



STRATA TITLES MANAGEMENT DISPUTES: STRATA TITLES BOARD UNDER THE STRATA TITLES ACT 1985 AND STRATA MANAGEMENT TRIBUNAL UNDER STRATA MANAGEMENT ACT 2013



 Mazliza Mohamad¹

¹Lecturer, Faculty of Law, Universiti Kebangsaan Malaysia

Email: mazliza@ukm.edu.my



ABSTRACT

Article History

Received: 27 February 2018

Revised: 13 June 2018

Accepted: 25 July 2018

Published: 7 September 2018

Keywords

Stratified properties
Strata titles board
Strata management tribunal
Strata titles Act 1985
Strata management Act 2013
Management corporation

The Strata Titles Board (“STB”) is given the power to hear and determine disputes upon an application being made by the parcel owners or MC or any person or body having a registered interest in a parcel. However, there are various unconfirmed reasons for the failure of the establishment of the STB. Now the Strata Management Tribunal (“SMT”) is established under the Strata Management Act 2013 (“SMA”) which effectively abolished the STB. In a nutshell, SMT may hear disputes on costs or repairs of a defect, claims for the recovery of charges, sinking fund contributions and convening general meetings or invalidating of proceedings of meetings. The objective of this paper is to see whether the provisions in SMA with regards to the establishment of the SMT is sufficient to address the strata titles management disputes. The research method used in writing up this paper is the qualitative research in which it will rely on the analysis of the relevant statutes, rules, regulations, books, journals, articles, seminar papers, electronic materials and newspaper reports. The finding of this paper is that despite the high monetary jurisdiction, the provisions of the SMA regarding the establishment of the SMT together with the regulations to regulate the SMT clearly provide an inexpensive alternative to resolve strata management disputes. Without the need to bear a substantial amount of legal cost, the award made by SMT is as good as an order of the courts and is enforceable accordingly. It is hoped that any disputes shall be resolved more timely and efficiently with minimal costs since not all matters may necessarily be taken to court in order for it to get resolved.

Contribution/ Originality: The paper's primary contribution is finding that the Strata Management Tribunal (“SMT”) may be a channel for the unsatisfied party to bring forward their dispute to be resolved other than to court. Hence, any disputes shall be resolved more timely and efficiently with minimal costs.

1. INTRODUCTION

The primary objective of the Strata Titles Act 1985 (“STA”) is to meet current development and socio-economic needs. It further aimed at providing provisions to facilitate the procedures and processes of application for subdivision of building into parcels in stratified properties and the disposition of titles connected thereto. The intention of the STA was also to overcome the weaknesses and inadequacies of the subsidiary titles provisions

which existed in the National Land Code 1965 (“NLC”) as discussed in some of the literatures (Sood, 1987; Ramli, 1992; Jamila, 1999; Azimuddin, 2001; Leong, 2001; Shukri, 2007; Khadijah and Faridah, 2009; Sood and Tee, 2012; Salleh, 2018). Section 39 of the STA 1985 provides for the setting up of the Management Corporation (“MC”) for all buildings with strata titles.

The strata title scheme in the STA has two (2) objectives. Firstly, there must be an individual strata parcel held under a separate title. In this respect, the owner will obtain indefeasibility of the title. Thereby, the owner will have unfettered right to charge, transfer or lease their parcels in the same way as the owner of landed properties. Secondly, there must be a strata corporation system which consists of the owners of the parcels which manages the common property and its use thereof (Shukri, 2007).

1.1. Strata Titles Act 1985

The Strata Titles Act 1985 (“STA”) contains the usual components of strata law taking after the corresponding legislation then prevailing in New South Wales, Australia. Since the formulation of the STA 1985 there have been problems which have occurred during its first few years of operation. One of the problems faced was the failure by some proprietors of the stratified properties to apply for subdivision of the strata titles itself. This has resulted in the legal ownership of the whole building to remain in name of the proprietor of the building. As a consequence, there were unfortunate purchasers who were unable to obtain their title to the parcel although they have fully paid for it. Further to that, the MC will not be able to be established in order to manage the common property of the building. There was no provision for the settlement of disputes due to the belief that few problems would occur (Shukri, 2007).

Therefore, it is expected that any shortcomings may be remedied by amendments to the STA or rules made from time to time. Several amendments to the STA were made, where in the first amendment was STA (Amendment) Act 1985 (A753) Act which came into force on 23rd February 1990, the second amendment in STA (Amendment) Act 1985 (A951) Act which came into force on 2nd August 1996, the third amendment in STA (Amendment) Act 1985 (A1107) Act which came into force on 1st December 2001, the fourth amendment in STA (Amendment) Act 1985 (A1290) Act which came into force on 12th April 2007 and the last amendment in STA (Amendment) Act 1985 (A1450) Act which came into force on 1st June 2015.

In particular, the amendment in 2001 attempted to resolve disputes regarding the running of the MC and overcoming the delays in the application of strata titles. The most outstanding provision in this amendment was the setting up of the Strata Titles Board as provided in Sections 67A – 67X of the STA 1985 (Azimuddin, 2001; Leong, 2001). The establishment of the Strata Titles Board (“STB”) enabled disputes between parcel owners and MC to be resolved without going to the courts which consequently reduced the courts’ burden to hear the case.

1.2. Strata Titles Board

The Strata Titles Board (“STB”) is an administrative tribunal. It has the power to hear and determine disputes upon an application being made by the parcel owners or MC or any person or body having a registered interest in a parcel. STB is given the mandate to exercise quasi-judicial functions with regards to matters relating to stratified properties. The rationale for establishing the STB is to protect the interest of the parcel owners. The STB is expected to be a forum for speedy settlement of disputes as the law requires the STB to make a finding or determination within six (6) months from the date it is constituted unless the matter involves complex issues (Shukri and Maidin, 2010). In that context, the state of Penang is the only state that has established a formal STB. However, it had to be later dissolved due to another amendment of the Strata Titles Act in 2007 which introduced the newly enacted Building and Common Property (Maintenance and Management) Act 2007 (Nor and Azlinor, 2013). Some important pronouncements of law ruled that in the absence of the STB, the Commissioner of Buildings has power to adjudicate issues on the management of stratified properties as provided under Section 3 of

the BCPA as was decided in the case of *Gurney Tower Management Corporation & 3 Others v COB of Building Penang, Penang Municipal Council & Others (2011) 6 CLJ 583* by Justice Datuk John Louis O'Hara. In this case the respondents were the COB, who is the Penang Municipal Council president and parcel owner Yeap Dah Long to whom the March 3 letter was addressed. It was decided by High Court judge Justice John Louis O'Hara that the parcel owners can only have one representative in the management corporation of their multi storey building regardless of how many parcels they own. This was the effect of a ruling when he upheld the COB's decision in a dispute involving Gurney Tower. The 36-storey tower houses The Gurney Resort Hotel & Residences, which is owned by the Employees Provident Fund (EPF), a fitness centre, eateries and an office block. EPF owns fifteen (15) parcels, with two hundred and fifty nine (259) rooms, in the building and had more than one (1) representative in the management corporation. Following the first annual general meeting of the Management Corporation and election of its council on Oct 15, 2009, various parcel owners of the office block had lodged complaints with the COB. The COB then ruled that the council was not properly constituted and held; only parcel owners could be elected as council members; proxies could not be elected nor made chairman; and EPF was only entitled to appoint one (1) representative in respect of the election although it owned fifteen (15) parcels. The COB also ruled the creation of two (2) sub-management corporations; one (1) for the hotel and one (1) for the office block, was invalid. Justice O'Hara, in agreeing with the COB, also ordered him to authorise an extraordinary general meeting for the election of between three (3) and fourteen (14) members to the management corporation. He dismissed the application by Gurney Tower Management Corporation, Bondell Corporation Sdn Bhd which operates the fitness centre, and two (2) proxy holders M. Elangovan and Vincent Tan Boon Sun for an order to quash a COB decision dated March 3.

Section 67A(3) of the STA stipulates that the STB shall consist of a President and such number of Deputy Presidents and other members who shall be appointed by the Minister. However, the Minister may consult any relevant State Authority before making such appointment. The President and Deputy Presidents can be legally qualified persons or non-legally qualified persons. In addition to the President or Deputy President in the STB, there are not more than twenty (20) persons shall be appointed by the Minister as members of the STB as provided in Section 67G(1) of the STA. These members of the panel shall have a wide range of experience and include accountants, architects, engineers, lawyers, property consultants and surveyors.

It is important that all the proceedings of the STB shall be opened to the public and the minutes of the STB including a note of any oral evidence given before the STB shall be kept by the President as stipulated under Section 67G(1) of the STA. The decision of the STB is final and as stated in Section 67X(1) of the STA, no appeal shall be made to the High Court against an order made by the STB except on a point of law. As clearly stated in Section 67V(1) of the STA, a person who contravenes an order made by the STB to do or refrain from doing a specified act shall be guilty of an offence and shall be liable on conviction to a fine not exceeding ten thousand ringgit (RM10,000) or to imprisonment for a term not exceeding two (2) years or to both. The STB is required to state in writing its reasons for making an order. This is an important aspect and principle of administrative law which requires all administrative tribunal decisions to state the grounds of its decision. This is a process where a proper "check and balance" role is performed by the STB. It also ensures public confidence and respect of the STB as an avenue for dispute resolution (Shukri and Maidin, 2010).

However, there are various unconfirmed reasons for the failure of the establishment of the STB (Nor and Azlinor, 2013). Therefore, there was no reported failure for the operating of the STB. This is considered as unfortunate for the public at large since the establishment of it could potentially assist in resolving disputes in the stratified property management without going to court. The STB established under Part IXA of the STA 1985 is now deleted and replaced by the Strata Management Tribunal which is governed by the Strata Management (Strata Management Tribunal) Regulations 2015.

1.3. Strata Management Act 2013

The main objective of the SMA was to govern the maintenance and management of buildings and common property of stratified properties and subdivided lands into a single legislation. The Act received its Royal Assent on 5th February, 2013 and was gazetted on 8th February, 2013 and now known as Act 757. The Act's sole interest and main objective was to protect parcel owners; especially in order to ensure that there is proper maintenance and management of the building and common property, free from unscrupulous developers and illegal property managers (Ishak, 2012).

1.4. The Strata Management Tribunal

The subject matter jurisdiction of SMT would be matters solely pertaining to the strata management and its scope is wider than STB. Similar to STB, SMT is established under the Urban Wellbeing, Housing and Local Government Ministry in accordance with Part XI of the SMA. In theory, it is anticipated that the establishment of the SMT will address the stratified property management disputes particularly with regards to the failure on the part of the parcel owners to pay maintenance fees and issues on the election of their committee members.

To take the discussions further, it is believed that as a result of the establishment of the SMT, the stratified property management disputes are expected to be resolved in a more expedient manner and that not all matters necessarily be taken to court in order for them to get resolved. Hence, any disputes shall be resolved more timely and efficiently with minimal costs since the parties in dispute can submit a case or claim before the SMT. In that context, currently there are not many tribunals established in Malaysia. There are two (2) tribunals which are in existence, namely the Consumer Tribunal and the Homebuyers' Claims Tribunal which are established under the Consumer Protection Act 1992 and the Housing Development (Control and Licensing) Act 1966 respectively (Samsar, 2002; Sufian, 2012; Consumers Association of Penang, 2013; Dato, 2013; National House Buyers Association, 2013; Noor, 2013)

i. Jurisdiction of Tribunal

The SMT is essentially divided into two (2) jurisdictions; the pecuniary and subject matter jurisdictions. It shall have the jurisdiction to hear and determine any claim which does not exceed two hundred and fifty thousand ringgit (RM250,000) as provided in Section 105(1) of the SMA.

The pecuniary jurisdiction stipulated on the SMT is considered to be very high in comparison to the Consumer Tribunal which is only twenty five thousand ringgit (RM25,000) and the Homebuyers' Tribunal Claim which is fifty thousand ringgit (RM50,000) as stipulated under Section 98(1) of the Consumer Protection Act 1999 and Section 16M of Housing Development (Control and Licensing) Act 1966 respectively. However, the pecuniary jurisdiction of the SMT amounting to two hundred and fifty thousand (RM250,000) is deemed sufficient on the basis that the current market value of the property keeps on rising in Malaysia.

ii. Qualifying Members of the Tribunal

The SMT members shall consist of the individual who shall be appointed by the Minister from amongst the members of the Judicial and Legal Service as a Chairman and Deputy Chairman. In addition, not less than twenty (20) other members shall be from the Judicial and Legal Service. Section 103(1) of the SMA provides that the Tribunal shall consist of the following members who shall be appointed by the Minister (a) a Chairman and a Deputy Chairman to be appointed from among the members of the Judicial and Legal Services; and (b) not less than twenty (20) other members to be appointed from among (i) the persons who are members of or who have held office in the Judicial and Legal Service; or (ii) the person who are admitted as advocates and solicitors under the Legal Profession Act 1976 [Act 166], the Advocates Ordinance of Sabah [Sabah Cap. 2] or the Advocates Ordinance of

Sarawak [*Sarawak Cap. 110*], and who has not less than seven (7) years' standing. The Chairman and Deputy Chairman will take turns to sit in the tribunal as stipulated in Section 103(2) of the SMA.

Section 109(1) of the SMA provides that the jurisdiction of the SMT shall be exercised by any of the SMT members sitting alone. There is no doubt that the SMT member sitting alone is an expert in legal matters. However, the issue is whether the SMT member sitting alone would have the necessary technical expertise and knowledge to decide on the disputed matter at hands, for example, in the case of water leakage involving the upper and lower floor units in a multi storey building. In that instance, it is essential to have the expertise of a surveyor or engineer to assist in determining the source of leakage. It is rare to encounter a legal expert who is also an expert in the other fields. Although Section 116(1)(a) provides that the SMT can appoint one (1) or more experts to report to it on specific issues to be determined by the SMT, it is opined that a minimum of two members sitting in the SMT would be ideal to preside at the hearing. For example, the SMT members could have one (1) with legal expertise and one (1) expertise in the relevant field at hand. This will minimise the need to appoint outside experts to assist the SMT in determining the disputes.

iii. Disputed Parties Entitled to Claim

The SMA has made it possible on all the parties related to stratified properties to easily identify who has the right to bring the disputed matter before the SMT. Section 107 of the SMA states that no person other than the following persons shall be entitled to file a claim to the Tribunal: (a) a developer; (b) a purchaser; (c) a proprietor, including an original proprietor; (d) a joint management body; (e) a management corporation; (f) a subsidiary management corporation; (g) a managing agent; and (h) any other interested person, with the leave of the Tribunal. In contrast, the provisions of the STA have failed to provide such clarity in its relevant provisions.

In addition, the SMA has added in the Section 107(h) that any other interested person, with the leave of the Tribunal shall be entitled to file a claim to the Tribunal. Hence, it will grant the parties that are not listed in Section 107(a)-(g), for instance a contractor who has dispute with the MC in the contract of rendering their service or supplying materials for the maintenance of the common property the right to claim before the SMT. This is considered as a pro-active provision whereby it gives the discretion to the Tribunal to determine parties that can file the claim other than the listed parties stipulated in Section 107(a)-(g) of the SMA.

iv. Conduct of Proceedings

It has been expressly stipulated in Section 110(2) of the SMA that no party shall be represented by an advocate and solicitor at a hearing unless, in the opinion of the Tribunal, the matter in question involves complex issues of law and one party will suffer severe financial hardship if he is not represented by an advocate and solicitor. Hence, it is considerably firm in disallowing disputed parties to be represented in the Tribunal.

However, Section 110(3) of the SMA has given some leniency by stipulating that in the event that a party is allowed to be represented by an advocate and solicitor, the other party shall also be entitled to be represented. On that account, the said provision is considered as a fair provision and will be able to be balanced to both parties which are in dispute as provided in Section 113 of the SMA.

It is substantial that the Chairman is given the liberty to conduct the proceeding of the Tribunal in a simple manner in order to resolve the disputes. This will ensure that the Tribunal shall be run smoothly. Section 114(1) of the SMA has explicitly indicated that the Tribunal may conduct the proceedings in a manner that is considered appropriate, necessary or expedient for the purpose of ascertaining the facts or law in order to determine a claim. Section 114(1) and Section 114(2) of the SMA have outlined the powers conferred upon the Tribunal.

v. Awards of Tribunal

The drafting of the SMA is in such a way that the interest of the disputed parties is put as a priority. This can be seen in Section 117(1) of the SMA which explicitly states that the Tribunal shall make its award without delay and, where practicable, within sixty (60) days from the first day the hearing before the Tribunal commences.

On top of that, reason for its award in the proceedings is required from the Tribunal. A criminal penalty will be charged on any person who fails to comply with the award made by the Tribunal. Section 123 of the SMA states that any person who fails to comply with an award made by the Tribunal commits an offence and shall, on conviction, be liable to fine not exceeding two hundred and fifty thousand ringgit (RM250,000) or to imprisonment for a term not exceeding three (3) years or to both, and in the case of a continuing offence, to a further fine not exceeding five thousand ringgit (RM5,000) for every day or part thereof during which the offence continues after conviction. It will set as a deterrent to the disputed parties not to comply. Hence, it can be concluded that the interest of the disputed parties are the utmost priority of the SMA. However, it had failed to elaborate the procedure on the action to be taken by the parties claiming that the other disputed party has failed to comply with the award. It is suggested that the appropriate steps to be taken in order to convict the disputed party for non-compliance of the award made by the Tribunal is spelled out clearly by the lawmakers in the SMA.

Section 121(1) of the SMA stipulates that the party to a proceeding who is not satisfied with the award given by the Tribunal shall be allowed to apply to the High Court with prior notice to the other party and the Tribunal to challenge the award. The ground of the challenge is on the basis of serious irregularity which the court considers has caused substantial injustice to the applicant. Section 121(3) of the SMA has been determined that the matters which may fall within the meaning of irregularities are failure by the Tribunal to comply with Section 113 of the SMA, failure of the Tribunal to deal with all the relevant issues that were put to it or uncertainty or ambiguity as to the effect of the award.

Vi. Limitation Period

Generally the law of limitations is relevant to civil disputes. The period is six (6) years from when the cause accrued, which is stated in Section 6 of Limitation Act 1953 is for actions relating to torts and contracts. Section 105(2) of the SMA provides that for the avoidance of doubt, the Limitation Act 1953 (Act 254) shall not apply to the proceedings of the Tribunal. This will not be in harmony with the intention of the statute of Limitation Act 1953. Compensation can be sought by an aggrieved person from the other party and that will prevent the continuation of a wrongdoing, where appropriate. The right where the wrongdoing has ceased does not exist or last forever. The right must be exercised within a specified period by going to the court. Nevertheless, there are situations where the limitation period is extended because there is fraud or a mistake and do not operate in an entirely absolute manner. It can be inferred that the rationale behind the SMA stipulating that the Limitation Act 1953 shall not be applicable to the proceedings of the SMT, is probably to accommodate the disputed parties in the stratified property management to bring before the SMT any disputes whenever it arises. This is considered as a positive move since disputes in stratified property management may arise at any point in time during the lifetime of the parcel owners in the stratified properties.

2. CONCLUSION

It can be concluded that the enactment of the SMA and the establishment of the SMT is a good and an expedient alternative for the parties in dispute to be assisted. The parties may resolve their dispute by going to the SMT rather than to court. The process of resolving disputes at the SMT can be seen and deemed as a privilege to the member of the SMT, on the basis that the provision in the SMA specifically provided a protection against any suits and legal proceedings.

Funding: I wish to acknowledge the assistance given by the research grant Galakan Penyelidikan Pensyarah Muda (GGPM-2016-038) Universiti Kebangsaan Malaysia.

Competing Interests: The author declares that there are no conflicts of interests regarding the publication of this paper.

REFERENCES

- Azimuddin, B., 2001. Latest amendments of the strata titles act 1985. National Convention on Strata Titles 2001, Melaka, Malaysia, 5 & 6 November 2001. pp: 4-6.
- Consumers Association of Penang, 2013. Malaysia the tribunal for homebuyer claims. Available from <http://www.consumer.org.my/index.php/complaints/rights/252-the-tribunal-for-homebuyer-claims> [Accessed 11 June 2013].
- Dato, C.A., 2013. Alternate dispute resolution in Malaysia: 3-6. Available from http://www.aseanlawassociation.org/9GAdocs/w4_Malaysia.pdf [Accessed 11 June 2013].
- Ishak, I., 2012. Strata management bill abetting illegal property managers. Available from <http://www.freemalaysiatoday.com/category/opinion/2012/10/04/strata-management-bill-abetting-illegal-property-managers> [Accessed 6 October 2012].
- Jamila, H., 1999. Strata titles in Malaysia. Kuala Lumpur, Malaysia: Pelanduk Publications. pp: 12-13.
- Khadijah, H. and H.P. Faridah, 2009. Apartment law in Malaysia buying properties without title legal point of view Available from <http://www.academia.edu/616166/viewed> [Accessed 9 March 2009].
- Leong, H.W., 2001. The latest amendment to the strata titles act. Seminar on Malaysian Land Laws, Kuala Lumpur, Malaysia. pp: 6.
- National House Buyers Association, 2013. Malaysia (National Association of Homebuyers). Available from <http://www.hba.org.my> [Accessed 11 June 2013].
- Noor, A.B.S., 2013. Tribunals for consumer claims the Malaysian experience. Sixth Annual AIJA Tribunals Conference, Malaysia.
- Nor, A.M. and S. Azlinor, 2013. Development on management of strata disputes in peninsular Malaysia: The way forward. 4th International Conference on Business and Economic Research (4th ICBER 2013) Proceeding, Malaysia.
- Ramli, N., 1992. The application for strata titles under the strata titles act 1985. Unpublished Thesis, International Islamic University, Malaysia. pp: 7-8.
- Salleh, B., 2018. High expectations for new strata management tribunal. The News Straits Times, Malaysia. Available from <https://www.nst.com.my/news/2017/02/214662/high-expectations-new-strata-management-tribunal> [Accessed 9 February 2018].
- Samsar, K.B.A.L., 2002. A tribunal for the house purchaser in the revamped housing development (Control and Licensing) Act 1966. The Journal of the Malaysian Bar, 2(2): 31.
- Shukri, I.I.M., 2007. Strata titles legislative amendments: Implementation issues (Unpublished) director of strata titles management. Putrajaya, Malaysia: Department of General Director of Land and Mines. pp: 1-5.
- Shukri, I.M. and A.J. Maidin, 2010. Malaysian strata titles law and procedure. Malaysia Sweet & Maxwell Asia. pp: 172
- Sood, T., Keang and K.L. Tee, 2012. Land law in Malaysia: Cases and commentary. 3rd Edn., Malaysia: Lexis Nexis Malaysia Sdn. Bhd. pp: 298.
- Sood, T.K., 1987. Strata titles in Malaysia: Law and practise. Singapore Butterworth. pp: 10.
- Sufian, A., 2012. Housing tribunals: Comparative analysis of the practices in peninsular Malaysia, Sabah and Sarawak. International Journal of Business and Society, 13(2): 151-162. *View at Google Scholar*

Views and opinions expressed in this article are the views and opinions of the author(s), International Journal of Asian Social Science shall not be responsible or answerable for any loss, damage or liability etc. caused in relation to/arising out of the use of the content.