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# DISPOSAL OF COMMON PROPERTY IN STRATA SCHEMES

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The legislative framework on dispositions of common property in the *BMSMA* is not entirely clear on the powers of a management corporation to permanently discard common property. This presents practical difficulties especially where it is inappropriate to undertake renewal or replacement of the same given the circumstances. Section 29(1)(d) of the *BMSMA* does not appear to confer such a power of disposal. This can be seen from the Hansard pertaining to the amendments made to this provision. Given the uncertainty engendered by the amendments themselves, the implications arising from case law and the relevant legislative provisions are considered, including the New South Wales' experience on the matter.

## I. INTRODUCTION

The management corporation in a strata scheme may install or provide facilities or amenities in the estate, or make improvements thereto, for the benefit of unit owners. To properly and effectively discharge its statutory duties to manage, maintain and upkeep the facilities and amenities which are common property,[1] the management corporation is entitled to have recourse to the management fund and sinking fund established under the *Building Maintenance and Strata Management Act*.[2] This may be contrasted with the responsibility for the repair and maintenance of the unit which lies on the unit owner. It is obvious then that the concept of common property is one device designed to deal with the problems of community living and maintenance, the other being the system of by-laws[3] regulating standards of conduct.

What happens when the management corporation decides to permanently discard or remove common property, such as a central air-conditioning system, which has outlived its purpose or usefulness without replacing it with another? Can the management corporation pass a by-law to achieve the same?

This issue surfaced in the recent case of *Yap Choo Moi v MCST Plan No 361*[4] discussed below.

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1 *Building Maintenance and Strata Management Act* (Cap 30C, 2008 Rev Ed), s 29 [*BMSMA*].

2 *Ibid*, ss 38(1), (4).

3 *Ibid*, s 32; Second Schedule to the *2005 Regulations*, *infra* note 56.

4 [2017] SGSTB 2 [*Yap Choo Moi*].

## II. Case Law

In *Yap Choo Moi*, the strata development, known as Leonie Towers, consisted of 92 units in two tower blocks of 25-storeys each. There was a 35-year old central air-conditioning system in the development and each tower was serviced by two central cooling towers. In October 2015, the management corporation of the development (the respondent) engaged a professional engineer to undertake a study and to report on the central air-conditioning system. It was found that the steel piping and related components of the system suffered from continuous corrosion and the costs of replacing them was expensive. The water quality was poor giving rise to the likelihood of Legionnaires' disease. In addition, the system was operating at below average level as 80% of the residents were using their own multi-split air-conditioning units and not relying any more on the central air-conditioning system. The estimated yearly costs of maintaining and repairing the cooling towers were $4,624 per month ($55,488 per annum). The costs for carrying out major repairs were estimated at $520,000. The estimated costs for installing completely new cooling towers were $750,000. In the result, it became clear to the management corporation the disadvantages of retaining and continuing with the central air-conditioning system given the high costs of replacement and maintenance coupled with its low utilisation rate as only 18 units out of the 92 units were still using the central system.

At an extraordinary general meeting of the management corporation held on 22 September 2016, a special resolution, pursuant to section 32(3) of the *BMSMA* to permanently remove the central cooling towers (the "2016 additional by-law") without replacing them with another, was passed.

The applicant, a unit owner, applied to the Strata Titles Board (the "Board") for, *inter alia*, an order that the 2016 additional by-law empowering the management corporation to remove the central cooling towers that serviced the air-conditioning system in the development be invalidated under section 106 of the *BMSMA*.[5] Among others, the applicant argued that section 32(3) of the *BMSMA* only provided for the making of by-laws that performed a regulatory role and that it did not allow for the making of a by-law for disposing of common property otherwise than authorised by statute.

The management corporation submitted that the 2016 additional by-law was within its powers to make and was within the ambit of administering common property. In essence, it was argued that the disposal or removal of an inefficient or outdated and expensive system was not inconsistent with the management corporation's statutory duty under section 29(1)(b)(i) of the *BMSMA* of maintaining the common property and that such disposal or removal would improve the common property.

The Board, in a written judgment, ruled in favour of the applicant. First, the Board was of the view that "a submission that a management corporation can do anything as long as there is no prohibition in the [*BMSMA*] or the [prescribed] by-laws cannot be correct."[6] As the management corporation comes into existence by

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5 This provision empowers the Board to make an order declaring a by-law invalid if it considers that the management corporation did not have the power to make the said by-law.

6 *Yap Choo Moi*, *supra* note 4 at para 23.

virtue of the relevant strata legislation,[7] it can only have the powers as provided thereunder. This is so notwithstanding that the management corporation had valid concerns pertaining to the central cooling towers. Second, section 34 of the *BMSMA* did not confer powers on the management corporation to dispose of or discard the cooling towers. The wordings in section 34(1) limit the powers of the management corporation to the type of disposals stated therein.[8] Third, the cooling towers came within the definition of common property in section 2(1) of the *BMSMA*. In this connection, the duty of the management corporation under section 29(1)(b)(i) of the *BMSMA* to maintain and keep the common property in a state of good and serviceable repair was unconditional.[9] The further duty therein to renew and replace common property arises only where it was reasonably necessary to do so.[10] Fourth, under the *Land Titles Strata Act*,[11] common property is vested in the unit owners as tenants-in-common and not in the management corporation.[12] In this regard, the case of *Poh Kiong Kok v Management Corporation Strata Title Plan No 581*[13] was cited by the Board to illustrate that the management corporation could not do as they wish with regard to common property. While there were provisions in sections 29(1)(a) and (b)(i) of the *BMSMA* for the maintenance and administration of common property and keeping common property in a state of good and serviceable repair, there was no provision in the *BMSMA* that allowed for the permanent removal or disposal of common property, such as the central cooling towers in question.[14] Finally, while section 33 of the *BMSMA* provides for the conferment of exclusive use or privileges over common property, namely, that unit owners can be deprived of the use of common property in favour of another unit owner pursuant thereto, this provision does not provide for the removal or discarding of common property.[15]

In the result, given that the management corporation did not even have such a power of disposal to begin with, the purported by-law passed at its extraordinary general meeting of 22 September 2016 authorising it to discard the central cooling towers, was, accordingly, invalidated by the Board under section 106 of the *BMSMA*.

The management corporation appealed to the High Court.[16] In setting aside the decision of the Board, the High Court ruled that the management corporation was empowered to remove the common property comprising the central cooling towers by way of a special resolution under section 29(1)(d) of the *BMSMA*.[17] It noted that the special resolution to make a by-law under section 32 of the same Act might not have been appropriate and that it should have been presented instead under

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7 *Land Titles (Strata) Act* (Cap 158, 2009 Rev Ed Sing), s 10A(1). See also *BMSMA*, *supra* note 1, s 24(1).

8 *Yap Choo Moi*, *supra* note 4 at para 35.

9 *Ibid* at para 26.

10 *Ibid*.

11 2009 Rev Ed Sing, s 13(1) [*LTSA*].

12 *Yap Choo Moi*, *supra* note 4 at para 27.

13 [1990] 1 SLR (R) 617 at para 10 (HC) [*Poh Kiong Kok*].

14 *Yap Choo Moi*, *supra* note 4 at para 32.

15 *Ibid* at para 33.

16 See HC/TA 10/2017.

17 The decision of the High Court is unreported. See also KC Vijayan, "Condo MC gets nod from court to remove cooling towers", *The Straits Times* (8 August 2017).

section 29(1)(d). In the result, the resolution was held to have been validly passed at the extraordinary general meeting. Regrettably, the High Court rendered only an oral decision and missed the opportunity to clarify the law in this area by explaining in a written judgment the reasons for its decision.

The High Court decision in *Yap Choo Moi* in allowing the appeal is premised on the management corporation having the power under section 29(1)(d) of the *BMSMA* to remove the common property comprising the central air-conditioning system pursuant to a special resolution. With all due respect, the meaning of making "improvements" to the common property as provided in the provision would ordinarily result in adding to or upgrading the common property in some physical way. That this is the overall purpose or objective of the provision can be seen in the other language employed therein, such as "to install or provide additional facilities" in relation to the common property and not removal as such. That section 29(1)(d) does not confer such a power of removal (hence, the need for amendments to be made) can also be seen in the speech of the Second Minister for National Development at the Second Reading of the *Building Maintenance and Strata Management (Amendment) Bill 2017*[18] where it is stated thus: "[Section 29(1)(d) of the *BMSMA*] currently only stipulates installation and provision of additional facilities as improvement works."[19] The removal of the central air-conditioning system, thus, has the opposite result. Guidance may also be sought from the new section 29(1)(d) introduced by the *Building Maintenance and Strata Management (Amendment) Act 2017*.[20] This new provision, which seeks to further clarify the ambit of the duty of the management corporation in regard to *improving or enhancing* the common property under the authority of a special resolution,[21] does not necessarily provide for the removal of common property as such.[22]

The relevant provisions (including those not dealt with in the case law) in the *BMSMA* and *LTSA* will now be considered under the respective sub-headings below to determine if the management corporation has the power to permanently remove or discard common property without replacing it with another.

## III. Recognised Methods of Disposal of Common Property

The statutory position on the disposal of common property is as follows:

### A. *Disposal by Way of a Transfer*

The method of disposal of any part of the common property by way of a transfer is recognised under section 34(1)(a) of the *BMSMA* and section 23(1)(a) of the *LTSA*. A disposal in this manner is subject to, *inter alia*, the approval of the relevant authority and pursuant to a 90% resolution.[23] Under these provisions, it is

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18 Bill No 29 of 2017, Sing [*Amendment Bill 2017*].

19 See *Parliamentary Debates Singapore: Official Report*, vol 94 (11 September 2017).

20 Act 35 of 2017, Sing which has yet to be brought into force [*Amendment Act 2017*].

21 See the Explanatory Statement to clause 20 in the *Amendment Bill 2017*.

22 See further the discussion in the text accompanying notes 51-55 below.

23 *BMSMA*, *supra* note 1, s 34(1)(a); *LTSA*, *supra* note 11, ss 23(1)(a), (2). See also *BMSMA*, *ibid*, s 2(5) for the requirements to be met where a motion is to be decided by 90% resolution.

provided that common property includes a part of any building or any immovable property affixed to common property.[24] Where the requirements stipulated in the provisions are satisfied, the appropriate instrument shall be executed by the management corporation.[25]

Upon registration of the instrument of such transfer, the part of the common property transferred will be free from any encumbrances (except those created by statute and subsisting easements not created or implied under the *LTSA*)[26] and the Registrar will, *inter alia*, issue to the transferee a certificate of title for the land transferred.[27]

The above provisions, enabling a transfer of part of the common property, may be resorted to where the unit owners wish to dispose of an area of the common property for which they have no need. A new lot would be created out of the part of the common property so transferred. The requirement of a 90% resolution ensures that such a transfer will not be detrimental to the interests of the unit owners. As every unit owner is also, together with his fellow unit owners, an owner of the common property, albeit only proportional to the share value allotted to his unit, any such transfer which affects his right to the use and enjoyment of the common property must be duly brought to his notice and the opportunity given to him to discuss it with his fellow unit owners in a general meeting before it is implemented.

### B. *Disposal by Way of a Lease*

The other method of disposal of common property is by way of a lease which is recognised under section 34(1)(b) of the *BMSMA* and section 23(1)(b) of the *LTSA*. Similar requirements, as noted above in the case of a disposal by way of a transfer, apply where the duration of the lease is for a period which exceeds three years.[28] Where the duration of the lease exceeds one year but does not exceed three years (and cannot be extended by the exercise of any option of renewal to exceed an aggregate of three years), only a special resolution[29] is needed in addition to approval from the relevant authority.[30] No resolution, but only the approval of the relevant authority, is required where the period does not exceed one year (and similarly cannot be extended by the exercise of any option of renewal to exceed an aggregate of one year).[31] As in the case of a disposal by way of a transfer, the requirement of a requisite resolution ensures that any unit owner whose rights to the use and enjoyment of the common property is affected by the lease will be notified and given an opportunity to discuss with other unit owners before the arrangement is implemented.

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24 *BMSMA*, *ibid*, s 34(1)(a); *LTSA*, *ibid*, s 23(1)(a).
25 *LTSA*, *ibid*, s 23(2).
26 *LTSA*, *ibid*, s 23(4). See also *LTSA*, *ibid*, ss 16-22.
27 *LTSA*, *ibid*, s 23(4)(c).
28 *BMSMA*, *supra* note 1, s 34(1)(b); *LTSA*, *ibid*, ss 23(1)(b), (2).
29 See *BMSMA*, *ibid*, s 2(3) for the requirements to be met where a motion is to be decided by special resolution.
30 *BMSMA*, *ibid*, s 34(2)(a).
31 *BMSMA*, *ibid*, s 34(2)(b).

### C. *A Third Method of Disposal of Common Property?*

As discussed above, the two recognised methods of disposal under the *BMSMA* and *LTSA* are by way of a transfer and a lease of common property.[32] Can a case be made out that there is available a third method of disposal?

It is crucial to note that the management corporation is a creature of statute as seen above. In the Singapore case of *Management Corporation Strata Title Plan No 473 v De Beers Jewellery Pte Ltd*,[33] the Court of Appeal made certain pertinent observations regarding the exercise of powers by a management corporation. Notwithstanding that the observations were made in the context of a management corporation levying contributions on unit owners, they are of general application under the *BMSMA* and the *LTSA*. The Court of Appeal had reiterated that a management corporation, being a body created by statute, only has powers granted expressly or by implication in that statute. As explained by the Court of Appeal:

> [I]t is trite law that a body created by a statute only has powers granted expressly or by implication in that statute... Anything done outside these powers is void *ab initio*... [T]o circumvent the detailed and carefully drafted provisions of the [strata legislation] would drive a coach and horses through it.[34]

*De Beers Jewellery* has made it categorically clear that a management corporation has no power incidental to the relevant provisions in the *BMSMA* and the *LTSA* which clearly delineate its power to dispose of common property in the manners stipulated therein. To recognise vague incidental powers would defeat the scheme set out therein.[35]

That the powers of a management corporation are generally circumscribed under the *BMSMA*, as was also observed by the Board,[36] can also be seen in section 24(3) therein which provides as follows:

> A management corporation constituted in respect of a strata title plan shall have the *powers*, duties and functions *conferred* or imposed *on it by* or *under* [the *BMSMA*], or *by the by-laws* in respect of the parcel comprised in that strata title plan and, *subject to* [the *BMSMA*], shall have the *control, management and administration of the common property* comprised in that strata title plan.[37]

Thus, in light of section 24(3) of the *BMSMA*, it is not possible for a management corporation to act as it wishes *ie carte blanche*.

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[32] Section 25(1) of the then New South Wales *Strata Schemes (Freehold Development) Act 1973* (NSW) and section 33 of the current *NSW Strata Schemes Act*, *infra* note 90 provided for similar methods of disposal of common property.

[33] [2002] 1 SLR (R) 418 (CA) [*De Beers Jewellery*].

[34] *Ibid* at para 10. See also, generally, the New South Wales case of *The Owners Strata Plan No 60919 v Consumer Trader and Tenancy Tribunal* [2009] NSWSC 1158 at paras 20, 21, where Patten AJ in the Supreme Court held that a by-law purporting to impose contributions on unit owners in ways other than in accordance with the then *NSW 1996 Act*, *infra* note 91, was void.

[35] *De Beers Jewellery*, *supra* note 33 at para 15.

[36] *Yap Choo Moi*, *supra* note 4 at para 22.

[37] Emphasis added.

Coming to the relevant provisions in the *BMSMA* and the *LTSA* which provide for the disposal of common property discussed above, the Board had noted, without much elaboration, that they provide for disposal only by way of transfer or lease.[38]

It is apposite to begin with a brief insight into the legislative history of section 23(1) of the *LTSA*. The predecessor provision to section 23(1) of the *LTSA* was first enacted in the 1970 Revised Edition of the *LTSA*, numbered as s 15A(1).[39] It later became section 21(1) in the 1985 Revised Edition of the *LTSA*[40] and was amended in 1987.[41] Section 21(1) (as amended) was re-numbered as s 23(1) in the subsequent 1988 and 1999 Revised Editions of the *LTSA* respectively.

Section 21(1) (as amended) and section 23(1) in the earlier revised editions of the *LTSA* had provided that the unit owners may, by unanimous resolution,[42] direct the management corporation "to *dispose of* or transfer"[43] any part of the common property, being a parcel of land or part thereof, a part of any building, or any immovable property affixed to the common property. Disposal of common property by way of a lease was also not provided for then. The words "dispose of" in the then section 23(1) of the 1999 Revised Edition of the *LTSA* were deleted, and disposal by way of a lease was added thereto, following the enactment of the *Building Maintenance and Strata Management Act 2004*[44] which introduced the current s 34(1) of the *BMSMA*.

With the removal of the words "dispose of", the scope of section 23(1)(a) of the LTSA now appears narrower or more restrictive as disposal is now limited to a transfer of common property, including a part of any building or any immovable property affixed to common property (apart from disposal by way of a lease in section 23(1)(b)). The words "dispose of" is much wider in scope compared to "transfer". The former can be taken to mean to remove or discard permanently when referring to the disposal of any immovable property affixed to common property. This is especially so when, *eg*, the central cooling towers in *Yap Choo Moi* which also amount to common property,[45] have outlived their usefulness or service life. Another instance is where the unit owners wish to do away with a fountain in their strata development. In both instances, the words "dispose of" would make it easier for the items to be discarded permanently pursuant to the requisite resolution without the need for any replacement where the unit owners so wish.

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38 *Supra* note 4 at paras 35, 37.

39 This was brought about by the *Land Titles (Strata) (Amendment) Act 1976* (No 4 of 1976, Sing), s 10.

40 Prior to this, section 15A(1) was renumbered as section 20(1) in the Reprint of the *LTSA* (RS (A) 2/76).

41 See the *Land Titles (Strata) (Amendment) Act 1987* (No 16 of 1987, Sing), s 13.

42 The change from the then requirement of "unanimous resolution" to the current "90% resolution" was effected by the *Statutes (Miscellaneous Amendments) (No 2) Act 2005* (No 42 of 2005, Sing), s 17(l).

43 Emphasis added.

44 No 47 of 2004, Sing, which later became the *BMSMA* [*2004 Act*]. The legislative intent is for the *LTSA* (which until 2004 was the only strata legislation in Singapore) and the *BMSMA* to deal with different matters. The *LTSA* now deals with development related matters, such as the subdivision of land into strata, strata registration and the disposition of titles thereto. The *BMSMA*, on the other hand, deals with the management, maintenance and resolution of dispute aspects of strata schemes.

45 See the expanded definition of "common property" in section 2(1) of the *BMSMA*, *supra* note 1, introduced by the *Amendment Act 2017* where under "*Examples (d)*" a central air-conditioning system is expressly recognised as common property.

On the other hand, a reading of section 23 of the *LTSA* in relation to a "transfer" would result in the appropriate instrument pertaining to the transfer being registered. A separate certificate of title will then be issued for the land so transferred.[46] This can be taken to mean, *inter alia*, that the part of the common property so transferred involves land or that the part of the land that is being transferred comprises, in addition, a part of any building thereon or any immovable property affixed to the land, such that a transfer brings with it all there is on the land. There is also the need in section 23(1)(a) for the management corporation to "execute" on behalf of the unit owners such a transfer, suggesting the need for formality by way of the appropriate instrument of transfer. In fact, the execution of such a transfer applies to the three categories of properties mentioned in section 23(1)(a), separately and independently of each individual category which is borne out by the use of the disjunctive word "or" in the provision.[47] Where the words "dispose of" are employed in the alternative to a "transfer", this would suggest that there is more flexibility in the scope of the action that may be taken as the item in question can then be just dismantled or discarded permanently without there being a "transfer" involved as understood above.

Although an instrument of transfer was also referred to in the then equivalent provision of the earlier revised editions of the *LTSA* before it was amended in 2004 as noted above, it did not detract from the fact that such an instrument was still required if it involved a "transfer". The formalities required of a "transfer" discussed in the immediately preceding paragraph similarly apply in the then equivalent provision of the earlier revised editions of the *LTSA* but not where the common property was "dispose[d] of" suggesting that the latter need not involve land as such but would apply to other common property where the issuance of a separate certificate of title would not be required. In other words, given that the phrase "dispose of" was also provided in the then equivalent provision in the alternative, it can be read to mean that such an instrument of transfer would not be necessary where common property was "dispose[d] of" in this alternative manner otherwise than by way of a "transfer".

Unfortunately, in this connection, the parliamentary debates on the *Building Maintenance and Management Bill*[48] to the *2004 Act* shed no light as to the reason for the removal of the words "dispose of" in section 23(1) of the *LTSA* or why this method of disposal was not retained in the *2004 Act*. The Minister for National Development, when discussing enhancing the powers of the management corporation, merely highlighted that the *Building Maintenance and Management Bill* would also empower the management corporation to lease out common property for its use by unit owners.[49] Similarly, the Explanatory Statement to the *Building Maintenance and Management Bill* revealed little. The Third Schedule to the *2004 Act* made only technical and consequential amendments[50] to the then section 23(1) of the 1999 Revised Edition of the *LTSA* so as to align it with the provision on disposal of common property contained in the *2004 Act*.

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46 *LTSA*, *supra* note 7, s 23(4)(c).

47 See also the then s 23(1) of the earlier revised editions of the *LTSA* and *BMSMA*, *supra* note 1, s 34(1)(a) which provide for the same.

48 No 6 of 2004.

49 See *Parliamentary Debates Singapore: Official Report*, vol 77 at col 2748 (19 April 2004).

50 See also *2004 Act*, *supra* note 44, s 138.

Finally, does the new section 29(1)(d) of the *BMSMA* introduced by the *Amendment Act 2017*[51] provide for another method of disposal of common property by way of a special resolution? It may be noted that the word "remove" now employed in the new sections 29(1)(d)(i) and (iii) applies only to the removal of a *facility* or *structure* on the common property for the purpose of improving or enhancing the common property. The word "remove" does not apply to the *common property* itself. This is critical especially given that, in the context of a central air-conditioning system, which the case of *Yap Choo Moi* is concerned with, there is a clear distinction made between facility or structure, on the one hand, and common property, on the other. In the new expanded definition of "common property" in section 2(1) of the *BMSMA* introduced by the *Amendment Act 2017*, a "central air-conditioning system and its appurtenances" is expressly recognised as common property,[52] not a facility or structure. In this regard, more clarity is needed in the new provision if common property is also to be regarded as a facility or structure. The requirement for different types of resolutions may also be noted in respect of the removal of a facility or structure on common property and that for the disposal of common property itself, namely, that of a special resolution and a 90% resolution respectively,[53] the latter imposing a stricter requirement.[54]

Unfortunately, there is no definition of "facility" or "structure" in the *Amendment Act 2017*. It is possible to foresee situations where a facility or structure may not come within the definition of "common property". For instance, a facility, such as a pipe or cable previously serving exclusively a unit (and hence not common property), may be removed such that a new facility benefits more units. Where the new section 29(1)(d) applies to the said removal, it can be seen then that the new provision similarly applies to non-common property situations. Further, as already alluded to above, the new section 29(1)(d) has no application to common property which is neither a facility nor a structure and more clarity in this respect is needed. Accordingly, while improving the common property extends to the removal of facilities and structures on common property, the new section 29(1)(d) cannot be said to be specifically dedicated to the disposal of common property as such. It is merely a general provision for, *inter alia*, the removal of a facility or structure which has the effect of improving or enhancing the use of the common property.[55]

## IV. Scope and Effect of By-Laws

The *BMSMA* provides for two types of by-laws applicable in a strata scheme. These are the statutorily prescribed by-laws set out in the Second Schedule to the *Building Maintenance (Strata Management) Regulations 2005*[56] and the by-laws which a

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51 *Supra* note 20.

52 See "*Examples (d)*" in the definition of "common property".

53 See *BMSMA*, *supra* note 1, ss 29(1)(d), 34(1).

54 See *BMSMA*, *ibid*, ss 2(3), (5).

55 This conclusion is also supported by the speech made by the Second Minister for National Development at the Second Reading of the *Amendment Bill 2017*, *supra* note 18: see *Parliamentary Debates Singapore: Official Report*, vol 94, (11 September 2017).

56 Cap 30C, S 192/2005 Sing [*2005 Regulations*].

management corporation is empowered to make under the *BMSMA*.[57] These by-laws amount to statutorily constituted contracts[58] which bind not only the management corporation and the unit owners but also any mortgagee in possession, lessee or occupier of a unit to the same extent as if they had signed and sealed the by-laws and covenanted to observe and perform them.[59]

The significance of having by-laws which are properly made can be seen below.

A management corporation may make or amend its own by-laws by special resolution provided they are not inconsistent with the statutorily prescribed by-laws.[60] Similarly, a by-law or an additional by-law made by the management corporation must not be inconsistent with the legislative scheme set out in the *BMSMA* which is intended to safeguard the interests and rights of unit owners in a strata development. Any by-law or additional by-law which is inconsistent with a provision in the *BMSMA* or a statutory by-law in the *2005 Regulations* would be invalid. In *Re Bukit Timah Shopping Centre (Strata Titles Plan No 1601)*,[61] the applicants, who were unit owners of the strata development in question, sought an order that certain by-laws passed at an annual general meeting of the management corporation were invalid. The Board found that one of the by-laws in question permitted the council to authorise the removal by a unit owner of the common property or part(s) thereof. This clearly contravened the substantive provisions in the then section 23(1) of the *LTSA* which provided that only the unit owners by unanimous resolution passed at a general meeting may direct the management corporation to dispose of or transfer away any part of the common property.

The need for the requisite resolution was clear. Such a disposal would affect a unit owner's right to use and enjoy the common property. An opportunity should, thus, be given to the unit owner to discuss the proposal with fellow unit owners in general meeting before it was implemented. In addition, this statutorily mandated process of decision-making in general meeting could not be delegated to the council.[62]

The defendant management corporation had sought to rely on *Paganetto v Management Corporation Strata Title Plan No 1075*[63] to argue that it had the power to pass the by-laws it did. The Board distinguished *Paganetto* on the basis that it did not deal with the question of whether the management corporation has the power to make certain by-laws. It considered a totally different issue, namely, whether every additional rule, no matter how trivial, made for the orderly enjoyment of common property must be made by way of by-laws. In the result, the Board ruled the by-law invalid.

It is clear from *Re Bukit Timah Shopping Centre* that the provisions of the *BMSMA* prevail over by-laws made by the management corporation. Further, in light of

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57 *BMSMA*, *supra* note 1, ss 32(3), 33.

58 See *Choo Kok Lin v Management Corporation Strata Title Plan No 2405* [2005] 4 SLR (R) 175 at para 23 (HC).

59 *BMSMA*, *supra* note 1, ss 32(6)(a), (b).

60 *BMSMA*, *ibid*, ss 32(2), (3).

61 [1996] SGSTB 6.

62 See the then section 63(4)(a) of the *LTSA*, *supra* note 7 corresponding to section 58(4)(a) of the *BMSMA*, *supra* note 1 where the position is different in that the type of restricted matter includes those that the general meeting determines as necessary to be decided upon at a council meeting.

63 [1988] 1 SLR (R) 103 (HC).

*Poh Kiong Kok*, the substantive provisions in the *BMSMA* take precedence over all by-laws, including the prescribed statutory by-laws. As Chan J explained:

> If there were any inconsistency, I would be constrained to hold that the by-law must give way to the substantive provision notwithstanding that it is enacted by Parliament. It is still a byelaw. The contrary proposition will mean that the substantive provision will give way to the by-law, a proposition which is contrary to all established principles of construction.[64]

As between the prescribed statutory by-laws and those made by the management corporation, the former take precedence over the latter as the latter can only be made if they are not inconsistent with the statutory by-laws.[65]

The above aligns with the position as set out in section 24(3) of the *BMSMA* that a management corporation (being a creature of statute) can only have the powers conferred on it thereunder and, subject to the *BMSMA*, shall have control, management and administration of the common property. The 2016 additional by-law made by the management corporation in *Yap Choo Moi* to dispose of the central cooling towers in the manner undertaken was, thus, clearly invalid as the management corporation had no such power to do so under section 34(1) of the *BMSMA* and section 23(1) of the *LTSA* which provide for disposal of common property merely by way of a transfer or lease. In other words, these substantive provisions must prevail or take precedence over the 2016 additional by-law that was made.

The management corporation had also argued before the Board that section 32 of the *BMSMA*, pertaining to by-laws, permits the making of the 2016 additional by-law. In particular, sections 32(3)(b) and subsection (i) allow the management corporation to so act to control the use of common property and to manage it for various purposes.[66] In addition, prescribed by-law 19 in the Second Schedule to the *2005 Regulations*[67] was also in favour of the management corporation. As will be demonstrated below, none of these provisions can be said to support the management corporation's contentions.

It is clear from section 32(3)(b) of the *BMSMA* that a by-law made pursuant to this subsection has to relate to the "details of any common property of which the use is restricted." This brings to mind sections 49(1)(b) and (d) of the *BMSMA* which relate to restrictions placed on a management corporation's powers to deal with the common property during the initial period of the strata development.[68] So a by-law is then made pursuant to section 32(3) to get the restrictions eased under section 50 of the *BMSMA* or the approval of the Commissioner of Buildings is sought under section 51 thereof to authorise the doing of certain acts in relation to the common property. Section 32(3)(b) does not have the meaning ascribed by the management corporation as argued before the Board in *Yap Choo Moi*, *ie* that the removal of

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64 *Supra* note 13 at para 16.

65 *BMSMA*, *supra* note 1, s 32(2).

66 *Yap Choo Moi*, *supra* note 4 at para 13.

67 *Supra* note 56.

68 As the owner developer generally controls the management corporation during the initial period, these restrictions are imposed on the management corporation to ensure that the owner developer does not use his superior voting power in an oppressive manner.

the central cooling towers was within the powers of the management corporation to control and restrict the use of parts of the common property with the passing of the 2016 additional by-law.

In regard to section 32(3)(i) of the *BMSMA*, the making of the by-law has to do with "such other matters as are appropriate to the type of strata scheme concerned". This would logically cover, *inter alia*, matters pertaining to the types of strata developments in question, *eg*, if the development is (i) a residential or commercial one, (ii) a mix of residential or commercial units, or (iii) one which comprises different types of residential units, such as a development with an apartment block together with townhouses, semi-detached houses, detached houses or terraces. The removal of the central cooling towers in *Yap Choo Moi* can hardly be said to be appropriate or unique to the strata scheme known as Leonie Towers. In this respect, the subject-matter of the 2016 additional by-law passed in *Yap Choo Moi* did not come within the ambit of s 32(3)(i). Central cooling towers are commonly installed in the various types of strata schemes found in Singapore and a by-law would be passed to renew or replace them where necessary.

It may also be noted that section 33 of the *BMSMA* which provides for the exclusive use and enjoyment of the common property by way of a by-law does not deal with the disposal of common property. The provision would confer on a unit owner(s) a right to exclusively use and enjoy the whole or any part of the common property or a special privilege in respect thereof, which other unit owners are then prohibited from using.

As for the prescribed by-law 19, the management corporation may, by special resolution, control the hours of operation and use of facilities situated on the common property. It is also provided that such a resolution must be complied with by every unit owner and occupier of a unit. It would certainly be in order to impose a fee by way of a by-law to regulate the orderly use and enjoyment of the common property, such as for the use of the various facilities in the strata scheme like a squash court or tennis court. But to argue that the 2016 additional by-law to discard the central cooling towers in *Yap Choo Moi* came within the ambit of prescribed by-law 19 would be stretching it too far given the context.

In the result, the substantive provisions in sections 32(3)(b), subsection (i) and section 33 of the BMSMA, and in the prescribed by-law 19 of the *2005 Regulations* do not confer on the management corporation the power to pass the 2016 additional by-law which it purported to do in *Yap Choo Moi*. The additional by-law was, thus, invalid.

## V. Duty of Management Corporation in Respect of Common Property

Section 29(1) of the *BMSMA* provides that it *shall* be the duty of a management corporation to properly maintain and keep in a state of good and serviceable repair the common property, including, where reasonably necessary, renew or replace the whole or part thereof.[69]

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[69] See *BMSMA*, *supra* note 1, s 29(1)(b)(i) [emphasis added].

The rationale for imposing this statutory duty on the management corporation was explained by Holland J in *Jacklin v Proprietors of Strata Plan No 2795*[70]:

> The general scheme of the legislation with respect to common property appears to me to be quite clear. The legislation makes, in respect of the parcel of land contained in the strata plan, a distinction between common property and the property comprised in a lot. . . . The repair and maintenance of the property contained within a lot is left to the individual proprietor who, of course, has the exclusive use and enjoyment thereof, but responsibility for the control[,] management and administration and the repair and maintenance of the common property is taken out of the hands of the individual proprietors and imposed upon the body corporate. When I say "imposed upon" I mean that it is not made merely a subject of power in the body corporate; it is made a matter of legal duty, and then, not merely by way of covenant between the body corporate and the proprietors or the proprietors *inter se*, but by way of express statutory duty.[71]

Holland J was speaking of, *inter alia*, section 68(1) of the then New South Wales *Strata Titles Act 1973*[72] which provided generally to the same effect as section 29(1) of the *BMSMA*. His Honour also made clear that the management corporation cannot abdicate or diminish its statutory responsibility in this regard:

> [T]he duty of control, management, administration, repair and maintenance of common property is imposed by the legislation upon the body corporate. This duty is necessarily owed to each and every proprietor. In my opinion, there flows from the scheme of the legislation as an incident of proprietorship of a lot a right in each proprietor to have the body corporate's duty performed in relation to all of the common property at the cost and expense of all proprietors in proportion to unit entitlements. As the duty is not only to repair and maintain but also to control, manage and administer, the right of each proprietor includes a right to have the whole administration of repairs and maintenance of common property carried out by the body corporate by its servants and agents.[73]

Similarly, the duty of maintenance and repair in section 29(1)(b)(i) of the *BMSMA* does not give the management corporation a discretion as to whether to carry out the duty. It is in fact mandatory for the management corporation to do so, including, where reasonably necessary, to renew or replace the whole or part of the common property. In this regard, an instructive case is *The Proprietors of Strata Plan 159 v Blake*[74] which dealt with section 68(1)(b)(i) of the then *NSW 1973 Act*[75] which is substantially the same as section 29(1)(b)(i) of the *BMSMA*.

In *Blake*, the strata building comprised an office and shopping arcade. The ground floor consisted of an arcade of 20 units, mostly used as shops. The ground floor was served by an air-conditioning system which either formed part of the common

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70 [1975] 1 NSWLR 15 [*Jacklin*].
71 *Ibid* at 23, 24.
72 (NSW) [*NSW 1973 Act*].
73 *Jacklin*, *supra* note 70 at 24.
74 (1986) 2 CCH Strata Title Law and Practice 30–068 [*Blake*].
75 *Supra* note 72. See now s 106 of the *NSW 2015 Act*, *infra* note 93, which is to the same effect.

property or was a fixture or fitting comprised in the common property. The top two floors of the building were offices which were not, and had never been, served by a common air-conditioning system. The ground floor air-conditioning system continued to operate with regular maintenance until when, as a result of its age, it ceased to work. The cost of repair or replacement would involve an expenditure of between $41,000 and $45,000. The body corporate resolved in a general meeting not to repair the air-conditioning system which had broken down and that the owners of the ground floor shops which require air-conditioning to install their own air-conditioning system within their own units. The body corporate took the view that to renew or replace the air-conditioner, which served only the ground floor units, would not be for the benefit of the unit owners as a whole, or even a majority of them, especially as the cost involved was considerable. A number of unit owners of ground floor shops had installed air-conditioners in their own premises.

A unit owner of one of the ground floor shops applied for an order that the purported resolution was beyond power and that the body corporate comply with section 68(1)(b)(i) of the then *NSW 1973 Act* to repair or replace the air-conditioning plant. The body corporate argued that their duty to repair or replace common property was discretionary. The Strata Titles Board held that section 68(1)(b)(i) imposed a mandatory duty on the body corporate to repair or renew such air-conditioning plant and that it had no discretion. On appeal, the principal issue for consideration was whether this duty imposed on the body corporate was mandatory or discretionary.

Yeldham J, who delivered the judgment of the New South Wales Court of Appeal, held that when the general scheme of the *NSW 1973 Act* was considered, as a matter of construction, the requirements of section 68(1)(b)(i) were mandatory with the consequence that the body corporate could not decline to comply with them. The duty imposed upon the body corporate was absolute subject only to the maintenance or replacement of the item of common property being necessary. His Honour was of the view that the use of the word "shall" in the opening words of section 68(1) pointed to the duty being mandatory.[76] He also noted that the various duties of the body corporate to be found in the other provisions in section 68(1) itself were mandatory requirements which did not confer any discretion upon the body corporate. Matters such as insurance, the keeping of records, the raising and investment of funds and the like,[77] were of such a nature as, coupled with the use of the word "shall" in the introductory words of section 68(1), made it quite impossible to construe section 68, so far as it related to them, as imposing a discretion rather than an obligation. Thus, there was imposed a mandatory duty on the body corporate to repair air-conditioning plant which formed part of the common property.

His Honour acknowledged the force of the argument that there would be cases in which it could not be for the benefit of the unit owners as a whole or even a majority of them, that something forming part of the common property should be repaired or renewed, especially where the expenditure involved was considerable and the benefit

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[76] *Blake*, *supra* note 74 at para 50,653. He also relied on the decision of Holland J in *Jacklin*, *supra* note 20 at 23, 24, the relevant part of which has been noted above. The opening words of s 29(1) of the *BMSMA*, *supra* note 1 also employ the word "shall" therein.

[77] See also *BMSMA*, *ibid*, ss 29(1)(c), (g), where such matters are also provided for.

to be derived was minimal. However, considering that the obligatory language of section 68 was intractable, he held that the body corporate could not refuse to comply with the requirements in section 68(1)(b)(i) as they stood on their own and could not be regarded as being governed by section 68(1)(a)[78] which would require the body corporate to control, manage and administer the common property for the benefit of the unit owners.[79] In other words, performance of the statutory duty of maintenance and repair of common property was not dependent on whether it would be for the benefit of the unit owners as a whole or all of them,[80] which, however, was the case in regard to the separate duty to manage and administer the common property.[81] In the result, he ruled that the resolution was beyond the power of the body corporate as section 68(1)(b)(i) imposed a mandatory duty on the body corporate to maintain and repair common property, including the air-conditioning plant.

The management corporation in *Yap Choo Moi* had argued that the disposal or removal of an inefficient or outdated and expensive system was not inconsistent with its statutory duty under section 29(1)(b)(i) of the *BMSMA* of maintaining the common property.[82] It was further argued that the obligation to properly maintain and keep in a state of good and serviceable repair was not absolute and had to be balanced with what was reasonably necessary, that is, there was no obligation to do so where it was not reasonably necessary. In the circumstances of the case, it was not reasonably necessary to maintain the central cooling towers and keep them in a state of good and serviceable repair.[83]

The above contentions of the management corporation are not tenable for the following reasons. It can be seen from *Blake* that the main thrust of section 29(1)(b)(i) of the *BMSMA* is to make it mandatory for a management corporation to properly maintain and keep in a state of good and serviceable repair the common property. The Court of Appeal in *Sattel v The Proprietors Be Bee's Tropical Apartments Building Units*[84] has helpfully explained the duty of maintenance and repair. The case dealt with section 37(1)(c) of the then Queensland *Building Units and Group Titles Act 1980*[85] which is *in pari materia* with section 29(1)(b)(i) of the *BMSMA*. The Court of Appeal was of the view that section 37(1)(c) of the *Queensland Act* "centres on the preservation of the fabric of the premises."[86] One "may maintain by keeping in the same state, or…maintain by keeping the same state and improving the state, always bearing in mind that it must be maintenance as distinguished from alteration of purpose."[87] The underlying notion is that the function of maintenance or repair of plant or equipment is to avert or remove defects which would prevent their functioning as intended. It is directed to keeping the common property and the fixture or fitting

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78 Now s 9 of the *NSW 2015 Act*, *infra* note 93. *BMSMA*, *supra* note 1, s 29(1)(a) also provides to the same effect.

79 *Blake*, *supra* note 74 at 50,652.

80 See also *Proprietors of Strata Plan No 30234 v Margiz Pty Ltd* (1993) 32 NSWLR 294 at 298.

81 This is also the position in s 29(1)(a) of the *BMSMA*, *supra* note 1.

82 *Yap Choo Moi*, *supra* note 4 at para 17.

83 *Ibid* at para 16.

84 [2001] QCA 560 [*Sattel*].

85 (Qld) [*Queensland Act*].

86 *Sattel*, *supra* note 84 at para 26.

87 *Sattel*, *supra* note 84 at para 64 citing Jessel MR in *Sevenoaks Maidstone and Tunbridge Railway Co v London Chatham and Dover Railway Co* (1879), LR 11 Ch D 625 at 635.

comprised therein operational and to restoring something which is defective. It is, in a way, clearly a substantial operation.

There is also nothing in the provisions of section 29(1)(b)(i) of the *BMSMA* which expressly provide or impliedly suggest that a management corporation is permitted or authorised to dispose of or discard common property where the replacement or renewal of the same is reasonably necessary but not practical. To recap, the minimum that a management corporation must do under section 29(1)(b)(i) of the *BMSMA* is to properly maintain and keep in a state of good and serviceable repair the common property. Additionally, this minimum obligation to maintain and repair is enlarged to encompass the renewal or replacement of the whole or part of the same where it is reasonably necessary to do so. Thus, once it is determined that it is reasonably necessary to effect renewal or replacement, the management corporation has no discretion not to carry out the renewal or replacement but is instead obliged to do so. In this regard, the management corporation's obligation to renew or replace arises only when the common property and fittings or fixtures are no longer operating effectively or have fallen into disrepair to the point where their renewal or replacement is called for as they can no longer be kept in a state of good and serviceable repair.[88] Accordingly, once it is found that the common property have not fallen into disrepair but are operating according to their original design capacity, there can be no breach of the obligation by reason of the refusal of the management corporation to replace them. In contrast, on the facts in *Yap Choo Moi*, while it was impractical to undertake repair work, section 29(1)(b)(i) would also not absolve the management corporation from its duty to undertake renewal or replacement of the central air-conditioning system.

Thus, as discussed above, the scope of section 29(1)(b)(i) of the *BMSMA* does not provide for the disposal or discarding of common property for good where it is not practicable to discharge the duty to renew or replace the same. Instead, as noted, section 29(1)(b)(i) requires maintenance and repair at the very minimum on the part of the management corporation. If reasonably necessary in the circumstances, renewal or replacement must also be undertaken. Hence, this provision does not confer power on the management corporation to dispose of or discard common property permanently without renewal or replacement. It does nothing of the sort mentioned. That is the province of s 34(1) of the *BMSMA* and s 23(1) of the *LTSA* discussed above.

## VI. The New South Wales Experience

In *Yap Choo Moi*, the management corporation was confronted with a situation where the central air-conditioning system serving the strata development had reached its

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88 See *The Owners Strata Plan 50276 v Thoo* (2013) NSWCA 270 at para 130 which dealt with s 62(2) of the then *NSW 1996 Act*, *infra* note 91, corresponding to *BMSMA*, s 29(1)(b). See also *Stanford v Roberts* [1901] 1 Ch 440 at 444 on the meaning of "reasonably necessary" ("… something which… a reasonable and prudent owner of property, if he were the absolute owner, would do") and *Ridis v Strata Plan 10308* [2005] NSWCA 246 at para 53 where Tobias JA opined that the words "where necessary" "… would not relieve an owners corporation from being proactive in the carrying out of inspections for the purpose of determining whether proper maintenance, repair, renewal or replacement was in fact necessary."

estimated service life. It was found that corrosion of the steel piping and related components of the air-conditioning system was continuous and unstoppable. In addition, the water quality was poor and it was also expensive to either maintain and repair or replace the air-conditioning system[89] which was operating at below average level.

To overcome the difficulty of disposing the air-conditioning system in the manner undertaken in *Yap Choo Moi*, guidance may be sought from the New South Wales experience. In New South Wales, the recognised methods of disposal of common property are the same as that provided in the *BMSMA* and LTSA, namely, by way of a transfer and a lease.[90] However, section 68(1) of the then *NSW 1973 Act*, corresponding to section 29(1)(b) of the *BMSMA*, had undergone legislative changes. The nature and scope of the duties under the then section 68(1) were considered in *Blake* discussed above. The *NSW 1973 Act* was subsequently repealed by the *Strata Schemes Management Act 1996*[91] and the then section 68(1) became section 62 where the duties were substantially identical save with the word "must" in s 62 replacing the word "shall" in the then section 68(1). However, a new subsection (3), which also applies to common property, was added to section 62 which reads:

> [Section 62] does not apply to a particular item of property if the owners corporation determines by special resolution that: (a) it is inappropriate to maintain, renew, replace or repair the property, and (b) its decision will not affect the safety of any building, structure or common property in the strata scheme or detract from the appearance of any property in the strata scheme.[92]

The current sections 106(1) to (3) of the New South Wales *Strata Schemes Management Act 2015*,[93] which repealed the *NSW 1996 Act*, is identical to the then sections 62(1)-(3) in the *NSW 1996 Act*.

The question which arises concerns the effect of section 106(3) of the *NSW 2015 Act* and whether such a provision is suitable for incorporation in section 29(1)(b) of the *BMSMA*. It is clear that section 106(1) would still require an owner's corporation to maintain and repair the common property. It still does not permit the body corporate to effect a disposal of the common property. However, this provision, which lays down the general duties in respect of common property, is qualified by subsection (3) which provides, *inter alia*, in paragraph (a) that the duties imposed in subsection (1) need not be carried out if the owners corporation determines by special resolution that "it is inappropriate to maintain, renew, replace or repair the property." While subsection (3)(a) does not expressly empower an owners corporation to dispose of the common property, might it not be possible to argue that an owners corporation has the implied power to do so?

As noted in *De Beers Jewellery*, a management corporation, although a creature of statute, can also have powers granted by implication in that statute. This is so notwithstanding section 24(3) of the *BMSMA* which deals with the express powers

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89 *Yap Choo Moi*, *supra* note 4 at para 5.
90 See *Strata Schemes Development Act 2015* (NSW), s 33 [*NSW Strata Schemes Act 2015*].
91 (NSW) [*NSW 1996 Act*].
92 *Ibid*, s 62(3).
93 (NSW) [*NSW 2015 Act*].

of a management corporation. In the context of subsection (3)(a) discussed above, it might be possible to make out a case for a management corporation to have such implied powers to dispose of common property. This is because if a special resolution is passed which determines that it is inappropriate to maintain, renew, replace or repair the common property concerned (either because the common property has outlived its purpose or the replacement parts are no longer available or too costly to acquire), then the management corporation is excused from performing the duties laid down in subsection (1) which would otherwise be mandatory. What happens to the common property then? It does not make sense for the common property to continue to remain in the strata development. The resolution was passed precisely because it has been determined that the common property need not be maintained, renewed or replaced. Thus, it is to be discarded permanently (*eg*, a central air-conditioning system) with no replacement to be made in its place. It makes logical sense for a management corporation to have the implied powers to do the necessary once subsection (3) is satisfied such that the duties imposed in subsection (1) do not apply. Otherwise, the common property concerned will be left in limbo in the strata development even though it has been determined pursuant to subsection (3)(a) that it is not appropriate that the common property be maintained, renewed, replaced or repaired. There is, thus, room to argue for implied powers to be conferred on a management corporation but only if the equivalent of subsection (3) is incorporated in s 29(1)(b) of the *BMSMA*.

## VII. Conclusions

As discussed earlier, the relevant provisions in the Singapore strata legislation do not permit or authorise the management corporation to remove the air-conditioning system in the manner proposed. Under section 34(1) of the *BMSMA* and s 23(1) of the *LTSA*, the only recognised methods of disposal are by way of a transfer and a lease. For the reasons discussed above, a permanent disposal of the air-conditioning system in the manner proposed in *Yap Choo Moi* does not come within a "transfer" or a "lease" in these provisions. Similarly, section 29(1)(b) of the *BMSMA* is of no assistance to the management corporation in *Yap Choo Moi*. In light of the discussion above, the focus of this provision is on maintenance and repair and not removal or disposal *simpliciter*. This duty to maintain and repair includes, where reasonably necessary, a renewal or replacement of the same following a disposal. This is the thrust of section 29(1)(b)(i) of the *BMSMA* when it comes to common property. The decision of the High Court in *Yap Choo Moi* that section 29(1)(d) of the *BMSMA* can be relied on to remove common property does not accord, as explained earlier, with the meaning of making improvements thereto. As for the new section 29(1)(d) introduced by the *Amendment Act 2017* which seeks to further clarify the duty of the management corporation in making improvements to the common property, it is not specifically dedicated to the disposal of common property as such.[94] Section 29(1)(a) of the *BMSMA* is also inapplicable in *Yap Choo Moi* as the removal of the central air-conditioning system was not for the benefit of *all* the unit owners in the

[94] See the earlier discussion at the text in Section II (discussion of the High Court decision) and accompanying notes 51-55 above.

strata development given that its removal was supported by only 82% of the unit owners.

The interpretation proffered for sections 29(1)(a), (b) and (d) and section 34(1) of the *BMSMA* as well as section 23(1) of the *LTSA* is consistent with the observation in *De Beers Jewellery* that the management corporation, being a creature of statute, can only have powers granted expressly or by implication in that statute.[95] This is further reinforced by section 24(3) of the *BMSMA* also noted earlier. As more and more strata developments in Singapore are approaching the 30 or 40-year mark, the need for a provision in the *BMSMA* which provides clarity in, and is dedicated to, the removal or disposal of common property is warranted. In this regard, it has been suggested that the solution is the incorporation in the *BMSMA* of the equivalent of section 106(3) of the *NSW 2015 Act*, discussed earlier.

It is essential that the management corporation be given well-defined powers to deal with common property in the interests of residents. Not only is it costly to maintain, repair, renew or replace common property which is old and near obsolete or which has reached its estimated service life, there are also health and safety concerns to residents as can be seen in *Yap Choo Moi*. In this regard, clarity is needed which would prove to be the ideal solution in providing a clear understanding of the powers conferred on the management corporation as well as in providing certainty in the course of action to be taken without attracting unnecessary lawsuits. The overall outcome would be a better run estate which is more efficiently administered and managed by the management corporation for the benefit of residents.

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95 *De Beers Jewellery*, *supra* note 33 at para 10.