“AW3A”), noted that it was evident that the balcony sliding doors windows differed from the other surrounding units. Ngiau Marn Lai (‘AW1”), who is also a subsidiary proprietor in the estate, testified that she has noted the effects of the renovation carried out by the respondents when walking around the estate – *the façade of the respondents’ strata lot differs from the neighbouring strata lots*.
18. The decision, taken after the discussion at the AGM on 26 April 2014, was *“The approach is to speak to the owner concerned and remind them of the by-laws. Failing which legal counsel would be sought and action was to be taken on this matter to get them to reinstate the windows and balcony doors to the original design”*

Applicant's Case

19. The applicant has applied for orders for the respondents to remove the:

- i) polyvinylchloride window casements;
- ii) polyvinylchloride sliding door frame with two sliding tracks;
- iii) balcony sliding doors; and
- iv) top layer windows that are flushed with the balcony sliding doors.

Following the removal of the aforementioned items, the applicant wants the respondents to reinstate the items removed with:

- i-i) powder coated aluminum window casements with dimensions that are set out in a drawing that was annexed at Form 9;
- ii-i) powder coated aluminum sliding door frames with four sliding tracks with dimensions that are set out in a drawing that was annexed at Form 9 ;
- iii-i) powder coated aluminum sliding doors that are collapsible on either side with dimensions that are set out in a drawing that was annexed at Form 9; and
- iv-i) top layer windows that are recessed against the sliding door with dimensions that are set out in a drawing that was annexed at Form 9.

20. It is the case for the applicant that the annexed drawings evidence the original dimensions. Tan Boong Ping ("AW4A"), a registered surveyor, took measurements of the sliding doors and windows of four other lots in the estate and confirmed that the measurements tallied with the drawings.

21. The grounds for the application were that

- i) the renovations had affected the external façade without prior approval from the management (EBL 6.7.1 and 6.7.2);
- ii) the design and opening style of the windows and door had been changed (EBL 6.7.4);
- iii) there was a breach of By-Law 5(4) of the prescribed by-laws in the 2nd Schedule of the Building Maintenance (Strata Management) Regulations 2005 ("the

prescribed by-laws”) which required that locking devices, safety devices, screens, other devices and structures installed *must have an appearance...in keeping with such guidelines as the management corporation may prescribe regarding such installations and with the appearance of the rest of the building;*

iv) there was no authorisation from the MC for improvements which had affected the appearance of the building (S37(3) and (4) of the Building Maintenance and Strata Management Act (“Act”).

22. It is the case for the applicant that it was apparent that the works had affected the uniformity of the external appearance of the building. In particular, the sliding doors were noticeably different in appearance from the original condition.

Respondents’ Case

23. The respondents opposed the application on the grounds that there were no breaches of the by-law of the estate; no breach of the prescribed by-laws in the Second Schedule of the Building Maintenance (Strata Management) Regulations 2005; there was no breach of S37(3) of the Act; the making of the orders sought by the applicants would cause hardship to the respondents without any corresponding benefit to the applicants.

24. In connection with the by-laws of the estate, it was submitted that the windows and sliding doors where work had been done were set back from and not part of the balcony and accordingly the façade was not affected. It was also submitted that the differences resulting from the works done, if not specifically pointed out, could not be noted by a casual observer; were not observable from the ground level; the absence of groove lines on the windows and the sliding tracks of the balcony door could not be seen unless one was viewing these when one was less than one metre away and was standing on the balcony. It was submitted that the differences were in harmony/agreement with the façade of the estate.

25. The respondents elicited evidence from Poon Chip Wah (“RW2”), a registered architect, who expressed the view that from an architectural point of view, there was

very little difference between the works and other strata units. He also found it hard to understand *how a casual observer would be able to spot the difference between the works and the other strata units.* It was his evidence that, from an architectural standpoint, design elements and components that affected façade would comprise significant design changes to elements and components

26. In connection with the sliding doors, where there was no dispute that there was a change in opening style from the original, it was submitted that this was *a matter of function and would not affect the façade in any way or have any visual impact.*
27. In connection with the prescribed by-laws, it was submitted that by-law 5.4, of the prescribed by-laws, were applicable to locking or safety devices, screens and other structures installed on common property. As the windows and doors replaced by the respondents were not on common property, there was no breach of this by-law. (The applicant did not make any submissions in connection with by-law 5.4 of the prescribed by-laws). It was also the respondents' case that the condition of the original windows and doors were such that they could not be securely shut and locked and exposed the respondents to a significant security risk of intrusion.
28. In connection with S37(3) of the Act, it was also submitted that *the MC and MA have unreasonably withheld authority/approval for the installations.* It was submitted that the respondents had complied with the by-laws before commencing the installations and because there were no provisions in the by-laws with regard to materials, four sliding tracks, recessed top layer windows the respondents' installations were not out of order. It was also submitted that because subsidiary proprietors when installing grills, had to comply with approved designs and specifications which were spelt out in the by-laws, specifications for designs and finishes of original windows and doors were not in the by-laws and accordingly *it is thus clear that strict compliance with the design and finish of the original windows and door unlike that for the installation of grills was not required.*
29. It was further submitted that even if the external appearance and façade was affected, it was in order for the respondents to have executed the installation

because there were safety considerations (the original windows and doors could not be securely shut).

30. It was submitted that there would be no real benefit for the orders sought by the applicant to be made because uniformity was no longer possible as other subsidiary proprietors had made alterations that had affected the façade and there were temporary structures or items placed on balconies of other units that were more visible and obvious than the respondents' installations. It was also submitted that the minor differences resulting from the installations could have no impact on the value of the estate. Costs had been incurred in completing the works and forcing the respondents to restore the original windows and doors would place the respondents in an unfairly prejudicial position with no corresponding benefit to the applicant.
31. It was the final submission of the respondents that they have been unfairly, and for no reason, singled out by the applicant.

The Issues

32. It is not in dispute that renovations/alterations had been done by the respondents to their windows and balcony doors and that the works carried out had resulted in differences between the original condition and condition after the works had been carried out. The differences as itemised in the letter written by KBH dated 17 March 2014 were not disputed or challenged by the respondents.
33. The Board proceeded to determine if the respondents had carried out renovations/alterations that were unauthorised and in breach of the by-laws of the estate and S37(3) of the Act and in the event that this had been done, whether orders of removal and reinstatement should be made.

DECISION

34. It is not in dispute that the by-laws of the estate were properly made under S32 of the Act and that they bind the MC and the subsidiary proprietors as if they had been signed and sealed by the MC and the subsidiary proprietors and contained mutual

covenants to observe, comply and perform all the provisions of the by-laws. They constitute a statutory contract between the MC and the subsidiary proprietors and between subsidiary proprietors *inter se*. (see *Choo Kok Lin v MCST Plan 2405 [2005] 4 SLR(R) 175*)

35. S 37(3) and (4) of the Act are a statutory provision prohibiting subsidiary proprietors from effecting improvements in or upon a lot that affects the appearance of the building and it is clear from the provisions that it was the intention of parliament that anyone who intends to purchase one or more lots in a strata titled development should not carry out any alterations/ renovations that affects the appearance of the building *i.e.* it is expected that all the lots should be uniform. Parliament could not have made its intentions clearer than what is set out in S37(3) and (4) of the Act

S37 -

(3) Except pursuant to an authority granted under subsection (4) no subsidiary proprietor of a lot that is comprised in a strata title plan shall effect any improvement in or upon his lot for his benefit which affect the appearance of any building comprised in the strata title plan.

(4) A management corporation may at the request of a subsidiary proprietor of any lot comprised in its strata title plan and upon such terms as it considers appropriate, authorise the subsidiary proprietor to to effect any improvement in or upon his lot referred to in subsection (3) if the management corporation is satisfied that the improvement in or upon the lot –

(a) will not detract from the appearance of any of the buildings comprised in the strata title plan or will be in keeping with the rest of the buildings ; and

(b) will not affect the structural integrity of any of the buildings in the strata title plan

36. Subsidiary proprietors are not prohibited from making improvements that may affect the appearance of the building but before them before proceeding to do so, Parliament required that they had to first obtain authority from the MC to do so.

The MC before granting or refusing its approval would consider if the improvement would detract from the appearance of any of the buildings or would be in keeping with the rest of the buildings

37. In almost every development, there would be by-laws that require subsidiary proprietors to submit an application before any alteration/renovation is carried out. The by-laws of the estate *i.e.* EBL 6.7.1, 6.7.2, and 6.7.4 are in keeping with S37 of the Act. This would be for the purpose of enabling the MC to have sight and consider the proposed alteration/renovation and determine if it would affect the appearance of the building.
38. Where a subsidiary proprietor intends to carry out an improvement that can affect the appearance of the building, it will not be in order for subsidiary proprietor to proceed to do so before approval has been granted in accordance with the by-laws. To do so, before approval has been obtained in accordance with the by-laws, would be in breach of the Act and in breach of the statutory contract between the MC and the subsidiary proprietors.
39. Where there is an application for renovation/alteration of a lot which does affect the appearance of the building but does not detract from the appearance of the building or is in keeping with the rest of the buildings and will not affect the structural integrity of the building, the application should be approved (S37(4) of the Act). Should a MC deny the granting of approval in such a case this would qualify as a failure to exercise or perform a power or duty conferred or imposed by the Act and the subsidiary proprietors can obtain a remedy under S101(1)(c) of the Act.
40. It will be in order to set out the applicable by-laws:
 - 6.7.1. *Any work which may affect the external façade of the building shall not be carried out without prior approval from the Management. Facade shall include windows, awnings, *grills, balcony compartments for air-con condensing units, common areas, open areas and all other visible parts of the building which consume or form part of the external appearance of the building.*

**All works involving grills must comply with the by-laws governing installation of grill.*

6.7.2 The SP shall not erect any structure or make any alteration to the external façade without the prior written consent of the Management.

6.7.4 The existing designs and opening styles of all windows, doors and fences as designed by the architects of the estate shall remain status quo and shall not be changed.

41. There is no ambiguity in the provisions. The MC and subsidiary proprietors had decided that they would be governed by a scheme where
- i) work *which may affect the external façade of the building* cannot be carried out unless prior approval had been obtained from the management;
 - ii) prior written consent from the management must be obtained before subsidiary proprietors can erect structures or make alterations to the external façade;
 - iii) the existing designs and opening styles of all windows, doors and fences as designed by the architects of the estate cannot be changed.
42. In this case, the respondents had never obtained approval from the management to carry out work *which may affect the external façade of the building*; the respondents did not have written consent from the management to erect structures or make alterations to the external façade.
43. Renovations/alterations had been done by the respondents to their windows and balcony doors and that the works carried out had resulted in differences, as itemised in the letter written by KBH dated 17/03/14 between the original condition and the condition after the works had been carried out.

Was there a breach of the applicable by-laws and S37(3) of the Act?

44. It is the case for the applicant that it was apparent that the works carried out by the respondents had affected the uniformity of the external appearance of the building. There was a breach of EBL 6.7.1, 6.7.2, 6, 7.4 and S37(3) of the Act. The external

appearance of a lot is *the appearance which the lot presents to a person outside it who might reasonably be able to view it* – *Re Saunders 1993 2 Qd R 335*. There was evidence from three subsidiary proprietors in the estate who could notice that the respondents' lot was different from the others.

45. The respondents submitted that the windows and sliding doors where work had been done were set back from and not part of the balcony and accordingly the façade was not affected. The Board is of the view that the façade of a building can be affected when windows and sliding doors are set back from and are not a part of the balcony. The definition of "façade" is *the front of a building* ("Oxford Advanced Learners Dictionary"). The sliding doors and windows are at the front of the lot and the façade would be affected when there are changes made to the sliding doors and windows. Also in this case the estate's by-laws specifically provided for the façade to include *visible parts of the building which constitute or form part of the external appearance of the building*.
46. The respondents submitted the differences resulting from the works done, if not specifically pointed out were not noticeable by a casual observer and were in harmony/agreement with the façade of the estate. Whilst the evidence of the witnesses for the respondents supports the submission of the respondents, the evidence of the witnesses for the applicant is otherwise.
47. District Judge Tan Boon Khai in *MCST Plan No 1786 v Huang Hsiang Shui [2006] SGDC 20* had the following to say in connection with determining whether the façade had been altered -

"In my view, this was essentially a factual exercise, undertaken by comparing the Premises with other similar units in the Development, and against the original façade, and determining the extent of the change, if any, that had been made"
48. Before this matter was fixed for an arbitration hearing, the members of the Board had visited the estate to view the renovations carried out by the respondents. From what we saw and from the photographs exhibited in this case, it cannot be said that

the differences between the respondents unit and the others were glaringly different. The differences were however not unnoticeable.

49. There is no dispute that there are in fact differences. According to the calculations of RW2, it was 8.97% (in RW2's report the percentage was 7.25% and it was corrected during cross examination) in the case of the window frames and 1.2% in the case of the sliding door frames. The applicant has, in its written submission, demonstrated that higher percentages would, depending on methods adopted for a comparison, be obtained. The fact is that there are differences and it was submitted by the applicant "*if subsidiary proprietors are all individually allowed to make marginal changes that do not result in a variance of more than 7% from the original condition, such marginal changes when viewed in their totality will result in the development very quickly losing its uniform appearance. It is a slippery slope that the MCST cannot afford to go down.*" At least three of the subsidiary proprietors of the estate who could see the differences were concerned to the extent that they were prepared to testify before the Board. The Board is of the view that due regard had to be given to their evidence.
50. The Board is satisfied that the renovations carried out by the respondents had affected the uniformity of the external appearance of the building.
51. It was submitted by the respondents that compliance with the design and finishes of the original windows and doors are not required because there are no specifications for the designs and finishes of such in the by-laws. It is correct that unlike grills, specifications of designs and finishes of the windows and doors are not in the by-laws. Grills were not installed by the developer and subsidiary proprietors who want to install such are not prohibited from doing so. They have, however, to comply with the design specifications set out in the by-laws in order that the "*uniformity of the building façade*" would be maintained. The fact that specifications for designs and finishes of windows and doors are not in the by-laws is not a license to carry out renovations/alterations that are different or not in keeping with the original. It is provided in the by-laws that works that affected the external façade cannot be carried out without prior permission from the management.

52. It will be in order to note that the dimensions in the drawings annexed in Form 9 were annexed when the original application was amended. An application to amend was made, when the Board, before the matter was fixed for arbitration hearing, noted that the applicant had originally applied for an order to *reinstate and restore at their own costs the respective areas to its original condition*. The Board had then expressed concern as to how its order could be complied with in the event the order was made. It was in these circumstances that the application was amended and the drawings annexed. The dimensions in the drawings will enable easy compliance rather than require the obtaining of dimensions (with the possibility of inaccurate dimensions being obtained) after an order is made by the Board.
53. The respondents also submitted that the applicant had unreasonably withheld approval for the installations. The Board cannot, in view of the applicant's concern with "*integrity of the façade; integrity of the estate; current regulations governing the façade are comprehensive and encompassing; value of the property*", find that approval had been unreasonably withheld.
54. It was also submitted that it was in order to execute the installations because of safety considerations. The Board is of the view that whilst it was not out of order to replace the original windows and doors there was however no necessity to do work that will affect the external façade and change the original designs, dimensions and opening styles.

Should the orders applied for be made?

55. Applications for orders for subsidiary proprietors to remove unauthorised renovation works and reinstate the premises to its original condition have been dealt with by previous Boards. In arriving at a decision, the Board would be guided by the law in connection with granting a mandatory injunction to redress a breach of a negative covenant. There is no dispute or ambiguity on this point and it will be sufficient to refer to the judgment of Chao Hick Tin J (as he then was) in *Management Corporation Strata Title Plan No 1378 v Chen Ee Yueh Rachel* [1993] 3 SLR(R) 630 ("the Rachel Chen case").

56. In the Rachel Chen case, the court was concerned with by-laws passed with the object of maintaining the external appearance of the building. The subsidiary proprietor had, without prior written approval from the MC, removed awnings of the building and flower troughs affixed to the external walls and replaced the metal grills at her balcony with sliding glass windows to keep out the rain and enjoy her balcony. Approval was subsequently sought from the MC for what had been done. The request was refused on the ground that the additions and alterations had substantially and adversely affected the façade of the building and an application was made for a mandatory injunction requiring the subsidiary proprietor to remove the windows and louvres enclosing the front balcony and restore the external wall to its original condition. The court found that the overall appearance of the building had been affected but on the facts in that case did not grant the injunction sought. At paragraphs 21 and 22, the court said:

"21. I come now to the final question, whether in the circumstances of this case, I ought to order the removal of the windows. Many cases were cited to me ...no doubt helpful in a general sort of way. They lay down that, generally, a mandatory injunction will not be issued unless very serious damage will ensue from withholding an injunction.

22. The only case which comes close to the fact-situation of our present case is a decision from New South Wales, Australia: Proprietors Strata Plan No 464 v Oborn [1975] 2 CCH Strata Title Law & Practice 50 at para 201, decided by Holland J in the equity division.... Holland J, having reviewed the authorities, said:

The general principle to be extracted from these cases is that the court will grant a mandatory injunction to redress a breach of a negative covenant, the breach of which is already accomplished, unless:

(a) the plaintiff's own conduct would make it unjust to do so; or

(b) the breach is trivial or has caused no damage or no appreciable damage to the plaintiff and a mandatory injunction would impose substantial hardship on the defendant with no counterbalancing benefit to the plaintiff."

Was the MC unjust in this case?

57. From the outset, it was clear that the MC was concerned with façade of the estate; maintaining the look of the estate; and protecting the integrity of the design. Before beginning their renovations, the respondents had given an assurance that the façade would not be affected. The assurance of the respondents that the façade would not be affected was appreciated and they were reminded that changes made to the windows and doors had to comply with the by-laws
58. The respondents had in addition to using different materials, changed the design and dimensions of the windows and sliding doors.
59. The respondents do not deny that there are differences in the windows and doors installed by them from the original windows and door. It is their case that the differences are not noticeable. The respondents had, at 4th Council Meeting of the 12th Management Council held on 26 August 2013, given an assurance as follows:
“Further, Mr Ee also assured the Council that he and his wife would adhere to the decision made by the House during the Annual General Meeting on the change of all balcony doors and windows.”
60. In his evidence before the Board, EMK denied that he had given the assurance and said that the assurance that he had given was an assurance that in the event the MC made a decision in the future to change all the windows in the estate, including a change of colour, he would comply with this.
61. The assurance given at the meeting on 26 August 2013 was referred to in a letter dated 17 March 2014 from MC to the respondents. Inter alia, the letter was as follows:
“At the meeting on 26 August 2013, you gave your assurance to the Council that the following will be complied with:
1. To adhere to the decision made by the House at the coming Annual General Meeting concerning the variations made to your balcony doors and windows;....”
62. In the minutes of the 13th AGM held on 26 April 2014, it is recorded:

“The meeting was informed that the owner (the respondents) was unavailable for this AGM as they were on holiday. The House was informed that during a prior meeting with the Council, the SP had agreed that if the House did not approve of the variation, they would reinstate the original design of the estate’s windows and balcony doors”

63. Until he appeared before the Board on 24 January 2017, EMK had never denied nor challenged the accuracy of the minutes of the 4th Council Meeting and 13th AGM.
64. The Board does not accept his evidence that the assurance he gave at the meeting on 26 August 2013 was an assurance that in the event that the MC made a decision in the future to change all the windows in the estate, including a change of colour, he would comply with this.
65. There is, in this case, no evidence that any of the decisions of the applicant were tainted by prejudice, malice or indifference. It is the finding of the Board that the applicant was not unjust in this case.

Was the breach trivial or has caused no damage or no appreciable damage to the applicants and a mandatory injunction would impose substantial hardship on the respondents?

66. The court, in the Rachel Chen case, considered the argument with regard to the injury made to the appearance of the building being trivial. Again Holland J was quoted:

“Even though no physical damage was done to the building and the work exposed the body corporate to no financial outlay or present liability, the defendants’ action spurned the authority of the body corporate and the council and disregarded the by-laws by which all the proprietors are bound. It has placed the body corporate and the council in a most difficult position. If it went without challenge and goes without redress, their authority is undermined and their hands tied in deciding future action with respect to the preservation and appearance of the building and the performance of their duty to act in the common interest of all proprietors.”

67. The respondents were, from the outset, aware of the concerns of the applicants and chose to complete their renovations when the necessary approvals had yet to be granted. They have *placed the body corporate and the council in a most difficult position. If it went without challenge and goes without redress, their authority is undermined and their hands tied in deciding future action with respect to the preservation and appearance of the building and the performance of their duty to act in the common interest of all proprietors.* Restoring the windows and sliding doors with dimensions in accordance with the drawings in Annex 1 of Form 9 of the application (it will not be necessary that the materials used should be aluminum) would result in inconvenience, time and a financial outlay on the part of the respondents. They have no one but themselves to blame.
68. It was submitted that orders for removal and reinstatement should not be made because uniformity is no longer possible because alterations have been made in other lots. Unlike the Rachel Chen case, the Board is, in this case, not aware of any matter that will prevent the applicant from commencing actions against other subsidiary proprietors who have carried out any work in breach of the by-laws.
69. Accordingly it is ordered that:
- (a) the respondents remove:
 - i) polyvinylchloride window casements;
 - ii) polyvinylchloride sliding door frame with two sliding tracks;
 - iii) balcony sliding doors; and
 - iv) top layer windows that are flushed with the balcony sliding doors.
 - (b) Following the removal of the aforementioned items, the respondents must reinstate the items removed with:
 - i-i) powder coated window casements with dimensions that are set out in a drawing that was annexed in Form 9 of the application;

- ii-i) powder coated sliding door frames with four sliding tracks with dimensions that are set out in a drawing that was annexed in Form 9 of the application;
 - iii-i) powder coated sliding doors that are collapsible on either side with dimensions that are set out in a drawing that was annexed in Form 9 of the application; and
 - iv-i) top layer windows that are recessed against the sliding door with dimensions that are set out in a drawing that was annexed in Form 9 of the application.
- (c) The respondents will pay costs fixed at S\$10,000.

Dated this 17th day of March 2017

MR REMEDIOS F.G

Deputy President

MR FRANKIE CHIA

Member

MR TER KIM CHEU

Member

Clerical errors corrected on 6 April 2017