

# CASE UPDATE



## By-Law Imposing Fines for Encroachment of Common Property Declared Invalid by Strata Titles Board

28 April 2017

Note: This article has been updated on 28 April 2017 to include the outcome of HC/TA 30/2016.

### Introduction

1. Under Section 32(3) of the Building Maintenance and Strata Management Act (Cap 30C) ("BMSMA"), a management corporation may, by special resolution, make by-laws for the purpose of controlling and managing the use or enjoyment of the parcel comprised in the strata title plan.
2. In *Technocrete Pte Ltd and Ors v MCST Plan No. 3293*, STB 32 of 2016, the Strata Titles Board held that a by-law which imposed a penalty and was not made in the interest of all subsidiary proprietors, was invalid.
3. The Strata Titles Board ordered that the by-law in question be repealed and that all sums paid by the 1<sup>st</sup> to 7<sup>th</sup> Applicants under the said by-law be refunded.
4. The Strata Titles Board held further that a separate by-law for usage of common property for running of a canteen, was valid and enforceable against the 8<sup>th</sup> Applicant. However, the 8<sup>th</sup> Applicant appealed to the High Court in HC/TA 30/2016. On 26 April 2017, when the appeal came up for hearing, the management corporation consented to an order that this other by-law be declared invalid.
5. The Applicants were represented by Toh Kok Seng and Daniel Chen of Lee & Lee.

For any queries relating to this article, please contact:

Toh Kok Seng  
[tohkokseng@leenlee.com.sg](mailto:tohkokseng@leenlee.com.sg)

Daniel Chen  
[danielchen@leenlee.com.sg](mailto:danielchen@leenlee.com.sg)

Authors:  
Toh Kok Seng  
Daniel Chen

**Lee & Lee**  
50 Raffles Place, #06-00  
Singapore Land Tower,  
Singapore 048623  
T : (65) 6220 0666

For more legal updates,  
please visit the News &  
Publication Section of Lee &  
Lee's website at  
[www.leenlee.com.sg](http://www.leenlee.com.sg).

### Facts

6. The Respondent is the management corporation of an industrial building known as Alpha Industrial Building ("the Development"). The Development consists of 88 commercial units.
7. The 8 Applicants are subsidiary proprietors of a total of 22 units within the Development.
8. At the 1<sup>st</sup> Annual General Meeting of the management corporation in 2010, the following resolutions were passed:

#### Additional By-Law 10

*"Any usage of common areas for placing or dumping of items/rubbish along the frontage that exceeds its length of 1.2m or 4ft will be charged the entire usage area at a minimum charge of \$200.00 per month. Waste Material shall be removed at cost and cleared at weekends by the Management Corporation.*

*Explanation: Use of Common area for placing items \$200.00 per month"*

**Disclaimer:** The copyright in this document is owned by Lee & Lee. No part of this document may be reproduced without our prior written permission. The information in this update does not constitute legal advice and should not form the basis of your decision as to any course of action.

# CASE UPDATE



## Additional By-Law 8

*“Usage of common areas for purpose of running a canteen will be pegged at the current rental agreement pro-rated based on floor area at \$3.50 cents per sq ft and after the current rental agreement expires, the canteen operator shall pay the Management Corporation the rental of the common area outside of their actual canteen ownership floor area at a rate of \$3.50 cents of common area per sq ft for the use of this common area.*

*Explanation: Use of Common Area for running a canteen is \$3.50 cents per sq ft”*

9. By way of letters dated 23 February 2016 to the 1<sup>st</sup> to 6<sup>th</sup> Applicants, the Respondent’s solicitors demanded payment of a total of S\$103,825.00 allegedly due for usage of common property dating back to 2011.
10. The 1<sup>st</sup> to 7<sup>th</sup> Applicants then sought orders from the Strata Titles Board that additional by-law 10 was invalid, that all invoices issued pursuant to the said by-law be cancelled, and all sums paid pursuant to the said by-law be refunded.
11. The 8<sup>th</sup> Applicant sought similar orders from the Strata Titles Board in relation to additional by-law 8.

## **Relevant Issues**

12. In coming to its decision, the Board considered the following:
  - a. Whether the additional by-laws were passed pursuant to Section 32(3) or 33 of the BMSMA; and
  - b. If the additional by-laws were passed pursuant to Section 32(3) of the BMSMA, whether they should be invalidated for being unclear, vague, and effectively imposing a penalty on subsidiary proprietors.

## **Whether the additional by-laws were passed pursuant to Section 32(3) or Section 33 BMSMA**

13. It was not disputed that under Section 33 of the BMSMA for exclusive use by-laws, written consents of the subsidiary proprietors of the lot concerned are necessary, and that there were none given by any of the Applicants. The Board observed that the additional by-laws would both have been invalidated if they were only made under Section 33 of the BMSMA.
14. The Applicants argued that the additional by-laws had been passed as ordinary resolutions under Section 33 of the BMSMA, while the Respondents argued that they had been passed as special resolutions under Section 32 of the BMSMA.
15. The Board found that the additional by-laws had been passed twice each during the 1<sup>st</sup> Annual General Meeting, once under the agenda item ‘TO PASS A SPECIAL RESOLUTION ON THE BY-LAWS OF THE MANAGEMENT CORPORATION’ and once under the agenda item ‘EXCLUSIVE USE OF THE COMMON AREAS BY-LAWS’.
16. The Board held that the additional by-laws were capable of being passed under Section 32 of the BMSMA, which did not require subsidiary proprietors’ consent, and that they had in fact been passed under Section 32 of the BMSMA as well as under Section 33 of the BMSMA. As a result, the additional by-laws were not invalid for lack of written consent by the subsidiary proprietors concerned.

## ***Whether the additional by-laws should be invalidated for being unclear, vague and effectively imposing a penalty on subsidiary proprietors***

17. The Board found that additional by-law 10 was unclear, badly drafted and punitive. In particular, the Board observed that:
  - a. The invoices rendered pursuant to additional by-law 10 stated that the fees charged were for 'violation';
  - b. It was unclear whether charges under additional by-law 10 were for a one time use of the common property, or on a monthly basis;
  - c. It was unclear whether additional by-law 10 provided for any usable space, and if so, how much; and
  - d. Additional by-law 10 provided for a minimum charge but no maximum charge.
18. The Board found further that since additional by-law 10 was unclear and capable of being misinterpreted and abused, it was not made in the interest of all subsidiary proprietors in the use and enjoyment of their lots or the common property.
19. In light of all the above, the Board found additional by-law 10 to be invalid, and ordered that it be repealed and all sums paid by the Applicants under additional by-law 10 to be refunded.
20. Of additional by-law 8, the Board stated only that it was clear and unambiguous, and there was no reason for it to be invalid or repealed. However, the 8<sup>th</sup> Applicant appealed to the High Court in HC/TA 30/2016. On 26 April 2017, when the appeal came up for hearing, the management corporation consented to an order that additional by-law 8 be declared invalid.

### **About Lee & Lee**

*Lee & Lee is one of Singapore's leading law firms being continuously rated over the years amongst the top law firms in Singapore. Lee & Lee remains committed to serving its clients' best interests, and continuing its tradition of excellence and integrity. The firm provides a comprehensive range of legal services to serve the differing needs of corporates, financial institutions and individuals. For more information: visit [www.leenlee.com.sg](http://www.leenlee.com.sg).*

The following partners lead our departments:

Kwa Kim Li  
Managing Partner  
[kwakimli@leenlee.com.sg](mailto:kwakimli@leenlee.com.sg)

Quek Mong Hua  
Litigation & Dispute Resolution  
[quekmonghua@leenlee.com.sg](mailto:quekmonghua@leenlee.com.sg)

Owyong Thian Soo  
Real Estate  
[owyongthiansoo@leenlee.com.sg](mailto:owyongthiansoo@leenlee.com.sg)

Tan Tee Jim, S.C.  
Intellectual Property  
[tanteejim@leenlee.com.sg](mailto:tanteejim@leenlee.com.sg)

Adrian Chan  
Corporate  
[adrianchan@leenlee.com.sg](mailto:adrianchan@leenlee.com.sg)

Louise Tan  
Banking  
[louisetan@leenlee.com.sg](mailto:louisetan@leenlee.com.sg)