

BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT

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

STB No. 72 of 2019

In the matter of an application under Section 101(1)(a) and Section 111 of the Building Maintenance and Strata Management Act in respect of the development known as **The Queens Condominium** (The MCST Plan No. 2748)

Between

Toh Cho Boon / Yong Phui Ling

...Applicant(s)

And

**The Management Corporation Strata Title Plan
No. 2748**

... Respondent(s)

FOUNDATIONS OF DECISION

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9 January 2020

27 February 2020

Coram: Mr Alfonso Ang (President)
 Mr Cyril Seah (Member)
 Ms Chew Yi-Ling Elaine (Member)

1. On 13 August 2019, the Applicants filed this application with the Strata Titles Boards and sought the following orders in their application:

*“i The Respondent consents to the Applicants’ installation of fixed coverings over the entire private enclosed spaces (PES) in accordance with the design guidelines and specifications to be provided by the Respondent or the Applicant as the Board deems to be reasonable response to the killer litter problem faced by the Applicant; and
ii That the Respondent pays the Applicant’s costs for this Application.”*

Background

2. The Applicants are the subsidiary proprietors of 12 Stirling Road, #01-13 Singapore 148955 (“**the Applicants**”) of a strata development known as The Queens Condominium (“**the Development**”). The Respondent is the Management Corporation Strata Title Plan No. 2748 of the Development (“**the Respondent**”).
3. In accordance with the special resolution passed at the 12th Annual General Meeting held on 28 May 2016, subsidiary proprietors at the ground floor with private enclosed space (“**PES**”) were allowed to erect awning over the PES (“**Awning By-Laws**”) subject to the following conditions:

“SPs at the ground floor with PES are only allowed to erect awning over the PES subjection to the following conditions:

- 1. The awning shall be of a design and colour approved as per appendix 1.*
 - 2. The SP shall bear all costs for the erection of the awning including but not limited to appointment of qualified persons to certify and submit the plans to relevant authorities to certify and submit the plans to relevant authorities having jurisdiction on such matters if required.*
 - 3. The SP shall be responsible for the maintenance and upkeep of the awning including taking up the necessary insurance for same.*
 - 4. The SP shall extend the fullest cooperation to the contractors appointed by the MCST for future repairing and redecoration works or any works to facilitate the use of gondolas for the effective and safe execution of works.*
 - 5. The awning shall not exceed 2m (Width) or beyond the PES*
 - 6. The awning should be inclined at angle to allow rain water flow”*
4. On 10 July 2018, the Applicants’ witness, Mr Toh Cho Boon (“**AW-1**”) wrote to the Respondent on the installation of a shelter/covering over the entire 4m width of the PES of their unit.¹ Their main reason for the application was to ensure the safety of the family members and to protect them from killer litter. The Respondent replied on 26 July 2018 that the installation of awning was to be in accordance with the Awning By-Laws, which allowed installation of fixed awning not exceeding 2m width.²
 5. The Applicants took their own initiative to obtain a quotation and design proposal from a contractor for a full awning. The Applicants then used the design proposal to seek written approval from the Urban Redevelopment Authority (“**URA**”) on 12 September 2018. The Applicants received the URA Grant of Written Permission (“**URA grant**”) on 9 October 2018.

¹ Affidavit of evidence in chief (“**AEIC**”) of Toh Cho Boon dated 26 December 2019 at para 8.

² *Id*, at para 9.

6. On 10 October 2018, the Applicants sent an email to the Respondents along with the URA grant to request a meeting with the Respondent and to get their approval to install the shelter. However, the Applicants' proposal did not comply with the Awning By-Laws as it exceeded 2m. The Respondent advised the Applicants to table their request to install an awning beyond what was permitted under the Awning By-Laws at a general meeting.³
7. The Applicants submitted a private motion to build an awning beyond 2m but failed to obtain the requisite vote to have their motion passed at the Extraordinary General Meeting on 15 December 2018 ("**EGM 2018**").⁴ Subsequently, the Applicants attempted to move the same motion at the Annual General Meeting on 25 May 2019 and again failed to obtain the requisite vote to have their motion passed.⁵

The Applicants' case

8. The Applicants' case is that a fixed awning over the whole 4m width of their unit's PES is necessary for their children's safety as they use the PES frequently (their children are 14 and 16 years old), and for the safety of the children of their extended family members who visit them frequently.⁶ The Applicants highlighted a severe problem of high-rise littering at the Development and that a fixed awning over their entire PES should be allowed for the protection of their family.⁷
9. The Applicants further submitted that their request for the installation of the fixed awning is a fair and reasonable proposal as they had obtained the URA grant.⁸ In the minutes of the Council Meeting on 30 August 2018, it was recorded that the Respondent had "*no objection, in principle, to [AW-1's] proposal subject to [AW-1] obtaining planning permission from the URA...*"⁹

The Respondent's case

10. The Respondent submitted that there were ten (10) units in the Development with PESs and only two (2) units have fixed coverings that comply with the Awnings By-Laws where they do not extend more than 2m.¹⁰ The Respondent had also facilitated the Applicants' request for the fixed coverings beyond the current 2m but the two motions were not passed at the general meetings. The Respondent is therefore not empowered to allow the

³ *Id*, at para 12. See also AEIC of Chong Foo Nam Nicholas dated 27 December 2019 at para 8.

⁴ AEIC of Chong Foo Nam Nicholas dated 27 December 2019 at paras 9 to 11. *Supra* n 1, at para 12.

⁵ AEIC of Chong Foo Nam Nicholas dated 27 December 2019 at paras 12 and 13. *Supra* n 1, at para 12.

⁶ *Supra* n 1, at paras 7, 17 and 18.

⁷ *Supra* n 1, at paras 21 to 24 and para 27.

⁸ *Supra* n 1, at Tab 5.

⁹ *Supra* n 1, at paras 33 and 34.

¹⁰ AEIC of Chong Foo Nam Nicholas dated 27 December 2019 at para 16.

Applicants' installation of fixed coverings beyond the 2m permitted under the Awning By-Laws.¹¹

Board's Findings

11. Paragraph 5 of the Second Schedule to the Building Maintenance (Strata Management) Regulations 2005 ("**BMSMR 2005**") states as follows:

"Alteration or damage to common property

5(1) A subsidiary proprietor or an occupier of a lot shall not mark, paint, drive nails or screws or the like into, or otherwise damage or deface, any structure that forms part of the common property except with the prior written approval of the management corporation.

...

(3) This by-law shall not prevent a subsidiary proprietor or an occupier of a lot, or a person authorised by such subsidiary proprietor or occupier from installing -

- (a) any locking or other safety device for protection of the subsidiary proprietor's or occupier's lot against intruders or to improve safety within that lot;*
- (b) any screen or other device to prevent entry of animals or insects on the lot;*
- (c) any structure or device to prevent harm to children; or*
- (d) any device used to affix decorative items to the internal surfaces of the walls in the subsidiary proprietor's or occupier's lot."*

12. Paragraph 5(3)(a) of the Second Schedule to the BMSMR 2005 allows subsidiary proprietors to install a safety device *to improve safety within that lot* or any structure or device in order to prevent harm to children (see *Pang Loon Ong and Ors v The MCST Plan No. 4288* STB 21 of 2019 (D'Leedon) at paragraph [10]). The Board notes the photographs of high-rise littering (including items such as blade and knife) in three (3) other ground floor units, besides the Applicants' unit (i.e. units #01-10, #01-20, #01-03).¹² The Board further notes at the hearing that the Respondent's Chairman, Mr Chong Foo Nam Nicholas ("**RW-1**"), had during his cross-examination on the said photographs, said that the litter had fell outside the PES but high rise littering was *not* a risk that the Respondent would take. The Board finds the Respondent had the power to allow any safety devices, including awnings pursuant to Paragraph 5(3)(a) of the Second Schedule to the BMSMR 2005 to address the problem of high-rise littering in the Development.
13. With respect to whether the Respondent is obliged to approve the Applicants' proposal for a fixed awning covering the entire PES (i.e. the 4m fixed awning) as a necessary, reasonable and proportionate response to the high-rise littering problem, the Board finds

¹¹ *Id.*, at para 18.

¹² *Supra* n 1, at para 23 and pages 88 to 99.

that the Respondent is *not* obliged to approve the Applicants' proposal for a fixed awning over their entire PES.

14. Firstly, the Board finds it was *not* a necessary, reasonable or proportionate response to have a 4m fixed awning when the Respondent was already prepared to allow the Applicants to install a retractable awning/covering that the Applicants conceded at the hearing, would enable their entire PES to be fully covered. The Respondent had conveyed to the Applicants that they did not object to the installation of a retractable covering of 2m with the initial 2m fixed awning. The installation of the additional 2m retractable covering was subject to the following conditions¹³ :

- a. No fixed framework is allowed beyond the initial 2.0m of the fixed covering*
- b. Any fixed framework for purposes of structural integrity of the structure is to be kept within the initial 2.0m of the fixed covering.*
- c. The retractable portion of the retractable covering is to be underneath and in line with the initial 2.0m of the fixed covering, when retracted.*
- d. Both the fixed and retractable coverings are (i) to comply with the By-Laws, as applicable, (ii) not to result in any increase in the gross floor area of the estate; and (iii) to comply with all applicable laws and regulations, codes and guidelines."*

15. AW-1 testified at the hearing that the Applicants had contacted three (3) contractors who informed him that they were unable to fix the additional 2m retractable covering without support at the end of the PES. However, none of the three (3) contractors attended at the hearing. The Applicants' counsel subsequently submitted quotations from the three (3) contractors in their further written submissions dated 23 January 2020 ("**Applicants' further submissions**"). The Respondent also submitted an email from an architect that the additional 2m retractable covering could be done.¹⁴ As a matter of evidence, the Board is unable to conclusively rule in the absence of hearing from the contractors and/or the architect and based on quotations and/or email that the contractors and/or architect were not able or were able to fix an additional 2m retractable covering.

16. Secondly, it was not necessary, reasonable or proportionate to have the 4m fixed awning when it was clear the general body refused to vote in favour of the Applicants at two general meetings. Notwithstanding support given by the Respondent to the AW-1's motions, AW-1 still failed to garner enough votes to pass a special resolution for the 4m fixed awning.

¹³ *Supra* n 10, at para 19.

¹⁴ Respondent's submissions dated 23 January 2020 at para 29(r) and Respondent's Bundle of Authorities and Documents at ("RBAD") at Tab 7.

17. Lastly, notwithstanding the approval from URA, the Board finds that the installation of a fixed awning was subject to the by-laws of the Development. “Part V – Additional Notes” of the URA grant clearly states that:

*“b) The planning permission from URA granted under the Planning Act **does not, in any way, supersede any requirements or by-laws that the MCST may have or impose on the development within its powers under the Building Maintenance & Strata Management Act** (“bold for emphasis”). Home owners are still obliged to comply with the by-laws which are administered by the development’s MCST and should separately seek the consent of the MCST before erecting the proposed structures.”*

18. Further, the Board also notes that Paragraph 5(3) had to be read together with Paragraph 5(4) of the Second Schedule to BMSMR 2005, which states:

“Any such locking or safety device, screen, other device or structure must be installed in a competent and proper manner and must have an appearance, after it has been installed, in keeping with such guidelines as the management corporation may prescribe regarding such installations, and with the appearance of the rest of the building.”

The Board notes at paragraph [10] of the Applicants’ further submissions that the Applicants “do not dispute that the Respondent is entitled under Rule 5(4) of the Prescribed By-Laws to prescribe guidelines for the installation of shelters over the PES.” The Board finds that it was not a necessary, reasonable or proportionate response to have a 4m fixed awning in contravention of by-laws and/or prescribed guidelines.

19. The Board noted that use of gondolas was raised at the hearing to buttress the Respondent’s position for the additional 2m retractable awning in order that the estate may carry out maintenance works (e.g. painting). In addition, the Applicants had in their further submissions provided a letter from an ISO Team C&P Pte. Ltd. that the gondola movements will be the same whether a 2m awning is fixed or a 4m awning is fixed¹⁵; whereas the Respondent had obtained confirmation from a Scatech Engineering Pte Ltd of difficulties for gondola installation, dismantling and landing¹⁶. Nevertheless, the Board finds that as a matter of evidence, it was not put before the Board whether the installation of the awning would prevent the Respondent from painting the external walls or whether the gondolas may still access the external walls without difficulty. As such, the Board has not taken this factor into account in arriving at its decision.

¹⁵ Applicants’ further submission dated 23 January 2020 at para 15.

¹⁶ *Supra* n 14, at para 43 and RBAD at Tab 8.

20. The Applicants also raised an issue in their skeletal submissions and further submissions that they should be reimbursed for incurring half the cost of convening the EGM 2018.¹⁷ The Board makes no order as to whether the Respondent was wrong to offer to share the costs of the EGM 2018 with the Applicants as the application for such an order was not prayed for and no evidence was adduced.

Board's Order

21. The installation of fixed coverings over the entire PES in accordance with the design guidelines and specifications as provided by Applicants is not a reasonable response to the killer litter problem. The Board finds that the Respondent has acted necessarily, reasonably and proportionately by allowing the installation of a retractable covering of 2m with the initial 2m fixed awning. The application is thus dismissed.
22. As the Respondent has submitted that there be no order as to costs, the Board orders that there be no order as to costs.

Dated this 27th day of February 2020

MR ALFONSO ANG
President

MR CYRIL SEAH
Member

MS CHEW YI-LING ELAINE
Member

Mr Kishan Pillay & Mr Yap Zhan Ming (M/s
TSMP Law Corporation) for the Applicants.

Mr Chong Foo Nam Nicholas (in-person) for the
Respondent.

¹⁷ Applicants' Skeletal Submissions at para 20 and *Supra* n 15 at para 29.