

CASE UPDATE



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STRATA TITLES BOARD HOLDS THAT IT CANNOT INTERFERE WITH DECISIONS MADE IN COMPLIANCE WITH PROCEDURAL REQUIREMENTS AND WHERE PARTIES VOTE IN FAVOUR OF THEIR OWN COMMERCIAL POSITION

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Introduction

1. Under Section 111 of the Building Maintenance and Strata Management Act (Cap 30C) ("BMSMA"), the Strata Titles Board may, where it considers that a management corporation has unreasonably refused to consent to a proposal by a subsidiary proprietor to effect alterations to the common property, make an order that the management corporation consent to the proposal.
2. The Strata Titles Board in *Soo Kee Investment Pte Ltd v The Management Corporation Strata Title Plan No. 0661*, STB 65 of 2016, stated an important guiding principle in the application of Section 111 of the BMSMA when it held that it cannot interfere with decisions made in compliance with procedural requirements where parties had voted in favour of their own commercial position. This case also highlights the importance of parties doing due diligence before purchasing properties in strata titled developments, so as to be aware of the share value of their strata lots and consequently their voting power.
3. The Board dismissed the Applicant's application for an order that the Respondent Management Corporation consent to certain proposed works on the common property of the development in question.
4. The successful Respondent was represented by Toh Kok Seng and Daniel Chen of Lee & Lee.

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Facts

5. The Respondent is the Management Corporation of a commercial development at 439/441/443 Geylang Road, which is located at the junction of Geylang Road and Aljunied Road.
6. The Applicant is the subsidiary proprietor of the sole ground floor unit at the development. This lot comprises 33.33% of the share value of the development. The remaining nine (9) units on the 2nd to 4th floors of the development are owned by Gayland Enterprises Pte Ltd ("Gayland"), the original developer and owner of the entire development. These nine (9) units comprise 66.66% of the share value of the development.
7. The development was built with covered footways on two (2) sides of the ground floor: one side facing Geylang Road and the other facing Aljunied Road. There were two (2) entrances to the ground floor strata unit from the covered footway facing Geylang Road, and one (1) entrance to the remaining nine (9) upper floor strata lots at the end of the covered footway facing Aljunied Road.

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8. The Applicant submitted a proposal in late 2011 to the Management Corporation to carry out external works to the façade of the development. The proposed work involved:
 - a. Replacement of the existing doors to one entrance of the Applicant's unit facing Geylang Road with glass doors and roller shutters;
 - b. Enlargement of other existing entrance to the Applicant's unit facing Geylang Road; and
 - c. Construction of two (2) more entrances to Applicant's unit facing Aljunied Road.
9. A motion for approval of the proposed work was tabled at the annual general meeting of the Management Corporation on 4 February 2012, but failed to pass due to Gayland's objection. The procedural propriety of the general meeting, and the Management Corporation's decision to reject the proposal, was undisputed.
10. The Applicant then sought orders from the Strata Titles Board that the Management Corporation be ordered to allow it to carry out the proposed work.
11. After the application to the Strata Titles Board was commenced, the Management Corporation agreed to the proposed works facing Geylang Road. What remained for the Board to decide was whether the Applicant should be allowed to construct the two (2) entrances to its unit facing Aljunied Road.

Relevant Issues

12. In deciding whether the Management Corporation's rejection of the proposed work was unreasonable, the Board considered a whole range of issues, ultimately arriving at the conclusion that there were no compelling reasons to interfere in the Management Corporation's decision. In particular, the Board considered the Management Corporation's treatment of the interests of all subsidiary proprietors, the loss that the Applicant alleged it had suffered, and the Management Corporation's concessions.

Interests of all Subsidiary Proprietors

13. It was undisputed that the proposed work involved alterations to the common property of the development, and that it required a special resolution to be passed at an annual general meeting. The Management Corporation argued that it could not consent to the proposed work since the general body did not approve the proposed work, and it had to abide by the decision.
14. The Management Corporation highlighted further that Gayland, the majority shareholder of the development, had objected to the proposal. Gayland had cited impact on its business and resale value of its units as reasons for not supporting the proposal.
15. The Applicant argued on the other hand that the Management Corporation's reasons for not approving the proposal were biased toward the interests of only one subsidiary proprietor (i.e. Gayland's interests). The Applicant argued further that Gayland's concerns on the impact to its business and resale value were unsubstantiated.
16. The Board was of the view that Gayland could not be faulted for voting against the proposal with the view of protecting its own commercial interests, and that Gayland was entitled to do so. The Board held that consequently, the Management Corporation could not be faulted for abiding by the outcome of the voting at the annual general meeting.

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17. The Board also opined that in the absence of compelling reasons, it would not interfere in a case like the present one. The Board noted that the property was bought on an “as is, where is” basis by open tender. The Applicant had the opportunity at the time of the purchase to perform its own due diligence search on the number of strata value of the strata lots. The fact that the Applicant had not done its own due diligence check and it emerged that the Applicant was a minority shareholder did not justify that the Board should interfere whenever the Applicant failed to obtain support for its proposals.

Alleged Loss

18. The Applicant argued that an entrance facing Aljunied would allow it to fully realise the retail potential of its unit, as an entrance facing Aljunied Road would allow better internal sub-division of the unit. The Applicant also argued that the proposed works would deter increase footfall around the development and therefore deter drug peddlers or sex workers from loitering in the area.
19. In view of this, the Applicant contended that it would lose more than Gayland if the proposal were not approved since it would not be able to demand higher rent for its unit and also because of the illicit activities along the pavement in front of the unit.
20. The Management Corporation countered that the Applicant would not suffer any losses as a result of the rejection of the proposed works, since the Applicant would be in the same position as when it bought its unit. Further, the Management Corporation argued that any loss allegedly suffered was caused by external elements such as illicit activities rather than the rejection of the proposed works.
21. The Board noted that the Applicant had conceded at hearing that the unit was bought on an ‘as is, where is’ basis, and that the Applicant had not been deprived of its use of the unit by the rejection of the proposed works. On these bases, the Board held that the Applicant had not suffered any loss.

The Management Corporation’s Concessions

22. At the hearing, the Management Corporation confirmed that it was prepared to allow the Applicant’s proposed works to the wall facing Geylang Road. The Management Corporation highlighted further that it had not objected to the Applicant’s proposed renovation works affecting the interior of its unit.
23. The Board considered that since the Management Corporation had essentially consented to 2 out of 3 of the proposed works, it was not unreasonable that it refused to approve the Applicant’s third proposal which related to the side of the unit facing Aljunied Road, which Gayland strongly objected to.

Conclusion

24. In its grounds of decision, the Board opined that although the Applicant might find have found itself in an unfortunate situation because it was a minority shareholder in the development, this, without more, could not warrant intervention by the Board.
25. The Board stated that it cannot be interfering with decisions made in compliance with procedural requirements and where parties had voted in favour of their own commercial position. The Board stated that it did not find any unique reason for the Board to interfere.

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26. The Board therefore ordered that:
- a. The Applicant's prayers for works to the wall facing Geylang Road be allowed (as agreed by the Management Corporation);
 - b. The Applicant's prayer for works to the wall facing Aljunied Road be dismissed; and
 - c. The Applicant pay the Management Corporation costs plus disbursements.

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