BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT

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

STB No. 40 of 2015

In the matter of an application under **Section 101** and/or **111** and **118** of the Building Maintenance and Strata Management Act in respect of the development known as **Ardmore Park Condominium** (MCST Plan No. 2645)

Between

Sit Kwong Lam

… Applicant

And

The MCST Plan No. 2645

... Respondent

Coram: Mr. Francis George Remedios
Deputy President

Panel Members: Mr. Chua Koon Hoe
Mr. Raymond Lye

Counsels:

i) Mr. Christopher Chuah
(WongPartnership LLP for the Applicant)

ii) Mr. Subramanian Pillai
(Colin Ng & Partners for the Respondent)

GROUNDS OF DECISION

Background:

1. The Applicant is the subsidiary proprietor of a penthouse unit at 15 Ardmore Park #XXX Ardmore Park Condominium. S259959. The unit comprises two (2) levels at levels 29 and 30. The Respondent is the management corporation of the condominium (the MCST).

2. Sometime in or about Nov 2011 (RB1 pg 47) the Applicant submitted an application for works to be carried out at his unit viz *Demolition of non-structural walls; Removal of unwanted existing trunking, cable trays, wires, AC ductings; Laying of new electrical, data, water, ACMV, telephony services; Erection of new walls and partitions; Replacement of doors and window panels; Laying of new wall and floor finishes; Install new ceiling, painting works & install new cabinetry.*

3. It was not stated in the application that the works were to be carried out in areas other than in the Applicant's lot. The application was approved. The completion date was 13/03/2012. Work was not completed by the due date and there were numerous applications for extension of time.

4. In Aug 2013, in the course of inspections the MCST discovered that the fixed glass panelling at two areas of the Applicant's unit had been replaced with sliding panels. Just outside the fixed panelling were balcony-like structures (ledges that were enclosed by a parapet 0.75m high). The Applicant had installed timber decking on the ledges (Work-1). The Applicant's representative was informed via an email dated 26/08/2013 (RB1 pgs 66 and 67) that what was done was unauthorised and he was requested to reinstate the fixed glass panelling. Inter alia clause 3.5 of the by-laws (*Residents shall not without written consent of the Management carry out any alterations or install any fittings or fixtures that deviate from the approved plans and specifications)* of the condominium was drawn to his attention. Via an email dated 27/08/12 (RB1 pg 66) the Applicant's representative replied that the Applicant had *"…just loose lay of the wooden flooring…"* on the *"balconies"* because the *existing floor tiles* were discoloured, uneven and cracked and were affecting the interior decoration. He further informed that the contractor had been instructed to seal off the sliding doors.

5. On 28/08/13 the Applicant was informed (RB1 pg 65) to submit a formal application to install timber on the *"balconies"* before the management council met on 14/09/13. On 29/08/13 the MCST was informed that a formal application (RB1 pg 69) would be submitted and that the Applicant would remove the *timber boarding* if approval was not given by council. On 03/09/13 (RB1 pg 70) an application, addressed to *The Management Council (MCST Plan 2645)* for approval was submitted and on 16/09/13 (RB1 pg 74) the Applicant was informed that it was the view of the management council that the application was an application for exclusive use of common property and the council had no jurisdiction to grant this. The Applicant was advised to sponsor a 90% resolution at the next AGM (S 33(1)(c) of the Building Maintenance and Strata Management Act Cap 30C (the Act) provides that a management corporation can pursuant to a 90% resolution confer on a subsidiary proprietor exclusive use and enjoyment of, or special privileges in respect of the whole or any part of common property for a period exceeding 3 years).

6. On or about 05/05/2014 the MCST's representative discovered that the Applicant had installed timber decking on the flat roof at level 30 outside his unit (Work-2). The timber decking covered the entire flat roof including the floor trap and drainage system. The flat roof was accessible to the Applicant via the back door of the kitchen of his lot. It was also accessible to all subsidiary proprietors in the condominium via a common staircase. According to the Applicant, *parquet flooring* had been installed because *"…the original floor was very dirty and slippery whenever it was wet…"* (RB1 pg 104).

7. On 12/05/2014 the MCST discovered that the Applicant had installed an air-conditioning vent on the wall of the common property (Work-3). The Applicant had installed a ventilation unit because *"…Ardmore Park had been built more than 10 years and there was no adequate ventilation system in the penthouse. In consideration of the health and well-being of the residents and to avoid any possible leakage of the aircon system a small ventilation unit was installed…"* (RB1 pg 104).

8. On or about 28/05/2014 (RB1 pg 98) when the structures had yet to be removed, the Applicant was informed that *"…The Management shall have full right and*

authority to remove/demolish all unauthorised works after giving 14 days' notice….". Following this, the Applicant's representative replied to say that the works were in *"…a secluded place where nobody else had access save for the Subsidiary Proprietor of #XXX"* and that the Applicant was in the process of *"…tabling a proposal under S 34 of the BMSMA for the conversion of the common area to private usage…"* (RB1 pg 104). The Applicant was informed that conversion of common areas to private usage would require approval from the general body and that he should requisition for a general meeting for the general body of subsidiary proprietors to consider and pass the appropriate resolutions to allow the Applicant to retain the unauthorised structures. The Applicant did not do this and on 15/07/2014 took the position (RB1 pg 130) that the unauthorised structures were not installed on common property and/or common areas and did not affect the external facade, structural integrity and/or the interests of the management corporation or other subsidiary proprietors and proposed that the Applicant be allowed to give an undertaking to maintain and service the structures at his own cost.

9. On 29/08/2014 (RB1 pg 132) the Applicant was inter alia informed *"…that if the unauthorised structures are not removed within 14 days the MCST will take such steps as necessary to remove the said structures from the common area…."*.

10. On 24/09/2014 (RB1 pg 137) the Applicant via solicitors inter alia informed the MCST *"…Your assertion that the structures are unauthorised structures in common areas is without basis…"*.

11. On 11/11/2014 the MCST via solicitors set out its position that the unauthorised structures were on common property and/or common areas. An offer was made by the Applicant to submit the dispute to mediation at the Singapore Mediation Centre. The MCST did not agree as it was of the view that it was for the general body to decide whether or not to allow the Applicant to the use of the common property in the manner that he had done.

12. At the AGM on 25/04/2015 the Applicant tabled a motion for the meeting to, by way of a 90% resolution make a by-law conferring on him exclusive use and enjoyment and/or special privileges on proposed terms and conditions in respect

of the common property where the works had been carried out for more than 3 years; alternatively by way of a 75% resolution for less than 3 years; alternatively by way of an ordinary resolution for a period not exceeding one year. The Applicant did not succeed on any of his three motions.

13. On 30/06/2015 the Applicant filed this Application in STB 40/2015 and applied for the following orders to be made by the Board:

1. *A declaration pursuant to S 101(1)(c) of the BMSMA that the Applicant is not in breach of his duty under the by-laws relating to the subdivided building by virtue of the installation of the following structures:*

(a) *the timber decking located at the balconies/planter boxes of Tower 15 Unit #XXX at level 29 within the SP's side of the lot; and/or*

(b) *the air-conditioning ventilation unit located along the exterior surface of the wall enclosing Tower 15 Unit #XXX at level 30; and/or*

(c) *the timber decking located at the open deck of level 30 outside Tower 15 Unit #XXX, (collectively the "Installations");*

2. *In the alternative to Prayer 1 above:*

(a) *a declaration that the Installations did not amount to an exclusive use and enjoyment of or the conferment of special privileges in respect of common property within the meaning of S 33 of the BMSMA;*

(b) *an order pursuant to S 111(a) of the BMSMA that the Respondent consents to the Applicant's proposal to effect alterations to the common property by way of the Installations;*

(c) *a declaration pursuant to S 101(1)(c) read with S 101(4) of the BMSMA that the Respondent has failed to exercise its powers under S 37(4) of the BMSMA;*

(d) *an order pursuant to S 111(b) of the BMSMA that the Respondent authorise the Installations as improvement(s) in or upon the Applicant's lot that do not detract from the appearance nor affect the structural integrity of any building comprised in the strata title plan*

under S 37(4) of the BMSMA on such terms as the Applicant has proposed and/or as the Honourable Board may impose.

14. It can be noted that except for the prayers in 2(b) and 2(d) the Applicant was seeking for declaratory orders. The Board was aware that such orders had never been made by any Board and was not satisfied that it had the power to make such an order. Accordingly, parties were directed to make the necessary submissions as to whether the Board had the power to make such an order.

15. It was the submission of the Applicant that in view of the wording of S 101 of the Building Maintenance and Strata Management Act Cap 30C (the Act), declaratory orders could be made. On the part of the MCST, it was submitted that a Board is a creature of statute and there are no provisions in the Act (unlike S 31(2(b) of the State Courts Act. Cap 321 and Order 15 Rule 16 of the Rules of Court) empowering a Board to make such an order. The MCST also referred to *Mark Wheeler v Management Corporation Strata Title Plan 751 and Anor [2003] SGSTB 5 (Mark Wheeler)* where the Board in that case had pronounced that *"…the Board has no jurisdiction to make a declaratory judgement…"* With regard to S 119(2) of the Act which refers to declaratory orders made by a Board, it was submitted that the section had to be read in conjunction with SS 103, 104 and 106 of the Act.

16. Before deciding if the Board does in fact have the power to make a declaratory order, the Board considered that it would be in order to determine if there was any merit in the applications *i.e*. is the Applicant correct in his assertions. If so, then before the orders sought can be made, the Board would have to determine if there is in fact a power for the Board to make the orders.

17. It was the case for the Applicant that the orders applied for should be made in his favour because works had not been carried out on common property and there was no breach of the applicable by-laws. It was the case for the MCST that unauthorised works had been carried out on common property/common areas in breach of the applicable by-laws. The applicable by-laws are By-Law 5 of the prescribed by-laws in The Building Maintenance (Strata Management) Regulations 2005 and Clauses 2, 4 and 8 of by-laws passed by MCST under S 32(3) of the Act (the ABL).

18. By-law 5 of the prescribed by-laws is as follows:

5.—(1) A subsidiary proprietor or an occupier 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 prior written approval of the management corporation.

5.—(3) This by-law shall not prevent a subsidiary proprietor or an occupier of a lot, or a person authorised by such subsidiary proprietor or occupier ***from installing*** *— (a) any locking or other safety device for protection of the subsidiary proprietor or occupier's lot against intruders or to improve safety within the lot; (b) any screen or other device to prevent entry of animals or insects on the lot; (c) any structure or device to prevent harm to children; or (d) any device used to affix decorative items to the internal surfaces of walls in the subsidiary proprietor's or occupier's lot.*

19. Clause 8.1.1 of the ABL is as follows:

The subsidiary proprietor shall submit to the Management the prescribed application form for renovation works together with a detailed work schedule at least 10 working days prior to the commencement of any renovation works.

20. Clause 8.2.5 of the ABL is as follows*:*

The subsidiary proprietor and his contractor can only carry out the type of work specified in the approval letter given by the Management.

Prayer 1:

Was there a breach of the applicable by-laws

21. It was the submission of the Applicant that he was not in breach of By-law 5 because works had not been carried out on common property. In the event that works had been carried out on common property, it was permissible by virtue of By-law 5(3) for the works to have been carried out.

Work-1:

Section 2(1) of the Act defines common property as follows:

2*.—(1) In this Act, unless the context otherwise requires —*

…

"common property", subject to subsection (9), means —

(a) in relation to any land and building comprised or to be comprised in a strata title plan, such part of the land and building —

(i) not comprised in any lot or proposed lot in that strata title plan; and

(ii) used or capable of being used or enjoyed by occupiers of 2 or more lots or proposed lots; or

(b) in relation to any other land and building, such part of the land and building –

(i) not comprised in any non-strata lot; and

(ii) used or capable of being used or enjoyed by occupiers of 2 or more non-strata lots within that land or building.

22. Accordingly two conditions have to be satisfied before any land and building comprised in a strata title plan can fall within the definition of common property: (a) it is not comprised in any lot or proposed lot in that strata title plan; and (b) it is used or capable of being used or enjoyed by occupiers of two or more lots.

23. With regard to Work-1 there is no access to the two areas. It is on the outside of, initially fixed glass panelling but now it is on the outside of sealed glass doors. Whilst the areas are not comprised in any lot (it is not in dispute that it is not in the Applicant's lot) it does not appear that anyone can access and physically use and enjoy the two areas. Accordingly, it was the submission of the Applicant that the areas are not common property.

24. The MCST submitted that in the certified strata title plans the two areas were marked as common property of the estate and had fallen within the MCST's purview since the MCST was constituted. There was however no submission as to whether the areas were used or were capable of being used or enjoyed by occupiers of 2 or more lots.

25. The Oxford Learners Dictionary defines "use" as "*take, hold or deploy (something) as a means of accomplishing or achieving something*". "Enjoy" is defined as "*to get pleasure from something*". The Board noted that the two areas in Work-1 i.e. ledge with low parapet wall is a feature of the building. It is not known whether such feature is provided at other floors or other parts of the building. Its designed purpose is subject to speculation. In any case, it is obvious that if it is removed, it will affect the appearance of the building. It is part and parcel of the fabric of the building and contributes to the character and appearance. Hence its presence provides for quiet enjoyment of the feature to all subsidiary proprietors. It is also obvious that it serves as a shelter or sunshade to the unit/units below it.

26. In the case of *Management Corporation Strata Title Plan No 367 v Lee Siew Yuen and Another* [2014] SGHC 161 Tan Siong Thye J inter alia noted that whilst the current definition of common property in the Act, which is a simplified definition when compared with the definition before the amendment in 2005, Parliament did not intend to change the definition. At paragraph 33 of the judgement the learned judge said

''The purpose behind the definition of common property under s 2(1) of the BMSMA is to exclude from common property those objects that are solely constructed within the subsidiary proprietor's unit for the enjoyment of the subsidiary proprietor only. This is consistent with the term ''common'', which indicates that the particular property must serve a common purpose.''

27. There was no dispute that the two areas are marked as common property in the certified strata title plans and whilst subsidiary proprietors cannot access the two areas, the areas are in fact used and enjoyed by all the subsidiary proprietors. The two areas are common property.

28. In Clause 2(g) of the ABL, *"common areas"* is defined as *all the area in the condominium with the exception of strata lots.* The two areas in Work-1 were not in the Applicant's lot and in accordance with the definition of *"common areas"* they were in the common areas of the condominium. It is not clear if the Applicant is disputing that there was a breach of the Clause 8 of the Additional By-laws when works were carried out in the two areas. It was however the

submission of the Applicant that the provisions of the ABL were inconsistent with the provisions of the Act and the BMSMR and should be disregarded. It was submitted that when there has not been a breach in connection with common property under the Act or the prescribed by-laws there cannot be a liability under the ABL in connection with *"common areas"* when the common areas are not "*common property*" under the Act.

29. Whilst the definition of *common areas* in ABL is not the same as the definition of *common property* in the Act, the Board cannot find that by-laws in connection with *common areas* are inconsistent with the Act. Under S 32 (3) of the Act *"…a management corporation may…make by-laws for the purpose of controlling and managing the use or enjoyment of the parcel comprised in the strata title plan…."* *i.e.* by-laws can be made for the purpose of controlling and managing all the areas of the estate. This would include common property and all other parts of the estate. By-laws are statutorily constituted contracts between the management corporation and the subsidiary proprietors and between the subsidiary proprietors inter se (*Choo Kok Lin v MCST Plan 2405* [2005] SGHC 144) It is also provided in S 33(6) of the Act that prescribed by-laws and by-laws made under S 33 *"…bind the management corporation and the subsidiary …as if the by-laws – (a) had been signed and sealed by the management corporation and each subsidiary proprietor…; and (b) contained mutual covenants to observe comply and perform all the provisions of the by-laws".* The Board does not agree that the ABL are inconsistent with the Act and should be disregarded. It was also the submission of the Applicant that he had complied with Clause 8.1.1 because an application for permission to carry out renovation works had been submitted. Whilst this is true, the application submitted and approved in Nov 2011 was not for work to be done outside of the Applicant's lot. An application for approval of the works in Work-1 was submitted on 03/09/2013 after the MCST became aware of the works but the application was not approved.

30. It is the finding of the Board that there was a breach of Clause 8.1.1 and 8.2.5 of the ABL when Work-1 was carried out.

31. Work-2 and Work 3 were carried out on the flat roof outside of the Applicant's lot and on the outside wall of Tower 15. It is not in dispute that the flat roof is accessible to all subsidiary proprietors of the estate via a common staircase. It was submitted by the Applicant that even though the flat roof and the outside wall can be used or was capable of being used or enjoyed by the occupiers of 2 or more units the areas were not common property because they were not meant for common usage.

32. The two areas are not comprised in any lot or proposed lot in the strata title plan and are used or capable of being used or enjoyed by the occupiers of 2 or more lots. The Act does not require that property must be *"meant for common usage"* before it can be considered to be common property. In the case of *Re Faber Garden (Strata Titles Plan N0 1047*) [1993] SGSTB 1 the Board had agreed with a submission *"…that there has to be present the ingredient of central or common usage before a property is categorised as common property…"*. This was in the context of deciding that a water heater and storage tank that was supplied by the developer for the exclusive use of an apartment and affixed on the roof of the apartment was not common property. The finding of the Board in that case is not applicable to the case at hand. There is also no merit in the submission that the areas were not meant for common usage as there was no evidence that the two areas in Work-2 and Work-3 are not meant for common usage.

33. The two areas in Work-2 and Work-3 are common property.

Was there a breach of duty under the by-laws when the works were carried out?

34. It is clear that a subsidiary proprietor is allowed to install on common property any locking or safety devices for *protection* of his lot against intruders*;* or *to improve safety* within his lot. The subsidiary proprietor is also allowed to install any structure or device to prevent *harm to children.*

35. In the Oxford Advanced Learner's Dictionary a *"device"* is defined as *"an object or a piece of equipment that has been designed to do a particular job"*. A locking or safety device in By-law 5(3) of the prescribed by-laws would be an object or a piece of equipment that has been designed for or can be used for the protection

of the subsidiary proprietor's lot against intruders or improve safety within the lot or prevent harm to children.

36. It was the submission of the Applicant that the aircon ventilation unit and timber flooring were erected in the interests of the Applicant's or occupiers' welfare, health and/or safety. It was also the submission of the Applicant that his children had **r**espiratory tract allergies and the installation of the aircon ventilation unit was necessary to promote cleaner air circulation within his unit.

37. As noted above, the by-law allows a subsidiary proprietor to install a locking or safety device for the *protection* against intruders or improve safety within the lot. Whilst timber flooring may prevent floors from becoming overly slippery when wet and an aircon and ventilation system can improve air quality the Board cannot find that the aircon ventilation unit and timber flooring are locking or safety devices for the protection of the Applicant's lot against intruders. They are also not devices that could improve safety within the Applicant's lot.

38. The by-law allows a subsidiary proprietor to install a safety device *to prevent harm* to his children. Whilst an air-con and ventilation system can improve air quality, the Board cannot find that the air-con ventilation unit and timber flooring on the flat roof are safety devices installed to *prevent harm* to the children.

39. As in the case of Work-1 the Applicant had not submitted an application for renovation works together with a detailed work schedule prior to the commencement of the works in Work-2 and Work-3.

40. It is the finding of the Board that there was a breach of By-law 5 of the prescribed by-laws and Clause 8.1.1 and 8.2.5 of the ABL when the works in Work-2 and Work-3 were carried out.

Prayer 2(a):

Did the works result in an exclusive use and enjoyment of or the conferment of special privileges in respect of common property within the meaning of S 33 of the Act

41. The submission of the Applicant was that there was in this case no need for a by-law under S 33 of the Act to be passed because there was no exclusive use and enjoyment of the areas where the works had been carried out and he has also not been conferred any special privileges in respect of the areas.

42. S 33 of the Act provides that a management corporation can, with the written consent of the subsidiary proprietor of a lot, make a by-law conferring upon the subsidiary proprietors the exclusive use and enjoyment or grant special privileges in respect of the whole or any part of the common property upon conditions (including payment of money). For a period not exceeding 1 year, by way of an ordinary resolution; for a period exceeding 1 year but not exceeding 3 years, by way of a special resolution; and for a period exceeding 3 years, by way of a 90% resolution. The by-law must also provide for the management corporation to be responsible for carrying out its duties under S 29(1) of the Act *i.e.* controlling, managing, administering and maintaining the common property or provide for the subsidiary proprietor to be responsible for the duties of the management corporation.

43. Whilst a finding can be made that there was no exclusive use and enjoyment or conferment of special privileges with regard to Work-1, and Work-2 – because, with regard to Work-1 all other SPs including the Applicant could not access the area after the sliding panels had been sealed; and with regard to the area in Work-2, all SPs including the Applicant could access, use and enjoy the area – the same cannot be said for the area in Work-3.

44. It was the submission of the Applicant that the fact that the ventilation unit was installed along the exterior surface of the wall did not prevent the use of the wall by other occupiers or subsidiary proprietors.

45. In the case of *Mark Wheeler v The Management Corporation Strata Title Plan No 751 and Another* [2003] SGSTB 5 the subsidiary proprietor had installed a retractable awning/canopy at the balcony of the front entrance of his unit. The Board in that case was obliged to consider whether the putting up of the retractable canopy was exclusive use of common property. The Board, after inter alia referring to *"Strata Title Management and the Law'* by Alex Ilkin where the

author cited that installation of an air conditioner in the wall of the common property and enclosing a balcony as examples of having exclusive use of common property, found that the installation of the awning amounted to having exclusive use of common property.

46. The installation of the air-con vent on the wall would prevent the use of the portion of the wall where it was installed from being used and enjoyed by other occupiers and subsidiary proprietors. The management corporation whose duty it is, under S 29(1)(2) of the Act to properly maintain and keep in a state of good and serviceable repair (including where reasonably necessary renew or replace the whole or part thereof) common property would not be able to do the necessary with regard to that part of the wall where the air-con vent was installed.

47. It is the finding of the Board that there was exclusive use and enjoyment of or the conferment of special privileges in respect of common property within the meaning of S 33 of the Act.

Prayer 2(b):

Application for an order under S 111(a) of the Act

48. S 111(a) of the Act is as follows:

Where pursuant to an application by a subsidiary proprietor, a Board considers that a management corporation…(a) has unreasonably refused to consent to a proposal by that subsidiary proprietor to effect alterations to common property…the Board may make an order that the management corporation consents to the proposal.

49. It was the submission of the Applicant that he had made *"…various attempts to propose terms and conditions relating to the installations…"* and the Respondent had *"…unreasonably refused to consider and consent to the proposals…".*

50. It was the submission of the MCST that the *"…clear meaning of S 111(a) is prospective in nature. The provision contemplates a proposal by the subsidiary*

proprietor to the MCST to effect an alteration or addition onto the common property of the estate…".

51. The facts are that the MCST had discovered that the Applicant had carried out the works in Work-1, Work-2, and Work-3 without first submitting an application for the works to be done and without having obtained any approval from the MCST. Whilst the Applicant had submitted an application in connection with Work-1 after the work had been carried out the application was not approved because the MCST considered that the management council did not have the jurisdiction and power to approve the application. With regard to the works in Work-2 and Work-3 the Applicant had made proposals to be allowed to retain what had been done but there were no applications made for the carrying out of the works. In connection with the proposals to retain the works, there was no evidence that the MCST did not agree because the MCST did not approve or was in any way against what had been done. The management council did not agree to the proposals because they were of the view that they did not have the jurisdiction or power to agree.

52. It was also the submission of the Applicant that the MCST was wrong when the MCST did not agree to the proposals on the basis that the MCST did not have the jurisdiction and power to agree because under S 58(1) and S 58(4) of the Act the management council is not prohibited from and has the power to decide on any matter *which only required an ordinary resolution such as the creation of a by-law to grant exclusive use of common property for a period not exceeding 1 year.*

53. Until the AGM in April 2015 when the meeting was called upon to consider a motion in connection for a period not exceeding one year after motions in connection with exclusive use for a period exceeding 3 years and a period not exceeding 3 years had failed there were, in this case no applications or proposals made by the Applicant in connection with the works for exclusive use for a period not exceeding one year. There was never any mention of the period over which the Applicant was seeking to retain the works and from the correspondence between the parties it appeared to be understood that it was for

more than 3 years. On 16/09/13, the MCST had advised the Applicant to sponsor a 90% Resolution.

54. The Board is in this case not satisfied that the MCST had unreasonably refused to consent to a proposal by the Applicant to effect alterations to common property. The Board is of the view that the position taken by the management council when not agreeing to the Applicant's proposals for retention of the works was not unreasonable.

Prayer 2(c):

The application for a declaration pursuant to S 101(1)(c) read with S 101(4) of the Act

55. It was the submission of the Applicant that the MCST had refused or failed to exercise or perform its power duty or function under S 37(4) of the Act when the MCST did not authorise the works carried out by the Applicant which the Applicant contended were *"improvements upon (not in) his lot"*. It was also the submission of the Applicant that when an improvement is made *"in respect of a lot"* it is an improvement "*upon*" a lot.

56. It is provided under SS 37(3) and 37(4) of the Act that, except when there is authority from the management corporation, improvements in or upon a subsidiary proprietor's lot that affects the appearance of a building is prohibited. The management corporation can authorise improvements which affects the appearance of the building when the management corporation is satisfied it 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 buildings. The provisions apply in connection with improvements "in or upon" a subsidiary proprietors lot i.e. within the lot. The Board does not agree with the submission of the Applicant that the sections are applicable in connection with improvements that are not in a lot and that it will be sufficient when the improvements are "*in respect of*" a lot *i.e.* when improvements are made outside of the lot or on common property and they are made in respect of the subsidiary proprietor's lot the management corporation can authorise the improvements. The extract from *Strata Title in Singapore and Malaysia* (4th Edition LexisNexis 2012) cited by the Applicant viz

A subsidiary proprietor is also prohibited from effecting any other improvement in respect of his lot for his benefit which affects the appearance of the building unless he is authorised by the management corporation to do so and upon such terms as it considers appropriate does not support the submission of the Applicant. The extract cannot be read as *"…improvements that are not within a subsidiary proprietor's lot e.g. on common property, that do not detract from the appearance of the building can be authorised by the management corporation when they are made in respect of the subsidiary proprietor's lot…"*. If this is correct, subsidiary proprietors would be able to obtain exclusive use and enjoyment or special privileges over common property from the management corporation without the need for a by-law which is required under S 33 of the Act.

57. The Applicant in this case had also not made any request for the works to be carried out before they were discovered by the MCST. As mentioned earlier proposals to retain the works were made after they were discovered by the MCST. The authorities cited by the Applicant that S 37(4) of the Act is applicable after the works had been carried out viz *MCST Plan 1378 v Chen Ee Yueh Rachel* [1993]3 SLR(R) 630 and *MCST Plan 958 v Tay Soo Seng* [1992]3 SLR(R) 818 do not support the submission. In the Rachel Chen case the issue was whether a mandatory order sought by the MCST requiring a subsidiary proprietor to remove windows which had been installed without the consent of the management corporation should be granted. The order sought was not granted after the court had considered precedents in connection with how the equitable jurisdiction of the court should be exercised with regard to the granting of a mandatory injunction. In the Tay Soo Seng case the issue was whether a glass partition of a shop unit in a building which a subsidiary proprietor had removed and replaced with a metal roller shutter was common property. The management corporation had contended that it was and sought an order from the Board for the glass partition to be reinstated. It was the finding of the Board that the glass partition was not common property as it was situated within the subsidiary proprietor's lot. On appeal the court agreed with the finding of the Board.

58. Whilst the subsidiary proprietor in the Tay Soo Seng case had submitted plans for approval of removal of the glass panel and substitution of the roller shutter after he had been asked by the management corporation to reinstate the glass panel, no order was made by the Board for the management corporation to consent to the proposal since the glass panel was not common property.

59. The Board is of the in view that SS 37(3) and (4) are not applicable because the works were not carried out in or upon the Applicant's lot. There was no failure on the part of the MCST to exercise powers under S 37(4).

Prayer 2(d):

Application for an Order under S 111(b) of the Act

60. S 111(b) of the Act is as follows:

Where pursuant to an application by a subsidiary proprietor, a Board considers that a management corporation… (b) has unreasonably refused to authorise under S 37(4) any improvement in or upon a lot which affect the appearance of any building …the Board may make an order that the management corporation consents to the proposal.

61. It was the submission of the Applicant that the MCST had unreasonably refused to authorise proposals to effect improvements upon his lot.

62. Whist the Applicant in this case has carried out works in the common areas and on common property Work-1, Work-2 and Work-3 were not carried out in or upon his lot. The MCST had never refused to authorise proposals to effect improvements in or upon the Applicant's lot.

Conclusion

63. In view of all of our findings, the Applicant is not entitled to any of the orders sought. There is no necessity for the Board to in this case determine if the Board has the power to make a declaratory order. This will be done when the need arises.

Decision of the Board:

64. The applications in STB 40/2015 are dismissed.

65. The Applicants will pay costs fixed at $10000

Dated this 11th day of February 2016

MR REMEDIOS F.G
Deputy President

MR CHUA KOON HOE
Member

MR RAYMOND LYE
Member