

BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT

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

STB No. 80 of 2021

In the matter of an application under **Section 111** of the Building Maintenance and Strata Management Act in respect of the development known as **Hillview Regency** (MCST Plan No. 3044)

Between

Nishad Ahmad Narod

... Applicant(s)

And

**The Management Corporation Strata Title Plan
No. 3044**

... Respondent(s)

FOUNDATIONS OF DECISION

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29 December & 30 December 2021

27 January 2022

Coram: Mr Raymond Lye Hoong Yip (Deputy President)

 Mdm Zahara binte Bakar (Member)

 Mr Edward D’Silva (Member)

Background

1. The Applicant is the Subsidiary Proprietor (“**SP**”) of the unit at 28 Bukit Batok East Avenue 2 #XXX, Singapore 659921 (“**the Applicant**”). The Respondent is the management corporation of the development known as Hillview Regency (“**the Respondent**”).
2. Due to the incidents of objects falling into the Applicant’s PES, the Applicant at the 14th Annual General Meeting (“**AGM**”) on 19 September 2020 moved a private motion for the installation of a cover / shelter at his PES by way of special resolution but failed to

obtain at least 75% of the total share value of the votes for the special resolution to be passed as a by-law.¹

3. The Applicant had on 1 December 2020 submitted a Renovation Works Application Form (“**RWAF**”) for the installation of the retractable awning, described in the RWAF as follows:

*“To install structure on balcony to prevent harm to our child Propose to **install retractable awning below the metal trellis, anchored to the facade wall using wall brackets.** Awning to extend along the length of the balcony not exceeding 2m from building line with the awning to remain within the boundary of the PES when fully extended.”²*

4. This application was filed on 9 July 2021 after the Applicant failed to obtain the Respondent’s approval for the installation of a retractable awning at the Private Enclosed Space (“**PES**”) of his unit. The Applicant sought the following order(s) from the Board:

“(i) that the Respondent consents to the Applicant's installation of a retractable awning at his private enclosed space; and

(ii) that the Respondent pays the Applicant costs for this application.”

The Applicant’s Case

5. The Applicant’s case was that since September 2020, the Applicant had informed or reported to the Respondent about incidents of objects falling into his PES and he referred to these as “killer litter” incidents (i.e. the “First Rope Incident”, the “Flower Pot Incident” and “Second Rope Incident”).³ As a result, the Applicant is of the view that he is entitled to install the awning as an exception under paragraph 5(3) of the prescribed by laws in the Second Schedule of the Building Maintenance (Strata Management) Regulations 2005 (“**BMSMR 2005**”).⁴ Under the said paragraph, he argues that the cover / shelter is necessary to ensure the safety of his daughter in relation to the issue of “killer litter” at his PES.
6. After the Applicant failed to obtain the resolution for the installation of a cover / shelter, he requested the Respondent to provide guidelines for installing a safety cover over his

¹ Affidavit of Evidence-in-Chief (“AEIC”) of Ahmad Ibrahim Bin Mohd Tahir dated 6 December 2021 at 24 and AEIC of Nishad Ahmad Narod dated 2 December 2021 at paragraphs [14] & [15].

² Applicant’s application dated 30 June 2021 at page 10 and at Annex L, *infra* n 3, 67-73.

³ AEIC of Nishad Ahmad Narod dated 2 December 2021 at paragraph [10].

⁴ *Id*, at paragraph [7].

PES.⁵ The Applicant also called the police with respect to the incident of the flower pot falling into his PES⁶ and his wife made police reports with respect to incidents of ropes falling into the Applicant's unit's PES⁷, enquired of the Building and Construction Authority on the installation of a covering at the Applicant's PES⁸, enquired of the Urban Redevelopment Authority on the addition of a retractable awning⁹; and also sought assistance from a Member of Parliament on the same.¹⁰

The Respondent's Case

7. The Respondent's case was that the Applicant is required to meet the statutory requirements under section 33 of the Building Maintenance and Strata Management Act ("BMSMA") at the General Meeting,¹¹ and the Respondent had installed CCTV to curb the instances of high-rise littering.¹² The Respondent denies that there was "killer litter" and submits that there is no evidence to substantiate the Applicant's allegations of "killer litter". The Respondent submitted there is only "high rise littering" and the Applicant chose to use the terms "killer litter" to justify his request for the installation of the cover / shelter as a safety device under paragraph 5(3) of the BMSMR 2005.¹³ The Respondent's understanding of the term "killer litter" is that it is limited to intentional or "conscious" wrongful acts; i.e. someone knowingly throwing something dangerous down a high-rise.¹⁴ This accounted for their response that the police had not been able to identify anyone guilty of such acts and also for their insistence that the installation of CCTV to catch the culprit would be the appropriate response.

Issues and Board's Findings

8. The Board noted in the Applicant's Affidavit of evidence-in-chief ("AEIC") that (a) the second incident of the rope falling into the Applicant's PES which occurred on 29 September 2021,¹⁵ (b) the Extra-Ordinary General Meeting ("EOGM") which was held on 13 November 2021¹⁶, and (c) the Respondent's proposal on 7 December 2021 for an invisible tightly knitted wire netting above the Applicant's PES¹⁷ had all occurred after

⁵ *Id*, at paragraphs [16] and [19].

⁶ *Id*, at paragraphs [28] and [29].

⁷ *Id*, at paragraphs [17] and [39].

⁸ *Id*, at paragraph [18].

⁹ *Id*, at paragraph [22].

¹⁰ *Id*, at paragraph [27].

¹¹ Respondent's Written Submissions at 2-3, 5-9, 12-13 and 18-19.

¹² AEIC of Ahmad Ibrahim Bin Mohd Tahir dated 6 December 2021 at 78, 101 & 122.

¹³ *Supra* n 11 at 12.

¹⁴ Transcript hearing on 29 December 2021 at page 164 Lines 3-22 and page 166 at Lines 12-17.

¹⁵ *Supra* n 3 at paragraphs [38] and [39].

¹⁶ *Supra* n 3 at paragraph [40].

¹⁷ *Supra* n 3 at paragraph [43] and 214-215.

this application was filed. The Respondent chose not to cross-examine the Applicant or to object to the evidence at the hearing. The duty of the Board is to examine all the relevant evidence put forward by the parties which is material and relevant to the dispute between the parties.

9. In response to the RWAF referred to in paragraph [3] above, the Respondent's suggestion was for the installation of CCTV to resolve the issue of objects falling into the Applicant's unit's PES.¹⁸ Further, the Board noted in the Respondent's letter dated on or about 13 January 2021 / 14 January 2021 the following:

*“Thus, for your application on 1 December 2020, Council [sic] opines that it will be acting ultra vires and beyond its powers, authority to grant consent and allow your application for awnings on this matter, as to do so, would mean that Council upturns the decision at the last general meeting on 19 September 2020 that had already disapproved of similar matters (coverings / awnings) raised by you in your private motion.”*¹⁹

10. The Board also noted that on 24 May 2021, the Applicant's counsel wrote to the Respondent about the incident of the flower pot falling into the Applicant's PES on 21 May 2021 i.e. the Flower Pot Incident and requested for a copy of the guidelines on the installation of retractable awnings.²⁰ In their letter dated 17 June 2021, the Respondent replied to the Applicant's counsel for the Applicant to wait for the outcome of the police investigation on the flower pot incident and that:

*“...as investigations are ongoing...we herein propose your client together with Management await the conclusion of the ongoing police investigation on this matter and latter's findings thereto and thereafter for Management Council to review your client's request to have guidelines on installation of retractable awnings vis a vis the findings from the concluded police investigation...”*²¹

11. The Board will address the following issues with respect to this application:

- (a) Whether the Applicant had discharged his burden of proof in showing that there was killer litter / high rise littering for which an installation of retractable awning (“**the renovation works**”) would be allowed under paragraph 5(3) of the Second Schedule of the BMSMR 2005; and

¹⁸ *Supra* n 3 at paragraph [23].

¹⁹ *Supra* n 12 at 80, 103, and 124.

²⁰ *Supra* n 3 at 100-104.

²¹ *Supra* n 12 at 89.

- (b) Whether the Respondent had unreasonably refused to consent to the Applicant's proposal on 1 December 2020 with respect to the installation of the retractable awning at the Applicant's PES pursuant to section 111 of the BMSMA.

Whether the Applicant had discharged his burden of proof in showing that there was killer litter / high rise littering for which an installation of retractable awning would be allowed under paragraph 5(3) of the Second Schedule BMSMR 2005

12. Paragraph 5(3) of Second Schedule of the BMSMR 2005 states as follows:

“Alteration or damage to common property

5-(1) 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.

(2) An approval given by the management corporation under paragraph (1) shall not authorise any additions to the common property.

(3) 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 the walls in the subsidiary proprietor's or occupier's lot.

(4) Any such locking or safety device, screen, other device or structure must be installed in a competent and proper manner and must have an appearance, after it has been installed, in keeping with such guidelines as the management corporation may prescribe regarding such installations, and with the appearance of the rest of the building.

(5) The subsidiary proprietor and occupier of a lot shall –

(a) maintain and keep in a state of good and serviceable repair any installation or structure referred to in paragraph (3) notwithstanding that it forms part of the common property and services the lot; and

(b) repair any damage caused to any part of the common property by the installation or removal of any locking or safety device, screen, other device or structure referred to in paragraph (3) notwithstanding that it forms part of the common property and services the lot.”

13. In *Pang Loon Ong and others v The MCST Plan No. 4288* [2019] SGSTB 6 (“*D’Leedon*”) at paragraph [2], the applicants in that case had used the term “killer” litter in that context to refer to “*objects thrown or falling from high buildings which endangered the people below*”. The Board wishes to point out that the BMSMA and Regulations thereunder do not prescribe that the prevention of harm to children is limited to any number of defined risks. That must surely be correct as the sole aim of paragraph 5(3)(c) of the 2nd Schedule of BMSMR 2005 is the prevention of harm to children, and the risk of harm from above in the context of high-rise living in Singapore is that of dangerous objects falling from above, however that may arise. This will usually depend on the facts of each case. Although the term “killer” litter has been used in a number of cases before the Board, and in those cases, there may well have been objects thrown from above, this should not be read as limiting or circumscribing the extent of the protection conferred by paragraph 5(3)(c) of the 2nd Schedule of BMSMR 2005 in any way. A good example on the facts of this case would be the multiple cases of shattered glass falling from high as a result of open windows being slammed shut with great force due to strong winds. (See paragraphs [18] and [19] below). As such, the use of the term “killer litter” must be read in its proper context for applications under paragraph 5(3)(c) of the 2nd Schedule of BMSMR 2005 as dangerous objects falling from above.
14. In *Sit Kwong Lam v Management Corporation Strata Title Plan No. 2645* [2018] 1 SLR 790, the Court of Appeal held that timber decking ostensibly installed on common property without the approval of the management corporation for the protection of children would be in breach of the relevant by-laws unless the structure fell within the exception in by-law 5(3)(c). The SP there contended that the exception was meant to include any structure that protected any children in any place in the development. The Court of Appeal clarified that the exception applied only where the structure was to prevent harm to children within the SP’s lot. The Court of Appeal did not contemplate that this exception is subject to the necessary votes being obtained at an AGM (per *D’Leedon* at paragraph [15]). At paragraph [72], Chief Justice Sundaresh Menon had interpreted paragraph 5(3)(c) of the Second Schedule of the BMSMR 2005 as follows:

“...Reading the exception in by-law 5(3)(c) in a consistent way, we were of the view that it must similarly be limited to the situation where a subsidiary proprietor erected a structure or device on common property in order to prevent harm to children when they were within his lot.”

15. The Board noted the series of cases cited in paragraph [24] of the High Court’s ruling in *Mu Qi and anor v Management Corporation Strata Plan No. 1849* [2021] SGHC 180 (“**Mu Qi**”) where awnings are deemed to be “safety devices” under paragraph 5(3) of the BMSMR 2005 (e.g. *Rosalina Soh Pei Xi v Hui Mun Wai and the Management Corporation Strata Plan No. 4396* [2019] SGSTB 5 (“**Rosalina Soh Peh Xi**”), *D’Leedon, Ahmad bin Ibrahim and Others v The MCST Plan No. 4131* [2019] SGSTB 8). The Board in *Rosalina Soh Pei Xi* at paragraph [27] had stated the position in relation to the law on the installation of awnings in a strata development as follows:

“(a) Ordinarily, a 90% resolution is required to enact a by-law in relation to the installation of an awning which is affixed to common property. If the requisite resolution is obtained, then the subsidiary proprietor is entitled to install the awning as per the terms of the resolution;

(b) However, if there is “killer” litter problem, then the management corporation is empowered, indeed obligated, to stipulate for guidelines in respect of the installation of awnings pursuant to paragraph 5(3) of the BMSMR 2005; and

(c) In light of an insistence by the management corporation on the installation of retractable awnings, the Board has held that the management corporation’s position is justified because it was a necessary, reasonable and proportionate response to the “killer” litter problem.”

16. The Board noted that that parties did not dispute that the façade wall was common property and that a 90% resolution had *not* been obtained for the installation of an awning affixed to common property in this case i.e. at the 3 November 2021 EOGM . The Board noted that there was a “PRIVATE MOTION BY UNIT #XXX, TOWER 1B, MR NISHAD AHMAD NAROD. COVER/ SHELTER INSTALLATION ON BALCONY AREA – SPECIAL RESOLUTION”²² as stated in paragraph [2] above, and while details were lacking as to the type of cover / shelter installation proposed by the Applicant at that forum, for the exclusive use of common property for more than 3 years, a 90% resolution would ordinarily have been required under section 33 of the BMSMA. (see also paragraphs [53]-[56] of *Mu Qi*)

²² *Supra* n 3 at 39.

(a) *Flower Pot and Heavy Ropes*

17. During the trial, evidence was heard on an incident of flower pot and two (2) incidents of ropes falling into the Applicant's PES. The flower pot incident had happened when there was heavy rain²³ and the rope incident(s) had happened when notice had earlier been given to the Applicant for the building's façade works which required the ropes to be used. The Board is of the view that these three (3) incidents of (heavy) objects falling into the Applicant's unit's PES would have caused serious harm to the Applicant's child if she had unfortunately been at the PES area at the material time.

(b) *Shattered Glass Windows*

18. The Board also heard evidence of six (6) other incidents of glass falling in Hillview Regency.²⁴ Upon the cross-examination by the Applicant's counsel, Mr Leong, of the Respondent's sole witness, Mr Ahmad Ibrahim Bin Mohd Tahir ("**Mr Tahir**"), Mr Tahir confirmed the same and testified as follows:

Mr Leong: So, at this date in September 2018, six incidents of glass from windows have fallen, Did you or your staff report this to the police?

A. Mr Nayan did report. Police came down.

Deputy President: ...

Deputy President: Mr Leong, just for the tribunal's benefit, when you ask this question of the witness, you said there were six instances of glass falling. Can we have that sorted out so that we are clear?

Mr Leong: Oh yes, Deputy President. There –

Mr Leong: ...

Mr Leong: The 8th of August 2018, the 27th of August 2018, and what's described in the 155 email, 1st December 2018. And by Mr Ibrahim's admission, two other occasions in Tower B as described in that draft email that was purportedly sent. On January for unit XXX and December for unit XXX.

Deputy President: So Mr Ibrahim, are you clear as to the six instances that Mr Leong is referring to?

²³ *Supra* n 14 at page 38 Line 16 to page 39 Line 12.

²⁴ *Supra* n 3 at 139-147 (i.e. incident on 19 September 2017). Also see Affidavit of Evidence-in-Chief ("AEIC") of Ahmad Ibrahim Bin Mohd Tahir dated 6 December 2021 at pages 155-169 (i.e. 19 September 2017, 8 August 2018, 27 August 2018, 1 December 2018, two cases in Year 2018 for Tower B)

- A: Yah based on the email was stated.
- Deputy President: Yes, so that two instances stated in your email or your draft email of 6th December 2018, are not any of the four earlier instances that Mr Leong mentioned, right?
That means the 19th September 2017, the 8th August 2018, the 27th August 2018 and the 1st December 2018 in Mr Nayan's emails. These four do not include the two that you mentioned in your draft email on the 6th of December 2018, is that correct?
- A: Based on the email, it's correct.²⁵

19. Mr Tahir further gave evidence that for one (1) incident of the six (6) incidents of glass falling in the estate, the police was alerted and it was more likely than not that the glass window had fallen from the upper floor units. The Respondent dealt with all six (6) instances by issuing a notice reminding residents to close their windows during heavy rain or storms. He testified:

- A: We find out aft -- when the police came down, then the police went upstairs.
- Q. Yes and then --
- A. After that, they come down and see me, then they mentioned that the slam of the wind.
- Q. So the police told you that the wind slammed the --
- A. As the owner, owner upstairs informed, yah.
- Q. To the police?
- A. Yah.
- Q. And then the police told you?
- A. Yah, I mean it's what the --
- Q. Okay. And that was one instance, right? Did you call the police for the other five instances?
- A. Normally, this case is happened fast, because raining season and it's --
- Q. So would you agree that this happens quite frequently, that glass falls from a highrise onto the bottom units. Because of rain and it's frequent. So there's no need to report to the police, right, because it happens quite often, are you saying that?
- A. I mean we put up the notice to inform the residents to close their windows whenever there's a heavy downpour that kind

²⁵ *Supra* n 14 at page 150 Line 3 to page 152 Line 7.

of thing. We put up the -- so this is what we --- the action taken. And to be frank, that until today, there's no break glass already. It's the owner responsibility to ensure that the glass – whenever there's a storm, heavy storm, they need to close the window.

Q: So close your windows so that the window doesn't slam, the owner. That's the position, and that's enough to protect the people below?

A. I mean at the moment because of the design, that kind of design in our estate, you know.²⁶

(c) History of High-Rise Littering

20. The Board finds that there is evidence of a history of high-rise littering in Hillview Regency given that the Respondent had put up a notice to inform / warn residents on the same.²⁷ Mr Tahir personally put up the notice which included items like pen and cutter/penknife, lighted cigarettes and cigarette boxes, faeces, etc found on ground floor areas, balconies, aircon ledges and drains. He agreed that objects thrown from high floors are dangerous and can cause harm to anyone below, including children and property.²⁸ Police reports had also been made on the objects falling into the Applicant's PES, i.e. the Flower Pot Incident on 21 May 2021 as well as the two (2) instances of falling ropes, and there was no evidence from the Respondent to refute the Flower Pot Incident beyond stating that "investigations are ongoing" as stated in paragraph [10] above. The Board also notes that the Mr Tahir agreed that the Applicant's daughter would have been seriously harmed by the flower pot and the debris falling from it.²⁹
21. In view of the evidence of the falling objects from high, including the multiple instances of shattered windows falling, the flower pot and heavy ropes as well as the history of high-rise littering as stated above, the Board finds on the facts that the Applicant has shown, on a balance of probabilities, that there is evidence of dangerous objects falling from height at his PES with a real and not fanciful risk of possible harm caused to his daughter.
22. Whether the risk of possible harm to children is a real and not fanciful one would depend on the facts of each case. The Board would add that a strong dose of common sense is always helpful, and when in doubt, to err on the side of caution where safety of children is concerned. It would be a sad day when management corporations ignore warning signs

²⁶ *Supra* n 14 at page 153 Line 15 to page 154 Line 22.

²⁷ *Supra* n 3 at 30, 231. Applicant's Closing Submissions dated 13 January 2022 at paragraphs [9] to [12].

²⁸ *Supra* n 14 at page 115 Lines 9-25.

²⁹ Applicant's Closing Submissions dated 13 January 2022 at paragraphs [15] and [16].

and act on safety concerns only after a child has actually been hurt, or killed, in the development.

(d) Existing Protection at PES Insufficient

23. The Board heard evidence from Mr Tahir that umbrellas had been used at other units' PES but even Mr Tahir concedes that there were no guidelines on these umbrellas and they will not adequately protect against "killer litter" such as glass. He testified:

Mdm Zahara: Ok. You gave evidence earlier that in your view, the umbrella should be --- should offer sufficient protection, right?

A. I mean for me, it's to protect the littering.³⁰

...

Mdm Zahara: Material of the umbrella?

A. Yes. Because they got two types, which actually previously we order one local one, and one from the States. So the material totally the price is different. So we spent that kind of different material and it's proven. And even actually, we also designed such a way that on top, we made like a small hole with another top to get the wind to –

Mdm Zahara: This is your guidelines for the umbrella for use by the –

A. No, this one –

Mdm Zahara: - - second floor units?

A. Yah, most of the units, they have this centre to open, to make some – when the wind they will just - - because the problem is sometimes there's nobody in the house or the flats.

Mdm Zahara: Of course, yes. So you are saying that there are guidelines issued by MCST, is it, for the type of umbrellas to be used?

A. By right, we just gave umbrella as the sheltered area.

Mdm Zahara: So there are no guidelines?

A. Don't have. We open to everyone else to - - we do - - as mentioned just now, the design we don't really - -

Mdm Zahara: Right, so there are no guidelines on the design of the umbrellas.

A. I mean you can put so many, but must be presentable that kind of don't - - if you put so many, but you don't maintain it also looks so unsightly., which actually we - -

Mdm Zahara: Okay.

³⁰ *Supra* n 14 at page 186 Lines 3-6.

A. I have encountered people – they don't just - - they just – at the end, they closed the thing, they don't want to use anymore.³¹

...

Deputy President: Okay, earlier we heard evidence that Mr Nayan had complained that the glass shards had damaged his umbrella and I think Mr Leong asked you a question or two on it, and you accepted that the falling glass may damage the umbrella and can I just ask you, in your view, would the umbrella be sufficiently - - would it be a sufficient safety device to protect anyone from falling glass?

A, If falling glass, we are talking about canvas, it will still go through. I mean it must be the facts. So because it just one - - even one pole come down from anywhere also, it just poke through.³²

24. It was not disputed between the parties that the Applicant resides in a building comprising 25 storeys; and has a 10-year daughter who resides in the Applicant's unit with PES which is within the lot. In the absence of any guidelines on the installation of any structure / device at the Applicant's unit's PES for the protection of children, the Board finds the Applicant's proposal for a retractable awning at his PES to be a necessary, reasonable and proportionate response³³ to the risk of dangerous objects falling into his PES, which may endanger the life of the Applicant's 10-year-old daughter. The installation of a retractable awning would be allowed under the said paragraph 5(3)(c) of the BMSMR 2005 as a structure / device to prevent harm to his 10-year-old daughter from the risk of the said dangerous objects falling from above.
25. Notwithstanding the above, the Board will proceed to consider whether the Respondent had unreasonably refused to consent to the Applicant's proposal made on 1 December 2020 on the renovation works for the installation of the retractable awning at the Applicant's PES under section 111 of the BMSMA.

Whether the respondent had unreasonably refused to consent to the Applicant's proposal on 1 December 2020 with respect to the installation of the retractable awning at the Applicant's PES pursuant to section 111 of the BMSMA

³¹ *Supra* n 14 at page 188 Line 10 to page 189 Line 18.

³² *Supra* n 14 at page 190 Lines 14-25.

³³ See *Pang Loon Ong and others v The MCST Plan No. 4288* [2019] SGSTB 6 at paragraphs [20]-[25] and *Ahmad bin Ibrahim and Others v The MCST Plan No. 4131* [2019] SGSTB 8 at paragraphs [16], [22] and [25].

26. Besides the submission of a RWAF for the installation of the said awning as stated in paragraph [3] above, the Board noted that with respect to the Applicant's first request on 20 September 2020 for guidelines on the installation of a safety cover over his PES, the Respondent had replied that approval via resolution was needed for the covering at the Applicant's PES.³⁴ The Applicant thereafter made a similar request for guidelines on 25 September 2020 to which there was no substantive response.³⁵
27. There were also requests made by the Applicant on 1 November and 4 November 2020 for a cover at his balcony to which the Respondent replied that it was unable to accede to the request in view of the private motion moved by the Applicant at the 14th AGM; that the Respondent would be taking steps to install a CCTV at the Applicant's balcony to verify the incidents of littering at his PES; and that the Applicant could "*apply for recourse at Strata Title Board*".³⁶
28. In view of above paragraphs [26] and [27], the Board notes that the Respondent had taken the position that approval for installation of retractable awning must be given by the general body. This is also as testified by Mr Tahir as follows:

"Mr Leong: Yes. And I am grateful for the tribunal giving me another chance as well, because that put question to you is, do you think it's reasonable, given the history of dangerous objects falling from a highrise in Hillview Regency, do you think it's reasonable for the MCST to just blatantly deny an application for retractable awning. Do you think it's reasonable?

A. Reasonable is what I –

Deputy President: Do you agree, disagree or don't know, then explain.

A. No. Yah, I disagree on that, okay. So can I explain why I disagree?

Deputy President: Yes.

A. I mean for the retractable awning. I mean to conduct a majority like we go through AGM, you know. Then EOGM, we go through again, you know. So, the floor said carry out. So we would do the next step. This is what we wanted, we got to be fair with the unit below, the unit above, few floors on top. That's where we caught in between, we still got to serve all other residents above, second floor and

³⁴ *Supra* n 3 at 42-43.

³⁵ *Supra* n 3 at 53-54.

³⁶ *Supra* n 3 at 58-61.

above. So, the AGM was conducted and was failed, and after that, EOGM gave second chance again, also it was not carried out. So the position now, if I say, “Eh, can fix, but I got no authorise to ask them to ask them to go and fix, install it. I just say it must do something on the owner’s side, see we can come out with something like okay, we still want to do this, so must have something to prove to us that it’s been approved by someone, professional engineering – engineer to give us the drawings or anything which actually relevant, can suit the PES area. Which I think is every – every – even we want to do something, we must spend money to – whether it is worth to do the job.

Mr Leong:

So you disagree, you say that it’s reasonable for the MCST to deny it, because go to general meeting. That’s your position in summary, right?

A.

That’s what been all the years being doing that.

Q.

And if there’s harm being done to children, go to general meeting, right?

A.

I mean I cannot say that because at the moment –

Q.

There’s no harm yet. So let’s wait till harm is done to children, then go to general meeting, is it?

A.

I mean I am a person to be execute whatever the decision-making by the MCST towards me.

Q.

Yes, yes, yes, that’s my point.

A.

It’s that it’s just direction only, okay. If the Board find that the MCST need to do what you’ve been telling me all this while, so for all means. I mean we also want to have the direction also.

Q.

Because MCST says “I don’t have power even if safety is an issue”, right? Is that the position. Go to general meeting. Is that the position?

A.

At the moment, anything you want to do, you need to get approval.

Q.

From general meeting, anything you want to do must get from general meeting?

A.

Must see case by case. It doesn’t mean like everything you want to do, go general meeting.

Q.

So some things no need to general meeting, some things go to general meeting. But safety must go. Even if there’s safety issues, must to go to general meeting, is it?

A. I have no comments.³⁷

29. Further, Mr Tahir testified that the Respondent knew under paragraph 5(3) of BMSMR 2005 the Applicant could install the retractable awnings for his daughter's safety but explained that this contradicted another section in the legislation requiring the Applicant to go the general assembly to seek its approval:

Q: Page 85, and that particular passage I want to refer you to says:

“We have also recently advised by BCA in late December 2020 that MCST shall refer to Sections 37(3) and 37(4) of the BMSMA, aside from paragraph 5(3) of the prescribed by-laws of the regulations.”

Can you tell me what paragraph 5(3) of the regulations say?

A. Which paragraph?

Q. No, in this page, in the middle –

A. Page 85, right?

Q. Sorry?

A. 85, right?

Q. 85, yes. And if you go to the middle of this page, you will see a paragraph starting with:

“We have also been recently advised by BCA”, right?

A. Mm.

Q. And in this letter, it refers to paragraph 5(3) of the regulations, you say that, “We have been advised that we shall refer to Sections 37(3) and 37(4), aside from paragraph 5(3) says?

A. Can you assist me? Maybe this one my – I can't answer to this part.

Q. It's your letter, you know. As in you literally are the signed off on this letter, you wrote this letter,

A. It's actually it's from Daud, my previous.

Q. So Daud wrote this letter with referencing all these, and you don't - - you just said, “Okay, sure, put my name there”.

A. No, normally we will present the MCST for updating any latest.

Q. Ok, so you are saying that the MCST knows this, but you are representing the MCST now. Does the MCST know

³⁷ *Supra* n 14 at page 170 Line 3 to page 172 Line 15.

what paragraph 5(3) says? It's okay. I think the clear answer is you don't know. Paragraph 5(3) says - - paragraph 5(3) provides the subsidiary proprietor, my client, with the ability to install structures or devices to prevent harm to children. Does that surprise you? I am saying to you there's a rule in paragraph 5(3) that allows my client to install structures or devices to prevent harm to his child. Do you know there's such a rule?

A. Yes.

Q. You know there's such a rule?

A. Yah, it's my concern that's a rule for that under the BMSMA.

Q. Yes. But earlier, you have said that no, must go to general meeting.

A. No, general meeting is to get the current, I mean the motion to be carried out, to get the floor to approve for the –

Q. So you don't know what rule 5(3) says. Because rule 5(3) says he can install it and doesn't need to go to general meeting.

A. That one a bit contradicting, because I'm not sure. For me, it's the by-law for the BMS is still there. But after what we have to do under this – and another section which actually we must go through to the floor for the approval.

Q. So you see, you don't know. Or you are sure that need to go to the general meeting?

A. Yah, anything to install or anything to be done, I mean –

Q. So you don't know what rule 5(3) says, because rule 5(3) says he can install it without going to general meeting, but yet you made him go to general meeting, right?

A. This one, this one I don't comment this one. I can't comment this one.³⁸

30. The Respondent can be taken to have conceded that the safety of the Applicant's child is at stake when very late in the course of these proceedings on 7 December 2021 after the AEIC deadline of 2 December 2021 which the Applicant complied with, it belatedly proposed for the Applicant *“to install “invisible” tightly knitted wire netting (or the likes)...placed or erected horizontally above Mr. Nishad or your PES area instead, as a viable, reasonable and effective safety device for Mr. Nishad and your child's safety...”*³⁹

³⁸ *Supra* n 14 at page 173 Line 8 to page 176 Line 5.

³⁹ *Supra* n 3 at 215 at paragraph [2].

31. The Board notes the Respondent's understanding of killer litter as stated in paragraph [6] above is misguided. As per paragraph [13] above, the rationale for paragraph 5(3)(c) of the 2nd Schedule of the BMSMR 2005 is the protection of children, and children can be harmed by falling objects from height regardless whether someone has intentionally thrown them down or not and whether or not the person has actually been identified, as the facts of the present case show. To that extent, the Board agrees with the Applicant's submission that the Respondent had abdicated its responsibility to ensure the safety of the Applicant's daughter to the general assembly.⁴⁰
32. The Respondent should have considered the exception under paragraph 5(3)(c) of the 2nd Schedule of the BMSMR 2005 in deciding whether to consent to the Applicant's RWA for the installation of the retractable awning at the Applicant's PES without the need to go to the general assembly to seek its approval.⁴¹
33. In so far as the Respondent's remaining objection was premised on section 33 of the BMSMA, this was incorrect as the provision is not triggered where there is a real and not fanciful risk of possible harm to children and the proposed structure to be installed to prevent the said harm is a necessary, reasonable and proportionate response. Of course, the Applicant cannot install any structure he wishes and wash his hands off thereafter. Paragraphs 5(4) and 5(5) of the 2nd Schedule of the BMSMR 2005 provide the requisite balance to an SP's right to install a safety device under paragraph 5(3)(c) of the 2nd Schedule of the BMSMR 2005 with the interests of the management corporation in that the structure must be installed in a competent and proper manner and must have an appearance, after it has been installed, in keeping with such guidelines as the management corporation may prescribe regarding such installations, and with the appearance of the rest of the building. The SP must also maintain the structure and repair any damage caused to common property by the installation and subsequent removal of the structure, notwithstanding that it may form part of common property.
34. The Respondent had therefore taken into account an irrelevant consideration in withholding its approval to the Applicant's application in his RWA for the installation of an awning at his PES. The Board therefore finds the Respondent to have acted unreasonably and orders the Respondent to approve the Applicant's application for the installation of a retractable awning at his PES and to provide the necessary guidelines in accordance with paragraph 5(4) of the Second Schedule of the BMSMR 2005 within forty-five (45) days of this Order.

⁴⁰ *Supra* n 29 at paragraphs [36] to [39].

⁴¹ *Supra* n 29 at paragraphs [34] and [35].

35. The Board notes that the Respondent had submitted a 70-page closing submission on 25 January 2022 well past the deadline of 13 January 2022 and just two (2) days before the delivery of the Board's decision. The contents suggest there is animosity between the Respondent council and the Applicant in their dealings over the issue of the awning request. The Board in coming to its decision relies solely on the evidence adduced by way of the affidavits of the parties and the arbitration hearing. We would urge subsidiary proprietors and council members to put personal feelings aside and focus on the real issues at stake in a rational and calm manner, and not let that be side-tracked by personal feelings.
36. The Board wishes to remind management corporations like the Respondent to play a more active role where children's safety is concerned and provide guidelines for its subsidiary proprietors pertaining to the installation of devices to prevent harm to children. The Board wishes to draw the Respondent's attention to another Strata Titles Board's decision in *Zou Xiong v MCST Plan No. 2360* [2017] SGSTB 5 (an application where the subsidiary proprietor applied to install invisible grilles at his balcony pursuant to section 111(b) of the BMSMA) at paragraphs [31]–[32] as follows:

“31. The Respondent submits that it cannot give approval for the Applicant's application to install invisible grilles because the proposed works affect the façade of the building and such approval is to be given by the general body and not by the Respondent. The Board takes the view that this reasoning is unsatisfactory because it is within the Respondent's power to give such approval. It is the Respondent's role to put in place a set of design guidelines for the installation of safety grilles that address both the safety issues and the issues regarding the façade of the Development, so that the subsidiary proprietors can comply with such guidelines. Where there is no design guidelines, the subsidiary proprietor's application for the installation of invisible grilles have to be decided on a case-by-case basis. In exercising its power, the Respondent should not defer its responsibility to the general body.

32.....Even if the Respondent's position was correct, the Respondent should have adopted a more active role to facilitate the Applicant in his application, especially in a case such as this where children's safety is concerned. The Respondent ought to take the initiative to provide guidelines for its subsidiary proprietors and it is not for the Applicant to initiate an approval for such guidelines.”

Board's Order(s)

37. The application is allowed.

38. The Respondent to approve the Applicant's application for the installation of a retractable awning at his private enclosed space and to provide the necessary guidelines in accordance with paragraph 5(4) of the Second Schedule of the Building Maintenance (Strata Management) Regulations 2005 within forty-five (45) days from the date of this Order.
39. The Respondent to pay the Applicant costs of \$15,000 and disbursements of \$3,500 (all in) inclusive of STB Application and arbitration hearing fees.

Dated this 27th day of January 2022

MR RAYMOND LYE HOONG YIP
Deputy President

MDM ZAHARA BINTE BAKAR
Member

MR EDWARD D'SILVA
Member

Mr Jeremy Leong Zhi Jia and Mr Mohamed Najib bin Mohamed Yunos
(M/s Acton Law LLC) for the Applicant.

Mr Wong Liang Fong, Mr Ong Kok Beng, Mr Anthony Lim Soon Yuen and
Mr Ahmad Ibrahim Bin Mohd Tahir (in-persons)
for the Respondent.