BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT

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

STB No. 29 of 2015

In the matter of an application under **section 101** of the Building Maintenance and Strata Management Act in respect of the development known as **Helios Residences** (MCST Plan No. 3727)

Between

MCST Plan No. 3727

... Applicant(s)

And

Ho Kok Wei/ Ng Xiang Rui

… Respondent(s)

Coram: Mr Remedios F.G (Deputy President)
Mr Lai Huen Poh (Member)
Mr Chan Ewe Jin (Member)

Counsel:
i) Mr Subramanian Pillai/ Mr Randall Perera (Colin Ng & Partners LLP) for the Applicants

ii) Mr Adrian Ee/ Ms Joanne Chew (Ramdas & Wong) for the Respondents

GROUNDS OF DECISION

1. This is an application by the Management Strata Title Plan No. 3727 (the Applicants) against the subsidiary proprietors of one of the lots in the development known as Helios Residences at Cairnhill Circle Singapore 229816. The Applicants are seeking for an order for the subsidiary proprietors to remove unauthorised/ renovation works carried out on common property.

2. Ho Kok Wei (HKW) and Ng Xiang Rui (NXR) are the subsidiary proprietors in the development and their lot is at 15 Cairnhill Circle unit #19-02.

3. On 4 August 2014, HKW submitted via email an *Application of Alteration & Addition/Renovation/Tenancy Works*. In the email HKW identified the application as *an application for renovation works* ***for our unit 19-02****.* The particulars of works were as follows: *i) Metal screen to cover aircon compressor; ii) Landscape works; iii) Carpentry works; iv) Painting works; v) Plumbing works.* The application was accompanied by a cheque dated 30 July 2014 for $1000.

4. Angie Lim (AL), the condominium manager, then sent an email requesting "…*for item 1 please let us have an illustration of how it is going to be installed at your unit…advise the location…submit the details for our review first before we can approve item 1 of the works*

5. A sketch was submitted by HKW on 7 August 2014 and he informed … *we will secure it on current raised aircon slab and side low wall ie not on the roof surface*…On the same day AL informed "…*We have in principle no objection to the proposed fitting works for the CU for your unit as per the attachment….*

6. On 21 August 2014, AL via email inter alia informed HKW "…*we realised that your unit has done the following works to the common area:- 1) Put up glass panel all around the wall. 2) Dismantled our lights and has linked up the lighting to our power point 3) Installed a water point from our water source. Please be informed that we have asked your contractor to stop the works at the common areas as these works are deemed unauthorised at the common area… In the meantime please hold all the works in the common areas. Thank you".* Following the email, a letter was sent on 25 August 2014 by AL, and HKW was inter alia informed " …*it has come to our attention that you have arranged for some renovation works to be commenced at the common property outside your unit at the rooftop without prior notification or approval by the MCST… we have requested your contractor to stop the pending renovation works at the common area outside your unit at the roof…if you would like to pursue with the continuation of the renovation works at the common areas please let us have Drawing Plans and Illustrations for the Council to review and approve the intended works. We would also require the Certificate of Compliance and Single Line Drawing for our LEW to check and confirm that electricity and water sources are from the unit. We can only give the approval for your unit to proceed with the said M&E works upon their endorsement..."* (In the ***Submission By Respondents*** (Form 18A) dated 30 June 2015 filed at the STB, the Respondents inter alia informed that it was their understanding that they were permitted to proceed with the renovation as long as the request for drawing plans, illustrations and confirmation that the electricity and water sources were from their unit. It is not in dispute that electricity and water were not tapped from the Applicants' sources and were from the Respondents' unit.)

7. On 24 September 2014, HKW was informed that the Applicants did not consent to the renovations at the common property and subject to conditions set out in the Applicants' letter use of the common property on a temporary basis under a Temporary Occupation License could be considered.

8. On 5 November 2014, HKW was, by letter, inter alia informed "*…The Council has deliberated the issues at length and unanimously takes the position that the said areas are common area and SP is not permitted to carry out any works or placement of personal items on the common area, and the MC has no empowerment to give such entitlement. With that the MCST maintained the view that these areas are common property and are hereby requesting you to make arrangements to remove the items that were placed on the common areas to its original condition within one (1) month from the letter dated…."*

9. The Respondents did not comply with the request and the Applicants proceeded to file the application in this case for the Respondents to remove *"…all*

unauthorised alteration/renovation works from the common property, specifically the rooftop area outside the Respondent's unit and restores the Common Property to its original state. The unauthorised alteration/renovation works include but are not limited to:-

a. *Glass panels affixed to rooftop walls;*

b. *The removal and re placement of lighting installed by development on the Common Property;*

c. *The tampering with the power point on the Common Property so as to provide electricity for new lights installed on the Common Property;*

d. *The installation of a water point on the common property to provide water to the new water tap which was installed by the Respondents, at the Common Property; and*

e. *The installation of timber decking on the Common Property.*

10. It is the case for the Respondents that renovations had been carried out for the purpose of improving the overall condition and safety of the Common Property which was left in a dilapidated state due to lack of maintenance by the Applicants. It was contended that before the renovation, the rooftop and walls were covered with moss and algae which were unsightly and a health and safety hazard; there was water ponding on the roof; the lights were often not lit and some were not in a serviceable condition; damaged and unserviceable wall lights had been replaced with good quality lights; good quality all weather timber floor boards had been installed; water drainage improved to prevent water ponding; the installation of the lighting was connected to the Respondents' electrical source and paid for by the Respondents; the installation of the water supply was connected to the Respondents' water supply and water supplied and paid for by the Respondents i.e. the Respondents were not tapping electricity or drawing water that belonged to the Applicants. Photos were exhibited to show the condition of the area before and after the renovation works. It did not appear that there was any dispute that the areas were in a better condition after the renovation works. On the part of the Applicants, it had in the letter (dated 5 November 2014) requiring the Respondents to reinstate the areas to its original condition informed the Respondents that *"…The Council has heard your views and concerns raised over the anticipated constraints and maintenance to the said areas, however the MCST will do its utmost to upkeep and maintain the conditions of the said areas on a reasonable basis…'*

11. The Board attempted to resolve the dispute between the Applicants and the Respondents but after two mediations it was indicated that the matter could not be resolved other than by way of an order from the Board after an arbitration hearing.

12. The Respondents confirmed that it was not in dispute that the Respondents had carried out unauthorised alterations/renovations at the common property at the rooftop area outside the Respondents' unit. The issue for determination by the Board was

Should the Board exercise its discretion under SS 101(1)(c) and 117(2) of the Act and order the Respondents to restore the common property to its original state

13. Directions were given for the parties to file Written Submissions on or before 14 September 2015 and Reply Submissions (if any) on or before 25 September 2015. The arbitration hearing date was fixed for 14 October 2015.

14. Before the arbitration hearing, the Board members considered that it would be useful that we should visit and view the place where the unauthorised renovations/alterations had been carried out. In the course of our visit, we saw that the unit was a penthouse unit with two levels and a roof terrace (total of three levels). Adjacent to the roof terrace is a flat roof. The flat roof is not a part of the Respondents' lot and it was on this flat roof that the unauthorised/renovations works had been carried out. An air-con compressor and a "motor room" (that services a lift running between the three levels of the Respondents' penthouse) are situated on the flat roof. The flat roof is separated from the roof terrace by a low wall with a door and is at a lower level than the roof terrace. The Respondents have raised floor level of the flat roof by installing timber decking (GEFF Decking). The flat roof with the timber decking is now flush with the roof terrace. In the Mechanical and Electrical drawings for the estate, the flat roof has been marked as "*RC Flat Roof (No access For Maintenance Only)"*

15. Whilst there is no dispute that the flat roof is common property, the developer, when the building was being constructed, did not make any provision for subsidiary proprietors and occupiers of the estate to use it. Other than a service ladder affixed to the outside of the wall, it did not appear that the flat roof could be accessed by anyone other than the occupiers of unit #19-02. The service ladder would be used by the maintenance staff to access the flat roof for the purposes of maintaining the common property in a state of good and serviceable repair. In view of the fact that that the flat roof is separated from the Respondents' roof terrace by a low wall with a door, it would appear that it was not intended that the Respondents should not have access to the flat roof. In fact, it would be necessary for the Respondents to access the flat roof to maintain and attend to the air compressor and "motor room" that was on the flat roof.

Applicants' Case:

16. It was submitted that the order should be made because of

    i) the Respondents conduct viz disregard for the By-Laws; surreptitiously erecting the unauthorised structures;

    ii) the Respondents were using the flat roof as an extension of their roof terrace which the Applicants contend was never intended by the developer. In this connection (in the Applicants' Written Submissions at paragraph 11 filed on 14 September 2015), the Applicants referred to an email from the developer (the email was from a Mr Wee Liang Yew, writing on behalf of Winnervest Investment Pte Ltd) and contended that the maximum allowable live load for the flat roof was 0.65kN per square metre whilst the live load for the Respondents' unit including the roof terrace was 2kN per square metre. Whilst it was not specifically submitted, it appeared that the Applicants were implying that the renovations/alterations had resulted in the maximum live load being exceeded and the stability and structural integrity of the flat roof had been adversely affected. Until receipt of the Written Submissions, it was never the case for the Applicants when STB 29 of 2015 was filed, that an order should be

made against the Respondents because the renovations/alterations had resulted in the live load of the flat roof exceeding the maximum allowable. After the filing of the Applicants' Written Submissions, the Respondents, because the Applicants had raised the issue of "loading", engaged a professional engineer to prepare a report on the issue of loading and by way of a letter dated 21 September 2015, the Respondents applied for an extension of time to file their Reply Submissions. After the Applicants had confirmed that they had no objections, the time for filing of the Reply Submissions was extended to 19 October 2015 and the date for arbitration hearing fixed for 14 October 2015 was vacated and re-fixed to 6 November 2015. Er. Wong Yok Siong, a Civil and Structural Engineer with M/s RX Engineers, was appointed by the Respondents and he, after viewing the structural as-built drawings of the building and conducting a structural study concluded …*Based on the study the additional load due to the newly added Floor Decking and the Glass Panels are well within the Design Live Load. In my opinion the addition of such load will not affect the stability and structural integrity of the roof Terrace structures.* When filing their Reply Submissions on 19 October 2015, the Respondents annexed Er. Wong's report. By way of a letter dated 17 October 2015, the Applicants informed that they had received Er. Wong's report on 15 October 2015 and were *taking instructions on the contents of the Report and…may have to refer the same to the Developer of the Estate and/or a qualified structural engineer for their comments…* An application was made by the Applicants for an extension of time to file their Reply Submissions by 2 November 2015. The Directions given by the Board in connection with the filing of Reply Submissions was for these to be filed in reply to the Written Submissions. The Applicants were required to file Reply Submissions to address issues raised in the Respondents' Written Submissions filed on 14 September 2015 and the Board was of the view that there was no reason why the Applicants could not do this before 19 October 2015. The application to file Reply Submissions by 2 November 2015 was rejected. When the Applicants filed their Reply Submissions on 20 October 2015, it was submitted that the Applicants "… *have not been afforded the right to be fully heard on the substantive conclusions reached by the Respondent's Professional Engineer…."* It will be in order to repeat that Er. Wong's report was filed by the Respondents in reply to an issue raised by the Applicants in the Applicants' Written Submissions filed on 14 September 2015. The Board, when considering the application in the Applicants' letter dated 17 October 2015, was not dealing with an application for time to file a Reply to the Reply Submissions filed on 19 October 2015.

17. In support of their application, the Applicants referred the Board to a number of authorities:

- Tay Tuan Kiat and another v Pritam Singh Brar [1985-1986] SLR(R)763;
- Management Corporation Strata Title Plan No 1378 v Chen Ee Yueh Rachel [1993]3SLR(R)630;
- Choo Kok Lin and Another v Management Corporation Strata Title Plan No 2405 [2005] 4SLR(R)175;
- Management Corporation Strata Title Plan No 681 v Tan Yew Huat [2015] SGDC118;

- Management Corporation Strata Title Plan No 2570 v Ng Khai Chuan and Another [2006] SGDC 176;
- Management Corporation Strata title Plan No 2605 v Abdul Rahman Rais Chong@ Chong Ngak Koon an Another [2013] SGDC 328; and
- Management Corporation Strata title Plan No 1786 v Huang Hsiang Shui [2006] SGDC 20) with regard to the applicable law

Respondents' Case:

18. The submission of the Respondents was that the order should not be made because *"…there will be a great detriment to the Respondents and no corresponding benefit to the Applicants or members of the entire property if the STB is to decide that the Renovation Works be removed….".*

19. The cases referred to by the Applicants were cited by the Respondents in support of their opposition to an order being made against them.

20. The Respondents also submitted that there was nothing to support the Applicants' allegation that they had surreptitiously erected unauthorised structures and had never claimed a right to use the flat roof as an extended roof terrace.

Decision of the Board:

21. There is no ambiguity with regard to the law in connection with granting a mandatory injunction to redress a breach of a negative covenant in situations where the breach has already occurred and it will not be necessary to deal with all the cases cited by the Applicants and Respondents.

22. It will be sufficient to refer to Management Corporation Strata Title Plan No 1378 v Chen Ee Yueh Rachel [1993]3SLR(R) 630. In the Rachel Chen case, the subsidiary proprietor had replaced metal grills that enclosed her balcony with sliding windows without first obtaining written approval from the management corporation that was required under the by-laws. The management corporation applied for a mandatory injunction requiring her to remove what she had installed and restore the external wall of the building to its original state. Chao Hick Tin J (as he then was) when considering if the order should be made, considered the case law cited by the subsidiary proprietor and noted that the law laid down was that *generally a mandatory injunction will not be issued unless very serious damage will ensue from withholding an injunction.* Reference was then made to the case of Proprietors – Strata Plan No 464 v Oborn [1975] 2CCH Strata Title Law and Practice 50 at 201 decided by Holland J. The judge in that case after reviewing the authorities in connection with the granting of a mandatory injunction said

The general principle to be extracted from these cases is that the court will grant a mandatory injunction to redress a breach of a negative covenant which is already accomplished, unless;

(a) the plaintiff's own conduct will make it unjust to do so;

or

(b) the breach is trivial or has caused no damage or no appreciable damage to the plaintiff and a mandatory injunction would impose substantial hardship on the defendant with no counterbalancing benefit to the plaintiff

23. In Rachel Chen case, the judge decided not to exercise his discretion and order the subsidiary proprietor to remove the sliding windows because in the circumstances of the case the order would cause hardship without any real corresponding benefit to the management corporation. When deciding as he did, the judge was conscious of the fact that matters affecting common property are, under the Act, entrusted to the management corporation and individual proprietors cannot be allowed to dictate to the management corporation because management corporation would then be unable to discharge their functions and chaos would be the result.

24. In the circumstances of the case at hand, the Board was conscious that subsidiary proprietors should not be allowed to spurn and undermine the authority of the management corporation. Subsidiary proprietors who are of the view that the condition of the common property is not satisfactory cannot be allowed to unilaterally proceed to carry out works on the common property in order that the condition will become, in their view, satisfactory. In determining whether the order prayed for should be granted in this case, the Board, in order that a just and fair result should be produced considered all the circumstances in this case.

25. In this case, the Respondents had submitted an application for renovation works including *Landscape works; Carpentry works; Painting works; and Plumbing works* without referring to the fact that these works would be carried out on common property.

26. Before the works were completed, they were informed to stop the works but continued until the works were completed. The management corporation when asking them to stop the works did so because the management corporation had not been notified and had not given approval for the works. Other than the Respondents and the maintenance staff in the estate, the common property where the works were carried out is not visible and accessible to anyone. From the Mechanical and Electrical drawing of the estate (*No Access For Maintenance Only),* it is clear that this area of the common property was not common property that was to be accessed and enjoyed by all the subsidiary proprietors in the estate.

27. In the eyes of the Respondents, the condition of the common property which was adjacent to their roof terrace was unsatisfactory and they proceeded to rectify this. As noted earlier, an application for renovation works was submitted without any reference to the fact that works would be carried out on common property.

28. When carrying out the works, no damage had been caused to the property and to the management corporation. There was in fact a benefit in that the condition had been enhanced.

29. It would be in order to find that after improving the condition, the Respondents accessed, utilised and enjoyed the improvements. They were not in breach of any

prohibitions or by-laws when they utilised and enjoyed the improved condition of the common property.

30. An order to remove would cause substantial hardship (time and money would have to be expended to remove an enhancement) with no counterbalancing benefit to the management corporation. An order to remove would result in enhancements being erased and the area would revert to the state that it was in before the enhancements. Such an order would be of no benefit to anyone and would not be in the interest of the estate. Accordingly, the Board is of the view that it will not be in order for the Board to exercise its discretion in favour of the Applicants.

31. The application is accordingly not granted. We are of the view that it will not be in order to award costs to the Respondents and accordingly will make no order as to costs.

Dated this 23rd day of November 2015

MR REMEDIOS F.G
Deputy President

MR LAI HUEN POH
Member

MR CHAN EWE JIN
Member