

BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT

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

**STB 59A of 2011**

In the matter of an application under section  
101/113 of the Building Maintenance and  
Strata Management Act in respect of the  
development known as **Parklane Shopping  
Mall** (MCST Plan No. 0561)

Between

**P-ZONE SERVICES PTE LTD**

... Applicant

And

**MCST PLAN NO. 0561**

... Respondent

Coram: Mr Tan Lian Ker  
President

Panel Members: Associate Professor Lye Lin Heng  
Mr Richard Tan Ming Kirk  
Mr Seah Choo Meng  
Mr Tony Tan Keng Joo

Counsel: Mr Amolat Singh (M/s Amolat & Partners) for the Applicant  
Mr Kenneth Siow (M/s Temple Counsel LLP) for the Respondent

### **GROUND OF DECISION**

1. The Applicant was the subsidiary proprietor of the car park of Parklane Shopping Mall that is attached to the mall. The Respondent is the management corporation of Parklane Shopping Mall.
2. The Applicant sought orders from the Board against the Respondent in relation to the damage caused by water condensation to building materials in the Applicant's car park floor on the 8<sup>th</sup> floor. The Applicant claimed this was primarily due to the Respondent's failure to repair the insulation of their Air Handling Unit ("AHU") room and air conditioning ducting directly below (and on the 6<sup>th</sup> floor) which caused coldness transmitting upwards through the soffit (i.e. ceiling) of the Respondent resulting in the damage. The Respondent's AHU room is on the 6<sup>th</sup> floor and has the height of two floors.
3. The parties submitted an Agreed Statement of Facts for the purposes of establishing responsibility since they could eventually agree on certain facts of the water seepage and water condensation. They agreed that the Board should first decide on the issue of whether the Respondent was to be responsible to maintain and repair the defective air conditioning duct that was the main cause of the water condensation. The parties agreed that should the Board decide that the Respondent was not responsible then the matter could end there and time and costs would be saved. If the Board decided otherwise, the Applicant could then proceed to prove the damages suffered and the quantum of those damages.
4. Briefly, the parties agreed through their counsel and the Agreed Statement of Facts that:
  - (a) water seepage at the affected compartments in the Respondent's property was caused by rain water;

- (b) water condensation on the affected part of Respondent's property was caused by the defective air conditioning ducting on the 6<sup>th</sup> floor;
- (c) there were 3 compressors in the 6<sup>th</sup> floor AHU room, one of which served the 6<sup>th</sup> floor and that floor had only one unit, Unit #XXX;
- (d) the air conditioning ducting from the AHU room is connected and directed to the kitchen of Unit #XXX and from there diverted and spilt into sub-ducting to supply air conditioning services to Unit #XXX only;
- (e) there was deteriorated insulation of the air conditioning ducting in the ceiling of Unit #XXX and the adhesive at the joint of the ducting was also detached;
- (f) the major defect was at the connection between the air conditioning ducting and opening on the wall next to the AHU room where the ducting was detached and the opening had been exposed in the void of the ceiling;
- (g) there were unsealed holes on the air conditioning ducting at the void above the soffit ceiling of Unit #XXX that could be sources where the cold air leaked above;
- (h) the AHU room was locked by and under the control of the Respondent who also maintained it; and
- (i) the Respondent has one bill for all maintenance charges and did not bill subsidiary proprietors separately for the provision or maintenance of the central air conditioning services.

### **Arguments**

- 5. The Applicant argued that the air conditioning ducting was part of the central air conditioning system that was under the control of the Respondent and it was the duty and responsibility of the Respondent to maintain and repair it. The Applicant submitted that the air conditioning ducting happened to serve only Unit merely because the 6<sup>th</sup> floor happened just to have one unit.
- 6. On the other hand, the Respondent argued that:

- (a) the air conditioning ducting on the 6<sup>th</sup> floor was a fixture and fitting serving only Unit #XXX;
  - (b) the Respondent had no duty to maintain or repair it; and
  - (c) the Applicant had sued the wrong party and should have sued the owner of Unit #XXX instead.
7. The Respondent relied on Section 29 (1) of the Building Maintenance and Strata Management Act ("BMSMA") which provides, among other things, that it shall be the duty of a management corporation to properly maintain any fixture or fitting (including any pipe, pole, wire, cable or duct) which is not used for the servicing or enjoyment of any lot exclusively. They argued that since the air conditioning duct served Unit #XXX exclusively and was also substantially within that unit, they were therefore not under a duty to maintain or repair it.

**Board's decision on responsibility to maintain air condition ducting**

8. The Board is of the view that the entire central air conditioning system should be considered as a single fixture rather than to separate it into its various parts and consider each part as a separate fixture as suggested by the Respondent.
9. This is because the central air conditioning system served more than one lot. In addition, the Respondent had control of and also maintained the entire central air conditioning system including the AHU room on the 6<sup>th</sup> floor. Furthermore, the AHU room was locked by and under the control of the Respondent.
10. The Respondent also relied on the case of *Clarke Quay Pte Ltd v Tan Hun Ling (trading as Sin Lok Cuisine)* [2006] SG CA 22 where the Court of Appeal found that the relevant part of the kitchen exhaust duct in which a fire had originated was not part of the common area and only served the tenanted premises. Consequently, the Court of Appeal held that it was the responsibility of the tenant in that case to clean and maintain the kitchen exhaust duct. The Board did not find

this argument persuasive. As the judgment of the Court of Appeal indicated, the kitchen exhaust duct was attached to the cooker hood whose function is to draw up by suction, fumes and other undesirable odours upwards and outwards towards the chimney. However, the central air conditioning system is a continuous looped system where cold air is pumped out from the AHU Room and recycled back to the AHU Room for further cooling and the process carries on until the desired temperature is reached or until it is shut down. In any event, the case of *Clarke Quay Pte Ltd v Tan Hun Ling (trading as Sin Lok Cuisine)* involved a dispute under the terms of a tenancy agreement between a building owner landlord and the tenant of one of the units in the building. It did not involve a dispute between a subsidiary proprietor and a management corporation on statutory responsibilities.

11. Consequently, the Board is of the view that the Respondent was responsible under Section 29 (1) of the BMSMA to repair the defective air conditioning ducting of the central air conditioning system on the 6<sup>th</sup> floor.

#### **Board's decision on remaining issues**

12. After the Board's decision that the Respondent was responsible for maintaining and repairing the defective air conditioning ducting, the Applicant informed the Board that the Applicant was no longer proceeding with the claim for damages.
13. The Applicant submitted that this was in the interests of not wanting to waste the Board's time and resources and also in consideration of the fact that the Applicant had already sold off the car park to a third party. However, the Applicant was still claiming for legal costs and disbursements including expert fees and Strata Title Board fees.
14. The Applicant argued that the unreasonable conduct of the Respondent left the Applicant with no option but to institute Strata Titles Board proceedings and such

unreasonable conduct continued even after the proceedings commenced. The Applicant asked for costs and disbursements of approximately \$72,000.

15. The Respondent argued that the Applicant had no basis to file a wide ranging claim and that created unnecessary work for the Respondent in defending it. The Respondent also submitted that the Respondent did not delay in attending to the matter and acted reasonably at all times.
16. The Respondent said that the Board should consider the fact that water seepage from rain water was to be expected in a partially sheltered car park and the Applicant had yet to prove any damage that was suffered as a result of the water condensation. The Respondent also submitted that even if damages were suffered, there was a duty to mitigate damages and the Applicant had not shown any mitigation of damages. The Respondent therefore argued that they were entitled to costs because this was a frivolous application on the part of the Applicant.
17. Both parties accepted that the Board has the discretion on costs and that the conduct of a party should be taken into account in the award of costs.
18. After considering the various submissions of the parties and taking into account all the relevant circumstances, the Board is satisfied that this was not a frivolous application. However, the total amount of legal costs and fees claimed by the Applicant was not appropriate. Accordingly, the Board orders the Respondent to pay the Applicant costs (inclusive of expert fees and all other disbursements) fixed at \$10,000.

Dated this 4<sup>th</sup> day of September 2013.

**MR TAN LIAN KER**  
President  
Strata Titles Board

**ASSOC PROF LYE LIN HENG**

Member

Strata Titles Board

**MR RICHARD TAN MING KIRK**

Member

Strata Titles Board

**MR SEAH CHOO MENG**

Member

Strata Titles Board

**MR TONY TAN KENG JOO**

Member

Strata Titles Board