

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

STB No. 86 of 2019

In the matter of an application under **section 101(1)(c) & 113** of the Building Maintenance and Strata Management Act in respect of the development known as **WCEGA Plaza & Tower** (MCST No. 3564)

Between

Supersonic Maintenance Services Pte Ltd

... Applicant

And

The MCST 3564

... Respondent

GROUNDS OF DECISION

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18 February 2020

19 August 2020

Coram:	Mr Seng Kwang Boon	(Deputy President)
	Mr Leo Cheng Suan	(Member)
	Ms Hazel Tang	(Member)

Background

1. The Applicant is the Subsidiary Proprietor (“SP”) of six (6) units in WCEGA Plaza and Tower (the “Development”). It is in the business of providing cleaning services for both the private and public sectors.
2. The Respondent is the Management Corporation of WCEGA Plaza and Tower.
3. The original application filed by the Applicant seeks the following Orders:
 - (1) An order for the Respondent to wheel-clamp or tow away any vehicle found parking at non-designated parking spaces (“Offending Vehicles”) within the premises of the Respondent;
 - (2) An order for the Respondent to enforce payment by the owner and/or driver of the Offending Vehicle(s) of:
 - a. An administrative fee of S\$100.00 for the release of the wheel clamp together with a parking fee of S\$50.00 a day or any part thereof, such fees to be paid in full in cash

together with the prevailing Goods and Services Tax before the wheel clamp is released; or

- b. An administrative fee of S\$300.00 together with a parking fee of S\$50.00 a day or any part thereof, the towing, storage and connected charges and the prevailing Goods and Services Tax for the Offending Vehicle towed away.
- (3) An order for the Respondent to supply or make available the following information to the Applicant;
 - a. A copy of the plan attached to the letter from the Respondent to the subsidiary proprietor, GT Café Pte Ltd, dated 5 June 2018 (“Letter”);
 - b. A copy of the “*lease agreement prepared for mutual signatures*” stated in the Letter;
 - c. Evidence that approval from the relevant authority has been obtained for the Respondent to execute on behalf of its subsidiary proprietors a lease of the common property outside units #XXX, #XXX and #XXX, pursuant to section 34(2) of the BMSMA; and
 - d. A copy of the special resolution authorizing the lease of the common property outside units #XXX, #XXX and #XXX, pursuant to section 34(2)(a) of the BMSMA.
 - (4) An order for the Respondent to take all steps necessary to ensure compliance with the conditions in the Letter by GT Café Pte Ltd, including but not limited to removing the canopy structure constructed over the common property outside units #XXX, #XXX and #XXX.
 - (5) An order for the Respondent to supply or make available the following information to the Applicant:
 - a. The approved Change of Use application in respect of the motor vehicle showrooms in the premises of the Respondent, pursuant to the 2014 URA Revised Guidelines for Supporting Uses in Industrial Developments;
 - b. Confirmation that the motor vehicle showrooms in the premises of the Respondent fall within the 40% ancillary use of the said premises, pursuant to the 2014 URA Revised Guidelines for Supporting Uses in Industrial Developments.
 - (6) An order for the Respondent to take all necessary steps to evict vehicle repair workshops in the Premises of the Respondent.
 - (7) Should these banners, advertisements and signage be placed without the prior written approval of the Respondent, an order for the Respondent to take all necessary steps to remove banners, advertisement, and signage on the common property (including but not limited to the building façade of the premises of the Respondent).
 - (8) An order that the Respondent pay the Applicant’s costs of the application.
4. All were resolved before this arbitration hearing except the parking issues and costs.
 5. In this hearing, the Applicant sought the following three (3) orders :
 - i. The Respondent to wheel clamp and tow away any vehicle found parking at non-designated parking spaces within the condominium property.
 - ii. The Respondent to enforce payment by the owner and/or driver of the offending vehicle(s) of:

- a) an administrative fee of \$100 for the release of wheel clamp together with a parking fee of \$50 a day or any part thereof, such fees to be paid in full in cash together with the prevailing Goods and Services Tax before the wheel clamp is released; or
 - b) an administrative fee of \$300 together with a parking fee of \$50 a day or any part thereof, the towing, storage and connected charges at the prevailing Goods and Services Tax for the vehicle towed away.
- iii. The Respondent pays the Applicant's costs of this application.
6. These orders sought were extracts from Paragraphs (4) & (6) of the Additional by-law on Car Parking Management of the Development passed sometime in 2013. Paragraphs (4) & (6) of the by-laws are as follows:
- “(4) That vehicles found parking at non-designated parking spaces within the common property of the Management Corporation be wheel clamped or towed away.*
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- (6) The owner and/or driver of the offending vehicle shall pay the Management Corporation:*
- (A) An administrative fee of S\$100.00 for the release of the wheel clamp together with a parking fee of S\$50.00 a day or any part thereof, such fees to be paid in full in cash together with the prevailing Goods and Services Tax before the wheel clamp is released;*
- (B) An administrative fee of S\$300.00 together with a parking fee of S\$50.00 a day or any part thereof, the towing, storage and connected charges and the prevailing Goods and Services Tax for the vehicle towed away.”*
7. The Applicant is asking the Board to make the orders under Section 101 (1)(c) of the BMSMA. Section 101(1)(c) provides as follows :-
- 101(1) – Subject to subsections (4), (6) and (7), a Board may, pursuant to an application by a management corporation or subsidiary management corporation, a subsidiary proprietor, mortgagee in possession, lessee or occupier of a lot in a subdivided building, make an order for the settlement of a dispute, or the rectification of a complaint, with respect to —*
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- (c) the exercise or performance of, or the failure to exercise or perform, a power, duty or function conferred or imposed by this Act or the by-laws relating to the subdivided building or limited common property, as the case may be.*

APPLICANT'S CASE

8. As early as Jan 2019 or even earlier, the Applicant noticed that many vehicles were being parked illegally at various locations in the Development. The locations and the large number of vehicles involved, caused serious safety issues and dangers to SPs and their employees. He wrote to the Respondent on several occasions reporting on the parking situation. The Applicant said the Respondent wrote to say they would step up daily inspections and take enforcement actions when necessary and would continue to do its best to ensure compliance of the applicable laws and by-laws.
9. The Applicant said that there was little or no improvement to the illegal parking problem, which remained unresolved.
10. The Applicant then filed this application with the STB.

11. The Applicant alleged that the Respondent failed to enforce the parking by-laws, and in particular, the Respondent's enforcement of the parking by-laws was lacking and inadequate, and that there are serious safety concerns from the extent of the illegal parking in the Development. This includes carpark ramps, traffic lanes, outside units in the Development and many common areas which are not demarcated for parking.
12. The Applicant further alleged that after he had filed the application with the STB, on 11 December 2019, the Respondent targeted him and selectively enforced the parking by-law against him by clamping and towing his vehicle away, despite there being allegedly many other vehicles parked in the same area.

RESPONDENT'S CASE

13. The Respondent denies the Applicant's allegations that it has not been enforcing the parking by-laws. The parking by-laws had been in existence for six (6) years and there were no objections from the Applicant before this.
14. The Respondent's operations manager, Lim Huang Jie and the complex manager, Lim Yong Heng both testified that they have been enforcing the parking by-laws complained of by the Applicant.
15. They submitted a security deployment table showing how the security officers were deployed in patrolling the Development and looking out for offending vehicles.
16. They also submitted the records of the number of vehicles clamped and the amount of fees paid by these offending vehicle's owner/driver.
17. They also testified that they have a standard operating procedure (SOP) for the guidance of the security officers, as follows:
"SOP for Parking Violations"
 1. *Obstruction - Tow away immediately.*
 2. *Non-obstruction - Serve warning letter (white colour) – 20 minutes allowance.*
 3. *Serve final a warning letter (red colour) - 20 minutes allowance thereafter to wheel clamp.*
 4. *Vehicle will be tow away if owner did not made payment of wheel clam fee after 3 days from the date of the wheel clamping. Parking fee of \$50.00 per day apply.*
 5. *After office hours – all violation charges & fee will be handled by the security with proper records and receipts. To hand over to management office the following working day.*
SOP for Obstruction by Heavy Vehicles & Container
 1. *Serve warning letter – 24 hours to remove*
 2. *Clamp/tow to temporary storage pending disposal after 3 days.*
 3. *Clamp release fee of \$107.00 (include 7% GST), towing charges of \$321.00 (include 7% GST) and daily storage fee is applicable.*
 4. *All charges will be reimbursed from owner."*
18. The development is also large, consisting of some ten (10) floors, with more than nine hundred (900) SPs. They deployed their officers the best they could to enforce the parking by-laws. The Development also owns sixteen (16) wheel clamps and used all of them frequently.
19. The 11 December 2019 incident cited by the Applicant for towing away his vehicles was exceptional. It is not disputed that the vehicle was parked in a undesignated parking lot in breach of the Additional By-law on parking. The vehicle was suspected of carrying a toxic

substance, and the Applicant had indicated that he would not remove the vehicle. Hence, the Respondent towed the vehicle away.

20. Both the Operation Manager and the Complex Manager also said that in implementing the SOP, the enforcement officers were given some flexibility and discretion. Both denied the Applicant's allegation of selective enforcement by their officers.

BOARD'S FINDINGS

21. The control management and administration of the use of common properties (including parking) is within the purview of the management corporation (see Sections 29 and 32) of the BMSMA. This would include the day-to-day management, such as the protocol and procedure used to carry out its duty.
22. The Board is of the view that in the absence of any evidence of discrimination, unfair practice or other unlawful acts against any SPs, the Board would not intervene.
23. Both the Respondent's Operations Manager and Complex Manager testified that the by-laws were being enforced. This was supported by the documents they submitted, especially the records of the number of vehicle clamped and the fees collected. The Board, on all the evidence adduced before it, finds that the Respondent had been enforcing the parking by-laws complained of by the Applicant, albeit, not to the subjective expectation of the Applicant.
24. The Board finds the SOP implemented by the Respondent reasonable, and that it is not lacking or inadequate. The Board also notes that the Applicant does not object to the SOP.
25. In enforcement actions, it is the Board's view, that it is reasonable to give these enforcement officers some degree of flexibility and discretion in following the SOP so long as there is no abuse, impartiality or discrimination.
26. The Board is not satisfied on the evidence before it that there were any oppressive or unreasonable actions taken by the officers of the Respondent against the Applicant. There was no selective enforcement against the Applicant.

BOARD'S DECISION

27. From the evidence presented by the parties, the Board finds that the Additional parking by-laws complained of by the Applicant had been enforced by the Respondent and declines to make the orders prayed for by the Applicant in this application.
28. The application is dismissed.

COSTS

29. The Board recognizes that there is an unauthorized parking problem in the Development, particularly on the ramp. The Board also notes that the Respondent had since taken additional steps to address the issue in the course of the Application, and the safety issue has been resolved.
30. In light of the above, the Board is of the view that it would not be equitable to order costs against the Applicant.

BOARD'S ORDERS

31. The Board orders that:

- (1) The application is dismissed; and
- (2) Each party to bear its own costs.

Dated this 19th day of August 2020

MR SENG KWANG BOON
Deputy President

MR LEO CHENG SUAN
Member

MS HAZEL TANG
Member

Mr Cumara Kamalacumar (M/s Selvam LLC) for the Applicant
Mr Daniel Chen (M/s Lee & Lee) for the Respondent