

Strata Titles Board Finds Management Corporation's Refusal to Allow Subsidiary Proprietor's Electrical Upgrade Improper and Unreasonable, Orders it to Consent.

Introduction

1. Under Section 29(1) of the Building Maintenance and Strata Management Act (Cap 30C) ("BMSMA"), it is the duty of a management corporation to control, manage and administer the common property for the benefit of all subsidiary proprietors.
2. The Strata Titles Board's decision in *Lee Lay Ting v The Management Corporation Strata Title Plan No. 3414*, STB 92 of 2014, is the first case in which a management corporation's duties have been considered in depth in relation to a request for electrical upgrading by subsidiary proprietors.
3. The Strata Titles Board ordered the Respondent management corporation to allow the Applicant subsidiary proprietor's request to upgrade the electricity supply to her units, on the ground that the Respondent's refusal of the Applicant's request had been improper and/or unreasonable, since the Respondent had ignored relevant considerations, taken into account irrelevant and extraneous considerations, and had acted with indifference in the face of objective evidence.
4. The successful Applicant was represented by Toh Kok Seng and Daniel Chen of Lee & Lee.

Facts

5. The Respondent is the management corporation of a mixed development known as Watermark Robertson Quay ("the Development"). The Development consists of 206 residential units and 8 shop units.
6. The Applicant, Lee Lay Ting, is a subsidiary proprietor of two of the shop units within the Development.
7. The Applicant had faced difficulty procuring quality tenants for her units as the electrical supply to the units, at 63

9 July 2015

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amperes 1-phase, was insufficient for such potential tenants. As such, she approached the Respondent's condominium manager to request permission to upgrade the electrical supply to her units to 100 amperes 3-phase each.

8. The Respondent's licensed electrical worker ("LEW") then, Mr Ng Hai Hock, having conducted an assessment, issued a report stating that he had no objections to the Applicant's request. He also signed off the on 'Form CS/3' for submission to the electricity provider, confirming that if the Applicant's request was allowed, "the total approved load to the entire building/complex will not be exceeded".
9. The Respondent rejected the Applicant's request on the ground that it had to "reserve the spare power supply for future common areas upgrading/improvement works".
10. The Applicant then sought an order from the Strata Titles Board that the Respondent consent to her request. She also engaged her own LEW, Mr Lim Sui Yong, to assess the feasibility of her proposed upgrades. Mr Lim confirmed that there was more than sufficient spare electrical supply to meet the Applicant's requests.
11. A week or so before the hearing of the matter, the Applicant was provided with three further reports by Mr Ng Hai Hock. In these reports, Mr Ng stated that there was insufficient spare electrical supply in the Development to cater to the Applicant's requests.

The Relevant Issues

12. In coming to its decision, the Board considered the following:
 - a. Whether the electricity supply constituted part of the 'common property' of the Development;
 - b. Whether the Board has jurisdiction to make an order in the present case and/or whether is a matter which requires a decision to be made at a general meeting of the management corporation;

- c. Whether there was sufficient spare electrical capacity in the Development; and
- d. Whether the Respondent's decision to reject the Applicant's request may be challenged.

Whether the electricity supply constituted part of the 'common property' of the Development

13. The Respondent argued that electricity supply constituted part of the common property of the Development, and that the approval of the Applicant's request would therefore be tantamount to the granting of exclusive use of a part of the common property, which required a resolution to be passed by the management corporation.
14. The Applicant, on the other hand, argued that electricity supply was not common property as firstly, it was not even a property right, and secondly that it could not be considered 'part of the land and building' under the definition of common property in section 2 BMSMA.
15. The Board disagreed with the Applicant's argument that electricity supply was not a property right. It held that the unutilised electricity supply to the Development may be regarded as a property right since 1) the Respondent's right to electricity supply was immune from summary cancellation or extinguishment; 2) the Respondent had a presumptive entitlement to exclude third parties of the Development from the electricity supply; and 3) the Respondent was entitled to prioritise the resource value of the electricity supply. (as per the three key features of property offered by Susan Gray and Professor Kevin Gray in *Elements of Land Law*, OUP, 2009), para 1.5.32.
16. Nevertheless, the Board agreed with the Applicant that based on the wording of section 2 BMSMA, and *Choo Kok Lin and another v MCST Plan No. 2405* [2005] SGHC 144 (which held that unconsumed Gross Floor Area allocated to a particular development could not be considered "common property"), unused electricity supply was not common property since section 2 BMSMA presupposes that in most cases common

property is a tangible property right, and it would be difficult to stretch this definition to cover unused electricity supply. The Board also distinguished the case of *Frontfield Investment Holding (Pte) Ltd v MCST No. 938* [2001] 2 SLR(R) 410, which held that an easement could constitute common property, on the basis that an easement was an ancient right which had always been regarded as proprietary in nature, in contrast to unused electricity supply.

Whether the Board has jurisdiction to make an order in the present case and/or whether is a matter which requires a decision to be made at a general meeting of the management corporation

17. Having held that the unused electricity supply of the Development was not common property, the Board rejected the Respondent's argument that the Applicant's request amounted to a request for exclusive use of the common property, and therefore required an exclusive use resolution to be passed by the management corporation at a general meeting.
18. The Respondent had also attempted to rely on a decision reached at the annual general meeting of the management corporation (unanimously) to deny the Applicant's request, although the Applicant had objected on various grounds including, inter alia, that she had withdrawn the motions she had earlier tabled, the general body had been misinformed that there was no spare electrical supply in the Development, and that none of the shop unit owners had been present. In its decision the Board did not comment on the decision of the annual general meeting. Presumably, this was because it had already held that the matter did not require a decision to be made at a general meeting.
19. Since it was common ground that the electrical switchboards and cables through which the electricity had to run were part of the common property, the Board accepted Applicant's Counsel's submissions that the Board would have the jurisdiction to make the orders under section 101(1)(c) BMSMA, under which the Board can make orders for the settlement of a dispute relating to the exercise of a duty conferred by the BMSMA (in this case, the Respondent's duty

to control, manage and administer the common property electrical switchboards and cables under section 29(1) BMSMA).

20. The Board held that in any case, it had jurisdiction under section 111 BMSMA, under which the Board can order a management corporation to consent to a proposal by a subsidiary proprietor to effect alterations to the common property, where the management corporation's refusal to consent is unreasonable.

Whether there was sufficient spare electrical capacity in the Development

21. The Board found that the Respondent had been inconsistent in its position on whether there was spare electrical capacity. The Respondent had initially taken the position that there was spare capacity but that this was insufficient for the Applicant's upgrade as it had to be reserved for future common areas upgrading/improvement works. However it had later taken the position that there was no spare capacity at all.
22. Crucially, all the LEWs (the Applicant's LEW Mr Lim, the Respondent's LEW at the material time Mr Ng and the Respondents current LEW Mr Tay Oon Tiong) were unanimous in their agreement that in their professional capacity as electrical engineers, there was enough spare capacity for the Applicant's request to be allowed.
23. At trial, Mr Ng was questioned over his three reports which appeared to conclude that there was insufficient spare capacity for the Applicant's upgrade. Mr Ng conceded that his conclusion was based on 'council's position' and from 'council's point of view'. He explained that the Respondent had asked him to produce a report on whether there would be any spare capacity if every shop unit in the Development consumed the maximum electricity supply they could theoretically consume. Most importantly, Mr Ng admitted readily that from an electrical engineering point of view, the requested upgrade was 'definitely possible'.

24. In light of all the above, the Board found that there was sufficient spare electricity supply in the Development for the Applicant's requested upgrade.

Whether the Respondent's decision to reject the Applicant's request may be challenged.

25. Both the Applicant and Respondent had submitted that the Board would have the jurisdiction to interfere if the Respondent's refusal to allow the Applicant's request was unreasonable. However parties differed in their submissions on what constituted unreasonable behaviour. While the Applicant submitted that the test was simply whether the behaviour was unreasonable, the Respondent submitted that its behaviour would be unreasonable only if it had not exercised its discretion responsibly for the benefit of all the subsidiary proprietors, its refusal to allow the Applicant's request was tainted with prejudice, malice or indifference, and it had acted with uneven hands or displayed favouritism or bias.

26. The Board disagreed with both the Applicant and Respondent. The Board held that it could not be the final arbiter of every decision which a subsidiary proprietor regards as unreasonable. To hold otherwise could potentially paralyse the decision making process of the management corporation and inundate the Board with multiple challenges by disgruntled subsidiary proprietors. Further, there was no requirement that the Board may only intervene where the decision was tainted with prejudice, malice or indifference.

27. The Board held instead that it may intervene where the management corporation had taken into account an irrelevant consideration and/or ignored a relevant consideration in the making of its decision.

28. The Board held that the Respondent should have taken into account its own LEW's opinion (i.e. Mr Ng's professional opinion that there was sufficient spare capacity for the Applicant's upgrade). Due consideration had to be given to the 'diversity factor', which is the ratio of the sum of the individual maximum loads of various subdivisions to the

maximum demand of the complete system. Instead, the Respondent simply added the individual supply components together in a linear fashion in reaching the conclusion that there would be insufficient spare electrical capacity.

29. Furthermore, it unravelled at the trial that the Respondent had other reasons for rejecting the Applicant's request which had not been communicated to her. The Respondent's condominium manager gave evidence that one of the reasons for the Respondent's rejection of the Applicant's request was Council's concern that if the request was granted, the shop units would operate 24-hour businesses such as pizza deliveries. The fear was that this could cause annoyance to subsidiary proprietors in the development, and also result in deliverymen loitering around the Development at all times of the day. The Board held that such concerns should be managed by the passing of by-laws, and that as such, they were irrelevant to the Applicant's request, and were in fact 'extraneous considerations'.
30. Given the circumstances, the Board found that the Respondent's refusal of the Applicant's request was improper because the Respondent had failed to take into account a relevant consideration (that there was spare capacity and the LEW's opinion) and had taken on board irrelevant considerations (the fear that the Applicant would tenant her units to a pizza delivery).

Conclusion

31. The Board ordered that the Respondent permit the Applicant to upgrade the electricity supply of her units to '3 phase 100 amperes' and that the Respondent pay the Applicant costs fixed at S\$18,000.00 plus disbursements.