

STRATA TITLES BOARD DISMISSES COMPLAINT OVER NOISE FROM CONDOMINIUM FOUNTAIN PUMP

Introduction

1. Noise is an issue that everyone living in a communal setting will encounter at some point or other.
2. It is unsurprising that noise complaints in condominiums, where residents stay in close proximity and are also near to common facilities such as pools, playgrounds and barbecue pits, are commonplace.
3. What is surprising, given the prevalence of noise issues and complaints in condominiums, is the dearth of regulatory guidance and case law on noise and noise complaints, at least in a civil (as opposed to criminal) context.
4. In *Liu Xiaoyu v The Subsidiary Management Corporation No. 2 – Strata Title Plan No. 4391* STB 41 of 2023, a subsidiary proprietor (“SP”) of a unit in *The Greenwich* sought orders with respect to the maintenance and operation of a Fountain Pump in the estate. The relevant order sought was that the Subsidiary Management Corporation (“the Sub-MCST”) of the estate “*switch off the noisy fountain pump immediately, repair it to reduce noise*”.
5. In considering the application, the Strata Titles Board dealt with various novel issues concerning noise and noise complaints, and in the process laid out a framework for the evaluation of such complaints, which will likely be applied in future cases.
6. The result of the matter was that Strata Titles Board dismissed the application in full.
7. The successful Sub-MCST was represented by Mr Daniel Chen and Mr Drashy Trivedi of Lee & Lee.

Breach of Statutory Duty / Tort of Nuisance

8. The Board held that the Sub-MCST would be in breach of its duty under Section 29(1)(b)(i) of the Building Maintenance and Strata Management Act 2004 (“BMSMA”) to maintain common property if the noise from the Fountain Pump’s operation amounted to an actionable nuisance, and the Sub-MCST did nothing or took no reasonable measures to abate it.
9. In this way, the Board found that it had jurisdiction to hear claims relating to the tort of nuisance, albeit via the abovementioned connection to the Sub-MCST’s statutory duty to maintain common property.

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10. The primary issue was therefore whether the noise from the Fountain Pump's operation amounted to an actionable nuisance.
11. Importantly, the Board found that the SP failed to prove a causal link between the noise complained of and the Fountain Pump. In other words, the SP failed to prove that the noise complained of was from the Fountain Pump. This was for reasons which included:
 - a. The SP's noise survey report indicated that there were other noise sources apart from the Fountain Pump and feature wall it served, including vehicular traffic and noise from the Greenwich V shopping mall next to the SP's unit.
 - b. The SP's concessions under cross-examination amounted to an acknowledgment that the noise complained of could have been caused by the noise emanating from the Greenwich V carpark and commercial activities through the louvres next to her unit and not necessarily by the Fountain Pump and/or the feature wall.
 - c. The SP gave evidence that her father would sleep at the unit's balcony during the day to avoid the loud noise complained of, which was an open area situated closer to the Fountain Pump and feature wall than where the SP's parents slept at night.
 - d. The SP conceded under cross-examination that she was unsure of what was causing the noise complained of.
12. The SP's failure to prove a causal link between the noise complained of and the Fountain Pump was sufficient to extinguish her claims for a breach of statutory duty (via the tort of nuisance).
13. Nevertheless, for completeness, the Board went on to consider whether the noise level complained of was objectively undesirable. In doing so, the Board made several important observations (some of which provide useful guidance in similar cases), namely:
 - a. There were no guidelines or regulations by the National Environment Agency ("NEA") governing the noise limits for water pumps or features in residential areas.
 - b. Though Singapore was a member of the World Health Organization ("WHO") it did not naturally follow that the WHO Guidelines ought to apply.
 - c. The evidence before the Board, including a brief sound recording taken by the Sub-MCST's expert during the hearing when the hearing room was silent which indicated a recording of 44.7 dB(A), suggested that WHO Guidelines of no more than 30 dB(A) inside bedrooms may not be practicable in a highly urbanized city-state like Singapore.
 - d. Until (and unless) NEA prescribes specific guidelines for noise levels within residential developments, NEA's current Guideline on Boundary Noise Limits for air-conditioning and mechanical ventilation systems ("ACMV") in Non-Industrial Buildings (Residential Premises) provides a useful starting point in guiding the inquiry on whether noise levels are objectively undesirable.
 - e. The sound levels reported by both the SP' and the Sub-MCST's experts exceeded the limits prescribed by the WHO Guidelines but fell within the NEA ACMV Guideline.

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14. On the evidence before it, the Board held that the SP had not shown on a balance of probabilities that the noise levels complained of were objectively undesirable in the circumstances.

Mandatory Injunction

15. The Board agreed with the Sub-MCST that the order sought by the SP to turn off the Fountain Pump amounted to an application for a mandatory injunction which would engage the test for a mandatory injunction.
16. However, the Board held that the first limb (or hurdle to cross) of the test for a mandatory injunction, that there be a breach of a negative covenant by the Sub-MCST, was not satisfied since it had already found that the Sub-MCST was not in breach of its statutory duty nor tortious duty in relation to the Fountain Pump. The Board therefore declined to order the Sub-MCST to turn off the Fountain Pump.

Maintenance of Fountain Pump

17. As mentioned above, part of the order sought by the SP was for the Sub-MCST to “repair (the Fountain Pump) to reduce noise”. In the course of the proceedings, the SP asked that the Sub-MCST service the swimming pool and feature wall pond (where the Fountain Pump is located) three times per week.
18. This was despite the fact there being no evidence of any defect in the Fountain Pump, and the Sub-MCST’s evidence that has an ongoing maintenance contract with a vendor to service the swimming pool three times a week and to check the water feature pumps monthly, reporting any faults.
19. The Board agreed with the Sub-MCST’s submissions that the SP’s request for the Board to intervene and direct the maintenance of the common properties, including the frequency of the maintenance of the Fountain Pump, amounted to micromanaging the day-to-day operations of the Sub-MCST, and declined to make any order relating to repair or maintenance of the fountain pump.

Conclusion

20. The Board observed that tolerance levels for noise are subjective and varies from person to person; what may be acceptable to some may be intolerable to others. However, the Board had to decide on issues of noise from a principled and objective basis.
21. The Board stated that it sympathized with the SP’s case and noted her concerns over perceived noise levels affecting her and her family, and hoped for an amicable outcome for them in the end.

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