BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT

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

STB No. 21 of 2019

In the matter of an application under **Sections 101(1)(a) and 111** of the Building Maintenance and Strata Management Act in respect of the development known as **D'Leedon** (The MCST Plan No. 4288)

Between

1. Pang Loon Ong / Chong Fui Shih

2. Pang Wing Hey

... Applicant(s)

And

The MCST Plan No. 4288

... Respondent

GROUNDS OF DECISION

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... Respondent

7 May 2019

29 May 2019

11 June 2019

Coram:	Mr Seng Kwang Boon	(Deputy President)
	Dr Tang Hang Wu	(Member)
	Mr Chua Koon Hoe	(Member)

1. The Applicants are the subsidiary proprietors of two (2) ground floor units comprising large private enclosed spaces with a curved shape as part of their strata area. The Respondent is the Management Corporation Strata Title Plan No. 4288 ("Management Corporation") comprising the subsidiary proprietors of a development known as D'Leedon. The Management Corporation was constituted on 14 September 2015. The developer of D'Leedon is Morganite Pte Ltd ("Developer") and its managing agent is Savills Property Management Pte Ltd ("Savills").

THE APPLICANTS' CASE

2. It is undisputed that the Applicants and other ground floor units faced numerous incidences of "killer" litter falling from the upper floors into their private enclosed spaces. The term "killer" litter in this context means objects thrown or falling from high buildings which endangered the people below. Savills recorded 55 reported cases of "killer" litter in 2017 and another 57 in 2018. Several police reports were made in relation to some of these "killer" litter incidents. The Applicants have young children aged between three (3) months to eight (8) years old.

3. Prior to this action, the Applicants wrote to Savills in relation to the "killer" litter problem requesting permission to install awnings to protect themselves. Permission was denied by the Respondent on the ground that they are not empowered to approve any installations to safeguard against "killer" litter. The Respondent took the position that this is a matter solely within the province of the Annual General Meeting. While several attempts were made to pass the necessary resolutions to approve by-laws allowing awnings (fixed or retractable) before the Annual General Meeting, it was undisputed that the requisite number of votes were not obtained.

4. In this application, the Applicants sought the following orders:

   (a) that the Respondent consents to the Applicants' installation of fixed coverings at their private enclosed spaces in accordance with the design guidelines and specifications set by the Developer, or such design which the Board deems to be a reasonable and proportionate response to the killer litter problem faced by the Applicants; and

   (b) that the Respondent pays the Applicants costs for this application.

5. After the present application was filed on 21 February 2019 but before the arbitration hearing on 7 May 2019, the Respondent proceeded to issue guidelines for the installation

of a retractable awning design on 17 April 2019. These guidelines were issued just before the deadline for exchange of affidavits of evidence-in-chief.

THE RESPONDENT'S CASE

6. The Respondent's position was simply that it was not able or empowered to approve the awnings when the necessary votes for the by-law on fixed or retractable awnings were not obtained at the Annual General Meeting. However, the Respondent issued guidelines for retractable awnings on 17 April 2019.

THE BOARD'S VIEW

7. In the Board's view, the Respondent's position is misconceived. There is an inherent internal contradiction in the Respondent's stance. Despite consistently maintaining that the Respondent was not able or empowered to approve awnings before the commencement of this Application, the Respondent issued guidelines for retractable awnings on 17 April 2019. The Respondent's issuance of such guidelines must mean that the Respondent had by its action conceded that it had the power to prescribe awnings in the face of the "killer" litter problem. If the guidelines for retractable awnings were issued earlier, this Application may not have been necessary.

8. As a matter of law, the Board is of the view that the Respondent's earlier position that it was not able or empowered to approve the awnings is wrong. Under the Building Maintenance and Strata Management Act (Cap 30C) ("BMSMA"), the management corporation is tasked to "control, manage and administer the common property for the benefit of all the subsidiary proprietors constituting the management corporation" (see section 29(1)(a) of the BMSMA). Any alteration to the common property would require prior written approval from the management corporation. This is enshrined in paragraph 5(1) of the 2nd Schedule to Building Maintenance (Strata Management) Regulations 2005 ("BMSMR 2005") which stipulate the prescribed by-laws for every strata development. Paragraph 5(1) provides that:

> A subsidiary proprietor or an occupier of a lot 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.

9. However, this general rule is qualified by paragraph 5(3) of the 2nd Schedule to the BMSMR 2005 which provides:

> 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's or occupier's lot against intruders or *to improve safety within that 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. (emphasis added)

10. Paragraph 5(3) of the 2nd Schedule to the BMSMR 2005 allows subsidiary proprietors to install a safety device to improve safety within that lot or any *structure or device* in order to prevent harm to children. In *Ahmad bin Ibrahim and 21 others v The MCST Plan No. 4131* ("*The Belysa")* STB No. 119 of 2017, the Board held that the wording of this paragraph is wide enough to encompass the installation of awnings in response to a "killer" litter problem. This Board would like to remind management corporations of what was said in *The Belysa* i.e. that "in the management of any strata development, the management corporation should be guided by the principle that children's safety must be considered to be of paramount importance" (see *The Belysa* at [16]). As one of the world's leading authority on strata titles, Cathy Sherry, perceptively observes in her monograph, *Strata Title Property Rights[:] Private Governance of Multi-Owned Properties* (Routledge, 2017) at 198:

> [Children's] presence in strata and community schemes is increasing, and their well-being is fundamental not just to themselves and their families, but to the entire community, which needs them to become functional adults of the future.

11. In a land-scarce country like Singapore, Sherry's observation is even more apposite as the majority of the population including children live in multi-owned properties. The Respondent's position that a management corporation is not empowered or unable to act if the requisite votes are not obtained at the Annual General Meeting even though the subsidiary proprietors are facing a serious "killer" litter problem is an unedifying view which this Board unequivocally rejects. To leave such serious issues solely to the province of majority rule is inappropriate. As Sherry in *Strata Title Property Rights[:] Private Governance of Multi-Owned Properties* (Routledge, 2017) at 218 notes:

> The majority may act in ways that are harmful to others, including children, even to the point of making decisions that are inimical to their physical safety.

If the Respondent is correct, this might result in a stalemate and intolerable situation. This cannot be right. The concept of majority rule in a strata development in this context cannot be taken to the extreme when the safety of children is at stake. It cannot be Parliament's intention for a management corporation to be impotent in the face of such a pressing problem faced by its residents. We urge management corporations not to adopt such an impractical and illogical interpretation of the regulatory framework governing strata developments and work with the subsidiary proprietors to resolve the problem at hand.

12. It should also be noted that the Respondent's argument that it was not empowered to issue guidelines without the necessary approval from the Annual General Meeting was rejected in *Zou Xiong v MCST Plan No. 2360* ("*19 Shelford Road*") [2017] SGSTB 5 at [31] – [32] where the Board observed (in the context of safety grilles):

> The Respondent submits that it cannot give approval for the Applicant's application to install invisible grilles because the proposed works affect the facade of the building and such approval is to be given by the general body and not by the Respondent. *The Board takes the view that this reasoning is unsatisfactory because it is within the Respondent's power to give such an approval. It is the Respondent's role to put in place a set of design guidelines for the installation of safety grilles that address both the safety issues and the issues regarding the facade of the Development, so that the subsidiary proprietors can comply with such guidelines.* Where there is no design guidelines, the subsidiary proprietor's application for the installation of invisible grilles have to be decided on a case-by-case basis. In exercising its power, the Respondent should not defer its responsibility to the general body.
>
> The Board also observes that the Respondent had, for other subsidiary proprietors, considered and approved their application for installation works that affect the facade of the building. As such, the Board cannot accept that the Respondent in this case is not able to do the same. Even if the Respondent's position was correct, the Respondent should have adopted a more active role to facilitate the Applicant in his application, especially in a case such as this where children's safety is concerned. The Respondent ought to take the initiative to provide the guidelines for its subsidiary proprietors and it is not for the Applicant to initiate an approval for such guidelines. (emphasis added)

13. While the observations above were made in relation to safety grilles, this Board is of the view that the same principles apply in relation to awnings where there is a "killer" litter problem.

14. Sundaresh Menon CJ in *Sit Kwong Lam v Management Corporation Strata Title Plan No 2645* ("*The Ardmore Park*") [2018] 1 SLR 790 at [72] interpreted paragraph 5(3)(c) of the 2nd Schedule to the BMSMR 2005 in the following manner:

> Reading the exception in by-law 5(3)(*c*) in a consistent way, we were of the view that it must similarly be limited to the situation where a subsidiary proprietor erected a structure or device on common property in order to prevent harm to *children while they were within his lot*. (emphasis in the original)

15. Two important points may be gleaned from this passage. First, the learned Chief Justice described paragraph 5(3)(c) of the 2nd Schedule to the BMSMR 2005 as an 'exception' to the general rule that the management corporation's consent must be obtained before a structure or device on common property is erected. Second, the passage did not contemplate that this 'exception' is subject to the necessary votes being obtained at the Annual General Meeting. Thus, *The Ardmore Park* supports this Board's conclusion that under existing law the Respondent did have the power to prescribe guidelines in relation to awnings when there is a "killer" litter problem to prevent harm to children while they were within a subsidiary proprietor's lot.

16. We note that the BMSMA was recently amended with the introduction of section 37A of the BMSMA. Section 37A of the BMSMA provides as follows:

> **37A.**—(1) A subsidiary proprietor of a lot in a building on a parcel comprised in a strata title plan may install safety equipment on the lot, or as part of any window, door or opening on the lot which is facing outdoors, despite any other provision of this Act or the regulations or any by-law of the parcel which otherwise prohibits the installation of such safety equipment.
>
> (2) A subsidiary proprietor of a lot in a building who installs safety equipment under this section must —
>
> (*a*) repair any damage caused to any part of the common property or limited common property (as the case may be) by the installation of the safety equipment; and

(*b*) ensure that the safety equipment is installed in a competent and proper manner and has an appearance, after it has been installed, in keeping with the appearance of the building.

(3) In this section, "safety equipment" means —

(*a*) any of the following features to prevent people from falling over the edge of an outdoor-facing balcony or terrace or a window or door or an opening which is outdoor-facing:

(i) a window grille or screen;

(ii) a balustrade, railing or fence;

(*b*) any device capable of restricting the opening of a window or door or an opening which is outdoor-facing;

(*c*) any screen or other device to prevent entry of animals or insects on the lot;

(*d*) an intruder alarm or monitoring system; and

(*e*) any lock or other security mechanism that is designed to protect occupiers of the lot against intruders to the lot.

17. The definition of "safety equipment" in section 37A of BMSMA does not appear to include awnings. Does the amendment mean that Parliament had by implication excluded the management corporation's power to prescribe guidelines in relation to awnings to counter a "killer" litter problem? This Board is of the view that a careful analysis of the statutory framework will show that section 37A of the BMSMA did not affect a management corporation's ability to prescribe guidelines with respect to awnings if there is a "killer" litter problem. Section 37A of the BMSMA deals with the specific issue of "safety equipment" and not "any structure or device to prevent harm to children" mentioned in paragraph 5(3)(c) of the 2nd Schedule to the BMSMR 2005. The omission to deal with these other structures or devices in section 37A did not, in this Board's view, signal an intention by Parliament to abolish the subsidiary proprietor's rights to install these items to protect their children. In other words, section 37A of the BMSMA did not preclude a subsidiary proprietor from installing any structure or device on common property to prevent harm to a child while the child is within his or her lot and the management corporation may prescribe guidelines in relation to the installation of such devices or structures. This interpretation is fortified by paragraph 5(4) of the 2nd Schedule to the BMSMR 2005 which provides:

> Any such locking or safety device, screen, *other device or structure* must be installed in a competent and proper manner and must have an appearance, after it has been installed, *in keeping with such guidelines as the management corporation may*

> *prescribe regarding such installations*, and with the appearance of the rest of the building. (emphasis added)

18. Thus, it is clear that management corporations may prescribe guidelines in relation to awnings which may fall within the definition of "other device or structure" when there is a "killer" litter problem.

19. In light of the above, the Respondent's earlier position that it was not empowered or unable to prescribe the installation of the awnings is erroneous.

Whether the Installation of Retractable Awnings is a Reasonable, Necessary & Proportionate Response

20. In *The Belysa*, the Board said that even though paragraph 5(3) of the 2nd Schedule to BMSMR 2005 permits installations of awnings, these awnings must be a *necessary, reasonable and proportionate* response to the killer litter problem. In the present case, the Applicants would prefer to install a fixed awning whereas the Respondent belatedly prescribed guidelines to install retractable awnings.

21. During the course of the arbitration hearing on 7 May 2019, it became clear that due to the curvature of the Applicants' units that there might be complications in relation to providing adequate coverage using retractable awnings. While a fixed awning is able to accommodate the curved exterior wall, the installation of retractable awnings may result in a gap in the coverage at the curved exterior wall.

22. After the arbitration hearing on 7 May 2019, the Respondent proceeded to call a further witness to testify that the installation of retractable awnings was able to provide for the gap in the coverage at the area of curvature. When the matter was heard again on 29 May 2019, the Respondent called Ms Ng Hwee Theng who is the general manager of HLH Singapore Pte Ltd. According to Ms Ng, it is possible to provide full coverage (including the area at the curved exterior wall) by installing three (3) separate retractable awnings. Furthermore, Ms Ng's drawing showed that the lowest part of the awnings would be estimated to be 1.9 metres. This was challenged by the Applicants who argued that that the lowest part of the awnings would be around 1.55 metres.

23. In light of Ms Ng's evidence, this Board sees no reason to disagree with the Respondent that the installation of retractable awnings instead of fixed awnings is a necessary, reasonable and proportionate response to solving the "killer" litter problem. In relation to

the contention as to the height of the lowest part of the retractable awnings, this Board quotes the judgment of *The Belysa* at [25] where the Board said:

> the Applicants' contention that inclination of the retractable awnings would mean that an adult would not be able to stand in every part of the subsidiary proprietor's lot due to height restrictions ought to be rejected. The issue at hand is not to find a perfect solution which would meet the Applicants' every need. Instead, the proper inquiry is to find a reasonable, necessary and proportionate response to solve the problem of "killer" litter.

24. We note Chan Sek Keong CJ writing extra-judicially in *Tan Sook Yee's Principles of Singapore Land Law*, (3rd ed: LexisNexis, 2009) at viii who expressed the following view:

> The law should provide optimal conditions for land use in Singapore and the common law principles should, whenever possible, be applied to promote, rather than hinder, the social and economic needs of the community.

While Chan Sek Keong CJ was referring to common law principles, this Board is of the view that a similar philosophy should be adopted in relation to interpreting the regulatory framework governing strata developments.

25. In the present case, the statute and social policy considerations dictate that the installation of retractable awnings is necessary to protect the subsidiary proprietors and their children.

BOARD'S ORDER

26. The Applicants' action is allowed to the extent that the Applicants are entitled to install retractable awnings as per the guidelines prescribed by the Respondent.

27. The Board would like to hear the parties on costs.

Dated this 11th day of June 2019

Mr Seng Kwang Boon
Deputy President

Dr Tang Hang Wu
Member

Mr Chua Koon Hoe
Member

Mr Toh Kok Seng (Lee & Lee) for the Applicants.
Mr Lim Tat (Aequitas Law LLP) for the Respondent.