

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

STB No. 87 of 2019

In the matter of an application under Section 101(1)(c), Section 103(1)(a), Section 106 and Section 111 of the Building Maintenance and Strata Management Act in respect of the development known as Bullion Park (MCST Plan No. 1849)

Between

Mu Qi / Lim Swee Joo

...Applicant(s)

And

**Management Corporation Strata Title Plan No.
1849**

... Respondent(s)

FOUNDATIONS OF DECISION

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... Respondent(s)

21 July 2020

21 September, 22 September & 23 September 2020

14 October, 16 October & 19 October 2020

Coram: Mr Seng Kwang Boon (Deputy President)

Mr Lee Coo (Member)

Ms Zahara binte Bakar (Member)

Background

1. The Applicants are the Subsidiary Proprietors (“**SPs**”) of the unit at 170 Lentor Loop, Tower 1, unit #XXX (“**the Applicants**”) of the development known as Bullion Park (“**the development**”). The Respondent is the management corporation of the said development (“**the Respondent**”).

2. The main dispute in this Application is the removal of fixed awnings installed at all eight units on all the 14th floors of the development and the reconstruction of common external walls that were demolished in those units.

3. The Applicants sought the following orders in their application:

“(i) For the Respondent to do the necessary to remove the fixed awnings which have been installed on the common external walls of the balconies of various units at level 14 of the development known as Bullion Park, including Units:-

(a) #XXX (Tower 1);

(b) #XXX (Tower 3);

(c) #XXX (Tower 4);

(d) #XXX (Tower 4);

(e) #XXX (Tower 5);

(f) #XXX (Tower 5);

(g) #XXX (Tower 6); and

(h) #XXX (Tower 6),

as soon as reasonably practicable and in any event, no later than 1 month from the date of such order (if any); and/or

(ii) For the Respondent to do the necessary to remove the fixed awnings installed at Unit 170 Lentor Loop, #XXX, of the development known as Bullion Park as soon as reasonably practicable and in any event, no later than 1 month from the date of such order (if any); and/or

(iii) For the Respondent to enforce the motion that was passed during the 18th Annual General Meeting on 10 November 2012 for residents who have installed / erected / constructed / attached any permanent / temporary structures / fixtures / objects on to the external walls shall remove such structures / fixtures / objects and reinstate the external walls back to their original condition before selling off their unit (notwithstanding that such structures / fixtures / objects may have been previously approved by the MCST); and/or

(iv) For the Respondent to invalidate the resolution which was passed during the Annual General Meeting on 17 November 2018 pertaining to the “installation of fixed sheltered at balcony private enclosed space (pes) area at level 14”; and/or

(v) For the Respondent to do the necessary to reinstate the brick walls on the 14th floor units that have removed the brick walls and replaced it with the sliding glass door; and/or

(vi) Cost to be paid by the Respondent to the Applicants.”

The Applicants' Case

4. The Applicants submitted that all the fixed awnings installed at all the 14th floor units of the development and the brick external walls on the 14th floor units that have been removed and replaced with the sliding glass doors were done without a 90% resolution as required under Section 33(1)(c) of the Building Maintenance and Strata Management Act (“**BMSMA**”), and hence they were deemed to be unauthorised structures; and the fixed awnings must be removed and the brick walls reinstated.
5. The Applicants also submitted that the fixed awnings constructed at Tower 1 unit #XXX which is directly below their unit had been causing them a myriad of health and safety concerns. The health concerns include heat, glare, dirt, dust and noise. The construction workers being able to stand on the awnings, being in close proximity to their windows and being able to look into their unit including their daughters' bedroom, was also their safety concern.
6. The Applicants further submitted that the awnings installed at all level 14 units have affected the façade of the development and thus Section 37(4)(a) of the BMSMA has not been complied with.
7. There is no exception to the 90% resolution requirement as there is no killer litter problem facing the 14th floor units.
8. The resolution passed on 10 November 2012 at the 18th Annual General Meeting (“**AGM**”) for residents who have installed, erected, etc. any structures/fixtures/objects on to the external walls to remove the same before selling off their unit (“**the 2012 resolution**”) should be enforced, and the resolution passed on 17 November 2018 at the AGM pertaining to the installation of fixed shelter at balcony private enclosed space (“**PES**”) area at level 14 (“**the 2018 resolution**”) to be invalidated.

The Respondent's Case

9. The Respondent submitted that there was a by-law passed on 16 December 2010 to allow the removal of brick walls. The by-law provides as follows:

“All works which involved the breaking/removing of any brick wall inside any unit is to be endorsed by a professional engineer.”
10. The Respondent also submitted that before Ahmad bin Ibrahim and others v The MCST Plan No. 4131[2018] SGSTB 8 (referred to by the Respondent as “the Belysa case”), it was unclear whether an external wall within the strata area of a unit is common property, and a 90% resolution was required for the installation of awnings on such a wall. Hence,

the Respondent had been giving approval for the installation of the disputed fixed awnings.

11. The Respondent relied on their expert's oral evidence and his report in respect of the health and safety concerns raised by the Applicants.
12. With respect to the enforcement of the 2012 resolution passed at the 18th AGM on "*Erecting, constructing, installing, attaching of structures, fixtures, objects etc. to the external common wall / ledges*", the Respondent submitted that the resolution remained a resolution and not a by-law that could be enforced, and in any event had expired.
13. Their approach in getting the 2019 resolution passed to address all, not specific, unauthorised structures is consistent with the decisions in *Low Yung Chyuan v The MCST Plan No. 2178 [2019] SGSTB 3* ("the Castle Green case") and *The Management Corporation Strata Title Plan No. 3436 v Tay Beng Huat* and another [2019] SGDC 208 in that no SP should be treated differently from other SPs in the development.

Board's Findings

14. It is not disputed that conferring on an SP of a lot the exclusive use and enjoyment of any part of the common property for a period that exceeds 3 years needs a 90% resolution (see Section 33(1)(c) of the BMSMA). There is no evidence produced to indicate that there was a 90% resolution passed for the construction of the awnings in dispute and/or removal of the brick walls in dispute.
15. However, it is apparent that the 14th floor SPs who had constructed their fixed awnings and/or removed the brick walls proceeded on the belief and premise that the Respondent had authorised them to do so. The Respondent did not deny that they gave such authority. The SPs had spent time, effort and resources acting on the Respondent's representation.
16. Whilst the disputed awnings and/or sliding glass doors as they stand now might be unauthorised structures, these affected SPs should be given an opportunity to raise any possible defence and/or counterclaim against the Respondent if the Respondent is to take action against them.
17. The Applicants' prayers (i) and (ii) for this Board to order the Respondent to take necessary action to remove the disputed awnings would be tantamount to this Board ordering the SPs to demolish their awnings without affording them an opportunity to be heard.

18. Also, in the course of these proceedings, this Board was informed that the Respondent had passed a by-law on “Unauthorised additions, alterations and improvement work within unit” (“**2019 by-law**”), after the filing of this application by the Applicants. This by-law, this Board was informed, was to allow all existing unauthorised structures on common property to remain for the duration of the by-law presumably for a period of three (3) years after which they must be removed.
19. This by-law may well make the disputed awnings etc. to be authorised structures as they stand now. This Board makes no finding as such because the said by-law was passed after the present application by the Applicants. Suffice to say that this may give the affected SPs another defence in respect of any order of their awnings and/or sliding glass doors for demolition while this 2019 by-law remains in force.
20. This Board will therefore not make any order directly or indirectly that would affect any SPs’ interests and disrupt their daily lives at significant costs without them being before this Board and afforded the chance to be heard and to raise any possible defences and/or counter-claims.
21. With regards to prayer (iii), the 2012 resolution passed at the 18th AGM was not acknowledged by the Building and Construction Authority and lodged with the Commissioner. As such, it has no force or effect (see Section 32(4) of the BMSMA).
22. For prayer (iv), the Respondent has no power to invalidate the 2018 resolution passed on the 17 November 2018 on “*Installation of fixed shelter at balcony Private Enclosed Space (PES) area at level 14*”. From the evidence adduced, this Board is of the view that the provisions of the BMSMA had been complied with in this regard. In any event, the 2018 resolution does not deal with the existing awnings at level 14.
23. This Board also finds that there is not enough evidence to show that there is a killer litter problem in this development.
24. For prayer (v), the findings of the Board in prayers (i) and (ii) are equally applicable here.
25. The Board, however, finds that the SPs of Tower 1, unit #XXX which is directly below the Applicants’ unit had breached Section 63 of the BMSMA. Section 63 provides, inter alia, as follows:

“Duties of subsidiary proprietors and other occupiers of lots

63. A subsidiary proprietor, mortgagee in possession (whether by himself or any other person), lessee or occupier of a lot shall not –

...

(b) use or enjoy that lot, or permit that lot to be used or enjoyed, in such a manner or for such a purpose as to cause a nuisance or hazard to the occupier of any other lot (whether that person is a subsidiary proprietor or not)..."

26. The expert witness of the Respondent in his report and oral testimony stated that the awnings at Tower 1, unit #XXX:

"6.1. ...have increased temperature which might result in heat reflecting into the unit of #XXX.

6.2. The white colour of the awning may be the cause of the glare into the unit #XXX

...

6.3. ... the fixed awnings may be a source of dirt..."

and

"6.3. ...the fixed awnings may be source of ...noise disturbance to unit #XXX during the rain."

27. The expert said that these nuisances could be rectified by:

- (a) using an off-white polyurethane coating; and
- (b) washing the awnings twice a year.

28. The Board is therefore of the view that the Respondent takes the necessary action against the SPs of unit #XXX to rectify the nuisances caused to the Applicants. The Respondent is to give advance notice to the Applicants of any proposed works that will be carried out at the awnings outside their windows.

29. The Board accepts the Respondent's expert report on security and finds that there is a low risk of the disputed awnings posing a security issue from intruders. This is also the view of the Applicants' expert during cross-examination.

Board's Order(s)

30. This Board makes the following orders:

- (a) Prayers (i) to (v) in this application are dismissed.
- (b) Respondent to take the necessary action against the SPs of 170 Lenton Loop, #XXX Singapore 789099 to rectify the breach of Section 63 of the BMSMA within one (1) month from the date of this order.

Costs

31. Although this Board had dismissed all the Applicants' prayers, it is of the view that it would be inequitable for the Applicants to be penalised with costs.

32. The Applicants had spent much time, effort and resources prosecuting their case which is not without merit.
33. The Respondent and their predecessors in the administration of their duties under the BMSMA are not without fault.
34. This Board is therefore of the view that it would be fair to both parties to order that each party is to bear its own costs.

Dated this 2nd day of November 2020

MR SENG KWANG BOON
Deputy President

MR LEE COO
Member

MS ZAHARA BINTE BAKAR
Member

Mr Lee Xiancong, Jensen and Mr Chan Jun Kitt @
Herman Lee (M/s Taylor Vinters Via LLC) for the
Applicants.

Mr Adam Chong and Mr Roland Samosir / Mr Goh
E Pei (M/s Low Yeap Toh & Goon LLP) for the
Respondent.