

'ENCROACHMENT OF COMMON PROPERTY' IN MANAGEMENT CORPORATIONS (MCSTs)

Introduction

1. In Management Corporations, the term 'Encroachment of Common Property' is commonly used to describe unauthorized use of Common Property, and is usually assumed to be illegal. However, there is no legal prohibition against 'Encroachment of Common Property' per se.
2. Paragraph 3 of the 2nd Schedule to the Building Maintenance (Strata Management) Regulations 2005 ("Prescribed By-Law 3") provides only that "A subsidiary proprietor or an occupier of a lot shall not obstruct the lawful use of the common property by any person, except on a temporary and non-recurring basis".
3. It is relevant in any case of 'Encroachment', that subsidiary proprietors hold the common property as tenants-in-common proportional to their share values (Section 13(1) of the Land Titles Strata Act 1967). They do have some rights to use the common property. The issue is how far those rights extend.
4. Further, even if a subsidiary proprietor is acting in breach of Prescribed By-Law 3, it does not follow automatically that a Court will make orders to restrain that breach. It will first undertake a 'test for the granting of a mandatory injunction'.
5. What this all means is when a Management Corporation is faced with a case of 'Encroachment of Common Property', it has to consider a whole range of factors, including but not limited to those mentioned above. It cannot assume that orders can be obtained from Court to restrain the 'Encroachment'.
6. In *The Management Corporation Strata Title Plan No. 3564 v Lian Fong Credit Holdings Pte Ltd and others* [2022] SGDC 200, the Management Corporation sought orders to restrain encroachments by some subsidiary proprietors at WCEGA Plaza.
7. The subsidiary proprietors mounted a vigorous defence of their use of the common property, but the District Court eventually found in favour of the Management Corporation, making orders against the subsidiary proprietors. An appeal was filed by the Defendants but subsequently withdrawn.
8. The successful Management Corporation was represented by Daniel Chen and Enzel Tan of Lee & Lee.

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Brief Facts

9. The Plaintiff in this case was the Management Corporation Strata Title Plan No. 3564, the management corporation constituted in respect of the development known as WCEGA Plaza and Tower. The Defendants were three (3) subsidiary proprietors of five (5) strata units.
10. The Defendants' five (5) strata units are located within WCEGA Plaza, an industrial building, with units zoned as light industrial (B1). There are various wide ramps and driveways running throughout the building, which enable subsidiary proprietors and occupiers to transport their goods, equipment and other items to and from their strata units.
11. The Defendants' five (5) strata units are located at the 7th floor of WCEGA Plaza, near the main spiral ramp of WCEGA Plaza. The main spiral ramp is taken by all vehicles going up and down the building. As WCEGA Plaza consists of a total of 10 floors, there are traffic utilizing the driveway and ramp on the 7th floor to access the 8th to 10th floors of the Plaza.
12. The Defendants are in the business of egg importation and distribution. The eggs are delivered to their units every morning, except on Sundays.
13. The Plaintiff contended that eggs ordered by the Defendants arrive in an assortment of large, medium and small trucks before 7 am every morning (except Sundays). By around 7 am, they start to obstruct the common property, including up to half the driveway and parts of the ramp.
14. The Defendants did not dispute the fact that their goods, items and vehicles were left on the driveway and ramp, but contended that they were only left there "*temporarily*". Based on the Defendants' own admission, the common property was cleared only "*by mid-day*" or, "*if there [was] an usually large consignment, by 3 pm that day*"

Obstruction of the Lawful Use of Common Property

15. Prescribed By-Law 3 provides that "*A subsidiary proprietor or an occupier of a lot shall not obstruct the lawful use of the common property by any person, except on a temporary and non-recurring basis*" (Emphasis added).
16. The District Court found that the Defendants had obstructed lawful use of parts of the common property when they caused their goods, items and vehicles to remain on the common property for extended periods of time (up to 8 hours) daily (except Sundays).
17. In arriving at that finding, the District Court made reference to various photographs in evidence, with accompanying comments. To give an idea of the evidence that led to the District Court's finding, two (2) of the photos are reproduced below, together with the District Judge's observations.

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Observation by District Judge: Shows forklift and trailer blocking the entire left driveway in front of Defendants' units and part of the driveway leading to the ramp.



Observation by District Judge: Show Defendants' egg pallets blocking left lane of driveway.

Whether Obstructions were on a Temporary, Non-Recurring Basis

18. Prescribed By-Law 3 provides that “A subsidiary proprietor or an occupier of a lot shall not obstruct the lawful use of the common property by any person, except on a temporary and non-recurring basis” (Emphasis added).
19. In this regard, the Defendants argued that their goods, items and vehicles were left on the driveway and ramp, “temporarily”, saying that the common property was cleared “by mid-day” or, “if there [was] an usually large consignment, by 3 pm that day”.
20. However, the Defendants did not dispute that their use of the space in front of their units happened on a daily basis from 7.00am to at least 12 pm, and on occasions up to 3 pm, Sundays excepted.
21. Based on this, the District Judge held that the obstructions were recurring, and therefore that the exception under Prescribed By-Law 3 did not apply, meaning the Defendants were acting in breach of Prescribed By-Law 3.

Unreasonable Interference

22. Section 63(c) of the Building Maintenance and Strata Management Act 2004 (“BMSMA”) states that subsidiary proprietors “shall not ... use or enjoy the common property in such a manner or for such a purpose as to interfere unreasonably with the use or enjoyment of the common property by the occupier of any other lot (whether that person is a subsidiary proprietor or not) or by any other person entitled to the use and enjoyment of the common property”.
23. The District Judge found that the Defendants had caused their goods, items and vehicles to block one of the two lanes on the driveway or ramp, notwithstanding that other vehicles might still be able to pass through by travelling on the other lane against the flow of traffic. He observed that this was dangerous, both to the driver and the persons working on the common property, especially when there was oncoming traffic from the opposite direction.
24. Given the widespread obstruction of the common property borne out by the photographs, the District Judge found that the Defendants had unreasonably interfered with the use and enjoyment of the common property by other subsidiary proprietors even if it might be possible for other subsidiary proprietors to squeeze around the Defendants’ items to get to their intended destination.

Whether a Mandatory Injunction should be granted

25. Since the orders sought by the Plaintiff were mandatory injunctions to restrain the Defendants’ breached of Prescribed By-Law 3 and Section 63(c) BMSMA, the District Court applied the test for the grant of a mandatory injunction. The test was not in dispute, as was as follows:

The Court will grant a mandatory injunction to redress a breach of a negative covenant, the breach of which is already accomplished, unless:-



*(a) The Plaintiff's own conduct would make it unjust to do so (Limb 1); or
(b) The breach was trivial or had caused no damage or no appreciable damage to the Plaintiff and a mandatory injunction would impose substantial hardship on the Defendant with no counterbalancing benefit to the Plaintiff (Limb 2).*

(Limb 1)

26. The Defendants argued that the Plaintiff's conduct made the granting of a mandatory unjust, because it was a common practice among the other subsidiary proprietors or occupiers at WCEGA Plaza to load and unload their goods in front of the occupant's unit, as there was no designated loading and unloading bay in the WCEGA Plaza. Stock and goods were also frequently left by other occupants in the common property or the areas close to their respective units at all times of the day.
27. However, the District Judge observed that the fact that other subsidiary proprietors had similarly encroached onto common property did not grant the Defendants a license for doing the same. In any case, the District Judge found that based on the evidence of enforcement action taken by the Plaintiff against others, there was a concerted effort by the Plaintiff in ensuring that By-Laws were uniformly observed by all subsidiary proprietors.
28. The District Judge also noted that the Courts have held in a number of cases that a management corporation may commence a "test case" as a warning to other subsidiary proprietors of the consequences of non-compliance with By-Laws

(Limb 2)

29. The District Judge held that the breach in the present case could not be said to be trivial, since the Defendants had effectively used the common property next to them as a distribution center on a daily basis (except Sundays), stacking it to the brim and beyond with their goods and equipment for extended periods of time. The District Judge noted that the danger and inconvenience caused to oncoming traffic (including those needing to use the ramp), as well as to the subsidiary proprietors in the event of an emergency, were obvious.
30. The District Judge held further that there was significant benefit to the Plaintiff in obtaining the mandatory injunction sought. The common property would be clear of obstructions, traffic and fire safety would be enhanced, and quite importantly, the Plaintiff would retain the requisite authority to enforce the By-Laws regarding the common property against other subsidiary proprietors, without allowing the state of affairs to descend into chaos.
31. Conversely, the District Judge held that any hardship caused in the present case was of the Defendants' own doing, since despite the scale of their egg distribution business, Defendants chose to run the operations from the relatively small B1 light industrial strata units rather than from a location that could function as a distribution facility.
32. In light of all the above, the District Judge decided to grant a mandatory injunction against the Defendants.

Scope of the Mandatory Injunction

33. Section 32(10)(a) of the BMSMA provides that a management corporation is entitled to apply to Court for an order to restrain the breach of any by-law. However, by-laws can be breached to varying extents, and in various ways.
34. The Court, as the District Judge noted, is entitled to tailor the terms of the mandatory order in a way which ensured that a fair result was achieved, and, specifically, to fine-tune the terms of the interlocutory injunction sought to take into account considerations of practicality, fairness and other unique considerations that might surface in the course of the hearing.
35. In this case, the substantive orders sought by the Plaintiff were that:

(a) The Defendants remove their vehicles and goods from the common property of WCEGA Plaza & Tower for loading and unloading and workstations; and

(b) The Defendants keep the common property of WCEGA Plaza & Tower clear of their vehicles and goods, and refrain from using the common property of WCEGA Plaza and Tower for any purpose other than passage of vehicles or persons;

36. However, as has been mentioned at paragraph 3 of this update above, subsidiary proprietors do have some rights to use common property. The District Judge held that the orders as sought by the Plaintiff would overreach the powers and duty of the Plaintiff, and therefore granted the following order instead, which allowed the Defendants limited use of some parts of the common property for the purpose of loading and unloading:

The Defendants keep the common property of WCEGA Plaza & Tower clear of their vehicles and goods, and refrain from using the common property of WCEGA Plaza & Tower for any purpose other than:

(i) passage of vehicles or persons;

(ii) unloading of goods to be delivered to the Defendants' premises; and

(iii) the loading of pre-identified, pre-packaged, and/or earmarked consignment of goods onto the Defendants' customers' vehicles,

Provided That in the case of (ii) and (iii), the loading and unloading shall only take place in the common property excluding the areas within 6 metres of the centre line of each of the driveway and ramp respectively (the "Restricted Common Area") And Provided Further That no consignment of goods unloaded onto the said Restricted Common Area or to be uploaded from the said Restricted Common Area shall be stored or otherwise remain in the said Restricted Common Area for any period in excess of 30 minutes.

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