

BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT

BUILDING MAINTENANCE AND STRATA MANAGEMENT
(STRATA TITLES BOARD) REGULATIONS 2005

STB No. 84 of 2008

In the matter of an application under section
101 of the Building Maintenance and Strata
Management Act in respect of the development
known as **The 101** (MCST Plan No. 1432)

Between

1. MCST Plan No. 1432

... Applicant

And

1. Saw Soon Jin/ Toh Bee Lee/ Sa S K/ Ko L L
2. Serviceproperty.com Pte Ltd
3. Beach City (S) Pte Ltd
4. Beach City Asia Pte Ltd
5. Tan Fung Chuan
6. Hannah Irene Tan Ai Ling
7. Joseph Chia Chon Heng
8. Tay Bin Tin/ Lee Kok Choon
9. Lee Kok Choon
10. James Ng In Kiat/ Teo Soo How
11. Wu Yi Daniel/ Bian Haiyan

... Respondents

Coram: Mr Alfonso Ang
Deputy President

Panel Members: Mr Lee Coo
Mr Frankie Chia

Counsel: Mr R. Shiever (Grays LLC) for the Applicant

GROUNDINGS OF DECISION

1. In this application, the Applicant sought from the Board an order that the Respondents are to reinstate back to the original state the façade and exterior of common areas or encroachment of common property, which was done without the consent of the Management Corporation Strata Title 1432 (“Management Council”). The changes allegedly affect the appearance of the building comprised in the strata title plan in contravention of Section 37 of the Building Maintenance and Strata Management Act (“BMSMA”). If the Respondents fail to reinstate, then the Management Council will reinstate at the Respondent’s cost what a contractor will have to reinstate.

2. The Applicant is represented by the Chairman of the Management Council of The 101 Beach Road, Mr Thomas Tan and the Managing Agent, Mr Nair. The First Respondent is the owner of unit #XXX at The 101 Beach Road. The Fifth Respondent is the owner of units #XXX and #XXX of The 101 Beach Road and units #XXX, #XXX and #XXX are owned by companies under his name. The Sixth Respondent is the owner of unit #XXX at The 101 Beach Road. The Seventh Respondent is the owner of units #XXX and #XXX of The 101 Beach Road. The Eighth Respondent is the owner of unit #XXX of The 101 Beach Road. The Ninth Respondent is the owner of unit #XXX of The 101 Beach Road.

Facts

3. The Respondents own units at The 101 Beach Road with various renovations and alterations done to them either when they bought them or that they carried out the renovations on the units themselves between 2001 and 2007. The Respondents or the previous owners of units where applicable had all obtained approval from the Managing Agent of the Management Council, Building & Construction Authority (“BCA”), Urban Redevelopment Authority (“URA”) and the Singapore Civil Defence Force (“SCDF”) prior to carrying out the renovation work.

Issues to be determined by the Board

4. The issue to be determined is whether the Respondents had approval to make the renovations and alterations from the Management Council.

Arguments of parties

5. Counsel for the Applicant argued that the Respondents had not obtained the requisite approval from the Management Council for the renovations and alterations which affected the appearance of the building such that it was not in keeping with the rest of the building under section 37(4)(a) of BMSMA. The Applicant also argued that the Respondents should not be allowed to dictate their own terms and be allowed to do renovations and alterations without the requisite approval. By not getting the requisite approval, this would affect the appearance of the Property which is not in keeping with the rest of the building.

6. The Applicant based their arguments on the grounds that the Respondents had not obtained the consent for the renovations and alterations apart from that of the then Managing Agent during Tan Fung Chuan’s tenure as the Chairman which does not constitute as approval from the Management Council.

7. The Respondents argued that permission for all renovation works is by common practice to be granted by the Managing Agent, representing the Management Council and that it is unreasonable that all renovation works require the approval of the Management Council.
8. The Respondents argued that all renovation works were done after approval from all the relevant authorities, namely, the Management Council, BCA, the URA and SCDF. They argued that Management Council and the Managing Agent had not raised any objections even though they were on-site several times to review the renovation progress and had checked the work upon completion.
9. The Fifth Respondent argued that the Applicant cannot retract the approvals for the renovation work that were accorded to him in good faith.
10. The Sixth Respondent argued that the Management Applicant had acted inconsistently by not issuing a notice to all Subsidiary Proprietors who had made the alleged changes to the façade and common areas.
11. The Respondents also argued that the doors of the units are not visible from outside of the building at road level because they are sited along the common corridor within the building and set more than 10m from edge of building. The corridor is also mostly blocked by big service ducts, common staircase and lift lobby.

Decision

12. The parties acknowledge that renovation works have been done to the various units of The 101 Beach Road. As only the appearance of the façade was purported to have been changed, the relevant provisions for such renovations are therefore sections 37(3) and (4) of the BMSMA.
13. At Pages 13, 14, 26 and 32 of the Fifth Respondent's Affidavit in Reply by Tan Fung Chuan dated 7 May 2009, the Fifth Respondent had submitted documentary evidence that the Managing Agent had acted for and on behalf of the Management Council to approve the renovation of units #XXX, #XXX and #XXX.
14. At Annex 1 the Sixth Respondent's Affidavit dated 16 April 2009, the Sixth Respondent had submitted documentary evidence that the Managing Agent had acted for and on behalf of the Management Council to approve the Renovation of units #XXX and #XXX.
15. After carefully considering the evidence, the Board found that all the Respondents had prior to the commencement of renovation works in their respective units obtained the requisite approval from the Managing Agent who had been properly authorised to act for and on behalf of the Management Council. It was thus unnecessary contrary to what the Applicant had contended that approval of the Management Council was required.
16. The Respondents had also shown that they had obtained approval from the relevant authorities as required by the Managing Agent of the Management Council before carrying out the renovation and alteration works.
17. With Reference to paragraph 8 of the Fifth Respondent's Affidavit dated 16 April 2009 and paragraph 13 of the Reply Affidavit by the Fifth Respondent dated 7 May 2009, the

Board notes that the Applicant had sent invoices to him for reinstatement works that had not been done to any of his units. Furthermore, these invoices were used at the Annual General Meeting of the Management Council to deprive the Fifth Respondent of his voting rights. As there were outstanding amounts owed to the Management Council the Fifth Respondent had lost his right to vote. The Sixth Respondent has also cited in paragraph 11 of the Sixth Respondent's Affidavit dated 16 April 2009 that the voting rights of the Respondents could potentially be deprived in perpetuity unless the levy imposed on the Respondents are paid for. We agree with the Respondents that the actions of the Applicant in this regard are reprehensible and done in bad faith to deprive the Respondents of their right to vote at the Annual General Meeting.

18. Having carefully considered the application, the evidence and the submissions of the parties, in the opinion of the Board, the Applicant have not discharged the burden to prove that the Respondents had not obtained the necessary approval of the Management Council.

19. Accordingly, the application is dismissed by the Board.

Legal Costs

20. The application is dismissed with costs and disbursements to be agreed or taxed.

Dated this 19th day of March 2010

MR ALFONSO ANG
Deputy President

MR LEE COO
Member

MR FRANKIE CHIA
Member