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DEPUTY REGISTRAR
SIM MEI LING
02 OCTOBER 2025

IN THE STATE COURTS OF THE REPUBLIC OF SINGAPORE

[2025] SGDC 263

District Court Originating Claim No 1469 of 2024
Summons No. 98 of 2025

Between

Management Corporation
Strata Title Plan No. 4234

… *Claimant*

And

Simba Telecom Pte Ltd

… *Defendant*

JUDGMENT

[Civil Procedure] — [Jurisdiction] — [Submission]
[Civil Procedure] — [Stay of Proceedings]

[Civil Procedure] — [Striking out] — [Abuse of process and interest of justice]
[Courts and Jurisdiction] — [Jurisdiction] — [Ouster] – [Effect of the Telecommunications Act 1999 and Code of Practice for Info-Communication Facilities in Buildings]

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v
Simba Telecom Pte Ltd

[2025] SGDC 263

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Deputy Registrar Sim Mei Ling
15 September 2025

02 October 2025 Judgment reserved.

Deputy Registrar Sim Mei Ling:

Introduction

1 This is the defendant's application to strike out the entire claim; alternatively, for a stay of the suit pending the determination of various issues by the Info-communications Media Development Authority (the "IMDA").

The claim

2 The claimant is the management corporation for a development known as Centropod @ Changi, located at 80 Changi Road, Singapore 419715 (the "Development").

3 The defendant is a telecommunications company.

4 By an agreement entered sometime in or around October 2019 ("Agreement"), the claimant granted the defendant a license to install, test and maintain its telecommunication equipment (the "Equipment") on a space on the roof garden of the Development ("Space").

5 The Agreement was for a period of 3 years, though the parties could agree to extend the Agreement for such period as mutually agreed, and it would also be extended automatically for a further 3 years. Either party could also terminate the Agreement by giving prior notice of not less than 3 months to the other party. The defendant was obliged, on the "Vacate Date", to vacate the Space, remove the Equipment, repair any damage caused by the removal, and reinstate the Space.

6 The claimant said that on or around 1 September 2022, it issued a written notice of termination to the defendant, to inform it that the Agreement would be terminated on 1 December 2022. The defendant however failed to remove the Equipment from the Space.

7 The claimant therefore brought the present claim for breach of the Agreement; alternatively, for trespass. It seeks an order for specific performance; alternatively, a mandatory injunction to compel the defendant to remove the Equipment, repair any damage caused by the Equipment's removal, and reinstate the Space. It also seeks, in the alternative, damages to be assessed.

The present application

8 The defendant applied to strike out the statement of claim pursuant to O 9 rr 16(1)(b) and (c) of the Rules of Court 2021 ("ROC 2021"), that the present claim is an abuse of the court's process and/or it is in the interest of justice to strike it out.

9 The defendant argued that the central issue in dispute is whether the Space amounts to mobile installation space ("MIS") under the Code of Practice for Info-Communication Facilities in Buildings issued by the IMDA ("COPIF 2018").

10 This is because COPIF 2018 obliges building owners to provide suitable space to mobile network operators for them to deploy telecommunications equipment without charge. Such space is designated under COPIF 2018 as MIS. If the Space amounts to MIS, the defendant will have a statutory right to occupy the Space.

11 The defendant argued that the Telecommunications Act 1999 (the "Act") and COPIF 2018 provide for the IMDA, not the court, to have oversight of any disputes arising out of or non-compliance with COPIF 2018.

12 The defendant therefore argued that the present proceedings amount to an abuse of process, as the claimant is attempting to bypass the statutory framework. Allowing the claim to proceed would also not be in the interest of justice, as it would result in parallel proceedings and undermine the statutory framework.

13 In the alternative, the defendant argued that the present claim should be stayed, pending the IMDA's determination of issues coming within the ambit of COPIF 2018, including whether the Space amounts to MIS.

14 It appears that there are no published decisions on whether the court has jurisdiction to hear disputes arising out of COPIF 2018.

15 The claimant had cited *Futar Enterprises Private Limited v Singtel Mobile Singapore Pte Ltd* [2023] SGDC 181, as a case where the District Court

had determined a dispute over a property to which COPIF 2018 applied. However, while the court there had made references to the applicability of COPIF 2018[1], parties did not appear to have raised any jurisdictional arguments. The court had in any event struck out the claim on a different ground, which was that the plaintiff's claim of an implied agreement was obviously unsustainable in light of its own admissions.

The claimant's procedural objections

16 Before dealing with the application proper, I will address the claimant's procedural objections.

Filing of two applications in a single summons

17 First, the claimant argued that the defendant filed two applications in a single summons, in breach of paragraph 50 of the State Courts Practice Directions 2021 ("PD 2021").

18 The claimant argued that this court should therefore strike out the defendant's alternative prayer for a stay of the proceedings.

19 Paragraph 50 of PD 2021 provides that distinct applications should not be combined in a single summons, unless they are inextricably or closely linked, or involve overlapping or substantially similar issues. The Registry may reject a non-compliant summons, or the court may direct parties to file separate summonses before proceeding with the hearing or proceed with the hearing on the solicitor's undertaking to file further summonses for the distinct applications.

[1] See for instance, [6].

20 The claimant argued that the defendant was making two distinct applications, as it was relying on the court's purported lack of jurisdiction pursuant to O 9 r 7(1) of ROC 2021 for its stay application, whereas for its striking out application, it was relying on O 9 r 16(1) of ROC 2021.

21 The claimant also relied on *Ong & Ong Architects Pte Ltd and Anor v Yee Wei Chi and Anor* [2007] SGHC 109 (see [44] – [46]), where the learned Assistant Registrar found that an application for striking out and an application for summary judgment were two distinct applications with different legal bases. She therefore struck out the prayer for striking out, and directed the defendant to file a separate striking out application.

22 While the court's power to strike out and stay proceedings are governed by different provisions in ROC 2021, the issues underpinning both prayers are substantially similar. The defendant relies on a common ground for the orders which are sought in the alternative, which is that it is the IMDA, and not the court, which has jurisdiction over disputes under COPIF 2018.

23 I therefore find that the two prayers are inextricably or closely linked. It would be in the interest of time and costs to have them both heard together.

Alleged failure to comply with timelines in O 9 r 7(2)

24 Next, the claimant argued that the stay application ought to be struck out as the defendant sought to file the stay application via the backdoor without complying with the timelines in O 9 r 7(2) of ROC 2021.

25 This provides that where a defendant is challenging the jurisdiction of the court, the court must direct any application seeking to challenge the court's

jurisdiction to be filed 14 days after the case conference, and fix a hearing no later than 14 days after all the affidavits have been filed and served.

26 The aim of O 9 r 7(2) is to ensure expeditious and efficient resolution of the jurisdictional challenge: *Singapore Civil Procedure 2024* at [9/7/1].

27 I note that the defendant had on 17 December 2024 filed a Checklist for Case Conference stating that it was intending to file a striking out application, on the basis that the court has no jurisdiction to decide whether the Space amounts to MIS.

28 The court had therefore directed at a case conference on 23 December 2024 that any striking out application was to be filed by 13 January 2025. The current application was then filed on 16 January 2025. A hearing date was eventually fixed for 15 September 2025.

29 I therefore do not find that the defendant has failed to comply with O 9 r 7(2) of ROC 2021. Even if there was a slight delay of 3 days in filing the application, this has not resulted in irremediable prejudice to the claimant warranting a striking out of the stay application.

30 I will therefore proceed to consider the merits of the defendant's application.

The law on striking out

31 It is generally only in plain and obvious cases that the power of striking out should be invoked: *Lim Eng Hock Peter v Lin Jian Wei and another* [2008] 4 SLR(R) 444 (at [23]).

32 The defendant agreed that the threshold for striking out is a high one: *Tan Eng Hong v AG* [2012] 4 SLR 476 at [20].

33 In determining if a pleading should be struck out for an abuse of process, the court would consider public policy and the interests of justice. A pleading would be struck out if the court process is not being used *bona fide*; the court will prevent improper use of its machinery and prevent the judicial process from being used as a means of vexation and oppression: *Iskandar bin Rahmat and others v Attorney-General and another* [2022] 2 SLR 1018 ("*Iskandar*") at [18].

34 A claim would also be struck out as an abuse of process if it amounts to hopeless litigation or a claim that is doomed to failure: *Kim Hok Yung and others v Cooperatieve Centrale Raiffeisen-Boerenleenbank BA* (trading *as Rabobank) (Lee Mon Sun, third party)* [2000] 2 SLR(R) 455 at [17].

35 A pleading would be struck out in the interest of justice, such as where the claim is plainly or obviously unsustainable: *Iskandar* at [19]. A claim would be legally unsustainable if it is clear as a matter of law that even if a party succeeded in proving all the facts that he offered to prove, he would not be entitled to the remedy sought. A claim would be factually unsustainable if it was possible to say with confidence before trial that the factual basis for the claim is fanciful because it is entirely without substance: *The "Bunga Melati 5"* [2012] 4 SLR 546 at [39].

Whether the defendant had submitted to the court's jurisdiction

36 The claimant argued that the defendant had submitted to the court's jurisdiction as it had taken a step in these proceedings.

37 In particular, the defendant had filed a Defence dealing with the underlying merits of the claim. However, it had also expressly pleaded that the court has no jurisdiction or should not exercise jurisdiction, and the grounds for its assertion.[2] It thereafter also filed an Agreed Statement of Facts, the Timelines Form and the present striking out application.

38 Submission is established where a party has taken a step that is incompatible with the position that the Singapore court does not have jurisdiction. Waiver would be established where a party has taken a step that is incompatible with the position that the Singapore court should not assume jurisdiction over the matter: *Reputation Administration Service Pte Ltd v Spamhaus Technology Ltd* [2021] 2 SLR 342 ("*Reputation Administration Service*") at [20].

39 While filing a defence on the merits would amount to submission to jurisdiction (*Singapore Civil Procedure 2024* at [9/7/1]), the claimant accepted that a defendant could nevertheless preserve its rights to stay proceedings by expressly reserving such rights in a defence: *Chong Long Hak Kee Construction Trading Co v IEC Global Pte Ltd* [2003] 4 SLR(R) 499 at [13]. However, it argued that O 6 rr 7(4) and 7(6) of ROC 2021 expressly allow a defendant to file only a defence challenging jurisdiction, which would not be treated as a submission to jurisdiction. As such, the defendant did not have to, and should not, have filed a defence on the merits.

40 At the end of the day, as noted in *Reputation Administration Service*, the test is whether the step taken by a party is clear and unequivocal, and is a

[2] Defence, [44].

question of fact to be determined in the circumstances of the particular case: [21].

41 While it was not necessary for the defendant to have also addressed the merits in its Defence, its conduct as a whole did not amount to an unequivocal submission to the court's jurisdiction.

42 First, the defendant had expressly reserved its rights to challenge the court's jurisdiction.

43 Secondly, while the defendant had also jointly filed an Agreed Statement of Facts with the claimant, and a Timelines Form setting out its proposed timelines for matters such as the filing of affidavits of evidence-in-chief, it had also filed on the same day, a Checklist for the General Process Case Conference whereby it stated that it intended to apply to strike out the claim on the basis that the IMDA, not the court, had jurisdiction to decide on whether the Space amounts to MIS.

44 Thirdly, it also made clear in its affidavit filed in support of its striking out application, that the basis of the defendant's application is that the court lacked jurisdiction to decide whether the Space amounts to MIS.

45 The facts of this case are thus very different from *Reputation Administration Service*, where the defendant filed a substantive defence, contested a summary judgment application, and filed a striking out application on the basis of the plaintiff's alleged lack of standing to sue. These had not been accompanied by any protest against the court assuming jurisdiction.

46 I therefore find that the defendant did not unequivocally submit to the court's jurisdiction or waive its right to request the court not to exercise jurisdiction.

Does COPIF 2018 apply to the present dispute?

47 Parties dispute the applicability of COPIF 2018.

48 The defendant argued that the claimant had accepted that COPIF 2018 applies, as evidenced by:

(a) The Preamble to the Agreement which stated that the Agreement was made "subject to" COPIF 2018;

(b) The claimant's initial participation in the IMDA's process; and

(c) The claimant's assertions even in these proceedings, that the defendant failed to comply with certain requirements in chapter 16 of COPIF 2018.[3]

49 The claimant, on the other hand, argued that COPIF 2018 did not apply, for the following reasons:

(a) COPIF 2018 only applies to unused spaces (paragraph 2.2.9(e) of COPIF 2018), but the roof garden of the Development is a used space;

(b) The Development obtained its Temporary Occupation Permit ("TOP") in 2015. Paragraphs 1.4.1 and 1.4.6 of COPIF 2018 state that COPIF 2018 only applies to developments which are granted provisional or written permission for construction on or after the

[3] Statement of Claim, [15].

Effective Date (i.e. 15 December 2018) and obtained TOP at or after the Effective Date; and

(c) Prior to the Agreement, the defendant allegedly represented that it would pay a monthly license fee even though COPIF 2018 states that an owner shall not impose any charge for use of MIS. After the Agreement expired, the defendant allegedly represented that it would remove its Equipment.

50 In my mind, these arguments raise 2 distinct issues:

(a) Did COPIF 2018, which requires a building developer or owner to provide MIS, apply to the Development; and

(b) If so, did the Space in question amount to MIS, such that the claimant was obliged to provide the Space to the defendant.

51 If COPIF 2018 applied to the Development, then the next issue that arises is whether its effect is to oust the court's jurisdiction to hear disputes arising out of COPIF 2018. Whether or not the Space then amounts to MIS only goes towards the merits of the claim, and not the issue of jurisdiction.

The effective date of COPIF 2018

52 It is clear from a plain reading of COPIF 2018 that it applies to the Development.

53 Paragraph 1.4.1 of COPIF 2018 which the claimant relies on deals with a developer or development owner's provision of space and facilities as described in chapters 4 to 10 of COPIF 2018.

54 However, a developer or development owner's obligation to provide MIS at its own cost and expense is instead found in chapter 2 of COPIF 2018 (specifically, at section 2.2).

55 Paragraph 1.4.6 of COPIF 2018 provides that the developer or owner of: (1) a development that has already been issued with a TOP as at the Effective Date (which is 15 December 2018, see paragraph 1.2 read with paragraph 1.1 of COPIF 2018); or (2) a development that is issued with a TOP on or after the Effective Date, is to comply with chapter 2 of COPIF 2018.

56 This is reinforced by paragraph 2.1.1 which provides that chapter 2 of COPIF 2018 applies to a development that has already been issued a TOP at the Effective Date or on or after the Effective Date.

The Preamble to the Agreement

57 As noted above, the defendant had also relied on the Preamble to the Agreement to argue that COPIF 2018 applies. This reads:

> This Agreement is made subject to [COPIF 2018] and is not intended to derogate from the parties' responsibilities under [COPIF 2018]. To the extent that any provision in this Agreement is inconsistent with the provision of [COPIF 2018], the provision of the COPIF 2018 shall supersede to the extent of the inconsistency and shall apply. For avoidance of doubt, in the event [COPIF 2018] prescribes any payment in respect of the Site such payment shall be mutually discussed in good faith between the Parties in accordance with the COPIF 2018.

58 The claimant does not dispute the validity of the Agreement and in fact relies on the Agreement as the basis of its claims. It has however alleged that it was not consulted by the Development's then-managing agent on the installation of the Equipment or the Agreement.

59 The extent to which the managing agent consulted the claimant (if at all) is a factual issue that I am not able to determine at this stage.

60 In any case, given my finding that the wording of COPIF 2018 itself clearly provides that the obligation to provide MIS applies to all developments, there is no need to additionally consider whether by the Preamble, the parties themselves accepted that COPIF 2018 applies.

The claimant's conduct

61 The defendant had requested the IMDA's intervention on the dispute on 21 July 2023.[4] Thereafter the claimant made submissions to the IMDA on 12 January 2024 and 14 February 2024.[5]

62 Of the claimant's two submissions, only its letter dated 14 February 2024 has been produced.[6] In this letter, the claimant sought to make several clarifications, including whether it is the IMDA's position that the roof garden is not an unused space.

63 However, the claimant had expressly reserved its rights in its letter of 14 February 2024. It had stated that its letter should not be construed as an admission of the IMDA's jurisdiction to determine the matter and it reserved its right to explore other avenues should the matter not be fully resolved.[7]

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[4] Mr Yeo Chee Kian ("Mr Yeo")'s affidavit, pp 58 – 59.

[5] As referred to in the IMDA's letter of 15 April 2025, Mr Yeo's affidavit, pp 66 – 69.

[6] Mr Yeo's affidavit, pp 63 – 64.

[7] Mr Yeo's affidavit, pp 64- 65, [5].

64 Thereafter in these proceedings, while disputing the applicability of COPIF 2018, the claimant also pleaded that the defendant was not permitted to install the Equipment in the Space as it had not complied with certain requirements in chapter 16 of COPIF 2018.[8] The defendant submitted that the claimant was therefore itself seeking to enforce COPIF 2018 against the defendant, thereby accepting that COPIF 2018 applies.

65 Regardless of whether the claimant's conduct amounts to an admission that COPIF 2018 applies, the fact remains that the wording of COPIF 2018 makes clear that the obligation to provide MIS applies to all developments.

Was the roof garden an unused space?

66 Paragraph 2.2.9(e) of COPIF 2018 provides that the location of the MIS is to be determined by the mobile telecommunication licensee in consultation with the developer or owner, subject to various factors such as locating the MIS at "suitable unused spaces within the development".

67 The claimant argued that COPIF 2018 does not apply to the present dispute because the roof garden is a used space. It referred to excerpts from the sales brochure for the Development, to show that the roof garden of the Development was designed and marketed as a communal space which included a swimming pool and communal seating areas[9].

68 In my view, the claimant's arguments would only go to whether the Space amounts to MIS. That is an issue to be determined at the merits stage. It

[8] Statement of Claim, [15].

[9] See for instance, Ms Wong Siew Yee ("Ms Wong")'s affidavit, pp 35 – 38, 42 – 43, 52.

does not derogate from the applicability of COPIF 2018, and in particular, a building developer or owner's obligation to provide MIS.

Is the defendant estopped from arguing that COPIF 2018 applies?

69 The claimant argued that the defendant had represented that COPIF 2018 does not apply and it is therefore estopped from arguing otherwise.

70 To amount to waiver by estoppel, there must be an unequivocal representation by one party that he will not insist upon his legal rights against the other party, and such reliance by the representee renders it inequitable for the representor to go back on his representation: *Asian Infrastructure v Kam Thai Leong Dennis* [2019] SGHC 288 at [105].

71 The claimant first relies on the defendant's email to the Development's then-managing agent dated 7 January 2019, whereby the defendant proposed to pay the claimant a monthly license fee[10], even though under COPIF 2018, the claimant was obliged to provide the Space at its own cost.

72 It is not clear why the defendant had initially proposed paying a monthly license fee. In any case, the Preamble of the Agreement eventually executed stated that it was made "subject to" COPIF 2018. Clause 7 of the Agreement also provided that pursuant to clause 2.3.3 of COPIF 2018, the defendant shall be granted the right to use, operate and maintain its Equipment at the Space at no charge.[11]

[10] Ms Wong's affidavit, p 75.

[11] Mr Yeo's affidavit, p 21.

73 The claimant next relied on various emails/ communications by the defendant's staff after the claimant terminated the Agreement, namely:

(a) An email from the defendant's Ms Wong Mei Yong dated 30 September 2022, whereby Ms Wong acknowledged the termination notice and said that tentatively, the defendant would remove its Equipment by December 2022[12];

(b) An email of 23 December 2022 from the defendant's Jane stating that the defendant was unable to provide any date of removal until a meeting and proper agreement on the subject[13]; and

(c) A survey of the equipment conducted by the defendant's Jane on or around 27 December 2022, whereby Jane allegedly admitted that the Equipment was wrongly installed in a used space and ought to be removed, and represented that she would provide a removal schedule for the Equipment.[14]

74 The defendant has denied these alleged representations. In gist:

(a) Ms Wong was a new employee, was operating under a mistake when she stated that the defendant would remove its Equipment, and had no actual or ostensible authority to make the representation on the defendant's behalf.[15]

[12] Ms Wong's affidavit, p 106.

[13] Ms Wong's affidavit, p 112.

[14] Ms Wong's affidavit, [39].

[15] Defence, [15].

(b) Jane's 23 December 2022 email did not contain any representation that the defendant would remove its Equipment.[16]

(c) At the meeting on 27 December 2022, it was the claimant's representatives who admitted that the Space is MIS, and that the claimant was obliged to provide MIS to the defendant rent-free. [17]

75 These are disputes of fact which I am not able to determine at this stage. In any case, this would go towards the second issue of whether the Space amounts to MIS. COPIF 2018, insofar as it mandated a building developer and owner's obligations to provide MIS, still applies.

Does COPIF 2018 oust the court's jurisdiction?

76 Having determined that COPIF 2018 applies to the Development, the question that then follows is whether, as the defendant argues, the Act and COPIF 2018 gave the IMDA exclusive jurisdiction to determine disputes arising under COPIF 2018.

The relevant provisions in the Act

77 The defendant argued that only the IMDA has jurisdiction to determine issues relating to compliance with COPIF 2018. It relied, specifically, on ss 23 and 89 of the Act.

78 The relevant provisions in ss 23 and 89 of the Act are summarised as follows:

[16] Defence, [16].

[17] Defence, [17].

(a) The IMDA is empowered to issue codes of practice for or in connection with the provision, maintenance and use of, and access to, space and facilities within or on any land or building for operation of any installation, plant or system used for telecommunications, and the allocation of costs and expenses incurred thereby (s 23(1) of the Act);

(b) A code of practice issued by the IMDA may require the developer or owner of any land or building to provide, maintain or give access to, at its expense, such space or facility within the land or building for installing, operating or maintaining any installation, plant or system used to provide any telecommunication or radio-communication service to that land or building and/or any other land or building (s 23(2) of the Act);

(c) Every developer or owner of any land or building and every telecommunication licensee, to whom any code of practice applies, must comply at its expense, with that code of practice (s 23(5) of the Act);

(d) The IMDA may give a written notice to a telecommunication licensee, or a developer, owner or occupier of any land or building, requiring compliance with any code of practice (s 23(7) of the Act);

(e) Where the IMDA is satisfied that a developer or owner of any land or building to whom a code of practice applies is contravening or has contravened any provision, the IMDA may issue such written order to the person as the IMDA considers necessary for securing compliance (s 23(12) of the Act);

(f) If the person then fails to comply with an order made under s 23(12), he shall be guilty of an offence (s 23(15) of the Act);

(g) A telecommunication licensee who is aggrieved by any decision of the IMDA in the exercise of its discretion, anything contained in any code of practice, or any direction given under certain provisions of the Act, may make a request to the IMDA to reconsider the matter or appeal to the Minister (s 89(1) of the Act);

(h) Any other person who is aggrieved by, amongst other things, any decision of the IMDA under various provisions, including s 23(7) and s 23(12) of the Act, or anything contained in any code of practice issued under s 23, may also make a request to the IMDA to reconsider the matter or appeal to the Minister (s 89(2) of the Act);

(i) If the telecommunication licensee or any other person is not satisfied with the IMDA's decision on its reconsideration request, it may appeal to the Minister, whose decision is final (s 89(7) and (14) of the Act).

79 I am not persuaded by the defendant's arguments that the absence of a reference in s 23 to the court having any role to play in addressing non-compliance, or the existence of provisions allowing the IMDA to issue notices or orders for non-compliance with COPIF 2018, is sufficient to oust the court's jurisdiction to hear disputes between a building owner or developer and a mobile telecommunication licensee concerning COPIF 2018.

80 It has been held that there must be express legislative provisions before the court's jurisdiction will be ousted in favour of the exclusive jurisdiction of a tribunal other than the court (see *Kwok Wai Hon v Teo Kim* Hui [2008] SGMC 4 at [14]). This holding was upheld on appeal to the High Court (*Teo Kim Hui and Another v Kwok Wai Hon* [2008] SGHC 232 ("*Teo Kim Hui*") at [22]).

81 These decisions concerned the Building Maintenance and Strata Management Act 2004 ("BMSMA"), which allows a Strata Titles Board ("STB") to hear disputes between strata title owners. The court found that the STB was merely an alternative tribunal available to subsidiary proprietors who chose not to litigate their disputes, but that did not oust the jurisdiction of the court.

82 *Teo Kim Hui* was followed by the High Court in the subsequent decision of *Fu Loong Lithographer Pte Ltd v Mok Wai Hoe* [2014] 1 SLR 218 ("*Fu Loong Lithographer*"), whereby the court held that the mere provision for the establishment of a tribunal, in that case, the STB, did not oust the court's jurisdiction, unless there was a provision either expressly ousting the court's jurisdiction or granting the STB exclusive jurisdiction over strata management disputes. The position was thus simply, that a plaintiff had two possible forums to choose from. If he chose to proceed before the STB in the first instance, then any appeal against the STB's decision to the High Court can only be on a point of law (at [26]).

83 Applying *Teo Kim Hui and Fu Loong Lithographer*, there are no express provisions in the Act ousting the court's jurisdiction or giving the IMDA exclusive jurisdiction over disputes relating to IMDA's codes of practice.

84 S 23(7) and (12) only provide that the IMDA "may" give a written notice requiring compliance with any code of practice or such written order to a person for the purpose of securing compliance with any code of practice. S 89 only provides that aggrieved persons "may" make a request to IMDA for reconsideration or appeal to the Minister.

85 Similar use of the permissive "may" is found in s 101 of the BMSMA, which provides that the STB may, pursuant to an application thereunder, make orders to settle a dispute or rectify a complaint.

86 I therefore find that the court has jurisdiction to hear disputes between a building owner or developer and a mobile telecommunication licensee concerning COPIF 2018.

The dispute resolution mechanism in paragraph 2.2.10 of COPIF 2018

87 As for paragraph 2.2.10 of COPIF 2018, this states:

> Where a developer or owner objects to the location of any mobile installation space selected by the mobile telecommunication licensee, both parties shall co-operate in good faith to resolve the matter in a timely manner, having regard to parameters stated in paragraph 2.2.9. In the event that parties are unable to reach agreement, they may refer the matter to IMDA for a decision which shall be binding on the parties.

88 The defendant's counsel sought to distinguish *Teo Kim Hui* on the basis that COPIF 2018 is not an act of Parliament, but a specialist document prepared by a regulatory authority. Accepting this argument would mean that two different standards of construction would apply – a higher threshold must be met before legislation is taken to oust the court's jurisdiction, as compared to a regulatory code or directive. It is not clear why it should be easier to oust the court's jurisdiction when it concerns a regulatory code or directive.

89 Applying *Teo Kim Hui* and *Fu Loong Lithographer* therefore, neither were there any express provisions in COPIF 2018 ousting the court's jurisdiction or giving the IMDA exclusive jurisdiction on matters arising out of COPIF 2018.

90 The language in paragraph 2.2.10 of COPIF 2018 is similarly permissive, as it provides that parties who are unable to agree on MIS "may" refer the matter to the IMDA.

91 Hence in the absence of express provisions to this effect, I am not persuaded that the IMDA has exclusive jurisdiction to hear disputes concerning COPIF 2018.

92 The IMDA appears to also take the position that it is not mandatory for parties to refer the dispute to the IMDA.

93 In the IMDA's letter of 15 April 2024, it stated that "if the parties are unable to reach agreement (whether on the provision of access for [the defendant] to conduct the proposed site survey or on the provision of MIS), the parties are to state their respective positions on whether they wish to refer the matter to IMDA for a decision which shall be binding on the parties pursuant to the COPIF".[18] Further, the IMDA stated that if either party "wishes to do so", they are to "expressly state that [they] wish to refer the matter to IMDA for a binding decision pursuant to the COPIF."

94 Further, before me, counsel for the defendant acknowledged that the court has jurisdiction to adjudicate claims for trespass and breach of contract even where COPIF 2018 applies. All the defendant was saying is that there are issues concerning COPIF 2018 (such as whether the Space amounts to MIS) which ought to be adjudicated by the IMDA instead. Accordingly, even taking the defendant's case at its highest, the present proceedings are, at best,

[18] Mr Yeo's affidavit, pp 66 – 69, [10].

premature pending the IMDA's decision on whether the Space amounts to MIS, but it cannot be said, at this stage, to be obviously unsustainable.

95 The defendant has therefore failed to establish a plain and obvious case for striking out the claim on this basis.

96 For completeness, I will address some of the other arguments raised by parties.

Significance of COPIF 2018 not having "legislative effect"

97 The claimant argued that COPIF 2018 does not constitute law, because s 23(4) of the Act states that a code of practice issued under s 23(1) "does not have legislative effect".

98 The claimant had cited parliamentary debates on the Online Criminal Harms Bill, which similarly has a provision that codes of practice issued thereunder do not have legislative effect. The Second Minister for Home Affairs had explained that this provision means that they do not constitute law. However, she had gone on to say that this is common for codes of practice under Singapore law, as the competent authority may need to adjust codes of practice now and then to keep pace with developments.

99 It is not clear how this supports the claimant's submission that the court has jurisdiction. If it is arguing that "no legislative effect" means COPIF 2018 is not binding, that cannot be the case. As noted above, the obligation for building developers or owners to provide MIS under COPIF 2018 apply to all developments in Singapore. S 23(7) of the Act allows the IMDA to give a written notice requiring compliance with any code of practice, while s 23(12) of the Act allows IMDA to issue written orders to secure compliance with

COPIF 2018. The failure to comply with such an order is an offence (s 23(15) of the Act).

100 In my view therefore, the phrase "do not have legislative effect" did not derogate from the binding nature of COPIF 2018, though, for the reasons above, COPIF 2018 (and the Act) do not oust the court's jurisdiction.

Scope of the dispute resolution mechanism in paragraph 2.2.10 of COPIF 2018

101 I am also not convinced by the claimant's submission that paragraph 2.2.10 of COPIF 2018 only applies to disputes arising during the selection of MIS and not after installation of equipment.

102 Paragraph 2.2.10 is phrased widely, and allows parties to refer a dispute to the IMDA where a developer or owner "objects to the location of any mobile installation space selected by the mobile telecommunication licensee". It does not specify when the objection must have been raised, or provide that this must be prior to installation of any equipment.

103 Further, when parties wrote to the IMDA on their dispute, the IMDA in its letter of 15 April 2024, took the view that the parties could, if they wished, avail themselves of the dispute resolution mechanism in paragraph 2.2.10. This was notwithstanding that the Equipment had already been installed.

Risk of conflicting decisions

104 Both the defendant and claimant accept that there may be a risk of conflicting decisions by the court and the IMDA. However, while the defendant argued that the matter should therefore be left to the IMDA to decide, the claimant argued that it should be determined by the court.

105 Ultimately, given my finding that the court has jurisdiction to hear disputes concerning COPIF 2018, the mere risk of conflicting decisions is not a sufficient basis for striking out the claim entirely. This would however be relevant to the defendant's alternative prayer for a stay of these proceedings, which I will come to in due course.

The alleged technical nature of the dispute

106 The defendant submitted that whether the Space constitutes MIS is a technical matter that falls within the IMDA's expertise and remit. The court should be slow to assume jurisdiction over technical matters for which there are specialist tribunals or regulatory bodies with primary responsibility for making binding determinations.

107 The defendant has not cited any authorities for its proposition that the court should decline to exercise jurisdiction where there is another authority with more appropriate technical expertise.

108 That a dispute involves technical issues is no bar to the court being able to hear it, as the court can consider evidence from relevant experts in coming to a view.

The claimant's alleged failure to exhaust all alternative remedies / attempt to forum-shop

109 The defendant submitted that the present claim is also an abuse of process because the claimant had initially participated in the IMDA's process. It was only when the IMDA gave preliminary views favouring the defendant, that the claimant decided to commence these proceedings.

110 Further, the defendant argued that the claimant is not entitled to seek injunctive relief and specific performance because it failed to exhaust the alternative remedy of referring the matter to the IMDA.

111 As noted above, while the claimant had sought the IMDA's views, it had expressly reserved its rights to explore other avenues and disclaimed any admission of the IMDA's jurisdiction.

112 While the IMDA did in its letter of 15 April 2024, say that based on the Agreement, it appeared that parties did consider the Space suitable to be used as MIS, the IMDA also made clear that it has not made any decision under paragraph 2.2.10 of COPIF 2018.[19]

113 I therefore do not find the claimant's acts of writing to the IMDA and subsequently commencing these proceedings, to be an abuse of process warranting striking out.

114 As for the assertion that the claimant has failed to exhaust alternative remedies, parties dispute whether this is relevant to whether a claimant is entitled to specific performance or a final injunction. The claimant argued that it is not, and the court instead considers factors such as whether damages are an adequate remedy: *Maxx Engineering Works Pte Ltd v PQ Builders Pte Ltd* [2024] 3 SLR 715, [16]; *Gonzalo Gil White v Oro Negro Drilling Pte Ltd and others* [2024] 1 SLR 307, [61] – [65]; *Group Lease Holdings Pte Ltd (in liquidation) and another v Group Lease Public Co Ltd* [2025] 3 SLR 1315, [39], [46], [59].

[19] Mr Yeo's affidavit, p 68, [12].

115 The defendant however argued that this is relevant, as the reliefs being equitable in nature, are subject to the court's discretion.

116 The extent to which this should factor in the court's decision whether to grant the reliefs sought, is not something to be determined at this striking out stage.

117 The defendant also cited *Kroll, Daniel v Cyberdyne Tech Exchange Pte Ltd and others* [2023] 4 SLR 484 ("*Kroll*"), for its submission that it was an abuse of process for a plaintiff to reject an offer which would provide him with everything he sought in the court proceedings and continue instead with the proceedings. This is based on the public interest that the court's resources should not be used for a claim that had become academic in view of such an offer having been made: [99].

118 I express doubt whether the mere possibility of referring the matter to the IMDA for a decision, can be said to be equivalent to the claimant receiving the same reliefs sought in these proceedings. It is unclear at this stage what any decision by the IMDA would be. It therefore cannot be said that the court proceedings have been rendered academic.

In the alternative, should the action be stayed

119 Having found that the court has jurisdiction to hear this matter, the question is whether the court should nonetheless grant a stay.

120 The defendant argued that to avoid multiplicity of proceedings, the court should stay this action pending the IMDA's determination of various issues including whether the Space constitutes MIS.

121 The claimant agreed that there is an overlap in issues before this court and issues that could come before the IMDA. It also agreed that all issues should be determined by a single forum to avoid inconsistent decisions. However, it said that this single forum should be the court, not the IMDA.

122 I find that it would be in the interest of an efficient, fair and orderly resolution of the dispute to have issues relating to COPIF 2018 determined by the IMDA first.

123 There is not just an overlap between the issue of whether the Space amounts to MIS under COPIF 2018 and the issue of whether the continued installation of the Equipment amounts to a breach of the Agreement and/or trespass. In fact, whether the continued installation of the Equipment in the Space is a breach of the Agreement and/or trespass, *depended on* whether the Space amounts to MIS under COPIF 2018.

124 To the extent that the claimant has asserted that the defendant's installation of its Equipment did not comply with certain requirements in chapter 16 of COPIF 2018[20], this would also depend on whether the Space amounts to MIS under COPIF 2018.

125 There is a real risk that the IMDA could decide the matter differently from the court.

126 The IMDA in its letter of 15 April 2024, appears to take the position that it can decide under paragraph 2.2.10 of COPIF 2018, so long as one party refers the matter to the IMDA. It had stated that "if one or both of the parties refers

[20] Statement of Claim, [15].

the matter to IMDA for a binding decision, IMDA reserves the right to make such binding decision even if the other party has not provided its response."[21] There is therefore a real possibility that IMDA could proceed to make a decision on the Space, and such decision would be binding on the Parties.

127 The only avenue to challenge this decision would, pursuant to s 89 of the Act, be to seek the IMDA's reconsideration, or appeal to the Minister, whose decision shall be final.

128 The parties did not submit on whether, should IMDA make such a decision, the court is able to review the IMDA and/or the Minister's decision, and to what extent. In any case, if there are inconsistent decisions, the parties would be in a conundrum as to whether they should comply with the court's decision or the IMDA and/or the Minister's decision.

129 Even if there is no determination under paragraph 2.2.10 of COPIF 2018, the IMDA may, on its own motion, pursuant to s 23(7) of the Act, give written notice to the parties requiring compliance with COPIF 2018, or pursuant to s 23(12) of the Act, issue a written order to the claimant to secure compliance with COPIF 2018. Further, a failure to comply with such written order is an offence under s 23(15) of the Act.

130 Similarly, the only recourse would be to seek the IMDA's reconsideration of its notice / direction or appeal to the Minister. Again, in the event of any inconsistency, parties would likewise face a dilemma between complying with the court's decision or the IMDA and/or the Minister's decision.

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[21] Mr Yeo's affidavit, pp 66 – 69, [11].

131 Staying the court proceedings would not unfairly prejudice the claimant. Both parties can make submissions to the IMDA pursuant to paragraph 2.2.10 of COPIF 2018. The IMDA's findings would be binding on both parties.

132 In the event the IMDA finds that the Space does not amount to MIS, the defendant would have no basis for keeping its Equipment in the Space. Should the defendant nevertheless fail to remove its Equipment, the claimant can pursue its claim for breach of the Agreement and trespass in these proceedings.

133 As for the claimant's assertions that the defendant failed to comply with certain requirements in chapter 16 of COPIF 2018, paragraph 16.11.1 envisages that in the event any licensee contravenes any requirement in chapter 16, the IMDA may require such licensee to rearrange, remove, alter or disconnect any of its installation, plant or system at its own expense. The claimant could therefore potentially obtain relief from the IMDA.

Conclusion

134 In the premises, I decline to strike out the action. I will however grant a stay of the matter.

135 The defendant's prayer for a stay is however too wide. It seeks a stay of the suit "pending the determination / adjudication by the [IMDA] of various issues including whether [the Space] presently used by the Defendant at [the Development] to operate its 4G network base station and antennas (the "Equipment") constitutes [MIS] as defined in [COPIF 2018]".

136 The prayer as currently drafted does not set out clearly or exhaustively what the "various issues" are.

137 It is also unclear when the IMDA will completely determine or adjudicate these issues. It does not appear that either party has sought to refer the matter to the IMDA since its letter of 15 April 2024.

138 To ensure that the matter is not stayed indefinitely, I will grant a stay on the following terms:

(a) Parties are to write to the IMDA within 2 weeks of this judgment, to:

(i) Seek the IMDA's decision pursuant to paragraph 2.2.10 of COPIF 2018, on whether the Space amounts to MIS; and

(ii) Seek the IMDA's directions pursuant to paragraph 16.11.1 of COPIF 2018, on whether there has been any contravention of the requirements in chapter 16 of COPIF 2018 and if so, the remedial action it requires (if any).

(b) The proceedings in DC/OC 1469/2024 are stayed pending the IMDA's decision / directions on both issues set out at (a) above.

(c) Parties are at liberty to write in to lift the stay once the IMDA has taken a position on both issues set out at (a) above, either by issuing its decision / directions to parties or by informing parties that it is declining to make any decision / directions.

139 Unless parties can agree on costs, they are to file brief costs submissions, limited to 10 pages, within 2 weeks of the date of this judgment.

Sim Mei Ling
Deputy Registrar

Tang Jin Sheng, Sivakumar Suchetra (WhiteFern LLC) for the claimant;
Clement Julien Tan Tze Ming (Nine Yards Chambers LLC) for the defendant.
