

High Court Upholds Mandatory Injunctions Granted to Beauty World Plaza against Subsidiary Proprietor for Unauthorized Alterations.

Introduction

1. Under the prescribed by-laws in Schedule 1 of the Land Titles (Strata) Act (1999 Rev. Ed.) as well as the Second Schedule to the Building Maintenance (Strata Management) Regulations 2005, subsidiary proprietors are prevented from obstructing common property, damaging common property and carrying out unauthorized alterations .
2. The learned District Judge Karolyn Gin's decision in *The MCST Plan No. 681 v Tan Yew Huat* [2015] SGDC 118 affirmed the position that a 'Test Case' brought by a management corporation against a subsidiary proprietor for a breach of by-laws would not fail merely for the reason that the management corporation had yet to commence legal proceedings against other subsidiary proprietors who might similarly be in breach.
3. The decision was upheld by the High Court in HC/RAS 5/2015, a Registrar's Appeal filed by the Defendant. The appeal was dismissed by the Honourable See Kee Oon JC.
4. The successful Plaintiffs/Respondents were represented by Toh Kok Seng and Daniel Chen of Lee & Lee.

Facts

5. The Plaintiffs, the MCST Plan No. 681, are the management corporation of the development known as Beauty World Plaza ("the Development").
6. The Defendant, Tan Yew Huat, is a subsidiary proprietor of a unit within the Development, and resides in that unit.
7. The Defendant had, without the approval of the Plaintiffs:-
 - a. Carried out unauthorized demolitions of the brick walls between his unit and the common property roof top of

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the Development to convert four windows into doorways;

- b. Installed an unauthorized awning and an unauthorized wash basin, attached to the exterior surface of the wall dividing his unit from the roof top area; and
 - c. Placed numerous personal possessions on the roof top including washing machines, potted plants and clothes poles.
8. Crucially, the Defendant was able to enter the Development's restricted water tank area through one of the unauthorized doorways. Under the Public Utilities (Water Supply) Regulations, the Plaintiffs were required to prevent access to that area. The unauthorized awning, unauthorized basin, and many of the Defendant's possessions were also within the restricted area.
9. The Plaintiffs sought mandatory injunctions in the District Court to compel the Defendant to:
- a. Remove the unauthorized awning and wash basin;
 - b. Reinststate to its original condition the wall to which the unauthorized awning and wash basin had been attached;
 - c. Remove the four unauthorized doorways and reinststate the boundary wall back to its original condition with four windows; and
 - d. Remove all his possessions from the roof top area.

Arguments Before the District Court

10. Parties were in agreement that the applicable test was that adopted by Chao Hick Tin J (as he then was) in *MCST Plan No. 1378 v Chen Ee Yueh Rachel* [1993] SGHC and affirmed by Judith Prakash J in *Choo Kok Lin and another v MCST Plan No. 2405* [2005] SGHC 144, namely that:

A Court will grant a mandatory injunction to redress a breach of a negative covenant, the breach of which is already

accomplished, unless:-

- a. The Plaintiff's own conduct would make it unjust to do so;
or
 - b. The breach was trivial or had caused no damage or no appreciable damage to the Plaintiff and a mandatory injunction would impose substantial hardship on the Defendant with no counterbalancing benefit to the Plaintiff.
11. The crux of the Defendant's argument was that it would have been unjust for the Court to grant the orders sought since the Plaintiffs had singled him out for action, even though other subsidiary proprietors in the Development were similarly in breach of the by-laws.
 12. The Defendant argued further that the Plaintiffs would obtain no real benefit from the granting of the orders sought since the uniformity of the building was no longer possible, as numerous subsidiary proprietors had changed their window frames over the years.
 13. Lastly, the Defendant argued that the orders, if granted, would impose onerous financial hardship on him as he would have to spend money to remove the unauthorized alterations and reinstate the common property.
 14. In response to the Defendant's argument that it would have been unjust for the Court to grant the orders sought, the Plaintiffs highlighted that they were concurrently investigating possible breaches by other subsidiary proprietors, but had decided to proceed against the Defendant first as a 'Test Case' because his breaches were far worse than any of the other alleged breaches.
 15. The Plaintiffs also stressed the importance of a favourable outcome in the matter: If the orders were granted, their authority to enforce by-laws regulating common property would be maintained. The Plaintiffs would also be able to prevent the Defendant from entering the restricted water

tank area.

The Decision in the District Court

16. The learned District Judge Karolyn Gin held that it was reasonable for a management corporation to take action against one subsidiary proprietor as a 'test case' with a view to proceeding against others at a later stage if necessary, and that prima facie, it was for the Plaintiffs to decide which subsidiary proprietor to take action against.
17. In any event, she found that the Plaintiffs had not acted unfairly against the Defendant, since he knew clearly that he was acting without the Plaintiffs' approval (contrast to the unit two doors away which claimed that it had the Plaintiffs' approval), and unlike any of the other subsidiary proprietors, he had encroached into the restricted water tank area.
18. The learned District Judge accepted the Plaintiffs' arguments on the benefits that they would obtain from the granting of the orders.
19. On the question of hardship to the Defendant, she held that the mere fact that the Defendant would have to bear the cost of removing his unauthorized alterations did not necessarily preclude the grant of a mandatory injunction.
20. On a balance, learned District Judge found that the benefits to the Plaintiffs outweighed the hardship to the Defendant.
21. The learned District Judge also considered *Choo Kok Lin and Another v MCT Plan No. 2405* [2005] SGHC 144, and *MCST Plan No. 1378 v Chen Ee Yueh Rachel* [1993] SGHC 283, where mandatory injunctions were denied on the ground that the management corporations would not have obtained any resulting benefit. The learned District Judge distinguished the two cases on the basis that the management corporations there had conceded that it would have been impossible to take action against other subsidiary proprietors who had committed similar breaches. She observed that in contrast, the Plaintiffs had indicated that they could and would do so.

The Appeal

22. Before the Honourable See Kee Oon JC, the Defendant conceded that he was not appealing against the mandatory injunctions granted in respect of the unauthorized alterations and installations within the restricted water tank area.

23. The Defendant argued that it would be unjust for the remaining mandatory injunctions to be upheld, because the Plaintiffs were in breach of their duty under Section 29(1) of the Building Maintenance and Strata Management Act (Cap 30C) ("BMSMA") to control, manage and administer the common property for the benefit of all subsidiary proprietors, since they had not taken action against other subsidiary proprietors in breach of the by-laws. The Defendant argued further that the council members of the Plaintiffs were similarly in breach of the duties as council members under Section 61(1) BMSMA.

24. The Plaintiffs denied that they or their council members were in breach of duties under the BMSMA, but submitted that in any case, such breaches would not operate as 'defences' to the granting of mandatory injunctions.

25. The Honourable See Kee Oon JC dismissed the appeal, holding that although the Plaintiffs could have done more and been quicker in taking action against other subsidiary proprietors allegedly in breach of the by-laws, he did not see any grounds for a finding of bad faith or misconduct.