IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 254

Originating Summons No 612 of 2017

In the matter of Sections 124(1), 32(3), (6) and 37(3) of the Building Maintenance and Strata Management Act (Cap 30C)

Between

The Management Corporation
Strata Title Plan No 940

… *Plaintiff*

And

Lim Florence Marjorie

… *Defendant*

GROUNDS OF DECISION

[Land] — [Strata titles] — [By-laws]
[Land] — [Strata titles] — [Building Maintenance and Strata Management Act]
[Equity] — [Estoppel]

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v
Lim Florence Marjorie

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High Court — Originating Summons No 612 of 2017
Vinodh Coomaraswamy J
25 September 2017; 8, 27, 28 March; 2 April; 4 May 2018

29 November 2018

Vinodh Coomaraswamy J:

1 The strata title legislative scheme exists to facilitate communal living. It draws a distinction between an individual strata title lot and common property. The former is owned solely by its subsidiary proprietor. The latter is owned communally by the community of subsidiary proprietors, acting through a management corporation. Although the legislative scheme recognises that a subsidiary proprietor owns her strata title unit absolutely, it does not recognise that she controls it absolutely. In certain circumstances, the scheme subordinates an individual subsidiary proprietor's right to deal as she pleases with her own property to the interests of the community of subsidiary proprietors taken as a whole.

2 This application is brought by a management corporation against a subsidiary proprietor. At issue in this application are: (i) the limits imposed on a subsidiary proprietor's right to renovate her own strata title lot; (ii) whether

her renovations have created a variance in the uniformity of the development's façade; and, if so (iii) the consequences which ensue if the subsidiary proprietor mistakenly believed that the management corporation had given its sanction for those renovations before embarking on them.

The background

3 In 2011, the defendant purchased a flat in the condominium known as The Arcadia. She engaged an architect, Mr Voon Wong, and a contractor, Siatyun (S) Pte Ltd ("Siatyun"), to renovate the flat before she and her family moved in.[1]

4 Siatyun appointed an employee, Mr Joseph Ngo, to be the site supervisor for the defendant's renovations.[2] Mr Ngo was on site virtually every day because the defendant's renovation was his only project at that time.[3] His tasks included liaising with the plaintiff's then managing agent, Jones Lang LaSalle Property Management Pte Ltd ("JLL"),[4] in order to ensure compliance with the procedures stipulated by the plaintiff for carrying out renovations.[5]

5 The renovations which lie at the centre of this application were carried out by the defendant to her balcony. The plaintiff's case is that the defendant, without prior approval from the plaintiff, widened the entrance from her living room to her balcony by removing wall columns on either side of the entrance

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1 Affidavit of Florence Marjorie Lim dated 29 August 2017 at paras 4 and 5.

2 Affidavit of Joseph Ngo dated 20 March 2018 at para 7.

3 Affidavit of Joseph Ngo dated 20 March 2018 at paras 7 and 8.

4 Affidavit of Florence Marjorie Lim dated 29 August 2017 at paras 9 and 10.

5 Affidavit of Joseph Ngo dated 20 March 2018, para 8; Notes of Argument dated 27 March 2018 at page 30, lines 19 to 22.

and installing new sliding glass doors in the widened access. I shall refer to these renovations as "the Works".

6 The Works were only one part of a larger set of renovations for which the defendant sought permission from the plaintiff in 2011. Through her contractor Siatyun, the defendant submitted an application in writing to the plaintiff on 9 June 2011 seeking approval for her proposed renovations.[6] Attached to the application were pre-renovation and post-renovation floor plans showing the demolition and construction entailed in the renovations.[7] The demolition and construction plan showed the Works as well as other renovations to the kitchen, the toilets, the main entrance and other parts of the flat[8] together with a project schedule.[9] The application indicated that demolition was to commence on 13 June 2011.

7 The plaintiff responded to the defendant's application by a letter dated 11 June 2011. The letter was written on the letterhead of The Arcadia and was signed by Mr Mark Chung of JLL as condominium manager for and on behalf of the plaintiff. The 11 June letter was addressed to the defendant with a copy to Siatyun.

8 The plaintiff's case is that the 11 June letter approved all of the defendant's proposed renovations *except* the Works. The defendant's case is that the 11 June letter approved all of the defendant's proposed renovations

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6 Affidavit of Koh Lay Hoon dated 1 June 2017 at Tab C; Affidavit of Florence Marjorie Lim dated 29 August 2017 at paras 9 and 10.

7 Notes of Argument dated 28 March 2018, page 3 lines 6 to 16; Affidavit of Koh Lay Hoon dated 1 June 2017 at pages 66 and 67.

8 Affidavit of Voon Wong dated 11 August 2017 at paras 8 to 10.

9 Affidavit of Voon Wong dated 11 August 2017 at page 12.

including the Works, albeit subject to a condition. I set the letter out in full and analyse its meaning in detail at [37] below.

9 At some time between 11 June and the commencement of demolition on 13 June 2011,[10] Mr Joseph Ngo met the plaintiff's representative on site. He recalls that it was one of the plaintiff's condominium managers but cannot recall whether the representative was Mr Chung. Mr Ngo's evidence is that, at this meeting, he asked the representative for approval to demolish the existing wall columns at both ends of the original access leading from the living room to the balcony.[11] Mr Ngo says that the condominium manager agreed orally that the demolition could be carried out.[12]

10 Demolition began on 13 June 2011.[13] The defendant's case is that in carrying out the demolition, she relied both on the plaintiff's written approval by way of the 11 June letter and on the condominium manager's oral approval given at the site meeting with Mr Ngo between 11 and 13 June 2011.

11 Before commencing demolition, the defendant also placed a security deposit of $1,000 with the plaintiff. The deposit was required by the plaintiff's by-laws.[14] The purpose of a deposit, as stated in the by-laws, is to "defray the cost of remedial works in the event of damage caused to any property arising out of the Renovation Works". The by-laws provide that the plaintiff may

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10 Notes of argument dated 27 March 2018 at page 37 line 6 to page 38 line 16.

11 Affidavit of Joseph Ngo filed on 19 March 2018 at para 16; Notes of argument dated 27 March 2018 at page 39 line 24 to page 43 line 14.

12 Affidavit of Joseph Ngo filed on 19 March 2018 at para 17; Notes of argument dated 27 March 2018 at page 43, lines 13 to 14.

13 Affidavit of Florence Marjorie Lim dated 29 August 2017 at para 11.

14 Affidavit of Florence Marjorie Lim dated 29 August 2017 at paras 32.

"forfeit (in whole or in part) the [security deposit] in the event that the subsidiary proprietor and/or his contractor fail(s) to adhere to the By-laws".[15]

12 The plaintiff's representatives inspected the defendant's flat from time to time while the renovations were in progress.[16] Although the representatives took issue with some aspects of the renovations, notably the new flooring at the defendant's main entrance, the plaintiff did not at any time take issue with the Works.[17]

13 The renovations, including the Works, were completed in December 2011.[18] When the renovations were nearly complete, the plaintiff's representatives conducted a final inspection of the defendant's flat.[19] They raised no objections to the Works. The only objection raised, once again, was to the flooring at the main entrance of the flat.[20] This objection was eventually resolved.[21] The plaintiff refunded the defendant's security deposit in full.[22]

14 In May 2012, after receiving complaints from other residents, the plaintiff took issue with the colour which Siatyun had used to paint the external wall of the defendant's balcony. The complaint was that the colour of the external wall of the defendant's balcony varied significantly from the off-white colour used on the other balconies in the same façade.[23] This issue was

15 Affidavit of Koh Lay Hoon dated 1 June 2017 at page 20.

16 Affidavit of Joseph Ngo dated 20 March 2018 at para 18.

17 Affidavit of Joseph Ngo dated 20 March 2018 at para 18.

18 Affidavit of Florence Marjorie Lim dated 29 August 2017 at para 11.

19 Affidavit of Joseph Ngo dated 20 March 2018 at para 19.

20 Affidavit of Joseph Ngo dated 20 March 2018 at para 19.

21 Affidavit of Joseph Ngo dated 20 March 2018 at para 19.

22 Affidavit of Florence Marjorie Lim dated 29 August 2017 at para 32.

23 Affidavit of Florence Marjorie Lim dated 29 August 2017 at para 22.

eventually resolved. Even on this occasion, the plaintiff took no issue with the defendant's widening of the access to her balcony.

15 In 2014, the plaintiff changed its managing agent from JLL to Knight Frank Estate Management Pte Ltd ("Knight Frank").[24]

16 In March 2015, more than three years after the defendant completed the renovations, the plaintiff – acting now through Knight Frank – wrote to the defendant objecting to the "non-standard design of the living room sliding door"[25] in the defendant's flat. The plaintiff took the position that:[26]

> The sliding door is part of the building exterior and is part of the external façade of the building. It cannot be changed or altered from its original material, design and colour theme. It invariably affects the uniformity in outlook and asthetics [*sic*] of the external façade of the building. It may also impact on then [*sic*] good image & prestige of an upscale and prestigious estate in THE ARCADIA.
>
> …
>
> We seek your co-operation to reinstate or replace the sliding glass door panel and 2 vertical walls (at the corner) between the living room and main balcony to its original type, design and colour theme within 6 months from date of this letter.

17 The defendant responded to the plaintiff in October 2015, after a chaser from the plaintiff earlier that month.[27] She took the position that the plaintiff had never raised "any written or verbal opposition against" the Works in 2011 – whether in response to the application for approval dated 9 June 2011, while the renovations were being carried out or upon completion of the renovations in

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24 Affidavit of Florence Marjorie Lim dated 29 August 2017 at para 9.

25 Affidavit of Koh Lay Hoon dated 1 June 2017 at page 53.

26 Affidavit of Koh Lay Hoon dated 1 June 2017 at page 53.

27 Affidavit of Koh Lay Hoon dated 1 June 2017 at page 54.

December 2011. She therefore refused to reinstate her balcony to its original state.[28]

18 In April 2017, the plaintiff held its 32nd annual general meeting.[29] The chairman of the meeting informed all of the subsidiary proprietors present that five subsidiary proprietors – including the defendant – had carried out and completed unauthorised works to their balconies.[30] Photographs of the unauthorised works were shown. As in the defendant's case, these works too involve widening the access from the living room to the balcony by removing the wall columns at the side of the access. The plaintiff's members passed a unanimous resolution authorising the plaintiff to commence legal proceedings against subsidiary proprietors who were in breach of the by-laws.[31]

19 The plaintiff brought this application against the defendant in June 2017.

Summary of the parties' cases

20 The plaintiff's case in this application is that the defendant has breached both the plaintiff's by-laws and s 37 of the Building Maintenance and Strata Management Act (Cap 30C, 2008 Rev Ed) ("the Act") because she carried out the Works without the plaintiff's prior approval. In particular, the plaintiff's case is that the defendant has without approval: (a) removed the wall columns between her living room and balcony; (b) removed the existing sliding doors and frame separating her living room from her balcony; and (c) enlarged the frame for the sliding door and installed a new wider door.[32]

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28 Affidavit of Koh Lay Hoon dated 1 June 2017 at page 55.

29 Affidavit of Koh Lay Hoon dated 1 June 2017 at page 77.

30 Affidavit of Koh Lay Hoon dated 11 January 2018 at para 10(b).

31 Affidavit of Koh Lay Hoon dated 1 June 2017 at page 79.

32 Originating Summons No 612 of 2017, prayer 1.

21 As a result, the plaintiff seeks the following relief: (i) a declaration that the defendant carried out the Works without the plaintiff's authorisation; (ii) a mandatory injunction compelling the defendant to remove the Works and reinstate her balcony to its original condition within a period of time to be fixed by the court; and (iii) an order that, if the defendant fails to comply with the mandatory injunction, the plaintiff be permitted to enter upon the defendant's lot to carry out reinstatement works at the defendant's expense.

22 The defendant's case is that the plaintiff gave her both written and oral approval for the Works before she commenced the works.[33] The plaintiff gave written approval for the Works, albeit subject to conditions, in the 11 June letter.[34] The plaintiff gave oral approval for the Works through the then condominium manager at the site meeting with Mr Ngo (see [9] above).[35]

23 The plaintiff denies that it ever gave the defendant approval for the Works.[36] The plaintiff's case is that the 11 June letter, on its proper construction, rejected approval for the Works outright.[37] And the plaintiff never gave oral approval for the works as alleged by the defendant[38] or at all. Further, even if the plaintiff did give oral approval, the defendant is nevertheless in breach of the by-laws. That is because the by-laws require approval in writing.[39] In addition, the plaintiff has no power to give approval for works which are contrary to s 37(4)(*a*) of the Act.[40] The Works are contrary to s 37(4)(*a*) of the

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33 Defendant's written submissions dated 26 March 2018 at para 11.

34 Defendant's written submissions dated 26 March 2018 at para 17.

35 Defendant's written submissions dated 26 March 2018 at para 28.

36 Plaintiff's written submissions dated 26 March 2018 at para 3.

37 Plaintiff's written submissions dated 26 March 2018 at para 36.

38 Plaintiff's written submissions dated 26 March 2018 at paras 38 and 39.

39 Plaintiff's written submissions dated 26 March 2018 at para 39.

Act because they either detract from the appearance of the buildings comprised in The Arcadia or are not in keeping with those buildings.

24 The defendant's final argument is that, even if the Works were not approved, the plaintiff is now estopped from contending otherwise because the plaintiff acquiesced in the defendant carrying out the Works.[41] The defendant further argues that the Works do not affect or detract from the appearance of the buildings comprised in The Arcadia.[42] In any event, a mandatory injunction, being discretionary relief, should not be granted.[43]

Issues to be determined

25 There are four issues to be decided in this application:

(a) Has the defendant breached the plaintiff's by-laws?

(b) Has the defendant breached s 37 of the Act?

(c) Is the plaintiff estopped from contending that the Works were carried out without approval?

(d) Should a mandatory injunction be granted?

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40 Plaintiff's written submissions dated 26 March 2018 at para 47.

41 Defendant's written submissions dated 26 March 2018 at para 29.

42 Defendant's written submissions dated 26 March 2018 at paras 44 to 49.

43 Defendant's written submissions dated 26 March 2018 at paras 27 to 56.

Breach of the by-laws

By-laws 1.0 and 3.0

26 The by-laws of a management corporation are the analogue of a company's constitution and bind the management corporation and its subsidiary proprietors in an analogous way. Thus, s 32(6) of the Act, as the analogue of s 39(1) of the Companies Act (Cap 50, 2006 Rev Ed), provides as follows:

> (6) … the … by-laws … shall bind the management corporation and the subsidiary proprietors … to the same extent as if the by-laws —
>
> (*a*) had been signed and sealed by the management corporation, and each subsidiary proprietor … ; and
>
> (*b*) contained mutual covenants to observe, comply and perform all the provisions of the by-laws.

27 The plaintiff contends that the defendant has breached by-laws 3.0(*a*) and 3.0(*n*)(iii) read with by-law 1.0 by failing to get the plaintiff's prior written approval before carrying out the Works. These by-laws read as follows:[44]

> **DEFINITIONS**
>
> **1.0** In the application of these By-Laws to the sub-divided building :-
>
> …
>
> "Prior approval" … shall mean prior written approval of the Council.
>
> …
>
> **3.0 ADDITION AND ALTERATION WORK**
>
> Every proprietor shall :-
>
> (a) not construct, modify the property or any lot thereof or make any renovation / fitting out works, addition, erection or improvement (be it temporary or permanent) to the property or any lot except with the prior approval of the Council, which consent shall not

[44] Affidavit of Koh Lay Hoon dated 1 June 2017 at pages 15 and 24.

> be unreasonably withheld. … The Council shall have the full right and authority to demolish all unauthorised constructions, modifications, additions, obstructions or structures or any part thereof so erected after giving fourteen (14) days written notice to the proprietor requesting him to remove the same
>
> …
>
> Management Corporation not to approve certain Renovation Works
>
> …
>
> 3(n)(iii) A subsidiary proprietor or occupier of a lot shall not make any alterations or additions to any balcony of his lot without the prior written approval of the Management Corporation.

Three differences between by-law 3.0(a) and 3.0(n)(iii)

28 There are three differences between the two by-laws on which the plaintiff relies.

First difference: who grants approval

29 The first difference between these two by-laws is that by-law 3.0(*a*) empowers the plaintiff's *Council* to grant approval for general renovations whereas by-law 3.0(*n*)(iii) empowers the plaintiff *itself* to grant approval for balcony renovations. That is an immaterial difference on the facts of this case and I need say no more about it.

Second difference: the renovations contemplated

30 The second difference is that by-law 3.0(*a*) prohibits *any* renovations without prior approval whereas by-law 3.0(*n*)(iii) prohibits *balcony* renovations without prior approval. It is because of this latter difference that I shall focus on by-law 3.0(*n*)(iii) in my analysis on this aspect of the plaintiff's case. I do so

because by-law 3.0(*n*)(iii) is a sub-set of by-law 3.0(*a*). A breach of by-law 3.0(*n*)(iii) will also necessarily entail a breach of by-law 3.0(*a*).

31 It is also the case that by-law 3.0(*n*)(iii) applies to the specific type of renovation in question in this application. In particular, I note that the defendant does not take the point that the Works were not "alterations or additions to any balcony" within the meaning of by-law 3.0(*n*)(iii) on the grounds that the Works were carried out on the living room's side of the boundary between the living room and the balcony and were not carried out on the cantilevered part of the balcony.[45]

32 The defendant is right not to take this point. What constitutes a "balcony" within the meaning of a by-law depends on the context: *Chong Ken Ban (alias Chong Johnson) and another v Management Corporation Strata Title Plan No 1395* [2004] 3 SLR(R) 138 at [17]. The purpose of by-law 3.0(*n*)(iii) is to ensure uniformity in the external appearance of The Arcadia. The sliding doors between the living room and the balcony, although set well back from the external wall of the balcony, remain visible to external observers. Those sliding doors form part of The Arcadia's external appearance. Renovations to those sliding doors – no less than renovations to the cantilevered part of the balcony – have the potential to affect the external appearance of The Arcadia. Given its purpose, by-law 3.0(*n*)(iii) must therefore encompass renovations anywhere on the balcony from the external wall of the balcony right back to the balcony's shared boundary with the living room.

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45 Notes of argument dated 28 March 2018 at page 18, lines 20 to 22.

Third difference: when the plaintiff can withhold consent

33 The third difference between the two by-laws is that by-law 3.0(a) contains a proviso that consent for general renovations cannot be unreasonably withheld whereas by-law 3.0(*n*)(iii) contains no such proviso. The plaintiff's intent in passing by-law 3.0(*n*)(iii) is therefore to place balcony renovations in a special category, where the plaintiff has an absolute right to withhold approval even if to do so can be said objectively to be unreasonable.

34 I am conscious that by-law 3.0(*n*)(iii) may not be effective to confer this absolute right on the plaintiff. Even in relation to a renovation which falls within by-law 3.0(*n*)(iii), a subsidiary proprietor may have recourse to the Strata Titles Board under s 101(1)(*c*) of the Act. That provision allows a subsidiary proprietor, amongst others, to seek an order compelling a management corporation to grant approval for renovations where such approval has been unreasonably withheld (see the unreported Strata Titles Board decision in *MCST Plan No 2440 v Ee Min Kiat/ Eileen Tan @ Tan Ai Lian* STB No 21 of 2016, at para 39). In a case which implicates s 37(4) of the Act in addition to a management corporation's by-laws, the Strata Titles Board can even order the management corporation to consent to the renovation under s 111(b) of the Act.

35 Even though this legislative route exists to challenge the plaintiff's unreasonable refusal to consent to balcony renovations despite the express terms of by-law 3.0(*n*)(iii), the distinction which the plaintiff has drawn expressly in its by-laws between general renovations and balcony renovations signals a clear intent to regulate balcony renovations strictly. That is a point I will return to later in this grounds of decision.

The plaintiff did not give prior written approval

The 11 June 2011 letter

36 By-law 3.0(*n*)(iii) requires the defendant to obtain prior written approval for the Works. I find that the defendant failed to obtain the defendant's prior written approval for the Works. I accept the plaintiff's submission that the 11 June letter, on its proper interpretation, denies approval for the Works.

37 I now set out the 11 June letter in full:

> **PROPOSED ADDITIONS AND ALTERATIONS AT BLK 237 #09-03 THE ARCADIA**
>
> We refer to your application for the proposed [addition and alteration] works to the above captioned unit.
>
> On behalf of the [plaintiff], we have no objections to the proposed renovation works, subject to the followings [*sic*] being complied with:-
>
> 1) Proposed new wall opening for the kitchen area should be evaluated and duly endorsed by a Professional Engineer to certify that the structural integrity for the building will not be compromised by the said opening.
>
> 2) All works that would affect the aesthetic uniformity / façade which are inconsistent with our approval guidelines are not permitted, in particular the following :
>
> i) Proposed modification and extension of the balcony sliding door at the Living Area; and
>
> ii) Proposed modification to the main entrance door and the floor finishes fronting the main entrance door;
>
> 3) Please ensure that the wet areas (eg. Bathrooms, Kitchen, Balcony etc) are adequately waterproofed to minimize the risk of possible water seepage issues to the apartment below in the future.
>
> 4) As required under the Electricity Act (Cap. A) and Electricity (Electrical Installations) Regulations, all condominium home owners who will be carrying out electrical works (including electrical modification works)

> during the renovation of their residential units are required to:
>
> i) Apply Electrical Testing to M/s SP Services or engage the Licensed Electrical Worker (LEW) of the Management Corporation to do the testing ; and
>
> ii) To submit the Certificate of Completion (COC) that is duly endorsed and signed by M/s SP Services or the said LEW to the Management Corporation for record purpose.
>
> …
>
> 5) Notwithstanding any approval granted by the Management Corporation for renovation works, it shall be the sole responsibility of the subsidiary proprietor to seek the appropriate professional advise [*sic*] and ensure that all necessary approvals are obtained from the relevant authorities before commencing any renovation works.
>
> …

38 The 11 June letter contains two key provisions. The first is the second paragraph of the letter, which is the unnumbered umbrella paragraph which serves as the lead-in to the numbered paragraphs. The umbrella paragraph says:

> On behalf of the [plaintiff], we have no objections to the proposed renovation works, subject to the followings [*sic*] being complied with …

39 The second key provision of the 11 June letter is the paragraph numbered 2. Paragraph 2 says:

> All works that would affect the aesthetic uniformity / façade which are inconsistent with our approval guidelines are not permitted …

Paragraph 2 then lists two of the proposed renovations: the renovations to the balcony and to the main entrance.

40 The defendant submits that the 11 June letter gave "conditional approval" for all of her proposed renovations, subject only to her compliance with the five conditions enumerated under the umbrella paragraph in the paragraphs numbered 1 to 5. The effect of this, according to the defendant, is that the plaintiff gave "in-principle approval to the [Works] … subject to the condition that they do not affect the aesthetic uniformity / façade of the Arcadia".[46]

41 I accept that the 11 June letter is not free from ambiguity. However, for the reasons which follow, I find that the defendant's interpretation of the letter is not correct. Reading the umbrella paragraph and paragraph 2 together and in context, the natural meaning of the letter is that the plaintiff *declined* to approve the proposed renovations to the balcony and to the main entrance *because* the plaintiff had made a positive determination that those renovations would affect the estate's aesthetic uniformity or façade and were inconsistent with the plaintiff's approval guidelines.

An overarching point

42 My first reason for arriving at this conclusion is an overarching one. At the time the plaintiff wrote the letter, it knew the scope of all of the actual renovation works which the defendant intended to carry out. In particular, the plaintiff knew the scope of the Works to the balcony. The pre-renovation floor plan attached to the defendant's application for approval showed that the wall columns at the balcony were to be demolished. The post-renovation floor plan showed no wall columns in their place. The plaintiff appreciated this change when it issued the 11 June letter. That is why paragraph 2(i) of the letter expressly addresses the defendant's "[p]roposed modification and *extension* of

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46 Defendant's written submissions dated 26 March 2018 at para 22.

the balcony sliding door at the Living Area" (emphasis added). The plaintiff therefore had enough information at the time it wrote the letter to make a positive determination as to whether or not the Works affected the aesthetic uniformity of The Arcadia or its façade or were otherwise inconsistent with the plaintiff's approval guidelines.

43 The defendant's submission on the interpretation of the 11 June letter amounts to arguing that the plaintiff approved all of the defendant's other *actual* renovations on 11 June (subject to compliance with the conditions listed in paragraphs 1, 3, 4 and 5 of the letter) while making a wholly *general* point to the plaintiff in paragraph 2 – a point which was unrelated to the *actual* renovations which the defendant proposed to the balcony and to the main entrance door – that the two renovations listed in paragraph 2(i) and 2(ii) were approved *unless* they affected the aesthetic uniformity of The Arcadia or its façade or were otherwise inconsistent with the plaintiff's approval guidelines.

44 If that is the correct interpretation of the 11 June letter, it means that the plaintiff approved the two renovations listed in paragraph 2 subject only to a condition *subsequent* to be tested after the Works were complete. The 11 June letter was issued just two days before the plaintiff knew that demolition was to start.[47] Further, 11 June 2011 was a Saturday and 13 June 2011 was a Monday. That leaves less than one working day between approval and commencement to arrive at that determination. Between 11 June 2011 and 13 June 2011, the plaintiff did not ask for and did not acquire any new information to arrive at a final decision on approval before demolition commenced. Thus, for example, the plaintiff did not ask the defendant for any information about the fit and finish to be applied to the balcony sliding doors. So, accepting the defendant's interpretation of the 11 June letter requires accepting that the plaintiff was

[47] Affidavit of Koh Lay Hoon dated 1 June 2017 at Annex B.

content to allow demolition to commence on 13 June 2011 without knowing whether the condition subsequent for approval would ever be satisfied. That appears to me a most unlikely interpretation of the 11 June letter.

45 The defendant's interpretation is even less likely to be correct when one considers the subjective nature of the condition subsequent which the defendant submits the plaintiff imposed. Determining whether the Works affect the aesthetic uniformity or the façade or are inconsistent with the plaintiff's approval guidelines is entirely subjective. Imposing a subjective condition subsequent is simply storing up a dispute for the future. If, after the Works were complete, the parties disagreed on whether the condition subsequent had been satisfied, whose determination would prevail? The plaintiff could not have intended the defendant's determination to prevail. That would mean, in effect, that the 11 June letter delegated to the defendant the authority to make that determination unilaterally, either before commencing the Works or after they were complete. Nor could the plaintiff have intended that its own determination should prevail over the defendant's contrary view. That would mean, in effect, that the plaintiff allowed the defendant to commence and complete the Works, thereby allowing defendant to present the plaintiff with a *fait accompli*, only for the plaintiff then, after the fact, to make its own determination and possibly order reinstatement. The defendant's interpretation of the 11 June 2011 cannot be the correct interpretation.

46 I bear in mind that the plaintiff was not content to rely on the general provisions of by-law 3.0(*a*) to regulate balcony renovations. Instead, the plaintiff saw it fit to pass a specific by-law expressly prohibiting balcony renovations without the plaintiff's prior written approval. I bear in mind also that the plaintiff saw it fit to exclude from that specific by-law the proviso which appears in by-law 3.0(*a*) and which prevents the plaintiff from unreasonably

withholding approval for general renovations. Both of those points indicate to me that the plaintiff attached significance to a subsidiary proprietor's obligation to secure written approval for balcony renovations *before the renovations were carried out* and special significance to having an unqualified right to withhold approval for balcony renovations *before the renovations were carried out*. Whether that right was in reality unqualified, bearing in mind s 101(1)(*c*) of the Act, does not detract from a finding that by-law 3.0(*n*)(iii) is evidence of a special significance which the plaintiff attached to balcony renovations.

47 In these circumstances, it appears to me that the defendant's submissions on the correct interpretation of the 11 June letter cannot be correct. The 11 June letter is not approval of the Works with a condition subsequent. It is a denial of approval for the Works.

Four features of the 11 June letter

48 In support of her submission that the 11 June letter is correctly interpreted as conditional approval of the Works, the defendant relies on four features of the 11 June letter and of the context in which it was written.

First feature – the umbrella paragraph

49 The first feature is the umbrella paragraph of the 11 June letter. That paragraph conveys that the plaintiff has no objections to the defendant's proposed renovations, makes that approval subject to conditions and then goes on to state the conditions that follow. The defendant argues that paragraph 2 is therefore nothing more than one of five conditions for the defendant to comply with in carrying out her proposed renovations and, more specifically, in carrying out the Works listed in sub-paragraphs 2(i) and 2(ii). The defendant complied with that condition because the Works do not "affect the aesthetic uniformity /

façade" and are therefore not "inconsistent with [the plaintiff's] approval guidelines".[48]

50 I do not accept this submission. It is correct that the umbrella paragraph expressly approves the renovations subject to the defendant's compliance with what follows. Although the umbrella paragraph does not speak in terms of "approval", no meaningful distinction can be drawn between the plaintiff saying that it has "no objections" to the Works and the plaintiff giving express approval for the Works. But the defendant's submissions on the express words of approval appearing in the umbrella paragraph do not in my view give proper weight to the express words of disapproval which appear in paragraph 2 of the 11 June letter:

> 2) All works that would affect the aesthetic uniformity / facade which are inconsistent with our approval guidelines *are not permitted*, *in particular the following*:
>
> i) Proposed modification and extension of the balcony sliding door at the Living Area;
>
> [Emphasis added]

51 The words "are not permitted" in paragraph 2 are critical. These are unequivocal words signifying an intent to refuse approval. Paragraph 2(i) attaches this refusal of approval specifically to the Works. None of the other numbered paragraphs in the 11 June letter use the words "are not permitted" or attach those words to the renovations which they cover. The clarity of that specific intent, to my mind, suffices to override a general intent to approve which the umbrella paragraph conveys. The correct interpretation of the 11 June letter is that the plaintiff *permitted* all of the defendant's proposed renovations *save that* the proposed renovations to the balcony and to the main entrance were *not permitted*.

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[48] Defendant's written submissions dated 26 March 2018 at para 21.

52 The words "in particular the following" in paragraph 2 are also critical The words conveying a general intent to approve in the umbrella clause are subject to what follows the umbrella clause, which includes paragraph 2. Paragraph 2 says that all works of a certain kind are *not* permitted, in particular what follows in that paragraph. What follows in that paragraph is naturally understood as that which is *not* permitted. Paragraph 2, by using the words "in particular the following" immediately after stating the type of works which are "not permitted", *particularises* two types of works which are not permitted. One of those types of works is precisely what the defendant carried out.

53 The natural reading of the umbrella paragraph and paragraph 2 taken together is that the plaintiff denied approval for the Works. It could be said, though it is not necessary, that paragraph 2 contains an implied repetition of the words "are not permitted" after the word "following":

> 2) All works that would affect the aesthetic uniformity / facade which are inconsistent with our approval guidelines *are not permitted*, in particular the following [*are not permitted*]:
>
> i) Proposed modification and extension of the balcony sliding door at the Living Area …
>
> [Emphasis added]

54 Further, paragraph 2 is quite different in nature from the numbered paragraphs 1, 3, 4 and 5 of the 11 June letter. On the defendant's submissions, paragraph 2 imposes a condition which seeks to regulate the design of the renovation to be carried out to the balcony and the main entrance. That is quite unlike paragraphs 1, 3, 4 and 5. These four paragraphs do not regulate the design of the renovations to which they pertain. Instead, these paragraphs set out conditions to ensure that the renovations to which they pertain are carried out in a manner which does not create a risk of damage to property or of injury to persons. The natural reading of the 11 June letter is to read paragraph 2

consistently with paragraphs 1, 3, 4 and 5 as not attempting to regulate the design of the renovation to be carried out.

55 Read that way, paragraph 2 is not a condition at all but a statement of the plaintiff's standing policy not to permit "all works that would affect the aesthetic uniformity / façade which are inconsistent with our approval guidelines". The correct interpretation of paragraph 2, then, is that it conveys a determination by the plaintiff that the specific renovations which the defendant proposes to make to her balcony and main entrance, in keeping with the plaintiff's stated policy, "are not permitted".

Second feature – annotations on the floor plan

56 The second feature on which the defendant relies are two annotations found on a copy of the pre-renovation floor plan which the defendant submitted to the plaintiff in June 2011 together with its application for approval of the renovations. That floor plan shows sliding doors extending partway along the boundary line between the living room and the balcony. Against these sliding doors appears the annotation "KIV". In the bottom right hand corner of this floor plan appear the words "fit outs of exterior must match existing".

57 The defendant relies on these annotations as evidence that the plaintiff had taken a decision to approve the Works subject to certain conditions in or about June 2011 and therefore as evidence supporting her interpretation of the 11 June letter.

58 I reject the defendant's submissions.

59 I accept that it is likely that these annotations were made for and on behalf of the plaintiff. That is because these annotations appear only on the copy

of the floor plan which the plaintiff produced in the course of this application. The annotations do not appear on any copy of the pre-renovation floor plan in the defendant's possession. Further, both Mr Voon Wong[49] and Mr Joseph Ngo have deposed that they did not make the annotations.[50] But there is no evidence as to who on the plaintiff's side made the annotations, when they were made and with what intent. In particular, there is no evidence that the annotations were made by a person authorised by the plaintiff to make the final decision to approve the Works or that the annotations were made before the 11 June letter was issued, and are therefore capable of supplying context to its interpretation.

60 Further, even assuming that these two factual questions are resolved in favour of the defendant, the annotations do not amount to evidence of a positive decision by the plaintiff to approve the Works, whether or not subject to a condition subsequent. The abbreviation "KIV" means "keep in view". "Keep in view" indicates that the plaintiff has *deferred* a decision on whether to approve the Works to a later date. Deferring a decision on the Works is undoubtedly not a rejection of the Works. But it is not approval of the Works either.

61 The result is that even if the annotations supply a context for interpreting the 11 June letter, that context is simply that the plaintiff had decided to defer approval of the Works until it was satisfied that the Works would have no impact on the estate's aesthetic uniformity or façade. Even if read in the light of that context, the 11 June letter amounts at most to an absence of objection. An absence of objection is not "prior written approval" within the meaning of by-law 3.0(*n*)(iii) read with by-law 1.0. In any case, these annotations cannot in themselves amount to the necessary "prior written approval". They were not communicated to the defendant in or around June 2011. They came to the

[49] Affidavit of Voon Wong dated 11 August 2017 at para 8.

[50] Affidavit of Joseph Ngo dated 20 March 2018 at para 12.

plaintiff's knowledge only through the plaintiff's affidavits filed in the course of this application.

62 In the circumstances, these annotations do not afford the defendant a contractual defence to the plaintiff's contractual claim against the defendant for breach of by-law 3.0(*n*)(iii).

Third feature – use of the conditional verb "would" in paragraph 2

63 The third feature of the 11 June letter on which the defendant relies is that the plaintiff used the conditional verb "would" in the phrase "All works that would affect the aesthetic uniformity / facade…" in paragraph 2 of the 11 June letter.[51] It is true that "would" in paragraph 2, if interpreted as a conditional verb, denotes *a possibility* that the Works *might* affect the aesthetic uniformity or façade and therefore could be read as expressing a condition for the defendant to comply with. But "would" in this context is not necessarily interpreted as a conditional verb. It can also be interpreted as a modal verb. As a modal verb, "would" denotes a *determination* that the Works do affect the aesthetic uniformity of façade.

64 The defendant's submission on the meaning of "would" is, in effect, a submission that the 11 June letter constitutes approval of the Works on 11 June 2011 subject to a condition subsequent to be tested at some point in the future on subjective grounds. That interpretation of the 11 June letter is incorrect for the reasons I have already given at [42]–[47] above. I therefore find the modal interpretation of "would" to be the correct interpretation of that word in paragraph 2. On that basis, paragraph 2 in fact conveys the plaintiff's

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[51] Notes of argument dated 28 March 2018 at page 2, lines 16 to 24.

determination that the proposed Works "would" – used as a modal verb – affect the estate's aesthetic uniformity or façade and therefore "are not permitted".

Fourth feature – renovation at main entrance

65 The final feature on which the defendant relies is the fact that paragraph 2 of the 11 June letter also refers to the proposed renovations to the defendant's main entrance door and the floor finishes fronting the door. Accepting the plaintiff's submissions on the meaning of paragraph 2 means that the defendant's renovations to her main entrance were also carried out in breach of the by-laws and must be reinstated. But the plaintiff has never taken that position.[52]

66 It is true that the plaintiff does not now challenge the renovations which the defendant carried out to her flat's main entrance as being unauthorised. But the plaintiff *did* take objection to these renovations, both while the renovations were in progress and after they were complete.[53] The plaintiff's objections were eventually resolved. No evidence was adduced as to the reason for the objections. Equally, no evidence was adduced as to how the plaintiff's objections were resolved. Did the plaintiff object regardless of aesthetic uniformity but simply because the renovations at the main entrance were carried out without prior written approval, contrary to the by-laws? Or did the plaintiff object because the renovations were duly approved but were carried out in a manner which failed to maintain aesthetic uniformity? Or did the plaintiff initially object because these renovations were carried out without prior written approval but then withdraw the objection because the renovations were presented as a *fait accompli* which maintained aesthetic uniformity or

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52 Notes of argument dated 28 March 2018 at page 6, lines 7 to 13.

53 Affidavit of Joseph Ngo dated 20 March 2018 at para 18.

represented a *de minimis* variation? Or did the plaintiff initially object because the renovations were carried out without prior written approval and withdraw the objection because the defendant carried out rectification or reinstatement works to maintain aesthetic uniformity? Given the lack of evidence on any of these points, and given the strength of the arguments I have set out at [42]–[47] above, the manner in which the plaintiff dealt with the defendant's renovations to her main entrance does not advance the defendant's case on the correct interpretation of the 11 June letter.

Conclusion on the 11 June letter

67 The meaning to be attributed to these four features raised by the defendant must thus be informed by the wider context of the 11 June letter. For the reasons I have set out above, an examination of the 11 June letter as a whole and in context reinforces my conclusion at [47] above that the correct interpretation of the 11 June letter is that the plaintiff denied approval for the Works.

68 The Works having been carried out in breach of contract, *ie* in contravention of by-law 3.0(*n*)(iii) and 3.0(*a*), the defendant's argument that the Works satisfy the condition subsequent in the 11 June letter – in that they do not "affect the aesthetic uniformity/façade" of the building – are immaterial to her liability for the breach. The Works were carried out without prior written approval in breach of the by-laws and therefore in breach of contract. It is not a defence to the breach to show that the Works do not qualitatively affect the aesthetic uniformity or the façade. This factor is, however, relevant to the issue of remedy.

69 I should add that even if I had accepted the defendant's submissions and found that the 11 June letter granted approval for the Works subject to the

condition subsequent set out in paragraph 2, I would also have found that that condition subsequent was never satisfied. The Works do affect the aesthetic uniformity of The Arcadia's façade in a manner which is more than *de minimis*. Even on her own case, therefore, I find that the defendant failed to satisfy the condition subsequent in the 11 June letter. On that ground too, I would have held that the defendant carried out the Works without prior written approval and was in breach of the by-laws.

70 The result is that the defendant is in breach of by-law 3.0(*n*)(iii) on any view of her case. To the extent that the finding adds anything to the plaintiff's claim, that suffices to place her also in breach of by-law 3.0(*a*). I so find.

Breach of section 37 of the Act

71 Section 37(3) of the Act prohibits a subsidiary proprietor from effecting any improvement to his strata title lot which affects the appearance of any building comprised in the strata title plan unless the improvement is authorised by the management corporation under s 37(4):

> (3) Except pursuant to an authority granted under subsection (4), no subsidiary proprietor of a lot that is comprised in a strata title plan shall effect any … improvement in or upon his lot for his benefit which affects the appearance of any building comprised in the strata title plan.
>
> (4) A management corporation may, at the request of a subsidiary proprietor of any lot comprised in its strata title plan and upon such terms as it considers appropriate, authorise the subsidiary proprietor to effect any improvement in or upon his lot referred to in subsection (3) if the management corporation is satisfied that the improvement in or upon the lot —
>
> (*a*) will not detract from the appearance of any of the buildings comprised in the strata title plan or will be in keeping with the rest of the buildings; and
>
> (*b*) will not affect the structural integrity of any of the buildings comprised in the strata title plan.

72 Unlike by-law 3.0(*n*)(iii) read with by-law 1.0, s 37 of the Act does not require a management corporation to give authority *in writing* for improvements affecting the appearance of the building. Therefore, a subsidiary proprietor will not breach s 37 of the Act if he obtains the management corporation's oral approval for improvements which come within the ambit of s 37. It is fair to say, however, that s 37 of the Act does require that a subsidiary proprietor secure a management corporation's approval before carrying out improvements within the ambit of s 37. That is because s 37 is forward-looking: it imposes restrictions and conditions which bind a subsidiary proprietor *before* she effects any improvements to her lot.

73 This second issue which I have to determine thus resolves into two sub-issues:

(a) Do the Works affect "the appearance of any building comprised in the strata title plan" so as to engage s 37(3) of the Act?

(b) If so, did the plaintiff authorise the Works within the meaning of s 37(4)(*a*) of the Act?

Section 37(3) of the Act

74 Determining whether renovations affect the appearance of a building is a factual exercise, undertaken by comparing the façade presented by the flat in question with the façade presented by other similar flats and by all of the flats as a whole: *Management Corporation Strata Title Plan No 1786 v Huang Hsiang Shui* [2006] SGDC 20 at [112]. Thus, for instance, a feature permanently affixed to a balcony and which does result in the balcony looking different from its original state does affect the overall appearance of the building: *Management Corporation Strata Title Plan No 1378 v Chen Ee Yueh Rachel* [1993] 3 SLR(R) 630 ("*Chen Ee Yueh Rachel*") at [17].

75 Whether an improvement effected to a particular flat affects the façade of its building is not to be ascertained as a theoretical exercise but from the viewpoint of a reasonable observer who looks at the building from a position which is practically possible or likely. As Derrington J stated in *Re J Saunders* (1993) NSW Titles Cases 80-019:

> The concept of appearance necessarily connotes the existence of an observer who has the capacity to see the appearance. … it is predicated that such views are limited to those which can reasonably be taken. The concept does not extend to a theoretical appearance as it might be seen by a person placed in a position which is not practically possible or likely.

76 The parties tendered various photographs of the defendant's balcony and the balconies of surrounding flats comprising the same façade.[54] The sliding doors between the living room and the balcony of flats in The Arcadia are set well back from the external wall of the balcony. That means that the observer's vantage point has a significant effect on whether the Works are visible.

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54 Affidavit of Florence Marjorie Lim dated 29 August 2017 at pages 18 to 25 and Affidavit of Koh Lay Hoon dated 15 August 2017 at pages 13 to 15.

77 The Works are not visible in the photographs adduced by the defendant, whether by reason of poor colour contrasting or obstruction by objects such as trees. But, despite the deep setback to the sliding doors, the Works are clearly visible in the photographs adduced by the plaintiff. And these photographs show a discernible variance, more than *de minimis*, between the façade presented by the defendant's flat and the façade presented by all of the other flats in her block, both individually and taken as a whole.

78 The plaintiff's photographs were taken from two other flats in other blocks of The Arcadia facing the defendant's flat.[55] I am satisfied that the plaintiff's photographs have been taken from positions which are not unfair to the defendant. The vantage points from which these photographs have been taken are practically possible or likely for a reasonable observer to occupy when looking at the defendant's balcony.

79 I thus find that the Works do affect the appearance of a building comprised in The Arcadia's strata title plan within the meaning of s 37(3) of the Act.

80 It is not necessary to make a further finding that the Works detract from the appearance of a building in The Arcadia's strata title plan at this stage of the inquiry. That test is no part of s 37(3) but appears only in s 37(4)(*a*). In defining the circumstances in which a subsidiary proprietor must get prior authorisation, s 37(3) uses the objective word "affect" rather than the subjective word "detract". That word choice is deliberate. It ensures that a subsidiary proprietor cannot arrogate to herself a subjective decision on whether her improvements come within s 37(3) and whether she is obliged to seek and secure prior authorisation. The obligation arises whenever an improvement "affects" the

[55] Affidavit of Koh Lay Hoon dated 15 August 2017 at para 23.

appearance of any building in a strata title plan. That test is more objective than that which appears in s 37(4)(*a*). So long as the objective test in s 37(3) is satisfied, the subsidiary proprietor must seek and secure the management corporation's approval. Whether the Works *detract* from the appearance of the building becomes relevant only when the management corporation considers whether to grant approval under s 37(4)(*a*).

81 The defendant's Works undoubtedly affect the appearance of the building. The defendant was thereby prohibited by s 37(3) from carrying out the Works without the prior authority of the plaintiff pursuant to s 37(4)(*a*).

Section 37(4)(a) of the Act

82 Mr Joseph Ngo gave evidence that the plaintiff's condominium manager granted oral approval for the Works at a site meeting which took place after the 11 June letter and before work commenced. A condominium manager has, at the very least, ostensible authority to grant the approval on behalf of the plaintiff. Mr Chung signed the 11 June letter for and on behalf of the plaintiff as "Condominium Manager".[56]

83 I am prepared to accept Mr Ngo's evidence that the plaintiff's condominium manager gave the defendant oral approval to carry out the Works before the Works commenced.

The plaintiff's power to grant authorisation under s 37(4)(a)

84 But even if I were to accept that the plaintiff gave oral approval for the Works before the Works commenced, I accept the plaintiff's submission that that approval would be of no legal effect because s 37(4)(*a*) of the Act does not

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[56] Notes of argument dated 27 March 2018 at page 36 line 15 to page 43 line 21.

empower the plaintiff to approve works which detract from the appearance of a building in its strata title plan. I first explain the limits on the plaintiff's power to grant approval under s 37(4)(*a*) before turning to consider why the Works fell outside the ambit of the plaintiff's powers.

Limits on the power to grant approval under s 37(4)

85 Section 37(4) of the Act empowers a management corporation to authorise a subsidiary proprietor to effect improvements to her lot *if* the management corporation is satisfied that the statutory criteria in s 37(4)(*a*) and (*b*) are met. The plain and ordinary meaning of s 37(4) is that a management corporation is *not* empowered to authorise improvements to a lot if the improvements *do not* meet the statutory criteria. This interpretation of s 37(4) accords with common sense. Parliament could not have intended to empower a management corporation to authorise renovations which would, for example, affect the structural integrity of a building contrary to s 37(4)(*b*).

86 The legislative history of s 37(4) also supports this interpretation. Section 37(4) of the Act is adapted from s 98(1) and (2) of the Condominium Act of Ontario, S O 1998, c 19 (Can) ("Ontario Condominium Act"): Teo Keang Sood, *Strata Title in Singapore and Malaysia* (LexisNexis, 5th Ed, 2015) ("*Strata Title in Singapore and Malaysia*") at para 10.96. Section 98(2) of the Ontario Condominium Act governs renovations to common property over which subsidiary proprietors have exclusive use. To carry out such renovations, the management corporation must be satisfied that the renovation:

> (a) will not have an adverse effect on units owned by other owners;
>
> (b) will not give rise to any expense to the corporation;
>
> (c) *will not detract from the appearance of buildings on the property*;

> (d) *will not affect the structural integrity of buildings on the property* according to a certificate of an engineer, if the proposed addition, alteration or improvement involves a change to the structure of the buildings; and
>
> (e) will not contravene the declaration or any prescribed requirements.
>
> [emphasis added]

A management corporation cannot authorise the works if these criteria are not fulfilled: *Metropolitan Toronto Condominium Corp No 985 v Vanduzer* [2010] OJ No 571 at [25] and *Waterloo North Condominium Corp No 37 v Silaschi* 2012 ONSC 5403 at [13].

87 The decision whether the statutory criteria in s 37(4)(*a*) and (*b*) are met is within the purview of the management corporation and not the courts. This is apparent from s 37(4) itself, which requires that it is the management corporation who must be satisfied that both subsections are satisfied. Placing the decision-making in the hands of the management corporation is in line with the overall intention of parliament in enacting the Act. The Act repealed the Buildings and Common Property (Maintenance and Management) Act (Cap 30, 2000 Rev Ed) ("BCPA") and amended the Land Titles (Strata) Act (Cap 158, 1999 Rev Ed) ("LTSA"). At the time the Act was introduced, the number of strata flats and management corporations had increased significantly since the enactment of the BCPA and LTSA. The Act was thus intended to empower management corporations to make decisions in a bid to encourage self-regulation, as government intervention was no longer feasible: *Singapore Parliamentary Debates, Official Report* (19 April 2004) vol 77 at col 2742–2744 (Mah Bow Tan, Minister for National Development). Indeed, similar concerns underlie the Ontario Condominium Act from which the Act was adapted. Thus, an Ontario court in *York Region Standard Condominium Corp No 1076 v Anjali Holdings Ltd* [2010] OJ No 488 said at [9]:

> It is not [the] function [of the] judge, however, to assess the aesthetics of the changes made … As Cusinato J said at paragraph 12: "It matters not … that the landscaping appears to be beautifully done, or that all other unit holders find it pleasing. Where the elected Board concludes that it is unacceptable … their word [i]s final …

88 This is not, of course, to endorse the tyranny of the majority. There are statutory safeguards to prevent minority oppression in management corporations just as there are safeguards to prevent minority oppression in commercial corporations. In particular, a subsidiary proprietor whose application under s 37(4) has been unreasonably refused can, by virtue of

s 111(b) of the Act, apply to the Strata Titles Board for an order compelling the management corporation to give its consent for her intended improvement.

The Works fall outside the plaintiff's powers of approval

89 For the reasons set out above at [42]–[47], I find that the plaintiff determined in the 11 June letter that the Works will and do affect the aesthetic uniformity and the façade of the building. That amounts to a determination that the Works detract from the appearance of the building and that the Works are not in keeping with the rest of the building. That suffices to render the Works contrary to both limbs of s 37(4)(*a*). That being so, the plaintiff was not empowered to authorise the Works.

90 That is the end of the defendant's defence to the plaintiff's claim that the defendant carried out the Works in breach of s 37(3) of the Act. Section 111(*b*) of the Act is not engaged in this application. The question of whether the plaintiff arrived at this determination reasonably does not arise.

91 In any event, for what it is worth, I consider that the Works do detract from the appearance of the building or, at the very least, are not in keeping with the buildings in the Arcadia. The subsidiary proprietors in The Arcadia place paramount interest on maintaining aesthetic uniformity in their development. The plaintiff – who, after all, is simply the embodiment of the collective will of The Arcadia's subsidiary proprietors – has passed by-laws which attach special significance to renovations carried out on a balcony. The plaintiff has also enacted specific by-laws to maintain day-to-day aesthetic uniformity of the balcony and therefore the façade, even to the extent of regulating the type, height and quantity of plants that can be grown in planter boxes on balconies[57]

[57] Affidavit of Koh Lay Hoon dated 1 June 2017 at page 17, by-law 3(l).

and the colour and inclination of awnings.[58] The plaintiff has quite reasonably taken the position that any renovations which affect the aesthetic uniformity of The Arcadia's façade "may also impact on [the] good image [and] prestige of an upscale and prestigious estate in [The Arcadia]".[59] A lack of uniformity may, in the long term, have a detrimental effect on the value of the flats in a development (see *Management Corporation Strata Title Plan No 1786 v Huang Hsiang Shui* [2006] SGDC 20 at [221] and *Strata Title in Singapore and Malaysia* at para 10.96).

92 Because s 37(4)(*a*) of the Act was not satisfied, the plaintiff was not empowered to authorise the Works under s 37(4) of the Act. The result is that any oral approval which the condominium manager may have given to Mr Joseph Ngo before the defendant's renovations commenced was not authorisation within the meaning of s 37(4). The defendant is therefore in breach of s 37(3) of the Act in addition to being in breach of the by-laws.

Estoppel by convention

93 In the analysis of the estoppel by convention argument, it is important to distinguish between the defendant's breach of s 37(3) of the Act and the defendant's breach of by-law 3.0(*n*)(iii).

The claim under s 37(3) of the Act

94 The defendant cannot rely on estoppel by convention as a defence to the plaintiff's claim for breach of s 37(3) of the Act. That is because the doctrine of estoppel by convention can be raised only against a contractual claim and not

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58 Affidavit of Koh Lay Hoon dated 1 June 2017 at page 16, by-law 3(d)(i).

59 Affidavit of Koh Lay Hoon dated 1 June 2017 at page 53.

against a statutory claim: *Management Corporation Strata Title Plan No 473 v De Beers Jewellery Pte Ltd* [2002] 1 SLR(R) 418 ("*De Beers*") at [44].

95 Although s 37(3) imposes an obligation on a subsidiary proprietor, it makes no provision for the consequence which follows if a subsidiary proprietor fails to comply with that obligation. In particular, the Act does not provide that a management corporation can obtain a mandatory injunction from the court (as opposed to an order from the Strata Titles Board under s 101(1)) requiring the subsidiary proprietor to remove improvements carried out in breach of s 37(3) and reinstate his strata title lot to its original condition. Both counsel accept, however, that I have the power by accretion of judicial decision to grant a mandatory injunction to remedy a breach of s 37 of the Act.[60]

96 My finding that the defendant's defence of estoppel by convention cannot succeed against the plaintiff's claim under s 37(3) of the Act suffices to enliven my discretion to grant the mandatory injunction which the plaintiff seeks without having to consider whether the defendant can avail herself of that estoppel defence against the plaintiff's claim under the by-laws.

97 Nevertheless, since the point has been argued, I will deal with it.

The claim for breach of the by-laws

98 Estoppel by convention is a defence to a claim in contract. A strata development's by-laws take effect as a contract by virtue of s 32(6) of the Act. The doctrine of estoppel by convention is therefore available to the defendant as a defence to the plaintiff's contractual claim for breach of the by-laws.

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60 Notes of Argument dated 27 March 2018 at page 70, lines 22 to 34; Notes of Argument dated 28 March 2018 at page 44, lines 14 to 18.

99 The defendant will establish an estoppel by convention if she can show the following elements (*Travista Development Pte Ltd v Tan Kim Swee Augustine and others* [2008] 2 SLR(R) 474 at [31]):

(a) the parties have acted on an assumed and incorrect state of fact or law in their course of dealing;

(b) the assumption is either shared by both parties pursuant to an agreement or something akin to an agreement, or made by one party and acquiesced in by the other; and

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

If an estoppel by convention is established, the courts will grant such remedy as the equity of the case demands: *Quah Poh Hoe Peter v Probo Pacific Leasing Pte Ltd* [1992] 3 SLR(R) 400 at [22], citing *Amalgamated Investment & Property Co Ltd (in liquidation) v Texas Commerce International Bank Ltd* [1982] QB 84 at 122.

100 The defendant has failed to establish that an estoppel by convention has arisen which precludes the plaintiff from relying on the defendant's breach of by-law 3(*n*)(iii). The defendant,[61] Mr Voon Wong,[62] and Mr Joseph Ngo[63] have all deposed that they understood the 11 June letter as conveying the plaintiff's conditional approval for the Works. I do not doubt that the defendant understood the 11 June letter in that way. It seems unlikely to me that the defendant understood the 11 June letter as denying approval for the Works yet went ahead with the Works. The evidence is that the defendant carried out the Works openly

61 Affidavit of Florence Marjorie Lim dated 29 August 2017 at para 15.

62 Affidavit of Voon Wong dated 11 August 2017 at para 12.

63 Notes of argument dated 27 March 2018 at page 33 line 26 to page 34 line 3.

and not surreptitiously. It seems highly unlikely that the defendant would have carried out the Works openly, knowing that the plaintiff had denied approval for them, in the hope that nobody would ever detect the unauthorised Works. The defendant could not have foreseen that the plaintiff and the other subsidiary proprietors would fail to detect the Works until long after they were completed. I find it unlikely that a subsidiary proprietor would run the significant risk in terms of time, cost and inconvenience of carrying out renovations which she knew had been denied approval.

101 But the defendant's understanding of the 11 June letter does not suffice in itself to establish an estoppel by convention. An estoppel by convention requires an assumption of fact or law which is communicated by one party to the other, *ie* which crosses the line between the parties. Even if the estoppel by convention is founded on an assumption on the defendant's side and acquiescence on the plaintiff's side, the plaintiff's acquiescence must still arise from a common or shared assumption between the plaintiff and the defendant.

102 The crucial finding against an estoppel by convention is my finding that the plaintiff's intent in writing the 11 June letter is contrary to the defendant's understanding of the 11 June letter. The 11 June letter conveyed the plaintiff's denial of approval for the Works. The defendant's understanding that the plaintiff had approved the Works subject to a condition was therefore not an assumption which was shared by both parties or which was common to both parties. No estoppel by convention can arise by reason of that letter.

103 In addition, I do not consider that the plaintiff acquiesced in the defendant's understanding of the 11 June letter in the sense necessary to give rise to an estoppel by convention. The defendant relies on the following acts of acquiescence by the plaintiff: (a) granting oral approval for the Works;[64] (b) not

objecting to the Works during the periodic inspections while the renovations were in progress;[65] (c) returning the defendant's security deposit to her unconditionally and without deduction when the renovations were complete;[66] (d) raising issues relating to the balcony other than the Works in 2012;[67] and (e) raising the Works with the defendant for the first time only in 2015[68] despite being made aware of the Works by another subsidiary proprietor in 2012.[69]

104 A common or shared assumption is essential even where a party seeks to establish an estoppel by convention arising from the other party's acquiescence. As Lord Steyn said in *Republic of India v India Steam Ship Co* [1998] AC 878 at 913–914:

> [A]n estoppel by convention may arise where parties to a transaction act on an assumed state of facts or law, the assumption being either shared by them both or made by one and acquiesced in by the other. The effect of an estoppel by convention is to preclude a party from denying the assumed facts or law if it would be unjust to allow him to go back on the assumption … It is not enough that each of the two parties acts on an assumption not communicated to the other. But … a concluded agreement is not a requirement.

105 It was never the plaintiff's intent to grant approval for the Works subject to a condition subsequent. The acts of acquiescence relied upon by the defendant cannot support an estoppel by convention because I do not accept that the plaintiff at any time – before, during or after the Works – shared the defendant's assumption that the Works had been approved subject to a condition subsequent.

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64 Notes of argument dated 27 March 2018 at page 43, lines 13 to 14.

65 Affidavit of Joseph Ngo dated 20 March 2018 at paras 18 and 19.

66 Affidavit of Florence Marjorie Lim dated 29 August 2017 at para 32.

67 Affidavit of Florence Marjorie Lim dated 29 August 2017 at paras 22 to 23.

68 Affidavit of Koh Lay Hoon dated 1 June 2017 at page 53.

69 Affidavit of Florence Marjorie Lim dated 29 August 2017 at para 25.

Should a mandatory injunction be granted?

106 Where a subsidiary proprietor has breached a negative covenant, a mandatory injunction to redress the breach will ordinarily issue upon the application of the management corporation (*Chen Ee Yueh Rachel*, *supra* [74], at [22]). The plaintiff is therefore *prima facie* entitled to relief by way of a mandatory injunction, whether for its contractual claim under the by-laws or its statutory claim for breach of s 37(3).

107 Arising from the findings which I have made, the form of the injunction which one would expect to issue is a mandatory injunction compelling the defendant to carry out reinstatement works on her balcony unconditionally and with immediate effect. However, for the reasons which follow, I have declined to order an unconditional mandatory injunction with immediate effect. To be fair, the plaintiff did not press for a mandatory injunction in that form either.

Chen Ee Yueh Rachel

108 In *Chen Ee Yueh Rachel*, Chao Hick Tin J held that a mandatory injunction to redress a breach of a negative covenant may not issue if (*Chen Ee Yueh Rachel* at [22]):

(a) the plaintiff's own conduct would make it unjust to do so; or

(b) the breach is trivial or has caused no damage or no appreciable damage to the plaintiff and a mandatory injunction would impose substantial hardship on the defendant with no counterbalancing benefit to the plaintiff.

109 In that case, a subsidiary proprietor replaced the metal grilles on her balcony with sliding glass windows without prior written approval, contrary to

the estate's by-laws. The management corporation sought a mandatory injunction to compel reinstatement. Chao Hick Tin J declined to grant the injunction, holding that to do so would cause hardship to the subsidiary proprietor without any real corresponding benefit to the management corporation. This was because the uniformity sought by the management corporation could not be achieved. There were seven other flats which had carried out similar renovations to their balconies. And the management corporation could not do anything about the variation in the façade presented by those seven flats because they had carried out their renovations before the management corporation was established. The court noted that not granting the mandatory injunction in this case would not undermine the authority of the management corporation over other subsidiary proprietors who might be minded to replace their own grilles in the same way because their breach of a by-law attracted penal sanction under the legislation then in force, the Land Titles (Strata) Act (Cap 158, 1988 Rev Ed).

110 For reasons which I set out at [116] and [117] below, neither of the factors which weighed so heavily in *Chen Ee Yueh Rachel* at [22] are present in this case.

111 For the reasons which follow, I do not consider that granting the plaintiff a mandatory injunction compelling reinstatement would be unjust on the facts of this case. I accept that granting the plaintiff a mandatory injunction which is unconditional and which has immediate effect could be said to be unjust. But that goes to the terms of the mandatory injunction and not to the fundamental question of whether one should issue.

112 I do not consider the defendant's breach to be trivial and cannot say that it has caused no damage or no appreciable damage to the plaintiff. Nor can I say

that a mandatory injunction would impose substantial hardship on the defendant with no counterbalancing benefit to the plaintiff. I say that for six reasons.

113 First, it remains the case that the plaintiff is in breach of both s 37(3) of the Act and of the contract with the plaintiff embodied in the plaintiff's by-laws. It may be true that the defendant's breach does not arise from fault on her part. But lack of fault is no defence to either the statutory claim or the contractual claim. Withholding a mandatory injunction on grounds of lack of fault would elevate absence of fault into a substantive defence. That would undermine the entire scheme of the Act and of the statutory contract constituted by the by-laws.

114 Second, on the defendant's side of the balance, the only hardship which granting a mandatory injunction would impose on her is the financial hardship of the cost of reinstating the balcony. Financial hardship is insufficient hardship in itself for a court to withhold the remedy of a mandatory injunction where a breach is established: *The Management Corporation Strata Title Plan No. 681 v Tan Yew Huat* [2015] SGDC 118 at [29(a)].

115 Third, on the plaintiff's side of the balance, I have found that the variance in the façade presented by the defendant's balcony is not *de minimis* and does detract from the aesthetics and the uniformity of the façade of The Arcadia as a whole. I accept that aesthetic uniformity is of paramount concern to the subsidiary proprietors in The Arcadia. They have manifested this concern generally through the plaintiff's by-laws (see [91] above). They have also manifested this concern specifically in the context of this case by the unanimous resolution passed at the 32nd Annual General Meeting in 2017 (see [18] above). They have followed through on the resolution with every one of the five strata title lots which have caused a variance in the façade. The plaintiff is not pursuing

the defendant capriciously or arbitrarily. It has a legitimate interest in doing so and is treating the affected subsidiary proprietors equally.

116 Fourth, unlike *Chen Ee Yueh Rachel*, it remains possible to achieve aesthetic uniformity in The Arcadia. Although there are four other flats in The Arcadia in which similar balcony works have been carried out, the subsidiary proprietors of these four flats have entered into settlement agreements with the defendant. In those settlements, they have agreed, subject to certain conditions and a long-stop date of 1 December 2021, to reinstate their balconies to the original design.[70] One has agreed to do so even though the unauthorised works were not carried out by him, but were carried out before he purchased his flat.[71] The findings I have made suggest no reason why the defendant should be treated any differently from the other four subsidiary proprietors.

117 Fifth, refusing to issue a mandatory injunction against the defendant will, once the other four flats have carried out reinstatement works, only serve to make the defendant's variance more prominent and the detraction from aesthetic uniformity even more pronounced. It is recognised that that can have an impact on values of flats in a development. The plaintiff has a clear interest in avoiding that result, both aesthetically and economically.

118 Sixth, declining to grant a mandatory injunction in this case will undermine the plaintiff's authority to ensure aesthetic uniformity. The penal sanction which served as a backstop to the management corporation's authority in *Chen Ee Yueh Rachel* no longer exists. It was removed from the Act with the objective of "reducing Government intervention and enhancing self-regulation

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70 Affidavit of Anand Jaisingh Danani dated 19 March 2018 at para 15 and pages 23 to 62.

71 Affidavit of Anand Jaisingh Danani dated 19 March 2018 at page 55.

[by management corporations]" (*Singapore Parliamentary Debates, Official Report* (19 April 2004) vol 77 at col 2747 (Mah Bow Tan, Minister for National Development)). Under the self-regulating regime introduced by the Act, a mandatory injunction compelling reinstatement is all the more necessary in order to avoid a free-for-all amongst subsidiary proprietors.

119 For all of these reasons I have decided that a mandatory injunction must issue against the defendant, albeit not one which is unconditional or which will take effect immediately. In deferring the effect of the mandatory injunction, I bear in mind two factors. First, the result of the plaintiff's settlement agreements with the other subsidiary proprietors who are in the same position as the defendant means that there is no assurance of aesthetic uniformity being restored in The Arcadia before 1 December 2021. Second, even though I have found the detraction caused by the Works to be real and beyond *de minimis*, the long period of time which the defendant's neighbours took to detect the variance in the defendant's balcony and which the plaintiff took to press the defendant on it indicates to me that the Works will not detract *significantly* from the aesthetics or the uniformity of the façade at The Arcadia before 1 December 2021. Both those factors suggest that an unconditional and immediate injunction is not warranted in this case.

120 For all of these reasons, I have directed that a mandatory injunction shall issue against the defendant but in terms no more onerous on the defendant than the terms of the settlements which the plaintiff has reached with each of the other four subsidiary proprietors in the same position as the defendant. The mandatory injunction that will issue will therefore require the defendant to carry out the necessary rectification and reinstatement works at her own cost and expense upon the occurrence of any one of the following events, whichever occurs first:

(a) when the defendant undertakes renovations works (that do not constitute "Minor Renovation Works" as defined under cl 4.5 of The Arcadia's by-laws dated 5 July 2013) to her flat, she shall at the same time carry out the rectification and reinstatement; or

(b) when the defendant sells or transfers the flat, she shall upon the execution of the option to purchase or agreement of sale or transfer:

(i) give written notice to the plaintiff;

(ii) procure and carry out, at her own cost and expense, the rectification and reinstatement; and

(iii) complete the rectification and reinstatement prior to the completion of the sale or transfer of the flat; or

(c) when the plaintiff receives written notice from any subsidiary proprietor(s) or occupier(s) regarding the unauthorised works carried out by the defendant, and the said subsidiary proprietor(s) or occupier(s) requisitions a motion that the defendant carries out the rectification and reinstatement works, and the said motion is duly passed at a general meeting, she shall carry out the rectification and reinstatement; or

(d) on the expiration of the longstop deadline set as 1 December 2021.

121 Given that the entire purpose of reinstatement is aesthetics and appearances rather than substance, I have also ordered the plaintiff to extend to the defendant the benefit – to the extent that the defendant is able to avail itself of that benefit – of an addendum which the plaintiff has agreed in the settlement

agreement with one set of subsidiary proprietors. The addendum is to the following effect:[72]

> 1A. The [plaintiff] accepts that the sliding door installed by the Subsidiary Proprietors between the living hall and the balcony ("the Sliding Door") whilst different in dimensions to the original sliding door, are however similar in design;
>
> 1B. In respect of the Removal and Reinstatement Works to be carried out, the [plaintiff] has agreed to the Subsidiary Proprietors' request to build and/or install two (2) wall columns over the enlarged sections of the Sliding Door, instead of removing the Sliding Door in its entirety.
>
> 1C The [plaintiff] has agreed to the aforesaid request set out in clause 1B above on the premise that such reinstatement works carried out by the Subsidiary Proprietors will result in the external façade of the Subsidiary Proprietors' Lot being aesthetically similar to the original condition, and this shall be determined by the [plaintiff] upon approval of the design for the reinstatement works.

122 This mandatory injunction, taken in conjunction with the settlement agreements, balances the interests of the community against the individual, ensures that like cases are treated alike and restores uniformity in the façade of the buildings in The Arcadia no later than 1 December 2021.

Conclusion

123 For the reasons above, I have allowed the plaintiff's application and ordered a mandatory injunction to issue in the terms set out at [120] and [121] above. I have also ordered the defendant to pay the plaintiff's costs of and incidental to this application fixed at $30,000 excluding disbursements, which disbursements shall be taxed by the court if not agreed between the parties.

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72 Affidavit of Anand Jaisingh Danani dated 19 March 2018 at page 52.

Vinodh Coomaraswamy
Judge

Lim Tat and Jasmin Kang (Aequitas Law LLP) for the plaintiff;
Moiz Haider Sithawalla and Zara Chan (Tan Rajah & Cheah) for the defendant.
