BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT

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

STB No. 106 of 2023

In the matter of an application under section(s) **101** of the Building Maintenance and Strata Management Act in respect of the development known as **RIDGEWOOD CONDOMINIUM** (MCST Plan No. 533)

Between

The MCST Plan No. 533

... Applicant

And

Ms Kanika Mittal

... Respondent

GROUNDS OF DECISION

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... Respondent

26 June 2024

Coram:	Mr Remedios F.G	(Deputy President)
	Dr Lim Lan Yuan	(Member)
	Prof Lye Lin Heng	(Member)

BACKGROUND

1. Ridgewood Condominium was completed sometime between 1981 and 1982. It comprises 464 residential units including a row of 38 townhouses. The Respondent is the subsidiary proprietor of a townhouse at No. XXX which is at the left end of the row as one faces the main road ("**the Respondent**"). All of the area outside the boundary of external walls are common property and access to the townhouses which have their own gated driveways is from the main road (Mount Sinai Rise).

2. Sometime in 2021 the Respondent installed fixed awnings with support columns at the front and side of the townhouse.

3. In February 2022 the Respondent applied to install a retractable awning at townhouse poolside facing outdoor space. The application was approved. Retractable awnings were installed at the front and back of her lot.

4. Where there was originally a wooden fence outside the Respondent's lot, this was replaced with an aluminum fence with the same color and dimensions of the original.

5. On 14 December 2023 the Applicant, the management corporation of the estate applied for orders for the Respondent to remove the fixed and retractable awnings and reinstate the wooden fence ("**the Applicant**"). The applications in respect of the retractable awnings and wooden fence were withdrawn after a mediation on 5 February 2024 and the Board is now required to make an order in relation to the outstanding application which was set out in section C of Form 9 as follows:

   That the Respondent be compelled to remove the fixed awning and support column of her unit.

6. In relation to the fixed awnings and support columns there was before the awnings were installed a smaller glass covering at the front of the townhouse, which was cracked and leaking. The fixed awnings and support columns were installed after an application was made by the Respondent, on grounds of, inter alia safety concerns and "*a schematic of the improved roof design that meets BCA/URA regulations*" was submitted for the Applicant's consideration. Permission for a "*like for like*" replacement was given in September 2021. Other than photographs of old awnings before the fixed awnings were installed there was no evidence of the specifications of the old awnings.

7. At the Directions Hearing before a hearing was fixed, the Board was informed there was only one ground for the application for removal and it was that removal was required because it was installed and anchored on common property. It was also recorded at the Directions Hearing that "*There is no dispute that the fixed awning is anchored on common property*."

8. The Board was also at the Directions Hearing informed that the parties did not intend to adduce evidence from witnesses and would be relying on the documents and written submissions filed and directions were given for the filing of written submissions.

9. There was on the part of the Respondent exclusive use and enjoyment of the areas of the common property where the awnings and support were anchored and there was no dispute that the Respondent intends to retain the awnings and support as a permanent feature of her unit.

EVIDENCE AND SUBMISSIONS

10. Under s 33 of the BMSMA, the management corporation can by way of a by-law pursuant to 90% resolution confer on a subsidiary proprietor exclusive use and enjoyment of common property for a period of more than 3 years and there can be no dispute that the requirements of s 33 must be strictly complied whenever exclusive use and enjoyment of, or special privileges over common property is contemplated.

11. It was the submission of the Applicant that *"the council was acting under the mistake"* when it gave its approval for a like for like replacement and that it had no authority to grant the approval.[1] On the part of the Respondent, it was submitted that the Applicant had given the *"requisite approval for the said replacement as required under s 33(1)(c) of the BMSMA… and had received implicit or explicit approval twice by Councils past and present as required under s 33(1)(c) of the BMSMA…"*.[2]

12. Whilst an argument could be made as to whether there was or was not an approval, the fact was that a by-law pursuant to a 90% resolution had not been made and the Respondent had never ever sought to obtain a resolution for the by-law.

13. Following the exclusive use and enjoyment of common property on the part of the Respondent without a by-law under s 33 of the BMSMA, the Applicant filed the application for an order under s 101 of the BMSMA.

FINDINGS AND DECISION

14. The application is for an order to compel the removal of the fixed awnings and support. The order applied for is in the nature of a mandatory injunction and the law in relation to injunctions has to be applied for a decision to be rendered.

[1] The Applicant's Written Submissions dated 22 May 2024, paragraph 7.
[2] The Respondent's Reply to the Applicant's Written Submissions dated 27 May 2024, paragraphs 4 and 5.

15. In Choo Kok Lin and Anor v MCST Plan No 2405 [2005] 4 SLR (R) 175) the High Court noted *"... The law in Singapore as established by the cases of Chen Ee Yueh and Tay Tuan Kiat v Pritam Singh Brar is that even where there is an encroachment by one land owner on the property of another or a subsidiary proprietor has erected structures without the permission of the management corporation, a mandatory injunction will not necessarily be issued to force the removal of the structures or end the encroachment."*

16. In Tay Tuan Kiat, the High Court did not grant an order for the defendant to pull down and remove a wall that had encroached upon the plaintiff's property because *"...the obligation imposed on the defendant is extremely onerous and is out of proportion to the benefit to be gained by the plaintiffs. In my view it will not produce a fair result."*

17. We proceeded to make our decision as to what would produce a fair result by considering the harm that the Respondent will suffer in relation to the benefit on the part of the Applicant in all the circumstances of this case.

18. The Applicant had applied for the order because of its duty to control, manage and administer common property and the exclusive use and enjoyment of common property on the part of the Respondent without the required by-law cannot be said to be a trivial matter. However, it was apparent that the structure has caused no damage or appreciable damage to the Applicant. There was no dispute that there were differences in awning styles, window frames, main door locations and styles in all the 38 town houses and an order for removal would not serve any purpose in relation to consistency of façades. The structure had also been installed after the Respondent's schematic of the improved roof design had been considered by the Applicant and after installation had been completed no action was taken by the Applicant to inform that it was not in accordance with the approval given and/or their removal was required, i.e. there was no undermining of the authority of the Applicant on the part of the Respondent. It was also a fact that whilst the structure was anchored on common property it was not in an area where there was interference with the use or enjoyment of common property by other occupiers or other persons entitled to the use and enjoyment of common property. We could not see how there could be a counterbalancing benefit to the Applicant compared to the hardship that would be caused to Respondent by the making of an order for removal.

19. The Applicant had in its Written Submission informed that the application in this case was a test case with a view to proceeding against other subsidiary proprietors who might similarly be in breach at a later stage if necessary.

20. It should be obvious the decision in this case was on the basis of facts and circumstances in the case. The outcome of proceedings against other subsidiary proprietors would be dependent on the facts and circumstances of the case under consideration and not on the decision in this case.

21. The decision in this case would also not be useful to others who have yet to install structures on common property and decide to do so because of the decision in this case. On the basis of the response of the management corporation when a subsidiary proprietor commences to install structures and make exclusive use of common property in breach of the provisions of the BMSMA it is difficult to imagine that a court or a board would allow the subsidiary proprietor to retain the structure when the harm caused to the management corporation and other subsidiary proprietors would be greater than the benefit to the offending subsidiary proprietor.

22. Accordingly, we have decided not to grant the order applied for and dismiss the application. There will be no order on costs.

Dated this 26th day of June 2024

Mr Remedios F.G
Deputy President

Dr Lim Lan Yuan
Member

Prof Lye Lin Heng
Member

Ms Teh Ee-von (M/s Infinitus Law Corporation) for the Applicant
Mr Muhammad Aadil (M/s I.R.B. Law LLP) for the Respondent