

BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT

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

STB No. 12 of 2016

In the matter of an application under **Section 101** of the Building Maintenance and Strata Management Act in respect of the development known as **Simsville** (MCST Plan No. 2412)

Between

The MCST Plan No. 2412

... Applicant

And

Jonathan Surya

... Respondent

Coram: Mr. Alfonso Ang (President)
Mr. Tan Ee Ping (Member)
Mr. Chng Beng Guan (Member)

Applicant: The MCST Plan No. 2412 (in person)

Respondent: Jonathan Surya (in person)

GROUND OF DECISION

1. The Applicant, MCST Plan No. 2412, is the management corporation of the strata title development known as Simsville. The Respondent, Jonathan Surya, is the subsidiary proprietor of 10 Geylang East Ave 2, #XXX of Simsville (the "Respondent's Unit"). The Applicant sought orders under Section 101 of the Building Maintenance and Strata Management Act, Chapter 30C ("BMSMA") against the Respondent.

BACKGROUND

2. This is a matter concerning water seepage which occurred on the ceiling outside of the main entrance door of #XXX (the "Affected Area"). It should be noted at the outset that the seepage did not occur in unit #XXX but was situated outside of unit #XXX, which is a common property. The subsidiary proprietor of #XXX was not a party in the proceedings.
3. In view of the seepage, the Applicant engaged Building Appraisal Pte Ltd, a chartered building surveyor, to carry out site inspection concerning water seepage occurring at the Affected Area. Inspection was carried out on 3 December 2015, and a report titled "Report on Inter-floor Water Seepage between #XXX and #XXX Simsville" ("Expert Report") was subsequently prepared by Building Appraisal Pte Ltd. The Expert Report's findings were as follows:

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- i) Following our site inspection of #XXX & #XXX, we are of the view that there is an interflow water seepage problem originating from the bathroom/toilet in the utility room of #XXX;
 - ii) The water supply pipes should also be tested by a licensed plumber to check for its water tightness by a water pressure test;
 - iii) In order to confirm our findings as regards the areas of suspect that are leaking from #XXX, we recommend that a water ponding test be carried out at the confirmed areas of failure of the waterproofing in the utility toilet/bathroom. ”

4. On 11 March 2016, the Applicant filed an application and sought the following orders against the Respondent:
 - “ i) To engage a licensed plumber, take necessary remedial action and rectification works for interfloor water seepage, and to submit us a report afterwards;
 - ii) To make good the damaged ceiling due to water seepage;
 - iii) To reimburse the Management Corporation for the cost in engaging a chartered building surveyor for inspection of the water seepage; and
 - iv) To reimburse the Management Corporation for the cost of this application. ”
5. The parties attended a total of three mediation sessions before the Board on 29 April, 17 May and 20 June 2016. At the end of the third mediation on 20 June 2016, parties were still unable to settle the matter as the Applicant maintained that the leakage occurring at the Affected Area remained unresolved. Pursuant to section 92(1)(b) of the BMSMA, the Board then gave directions for an arbitration hearing to be fixed on 12 July 2016.
6. At the scheduled hearing on 12 July 2016, parties' documents were not in order and their expert witnesses were unavailable. Consequently, the Board adjourned the hearing for parties to organise their hearing documents and arrange for their witnesses to attend the next hearing.
7. At the resumed hearing, the Respondent informed the Board that, in an attempt to resolve the leakage, he had taken measures to bypass a concealed pipe within his own internal property and had installed external piping. However, the Applicant noted that the leak in the Affected Area was still present as at the date of hearing.
8. The Applicant's expert, Mr Chin Cheong ("Applicant's Expert"), the chartered building surveyor responsible for preparing the Expert Report testified. He indicated that despite the measures taken by the Respondent to resolve the

leakage, he could not confirm the cause of the leak at the Affected Area as his recommendations set out in the Expert Report were not carried out. As a result, the Board directed parties to jointly conduct a conclusive test with an independent surveyor. Leave was given to parties to prepare a survey report stating the cause of leak and any necessary rectification works.

9. By the time the case was scheduled for a re-hearing on 19 September 2016, the Board was informed by parties (Applicant's email dated 15 September 2016) that the leakage problem was resolved as the leak had ceased sometime in August 2016. Parties agreed that further investigation was not necessary.
10. Parties were not able to resolve their dispute in connection with damages and costs, thus hearing proceeded to hear these issues.

BOARD'S DECISION ON DAMAGES AND COSTS

11. The Applicant sought costs for the following:

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- i) Cost of engaging a Chartered Building Surveyor for inspection and preparation of the Report;
 - ii) Cost of engaging the Surveyor to advise and attend mediation on behalf of the MCST;
 - iii) Cost of application of the Order paid to the Strata Title Board;
 - iv) Damages to false ceiling above #XXX and common corridor; and
 - v) Damages to the floor at #XXX and common corridor. ”

12. The Applicant alleged that, with all other factors being equal, the water seepage at the Affected Area can be reasonably attributed to the Respondent's Unit as the water seepage problem ceased after the Respondent repaired his pipes.
13. The Respondent disputed the Applicant's claim, on the basis that there was a dearth of evidence on the Applicant's part to support such inferences.

Additionally, the Respondent questioned the Applicant's unsubstantiated conclusion that the source of leak at the Affected Area originated from his unit.

14. The Board considered the arguments of both parties and the expert's submissions. Accordingly, the Board is of the view that the Applicant is not entitled to damages and costs.
15. The Board provides hereto the grounds of their decision.

A. *Presumption in section 101(8) of the BMSMA cannot be applied*

16. Typical cases concerning inter-floor leakage involves water leakage that emanates from the unit directly above, causing damage to the unit below. In such cases, the presumption in section 101(8) of the BMSMA will operate in presuming that the apartment above is responsible for such a leak.
17. In the present case, parties did not dispute the location of the water seepage. Both parties accepted that the water seepage was located on the ceiling outside of the main entrance door of #XXX. If section 101(8) of the BMSMA is applicable, then the area outside of the main door of #XXX is presumed to be responsible for the water seepage at the Affected Area.
18. However, the Board is of the view that on a proper construction of section 101(8) of the BMSMA, the presumption does not apply. The water seepage at the Affected Area was situated outside of unit #XXX, which is considered "common property" as defined in section 2(1) of the BMSMA. As the Respondent's Unit is not situated directly above the common property, no presumption applies.
19. In order to demonstrate that the Respondent was liable for the damage done to the false ceiling and floor of the Affected Area, the onus of proof lies with the Applicant who must prove on the balance of probabilities, that the water seepage at the Affected Area was reasonably attributed to the Respondent's Unit. Unless the Applicant is able to adduce sufficient evidence to support their contention, the Respondent would not be liable for the damage caused.

B. Inconclusiveness of the expert evidence

20. The Board finds that the Applicant's Expert was unable to ascertain the cause of the leak at the Affected Area. In the Applicant's Expert's report tendered at the hearing, he opined at paragraph 5.0(i):

“ Following our site inspection of #XXX & #XXX, we are **of the view** that there is an interflow water seepage problem originating from the bathroom/ toilet in the utility room of #XXX. ”

21. Subsequently, it was noted at paragraphs 6.0(iii) and 6.0(iv) of the Expert Report, that further tests were required in order to validate his opinion. He recommended that:

“ **In order to confirm our findings of the highly suspected area/s,** we strongly recommend a water ponding test to examine the waterproofing of the toilet/bathroom in the utility room of #XXX.

Further, a water pressure test is also recommended for the water supply pipes. ”

(emphasis added)

22. Based on the inspection done by the Applicant's Expert, he was of the opinion that the water seepage at the Affected Area originated from the Respondent's Unit. Nevertheless, it is evident in paragraph 5.0(i) of the Expert Report that the source of the water leakage was a mere opinion and cannot be regarded as conclusive without conducting the necessary tests stated at paragraphs 6.0(iii) and 6.0(iv) of the Expert Report.

23. The Board finds that as the tests recommended in paragraphs 6.0(iii) and 6.0(iv) of the Expert Report were not carried out, the Applicant's Expert was unable to ascertain with certainty, the cause of the leak that occurred at the Affected Area.

C. *Timeline and correlation between Respondent's repairs and stoppage of leak*

24. The Respondent, after commencement of this application and notwithstanding that the source of the leak could not be attributed to him, engaged waterproofing company, Winborne Pte Ltd to conduct a ponding test on 1 July 2016 (Vegas Interior Design's ponding-test report filed on 4 July 2016). During this ponding test, it was noted that there were no indications of water leakage, such as blue-dyed water forming on the ceiling or walls of the Affected Area.
25. The Respondent subsequently engaged Vegas Interior Design Pte Ltd to conduct further tests. Based on the report filed on 26 July 2016, there was nothing to suggest that the Respondent was responsible for the leakage at the Affected Area. However, as a gesture of goodwill, the Respondent changed his piping from concealed to external piping.
26. The Board noted in both parties' submissions that even after the Respondent had changed his concealed piping to external piping, the leakage was still present. As further evidence was not adduced, there is no evidence to prove that the cessation of the leak at the Affected Area was reasonably attributed to the Respondent's repairs. Hence, the Board is of the view that the correlation between the repairs done by the Respondent and the cessation of the leak at the Affected Area was too remote.
27. Additionally, given the evidence before the Board, we are not persuaded by the Applicant's assertion that the leak was attributed to the Respondent's Unit. As the recommended tests set out in the Expert's Report were not carried out and the Applicant's Expert was unable to confirm the cause of the leak to the Affected Area, a definitive conclusion as to the source of the leak could not be drawn. Consequently, the Board is unable to attribute the damage caused by the water seepage to the Respondent's water supply pipes in his unit.
28. For the reasons set out above, the Board finds that the Applicant has failed to prove, on the balance of probabilities, that the cause of the leakage at the Affected Area was attributed to the Respondent's Unit, and thus the Applicant fails to succeed on their claims.

29. Ordinarily, the Board would have ordered the Applicant to pay the Respondent's costs as the Applicant has failed in their application. However, having considered the manner in which parties have conducted themselves throughout the proceedings, including mediation, the Board orders that each party be made to pay their own costs.

Dated this 29th day of September 2016

MR ALFONSO ANG
President

MR TAN EE PING
Member

MR CHNG BENG GUAN
Member