Published on e-First 12 April 2022

21. LAND LAW

TEO Keang Sood
LLM (Harvard), LLM (Malaya);
Advocate and Solicitor (Singapore and Malaya);
Professor, Faculty of Law, National University of Singapore.

I. Co-ownership

A. Trespass by ouster

21.1 The issue of what conduct amounted to an ouster by a tenant in common was considered in *Goh Rosaline v Goh Nellie*.[1] Low, on her death, had by a will left the family home ("the property") in equal shares to all ten of her children plus one of her grandchildren. The plaintiff, the youngest daughter of Low, in her case against her older brother ("the second defendant") for trespass by ouster, had relied on the will and not directly on her rights as a registered tenant in common as she had refused to have her interest transferred from the estate into her name.

21.2 The High Court, in dealing with the preliminary issue of the plaintiff's standing to sue the second defendant, observed that she only held the beneficial interest to one-eleventh of the property as she had refused to accept transfer of legal title to her tenancy in common from the first defendant as the administrator of the estate. Nevertheless, the question of standing was effectively dealt with by the plaintiff joining the first defendant as a defendant so as to ensure that all necessary parties were before the court.

21.3 In the present case, the plaintiff relied on constructive ouster against the second defendant. It is trite that there is ouster for any tenant in common to take possession of the property exclusively, preventing the rest from deriving benefit from it, including by their co-occupation. On constructive ouster, the court succinctly explained as follows:[2]

> In my view, constructive ouster will include wholly unreasonable conduct of one tenant in occupation that effectively prevents another tenant from also residing there. In the case of residential premises, and especially where the tenants in common are family members, the court must have regard to the subjective feelings of the occupants, including likes and dislikes. The court must

1 [2021] SGHC 153.
2 *Goh Rosaline v Goh Nellie* [2021] SGHC 153 at [38].

© 2022 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

> consider objectively whether, having regard to the subjective characteristics of the occupants themselves, the impugned conduct amounts to an ouster.

21.4 The court further opined that it is not a question of who had acted more reasonably. The law does not set out rules concerning who in any household must give way to the other or who must be more reasonable. This applies as much to choice of pets as to anything else. It is important to assess whether any concern, interest or preference relied upon by either party is genuinely held.[3]

21.5 The second defendant's objections had always centred on the plaintiff's dogs, and he had never denied the plaintiff's personal right of residence in the property. He had expressed concerns about specifics, such as the plaintiff bringing the dogs into the shared living areas within the house, their excessive salivation and her delay in cleaning it up. He was also concerned that the dogs were allowed to defecate in the compound and that the plaintiff would not clear it up immediately, attracting flies. The court found that these concerns were genuine and that the plaintiff did not do very much to address the second defendant's concerns.

21.6 For the past 14 years, the plaintiff had exclusive use of one room on the second floor of the property which she had kept locked and gone to whenever she wanted without hindrance from the second defendant. In keeping the room as she did, the plaintiff was affirming that she was indeed in residence. In the result, her claim for trespass by ouster failed.

21.7 The court was also of the view that the plaintiff was not entitled to recover the rent she incurred elsewhere in order to accommodate her dogs if they could not stay with her at the property. The plaintiff could have stayed in her room at the property while her dogs stayed at her apartment next door where there was a side gate between the two compounds that she used.[4]

B. Determination of shares of co-owners

21.8 It is trite that the determination of the share of a co-owner in the property is based on his or her actual contribution towards the purchase price. This is illustrated in *Somwonkwan Sharinrat v Wong Hong Sang Maurice*[5] where the first and second defendants were registered as joint tenants of a Housing and Development Board ("HDB") flat ("the property"). The first defendant's name was included as a joint tenant

3 *Goh Rosaline v Goh Nellie* [2021] SGHC 153 at [39].
4 *Goh Rosaline v Goh Nellie* [2021] SGHC 153 at [55].
5 [2021] SGHC 127.

© 2022 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

of the property by way of a gift from his parents that is, his mother and the second defendant. Following the demise of the first defendant's mother in 2016, her interest in the property devolved to the defendants under the right of survivorship.

21.9 The plaintiff and the first defendant had lived in the property since their marriage in 2013. The plaintiff had since obtained a decree *nisi* against the first defendant in divorce proceedings she instituted against the latter. In the present application to the High Court, the plaintiff claimed for a division of the first defendant's 50% share in the property which was worth $540,000.

21.10 The plaintiff had argued, *inter alia*, that the second defendant was employed by the first defendant as a driver at the latter's company after the second defendant was retrenched from his last job. The plaintiff had reason to believe that the Central Provident Fund ("CPF") contributions utilised in servicing the monthly mortgage instalments were paid by the first defendant. Consequently, the plaintiff was of the view that the first defendant had an equal share in the property as the second defendant and she wanted the court to grant the declaratory relief she claimed in her application.

21.11 The defendants objected to the application and contended that there was no justification or basis for the declaration of 50% ownership sought by the plaintiff. The plaintiff was not seeking a determination by the court as to the percentage share owned by the first defendant in the property. What she was asking the court to do instead was to impute an equal share or 50% to the first defendant, of which she wanted a share in the division of the couple's matrimonial assets. The defendants pointed out that the plaintiff had provided no evidence or justification in support of her claim.

21.12 The plaintiff's contention that the first defendant had a 50% interest in the property was unsustainable. The first defendant's down payment of $22,674.28 towards the property and his contributions of $1,942.28 to the second defendant's CPF ordinary account added up to $24,616.56. The first defendant's share, based on his contributions, accordingly, represented only 4.26% of the property.

21.13 The court pointed out that the plaintiff herself admitted that the first defendant only contributed $22,674.28 towards the purchase price of the property and he became a joint owner because the second defendant and the first defendant's mother had difficulties in servicing

© 2022 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

the HDB mortgage loan. *Chan Yuen Lan v See Fong Mun*[6] ("*Chan Yuen Lan*") and *Damodaran v Rogini*[7] are authorities which pointed to the first defendant's share in the property being based on his actual contribution towards the purchase price. As the plaintiff did not produce any evidence to refute that principle, her application was dismissed by the court.

C. Severance of joint tenancy

21.14 In *Kwek Pit Seng Jeffrey v Koek Ah Hong*,[8] the plaintiff and defendant were initially registered as joint tenants of the property in question. The defendant was the eldest child while the plaintiff was her youngest sibling. The defendant subsequently severed the joint tenancy of the property to a tenancy in common under the Land Titles Act[9] ("LTA") and the instrument of declaration prescribed thereunder was registered.[10] The plaintiff contended that the act of severance was in breach of a common intention constructive trust and, accordingly, the entire beneficial interest in the property was solely his.

21.15 Having regard to the facts and evidence in the case, the High Court found that there was no common intention constructive trust. The parties' original intention was to hold the property on a joint tenancy. The defendant had, up until the point of severance, been content for the property to devolve to the plaintiff upon her demise, which was consistent with her generous conduct toward the plaintiff in the past.

21.16 The precipitating cause for the severance of the joint tenancy was the defendant's realisation that the plaintiff had rented out the property without her permission and failed to pay her half the rental proceeds. In her opinion, this was a sign of disrespect to her as his elder sister. In any event, the defendant was legally entitled to sever the joint tenancy under the LTA.

D. Whether properties are held in joint tenancy or tenancy in common in equity

21.17 In *Lim Sze Wei v Lim Chuan Wei*,[11] one of the issues confronting the High Court was whether the two properties in question, namely, the

6 [2014] 3 SLR 1048.
7 [2020] 5 SLR 1409.
8 [2021] SGHC 143.
9 Cap 157, 2004 Rev Ed.
10 Upon unilateral severance, co-owners are deemed to hold their shares equally as tenants in common: Land Titles Act (Cap 157, 2004 Rev Ed) ss 53(5) and 53(6).
11 [2021] SGHC 267.

© 2022 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

Ang Mo Kio ("AMK") property and the Sunrise property respectively, were held in joint tenancy or tenancy in common in equity.

21.18 Both properties were registered in the names of the defendant (the eldest child) and that of his parents as joint tenants. After the demise of his parents, his two younger siblings commenced the present action, in their capacity collectively as executors of their parents' estates, claiming that in respect of the AMK property the parents' estate owned all of it, while in respect of the Sunrise property the parents' estate owned two-thirds. If so, and as both parents under their wills had given their interests in the properties to the first plaintiff (the youngest child), the latter would be entitled to the beneficial interests therein. The defendant counterclaimed that he was the sole beneficial owner of both properties, on the principle that upon the death of a joint tenant the entire interest in the property passes to the survivor.

21.19 Having regard to the facts and evidence in the case, the court found that the parents did not understand or intend at the time the properties were purchased that their interests therein would go to the defendant automatically upon their deaths. Accordingly, the legal estate was held in joint tenancy only because that was the "default" position under the LTA. It was not the parents' deliberate and informed choice.[12] In the result, the court held that, in equity, the parents purchased the properties as tenants in common and as such, their beneficial interests in the properties could be bequeathed by them under their wills to the first plaintiff.

21.20 In respect of the AMK property, the court referred to the analytical framework laid down by the Court of Appeal in *Chan Yuen Lan*[13] to determine the proportion of beneficial interests therein. The court found, *inter alia*, that there was sufficient evidence that the entirety of the equitable interest in the property belonged to the parents in equal shares, as neither the plaintiffs nor defendant had been able to show intention of any different apportionment between the father and the mother.[14] Further, at the time of acquisition, the beneficial interest of the AMK property was intended to be held entirely by the parents. Thus, the beneficial interest in the property remained with the parents notwithstanding the joint tenancy of the legal estate. Accordingly, the property was beneficially owned in equal shares by the parents and the

12 See also *Lau Siew Kim v Yeo Guan Chye Terence* [2008] 2 SLR(R) 108 at [95].
13 *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 at [160]. See para 21.13 above.
14 In this regard, the High Court made reference to *Su Emmanuel v Emmanuel Priya Ethel Anne* [2016] 3 SLR 1222 at [87].

© 2022 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

defendant held the property on trust for the estates of the parents, to be distributed in accordance with their respective wills.

21.21 As for the Sunrise property, the court, in applying the *Chan Yuen Lan* framework, found that the parents and the defendant had the common intention to hold the property in the proportion of one-third each from the time of the original purchase. While the orthodox approach is to determine each party's share of the beneficial interest with reference to their contributions to the purchase price of the property at the time of acquisition, such a strict approach may not be consonant with the realities of mortgage repayments. As was held in *Su Emmanuel v Emmanuel Priya Ethel Anne*,[15] subsequent mortgage repayments may be taken into account if there is a prior agreement between parties concerning the apportionment of payment of the mortgage. In this regard, the defendant was expected to pay for one-third of the Sunrise property in accordance with the parties' common intention. In the result, the three named joint tenants had owned the property in equity as tenants in common in equal shares.

II. Caveatable interest

A. Private trustee in bankruptcy of mortgagor

21.22 One of the issues which arose for consideration in *Rothstar Group Ltd v Chee Yoh Chuang*[16] was whether the private trustees in bankruptcy of a mortgagor of property have a caveatable interest therein. In the present case, a property held by N and a company was mortgaged to Rothstar Group Ltd ("Rothstar") and the mortgage was registered. Subsequently, N was adjudged a bankrupt and the company was wound up. The liquidator of the company and the private trustees in bankruptcy of N sought to void the mortgage on the ground, *inter alia*, that it was a transaction at an undervalue under s 98 of the Bankruptcy Act.[17] The private trustees had also lodged a caveat against the property. Rothstar applied for the removal of the caveat.

21.23 The High Court held, *inter alia*, that the granting of the mortgage was an undervalued transaction that was void under s 98 of the Bankruptcy Act and allowed the application of the liquidator and the private trustees.

15 [2016] 3 SLR 1222. See n 21.14 above.
16 [2021] SGHC 176.
17 Cap 20, 2009 Rev Ed.

© 2022 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

21.24 The application of Rothstar to remove the caveat lodged against the property was dismissed. The private trustees had lawfully lodged the caveat under s 76(1) read with s 36(1) of the Bankruptcy Act which provides that, upon the making of the bankruptcy order, the property of the bankrupt shall vest in the private trustee. Under s 111 of the LTA, when the private trustee takes possession of land under a bankruptcy order, he may lodge a caveat under s 115 of the LTA.

21.25 The court correctly clarified that the property did not fall outside the pool of assets that vested in the private trustees. As the mortgage was found to be void, the private trustees had a caveatable interest in the property.[18]

III. Strata title

A. Management corporation's statutory duty to maintain common property

21.26 What is the nature of a management corporation's duty to maintain common property under s 29(1)(*b*)(i) of the Building Maintenance and Strata Management Act 2004[19] ("BMSMA")? Is it a case of strict liability or one where the duty is not breached if it has acted reasonably? This was considered by the High Court in *Management Corporation Strata Plan No 3602 v MacFadden, Declan Pearse*.[20]

21.27 Water from a concealed rainwater downpipe in a strata development had leaked into the unit owned by the respondent. The pipe was common property, and it was encased in a wall. The respondent brought a claim before the Strata Titles Board ("STB") seeking damages from the appellant, the management corporation, for water damage and consequential losses.

21.28 As the pipe was concealed, it was not visible to a person on the ground looking at the building. It was also not shown in the as-built drawings. The STB held that there was no inordinate delay on the part of the appellant in establishing the cause of the leak and in repairing the pipe. However, the STB held, *inter alia*, that the position under s 29(1)(*b*)(i) of the BMSMA is one of strict liability and found the appellant to be in breach of its statutory duty to maintain the pipe and keep it in good repair. The STB had followed the New South Wales Supreme Court case

18 *Rothstar Group Ltd v Chee Yoh Chuang* [2021] SGHC 176 at [86].
19 2020 Rev Ed.
20 [2021] SGHC 260.

© 2022 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

of *Seiwa Pty Ltd v Owners Strata Plan 35042*[21] ("*Seiwa*") which decided that a breach of ss 62(1)–6(2) of the New South Wales Strata Schemes Management Act 1996 ("SSMA"), the equivalent of s 29(1)(*b*)(i) of the BMSMA, gave rise to strict liability and that it mattered not whether the owners corporation had acted reasonably.[22]

21.29 On appeal, the High Court reversed the STB's decision. The court noted that although *Seiwa* cited *Ridis v Strata Plan 10308*[23] ("*Ridis*"), the two decisions stood in contrast as to what the duty to maintain common property entailed. In *Ridis*, a glass pane in the front door of a building shattered and injured the plaintiff. He claimed that the owners corporation had breached its duty of care as an occupier of the common property, and its statutory duties under s 62 of the SSMA. His claim was dismissed at first instance, and that decision was upheld (by a majority) on appeal. In *Ridis*, all three appellate judges found it relevant whether the owners corporation had acted reasonably.[24] The High Court considered the law on this point in New South Wales to be represented by the decision of the appellate court in *Ridis* and not the decision of the first instance court in *Seiwa*. It also adopted the reasoning in the Canadian case of *John Campbell Law Corp v Strata Plan 1350*[25] where the position is the same as laid down in *Ridis*.

21.30 In light of the above, the High Court held that the appellant's duty to maintain common property under the BMSMA did not give rise to strict liability as it mattered whether the appellant acted reasonably or not. In relation to its duty to maintain common property, the appellant was merely the agent for the unit owners[26] and it was not an insurer.[27]

21.31 In the present case, the appellant did not know, and could not reasonably have known, of the concealed pipe. When the leak occurred, it ascertained the source of the leak, and repaired the pipe. As the appellant acted reasonably, there was no breach of s 29(1)(*b*)(i) of the BMSMA which did not create a situation of strict liability.[28] In other words, the mere fact that the leaking pipe was common property did not, without

21 [2006] NSWSC 1157.
22 *Seiwa Pty Ltd v Owners Strata Plan 35042* [2006] NSWSC 1157 at [3], [5], [14] and [21].
23 [2005] NSWCA 246.
24 *Ridis v Strata Plan 10308* [2005] NSWCA 246 at [5]–[7], [11], [55] and [187].
25 [2001] BCSC 1342 at [18] which dealt with the equivalent s 34(1)(d) of the British Columbia Condominium Act (RSBC 1996, c 64) where the phrase "reasonably necessary" is used to qualify the duty of "renewal".
26 *Ridis v Strata Plan 10308* [2005] NSWCA 246 at [186].
27 *John Campbell Law Corp v Strata Plan 1350* [2001] BCSC 1342 at [18].
28 See also *Loh Ngai Seng v The Management Corporation Strata Title Plan No 0581* [2019] SGMC 34 where it was not held that the management corporation was

(cont'd on the next page)

© 2022 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

more, render the appellant liable. If the appellant had acted reasonably in the discharge of its duty to maintain common property, it did not breach its statutory duty.

B. Award of damages by Strata Titles Boards for breach of statutory duty

21.32 The issue whether an STB can award damages for breach of statutory duty under the BMSMA was also considered in *Management Corporation Strata Plan No 3602 v MacFadden, Declan Pearse*.[29]

21.33 The STB, in finding the appellant to be in breach of its statutory duty under s 29(1)(*b*)(i) of the BMSMA to maintain the pipe and keep it in good repair, had held that it was liable to pay damages for the leak from the pipe pursuant to ss 101(1)(*a*) and 101(3) of the BMSMA.

21.34 On appeal, the High Court set aside the STB's order. It held that s 101 of the BMSMA does not give an STB the power to award damages for breach of statutory duty as s 88[30] of the BMSMA gives that power to the court. In fact, s 101(3) of the BMSMA (which confers on an STB the power to order damages) specifically excludes "order[s] made with respect to the exercise or performance of, or the failure to exercise or perform, a power, duty or function conferred or imposed by this Act or the by-laws". That corresponds to s 101(1)(*c*) of the BMSMA. An order with respect to a breach of the appellant's duty under s 29(1)(*b*)(i) of the BMSMA to maintain common property is an order under s 101(1)(*c*) and within the exception to s 101(3). It followed that an STB had no power to order damages for breach of statutory duty.

21.35 The STB in awarding damages had relied on *Seiwa*.[31] The High Court noted that *Seiwa* was overruled on this point by the New South Wales Court of Appeal in *The Owners Strata Plan 50276 v Thoo*[32] (where the appellate court held that a breach of s 62(1) of the SSMA (the equivalent of s 29(1)(*b*)(i) of the BMSMA) by an owners corporation

strictly liable, such that the mere fact of a tree falling onto the residents' parked cars would render the management corporation liable.

29 Discussed at paras 21.26–21.31 above.

30 For earlier cases decided prior to the introduction of s 88 of the Building Maintenance and Strata Management Act 2004 (2020 Rev Ed) on 1 April 2005 when there was no reference to any entitlement to apply to recover damages, see *Management Corporation Strata Title Plan No 586 v Menezes Ignatius Augustine* [1992] 1 SLR(R) 201 and *Keller Piano Co (Pte) Ltd v Management Corporation Strata Title No 1298* DC/S 3109/1989 (27 August 1993).

31 Discussed at paras 21.28–21.30 above.

32 [2013] NSWCA 270.

© 2022 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

did not give rise to an action for damages for breach of statutory duty)[33] as the SSMA had no equivalent of s 88 of the BMSMA giving the court the power to award damages in such a case.[34] However, it is clear that under the BMSMA, damages for breach of s 29(1)(*b*)(i) cannot be ordered by an STB.

B. Nomination for council elections

21.36 Is the collective nomination of individual unit owners, on a single nomination form, valid for council elections? This issue arose for consideration in the High Court case of *Cheng Hiap Choon v Management Corporation Strata Title Plan No 3001*[35] where nine individual unit owners were collectively nominated for council elections. Earlier, the applicants had applied to the STB to invalidate the elections. The STB dismissed the application on other grounds and the applicants appealed.

21.37 Before the High Court, the applicants argued that the collective nomination of the nine individual unit owners was impliedly prohibited by s 53(8)(*b*) read with s 53(12) of the BMSMA given that there was no express prohibition in s 53 of the same Act.

21.38 Section 53(8)(*b*) of the BMSMA concerns nominations by a unit owner who owns two or more units ("multiple-unit owner"). Together with the nominees of a multiple-unit owner already in council, that unit owner's nominees for election must not exceed the threshold number under s 53(12) of the BMSMA, that is, the number of council members proportional to that unit owner's share value, or 49% of the number of council members, whichever number is lower. This allows a multiple-unit owner to nominate candidates proportionate to his share value while preventing such a unit owner's nominees from amounting to a majority in council.

21.39 In dismissing the appeal, the High Court correctly noted that, as each unit owner only owned one unit in the strata development in question, the multiple-unit owner provisions in s 53(8)(*b*) read with

---

33 *The Owners Strata Plan 50276 v Thoo* [2013] NSWCA 270 at [1], [198]–[222] and [227].

34 While s 88 of the Building Maintenance and Strata Management Act 2004 (2020 Rev Ed) ("BMSMA") now entitles a unit owner to apply to the court to recover damages from the management corporation in the event of any breaches of the provisions in Pt V of the BMSMA (which includes s 29(1)(*b*)(i)) and the court may make such order as it thinks fit, which could include ordering the management corporation to pay damages, whether damages would be ordered, would depend on the circumstances of each case.

35 [2022] SGHC 16.

© 2022 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

s 53(12) of the BMSMA would not apply. The applicants, nevertheless, argued that if multiple-unit owners were subject to a limit on nominations, unit owners who own only one unit ("single-unit owners") must likewise be subject to some limit on nominations, namely, each single-unit owner could only nominate one person. They relied on a commentary in *Strata Living in Singapore: A General Guide*[36] ("*SLS Guide*"), which is premised on a single-unit owner being entitled to nominate only one candidate in respect of his or her unit, that is, the "one unit, one candidate" principle.

21.40 While the court accepted that the "one unit, one candidate" principle underpinned what a single-unit owner is entitled to do, it arrived at this position based on ss 53(6) and 53(8)(*a*) of the BMSMA, and the legislative history[37] of s 53 of the same Act (and not on the multiple-unit owner provisions in ss 53(8)(*b*) and s 53(12) of the BMSMA which do not apply to single-unit owners). Under s 53(6)(*a*) of the BMSMA, a unit owner's eligibility for election is not defined with reference to "nomination", unlike the other two categories: an individual nominated by a corporate unit owner[38] and the immediate family of a unit owner nominated by that unit owner.[39] The court correctly observed that a unit owner's eligibility for election is derived from his or her own status as a unit owner, that is, his or her ownership of a unit, rather than from being nominated by himself or herself, or by someone who has the right to nominate him or her.[40]

21.41 In the present case, all nine nominees were themselves individual unit owners. Each of them was eligible for election under s 53(6)(*a*) of the BMSMA and none of the disqualifying factors in s 53(7) or 53(8) of the BMSMA applied. Their names, unit numbers, and signatures (signifying their consent to run) appeared on a single form, with a tenth unit owner as proposer and an 11th unit owner as seconder. As the court further explained:[41]

> [T]he *collective* nomination [was] an exercise of each of the nine [unit owners'] *individual* right to run for election, and to nominate himself for that purpose. In making that nomination, the proposer and seconder were agents of the nine

36 *Strata Living in Singapore: A General Guide* (Building and Construction Authority, 2005) at p 12.
37 *Ie*, First Schedule read with s 30(4) of the Land Titles (Strata) Act (Cap 158, 1985 Rev Ed) (with effect from 30 March 1987) and ss 57(5)–57(7) of the Land Titles (Strata) Act (Cap 158, 1985 Rev Ed) (with effect from 1 December 1987).
38 Building Maintenance and Strata Management Act 2004 (2020 Rev Ed) s 53(6)(*b*).
39 Building Maintenance and Strata Management Act 2004 (2020 Rev Ed) s 53(6)(*c*).
40 *Cheng Hiap Choon v Management Corporation Strata Title Plan No 3001* [2022] SGHC 16 at [30].
41 *Cheng Hiap Choon v Management Corporation Strata Title Plan No 3001* [2022] SGHC 16 at [32].

© 2022 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

> nominated [unit owners]. The proposer and seconder were not exercising any individual rights of theirs to make several nominations; instead, each of the nine [unit owners] was exercising his own right to run, and to nominate himself. The nine nominated [unit owners] were not nominees in respect of the proposer's or seconder's [units]: they were nominees in respect of their respective [units]. Indeed, the proposer and seconder could still have put themselves forward for election, if they had wished to do so. [emphasis in original]

21.42 In the court's opinion, the correct question to ask was not: "Can a single-unit owner nominate several persons for election?" Instead, it was: "Can each of several individual unit owners nominate himself or herself for election, through a collective nomination of them all?", to which the answer is in the affirmative.[42]

21.43 For the reasons above, the court held that it was not possible to read into ss 53(8)(*b*) and 53(12) of the BMSMA any implied prohibition against the collective nomination of individual unit owners, when each of them was eligible for election. Hence, a collective nomination of individual unit owners did not go against the letter or the spirit of the legislation and was valid.

21.44 As for the commentary in the *SLS Guide* noted above, the court explained that it should be understood as follows:[43]

> (a) An individual single-unit owner may run himself or herself (s 53(6)(*a*) of the BMSMA), or he or she may nominate an immediate family member to run (s 53(6)(*c*) of the BMSMA).
>
> (b) A corporate single-unit owner may nominate an individual to run (s 53(6)(*b*) of the BMSMA).
>
> (c) If a single unit is jointly owned, any one of the joint owners who is an individual may run, or another person (whether an individual unit owner's immediate family member under s 53(6)(*c*) of the BMSMA, or a corporate unit owner's representative under s 53(6)(*b*) of the BMSMA) may be nominated in respect of that unit (s 53(8)(*a*) of the BMSMA).
>
> (d) If several individual unit owners are collectively nominated, each of them is exercising his or her individual right to run, and to nominate himself or herself in respect of his or her unit – and that is valid.

21.45 Thus, if several unit owners are collectively nominated for election, all of them can run for election as the collective nomination of them is valid.

42 *Cheng Hiap Choon v Management Corporation Strata Title Plan No 3001* [2022] SGHC 16 at [34].

43 *Cheng Hiap Choon v Management Corporation Strata Title Plan No 3001* [2022] SGHC 16 at [38].

© 2022 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

C. Common property

21.46 Are the external walls of a strata development within the balcony areas of the units concerned common property? If so, there is a requirement for the management corporation to procure a 90% resolution under s 33 of the BMSMA to permit the unit owners concerned to make alterations to the external walls on a permanent basis. These issues were canvassed by the High Court in *Mu Qi v Management Corporation Strata Plan No 1849*.[44]

21.47 The appellants were owners of a 15th floor unit in a strata development. They applied to the STB for, *inter alia*, an order requiring the respondent, the management corporation, to remove the unauthorised awnings installed by the unit owners on the 14th floor which were affixed to the external walls of the balcony area directly below the appellants' unit. The awnings reflected heat and caused glare, among others, which affected the appellants' unit above. The STB declined to grant the order sought and the appellants appealed.

21.48 Having regard to the definition of "common property" in s 2(1) of the BMSMA and based on the photographs that were produced in evidence, the High Court held that it was indisputable that the external walls to which the awnings were affixed formed part of the common property of the development in line with the Court of Appeal decision in *Sit Kwong Lam v Management Corporation Strata Title Plan No 2645*[45] as they contributed to the appearance of the building, and were hence capable of being enjoyed by some or even all unit owners of the development.

21.49 The court also noted that, at the STB hearing, the respondent unequivocally took the position that the external walls of the development were common property, and the matter proceeded on that basis. To now entertain the respondent's contention before the court that the external walls might not be common property would prejudice the appellants given that the case could well have proceeded differently at the STB hearing below. The STB, accordingly, erred in not granting the order

44 [2021] 5 SLR 1401.

45 [2018] 1 SLR 790 at [59]. See also *Mark Wheeler v The Management Corporation Strata Title Plan No 751* [2003] SGSTB 5 at [31] and *Wu Chiu Lin v Management Corporation Strata Title Plan No 2874* [2018] 4 SLR 966 ("*Wu Chiu Lin*") at [58]–[76] which held that the external walls of a condominium development were common property. The correctness of the decision in *Wu Chiu Lin* has clearly been reinforced with the subsequent addition of sub-s (*c*) to the definition of "common property" in s 2(1) of the Building Maintenance and Strata Management Act 2004 (2020 Rev Ed) ("BMSMA") and its attendant examples on 1 February 2019, when certain amendments to the BMSMA came into effect.

© 2022 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

sought by the appellants against the respondent for the removal of the fixed awnings and/or the restoration of the demolished external walls given that there was no 90% resolution procured as required under s 33 of the BMSMA, which will now be discussed below.

D. Exclusive use by-laws

21.50 In *Mu Qi v Management Corporation Strata Plan No 1849*, the respondent had also argued that the STB's decision should stand even if s 33 of the BMSMA were to apply since the November 2019 resolution passed at the annual general meeting ("AGM") sufficed for the purposes of that section to authorise the installation of the awnings and the modification of the walls.

21.51 The High Court did not agree with the views expressed by the STB below that the by-law passed by the November 2019 resolution might well make the disputed awnings *etc* to be authorised structures as they stood now.[46] The special resolution passed at the November 2019 AGM was a clear attempt to provide a blanket whitewash approval in respect of all unauthorised structures on the common property of the development. It was an abuse of the approach set out in s 33 of the BMSMA for the grant to exclusive use or special privileges over common property.

21.52 In the opinion of the court, under s 33 of the BMSMA, the resolution in question which conferred on a unit owner the exclusive use of, or special privileges over, the common property must identify the owner of the unit in question, specify the nature of the exclusive use or the special privilege, and the period of time over which this use or privilege was to last.[47] Instead, the November 2019 by-law flouted all these requirements. It gave *carte blanche* to the unit owners to submit a list of all the exclusive uses of the common property they wished to enjoy, or special privileges over the common property which they wished to exercise, and allowed the management office to effectively grant them to the unit owners, who were not even named in the by-law, without further question.[48] This was undoubtedly an invalid resolution, in so far as it was one that was passed purportedly to comply with s 33 of the BMSMA.

21.53 It was incumbent for the by-law to be passed pursuant to a 90% resolution as the unauthorised structures were clearly intended

46 *Mu Qi v Management Corporation Strata Plan No 1849* [2021] 5 SLR 1401 at [62].
47 These requirements similarly applied to the November 2018 resolution: *Mu Qi v Management Corporation Strata Plan No 1849* [2021] 5 SLR 1401 at [72].
48 *Mu Qi v Management Corporation Strata Plan No 1849* [2021] 5 SLR 1401 at [66].

© 2022 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

by the unit owners of the 14th floor to be permanent in nature.[49] It was an improper and illegal use of the procedures set out in s 33(1) of the BMSMA if one could effectively accord to unit owners 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 involved changes to the common property that were permanent in nature.[50] As such, the November 2019 by-law was not legally effective in so far as it purported to authorise the fixed awnings installed by the 14th floor unit owners or the demolition of the external walls of the development.

E. Appeal on points of law

21.54 Apart from the points of law discussed above which were raised on appeal to the High Court in *Mu Qi v Management Corporation Strata Plan No 1849* under s 98(1) of the BMSMA, the court also dealt with the alleged error of law that the STB, in deciding against ordering the respondent to take steps to restore the common property, took into account the irrelevant consideration that the affected owners of the 14th floor unit ought to have been given a chance to be heard and to raise any possible defences and/or counterclaims against the respondent.

21.55 In light of s 24(2) of the BMSMA,[51] there was no procedural defect in the proceedings commenced before the STB. There was no dispute between the appellants and the respondent in the STB proceedings that the external walls of the development were common property. That being the case, the respondent, being the management corporation, was the correct party to be named as the party to defend the STB proceedings. It was unnecessary for the appellants to have named the affected 14th floor unit owners as respondents in the proceedings because there was no

49 *Mu Qi v Management Corporation Strata Plan No 1849* [2021] 5 SLR 1401 at [68].

50 It may be pertinent to note that the Strata Titles Board found as a fact that there was insufficient evidence to show that there was a "killer litter" problem in the development. Thus, the 14th floor unit owners did not come within the exception to the 90% resolution requirement for the installation of the fixed awnings by them, namely, that the awnings in the present case were not "safety devices" under para 5(3) of the Second Schedule to the Building Maintenance (Strata Management) Regulations 2005, dealing with prescribed by-laws, which permitted a management corporation to allow the installation of a "safety device" on common property for the safety of the occupiers of the unit concerned: *Mu Qi v Management Corporation Strata Plan No 1849* [2021] 5 SLR 1401 at [24] and [82].

51 See also *Management Corporation Strata Title Plan No 1272 v Ocean Front Pte Ltd* [1994] 3 SLR(R) 787 at [26]–[28] which dealt with the then equivalent s 33(2) of the Land Titles (Strata) Act (Cap 158, 1988 Rev Ed) where it was held that it is the management corporation which should normally sue and be sued with regard to common property.

© 2022 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

dispute that what they had done was to install structures and make alterations to the common property of the development.

21.56 Even if the affected 14th floor unit owners might have some claim against the management corporation for having misled them into believing that their additions and alterations were legal and authorised, it did not follow that they would have a defence if the respondent was ordered to take steps to remove the illegal structures and/or restore the external walls as they could not successfully resist any order which required the common property to be restored to its original form. The only possible defence was if the unit concerned had a "killer litter" problem. This, however, should not apply to the owners of the 14th floor unit directly below that of the appellants' unit as it was clear that their evidence had been heard and considered by the STB which also made a finding that the development did not have any "killer litter" problem. Accordingly, the STB erred in not granting the orders sought by the appellants in respect of the common property of the development. The court granted, *inter alia*, the respondent three months to carry out what it needed to do before proceeding to take steps to remove the fixed awnings and restore the demolished external walls.

© 2022 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.