

CASE UPDATE



HIGH COURT DISMISSES APPEAL BY CONDOMINIUM RESIDENT FOR REMOVAL OF WHEELCLAMP

Introduction

1. In many strata-titled developments across land-scarce Singapore, parking lots for both cars and motorbikes are in short supply. It is therefore not surprising that most (if not all) management corporations have passed various By-Laws and/or House Rules to manage and administer parking in the development.
2. In STB No. 19 of 2023 (*Tan Teck Huat and Toh Laye Lan v The Management Corporation Strata Title Plan No. 3752*) the subsidiary proprietors of a unit in Rosewood Suites parked a motorbike in the development without complying with the by-laws and house rules of the management corporation ("MCST"). The MCST's by-laws and house rules, when read together, required that motorbike owners produce: (a) relevant identification to prove that they are residents of the development; and (b) the Land Transport Authority's registration details for proof of ownership.
3. If the above was not provided, the MCST was empowered, under the additional by-laws of the development, to wheel-clamp the offending vehicle. Thereafter, the MCST would impose an administrative fee of \$100 for the removal of the wheel-clamp, plus an additional administrative fee of \$50 per day or part thereof until full payment is made and the offending vehicle is removed.
4. The subsidiary proprietors did not provide the documents requested by the MCST, which proceeded to wheel clamp the motorbike. Thereafter, the subsidiary proprietors applied to the Strata Titles Board seeking several orders including, inter alia, the release of the wheel-clamp and invalidation of the fees imposed by the MCST.
5. After hearing parties, the Board, chaired by the learned Deputy President Mr Remedios FG dismissed the subsidiary proprietor's application. The subsidiary proprietors then appealed to the General Division of the High Court against the Board's decision. This appeal was likewise dismissed by the Honorable Justice S Mohan in HC/TA 3/2023; HC/SUM 3742/2023.
6. The MCST was represented successfully in all the above matters by Toh Kok Seng and Enzel Tan of Lee & Lee.

Board's Decision

7. Before the Board, there was only one ground for contending that clamping and imposition of the release and daily fee was wrong,

29 February 2024

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and this was that the by-laws of the MCST were not applicable to motorcycles.

8. The Board found that:
 - a. the provisions of the by-laws were not confined to the parking of cars and in fact referred to motorcycles, small vans and other light vehicles; and
 - b. any doubt as to the rules that motorcycle owners had to comply with was removed when the MCST passed house rules on the parking of motorbikes in August 2022. The house rules required that motorbike owners provide “relevant identification to prove that they are the Resident” and “the Land Transport Authority (ROV) registration card and i/c as proof of ownership”.
9. It thus followed that owners of “any and all vehicles” who required parking facilities in the development had to comply with the system catered for all vehicles.
10. Since the subsidiary proprietors had been asked for proof of residency and for the vehicle registration card of the motorcycle but had not provided the same, the MCST could wheel-clamp the motorcycle and the fees as provided under the house rules were properly charged.
11. While the subsidiary proprietors had also sought to challenge the authenticity of the house rules in their reply submissions, the Board dismissed this as the subsidiary proprietors had not made the necessary amendments to their application as directed.

Appeal to the General Division of the High Court

12. On appeal by the subsidiary proprietors, a number of issues arose: -
 - a. when does the time for appeal start to run – whether it starts from the date the tribunal made the decision (4 Oct 2023) or the date the decision was communicated by the tribunal to the parties (6 October 2023);
 - b. what are the principles applicable to an application for an extension of time to file appeal;
 - c. when is a decision of the Board is appealable to the General Division of the High Court; and
 - d. whether on the facts of the case, the appeal should be allowed.
13. On the first issue, the Court held that Order 20 rule 3 of the Rules of Court 2021 is very clear:

“Subject to any other written law, the originating application and supporting affidavit must be filed and served on all parties who have an interest in the matter within 14 days after the tribunal’s decision.”
14. The Court held that the time for appeal starts to run from the date of the Tribunal’s decision and not when the parties were notified of the decision. The subsidiary proprietors therefore had to file an application for extension of time to file their appeal.

15. On the second issue, the Court held that the applicable principles were settled in the case of *Newspaper Seng Logistics Pte Ltd v Chiap Seng Productions Pte Ltd* [2023] SGHC (A) 5. The Court had a discretion to grant an extension of time and will consider the length of the delay, the reason for the delay, the chance of success in the appeal and the question of prejudice. In this case, the length of delay (3 days) was not substantial and that there was no substantial prejudice to the MCST. However, the Court held that the reason for the delay was not convincing and there was no merit in the appeal.
16. The Court held that the subsidiary proprietors' excuse, that one of them was in Europe, was not acceptable since there was ample time for them to give instructions to appeal the decision of the Board. In any event, the evidence did not suggest that both of them were incommunicado or that they were unable to give instructions to file and serve the appeal papers.
17. The Court further found that there was no merit in the appeal and dismissed the application by the subsidiary proprietors for an extension of time.
18. In the alternative, the Court held that it would have, in any event, dismissed the substantive appeal proper even if an extension of time had been granted, in view of section 98 of the Building Maintenance and Strata Management Act 2004:

"98. No appeal shall lie to the General Division of the High Court against an order made by a Board under this Part or the Land Titles (Strata) Act 1967 except on a point of law."
19. The Court held that none of the points raised by the subsidiary proprietors involve any point of law.
20. On the facts of the case, the Court agreed with the Board, that the issue of the authenticity or validity of the house rules on motorcycles was not before the Board. In any event, the Court found that there was reasonable and uncontroverted evidence raised by the MCST, that the house rules on motorcycles passed in August 2022 was posted on the condominium's mobile application and on the notice board.
21. The Court likewise held that the by-laws applied to all vehicles and not just to cars as the MCST's guidebook and by-laws had to be read and interpreted in the context that the development's carpark was constructed not just for cars, but also to park vehicles including motorcycles.

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22. Therefore, there was a legal basis for the MCST to enforce the relevant by-laws and house rules by wheel-clamping the subsidiary proprietors' motorbike. The Court accordingly dismissed the appeal.

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