CASE UPDATE

STRATA TITLES BOARD DISMISSES APPLICATION BY CONDO RESIDENT TO HAVE NEIGHBOUR'S AWNING REMOVED

Introduction

1. Starting with *Sujit Singh Gill v MCST Plan No. 3466* [2015] SGSTB 2, there has been a line of cases in the Strata Titles Boards and the Courts holding that Management Corporations cannot prevent Subsidiary Proprietors from installing safety devices even if such devices are mounted on common property, pursuant to Paragraph 5(3) of the 2nd Schedule to the Building Maintenance (Strata Management) Regulations 2005 ("BMSMR").

2. The Building Maintenance and Strata Management Act (Cap 30C) ("BMSMA") was also amended (with effect from 1 February 2019) to include a new Section 37A, which expressly provides that the installation of safety equipment by Subsidiary Proprietors is permitted.

3. At the same time, the High Court in *Wu Chiu Lin v MCST Plan No. 2874* [2018] SGHC 43 ("*Wu Chiu Lin*") held that "*external walls*" and walls that are "*outward-facing and visible from the outside of a strata lot*" are common property, and that the installation of an awning on such walls would constitute exclusive use of common property which required approval by way of a 90% exclusive use by-law.

4. Following *Wu Chiu Lin,* the Strata Titles Boards held (in *Ahmad Ibrahim and Ors v The MCST Plan No. 4131* STB No. 119 of 2017 and *Pang Loong Ong and Ors v. The MCST Plan No. 4288* STB No. 21 of 2019) that safety is an exception to the usual requirement that the installation of awnings on common property requires a 90% exclusive use by-law. With these cases, awnings that protect against killer litter must be allowed, even in the absence of a 90% exclusive use by-law.

5. In all the cases, the dispute was always between Subsidiary Proprietors who wanted to install awnings or other safety devices, and Management Corporations which refused to allow the installations, or insisted on a design that differed from the Subsidiary Proprietors' desired design.

6. *Rosalina Soh Pei Xi v Hui Mun Wai and MCST Plan No. 4396* STB No. 123 of 2018 is the first reported case in which a Subsidiary Proprietor commenced an application before the Strata Titles Board against a neighbour, seeking an order that the neighbour remove an awning. The Applicant also sought a declaration that the Management Corporation had breached its duties by permitting the neighbour to install the awning, and sought to invalidate the design guidelines adopted by the Management Corporation for awnings in the estate.

7. After a trial, the Board dismissed the Applicant's application and ordered her to pay the Respondents a total of $20,000 in costs plus disbursements. The successful Respondents were represented by Mr Daniel Chen of Lee & Lee.

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Facts

8. The Applicant, Rosalina Soh Pei Xi, is the sole Subsidiary Proprietor of a third-level unit in the development known as Suites@Newton.

9. The 1st Respondent, Hui Mun Wai, is the sole Subsidiary Proprietor of the unit directly below the Applicant's unit. The 1st Respondent's unit includes a private enclosed space ("PES") which was originally exposed to the sky, and directly in front of and below the Applicant's unit.

10. On 5 October 2017, the Management Council of Suites@Newton approved the 1st Respondent's installation of a fixed awning at his PES. At that time, the Management Council consisted of three (3) persons: The Applicant, the 1st Respondent, and a third Subsidiary Proprietor. There was some dispute over whether the Applicant's approval was conditional, but the Board found on the facts that this was not so, and the Management Council had in fact approved the fixed awning.

11. Thereafter the 1st Respondent proceeded with the installation of the awning on 26 October 2017.

12. Subsequently, at an extraordinary general meeting on 20 October 2018, a by-law allowing fixed awnings was proposed and passed with 76.3% of the valid votes cast.

The Applicant's Case

13. The Applicant's main objection to the 1st Respondent's awning was that the noise caused by raindrops on the awning caused her much distress. She also alleged that it compromised her safety, that it was dirty and attracted pests, that water puddles on it might become mosquito breeding sites and that it did not comply with Urban Development Authority ("URA") regulations and the Singapore Civil Defence ("SCDF") Fire Code.

14. The Applicant did not dispute the safety exception established in the previous Strata Titles Boards and Court cases, but argued that it should not apply because there was "*no killer litter issue*" in the estate. Since the Management Corporation had not made a 90% exclusive use by-law, this would mean that the 1st Respondent's awning must be removed.

15. The Applicant also cited *Ahmad Ibrahim and Ors v The MCST Plan No. 4131* STB No. 119 of 2017 and and *Pang Loong Ong and Ors v. The MCST Plan No. 4288* STB No. 21 of 2019, for the proposition that even if the safety exception applied, the safety device installed must be "*necessary, reasonable and a proportionate response to solving the problem*".

16. Against the 2nd Respondent (the Management Corporation), the Applicant argued that:

    a. The 2nd Respondent had breached its duty to control, manage and administer the common property for the benefit of all Subsidiary Proprietors, by approving the 1st Respondent's awning without a 90% exclusive use by-law; and
    b. The by-law allowing fixed awnings made at the extraordinary general meeting on 20 October 2018 was invalid because it was made by a special resolution instead of a 90% resolution.

The 1st Respondent's Case

17. The 1st Respondent argued that the installation of his fixed awning was necessary due to killer litter. The 1st Respondent gave evidence that he had found a used condom at his PES on one occasion, and large pieces of debris of diameters between 5 and 7 cm at his PES on another occasion.

18. In light of the killer litter, the 1st Respondent argued that the safety exception should apply and that a 90% exclusive use by-law was not necessary for his awning to be approved. The 1st Respondent also argued that the awning had in fact been approved by the 2nd Respondent.

19. The Respondent also argued that the fixed awning was a "*necessary, reasonable and a proportionate response*" to the threat of killer litter in the estate.

The 2nd Respondent's Case

20. The 2nd Respondent, the Management Corporation, took the position that it had approved the 1st Respondent's awning, and for the avoidance of doubt, stated that its position remain unchanged.

21. The 2nd Respondent argued that it was not necessary for it to make a 90% exclusive use by-law before it could approve the 1st Respondent's awning, because the safety exception applied.

The Board's Decision

22. The Board first acknowledged the position at law following *Wu Chiu Lin*. Accordingly, it held that the starting point in this case was that a 90% resolution was required to make the necessary by-laws authorising the 1st Respondent's awning because it was fixed to an external wall (albeit within the PES) which was common property.

23. The Board then proceeded to reiterate that safety was an exception to the usual requirement for a 90% resolution, stating that where there is a killer litter problem, the Management Corporation is empowered and in fact obligated to stipulate guidelines for the installation of awnings pursuant to Paragraph 5(3) of the 2nd Schedule to the BMSMR.

24. The Board noted that previous cases in which it was held that safety devices must be a *necessary, reasonable and a proportionate response to solving the* (killer litter) *problem*, took place in a different context, where Management Corporations and the Subsidiary Proprietors who wanted to install awnings differed on what would be suitable. The Board noted that those cases did not deal with a situation where the Management Corporation had allowed for fixed awnings and the Subsidiary Proprietor had relied on that representation (as was the case in Suites@Newton).

25. On the facts, the Board held that:

    a. There was a killer litter problem in the estate;
    b. The Management Council did approve the 1st Respondent's fixed awning; and
    c. In light of the killer litter problem, the Management Council's approval of the 1st Respondent's fixed awning was well within its power.

26. The Board also declined to review the Management Council's decision to approve the 1st Respondent's fixed awning, which would have involved considering whether retractable awnings would be a *necessary, reasonable and a proportionate response to solving the* (killer litter) *problem*. Central to the Board's decision was that the 1st Respondent had already acted on the Management Council's approval and installed the fixed awning. The Board stated that "*the policy of finality of the (Management Council's) decision is overriding in the present case*".

27. The Board observed, *obiter*, that the 1st Respondent would have the defence of estoppel against the 2nd Respondent for an order to remove the awning, and that all the classic elements of estoppel, i.e. representation, detriment and reliance were present.

28. Lastly, the Board found that the Applicant had failed to prove that the 1st Respondent's awning did not comply with URA and SCDF regulations.

29. The Board therefore dismissed the Applicant's application against both Respondents, and ordered that the Applicant pay the Respondents costs fixed at $20,000.00 plus reasonable disbursements.

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