

BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT

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

STB No. 84 of 2017

In the matter of an application under **section 101** of the Building Maintenance and Strata Management Act in respect of the development known as **LE CRESCENDO** (MCST Plan No. 3127)

Between

The Management Corporation Strata Title Plan
No. 3127

Applicant

And

Tay Boon Yong

Respondent

GROUND OF DECISION ON COSTS

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29 March 2018

10 April 2018

Coram:	Mr Alfonso Ang	(President)
	Mr Loh Kwi Leong	(Member)
	Mr Chan Kok Way	(Member)

BACKGROUND

1. The Applicant, the Management Corporation Strata Title Plan No. 3127 (the “MCST”), is the management corporation of the development known as Le Crescendo, located at 233 Paya Lebar Road Singapore 409044. The Respondent, Tay Boon Yong is the subsidiary proprietor of unit #XXX in the development.
2. The Applicant sought an order from the Board for the Respondent to remove certain unapproved structures being, (i) stainless steel trellis covering; and (ii) stainless steel

railings on the glass panel (“**Unapproved Structures**”), which were constructed by the Respondent without the approval or permission of the Applicant.

3. The parties attended a total of two mediation sessions before the Board on 20 November 2017 and 11 January 2018. At the end of the second mediation on 11 January 2018, as parties were still unable to settle the matter, the Board then gave directions for an arbitration hearing to be fixed on 2 March 2018. The hearing was subsequently adjourned to 29 March 2018.
4. At the hearing on 29 March 2018, parties agreed to a consent order before the Board on the basis of without admission to liability by either party. As parties could not agree on costs, the decision was left to the Board. The Board subsequently heard parties on costs.

APPLICANT’S SUBMISSIONS ON COSTS

5. The Applicant sought for costs on an indemnity basis amounting to a total of S\$20,000.00 (Singapore Dollars Twenty Thousand) including disbursements and Goods and Services Tax. The Applicant contended that the Board should order costs in favour of the Applicant on an indemnity basis for the reasons below:

- (i) By-law passed at the 8th Annual General Meeting (“**AGM**”)

It was resolved at the 8th AGM that “*all costs, including legal costs on an indemnity basis, disbursements and incidental costs incurred by the management corporation to enforce or to try to enforce any party’s compliance with the Building Maintenance & Strata Management Act, other statutes, subsidiary legislation, by-law shall be recoverable from the party concerned.*” The Applicant submitted that this by-law passed at the 8th AGM amounted to a contractually binding clause between subsidiary proprietors and MCST, and consequently, the Board should award costs on an indemnity basis. Additionally, that there was good basis for the above by-law as the MCST’s funds should be used for the purposes of the development.

- (ii) Conduct of the Respondent

The Applicant contended that due to the Respondent’s acts of non-compliance and having persistently undertaken works and constructions despite the Applicant’s directions not to do so, this application before the Board was necessary for the Respondent to comply with the Applicant’s instructions to remove the Unapproved Structures.

RESPONDENT'S SUBMISSIONS ON COSTS

6. The Respondent contended that no order to costs should be provided and that parties should bear their own costs. The Respondent's reasons were as follows:
 - (i) Section 32(3) of the Building Maintenance and Strata Management Act ("**BMSMA**") does not provide the MCST with the power to pass by-laws with respect to recovery of legal costs and the basis of such recovery;
 - (ii) As regards to the conduct of parties, the Respondent highlighted that there were various instances where settlement options had been proposed. In addition, the Respondent also stated that she had attempted to resolve the matter by the letters dated 11 January 2015 and 23 May 2016;
 - (iii) The Respondent contended that ordering costs on an indemnity basis is not equivalent to one party bearing all the legal costs of the other. The Respondent also relied on the Strata Titles Boards case of *Loh Mary/Tan Kar Keong v The MCST Plan No 3641 and Others* [2016] SGSTB 3 ("**Loh Mary**") at [28], where the Board held that it "*behooved on the MCST to on their part manage legal costs*" and as such, the Applicant ought to be responsible for managing its own costs;
 - (iv) Based on the guidelines for party-and-party costs awards in the Supreme Court of Singapore, contentious originating summons before the High Court without cross-examination would be an estimate of S\$12,000.00 per day, while contested summons of a complex or lengthy nature would be between S\$4,000.00 and S\$15,000.00. The Respondent noted that STB 84 of 2017 would not be considered to be complex or lengthy in nature and hence, any costs awarded should be much lower.

BOARD'S DECISION ON COSTS

7. Section 117 of the BMSMA states as follows:

*"An order made by a Board under this Act or the Land Titles (Strata) Act (Cap. 158) may include such ancillary or consequential provisions as the **Board thinks fit** including costs to be paid by the applicant, a management corporation, a subsidiary management corporation or any person against whom the order is made or costs to be paid by a party for making a frivolous application to the Board."* (emphasis ours)

8. An initial question raised by the Applicant before the Board was whether the Board had, under the provisions of the BMSMA, the power to determine costs where liability between the parties was not established. The Board wish to emphasise that by the wordings of section 117 of the BMSMA, it is empowered to award costs as it thinks fit

and the provision also provides the Board with wide powers to award costs at its discretion.

9. The position proposed by the Applicant is an unambiguous abrogation of the exercise of the Board's duties to judiciously decide on the matters before it. It is for the Board to decide, on the merits of each and every case, whether it should make an order under Division 2 of the BMSMA. Once a Board has made a determination regarding the matters before them, the Board's discretion in awarding costs ranges from providing no order as to costs and where appropriate, awarding costs on an indemnity basis. To suggest otherwise would be to shackle the Board's discretionary powers under section 117 of the BMSMA and its net effect would be to render section 117 redundant.
10. With respect to a consent order made before the Board, the legal effect and force of such a consent order are ultimately derived from the order of the Board. The Board has the right and power to decide upon the finality of a consent order, and where appropriate, disagree to its terms.

By-laws

11. Having considered the submissions by both parties, the Board is of the view that nothing in the provisions of BMSMA indicates that the MCST is empowered to pass by-laws which would interfere with the Board's discretionary powers to award costs under section 117 of the BMSMA.
12. We are of the opinion that even if the 8th AGM by-law was passed by the subsidiary proprietors, the presence or existence of such by-laws relating to the recovery basis of legal costs would not bind or restrict the Board's discretion to award costs under section 117 of the BMSMA. The Applicant was misguided in their submission in believing that the 8th AGM by-law could or would fetter the discretion of the Board under section 117.
13. If the Applicant intends to rely on the by-law passed at the 8th AGM, the Board is of the opinion that such by-law relating to the recovery basis of legal costs was made on a contractual basis between the MCST and the subsidiary proprietors of the development. Whether this by-law is enforceable in contract is for another forum to decide and the Board is not in any position to adjudicate or comment on the matter.

Indemnity costs

14. It is trite law that costs may be awarded on an indemnity basis if there are exceptional circumstances justifying such an award. In the High Court case of *Airtrust (Hong Kong) Ltd v PH Hydraulics & Engineering Pte Ltd* [2016] SGHC 167, Justice Chan Seng Onn at [50] stated:

“As a baseline inquiry, it may be useful for a court to ask itself whether the party’s conduct was so unreasonable as to justify an award of indemnity costs...such unreasonableness, however, need not rise to the level of dishonesty or moral iniquity for it to attract indemnity...the extent of a party’s dishonest and unscrupulous intentions and actions, where present, will be relevant factors for the court to take into account.”

Justice Chan also mentioned at [53] that although *“there may be situations where indemnity costs could be ordered despite the absence of unreasonable conduct, these will, in my judgment, be rare cases.”*

15. In view of the above, the Board finds that there are insufficient facts to substantiate the Applicant’s contention to award costs on an indemnity basis. On the present facts, no exceptional circumstances exist. Furthermore, despite the Respondent’s persistent disagreement to remove the Unapproved Structures, it cannot be said that her actions were so unreasonable as to justify an award of indemnity costs. Accordingly, costs would be awarded on the standard basis.

Quantum

16. The Applicant had submitted that costs should be on an indemnity basis for the total amount of S\$20,000.00. As mentioned above, there are insufficient facts to provide for costs on an indemnity basis and as such, determination of the quantum for costs awarded shall be made on the standard basis.
17. The Board reiterates its decision in the STB case of *Loh Mary*, and agrees that it is incumbent on the MCST to manage its legal costs, especially in light of the fact that the payment of such costs ultimately stems from the subsidiary proprietors’ contributions to the development’s funds.
18. In addition, the Board agrees with the submission of the Respondent, that in comparison with the guidelines for party-and-party costs awards in the Supreme Court of Singapore, the Applicant’s requested costs amount for S\$20,000.00 is excessive. The Board appreciates that for complex or lengthy summon applications fixed for special hearing, the costs order guidelines provides for an estimate of between S\$4,000.00 and S\$15,000.00 excluding disbursements. It is plainly clear on the present facts that the matter was neither complex nor lengthy. As such, it would be inappropriate for the Board to award costs for a sum of S\$20,000.00.
19. Notwithstanding the above, the Board disagrees with the Respondent’s contention that no order to costs should be provided. The Board notes that when questioned in the course of the costs hearing, the Respondent had acknowledged that the current application taken

out by the applicant cannot be considered frivolous or vexatious, which in our opinion, was correct.

20. In view of all of the above, the Board accordingly orders that the Respondent pays the Applicant costs as follows:

- (i) Costs of S\$4,000.00;
- (ii) Reimbursement of all fees payable to the STB for the sum of S\$1,100.00 being application fee, hearing fee and fee for delivery of decision; and
- (iii) Reasonable disbursements.

Dated this 10th day of April 2018

MR ALFONSO ANG
President

MR LOH KWI LEONG
Member

MR CHAN KOK WAY
Member

Mr Srijit Jeshua Shashedaran (M/s Netto & Magin LLC) the Applicant
Mr Adrian Wong / Mr Leong Hao Ang (M/s Rajah & Tann Singapore LLP) for the Respondent