

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

STB No. 54 of 2020

In the matter of an application under Sections 101 and 117(1) of the Building Maintenance and Strata Management Act in respect of the development known as **Skies Miltonia (MCST No. 4407)**

Between

- 1) **Lim Kee Liew @ Victor Lim**
- 2) **Lim Meiyi, Sophie**

... Applicants

And

**The Management Corporation Strata Title
Plan No. 4407**

... Respondent

GROUNDS OF DECISION

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15 March 2021 & 18 March 2021

23 April 2021

Coram: Mr. Alfonso Ang (President)
 Dr. Tan Teng Hooi (Member)
 Mdm. Monica Neo (Member)

Background

1. The 1st Applicant is a resident of Block 33, Unit #XXX, Singapore 768064 (the “Unit”) in the development known as Skies Miltonia (“Development”). The Unit is owned by the 2nd Applicant. The Unit is one of the penthouse units in the Development with their own private habitable roof terraces. The construction was completed and the Temporary Occupant Permit (TOP) for the Development was obtained sometime in 2016.
2. The Respondent is the management corporation of the Development.

3. On 16 August 2018, the Respondent received an email from the Senior Planner, Development Control Group of the Urban Redevelopment Authority (“**URA**”), Ms Lau Ching Yu, that:
 - (a) URA had received feedback that the Subsidiary Proprietor of the Applicants’ unit had enclosed the private roof terrace;
 - (b) The private roof terraces of Skies Miltonia were designed and approved as semi-outdoor spaces. Therefore, they should not be enclosed;
 - (c) While URA did allow screening to be installed at roof terraces to provide privacy and sun shading, the screening had to comply with certain performance criteria. Glass panels, windows, sliding doors would not meet the criteria and were therefore not permitted for the private roof terraces; and
 - (d) The Respondent could follow up with the appropriate actions under the Building Maintenance & Strata Management Act (“**BMSMA**”) to ensure that their private roof terrace complied with the screening requirements.
4. Four (4) subsidiary proprietors of Skies Miltonia filed an application with the Strata Title Boards (“**STB**”) in STB 75 of 2019 (“**STB 75/2019**”) against the 1st and 2nd Applicants seeking the following orders:
 - (a) That the 1st and 2nd Applicants carry out and complete, at their own costs, such works or alterations to the Applicants’ Unit to dismantle the unauthorized works within a reasonable time as determined by the Board constituted in STB 75/2019; and
 - (b) That the 1st and 2nd Applicants pay the costs of the application.
5. The 1st and 2nd Applicants resisted the application under STB 75/2019 by raising, *inter alia*, allegations of defects in the Lightning Protection System (“**LPS**”). They made references to a report dated February 2019 by Er. Dr. Lock Kai Sang of PQR Consultants (“**Dr Lock’s Report**”) prepared for the Respondent during the 1st Applicant’s chairmanship of the management council of the Development.

6. Dr. Lock in his report of February 2019 raised certain instances of nonunitcompliance with SS555:2010, a Code of Practice for protection against lightning. The Building and Construction Authority (“BCA”) had assessed Dr. Lock's report and agreed on four (4) instances where the LPS was non-compliant to Parts 1, 3 and 4 of SS555:2010. All other issues in the report were deemed compliant to the Code.
7. At the 1st mediation of STB 75/2019 on 8 October 2019, the 1st Applicant gave and executed an undertaking that he would remove the unauthorized works as soon as the rectification of the LPS was carried out and that he would do all he could to expedite the rectification of the LPS. On the basis of the undertaking, the four (4) subsidiary proprietors withdrew their application under STB 75/2019 on 25 November 2019.
8. The 1st and 2nd Applicants took out the present application under STB 54 of 2020. The gist of their case is that:
 - (a) The acceptance by the Respondent of the rectification works by the developer (*i.e.* TG Master Pte Ltd) and the Builder (*i.e.* Lian Beng Construction (1988) Pte Ltd) pertaining to the LPS of the private habitable roof terraces of all the penthouse units and common rooftops of Skies Miltonia was improper and invalid;
 - (b) The said rectification works were inadequate in ensuring that the LPS of the private habitable roof terraces of all penthouse units complied with the LPS Code of Practice SS555:2010, BCA's advisory notices and with the Building Control Act and Regulations.
9. It is the Applicants' case that they had constantly raised serious issues concerning defects to the LPS at the Development. Sometime in January 2018, the issues with the LPS were brought up with the developer and also with BCA. Rectifications were made to the LPS by the developer, who engaged a professional engineer, Er. Lee Wee Hing (“Er. Lee”), who eventually certified that the LPS installed on the Development complied with the LPS SS555:2010

Code of Practice. Another professional engineer, Er. Nyap Fat Ming (“**Er. Nyap**”), also similarly certified that the LPS installed on the Development complied with BCA’s requirements.

10. BCA accepted the certifications by the two professional engineers and wrote to the 1st Applicant on 7 June 2018 that “*the LPS of Skies Miltonia is deemed to have complied with the prevailing Code*” and also wrote to the developer on 19 June 2018 that “*the LPS in Skies Miltonia complies with the design requirements.... We consider the lightning protection system installed in your development compliant with the requirements in the Code*”.
11. Notwithstanding the two professional engineers’ certifications and BCA’s acceptance, the Applicants’ expert, Er. Pam Chee How (“**Er. Pam**”), gave evidence that there were still existing concerns regarding the adequacy of the LPS installed by the developer. The Applicants alleged that notwithstanding the certifications by the Respondents’ two professional engineers and the acceptance of certifications by BCA, there still exists safety risk at the roof top during lighting strikes and hence there was a building defect.

Orders Sought by the Applicants

12. The Applicants seek the following Orders from the Board:
 - (a) Pursuant to section 101 of the BMSMA
 - i. *An order that the acceptance by the Respondent of minor and inadequate rectification works proposed by the Developer (TG Master Pte Ltd)/the Builder (Lian Beng Construction [1988] Pte Ltd) to be carried out and which were carried out by the Developer and/or Builder on the seriously defective Lightning Protection Systems ("LPS") of the private habitable roof terraces of all the Penthouse Units and common rooftops of at [sic] Skies Miltonia was improper and invalid.*

- ii. *An order that the above rectification works proposed and carried out were inadequate in ensuring that the LPS of the private habitable roof terraces of all Penthouse Units complied with the LPS Code of Practices SS555:2010 ("Code"), complied with BCA's advisory notices and complied with the Building Control Acts and Regulation 2003 5th Schedule Section L37 and L38 on the safety objective and performance of a proper LPS ("Building Control Acts & Regulations"). As such the said acceptance of the rectifications works and LPS re-certification be set aside. The said penthouses are at Block 21, 23, 25, 27, 29, 31, 33 and 35.*
- iii. *An order that the Respondent engages a contractor registered with the Building and Construction Authority ("BCA") to carry out rectification works on the LPS of all the Penthouse Units to rectify the deficiencies and in accordance with the recommendations set out in the reports of Dr Lock Kai Sang dated 18 February 2019 and Er Pam Chee How dated 30 August 2020.*
- iv. *In the alternative, an order that the Respondent engages a third party independent Qualified Person ("QP") to be agreed upon between the Respondent, the Applicants and the majority of the individual penthouse owners, to prepare a report on and prescribe the rectification works to be carried out on the LPS of all the Penthouse Units, and that the Respondent engages a contractor registered with BCA to carry out the abovementioned rectification works according to what is recommended by the abovementioned QP's report.*
- v. *An order that the Respondent ensures that the LPS of all penthouses at Skies Miltonia be rectified such that they comply with the LPS SS555:2010 or SS555:2018 Code of Practices, BCA's LPS advisory notices the Building Control Acts and Regulations and remain free from all safety risks.*

- vi. *An order that after the rectification works are carried out, the same person who prepared the report (i.e., Dr Lock Kai Sang/Er Pam or the third party QP) review the rectification works and all the LPS of all Penthouse units and re-certify the LPS of all the Penthouse Units.*
 - vii. *An order that the abovementioned rectification works be carried out and completed within 3 to 6 months from the date of the order.*
 - viii. *An order that the Applicants' roof be retained, i.e., the undertaking of STB 75 of 2019 be set aside until the LPS is properly rectified and recertified as abovementioned.*
 - ix. *An order that should the rectification works still not be adequate as per the review of Dr Lock/Er Pam/the QP, the same person shall review the LPS of all Penthouse again and prescribe further rectification works to be done and the Respondent shall engage a BCA registered contractor to carry out the said further rectification works prescribed.*
- (b) Pursuant to section 117(1) of the BMSMA, an order that: “*the Respondent pay all the costs in connection with this Application, including but not limited to the costs of the engagement of the proper third-party independent QP/LPS Consultant and Building Surveyor (if any) by agreement to provide the abovementioned report, the cost of the rectification works to be carried out and the costs of the review the rectification and re-certification of the LPS, which must be capable of complying to the Code of Practices of SS555:2010/ SS555:2018, BCA's LPS safety advisory circulars or notices, and the proper objective and performance of LPS required under the Building Control Act and Regulations 2003 5th Schedule L37 & 38. The order for cost should include the costs incurred by the Applicants in discovering the deficiencies and non-compliance of the unsafe LPS including but not limited to the costs incurred by the Applicants in obtaining expert reports on the said deficiencies and non-compliances, the cost of engaging the third-party QP and/or Dr Lock/Er Pam to review the LPS again any rectification and re-certification should the Respondent continue to fail to rectify the LPS.*”

13. After the conclusion of the arbitration hearing, the Applicants, in their Applicants' Written Submissions dated 5 April 2021, informed the Board that it would not be proceeding with the Order under paragraph 12(a)(ii) above.

Issues before the Board

14. The three main issues before the Board are:

- (a) Whether the LPS SS555:2010 Code of Practice (“**2010 Code**”) or the SS555:2018 Code of Practice (“**2018 Code**”) applied to the rectification works to the LPS in the Development;
- (b) Whether the LPS of all penthouse units were defective and in breach of the applicable Code of Practice; and
- (c) Irrespective of the Code of Practice, whether the LPS was nevertheless unsafe and gave rise to safety risks to the users of the private habitable roof terraces of all the penthouse units.

The Applicants' Case

15. The Applicants' case was essentially for rectification works to be carried out on the LPS of all the eight (8) tall buildings with penthouse units at the Development and for the Applicants to keep their roof structure till such time the LPS of all the eight (8) tall buildings are properly rectified and re-certified - *i.e.* that the LPS was free from all safety risks, and complied with the Building Control Act, Building Control Regulations and relevant Codes of Practice, namely the 2018 Code or alternatively the 2010 Code.

16. It is the Applicants' case that the LPS of all penthouse units in the Development was seriously defective and not compliant with the Codes of Practice, which the Applicants had been raising concerns about since January 2018. The Applicants alleged that there was a lack of tall lightning rods providing overhead protection,

that the lightning conductor tape was placed on top of the parapet walls within reach of occupants standing on the upper roof terraces, and that the lightning conductor tape was painted over (which reduced its conductivity).¹

17. The First Applicant, Lim Kee Liew, maintained in his evidence that the LPS in the Development was unsafe and did not comply with the 2010 Code, the 2018 Code and the Building Control Regulations. As an example, he cited an incident when his son-in-law decided to go to the upper roof terrace to make some phone calls. Suddenly, there was a lightning strike at a distance and he was immobilized for a few seconds, as his feet got attracted to the upper roof terrace ground. He could not move and was badly traumatised.

The Applicants engaged Er. Dr. Lock Kai Sang to give assessment of the LPS at the Development. Although Dr. Lock's report was attached to the First Applicant's affidavit of evidence-in-chief, he was not called as a witness. The Applicants called Er. Pam to give evidence. Er. Pam prepared an assessment of the lightning risk at the Development and commented on the report made by Dr. Lock which he generally agreed with.

It is not disputed that the BCA issued a directive on 31 December 2010 covering the design, installation and maintenance of the LPS. On 31 October 2018, BCA issued a new standard for protection against lightning.

18. The Applicants further allege that the initial rectification of the LPS conducted by the Respondent was invalidly certified. Around December 2019 to March 2020, minor rectification works were conducted to fix the defects to the LPS, and to ensure that the LPS complied with the Code of Practice and the applicable regulations. However, these rectifications were, so the Applicants alleged, inadequate as the LPS still remained allegedly defective, unsafe and not in compliance with the Code of Practice and regulations.² The Applicants argued

¹ Applicants' Submissions dated 5 April 2021 at paragraph 5.

² Applicants' Submissions dated 5 April 2021 at paragraph 15.

that the professional engineers who signed the certifications of the abovementioned rectification works were not independent, and that no weight ought to be given to the certifications of the rectification works.³

19. It is the Applicants' case that the Respondent, the developer, the two professional engineers (*i.e.* Er. Lee and Er. Nyap) (hereinafter collectively referred to as the "PEs"), and BCA have all showed complete disregard for the safety of the residents and instead seemed to be more interested in saving time and money, taking short cuts and attempting to simply adhere to their own wrong interpretation of the Codes of Practice.

The Respondent's Case

20. It is the Respondent's case that the applicable Code of Practice was the 2010 Code, that the LPS complied with the 2010 Code and that BCA had also accepted the certifications and applications made by the Respondent's expert witnesses under the 2010 Code.⁴ The Respondent's case is that the 2018 Code did not apply to the Development at all.
21. The Respondent also accepted the method of rectification proposed by the developer as it was duly endorsed by the independent professional engineers and had been reviewed by BCA.⁵ The same rectification works had been certified by the independent professional engineers, and reviewed and accepted by BCA. Further, BCA had not raised any issues relating to rectifications works or that the LPS was defective and did not comply with the 2010 Code.
22. It is the Respondent's case that the present application was frivolous, vexatious, misconceived and lacking in substance.⁶

³ Applicants' Submissions dated 5 April 2021 at paragraph 47.

⁴ Respondent's Submissions dated 5 April 2021 at paragraph 7.

⁵ Respondent's Submissions dated 5 April 2021 at paragraph 11.

⁶ Respondent's Submissions dated 5 April 2021 at paragraph 12.

The Board's Findings

23. The Board finds that the code of practice applicable to the Development was the 2010 Code, and not the new 2018 Code. The 2010 Code does not cover open terraces whereas the 2018 Code, an enhanced version, covers open roof terraces. It is indisputable that the 2018 Code did not supersede the 2010 Code, and that, based on a circular dated 31 October 2018 from BCA, the new 2018 Code would apply only to developments whose building plans were submitted on or after 1 May 2019. In our present case, it is not in dispute that the building plans for the Development were submitted before 1 May 2019. Therefore, the previous 2010 Code would remain applicable to the Development and not the new 2018 Code. This is notwithstanding that the rectification works to the LPS of the Development were carried out after the new 2018 Code came into existence.
24. The Board also accepts the evidence of Er. Lee, a professional engineer who was independently engaged by the developer of the Development, who had verified and certified that the rectification works to the LPS, and the LPS itself, complied with the 2010 Code.
25. The Board does not accept the evidence of the Applicants' expert, Er. Pam. There is no reason for Er. Pam to adopt the more stringent requirement of 20 metres rolling spare radius in his analysis when the 2010 Code only required a more lenient standard of 45 metres. While Er. Pam had clarified in cross-examination that the higher level standard was recommended for buildings with higher risks of flammability such as storage of explosive or flammable contents, the Board does not accept Er. Pam's classification of the Development as one such building. The Development was a mere residential building, and not one for use as storage of flammable or explosive items.
26. The Board also finds no reason to doubt the appropriateness of the rectification works to the LPS as well as the safety of the LPS when the independent PEs had endorsed and BCA had not raised any issue with the same. Both PEs had, in their evidence-in-chief, stood by their certifications that were submitted to BCA. Indeed, as accepted and conceded by Er. Pam in cross-examination, BCA is the

authority and has the final say whether to accept the certifications. BCA's acceptance of the certifications is a decision that is best left to that competent authority.

27. The Board also finds that BCA had advised that the residents were to seek shelter during a thunderstorm or inclement weather and not to remain in open spaces - even with a LPS in place. If the Applicants wish to have more safety features, they could add such features after applying to the general body to do so (where necessary).

The Board's Decision

28. The Board dismisses all prayers in relation to matters concerning the LPS. The initial defects to the LPS on the upper roof terraces of the penthouse units had been rectified by the Respondent, certified by independent professional engineers who stood by their decisions, and were considered and accepted by BCA. The Applicants' submission that the Respondent, the professional engineers and BCA acted in disregard of the safety of residents so as to save time and money are attacks on their integrity and/or professionalism and without any basis whatsoever.
29. The Board also dismisses the prayer that the Applicants be allowed to retain the roof, *i.e.* that the undertaking given by the Applicants in STB 75/2019 is to be set aside until the LPS is properly rectified and recertified. It is not for this Board to set aside an undertaking made before a prior Board as this Board does not have such powers to do so. The Applicants, having given an undertaking which led to the withdrawal of STB 75/ 2019, should properly abide by their said undertaking, which is binding.
30. On the issue of costs and disbursements, the Board agrees with the Respondent's submissions as fair in the circumstances and so ordered costs of S\$7,000.00 payable by the Applicants to the Respondent inclusive of STB and transcription fees.

Dated this 23rd day of April 2021

Mr. Alfonso Ang
President

Dr. Tan Teng Hooi
Member

Mdm. Monica Neo
Member

Mr Joavan Christopher Pereira (M/s Arbiters Law Corporation) for the Applicants.

Mr Michael Eu Hai Meng (M/s United Legal Alliance LLC) for the Respondent.