

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

STB No. 6 of 2018

In the matter of an application under **section 101(1)(c)**
and 114 of the Building Maintenance and Strata
Management Act in respect of the development known
as **INTERNATIONAL PLAZA** (MCST No. 461)

Between

The Management Corporation Strata Title Plan No.
461

... Applicant(s)

And

Lim Lay Peng (Junie)

... Respondent(s)

GROUNDS OF DECISION

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... Respondent(s)

21 August 2018

27 September 2018

Coram:	Mr Remedios F G	(Deputy President)
	Ms Vicki Loh	(Member)
	Mr Lim Peng Hong	(Member)

1. The applicant, the Management Corporation Strata Title Plan No 461 in the development known as International Plaza is applying for the following orders against the respondent, Ms Lim Lay Peng, the subsidiary proprietor of unit #49-07 in the development:

- (i) *The respondent allows the applicant and/or its agents, representatives, or contractors access to her unit at 10 Anson Road #49-07 International Plaza Singapore 079903 within 30 days from the date of the order to be made herein for the purposes of carrying out the following works pursuant to Section 29(1) and/or*

30 of the Building Maintenance and Strata Management Act (Cap 30C, 2008 Rev Ed):-

- a) Replacement of existing Condenser Water Supply/Condenser Water Return pipes and elbows with new galvanized steel pipes and elbows*
 - b) Removal of all abandoned pipes and conduits; and*
 - c) All incidental and necessary works to carry out the above works*
- (ii) *The respondent allows the applicant and/or its agents, representatives or contractors access to her unit at 10 Anson Road #49-07 as and when necessary for the purpose of conducting a visual inspection of the condition of the pipes referred to above.*
- (iii) *The respondents pays the applicants costs of this application; and*
- (iv) *Any further and other relief that the Strata Titles Boards deems fit*

BACKGROUND

2. The applicant is seeking to replace a section of the common condenser water pipes that is part of the central chilled water air-conditioning system. The pipes pass through the respondent's unit. A chiller plant at Level 36 provides chilled water to office units at levels 18 -35. The cooling tower is at level 50 and is directly above the respondent's unit. The supply/return condenser water pipes from the cooling tower to the chiller plant passes through the respondent's living room.
3. On 17 Mar 2013 a condenser pipe ruptured (due to wear and tear). Repairs were carried out. (According to the applicant the applicant was allowed entry only after the applicant, *inter alia* provided an undertaking to remove the pipes from the respondent's unit. The respondent denies that entry was granted only after the applicant had acceded to her demand for the pipes to be removed from her unit). On 05 April 2013 the applicant commissioned M/s 6 Sigma Pte Ltd to study the possible cause of failure of the pipes in the respondent's unit and to consider preventive measures and possible diversion alternatives. A recommendation was made for the pipes to be replaced and to extend the new pipe into the common corridor. Removal of the pipes from the respondent's unit and relocating them elsewhere was not feasible.
4. On 20 May 2013 the applicant discussed and obtained a quotation from M/s MSA Architects to examine the feasibility of diverting the condenser pipes out of the respondent's unit into the staircase adjacent to the unit. The study was aborted after the Singapore Civil Defence Force (SCDF) advised that services could not be located within the fire escape staircase.
5. On 13 June 2013 the applicant's then solicitors sent a Notice of Entry for Replacement Work to the respondent and informed her of its intention to access her unit for repair works on 29 June 2013. On 27 June 2013 the respondent was informed that the applicant would be proceeding to carry out the repair works without fail on the 29 June 2013 at 2.00 pm. She responded by sending an email stating that repair works was not necessary and informed the applicant that her solicitor would be writing to the applicant shortly.
6. The solicitors for the applicant and the respondent corresponded between July 2013 and Dec 2013 with regard to the applicant's request for entry. The respondent refused entry.

7. Following a meeting between the applicant and the respondent on 10 March 2017, a professional engineer from M/s Winstec Engineers and Associates (Winstec) was appointed to carry out an inspection of the condenser pipes.
8. In addition to the existing condenser pipes Winstec found abandoned pipes and abandoned pipes/conduit in the ceiling of the respondent's unit. The condenser water supply (CWS) pipe had been replaced previously and the condenser water return (CWR) pipe had been repaired and re-patched. Winstec's conclusion and recommendations after inspection were *inter alia* as follows:

...there is no leaking from the condenser water pipes in #49-07 at this point of time. However we would like to highlight that the pipes have been around for over 40 years. The pipe material may have weakened/corroded throughout the years. There is a high possibility that these pipes may start leaking soon.

In #49-07 we observed that water is leaking from the abandoned conduit pipes' joints...Furthermore the abandoned pipes/conduits above the false ceiling are also not in good condition and there are insufficient brackets supporting the abandoned pipes. These abandoned services may cause safety issues and even result in more severe water leakage overtime....

Thus we recommend...

Unit #49-07

- i. Replacement of the existing CWS/CWR pipes and elbows with new galvanised steel pipes and elbows*
 - ii. Removing all the abandoned pipes and conduits*
 - iii. After replacement works, visual inspections to be conducted annually on the CWS/CWR pipes' condition*
9. The application in this case was filed on 11 January 2018 and is for an order to enter the respondent's unit to carry out works recommended by Winstec on the basis that there is significant risk that the pipe *may rupture and cause substantial loss and damage to the applicant and the other subsidiary proprietors of the development. However as a result of the respondent's persistent refusal to grant the applicant access to unit #49-07 to carry out the replacement works, the applicant had no choice but to commence the present proceedings....*
10. In the respondent's submission (Form 18A) the respondent narrated the reasons for her refusal. Other than to set out that the respondent wanted the applicant to install new pipes in the common area (the respondent had previously engaged M/s Airelated Services Pte Ltd to submit a report in connection with diverting the pipes out of her unit into the common area and three options were proposed) rather than replace the pipes in her unit, that since 1991 there had been numerous incidents of water leakage and she had up to 2013 always granted the applicant access to carry out repairs and that after the repairs were carried out the applicant did not make good the damage that was caused, it will not be necessary to set out all that she narrated.

11. Following the filing of the application in this case parties appeared before the Board for mediation on 28 February 2018 and at the mediation it was agreed that the applicant would engage a professional engineer to conduct a feasibility study for the diversion of the water supply and condenser water pipes in the respondent's unit, out of her unit. The professional engineer appointed was Winstec and the conclusion was that it was feasible to shift the main condenser pipes out from the respondent's unit and divert them into the common areas. SCDF approval was required and approval was granted on 09 May 2018.
12. The estimated cost for relocating the pipes out of the respondent's unit into the common area is \$50,000 (\$45,900+\$4100). The estimated cost for replacing the pipes inside the respondent's unit is \$35,000 (\$30,500+\$4500) *i.e.* a difference of approximately \$15000. (ABOD annex 22).
13. The applicant has since decided to proceed with the application in this case because at an extraordinary general meeting on 07 Jul 2018 a resolution for the pipes to be diverted out of the respondent's unit was defeated.
14. When parties appeared for directions before the date for hearing was fixed, it was indicated to the applicant.

To detail the exact order that the applicant wants the Board to issue i.e. include provisions with regard to rectification of any damage caused; and compensation to the respondent during the period when the respondent is denied usage and access of the premises when work is being carried out...

The applicant has in the Written Submissions set out the order it is seeking. The order sought is the same as when the application was filed. While the applicant has in its written submissions informed that notice of at least 14 days will be given to the respondent prior to entry, the applicant has declined to set out in detail the exact duration for which access is required, and the scope and method of works that will be carried out thereto.

15. Accordingly, the applicant is seeking an order from the Board to enter into the respondent's premises to carry out repair and replacement works and to periodically enter the unit for purposes of inspection. There is no mention as to how much notice is to be given, no mention as to the number of entries required and no mention of the scope and duration of the works. There are no proposals regarding damages caused by the works to the unit and payment of any compensation to the respondent when she is unable to use her unit. The applicant's position is that *the respondent should not be compensated for any access.*

APPLICANT'S CASE

16. When the application was filed, it was set out in the application form that the orders were sought under sections 101(1)(c) and 114 of the Building Maintenance and Strata Management Act Cap 30C (the Act). In the written submissions the applicant has submitted that the orders can be made under sections 101(1)(a), 101(1)(c) and 114 of the Act. Under section 101(1)(a) it was submitted that the *state of the pipe constitute a defect* and the Board would have the *jurisdiction to make the orders* sought. Under section 101(1)(c) it was submitted that there was a dispute with respect to the applicant's duty under *section 29(1) of the Act which clearly extends to keeping the pipes in a state of good and*

serviceable repair. Under section 114 it was submitted that the Board could make the orders sought *under section 114 read together with section 30(2)(c) and/or section 30(5) of the Act.*

RESPONDENTS' CASE

17. The written submissions were in line with the submission in Form 18A.

BOARD'S DECISION

18. Under the three sections referred to by the applicant the Board would have a discretion whether or not to make orders applied for when the relevant conditions for the making of the orders have been met *i.e.* when the relevant conditions for the making of the orders have been met, the Board can decide if the order applied for should be granted or decide that it should not be granted if there are valid reasons for refusing

19. It will be appropriate that the Board should first consider section 114.

114.—(1) A Board may make an order requiring a subsidiary proprietor or an occupier of any lot or part of a lot to allow a management corporation or subsidiary management corporation, as the case may be, access to the lot or part of the lot for the purpose of carrying out any work referred to in section 30 or determining whether any such work needs to be carried out.

(2) This section shall not limit the power of any management corporation or subsidiary management corporation to enter a lot under section 31 without applying for an order under this section.

(3) An application under this section may be made only by a management corporation or subsidiary management corporation.

20. Under section 114 (1) of the Act a Board can make an order allowing for the management corporation to enter/access a subsidiary proprietor's lot in the circumstances spelt out in the section. The circumstances are

...for the purpose of carrying out work under section 30 or determining whether such work needs to be carried out

21. Section 114(2) informs that in addition to section 114(1) there is another section in the Act viz section 31 that provides for entry by a management corporation into a lot.

22. Accordingly, it can be noted that there are two sections in the Act that provides for a management corporation to enter a subsidiary proprietor's lot. Whilst an order for entry from the Board is required under section 114, there is no requirement for the management corporation to make an application to the Board for an order for entry when entry is sought pursuant to powers provided under section 31 of the Act.

23. Section 30 of the Act is as follows

30.—(1) *Where a notice has been served on the subsidiary proprietor of a lot by a public authority requiring that subsidiary proprietor to carry out any work on or in relation to that lot and the notice is not complied with, the management corporation may carry out the work.*

(2) *Where a subsidiary proprietor, mortgagee in possession, lessee or occupier of a lot fails or neglects to carry out any work —*

(a) *required to be carried out by him under a term or condition of a by-law referred to in section 33;*

(b) *necessary to remedy a breach of the duty imposed on him by section 63(a);*

(c) *to rectify any defect in any water pipe or sewer pipe within his lot or any cracks in the wall or floor within his lot; or*

(d) *necessary to rectify his contravention of section 37(1), the management corporation may carry out that work.*

(3) *Where the management corporation carries out any work on or in relation to a lot or common property under subsection (1) or (2), it may recover the cost of so doing, as a debt —*

(a) *from the subsidiary proprietor, mortgagee in possession, lessee or occupier referred to in subsection (1) or (2); or*

(b) *where the work is carried out —*

(i) *under subsection (1) or (2)(b) or (c), from any person who, after the work is carried out, becomes the subsidiary proprietor of the lot on or in relation to which the work was carried out; or*

(ii) *under subsection (2)(a), from any person who, after the work is carried out, becomes the subsidiary proprietor of the lot in respect of which the by-law referred to in subsection (2)(a) was made.*

(4) *Where an order (including an interim order) made by any Board has not been complied with, the management corporation may carry out any work specified in the order and recover from the person against whom the order was made the cost of so doing as a debt in a court of competent jurisdiction.*

(5) *Where —*

(a) *any part of a building comprised in a lot contains any structural defect which affects or is likely to affect the support or shelter provided by that lot for another lot in that building or the common property; or*

(b) any defect occurs in any pipe, wire, cable or duct referred to in section 63(a)(ii) within a lot, and the defect is not due to any breach of the duty imposed on any person by section 63(a), the management corporation shall carry out such work as is necessary to rectify the defect and may recover the cost of such work from any person who has a duty to remedy the defect as a debt in any court of competent jurisdiction.

(6) Where —

(a) the management corporation incurs any expenditure or performs any repairs, works or acts that it is required or authorised by this Part or by any other written law to perform (whether or not the expenditure was incurred or the repairs, works or acts were performed consequent upon the service on it by the Government or any statutory authority of any notice or order); and

(b) the expenditure or the repairs, works or acts were rendered necessary by reason of any wilful or negligent act or omission on the part of, or breach of any provision of its bylaws by any person or his tenant, lessee, licensee or invitee, the amount of that expenditure expended by it in performing the repairs, works or acts shall be recoverable by it from that person as a debt in an action in any court of competent jurisdiction.

24. The section deals with various types of work described in subsections (1), (2) and (4) and (5) viz

Section 30(1) - work that a public authority requires a subsidiary proprietor to be carry out;

Section 30(2) – (a) work that a subsidiary proprietor is required to carry out under a term or condition of a by-law where exclusive use of common property or special privileges in respect of common property has been conferred; (b) work that a subsidiary proprietor is required to carry out in order to remedy a breach of a duty imposed by section 63(a) of the Act i.e. acts done by a subsidiary proprietor that has affected other subsidiary proprietors or common property; (c) work that a subsidiary proprietor is required to carry out in order to rectify any defect in any water pipe or sewer pipe within a subsidiary proprietor’s lot (d) work that a subsidiary proprietor is required to carry out to rectify a contravention of section 37 of the Act i.e. an improvement in the lot that has increased the floor area of the land;

Section 30(4) - work that a Board has ordered;

Section 30(5) - work necessary to rectify structural defects in a part of the building or defects in pipes, wires, cables or ducts referred to in section 63(a)(ii).

25. The applicant has applied for orders in connection with two (2) sets of pipes viz

a. Replacement of existing Condenser Water Supply/Condenser Water Return pipes and elbows with new galvanised steel pipes and elbows

b. Removal of all abandoned pipes and conduits; and

26. With regard to the *existing Condenser Water Supply/Condenser Water Return pipes and elbows* the work that the applicant is seeking to carry out is work that is referred to in section 30(5). It is not work that is referred to in sections 30(1), 30(2), or 30(4)
27. Under section 114 of the Act read with section 30(5) an order can be made in connection with the *existing Condenser Water Supply/Condenser Water Return pipes* if the Board is satisfied that the pipes are defective and replacement of the pipes is necessary.
28. The applicant is seeking for an order for entry to replace the pipes which were repaired in March 2013 and its current condition according to Winstec is

...there is no leaking from the condenser water pipes in #49-07 at this point of time. However we would like to highlight that the pipes have been around for over 40 years. The pipe material may have weakened/corroded throughout the years. There is a high possibility that these pipes may start leaking soon.

29. Whilst the pipes may have been around for over 40 years and the pipe material may have weakened/corroded and there is a high possibility that they may start leaking soon the Board is not satisfied that replacement of the pipes can qualify as works necessary to rectify any defect in any water pipe.
30. In *Re Himiko Court (Strata Titles Plan No 945) [1992] SGTB 3* the Board when deciding whether it had jurisdiction with regard to an application for an order in connection with noise emanating from the squash courts was a “defect” within the meaning of section 101 (then section 103) of the Act decided that it was not. At page 4/5 of the Grounds of Decision the Board said

In our opinion, the Respondent's case clearly falls within the first limb of Section 103.

The word "defects" is defined in Stroud's Judicial Dictionary to mean "the lack or absence of something essential to completeness".

The Concise Oxford Dictionary defines the word "defects" to mean "lack of something essential or required; imperfection".

In Barry v. Minturn (1913) AC at page 589 Lord Parker of Waddington said "..... In considering whether a party structure is defective, the proper course is, in my opinion, to consider how far it is effective for the purpose for which it is used or intended to be used and not to compare its various characteristics with those of an imaginary structure perfect for all purposes."

Thus, in order for the Respondent to succeed, the alleged excessive noise level must render the squash court facilities ineffective to be used for the purpose for which they were intended to (ie., to play squash).

31. The pipes in this case are not ineffective for the purpose for which they are used and the Board is not satisfied that they are defective.

32. Even if the pipes can be classified as defective, the Board has not been persuaded that replacement works are necessary as replacement is not the only option available to the applicant. Accordingly, an order cannot be made under section 114 read with section 30(5) of the Act.
33. Even though replacement of the pipes may not qualify as works necessary to rectify a defect the Board considered whether an order should be made on the basis that an order can be made under section 114 read with section 30(5) of the Act.
34. Whilst the applicant had at the hearing and in its written submissions informed that it was prepared to provide an undertaking that work would be carried out with minimal inconvenience to the respondent there is, in the order applied for no indication of the number of days and/or hours required for the work to be done. Within 30 days of an order being made the applicant can at any time of the day or night require access and respondent will have to open her door and remain in the premises for the entire period of the work or inspection. It is probable that damage would be caused to the respondent's unit when replacement works are being carried out and no proposals have been made in connection with rectification. In the event that the respondent will have to vacate the unit when work is being carried out, she will have to find alternative accommodation and/or find a place to pass the time at her own expense.
35. Other than the abandoned pipes in the respondent's unit the Board considered the fact that in this case works in connection with the pipes can be rectified without the need for entry and periodic inspection in the respondent's unit. Even though a motion to divert the pipes was defeated at a meeting of the applicant's, diversion into the common areas is an available option. The Board is also of the view that considering the need for general maintenance and repairs and accessibility in the event of an emergency it is preferable that fixtures and fittings including pipes that are not used exclusively for the enjoyment of a subsidiary proprietor's unit should not be located within the unit. [The Board notes that in the respondent's submissions, there was a major leakage in December 2005 where the applicant was not able to or otherwise did not access the respondent's unit for 2 days after a leak occurred].
36. When the application was filed it was on the basis that diversion was not a feasible option. In the course of mediation it was determined that diversion is a feasible option and the applicant is now submitting that it cannot proceed with this option because i) a 90% resolution is required under section 34 of the Act because it would amount to an abandonment of an easement resulting in a disposal of land; and ii) a special resolution is required under section 29(1)(d) because it would result in an improvement of the common property.
37. The Board is not satisfied and does not agree that sections 34 and 29(1)(d) are applicable. Diversion of pipes cannot amount to disposal of land. In any event, if the pipes were diverted there would be no actual, tangible loss to the subsidiary proprietors as they would continue to enjoy the use of the pipes albeit situated in a different location. The Board is also of the view that whilst the diversion of the pipes will facilitate maintenance and repairs it is not an improvement to common property that can only be carried out only after a special resolution has been passed. It can qualify as a renewal or replacement of a fixture

or fitting under section 29(1)(b)(ii) and (iii) of the Act which can be carried out without the need for a special resolution.

38. Even if a 90% resolution and a special resolution is required the Board is of the view that it is not obliged to grant the orders applied for just because the applicant is unable to secure the required resolutions.
39. Balancing the needs and concerns, including the property rights of the respondent and the applicant the Board considers that it will be appropriate that the order for entry for replacement of the pipes should not be made under section 114 read with section 30(5) of the Act.
40. It will be in order to note that the disapproval of the application by the Board will not prevent the applicant from entering into the respondent's unit pursuant to its powers under section 31 of the Act. In fact the applicant had previously attempted to exercise its powers under this section and brought a private summons against the respondent in the State Courts (Magistrates Courts Summons No 195 of 2014) for obstructing and otherwise hindering it in the exercise of its powers of entry. The respondent was acquitted when the court found that the applicant had failed to give notice in compliance with section 31(1)(d)(ii) of the Act.
41. The Board is also of the view that the orders applied for cannot be made under sections 101(1)(a) and 101(1)(c) of the Act. It is provided in section 101(7) of the Act that an *order in respect of any matter dealt with in any other section in this Part shall not be made under this section i.e* a Board cannot make an order under section 101 when the subject matter in connection with the order (in this case, an order requiring a subsidiary proprietor to allow the management corporation access into the subsidiary proprietors lot) is dealt with in another section (viz section 114) in Part VI of the Act.
42. Even if the orders sought could be made under sections 101(1)(a) or 101(1)(c) the Board would not make the orders. The reasons for not making the orders under section 114 of the Act would be applicable.
43. In addition to the application for entry to replace the existing condenser pipes the applicant has also applied for an order for entry to remove the abandoned pipes in the respondent's unit. These pipes were abandoned when the chilled water air-conditioning system serving the residential units were terminated sometime in 2006 i.e. the applicant did not after the termination remove the pipes from the respondent's unit. In view of the condition as described by Winstec, it will be in order to find that these pipes are defective and that if they are not removed the respondent may suffer damage and injury. Accordingly the Board is of the view that it is necessary that the pipes should be removed.
44. The respondent has not in her submissions set out any reason for refusing entry for the purpose of removal of the abandoned pipes and the Board is of the view that it will be appropriate that the following order be made in connection with the abandoned pipes.

The respondent allows the applicant and/or its agents, representatives, or contractors access to her unit at 10 Anson Road #49-07 International Plaza Singapore 079903 within

30 days from the date of the order to be made herein for the purposes of carrying out the following works

Removal of all abandoned pipes and conduits; and all incidental and necessary works to carry out the works

Unless there are valid reasons why the works cannot be completed in the course of one working day, only one entry is permitted.

The applicant shall be allowed entry only between the hours of 8.00am to 6.00pm and before entry give at least fourteen (14) days' notice of the date and time of entry

The applicant shall also before commencement of any work give a written undertaking that any damage caused will be repaired and the premises will be restored to its original condition after the works are completed

45. It will be appropriate that no order be made for costs.

Dated this 27th day of September 2018

MR REMEDIOS F G
Deputy President

MS VICKI LOH
Member

MR LIM PENG HONG
Member

Mr Justin Chia (M/s Eversheds Harry Elias) for the Applicant.
Junie Lim Lay Peng (in person).