



## Summary of Judgment

### Chui Marjorie Che Ying & Chui Toni Yim (“Applicants”) v Appeal Tribunal (Buildings) (“BAT”) & Building Authority (“BA”) CACV 291/2022; [2024] HKCA 873

**Decision** : BA’s appeal unanimously allowed with costs  
**Date of Hearing** : 29 June 2023  
**Date of Judgment** : 16 September 2024

#### Background

1. This is an appeal lodged by BA to the Court of Appeal (“CA”) from the judgment of the Court of First Instance (“CFI”) allowing the Applicants’ judicial review against the BAT’s decision (“Decision”) requiring the Applicants to carry out repair work to a defective pipe in accordance with an order issued under section 28(3)<sup>1</sup> (“Order”) of the Buildings Ordinance (“the Ordinance”).  
(Full text of the CFI’s judgment at [https://legalref.judiciary.hk/lrs/common/ju/ju\\_frame.jsp?DIS=145426&currpage=1](https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=145426&currpage=1))
2. BA served the Order upon the Applicants who were the owners of Flat 11B of a building while the defective part of the pipe was physically located within the ceiling of Flat 10B of that building.
3. The Applicants appealed against the Order at the BAT. Upon BAT’s dismissal of the said appeal, the Applicants applied for judicial review against the BAT’s Decision.
4. At the CFI, Coleman J held that the phrase “owner of the building” in section 28(3) of the Ordinance means all the co-owners of a building. Hence, the Order must be served on all the co-owners of the subject building, not just the Applicants who have exclusive use of the defective pipe.

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<sup>1</sup> Section 28(3) of the Ordinance provides that “Where in the opinion of the Building Authority the drains or sewers of any building are inadequate or in a defective or insanitary condition he may by an order in writing served on the owner of such building require – (a) such drainage works as may be specified in the order to be carried out; (b) an authorized person to be appointed to carry out such investigation in relation to the drains or sewers of such building as may be so specified; and (c) the submission for approval by the Building Authority of proposals for drainage works to be carried out to remedy the inadequacy or the defective or insanitary condition, being proposals based on the findings of the investigation, within such time or times as may be specified in the order”.



5. BA appealed against the CFI's judgment. On 29 June 2023, the CA heard BA's appeal. On 16 September 2024, the CA handed down a judgment unanimously allowing BA's appeal with costs.

### **Department of Justice's Summary of the Court's Decision**

(Full text of the CA's judgment at

[https://legalref.judiciary.hk/lrs/common/search/search\\_result\\_detail\\_frame.jsp?DIS=162660&QS=%24%28CACV%2B291%2F2022%29&TP=JU](https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=162660&QS=%24%28CACV%2B291%2F2022%29&TP=JU))

### **Issues in dispute**

6. BA appealed against the CFI's judgment on the following 2 grounds:-
- (i) the Judge erred in holding that the phrase "*owner of the building*" only means *all* co-owners of a building and hence, BA has no power / discretion to serve an order made under section 28(3) of the Ordinance ("**a section 28(3) order**") on a particular co-owner(s) of a multi-storey building and must issue and serve the order upon all the co-owners of the building ("**Ground 1**"); and
  - (ii) the Judge thus erred in holding that, by reason of his construction of section 28(3) of the Ordinance, §12(b) of the EBD Manual (i.e. BA's internal policy document which provides that BA has discretion to serve a section 28(3) order on a particular co-owner(s) of a multi-storey building) is inconsistent with section 28(3) of the Ordinance and therefore BA and BAT's reliance thereon was unlawful ("**Ground 2**") (§28).

### **Ground 1**

7. The CA disagreed with the CFI's findings that:-
- (i) in section 28(3) of the Ordinance, the word "*building*" means "*the entire building*" and "*owner of the building*" only means all the co-owners of the relevant building; and
  - (ii) the BA does not have any discretion to choose which of the co-owner to serve and thus, if the drain is not within the common parts, the Order should be served on all the co-owners of the building (§§33-34).



8. The CA held that on a proper construction in its proper context and purpose, the words “*the drains or sewers of any building*” in section 28(3) of the Ordinance mean the drains or sewers that serve the building or part of the building (not only mean the drains or sewers that serve “the entire building” pursuant to CFI’s findings) which are found to be defective or inadequate; and the phrase “*owner of such building*” shall mean the owner of the part or parts of the building which the identified defective drain or sewer serves exclusively. For this case, as the defective pipe serves the Applicants exclusively, the owners of “the building” would be the Applicants and the Order was correctly and rightly served on the Applicants (§§55-56).

### Ground 2

9. The CA found that as a matter of language, on a plain and objective reading of the phrase “*the [BA] may by an order in writing served on the owner of such building*” in section 28(3) of the Ordinance, the word “*may*” is obviously intended to refer to BA’s discretion as to whether to issue a repair order or not, but not as to, after deciding to issue a repair order, which owner the order should be served upon. In the premises, the plain wording of section 28(3) of the Ordinance does not provide any discretion to BA to decide which of the owners of the building should be served with a repair order. Hence, the CA found that §12(b) of the EBD Manual is unlawful as it is based on an incorrect reading of section 28(3) of the Ordinance (§§47-49, 59-61).

### Court’s Disposition

10. With the CA’s construction of section 28(3) of the Ordinance as aforesaid, the Order was still correctly and rightly served on the Applicants and therefore the BAT’s Decision in upholding the Order is also correct (§§62-63).
11. Accordingly, the CA unanimously allowed BA’s appeal with costs (§§64-66).