Automobile Association of Singapore *v* Management Corporation Strata Title Plan No 918 and another matter
[2013] SGHC 214

Case Number	: Originating Summonses Nos 911 and 1074 of 2012
Decision Date	: 22 October 2013
Tribunal/Court	: High Court
Coram	: Lai Siu Chiu J
Counsel Name(s)	: Chan Hock Keng, Suegene Ang and Chong Yong Hui (WongPartnership LLP) for the plaintiff in OS 911/2012 and defendant in OS1074/2012; Wong Siew Hong and Poonaam Bai (Eldan Law LLP) for the defendant in OS911 and plaintiff in OS1074/2012; Gokul Haridass (M Rama Law Corporation) on a watching brief.
Parties	: Automobile Association of Singapore — Management Corporation Strata Title Plan No 918

Land – Strata titles – By-laws – Validity of by-laws governing allocation of car park spaces

22 October 2013

Lai Siu Chiu J:

1 This was a dispute concerning the use of the car park at the AA Centre on River Valley Road. The parties involved are the management corporation and a subsidiary proprietor of the AA Centre. Two originating summonses were filed in connection with the dispute. The management corporation, which I shall refer to as the "MCST", is the defendant in Originating Summons No 911 of 2012 ("OS 911/2012") and is the plaintiff in Originating Summons No 1074 of 2012 ("OS 1074/2012"). The subsidiary proprietor is the Automobile Association of Singapore, which I shall refer to as "AAS". It is the plaintiff in OS 911/2012 and the defendant in OS 1074/2012.

2 The core question in this dispute is whether certain by-laws governing the use of the car park (the "By-Laws") at the AA Centre are valid and thus binding on the MCST. OS 911/2012 was the AAS's application for, *inter alia*, a declaration that the By-Laws are valid and for injunctions restraining the MCST from taking a course of conduct which was said to contravene the By-Laws. OS 1074/2012 was the MCST's application for, *inter alia*, a declaration that the By-Laws are void or otherwise invalid. After hearing both applications on 10 July 2013, I granted OS 911/2012 and dismissed OS 1074/2012. As the MCST has appealed against my decision (in Civil Appeal No 91 of 2013), I shall now set out my reasons.

Background facts

3 The AA Centre is a 14-storey mixed-use development comprising 30 strata lots. AAS owns and occupies two strata lots which it uses for commercial purposes. These two strata lots encompass the entirety of the first to sixth storeys. The remaining 28 strata lots correspond to 28 residential units spread over the seventh to fourteenth storeys. AAS owns 3,128, or 78.2%, of the 4,000 shares in the common property, and the remaining 872 shares are held by various subsidiary proprietors of the 28 residential units.

4 The By-Laws were passed by special resolution at an Extraordinary General Meeting ("the

EGM") of the MCST held on 25 July 2003. The vote, measured in share value, was 3,448 for to 232 against. The main thrust of the By-Laws was that the 94 car park spaces in the AA Centre would be allocated among the subsidiary proprietors in proportion to their respective share values. 28 car park spaces were allocated to the subsidiary proprietors of the 28 residential units, *ie*, one car park space per residential unit, and the remaining 66 car park spaces were allocated to AAS. Car park labels were issued for the purpose of putting this scheme of allocation into effect: one label for every car park space allocated to a subsidiary proprietor, which meant, for instance, that 66 car park labels were issued to AAS.

5 The 94 car park spaces in the AA Centre span five basement levels. There are 21 spaces on Deck 1B, and a total of 73 spaces on Decks 2A, 2B, 3A and 3B. The By-Laws provided that the 21 spaces on Deck 1B would be marked "RESERVED" in red and set aside for the exclusive use of vehicles with car park labels on a "first-come-first-available" basis. The remaining 73 spaces on the other four levels were open not only to vehicles with car park labels but also to visitors to the AA Centre, likewise on a "first-come-first-available" basis. However, parking in these 73 spaces from midnight to 7 am was, in the absence of prior arrangement between the MCST and the relevant subsidiary proprietor, restricted to vehicles with car park labels.

6 I turn now to the relatively recent events giving rise to the dispute. By way of a letter dated 21 August 2012, the MCST informed the subsidiary proprietors of the AA Centre that it was "renewing" the car park labels. By this the MCST meant that, from 1 September 2012, the old car park labels would no longer be in use, and any vehicles using the old labels parked at the spaces marked "RESERVED" would have their wheels clamped. The letter went on to state that the new car park labels would be issued to the subsidiary proprietors based on an allocation of one car park space per strata lot owned or occupied by that subsidiary proprietor. Hence, under the new scheme described in the letter of 21 August 2012, AAS would be allocated just two car park spaces and correspondingly be issued only two car park labels. AAS complained that this contravened the By-Laws, under which it would enjoy an allocation of 66 car park spaces.

7 AAS further complained that the MCST also contravened the By-Laws by putting into effect measures designed to restrict access to and use of the car park. These measures consisted of imposing a one-hour time limit on parking for visitors to the AA Centre and enforcing it by clamping the wheels of vehicles which exceeded that limit, imposing a $150 fee for releasing the wheel clamps, and installing chains in a manner which prevented cars from being driven down from Deck 1B to Decks 2A, 2B, 3A and 3B. Accordingly, in OS 911/2012, AAS sought injunctions restraining the MCST from putting such measures into effect.

8 In the various affidavits filed in support of the two originating summonses, each party alleged instances in which the other party's behaviour was unreasonable or even unlawful. While these allegations are connected to the dispute before this court, and are helpful insofar as they facilitate understanding of the underlying grievances and motivations of the parties and of how and why their relationship descended to such an acrimonious state, I do not think that there is a need to address the allegations in detail as they are not relevant to the issues this court had to decide.

The Issues

9 Some legislative background is necessary at this juncture. Before 1 April 2005, s 41 of the Land Titles (Strata) Act (Cap 158, 1999 Rev Ed) ("LTSA") laid down the procedure by which a management corporation would make by-laws for, *inter alia*, regulating the management of common property. On 1 April 2005, however, s 41 and other provisions of the LTSA were repealed, and the legislative provisions relating to the making of by-laws which were formerly to be found in the LTSA were re-

enacted, with amendments, as ss 32 and 33 of the new Building Maintenance and Strata Management Act (Cap 30C, 2008 Rev Ed) ("BMSMA"). As to the by-laws made under the superseded LTSA regime, transitional provisions were put in place, in the form of para 14 of the Fourth Schedule to the BMSMA, to govern the survival or otherwise of those by-laws after 1 April 2005.

10 In this case, the By-Laws were passed at a time when s 41 of the LTSA was still in force. It was passed by special resolution at a meeting of the MCST, as required by s 41(3) of that statute, which reads:

> **41.**—(3) A management corporation may, under a special resolution, make by-laws, not inconsistent with the by-laws set out in the First Schedule, for regulating the control, management, administration, use and enjoyment of the subdivided building and the common property.

Although s 41 of the LTSA was repealed on 1 April 2005, the existing by-laws, including the By-Laws, continued in force after that date by operation of para 14(1) of the Fourth Schedule to the BMSMA, which reads:

> 14.—(1) Subject to this paragraph, every by-law that was made in respect of any parcel comprised in a strata title plan under the former provisions by a management corporation continued by the operation of paragraph 10 and that was in force immediately before 1st April 2005 shall continue in force and be deemed to have been made under section 32 or 33 of this Act.

It therefore appears, at least on the surface, that the By-Laws are valid and bind the MCST.

11 The MCST raised, to my understanding, two arguments against the validity of the By-Laws. First, it argued that the By-Laws are invalid/void because they were not lodged with the Commissioner of Buildings (the "Commissioner") within 30 days of the passing of the special resolution, as required by the LTSA. Second, the MCST argued that it terminated the By-Laws, with reasonable notice given, by way of the letter of 21 August 2012, in compliance with the BMSMA.

12 The MCST's two arguments furnish a convenient structure for my decision. Hence, these grounds of decision focus on the two arguments.

Are the By-Laws invalid/void for having been lodged out of time?

13 The special resolution approving the By-Laws was passed on 25 July 2003. Under s 41(12) of the LTSA, the MCST was obliged to lodge a copy of the By-Laws with the Commissioner within 30 days of that date. The provision reads:

> **41.**—(12) A copy of every by-law made by the management corporation and every modification or amendment of any by-law for the time being in force, certified as a true copy under the seal of the management corporation, shall be lodged by the management corporation with the Commissioner within 30 days of the passing of the resolution by the management corporation approving the making of such by-law or any modification or amendment of any existing by-law.

14 The MCST's first argument was that this obligation was not met. It relied on two pieces of evidence. The first was a letter dated 20 August 2003, from the MCST's agent to the Commissioner, which enclosed the By-Laws and which had on it a "RECEIVED" stamp dated 12 September 2003. The second was a letter dated 26 September 2003, from one Zhang Zhi Bin writing on behalf of the

Commissioner to the MCST, in which Mr Zhang alluded to the first letter as having been "received by us on [12 September 2003]". The MCST argued that on the basis of this evidence the By-Laws had been lodged on 12 September 2003, more than 30 days after the passing of the special resolution.

15 I did not accept the MCST's argument. Instead, I accepted AAS's argument that the evidence was equivocal as to whether the By-Laws were lodged out of time, given that the first letter relied on by the MCST, although marked with a "RECEIVED" stamp dated 12 September 2003, was dated 20 August 2003, a date within 30 days of the passing of the special resolution. I did not think that the second letter buttressed the MCST's argument in any way, since it merely restated the fact that the letter was dated 20 August 2003 but marked as received on 12 September 2003.

16 I accepted the argument of AAS that the burden was on the MCST to prove that the By-Laws were lodged more than 30 days after the special resolution was passed. Section 108 of the Evidence Act (Cap 97, 1997 Rev Ed) provides that when any fact is especially within the knowledge of a person, the burden of proving that fact is upon him. Since it was the MCST's obligation to lodge the By-Laws with the Commissioner, I was of the view that the date on which such lodgement took place was a fact especially within the MCST's knowledge. Thus it was for the MCST to prove that the lodgement took place out of time. However, the evidence relied on by the MCST was not sufficiently unambiguous to discharge that burden of proof. On this basis alone, the MCST's first argument failed.

17 I should add that even if it could be shown that the By-Laws were lodged with the Commissioner after the expiry of the 30-day period, I am not sure that the By-Laws are, for that reason alone, void. Section 41(13) of the LTSA provides that a by-law shall not come into force until a copy is lodged with the Commissioner. The exact words of the provision are:

> **41.**—(13) Any by-law, and any modification or amendment of any existing by-law, made by the management corporation shall not come into force until a copy thereof has been lodged with the Commissioner.

On the one hand it can be argued that s 41(12) of the LTSA renders invalid any purported lodgement of a by-law after the expiry of the 30-day period, with the consequence under s 41(13) that the by-law never comes into force. On the other hand, while lodgement out of time might expose the management corporation and its council members to criminal sanctions and a fine under s 120(1) of the LTSA, it does not affect the validity of the lodgement and hence does not prevent the by-law from coming into effect whenever it is lodged, however late that might be. As neither party argued this point, I express no preference for either view.

Were the By-Laws terminated by the letter dated 12 August 2012?

18 The MCST's second argument was that it was entitled to terminate the By-Laws with reasonable notice, and that it did precisely that by announcing in the letter of 21 August 2012 its intention to implement a new scheme of allocating car park spaces. The MCST relied on para 14(4) of the Fourth Schedule to the BMSMA, which provides, in relation to by-laws made under the superseded LTSA regime, that any by-law which grants a subsidiary proprietor a right of exclusive use and enjoyment of, or special privileges in respect of, any common property would be terminable on reasonable notice after 1 April 2005, unless the management corporation otherwise resolves by unanimous resolution. For convenience I set out that provision in full:

> 14.—(4) Where, immediately before 1st April 2005, a subsidiary proprietor of a lot was entitled, pursuant to former section 41 of the Land Titles (Strata) Act repealed by this Act, a right of exclusive use and enjoyment of, or special privileges in respect of, any common property, the

subsidiary proprietor for the time being of the lot shall continue to be entitled to that right or those special privileges in accordance with the terms of the by-law, and any such by-law shall be terminable on reasonable notice unless the management corporation otherwise resolves by unanimous resolution.

19 The premise behind this second argument of the MCST must be that the By-Laws granted AAS, or some other subsidiary proprietor, a right of exclusive use and enjoyment of, or special privileges in respect of, the common property that is the car park. However, I failed to see how this premise could be correct. As AAS argued, being allocated 66 car park spaces did not equate to having exclusive use of 66 car park spaces. The 21 car park spaces marked "RESERVED" on Deck 1B and the other 73 spaces were on a "first-come-first-available" basis, meaning that no one particular space was earmarked for the exclusive use of any one subsidiary proprietor. In effect, each subsidiary proprietor could use the entire car park. As to whether the By-Laws granted AAS "special privileges" in respect of the car park, I did not think that they did. AAS was allocated 66 car park spaces out of 94, which meant that it was allocated approximately 70.2% of the car park spaces in the AA Centre. It was, without doubt, allocated many more spaces than the other subsidiary proprietors, but this must be seen in the context of AAS's majority share value of 78.2%. I would not venture to define exhaustively what does or does not constitute "special privileges", but in my opinion a scheme that allocates car park spaces to subsidiary proprietors in a manner proportionate to their share values is not one which grants any subsidiary proprietor "special privileges".

20 Since the By-Laws granted AAS neither exclusive use of nor special privileges in respect of the car park, para 14(4) of the Fourth Schedule to the BMSMA has no application. It follows that the MCST was not entitled to terminate the By-Laws with reasonable notice. The MCST's second argument thus failed.

21 It was open to the MCST to implement the new scheme of allocating car park spaces described in their letter of 21 August 2012, provided that they did so by means of a special resolution, as required by s 32(3) of the BMSMA. But, as became clear only at the hearing, there was no such special resolution as the AAS had been led to believe. Indeed, there was not even a general meeting convened for the purpose of taking a vote on the new scheme of allocation. Hence, the By-Laws were not superseded by any new scheme of allocation.

22 There are two further points that should be dealt with before I conclude. The first additional point arose because the MCST sought a declaration in OS 1074/2012 that it "has the right, power and duty to manage and administer all the common property comprised in the AA Centre, including the car park". I dismissed OS 1074/2012 in its entirety, but that should not be taken to mean that the MCST does not have such right, power and duty, for it undoubtedly does. In my view, what the MCST was seeking was a declaration that it had a *carte blanche* to manage the common property as it deems fit. That cannot be the case. The MCST must manage the property in accordance with all by-laws in effect, which in this case includes the By-Laws.

23 The second additional point concerned the relationship between the By-Laws and the by-laws prescribed by regulations under the BMSMA. The prescribed by-laws are set out in the Second Schedule to the Building Maintenance (Strata Management) Regulations (S 192/2005). By operation of s 32(2) of the BMSMA read with para 14(1) of the Fourth Schedule, the By-Laws cannot be inconsistent with the prescribed by-laws. AAS accepted that the MCST adopted the prescribed by-laws by special resolution, as required by para 14(3) of the Fourth Schedule to the BMSMA, at an Annual General Meeting held on 20 April 2006. The problematic by-law in the prescribed by-laws is the following one:

Vehicles

2.—(1) A subsidiary proprietor or an occupier of a lot shall not —

(*a*) park or leave; or

(*b*) permit any invitees of the subsidiary proprietor or occupier to park or leave,

any motor vehicle or other vehicle on the common property except with the prior written approval of the management corporation.

24 At first glance, it would appear that the By-Laws are inconsistent with this particular prescribed by-law. More than that, any by-law which permitted parking as of right even in a designated car park would seem to be inconsistent with this prescribed by-law. That, however, would be an absurd position. In my view, the prescribed by-law must be interpreted as not applying to any part of the common property which has been designated as a car park. I find support for this view in *Poh Kiong Kok v Management Corporation Strata Title Plan No 581* [1990] 1 SLR(R) 617, a decision of Chan Sek Keong J, at [16]. The By-Laws pertain wholly to the use of a car park, and accordingly, in my opinion, they are not inconsistent with the by-laws prescribed by the BMSMA regulations and adopted by the MCST.

Conclusion

25 For the foregoing reasons, I held that the By-Laws are valid and binding on the MCST, and granted the declarations and injunctions sought by AAS. I further ordered that damages be assessed by the Registrar. I awarded costs of OS 911/2012 to AAS, together with the costs of the interim injunction that I had previously granted (on 2 October 2012) pending the hearing of the two originating summonses. I made no order for the costs for OS 1074/2012.