

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

STB No. 9 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 **ST REGIS HOTEL AND
RESIDENCES** (MCST Plan No. 3429)

Between

Khoo Hong Wei

... Applicant(s)

And

**The Management Corporation Strata Plan No.
3429**

... Respondent(s)

Coram: Mr. Remedios Francis George
Deputy President

Panel Members: Dr. Lim Lan Yuan
Mr. Chan Ewe Jin

Applicants: Khoo Hong Wei

Counsel: Mr. Adrain Tan / Mr. Robert Raj / Ms. Aziah Hussin
(M/s Drew & Napier LLC for the Applicant)

Respondents: The Management Corporation Strata Title Plan No. 3429
Mr. Joe Goh Ching Lai (Chairman)
Mr. Irene Ngo Kim Lian (Secretary)

Counsel: Mr. Sivakumar / Ms Melissa Leong
(M/s Genesis Law Corporation for the Respondent)

GROUND OF DECISION

1. The Applicant, Khoo Hong Wei (Khoo) is a subsidiary proprietor of St Regis Residences (SRR).
2. The Respondent is Management Corporation Strata Title Plan No 3429 (MCST). Khoo was appointed as a member of the 1st Management Council of the MCST at the 1st AGM of the MCST on the 30/10/2010 and was elected as a member of the 2nd Management Council at the 2nd AGM of the MCST on the 29/10/2011
3. In this application Khoo is applying for orders against the MCST to take the following actions:
 - a) *Release the vehicle operated by Khoo notwithstanding the non-payment of parking and clamping fees;*
 - b) *Allow Khoo to utilise the unused parking lot allocated to another subsidiary proprietor, as agreed upon between Khoo and the relevant subsidiary proprietor. and*
 - c) *An order for the Board to repeal a by-law passed on 20/Oct/12 dis-allowing the parking of commercial vehicles and wheel clamping of such at the carpark at Basement Level 3.*

Background:

4. SRR consists of two exclusive 23-storey towers of 173 beautifully appointed residences. There are 430 parking lots at Basement Levels 1, 2 and 3 (B1, B2 and B3).
5. According to the House Rules parking at B3 is dedicated for the sole use of owners and residents. The use of the car parks at SRR by owners and residents would be made available after an application for season parking facilities. Season parking charges were 149.80 per month.

6. At the 1st AGM on the 30/10/10 the following by-law was passed by way of a special resolution:

A subsidiary proprietor or visitor shall not park or leave any motor vehicle...upon any common property not meant for car parking, do or omit any act which may breach any of the provisions of the Management Corporation's House Rules governing car parking...including subsequent addition and amendment that may be made by the council from time to time...any infringement may result in his/her vehicle to be wheel clamped and shall pay a fee of \$100 for releasing the wheel clamping device and in the event that the wheel clamping device remains unreleased the defaulting subsidiary proprietor or visitor shall pay a fee of \$50 for every day the vehicle remains unclamped....

7. At the 1st management council meeting on the 20/11/10 the meeting deliberated on a *Proposed Allocation of Free Car Park Lots to Unit Owners/Tenants*. The minutes of the meeting recorded that before the decision was made the managing agent had reported that at that point of time there was a total of 144 applications for season parking. After the impact of a reduced income from season parking was noted, the meeting decided to *allocate 2 free lots per unit with effect from 1st January 2011*

8. At the 2nd AGM on 29/10/11 additional by-laws were passed by special resolution. These were lodged with The Commissioner of Buildings pursuant to S 32(5) of the Building Maintenance and Strata Management Act 2004 (the Act) on the 24/11/11:

Any motor vehicle found parked in an unauthorised parking area or not parked within the designated parking lot or in any manner which will cause obstruction and/or inconvenience to other users...shall be liable to have one or more of its wheels immobilised by a wheel clamp device.

...

The use of a motor vehicle that has one or more of its wheels immobilised ...shall pay a fee of \$100... to have the wheel clamp device removed....

If the motor vehicle is parked in the estate with one or more of its wheels immobilised by a wheel clamp overnight or for more than one day the wheel clamp device shall only be removed on payment of a surcharge of \$50 per day for each day the motor vehicle's wheels remain immobilised....

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9. On the 13/11/11 Khoo drove his m/van No GY 8275G into the carpark at B3. At that time he had already registered 2 vehicles viz SGZ9933D and SGM331T for free parking. He was not allowed to enter but was allowed entry after the security guard was informed that he needed to unload his van. After entering he parked the van in the carpark.
 10. On 22/02/12 the MCST wrote to Khoo and drew his attention to the fact that he already had two vehicles registered for parking in B3 and if he wanted to park a third vehicle there he had to apply for season parking and that the fee for season parking was \$149 per vehicle per month. An application form (with the terms and conditions governing the use of parking facilities) for season parking was provided for his completion.
 11. On the 01/03/12 via his solicitors, Khoo wrote to the MCST
"...The position at the condominium is that each condominium unit would be entitled to 2 car park lots. There is no provision prohibiting an owner of the unit from applying for a lot for owner of another unit. Our client has 2 cars. There is however an owner of another unit who is prepared to make an application for him to park a third car..." (In his Opening Statement (AOS) the Board was informed that Khoo had approached one Mdm Elvira Luy of unit #06-67 Tower C for permission to park his van in one of the lots allocated to her and she has consented to this. This fact was disputed by the MCST. Khoo has submitted what appear to be text messages between one Omar and Mdm Luy and a transcript of an audio recording to support his claim that she had given her consent).
 12. On the 22/03/12 via solicitors, the MCST inter alia informed
"...the Management Council, who are charged with the day to day management of the condominium, decided that each unit would only be entitled to 2 free car park lots. As your client has used up his allotted 2 free car park lots he is not entitled to any more free car park lots. As the car park is common property the use thereof is governed by

the terms stipulated by the Management Council. Under the circumstances your client is not entitled to use any other car park lots....

...as of 22 February 2012 your client is indebted to our clients in the sum of \$524.30 for the use of car park facilities... "

13. On the 11/04/12 the MCST wrote to Khoo to inter alia inform him of the amount of car park fees outstanding; requested him to submit an application with regard to the parking of the van; and its intention to immobilise the vehicle with a wheel clamp. It was headed as a *Final Reminder* and was sent by registered post
14. On the 17/04/12 Khoo's vehicle was wheel clamped.
15. Between 11/04/12 and 22/04/13 various amounts were demanded from Khoo in connection season parking fees, hourly parking fees, wheel clamping charges and wheel clamp release fees.
16. On the 06/02/13 Khoo filed his application in STB 09/2013.
17. In the course of mediations before the matter was fixed for arbitration hearing the Board had expressed concerns as to whether the Board had powers to order the MCST to release the wheel clamp and order the MCST to allow a subsidiary proprietor to use an additional car park lot after the number allocated had been used up.
18. It was the submission of Khoo that such orders could be made under S.101(1)(c) ie such orders would be orders *for the settlement of a dispute ...with respect to the exercise or performance or failure to exercise or perform a power duty or function conferred or imposed by this Act or the by-laws relating to the subdivided building or limited common property....*
19. It was the submission of the MCST that since this was a dispute that arose from the by-laws which provided for sanctions in the event of non-compliance, S.101 (1)(c) should not be read *so widely and effectively to give the Board inherent jurisdiction.* The MCST also submitted at the hearing that whilst the provision did allow the Board

to make orders in connection with disputes involving the performance of power/duties relating to *the subdivided building or limited common property*, it did not provide for the making of orders involving *common property*.

20. The Board was of the view that the orders could be made under S 101(1)(c) of the Act. The dispute in this case arose when the management corporation was carrying out its duties under S 29 of the Act in connection with the control, management and administration of the car parks which were common property. The car parks were in B1, B2 and B3 of SRR and were part of *the subdivided building*.

Applicant's Submissions:

21. It was the submission of Khoo that the MCST should be ordered to remove the wheel clamp without the need of any payment on his part and that he should be allowed to park his vehicle in the B3 car park without payment of any fees in spite of the fact that his free allocation had already been used up because of i) the absence of any relevant by-law with regard to wheel clamping; ii) there was a breach of natural justice *by not publicizing the alleged allocation*; iii) enforcing the alleged allocation inappropriately as House Rule and not a by-law; and iv) unreasonably withholding approval pursuant to the oral agreement between Khoo and Mdm Luy
22. It was submitted that there was no breach of any specific provision of the by laws passed in Oct 2010 and Oct 2011; that whilst he was a member of the management council and was present at the meeting when the decision with regard to 2 free lots was made the decision of the management council was not in the by –laws passed in 2011 and other than in the minutes of the meeting, was not published anywhere; that it was not in order for the MCST to treat the decision as a house rule; and the denial of the agreement between Khoo and Mdm Luy was an inefficient and insensible use of parking space.
23. With regard to the application for an order to repeal the by-law passed on 20/Oct/12 which was as follows:
Commercial vehicles (lorry and van) are not allowed to be parked in Basement 3 and

Commercial vehicles found parked in Basement 3 will be subject to the existing wheel clamping by laws approved in the estate.

It was the submission of Khoo that the operation of the by-laws passed was contrary to By-Law 2(2) prescribed in the Building Maintenance (Strata Management) Regulations 2005 which provides as follows:

The management corporation shall not unreasonably withhold its approval to the parking or leaving of a motor vehicle or vehicle on common property

24. In addition to the submissions on the issues there were submissions that the fees were exorbitant. The Board will not deal with these as they are not relevant to the applications in this case

Submissions of MCST:

25. Under S 29(1)(a) of the Act the management corporation has a duty to control, manage and administer common property and the car park lots in the estate are common property.
26. Khoo's vehicle had been wheel clamped in accordance with the By-laws and the House Rules of SRR. Specifically, there was no application on the part of Khoo for season parking facilities for the vehicle before the vehicle was parked in the B3 car park. Khoo had been informed to apply for season parking and it was after he failed to do so that the vehicle was wheel clamped.
27. The agreement between Khoo and Mdm Luy which was disputed cannot oust or supersede validly passed by-laws and house rules i.e. it will not allow for a subsidiary proprietor to have the use of more than two free car park lots.
28. Khoo was aware of the decision of the management council made on 20/11/10 and was aware that he had already used his 2 free allotments when he parked his third vehicle

29. Prior to the 17/04/12 when the vehicle was wheel clamped Khoo was aware that he was required to pay season parking charges for the vehicle.

Decision of the Board:

30. Khoo had parked a third vehicle at the B3 level car park which was dedicated for the sole use of owners/residents. The use of the car park was available to owners/residents upon purchase of season parking. Season parking facilities had not been purchased by Khoo before the vehicle was parked. Khoo was aware of the decision of the management council *to allocate 2 free lots per unit with effect from 1st January 2011* ie he was aware that he was entitled park two vehicles free of charge and he also knew that he had already used his 2 free allotments when he parked his third vehicle. When he parked his third vehicle he was advised to apply for and pay season parking fees. He did not do this and wheel clamps were applied to his vehicle. The by-laws passed on the 30/10/10 provided for the application of wheel clamps on vehicles parked in *breach any of the provisions of the Management Corporation's House Rules governing car parking*.
31. The Board is of the view that it will not be in order to order the MCST to release the vehicle notwithstanding the non-payment of parking and clamping fees.
32. With regard to Khoo's application for an order that the MCST should allow him *to utilise the unused parking lot allocated to another subsidiary proprietor, as agreed upon between Khoo and the relevant subsidiary proprietor*, the text messages and transcript submitted did not evidence such an agreement. Inter alia the relevant subsidiary proprietor Mdm Luy said:
"...if the House Rules of this condominium allow for this then I don't mind to help...As a good neighbour I want to help but if the Rules don't allow then I'm sorry there's nothing I can do...What I said was if the House rules allow then I don't mind...."
Mdm Luy was prepared to help Khoo in accordance with the House Rules.
33. No car parking lot had been allocated to Mdm Luy or any other subsidiary proprietor. The use of car parks is made available upon the application of season parking

facilities. Whilst a decision had been made by the management council to allow residents to use two car park lots free of charge it was not the case that two car park lots were assigned to each of the 173 residential unit which they could allow others to use and/or do whatever else they pleased with the lots.

34. The by-law passed on 20/Oct/12 dis-allowing the parking of commercial vehicles and wheel clamping of such at the carpark at B3 is in the view of the Board, not contrary to the By-laws prescribed in the Building Maintenance (Strata Management) Regulations 2005. Where there are 3 levels for parking of vehicles it cannot be said that prohibiting commercial vehicle from parking in one of 3 levels is an unreasonable withholding of *approval to the parking or leaving of a motor vehicle on common property*.
35. The applications in STB 9/2013 are dismissed. We will hear parties with regard to costs.

Dated this 7th day of August 2013

MR REMEDIOS FRANCIS GEORGE
Deputy President

DR LIM LAN YUAN
Member

MR CHAN EWE JIN
Member