

BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT

BUILDING MAINTENANCE AND STRATA MANAGEMENT
(STRATA TITLES BOARDS) REGULATIONS 2005

STB No. 28 of 2012

In the matter of an application under
Section 101 of the Building Maintenance and
Strata Management Act in respect of the
development known as **Highpoint** (MCST
Plan No. 367)

Between

The MCST Plan No. 367

... Applicant(s)

And

Madam Lee Siew Yuen / Mr Eng Chiet Soong

... Respondent(s)

Coram : Mr Tan Lian Ker
President

Panel Members: Prof. Teo Keang Sood
Mr Tan Ee Ping

Counsels: Ms Josephine Choo/Ms Emily Su
(M/s Wong Partnership for the Applicant)

Mr Toh Kok Seng/Ms Yik Shu Ying
(M/s Lee & Lee for the Respondent)

Grounds of Decision

1. The applicant is the management corporation (MC) for the development known as High Point (MCST Plan No. 367) located at 30 Mount Elizabeth, Singapore 228519. The development is 40 years old. The respondents are the subsidiary proprietors (SPs) of unit #XXX in the development.

2. This is an application by the applicant under s 101 of the Building Maintenance and Strata Management Act (Cap 30C, 2008 Rev Ed) (BMSMA) that the respondents make good any defects in the beams and columns in the latter's unit. Specifically, the dispute pertains to defects in the beams above the ceiling of the master bedroom toilet and that of the kitchen in the said unit.

3. In essence, the application is concerned with the issue of whether it is the MC or the SPs who are responsible for the repair and proper maintenance of the beams in question.

Main Issues

4. A determination of this issue must necessarily involve a consideration of whether beams are common property, in which case it is the statutory responsibility of the MC to repair and maintain them as provided in s 29(1)(a) and (b)(i) of the BMSMA. On the other hand, if beams are considered not to be common property, then the responsibility would lie on the SPs of the unit concerned unless the defects in the beams comprised in the said unit amount to structural defects in which case it is for the MC to rectify under s 30(5) of the BMSMA, subject to the SPs not being in breach of their duty imposed under s 63(a) of the same Act. The importance of identifying the common property of a strata scheme can be seen in *MCST Plan No 958 v Tay Soo Seng* [1992] 3 SLR(R) 818 where GP Selvam JC (as he then was) perceptively observed as follows at [13]:

“The Act thus makes a clear dichotomy between common property which is vested in the management corporation and private property which is vested in the subsidiary proprietor of the lot.”

5. Thus, the responsibility of effecting the necessary repairs or maintenance will lie on the MC or the SP depending on whether the relevant part of the building concerned (i.e. beams in the case before us) is part of the common property or part of the unit.

Summary Of Applicant And Respondents' Arguments

6. Not surprisingly, the applicant and respondents take opposing positions on this matter. In summary, the applicant argues that the beams are not common property and that it is for the respondents to make good the defects in the beams. The

respondents contend otherwise. The respondents further argue that even if the beams are not common property, the defects therein, nevertheless, amount to structural defects which the applicant is required to rectify unless the respondents had committed a breach of the duty imposed on them under s 63(a) of the BMSMA.

Are Beams Common Property

7. The first question to consider then is: are beams to be considered common property?

8. For purposes of our present case, “common property” is defined in s 2 of the BMSMA to mean:

“(a) in relation to any land and building comprised ... in a strata title plan,
such part of the land and building —
(i) not comprised in any lot ... in that strata title plan; and
(ii) used or capable of being used or enjoyed by occupiers of 2 or more lots ...;
...”

9. It is clear that the requirements are conjunctive and both must be satisfied, namely, to amount to common property, such part of the land and building must firstly not be comprised in any lot (i.e. unit) in the strata title plan and secondly, must be used or capable of being used or enjoyed by the occupiers of 2 or more units. It may be noted that s 3(1) of the Land Titles (Strata) Act (Cap 158, 2009 Rev Ed) provides for identical requirements.

10. A perusal of the relevant documents, including a copy of the relevant strata title plan of unit #XXX, indicate that the beams concerned are comprised in the said unit. This is further supported by Rule 41 of the Boundaries and Survey Maps (Conduct of Cadastral Surveys) Rules (Cap 25, R 5, 2007 Rev Ed) which provides that, unless otherwise stipulated on the strata certified plan, the common boundary of any unit with another unit or with the common property shall be the centre of the floor, wall or ceiling, as the case may be. For purposes of the BMSMA, “ceiling” does not include any false ceiling (see BMSMA, s 2(1)). As the first requirement is not satisfied, it matters not that the beams in question are used or capable of being used or enjoyed by occupiers of 2 or more units.

Whether Defects Amount To Structural Defects

11. It would appear then that the respondents have the responsibility to repair the defects in the beams which are comprised in their said unit as the beams are not common property based on the discussion of the statutory provisions and case law above.

12. However, the respondents do not have such a responsibility if it can be shown that the defects in the beams in their unit amount to structural defects which affect or is

likely to affect the support or shelter provided by their unit for another unit in the building or the common property as set out in s 30(5)(a) of the BMSMA.

13. The Board noted that the reports of both WTS Consulting Engineers (dated 10 February 2012) and the respondents' expert witness, Mr Song Wee Ngee (dated 7 November 2012), took the position that the defects in the beams are structural in nature which are likely to have the effect as described in s 30(5)(a) of the BMSMA and which require immediate attention and urgent repair work to be undertaken.

14. While the BMSMA is silent on what are structural defects, assistance may also be gathered from related legislation in this regard. The Building Control Act (Cap 29, 1999 Rev Ed) in s 2(1) provides that "key structural elements" of a building means "the foundations, columns, beams, shear cores, structural walls, struts, ground anchors and such other parts of a building which are essential for its support and overall structural stability." Defects in the "key structural elements" of a building would ordinarily amount to structural defects.

15. Further, in line with the requirement in the BMSMA that it is for the management corporation to rectify structural defects in the building, the Building Control Act in s 26(1) which pertains to inspection of buildings, provides that the owner of a subdivided building is the management corporation having control of the building. Pursuant to s 28 of the Building Control Act, the Commissioner of Buildings may, by notice served on the management corporation, require the building to be inspected which duly took place in our present case on or about December 2010. WTS Consulting Engineers, which was appointed to undertake the inspection, made certain recommendations in its report. The Building and Control Authority via their letter of 31 January 2011 then directed the management corporation (and not the subsidiary proprietors) to "expeditiously implement the measures as recommended in the report to prevent further deterioration of the building structure" and to "continue to maintain your buildings in good condition till the next inspection" for the structural safety of the building. Any failure to comply by the management corporation is made an offence in s 28(9) of the Building Control Act which attracts a fine or imprisonment or both.

16. In the result, the Board is of the view that the defects in the beams are structural defects within the meaning of s 30(5)(a) of the BMSMA.

Whether Respondents In Breach Of Their Duty In Section 63(a)(i) of the BMSMA

17. It may be noted that s 30(5)(a) of the BMSMA imposed a duty on the management corporation to rectify a structural defect only if the defect is not due to any breach of the duty imposed on the respondents as subsidiary proprietors by s 63(a) of the BMSMA. It should be noted that only s 63(a) is referred to in s 30(5) of the BMSMA and no other provision. In our case, the relevant provision is s 63(a)(i) of the BMSMA which *prohibits* a unit owner from *doing anything or permitting anything to be done* on or in relation to his/her unit so that any support or shelter provided by the said unit for another unit or common property is interfered with.

18. There are 2 limbs to s 63(a). The 1st limb pertains to “shall not do anything”. It is clear that for there to be a breach of duty under this limb, the unit owner must have *done a positive act* which interferes with the said support or shelter. In the absence of such a positive act on the part of a unit owner, there is no breach of duty.

19. The 2nd limb deals with “shall not permit anything to be done”. This may appear wide enough to cover omissions. (see also interpretation of the word “act” in s 2(1) of the Interpretation Act (Cap 1, 2002 Rev Ed)) However, given the intent in s 30(5) of the BMSMA for the burden of rectification costs for structural defects to be shared by all subsidiary proprietors as such defects will impact the structural stability of the building (hence, the responsibility is on the MC), it cannot cover cases of *mere* omissions on the part of the SP concerned. The 2nd limb would certainly cover cases where a contractor of an SP damaged the beams in the unit in the course of work for which the SP must rightfully be held solely responsible to rectify the structural defects. It surely cannot cover cases of, for example, latent defects arising from construction of the building which subsequently manifest themselves as structural defects in the unit concerned and for which the SP later became aware of. Being latent defects, the SP is in no way responsible for the structural defects arising which affect the safety of the building even if the SP subsequently became aware of them. This is so even if only a single unit is affected. Thus, looking at the purpose and intent of s 30(5) of the BMSMA, the default position is that for structural defects which affect or is likely to affect the support provided by one unit for another unit in the building or the common property, the burden of rectification costs is to be shared by all SPs and the MC is responsible to rectify them under s 30(5) of the BMSMA unless the SP concerned has permitted anything to be done to the beams or columns such that the support provided by the said unit is interfered with.

20. Given the evidence in our present case, there is nothing to suggest that the respondents were in breach of the duty imposed on them in s 63(a)(i) of the BMSMA. As there was no breach of the duty in s 63(a)(i), the management corporation (i.e. the applicant) is, thus, duty bound (given the word “shall”) to rectify the structural defects as provided in s 30(5)(a) of the BMSMA.

Recourse To Sinking Fund By Management Corporation For Repairs of Structural Defects

21. It follows from the above that the applicant may have recourse to the moneys available in the sinking fund to undertake repairs of the structural defects in the beams concerned as it is for the purpose of carrying out its duties in this regard under the BMSMA. This is specifically provided for in s 38(6) of the BMSMA which reads: “A management corporation shall not disburse any moneys from its sinking fund *otherwise* than for the *purpose* of — ... (b) carrying out its powers, authorities, *duties* or functions under this Act.” (emphasis added)

22. In the event that there is insufficient funds available in the sinking fund, the management corporation may levy contributions on the subsidiary proprietors in

accordance with the BMSMA. Under s 44(1) of the BMSMA, any expenditure lawfully incurred by a management corporation in the course of the exercise of any of its powers or functions or the carrying out of its duties or obligations is guaranteed by the subsidiary proprietors who, for the time being and from time to time, comprise the management corporation.

23. As structural defects affect the safety and integrity of the entire building, it is sound policy that the BMSMA sees it fit to impose the duty on the management corporation which is in a better position to coordinate and carry out the appropriate and necessary repairs which will ultimately benefit all the subsidiary proprietors concerned notwithstanding that there may be units which may not suffer from structural defects. In turn, it is only fair that as the subsidiary proprietors as a whole benefit from the repairs of the structural defects, they should fund the rectification work through the sinking fund to which they contribute.

Greater Alignment of BMSMA And Building Control Act

24. To provide clearer guidance on what amounts to structural defects, it is suggested that the BMSMA be amended so that there is greater clarity in this regard. For example, providing a definition of “structural defects” in obvious situations (such as cases involving defects in beams or columns) or a reference to the definition of “key structural elements” of a building in s 2(1) of the Building Control Act may assist in removing uncertainty and would certainly be a welcome move. This would also align the BMSMA more with the Building Control Act to ensure consistency in this respect.

25. The application is hereby dismissed for the reasons above with no order as to costs.

Dated this 4th day of July 2013.

Mr Tan Lian Ker
President

Prof. Teo Keang Sood
Member

Mr Tan Ee Ping
Member