

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

STB No. 16 of 2017

In the matter of an application under **Section 101(8)** of the Building Maintenance and Strata Management Act in respect of the development known as **Florence Regency** (MCST Plan No. 3974)

Between

Poon Meng Jin Dennis

... Applicant

And

Teo Oh & Tan Thiam Teck

... Respondents

GROUND OF DECISION

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... Respondents

4 August 2017

28 September 2017

Coram: Ms Lee Lay See (Deputy President)
Mr Lee Keh Sai (Member)
Mr Chua Koon Hoe (Member)

1. The Applicant, Poon Meng Jin Dennis, is the subsidiary proprietor of Unit #XXX (“**Applicant’s Unit**”) at the residential strata development known as Florence Regency and the Respondents, Teo Oh and Tan Thiam Teck (the “**Respondents**”) are subsidiary proprietors of #XXX (“**Respondents’ Unit**”). This is a matter concerning inter-floor leakage where the Applicant relied on the presumption of liability in section 101(8) of the Building Maintenance and Strata Management Act, Chapter 30C (“**BMSMA**”) that the unit above is responsible for such a leak.

BACKGROUND

2. The Applicant moved into his Unit in December 2016. Renovation works were carried out from October 2016 – December 2016 before the Applicant moved in. The Applicant’s appointed contractor first noticed the leaks emanating from the common toilet of the Respondents’ Unit into the Applicant’s master bedroom toilet during a pre-work routine inspection in October 2016.
3. The Applicant notified the management corporation (the “**MCST**”), who wrote to the Respondents on numerous occasions (from 14 November 2016 – 19 March 2017). The Respondents were informed to take necessary steps to arrest the leakage from their Unit. While the Respondents made some attempts to rectify the leak, the leakage persisted.
4. On 16 March 2017, the Applicant filed an application dated 12 March 2017 and sought the following orders under section 101 of the BMSMA against the Respondents:
“ (1) *Repair the interfloor seepage between our Units*
(2) *Pay for the damages that have been caused by this leakage*
(3) *Pay for the legal and other administration costs relating to the filing of this application. ”*
5. The parties attended 3 mediation sessions before the Board on 4 May 2017, 1 June 2017 and 20 June 2017. At the first mediation, the Board suggested and the parties agreed that

the Respondents engage an independent expert to investigate the leak and recommend remedial measures if necessary. The expert's report was to be binding on both parties. The appointed independent expert is a professional engineer, Engineer Wong Yew Fai (**the "Expert"**) who did two rounds of investigations. The Expert's first investigation (from 22 May 2017 – 29 May 2017) found a leak from the Respondents' Unit. His second investigation (from 3 Jul 2017 – 8 Jul 2017) found no leakage during that investigation. Both parties were unable to settle the matter through mediation. The dispute then proceeded to hearing on 4 August 2017.

6. The Expert submitted 3 reports in all. The first was dated 28 May 2017, after the first round of investigation ("**1st Report**"). The second dated 2 July 2017 was labelled "Supplementary Report". The third dated 14 July 2017 was submitted after the second round of investigation ("**2nd Report**"). Copies of these reports were included in the affidavits of both the Applicant and the Respondents.
7. In the 1st Report, the Expert described the investigative procedure he adopted and confirmed that water from the Respondents' Unit had leaked into the Applicant's Unit during the test and showed up as droplets in the ceiling around the waste pipe. He thus concluded that there was water leakage from the Respondents' Unit to the Applicant's Unit. He recommended that the leakage could be fixed by PU injection into the ceiling around the waste pipe. However, if this did not stop the leak, the problem could be in the waste pipe itself which should then be replaced.
8. The Expert's Supplementary Report dated 2 July 2017 was simply a response to the request made in the Board's letter of 21 June 2017 (vide copy at AW-1 PMJ-1 pages 1 & 2) for clarity on the ownership of the pipes he was referring to in his 1st Report. The Supplementary Report clarified that the pipes in question are discharge pipes connecting to the Respondents' toilet bowl and floor trap and therefore are not common property under the MCST. At the hearing, the Expert confirmed that the pipes serve the Respondents exclusively and belong to the Respondents.

9. Although the Board's letter was issued to the parties on 21 June 2017, the Expert was engaged by the Respondents to undertake the 2nd investigation only much later, on 1 July 2017. Besides producing the Supplementary Report on 2 July 2017, he made 3 new visits to the subject Units, on 3, 5 and 8 July 2017 and produced the 2nd Report dated 14 July 2017.

10. In the 2nd investigation, despite flushing the Respondents' toilet and running the tap at the basin outside the toilet and also splashing the toilet floor with water by hosing the areas around the floor trap, he could not see any water leaking to the ceiling below, unlike the outcome in the 1st investigation. He recorded his finding accordingly, i.e., no leakage visible at the time of his 2nd investigation. The Expert was unable to say if the water path that clearly existed for water to leak through during the first investigation had been rectified, as he had no information if any rectification had been undertaken by anybody since his first investigation. The conclusion in his first investigation that there was water leaking from the Respondents' Unit into the Applicant's Unit still hold.

11. The Expert stated in his 2nd Report that he wanted to do a ponding test as part of his 2nd investigation but his request for a ponding test was rejected by the Respondents. Under questioning by the Board during the hearing, the Expert clarified that without doing the ponding test, he could not be sure that the waterproof membrane was still intact. Although leakage appeared to have stopped at the time of the 2nd investigation, he could not be sure that there was no more water path for water to leak through in future because such water path was clearly present during the 1st investigation. In the absence of visible leak during the 2nd investigation, he recorded that as a fact. He was not aware that the Respondents had sometime between his 1st investigation and the 2nd investigation used a product called "cement water plug" to somehow seal the leak. He had not seen any obvious sign of rectification work being done by the Respondents as there was no visible alteration to the floor tiles. In his view, the probability of future leaks is very high.

APPLICANT'S CASE

12. In his affidavit (“**AW1**”) and at the hearing, the Applicant, who appeared in person, claimed that the leakage in his master bedroom toilet emanating from the Respondents’ Unit caused severe damage to the false ceiling and electrical fixtures in the master bedroom toilet such that his family was not able to use the toilet since February 2017. A door stop mounted on the false ceiling had fallen off due to the leakage and water had on one occasion gushed out from the ceiling light posing an electrical safety issue to his family. (Vide photo at AW-1 PMJ-1 page 19 annotated with the date 1 March 2017).
13. Sometime in February 2017, at the recommendation of the managing agent, the Respondents had appointed a contractor, Maxbuild Group Pte Ltd (“**Maxbuild**”) to rectify the leak. The Applicant submitted that Maxbuild carried out PU grouting works twice on 27 February 2017 and 2 March 2017. It was further submitted that during the second round of PU injection, Maxbuild had to remove the Applicant’s affected false ceiling as part of the procedure. Maxbuild informed the Applicant that the Respondents were aware of the procedure, and would take immediate steps to reinstate the false ceiling.
14. The Applicant asserted that the rectification works were unsuccessful as the leak resumed shortly after both instances of PU grouting works.
15. On or about 7 March 2017, Maxbuild carried out a water ponding test. The Applicant claimed that he was informed by Maxbuild that the ponding test had failed (i.e. leakage was detected). On the same day, the MCST locked up the Respondents’ toilet with the Respondents’ consent, in order to prevent further leak through usage. The Applicant contended that the Respondents’ claim that the ponding test was successful was untrue.
16. The Applicant’s case is that in the 1st Report, the Expert had found from his 1st investigation, leakage from the Respondents’ Unit into his Unit and recommended rectification works. He found the rephrasing by the Expert in his Supplementary Report

somewhat confusing and felt that the Expert appeared “unable to ascertain for certain the cause of the leakage from unit #XXX to #XXX.” He was perplexed by how the Expert could conclude in his final report (the 2nd Report) that there was no leakage when he was denied the ponding test he requested. Nevertheless, in summary, he asserted that based on his detailed submission, the Expert’s reports and the circumstances, “the Respondents have failed to show proof to the contrary that the leakage did not seep from the Respondents’ unit into my unit.”

RESPONDENTS’ CASE

17. The Respondents highlighted that prior to the Applicant moving into Unit #XXX, the latter had done extensive renovations.
18. The Respondents contended that the extent of leak was not as serious as the Applicant stated it to be, given that they had only observed “water droplets” contrary to the Applicant’s description of the leakage as “gushes of water”. They alleged that the gush of water from the ceiling light could be from the Applicant’s own water pipe hidden in the false ceiling space.
19. The Respondents argued that they had made attempts to resolve the leak from the time they were first informed by the Applicant’s renovation contractors and the MCST sometime on or about end October 2016. In this respect, the Respondents supported their claim of rectification effort with Maxbuild’s PU grouting works in March 2017 and also the 1st Respondent’s “water plug cement” works sometime between 29 May 2017 and 3 July 2017. The Respondents also submitted that they cooperated by agreeing to lock their common toilet and plug the sink situated outside the toilet, till the leak was resolved.

20. During the course of the hearing, the 1st Respondent explained that he rejected the Expert's request to do ponding test as not necessary because the leak had ceased by the time of the Expert's second inspection.
21. Counsel for the Respondents alluded to the fact that since the leak had stopped, this is proof of rectification by the Respondents.

BOARD'S FINDINGS

22. Having considered the submissions and evidence presented at the hearing, the Board makes the following findings of fact:

i. Leakage emanating from the Respondents' Unit

23. There is ample evidence in the many photos and letters sent by the MCST to the Respondents to establish signs of water seepage from the Respondents' Unit into the Applicant's Unit which is directly below. The Expert after investigation confirmed that indeed there was visible leakage from the common toilet of the Respondents' Unit to the master bedroom toilet of the Applicant's Unit. Pursuant to section 101(8) of the BMSMA, the Respondents are deemed responsible for the leak, as the Expert's confirmation that there was a leak puts it beyond refute. The Respondents had admitted that their property had caused leakage in the form of water droplets but denied responsibility for the "gushing" of water streaming from the ceiling light. (Vide RW-2 Page 11 [38]).

ii. Expert's Reports and Testimony

24. The Board accepts the Expert's reports and opinion on the matters dealt with. Through investigative testing, the Expert had established there was leakage from the Respondents' Unit into the Applicant's ceiling at or around the Respondents' discharge pipe. This means

that there was at least one water path causing the leakage that needed to be fixed. The Expert saw no fresh leak during his second investigation but could not determine why and how the leak had stopped. He was not given any information if any remedial work had been undertaken by the Respondents. Further, he was denied the opportunity to conduct an industry standard ponding test to check for watertightness. Without the ponding test, he could not verify that there was no more water path that may cause leakage. As he was not told of any remedial works being done, he was of the view that the probability of future leaks is very high. The Applicant had noted this with concern in his closing submission and expressed no confidence that the problem had been fixed. The Board accepts this as a valid concern.

25. To questions by the Board, the Expert also expressed the view that the isolated incident involving the stream of water “gushing” from the ceiling light was due to accumulated leakage water on the false ceiling which eventually gave way. He also said that he did not see any water supply pipe in the toilet ceiling. The Respondents’ suggestion that the water came from the Applicant’s own defective supply pipe is therefore incorrect. The Board also perused the sanitary plan (in particular section 1.1) submitted by the Respondents. No water pipe was shown running in the ceiling space below the Respondents’ common toilet.

iii. *No leakage as at hearing date*

26. The Applicant confirmed that there was no leakage since the time of the Expert’s 2nd investigation. It was only at the hearing on 4 August 2017 that the 1st Respondent disclosed that he had applied a “water plug cement” to seal the leakage. He declared that he has been in the building industry for a long time and was 100% sure it will not leak again after his intervention. The Board notes that there was no mention of any action being taken by the Respondents in their AEIC. The Board is disappointed that the Respondents had withheld information on the rectification work from the Expert, the Applicant and the Board until he was cross-examined. In the circumstances, there is no

merit in their submission that the Applicant ought not to have proceeded to hearing when leakage had stopped.

27. The Respondents claimed to have applied the sealant sometime between the Expert's 1st and 2nd investigation. However, the Applicant pointed out that during that period, the Respondents' toilet was supposed to be locked by the MCST and inaccessible. The 1st Respondent claimed that he had resumed using the toilet after the Expert's 2nd investigation. He had also said that he "used the water very little". He provided no information on how and where he had applied his "water plug cement" but only offered to show samples of the material to the Board. Specialized material would normally require proper application in accordance with manufacturer's recommendations and to be used in appropriate conditions only. He was evasive and provided no relevant information on the rectification. He had not done any ponding test to verify its effectiveness as is normally done in waterproofing repairs in the building industry, a practice which he ought to know and implement in view of his emphasis to the Board that he was an old hand. He had obstructed the Expert in the performance of his investigation by refusing to allow the ponding test for no good reason. His rejection of the Expert's request, simply on the basis that no leakage was seen after water was splashed on the floor, is clearly unreasonable and unacceptable. Splashing water on the floor is not equivalent to a full ponding test. It is uncertain if the leakage had indeed been fixed or if there was little or no water usage over the problematic area. In the circumstances, the Expert and the Applicant had good reason to be concerned that the leak would recur.

BOARD'S DECISION/ ORDER

28. The Board has examined the reports of the Expert and accepted the findings and determined that the Respondents are responsible for the leakage complained of by the Applicant. The Board also recognises that the Respondents had taken some steps to repair the leak and notes that the leak in the Applicant's master bedroom toilet was not present

as at the date of hearing. However, in view of the Board's findings above, the Applicant has endured considerable inconvenience and deserves better assurance that the Respondents had indeed properly discharged their responsibility to stem the leak and that the leak has stopped.

29. The Board therefore orders as follows:

The Respondents shall at their own expense, within 2 weeks from the date hereof, engage the Expert to arrange, direct and supervise a professionally conducted ponding test in their common toilet. If the ponding test result is satisfactory (i.e. no leakage arising from the test is detected in the Applicant's toilet), it shall be accepted that the Respondents have satisfactorily fixed the leak. However, if the test fails (i.e. leakage arising from the test is detected in the Applicant's toilet), then the Respondents shall under the supervision of the Expert carry out such repair or rectification as may reasonably be specified by the Expert to fix the leak. Upon completion, the Respondents shall conduct another ponding test under the direction and supervision of the Expert to confirm watertightness. The investigative and rectification process shall be repeated if necessary until the ponding test is satisfactory and the leak has ceased.

BOARD'S DECISION ON COSTS

30. The Board will now deal with the issue of costs and damages, which will be confined to the prayers sought by the Applicant.

31. The Applicant submitted that costs and damages in the total of \$4,902.60 ought to be awarded. This amount includes the cost to reinstate the false ceiling and electrical fittings in his master bedroom toilet and the solicitor and client costs which he incurred in the engagement of legal services by KSCGP Juris LLP.

32. In view of the finding and conclusion, the Board, in its discretion, considers that the appropriate orders for costs and damages are as follows and hereby orders:

- (i) the Respondents shall pay to the Applicant, the amount fixed at \$4,500.00 to cover the Applicant's claim;
- (ii) all costs involved in engaging the Expert and the measures to stop the leak shall be fully borne by the Respondents; and
- (iii) the parties are to bear their own costs for the rest of the matter.

Dated this 28th day of September 2017.

MS LEE LAY SEE
Deputy President

MR LEE KEH SAI
Member

MR CHUA KOON HOE
Member

The Applicant in person.

Ms Choo Yean Ling/ Ms Rebecca Yeo (M/s Tan Lee & Partners) for the Respondents.