

BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT

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

STB No. 32 of 2019

In the matter of an application under Section **101** of the Building Maintenance and Strata Management Act in respect of the development known as **Nassim Mansion** (The MCST Plan No. 0364)

Between

1. **Kumar Balasingam**
2. **Jyoti Kishinchand Ramnani @ Mrs Balasingam**

.. Applicant(s)

And

Southseas Corporation (Pte) Ltd

... Respondent(s)

GROUND OF DECISION

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... Respondent(s)

Coram: Mr Alfonso Ang (President)

 Mr Kong Mun Kwong (Member)

 Dr Richard Tan Han Shing (Member)

BACKGROUND

1. This is a case of water seepages from the Respondent's unit at 32 Nassim Hill, #XXX Nassim Mansion Singapore 258472 ("**Respondent**") to the Applicants' unit at 32 Nassim Hill, #XXX Nassim Mansion Singapore 257472 ("**Applicants**"). Parties have resolved the water seepage issue at mediation and a Consent Order was made between the parties on 10 July 2019 wherein it was stated at paragraph [1]:

“That the Respondent repairs and rectifies its unit at 32 Nassim Hill, #XXX Nassim Mansion, Singapore 258472, in accordance with the recommendations stated in paragraphs B.3.11 and C.3.16 of the Defect Assessment Report dated 20 February 2019 prepared by Vincent Ng of LVG Consulting Pte Ltd...”

and at paragraph [2]:

“That the Respondent repairs and rectifies such part(s) of the Applicants’ unit at 32 Nassim Hill, #XXX Nassim Mansion, Singapore 258472 that has/have been damaged by Water Seepages, in accordance with the recommendations stated in paragraphs B.3.11 and C.3.16 of the Defect Report in relation to the Applicants’ unit...”

2. The remaining issues between the parties were on damages and costs. Both parties opted for a documents-only hearing and presented to the Board that it was appropriate for a documents-only hearing for the issues. Parties do not dispute that pursuant to Section 117(1) of the Building Maintenance and Strata Management Act (Cap. 30C, 2008 Rev. Ed.) (“**BMSMA**”), the Strata Titles Boards (“**the Board**”) can award costs.¹ Section 117(1) of the BMSMA states:

*“General provisions relating to orders
117.-(1) An order made by a Board under this Act or the Land Titles (Strata) Act (Cap. 158) may include such ancillary or consequential provisions as the Board thinks fit including costs to be paid by the applicant, a management corporation, a subsidiary management corporation or any person against whom the order is made or costs to be paid by a party for making a frivolous application to the Board.”*

The Applicants further submitted that the Board has the power to award damages.

APPLICANTS’ CASE

3. The Applicants objected to the Respondent’s introduction of fresh evidence in the reply affidavits, both dated 14 August 2019, of Mr Ho Tian Teck Roger (“**Mr Roger Ho**”) and Mr Lance Ho Chuen Chu (“**Mr Lance Ho**”).² The Applicants objected on the basis that it was

¹ Applicants’ Written Submission undated at para 13 and Respondent’s Written Submission dated 21 August 2019 at para 8.

² Applicants’ Written Submission undated at para 19.

against the rules of natural justice for the Respondent to make fresh allegations³ against the Applicants in Mr Roger Ho and Mr Lance Ho's reply affidavits, which the Applicants were unable to respond to.

4. Further, the Applicants claimed that there was improper photo taking by the Respondent's contractors / consultants of the Applicants' bathroom, which did not feature the damage caused by the water seepage. Instead, the photos taken were used to support Mr Lance Ho in discrediting the Applicants.⁴
5. The Applicants' claims for damages and costs are as follows:
 - (a) damages of the sum of \$12,000 in that where nuisance is established, the Applicants are entitled to claim for "*the loss of comfort and enjoyment of (the property)*"⁵ :
 - (i) with respect to the seepage at the ceiling of the Applicants' living room balcony also referred to as "water seepage 1"⁶, the Applicants were not able to enjoy the use of said balcony from January 2015 to December 2016 and May 2017 till to-date, they could not open up the balcony to entertain their guests nor place furniture in the balcony. The said balcony also looked unsightly⁷; and
 - (ii) with respect to seepage at the ceiling of the Applicants' master bathroom also referred to as "water seepage 2"⁸, it was unsightly, foul water needed to be cleared away, the master bathroom was left unused since July 2017⁹, and the intensity of water seepage increased when the occupant of the Respondent's unit used / cleaned the bathroom.¹⁰
 - (b) costs to repair "water seepage 1" of \$740;
 - (c) fees for consultant / expert of \$2,800;
 - (d) legal costs and disbursements; and
 - (e) STB fees of \$500 being the Application Fee.

RESPONDENT'S CASE

³ Such as the use of polyurethane grouting to repair water leakages in a Prima Seal Article stated in Mr Roger Ho's affidavit, and the manner in which parties carried out the terms of the Consent Order stated in Mr Lance Ho's affidavit.

⁴ Applicants' Written Submissions undated at paras 22 and 23.

⁵ *Id*, at para 53.

⁶ *Id*, at para 4.

⁷ *Id*, at para 35.

⁸ *Supra* n 4 at para 4.

⁹ Affidavit of Evidence in Chief of Kumar Balasingam dated 1 August 2019 at para 73.

¹⁰ *Supra* n 4 at para 35.

6. The Respondent's case is that the Applicants' claims for damages and costs should be dismissed in entirety as the application was "*occasioned solely by the Applicants' unreasonable, uncooperative and obstructive conduct – inter alia, their refusal to provide the Respondent with adequate advance notice for access to #XXX; their unilateral imposition of conditions on the Respondent's proposed repair works in #XXX; and their refusal to accommodate any other repair methodology apart from their own (even though are not construction experts).*"¹¹
7. To elaborate, the Respondent particularised the Applicants' conduct as follows¹² :
 - (a) the Applicants shut out the Respondent rather than genuinely engaged the Respondent to make good the leakages;
 - (b) the Applicants set unreasonable timelines for the Respondent to start the repairs which made the expeditious repairs / rectifications impossible;
 - (c) the Applicants wanted to dictate the method of repair and undermined the expertise of the Respondent's contractor;
 - (d) the Applicants made personal attacks at Mr Lance Ho, the current Chairman of the Management Committee of Nassim Mansion; and
 - (e) the Applicants undermined the Respondent's efforts to carry out its obligations under the Consent Order.
8. With respect to the Applicants' prayer for damages of \$12,000, the Respondent submitted that as a matter of law, the onus is on the Applicants to show such evidence.¹³
9. With respect to the Applicants' prayer for costs of \$740 to repair "water seepage 1", the Respondent submitted that the said costs were set out in Invoice No. 16-1081 dated 29 December 2016 issued by NNID Pte Ltd ("**NNID**") to the 1st Applicant.¹⁴ However, the Respondent submitted that the claim is entirely unfounded as the Respondent was willing and able to make good the seepage but for the 1st Applicant's decision to "*shut the door on the Respondent*"¹⁵ and that such works carried out were ultimately "*ineffective*".¹⁶

¹¹ Respondent's Written Submission dated 21 August 2019 at para 7(a).

¹² *Id.*, at paras 14 to 18.

¹³ *Id.*, at para 39.

¹⁴ Respondent's Written Submission dated 21 August 2019 at para 22 and Affidavit of Evidence in Chief of Ho Tian Teck Roger dated 25 July 2019 at para 65.

¹⁵ Respondent's Written Submission dated 21 August 2019 at para 24.

¹⁶ *Id.*, at para 25.

10. With respect to the Applicants' prayer for consultant / expert fees of \$2,800, the Respondent submitted that this amount was derived from three (3) invoices issued by LVG Consulting Pte Ltd ("LVG") to the 1st Applicant dated 11 February 2019, 15 February 2019 and 20 February 2019 for conducting two (2) visual inspections and the preparation / issuance of a defect assessment report dated 20 February 2019.¹⁷ However, the Respondent submitted that the Applicants' engagement of LVG was for the purpose of litigation and not with a view to carry out the repair works.¹⁸
11. With respect to the Applicants' prayer for costs and disbursements, the Respondent submitted that liability had not been contested and determined against them, that there were exceptions to the general rule that the successful litigant is entitled to costs; and that the Respondent had already agreed to bear the costs and expenses for the repairs / rectification works.¹⁹

BOARD'S DECISION

12. On the facts of the case, the Board finds that the Applicants have failed to prove any actual loss of comfort and enjoyment. Accordingly, the Board dismissed their prayer for damages of \$12,000 as they have failed to prove their claim.
13. With respect to the costs of \$740 invoiced by NNID to repair "water seepage 1" and the fees of \$2,800 invoiced by LVG for the consultant / expert, the Board finds that but for the water seepages, the Applicants would not have incurred such expenses / suffered such losses. The Board orders that the Respondent should reimburse the Applicants for both invoices amounting to \$3,540.
14. With respect to legal costs, disbursements and the STB fees of the sum of \$500 being the Application Fee, the general principle of awarding costs to compensate the successful litigant ought to apply. The Respondent failed to and/or did not rebut the statutory presumption in Section 101(8) of the BMSMA against a lot immediately above another lot, where there is "*any evidence of dampness, moisture or water penetration*" on the ceiling of the lot below. In fact, the Respondent had agreed to rectify the water seepage issue in this application in the Consent Order.

¹⁷ Respondent's Written Submission dated 21 August 2019 at para 26 and Affidavit of Evidence in Chief of Vincent Ng dated 30 July 2019 at para 10.

¹⁸ Respondent's Written Submission dated 21 August 2019 at para 28.

¹⁹ *Id*, at para 33.

15. Further, the Board finds that the application was not frivolous, vexatious or an abuse of the process of the Board. Accordingly, the Board orders the Respondent to pay the Applicants costs fixed at \$4,000 and STB fees of \$500 being the Application Fee.

Dated this 18th day of October 2019

MR ALFONSO ANG
President

MR KONG MUN KWONG
Member

DR RICHARD TAN HAN SHING
Member

Mr Christopher Yong and Ms Elizabeth Fong
(M/s Legal Solutions LLC)
for the Applicants.
Mr Karam S Parmar and Ms Vinna Yip
(M/s Tan Kok Quan Partnership)
for the Respondent.