

BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT

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

STB No. 25 of 2021

In the matter of an application under **sections 101(b) and (c)** of the Building Maintenance and Strata Management Act in respect of the development known **Aljunied Industrial Complex** (MCST Plan No. 826)

Between

Koh Tian Soon and Tan Muay Lan

... Applicant(s)

And

The Management Corporation Strata Title Plan No. 826

... Respondent(s)

CONSOLIDATED WITH

STB No. 36 of 2021

In the matter of an application under **sections 101 and 117** of the Building Maintenance and Strata Management Act in respect of the development known **Aljunied Industrial Complex** (MCST Plan No. 826)

Between

The Management Corporation Strata Title Plan No. 826

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FOUNDATIONS OF DECISION

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30 July 2021

Coram:	Mr. Remedios F.G	(Deputy President)
	Mr Lai Huen Poh	(Member)
	Professor Teo Keang Sood	(Member)

INTRODUCTION:

1. In the case, applications were filed by the subsidiary proprietors (“**the SPs**”) of #XXX and #XXX (STB 25 of 2021) in the development known as Aljunied Industrial Complex and by the management corporation (“**the MC**”) of the development (STB 36 of 2021) in relation

to legal fees incurred by the MC when enforcing a breach of the by-laws on the part of the SPs when they installed CCTV cameras on the external wall of their units without approval from the MC.

2. There were other prayers in the two (2) applications - when the applications were filed, the SPs had prayed for four (4) orders and the MC had prayed for five (5) orders. The SPs filed an interlocutory application to make an amendment to their application and whilst an interlocutory application was not filed on the part of the MC to amend, the parties in the course of mediation/directions agreed that only orders in relation to legal fees would be sought from the Board.

BACKGROUND

3. From the submissions filed, the following facts were not in dispute
 - 3.1 The SPs are subsidiary proprietors of two (2) units viz #XXX and #XXX in Aljunied Industrial Complex. The units are tenanted to a company viz KTK Beauty Pte Ltd and the SPs are the directors and shareholders of the company. References to the SPs in these grounds will include the tenants.
 - 3.2 Inter alia, the following by-laws and resolutions were passed by the MC:
 - 3.2.1 22 June 1999 - MCST Plan 826 By - Laws (“**the MC By-laws**”)
“3.14: Occupiers/Tenants shall not make any additions/alterations to the façade and windows of their units without prior written approval of the Management Corporation. Any alteration/replacement of the windows must follow the common designs as specified by the Management Corporation”
 - 3.2.2 28th Annual General Meeting (“**AGM**”) on 27 April 2012 - By-Law on Encroachment of Common Areas (“**the Encroachment By-laws**”)
“...to empower the management corporation in the event of a breach or violation of the By-Laws, to take such action as it considers appropriate under the circumstances....”
“All expenses and costs arising from or in connection with or from the action taken...shall be borne by the subsidiary proprietor”
 - 3.2.3 Special Resolution passed on 28 May 2015
“To authorise the Management Council to approve applications by Subsidiary Proprietors/Tenants to install CCTV/Sign Boards (with or without illumination) within the common areas on a case to case basis and as deemed fit by the Management Committee. The Management Committee shall reserve the rights to disapprove any applications without providing any reasons”
 - 3.2.4 Resolution passed at 33rd AGM on 2 June 2017
“6.2 It was unanimously resolved that where a subsidiary proprietor or occupier of a lot has breached any...by-laws passed ...and /or defaulted in payment of any contributions levied...and or interest thereon and where the Management Corporation incurs any cost fees or expenses whatsoever in

enforcing ...the Management Corporation shall recover all such costs...on an indemnity basis”

3.2.5 Resolutions passed at the 34th AGM on 31 August 2018

8.0 Legal Action and Recovery of Legal Fees

8.1 Arrears in Contributions.

“The meeting resolved that all legal fees including those on solicitor-and-client basis, disbursements and all other costs, charges and expenses incurred in the recovery of arrears of any contributions or such other sums owing to the management corporation by any subsidiary proprietor be recovered on full indemnity basis from the subsidiary proprietor concerned”

8.2 Breach of By-laws.

“The meeting resolved that where a subsidiary proprietor or occupier of a lot has breached any prescribed by-laws set out in the Second Schedule of the Building Maintenance (Strata Management) Regulations 2005 and/or breached any by-laws passed by the management corporation at its general meetings and where the management corporation incurs any costs, fee or expenses whatsoever in enforcing the said by-laws, the management corporation shall recover as a debt all such costs, fee and expenses from the subsidiary proprietor or occupier on full indemnity basis”

4. In and around February 2019, four (4) security cameras were installed outside the SPs’ units. The cameras were, according to the SPs, *to ensure safety of the vehicles parked in the common carpark.*
5. On 1 March 2019, the SPs were, by way of a letter sent by Absolute Properties Pte Ltd, for and on behalf of the MC, advised to remove the cameras within seven (7) working days *failing which legal proceeding against you will be commenced without further recourse.* The SPs did not reply or respond.
6. Via a letter dated 2 April 2019, a demand was made by the MC for the cameras to be removed by 16 April 2019, inter alia, on the ground that the SPs had in breach of the MC By-laws failed to obtain prior written approval for the installation; and the installation contravened section 37(3) of the Building Maintenance and Strata Management Act Cap 30C (“**the Act**”) because it affected the appearance of the building. The demand was made in a letter sent by lawyers acting for the MC.
7. On 17 April 2019, the SPs via their lawyers contended that the cameras were required for *reasons including security*; that there was no basis for the contention that the cameras had affected the appearance of the building; highlighted that others had installed cameras on external walls and no action had been taken against them. The SPs in the last paragraph of the letter informed that they would *on a without prejudice basis and without any admission of liability whatsoever and to close the chapter on your client’s demands, unfounded as they may be, our client has already removed the camera portions of the CCTVs....*

8. There is no dispute that the cameras were removed, but it appeared to be the case that the brackets of the cameras had not been removed at the same time and on or about 3 June 2019, the MC's lawyers informed the SP's lawyers that the brackets had to be removed and consequential repairs carried out by 17 June 2019. There is no dispute that the brackets were removed and whilst there is no evidence as to the date when they were removed, there is no evidence that the MC had to ask or demand removal of the same after the deadline date.
9. On 17 June 2019, the SPs by way of a letter from their lawyers, inter alia *requests that your client forthwith drop its objections to and do approve the installation of the 4 CCTV Cameras*. The MC did not reply.
10. Via a letter dated 12 November 2019, a claim for \$11,374.52 was made by the MC against the SPs as costs, fees or expenses incurred in enforcing the by-laws. It was the contention of the MC that it was *entitled to claim all costs, fees and expenses incurred in enforcing the by-laws as a debt (from the SPs) on a full indemnity basis. This is pursuant to, inter alia the following provisions* (the MC referred to the resolutions passed at the 33rd and 34th AGM of MCST 826 and By-law No 1 of the Encroachment By-laws) *which you should already be aware of*. A demand was then made for payment of the \$11,374.52 *being the costs incurred...in enforcing the by-laws*.
11. Between 2 August 2019 and 22 October 2019, the MC's lawyers sent invoices and a credit note to the MC for the amount that the MC had demanded from the SPs in the 12 November 2019 letter. The lawyers had billed the MC for professional services rendered between 17 April 2019 and 8 September 2019.
12. On 26 November 2019, the SPs, by way of a letter from their lawyers, inter alia replied that there was no basis for the claim for legal costs and that the amount claimed was excessive.
13. Between 1 January 2020 and 1 January 2021, the MC included the legal fees in the Invoice/Statement that were sent to the SPs in relation to contributions to the management and sinking funds (\$5687.26 for each of the SPs' two (2) units).
14. The SPs are in this case applying for
“An order that the MCST be restrained from claiming from them for the Legal Fees (comprising of the sums of S\$5,687.26 and S\$5,687.26); and
An order that the MCST shall amend or remove or do all that is necessary so that the legal fees of \$5,687.26 is not reflected in the Invoices Account No. 623-05-02 dated 1 April 2020; 1 July 2020; 1 October 2020; and 1 January 2021 and the legal fees of S\$5,687.26 in Invoice Account No. 623-05-04 dated 1 April 2020; 1 July 2020; 1 October 2020; 1 January 2021 issued by the MCST”
15. The MC is applying for
“An order that the SPs shall bear all expenses and costs arising from or in connection with or from the action taken by the MC in respect of the SPs' installation of the CCTV Cameras in the amount of S\$11,374.52, or such other amount as the STB deems fit.
An order that the SPs shall bear the costs of the Consolidated Application, including the

legal costs and expenses incurred by the MC on a full indemnity basis, or on such basis as the STB deems fit.

Such further or other orders and/or relief as the STB deems fit”

THE SPS' APPLICATIONS

16. It was the submission of the SPs that the MC should be restrained from claiming the legal costs because (i) there was no breach of the by-laws or section 37(3) of the Act; ii) no legal basis for the MC to make a claim for the legal costs; and iii) even if there was a legal basis for the claim it was excessive and disproportionate.

Inter alia, it was submitted that the legal costs claimed included work done by the lawyers for work done between 4 June 2019 and 9 September 2019 when there were no matters in connection with the cameras outstanding.

17. In relation to “*no breach of the by-laws and section 37(3) of the Act*”, it was the submission of the SPs that there was no breach of the MC By-laws because the installation of the cameras was not an alteration to the façade and it did not affect the appearance of the building.
18. The Board was satisfied that the installation of the cameras had altered the façade of the building and affected the appearance of the building
19. Submissions of the SPs that they were not aware that the MC’s consent was required before installing the cameras; that other subsidiary proprietors installed cameras and no action had been taken by the MC were not relevant to the fact that there was a breach of the MC By-laws when the cameras were installed.
20. In relation to the submission that there was no legal basis for the claim of legal costs the SPs pointed out that the MC was relying on the Encroachment By-laws and the resolutions passed at the 33rd and 34th AGMs.
21. It was submitted that the Encroachment By-laws did not provide for a recovery of full legal costs when there was a breach of the by-laws and only provided for the actions that the MC could take when there was a breach. In respect of expenses and costs, the SPs accepted that whilst the by-law was a contract between the management corporation and subsidiary proprietors and provided for the recovery of *all expenses and costs arising from or in connection with or from the action taken by the MC*, it did not provide the MC with a right to recover the actual legal costs on an indemnity basis which was what the MC was seeking in this case. As for the resolutions passed at the 33rd and 34th AGMs, these were decisions made at the respective meetings and not a record of an agreement on the part of subsidiary proprietors to pay costs i.e. they were not by-laws.
22. The SPs also submitted that even if there was a legal basis for the claim for costs, the amount claimed, when considering the work done by the lawyers was excessive and disproportionate.

THE MC'S APPLICATIONS

23. When STB 36 of 2021 was filed by the MC, it informed that the \$11,374.52 was *costs incurred in enforcing the by-laws* against the SPs (Form 8 Paragraph 17) and it was applying for an order from the Board because the SPs *are liable to indemnify the Applicant for the entire costs of enforcement* pursuant to the by-laws and resolutions passed (Form 8 Paragraph 24 to 28). It did not in the written submissions of the MC appear that it was, in respect of the first order applied for, submitting that an order should be made by the Board for the SPs to pay because of a liability under the by-laws and the resolutions. During mediation, the attention of the parties had been drawn to the decision of the Board in MCST Plan 3127 v Tay Boon Yong [2018] SGSTB 2 (“**Tay Boon Yong**”) where a by-law that “*all costs, including legal costs on an indemnity basis, disbursements and incidental costs incurred by the management corporation to enforce or to try to enforce any party’s compliance with the Building Maintenance & Strata Management Act, other statutes, subsidiary legislation, by-law shall be recoverable from the party concerned.*” was considered. The management corporation submitted that this by-law amounted to a contractually binding clause between subsidiary proprietors and the management corporation and that the Board should award costs on an indemnity basis. The Board at paragraphs [11] and [12] pronounced

...the Board is of the view that nothing in the provisions of BMSMA indicates that the MCST is empowered to pass by-laws which would interfere with the discretionary powers to award costs under section 117 of the BMSMA

We are of the opinion that even if the 8th AGM by-law was passed by the subsidiary proprietors, the presence or existence of such by laws relating to the recovery basis of legal costs would not bind or restrict the Board’s discretion to award costs under section 117 of the BMSMA ...”

24. Whilst it was not the submission of the MC that the SPs should be ordered to bear all the expenses and costs because they were required or obliged to do so by the by-laws and resolutions, it was submitted that the Board should exercise its discretion and order the SPs to do so because they had agreed to do so and the agreement should be upheld unless it was manifestly unjust to do so. It was submitted that *it is just in the circumstances for the SPs to be liable for all the costs incurred by the MC given their unreasonable and wanton conduct of wilfully breaching the by-laws.*
25. It would be in order to note that whilst the SPs had not responded immediately to the advice and demands in relation to the removal of the cameras and were initially opposed to removal, they had complied without exceptional delay. It was not the finding of the Board that the conduct of the SPs was unreasonable and wanton when they breached the by-law.
26. As an alternative to the application for the SPs to bear all the expenses and costs amounting to \$11,374.52, the MC had applied for the Board to make an order for the SPs to pay *such other amount as the STB deems fit*. In response to the SPs’ submission that this was in essence an application for an order to “tax” the legal fees, the MC replied that it was not asking the Board to review its bill of costs but was leaving it to the Board to determine reasonable costs.

27. The submission of the MC in its application for the second (2nd) order i.e. for the SPs to bear the costs of STB 25 and 36 of 2021 *incurred by the MC on a full indemnity basis or on such basis as the STB deems fit* was that the SPs should be ordered to pay (i) \$5000 as costs thrown away when the orders initially applied for were withdrawn and new orders introduced; and (ii) \$25,000 as costs for STB 25 and 36 of 2021.

DECISION OF THE BOARD

28. The installation of the CCTV cameras was an addition/alteration to the façade of the SP's units and there was a breach of the MC By-laws. Accordingly, it was in order for the MC to require that they be removed and whilst the SPs had not complied immediately, the necessary was done and there was no evidence that they were going to object to the removal. By virtue of the Encroachment By-law, the SPs had agreed that they would bear all expenses and costs arising from the enforcement on the part of the MC. The MC now wants an order for the SPs to pay \$11,374.52 as expenses and costs. The application is for the Board to make an order for the SPs to pay the legal costs incurred by the MC when it had appointed lawyers in relation to the SPs breach of the MC By-laws.
29. The Board is a statutory body established for the settlement of disputes with jurisdiction and powers identified in the Act and the types of orders that it can make are set out in Part VI Division 2 of the Act. It cannot make determinations on matters over which the Act has not given it any jurisdiction. The MC did not submit that there was a provision in the Act that provided for the making of the order that it was seeking. It was its' submission that the Board has a discretion to make the order applied for and it would be just in the circumstances of this case for the order to be made.
30. Under section 117 of the Act, the Board can make an order for costs to be paid by *the applicant, a management corporation, a subsidiary management corporation or any person against whom the order is made or costs to be paid by a party for making a frivolous application to the Board*. In Tay Boon Yong, it was the decision of the Board at paragraph [9] that the discretionary power to award costs arose *once a Board has made a determination regarding the matters before them* i.e. the Board has powers to award costs in connection with matters before the Board.
31. The application of the MC for the Board to order the SPs to pay its legal costs in this case was not an application in connection with a matter or any matter that was pending when the costs were incurred. The application (STB 36 of 2021) was filed on 30 March 2021 when there were no outstanding matters in connection with the CCTV cameras. The claim for the legal fees that had been incurred was in respect of a contractual obligation that was based on a by-law. The SPs have not and had never accepted the validity of the claim and a determination will have to be made as to whether the SPs are liable to pay the \$11,374.52 claimed by the MC. A determination as to whether the by-law is enforceable or not is, as pointed out in the Board in Tay Boon Yong at paragraph [13] for another forum to decide.
32. The Board is not aware and it has not been shown that there are any provisions in the Act that allows for the Board to make an order for a subsidiary proprietor or anyone to pay the management corporation or anyone legal costs incurred in matters that were not before the

Board. Accordingly, the application of the MC for the SPs to pay the costs and expenses in the amount of \$11,374.52 or such other amount is dismissed.

33. Regarding the orders applied for by the SPs, they had breached the by-law in relation to addition/alteration of the façade. Whilst the Board does not have the power to order that legal fees incurred by the MC to be paid by them, there is no reason whatsoever for the Board to make an order (assuming that it has the power to do so) to restrain the MC for making a claim against them. The application for an order to restrain the MC from claiming legal fees is dismissed.
34. The legal fees of \$11,374.52 incurred by the MC have been included in invoices dated between 1 January 2020 and 1 January 2021. Whilst the Board has dismissed the application of the MC for the Board to make an order for the SPs to pay the legal fees and the consequence of this is that there is, at this point of time, no obligation for the SPs to pay the legal fees, the Board is not aware and it has not been shown that it has the power to order the MC to amend or remove the legal fees from the invoices that were issued between 1 January 2020 and 1 January 2021. The application to amend or remove the legal fees from the invoices is dismissed.
35. The SPs and the MC have not succeeded in any of their primary applications and it will be appropriate that the Board should make no order for costs.

Dated this 30th day of July 2021

Mr Remedios F.G
Deputy President

Mr Lai Huen Poh
Member

Professor Teo Keang Sood
Member

Mr Collin Choo (Tan Peng Chin LLC) for the SPs.
Mr Nicholas Tan and Ms Tai Ai Lin (Allen & Gledhill LLP) for the MC.