

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

STB No. 52 of 2014

In the matter of an application under
Section 111(b) of the Building
Maintenance and Strata Management
Act in respect of the development
known as One-North Residences
(MCST Plan No. 3466)

Between

Sujit Singh Gill

... Applicant

And

MCST Plan No. 3466

...Respondent

Coram: Mr Alfonso Ang (Deputy President)
Mr Chua Koon Hoe (Member)
Mr Lim Gnee Kiang (Member)

Counsel: (1) Mr Toh Kok Seng and Mr Daniel Chen (M/s Lee & Lee) for the Applicant
(2) Mr Subramanian A. Pillai and Ms Venetia Tan (M/s Collin Ng & Partners)
for the Respondent

GROUND OF DECISION

1. The Applicant, Mr Sunjit Singh Gill, is the subsidiary proprietor of 7 One-North Gateway #XXX Singapore 138642 ("Unit").
2. The Respondent is MCST Plan No. 3466, the management corporation of the condominium building known as 7 One North Residences ("Building").

Background

3. The Applicant has resided at the Unit since 2010. He currently lives in the Unit with his wife and two young children, a daughter and a son aged four and two respectively. The Unit is on the thirteenth floor, the second highest unit in the Building.
4. On the balcony of the Applicant's strata lot, there is a waist-high glass wall which, in the Applicant's opinion, poses a potential falling hazard. Playful and active young children are likely to lean and climb over the glass wall and this may have tragic consequences.
5. On 14 January 2014, the Applicant's wife wrote to the management corporation ("MC") requesting for permission to install safety grilles on the balcony of their Unit after witnessing their daughter's attempt to lean and climb over this glass wall.
6. On 24 January 2014, the Respondent replied by way of a letter, rejecting the application on the basis that installing the grilles would affect the uniformity, integrity and appearance of the Building.
7. On 12 May 2014, legal counsel for the Applicant, M/s Lee & Lee wrote to the MCST in another attempt to persuade the Respondent to reconsider their decision. They explained the Applicant's concern was for the safety of his children and that there were grilles

designed to be less obvious which would not detract from keeping with the appearance and uniformity of the Building (“invisible” grilles). They also highlighted that under the prescribed by-law rule 5(3) in the Second Schedule of the Building Maintenance and Strata Management (Strata Titles Board) Regulations 2005 (hereinafter referred to as “Regulations 2005”), subsidiary proprietors are permitted to install structures or devices to prevent harm to children. [The Regulations 2005 are issued by the Minister for National Development under the powers conferred by S 136 of the Building Maintenance and Strata Management Act (“BMSMA”).]

8. On 28 May 2014, legal counsel for the Respondent, M/s Colin Ng & Partners responded by way of a letter, rejecting the Applicant’s request for the second time with the same reasons given. They maintained that the installation of grilles would detract from the uniform and unique appearance of the Building and proposed that the Applicant install the said grilles behind his balcony door (i.e. at the edge of the living room before the balcony) to restrict his children’s access to the balcony.
9. The Applicant filed this application before the Board on 4 July 2014 and his application is made under S 111(b) BMSMA which states:

Where, pursuant to an application by a subsidiary proprietor, a Board considers that the management corporation or subsidiary management corporation to which the application relates –

(b) has unreasonably refused to authorise under section 37(4) any improvement in or upon a lot which affects the appearance of any building comprised in the strata title plan,

the Board may make an order that the management corporation or subsidiary management corporation, as the case may be, consents to the proposal.

10. In his application, the Applicant sought an order that the Respondent consents to the Applicant's application to install "invisible" safety grilles at the balcony of his Unit and to pay the costs of this application.
11. The Applicant submits that there are two issues for the Board's consideration:
 - a. Whether the Respondent had been unreasonable in refusing to authorise the Applicant's proposed installation of "invisible" grilles at the balcony of his Unit, pursuant to S 111(b) BMSMA; and
 - b. Whether the Respondent can prevent the Applicant from installing the said grilles to prevent harm to his children, provided under the prescribed by-law rule 5(3) of Regulations 2005.
12. The Respondent submits that the application should be dismissed for three reasons:
 - a. The fixed tensile grilles do not conform strictly to the approved design, color scheme, material, proportion and type of grille specified by the management under One North Residences ("ONR") by-law 4.0 8.2; and it does not keep with the appearance of the rest of the Building provided in ONR's by-law 7.0 5(4);
 - b. The fixed tensile grilles are a permanent barrier and not a locking or safety device. Furthermore, the tensile grilles pose a safety concern; and
 - c. The fixed tensile grilles obstruct the Respondent from carrying out their duty to maintain the glass wall (which is common property) and from keeping them in a state of good and serviceable repair for the benefit of all the subsidiary proprietors required under the BMSMA.

Considerations

13. In considering whether the Respondent had unreasonably refused the Applicant's request, the following are relevant:
- a. Whether the installation of "invisible" grilles on the Applicant's balcony would detract from the appearance and structural integrity of the Building, contrary to S 37(4) BMSMA;
 - b. Whether the installation of the "invisible" grilles on the balcony constitutes an alteration on common property of the Building, therefore making it reasonable for the MC to refuse the Applicant's request;
 - c. Whether the by-laws of ONR are applicable to this case; and
 - d. Whether the height of the balcony glass wall is sufficiently tall, thus making it necessary for any grilles to be installed on the balcony.

Applicant's Case

A. Minimal Effect on Appearance and Structural Integrity of the Building

14. S 37(4) BMSMA provides:

"A management corporation may, at the request of a subsidiary proprietor of any lot comprised in its strata title plan and upon such terms as it considers appropriate, authorise the subsidiary proprietor to effect any improvement in or upon his lot referred to in subsection (3) if the management corporation is satisfied that the improvement in or upon the lot –

(a) will not detract from the appearance of any of the buildings comprised in the strata title plan or will be in keeping with the rest of the building; and

(b) will not affect the structural integrity of any of the buildings comprised in the strata title plan.

(emphasis added)

15. Under this provision, any improvement or alteration to the property must not detract from the appearance of the buildings AND must not affect the structural integrity of the buildings.
16. The Applicant has gone through the proper channel and procedure to seek permission from the MC to install safety grilles on his balcony. Mindful that the grilles may affect the appearance and uniformity of the Building, the Applicant has chosen a design and structure that differs from the conventional aluminum grilles.
17. The proposed “invisible” grille structure sold by Legate Enterprises Pte Ltd is in the form of closely spaced steel wires stretched taut vertically by tensioning and anchored at the top and bottom of the balcony. The grilles will be mounted onto the concrete kerb very close to the glass wall, on the Applicant’s side of the common boundary within the Unit’s strata lot.
18. The “invisible” grilles have been increasingly popular in several other condominiums and HDB units. They have been installed in condominium developments such as “Waterview” and “The Minton”. Photographic evidence tendered at the hearing shows that such grilles are almost invisible from a distance and do not detract significantly from the appearance of the rest of the buildings in the complex.

B. Alteration on Common Property

19. The Respondent contends that the area which the Applicant intends to install the grilles is common property and therefore, would affect his ability to maintain the common property. However, based on the Strata Plan, the common boundary runs along the centre of all the exterior walls. The balcony glass wall is common property with its responsibility shared by the MCST and the Applicant.
20. The exterior face of the glass wall is part of the façade of the Building while the interior face marks the edge of the Applicant's useable floor space on his strata lot. Therefore, the MCST still bears the responsibility for maintaining the exterior face of the balcony glass wall.
21. The proposed grilles would not be mounted on the balcony glass wall but onto the concrete kerb which is within the Applicant's strata lot.

C. By-Laws of ONR

22. The Respondent contends that the by-laws of ONR have been in force as House Rules and therefore, are binding on the Applicant. The by-laws of ONR expressly prohibit installation of grilles on balconies under rule 7.0 5(3)(d). However, the Applicant argues that under S 32(4) BMSMA, any by-laws made shall *take effect only when they are so lodged* in this case, they were lodged on 15 July 2014. Thus, the Applicant could not have been aware of them when he purchased his Unit in 2010, or when he first applied to the MC for permission to install the grilles in January 2014, or even when this application to the Board was filed on 4 July 2014.
23. While the MC is permitted to pass additional by-laws, they must not be inconsistent with the prescribed by-laws of Regulations 2005 which permit subsidiary proprietors to install safety structures or devices to prevent harm to children.

D. Height of Balcony Glass Wall

24. The Applicant does not dispute that his balcony glass wall meets the requisite Building and Construction Authority (“BCA”) standards. From on-site measurements submitted by the Applicant, the glass wall is 895mm tall measured from the last toehold which is at the top of the concrete kerb whereas the corresponding prescribed minimum is 850mm. The height from the original finished floor to the top of the glass wall is 1,015mm, just half an inch higher than the 1,000mm required by the regulations.
25. By decking over the whole balcony including the recessed planter box, the Applicant has raised the finished floor by 60mm (about two and a half inches) on all three sides of the balcony and also caused the long side of the waist-high glass wall to be even easier to reach by children. It is noted that on the two short sides of the balcony, there is no planter box. It is also noted that all strata lots below the Applicant’s Unit have their planter boxes covered up. It is not clear whether this was done individually by the owners of each strata lot or by the developer.
26. However, from the point of safety from falling for active and playful children, the critical measurement is the height above the last toehold and this remains unchanged by the decking, being 895mm on all three sides of the balcony.
27. Concerned for the safety of his children, the Applicant has proposed to install grilles to prevent his children from climbing and falling over the waist-high wall. He has testified that even if there was no decking, he would still make the application because his daughter had been seen using the existing concrete kerb as a foothold and attempting to climb the waist-high wall. This risk is ever-present with or without the decking or planter box because the height from the kerb to the top of the glass wall is the same throughout the three lengths of balcony wall and is only 895mm, even less than the one meter required for a wall measured from the finished floor level.

28. Basically, the waist-height of the balcony glass wall is not sufficient to deter active and playful children from climbing over it, notwithstanding the fact that the height of the glass wall has exceeded BCA standards. This poses an unacceptable safety risk to the Applicant as a parent of young children.

29. The prescribed by-law in rule 5(3)(c) of Regulations 2005 states:-

This by-law (referring to the by-law which prohibits alteration to common property

without prior approval of the MC found in rule 5(1) of the same Regulations 2005) shall not prevent a subsidiary proprietor or an occupier of a lot, or a person authorised by such subsidiary proprietor or occupier from installing any structure or device to prevent harm to children.

(emphasis added)

30. The Applicant's primary reason for installing the grilles on his balcony is to ensure a safe living space for his two children (and other young children who may visit his Unit). It is not an attempt to abdicate parental responsibility but to allow his children to enjoy the benefits of the balcony without compromising on their safety.

Board's Views and Decision

A. Minimal Alteration to the Appearance of the Building

31. The Board notes that the architectural design of the Building at ONR is intended to be a fenceless and barrier-free community with an open view greenery. This is the unique selling point of the Building. It also notes that the specifications (i.e. the measurements)

of the glass wall in each unit satisfy the requisite building requirements whilst keeping with the overall innovative design of the Building.

32. On this note, the Applicant has presented evidence of “invisible” grilles installed at several other condominium complexes (such as “Waterview” and “The Minton”). This “invisible” grille structure is designed to be less visible than the conventional aluminum grilles and therefore, have minimal effect on altering structural integrity and façade of the building as a whole.
33. From the evidence presented, the Board agrees that the “invisible” grilles, unlike the conventional grilles, are less obvious and less intrusive to the overall appearance of the building. It appears to be a neat solution and can be fine-tuned to suit the Building’s appearance of ONR, if necessary. The proposed grilles can hardly be seen from a distance and the Board acknowledges that other condominium developments have permitted the installation of such grilles.
34. The Board is satisfied that the proposed “invisible” grilles, with their straight and simple line forms, will have a minimal impact on the appearance of the Building, and will hardly be noticeable by the average observer.
35. The grilles are proposed for the Applicant’s own balcony and not for the entire Building at ONR. The Building at ONR will still retain its open and fenceless appearance as a whole.
36. Furthermore, it is the Board’s view that any everyday non-permanent object placed on the balcony of a strata lot will almost certainly catch the eye of an average reasonable observer, more noticeably so than the proposed grille structure.
37. In regards to the suitability and safety of the grilles if they are so installed, it is for the Applicant to determine and be responsible for it and not the Respondent’s responsibility.

The Board is satisfied that the proposed grille structure is within the ambit of the prescribed by-law rule 5(3) of Regulations 2005.

38. The Board recognises that S 37(4) BMSMA purports to prevent subsidiary proprietors from making alterations and improvements to their respective lots in order to maintain a uniformed appearance and façade with the rest of the Building. It also ensures that subsidiary proprietors adhere to the structural design of the Building.
39. However, this must be interpreted together with the prescribed by-laws of Regulations 2005 which permit subsidiary proprietors to install any safety device or structure (such as safety grilles on their balcony) if they are intended to prevent harm to children (rule 5(3)(c) of Regulations 2005).
40. Under rule 5(4) of Regulations 2005, the Respondent is entitled to prescribe guidelines for the installation of any safety device or structure in order that they are installed in a competent and proper manner. There is however no evidence that the Respondent has done so. It has not drawn up any house rules, by-laws or prescribed any guidelines under this rule that will enable the installation of the type of structure or device to prevent harm to children as envisaged in rule 5(3)(c) of the Regulations.
41. The Respondent submits that ONR's by-law 4.0 8.2 is applicable. This by-law (as approved at the Fourth Annual General Meeting held on 21 June 2014) states:-

"Installation of grilles to windows and / or sliding doors, where approved, shall conform strictly to the approved design, color scheme, material, proportion and type of grille specified by the Management. Installation of such grilles shall be behind the windows and / or sliding doors on the internal side of the doors and / or windows."

42. However, upon a closer reading of ONR's by-law, it is the Board's view that this by-law does not apply to the case of grilles installed at balcony walls pursuant to the prescribed by-law rule 5(3) of Regulations 2005. The above ONR by-law refers only to installation of grilles to windows and / or sliding doors and therefore, not applicable to this case.

B. No Viable Alternatives from the Respondent

43. The Board finds the alternative proposals from the Respondent unreasonable and not viable.
44. The first option is for the Applicant to install lockable sliding grilles behind the balcony doors (i.e. at the edge of the living room before the balcony). This will allow the Applicant to enjoy the cool and natural breeze from the balcony while keeping his children away from the balcony and the timber decking on his balcony.
45. The Respondent's insistence that the grilles must be installed behind the balcony doors before the start of the balcony is however inconsistent with and ignores the intentions of the prescribed by-laws, rules 5(3) and 5(4) of Regulations 2005. Moreover, installing the grilles before the balcony will unduly prevent the Applicant from enjoying the full benefits of his balcony.
46. The Respondent also proposes for the Applicant to remove the timber decking on his balcony. This would restore the original height of the glass wall (which is in excess of the BCA's requirements). These are not practical solutions since removing the timber decks or placing potted plants are not long term solutions to the safety hazards envisaged by the Applicant for his young children.
47. The Respondent also gives other reasons for refusing the application – that allowing the installation of grilles will set an undesirable precedent; and the grilles will alter the

unique characteristic of the Building at ONR, leading to an adverse effect on the value of the estate.

48. The Board finds these reasons by the Respondent far-fetched and without evidential support, do not merit further consideration.

C. Safety of Children Paramount Regardless of and Overrides Other Concerns

49. In this case, the proposed installation of grilles, even if it is an alteration on common property, is not an unreasonable request since it concerns the safety of the Applicant's children. The Board is of the view that the children's safety must be paramount, even if the grilles may affect the appearance of the Building or if they constitute an alteration on common property and therefore are prohibited under ONR's by-laws.
50. Given that the overriding concern is for the children's safety, the Board is of the view that the Respondent should be supportive of like applications made to the MC regarding the installation of safety device or structure (such as grilles on balconies). The MC should provide guidelines in regards to the installation of such safety device or structure to ensure that they keep to the rest of the appearance of the Building.
51. Having grilles installed is not an attempt to abdicate parental responsibility. Instead, it serves as a safety precaution to protect children from leaning or climbing over the balcony glass wall. After all, it only takes a split second for a child to climb and fall over the glass especially since it is only waist-high and easy to climb over.
52. The Board notes that the height of the balcony glass balustrades was reduced by the Applicant's own doing as a result of the timber decking. However, ordering its removal to restore the original height of the balcony glass wall does not resolve the Applicant's concerns.

53. The Board is satisfied, based on the strata title plan and Unit's floor plan that the Applicant's strata lot extends all the way to the edge of the balcony. Furthermore, the Board is of the view that the planter box on the Applicant's balcony is not capable of being used and enjoyed by occupiers from two or more lots and therefore, should not be regarded as "common property" since it fails to satisfy the definition in S 2(2) BMSMA. The proposed grilles will be mounted on the concrete kerb close to the glass wall and within the Applicant's side of his Unit's strata lot.
54. It is immaterial whether the additional by-laws of One North Residences are binding on the Applicant since underlying rules and prescribed by-laws found in the BMSMA and Regulations 2005 are relevant to this application and will bind both parties.

Conclusion

55. The Board finds the Respondent has been unreasonably difficult with the Applicant's request. It appears that the Respondent's primary concern is with maintaining the unique characteristics and façade of ONR and its unproven belief that the value of the estate will be adversely affected if it authorises the installation of grilles at the Applicant's balcony.
56. As a result, the Respondent has ignored the concerns for the children's safety as specifically provided under the prescribed by-law rule 5(3) of Regulations 2005 even though it is fully aware of its legislative purpose as clarified by the BCA and URA.
57. The prescribed by-laws rules 5(1) to 5(5) of Regulations 2005, when read as a whole, serve to authorise subsidiary proprietors to install and to prevent the MCST from refusing to allow subsidiary proprietors (like the Applicant in this case) to install safety structures such as grilles, even if such installation is mounted on common property and even if it alters the appearance and façade of the building.

58. In this case, the Respondent has put its own interest ahead of the children's safety and such behavior should not be supported and should be discouraged.
59. In view of all of the above, the Board orders that:-
- a. The Respondent permits the Applicant to install the "invisible" safety grilles at the balcony of his Unit at the Applicant's own costs; and
 - b. The Board will hear parties on costs.

Dated on 21ST day of January 2015

MR ALFONSO ANG

Deputy President

MR CHUA KOON HOE

Member

MR LIM GNEE KIANG

Member

