IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 213

District Court Originating Summons No 173 of 2019 (Registrar's Appeal No 8 of 2020) and Summons No 2529 of 2020

In the matter of Section 37 of the Building Maintenance and Strata Management Act (Cap 30C)

Between

The Management Corporation
Strata Title Plan No 4123

… *Plaintiff*

And

Pa Guo An

… *Defendant*

GROUNDS OF DECISION

[Land] — [Strata titles] — [Condominium]
[Land] — [Strata titles] — [Management corporation]

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v
Pa Guo An

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High Court — District Court Originating Summons No 173 of 2019
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Andre Maniam JC
16 June, 4 September 2020

6 October 2020

Andre Maniam JC:

Introduction

1 The management corporation strata title ("MCST") of a development sued a subsidiary proprietor ("SP") over improvements to the SP's unit/lot. There have been several such cases, involving different MCSTs and SPs.

2 The improvement was a new sliding glass door (the "Glass Door") enclosing part of a patio area. I found that the Glass Door affected the appearance of the development within s 37(3) of the Building Maintenance and Strata Management Act (Cap 30C, 2008 Rev Ed) (the "BMSMA"). I thus ordered the SP to seek the MCST's authorisation as required under s 37(3) of the BMSMA, at an upcoming meeting with the MCST on 18 September 2020; if the SP failed to obtain authorisation, he was to remove the Glass Door.

3 The SP purchased his unit (the "Unit") in the Eight Courtyards condominium (the "Development") in or around 2018–2019; a search on the Unit shows that he was registered as its owner on 17 May 2019, and the "last contract date" is stated as 23 October 2018.[1]

4 The Unit was on the ground floor, with a patio area that had been approved as a private enclosed space ("PES") by the Urban Redevelopment Authority ("URA").

5 The Unit came with an original sliding glass door at the boundary between the indoor area and the PES. The PES extended some 3.1m away from the indoor area: the first 1.2m of this was covered by the upstairs balcony, and the remaining 1.9m was uncovered.

6 The SP decided to extend the indoor area, by installing the Glass Door at the boundary between the covered and uncovered parts of the PES, *ie*, below where the upstairs balcony ended. He thus enclosed part of the PES that was already covered in the first place, but not what was uncovered by the upstairs balcony. The Glass Door was of the same design as the original glass door, but 1.2m further out. The following floor plan illustrates the PES before and after the installation of the Glass Door:

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[1] Liang Zhixiang's affidavit dated 11 October 2019, pp 9-11.

Procedural history

7 The MCST took issue with the installation of the Glass Door, on the following grounds:

(a) the SP had not sought and obtained the MCST's prior approval (contrary to some "House Rules");

(b) the installation of the Glass Door affected the appearance of the building, per s 37(3) of the BMSMA; and the MCST had not authorised this under s 37(4) of the BMSMA;

(c) the installation of the Glass Door increased or was likely to increase the floor area of the land and building comprised in the strata title plan, *ie*, the Development, per s 37(1) of the BMSMA; and this had not been authorised by a 90% resolution of the MCST under s 37(2) of the BMSMA; and

(d) the SP had installed the Glass Door without having obtained planning permission from the URA.

8 The MCST's case evolved over time, and I have listed the above grounds in the same sequence as they were progressively advanced. At the outset, the focus was on the "House Rules" and the appearance of the Development; the SP was even informed by the MCST's managing agent that the issue was *not* about an increase in floor area.[2] By the time the merits were heard at first instance, however, the increase in floor area had been put into issue (see [2] of *The Management Corporation Strata Title Plan No 4123 v Pa Guo An* [2020] SGDC 82 – the grounds of decision ("GD") of the learned District Judge ("DJ")). Finally, the issue of planning permission from the URA was only raised on appeal, in conjunction with an application for leave to adduce further evidence in the form of correspondence with the URA (see [2]–[4] of the GD for the issues that were raised at first instance).

9 The MCST and the SP had corresponded in July and August 2019, and a demand letter was issued by the MCST's solicitors on 13 August 2019. On 15 October 2019, the MCST filed this Originating Summons ("OS") seeking a mandatory injunction to compel the SP to remove the Glass Door. The MCST also sought damages and/or an indemnity against any claims whatsoever by any authority, development charges and/or losses owing to the installation of the Glass Door; and costs. The OS was dismissed at first instance, and the matter came before me on appeal.

Application to adduce further evidence

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[2] Pa Guo An's affidavit dated 10 January 2020, p 5; see also the District Judge's Grounds of Decision at [8].

10 At the first hearing before me, the MCST sought an adjournment to file an application for leave to adduce further evidence. The SP objected but I allowed the adjournment, albeit with costs against the MCST.

11 The MCST proceeded to file an application for leave to adduce, as additional evidence, the MCST's solicitors' correspondence with the URA after the first instance decision had been rendered. That correspondence was exhibited to the supporting affidavit filed by a director of the MCST's managing agent.[3]

12 In that affidavit, the MCST reiterated that the installation of the Glass Door had affected the external facade of the Development, and had increased or was likely to increase the Gross Floor Area ("GFA") of the Development.

13 The correspondence with the URA started with the MCST's solicitors' letter of 2 April 2020. That was the day the DJ's GD was issued, following his decision, with oral grounds, on 6 March 2020. It is unfortunate that the URA was not informed that a court decision on the matter had been rendered nearly a month prior. Instead, the MCST's solicitors simply repeated the MCST's unsuccessful allegations that the installation of the Glass Door had been done in breach of the "House Rules", and that the installation also contravened the BMSMA because:

> (a) it increased or was likely to increase the GFA of the Development, in contravention of s 37(1) of the BMSMA; and

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[3] John Anil Prathap Pandiri's affidavit dated 24 June 2020.

(b) it affected the appearance of the Development, under s 37(3) of the BMSMA.

14 The MCST's solicitors further asserted that the installation ran counter to the design and purpose of a PES, and that it was not in accordance with the guidelines in the Circular URA/PB/2018/07-DCG dated 17 October 2018 (the "2018/2019 Circular"). The URA was requested to confirm the matters asserted by the MCST's solicitors.

15 After a holding response from the URA on 20 April 2020, the MCST's solicitors replied the same day to convey that the MCST had not authorised the renovation but the SP had ignored the MCST and proceeded without obtaining consent as required under s 37 of the BMSMA. They also stated that the installation would increase the covered built-up area, which would thereby impact GFA/planning permission. They asked if the SP had applied to the URA for permission.

16 The URA replied substantively on 26 May 2020 to say:

> …
>
> Based on our records, the subject unit has a private enclosed space (PES) located next to the living room. *As stated in the guidelines, PES is approved as a semi-outdoor space and not allowed to be enclosed.* The enclosure of the PES at the subject unit with sliding glass doors is not approved. Consent from the MCST via a 90% resolution is required for enclosure of PES. The MCST may follow up with the appropriate actions under the BMSMA to deal with the owner's request. We will not accept a planning application without the MCST's consent.
>
> [emphasis added]

17 The SP resisted the MCST's application to adduce further evidence. He argued that the additional evidence was not relevant, it was readily available to the MCST earlier, it was not apparently credible, and it would cause him great

prejudice if admitted. He pointed out that the URA's response was at odds with what the court had decided at first instance; but the URA was not told about the court's decision, and instead the MCST's solicitors simply repeated their unsuccessful contentions as if there had been no court decision against the MCST.

18 There was force in the SP's contentions, but I decided to allow the MCST to adduce the correspondence with the URA as further evidence.

19 In a case like the present, Woo Bih Li J had held in *ACU v ACR* [2011] 1 SLR 1235 that the court had a discretion to admit fresh evidence on appeal, and in so doing was entitled though not obliged to take reference from the principles in *Ladd v Marshall* [1954] 1 WLR 1489. This is in line with the Court of Appeal's guidance in *Anan Group (Singapore) Pte Ltd v VTB Bank (Public Joint Stock Co)* [2019] 2 SLR 341 at [56]–[58]. I adopted the same approach, particularly as the proceedings before the DJ did not bear the characteristics of a full trial.

20 I agreed with the SP that the further evidence could and should have been obtained earlier, in time for the first instance decision. However, the correspondence was with the URA (the planning authority) about the SP's Unit. That pointed to it being credible and relevant, although there were issues of hearsay, as well as whether the URA's views were ultimately correct, as I will elaborate below.

Issues and findings

21 I address the following issues, in sequence:

(a) Had the Glass Door affected the appearance of the Development under s 37(3) of the BMSMA?

(b) Had the Glass Door increased the floor area of the Development under s 37(1) of the BMSMA?

(c) Were the "House Rules" by-laws, and what is the effect of the SP breaching them?

(d) Could the MCST sue the SP for failing to obtain planning permission for the installation of the Glass Door?

Had the Glass Door affected the appearance of the Development under s 37(3) of the BMSMA?

22 In the present case, if the installation of the Glass Door "affects the appearance" of the Development under s 37(3) of the BMSMA, the MCST's authorisation was required.

23 Sections 37(3) and 37(4) of the BMSMA provide as follows:

> (3) Except pursuant to an authority granted under subsection (4) by the management corporation or permitted under section 37A, no subsidiary proprietor of a lot that is comprised in a strata title plan shall effect any other improvement in or upon his lot for his benefit which affects the appearance of any building comprised in the strata title plan.
>
> (4) A management corporation may, at the request of a subsidiary proprietor of any lot comprised in its strata title plan and upon such terms as it considers appropriate, authorise the subsidiary proprietor to effect any improvement in or upon his lot referred to in subsection (3) if the management corporation is satisfied that the improvement in or upon the lot —
>
> > (*a*) will not detract from the appearance of any of the buildings comprised in the strata title plan or will be in keeping with the rest of the buildings; and

> (*b*) will not affect the structural integrity of any of the buildings comprised in the strata title plan.

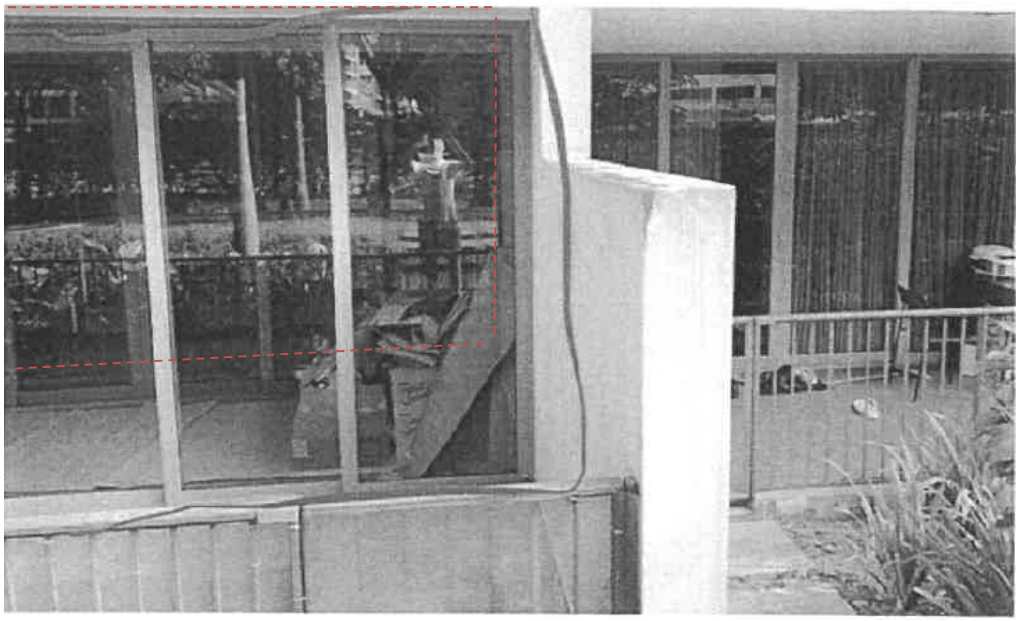
24 The DJ found that the installation of the Glass Door had not affected the appearance of the Development. On this, I respectfully disagree.

25 In *Management Corporation Strata Title Plan No 1378 v Chen Ee Yueh Rachel* [1993] 3 SLR(R) 630 ("*Rachel Chen*"), Chao Hick Tin J (as he then was) held at [17] that "[t]he sliding windows in question are clearly permanently affixed onto the balcony. They do affect the overall appearance of the building, in the sense that the balcony now looks different from its original state."

26 In finding that the installation of the Glass Door had not affected the appearance of the Development, the DJ appeared to focus on the fact that the facade of the SP's Unit post-installation was similar to the facade of the adjoining unit (see [17] of the GD). However, the present facade of the SP's Unit with the Glass Door also needs to be compared with *the Unit's* original facade with only the original glass door. On that, the DJ said (at [17] of the GD): "… I took into account the fact that what has been erected is another glass door similar to the one already existing. The external facade therefore remains the same *save that the glass door is now closer to the boundary of the PES area*, though it does not cover all of the PES area." [emphasis added] That itself shows that the facade of the SP's Unit did look different from its original state – someone looking at the Unit from the outside would now see a glass door closer to the boundary of the PES area, and a smaller open patio area. Other ground floor units with a similar configuration still had the original design with a larger open patio area, and an indoor area further from the boundary of the PES area.

27 A photograph of the SP's Unit and the adjoining unit shows that the SP's original glass door was aligned with the glass door of the adjoining unit,

but the new Glass Door disrupted that uniformity of appearance (the Unit's original glass door is marked out with dotted red lines):



28 Although the facade of the Unit still looked similar to that of the adjoining unit, the Glass Door *had* affected the appearance of the Development.

29 As such, on this issue I agreed with the MCST that the SP was, under s 37(3) of the BMSMA, required to obtain the MCST's authorisation for the installation of the Glass Door, but this had not been done.

Had the Glass Door increased the floor area of the Development under s 37(1) of the BMSMA?

There was no increase in floor area as statutorily defined

30 Sections 37(1) and 37(2) of the BMSMA state:

> **37.**—(1) Except pursuant to an authority granted under subsection (2), no subsidiary proprietor of a lot that is comprised in a strata title plan shall effect any improvement in

> or upon his lot for his benefit which increases or is likely to increase the floor area of the land and building comprised in the strata title plan.
>
> (2) A management corporation may, at the request of a subsidiary proprietor of any lot comprised in its strata title plan and upon such terms as it considers appropriate, by 90% resolution, authorise the subsidiary proprietor to effect any improvement in or upon his lot referred to in subsection (1).

31 Section 37(1) of the BMSMA is triggered if the improvement in question "increases or is likely to increase the floor area of the land and building comprised in the strata title plan", *ie*, the Development. The term used in s 37(1) of the BMSMA is "floor area", and s 37(5) of the BMSMA defines "floor area" by adopting the definition of that term in the Planning (Development Charges) Rules (Cap 232, R 5) (the "Rules").

32 Rule 2(1) of those Rules defines "floor area" as follows:

> "floor area" means —
>
> > (*a*) the gross area of all covered floor space (whether within or outside a building and whether or not enclosed) measured between party walls including the thickness of external walls where there are such walls;
> >
> > (*b*) the gross area of floor space in an open area used as a beer garden, drive-in, eating area or for other similar commercial purposes; and
> >
> > (*c*) the gross area of floor space in any outdoor area (whether covered or otherwise) which is approved by the competent authority as private enclosed space or private roof terrace in a building (not being a landed dwelling-house) in the grant of planning permission or conservation permission in relation to —
> >
> > > (i) an application for planning permission or conservation permission submitted on or after 12th January 2013; or
> > >
> > > (ii) an application for planning permission or conservation permission submitted before 12th January 2013 ("the original application") and which is followed by a subsequent application for amendment to the plans contained in the

> original application, submitted on or after 12th January 2013, due to an advice given by the competent authority to the original application,
>
> but excludes any covered area as specified by the Minister[.]

33 Applying the statutory definition of "floor area" is straightforward: the part of the PES that was now enclosed by the Glass Door was always "covered floor space" within r 2(1)(*a*) of the Rules, because it was covered by the overhanging balcony of the upstairs unit. That area was already "floor area" before the Glass Door was installed; enclosing that area by the Glass Door thus did not *increase* the floor area under s 37(1) of the BMSMA.

34 Moreover, if the application for planning permission had been submitted on or after 12 January 2013 (which was the MCST's case), then the *whole* of the PES would already have been "floor area" under r 2(1)(*c*)(i) of the Rules. Again, enclosing part of the PES by the Glass Door would not have increased the "floor area" of the Development, as the PES was always considered "floor area" to begin with.

Whether there was an increase in GFA is inconclusive and irrelevant

35 The MCST made submissions at first instance and on appeal on whether the Glass Door increased the GFA (a concept which the URA uses for planning purposes). The DJ likewise framed the issue in relation to the floor area as: "Whether the erection of the Glass Door increased the GFA of the Development" (see the section at [5]–[10] of the GD). I did not find this helpful in answering the question of whether, under s 37(1) of the BMSMA, there had been an increase in "floor area" (as statutorily defined).

36 The DJ however regarded "floor area" in s 37(1) of the BMSMA as synonymous with GFA, citing his previous decision in *Management*

Corporation Strata Title Plan No 4066 v Wong Wei Kit Leslie & Jasmin Lau [2020] SGDC 15 ("*Leslie Wong*") at [5] of his GD for its discussion of GFA (see [13]–[15] and [22]–[26] of *Leslie Wong*).

37 In *Leslie Wong* at [20]–[21], the DJ had noted the provisions of s 37 of the BMSMA and the definition of "floor area" in the Rules, but he remarked at [22]: "The definition of "floor area" in the Planning (Development Charges) Rules appears to refer to the development's GFA and is consistent with URA's treatment of GFA although the definition lacks the detailed treatment of GFA found in the URA GFA Handbook."

38 He went on to hold at [26] that the interpretation of "floor area" in s 37(1) of the BMSMA could *change or evolve* with new URA circulars or updates to the URA's GFA Handbook:

> … Given that what is or is not included as GFA is decided by URA, the definition of "floor area" in Section 37(1) of [BMSMA] could therefore evolve over time, as it has in this case with respect to PES and [private roof terraces]. There is nothing in theory objectionable with Parliament fixing the definition of a certain phrase or provision in a statute to something which can change or evolve over time.

39 With respect, I do not share that view. "Floor area" in s 37(1) of the BMSMA is not defined with reference to GFA. It is defined with reference to the definition in the Rules; that does not depend on what the URA considers GFA to be from time to time, or case by case. If the URA's policies, guidelines or views on GFA were to change, that would not thereby change the interpretation of s 37(1) of the BMSMA.

40 In any event, since a definition has been provided by statute, I applied it and asked whether there had been an increase in "floor area" as statutorily

defined; rather than equating "floor area" with GFA, and then asking whether there had been an increase in the GFA.

41 I have referred to *Leslie Wong* ([36] *supra*) because it was cited by the DJ at [5] of the GD in relation to GFA, which the DJ considered relevant to cases involving s 37 of the BMSMA (like *Leslie Wong* itself, and the present case). I note however that *Leslie Wong* is also under appeal (by way of HC/RAS 3/2020) and so I will not discuss the merits of that case.

42 I do note that notwithstanding the DJ's views in *Leslie Wong* ([36] *supra*), in the present case he stated at [10] of the GD that the URA's views would be "persuasive" (rather than decisive). I expect the DJ would have accepted that the statutory definition would ultimately prevail in the event of any difference between "floor area" and GFA, but he saw no difference between them.

43 There *can* be a difference in a case like the present, where the newly enclosed area of the PES in question was always "floor area" as defined, but it was also part of a PES, and the URA's treatment of PES in computing GFA has changed over time. Even if (depending on the applicable guidelines) the URA did not regard the area in question as GFA, it was still "floor area" for the purposes of s 37(1) of the BMSMA.

44 In any event, the submissions on GFA were mired in uncertainty because the evidence was unclear and the MCST could not say for certain which guidelines applied. Specifically, the MCST did not provide evidence as to whether the application for planning permission had been submitted before 12 January 2013, or on or after 12 January 2013.

45 Moreover, neither the guidelines prior to 12 January 2013, nor the revised guidelines implemented on 12 January 2013, were in the evidence. Instead, the MCST exhibited two later circulars:

(a) the URA Circular dated 28 February 2014, effective from 1 March 2014 (the "2014 Circular"); and

(b) the 2018/2019 Circular, effective from 17 January 2019.

46 The 2014 Circular applies to non-landed strata-titled residential developments which had been submitted for and granted Provisional Permission prior to 12 January 2013; but it did not change the position for developments where plans were submitted on or after 12 January 2013. As for the 2018/2019 Circular, that expressly states that its guidelines will not apply to formal development applications submitted before 17 January 2019 which have already been granted Provisional Permission or which will result in a Provisional Permission. Here it appears that the Final Plans, CPST 104188 and CPST 104180, were approved on 17 November 2014, and the Strata Title Plan was registered on 27 May 2015.[4]

47 Thus, if the planning application for this Development had been made between 12 January 2013 and 16 January 2019 (which was the MCST's case), the relevant guidelines applicable during that period were not in the evidence.

48 I am thus sympathetic to the difficulties which the DJ had with the MCST's argument on GFA.

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4 Liang Zhixiang's affidavit dated 11 October 2019, pp 9 and 12.

Even if the Glass Door were contrary to the URA's guidelines, that did not mean there was an increase in floor area

49 What then of the URA's e-mail of 26 May 2020 to the effect that the SP required a 90% resolution of the MCST to enclose part of the PES as he did? The contents of the URA's e-mail alluded to ss 37(1) and 37(2) of the BMSMA.

50 First, I considered this to be hearsay – the statements by the URA were put forward to establish the truth of what was said, starting from the premise that the Glass Door had increased the floor area of the Development. But the evidence was not in the form of an affidavit from a URA officer; the correspondence with the URA was simply exhibited to an affidavit from the MCST's managing agent's representative. I had raised this with the MCST's counsel at the first hearing when she sought an adjournment. The response then was that the MCST might be able to rely on s 32 of the Evidence Act (Cap 97, 1997 Rev Ed) (the "Evidence Act"). However, no notice to admit hearsay evidence was thereafter given, as required by s 32(4)(*b*) of the Evidence Act and O 38 r 4(1) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed).

51 Moreover, what was said by the URA in correspondence with the MCST's solicitors appeared to contradict the position previously taken by the URA, as reported by the managing agent to the MCST's Council. At the third Council meeting held on 25 September 2019, the managing agent had been instructed as follows: "[managing agent] to enquire from URA/BCA on the advisory for increased GFA due to unauthorized structure installation by the unit".[5] At the fourth Council meeting on 30 October 2019, the managing agent provided this update: "[managing agent] informed Council that the non-

[5] Pa Guo An's affidavit dated 10 January 2020, p 21, item 8.1.

compliance of the unauthorized sliding glass doors design does not affect increasing of GFA".[6] These aspects of the Council meetings were duly noted by the DJ (at [9]–[10] of the GD).

52 It appears that the MCST's solicitors did not draw the URA's attention to this discrepancy. The URA's correspondence did not explain the apparent contradiction, and neither did the supporting affidavit of the managing agent's representative.[7] No explanation was offered for the URA's apparent about-turn between October 2019 and May 2020.

53 Further, the URA's e-mail of 26 May 2020 had referred to "guidelines" without specifying exactly which guidelines it was referring to. The guidelines referred to in the MCST's correspondence with the URA were those in the 2018/2019 Circular, but those guidelines did not appear to be applicable (see [46]–[47] above).

54 Putting to one side the evidential difficulties, the MCST's position in its reply affidavit was that the applicable regime, in relation to the treatment of PES in assessing GFA, was as follows:[8]

> (a) The PES was part of the GFA of the Development, and it constituted "bonus GFA" under the bonus GFA scheme provided for by the URA, over and above the permissible residential GFA of the Development.

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6 Pa Guo An's affidavit dated 10 January 2020, p 12, item 8.1.

7 John Anil Prathap Pandiri's affidavit dated 24 June 2020.

8 John Anil Prathap Pandiri's affidavit dated 30 January 2020.

(b) In order to qualify for bonus GFA, the PES had to comply with the guidelines to retain a "semi-outdoor character", and to the extent that the Glass Door had enclosed part of the SP's PES, the enclosed portion would become residential GFA. Thus, the SP had increased the residential GFA of his Unit and of the Development.

55 The MCST's position that the PES was originally part of the GFA of the Development, necessarily meant that enclosing part of the PES did *not* increase the GFA of the Development. The MCST's complaint, instead, was that the enclosed part of the PES now did not qualify for bonus GFA, and so the maximum permissible GFA (without relying on any bonus GFA) would now need to accommodate that enclosed area (which could no longer be accommodated under bonus GFA). Even if there were an increase in "residential GFA", there was in fact no increase in the GFA of the Development; more importantly, there was no increase in the floor area of the Development under s 37(1) of the BMSMA.

56 Ultimately, the correspondence with the URA did not improve the MCST's position on the purported increase of floor area. The correspondence referred to GFA rather than "floor area" under s 37(1) of the BMSMA as statutorily defined. It was also not highlighted to the URA that the newly enclosed area of the PES had always been *covered* floor area – the URA was left to review the photographs and plans by itself. As of May 2020, the URA seemed to have agreed with the MCST that the SP's actions might have implications for GFA and planning permission. But it does not follow that there was an increase in the floor area of the Development under s 37(1) of the BMSMA, and, with respect, I found that there was *no* such increase.

57 Accordingly, s 37(1) of the BMSMA was not triggered, and thus the SP did not require the MCST's consent under s 37(2) of the BMSMA.

Were the "House Rules" by-laws, and what is the effect of the SP breaching them?

58 The "House Rules" were in the form of a "Resident's Guide" issued on behalf of the developer that predated the constitution of the MCST. After the MCST was constituted, it continued to adopt the "House Rules".

59 In its affidavits and oral submissions at first instance, the MCST characterised the "House Rules" as additional by-laws, but there was no objective evidence of this. In particular, there was no evidence that the "House Rules" had been passed as by-laws by a special resolution pursuant to s 32(3) of the BMSMA, and then lodged pursuant to ss 32(4) and 32(5) of the BMSMA. Accordingly, the DJ rejected the contention that the "House Rules" were by-laws (GD at [11]).

60 On appeal, the MCST abandoned its previous contention that the "House Rules" were by-laws, arguing instead that the "House Rules" did not need to be passed as by-laws. The MCST cited *Paganetto v Management Corporation Strata Title Plan No 1075* [1988] 1 SLR(R) 103 ("*Paganetto*"), where an SP alleged that that MCST's house rules were void and of no legal effect. The challenge failed. Chao Hick Tin JC (as he then was) held (at [12]) and [14]) that in carrying out its duty to control, manage and administer the common property for the benefit of all SPs (see s 29(1)(*a*) of the BMSMA), with the power to do all things reasonably necessary for the enforcement of by-laws (see s 29(2)(*b*) of the BMSMA), an MCST could make house rules for those purposes; it need not make those house rules by way of by-laws.

61 However, the learned judge also noted that by-laws had a certain status under the relevant legislation: for one thing, a breach of by-laws was then an offence (under s 35(12) of the Land Titles (Strata) Act (Cap 158, 1985 Rev Ed)); but the same could not be said for house rules. Furthermore, by-laws were and still are binding on an MCST and SPs as if they constituted properly executed agreements (a) on the part of the management corporation with the subsidiary proprietors; and (b) on the part of each subsidiary proprietor with every other subsidiary proprietor and with the management corporation, to observe and perform all the provisions of the by-laws (see s 32(6) of the BMSMA). There might however be an issue as to whether house rules are likewise binding.

62 As by-laws are a deemed contract under the BMSMA, a claim for breach of by-laws can be asserted as a contractual claim (see *Management Corporation Strata Title Plan No 940 v Lim Florence Marjorie* [2019] 4 SLR 773 ("*Marjorie Lim*") at [98]). There are also specific provisions entitling an MCST to apply to the court to enforce the performance of or restrain any breach of by-laws, but there is no equivalent for house rules. See ss 32(10) and 32(11) of the BMSMA:

> (10) The management corporation or subsidiary proprietor, mortgagee in possession, lessee or occupier of a lot shall be entitled to apply to the court —
>
> > (*a*) for an order to enforce the performance of or restrain the breach of any by-law by; or
> >
> > (*b*) to recover damages for any loss or injury to person or property arising out of the breach of any by-law from,
>
> any person bound to comply therewith, the management corporation or the managing agent.
>
> (11) The court may make such order against any such person, the management corporation or the members of its council, or the managing agent, as the court thinks fit.

63 The "house rule" relied upon here was sub-para 2.20.4 under para 2.20 on Technical Guidelines for Architectural and Interior Works, in the section captioned "Addition & Alteration (A&A) Guidelines". It read as follows:

> 2.20.4 **External Work**
>
> Subsidiary Proprietor(s) shall not carry out any work, which will affect the external facade of the building without prior written approval from the Management. Facade shall include windows, balconies, and compartments for condensing units. Common Property, open areas and all other visible parts of the building, which constitute or form part of the external appearance of the building. Any sun-shade film to be installed on the window panes and sliding glass doors shall be non-reflective.
>
> …
>
> [emphasis in bold in original]

64 The SP had applied under that "house rule" for the proposed renovation of his Unit, but his application neglected to mention the Glass Door – hence the present dispute.

65 As in *Paganetto* ([60] *supra*), the MCST was entitled to use such a "house rule" in the exercise of its powers, duties and functions, although it would not have the same status as a by-law.

66 For present purposes, the "House Rules" did not add anything to the MCST's case, since I found that the Glass Door *did* affect the appearance of the Development under s 37(3) of the BMSMA. As such, the SP ought to have sought the MCST's authorisation, and he ought to have done so prior to the installation of the Glass Door, in accordance with "house rule" 2.20.4.

Could the MCST sue the SP for failing to obtain planning permission for the Glass Door?

67 A belated fourth ground relied upon by the MCST only on appeal was that the SP required written permission from the URA for the installation of the Glass Door, which he had not obtained.

68 Thus, in the MCST's submissions for leave to adduce further evidence, it was submitted at para 17 that:

> Regarding relevance and credibility, the issues in this action are:
>
> (a) Whether the Unauthorised Installation contravenes the URA guidelines with regard to PES; and
>
> (b) Whether the Respondent had obtained any approval from URA with regard to the Unauthorised Installation.
>
> …

69 The correspondence from the URA does indicate that enclosing part of the PES was contrary to the URA guidelines, and that the URA expected the SP to have made a planning application for this.

70 Under s 12(1) of the Planning Act (Cap 232, 1998 Rev Ed) (the "Planning Act"), planning permission is required to carry out or permit the carrying out of development of land. Section 3(1) of the Planning Act defines "development" to mean "the carrying out of any building … or other operations in, on, over or under land, or the making of any material change in the use of any building or land". Section 3(2) provides that various operations or uses of land shall not be deemed for the purposes of the Planning Act to involve development of land, including:

> (*a*) the carrying out of works for the maintenance, improvement or other alteration of a building which do not materially affect the external appearance or the floor area of the building[.]

71 Thus, the carrying out of works for the improvement of a building which *do* materially affect the external appearance or the floor area of the building, would not fall within the exclusion in s 3(2)(*a*), and *could be* "development of land" within the Planning Act. I have found that the installation of the Glass Door did affect the external appearance of the Development, but I will reserve

comment on whether it *materially* affected the external appearance of the Development. That is an issue which the URA and the SP may have to resolve as between them; but it is not an issue which I need to decide as between the MCST and the SP, as the parties to the present proceedings.

72 The key question for present purposes is whether an MCST can bring an action against an SP for an improvement to that SP's unit/lot merely on the ground that the SP has not obtained planning permission from the URA. I would say no.

73 In this regard, s 37(2A) of the BMSMA provides as follows:

> (2A) To avoid doubt, subsections (1) and (2) do not affect the operation of the Planning Act (Cap. 232), or any requirement under that Act for written permission for any improvement in or upon a lot which increases or is likely to increase the floor area of the land and building comprised in the strata title plan.

74 I did not however read that as empowering the MCST to take action against SPs for Planning Act matters. Section 37(4A) of the BMSMA expressly allows an MCST to give written notice to SPs to require that any breaches under ss 37(1) or 37(3) of the BMSMA be remedied. But s 37(4A) of the BMSMA makes no such express allowance in relation to s 37(2A) of the BMSMA.

75 I noted also that the MCST's solicitors' letter of demand of 13 August 2019 did not cite ss 37(2A), 37(4A) or 37(5) of the BMSMA – it only cited ss 37(1), 37(2), 37(3) and 37(4). Subsections 37(2A) and 37(4A) of the BMSMA only came into force on 1 February 2019, but they were already in force when the MCST's solicitors issued the demand letter of 13 August 2019.

76 I was not persuaded that "the powers, duties and functions conferred or imposed on [an MCST] by or under [the BMSMA], or by the by-laws" (per

s 24(3) of the BMSMA) extended to ensuring that SPs comply with the Planning Act, in respect of improvements that SPs wish to make to their units/lots.

77 The MCST cited the Strata Titles Board's decision in *The Management Corporation Strata Title Plan No 4188 v Lim Yeong Seng and Kam Leh Hong Helen* [2020] SGSTB 2 at [5]. There, the Board agreed with the URA's view that the MCST in that case was in the best position to get residents to remove the unauthorised glass curtains at the balcony area, since the MCST was empowered by the BMSMA to enforce the by-laws that have been drawn up in relation to such works. In that case, the URA had expressly referred to applicable by-laws (and in the present case there were no such by-laws). In the event, the MCST in the present case did not proceed on the basis of breach of any by-laws, or lack of planning permission (at least at first instance), but simply on the basis that there had been a contravention of ss 37(1) and 37(3) of the BMSMA.

78 A lack of planning permission for works within an SP's lot is not something for which, *per se*, an MCST could sue an SP for. It is essentially an issue between the SP and the URA under the Planning Act.

What relief, if any, should be awarded in this case?

Should a mandatory injunction be awarded?

79 The MCST sought a mandatory injunction to require the SP to remove the Glass Door. The grant of an injunction is at the discretion of the court. In *Tay Tuan Kiat and another v Pritnam Singh Brar* [1985–1986] SLR(R) 763, L P Thean J (as he then was) recognised (at [8]–[10]) that the court must consider whether the grant of the injunction sought will produce a *fair result*, taking into account considerations such as the obligation imposed on the

defendant, as compared to the benefit to be gained by the plaintiff. In that case, although Thean J found that the defendant's wall had encroached upon the plaintiff's property, he did not order the defendant to fulfil the "extremely onerous" obligation of removing the wall (see [9] and [12]–[13] of the judgment).

80 In *Rachel Chen* ([25] *supra*), Chao J accepted (at [22]) that as a general principle, 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; or
>
> (b) the breach is trivial or has 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.

81 Chao J found that the SP in that case had breached the by-laws by installing windows in her balcony without the consent of her development's MCST, but he did not order her to remove the windows. Chao J noted (at [23]) that other SPs had erected similar windows which they could not be required to remove; by the time that MCST was constituted, uniformity was already no longer possible.

82 *Choo Kok Lin and another v Management Corporation Strata Title Plan No 2405* [2005] 4 SLR(R) 175 is similar. Judith Prakash J (as she then was) found that the appellant SPs had breached the by-laws by installing two new air-conditioning compressors; but even if they were to remove those compressors, other compressors which the appellant SPs and other SPs had installed earlier would remain. Moreover, for a time that MCST had no objections to the appellant SPs' new compressors so long as they were regularised with the authorities, but the MCST thereafter changed its mind and refused to endorse

the appellant SPs' application form for submission to the URA. In the circumstances, the appellant SPs were not ordered to remove the two new compressors (see [57]–[59] and [61] of the judgment).

83 In the present case, factors against the grant of an injunction include:

(a) The Glass Door is of the same design as the original glass door, and the facade of the Unit still looks similar to that of the adjoining unit (GD at [16]).

(b) SPs are allowed to install full-length blinds at the edge of their balconies or PES areas; when those blinds are fully drawn, they block the balcony or PES from view entirely (GD at [16]). However, the SP did not keep his PES blocked from view at all times, and the Glass Door was noticed. The fact that blinds or screens can be installed, and can be shut from time to time, does not mean that changes to the facade do not affect the appearance of the building. But it is relevant to consider this in deciding whether to order that improvements made be undone.

84 Factors in favour of the grant of an injunction include:

(a) The cost of removing the Glass Door: the SP did not say that if he were now required to remove it, that would be very costly or would otherwise cause substantial hardship to him.

(b) It would tend to undermine the authority of the MCST if the SP were simply allowed to retain the Glass Door, notwithstanding that it had affected the appearance of the Development under s 37(3) of the BMSMA, and the SP ought to have sought and obtained the MCST's

authorisation. On this, see *Rachel Chen* ([25] *supra*) at [24]–[26] and *Marjorie Lim* ([62] *supra*) at [118].

85 I concluded that I should make some order in relation to the Glass Door, rather than just leaving things per the status quo. However, requiring the SP to remove the Glass Door right away would not be a fair result.

86 At times, the SP appeared amenable to seeking authorisation from the MCST, albeit after the fact. In the pre-action correspondence on 22 July 2019, the SP had told the MCST's managing agent: "if necessary, I would seek your understanding to allow additional submission of A&A application to your office to reflect the additional sliding door for re-approval".[9]

87 The managing agent replied on 23 July 2019:[10]

> It is not allowed to install glass panels or another screens [*sic*] which are not in compliance with MCST approved screens or color code.
>
> *Glass panels are not allowed as they affect the building facade. Even you apply now it will not be approved.*
>
> [emphasis added]

88 Despite the managing agent's negative reply, the SP could have pressed the point by making an application to the MCST, but he did not. Instead, both sides maintained their respective positions throughout the court proceedings.

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9 Pa Guo An's affidavit dated 10 January 2020, p 32.

10 Pa Guo An's affidavit dated 10 January 2020, p 31.

89 More recently, the SP made enquiries with the managing agent about the procedure for tabling a matter for consideration at a meeting of the MCST, but the SP did not follow up on this thereafter – he said he had been busy.

90 At the hearing on 4 September 2020, I was informed that a meeting of the MCST would be held on 18 September 2020. In the circumstances, I made the following orders:

(a) The SP is to seek authorisation from the MCST at the meeting to be held on 18 September 2020, unless the SP and the MCST agree to defer the matter to a later date.

(b) If the SP fails to obtain authorisation, he is to remove the Glass Door within two weeks of 18 September 2020 or such later date as the SP and the MCST might agree to.

Should damages or an indemnity be awarded?

91 The SP has not caused any loss or damage to the MCST for which I would order any damages.

92 The MCST also sought an indemnity against any claims whatsoever by any authority, development charges and/or losses owing to the installation of the Glass Door. There is, however, nothing to show that there would be claims against the MCST, or that the MCST would be under any liability, as a result of the SP's installation of the Glass Door.

93 When the MCST reported the matter to the URA, the URA did not respond by bringing any claims against the MCST. Indeed, the MCST is not liable for any development charge that may pertain to the SP's installation of

the Glass Door. Instead, under s 37(1) of the Planning Act, such a development charge may be levied on:

> (*a*) the owner of the land with respect to which the planning permission or conservation permission is granted; or
>
> (*b*) the person who applied for the relevant planning permission or conservation permission.

94 In the circumstances, I declined to order any damages or indemnity.

Conclusion

95 For the above reasons, I allowed the appeal with costs to the MCST here and below, and made the orders set out in [90] to address the issue of the Glass Door.

Andre Maniam
Judicial Commissioner

Leo Cheng Suan and Denise Tay (Infinitus Law Corporation) for the plaintiff;
The defendant in person.