

BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT

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

STB No. 44 of 2010

In the matter of an application under Section
108,111,114 of the Building Maintenance
and Strata Management Act in respect of the
development known as **Guang Ming
Industrial Building** (MCST Plan No. 1360)

Between

Anne Lee Heng t/a Tian Hup Chan
Warehousing

... Applicant(s)

And

The MCST Plan No 1360

... Respondent(s)

Coram: Mr Remedios F.G
Deputy President

Panel Members: Mr Lee Coo
Ms Lee Lay See

The Applicant: Anne Lee Heng t/a Tian Hup Chan Warehousing

Counsel for the Respondent: Mr Kevin Kwek
Firm: M/s Legal Solutions LLC

Ground of Decision

This is an application by Ms Anne Lee Heng t/a as Tian Hup Chan Warehousing against the MCST Plan No 1360 for the following orders:

- 1) *To stop encroachment and usurping the lift lobby being also the frontage of #XXX's door opening. Reinstate the lift lobby according to Ground Floor Plan of B.C.A. drawings*
- 2) *To allow a 2nd door to serve as fire exit for unit #XXX applied in Oct 2006, but refused without reason, due to conflict of interests, being Respondents usurping Lorry Bay 1 where 2nd door open out to, for their exclusive private car park lots*
- 3) *To relocate unit #XXX's allotted car park lot to the same side as exit of #XXX for accessibility/to oversee. Current location at #XXX's exit facing Upper Paya Lebar Rd cannot be used by #XXX.*
- 4) *To allow #XXX to adjust existing door in accordance to B.C.A.'s South Elevation in Drawing Title Section-B No KGG/83/GMD/AC5 Amended 23 Apr 1985 Notation Z60*
- 5) *Costs for wilful deprivation of allotted and common facilities ie allotted car park lot to #XXX and share of use of common lorry bay from Sept 2006 to current time.*

Background

1. The applicant is the subsidiary proprietor of unit #XXX (the "unit") in strata titled building known as Guang Ming Industrial Building, an industrial building comprising 7 storeys with 20 units.
2. The building received its Temporary Occupation Permit in or about 1988 and currently the units in the building are used as warehouse offices, light industrial, factory use and there is a motor repair shop on the ground floor.
3. The perimeter around the building consists of car park spaces and 2 lorry bays. The lorry bays are intended for loading and unloading purposes.

Applicant' case

4. It was the case for the applicant that when she purchased the unit she wanted to do some renovations to facilitate her warehousing operations. She then applied to be allowed to i) increase the height of the door which she said was too low for her forklift which had a high mast and ii) to construct a 2nd door, inter alia for easier entry/exit. Her applications were disapproved.
5. Following the disapproval by the MCST, she tenanted the unit to a trading company and said she received complaints from her tenant which led her to write to the respondents on 01/07/08.

Frontage of the above stated unit is misused – at our main door entrance – you place your security guard with all his desks, chairs, cabinets occupying a big area which the said warehouse unit could use for deliveries, loading and unloading of goods etc

And adjacent area to lifts the area of parking lots allotted to other users – is NOT according to BCA's plan which showed/designated that area as the parking for lorry/container for warehouse use!

Kindly revert as soon as possible.

6. She did not receive a reply to the letter despite follow up letters and on 17/09/2009 she filed an application with the STB.
7. STB 57/2009 was an application filed by the applicant against SCMS Property Management Pte Ltd (the managing agent) and MCST Plan No 1360 (the respondents in this case). The applicant prayed for 3 orders including an order with regard to the use of the lorry bay and for relocation of the car park lot allotted to her unit. She wanted a parking lot which would be convenient for her to oversee and access. On 04/11/09 the following order was made

“... by consent of both the Applicants and Respondents ordered that:-

- 1. Lorry Bay 1 and 2 shall be used exclusively for lorries only; and*
- 2. The Respondents shall endeavour that no other vehicles are parked in both Lorry Bay 1 and 2”*

8. It is to be noted that the applicant in STB 57/2009 did not make any application with regard to use of the lobby by the security guards. The Board in STB 57/2009 did not make any order with regard to the application for relocation of the allotted car park lot.
9. On or about June 2009 the applicant was engaged in moving items from premises in Defu Lane to the unit. On 11/06/09 she said that access to the door opening of the unit was impeded by the *"the security guards' furniture, personal effects, sign board etc taking up half the lobby width..."* She informed that on that day *"another proprietor from level 4 delivering out 6 units via the cargo lift, taking up the whole day..."*
10. It was also the evidence of the applicant that the door to the unit was obstructed by *"the piping of a sprinkler siren connection and the overhang of the stack of aluminium letterboxes instead of the hose reel duct..."*
11. There was no prayer in this application for an order in connection with the sprinkler siren connection and letterboxes.
12. It was also the evidence of the applicant that in BCA drawing No KGG/83/GMD/AC5 the height of the door to the unit was higher than the existing door by 0.51 m.
13. In the affidavit of her evidence in chief, applicant also referred to a stray cat that had climbed to the mezzanine level via the aluminium vents facing Lorry Bay 1 and car park lot 15. To prevent further intrusions she *"seeks to secure this problem in alternate remedy such as replacing the vents with fire-rated door..."*
14. There was no prayer in this application, for an order to replace the vents.

15. In connection with the car park allotted to the unit, the applicant said that the allotted car park was located at the main door of unit #XXX. The gist of her evidence in connection with this prayer was that the allocated car park was not convenient for her to use and she wanted the allotted car park to be relocated *“for access and to be able to oversee from the same side as door entrance.”*
16. At the hearing before the Board the applicant informed that she wanted to use the car park to park her forklifts.
17. The application in this case was filed on 25/08/2010 and it is the case for the applicant that she is entitled to the orders prayed for under SS 108, 111 and 114 of Building Management and Strata Management Act. Cap 30C (BMSMA).
18. Under S 108 of the Act the Board can, where any amount levied or proposed by a management corporation is excessive or inadequate or manner of payment is unreasonable, make orders for payments of different amounts or orders for payments in a different manner.
19. S 111 of BMSMA provides for dissatisfied applicants to apply to Board in connection with applications in connection with improvements in or upon a lot or an alteration to the common property that have been UNREASONABLY refused.
20. S 114 of BMSMA provides for orders for entry into a lot. Only management corporations (i.e SPs cannot apply) can apply to the Board for an order for an SP to allow the MC to access his lot for the purpose of carrying works.
21. It is to be noted that SS 108 and 114 are not applicable in this case.

Respondent's case

22. Mr Sum Kok Meng the maintenance officer employed by the respondents was the only witness called by the respondents. His evidence was as follows:

Encroachment of the lift lobby

23. There was no encroachment of the lift lobby. It was a fact that there was a table and a chair that were used by the security guards in the lift lobby. Prior to the application in this case the guards had hung their clothes and had personal effects at that place. When the case was being mediated before the hearing the security guards were directed to keep the place tidy and they have since removed clothing and personal effects. Security guards are provided for the benefit of all the occupants of the building and the location in the lobby which fronts the main gate provides the best vantage point for monitoring activities at the building. *"The security guard post has been there ever since TOP was obtained for the building"*
24. It was also the evidence of Mr Sum that there has not been any changes made to the structures or installations (including letter boxes and fire alarm bells) on the common property.

Erection of a 2nd Door

25. In connection with the application for a second door, Mr Sum said that the applicant had proposed that this be situated in front of the lorry bay and car park lots. There was also a fire breaching in-let system for use by the SCDF at the location. It was his evidence that it was not possible for a door to be located there.

Adjusting the height of the existing door

26. In connection with the application to adjust the height of the door, it was the evidence of Mr Sum that the condition of the door was as it was when the building was handed over to the management corporation by the developer ie there has not been any changes ever since the building was completed and no one has ever been allowed to alter their main entrances.

Re allocate car park

27. Mr Sum referred to the fact that this had been prayed for previously and that no order had been made by the Board in STB 57/2009. Mr Sum further informed that car park lots were allotted even before the management corporation had been constituted (unit numbers are written on the lots) and said that the management corporation had no power to reallocate car park lots.

Consideration of the evidence

28. It will be in order to first of all deal with the submission made by the respondents (in the Opening Statement) that the applicant had no basis for making this application because similar issues were raised in STB 32/2010 (filed on 08/07/2010).
29. The application in STB 32/2010 was against SCMS Property Management Pte Ltd (the managing agent) and not against the respondents in this case. The doctrine of res judicata is not applicable.
30. It was also submitted that this application be dismissed because there were outstanding maintenance contributions amounting to \$14853.50 due from the applicant. S 116 (d) of the BMSMA was cited in support of this submission. The applicant did not dispute that there were outstanding contribution due from her. She informed that payments had not been made because incorrect statements had been submitted to her.

S 116(d) of the BMSMA provides that

A Board may dismiss an application under this part if –

(d) in the case of an application made by any subsidiary proprietor of a lot, the applicant has not paid all contributions levied and payable in relation to the lot under this Act.

31. It is to be noted that dismissal is not mandatory when contributions are outstanding. Considering the fact that the applicant had her reasons for not paying (it is not the decision of this Board that her reasons were valid) and that the respondents had commenced a suit in the Subordinate Courts to recover the outstanding contributions, the Board was of the view that the Board should not dismiss the application on this ground.

Encroachment and usurping of the lift lobby

32. It was the case for applicant that positioning of the security guards at the lobby with their desks, chairs and cabinets interfered with deliveries and the loading and unloading of goods to her unit. She referred to the occasion in June 2009 when she was moving items and access to her door was impeded by the security guards' furniture. It was noted that on that day another subsidiary proprietor was making deliveries and using the cargo lift. There was very little doubt access would have

been affected when more than one delivery was taking place at the same time. Other than this occasion there was no evidence of the applicant's access being impeded.

33. The respondent's case with regard to the location of the security guards was that security guards are provided for the benefit of all the occupants of the building and the location in the lobby which fronts the main gate provides the best vantage point for monitoring activities at the building. It was also the evidence of Mr Sum that the security guards had been positioned at that location ever since the building obtained its TOP ie until the complaint of the applicant there was never any complaint of obstruction being caused by the location of security guards.
34. Under S 29(1) BMSMA it is the duty of the management corporation *to control, manage and administer the common property for the benefit of all the subsidiary proprietors*. Positioning security guards at the best vantage point for monitoring activities at the building would be in accordance with the duties of a management corporation.

Erection of a 2nd Door

35. The applicant had made an application for a second door to be constructed when she purchased her unit. This was not approved because the applicant had proposed that this be situated in front of the lorry bay and car park lots. There was also a fire breeching in-let system for use by the SCDF at the location and it was the evidence of Mr Sum that it was not possible for a door to be located there.
36. Allowing the applicant to construct a second door would require the demolition of a part of the existing external wall and allowing the applicant to construct a door for her exclusive use. The external wall is common property and it is provided in S 33 (1)(c) of the BMSMA that a management corporation can only make a by-law conferring on a subsidiary proprietor the exclusive use and enjoyment of common property for more than 3 years (in this case the applicant was seeking exclusive use of common property for an unlimited period) when there was 90% resolution. There was no evidence in this case of such a resolution.
37. S 111 of BMSMA provides for dissatisfied applicants to apply to Board in connection with applications in connection with improvements in or upon a lot or an alteration to the common property that have been unreasonably refused. There was no evidence whatsoever that the management corporation's refusal of the application for the second door was unreasonable.

Adjusting the height of the existing door.

38. Whilst it was the contention of the applicant that there was a BCA drawing showing that the height of the door to her unit was 0.51m higher than the existing door, the evidence adduced did not show that this was so. It was also the evidence of Mr Sum that the condition of the door was as it was when the building was handed over to the management corporation by the developer i.e there has not been any changes ever since the building was completed and no one has ever been allowed to alter their main entrances.
39. Again as in the case for the application for the construction of a second door, increasing the height of the existing door would require demolition of a part of the external wall and giving the applicant exclusive use of the part of the common property that is removed. There was no evidence that a 90% resolution had been obtained for this and there was also no evidence that when the management corporation disapproved the application for this, the disapproval was unreasonable.

Relocation of the allotted car park

40. The applicant did not find the location of the car park allotted to her unit to be convenient for the parking of her forklifts and wanted the management corporation to allocate another car park to her. Mr Sum said that that the management corporation did not have the power to do this because the car park lot had been allotted even before the management corporation had been constituted.
41. The applicant would have been aware of the location of the allotted car park when she purchased her unit and had proceeded with the purchase with this knowledge. The applicant was now seeking that the management corporation should on her behalf obtain consent of another subsidiary proprietor, specifically the subsidiary proprietor who had the use of car park No 15 (the car park that she identified as the one that she wanted) to exchange car park lots with her.
42. The applicant had previously made an application to the Board for such an order (STB 57/2009) and had not been granted the order and there was no valid reason whatsoever for the Board in this case to make the order in her favour.

Application for Costs for wilful deprivation of allotted and common facilities.

43. There was no evidence whatsoever to support the application for this order.
44. In view of all of the above the applications of the applicant are dismissed.
45. We will hear parties on the issue of cost.

Dated this 18th day of February 2011.

Mr Remedios F.G
Deputy President
Strata Titles Boards

Ms Lee Lay See
Member
Strata Titles Boards

Mr Lee Coo
Member
Strata Titles Boards