

BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT

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

STB No.41 & 43 of 2009

In the matter of an application under section
101 of the Building Maintenance and Strata
Management Act in respect of the development
known as Draycott 8 Condominium (MCST #
XXX)

The MCST No. 3106

... Applicant

And

- 1) Grand Ventures Investments Ltd
(withdrawn on 21/8/09)
- 2) Cascadila Investment Holding Pte Ltd
(withdrawn on 3/9/09)
- 3) Ostinelli Francois
(withdrawn on 8/10/09)
- 4) Pochuev Vladislav
- 5) Chen Jung Yuan
- 6) Pochueva Inna
- 7) Nigel Abraham Saperia
(withdrawn on 2/9/09)

... Respondents

Coram: Mr F G Remedios
Deputy President

Panel Members: Prof Teo Keang Sood
Dr Lim Lan Yuan

Counsel: Mr Tan Liam Beng
Mr Soh Chun York
(Drew & Napier LLC for the Applicant)

Mr Ranjit Singh
(M/s Francis Khoo & Lim for the 4th & 6th Respondents)

GROUND OF DECISION

This is an application by The Management Corporation Strata Title Plan No. 3106 (the MC) against the subsidiary proprietors of 10 Draycott Park #XXX and 6 Draycott Park #XXX for the following orders:

That the respondents and/or tenants and/or occupiers of the units allow the MC's agents, staff, employees, contractors and/or nominees to enter the said units, at a time to be determined by the MC, to carry out rectification and/or enhancement works to the balcony glass balustrades of the units;

That the respondents shall pay to the MC the costs of this application on an indemnity basis;

Such further or other relief as the Board deems fit and just.

Background:

The events leading to the filing of the application are set out in paragraphs 6 to 12 of AEIC of the condominium manager Yap Bee Poh. They are as follows:

The Development is a residential development comprised of 3 towers each 24 storeys high, and housing some 136 residential units. Each unit within the Development features balcony balustrades made of glass.

In 2008, there were 5 separate instances of spontaneous breakages of the balcony glass balustrades. There were also several incidents of other spontaneous glass breakages between early 2008 to early 2009.

As a result of these incidents, and in particular the spontaneous breakages of the balcony glass balustrades, the MC engaged a façade consultant to advise on the matter, with a view to considering legal proceedings against the developer of the Condominium, Winworth Investment Pte Ltd (“the Developer”).

The facade consultant determined that there was a likelihood of further instances of such breakages of glass, and that significant physical injury may result due to the shattered glass falling onto the ground floor and onto the units immediately below. The façade consultant further recommended various measures to be carried out to enhance the safety of the glass balustrades, such as the application of a safety film and installing additional supports. Should spontaneous breakages of the balcony glass balustrades occur, the safety film would hold the shattered glass in position, preventing it from falling onto the ground floor and/or onto the units immediately below.

Subsequently, the Developer proposed to carry out rectification and/or enhancement works to the balcony glass balustrades (“the Works”). This involved, amongst others, applying a safety film into structures/kerb/frames and installing additional supports to the glass balustrades.

The Developer’s proposals were in line with the recommendations of the façade consultant. Accordingly, the MC was agreeable to the Developer carrying out the proposed Works, and subsequently issued various circulars and letters to the Respondents to notify them of the Developer’s proposed course of action.

The consent of the Respondents was sought to allow the Developer to enter into the Units to carry out the Works. Such consent was sought by way of, amongst others, circulars dated from December 2008 to June 2009. Particulars of these circulars, along with material extracts thereof, are as follows:

- (a) Circular dated 4 December 2008 (Ref: DC8/CIR/142-08);

“ We refer to the above captioned and our earlier letter dated 17th September 2008, in which we inform that the developer, [M/s] Winworth Investment Pte Ltd would be carrying out enhancement work to the individual units with existing glass balustrades at the balconies. The purpose of the enhancement is to ensure that in the event of spontaneous shattering of the glass, the extended top and bottom frame will hold the safety film and glass in place until it is replaced.

...

To date, the works are still on-going and we have noted that subsidiary proprietors/tenants have yet to revert on their availability for the enhancement works to be carried out in their availability for the enhancement works to be carried out in their units. The works have been scheduled to commence on 29th September 2008 to end January 2009 ...

...

Residents who have yet to [respond] will need to indicate their three(3) priority of availability for the enhancement work for your unit in the attachment form enclosed.”

(b) Circular dated 22 January 2009 (Ref: DC8/CIR/148-09);

“We wish to reiterate that the purpose of the enhancement is to ensure that in the event of spontaneous shattering of the glass, the extended top and bottom frame will hold the safety film and glass in place until it is replaced.

...

*The work have been scheduled to recommence from **2nd February 2009 to 12th March 2009***

Residents who wish to register for the above will need to indicate their three (3) priority of availability for the enhancement work for your unit in the attachment form enclosed.”

(c) Circular dated 9 February 2009 (Ref: DC8/CIR/154-09);

“Refer to the earlier circular date 21 January 2009 regard to the above captioned.

To-date, we have yet to receive any replies from your ends on the arrangement for an appointment date to facilitate M/s Winworth Investment Pte Ltd to [access] your unit to carry out the existing balcony glass enhancement works.

Our office would like to emphasize that the purpose of the enhancement is to ensure that in the event of spontaneous shattering of the glass, the extended top and bottom frame will hold the safety film and glass in place until it is replaced.

In view of the safety concerns, we urge all residents/tenants to register with our management office for appointments according to the available schedule attached. Alternatively, if either of the timings is not available to you, we would appreciate that you could contact our office for other arrangements and we will [do] our utmost to arrange with the contractors.

*The available schedules which are currently available is **from 12th February 2009 to 12th March 2009...**”.*

(d) Circular dated 15 February 2009 (Ref: DC8/CIR/158-09);

“Refer to the earlier circular date 9 Feb 2009 and 21 Jan 2009 in regard to the above captioned. The said circular has been sent to your unit at Draycott 8 but to-date, we have yet to receive any replies from your ends on the arrangement for an appointment date to facilitate M/s Winworth

Investment Pte Ltd to [access] your unit to carry out the existing balcony glass enhancement works.

Our office would like to emphasize that the purpose of the enhancement is to ensure that in the event of spontaneous shattering of the glass, the extended top and bottom frame will hold the safety film and glass in place until it is replaced.

In view of the safety concerns, we urge all residents/tenants to register with our management office for appointments according to the available schedule attached. Alternatively, if either of the timings is not available to you, we would appreciate that you could contact our office for other arrangements and we will do our utmost to arrange with the contractors.

*The available schedules which are currently available is from **16th February 2009 to 12th March 2009...***

(e) Circular dated 9 April 2009 (Ref: DC8/CIR/169-09);

“Refer to the earlier circular 4 December 2008 in regard to the above captioned. The said circular has been sent to your unit at Draycott 8 but to-date, we have yet to receive any replies from your ends on the arrangement for an appointment date to facilitate M/s Winworth Investment Pte Ltd to [access] your unit to carry out the existing balcony glass enhancement works.

Our office would like to emphasize that the purpose of the enhancement is to ensure that in the event of spontaneous shattering of the glass, the extended top and bottom frame will hold the safety film and glass in place until it is replaced.

In view of the safety concerns, we urge all residents/tenants to register with our management office for appointments according to the available schedule attached. Alternatively, if either of the timings is not available to you, we would appreciate that you could contact our office for other arrangements and we will do our utmost to arrange with the contractors.

*The available schedules which are currently available is from **16th April 2009 to 5th May 2009...***

(f) Circular date 8 May 2009 (Ref: DC8/CIR/169-09);

“We refer to the earlier circular 9 April 2009 which was sent to you and your at Draycott 8 but to-date, we have yet to receive any replies from your ends on the arrangement for an appointment date to facilitate M/s Winworth

Investment Pte Ltd to [access] your unit to carry out the existing balcony glass enhancement works.

...

*We wish to bring to your attention also that the balcony glass balustrade is considered as part of the common property and the MCST has the duty to maintain the same. Under Section 31 of the Building Maintenance and Strata Management Act 2004 (BMSMA), the MCST's agents, employees and/or carry out repairs to common property **at a reasonable time on notice being given to the occupier** of that unit. If the owner of the unit refuses to grant entry nonetheless, he shall be guilty of an offence.*

...

In view of the above and other safety concerns, we urge all residents/tenants to register with our management office for appointments according to the available schedule attached. Alternatively, if either of the timings is not available to you, we would appreciate that you could contact our office for other arrangements and we will do our utmost to arrange with the contractors.

*The available schedules with are currently available is **from 14th May 2009 to 19th June 2009...***

(g) Circular dated 3 June 2009 (Ref: DC8/CIR/182-09);

“Further to our earlier circular reference DC8/CIR/169-09 dated 8 May 2009 which was sent to you and your unit at Draycott 8.

To-date, at our records, it was noted that there was no arrangement made at your end for an appointment date to facilitate M/s Winworth Investment Pte Ltd to access your unit to carry out the existing balcony glass enhancement works.

...

In view of the above and other safety concerns, we urge all residents/tenants to register with our management office for appointments according to the available schedule attached at a date not later than 15 June 2009. Alternatively, if either of the timings is not available to you, we would appreciate that you could contact our office for other arrangements and we will do our utmost to arrange with the contractors.

*The available schedules which are currently available is **from 9th June 2009 to 10th July 2009...***

...

Nevertheless, we would also like to stress that the Developer has prepared to grant a final extension of time for the arrangement of the balcony enhancement works. Therefore, please be informed that per as advice from the solicitor, M/s Drew & Napier LLC, it has stated that unless the strata title plans otherwise provide, the balcony glass balustrades are part of the

common property. The MCST therefore has the responsibility of maintaining them and a failure to do so would constitute an offence under Section 9 of the BSM Act. If, on the other hand, the balcony glass balustrades are also partly owned by the respective subsidiary proprietors, then the individual subsidiary proprietors would also be Liable in the event of a collapse.”

Although several timeframes were provided to the respondents for them to choose for entry into their units for the execution of the works and although they were informed of the process by which the work would be carried out, their consents were not given.

It is the case for the applicants that the balcony glass balustrade form part of the common property which the MC has a duty under S 29(1)(b)(i) of the Building Maintenance and Strata Management Act 2004 (the Act) to properly maintain and keep in a state of good and serviceable repair; and that further under Rule 2.1.n of the By Laws the MC is entitled to enter the units at a reasonable time and upon giving reasonable notice to execute any work or perform any duty in connection with the condominium.

The respondents agree that the applicants has a duty under S 29(1)(b)(i) of the Act to properly maintain the common property of the development but do not agree that the balcony glass balustrades are part of the common property and accordingly are not agreeable to allowing the applicants to enter their units for execution of the necessary works

S 29(1)(b)(i) of the Act provides as follows:

29. - (1) Except as otherwise provided in subsection (3), it shall be the duty of a management corporation -

(b) to properly maintain and keep in a state of good and serviceable repair (including, where reasonably necessary, renew or replace the whole or part thereof) —

(i) the common property

Rule 2.1.n of the By Laws provides as follows:

“Residents shall permit any staff of the Management at all reasonable time and on reasonable notice being given (except in an emergency when no notice is required) to enter their unit to execute any work or perform any duty or enforce any by-laws and house rules in connection with the condominium.”

Issue:

Both applicants and respondents submitted that the issue for determination by the Board was whether the balcony glass balustrades are common property

It is the case for the applicants that they are because they are “windows” and it is the case for the respondents that they are not “windows”.

In the interpretation section of the Act viz S 2(1) a window is defined to include

“...any other building material which transmits natural light directly from outside a building into a room of or interior of the building”

and in S 2(9) of the Act it is provided that all windows located on any exterior wall of lot other than louvres, casement windows, sliding windows, or windows with any movable part, *shall be common property, unless otherwise described in a strata title plan.*

Louvres, casement windows, sliding windows and windows with movable parts are excluded from the definition because they are openable and within the control of unit owners themselves and it would be difficult for the MC to supervise or control the proper usage and maintenance of such windows. All other windows remain as common property because unit owners cannot be expected to take charge of such external fixed windows as they are outside the unit owners’ purview and control

The Submissions:

It was the submission of the Respondents that whilst the glass balustrade at the balcony does transmit natural light from the outside it does not in this case transmit the light into a room or into the interior of the building. The respondents submitted that in this case the light transmitted through the glass balustrade is transmitted only into the balcony and the balcony according to the respondent is not the interior of the building.

The Board’s attention was drawn to the fact that there was no definition in the Act with regard to what constituted *“the interior of the building”* and it was the submission of the respondents that the balcony is an *“exterior feature”*.

S 2(1) of the Act provides for an *exterior feature* to have the same meaning as that in the Building control Act Cap 29 and it is defined as follows:

“exterior feature” , in relation to any building, means any of the following features that is permanent and is installed on, forms part of or projects outwards from the roof or exterior of the building:

- (a) any air-conditioning unit, including any window air-conditioning unit and any condensing equipment of an air-conditioning unit;*
- (b) any window, with or without movable parts;*
- (c) any grille or shutter, with or without movable parts;*
- (d) any tile, cladding, curtain wall, siding, plaster, bracket or cornice;*
- (e) any gutter, rainwater down-pipe, or part of the roof;*
- (f) any awning or sun-shading device;*

The applicants submitted as follows:

It is to be observed from the phraseology, that an exterior feature “means any of the following features” enumerated in the above provision. Legislature has chosen to use such terminology, instead of “includes, but is not limited to the following features”. Thus, it is submitted that the list above is an exhaustive list of features which are to be considered exterior features of a building.

Accordingly, a balcony is not considered to be an “exterior feature” of a building under Section 2(1) of the Building Control Act, since it is not expressly listed therein.

On the part of the respondents it was submitted that the key words in the definition was “*permanent*” and “*project outwards*” and because a balcony is a permanent feature and projects outwards it is an exterior feature.

The Decision of the Board

The Board cannot agree with the respondent as the definition does not provide that any feature that is permanent and projects outwards to be an exterior feature. It is only the 6 features listed from (a) to (f) in the definition that can qualify to be an external feature and a balcony is not one of the 6 features.

It is the decision of the Board that a balcony is not an external feature and that the balcony glass balustrade which transmits natural light from the outside into the interior of the building is, under S 2(1) of the Act a “window” The balcony glass balustrade is not a louvre, casement window, sliding window, or window with any movable parts and accordingly is, under S 2(9) of the Act, common property as it is not otherwise described in the strata title plan.

Accordingly the Board orders:

1. That the respondents and/or tenants and/or occupiers of 10 Draycott Park #XXX and 6 Draycott Park #XXX allow the MC’s agents, staff, employees, contractors and/or nominees to enter the said units, upon receipt of not less than two weeks notice, to carry out rectification and/or enhancement works to the balcony glass balustrades of the units. The respondents will also pay for the costs of the said works (\$3500 x 2 = \$7000).

2. That the Respondents pay to the applicants the costs of this application.

Dated this 14th of January 2010.

Mr F G Remedios
Deputy President

Prof Teo Keang Sood
Member

Dr Lim Lan Yuan
Member