**IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE**

**[2018] SGCA 14**

Civil Appeal No 28 of 2017

Between

**SIT KWONG LAM**

… *Appellant*

And

**MANAGEMENT CORPORATION STRATA TITLE PLAN NO 2645**

… *Respondent*

In the matter of Originating Summons No 246 of 2016

Between

**SIT KWONG LAM**

… *Applicant*

And

**MANAGEMENT CORPORATION STRATA TITLE PLAN NO 2645**

… *Respondent*

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# GROUNDS OF DECISION

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[Land] — [Strata titles] — [Common property]
[Land] — [Strata titles] — [By-laws]

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# Sit Kwong Lam
# v
# Management Corporation Strata Title Plan No 2645

**[2018] SGCA 14**

Court of Appeal — Civil Appeal No 28 of 2017
Sundaresh Menon CJ, Judith Prakash JA and Steven Chong JA
24 October 2017

5 March 2018

**Sundaresh Menon CJ (delivering the grounds of decision of the court):**

## Introduction

1 This was an appeal against the decision of the High Court, which in turn was dealing with an appeal brought against the decision of the Strata Titles Board ("the STB") on certain points of law, pursuant to s 98(1) of the Building Maintenance and Strata Management Act (Cap 30C, 2008 Rev Ed) ("the BMSMA"). The crux of the matter was the proper interpretation of the term "common property", as defined in s 2(1) of the BMSMA. Mr Sit Kwong Lam ("the Appellant"), a subsidiary proprietor of a unit in the condominium development at 13 Ardmore Park ("the Development"), had carried out various works at different areas of the Development, each of which, he maintained, did not form part of the common property. The management corporation of the Development ("the Respondent"), on the other hand, contended that those areas were part of the common property, and that the Appellant had breached various

by-laws in having carried out the works in question without obtaining the Respondent's prior approval. The STB found in favour of the Respondent and on appeal, the High Court affirmed the STB's decision. After hearing the parties, we too were satisfied that the works carried out by the Appellant were within the common property and that the Appellant had breached the relevant by-laws in having had these works carried out without the necessary approval. We therefore dismissed the appeal and now give the detailed reasons for our decision.

**Background facts**

2 The Appellant was the subsidiary proprietor of a penthouse unit ("the Unit") which occupied the 29th and 30th floors of one of the towers in the Development.

3 Sometime around November 2011, the Appellant's representative, Glory Sky Technology Ltd ("Glory"), submitted an application for certain renovation works to be carried out at the Unit for the Respondent's approval. The application, which the Respondent subsequently approved, did not state that any of these renovation works would be in areas that were not within the unit.

4 In August 2013, the Respondent discovered in the course of some routine inspections that the Appellant had installed timber decking on two ledges that bordered segments of the Unit's external facades on the 29th floor ("Work 1"). Each of the two ledges was enclosed by a parapet that was about 0.75m in height and resembled balconies, although it was common ground that they were not in fact balconies. Fixed glass panels originally separated the ledges from the Unit such that they could not be accessed by occupants of the Unit, but the Appellant had replaced those with sliding panels.



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5 The Respondent then corresponded with Glory, stating that Work 1 was unauthorised and requesting the Appellant to restore the fixed glass panels. Further correspondence ensued and, on 28 August 2013, the Respondent advised the Appellant to submit a formal application to install timber decking on the ledges. The Appellant did so through Glory on 3 September 2013, but the Respondent concluded that Work 1 entailed the exclusive use of common property, which it had no jurisdiction to authorise. It thus advised the Appellant to sponsor a resolution at the next Annual General Meeting ("AGM") in April 2014 to acquire the right to the exclusive use of the ledges pursuant to s 33(1)(*c*) of the BMSMA. Such a resolution would have required the support of at least 90% of the aggregate share value of all the valid votes cast at the AGM in order to be carried. However, the Appellant did not initially pursue this course.

6 About eight months later, on or around 5 May 2014, the Respondent discovered that the Appellant had covered the entirety of the flat roof on the 30th floor, outside the Unit, with similar timber decking ("Work 2"). The flat roof was accessible to all subsidiary proprietors in the Development through a common staircase.

7 A few days later, on or around 12 May 2014, the Respondent discovered that the Appellant had installed an air-conditioning ventilation unit on an external wall enclosing the Unit at the 30th floor, in the same vicinity as Work 2 ("Work 3"). To carry out Work 3, the Appellant would have needed to hack through the wall in question so as to connect the air-conditioning ventilation unit to the interior of the Unit.

8 Thereafter, the Respondent wrote to Glory requesting the immediate removal of Works 1, 2 and 3 (collectively, "the Works"), failing which the



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Respondent would remove or demolish "all unauthorised works". Further correspondence was subsequently exchanged between the Respondent and Glory, but there was no resolution and the Works remained in place.

9 About a year later, at the AGM held on 25 April 2015, the Appellant tabled motions seeking the exclusive use and enjoyment of, and/or special privileges in respect of, the areas where the Works had been carried out (collectively, "the Areas"). However, he failed to secure the requisite number of votes on any of the motions.

10 Thereafter, on 30 June 2015, the Appellant filed an application to the STB ("the STB Application") seeking a number of orders, including a declaration that he had not breached any by-laws in having executed the Works.

11 It was undisputed that the Areas, which in the aggregate measured about 53 square metres, were not marked out as falling within the Unit on the strata title plan, but were instead demarcated as common property.

**The STB's decision**

12 On 11 February 2016, the STB dismissed the STB Application with costs to the Respondent. That decision turned largely on whether the Areas formed part of the common property, and the STB concluded that they did.

13 Common property is defined in s 2(1) of the BMSMA, as follows:

> "common property", subject to subsection (9), means —
>
> > (*a*) in relation to any land and building comprised or to be comprised in a strata title plan, such part of the land and building —



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> (i) not comprised in any lot or proposed lot in that strata title plan; and
>
> (ii) used or capable of being used or enjoyed by occupiers of 2 or more lots or proposed lots; or
>
> (*b*) in relation to any other land and building, such part of the land and building —
>
> (i) not comprised in any non-strata lot; and
>
> (ii) used or capable of being used or enjoyed by occupiers of 2 or more non-strata lots within that land or building;

Only the definition in sub-s (*a*) was relevant to the present appeal. The STB construed the two limbs of sub-s (*a*) as imposing two conjunctive conditions, such that in order to constitute common property, the relevant part of the land or building must not be comprised in any lot or proposed lot in the strata title plan, *and* must also be used or capable of being used or enjoyed by the occupiers of two or more lots or proposed lots. Since the satisfaction of the first condition was not in contention, the sole issue was whether the Areas fulfilled the second condition of being used or capable of being used or enjoyed by the occupiers of two or more lots or proposed lots.

14 In relation to Work 1, the STB thought that the "designed purpose" of the ledges was speculative, but was nevertheless of the view that the ledges were obviously "part and parcel of the fabric of the building", "contribute[d] to the character and appearance" of the building, and that their presence provided for "quiet enjoyment" of them by all the subsidiary proprietors. The STB also thought that it was "obvious that [the ledges] serve[d] as a shelter or sunshade to the unit/units below [them]". It therefore concluded that the ledges were used or capable of being used or enjoyed by the occupiers of two or more lots in the Development, and that accordingly, they formed part of the common property.



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15 As for Works 2 and 3, these were respectively installed on the flat roof at the 30th floor outside the Unit and the external wall in the same vicinity. Both the flat roof and the external wall were accessible to all subsidiary proprietors by way of a common staircase. The Appellant submitted that even though the flat roof and the external wall could be used or was capable of being used or enjoyed by occupiers of two or more units, they were not common property because they were not *meant* for common usage. The STB rejected this argument and concluded that the BMSMA did not require property to be "meant for common usage" before they could be considered common property. It was satisfied on the facts that the areas on which Works 2 and 3 had been installed formed part of the common property.

16 The Works were therefore all found to have been installed on the common property of the Development. The STB found that in carrying out the Works without the prior approval of the Respondent, the Appellant had breached by-laws 8.1.1 and 8.2.5 of the by-laws made by the Respondent under s 32(3) of the BMSMA ("the Additional By-Laws"), and also by-law 5 of the by-laws prescribed in the Second Schedule to the Building Maintenance (Strata Management) Regulations 2005 (GN No S 192/2005) ("the Prescribed By-Laws").

17 The Additional By-Laws read as follows:

> **8.0 RENOVATION**
>
> 8.1 Submission & Approval
>
> 8.1.1 The Subsidiary Proprietor shall submit to the Management the prescribed application form for renovation works together with a detailed work schedule at least 10 working days prior to commencement of any renovation works.
>
> …
>
> 8.2 Type of Work



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> …
>
> 8.2.5 The Subsidiary Proprietor and his contractor can only carry out the type of work specified in the approval letter given by the Management.

18 The Prescribed By-Laws read as follows:

> **Alteration or damage to common property**
>
> 5.—(1) A subsidiary proprietor or an occupier of a lot shall not mark, paint, drive nails or screws or the like into, or otherwise damage or deface, any structure that forms part of the common property except with the prior written approval of the management corporation.
>
> …
>
> (3) This by-law shall not prevent a subsidiary proprietor or an occupier of a lot, or a person authorised by such subsidiary proprietor or occupier from installing —
>
> > (*a*) any locking or other safety device for protection of the subsidiary proprietor's or occupier's lot against intruders or to improve safety within that lot;
> >
> > (*b*) any screen or other device to prevent entry of animals or insects on the lot;
> >
> > (*c*) any structure or device to prevent harm to children; or
> >
> > (*d*) any device used to affix decorative items to the internal surfaces of walls in the subsidiary proprietor's or occupier's lot.
>
> …

19 The Appellant, in response, sought to rely on the exception set out in by-law 5(3)(*c*) of the Prescribed By-Laws, and contended that the timber decking and the air-conditioning ventilation unit, namely Works 2 and 3 respectively, had been installed "to prevent harm to children". The STB, however, was not persuaded and accordingly found in favour of the Respondent.



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**The decision below**

20 Having failed before the STB, on 10 March 2016, the Appellant filed Originating Summons No 246 of 2016 ("OS 246"), which was an appeal against the decision of the STB on points of law, pursuant to s 98(1) of the BMSMA. That section reads as follows:

> **98.**—(1) No appeal shall lie to the High Court against an order made by a Board under this Part or the Land Titles (Strata) Act (Cap. 158) except on a point of law.

21 A number of questions of law were raised in OS 246, but only the following two were the subject of the present appeal:

(a) what was the correct interpretation and application of "common property", as defined in s 2(1) of the BMSMA; and

(b) whether the Works fell within the exception in by-law 5(3)(*c*) of the Prescribed By-Laws.

22 After hearing the parties, the High Court judge ("the Judge") dismissed OS 246 and issued detailed written grounds for his decision: see *Sit Kwong Lam v MCST Plan No 2645* [2017] SGHC 57 ("the GD"). We set out below the salient points of his decision that were relevant to the present appeal.

***The correct interpretation and application of the definition of "common property" in s 2(1) of the BMSMA***

23 The definition of "common property" contained in s 2(1) of the BMSMA has been set out at [15] above. Before the Judge, the Respondent submitted that, contrary to the STB's interpretation, the two limbs of the definition should be read disjunctively such that, in order to constitute common property, the relevant part of the land or building need only fulfil one of two conditions, that



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is, either (a) not be comprised in any lot or proposed lot in that strata title plan, or (b) be used or capable of being used or enjoyed by the occupiers of two or more lots or proposed lots. The Appellant disagreed and maintained that the two limbs ought to be read conjunctively, such that both conditions had to be fulfilled in order for a part of the land or building to be within the common property. As has been noted above, this was material because it was undisputed that each of the Works had not been installed on a part of the land or building falling within any lot or proposed lot in the strata title plan, and so the first condition was clearly fulfilled.

24 Having considered the legislative history of the relevant provisions and case law, the Judge concluded that the two limbs were to be read conjunctively: at [77] of the GD.

25 The Judge then held that the correct way to construe the second limb of the definition of common property was to ask whether the area in question was for the exclusive use of the occupiers of the unit in question, in which case it would not be common property, instead of whether the area was for the use of the occupiers of two or more lots, in which case it would be common property: at [78] of the GD. According to the Judge, there was a subtle difference between the two approaches: if an area was intended for use by the occupiers of two or more lots, it would follow that it could not have been meant for the exclusive use of any one lot; but the fact that an area could not be used by the occupiers of two or more lots did not necessarily mean that it was intended for the exclusive use of a single lot, because it might in fact not have been intended for the use of *any* occupier at all. Reading the second limb of the definition of "common property" as directing the inquiry to whether the area in question was for the use of the occupiers of two or more lots could result in a third category of property (aside from the common property and individual lots) in strata



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developments. These would be areas which, although not comprised in any lot, also could not be used by the occupiers of two or more lots. The Judge considered that this would be an absurd outcome, because it would give rise to uncertainty as to who would bear the responsibility for the maintenance of such property: at [82]–[86] of the GD. He therefore considered that the better approach was to construe the second limb of the definition as requiring a consideration of whether the area in question was for the exclusive use of the occupier of the unit in question. What this effectively meant was that an area which was not comprised in any lot in the strata title plan, such that it fulfilled the first limb of the definition in s 2(1) of the BMSMA, would presumptively be part of the common property unless it could be shown that it was for the exclusive use of the occupiers of only one unit.

26 Applying that test, the Judge found that, for Work 1, the ledges were clearly neither intended to be used nor capable of being used or enjoyed by the occupiers of the Unit. As for Works 2 and 3, the position was even clearer as these were installed on the openly accessible flat roof and not for the exclusive use of the occupiers of the Unit. Since both conditions in the first and second limbs of the definition of "common property" in s 2(1) of the BMSMA were fulfilled, the Judge concluded that the Areas were all common property.

***Whether the Works fell within by-law 5(3)(c) of the Prescribed By-Laws***

27 The Judge also found that the Appellant had, by installing the Works without the prior approval of the Respondent, breached by-laws 8.1.1 and 8.2.5 of the Additional By-Laws and by-law 5 of the Prescribed By-Laws. The relevant provisions have been set out at [19] and [20] above. In this appeal, the Appellant contested the Judge's decision with respect to by-law 5 of the Prescribed By-Laws, but not that with respect to by-laws 8.1.1 and 8.2.5 of the



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Additional By-Laws. Thus, we only summarise the Judge's grounds of decision in relation to the former.

28 Before the Judge, the Appellant argued that he had not breached by-law 5 on the basis that Works 2 and 3 fell within the exception set out in by-law 5(3)(*c*) of the Prescribed By-Laws. No similar argument was made with respect to Work 1. For ease of reference, by-law 5(3) is reproduced below:

> (3) This by-law [prohibiting alteration of common property without the prior approval of the management corporation] shall not prevent a subsidiary proprietor or an occupier of a lot, or a person authorised by such subsidiary proprietor or occupier from installing —
>
> > (*a*) any locking or other safety device for protection of the subsidiary proprietor's or occupier's lot against intruders or to improve safety within that lot;
> >
> > (*b*) any screen or other device to prevent entry of animals or insects on the lot;
> >
> > (*c*) any structure or device to prevent harm to children; or
> >
> > (*d*) any device used to affix decorative items to the internal surfaces of walls in the subsidiary proprietor's or occupier's lot.

29 The Appellant asserted that Works 2 and 3 fell within the exception in by-law 5(3)(*c*). In this regard, he contended that he had installed Work 2 because the original cement flooring of the flat roof was prone to become slippery when wet and he was concerned that his three young children might slip and fall there as a result. As for Work 3, he contended that the Unit lacked proper ventilation and this was harmful to his children who had sensitive throats and respiratory tract allergies. These arguments had been made earlier before the STB but the STB was unpersuaded and found that Works 2 and 3 did not fall within the exception in by-law 5(3)(*c*). While it was common ground that the High Court's jurisdiction in the appeal was limited to points of law pursuant to s 98(1) of the



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BMSMA, and did not extend to the STB's findings of fact, the Appellant asserted before the Judge that the STB had made an error of law, by conflating the language of by-laws 5(3)(*a*) and 5(3)(*c*) of the Prescribed By-Laws, and thus wrongly construed by-law 5(3)(*c*) as being confined to "*safety*" devices or structures (as opposed to *any* devices or structures) designed to prevent harm to children.

30 The Judge rejected this argument. First, he noted that the Appellant had not explained what difference there was between a "*safety* device" and any other device to prevent harm to children, or how such a difference would have been material to the STB's finding. Furthermore, based on the STB's judgment, the Judge considered that the STB's analysis rightly focused on whether Works 2 and 3 could be said to prevent harm to the Appellant's children, rather than on whether they were "safety" devices: at [98] of the GD. The Judge further held that by-law 5(3)(*c*) should properly be construed as allowing a subsidiary proprietor to erect a structure or device that is necessary to prevent harm to the children *within his lot*, rather than elsewhere in the development. This was because whether the common property of a strata development posed a risk to the safety of children in general was a matter falling within the responsibility of the management corporation, and hence for its determination and action. By-law 5(3)(*c*) could not be construed as conferring a licence on individual occupiers to take matters into their own hands and reconstruct parts of the common property to a standard of safety that they subjectively found to be satisfactory, simply because their children might be amongst the possible users of those parts: at [99] of the GD.

31 The Judge was, in any event, unpersuaded that Works 2 and 3 were indeed intended to prevent harm to the Appellant's children. As to Work 2, given that access to the flat roof was intended only for maintenance purposes



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by the Respondent's staff, there was no reason for the Appellant's children to frequent it. It also appeared to the Judge, from the previous correspondence between Glory and the Respondent, that the Appellant's intention for carrying out Work 2 had been primarily aesthetic. As for Work 3, the Judge agreed with the STB that there was insufficient evidence of a direct correlation between the installation of the air-conditioning ventilation unit and the prevention of harm to the Appellant's children. The Appellant had also not addressed the question of whether there were other options *in* the Unit that could be taken to improve the air quality: at [101]–[102] of the GD.

**The issues in this appeal**

32 The appeal before us centred on whether the Areas were within the common property of the Development. This, in turn, raised issues concerning the proper interpretation of the definition of "common property" in s 2(1) of the BMSMA, specifically:

> (a) whether the two limbs in the definition were to be read conjunctively or disjunctively; and
>
> (b) whether the condition set out in the second limb was to be construed by reference to whether the area in question was for the exclusive use of the occupiers of a given lot, as opposed to whether the area was used or capable of being used or enjoyed by the occupiers of two or more lots.

33 If the Works had indeed been installed in areas which fell within the definition of common property as properly constructed, then a further question arose as to whether Works 2 and 3 were installed in breach of by-law 5 of the



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Prescribed By-Laws, or whether they fell within the exception contained in by-law 5(3)(*c*).

## Our decision

### *Preliminary matter – the significance of the fact that the Areas were demarcated as common property on the strata title plan*

34 Before turning to the construction of the definition of "common property" in s 2(1) of the BMSMA, we first noted that, in this case, it was undisputed that the Areas were demarcated as common property on the strata title plan. In our view, some significance must be attached to this.

35 The Land Titles (Strata) Act (Cap 158, 2009 Rev Ed) ("the LTSA") provides that subsidiary proprietors shall be deemed to be the proprietors of their units only upon the registration of their respective strata title applications with the Registrar of Titles ("the Registrar"): see s 10(2) of the LTSA. The Registrar may not register such an application unless the strata title plan for that parcel has been lodged with and approved by the Chief Surveyor under the Boundaries and Survey Maps Act (Cap 25, 2006 Rev Ed): see s 9(1) of the LTSA. When the Registrar registers the strata title application, he also registers the strata title plan and assigns a serial number to the strata title plan as notified in the land-register: see s 9(3) of the LTSA. The strata title plan is, in the circumstances, an official document that has not only been approved by the Chief Surveyor, but has also been registered under the LTSA with its serial number notified in the land register. It is therefore to be legitimately expected that the strata title plan may be relied on as an accurate depiction of how the individual lots and common property are delineated in the strata development, so that interested parties may plan their dealings on this basis. Were it otherwise, there would be no clarity or certainty on such fundamental matters as the



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boundaries of a subsidiary proprietor's lot, which is owned by him as private property, and of the common property, which all the subsidiary proprietors own as tenants-in-common: see s 13(1) of the LTSA.

36 We further noted that the definition of "common property" in previous iterations of the applicable statute had included an illustrative list of the specific types of structures and/or features that constituted common property. That list had included "all facilities described as common property in any plan approved by the relevant authority for a condominium development and all facilities which may be shown in a legend of a strata title plan as common property": see limb (*c*)(v) of the definition inserted by s 2(*d*) of the Land Titles (Strata) (Amendment) Act 1976 (No 4 of 1976) and s 3(*c*)(vi) of the Land Titles (Strata) Act (Cap 158, 1999 Rev Ed) ("the 2003 LTSA"). While such a list has since been done away with in the current definition of "common property" in s 2(1) of the BMSMA, it was common ground, both before the Judge and before us, that Parliament had removed this list following feedback that a very detailed definition listing out examples of structures or features that constituted common property could create confusion and give rise to ambiguity in interpretation, since with changing technology it would not be possible to be exhaustive in providing for all types of structures or features constituting common property: at [69]–[73] of the GD. Notably, it was common ground that it had not been Parliament's intention, by removing the list, to exclude those structures or features that were in the list from the definition of "common property".

37 In our judgment, therefore, the fact that an area had been demarcated as common property on the strata title plan established that it was, at least on a presumptive basis, part of the common property of the development. In such circumstances, it would be for the party contending otherwise to prove that the strata title plan was in error, and that the area in question was in fact not part of



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the common property because it could not properly fall within the statutory definition of "common property".

***The proper construction of the definition of "common property" in s 2(1) of the BMSMA***

38 In that light, we then turned to the proper construction of the definition of "common property" in s 2(1) of the BMSMA, beginning first with the legal principles governing statutory interpretation.

*The legal principles for statutory interpretation*

39 The purposive approach to statutory interpretation is mandated by s 9A of the Interpretation Act (Cap 1, 2002 Rev Ed) ("IA"). In our recent decision in *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 ("*TCB*"), we set out in detail what this entails in practice and how it should be undertaken. It suffices for present purposes to provide just a summary here:

(a) The first step in statutory interpretation is to ascertain the possible interpretations of the provision, having regard not just to the text of the provision but also to the context of that provision within the written law as a whole. The court is to ascertain possible interpretations of the provision by determining the ordinary meaning of the text of the provision. It may be aided in this effort by a number of rules and canons of statutory construction.

(b) The second step is to ascertain the legislative purpose or object of the statute. Since the law enacted by Parliament is the text which Parliament has chosen to embody and give effect to its purposes and objects, the meaning and purpose of the provision should, as far as possible, be derived from the statute itself, based on the provision in



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question read in the context of the statute as a whole. The court should first look to the ordinary meaning of the provision in its context, since this might give a sufficient indication of the purposes and objects of the written law, before evaluating whether consideration of extraneous material is necessary. Consideration of extraneous material may then be had, but only in the following appropriate circumstances:

(i) under s 9A(2)(*a*) of the IA, to *confirm* that the ordinary meaning is the correct and intended meaning having regard to any extraneous material that further elucidates the purpose or object of the written law;

(ii) under s 9A(2)(*b*)(i) of the IA, to *ascertain* the meaning of the text in question when the provision on its face is ambiguous or obscure; and

(iii) under s 9A(2)(*b*)(ii) of the IA, to *ascertain* the meaning of the text in question where, having deduced the ordinary meaning of the text as aforesaid, and considering the underlying object and purpose of the written law, such ordinary meaning is manifestly absurd or unreasonable.

(c) For statements made in Parliament to be of any real use in the exercise of interpretation, these should be clear and unequivocal, and should disclose the mischief targeted by the enactment. In other words, the statements should be directed to the very point in question to be especially helpful.

(d) As a final step, the possible interpretations of the text should be compared against the purposes or objects of the statute.



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*Whether the two limbs of the definition should be read conjunctively or disjunctively*

40 The definition of "common property" in s 2(1) of the BMSMA has been set out at [15] above, and is reproduced here with emphasis for ease of reference:

> "common property", subject to subsection (9), means —
>
> (a) in relation to any land and building comprised or to be comprised in a strata title plan, such part of the land and building —
>
> (i) not comprised in any lot or proposed lot in that strata title plan; *and*
>
> (ii) used or capable of being used or enjoyed by occupiers of 2 or more lots or proposed lots; *or*
>
> (*b*) in relation to any other land and building, such part of the land and building —
>
> (i) not comprised in any non-strata lot; and
>
> (ii) used or capable of being used or enjoyed by occupiers of 2 or more non-strata lots within that land or building;
>
> [emphasis added]

41 The Judge held, after a detailed analysis of the legislative history of the relevant statutory provisions and case law, that the two limbs of the definition in sub-s (a) were to be read conjunctively. In the present appeal, the Respondent submitted, as it did in the court below, that the correct interpretation was for these two limbs to be read disjunctively.

42 We rejected the Respondent's submission and agreed with the Judge that limbs (i) and (ii) of sub-s (*a*) of the definition of "common property" were to be read conjunctively. The interpretation advocated by the Respondent could only be supported if the word "and" separating limbs (i) and (ii) was read as having a disjunctive effect. In ordinary usage, however, the word "and" has a



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conjunctive effect, as opposed to the word "or", which has a disjunctive effect. The Respondent sought to depart from this, and cited the High Court's decision in *Kori Construction (S) Pte Ltd v Nam Hong Construction & Engineering Pte Ltd* [2015] 2 SLR 616 as authority for the proposition that under the rules of statutory interpretation, the word "and" could be interpreted as either conjunctive or disjunctive, depending on the context. This might be so, but in the present case, we were satisfied that the word "and" clearly had a conjunctive meaning when considered in the context of s 2(1) of the BMSMA, for the following reasons.

43 As a matter of the plain reading of the text, it was clear that sub-ss (*a*) and (*b*) of the definition of "common property" were disjunctive, with the former relating to land and buildings comprised or to be comprised in a strata title plan, and the latter relating to other types of land and buildings. Sub-sections (*a*) and (*b*) were separated by the word "or", and hence it appeared that in the context of the definition of "common property" in s 2(1) of the BMSMA, Parliament had used the word "or" when it intended a disjunctive meaning. It would be unlikely then to find, as the Respondent contended, that within the same definition, Parliament had decided to use two different words, "and" and "or", to achieve the same disjunctive effect. Rather, the more logical conclusion was that Parliament had clearly appreciated the difference in the meaning of the two words in their ordinary usages, with the word "and" having a conjunctive effect and the word "or" having a disjunctive effect, and had consciously used these two words to convey the meaning that it intended. On this basis, it would follow that sub-ss (*a*) and (*b*) of the definition were separated by the word "or" because they were meant to be read disjunctively, whereas sub-sub-ss (*a*)(i) and (*a*)(ii) were separated by the word "and" because these two limbs were meant to be read conjunctively.



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44 Hence, having regard to the text and structure of the definition of "common property" in s 2(1) of the BMSMA, it was clear to us that the two limbs of sub-s (*a*) should be read conjunctively and not disjunctively. To put it another way, the ordinary meaning of the text read in context clearly led to the conclusion that the former was the correct approach.

45 Moving to the next step in statutory interpretation, which was to ascertain the legislative purpose or object of the statute and then compare that against possible interpretations of the text, as stated at [41(b)] above, we held in *TCB* that the meaning and purpose of a provision should, as far as possible, be derived from the ordinary meaning of the provision in its context, before evaluating whether it was necessary to also consider any extraneous material. As we have already noted, the ordinary meaning of this provision in its context was clear. Further, there was nothing in the relevant extraneous materials that suggested that there was any legislative purpose behind the definition that pointed away from what we considered was the plain and clear meaning of the definition.

46 The Respondent also argued that the conjunctive interpretation would create the "absurd and unreasonable" consequence of creating pockets of "no man's land" within strata developments in Singapore, over which neither the management corporation nor an individual subsidiary proprietor could claim ownership or be responsible for maintenance and management. This was advanced on the basis that there might be land which fell outside the bounds of any lot but would nonetheless not form part of the common property if they were not capable of being used or enjoyed by occupiers of two or more lots. We agreed that this seemed contrary to Parliament's intention in enacting the BMSMA, but for reasons that we set out below, we concluded that the second limb of the definition of "common property" was to be read broadly, such that



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in practice, any such pockets of "no man's land" would, if at all they existed, be so rare as to be practically irrelevant. With this, we turn to the proper interpretation of the second limb of the definition.

*The proper interpretation of the second limb of the definition*

47 As has been noted, the Judge, having held that the two limbs of the definition of "common property" in s 2(1) of the BMSMA were to be read conjunctively, further concluded that the correct way to interpret the second limb of the definition was to ask whether the area in question was for the exclusive use of the occupiers of the unit in question, in which case it would not be common property (see [27] above).

48 In so holding, the Judge was trying to avoid the precise situation that has been alluded to at [48] above. His reasoning at [85]–[86] of the GD bears setting out in full:

> 85 … [T]he appellant's approach would create an absurdity regarding the issue of ownership and responsibility for maintenance. For strata developments, only two forms of ownership are statutorily recognised: common ownership over common property and individual ownership in relation to the lot. This is not a distinction without difference but one of seminal importance. Responsibility for the former falls on the management corporation and the latter on the owner of the lot. The appellant's approach would leave areas or installations which cannot be used by the occupiers of two or more lots, but which are not meant for the exclusive use of a lot, in a state of uncertainty. They would not be common property. At the same time, they could not be said to form part of a lot. In such a situation, in whom would ownership reside and on whom would responsibility for maintenance fall? By contrast, adopting the exclusive use approach that I have suggested removes any uncertainty as to the ownership and responsibility for maintenance.
>
> 86 I had posed this conundrum to counsel for the appellant. However, he was unable to satisfactorily resolve it. He suggested that there could be a third category of property (in addition to common property and individual lots) as regards



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> which the legal title and responsibility for maintenance would be uncertain. Such speculation is not logical. The creation of such uncertainty would burden management corporations and subsidiary proprietors, and counteract the pursuit of clarity and certainty which motivated the definitional amendments [to the provision]…

49 Before us, counsel for the Appellant, Mr Alvin Yeo SC ("Mr Yeo"), submitted that the BMSMA implicitly recognised a third category of property in strata developments, being areas that were neither part of the common property because they were not capable of joint or shared use or enjoyment, nor the property of any individual subsidiary proprietor because they were not comprised in any lot or proposed lot in the strata title plan. Mr Yeo further submitted that because this third category of property was not part of the common property, such property would not fall within the purview of the management corporation, and thus it would follow that any individual subsidiary proprietor would be able to effect works on such property as he wished, with the management corporation having no authority to intervene. In other words, each and every subsidiary proprietor of the development would be free to carry out works or activities on such areas as he wished. The Respondent, on the other hand, echoed the Judge's concern that the position advocated by the Appellant would lead to a trail of chaos and uncertainty in relation to the concept of ownership and the obligation of maintenance in strata developments.

50 We shared the concerns of the Judge and the Respondent. 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. As stated by the then Minister for National Development during the second reading of the Building Maintenance and Strata Management Bill (No 6 of 2004):



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> 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 …

(*Singapore Parliamentary Debates, Official Report* (19 April 2004) vol 77 at col 2789 (Mr Mah Bow Tan, Minister for National Development)).

51 The acceptance of a third category of property, as was suggested by the Appellant, would blur the lines of ownership in strata developments, resulting in uncertainty not only with respect to the legal rights and duties of each proprietor, but also regarding the allocation of responsibilities and duties for the maintenance of different parts of the development. The consequence of this could be disharmony if different proprietors had different views of what should be done; and disrepair, if it was unclear who bore the responsibility for maintenance. This, in our judgment, ran contrary to Parliament's stated intention in enacting the BMSMA and its predecessor statutes, which was to ensure that strata developments would be properly managed and maintained. As noted by the Judge (at [53]–[54] of the GD), the LTSA was first enacted in 1967 to create management corporations that would be responsible for the upkeep of common areas, because of the inherent difficulties in getting individual proprietors to work together to this end. When the Buildings and Common Property (Maintenance and Management) Act was subsequently enacted in 1973 to further similar objectives, the then Minister for National Development expressed the aims in these terms:

> Large numbers of high-rise flats and other buildings have been constructed in Singapore in recent years, and many of them are not properly managed and maintained. In many cases, the owners, management corporations or persons responsible for their maintenance and management have not been discharging



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> their functions properly and have allowed the buildings to fall into disrepair. Steps have to be taken to ensure that this unsatisfactory position is rectified before it further deteriorates. With the encouragement of condominium development, the need to ensure that the buildings and the amenities and facilities shared in common are properly managed and maintained has now become even more urgent. It is therefore proposed to set up a public authority with appropriate powers to deal with this problem. It is to this end that this Bill is now before the House.

(*Singapore Parliamentary Debates, Official Report* (20 March 1973) vol 32 at col 1095 (Mr E W Barker, Minister for National Development)).

52 However, while we agreed with the Judge that the BMSMA did not envisage a third category of property in strata developments which constituted neither private nor common property, and for the maintenance of which no one had the clear responsibility, we were unable to agree with the Judge's interpretation of the second limb of the definition of "common property" in s 2(1) of the BMSMA.

53 It was clear that, under the settled principles for statutory interpretation (see [41] above), the ordinary meaning of the text of a provision read in its context should be given primacy, even though statutory provisions are to be read purposively. We further agreed with the Appellant that, when interpreting statutory definitions, the courts should be even slower to depart from the ordinary meaning of the text, since the fact that a term had been defined in a statute indicated that Parliament must have specifically addressed its mind as to the intended meaning of the term. This much is supported by the authorities: see, for instance, the following passage from the decision of the High Court of Australia in *PMT Partners Pty Ltd v Australian National Parks and Wildlife Service* (1995) 131 ALR 377 (at [18]), cited by the High Court in *Dyna-Jet Pte Ltd v Wilson Taylor Asia Pacific Pte Ltd* [2017] 3 SLR 267 (at [95]):



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> It is of fundamental importance that statutory definitions are construed according to their natural and ordinary meaning unless some other course is clearly required. It is also of fundamental importance that limitations and qualifications are not read into a statutory definition unless clearly required by its terms or its context, as for example if it is necessary to give effect to the evident purpose of the Act. …

54 The text of the second limb of the definition of "common property" in s 2(1) of the BMSMA – "used or capable of being used or enjoyed by occupiers of 2 or more lots or proposed lots" – is clear and unambiguous, and there is nothing in the context of the written law as a whole to suggest that the meaning of the provision was other than what its plain words said. In any event, there was nothing in the Parliamentary debates or other extraneous materials that suggested that some other meaning was intended.

55 At [87] of the GD, the Judge expressed the view that certain proposed amendments to the definition of "common property" in the BMSMA, which had been the subject of public consultation, supported his interpretation of the second limb of the definition. The proposed amendments, set out in the GD, are reproduced below:

| Existing provision | Content of amendment | Rationale |
|---|---|---|
| "Common property" in a strata development refers to an element in relation to any land and building shown in the strata title plan which is not comprised in any unit and is also used or capable of being used or enjoyed by occupiers of 2 or more units. | (a) To make clearer the definition of "common property" to include key structural elements (foundations, beams, columns) of the building.<br>(b) To make clear that fire sprinkler and central air conditioning systems are also part of common property to be maintained by the MCST.<br>(c) To make clear that any conduit, pipe, cable, ducts that services two or more lots but may be embedded within one strata | Recognise that critical components such as structural elements and systems spanning across strata lots are better maintained by the MCST because MCSTs have a collective interest in maintaining these structures and systems. Also facilitate emergency repairs and minimise disputes between MCST and individual lot owner |



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| | | |
|---|---|---|
| | lot is to be considered common property.<br>… | on which party is to maintain such common property rightfully. |

56 With respect, there were two objections to the Judge's reliance on the proposed amendments. First, these were *proposed* amendments, which had not been finalised, and could not possibly be probative of Parliament's intention in enacting the present definition of "common property" in s 2(1) of the BMSMA which preceded their publication. The relevant Parliamentary intention was to be found at the time the law was enacted or, in some circumstances, when Parliament subsequently reaffirmed its intention in relation to the particular statutory provision in question: see *Constitutional Reference No 1 of 1995* [1995] 1 SLR(R) 803 at [44]. Second, it was, in any case, difficult to see how the proposed amendments supported the Judge's interpretation of the second limb of the current definition, especially since paragraph (c) of the proposed amendment (under the column labelled "content of amendment") retained the use of the phrase "two or more lots".

57 With respect, therefore, we considered that the Judge's interpretation of the second limb of the definition of "common property" in s 2(1) of the BMSMA as directing the inquiry to whether or not the area or installation in question was for the exclusive use of the occupiers of a single lot, instead of whether the area or installation was used or capable of being used or enjoyed by occupiers of two or more lots, could not be sustained. The Judge's main reason for holding as he did was to avoid the creation of the aforementioned pockets of "no man's land" in strata developments. However, we considered that a proper construction of the second limb of the definition of "common property" in s 2(1) of the BMSMA, in a manner that was consistent with its text, did not necessarily lead to the creation of such pockets of "no man's land" and the uncertainties that would ensue from that.



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58 The second limb of the definition provides that a common property must be "used or capable of being used or enjoyed by occupiers of 2 or more lots or proposed lots". In our judgment, this was to be interpreted broadly. The words "use" and "enjoy" are not defined in the BMSMA, but as pointed out by the STB (at [25] of its grounds of decision), the plain meaning of the word "use", as provided in the Oxford Learners Dictionary, is to "take, hold or deploy (something) as a means of accomplishing or achieving something", whereas "enjoy" means "to get pleasure from something". There was, in our judgment, no reason not to read the words "use" and "enjoy", in the second limb of the definition of "common property", in accordance with their ordinary dictionary meanings.

59 In our judgment, based on their plain meanings, the word "enjoy" has a wider ambit than the word "use". We agreed with the STB that any area or installation that could affect the appearance of a building in a strata development, or that was part and parcel of the fabric of the building, could, by its mere presence, be "enjoyed" by some or even all subsidiary proprietors of the development. Indeed, there was no need for the area or installation to be physically accessible by the subsidiary proprietors (or any of them) in order to be "enjoyed" by the said proprietors.

60 We also considered that the second limb of the definition of "common property" in s 2(1) of the BMSMA would be satisfied so long as the area or installation in question was "capable" of being used or enjoyed by occupiers of two or more lots. This meant that an area or installation not comprised in any lot need not *at any particular point in time* be used or enjoyed by occupiers of two or more lots to be considered common property.



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61 In addition, we considered that any area or installation in respect of which the management corporation had assumed a duty to control, manage, administer or maintain would presumptively be taken to have satisfied the second limb, unless it was shown that the management corporation ought not to have assumed such a duty.

62 In this light, it seemed to us that situations where an area or installation that was not comprised in any lot would fail to satisfy the second limb of the definition of "common property" in s 2(1) of the BMSMA would be so few and far between as to pose, in essence, a largely theoretical rather than actual problem.

63 Finally, we note that after the present appeal was heard and dismissed, the High Court released its decision in *Wu Chiu Lin v Management Corporation Strata Title Plan No 2874* [2018] SGHC 43 ("*Wu Chiu Lin*") on 28 February 2018. One of the issues there was whether certain external walls of a penthouse unit of a condominium development constituted "common property" under the BMSMA. The High Court held that they did. In *obiter dicta*, the Court commented that the statutory definition of "common property" promoted a dichotomous classification of strata title property as either common property or private property, and should not permit a third category of property that amounted to a "no man's land" (at [63]). In this regard, it would be practically impossible for a third category of property to exist so long as a broad construction was placed on the second limb of the statutory definition (at [64]). There was, therefore, no need to adopt the construction that the Judge had placed on the second limb (at [64]). As we have indicated above, we agree with the Court in *Wu Chiu Lin* that there is no need to construe the second limb of the definition as the Judge did in order to avoid the uncertainties associated with such a third category of property. Insofar as there may be further issues



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concerning the existence, scope, and practical effect of this third category of property, those did not arise and will have to be dealt with in a subsequent appropriate case.

***Whether the Areas were within the common property***

64 Turning to the Works in question in this case, we deal first with the ledges on which Work 1 had been constructed. The STB was of the view that the ledges were part and parcel of the fabric of the building and contributed to its character and appearance. It was also "obvious" to the STB that the ledges served as a shelter or sunshade to the unit(s) below it. We saw no reason to disturb this finding and accordingly, found that these ledges were used or capable of being used or enjoyed by occupiers of two or more lots. It did not matter that the ledges were not physically accessible by any subsidiary proprietor, because, as we have noted, subsidiary proprietors may "enjoy" an area or a feature in a strata development without having to physically access it (see [61] above). Since it was not disputed that the ledges were not comprised in any lot, both limbs of the definition of "common property" in s 2(1) of the BMSMA were satisfied, and the ledges were therefore part of the common property.

65 As for the flat roof and wall on which Works 2 and 3 had been installed, these too were part and parcel of the fabric of the building and contributed to its appearance. Indeed, their removal could even affect the structural integrity of the building. Furthermore, it was not disputed that the Respondent had assumed responsibility for the maintenance of the flat roof and wall, and the Appellant did not contend that the Respondent ought not to have assumed that responsibility. This being the case, given our observation at [63] above, the flat roof and wall both satisfied the second limb of the definition of "common



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property" as being used or capable of being used or enjoyed by occupiers of two or more lots. Again, it was not disputed that the first limb of the definition was satisfied as well. It followed that the flat roof and wall were part of the common property.

66 We would additionally highlight that under sub-s (*c*)(i) of the definition of "common property" in the 2003 LTSA, roofs and walls, unless they were described specifically as comprised in any lot in a strata title plan and shown as capable of being comprised in such a lot, were both listed as examples of common property. As we have noted (at [38] above), it was common ground in the present appeal that despite subsequently simplifying the definition of "common property" to remove the illustrative list of structures or features that constituted common property, there was nothing to suggest that Parliament had intended to exclude from the definition of "common property" those structures or features that had initially been specifically identified and listed. This also supported our conclusion that the flat roof and wall on which Works 2 and 3 had been installed were part of the common property.

67 Mr Yeo also submitted that in determining whether the Areas were part of the common property, it was relevant to have regard to the nature of the Works. He noted that the timber decking that was part of Work 1 was only visible from within the Unit, and had neither altered the appearance of the façade of the building, nor caused any prejudice or inconvenience to other subsidiary proprietors of the Development. He also stated that Works 2 and 3 were similarly unobtrusive. In this connection, he relied on the decision of the High Court in *Tsui Sai Cheong and another v MCST Plan No. 1186 (Loyang Valley) and others* [1995] 3 SLR(R) 713 ("*Tsui Sai Cheong*").



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68 We were unable to agree with Mr Yeo in this regard. Nowhere in the statutory definition of "common property" was there support for that submission. Further, it was unclear to us how *Tsui Sai Cheong* could offer any assistance. There, the High Court had to determine whether a water pipe was common property. Warren Khoo J held that the fact that part of the pipe was embedded in a concrete slab which was common property did not automatically turn that part of the pipe into common property, and found, on the facts, that the pipe was the property of the subsidiary proprietor whose unit the pipe *exclusively* served. It was plain that the context in which *Tsui Sai Cheong* was decided was wholly different from that in the present appeal. The issue there was whether a feature that was installed in what was indisputably common property was, by reason of that fact, also part of the common property. In the present case, however, the question we had to answer was whether the Works were installed in *areas* that were part of the common property. We were not concerned with whether the Works themselves (namely, the timber decking at the ledges and on the flat roof, and the air-conditioning ventilation unit) were common property.

69 We therefore concluded that the Works had been installed on common property. Since the Appellant had installed them without prior authorisation of the Respondent, such installation would have been in breach of the relevant by-laws (see [18] above), unless they fell within one of the exceptions. It is in this context that we turned finally to consider the exceptions.

***Whether Works 2 and 3 fell within the exception in by-law 5(3)(c) as structures or devices to prevent harm to children***

70 The Appellant contended that even if Works 2 and 3 were installed on common property, they nonetheless fell within the exception in by-law 5(3)(*c*) of the Prescribed By-Laws, such that no prior approval from the Respondent



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was necessary. The Appellant did not mount the same argument with respect to Work 1. By-law 5(3) has been set out above (at [30]) and is reproduced here with emphasis for ease of reference:

> (3) This by-law [prohibiting alteration of common property without the prior approval of the management corporation] shall not prevent a subsidiary proprietor or an occupier of a lot, or a person authorised by such subsidiary proprietor or occupier from installing —
>
> (*a*) any locking or other safety device for protection of the subsidiary proprietor's or occupier's lot against intruders or to improve safety within that lot;
>
> (*b*) any screen or other device to prevent entry of animals or insects on the lot;
>
> *(c) any structure or device to prevent harm to children; or*
>
> (*d*) any device used to affix decorative items to the internal surfaces of walls in the subsidiary proprietor's or occupier's lot.
>
> [emphasis added]

71 The Appellant contended that by-law 5(3)(*c*) applied so long as it could be established that Works 2 and 3 were structures or devices to prevent harm to *any* children *in any place* within the Development, and was not limited to the prevention of harm to children while they were within the Unit. The Judge disagreed. He held as follows (at [99] of the GD):

> In my view, by-law 5(3)(*c*) must properly be construed as allowing a subsidiary proprietor to erect a structure or device that is necessary to prevent harm to the children residing with him in his lot, rather than children generally residing in the development. Whether the common property of the strata development poses a risk to the safety of children in general is the responsibility of the management corporation and a matter for its assessment and action. By-law 5(3)(*c*) cannot be a licence for individual occupiers to take matters into their own hands and reconstruct parts of common property to a standard of safety that they find satisfactory, simply because their children are amongst the possible users of those parts.



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72 Insofar as the reference to "children residing… in his lot" meant children who were physically within the lot, we respectfully agreed with the Judge. We did not think that the exception in by-law 5(3)(*c*) went as far as the Respondent contended. It was clear that the other exceptions in by-laws 5(3)(*a*) and 5(3)(*b*) were intended to allow a subsidiary proprietor to install devices on common property to either improve safety within his lot or to keep out intruders, and in the case of by-law 5(3)(*d*), to enhance the interior aesthetics of a lot. The focus, in these instances, was consistently on alterations to the common property that enhanced safety and enjoyment *within the lot*. Reading the exception in by-law 5(3)(*c*) in a consistent way, we were of the view that it must similarly be limited to the situation where a subsidiary proprietor erected a structure or device on common property in order to prevent harm to *children while they were within his lot*.

73 This also made good sense because, as the Judge noted, by-law 5(3)(*c*) should not be construed to grant a free license for individual subsidiary proprietors to take matters into their own hands to reconstruct common property anywhere in the development whenever they consider that any children, whether or not it be their own or resident in their lots, might suffer some harm or danger unless something were done. That, in our judgment, was properly the responsibility of the management corporation, which was duty bound by s 29(1)(*a*) of the BMSMA to control, manage and administer the common property for the benefit of all the subsidiary properties. At the hearing before us, Mr Yeo suggested that by-law 5(3)(*c*) should be read broadly to cater for the possible situation where the management corporation was not diligent in the discharge of its duties. We saw no reason to adopt such a construction to cater for the possible default of the management corporation when the BMSMA already provides appropriate remedies to deal with this: see, for instance, s 88(1)



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of the BMSMA which provides that subsidiary proprietors may apply to the court for remedies if the management corporation breaches its duties.

74 Since Work 2 was purportedly installed to prevent common property outside the Unit from becoming slippery when wet, it followed that it was not a structure or device to prevent harm to the Appellant's children *while they were within the Unit*. Thus, by-law 5(3)(*c*) could have no application at all. That left Work 3, which was purportedly installed to improve air quality in the Unit.

75 On the present facts, the STB was of the view that Work 3 (and also Work 2) did not fall under the exception in by-law 5(3)(*c*). As we have noted, pursuant to s 98(1) of the BMSMA, an appeal to the court against the STB's decision could only be on points of law but not on the STB's findings of fact. The Appellant contended that the STB had misapplied the law by conflating the distinct and separate limbs of by-laws 5(3)(*a*) with 5(3)(*c*) and thus erroneously considered whether Works 2 and 3 fell within by-law 5(3)(*c*) by reference to the question of whether these were "safety devices" (instead of "any structure or device") that prevented harm to children.

76 The Judge found that the STB had not made any error of law, and we saw no reason to disagree with him. The pertinent parts of the STB's decision are reproduced below:

> 34. It is clear that a subsidiary proprietor is allowed to install on common property any locking or safety devices for *protection* of his lot against intruders; or *to improve safety* within his lot. The subsidiary proprietor is also allowed to install any structure or device to prevent *harm to children.*
>
> 35. In the Oxford Advanced Learner's Dictionary a "*device*" is defined as "*an object or a piece of equipment that has been designed to do a particular job*". A locking or safety device in By-law 5(3) of the prescribed by-laws would be an object or a piece of equipment that has been designed for or can be used for the



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> protection of the subsidiary proprietor's lot against intruders or improve safety within the lot or prevent harm to children.
>
> 36. It was the submission of the [Appellant] that the aircon ventilation unit and timber flooring were erected in the interests of the [Appellant's] or occupiers' welfare, health, and/or safety. It was also the submission of the [Appellant] that his children had respiratory tract allergies and the installation of the aircon ventilation unit was necessary to promote cleaner air circulation within his unit.
>
> 37. As noted above, the by-law allows a subsidiary proprietor to install a locking or safety device for the *protection* against intruders or to improve safety within a lot. While timber flooring may prevent floors from becoming overly slippery when wet and an aircon and ventilation system can improve air quality the Board cannot find that the aircon ventilation unit and timber flooring are locking or safety devices for the protection of the [Appellant's] lot against intruders. They are also not devices that could improve safety within the [Appellant's] lot.
>
> 38. The by-law allows a subsidiary proprietor to install a safety device to *prevent harm* to his children. Whilst an air-con and ventilation system can improve air quality, the Board cannot find that the air-con ventilation unit and timber flooring on the flat roof are safety devices installed to *prevent harm* to the children.
>
> [emphasis in original]

77 The Appellant took issue with the STB's use of the phrase "safety device" at [37] and [38] of its written grounds of decision. However, both in the court below and before us, the Appellant failed to explain what practical difference there was between a "safety device to prevent harm to children", and "a device to prevent harm to children", that would have been material to the STB's decision. Further, reading the STB's decision, we were satisfied that the STB had not conflated the different limbs of by-law 5(3):

> (a) From [34] of the STB's decision, it was apparent that the STB appreciated that there were *separate* limbs under by-law 5(3), pertaining not only to "locking or safety devices for protection of [a] lot against intruders" or to "improve safety within [a] lot" (which corresponded to



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by-law 5(3)(*a*)), but *also* to "any structure or device to prevent harm to children" (which corresponded to by-law 5(3)(*c*)).

(b) At [37] of its decision, the STB's analysis was directed at whether the timber decking (Work 2) and the air-conditioning ventilation unit (Work 3) fell within by-law 5(3)(*a*) as locking or safety devices for the protection of the Unit against intruders or to improve safety within the Unit. It found that they did not.

(c) The STB's decision at [38] contained a separate analysis which was focused on whether Works 2 and 3 fell within by-law 5(3)(*c*) as being safety devices installed to prevent harm to the Appellant's children.

78 Since we did not find that the STB had made any error of law in its interpretation of the by-law, its finding of fact that Work 3 (and for that matter, Work 2) did not come within the exception was binding and not subject to challenge. In any case, in respect of Work 3, the Judge agreed with the STB that there was insufficient evidence of a direct correlation between the installation of the air-conditioning ventilation unit and the prevention of harm to the Appellant's children within the Unit, and we saw no reason to disagree with that.

79 We therefore found that the Appellant's contention that the STB had erred in finding that Works 2 and 3 did not fall under the exception in by-law 5(3)(*c*) was without merit.



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**Conclusion**

80 For these reasons, we dismissed the appeal and awarded costs of the appeal to the Respondent fixed at $40,000, inclusive of disbursements.

| | | |
|---|---|---|
| Sundaresh Menon | Judith Prakash | Steven Chong |
| Chief Justice | Judge of Appeal | Judge of Appeal |

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