

STRATA TITLES BOARD

STB 7 / 2006

SIAHAAN BETTY

... APPLICANT

AND

LIM BEE CHENG LAMMERS

... RESPONDENT

Counsel for Applicant – Mr William Poh
Assisted by Ms Jeannette Aruldos

Counsel for Respondent – Mr Ian De Vaz

GROUND OF DECISION

1. The Applicant in this case commenced an action against the Respondent in STB No 7 of 2006. In her application, she sought, inter alia, a declaration that the Respondent is liable to maintain his property in a proper state of repair so as to prevent rainwater escaping from his premises into hers. She also sought an order requiring that the Respondent carry out rectification works on her unit.
2. The facts leading to the Applicant filing STB No 7 of 2006 is as follows. In the Statement of Facts reflecting the grounds for seeking the order, the Applicant established that she is the subsidiary proprietor owner of unit #XXX Carlton Terrace at 55 Holland Road whilst the Respondent, the subsidiary proprietor of unit #XXX Carlton Terrace Holland Road.

3. The Applicant's first application for such a declaration was in STB6 of 2002. On 1 July 2002 parties appeared before that Board and after negotiations conducted by that Board, arrived at a settlement (the 1st Consent Order). The parties who were then represented by their counsel executed the 1st Consent Order, the terms of which include the Respondent agreeing to adopt the recommendations and remedial action as stipulated in the report by Dr. Lam Khee Poh.
4. The next event which took place, was on 14 October 2002 when the Applicant filed a Magistrate's complaint on 14 October 2002 in the Subordinate Courts pursuant to Section 113 of the Land Titles (Strata) Act for non-compliance of the 1st Consent Order. Parties appeared before a Magistrate who referred the matter for mediation. The mediator referred the matter to the Strata Titles Board for clarification of the 1st Consent Order. On 30 November 2002, the Board clarified and confirmed that it was the intention of parties that the water pending test be carried out.
5. Two years elapsed and parties again appeared before the Strata Titles Board and they obtained another consent order (2nd Consent Order) on 15 February 2003. The 2nd Consent Order essentially dealt with certain aspects of the rectifications to be carried out by the Respondent and the issue of costs.
6. It appeared that there were problems with parties complying with the 2nd Consent Order and they appeared before the Strata Titles Board once again on 29 November 2003. Parties then obtained another consent order (the 3rd Consent Order).
7. On 3 June 2005, the Applicant commenced an enforcement action in the Subordinate Courts in Originating Summons No 202 of 2005

under Section 120(1) of the Building Maintenance & Strata Management Act. After hearing the parties, the District Judge directed that the matter be referred to the Strata Titles Board for clarification on the rectification works that were to be carried out so as to facilitate the enforcement of the same by the District Court.

8. When parties appeared before the Strata Titles Board, the Strata Titles Board took the view that they were res judicata. On 12 November 2005, through the mediation of the Board, parties through their solicitors reached an agreement ("Clarifying Agreement"), signed/indorsed by their respective counsel, which in effect clarified the order which the District Judge had directed.
9. However after the Clarifying Agreement, it appeared to the Applicant that the Respondent failed to comply with the terms of the settlement and her problems remained unsolved to her satisfaction.
10. Having obtained the Clarification Agreement, the Applicant commenced this action against the Respondent in STB 7 of 2006 on 21 January 2006. She did not refer back to the District Judge who requested for the clarification for the enforcement of the judgment by the District Court.
11. In her application, the Applicant based her claim on the premise that the Respondent failed to carry out the agreed rectification as agreed.
12. The Respondent's position is that parties reached various settlement agreements and that it was for the Applicant to enforce the agreement and not to litigate the same matter again before this Board. The Respondent also contended that the Board should only hear disputes that are within its jurisdiction and it has no jurisdiction to enforce

settlement agreements arising out of alleged breach of the settlement agreement.

13. It is clear that parties reached various agreements as evidenced by the 3 Consent Orders and the Clarifying Agreement which were all drafted and settled by their own solicitors which were endorsed by the Board as to how their dispute was to be resolved. This Board accepts the Respondent's submission that having reached a compromise or having settled the matter- and this through their respective solicitors – parties must enforce their rights based on the settlement agreement. This Board accepts the submission of the Respondent's counsel that it is trite law that once a dispute has been compromise or settled, the said dispute is subsumed under the settlement agreement and as a matter of law, the settlement agreement shall govern their respective rights in so far as it concerns matters which were covered by the settlement agreement. The Board was mindful that the case before it concerned the same issue that was first brought before the Strata Titles Board in 2002 and was not a new matter which the Board had not heard before. Neither was the dispute a matter which was outside the ambit of the 3 Consent Orders or the Clarifying Agreement.
14. This Board was of the view that it did not have the jurisdiction to hear the same dispute which originated in 2002 and where parties had reached a settlement agreement.
15. Parties had differences over the interpretation of their 3 Consent Orders or the Clarifying Agreement and it was clear to this Board that there were various allegations of breaches or non-compliance. The proper course was for the parties to sue on the settlement agreement or alternatively to enforce the Consent Order in the Subordinate Courts.

16. The Board also considered that the Applicant had in fact commenced an action in OS 202 of 2005. After several hearings in the Subordinate Courts, the District Judge referred parties to the Strata Titles Board. The Applicant's counsel in the submission stated that the purpose was to record the final orders with "sufficient specificity as to the responsibilities of each party in respect of the rectification works to be carried out, so as to facilitate enforcement by the District Court". The Applicant submitted that when they appeared before that Board they refused to clarify the order as it was functus officio but nevertheless offered to mediate the matter resulting in the Clarifying Agreement being signed. It is our view that having arrived at a clarification sought by the District Judge, whether with or without the assistance of that Board, it was for the Applicant to revert back to the District Judge to enforce the judgment in OS 202 of 2005 or to sue on this agreement. Instead of doing so, the Applicant commenced another action on the same dispute before the Strata Titles Board, to adjudicate on a matter which parties had settled.
17. This Board is of the view that the matter raised in this hearing has been dealt with by an earlier Board and that parties agreed to settle the matter as evidenced by their 3 Consent Orders and the Clarifying Agreement. For the reasons stated above, this Board is compelled to dismiss this application. As parties did not address the issue of costs, the Board did not make an order as to costs.

Dated this 4th day of July 2006

ALFONSO ANG
Deputy President
Strata Titles Boards