

# CASE UPDATE



## STRATA TITLES BOARD CONSIDERS THE EXTENT OF MANAGEMENT CORPORATIONS' DUTIES TO ENFORCE BY-LAWS

### Introduction

1. In the vast majority of disputes before Strata Titled Boards, applications are made by a Management Corporation against a Subsidiary Proprietor allegedly in breach of a provision of the Building Maintenance and Strata Management Act (Cap 30C) ("BMSMA"), regulations thereunder, or by-laws, or by a Subsidiary Proprietor seeking some recourse against a Management Corporation.
2. In *Supersonic Maintenance Services Pte Ltd v MCST Plan No. 3564* [2020] SGSTB 8, the Strata Titles Board dealt with a unique application by a Subsidiary Proprietor which sought orders that Management Corporations enforce by-laws against other Subsidiary Proprietors.
3. In dismissing the application, the Board considered the circumstances in which it would be appropriate for it to intervene in a Management Corporation's enforcement of by-laws against other Subsidiary Proprietors.
4. The successful Management Corporation was represented by Mr Daniel Chen of Lee & Lee.

### The Dispute

5. WCEGA Plaza & Tower is a strata-titled development with more than 900 strata-titled units. The Applicant, Supersonic Maintenance Services Pte Ltd, is the Subsidiary Proprietor of 6 of those units, while the Respondent, the Management Corporation Strata Title Plan No. 3564, is the Management Corporation constituted in respect of the development.
6. By-laws were made sometime in 2013 by the Management Corporation, which empowered it to "wheel clamp and tow away any vehicle found parking at non-designated parking spaces within the (common) property", and to impose fees for release of wheel clamps, towing, storage etc ("the Parking By-Laws").
7. The Applicant alleged that the Management Corporation had failed to enforce the Parking By-Laws and in particular, that the Management Corporation's enforcement of the Parking By-Laws was lacking and inadequate, resulting in serious safety concerns.

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8. The Applicant therefore sought orders that the Management Corporation enforce the Parking By-Laws. In the same application, the Applicant sought various other orders, but these were resolved at mediation. The arbitration hearing dealt only with the enforcement of the Parking By-Laws.
9. The Applicant also alleged that after it filed the application with the Strata Titles Board, the Management Corporation selectively enforced the Parking By-Laws against it by clamping and towing a vehicle, despite there being many other vehicles parked in the area.
10. The Management Corporation argued that it had already been enforcing the Parking By-Laws, and adduced evidence of this. The evidence included that it clamped and/or towed seventy-five (75) cars in 2018 and one hundred and thirty-seven (137) cars in 2019, all for parking at undesignated parking spots. In the first ten (10) days of 2020 alone, nine (9) cars were clamped and/or towed. The Management Corporation also adduced evidence of a standard operating procedure for the guidance of security officers in enforcement of the Parking By-Laws.
11. The Management Corporation argued that in any event, the law is that the Strata Titles Boards will not interfere in the collective decisions of management corporations on how they should be run, and will not micromanage management corporations, except in the most exceptional of cases.
12. The Management Corporation pointed out that Strata Titles Boards have declined to interfere in the decisions of management corporations on the appointment of contractors<sup>1</sup> selection and employment of managing agents<sup>2</sup> and consents relating to common property<sup>3</sup>.
13. Lastly, the Management Corporation denied selective enforcement of the Parking By-Laws, pointing out that the Applicant's vehicle had been clamped and towed because it was parking at an undesignated parking lot, it was suspected of carrying a toxic substance, and the Applicant had indicated it would not remove the vehicle.

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

14. The Board first made it clear that "in the absence of any evidence of discrimination, unfair practice or other unlawful acts against any (Subsidiary Proprietors), the Board would not intervene".
15. The Board then went on to find that the Management Corporation "had been enforcing the (Parking By-Laws), albeit, not to the subjective expectation of the Applicant". The Board took the view that in enforcement actions, "it is reasonable to give these enforcement officers some degree of flexibility and discretion in following the (standard operating procedures) so long as there is no abuse, impartiality or discrimination".
16. Lastly, the Board held that there was no evidence of oppressive or unreasonable actions taken by the Management Corporation against the Applicant, and that there was no selective enforcement against the Applicant.

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<sup>1</sup> *Ker Lee Ping v MCST Plan No. 3822* [2017] SGSTB 6

<sup>2</sup> *Re Pasir Panjang Road (Strata Titles Plan No. 983)* [1991] SGSTB 5

<sup>3</sup> *Soo Kee Investment Pte Ltd v The Management Corporation Strata Title Plan No. 0661* [2017] SGSTB 3

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17. The Board therefore dismissed the application.

## **Commentary**

18. The Board's holding that it should not intervene in the absence of any evidence of discrimination, unfair practice or other unlawful acts against any subsidiary proprietors, is consistent with the position taking by previous Strata Titles Boards. However, it is the first time the "intervention" sought was in respect of a Management Corporation's enforcement of by-laws.

19. The position is therefore that as long as the of enforcement of by-laws is not discriminatory, unfair or unlawful in the circumstances, the Board will not intervene.

20. In particular, the Board held that the Management Corporation was enforcing the by-laws, though it did not meet the "subjective expectation of the Applicant". The result is that the standard of enforcement of by-laws to which Management Corporations are held, is an objective one to be determined by the Board.

## **About Lee & Lee**

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