

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

STB No. 121 of 2018

In the matter of an application under **section 108** of
the Building Maintenance and Strata Management Act
in respect of the development known as **LE**
CRESCENDO (MCST Plan No. 3127)

Between

How Ah Meng and Hedy Goh Kim Kee

... Applicants

And

MCST Plan No. 3127

... Respondent

GROUNDS OF DECISION

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Coram:	Mr Remedios F.G	(Deputy President)
	Professor Teo Keang Sood	(Member)
	Mr Lawrence Ang	(Member)

INTRODUCTION

1. In this case, the applicants, who at the point of time when the application was filed, were the subsidiary proprietors of #19-02 in the development known as Le Crescendo (the “Development”) at 233 Paya Lebar Road Singapore 409044. They applied for a refund of

a sum of \$2899.03 that was paid to the respondent, the management corporation of the Development shortly before they ceased to be subsidiary proprietors in the Development.

BACKGROUND

2. Before this application was filed by the applicants, the respondent had filed an application at the Strata Titles Boards (“the STB”) for an order against Tay Boon Yong (“Tay”), the subsidiary proprietor of #19-11 in the Development in connection with structures erected by the subsidiary proprietor without approval from the respondent (STB No. 84 of 2017, MCST Plan No. 3127 v Tay Boon Yong (“the 2017 case”)) (see paragraph 8 below for background to the 2017 case). The 2017 case was resolved by way of a consent order but the parties were unable to resolve the dispute in connection with costs.
3. The respondent had in connection with the 2017 case incurred legal costs amounting to \$20,000 and an application was made to the Strata Titles Board for the 2017 case (“the 2017 Board”) for an order for costs on an indemnity basis to be made against Tay. The 2017 Board declined to award costs on an indemnity basis and on 10 April 2018 awarded against Tay costs of \$4000 plus reimbursement of fees payable to the STB and reasonable disbursements.
4. On 11 July 2018, the respondent sought a payment of \$2899.03 from the applicants who, as earlier noted, were at that point of time the subsidiary proprietors residing at #19-02.
5. The letter from the respondent on 11 July 2018 was headed:
LE CRESCENDO #19-02 – REIMBURSEMENT OF LEGAL COST IN PURSUANT OF UNAUTHORISED STRUCTURE AT OPEN TERRACE
6. The letter referred to a resolution of an issue of unauthorised structures with the STB (the 2017 case was not mentioned in the letter); that legal fees was incurred in the matter; and that reimbursement of legal costs amounting to \$2899.03 was being sought from the applicants.

7. The applicants were of the view that the respondent was claiming “legal costs” which were not awarded by the 2017 Board and were not agreeable to pay as inter alia they were not parties in the proceedings between the respondent and Tay in the 2017 case; and they were also of the view the respondent did not have the power *to pass by-laws in relation to recovery of legal costs incurred in matters against MCST residents.*

8. A perusal of the “*Submission by Respondent/Management Corporation/Person Invited to Make Submission*” (Form 18A) sets out that there was (according to the respondent) an illegal structure in the applicants’ unit when the applicants took possession the unit in August 2011. There was correspondence between the applicants and the respondent in connection with this matter between 17 March 2014 and 26 May 2018. At the point of time when the respondent filed the 2017 case, there were three units including the applicants with illegal structures. Instead of filing applications against subsidiary proprietors of all the three units at the same time, a decision was taken by the respondent to first proceed against the subsidiary proprietor of #19-11 in the 2017 case. As mentioned earlier, the 2017 case was settled with a consent order. At the conclusion of the 2017 case, the respondent’s position was that the applicants could legally erect and correct the unauthorised structure in their unit.

9. The respondent had incurred legal costs totalling \$8679.08 when seeking advice in connection with the unauthorised structures in the three units and it was the respondent’s position that the applicants were liable for one third of the costs. The respondent was of the view that it was in order to require the applicants to pay this amount because at all the annual general meetings of the respondent between 28 December 2013 (7th Annual General Meeting) and 16 December 2017 (11th Annual General Meeting) of the Management Corporation held on 28 December 2013 it was:
resolved that all costs including legal costs on an indemnity basis, disbursements and incidental costs incurred by the management corporation to enforce or try to enforce any party’s compliance with the Building Management and Strata Management Act, other statutes, subsidiary legislation, by law shall be recoverable from the party concerned.

10. The applicants, as mentioned earlier, were not prepared to and did not agree to make the payment requested. The applicants were at that point of time in the process of selling their lot in the Development and the lawyers acting for the purchasers had made an application to the respondent for a certificate under section 47(1)(c) of the Building Maintenance and Strata Management Act. Cap 30C (the “Act”).
11. Under section 47(1)(c) of the Act, the management corporation is, pursuant to an application from a prospective purchaser of a lot, required to, *inter alia*:
- c) certify, as at the date of the certificate, in respect of the lot in respect of which the application is made —*
- (i) the amount of any regular periodic contributions determined by the management corporation under section 39(1) and (2) and the periods in respect of which those contributions are payable;*
 - (ii) whether there is any amount unpaid of any contribution determined under section 39(1) and (2) and, if so, the amount thereof and the date on which any such contribution was levied;*
 - (iii) whether there is any amount unpaid of any contribution levied under section 40 or 41 and, if so, the amount thereof and the date on which it was levied;*
 - (iv) whether there is any amount recoverable from the subsidiary proprietor of that lot under section 30 and, if so, the amount thereof;*
 - (v) any interest payable under section 40(6)(b) in respect of any unpaid contribution referred to in that subsection;*
- ...
12. It will be noted that the above section is concerned with the amount of any regular periodic contributions determined by the management corporation under section 39(1) and (2); the periods in respect of which those contributions are payable; whether any amount levied is unpaid; and amounts recoverable from a subsidiary proprietor under section 30 of the Act i.e. for work that a subsidiary proprietor is required to carry out and was carried out by the management corporation after the subsidiary proprietor had failed or neglected to do the necessary.

13. Following the application from the lawyers for the prospective purchaser, the respondent had on 23 July 2018 *inter alia* certified that in relation to the applicants' lot the following were outstanding as at 15 July 2018:

<i>Management Fund</i>	<i>\$1200.00</i>	<i>01 Jul 18 to 30 Sep 18</i>
<i>Sinking Fund</i>	<i>\$150.00</i>	<i>01 Jul 18 to 30 Sep 18</i>
<i>Legal Costs</i>	<i>\$2899.03</i>	<i>11 Jul 2018</i>
<i>Total</i>	<i>\$4249.03</i>	

14. On 23 August 2018, the applicants, for the purpose of completing their sale with the prospective purchaser paid the management corporation legal costs of \$2899.03. The applicants reiterated that they did not agree that there were legal costs outstanding as an unpaid contribution under sections 39(1), 39(2) and 40 of the Act and that the management corporation did not have any basis for the claim.
15. The applicants are now seeking for an order for the respondent to refund the amount paid.
16. The order that the applicants are seeking is for the Board to order the respondent to refund to the applicants a payment that the applicants have made to the respondent i.e. money was paid to the management corporation when there was, in the view of the applicants, no legal obligation to pay. The application in this case is in effect a claim for moneys had and received.
17. The applicants submitted that the Board can and has the power to make the order under section 108 of the Act. The respondent *inter alia* submitted that, because the applicants are not at this point of time subsidiary proprietors in the Development, the Board did not have jurisdiction to consider the application.

BOARD'S DECISION

18. The applicants had, in this case, submitted their application to the STB on 27 August 2018, one day before the sale of the unit was completed on 28 August 2018. The Board was, under Regulation 6 of the Building Maintenance and Strata Management (Strata

Titles Boards) Regulations 2005 (“the 2005 Regulations”), constituted on 5 October 2018 and the first mediation was held on 5 November 2018.

19. Section 89(2) of the Act provides that:

Unless otherwise provided by this Act or the Land Titles (Strata) Act (Cap 158), a Board shall determine by mediation-arbitration every dispute of which it has cognizance and every matter with respect to which it has jurisdiction under this Act or that Act.

20. Accordingly, a Board can make a determination only with regard to matters with respect to which it has jurisdiction under the Act or the Land Titles (Strata) Act. It cannot make determinations on matters over which the Act has not given it any jurisdiction.

21. The STB was established to adjudicate disputes between the subsidiary proprietors and management corporations and between one subsidiary proprietor and another. The intention was that the courts would not be overloaded with such disputes.

22. Part VI Division 2 of the Act (sections 101 - 120) sets out the various orders that can be made by the Board and the parties who can apply for the orders.

Jurisdiction to consider the application

23. It is not in dispute that when the parties appeared before the Board the applicants were not the subsidiary proprietors in the Development. They were, however the subsidiary proprietors when the application was filed pursuant to Regulation 3 of the 2005 Regulations, and the Board is of the view that it is at this point of time that a determination is made as to whether or not the Board has jurisdiction over the matter. Accordingly, the Board is of the view that it has jurisdiction to consider and determine the application.

Power to make the order sought

24. After determining that there was jurisdiction to consider the application, the Board proceeded to determine the issue as to whether there was any power under the Act for the Board to make the order applied for.

25. This is a case where a “payer” had made a payment to “payee” when the payer was of the view that the payee did not have a legal right to require the payment and is now seeking an order for the money to be refunded.

26. It was, as noted earlier, the submission of the applicants that the order can be made under section 108 of the Act which reads as follows:

Order varying contributions, etc.

108.— (1) Where, pursuant to an application by a management corporation, a subsidiary management corporation, a subsidiary proprietor or a mortgagee in possession (whether by himself or another person), a Board considers that any amount levied or proposed to be levied by way of contributions —

(a) under section 40 or 41(3) or (4) in respect of a lot in a subdivided building where planning permission for the development of land was granted prior to 15th April 1976; or

(b) under section 41(3) or (4) in respect of a lot in a subdivided building where planning permission for the development of land was granted on or after 15th April 1976, is inadequate or excessive or the manner of payment of contributions is unreasonable, the Board may make either or both of the following orders:

(i) an order for the payment of contributions of a different amount with effect from such date as the Board determines;

(ii) an order for the payment of contributions in a different manner.

(2) Where an order of a Board under subsection (1) takes effect in relation to a contribution levied by a management corporation or subsidiary management corporation, as the case may be, that has been wholly or partly paid in respect of a lot, the management corporation or subsidiary management corporation shall be deemed to have imposed a levy of the amount determined by the Board with effect from such date as the Board determines.

(3) Notwithstanding section 40(2), an order may be made by a Board under subsection (1) for the payment of any amount which the Board thinks is fair and adequate.

(4) For the avoidance of doubt, nothing in this section shall authorise any Board to alter the share value of any lot shown in a strata title plan in any manner on or after the date the management corporation is constituted.

27. It is clear that the section is concerned with contributions levied by the management corporation on subsidiary proprietors under sections 40, 41(3) or 41(4) of the Act. The orders that can be made under section 108 are i) an order for a payment of a different amount; and/or ii) an order for a payment of the contribution in a different manner.
28. Under section 40 of the Act, a management corporation can levy contributions in accordance with sections 39(1), 39(2), 41, and contributions referred to in section 39(3). Such contributions are by virtue of section 40(2) payable by subsidiary proprietors in shares proportional to the share value of their respective lots. The section is concerned with contributions (the amount would have been determined at a general meeting) that all the subsidiary proprietors are obliged to pay in accordance with the share value of the respective lots. Under section 108, the Board can vary the amount that was determined at the general meeting when the Board is of the view that the amount is inadequate or excessive and the Board has also been given a power to order the payment of the contribution to be in a manner other than in accordance with share value which is the prescribed manner.
29. Sections 41(3) and 41(4) are not relevant in this case as the sections are in relation to additional contributions approved by the Commissioner of Buildings when a lot has been sub-divided; where a change of use of the lot has been approved by the competent authority; or when improvements in or upon a lot have been effected in accordance with section 37 of the Act.
30. The payment that was made by the applicants in this case was not for an amount that was determined at a general meeting that all subsidiary proprietors are required to pay. It was not a contribution that was levied in accordance with sections 39(1), 39(2), 41, or a contribution referred to in section 39(3). It was pursuant to a by-law that was made in connection with legal costs incurred by the management corporation for the purpose of

enforcing compliance with the Act and the by-laws that the respondent required the applicants to make the payment and payment was made.

31. Whilst it is the case for the applicants that there was no obligation on their part to make the payment and that the by-law under which the respondent had required the payment was not a valid by-law, section 108 does not provide for an order to be made for the refund of such a payment.
32. The Board is in this case not expressing any views as to whether or not it was in order for the management corporation to require the payment from the applicants as this was not the issue in this case.
33. Accordingly, the application is dismissed.

Dated this 11th day of February 2019

Mr Remedios F.G
Deputy President

Professor Teo Keang Sood
Member

Mr Lawrence Ang
Member

Applicants in person
Ong Beng Hui (Chairman) and Boey Ghim Chiew (Secretary) for the Respondent