

High Court Issues Landmark Decision on Common Property in Strata Developments

Introduction

1. Under the Building Maintenance and Strata Management Act (Chapter 30C) (“BMSMA”), the management corporation of a strata titled development must properly maintain and keep in a state of good and serviceable repair, the common property of the development .
2. The High Court’s decision in *The Management Corporation Strata Title Plan No. 367 v Lee Siew Yuen and another* [2014] SGHC 161 is a significant decision which clarifies the meanings of ‘common property’ and ‘structural defects’ under the BMSMA.
3. The High Court decided that Parliament in enacting a simplified definition of ‘common property’ under the BMSMA did not intend to depart from the definition of ‘common property’ under the Land Titles (Strata) Act (Chapter 158, 1999 Rev. Ed.) (“LT(S)A 1999”) before 1 April 2005, which expressly included beams and supports, together with other structures.
4. The High Court also clarified the rights and obligations of management corporations and subsidiary proprietors in relation to structural defects within the subsidiary proprietors’ unit.

Facts

5. The Appellant is the management corporation of the development known as ‘Highpoint’, located at 30 Mount Elizabeth 01-32 Singapore 228519. The development is about 41 years old.
6. The Respondents are and have been subsidiary proprietors of a unit in the development since 1993.

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7. Sometime in 2012, it was discovered that beams above the ceilings of the master bedroom toilet and the kitchen of the Respondents' unit were cracked. The Respondents informed the Appellant of this. A dispute then arose as to who was responsible for the repair of the beams, and the Appellant referred the matter to the Strata Titles Board ("STB").
8. The STB held in *The Management Corporation Strata Title Plan No. 367 v Lee Siew Yuen and Another* [2013] SGSTB 5 that the cracked beams were not 'common property' under Section 2 of the BMSMA, based on its finding that the cracked beams were 'comprised' in the Respondents' unit.
9. However, the STB held that the Appellant was duty bound to repair the cracked beams, based on its finding that the cracks in the beams amounted to 'structural defects' under Section 30(5) of the BMSMA. The STB made no order as to costs.
10. Dissatisfied with the STB's decision, the Appellant appealed to the High Court. The appeal was dismissed and the Appellant was ordered to carry out the repairs immediately. The High Court also ordered the Appellant to pay the costs of the appeal and the proceedings before the STB.
11. In dismissing the appeal and holding that the Appellant was duty bound to repair the beams, the High Court affirmed the STB's finding that the cracks in the beams amounted to 'structural defects' under Section 30(5) of the BMSMA.
12. Crucially, however, the High Court rejected the holding of the STB that the beams were not part of the 'common property' of the development, after embarking on an extensive foray into the legislative background of the definition of 'common property' under the BMSMA and the Land Titles (Strata) Act (Chapter 158, 2009 Rev. Ed.) ("LT(S)A 2009"), as the definition of 'common property' under the BMSMA was ambiguous.
13. At the High Court, the Appellant was represented by Josephine Choo and Emily Su of Wong Partnership, while the Respondents were represented by Toh Kok Seng and Yik Shu Ying of Lee & Lee, assisted by Daniel Chen.

Common Property

14. The High Court observed that:-

- a. Under the LT(S)A 1999, the definition of the 'common property' expressly included beams and supports, among other structures;
- b. The more general definition of 'common property' under the BMSMA and LT(S)A 2009 was a result of representations to the Select Committee on the Building Maintenance and Strata Management Bill that the definition of common property should be simplified;
- c. The simplified definition of 'common property' was not meant to exclude any structure from the definition. Rather, it was meant to avoid having to rely on an exhaustive list of structures so as to accommodate future developments in technology and architecture, as well as to accommodate non-strata developments, which had different features as compared to strata developments;
- d. The simplified definition has given rise to confusion and ambiguity as to what common property consists of, especially in relation to beams and supports; and
- e. In practice, owners and management corporations recognise that foundations, columns and beams should form part of the 'common property'.

15. On that basis, the High Court found that Parliament in enacting a simplified definition of 'common property' under the BMSMA did not intend to depart from the definition of 'common property' under the LT(S)A 1999, which expressly included beams and supports, together with other structures.

16. The High Court rejected the STB's holding that the cracked beams were not 'common property'. The High Court held that the beams were not 'comprised' in the Respondents' unit and therefore outside the definition of 'common property' under Section 2(1) of the BMSMA.

17. In deciding that the beams were not ‘comprised’ in the Respondents’ unit, the High Court held that ‘comprised’ meant ‘included in’ rather than ‘situated in’. On the facts, the High Court commented that the unit surely did not include the beams when the Respondents bought the unit, the beams did not serve any purpose or function for the unit but were supporting the units above it. Moreover, the beams were located between their unit and the unit above it, and “shared by two units”.
18. The High Court therefore held that the cracked beams were part of the ‘common property’ of the development under Section 2 of the BMSMA. The High Court stated that on this ground alone, the Appellant was required to make good the cracked beams.

Structural Defects

19. The High Court affirmed the STB’s holding that the cracked beams were ‘structural defects’ under Section 30(5) of the BMSMA which fell to be rectified by the Appellant. The High Court noted that the beams, which are essential for the support of the building and its overall structural stability, are clearly “key structural elements” of the development.
20. The High Court also affirmed the STB’s holding that ‘mere omissions’ could not amount to a breach under Section 63(a) of the BMSMA which, if proven, would release a management corporation from its duty to rectify structural defects. The High Court added that only an ‘illegal omission’ by a subsidiary proprietor could constitute a breach of Section 63(a) of the BMSMA.
21. Observing that there was no evidence that the Respondents had caused or allowed anything to be done which could have resulted in the beams becoming cracked, the High Court held that on this ground as well, the cracked beams fell to be repaired by the Appellants.

22. The Appellant had argued that it had discharged its duty to rectify when it issued circulars requiring subsidiary proprietors including the Respondents to check their ceilings for spalling concrete and to make good any defects. The High Court held that the MCST could not deflect such an obligation by simply sending out circulars asking the subsidiary proprietors to remedy the problem.

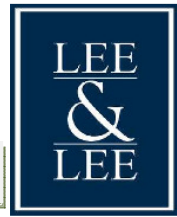
Other Observations

23. In the course of dismissing the appeal, the High Court also made two observations.
- a. Firstly, the High Court pointed out that the Appellant had criticised almost every aspect of the STB's deliberations, including its findings of fact. The Appellant had also alleged that the STB had misconducted the proceedings, regardless of whether or not it related to a point of law. The High Court held that this was an abuse of the appeal process.
 - b. Secondly, the High Court criticised the nonchalant attitude of the Appellant towards such a serious matter. It pointed out that many lives were at stake and that the safety of the occupants of the development was of paramount importance. The High Court stated that it expected a responsible management corporation that is concerned for the lives and safety of its occupants at the development to urgently rectify the structural defects and then subsequently deal with the legal issues.

Legislative Amendment

24. The Building and Construction Authority ("BCA") Consultation paper released on 25 September 2013 contained a recommendation 'To make clearer the definition of "common property" to include key structural elements (foundations, beams, columns) of the building'. The deadline for the public to submit comments or proposals on this and other recommendations in the consultation paper closed in October 2013.

CASE UPDATE



25. In light of the recommendation as well as the reasons expressed by the High Court in *The Management Corporation Strata Title Plan No. 367 v Lee Siew Yuen and another* [2014] SGHC 161, it is hoped that that the definition of common property under the BMSMA will be amended to expressly include foundations, columns, beams and other key structural elements of a building.