

BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT

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

STB No. 58 of 2016

In the matter of an application under Section 101 of
the Building Maintenance and Strata Management
Act in respect of the development known as
Heritage East (MCST Plan No. 3822)

Between

Ker Lee Ping

... Applicant(s)

And

MCST Plan No. 3822

... Respondent(s)

FOUNDATIONS OF DECISION

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11 January 2017, 6 February 2017

20 April 2017

Coram: Mr Alfonso Ang (President)
 Mr Goh Tiam Lock (Member)
 Mr Ter Kim Cheu (Member)

BACKGROUND:

1. This is a matter concerning the breakdown of the mechanised car parking system in the residential strata development known as Heritage East (“**Heritage East**”).
2. The Applicant, Ker Lee Ping, is the subsidiary proprietor of unit #XXX and the Respondent, MCST Plan No. 3822 (“**MCST**”), is the management corporation of Heritage East.
3. The car parking facilities at Heritage East consists of 39 parking lots: 34 of them are situated in the Fully Automated Mechanised Car Park (“**FAMCP**”) and the rest are surface parking lots.

4. The FAMCP is manufactured by a China company known as Hangzhou Xizi-IUK Parking Systems Co. Ltd (“**Xizi**”). Chris-Ray Engineering Pte. Ltd. (“**Chris-Ray**”) is the sole authorised agent in Singapore for Xizi for the supply, installation and maintenance of the FAMCP.
5. On 17 August 2012, the fire sprinkler was activated and it resulted in the basement of the FAMCP being flooded with water from the activated fire sprinkler. The FAMCP was shut down but it was re-instated by Chris-Ray. Chris-Ray had determined that a major servicing and repair was required for the system but this was not carried out by the reason of costs.
6. On 3 September 2015, the fire sprinkler was again activated. It was caused by the smoke and sparks from an unauthorised welding carried out by the contractors engaged by the subsidiary proprietor of unit #XXX. As a result of the water from the fire sprinkler, the FAMCP was shut down. It is undisputed that the FAMCP was shut down on 3 September 2015 and has since remained in that state.
7. The shutdown of the FAMCP meant that no cars could be parked in the FAMCP. There were insufficient surface parking lots for all the cars and some car owners parked their cars along the roadside illegally. The illegal parking problem was highlighted to the grass-root leaders, Member of Parliament of the constituency, officers from Land Transport Authority (“LTA”) and Building and Construction Authority (“BCA”), and the police. To create more spaces for parking, the Respondent re-designated parts of the estate into temporary parking lots including the area along the fire hydrant, breeching inlets and handicapped lots. The Respondent required the owners of the cars parked at these lots to place their contact numbers on the windscreen and be contactable at all times in case of an emergency so that their cars can be removed or relocated.
8. After the shutdown of the FAMCP, the Respondent took various steps to restore it including directly contacting Xizi’s engineers as well as engaging third parties to assess the problem and restore it. However, it emerged that the Respondent had difficulty getting Xizi’s help and as the FAMCP system is password protected, the third party contractors engaged by the Respondent could not get the system restored. Chris-Ray is the holder of the password and he is not prepared to release the password to the Respondent.
9. The Respondent entered into negotiations with Chris-Ray for the restoration works. In the final negotiation, the Respondent paid Chris-Ray a sum of \$59,290.35 for the restoration works but did not agree to a three-year Equipment Maintenance Agreement (“**EMA**”). Chris-Ray, on the other hand, insisted that the EMA is coupled with the restoration works and refused to commence the restoration works until the agreement bearing the EMA term is signed by parties. The negotiation came to a standstill.
10. As at the hearing of this application, the FAMCP has been shut down for a period of about one (1) year and five (5) months.

11. By reason of the foregoing matters, the Applicant filed an application before the Board seeking the following orders against the Respondent:
 - i. Pursuant to section 101(1)(a) of the Building Maintenance and Strata Management Act (“BMSMA”), an order that the Respondent performs its duties under section 29(1)(b)(i) of the BMSMA by rectifying and bringing to operating condition the FAMCP within 2 months of the orders being made or within such time as this Honourable Tribunal shall deem fit. In the Applicant’s closing submission, she amended the prayer to:-

“Pursuant to section 101(1)(a) or, in the alternative, section 101(1)(c) of the BMSMA, an order that the Respondent engages [Chris-Ray] within 7 days of this order to rectify the FAMCP and bring it to operating condition or within such time as this Honourable Tribunal deems fit; or an order that the Respondent rectifies and brings to operating condition the FAMCP within 2 months of the orders being made or within such time as this Honourable Tribunal shall deem fit”;
 - ii. Pursuant to section 101(3) of the BMSMA, an order that the Respondent pays to the Applicant damages for loss of convenience arising from the loss of use of the FAMCP, estimated to be \$20.42 per day, or any other such rate that this Honourable Tribunal shall deem fit, from the date of the failure of the FAMCP until the functioning of the same has been fully and completely restored, or for any such period that this Honourable Tribunal deems fit;
 - iii. Pursuant to section 110 of the BMSMA, an order that the Respondent pursues an insurance claim for the damage to the FAMCP occasioned by the sprinkler activation on 3 September 2015; and
 - iv. costs.
12. In her closing submission, the Applicant withdrew prayer (iii) as during cross-examination the Respondent had stated that they intended to pursue an insurance claim in due course.

THE APPLICANT’S CASE

13. The Applicant submits that her application should be granted because section 29(1)(b)(i) of the BMSMA imposes a mandatory duty on the Respondent to properly maintain and keep in a state of good and serviceable repair (including, where necessary, renew or replace the whole or part thereof) the FAMCP. It is undisputed that the FAMCP is a common property. The Applicant argues that as the FAMCP continues to remain in a state of disrepair and not functional, the Respondent has failed to perform its statutory duty.
14. The Applicant claims that the FAMCP has remained in a state of disrepair for more than 1 year and 6 months (as at the date of submission by parties) and the Respondent’s

failure to repair the FAMCP has caused her and the other subsidiary proprietors to suffer severe inconvenience. The Applicant also submits that the temporary parking arrangements posed safety hazards as the temporary parking lots allowed cars to be parked at places which blocked access to crucial firefighting points.

15. The Applicant also seeks an order compelling the Respondent to engage Chris-Ray to perform the rectification works on the basis that Chris-Ray is the sole authorised agent of Xizi who has the expertise to repair the FAMCP quickly. Chris-Ray is also ready and willing to proceed with the repair of the FAMCP.
16. The Applicant submits that appointing Chris-Ray for the rectification will not result in the Respondent being taken advantage of as Chris-Ray has always quoted a fair price and any increases in price over time was slight and, in any event, justified. The Applicant is of the view that the terms of the contract were thoroughly negotiated between Chris-Ray and the Respondent. The Respondent had in fact acquiesced to all the terms in the rectification contract save for the requirement to enter into the EMA. The Applicant opines that the EMA accompanying the contract for rectification works is competitively priced and does not prejudice the Respondent. Further, since the Respondent had already paid a sum of \$56,635.48 to Chris-Ray for the rectification work, it is convenient and practical to accept Chris-Ray's condition to couple the rectification work with the EMA rather than to attempt to extract the said monies (if necessary) and proceed with a separate contractor.
17. The Applicant submits that if this Tribunal does not agree with the Applicant's prayer to order the Respondent to engage Chris-Ray, she prays that the Board would nevertheless order the Respondent to rectify and bring to operating condition the FAMCP within 2 months of the orders being made or within such time as this Tribunal shall deem fit.
18. On the prayer for payment of damages, the Applicant submits that by section 101(3) of the BMSMA, the Board is empowered to make an order for the payment of damages not exceeding the jurisdictional limit of the District Court. If the present proceedings were to commence in a Civil Court, the Respondent would have been awarded damages for the loss suffered by the Applicant occasioned by the Respondent's negligence. In quantifying the damages, the Applicant arrived at the sum of \$20.42 per day using the season parking fees at Parkway Parade and private transport between Parkway Parade and Heritage East as the gauge. The Applicant submits that this amounts to approximately \$612.60 per month and is not an onerous burden for the Respondent to bear.
19. For the aforesaid reasons, the Applicant prays that an order be made in favour her prayers (i) and (ii).

THE RESPONDENT'S CASE

20. Ng Bee Choo @ Ng Catherine, the Director of Credas Management, which is the current Managing Agent for Heritage East gave evidence for the Respondent.
21. The Respondent claims that it has not been negligent or lackadaisical in discharging its duties. Instead, the Respondent argues that they had exercised considerable resourcefulness and diligence in finding a solution to the problem posed by the FAMCP, including actively engaging the expertise of third parties and minimizing the impact on the residents by introducing temporary parking solutions. The Respondent submits that their efforts to restate the FAMCP were stymied by unexpected obstacles beyond their control. They cannot be blamed for the delay in restoring the FAMCP because Chris-Ray had prevented Xizi's engineers from coming over to try to fix the system and had refused to disclose the password to the system. Without the password, it is almost impossible for the Respondent to make any progress.
22. The Respondent professes that they were at all times acting in the best interests of all the subsidiary proprietors by carefully negotiating with Chris-Ray. The Respondent considers it prudent to do so because they found that Chris-Ray had increased its quotation for the same kind of work without explanation and its pricing is far higher than the quotation submitted by another contractor. The Respondent was also informed by third party contractors that the parts recommended by Chris-Ray for replacement are unnecessary.
23. The Respondent says that it had already paid Chris-Ray the money for the restoration works. However, it is Chris-Ray who refuses to carry out any restoration works until the Respondent agrees to the EMA. The Respondent argues that the EMA which is for an increased price is not a favourable term. The Respondent also argues that it has the sanction, approval and majority approbation of the subsidiary proprietors obtained at the annual general meeting held on 12 November 2016 to terminate all contracts and dealings with Chris-Ray and not to enter into any contracts that may be a liability to the subsidiary proprietors. In the premises, the Respondent says that it is acting under the mandate from the subsidiary proprietors and objects to re-appointing Chris-Ray. The Respondent submits that it is inappropriate for the Board to make an order compelling them to re-appoint Chris-Ray.
24. As for the Applicant's claim for damages, the Respondent submits that the amount prayed for is merely an estimation which does not amount to proper quantification of loss. The Applicant had failed to particularise and show the extent of her loss and damage. Consequently, the Respondent prays that the Board makes no order for loss and damages to the Applicant.
25. The Respondent submits that to date, the Respondent is still actively involved in finding a solution to repair the FAMCP. Notably, it had made payment to Chris-Ray for the repair works to be carried out immediately. The Respondent argues that it had discharged its duties with reasonable skill and has acted honestly at all times. In the circumstance, it is

not reasonable for the Applicant to pursue the claim of negligence against the Respondent. The Respondent therefore submits that this application should be dismissed with costs.

THE BOARD'S DECISION

Prayer (i) - Restoring the FAMCP

26. The key issue before the Board is whether the Respondent had failed to perform its duty under section 29(1)(b)(i) of the BMSMA to keep the common property, the FAMCP, in an operational condition.
27. Section 29(1)(b)(i) BMSMA provides as follows:

“Except as otherwise provided in subsection (3), it shall be the duty of a management corporation –

 - (b) to properly maintain and keep in a state of good and serviceable repair (including, where reasonably necessary, renew or replace the whole or part thereof) —
 - (i) the common property;”
28. It is clear from the language adopted in section 29(1)(b)(i) of the BMSMA that the duty placed upon the management corporation to maintain and keep the common property in a state of good and serviceable repair is mandatory and not discretionary. The duty is not premised on conditions; neither can the management corporation diminish or delay the discharge of its duty.
29. Under the section, the word “repair” is also sufficiently broad to allow the management corporation to do certain things: it permits the management corporation, where necessary, to renew or to replace the whole or parts of the common property. As such, the management corporation has the discretion as well as the flexibility of using different approaches when performing its statutory duty. The effect of section 29(1)(b)(i) of the BMSMA is that the management corporation is imposed with the power, duty and function to manage and maintain all common properties for the benefit, use and enjoyment by all the subsidiary proprietors, and such a duty has to be carried out in a timely manner by the management corporation using its judgment and resources.
30. The Board finds that, on the facts of the case, the Respondent has failed to discharge its statutory duty. The Board finds that the Respondent has not done enough given that it is obliged to maintain and keep the FAMCP in a state of good and serviceable repair and it is conferred with the power needed to achieve it. The Board also considers that the length of time for which the FAMCP has remained shut down is fatal to the Respondent's case.
31. The relationship between the Respondent and Chris-Ray is notably marked by acrimony. The parties blame each other for the delay in restoring the FAMCP. The Respondent pegs the cause to the unreasonable acts and unfavourable demands of Chris-Ray, alleging that its efforts to directly engage the help of Xizi and a third party contractor to repair the

FAMCP were hindered by Chris-Ray's intervention and also its refusal to disclose the password to the system. The Respondent further alleges that it had already made payment to Chris-Ray but Chris-Ray is capitalizing on the situation by coupling the restoration works with a three-year EMA. Chris-Ray, on the other hand, maintains that it had acted reasonably despite the Respondent's breach of contract for non-payment of its bills and also when the Respondent engaged an unauthorised third party to perform works on the FAMCP. Chris-Ray also denies that it had intervened and prevented the manufacturer from coming to Singapore to assist the Respondent. Chris-Ray proclaims that it is always ready and willing to proceed with the repair of the FAMCP and it is the Respondent who refuses to agree to the term of the restoration works.

32. The Board is not in the position nor should it adjudge the merits of the disputes and be embroiled in the disputes between the Respondent and Chris-Ray which primarily concerns contractual terms and conditions. The disputes and intransigence between the Respondent and Chris-Ray cannot justify the Respondent's inordinate delay in restoring the FAMCP to working condition. Crucially, the Respondent cannot diminish or postpone its statutory responsibility for the administration and maintenance of the common property. It is not an option for the Respondent to leave a common property in a non-functional state, let alone for such an extended period of time.
33. While the Board recognises that the Respondent is concerned with the terms and conditions of the contract with Chris-Ray, uncertainty in many situations are unavoidable. If the cause and effect of decisions to be made were to be stretched too far, this will eventually transform itself into pure conjecture: it might happen, but it might not.
34. The Board also cannot overlook the indisputable fact that the Applicant and the other residents of Heritage East have been deprived of the use of the FAMCP for 1 year and 6 months. The Board notes that the detriment is to all of the subsidiary proprietors and the impact is exceptional because the only mechanised car parking system in the development is not in operation and it renders the majority of the parking lots in the development completely inaccessible.
35. The Board is of the opinion that such matters cannot be left in a limbo until the Respondent finds at its own time and pace a solution. The Respondent having taken 1 year and 6 months (and counting), in attempting to resolve the matter reflects a lack of sense of urgency on their part in tackling the problem. The Respondent, at the hearing, disclosed that they are looking to commence a litigation suit against Chris-Ray. Surely the residents cannot be made to wait until the disputes between them are resolved before the FAMCP is restored.
36. The interim solutions put in place by the Respondent which included directing residents and visitors to park their cars outside of the estate and designating parking lots along the fire hydrant raised safety issues and were clearly in breach of the Road Traffic Rules. In particular, the rule against parking a vehicle within 3 metres on either side of any fire

hydrant is absolute and must not be violated at all times. The penalty for a breach of this rule is a fine. By passing a circular that directed residents to park their cars next to the fire hydrant, the Respondent was effectively encouraging the commission of a road traffic offence and endangering public safety. This is preposterous and wholly unacceptable. This situation had gone on from the time the FAMCP was shut down and it was only corrected after this Board reminded the Respondent that its direction was illegal and dangerous.

37. The Board also finds that the Respondent has not exhausted its options. The Board is of the view that there are clearly other options available to the Respondent. Instead of actively exploring plausible alternatives, the Respondent became embroiled in disputes with Chris-Ray on contractual terms and conditions.
38. It does not appear to the Board that the Respondent has any clear and proper plans. The existing situation is unsatisfactory and is in contradiction to the Respondent's mandatory statutory duty to maintain the common property in a state of good and serviceable repair. The statutory duty placed upon the Respondent requires immediate action to put the FAMCP into working condition without further delay.
39. In her closing submission, the Applicant also prayed for the Board to order the Respondent to engage Chris-Ray to rectify the FAMCP. The Board dismisses this part of the prayer as it is clearly not within the purview of the Board's power to micromanage the Respondent and interfere with their decision on which contractor to engage.
40. For the aforesaid reasons, the Board orders that the Respondent rectify and bring the FAMCP to an operating condition within 3 months of this order.

Prayer (ii) – Damages

41. The evidence produced by the Applicant failed to prove that she had in fact incurred expenses arising from the inconvenience caused by the breakdown of the FAMCP. The Board is not satisfied that the Applicant should be awarded damages and in that respect, the Board dismisses this prayer.

Prayer (iii) - Insurance claim for the damage to the FAMCP

42. As the Applicant withdrew this prayer, the Board need not address this prayer.

Conclusion

43. In conclusion, having considered all the facts of the case, the Board makes the following orders:

- i. that the Respondent rectify and bring to operating condition the FAMCP within 3 months from the date of this order;
- ii. that the Applicant's prayer (ii) be dismissed; and
- iii. that the Applicant be permitted to withdraw her prayer for the Respondent to pursue an insurance claim for the damage to the FAMCP occasioned by the sprinkler activation on 3 September 2015.

The Board will hear parties on costs.

MR ALFONSO ANG
President

MR GOH TIAM LOCK
Member

MR TER KIM CHEU
Member

Mr Joel Quah (M/s Tan Peng Chin LLC) for the Applicant/s
Mr Simon Tan (M/s Attorneys Inc LLC) for the Respondent/s