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BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT

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

STB No. 105 of 2023

In the matter of an application under Section(s) **101(1)(c) and 114** of the Building Maintenance and Strata Management Act in respect of the development known as **Highland Centre (MCST Plan No. 2005)**

Between

The MCST Plan No. 2005

... Applicant

And

Tan Wei Loong and Chin Lei Tze

... Respondents

GROUNDS OF DECISION

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Between

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... Respondents

22 March 2023

20 June 2024

Coram:	Mr Oommen Mathew	(Deputy President)
	Mr Frankie Chia	(Member)
	Ms Jacqueline Chan	(Member)

INTRODUCTION

1. In this case, the Applicant seeks an order from the Board, pursuant to section 114 of the Building Maintenance and Strata Management Act (2004 ("BMSMA") requiring the Respondents to allow the Applicant access to the Respondents' unit to determine whether any work should be carried out in the Respondents' unit pursuant to section 30 of the BMSMA.

2. The Applicant is the management corporation of the development known as Highland Centre. The 1st and 2nd Respondents are the husband-and-wife subsidiary proprietors of 22 Yio Chu Kang Road #XXX Singapore 545535 ("the Unit") who purchased the Unit in April 2022.

3. The Applicant's witnesses were Kelvin Lee ("Kelvin") an employee of the managing agent for Highland Centre, Landsfield Property Management Pte Ltd and Yeo Boon Keng, a professional engineer and principal of BK Consulting Engineers Pte Ltd ("Yeo"). The 2 Respondents were the witnesses for the Respondents' case.

4. The Respondents applied for and obtained approval for renovation of the Unit in early August 2022. The Respondents state that hacking works to the Unit started on or around 11 August 2022. While the hacking works were progressing, on or around 26 August 2022, Kelvin asserted that he received a call from the Respondents because one of the water pipes in the Unit had burst. By the time he had reached the Unit, the leak had stopped according to Kelvin because the pipe had been bent. The Respondents dispute Kelvin's attendance on this date as this forms the main basis of the Applicant's observation as to why the Applicant requires access to determine if any work needs to be done in the Unit. Other than this, the Applicant only relies on Yeo's expert evidence report for observations on the exterior of the Unit.

5. Both parties were directed to file a common list of issues and a separate list for any issues that could not be agreed upon. The parties were unable to come to an agreement on any one common issue and filed their own lists. Having looked at the lists and posed questions to the parties, the Board was of the view that the central issue revolved around whether section 114 of the BMSMA was triggered such that the Board should make an order in terms of the application.

THE LAW

6. Section 114 of the BMSMA states as follows:-

"(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 mentioned in section 30 or determining whether any such work needs to be carried out.

(2) This section does 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."

7. Section 30 of the BMSMA states as follows:-

"(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 the subsidiary proprietor under a term or condition of a by-law mentioned in section 33 or under a notice under section 37(4A);

(b) necessary to remedy a breach of the duty imposed on the subsidiary proprietor, mortgagee in possession, lessee or occupier by section 63(a);

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

(d) necessary to rectify the subsidiary proprietor's contravention of section 37(1) or (3), 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 mentioned in subsection (2)(a) was made or the notice under section 37(4A) was given.

(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 mentioned 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 must 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 by-laws by any person or the person's tenant, lessee, licensee or invitee,

the amount of that expenditure expended by it in performing the repairs, works or acts is recoverable by it from that person as a debt in an action in any court of competent jurisdiction."

8. Section 31 of the BMSMA states as follows:-

"(1) For the purpose of carrying out –

(a) pursuant to section 30(1), (2), (4) or (5), any work;

(b) any work required to be carried out by a management corporation –
(i) by a notice served on it by a public authority; or
(ii) by an order (including an interim order) of a Board;

(c) any work mentioned in section 29(1)(b) or (d); or

(d) any work necessary to repair or renew any pipe, wire, cable or duct mentioned in section 63(a)(ii),

the management corporation may, by its agents, employees or contractors, enter upon any part of the parcel for the purpose of carrying out the work –

(e) in the case of an emergency – at any time; or

(f) in any other case – at any reasonable time on notice being given to any occupier of that part of the parcel.

(2) Any person who obstructs or hinders a management corporation in the exercise of any power under this section shall be guilty of an offence."

9. The Applicant, in its Opening Statement, had submitted that the standard of proof to be employed in deciding if the threshold in section 114 was met was akin to the court ordering pre action discovery as set out in Ord 11 Rule 11 of the Rules of Court 2021. The Respondents did not make clear in its written Opening Statement what level or standard of proof was to be met but in the opening remarks at the hearing (in response to the Board's queries), submitted that the standard of proof required was something between pre-action discovery and obtaining a Search (or Anton Piller) order. In the written Respondent's Closing Submissions ("RCS"), the Respondents refined this further by suggesting a revised form of threshold to be met based along the lines for granting a Search Order.

10. What is common ground is that both parties acknowledge that the section 114 of the BMSMA itself does not appear to offer any guide as to the threshold required to trigger the operation of section 114.

11. The Board does not find anything in the language of section 114 of the BMSMA to justify the usage of tests based on levels of proof for either pre-action discovery or search orders. As such, the Board is of the view that the rules of interpretation in interpreting such provisions should be borne in mind. The framework for statutory interpretation as set out in *Tan Cheng Bock* v *Attorney-General* [2017] 2 SLR 850 ("*Tan Cheng Bock*") is apposite :-

"54. We summarise the legal principles that are applicable in the present case as follows:

(a) The purposive approach to statutory interpretation, which is mandated by s9A of the [Interpretation Act], applies to the interpretation of provisions in the Constitution by virtue of Art 2(9) of the Constitution.

(b) The court must start ascertaining the possible interpretations of the provision of the Constitution, having regard not just to its text but also to its context within the Constitution as a whole.

(c) The court must then ascertain the legislative purpose or object of the specific provision and the part of the in which the provision is situated. The court then compares the possible interpretations of the provision against the purpose of the relevant part of the Constitution. The interpretation which furthers the purpose of the written text should be preferred to the interpretation which does not.

(i) It may be necessary to distinguish between the specific purpose of the Constitutional provision in question, and the general purpose of the part of the Constitution in which it is found. If the general purpose sheds no light on the object of a given specific provision, it may be necessary to examine the specific purpose separately.

(ii) The purpose should ordinarily be gleaned from the text itself. The court must first determine the ordinary meaning of the provision in its context, which might give sufficient indication of the objects and purposes of the written law, before evaluating whether consideration of extraneous material is necessary.

(iii) Consideration of extraneous material may only be had in three situations:

(A) If the ordinary meaning of the provision (taking into account its context in the written law and purpose of object underlying the written law) is clear, extraneous material can only be used to confirm the ordinary meaning but not to alter it.

(B) If the provision is ambiguous or obscure on its face, extraneous material can be used to ascertain the meaning of the provision.

(C) If the ordinary meaning of the provision (taking into account its context in the written law and the purpose or object underlying the written law) leads to a result that is manifestly absurd or unreasonable, extraneous material can be used to ascertain the meaning of the provision.

(iv) In deciding whether to consider extraneous material, and if so what weight to place on it, the court should have regard to the desirability of persons being able to rely on the ordinary meaning conveyed by the text of the provision (taking into account its context in the written law and the purpose or object underlying the written law); and the need to avoid prolonging legal or other proceedings without compensating advantage. The Court should also have regard to (A) whether the material is clear and unequivocal; (B) whether it discloses the mischief aimed at or the legislative intention underlying the statutory provision; and (C) whether it is directed to the very point of statutory interpretation in dispute."

ORDINARY MEANING

12. Section 114 of the BMSMA merely states that the Board is empowered to make an order requiring the subsidiary proprietor to allow access to the lot by the management corporation for specific purposes. Those purposes are to :-

(i) carry out any work as mentioned in section 30 of the BMSMA; or

(ii) determine if any such work (i.e. works as mentioned in Section 30 of the BMSMA) needs to be carried out.

13. It is not really disputed that the Applicants are making the current application for the latter purpose i.e. to determine if any such work as mentioned in section 30 of the BMSMA needs to be carried out. Applying the analysis in *Tan Cheng Bock*, the wording in section 114 is broad and no limitations or preconditions are placed before the Board can exercise its discretion save for the two purposes cited above at [13].

14. Section 114 is under Part 6 Division 2 of the BMSMA which prescribes the type of orders the Board can make, and this type of order being sought can only be applied for by the management corporation (See section 114(3) of the BMSMA). Hence, the reference back to section 30 of the BMSMA is important. The work that is outlined in section 30 of the BMSMA can **only** be done by the management corporation and falls within Part 5 Division 2 of the BMSMA which deals with the management corporation and duties and powers of the management corporation (section 29 of the BMSMA).

15. Section 29 of the BMSMA imposes a positive duty on a management corporation to, inter alia, maintain, manage and administer the common property for the benefit of all subsidiary proprietors. Section 30 of the BMSMA can broadly be divided into 3 separate situations where

the management corporation may enter any particular lot belonging to the subsidiary proprietor: -

(i) Section 30(1) of the BMSMA stipulates that the management corporation may carry out work mandated by a public authority on any particular subsidiary proprietor who has not carried out the work;

(ii) Section 30(2) of the BMSMA stipulates that the management corporation is to carry out (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 BMSMA 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;

(iii) Section 30(4) of the BMSMA permits the management corporation to carry out any work when the subsidiary proprietor has not complied with an order of the Board.

(iv) Section 30(5) of the BMSMA relates to 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) of the BMSMA.

16. Section 31 of the BMSMA permits the management corporation to enter the subsidiary proprietor's lot at any time in an emergency case or in any other situation, upon reasonable notice being given to the subsidiary proprietor, to carry out the works spelt out in section 30 or to do the maintenance work which relates to common property. Crucially, this section does not require the management corporation to obtain any court or STB order whatsoever before doing so.

17. In this regard, the Board is mindful that such an exercise of power by the management corporation may be draconian especially invading the privacy of the individual subsidiary proprietor. However, this wide-ranging power can be understood in the context of the scheme of the BMSMA. As the Minister for National Development Desmond Lee in the Second Reading of the Bill for the BMSM (Amendment) Bill 2017, said, "…. *the Act (i.e. the BMSMA) has been designed to empower MCs to manage their own affairs and make decisions relevant to their needs. Ultimately, it is about striking a balance between maintaining the flexibility that underpins self-governance, while having sufficient oversight and structure to prevent abuse of the system.* (Singapore Parliamentary Debates, Official Report (11 September 2017) Vol 94 at p.54 (Desmond Lee, Second Minister for National Development)).

18. The literal broad interpretation permitting relatively liberal access to the management corporation to carry out the works in sections 30 and 31 of the BMSMA can be read consistently with the

legislative intention to "*empower management corporations to manage their own affairs and make decisions relevant to their needs*".

19. Criticism may be levelled against such an interpretation as the subsidiary proprietors' interest also has to be taken into account. The Respondents have contended that *"… a man's home is his castle* …" thereby arguing that any order granting access into the subsidiary proprietor's unit is an intrusion of privacy and must be guarded against zealously. The Board is firmly of the view that while the "*the English man's home is his castle*" (*Semayne's case* (January 1, 1604) 5 Coke Rep.91), that concept has to be read in the context of modern Singapore, particularly in high rise strata title units built specifically to cater for a densely populated country. Indeed, it has been commented that this concept has been eroded statutorily and interpreted pragmatically and in the spirit of communitarism (See *Tang HW, The Legal Representation of the Singaporean Home and the Influence of the Common Law, (2017) 37 Hong Kong LJ 81*).

20. The Board also recognises that the Applicant's order being sought is **only** to determine if the works pursuant to section 30 of the BMSMA needs to be carried out. This is far less draconian than any order to carry out works in the Respondents' unit. (see Applicant's Closing Submissions, paragraph 1) This would be consistent with the intent that the management corporation should be empowered to manage, control and administer common property. If the Applicant can show that there is some concern over the areas within the Respondents' unit that may have impact or affect parts of the common property, the Applicant should be entitled to inspect the Unit.

PROVENENCE OF SECTION 114 OF BMSMA

21. While the provisions in Parts IV and VI of the Land Titles (Strata) Act (Cap 158) (Rev Ed 1999) ("LTSA") and the Building and Common Property (Maintenance and Management Act) 2000 were repealed when the BMSMA was enacted, none of those repealed provisions in Part VI of the LTSA (which deal with the powers of the Board) appear to have contained any provision empowering the STB to issue orders akin to what is found in section 114 of the BMSMA. The equivalent provision for section 30 of the BMSMA was found in section 45 of the LTSA but is immaterial for current purposes.

CASE LAW ON SIMILAR PROVISIONS

22. While there are no local authorities that directly address the applicable standard of proof in interpreting section 114 of the BMSMA (the Board being mindful of at least one other decision relating to section 114 of the BMSMA- *The Management Corporation Strata Title Plan No. 461 v Lim Lay Peng (Junie)* [2018] SGSTB 6) , the Board directed both parties to look at other jurisdictions to see if the Board could obtain some guidance. In this regard, the High Court in *Prem N Shamdasani* v *Management Corporation Strata Title Plan No 920* [2022] SGHC 280 at [45] stated that "…*it appears that in preparing the BMSMA, parliament had decided to look at more established strata management models in other countries, such as Canada and Australia, which have a longer history …". Therefore, it had "studied similar legislation in Australia and Canada"*

*in preparation of the act (*see Singapore Parliamentary Debates, Official Report (19 April 2004) Vol 77 act cols 2744-2745 (Mah Bow Tan, Minister for National Development).

23. In the RCS, no submissions were made on the legislative history on the sections of the BMSMA or the LTSA. The Applicant, on the other hand, referred to the provisions in sections 145 and 65 of the New South Wales Strata Schemes Management Act 1996 No. 138 (NSWA) which the Respondents point out has been repealed. In the Board's view, that cannot be a valid ground of criticism as the provenance of some of the BMSMA sections date back to provisions in the LTSA and could have been adopted (with modification) from the 1996 NSWA. Sections 145 and 65 of the 1996 NSWA which appeared to correspond with sections 114 and 30 of the BMSMA are set out below:-

"***145 Order for entry to lot***

(1) An Adjudicator may make an order requiring the occupier of a lot or part of a lot to allow access to the lot for any of the following purposes:

(a) to enable the owner's corporation to carry out any work referred to in section 65(1) or to determine whether such work needs to be carried out,

(b) to enable an inspection referred to in section 65C to be carried out.

(2) This section does not limit the power of an owner's corporation to enter a lot under section 65(3) without applying for an order under this section.

(3) An application for an order under this section may be made only by an owner's corporation."

"***65. Can an owner's corporation enter property in order to carry out work?***

(1) An owner's corporation may, by its agents, employees or contractors, enter on any part of the parcel for the purpose of carrying out the following work:

(a) work required to be carried out by the owner's corporation in accordance with this Act (including work relating to window safety devices),

(b) work required to be carried out by the owner's corporation by a notice corporation by a notice served on it by a public authority,

(c) work required to be carried out by the owner's corporation by an order under this Act.

(2) An owner's corporation may, by its agents, employees or contractors, enter on any part of the parcel for the purpose of determining whether any work is required to be carried out by the owner's corporation in accordance with this Act.

(3) In an emergency, the owner's corporation may enter any part of the parcel for those purposes at any time.

(4) In a case that is not an emergency, the owner's corporation, may enter any part of the parcel for those purposes with the consent of any occupier of that part of the parcel or, if the occupier does not consent, in accordance with an order of an Adjudicator under section 145.

(5) A person must not obstruct or hinder an owner's corporation in the exercise of its functions under this section.

Maximum penalty: 2 penalty units

(6) An owner's corporation is liable for any damage to a lot or any of its contents caused by or arising out of the carrying out of any work, or the exercise of a power of entry, referred to in this section unless the damage arose because the owner's corporation was obstructed or hindered."

24. The Board also noted that in the RCS, the Respondents have responded with reference to 2 separate cases, namely *Huan*g v *The Owners Strata Plan 7632 t/as The Owners Strata Plan 7632* [2022] NSWC 194, a case from the New South Wales Supreme Court ("NSWSC") and *Elena Bolland* v *York Condominium Corporation No. 201*, 2016 ONSC 2405, an Ontario Supreme Court decision. While the latter is a Canadian case which seems to touch on strata living, the Respondents did not provide any further guidance on the relevant strata title provisions dealing with the issue. The case itself made no reference to any detailed provisions or the precise wording and as such, the Board did not consider it relevant.

25. In contrast, the *Huang* case which dealt with section 124 of the Strata Schemes Management Act 2015 ("SSMA") shed some light on the interpretation of section 114 of the BMSMA. As the Court there commented at [30] on section 124 of the SSMA, "…*this provision gives the Tribunal a very wide jurisdiction relating to any dispute or complaint about the specified matters…*" Section 124 of the SSMA states:-

"*The Tribunal may, on application by an owner's corporation for a strata scheme, make an order requiring the occupier of a lot in the scheme to allow access to the lot for any of the following purposes:-*

(a) to enable the owner's corporation to carry out work referred to in section 118, 119, 120 or 122 or to determine whether such work needs to be carried out
(b) to enable an entry or inspection referred to in section 122 or 123 or Part II to be carried out.

(2) This section does not limit the power of an owner's corporation to enter a lot under this Division in an emergency without applying for an order…"

26. In *Huang*, the plaintiffs, who were the owners of the top floor of the block of units, had renovated their bathrooms. The renovation involved tiling and water proofing to the bathrooms which were not approved by the owners' corporation, as it allegedly involved common property. The management corporation successfully applied to the tribunal to remove unlawful common property works in their bathrooms. One of the orders made was for the owners to grant access to the management corporation to carry out the works in the units. A factual finding was made at the first instance tribunal that the owners had completely replaced the tiles on the walls and floor of their bathrooms and ensuite and replaced certain fittings in these rooms. These works were done without prior approval from the owners' corporation or through the procedures set out in the by-law.

27. In the NSWSC's words, *"…the facts before the Tribunal and the conclusions of fact of the Tribunal in each of the three decisions of the Tribunal are to the effect that the work performed by the Plaintiffs had caused damage and had not been completed. The determination of those facts is for the Tribunal and does not require the objective existence of the facts. It is sufficient if the Tribunal is satisfied of their existence, assuming the satisfaction is based on probative evidence and/or was reasonably open…".*

28. The discretion for the tribunal in New South Wales to make the order is a patently wide one and must necessarily be so if the owners corporation is to fulfil its functions set out in sections 118, 119, 120 and 122 of the NSW Act. The Board cannot see why, in principle, the powers given to the Board under the BMSMA is not similarly wide to facilitate the management corporation's functions and duties.

29. The only issue that remains is what level of proof is required. The Board need only be satisfied of the existence of the facts based on probative evidence or based on what can be reasonably interpreted.

30. The Board has also considered the Applicant's submission of taking guidance from section 145 and section 65 of the 1996 NSWSSMA which are similar to section 114 and 30 of the BMSMA respectively. While the Respondents have dismissed references to the sections in the 1996 NSWSSMA merely because they were repealed, they have offered no reason why that should be the case. The Board considers the provisions in the 1996 NSWSSMA also of persuasive value and has considered the 2 cases of *Owners Corporation SP 70294 v Merlo (Strata & Community Schemes)* [2005] NSWCTTT 283 ("*Merlo*") and *Owners Corporation v Trikeel PIL* [2003] NSWCTTT 21 ("*Trikeel*").

31. In the case of *Merlo*, the owner's corporation sought an order successfully to be granted access to the Respondent's lot to inspect the floors and walls of the lot after renovation which included the installation of a jacuzzi and change of flooring. Tellingly from the evidence submitted, while it was clear that the original floor coverings had been removed and replaced by polished concrete as well as the photograph of the jacuzzi, there was no indication of any damage done to the common property. The owner's corporation submitted that there may be damage to common property without providing any real evidence while the lot owner denied that there was any damage but without providing any evidence. Equally, the expert in the present case, Yeo, had testified that it was not visible from outside the lot if there was any damage. Similarly in *Merlo*, there was also no such visible evidence. Nevertheless, the Tribunal in *Merlo* ruled it was *"… reasonable to allow access to ascertain the situation…".*

32. The Board is of the view that the test adopted in *Merlo* is similar to the position adopted in *Huang* in that the Board only needs to be satisfied (based on probative evidence) of the existence of facts. The Board notes that the Respondents have also never provided proof that no damage has been done to any common property and on that basis, the low threshold for granting an order to allow access is met.

33. In *Trikeel*, the order to grant access was given on the basis that the owner's corporation required access to the lot in order to fulfil its obligations under the Act.

FACTUAL FINDING

34. The Applicant has based its application on the factual evidence of Kelvin, an employee of the managing agent. The evidence led by the Applicant was that Kelvin had gone to the Respondents' unit on 26 August 2022 to respond to the call that a pipe had burst in the Unit. The Respondents disputed that Kelvin had gone to the Unit for such an inspection. Kelvin said he walked around the unit for about 15-20 minutes and that the pipe had stopped leaking by the time he had reached there because it had been bent to stop the leak. Kelvin's evidence was that the majority of the internal walls in the unit were hacked but he readily conceded that he did not know which walls should or should not have been hacked. The Respondents dispute the fact that Kelvin even came to their unit and questioned his ability to recall what exactly he saw and the fact that he did not know which walls were to be hacked based on the renovation application.

35. Having heard both parties and had the benefit of observing the witnesses, the Board finds, as a fact, that Kelvin did indeed go to the Respondents' unit on or about 26 August 2022 to inspect it when the burst pipe complaint surfaced. Kelvin may have been sketchy on the details of this observations, but he did remember seeing most of the internal walls hacked. This, in the Board's view, is sufficient to constitute some probative evidence to form the basis for the request for access to the Unit, bearing in mind the low threshold that the Australian cases suggest is the level required for such an application. From the cases cited and the plain and purposive reading of section 114 of the BMSMA, it is not required of the Applicant to show if indeed any structural elements (constituting common property) have been hacked or damaged.

36. The Board has also taken into consideration the fact that the Respondents were required to give access to the Applicant after completion of the renovation works for an inspection to be made. No such inspection has been permitted even though the renovation works were supposed to have been completed by March 2023. That was part of the renovation application form submitted on 27 July 2022 (Form 9 dated 23 November 2023, Tab-3) and forms part of the house rules which read as follows:-

"Upon completion of works, the subsidiary proprietors / tenants or occupiers shall notify the Management Office for a joint site inspection to ensure that the site is in a satisfactory condition."

37. The Respondents' reason for refusing access, contrary to the agreement reached in applying for renovation, also disclosed that they did not have a *bona fide* reason. Rather, the 1st Respondent made it clear that he did not allow the Applicant to come in because of the "window issue." This was a matter brought up in the course of proceedings where the Applicant had taken issue with the window façade of the Respondents' unit but later did not pursue it any further. In the 1st Respondent's words, *"I would have allowed them if there's no other case. If the window case is settled*." (Notes of Evidence, p. 141, line 7 – p. 142, line 2).

38. In the circumstances, viewing the evidence as a whole, and having heard the witnesses from both the Applicant and the Respondents, the Board is satisfied that the evidence led by the Applicant is sufficient, with the low threshold required to trigger the operation of section 114 of the BMSMA and the Board is minded to grant the order sought. This is especially so as all the Applicant is seeking is only to inspect the Unit to assess if works needed to be carried out. In arriving at this decision, the Board has also taken on board the concerns of the Respondents to have their privacy rights respected and balancing the concerns of both parties, the Board believes the application is justified considering also that the Applicant is seeking to determine if any works need to be carried out. This surely must be in the interest of all the subsidiary proprietors.

ACQUIESCENCE

39. The Respondents have also asserted that the Applicant had acquiesced in the Respondents' renovation works and not raised any concerns about the hacking of the walls till November 2023, more than a year after the works had started.

40. Acquiescence is based upon the inaction of one party, where that party having a right stand by, seeing the other party infringe that right, in such a manner so as to induce that person committing that act, to believe that he has consented to that act. Delay alone is insufficient (*Salaya Kalairani (legal representative of the estate of Tey Siew Choon, deceased) and another* v *Appangam Govindhasamy (legal representative of the estate of T Govindasamy, deceased*) *and others and another appeal* [2023] SGHC(A) 40 at [66]).

41. There is no evidence of the Applicant merely standing by and thereby inducing the Respondents to do something that the Applicant has not consented. The Applicant did not even know the state of repairs after August 2022 as the unit was boarded up and closed shortly after Kelvin's inspection. In any event, the intervening period of 1 year does not qualify as a period long enough for this doctrine to operate. In the circumstances, the Board does not accept that the defence of acquiescence is made out on the facts.

42. As such, the Board will grant the order sought for but with safeguards and conditions.

Dated this 20th day of June 2024

MR OOMMEN MATHEW
Deputy President

MR FRANKIE CHIA
Member

MS JACQUELINE CHAN
Member

Daniel Chen & Drashy Trivedi (M/s Lee & Lee) for the Applicant
Mark Lee, Sarah Yeo & Amelia Tan (M/s WMH Law Corporation) for the Respondents
Isabelle Lim Yu Jie as young amicus curiae