BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT

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

STB No. 45 of 2021

In the matter of an application under **section 101** of the Building Maintenance and Strata Management Act in respect of the development known as **Skies Miltonia** (MCST Plan No. 4407)

Between

The Management Corporation Strata Title Plan No. 4407

... Applicant

And

Lin Meiyi Sophie

… Respondent

GROUNDS OF DECISION

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… Respondent

19 April 2022

24 May 2022

Coram:	Mr. Raymond Lye	(Deputy President)
	Mr Lim Gnee Kiang	(Member)
	Ms Vicki Loh	(Member)

Parties

1. The Applicant is the management corporation of the development known as Skies Miltonia (**"Development**").

2. The Respondent is the subsidiary proprietor of one of the penthouse units in the Development at Block 33, Unit #XXX, Singapore 768064 (the "**Unit**"). By way of a power of attorney, the Respondent was represented by her father Mr Victor Lim in these proceedings.

Earlier proceedings

3. The substantive dispute is over the works and structures that the Respondent has erected at the lower roof terrace of her Unit and the open terrace outside the Respondent's study/family room sometime in 2018 (AWS Tab 9), and whether the Respondent should be allowed to retain the same. It is the Applicant's case that these works are unauthorised in that no proper approval has been sought nor granted by the MCST or relevant authorities.

4. For clarity, the Board will refer to the alleged unauthorised works as set out in the Applicant's Interlocutory Application to Amend dated 7 January 2022, and the works/structures that the Applicant has identified to-date shall collectively be referred to as the "**Respondent's Works/Structures**".

5. The Board notes that the renovation works erecting the Respondent's Works/Structures were done in 2018, and since then, the Respondent and/or her father have appeared multiple times before the Strata Titles Boards as well as the Courts on this issue.

6. Given the long history between parties, it is appropriate to revisit in brief the sequence of events that have led parties to these proceedings:

   (a) On 24 October 2012, the Respondent signed a Sale & Purchase Agreement purchasing the Unit from the developers. Notably, and as pointed out by the Applicant, she acknowledges that she is not allowed to enclose the open to sky areas of the Unit without prior written approval from the relevant authorities and the MCST (see clause 22E and also clauses 22A, 22D, 22G of Sale & Purchase Agreement).

   (b) On 10 November 2017, the 1st Management Council of the MCST held its 2nd council meeting. The minutes (exhibited in the Applicant's Written Submissions ("**AWS**") Tab 14) state that the Management Council had ratified the information provided by the developer regarding the approved and utilized gross floor area for

the Development, and noted that "*Skies Miltonia has fully utilized the GFA allotted for the site".* The Respondent's father Mr Victor Lim was Chairman of the Management Council at the time and was in attendance at the said meeting.

(c) On 27 November 2017 and 23 January 2018, the Respondent submitted 3 plans to URA for approval to build what is described as a "*Proposed Roof Covering to existing balcony and roof terrace*" of her Unit. URA gave conditional approval by way of a Grant of Written Permission dated 25 January 2017 (this appears to be a clerical error and should be dated 2018); the approval was subject to conditions *inter alia* that there would be no increase in gross floor area, and that the private roof terrace and balcony areas were to remain open-sided, and not enclosed (AWS Tab 10).

(d) The Respondent proceeded with her renovation works thereafter. It then came to the attention of the other subsidiary proprietors of the Development that the Respondent was proceeding with extensive renovation works at her Unit for which no approvals had been sought from the MCST.

(e) Accordingly, on or around 11 January 2019, Mr Harry Ho, a subsidiary proprietor and the developer's representative filed STB 5 of 2019 against the management corporation of the Development ("**MCST**") (of which the Management Council was then helmed by Mr Victor Lim as chairman) for *inter alia* disclosure of documents relating to the Unit's renovation works.

In STB 5 of 2019, it was alleged that the Respondent had failed to obtain the necessary renovation approvals from the Applicant, or URA before the proceeding with the Respondent's Works/Structures. In addition, that the Respondent's Works/Structures had caused an increase in the gross floor area of the Development.

(f) Belatedly, among documents that were disclosed by the MCST post filing of the proceedings in STB 5 of 2019, a renovation form submitted on behalf of the Respondent to the MCST dated 26 March 2018 was also produced. The renovation form had a scanty description of the concluded or intended works, which description read "*Installation of ACT canopy on steel structure on roof terrace*" ("**2018 Renovation Form**"). Further descriptions of the intended works were also set out in the Respondent's letters to the MCST on 5 March 2018 and 16 September 2018.

(g) On conclusion of the Respondent's renovation works however, it became apparent that what the Respondent had carried out was clearly more extensive than what was described in the 2018 Renovation Form and in the subsequent letters to the MCST, or even as indicated in the original plans submitted to URA.

(h) On or about 6 August 2019, four subsidiary proprietors in the Development filed STB 75 of 2019 against the Respondent and her father Mr Victor Lim to dismantle the 'Unauthorised works' in the Respondent's Lot.

These Unauthorised works were identified in a letter dated 26 April 2019 from various subsidiary proprietors to the MCST as the following:

"a. Enclosing the sides of the roof, resulting in an increase in the Unit's gross floor area at the expense of the allocated gross floor area of the entire condominium;

b. erecting a build-up supporting wall for the roof that is sitting on the common boundary wall, thereby encroaching on the common boundary;

c. extending the roof eave beyond the boundary line, thereby encroaching on the common boundary;

d. hacking into the reinforced concrete party wall;

e. partially enclosing the yard with louvers and glass panels windows, resulting in the covering of more than 50% of the ventilated areas when the windows are fully closed; and.

…

Unauthorised discharge of condensate water into the common area."

This application was eventually withdrawn pursuant to a written undertaking given by the respondents in STB 75 of 2019 (through Mr Victor Lim) that the said 'Unauthorised works' would be removed as soon as the Lighting Protection System ("**LPS**") was rectified, and that he (presumably in his capacity as then-Chairman of the Management Council) would expedite the rectification of the LPS.

(i) On or about 31 July 2020, the MCST informed the Respondent and her father, that the developer had sent the PE certification for Block 33 where the Respondent's Unit was located. In addition, that *"LPS rectification works has been completed and they were certified in compliant (sic) with the Code of Practice for Lightning*

Protection SS 555:2010. The BCA comments made on 13 July 2020 has been responded and BCA has no further comments on the LPS matter." Notwithstanding the certification and BCA's position on the LPS, the Board notes that the Respondent's father appeared to disagree that this was sufficient for his purposes, and maintained that he was unable to accept the above as it was "*not in line with the good LPS presentations made by ER Tan to the building industries around Feb 2018*".

(j) The MCST then wrote to the Respondent and her father on 28 August 2020 and 9 October 2020 demanding that they comply with their written undertaking given in STB 75 of 2019. The Respondent made little or no attempt to comply with this written undertaking.

(k) For completeness, we note that the Respondent has alleged in the course of these proceedings that the glass sliding doors in her Unit had been removed on 4 October 2019 pursuant to this written undertaking or otherwise. Further, that the Applicant should have been aware of this, *inter alia,* when the MCST's representatives visited the roof of the Unit on various occasions, and lastly when the Respondent informed the Applicant of this at the interlocutory hearing on 15 February 2022. We elaborate on this below.

(l) The Respondent and her father Mr Victor Lim proceeded to file STB 54 of 2020 on 14 September 2020 against the Applicant for various orders. The nub of the Orders sought pertained to the LPS. As it is apparent that the Respondent and her father were of the view that the 'correct' LPS Code of Practice that should apply to the Development was the SSS 55:2018 ("**2018 Code**") rather than SS 555:2010 ("**2010 Code**"), the Respondent and her father sought orders demanding that the Applicant reject the rectification works done by the developer to the LPS in accordance with the 2010 Code, and sought orders compelling the Applicant to instead do what was necessary to ensure that the LPS of the Development was in accordance with the 2018 Code.

(m) In its grounds of decision dated 23 April 2021, the Board in STB 54 of 2020 conclusively found that the code of practice applicable to the Development was the 2010 Code and not the 2018 Code. Notably, the Respondent's own expert ER Pam had accepted and conceded in cross-examination that the "*BCA is the authority and*

has the final say whether to accept the certifications. BCA's acceptance of the certifications [by Er Lee. that the rectification works done to the LPS, and the LPS itself, complied with the 2010 Code] is a decision that is best left to that competent authority."

The Board further notes that the Board in STB 54 of 2020 had specifically dismissed the prayer that the Respondent and her father, be allowed to retain the roof and the Respondent and her father were reminded that having given an undertaking, which led to the withdrawal of STB 75 of 2019, they should properly abide by the same.

(n) Shortly after, on 26 April 2021, the Applicant filed these proceedings STB 45 of 2021 to compel the Respondent to remove the Respondent's Works/Structures.

(o) Concurrently, the Respondent and her father appealed to the General Division of the High Court on 18 May 2021 *inter alia* seeking to set aside the orders made in STB 54 of 2020 by way of HC/TA 12/2021.

(p) HC/TA 12/21 was dismissed on 27 August 2021 and we note that Maniam JC (as he then was) had rejected the Respondent and her father's request for further arguments on 13 September 2021.

(q) Still dissatisfied, the Respondent and her father applied for leave to appeal to the Appellate Division of the High Court *vide* AD/OS 48/2021 and this application was dismissed on 6 December 2021. We highlight that the Honourable Quentin Loh JAD and See Kee Oon J had in their judgment recorded,

(2) … "*It is clear beyond peradventure that the circular ("the Circular") which accompanied the 2018 Code did not provide for the 2018 Code to supersede the 2010 Code. On the contrary, the Circular made it explicitly clear that the 2018 Code would apply only to developments whose buildings plans were submitted on or after 1 May 2019. It is undisputed that the building plans for the Development were submitted before 1 May 2019.*

(3) For completeness, we also do not consider either the Judge or the Strata Titles Board ("STB") to have erred in their reasoning and decision…" [emphasis added].

(r) In view of the proceedings *vide* HC/TA 12/21 and AD/OS 48/2021, STB 45 of 2021 was stayed twice. We note that the Respondent and her father have exhausted all avenues of appeal on this issue and the issue of which Code applies and whether it is safe and appropriate for such Code to apply, should be regarded as *res judicata.* The Appellate Division has made clear (if it were not already apparent previously) that it is the 2010 Code that should apply to the Development.

Orders sought by Applicant

7. The Orders sought by the Applicant, as amended by the Applicant's Interlocutory Application to Amend dated 7 January 2022, which amendments were allowed by the Board on 15 February 2022 are as follows:

*"1 (i) The Respondent be ordered to remove the unauthorized roof shelter shown at Tab 12 of the Application) constructed over the entire lower roof terrace of her penthouse located at Block 33 #*XXX *including the unauthorized enclosures shown in Tab 13 -17 of the Application namely. the aluminium framed glass panel resting at the edge of a party wall, the louvre facade concealing the enclosed space and air conditioner compressor, a glass sliding door (Tab 40 of the Application) and any other unauthorized structures found to have been installed to enclose the entire lower roof terrace;*

(ii) The Respondent be ordered to remove an extension built on top of an existing boundary wall (Tab 62 of the Application) separating her strata lot from the common property;

(iii) The Respondent be ordered to remove a shelter installed over a steel trellis; (Tab 13 and Tab 17 of the Application)

(iv) The Respondent be ordered to remove ~~all pipings and electrical cables concealed in~~ a channel hacked into a party wall to conceal air conditioner drainage pipes and electrical cables and to take steps to ensure air conditioner condensates is not drained onto the common area; (Tab 15, 16 and 62 of the Application)

(v) The Respondent be ordered to remove the glass sliding door and side louvres installed at the open terrace of her family/study room; (Tab 18 and Tab 19 of the Application) and

(vi) Where works were carried out as described above the Respondent be ordered to restore it to its original state.

All these orders applied for shall hereinafter be described collectively as "unauthorized works" where changes were made to existing structures and "unauthorized structures" where additional structures were built and added to existing structures.

2. *The Respondent shall allow and pay for the engagement of a professional engineer to be appointed by the MCST to conduct an audit of the restoration work as well as to certify the fitness of work carried out to restore it to its original state.*

3. *Costs of this Application to be provided for.*"

(N.B: Counsel for the Applicant has clarified that references to "Tab" above refer instead to "Page" and the numbers that follow are page numbers)

Issues before the Board

8. The issues before the Board for determination are as follows:

(a) Whether the alleged Respondent's Works/Structures are indeed Unauthorised;

(b) Even if the alleged Respondent's Works/Structures are indeed Unauthorised, whether there are other considerations the Board should take into account; and

(c) Following from the above, whether the Board should order the removal of the Respondent's Works/Structures.

9. For completeness, we note that there were several preliminary objections raised by the Respondent and we deal with these briefly:

(a) Whether the application has been filed with reference to the correct provisions in the Building Maintenance and Strata Management Act ("**BMSMA**") and/or whether the Applicant has failed to make out its case;

(b) Consequently, whether the burden of proof lies on the Applicant to make out its case and what is the burden of proof required; and

(c) Whether the Application is frivolous, vexatious and/or brought in abuse of process, and so therefore should be dismissed.

Reference provision in BMSMA

10. The Application has been brought pursuant to section 101 of the BMSMA. At the hearing on 19 April 2022 and by way of the Respondent's Closing Submissions dated on 4 May 2022 ("**RCS**"), the Respondent has sought to allege that this is the incorrect provision and/or that the Applicant has failed to make out its case pursuant to section 101.

11. Section 101, specifically section 101(1)(c) of the BMSMA provides,

"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

...

(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."

12. The Applicant's position as set out in its Further Written Submissions (for ease of reference referred to as the Applicant's Closing Submissions ("**ACS"**)) is that there is a dispute between the Applicant and the Respondent over the Respondent's alleged infringement of the BMSMA and the by-laws of the Development in proceeding with the Respondent's Works/Structures without the requisite approvals from either the Applicant or the relevant regulatory authorities.

13. The Applicant goes on to cite section 29(1)(a) of the BMSMA which empowers it to "*control, manage and administer*" the common property of the Development and section 29(2)(b) of the BMSMA which empowers it to "*do all things reasonably necessary for the performance of its duties … and for the enforcement of the by-laws".* In commencing these proceedings therefore, the Applicant takes the position that it is seeking to take the Respondent to task for failing to comply with the BMSMA and relevant by-laws.

14. The Board agrees with the Applicant's position and is of the view that the application has been properly commenced pursuant to section 101(1)(c) of the BMSMA.

Burden of proof

15. After the hearing on 19 April 2022, the Board invited parties to submit on the legal and evidential burden of proof in this application. Parties have taken rather disparate positions on this.

16. With reference to the Court of Appeal case of *Ng Eng Ghee and others v Mamata Kapildev Dave* [2009] 3 SLR(R) 109 ("**Horizon Towers**"), the Applicant has sought to persuade the Board that the Board is exercising an inquisitorial jurisdiction over the proceedings, and as a result, *"neither party bears a burden of proof*". The Board notes that Horizon Towers is a case relating to an appeal arising from an arbitration heard by the STB on collective or "*en bloc*" sales.

17. Generally, the Singapore judicial system, being under a common law system of jurisprudence, adopts an adversarial rather than inquisitorial approach. The Board is of the view the relevant extracts from the Horizon Towers case (at [172] to [175]) were intended to convey that for collective or *en bloc* cases, the STB had to play a more proactive role at an arbitration "*in the event that mediation has failed*" ([173]), and it was not sufficient for the Board to only rely on what parties had put forward, as in the case of a traditional adversarial approach. In fact, (at [174 and 175]) the Court of Appeal drew an important distinction between the types of STB proceedings; those affecting private rights ("*to the extent that the STB's decisions affect the interests of contending subsidiary proprietors, proceedings before the STB may be said to be analogous to private litigation*") and those concerning a "*wider public interest involved in the implementation of the collective sale scheme*", with the latter justifying a more inquisitorial role. It is also important to put the Horizon Towers case in its proper perspective, that since the amendments to the Land Titles (Strata) Act in 2010, the STB's role in collective sale cases have been limited only to mediation, and when that fails, the dispute is automatically referred to be contested in the High Court. The STB therefore no longer arbitrates disputes involving collective sales.

18. In any event, we note that the Court of Appeal's comments, that the "*STB must correctly apply the appropriate burden of proof*", and that "*the absence of a strict burden of proof*

does not necessarily entail an absence of any legal standard of persuasion" ([102]) are in line with regulation 18(1) of the Building Maintenance and Strata Management (Strata Titles Boards) Regulations 2005 which provide that the "*Board shall not be bound to apply the rules of evidence applicable to civil proceedings in any court but may inform itself on any matter in such manner as it thinks fit*." [emphasis added]

19. As such, the Board is not and should not be strictly constrained by the Evidence Act ("**EA**") or the usual cases on legal and evidential burden of proof which have been cited to us by the Respondent.

20. That being said, the Board appreciates that there should nevertheless be some logical benchmark or, as the Court of Appeal in Horizon Towers calls it, some "*legal standard of persuasion"* that an applicant should meet, in order to persuade or convince a Board that an order should be made in its favour. Regard may be had therefore to the principles regarding the legal and evidential burdens that parties to civil proceedings have to meet. The EA, although not binding on the Board, is nevertheless a good starting point, coupled with the general law on evidence developed over the years. This is especially so where the parties themselves have relied on it in the proceedings before the Board.

21. On the facts of this case, the Applicant has alleged that the Respondent has proceeded with various Respondent's Works/Structures without proper authorisation from the MCST and/or the relevant regulatory bodies. The Respondent's beef with the Applicant's application herein ("**Application**") is that it is lacking in particulars and it is "*impossible to tell from the Application…how the Works were "unauthorised" as alleged*".

22. The Board should therefore inform itself on the considerations as to the relevant burdens of proof. The legal burden falls on the party who asserts the existence of any fact in issue, while the evidential burden of proof exists in the form of a tactical onus to contradict, weaken or explain away the evidence that has been led (per the Court of Appeal in *Cooperatieve Centrale Raiffeisen-Boerenleenbank BA, Singapore Branch v Motorola Electronics Pte Ltd* [2011] 2 SLR 63 at [30] ("**Rabobank"**). Per *Britestone Pte Ltd v Smith & Associates Far East Ltd* [2007] 4 SLR(R) 855 at [58] ("**Britestone**"), the legal burden of proof describes the obligation to persuade the trier of fact that, in view of the evidence, the fact in dispute exists. The Court of Appeal added "*This obligation never*

shifts in respect of any fact, and only 'shifts' in a manner of loose terminology when a legal presumption operates".

23. In this regard, the Board is of the view that the discussion on burden of proof will not be complete without a reference to the presumption in section 108 EA:

"Burden of proving fact especially within knowledge
108. When any fact is especially within the knowledge of any person, the burden of proving that fact is upon that person.

Illustrations

(b) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him."

24. In *Burden of Proof and Standard of Proof in Civil Litigation* (2013) 25 SAcLJ 130, the learned author at ([57] and [58]) opined that for section 108 to come into play, the party who has the legal burden of proof would have to prove the inference from its evidence that unless there is rebuttal evidence from the other side, the inference of knowledge as asserted by the plantiff (Applicant) would prevail, and places the burden on the defendant (Respondent) to prove a fact "*especially within the knowledge*" of the defendant (Respondent).

25. On the facts, the Respondent did not set out with sufficient detail the renovations works that she intended to, and did carry out to her Unit in 2018, by way of the renovation application form that is required under the Development's Resident Handbook ("**Handbook**") (AWS Tab 11). Further, it is not uncommon in cases of alleged unauthorised works that the offending subsidiary proprietor may have been less than candid in submitting relevant details to the MCST with the risk that it be rejected outright. It is also not uncommon that subsidiary proprietors in such situation may also be reluctant to and/or make it difficult for the MCST to inspect the subsidiary proprietor's premises to verify such works. The Board notes that the Applicant has alleged that the Respondent had "*never allowed anyone from the management office or council member to inspect the lower terrace*" (AWS paragraph 16), which is where the Respondent's Works/Structures are. In RCS at 18.5, the Respondent's counter was that she did not "*actively stop or prevent the Applicant's representatives from being apprised of the of the Works in any way*", and "*even if this were so, this would be fatal to the Applicant's case as it*

demonstrates the Applicant itself is unsure of the basis of its case". Having essentially ignored the relevant provisions in the Handbook, and failed to come clean as it were about her intended renovation works, it is disingenuous for the Respondent to suggest that she is unable to now know the case she has to meet.

26. Insofar as there is a legal burden that the Applicant has to meet, the Applicant has to sufficiently show that the fact in dispute, i.e. the issue of the Respondent's Works/Structures, exists (per *Britestone*). The Board is of the view that this has been met by the Applicant on the facts as to (a) the Respondent's Works/Structures, (b) providing particulars and evidence thereof, to the best of the Respondent's knowledge and information available, and (c) the Respondent not disputing she had works done to the roof terrace of her Unit, allegedly for lightning protection, but putting the onus on the Applicant to identify with clarity what the Respondent's Works/Structures are. It is not disputed that the onus is upon the individual subsidiary proprietor to seek such approval from the relevant authority, be it BCA, URA, etc and/or the MCST, for renovation and/or alteration works. The onus is thus on the Respondent to prove the Respondent's Works/Structures were in fact authorized, but she has proffered no evidence of the same.

27. The Board notes that the Respondent also relies on other provisions in the EA as "*sound principles of law … which this Honorable Board may be guided by*" (RCS paragraph 6). The Board agrees and is of the view that the principle in section 108 EA is persuasive in this case. In cases of this nature, where the fact in dispute is whether one party has obtained the necessary approvals, the Board is of the view that section 108 EA will place the onus on such party, in this case, the Respondent to then prove that she has in fact sought and obtained the necessary approvals from both the MCST and the relevant authorities. Illustration (b) of section 108 EA is instructive; just as the person charged for travelling without a ticket has the burden to prove he or she has a ticket, the Respondent here is alleged to have done renovation works without the requisite approval, and the burden of proving she had the said approvals should therefore fall on her.

28. The Board notes that the Respondent remained cagey about whether she has obtained approvals from the MCST or the relevant government authorities all throughout these proceedings, even during the hearing on 19 April 2022. Beyond technical arguments, the Respondent has made no attempt to satisfy the Board that the Applicant is wrong, and that the Respondent's Works/Structures were in fact authorized.

29. By way of example, when it was pointed out by the Applicant's counsel that there was an email from BCA dated 25 June 2020 referring to an Order made by BCA with a deadline of 1 August 2020, and that this deadline had already been extended twice (page 39 of Form 9), the Respondent was content to merely say that this email was not sent to the Applicant and it is unclear what the aforesaid Order was referring. As the email in question was sent to the Respondent and her father, it is clear that the Respondent (of all parties) should be well-acquainted with the contents thereof and the Board notes the Respondent's reticent conduct even before the Board. The Board reiterates that it is not for the Respondent to rely on her own breach to try and stymie the Application and the Board finds that the Respondent has failed to discharge her legal and/or evidential burden of proof.

30. Having considered the factual matrix in this case, the Board notes that while ordinarily an applicant is required to state its case with sufficient clarity, in this instance it is not reasonable for the Respondent to advance technical arguments of this nature and demand that the Applicant further particularise its case. In doing so, the Respondent is in essence relying on her own breach to stymie the Application.

31. For avoidance of doubt and be that as it may, the Applicant has clarified the Respondent's Works/Structures at the arbitration hearing by marking out the same in the photographs from Page 12 to Page 19 of its Form 9, corresponding to the description of the said Works and page numbers mentioned in its Interlocutory Application (Form 11) (see paragraph 7 above).

32. On consideration of parties' submissions and to the extent necessary, with reference to regulation 18(1) of the Building Maintenance and Strata Management (Strata Titles Boards) Regulation 2005, the Board finds that the Applicant has sufficiently discharged its legal and evidential burden in this regard, whereas the Respondent has failed to rebut the same even though the evidence supporting whether the Respondent's works were in fact authorized, if any, was within her own knowledge and possession.

<u>Whether the Application is frivolous, vexatious and/or brought in abuse of process, and so therefore should be dismissed.</u>

33. For the reasons above, the Board finds that there is no basis to the Respondent's contention that the Application is frivolous, vexatious or brought in abuse of process. If

at all, the Board notes that it might rather be said that it is the Respondent's continued litigation on matters which have already been decided that is an abuse of process.

34. We turn now to deal with each of the substantive issues set out in paragraph 8 above.

Whether the alleged Respondent's Works/Structures are indeed Unauthorised

35. As set out above, in relation to the Respondent's Works/Structures, the Board finds that the Respondent has not discharged her burden of showing that she has complied with the relevant by-laws or house rules found in the Handbook prior to constructing the same, or that the Respondent obtained the requisite approvals from the relevant regulatory authorities.

36. There is in any event no evidence before the Board that the Respondent's Works/Structures have in fact, been authorized either by the MCST or even the regulatory authorities. As mentioned at paragraph 6(c) above, the URA Grant of Written Permission dated 25 January 2017 previously obtained by the Respondent was a conditional one, and does not assist the Respondent. On the facts, it is sufficiently clear from the photographs that the Respondent has enclosed the sides of the roof cover and an increase of floor area owing to the Respondent's works is therefore likely.

37. For completeness, we note that while the URA circular no. URA/PB/2014/03-DCG published on 28 February 2014 (referred to at AWS Tab 15) has revised the guidelines to exempt coverings on private enclosed spaces and private roof terraces from gross floor area ("**GFA**") computation even for the Development for which plans were approved by URA before 12 January 2013, this exemption does not apply if the covered area is enclosed at the sides. URA has also made clear that the owners are still required to meet the requirements of *inter alia* BCA and FSSD, SCDF and comply with the applicable by-laws, and seek consent of the MCST before erection.

38. The Board accordingly accepts the Applicant's position as to the Respondent's Works/Structures set out at paragraphs [14] to [27] of the ACS. As this Board has already determined that there is no evidence that the Respondent's Works/Structures have been authorised by the MCST or the relevant authorities, it is not necessary for this Board to conclusively determine whether the Respondent's Works/Structures have infringed any specific statutory regulations/ by-laws. That being said, this Board is of the view that

there is at least a *prima facie* case that the Respondent has infringed the following provisions / by-laws:

(a) Section 33 BMSMA – Respondent has failed to obtain approval at general body for the exclusive use of the common property that part of the Respondent's Works/Structures rest on.

(b) Section 37(1) BMSMA – Respondent has caused an increase in GFA due to the erection of the unauthorised roof shelter with enclosed sides.

(c) Section 37(2) BMSMA – Even if it the unauthorised roof shelter were permissible, Respondent has to-date failed to seek and obtain 90% approval for the same at a general meeting for the improvement in her Unit.

(d) Section 37(3) and 37(4) BMSMA –Respondent has not requested, nor has Applicant approved the Respondent's Works/Structures which detract from the appearance of the Development.

(e) With reference to section 63 BMSMA, it is apparent also that in constructing the Respondent's Works/Structures, the Respondent has interfered with the common property of the Development. There is a breach of the Regulation 20, and paragraph 5 of the Second Schedule of the Building Maintenance (Strata Management) Regulations 2005.

39. As an aside, we address in brief the Respondent's contention that she had removed the glass sliding doors at the (see paragraph 6(k) above) prior to the Application and this should have been taken into account by the Applicant, or the Application amended accordingly. The duty is and has always been on the Respondent to obtain the necessary approvals from the MCST *before* commencing renovation works. This would of course be in addition to obtaining the requisite regulatory approvals. In the circumstances, it is hardly appropriate for the Respondent to contend that "*at no point did the Respondent…actively stop or prevent the Applicant's representatives from being apprised of the Works in any way."* (see paragraph 25 above). The MCST cannot be expected to routinely go on a detective hunt or engage in a cat-and-mouse game with subsidiary proprietors to see who has failed to comply with the law and to what extent. This would be a waste of the MCST's time and resources.

40. The Board is minded therefore to grant an order for the removal of all the Respondent's Works/Structures as prayed for in prayer 1 of the Applicant's Interlocutory Application; it is to be noted that this may be more comprehensively framed as an order requiring the Respondent to reinstate the entire lower roof terrace and open terrace outside the Respondent's study/family room of her Unit to its as-built condition, and for the Respondent to reinstate the adjoining common property to its as-built condition as well.

Whether there are other considerations that the Board should take into account and hence allow the Respondent to maintain the same Respondent's Works/ Structures

41. The Respondent raises two points in this regard. First, that the Application is in the nature of a mandatory injunction and the Applicant has failed to show why it should be granted in this instance. Second, that there are safety considerations which the Board should take into account in dismissing the Application. In support, the Respondent has cited the case of *The Management Corporation Strata Title Plan No. 4188 v Lim Yeong Seng and Kam Leh Hong Helen* [2020] SGSTB 2 ("**A Treasure Trove**"). The Board will deal with each in turn.

42. Applying the test for grant of a mandatory injunction as reiterated most recently in A Treasure Trove, the Board finds that the test at [40] has been met,

"[t]he general principle to be extracted from these cases is that the court will grant a mandatory injunction to redress the 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 is trivial or has caused no damage or no appreciable damage to the plaintiff and a mandatory injunction would impose substantial damage on the defendant with no counterbalancing benefit to the plaintiff."

43. There is no conduct on the part of the Applicant that would make it unjust to grant the prayers sought, nor can it be said that the breach is trivial and has caused no damage to the Applicant, whereas on counterbalance it would cause damage to the Respondent.

44. Simply put, the Respondent is in this situation of her own volition. At the outset, she had elected to buy a penthouse unit with extensive private roof terraces that were clearly demarcated as being "*open to sky*". Akin to the respondents in A Treasure Trove, it may

well be that the Respondent in this case did not wish to properly describe the intended renovations works at the outset to either the URA or the Applicant as she was aware that it would not, and in fact could not be approved "*as-is*". While it would not be fruitful to speculate further on the Respondent's motivations for her actions in 2018, it is apparent in any event that the Respondent has to-date embarked in a long running cat-and-mouse game with the multiple parties: the Applicant, other subsidiary proprietors in the Development, and even the regulatory authorities over the Respondent's Structures/Works. The Respondent's consistent stance throughout has been a willful disregard for anyone's views other than her own.

45. On the related issue of the alleged safety concerns, the Board notes that the Respondent faced an insurmountable barrier in her earlier insistence that only the 2018 Code can and should be applicable to the Development; which was what the Respondent's professional engineers have suggested should be applied. However the BCA, STB, the High Court and even the Appellate Division of the High Court found to the contrary on this issue, that it is the 2010 Code that applies, and that the existing LPS, properly maintained according to the 2010 Code, is sufficient.

46. At risk of repetition, and as referred to at paragraphs 6(m) and 6(r) above, both the Board in STB 54 of 2020 and the Appellate Division in AD/OS 48/2021 have made it clear that it is the 2010 Code that applies to this Development.

47. To deal with this constraint, the Respondent morphed her basis for keeping her alterations; she distinguishes STB 54 of 2020 and the decision of the Appellate Division of the High Court in AD/OS 48/2021 as being limited to deciding that the 2010 Code was applicable and not the 2018 Code. In his oral submissions, counsel for the Respondent said that whether the 2010 or 2018 Code applied "*doesn't really matter to us*" and does not require this Board "*to offend a whole host of learned Members of the Bench and the Bar to make a finding that there is a safety risk*"; the Respondent's position now is that, regardless of the applicable code, a live lightning safety risk still exists for her (Transcript page 119).

48. To this end, the Respondent refers to paragraph 38 of the Fifth Schedule of the Building Control Regulations 2003 ("**BCR 2003**"): "*A lightning protection system shall be capable of protecting the building and its occupants from the effects of lightning strike*". The Respondent cites paragraph 38 to say that "*if the correct version of the LPS had been*

rectified, that would make a difference as regards the safety of the residents at the (Respondent's) *Unit".* The Respondent also refers to her expert as citing and applying this said paragraph 38, which in his view, "*confirmed the deficiencies with the LPS and, relatedly, ... what needs to be done to live up to the requirements of paragraph 38*" (RCS paragraphs 30 and 31).

49. The Applicant did not deal with this "change" in the Respondent's position. However the Board did not rely solely on the Respondent's submissions but informed itself on the applicability of paragraph 38 of the Fifth Schedule of the BCR 2003. The Fifth Schedule reads as follows:

"*A. General*

1. This Schedule sets out the objectives and performance requirements that must be complied with in the design and construction of a building.

2. The objectives and performance requirements set out herein are deemed to have been satisfied if the design and construction of a building complies with the acceptable solutions set out in the Approved Document."

Paragraph 38, which is found under Clause L of the Fifth Schedule, reads:

"*L. Lightning Protection*

Objective

37. The objective of paragraph 38 is to protect a building from the direct effects of lightning strike and to protect its occupants from the risk of lightning current being discharged through the building.

Performance requirement

38. A lightning protection system shall be capable of protecting the building and its occupants from the effects of lightning strike."

50. Taken in its proper context, the Fifth Schedule makes it clear that Clause L would be "*deemed to have been satisfied if the design and construction of a building complies with the acceptable solutions set out in the Approved Document".* What is then an "*Approved Document*"? Regulation 2 of the BCR 2003 states that "*Approved Document" means an Approved Document issued by the Commissioner of Building Control under regulation 27.* Regulation 27 reads as follows:

"*Acceptable solutions*

27.— (1) The Commissioner of Building Control may issue, in such form as he thinks fit, and from time to time amend, one or more Approved Documents setting out the specifications, materials, designs or methods of construction (referred to in these Regulations as acceptable solutions) which shall, without prejudice to any alternative means of achieving compliance, be deemed to comply with the relevant objectives and performance requirements set out in the Fifth Schedule for the design and construction of buildings or endorse, in whole or in part, any document for use in establishing compliance with the requirements of these Regulations.

(2) The plans of any building works that are prepared in accordance with the acceptable solutions and any building works carried out in accordance with the acceptable solutions shall be deemed to comply with the relevant objectives and performance requirements set out in the Fifth Schedule."

51. As it turns out, the Approved Document refers to SS 555:2010 – Code of Practice for Protection Against Lightning; i.e. the same 2010 Code in these proceedings. The relevant paragraphs in the BCA Circular dated 31 December 2010 state as follows:

"*2 Clause L on Lightning Protection in the Fifth Schedule of the Building Control Regulations (on Objectives and Performance Requirements for the Design and Construction of Buildings) requires buildings and its occupants to be protected from the direct effects of lightning strike and the risk of lightning current being discharged through the building. Currently, designs which are in accordance with Singapore Standard CP 33 – Code of Practice for Lightning Protection are deemed to have complied with the above Objectives and Performance Requirements.*

3 With the launch of the new SS 555:2010 – Code of Practice for Protection against Lightning in November 2010, BCA has decided to adopt it to replace CP 33 as the deemed approved solution for compliance with the Regulations. With effect from 1 July 2011, developments whose building plans are submitted on or after this date must comply with the relevant requirements in SS 555:2010."

The 2010 Code is therefore the "*deemed approved solution*" for compliance with Clause L of the Fifth Schedule. A copy of the BCA Circular dated 31 December 2010 is appended to this grounds of decision.

52. It is therefore apparent that citing paragraph 38 of Clause L of the Fifth Schedule does not assist the Respondent, who, as it turns out, has made a circular argument leading right back to the applicable Code, and for which she has already conceded that the 2010 Code applies.

53. The Board further notes BCA's comments via email dated 13 December 2021 (AWS Tab 13) on the more recent alleged lighting incidents at the Development on 18 November 2021, "*there is no LPS that can fully prevent lighting from striking a building*" and "*with a residual damage risk from lightning strikes of 5%*" [emphasis added]. BCA has also reminded that the onus is on the residents to go indoors during bad weather, and not to expect the LPS to act as an invincible shield against all lightning strikes. In the same email, BCA had added that "[w]*e also wish to reiterate that, for resident's personal safety, residents should stay indoors during inclement weather to avoid being struck by lightning. Please remind residents to stay indoors during inclement weather."* BCA has left it to the MCST to consider if further enhancements are to be carried out to the LPS and to engage appropriate professional engineers to do so if this is the case. This does not mean the LPS in the Development are unsafe and/or non-compliant with the relevant lightning protection code, which in this case is the 2010 Code.

54. The Board is of the view therefore that the Respondent's concerns as to safety are unfounded. The Board does not agree that the Respondent's Works/Structures or even the roof shelter in itself are safety equipment as defined in section 37A of the BMSMA which are necessitated as a result of alleged deficiencies with the applicable lightning protection code. Certainly in the face of the consistent findings of the BCA, STB and the Appellate Division of the High Court, it would not be possible for this Board to find otherwise.

55. Finally, with reference to the photograph of the Respondent's lower roof terrace taken on 7 March 2022, the Board notes that the Respondent has placed two potted plants *on top* of the erected roof cover (See ACS Tab D). If, the Respondent is truly concerned about the possibility of lightning strikes and wishes to maximise the safety of her Unit, it beggars belief why the Respondent would seek to increase the height of the structures on her Unit; the placement of such plants increases that further and increases the risk of lightning strikes.

Summary of Board's Findings

56. In conclusion therefore, the Board notes that the Respondent has shown consistent and blatant disregard for the authority of the Applicant, in disregarding almost all procedures put in place to regulate the strata living of the Development. In addition, it is concerning that the Respondent has displayed little to no regard for the regulatory authorities, Strata Titles Board's previous determinations on this issue, or even the Appellate Division's judgment on the issue of what is the applicable LPS Code, and what is considered safe for the Development. As BCA has pointed out, if the Respondent is really concerned with lightning strikes on her roof terrace, she and her family and friends should stay indoors during inclement weather to avoid being struck by lightning. On the facts of this case and having regard to the past proceedings, the Board is not convinced that the renovation and/or alteration works undertaken by the Respondent was meant solely or even substantially for this purpose.

57. The Board therefore allows the Application in its entirety and orders as follows:

    (1) that the Respondent dismantle all the Respondent's Works/Structures as identified in Prayer 1(i) to (v) of the Applicant's Interlocutory Application dated 7 January 2022 and reinstate the entire lower roof terrace and open terrace outside the Respondent's study/family room of her Unit to its as-built condition, and consequently to reinstate the adjoining common property to its as-built condition as well, within two (2) months from the date of this Order.

    (2) The Respondent to pay for the engagement of a professional engineer to be appointed by the Applicant to confirm that the reinstatement works have been carried out as ordered by this Board and to allow access to the Respondent's premises for this purpose. The professional engineer's findings shall be deemed conclusive.

58. On the issue of costs, costs should follow the event and the Board accepts the Applicant's submissions that costs on an indemnity basis is applicable. Both the Renovation Form signed by the Respondent, and the by-laws and Handbook provide for the subsidiary proprietor to bear the MCST's costs on an indemnity basis if the subsidiary proprietor acts in breach of the law and by-laws. The Board accordingly orders the Respondent to

bear the Applicant's costs on an indemnity basis fixed at S$15,000 all-in, inclusive of disbursements.

Dates this 24th day of May 2022

_____

Mr Raymond Lye
Deputy President

_____

Mr Lim Gnee Kiang
Member

_____

Ms Vicki Loh
Member

Mr Tng Kim Choon (KC Tng Law Practice) for the Applicant.

Mr Devathas Satianathan and Ms Glenna Liew (Rajah & Tann Singapore LLP) for the Respondent.

Clerical errors corrected on 26 May 2022.

Building and Construction Authority

We shape a **safe**, **high quality**, **sustainable** and **friendly** built environment.

Our Ref.: BCA BC 15.0.3 Building Plan and Management Division

31 Dec 2010

See Distribution

Dear Sir/Madam

ADOPTION OF NEW SINGAPORE STANDARD SS 555:2010 – CODE OF PRACTICE FOR PROTECTION AGAINST LIGHTNING

Objective

This circular is to inform the industry on the adoption of new Singapore Standard SS 555:2010 – Code of practice for protection against lightning

Adoption of SS 555:2010 – Code of Practice for Protection against Lightning

2 Clause L on Lightning Protection in the Fifth Schedule of the Building Control Regulations (on Objectives and Performance Requirements for the Design and Construction of Buildings) requires **buildings and its occupants to be protected from the direct effects of lightning strike and the risk of lightning current being discharged through the building**. Currently, designs which are in accordance with Singapore Standard CP 33 – Code of Practice for Lightning Protection are deemed to have complied with the above Objectives and Performance Requirements.

3 With the launch of the new SS 555:2010 – Code of Practice for Protection against Lightning in November 2010, BCA has decided to adopt it to replace CP 33 as the deemed approved solution for compliance with the Regulations. **With effect from 1 July 2011, developments whose building plans are submitted on or after this date must comply with the relevant requirements in SS 555:2010.**

4 The new SS 555:2010 is aligned to the IEC 62305 International Standard on Protection against Lightning, and it comprises of the following four parts:

a) Part 1: General principles – This part provides guidelines for lightning protection of structures and their installations, their contents including persons within the structures and services connected to the structures.

b) Part 2: Risk Management – This part introduces evaluation procedures for assessing lightning risk for a structure or its services, and selection of lightning protection measures upon completion of risk assessment.

c) Part 3: Physical damage to structures and life hazard – This part provides requirements for the protection of a structure against physical damage by means of a lightning protection system. It also provides requirements for protection of living beings in the vicinity of the lightning protection system against injuries caused by touch or step voltages.

d) Part 4: Electrical and electronic systems within structures – This part provides guidelines on the design, installation, inspection, maintenance and testing of Lightning Electromagnetic Pulse (LEMP) protection systems for electrical and electronic services within a structure.

5 Specifically, BCA would like to draw industry's attention to the four classes (I, II, III and IV) of lightning protection system which are mentioned in Part 3 of the SS555:2010. For the purpose of complying with the Building Control Regulations, **a minimum level of Class III lightning protection system (equivalent to a rolling sphere radius of 45m under the rolling sphere method of determining air termination positions) must be provided.** For buildings with higher risks (e.g. storage of explosive or flammable contents), a higher level lightning protection must be provided accordingly.

Lightning Protection at Rooftop Garden

6 BCA has observed an increasing trend of developments with rooftop gardens for the enjoyment of the residents/public. Industry is reminded that such rooftop gardens must be provided with lightning protection system as well.

Clarification

7 We would appreciate it if you could convey the contents of this circular to the members of your organisation. For clarification, you may email to bca_enquiry@bca.gov.sg or call our hotline 6325 7159.

Yours faithfully

TEO ORH HAI
DEPUTY DIRECTOR
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