This Grounds of Decision is subject to final editorial corrections approved by this Strata Titles Board and/or redaction in compliance with prevailing government regulations/rules, for publication in LawNet and/or on the Strata Titles Boards' website.

BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT

BUILDING MAINTENANCE AND STRATA MANAGEMENT

(STRATA TITLES BOARDS) REGULATIONS 2005

STB No. 41 of 2023

In the matter of an application under Section(s) **101(c)**, **101(1)(a)** and **101(8)** of the Building Maintenance and Strata Management Act in respect of the development known as **GREENWICH V/THE GREENWICH** (MCST Plan No. **02-4391**)

Between

Liu Xiaoyu

... Applicant(s)

And

The Management Corporation Strata Title Plan No. 02-4391

... Respondent(s)

GROUNDS OF DECISION

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

STB No. 41 of 2023

In the matter of an application under Section(s) **101(c)**, **101(1)(a)** and **101(8)** of the Building Maintenance and Strata Management Act in respect of the development known as **GREENWICH V/THE GREENWICH** (MCST Plan No. **02-4391**)

Between

Liu Xiaoyu

... Applicant(s)

And

The Management Corporation Strata Title Plan No. 02-4391

... Respondent(s)

2 October 2023
17 November 2023

Coram: Mr. Raymond Lye (Deputy President)
Mr. Zahidi Abdul Rahman (Member)
Mr. Tony Tay Chye Teck (Member)

BACKGROUND FACTS

1. The Applicant is the Subsidiary Proprietor ("**SP**") of the unit at 3 Seletar Road, #XXX, Singapore 807012 ("**the Applicant**"). The Respondent is the Subsidiary Management Corporation Strata No. 2 – Title Plan No. 4391 of the development known as Greenwich V / The Greenwich ("**the Respondent**").

2. The Applicant took out an interlocutory application to amend her application before the hearing on 2 October 2023 to substitute the Main MCST with the Respondent. The Applicant previously filed this application against the Main MCST of the Greenwich V/The

Greenwich having mistaken the latter to be responsible for the subject matter of her complaint.

3. The Board allowed the Applicant's application despite the Respondent's objections as it was of the view that doing so would not cause any prejudice to the Respondent and the Main MCST. Both the Main MCST and the Respondent knew of the Applicant's complaints and had dealt with them substantively on previous occasions. This was reflected in the Respondent's Form 18A, where both the Main MCST and the Respondent dealt substantively with the Applicant's complaints, as well as the letter of authorisation for the Managing Agent's representative, which was signed off by the chairman of the Main MCST and the Respondent (being the same person) with the stamp of the Respondent affixed as well.

4. The present dispute revolves around the maintenance of some of the common properties of The Greenwich which are under the Respondent's purview and responsibility. The Applicant, who is self-represented, alleges that the Respondent is in breach of its statutory obligation under s 29(1)(b)(i) of the Building Maintenance and Strata Management Act 2004 ("**BMSMA"**) and is liable under the tort of nuisance.

5. The Applicant's key complaint pertains to the maintenance of the fountain pump system (**"Fountain Pump"**) near her unit. The Fountain Pump operates the water feature on both sides of the wall. Wall A (**"Wall A"**) faces away from the Applicant's unit and water flows down from the top of Wall A into a feature pool while Wall B diagonally faces the Applicant's unit and water flows down from the top of Wall B into the swimming pool (**"Wall B"**) used by the residents. The Fountain Pump is submerged under a grating in the feature pool below Wall A.[1] According to the Applicant, the Fountain Pump has been poorly maintained by the Respondent, resulting in a noise nuisance that caused psychological distress and injury to the Applicant and her parents, thereby interfering with their use and enjoyment of the unit.

6. Apart from the Respondent's maintenance of the Fountain Pump, the Applicant also submits that the Respondent has not satisfactorily addressed the water leakage issue affecting her master bedroom and the litter in the common area outside her unit. The Applicant therefore sought from the Board the following orders in her Form 8:

   i. *The Respondent is to switch off the noisy fountain pump system immediately and repair the pump system to reduce the noise emanating from the pump's operation. The Respondent is to install soundproofing devices outside the master bedroom toilet.*

   ii. *The Respondent is to increase the frequency of maintenance of the common properties, in particular, the fountain pump system and the issue of mould growth and litter in the common area outside of the Applicant's unit, including the swimming pool.*

   iii. *The Respondent is to address and rectify the water leakage issue in the Applicant's master bedroom.*

   iv. *The Respondent is to pay the Applicant damages arising from the Applicant's inconvenience, loss of quiet enjoyment of the unit, and the distress caused by the Respondent's breaches of its statutory duty under s 29(1)(b)(i).* [The Board notes that this claim was not made in the Applicant's Form 8 and was instead made for the first time in the Applicant's affidavit of evidence-in-chief.]

[1] Chua Zi Wei's AEIC, p 4 at [12] – [14] and p 30

THE APPLICANT'S CASE

7. The Applicant acquired her unit through a resale transaction on 31 May 2021.[2] The Applicant and her parents previously resided in an HDB flat in Yishun. A primary consideration behind the Applicant's decision to move to a condominium was to provide a "more peaceful environment for her retired elderly parents, ensuring their comfort and well-being".[3] This consideration eventually became the impetus behind the Applicant's decision to purchase her current unit located next to the swimming pool as the Applicant perceives the sound of water to have a calming effect.[4]

8. In July 2021, shortly after moving into the unit, the Applicant and her parents experienced noise disturbances in the master and common bedrooms. The Applicant raised this issue to the then-condominium manager, Mr. Gary. Mr. Gary then identified the noise to be emanating from Wall A. Between July 2021 – 2022, the MCST attempted to address the Applicant's concerns by changing and fixing the Fountain Pump.[5] It is important to note that the Applicant's primary complaint relates to the operation of the Fountain Pump for Wall A.[6]

9. Nonetheless, changing the Fountain Pump did not address the Applicant's noise complaint.[7] In October 2022, the MCST decided to shut down the Fountain Pump after receiving another complaint from the Applicant. The Fountain Pump was then deactivated up till April 2023, when the new condominium manager, Mr. Heng, informed the Applicant that the Fountain Pump had to be switched on to prevent mosquito breeding and algae growth in Walls A and B.[8]

10. On 28 April 2023, the contractor (**"Aquapool"**) engaged by the MCST to maintain the swimming pool and fountain pump proposed replacing the Fountain Pump with a 0.75/3ph pump and installing a rubber expansion to mitigate the noise disturbances.[9] Following this recommendation, the MCST informed the Applicant that they were in the process of obtaining a quotation from Aquapool for the replacement process.

11. During this period, the Applicant attempted to contact Mr. Heng via the phone and through emails but did not receive a reply.[10] This led to the Applicant approaching Ms. Rynn Chua Zi Wei ("**Ms Chua**"), an employee of Asia Properties & Assets Consultancy Pte Ltd, the Managing Agent appointed by the Respondent. Accordingly, Ms Chua agreed to only operate the Fountain Pump from 10 am to 7 pm daily.[11]

12. However, despite the agreement between the Applicant and Ms Chua, the MCST continued to operate the Fountain Pump outside the agreed hours. The Applicant subsequently appointed her expert, Alpha 1 Acoustics LLP, (**"A1"**) to conduct a noise survey in her unit.

---

[2] Applicant's AEIC, p 3
[3] Applicant's AEIC, p 3
[4] Transcript, p 57 row 1 to 4
[5] Applicant's AEIC, p 4
[6] Applicant's AEIC, p 2 at [4a]
[7] *Ibid*
[8] *Id*, at p 5
[9] *Ibid*
[10] *Ibid*
[11] *Ibid*

The survey results were benchmarked against the World Health Organisation – Guidelines for Community Noise in Specific Environments ("**WHO Guidelines**"). A1 concluded that the noise recorded in the Applicant unit exceeded the WHO Guidelines and hence caused disturbances to one's sleep.[12]

13. To conclude on the issue of noise emanating from the Fountain Pump, the Applicant argues that the Respondent should not be allowed to rely on the fact that the Applicant had purchased the unit with her 'eyes wide open' to defeat the Applicant's claim. This is as "coming to the nuisance" has been rejected by the UK Supreme Court in the seminal decision of *Lawrence and another v Fen Tigers Ltd and others* [2014] UKSC 13 as a valid defence to the tort of nuisance.[13]

14. The Applicant's second complaint pertains to the water leakage issue in her master bedroom. According to the Applicant, the Respondent failed to satisfactorily address and rectify this issue which has been ongoing for the past two years. The water leakage has resulted in damage to the walls, wooden floor, furniture, and curtains in the Applicant's master bedroom and poses a health risk to the Applicant and her parents.[14]

THE RESPONDENT'S CASE

15. The Respondent, to the best of its knowledge, did not receive any complaints over the Fountain Pump from the previous owners of the units, who had previously lived there for more than six years. In the Respondent's view, the absence of complaints suggests that the sound level of the Fountain Pump was acceptable to the previous owners of the unit and hence "cannot be that bad".[15]

16. Furthermore, the Applicant bought the unit with her eyes wide open. At the time of purchase, the Applicant knew of the presence of the Fountain Pump and water feature walls. It would now be unjust for the Board to make an order for the Fountain Pump and water feature walls to be turned off just because the Applicant is unhappy with the sound level.[16]

17. Contrary to what the Applicant is claiming, the Respondent did not replace the Fountain Pump on previous occasions. The Respondent also did not promise the Applicant that they will replace the Fountain Pump. Instead, Aquapool was consulted only for their opinion on a possible solution to address the Applicant's complaint.[17]

18. More importantly, the Respondent did not reach an agreement with the Applicant to reduce the operating hours of the Fountain Pump or to shut the Fountain Pump for 6 months from October 2022 to April 2023. Instead, it was the Respondent's own decision to postpone the start time of the Fountain Pump to 10 am after receiving the Applicant's complaint.[18]

19. The Respondent did not switch off the Fountain Pump from October 2022 to April 2023. Nonetheless, the Respondent acknowledged that there were days during this period when the Fountain Pump was switched off. This was done because the Applicant's mother had visited the Management Office and prevented the Managing Agent's staff from leaving

[12] A1 Acoustics' Noise Survey Report, p 30 of 39
[13] Applicant's closing submissions, p 19 at [18]
[14] Applicant's Form 8, p 5
[15] Chua Zi Wei's AEIC, p 5 at [19]
[16] Respondent's written submissions, p 16 at [26]
[17] Transcripts, at p 218 row 18 to p 223 row 24
[18] Transcripts, at p 224 row 8 to 24

unless they switched off the Fountain Pump. Under such circumstances, the staff had little to no choice but to accede to the Applicant's mother's demands.[19]

20. However, the Fountain Pump was switched off by the Managing Agent without the approval of the Management Committee ("MC"). The MC subsequently learned about these incidents and instructed the Managing Agent that they should not be turning off the Fountain Pump. Turning off the Fountain Pump would indicate that the Respondent placed the Applicant's interests before that of the entire estate.[20]

21. The Respondent further submits that the order sought by the Applicant to turn off the Fountain Pump immediately amounts to an application for a mandatory injunction.[21] The Respondent argues that the Applicant's case did not satisfy the test prescribed for a mandatory injunction.

22. Foremost, the test for a mandatory injunction requires a breach of a negative covenant or legal obligation. In the present case, the Applicant has not identified and alleged any breach of a negative covenant, obligation, or law at any point in the proceedings.[22]

23. Next, the Applicant's conduct makes it unjust for a mandatory injunction to be granted. This is given that the Applicant witnessed the operation of the Fountain Pump at Wall A multiple times before purchasing the unit and had found the sound level to be acceptable and even calming.[23] Moreover, the Applicant never identified any defect in the water pump or provided any evidence of any defect.[24]

24. In the alternative, the Respondent takes the view that any orders sought by the Applicant in relation to the operation and maintenance of the Fountain Pump is akin to requesting the Board to micromanage the day-to-day affairs of the Respondent. The Respondent submits that this Board has made it clear that it will not intervene in the day-to-day operations unless there is fraud.[25] In the present case, the Applicant failed to adduce any evidence of fraud that would warrant an intervention from the Board.[26]

25. Additionally, the Applicant failed to provide any evidence that the noise complained of emanated from the Fountain Pump.[27] There were also other noise sources in the vicinity of the Applicant's unit. These sources include vehicular noise, noise from the Greenwich V Shopping Centre's public announcement system, and noise from the ACMV located at the back of the Applicant's unit.[28]

26. Nonetheless, should the Board decide that the Fountain Pump is the sole source of the noise disturbance, both the overall sound level reported by the Respondent's noise expert, Axiom, and the vibration level reported by the Respondent's vibration expert, "MIT Technology" were acceptable when they were respectively benchmarked against the National Environmental Agency's Guideline on Boundary Noise Limits for ACMVs in Non-

[19] Transcripts, at p 224 row 8 to p 227 row 11
[20] Transcripts, at p 225 row 1 to 21
[21] Respondent's closing submissions at p 13 at [26]
[22] *Id*, p 14 at [29]
[23] *Id*, p16 at [33]
[24] *Ibid*
[25] *Id*, p 12 at [21]
[26] *Ibid*
[27] *Id*, p 17 at [37] – [38]
[28] *Id*, p 18 at [40]

Industrial Buildings (Residential Premises) (**"NEA ACMV Guideline"**) and the DIN-4150-2 permissible limit for residential properties.[29]

27. In respect of the issues of water leakage and cleanliness of the common property, the Respondent argues that the Applicant has not pursued them in her submissions and the Registrar's letter to both parties dated 22 August 2023 clarified that these issues are outside the scope of the arbitration hearing before the Board on 2 October 2023.[30]

28. Finally, the Respondent submits that the Board does not have the jurisdiction to make an order for damages since the application was taken out under S 101(1)(c) BMSMA, of which, S101(3) stipulates that the Board cannot award any damages with respect to the Respondent's failure to perform any duty.

ISSUES BEFORE THE BOARD

29. Having heard from both parties at the hearing on 2 October 2023, the Board is of the view that there are five issues – one preliminary and four substantive issues that arose from the parties' submissions.

    i. Whether the Board has the jurisdiction to award damages for a breach of statutory duty under s 29(1)(b)(i)?

    ii. Whether the Applicant has established her claim in breach of statutory duty/under the tort of nuisance against the Respondent with respect to the maintenance of the Fountain Pump?

    iii. Whether the Applicant has satisfied the requirements for a mandatory injunction to restrain the Respondent from operating the Fountain Pump?

    iv. Whether the Board should intervene in the Respondent's decision on the maintenance and cleanliness of common property, including frequency of maintenance of the of the Fountain Pump?

    v. Whether the Applicant has established her claim in breach of statutory duty against the Respondent with respect to the water leakage in her master bedroom?

WHETHER THE BOARD HAS THE JURISDICTION TO AWARD DAMAGES FOR A BREACH OF STATUTORY DUTY UNDER S 29(1)(b)(i) OF THE BMSMA

30. Aside from the fact that damages were not claimed by the Applicant in her Form 8, the Board agrees with the Respondent's submissions that it does not have the power to award damages for breach of statutory duty. This is given that an order made in respect to any breach of the Respondent's duty under s 29(1)(b) of the BMSMA to maintain common property was an order under s 101(1)(c) and fell within the exception enumerated in s 101(3) of the BMSMA (see *Management Corporation Strata Title Plan No 3602 v MacFadden, Declan Pearse* [2021] SGHC 260 at [11], [14] and [19]).

[29] *Id*, p 24 at [53]
[30] *Id*, p 2 at [4]

31. Having dispensed with this preliminary issue, the Board will now proceed to consider whether the Applicant has established her claim in breach of statutory duty/under the tort of nuisance against the Respondent with respect to the maintenance of the Fountain Pump.

WHETHER THE APPLICANT HAS ESTABLISHED HER CLAIM IN BREACH OF STATUTORY DUTY/UNDER THE TORT OF NUISANCE AGAINST THE RESPONDENT WITH RESPECT TO THE MAINTENANCE OF THE FOUNTAIN PUMP?

32. S29(1)(b)(i) of the BMSMA states as follows:

> *"**Duties and powers of management corporation in respect of property***
>
> *29.—(1) Except as otherwise provided in subsection (3), it is the duty of a management corporation —*
>
> > *(b) to properly maintain and keep in a state of good and serviceable repair (including, where reasonably necessary, renew or replace the whole or part thereof) —*
> >
> > *(i) the common property;"*

33. In *Management Corporation Strata Title Plan No 3602 v MacFadden, Declan Pearse* [2021] SGHC 260, the High Court held that the MCST's duty to maintain common property under s 29(1)(b) of the BMSMA did not create strict liability on the part of the MCST. Instead, the inquiry should be whether the MCST had acted reasonably in the discharge of its duty to maintain common property when it knows or reasonably knows of the problem complained of (at [38], [40] to [44]).

34. The Board is of the view that in deciding whether the Respondent had acted reasonably in maintaining the Fountain Pump, a useful starting point would be to ascertain the purpose of the Fountain Pump. In this case, the Fountain Pump's primary purpose is to operate Walls A and B decorating the façade and swimming pool of The Greenwich for the use and enjoyment of all the SPs.

35. However, this purpose must be balanced against the SPs' right to quiet enjoyment of their units. Put simply, the Fountain Pump must be maintained in a manner that ensures its operation does not amount to an actionable nuisance for any SP. It cannot be said that the Respondent had acted reasonably in carrying out its duty under S29(1)(b)(i) of the BMSMA if the noise from the Fountain Pump's operation amounted to an actionable nuisance and the Respondent, did nothing or took no reasonable measures to abate it. On the facts of the present case, the respective causes of action of breach of statutory duty and the tort of nuisance are intertwined, and the Board proposes to deal with them together.

36. To succeed in a claim of nuisance, the Applicant must establish the following elements:

1) The conditions of and/or activities of the Respondent interfered with the Applicant's use and enjoyment of the Applicant's Property;

2) The Respondent's interference was unreasonable;

3) The Applicant had possessory rights over the Applicant's Property;

4) The Applicant suffered damage.

See Gary Chan Kok Yew & Lee Pey Woan, *The Law of Torts in Singapore* (Academy Publishing, 2011) at para 10.035.

37. In the present case, the third element is not in dispute. The Board will therefore consider whether the Applicant has proved the first and second elements on a balance of probabilities, and if necessary, the fourth element thereafter.

38. As a preliminary point, the Board is aware that the Applicant has significantly altered her position in her Closing Submissions.

39. Firstly, after the close of the arbitration hearing, the Applicant completely dropped her claim and all references to mechanical noise emanating from the "machinery room" in her Closing Submissions. This 'machinery room" faces the Applicant's living room and bathrooms of both master and common bedrooms. The Board notes that it was clarified at the arbitration hearing that this "room' is actually a large void of the basement carpark of the adjacent commercial development, and the noise therefore emanated from the commercial activities there. The responsibility to maintain the carpark and commercial activities falls under a different sub-MCST, which is not a party to the present proceedings. A decision on whether to drop or proceed with a claim is entirely for the Applicant to make, and the Board will therefore proceed on this basis.[31]

40. Secondly, the Applicant's case for noise nuisance has from the onset till the end of the arbitration hearing been on absolute noise levels, and how the loudness exceeded certain noise guidelines. As a result, the evidence of the respective parties and their experts was focused solely on absolute noise levels. However, in her Closing Submissions, the Applicant sought to distinguish her complaint as one against a "*persistent, low-frequency mechanical hum*" rather than loudness, submitting for the first time that:

> "*The balcony, even exposed to louder noises, including the pool's water flow, is still preferable to the mechanical drone that is the heart of our complaint.* ***It is the nature, not the volume, of the sound that is at issue****."*[32]

41. This shift is significant as her Closing Submissions contradict her claim in her Form 8 that the noise purportedly caused by the Fountain Pump "has become *louder* and produces a *higher-pitched sound*".[33] (emphasis the Board's) The general rule is that parties are bound by their pleadings. Although the Board is allowed to depart from this rule, this can only be done under limited circumstances where no prejudice is caused to the Respondent which cannot be compensated by costs (see V Nithia v Buthmanaban s/o Vaithilingam [2015] SGCA 56 at [38] – [40]).

42. The present circumstances do not permit such an exception. As stated above, both parties had prepared their respective cases and evidence based on the volume and/or loudness of the noise complained of, and so did the respective experts. Moreover, no evidence was adduced by the Applicant at the hearing about the nature and/or frequency of the sound, and certainly not the Respondent who would have had absolutely no notice nor opportunity to respond with the conclusion of the arbitration hearing. Allowing the Applicant to change the essence of her

[31] Transcripts, at p 216 row 16 to p 221 row 11
[32] Applicant's closing submissions, p 10 at [11]
[33] Applicant's Form 8, p 4

case at this stage would be to allow a post-trial submission by ambush. Doing so significantly prejudices the Respondent in a manner that cannot be compensated by costs.

43. Thus, the Board will deal with the noise complaint as pleaded and on the evidence as adduced by both parties based on their respective positions at the arbitration hearing, with the focus on sound levels submitted by the parties to determine whether the Applicant has established the first two elements for a claim in nuisance. The Board will first refer to the noise survey reports prepared by A1 and Axiom, expert witnesses who were appointed by the Applicant and the Respondent respectively.

44. A1's noise survey was conducted from 9 am, 31st August 2023 to 3 pm, 4th September 2023.[34] The Applicant and her parents were not present for a large part of the noise survey. They had left the unit with their pets on 1st September 2023 and returned only on 4th September. It is also worth noting that no rainfall was reported by A1 throughout the noise survey.

45. To ensure the accuracy of the noise survey, A1 sought to model study conditions based on the usual practices of the Applicant. These practices include:

1. Shutting the windows and door of the common bedroom;
2. Leaving the door and casement windows of the common toilet open at 30 degrees when the toilet is not in use;
3. Leaving the Master Bedroom's sliding windows door open with a gap of 30 centimetres and door open; and
4. Leaving the Master Bedroom toilet door and casement windows open at 30 degrees when the toilet is not in use.

46. Sound levels were recorded from three different points in the Applicant's unit over 102 hours. These points have been reproduced below for reference.

Point	Location
1	Common Bedroom
2	Master Bedroom
3	Kitchen/Dining Area

47. On the other hand, Axiom's noise survey report was conducted from 28 to 29 July 2023. Sound levels were also recorded from the affected bedrooms in the Applicant's unit, with the Fountain Pump intentionally switched on and off during the noise survey.

Point	Location
1	Master Bedroom
2	Common Bedroom

48. The Board made the following observations on the Parties' noise survey report. Foremost, the average sound levels recorded over four days by A1 at Points 1 (common bedroom) and 2 (master bedroom) between 10 am to 9 pm, when the Fountain Pump was in operation, were within the ranges of 37.3 – 37.9 db(A) and 48.4 to 50.2 db(A) respectively.[35] Conversely, the sound levels recorded by Axiom at Points 2 (common bedroom) and 1 (master bedroom) when the Foutain Pump was switched on were within the ranges of 34.8 – 36.5 db(A) and 38.3 – 38.9 db(A) respectively.[36]

[34] A1 Acoustics' Noise Survey Report, p 30
[35] A1 Acoustics' Noise Survey Report, p 16 to p 24
[36] Axiom's Noise Monitoring Report, p B-1.

49. Without deciding on the applicability of the guidelines at this stage, the Board notes that the sound levels reported by both experts exceeded the limits prescribed by the WHO Guidelines relied on by A1 but fell within the NEA ACMV Guideline. However, this alone does not satisfy the Board that the sound levels were solely caused by the Fountain Pump.

50. This is since A1's noise survey report indicated that there were other noise sources apart from the Fountain Pump and Wall A. These noise sources include human and vehicular traffic, insects, the public announcement system, and the noise from the Greenwich V Shopping Mall next to the Applicant's unit.[37]

51. When cross-examined by the Respondent's counsel, the Applicant conceded that it was the noise from the Greenwich V carpark next to her unit that caused it to be noisier in her bedroom than her balcony which was next to the Fountain Pump.[38]

52. Thus, the Board is of the view that the Applicant's concession amounted to an acknowledgment that the noise complained of could have been caused by the noise emanating from the Greenwich V carpark and commercial activities through the louvres next to her unit and not necessarily by the Fountain Pump and/or Wall A.

53. Further, the Applicant's evidence that her father would sleep at the unit's balcony during the day to avoid the loud noise complained of further weakens her claim that such noise came from the Fountain Pump which was in operation at that time.[39] [It is important to note that the balcony is an open area situated closer to the Fountain Pump and Wall A than Point 2 where the Applicant's parents slept at night.][40]

54. As mentioned previously, the sound level at Point 2 [48.4 – 50.2 db(A)] in A1's report was recorded with both the bedroom windows and en-suite toilet windows opened. [In this case, if the noise indeed came from the Fountain Pump, the noise level at the balcony would be similar, if not higher than that of Point 2.] Again, when cross-examined by the Respondent's counsel on this contradiction, the Applicant conceded that she was unsure of what was causing the noise complained of.[41]

55. Finally, the audio recording adduced by the Applicant and played at the hearing is of little assistance to her claim. The Board was unable to appreciate how such a recording could be evidence that the noise came from the Fountain Pump. More importantly, the Applicant conceded to the Board that in her opinion, the recording only contained the sound of water, which was what attracted the Applicant to purchase the unit in the first place.[42]

56. For the reasons above, the Board finds that, on the balance of probabilities, the Applicant has failed to discharge her legal burden in proving the causal link between the noise complained of and the Fountain Pump. Nonetheless, for completeness, the Board will address the second element required of the Applicant's claim – whether the Respondent's interference was unreasonable.

57. In determining whether an interference was unreasonable, the Board is required to evaluate whether the Fountain Pump caused a substantial interference and whether the Applicant and

[37] A1 Acoustics' Noise Survey Report, p 9 to p 10
[38] Transcripts, at p 92 row 2 to p 96 row 25
[39] Transcripts, at p 125 r 18 to p 126 row 11
[40] Chua Zi Wei's AEIC, p 30 and Transcripts, at p 125 row 18 to p 126 row 4.
[41] Transcripts, at p 58, rows 14-20 and p 91 rows 18 to p 92 rows 8
[42] Transcripts, at p 57 rows 1-4 and p 250 rows 4-12

Respondent's use of the land is ordinary. The evaluation of the extent of interference is an objective inquiry and is measured by reference to the sensibilities of an ordinary person (see *Fearn and others v Board of Trustees of the Tate Gallery* [2023] 2 WLR 339 at [68] ("*Fearn*")).

58. However, the rule of "give and take, live and let live" means that even where the Fountain Pump substantially interferes with the Applicant's ordinary use and enjoyment of her unit, liability will not arise if the operation of the Fountain Pump is no more than the Respondent's ordinary use of the land (see *Pua Siew Yok* [2023] SGMC 59 at [22], applying the test for nuisance in *Fearn* at [21]).

59. As alluded to earlier (see [35] above), it cannot be said that the Respondent's use of the land is ordinary if the noise produced by the Fountain Pump is found to be objectively undesirable and the Respondent did nothing or took no reasonable measures to abate it.

60. In the present case, the Applicant bore the burden of proof in proving that the noise level complained of was objectively undesirable. Although the Applicant rightly pointed out that there are currently no guidelines or regulations by the NEA governing the noise limits for water pumps or features in residential areas, and that Singapore is a member of the WHO,[43] it did not naturally follow that the WHO Guidelines ought to apply in the absence of such guidelines from the NEA.

61. As observed by the High Court in *PP v Tan Cheng Yew* [2013] 1 SLR 1095 ("*Tan Cheng Yew*") (at [56]):

> *"It is trite law that Singapore follows a dualist position. In short, Singapore's international law obligations do not give rise to individual rights and obligations in the domestic context unless and until transposed into domestic law by legislation…"*

62. The High Court decision in *Tan Cheng Yew* has since been endorsed by the Court of Appeal in *Yong Vui Kong v PP* [2015] 2 SLR 1129 (at [29]). Accordingly, the Board cannot and should not decide on the applicability of the WHO Guidelines. It is for Parliament or the relevant authorities in Singapore to establish the law to apply in any given set of circumstances.

63. Although Mr. Lim Li Tzong, the Applicant's expert responsible for the A1 noise report, submitted that the WHO's Guidelines have been presented to the Community Dispute Resolution Tribunal (**"**CDRT**"**) in other community noise disputes in which he had represented parties in, Mr. Lim did not adduce cogent evidence that such guidelines had been accepted by the CDRT and/or forms part of Singapore law.[44]

64. The Respondent's expert was of the view and had also demonstrated to the Board that the WHO Guidelines relied on by the Applicant are impossible to achieve in Singapore. A brief sound recording taken by the Respondent's expert during the hearing indicated a recording of 44.7 dB(A).[45]

65. The recording was taken before the Board when the hearing room was silent. This suggests that the WHO Guidelines of no more than 30db(A) inside bedrooms may not be practicable in a highly urbanised city-state like Singapore. Additionally, the Board is cognisant that both

[43] Transcripts, at p 192 row 20 to p 193 row 15
[44] Applicant's closing submissions, p 56 at [5]
[45] Transcripts, at p 164, row 4 to p 165 row 10

the United Kingdom and the United States have prescribed urban sound guidelines with levels exceeding those prescribed by the WHO.[46]

66. On the other hand, the Board notes that the NEA is a creature of statute whose function under s 11 of the National Environmental Agency Act 2002 ("NEA Act") includes:

> ***"Functions and Duties of Agency***
>
> 11.—(1) Subject to the provisions of this Act, the functions and duties of the Agency are as follows:
>
> *(l)* ***to manage and regulate*** *environmental noise, and to monitor and assess ambient air and noise levels;*

67. In addition, s 12(a) of the NEA Act empowers the NEA to "prescribe and implement regulatory policies, strategies, measures, standards or any other requirements on any matter related to or connected with environmental health…that may be necessary for the performance of the functions of the Agency". Thus, the Board is of the view that it is for the NEA to prescribe the guidelines applicable for governing the noise limits for water pumps or features in residential areas.

68. Until NEA prescribes specific guidelines for noise levels within residential developments, the Board takes the view that the NEA's current Guideline on Boundary Noise Limits for ACMVs in Non-Industrial Buildings (Residential Premises) provides a useful starting point in guiding the inquiry on whether the noise levels in the Applicant's case were objectively undesirable.[47]

69. Hence, the Board is of the view that the Applicant has not shown on a balance of probabilities that the noise levels of the Fountain Pump were objectively undesirable in the circumstances of the present case. Given that the Applicant has failed to satisfy the Board that the noise complained of amounted to an actionable nuisance, this Board is not required to consider whether the Applicant suffered damage and her submissions on the Respondent's reliance on the "coming to the nuisance" defence. Therefore, the Board similarly finds that the Respondent has not breached its statutory duty under s 29(1)(b)(i) in relation to the Fountain Pump.

70. Finally, should the Applicant continue to perceive the Fountain Pump to be the cause of the noise disturbances, the Applicant may consider tabling a resolution at a general meeting under s 29(1)(d) of the BMSMA to relocate the Fountain Pump and/or install soundproofing devices around her unit.

WHETHER THE APPLICANT HAS SATISFIED THE REQUIREMENTS FOR A MANDATORY INJUNCTION TO RESTRAIN THE RESPONDENT FROM OPERATING THE FOUNTAIN PUMP?

71. The Board agrees with the Respondent that the order sought by the Applicant to turn off the Fountain Pump amounts to an application for a mandatory injunction under s 88(1) of the

[46] See EPA: Exposure Limits by the United States Environmental Protection Agency and Guidance On Sound Insulation and Noise Reduction For Buildings by the British Standards Institution

[47] National Environmental Agency's Guideline on Boundary Noise Limits for ACMVs in Non-Industrial Buildings (Residential Premises)

BMSMA. Such an application would engage the test for a mandatory injunction first introduced in the High Court's decision of *MCST Plan No. 1378 v Chen Ee Yueh Rachel* [1993] SGHC 283.

72. Applying the test for a grant of a mandatory injunction as reiterated most recently in *MCST Plan No. 4407 v Lin Meiyi Sophie* [2022] SGSTB 3, the Board finds that the Applicant has not met the requirements for a mandatory injunction.

> *"[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."*

73. As the Board has found that the Respondent is not in breach of its statutory duty nor tortious duty in relation to the Fountain Pump, the Applicant has not crossed the threshold to engage the other limbs of the test for a mandatory injunction. Thus, the order sought by the Applicant to switch off the Fountain Pump is accordingly dismissed.

WHETHER THE BOARD SHOULD INTERVENE IN THE RESPONDENT'S DECISION ON THE MAINTENANCE AND CLEANLINESS OF COMMON PROPERTY, INCLUDING ON THE FREQUENCY OF MAINTENANCE OF THE FOUNTAIN PUMP?

74. The Applicant alleges that the Respondent has not performed a satisfactory job in maintaining the cleanliness of the estate. In her Closing Submissions, the Applicant requested the Board to direct the Respondent to perform a thorough cleaning of the condominium's common properties, which include, *inter alia*:

1. The dusty and muddy pond enjoining Wall A;
2. The staircase of the swimming pool;
3. The corridor outside the Applicant's unit where timber strips were previously disposed; and
4. Removal of rubbish, renovation tools and debris from the flowerpots.[48]

75. The Board, having considered the evidence presented by the Applicant in this regard, notes that some of these complaints are dated and have since been rectified in the course of the Respondents maintenance of common property. In addition, having heard from the Applicant and the Respondent's witness, Ms. Chua, on this point at the hearing, the Board is not satisfied that, on a balance of probabilities, the Respondent acted unreasonably in the discharge of its duties to maintain the common properties in a state of good and serviceable repair.

76. The Applicant also wants the Respondent to service the swimming pool and feature wall pond (where the Fountain Pump is located) three times per week. The Board notes that the Respondent already has an ongoing maintenance contract with Aquapool to service the swimming pool three times a week and to check the water feature pumps monthly, reporting

[48] Applicant's closing submissions, p 39 at [46]

any faults. It would be prudent for the Respondent to supervise the maintenance process to ensure that the contractor satisfactorily performs its contractual obligations.

77. In any event, the Board agrees with the Respondent's submissions that the Applicant's request for the Board to intervene and direct the maintenance of the common properties, including the frequency of the maintenance of the Fountain Pump amounted to micromanaging the day-to-day operations of the Respondent. In *Re Pasir Panjang Road (Strata Titles Plan No .983)* [1991] SGSTB 5 ("*Re Pasir Panjang*"), this Board held that (at [E]):

> "*the selection and employment of managing agents are matters primarily for the decision of a management corporation and that in the absence of fraud the board should not interfere in such decisions*."

78. The decision in *Re Pasir Panjang* was most recently affirmed by the High Court in the case of *Cheung Phei Chiet v Jujun Tanu and another matter* [2023] SGHC 51 (at [164] and [165]), which reiterated that it is undesirable for the Court to micromanage the day-to-day and operational matters of the MCST. *Cheung's* case is binding on the Board and the principle applies equally to the present case.

79. In the present case, the Applicant has not identified any incident of fraud that warrants an intervention from the Board. Therefore, the Applicant's request for the Board to dictate the maintenance and cleaning of common property on the part of the Respondent, including the frequency of the Fountain Pump, is thereby dismissed.

WHETHER THE APPLICANT HAS ESTABLISHED HER CLAIM IN BREACH OF STATUTORY DUTY AGAINST THE RESPONDENT WITH RESPECT TO THE WATER LEAKAGE IN HER MASTER BEDROOM?

80. The Board finds that the Respondent has not acted unreasonably in respect of the water leakage issue in the Applicant's master bedroom. Thus, the Respondent did not breach its statutory duty under s 29(1)(b)(i) of the BMSMA. This was based on two findings by the Board.

81. Firstly, the Board notes that it is not the Applicant's case that the leakage has not been rectified. In her Closing Submissions, she does not allege that the leaks are continuing, and she referred to what she wanted the Respondent to do in the event of "future water leakage issues".[49] The Applicant herself had also acknowledged that the Respondent's contractor had "patched up" the leaks.[50] However, the Applicant's main complaint was premised on the method adopted by the Respondent's contractor in addressing the issue of water leakage.[51]

82. Upon the Applicant's cross-examination, Ms. Chua acknowledged that the Applicant's complaint on the water leakage issue is not an isolated case and that at least eight other SPs have complained about this problem. The Respondent had sought to address the Applicant's issue by prioritising the Applicant's complaints over other SPs whose units

[49] Applicant's closing submissions, p 39 at [48]
[50] Transcripts, at p 238, rows 14 to 16
[51] *Id*, rows 17 to 21

were affected.[52] The Applicant has also confirmed that the timber strips, which became decayed due to the water leakage in her unit have already been replaced by the Respondent.[53]

83. Next, to further address the water leakage complaints, the Respondent attempted to table a resolution at the annual general meeting to adopt a better material to be used in the waterproofing works. However, this resolution was defeated as it did not gain the requisite support from the other SPs of The Greenwich.[54]

84. The Applicant's request to adopt a different method/material of waterproofing would bring its case under s 29(1)(d)(i). Accordingly, this request would have to be approved by at least 75% of the share value of all the valid votes cast by the SPs present at the general meeting.

85. Under such circumstances, the Respondent cannot be said to have acted unreasonably. Thus, the Respondent is not in breach of its statutory duty under s 29(1)(b)(i) of the BMSMA with respect to the water leakage issue. The Applicant's claim on the water leakage issue is accordingly dismissed.

CONCLUSION

86. The Board orders as follows:

    i. That the Applicant's claims are dismissed in full; and
    ii. The Applicant to pay the Respondent costs and disbursements in the sum of $14,000.00 all in, as well as full costs of transcript services.

87. Tolerance levels for noise are subjective and varies from person to person; what may be acceptable to some may be intolerable to others. but it behoves the Board to decide such issues from a principled and ultimately objective basis. This is especially so where noise permeates a highly urbanised and densely populated country like Singapore The Board sympathises with the Applicant's case and do note her concerns over perceived noise levels affecting her and her family (eg, the medical memoranda for the Applicant and her mother) and do hope for an amicable outcome for them in the end.

88. The Board wishes to thank the Applicant and Counsel for the Respondent for their assistance in helping the Board come to its decision. Lastly, the Board would like to acknowledge and thank the young amicus curiae, Phua Zai Liang, for his research, insight, patience and attention to detail. He has been of great assistance to the Board.

Dated this 17th November 2023

[52] Transcripts, at p 239 rows 7 to 20
[53] Transcripts, at p 201 rows 14 to 16
[54] *Ibid* and Respondent's Form 18A, p 4 of 8

Mr. Raymond Lye
Deputy President

Mr. Zahidi Abdul Rahman
Member

Mr. Tony Tay Chye Teck
Member

The Applicant is self-represented.
Mr. Daniel Chen & Mr Drashy Trivedi (Lee & Lee) for the Respondent.
Mr. Phua Zai Liang as young amicus curiae.