BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT

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

STB No. 77 & 95 of 2012

In the matter of an application under section **101(1) and 111(a)** of the Building Maintenance and Strata Management Act in respect of the development known as **YONG AN PARK** (MCST No. 1267)

Between

Yap Sing Lee

... Applicant(s) / Respondent(s)

And

MCST Plan No. 1267

... Applicant(s) / Respondent(s)

Coram: Mr Remedios F.G (Deputy President)
Prof Teo Keang Sood (Member)
Mr Chua Koon Hoe (Member)

Counsel: i) Mr Alvin Yeo (SC) and Ms Loh Bee Kee (WongPartnership LLP) for MCST Plan No. 1267
ii) Mr Yap Sing Lee (in person)

GROUNDS OF DECISION

1. Mr Yap Sing Lee (Yap) is the subsidiary proprietor of a penthouse unit in Blk 327 River Valley Road #XXX Yong An Park (Blk 327). He purchased the unit in or about March 2006.

2. On 19th September 2012, Yap (in STB 77 of 2012) applied for the following orders against Management Corporation Strata Plan No. 1267 (MCST):
To order the Respondent (MCST) to accept the rights of, and/or grant consent to the Applicant's following alterations and additions made to the rooftop and/or the common properties of the building:-
   (a) Relocation of the ventilation stacks approved by the PUB;
   (b) Addition of lightning protection systems to the existing lightning protection system; and

(c) *Installation of air condition condensers.*

3. STB 95 of 2012 which was filed on 8th November 2012 mirrors STB 77of 2012 in that the Applicant here is the MCST. Orders were sought against Yap requiring him to reinstate at his own costs:

   a) *the ventilation stacks which currently terminate at the rooftop of Block 327 to their original condition*;

   b) that Yap removes, *at his own costs, the unauthorized additions to the lightning protection system at the rooftop of Block 327 and reinstate the lightning protection system to its original condition*; and

   c) that Yap removes, *at his own costs, the unauthorized air conditioning condenser units located at the rooftop of Block 327 and reinstates the rooftop to its original condition*.

4. The applications were made under SS 101(1) and 111(a) of the Building Maintenance and Strata Management Act (Chapter 30C) (the Act).

BACKGROUND:

5. Blk 327, including the rooftops is 27 floors in height with 24 floors consisting of 3 strata lots on each floor from the 2nd floor to the 25th floor. There are 3 duplex penthouses with each unit occupying the lower floor at the 25th floor and the upper floor at the 26th floor of the building. The rooftops of the respective penthouses are at the 27th floor.

THE VENTILATION STACKS (VS):

6. The VS provide ventilation for the sanitary system for the units in each block. There are 5 VS in each strata lot and the VS are located within the service ducts of the buildings. The service ducts run through the various units of the building [Note: Whereas YSL4 p23 clearly shows V1 to V4 ventilate the 4 toilets (i.e., the sanitary system), there is no information on what the 5th pipe serves]

7. The VS in Blk 327 were designed and built on or before 1986, *i.e.* before the Singapore Standard Code of Practice: Sewerage and Sanitary Works (SS CP:SSW) came into force in the year 2000. Pursuant to Clause 3.2.3.[g] of SS CP:SSW, since February 2001, the Public Utilities Board (PUB) no longer allows VS to be terminated in the private roof area that are designed for use by the occupants.

8. In a letter dated 8th April 2006, Yap sought the MCST's consent to install filters to the ventilation pipes and/or for the relocation of the VS. In his letter, Yap referred the MCST to Clause 3.2.3.4[g] of SS CP: SSW that the VS were no longer allowed to be terminated in the private roof terrace of a unit.

9. There was no written response from the MCST to the request.

10. It is the case for the MCST that Yap was verbally informed that his request for relocation was not approved. (There are no particulars as to who informed Yap and when the information was conveyed).

11. By way of a letter dated 11th June 2007, Yap's lawyers (M/s Allen and Gledhill) reminded the MCST of its non-response to Yap's letter dated 8th April 2006 to the MCST and informed the MCST that due to the MCST not responding, Yap had requested for consent from the PUB for the VS to be re-located.

12. By a letter dated 13th June 2007 from the PUB addressed to a Choi Wai Ha (the letter was copied to the MCST), Yap was informed by the PUB that: PUB had *no objection to the proposed diversion of four nos.(4) 150mm diameter stack as shown in your attached drawings*; the works must be carried out in strict compliance with the SS CP:SSW; and Yap was informed to

    "Please also get the consent from the owner/ Management Corporation on your proposal"

13. On 20th June 2007, M/s Allen & Gledhill (A&G) wrote to the MCST, enclosing the PUB's letter dated 13th June 2007, and sought the MCST's consent to Yap's proposal to relocate the VS.

14. On 27th June 2007, the MCST, by way of a letter from Drew and Napier LLC (D&N), *inter alia* replied, as follows:

    It is not clear from either your client's letter dated 8 April 2006 or your recent letter as to where exactly your client is proposing to relocate the ventilation stack. In addition, neither your client's letter 8 April 2006 or your recent letter addresses the issue of costs and maintenance, and the issue of potential liability for any defects or damages caused by or arising from the relocation of the ventilation stack, particularly after a change of ownership of your client's unit.

    First if your client is proposing to terminate the ventilation stack at the common roof on the 27th level, our client will require your client to bear all costs of relocation, including the costs of reinstating the waterproofing membrane on the 27th floor and maintaining the ventilation stack and waterproofing membrane at the common roof.

    Secondly our client is very concerned to ensure that your client and his successors-in-title are all bound to indemnify the MCST for any potential liability for any defects or damage caused by or arising from the relocation of the ventilation stack, and in particular to address the possibility of water leakage around the areas of the relocated ventilation stack

15. By a letter dated 28th June 2007, A&G replied and informed that Yap is amenable:

    a) *to bear all the costs of the relocation as well as to make good the water proofing membrane(s) affected by the relocation;*

    b) in line with the normal defect warranty period of the construction industry, provide a full indemnity to the MCST in relation to the maintenance of the water proofing membrane(s) affected by the said relocation, as well as all defects or damages caused by and/or arising from the relocation, for a period of 1 year up to the sum of $50,000; and

    c) as a gesture of our client's sincerity to furnish a refundable interest free deposit of $5,000 to the MCST as a surety for the maintenance of the water proofing membrane(s) affected by the relocation for a period of 3 years.

    ……

Further, in relation to your client's query as to the position(s) from and to which our client is intending to relocate the ventilation stacks, we are instructed to inform that your client is welcome to visit our client's unit whereupon our client and/or his representative will be pleased to show the exact said positions for the said relocation. In this regard, please contact our client directly to make the necessary appointment(s).

16. It is the case for the MCST that on or about 28th September 2007, the MCST replied to the letter dated 28th June 2007 and proposed to seek professional assistance from two building surveyors, namely, CS Lee & Associates and Faithful + Gould Pte Ltd, to clarify the technical issues relating to Yap's proposed relocation of the VS. The MCST also proposed that Yap bears the cost of the building surveyors' services in the sums of $1,500 and $2,800 respectively.

17. It is Yap's case that the MCST never responded to the 28th June 2007 letter. Accordingly, he did not respond to the proposals.

18. It is the case for the MCST that the minutes of the Fifth and Sixth Council's meeting state that the letter was sent to Yap.

19. The minutes do not confirm that such a letter was sent. What is recorded in the minutes of the Fifth Council's meeting on 6th September 2007 is:

*The LSC (*legal subcommittee*) reported that in the meeting the LSC had with the solicitors on the 17August 2007, the solicitors advised that the MC should refer the details of the undertaking provided by the Subsidiary Proprietor in consideration of his application to carry out works affecting common property to a qualified person as a building surveyor for their professional opinion. The MA reported that they have obtained two proposals from two building surveyors and circulated the proposals to the LSC prior to the meeting. The Council decided that the proposals should be considered by the Subsidiary Proprietor and that it would only be fair that the costs associated with the engagement of these professionals be borne by the SP as part of the SP's costs to carry out the works affecting common property. The MA noted the instruction and will communicated the Council's decision and proposal to the SP.*

20. In the minutes of the Sixth Council's meeting held on 5th November 2007, it is recorded that:

MA to remind D&N to expedite on the reply to YSL on his application to reposition vent pipes and others...

21. It is not known and there is nothing to show that the MA had in fact reminded D&N.

22. On 26th July 2007, Yap sent an email to the MCST wherein he *inter alia* referred to the non-receipt of an official reply to his applications with regard to relocation of the VS and placement of the air con condenser (ACC) over *my roof top* and repeated his application with regard to the VS and ACC. *Inter alia* the email was as follows:

...I am prepared to settle this amicably with you and forgo my claim against you in court for your failure to respond to my amended application to you on the 13th November if you would consider the following:

1. *grant me the consent to relocate the ventilation stacks as proposed with 3 years warranty.*
2. *give me the approval to place the air conditioner units over my roof top in return for my proposal to maintain the roof top at my own costs*
3. *each party to bear their own costs in the STB 10 of 2007 case which I have withdrawn in preparation to continue the case in court*

I shall further delay the commencement of my A/A from 30th July 2007 to the 6th August for one last time.....

23. On 30th July 2007, Yap was informed that his email had been forwarded to the council of the MCST.

24. On the same day, Yap reminded the MCST of the urgency to consider granting permit to allow him to commence his A&A works as his A&A had been delayed for over a year.

25. On 31st July 2007, Yap was given approval for *removal of existing belongings.*

26. By way of a letter dated 23rd August 2007, there was a request from Yap with regard to "*proposed Air Con Condenser Location", "Proposed Exhaust pipes Location" and "Proposed Awning Location*".

27. Yap informed (S/No.:60 of the consolidated statement of facts (AB1)) that this was an alternative to the initial request with regard to the ACC made in a letter dated 19th June 2007 sent by A&G (Tab 53 of AB2). It is the case for Yap that there was no written response to the request but that in Sept 2007 he was informed by the condominium manager, Steve Teo that the alternative requests with regard to "*Proposed Air Con Condenser Location", and "Proposed Exhaust pipes Location*" were approved. At this time he was also informed that his applications with regard to the VS and ACC (submitted in a letter dated 19th June 2007) were not approved by the council because of "*constraint of the Act*" and it was suggested that he should table an exclusive use resolution in the general meeting.

28. It is the case for Yap that in late 2007, Steve Teo informed him that the MCST had allowed him to commence all A&A work including relocation of VS and installation of ACC (Whilst this is not agreed by the MCST, it is noted in AB1 that the MCST does not dispute this - S/No.:69))

29. The following was recorded at the Seventh Council's meeting on 27th December 2007:
As for the owner's application for relocation of the vent pipe the council decided that it would be tabled at the EGM to seek general approval as this involves the common property

30. On 21st January 2008, Yap requested for the following motion to be included in the agenda for the next EGM or AGM whichever was earlier:
To consider and approve through a 90% resolution for an addition to the by-law to grant the subsidiary proprietor (SP) of Blk 327 #XXX the perpetual exclusive use and enjoyment of the common roof top directly above the SP's unit and upon the SP agreeing at the SP's own costs and expenses, to maintain and assume full

responsibilities and liabilities for the rooftop indefinitely, including any leakage or flooding from the said rooftop into the SP's own unit and/or into the neighbouring units and/or into the common properties

31. At the EOGM on 15th March 2008, the resolution was not carried.

THE LIGHTNING PROTECTION SYSTEM (LPS):

32. A LPS is installed in every block and its purpose is to protect the building.

33. It is not in dispute that there was no written (formal/official) application by Yap for any work to be done to the LPS.

34. It is the case for Yap that the LPS installed at his block is inadequate and does not comply with the Code of Practice for Lightning Protection (CP 33:1996). MCST does not dispute this and informs that CP 33:1996 was not in force when the development was built.

35. Yap had also noted that over the years the MCST had carried out numerous repainting works and repeatedly painted thick layers of acrylic paint over the air terminals and from the information in SS CP33:1996, he was of the view that this *had damaged the conductibility of these air terminals and affected its ability to attract lightning discharge and therefore damaged its function to protect the building from being struck by lightning.*

36. It is the case for Yap that in late 2007, he informed Steve Teo that he would be installing, *inter alia* a lightning protection device and that it would be in accordance with rules and regulations of the authorities. Steve Teo verbally allowed him to proceed. (In AB1, MCST does not dispute this – S/No.:76 to 78)

37. Yap did not make any application to modify the LPS and proceeded to modify the portion affecting his unit.

38. As far as the MCST was concerned, they were unclear if the entire LPS is functioning properly and wanted endorsement from a qualified person.

39. When A&A works were being carried out by Yap, the MCST's security guards conducted inspections and took photos of the work being carried out; Yap's contractors booked and made payments for exclusive use of the fireman's lift for the A&A works and after Steve Teo ceased connection with the MCST, the new condominium manager allowed Yap to carry on with and complete the A&A and relocation of the VS was completed in early 2008 (In AB1, MCST does not dispute this – S/No.:78 of AB1)

40. All work in connection with the VS, the LPS and the ACC was completed before 15th March 2008.

41. Yap has pointed out that when any work is carried with the approval of relevant authorities, the authority will require certification that the work has been carried out in accordance with the approved plans. Accredited Clerk of Works has to be engaged to inspect the work during the A&A.

42. Exhibited at Tab 46 in AB2 is a Certificate of Supervision of Lightning Protection System dated 8th April 2008, signed by a Professional Engineer licensed by PUB certifying that:
I have supervised the installation of the lightning protection system; and the design and installation of the lightning protection system are in accordance with the Code of Practice on Lightning Protection in Buildings –SS CP 33:1996 [In addition, YSL4 page 28 is an additional certification dated 2nd April 2013 by the same PE that the existing LPS of Blk 327 and the entire condo is not compromised by the LPS A&A at unit #XXX]

43. By way of letters dated 25th March 2008 and 2nd April 2008, MCST notified Yap that the relocation of the VS constituted a breach of the Act and/or by-laws and asked him to reinstate the VS to its original condition; reinstate original LPS and remove ACC from rooftop.

44. By way of two letters dated 4th April 2008 and 7th April 2008, Yap replied that: With regard to the LPS he had buried and concealed the exposed conductor without making any changes to the original conductor and *a more advanced lightning protection device is used to provide a lightning protection to my roof terrace as well the whole building, which makes it a safer place to live in in compliance with the new SS CP33:1996*.and he informed that a certificate certifying that the lightning protection device complied with the latest SS
CP33:1996, would be issued within the next two weeks (Tab 46 in AB2)

45. With regard to the ACC, he had sought approval for installation on 18th June 2007 and MCST had not replied. He had then commenced installation of the ACC at the common rooftop and *inter alia* said that others had been allowed to so install. Installation of the ACC involved extensive infra-structure works and removal would impose great financial costs without benefit to anyone. The installation of the ACC did not affect facade, or normal enjoyment of other subsidiary proprietors.

46. With regard to the VS, he had sought approval for relocation on 8th April 2006. There was no reply until 27th June 2007. The reply then dealt with costs and liability and he had replied on 28th June 2008 offering to absorb costs and liability. There was no reply to this.

47. The original termination points of the VS which were built in accordance with Code of Practice on Sanitary Plumbing and Drainage System in force in 1986 posed a health hazard and in view of the non-receipt of a response to the application for approval for relocation, he had proceeded with relocation as approved by PUB and this was done by a competent licensed plumber recognised by PUB. Yap went on to say that the re-location of the VS was in accordance with the provisions of paragraphs 5(3)(c) and 5(4) of the By-Laws in the 2nd Schedule of the Building Maintenance (Strata Management) Regulations 2005.

<u>THE AIR CON CONDENSER (ACC):</u>

48. ACC are installed within the premises of the various units

49. The roof at each block is accessed *through scaling through the unit's roof terrace.*

50. By a letter dated 19th June 2007 sent by A&G, Yap applied for approval to install his ACC units at the roof of Blk 327. The MCST by way of a letter dated 27th June 2007 from D&N replied that installation of the ACC units at the roof constituted exclusive use and enjoyment of common property and that the MCST was unable to grant approval without a 90% resolution passed at a general meeting.

51. By way of a letter dated 28th June 2007 from A&G Yap inter alia pointed out that the roof is accessible to authorised maintenance personnel and is not accessible for common use of the residents. Yap also pointed out the benefits to the MCST as follows:

…In the circumstances the proposed relocation of our client's air-conditioning condenser units would grant the MCST as well as Yong An Park the cost benefits of our clients undertaking to maintain the portion of the roof top common area directly above his unit at his own expense….

52. Without written approval from the MCST, (as set out above it is the case for Yap that in late 2007 Steve Teo had informed him that the MCST had allowed him to commence all A&A work including relocation of VS and installation of ACC) Yap installed the condenser piping running from within the strata boundary of his unit and terminated at the wall of the roof of the unit where the ACC are installed.

53. The installation cannot be seen from anywhere within the estate *i.e.* is not visible except from overhead. Work was completed before 15th March 2008.

54. At a council meeting on the 6th October 2008 (Tab 60 in AB2), it was agreed that the MCST would apply to the STB *for an Order under Part VI to let the Board decide if the Management Corporation should allow (Yap) to maintain the common roof directly above his unit and around the relocated ventilation stacks at his own costs and expenses or whether he should reinstate the alterations and additions carried out at the common property at his own cost.*

55. This did not come to pass because Yap was, by way of a letter dated 7th October 2008, informed that his proposal to maintain the common roof *is to enjoy exclusive use of the common area for an indefinite period….* and he was invited to table a private requisition at the next AGM to seek the mandate from the general body on the exclusive use of the common property.

56. Yap responded by way of a letter dated 20th October 2008 that he had no desire or wish to seek exclusive use from the general body *as in practice it can only be accessed and used exclusively by my unit only a*nd went on to ask *I need to know on an urgent basis whether the MCST is proceeding to maintain the roof top or I should do the maintenance.* There was no response from the MCST to this letter

BOARD'S FINDINGS:

57. Before deciding on the respective applications of Yap and the MCST, it will be in order that we set out our findings as to how the VS came to be relocated; the LPS modified and the ACC installed on the roof.

58. To fully appreciate what exactly was involved in the relocation and installation of the VS, the LPS and ACC, we visited Yap's unit and viewed the installations. We

also visited the unit next door to view the original location of the VS. Photographs taken by Board members during the visit are exhibited at BP1 to BP48.

59. There are three penthouses at the upper most levels of Blk 327 (see pg 19 of YSL 4) and they occupy two levels. YSL4 pages 7 to 16 show that Blk 327 is a point block of apartments. A lift and staircase core is located centrally in the block and is topped by the lift motor room and water tanks and covered by an angled roof. A twin stack of adjoining apartments is attached to one side of this access core and a third stack of apartments is attached to the other side. Yap's penthouse (unit #XXX) and his adjoining neighbouring penthouse (unit #XXX) together top the twin stack whilst unit #XXX tops the other stack. Each penthouse occupies two levels. The Board visited units #XXX and #XXX.

60. The upper floor of each penthouse is at the 26th level. It partly comprises a large open roof terrace and partly built-in living space that is roofed over by a flat roof at the 27th level. This flat roof over the adjoining units #XXX and #XXX is one continuous, integral roof slab and abuts the lift/staircase core. The flat roof over #XXX similarly abuts the lift/staircase core on the opposite side. There is no direct access from the lift/staircase core to the 27th level flat roofs.

61. The roof terraces and flat roofs are bordered by a parapet.

62. The flat roof above the upper level of unit #XXX is accessible by way of spiral stairway from the roof terrace. The spiral stairway (BP10) was installed by Yap. It did not appear that the developer had intended for the flat roof to be accessible from the roof terrace as during the site visit we were not able to access the flat roof of unit #XXX when we visited that unit.

63. In the written submissions, references were made to “roof tops” without reference to whether this referred to the flat roof or the angled roof. The Board is of the view that the use of the word “roof top” may cause confusion and will use the words “flat roof” and “angled roof” when referring to the respective roofs.

THE VENTILATION STACKS (VS):

64. The VS in Blk 327 were designed and built on or before 1986, *i.e.* before the Singapore Standard Code of Practice: Sewerage and Sanitary Works (SS CP:SSW) came into force in 2000. Pursuant to Clause 3.2.3.[g] of SS CP:SSW, since February 2001, the PUB no longer allows VS to be terminated in the private roof area that are designed for use by the occupants.

65. In April 2006, Yap sought the consent of the MCST to relocate the VS. For more than 12 months, the MCST did not respond to Yap’s letter and on 11th June 2007, Yap’s lawyers reminded the MCST of its non-response and informed that Yap had requested for consent from the PUB for relocation of the VS.

66. On 13th June 2007, PUB informed Yap that it had no objections to Yap’s proposal and at the same time Yap was informed by PUB to get the consent of the owner/MCST. Yap then through his lawyers sent the letter from the PUB to the MCST and sought consent to relocate the VS.

67. On the 27th June 2007, the MCST inter alia informed Yap that if he was proposing to terminate the VS at the common roof he would be required to i) bear all costs of relocation, including the costs of reinstating the waterproofing membrane on the 27th floor and maintaining the ventilation stack and waterproofing membrane at the common roof; and ii) to ensure that Yap and his successors-in-title are all bound to indemnify the MCST for any potential liability for any defects or damage caused by or arising from the relocation of the ventilation stack, and in particular to address the possibility of water leakage around the areas of the relocated ventilation stack.

68. Yap confirmed that he was prepared to bear all the costs of the relocation as well as to make good the water proofing membrane(s) affected by the relocation; in line with the normal defect warranty period of the construction industry, provide a full indemnity to the MCST in relation to the maintenance of the water proofing membrane(s) affected by the said relocation, as well as all defects or damages caused by and/or arising from the relocation, for a period of 1 year up to the sum of $50,000; and to furnish a refundable interest free deposit of $5,000 to the MCST as a surety for the maintenance of the water proofing membrane(s) affected by the relocation for a period of 3 years.

69. There was no response from the MCST to Yap's offer until 30th July 2007 when Yap was informed his email dated 26th July 2007 which inter alia referred to the 3 years warranty had been forwarded to the council of the MCST.

70. In September 2007, Yap was informed by the condominium manager that his applications in connection with the VS and the ACC were not approved because of "*constraints of the Act*" and it was suggested to him that he table an exclusive use resolution in the general meeting (Under S 33 of the Act, the management corporation can make a by-law conferring on subsidiary proprietor(s) the exclusive use and enjoyment or special privileges in respect of the whole or any part of the common property)

71. In the later part of 2007, the condominium manager after having informed Yap that his applications in connection with the VS and ACC were not approved because of *constraints of the Act* informed him that the MCST had allowed him to commence his A&A works including relocation of the VS and installation of the ACC.

72. A&A works including relocation of the VS were then carried out by Yap's contractors and completed before 15th March 2008. The works were carried out openly and not in a furtive or surreptitious manner.

73. There were 5 VS originally. 3 of the VS terminated at Yap's 26th level roof terrace and a 4th VS terminated on the 27th level roof top. Yap relocated these four VS and added a new exhaust pipe and collected all 5 pipes neatly together next to the existing 5th VS on the 27th level roof top beside the lift motor room wall. The scope of works is clearly illustrated in the drawings at YSL4 pages 23 to 25 stamped by a Professional Engineer (BP4, BP22, BP31, BP41, and BP46). The relocation of the VS was considered by the PUB as "minor work" that did not require submission of plans or notice of work to them (Page 22 of YSL4) As regards the coring through the 26th and 27th floor structural concrete slabs for the 5 pipes and the re-running of the pipes, the professional engineer has, in effect, certified that the structural integrity of the building is not compromised by the work done (Page 23 of YSL4).

THE LIGHTNING PROTECTION SYSTEM (LPS):

74. Every block has a LPS and its purpose is to protect the building. The LPS at Blk 327 was installed before the Code of Practice for Lightning Protection (CP33:1996) came into force and does not comply with CP33:1996. It comprised horizontal air terminals that ran along the parapet of the roof terrace and the flat roof.

75. Sometime in late 2007, Yap informed the condominium manager that he would be installing, a lightning protection device and that it would be in accordance with rules and regulations of the authorities. After the condominium manager had verbally allowed him to proceed, Yap completed the installation before 15th March 2008.

76. Yap concealed the exposed horizontal air terminals on the parapet of the roof terrace and an Ionostar lightning conductor was added to the horizontal air terminal at the parapet of the flat roof to provide a parabolic umbrella zone of protection (BP23).

77. The design and installation was in accordance with CP33:1996 and installation was supervised by a professional engineer licensed by the PUB (Tab 50 of AB2). A professional engineer has certified that the existing LPS has not been compromised (Page 28 of YSL4)

THE AIR CON CONDENSER (ACC):

78. ACCs were originally within the premises of various units.

79. On 19th June 2007, Yap applied for approval to install his ACC at the flat roof of his block and he was informed by the MCST that installation at the roof constituted exclusive use and enjoyment of common property and the MCST could not grant approval without a 90% resolution passed in a general meeting.

80. Without written approval from the MCST, Yap proceeded to relocate his ACCs and completed the installation before 15th March 2008. The hole where one of the original VS was located was used to run the condensing piping to the flat roof *i.e.* there was no alteration to the structure of the flat roof (BP11). The ACCs whilst positioned above the flat roof were in fact attached to the wall of the motor room (BP14, BP16, BP31, BP44 and BP46)

THE APPLICATIONS AND THE SUBMISSIONS:

81. In STB 77 of 2012, Yap has made an application for the following orders:

To order the Respondent (MCST) to accept the rights of, and/or grant consent to the Applicant's following alterations and additions made to the rooftop and/or the common properties of the building:-

(a) Relocation of the ventilation stacks approved by the PUB;

(b) Addition of lightning protection systems to the existing lightning protection system; and

(c) *Installation of air condition condensers*

82. The Board is not aware and it was not shown that there is any provision, including S 101(1) of the Act that provides for the Board to make an order for the management corporation or anyone to accept the rights of another.

83. Whilst S 111 of the Act provides for the Board to make orders for management corporations to consent to proposals by subsidiary proprietors to effect alterations to common property or authorise under S 37(4) improvements in or upon a lot which affects the appearance of the building, it appeared from Yap's written submissions that he had abandoned his application for an order for the Board to order the MCST to grant consent as it was his submission that no approval was required for the alterations made by him and if approval was required verbal approval had been given.

84. There was also no reference for an order from the Board for the MCST to grant consent in the Opening Statement (Page 11 of YSL1). Here Yap said that he wanted the Board to *determine whether the following said A&A carried out by me to the roof terrace are legal or illegal and if the Honourable Board found them to be illegal to further determine whether the MCST ought to be granted an order to compel me to reinstate/remove the same.*

85. We considered the submissions of Yap that no approvals were required for the alterations made and if approvals were required, verbal approval had been given.

86. In addition to the submissions that approvals were not required and if required had been verbally given, Yap submitted that he had been discriminated by the MCST; and that MCST had committed dishonest/ fraudulent acts.

87. We did not find that there was any evidence to support these submissions. Yap in his Opening Statement and submissions also referred to works carried out by other owners and other applications made by him. The Board is of the view that these are not relevant and will not in this grounds of decision deal with them.

<u>THE VENTILATION STACKS (VS):</u>

88. It was submitted that the VS is not common property. Yap after referring to the definition of "common property" pointed out that the VS were located within the service duct and the service duct terminated at the 25th floor and thereafter was wholly within Yap's unit and because it was wholly within his lot it could not be common property as it was not within one of the two limbs of common property viz "*not comprised in any lot*". As such he did not require any approval from the MCST after approval had been given by the PUB.

89. S 29(1)(b)(iii) of the Act provides that it … *shall be the duty of a management corporation…to properly maintain and keep in a good state and serviceable repair…any fixture or fitting (including any pipe pole wire, cable or duct) which is comprised within a lot and which is intended to be used for the servicing or enjoyment of the common property.*

90. The VS were fixtures/ fittings comprised within a lot, which was intended to be used for the servicing or enjoyment of the common property. They provided ventilation for the sanitary system for all the units in the building. They were

fixtures/fittings that the management corporation had a duty to maintain and keep in a state of good and serviceable repair.

91. We did not agree with the submission that because the VS were not common property, approval was not required before an alteration was made to it. The VS was not the property of Yap and did not belong to him. Whilst Yap and other subsidiary proprietors have rights to effect improvements on their lots (S 37(3), they do not and cannot have any right to alter fixtures and fittings which the Act requires the MCST to maintain and keep in a state of good and serviceable repair.

92. It was a further submission of Yap that no approval was required from the MCST for the relocation of the VS because he was, for health reasons, allowed under By-law 5(3) of the prescribed by-laws in The Building Maintenance (Strata Management) Regulations 2005 to do the relocation. Whilst the Board did not find that there was any evidence that the VS was in any way a health hazard, the Board was of the view that it was indeed for health reasons that Yap had sought approval for the relocation. It was however the finding of the Board that By-law 5(3) did not permit the relocation of the VS.

93. By-law 5(1) and 5(3) provides as follows:

" (1) A subsidiary proprietor or an occupier shall not mark paint drive nails or screws or the like into or otherwise damage or deface, any structure that forms part of the common property except with the prior written approval of the management corporation

(3) *This by-law shall not prevent a subsidiary proprietor or an occupier or a person authorised by such subsidiary proprietor from installing – (a) any locking or other safety device for protection of the subsidiary proprietor or occupier's lot against intruders or to improve safety within the lot; ((b) any screen or other device to prevent entry of animals or insects on the lot; (c) any structure or device to prevent harm to children; or (d) any device used to affix decorative items to the internal surfaces of walls in the subsidiary proprietor's or occupier's lot"*

94. The relocation of the VS, in this case by diverting a fixture/ fitting belonging to the MCST, was not an **installation** of a safety device or a structure or device to prevent harm to children.

95. With regard to the submission that verbal approval had been given, it is our finding that Steve Teo had verbally informed Yap that he could proceed. As to whether it was in order for Yap to proceed on the basis of the verbal approval, we are of the view that it was not in order for him to have done so and agree with the submissions of the MCST at paragraphs 7 to 18 of MC4.

96. By virtue of SS 67(1) and (3) of the Act, the powers and duties of a managing agent are governed by an instrument in writing and/or an ordinary resolution. The MCST in this case had not granted the approval sought by Yap. Even if Steve Teo had the approval of the MCST to inform Yap that he could proceed, the approval would have, by virtue of S 67(2) of the Act, been invalid.

THE LIGHTNING PROTECTION SYSTEM (LPS):

97. As noted earlier, no written application was submitted in connection with the alteration made. Verbal approval from Steve Teo was not approved by the MCST.

98. It was the submission of Yap that he was by virtue of By-law 5(3) of the prescribed by-laws permitted to do what he did.

99. As in the case of the VS, whilst there was no evidence that what was in place before the alterations was in any way a health hazard, the Board was satisfied that it was for the purpose of improving safety that led to the alterations. The submission of the MCST (relying on the case of Management Corporation Strata Plan No 2570 v Ng Khai Chuan 2006 SGDC 176) was that the *safety features and devices which are allowed to be installed are those which can be easily attached within the strata lot or with minimal encroachment onto the common property* and it was submitted that what was done by Yap exceeded *that contemplated under the safety exception.*

100. Subsidiary proprietors are not prohibited from and can install safety devices to improve safety within their lots. In this case, safety would be enhanced by the alterations made by Yap. The Board had viewed the alterations done to the LPS and it is not our finding that what was done exceeded that contemplated by the safety exception.

101. The Board is of the view that the alterations in connection with the LPS were not out of order.

THE AIR CON CONDENSER (ACC):

102. It was Yap's submission that the flat roof was not accessible to others; not capable of being used or enjoyed by others; there was no serviceable installation on it that required the MCST to access for maintenance and repair. As such the flat roof was not common property and it was in order for him to relocate his ACC on the flat roof.

103. From the plans submitted and our inspection of the premises, the flat roof over Yap's unit was not (unlike the flat roof over his neighbour at unit #XXX) specifically built as a roof for his unit. There were two flat roofs in the block - one was over unit #XXX and the other was over unit #XXX and unit #XXX.

104. It is not correct that the flat roof over Yap's unit is not accessible to anyone and could only be accessed via Yap's premises. It could be accessed from the flat roof over unit #XXX (In BP17 and BP22, it can be seen that there is a fence between the flat roof over Yap's and his neighbour's unit and it would not be difficult to cross from one side to the other).

105. Even if it was the case that that it could not be accessed except via Yap's premises (as in the case of the flat roof over unit #XXX), it was submitted by the MCST that exclusive access as contended by Yap is not contemplated in the definition of "common property".

106. Under S 29(1) (d) of the Act, the MCST must, when directed by a special resolution, install and provide additional facilities or make improvements to

common property for the benefit of subsidiary proprietors. It is not beyond contemplation that the MCST would be required to install satellite dishes and other communication devices on the flat roofs over Yap's premises or over unit #XXX. And when this comes about, Yap (and the owner of unit #XXX) would by virtue of S 31 of the Act be required to allow access to the flat roof through his penthouse when work, necessary under S 29(1)(d), has to be carried out.

107. Yap's submission that such devices could be installed on the angled roof rather than on the flat roof would not detract from the fact that they could be installed on the flat roof. Technical and other requirements could well determine that they should be installed on the flat roof rather than on the angled roof.

108. It is not inconceivable that had Yap not installed the Ionostar lightning conductor to the LPS, a special resolution could well have been passed for the MCST to install Ionostar lightning conductor to the LPS of all the buildings in the estate and Yap would have had to allow access via his premises for this to be done.

109. The flat roof was *not comprised in any lot* and because it could be used for installations of, inter alia communication devices, it was *capable of being used or enjoyed by occupiers of two or more lots.*

110. The Board was of the view that the flat roof above Yap's unit was common property.

111. In the case of Mark Wheeler v The Management Corporation Strata Title Plan No 751 and Anor [2003] SGSTB 5, the Board after referring to, inter alia Alex Ilkin in Strata Title Management and the Law where the author cited the installation of air conditioners in a wall as an example of having exclusive use of common property, decided that the installation of an awning to common property which could only be used by the owner of the lot amounted to exclusive use of common property.

112. In relocating his ACC to the flat roof (as noted earlier the ACCs were in fact affixed to the wall of the motor room and there can be no question that this was common property), there was exclusive use and enjoyment of common property.

REINSTATEMENT OF VS AND REMOVAL OF ACC:

113. In view of our findings, we considered whether orders should be made against Yap requiring him to *(i) reinstate at his own costs the ventilation stacks which currently terminate at the rooftop of Block 327 to their original condition; and (ii) remove at his own costs, the unauthorized air conditioning condenser units located at the rooftop of Block 327and reinstates the rooftop to its original condition.*

114. The Board could not but note that it was more than four years after the works had been completed and after Yap had filed his application in STB 77 of 2012 that the MCST filed the application in STB 95 of 2012.

115. It was the submission of the MCST that the orders could be made under SS 101(1) and 117(2) of the Act. The cases of Management Corporation Strata Title Plan 1395 v Chong Keng Ban (alias Johnson Chong and Anor [2003] SGSTB 6 and Chong Keng Ban (alias Johnson Chong) and Anor v Management Corporation Strata Title Plan 1395 [2004] 3 SLR(R) 138 were cited in support of the

submission. There was no submission from Yap that the Board did not have the powers to make the orders.

116. SS 101(1) and 117(2) provide as follows:

101— (1) Subject to subsections (4), (6) and (7), a Board may, pursuant to an application by a management corporation or subsidiary management corporation, a subsidiary proprietor, mortgagee in possession, lessee or occupier of a lot in a subdivided building, make an order for the settlement of a dispute, or the rectification of a complaint, with respect to —

(a) any defect in a lot, a subdivided building or its common property or limited common property;

(b) the liability of a subsidiary proprietor to bear the costs of or any part thereof for any work carried out by a management corporation or subsidiary management corporation, as the case may be, in the exercise of its powers or performance of its duties or functions conferred or imposed by this Act or the by-laws relating to the subdivided building or limited common property, as the case may be; or

(c) the exercise or performance of, or the failure to exercise or perform, a power, duty or function conferred or imposed by this Act or the by-laws relating to the subdivided building or limited common property, as the case may be.

117— (2) Without prejudice to subsection (1), a Board may order —

(a) a management corporation or its council;

(b) a subsidiary management corporation or its executive committee;

(c) a managing agent; or

(d) a subsidiary proprietor or other person having an estate or interest in a lot or an occupier of a lot,

to do or refrain from doing a specified act with respect to a subdivided building or the common property or limited common property, as the case may be

It is to be noted that the provisions do not mandate that a Board must make the orders specified and that a Board has the discretion whether or not to make the orders sought.

117. The Board was satisfied that we had the powers to make the orders sought by the MCST and was conscious of the fact that it was the duty of the management corporation to act in the common interests of all subsidiary proprietors. Subsidiary proprietors cannot be allowed to ignore the authority of the management corporation and when this happens and is not challenged; its authority will be adversely affected and undermined.

118. In deciding whether the orders should be made, we considered the decision of the High Court in Management Corporation Strata Title Plan 1378 v Chen Ee Yueh Rachel [1993] 3 SLR(R)630 (the Chen case).

119. Although the Chen case was a decision under S 41(14) of the Land Titles (Strata) Act (Cap 158, 1988 Rev Ed) - now S 32(10) of the Act - which entitled management corporations and subsidiary proprietors to apply to the court:

(a) for an order to enforce the performance or to restrain the breach of any by-law; or

(b) *to recover damages for any loss or injury to person or property arising out of the breach of any by-law*

we were of the view that the decision is applicable in our case.

120. In the Chen case the management corporation had applied for a mandatory injunction against a subsidiary proprietor to remove windows and louvres enclosing the front balcony of the unit and to restore the external wall of the building to its original state and condition. The subsidiary proprietor had made alterations without first obtaining approval that was required under a by-law. The aim and object of the by-law was to maintain the external appearance of the building and the alterations had affected the overall appearance of the building.

121. Chao J, as he then was, after reviewing and considering various precedents in connection with how the equitable jurisdiction of the court should be exercised with regard to the granting of a mandatory injunction noted that it will not be issued unless very serious damage will ensue from the withholding of the injunction. Inter alia Chao J referred to the case of Proprietors –Strata Plan No 464 v Oborn (1975) 2 CCH Strata Title Law and Practice 50 where the judge, Holland J said:

The general principle to be extracted from these cases is that a 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;

(b) *The breach is trivial or has 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*

122. The orders sought by the management corporation were not granted after Chao J found that uniformity sought could not be obtained in that case by granting the injunction because there were other units that had similar addition/alteration that could not be removed; there was no evidence that the subsidiary proprietor had knowingly refused to obtain approval before proceeding with alterations/additions; and in the circumstances of the case, to order the removal of the sliding windows would cause hardship without any real corresponding benefit to the management corporation.

123. In the case at hand, the Board after noting:

i) that the PUB no longer allows VS to be terminated in the private roof area that is designed for use by the occupants;

ii) the events that took place when Yap had first sought the consent of the MCST to relocate the VS and the ACC and the relocation of the VS and ACC (inter alia we were of the view that Yap's application had not been dealt with in a timely manner and a robust internal process be put in place whereby the managing agent is apprised of the scope of what he might or might not say or

represent to unit owners – in AB1, it was noted that on more than one occasion, the MCST had no record of the condominium manager conveying an approval/ disapproval to Yap, in connection with an application. Yap had also not commenced with the relocations until after oral approval had been given by the condominium manager);

iii) the manner in which the relocation was done (inter alia we noted that the relocation works were carried out openly and carried on till completion without any indication from the MCST that works were not in order. The relocated VS and the newly added exhaust pipe were collected neatly together alongside where the existing 5th VS was; there are good health reasons for relocating the 3 VS located at the 26th storey roof terrace even if the law does not mandate it; and did not prevent or obstruct the use of the motor room or expansive flat roof);

iv) the relocations had not in any way adversely affected the building and the façade of the building (inter alia it was noted that the ACC were neatly placed against the motor room wall 27 storeys above the ground and do not have any practical adverse impact on the view or appearance of the external façade of the building); and

v) the fact that relocation would result in time and monetary expenses on the part of Yap without any real corresponding benefit to the management corporation;

was of the view that the orders sought should be not be made against Yap.

128. Accordingly it is ordered:

i) The applications in STB 77 of 2012 are dismissed.

ii) No order is made on the applications in STB 95 of 2012.

iii) No order is made as to costs

Dated this 7th day of October 2013

MR REMEDIOS F.G
Deputy President

PROF TEO KEANG SOOD
Member

MR CHUA KOON HOE
Member