IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 270

Originating Summons No 1337 of 2017
(Summonses Nos 2140 and 2145 of 2018)

Between

THE MANAGEMENT CORPORATION STRATA TITLE PLAN NO 901

… *Plaintiff*

And

LIAN TAT HUAT TRADING PTE LTD

… *Defendant*

GROUNDS OF DECISION

[Civil Procedure] — [Striking out]

[Land] — [Strata titles] — [By-laws]

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v
Lian Tat Huat Trading Pte Ltd

[2018] SGHC 270

High Court — Originating Summons No 1337 of 2017 (Summonses Nos 2140 and 2145 of 2018)
Dedar Singh Gill JC
23 August, 5 September 2018

7 December 2018

Dedar Singh Gill JC:

Introduction

1 In Originating Summons No 1337 of 2017 ("OS 1337"), the plaintiff management corporation ("MC") sought damages and other remedies from the defendant subsidiary proprietor on the basis that the defendant's tenant had breached certain by-laws by encroaching onto the common property of the development. The defendant filed Summonses Nos 2140 and 2145 of 2018 ("SUM 2140" and "SUM 2145"), which were applications to strike out the whole of the plaintiff's claim in OS 1337 under O 18 r 19 of the Rules of Court (Cap 322, R5, 2014 Rev Ed) ("the Rules") and for the preliminary determination of a question of law under O 14 r 12 of the Rules respectively.

2 After hearing the parties, I held that the defendant was not the proper party to OS 1337 and that the plaintiff had acted beyond its statutorily-

prescribed powers by passing a by-law imposing on-demand liquidated damages in respect of encroachments onto common property. I therefore allowed SUM 2140 and struck out the plaintiff's claim in OS 1337 in its entirety. I made no order as to SUM 2145. As the plaintiff has appealed against my decision, I now set out the full grounds of my decision.

Background

3 The plaintiff is the MC of a development known as the Hoa Nam Building ("the Building"). The defendant, Lian Tat Huat Trading Pte Ltd, is the subsidiary proprietor of a unit on the ground floor of the Building ("the Unit").[1]

4 On 1 August 2016, the defendant entered into a tenancy agreement ("the Tenancy Agreement") with L20 218 Coffeeshop ("the Tenant") to lease the Unit for 36 months. The Tenant, who operated a coffee shop, placed its tables, chairs and other items in the walkway outside the Unit and also installed various fixtures such as television sets and lighting in the walkway. It was undisputed that the walkway was the common property of the Building and that the Tenant had encroached on the common property.[2] According to the plaintiff, this had been happening since October 2016.[3]

5 Clause 3.30(ii) of the Tenancy Agreement required the Tenant to comply with the rules, regulations, requirements and by-laws of the plaintiff. In turn, the by-laws of the Building ("By-laws"), which were passed by the plaintiff, included a number of provisions on the topic of encroachment. The relevant By-laws read as follows:[4]

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1 Defendant's submissions, para 6.

2 Plaintiff's submissions, paras 6–7; defendant's submissions, para 7.

3 Plaintiff's submissions, para 63.

4 1st affidavit of Lim On Guan, pp 27–28 and 57.

ENCROACHMENT

64. A subsidiary proprietor or occupier shall at all times in the use of his lot confine such use to within the boundaries of his lot and shall not in any way or for any reason occupy or encroach upon any part of the common property.

65. A subsidiary proprietor or occupier (having created a tenancy or granted a license in respect of the occupation or use of his lot) whose tenant or licensee is found to wilfully occupy or encroach onto the common property, shall forthwith take all necessary action, including legal proceedings at his own cost, to evict such tenant or licensee from his lot.

66. Any subsidiary proprietor or occupier who or whose tenant or licensee in respect of his lot, encroaches and continues to encroach upon the common property shall be liable to pay to the Management Corporation on demand damages calculated according to the following formula for the breach of By-law 9 of the First Schedule of the [Land Titles (Strata) Act (Cap 158, 1988 Rev Ed)] or any of these By-laws concerning encroachment:-

$$D = \frac{R\ x\ S}{30}\ x\ 2 \quad where,$$

"**D**" is damage payable per day

"**R**" is the marked rental determined by the Management Council per month per square metre for the lot(s) immediately adjacent to the space occupied;

"**S**" is the space in square metres occupied by the objects fixtures, goods or things.

Any payment received by the Council shall be without prejudice to any other rights and remedies of the Management Corporation against the defaulting subsidiary proprietor, tenant, occupier or licensee. The Council shall have the power to vary the penalties imposed in this By-law as it deems fit. The damages recovered by the Council under this By-law shall be treated as income received by the Management Corporation and shall be paid into the Management Fund account.

67. The Council shall have the right to remove any article or thing which has been placed on the common property and shall further be entitled to recover against the owner or custodian of such article or thing the costs of

> the removal and storage of the said article or thing from the defaulting subsidiary proprietor, tenant, occupier or licensee.

By-law 9 of the First Schedule of the Land Titles (Strata) Act (Cap 185, 1988 Rev Ed), which is referred to in By-law 66 above, states:

> **Obstruction of common property**
>
> 9. A subsidiary proprietor or occupier of a lot shall not obstruct the lawful use of the common property by any person.

6 After the Tenant had failed to comply with repeated warnings by the defendant to remove the unauthorised items and fixtures from the walkway, the defendant commenced proceedings against the Tenant in the State Courts on 14 November 2017, seeking an order of possession against the Tenant.[5]

7 The plaintiff subsequently filed OS 1337 in the High Court on 28 November 2017, seeking the following relief:[6]

(a) an order for the defendant to take action against the Tenant to stop the Tenant's unauthorised encroachments on the common property and to remove all unauthorised fixtures, pursuant to By-law 65;

(b) damages of $344,018.57 for the Tenant's encroachments from 1 November 2016 to 31 August 2017, pursuant to By-law 66;

(c) further damages of $1,131.64 per day from 1 September 2017 until such time the Tenant ceases its encroachments, also pursuant to By-law 66;

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5 Defendant's submissions, paras 8–9.

6 Originating Summons No 1337 of 2017.

(d) an order for the defendant to indemnify the plaintiff, pursuant to By-law 67 against all costs, expenses and disbursements arising out of or in connection with the Tenant's encroachments, and for the damages due to the plaintiff under By-law 66; and

(e) costs on an indemnity basis.

8 On 10 January 2018, the defendant filed Summons No 184 of 2018 ("SUM 184") to convert OS 1337 into a writ action. SUM 184 also included a prayer that OS 1337 be set aside. Following negotiations between the parties, the defendant withdrew SUM 184 and agreed to pay the plaintiff $1,500 in costs. The consent order was recorded by the court on 11 April 2018.[7]

9 On 8 May 2018, the defendant filed two further applications, which were the subject of these proceedings:[8]

(a) SUM 2140 was an application under O 18 r 19 of the Rules to strike out OS 1337 in its entirety.

(b) SUM 2145 was an application under O 14 r 12 for the preliminary determination of a question of law. Specifically, the defendant sought a declaration that the plaintiff had sued the wrong party and should not be allowed to claim damages from the defendant.

10 Subsequent to the filing of these applications, the defendant obtained a writ of possession against the Tenant, and the Bailiff of the State Courts issued a notice to the Tenant to vacate the Unit. On 5 July 2018, the Bailiff handed vacant possession of the Unit to the defendant.[9]

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7 Certified transcript of 11 April 2018 (SUM 184); plaintiff's submissions, para 12.

8 Plaintiff's submissions, para 13.

Parties' cases

11 The defendant made three key submissions in support of its applications in SUM 2140 and SUM 2145:

(a) First, it argued that it was not the proper party to be sued and that the plaintiff should have instead proceeded against the Tenant, who was bound by the relevant By-laws and had breached them. According to the defendant, s 32(10) of the Building Maintenance and Strata Management Act (Cap 30C, 2008 Rev Ed) ("the BMSMA") makes clear that it is the breaching party who will be held liable.

(b) Second, the defendant submitted that By-law 66 was invalid and unenforceable because the plaintiff did not have the power under s 32(3) of the BMSMA to pass such a by-law which imposed liquidated damages or penalties for breach. The defendant's case was that the wording of s 32(3) shows that Parliament did not intend to grant such a power to MCs, and the defendant supported this interpretation of s 32(3) by contrasting the provision against s 32(3) of the Malaysian Strata Management Act 2013 (Act 757) ("the Malaysian Act") which expressly provides for such a power, as well as by referring to certain extrinsic materials relating to public consultations on proposed amendments to the BMSMA in 2017. Further, it contended that a contrary reading of s 32(3) of the BMSMA would conflict with s 33(1), which empowers an MC to make a by-law conferring on a subsidiary proprietor the exclusive use of common property in exchange for payment, subject to certain procedural requirements.

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[9] 3rd affidavit of Ang Thian Lam, paras 16–18.

(c) Third, it argued that By-law 66 was an unenforceable penalty provision. It contended that the prescribed formula for damages (see [5] above) was not a genuine pre-estimate of loss, as the "x 2" multiplier in the formula was disproportionate and the variable "*R*" was capricious in that it was based on rental amounts determined solely by the plaintiff.

(d) In any case, the defendant made the further point that it had already taken action against the Tenant and successfully evicted the Tenant from the Unit. Therefore, the plaintiff's first prayer in OS 1337 for an order requiring the defendant to take action against the Tenant ("Prayer 1") was no longer a live issue before the court.

12 In response, the plaintiff made the following arguments:

(a) First, it conceded that Prayer 1 was no longer a live issue, but nonetheless maintained that it should not be struck out as the plaintiff was entitled under By-law 65 to seek such relief against the defendant.

(b) The plaintiff took the position that the defendant was a proper party to the action as By-law 66 gave the plaintiff a discretion to pursue either the defendant or the Tenant for the Tenant's encroachments onto the common property of the Building. Any damages paid to the plaintiff could be recovered by the defendant from the Tenant under the Tenancy Agreement.

(c) Next, it argued that it was entitled under the BMSMA to pass By-law 66. It contended that the defendant's argument, taken to its logical conclusion, would mean that MCs would not even have the power to pass by-laws to impose wheel clamp removal fees to regulate unauthorised uses of carparks. It also argued that the defendant's

interpretation of the relevant provisions in the BMSMA was at odds with parliamentary statements to the effect that the Act was meant to empower MCs to decide on estate-related issues for the benefit of their subsidiary proprietors.

(d) Finally, the plaintiff submitted that By-law 66 was not penal or punitive in nature. It characterised the damages formula as a fair one which enabled it to collect rent for the unauthorised use of common property, and analogised the "x 2" multiplier in the formula to the situation where a tenant holds over and becomes liable for double rent.

Issues to be determined

13 The following main issues arose for my determination:

(a) first, whether the defendant was the proper party to OS 1337; and

(b) second, whether By-law 66 was invalid on the basis that the plaintiff had no power to pass such a by-law.

14 I will first set out the reasons for my decision in SUM 2140 (the striking-out application) before discussing SUM 2145 (the application for a preliminary determination of a question of law), because there would be no need to decide the latter application if I struck out the plaintiff's claim in its entirety.

The law on striking out

15 The legal principles applicable to an application for striking out under O 18 r 19 of the Rules are well-established and not in dispute. The court may strike out any pleading on the following four grounds specified in r 19(1):

…

> (a) it discloses no reasonable cause of action or defence, as the case may be;
>
> (b) it is scandalous, frivolous or vexatious;
>
> (c) it may prejudice, embarrass or delay the fair trial of the action; or
>
> (d) it is otherwise an abuse of the process of the Court …

16 In general, the court will only strike out a pleading or claim in "plain and obvious cases" (*Gabriel Peter & Partners (suing as a firm) v Wee Chong Jin and others* [1997] 3 SLR(R) 649 at [18]). In particular, the Court of Appeal explained in *The Bunga Melati 5* [2012] 4 SLR 546 at [32] that a claim will be struck out under the "frivolous or vexatious" limb in r 19(1)(*b*) if it is "plainly or obviously unsustainable" on the facts or on the law.

Preliminary issue of whether Prayer 1 should be struck out by reason of subsequent events

17 Prior to turning to the parties' submissions on the core issues in SUM 2140 and SUM 2145, I address the preliminary issue of whether Prayer 1 should be struck out in view of the fact that it was no longer a live issue before the court.

18 Pursuant to By-law 65, where its tenant has encroached on the common property of the Building, a subsidiary proprietor is under an obligation to take "all necessary action" against its tenant, including legal proceedings, to evict such tenant. Given that the defendant's tenant had in fact committed various encroachments on the common property of the Building, the plaintiff was entitled to file OS 1337 as it did on 28 November 2017, and by Prayer 1 to ask that the defendant take action to stop the Tenant's encroachments.

19 However, as it transpired, the defendant had separately commenced proceedings against the Tenant in the District Court. On 3 May 2018, the defendant obtained final judgment against the Tenant for, *inter alia*, delivery of vacant possession. On 5 July 2018, the bailiff of the State Courts executed the writ of possession against the Tenant, and possession of the Unit was handed over to the defendant.

20 Given that the Tenant was no longer in occupation of the Unit, there was no further action that the defendant could possibly take against the Tenant to stop the Tenant's encroachments. In these circumstances, it was pointless to allow the plaintiff to continue pursuing Prayer 1. It would also have been unfair to compel the defendant to expend money, time and effort to defend the claim.

21 I therefore struck out Prayer 1 on the basis that it had, by reason of subsequent events, become frivolous and vexatious, and an abuse of process of the Court, under O 18 r 19(1)(*b*) and (*d*) of the Rules respectively. I should mention that although I agreed with the defendant that Prayer 1 should be struck out, the plaintiff was nonetheless justified in seeking Prayer 1 at the time OS 1337 was filed. I therefore considered this fact when making my order on costs.

Whether the defendant was the proper party to OS 1337

22 A key thrust of the defendant's case was that it was not the proper party to OS 1337 and that the plaintiff ought to have sued the Tenant instead, who was the real party liable for breaching its obligations not to encroach upon the common property of the Building. The plaintiff argued in response that the defendant could be held liable under By-law 66 and was therefore the proper party, and added that it was open to the defendant to separately recover from the

Tenant the damages paid to the plaintiff. I agreed with the defendant's position for the reasons which follow.

23 I begin by considering the scheme of the BMSMA, which makes clear that an MC is only entitled to proceed against the person or entity in breach of the particular by-law. Specifically, s 32(10) of the BMSMA provides:

> 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; 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.

In other words, s 32(10) provides that where there has been a breach of any by-law, the MC is entitled to seek relief in court from any person bound to comply with the relevant by-law. The proper party must therefore be determined with reference to the particular by-law breached.

24 In my judgment, the relevant by-law that had been breached was By-law 64, which set out the obligation not to encroach upon the common property of the Building. Pursuant to s 32(10), the only party whom the plaintiff was entitled to sue in respect of encroachments on the common property was the party who was bound to comply with the obligation not to encroach on the same. Naturally, that obligation fell squarely and only on the party who was occupying and using the unit at the material time. It was undisputed that it was the Tenant, and not the defendant, who was responsible for the encroachments. By-law 64 was binding on the Tenant as an occupier of the Unit pursuant to both cl 3.30(ii) of the Tenancy Agreement (see [5] above) and s 32(6) of the BMSMA, which

provides that occupiers of a lot must comply with the by-laws. The Tenant was thus clearly in breach of its obligations under By-law 64, and not the defendant who was not even in occupation of the Unit.

25 I found this position to be consistent with the decision of the High Court in *The Management Corporation Strata Title No 561 v Pontiac Land Pte Ltd* [1992] SGHC 190 ("*Pontiac Land*"). The facts of *Pontiac Land* were largely similar to the present case in that the tenant of the lot, who operated a cafeteria on the premises, had encroached upon the common property of the building. The MC commenced proceedings against the subsidiary proprietor rather than the tenant, seeking an injunction against further interference with the common property and an order that the defendant remove all of its tenant's things from the common property. Goh Joon Seng J dismissed the application, holding that the subsidiary proprietor was not the proper party to the action. Instead, "[t]he proper party against whom these proceedings should [have been] brought [was] the [t]enant", who was responsible for the encroachments and was required to comply with its obligations under the relevant by-laws. Similarly, the Tenant here was solely responsible for the encroachments and therefore the proper party against whom the remaining prayers in OS 1337 should have been sought.

26 The plaintiff argued that the relevant by-law that had been breached was By-law 66 instead, and also sought to distinguish *Pontiac Land* on the basis that the by-law breached in that case was not targeted at the subsidiary proprietor in the same way that By-law 66 was. I did not agree with this submission. By-law 66 was simply an on-demand provision which purportedly provided for the liability of a subsidiary proprietor to pay damages for breaches committed by its tenant or licensee according to a prescribed formula. It did not contain any obligation to refrain from encroaching on the common property, which was the real breach being complained of in this case. In any event, for separate reasons

which I will explain below, By-law 66 was invalid and unenforceable to begin with.

27 It was therefore clear to me that the defendant was not the proper party to the action regarding the encroachments on the common property of the Building as prohibited by By-law 64, as it was not in a position to commit such a breach. On this basis, I found it appropriate to strike out the remaining prayers of OS 1337 for failing to disclose a reasonable cause of action against the defendant, and for being frivolous or vexatious in the sense that they were legally unsustainable, under O 18 r 19(1)(*a*) and (*b*) of the Rules respectively.

Whether By-law 66 was valid and enforceable

28 Further, I also found it appropriate to allow the striking-out application for the independent reason that By-law 66, upon which the remaining prayers in OS 1337 were based, was invalid and unenforceable because the plaintiff did not have the power to pass such a by-law under the provisions of the BMSMA.

29 I reproduce the relevant parts of By-law 66 here for ease of reference:

> Any subsidiary proprietor or occupier who or whose tenant or licensee is in respect of his lot, encroaches and continues to encroach upon the common property shall be liable to pay to the Management Corporation on demand damages calculated according to the following formula for the breach of By-law 9 of the First Schedule of the Act or any of these By-laws concerning encroachment:-
>
> $$D = \frac{R\ x\ S}{30} x\ 2 \quad where,$$
>
> "**D**" is damage payable per day
>
> "**R**" is the marked rental determined by the Management Council per month per square metre for the lot(s) immediately adjacent to the space occupied;
>
> "**S**" is the space in square metres occupied by the objects fixtures, goods or things. …

By-law 66 thus imposes an obligation upon the subsidiary proprietor to pay damages, calculated according to the above formula, when his tenant has encroached upon the common property of the Building.

30 As an MC created under the BMSMA, the plaintiff could only have such powers that were expressly or impliedly granted under the BMSMA, and anything it did outside of these powers would have been void *ab initio* (*Management Corporation Strata Title Plan No 473 v De Beers Jewellery Pte Ltd* [2002] 1 SLR(R) 418 at [10]). The validity of By-law 66 therefore had to be considered against the BMSMA regime.

31 I refer again to s 32(10) of the BMSMA (set out in full at [23] above), which provides that an MC is entitled to recover damages arising out of breaches of by-laws upon application to the court. When making such an application, an MC must be able to prove its loss in order to recover damages from the defendant. Accordingly, it is for *the court* to determine the quantum of damages payable when there has been a breach. In contrast, By-law 66 was an on-demand provision, under which the MC unilaterally determined the damages payable to it, calculated in accordance with the formula contained therein, without the need to establish any loss and without the need to apply to court. This mechanism was inconsistent with the scheme contemplated in the BMSMA. In my judgment, By-law 66 was beyond the powers of an MC and the plaintiff's prayers in OS 1337 could not have been validly premised on such a basis.

32 For completeness, I briefly address the defendant's further submission that By-law 66 was at odds with s 33(1) which empowers an MC to make a by-law to confer on a subsidiary proprietor the exclusive use of common property in exchange for payment, subject to the requirement that the MC obtains the written consent of the subsidiary proprietor and passes the by-law by an

appropriate resolution. This argument did not have any impact on my decision, as I found that By-law 66 was meant to deal with situations where the obligation not to encroach on common property was breached, whereas s 33(1) was concerned with agreements between the MC and the subsidiary proprietor for the latter to be granted exclusive use of common property. At the same time, I also did not agree with the plaintiff's submission that it necessarily followed from s 33(1) that MCs had the power to impose fees for the unauthorised use of common property. Although I did not think that s 33(1) supported either party's arguments, I was nonetheless satisfied on the basis of s 32(10) that the plaintiff was not entitled to pass By-law 66.

33 I note that a large part of the parties' submissions was directed at the question of whether an MC has the power to make by-laws which impose fines or fees for the breaches of its by-laws. It was not necessary for me to decide this question because By-law 66 concerned the calculation of liquidated damages according to a prescribed formula and was not a provision which imposed a fine. However, for completeness, I set out the parties' arguments on this issue as it was a point of contention in their submissions.

34 In summary, the plaintiff argued that if MCs did not have the power to impose fees or fines for breaches of by-laws, this would mean that MCs would not be able to impose fines or fees even for routine matters such as parking violations and wheel clamp removal without having to file an application in court.

35 The defendant submitted that the validity of By-law 66 had to be assessed by reference to s 32(3) of the BMSMA, which vests in MCs the power to pass a special resolution to make by-laws for certain prescribed purposes but

is silent as to whether MCs may impose fines for breaches of by-laws. Section 32(3) reads:

> Save where otherwise provided in section 33, a management corporation may, pursuant to a special resolution, make by-laws, or amend, add to or repeal any by-laws made under this section, for the purpose of controlling and managing the use or enjoyment of the parcel comprised in the strata title plan, including all or any of the following purposes:
>
> (a) safety and security measures;
>
> (b) details of any common property of which the use is restricted;
>
> (c) the keeping of pets;
>
> (d) parking;
>
> (e) floor coverings;
>
> (f) garbage disposal;
>
> (g) behaviour;
>
> (h) architectural and landscaping guidelines to be observed by all subsidiary proprietors;
>
> (i) such other matters as are appropriate to the type of strata scheme concerned.

36 The defendant cited *Management Corporation Strata Title Plan No 2746 and others v Boon Kee Battery Service and another* [2012] SGSTB 2 ("*Boon Kee Battery*") for the proposition that the omission of any mention of the imposition of fines or fees (or even liquidated damages) from s 32(3) indicated that Parliament had not meant to vest any such power in MCs. The facts in *Boon Kee Battery* concerned two by-laws which purportedly allowed the MC to impose fees of $200 per breach of the prohibitions against the use of forklifts and the servicing of vehicles in the driveway of the premises. The Strata Titles Board held at [45] that s 32(3) did not allow an MC to pass by-laws providing for a monetary penalty to be imposed for breaches of by-laws, thus the two by-laws in question were invalid as "Parliament could not have and did

not entrust [MCs] with undefined and unlimited powers of imposing charges/penalties/fines or any other monetary payments upon subsidiary proprietors for breaches/contraventions of by-laws made under Section 32(3) of the Act" (at [52]).

37 The defendant then drew my attention to two sets of extrinsic materials to assist in the interpretation of s 32(3). The first was s 32(3) of the Malaysian Act, an equivalent provision which is similar to our s 32(3) and enumerates the exact same list of purposes from s 32(3)(*a*)–(*h*), save that s 32(3)(*i*) instead reads:

> (i) imposition of fine not exceeding two hundred ringgit against any parcel owner, occupant or invitee who is in breach of any of the by-laws.

38 The second set of materials related to the Building and Construction Authority's ("BCA's") public consultations from 2012 to 2017 for amendments to the BMSMA. In a consultation paper titled "Public Consultation on the Proposed Amendments to the Building Maintenance and Strata Management Act" dated 25 September 2013, the BCA made the following observations and recommendations:

> 17 *Currently, a MCST cannot impose fines on errant offenders for any contravention of the by-laws*. Any breach of by-law has to be enforced by applying to the Court for a conforming or restraining order.
>
> 18 There are varying concerns on the ability of MCSTs to exert effective control over the breach of by-laws especially so when it comes to the imposition of monetary fines on errant SPs. There are concerns that Court action by the MCST is costly and hence discourage MCST from enforcing the breach of by-laws. There were suggestions that the MCST be empowered to carry out necessary enforcement actions via the imposition of a fine, to ensure by-laws are adhered to by the residents. The proposal will be to state in the by-laws that the quantum of fine be capped at $200. Furthermore, the imposition of a fine should

> be restricted to breach of only a limited list of the prescribed by-laws, as follows:
>
> i. Vehicles
>
> ii. Obstruction of common property
>
> iii. Alteration or damage to common property
>
> iv. Depositing rubbish, etc. on common property
>
> v. Storage of flammable materials
>
> vi. Prevention of fire and other hazards
>
> vii. Anti-littering [please also see Recommendation 4]
>
> [emphasis added]

The BCA had proposed recommending that MCs be allowed to impose fines of up to $200 in respect of certain prescribed matters, but it subsequently removed this recommendation in the final round of public consultations in February 2017, and no such provision was added to the BMSMA in the course of the 2017 amendments to the said Act.

39 Nonetheless, I reiterate that it was not necessary to decide this issue for the purposes of the present applications. For the reasons set out at [30]–[31] above, By-law 66 was invalid and hence the plaintiff's prayers for damages pursuant to By-law 66 were amenable to be struck out under O 18 r 19(1)(*a*) of the Rules in that they failed to disclose a reasonable cause of action against the defendant, as well as under r 19(1)(*b*) of the Rules in that they were legally unsustainable and thus "frivolous or vexatious". As all of the plaintiff's prayers for substantive relief were struck out, it followed that its additional prayer in OS 1337 for indemnification from the defendant against all costs, expenses and disbursements in these proceedings should also be struck out.

40 Given my decision to strike out the whole of the plaintiff's claim in OS 1337, it was unnecessary to consider the preliminary question of law framed

in SUM 2145 or to grant the declaratory relief sought by the defendant. I therefore made no order on SUM 2145. I note, however, that SUM 2145 turned on the same issue of whether the defendant was the proper party to OS 1337, and I would have answered this question in favour of the defendant as I did in the striking-out application if it had been necessary for me to decide.

Conclusion

41 For the above reasons, I held that the defendant was not the proper party to OS 1337 and that By-law 66 was invalid as the plaintiff had no power to make such a by-law under the provisions of the BMSMA. I therefore allowed SUM 2140 and struck out the plaintiff's claim in its entirety under O 18 r 19(1)(*a*) and (*b*) of the Rules. I made no order as to SUM 2145.

42 I ordered costs fixed at $8,000 (inclusive of disbursements) to be paid by the plaintiff to the defendant.

Dedar Singh Gill
Judicial Commissioner

Kwek Yiu Wing Kevin, Yeo Teng Yung Christopher and Joshua Chan (Legal Solutions LLC) for the plaintiff;
Jeremy Gan Eng Tong and Tan Hua Chong Edwin (Rajah & Tann LLP) for the defendant.