

FALLING GLASS PANELS ARE A PANE

Glass panels on the exterior of buildings are a common sight, especially so in condominium units these days.

While we seldom hear about falling glass panels, we may have faced or know someone who has faced issues with defective exterior windows at home. It has been reported that there were 43 recorded cases of fallen windows between January to November 2021. Fortunately, no injuries were reported.¹

Notably, if an exterior feature of a building falls due to lack of maintenance, persons responsible, in some cases, homeowners, can be fined up to S\$10,000, imprisoned for up to 12 months, or both.²

When it comes to the question of who, between the subsidiary proprietor or the Management Corporation Strata Title (“MCST”), should be liable for the fallen windows, the answer is (surprisingly), that it depends on where the window is located, and not necessarily who can have access to the said window easily.

Section 2(1) of the Building Maintenance and Strata Management Act 2004 (“BMSMA”) states that a “window” includes a roof skylight, glass panel, glass brick, louvre, glazed sash, glazed door, translucent sheeting and any other building material which transmits natural light directly from outside a building into a room of or an interior of the building.

So, if the glass panel in question falls within any of the defined terms above, it is a window and the maintenance of the said glass panels will be governed by the BMSMA.

¹<https://www1.bca.gov.sg/about-us/news-and-publications/media-releases/2021/12/11/homeowners-can-help-create-a-safer-living-environment-with-regular-window-maintenance>

² Section 9(1), BMSMA.

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The party responsible for the maintenance of such windows depends on whether the property falls within the ambit of “common property” as defined in Section 2(9) of BMSMA, which differentiates between exterior movable windows and exterior immovable windows as follows:³

- (a) Immovable windows are “common property”.
- (b) Windows with any movable part are not common property (i.e. it belongs to the subsidiary proprietor).

If it is “common property”, then the MCST would be liable for it.

This distinction was applied in the Strata Titles Boards case of MCST No. 3106 v Pochuev Vladislav [2010] SGSTB 1 (“MCST 3106”), where the Tribunal held that a balcony glass balustrade of a unit was not a window with any movable part and accordingly, was regarded as “common property”.⁴ As such, the MCST had the duty to maintain the same.

The Tribunal reasoned that windows with movable parts are excluded from the definition of common property as they are “openable and within the control of unit owners themselves and it would be difficult for the MC to supervise or control the proper usage and maintenance of such windows. All other windows remain as common property because unit owners cannot be expected to take charge of such external fixed windows as they are outside the unit owners’ purview and control.”⁵

Notably, Parliament’s intent behind Section 2(9) of the BMSMA was to distinguish between liability arising from windows which unit owners have access and control of, and those which are outside the owner’s purview and control.⁶ Further, it was proposed in Parliament that the MCST should only be responsible for maintaining fixed external windows, such as curtain walling, where it would not be practical for the unit owners to engage specialist contractors to clean the windows.⁷



³ Section 2(9), BMSMA.

⁴ MCST No. 3106 v Pochuev Vladislav [2010] SGSTB 1, p 7.

⁵ MCST No. 3106 v Pochuev Vladislav [2010] SGSTB 1, p 6.

⁶ Singapore Parliamentary Debates, Official Report (19 October 2004) vol 78 at cols 928 (Mr Mah Bow Tan, Minister for National Development)

⁷ Singapore Parliamentary Debates, Official Report (19 April 2004) vol 77 at cols 2766 (Dr Amy Khor Lean Suan, MP, Hong Kah).

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Hence:



(a) Immovable windows, such as balcony glass balustrades, are to be maintained by the MCSTs;⁸ and



(b) Movable windows or windows with any movable part are to be maintained by the owners.

The Tribunal’s decision in MCST 3106 presents an unusual outcome, as one would imagine that save for the fact that the glass panel was immovable, it would common consensus that the subsidiary proprietor would be the party with easy access to the glass panel.

Perhaps an exception to the definition of “common property” under Section 2(9) of the BMSMA for immovable windows, which are within the control of owners, should be considered. Such an exception may arguably give better effect to Parliament’s intent. This may also strike a balance between the MCST’s duty to maintain common property and an owner’s responsibility to maintain external immovable glass panels which are easily within their reach, e.g. on a balcony.

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⁸ Unless otherwise described in a strata title plan.