

Renovations, Improvements and Decorations: The Building Management (Amendment) Bill 1998



Recent amendments to the Building Management Ordinance have given owners's corporations the power to force unwilling owners to contribute to 'renovations, improvements and decorations' of common parts of their buildings. JA McInnis looks at the background to this change and the case the new legislation overrules.

The Building Management Ordinance

In 1993 the Building Management Ordinance Cap 344 came into being to replace the Multi-Storey Buildings (Owners= Incorporation) Ordinance. The latter Ordinance provided the mechanism from 1970 onward for the incorporation of owners and creation of management committees to oversee management of multi storey buildings. As incorporated bodies the owners had rights to bring and defend actions, enforce the terms of Deeds of Mutual Covenants and generally oversee the running of the buildings. A key aspect of the legislation was to facilitate building repairs. When the Building Management Ordinance came into force in 1993 additional rights were vested in the owners and their management committees to maintain and repair the common parts and property of the corporations. However, during these last five years under the new legislation an increasing number of cases have arisen where the actions of the owners or the management committees have been contested by smaller groups of owners. A recent case in point is the *Incorporated Owners of Bayview Mansion v Chan Cheung Kit Mui Margaret* [1995] HKLD 125, or the *Bayview Mansion* case.

The Bayview Mansion Case

In the *Bayview Mansion* case two resolutions were passed in meetings of all of the owners. The first resolution, passed by a count of 108 to 79, authorised the management

committee to expend some \$51.5 on renovations to the building. The second resolution required each owner to contribute some \$4500 toward these costs. Many of the owners were unhappy and at least one them, Ms. Margaret Chan, refused to pay altogether. As a result the incorporated owners launched action in the Small Claims Tribunal and successfully recovered the amount from her. Ms. Chan, believing the owners had no basis to compel her to contribute, appealed to the High Court. The case came before Mr. Justice Jerome Chan. There were numerous issues argued and some difficulties were raised over the contents of the record that was before the small claims adjudicator. Two issues in particular though stood out. (1) Did a majority of owners have the authority to pass the resolutions under the Deed of Mutual Covenant and bind all of the owners as such (including Ms. Chan); or (2) if not, did the majority of owners have such authority under the Building Management Ordinance. The answers to both questions was no. Justice Chan clearly ruled that the Deed of Mutual Covenant contained no such power authorizing the renovations. Similarly he could find no such power under the legislation itself and said:

“Section 14 of the Building Management Ordinance (Cap 344), provides that a resolution “passed with respect to the control, management and administration of the common parts” shall be binding on all owners. The duties and powers of the [owners]....under section 18(1)(a) of the Ordinance

are to 'maintain the common parts and the property of the corporation in a state of good and serviceable repair and clean condition'. It will be a wholly unreasonable stretch of one's imagination to describe the renovation works as works for the 'control, management or administration' of the common parts; or as necessitated by putting the said parts' in a good and serviceable repair and clean condition'. I am satisfied that no assistance can be found in the [Building Management] Ordinance to justify the conduct of the [owners] 'or to afford them any lawful basis for their resolution'."

Thus Ms. Chan won. She did not have to contribute to the renovations. The result was a victory for reluctant owners, a loss for proactive owners, and a set-back for government policy. The scope of authority for owners and management committees under the legislation was accordingly narrower than the government liked. It did not have to turn out this way and it is arguable that a term could have been implied by Justice Chan as a necessary incident of the powers already vested in owners or management committees to maintain and repair their buildings but this approach was not taken. Justice Chan preferred to construe the legislation strictly and to rely upon an early characterization of the repairs to be carried out, in an initial notice by the owners, as 'decoration works' in support of his ruling. This preference more than anything else took the actions of the owners outside both the terms of the Deed of Mutual Covenant as well as the legislation. That was then.

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Last month management committees had some revenge. It may have come too late for the majority of owners in the *Bayview Mansion* case but it certainly adds to the powers of owners corporations in future. The government wasted no time in legislatively overruling *Bayview Mansion*, amending the Building Management Ordinance, and making it clear that owners are being given an express power to renovate, improve and decorate the common parts of their buildings and to pass any resolutions they wish in this regard in general meeting. The government has also moved to increase the minimum size for vocal minority

owners. Thus, the amendments have made it harder to object to meetings of owners and in future 30% of the owners, rather than the 10% currently, will have to object to the convening of a meeting before it will not be held.

Policy on Repairs

At the time of the introduction of the Buildings Management (Amendment) Bill 1998 a spokesman from the Home Affairs Bureau stated that the Bill was introduced in part to redress the problem of the deterioration of older buildings in Hong Kong. This is consistent with the greater attention government is giving to the problems of older buildings in Hong Kong overall. Recent project initiatives by the Land Development Corporation, stepped-up inspections under the Building Safety Inspection Scheme, (reported on in this column in the September 1997 edition of AAC), among other measures indicate more willingness on government's part to address the problems of deterioration of local buildings. As a practical matter it can be difficult to draw a clear line between repair and decoration or renovation in any case. It was thought that some owners were not taking steps to improve their property because of this distinction. Once again, with the safety issue in mind, it did not seem right to let the issue lag. The recent amendments suitably recognise this and the quick action of Home Affairs and the government Bill underscores the priority being given to safety issues, the upgrading of capital properties, and empowering of owners to pursue these initiatives themselves.

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