

BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT

**BUILDING MAINTENANCE AND STRATA MANAGEMENT
(STRATA TITLES BOARDS) REGULATIONS 2005**

STB No. 6 of 2019

In the matter of an application under Section 106
of the Building Maintenance and Strata
Management Act in respect of the development
known as **JUNCTION NINE** (MCST Plan No.
4431)

Between

- 1. Jape Pte. Ltd**
- 2. UPE Automation Pte. Ltd.**
- 3. Armi Pte. Ltd.**
- 4. Best Tang Pte. Ltd.**
- 5. SK Tang Investment Pte. Ltd.**

... Applicant(s)

And

**The Subsidiary Management Corporation No.
1 – Strata Title Plan No. 4431**

... Respondent(s)

GROUND OF DECISION

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... Respondent(s)

20 June 2019

1 August 2019

Coram:	Mr Raymond Lye	(Deputy President)
	Mr Lai Huen Poh	(Member)
	Ms Chew Yi-Ling Elaine	(Member)

BACKGROUND

1. The Applicants are the subsidiary proprietors of the shop units with open concept being units #XXX, #XXX, #XXX, #XXX, and #XXX of 18 Yishun Avenue 9 Singapore 768897 at Junction Nine (“**the Applicants**”). The Respondent (“**the Respondent**”) is the Subsidiary Management Corporation (“**SMC**”) of Junction Nine, a mixed development comprising commercial properties and residential units.
2. The Applicants were the respondents and the Respondent was the applicant in STB 107

of 2017 (“**the 2017 Application**”). On 1 December 2017, the Respondent filed the 2017 Application against the Applicants for the Strata Titles Boards (“**STB**”) to make an Order for the Applicants:

- (a) To remove all encroachment and comply with Fire Safety Regulations, By-Laws and the Prescribed By-laws under the Building Maintenance and Strata Management Act (“**BMSMA**”);
 - (b) Not to store items above 1.8 meters; and
 - (c) To pay the two summonses issued by the Singapore Civil Defence Force (“**SCDF**”) for violations of fire safety requirements of \$300 and \$500, respectively and costs.
3. Both parties eventually settled their dispute in the 2017 Application in a Consent Order dated 9 April 2018 (“**Consent Order**”) which states at paragraphs [1] and [2] as follows:

“By Consent, parties agree as follows:

- 1. Respondents to remove all encroachment and comply with all Fire Safety Regulations, By-Laws issued by FSB and the MCST Prescribed By-Laws.*
- 2. Respondents not to store any items exceeding 1.8 meter that will obstruct full deployment of the smoke curtain in Respondents’ premises...”*

4. On 22 June 2018, the SMC held the 2nd Annual General Meeting (“**AGM**”) to pass by way of special resolution an additional by-law as follows:

“Proposed Addition to By-Law

4.11.2 The Owners/Occupiers/Tenants of kiosk/open units shall ensure that their stock, goods, signage or any installation must keep within the units and must not stack and install above 1.8m in height from ground level. Installation of signage shall be reviewed on case by case basis subject to the approval of the Management. The Management shall issue removal notice upon discovery including serving legal notice.”

5. By way of special resolution, By-Law 4.11.2 was passed. The same was lodged with the Building and Construction Authority on 10 July 2018.
6. On 18 January 2019, the Applicants filed this application for the Board to declare By-Law 4.11.2 to be invalid. Section 106 of the BMSMA provides for the Board to declare a by-law to be invalid where the SMC does not have the power to make such a by-law.

ISSUES BEFORE THE BOARD

7. The three main issues before the Board are as follows:

- (a) Does By-Law 4.11.2 infringe on the Applicants’ property rights in their shops? And its corollaries –
 - can the SMC regulate the internal usage of the Applicants’ shops, except

where safety is concerned?

- does By-Law 4.11.2 serve a purpose beyond the prescribed By-Law 18 in the Building Management and Strata Management Regulations 2005 (“**Regulations**”)?
- (b) What is the effect of Clause 35 of the Sale & Purchase Agreement (“**SPA**”)?
- (c) What is effect of the Consent Order?

APPLICANTS’ CASE

8. The Applicants’ case is that the issue between the parties was on safety and storage of items in the Applicants’ open concept shop units to not affect the deployment of the smoke curtain and not to encroach on common property. This was evidenced in the letters between the parties from October 2016 to January 2017 where issues on fire curtain and encroachment were raised but no reference was made to renovation, fitting works, and/or height of racks or goods stored in the shop units with open concept.¹
9. The Applicants submitted that the Respondent does not have the power to make By-Law 4.11.2 because this interfered with the internal usage of their open concept units (for which the Applicants paid a substantial amount).² Whereas the owners of open concept units had limits to the height of goods displayed in their shops, the enclosed shop owners could display their goods to almost their units’ ceiling height (up to 3 metres).³ Further, the terms of the SPA stated that the shop units with open concept were to enable maximum visibility and openness and the Applicants maintained that there was a high level of visibility for their shop units with open concept, including being open to the space above them.⁴ The Applicants submitted that the Respondent can regulate their shop space, but only where safety was concerned.⁵
10. The Applicants also submitted that the Respondent’s arguments that their approval was required for the installation of racks higher than 1.2 metres and for putting up signboards at more than 1.8 metres was an afterthought to justify passing By-Law 4.11.2.⁶ There were other purchasers/tenants of the shop units with open concept that had installed sign boards, structures and fittings that exceeded 1.8 metres in height without the Respondent’s approval.

RESPONDENT’S CASE

11. At the hearing on 20 June 2019, the Respondent submitted that where safety was the

¹ Affidavit of Evidence in Chief of Patrick Saik Seow Ghee dated 2 May 2019 from pages 83 to 93.

² Applicants’ written submissions dated 23 May 2019 at paras 17 and 19.

³ Applicants’ written submissions dated 23 May 2019 at para 32.

⁴ Applicants’ written submissions dated 23 May 2019 at paras 14 and 25.

⁵ Applicants’ written submissions dated 23 May 2019 at para 30.

⁶ Applicants’ written submissions dated 23 May 2019 at para 8.

issue, the Respondent could address this in making by-law(s). Further, it was not in dispute between the parties that the Applicants could stack goods within their own shop units.

12. The Respondent's case is that as far the shop units with open concept were concerned:

*“(a) there must be visibility of the interior of the shops;
(b) there must be openness in that installations within the shops must not be of such nature that the installations become “walls” as it were; and
(c) of course, the safety of the occupiers and shoppers were of paramount concern.”*⁷

13. The Respondent submits that besides having high visibility and openness – these being the purport of the SPA, the owners of shop units with open concept needed to obtain the Respondent's consent for any and all changes to their units.⁸

BOARD'S DECISION

Balancing between property rights and safety concerns

14. Section 82(4) of the BMSMA states that Section 32 By-laws for common property, and Section 33 Exclusive use by-laws, apply to the by-laws of an SMC as they apply to the by-laws of a management corporation.
15. By-Law 4.11.2 was passed pursuant to Section 32(3) of the BMSMA. Section 32(3) of the BMSMA empowers the SMC to make by-laws which are “*for the purpose of controlling and managing the use or enjoyment of the parcel comprised in the strata title plan*”.
16. It is stated in By-Laws 4.11 and 4.11.1 that:

“4.11 STORAGE OF MATERIALS AND OBSTRUCTIONS TO COMMON PASSAGE, FIRE ESCAPE ETC.

4.11.1 The Owners/Occupiers/Tenants must ensure that their stock, goods or any items are kept within their premises as any obstruction to the common corridors fire escape routes etc. shall be immediately cleared away by the Management and all removal cost so incurred shall be charged to the Owner/Occupier/Tenant accordingly. If the Occupier/Tenant refused to pay, then the Management shall charge it to the Owners accordingly due to non-payment by their Occupier/Tenant.”

The above applies to all owners and does not differentiate between owners of shop units with open concept and other shop owners.

17. By-Law 4.11.2 which follows after By-Law 4.11.1 states that:

⁷ Affidavit of Evidence in Chief of Vijay Nath Rai dated 3 May 2019 at para 35.

⁸ Respondent's written submissions dated 23 May 2019 at paras 40 and 41.

“The Owners/Occupiers/Tenants of kiosk/open units shall ensure that their stock, goods, signage or any installation must keep within the units and must not stack and install above 1.8m in height from ground level. Installation of signage shall be reviewed on a case-by-case basis subject to the approval of the Management. The Management shall issue removal notice upon discovery including serving legal notice.”

18. The Board finds By-Law 4.11.2 to be ambiguous or unclear (the Respondent submitted that its wording is *“far from perfect”* and invites the Board to *“refine the wording of the by-law”*⁹). Based on a plain reading of By-Law 4.11.2, it applies to *“kiosk/open units”*. It is common ground that there are no kiosks in the development¹⁰ nor *“open units”*. There are, however, *“Shop units with Open Concept”* or *“Open Concept Units”*.¹¹ For this reason alone, the by-law is questionable.
19. The Board disagrees with the Respondent’s case that their written approval is required for any or all changes to the Applicants’ units. The law seeks to balance the property rights of shop owners as to how they wish to lay-out and/or furnish their lots with the overriding concern of safety or where the use of such rights may lead to legitimate concerns from other owners/users; see [20] below.
20. Pursuant to Section 32(3) of the BMSMA, the SMC can pass special resolutions to make by-laws for the purpose of controlling and managing the use and enjoyment of the parcel comprised in the strata titles plan which includes the following prescribed 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) behavior;*
- (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.”*

In our view, the SMC cannot make a by-law that interferes with the height limit at which the shop owners could display the goods in their own shops, if this is not for any of the prescribed purposes as stated above. This is consistent with the position that an SMC cannot make a by-law where it has no powers to do so under Section 106 of the BMSMA.

⁹ Respondent’s written submissions dated 23 May 2019 at para 83.

¹⁰ Applicant’s written submissions dated 23 May 2019 at para 34.

¹¹ Affidavit of Evidence in Chief of Patrick Saik Seow Ghee dated 2 May 2019 at page 66 with reference to Clause 35 of the SPA.

21. In this regard, the Board finds the prescribed purpose the Respondent is relying on for passing By-Law 4.11.2 is safety, elaborated below at [23] – [30]. While the Respondent had also made submissions on the importance of maintaining visibility of the areas around the Applicants’ units as an underlying reason for By-Law 4.11.2, the title of By-Law 4.11, “*Storage of Materials and Obstructions to Common Passage, Fire Escape etc.*” suggests otherwise.
22. Further, the Respondent had also conceded at the hearing of 20 June 2019 that while the SMC can interfere in every (open concept) unit to regulate the height limit of stacking of goods to no more than 1.8 metres, the SMC cannot do so to the enclosed shop units as it does not have right to “*interfere*”.¹² In the Board’s view, By-Law 4.11.2 obviously discriminates between enclosed shop units and open concept shop units without proper justification or basis. The By-Law can also be repealed under Section 105 of the BMSMA on this basis.¹³ In summary, the Board is of the view that aside from the grounds listed in Section 32(3) of the BMSMA, the SMC does not have the power or legal basis to interfere in the internal layout of all shop units. In short, the By-Law cannot sensibly and logically be construed to interfere with the rights of shop owners within their units so that they are prohibited from stacking stock, goods, signage or any installation above 1.8 metres in height from ground level.

By-Law 4.11.2 vis-à-vis prescribed by-law in the Regulations

23. Pursuant to Section 32 of the BMSMA, the by-laws passed by the SMC shall not be inconsistent with any such prescribed by-law in the Regulations.
24. Regulation 21 of the Regulations provides as follows:
- “By-laws applicable to limited common property, etc.
21. Subject to section 82 of the Act, the by-laws prescribed in the Second Schedule shall apply to the limited common property managed and maintained by a subsidiary management corporation with the following modifications:
(a) any reference in the by-laws to the management corporation shall be read as a reference to the subsidiary management corporation; and
(b) any reference in the by-laws to the common property shall be read as a reference to the limited common property.”*
25. The prescribed by-laws in the Second Schedule of the Regulations are applicable in this case.
26. By-Law 18 of the prescribed by-laws in the Second Schedule of the Regulations provide as follows:

“Prevention of fire and other hazards

¹² Transcript of 20th June 2019 Page 63 Line 4-17 and Page 70 Line 1-4.

¹³ *Roland Yeo Peng Sin/Chan Mei Yoke and 19 Ors. v The MCST Plan No. 2054* STB No. 54 of 2013 (“*Parc Oasis*”) at paras 10 and 20.

- 18(1) A subsidiary proprietor or an occupier of a lot shall not do any thing or permit any of his invitees to do any thing on the lot or common property that is likely to affect the operation of fire safety devices in the parcel or to reduce the level of fire safety in the lots or common property.*
- (2) *A subsidiary proprietor or an occupier of a lot shall not do any thing or permit any of his invitees to do any thing on the lot or common property that is likely to create a hazard or danger to the owner or occupier of another lot or any person lawfully using the common property.*
- (3) *Without prejudice to the generality of paragraph (2), a subsidiary proprietor or an occupier of a lot shall not place, put up or display any article or object on or by any window or on any balcony of, or outside, the lot in a manner which is likely to cause any damage to property or injury to life to any person lawfully using the common property.”*
27. The Respondent stated that fire hazard contraventions was the issue between the parties in the period between late 2016 and mid-2017, resulting in the filing of the 2017 Application and the Respondent produced copies of the notices issued by the SCDF thereof.¹⁴ The Respondent also admitted that the other issue at that time was on the Applicants’ placement of goods that obstructed passageways and escape routes, which had “*since been abated*”.¹⁵ These issues had been settled in a Consent Order elaborated below at [38]-[42].
28. The Respondent produced photographs to show that the Applicants’ shop units with open concept had installations/goods that obstructed the full deployment of the smoke curtains.¹⁶ They also claimed that as recent as 11 April 2019, SCDF had conducted a spot check on Junction Nine and found that smoke curtains could not be deployed to full length due to the obstruction by the Applicants’ racks/goods/installations.¹⁷ The Board finds it surprising that where SCDF notices were produced for the past fire safety breaches by the Applicants, there was no similar SCDF notice produced for the fire safety breach on 11 April 2019. The Respondent submits that the Applicants had “*only recently moved/removed their racks/stock/goods/items that were preventing the full deployment of the smoke/fire curtains. The smoke/fire curtains can now be fully deployed*”.¹⁸
29. In view of the evidence before the Board (i.e. that the issue had abated and that the Respondent had not provided concrete evidence that the Applicants had breached fire safety regulations), the Board found that the Respondent had not, in this application, discharged its burden to show the Applicants were in breach of safety on a balance of probabilities.¹⁹ The Board is further fortified in its views that safety concerns were not

¹⁴ Affidavit of evidence in chief of Vijay Nath Rai dated 3 May 2019 from paras 26 to 28.

¹⁵ Affidavit of evidence in chief of Vijay Nath Rai dated 3 May 2019 at para 29.

¹⁶ Affidavit of evidence in chief of Vijay Nath Rai dated 3 May 2019 at paras 38 and 39.

¹⁷ Affidavit of evidence in chief of Vijay Nath Rai dated 3 May 2019 at para 42.

¹⁸ Respondent’s written submissions dated 12 July 2019 at para 89.

¹⁹ Section 103 of the Evidence Act states as follows:

the motivating factor of the SMC setting of the height restriction for the display of goods for the open concept units when the Respondent said that approval would still not be granted by the SMC for goods stacked above 1.8 metres even if “*securely fastened*” as “*we (SMC) don’t want anything above that*”.²⁰ This also shows that the By-Law 4.11.2 is clearly arbitrary. The Respondent also conceded that the minutes of the AGM of 22 June 2018 did not record any discussions, whether as to safety, visibility or openness or at all, before the By-Law 4.11.2 was passed.²¹

30. The Board therefore finds that the Respondent does not have the power to make By-Law 4.11.2 where it is not shown by the Respondent that the making of the said By-Law is for the prescribed purpose, namely safety.

Legal Effect of Clause 35 of the SPA

31. In “*The Law of Contract in Singapore*” by Andrew Phang (Lexis Nexis 2012) at paragraph [06.023], it was stated that where the contract is in writing, the terms of the contract are usually determined by reference to the written document. In *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) at 1029, it was held by V K Rajah JA (as his Honor then was) that:

“The first and foremost consideration in approaching any written contract must be the essence and attributes of the document being examined. Different genres of documents may require different treatment by the court at various stages of the analytical process. For example, for standard form contracts and documents for commercial circulation (e.g. negotiable instruments), the presumption that all the terms of the agreement between the parties are contained in the contract will be almost impossible to rebut. Such documents are examples par excellence of contracts that look complete to parties...”

32. It is not in dispute between the parties that the SPA for the sale and purchase of Shop units with Open Concept is complete and that it contains all the terms of the agreement between the seller and the buyer, namely the Applicants. The express terms of Clause 35 of the SPA states as follows:

“35. Shop units with Open Concept

35.1 The Purchaser acknowledges and accepts the following in respect of the named Units, which have been approved for use as “shop”, namely #XXX, #XXX, #XXX,

“103(1) Whoever desires any court to give judgment as to any legal right or liability, dependent on the existence of facts which he asserts, must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.”

Section 105 of the Evidence Act states as follows:

“105. The burden of proof to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”

²⁰ Transcript of 20th June 2019 Page 72 Line 15-21.

²¹ Transcript of 20th June 2019 Page 116 Line 1-20.

#XXX, #XXX, #XXX, #XXX, #XXX, #XXX, #XXX, #XXX, #XXX, #XXX, #XXX,
#XXX, #XXX, #XXX, #XXX, #XXX, #XXX, #XXX, #XXX, #XXX, #XXX, #XXX,
#XXX, #XXX, #XXX, #XXX, #XXX, #XXX, #XXX, #XXX, #XXX, #XXX, #XXX,
#XXX and #XXX, (“the Open Concept Units”):-

- (1) They will not have any partition wall to enable maximum visibility and openness, except for a 1.2m height partition along each strata boundary line between any adjoining Open Concept Units.
- (2) They will have plasterboard ceiling, except for Units #XXX, #XXX, #XXX, #XXX, #XXX, #XXX, #XXX and #XXX which are either without ceiling and open to the space above them or provided with partial plasterboard ceiling and partially open to the space above them;
- (3) They will have tile floor finish;
- (4) They will be exposed to the effect of air-conditioning and lighting supplied to the Commercial Limited Common Property of the Housing Project. The Open Concept Units which are provided with plasterboard ceiling shall be provided with light fittings which shall be owned, operated and maintained by the Vendor (or the Commercial Sub-MC (when formed)); and
- (5) Any form of changes including but not limited to addition or removal of any partition, ceiling, fixture and fitting to the Open Concept Units shall require the prior written approval of the Consenting Party.

35.2 For avoidance of any doubt whatsoever, the Purchaser of any the Open Concept Units shall accept that his enjoyment of the air conditioning and lighting, if any, as aforesaid is purely incidental, and shall abide to the decision of the Vendor (or the Commercial Sub-MC (when formed)) on the duration, quality and all aspects of the air-conditioning and lighting supplied to the Commercial Limited Common Property of the Housing Project.”

33. The Respondent states that pursuant to the SPA, the shop units with open concept are to maintain maximum visibility of the interior of the unit and that openness is to be observed.²² The Applicants submit that the Respondent’s basis for the afore-mentioned lies in Clause 36 of the SPA²³ which states as follows:

“36. Installation of Partition, Wall or Doors to the Unit

The Purchaser acknowledges and accepts that prior written approval of the Consenting Party is required for the installation (or removal) of any partition, wall or doors to the Unit. In particular, without prejudice to the generality of the foregoing, the Purchaser shall seek to ensure a high level of visibility of the interior of the Unit.”

34. The Board finds that Clause 36 would apply to all shop owners (and in that regard, all the purchasers of the shop units) and not just the shop units with open concept. In that regard, “maximum visibility” and “high level of visibility” apply to shop units with open

²² Affidavit of evidence in chief of Vijay Nath Rai dated 3 May 2019 at paras 20 to 22.

²³ Applicants’ written submissions dated 23 May 2019 at para 22.

concept and all shop units, respectively. The Respondent's case that there must be "*visibility in the interior of the shops*" does not apply only to the shop units with open concept but also to the shops with enclosed space. It is not in dispute between the parties that owners of shops with enclosed space face no height restriction with respect to the stacking of their stock, goods, signage or any installation.

35. The Board finds that the issue of visibility in the interior of the shops had arisen pursuant to the terms of the SPA and not under the by-laws. It is not necessary to decide on the issue of whether Clause 35 had been breached for the purpose of this application.
36. For the reasons set out in [14] – [30] above, By-Law 4.11.2 is invalid and the Board orders that it be repealed.
37. The Board now proceeds to elaborate on the Consent Order that was made in the 2017 Application.

Legal Effect of the Consent Order

38. The law is trite with respect to a Consent Order made between the parties. In the course of litigation, it is a good practice for parties to embody their agreement in a consent judgment as apart from giving the settlement official and confirmed status, the consent judgment may be automatically enforced in the same way as any other judgment. (See Chapter 21 Judgments and Orders in "*Principles of Civil Procedure*" by Jeffrey Pinsler, SC (Academy Publishing 2013), at [21.017] and [21.018]). As stated by Bryne J in *Wilding v Sanderson*²⁴,

"A consent judgment or order is meant to be the formal result and expression of an agreement already arrived at between the parties to proceedings embodied in an order of the court. The fact of its being so expressed put the parties in a different position from the position of those who have simply entered into an ordinary agreement."

39. The Court of Appeal in *Woo Koon Chee v Scandinavian Boiler Service (Asia) Pte Ltd* [2010] 4 SLR 1213 at [24]–[28] also held that there was no real difference between an order and a judgment in substance and in form. It makes no difference whether the judgment or order is obtained arising from a contested hearing or by the consent of the parties. It is automatically enforceable in both instances.
40. It is also well established that where a court order is intended to substantially give effect to the parties' intentions, it would be relevant to consider these intentions when giving consideration to the express wording of the order. (See [39] of *Hoban Steven Maurice Dixon and anr v Scalon Graeme John and others* [2007] 2 SLR(R) 770).
41. By consent of the parties, the Applicants had agreed to remove all encroachment, comply with the MCST prescribed by-laws, and not store any items exceeding 1.8 metres that

²⁴ [1897] 2 Ch 534 at 543.

will obstruct the deployment of the smoke curtain in the Applicants' premises. The Board notes that in the 2017 Application, the Respondent had applied, *inter alia*, for an order that the Applicants were not to stack items above 1.8 metres. After the successful mediation conducted by the Board then, the restriction was agreed by parties to be limited to stacking of goods above 1.8 metres "*that will obstruct the deployment of the smoke curtain*". This was enough to suggest that parties must have thought that the Applicants could stack goods exceeding 1.8 metres provided that the stacking did not obstruct the deployment of the smoke curtain.

42. The Consent Order made between the parties may be enforced in the same way as any other judgment. Parties are therefore bound by the Consent Order.
43. The Board will hear the parties on costs.

Dated this 1st day of August 2019

Mr Raymond Lye
Deputy President

Mr Lai Huen Poh
Member

Ms Chew Yi-Ling Elaine
Member

Mr Michael Chong (M/s APAC Law Corporation) for the Applicants
Mr Andrew Wu (M/s Allister Lim & Thrumurgan) for the
Respondent