

# CASE UPDATE



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## STRATA TITLES BOARD ORDERS REMOVAL OF GLASS CURTAINS AT BALCONY, SAYS RESIDENTS SHOULD NOT TRY TO “GAME THE SYSTEM”

### Introduction

1. Under the Building Maintenance and Strata Management Act (Cap 30C) (“BMSMA”), subsidiary proprietors of strata lots can generally do as they wish within their strata lots, subject to a few prohibitions.
2. One of the prohibitions is against effecting improvements in or upon the lot that affect the appearance of the building, unless the subsidiary proprietor first applies to the Management Corporation for approval, and the Management Corporation, being satisfied that the improvement does not detract from the appearance of the building, grants approval.
3. Another prohibition is against effecting any improvement in or upon a lot which increases or is likely to increase the floor area of the land and building comprised in the strata title plan, unless authorised by a 90% resolution at a general meeting.
4. The Strata Titles Board considered both these prohibitions in *The Management Corporation Strata Title Plan No. 4188 v Lim Yeong Seng and Kam Leh Hong Helen* STB No. 53 of 2019, where the Applicant Management Corporation sought an order that the Respondents remove glass curtains they had installed at the balcony of their unit.
5. After an arbitration hearing, the Board ordered that the Respondents remove the glass curtains and pay the Applicant S\$15,000.00 in costs plus disbursements. The successful Applicant was represented by Mr Daniel Chen of Lee & Lee.

### Facts

6. The Applicant is the management corporation constituted in respect of the development known as A Treasure Trove. The Respondents are subsidiary proprietors of a unit within A Treasure Trove.
7. The Respondents installed glass curtains along the perimeter of the balcony of their unit. A 10 cm gap was left open from the top of the glass panes to the ceiling.
8. The Respondents were aware that approval from the Applicant was required for the installation, but decided not to apply for approval. They admitted that this was because they knew that the Applicant allowed only aluminium operable louvered screens at balconies, and would have rejected their application for glass curtains. Nonetheless, they decided to carry on with the glass curtains instead of opting for the approved design.

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## *The Applicant's Case*

9. The Applicant's first argument was that the glass curtains affected the appearance of the building and were therefore installed in breach of Section 37(3) of the Building Maintenance and Strata Management Act (Cap 30C) ("BMSMA").
10. The Applicant pointed out that aside from the Respondents, other subsidiary proprietors had only installed approved balcony screens (the design of which was stated in the Resident's Handbook), approved blinds in a standard colour, or invisible grilles (permitted due to safety considerations).
11. The Applicant's second argument was that the glass curtains increased or were likely to increase the floor area of the building and were therefore installed in breach of Section 37(1) of the BMSMA.
12. The Applicant adduced evidence of Urban Redevelopment Authority ("URA")'s position that:
  - a. The Respondent's balcony was computed as gross floor area under the Balcony Incentive Scheme and that balconies approved under this scheme are to remain as semi-outdoor areas.
  - b. Screening at such balconies would have to comply with 'performance criteria', including that it must be porous enough to allow for natural ventilation even when the screens are fully drawn closed.
  - c. Glass curtains (with or without any gap on the top) do not comply with the 'performance criteria' and thus cannot be permitted.
13. Lastly, in response to the Respondent's contention that they should be allowed to keep the glass curtains as they were a safety device, the Applicant argued that the glass curtains did not qualify as a safety device under Section 37A of the BMSMA (under which subsidiary proprietors may install safety devices), since they did not follow the design guideline for safety devices for balconies in the development

## *The Respondents Case*

14. The Respondents' first argument was that their glass curtains constituted safety equipment, and should therefore be allowed pursuant to Section 37A of the BMSMA, regardless of whether the glass curtains affected the appearance of the building or increased floor area.
15. The Respondents' second argument was that the glass curtains were in keeping with the appearance of the building since there was "no uniformity of the building to be preserved".
16. Lastly, the Respondents argued that the installation of the glass curtains did not increase the floor area of the building. In support of this, the Respondents argued that the glass curtains did not violate any of URA's guidelines since there was a 10 cm gap between the top of the glass panels and the ceiling of the balcony.

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## *The Board's Decision*

### Safety

17. The Board observed that while Section 37A of the BMSMA does permit the installation of safety equipment, Section 37A(2) of the BMSMA places the onus on the subsidiary proprietor to ensure that any such safety equipment is in keeping with the appearance of the building.
18. Crucially, after reviewing Parliamentary Debates on Section 37A(2) of the BMSMA, the Board held that the provision implied that subsidiary proprietors should comply with design guidelines defined by the management corporation regarding such safety installations where applicable.
19. Since the Respondents chose to install the glass curtains instead of the designs approved by the Applicant for installations at the balcony which could serve the same purpose with regard to safety, the Board held that the Respondents had not made out their case under Section 37A of the BMSMA.

### Floor Area

20. The Board noted that one of the Respondents' reasons for installing the glass curtains was "keeping the rain out and protecting (their) son's tea table from being damaged by the rain". The Board observed that the curtains effectively allowed the Respondents to use their balcony in a manner that was contrary to its intended nature as a "semi-outdoor space".
21. The Board held that there was sufficient evidence that by installing the glass curtains the Respondents had effectively enclosed their balcony and "increased the floor area of the land and building comprised in the strata title plan".
22. The Board further noted that no 90% resolution under Section 37(2) of the BMSMA was sought or obtained by the Respondents with regard to the installation of the glass curtains.

### Appearance

23. The Board made a finding of fact that the glass curtains affected the appearance of the building since it reflected more sunlight than other units due to the material of the glass curtains (as opposed to aluminium operable louvred screens), and the lintel above the glass curtains stood out significantly from the other units.
24. The Board also noted that no authorization was sought by the Respondents from the Applicant under Section 37(4) of the BMSMA for the glass curtains.

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## Test for Mandatory Injunction

25. The Board held that the Respondent had not done anything that would have made the granting of an order for removal of the glass curtains unjust, and observed that the Respondent had in fact displayed commendable restraint.
26. The Board also held that the Respondents' installation of the glass curtains had caused damage to the Applicant, in that it undermined the Applicant's authority and tied its hands with respect to the preservation and appearance of the building. The Board observed that any hardship imposed on the Respondents by an order for removal of the glass curtains would be counterbalanced by the benefit of the alleviation of such damage.
27. In light of the above, the Board ordered that the Respondents remove the glass curtains, and pay the Applicant costs fixed at \$\$15,000.00 plus disbursements.

## Board's Closing Remarks

28. The Board was critical of the Respondents' decision to install the glass curtains without approval, despite knowing that approval was required, just because they knew it would not be given.
29. The Board observed that in installing the curtains, and then alleging that the Applicant would not be able to meet the threshold requirements for a mandatory injunction, the Respondents appeared to be making a calculated attempt to "game the system".
30. The Board closed by expressing its hope that subsidiary proprietors would refrain from such conduct as it undermines the basis for communal living, and observed that subsidiary proprietors unhappy with existing designs have other means to achieve their desired outcomes, such as proposing alternative designs (that meet regulatory requirements) for approval at a general meeting.

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