IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2023] SGHC 51

Originating Summons No 808 of 2021

Between

Cheung Phei Chiet

… *Applicant*

And

Jujun Tanu

… *Respondent*

Originating Summons No 809 of 2021

Between

Cheung Phei Chiet

… *Applicant*

And

(1) Cheong Yoke Ling @ Zhang Yuling
(2) Chang Chih-Tung, Charles
(Executors of the Estate of Cheong Kim Koek, deceased)

… *Respondents*

JUDGMENT

[Land — Strata titles]

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v
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20 July 2022, 17 January 2023

2 March 2023 Judgment reserved.

Tan Siong Thye J:

Introduction

1 The present applications, namely Originating Summons No 808 of 2021 ("OS 808") and Originating Summons No 809 of 2021 ("OS 809"), are the latest in a series of acrimonious and bitter disputes between two small groups of subsidiary proprietors, namely the applicant and the respondents. They are living in a very small development along Upper East Coast Road ("the Development"). The Development comprises four commercial units on the ground floor and four residential units above them. The Development's management corporation ("MCST") is the Management Corporation Strata Title Plan No. 508 ("MCST 508").

2 It is deeply disappointing that such a small development could lead to so many emotionally charged and prolonged disputes pertaining to the

management of the Development. As a result, the parties soured their neighbourly relationships and incurred significant amounts of time, costs and effort in bringing their disputes to the courts. It is, indeed, a disturbing state of affairs in this Development. The disputes have spanned many years and involved no less than twelve cases filed before all levels of the Singapore Courts. What lies at the core of their disputes is, simply, the unhappiness and dissatisfaction of two opposing groups of disgruntled subsidiary proprietors regarding the management and affairs of the Development.

3 The Applicant in OS 808 and OS 809 (collectively, the "OSes") is Mr Cheung Phei Chiet ("Mr Cheung") and he is the subsidiary proprietor of Unit 53A. The respondent in OS 808 is Mr Jujun Tanu ("Mr Tanu") and he is the subsidiary proprietor of Unit 55. The respondents in OS 809 are a husband-wife duo, Mdm Cheong Yoke Ling ("Mdm Cheong") and Mr Chang Chih-Tung Charles ("Mr Chang"). Both are the subsidiary proprietors of Unit 53. They hold Unit 53 in their capacity as executors and trustees for the estate of Mr Cheong Kim Koek, with the title of the unit being transferred to them in January 2021.[1] Both Units 53 and 55 are commercial units on the ground floor of the Development. Unit 53A is a residential unit located at the Development that is directly above Unit 53.[2]

4 The other subsidiary proprietors in the Development are not parties in the OSes. However, as will be described below, some of them have also featured prominently in the background disputes leading up to the present applications. These include Mr Parameshwara s/o Krishnasamy ("Mr Param") and his wife, Ms Sarah Shoba Aroul Stashe Aroul ("Ms Aroul"), who are the subsidiary

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1 Cheong Yoke Ling's Reply Affidavit dated 23 September 2021 ("CYLRA") at para 3.

2 CYLRA at para 8.

proprietors of Unit 59A at the Development.[3] The present subsidiary proprietor of Unit 59 is One Metal Investment Holdings Pte Ltd ("One Metal").[4] Mdm Loh Sook Cheng ("Mdm Loh") was the previous subsidiary proprietor of Unit 59. She was also involved in a past dispute with MCST 508.[5]

5 Mr Cheung and Mr Param were the initial members of MCST 508's council. However, they have since resigned from the council in November 2021.[6] This leaves Mdm Cheong and Mr Tanu as the only council members.[7]

6 Mr Cheung filed the OSes against Mr Tanu, Mdm Cheong and Mr Chang (collectively "the Respondents") seeking numerous prayers in various forms of reliefs. Most of the reliefs sought in the OSes are common and hence overlapping. The various reliefs contained in the prayers sought by Mr Cheung can be summarised into the following categories:[8]

(a) A declaration that various motions which Mdm Cheong and Mr Tanu sought to pass were unlawful, unenforceable, invalid and/or void. This is the first prayer sought in the OSes.

(b) Orders to restrain the Respondents from exercising their rights as subsidiary proprietors to table motions relating to the installation of

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3 Jujun Tanu Supplementary Affidavit dated 18 January 2022 ("JTSA") at paras 5 and 37.

4 Cheung Phei Chiet's 4th Affidavit filed for OS 808 dated 28 February 2022 ("4th CPCA OS 808") at para 83.

5 4th CPCA OS 808 at para 70.

6 JTSA at para 16.

7 JTSA at para 6.

8 Respondents Written Submissions dated 13 July 2022 ("RWS") at para 7; JTSA at para 14; Cheong Yoke Ling's Supplementary Affidavit dated 18 January 2022 ("CYLSA") at para 14.

various structures on the Development's common areas. These are the second to sixth prayers sought in the OSes.

(c) Orders curtailing Mdm Cheong's and Mr Tanu's power to appoint Legal Solutions LLC ("Legal Solutions") as MCST 508's solicitors. This is the seventh prayer sought in the OSes.

(d) A declaration to impose a duty on Mdm Cheong and Mr Tanu to append wet-ink signatures on MCST 508's official documents. This is the ninth prayer sought in OS 808 and the twelfth prayer sought in OS 809.

(e) Orders that seek to remove Mdm Cheong and Mr Tanu as MCST 508's council members. This is the tenth and eleventh prayers sought in OS 808 and the thirteenth and fourteenth prayers sought in OS 809.

(f) Orders that seek to impose restrictions on Mdm Cheong and Mr Chang relating to existing and allegedly unauthorised alterations in respect of Unit 53. This is the eighth to tenth prayers sought in OS 809.

7 Mr Cheung had also sought, in the eighth prayer in OS 808 and the eleventh prayer in OS 809, orders seeking to restrict MCST 508's access to documents and information contained in MCST 508's files kept with Aequitas Law LLP ("Aequitas"). However, Counsel for the Applicant informed the Court during oral submissions that Mr Cheung no longer wished to pursue these prayers. Accordingly, I shall not consider this matter in my judgment.

8 I shall set out the historical background between the parties to fully understand their disputes.

Background

Background history

9 The disputes in the OSes arose from matters that occurred largely during the events surrounding MCST 508's formation and tenure of the council in 2021 and 2022.

Formation of the 2021 Council

10 Prior to the formation of the council in 2021 ("the 2021 Council"), Mr Cheung and Mr Param were the only two council members of MCST 508 from 2017 to 2020.[9]

11 During MCST 508's Annual General Meeting held on 30 December 2020 ("the 2020 AGM"), Mr Tanu participated through his proxy, while Mdm Cheong, Mr Cheung and Mr Param attended the meeting in person. The meeting at the 2020 AGM, however, was extremely acrimonious. Mr Tanu's proxy was not allowed to speak or vote at the 2020 AGM on his behalf because he was allegedly in arrears. When it was time to consider the formation of a new council for 2021 at the 2020 AGM, Mr Cheung and Mr Param took the position that Mr Tanu did not qualify to be nominated as a council member given that he was allegedly in arrears and Mdm Cheong did not qualify as she was only an executor.[10]

12 Although Mdm Cheong and Mr Tanu eventually became council members for the 2021 Council,[11] there remained numerous disputes between the

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9 Jujun Tanu's Reply Affidavit dated 24 September 2021 ("JTRA") at para 7.

10 JTRA at paras 9 and 10; CYLRA at paras 19–21.

11 JTRA at para 13; CYLRA at para 10.

parties at the 2020 AGM. Thus, many of the motions brought up at the 2020 AGM were ultimately deadlocked.[12] This included the motion empowering the 2021 Council to appoint office bearers. As a result, the 2021 Council did not have any office bearers.[13]

The 2021 Council

13 The 2021 Council was a split council, with Mr Cheung and Mr Param usually on one side and Mdm Cheong and Mr Tanu on the other side.[14] It was an acrimonious situation. Any attempts to hold a council meeting, whether physically or by correspondence, were futile. The fact remained that the 2021 Council never held its first council meeting. Accordingly, there were no collective decisions made by MCST 508 in the year 2021.[15]

14 As a consequence, Mr Cheung and Mr Param did not inform or involve Mdm Cheong and Mr Tanu, and they proceeded to make several decisions for MCST 508 on their own accord.[16] These included the appointment and instruction of their own solicitors, Aequitas, to act for MCST 508 in CA/CA 6 of 2021 ("CA 6"), which was a dispute involving MCST 508 and Mdm Loh,[17] the previous subsidiary proprietor of Unit 59. They also procured insurance for MCST 508[18] and made payment to vendors appointed for MCST 508's benefit

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12 JTRA at para 12.

13 JTRA at para 12(a).

14 JTRA at para 12.

15 JTSA at para 21(b).

16 JTSA at para 21(c).

17 CYLRA at pp 155–165. Also see Cheong Yoke Ling's Further Reply Affidavit dated 18 April 2022 ("CYLFRA") at pp 86–90.

18 CYLFRA at paras 197–199.

without involving Mdm Cheong and Mr Tanu.[19] Mr Cheung and Mr Param had also appointed Singapore Accounting and Business Services Ltd ("SABS") to provide bookkeeping and accounting services to MCST 508. This was also done without informing Mdm Cheong and Mr Tanu.[20] The non-consultative manner in which Mr Cheung and Mr Param had conducted themselves in running the 2021 Council to the exclusion of Mdm Cheong and Mr Tanu showed the extent to which they vehemently refused to work with their fellow council members. The bitterness that both camps harboured for each other is clearly evident.

Mdm Cheong's and Mr Tanu's attempts to requisition an EGM

15 On 21 April 2021, Mdm Cheong and Mr Tanu attempted to requisition an extraordinary general meeting ("EGM") pursuant to paragraph 14(1) of the First Schedule to the Building Maintenance and Strata Management Act (Cap 30C, 2008 Rev Ed) ("BMSMA").[21] They sent a letter to Mr Cheung and Mr Param to inform them that they wished to convene an EGM ("the 1st EGM") to pass a total of 14 ordinary resolutions ("the 21 April Letter").[22] On 30 April 2021, Mr Cheung and Mr Param replied that they objected to the calling of the 1st EGM.[23] On 17 May 2021, Mdm Cheong and Mr Tanu sent a further letter setting out additional motions which they wished to pass for the 1st EGM ("the 17 May Letter").[24]

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19 CYLFRA at para 7.

20 JTSA at para 21(c)(iii),

21 Cheung Phei Chiet's 1st Affidavit filed for OS 808 dated 10 August 2021 ("1st CPCA OS 808") at p 35.

22 1st CPCA OS 808 at pp 36–37.

23 1st CPCA OS 808 at pp 57–58.

24 1st CPCA OS 808 at pp 39–40.

Commencement of OS 808 and OS 809

16 On 21 July 2021, Mdm Cheong and Mr Tanu served on all the subsidiary proprietors of the Development a Notice to convene the 1st EGM on 14 August 2021 to pass the proposed ordinary resolutions as set out in the 21 April Letter and the 17 May Letter.[25] In response, Mr Cheung filed the OSes against Mr Tanu and Mdm Cheong seeking the various reliefs.[26]

17 On 10 August 2021, a few days before the 1st EGM was convened, Mr Cheung filed two summonses against the Respondents ("the Summonses for Injunction") to, amongst others, restrain Mdm Cheong and Mr Tanu from proceeding with the 1st EGM.[27] At the hearing of the Summonses for Injunction on 12 August 2021, the parties agreed to record a consent order stating, amongst others, the following:[28]

> (a) Mdm Cheong and Mr Tanu will submit to all council members of MCST 508 by 18 August 2021 a fresh requisition for all 22 proposed resolutions with the necessary amendments, if any.
>
> (b) In the event that the council members do not convene an EGM within 14 days of receipt of the requisition, Mdm Cheong and Mr Tanu shall be entitled to call for an EGM in relation to the proposed fresh requisitions pursuant to para 14(3) of the First Schedule to the BMSMA.

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25 1st CPCA OS 808 at pp 43–47.

26 1st CPCA OS 808 at para 10; Cheung Phei Chiet's 1st Affidavit filed for OS 809 dated 10 August 2021 ("1st CPCA OS 809") at para 9

27 JTRA at para 20.

28 JTRA at para 21; CYLRA at para 41.

(c) Should the EGM take place before the final determination of the OSes, Mdm Cheong and Mr Tanu undertake that they shall not act upon and/or enforce any of the resolutions passed, save for several resolutions identified in the consent order.

18 Following the record of the consent order in the Summonses for Injunction, Mdm Cheong and Mr Tanu submitted a fresh requisition on 18 August 2021 to be tabled at a subsequent EGM to be convened.[29] On 28 September 2021, Mdm Cheong and Mr Tanu sent the Notice and Agenda for the 2nd EGM to be convened on 27 October 2021 ("the 2nd EGM").[30] However, the 2nd EGM did not take place because Mdm Cheong had come down with COVID-19 symptoms.[31]

Events following Mr Cheung's and Mr Param's resignation

19 On 10 November 2021, Mr Cheung and Mr Param resigned from the 2021 Council.[32] Therefore, Mdm Cheong and Mr Tanu became the only two remaining members of the 2021 Council.

20 Following Mr Cheung's and Mr Param's resignation, Mdm Cheong and Tanu were left to deal with the various matters and decisions mentioned above at [14] which Mr Cheung and Mr Param had previously handled without involving Mdm Cheong and Mr Tanu. Thus, Mdm Cheung and Mr Tanu were left groping in the dark regarding the affairs of MCST 508. This was because Mr Cheung and Mr Param failed to conduct a proper handover of documents,

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29 JTRA at para 22.

30 CYLSA at para 11.

31 CYLSA at para 15.

32 CYLSA at para 16.

information and assets of MCST 508 to Mdm Cheong and Mr Tanu.[33] Mr Cheung and Mr Param had sent a letter dated 9 November 2021 to Mdm Cheong and Mr Tanu that they could collect MCST 508's chequebook and the key to MCST 508's electrical switchboard from Aequitas.[34] They also informed Mdm Cheong and Mr Tanu that MCST 508's accounting documents were with SABS and that Mdm Cheong and Mr Tanu could collect them from SABS.[35]

21 In a letter dated 15 November 2021, Mr Cheung and Mr Param informed Mdm Cheong and Mr Tanu that the Police had requested them to preserve documents relating to MCST 508. This was purportedly to assist in Police investigations regarding the allegation that Mdm Cheong had forged MCST 508's documents. Thus, they were unable to hand over any documents.[36]

22 Despite these letters, Mdm Cheong and Mr Tanu did not receive any of the said documents and the key from Mr Cheung or Mr Param, nor were they able to obtain these documents through their own means. For instance, when Mdm Cheong called Aequitas about the key to MCST 508's electrical switchboard, Aequitas had informed her that they had neither the key nor MCST 508's chequebook.[37] Further, in relation to the accounting documents that were with SABS, Mdm Cheong had attempted to contact and liaise with SABS on numerous occasions *via* phone, letters and emails throughout the

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33 JTFRA at para 6(i).

34 CYLSA at para 17.

35 Jujun Tanu's Further Reply Affidavit dated 18 April 2022 ("JTFRA") at para 6(j); CYLFRA at paras 7(j) and 75.

36 JTFRA at para 6(j); CYLFRA at para 7(j); CYLSA at para 19.

37 CYLSA at para 21(c)(ii).

month of December 2021. However, SABS was unresponsive for the most part.[38]

23 Mdm Cheong had also contacted the Police to enquire about the status of the investigations regarding her alleged forgery. The Police informed Mdm Cheong that they had completed the investigations and would not be taking further action on the matter. The Police had also issued a letter dated 19 November 2021 stating the same.[39] Despite this, Mr Cheung and Mr Param refused to hand over the documents to Mdm Cheong.[40] Thus, Mdm Cheong and Mr Tanu did not receive any of the said documents and the key from Mr Cheung or Mr Param, nor were they able to obtain these documents through their own means.

24 It was only in late 2021 and early 2022, following the formation of the new council for 2022 ("the 2022 Council"), that some of MCST 508's accounting documents and the electrical switchboard key and chequebook were handed over to Mdm Cheong and Mr Tanu.[41] Even then, Mr Cheung and Mr Param continued to hold on to most of MCST 508's documents, information and assets, including MCST 508's CCTV passwords, security tokens and other access passwords.[42] Mdm Cheong and Mr Tanu thus had access to very limited documents.[43] Mr Cheung and Mr Param did not hand over the contracts and

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38 CYLFRA at pp 153–163.

39 CYLSA at para 21(d)(vi); CYLFRA at para 183 and p 304.

40 CYLFRA at paras 186–187; JTFRA at paras 160–161.

41 CYLSA at para 21(c)(iii); CYLFRA at pp 156-157 and 160-161; JTFRA at para 152(d).

42 CYLSA at para 21(e); Respondent's Written Submissions at para 14(l).

43 JTFRA at para 6(l).

appointment letters of third-party vendors appointed in 2021 by MCST 508.[44] Mdm Cheong and Mr Tanu were also not provided with the original bank statements relating to MCST 508's bank account. Any requests made by Mdm Cheong and Mr Tanu for the delivery of the remainder of MCST 508's documents and assets held by Mr Cheung and Mr Param were met with refusal.[45] All of these made it extremely difficult for Mdm Cheong and Mr Tanu to run MCST 508's affairs as members of the 2022 Council.

25 As for the matters pertaining to CA 6, although Mdm Cheong and Mr Tanu were aware of the existence of CA 6 as early as in July 2021, they did not have a clear understanding of the nature of the issues in CA 6.[46] Further, both Mdm Cheong and Mr Tanu did not give any instructions or approve any of the documents filed in court by Aequitas.[47] On Mdm Cheong's instructions, Legal Solutions wrote to Aequitas to ask for Aequitas' warrant to act. Aequitas did not accede to Mdm Cheong's request. On the contrary, Aequitas responded and questioned the basis for Legal Solutions' request for the former's warrant to act in CA 6. Mdm Cheong and Mr Tanu had also requested Aequitas, who had acted for MCST 508 in CA 6, to provide their files for inspection. Mdm Cheong and Mr Tanu also asked Aequitas to provide their invoices and breakdown of time spent for all matters that they had acted on behalf of MCST 508. However, their requests were met with refusal on Aequitas' part.[48] Thus, Mdm Cheong and Mr Tanu, till this day, do not understand the exact

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44 JTFRA at para 6(l).

45 JTFRA at para 6(m).

46 CYLFRA at paras 44–46; JTFRA at paras 30 and 35.

47 CYLFRA at paras 42–43; JTFRA at para 34.

48 CYLFRA at paras 45–52, pp 208–214.

nature of the legal services which Aequitas had provided in respect of the dispute in CA 6.

26 Further, Mdm Cheong wrote to Mr Cheung and Mr Param to ask about the appointment of Aequitas in CA 6, the approved papers filed by Aequitas in CA 6 and the authorisation to use MCST 508's funds in CA 6.[49] However, she received no response. Mdm Cheong and Mr Tanu had also made numerous requests to Mr Cheung and Mr Param for the documents and information related to CA 6. However, Mr Cheung and Mr Param refused to provide the documents sought.[50] It was only after Mdm Cheung had retrieved the accounting documents from SABS that she discovered, amongst others, that MCST 508 was ordered to pay costs of S$8,969.61 to Mdm Loh in CA 6, and that Mdm Loh's solicitors had garnished MCST 508's bank account.[51]

Formation of the 2022 Council

27 Following the cancellation of the 2nd EGM, Mdm Cheong and Mr Tanu decided that it did not make sense to hold two general meetings so close to each other. They felt that it would be more sensible to table the amended proposed resolutions at MCST 508's 2021 annual general meeting ("the 2021 AGM").[52] Accordingly, in December 2021, Mdm Cheong and Mr Tanu circulated to the Development's subsidiary proprietors the Notice and Agenda for the 2021 AGM. The 2021 AGM was scheduled to be held on 30 December 2021.[53] Mdm Cheong and Mr Tanu, acting on behalf of MCST 508, engaged Legal

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49 CYLFRA at para 48.

50 CYLFRA at para 60.

51 CYLFRA at para 77.

52 CYLSA at para 23

53 CYLSA at para 27.

Solutions to prepare the Notice and Agenda for the 2021 AGM.[54] The Agenda for the 2021 AGM had included a majority of the resolutions that were tabled previously for the 1st EGM and the 2nd EGM, both of which did not take place. However, Mdm Cheong and Mr Tanu had, following a review of the amended proposed resolutions, decided to remove some of them as their current tenants no longer required them.[55] Further, the subsidiary proprietor of Unit 59, One Metal, had also requested two resolutions to be included in the 2021 AGM.[56]

28 The 2021 AGM was attended by Mdm Cheong, Mr Chang, and Mr Tanu's proxy. As for Mr Cheung and Mr Param, they were represented by their respective proxies.[57] During the 2021 AGM itself, only Mdm Cheong and Mr Tanu put in their nominations as council members. Apart from them, no one else put themselves forward to be council members. Accordingly, Mr Cheung and Mr Param were not appointed as council members.[58] Following the 2021 AGM, Mdm Cheong and Mr Tanu were appointed to the 2022 Council. Further, some of the amended proposed resolutions which formed the subject matters of the OSes were voted upon at the 2021 AGM. They were not passed.[59]

Prior litigation involving the Development's subsidiary proprietors

29 There were three key disputes in which the subsidiary proprietors of the Development were involved.

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54 CYLSA at para 24.

55 CYLSA at para 25.

56 CYLSA at para 26.

57 CYLSA at para 37.

58 CYLSA at paras 38 and 40(d).

59 CYLSA at para 38; RWS at para 19.

DC/OSS 3 of 2020

30 The first key dispute between the parties was in the matter of DC/OSS 3 of 2020 ("OSS 3"). OSS 3 involved a dispute between Mdm Cheong and Mr Chang on the one hand, and MCST 508 on the other. While Legal Solutions represented Mdm Cheong and Mr Chang for the dispute, Aequitas represented MCST 508. The crux of the dispute involved, amongst others, Mdm Cheong's and Mr Chang's claim for reliefs relating to MCST 508's right to remove certain fixtures and alterations in Unit 53 and the surrounding common property. MCST 508 on the other hand brought counterclaims against Mdm Cheong and Mr Chang seeking, amongst others, an injunction that Mdm Cheong and Mr Chang remove and rectify certain fixtures from the Property.[60]

31 Following the hearing of the dispute in OSS 3, the District Judge found, amongst others, that there were several claims and counterclaims that could not be resolved in OSS 3 because the disputes were factual in nature. Accordingly, the District Judge in his written grounds in *Cheong Yoke Ling @ Zhang Yuling and another v Management Corporation Strata Title Plan No 508 and others* [2020] SGDC 295 ("*Cheong Yoke Ling* (SGDC)") held at [7] that if the parties wished to further pursue these claims and counterclaims, they should proceed by writ action. It is important to note that the District Judge made no specific orders in relation to the further resolution of the unresolved claims and counterclaims brought by both parties in OSS 3. I shall elaborate on this at [144]–[145] below.

60 CYLRA at pp 37–39 (para 14 of the District Court's decision in OSS 3).

CA/CA 6 of 2021

32 CA 6 is an appeal to the Court of Appeal brought by Mdm Loh in 2021 against MCST 508 following the decisions below in HC/RAS 13 of 2020 ("RAS 13") and DC/OSS 159 of 2020 ("OSS 159"). As mentioned earlier, Mdm Loh was at that time the subsidiary proprietor of Unit 59 at the Development. The dispute below and in CA 6 relates to an action by Mdm Loh against MCST 508 to pray that the Court allow Unit 59 to undertake certain works on the Development's common property.[61]

33 At first instance in OSS 159, Mdm Loh succeeded in her claim against MCST 508.[62] The details of Mdm Loh's suit is unclear. MCST 508 then brought an appeal against the decision in OSS 159 to the High Court in RAS 13. MCST 508 succeeded in its appeal, with the High Court holding that the works sought to be undertaken entailed the installation of "permanent structures being installed on common property for the sole benefit" of Unit 59.[63] Accordingly, the High Court held that the works required the necessary resolutions to be passed in accordance with s 33 of the BMSMA.

34 Mdm Loh then appealed to the Court of Appeal in CA 6. MCST 508, through Mr Cheung and Mr Param, had instructed Aequitas to act for MCST 508 in the action against Mdm Loh.[64] CA 6 was eventually withdrawn by Mdm Loh in October 2021.[65] As I mentioned at [26] above, however, MCST 508 was ordered to pay the costs of the proceedings to Mdm Loh, and

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61 4th CPCA OS 808 at paras 71 and 82.

62 CYLFRA at p 241 (para 74 of the District Court's judgment in OSS 159).

63 4th CPCA OS 808 at para 82.

64 CYLFRA at pp 87 and 88.

65 4th CPCA OS808 at para 71.

Mdm Loh had taken out garnishee proceedings against MCST 508's bank account.

DC/DC 2809 of 2019

35 DC/DC 2809 of 2019 ("DC 2809") was an action before the District Court. DC 2809 was brought by Ms Aroul against Mdm Cheong and Mr Chang. The dispute in that case relates to, amongst others, unauthorised fixtures and installations outside Unit 53. Such unauthorised fixtures and installations (or removed items) included the rear window and a signboard of the former tenant of Mdm Cheong and Mr Chang that was affixed to the front wall of Unit 53.[66] Although the signboard had since been removed, the rear window of Unit 53 remained. Ms Aroul, therefore, sought in DC 2809, amongst others, an order that Mdm Cheong and Mr Chang carry out rectification works in respect of the rear window of Unit 53.[67]

36 The trial in DC 2809 was concluded on 22 March 2022, and the parties have filed their closing submissions and reply closing submissions,[68] with the court's decision in DC 2809 pending. It is also worth noting that Mdm Cheong has provided her assurance to the court in DC 2809 that she and Mr Chang would carry out rectification works as may be ordered by the court in DC 2809.[69]

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66 CYLFRA at para 20.

67 CYLFRA at para 14(c).

68 Cheung Phei Chiet's 5th Affidavit filed for OS 808 dated 20 June 2022 ("5th CPCA OS 808") at para 16; CYLFRA at para 21.

69 CYLFRA at paras 24–26.

Issue to be determined

37 The issue is whether the Court should grant the Applicant, Mr Cheung, the reliefs sought in his prayers in OS 808 and OS 809, many of which are overlapping as stated above at [6]. I shall now consider, in turn, the various reliefs in each prayer and the parties' respective arguments.

My decision

Declaration in relation to the legality of several proposed resolutions

38 The first prayer in OS 808 and OS 809 concerns the legality of proposed resolutions 10(e), 14, 17, 18, 19 and 21 in the Notice and Agenda of the 2021 AGM ("the Proposed Resolutions"). In particular, Mr Cheung seeks in his first prayer a declaration that the Proposed Resolutions are unlawful, unenforceable, invalid and/or void at law ("the First Prayer"). The First Prayer states as follows:[70]

> A declaration that the proposed ordinary Resolutions 10(e), 14, 17 to 19 and 21 … contained in the Notice and Agenda of the Annual General Meeting ("**AGM**") of the development known as [MCST 508] dated 13 December 2021 are unlawful and/or unenforceable and/or invalid and/or void at law.
>
> [emphasis in original]

39 I now reproduce the Proposed Resolutions as follows:[71]

> 10(e). To consider and if approved, resolve that the appointed Chairman of the Incoming Council will have a casting vote in the event of any deadlock in any council meetings.
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> …
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> 14. To consider and if approved, resolve that [Mdm Cheong and Mr Chang], the subsidiary proprietors of Unit 53 be granted

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70 OS (Amendment No.1) dated 1 April 2022.

71 CYLSA at pp 19–21 and 60–62.

> exclusive use and enjoyment of the back wall of the mezzanine level (not along the corridor of the mezzanine floor) at the Development directly above Unit 53's back door and be permitted to install additional air-conditioning compressors (including necessary piping & trunking) for Unit 53 along the said wall, for a period of 1 year from the time the air-conditioning compressors is put up.
>
> …
>
> 17. To consider and if approved, resolve that [Mdm Cheong and Mr Chang], the subsidiary proprietors of Unit 53 be granted exclusive use and enjoyment of the front space of the front wall beside the front door of Unit 53, which said front wall belongs to Unit 53, and be permitted to mount an additional shop name and logo on the said wall for a period of 1 year from the time the said shop name and logo is put up.
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> 18. To consider and if approved, resolve that [Mdm Cheong and Mr Chang], the subsidiary proprietors of Unit 53 be granted exclusive use and enjoyment of the front space of the front wall beside the front door of Unit 53, which said front wall belongs to Unit 53 or the ceiling at the front of Unit 53, and be permitted to install an additional light source (including necessary piping & trunking) either on the ceiling at the front of Unit 53 or on the wall at the front of Unit 53 above the logo or shop name for a period of 1 year from the time the said light source is put up.
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> 19. To consider and if approved, resolve that [Mdm Cheong and Mr Chang], the subsidiary proprietors of Unit 53 need not reinstate the back windows.
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> …
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> 21. To consider and if approved, resolve that [Mr Tanu], the subsidiary proprietor of Unit 55, be granted exclusive use and enjoyment of the ceiling at the front of Unit 55 and be permitted to install an additional light source on the ceiling at the front of Unit 55 for a period of 1 year from the time the said light source is put up.

40 I shall now consider each party's submissions with respect to the legality of the Proposed Resolutions.

The Parties' submissions

(1) The Applicant's case

41 Mr Cheung accepts that, since the Proposed Resolutions were not passed, they were ultimately not given effect. Mr Cheung, nevertheless, seeks the First Prayer as he is of the view that the declaration granted in the First Prayer would provide a sense of finality for the parties, given the extent of the disputes between them.[72]

42 Mr Cheung argues that the Proposed Resolutions are unlawful, unenforceable, invalid and/or void at law for the following reasons:[73]

(a) In respect of Resolution 10(e), the BMSMA does not expressly provide for the Chairman of MCST 508's council to have a casting vote. Instead, the BMSMA provides that any decision by MCST 508's council on any matter, where there are two or more members in that council, is based on the majority's votes. In other words, the BMSMA requires a majority of the council members for a decision to be made. Accordingly, the effect of Resolution 10(e) at the 2021 AGM would be to empower the Chairman to render a casting vote, such that any decision made in this manner would not be made by a majority. This would, therefore, be contrary to the express wording of the BMSMA. Further, it would be inconsistent with the legislative scheme for subsidiary proprietors to be able to allow the Chairman to have the casting vote. In so far as any issues of deadlock at council meetings are concerned, this is sufficiently addressed by the provisions in the BMSMA.

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72 4th CPCA OS 808 at para 25.

73 Applicant's Written Submissions dated 13 July 2022 ("AWS") at paras 26–46.

(b) In respect of Resolutions 14, 17, 18 and 21, these resolutions seek to confer on the Respondents exclusive use of the Development's common property in various ways. However, these resolutions are intended to pass by way of ordinary resolutions, which Mr Cheung submits is improper. According to Mr Cheung, these resolutions do not comply with the requirements of s 33 of the BMSMA. This is because the specification in these resolutions that the exclusive use is sought for only one year is artificial, given that they are intended to be of a permanent nature and would, therefore, likely be put up for more than one year. Accordingly, it would have been necessary for these resolutions to be passed pursuant to a 90% resolution in accordance with s 33 of the BMSMA. Further, Mr Cheung argues that these resolutions are not passed in accordance with the appropriate format.[74]

(c) In respect of Resolution 19, the removal of Unit 53's rear windows was plainly unauthorised. Mr Cheung submits that MCST 508 was not empowered to approve the same, given that the removal of these windows detracts from the appearance of the Development. In any case, the issue of reinstatement of these windows was an issue raised in an ongoing proceedings as a counterclaim by MCST 508, and the counterclaim was left to be resolved via a writ action. According to Mr Cheung, such an action is unlikely to be brought since Mdm Cheong and Mr Tanu are the only members on the council.[75]

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74 AWS at paras 55–57.

75 AWS at para 70.

(2) The Respondents' case

43 The Respondents submit that the Proposed Resolutions no longer exist and are, therefore, inapplicable. Hence, Mr Cheung is not entitled to ask the Court for a declaration on matters that are no longer in existence or that are inapplicable.[76]

44 In the alternative, the Respondents argue that the Proposed Resolutions are valid for the following reasons:

(a) In respect of Resolution 10(e), the BMSMA does not prohibit the Chairman from having the casting vote, and that the purpose of the casting vote is to resolve deadlocks.[77]

(b) In respect of Resolutions 14, 17, 18 and 21, the Respondents are only seeking exclusive use of the various stated common properties at the Development for one year. Accordingly, a 90% resolution is not required when exclusive use is stated to be sought for one year under s 33 of the BMSMA. Further, there is no prescribed format for the passing of a by-law.[78]

(c) In respect of Resolution 19, the removal of the rear windows by Unit 53 does not affect the Development's appearance. Further, Mdm Cheong and Mr Chang have no knowledge of the removal of the rear windows. The architectural drawings submitted to the relevant authorities do not show any rear windows. Finally, the window issue is a matter raised in an ongoing action and the decision of which has not

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76 RWS at paras 19–20.

77 JTRA at paras 27–32; CYLRA at paras 47–52.

78 RWS at para 32.

been rendered. Mdm Cheong and Mr Tanu will carry out any rectification works if ordered by the court to do so.[79]

The Court's discretion to grant declaratory relief

45 The Court's power to grant declaratory judgments is found in s 18 read with para 14 of the First Schedule to the Supreme Court of Judicature Act 1969 (2020 Rev Ed) ("SCJA"), and O 4, r 7 of the Rules of Court 2021 ("the Rules") (previously O 15, r 16 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed)).

46 Section 18 of the SCJA reads as follows:

> **Powers of General Division**
>
> **18.**— (1) The General Division has the powers that are vested in it by any written law for the time being in force in Singapore.
>
> (2) Without limiting subsection (1), the General Division has the powers set out in the First Schedule. …

47 Paragraph 14 of the First Schedule to the SCJA reads as follows:

> **Reliefs and remedies**
>
> 14. Power to grant all reliefs and remedies at law and in equity, including damages in addition to, or in substitution for, an injunction or specific performance.

48 Order 4, r 7 of the Rules reads as follows:

> **7.** The Court may make a declaratory judgment or order whether or not any other relief is sought.

49 The Court of Appeal in *Salijah bte Ab Latef v Mohd Irwan bin Abdullah Teo* [1996] 2 SLR(R) 80 ("*Salijah*") at [50(b)] observed that the court's power to grant a declaratory relief is discretionary in nature. Accordingly, the party

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[79] JTRA at paras 61–66; CYLRA at paras 89–98

seeking a declaratory relief has to show that the court's discretion ought to be exercised in favour of granting the relief (see *Sun Travels & Tours Pvt Ltd v Hilton International Manage (Maldives) Pvt Ltd* [2019] 1 SLR 732 at [136]). In the exercise of the court's discretionary power, the court has to weigh the competing considerations in deciding whether the circumstances of the specific case warrant the exercise of the discretion.

50 In *Karaha Bodas Co LLC v Pertamina Energy Trading Ltd* [2006] 1 SLR(R) 112 ("*Karaha Bodas*"), the Court of Appeal held at [14] that the following factors governed the exercise of the court's discretionary power to grant declaratory relief:

(a) the court must have the jurisdiction and power to award the remedy;

(b) the matter must be justiciable in the court;

(c) the exercise of the discretion must be justified by the circumstances of the case;

(d) the plaintiff must have *locus standi* to bring the suit and there must be a real controversy for the court to resolve;

(e) any person whose interests might be affected by the declaration should be before the court; and

(f) there must be some ambiguity or uncertainty about the issue in respect of which the declaration is asked for so that the court's determination would have the effect of laying such doubts to rest.

51 Specifically in relation to requirement (d) as stated in *Karaha Bodas*, *ie*, that there must be "a real controversy", the Court of Appeal in *Tan Eng Hong*

v Attorney-General [2012] 4 SLR 476 ("*Tan Eng Hong*") at [143] considered this requirement in detail:

> We agree instead with the analysis in *Zamir & Woolf* … at para 4-98:
>
> > The courts will not grant declarations which are of no value but, if a declaration will be helpful to the parties or the public, the courts will be sympathetic to the claim for a declaration *even if the facts on which the claim is based or the issue to which it relates can be described as theoretical*. [emphasis added]
>
> Where the circumstances of a case are such that ***a declaration will be of value to the parties or to the public, the court may proceed to hear the case and grant declaratory relief even though the facts on which the action is based are theoretical***. We do not necessarily see this as an exception to the "real controversy" requirement as we are of the view that it can logically be said that where there is ***a real legal interest in a case being heard, there is a real controversy to be determined***. Further, as noted above at [17], a declaration by the court which determines the controversy between the parties is *res judicata*. "Legal" interest is used here in contradistinction to a mere socio-political interest, and may be said to arise where there is a novel question of law for determination, as in the present case. While a legal interest may suffice to satisfy the "real controversy" requirement, mere socio-political interest will ***not*** suffice in itself. The court is well placed to determine legal questions but not socio-political questions.
>
> [emphasis in original in italics; emphasis added in bold italics]

52 For there to be "a real controversy" such as to warrant the court's exercise of its discretion to grant a declaratory relief, the parties must show that there is "a real legal interest" in a case being heard. This may include, but is not limited to, a novel question of law which arises for determination.

53 However, "a real controversy" is unlikely to be established where the question is purely hypothetical. As was observed by the High Court of Australia in *Ainsworth v Criminal Justice Commission* (1992) 106 ALR 11 at 22 (per Mason CJ, Dawson, Toohey and Gaudron JJ):

> Hence, declaratory relief must be directed to the determination of legal controversies and not to answering abstract or hypothetical questions. The person seeking relief must have "a real interest" and relief will not be granted if the question "is purely hypothetical", if relief is "claimed in relation to circumstances that [have] not occurred and might never happen" or if "the court's declaration will produce no foreseeable consequences for the parties".

54 Where the question posed to the court is purely hypothetical or relates to circumstances that never existed and may never exist, or if the declaration will produce no foreseeable consequences for the parties, these are countervailing factors that weigh heavily against the court's exercise of its discretion. As the Court of Appeal in *Salijah* observed at [59], "in practically all cases where the issues are theoretical the courts have *declined* to exercise their discretion" [emphasis added]. The court in *Salijah* explained at [60] (citing Zamir and Woolf, *The Declaratory Judgment* (2nd Ed, 1993)):

> The editors of Zamir and Woolf have identified one rationale for the reluctance of the courts to deal with theoretical issues – that it distracts the courts from deciding real, subsisting problems. A stronger reason is that if there is in fact no real issue subsisting, then the matter would not be *res judicata*, nor the issue merged in judgment. In that event, it would be open for the issue to be reopened again and again. The need for the existence of a contested dispute is to ensure that there is finality in the court's judgments as well.

Accordingly, the rationale underlying the court's reluctance to grant a declaration on hypothetical or theoretical issues is to ensure finality in litigation. In the absence of any real subsisting issue, the grant of a declaration would not be *res judicata*. This, in turn, encourages the parties to re-litigate the matter over and over again, which is antithetical to the general interest in ensuring finality in litigation.

55 Thus, the court should not be asked to exercise its discretion to grant a declaratory relief based on a hypothetical issue. As the Court of Appeal in *Tan Eng Hong* at [145] observed:

> In *Salem* … at 457A, Lord Slynn sagaciously cautioned that even in the area of public law, the courts should be circumspect in exercising their discretion to hear hypothetical issues, and should not do so "unless there is a good reason in the *public interest* for so doing" … ***As can be seen, the key factor in favour of the court hearing an academic issue is that it is in the public interest for the court to do so***. This key concern was echoed in *Michael Victor Gawler v Paul Raettig* [2007] EWCA Civ 1560 at [37], where the English Court of Appeal's approach to the exercise of its discretion was expressed as follows (*per* Sir Anthony Clarke MR):
>
> > All will depend upon the facts of the particular case and … I do not intend to be too prescriptive. However, such cases are likely to have a number of characteristics in addition to *the critical requirement that an academic appeal is in the public interest*. They include the necessity that all sides of the argument will be fully and properly put: see eg *National Coal Board v Ridgeway* [[1997] 3 All ER 562], per Bingham LJ at page 604f and *Bowman v Fels* at [12] and [15]. It seems to me that in the vast majority of such cases, this must involve counsel being instructed by solicitors instructed by those with a real interest in the outcome of the appeal. [emphasis added]
>
> [emphasis in original in italics; emphasis added in bold italics]

Where the court is asked to make a declaration on hypothetical or academic issues, therefore, the question is whether it is in the public interest that the court grants a declaration in respect of the issue sought to be adjudicated upon. This must be correct. This is consistent with the High Court's views in *Salijah bte Ab Latef v Mohd Irwan bin Abdullah Teo* [1995] 3 SLR(R) 233 at [17] that the remedy of a declaration should provide "relief" in a real sense:

> Firstly, the jurisdiction of the court to make a declaration of right is confined to declaring contested legal rights, subsisting or future, of the parties represented in the litigation. Secondly, *the remedy being a discretionary one, it will not be granted to a*

> *plaintiff if it would not give him "relief" in any real sense, ie relieve him from any liability or disadvantage or difficulty. …*
>
> [emphasis added]

56 And as the Court of Appeal in *Latham Scott v Credit Suisse First Boston* [2000] 2 SLR(R) 30 at [74] held, there must be a useful or practical purpose to be served before it would exercise its discretion to grant a declaration:

> The power of the court to grant a declaration is found in s 18 of the Supreme Court of Judicature Act (Cap 322) read with para 14 of the First Schedule of the Act and O 15 r 16 of the Rules of Court. *This power is discretionary and where the court feels that a declaration will serve no useful purpose, no declaration will be granted.*
>
> [emphasis added]

57 To summarise, while the grant of a declaration is a discretionary relief, the court ought to exercise its discretion carefully. The pertinent factors are whether there was a real controversy to be resolved, or if any useful or practical purpose would be served by the grant of a bare declaration. Where the issue for which a declaration is sought is hypothetical or academic in nature, the court would lean heavily against granting a declaration. The court's intervention may be warranted if it can be shown that there is an overwhelming public interest underlying the legal issue and that any declaration made on that issue can be said to be useful or would serve a practical purpose. It is important, however, to stress that it is not merely any form of public interest that would suffice to tilt the balance in favour of granting the declaratory relief. The threshold must necessarily be a high bar. This is to discourage the inculcation of a litigious mindset and the view that the court is necessarily the most appropriate forum to resolve any and all theoretical disputes.

58 I shall now address the issue of whether the First Prayer should be granted.

My analysis

59 The issue in the First Prayer is whether there is a real controversy or dispute and if the parties have a real legal interest in having the declaration granted. The answer must be in the negative.

60 At the outset, I point out that Mr Cheung's characterisation of the Proposed Resolutions as "resolutions" is, strictly speaking, incorrect. The appropriate term to use would be "motions". As was observed by Professor Teo Keang Sood in *Strata Title in Singapore and Malaysia* (Lexis Nexis, 5th ed, 2015) ("*Strata Title in Singapore and Malaysia*") at para 11.107, a "motion" is defined as a "proposal for consideration at a meeting". Where the motion is passed, only then will it become "a resolution of the management corporation". Similarly, Belinda Ang Saw Ean J (as she then was) held in *Tunas Pte Ltd v Management Corporation Strata Title Plan No 562* [2015] 5 SLR 756 at [48] (citing N E Renton, *Guide for meetings and organisations* vol 2: *Guide for Meetings* (LBC Information Services, 7th Ed, 2000) at para 4.1 and A D Lang, *Horsley's Meetings: procedure, law and practice* (LexisNexis, 6th Ed, 2010 at para 11.1)) that a resolution "is a decision of a meeting of a corporate body". Ang J further defined a resolution (citing *Black's Law Dictionary* (Bryan A Garner chief ed) (Thomson Reuters, 10th Ed, 2014) as a "[f]ormal action by a corporate body … authorising a particular act, transaction or appointment". In other words, a motion that has been voted upon and accepted by MCST 508's council at a meeting is given legal effect in the form of a resolution. In such a case, the resolution can be said to have been validly authorised and passed in accordance with the proper procedures.

61 In the present case, it is not disputed by the parties that although the Proposed Resolutions (which are in fact motions) proposed by the Respondents

were voted upon, it remains that they were in fact not passed (see [28] above). This is because the parties were in a deadlock during the 2021 AGM, such that the requisite majority was not reached. It cannot be said, therefore, that the Proposed Resolutions were passed as proper resolutions. MCST 508 thus could not be said to have authorised the Proposed Resolutions. The motions were, therefore, of no legal effect.

62 Accordingly, any declaration that the Court should render in respect of the Proposed Resolutions would necessarily be academic or hypothetical in nature. This is because the Court is asked to determine whether the Proposed Resolutions, *if they had been passed*, would have been unlawful, unenforceable, invalid and/or void at law. This is clearly a hypothetical question and relates to circumstances that never existed.

63 The Respondents argue that the Court should dismiss the First Prayer. In their submission, the Proposed Resolutions are non-existent and are inapplicable, and hence there is no "real controversy" that the Court is asked to decide. The Respondents' submission is that the Court should dismiss the declaratory relief sought in the First Prayer, as the relief is sought in relation to circumstances that never existed. As I have held above at [57], however, the mere fact that the Court is asked to grant a declaratory relief in respect of an academic or hypothetical issue is not conclusive of the matter. If there exists a strong public interest in respect of the legal issue put before the Court, this will weigh in favour of the Court's exercise of its discretion to grant the declaration sought.

64 Therefore, the question is whether there exists, in the present case, a strong public interest for the Court to render a declaration to this effect. That question is answered in the negative. Even if Mr Cheung's allegations are made

out, I am not convinced that the Court should exercise its discretion in favour of granting the declaration in the First Prayer. There is no real purpose to be served in the grant of this declaration. The Proposed Resolutions were ultimately not passed. This being the case, there is no adverse outcome that would affect Mr Cheung or the other subsidiary proprietors. For instance, Mr Cheung did not show that he or the other subsidiary proprietors suffered any prejudice or incurred any loss or damages which require redress. Any declaration that is granted would ultimately relate to an issue that is rendered moot by virtue of the fact that the Proposed Resolutions were not passed.

65 In any event, Counsel for the Applicant conceded at the oral hearing of the OSes that, if the Proposed Resolutions or motions of similar effect are ever raised again in future general meetings, it is always open to the subsidiary proprietors to raise their objections in the general meeting. There is, therefore, absolutely no reason why the declaration ought to be granted. Indeed, subsidiary proprietors who are dissatisfied with any proposed resolution should avail themselves of the internal mechanisms for objecting to a by-law in the form of the voting system contained in the BMSMA to make their objections heard.

66 Further, the Proposed Resolutions do not appear patently unlawful in any way. In so far as the Respondents, in a subsequent general meeting, are to submit the Proposed Resolutions and the resolutions are passed in accordance with the requirements set out in s 33 of the BMSMA, they ought to be valid. Accordingly, there is no real controversy for the Court to resolve, or any real relief to be provided to Mr Cheung by making the declaration that he sought.

67 I, therefore, dismiss the First Prayer.

Order restraining the Respondents from raising the proposed resolutions

68 The second prayer in OS 808 and OS 809 concerns the restraining of the Respondents from introducing the Proposed Resolutions, or motions to similar effect, at general meetings ("the Second Prayer"). The Second Prayer for each of the respective OSes states as follows:

> OS 808
>
> An order that [Mr Tanu] be permanently restrained from proposing [the Proposed Resolutions] and/or any other resolutions which are similar to [the Proposed Resolutions] at any general meeting of [MCST 508].
>
> OS 809
>
> An order that [Mdm Cheong and Mr Chang] be permanently restrained from proposing [the Proposed Resolutions] and/or any other resolutions which are similar to [the Proposed Resolutions] at any future general meeting of [MCST 508].

69 I pause to observe that although the wording of the Second Prayer in respect of each of the OSes are slightly different, namely that the Second Prayer in OS 809 uses the term "future general meeting" while that of OS 808 uses the term "general meeting" without the word "future", the substance of the prayers remain the same in so far as the effect would be to prospectively restrict the Respondents from introducing motions at any general meeting.

The parties' submissions

(1) The Applicant's case

70 Mr Cheung does not provide any fresh reasons why the Court ought to grant an order in terms of the Second Prayer. Mr Cheung's submission in respect of the Second Prayer is that, if the Court were to grant a declaration that the Proposed Resolutions were unlawful, invalid or void at law for the First Prayer, "it follows that [Mdm Cheong and Mr Tanu] should be restrained from

proposing the same or similar resolutions at future general meetings".[80] Mr Cheung's submission is, therefore, that the Second Prayer is contingent on the success of the First Prayer. This was confirmed by Counsel for the Applicant at the oral hearing of these applications.

(2) The Respondents' case

71 On the other hand, the Respondents submit that the Second Prayer should not be granted because it would be against the legislative scheme of the BMSMA. In particular, it would be inconsistent with the Respondents' statutory rights as subsidiary proprietors as prescribed under the BMSMA.[81]

My analysis

72 Given that I have dismissed the First Prayer, it follows that there exists no valid reason for me to grant the Second Prayer.

73 In any case, I accept the Respondents' argument that the effect of the Second Prayer would be to effectively and permanently curtail the Respondents' rights as subsidiary proprietors to propose any motions they wish for the general body's consideration. This is an impermissible limitation that is not legally sustainable. The right of a subsidiary proprietor to put forth any motion he or she wishes for the general body's consideration is a statutory right that is enshrined under para 12 of the First Schedule to the BMSMA, which states as follows:

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80 AWS at para 25.

81 RWS at paras 22–23.

> **Requisition for motions to be included on agenda for general meeting**
>
> 12.—(1) Any subsidiary proprietor may, by written notice served on the secretary of the council of the management corporation or subsidiary management corporation (as the case may be), require inclusion in the agenda of the next general meeting of the management corporation or subsidiary management corporation (as the case may be) of a motion set out in the firstmentioned notice and the secretary must comply with the notice.
>
> (2) The secretary of the council must give effect to every requirement in every notice under sub-paragraph (1).
>
> …

74 The plain wording of paras 12(1) and 12(2) of the First Schedule makes it clear that "the secretary of the council of the management corporation *must* comply with the notice" [emphasis added] given by any subsidiary proprietor seeking to propose a motion in a meeting and further, that the secretary "*must give effect to every requirement in every notice*" [emphasis added]. The mandatory language of para 12(1) of the First Schedule reinforces the absolute right accorded to a subsidiary proprietor to put in motions in a meeting. Indeed, this right is so crucial to a subsidiary proprietor that "the right to call for a motion is also available to a subsidiary proprietor who may be in arrears in contributions because of a dispute with the council" (see *Strata Title in Singapore and Malaysia* at para 11.109).

75 The Second Prayer, therefore, offends the statutory rights of the Respondents as subsidiary proprietors. Accordingly, I dismiss the Second Prayer.

Orders securing the Respondents' compliance with statutory requirements under the BMSMA

76 The third and fourth prayers in OS 808 and OS 809 are framed as alternatives to the Second Prayer. The third prayer is as follows ("the Third Prayer"):

> OS 808
>
> Further and/or alternatively to [the Second Prayer] above, an order that [Mr Tanu] be permanently restrained from tabling motion(s) to be included in the agenda of any future general meeting of [MCST 508] which motion(s) pertain only to and/or benefit only [Mr Tanu's] unit at the [D]evelopment unless [he] has served a written requisition on the secretary of the council of [MCST 508] pursuant to paragraph 12 of the First Schedule to the [BMSMA].
>
> OS 809
>
> Further and/or alternatively to [the Second Prayer] above, an order that [Mdm Cheong and Mr Chang] be permanently restrained from tabling motion(s) to be included in the agenda of any future general meeting of [MCST 508] which motion(s) pertain only to and/or benefit only [Mdm Cheong's and Mr Chang's] unit at the [D]evelopment ("**Unit 53**") unless [they] have served a written requisition on the secretary of the council of [MCST 508] pursuant to paragraph 12 of the First Schedule to the [BMSMA].
>
> [emphasis in original]

The Third Prayer seeks to restrain the Respondents from tabling motions for any future general meetings which pertain to or benefit only Unit 53 or Unit 55 unless they first serve a written requisition in accordance with para 12 of the First Schedule to the BMSMA.

77 The fourth prayer is as follows ("the Fourth Prayer"):

> Further and/or alternatively to [the Second Prayer], an order that [the Respondents] be permanently restrained from tabling motion(s) to be included in the agenda of any future general meeting of [MCST 508] which motion(s) purport to grant [the

> Respondents] exclusive use and enjoyment of the common property of [MCST 508] unless such motion(s) are tabled in the form of a by-law to be passed pursuant to the requirements of section 33 of the BMSMA.

The Fourth Prayer seeks to restrain the Respondents from tabling motions for any future general meetings which seek to grant the Respondents exclusive use over common property, unless the motions are tabled in the form of a by-law and are passed pursuant to the requirements of s 33 of the BMSMA.

78 Both the Third Prayer and the Fourth Prayer, therefore, seek to secure the Respondents' compliance with the various requirements under the BMSMA.

The parties' submissions

(1) The Applicant's case

79 In respect of the Third Prayer, Mr Cheung does not dispute that, as subsidiary proprietors, the Respondents are entitled to put forth motions for inclusion in the general meeting agenda which benefit only their units. What Mr Cheung contends is that any such motions, which the Respondents intend to put forward for consideration in a meeting, must first be requisitioned and served on the secretary of MCST 508's council pursuant to para 12 of the First Schedule to the BMSMA.[82] If there is no secretary, then Mr Cheung accepts that the requisition should, nonetheless, be served on all council members instead.[83] Mr Cheung submits that the Respondents failed to serve any such written notice to the council members when deciding the agenda for the 2021 AGM.[84]

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82 AWS at para 93.

83 AWS at para 94.

84 AWS at para 96.

80 Mr Cheung also alleges that para 12(3) of the First Schedule to the BMSMA contemplates the situation where notice of a general meeting had been issued before the requisition for the motions had been served. The requisitioned motions would then have to be included in the next general meeting after the meeting for which Notice had been given. Since the Respondents had sent the requisitions for the 1st EGM and the 2nd EGM prior to the notice of the EGMs being served on each subsidiary proprietor of the Development, para 12(3) of the First Schedule to the BMSMA does not apply.[85]

81 As for the Fourth Prayer, Mr Cheung submits that the Proposed Resolutions failed to comply with the requirements under s 33 of the BMSMA for three reasons.[86] First, while the Proposed Resolutions are framed as ordinary resolutions that purport to confer exclusive use of the common property for one year, the Proposed Resolutions in fact refer to the installation of structures that are likely to be of a permanent nature. This being the case, Mdm Cheong and Mr Tanu ought to have tabled the motions indicating that the structures are to be used for a period of more than three years, instead of tabling the motions indicating that these structures are to be maintained on the common property for a period of one year. It, therefore, follows that the by-law, being an exclusive use by-law, must be passed pursuant to a 90% resolution as prescribed under s 33(1)(*c*) of the BMSMA.[87]

82 Second, s 33(1) of the BMSMA requires an exclusive use by-law to be made pursuant to the appropriate resolution required. Mr Cheung alleges that none of the Proposed Resolutions purport to make a by-law or to set out the

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85 AWS at paras 90–97.

86 AWS at para 102.

87 AWS at paras 53–57.

terms of a by-law to be passed. Mr Cheung argues that this would be contrary to the need for such resolutions to state that it intended to pass a by-law, and to provide the actual wording of the proposed by-law.

83 Third, s 33(2) of the BMSMA requires an exclusive use by-law to either state whether a management corporation or the subsidiary proprietor is responsible for performing the management corporation's duties prescribed under s 29(1) of the BMSMA. However, the Proposed Resolutions do not state whether it is MCST 508 or the Respondents who must perform MCST 508's duties under s 29(1) of the BMSMA in respect of the common property for which exclusive use is conferred.[88]

(2) The Respondents' case

84 The Respondents submit that they were not able to make a fresh requisition in accordance with para 12(3) of the First Schedule to the BMSMA, as there was no secretary for the 2021 Council at the time the Notice and Agenda for the 2021 AGM were sent out. Further, the Respondents had previously sent requisitions for the 1st EGM and the 2nd EGM, which were not convened. Thus, they were entitled to rely on para 12(3) of the First Schedule to the BMSMA to include the prior requisitions in the 2021 AGM's Notice and Agenda.[89]

85 Finally, the Respondents submit that the Third Prayer is unduly restrictive for two reasons. First, given that the failure to abide by para 12(3) of the First Schedule to the BMSMA was due to the absence of any secretary in the 2021 Council, and should this state of affairs continue, this would mean that the Respondents can never submit any motion to be tabled for a meeting.

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88 AWS at paras 59–60.

89 RWS at paras 26–27.

Second, if one of the Respondents becomes the secretary and wishes to submit a motion, the effect of the Third Prayer would be to require the secretary to write to himself or herself before sending his or her motion to the rest of the council members. According to them, this is not much different from what Mdm Cheong and Mr Tanu had done for their joint resolutions for the 1st EGM and the 2nd EGM.[90]

86 As for the Fourth Prayer, the Respondents contend that the Proposed Resolutions were framed as ordinary motions for a prescribed period of one year. There is, therefore, nothing irregular in the way the Proposed Resolutions were framed.[91] Further, there is no prescribed format for drafting a by-law in either the BMSMA or the Building Maintenance (Strata Management) Regulations 2005. The focus of the inquiry should be on the substance of the Proposed Resolutions rather than the form. The Respondents also submit that it is not necessary to affix the word "by-law" to a resolution before it is to be taken as a by-law.[92]

My analysis

(1) The Third Prayer

87 The Third Prayer should be dismissed. While I generally agree with Mr Cheung's submission on the need to comply with the provisions under the BMSMA on giving notices for requisitions, I find that there is no utility in granting this prayer.

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90 RWS at para 28.

91 RWS at para 34.

92 RWS at paras 32–33.

88 First, I agree with Mr Cheung's submission that, if there was no council member holding the office of secretary of the MCST 508's council, then any written notice for requisitioning motions should, nonetheless, be served on all council members. The secretary of MCST 508's council plays a largely administrative role in facilitating the conduct of MCST 508's day-to-day activities. This is made clear by s 56 of the BMSMA, which prescribes the duties of the secretary. Specifically, s 56(*g*) of the BMSMA states that the secretary is to attend to matters of an administrative or secretarial nature in connection with the exercise of MCST 508's council's functions:

> **Duties of secretary of council**
>
> **56.** The duties of the secretary of the council of a management corporation include the following:
>
> …
>
> (*g*) to attend to matters of an administrative or secretarial nature in connection with the exercise, by the management corporation or the council, of its functions.

89 Thus, the secretary is an intermediary between subsidiary proprietors and the council members. That being the case, where an MCST council does not have a secretary and where subsidiary proprietors seek to give written notice for the requisitioning of motions pursuant to para 12(1) of the First Schedule to the BMSMA, the most practical alternative would be to serve the written notice onto every council member. This is the equivalent of serving the written notice for the requisitioning of motions on the council's secretary, who would then collate these notices to be conveyed to the council members.

90 Second, the plain wording of para 12(3) of the First Schedule to the BMSMA makes clear that, where notice for the convening of a general meeting has been served on each subsidiary proprietor, any notice for the requisition for

the motions which was served on the secretary would be included in the next general meeting without the need to serve another written notice:

> **Requisition for motions to be included on agenda for general meeting**
>
> …
>
> (3) Sub-paragraph (1) does not require the inclusion of a motion on the agenda of a general meeting for which notices have already been given in accordance with this Schedule, but in that case, the secretary of the council must include the motion in the agenda of the next general meeting after that.

91 The Respondents cannot rely on para 12(3) of the First Schedule to the BMSMA to validate the requisition for motions tabled in the agenda for the 2021 AGM. This is because Mdm Cheong and Mr Tanu had served the written notice setting out requisitions to be tabled for the 1st EGM and the 2nd EGM, prior to issuing the notice for the convening of these respective EGMs. In this case, the condition prescribed under para 12(3) of the First Schedule to the BMSMA is not met.

92 Finally, the Third Prayer is not unduly restrictive. The Third Prayer simply seeks to restate the need for the Respondents to abide by the requirements stipulated in para 12 of the First Schedule to the BMSMA, if they wish to have a requisition for motions to be included in the agenda for a general meeting.

93 However, the end result which Mr Cheung seeks to achieve, *ie*, to ensure that the Respondents comply with the requirements under para 12 of the First Schedule to the BMSMA, is already enshrined under the BMSMA itself. There is, therefore, no utility in granting this prayer. Accordingly, I dismiss the Third Prayer.

(2) The Fourth Prayer

94 The Fourth Prayer should also be dismissed. The effect that the Fourth Prayer seeks to establish is effectively the same as that which is already prescribed under s 33 of the BMSMA. The Fourth Prayer is, therefore, merely duplicating what the BMSMA has prescribed and there is no utility in granting such an order.

95 In any case, I also do not agree with Mr Cheung's submission regarding his understanding of the requirements to comply with the exclusive use by-laws.

96 Firstly, Mr Cheung alleges that the Proposed Resolutions in the present case are intended by the Respondents to circumvent the requirements under s 33(1) of the BMSMA. I do not agree. The wordings of the relevant motions which I have reproduced at [39] above, in so far as they relate to motions seeking to pass exclusive use by-laws, show clearly that the structures to be installed would be for a clearly defined period of one year. Thus, s 33(1)(*a*) of the BMSMA requires that such motions be passed pursuant to an ordinary resolution:

> **Exclusive use by-laws**
>
> **33.**—(1) Without affecting section 32, with the written consent of the subsidiary proprietor of the lot concerned, a management corporation may make a by-law —
>
> (*a*) pursuant to an ordinary 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 not exceeding one year —
>
> (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;
>
> …

97 Mr Cheung relies on the case of *Mu Qi and another v Management Corporation Strata Title Plan No. 1849* [2021] 5 SLR 1401 ("*Mu Qi*") in support of his submission that the Proposed Resolutions are framed in such a way as to permit the Respondents to avoid having to pass a 90% resolution for installations of a permanent nature. Specifically, Mr Cheung submits that, according to *Mu Qi* at [69], it would be improper and illegal to effectively confer exclusive use indefinitely by repeatedly passing resolutions at a lower threshold:

> … it would be an improper and illegal use of the procedures set out in s 33(1) of the BMSMA, if one could effectively accord to [subsidiary proprietors] exclusive use of, or special privileges over, common property *indefinitely* by the passing of *special*, but not 90%, resolutions, every three years, in cases where the intended use or privilege involves changes to the common property that are permanent in nature. In my view, this appears to be the true intent of the respondent, whose management council members do not want to face up to the realities of the situation they are presently in, and to accept the fact that the previous management council members might not have carried out their duties in accordance with what is required by the BMSMA.
>
> [emphasis in original]

98 The case of *Mu Qi* does not assist Mr Cheung. The paragraph which he relies on must be read in the context of the facts of *Mu Qi*. There, the MCST sought to pass a by-law that would provide a blanket whitewash approval in respect of all unauthorised structures on the common property of the development. The precise wording of the by-law in *Mu Qi* was as follows (at [20]):

'UNAUTHORIZED ADDITIONS, ALTERATIONS AND IMPROVEMENT WORK WITHIN UNIT'

The Management Council shall have the authority to record all additions, alterations or improvements made in or upon Common Property as of 2nd January 2020 and take all actions as provided in this by-law.

All subsidiary proprietors (SPs) are required to submit a list of additions, alterations or improvements made in or upon Common Property that are closest to or even found in their units. Additions, alterations or improvements referred to herein shall include but not be limited to awnings, gates, cabinets, air-con units, aluminium louvers, clothing pole supports, etc. (whether or not the current SPs are the ones who installed them). The list shall be submitted to the management office by 2nd January 2020 at the latest. Exceptions to this requirement are approved windows at the kitchens and permitted safety equipment under and governed by the current section 37A of the Building Maintenance and Strata Management Act ('the Act').

Additions, alterations or improvements made in or upon the Common Property that are provided by the SPs to and recorded by the management office by 2nd January 2020 shall be allowed for the duration of this special resolution as governed by the Act. Additions, alterations or improvements made in or upon the Common Property that are not provided to the management office by 2nd January 2020 shall be considered as unauthorised.

Notwithstanding the foregoing, all additions, alterations or improvements allowed as aforesaid shall be removed completely and the remaining wall or other structure that is not unauthorised be reinstated by the relevant SPs no less than thirty (30) days before the completion of the sale of their unit. Such SPs are to also inform prospective buyers of their units in writing about this condition even before any option to purchase is signed.

All additions, alterations or improvements made in or upon Common Property that are not recorded by the management office on or before 2nd January 2020 but discovered by the Management Council after 2nd January 2020 shall be deemed unauthorised and the relevant SP who made such addition, alteration or improvement or, failing such determination by the Management Council on which SP made the addition, alteration or improvement, the SP whose unit is closest to such addition, alteration or improvement, shall within thirty (30) days of written notification to do so by the Management Council,

> remove the same completely and the remaining wall or other structure that is not unauthorised be reinstated.
>
> If the relevant SP fails to take the relevant appropriate action by the relevant deadlines in either case of authorised or unauthorised additions, alterations or improvements made in or upon Common Property as aforesaid, the Management Council shall have the authority to remove such additions, alterations or improvements and carry out rectification and reinstatement work at the relevant SPs' expense.
>
> Additions, alterations or improvements made in or upon the SPs' lots shall be governed by the relevant provision of the ACT (e.g. current section 37), including but not limited to the actions that may be taken by the MCST as provided in section 37(4A) of the Act.

99 The effect of this by-law was to permit the subsidiary proprietors in that development to submit a list of all unauthorised structures on, or alterations to common property to the MCST's office by a fixed date, and once recorded by the MCST's staff, these structures or alterations would be deemed authorised. But, if the structure or alteration, of whatever nature, was not reported to the management office by then, it would be deemed to be unauthorised.

100 This by-law, in Ang Cheng Hock J's view, was "a rather cynical abuse of the approach envisaged by Parliament and set out in s 33 of the BMSMA" (at [64]). In Ang J's view, the by-law in *Mu Qi* offended the requirement set out in s 33 of the BMSMA as it did not identify, amongst others, the period of time over which the exclusive use, or special privilege accorded, should last (*Mu Qi* at [66]). Although the chairman of the development's MCST in *Mu Qi* gave evidence that the intention was to authorise the installations for a period of three years, Ang J ascribed great weight to the fact that the words of the by-law did not state that the installations or alterations would be for a period of three years (*Mu Qi* at [67]). In the absence of any express wording in the by-law to this effect, Ang J turned to examine the circumstances of the case, including the

nature of the installations and alterations. It was in this context that Ang J made the following findings and holdings (*Mu Qi* at [68] and [69]):

> I cannot accept this submission. First, the structures erected and the changes to common property that are intended to be addressed by the November 2019 by-law, that is, the affixing of the awnings on the external walls, and the demolition of part of external walls, are clearly intended by the relevant 14th floor SPs to be permanent in nature. There is no doubt that those SPs' real intent is to keep these changes for more than three years. In fact, for the 14th floor unit below the appellants' unit, the fixed awnings have been in place since 2011, without any proper approvals. Some of the changes to the common property, by which I mean, the demolition of the common walls, are in their very nature clearly intended to be permanent, unless there is a change in ownership of the unit, where the new SPs may wish to reinstate those demolished walls. All this being the case, it is incumbent for the by-law to be passed pursuant to a 90% resolution. Following the failure to pass the by-law with a 90% resolution, the fixed awnings and the demolished walls cannot be then simply deemed authorised for a period of three years under s 33(1)(*b*) of the BMSMA, without any mention of this under the by-law. In my view, they are and continue to be unauthorised structures affixed onto common property of the development.
>
> Secondly, it would be an improper and illegal use of the procedures set out in s 33(1) of the BMSMA, if one could effectively accord to SPs exclusive use of, or special privileges over, common property *indefinitely* by the passing of *special*, but not 90%, resolutions, every three years, in cases where the intended use or privilege involves changes to the common property that are permanent in nature. In my view, this appears to be the true intent of the respondent, whose management council members do not want to face up to the realities of the situation they are presently in, and to accept the fact that the previous management council members might not have carried out their duties in accordance with what is required by the BMSMA.
>
> [emphasis in original]

101 Therefore, in the absence of any express wording in the by-law as to the duration of the alterations or installations, Ang J turned to examine the nature of the alterations or installations in concluding that they could not have been intended to be in place for only three years. On the contrary, they were more

likely to be intended to be of a permanent nature. This was especially so given that one of the installations had been in place since 2011. It was in this context that Ang J thus held that it would be improper and illegal to effectively confer exclusive use indefinitely by repeatedly passing resolutions at a lower threshold.

102 The facts of the present case are materially different from the context of *Mu Qi*. In this instant case, the Proposed Resolutions which were sought to be passed during the 2021 AGM were all expressly stated to be for a period of one year. The burden lies on Mr Cheung to show that the Respondents had intended to abuse the requirements under s 33(1) of the BMSMA through the indefinite passing of ordinary, and not 90%, resolution every year. This Mr Cheung could not prove. He asserts that "these installations are evidently of a permanent nature, and it defies belief that these structures are meant to be put up for no more than [one] year".[93] Mr Cheung is referring to the installation of air-conditioning compressors, a shop name and logo, and a light source at the common areas outside Unit 53 and Unit 55 which the Respondents sought to pass in the various motions at [39] above. These structures may appear permanent, but if the Respondents table the resolutions for one year, then they will have to bear the consequences of them being illegal structures after one year, should they be unable to obtain the necessary votes to pass the resolutions for these structures. These structures will thus have to be removed if no further approvals are given. Alternatively, they could propose resolutions for further extensions, but these will also have to depend on whether the Respondents are able to obtain the necessary approvals.

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93 AWS at para 55.

103 I, therefore, accept that the Proposed Resolutions were correctly framed as ordinary motions in accordance with s 33(1)(*a*) of the BMSMA as the Respondents were only seeking for a period of one year.

104 Secondly, Mr Cheung also alleges that the Proposed Resolutions did not accord with the formalities requirement of passing an exclusive use by-law under s 33(2) of the BMSMA as they did not state whether it is MCST 508 or the subsidiary proprietor that is to perform the duties in respect of the common property for which exclusive use is conferred on the subsidiary proprietor.[94] Section 33(2) of the BMSMA states as follows:

> **Exclusive use by-laws**
>
> …
>
> (2) A by-law mentioned in subsection (1) must either provide that —
>
> (*a*) the management corporation continues to be responsible to carry out its duties under section 29(1), at its own expense; or
>
> (*b*) the subsidiary proprietor or proprietors of the lot or lots concerned are responsible for, at the subsidiary proprietor's or subsidiary proprietors' expense, the performance of the duties of the management corporation mentioned in paragraph (a), …

105 Where the exclusive use by-law does not stipulate whether it is the management corporation or the subsidiary proprietor who is responsible, the default rule under s 33(5) of the BMSMA kicks in, *ie*, the subsidiary propriety is responsible. Section 33(5) of the BMSMA states as follows:

> (5) If a by-law does not provide as required by subsection (2)(*a*) or (*b*), the subsidiary proprietor or subsidiary proprietors are responsible at the subsidiary proprietor's or subsidiary proprietors' own expense, for the duties of the management corporation mentioned in subsection (2)(*a*).

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94 AWS at para 60.

106 Indeed, as Prof Teo stated in *Strata Title in Singapore and Malaysia* at para 15.80:

> It may also be pertinent to note that a by-law so made shall either provide that the management corporation shall continue to be responsible for carrying out its duties under section 29(1) of the BMSMA at its own expense or that the subsidiary proprietor(s) of the lot(s) concerned shall be responsible for the performance of such duties of the management corporation at his or their expense. Where the by-law does not so provide, then the subsidiary proprietor(s) shall be responsible, at his or their own expense, for the duties of the management corporation.

107 Finally, Mr Cheung refers to sources which provide guidance on the drafting of resolutions for exclusive use of common property that comply with the requirements of s 33 of the BMSMA (see Hairani Saban, *Strata Living - Governance and Management* (LexisNexis, 2010) at Appendix B-R3 page 331). While it may certainly be good practice to adopt the suggested wording from this guide, it is, as Mr Cheung states, simply a guide. In any event, as I have held at [28] above, the Proposed Resolutions were not passed. Therefore, I need not consider their legality or validity.

108 For the above reasons, I dismiss the Fourth Prayer. I shall now consider the fifth and sixth prayers which Mr Cheung seeks in the OSes.

Order restraining the Respondents from installing kitchen exhaust systems on the Development's common property

109 The fifth prayer which Mr Cheung has sought in OS 808 and OS 809 is as follows ("the Fifth Prayer"):

> An order that [the Respondents] be permanently restrained from installing any kitchen exhaust system and/or ducting on the common property of [the Development] irrespective of any resolution passed and/or bylaw made purportedly approving and/or authorising the same.

The Fifth Prayer effectively seeks to permanently restrain the Respondents from installing any kitchen exhaust system or ducting ("KED") on the common property of the Development. The Fifth Prayer was sought in response to the proposed resolutions by the Respondents in the 1st EGM and the 2nd EGM to be granted exclusive use over the common property walls of the Development and for the installation of a KED for Unit 53 and Unit 55 along the said walls, with the KED to be erected for a period of one year. However, these proposed resolutions were removed from the agenda for the 2021 AGM. This was because the current tenants of Unit 53 and Unit 55 do not require a KED to be installed.[95]

110 The sixth prayer in OS 808 and OS 809 is framed as an alternative to the Fifth Prayer, and is as follows ("the Sixth Prayer"):

> Further and/or alternatively to [the Fifth Prayer] above, an order that [the Respondents] be permanently restrained from installing any kitchen exhaust system and/or ducting on the common property of [the Development] unless [MCST 508] has made a bylaw pursuant to a 90% resolution conferring on [the Respondents] exclusive use and enjoyment of that part of the common property in accordance with section 33(1)(*c*) of the BMSMA.

Similar to the Fifth Prayer, the Sixth Prayer effectively seeks to permanently restrain the Respondents from installing any KED on the common property of the Development, unless the requirements under s 33(1)(*c*) of the BMSMA are met, *ie*, that the by-law is passed pursuant to a 90% resolution. I note the mandatory nature in which the Sixth Prayer is phrased. Therefore, regardless of the duration for which the KED would be installed, Mr Cheung effectively requires that any exclusive use by-law passed to this effect be subject to a 90% resolution.

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95 OS 808: JTSA [25]; OS 809: CYLSA [25]; AWS at para 106.

The parties' submissions

(1) The Applicant's case

111 Mr Cheung submits that the Fifth Prayer is necessary to prevent the Respondents from proposing similar resolutions for the permanent installation of KEDs in future general meetings. He contends that the Proposed Resolutions intend for the KEDs to be installed for just one year in order to circumvent the requirements under s 33 of the BMSMA. Mr Cheung refers to an incident in which the Respondents had previously installed a KED for Unit 53 on common property for almost 15 years, without any prior authorisation at a general meeting. The KED was eventually removed by MCST 508 in 2019. He submits that this shows the possibility that the Respondents will once again attempt to circumvent the requirements under the BMSMA in an attempt to install such similar permanent structures at the Development's common area.[96]

112 Mr Cheung further submits that there is simply no place for a KED on the common area of the Development. Mr Cheung alleges that the installation of a KED would detract from the appearance of the building. Further, it causes disamenity to the residential units as it discharges fumes and grease to the open roof-top terraces and/or gardens of the residential units. The KED also poses a tremendous fire hazard to residents.[97] The KED, therefore, interferes unreasonably with the harmonious enjoyment which the subsidiary proprietors of the various affected units at the Development are entitled to.[98]

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96 AWS at paras 107 and 110.

97 AWS at paras 114 and 115.

98 AWS at para 116.

113 Therefore, even if the Respondents were to obtain the appropriate by-law passed under s 33 of the BMSMA to have exclusive use over the common property to install a KED, this does not change the fact that any KED installed would be an illegal structure. This is because the installation of a KED would cause disamenity, nuisance and be a fire hazard. Thus, it would be in breach of s 63 of the BMSMA.[99]

114 Mr Cheung's submission in respect of the Sixth Prayer is that any installation of KEDs on the common areas of the Development would have to be subject to the requirements laid out in s 33 of the BMSMA.[100] Mr Cheung further relies on Ang J's decision in *Mu Qi* in support of the position that, in relation to works of a permanent nature it would be improper to confer exclusive use indefinitely by the passing of special resolutions every three years instead of passing a 90% resolution under s 33 of the BMSMA.[101] Accordingly, Mr Cheung submits that a KED is likely to be an installation of a permanent nature, and would, therefore, have to satisfy the requirement under s 33(1)(*c*) of the BMSMA.

(2) The Respondents' case

115 The Respondents submit that the Fifth Prayer would be an undue curtailment of their statutory rights as subsidiary proprietors under paras 12 and 14 of the First Schedule to the BMSMA to put forth any motion they wish for the general body's consideration.[102]

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99 AWS at para 117.

100 AWS at paras 48–50.

101 AWS at paras 51–52.

102 RWS at paras 22–23.

116 As for the Sixth Prayer, the Respondents submit that the requirement of a 90% resolution should not be imposed in relation to any motions for the installation of KEDs. This is because such an order would be inconsistent with s 33 of the BMSMA, which expressly permits differing periods of exclusive use of common property based on the percentages of approvals obtained from the general body.[103] According to the Respondents, the Sixth Prayer, if granted, would be an undue interference with the statutory rights of subsidiary proprietors to put up motions provided for within paras 12 and 14 of the First Schedule to the BMSMA or with the general body's decision making power provided within the BMSMA.[104]

My analysis

(1) The Fifth Prayer

117 I do not accept Mr Cheung's submission that the Fifth Prayer should be granted.

118 It is important to point out that any motion for the installation of KEDs at the Development was not tabled in the Notice and Agenda for the 2021 AGM, although they were tabled in the agenda for the 1st EGM and the 2nd EGM. Mr Cheung accepts this in his submission.[105] Hence, Mr Cheung is effectively seeking, in the Fifth Prayer, a pre-emptive and permanent prohibition that would preclude the Respondents from proposing any motions in relation to the installation of KEDs at the general meeting.

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103 RWS at para 37.

104 RWS at para 39.

105 AWS at para 106.

119 I find this to be wholly without any legal basis or merit. The Court does not have the power to make such a far-reaching and invasive order to restrict the rights of the subsidiary proprietors to deal with their property and the common areas linked to their property, subject to any requirements prescribed under the BMSMA. For instance, it may be entirely possible that the Respondents would, in the near future, seek to lease out the commercial units at the Development to a food and beverage business establishment which may require the use of KEDs. Indeed, even Mr Cheung concedes in his submission that planning permission has been granted to Unit 53 at the Development for restaurant use.[106] This may contemplate the possibility that a KED would be installed. It may also be entirely possible that the technology relating to KEDs would have advanced to the extent that the various issues which Mr Cheung has alleged, *ie,* that the KEDs would cause disamenity, nuisance and pose a fire hazard, would either be significantly minimised or entirely removed. The KED may also be aesthetically and creatively designed to enhance or complement the façade of the Development. Furthermore, it is possible that, should the Respondents table the motion to install the KED in the near future, they may have successfully convinced all the other subsidiary proprietors, other than Mr Cheung and his ally, Mr Param, to support the motion. If this happens it would be difficult for Mr Cheung to argue that the installation of KEDs at the Development would be in violation of ss 63(*c*) and 63(*d*) of the BMSMA.

120 Whatever the case may be, granting such an order would effectively (and unduly) curtail the rights of the Respondents and the rights of their lessees, to deal with the property in any way which they see fit, subject to the provisions

106 5th CPCA OS 808 p 62.

under the BMSMA. Granting such an order is simply unrealistic, impractical, and ultimately unfair to the Respondents.

121 This brings me to the next point raised by Mr Cheung on the alleged illegality of the installation of KED devices. Mr Cheung refers to ss 63(*c*) and 63(*d*) of the BMSMA, which state as follows:

> **Duties of subsidiary proprietors and other occupiers of lots**
>
> **63.** A subsidiary proprietor, mortgagee in possession (whether personally or by any other person), lessee or occupier of a lot must not —
>
> …
>
> (c) use or enjoy the common property in such a manner or for such a purpose as to interfere unreasonably with the use or enjoyment of the common property by the occupier of any other lot (whether that person is a subsidiary proprietor or not) or by any other person entitled to the use and enjoyment of the common property; or
>
> (d) use or enjoy the common property in such a manner or for such a purpose as to interfere unreasonably with the use or enjoyment of any other lot by the occupier of the lot (whether that person is a subsidiary proprietor or not) or by any other person entitled to the use and enjoyment of that lot.

122 Sections 63(*c*) and 63(*d*) of the BMSMA state that a subsidiary proprietor's use or enjoyment of the common property must not be in a manner or for a purpose that would interfere unreasonably with the use or enjoyment of the common property or any other lot by other subsidiary proprietors.

123 I reiterate that the Respondents have not tabled any motions on the installation of any KEDs. Thus, it is difficult to determine whether the mere fact of the installation of KEDs in itself would lead to a violation of ss 63(*c*) and

63(*d*) of the BMSMA. As I have said above at [119], I cannot rule out the possibility that any KED's technology proposed to be installed at the Development would be such that it does not give rise to the concerns raised by Mr Cheung. It would, therefore, be too premature for the Court to make any determination to this effect in respect of Mr Cheung's submission that the Fifth Prayer should be granted for the reason that the installation of KEDs at the Development would be in violation of ss 63(*c*) and 63(*d*) of the BMSMA.

124 I also reiterate my holdings at [73]–[74] above that a subsidiary proprietor has a right to put forth any motion which he or she wishes for the general body's consideration. Such a right is statutorily enshrined in paras 12 and 14 of the First Schedule to the BMSMA. To pre-emptively preclude the Respondents from submitting motions to be voted on at a general meeting would be incompatible with this right. I, therefore, dismiss the Fifth Prayer.

(2) The Sixth Prayer

125 I also do not accept Mr Cheung's submission that the Sixth Prayer should be granted. To impose a mandatory requirement of a 90% resolution in respect of motions for the exclusive use of KEDs in the common property, regardless of the actual duration of use as stated in the motion, may be in contravention of the BMSMA. The statutory regime regarding the passing of exclusive use by-laws as prescribed under s 33 of the BMSMA makes reference to the duration of exclusive use stated in the resolution and the corresponding percentage of votes required to pass the resolution.

126 Mr Cheung seeks to rely on the decision of *Mu Qi* in support of his view that the 90% resolution requirement as prescribed by s 33(1)(*c*) of the BMSMA must be adhered to where an exclusive use by-law sought to be passed relates

to the installation of structures that are likely permanent in nature. I have held above at [98]–[103] that Mr Cheung's interpretation of the holding in *Mu Qi* is incorrect.

127 To reiterate, Ang J held that the by-law sought to be passed in *Mu Qi* offended the requirement set out in s 33 of the BMSMA as it does not identify, amongst others, the period of time over which the exclusive use, or special privilege accorded, should last (*Mu Qi* at [66]). In the absence of any express wording in the by-law to this effect, Ang J turned to examine the circumstances of the case, including the nature of the installations and alterations, before concluding that the installations were more likely than not to be of a permanent nature. It, therefore, follows that, where the by-law indicates the duration for which the exclusive use of the common area is intended, it would not be necessary, and would indeed be contrary to s 33 of the BMSMA, to continue to impose a 90% resolution for passing such by-laws.

128 It would be legally incorrect to require that all exclusive use by-laws on the installation of KEDs at the Development's common area be passed only upon a 90% resolution being obtained at any subsequent general meetings regardless of the duration for which the KED is to be installed. Accordingly, I dismiss the Sixth Prayer.

Order restraining the Respondents from engaging Legal Solutions

129 The seventh prayer which Mr Cheung seeks in OS 808 and OS 809 is as follows ("the Seventh Prayer"):

> An order that [the Respondents] be restrained from appointing, engaging and/or continuing to engage [Legal Solutions] (who are the [Respondents'] personal solicitors in the present action) to act as solicitors for [MCST 508].

130 The Seventh Prayer concerns the propriety of engaging the Respondents' personal solicitors, Legal Solutions, to act for MCST 508.

The parties' submissions

(1) The Applicant's case

131 The crux of Mr Cheung's submission is that Legal Solutions is placed in a position of a conflict of interest in acting for Mdm Cheong and Mr Chang and MCST 508. According to Mr Cheung, Legal Solutions was instructed by the Respondents to act as MCST 508's solicitors for the drafting of the 2021 AGM Notice and Agenda, and to perform as the post-box for proxy forms. Further, Legal Solutions was also Mdm Cheong's and Mr Chang's personal solicitors in OSS 3. Legal Solutions continues to act for Mdm Cheong and Mr Chang in their claims against MCST 508 and counterclaims by MCST 508 in OSS 3 that remain alive and outstanding.[107] Thus, Mr Cheung alleges that Mdm Cheong and Mr Chang remain clients of Legal Solutions by virtue of these purportedly outstanding and unresolved claims and counterclaims in OSS 3.[108] Mr Cheung, therefore, says that Mdm Cheong and Mr Chang were and are, at all times, clients of Legal Solutions, even when Mdm Cheong became a member of the council.

132 Mr Cheung further submits that Legal Solutions failed to take into account MCST 508's duties and interests. This is evident from the fact that the resolutions sought to be passed at the 2021 AGM, which would benefit only Unit 53 and Unit 55, were included without a written requisition for the same. Further, these resolutions which sought to confer exclusive use over common

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107 AWS at paras 125.

108 AWS at para 131–133.

property in favour of Unit 53 and Unit 55 did not comply with the requirements of s 33 of the BMSMA.[109]

(2) The Respondents' case

133 The Respondents, on the other hand, submit that Legal Solutions is not in a conflict-of-interest situation. First, there are no ongoing proceedings involving the Respondents and MCST 508, in which Legal Solutions is acting for the Respondents. In particular, the District Judge in OSS 3 had decided that if parties wished to pursue their residual claims, such residual claims should be taken out afresh through a writ action. In any case, Legal Solutions had merely prepared the Notice and Agenda for the 2021 AGM and assisted to send out these Notices and receive the proxy forms or documents. Such broad functions do not relate to the previous residual claims of Mdm Cheong or MCST 508 in OSS 3. Nor did MCST 508 suffer prejudice throughout the 2021 AGM as Legal Solutions played no part in the voting process.[110] Second, the Respondents, as council members, are not restricted in choosing the solicitors whom they wish to act for MCST 508. Nothing in ss 58 and 59 of the BMSMA imposes any restrictions on the Respondents to the same.[111]

My analysis

134 At the outset, I should point out that any allegations made that a legal professional is potentially in breach of his ethical duties should be brought to the attention of the Law Society of Singapore ("LSS"). It is the LSS, and not the court, that ought to be the first port of call to raise such concerns. Counsel for

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109 AWS at paras 125.3.

110 RWS at paras 110 and 111.

111 RWS at paras 113–114.

the Applicant accepts this to be the case. However, the Court was informed that Mr Cheung has not taken any steps to refer the matter to the LSS.

135 In any event, I do not accept Mr Cheong's submission in support of the Seventh Prayer.

136 First, the fact of Legal Solutions acting for both Mdm Cheong and Mr Chang as well as MCST 508 *on different matters and across different periods of time* does not *prima facie* amount to a violation of the rule on conflict of interest between two or more clients. Mr Cheung refers the Court to r 20 of the Legal Profession (Professional Conduct) Rules 2015 ("PCR 2015"), which sets out the rule on conflict of interest between two or more clients:

> **Conflict, or potential conflict, between interests of 2 or more clients**
>
> …
>
> (2) Paragraphs (3), (4) and (7) apply where —
>
> (*a*) a legal practitioner or law practice intends to act for 2 or more different parties (each called in those paragraphs a relevant party) to a matter or transaction; and
>
> (*b*) a diversity of interests exists, or may reasonably be expected to exist, between those parties.
>
> …
>
> (5) Paragraphs (6) and (7) apply where —
>
> (*a*) a legal practitioner or law practice acts for 2 or more different parties (each called in those paragraphs a relevant party) to a matter or transaction; and
>
> (*b*) a diversity of interests arises between those parties during the course of the retainer for the matter or transaction.

137 Rule 20(2) of the PCR 2015 states that rr 20(3), 20(4) and 20(7) of the PCR 2015 apply in the case of a potential conflict of interest, whereas r 20(5) of the PCR 2015 states that rr 20(6) and 20(7) of the PCR 2015 apply in the case of an actual conflict of interest. Whether a potential or an actual conflict of interest is alleged under r 20 of the PCR 2015, rr 20(2) and 20(5) of the PCR 2015 state that it is necessary to show that the conflict of interest alleged arises from the fact that "a legal practitioner or law practice acts for *2 or more different parties* … to *a matter or transaction*" [emphasis added].

138 In other words, it is necessary to establish that: (a) the law firm in question is acting for at least two different parties; and (b) the parties are instructing the law firm on one specific matter or transaction at any given time, before turning to consider the specific requirements relating to a potential or an actual conflict of interest.

139 In the present case, it is true that Legal Solutions is acting for MCST 508 in relation to the 2021 AGM, and it is also acting for both Mdm Cheong and Mr Chang in OSS 3. However, the matters which Legal Solutions is engaged to act in are entirely distinct. In relation to Legal Solutions' engagement by MCST 508, this is in respect of the 2021 AGM. Legal Solutions' job scope was confined to the preparation of the Agenda and Notice for the 2021 AGM, and to assist to send out the Notices and receive the proxy forms or documents for the same. As for Legal Solutions' engagement by Mdm Cheong and Mr Chang, this is in respect of legal representation in OSS 3, and the disputes raised in OSS 3 are entirely separate and distinct from the 2021 AGM. I also note that the matters in relation to OSS 3 have already concluded, with the District Judge rendering his written grounds on 28 December 2020.[112] These matters being

[112] Applicant's BOA at Tab 9.

entirely distinct and taking place across different periods in time, I do not see how the requirements under either r 20(2)(*a*) or r 20(5)(*a*) of the PCR 2015 are satisfied.

140 In any event, and for argument's sake, even if the Court were to accept that the rules on potential or actual conflict of interests are engaged under r 20 of the PCR 2015, it remains that a breach would only be made out if several further requirements are established. In respect of a potential conflict of interest, rr 20(3) and 20(4) of the PCR 2015 state as such:

> (3) Before accepting any instructions from any relevant party in relation to the matter or transaction, the legal practitioner or law practice —
>
> (*a*) must communicate directly with each relevant party —
>
> (i) to explain to that relevant party —
>
> (A) how the interests of all or any of the relevant parties diverge or may diverge;
>
> (B) how the legal practitioner or law practice may be prevented from disclosing to a relevant party information obtained from another relevant party, despite the relevance of the information to the matter or transaction; and
>
> (C) how the legal practitioner or law practice may be prevented from giving to a relevant party any advice that is prejudicial to another relevant party;
>
> (ii) to inform that relevant party that the legal practitioner or law practice must cease to act in the matter or transaction if, in the course of the retainer, the legal practitioner or law practice has difficulty in advising on and dealing with the relevant parties' divergent interests competently, evenly and consistently;

(iii) to receive and deal with any queries which that relevant party may have on the matter or transaction, or on the risks of all or any of the relevant parties being jointly represented in the matter or transaction by the legal practitioner or law practice; and

(iv) to ascertain precisely the intentions of that relevant party;

(*b*) in the case of a transaction that is ostensibly or potentially disadvantageous to a particular relevant party, must also communicate directly with the relevant party —

(i) to explain the relevant party's position before the transaction, and how the relevant party's position will or may be altered to the relevant party's detriment by the transaction;

(ii) to verify whether any instructions purportedly given on behalf of the relevant party do in fact reflect the relevant party's intentions; and

(iii) to remove any doubt as to whether the relevant party may have been misled by, or may be acting under the undue influence of, another person;

(*c*) must advise each relevant party to obtain independent legal advice;

(*d*) if a particular relevant party does not obtain independent legal advice, must obtain a written confirmation from the relevant party, or maintain a written record, that the relevant party declines to do so; and

(*e*) must obtain each relevant party's informed consent in writing to the legal practitioner or law practice acting for all relevant parties, despite the relevant parties' divergent interests.

(4) The legal practitioner or law practice —

(*a*) must throughout the course of the retainer for the matter or transaction —

> (i) continue to be vigilant of any conflict or potential conflict between the interests of any of the relevant parties; and
>
> (ii) inform each relevant party of any conflict or potential conflict that arises or may arise between the interests of any of the relevant parties; and
>
> (*b*) must cease to act in the matter or transaction if, in the course of the retainer, the legal practitioner or law practice has difficulty in advising on and dealing with the relevant parties' divergent interests competently, evenly and consistently.

141 In respect of an actual conflict of interest, r 20(6) of the PCR 2015 states as follows:

> (6) The legal practitioner or law practice —
>
> (*a*) must, throughout the remainder of the course of the retainer for the matter or transaction —
>
> (i) continue to be vigilant of any conflict or potential conflict between the interests of any of the relevant parties; and
>
> (ii) inform each relevant party of any conflict or potential conflict that arises or may arise between the interests of any of the relevant parties; and
>
> (*b*) must cease to act in the matter or transaction if, in the course of the retainer, the legal practitioner or law practice has difficulty in advising on and dealing with the relevant parties' divergent interests competently, evenly and consistently.

142 No evidence was adduced to show that there was a breach of any of these requirements. Indeed, it is unclear from Mr Cheung's submission as to how he is seeking to establish that Legal Solutions has failed to discharge its obligations under these provisions. Specifically, how the interests between MCST 508 and

the respondents in OSS 3 have diverged to such an extent that there exists a potential or an actual conflict of interest.

143 Further, Mr Cheung relies heavily on the allegation that there exists some unresolved dispute between MCST 508 and the respondents in OSS 3. The presence of such unresolved disputes means that there are live disputes between MCST 508 and the respondents in OSS. Thus, Mr Cheung submits that the parties' interests have so diverged that Legal Solutions cannot possibly act for both.

144 I do not agree with Mr Cheung's submission. In my view, the District Judge in OSS 3 made no orders as to how the parties are to proceed with the unresolved claims and counterclaims. In the District Judge's words (see *Cheong Yoke Ling* (SGDC) at [7] and [123]):

> I granted the OS in part, but also found that the adjudication of several claims and counterclaims required the resolution of intensely factual matters that were not suited for adjudication via an originating summons action, and that they were to proceed via writ action. After issuing my oral grounds, I asked parties to submit on the specific orders that I should make in relation to the resolution of those claims and counterclaims. As parties were broadly of the view that no specific orders were required, I did not grant any specific directions, save that the claims and counterclaims are to be resolved via writ action otherwise than through the OS.
>
> …
>
> Because of these intensely factual matters which I am unable to resolve on affidavit evidence or to which no evidence at all has been adduced, I am unable to decide the following reliefs being claimed by parties:
>
> (a) The Applicants' claim for the recovery of $6,276 paid to the MCST under protest;
>
> (b) The Applicants' claim for damages for the 2019 Fixtures Removal;

> (c) The Respondents' counterclaim for a declaration that the 2004 Minutes are a forgery;
>
> (d) The Respondents' counterclaim for a mandatory injunction to remove the rest of the Fixtures and effect other rectification and reinstatement works.
>
> 124 These claims and counterclaims would have to proceed by writ action. After I issued my oral grounds on 24 November 2020, I requested parties to submit on the orders I should make. *I considered that there were several options open to parties – the present OS could be converted into a writ action, or parties could file a fresh writ action to deal with the claims and counterclaims. Parties were broadly of the view that no specific orders were required*, though the Applicants informed me that it would bring its claims into DC 2809, which was a suit brought by Ms Aroul against the Applicants, in relation to some of the same Fixtures that are the subject of the OS.
>
> 125 *I therefore did not grant any specific orders, save for ordering that the claims and counterclaims are to be resolved* via *writ action otherwise than the through the OS*. …
>
> [emphasis added]

145 A key part of the alleged unresolved claims and counterclaims in OSS 3 related to the installation of fixtures in and around Unit 53's common area, including an air-conditioner compressor, liquified petroleum gas system and a KED system (*Cheong Yoke Ling* (SGDC) at [96]). Quite apart from stating that these unresolved claims and counterclaims could only be resolved by way of a trial and not through the originating summons regime, the District Judge had observed that there were two options open to the parties: (a) that the unresolved matters in OSS 3 could be converted into a writ action; or (b) that the parties could simply file a fresh writ and bring these unresolved claims and counterclaims in subsequent proceedings. Having been presented with these two options, the parties chose the latter. The District Judge accordingly made no further orders on these matters. As far as OSS 3 is concerned, therefore, the matters therein have concluded. This means that, if the parties wish to pursue

the dispute any further, they are to bring these claims and counterclaims by way of a writ.

146 However, the fact that no follow-up action was pursued by either parties from OSS 3 may suggest that any so-called live or outstanding dispute may have been resolved, even if tentatively. It also follows from this that Mdm Cheong and Mr Chang are no longer Legal Solutions' clients in respect of their disputes against MCST 508 in OSS 3. Accordingly, in so far as Mr Cheung relies on OSS 3, there does not exist a divergence of interest between MCST 508 and the respondents that would place Legal Solutions in a position of conflict of interest.

147 There appears to be outstanding disputes between the respondents (*ie*, Mdm Cheong and Mr Chang) and Ms Aroul in DC 2809 after the conclusion of OSS 3. I have described the subject matter and the procedural history of the parties' dispute in brief at [35]–[36] above. Mr Cheung submits that Mdm Cheong's and Mr Chang's closing submissions in DC 2809, demonstrate the existence of unresolved contentious claims and counterclaims, and there are conflicting interests between Mdm Cheong and Mr Chang on the one hand and MCST 508 on the other in OSS 3. This is because the said closing submissions alleged that MCST 508 had wrongfully removed the KED, despite MCST 508 not being a party to DC 2809.[113] Mr Cheung, therefore, submits that, by acting for both MCST 508 in the 2021 AGM and for Mdm Cheong and Mr Chang in DC 2809, Legal Solutions is placed in a position of conflict of interest.

148 The mere fact that MCST 508 was referred to in the closing submissions for DC 2809 does not mean that Legal Solutions is placed in a conflict-of-interest situation. First, as Mr Cheung rightly noted, MCST 508 was not a party

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113 AWS at para 133.

in DC 2809. Legal Solutions was not acting for two different parties in the same matter, which is a pre-requisite for establishing a conflict of interest under r 20 of the PCR 2015, as I have held at [137] above.

149 A closer look at the various portions of the closing submissions which Mr Cheung relies on shows that any reference to matters involving MCST 508 was merely meant to provide the context which supported Mdm Cheong's and Mr Chang's defence against the claims brought by Ms Aroul. Nothing that was brought up in the closing submissions would have the effect of prejudicing MCST 508's legal rights.

150 In any event, none of this detracts from the fundamental point which I have emphasised at [136] above, namely that the matters which Legal Solutions was engaged to act in relate to different matters and different periods of time. Indeed, the dispute in DC 2809 relates to the rights between Mdm Cheong, Mr Chang and Ms Aroul as subsidiary proprietors *inter se* and also relates to disputes that arose prior to 2019. Separately, Legal Solutions was engaged to act for MCST 508 in respect of matters relating to the 2021 AGM. Clearly, both the nature and period of work which Legal Solutions was engaged in differ.

151 I, therefore, do not accept Mr Cheung's submission that the fact that MCST 508 was referred to in the closing submissions in DC 2809 drafted by Legal Solutions, and that Legal Solutions acted for MCST 508 in respect of matters relating to the 2021 AGM, place Legal Solutions in a position of conflict of interest as Mr Cheung alleges. There may exist a live dispute, but that dispute is between the subsidiary proprietors of the Development, and not MCST 508. In any case, that dispute relates to matters that are entirely different from Legal Solutions' scope of responsibility for which they are engaged to undertake in respect of the 2021 AGM.

152 It appears that Mr Cheung's allegations made in support of the Seventh Prayer exemplify a case of the pot calling the kettle black. It is hypocritical and it displays double standards on Mr Cheung's part. While Mr Cheung alleges that Legal Solutions, by acting for both the Respondents and MCST 508 in different matters and at different times, *ie*, in OSS 3 and for matters relating to MCST 508, is placed in a position of conflict of interest, the same can also be said for himself. Indeed, as the Respondents have pointed out, Aequitas have also acted for Mr Cheung and MCST 508 in various other matters. Specifically, Aequitas acted as MCST 508's legal representatives in CA 6, during which time Mr Cheung himself was a council member and appointed Aequitas. And now Mr Cheung has engaged Aequitas to represent him in the OSes. By Mr Cheung's standard, Aequitas would also be in a position of conflict of interest in respect of its representation of MCST 508 in CA 6 and its representation of Mr Cheung in the OSes.

153 The Seventh Prayer seeks to preclude the Respondents from engaging Legal Solutions to act for MCST 508. This seems to interfere with MCST 508's powers to act autonomously in engaging its own solicitors.

154 It is well established that a management corporation of a strata title plan is a legal entity separate from the subsidiary proprietors of the lots comprised in the strata title plan (see *Yap Sing Lee v Management Corporation Strata Title Plan No 1267* [2011] 2 SLR 998 at [26]). This is also made clear in ss 24(1)(*b*) and 24(2) of the BMSMA, which state as follows:

> **Constitution of management corporation**
>
> **24.**—(1) The management corporation constituted by virtue of the Land Titles (Strata) Act 1967 in respect of a strata title plan —
>
> …

> (*b*) is a body corporate capable of suing and being sued and having perpetual succession and a common seal; …
>
> …
>
> (2) A management corporation for a strata title plan may —
>
> (*a*) sue and be sued on any contract made by it;
>
> (*b*) sue and be sued in respect of any matter affecting the common property;
>
> (*c*) sue in respect of any loss or damage suffered by the management corporation arising out of a contract or otherwise; and
>
> (*d*) be sued in respect of any matter connected with the parcel for which the subsidiary proprietors are jointly liable.

155 Sections 24(1)(*b*) and 24(2) of the BMSMA thus make clear the separate and distinct legal personality of a management corporation of a strata title plan. The management corporation of a strata title plan has the capacity to sue and be sued as well as to enter into contractual relationships with third parties. Indeed, a management corporation comprises the subsidiary proprietors collectively, has a flow-through liability structure, is subject to limited agency in the case of structural defects, and is empowered to represent its subsidiary proprietors in legal proceedings (see *Fu Loong Lithographer Pte Ltd and others v Mok Wing Chong (Tan Keng Lin and others, third parties)* [2018] 4 SLR 645 at [75]). However, as with a separate legal entity, a management corporation of a strata title plan has to act through its agent. That is why, for example, a managing agent may be appointed under s 67 of the BMSMA to facilitate the day-to-day administration of the strata title scheme. But in some cases, the subsidiary proprietors themselves may choose to volunteer for the task of running the strata title scheme, and to also sit on the council of the management corporation.

156 In the present case, the Respondents act as MCST 508's agents through their position as members of the council. Hence, MCST 508 is not precluded from engaging Legal Solutions, unless there are restrictions imposed on the council. The relevant restrictions in this regard are ss 58 and 59 of the BMSMA:

> **Council's decisions to be decisions of management corporation**
>
> **58.**—(1) Subject to the provisions of this Act, the decision of a council on any matter, other than a restricted matter, is the decision of the management corporation.
>
> (2) Even though a council holds office, the management corporation may in a general meeting continue to exercise or perform all or any of the powers, duties and functions conferred or imposed on the management corporation by this Act or the by-laws.
>
> (3) A council must not make a decision on any matter if, before the decision is made, written notice has been given to the secretary of the council by subsidiary proprietors who altogether own not less than one-third of the lots in the subdivided building concerned that the making of the decision is opposed by those subsidiary proprietors, and any decision, if made by the council, has no force or effect.
>
> (4) In subsection (1), "restricted matter", in relation to a council of a management corporation, means —
>
> (*a*) any matter a decision on which may, in accordance with any provision of this Act or the by-laws, only be made by the management corporation pursuant to a unanimous resolution, special resolution, 90% resolution, comprehensive resolution, resolution by consensus or in a general meeting of the management corporation, or only by the council at a meeting; and
>
> (*b*) any matter referred to in section 59 and specified in a resolution of that management corporation passed for the purposes of that section.
>
> **Restrictions imposed on council by management corporation**
>
> **59.** A management corporation may in a general meeting decide, by ordinary resolution, what matters or class of matters (if any) must be determined only by the management corporation in a general meeting.

157 Section 58 of the BMSMA thus confers upon the management corporation's council the power to decide on any matter, and that decision is the decision of the management corporation. The council's power to make decisions on behalf of the management corporation is then restricted in two situations. The first situation is under s 58(3) of the BMSMA. That provision restricts the council from making a decision on behalf of the management corporation in the following circumstances: (a) before the council makes a decision; (b) the subsidiary proprietors give written notice to the council's secretary opposing the making of the decision on that matter; and (c) the subsidiary proprietors must altogether own not less than one-third of the lots in the subdivided building concerned.

158 The second situation is under s 58(1) read with s 58(4) of the BMSMA. Under those provisions, a management corporation may not decide on a matter which is defined as a "restricted matter". A "restricted matter" includes the following: (a) a matter which is stated either under the BMSMA or a by-law to be decided pursuant to a unanimous resolution, special resolution, 90% resolution, comprehensive resolution, resolution by consensus or in a general meeting of the management corporation, or only by the council at a meeting; or (b) a matter which has been decided in a general meeting and by way of ordinary resolution as a matter that can be decided only by the management corporation in a general meeting.

159 The decision to appoint Legal Solutions as MCST 508's solicitors is not a matter which the council is precluded from deciding on. Mr Cheung has not sought to oppose MCST 508's appointment of Legal Solutions to act for MCST 508, neither does he have the capacity to do so since he would not satisfy the requirement of being "one-third of the lots" required under s 58(3) of the BMSMA. Further, the matter of appointing Legal Solutions as MCST 508's

solicitors is also not one which falls within the definition of a "restricted matter" under s 58(1) read with s 58(4) of the BMSMA.

160 Accordingly, I dismiss the Seventh Prayer.

Declaration for Mdm Cheong and Mr Tanu to use wet-ink signatures

161 The Ninth Prayer in OS 808 and the Twelfth Prayer in OS 809 relate to Mr Cheung seeking a declaration that Mdm Cheong and Mr Tanu use only wet-ink signatures in signing all MCST's communications, payment authorisations and cheques ("the Signature Declaration"). The Signature Declaration reads as follows:

> A declaration that so long as [the Respondents are] council member[s] of [MCST 508], [they are] under a duty to append [their] wet ink signature[s] on all MCST [508's] communications, payment authorisations and cheques.

The parties' submissions

(1) The Applicant's case

162 Mr Cheung submits that the Signature Declaration is necessary to ensure that Mdm Cheong and Mr Tanu would be held accountable for their actions in running the council. This is especially so for Mr Tanu, who lives in Indonesia. He will be largely absent from personally managing the affairs of MCST 508 and would not be checking on Mdm Cheong over MCST 508's finances. Requiring Mr Tanu to append his wet-ink signature would, in Mr Cheung's view, leave no doubt as to whether any document was signed by only Mdm Cheong or Mr Tanu or both. This is important if there is any litigation over MCST 508's documents.[114]

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114 AWS at paras 182 and 185.

(2) The Respondents' case

163 The Respondents submit that if accountability is Mr Cheung's sole concern, then the use of electronic signatures will still allow for this outcome.[115] Further, there is no legal basis for Mr Cheung to seek the Signature Declaration. MCST 508's general body has not placed any restrictions or requirements on the council members for them to use only wet-ink signatures. Neither has Mr Cheung resorted to the mechanism under s 58(3) of the BMSMA to impose such a restriction on the Respondents.[116]

My analysis

164 I disagree with Mr Cheung's submission that the Court ought to grant the Signature Declaration. There is no legal basis to seek the wet-ink signatures. There is also no legal significance as to whether MCST 508's documents are signed by way of wet-ink signatures or electronic signatures. The adoption of electronic signatures is a common business practice in this age and time. Further, given that Mr Tanu is currently residing abroad, it would be impractical to insist on wet-ink signatures. I agree with the Respondents that there would be unnecessary waste of time and costs in having to courier documents to and from Indonesia for Mr Tanu's signature. To permit Mr Cheung's application for the Signature Declaration is to ask the Court to micromanage MCST 508's conduct in its day-to-day administrative affairs, which is not desirable.

165 Mr Cheung also submits that Mr Tanu is a council member and that it is impermissible for Mr Tanu to put in place a system where Mdm Cheong is the sole signatory for MCST 508's cheques. It may be prudent not to have a sole

115 RWS at paras 94.

116 RWS at paras 95–98.

signatory to the issuance of MCST 508's cheques. This was done in this case for practical reason, at the expense of checks and balances, as Mr Tanu was residing in Indonesia. This may not comply with good governance. But there is no provision in the BMSMA that disallows the sole signatory of a management corporation's cheques. Mr Cheung should raise his concern within the framework of the BMSMA instead of asking the Court to micromanage the operation of MCST 508.

166 I, therefore, find that there is no utility in granting this declaration. Accordingly, I dismiss the prayers relating to the Signature Declaration.

Orders seeking the removal of Mdm Cheong and Mr Tanu as council members for alleged breaches of their duties as council members

167 Mr Cheung seeks, through the Tenth Prayer in OS 808 and Thirteenth Prayer in OS 809, declarations that Mdm Cheong and Mr Tanu have breached their duties, or failed to discharge their duties as council members ("the Breach Declaration"). The Breach Declaration as framed in OS 808 and OS 809 is as follows:

> OS 808
>
> 10. A declaration that [Mr Tanu] is in breach of his duties as a council member of [MCST 508] and/or has failed to discharge his duties as a council member of [MCST 508] and/or is unfit to be a council member of [MCST 508].
>
> OS 809
>
> 13. A declaration that [Mdm Cheong] is in breach of her duties as a council member of [MCST 508] and/or has failed to discharge her duties as a council member of [MCST 508] and/or is unfit to be a council member of [MCST 508].

168 Mr Cheung also seeks, through the Eleventh Prayer in OS 808 and the Fourteenth Prayer in OS 809, an order for the removal of Mdm Cheong and

Mr Tanu as council members ("the Removal Orders"). The Removal Orders are as follows:

> OS 808
>
> 11. An order that [Mr Tanu] be removed as a council member of [MCST 508].
>
> OS 809
>
> 14. An order that [Mdm Cheong] be removed as a council member of [MCST 508].

The Court's powers to make the Removal Orders

(1) The parties' submissions

169 At the outset, the Respondents raise the issue of whether, assuming Mr Cheung is able to satisfy the Court as to the Breach Declaration, the Court has the power to grant the Removal Orders.

(A) THE APPLICANT'S CASE

170 Mr Cheung submits that the Court does have the power to grant the Removal Orders for the following reasons. First, the Court's power to grant the Removal Orders flows from s 18 of the SCJA read with para 14 of the First Schedule to the SJCA. Second, there is no provision in the BMSMA which ousts the Court's jurisdiction and power to order the removal of Mdm Cheong and Mr Tanu as council members under the SCJA. Finally, Mr Cheung also relies on s 123 of the BMSMA, which states that subsidiary proprietors continue to have rights under general law apart from the BMSMA, in submitting that the Court does have the power, pursuant to that provision, to make the Removal Orders.[117]

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117 AWS at paras 190–195.

(B) THE RESPONDENTS' CASE

171 The Respondents, on the other hand, submit that the Court does not have such a power. They rely on the Second Reading of the Building Maintenance and Strata Management Bill and submit that Parliament's intention in enacting the BMSMA was to create a framework of self-governance in respect of strata developments. The management corporation elected by the subsidiary proprietors is made the supreme decision-making body in the strata development.[118] The Respondents also refer to s 54 of the BMSMA, which permits the removal of council members, as a specific example of this self-governing framework. They argue that s 54 of the BMSMA does not permit that the removal of Mdm Cheong and Mr Tanu be done by way of a Court order. In other words, the grounds under which Mdm Cheong and Mr Tanu may be removed as council members are limited to the statutorily prescribed grounds under s 54 of the BMSMA. Therefore, the Respondents submit that the Court does not have the power under s 18 of the SCJA read with para 14 of the First Schedule to the SCJA to order the removal of council members.[119]

172 Finally, in so far as reliance is placed on s 18 of the SCJA read with para 14 of the First Schedule to the SCJA in support of the Court's power to make the Removal Orders, the Respondents argue that the exercise of such power under para 14 of the First Schedule to the SCJA must be in accordance with the law. This means that the exercise of the Court's powers must be done in a manner that is compatible with what legislation has specifically prescribed for the specific situation concerned.[120]

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118 RWS at para 43.

119 RWS at para 47.

120 RWS at paras 49, 55 and 58–62.

(2) The Court does not have the power to order the removal of the management corporation's council members

173 I disagree with Mr Cheung's submission that the Court has the power to make the Removal Orders.

174 Section 18 of the SCJA read with para 14 of the First Schedule to the SCJA cannot be applied as suggested by Mr Cheung. That provision does not render the Court omnipotent and capable of granting any and all kinds of remedies sought. Instead, and as the Court of Appeal in *Chan Yung Cheong (trustee of the will of the testator) v Chan Chi Cheong (trustee of the will of the testator)* [2021] 2 SLR 67 held at [34], any power under para 14 of the First Schedule to the SCJA must be exercised *in accordance with law*. This means that the exercise of the Court's discretion must be confined to the existing laws which prescribe the ambit of the Court's powers. Thus, it is not for the Court to exercise its discretion to grant a relief or remedy under para 14 of the First Schedule to the SCJA in a manner that is incompatible with the framework set out under the prescribed law.

175 In the present case, any exercise of the Court's power to grant the remedies sought by Mr Cheung must first be compatible with the BMSMA, as the BMSMA is the key legislation governing the affairs of strata developments. Section 123 of the BMSMA states as follows:

> **Other rights and remedies not affected by this Act**
>
> **123.** Nothing in this Act affects or takes away any rights or remedies that a subsidiary proprietor or mortgagee of a lot or a management corporation may have in relation to any lot or the common property apart from this Act.

176 Prof Teo in *Strata Title in Singapore and Malaysia* at para 17.196 makes the following observation in respect of s 123 of the BMSMA:

> The expression 'rights or remedies … in relation to any lot or the common property apart from this Act' in section 123 of the BMSMA refers to the rights and remedies apart from those provided by the Act which are the *normal incidents of legal relationships that the Act bring[s] into being* and those relationships include not only the proprietary rights incidental to lots and common property, but also the contractual rights between the parties concerned arising from their participation in the strata scheme.
>
> [emphasis added]

177 Section 123 of the BMSMA makes it clear that a subsidiary proprietor or management corporation continues to have the rights and remedies under general law apart from the BMSMA. However, as emphasised by Prof Teo, such rights only relate to the "normal incidents of legal relationships" as between the subsidiary proprietor and the management corporation. Hence, s 123 of the BMSMA refers to the preservation of rights and reliefs which a subsidiary proprietor may have against the management corporation, or *vice versa*, at common law and under other legislation.

178 Mr Cheung seeks the Court's order to remove the Respondents as council members. The removal of council members is specifically provided for under s 54 of the BMSMA. The relevant portions of that provision state as follows:

> **Vacation of office of member of council**
>
> **54.**—(1) A person who is the chairperson, secretary or treasurer or a member of a council must vacate his or her office as such a member —
>
> …
>
> (g) if the management corporation removes the person from his or her office;
>
> …
>
> (2) A management corporation may remove a member of its council from office —

> (*a*) without a general meeting —
>
> (i) where the member is a subsidiary proprietor at the time of his or her appointment or election — if all or any part of the member's contributions or any other moneys levied or recoverable by the management corporation under this Act in respect of his or her lot are in arrears for more than 3 months; or
>
> (ii) where the member is a nominee of a subsidiary proprietor — if all or any part of that subsidiary proprietor's contributions or any other moneys levied or recoverable by the management corporation under this Act in respect of the subsidiary proprietor's lot are in arrears for more than 3 months; or
>
> (*b*) by ordinary resolution at a general meeting in any other case, including on any of the following grounds:
>
> (i) misconduct;
>
> (ii) neglect of duty;
>
> (iii) incapacity or failure to carry out satisfactorily the duties of the member's office.

179 Section 54 of the BMSMA prescribes numerous ways in which a council member may be removed from office, one of which is prescribed under s 54(1)(*g*) read with s 54(2) of the BMSMA. Specifically, the management corporation has the power to remove a council member in the following circumstances. The first is under s 54(2)(*a*) of the BMSMA, which states that the management corporation may, without convening a general meeting, remove a council member where that council member is, at the time of his appointment: (i) a subsidiary proprietor; or (ii) a nominee of a subsidiary proprietor, and where that subsidiary proprietor is in arrears for more than three months in respect of all or any part of his contributions or any other moneys levied or recoverable by the management corporation under the BMSMA in

respect of his lot. The second is under s 54(2)(*b*) of the BMSMA, which states that the management corporation may, in a general meeting by way of an ordinary resolution, remove a council member on the basis of misconduct, neglect of duty, or the incapacity or failure to carry out satisfactorily the duties of his or her office.

180 In the present case, the basis which Mr Cheung relies on in advancing his case for the removal of Mdm Cheong and Mr Tanu from their position as council members is premised on various allegations that the council members are in breach of their duties, failed to discharge their duties and/or are unfit to be council members of MCST 508. I shall consider these allegations below at [188]–[199]. On the assumption that Mdm Cheong and Mr Tanu have indeed breached their duties as council members of MCST 508, the appropriate procedure to secure their removal would be to proceed under s 54(2)(*b*) of the BMSMA and to convene an extraordinary general meeting to put forth such allegations for the consideration of the management corporation.

181 In so far as the removal of a council member is premised on allegations of misconduct, breaches of duties or the general incapability of that member to carry out his or her duties as a council member to the management corporation, the Court does not have the power to make an order for the removal of such council members. If Mr Cheung is dissatisfied with Mdm Cheong's or Mr Tanu's performance of their duties as council members, the decision for their removal should be properly brought before MCST 508. Mr Cheung cannot claim that he is unable to avail himself of the BMSMA because of an alleged deadlock, when he has not initiated the mechanism under the BMSMA to challenge the propriety of the Respondents' conduct as council members. As this is a small development with eight subsidiary proprietors, Mr Cheung could try to convince the other subsidiary proprietors to step in to remove the

Respondents if he so wishes. If the other subsidiary proprietors disagree with Mr Cheung, it will be taken as the decision of MCST 508.

182 It is not for the courts to descend into the arena to resolve any and all disputes of the subsidiary proprietors of a strata development, especially where the BMSMA has clearly delineated the framework and scope of reliefs available in the specific situation. This is in line with the general policy underlying the self-governing framework that the BMSMA has put in place. The then-Minister for National Development, Mr Mah Bow Tan ("Minister Mah"), has in the Second Reading of the Building Maintenance and Strata Management Bill (No 6 of 2004) stated as follows (see *Singapore Parliamentary Debates, Official Report* (19 April 2004) vol 77 at cols 2743–2744 and 2780 (Mr Mah Bow Tan, Minister for National Development):

> Sir, this Bill seeks to provide for more effective management and maintenance of strata developments, recognising differences in interests amongst stakeholders. *Our thrust is to provide flexibility by empowering MCs to make decisions, and therefore encourage self-regulation. This will then allow Government to reduce its involvement in the affairs of the MCs.*
>
> …
>
> … When we talk about self-governance and self-regulation and we have apprehensions about it, I think we ought to rise to the challenge. It is no use saying that we lack awareness and we lack experience, because it is really up to Singaporeans, at the end of the day, to make the society which we hope we like to belong to.
>
> [emphasis added]

183 The BMSMA provides flexibility and promotes self-regulation for management corporations. This was further emphasised by Minister Mah in the Third Reading of the Building Maintenance and Strata Management Bill (No 6 of 2004) as follows (see *Singapore Parliamentary Debates, Official Report*

(19 October 2004) vol 78 at col 945 (Mr Mah Bow Tan, Minister for National Development):

> Basically, this is a Bill that has got far-reaching implications for many strata title holders in Singapore, as they do have problems with their managing agents. Many people do not come forward to serve for various reasons. And when they do come forward to serve, they do encounter certain problems. So there is a general lack of empathy. And this is the reason why, in the crafting of this Bill, we sought not only to try and address some of the problems of balance of interest between the various stakeholders *but also to try and encourage more self-regulation and more involvement of subsidiary proprietors and stakeholders in the management of their estates*. …
>
> [emphasis added]

184 It is, thus, clear that self-regulation is one of the core objectives of the BMSMA. It would be up to the subsidiary proprietors of strata developments, if they are displeased with the management corporation's council members in the discharge of their duties, to take the errant council members to task *via* the avenues afforded to them under the BMSMA. It would also be up to the subsidiary proprietors, as in this instant case, to step up to assist with resolving any dispute amongst their fellow subsidiary proprietors. After all, it is part and parcel of the nature of strata developments that subsidiary proprietors must step up to take management and ownership of the very place which they call home, or where they go to conduct business. In the spirit of the BMSMA, it is not for the courts to step in to resolve such quarrels amongst subsidiary proprietors and the management corporation, especially if these quarrels relate to the day-to-day activities that one may ordinarily expect from the management corporation's performance of its functions. Indeed, a light touch approach is necessary and preferred. The courts should only intervene in such disputes in the clearest and most exceptional of cases, and when those cases are not statutorily prescribed for under the BMSMA. As Lee Seiu Kin J in *Chan Sze*

Ying v Management Corporation Strata Title Plan No 2948 (Lee Chuen T'ng, intervener) [2020] SGHC 88 ("*Chan Sze Ying*") aptly observed at [59]:

> … [it] is important to discourage the use of the courts in petty quarrels among residents which ought to be resolved through mediation, or by simply voting the delinquent management council out at the next annual general meeting. …

185 Accordingly, I find that the Court does not have the power to grant the Removal Orders. I dismiss the Eleventh Prayer in OS 808 and the Fourteenth Prayer in OS 809.

Declaration as to Mdm Cheong's and Mr Tanu's alleged breaches of duties

(1) The parties' submissions

(A) THE APPLICANT'S CASE

186 Mr Cheung alleges that Mdm Cheong and Mr Tanu have acted in breach of their duties as council members when they engaged in self-serving conduct as council members and placed their own interests ahead of MCST 508's interest. Mr Cheung relies on the following acts in alleging these breaches:

> (a) Not putting in any written requisition for motions pertaining to Unit 53 and Unit 55 before including them in the 2021 AGM Agenda.[121] Mr Cheung submits that this shows that Mdm Cheong and Mr Tanu had acted in blatant disregard of the provisions set out under the BMSMA and were using their position as council members to obtain a personal benefit for themselves.[122]

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121 4th CPCA OS 808 at paras 76–79.

122 4th CPCA OS 808 at paras 19 and 76-77; Cheung Phei Chiet's 4th Affidavit filed for OS 809 dated 28th February 2022 ("4th CPCA OS 809") at paras 19 and 80–81.

(b) Permitting requisition from Unit 59's new subsidiary proprietor, One Metal, for resolutions to carry out electrical works on common property and installing an air-conditioning compressor to be submitted for consideration at the 2021 AGM. This is despite the High Court's decision in RAS 13, which held that works of a permanent nature required a 90% resolution pursuant to s 33 of the BMSMA to be passed, and which Mr Cheung submits that Mdm Cheong and Mr Tanu have failed to bring to One Metal's attention. Further, that Mdm Cheong, as chairperson of the 2021 AGM, did not rule One Metal's motion out of order despite One Metal's absence from the 2021 AGM.[123]

(c) Failing to take action against Mr Tanu's tenant who had installed a branch water pipe along the common property, despite knowing of the High Court's decision in RAS 13, and despite Mr Tanu being bound to that decision by virtue of his position as a council member.[124]

(d) Mdm Cheong and Mr Chang having unresolved claims and counterclaims involving MCST 508 in OSS 3, for which the District Judge held to be resolved by way of a writ action instead of an originating summons action. However, given that Mdm Cheong is a council member and Legal Solutions is acting for her, Mr Cheung alleges that Mdm Cheong is very unlikely to pursue MCST 508's outstanding counterclaims in OSS 3 against Mr Chang.[125]

(e) Not collecting or checking MCST 508's mail which were posted to MCST 508's registered address with SABS for more than 75 days

123 4th CPCA OS 808 at paras 80–86.

124 4th CPCA OS 808 at paras 87–89.

125 4th CPCA OS 809 at paras 95–96; AWS at para 205.5.

from 9 November 2021 to 27 January 2022, and thereby causing MCST 508's insurance policy to lapse on its annual renewal date.[126]

(B) THE RESPONDENTS' CASE

187 The Respondents' case is that none of these alleged misconduct are indicative that they have failed to discharge or have breached their duties as council members. Their arguments are as follows:

(a) The failure to put in written requisitions for various motions to be included in the 2021 AGM is irrelevant, given that Mdm Cheong and Mr Tanu had already submitted joint requisitions for the 1st EGM and the 2nd EGM. Paragraph 12(3) of the First Schedule to the BMSMA permits these requisitions to be included in the 2021 AGM. In any case, the mere fact that they had not submitted written requisitions does not amount to a breach of their duties as council members.[127]

(b) The inclusion of Unit 59's requisitions in the Agenda for the 2021 AGM did not amount to a breach. This is because para 12(2) of the First Schedule to the BMSMA required Mdm Cheong and Mr Tanu to give effect to the motions tendered.[128] Further, once the motion was put up, it was for the general body to decide and vote on such motions.[129]

(c) In relation to the unauthorised water pipe along the common property which Mr Tanu's tenant had installed, this was done without Mr Tanu's knowledge or authority. In any event, the pipe had since been

126 4th CPCA OS 808 at para 95(iii); AWS at para 205.6.

127 RWS at paras 66–67.

128 RWS at para 71.

129 RWS at para 73.

removed from the common area following the Notice which Mr Cheung's solicitors issued to Mr Tanu's solicitors.[130]

(d) As for the alleged ongoing proceedings which Mdm Cheong and Mr Chang are involved with against MCST 508, there are in fact no ongoing proceedings. Rather, the District Judge in OSS 3 held that it was up to the parties to decide whether they wish to pursue their residual claims, and if so, those claims should be taken out through a writ action. Further, the solicitors of Mdm Cheong and Mr Chang had informed the District Court in OSS 3 that the residual claims would be brought in DC 2809.[131]

(e) Regarding Mr Cheung's complaints that Mdm Cheong and Mr Tanu were tardy in carrying out their duties as council members in renewing the insurance policy and in handling MCST 508's administrative matters in general, the Respondents submit that the proper avenue for Mr Cheung to air such grievances would be to bring them before the general body in a general meeting as stated in s 54(2)(*b*) of the BMSMA. Further, these delays were attributed to Mr Cheung's and Mr Param's failure to conduct a proper handover of the documents following their resignation.[132]

(2) My analysis

188 I shall begin with s 61 of the BMSMA, which states as follows:

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130 RWS at para 76.

131 RWS at paras 79–82.

132 RWS at paras 83–86.

> **Duty and liability of council members and officers**
>
> **61.**—(1) A member of a council must at all times act honestly and use reasonable diligence in the discharge of the duties of the member's office.
>
> (2) A member of a council, or an officer or an agent or a managing agent of a management corporation, must not use his, her or its position as a member of the council or as an officer, an agent or a managing agent of the management corporation to gain, directly or indirectly, an advantage for himself, herself or itself or for any other person or to cause detriment to the management corporation.
>
> (3) Any person who commits a breach of any provision of this section shall —
>
> > (*a*) be liable to the management corporation for any profit made by the person or for any damage suffered by the management corporation as a result of the breach of any such provision; and
> >
> > (*b*) be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months or to both.
>
> …

189 Section 61(1) of the BMSMA, thus, imposes on a council member of a management corporation the duty to act honestly and with reasonable diligence in the exercise of his powers and the discharge of his duties as a council member. In addition, s 61(2) of the BMSMA states that a council member must not, directly or indirectly, use his position to gain an advantage for himself.

190 None of the allegations raised by Mr Cheung indicates that the Respondents had breached their duties to act honestly and with reasonable diligence in the exercise of their powers and the discharge of their duties as council members.

191 Regarding Mr Cheung's allegation that the Respondents had failed to put in any written requisition for motions pertaining to Unit 53 and Unit 55

before including them in the 2021 AGM Agenda, I have found (see [28] above) that the motions introduced were never passed. Hence, it could not be said that the Respondents had gained an advantage for themselves. In any case, I fail to see how the mere fact that these motions were introduced in the 2021 AGM Agenda, in itself, demonstrates that Mdm Cheong and Mr Tanu were acting dishonestly.

192 As for Mr Cheung's allegation that there are unresolved claims following the conclusion of OSS 3 which Mdm Cheong and Mr Tanu are unlikely to pursue on behalf of MCST 508, I find these to be baseless. At the outset, I have found (see [146] above) that these so-called "unresolved" claims in OSS 3 were in reality not live claims. The District Judge simply held that, if the parties wish to pursue these claims, they had to do it by way of a writ action. And the fact of the matter is that no proceedings have been initiated by Mdm Cheong and Mr Chang. As for the disputes in DC 2809, I have also found (see [148]–[149] above) that MCST 508 was not a party in DC 2809 and that the alleged complaints raised in Mdm Cheong's and Mr Chang's closing submissions in DC 2809 against MCST 508 merely formed the factual backdrop in support of their defences. There is thus no basis for Mr Cheung to rely on DC 2809 as a ground for alleging Legal Solutions is in a position of conflict of interest by acting for Mdm Cheong and Mr Chang in DC 2809. Mr Cheung has not shown any factual basis as to how Mdm Cheong and Mr Tanu intend to use their position as council members to stifle the claims raised in DC 2809, or any other potential claims that may be raised following the conclusion of OSS 3.

193 I shall now address Mr Cheung's allegation that the Respondents had disregarded or deliberately went against the High Court's decision in RAS 13. This accusation is baseless. There is no legal duty incumbent upon them to bring to One Metal's attention the High Court's decision in RAS 13. Further, all that

the High Court in RAS 13 had held was that works of a permanent nature required a 90% resolution pursuant to s 33 of the BMSMA to be passed. Here, One Metal's motions comply with the requirements under s 33 of the BMSMA and the Respondents have followed the procedures provided under para 12 of the First Schedule to the BMSMA when they included One Metal's motions in the 2021 AGM Agenda. Hence, there is no impropriety with the inclusion of One Metal's motions in the 2021 AGM Agenda. Indeed, the procedure under para 12(1) of the First Schedule to the BMSMA has been followed. Paragraph 12(2) of the First Schedule prescribes that the secretary of the council "must give effect to every requirement in every notice" received. As I have held at [88] above, despite the fact that there was no council member holding the office of secretary for the 2021 Council, it remains necessary to include One Metal's motions in the 2021 AGM Agenda. This Notice was given to every other council member, *ie,* Mdm Cheong and Mr Tanu. Accordingly, the inclusion of One Metal's motions into the 2021 AGM Agenda was proper.

194 Mr Cheung's allegation that Mdm Cheong had breached her duties as a council member by failing to rule One Metal's motions out of order is also baseless. The Court of Appeal in *Fu Loong Lithographer Pte Ltd and others v Mok Wai Hoe and another and another matter* [2014] 3 SLR 456 at [38] held as follows:

> The purpose of the power of the chairperson of a general meeting of a management corporation (or other similar body corporate) to rule a motion out of order appears to be that *a motion which is in conflict with the constitution, rules, standing orders, or any other statutory or other legally binding provisions that regulate the activity of the management corporation is ultra vires and will be held to be invalid from the beginning* (see A D Lang, *Horseley's Meetings: Procedure, Law and Practice* (LexisNexis, 6th Ed, 2010) at para 10.6). The wider duty of the chairperson of a general meeting of a body corporate is to preserve order in the meeting and to regulate the proceedings so as to give all persons entitled to vote a reasonable

> opportunity of voting (see *R v D'Oyly* (1840) 113 ER 763 at 771). Therefore, in *Wishart v Henneberry* (1962) 3 FLR 171 at 173, it was held that the chairman of a meeting of a body corporate could not rule out of order a motion which was within the competence of the meeting when all the conditions incidental to the submission of the matter to the meeting had been observed.
>
> [emphasis added]

195 The instances in which a chairperson of a general meeting of a management corporation is entitled to rule a motion out of order are, therefore, limited to situations where a motion is *ultra vires*. A motion would be *ultra vires* where it conflicts with the constitution, rules, standing orders, or any other statutory or other legally binding provisions that regulate the activity of the management corporation.

196 In the present case, nothing in the motions which One Metal sought to pass at the 2021 AGM indicates that it would be *ultra vires*. Accordingly, Mdm Cheong acted properly by not ruling out One Metal's motions at the 2021 AGM. On the contrary, there was no basis upon which Mdm Cheong could rule out the motions. She would have been acting improperly if she had done so. Mdm Cheong, therefore, had followed the proper procedures. There was no bad faith on her part, nor did she breach her duties as a council member in so far as her conduct of the 2021 AGM was concerned.

197 Mr Cheung alleges that Mr Tanu has breached his duties as a council member by failing to prevent his tenant from installing the water pipe on common property. I am satisfied with Mr Tanu's explanations that this was done without his knowledge or approval. In any case the water pipe was eventually rectified by the tenant when the tenant was informed that it was not authorised.

Thus, the water pipe was no longer installed within the common area of the Development.[133]

198 I shall now address Mr Cheung's allegations that the Respondents have breached their duties as council members by failing to attend to matters such as collecting and checking MCST 508's mail at SABS and to maintain MCST 508's insurance policy. These incidents were the result of Mr Cheung's and Mr Param's uncooperativeness and their failure to conduct a proper handover of the documents and affairs of MCST 508 to Mdm Cheong and Mr Tanu when they resigned as council members. Prior to Mdm Cheong and Mr Tanu coming on board as council members, Mr Cheung and Mr Param were the only council members managing MCST 508. Mr Cheung and Mr Param had been managing the Development for a considerable amount of time. Thus, they would have been more familiar with the affairs of MCST 508. After Mdm Cheong and Mr Tanu came on board, Mr Cheung and Mr Param refused to work with Mdm Cheong and Mr Tanu. They side-lined and ignored Mdm Cheong and Mr Tanu. They made decisions relating to MCST 508 without the knowledge or involvement of Mdm Cheong and Mr Tanu. Hence, Mdm Cheong and Mr Tanu were kept in the dark regarding the affairs of MCST 508. Accordingly, the Respondents cannot be faulted for not getting up to speed on the various administrative matters. Indeed, I accept Mdm Cheong's account at [22] above when she described the difficulties which she had encountered in obtaining the relevant documents from SABS as having contributed to the present state of affairs. Even after Mdm Cheong obtained the relevant documents from SABS, there remained other files relating to MCST 508 which Mr Cheung and Mr Param continue to hold onto.

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133 CYLFRA at para 157; JTFRA at para 135.

199 Therefore, Mdm Cheong could not be faulted for the delays caused in not getting up to speed on the administrative matters relating to the running of MCST 508. Mdm Cheong and Mr Tanu were left to manage MCST 508's affairs with their hands tied by Mr Cheung and Mr Param, and they did the best they could in these trying circumstances. Mr Cheung's allegations that the Respondents were slow in dealing with MCST 508's matters are unfair as he and Mr Param had contributed substantially to the problems. Having contributed to these difficulties, it is simply unfair for Mr Cheung to now complain against the Respondents.

200 I, therefore, dismiss Mr Cheung's prayers seeking the Breach Declaration.

Orders relating to the reinstatement of portions of Unit 53

201 The Eighth, Ninth and Tenth Prayers in OS 809 are as follows:

> 8. An order that [Mdm Cheong and Mr Chang] remove the bricks installed at the window openings at the back wall of Unit 53 and reinstate the back windows of Unit 53.
>
> 9. A declaration that the front wall beside the front door of Unit 53 encroaches onto the common property of [MCST 508].
>
> 10. An order that [Mdm Cheong and Mr Chang] remove the front wall beside the front door of Unit 53 and reinstate that portion of the façade of Unit 53 to its original condition.

202 Essentially, Mr Cheung seeks, through these prayers, to have Unit 53's rear windows and front wall reinstated to their original conditions.

Order for reinstatement of the rear windows of Unit 53

203 At the hearing, Mdm Cheong and Mr Chang have indicated to the Court that the matter encompassing the Eighth Prayer is being adjudicated in DC 2809

and they will abide by the decision of the court in DC 2809. However, following the conclusion of DC 2809, the court did not make any specific findings on the rear windows of Unit 53. Accordingly, I shall make a determination on whether the rear windows of Unit 53 ought to be reinstated.

(1) The parties' submissions

204 Mr Cheung submits that the original state of the common wall located at the rear of Unit 53 had windows like the other shop units located on the ground floor of the Development which also have rear windows. The original building plan for the Development dated 1976 shows that there were windows at the rear of Unit 53.[134] He then argues that the rear windows were removed without authorisation from MCST 508.[135] Mr Cheung says that MCST 508 does not have the power to authorise or regularise the removal of the windows pursuant to s 37 of the BMSMA, as the windows form part of the appearance of the building.[136] I now reproduce a photograph showing the current state of the rear of Unit 53:[137]

134 AWS at paras 73 and 77–78.

135 Applicant's Further Written Submissions dated 16 December 2022 for HC/OS 808/2021 and HC/OS 809/2021 ("AFWS") at para 14.

136 AWS at para 77.

137 1st CPCA OS 809 at p 111; AWS at para 74.

Figure 1: Current state of the rear of Unit 53

205 The crux of Mdm Cheong and Mr Chang's position is two-fold. First, nothing on the evidence shows that the rear of Unit 53 originally came with windows. Second, and more crucially, even if there were such windows, they were eventually removed in 2004 following the renovation works carried out by Mdm Cheong's father, who was the original owner of Unit 53. Since then, there were no issues raised by any of the subsidiary proprietors or MCST 508 regarding the allegedly missing windows, until the present proceedings brought by Mr Cheung. Accordingly, Mdm Cheong and Mr Chang rely on the doctrine of acquiescence to bar Mr Cheung from seeking the present relief.[138]

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138 Respondent's Further Written Submissions dated 16 December 2022 for HC/OS 808/2021 and HC/OS 809/2021 ("RFWS") at paras 14, 21, 27 and 31.

(2) My analysis

206 I disagree with Mdm Cheong and Mr Chang's submission that nothing on the evidence shows that the rear of Unit 53 originally came with windows. Referring to the various photographs that were submitted to the Court, it is clear that there were originally windows located at the rear of Unit 53.[139] I now reproduce the photograph showing the building plan for the Development dated 1976:[140]

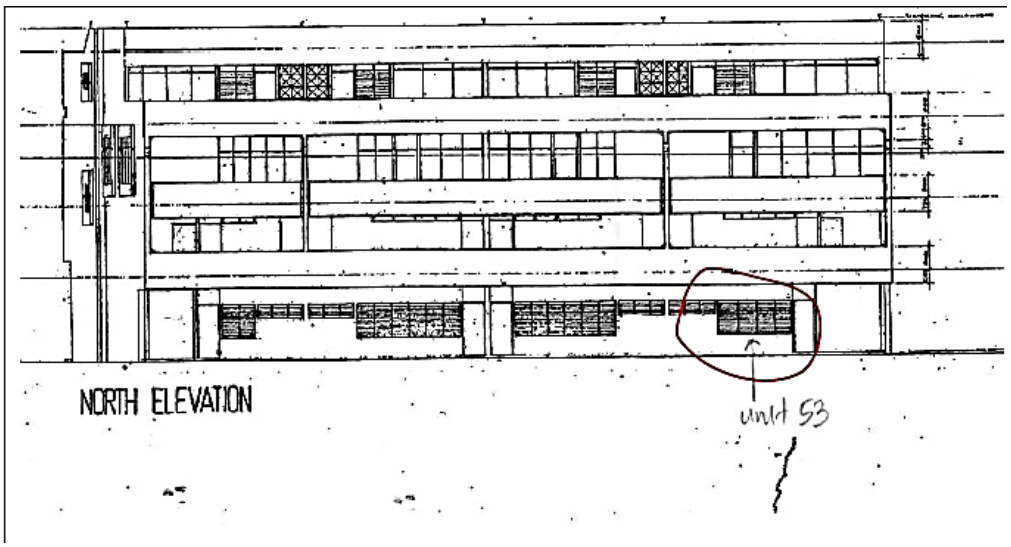

Figure 2: Sketch plan of the rear of the Development

207 The accuracy of these photographs is not disputed by Mdm Cheong and Mr Chang. Instead, their submission relies on the evidence adduced in DC 2809 relating to renovation works that Mdm Cheong's father had carried out in 2004 to convert Unit 53 from a pub to an eating house/coffee shop.[141] Further,

139 AWS at paras 73–74.

140 CYLRA at p 203; JTRA at p 62.

141 See Cheong Yoke Ling's Affidavit of Evidence-in-Chief filed in DC 2809 ("CYLA DC 2809") at paras 5, 6, 35 and 36.

Mdm Cheong and Mr Chang refer to the renovation plans approved by the Building and Construction Authority ("BCA") and the Fire Safety Bureau ("FSB") in 2004 as well as the plans for the installation of an LPG system as part of the renovation works adduced in DC 2809. Mdm Cheong's and Mr Chang's primary submission is that none of these plans show that there were rear windows. I now reproduce the sketch plan relating to Unit 53:[142]

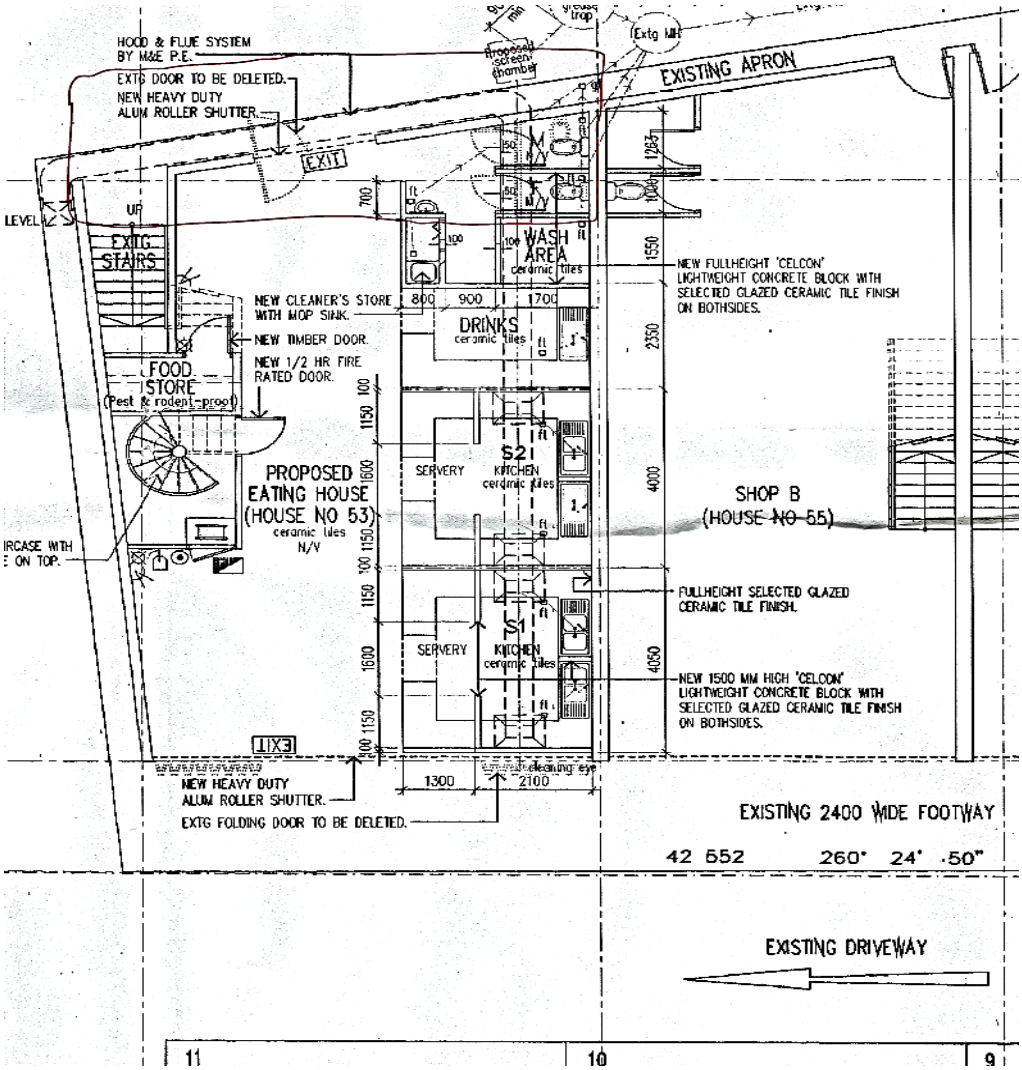

Figure 3: Sketch plan for renovation of the ground floor of Unit 53

142 RFWS at Tab C, p 39.

208 It is also contended that even if the rear windows did exist, these windows would have to be removed to make way for the installation of the LPG system. In particular, the plan for the LPG system stated that the LPG system must be installed against a wall.[143] Mdm Cheong and Mr Chang, therefore, argue that, even if the rear windows of Unit 53 were part of the originally constructed Development, they would have been removed in July 2004 as part of the renovation works.[144]

209 I disagree with Mdm Cheong's and Mr Chang's submission. As can be seen above, the sketch plan is a cross-section overview of the renovation works to be carried out at Unit 53. The plan does not confirm or show the presence of any windows at the rear of Unit 53. On the other hand, the 1976 building plans for the Development relied upon by Mr Cheung clearly show that there were windows present at the rear of Unit 53. Mdm Cheong and Mr Chang have not adduced any other evidence to prove that Unit 53 did not originally come with rear windows. The fact that Mdm Cheong and Mr Chang included Resolution 19 in the 2021 AGM agenda, *ie*, a resolution seeking retrospective approval for the removal of the rear windows at the common property wall, suggests that there were windows at the rear of Unit 53. Accordingly, there were originally windows present at the rear of Unit 53, and the windows were subsequently removed as part of the renovation works carried out by Mdm Cheong's father.

210 There is also no evidence to show that Mdm Cheong's father, in carrying out the renovation works, sought MCST 508's approval to remove the rear windows. It is true that approvals were given by the BCA and the FSB regarding the renovation works at Unit 53 of the Development. However, I agree with

143 RFWS at paras 23–24.

144 RFWS at paras 21.

Mr Cheung's submission that the approvals for the renovation works given by the authorities in 2004 do not constitute the requisite approval from MCST 508 for the windows to be removed.[145] Indeed, the predecessor of the BMSMA, which is the Land Titles (Strata) Act (Cap 158, 1999 Rev Ed) ("LTSA"), states at para 12 of the First Schedule which state as follows:

> **Permission to carry out alterations**
>
> 12. A subsidiary proprietor or occupier shall not make any alteration to the windows installed in the external walls of the subdivided building without having obtained the approval in writing of the management corporation.

Paragraph 12 of the First Schedule to the LTSA makes it clear that any alterations to windows installed in the external walls of the building can only be undertaken following approval sought from the management corporation. The point to be made, therefore, is that any intended alterations to a subsidiary proprietor's lot must be approved by the management corporation before the relevant alteration works are carried out. This is made abundantly clear by ss 37(3) and 37(4) of the BMSMA, which state as follows:

> **Improvements and additions to lots**
>
> **37.**— …
>
> …
>
> (3) 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.
>
> (4) A management corporation may, at the request of a subsidiary proprietor of any lot comprised in its strata title plan and upon such terms as it considers appropriate, authorise the subsidiary proprietor to effect any improvement in or upon the

145 AWS at para 75.

> subsidiary proprietor's lot mentioned in subsection (3) if the management corporation is satisfied that the improvement in or upon the lot —
>
> (*a*) will not detract from the appearance of any of the buildings comprised in the strata title plan or will be in keeping with the rest of the buildings; and
>
> (*b*) will not affect the structural integrity of any of the buildings comprised in the strata title plan.

211 Section 37(3) of the BMSMA prohibits a subsidiary proprietor from effecting any improvement to his strata title lot which affects the appearance of any building comprised in the strata title plan. Where such improvements are intended, the subsidiary proprietor must first seek approval from the management corporation pursuant to s 37(4) of the BMSMA. In this regard, s 37(4) of the BMSMA provides that the management corporation has the power to authorise a subsidiary proprietor to effect improvements to his lot, if the management corporation is satisfied that the statutory criteria under ss 37(4)(*a*) and 37(4)(*b*) are met.

212 At the hearing, Counsel for the Respondents submits that s 37(3) of the BMSMA requires the subsidiary proprietor to "decide for himself whether or not [his] renovation is going to detract from the general appearance of the building".[146] He further submits that if this inquiry is answered in the affirmative, then the subsidiary proprietor must seek approval from the management corporation which, under s 37(4) of the BMSMA, must decide whether to grant approval. He further adds that even if the requirements under s 37(4) of the BMSMA were not met, the management corporation could authorise the improvement of the subsidiary proprietor's lot, but that such

146 17 January 2023 Transcript at pp 23 (line 31) to 24 (line 1).

authorisation would be susceptible to challenge.[147] In support, he refers to two cases decided by the High Court, namely *Management Corporation Strata Title Plan No 940 v Lim Florence Marjorie* [2019] 4 SLR 773 ("*Lim Florence Marjorie*") and more recently, *Prem N Shamdasani v Management Corporation Strata Title Plan No 920* [2022] SGHC 280 ("*Prem N Shamdasani*"). These cases do not stand for the propositions that Counsel for the Respondents seeks to advance.

213 In *Lim Florence Marjorie* and *Prem N Shamdasani*, the courts considered the interaction between ss 37(3) and 37(4) of the BMSMA, and how these provisions are invoked:

(a) At the general level, s 37(3) of the BMSMA is "forward-looking" and "imposes restrictions and conditions which bind a subsidiary proprietor *before* she effects any improvements to her lot" [emphasis in original] (*Lim Florence Marjorie* at [72], cited in *Prem N Shamdasani* at [39]).

(b) The starting point is s 37(3) of the BMSMA, which requires a subsidiary proprietor to seek the management corporation's approval as regards any improvements to be made to the subsidiary proprietor's lot where the improvement would "affect the appearance" of the unit. In this vein, Vinodh Coomaraswamy J held that this is a "factual exercise" that is "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" (*Lim Florence Marjorie* at [74]). Elaborating on this, Goh Yihan JC held that the focus of the test is to compare the unit's own

147 17 January 2023 Transcript at p 24 (lines 17–31).

original façade with that of the improved façade (*Prem N Shamdasani* at [41], citing *Management Corporation Strata Title Plan No 4123 v Pa Guo An* [2021] 3 SLR 1016 at [26]). Further, this entire inquiry is undertaken "from the viewpoint of a reasonable observer who looks at the building from a position which is practically possible or likely", and is therefore an objective test (*Lim Florence Marjorie* at [75] and [80]). It is, therefore, incorrect for Counsel for the Respondents to suggest that the test under s 37(3) of the BMSMA is a wholly subjective one.

(c) If the management corporation is satisfied that the alterations and additions would objectively "affect the appearance" of the building within the meaning of s 37(3) of the BMSMA, the MCST would then have to consider whether the renovation detracts from the appearance of the building or is in keeping with the rest of the buildings comprised in the strata title plan, and whether the alteration would affect the structural integrity of the building within the meaning of s 37(4) of the BMSMA (*Prem N Shamdasani* at [43]):

> (i) Turning to the first requirement under s 37(4)(*a*) of the BMSMA, there are two limbs, namely "detract from the appearance of any of the buildings comprised in the strata title plan" or "in keeping with the rest of the buildings". Goh JC considered the legislative history underlying this provision, and observed that these two limbs arguably serve distinct functions. In particular, the second limb of s 37(4)(*a*) of the BMSMA ("in keeping with") could be invoked where the façade of the building was initially not uniform, such that the proposed improvement can be found to be "in keeping with" this non-uniform state of affairs, which empowers the management

corporation to approve the alterations (*Prem N Shamdasani* at [55]).

(ii) As for the second requirement under s 37(4)(*b*) of the BMSMA, that requirement is clear and needs no further elaboration: the management corporation would not be empowered to approve the alterations where it would affect the structural integrity of the building.

(d) The determination of whether the requirements under s 37(4) of the BMSMA are met is within the purview of the management corporation and not the courts (*Lim Florence Marjorie* at [87], cited in *Prem N Shamdasani* at [57]). Accordingly, this suggests that a healthy level of deference would be accorded to the decision of a management corporation under s 37(4) of the BMSMA (*Prem N Shamdasani* at [57]).

(e) Coomaraswamy J held that the management corporation is not empowered to authorise improvements to a lot if the improvements do not meet the statutory criteria. This, in his view, is supported by both the plain language of s 37(4) of the BMSMA and the legislative history (*Lim Florence Marjorie* at [84]–[86], cited in *Prem N Shamdasani* at [43]). Contrary to Counsel for the Respondents' submission, it is, therefore, clear that the management corporation is not empowered to authorise any alterations that would contravene the requirements under that provision.

214 In the present case, Mr Cheung has shown that the rear windows were altered in contravention of s 37(3) of the BMSMA. As can be seen from the photograph and the sketch plan above, it is clear that the bricking up of the rear windows resulted in the rear portion of Unit 53 appearing different from its

original state. Further, it is the only unit without a rear window. Thus, the removal of the rear windows does affect the appearance of Unit 53 at the Development, within the meaning of s 37(3) of the BMSMA. Accordingly, Mdm Cheong and Mr Chang were prohibited by s 37(3) from carrying out the alteration. MCST 508 also does not have the authority to allow Unit 53 to replace the rear windows with a wall. On the facts, it is clear that no such authorisation was sought from MCST 508. Indeed, Mdm Cheong and Mr Chang do not contend that the removal was authorised, or that the requisite approval had been sought from MCST 508. Accordingly, the removal of the rear windows is unauthorised.[148]

215 For the removal of the rear windows, Mdm Cheong and Mr Chang sought to rely on the doctrine of acquiescence. They rely on the fact that there has been no complaint or proceedings commenced in respect of the removal of the rear windows of Unit 53 for a period of 15 years until 24 March 2020, when MCST 508 counterclaimed for reinstatement of a window in OSS 3.[149] This prolonged period of non-compliance, in their submission, meant that Mr Cheung's Eighth Prayer in OS 809 should fail because of his acquiescence.

216 The doctrine of acquiescence was considered by the Court of Appeal in *Genelabs Diagnostics Pte Ltd v Institut Pasteur and another* [2000] 3 SLR(R) 530. There, the Court of Appeal at [76] endorsed the following statement of the law:

> 76 In any event, the crucial question in this regard is whether mere knowledge of infringement and failure to take action to prevent such infringement is sufficient to establish acquiescence. Here the respondents rely on *Farmers Build v Carier Bulk Materials Handling Ltd* [1999] RPC 461 to assert

148 AWS at para 77.

149 RFWS at para 31

> that the answer is in the negative. There, the Court of Appeal approved the following statement of the law set out in *Halsbury's Laws of England* vol 16 (4th Ed Reissue) at para 924.
>
> > The term acquiescence is … properly used where *a person having a right and seeing another person about to commit, or in the course of committing an act infringing that right, stands by in such a manner as really to induce the person committing the act and who might otherwise have abstained from it, to believe that he consents to its being committed; a person so standing-by cannot afterwards be heard to complain of the act.* In that sense the doctrine of acquiescence may be defined as quiescence under such circumstances that assent may reasonably be inferred from it and is no more than an instance of the law of estoppel by words or conduct …
>
> [emphasis added]

As the High Court in *Tan Yong San v Neo Kok Eng and others* [2011] SGHC 30 ("*Tan Yong San*") explained at [114], the doctrine of acquiescence is premised on the fact that the claimant has, by standing by and doing nothing, made certain representations to the defendant in circumstances to found an estoppel, waiver, or abandonment of rights. To succeed on a defence of acquiescence, therefore, the acquiescing party must have been aware of the acts he now seeks to complain of, because one cannot acquiesce to something he does not know (see *Tan Yong San* at [117], citing *LS Investment Pte Ltd v Majlis Ugama Islam Singapura* [1998] 3 SLR(R) 369 at [40] and *Keppel Tatlee Bank Ltd v Teck Koon Investment Pte Ltd* [2000] 1 SLR(R) 355 at [27]). In *Koh Wee Meng v Trans Eurokars Pte Ltd* [2014] 3 SLR 663, the High Court further elaborated at [120]–[121] that acquiescence is established in the situation where there is a continuing violation of the claimant's rights from the beginning, and the claimant has knowledge of the same.

217 In summary, the critical inquiry when considering the defence of acquiescence, is whether:

(a) there is a continuing violation of the claimant's rights;

(b) the claimant has knowledge of the acts amounting to a violation of his rights; and

(c) despite having such knowledge, the claimant "stood by" in such a way as to effectively represent to the defendant in circumstances to find an estoppel, waiver, or abandonment of rights.

218 Applying the above criteria, I accept that the elements of the doctrine of acquiescence are likely established.

219 First, I find that there has been a continued violation of MCST 508's rights. Where a subsidiary proprietor has made alterations to the lot in contravention of s 37 of the BMSMA, it is the management corporation whose rights are violated. This is made clear from s 37(4A) of the BMSMA, which states as follows:

> (4A) Where the management corporation for a strata title plan is satisfied that an improvement in or upon a lot comprised in the strata title plan is effected in contravention of subsection (1) or (3), the management corporation may, by written notice given to the subsidiary proprietor of the lot (whether or not the subsidiary proprietor is responsible for the contravention) require the subsidiary proprietor to carry out and complete, at the subsidiary proprietor's own cost, any works or alteration to the lot to remedy the breach within a reasonable time specified in the notice.

Section 37(4A) of the BMSMA thus makes clear that it is the management corporation which is vested with the right to compel a subsidiary proprietor to make good the breach of s 37(3) of the BMSMA.

220 Second, I am satisfied that MCST 508 had knowledge of the acts amounting to a violation of its rights, *ie*, that MCST 508 had knowledge of the removal of the rear windows of Unit 53 amounting to a violation of s 37(3) of the BMSMA for some time. As stated above at [154], s 24(1)(*b*) of the BMSMA makes clear that a management corporation of a strata title plan is a legal entity. It is further well accepted that a separate legal entity has no mind or body of its own and can only act through natural persons (see *Lennard's Carrying Company, Limited v Asiatic Petroleum Company, Limited* [1915] AC 705). It, therefore, follows that only human agents, either collectively or individually, would have a mind and, in turn, knowledge and/or intention that can be attributed to these artificial legal entities (see *Ho Kang Peng v Scintronix Corp Ltd (formerly known as TTL Holdings Ltd)* [2014] 3 SLR 329 at [47], citing Paul L Davies and Sarah Worthington, *Gower and Davies' Principles of Modern Company Law* (Sweet & Maxwell, 9th Ed, 2012) at para 7-1). While the cases cited in support of these principles are considered in the corporate context, there is no reason why they ought not to equally apply in the context of management corporations, which as noted above have been statutorily recognised as legal entities capable of suing and being sued in their own names.

221 Accordingly, the relevant knowledge attributed to MCST 508 for the purposes of establishing MCST 508's knowledge regarding the breach of s 37(3) of the BMSMA by the subsidiary proprietors of Unit 53, would be the relevant persons running the MCST 508's council. Since the breach of s 37(3) of the BMSMA occurred from 2004, the relevant knowledge would be the knowledge of MCST 508's council members from 2004 to 2020 (when action was taken by MCST 508 against Mdm Cheong and Mr Chang in OSS 3 (see [30] above)). In this regard, it is undisputed that Mr Cheung was a council

member from at least 2006 to 2010 or 2011 and also between 2017 and 2021.[150] While it is unclear which other persons were part of MCST 508's council then, for present purposes, it is Mr Cheung's knowledge that is relevant since he is the applicant in the present action.

222 In this connection, on a balance of probabilities, Mr Cheung would have had knowledge of the removal of Unit 53's rear windows since 2004. Mr Cheung has been a subsidiary proprietor of the Development since 1999.[151] Moreover, Mr Cheung is a subsidiary proprietor of Unit 53A, which is located directly above Unit 53. Given that this is a very small development, any renovation works involving the alteration of the Development's façade by any of its units would surely not have gone unnoticed by any of its subsidiary proprietors, including Mr Cheung who is for all practical intents and purposes a neighbour of Unit 53. Given the location of Unit 53A, and to access Unit 53A the latter's occupants would have to walk past Unit 53's rear on a daily basis, Mr Cheung would have noticed that the rear windows of Unit 53 were removed. Therefore, it is reasonable to infer that Mr Cheung knew that the rear windows of Unit 53 were removed in 2004.

223 Finally, despite having such knowledge, however, Mr Cheung did not take any action against either Mdm Cheong or Mdm Cheong's father to rectify the improper alterations or to advance his legal rights as the subsidiary proprietor. Indeed, it was only in March 2020 when Mr Cheung filed his affidavit in support of his action in OSS 3 that he raised, for the first time, the issue relating to the improper removal of the rear windows of Unit 53. Thus, there had been a period of inaction of over 15 years since the removal of the

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150 7 January 2023 Transcript at p 35 (lines 6-8); CYLFRA at para 7.

151 17 January 2023 Transcript at p 32 (lines 5-6).

windows in 2004. This significant period of inaction on Mr Cheung's part supports the finding that he has "stood by" and, therefore, represented to the subsidiary proprietors of Unit 53, *ie*, Mdm Cheong's father and now Mdm Cheong and Mr Chang, that he had impliedly given his approval and hence assented to the infringing acts being committed.

224 Despite the fact that the doctrine of acquiescence is made out, I, nevertheless, find that the doctrine of acquiescence does not apply in the present case. The doctrine of acquiescence cannot apply to remedy certain breaches under the BMSMA. In *Bowmaker Ltd v Tabor* [1941] 2 All ER 72, for instance, the English courts observed (at 76) as follows:

> The maxim which sanctions the non-observance of a statutory provision is *cuilibet licet renuntiare juri pro se introducto*. Everyone may waive the advantage of a law made solely for the benefit or protection of him as an individual in his private capacity, but this cannot be done if the waiver would infringe a public right or public policy: *MacAllister v. Rochester (Bp.)* …

225 This passage, therefore, suggests that where a statutory provision deals with the conferral of rights in circumstances other than to an individual in his private capacity, it is not open to any party to mount a claim that those rights conferred under the relevant statute have been waived, including implicitly by way of acquiescence (see Halsbury's Laws of England (5th edn) Vol 96 at para 372). Thus, it appears that the rights conferred under s 37(4) of the BMSMA, *ie*, the right to improvement of a lot under the strata title plan , is one that is conferred upon the management corporation and not individual subsidiary proprietors in their private capacity. This is made clear from the statutory scheme under s 37 of the BMSMA, which is directed towards the management corporation's power to approve improvements to a subsidiary proprietor's lot under certain specific conditions (see s 37(4) of the BMSMA). Hence, the management corporation can also direct the subsidiary proprietors

who have not sought prior approval from the management corporation to remove the unlawful improvements (see s 37(4A) of the BMSMA). Accordingly, the inference under the BMSMA is that Parliament intended for the statutory duty relating to alterations or improvements of lots to be enforced under this framework through the management corporation. It appears that Parliament did not intend to confer a private right of action of the same to subsidiary proprietors in their individual capacities. As the Court of Appeal in *Sit Kwong Lam v Management Corporation Strata Title Plan No 2645* [2018] 1 SLR 790 ("*Sit Kwong Lam*") observed at [50], "Parliament had made it clear that strata developments were founded on the concept of community living; and if this were to be harmonious, it required the limits of each subsidiary proprietor's personal rights and duties to be clearly demarcated from the rights and duties of the management corporation". Thus, it is not open to the subsidiary proprietors to argue that a management corporation has acquiesced to the former's breach under s 37 of the BMSMA owing to the latter's failure to take action against such breaches.

226 Accordingly, it is not open to Mdm Cheong and Mr Chang to say that MCST 508 has, through their inaction, acquiesced to the breaches under s 37 of the BMSMA, when MCST 508 does not have the power to authorise the removal of the rear windows under s 37(4) of the BMSMA. This is because the doctrine of acquiescence cannot be relied upon to validate an excess of statutory power (see *Wong Yet Eng v Chin Cheng Foo* [1985] 1 MLJ 36 at 37; *Tenaga Nasional Bhd v Calsonic Compressor (M) Sdn Bhd* [2009] 8 MLJ 793 at [29], citing *Halsbury's Laws of England* (4th Ed) Vol 1 at p 26). In my view, this principle also accords with common sense. Take, for instance, the situation of a management corporation that has not taken any steps to prohibit or refuse to grant authorisation of renovations which would, for example, affect the

structural integrity of a building contrary to s 37(4)(*b*) of the BMSMA. Assume further that the management corporation is aware of the unauthorised renovation but for whatever reason decides not to take any action for a long duration. To permit the subsidiary proprietor in this example to rely on the doctrine of acquiescence to prevent the management corporation from taking action under s 37(4) of the BMSMA would simply lead to an absurd and dangerous outcome. This surely cannot be right.

227 As I have stated above, a management corporation is not empowered to authorise improvements to a lot if the improvements do not meet the statutory criteria under s 37(4) of the BMSMA. As the photograph above shows, the removal of the rear windows is such a drastic form of renovation work that clearly creates non-uniformity in the Development's rear view, and certainly detracts from, and is not "in keeping with" the original state of affairs within the meaning of s 37(4)(*a*) of the BMSMA. Since MCST 508 would not have the power under s 37(4) of the BMSMA to authorise the removal of the rear windows, it would be meaningless to speak of MCST 508's acquiescence to a matter which it has no power even to approve.

228 Accordingly, I am satisfied that Mr Cheung's claim under the Eighth Prayer in OS 809 ought to be allowed as the removal of the rear windows of Unit 53 is in violation of s 37 of the BMSMA and Mdm Cheong and Mr Cheung have not raised any viable defence. I, therefore, grant the Eighth Prayer in OS 809 requiring Mdm Cheong and Mr Chang to reinstate the rear windows.

Order for removing the front wall and reinstating the façade of Unit 53

229 The Ninth and Tenth Prayers relate to the removal of the front wall that has allegedly encroached onto the common area of the Development and the

reinstatement of the façade of Unit 53 ("the Reinstatement Order"). Mdm Cheong and Mr Chang initially took the position that any claim by Mr Cheung relating to the front wall of Unit 53 is a matter that has already been raised in DC 2809.[152] To briefly recap, one of the issues in DC 2809 related to a signboard of the former tenant of Mdm Cheong and Mr Chang that was affixed to the front wall of Unit 53. Mdm Cheong (acting through her solicitors in the present matter) gave her assurance to the Court during the hearing that both she and Mr Chang would carry out rectification works as may be ordered by the court in DC 2809.[153]

230 Following the conclusion of DC 2809, however, I was informed by the parties that the District Court made no findings or orders in relation to the front wall of Unit 53.[154] Accordingly, this Court has to decide whether the front wall beside the front door of Unit 53 encroaches onto the common property, and accordingly whether I should make the Reinstatement Order.

(1) The parties' submissions

231 Mr Cheung submits that the front wall of Unit 53 has encroached onto the common walkway of the Development as the wall extends beyond the boundary of Unit 53 and protrudes out to the common walkway.[155] Further, the front wall "permanently obstructs" the use of a portion of the walkway.[156] Therefore, it is incumbent on the Respondents to put forth a motion to seek approval in accordance with the requirements under s 33 of the BMSMA, failing

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152 RWS at para 134.

153 See also CYLFRA at paras 24–26.

154 17 January 2023 Transcript at p 15 (lines 11-13).

155 AWS at para 152.

156 AWS at para 159.

which the wall that protrudes out to the common walkway must be removed. Mr Cheung thus submits that the construction of the wall breaches ss 63(*c*) and 63(*d*) of the BMSMA as it amounts to the Respondents' use of the common property in a manner that causes unreasonable interference.[157]

232 Alternatively, Mr Cheung submits that the front wall was an unauthorised alteration that detracts from the appearance of the Development. Thus, under s 37(4) of the BMSMA, MCST 508 cannot authorise the encroachment of the front wall onto the common walkway. Accordingly, the front wall should be removed.[158]

233 Mdm Cheong and Mr Chang's submissions are three-fold. First, they argue that the front wall does not encroach onto the common property.[159] Second, they contend that the front wall does not affect the appearance of the Development and, therefore, can be authorised by MCST 508.[160] Third, Mdm Cheong and Mr Chang rely on the doctrine of acquiescence to defend against Mr Cheung's claim in this respect.[161]

(2) My analysis

234 I begin by considering whether the erection of the front wall of Unit 53 amounts to an encroachment onto common property such as to cause unreasonable interference. The starting point is ss 63(*c*) and 63(*d*) of the BMSMA, which state as follows:

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157 AWS at para 158.

158 AWS at paras 160 and 162.

159 RFWS at paras 44–47.

160 RFWS at paras 63–64.

161 RFWS at para 50.

> **Duties of subsidiary proprietors and other occupiers of lots**
>
> **63.** A subsidiary proprietor, mortgagee in possession (whether personally or by any other person), lessee or occupier of a lot must not —
>
> …
>
> (c) use or enjoy the common property in such a manner or for such a purpose as to interfere unreasonably with the use or enjoyment of the common property by the occupier of any other lot (whether that person is a subsidiary proprietor or not) or by any other person entitled to the use and enjoyment of the common property; or
>
> (d) use or enjoy the common property in such a manner or for such a purpose as to interfere unreasonably with the use or enjoyment of any other lot by the occupier of the lot (whether that person is a subsidiary proprietor or not) or by any other person entitled to the use and enjoyment of that lot.

235 I do not accept Mr Cheung's submission that the erection of the front wall amounts to an unreasonable interference of the walkway outside Unit 53, which is classified as the Development's common property. I reproduce the photographs of the front wall of Unit 53 as follows:[162]

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162 AWS at para 152; RFWS at Tab D, p 62.

Figure 4: Side view of the front wall of Unit 53

Figure 5: Front view of the front wall of Unit 53

236 Having examined the photographs of the front wall and the architectural blueprints showing the original drawing plan for the Development, I am unable to see how the front wall protrudes out in a way that encroaches onto the common property, much less how it "obstructs" the use of the walkway and causes unreasonable interference. Indeed, Counsel for the Applicant candidly acknowledged at the hearing before the Court that he did not know precisely how much the front wall encroached onto the common walkway.[163] Thus, Mr Cheung failed to adduce evidence to show any encroachment of the front wall onto the common walkway. Further, the front wall appears to be constructed within the boundary of Unit 53 and belongs to Unit 53. Any such complaints regarding the front wall are at best *de minimis*. Accordingly, I reject the Ninth Prayer sought by Mr Cheung in OS 809.

237 Turning to deal with the Tenth Prayer sought by Mr Cheung in OS 809, I also do not accept that the front wall of Unit 53 is an unauthorised alteration to the lot for which the subsidiary proprietors of Unit 53, *ie*, Mdm Cheong's father and now Mdm Cheong and Mr Chang, ought to have sought approval from MCST 508, the failure of which would provide grounds for seeking the Reinstatement Order. There is no evidence to suggest that the erection of the front wall is an alteration that "affects the appearance of any building comprised in the strata title plan" within the meaning of s 37(3) of the BMSMA. The only evidence before the Court that shows the original design of the front of the Development is the following sketch plan:[164]

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163 17 January 2023 Transcript at p 16 (lines 3–21).

164 1st CPCA OS 808 at p 86.

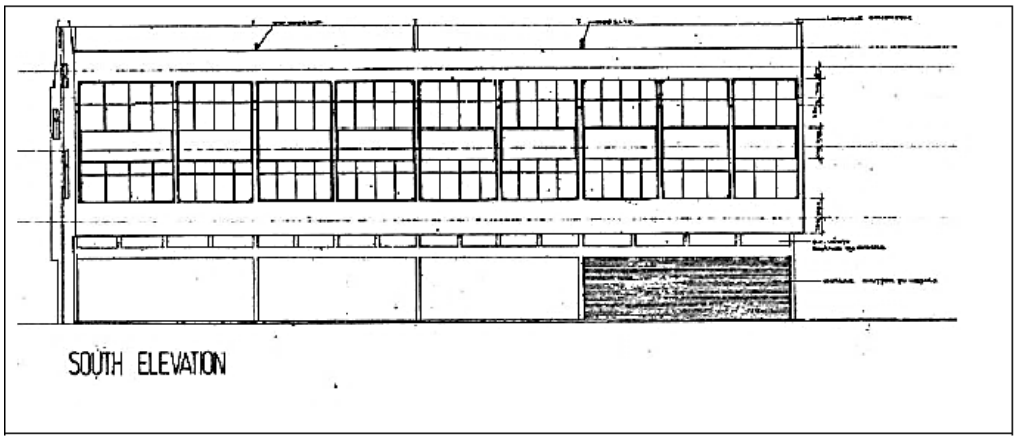

Figure 6: Sketch plan of the front of the development

238 The sketch plan does not show how the original front of the Development looks like. All that can be seen is that the front of each of the units in the Development has a roller shutter. Accordingly, I am not satisfied that the erection of the front wall is an alteration that affects the appearance of the Development.

239 Given my primary finding that there was no breach of s 37(3) of the BMSMA, it is not necessary to consider whether there was a breach of s 37(4) of the BMSMA to justify granting the Reinstatement Order. For completeness, however, I shall deal briefly with Mr Cheung's submission that the erection of the front wall of Unit 53 amounted to a breach of s 37(3) of the BMSMA. Even on the assumption that the front wall affects the appearance of the Development, such that approval from MCST 508 is necessary, and which Mdm Cheong and Mr Chang have not sought, I am satisfied that MCST 508 is empowered under s 37(4) of the BMSMA to approve the alteration. As the evidence before the Court shows, there is clearly no uniformity to the front of the Development to begin with. This point was also acknowledged by Counsel for the Applicant at

the hearing before the Court.[165] This is clear from the various photographs of the front of the Development:[166]

Figure 7: Photograph of the front of the Development from the left.

165 17 January 2022 Transcript at pp 17 (line 25) to 19 (line 11).

166 RFWS at pp 58, 60 and 63.

Figure 8: Photograph of the front of the Development from the centre.

Figure 9: Photograph of the front of the Development from the right.

The erection of the front wall therefore does not detract from, and rather is "in keeping with" the already non-uniform state of the front of the Development (see *Prem N Shamdasani* at [55]).

240 Accordingly, the fact that MCST 508 is empowered to authorise the erection of the front wall of the Development means that this is a matter that is best dealt with by MCST 508 perhaps by way of the passing of a resolution to authorise the erection of the front wall. Such an approach would be consonant with Parliament's intention to empower management corporations to make decisions in a bid to encourage self-regulation (see [182] above). It is not for the courts to interfere with the affairs of the subsidiary proprietors of the Development, and the courts should certainly not be viewed as a first resort by any subsidiary proprietors of any development, the moment any dispute arises.

241 I should also point out that Mdm Cheong and Mr Chang have also relied on the doctrine of acquiescence in support of their defence against Mr Cheung's allegation that the erection of the front wall is in breach of s 37 of the BMSMA. Given my finding at [238] above that there is no breach of the said provision, it is not necessary for me to consider the application of this doctrine any further. In any event, I am satisfied that the doctrine of acquiescence is applicable in the present case. Unlike the removal of the rear windows discussed above, which is clearly an alteration that detracts from the uniformity of the rear view of the Development and one which MCST 508 is not empowered to authorise, the erection of the front wall is an alteration that does not detract from, and is in keeping with the already non-uniform state of the façade of the Development. Thus, this is an improvement that MCST 508 is empowered to authorise within the meaning of s 37 of the BMSMA. Accordingly, the doctrine of acquiescence does apply to ratify the erection of the front wall by the subsidiary proprietors of Unit 53.

242 The front wall was purportedly erected around the same time as the removal of the rear windows, *ie*, 2004.[167] Thus, Mr Cheung and MCST 508 ought to have known of the front wall if it indeed had encroached onto the common passageway or was not in keeping with the uniformity of the façade of the Development. No action was taken against either Mdm Cheong's father or Mdm Cheong to remove the front wall. Similarly, like the rear windows, it was only in March 2020 when Mr Cheung filed his affidavit in support of his action in OSS 3 that he raised, for the first time, the issue relating to the front wall of Unit 53 (see [223] above). Therefore, there was no action from MCST 508 or any subsidiary proprietors of the Development for more than 15 years since 2004. Hence, the doctrine of acquiescence (see [215]–[223] above) is applicable *mutatis mutandis* to the front wall.

243 I, therefore, dismiss the Ninth and Tenth Prayers in OS 809 in relation to the Reinstatement Order.

Summary of my findings

244 In summary, my findings in respect of the various prayers set out by Mr Cheung in the OSes are as follows:

(a) I dismiss the First Prayer sought by Mr Cheung. In my view, given that the Proposed Resolutions were ultimately not passed, any declaration sought to be granted would be hypothetical or academic in nature. In this case, there is no public interest that justifies the granting of the declaration sought in respect of these hypothetical issues. In any event, if the Proposed Resolutions or motions of similar effect are ever raised again in future general meetings, it is always open to the

167 RFWS at paras 53 and 58 and p 90.

Development's subsidiary proprietors to raise their objections in the next general meeting in accordance with the internal mechanism under the BMSMA.

(b) I dismiss the Second Prayer. In my view, granting the Second Prayer would offend the statutory rights of the Respondents as subsidiary proprietors to put in motions in a meeting.

(c) I dismiss the Third Prayer. Any obligation that Mr Cheung seeks to enforce against the Respondents in the Third Prayer is already enshrined under para 12 of the First Schedule to the BMSMA. There is, therefore, no utility served in granting this prayer.

(d) I dismiss the Fourth Prayer. In my view, the Fourth Prayer is merely duplicating what the BMSMA has prescribed. There is, therefore, no utility in granting the order. I also do not accept Mr Cheung's submission on the legal requirements to be satisfied in passing exclusive use by-laws. The case of *Mu Qi* does not assist Mr Cheung and can be distinguished. The Proposed Resolutions were correctly framed as ordinary motions in accordance with s 33(1)(*a*) of the BMSMA as the Respondents were only seeking for a period of one year. I also find that the Proposed Resolutions do not offend any formalities requirement for passing an exclusive use by-law under s 33(2) of the BMSMA.

(e) I dismiss the Fifth Prayer. The Court does not have the power to pre-emptively and permanently restrict the rights of the subsidiary proprietors to deal with their property and the common areas linked to their property, subject to any requirements prescribed under the BMSMA. It is difficult to determine whether the fact of the installation

of KEDs in itself would lead to a violation of ss 63(*c*) and 63(*d*) of the BMSMA. This is so given that the Respondents have not tabled any resolutions on the installation of any KEDs. With the rapid advancement of technology and innovation it is possible that in the near future the KEDs installed would address all the concerns raised by Mr Cheung.

(f) I dismiss the Sixth Prayer. To impose a mandatory requirement of a 90% resolution in respect of motions for exclusive use of KEDs in the common property, regardless of the actual duration of use as stated in the motion, may be in contravention of s 33 of the BMSMA. The statutory regime regarding the passing of exclusive use by-laws as prescribed under s 33 of the BMSMA makes reference to the duration of exclusive use stated in the resolution and the corresponding percentage of votes required to pass the resolution. As long as these requirements are adhered to, I find no reason to mandate that the passing of motions for the exclusive use of KEDs must always be subject to a 90% resolution.

(g) I dismiss the Seventh Prayer. There is insufficient factual basis to sustain Mr Cheung's allegation that Legal Solutions is placed in a position of conflict of interest. For a law firm to be found in violation of r 20 of the PCR 2015, *ie*, potential or an actual conflict of interest, it is necessary to establish that: (a) the law firm in question is acting for at least two different parties; and (b) the parties are instructing the same law firm on one specific matter or transaction at any given time. In this instant case, the matters in which Legal Solutions is engaged to act, *ie*, to act for MCST 508 in respect of the matters relating to the 2021 AGM and to act for Mdm Cheong and Mr Chang in their capacities as subsidiary proprietors in respect of the disputes in OSS 3 and DC 2809,

are matters which are entirely distinct both in terms of the subject matter engaged, the period in which these matters arose, and the respective interests of the parties. If Mr Cheung objects to Legal Solutions acting for MCST 508, he should do so within the framework of the BMSMA.

(h) I dismiss the Prayers sought in the OSes in respect of the Signature Declaration. There is no utility in granting a declaration that Mdm Cheong and Mr Tanu use only wet-ink signatures in signing all MCST 508's communications, payment authorisations and cheques. First, there is no legal basis, whether under the BMSMA or elsewhere, that mandates the use of wet-ink signatures. Second, given that Mr Tanu is currently residing abroad, it would be impractical to insist on wet-ink signatures. However, it may be prudent not to have Mdm Cheong be the sole signatory in respect of MCST 508's cheques as it may not comply with good governance. But, there is no provision in the BMSMA that disallows the sole signatory of a management corporation's cheques. Mr Cheung should raise his concern within the framework of the BMSMA instead of asking the Court to micromanage the operations of MCST 508. To seek for this declaration is to effectively ask the Court to micromanage MCST 508's conduct in its day-to-day administrative affairs, which is not desirable.

(i) I dismiss the Prayers sought in the OSes in respect of the Breach Declaration and the Removal Orders. First, there is no legal basis for the Court to exercise its powers to remove Mdm Cheong and Mr Tanu from their position as council members of MCST 508. Under the BMSMA, there is a regime to remove the management corporation's council members. Second, there is no factual basis for alleging that

Mdm Cheong and Mr Tanu have breached their duties or failed to discharge their duties as council members of MCST 508.

(j) I allow the Eighth Prayer in OS 809. The removal of the rear windows in Unit 53 appears to be unauthorised and it is a breach of s 37 of the BMSMA. This alteration is one which MCST 508 is not empowered to authorise under s 37(4) of the BMSMA. Further, Mdm Cheong and Mr Chang cannot rely on the doctrine of acquiescence to say that MCST 508 has, by its inaction, acquiesced in the breach. It is simply illogical to conclude that MCST 508 has acquiesced to a matter for which it has no power to approve.

(k) For the Ninth and Tenth Prayers in OS 809, Mr Cheung has failed to prove on a balance of probabilities that the front wall of Unit 53 encroached onto the common property so as to interfere unreasonably with the use or enjoyment of the common property. Further, there was no breach of s 37(3) of the BMSMA flowing from the erection of the front wall. In any event, even if there was a breach, I am satisfied that the doctrine of acquiescence applies to ratify that breach, given that the erection of the front wall is an improvement to the lot which MCST 508 is empowered to authorise.

Conclusion

245 For the above reasons, I dismiss the Applicant's case except for the Eighth Prayer in OS 809.

246 This leaves me to conclude with one final observation regarding the behaviours of subsidiary proprietors in strata developments. I reiterate the Court of Appeal's observations in *Sit Kwong Lam* at [50], that strata developments

were founded on the concept of community living. If this goal of harmonious living is to be achieved, it requires the limits of each subsidiary proprietor's personal rights and duties to be clearly demarcated from the rights and duties of the management corporation. In this way it will hopefully minimise conflicts and disputes. This was also emphasised by Minister Mah during the Second Reading of the Building Maintenance and Strata Management Bill (No 6 of 2004) (see *Singapore Parliamentary Debates, Official Report* (19 April 2004) vol 77 at col 2789 (Mr Mah Bow Tan, Minister for National Development):

> Strata developments are founded on the concept of community living - community living with shared ownership of common property and individual ownership of their own unit, their strata title. So, with this concept, community living must require of each resident a *certain amount of give and take* and it must require of each resident, of each subsidiary proprietor, a knowledge of what are his legal rights and responsibilities, what are his duties and liabilities. …
>
> [emphasis added]

247 Indeed, the point on community living and shared ownership of strata developments was once again reiterated by Minister Mah in the Third Reading of the Building Maintenance and Strata Management Bill (No 6 of 2004) (see *Singapore Parliamentary Debates, Official Report* (19 October 2004) vol 78 at col 992–993 (Mr Mah Bow Tan, Minister for National Development):

> Strata developments are founded on the concept of community living. Individuals own their strata units but share the ownership of common property. *Community living requires a certain degree of give-and-take from each resident.* He must be aware of his responsibilities and liabilities. Ultimately, the [subsidiary proprietors] and other stakeholders will have to take on greater ownership of their estates and work together to resolve issues for the common good of the community.
>
> [emphasis added]

248 The concept of give-and-take is one that was heavily emphasised by Parliament across both readings of the Building Maintenance and Strata

Management Bill. This being the case, it is incumbent on subsidiary proprietors to work together in a cooperative fashion to resolve any and all differences amicably. Unfortunately, the present case is the exact opposite of what was envisaged to be the relationship between subsidiary proprietors. The relationship between Mr Cheung and Mr Param, on the one hand, and the Respondents on the other, has been hostile. It appears to me that both parties are constantly at each other's necks, and this may continue until they realise that this is really senseless.

249 In particular, the manner in which Mr Cheung and Mr Param have conducted themselves as subsidiary proprietors and, at some point in time, council members of MCST 508, is nothing short of abysmal. Despite being offered the opportunity to have their disputes settled amicably by way of mediation, they, particularly Mr Cheung, remained difficult and uncooperative.

250 I echo the words of Lee J in *Chan Sze Ying* at [59], which is worth repeating, that it "is important to discourage the use of the courts in petty quarrels among residents which ought to be resolved through mediation, or by simply voting the delinquent management council out at the next annual general meeting." Indeed, to request the courts to resolve any and every single dispute between subsidiary proprietors of a strata development is especially detrimental from the point of the usage of scarce court resources. Unnecessary court time is taken up to hear and resolve the matter. On the parties' end, unnecessary time and legal expenses are incurred to deal with the disputes. At the end of the day, any perceived victory attained by either party is but a pyrrhic victory.

251 The parties in this case should set aside their egos and their differences, and instead adopt a "give-and-take" attitude and work together in furtherance of the resolution of any and all disputes. Indeed, doing so would further the

spirit of community responsibility, a core feature of strata development living. I, therefore, stress that subsidiary proprietors should, as far as possible, not be too blinded by their emotions and to seek recourse to the courts as the first port of call to resolve their disputes.

252 I shall now hear the parties on costs.

Tan Siong Thye
Judge of the High Court

Lim Tat, Subir Singh Grewal and Wan Chi Kit (Aequitas Law LLP) for the applicant in OS 808 and OS 809;
Kwek Yiu Wing Kevin, Yeo Teng Yung Christopher and Jason Yan Zixiang (Legal Solutions LLC) for the respondent in OS 808 and the respondents in OS 809.