

**BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT**

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

STB No. 37 of 2020

In the matter of an application under Section 101(1)(c) of the Building Maintenance and Strata Management Act in respect of the development known as **Astoria Park** (MCST No. **2120**)

Between

**Chang Quan Yin Elizabeth Ann**

... Applicant(s)

And

**The Management Corporation Strata Title Plan  
No. 2120**

... Respondent(s)

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**FOUNDATIONS OF DECISION**

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Between

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... Respondent(s)

**4 January 2021**

**5 January 2021**

**11 February 2021**

Coram: Mr Raymond Lye (Deputy President)

Mr Tan Kian Hoon (Member)

Ms Hazel Tang (Member)

**Background**

1. The Applicant is the Subsidiary Proprietor (“SP”) of a unit at 36 Lorong Mydin #XXX Astoria Park Singapore 416828 (“the Applicant”) of the development known as Astoria

Park (“the development”). The Respondent is the management corporation of the development (“the Respondent”).

2. By way of an application under Section 101(1)(c) of the Building Maintenance and Strata Management Act (Cap 30C) (“the Act”) dated 3 August 2020, the Applicant seeks the following terms in the Order against the Respondent:

*“1) Ensure by-laws are strictly enforced with regards to the usage of tennis courts - maximum 4 hrs a week (including 2 hrs for peak periods) & limited to 1 hr each session per resident.*

*2) Suspend resident's account where he/she is caught sharing/using another resident's user ID & password to book tennis courts (abuse of booking facility app "hiLife").*

*3) Prohibit entry of non-residential tennis students/parents into the condominium to attend tennis lessons.*

*4) Remove management's vendor's cats making their permanent habitats in the basement of Astoria Park multi-storey car park.*

*5) Prohibit feeding of cats at multi-storey car park, void deck of residential block/side entrance gates into Astoria Park & multi-storey car park.*

*6) Reinstate all trash bins at every residential block lift lobby.*

*7) Prohibit washing of big green trash bins in the basement of multi-storey car park and reinstate water tap for washing of cars, bicycles and motorcycles parked at basement.*

*9) Respondent to pay compensation for rejection of residential card from Jan 2018 to Nov 2019.*

*10) Respondent to bear costs of a new canvas top for car, cat spike mats, car cover and cat repellent spray.*

*11) Respondent to provide an indemnity for damage by Management, its appointed vendors and vendors' reared cats to my cars & motorcycle parked within condominium grounds.*

*12) Respondent to bear all filing and hearing fees for filing this Application at the Strata Titles Board.”*

3. On 28 October 2020, on the request of the Board, the Applicant filed the ‘*Finalised Orders Sought by the Applicant*’ with the Board, and served it on the Respondent:

*“(1) Ensure by-laws are strictly enforced with regards to the usage of tennis courts – maximum 4 hrs a week (including 2 hrs for peak periods) & limited to 1 hr each session per resident.*

*(2) Suspend resident’s account when he/she is caught sharing/using another resident’s user ID & password to book tennis courts (abuse of booking facility app ‘hiLife’)*

*(3) Prohibit entry of non-residential tennis students/parents into the condominium to attend tennis lessons.*

*(4) Remove [Management’s vendor’s] cats making their permanent habitats in the basement of Astoria Park multi-storey car park.*

*(5) Prohibit feeding of cats at multi-storey car park, void deck of residential block / side entrance gates into Astoria Park & multi-storey car park.*

*(6) Respondent to bear costs of a new canvas top for car, cat spike mats, car cover and cat repellent spray.*

*(7) Respondent to provide an indemnity for damage by Management, its appointed vendors and vendors’ reared cats to [the Applicant’s] cars parked within condominium grounds.*

*(8) Respondent will bear all filing and hearing fees for filing this Application at the Strata Titles Board, and Applicant’s legal costs.”*

4. On 17 December 2020, the Applicant appears to seek a different set of orders from the Board <sup>1</sup>:

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<sup>1</sup> Affidavit of evidence-in-chief (“AEIC”) of Chang Quan Yin Elizabeth Ann dated 17 December 2020 paragraphs [17] and [36].

*“17. The Orders which I seek from the Board on the tennis court issue include the following:-*

*(1) The Respondent to take all necessary steps to ensure that the by-laws including the Supplementary By-Laws are strictly enforced with regards to the usage and booking of the tennis courts at Astoria Park, which include the following-*

*(a) the Respondent must take all necessary steps including verifying bookings made on Hi-Life against the actual persons using the tennis courts during the reserved time-slot, and conducting inspections when the tennis courts are in use, to ensure that:-*

*(i) a subsidiary proprietor or occupier of a lot may book only one (1) tennis court, and be limited to one (1) per session per booking;*

*(ii) each subsidiary proprietor or occupier’s lot [sic] is limited to booking only one (1) tennis court for one (1) hour per day, up to a maximum of four (4) hours [sic] per week (inclusive of bookings for prime time which is subject to a maximum of two (2) hours per week);*

*(iii) the subsidiary proprietor or occupier of the lot which booked the tennis court must be present at the tennis court throughout the period booked, and must accompany guests at all times when they are using the tennis courts, as otherwise the booking would be deemed as invalid and the Respondent shall exercise it [sic] powers to prevent and exclude players from using the tennis court;*

*(2) Suspend resident’s account when he/she is caught sharing/using another resident’s user ID & password to book tennis courts (abuse of booking facility app Hi-Life);*

*(3) Prohibit entry of non-residential tennis students/parents into the condominium to attend tennis lessons;*

*(4) Such other Orders as the Board may deem fit.*

...

*36. The Orders which I seek from the Board on the cat issue include the following:-*

*(1) The Respondent shall within 2 weeks of the Board's Order, remove the cats making their permanent habitats in the basement of Astoria Park multi-storey car park.*

*(2) The Respondent shall forthwith prohibit feeding of cats at multi-storey car park, void deck of residential block / side entrance gates into Astoria Park & multi-storey car park and take such steps as are necessary to enforce the aforesaid.*

*(3) The Respondent shall bear and pay to me (the Applicant) a total sum of S\$5,664.53 (or alternatively S\$3,158.93) comprising of:-*

*(a) S\$5,605.57 (quote from Mini Authorised Dealer Eurokars Habitat Pte Ltd) (or alternatively, S\$3,1000.00, quote from Auto-Interior Upholstery Services [sic]), being costs to replace the soft top canvas of my mini Cooper Cabriolet..., which has been scratched and damaged by the car on the common property in Astoria Park;*

*(b) S\$30.96, being costs of one (1) anti-cat prickle strip; and*

*(c) S\$28.00, being costs of one (1) pet repellent mat.*

*(4) The Respondent to forthwith provide an indemnity for damage by Management, its appointed vendors and vendors' reared cats to my vehicles parked within condominium grounds*

*(5) Such other Orders as the Board may deem fit. ””*

5. Although the Respondent does not object to the damages<sup>2</sup>, the Board notes that the Applicant was already given an opportunity to finalize her claims on 28 October 2020 and the Applicant's lawyers in fact did so (Paragraph [3] above refers). As such, the Applicant is not allowed to seek a different set of Orders on 17 December 2020, after the “*Finalised Orders*” sought.

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<sup>2</sup> Respondent's Closing Submissions dated 6 January 2021 had dealt with the 17 December 2020 version of the Applicant's claims.

### **Applicant's arguments**

6. The Applicant's case is for the Respondent to enforce the by-laws on the *use and booking of the tennis courts*<sup>3</sup> and to resolve the issue of nuisance caused by (stray) cats in the condominium.<sup>4</sup>
7. The Applicant submits the use of the tennis courts is governed by the following provisions of the Respondent's Supplementary By-Laws:

#### ***"Part 1- General***

...

#### **8. *Use of Recreational Facilities by Guests***

*A subsidiary proprietor or occupier of a lot shall: -*

8.1 *Ensure that his guests observed the Management Corporation By-Laws governing the use and enjoyment of the recreational facilities.*

8.2 *Accompany his guests at all times when they are using the recreational facilities.*

8.3 *Note that the Management reserves the right to exclude the invited guests from the use of recreational facilities should there be any non-observance of house rules or misuse of recreational facilities.*<sup>5</sup>

...

#### ***Part 3 – Use of Tennis Courts: -***

...

#### **2. *Reservation of Courts***

*A subsidiary proprietor or occupier of a lot shall: -*

2.1 *Be permitted to make reservation of the court by logging in to the web and app portal of Hi-Life at least more than 3 days in advance to the day of usage.*

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<sup>3</sup> Applicant's Written Submission ("AWS") dated 24 December 2020 at paragraph [5(1)].

<sup>4</sup> AWS dated 24 December 2020 at paragraph [5(2)].

<sup>5</sup> AEIC of Chang Quan Yin Elizabeth Ann dated 17 December 2020 Tab A, pp 23 and 24.

2.2 *Produce for inspection and shall produce for inspection his / her resident card for all reservations.*

2.3 *Observe that booking may be made for only one (1) court of each facility (tennis courts). Each subsidiary proprietor or occupier's lot unit may book one (1) hour per day of each facilities up to maximum of four (4) hours per week. This is inclusive of bookings for prime time which is subject to a maximum of two (2) hours per week. Prime time shall be from 5:00pm to 10:00pm daily except as otherwise prescribed by the Respondent and its Management from time to time. There shall be no accumulation of the four (4) hours i.e. If the four (4) hours are not taken up during the week, it may not be accumulated to the following week.*

...

2.5 *Be limited to one (1) hour per session per booking.*

### **3. Entry of Courts**

*A subsidiary proprietor or occupier of a lot shall: -*

...

3.3 *Show his resident card on demand to any security personnel employed by the Management Corporation.*

3.4 *Be present at the court during the period booked as otherwise the booking would be deemed as invalid and players may be prevented from using the court.”<sup>6</sup>*

8. With regard to the cats on common property of the development, the Applicant claims that the cats are *causing annoyance and nuisance* and that they *have also damaged the Applicant's car parked on the condominium grounds, especially at the multi-storey car park.*<sup>7</sup> The Applicant submits that Respondent has a duty under section 29(1)(a) of the Act to control, manage and administer the common property for the benefit of all subsidiary proprietors constituting the management corporation, which includes the Applicant.<sup>8</sup> The Applicant further submits that the subsidiary proprietors and/or occupiers (including the condominium's gardener<sup>9</sup>) who feed and care for the cats are *“effectively treating the cats as their pets”*<sup>10</sup>. They are thus subject to the obligations

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<sup>6</sup> AEIC of Chang Quan Yin Elizabeth dated 17 December 2020 Tab A, pp 28 and 29.

<sup>7</sup> AWS dated 24 December 2020 at paragraph 5(2).

<sup>8</sup> Applicant's Closing Submissions dated 26 January 2020 at paragraph [26].

<sup>9</sup> AWS dated 24 December 2020 at paragraph [26].

<sup>10</sup> AWS dated 24 December 2020 at paragraph [24].



under the *Pet Supplementary By-Laws*<sup>11</sup> and Regulation 14 of the Second Schedule of the Building Maintenance (Strata Management) Regulations 2005 (“*Regulations 2005*”) which are as follows:

***Pet Supplementary By-Laws***

***“Part 8 – CONTROL OF PETS***

***1. Keeping of Livestock, Poultry and Other Non-Household Pets.***

*A subsidiary proprietor or occupier of a lot shall not be permitted to keep livestock, poultry and other non-household pets.*

***2. Control of Pets***

*A subsidiary proprietor or occupier of a lot shall:-*

*2.1 Accompany and restrain his pet at all times when in the common areas.*

*2.2 Not bring his pet in or about the recreational facilities, changing rooms and Management Office.*

*2.3 Dispose off immediately his pet excreta.*

...

*2.5 Ensure that his pet does not –*

...

*2.5.3 Create noise or other nuisance to the annoyance of the subsidiary proprietors or occupier of other lots.*

...

***Second Schedule of the Building Maintenance (Strata Management) Regulations 2005***

***“Keeping of animals***

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<sup>11</sup> AEIC of Chang Quan Yin Elizabeth dated 17 December 2020 at p 42.

*14. A subsidiary proprietor or an occupier of a lot shall not keep any animal upon his lot or the common property which may cause annoyance to the subsidiary proprietors or occupiers of other lots.”*

### **Respondent’s arguments**

9. The Respondent does not deny that following from the Applicant’s complaint that there was sharing of IDs and passwords for tennis court bookings, it had emailed residents to inform that their passwords had been cancelled to prevent their accounts from being misused to make the tennis court bookings.<sup>12</sup> The Respondent states that since then, there had been no breaches on the tennis court booking.<sup>13</sup> With regard to the prohibition of non-residential students/parents from entering into the condominium to attend tennis lessons, it is the Respondent’s case that the Board does not have the jurisdiction to enforce any prohibition on commercial coaching in the absence of a by-law being passed by special resolution on such prohibition under Section 101(6) of the Act.<sup>14</sup>
10. The Respondent submits that there are “2-3 *free roaming cats*” in the condominium<sup>15</sup> and that it is not disputed that various steps had been taken by the Respondent to address the Applicant’s concerns about these cats by meeting with a mediator from the Cat Welfare Society (“CWS”) and putting the cats up for adoption. However, the Respondent claims that the Applicant was resistant to the proposed solutions by the CWS and the cats had not been adopted (i.e. to park her car on the 3<sup>rd</sup> or 4<sup>th</sup> level of the multi-storey carpark).<sup>16</sup>
11. The Respondent also denies any liability for any damage to the Applicant’s vehicle, and states that there is no basis for the Respondent to seek an indemnity from the Respondent and/or any other third party in this regard.<sup>17</sup> The Respondent takes the position that the Applicant has not furnished any evidence showing the cats scratching the top of her car and/or that the scratches were indeed caused by the cats<sup>18</sup>, there has been no failure on their part to exercise or perform a power, duty or function conferred or imposed by the

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<sup>12</sup> Respondent’s Written Submission (“RWS”) dated 24 December 2020 at paragraph [10].

<sup>13</sup> RWS dated 24 December 2020 at paragraph [14].

<sup>14</sup> RWS dated 24 December 2020 at paragraphs [21] and [22].

<sup>15</sup> RWS dated 24 December 2020 at paragraph [23].

<sup>16</sup> RWS dated 24 December 2020 at paragraphs [28] and [29].

<sup>17</sup> RWS dated 24 December 2020 at paragraph [49].

<sup>18</sup> RWS dated 24 December 2020 at paragraph [39].

Act upon them<sup>19</sup>; and that in any event the damage is allegedly caused by the stray cats which does not fall within their purview<sup>20</sup>.

12. The Respondent also takes the view that the signs prominently placed throughout the car park is effective in exempting their liability vis-à-vis the damage. The signs state<sup>21</sup>:

*“The Management will not be held responsible for any damage, loss, theft or misdemeanour occurring whilst the vehicles are parked in the premises. All vehicles are parked strictly at the owner’s risk.”*

## **Board’s Findings**

### *On the use of tennis courts*

13. During the cross examination of the condominium manager, Ms Catherine Lim Siew Eng (“*the condominium manager*”), with respect to two (2) incidents of breaches to the use of tennis courts reported by the Applicant on 19 September 2020<sup>22</sup> and 21 February 2020<sup>23</sup>, the condominium manager had admitted that it would not be possible for the Respondent to confirm / tell the person(s) actually using the tennis courts during the period for which the tennis courts were booked. The condominium manager and/or the condominium’s security guard(s) would randomly check the users of the tennis courts and/or when complaints were raised in relation to the enforcement of the supplementary by-laws on the use of the tennis courts.
14. At the hearing, the Respondent took the position that commercial coaching was allowed in the absence in its supplementary by-law on the use of tennis court for commercial coaching purpose. However, when cross examined, the condominium manager acknowledged there was a notice to the security guards to prohibit non-residents from entry into the condominium for tennis coaching, which notice states:

*“The Management Corporation has alerted all security guards DO NOT ALLOW entry to non-residential tennis students/parents into Astoria Park to attend their tennis lessons.”*

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<sup>19</sup> RWS dated 24 December 2020 at paragraph [40]

<sup>20</sup> RWS dated 24 December 2020 at paragraph [41].

<sup>21</sup> RWS dated 24 December 2020 at paragraph [42].

<sup>22</sup> AEIC of Catherine Lim Siew Eng dated 17 December 2020 at pp 27 and 36.

<sup>23</sup> AEIC of Catherine Lim Siew Eng dated 17 December 2020 at p 17.

*...: attention to all security officers at main guard entrance. "DO NOT ALLOW ANY VISITORS TENNIS STUDENTS / PARENTS TO ATTEND TENNIS COACHING". If any doubt, security is to contact the Management Corporation."*<sup>24</sup>

15. Given the above, the Board finds that the supplementary by-laws with respect to the use of the tennis courts had been breached (i.e. monitoring was randomly conducted by the Respondent, and the Respondent failed to reasonably ensure that the person who booked the tennis court was present at the court during the booking period).
16. Notwithstanding the Respondent's claims that there have been "*continued efforts on the Respondent's part to actively monitor and scrutinize the bookings made by the residents*"<sup>25</sup>, the Board is not convinced by the evidence adduced by the Respondent at the hearing that there have been in fact been such efforts actively on the ground. For example, the letter that the condominium manager said had been sent to residents on the cancellation of their passwords for the mobile application for the booking of tennis courts (to prevent misuse by non-residents) in fact had only been set to 3 residents.<sup>26</sup>
17. In this regard, the Board is of the view that the management council should at least take reasonable steps to ensure that the by-laws are complied with and conclude that the Respondent in this case had failed to take reasonable steps. Further, there is no satisfactory evidence before the Board to show that these breaches would not continue.
18. The Board therefore makes an order pursuant to section 101(1)(c) of the Act, for the Council of the MCST ("the Management Corporation Strata Title Plan No 2120") to enforce the supplementary by-laws on the "*Use of Recreational Facilities by Guests*" and the "*Use of Tennis Courts*" and on that point, prayer (1) of the Applicant's application is allowed.
19. The Board is unable to make an order for enforcement in relation to the Applicant's prayers for the suspension of resident's account when he / she is caught sharing user ID and passwords as that would be overly-prescriptive and intruding into the decision-making choices of the MCST as to how the by-laws are to be enforced.
20. On the issue of the use of the tennis courts for commercial coaching, the Board makes the following observations.

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<sup>24</sup> AEIC of Catherine Lim Siew Eng dated 17 December 2020 at p 18.

<sup>25</sup> Respondent's Closing Submissions dated 26 January 2021 at paragraphs [12]-[16].

<sup>26</sup> Transcript for hearing on 5 January 2021 Page 6 Line 11 to Page 9 Line 11.

21. Paragraph [7.1] of Part 1 of Supplementary By-Laws provides that “A *Subsidiary Proprietor or occupier of a lot shall not be permitted to engage in any game or activity in or about other than those for which the recreational facilities are designed or for the purpose deem fit by the council.*” At least as of February 2020, the Respondent appeared to have taken the position that “*RESIDENTS SHOULDN’T COMBINE THEIR BOOKING SLOTS AND UTILIZE THE SLOTS TOGETHER FOR COACHING*”<sup>27</sup>. When asked about why the reference to “FOR COACHING” was removed during the hearing, the Respondent was unable to confirm that there was a council meeting or decision on this point.
22. The Board notes that the Management Council and/or its Managing Agent asserts that what is not prohibited by the by-laws is deemed allowed, based on the evidence at the hearing:

*(a) Evidence by the Respondent’s lawyer:*

*“Deputy President: I think Ms Chang mentioned it earlier. If you see page 45, it says - - the caps, right:  
PLEASE – “NOTE...RESIDENTS SHOULDN’T  
COMBINE THEIR BOOKING SLOTS AND UTILISE THE  
SLOTS TOGETHER FOR COACHING.”  
Yes, so this is in February 2020. So the board would just  
like you to clarify your client’s position on this issue of  
commercial coaching. Is this a breach or note of your  
bylaws? And, you know, then maybe just explain those two  
documents.*

*Mr Gokul: Sure. Thank you, your Honor. In respect of the first query  
whether - - in respect of Catherine’s email, coaching for a  
commercial purpose. Because it falls under the heading of  
breach of bylaws, so a natural meaning to it meaning it’s a  
breach. The reason why this was set out as a breach was,  
at first, they took the position that there was a breach.  
However, it was pointed out by the coaches that the bylaws  
are silent and, thereafter, the position which the MCST has  
taken, there were - - there are no breaches.”<sup>28</sup>*

*(b) Evidence by Mr Soh Goon Chuan, Council Member:*

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<sup>27</sup> AEIC of Chang Quan Yin Elizabeth dated 17 December 2020 at Tab B.

<sup>28</sup> Transcript of 4 January 2021 at Page 46 Line 1 to Line 20.

*“Deputy President: Mr Soh, there was one point that earlier we tried to engage your (counsel) on. And which is the council’s understanding that your by-laws do not prohibit commercial coaching, right, for – at least for tennis or it –*  
A. *It’s silent*

*...  
Deputy President: -- does not prohibit commercial coaching for any use of the recreational facilities in Astoria Park?*

A. *I think by-law only for - - like for example, karaoke all these, they had no commercial value. But for tennis court, they didn’t mention any. Because by-law is set up by the developer, the first management. So we just follow the by-law.*

*So we may have to, what you call, to prevent commercial value, we have to prevent commercial value, we have to put up a motion, the next AGM, then it can make it become a by-law. We need AGM. But right now, there is no by-law saying that you cannot do commercial for tennis court, yah.”<sup>29</sup>*

*(c) Evidence by Catherine Lim Siew Eng, condominium manager:*

*“Q This is what you said was emailed out. So can I draw your attention to the middle section, “Breach of by-laws – terms and conditions in Hi-Life booking facility”. Do you confirm that it’s written there, number “(1) coaching for commercial purposes”; and number “(6) prohibition of combining booking slots and utilising it for coaching breached” ....*

A *Yah.*

*Q. -- is this what is stated here? Yes or no?*

A. *This breach of by-law is given by the applicant, right. She has given me this breach of by-law, and so I began to share with the resident that they are not supposed to breach the by-law. And basically, they are supposed to follow. But later on, in our by-law, it says that the commercial coaching is silent.”<sup>30</sup>*

*“Q. Okay. I put it to you that therefore, it has been the position of the MCST and its management that tennis – commercial tennis coaching was not allowed, based on what I have said just now. I am not talking about what has been the MCST’s*

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<sup>29</sup> Transcript of 4 January 2021 at page 176 Line 3 to Line 25.

<sup>30</sup> Transcript of 5 January 2021 at page 43 Line 4 to Line 23.

- and management's position on commercial tennis coaching. Your position has been that it's not allowed.*
- A, *Right.*
- Q. *Correct, agree?*
- A. *Yes.*
- Q. *Agree.*
- A. *But we have in the by-law, after reading, we know that coaching was silent. So this was put up due to the applicant's request. So I based on the applicant's request and that's why I put it up in this manner, but actually, it is not right to have this to be up. Commercial has nothing to mention, so it's allowed actually. Commercial activity is allowed*
- Q. *So you are saying that because it is silent, by-laws are silent on coaching, so it is allowed?*
- A. *Right.*<sup>31</sup>

23. In particular, the Board wishes to highlight sections 32(1), 32(2) and 32(3) of the Act, which state as follows:

***“By-laws for common property***

*32(1) Every parcel comprised in a strata title plan shall be regulated by by-laws.*

*(2) Subject to the Fourth Schedule, the by-laws prescribed by regulations shall be the by-laws for every parcel comprised in a strata title plan in respect of which a management corporation is constituted on or after 1<sup>st</sup> April 2005, and no by-law made under this section or section 33 shall be inconsistent with any such prescribed by-law.*

*(3) Save where otherwise provided in section 33, a management corporation may, pursuant to a special resolution, make by-laws, or amend, add to or repeal any by-laws made under this section, for the purpose of controlling and managing the use or enjoyment of the parcel comprised in the strata title plan, including all or any of the following purposes:*

- (a) safety and security measures;*
- (b) details of any common property of which the use is restricted;*
- (c) the keeping of pets;*

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<sup>31</sup> Transcript of 5 January 2021 at Page 51 Line 13 to Page 52 Line 8.

- (d) *parking;*
- (e) *floor coverings;*
- (f) *garbage disposal;*
- (g) *behaviour;*
- (h) *architectural and landscaping guidelines to be observed by all subsidiary proprietors;*
- (i) ***such other matters as are appropriate to the type of strata scheme concerned.***

24. The Board notes that Astoria Park is a purely residential development without commercial lots. Section 32(1) when read together with section 32(3)(i) of the Act indicate that the use of a recreational amenity in a condominium like Astoria Park must be congruent and appropriate to the approved residential strata scheme. Regulation 19(1)(a) of Regulations 2005 relied on by the Respondent to argue that commercial activities may be conducted on common property since a special resolution is only required to limit it to specified times, must be read subject to the Act, and the type and nature of the strata development. Therefore, a special resolution may be passed by Astoria Park's subsidiary proprietors so that commercial activities may be conducted during specified times, if the MCST considers it appropriate for the control, management, administration, use or enjoyment of the tennis courts. The Board is therefore of the view that allowing commercial tennis coaching to residents and non-residents in Astoria Park would require a by-law to permit and regulate such a use. Section 32(3) of the Act provides that such a by-law is to be passed as a special resolution and the words "*for the purpose of controlling and managing the use or enjoyment of the parcel*" are particularly instructive, and Regulation 19(1)(a) of Regulations 2005 is consistent with it.

### ***On the presence of three (3) cats roaming in the development***

25. There is common ground that both parties refer to the same three (3) cats. During her cross examination, the condominium manager informed the Board that "Uncle Daud", the estate's gardener, had been feeding and caring for the cats in the development. A warning letter had been sent to Uncle Daud's employer, Prince's Landscape Pte Ltd, on 11 August 2020 that the "*vendor's cats must be removed from Astoria Park basement.*"<sup>32</sup> At paragraph [22] of her AEIC, the condominium manager testified "*the vendor's email reply dated 12 August 2020 denying ownership of the cat*" but gave no evidence of such an email reply. During her re-examination, the condominium manager testified that the cats

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<sup>32</sup> AEIC of Catherine Lim Siew Eng dated 17 December 2020 at p 46.



may also belong to an owner in the condominium who had passed away<sup>33</sup> but evidence of the cats' previous ownership was not traversed before the Board. The three (3) cats are cared for and kept by "Uncle Daud", the Respondent's gardener, rendering him effectively adopting the cats.

26. In *Management Corporation Strata Title Plan No. 3250 v Yan Wen Ting* [2017] SGDC 175 ("*Yan Wen Ting*"), the plaintiff was a management corporation that filed a suit against the defendant who was an occupier of a unit in the residential development. In its application, the plaintiff sought a mandatory injunction to remove the defendant's dog from the said unit. In finding whether the Court should grant a mandatory injunction, it was held at paragraph [41] of *Yan Wen Ting* that:

*"...the 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; or*

*(b) the breach was trivial or had caused no appreciable damage to the plaintiff and a mandatory injunction would impose substantial hardship on the defendant with no counter-balancing benefit to the plaintiff."*

27. The District Court in *Yan Wen Ting* found that granting a mandatory injunction to remove the defendant's dog from the said unit would be disproportionate to the complaints made by the plaintiff about the defendant's dog. The plaintiff's complaints were based entirely on the complaints made by a family residing in the estate. Further, it was motivated by acrimony between the two neighbours and lacked objectivity. The Court found that the plaintiff and the family did not suffer an appreciable damage as the family's encounters with the dog were occasional, and the defendant had taken steps to improve the situation (see paragraphs [42] to [44] of *Yan Wen Ting*).

28. In the present case, the factors in favour of the grant of an injunction are as follows:

- (a) Based on the evidence adduced before the Board by way of photographs of the Applicant's car and during the inspection thereof conducted by the Board on 5 January 2021, the Board is satisfied that the damage was done by the cats as stated in the Application;

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<sup>33</sup> AEIC of Catherine Lim Siew Eng dated 17 December 2020 at paragraph [22].

- (b) There was at least another incident of cats causing scratches on the “*top of cars and have caused scratches to the car surface*” on or about 12 January 2018;<sup>34</sup> and
  - (c) The Board finds that the proposals by the Respondent and/or CWS for the Applicant to put cat spike mats (cats have jumped onto the cat spike mats<sup>35</sup>), to use cat repellent spray (this had to be applied every 2-3 hours and leave the Applicant’s car sticky and dirty after each application) and to park at other levels of the carpark and the surface carpark, and not at the basement car park are not effective, and does not prevent the three (3) cats from damaging / causing further damage the Applicant’s car. For example, there is evidence of the cats at other carpark levels besides the basement car park<sup>36</sup>, with no relief to the Applicant’s car.
29. There are 2 other points the Board would observe.
- (a) There were 42 signatures out of 354 units or 360 units (11%) in the development<sup>37</sup> to petition to “LEAVE THE CATS WHERE THEY ARE”. The Board is focused on the application before it which is whether the MCST has exercised and/or performed its powers and/or duties in accordance with the law. The Board would not suggest that any MCST exercises and/or performs its duties influenced by or based on petitions, especially where the council has been duly elected or empowered by the general body at an Annual General Meeting.
  - (b) The CWS mediator, Safiah Bte Mohamed Basir, testified that if the three (3) cats are removed from the condominium the surrounding area of the condominium have known cases of unsterilized cats and “...*there is a possibility of the said cats taking up an empty territory once inhabited by the cats*”. However, as the Board finds that there is a failure to exercise or perform its powers or duties in accordance to the law by the MCST, the Board will have to make the necessary order(s) in this regard. Furthermore, there is a possibility that the further damage to the Applicant’s car cannot be prevented in the future if the removal of the said three (3) cats in question is not ordered.
30. Further, pursuant to the section 33 of the Act, the condominium is regulated by the by-laws, inter alia, Regulation 14 of Regulations 2005. “Uncle Daud” is not a subsidiary proprietor or an occupier and it would be absurd if the law allowed him to keep and care for the cats in the condominium and for his cats to roam freely at the common property

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<sup>34</sup> AEIC of Catherine Lim Siew Eng dated 17 December 2020 at p 39.

<sup>35</sup> AEIC of Chang Quan Yin Elizabeth dated 17 December 2020 at pp 140 and 141.

<sup>36</sup> AEIC of Chang Quan Yin Elizabeth dated 17 December 2020 at pp 142–149 and pp 127-138.

<sup>37</sup> AEIC of Phua Joo See dated 17 December 2020 at paragraph [29].

whereas the subsidiary proprietors / occupiers were held to the stricter Regulation 14 of Regulations 2005.

31. This Board finds that, under the circumstances, it would be a fair outcome to order the removal of the three (3) cats from the condominium. In fact, the Respondent had contacted the Animal Veterinary Services (“AVS”) to enquire about loan traps on or about 10 February 2020 (so that the cats may be trapped and thereafter sent for adoption) “*However, upon learning that the stray cats may have owners, the request to loan traps was withdrawn.*”<sup>38</sup> As the Board finds the stray cats to belong to “Uncle Daud” and not the subsidiary proprietors / occupiers, the Respondent should proceed to contact AVS on the loan of traps and sending the three (3) cats for adoption as the Respondent originally intended. In that regard, Prayer (4) of the Applicant’s application is allowed. An order made with respect to Section 101(3) of the Act may not provide for the payment of damages. Therefore, with respect to the Applicant’s request for damages, the Board is unable to make an order.

#### **Board’s Order(s)**

32. The Respondent should note that pursuant to section 29(1)(a) of the Act it is the duty of the Respondent “*to control, manage and administer the common property for the benefit of all subsidiary proprietors...*” The Respondent’s counsel argued that the Respondent “*did not shut a blind eye*” to the Applicant’s complaints of misuse of the tennis courts and presence of cats roaming in the estate. In this case, it is not adequate to merely state that the Respondent did not shut a blind eye to the issues raised by the Applicant. The Respondent has to take reasonable steps to enforce its supplementary by-laws and to control, manage and administer the common property for the benefit of residents, which includes the Applicant. The onus of this ultimately rests on the Council of the Respondent.<sup>39</sup>
33. While the Board has ruled that a special resolution would be required to allow commercial activities within the specified times in a purely residential condominium such as Astoria Park, the Board would not prescribe the prohibition of entry of non-residents with Astoria Park for tennis lessons as prayed for by the Applicant. As stated above, with regards to potential breaches of the by-laws as to the booking of tennis courts, the Board would not prefer to take an overly-prescriptive role and leave it to the MCST to manage the situation. For example, non-residents may well enter Astoria Park for gratuitous tennis lessons

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<sup>38</sup> AEIC of Catherine Lim Siew Eng dated 17 December 2020 at paragraph [21].

<sup>39</sup> Section 101(2) of the Act.

conducted by a relative and/or a friend and so long as the other by-laws are complied with would be free to do so.

34. This Board orders the Council of the Respondent to:

*(1) Enforce its by-laws with regards to the usage of tennis courts – maximum 4 hrs a week (including 2 hrs for peak periods) & limited to 1 hr each session per resident.*

*(4) Remove the three (3) cats cared for by the MCST's gardener making their permanent habitats in the basement of Astoria Park multi-storey car park.*

**Costs**

35. The Applicant had largely succeeded in her case for the enforcement of the supplementary by-laws on the use of the tennis courts and the removal of the three (3) cats within Astoria Park. The general rule is that costs follow the event and in this case the Board notes that the Applicant's counsel has sought costs of \$8,000 for the two (2) days of trial excluding GST, STB disbursements, and the Applicant's share of the costs of the transcripts. Respondent's counsel was of the view that the costs should be \$800 although he agrees to the STB disbursements, the Applicant's share of the transcripts and GST, if any. The Board notes that costs are generally in the discretion of the tribunal and that the Applicant's counsel has sought costs on the low side for a 2-day trial.

36. The Board orders the Respondent to pay the Applicant costs fixed at \$8,000 with STB disbursements at \$1,400, and the Applicant's share of the transcripts at \$1,438.51, and GST, if any.

Dated this 11<sup>th</sup> day of February 2021

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**MR RAYMOND LYE**  
Deputy President

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**MR TAN KIAN HOON**  
Member

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**MS HAZEL TANG**  
Member

Ms Wu Xiaowen (M/s Lexton Law Corporation)  
for the Applicant.

Mr Gokulamurali Haridas / Ms Sancia Ng (M/s  
Tito Isaac & Co LLP) for the Respondent.