

# CASE UPDATE



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Note: This article has been updated on 23 October 2017 to include the outcome of DC/OSS 161/22016.

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## STRATA TITLES BOARD AFFIRMS LEGAL POSITION THAT SAFETY IS PARAMOUNT AND ORDERS MANAGEMENT CORPORATION TO ALLOW A SUBSIDIARY PROPRIETOR TO INSTALL SAFETY GRILLES

### Introduction

1. For many years, management corporations banned subsidiary proprietors from installing safety grilles at the balconies and windows on the grounds that they affect the façade. *In Sujit Singh Gill v MCST Plan No. 3466 ("One-North Residences")* [2015] SGSTB 2, the Strata Titles Board, interpreting Paragraph 5(3) of the Prescribed By-Laws under the Second Schedule to the Building Maintenance (Strata Management) Regulations 2005, held that management corporations cannot prevent subsidiary proprietors from installing safety structures such as grilles, even if such installation is mounted on common property and even if it alters the appearance and façade of the building.
2. This landmark decision by the Board was widely reported in the media and public opinion was overwhelmingly in support of the decision to put safety ahead of aesthetics. Even the Chairman of the Government Parliamentary Committee on National Development and Environment, Ms Lee Bee Wah, was quoted as saying that *"all condos should put safety before aesthetics"* and that *"they should stop banning grilles based on appearance – we don't want to wait till somebody falls down, because then it would be too late"*. Ms Lee added that this case should serve as a precedent for management committees that *"if they were to insist and go to court, they would still lose"*.
3. Although the Building and Construction Authority ("BCA") had already issued a few circulars and media replies prior to the decision, BCA took the opportunity to issue another circular to all management corporations to expressly refer to the decision in the One-North Residences case and to remind management corporations once again to allow subsidiary proprietors to install safety grilles.
4. It may therefore come as a surprise to many that some subsidiary proprietors continue to face difficulties in getting approval from their management corporations to allow them to install safety grilles, leaving them with no choice but to commence proceedings before the Strata Titles Board ("STB"). One such case is *STB No. 79 of 2016 Zou Xiong v MCST Plan No. 2360 ("19 Shelford Road")*.
5. After a trial, the Board allowed the subsidiary proprietor's application and ordered the management corporation to allow the subsidiary proprietor to install invisible grilles at the balcony (full height) on certain conditions. The management corporation was also ordered to pay costs.
6. The subsidiary proprietor was represented by Toh Kok Seng and Daniel Chen of Lee & Lee.

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## Facts

7. The Applicant, Zou Xiong, is a subsidiary proprietor of a unit at the development known as 19 Shelford Road. He resides there with his wife, two young children aged 2 ½ and 4 ½ years old, his mother and a domestic helper.
8. The unit is situated on the highest floor of the 4-storey building. It has a large open balcony (labelled as “roof garden” in the floor plan) accessible from the living area. There is a trellis roof over this area. The balcony railings are 92 cm from the ground with three horizontal bars and gaps of 20 cm in between the bars.
9. On 23 May 2016, the Applicant sent an email to the managing agent (“MA”) requesting permission to install invisible grilles at the balcony. The application was rejected without any reasons given. The Applicant was told that he could appeal to the council. The Applicant appealed to the council by email. At the request of the MA, the Applicant also emailed her drawings of the proposed invisible grilles.
10. Meanwhile, the Applicant also submitted a formal application for a series of renovation works but did not mention the invisible grilles. The Applicant was not told that he had to include the invisible grilles in the formal application.
11. On 24 June 2016, the Applicant was informed by the MA that following council’s instructions, she was following up *with “relevant authorities for their clarification and advise before any approval to be issued”*. On 11 July 2016, the Applicant was informed that the invisible grilles would affect the building’s façade and would therefore require the approval of the management corporation at a general meeting, and that council was in no position to approve it. The MA also suggested that the Applicant could request a resolution to be tabled at a general meeting for the general body to collectively determine a set of guidelines for the installation of invisible grilles.
12. As the Applicant did not hear from the MA on what the relevant authorities had to say, he emailed the Urban Redevelopment Authority (“URA”) directly. URA confirmed that they had no objections to the installation of the invisible grilles. On 21 July 2016, the MA informed the Applicant that he could look into a “temporary measure” before approval being made in a general meetings. She did not tell him what constitutes a “temporary measure”.
13. On 17 August 2016, the Applicant instructed his contractor to install the invisible grilles as a temporary measure. As the Applicant’s balcony was open to the sky and did not have a ceiling (unlike the apartment in the *One-North Residences case*), the wire cables had to be secured onto a metal frame, which was mounted on the balcony floor as well as one wall. When the management corporation saw the installation, they stopped the contractor and called the police. The installation was left partially completed.

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14. Subsequently, the management corporation gave varying reasons why the invisible grilles could not be approved:
  - a. Paragraph 5(3) of the prescribed by-laws applies only to “windows” and “balconies” and not to the Applicant’s “roof garden”;
  - b. Installation of invisible grilles can only be approved at a general meeting of the management corporation; and
  - c. As the installation works affected the appearance of the building, approval of the management corporation was required.
  
15. The Applicant commenced proceedings before the STB. Before the Board, the management corporation raised the following objections:
  - a. As the Applicant sent only emails on the invisible grilles and the grilles were not mentioned in the formal renovation application, it was just an enquiry. The management corporation had not received any application for installation of invisible grilles and had not rejected any such application;
  - b. The design of the invisible grilles affects the appearance of the development. The council is not in a position to approve the installation. The Applicant must seek approval for the installation from the general body and if he fails to do so, the management corporation cannot be faulted.
  - c. The metal frame supporting the wires is unsightly and untidy, and in breach of prescribed by-law 10 (Drying of laundry);
  - d. The management corporation had offered alternatives to the Applicant which would be effective in preventing a child from falling over the balcony but the Applicant refused to accept them; and
  - e. The management corporation clarified that it was not objecting to the invisible grilles per se but the metal frames which affect the façade of the building.

## ***Board’s Decision***

16. The Board reiterated that children’s safety is the paramount consideration. The Board noted that while the management corporation had given various reasons for not approving the installation of the invisible grilles, the management corporation had not satisfactorily justified its position.

## ***No Formal Application***

17. On the argument that the Applicant had not made a formal application for the installation of the invisible grilles, the Board noted that the management corporation was fully aware of the Applicant’s intention to install invisible grilles. Parties had communicated by email on the subject from May to August 2016. The Applicant was even instructed to appeal against the rejection at the first instance through email. As such, the objection on mere technical grounds is without merit.
  
18. Furthermore, the Board noted that the prescribed form only came into force after the management corporation lodged it with BCA. This was after the STB application was made.

## ***Requirement of Consent from the General Body***

19. The Board rejected the management corporation's argument that approval has to be given by the general body. It considered this reasoning to be unsatisfactory. The Board noted that for other subsidiary proprietors, the management corporation was able to consider and approve their applications for installation works that affect the façade of the building. As such, the Board cannot accept that the management corporation is not able to do the same here. Even if the management corporation was correct on this point, the management corporation should have adopted a more active role to facilitate the Applicant in his application, especially in a case such as this where children's safety is concerned.
20. The Board pointed out that it is for the management corporation to put in place a set of design guidelines for the installation of the safety grilles so that subsidiary proprietors can comply with such guidelines. Where there are no design guidelines, the management corporation must consider applications on a case-by-case basis. The management corporation must take the initiative to provide the guidelines for its subsidiary proprietors and should not defer its responsibility to the general body.

## ***Reasonableness of the Management Corporation's Proposed Alternatives***

21. The Board noted that the management corporation had no design guidelines for the installation of invisible grilles at the open balcony. The management corporation's proposals were made spontaneously at different times, some during the midst of the application, without proper consideration. Having considered the facts and the evidence, the Board found that all three proposals were unreasonable and not viable. By providing alternatives that are not workable, it essentially amounts to the management corporation not providing the subsidiary proprietor with any alternatives.
22. The first proposal was to permit the installation of a 1.2m (4 feet) high acrylic sheet at the balcony railings. The Board noted that this is only slightly higher than the existing height of the railings and therefore took the view that this proposal fails to address the fundamental safety concern.
23. The second proposal, made during mediation in the course of the STB proceedings, was to permit the installation of invisible grilles onto the existing trellis beams. For the portion of the balcony without a trellis beam, the proposal was to string the wire cables horizontally between an existing trellis column and the wall, or alternatively to install acrylic sheet / laminated glass. However, the management corporation did not verify whether it was structurally safe to do so. On the other hand, the Applicant's professional engineer had doubts on whether this can be done. The management corporation recommended two contractors to do the installation. One could not give a guarantee that the grilles could be mounted onto the existing trellis beams. The other contractor did not respond to the Applicant.

24. The third proposal was to permit the installation of acrylic sheet / laminated glass up to a height of 5 feet. This was in fact only approved by way of by-law at the 17<sup>th</sup> AGM on 26 November 2016, many months after the STB application had been taken out. However, evidence produced by the subsidiary proprietor showed this proposal to be in breach of URA regulations which do not allow the roof garden to be enclosed.
25. The Board noted that throughout the course of the proceedings, the management corporation made no attempts to verify if their proposed alternatives would work. In fact, the management corporation's witness conceded at the hearing that he was not even aware if any of the proposals were in fact workable. The Board pointed out that it is pointless to make suggestions which are still subject to trial and error, or are not viable.
26. The management corporation argued that by making recommendations to other contractors, it was suggesting that there are other ways to install the invisible grilles. However, the Board took the view that where the management corporation provides alternative proposals after rejecting a subsidiary proposal's application, the duty lies upon the management corporation to ensure that the alternative proposals are workable and structurally safe. The subsidiary proprietor cannot be expected to continuously provide different proposals until they find a design that satisfies the management corporation's demands.

## **Conclusion**

27. In conclusion, the Board allowed the subsidiary proprietor's application and ordered the management corporation to allow the subsidiary proprietor, within 2 months, to install full height invisible grilles at the balcony. However, they will have to be in accordance with the management corporation's proposal, which should take into account structural integrity (as approved by a professional engineer nominated by the management corporation) and the façade of the building. If the management corporation fails to do so, the subsidiary proprietor is to be allowed to erect the invisible grilles as proposed by his contractor and approved by his professional engineer. The Board also ordered the management corporation to pay the subsidiary proprietor costs fixed at \$18,000.00 and disbursements to be agreed.

## **Court Proceedings in DC/OSS 161/2016**

28. Three days after the subsidiary proprietor's application was filed with the STB, the management corporation commenced court proceedings against the subsidiary proprietor in the State Courts in DC/OSS 161 of 2016, seeking an order for the removal of the partially installed invisible grilles.
29. By an order dated 15 June 2017, the District Court ordered that:
  - a. The management corporation's application be dismissed;
  - b. The subsidiary proprietor's current frame/structure be permitted to stay;
  - c. The subsidiary proprietor is to apply to the management corporation for prior approval before doing any further works to the existing frame/structure; and
  - d. The management corporation do pay the subsidiary proprietor costs fixed at S\$2,000.00

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