

BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT

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

STB No. 63 of 2018

In the matter of an application under **Section 101(1)(c)** of the Building Maintenance and Strata Management Act in respect of the development known as **Urban Vista** (MCST Plan No. 4404)

Between

Bayfront Realty Pte Ltd

...Applicant

And

MCST Plan No. 4404

...Respondent

GROUNDS OF DECISION

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26 October 2018

22 November 2018

Coram:	Mr Alfonso Ang	(President)
	Mr Lawrence Ang	(Member)
	Mr Ashvinkumar s/o Kantilal	(Member)

1. Urban Vista is a condominium housing development with 582 residential units and three (3) commercial units.
2. The Applicant is the subsidiary proprietor of three (3) commercial units, namely #XXX, of Urban Vista. The Applicant is also the former owner-developer of Urban Vista.
3. The Respondent, MCST Plan No. 4404, is the management corporation of Urban Vista. Collectively, the Applicant and the Respondent shall be known as the **"Parties"**.

BACKGROUND

4. The three (3) commercial units are situated at the corner of a residential block, well nestled in and/or between the residential blocks on the opposite end of the land from the entrance of the property. To gain access to the units, one would have to enter through the front entrance of Urban Vista, pass through residential blocks, two (2) swimming pools within the common areas of the property as well as more residential blocks before reaching the units at the back corner of residential Tower 8. The site plan of Urban Vista is annexed to this judgement as **Appendix A**.
5. The Applicant had leased (two) 2 of the three (3) commercial units to a mini-mart operator. Visitors to the mini-mart included residents, guests of residents and members of the public who were neither residents nor guests of residents ("**members of the public**"). There was no restriction on visitors to the mini-mart from the time it started operations.
6. Members of the public who wanted to visit the mini-mart had to record their personal details in a logbook at the security post. The security personnel would then issue them with visitor passes before they can enter Urban Vista. These members of the public would have to return their visitor passes and record the time of their leave at the security post when they are leaving the property.
7. Over time, there were concerns of safety amongst the residents. Complaints were made to the Respondent that there were unknown persons using the estate's facilities. When approached by the security personnel, these persons were unable to disclose any resident's unit numbers whom they claimed to be guests of. Some visitor passes were not returned and the time of leave was not recorded in the log book.
8. On 24 January 2018, the Respondent sent a letter to the Applicant informing that "*...the 1st Management Council resolved at the 6th Council Meeting held on Saturday, 20 January 2018 that non-residents and non-guests are not allowed to enter the estate to patronise the commercial units with effect from 1 February 2018.*"
9. In the same letter, the Respondent referred to item m of part IV of the Urban Redevelopment Authority's ("**URA**") Grant of Written Permission ("**WP**") dated 16 January 2013, which stated that "*The commercial shops will be for residents only.*"
10. The Applicant's architects wrote to URA on the applicability of the planning condition. On 12 February 2018, URA clarified that the "...WP condition for the shops to be for the residents only was imposed at the period of the time of development approval," and that URA has since then exercised flexibility "...and will leave it to the MCST to decide if they wish to allow non-residents to patronize the shops as well considering the comfort and wishes of the condominium residents". Hence, "...it is for the MCST and the residents to decide for their own development."

11. On 15 March 2018, the Respondent started denying members of the public access to the commercial units. The mini-mart was said to have suffered losses and has since closed down. The three (3) commercial units are now vacant.
12. On 29 March 2018, the Respondent informed the Applicant that the management corporation decided to convene an Extra-Ordinary General Meeting (“EOGM”) to be held on 5 May 2018, to decide whether to allow members of the public to enter the estate to patronise the commercial units.
13. However, on 13 April 2018, the Respondent informed the Applicant that the management corporation had decided not to proceed with the EOGM.
14. On 7 June 2018, the Applicant commenced these proceedings.
15. On 4 August 2018, the Respondent held the 2nd Annual General Meeting (“AGM”). It was resolved by way of an ordinary resolution that the “...management corporation to continue exercising the clause stipulated in the Sale and Purchase Agreement (S&P) that ‘The commercial shops (three (3) strata units) will be for residents only.’”

ORDER SOUGHT BY THE APPLICANT

16. The Applicant is seeking an order that Respondent shall not prevent invitees (including guests, customers and staff) from entering the estate to visit any of the units including commercial units.

THE APPLICANT’S CASE

17. The Applicant’s arguments were:
 - a. The Respondent was not empowered by the law to impose restrictions on the type or class of persons entering a strata lot. The law envisions that invitees (including customers) must be allowed to enter the strata lot;
 - b. Alternatively, even if the Respondent was empowered to impose restrictions on the type or class of persons entering a strata lot, there were procedural requirements to do so. A by-law should be passed, with strict requirements to be complied with before a by-law can come into force. There was no such by-law passed and the legal requirements were not complied with; and
 - c. Even if the Respondent was empowered to impose restrictions on the type or class of persons entering a strata lot and the Respondent had complied with the procedural requirements for doing so, the Respondent’s decision was improper for having taken into account irrelevant considerations. The Respondent should not have relied on URA’s WP or the Sale and Purchase Agreement (“SPA”). The Respondent’s concern over safety should be addressed by way of proper enforcement instead of imposing restrictions on the type or class of persons entering a strata lot.

THE RESPONDENT'S CASE

18. The Respondent's arguments were:

- a. It is questionable whether the Strata Titles Board ("the Board") had jurisdiction to order the Respondent to allow members of the public who are neither residents nor guests of residents to enter the estate;
- b. If the Board had the power, the Respondent does not consider members of the public, being customers who are neither residents nor guests of residents to be "invitees". Therefore, such members of public or customers, should not be allowed to enter the estate. The Respondent has never prevented guests of residents and the Applicant's staff from entering the estate;
- c. The Respondent had allowed customers to patronise the commercial units. These customers had to record their details into a logbook and were issued with visitor passes before entering the estate. However, there were customers who would not report the time they left the property or returned the visitor passes. Accordingly, the Respondent was unable to account to the residents if these customers actually left the estate. Further, residents have complained of unknown persons using the estate's facilities;
- d. The Respondent had proceeded on terms granted by the WP and the SPA, which the Applicant, having been the owner-developer of the estate, would have had knowledge of these terms and had agreed unreservedly to;
- e. The Respondent had at all times treated the Applicant with fairness and openness;
- f. The Respondent had no power to allow members of the public to patronise the Applicant's units, and they had exercised their duties and functions honestly, fairly and with reasonable diligence; and
- g. At the 2nd Annual General Meeting of Urban Vista, the residents had voted and passed an ordinary resolution that the Applicant's units should only serve residents only.

BOARD'S DECISION

19. Having considered the submissions from Parties, the Board dismissed the application.

Respondent's power to restrict members of the public from entering the development

20. Section 29(1)(a) of the Building Maintenance and Strata Management Act (Cap. 30C) ("BMSMA") states as follows:

29. — (1) Except as otherwise provided in subsection (3), it shall be the duty of a management corporation –

(a) to control, manage and administer common property for the benefit of all the subsidiary proprietors constituting the management corporation;

21. The URA has clarified that the Grant of Written Permission dated 16 January 2013 with conditions as stated above was only imposed at the time of development's planning approval, and that it is for the Respondent and the residents to decide for their own development if they will allow non-residents to patronise the shop as well (see Annex C of the Applicant's Opening Submissions).
22. The Board is of the view that the Respondent has the power pursuant to section 29(1)(a) of the BMSMA to restrict members of the public who are not residents, guests of residents or the Applicant's staff to enter Urban Vista and accordingly, to patronise the commercial units in Urban Vista. The Respondent has the duty to control and manage the usage of the common property for the benefit of all the subsidiary proprietors.

Residential development

23. The Applicant submitted that Urban Vista is a mixed development with 582 residential units and three (3) commercial units (see Applicant's Opening Submissions at paragraph 1).
24. However, the Grant of Written Permission issued by URA stated that Urban Vista is a "...condominium housing development comprising...total of 582 units...[and] three (3) shops..." (see Annex B of the Applicant's Opening Submissions at paragraph 4).
25. In the course of proceedings, the Applicant's solicitors confirmed that they agreed with URA's classification of Urban Vista being a condominium housing development.
26. Accordingly, the Board is of the view that Urban Vista is a residential development and not a mixed development. In a residential development, the management corporation and the residents have the right to restrict the type or class of people entering the residential property. Hence, the Respondent has the right to restrict members of the public who are neither residents nor guests of residents from entering Urban Vista.

Ordinary resolution passed

27. The subsidiary proprietors of Urban Vista have passed an ordinary resolution at the 2nd Annual General Meeting, resolving that the commercial units in Urban Vista will be for residents' use only (see Annex F of Applicant's Opening Submissions at paragraph 5.0).
28. Mr Toh Kok Seng submitted, on behalf of the Applicant, that there was a procedural defect based on the current facts. Mr Toh argued that even if the Respondent had the power to restrict the type or class of persons to enter a strata lot, it would have

to be derived from a by-law properly passed and lodged with the Commissioner of Buildings pursuant to section 32 of the BMSMA (see paragraph 53 of the Applicant's Opening Submissions).

29. Notwithstanding that no by-law has been passed pursuant to section 32 of the BMSMA, the effect of the ordinary resolution stands as it is and remains binding on the Applicant so long as the Applicant remains as the subsidiary proprietor of the three (3) commercial units in Urban Vista.
30. The Board is of the view that the Respondent is not being unreasonable as they have never prohibited residents or guests of residents, as well as the Applicant's staff from entering Urban Vista to patronise the commercial units.
31. The Board would like to emphasise that strata developments are premised on a unique concept of community-based property ownership, and that it is for the subsidiary proprietors to cooperate to enjoy harmonious living at their residential property (see Second Reading Speech by Second Minister for National Development Desmond Lee, *Parliament Report Vol. 94, for Building Maintenance and Strata Management (Amendment) Bill*, 11 September 2017). The Board urges the Parties to collaborate and find a beneficial arrangement which would benefit the Parties and all subsidiary proprietors.
32. The Applicant's action is dismissed with costs. The Board will hear the Parties on costs.

Dated this 22nd day of November 2018

Mr Alfonso Ang
President

Mr Lawrence Ang
Member

Mr Ashvinkumar s/o Kantilal
Member

Mr Toh Kok Seng & Mr Daniel Chan (M/s Lee & Lee) for the Applicant.
Mr Adam Chong (M/s Low Yeap Toh & Goon LLP) for the Respondent.

Site plan

