BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT

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

STB No. 109 of 2022

In the matter of an application under 101 of the Building Maintenance and Strata Management Act in respect of the development known as **Oleander Towers** (MCST No. 2245)

Between

1. Foo Siang Yean (Fu Xiangyuan)
2. Leong Fong Meng Irene
3. Tay Kheng Lock and Lim Hai Imm Doris

... Applicants

And

The MCST Plan No. 2245

… Respondent

GROUNDS OF DECISION

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… Respondent

8 and 9 May 2023

21 June 2023

Coram:	Mr Oommen Mathew	(Deputy President)
	Dr Tang Hang Wu	(Member)
	Ms Sim Kai Li	(Member)

Background Facts

1. The Applicants are the subsidiary proprietors of 911 Lorong 1 Toa Payoh, Singapore 319771 ("**the Applicants**") of a strata development known as Oleander Towers ("**the Development**"). The Respondent is the Management Corporation Strata Title Plan No. 2245 of the Development ("**the Respondent**").

2. This is yet another dispute on the right of the subsidiary proprietors living on the ground floor to fix awnings over their private outdoor spaces which has come before the Board in

the last five years. Most of the cases involved situations where the subsidiary proprietors of ground floor units would report to the management corporation that they are facing a killer litter problem. Usually, this involves evidence of dangerous items falling into the ground floor units. In some cases, police reports are lodged. As a response to the killer litter problem, the ground floor subsidiary proprietors would seek the management corporation's permission to install awnings as protective coverings against killer litter. These features are also found in the present case. Thus, the legal issue is whether an individual owner has a right to fix awnings on his or her own unit as a form of protective covering from killer litter without obtaining the requisite consent from the rest of the owners.

3. To understand the difficulty with obtaining consent, some context is necessary. Singapore's strata law stipulates that to make a by-law granting exclusive use of common property for more than 3 years to an owner of a lot, a 90 % resolution is required from all subsidiary proprietors present (in person or by proxy) at a meeting when the vote is taken (see section 33(1)(c) of the Building Maintenance and Strata Management Act 2004 ("BMSMA"). In 2018, Chan Seng Onn J in *Wu Chiu Lin v Management Corporation Strata Title Plan No 2874* [2018] 4 SLR 966 decided that external walls of buildings were common property even if these external walls were comprised in an individual owner's apartment; hence, the court held that a structure which was attached to an external wall constituted exclusive use and required a 90 % resolution. The correctness of this decision has not been seriously challenged and it has been assumed that since awnings are attached to external walls, such structures must be authorised with a 90 % resolution (see also the decision of Ang Cheng Hock J in *Mu Qi and another v Management Corporation Strata Plan No 1849* [2021] 5 SLR 1401 at [60]; *Ahmad bin Ibrahim v Management Corporation Strata Title Plan No. 4131* [2018] SGSTB 8). A competing characterisation is to take a purposive approach to the statute and regard the fixing of an awning to the external wall does not constitute exclusive use of the external wall but should instead be construed as a form of alteration to common property. In fact, the New South Wales Civil and Administrative Tribunal has recently suggested that anchoring an awning to an external wall is not a form of alteration to the common property other than incidentally (*Fong v The Owners Strata Plan No 82783* [2022] NSWCATCD 56 at [104]). Alterations to common property would require only a special resolution i.e. 75 % of all owners present at (in person or by proxy) at a meeting when the vote is taken. While this development in New South Wales is interesting, this Board is bound by the decisions of the Singapore High Court (*Wu Chiu Lin v Management Corporation Strata Title Plan No 2874* [2018] 4 SLR 966; *Mu Qi and another v Management Corporation Strata Title Plan No 1849* [2021] 5 SLR 1401 at [60]) and for the purposes of this action it is assumed that a 90% resolution is required to fix awnings on the wall.

4. Most of the cases demonstrate that when this issue is put to a vote, the 90 % resolution is, in fact, difficult to obtain (see e.g. *Mu Qi and another v Management Corporation Strata Title Plan No 1849* [2021] 5 SLR 1401). Owners who live on the second floor often resist the installation of such awnings based on concerns about reflected heat from the awnings, noise when it rains, loss of views, dirt from the awnings and security considerations. Indeed, these

are precisely the objections which the Applicants, who are subsidiary proprietors living on the second floor, are making in the present case. Hazel Easthope explains the tension between owners in *The Politics and Practices of Apartment Living* (Edward Elgar, 2019) at 8 as follows:

> While home ownership is often associated with ideas of control and eminent domain, condominium owners are seldom in a position to make individual decisions about their property and must negotiate and compromise with co-owners.

5. Does this mean that a ground floor subsidiary proprietor has no right to fix awnings even if faced with a killer litter problem if the 90 % resolution is not obtained? Relying on the prescribed by-law by statute, specifically by-law 5(3) under the Second Schedule of the Building Maintenance (Strata Management) Regulation 2005, which stipulates that an owner shall not be prevented from installing safety devices or "any structure or device to prevent harm to children", the Strata Titles Board has consistently held in several cases that an owner of a lot may install awnings as protective coverings even if the requisite 90 % resolution is not obtained if there is evidence of killer litter (*Ahmad bin Ibrahim and others v The Management Corporation Strata Title Plan No. 4131 ("Belysa")* [2018] SGSTB 8); *Rosalina Soh Pei Xi v Hui Mun Wai and Another ("Suites @ Newton"*) [2019] SGSSTB 5; *Pang Loon Ong and others v The Management Corporation Strata Title Plan No. 4288* [2019] SGSTB 6; *Lee Soh Geok v The Management Corporation Strata Title Plan No. 4417 ("Citylife@Tampines")* [2020] SGSTB 9; *Toh Cho Boon and Yong Phui Ling v The Management Corporation Strata Title Plan No. 2748 ("The Queens Condominium")* [2020] SGSTB 4; *Nishad Ahmad Narod v The Management Corporation Strata Title Plan No 3044* [2022] SGSTB 1). Specifically, the Strata Titles Board in a split decision held that the prescribed by-law applied to all developments by reason of section 32(2) of BMSMA, and that no by-law made may be inconsistent with the prescribed by-law (*Lee Soh Geok v The Management Corporation Strata Plan No. 4417 ("Citylife@Tampines")* [2020] SGSTB 9). Section 32(2) of BMSMA states that no by-law made under section 33 of the BMSMA 2004, which is the exclusive use provision, may be inconsistent with the prescribed by-law. Therefore, the conclusion is that the prescribed by-law allows for the installation of safety devices or 'any structure or device to prevent harm to children' without the requirement of a 90 % resolution. This reasoning in *Lee Soh Geok v The Management Corporation Strata Plan No. 4417 ("Citylife@Tampines")* [2020] SGSTB 9 has been implicitly approved by a High Court decision where Ang Cheng Hock J said that an awning may be fixed if there was evidence of killer litter even though a 90 % resolution was not obtained (*Mu Qi and another v Management Corporation Strata Title Plan No 1849* [2021] 5 SLR 1401 at [82]). This Board notes that the drafting of Singapore's prescribed by-laws appears to have been inspired by the *model* by-laws of New South Wales's Strata Schemes Management Regulation 2016 which is made pursuant to the Strata Schemes Management Act 2015. However, the crucial difference between New South Wales and Singapore is that in the former, the model by-laws have to be adopted by a strata development, whereas in Singapore, the prescribed by-laws are mandatory in nature to all strata developments by

virtue of section 32(2) of the BMSMA and may not be derogated from by the subsidiary proprietors.

6. The present case is different from all the other previous cases before the Strata Titles Board and the High Court because the awnings were installed pursuant to a by-law which was passed with *unanimous* resolution at an Annual General Meeting. In the present dispute, the Applicants are taking the position that the awnings which are installed is actually in breach of the relevant by-law. Hence, this case is essentially an issue of interpretation of the relevant by-law and whether the awnings which were installed are consistent with the by-law passed.

7. The Notice of 21st Annual General Meeting dated 28 September 2020 provided for *inter alia* as follows*:*

> 10.0 To resolve the following by-laws governing the covering of the Private Outdoor Space (Cover) following the revision of the URA guidelines with effect from 1 March 2014 with the following conditions:
>
> a. The Width of the Cover shall be no more than 2 metres from the external wall of the unit;
>
> b. The design of the Cover must be certified by a Qualified Person at unit owner's own cost.
>
> c. The design of the Cover shall be approved by the Council.
>
> d. Any other conditions as imposed by the Council including the right for the Council to ask the subsidiary proprietor to remove if it is causing a nuisance.

8. The 21st Annual General Meeting was held on 24 October 2020 and the following was recorded at the meeting:

> Mr Mak Weng Tat (T1 #XXX)
>
> "Your two meter is not a statutory issue here. Two meter is the minimum requirement for BSP cover. Under the instruction of URA, you can actually cover the whole private enclosed space".
>
> "What I'm trying to say is,…you should not put "at more than"…Because we already agreed in this meeting that we can cover according to the guideline, but of course, based on our final task force discussion…"
>
> Mr Richard Kan (Chairman of Council)

> "although we put a maximum two meter, it's a guide only. Because you are four meter. From the time you step out of your…your main hall to the gate is four meter, I think. So we are putting two meter, it's the bylaw, we put two meter. But once the task force comes in, there will be a set of guidelines that says that, I call it local rules, local rules where we can know that this can be done and all that.
>
> "the task force will decide on the local rules here of this condo to say what is whether 2.5 or 3 or whatever"
>
> Male voice in the background:
>
> "Okay, so URA also depends on case to case. As long as URA agrees, we can't stop them from approving it. So, right now URA is 2 metres, anything above maximum. So they got to get approval from URA.

9. It should be noted that Resolution 10 was tabled for a special resolution. However, Resolution 10 was passed with a unanimous resolution. Both the Applicants and Respondent agree that despite Resolution 10 being tabled for a special resolution, the by-law is a valid exclusive use by-law because it was passed with unanimous resolution. The by-law which was lodged with the Building and Construction Authority on 5 January 2021 provides:

> It was unanimously resolved as a by-law governing the covering of the Private Outdoor Space (Cover) following the revision of the URA guidelines with effect from 1 March 2014 with the following conditions:
>
> a. The Width of the Cover shall be no more than 2 metres from the external wall of the unit due to constraint on installation as it required to be mounted on the external wall which is common property/subject to the approval of URA;
>
> b. The design of the Cover must be certified by a Qualified Person at unit owner's own cost.
>
> c. The design of the Cover shall be approved by the Council.
>
> d. Any other conditions as imposed by the Council including the right for the Council to ask the subsidiary proprietor to remove if it is causing a nuisance.

10. This resolution is now incorporated as By-Law 6.0 of the Development. It is not disputed that the awnings that have been installed are beyond 2 metres. Many ground floor subsidiary

proprietors have installed covers which span the entire outdoor space with covers approximately 4 metres.

Applicants' Case

11. The Applicants' case is that the installation of the awnings is in breach of By-Law 6.0. Specifically, the Applicants urge this Board to consider By-Law 6.0 without the additional words "due to constraint on installation as it required to be mounted on the external wall which is common property/subject to the approval of URA" since these words were not in resolution 10.1 in the Notice of 21st Annual General Meeting dated 28 September 2020. In any case, the Applicants say that even if By-Law 6.0 is read with the additional words, it does not allow for awnings exceeding 2 metres from the external wall of the development.

Respondent's Case

12. The Respondent's primary case is that By-Law 6.0 should be "interpreted as a guide, the width of the cover shall be no more than 2 metres from the external wall of the unit and the cover may be larger if approved by the Urban Redevelopment Authority ("**URA**"). This was the understanding of all the residents who were present and who unanimously voted to pass proposed Resolution 10.00 into By-Law 6.0".

13. The difference between the Applicants' position and Respondent's case appears to be whether in interpreting By-law 6.0, the Board is entitled to refer to extrinsic evidence, namely, what was said at the 21st Annual General Meeting.

The Law on Interpretation of By-Laws

14. Section 32 of the BMSMA provides that every parcel comprised in a strata title is regulated by by-laws. There are several types of by-laws envisaged in the BMSMA: (a) prescribed by-laws which are mandatory to every strata title plan which may not be derogated from (section 32(2) of the BMSMA); (b) ordinary resolution by-laws (see e.g. exclusive use of common property upon conditions for a period not exceeding one year pursuant to section 33(1)(1) of the BMSMA); (c) by-laws which may be made by a special resolution for certain matters (see e.g. sections 32(3) and 33(1)(b) of the BMSMA); and (d) by-laws which require a 90 % resolution (see e.g. exclusive use by-laws for a period which exceeds 3 years which must be made pursuant to section 33(1)(c) of the BMSMA).

15. Before identifying the relevant principles in relation to the interpretation of by-laws, it is important to determine the legal nature of by-laws. In Australia, there is some debate whether by-laws should properly be regarded as a form of delegated legislation or statutory contracts (see *The Owners of Strata Plan No 3397 v Tate* (2007) 70 NSWLR 344; Cathy Sherry, *Strata Title Property Rights,* (Routledge, 2017), 148 - 152). In Singapore, this question appears to

be settled. According to Judith Prakash J (as she then was) in *Choo Kok Lin v Management Corporation Strata Title Plan No 2405* [2005] 4 SLR(R) 175 at [23] by-laws are "considered to be statutorily constituted contracts between the management corporation and the subsidiary proprietors…" This analysis has been adopted in a number of Singapore cases (*Chia Sok Kheng Kathleen v Management Corporation Strata Title Plan No 669* [2004] 4 SLR(R) 27 at [40] –[41]; *Management Corporation Strata Title Plan No 2911 v Tham Keng Mun* [2011] 1 SLR 1263 at [62] – [64]; *Management Corporation Strata Title Plan No 940 v Lim Florence Majorie* [2019] 4 SLR 73 at [113]; *Prem N Shamdasani v Management Corporation Strata Title Plan No 920* [2022] SGHC 280 at [78]).

16. Since by-laws are a form of statutorily constituted contracts, the next issue would be whether Singapore's jurisprudence on interpretation of contracts, especially the cases on the use of extrinsic evidence in interpreting contracts (see e.g. *Sembcorp Marine Ltd v PPL Holdings Pte Ltd* [2013] 4 SLR 193; *Tuitiongenius Pte Ltd v Toh Yew Keat* [2021] 1 SLR 231), is relevant to the construction of by-laws in a strata development. The complication here is that the Singapore cases on interpretation of contracts and the use of extrinsic of evidence revolve around the application of the Evidence Act 1893. In this regard, the Evidence Act 1893 is not applicable to Strata Titles Board proceedings. Section 15 of the Land Titles (Strata Titles Boards) Regulations 1999 provides that the Strata Titles Board "shall not be bound to apply the rules of evidence applicable to civil proceedings in any court but may inform itself on any matter in such manner as it thinks fit". This leads to the following issue whether the law in Singapore on interpretation of contracts and the use of extrinsic evidence is a matter of evidence law. In *BQP v BQQ* [2018] SGHC 55 at [122], Quentin Loh J held that the question of admissibility of extrinsic evidence in construing written agreements was a question of evidence or procedural law. Hence, Loh J held that since international arbitration proceedings are not bound by the Evidence Act 1893, Singapore's case law on the admissibility of extrinsic evidence do not apply in international arbitration proceedings. The Strata Titles Board is similarly not bound by the Evidence At 1893; it must follow that Singapore's jurisprudence on interpretation of contracts which is premised on the Evidence Act 1893 is inapplicable to the present hearing.

17. We note that Goh Yihan JC (as he then was) in *Prem N Shamdasani v Management Corporation Strata Title Plan No 0920* [2022] SGHC 280 at [179] has recently pointed out that subsidiary proprietors have a choice to bring disputes before the courts or the Strata Titles Board at first instance as the Strata Titles Board does not have exclusive jurisdiction over disputes under the BMSMA. Thus, if the matter is brought before the Strata Titles Board, issues of construction of by-laws would be decided without reference to the Evidence Act 1893 whereas if the dispute was filed in the High Court, Singapore's jurisprudence on interpretation of contracts might be applicable if by-laws are properly considered as a form of contract. This position does not appear to be logical nor satisfactory. Nevertheless, this is not an issue that this Board may resolve at this stage and is better examined by the policy makers the next time the relevant statute is reviewed. For the present purposes, the Board will proceed on the basis that Singapore's jurisprudence on interpretation of contracts and

the use of extrinsic evidence is *not* applicable because the Evidence Act 1893 is inapplicable to the present hearing.

18. It may be useful to look at jurisdictions with a similar statutory scheme to determine the principles associated with interpretation of by-laws. The BMSMA was drafted after the policy makers studied legislation from Australia and Canada (see Singapore Parliamentary Debates, Official Report (19 April 2004) vol 77 at cols 2744–2745 (Mah Bow Tan, Minister for National Development; *Prem N Shamdasani v Management Corporation Strata Title Plan No 0920* [2022] SGHC 280 at [45]) . Hence, it might be worthwhile to examine the law in those jurisdictions for guidance on the interpretation of by-laws. Indeed, this was the approach by Goh Yihan JC (as he then was) in *Prem N Shamdasani v Management Corporation Strata Title Plan No 0920* [2022] SGHC 280 at [45] in relation to the building façade of a strata development. In the context of the Land Titles Act, VK Rajah J (as he then was) in *United Overseas Bank Ltd v Chia Kin Tuck* [2006] 3 SLR (R) 322 at [21] said since Singapore land law was inspired by the Australian Torrens System, it is profitable to refer to *inter alia* relevant legal material from Australia. Therefore, this Board will review the jurisprudence of Canada and Australia in relation to the principles on interpretation of by-laws.

19. The leading case in Australia is the decision of McColl JA (with Mason P agreeing) in *The Owners of Strata Plan No 3397 v Tate* (2007) 70 NSWLR 344. McColl JA helpfully summarized the law on interpretation of by-laws as follows:

> The following propositions emerge from the foregoing discussion:
>
> 1. By-laws are the "series of enactments" by which the proprietors in a body corporate administer their affairs; they do not deal with commercial rights, but
> the governance of the strata scheme: *Bailey*;
> 2. By-laws have a public purpose which goes beyond their function of facilitating
> the internal administration of a body corporate; cp, *Parkin, Lion Nathan*;
> 3. Exclusive use by-laws may be inspected by third persons interested in acquiring an interest in a strata scheme, whether, for example, by acquiring units, or by lending money to a lot proprietor; such persons would ordinarily have no access to the circumstances surrounding their making; their meaning should be understood from their statutory context and language: *NRMA*; *Lion Nathan*;
> 4. By-laws may be characterised as either delegated legislation or statutory contacts: *Dainford; Re Taylor*; *Bailey*; *North Wind*; *Sons of Gwalia*;
> 5. Whichever be the appropriate characterisation, exclusive use by-laws should be interpreted objectively by what they would convey to a reasonable person: *Lion Nathan*;

6. In interpreting exclusive use by-laws the court should take into account their constitutional function in the strata scheme in regulating the rights and liabilities of lot proprietors inter se: *Parkin*; *Lion Nathan*;
7. Unlike the articles of a company, there does not appear to be a strong argument for saying exclusive use by-laws should be interpreted as a business document, with the intention that they be given business efficacy: cf *NRMA* at [75]. That does not mean that an exclusive use by-law may not have a commercial purpose, and be interpreted in accordance with the principles expounded in cases such as *Antaios Compania Naviera SA,* but due regard must be paid to the statutory context in so doing;
8. An exclusive use by-law should be construed so that it is consistent with its statutory context; a court may depart from such a construction if departure from the statutory scheme is authorised by the governing statute and if the intention to do so appears plainly from the terms of the by-law: *Re Taylor*;
9. Caution should be exercised in going beyond the language of the by-law and its statutory context to ascertain its meaning; a tight rein should be kept on having recourse to surrounding circumstances: *Lion Nathan*.

20. Professor Cathy Sherry argues in *Strata Title Property Rights*, (Routledge, 2017), 151 that extrinsic evidence should not be referred to in relation to interpreting by-laws. Sherry argues:

> …the rules in relation to extrinsic evidence used to interpret a company constitution relate to surrounding circumstances *known* to, or easily capable of being *ascertained* by third parties…In the context of a strata scheme, many owners are unlikely to know anything of the circumstances in which a by-law was created, either because they were not members of the body corporate when the by-law was made or because they did not attend the relevant meeting…The fundamental premise in both contract and corporate law is that it is only extrinsic evidence and surrounding circumstances known to the parties or ascertainable by them that can be used to aid interpretation of words, and this presents a very real impediment to applying contract or corporate interpretation case law to strata by-laws. (emphasis in the original)

21. Sherry's argument is apposite in the Singapore context. When a by-law is passed, there is a requirement that the by-law must be lodged by the management corporation with the Commissioner of Buildings pursuant to section 32(5) of the BMSMA. Hence, the by-laws should be interpreted based on the language of the by-law which has been lodged with the Commissioner of Buildings. One cannot expect that the by-laws are to be interpreted only after reading what was said in the Annual General Meeting.

22. The principles in relation to construction of by-laws have also been considered in Canada. *Moure v Strata Plan NW 2099* [2003] BCJ No. 2071 is a decision from British Columbia Supreme Court which dealt with the use of extrinsic evidence in interpreting by-laws. In this case, a Mr Loren had given affidavit evidence explaining the change of the by-laws. Groberman J cautioned against the use of extrinsic evidence as follows:

> In my view, Mr. Loren's evidence on this point is of very limited value. The bylaws, as they exist from time to time, must be understandable by the people governed by them. Except perhaps where there is an irresolvable ambiguity, extrinsic evidence such as that of Mr. Loren should not be used to interpret strata corporation by-laws.

23. In *Wilson v Condominium Corp No 021 1057* 2010 ABPC 150 at [23] Hess ACJ:

> In my view, principles of contract interpretation dealing with ascertaining the intention of the parties to a contract and implying terms to give effect to that intention have no application to the interpretation of the rights and obligations created by by-laws promulgated under the requirements imposed by legislation. By-laws are not negotiated as between the condominium corporation and unit owners and I [sic] my view the court should not be reading provisions into the by-laws at the instance of either of the parties.

24. ML Dovell J in *Tofin v Spadina Condominium Corp* [2011] SJ No. 400 at [40] – [41] observed ("*Tofin*"):

> …[t]he Court has concluded that principles of contract interpretation have no place within the scope of the within application, being the interpretation of a condominium bylaw. This process is not analogous to the interpretation of a contract. The owners of condominiums within a condominium corporation are not in the same position as the parties to a specific contract.
>
> Although s. 44(3) of the Act makes reference to the bylaws of a corporation binding the corporation and the owners to the same extent as if the bylaws had been signed and sealed by the corporation and by each owner, the resultant relationship is not the same as that of individual parties who had agreed to the terms of the contract. Notwithstanding some of the owners of a condominium corporation not being in agreement with certain provisions of the bylaws, those same owners are bound to comply with all of the provisions of the bylaws eventually enacted by that condominium corporation.

25. *Tofin* was cited with approval in *Summer Services Ltd v Karwood Commercial Condominium Corp* [2016] NJ No 184 and *Condominium Plan No 7721985 v Breakwell* [2019] AJ No 1159 at [51].

26. RP Stack J in *Summer Services Ltd v Karwood Commercial Condominium Corp* [2016] NJ No 184 at [32] stated that condominium by-laws:

> must be interpreted by giving the words used their plain and ordinary meaning, and not an expanded meaning, and as a reasonably informed unit holder would read it (*Pearson (Litigation Guardian of) v. Carleton Condominium Corp. No. 178,* 2012 ONSC 3300 at para. 23, relying on *Metropolitan Toronto*

Condominium Corp. No. 699 v. 1177 Yonge Street Inc., (1998) 39 O.R. (3d) 473 at para. 6, 109 O.A.C. 192.

27. Drawing all the threads from these decisions in Australia and Canada, this Board adopts the following principles in interpreting by-laws:

i. By-laws should be interpreted objectively by what they would convey to a reasonable person (*The Owners of Strata Plan No 3397 v Tate* (2007) 70 NSWLR 344). In other words, by-laws "must be interpreted by giving the words used their plain and ordinary meaning, and not an expanded meaning, and as a reasonably informed unit holder would read it" (*Pearson (Litigation Guardian of) v. Carleton Condominium Corp. No. 178*, 2012 ONSC 3300 at para. 23, relying on *Metropolitan Toronto Condominium Corp. No. 699 v. 1177 Yonge Street Inc*., (1998) 39 O.R. (3d) 473 at para. 6, 109 O.A.C. 192;

ii. Caution should be exercised in going beyond the language of the by-law and its statutory context to ascertain its meaning; a tight rein should be kept on having recourse to surrounding circumstances (*The Owners of Strata Plan No 3397 v Tate* (2007) 70 NSWLR 344);

iii. Extrinsic evidence should not be referred to in interpreting by-laws (see *Moure v Strata Plan NW 2099* [2003] BCJ No. 2071) because many owners and third parties may not know anything of the circumstances in which a by-law is created (see *Strata Title Property Rights,* (Routledge, 2017), 151);

iv. Principles of contractual interpretation dealing with ascertaining the intention of the parties to a contract are not applicable because: (a) the Evidence Act 1893 does not apply to Strata Titles Board proceedings; and (b) there is a significant difference between by-laws and contracts. By-laws are not negotiated contracts (see *Wilson v Condominium Corp No 021 1057* 2010 ABPC 150) and they bind subsidiary proprietors who did not agree to the by-laws (see *Tofin*).

Application of the Law to the Facts on By-Law 6.0

28. By-Law 6.0 has to be interpreted objectively by what they convey to a reasonable person without reference to extrinsic evidence. In particular, what was said in the 21st Annual General Meeting may not be referred to because this represents material which would not be known by third parties and those who did not attend the meeting.

29. Even if we take the Respondent's case at its highest and include the additional words incorporated in By-Law 6.0, this Board holds that the awnings which have been installed breaches the relevant By-Law. By-Law 6.0 provides:

> The Width of the Cover shall be no more than 2 metres from the external wall of the unit due to constraint on installation as it required to be mounted on the external wall which is common property/subject to the approval of URA.

30. The words "The Width of the Cover shall be no more than 2 metres" conveys to a reasonable person precisely what it says i.e. the awnings should be no more than 2 metres. There is no ambiguity whatsoever with the words "The Width of the Cover shall be no more than 2 metres". This Board does not think that the words "subject to the approval of URA" means that the awnings could be more than 2 metres. Since the awnings which have been installed spans almost 4 metres, this Board cannot see how By-Law 6.0, as it stands, can be said to be consistent with the awnings which have been installed.

31. For completeness, this Board is of the view that By-Law 6.0 is not inconsistent with prescribed by-law 5(3) under the Second Schedule of the Building Maintenance (Strata Management) Regulation 2005 which allows for installing safety devices or "any structure or device to prevent harm to children". In other words, By-Law 6.0 allows for the installation of structures or devices to prevent harm to children albeit at a limit of 2 metres. Since By-Law 6.0 specifically provides that the Covers should not exceed 2 metres, this Board holds that awnings which exceed 2 metres is in breach of the said by-law.

32. The Applicants have urged the Board to order the:

> Respondent shall notify the subsidiary proprietors of Block 911 #XXX and #XXX and Blk 913 #XXX and #XXX of Oleander Towers ("**Ground Floor SPs**") that they are to remove the covers (the "**Covers**") installed over the entire Private Outdoor Space ("**POS**") of their respective units and/or alternatively, if the Ground Floor SPS fail to remove the Covers within 14 days of being notified to do by the Respondent and that the Respondent proceed to demolish the Covers at its own cost with liberty to claim the said costs from the Ground Floor SPs.

33. This Board does not consider it reasonable or prudent to order that the Respondent proceed to unilaterally demolish the Covers within 14 days if the ground floor subsidiary proprietors refuse to take down the Covers. In *Mu Qi and another v Management Corporation Strata Title Plan No 1849* [2021] 5 SLR 1401, Ang Cheng Hock J allowed the management corporation 3 months to attempt to obtain a 90 % resolution to regularize the awnings. Furthermore, the learned judge contemplated that the management corporation had to get the necessary orders from the Strata Titles Board in order to get the 14th floor subsidiary proprietors to comply.

34. This Board orders that the Respondent shall notify the subsidiary proprietors of Block 911 #XXX and #XXX and Blk 913 #XXX and #XXX of Oleander Towers ("**Ground Floor SPs**") that their pre-existing covers are in breach of By-Law 6.0, and they are to remove these

covers. If the Ground Floor SPs refuse to remove the Covers, then the Respondent should take the necessary civil proceedings against the Ground Floor SPs to remove the Covers.

35. This Board notes that certain representations may have been made to the Ground Floor SPs which may be relevant in the civil proceedings by the Respondent against the Ground Floor SPs.

36. Finally, this Board thanks Counsel for the Applicants, Ms Roslina bte Baba and Mr Haziq Ika and Respondent, Mr Justin Chia, Mr Charles Ho and Ms Toh Ming Wai for their effective advocacy, helpful submissions and collegiality which led to this matter being heard in less than two days. This Board would like to acknowledge and thank the young amicus curiae, Elias Khong Ngai Hum, for his research assistance.

37. The Board will hear the parties on costs.

Dated this 21st day of June 2023

_____
MR OOMMEN MATHEW
Deputy President

_____
DR TANG HANG WU
Member

_____
MS SIM KAI LI
Member

Ms Roslina bte Baba and Mr Haziq Ika bin Zahidi (M/s Legis Point LLC) for the Applicants
Mr Justin Chia, Mr Charles Ho and Ms Toh Ming Wai (M/s Harry Elias Partnership LLP) for the Respondent.
Ms Elias Khong Ngai Hum as young amicus curiae