

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

STB No. 79 of 2016

In the matter of an application under **Section 111(b)** of the Building Maintenance and Strata Management Act in respect of the development known as **19 Shelford Road** (MCST Plan No. 2360)

Between

Zou Xiong

... Applicant

And

MCST Plan No. 2360

... Respondent

GROUNDS OF DECISION

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9 February, 30 March 2017

30 March 2017

Coram: Mr Alfonso Ang (President)
 Prof Teo Keang Sood (Member)
 Mr Lim Peng Hong (Member)

1. The Applicant, Zou Xiong, is the subsidiary proprietor of unit #04-24 (“**the Unit**”) at the residential strata development known as 19 Shelford Road (“**the Development**”) and the

Respondent, MCST Plan No. 2360 (“MCST”), is the management corporation of the Development.

BACKGROUND

2. The Applicant has been residing at the Unit since 18 June 2016 with his wife, two young children aged 21/2 and 41/2 years old, his mother-in-law and a domestic helper.

3. The Unit is situated on the highest floor of the 4-storey building. It has a large open balcony accessible from the living area labelled as roof terrace and over the open balcony is a trellis roof. The railings of the balcony are 92 cm from the ground and consists of three horizontal bars. The railings have gaps of 20 cm between each horizontal bar. There are only 8 units out of 256 units with such a design in the Development.

4. Being the parents of 2 young children, the Applicant is concerned that his children will scale the railings and fall over. On 23 May 2016, the Applicant sent an email to the managing agent (“MA”) of the Development and requested to install the invisible grilles at his Unit’s balcony. The said application was rejected by the MA on 25 May 2016 and no reasons were given for the rejection. The MA merely instructed the Applicant to appeal to the management council. On the same day and as instructed by the MA, the Applicant made an appeal to the management council by email. Also, following the request of the MA on 27 May 2016, the Applicant had emailed to her drawings of the invisible grilles he intended to install.

5. In the meantime, also on 25 May 2016, the Applicant submitted a formal application to the management corporation for a series of renovation works but had failed to include the application for the installation of invisible grilles. At no point during the email correspondence was the Applicant informed to make a formal application for the invisible grilles.

6. On 24 June 2016, the MA informed the Applicant that following the management council’s instructions, she was following up with “the relevant authorities for their clarification and advise before any approval to be issued”. On 11 July 2016, the MA informed the Applicant that the proposed improvement works affecting the appearance of the building’s façade would

require the approval of the Respondent and not the management council. The MA suggested that the Applicant could request a resolution to be tabled at a general meeting for the general body to collectively determine a set of design guidelines for the installation of invisible grilles.

7. As the Applicant had not heard from the MA on what the relevant authorities had to say, he emailed the Urban Redevelopment Authority (“URA”) directly. The URA confirmed that they had no objections to the installation of invisible grilles and that planning permission was not required. On 21 July 2016, the MA informed the Applicant that “As for the safety of your kids, you may want to look into a temporary measure before the approval being made in a general meeting”. They did not inform him what constitutes a temporary measure.

8. On 17 August 2016 and as a temporary measure to ensure the safety of his children, the Applicant instructed his contractors to install the invisible grilles on his balcony. The structure included metal frames on which the wire cables were mounted on and these metal frames are secured onto the floor of the balcony as well as onto the walls. When the Respondent noticed the installation, the Respondent stopped the installation and the police was called in when the Applicant refused to stop. The Respondent stated that no approval was given for the installation and that a portion of the metal frame is mounted onto the external wall which is a common property. The installation remains incomplete as at the date of this application.

9. By way of letters dated 20 and 25 August 2016, the Respondent informed the Applicant that the installation of invisible grilles was not approved because statutory by-laws 5(1) to 5(5) of the Building Maintenance (Strata Management) Regulations 2005 (“BMSMR”), which states that subsidiary proprietors shall not be prevented from installing any structure or device to prevent harm to children, apply only to ‘windows’ and ‘balconies’. As the Applicant’s balcony was labelled a ‘roof garden’, the statutory by-laws did not apply. The Respondent reiterated that the proposed installation of invisible grilles could only be approved at a general meeting of the management corporation.

10. On 13 September 2016, the Respondent’s solicitors wrote to the Applicant’s solicitors stating that the Applicant’s installation works affected the appearance of the building and that the approval of the management corporation was required.

11. The Applicant proceeded to file this application before the Board on 26 September 2016 and sought the following orders against the Respondent:

- (a) That pursuant to section 111 of the Building Maintenance and Strata Management Act (“BMSMA”) the Respondent consents to the Applicant’s application for approval to install ‘invisible’ safety grilles at the balcony of his Unit; and
- (b) that the Respondent pay costs of this application.

12. In the course of the proceedings, the Respondent admitted that there were no design guidelines prescribed for the Development for the installation of invisible grilles at the open balcony and that the Respondent works on a case-by-case evaluation for each request that it receives. In this case, the Respondent had at various times proposed different alternatives for the Applicant to adopt. Briefly, they are as follows:-

- (i) Firstly, by a letter through their solicitors on 13 September 2016, the Respondent stated that it was prepared to permit the installation of 1.2m high acrylic sheet at the balcony railing.
- (ii) At the mediation of this application, the Respondent suggested that the Applicant string the high tension aluminium wires to the existing beams at the balcony of the unit. For the portion of the balcony that does not have a trellis beam, the Respondent suggested stringing the wire cables horizontally between the existing trellis column and the wall, or in the alternative, to install acrylic sheet/laminated glass on this portion of the balcony railing. The idea behind the Respondent’s proposed alternatives is that the installation of the invisible grilles must not detract from the appearance of the building.
- (iii) Finally, during the 17th AGM on 26 November 2016, the Respondent passed a by-law permitting the installation of acrylic sheet/laminated glass up to a height of 5 feet at the railing for those units with roof terrace or balcony.

13. The Applicant rejected the Respondent's proposed alternatives for various reasons which will be expounded below.

APPLICANT'S CASE

14. The Applicant submits that the Board ought to make the orders being sought for the following reasons:

- (i) It is for the safety of their two young children. The Applicant submitted that the prescribed by-laws expressly disallow management corporations from stopping subsidiary proprietors from installing "any structure or device to prevent harm to children". The Applicant also submitted that the decision in *Sujit Singh Gill v MCST Plan No. 3466* [2015] SGSTB 2 ("**Sujit Singh Gill**") which similarly involves the installation of invisible grilles supports the Applicant's application in that management corporations are not to prevent subsidiary proprietors from installing safety structures such as grilles even if such installation is mounted on common property and even if it alters the appearance and façade of the building. Lastly, the Applicant adduced a newspaper report dated 25 January 2015 which cited Ms Lee Bee Wah, head of the Government Parliamentary Committee on National Development and Environment, as agreeing with the decision in *Sujit Singh Gill*; and
- (ii) The metal frames do not affect the facade of the building. The Applicant argues that the metal frames are not obvious and difficult to spot. The Applicant also observed that many other units had installations on their balconies which obviously detracted from the appearance of the building;

15. The Respondent had professed that it had not unreasonably refused to authorise the installation work because the Applicant did not make any application to install the invisible grilles. The Applicant counters that the Respondent's contention is disingenuous as the Applicant had written emails to the Respondent for permission. In any case, the by-law requiring renovation applications to be made by way of a prescribed renovation application form was made two months after the filing of this application and therefore does not apply to

the Applicant.

16. The Applicant further pointed out that the Respondent had been changing its position and at different times gave different reasons for not approving his application. The Respondent initially rejected the Applicant's application without giving any reasons. On appeal, the Respondent explained that the MA was checking with the relevant authorities. On being pressed, the Respondent said that the installation works affected the facade of the building and would require the approval of the management corporation. Subsequently, the Respondent cited that the statutory by-laws did not apply but later reverted to its original position, stating that the installation works were rejected because it affected the façade of the building and as before, the approval of the management corporation is required.

17. With reference to the Respondent's latest position, the Applicant refutes that the Respondent is mistaken as there is no such provision in the BMSMA or the regulations thereunder and it is for the management council to make the decision. The Applicant asserts that it is for the Respondent to pass design guidelines by-laws and the Respondent cannot use the lack of design guidelines as an excuse for rejecting the Applicant's application.

18. The Applicant rejects the alternatives proposed for the following reasons:-

- (a) Firstly, the installation of acrylic sheet at the height of 1.2m is insufficient to prevent a child from scaling the railings;
- (b) Secondly, the installation of acrylic sheet/ laminating glass at the railings to a height of 5 feet is considered an enclosure of the roof terrace and having enquired with URA on 23 December 2016, URA had in its email reply expressly stated that such installation is not permitted; and
- (c) Thirdly, the mounting of the invisible grilles onto the existing trellis beam is structurally unsafe. In this regard, the Applicant produced a professional engineer report which states that the existing trellis beam, in its normal design practice, is not designed to carry the additional load contributed by the cables.

19. The Applicant argues that it had considered all of the alternatives proposed by the Respondent and they are neither legal nor workable. In the premises, the Applicant's proposal of installing invisible grilles by erecting metal frames where the wire cables are mounted is the best method and the Applicant should be permitted to continue with the installation.

RESPONDENT'S CASE

20. The Respondent submits that the Applicant did not make any application by way of the prescribed form for the installation of the invisible grilles. The renovation form submitted by the Applicant on 25 May 2016 makes no mention of the installation of invisible grilles. The Respondent therefore takes the position that the Applicant merely enquired through emails about the installation of invisible grilles and it was not a formal application made to the Respondent for consideration and approval.

21. The Respondent also takes the position that the design of the invisible grilles submitted by the Applicant affects the appearance of the Development. The Respondent therefore regards that it was not in the position to grant an approval in this case and suggests that the Applicant seek approval for the installation of the invisible grilles from the general body.

22. The Respondent submits that it cannot be faulted for the Applicant's failure to table a motion at the annual general meeting ("AGM") having informed the Applicant to do so.

23. The Respondent further argues that the metal frame is unsightly and makes the Development appear untidy which is in breach of the statutory by-law 10 which states that:

"A subsidiary proprietor or an occupier of a lot shall not, except with the prior written approval of the management corporation, hang any washing, towel, bedding, clothing or other article on any part of the parcel in such a way as to be visible from outside the subdivided building, other than at areas designated for the purpose and there only for a reasonable period."

24. The Respondent submits that it had offered alternatives to the Applicant which the

Applicant refused to adopt. The Respondent says that the installation of acrylic sheet is sufficient to prevent children from scaling the railings and also preserves the façade of the building. The same has been adopted by other subsidiary proprietors in the Development. The installation of the invisible grilles on the existing trellis beams is also aesthetically consistent with the appearance of the rest of the Development.

25. The Respondent explains that the Applicant insisted on installing invisible grilles mounted on metal frames. However, as the visible metal frames affect the façade of the building, the design was not approved. The Respondent clarified that they do not object to the installation of the invisible grilles per se. The objection is against the visible frame. The Respondent observes that there are other subsidiary proprietors who had their application for the installation of invisible grilles approved because the installation does not detract from the appearance of the Development. Hence, there is no blanket disapproval for invisible grilles.

26. The Respondent submits that the alternatives proposed by them are effective in preventing a child from falling over the balcony and keeps with the appearance of the building. It is the Applicant who refuses to accept the Respondent's proposed alternatives and this application is unnecessary. On that basis, the Respondent asks that this application be dismissed.

BOARD'S DECISION

27. All parties agree that children's safety is the paramount consideration. This has been repeatedly emphasised by the Board as well as by the Building and Construction Authority ("BCA") in its circulars. Although the Respondent had initially rejected the Applicant's application without giving any reasons, the Respondent eventually permitted the installation of invisible grilles subject to conditions. If the Respondent had held its initial position, the Respondent would have been unreasonable. In the present case, the Respondent gave various reasons for not approving the Applicant's application for the installation of invisible grilles but based on the evidence and the facts, the Board is of the view that the Respondent had not satisfactorily justified its position.

A. No Formal Application made by the Applicant

28. The Respondent contends that as the Applicant did not submit his application for the installation of invisible grilles in the prescribed form, the current application to the Strata Titles Boards is premature and hence, it cannot be said that the Respondent has unreasonably refused to authorise the installation of grilles in the Applicant's Unit as no actual rejection was given by the Respondent.

29. On the facts, the Board notes that despite the absence of a prescribed form, the Respondent had corresponded with the Applicant with regards to the installation as if an application was made to them. The Respondent was fully aware of the Applicant's intention to install invisible grilles at his balcony as evidenced by the email correspondences between May 2016 to August 2016. On 25 May 2016, the Respondent even instructed the Applicant to make an appeal against the rejection at the first instance through email. Additionally, the Board also notes that the prescribed form only came into effect after the Respondent lodged it with BCA and this was after this application was made.

30. On that basis, the Board takes the view that the Respondent knew from the onset that the Applicant was making an application with the Respondent and had regarded the Applicant's email as a formal application. The Board finds that at the time when the application was made there was no prescribed form. Therefore, the application is validly made and the Respondent should not take advantage of the procedure as the Respondent is aware of the specific nature of the application.

B. Requirement of Consent from the General Body

31. The Respondent submits that it cannot give approval for the Applicant's application to install invisible grilles because the proposed works affect the facade of the building and such approval is to be given by the general body and not by the Respondent. The Board takes the view that this reasoning is unsatisfactory because it is within the Respondent's power to give such an approval. It is the Respondent's role to put in place a set of design guidelines for the installation of safety grilles that address both the safety issues and the issues regarding the

facade of the Development, so that the subsidiary proprietors can comply with such guidelines. Where there is no design guidelines, the subsidiary proprietor's application for the installation of invisible grilles have to be decided on a case-by-case basis. In exercising its power, the Respondent should not defer its responsibility to the general body.

32. The Board also observes that the Respondent had, for other subsidiary proprietors, considered and approved their application for installation works that affect the facade of the building. As such, the Board cannot accept that the Respondent in this case is not able to do the same. Even if the Respondent's position was correct, the Respondent should have adopted a more active role to facilitate the Applicant in his application, especially in a case such as this where children's safety is concerned. The Respondent ought to take the initiative to provide the guidelines for its subsidiary proprietors and it is not for the Applicant to initiate an approval for such guidelines.

C. Reasonableness of the Respondent's Proposed Alternatives

33. The Board notes that the Respondent had made three alternative proposals in place of the Applicant's invisible grilles design. Having considered the facts and evidence before it, the Board accepts that the Applicant had in fact considered the alternatives provided by the Respondent but finds that all three of the alternative proposals were unreasonable and not viable. The Board also observes that the Respondent's offers were made spontaneously at different times, some during the midst of this application, without proper consideration.

34. The first alternative provided by the Respondent was to permit the installation of a 1.2m high acrylic sheet at the balcony railings. The Board notes that children's safety is of paramount consideration and it is imperative that in situations such as this one, parents should control their children to prevent them from scaling the balcony bars. Nevertheless, the Board notes that based on the design of the railings in the Applicant's Unit, the proposed acrylic sheet at the height of 1.2m, is only slightly above the height of the railings as it currently stands. Having considered the current facts, the Board is of the view that while the proposal may temporarily deter the Applicant's children from employing the railings as a ladder, this proposal fails to address the Applicant's fundamental concern as to the height of the railings or its lack thereof.

The Board accepts that this proposal does not sufficiently overcome the shortcoming of the design of the railings in the Applicant's Unit.

35. The second alternative provided by the Respondent was to permit the Respondent to install the invisible grilles onto the existing trellis beams at the balcony of the unit. The main concern surrounding the Applicant's refusal to accept this proposal was the likelihood that mounting the invisible grilles onto the existing trellis beam would be structurally unsafe. As such, the Applicant engaged a professional engineer to determine the structural safety of the Respondent's second alternative. In accordance with the Applicant's professional engineer report tendered at the hearing, the professional engineer stated at the end of section 3 of the report that:

“For normal design practice, the additional loading due to the cable would not be incorporated in the trellis design. Hence, in the event where tension is exerted by the cable, the trellis might suffer from over stress. There is a possibility of pulling down the trellis.”

36. Although the Applicant's professional engineer report did not provide a definitive conclusion that the Respondent's second alternative was not viable, it is clear that the professional engineer had cast doubt on the structural safety of the Respondent's second alternative. Additionally, in the course of the hearing, it became evidently clear that the Respondent did not take any steps to ensure that the second alternative was structurally safe and does not seemed to have verified with a professional engineer on whether it will be safe to mount the invisible grilles on the trellis beams.

37. The Board acknowledges that, in an attempt to assist the Applicant with the design of the invisible grilles, the Respondent had recommended two contractors to the Applicant. The Applicant had actively approached one of the contractors but subsequently realised that the said contractor could not give a guarantee as to the integrity of the trellis beam structure when the invisible grilles are mounted onto it; the other contractor did not respond to him. Although both contractors were recommended by the Respondent, it is noted that the Respondent does not seemed to have verified with the contractors on whether it will be safe to mount the invisible

grilles on the trellis beams.

38. Finally, it must be highlighted that the Respondent conceded at the hearing that this proposal is not conclusively workable.

39. The Respondent, in its reply submission, submits that by making recommendations to other contractors, the Respondent is suggesting that there are other ways to install the invisible grilles and it is not to be construed as directing the Applicant to install the invisible grilles onto the trellis beams. The Board takes the position that where the management corporation provides alternative proposals after rejecting an applicant's proposed invisible grilles design, the duty lies upon the management corporation to ensure that the alternative proposal given is workable and structurally safe. On the facts, as the Applicant had already produced a professional engineer's report stating that there may be structural safety issues surrounding the Respondent's second alternative, the duty then falls on the Respondent to prove that their proposal is both workable and structurally safe. The Respondent must subsequently engage a professional engineer to certify that their proposal is viable.

40. The third alternative provided by the Respondent was to permit the Applicant to install an acrylic sheet/laminated glass at the balcony railings, up to a height of 5 feet. The Board notes that this by-law was only passed at the 17th AGM dated 26 November 2016, many months after the current application had commenced. Additionally, the installation of an acrylic sheet/laminated glass with a height of 5 feet at the balcony railings had been expressly prohibited by the URA as it would be considered an enclosure of the roof terrace. Persuading the Applicant to adopt this proposal amounts to encouraging the Applicant to breach the URA's regulations. The Respondent seeks to persuade the Board not to accept the email from URA as definitive. However, the Respondent has not adduced any concrete evidence to the contrary. In the absence of contrary evidence, the Board is inclined to accept the Applicant's evidence.

41. The Board notes that throughout the course of the proceedings, the Respondent made no attempts to verify if their proposed alternatives would work. While the Board appreciates that the Respondent is responsible for maintaining the facade of the Development, the Respondent cannot expect the Applicant to continuously provide different proposals until they

find a design that satisfies the Respondent's demands.

42. Crucially, towards the end of the hearing, the Respondent's witness conceded that he was not even aware if any of the three proposed alternatives suggested to the Applicant were in fact workable. The Board is of the view that the Respondent, when providing suggestions to the Applicant, must provide options which are certified workable and safe by a professional engineer. It is pointless to make suggestions which are still subject to trial and error or are not viable.

Conclusion

43. From the evidence and facts in the present case, we find the following:

- i. the Respondent had from the onset, been fully aware of the Applicant's intention to make an application to install invisible grilles at his Unit's balcony and as such the Respondent's rejection of the Applicant's application on mere technical grounds is without merit;
- ii. the Respondent, being the management corporation of the Development has the right to determine whether the Applicant was permitted to install the invisible grilles. By that reason, the Respondent's submission that in the present case only the general body can give approval for the installation of the invisible grilles is also without merit; and
- iii. the Respondent had failed to provide the Applicant with practical and feasible alternatives subsequent to rejecting the Applicant's invisible grilles proposal. The alternatives proposed by the Respondent were neither evidentially approved by the URA nor certified structurally safe by a professional engineer. By providing alternatives that are not workable, it essentially amounts to the Respondent not providing the Applicant with any alternatives.

44. The Board recognises that the Respondent has a duty to ensure that the facade of the building is consistent. However, it is also the duty of the Respondent to provide design guidelines for its subsidiary proprietors to adopt and where the Respondent proposes any alternatives, these must be structurally sound, comply with the law and regulations and are workable. Where the proposal concerns structural integrity, the Respondent should support its proposal from appropriate professionals, which in this case, is a professional engineer.

45. The Board therefore orders that the Respondent shall, within 2 months, allow the Applicant to install the invisible grilles at the Applicant's balcony (full height), in accordance with the Respondent's proposal, which should take into account structural integrity (as approved by a professional engineer nominated by the Respondent) and the facade of the building. If the Respondent fails to do so, the Applicant be allowed to erect the invisible grilles as proposed by his contractor, M/S Legate and approved by the Applicant's professional engineer, Wong Yew Fai.

46. The Board orders that the Respondent pay the Applicant \$18,000 and disbursements to be agreed by parties.

MR ALFONSO ANG

President

PROF TEO KEANG SOOD

Member

MR LIM PENG HONG

Member

Mr. Toh Kok Seng/ Mr. Daniel Chen (M/s Lee & Lee) for the Applicant.

Ms. Teh Ee-von (M/s Infinitus Law Corporation) for the Respondent.