

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

STB No. 80 of 2016

In the matter of an application under **Section 106** of the Building Maintenance and Strata Management Act in respect of the development known as **Leonie Towers** (MCST Plan No. 361)

Between

Yap Choo Moi

... Applicant

And

The MCST Plan No. 361

... Respondent

Coram: Mr. Remedios Francis G. (Deputy President)
Prof Teo Keang Sood (Member)
Mr. Chua Koon Hoe (Member)

Counsel: i) Ms. Valerie Ang
(Straits Law Practice LLC) for the Applicant
ii) Ms. Teh Ee-von
(Infinitus Law Corporation) for the Respondent

FOUNDATIONS OF DECISION

1. This is an application under s 106 of the Building Maintenance and Strata Management Act (Cap. 30C) ("the Act") by a subsidiary proprietor for an order to invalidate a by-law that empowered the management corporation to remove the central cooling towers that serviced the air-conditioning systems in the estate.

BACKGROUND:

2. Leonie Towers comprises 92 units in two tower blocks of 25-storeys each. There is a central air-con system in the estate and each tower is serviced by two central cooling towers. The central air-con system is approximately 35 years old. According to ASHRAE Applications Handbook, the estimated service life for a cooling tower is 20 years, *i.e.* the towers in the estate have outlived the estimated service life.
3. PCA Consulting Engineers were engaged by the management corporation of the estate – MCST Plan No. 361 (the Respondent) to study and report on the system in October 2015.
 - i) There was corrosion of the steel piping and related components that was continuous and unstoppable – costs for replacing them was expensive;
 - ii) Water quality was poor (cloudy) – there was likelihood of Legionella (Legionnaires' disease); and
 - iii) The system was operating at below average level (because 60% of the residents were using their own air-con units).
4. At an Extraordinary General Meeting on 22/09/16, the following resolution was tabled for consideration:

To consider and if deemed fit, to pass with or without amendments the following Additional By-Law by way of special resolution pursuant to S.32 (3) of the Building Maintenance and Strata Management Act: That the two central cooling towers, and its related fixtures and fittings, be permanently removed after 6 months of the date of the passing of this Additional By-Law.

(the Additional By-Law)
5. The general body was presented with the following information:
 - a) estimated yearly costs for maintaining and repairing the cooling towers was \$4,624 pm, *i.e.* \$55,488 pa;
 - b) costs for carrying out major repairs estimated at \$520,000;
 - c) costs for installing a new central air-con system, \$750,000; and

- d) to remove and discontinue the system, \$85,000.
6. 82% of the subsidiary proprietors who were at the meeting voted in favour of the resolution.
7. Mdm Yap Choo Moi (the Applicant) is a subsidiary proprietor in the estate and is the owner of #03-28. She has applied for the following orders:
- i. *An order to invalidate a purported by-law to empower the MCST to remove the common air-con cooling towers.*
 - ii. *An order to defer any action to remove the cooling towers until 6 months after the Board has made its judgment.*
8. She wants the Board to invalidate the Additional By-Law and in the event that the by-law is not invalidated by the Board, the MCST is not to do anything until 6 months after the decision of the Board.
9. It is her case that she relies on the cooling towers. She alleges that they are in good working order; the air-con systems in the various units depend on the cooling towers functioning; removal of the cooling towers will require the air-con systems to be scrapped. Whilst some units (not all) have installed systems that are independent of the cooling towers, removal of the cooling towers would require her to install a new system which she alleges will lower the quality of life.

APPLICANT'S SUBMISSIONS:

10. In support of her application, the Applicant referred to the powers and duties of a management corporation. Under s 24(3) of the Act, a management corporation *shall have the powers duties and functions conferred or imposed under this Act or by the by-laws...and shall have the control, management and administration of the common property comprised in the strata title plan.* The duties of a management corporation are set out in s 29 of the Act. Inter alia, with regard to common property, it has a duty to control, manage and administer common

property for the benefit of all subsidiary proprietors; properly maintain and keep common property in a state of good and serviceable repair (including where reasonably necessary renew or replace the whole or part thereof).

11. Under s 32(3) of the Act ...*a management corporation may, pursuant to a special resolution, make by-laws...for the purpose of controlling and managing the use or enjoyment of the parcel comprised in the strata title plan ...including all or any of the purposes spelt out in s 32(3) (a) to (i).*
12. It was submitted that the Additional by-law was made under s 32(3) of the Act and that the section only provided for the making of by-laws that performed a regulatory role and that it did not allow for the making of a by-law for disposing of common property.

RESPONDENT'S SUBMISSIONS:

13. It was the submission of the Respondent that the Additional By-law was within the powers of the management corporation to make and was within the ambit of administering common property. It was made in accordance with s 32 of the Act where there was a power for a management corporation to restrict the use of common property and such other matters as are appropriate to the type of strata scheme.
14. Under s 29(1) and (2) of the Act, a management corporation has a duty *to control, manage and administer the common property for the benefit of all subsidiary proprietors; install and provide additional facilities or make improvements to the common property for the benefit of the subsidiary proprietors* and the power *to do all things necessary for the performance of its duties and for the enforcement of the by-laws.* It was submitted that the Additional by-law was congruent with the Respondent's duties under the Act.
15. The Respondent could not dispute that there was no provision in the Act that specifically allowed for the removal of the cooling towers (or any other common

property). It was, however, submitted that there was no provision in the Act that prohibited the removal of common property.

16. With regard to s 29(1)(b) which provided that it shall be the duty of a management corporation 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) the common property...*”, it was submitted that the obligation to properly maintain and keep in a state of good and serviceable repair was not absolute and had to be *balanced with what was reasonably necessary, i.e.* there was no obligation to do so where it was not reasonably necessary. In the circumstances of this case, it was not reasonably necessary to maintain the cooling towers and keep them in a state of good and serviceable repair.
17. The case for the Respondent is that disposal/removal of an inefficient/outdated and expensive system equates to controlling and administering the common property and that the disposal/removal will improve the common property.
18. The Respondent also referred to s 23(1) of the Land Titles (Strata) Act (Cap. 158) (LTSA) and s 34(1) of the Act and submitted that the provisions were not applicable to this case.
19. Before it was amended by Acts 47/2004 and 42/2005, s 23(1) of the LTSA was as follows:

23(1) The subsidiary proprietors may, by unanimous resolution passed at a general meeting of the management corporation direct the management corporation to dispose of or transfer –

 - (a) any part of the common property, being a parcel of land or part thereof;*
 - (b) a part of any building; or*
 - (c) any immovable property affixed to the common property.*
20. Section 34(1) of the Act is as follows:

A management corporation may, subject to the approval of the relevant authority, and pursuant to a 90% resolution –

(a) execute on behalf of its subsidiary proprietors a transfer of any part of the common property (including a part of any building or any immovable property affixed to the common property) as provided in S 23 of the Land Titles (Strata) Act (Cap. 158); or

(b) execute on their behalf a lease of or rent part of such common property for a period which exceeds three years.

other than common property which is the subject of any lease accepted or acquired by the management corporation under subsection (3).

BOARD'S DECISION

21. The Board is of the view that the Respondent had valid concerns when the resolution for the Additional By-Law which enabled the respondent to *permanently remove, i.e.* dispose of common property, was tabled. This concern, however, does not by itself permit the making of the by-law. It had to be determined if the Respondent had the power under the Act to make the by-law.

22. A management corporation is a creature of statute and its powers are circumscribed by provisions in the Act. It is specifically provided in s 24 (3) of the Act that:

A management corporation constituted in respect of a strata title plan shall have the powers, duties and functions conferred or imposed on it by or under this Act, or by the by laws in respect of the parcel comprised in that strata title plan and subject to this Act shall have the control, management and administration of the common property comprised in the strata title plan.

23. It will be clear that a submission that a management corporation can do anything as long as there is no prohibition in the Act or the by-laws cannot be correct.

24. Section 29 of the Act sets out the duties and powers of a management corporation. Specifically, it is provided in s 29(1)(a), (b) and (d) that a management corporation is required to control, manage and administer the common property for the benefit of all subsidiary proprietors; 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); and to install, or provide additional facilities or make improvements to the common property when directed by a special resolution.
25. With regard to maintaining and keeping common property in a state of good and serviceable repair, the Board does not agree that there is a duty to do this only where it was reasonably necessary to do so. Section 29(1)(b) is as follows:
- Except as otherwise provided in subsection (3), it shall be the duty of a management corporation – (b) to properly maintain and keep in a state of good and serviceable repair (including, where reasonably necessary, renew or replace the whole or part thereof) – (i) the common property...*
26. The duty to maintain and keep common property in a state of good and serviceable repair is unconditional. There is also a duty to renew and replace common property, but this duty arises only where it is reasonably necessary to do so, *i.e.* there is no duty to replace or renew common property until it is reasonably necessary to do so.
27. By virtue of s 13(1) of the Land Titles (Strata) Act (Cap. 158), *common property is held by subsidiary proprietors as tenants in common in shares proportional to their respective share values.* Accordingly, common property is vested in the subsidiary proprietors and not in the management corporation.
28. Chan Sek Kiong J (as he then was) in *Poh Kiong Kok v MCST Plan No. 581* [1990] 1 SLR(R) 617 at [10] explained the nature of co-ownership of common property: - “... *at common law all co-proprietors have unity of possession and no proprietor can claim possession of a separate part of the property against his co-proprietor...*” .

29. In that case, the parking lots in the estate had been allocated on an exclusive and permanent basis resulting in a subsidiary proprietor being permanently deprived of the use and enjoyment of all the parking lots save that which had been allocated to him. The plaintiff, a subsidiary proprietor complained that he had been allocated an inferior parking lot and his request to be allowed to park at any available lot on a first come first served basis was ignored by the management council. He commenced an action seeking a declaration that a subsidiary proprietor could not be excluded from the use and enjoyment of any part of the common property.
30. It was the finding of the court that *at common law all co-proprietors have unity of possession and no proprietor can claim possession of a separate part of the property against his co-proprietor ...the management corporation has no power to prevent any proprietor from parking his car in any unoccupied parking lot by reserving it exclusively to some other person.*
31. There can be no dispute that the cooling towers in this case are common property as they come within the definition in s 2(1) of the Act. They are held by the Applicant as a tenant in common in shares proportional to her share values. They do not belong to the Respondent and they are necessary for the Applicant's use and enjoyment of her unit. The Respondent has by way of a special resolution made a by-law enabling the Respondent to deprive the Applicant of a piece of the common property by removing/disposing/discarding it.
32. Whilst there are provisions in s 29 of the Act for controlling, managing, administering common property and keeping common property in a state of good and serviceable repair, there is no provision in the Act that allows for the permanent removal/disposal/discarding of common property.
33. Section 33 of the Act provides for the conferring of exclusive use/privileges over common property, *i.e.* subsidiary proprietors can be deprived of the use of common property when exclusive use and enjoyment of such has been

conferred on another subsidiary proprietor in accordance with s 33. Accordingly, it can be noted that there is a provision in the Act that provides that subsidiary proprietors can be deprived of the use of common property. The section, however, does not provide for the removal/discarding of common property.

34. Section 34 of the Act permits a management corporation, subject to approval of a relevant authority and pursuant to a 90% resolution to execute a transfer of common property or lease or rent out common property for more than 3 years; for a lease of between 1 and 3 years by special resolution; and for a lease of less than 1 year, a management corporation can do this without need for any resolution.
35. It will be in order to note that s 34 is concerned with transfer of common property and leasing of common property. It is not concerned with disposal/discarding of common property other than by transfer and lease. The requirement of the requisite resolution ensures that any subsidiary proprietor whose rights to use and enjoyment of common property is affected by a transfer or lease will be notified and given an opportunity to discuss with other subsidiary proprietors.
36. When common property has been transferred or leased out, subsidiary proprietors will be deprived of the use and enjoyment of the property and it is noteworthy that a 90% resolution is required for common property to be transferred or leased out for more than three years. In this case, the Respondent is seeking to permanently deprive the Applicant of the use and enjoyment of common property by way of a special resolution.
37. The then s 23 (1) of the LTSA (Cap. 158) (see above) did provide for the disposal of common property. The section was deleted and substituted by the Building Maintenance and Strata Act 2004 (No. 47 of 2004 and Statutes (Miscellaneous Amendments) (No. 2) Act 2005 (No. 42 of 2005). There is currently no provision in the Act or the LTSA that allows for a *management corporation to dispose of* common property. It is noteworthy that even when this could be done, it could only be done by way of a unanimous resolution.

38. It is the finding of this Board that the management corporation did not have the power to make the Additional By-law in this case. It is hereby declared that it is invalid.

Dated this 3rd day of March 2017.

MR REMEDIOS FRANCIS G.
Deputy President

PROF TEO KEANG SOOD
Member

MR CHUA KOON HOE
Member