BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT

BUILDING MAINTENANCE AND STRATA MANAGEMENT (STRATA TITLES BOARDS) REGULATIONS 2005

STB No. 119 of 2017

In the matter of an application under **section 101(1)(c), 111** of the Building Maintenance and Strata Management Act in respect of the development known as **Belysa** (MCST Plan No. 4131)

Between

1. Ahmad bin Ibrahim
2. Rashida Binte Mohamed Zain
3. Lim Heow Tong Tommy
4. Shyna Yang Zhi Shan
5. Mohamed Sidiqie Bin Mohd Aiksan
6. Nuraisyah Binte Ahmad
7. Callan Chong
8. Teo Suan Hui, Isabella
9. Tan Yoke Lim
10. Yu Min
11. Loo Chuan Fook Bernard
12. Karen Leow Yuet Kum
13. Tan Pang Kiak
14. Chia Hong Sian Jasmine
15. Wong Chee Sheong
16. Lee Su Fau
17. Jegan s/o Jayaprakasan
18. Rajeshree d/o Thanapal
19. Oh Thye Seng
20. Rosita Binte Sahari
21. Hoi Seng Keong
22. Ham Wee Jean (Fan Huijin)

... Applicants

And

The MCST Plan No. 4131

... Respondent

GROUNDS OF DECISION

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21 September 2018

12 November 2018

Coram:	Mr Alfonso Ang	(President)
	Dr Tang Hang Wu	(Member)
	Mr Chng Beng Guan	(Member)

1. The Respondent is the Management Corporation Strata Title Plan No. 4131 comprising the subsidiary proprietors of a development known as Belysa at 55 Pasir Ris Drive 1. The Management Corporation was constituted on 13 October 2014. There are three blocks in the development. Two blocks are eighteen floors and one is sixteen floors. Belysa received temporary occupation permit on 28 May 2014 and most of the Applicants moved into their units in or around mid to end 2014. The twenty-two Applicants are subsidiary proprietors of eleven ground floor units and have a private enclosed space in their lots. It is undisputed that the Applicants complained of litter and the Respondent has issued notices to remind the residents not to litter.

2. The Applicants sought the following orders:

   (a) That the Respondent consents to the Applicants' installation of awnings at their private enclosed space; and

   (b) That the Respondent pays the Applicants costs for this application.

3. The developer of Belysa was Pasir Ris EC Pte Ltd and its managing agent during the initial period was Knight Frank Estate Management Pte Ltd ("Knight Frank"). Sometime after October 2014, the Applicants (save for the 9th to 12th Applicants) approached the developer for approval to install awnings within the private enclosed space of their respective units. The developer granted "in-principle" approval for the installation of the awnings (see pages 23-25 of the Affidavit of Evidence in Chief of Chiz Poh Seng). All the Applicants installed fixed metal awnings within the private enclosed space of their respective units. These awnings were anchored on concrete ledges which protrude out of the external walls. Some subsidiary proprietors other than the Applicants installed retractable awnings over their private enclosed space in their respective lots. These retractable awnings are not in contention before the Board.

4. The Applicants applied to the Board stating that the by-law found in paragraph 5(3) of the 2nd Schedule to Building Maintenance (Strata Management) Regulations 2005 ("BMSMR 2005") "makes clear that management corporations are not allowed to prevent subsidiary proprietors from installing safety devices within their own lot for the

improvement of safety within that lot. The shelters…are specifically intended to keep the Applicants and their family members safe from the danger of 'killer' litter which is very prevalent in the development" (see page 14 of Form 8 of the Application). The Respondent resists the application by taking the position that the Applicants should install retractable awnings instead of fixed awnings. In the Respondent's closing submission, the Respondent explain that fixed awnings "cause annoyance to the second floor subsidiary proprietors as they reflect heat, block the view and are noisy when it rains. The fixed shelters trap dirt and are an eyesore especially because they are not regularly cleaned" (See The Respondent's Closing Submissions at [14]).

5. The agreed issues before the Board are:

   a. Whether the manner in which the Applicants had installed the coverings over their private enclosed spaces constitutes exclusive use and enjoyment of the common property which requires a section 33 of the Building Maintenance and Strata Management Act (Cap 30C) ("BMSMA") Resolution.

   b. If so, whether the prescribed by-laws rules 5(1) to 5(5) of the BMSMR 2005 serve to authorise the Applicants to install and prevent the Respondent from refusing to allow the Applicants to install safety devices even if such installation is mounted on common property.

   c. In the circumstances, whether the Applicants' coverings at their private enclosed spaces are in fact safety devices which improve safety within the Applicants' lots.

6. The Applicants' arguments are:

   a. The installation of the awnings does not constitute exclusive use of common property since the concrete ledges to which they are attached are not common property, and even if they are, the installation does not constitute exclusive use and enjoyment of those ledges;

   b. Prescribed by-laws rule 5(1) to 5(5) of the BMSMR 2005 have been considered by the Strata Titles Board, High Court and Court of Appeal to be exceptions to prohibitions against installations on common property; and

   c. On the facts, it is clear that the Applicants face a serious, potentially fatal issue of killer litter, and that the awning serve to protect them from killer litter.

7. The Respondent's arguments are:

a. The Applicants' awnings are installed on the concrete ledges which is part of the design and external fabric of the development and therefore common property.

b. The Applicants' awnings are not approved or authorised by the Respondent. Motions for the fixed awnings had been rejected at the 2nd and 3rd Annual General Meeting.

c. As the awnings, anchored onto common property, permanently encroach onto common property, the Applicants require a 90% resolution to allow exclusive use of common property and no such resolution was obtained.

d. Prescribed by-law Rule 5(3) of the BMSMR 2005 permits the installation of "safety devices" but under Rule 5(4), any safety device must still adhere to guidelines prescribed by the management corporation. The Respondent's guidelines provide for the installation of retractable awnings.

e. A fixed awning does not improve safety within the lot because the awning is not of an approved material and actually hazardous. Also, the Applicants already have a 2 metre concrete ledge covering their private enclosed space which adequately protects against litter.

f. Even if the Board considers that the awning is a safety device, the onus is on the Applicants to show that a retractable awning is an inadequate safety device and only a fixed metal awning will improve the safety of the occupants of the lot. The Applicants have not discharged this burden.

8. As a preliminary matter, the Applicants argue that they are entitled to install the fixed awnings because the awnings are not fixed onto common property. In other words, the Applicants say that the concrete ledges which anchor the fixed awnings are not considered to be common property as defined by section 2(1) of the BMSMA. Section 2(1) of the BMSMA provides:

> "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; or
>
> (*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;

9. From the definition above, "common property" consists of two conjunctive elements: (a) an area or installation that was not comprised in any lot; and (b) the area or installation was used or capable of being used or enjoyed by occupiers of two or more subsidiary proprietors (see *Sit Kwong Lam v Management Corporation Strata Title Plan No 2645* ("*The Ardmore Park*") [2018] 1 SLR 790). The Applicants contend that the concrete ledges are not common property because they are entirely within the strata area of the respective units. Furthermore, the concrete ledges are not used or capable of being used or enjoyed by occupiers of two or more subsidiary proprietors. The Board finds this argument unsustainable and are of the opinion that the concrete ledges are common property. Recently, Chan Seng Onn J in *Wu Chiu Lin v Management Corporation Strata Title Plan* (*"The Sunglade*") [2018] 4 SLR 975 held that common property included external walls. While counsel for the Applicants, Mr Toh Kok Seng, attempted to persuade the Board that the concrete ledges may be distinguished from external walls, the Board finds this argument to be over-refined and unconvincing. The concrete ledges may be likened to the external walls of a building. The Board is unable to see a distinction between these concrete ledges and external walls. In relation to the requirement that common property must be used or capable of being used or enjoyed by occupiers of two or more subsidiary proprietors, the Board is bound by the Court of Appeal's recent decision in *The Ardmore Park* [2018] 1 SLR 790 which adopted a wide view of the second limb of the definition of common property. Sundaresh Menon CJ said (at [59]):

> any area or installation that could affect the appearance of a building in a strata development, or that was part and parcel of the fabric of the building, could, by its mere presence, be "enjoyed" by some or even all subsidiary proprietors of the development. Indeed, there was no need for the area or installation to be physically accessible by the subsidiary proprietors (or any of them) in order to be "enjoyed" by the said proprietors.

10. The Board is of the view that the concrete ledges are part of the common property of the strata development because their mere presence render them capable of being enjoyed by some or even all subsidiary proprietors. Furthermore, the Applicants have not asserted that they have the responsibility to maintain the concrete ledges. This further supports the view that all the parties have assumed correctly that the concrete ledges are common property. Under the BMSMA, the management corporation is tasked to "control, manage and administer the common property for the benefit of all the subsidiary proprietors constituting the management corporation" (see section 29(1)(a) of the BMSMA). Since the concrete ledges are common property, any alteration would require prior written approval from the management corporation. This

is enshrined in paragraph 5(1) of the 2nd Schedule to BMSMR 2005 which stipulate the prescribed by-laws for every strata development. Paragraph 5(1) provides that:

> A subsidiary proprietor or an occupier of a lot shall not mark, paint, drive nails or screws or the like into, or otherwise damage or deface, any structure that forms part of the common property except with the prior written approval of the management corporation.

11. In the present case, it is undisputed that the Applicants (save for the 9th and 10th Applicants) signed a letter of undertaking in relation to the installation of awnings which provided:

> We understand that this in-principle approval for the installation work given by the Developer, M/s Pasir Ris EC Pte Ltd, is subjected to the jurisdiction of the Management at its general meetings. *Upon receiving any notice from the Management Council*…to remove the canopy/awning installed in our private enclosed spaces, we shall undertake the responsibility to remove the said canopy/awning and incur all costs and expenses relating to the removal within the stipulated date of the notice served upon us. (emphasis added)

12. It is clear that the Applicants (save for the 9th and 10th Applicants) did not have an unequivocal approval of the management corporation to install the fixed awnings. At most, the Applicants only had conditional approval to fix the awnings. They were well aware at the time when they installed the awnings that in future the Management Council may ask them to take down the awnings. This is supported by an email dated 23 October 2014 from Brian Chong of Knight Frank who wrote to the 1st Applicant:

> There is one very important point that I would like to stress on is that although when (sic) every approval is granted at this point of time, the final decision will still lies (sic) in the committee that will be going (sic) to form in the near future. If they have any violent objection, legally, they could still have the right to request for the resident to remove any unauthorised structure with a valid reason…

13. From the email correspondence and the letter of undertaking, it could be said that the Applicants (save for the 9th and 10th Applicants) took a conscious risk that they may have to take down the awnings sometime in the future. The 9th and 10th Applicants applied to install a "canopy shelter for PES area". This was understood to be the installation of retractable awnings. In fact, the 9th Applicant informed the Respondent that he was installing retractable awnings. However, the Respondent subsequently discovered that they had installed fixed awnings.

14. As Leow explains "the use and enjoyment of the strata title development is governed by the by-laws of the development which regulates the conduct of subsidiary proprietors *inter se* and between subsidiary proprietors and the management

corporation" (see Rachel Leow, "Minority Protection Doctrines: From Company Law and Equity to Strata Title" [2011] Conv 96 at 97). Without an unequivocal written approval from the management corporation, the fixed awnings are prima facie in breach of paragraph 5(1) of the 2nd Schedule to the BMSMR 2005. However, this general rule is qualified by paragraph 5(3) of the 2nd Schedule to the BMSMR 2005 which provides:

> This by-law shall not prevent a subsidiary proprietor or an occupier of a lot, or a person authorised by such subsidiary proprietor or occupier from installing —
>
> (*a*) any locking or other *safety device* for protection of the subsidiary proprietor's or occupier's lot against intruders or *to improve safety within that lot*;
>
> (*b*) any screen or other device to prevent entry of animals or insects on the lot;
>
> (*c*) any *structure or device* to *prevent harm to children*; or
>
> (*d*) any device used to affix decorative items to the internal surfaces of walls in the subsidiary proprietor's or occupier's lot. (emphasis added)

15. This exception allows subsidiary proprietors to install a safety device to improve safety within that lot or any structure or device in order to prevent harm to children. The Court of Appeal decided in *The Ardmore Park* [2018] 1 SLR 790 at [72] that alterations to common property which enhanced safety and enjoyment within the lot or prevented harm to children while they were within the lot were an exception to the by-law prohibiting alteration of common property without the prior approval of the management corporation. In the context of the installation of "invisible" grilles, the Strata Titles Board articulated the rationale of this exception in *Sujit Singh Gill v MCST Plan No 3466* ("*One-North Gateway*") [2015] SGSTB 2 at [49]:

> …the proposed installation of grilles, even if it is an alteration on common property, is not an *unreasonable* request since it concerns the safety of the Applicant's children. The Board is of the view that the children's safety must be paramount, even if the grilles may affect the appearance of the Building or if they constitute an alteration on common property… (emphasis added)

16. Two points may be gleaned from the passage above in *One-North Gateway*. First, in the management of any strata development, the management corporation should be guided by the principle that children's safety must be considered to be of paramount importance. However, this principle is not an unqualified rule. Otherwise, this might lead to an unmanageable situation where every subsidiary proprietor would ignore the management corporation in relation to alterations to common property and allege that these works were for safety purposes. There must be some logical limit to the general rule that a subsidiary proprietor may alter common property for the safety of residents and children living within his or her lot. This leads us to the next point which is often overlooked. Second, alteration of common property to install safety devices to protect children must be a *reasonable* request as mentioned by the Board in *One-North*

Gateway. We will return and develop the second point on reasonableness in our judgment.

17. Therefore, for the Applicants to succeed in this action they must persuade the Board on the following matters:

    a. That the alterations to the common property to secure the fixed awnings should be construed as a safety device to improve safety on that lot or is meant to prevent harm to children living in their respective lots; and

    b. The installation of fixed awnings constituted a reasonable method to achieve such safety purposes.

18. In this present dispute, the Board must determine whether awnings may be considered to be either a "safety device…to improve safety within that lot" or a "structure or device to prevent harm to children" as per paragraph 5(3) of 2nd Schedule to the BMSMR 2005. Counsel for the Respondent, Ms Teh Ee-von, referred the Board to *Management Corp Strata Title Plan No 2570 v Ng Khai Chua* [2006] SGDC 176 at [47] where Malcolm Tan Ban Hoe DJ interpreted paragraph 5(3) of the 2nd Schedule to the BMSMR 2005 to cover safety features and devices "which can easily be attached within the subsidiary unit or with minimal encroachment onto common property". Tan DJ held that a covered trellis does not fall within the definition of paragraph 5(3) of the 2nd Schedule to the BMSMR 2005. Therefore, Ms Teh argued that an awning is not considered to be a safety device that improves safety within the lot.

19. In contrast, Chan Seng Onn J in *The Sunglade* [2018] 4 SLR 975 at [14] mentioned that the subsidiary proprietors on the ground floor units entered into a settlement agreement at a mediation before the Board on the ground *inter alia* that the coverings over trellises constituted the installation of safety devices for the improvement of safety within those strata lots pursuant to paragraph 5(3) of the 2nd Schedule to BMSMR 2005. While this point was not argued, it seems that the Board (and indeed Chan Seng Onn J) in *The Sunglade* implicitly assumed that coverings over trellises may be construed as safety devices under paragraph 5(3) of the 2nd Schedule to BMSMR 2005.

20. On balance, the Board is of the view that the term "safety device" referred to in paragraph 5(3) of the 2nd Schedule to BMSMR 2005 is wide enough to include an awning. In reaching this conclusion, the Board is mindful that the overriding objective of paragraph 5(3) of the 2nd Schedule to BMSMR 2005 is to ensure the safety of the occupants within the subsidiary proprietor's lot. "Killer" litter has been known to cause serious injury and even death. Therefore, as a matter of common sense, the term "safety device" in paragraph 5(3) of the 2nd Schedule to BMSMR 2005 ought to be interpreted broadly to include an awning which is installed to prevent "killer" litter from harming the occupants of the subsidiary proprietor's lot.

21. On the facts, the Board is satisfied that the present strata development faces a “killer” litter problem. Numerous items such as a knife blade, laundry pole, tennis racket, glass shards and aluminium poles have dropped into the ground floor units (See paragraphs 7 – 22 of the Affidavit of the 1st Applicant).

22. Mr Toh argues that the “question the Board has to decide is whether Applicants’ shelters are in fact safety devices which improve safety within the Applicants’ lots. The existence of alternatives does not change the answer to the question to be decided.” The Board does not accept this argument. Having decided that an awning may be considered as a safety device and that there was a “killer” litter problem in the present strata development, the next question to be decided is whether the installation of the fixed metal awning was a reasonable response to the “killer” litter problem? In other words, even though paragraph 5(3) of the 2nd Schedule to BMSMR 2005 permits alterations to common property to install safety devices, these safety devices must be a *necessary, reasonable and proportionate* response to the problem. For example, in *One-North Gateway* it was a necessary, reasonable and proportionate response for the subsidiary proprietor to install “invisible” grilles to prevent his children from leaning and climbing over the balcony of his unit. The installation of “invisible” grilles is an option which does not detract from the appearance and uniformity of the building. Assume that the subsidiary proprietor in *One-North Gateway* chose not to install “invisible” grilles but wanted to install intricate grilles with an ornamental design. Would such grilles be permitted under paragraph 5(3) of the 2nd Schedule to BMSMR 2005? The answer would be surely not. Such intricate ornamental grilles would not constitute a necessary, reasonable and proportionate response to solving the safety problem when another option which would not detract from the uniformity and appearance of the building exists i.e. “invisible grilles”.

23. The principle that the safety devices installed should be a necessary, reasonable and proportionate response to solving the problem may be justified on the fact that the management corporation in a strata development has to juggle competing demands from different subsidiary proprietors who may have conflicting interests. As Hazel Easthope and Bill Randolph note that owners in strata schemes “must make daily negotiations between their individual desires and their responsibilities to neighbours, civic interests and broader society” (see Hazel Easthope & Bill Randolph, “Collective Responsibility in Strata Apartments in *Multi-Owned Property in the Asia Pacific Region* (Erika Altmann & Michelle Gabriel eds) (Palgrave MacMillan, 2018) 177, 178). While we appreciate that the Applicants are of the view that fixed awnings would best protect them and their families, we have also heard compelling evidence from a subsidiary proprietor who lives on the second floor, Mr Goh Tang Peng, on the effect that a fixed awning had on his life. Mr Goh likened the fixed awning on the first floor to a “metal plate” which radiated heat, was noisy when it rained and accumulated dirt. This led Mr Goh to shut his window, draw his blinds and turn on his air conditioner all the time. Mr Goh said that the fixed awnings has led him not to be able to enjoy his balcony and suffer from depression. In contrast, if a retractable awning was installed,

dirt and rubbish would not accumulate on the awning indefinitely since there would be a natural inclination to the retractable awning. Furthermore, Mr Goh said he could use a broom to push the rubbish accumulating on the retractable awning. The rain would eventually wash the rubbish on the retractable awning down to the ground. Mr Goh said that the presence of the fixed awning made him feel helpless. We narrate Mr Goh's evidence to demonstrate that the Respondent as the management corporation is not being unreasonable in refusing the Applicants' request for fixed awnings but instead is seeking in good faith to balance the competing interests of all subsidiary proprietors. While the Board appreciates the Applicants' safety concerns, the Board also has to take into account Mr Goh's perspective. In analysing this dispute, we are reminded of Kevin Gray's and Susan Francis Gray's wise words in their seminal textbook, *Elements of Land Law*, (OUP, 2009) at 113 that "…the deep structure of 'property' is not absolute or oppositional in nature. It is, instead, delimited by a pervasive sense of community-directed obligation and is rooted in a contextual network of mutual restraint and social accommodation mediated by the agencies of the state."

24. In the present case, the main contention between the Applicants and Respondent is choosing between the option of a fixed metal awning or retractable awning. Would a retractable awning function as a safety device to protect the Applicants and their families? The Applicants dispute that a retractable awning would serve as an adequate safety device on the following grounds: (a) the inclination of the retractable awning would mean that an adult would not be able to stand in every part of the subsidiary proprietor's private enclosed space due to height restrictions. In other words, the lower parts of the retractable awning will not allow an adult to stand up straight and the adult has to crouch or bend down; (b) the Applicants would have to install multiple retractable awnings to cover the entire subsidiary proprietor's lot; (c) the canvas covering on a retractable awning may not be able to protect against heavier or sharper falling items such as laundry poles, parasol, bag of soil and knife plates; and (d) retractable awnings are not fire rated and could easily catch fire from cigarette butts thrown down.

25. After reviewing the evidence, the Board is not persuaded by the Applicants' position. The Board is satisfied that the Respondent has proved that retractable awnings are a necessary, reasonable and proportionate response to the "killer" litter problem. In particular, the Board has been shown documentation of nine grown men sitting on a retractable awning (see pages 26 and 29 of the Respondent's Bundle of Supplementary Documents). There is also evidence of such retractable awnings being subject to 43 kg and 74 kg drop tests (see page 25 of Respondent's Bundle of Supplementary Documents). Thus, the Applicants' argument that retractable awnings would not adequately protect them is unconvincing. Furthermore, the Respondent has tendered evidence that it is possible to use incombustible/fire-retardant materials on such retractable awnings (see page 32 of Respondent's Bundle of Supplementary Documents). Therefore, the Applicants' submission that retractable awnings could easily catch fire from lighted cigarette butts is unpersuasive. Finally, the Applicants'

contention that inclination of the retractable awnings would mean that an adult would not be able stand in every part of the subsidiary proprietor's lot due to height restrictions ought to be rejected. The issue at hand is not to find a perfect solution which would meet the Applicants' every need. Instead, the proper inquiry is to find a reasonable, necessary and proportionate response to solve the problem of "killer" litter.

26. There are two side issues that the Board would like to deal with. First, we note Chan Seng Onn J in *The Sunglade* [2018] 4 SLR 975 held that a by-law which allowed a subsidiary proprietor to install coverings over the roof trellises needs to be passed by a 90% resolution. This is because the installation of coverings over the roof trellises involved the conferring of exclusive use and enjoyment of or special privileges exceeding three years in respect of common property. Section 33(1)(c) of the BMSMA stipulates that a 90% resolution is required to make by-laws conferring on subsidiary proprietors the exclusive use and enjoyment of or special privileges in respect of the whole or any part of common property exceeding three years. The Board regards itself to be bound by *The Sunglade* decision. Since the coverings over the roof trellises are very similar to the installation of awnings, we are of the view that a 90% resolution is required to make the necessary by-laws authorising the awnings. On the present facts, we note that a motion to approve retractable awnings was passed with 85.11% share value at the 2nd Annual General Meeting held on 15 October 2016 (see page 277 of the Affidavit of the 1st Applicant). Since this motion was below 90%, the Board has not taken this factor into account in coming to its decision. Indeed, Chan Seng Onn J in *The Sunglade* [2018] 4 SLR 975 held that a trellis by-law which received 83.06% support at the Annual General Meeting was not *validly* made. Even though there was no 90% resolution approving retractable awnings, the Board is of the view that the Respondent is entitled to take the position that retractable awnings instead of fixed awnings are a necessary, reasonable and proportionate response to the "killer" litter problem.

27. Mr Toh made a valiant attempt to persuade the Board that the installation of a fixed awning was not an exclusive use of common property. Relying on *inter alia Platt v Cieriello* [1997] QCA 33, Mr Toh argued that: (i) exclusive use of common property does not refer to the mere fact of exclusive possession; (ii) exclusive use of common property is the use of common property in a manner for a purpose which interferes unreasonably with the right of others to use the same common property; and (iii) if a subsidiary proprietor uses the common property in a manner or for a purpose which does not interfere unreasonably with the right of others to do likewise, there is no exclusive use of common property. To bolster his position, Mr Toh gives the following examples in the Applicants' Closing Submission (at [38]):

> ..structural beams and columns which run though strata units may be 'used' in the sense that one might enclose them with a false ceiling or wall, or paste wallpaper on them, paint them, or hang items on them. Similarly, sewage pipes which run though the strata lots may also be boxed up, painted etc. There is no reported case where the management corporation has insisted on a Section 33 BMSMA exclusive

use by-law at a general meeting to approve every instance of such use for every single unit, every small shoe cabinet placed on the common corridor outside the unit, every floor mat outside the door and every welcome sign hung on the wall beside the main door.

28. Mr Toh argued forcefully that there was "no contention that other subsidiary proprietors have any entitlement to use and enjoy the concrete ledges, or even that they have any desire to do so" (at [39]). The Board sees some force in Mr Toh's argument that exclusive use of common property is a question of fact. As Professor Douglas Harris perceptive notes "[w]ithout common property through which people can move freely, private property becomes unusable or inefficiently usable because of the resources required to negotiate and secure access…The common property in a condominium performs the same role of facilitating access to, while preserving the integrity of, private property" (see Douglas C. Harris, "Condominium and the City: The Rise of Property in Vancouver" (2011) Law & Social Inquiry 694, 701). The key to the idea of exclusive use of common property is if such use prevents other subsidiary proprietors from accessing a similar resource. Thus, in the installation of an awning, if the awning is found to prevent the management corporation from using gondolas to paint the external walls, then this may be considered to be a form of exclusive use of common property. However, if it can be shown, as a matter of evidence, that the gondolas may still access the external walls without much difficulty, then there is an argument that the installation of an awning does not constitute an exclusive use of common property. If this proposition is correct, then a 90% resolution is not needed. However, this is a tentative observation as the Board is bound by Chan Seng Onn J's decision in *The Sunglade* [2018] 4 SLR 975 which unequivocally held that covering up trellises constituted an exclusive use of common property. In the Board's opinion, it is not possible to distinguish the installation of an awning from the covering up of trellises in *The Sunglade*. In any case, this argument would not have an impact on the overall result in the present case since the Board has found that the fixed awnings were not a necessary, reasonable and proportionate response to the "killer" litter problem.

29. In light of the above, the Board is of the view the Respondent's position approving a retractable awning as a safety device instead of a fixed awning is justified. The installation of a retractable awning is a necessary, reasonable and proportionate response to the "killer" litter problem. The Board appreciates that the Applicants have installed the fixed awnings in the good faith belief that this was the best option to protect themselves and their families. However, the Board must balance their needs with other competing demands of the rest of the subsidiary proprietors. The Board urges all parties to repair and reconcile their relationship after this application because parties are, in the words of Blandy, Bright & Nield, in an "enduring property relationship" (see Sarah Blandy, Susan Bright and Sarah Nield, "The Dynamics of Enduring Property Relationships in Land" (2018) 81 MLR 85). The Board also urges the Respondent, together with all the subsidiary proprietors to resolve this anti-social behaviour of littering. As a leading property scholar, Chen Lei, in concluding his excellent and insightful comparative study on condominium law, says "[t]he interplay between unit

owners is crucial for harmonious condominium living. People who live in condominiums must out of necessity work closely with each other to make a condominium association function" (see Chen Lei, *The Making of Chinese Condominium Law: A Comparative Perspective with American and South African Condominium Laws* (Intersentia, 2010), 179). This is a sentiment which the Board wholeheartedly endorses.

30. Therefore, the Applicants' action is dismissed with costs. The Board will hear the parties on costs.

31. The Board would like to thank counsel for the Applicants, Mr Toh, and for the Respondent, Ms Teh, for their depth of knowledge and effective assistance.

Dated this 12th day of November 2018

Mr Alfonso Ang
President

Dr Tang Hang Wu
Member

Mr Chng Beng Guan
Member

Mr Toh Kok Seng & Daniel Chan (M/s Lee & Lee) for the Applicants.
Ms Teh Ee-von (M/s Infinitus Law Corporation) for the Respondent.