

CASE UPDATE



OWNER WHO TRIED TO CONCEAL MEZZANINE FLOOR ORDERED BY DISTRICT COURT TO REMOVE IT

Introduction

1. In land-scarce Singapore, it can sometimes be tempting for owners of units in strata-titled developments to increase the floor area of their lot. For developments with a high ceiling, one way in which this may be done is to build a mezzanine floor.
2. However, in strata-titled developments, mezzanine floors require approval by way of a 90% resolution passed at a general meeting. This is pursuant to section 37(1) of the Building Maintenance and Strata Management Act 2004 (“BMSMA”), under which a 90% resolution is required for works which increase or are likely to increase floor area.
3. Where a mezzanine floor is built without a 90% resolution, the MCST may apply to Court for its removal. Some home-owners may therefore go so far as to attempt to conceal the construction of such mezzanine floors from the MCST.
4. In *MCST Plan No. 2785 v Ng Jun Quan (Huang Junquan)* [2024] SGDC 150, the District Court on an application by the MCST, ordered an owner remove a mezzanine floor, staircase, open roof terrace and roofing frame that he had installed, and reinstate various parts of the common property he had removed.
5. Dissatisfied, the owner appealed to the General Division of the High Court. The appeal was dismissed by the Honorable Justice Hoo Sheau Peng, in *HC/RAS 6/2024*.
6. The MCST was represented successfully in both the original suit and the appeal by Daniel Chen and Enzel Tan of Lee & Lee.

Facts

7. Sometime in early 2022, an owner of a unit in a small strata-titled development situated along East Coast Road submitted an application for proposed renovation works in respect of his unit. In the floor plan attached to this application, it was clear that the proposed renovation works involved only the original floor area of the unit. The renovation application was duly approved.
8. However, a few weeks later, the MCST came across a “Lighting Plan” pasted on the wall of the unit, which included an additional floor plan for a mezzanine level measuring some 676 square feet, comprising a living area, two bedrooms and a bathroom, which was connected to the base level by a staircase. A copy is reproduced below.

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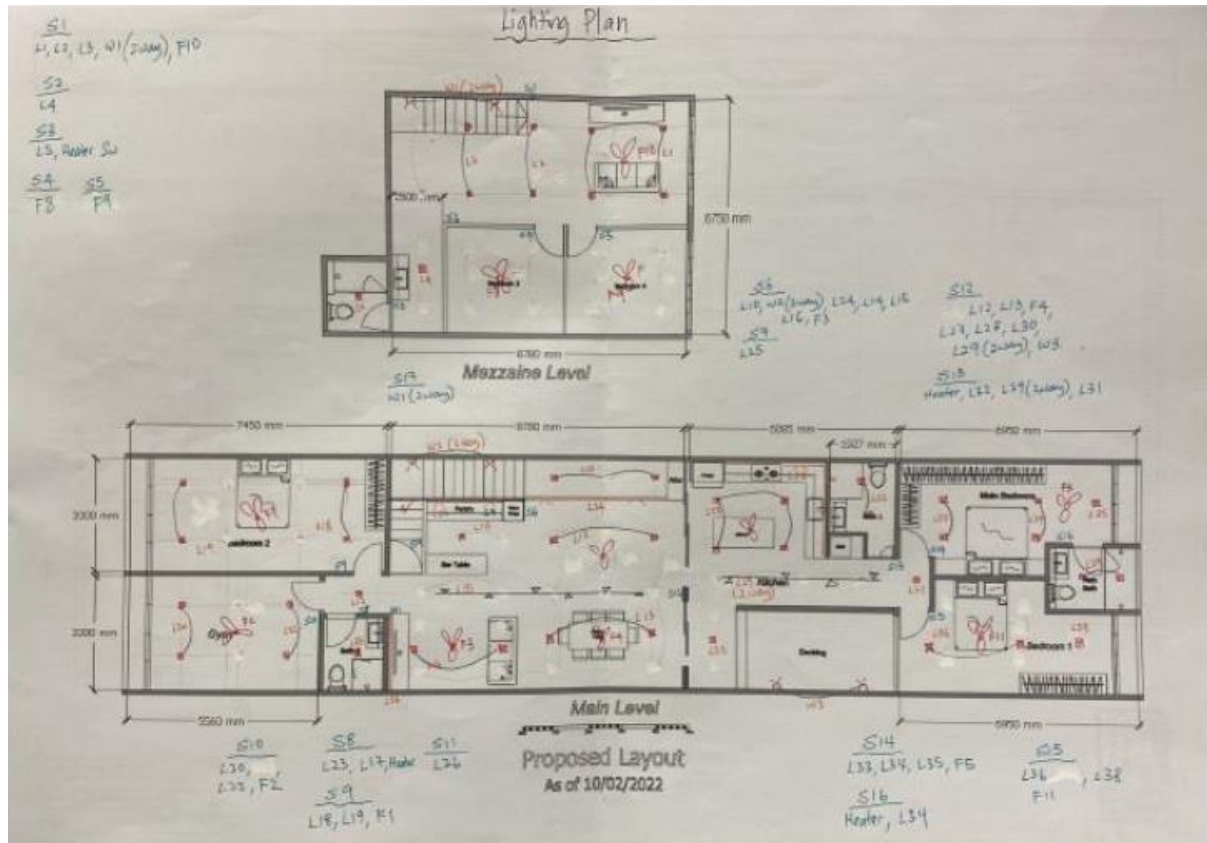
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9. Despite the MCST's express and repeated objections, the owner persisted with the works.
10. Eventually, the MCST convened an extraordinary general meeting, at which a resolution for the authorisation of the mezzanine level was put to a vote. This resolution was defeated.
11. Following a joint inspection by the MCST and owner of the unit, it was discovered that the owner had not only constructed the mezzanine level and staircase, but had also removed an entire portion of the building roof, built an open roof terrace in its place, demolished part of a wall to create access from the mezzanine floor to the open roof terrace, removed part of the concrete roof gutter, and installed a roofing frame. All this allowed the owner to "further extend his liveable space by appropriating the area occupied by the building roof".
12. As the owner refused to comply with the MCST's demands to remove the unauthorized works and reinstate common property, the MCST commenced proceedings in the District Court to compel the removal / reinstatement.
13. A photograph of showing some of the abovementioned works is reproduced below.

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Breach of the BMSMA

14. The District Court held that:

- (a) The mezzanine floor and staircase increased the floor area of the unit, in breach of section 37(1) BMSMA.
- (b) The removal of a portion of the building roof, partial demolition of the wall between the open terrace and mezzanine and removal of the roof gutter damaged the common property.
- (c) The construction of the roofing frame amounted to exclusive use of common property without a 90% resolution as required under section 33(1)(c) BMSMA. However, while the construction of the open terrace did not implicate common property, if a mandatory injunction were granted to compel the reinstatement of the portions of the roof removed by the owner, the open terrace would have to be removed before the building roof could be reinstated anyway.

Grant of Mandatory Injunction

15. The District Court then considered whether it should grant the mandatory injunction sought by the MCST, for the removal of the works which were held to be in breach of the BMSMA. It was common ground that the court will grant a mandatory injunction to redress a breach of a negative covenant, the breach of which is already accomplished unless: (a) the claimant's own conduct would make it unjust to do so; or (b) the breach was trivial or had caused no damage or no appreciable damage to the claimant, and a mandatory injunction would impose substantial hardship on the defendant with no counterbalancing benefit to the claimant.
16. While the District Court granted the mandatory injunction in favour of the MCST in relation to substantially all the works subject to the MCST's application, the owner appealed only against the injunction in relation to the works to the mezzanine level and staircase.

MCST's Conduct

17. Although the owner argued that the MCST's action led him to believe that obtaining approval from the Urban Redevelopment Authority ("URA") was merely procedural, the Court disagreed. Instead, DJ Ng agreed with the MCST's submissions and held that "*(the owner's) claim was flatly contradicted by the documentary evidence*" as the MCST emailed the owner's contractor just 2 days after discovering the "Lighting Plan", requesting that all works be stopped until the necessary documents were submitted.
18. DJ Ng went on to observe that the emails, read against the background events, "*suggested that the (owner) had intended to conceal the construction of the mezzanine level, and this scheme was foiled only by the (MCST's) accidental discovery of the Lighting Plan*".
19. On appeal, the owner maintained that the MCST's conduct made it unjust to grant the mandatory injunction. However, the High Court upheld the District Court's findings, observing that the owner made bare assertions flatly contradicted by the documentary evidence.

Damage to MCST and hardship to owner

20. The owner also argued, before the District Court, that he would suffer substantial hardship if made to remove the mezzanine level and staircase since he had spent S\$288,888 on the renovation works.
21. However, DJ Ng observed that it was not appropriate to regard this as relevant hardship as to do so would result in a "*perverse outcome*". Since the cost of renovation works generally correlates with the extensiveness of the renovation works, to regard the cost of the renovation works as relevant hardship would mean that the more extensive the renovation works that were in breach, the lower the probability that remedial mandatory injunctions would be granted.
22. The District Court instead agreed with the MCST, that the breaches would cause damage to the MCST since (a) there was actual physical damage to the common property; (b) the MCST's access to the common property for maintenance and painting had been cut; and (c) there was an erosion of the MCST's authority in enforcing the requirements under the BMSMA.

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23. On appeal, the owner asserted, *inter alia*, that:
- (a) the MCST would not suffer any real damage since it did not intend to exercise its authority against other owners who had allegedly breached the BMSMA; and
 - (b) he had incurred costs in making submissions to the URA.
24. However, the High Court rejected the owner's submissions, agreeing instead with the MCST that unless a mandatory injunction was granted in favour of the MCST, its authority to enforce the provisions of the BMSMA would be affected. The High Court concluded by observing that the costs incurred by the owner in applying to URA was of his own action and, in any event, was not a substantial portion of the costs he allegedly incurred.
25. The High Court thus dismissed the appeal and awarded costs in favour of the MCST on an indemnity basis.

Conclusion

26. The decisions of the District Court and High Court in this matter make clear that owners in strata titled developments are not entitled to unilaterally increase the floor area of their units or remove parts of common property without the proper approvals by the MCST.

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