IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2022] SGHC 219

District Court Appeal No 52 of 2021

Between

Smart Property Management
(Singapore) Pte Ltd

… *Appellant*

And

The Management Corporation
Strata Title Plan No 4375

… *Respondent*

JUDGMENT

[Contract — Breach]
[Contract — Remedies — Damages]
[Land — Strata titles — Management corporation]

TABLE OF CONTENTS

Smart Property Management (Singapore) Pte Ltd
v
Management Corporation Strata Title Plan No 4375

[2022] SGHC 219

General Division of the High Court — District Court Appeal No 52 of 2021
Audrey Lim J
1, 15 July 2022

14 September 2022 Judgment reserved.

Audrey Lim J:

1 The present appeal arose out of a dispute between the respondent ("the MCST"), the management corporation of a development known as Alexandra Central ("the Development"), and the appellant ("Smart"), who was at the material time the managing agent ("MA") of the Development. The Development is a mixed-use strata title development comprising a shopping mall and a hotel. The MCST had commenced District Court Suit No 2074 of 2019 ("the Suit") against Smart for breaching its contractual duties. The District Judge ("DJ") allowed the MCST's claims in part and ordered Smart to pay damages totalling $120,948.70. Smart appealed against the DJ's decision in relation to three claims, as follows:

(a) First, Smart had failed to supervise the landscaping works provided by Oakland Landscaping Pte Ltd ("Oakland"), pursuant to a landscaping contract between Oakland and the

MCST ("Landscape Works") and was liable to the MSCT for the rectification costs to restore the landscaping on the Development.[1]

(b) Second, Smart had wrongly advised the MCST to tender for and install hoarding works for vacant units of the Development ("Hoarding Works") using moneys from the sinking fund which it advised that the MCST could claim reimbursement from the subsidiary proprietors ("SPs") of those units and was liable to the MCST for the costs of the hoarding works.[2]

(c) Third, Smart had wrongly advised the MCST to install electro-magnetic door locks at the Development ("EM Locks") which were never activated for their intended use and was liable for the costs the MCST expended for installing the EM Locks.[3]

2 I dismiss the appeal in relation to the Landscape Works and Hoarding Works but allow the appeal on the EM Locks.

Background

3 Smart was the MA for the Development from January 2018, after the previous MA went through a merger and transferred the business to Smart. Subsequently, Smart was formally appointed by the MCST as the MA of the

---

1 Appellant's Case ("AC") at [45(a)], [55]–[109].

2 AC at [45(b)], [110]–[142].

3 AC at [45(c)], [143]–[158].

Development for one year from 1 July 2018 to 30 June 2019.[4] The relationship between Smart and the MCST was governed by a management agreement (the "Contract") that set out, *inter alia*, Smart's duties and obligations to the MCST. I reproduce the relevant terms of the Contract:[5]

> …
>
> **4. Scope of duties and obligations and services of the Managing Agent**
>
> 4.1 The Managing Agent shall carry out the duties and obligations and perform the services in accordance with the provisions set out in Schedule 2 and the BMSMA.
>
> …
>
> **7. Standard of conduct**
>
> In carrying out its duties and obligations and performing its services under this Agreement[,] the Managing Agent must, and ensure that its servants or agents must, at all times:-
>
> (a) act honestly, competently and diligently;
>
> (b) act lawfully, taking care to ensure that all actions taken by it on behalf of the Management Corporation or in the course of its duties are in compliance with generally accepted good practices and standards applicable in the profession of the management of strata titled development;
>
> (c) act fairly and without bias or undue discrimination and in the best interests of the Management Corporation when sourcing for or supervising contracts, merchants and service providers;
>
> (d) supervise contractors, merchants and service providers for the purpose of their completing all projects and other works undertaken by them in a timely manner and in accordance with the terms of the relevant contract or in accordance with industry practice, as may be the case;

---

4 Angeline Tan's affidavit of evidence-in-chief ("Angeline's AEIC") at [8]–[17]; DJ's Grounds of Decision ("GD") at [2(a)] and [2(b)]; AC at [3]–[5]; 1/7/22 Minute Sheet ("Minute Sheet") at pp 1–2.

5 Minute Sheet at p 1; Record of Appeal ("ROA") Vol 3D at pp 123–135.

(e) when advising the Management Corporation on the employment of vendors, contractors or suppliers, or, when choosing such vendors, contractors or suppliers on behalf of the Management Corporation, to satisfy himself that the prices quoted are in conformity with industry practice where there is such industry practice and or to make reasonable effort to ensure that the prices are reasonable in the circumstances;

…

(i) be familiar with the statutory provisions in the BMSMA pertaining to the Management control and administration of the common property, to the duties and functions of the Management Corporation and the Council in order that the Managing Agent may provide good and sufficient guidance and assistance to the Management Corporation and the Council in complying with such provisions in the BMSMA; and

(j) be familiar with the provisions of legislation requiring building owners to carry out periodic inspection or structural survey or works such as painting the exteriors of buildings, and to advise and remind the Management Corporation or the Council in sufficient time for these things to be carried out.

…

Schedule 2

Article 4

Scope of duties, obligations and services of the Managing Agent

(A) Maintenance management services

(a) To carry out **weekly visit/inspection** of the Estate (excluding the interior premises of the strata titles units and other parts of the Estate which are not part of the common property) regularly to ensure that the Estate is in satisfactory and serviceable condition and properly maintained according to the standards required by the relevant authorities; and to recommend any works which are necessary to the Management Corporation;

> (b) To call, evaluate and administer various tenders for routine maintenance works, services and supplies and to advise on the selection of suitable contractors/specialists and to award such tenders on behalf of the Management Corporation subject to the approval of the Management Corporation;
>
> (c) To ensure that all repairs and routine maintenance works undertaken by the contractors are carried out properly and completed satisfactorily in accordance with the terms and conditions of the contract;
>
> …
>
> (h) To apply and obtain all necessary licences and certificates from the relevant authorities;
>
> (i) To ensure that the contractors carry out their duties and responsibilities properly;
>
> …
>
> [emphasis in original]

4 The Contract was terminated with effect from 19 March 2019, by a termination notice the MCST issued to Smart on 20 February 2019.[6] The MCST then appointed a new MA, Colliers International Consultancy & Valuation (Singapore) Pte Ltd ("Colliers"), and subsequently commenced the Suit on 11 July 2019. For purposes of my decision, I deal only with the claims that Smart appealed against, as elaborated below.

5 First, Smart failed to supervise Oakland in its landscaping services. This resulted in the landscape of the Development being poorly maintained and falling into a state of disrepair. Thus, Smart had breached Article 4, paragraphs (A)(a), (A)(c) and (A)(i) of Schedule 2 of the Contract and clause 7(d) of the

---

6 GD at [2(c)]; Statement of Claim ("SOC") at [15]; AC at [5].

Contract. The MCST claimed $33,405, being the costs to restore the landscaping which was carried out by Lucky Garden Floriculture Pte Ltd ("Lucky Garden").[7]

6 Second, Smart wrongly and/or negligently advised the MCST to tender for and install Hoarding Works on the basis that the costs incurred could be reimbursed from the SPs of these unit. In reliance of Smart's advice, the MCST engaged Build Archive 1 ("BA") to install the Hoarding Works. However, the SPs subsequently refused to reimburse the MCST for such works. As such, the MCST claimed that Article 4, paragraph (A)(b) of Schedule 2, and clauses 7(a), (b), (c), (e), (i) and (j), of the Contract were breached. It claimed $67,000 as compensation for the costs of the Hoarding Works that could not be reimbursed from the sinking fund.[8]

7 Third, Smart wrongly advised the MCST to install the EM Locks. The MCST claimed that although Smart recommended the installation of the EM Locks system to prevent unauthorised entry into the premises after the closing hours of the shopping mall, Smart never implemented the system, which shows that the EM Locks were unnecessary. The MCST thus claimed that Article 4, paragraph (A)(b) of Schedule 2, and clauses 7(a), (b), (c) and (e), of the Contract were breached and claimed $19,153.50 as wasted costs incurred in installing the EM Locks.[9]

---

7 SOC at [7(a)], [7(c)], [7(e)], [9(d)], [20(a)]–[20(e)], [27(d)].

8 SOC at [7(b)], [9(c)], [9(e)], [9(f)], [9(g)], [21]–[23], [27(b)]; Angeline's AEIC at [78]; Julie's affidavit of evidence-in-chief ("Julie's AEIC") at [51].

9 SOC at [7(b)], [9(a)], [9(b)], [9(c)], [9(e)], [22]–[23], [27(c)].

The DJ's decision

8 The DJ's grounds of decision are set out in *The Management Corporation Strata Title Plan No 4375 v Smart Property Management (Singapore) Pte Ltd* [2022] SGDC 38 ("the GD").

9 In relation to the Landscape Works, the DJ found the MCST had established that the landscape of the Development was in a state of disrepair during Smart's tenure as MA, based on: (a) photographs taken of the Development shortly after Colliers took over as MA; (b) contemporaneous documentary evidence; and (c) eye witnesses' testimony. The DJ also observed that Smart's characterisation of Oakland as a "recalcitrant" contractor whom even Colliers had difficulty managing was a "non-starter" as Smart had failed to lead any evidence to show that it made efforts to supervise and manage Oakland. The DJ further stated that even if Oakland was uncooperative, it was entirely open to Smart to accept Oakland's repudiation of the landscaping contract and engage a replacement contractor to carry out the landscaping duties. Accordingly, the DJ found that Smart had breached its duty to supervise Oakland. The DJ accepted the cost of rectification works to restore the landscape amounted to $32,752.70, based on the invoices adduced by the MCST and noted that no evidence was led by Smart to dispute the rectification cost.[10]

10 As for the Hoarding Works, Smart relied on resolution 9.5 ("Resolution 9.5") of the Second Annual General Meeting ("2nd AGM") held on 29 August 2018 to justify that it had not given advice to the MCST wrongly or

[10] GD at [14], [18], [22]–[23].

negligently.[11] However, the DJ found that Resolution 9.5 did not authorise the MCST to install the Hoarding Works without an SP's consent, to charge the installation costs to the sinking fund and to claim such costs from the SP or its contractor. Further, the proposed by-law contemplated by Resolution 9.5 had not been passed. Accordingly, Smart had wrongly advised the MCST to install the Hoarding Works and the DJ awarded damages as the installation costs of the Hoarding Works at $67,000.[12]

11 In relation to the EM Locks, the DJ found that Smart had breached its duty to act competently and diligently. The DJ was satisfied that the MCST had showed that the EM Locks were unnecessary and wasteful. The DJ accepted the MCST's evidence that: (a) the EM Locks were never activated for use because they were not functioning well; (b) there were safety concerns that patrons of the shopping mall might be accidentally trapped in the mall when the EM Locks were activated; and (c) after the EM Locks were installed, there was no evidence of the MCST receiving any complaints that had initially prompted the installation of the EM Locks. The DJ thus concluded that Smart's advice to install the EM Locks was "misconceived or at the very least not properly thought through". Further, it was Smart, and not the MCST, who decided not to activate the EM Locks. Accordingly, the DJ awarded the full installation costs of the EM Locks, amounting to $19,153.50, to the MCST.[13]

12 I deal with each of the above claims in turn.

---

11 GD at [26].

12 GD at [27]–[29], [40].

13 GD at [43]–[45], [48]–[49].

Landscape Works

13 In relation to the Landscape Works, Smart submitted that the DJ's reasoning was premised on the following assumptions that were without basis, namely: (a) Smart's duty to inspect and supervise contractors amounted to guaranteeing Oakland's work such that evidence of breach by Oakland was treated as a breach by Smart; (b) the remedial works carried out by Lucky Garden was confined to remedying breaches of Oakland's work; and (c) the sum the MCST paid Lucky Garden was automatically recoverable from Smart without deduction for the benefits procured.

14 In the above regard, Smart submitted that even if Oakland had breached the landscaping contract, this did not therefore mean that Smart had also breached its duty under the Contract to supervise Oakland. Further, there was no evidence to show the works done by Lucky Garden were solely to rectify the state of disrepair caused by Oakland. Finally, even if Smart were liable for damages arising out of its failure to supervise Oakland, the damages should be moderated to no more than $15,000.[14]

15 The MCST submitted that Smart's objections were premised on a wrong understanding of the DJ's reasoning. The DJ had first considered whether Oakland was in breach of the landscaping contract before determining whether Smart breached its duty to supervise Oakland. It was only in respect of the latter that the DJ concluded that Smart had breached its contractual duty to supervise

[14] AC at [58]–[78], [79]–[96], [106]–[109].

Oakland. Hence, the DJ did not regard Smart's duty to inspect and supervise Oakland as a "guarantee" of Oakland's work.[15]

Whether Oakland had discharged its duties under the landscaping contract

16 It was not disputed that Smart had a duty to supervise Oakland in the carrying out of Oakland's duties under the landscaping contract.[16] I disagree with Smart that the DJ had conflated the issue of Oakland's duty and liability with Smart's duty and liability to the MCST. It was clear from the GD that the DJ considered the two issues separately, *ie*, whether Oakland had breached its duty to maintain the landscape, and whether Smart had breached its duty to supervise Oakland's work.

17 I accept the DJ's findings that the landscape was in a state of disrepair and that Oakland had fallen short of its duties to maintain the landscape during Smart's tenure as MA (see the GD at [14]–[17]). The DJ had set out detailed reasons which included the following.

18 First, the photographs adduced through Angeline Tan ("Angeline"), the chairperson of the MCST, and Julie Neo ("Julie"), Colliers' property manager, showed, among other things, weeds, withered plants and overgrown foliage at the Development.[17] Smart did not dispute the photographs were taken during the

---

15 Respondent's Case ("RC") at [61]–[63], [65]–[71].

16 Minute Sheet at p 2; AC at [59].

17 ROA Vol 3B at pp 142–146, 175, 212; ROA Vol 3D at pp 237–243, 251, 279–284.

site inspection on 19 March 2019 when Colliers took over as the MA. The state of the landscape was also attested to by Julie who had walked the ground.[18]

19 Second, Smart's own employee, Kaystal Koh ("Kaystal") admitted in an email on 19 February 2019 to the MCST that the landscape had not been taken care of. In that email, Kaystal stated "Attached are the photos that I have taken of the landscape area that have been affected and not taken care off [*sic*]."[19] I find Smart's assertion, that the photographs were taken after the termination of its contract and therefore was not evidence that it was in breach, to be disingenuous.[20] Smart remained as the MA until 19 March 2019, even if it was notified of its termination as the MA on 20 February 2019 (see [4] above). Thus, Kaystal's photographs were relevant evidence to show the state of the landscape during Smart's tenure as MA.

20 Third, Smart's employees, including its managing director Desmond Tan ("Desmond"), were copied in an email sent by Colliers to the MCST on 20 March 2019 that highlighted the poor state of the landscape, stating, for example, that the landscape area was full of weeds and dead plants and that most of the planter creepers at the vertical wall along the car park ramp were dead.[21] Smart never disputed these allegations.

---

18 ROA Vol 3B at p 117 (S/n 15 – Site Walk for pre-con survey); ROA Vol 3G at p 62 (2/3/21 NE 54); ROA Vol 4D at p 139 (Defendant's written submissions dated 6 July 2021 at [135]); Julie's AEIC at [26]–[27], [30].

19 ROA Vol 5B at p 116.

20 AC at [86].

21 ROA Vol 5C at pp 75–77.

21 Fourth, Smart pleaded that "Oakland had not performed its 'landscaping duties'" which was why it had recommended to the MCST to engage a replacement landscape contractor to carry out rectification works. Desmond did not deny that Oakland had breached its contract and did not do the landscaping works properly.[22] These are clear admissions by Smart that the landscape of the Development was not properly maintained during its tenure as MA.

22 Indeed, implicit in Smart's submissions before me that: (a) Smart claimed to have performed its supervisory duties by purportedly recommending a replacement of Oakland (although Desmond confirmed during cross-examination there was no evidence to show that Smart had recommended a replacement contractor to the MCST);[23] (b) Oakland did not discharge its duties even under Colliers' supervision; and (c) the MCST was aware that Oakland was the blameworthy party,[24] is Smart's acknowledgment that Oakland had failed in its duties under the landscaping contract.

Whether Smart had breached its duty to supervise Oakland

23 Next, I find the DJ was correct to conclude that Smart had breached its duty under the Contract to supervise Oakland in the discharge of the latter's landscaping duties.[25]

24 Before me, counsel for Smart, Mr Liew, argued that Smart supervised Oakland by receiving service reports from Oakland and getting Oakland to

---

22 Defence at [17(e)]; ROA Vol 3J at p 84 (14/5/21 NE 76).

23 ROA Vol 3J at pp 82–83 (14/5/21 NE 74–75).

24 AC at [64]–[65]; [74]–[77].

25 GD at [17]–[20].

increase its workforce by sending a float team.[26] However, I find these actions were insufficient to fulfil Smart's duties under the Contract to supervise Oakland.

25 First, Smart's receipt of the service reports did not necessarily amount to a discharge of its duties under the Contract. Paragraphs (A)(a) and (A)(c) of Schedule 2 of the Contract provide that Smart was under a duty to "carry out weekly *visit/inspection*" [emphasis in original omitted; emphasis added in italics] of the Development "to ensure [the Development] is in satisfactory and serviceable condition and properly maintained" and "to ensure that all … routine maintenance works undertaken by the contractors are carried out properly and completed satisfactorily in accordance with the terms and conditions of the contract". Clause 7(d) of the Contract states that Smart had to "supervise" its contractors for the purpose of their completing the works undertaken by them "in accordance with the terms of the relevant contract". Thus, Smart's duty to supervise included a duty to independently verify (including a *physical* verification) that the works undertaken by Oakland were satisfactorily completed in accordance with Oakland's landscaping contract. The mere receipt of service reports from Oakland did not amount to adequate supervision by Smart to discharge its duties under the Contract.

26 In the above regard, the DJ had found, and I agree, that Smart did not show evidence of having made any attempt to supervise and manage Oakland. I accept the DJ's analysis of the evidence on this matter, including the evidential

---

[26] Minute Sheet at p 2; ROA Vol 3A at p 108; ROA Vol 3J at p 88; ROA Vol 5B at pp 53–94.

burden being on Smart to show what efforts it had taken to supervise Oakland, after the MCST had established a *prima facie* case (see the GD at [18]–[19]).

27 I agree with the DJ that the service reports did not show how Smart supervised Oakland, despite Mr Liew's submissions to the contrary.[27] Pertinently, and as the DJ had observed correctly, many of the service reports were received in batches and not contemporaneously with the purported servicing by Oakland (see the GD at [20]). Smart accepted the service reports showed that the reports for servicing purportedly done in a particular month was only received in the following month in a batch.[28] That the service reports were not received by Smart at the time of each purported servicing, but in many instances a few weeks later, contradicted Smart's position that it supervised Oakland at the time Oakland serviced the Development's landscape. Hence, Mr Liew's reliance on Desmond's testimony in relation to the service reports did not assist Smart's case. Desmond did not explain how or what supervision Smart did *vis-à-vis* Oakland and instead conceded that the service reports were: (a) largely devoid of any explanatory comments on Oakland's work; and (b) insufficient to prove contemporaneous supervision of Oakland's work.[29]

28 Second, Mr Liew argued that Smart had supervised Oakland by arranging for Oakland to increase its workforce by deploying a float team. However, Mr Liew's argument that the float team was a *result* of Smart's supervision of Oakland and had been deployed because Oakland was not

---

27 ROA Vol 3J at p 86 (14/5/21 NE 78); AC at [69]–[70].

28 ROA Vol 5B at pp 64–66, 67–70, 75–77, 79–82, 83–87, 88–94; ROA Vol 3J at p 89 (14/5/21 NE 81).

29 AC at [70]; ; ROA Vol 3J at pp 88, 94 (14/5/21 NE 80, 86).

performing its landscaping duties satisfactorily, is not supported by the evidence. Before me, Mr Liew agreed that Smart did not testify as such, and further that there was no correspondence to show that Smart had ever expressed dissatisfaction to Oakland over its performance of duties.[30]

29 Third, if Smart had attempted, by pleading that it had: (a) brought the issue of the landscape maintenance to the attention of the MCST and Oakland; and (b) recommended to the MCST to engage a replacement landscape contractor to carry out rectification works as Smart had realised that Oakland did not perform its landscaping duties,[31] to show that these amounted to supervision of Oakland, this is not borne out by the evidence. As Desmond conceded at trial, Smart did not lead evidence in support of its pleaded case.[32]

30 Finally, Mr Liew's attempt to show that Oakland was a "recalcitrant" contractor whom even Colliers had difficulty managing, is, as the DJ stated, a non-starter as there was no evidence that Smart had even supervised Oakland in accordance with the Contract.[33] I fail to see how this amounted to a defence by Smart in relation to the breach of *Smart's* duties under the Contract.

The MCST's corresponding duty

31 Before me, Mr Liew submitted that the MCST also had a corresponding responsibility to ensure its contractors carried out their duties. Mr Liew submitted that as the MCST "owed co-extensive duties and obligations, insofar

---

30 Minute Sheet at pp 2–3; ROA Vol 5A at p 135.

31 Defence at [17(d)]–[17(e)]; Reply at [10]–[11].

32 ROA Vol 3J at pp 80–83 (14/5/21 NE 72–75).

33 GD at [18]; AC at [74].

as they argue egregious breach by [Smart], they are admitting egregious breach on their part".[34] I do not understand Mr Liew's point, which does not assist Smart's case in relation to the MCST's claim against it. As Mr Liew agreed, even if the MCST shared similar duties as the MA, the MA (*ie*, Smart) was not absolved from its liabilities under the Contract to the MCST.[35]

Whether Lucky Garden's work was confined to remedying Oakland's breaches

32 I turn to the issue of whether Lucky Garden's work amounting to $32,752.70 only involved rectification works to repair the damage caused by Oakland. In this regard, Lucky Garden submitted three invoices dated 26 August 2019 – two of which were titled "enhancement work" and one was titled "ad-hoc work" (the "Three Invoices").[36]

33 The MCST bore the burden of proving the quantum of loss it suffered. Smart submitted that it should not have to pay for the entire costs of Lucky Garden's works as it claimed that Lucky Garden did not merely perform rectification works given that two of its invoices were titled "enhancement work" and there was nothing in the invoices to distinguish between the rectification and enhancement works that Lucky Garden performed.[37]

34 I disagree with Smart, and I find the DJ did not err in finding that the works performed by Lucky Garden pertained to reinstating the landscape and

---

34 AC at [49]–[51].

35 Minute Sheet at pp 3–4.

36 ROA Vol 3C at pp 118, 127–128, 155.

37 AC at [99] and [101].

was thus fully recoverable by the MCST from Smart. Whilst Lucky Garden described its works as "enhancement work", this did not mean that it had performed works over and beyond what was required in the first place of Oakland to maintain the landscape, but that such description had to be read in context of the scope of Lucky Garden's engagement which was to rectify the damage to the landscape (see GD at [22]).

35 Lucky Garden's invoices showed that the substance of its works corresponded to the proposed scope of rectification identified in a takeover report submitted to Colliers ("Takeover Report"). The Takeover Report was prepared in response to Collier's request to Lucky Garden to rectify the landscaping of the Development.[38] It was prepared on 30 April 2019, based on an inspection of the Development on the same date and reported various matters pertaining to the landscape of the Development that required attention. There was no evidence to suggest that what was observed and reported was fabricated.

36 A perusal of the Three Invoices showed that the works done by Lucky Garden matched the description of works in the Takeover Report. Hence, the DJ was entirely justified in concluding that Smart's assertion – that the rectification works performed by Lucky Garden went beyond what was needed to restore the landscape on the basis that it was labelled "enhancement work" – was "pure speculation".[39]

37 On the same basis, I reject Mr Liew's submission that the damages should be reduced to $15,000 because the MCST had sourced for a quotation of

---

38 Julie's AEIC at [33]–[34]; ROA Vol 3C at pp 89–90, 98–116; Minute Sheet at p 6.

39 GD at [22].

$15,000 to $20,000 and this therefore showed that Lucky Gardens' works (which were more expensive) had included enhancement works.[40] Smart's reliance on an email from the MCST's representative (one Victor) to Smart, to show that Victor had liaised with another landscape entity which had quoted the sum of $15,000 to $20,000 does not assist Smart's case. Not only was the email dated 20 February 2019 when Smart was still the MA, the quotation was bereft of any details on the extent of rectification works to be done and which might have changed after Smart's Contract with the MCST had been terminated.

38 As such, I find no reason to disturb the DJ's award of damages at $32,752.70.

Hoarding Works

39 In relation to the Hoarding Works, Angeline attested that on or around July 2018, Smart had advised the first management council ("MC") to implement a by-law to hoard up empty units in the Development. The first MC thus included motion 9.5 in the notice of the MCST's 2nd AGM to empower the incoming MC to draft and implement a new by-law on the hoarding up of vacant units. On 29 August 2018 at the 2nd AGM, Resolution 9.5 was passed with a vote of 99.4% in favour.[41] Resolution 9.5 is as follows:

> Hoarding and Internal Facade Requirements
>
> To empower the incoming Management council to draft and implement a new by-law regarding the hoarding up of vacant units.

---

40 AC at [106]–[108]; ROA Vol 5B at p 128.

41 AC at [112]; Angeline's AEIC at [68]; ROA Vol 5A at p 228.

> Current by-laws require a unit under renovation to hoard up the unit to prevent dust and debris from ongoing renovation works from polluting the common property.
>
> The new by-law to be drafted by the incoming Management Council will be added as an addendum to that section of the by-law which will require units that are currently vacant to be hoarded up, to prevent illegal access to the vacant unit by patrons of the mall during the night time hours.
>
> It will also act to beauty the mall by preventing empty units from being exposed to the general public during operating hours. To present a more professional image to the general public.
>
> …

40 Subsequently, during the first Council Meeting of the second MC held on 14 September 2018, Smart provided the following advice to the MCST:[42]

> Hoarding up of unit
>
> Mr. Eric enquired on how the design of the hoarding will look like. MA shared that MCST will be subsidizing the unit cost for the hoarding up first and subsequently when the unit is tenanted out, the hoarding cost amount can be claimed back from the incoming contractors/landlord[s] which is required by default to be constructed before renovation works commences. MA reminded that hoarding cost will come from the sinking fund as per the resolution passed.

41 In a "Recommendation for award of works" dated 5 October 2018 prepared by Smart for the MCST's approval, Smart stated that the installation of hoarding for vacant units had been approved during the 2nd AGM under Resolution 9.5 and reiterated that "The hoarding will be charged back to the contractors of each unit before commencing renovation works". It was on this

[42] ROA Vol 5A at p 239.

basis that Smart asked for the MCST's approval to pay for the works from the sinking fund.[43]

42 Desmond claimed that Resolution 9.5 authorised the MCST to carry out Hoarding Works and for the costs of the same to be paid out of the sinking fund.[44] Smart submitted that its advice to the MCST, to install hoarding by deducting the costs of installation from the sinking fund first and on the basis that such costs could be claimed back from the SPs of the units (where the hoarding was installed), was not wrong.[45] Smart also submitted that even if the advice were wrong, this was premised on its "incorrect understanding" of Resolution 9.5, and that "wrong advice of itself does not give rise to a cause of action". This is because Smart's advice did not fall below the standard of a reasonably competent managing agent and the MCST did not call expert evidence on what this standard was.[46] Mr Liew claimed that the DJ had conflated "wrong advice" with "negligent advice", and that it was not reasonable for the MCST to rely on Smart's advice "on legal matters and other intricacies such as the wording and legal effect of legislation".[47]

43 The MCST claimed that although no by-law had been passed, Smart had nevertheless advised the MCST that hoarding up empty units could proceed as it could pay for the works first and claim reimbursement from the incoming SPs and/or their contractors later. Moreover, the MCST submitted that Smart had

---

43 ROA Vol 5A at p 254; Minute sheet at p 4.

44 Desmond's affidavit of evidence-in-chief at [40].

45 Applicant's Skeletal Submissions ("ASS") at [41]–[49]; Minute Sheet at p 3.

46 AC at [125]–[128].

47 AC at [132], [134]

shifted from its original defence at first instance (*ie*, that it had correctly advised the MCST on the recoverability of the costs of hoarding) to arguing that it should not be judged on the basis of "perfect advice". This amounted to a different defence which Smart had not sought leave to adduce as a new point on appeal, and hence this new argument should be dismissed.[48]

Purport of Resolution 9.5

44 I agree with the DJ that Resolution 9.5 did not authorise the MCST to install hoarding without an SP's consent or to charge the installation costs to the sinking fund. Resolution 9.5 merely empowered the MCST to *draft and implement* a new *by-law* pertaining to the hoarding up of vacant units. It did not expressly empower the MCST to *perform hoarding works* of a vacant unit, much less to deduct the costs of such works from the sinking fund or to charge or recover such costs from the SP subsequently.

45 The above is supported by comparing Resolution 9.5 with another resolution passed at the 2nd AGM which expressly provided for the MCST to undertake certain works. Resolution 9.3 empowered the MCST to "erect kiosks, booths and push carts on common property for short term lease" and expressly provided that the costs for such works could not exceed $500,000 and that the moneys would come from the sinking fund. Likewise, resolution 9.4 (which was defeated when put to a vote) was to enable the MCST to "undertake modification works to the façade fountain water feature" and other works with

---

48 SOC at [21(a)]; Angeline's AEIC at [69]; RC at [73]–[80]; ROA Vol 4D at p 148 (Smart's Closing Submissions in the Suit at [162]); GD at [27].

the costs for such works not exceeding $50,000 and to be drawn from the sinking fund.[49]

Whether Smart was liable to the MCST for the advice given

46 Given the above, I accept the DJ was correct to find that Smart's advice was wrong. I will not repeat the DJ's detailed findings (see the GD at [27] to [38]) which I accept, save to mention a few points.

47 In particular, Smart was wrong to advise the MCST to proceed with the Hoarding Works as though Resolution 9.5 had the effect of a by-law (which it did not) and when a by-law to give effect to the resolution had not even been drafted. Even if Resolution 9.5 had such effect, it did not confer on the MCST the power or authority to: (a) undertake Hoarding Works; (b) expend whatever amount it deemed fit for the works; and (c) charge the costs to the sinking fund first and recover them against "incoming contractors/landlords". As Angeline attested, there was no discussion at the 2nd AGM as to who would bear the costs of the Hoarding Works.[50] This was not challenged by Smart, which also accepted that Resolution 9.5 was silent on who would bear such costs.[51] Hence, I disagree with Desmond's evidence that Resolution 9.5 authorised the MCST to carry out Hoarding Works with the costs to be paid out of the sinking fund.

48 Given the lack of explicit authorisation in Resolution 9.5, Smart submitted that the resolution implicitly supported its advice to the MCST. Mr Liew argued that Smart's advice was not wrong because a reading of Resolution

---

49 ROA Vol 5A at pp 227–228.

50 GD at [27]; ROA Vol 3H at p 28 (3/3/2021 NE 20).

51 AC at [114].

9.5 showed that the SPs would ultimately have to pay for the Hoarding Works and it was reasonable to assume that they would bear the cost of such works having voted for the resolution. Mr Liew also submitted that the pre-existing by-laws that required a unit under renovation to be hoarded up, meant that eventually all vacant units would have to be hoarded up, and thus an SP of a vacant unit would in any case have to pay for the costs of hoarding up his unit.[52]

49 I reject Mr Liew's argument that Smart's advice was not wrong and I reiterate [44]–[47] above. Even if it were reasonable to assume that an SP of a vacant unit would eventually have to bear the costs of hoarding, the fact remained that Smart had advised the MCST to proceed with the Hoarding Works when no by-law had been drafted, let alone passed to give effect to Resolution 9.5, and advised the MCST that it could use the sinking fund to pay for such works when it was clear that Resolution 9.5 was silent on the MSCT's authority to do so. Further, Smart's submission, that its advice that the MCST could recover the costs of hoarding up from an SP of a vacant unit was correct, presumes that the SP would be liable to pay *whatever* costs the MCST had incurred on Hoarding Works, even if such costs were excessive, unreasonable or not agreed upon by the SP in the first place. I pause here to note that Resolution 9.5 is unclear as to whether it would be the outgoing or incoming SP who would ultimately bear the cost of the works. As the DJ rightly observed, Smart itself appeared uncertain as to who should bear the costs given its vague reference to a "contractor" in addition to a "landlord" at the 14 September 2018 Council Meeting (see GD at [36]).

---

52 AC [114]–[118]; Minute Sheet at pp 3, 5.

50 During the proceedings below, Desmond agreed that Resolution 9.5 did not expressly state that an SP of a vacant unit would have to pay for the Hoarding Works, or that the MCST was to pay upfront for such works, or that the hoarding could be charged to the contractor/landlord. Desmond further agreed that Smart's position (that the MCST would subsidize the costs first and subsequently claim the costs back from an incoming contractor/landlord when the unit is tenanted out) was not borne out by Resolution 9.5 as there was then no by-law passed on the resolution.[53] Hence, on a plain reading of Resolution 9.5 and by Smart's own admission, a reasonably competent MA would not have interpreted the resolution in the manner that Smart had, and Smart's advice to the MA fell below the standard of what could be expected of a reasonably competent MA.

51 It is pertinent to note that Smart held itself out to be a leading MA with more than 160 residential and commercial developments under its charge.[54] Desmond agreed that Smart would be familiar with property management and the laws in this area and in particular the requirements under the Building Maintenance and Strata Management Act (Cap 30C, 2008 Rev Ed) ("BMSMA"). As an established MA, Smart should have had a basic understanding of the statutory requirements for passing a by-law and should have known that the MCST would require proper authorisation to use the sinking fund to pay for the Hoarding Works.

52 As provided in clause 7(i) of the Contract, Smart had to be familiar with the provisions of the BMSMA in order to provide good and sufficient guidance

---

53 ROA Vol 3I at p 250–252 (12/5/21 NE 242–244).

54 GD at [46]; ROA Vol 3I at pp 67–68 (12/5/21 NE 59–60).

and assistance to the MCST in complying with the provisions therein. It thus cannot be said that it was unreasonable for the MCST to have relied on Smart's advice on the Hoarding Works. Hence, I agree with the DJ that Smart breached its duties under the Contract to act competently and to provide good and sufficient guidance to the MCST in complying with the provisions of the BMSMA when it incorrectly advised the MCST to install the Hoarding Works.

53 In this regard, Mr Liew argued before me that "even if the advice was wrong… that does not automatically translate into actionable negligence" as "wrong advice of itself does not give rise to a cause of action".[55] It is unclear what further point Mr Liew was making, as the MCST's cause of action was premised on a breach of the Contract (and which I have found to have been made out).

Quantum of damages

54 Finally, I turn to address the quantum of damages to be awarded for Smart's breach of the Contract. In this regard, Smart claimed the MCST had obtained a benefit from the Hoarding Works. In any event, the MCST never attempted to demand payment of the costs of the works from the SPs and thus the quantum of its claim could not be an accurate representation of its losses.[56]

55 The DJ had considered the issue of mitigation and pointed out essentially that Smart's argument rested on the premise that the MCST had to seek reimbursement for the Hoarding Works when it had no legal right to do so.[57] As

---

55 ASS at [43]; AC at [125].

56 AC at [139]–[142].

57 GD at [39].

such, that the MCST did not attempt to claim payment of costs of the works from the SPs involved was irrelevant as it had no legal basis to do so. Hence it is unclear how the MCST was to have mitigated its loss, short of passing a by-law to operate retrospectively to deal with the costs of hoarding up to be borne by the SP concerned (and with such by-law being open to challenge).

56 Additionally, the DJ rightfully pointed out that the MCST would have been unlikely to install the hoarding had it received the correct advice from Smart.[58] In this regard, Angeline attested during the trial that the MCST would not have approved the Hoarding Works if not for Smart's advice that the costs of the works was recoverable from the SPs or their contractors.[59] I add briefly that the DJ was right to highlight that Smart failed to specifically plead mitigation in its Defence and should not be allowed to run this argument without amending its pleading as it would result in the MCST suffering prejudice[60] (see also *Yip Holdings Pte Ltd v Asia Link Marine Industries Pte Ltd* [2012] 1 SLR 131 at [23]–[24]).

57 As such, I saw no reason to disturb the DJ's finding that the MCST was entitled to claim from Smart the installation costs of $67,000 which it had paid BA for such works.

---

58 GD at [40].

59 ROA Vol 3H at p 94 (3/3/21 NE 86).

60 GD at [39].

EM Locks

58 It is common ground that Smart advised the MCST to install the EM Locks at the entry and exit points of the Development.[61] The issue is whether Smart's advice was wrong, given that the EM Locks were purportedly never activated for their intended use.

59 The MCST claimed that Smart did not activate the EM Locks because they were not functioning well after they were installed, and there were also safety concerns that if the EM Locks were activated without a security guard being present to ensure there was no one in the shopping mall, patrons of the mall could be trapped in the mall. Hence, the EM Locks "became a white elephant and an unnecessary expense".[62]

60 Smart submitted that there was no evidence that the EM Locks were not functioning well and that it was the MCST who had changed its mind and decided that it could do without the EM Locks. Smart submitted that the DJ's finding that its advice to install the EM Locks was "poorly thought through" went against the weight of the evidence and was factually unsupportable. Accordingly, Smart could not be liable and no question of quantum of loss could arise. Smart further submitted that even if it were liable, the MCST had suffered no loss because it continues to retain and use the EM Locks.[63]

---

61 AC at [143]; Angeline's AEIC at [59]; ROA Vol 3E at p 164.

62 Angeline's AEIC at [65]–[67].

63 AC at [145], [150]–[151], [153], [155]–[158]; Appellant's Supplemental Submissions dated 15 July 2022 at [24]–[25].

61 Counsel for the MCST, Mr Wah, submitted that Smart has raised facts that were not in evidence and without making an application to adduce new evidence. The MCST objected to Smart's submission that the EM Locks were working well and that it was the MCST who did not want to activate the EM Locks in the absence of any underlying evidence in the record of proceedings.[64]

Whether Smart had wrongly advised on the installation of the EM Locks

62 In determining whether Smart's advice to install the EM Locks was wrong and which led to their installation being unnecessary and wasteful, it is necessary to examine whether the concern raised by Smart that necessitated the installation was legitimate and whether it was Smart who did not activate the EM Locks because they were not functioning well and there was a safety concern that patrons of the mall could be trapped in the mall. Contrary to the MCST's submission, Smart's arguments before me were not premised on any new evidence it was seeking to introduce.[65] Instead, Smart was merely asking this court to re-examine the DJ's findings in light of the evidence already adduced in the court below and on the basis of who bore the burden of proving the assertions.

63 Having considered the context behind Smart's advice, I find that there was a legitimate and reasonable basis for Smart to recommend the installation of the EM Locks to prevent property damage within the Development after the usual operating hours. I briefly set out the context which led to Smart's advice to install the EM Locks.

---

64 RC at [82], [88].

65 RC at [82], [89].

64 On 7 June 2018, Smart received a formal complaint from a tenant that operated a kindergarten at the Development ("7/6/18 Email").[66] In gist, the tenant complained against the proposal for a bar to be operated on the same floor as the kindergarten on the basis that the bar would negatively impact the kindergarten's business, and further stated that there were already six bars operating at the mall. The tenant also noted in the 7/6/18 Email that "the Central Management [was] experiencing great difficulty clearing the smell of smoke from the corridor each morning on Level 3 due to the bars already operating at the Mall" and highlighted that there were "a number of unsavoury and illegal activities" operating at an establishment on the first floor.

65 Smart then wrote to the MC on 11 June 2018 to update them on the 7/6/18 Email. In its update to the MC, Smart also highlighted two incidents caused by intoxicated patrons within the span of a month that resulted in damage to the Development, namely a "broken wire mesh glass for 4 way breeching inlet box" and a "car crashing into [the] carpark barrier during exit". Smart then informed the MC that it would be taking measures in the form of "installing electromagnetic locks at the entry/exit doors of the mall and the doors will be locked based on the shopping mall closing hours" with the EM Locks being "deactivated and released if the fire alarm is triggered".[67]

66 On the same day, the MC replied, *inter alia*, suggesting the parties "brain storm [*sic*] for better solutions before implementation".[68] In response, Smart sent another email also dated 11 June 2018 as follows:

---

66 ROA Vol 5A at p 156.

67 ROA Vol 5A at p 155.

68 ROA Vol 5A at p 154.

> …
>
> We are not against the operation of bars here, however we do have a serious issue of patrons smoking in the common corridors, vomiting and urinating in vacant units and common areas, i.e the path to the 1st and 2nd floor toilets.
>
> We also have incidents where the patrons damaged the common areas.
>
> At our first Council Meeting, I believe I had presented the Council with comments made by the scouts from sushi express, kiddie palace, e play and Lego.
>
> One of the comments given that prevented us from getting them as prospective clients are the bars. Which is giving the mall an overall image of something akin to Golden Mile.
>
> …
>
> Now the installation of the EM locks is for the security of the mall itself.
>
> Why you ask.
>
> The answer is simple, over the past few years since the bars have come in, there have been cases of molest, fights by drunk patrons, drugs and etc.… which have occurred within and outside of the mall.
>
> …
>
> The first step is to secure the mall against damages from both internal and external, but yet not cause an inconvenience to our normal business operators.
>
> It is unfair to everyone to have to pay for the damages caused by the few, I believe we are all in agreement to that.
>
> …

67 Smart subsequently obtained quotations for the EM Locks and submitted a "recommendation for award of works" dated 19 July 2018 for the EM Locks to be installed on the first six floors of the Development. The MCST

accepted Smart's recommendation and the EM Locks were installed in or around November 2018.[69]

68 It is clear that the impetus for Smart's recommendation to install the EM Locks was due to a complaint from a tenant as well as the incidents of damage to the property of the Development and of improper behaviour of unruly patrons. It was therefore reasonable for Smart to have been concerned about further property damage to the mall (particularly after operating hours) and the reputation of the mall.

69 Indeed, Angeline agreed during the proceedings below that the EM Locks were considered to be essential for the safety of the Development, especially in relation to the late-night patrons at the pubs and bars. Angeline also agreed that the MC did not blindly accept Smart's recommendation to install the EM Locks but had deliberated on the matter before making a decision. She further agreed that the MC had also, in its deliberation, discussed what would happen to patrons in the mall if the EM Locks were activated, but nevertheless agreed to the installation of the EM Locks.[70] As such, it could not be said that Smart's advice to install the EM Locks was wrong, or that the EM Locks were an unnecessary expense which should not have been incurred in the first place.

70 My conclusion that there was a legitimate basis for Smart's advice to install the EM Locks is also supported by Angeline's testimony in court that the *EM Locks were actually activated about a year after they were installed and*

---

69 ROA Vol 5A at p 163; Angeline's AEIC at [62], [65].

70 ROA Vol 3G at pp 131, 136–137, 139 (2/3/21 NE 123, 128–129, 131).

during the Covid-19 period and in fact continue to be utilised at the Development as a safety feature.[71] Pertinently, Angeline stated that the bars and pubs moved out of the Development due to their business being affected by the Covid-19 restrictions. Hence, even if the original purpose of the EM Locks (to deal with unruly patrons of bars and pubs) was not a concern at that time, this was due to an unforeseen supervening event (Covid-19) which could not be attributed to Smart. As Angeline attested, while the bars and pubs have left the Development, the concerns of unruly patrons damaging the mall in future should the bars and pubs return as tenants would be addressed by the EM Locks.[72]

71 Following from the above, I also disagree with the DJ's finding that it was Smart who decided not to activate the EM Locks (GD at [45]). Angeline's answers in cross-examination showed that the decision not to activate the EM Locks was made by both Smart and the MCST. Angeline attested that the MC had a meeting with Smart about a month after the EM Locks were installed but not yet activated. At this meeting, the activation of the EM Locks was discussed. When cross-examined as to why the MC did not simply instruct Smart to activate the EM Locks given that they had been installed, Angeline replied that "we can't because we were concerned there were safety concerns for the patrons", in that patrons could be trapped in the mall if the EM Locks were activated after the mall was shut.[73]

---

71 ROA Vol 3G at pp 151, 158–159 (2/3/21 NE 143, 150–151).

72 ROA Vol 3G at p 159 (2/3/21 NE 151).

73 ROA Vol 3G at pp 143–144 (2/3/31 NE 135–136).

72 In any event, I note that the safety concerns raised by the MCST were acknowledged by Angeline to be easily addressed. As the EM Locks would be activated by a central control centre, Angeline accepted that a sign with the security office's contact number would be sufficient to assist a patron who might inadvertently be trapped in the mall.[74]

73 The MCST's other argument that it could not activate the EM Locks because they were defective was also not supported by the evidence. Indeed, Angeline's testimony that the *one* lock that was not functioning properly was rectified when Colliers took over as MA (a few months after the EM Locks were installed) and then the MCST activated the EM Locks,[75] further supported that they could have been activated (albeit after some repairs) at the time they were installed but for the MCST's decision not to do so.

74 In the round, I find the MCST failed to prove on a balance of probabilities that Smart's advice to install the EM Locks was wrong and which resulted in them becoming a white elephant and an unnecessary expense because it was purportedly never used. The MCST had at that time considered it to be an essential feature to meet its purposes and accepted that it would have addressed the legitimate concern of unruly patrons damaging the shopping mall (see [69] above). Moreover, the MCST decided not to activate the locks at the material time although it could have resolved the safety issue (of patrons being trapped in the mall) in some other manner (see [72] above) and, in the end, the EM Locks were eventually used and continues to be used.

---

74 ROA Vol 3G at pp 145–146 (2/3/21 NE 137–138).

75 ROA Vol 3G at p 148 (2/3/21 NE 140).

75 As such, I disagree with the DJ that Smart had breached its duties under the Contract in relation to its advice to install the EM Locks. Hence, the issue of the appropriate quantum of damages to be awarded does not arise. Even if I accept that Smart had breached its duty in relation to its advice to install the EM Locks, it is unclear what loss the MCST has suffered given that the EM Locks were and continues to be used by the MCST and as a safety feature. In so far as the MCST had suffered the cost of repairing a defective EM Lock (which Colliers rectified after it took over as MA), this is not a claim the MCST has pursued against Smart.

Conclusion

76 To conclude, I dismiss the appeal in relation to the Landscape Works and Hoarding Works but allow the appeal in relation to the EM Locks. I will hear parties on costs.

Audrey Lim
Judge of the High Court

Liew Teck Huat, Alex Yeo Sheng Chye and Denise Teo Ying Ying (Niru & Co LLC) for the appellant;
Wah Hsien-Wen, Terence and Mok Zicong (Dentons Rodyk & Davidson LLP) for the respondent.