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

[2023] SGHC 355

Originating Application No 1017 of 2023

Between

Soo Hoo Khoon Peng

… *Applicant*

And

Management Corporation
Strata Title Plan No 2906

… *Respondent*

JUDGMENT

[Civil Procedure — Appeals — Leave]
[Land — Strata Titles — Common property]

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Soo Hoo Khoon Peng
v
Management Corporation Strata Title Plan No 2906

[2023] SGHC 355

General Division of the High Court — Originating Application No 1017 of 2023
Christopher Tan JC
15 November 2023

19 December 2023 Judgment reserved.

Christopher Tan JC:

1 The applicant ("Applicant") is the subsidiary proprietor of a unit in a condominium managed by the respondent to this application (the "Respondent"). He had sought permission from the Respondent to install a screen, of the brand Renson Fixscreen ("the Screen"), in the balcony of his unit. When the Respondent refused, he filed DC/OA 41/2023 ("DC/OA 41") in the District Court, seeking, *inter alia*, the following:

(a) An order restraining the Respondent from refusing to approve the Applicant's installation of the Screen. In prayer 1 of DC/OA 41, the Applicant prayed that the order be granted pursuant to s 88(1)(*a*) of the Building Maintenance and Strata Management Act 2004 (2020 Rev Ed) ("BMSMA"), based on the Applicant's contention that the Respondent's refusal was a breach of s 37(4) of the BMSMA. In his submissions in

DC/OA 41, the Applicant further contended that the Respondent's approval could be compelled pursuant to s 111(*a*) of the BMSMA.[1]

(b) A declaration that the area of the Applicant's balcony where he intended to install the Screen was not common property.[2]

The learned District Judge ("DJ") below dismissed DC/OA 41.

2 Both parties proceeded on the common premise that given the nature of the claim, permission of the court was required under s 21(1) of the Supreme Court of Judicature Act 1969 (2020 Rev Ed) ("SCJA") for any appeal against the DJ's decision. The Applicant filed a summons seeking permission from the DJ to appeal against her dismissal of DC/OA 41. Upon her dismissal of the summons, the Applicant filed the present application, pursuant to s 21(1)(*a*) of the SCJA read with O 18 r 19(2) of the Rules of Court 2021, for permission to appeal against the learned DJ's dismissal of DC/OA 41.

3 I dismiss the application and set out my reasons below.

The Law

4 Both parties to this appeal were in agreement as to the applicable legal test governing when permission may be granted for an appeal. In *Lee Kuan Yew v Tang Liang Hong and another* [1997] 2 SLR(R) 862 ("*Lee v Tang*"), the Court of Appeal laid out (at [15]–[16]) three non-exhaustive categories when such permission will be granted:

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1 Applicant's submissions in DC/OA 41, dated 13 June 2023, at para 3.1.1(c).

2 Applicant's submissions in DC/OA 41, dated 13 June 2023, at para 3.1.1(b).

(a) The first category would be where there is a *prima facie* case of error. While, the Court of Appeal in *Lee v Tang* did not specify whether this category relates to errors of fact or law, recent pronouncements of the Appellate Devision of the High Court appear to lean towards the position that the errors should relate to errors of **law**, while leaving open the question as to whether errors of **fact** which are "*obvious from the record*" can justify the grant of permission: see *UD Trading Group Holding Pte Ltd v TA Private Capital Security Agent Limited and another* [2022] SGHC(A) 3 (at [21]), cited by Goh Yihan JC (as he then was) in *Zhou Wenjing v Shun Heng Credit Pte Ltd* [2022] SGHC 313 ("*Zhou Wenjing*") (at [30]–[31]). Further, it has also been held that the error must be one that "has a bearing on the decision of" the court below: see *Abdul Rahman bin Shariff v Abdul Salim bin Syed* [1999] 3 SLR(R) 138 ("*Abdul Rahman bin Shariff*") (at [31(a)]).

(b) The second category would be where there is a question of general principle decided for the first time. This category would not apply to a proposed appeal on an issue which is peculiar to the facts of the particular case and not likely to arise in other cases (*Essar Steel Ltd v Bayerische Landesbank and others* [2004] 3 SLR(R) 25 at [27(b)]) or if there are mere questions of fact to be considered (*Abdul Rahman bin Shariff* at [31]).

(c) The third category would be where there is a question of importance upon which further argument and a decision of a higher tribunal would be to the public advantage. For this category, the test of importance is an objective one. In other words, the question has to be objectively important, and not just important from the perspective of the

parties: see *Portcullis Escrow Pte Ltd v Astrata (Singapore) Pte Ltd and another* [2010] SGHC 302 (at [6]).

5 The Court of Appeal in *Lee v Tang* was also clear, by its use of the word "at least" at [16], that the three categories above are not exhaustive.

6 In laying out the three discrete grounds above, the Court of Appeal in *Lee v Tang* cited with approval (at [15]) the remarks of Lai Kew Chai J in *Anthony s/o Savarimiuthu v Soh Chuan Tin* [1989] 1 SLR(R) 588 (at [2]):

> The circumstances for granting leave would include (though obviously not limited to) cases where an applicant is able to demonstrate a *prima facie* case of error or if the question is one of general principle upon which further argument and a decision of a higher tribunal would be to public advantage. … These propositions have a ***common thread: that to deny leave may conceivably result in a miscarriage of justice***. [emphasis added]

The use of the term "common thread" connotes that the requirement of potential miscarriage of justice appears to apply to all three categories above.

The Appeal

7 At the hearing below, the Applicant argued that the Screen was not being installed on common property (see [1(b)] above). This was a pivotal point – if the balcony walls on which the Screen's brackets were being mounted constituted common property *and* the installation of the Screen could be construed as "exclusive use and enjoyment" of those walls (within the meaning of s 33(1)(*c*)(i) of the BMSMA), the Applicant would have had to obtain approval by way of a 90% resolution at a general meeting of subsidiary proprietors, for the Screen to be installed. This would have been a difficult hurdle to cross and, without such a resolution, the issue of whether the

Respondent should have approved the installation of the Screen would not even arise. Section 33(1)(*c*) of the BMSMA reads:

> … [W]ith the written consent of the subsidiary proprietor of the lot concerned, a management corporation may make a by-law —
>
> (c) *pursuant to a 90% resolution*, conferring on the subsidiary proprietor of a lot specified in the by-law, or on the subsidiary proprietors of the several lots so specified, for a period which exceeds 3 years —
>
> (i) the *exclusive use and enjoyment* of; or
>
> (ii) *special privileges* in respect of,
>
> the whole or any part of the common property, upon conditions (including the payment of money at specified times or as required by the management corporation, by the subsidiary proprietor or subsidiary proprietors of the lot or several lots) specified in the by-law …
>
> [emphasis added]

8 During the hearing of the application before me, the Applicant conceded that at least some parts of the walls to which the Screen's bracket would be affixed *were* common property. This belated concession flowed from s 2 of the BMSMA, which defines "common property" as follows:

> "common property"… means —
>
> (*a*) in relation to any … building comprised … in a strata title plan, such part of the … building —
>
> (i) ***not comprised in any lot*** … in that strata title plan; and
>
> (ii) used or capable of being used or enjoyed by occupiers of 2 or more lots or …
>
> … ***or***
>
> (*c*) in relation to any … building mentioned in paragraph (a) …, any of the following ***whether or not comprised in a lot*** … :
>
> …
>
> (iii) any ***structural element*** of the building;

[emphasis added]

The walls onto which the Screen was to be installed lay entirely within the Applicant's lot and, on that account, would ordinarily not have been classified as "common property" under limb (*a*) of the definition above. However, given that some parts of these walls were load-bearing, the Applicant conceded that they were considered "common property" by virtue of their being *structural elements*.

9 Having made this concession, the Applicant proceeded to take the position that the installation of the Screen did not constitute "exclusive use and enjoyment" of the walls onto which the Screen would be installed. There would then be no need for him to secure approval, by way of a 90% resolution at a general meeting of subsidiary proprietors, to instal the Screen. The Respondent disagreed, contending that installation of the Screen *did* constitute exclusive use and enjoyment of the walls concerned.

Whether installation of the Screen constituted exclusive use and enjoyment of the walls within the Applicant's lot

10 The learned DJ agreed with the Respondent[3] that installation of the Screen did amount to exclusive use and enjoyment of common property, meaning that the Respondent could not approve the installation (even if it wanted to), given that the requisite 90% resolution under of s 33(1)(*c*)(i) of the BMSMA had not been obtained. In arriving at her decision, the learned DJ relied[4] on the case of *Wu Chiu Lin v Management Corporation Strata Title Plan No 2874* [2018] 4 SLR 966 ("*Wu Chiu Lin*"), where Chan Seng Onn J (as he

3 At [57] of the DJ's judgment.

4 At [49] of the DJ's judgment.

then was) held (at [74]-[75]) that common property constituted by external facing structures can be aesthetically "enjoyed" by multiple subsidiary proprietors. Chan J thus held (at [84]) that the subsidiary proprietor's act of covering up the external facing walls above her unit and obstructing these walls from the view of other subsidiary proprietors constituted exclusive use and enjoyment.

11 The Applicant argues that the test of what constitutes "exclusive use and enjoyment", as propounded in *Wu Chiu Lin*, is inapplicable to common property comprising structural elements within the subsidiary proprietor's lot, as these would ordinarily not be subject to aesthetic appreciation by anyone outside the lot.[5]

12 I agree with the Applicant's submissions. In my view, the approach to assessing how common property may be "used" or "enjoyed" (such that exclusion of such use and enjoyment by other subsidiary proprietors gives rise to the exclusivity contemplated by s 33(1)(*c*)(i) of the BMSMA) must hinge on the property's location within the development, as well as the role(s) that the property plays given that location. Common property consisting of outward facing walls have been taken to play an aesthetic role. In *Sit Kwong Lam v Management Corporation Strata Title Plan No 2645* [2018] 1 SLR 790 ("*Sit Kwong Lam*"), the Court of Appeal observed (at [59]):

> [A]ny area or installation that could affect the appearance of a building in a strata development, or that was part and parcel of the fabric of the building, could, by its mere presence, be "enjoyed" by some or even all subsidiary proprietors of the development. Indeed, there was no need for the area or installation to be physically accessible by the subsidiary proprietors (or any of them) in order to be "enjoyed" by the said proprietors.

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5 Applicant's submissions, at paras 3.1.8–3.1.11.

13 However, both *Wu Chiu Lin* and *Sit Kwong Lam* dealt with features falling within limb (*a*) of the definition of "common property" in s 2(1) of the BMSMA. In contrast, common property consisting of structural elements fall under limb (*c*). Where such elements are comprised within the subsidiary proprietor's lot and inward facing, the approach to assessing if there is exclusive use and enjoyment (within the meaning of s 33(1)(*c*)(i) of the BMSMA) ought to be adapted accordingly.

14 Structural features comprised within the lot, if not external facing, do not serve any aesthetic function for the development. Where the subsidiary proprietor is proposing to perform works on such features, it would not be meaningful for the test (of whether the works amount to exclusive use and enjoyment) to centre on whether the works visually obstruct the feature. Rather, the test ought to focus on the impact which the works have on structural functionality. This is because use and enjoyment of such a non-external facing structural feature is derived by other subsidiary proprietors from the structural support which it renders to their respective lots, rather than from visual appreciation. An example of exclusive use in such a context would conceivably be when the subsidiary proprietor's works would hinder the management corporation from maintaining the structural feature within his lot. Such works could potentially deprive other subsidiary proprietors of the structural integrity of that feature. (For completeness, if the works proposed by the subsidiary proprietor affect the feature's structural integrity, this would also trigger the prohibition in s 37(4)(*b*) of the BMSMA.) Conversely, if a subsidiary proprietor mounts a painting on a pillar comprised within the inner recesses of his lot, and this pillar constitutes "common property" on account if it being a load-bearing feature, but the painting does not in any way prevent the management corporation from maintaining that pillar, this would not constitute exclusive use

and enjoyment of the pillar. In such a situation, aesthetics should not factor into the equation. It makes no sense to insist that just because persons standing outside the subsidiary proprietor's window and peering into his lot would be obstructed (by the painting) from viewing the pillar, the subsidiary proprietor is bound to obtain approval by way of a 90% resolution just to mount that painting.

15 I am mindful that while the Screen's brackets were being mounted onto the non-external facing parts of the structural elements concerned, the Screen's roller blind (when drawn down) would obstruct the open space within the Applicant's balcony, which would otherwise have been visible to outsiders. However, parties did not contend that this open space was "common property", such that its obstruction would constitute exclusive use falling within s 33(1)(*c*)(i) of the BMSMA. This was unlike in the case of *Wu Chiu Lin*, where the subsidiary proprietor was disallowed from obstructing the external facing walls above her unit, which walls *were* considered common property. Notably, the Respondent allows rattan blinds to be mounted to the balcony ceilings – parties did not take the position that obstruction of the open space within the balcony by these blinds constituted exclusive use of common property, such that 90% approval under s 33(1)(*c*) of the BMSMA was required for installation of rattan blinds.

16 While it may be a bit of a stretch to say so, there is arguably a question of general principle which could benefit from more detailed arguments on appeal, *ie*, the scope of what constitutes exclusive use and enjoyment of common property comprising non-external facing structural elements comprised within the lot. However, as explained at [6] above, an applicant seeking permission to appeal also needs to demonstrate the prospect of miscarriage of justice if permission is not granted. It is on this that the Applicant fails in his application. The learned DJ did not dispose of the issue of exclusive

use and enjoyment solely by applying the test of exclusivity in *Wu Chiu Lin*. She also found that installation of the Screen would impinge on the Respondent's ability to maintain and repair the structural elements to which the Screen had been mounted. This impingement had also supported her conclusion that installation of the Screen constituted exclusive use and enjoyment.[6] In that respect, even under the approach advocated by the Applicant, the DJ found that there was exclusive use and enjoyment. The Applicant thus suffered no injustice in this regard. Rather, his main bone of contention appears to be more factual in character. Installation of the Screen would have been more invasive than, say, installation of rattan blinds – the Screen required brackets to be mounted to the walls to seal off access to weather elements and insects. Notwithstanding, the DJ's finding that mounting of the Screen impinged on the Respondent's ability to maintain the structural integrity of the walls could have been grounded on a firmer substratum of evidence. For example, expert evidence could have been called to demonstrate the extent to which these brackets hindered structural maintenance of the walls, such that their installation should be considered as amounting to exclusive use and enjoyment. Be that as it may, I am of the view that this is an issue which is factual in nature and does not in and of itself give rise to questions of general principle or public importance.

17 More importantly, even if the DJ could be said to have erred in law when concluding that there was exclusive use and enjoyment, there would have been no miscarriage of justice arising from the dismissal of DC/OA 41. This is because the DJ went on to find that the Screen failed to keep with the appearance of the rest of the buildings. As will be explained below, I have upheld this

6 At [56] of the DJ's judgment.

finding, which constitutes a separate plank in support of the Respondent's decision to disallow installation of the Screen. The appeal against dismissal of DC/OA 41 is thus unlikely to succeed, regardless of how the test of exclusive use and enjoyment of structural elements within the lot is couched.

Whether the Screen was in keeping with the appearance of the building

18 While I have taken the view that the test of what constitutes exclusive use and enjoyment of non-external facing structural elements comprised within the lot should focus on the impact of the proposed works on structural functionality (rather than on aesthetics), this does not mean that the element of aesthetics is irrelevant. As alluded to at [15] above, the Screen's roller blinds would (when drawn down) cover the open space within the Applicant's balcony. While this did not amount to obstruction of common property, it still affected the overall façade of the building. On this front, the question of whether installation of the Screen should be allowed hinges on, *inter alia*, compliance with the aesthetic-related clauses found in three legislative provisions:

(a) section 37 of the BMSMA;

(b) section 37A BMSMA; and

(c) by-law 5 in the Second Schedule to the Building Maintenance (Strata Management) Regulations 2005 ("BM(SM)R").

19 Section 37 BMSMA deals with effecting *improvements* ***within the subsidiary proprietor's lot***. The relevant portion of the section reads:

> **Improvements and additions to lots**
>
> **37**.—(1) …
>
> …

> (3) Except pursuant to an authority granted under subsection (4) by the management corporation or permitted under section 37A, a subsidiary proprietor of a lot that is comprised in a strata title plan *must not effect any other improvement in or upon the lot for the subsidiary proprietor's 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 the subsidiary proprietor's lot mentioned 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.
>
> [emphasis added]

20 Section 37A BMSMA deals with the installation of *safety equipment*, also ***within the subsidiary proprietor's lot***. The relevant portion of this provision reads:

> **Installation of safety equipment permitted**
>
> **37A**.—(1) A subsidiary proprietor of a lot in a building on a parcel comprised in a strata title plan may install safety equipment on the lot… which is facing outdoors, despite any other provision of this Act or the regulations or any by-law of the parcel which otherwise prohibits the installation of the safety equipment.
>
> (2) A subsidiary proprietor of a lot in a building who installs safety equipment under this section must —
>
> …
>
> (*b*) ensure that the safety equipment is installed in a competent and proper manner and has an appearance, after it has been installed, in *keeping with the appearance of* the building.

(3) In this section, 'safety equipment' means —

(*a*) any of the following features to prevent people from falling over the edge of an outdoor-facing balcony or terrace or a window or door or an opening which is outdoor-facing:

(i) a window grille or screen;

(ii) a balustrade, railing or fence;

(*b*) any device capable of restricting the opening of a window or door or an opening which is outdoor-facing;

(*c*) any screen or other device to prevent entry of animals or insects on the lot;

…

21 By-law 5 of the Second Schedule to the BM(SM)R deals with works that might *damage or deface* ***common property***. The relevant portion of the by-law reads:

Alteration or damage to common property

5.—(1) A subsidiary proprietor or an occupier of a lot shall not mark, paint, drive nails or screws or the like into, or otherwise damage or deface, any structure that forms part of the common property except with the prior written approval of the management corporation.

(2) An approval given by the management corporation under paragraph (1) shall not authorise any additions to the common property.

(3) This by-law shall not prevent a subsidiary proprietor or an occupier of a lot, or a person authorised by such subsidiary proprietor or occupier from installing—

…

(*b*) any screen or other device to prevent entry of animals or insects on the lot;

(*c*) any structure or device to prevent harm to children; …

…

(4) Any such locking or safety device, screen, other device or structure must be installed in a competent and

> proper manner and must have an appearance, after it has been installed, in *keeping with such guidelines as the management corporation may prescribe regarding such installations, and with the appearance of the rest of the building.*

22 The question of which provision applies thus hinges on the *location* of the proposed works. If the works are to be performed within the subsidiary proprietor's lot, ss 37 and 37A of the BMSMA apply. If they are performed on common property, by-law 5 applies. In the less common situation where works are performed on common property that *also* lies within the subsidiary proprietor's lot, such as in the present case, all three provisions apply. The learned DJ proceeded on the premise that the applicable provision governing the matter was by-law 5,[7] which pertained to works on common property. As regards ss 37 and 37A of the BMSMA, she opined:[8]

> ***Given my finding that Fixscreen would be installed on common property***, it is not strictly necessary for me to deal with ss 37 and 37A of the BMSMA as these are only engaged where the proposed works would take place in or upon the claimant's lot. [emphasis added]

The Applicant submits[9] that the above observation by the DJ appeared to be an error of law, because structural elements defined as "common property" under s 2 BMSMA can *still* lie within the subsidiary proprietor's lot, and thereby trigger the operation of ss 37 and 37A BMSMA.[10] That was in fact the case here, where the structural walls to which the Screen brackets would be affixed were comprised in the Applicant's lot. The Applicant thus takes the view that ss 37 and 37A BMSMA remain applicable.

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7 At [58] of the DJ's judgment.

8 At [77] of the DJ's judgment.

9 Applicant's submissions, at paras 3.3.2–3.3.4.

10 Applicant's submissions, at paras 3.3.2–3.3.4.

23 I agree that the statement of the learned DJ, as extracted in the preceding paragraph, appears to reflect an error of law. The Respondent concedes this as well. Still, it is not an error of law that merits permission to appeal. As explained by Goh JC in *Zhou Wenjing* (at [37]), not every error of law will suffice – the error must be one where (*inter alia*) the appeal is likely to succeed. The DJ's error in this case did not satisfy that threshold. Despite opining that ss 37 and 37A BMSMA were inapplicable, the learned DJ specifically went on to evaluate how, *even* if ss 37 or 37A applied, installation of the Screen still fell afoul of these two other provisions on account of the Screen not keeping with the appearance of the building.[11] The error of law, if one could call it that, was thus not determinative and did not constitute a ground to grant permission to appeal.

24 This segues to the common thread running through all three provisions, which is that the works done must not detract from, and must be in keeping with, the appearance of the rest of the building or other buildings: see s 37(4)(*a*), s 37A(2)(*b*) and by-law 5(4), extracted above.

25 As alluded to at [22] above, given that the Screen was being installed on "common property", the learned DJ decided that by-law 5 of the Second Schedule to the BM(SM)R applied. The learned DJ held that the Screen failed to comply with by-law 5(4), as it was not in keeping with the appearance of the rest of the building.[12] As explained at [23] above, the learned DJ also opined that even if ss 37A and 37 of the BMSMA governed the Respondent's decision, the Screen would similarly not be in keeping with the appearance of the building under s 37A(2)(*b*) of the BMSMA,[13] and would also detract from the appearance

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11 See [84] and [92] of the DJ's judgment.

12 See [72] of the DJ's judgment.

13 See [84] of the DJ's judgment.

of the building under s 37(4) of the BMSMA (meaning that the Respondent's refusal to approve would also have been justified under both s 37A and s 37 of the BMSMA).

26 The Applicant contends that permission should be granted for an appeal as the learned DJ failed to go through the proper steps in assessing the Screen's impact on the appearance of the rest of the buildings. Specifically, the Applicant relies on the structure of s 37 of the BMSMA to argue that the assessment of aesthetic impact entails a two-step process:

(a) Under s 37(3) of the BMSMA, if the proposed improvement *affects* the appearance of the buildings in the strata title plan, the subsidiary proprietor must seek the management corporation's approval for the improvement.

(b) Under s 37(4)(*a*) of the BMSMA, the management corporation may grant approval if the improvement will *not detract* from the appearance of any of the buildings comprised in the strata title plan, or if it will be in *keeping with* the rest of the buildings.

The Applicant thus argues that in assessing whether the Respondent should have approved his application to install the Screen, the learned DJ ought to have gone through both steps: (i) the first step being to assess if the Screen *affected* the appearance of the buildings; (ii) the next step being to assess if the Screen affected the appearance to the extent that it *detracted* from the appearance of the buildings in the strata title plan, or failed to keep with the buildings' appearance.[14] The latter step would thus have entailed an assessment of degree. The Applicant contends that in this case, the learned DJ only went through the

[14] Applicant's submissions, at para 4.1.3.

first step, by explaining how the Screen affected the appearance of the buildings,[15] but failed to give any reasons as to why this would have been to an extent as to either detract from the appearance of the buildings or fail to keep with the building's appearance.[16]

27 With respect, the Applicant's argument is one that seeks to split hairs. The learned DJ made an express factual finding that the Screen was not in keeping with appearance of the building.[17] In doing so, she analysed the basis of the General Division of the High Court's decision of *Prem N Shamdasani v Management Corporation Strata Title Plan No 920* [2023] 3 SLR 1662, where the court found that the works in question would be in keeping with the rest of the building's façade, to show why the same conclusion would not apply to the present case.[18] Clearly, she was aware of the appropriate test under s 37(4) of the BMSMA and properly applied her mind to it.

28 For completeness, I should add that I have looked at the photographs adduced by parties during the appeal and am of the view that the learned DJ did not err in concluding that the Screen failed to keep with the appearance of the rest of the building.

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15 See [76] of the DJ's judgment.

16 Applicant's submissions, at paras 4.1.5–4.1.6.

17 See [72] of the DJ's judgment.

18 See [74] of the DJ's judgment.

The extent of a management corporation's power to prescribe guidelines to ensure aesthetic uniformity

29 The Respondent had issued guidelines on the safety equipment that they could install. Specifically, the Respondent allowed subsidiary proprietors to install:

(a) invisible grilles, to prevent falls from height; and

(b) mosquito nets, to prevent entry of insects.

In refusing to consent to the installation of the Screen, the Respondent took the view that the Applicant could avail himself of these other installations, which were approved under the Respondent's guidelines.

The appliable test for assessing a management corporation's guidelines on aesthetic uniformity

30 In seeking permission to appeal, the Applicant challenges these guidelines and, in doing so, argues that the legal threshold for challenging such guidelines by a management corporation is a question of general principle or question of public importance.

31 Before examining this argument, it is necessary to refer to by-law 5(4) of the Second Schedule to the BM(SM)R, which states that any installation must not only keep with the appearance of the rest of the buildings, but also keep with the guidelines of the management corporation. Both these requirements are necessarily related – the management corporation's guidelines on aesthetic uniformity would assist in maintaining some degree of uniformity in the appearance of the installations, thereby helping to maintain the aesthetics of the building's appearance. A fair degree of latitude should be accorded to the

management corporation in the promulgation of guidelines on what is aesthetically acceptable and what is not. In *Management Corporation Strata Title Plan No 940 v Lim Florence Marjorie* [2019] 4 SLR 773 ("*Lim Florence Marjorie*"), Vinodh Coomaraswamy J examined the operation of s 37 BMSMA and observed, at [87]–[88]:

> 87 The decision whether the statutory criteria in ss 37(4)(a) and 37(4)(b) are met is within the purview of the management corporation and not the courts. This is apparent from s 37(4) itself, which requires that it is the management corporation who must be satisfied that both subsections are satisfied. Placing the decision-making in the hands of the management corporation is in line with the overall intention of parliament in enacting the Act. … The Act was thus intended to empower management corporations to make decisions in a bid to encourage self-regulation, as government intervention was no longer feasible. … Indeed, similar concerns underlie the Ontario Condominium Act from which the Act was adapted. Thus, an Ontario court in *York Region Standard Condominium Corp No 1076 v Anjali Holdings Ltd* [2010] OJ No 488 said at [9]:
>
> > It is not [the] function [of the] judge, however, to assess the aesthetics of the changes made … As Cusinato J said at paragraph 12: 'It matters not … that the landscaping appears to be beautifully done, or that all other unit holders find it pleasing. Where the elected Board concludes that it is unacceptable … their word [i]s final …'
>
> 88 This is not, of course, to endorse the tyranny of the majority. There are statutory safeguards to prevent minority oppression in management corporations just as there are safeguards to prevent minority oppression in commercial corporations. …

While a wide berth may be accorded to the management corporation to exercise its discretion, there still has to be a balance struck between aesthetic uniformity and the efficacy of the safety equipment prescribed by the management corporation in keeping the relevant harm at bay. In the case of *Ahmad bin Ibrahim and others v The MCST Plan No. 4131* [2018] SGSTB 8 ("*Ahmad bin Ibrahim*"), the Strata Titles Board ("STB") was confronted with the question of

how that balance should be achieved. In that case, the subsidiary proprietors wanted to install fixed awnings to address the issue of "killer litter", but the management corporation refused to allow this, as its guidelines allowed only retractable awnings. The subsidiary proprietors filed an application that they be allowed to install fixed awnings. The STB rejected the application, ruling (at [25]) that the retractable awnings prescribed by the management corporation's guidelines were "*a necessary, reasonable and proportionate response*" to the "killer litter" problem.

32 The Applicant contends that there are no High Court pronouncements on whether the formulation propounded by the STB for assessing the management corporation's guidelines, *ie*, that they be "*necessary, reasonable and proportionate*", should in fact be the "controlling principle"[19] to police such guidelines. This, the Applicant argues, is a question of general principle to be decided for the first time[20] and also a question of public importance.[21]

33 At the threshold, I note that the validity of the formulation in *Ahmad bin Ibrahim* was never challenged by Applicant below. In fact, the Applicant had, in his submissions before the learned DJ, explicitly adopted this very formulation, *ie,* that the guidelines by the Respondent had to be a necessary, reasonable and proportionate response to addressing the risk at hand.[22] More importantly, the Applicant failed to suggest any alternative formulation for adjudging the acceptability of a management corporation's guidelines, and how that alternative formulation might tip the balance on appeal. That being the case,

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19 Applicant's submissions, at para 3.4.9(b).

20 Applicant's submissions, at para 3.4.11.

21 Applicant's submissions, at para 3.5.1.

22 Applicant's submissions in DC/OA 41, dated 13 June 2023, at paras 5.3.4, 6.3.2, 6.3.6.

without having to expressly endorse the approach in *Ahmad bin Ibrahim* for determining the acceptability of a management corporation's guidelines on safety equipment, I conclude that the Applicant has not raised any question of general principle or question of public importance on this point, for which permission to appeal should be granted.

Burden of proof when challenging a management corporation's guidelines on aesthetic uniformity

34 The Applicant also points to the DJ's remarks (at [65]) that:

> … the [Applicant] would have to comply with [the Respondent's] guidelines unless he is able to show that the installation(s) permitted by the [Respondent] are not necessary, reasonable or proportionate.

The Applicant highlights that the learned DJ effectively placed the legal burden on the subsidiary proprietor to show that the management corporation's guidelines were *not* acceptable, when it was arguably the management corporation which should have borne the burden of proving that they *were*.[23] The Applicant thus contends that this is yet another question, *ie*, where the legal burden should lie, which should be answered by a higher court on appeal.[24]

35 I reject the Applicant's submissions on this point. The law on burden of proof is trite and has been repeatedly expounded in our case law. Given that a person seeking to establish a fact bears the burden of proving it, it stands to reason that where a management corporation has issued guidelines to maintain the development's aesthetic appearance, a subsidiary proprietor seeking to challenge those guidelines as being unacceptable bears the burden of

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23 Applicant's submissions, at para 3.4.6.

24 Applicant's submissions, at para 3.4.9(b).

demonstrating this to the court. This position also coheres with the broader policy position, canvassed at [31] above, that management corporations should be given sufficient leeway to dictate what accords with the development's overall aesthetic theme. This is an important function which, as observed by Coomaraswamy J in *Lim Florence Marjorie*, at [91], impacts on the value of the development:

> The [MCST] – who, after all, is simply the embodiment of the collective will of … subsidiary proprietors – has passed by-laws which attach special significance to renovations carried out on a balcony. The plaintiff has also enacted specific by-laws to maintain day-to-day aesthetic uniformity of the balcony and therefore the façade, even to the extent of regulating the type, height and quantity of plants that can be grown in planter boxes on balconies and the colour and inclination of awnings. The plaintiff has quite reasonably taken the position that any renovations which affect the aesthetic uniformity of [the development's] façade 'may also impact on [the] good image [and] prestige of an upscale and prestigious estate in [the development]'. A lack of uniformity may, in the long term, have a detrimental effect on the value of the flats in a development …

If the management corporation is to perform this function effectively, it should not be put on the defensive and made to justify its guidelines in court every time a subsidiary proprietor sees fit to install something that sticks out like a sore thumb. If the subsidiary proprietor wants to defy the management corporation's guidelines, he bears the burden of proving why he should be allowed to do so.

36 This view is also consistent with the observations expressed at the Second Reading speech introducing s 37A of the BMSMA (*Singapore Parliamentary Debates, Official Report* (11 September 2017) vol 94 (Desmond Lee, Second Minister for National Development)), where the Minister remarked that the onus of ensuring that installations maintain uniformity with the development's overall appearance lies with the subsidiary proprietor:

> Next, we want to strengthen an existing provision to facilitate SPs' installation of safety equipment in their own lots. While an existing prescribed by-law states that SPs cannot be prevented from installing any structure or device that prevents harm to children, SPs are also required to seek the MCST's approval for installations which affect the appearance of the building. There have been cases of MCSTs vetoing SPs' installation of safety grilles on the basis that the designs affected the building's appearance.
>
> With this amendment …, MCSTs can no longer disallow installations of safety equipment such as grilles installed at windows or balconies. But a new Section 37A(2) ***will place the onus on SPs to ensure that their installations maintain a certain uniformity of appearance***. In this regard, developers and MCSTs are encouraged to provide design guidelines for such installations upfront, to guide SPs in achieving the overall desired appearance.
>
> [emphasis added]

37 In my view, there is no question of public importance or general principle arising here. The burden of proof for establishing that the court should disregard the Respondent's guidelines lay squarely on the Applicant. Of course, in those instances where the management corporation's guidelines are clearly unreasonable or disproportionate, the subsidiary proprietor may well face little difficulty in discharging that burden, although this would be highly dependent on the facts.

Extent to which a management corporation's guidelines on aesthetic uniformity can curtail the range of safety equipment

38 As alluded to above, both s 37A of the BMSMA (in the case of installations within the subsidiary proprietor's lot) and by-law 5(3) in the Second Schedule to the BM(SM)R (in the case of installations on common property) allow the subsidiary proprietor to install various categories of safety equipment, subject to the restriction that the installation keeps with the appearance of the rest of the building. I have used the term "safety equipment"

loosely in describing the installations listed in by-law 5(3), as this by-law does not actually employ that term. On this, the Applicant points to the following section of the Second Reading speech introducing s 37A of the BMSMA, as support for his view that Parliament intended for subsidiary proprietors to have a wide host of safety equipment to choose from:

> Er Dr Lee asked for the definition of 'safety equipment' to be extended to cover other items. The proposed definition will cover ***a host of other items including balustrades, railings, fences, screens and lock or security mechanisms***.
>
> [emphasis added]

39 The Applicant argues that the host of definitions of safety equipment provided for in s 37A of the BMSMA would be rendered otiose if the Respondent could promulgate guidelines which only allow for one or two types of safety equipment,[25] such as in this case where the Respondent prescribed mosquito netting to keep out insects and invisible grilles for the safety of children.[26] The Applicant thus argues that this is yet another question of general principle or public importance that should be ventilated on appeal, *ie*, the extent to which a management corporation is entitled to curtail the scope of safety equipment which could be installed.

40 With respect, the Applicant's argument is misconceived. Parliament has laid out a wide host of *categories* of safety equipment. I would agree that the management corporation should not be restricting those categories, *eg*, by allowing subsidiary proprietors to install only insect screens but not railings. Such a restriction would defeat the purpose of s 37A, as it would keep insects out but fail to protect against fall from height. However, what the Respondent

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25 Applicant's submissions, at para 3.4.4.

26 Applicant's submissions, at para 3.4.6.

did in this case was *not* to restrict the host of categories, but rather the type of installations *within each category*. Thus, within the category of insect screens in s 37A(3)(*c*) of the BMSMA, the Respondent decided to exclude Fixscreen and Ziptrak. Once a management corporation's choice of installation (*eg*, invisible grilles and mosquito nets in this case) sufficiently addresses the safety concern sought to be achieved by the specific category of safety equipment prescribed by statute, the subsidiary proprietor's only remaining grouse would be that the management corporation deprived him of a wider *aesthetic* array of installations. However, given the observation in *Lim Florence Marjorie* that the management corporation is typically charged with maintaining the aesthetic uniformity of the development, with a view to preserving the value of the development, it is to be expected that the guidelines promulgated by a management corporation must necessarily curtail diversity of aesthetic designs to some degree.

41 The real question that the Applicant is raising here is whether the *extent* to which the Respondent's guidelines had narrowed the scope of choices within each category of safety equipment was reasonable. That is a highly factual issue which would necessitate delving into what is aesthetically acceptable and what is not. This did not give rise to any question of general principle or question of importance requiring ventilation at an appellate platform.

Conclusion

42 For the above reasons, I dismiss the application for permission to appeal.

Christopher Tan
Judicial Commissioner

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