

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

STB No. 65 of 2016

In the matter of an application under **Section 111** of the
Building Maintenance and Strata Management Act in
respect of the development known as **439/441/443**
Geylang Road (MCST No. 0661)

Between

SOO KEE INVESTMENT PTE LTD

... Applicant

And

THE MANAGEMENT CORPORATION STRATA PLAN
NO. 0661

... Respondent

Coram: Mr Alfonso Ang (President)
Ms Lee Lay See (Deputy President)
Mr Tan Kian Hoon (Member)

Counsel: Ms Stephanie Wee/ Mr Carl Lim (M/s Shook Lin & Bok) for the
Applicant
Mr Toh Kok Seng / Mr Daniel Chen (M/s Lee & Lee) for the
Respondent

GROUND OF DECISION

1. The Applicant, Soo Kee Investment Pte Ltd, is the subsidiary proprietor of the ground floor (the “Unit”) of the development at 439/441/443 Geylang Road Singapore 389399. The said development is a four-storey building (the “development”) located at the junction of Aljunied Road and Geylang Road.
2. The Respondent, MCST Plan No. 0661 (“MCST”) is the management corporation of the development.

BACKGROUND

3. There are only two subsidiary proprietors of the development, namely Gayland Enterprises Pte Ltd (“Gayland”) and the Applicant.
4. The development comprises ten (10) strata lots with one (1) strata lot on the ground floor and three (3) strata lots on each of the second to fourth floors. The Applicant is the subsidiary proprietor of the single strata lot on the ground floor which comprises 33.33% of the total share value of the development. Gayland holds the remaining nine (9) strata lots which amount to the remaining 66.66% of the total share value, making it the holder of majority of the share value of the development.
5. Each of the subsidiary proprietors is represented on the Management Council in the following manner:
 - (a) Chairman and Secretary: Mr Lim Keng Chong of Gayland; and
 - (b) Treasurer: Mr Lim Yong Guan, representative of the Applicant.
6. Gayland was the original developer and owner of the entire development. The ground floor of the development was initially sold to UOB Group and UOB Group subsequently sold it to the Applicant through an open tender in which Gayland was also a tenderer. The Applicant tenanted the Unit to a pawnshop and a supermarket, while Gayland operates its hotel business known as “New Cathay Hotel” out of the premises from the second to fourth floors of the development.
7. The development was built with covered footways on two (2) sides of the ground floor: one side facing Geylang Road and the other side facing Aljunied

Road. There are presently two (2) entrances to the Applicant's Unit both facing Geylang Road and there is no entrance to the Unit from the side facing Aljunied Road.

8. There is presently one (1) entrance to Gayland's units at the far end of the footway facing Aljunied Road which leads into a staircase by which the second to fourth floors are accessible.
9. The Applicant submitted proposal for renovation works to the MCST on 21 December 2011 and 7 January 2012 which involved internal works to the Unit as well as external works to the façade of the development, including:
 - i. Replacement of the existing doors to one entrance to the Applicant's unit facing Geylang Road with glass doors and roller shutters;
 - ii. Enlargement of the other existing entrance to the Applicant's unit facing Geylang Road; and
 - iii. Construction of two (2) more entrances to the Applicant's unit facing Aljunied Road.
10. It is undisputed that the proposed external works involve alterations to the common property of the development for which a motion was tabled at the annual general meeting for approval by the general body.
11. The Respondent does not oppose the internal works but opposes the external renovation works. The proposed renovation works was presented at the annual general meeting held on 4 February 2012 ("**the AGM**") and it did not gain the support or approval of Gayland. The parties could not reach a resolution on the matter and there has been a standstill which resulted in the Applicant filing this application to the Board.
12. The Applicant seeks the following orders:-

That Pursuant to Section 111 of the Building Maintenance and Strata Management Act ("**BMSMA**"), the Respondent be ordered to allow the Applicant to:-

 - i. replace the existing doors to one entrance to the Applicant's unit facing Geylang Road with glass doors and roller shutters;

- ii. enlarge the other existing entrance to the Applicant's unit facing Geylang Road; and
 - iii. construct two (2) more entrances to the Applicant's unit facing Aljunied Road.
13. The Applicant's sole witness was Mr Lim Yong Guan of Soo Kee Investment Pte Ltd and the Respondent's sole witness was its chairman and secretary, Mr Lim Keng Chong.
14. After this application was made to the Board, the Respondent agrees to prayers (i) and (ii) which is to allow the Applicant to carry out the renovation works for the side of the Applicant's Unit facing Geylang Road. Therefore, the remaining prayer for the Board to decide is whether the Applicant should be allowed to construct the 2 entrances to the Applicant's Unit for the side facing Aljunied Road.

APPLICANT'S CASE

15. The Applicant submits that the reasons for the proposed renovation works are two-fold: to fully realise the retail potential of its Unit and to deter drug peddling and sex trade activities, in particular, along the side of the Unit facing Aljunied Road.
16. The Applicant submits that, as the subsidiary proprietor, it ought to be permitted to fully realise the retail potential of its ground floor corner unit. The Applicant argues that the lack of an entrance along Aljunied Road hampers the Applicant's ability to use that side of its property for retail space and/or allow proper sub-division of the Unit. Moreover, the Applicant also argues that it was important that its corner unit has visibility on both sides along Geylang Road and Aljunied Road. The Applicant contends that the Respondent's claim that it is a "design feature" that the side facing Geylang Road is for use by the ground floor while the side facing Aljunied Road is for use by the upper floors is unsubstantiated.
17. The Applicant reasons that the proposed renovation will deter illicit activities such as unlicensed drug peddlers and sex workers loitering at the side of the

Unit. It is the Applicant's case that by opening up the spaces where the peddlers gather and increasing the footfall around the development, this will discourage the illicit activities. The Applicant also contends that it had to erect temporary and removable hoardings along the covered walkway and common property car park in the development to curb the illicit activities on the walkway and also to prevent any unauthorised usage of the car park by neighbouring properties and unlawful dwellers.

18. The Applicant submits that the Respondent has been unreasonable in refusing to consent to its proposed renovation works. Firstly, the Respondent changed its position numerous times as to why the proposal could not be approved. The Applicant gave a chronological order of the various reasons given by the Respondent. Prior to 2012, the reason given by the Respondent for rejecting the proposed renovation works was the issue of building stability. At the AGM held on 4 February 2012, the Respondent stated that the MCST did not stand to gain if the proposed renovation works is approved. Subsequently, by a letter dated 11 February 2012, the Respondent wrote to the Applicant stating, inter alia, that the Applicant had purchased the Unit in its present state and condition and that Gayland was not obliged to accede to the Applicant's request. The Respondent also reiterated the issue of structural stability as the other reason for rejecting the Applicant's proposal. To address the issue of structural instability, the Applicant engaged a professional engineer who certified that "[the] external walls at [the] 1st Storey can be demolished structurally". After this application to the Board was made, in its submission, the Respondent submitted, inter alia, that the side of the wall facing Aljunied Road was meant to serve the upper floors and that the proposed renovation works, if approved, would encourage further encroachments by the Applicant on the common property. Finally, at the hearing, the Respondent indicated that it was agreeing to the renovation works for the side facing Geylang Road but not the renovation works that affect the side of the Unit facing Aljunied Road.
19. The Applicant further pointed out that at the hearing, the Respondent's witness gave evidence to the effect that he had not written or approved the letters written to the Applicant rejecting its renovation proposal. In light of the Respondent's numerous changes of reasons for rejecting the Applicant's

proposed renovation works, the Applicant contends that the Respondent had not legitimately reasoned its decision and/or the Respondent's discretion was not properly exercised.

20. The Applicant contends that the Respondent had acted unreasonably because the reasons given by the Respondent at various times refusing to consent to the proposed renovation works are unsupported, baseless and without reason. The Applicant contends that the report from its professional engineer had conclusively dispelled the concern over structural integrity and it should not be of further concern. The Applicant also claims that it is baseless for the Respondent to contend that the façade of the building is affected because there is no evidence that the building was designed in a particular style or that the proposed renovation works will alter the uniformity of the appearance of the building. Similarly, the Respondent could not adduce any objective evidence to support its claim that there is a "design feature" that the wall facing Aljunied Road was meant to serve the strata lots on the upper floors only.
21. The Applicant also argues that the Respondent's assertions that Gayland's business will be impacted and that the Respondent would loss advertising revenue should the Applicant's renovation works be permitted are all unsubstantiated. The Applicant, in contrast, submits that it stands to lose more in comparison to Gayland because it cannot demand higher rent for its Unit and also because of the illicit activities along the pavement in front of its Unit.
22. Lastly, the Applicant contends that the Respondent was unreasonable as its decision was tainted by prejudice, malice or indifference and/or bias towards Gayland. The Applicant argues that this was patently clear from the fact that Gayland controls the majority of the Respondent and from the self-serving reasons provided by the Respondent which are biased of the interests of only one subsidiary proprietor (ie. Gayland's interests). The Applicant also claims that Gayland was objecting to the Applicant's proposals because it was unable to buy back the property from the Applicant. The Applicant is of the view that the Respondent had taken into account irrelevant considerations. For instance, the structural concern was readily addressed by the Applicant's professional engineer and the Respondent's concern over further encroachment could not

be substantiated. Consequently, the Applicant submits that the Respondent has been unreasonable.

RESPONDENT'S CASE

23. The Respondent submits that it had refused to consent to the Applicant's proposed renovation works because they involve alternations to the common property and it would require approval from the general body. Since the general body decided not approve the proposal, the Respondent is merely abiding by the decision of the general body.
24. The Respondent also highlights that the Applicant's proposal was not approved because the majority shareholder of the development, Gayland, objects to it. Gayland had cited impact on its business and resale value of its units as reasons for not supporting the proposal. Gayland is worried that the additional entrances along the common property wall facing Aljunied Road would obscure the single entrance to the second to fourth floors of the development. Gayland is also of the view that the frontage facing Aljunied Road is intended to serve the units on the upper floors while the frontage facing Geylang Road is intended to serve the unit on the ground floor.
25. The Respondent further submits that the proposed renovation works are detrimental to it as it will irreversibly deprive the Respondent of the potential revenue that can be earned from the granting of exclusive use of the common property walls. In this regard, the Respondent cites the loss of the ability to authorise any advertisements on the wall as an example.
26. The Respondent also submits that the Applicant has not suffered any losses as a result of the rejection of the renovation proposals and the Applicant is in the same position as when it bought the property. The Respondent contends that any loss allegedly suffered by the Applicant was caused by external elements such as the drug and sex trading activities rather than by the Respondent's refusal to consent to the renovation works proposal.
27. In response to the Applicant's claim that the Respondent's decision was tainted with prejudice, malice or indifference or that the Respondent had taken into account irrelevant considerations, the Respondent counters that the Applicant had not produced evidence supporting such claims. The Respondent submits

that both the Applicant and the Gayland had made mutual offers to purchase each other's property in the development and therefore Gayland's objection to the Applicant's proposal cannot be labelled as being prejudicial against the Applicant. In refuting the Applicant's allegation that the Respondent had taken into account irrelevant considerations, the Respondent submits that it had merely raised the structural integrity issue as a concern and had not made it a ground for rejecting the proposed renovation works.

28. The Respondent submits that its main objection to the Applicant's proposed renovation works is that it affects the common property and also affects the business of the other subsidiary proprietor. The Respondent proclaims that as the management corporation of the development, its duty is to adhere to the provisions of the BMSMA and regulations thereunder regulating common property as well as to look after the interests of all subsidiary proprietors in the development.
29. At the hearing, the Respondent confirmed that it was prepared to allow the Applicant's proposed works to the wall facing Geylang Road. Further, the Respondent highlighted that it had not objected to the Applicant's proposed renovation works affecting the interior of the Unit. The Respondent opines that the Applicant is insistent on further openings on the wall facing Aljunied Road because it has chosen to close off roughly a third of the wall on this side for the installation of automated teller machines. In response, the Applicant says that it is obliged to do so as a term of the sale and purchase with UOB. The Respondent argues that whilst it is the Applicant's prerogative to use the wall facing Geylang Road, the Applicant cannot compel the Respondent to permit it to open new entrances to the wall facing Aljunied Road.
30. The Respondent, therefore, prays that the Applicant's application be dismissed with costs in respect of the proposed renovation work to the wall of the Unit facing the Aljunied Road, and that a consent order be recorded for the Applicant to carry out the proposed works to the wall of the Unit facing Geylang Road.

BOARD'S DECISION

31. Having considered the facts of the case, the Board considers that the Respondent has not been unreasonable in its refusal to grant approval for the Applicant's proposed renovation works in relation to the wall of the Unit facing Aljunied Road.
32. Section 111 of the BMSMA provides that:-
"111. 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 –
(a) has unreasonably refused to consent to a proposal by that subsidiary proprietor to effect alterations to the common property or limited common property; or
(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. "
33. It is clear that under Section 111 of the BMSMA the Board may make an order where the management corporation has unreasonably refused to consent to a proposal by a subsidiary proprietor that affects the common property.
34. The Board acknowledges the Applicant's reasons for the proposed renovation works. The Board also observes that the relationship between the parties is hostile with each party making allegations against each other. Further, the Respondent's witness, while on the stand, was often evasive and cannot be considered as a commendable witness. Nevertheless, the Board does not agree with the Applicant's contention that the Respondent had acted unreasonably or prejudicially against him.
35. It is undisputed that the Applicant's proposed renovation works affect the common property. Consequently, the proposal requires a special resolution to be passed at the annual general meeting and the Applicant does not challenge this. The proposed renovation works was duly presented at the AGM held on 4 February 2012 but by virtue of the fact that there are only two subsidiary

proprietors in the development and that the Applicant holds the minority share value, the Applicant was unable to secure the requisite number of votes. The Board is of the opinion that Gayland cannot be faulted for voting against the proposal with the view of protecting its own commercial interest. It is a commercial decision that Gayland is entitled to make just as the Applicant is entitled to make commercial decisions protecting its own interest. Consequently, the Respondent cannot be faulted for abiding by the outcome of the voting.

36. The Board also opines that, in the absence of compelling reasons, it will not interfere in a case like the present one. During the hearing, the Applicant conceded that the property was bought on an 'as is, where is' basis and the purchase was made by way of an open tender. The Applicant had the opportunity at the time of the purchase to perform its own due diligence search on the number of share value of the strata lots. The fact that the Applicant had not done its own due diligence check and it emerged that the Applicant was a minority shareholder does not justify that the Board should interfere whenever the Applicant fails to obtain support for its proposals.
37. The Applicant has not shown that it was in any way deprived of the use of its Unit by the Respondent's refusal to approve its proposed renovation works. The Applicant is able to access its Unit from the entrances facing Geylang Road. The Applicant is also able to use the Unit as planned and approved, and the Unit was tenanted to different tenants as at the date of the hearing. The Board is satisfied that the Applicant had not suffered any loss.
38. The Respondent by consenting to the Applicant's proposal for renovation works for the side of the Unit facing Geylang Road is essentially consenting to two out of three of the Applicant's proposed renovation works. The Board considers that since the Respondent has made concessions, it is not unreasonable that the Respondent refuses to approve the Applicant's third proposal which relates to the side of the Unit facing Aljunied Road given that Gayland strongly objects to it. The Board has considered the reasons given by Gayland for its objection and does not regard them as arbitrary.

39. In conclusion, although the Applicant might find itself in an unfortunate situation because it is a minority shareholder in the development, the Applicant's situation, without more, cannot warrant an intervention by the Board. The Board cannot be interfering with decisions made in compliance with procedural requirements and where parties had voted in favour of their own commercial position. Moreover, the present case does not present any unique reason for the Board to interfere.
40. The Board makes the following order:
- i. the Applicant's prayer (i) for the replacement of the existing doors to one entrance to the Unit facing Geylang Road with glass doors and roller shutters be allowed (as agreed by the Respondent in their submission);
 - ii. the Applicant's prayer (ii) for the enlargement of the other existing entrance to the Unit facing Geylang Road be allowed (as agreed by the Respondent in their submission); and
 - iii. the Applicant's prayer (iii) for the construction of two entrances to the Unit facing Aljunied Road be dismissed.
41. The Board will hear parties on cost.

Dated this 10th day of March 2017

MR ALFONSO ANG
President

MS LEE LAY SEE
Deputy President

MR TAN KIAN HOON
Member