

Dispute Resolution

Judicial Approach in MCST Cases: To defer to, or differ from, a Management Corporation?

Introduction

In Singapore, strata titled developments are a unique form of private housing. The legal framework and rules governing the improvements and additions by subsidiary proprietors ("**SP**") to units comprised in a strata title development are set out in the Building Maintenance and Strata Management Act ("**BMSMA**"). Under the BMSMA, a SP is required to seek the management corporation's ("**MCST**") approval to effect improvement in or upon his or her lot if the proposed improvement "*affects the appearance of any building comprised in the strata title plan*". The overarching concern is that of uniformity.

When approval is sought, the MCST could (a) decide that it is empowered to grant the approval sought and does grant such approval; (b) decide that it is not empowered to grant the approval sought and turns the SP away on this basis; or (c) decide that it is empowered to grant the approval sought but decides not to grant the approval.

What if the MCST's basis for declining approval is objectively indefensible? It is then open to the SP to bring an action to challenge the MCST's decision and concomitantly compel the MCST to act otherwise. Guiding principles have been established in earlier cases but the analysis of the deference accorded to a MCST's decision is a novel point. Indeed, safeguards are provided by the BMSMA and the MCST's decision must, on principle, be subject to judicial control.

In a recent civil appeal against the decision of the District Court ("**Appeal**"), Gregory Vijayendran SC and Tomoyuki Lewis Ban from Rajah & Tann Singapore's Dispute Resolution team successfully appealed against the entire decision of the District Court (except in relation to the question of damages which the Appellant did not pursue in the Appeal) and ordered the MCST of Hawaii Tower ("**Development**") to approve certain Unapproved Works (defined below) requested for by the Appellant. This Update elucidates the considerations that the High Court in *Prem N Shamdasani v Management Corporation Strata Title Plan No. 0920* [2022] SGHC 280 took into account in allowing the appeal. We will also cover the High Court's clarification of the legal framework under the BMSMA as to (a) a MCST's power to authorise a SP's request to effect improvements to their lot; and (b) how and when the exercise of such power may be challenged.

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Background

The dispute at hand arose from the Respondent MCST's decision to stop the Appellant SP's renovation works that had not been approved ("**Unapproved Works**"). The Unapproved Works included (a) the removal of balcony sliding doors of the living and master bedroom; (b) the installation of aluminium framed glass windows; and (c) the replacement of the air-conditioner condenser on the external wall of the building. Significantly, the Appellant had carried out substantially similar renovation works in the past, and the Respondent had not objected to the same. There were also 19 other units in the Development with alternations and additions made to them. Dissatisfied with the Respondent's actions, the Appellant sought an order from the District Court that the MCST be restrained from stopping the Unapproved Works. At first instance however, the learned District Judge ("**DJ**") dismissed all the Appellant's claims.

The key relevant legal principles from the General Division of the High Court that heard the Appeal were as follows:

- (a) First, a SP is required under section 37(3) of the BMSMA to secure the MCST's approval before carrying out an improvement that "*affects the appearance of any building comprised in the strata title plan*". Ultimately, whether an improvement affects the facade or appearance of any building is not to be ascertained as a theoretical exercise but from the viewpoint of a reasonable observer who looks at the building from a position which is practically possible or likely. The burden is on the SP to show that the proposed improvement does not affect the appearance of any building, thereby absolving the need for the MCST's approval;
- (b) Secondly, if the SP requires the MCST's approval to effect the proposed improvement, section 37(4) of the BMSMA is engaged to provide for when and how a MCST can give such approval. Under section 37(4) of the BMSMA, a MCST may only give such approval if it is satisfied that the proposed improvement (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 (section 37(4)(a) BMSMA); and (b) will not affect the structural integrity of any of the buildings comprised in the strata title plan (section 37(4)(b) BMSMA). The burden falls on the MCST to justify its decision whether to authorise the proposed improvement or not; and
- (c) Finally, the MCST's decision under section 37(4) of the BMSMA is open to challenge through various avenues. Two modalities suffice: (a) section 88(1)(a) of the BMSMA where the SP may contend that the MCST had "breached" its duty under section 37(4) to properly consider whether the criteria in section 37(4)(a) and section 37(4)(b) are met; and (b) section 111(b) of the BMSMA (if it can be shown that the MCST's decision under section 37(4) was "unreasonable").

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Appellant's Position

The Appellant's case was that the Respondent was not justified in declining to allow the Unapproved Works. His main reasons were:

- (a) First, the Unapproved Works did not affect the appearance of any building within the Development within the meaning of section 37(3) of the BMSMA;
- (b) Secondly, and in any event, the Unapproved Works did not detract from the appearance of any of the buildings and were in keeping with the rest of the buildings within the Development within the meaning of section 37(4)(a) of the BMSMA; and
- (c) Finally, the Respondent had impliedly approved/acquiesced to similar works in the past and ought to be restrained from ordering or directing the Appellant to remove and/or reinstate the Unapproved Works.

Accordingly, the Appellant sought a prohibitory injunction under section 88(1)(a) of the BMSMA that the Respondent be restrained from ordering or directing the Appellant to remove and/or reinstate the Unapproved Works.

Respondent's Position

The Respondent's case was that it was entirely justified in its actions against the Appellant for the following reasons:

- (a) First, the Appellant did not obtain the Respondent's approval with respect to the installation of the aluminium framed glass windows and the removal of the sliding doors and was thus in breach of the 2014 Additional By-Laws;
- (b) Secondly, the Appellant had also breached section 37(3) of the BMSMA as the installation of the aluminium framed glass windows and the removal of the sliding doors affected the appearance of the buildings in the Development; and
- (c) Finally, the Appellant had breached the 1990 Additional By-Laws by replacing the air-conditioner condenser affixed on the external wall. It also posed a safety hazard to innocent passers-by.

As such, the Respondent contended that since the Appellant had breached the Additional By-Laws, it was empowered to cease the renovation works and require the Appellant to rectify the works to their original position.

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Decision of the General Division of the High Court of Singapore

The Honourable Judicial Commissioner Goh Yihan ("JC Goh") allowed the Appeal in its entirety, and ordered the Respondent to approve the Unapproved Works requested for by the Appellant.

Deference accorded to a MCST's decision

As a matter of law, the Respondent relied on the decision of Coomaraswamy J in *Management Corporation Strata Title Plan No 940 v Lim Florence Marjorie* [2019] 4 SLR 773 as authority that it is for the MCST, not the court, to decide whether the statutory criteria in sections 37(4)(a) and 37(4)(b) of the BMSMA is fulfilled. JC Goh disagreed, and did not think that Coomaraswamy J was suggesting such an approach. JC Goh also held that it cannot be correct to think that a MCST's decision is beyond judicial control. In coming to this conclusion, JC Goh insightfully drew a distinction between where a decision-making power is placed, and whether the decision arising from that decision-making power can be challenged.

Applying the analytical framework for sections 37(3), 37(4) and 88(1) of the BMSMA to the facts of the case, JC Goh found that the installation of the aluminium framed glass windows and the replacement of the air-conditioner condenser unit did affect the appearance of the building of the Appellant's unit. However, these renovation works were in keeping with the rest of the buildings, and the Respondent therefore could not objectively point to the Appellant being unable to meet the requirements under section 37(4)(a) of the BMSMA to carry out the improvement works. As for the removal of the sliding doors, JC Goh found that this did not affect the appearance of the building of the Appellant's unit. Accordingly, the Appellant was not required to seek the Respondent's approval to remove the sliding doors concerned. We elaborate on JC Goh's findings below.

Removal of the Balcony Sliding Doors

Having reviewed several photographs taken closer to the buildings in the Development, JC Goh was of the view that it was not possible for an observer standing at a reasonable vantage point to see much of the sliding doors, if at all. Although the DJ at first instance had found that the Appellant was in breach of section 37(3) of the BMSMA because there were no sufficiently clear photographs showing that the appearance of the building concerned had not been affected, JC Goh disagreed, finding that if the sliding doors could not be seen clearly from the numerous photographs, the correct conclusion ought to be that these doors did not affect the appearance of the building.

Installation of the Aluminium Framed Glass Windows

Turning to the aluminium framed glass windows, JC Goh found that the windows were in keeping with the rest of the buildings. Even though the installation of the said windows could factually detract from the appearance of the buildings in the Development, this was only if other units were all not altered as well. At first instance, the DJ found that uniformity could still be achieved as the Respondent could

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conceivably go after the 19 other SPs who had made similar alterations. In this regard, the Court accepted the Appellant's submission that the Respondent's claims against the 19 other SPs were likely to be time-barred; hence, the Respondent was no longer able to achieve the uniformity that it sought. The Respondent could not insist that the Appellant adhere to the dream of uniformity that bore no semblance to reality.

JC Goh also agreed with the Appellant that the Respondent's own inaction in the last 25 years had given rise to acquiescence in respect of the works undertaken by the 19 other SPs. As such, apart from its claims being likely time-barred, JC Goh also found that the Respondent's claims would also likely fail because of its own acquiescence.

Replacement of the Air-conditioner Condenser

JC Goh found that the same analysis applied to the Appellant's replacement of the air-conditioner condenser. The Respondent could not go after the six other units with similar external air-conditioner condenser units as JC Goh had found that these SPs had simply not breached any of the prescribed By-Laws. Again, even if the SPs were in breach of any of the prescribed By-Laws, the Respondent's claim in respect of such breach would likely be time-barred or fail due to acquiescence. JC Goh also agreed with the Appellant that the Respondent did not raise specific evidence that substantiated its concerns about safety in the present case. It was also not sufficient for the Respondent to point to safety concerns in other developments, without explaining how those concerns may be relevant to the Development.

Comments

We conclude with three observations on JC Goh's decision:

- (a) On the central question in this Update of deferring to, or differing from, a MCST, the court's interpretation of section 37(4) of the BMSMA is both illuminating on the legislative balance and practical. In JC Goh's words: "... *this reading of s[ection] 37(4) would still further the legislative intent of not burdening the courts and tribunals with an avalanche of disputes due to the large increase in the number of management corporations and strata title flats. This is because a management corporation's decision under s[ection] 37(4) stands until it is challenged. Even by this reading of s[ection] 37(4), the primary decision-making process is still vested in the management corporation and is not transposed onto the courts and tribunals.*"
- (b) This decision demonstrates the importance for a MCST to properly consider whether the criteria in sections 37(4)(a) and 37(4)(b) of the BMSMA are met. While aesthetic uniformity is unquestionably a concern in strata titled developments, whether uniformity can *realistically* be achieved must be the primary consideration.
- (c) if a MCST is of the view that breaches have been committed, this decision is instructive that

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action must be taken against such breaches timeously to counteract an inference of implied approval and/or acquiescence.

The full written judgment of JC Goh is available [here](#).

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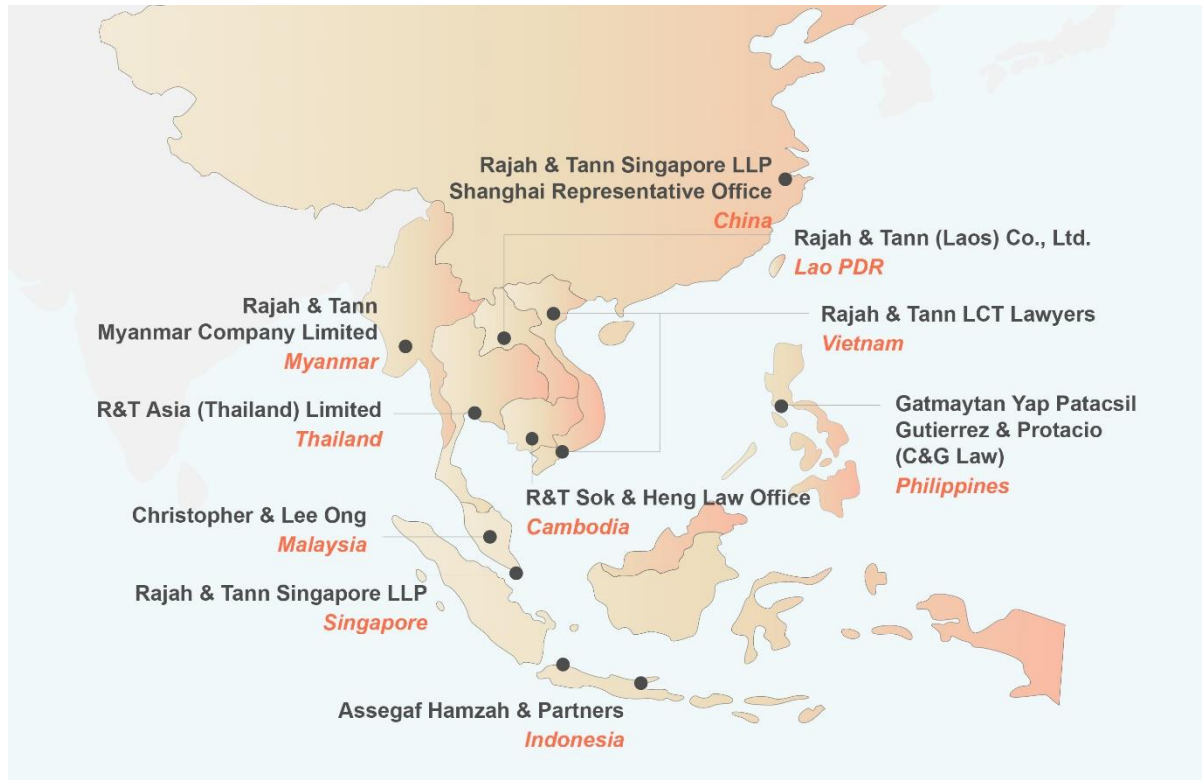
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