BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT 2004

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

STB No. 79 of 2024

In the matter of an application under **section 101** of the Building Maintenance and Strata Management Act in respect of the development known as **Tanamera Crest** (MCST Plan No. 2902)

Between

MCST Plan No. 2902

... Applicant(s)

And

Tan Siew Kuan

… Respondent(s)

GROUNDS OF DECISION

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21 April 2025

11 August 2025

Coram:	Mr Alfonso Ang	President
	Er Tony Tay	Member
	Dr Edward Ti	Member

INTRODUCTION

1. The Applicant is the Management Corporation Strata Title Plan No. 2902 (the "**MCST**") of Tanamera Crest (the "**Development**") located at Pari Dedap Walk, Singapore 486060. Tan Siew Kuan (the "**Respondent**") is the subsidiary proprietor (the "**SP**") of unit #XX-XX in the Development (Block X), a penthouse unit, and has been the unit owner since 31 May 2018. Penthouse units in the Development originally included an open patio. Presently, the open patio of the Respondent's unit is covered by a fixed, non-retractable awning, extending close to the edge of the open patio, up to the patio's balustrade wall. The awning is attached to the walls on three sides of the open patio.

2. The Development was completed in 2004. On 14 August 2010, the 5th Annual General Meeting (the "**5th AGM**") of the Management Council was held, and the minutes of that meeting indicate that a special resolution was passed which allowed for the installation of sun shading devices. Pursuant to section 32(4) of the Building Maintenance and Strata Management Act (Chapter 30C),[1] the Management Corporation (the "**MC**") is obliged to lodge every by-law with the Commissioner of Buildings within 30 days of its passing, and until this is done, any such by-law passed '*shall have no force or effect*.' The MC failed to do so, a fact both parties during the arbitration hearing agreed with. Accordingly, the Board is of the view that pursuant to the law applicable at the time the by-law should have been lodged, i.e., 30 days from 14 August 2010, the failure to lodge renders the purported by-law ineffectual.[2] This preliminary issue is mentioned in the background to these grounds of decision as they have been addressed by the parties, but ultimately do not affect the decision taken by the Board.

3. Following that 5th AGM, multiple sun shading devices were installed by various SPs in their respective units, with no pushback from the Applicant. The unit that the Respondent purchased in 2018 was one of such units. The Respondent bought the unit with the awning already installed, on the assumption that such an installation had been approved by the MCST pursuant to the 5th AGM and that there were no prior notices or warnings to remove the awning. Several years later, checks were conducted on her unit but there was a lack of follow up from the Applicant. In addition, documentation of all prior works done to the unit is unaccounted for, with the Applicant admitting to this during the hearing. Subsequently however, the Respondent received a letter of demand from the Applicant for the removal of the allegedly unauthorised awning.

SUBMISSIONS BY THE PARTIES

4. The issues before the Board track the arguments submitted by the Applicant, who allege three breaches committed by the Respondent: (i) that the Respondent's awning resulted in an increase in the floor area of the Respondent's unit thus breaching section 37(1) of the BMSMA; (ii) that the absence of a resolution granting the Respondent exclusive use of common property meant that there was a breach of section 33(1)(c) of the

[1] Version applicable from 15 July 2010 to 14 August 2014.
[2] See *Mu Qi v MCST Plan No 1849* [2021] SHGC 180 at [14].

BMSMA; and (iii) that the presence of the awning affects and detracts from the appearance of the building, thus infringing sections 37(3) and (4) of the BMSMA.

5. The Respondent submits that the Applicant has failed to prove that any installation was made on common property, that the Applicant has failed to prove that there has been an increase in floor area, and that the awning does not materially affect the appearance of the building. In any case, the Respondent submits that limitation should apply as a bar to enforcement, even if breaches of the BMSMA exist.

ADDRESSING THE APPLICANT'S CASE

A. Section 37(1) of the BMSMA

6. Section 37(1) of the BMSMA reads:

Except pursuant to an authority granted under subsection (2), 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 increases or is likely to increase the floor area of the land and building comprised in the strata title plan.

7. The Board is of the view that there is no breach of section 37(1) of the BMSMA by the Respondent because what the sub-section prohibits is an SP from effecting improvements on his or her lot which increase or is likely to increase the floor area of that unit. Here, it is a fact – accepted as well by the Applicant, that the Respondent was not the SP which effected such works. This is based on the Respondent's AEIC at [5] and [7], where she stated that the sun shading device was already installed in the unit before she took ownership and was therefore unable to furnish the supporting documents to the renovation works that were requested by the Applicant. The notion that the sun shading device was built prior to the Respondent is further supported by the AEICs of **R1** Angela Moghe at [14], **R3** Chng Yang Gek at [10], **R4** Tang Wing Choy at [32] and **R5** Wong Sang Lin at [12]. That it was the Respondent's predecessor who effected such works was undisturbed on cross-examination and thus accepted by the Applicant as an undisputed fact.

8. Therefore, even assuming that the works effected by the previous unit owner of #XX-XX had increased the floor area of the unit (and the Board takes no position on this), it would have been the former SP in breach of the subsection in the BMSMA in force at

the time such works were effected (which exact date neither party can pinpoint). The Respondent cannot be in breach of section 37(1) for simply purchasing the unit given that the subsection uses the active language of "*no SP… shall effect…*".

B. Section 33(1)(c) of the BMSMA

9. Section 33(1)(c) of the BMSMA reads:

> *Without affecting section 32, with the written consent of the subsidiary proprietor of the lot concerned, a management corporation may make a by-law —*
>
> *(c) pursuant to a 90% resolution, conferring on the subsidiary proprietor of a lot specified in the by-law, or on the subsidiary proprietors of the several lots so specified, for a period which exceeds 3 years —*
>
> *(i) the exclusive use and enjoyment of; or*
>
> *(ii) special privileges in respect of,*
>
> *the whole or any part of the common property, upon conditions (including the payment of money at specified times or as required by the management corporation, by the subsidiary proprietor or subsidiary proprietors of the lot or several lots) specified in the by-law.*

10. Following *Mu Qi v MCST 1849* [2021] SGHC 180 ("***Mu Qi***"),[3] the 90% resolution in question which "*confers on a SP the exclusive use of, or special privileges over, the common property, must identify the SP in question, i.e., the SP of which unit. It should also specify the period of time over which the exclusive use, or special privilege accorded, should last. It should obviously also identify clearly the nature of the exclusive use or the special privilege, e.g., the fixture of awnings to shelter the balcony of the particular unit, or permission to demolish the external walls in the balcony of the particular unit*." The threshold question which the Board needs to determine is thus whether the awning was attached to common property.

11. The Board is of the view that the awning was attached to the common property of the Development. Pursuant to the definition of "*common property*" as laid out in section 2(1) of the Building Maintenance and Strata Management Act 2004, an example of this

[3] *Mu Qi v MCST Plan No 1849* [2021] SGHC 180 at [66].

is *"An external wall, or a roof or façade of a building which is used or enjoyed, or capable of being used or enjoyed, by occupiers of 2 or more lots, proposed lots or non-strata lots."* In *Wu Chiu Lin v Management Corporation Strata Title Plan No 2874* [2018] SGHC 4313, it was held that in respect of outward facing walls in a penthouse unit, being visible from the outside of the strata lot, are thus capable of being used or enjoyed by other subsidiary proprietors, and hence regarded as common property.[4]

12. The Board takes cognisant of the fact that the High Court in *Mu Qi* ordered the removal of fixed awnings attached to walls within balconies that were originally uncovered. Unlike the provisions under section 37 of the BMSMA, which concern themselves with the SP which effected certain changes, the Board agrees with the Applicant that section 33 of the BMSMA which concerns itself with exclusive use and enjoyment of common property can apply to the Respondent even though she was not the SP who installed the said awnings.

13. Here, the Respondent has exclusively used and enjoyed common property but there is no evidence of any by-law being passed pursuant to a 90% resolution conferring on the Respondent such a right. In *Mu Qi*, the Court held that "*without the proper approvals as required under s 33(1)(c),*" the subsidiary proprietors in that case could not "*successfully resist any order which requires the common property to be restored to its original form,*" unless they could show that the awnings were required "*for reasons of safety, for instance if* [their] *unit*[s] suffers from a "*killer litter" problem*." The Respondent has not made any assertion that her unit's awning is required "*for reasons of safety*." Hence, the Board concludes that the Respondent has not complied with section 33(1)(c) of the BMSMA insofar as she has exclusively used and enjoyed common property without the requisite approval.

C. Section 37(3) of the BMSMA

14. The Board notes that it is uncertain when the awning was installed but it is accepted to have taken place before 31 May 2018, when the Respondent completed the purchase of the unit.[5] This means that there are two potentially applicable versions of section

[4] *Wu Chiu Lin v Management Corporation Strata Title Plan No 2874* [2018] SGHC 4313at [70].

[5] Respondent's AEIC at [23].

37(3): the pre-Act 35 of 2017 amendment version (the "**Pre-2017**") and the post-Act 35 of 2017 amendment version (the "**Post-2017**"), which are as follows:

(a) Pre-2017 amendment version: *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 other improvement in or upon his lot for his benefit which affects the appearance of any building comprised in the strata title plan.*

(b) Post-2017 amendment version: *Except pursuant to an authority granted under subsection (4) by the management corporation or permitted under section 37A, a subsidiary proprietor of a lot that is comprised in a strata title plan must not effect any other improvement in or upon the lot for the subsidiary proprietor's benefit which affects the appearance of any building comprised in the strata title plan.*

15. Regardless of the applicable version of the BMSMA, the essence of both versions is the same (*viz*, the prohibition on the effecting of any improvement in or upon the lot which affects the façade of the building).

16. Following *Prem N Shamdasani v MCST Plan No 920* [2023] 3 SLR 1680 ("**Prem**")[6], section 37(3) asks '*whether the proposed improvement* "*affects the appearance of any building comprised in the strata title plan*."' The relevant parts of Goh Yihan JC's (as he then was) judgment are instructive and merit setting out in full:

41 Determining whether renovations affect the appearance of a building is a factual exercise, undertaken by comparing the façade presented by the flat in question with the façade presented by other similar flats and by all of the flats as a whole (see Lim Florence Marjorie *at [74]). However, the focus of the test is not merely to ascertain whether the façade of the subsidiary proprietor's unit post-renovation was similar in look to the façade of the adjoining units, but it must also be compared with the unit's own original façade (see the High Court decision of* Management Corporation Strata Title Plan No 4123 v Pa Guo An *[2021] 3 SLR 1016 at [26]). Thus, for instance, a feature permanently affixed to a balcony, and which resulted in the balcony looking different from its original state, does affect the overall appearance of the building (see the High Court decision of* Management Corporation Strata Title Plan No 1378 v Chen

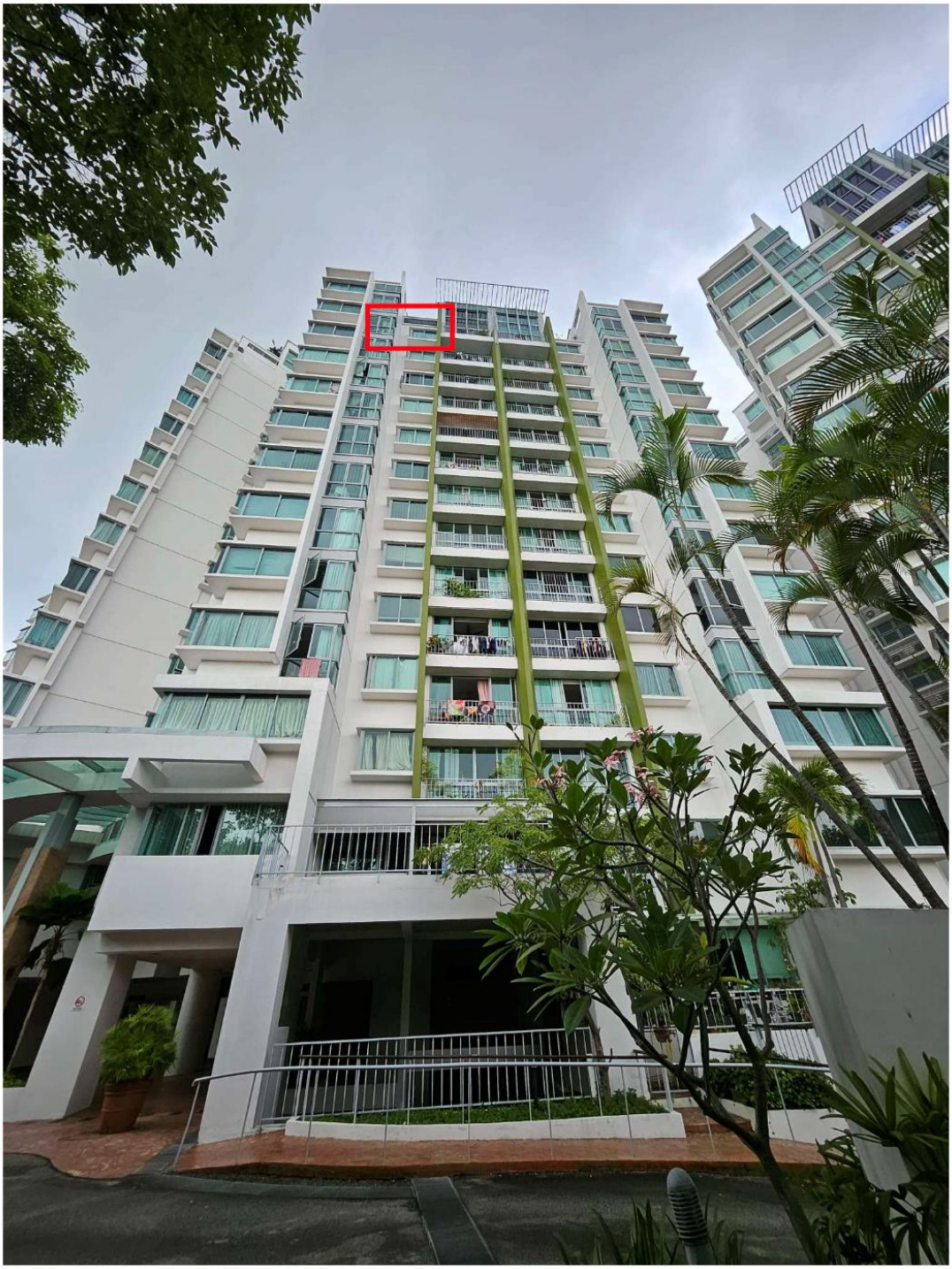
[6] *Prem N Shamdasani v MCST Plan No 920* [2023] 3 SLR 1680 at [40].

Ee Yueh Rachel *[1993] 3 SLR(R) 630 ("*Rachel Chen*") at [17]). The test applied in* Rachel Chen *(at [17]) in determining whether the sliding windows affect the external appearance of the building depended on "the degree of permanence with which the addition or alteration is annexed to the original structure of the balcony". Ultimately, whether an improvement effected to a particular unit affects the façade of its building is not to be ascertained as a theoretical exercise but from the viewpoint of a reasonable observer who looks at the building from a position which is practically possible or likely (see* Lim Florence Marjorie *at [75]).*

17. Goh Yihan JC in *Prem* suggested that "*if privacy concerns are not in issue or can be adequately addressed, future cases* [of section 37(3) of the BMSMA] *should set out the relevant photographs in a way that makes the decision more accessible to an external reader with no knowledge of the proceedings*. *At the very least, a floorplan of the affected unit, along with clear photographs of the contested features, should be reproduced in judgments*."

18. The Board finds that the installation of the awning does not affect the appearance of the building in the Development. In this regard, the Board refers to these photographs which were tendered by the Respondent, and not disputed by the Applicant:

View from road on the perimeter of the estate



View from streets

19. Looking at the photographs, the Board considers this to be a "*reasonable vantage point of an observer at ground level looking at the Development from a reasonable distance*." The Board notes that the noticeable grey area in the marked-up portions of the photographs is not the awning but the retractable zip track blind, as can be seen in the photograph below (which shows the blind in a partially retracted position). As noted in *Prem*, the degree of permanence is a relevant factor to be considered. Here, the zip track blind can be easily removed, and as the Applicant also conceded during the hearing, is not at all visible when it is retracted.

20. In the Board's view, a reasonable observer looking at the building from a position which is practically possible cannot make out the awning as a prominent element of the building's appearance. The colour of the awning is unobtrusive and is visible to different degrees depending how much it is retracted. Any differences are truly insignificant and marginal at best. In this regard, the Board notes that the Respondent's unit is a penthouse unit, and which therefore has some façade differences compared to neighbouring units. Accordingly, the Board finds that the installation of the awning and retractable blind does not materially affect the reasonably appreciable appearance of the Respondent's unit compared to its original state, nor in relation to adjoining units. In conclusion, the Board holds as a finding of fact, that the Respondent has not breached section 37(3) of the BMSMA.

D. Summary of Substantive Findings

21. Of the three substantive submissions made by the Applicant, the Board finds that the Applicant has failed to show on the balance of probabilities that the Respondent has done anything to increase her unit's floor area, or that the existence of the awning detracts from the building's appearance.

22. In relation to section 33 of the BMSMA, the Board finds that the Respondent is non-compliant. Given the long lapse of time before the Applicant took action against the Respondent however, and the fact that limitation was specifically pleaded by the Respondent, the Board now turns to whether limitation may act as a defence in relation to this non-compliance. This requires the Board to answer first whether, as a matter of law, limitation can apply to Strata Titles Boards' (the "**STB**") matters, and second whether the requisite period of time has passed justifying the defence.

APPLICATION OF LIMITATION

23. Section 6(1) of the Limitation Act 1959 states that: "… *the following actions shall not be brought after the expiration of 6 years from the date on which the cause of action accrued*." This includes actions founded on a contract.[7] In relation to by-laws, the relationship between the MC and SPs is one grounded in contract,[8] and as the High Court held, breaches of by-laws must be enforced within six years of the breach.[9]

24. The Board notes that the term "*actions*" in section 6(1) is defined under section 2(1) of the Limitation Act 1959 states: "*action*" *includes a suit or any other proceedings in a court*. As the STB is not a court, a strict reading of the provision suggests that it is not immediately apparent that the Limitation Act 1959 may apply to its proceedings. Notably, section 92(6) of the BMSMA expressly disapplies the Arbitration Act 2001 (the "**AA**"). This is significant, since section 11 of the AA *does* expressly provide for limitation to apply.

25. The Board notes that several STB's decisions have expressly applied the Limitation Act.[10] The Board also notes that if limitation does not apply to its proceedings, an

[7] Section 6(1)(a), *Limitation Act 1959*.
[8] *Prem Shamdasani* at [78].
[9] *Prem Shamdasani* at [142].
[10] *Lai Yew Sin v MCST Plan No. 568* [2020] SGSTB 10; *Re Sophia Court* [1992] SGSTB 1.

Applicant may in some cases, be better off coming to the STB than to the State Courts or High Court. It is not difficult to imagine that extreme and absurd results may result if the STB continues to hear cases decades after any alleged breach. The pragmatic approach taken by the STB in other cases applying limitation is a practice that should be maintained given the need to prevent claimants from bringing stale claims.

26. As a matter of interpretation, the Board thus adopts an expansive construction of the term "*includes*" in section 2(1) of the Limitation Act 1959. Pursuant to *Dilworth v Commissioner of Stamps* [1899] AC 99, "*includes*" is generally used to enlarge the meaning of a term, unless context compels a restrictive interpretation.[11] This is further bolstered in the local case of *Tiong Seng Contractors v Chuan Lim Construction* [2007] 4 SLR(R) 364 where the court interpreted "*includes*" to cover items not expressly listed in the statute.[12] More recently, the High Court in *GTMS Construction v Ser Kim Koi* [2021] SGHC 9 found that "*including*" can subsume items of the same genus even if not expressly mentioned.[13] In line with this, the Board takes the view that the phrase "*includes a suit or other proceedings in a court*" under section 2(1) of the Limitation Act 1959 is not exhaustive, and does not preclude tribunals such as the STB, and thus holds that the Limitation Act 1959 applies to its proceedings.

Limitation applies to non-compliance of section 33 of the BMSMA

27. Section 33 requires that a by-law exists in order to enable an SP to lawfully use common property exclusively. Had an SP gone beyond the ambit of such a by-law, this would be seen as a breach of contract that allows the shield of limitation to be raised. It follows that the absence of any by-law justifying exclusive use of common property should not be any less of a breach of contract, and where inaction exceeds the statutory period, the limitation defence should also apply. The Board therefore disagrees with the Applicant's submissions[14] that section 33 is immune from the Limitation Act 1959. While the Applicant frames this as a form of statutory breach, in truth non-compliance with section 33 is matter of private law non-compliance, since it is within the powers of the body of unit owners to allow any unit owner the right to use common property exclusively.

[11] *Dilworth v Commissioner of Stamps* [1899] AC 99.
[12] *Tiong Seng Contractors v Chuan Lim Construction* [2007] 4 SLR(R) 364.
[13] *GTMS Construction v Ser Kim Koi* [2021] SGHC 9.
[14] Para 35 of Applicant's Closing Submissions.

Calculation of time

28. The application of the Limitation Act 1959 necessitates the calculation of time to determine if the defence can be raised. There are two possible timings where the time can start running from. (1) The time the awning was built, and (2) the time when the Respondent took ownership of the house. Given that the only breach the Respondent has is the breach of section 33 of the BMSMA,[15] which requires the SP to have the exclusive use and enjoyment or special privileges in respect of the common property, the Board is of the view that the time should start from the point where the Respondent started to have the exclusive use and enjoyment of the awning.

29. Based on the INLIS records of the Respondent's unit provided by the Applicant in the AEIC of **A1** Yeo Hock Chye Vincent, the Respondent became the registered owner of the property on 20 June 2018. Counting six years from the time where the Respondent became the owner, the relevant date where the time to bring an action concludes would thus be 19 June 2024.

30. In this case, the STB accepted the Applicant's application on 6 September 2024, with the Applicant making payment of the filing fee on 7 September 2024. This is clearly after the requisite statutory limitation period. The Board thus finds that the section 33 claim made against the Respondent is time-barred under the Limitation Act 1959. In coming to this decision, the Board is cognisant of the fact that the Respondent never concealed her awning or hampered the Applicant from discovering the unauthorised works. The Applicant's submission[16] that it had less than three years of knowledge that this breach occurred and its reliance on section 24A(3)(b) of the Limitation Act to deny the defence is unfounded given that the relevant Managing Agent (the "**MA**") would have had a supervisory role when the Respondent's predecessor installed the awning. In this regard, the Applicant's case theory is also internally inconsistent, since it is on one hand asserting that the awning has affected the building's façade – this difference being reasonably observable – while maintaining that its unawareness of the Respondent's breach justifies limitation running from a much later point in time. Indeed, taking into account the time when the Respondent's predecessor-in-title likely

[15] BMSMA section 33.
[16] Para 34 of Applicant's Closing Submissions.

installed the awning, the Applicant has done nothing to enforce the section 33 breach for a period far exceeding the statutory limit.

ESTOPPEL BY CONVENTION

31. The Limitation Act 1959 aside, the Board holds that the application will still fail because the Respondent is entitled to rely on the defence of estoppel by convention. The Board is cognisant that it has no equitable jurisdiction and notes that estoppel by convention is a doctrine of the common law.[17] With reference to *Travista Development Pte Ltd v Tan Kim Swee Augustine,*[18] *Singtel v SCV*[19] and *Chitty on Contracts*,[20] the elements are as follows:[21]

(1) The parties must have acted on "*an assumed and incorrect state of fact or law*" (per Bingham LJ in *Norwegian American Cruises A/S v Paul Mundy Ltd* [1988] 2 Lloyd's Rep 343 at 352) in their course of dealing.

(2) The assumption must be either shared by both parties pursuant to an agreement or something akin to an agreement, or made by one party and acquiesced to by the other.

(3) It must be unjust or unconscionable to allow the parties (or one of them) to go back on that assumption.

32. Applying the elements to the present case, estoppel by convention is made out.

(1) The parties have acted on an assumed and incorrect state of fact in their course of dealing.

33. The Applicant does not deny the fact that many awnings were built after the 5th AGM resolutions, and that the MCST allowed them to be built. This was founded on the assumption that the resolutions were effective and valid. While the Board finds that as a matter of law, the resolution permitting awnings at the 5th AGM is ineffectual because of the Applicant's failure to lodge the resolved by-law, it is understandable that SPs

[17] The "Vistafjord" [1988] 2 Lloyd's Rep 343.
[18] *Travista Development Pte Ltd v Tan Kim Swee Augustine* [2008] 2 SLR(R) 474 ("***Travista***").
[19] *Singapore Telecommunications Ltd v Starhub Cable Vision Ltd* [2006] 2 SLR 195 at [28].
[20] *Chitty on Contracts* (H G Beale gen ed) (Sweet & Maxwell, 29th Ed, 2004) vol 1 at para 3-107.
[21] *Travista* at [31].

would labour under the mistaken belief that the special resolution permitting sun-shading devices was lawfully passed.

(2) The assumption was shared by both parties

34. During the many years where no action was taken by the Applicant, it is reasonable to conclude that there was a common assumption shared by the parties, given the inaction of the MCST. Further, as the Respondent submits (and unrebutted by the Applicant on cross-examination), the MA representing the MCST had come, multiple times, to check on the awning, but did not raise any issue with it, in the short to medium time period following those checks. In addition, as both the Applicant and Respondent have agreed, the awning has been there long before the Respondent bought the unit. As mentioned in *Prem N Shamdasani v MCST Plan No 920*[22] with reference to *MCST Plan No 1786 v Huang Hsiang Shui*,[23] the MCST through its inaction, acquiesced to the presence of the awning.

(3) It is unjust or unconscionable to allow one party to go back on that assumption

35. For the Applicant to go back on that assumption, practical injustice would occur given the long period of time that has passed, and the significant and unexpected cost that would arise on the part of the Respondent if she were required to remove an awning which she did not herself install. It is apparent to the Board that the Applicant is seeking to enforce the alleged breaches committed by the Respondent after its own inaction fostered a long period of reliance. In this regard, the Applicant failed to give any reason why it failed to lodge the by-law at the 5th AGM (and thereby thwarting the wishes of the SPs as a whole). For the Applicant to now seek to benefit from its own mistake exacerbates the injustice that would arise if the Board allowed the Applicant to go back on this shared assumption.

36. The Board also weighed the Respondent's rights against the community of other SPs. In this regard, the Board is of the view that the 'use' of this sliver of common property by the Respondent does not affect the façade, safety, well-being or pecuniary interest of any other owner. This particular use of the external wall in question does not compromise the collective interest of other SPs.

[22] *Prem* at [145], [146] and [150].
[23] *MCST Plan No 1786 v Huang Hsiang Shui* [2006] SGDC 20.

37. Accordingly, the Board is of the view that alongside the application of limitation, estoppel by convention also provides a defence for the Respondent.

BOARD'S DECISION

38. For the reasons above, the application is dismissed.

39. The Board hereby orders that costs in the sum of S$15,000 be awarded to the Respondent.

Dated this 11th day of August 2025

Mr Alfonso Ang
President

Er Tony Tay
Member

Dr Edward Ti
Member

Daniel Chen (Lee & Lee) for the Applicant.
Daniel Loh and Jacob Lee (BR Law Corporation) for the Respondent.
Denise Yeo Sok Hiang as Young Amicus Curiae.