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BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT

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

STB No. 19 of 2023

In the matter of an application under section(s) 101, 103, 104, 105, 106, 108 and 113 of the Building Maintenance and Strata Management Act in respect of the development known as ROSEWOOD SUITES (MCST Plan No. 3752)

Between

Tan Teck Huat and Toh Laye Lan

...Applicants

And

The Management Corporation Strata Title Plan No. 3752

... Respondent

GROUND OF DECISION

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18 September 2023

Coram:	Mr Remedios F.G	(Deputy President)
	Mr Winston Hauw	(Member)
	Ms Elaine Chew	(Member)

INTRODUCTION

1. Tan Teck Huat (TTH) and Toh Laye Lan (TLL) are subsidiary proprietors of a lot in the estate known as Rosewood Suites and they are the applicants in this case. The respondent is Management Corporation Strata Title Plan No 3752, the management corporation of the estate (the MCST).
2. TTH is the owner of motorcycle (m/cycle) FPxxxxE and had been parking his m/cycle in the estate ever since late 2011.

BACKGROUND

3. On 13/09/22, the MCST sent an email to TLL. The subject of the email was “*RE: RWS Motorcycle Parking*” and she was informed that the MCST was *seeking proof of residency*. She was also informed that *Till this date the MA office and MC have yet received from you any valid proof of residency...For the record the date line to submit a valid proof of residency has expired...Hence to move things forward, please submit proof of residency and vehicle registration card for review by 15 September 2022...the Management reserve the right to proceed with the wheel clamp in accordance with the Car Parking By-Law and the Wheel Clamping By Law passed in 2014.*
4. On 14/09/22 the m/cycle was wheel clamped.
5. Via an email sent on 07/10/22 the MCST referred to its 13/09/22 email and informed TLL *that the motorbike has been clamped in accordance with the Carparking By-law and the Wheel-Clamping By-law passed in 2014. In order to release the wheel clamp, please proceed to the Management Office during office hours or Security Guardhouse after office hours to make the payment as follows:*

Amount to be charged.

Release of wheel clamp: \$100.

Subsequent at \$50/day: \$50 x20 days (calculated till 5/10) = \$950

Total: \$1050
6. It can be noted that the daily administrative fee for release was being charged for the period 16/09/22 – 05/10/22 ie there were no charges for 14 – 15/09/22. Statement of Accounts rendered to applicants from Oct 2022 to date included the release and daily fees.
7. When STB 19 of 2023 was filed, the application was for a total of seven (7) orders including orders in relation to the wheel clamping of TTH’s m/cycle.
8. In the Submission By Management Corporation Invited to Make Submission (Form 18A) the MCST informed:

*At the 3rd AGM on 24/05/2014, by-laws titled *By-Laws on Wheel Clamping of Vehicles (the Wheel Clamping by-laws) were passed. Inter alia the by-laws provided for**

i) imposition of an administrative fee for removal of mechanical vehicle wheel clamps,
ii) disablement via wheel clamping for breach or violation of the By-Laws and House Rules
iii) imposition of daily administrative fees.
9. On 20/08/2022 residents were notified that *House Rules on parking of motorbikes in Rosewood Suites (the House Rules) were passed. Inter alia the House Rules provided:*

3. Motorbike Owners are to produce relevant identification to prove that they are Resident of Rosewood Suites.

4. *To produce photocopy of the Land Transport Authority (ROV) registration card and i/c as proof of ownership.*
10. The Wheel Clamping by laws and the House Rules were exhibited at Annexes A and B of Form 18A.
11. The MCST informed that the applicants' m/cycle had been wheel clamped because they had tenanted their unit and were no longer residents in the estate. An email dated 03/05/2019 from TLL notifying the MCST that their unit had been rented out starting from 01/05/2019 was exhibited at Annex C
12. Mediation did not result in a successful resolution of the dispute and a Directions Hearing (DH) was fixed for directions to be given in relation to an arbitration hearing. Because the parties had agreed on some matters in the course of mediation, the parties were directed to, before the DH, inter alia notify the Board as to issues for determination.
13. DH was held on 26/7/2023. In accordance with Regulation 13 of the Building Maintenance and Strata Management (Strata Titles Boards) Regulations 2005 (BMSMR), DH are held for directions to be given with a view to the just and expeditious disposal of the arbitration proceedings. At the DH, it was noted and recorded that the applicants were, in respect of the seven (7) orders applied for in the application (Section D of Form 8) now seeking for five (5) of the seven viz:
- i) MCST to immediately release wheel clamp on m/cycle FPxxxxE. Clamped on 14/09/22 after letter dated 13/09/22 was issued requiring owner to supply/furnish documents by 15/09/22 failing which vehicle would be clamped.
 - ii) Invalidate the imposition of \$100 wheel clamp release fee and daily fee of \$50 per day imposed on 07/10/22.
 - iii) Invalidate the imposition of fees relating wheel clamping in MCST statements from Oct 2022 onwards.
 - iv) The MCST be ordered to compensate the Applicants for losses including loss of use and damage(s) suffered as a result and MCST/MC/MA conduct and action. The MC/MA deliberately misconstrued the Car Parking By Law and the wheel clamping By Law passed in 2014 to pursue a course of action not provided for.
 - v) An order that the MCST/MC/MA shall not be allowed to pay any cost, loss, damage, or expenses from the Management and Sinking Funds...and individuals responsible for this shall bear such amounts.
14. The grounds for the orders as set out in the application (paragraphs 5, 6 and 7 of Section E of Form 8) were also noted and recorded at the DH. They were:

Notably the By Laws apply specifically to Cars and their owners and their compliance with such By-laws and those By Laws do not apply to m/cycles or bicycles...This was previously repeatedly pointed out to MCST by the Applicants...

Then without notice, the MCST/MC/MA in utter bad faith wheel clamped the m/cycle on 14/September 2022 despite having given the Applicants until 15 September 2022 to furnish the documents and thereafter refused to release the same without payment of the fees imposed...

The MCST further unlawfully included and invoiced and or rendered Statement of Account to the Applicants for a release fee of \$1000 and wheel-clamping fee at \$50 per day with GST...from October 2022 ...onwards.

Parties were also at the DH informed of that amendments would have to be made to the application before any other grounds could be raised and directions were given for submissions to be filed in relation to the issues identified.

15. The Board is not under Regulation 18(1) of the BMSMR bound to apply the rules of evidence applicable to civil proceedings and in this case the parties at the DH agreed that they would be relying on the documents that had been submitted and that there would not be a need for AEICs in relation to the documents. Inter alia the documents submitted included the Wheel Clamping by-laws and the House Rules.
16. It can be noted that the orders applied for were in relation the wheel clamping of m/cycle FPxxxxE, a m/cycle that belonged to TTH. The orders applied for can be made only if the m/cycle had been wrongly clamped. There was, in this case only one ground for contending that clamping and imposition of the release and daily fee was wrong, and this was that the by-laws of the MCST were not applicable to m/cycles. There were no applications for amendments in this case.

APPLICANTS' SUBMISSION

17. In the written submissions (A1) the applicants in support of their contention that the by-laws did not apply to m/cycles submitted that the contents of the by-laws were substantially in relation to motor cars (m/cars) and that this was *a tacit acceptance* that they were not applicable to m/cycles. It was submitted that the By Laws “...had no reference to motor cycle parking and was restricted to car parking and about car parking requirements...” The applicants referred to “Section E of By Laws Updated 7 July 2021” (exhibited at “J” in A1) which, inter alia dealt with “*Parking Arrangements for Car Owners*”, “*Parking Arrangements for Second and Subsequent Car Owners*”, “*Application for transponders...*” and pointed out that except for one provision that allowed for the parking m/cycles in the estate, there was no mention of m/cycles in any of the other provisions. It was also submitted that the Wheel Clamping by-laws were not applicable to m/cycles because m/cycles were not mentioned in “Section E of By Laws Updated 7 July 2021” and it was submitted that *no other house rules or otherwise were passed by the MC*. There was no submission on the applicability of the *House Rules on parking of motorbikes in Rosewood Suites* which the Respondent had exhibited at Annex B of Form 18A.
18. The applicants in their Reply Submissions (A2) made a submission that the House Rules made in August 2022 did not exist when the m/cycle was clamped ie that they were fabricated. This was, until the Reply Submissions were filed never a part of the applicants’ case.

RESPONDENT'S SUBMISSION

19. In the Submission By Respondent (Form 18A) filed by the MCST in response to the application, the MCST referred to the bylaws and house rules on parking and wheel clamping and pointed out that the applicants’ contention that the bylaws were applicable to m/cars and not to m/cycles was *wholly unmeritorious*. *The relevant by-law is titled “by-Laws on Wheel Clamping of Vehicles” and applies to all vehicles parked in the Development including both motor cars and motorbikes.*

20. The respondent in its Written Submission (R1) repeated that the applicants' assertion that the by-laws and house rules did not apply to m/cycles were *wholly unmeritorious*. Respondents referred to the title of the Wheel Clamping by-laws and the reference to *vehicles* in the by-laws. It was submitted that on a plain reading the Wheel Clamping by-laws applied to all vehicles including m/cars and m/cycles. It was also submitted that if there was any ambiguity as to whether or not the by laws were applicable to m/cycles, the House Rules expressly stated it was for the governance of m/cycles. In relation to the clamping of the m/cycle on the 14/09/22 the respondent in R1 informed that it was of the view that the applicants had no intention of providing documentary evidence and informed that up to the time of the filing of R1 it had yet to receive the vehicle registration card for the m/cycle and did not know who it belonged to.

BOARD'S DECISION

21. In addition to the Wheel Clamping By-laws and the House Rules, there were the by-laws referred to by the applicants (exhibit "J" in A1) viz Rosewood Suites By-laws Updated 7 July 2021 (Rosewood Bylaws) which dealt with various activities in the estate.
22. The Rosewood Bylaws predated the House Rules and by-laws in relation to parking in the estate were in Section E. There were 6 by-laws in relation to parking and it was headed "Car Parking". A perusal of the provisions in the section will however reveal that the provisions were not confined to parking of m/cars eg it was in 5.2 of Section E provided that *Only m/cycles, cars small vans, and other light vehicles...are allowed to park at the estate*. It is true that there were provisions in Section E that were applicable only to m/cars eg *Parking Arrangement for Car Owners (E.1); Parking Arrangement for Second and Subsequent Car Owners (E.2); Application for transponder...(E.3)*. This however cannot validate a submission that car parking by laws in the estate were not applicable to m/cycles.
23. There was, other than that m/cycles were allowed to park in the estate no evidence that there were any by-laws or rules similar to E.1, E.2, and E.3 in the Rosewood By-laws before August 2022. However, any doubt as to the rules that m/cycle owners had to comply with was removed with the passing of the House Rules on the parking of motorbikes on 23/8/2022. Residents were in the preamble of the House Rules informed that the Management Council would be tightening the rules on motor bike parking and it was in the rules provided.
3. *Motorbike Owners are to produce relevant identification to prove that they are the Resident of Rosewood Suites.*
4. *To produce photocopy of the Land Transport Authority (ROV) registration card and i/c as proof of ownership.*
24. The Wheel Clamping by-laws allowed for wheel clamping of vehicles that were in breach or violation of the *By Laws and House Rules governing the car parking system*. It is not the finding of the Board that By Laws and House Rules governing the car parking system in the estate governed only m/cars. Owners of any and all vehicles who required parking facilities in the estate had to comply the car parking system in the estate and the system catered for m/cars and other vehicles including m/cycles.
25. The applicants had been asked for proof of residency and for the vehicle registration card of the m/cycle. The necessary documents were not provided and the m/cycle was wheel clamped. The release fee and daily fees were properly charged as the documents were never provided. To the

applicants' point that the wheel clamping had occurred on 14/09/22 despite the MCST's email on 13/09/22, it suffices to point out that the applicants were already in non-compliance by 14/09/22 such that the By Laws and House Rules allow clamping and in any event no daily administrative fees had been charged until after 15/09/22.

26. Finally, while the applicants had challenged the authenticity of the House Rules in their reply submissions, as observed above, Parties had been informed at the DH that amendments would have to be made to the application before any other grounds could be raised and directions were given for submissions to be filed in relation to the issues identified. No amendments had been made to take into account this challenge.
27. In light of the above, there is no basis for ordering the release of the wheel clamp and consequentially the other orders sought by the applicants also fall away.
28. The application is dismissed and it is ordered that the applicants will pay the respondent costs fixed at \$5,000.00.

Dated this 4th day of October 2023

Mr REMEDIOS F.G
Deputy President

Mr WINSTON HAUW
Member

Ms ELAINE CHEW
Member

<p>Mr Ignatius Joseph (Ignatius J & Associates) for the Applicants. Mr Enzel Tan and Mr Drashy Trivedi (Lee & Lee) for the Respondent.</p>
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