

# CASE UPDATE



## SPLIT DECISION BY STRATA TITLES BOARD OVER SAFETY AWNINGS AT CITYLIFE@TAMPINES EC

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### Introduction

1. In many condominiums, ground-floor units include large private enclosed spaces (PES) which are open to the sky. This poses a serious safety risk, as killer litter from units above falls directly into the PES and onto anyone in the PES. Many owners of ground-floor units therefore install awnings at their PES to protect themselves from this risk.
2. This became an issue when 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 attachment of an awning onto such walls would require approval by way of a 90% exclusive use by-law.
3. However, following *Wu Chiu Lin*, the Strata Titles Boards held in 3 separate cases<sup>1</sup> that pursuant to paragraph 5(3) of the 2<sup>nd</sup> Schedule of the Building Maintenance (Strata Management) Regulations ("BMSMR"), safety is an exception to the usual requirement that the installation of awnings on common property walls requires a 90% exclusive use by-law. Awnings that protect against killer litter must therefore be allowed, even in the absence of such a by-law.
4. 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. However, Section 37A of the BMSMA applies only to certain types of safety equipment listed therein, and does not apply to awnings to protect from killer litter. Boards therefore continued to rely on paragraph 5(3) of the 2<sup>nd</sup> Schedule of the BMSMR in its decisions on awnings.
5. In *Lee Soh Geok v The MCST Plan No. 4417* STB No. 88 of 2019, the Board affirmed the position taken in previous cases. However, for the first time, there was a dissenting opinion by a Board member, who took the view that that awnings in question at ground floor units in Citylife@Tampines EC must be removed in the absence of a 90% exclusive use by-law.
6. The successful Respondent (the Management Corporation) was represented by Mr Daniel Chen of Lee & Lee.

<sup>1</sup> *Ahmad Ibrahim and Ors v The MCST Plan No. 4131* [2018] SGSTB 8, *Pang Loong Ong and Ors v. The MCST Plan No. 4288* [2019] SGSTB 6 and *Rosalina Soh Pei Xi v Hui Mun Wai and MCST Plan No. 4396* [2019] SGSTB 5.

## ***Factual Background***

7. The Management Corporation Strata Title Plan No. 4417 is the Management Corporation constituted in respect of the strata titled development known as Citylife@Tampines.
8. Owners of 24 ground-floor units had installed fixed awnings in a standard design and colour in or around 2016, when they have first moved in. There was evidence that the developer had given approval for the installation of the awnings and prescribed the structure which ought to be installed.
9. The awnings were attached to walls within the PES which were “*outward-facing and visible from the outside of a strata lot*”. However, no 90% exclusive use by-law was made to authorise the installation of the awnings. It should be noted that the decision in *Wu Chiu Lin* came only around 2 years later.
10. In STB No. 88 of 2019, Lee Soh Geok, the owner of a second-floor unit in Citylife@Tampines, sought various orders against the Management Corporation, including orders that the Management Corporation remove the fixed awnings and to replace them with retractable awnings.
11. The Management Corporation did not insist that the awnings be removed or replaced, and resisted the application for orders that they do both.

## ***The Board's Decision***

12. It was common ground between all Board members that pursuant to *Wu Chiu Lin*, the installation of awnings on walls which were common property (even if within the PES) ordinarily required authorisation by way of a 90% exclusive use by-law.
13. It was also common ground between Board members that the ground-floor unit owners faced safety concerns due to the risk of litter falling into the PES from above.
14. The issue was whether the BMSMA contemplated that awnings may be installed due to safety concerns, even if the 90% exclusive use by-law was not obtained.
15. The majority of the Board took the same position as previous Boards, holding that since paragraph 5(3) of the 2<sup>nd</sup> Schedule to the BMSMR does not prevent an owner from installing “*any structure or device to prevent harm to children*”, the ground-floor units could retain their awnings due to the problem of killer litter. For easy reference, the relevant parts of paragraph 5(3) of the 2<sup>nd</sup> Schedule to the BMSMR state that:  
  
*“(3) This by-law shall not prevent a subsidiary proprietor or occupier of a lot, or a person authorised by such subsidiary proprietor or occupier from installing (a) any locking or other safety device ... to improve safety within that lot ... (c) any structure or device to prevent harm to children”*
16. The main point of contention between the majority and minority of the Board was whether paragraph 5(3) of the 2<sup>nd</sup> Schedule to the BMSMR took ‘precedence’ over Section 33 of the BMSMA (the provision under which a 90% exclusive use by-law is made). This was an issue that had not been discussed in detail in any of the previous judgments on safety awnings.

17. The majority of the Board held that paragraph 5(3) of the 2<sup>nd</sup> Schedule to the BMSMR took 'precedence' over Section 33 of the BMSMA since statutory force of the former is derived from Section 32(2) BMSMA, which is expressly stated to take precedence over Section 33 BMSMA.
18. The result of this was that paragraph 5(3) of the 2<sup>nd</sup> Schedule to the BMSMR created an exception to the usual requirement for authorisation by way of a 90% exclusive use by-law.
19. The majority of the Board noted that the Court of Appeal had, in *Sit Kwong Lam v MCST Plan No. 2645* [2018] 1 SLR 790, held that paragraph 5(3)(c) of the 2<sup>nd</sup> Schedule to the BMSMR, was an exception to the general rule that owners could not install structures or devices in common property.
20. The majority of the Board noted further that the High Court in *Wu Chiu Lin* had implicitly accepted the position that awnings may be installed if there are safety concerns.
21. Lastly, the majority of the Board held that it would be disproportionate to ask the ground-floor owners to replace their fixed awnings with retractable awnings, given that the fixed awnings had been in place since 2016.
22. The dissenting Board member took the view that paragraph 5(3) of the 2<sup>nd</sup> Schedule to the BMSMR was a saving provision, intended to be a shield and not a sword, specifically to save any act prohibited under paragraph 5(1) of the 2<sup>nd</sup> Schedule to the BMSMR, which reads:

*"5(1) A subsidiary proprietor of a lot shall not mark, paint, drive nails or screws or the line into, or otherwise damage or deface, any structure that forms part of the common property except with the prior written approval of the management corporation"*.
23. The dissenting Board member held that paragraph 5(3) of the 2<sup>nd</sup> Schedule to the BMSMR does not override or create an exception to the usual requirement for authorisation by way of a 90% exclusive use by-law. He therefore took the view that the awnings should be removed in the absence of such a by-law.

## **Conclusion and Comment**

24. In the judgment of the majority, paragraph 5(3) of the 2<sup>nd</sup> Schedule to the BMSMR created an exception to the usual requirement for authorisation by way of a 90% exclusive use by-law, and so owners of the 24 ground-floor units could retain their fixed awnings.
25. However, some doubt has been cast on the view of the majority, and therefore also the previous decisions of the Strata Titles Boards, by the dissenting opinion in this case.
26. Assuming safety is to be paramount, the most straightforward means by which this issue may be resolved is for Parliament to amend the list of safety equipment expressly permitted under Section 37A of the BMSMA to include awnings for protection from killer litter, or to expand the definition of safety equipment under that provision to include all safety equipment.
27. For example, rather than being limited to specific types of safety equipment, Section 37A of the BMSMA could permit safety equipment / devices which "*improve safety within the lot*" or "*prevent harm to children*", in the words of paragraph 5(3) of the 2<sup>nd</sup> Schedule to the BMSMR.

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28. In the absence of any such amendments, it looks likely that there will be further litigation over awnings at PES in strata titled developments in Singapore.

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