

# CASE UPDATE



## CONDOMINIUM RESIDENT FAILS IN BID TO INSTALL ZIP BLINDS FOR SAFETY REASONS

### Introduction

1. Zip blinds consist of blinds with vertical tracks (usually attached to side walls or columns) to guide the blinds in their vertical course, and eliminate any gaps between the blinds and side walls / columns. They are often advertised as being waterproof and insect-repelling (when shut).
2. Sometime in late 2022, a subsidiary proprietor and resident of a condominium sought approval from the Management Corporation ("MCST") of his condominium, Stevens Loft, to install zip blinds at 2 balconies at his unit. Among other reasons, the resident cited the "safety of (his) children".
3. The 2 balconies where the resident intended to install zip blinds are shown circled in red in the below photographs:



4. According to the resident, the zip blind mechanisms would be installed on the ceiling, pillars and top surfaces of the balustrade walls of those balconies. In particular, the top brackets would be mounted on the ceilings, the vertical tracks would be mounted on pillars, and the horizontal tracks would be mounted on the top surfaces of the balustrade walls. The tracks would be mounted on the inner walls of the balcony.

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5. When the MCST did not approve the zip blinds, the resident commenced proceedings in the District Court seeking orders that he be permitted to install them.
6. The Honourable District Judge Sim Mei Ling dismissed the resident's claim in *Soo Hoo Khoon Peng v MCST Plan No. 2906* [2023] SGDC 162. She also dismissed the resident's subsequent application for permission to appeal, in DC/OA 41/2023, DC/SUM 2006/2023.
7. The resident then applied to the General Division of the High Court for permission to appeal against the decision of the District Court. This application was likewise dismissed by the Honorable Judicial Commissioner Christopher Tan, in *Soo Hoo Khoon Peng v MCST Plan No. 2906* [2023] SGHC 355.
8. The MCST was represented successfully in all the above matters by Daniel Chen and Enzel Tan of Lee & Lee.

## Requirement for MCST Approval

9. Both the District Court and High Court (in considering whether permission to appeal should be granted) held that MCST approval for the zip blinds was necessary on 2 distinct grounds.
10. First, the zip blinds would be attached to common property of the estate, and amounted to exclusive use and enjoyment of the common property, for which approval was necessary by an exclusive use by-law made by a 90% resolution pursuant to Section 33(1)(c) of the Building Maintenance and Strata Management Act 2004 ("BMSMA"). The District Court held that:
  - a. The parts of the building to which the zip blinds would be attached were common property by virtue of being 'structural elements' of the building as defined in the BMSMA.
  - b. The attachment would impinge on the MCST's ability to discharge its duty to maintain and repair common property, and would therefore amount to use and enjoyment of common property by the resident, to the exclusion of other owners.
11. Second, the zip blinds would affect the appearance of the building, meaning approval of the Management Corporation was required under Section 37(4) BMSMA.
  - a. In coming to the above, the District Court found Section 37 BMSMA to be engaged (and approval under Section 37(4) BMSMA necessary) only where the installation was not on common property. The District Court therefore considered Section 37(4) BMSMA only in the alternative.
  - b. However, the High Court's view was that Section 37 BMSMA would be engaged (and approval under Section 37(4) BMSMA necessary) where works are performed on common property that also lies within a strata lot, such as in the present case.
  - c. Since both the District Court and High Court found that the zip blinds detracted from the appearance of the buildings in the condominium and/or found that they would not be in keeping with the rest of the buildings, the above difference in views did not affect the outcome of this case. However, it may be relevant in other disputes.

## Whether Zip Blinds are Safety Equipment

12. The District Court then considered the issue of whether zip blinds are safety equipment (under Section 37A BMSMA) or safety devices (under paragraph 5(3) of the 2<sup>nd</sup> Schedule to the Building Maintenance (Strata Management) Regulations 2005 ("BMSMR").
13. This was relevant to the proceedings because under those provisions, the MCST must permit the installation of such safety equipment or devices (subject to MCST's prescribed guidelines), even if there is no approval obtained (by an exclusive use by-law made by a 90% resolution pursuant to Section 33(1)(c) BMSMA and/or under Section 37(4) BMSMA).
14. The District Court held that the zip blinds were not a safety device under paragraph 5(3)(c) of the 2<sup>nd</sup> Schedule to the BMSMR or 37A(3)(a) BMSMA since there was no evidence (apart from the resident's assertion) that they would prevent children from jumping or falling over the walls of the balconies.
15. However, the District Court held that the zip blinds were a safety device under paragraph 5(3)(b) of the 2<sup>nd</sup> Schedule to the BMSMR and safety equipment under Section 37A(3)(c) BMSMA since they were advertised as having the effect of repelling insects when closed.

## MCST's Prescribed Guidelines for Safety Equipment

16. Given that the zip blinds were safety equipment, at least on the basis that they would repel insects when closed, the issue turned to whether the MCST could prescribe only one type of safety device for each safety purpose.
17. The MCST in this case had prescribed 'invisible grilles' as the standard design for safety barriers at balconies, and mosquito netting as the standard design to prevent the entry of insects.
18. The resident argued that the MCST should not be allowed to dictate only one type of safety equipment. The issue was therefore the extent to which a Court should defer to a management corporation's guidelines for safety equipment.
19. The District Court held that the MCST was empowered to prescribe guidelines regarding safety installations even if such guidelines only prescribe one type of device, and that the resident would have to comply with these guidelines unless he was able to show that the installation(s) permitted by the MCST were not necessary, reasonable or proportionate.
20. Specifically in relation to safety equipment to prevent the entry of insects, which the District Court held that MCST was empowered to prescribe guidelines stipulating only the use of mosquito netting to prevent entry of insects on the lot.
21. On the same issue, the High Court observed that while the MCST should not be restricting the categories of safety equipment permitted under statute, the MCST's restriction in this case was of the type of installations within each category, and since management corporations are typically charged with maintaining the aesthetic uniformity of the development, with a view to preserving the value of the development, it is to be expected that the guidelines promulgated by a management corporation must necessarily curtail diversity of aesthetic designs to some degree.

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## Conclusion

22. The decisions of the District Court and High Court in this matter make clear that subsidiary proprietors in strata titled developments are not entitled to demand approval of installations just because they amount to safety equipment or devices.
23. If there are guidelines prescribed by the management corporation for the category of safety installation concerned, the subsidiary proprietor must comply with those guidelines, unless he is able to show that the installation(s) permitted by the management corporation are not necessary, reasonable or proportionate.

## About Lee & Lee

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