

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

STB No. 56 of 2013

In the matter of an application under Section 101
of the Building Maintenance and Strata
Management Act in respect of the development
known as **8A ADMIRALTY ST**
FOODXCHANGE (MCST Plan No. 3481)

Between

**The Management Corporation Strata Title
Plan No. 3481**

... Applicant(s)

And

Synnovate Solutions Pte Ltd

... Respondent(s)

Coram: Mr. Remedios Francis George
Deputy President

Panel Members: Mr. Lim Gnee Kiang
Mr. Lee Keh Sai

Applicants: The Management Corporation Strata Title Plan No. 3481

Counsel: Mr. Subramaniam Pillai / Mr Leow Zi Zhiang
(M/s Colin Ng & Partners for the Applicant)

Respondents: Synnovate Solutions Pte Ltd

Mr Lawrence Low
Founder and Chief Executive Officer

GROUND OF DECISION

1. In this application (STB 56/2013 filed on the 16/08/2013) the applicant is the Management Corporation Strata title Plan No 3481 (the MC).
2. The application was for orders against two parties viz

Synnovate Solutions Pte Ltd (SSP); and
Jesindo Patisserie(S) Pte Ltd (JP).
3. SSP is the tenant and/or occupier of premises #XXX and #XXX at the FoodXchange@Admiralty (the premises) and JP was, up to 15 May 2013 and 19 May 2013 respectively the owner of the premises
4. In the application (Form 9) where the MC was required to state the orders sought from the Board, the MC stated:

Respondent No 1 removes the metal gate at the strata parking lots of units #XXX and #XXX at the FoodXchange@Admiralty, 8A Admiralty Street, Singapore 757437 at their own costs within fourteen (14) days from the date of Order of the Strata Titles Board.
Respondents No 1 and 2 are to pay the Management Corporations cost in these proceedings including the proceedings in STB No 27/2012 as a debt on a full indemnity basis
5. The orders were sought under S 101 of the Building Maintenance and Strata Management Act Cap 30C (the Act).
6. Prior to the arbitration hearing it was ordered that that the applications against the two parties should be dealt with separately and in this case we are concerned with the application against SSP.
7. In the written submissions (AB4) filed on behalf of the MC, there was a prayer for another order viz

...an order against the 1st Respondent to bear the Applicant's solicitor and clients costs of making the 2nd Respondent a respondent in STB No 27 of 2012 and in the present proceedings...

8. Prior to the matter being fixed for an arbitration hearing there was no application under Regulation 12 of the Building Maintenance and Strata Management (Strata Titles Boards) Regulations 2005 (the Regulations) or at any other time for an amendment to the application. The Board is of the view that the application for the further order should not be considered in this case.

Background:

9. As noted, SSP is the tenant/occupier of the premises. Prior to 22/10/2010, SSP erected metal gates at the car park lots at the premises and used the enclosed space as a holding area for its business. At #XXX the space was used for deliveries, the gates would be opened between 2.00am and 7.00pm and closed between 7.00pm and 2.00am. At #XXX the space was used for collections and the gates were opened between 7.00am and 2.00am and closed between 2.00am and 7.00am.

10. On 25/10/10 a letter was sent to SSP (SSP was then known as PPT Solutions Pte Ltd) by the MC informing SSP

...Please take note that the strata car park are designed and meant strictly for parking of vehicles as approved by the Urban Redevelopment Authority (URA) and therefore should not be used or converted to storage or other unauthorised purposes. Installation of a metal gate would be considered as Change of Use of the car park lots and deemed as an infringement of the planning regulations under Urban redevelopment authority on development...

SSP was told to remove the metal gates.

11. On 16/05/11 De Vries Glenn Arnold Gerrard (De Vries) the MC's building manager queried URA with regard to fencing or metal barriers and roller shutters to cordon off the strata parking lots and use the space for storage. The query was as follows:

FoodXchange is a 7-story ramp-up industrial building designed for food industries located at Admiralty Road. Each strata factory has 2 motorcar and 1 lorry parking lots immediately outside the unit that belong to the subsidiary proprietor (SP). We understand that the strata parking lots are designed for vehicle parking and are not part of the Gross Floor Area of the whole development as determined by URA

Some of the SPs have installed fencing or metal barriers and roller shutters to cordon off the strata parking lots and use the space for storage. MCST has written to the SPs concerned (copy off the notice enclosed) that this was not allowed but the SPs persisted and insisted that the strata parking lots are their property.

Please advise if the above acts by the SPs to install fencing, metal barriers or shutters are deemed by URA as 'Change of Use' of the strata parking lots and that URA is empowered to take action against the SPs for the unauthorized change of use.

12. The reply received from URA sent by Sr Planner Lau Ching Yu on 25/05/2011 was

The private carpark/lorry lots are approved for parking use, any change of use of the space requires planning permission. The change of use of the carparks will constitute additional Gross Floor Area (GFA) and the overall development is subject to a Gross Plot Ratio (GPR) control of 2.5.

URA went on to inform that URA would consider applications from owners who wished to optimise the use of car parks for their operations subject to inter alia a *Letter by the secretary or Chairperson of the council of the MC conforming that the MC has by 90% resolution authorised the proposed conversion and additional GFA; LTA's clearance to ensure sufficient balance car parking provisions in the development to meet LTA's Minimum carparking requirements; Payment of Differential Premium (DP); and compliance with technical requirements of relevant government agencies including SCDF*

13. On 18/07/2011 the MC wrote to URA. Inter alia the MC requested URA to take the necessary action including but not limited to enforcement against those who have made the alteration works which is a contravention of the Planning Act (Cap 232, 1998 Ed)
14. URA did not accede to the MC's request and on 10/08/2011 informed that URA was prepared to consider some flexibility for conversion of private car parks subject to the conditions mentioned in the reply on 25/05/2011. The MC was informed that if the MC did not endorse the conversion of private strata parking lots it could proceed to enforce the unauthorised conversion under the Act.
15. By way of a letter dated 23/09/11 the MC informed SSP of what it had learnt from the URA reply on 25/05/2011 and went on to say *As the Management Corporation has not been notified of any of the clearances and approval as stated above*, it required SSP to remove the unauthorised gates.
16. There is no evidence that SSP or anyone has made any application to the URA for a change of use of the car parks at the premises.
17. By way of a letter dated 21/12/11 Ms Colin Ng and Partners on behalf of the MC inter alia informed SSP that installation of the metal gates amounted to an infringement of S 37 of the Building Maintenance and Strata Management Act and the by-laws of the MCST as set out in the Second Schedule of the Building Maintenance (Strata Management) Regulations 2005 and the approved planning permission granted by URA. Notice was given to SSP that if the gates were not removed within 14 days legal proceedings would be commenced.
18. To date SSP has not removed the gates

19. SSP has refused to remove the gates from the premises because Mr Low Chee Yong, Lawrence the CEO (Low) of SSP said that SSP was not aware of the rule, regulation or policy that had been violated. The premises including the car parks had been leased from the owners and SSP when renting the premises informed the owner of the premises that the carpark lots would be used as holding areas. They erected the gates after they saw that others had done the same. SSP was of the view that using the car parks as a holding area did not amount to a change of use.

Findings and Decision of the Board:

20. It was the submission of the MC that there was in this case a breach of By-law 5 (1) in the Second Schedule of the Building Maintenance (Strata Management) Regulation 2005 (the By-law) and S 37 of the Act.
21. The By-law is as follows:
- A subsidiary proprietor or an occupier of a lot shall not mark, paint drive nails or screws or the like into, or otherwise damage or deface, any structure that forms part of the common property except with the written approval of the management corporation*
22. There are in the estate 207 common parking lots (common property), 564 strata car parking lots and 282 strata lorry parking lots. It did not appear to be in dispute that the lots at the premises were strata parking lots i.e. the parking lots were not common property.
23. There was no direct evidence as to the construction and make-up of the gates at the premises and the evidence of De Vries in his affidavit (AB1) was as follows:
- I am advised and verily believe that the 1st Respondent, in erecting the metal gates at the car park lots breached By law 5(1) by driving screws or the like into the external walls forming part of the common property without prior written approval from the management corporation.*
24. Accordingly it was the case for MC that there was a breach of the by-law because screws or the like had been drive into common property viz the external wall.
25. At the hearing before the Board, De Vries conceded that there was no encroachment onto the external wall. The photographs (AB3) did not show any encroachment onto the external wall. The gates were affixed to the inside wall of the strata lot.
26. Counsel for MC then submitted before the Board that the gate was affixed to what was in fact a column that supported SSP's lot as well as other lots in the building and accordingly the gates were affixed on common property.

27. S 2 (1) of the Act provides as follows -

common property...means (a) in relation to any land and building...such part of the land and building

(i) not comprised in any lot...and

(ii) used or capable of being used or enjoyed by occupiers of two or more lots....

28. Common property is land and building that is not in a lot and in addition to not being in a lot the land and building must be used or capable of being used or enjoyed by occupiers of two or more lots. Land that is comprised in a lot is not common property. SSP had in this case not driven screws or the like into the external wall when erecting the gates and the column was within SSP's lot.

29. It is the finding of the Board that there was no breach of the By-law when the gates were erected.

30. S 37(1) of the Act provides -

Except pursuant to an authority granted under subsection (2), 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 increases or is likely to increase the floor area of the land....

31. The MC has also referred to the Planning Act Cap 232 where it is provided in S 12(1) that *No person shall without planning permission carry out any development of any land outside a conversion area.* In S 3(1) *development* is inter alia defined as *the making of any material change in the use of any building or land*

32. In submitting that there was a breach of S 37 of the Act it was the case for the MC that SSP had when erecting the metal gates at the carparks at the premises effected an improvement in or upon his lot for his benefit which increases or is likely to increase the floor area of the land.

33. When De Vries wrote to the URA there were two matters in the query viz
i) *fencing or metal barriers and roller shutters to cordon off the strata parking lots;*
and
ii) *use the space for storage.*

34. The reply from URA did not address the first matter (there was no mention in the reply about fencing or metal barriers or roller shutters) but only the second where URA informed that

The private carpark/lorry lots are approved for parking use, any change of use of the car park will constitute additional Gross Floor Area (GFA) and the overall development is subject to a Gross Plot Ratio (GPR).

35. It is a fact that the car parks at the premises were not used as car parks during the periods when they were used as a holding area when deliveries and collections were taking place. (Whilst the MC had chosen to describe the use as *storage* and SSP describes it as *holding area*, there is really no significance in the descriptions. It was not used a car park but was used for goods delivered /awaiting collection. The evidence of Low at the hearing was that the goods were brought to the car park of the premises at #XXX at sometime between 3.00am to 4.00am and the gates would then be closed until after the staff had moved the goods into the factory at about 7.00am to 8.00am i.e. a period of between three to five hours. At #XXX the staff would place the goods in the car park at sometime between 6.00pm and 8.00pm, the gate would then be closed until around 9.00pm and 10.00pm (i.e. a period of between one hour and four hours) when the drivers came and collected the goods. The items held in the areas were valuable as Low said in RB -1... *We absolutely must keep our gates for business operations reasons...* and the gates were erected to safeguard the items held in the car parks.
36. The gates were erected to safeguard, not a motor vehicle parked in the car park but items that had been delivered or awaiting collection. Accordingly an improvement had been made on the lot for the purposes of using it, not as a car park but to hold/store goods. On the part of URA *any change of use of a car park* constituted additional GFA.
37. SSP had without authority granted under subsection (2) of S 37 of the Act effected an improvement in or upon the lot that had increased GFA.
38. In view of our finding we considered whether an order for
Respondent No 1 removes the metal gate at the strata parking lots of units #XXX and #XXX at the FoodXchange@Admiralty, 8A Admiralty Street, Singapore 757437 at their own costs within fourteen (14) days from the date of Order of the Strata Titles Board
should be made.
39. The MC had prayed for the order in Form 9 and cited S 101 of the Act as the provision under which it was seeking the order (in the written submissions AB4 it was submitted that the application was under S 101(1)(c).
40. Under S 101(1) *...a Board may...pursuant to an application by a management corporation... make an order for the settlement of a dispute ...with respect to – (c) the exercise or performance or failure to exercise or perform a power, or duty or function conferred or imposed by this Act or the by-laws....*
41. The MC had in its written submissions referred to SS 12(1),(4), (5) and 13 of the Planning Act Cap 232 where it is provided that carrying out of a development without planning permission is an offence punishable with a fine not exceeding

\$200000; and a further fine not exceeding \$10000 for every day during which the offence continues. The competent authority can also serve an order on the offender to directing him to remove from the land such property or materials used in connection with the offence. There was no doubt as to the penalties that can be imposed on an offender under the Planning Act. There was however no submission as to how a breach of S 37 (1) of the Act which prohibits the effecting of improvements without the authority of the management corporation can be said to be a dispute with respect to the exercise or performance or failure to exercise or perform a power or duty or function conferred or imposed by the Act or the by-laws.

42. Whilst S 37 of the Act did not provide for the making of the order prayed for the Board, there was power under S 117(2) of the Act to make the order.

S 117(2) provides as follows:

117— (2) *Without prejudice to subsection (1), a Board may order —*

- (a) a management corporation or its council;*
- (b) a subsidiary management corporation or its executive committee;*
- (c) a managing agent; or*
- (d) a subsidiary proprietor or other person having an estate or interest in a lot or an occupier of a lot,*

to do or refrain from doing a specified act with respect to a subdivided building or the common property or limited common property, as the case may be

43. The provision does not mandate that a Board must make the orders specified and a Board has the discretion whether or not to make the orders. In exercising its discretion a Board must be conscious of the fact that it is the duty of a management corporation to act in the common interests of all subsidiary proprietors. Subsidiary proprietors cannot be allowed to ignore the authority of the management corporation and when this happens and is not challenged; its authority will be adversely affected and undermined.
44. In deciding whether we should exercise our discretion and grant the order sought we considered the decisions in *Tay Tuan Kiat v Pritam Singh Barr* [1985-86] SLR (R) 763 and *MCST Plan no 1378 v Chen Ee Yueh Rachel* [1993] 3 SLR(R) 630. Whilst the court was not in the two cases concerned with S 117(2) of the Act, we were of the view that the decisions were applicable in this case.
45. In the case of *Tay Tuan Kiat v Pritam Singh Barr*, L P Thean J declined make an order on property owner who had encroached upon the property of another to pull down and remove a wall after finding that this would not be a fair result. At [9] and [10] Thean said

In my view if the mandatory injunction asked for by the plaintiff is granted the obligation imposed on the defendant is extremely onerous and is out of proportion to the benefit gained by the plaintiffs. In my view it will not produce a fair result. In Charrington v Simon & Co. Ltd. [1970] 1 WLR 725 Buckley J in considering the grant of a mandatory injunction said at 730

Where a mandatory order is sought the court must consider whether in the circumstances as they exist after the breach a mandatory and if so what kind of mandatory order will produce a fair result. In this connection the court must in my judgement take into considerations amongst other relevant circumstances the benefit which the order will confer on the plaintiff and the detriment which it will cause the defendant. A plaintiff should not of course be deprived of relief to which he is justly entitled merely because it will be disadvantageous to the defendant. On the other hand he should not be permitted to insist on a form of relief which confer no appreciable benefit to himself and will be materially detrimental to the defendant.

46. In MCST Plan no 1378 v Chen Ee Yueh Rachel, Chao Hick Tin J (as he then was) declined to order a subsidiary proprietor who had breached the by-laws by installing windows in her balcony without the consent of the management corporation to remove the windows as he of the view that the harm to her would outweigh any benefit to the management corporation because other subsidiary proprietors had erected similar windows which could not be ordered to be removed. The judge was of the view that ordering the removal of the sliding windows would cause hardship without any real corresponding benefit to the management corporation.
47. In this case it was the use of the premises as a holding area/storage that required approval from the URA. This was because the change of use constituted additional GFA. There was nothing in the correspondence from the URA that showed that the URA was in any way concerned with the erection of the metal gates and it did not appear that construction of the gates without a change of use requires any approval from the URA.
48. In Choo Kok Lin v MCST Plan No 2405 [2005] 4 SLR(R) 175 Judith Prakash J noted that GFA is an administrative tool (it is a planning guideline that limit the extent to which land can be built up) and it is up to the URA to increase or decrease the GFA for any particular parcel of land and to decide what it would do if construction on the land resulted in it being built up beyond the GFA. The evidence in this case was that URA did not intend to do anything or take any action with regard to SSP's use of the car parks for holding/storing goods after collection and awaiting delivery.
49. Erection of gates at the car park without any change of use was not prohibited. It was the use as a holding/storage area (and not the erection of the gates) that provided the MC with a cause of action against SSP. The application of the MC was however not an application to stop SSP from using the car park to hold/store goods but for SSP to remove the gates.

50. The erection of the gates had not changed the nature of the space that it enclosed. It did not become something that was not a car park lot i.e. its use as a car park was not terminated by the erection of the gates. It is not unknown for owners to secure vehicles in their car parks with gates, roller shutters and the like.
51. The removal of the gates would also not prevent SSP from holding/storing goods delivered/ awaiting collection in the lots. It would however require SSP to find other means to secure/protect the goods delivered or awaiting collection. An order for removal would be of very little or of no benefit to the MC.
52. After due consideration the Board was the view that an order to remove the gates would impose an obligation on SSP that is onerous and out of proportion to the benefit gained by the MC
53. Accordingly it is ordered that the application for
- Respondent No 1 removes the metal gate at the strata parking lots of units #XXX and #XXX at the FoodXchange@Admiralty, 8A Admiralty Street, Singapore 757437 at their own costs within fourteen (14) days from the date of Order of the Strata Titles Board.*
- be dismissed.
54. There will be no order as to costs.

Dated this 29th day of November 2013

MR REMEDIOS FRANCIS GEORGE
Deputy President

MR LIM GNEE KIANG
Member

MR LEE KEH SAI
Member