

CASE UPDATE



STRATA TITLES BOARD DISCUSSES MANAGEMENT CORPORATIONS' DUTY TO "CONTROL, MANAGE AND ADMINISTER THE COMMON PROPERTY"

Introduction

1. The Building Maintenance and Strata Management Act (Cap 30C) ("BMSMA"), imposes various duties on Management Corporations.
2. One of these duties, under Section 29(1)(a) of the BMSMA, is to "control, manage and administer the common property for the benefit of all subsidiary proprietors constituting the management corporation".
3. Precisely what this meant was considered by the Strata Titles Board in *Lau Khee Leong & Ding Hongyan v The Management Corporation Strata Title Plan No. 3915* [2020] SGSTB 3.
4. In this case, the Applicant subsidiary proprietors sought an order that the Respondent Management Corporation relocate (at its own cost) the Applicants' air-con condenser units from their original location on a common property roof to the ground floor of the development.
5. After an arbitration hearing, the Board dismissed the application, declining to make the order sought for relocation, and also declining to make another order sought by the Applicants for reimbursement of expenses incurred in by them in relation to the installation of an unauthorized structure on the same common property roof.
6. The Board ordered the Applicants to pay the Respondent S\$15,000.00 in costs plus disbursements. The successful Respondent was represented by Mr Daniel Chen of Lee & Lee.

Facts

7. The Respondent is the management corporation constituted in respect of the development known as Esta Ruby. The Applicants are subsidiary proprietors of a commercial unit within Esta Ruby.
8. The Applicants took possession of their commercial unit sometime in April 2013. From the outset, the unit's air-con condensers were located at the common property flat roof just above the unit.
9. In December 2017, the Applicants installed a signage on top of the same common property flat roof, without the Respondent's approval.
10. After legal proceedings were commenced by the Respondent in the District Court, the Applicants removed the signage. The Respondent withdrew the proceedings, and the Court ordered that the Applicants to pay the Respondent a total of S\$2,183.41 in costs and disbursements.

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CASE UPDATE



11. Just five weeks after the proceedings had been withdrawn, but a whole five and a half years since they had taken possession of their unit, the Applicants alleged for the first time that “*Access to the air-con processor [sic] has been a hassle and highly inconvenient*”, and demanded “*plans to enable our clients [i.e. the Applicants] convenient access to the said roof, or alternatively relocate the air-con compressor to an accessible and appropriate location*”
12. Parties were unable to agree on a course of action, and the Applicants filed an application with the Strata Titles Board for orders that:
 - (i) The Respondent relocate the Applicants’ air-con compressors to the ground floor at the Respondent’s own costs and/or expenses (from the sinking fund), and
 - (ii) The Respondent pay the Applicants for the costs of the unauthorized signage, the cost of shipping it from China to Singapore, the costs of its installation, removal and disposal, the costs the District Court ordered the Applicants to pay the Respondent in DC/OSS 113/2018, and the legal costs the Applicants paid their lawyers in DC/OSS 113/2018.

The Applicants’ Case

13. The Applicants argued that the Respondent had a duty under Section 29(1)(a) of the BMSMA to provide them with “access to their condenser(s)”.
14. As for how such access should be provided, the Applicants argued that “*The Respondent should relocate the condenser(s) to the ground level because providing access to the (common property flat roof) via scaffolding and/or a ladder would raise issues of safety and/or security*”.
15. In relation to the unauthorized signage and DC/OSS 113/2018, the Applicants argued that “*Arbitrary and/or unreasonable behaviour and/or actions*” on the part of the Respondent had resulted in “*the Applicants incurring excessive and unnecessary costs and/or expenses*”.
16. In particular, they alleged that there were other unauthorized installations in the development, and that their intentions were to “*put up the mascot [i.e. the signage on the roof] temporarily ... never to put that permanently, and we are discriminated for doing that*”.

The Respondent’s Case

17. The Respondent argued that it had no duty to relocate the condensers since works did not fall under Section 29(1)(a) of the BMSMA, and in fact constituted improvement/enhancement works under Section 29(1)(d) of the BMSMA and exclusive use and enjoyment of common property under Section 33 of the BMSMA, both of which required approval at a general meeting.
18. The Respondent added that the cost of doing the relocation works was not one of the permitted uses of the sinking fund under the BMSMA, and was also not provided for under its yearly budget.
19. In relation to the unauthorized signage and DC/OSS 113/2018, the Applicants argued that the matter, having been decided by the District Court, was *res judicata*, and in any event, the Board did not have the jurisdiction to make the orders sought since Section 101(3) of the BMSMA prevented it from making orders for damages in the circumstances.

CASE UPDATE



The Board's Decision

Management Corporation's Duties under Section 29(1)(a) BMSMA

20. The Board held that a Management Corporation's duty under Section 29(1)(a) of the BMSMA to "*control, manage and administer the common property*", must, when it relates to improvements and/or enhancements to the common property, be read together with Section 29(1)(d) BMSMA. Therefore, without a special resolution, a Management Corporation would be under no duty to carry out improvements and/or enhancements to the common property.
21. The Board observed that the Respondent had not impeded the Applicants from accessing their condensers, and noted that when questioned by Respondent's counsel on the necessity of moving the condensers, the 1st Applicant had replied that "*it's not necessary, frankly speaking*".
22. The Board found that the relocation works demanded by the Applicants constituted improvements and/or enhancements to the common property, since they would involve acts to "*erect, remove, replace or add to a structure on the common property*".
23. Since there was no such special resolution passed, the Board agreed with the Respondent that it did not have a duty to carry out the relocation works.
24. The Board also agreed with the Respondent that the relocation of the Applicants' condensers to the ground floor would constitute "*exclusive use and enjoyment of*" the "*whole or part of the common property*" covered under Section 33 of the BMSMA.

The Issue of Safety

25. Although the Applicants argued that their condensers should be relocated to the ground floor since the present mode of access (by mobile ladder) was unsafe, the Board found that no evidence was presented to it on safety requirements other than bare statements by the Applicants.
26. The Board also noted the Respondent's evidence that landscaping contractors who accessed the same flat roof had no safety concerns, and that the access point where a mobile ladder could be set up to access the roof was secured by card access, acting as deterrent to any potential trespassers.
27. The Board therefore held that the Applicants had not discharged the burden of proof that the current mode of access to their condensers (located on common property) was unsafe.
28. In any event, the Board observed that under Section 37A of the BMSMA, the Applicants had a right to install 'safety equipment' on their lot, but that this did not impose a duty on the Respondent to install 'safety equipment' on the common property.

CASE UPDATE



The Unauthorized Signage and DC/OSS 113/2018

29. The Board disagreed that DC/OSS 113/2018 was *res judicata* since in that case, there was no 'final and conclusive judgment on the merits' of the case. Instead, the Respondent had been given leave to withdraw its application before the Court, and the Court ordered the Applicants to pay the Respondent costs, after the Applicants removed the unauthorized signage.
30. However, the Board agreed with the Respondent that it had no jurisdiction to make the orders sought in respect of the unauthorized signage and DC/DC OSS 113/2018, since they amounted to claims for damages. The Board held that the effect of Section 101(3) of the BMSMA was to prevent it from making any award for damages in applications brought to it under Section 101(1)(c) of the BMSMA (such as the present case).

Conclusion

31. In light of all the above, the Board dismissed the application, and ordered the Applicants to pay the Respondent costs fixed at \$15,000.00 plus disbursements.

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