The Management Corporation Strata Title Plan No. 3564 *v* Lian Fong Credit Holdings Pte Ltd and others [2022] SGDC 200

Case Number	: District Court Suit OSS No 6 of 2022, HC/RAS 24 of 2022
Decision Date	: 02 September 2022
Tribunal/Court	: District Court
Coram	: Clement Seah Chi-Ling
Counsel Name(s)	: Chen Chongguang, Daniel (Lee & Lee) for the plaintiff; Teh Ee-Von (Infinitus Law Corporation) for the 1st to 3rd defendants.
Parties	: The Management Corporation Strata Title Plan No. 3564 — Lian Fong Credit Holdings Pte Ltd and others

Land – Strata titles – By-laws – Mandatory injunction to remove obstructions on common property – Fair result principle

[LawNet Editorial Note: An appeal to this decision has been filed in HC/RAS 24 of 2022.]

2 September 2022

District Judge Clement Seah Chi-Ling:

Introduction

1 The Plaintiff is the Management Corporation constituted in respect of the development known as WCEGA Plaza & Tower (the "**MCST**"), a light industrial building.

2 The Defendants are in the business of raw egg distribution. They are the subsidiary proprietors of five adjacent corner units on level 7 of WECGA Plaza.

3 In this application, the Plaintiff sought orders that:

(a) The Defendants remove their vehicles and goods from the common property of WCEGA Plaza & Tower for loading and unloading and workstations;

(b) The Defendants keep the common property of WCEGA Plaza & Tower clear of their vehicles and goods, and refrain from using the common property of WCEGA Plaza and Tower for any purpose other than passage of vehicles or persons; and

(c) The Defendants pay the Plaintiffs' costs and disbursements of this application on a solicitor and client basis.

4 At the conclusion of the hearings, including a hearing for Further Arguments at the request of the Defendants, I did not make any orders in relation to the first relief claimed by the Plaintiff (see [3(a)] above). I granted the second and third relief sought by the Plaintiff, but with modifications in the following terms:

(a) The Defendants keep the common property of WCEGA Plaza & Tower clear of their vehicles and goods, and refrain from using the common property of WCEGA Plaza & Tower for any purpose other than: (i) passage of vehicles or persons; (ii) unloading of goods to be delivered to the Defendants' premises and (iii) the loading of pre-identified, pre-packaged, and/or earmarked consignment of goods onto the Defendants' customers' vehicles, Provided That in the case of (ii) and (iii), the loading and unloading shall only take place in the common property excluding the areas within 6 metres of the centre line of each of the driveway and ramp respectively (the "Restricted Common Area") And Provided Further That no consignment of goods unloaded onto the said Restricted Common Area or to be uploaded from the said Restricted Common Area shall be stored or otherwise remain in the said Restricted Common Area for any period in excess of 30 minutes.

(b) The Defendants pay the Plaintiffs costs of $5,000 plus GST and reasonable disbursements to be agreed if not taxed;

(c) The Defendants pay the Plaintiffs costs of the further arguments heard on 4 August 2022, fixed at $800 (all in).

5 The Defendants have appealed against my decision. I set out the grounds of my decision below.

Background Facts

6 The undisputed background facts as distilled from the Plaintiff's and Defendants' written submissions are as follows[note: 1].

7 WCEGA Plaza & Tower consists of both WCEGA Plaza, and WCEGA Tower. The Defendants' units are located within WCEGA Plaza, an industrial building, with units zoned as light industrial (B1). There are various wide ramps and driveways running throughout the building, which enable subsidiary proprietors and occupiers to transport their goods, equipment and other items to and from their strata units.

8 The Defendants' units are located at the 7th floor of WCEGA Plaza, near the main spiral ramp of WCEGA Plaza. The main spiral ramp is taken by all vehicles going up and down the building. As WCEGA Plaza consists of a total of 10 floors, there are traffic utilizing the driveway and ramp on the 7th floor to access the 8th to 10th floors of the Plaza.

9 The Defendants are in the business of egg importation and distribution. The eggs are delivered to their units every morning, except on Sundays. The layout of the Defendants' units and the immediate surrounding common property are illustrated in the plan exhibited at page 15 of Chua Teck Hock's affidavit

dated 9 June 2022 and annexed to this judgment (the "**Plan**"). In the Plan, the Defendants' units are shaded in blue, and the common property is shaded in green and red. The red shading shows the common property comprising the driveway and ramp, while the green shading shows all other common property.

Plaintiff's Case

10 The Plaintiff contended that eggs ordered by the Defendants arrive in an assortment of large, medium and small trucks before 7 am every morning (except Sundays). By around 7 am, they start to obstruct up to half the driveway and parts of the ramp. This was evident from the photographs at page 27 of the 3rd affidavit of Lim Yong Heng dated 1 July 2022 ("**Lim Yong Heng's 3rd Affidavit**").

11 The eggs, in boxes and pallets, are left on the common property outside the Defendants' units, including on the driveway and ramp. This could be seen in various photographs adduced by the Plaintiffs, including those at pages 15 to 22 of Lim Yong Heng's 3rd Affidavit. The eggs were then packed and/or processed on the common property and gradually picked up by vehicles throughout the morning for distribution. The photographs showed egg pallets, equipment and delivery trucks extending up to the yellow line on the ground that marks the middle of the common property driveway/ramp, completely blocking off one of the two lanes of the driveway/ramp. It was further evident from the photographs that the other parts of common property not forming part of the ramp and driveway (shaded in green in the Plan) were also full of the items. Based on the Defendants' own admission, the common property was cleared only "by mid-day" or, "if there [was] an usually large consignment, by 3 pm that day"[note: 2].

12 Because of the volume of eggs in the common property directly in front of the Defendants' units (*i.e.* the area shaded in green in the Plan), it was impossible for the vehicles picking them up, or forklifts moving them around, to limit their activity to the green shaded area. Instead, the vehicles and forklifts had to park and operate on the driveway and ramp: see, for example, the photographs at pages 24 to 26 of Lim Yong Heng's 3rd Affidavit. Since the parking and activity on the driveway and ramp continued for as long as the eggs were on the common property, they too lasted for at least five and up to eight hours daily (except Sundays).

13 The Plaintiff pointed out that while loading and unloading were underway at the common property, other vehicles with no dealings with the Defendants (hereinafter, "**other vehicles**") had to navigate through the mass of the Defendants' vehicles, equipment and goods on the common property to drive through the relevant area. The bottom photograph at page 20 of Lim Yong Heng's 3rd Affidavit gave an idea of what other vehicles "passing through" had to navigate. It was evident from the photographs that some of these other vehicles were huge vehicles, including trailers pulling shipping containers. It would be extremely difficult and dangerous for them to navigate through the mass of vehicles, equipment and goods, even if they were the only vehicle going through. The problem would be accentuated if there were another vehicle going in the opposite direction at the same time.

14 The Defendants did not dispute the fact that their goods, items and vehicles were left on the driveway and ramp, but contended that they were only left there "temporarily". As mentioned in [11] above, the Defendants' goods were left on the common property for durations of between five and eight hours each day. The Plaintiff submitted that even if the obstructions for up to eight hours every day could be considered to be "temporary", they were "recurring", in contravention of Statutory By-Law 3. They further constituted an unreasonable interference with the use and enjoyment of the common property by other subsidiary proprietors in breach of the BMSMA. Having regard to the significant obstructions posed by the Defendants' operations, the Plaintiff sought a mandatory injunction to restrain the Defendants from contravening Statutory By-Law 3 and section 63(c) of the BMSMA (see [21]-[24] below).

Defendants' case

15 The Defendants' position was that their use of the common property for loading and unloading of goods was reasonable in the circumstances and no different from how other subsidiary proprietors and occupants were using the common property.

16 The Defendants claimed to have used the areas in front of their five units for loading and unloading of eggs for the past eight years without any issues from the MCST. Recently, the MCST started complaining that the Defendants were encroaching and obstructing the common property of the MCST by carrying out the loading and unloading of eggs in the common property in front of the Defendants' units.

17 The Defendants denied that their loading and unloading activities had obstructed the flow of traffic at WCEGA Plaza. The Defendants pointed out that their units were located at a corner of level 7 as shown in the Plan. There was therefore no through-traffic passing in front of most of their units. Traffic only passed peripherally on the way up and down the ramp to and from the 8th, 9th and 10th floors.

18 The Defendants further contended that after the Defendants' eggs were unloaded from the delivery vehicles and repacked, they were immediately distributed to the Defendants' various purchasers. Once the purchasers collected their eggs, they left the premises. Similarly, once the vehicles delivering the eggs were unloaded, the vehicles leave and the premises were immediately cleared. The Defendants' busiest period was in the morning but by mid-day every day, or if there was an unusually large consignment, by 3 pm that day, the area in front of the Defendants' premises would be clear of vehicles, equipment and goods. The Defendants pointed to the photographs at pages 52 and 53 of the Lim Yong Heng's 1st Affidavit filed on 6th January 2022 ("**Lim Yong Heng's 1st Affidavit**") which showed the common property to be clear and empty after the distribution of eggs,.

19 At any rate, the Defendants contended that it was a common practice among the other subsidiary proprietors or occupiers at WCEGA Plaza to load and unload their goods in front of the occupant's unit as there was no designated loading and unloading bay in the WCEGA Plaza. Stock and goods were also frequently left by other occupants in the common property or the areas close to their respective units at all times of the day. The Defendants' use of the common property was therefore reasonable and in line with all the other occupants' use of the common property. The Defendants asserted that notwithstanding that this was a common practice amongst most subsidiary proprietors or occupiers, the MCST chose to take action against the Defendants only.

The Law on Obstruction of Common Property

20 The Plaintiff's case was that the Defendants had in the conduct of their business obstructed common property in breach of: (a) Statutory By-Law 3 under Schedule 2 of the Building Maintenance (Strata Management) Regulations 2005 ("**Statutory By-Law 3**"), and (b) Section 63(c) of the Building Maintenance and Strata Management Act 2004 ("**BMSMA**")

21 Statutory By-Law 3 provides as follows:

3.—(1) A subsidiary proprietor or an occupier of a lot shall not obstruct the lawful use of the common property by any person, *except on a temporary and non-recurring basis. (emphasis added)*

22 "Common Property" is defined under the BMSMA as "such part of the land and building – (i) not comprised in any lot or proposed lot in the strata title plan; and (ii) *used or capable of being used or enjoyed by occupiers of 2 or more lots or proposed lots*" *(emphasis added).*

23 Section 63(c) BMSMA further provides that subsidiary proprietors "shall not … use or enjoy the common property in such a manner or for such a purpose as to *interfere unreasonably* with the use or enjoyment of the common property by the occupier of any other lot (whether that person is a subsidiary proprietor or not) or by any other person entitled to the use and enjoyment of the common property". *(emphasis added)*

My Decision

Whether there was unreasonable interference with the use or enjoyment of common property?

24 Based on the photographs of the common property surrounding the Defendants' units, I found that the Defendants had obstructed lawful use of parts of the common property when they caused their goods, items and vehicles to remain on the common property for extended periods of time (up to 8 hours) daily (except Sundays). This was evident from, inter alia, the following photographs:

	Photos	**Observations**
1.	Page 27 of Lim Yong Heng's 3rd Affidavit	Shows delivery or loading trucks blocking part of the left driveway leading to the ramp, as well as half of the left lane of the ramp.
2.	Page 15 of Lim Yong Heng's 3rd Affidavit	Shows forklift and trailer blocking the entire left driveway in front of Defendants' units and part of the driveway leading to the ramp.
3.	Pages 16, 17 (top photo) of Lim Yong Heng's 3rd Affidavit	Show Defendants' egg pallets blocking left lane of driveway.
4.	Pages 18-21 of Lim Yong Heng's 3rd Affidavit	Show Defendants' egg pallets and equipment blocking left lane of driveway and half of the left lane of the ramp.
5.	Pages 24-26, 29 of Lim Yong Heng's 3rd Affidavit	Show Defendants' egg pallets: (i) occupying substantially all of the area shaded in green in the Plan from as early as 9:02 am and until as late as 3:38 pm (ii) blocking the left driveway, and (iii) blocking half of the start of the left ramp. They also show Defendants apparently using the green area as a packing and distribution centre for their egg business.
6.	Pages 31-32 of Lim Yong Heng's 3rd Affidavit	Show trucks and Defendants' egg pallets occupying a substantial portion of the left driveway.
7.	Pages 33 of Lim Yong Heng's 3rd Affidavit	Shows pick-up trucks, Defendants' egg pallets and equipment blocking access to Exit staircase.
8.	Pages 55-56 of Lim Yong Heng's 1st Affidavit dated 6 January 2022	Show (i) steel cage trolleys placed at the right driveway after the downward exit of the ramp; and (ii) 2 cars parking at the up-ramp area.

25 Based on the photographs, the common property that were affected included the common property shaded in green in the Plan, and parts of the driveway and ramp shown in red in the Plan.

26 In relation to the driveway and ramp, I agreed with Plaintiff's Counsel that the photos showed that the Defendants had caused its goods, items and vehicles to block one of the two lanes on the driveway or ramp, notwithstanding that other vehicles might still be able to pass through by travelling on the other lane against the flow of traffic. This was however dangerous, both to the driver and the persons working on the common property, especially when there was oncoming traffic from the opposite direction.

27 The obstruction to common property was also occasioned when the Defendants placed their goods, items and vehicles for extended periods of time and on a recurring basis in the spaces in front or to the sides of their units (area shaded in green in the Plan). The Defendants were effectively using such spaces as a *de facto* packing facility and distribution center for their eggs pending pick-up of the eggs by their clients.

28 Given the widespread obstruction of the common property borne out by the photographs, I found that the Defendants had unreasonably interfered with the use and enjoyment of the common property by other subsidiary proprietors even if it might be possible for other subsidiary proprietors to squeeze around the Defendants' items to get to their intended destination. This contravened Statutory By-Law 3 and section 63(c) of the BMSMA.

29 I should address the case of *The MCST Plan No. 651 v. Iremit Singapore Pte Ltd and Others* [2014] SGDC 414 ("*Iremit*") which was heavily relied upon by Defendants' Counsel. In *Iremit*, the District Court found that the defendants, who operated a remittance agency at Lucky Plaza, had not unduly interfered with the use of the common property by other occupants despite attracting a large number of customers on weekends who would queue outside the defendant's unit.

30 I found the facts of *Iremit* to be wholly distinguishable from the present case. In *Iremit*, the court found that there was nothing to show that Iremit had conducted its business in any way that was not ordinary, normal or proper (at [42]). Iremit, for all intents and purposes, had carried on its business from within its premises throughout. If the demand for its services from the large Filipino community was such that queues would form along the common corridor, this was not something that Iremit could be faulted for. Indeed, on the facts, Iremit had submitted renovation plans to the MCST to solve the issue of crowding, but the MCST had, for reasons unknown, not allowed Iremit to carry out the renovations (at [53]). In contrast, in our case, the main cause of the obstructions

was the Defendants' act of *conducting its business on the common property*, by using the green shaded area in the Plan as a *de facto* packing and distribution center. It was the Defendants' refusal to conduct its business from *within* its units that had caused the obstructions to the common property in the present case. Further, despite repeated warnings from the MCST, the Defendants had refused to remedy its breaches. I am unable to see how the present case could be said to be analogous to *Iremit*.

Whether obstructions were on a temporary, non-recurring basis

31 To the extent the Defendants now seeks to rely on Statutory By-Law 3 to justify its usage of the common property, the relevant By-Law only had a single exception, *i.e.* where the obstructions were *temporary* and *non-recurring*. On our facts, even if the obstructions could be said to be temporary, they could not be said to be of a non-recurring nature. It was not disputed that the Defendants' use of the space in front of their units happens on a daily basis from 7.00am to at least 12 pm, and on occasions up to 3 pm, Sundays excepted. The obstructions were recurring, and hence Statutory By-Law 3 is of no assistance to the Defendants.

32 Given that the Defendants had breached both section 63(c) BMSMA and Statutory By-Law 3, the Plaintiff was entitled to apply to the court to seek a mandatory injunction to enforce compliance with the BMSMA and Statutory By-Law 3.

Whether a mandatory injunction should be granted

33 A Management Corporation is empowered under section 29(2)(b) BMSMA to "do all things reasonably necessary for the … *enforcement of the By-Laws*", and is "*entitled to apply to the court – for an order to enforce the performance or restrain the breach of any By-Law*": see section 32(10) BMSMA. *(emphasis added)*

Test for the grant of a mandatory injunction

34 The test on whether a mandatory injunction should be granted as adopted by Chao Hick Tin J in *MCST Plan No. 1378 v Chen Ee Yueh Rachel* [1993] SGHC 283 ("***Chen Ee Yueh Rachel***"), and affirmed by Judith Prakash J in *Choo Kok Lin and another v MCST Plan No. 2405* [2005] SGHC 144 ("***Choo Kok Lin***"), is as follows:

> 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 Plaintiff'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 Plaintiff and a mandatory injunction would impose substantial hardship on the Defendant with no counterbalancing benefit to the Plaintiff.

Limb 1 of the test - Plaintiff's own conduct

35 In the first stage, a mandatory injunction would not be granted where the Plaintiff's own conduct made it unjust to grant a mandatory injunction. In the present case, I did not think the Plaintiff acted unjustly in taking out the mandatory injunction.

36 I start by observing that the fact that other subsidiary proprietors had similarly encroached onto common property did not grant the Defendants a license for doing the same. It could not be assumed that enforcement action had not been, and will not be, taken against the other subsidiary proprietors. The Plaintiff's complex manager, Mr Lim Yong Heng ("**Mr Lim**"), had deposed that legal proceedings had been taken against the Defendants *first* as the "scale and regularity of the Defendants' breach have no equal [compared to] other units"[note: 3]. The Defendant was further the only occupant who had resolutely refused to cease their encroachment of the common property despite repeated warnings and demands, when other subsidiary proprietors had made some efforts to ensure compliance[note: 4]. The Plaintiff had thus commenced legal proceedings against the Defendants *first*, simply because they were the worst offenders"[note: 5].

37 Secondly, the evidence further showed that various enforcement actions, ranging from wheel clamps[note: 6], to warning letters followed by lawyer's letters[note: 7], had in fact been imposed or issued against other errant subsidiary proprietors. The minutes of a Council Meeting held on 11 November 2021 also pointed to the MCST's efforts in monitoring a recalcitrant subsidiary proprietor at level 8, with a possibility that legal action might be instituted imminently[note: 8]. All these suggested a concerted effort by the MCST in ensuring that By-Laws were uniformly observed by all subsidiary proprietors. The Defendants' submission that the enforcement action was targeted at Plaintiff solely was therefore incorrect.

38 In any event, the District Courts have in a number of cases – see *The Management Corporation Strata Title Plan No. 681 vs Tan Yew Huat* [2015] SGDC 118 at [75] ("***Tan Yew Huat***") and *MCST Plan No. 2570 v Ng Khai Chuan* and anor ("***Ng Kai Chuan***") [2006] SGDC 176 at [39] – held that a MCST may commence a "test case" as a warning to other subsidiary proprietors of the consequences of non-compliance with By-Laws. In *Tan Yew Huat*, the District Court noted at [75]:

> "*It is reasonable for a management corporation to take action against one subsidiary proprietor as a 'test case', with a view to proceeding against other subsidiary proprietors at a later stage if necessary*. This would potentially save costs as other subsidiary proprietors in breach may comply in the light of an order given against the subsidiary proprietor in the test case. *Prima facie, it is for a Plaintiff to decide which potential Defendant it wishes to proceed against." (emphasis added)*

Limb 2 - Whether breach was trivial and would cause substantial hardship without counterbalancing benefit

Benefit

39 In the 2nd limb of the test, a mandatory injunction would not be granted if the breach was trivial or had caused no appreciable damage to the MCST, and the mandatory injunction would impose substantial hardship to the Defendants without any counterbalancing benefits to the Plaintiff.

40 As the District Court noted in *Ng Khai Chuan* at [38]:

> "Whether or not a mandatory injunction ought to be granted is at the *discretion of the court*. In deciding whether to exercise this power, the Court has to *balance the interests of both parties, taking into account the benefits and burdens to both parties, in order to achieve a fair and equitable result* having regard to the circumstances of the case." *(emphasis added)*

41 The basic concept is thus that of producing a "fair result", and this involves the exercise of a judicial discretion: see *Choo Kok Lin* at [10] per Judith Prakash J.

42 In my judgment, the breach in the present case could not be said to be trivial. Here, the Defendants had effectively used the common property next to them as a distribution center on a daily basis (except Sundays), stacking it to the brim and beyond with their goods and equipment for extended periods of time. As noted in [24] above, some goods, items and equipment were shown to be occupying parts of the driveway and ramp[note: 9]. The lack of space in the common property shaded in green had further forced trailers, vehicles and equipment to encroach onto the driveway and ramp[note: 10]. Egg pallets and other equipment were also seen to be blocking the emergency exit partially[note: 11]. The danger and inconvenience caused to oncoming traffic (including those needing to use the ramp), as well as to the subsidiary proprietors in the event of an emergency, were obvious.

43 I agreed with Plaintiff's Counsel that there was significant benefit to the MCST in obtaining the mandatory injunction sought. The common property would be clear of obstructions, traffic and fire safety would be enhanced, and quite importantly, the MCST would retain the requisite authority to enforce the By-Laws regarding the common property against other subsidiary proprietors, without allowing the state of affairs to descend into chaos. Chao J thus noted in *Chen Ee Yueh Rachel's* case:

> "27. It is clear that, under the Act, matters affecting common property or the appearance of a strata title building are entrusted to the management corporation. *Individual proprietors should not be allowed to dictate to the management corporation. Otherwise, there would be chaos and the management corporation would not be able to discharge its functions effectively.* …." *(emphasis added)*

Hardship

44 In relation to hardship, the courts have consistently taken the position that any alleged hardship that the subsidiary proprietor must undergo as a result of the grant of a mandatory injunction to restrain the breach of a By-Law is a consequence which the errant subsidiary proprietor has to accept – see *Chen Ee Yueh Rachel* at [26]. I agreed that any hardship caused in the present case was of the Defendants' own doing. Despite the scale of their egg distribution business, Defendants chose to run the operations from the relatively small B1 light industrial strata units rather than from a location that could function as a distribution facility. Compared to the significant benefit to the Plaintiff in enforcing the By-Laws, the hardship caused to the Defendants was not a significant consideration.

45 Applying the tests, I was accordingly of the view that a mandatory injunction ought to be granted to injunct the mode of carrying on of the Defendants' operations. However, I caution to note that the grant of a mandatory injunction is discretionary, and the court has to balance the interests of the parties, taking into account the benefit and burdens on both sides, in order to achieve a fair and equitable result having regard to all the circumstances of the case: see *Choo Kok Lin* at [9]-[10].

46 In this regard, I accepted Defendant's Counsel's argument that the terms of the mandatory injunction as proposed by the Plaintiff's Counsel, which effectively limited the use of the common property by the Defendants to the passage of person and vehicles only, was far too draconian and overreaching. It effectively disallowed any loading or unloading to take pace in front of the Defendants' units.

47 It is trite that the common property of a strata development is held by the subsidiary proprietors as tenants in common in shares proportional to their share value, and do not belong to the management council: see section 13 of the Land Titles (Strata) Act 1967. In *Abraham Aaron Isaac v Management Corporation Strata Title Plan No 664* [1999] SGCA 32, the Court of Appeal noted at [22]:

> "…. the lifts in the building are a part of common property. *Section 13(1) of the [Land Titles (Strata) Act 1967] provides that: "… the common property shall be held by the subsidiary proprietors as tenants in common proportional to their respective share value and for the same term and tenure as their respective lots are held by them*". As such, *all the subsidiary proprietors have unity of possession, and no subsidiary proprietor can claim possession of a separate part of the property against another:* Poh Kiong Kok v MCST Plan No 581 [1990] 1 SLR(R) 617. As all the subsidiary proprietors are shared owners of the lift and have unity of possession, it follows that they *all have an equal right to the reasonable use and enjoyment of the lift…...*" *(emphasis added)*

48 Given that the development has no loading and unloading areas, the common property (*i.e.* the green shaded area) ought to be available to the Defendants for unloading eggs to be delivered to the Defendants, as well as for uploading eggs to be delivered to its customers. It would therefore be unobjectionable if the Defendants used the common property marked in green in the Plan to unload eggs and deliver them to within their five units, and to then have the buyers' vehicles stop outside the units for a while to pick up the eggs from the units, and then drive off with the eggs[note: 12]. Such a transient use of the common property would not unduly interfere with the use and enjoyment of the common property by other subsidiary proprietors. Restricting the use of the common property by the Defendants to only the passage of vehicles and persons overreaches the powers and duty of the MCST.

49 What ought to be prohibited, on the other hand, is the use of the common property as a processing area and distribution point –*i.e.* to unload the eggs, to process the eggs and thereafter hold them for hours on the common property while waiting for them to be picked up[note: 13]. This appeared to be the current use of the common property by the Defendants. As Mr. Lim noted, it was precisely because of the Defendants' current practice of leaving a large amount of eggs and other encroaching items on the common property (the green shaded area) that when vehicles came to pick up the eggs, they needed to stop even further out on the common property (including the driveway and ramp). The situation was made worse by the fact that this occurred for up to eight hours on a daily basis.

50 I would therefore grant the mandatory injunction but word it so as to ensure that: (i) the Defendants would continue to be able to use the common property (*i.e.* the green shaded areas) for loading and unloading purposes, provided that the storage of the goods (here, the eggs) on the common property was transient in nature; and (ii) the Defendants ought not be allowed to keep the eggs on the common property in front of the unit for protracted periods of time, thereby effectively using the common property as a *de facto* distribution center, and leaving no space for the delivery and pick-up trucks or vehicles to use the green-shaded common property as a loading and delivery point for the eggs.

51 I would therefore word the mandatory injunction as follows:

> The Defendants keep the common property of WCEGA Plaza & Tower clear of their vehicles and goods, and refrain from using the common property of WCEGA Plaza & Tower for any purpose other than: (i) passage of vehicles or persons; (ii) unloading of goods to be delivered to the Defendants' premises and (iii) the loading of pre-identified, pre-packaged, and/or earmarked consignment of goods onto the Defendants' customers' vehicles, Provided That in the case of (ii) and (iii), the loading and unloading shall only take place in the common property excluding the areas within 6 metres of the centre line of each of the driveway and ramp respectively[note: 14] (the "Restricted Common Area") And Provided Further That no consignment of goods unloaded onto the said Restricted Common Area or to be uploaded from the said Restricted Common Area shall be stored or otherwise remain in the said Restricted Common Area for any period in excess of 30 minutes.

The Further Arguments

52 I should mention that the order made above was actually an amended order made after the Defendants wrote in to request for further arguments (the "**Reques**t").

53 I had in my original order confined the loading and unloading of the eggs to the *common property marked in green in the Plan*. In the Request, the Defendants' Counsel suggested that my original order would exclude the area immediately in front of units #07-58 and #07-59 from being used for loading and unloading, making my original order "somewhat incongruous". The Defendant requested that a slight modification be made to the green shaded area in the Plan so that units #07-58 and #07-59 might also be permitted to use the common property to load and unload on a temporary basis (the "**First Argument**").

54 In the Request, the Defendants made two further arguments:

> (a) that the loading and unloading time of 30 minutes provided in my original order was too short. Defendants' Counsel intimated that their clients' instructions were that each delivery of eggs received by the Defendants involved about 120,000 eggs, and that it took about one hour to unload the eggs. Similarly, their clients needed one hour to load that amount of eggs onto their customer's vehicles; and

> (b) the reliefs in an originating summons were akin to pleadings. As it is trite law that parties are bound by their pleadings, and given the Plaintiff had not successfully persuaded the court to grant the *precise* reliefs it was seeking, the court ought to have dismissed the application rather than to have made its own orders.

55 I indicated to both counsel that I had agreed to hear further arguments principally because I was concerned with the First Argument, namely, whether my original order had failed to provision for the use of suitable space around units #07-58 and #07-59 for loading and unloading on a temporary basis.

56 Having heard further submissions on the First Argument, I agreed with Plaintiff's Counsel that based on the Plan, #07-58 and #07-59 were well served by green shaded common property either to the left or right side of the said units. There was no issue of #07-58 and #07-59 being without a loading and unloading area. I also agreed with Plaintiff's Counsel that the smaller blue rectangle depicted in each unit in the Plan was in fact an accompanying loading area for the respective units. This became clear when the Plan was compared against the photographs in Lim Yong Heng's 3rd affidavit at pages 18 to 21. Units #07-58 and #07-59 were accordingly never without an accompanying loading and unloading area.

57 In the course of further arguments, it became apparent that what Defendants really wanted was for the boundary of the red shaded area in the Plan (*i.e.* the driveway and the ramp) to be moved in/narrowed a little so that the green shaded areas appurtenant to #07-58 and #07-59 were expanded. Though Defendants' Counsel did not say so in as many words, it was evident to me that what Defendants effectively wanted was to be able to continue to use part of the driveway and ramp for loading and unloading purposes.

58 Given the premise of my original order – namely, that the significant encroachment onto the driveway and ramp on a recurring basis should be prohibited – I declined to move the boundaries of the red shaded area. However, I noted that the map was imprecise and not drawn to scale, and accordingly the precise location of the driveway and ramp might not be entirely clear. It was not disputed that the driveway and ramp were 12 meters wide each, *i.e.* 6 meters from their respective center dividing lines. I was of the view that the driveway and ramp areas could be defined more clearly. Hence, I reworded the terms of the mandatory injunction to read as set forth in [51] above.

59 As for the two other issues raised by Defendants' Counsel in the Request, having read the skeletal submissions filed by both parties, I was not minded to accede to Defendants Counsel's request to extend the duration of time during which the goods could remain on the common property. I did not think it would be proper to extend the time beyond 30 minutes as initially ordered[note: 15], as any longer period would merely *restore the status quo*, i.e. result in the common property being used effectively as a *de facto* distribution center, which was the very practice that the Plaintiff was rightfully seeking to injunct.

60 Once it was established that the Defendants were in breach of Statutory By-Law 3 and section 63(c) of the BMSMA, and that the injunction would not impose substantial hardship to the Defendants without any counterbalancing benefits to the Plaintiff, the fact that the Defendants needed more time to load and unload based on their current *modus operandi* should not be a license for the Defendants to continue breaching these provisions. The onus was on the Defendants to find alternate ways of loading and unloading their eggs without contravening the said provisions, such as: (i) staggering the delivery times, (ii) receiving and delivering the eggs in smaller but multiple consignments, (iii) coordinating with their suppliers and customers as to how the pre-existing mode of deliveries could be adjusted, and (iv) exploring how the designated spaces at each of levels 5 to 9 of the WCEGA Plaza for the parking of containers could be used for loading and unloading, among others. Mr. Lim had deposed on affidavit that the Plaintiff has four designated spaces at each of levels 5 to 9 of the WCEGA Plaza for the parking of containers. These designated spaces had been chosen because parking of containers there would not obstruct the driveways or ramps. A fee was payable for such parking[note: 16]. It was for the Defendants to discuss with the Plaintiff whether these spaces or any other spaces within WCEGA Plaza could be used for deliveries, and what payments would be charged.

61 As for the point on pleadings, I found it to be wholly unmeritorious. The two cases cited by Defendants' counsel in support of their argument that parties are bound by their pleadings were evidently cases dealing with writ actions. Ord 1 r 4 of the Rules of Court 2014 expressly provides that the term pleading "does not include an *originating summons*, a summons or a preliminary act". The contention that the Plaintiff was bound strictly to the reliefs prayed for in the Originating Summons as if it were a pleading was therefore a non-starter.

62 Furthermore, the Originating Summons in the present case sets out the *reliefs* the Plaintiff seeks, namely a mandatory injunction on certain stipulated terms. The Defendants' contention that I could only grant the Plaintiff the reliefs in the *exact terms* prayed for, or not at all, was completely illogical and unsupported by authority. Defendants' argument, taken to its logical conclusion, would imply that where an Originating Summons claims relief in a given sum, the court only has the option of awarding the exact sum claimed, failing which, the Originating Summons must be dismissed *in toto*. Even a *de minimis* deviation from the sum prayed for, say by $1.00, was not permitted. Likewise, if Defendants' argument were accepted, an application for an interlocutory injunction must be granted in the precise terms sought for by the applicant, with no flexibility being accorded to the court to fine-tune the terms of the interlocutory injunction sought to take into account considerations of practicality, fairness and other unique considerations that might surface in the course of the hearing. This belies logic and unduly limits the court's power to grant *reliefs* with such modifications as the fairness of the case requires.

63 As noted by Buckley J in *Charrington v Simons & Co* [1970] 1 WLR 725, which was cited with approval by Prakash J in *Choo Kok Lin's* case:

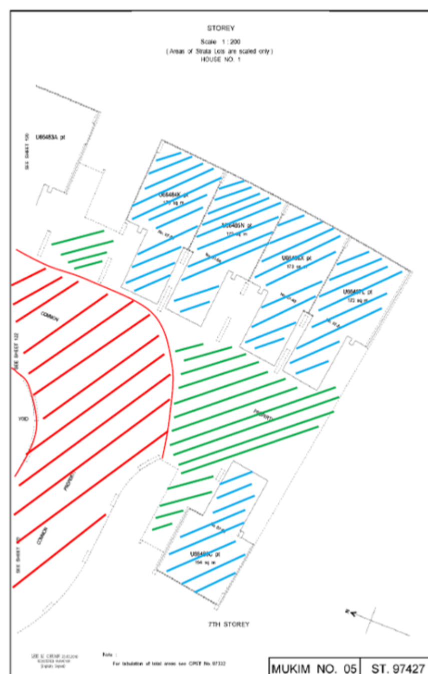
> "Where a mandatory order is sought the court must consider whether in the circumstances as they exist after the breach, a mandatory order, *and if so, what kind of mandatory order*, will produce a fair result.*" (emphasis added)*

64 I was therefore of the view that the court necessarily had the power to tailor the terms of the mandatory order in a way which ensured that a fair result was achieved, and not be strictly limited by the reliefs as set out in the Originating Summons.

Conclusion

65 Based on the foregoing, I granted a mandatory injunction in the Plaintiff's favour in the terms set out in [51] above and ordered costs in favour of the Plaintiff. The Defendants are dissatisfied with my decision and have filed the present appeal.

ANNEX



[note: 1]Plaintiff's Submissions at [4] to [13]; Defendants' Skeletal Submissions at [1] to [6]

[note: 2]Chua Teck Hock's affidavit dated 9 June2022 at [17].

[note: 3]Lim Yong Heng's 2nd affidavit dated 5 May 2022 at [10]

[note: 4]Lim Yong Heng's 3rd affidavit at [22]

[note: 5]Lim Yong Heng's 2nd affidavit dated 5 May 2022 at [10]

[note: 6]See Exh LHY-13 of Lim Yong Heng's 3rd Affidavit at pages 42-50

[note: 7]See Exh LHY-14 of Lim Yong Heng's 3rd Affidavit at pages 52-116

[note: 8]See Chua Teck Hock's affidavit dated 9 June 2022 at pages 40-44, especially page 43

[note: 9]See, *e.g.*, Lim Yong Heng's 3rd Affidavit at pages 15-22

[note: 10]See, *e.g.*, Lim Yong Heng's 3rd Affidavit at pages 15, 17

[note: 11]See, *e.g.*, Lim Yong Heng's 3rd Affidavit at pages 31-34, especially page 33

[note: 12]Lim Yong Heng's 3rd affidavit at [4]

[note: 13]Lim Yong Heng's 3rd affidavit at [3] and [10]

[note: 14]The driveway and the ramp are 12 meters each, *i.e.* 6 meters to the left and right of the center line of the driveway and ramp respectively.

[note: 15]Defendants' counsel seems to be requesting that 1 hour each be allowed for unloading and uploading of each delivery.

[note: 16]Lim Yong Heng's affidavit dated 1 July 2022 at [25]

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