

BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT

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

STB No. 48 of 2020

In the matter of an application under sections 101(1)(a) and 101(8) of the Building Maintenance and Strata Management Act in respect of the development known as **PINE GROVE CONDOMINIUM** (The MCST Plan No. **2032**)

Between

Shumona Roy

... Applicant

And

Tan Meng Yan and Wu Mei Hui Jenny

... Respondents

GROUND OF DECISION

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Shumona Roy

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... Respondents

18 February 2021

19 February 2021

19 March 2021

Coram: Mr. Raymond Lye (Deputy President)
 Mr. Lim Peng Hong (Member)
 Mr. Tony Tan (Member)

BACKGROUND

- 1 The Applicant is the subsidiary proprietor (“SP”) of Block 1P, Pine Grove #XXX (“the Applicant”). The Respondents are the SPs of Block 1P, Pine Grove #XXX (“the Respondents”).
- 2 The present application before the Strata Titles Board (“the Board”) was filed by Ms Hena Biswas d/o P Biswas – known to the Board as “Mrs Roy” – for and on behalf of the Applicant in her capacity as the legal donee of the Applicant. This is Mrs Roy’s second application in respect of the water seepage issues in the Applicant’s unit.
- 3 The floor plans of the Applicant’s and Respondents’ units are almost identical. However, the floor area of the Applicant’s unit is slightly larger - since the corridor outside the unit

was purchased by the Applicant and is presently an entrance foyer located within the Applicant's unit. This additional purchased floor area is located right beside the Applicant's kitchen and the common corridor of the fourth floor is located immediately above it.¹

- 4 The following prayers were listed under "*Particulars of Order(s) sought from the Strata Titles Board*" in the Applicant's application form dated 7 September 2020:

"(1) Seeking an order from the Board for the respondent to engage a licensed contractor to stop the recurrent seepages from sources permanently.

(2) Thereafter, to replace / rectify / repair all damages caused to #XXX.

(3) To compensate [for] loss of income (if any) ".²

- 5 The water seepage in the Applicant's unit was first observed in October 2018 at three (3) areas - namely "*the ceiling of the bedroom, kitchen and service yard*".³ As the parties were unable to reach a common understanding on how the issue should be resolved and the condition of the unit continued to worsen, Mrs Roy filed her first application (*i.e.* STB No. 109 of 2019) in December 2019.⁴

- 6 The Respondents highlighted that they carried out some works to their unit in September 2019 (prior to the first application filed by Mrs Roy) on "*the presumption of #XXX being the cause of the water damage*", including, *inter alia*:

a) "*instructing [their] contractor to run expose pipes for the whole house*";

b) "[*Perform*] *cement grouting, ... add a waterproofing membrane and an epoxy paint layer to the Bathroom*"; and

c) "*add a waterproofing membrane to the area above the #XXX kitchen*".⁵

- 7 Towards the end of the mediation process, which was facilitated by a different Board constituted in STB No. 109 of 2019, Mrs Roy found that seepage had ceased and decided to withdraw the application with consent from the Respondents.⁶

- 8 In August 2020, the water seepage issues recurred. The seepage was observed in "*the kitchen, ... bathroom and dining area*".⁷ As the parties were once again unable to resolve the issue among themselves, the present application was filed in September 2020 and this Board was constituted to handle the matter.

- 9 At the first mediation session before this Board on 20 October 2020, the parties entered

¹ Affidavit of evidence-in-chief of Yeoh Cheng Yow ("AW-2"), at p 26.

² Applicant's Form 8, at p 4.

³ Affidavit of evidence-in-chief of Hena Biswas d/o P Biswas ("AW-1"), at para 7.

⁴ *Id.*, at paras 8 and 10.

⁵ Affidavit of evidence-in-chief of Tan Meng Yan and Wu Mei Hui Jenny ("RW-1"), at para 4.

⁶ Applicant's Opening Statement ("AWS"), at para 9.

⁷ AW-1, *supra* n 3, at paras 14 to 15.

into a written agreement (“the Written Agreement”) on the following terms:

“IT IS HEREBY AGREED between the parties as follows:

- (1) *The parties are to jointly appoint a Building Surveyor by 3 November 2020 to:*
 - a) *determine whether there is water leaking into the Applicant’s unit;*
 - b) *ascertain the cause(s) of the water leakage, in particular whether it arose from the Respondents’ unit and/or common property;*
 - c) *whether the water leakage had caused any damage to the Applicant’s unit and to identify the said damaged areas; and*
 - d) *make recommendations as to the work that is required to rectify the defects that caused the water leakage.*
- (2) *The parties agree to be irrevocably bound by the appointed Building Surveyor’s findings as to the leakage, if any, and recommendations for rectifications to be carried out.*
- (3) *The initial costs of the appointed Building Surveyor shall be borne equally by the parties, subject to the final determination of costs by the Strata Titles Board (“the Board”).*
- (4) *The parties are to give access to the appointed Building Surveyor to conduct his investigations.*
- (5) *The report of the appointed Building Surveyor is to be completed by 1 December 2020 and 4 copies to be submitted to the Board by the same date.”*⁸

10 The parties appointed Absolute Inspection Pte Ltd (“Absolute Inspection”) to perform a joint inspection and put up a report pursuant to the terms of reference covered in the Written Agreement. The joint inspection was conducted on 6 November 2020 and 10 November 2020 and a report dated 24 November 2020 (“the Joint Report”) was provided to the Board and parties. The Joint Report was endorsed by Mr Yeoh Cheng Yow (“Mr Yeoh”), a Chartered Surveyor.

11 The Joint Report specified that the “*site survey was conducted visually, [in a] non-pervasive manner, aided with standard handheld tools, such as Measuring tape, laser measuring device, Moisture Meter and Camera*”.⁹ Notably, the Joint Report highlighted that:

- (a) Although there was “*no water leaking observed at the time of inspections*” at the Applicant’s unit, there was “*visible staining, discolouration and residual [sic] observed at the ceiling portion of the [kitchen and master bedroom of the Applicant’s unit, which are] clear side effects arising from water ingress and leaking through the*

⁸ AW-1, *supra* n 3, at p 135.

⁹ AW-2, *supra* n 1, p 22, at point 1.0.

upper floor's unit”;

- (b) “*Severe corrosion of exposed reinforcement bars and spalling concrete*” was observed at the common bathroom’s concrete ceiling soffit, which was “*attributed and further aggravated with the presence of moisture*”;
- (c) The Respondent’s “*original kitchen layout has been re-configured, with clear intention [for the space to be used as] as a wet area and shower area*”;
- (d) The failure of the “*wall and floor water proofing membrane in the re-configured kitchen and toilet*” within the Respondents’ unit were assessed to be the cause of water ingress; and that
- (e) “*The quality of workmanship and methodology of water proofing application is unsatisfactory, with stop-gap solutions and sub-par approaches*”.¹⁰

- 12 It is not disputed that the Respondents did not carry out the rectification works as stated in the Joint Report, which included, *inter alia*, recommendations to:
- a) “*Regularize the spatial interior layout and obtain the MCST / Management’s review and approval*” for the re-configured kitchen in the Respondents’ unit;
 - b) Perform water proofing works for wet areas in the kitchen and bathroom according to the Building and Construction Authority’s (“BCA’s”) Code of Practice; and
 - c) Conduct a “*water ponding test with documented results and written warranty*” according to BCA’s Code of Practice.¹¹
- 13 At some point of time after the Joint Report was issued, the Respondents decided unilaterally to instruct their contractor to “*completely remove all the water pipes and sources in [the kitchen] area and permanently seal them, and to level out the previously recessed floor area with vinyl rubber*”.¹² It will become apparent that the Respondents wilfully decided not to abide by the findings and recommendations of the Joint Report.
- 14 As parties were still unable to reach an amicable settlement at the second mediation session before the Board on 10 December 2020, directions for a hearing were given.
- 15 Mrs Roy appointed Mr Yeoh to carry out a further inspection of the Applicant’s unit as the “*water seepage ... continued to worsen ... [showing that the Respondents’] renovation works were not effective in resolving the water seepage into ... #XXX*”.¹³ Mr Yeoh performed the inspection on 11 January 2021 and issued a second report (“the Supplementary Report”) on the same day.¹⁴
- 16 After receiving a copy of the Supplementary Report, the Respondents, who mentioned

¹⁰ AW-2, *supra* n 1, at pp 22 to 24.

¹¹ *Id.*, at p 25.

¹² RW-1, *supra* n 5, at para 11.

¹³ AW-1, *supra* n 3, at paras 43 to 44.

¹⁴ AW-2, *supra* n 1, at para 29.

they were “left with no other choice but to find a third-party surveyor for further inspections of [the Respondents’] unit”, decided to engage a contractor by the name of SiD Solutions Pte Ltd (“SiD Solutions”) to perform an inspection of the Applicant’s and Respondents’ units and to conduct a water ponding test at the bathroom of the Respondents’ unit.¹⁵ A person named “Kenn” performed the tests and checks on 18 and 19 January 2021 and issued a total of four (4) Findings Reports (“the SiD Reports”).¹⁶ Kenn did not swear or affirm an affidavit of evidence-in-chief (“AEIC”) and was not present at the hearing to give evidence.

APPLICANT’S CASE

17 In summary, the Applicant’s position is that:

- (a) The statutory presumption in section 101(8) of the Building Maintenance and Strata Management Act (Cap 30C, 2008 Rev Ed) (“BMSMA”) applies to the affected areas in this case, namely the “ceiling of the kitchen, master bedroom and Bath 1 of the Applicant’s unit”;
- (b) The Respondents have failed to rebut the statutory presumption;
- (c) The Respondents have a duty to identify and rectify the defects in their unit, which they have not carried out; and
- (d) The Respondents should bear all expenses of the works, losses and expenses relating to the duty mentioned in [17(c)] above.¹⁷

18 In their opening statement, the Applicant’s counsel cited numerous precedents to highlight the practical implications of the statutory presumption considered by the Boards in those disputes.

19 Notably, the Applicant’s counsel highlighted the case of *Poon Meng Jin Dennis v Teo Oh and anor* (“*Florence Regency*”), which was a water seepage matter involving an agreement between the parties to engage an independent expert to investigate the leak, and that the findings and recommendations of the expert were to be binding on the parties.¹⁸

20 In *Florence Regency*, the Respondents did not adhere to the recommendations of the independent expert and instead chose to perform their own rectification works. Having studied the expert’s report, the Board constituted to resolve that matter found that there was sufficient evidence that the leak emanated from the Respondents’ unit and ordered the Respondents to perform a water ponding test to ensure effectiveness of their rectification works performed (despite the leak having stopped at the time of the hearing).

21 The Applicant’s counsel argues that the Board’s actions show “that the Honourable

¹⁵ RW-1, *supra* n 5, at para 13.

¹⁶ *Id.*, at para 1.

¹⁷ Applicant’s Closing Submissions (“ACS”), at para 16.

¹⁸ *Poon Meng Jin Dennis v Teo Oh & Tan Thiam Teck* [2017] SGSTB 10.

Board was unsatisfied that the Respondent had discharged his duty to rectify the defect” and also that the facts in *Florence Regency* are materially similar to the present case.¹⁹

22 At the hearing, the Applicant’s counsel first called Mrs Roy as a witness to give evidence. During cross-examination by Mr Tan Meng Yan (“Mr Tan”), one of the Respondents, Mrs Roy confirmed that:

(a) *“All the seepages that has happened and that has recurred are the same two locations ... [complained of] in STB 109 of 2019 ... [and] both the locations are within the unit ... and not outside the unit”*; ²⁰ and

(b) With regard to a picture displaying the damage to a wooden beam located between the entrance foyer and kitchen of the Applicant’s unit,²¹ the seepage *“comes down at [the Applicant’s] kitchen cabinet first, and then the seepage spreads outwards to the light, to the walls, even to the dining area”* and that *“this is actually the end point where it stops and it comes down the wooden beam”*²²; and

(c) There are no signs of seepage on the ceiling of the entrance foyer, rather it is *“all within the ... boundary [which] is the wooden beam of the kitchen”*.²³

23 Mr Yeoh of Absolute Inspection was then called by the Applicant’s counsel as an expert witness. Through the course of giving evidence, Mr Yeoh highlighted that:

(a) With regard to the possibility of failed concealed pipes causing water seepage, there might not necessarily be high water consumption as *“if it’s a micro crack, which is like dripping and dripping ... very small, it doesn’t represent with a high utility bill”*;²⁴

(b) Concerning the use of a moisture meter in the Applicant’s unit but not the Respondents’ unit, he *“always use[s] the meter in the area of contentious point”* and since the matter involved *“inter-floor [seepage], because its top down, so it’s natural for [him to use the moisture meter] in the unit below”*,²⁵

(c) Mr Yeoh did not do a thermographic test since *“a building surveyor does visual [inspections]... only a specialist expert use equipment [relying on] infrared technology”*, and that he had actually recommended doing a thermographic scan in the Joint Report;²⁶ and

(d) The possibility of a breach in the external wall being cause of the water seepage to the bathroom of the Applicant’s unit was *“very remote”* based on the conditions observed.²⁷

¹⁹ AWS, *supra* n 6, at paras 91 to 93.

²⁰ Transcript of 18 February 2021, p 57, at lines 16 to 20.

²¹ AW-1, *supra* n 3, at p 121

²² Transcript of 18 February 2021, p 95, lines 1 to 9.

²³ *Id*, p 104, lines 6 to 8.

²⁴ *Id*, p 121, line 20 to p 122, line 2.

²⁵ *Id*, p 129, lines 1 to 15.

²⁶ *Id*, p 130, lines 1 to 9.

²⁷ *Id*, p 140, line 21 to p 141, line 17.

- 24 When questioned by the Board regarding the condition of the steel reinforcement bars in the bathroom of the Applicant's unit, Mr Yeoh confirmed that a leak must have persisted for a long time for the bars to rust and that in this scenario, "*some of the rebars even eroded entirely, more than 50% of the diameter ... so this cannot be a natural wear and tear [issue] ... it must [have been] aggravated by water ingress*".²⁸
- 25 Further, when asked by the Board on his recommended solution to rectify the water seepage issue, Mr Yeoh highlighted that:
- a) The recommended solution was "*total re-screeding membrane, with new waterproofing, new piping*";²⁹
 - b) The recommended solution is preferred over polyurethane ("PU") grouting since the "*soffit [in the bathroom of the Applicant's unit] is not in a good condition to receive any plugs to inject the PU grout*";³⁰ and
 - c) The "*only assurance is full course of re-piping as well*" since "*there is a combination of stainless steel exposed and concealed*" in the Respondents bathroom and some of the active pipes are still concealed.³¹

RESPONDENTS' CASE

26 Notably, the Respondents argue that:

- (a) They have "*proved beyond reasonable doubt that the presumption of liability under Section 101(8) of the BMSMA should not apply*" with reference to the tests and findings covered in the SiD Reports;³²
- (b) With regard to Mr Yeoh's professional views, that "*the Expert's recommendation is flawed because his observation is flawed*".³³ They also take issue with Mr Yeoh's objectivity because the Respondents were not informed of the Applicant's request for the Supplementary Report, which was done without their knowledge;
- (c) With respect to the damaged area in the kitchen of the Applicant's unit, that "*the external corridor wall [outside the Respondent's unit] could have caused water damage to the Applicant's kitchen ... during the monsoon season ... between August 2020 to September 2020 ...*";³⁴ and
- (d) Regarding the damage to the wall in the Applicant's bedroom, that the "*only reason left for the water damage suffered by [the Applicant] ... [is that] the Applicant has a defect in her master bedroom wall that needs further investigation*".³⁵

²⁸ Transcript of 18 February 2021, p 171, lines 15 to 24.

²⁹ *Id.*, p 175, lines 4 to 20.

³⁰ *Id.*, p 176, lines 7 to 10.

³¹ *Id.*, p 176, line 19, to p 177, line 11.

³² Respondents' Closing Submissions ("RCS"), at p 32.

³³ *Id.*, at p 28.

³⁴ *Id.*, at p 33.

³⁵ *Id.*, at p 16.

27 The Respondents highlighted several points in their written submissions, notably stating:

- (a) It was “*not necessary to follow the Joint Report’s suggestion to “perform waterproofing works” as previous such works and even more had been completed before the Applicant had filed for STB 48 of 2020*”;³⁶
- (b) “*All the surveyors’ reports have been based on wrong assumptions and observations*” – with regard to the “*Allstar Inspection Report dated 24 December 2019*”, “*IGM Inspection Report dated 31 August 2020*” and the Joint Report by Absolute Inspection;³⁷ and
- (c) The Respondents’ position that “*any deviation from the mediation agreement [i.e. the Written Agreement] that we would be “irrevocably bound” by the findings of the jointly appointed surveyor would have been followed by us if it were applicable. However, most of the advice given by Absolute Inspection were either already done ... or based on false assumptions about the nature of the piping in [the Respondents’ unit]*”.³⁸

28 Citing *Ho Yew Choong Victor & anor v Lam Wai Kong Davy* (“Palmwoods”) in their written submissions, the Respondents also argued that the Respondents should have the right to choose the method of rectification to solve water seepage issues.³⁹ In particular, the Respondents cited a particular paragraph where the Board for that matter highlighted that:

“The duty of the Respondent is to ensure that there is no water leakage emanating from his premises to that of the Applicants. The methodology as to how this can be done varies. The Respondent could, in the extreme, if he so wishes, convert the entire toilet into a study room to prevent any water leakage. This could solve the problem. However, there is no suggestion that he will do so.”

29 On the second day of the hearing, Mr Tan gave evidence on behalf of the Respondents. Notably, Mr Tan highlighted that:

- (a) The rectification works by the Respondent’s contractor “*lasted 11 months, because it’s during the dry period and then [the water seepage] happened again because its monsoon season ... our observation [is] that the monsoon water that hit our wall, external wall, has managed to enter into the applicant’s unit through her defects in the house*”;⁴⁰ and
- (b) With regard to possibility of the Respondents’ tenants showering in the re-purposed kitchen of the Respondents’ unit, that “*all the tenants cannot shower in cold water and they want the heater*”⁴¹ and “*even if they showered there, the water will not seep down to the applicant’s unit, because [the Respondents had] already done the*

³⁶ Respondents’ Written Submissions (“RWS”), at p 6.

³⁷ *Id.*, at pp 7 to 9.

³⁸ *Id.*, at p 11.

³⁹ *Ho Yew Choong Victor/Khew Cai Jun v Lam Wai Kong Davy* [2015] SGSTB 6, at [41(i)]; RWS, at pp 6 to 7.

⁴⁰ Transcript of 19 February 2021, p 46, lines 17 to 22.

⁴¹ *Id.*, page 77, lines 8 to 13.

waterproofing works in September 2019”⁴²;

- (c) Regarding the conversion of the Respondents’ kitchen into a dry area, that:
- i. The Respondents’ “*don’t have to* [seek official approval from the authorities or management corporation] *because its* [their] *private property*, [they] *can convert even the toilet into a study room if* [they] *choose to do so*”;⁴³ and
 - ii. The Respondents “*have every intention to convert* [their kitchen] *into a permanent dry area, because* [they] *have already totally removed all the pipes and the water coming to this area*”.⁴⁴

ISSUES BEFORE THE BOARD

Primary Issues

- 30 The Board will first consider whether the statutory presumption in section 101(8) BMSMA applies in view of the allegations of the three (3) areas displaying signs of water ingress/damage in the Applicant’s unit, namely the kitchen, master bedroom and bathroom.⁴⁵
- 31 Where the Board finds that the presumption is applicable to any area(s) in the Applicant’s unit affected by water seepage, the Board will consider whether the Respondents have provided enough evidence to rebut the presumption.
- 32 The Board will also consider the status of the Written Agreement entered into by parties – in particular whether it is legally binding on parties and if so, the implications on the obligations of parties.

Secondary Issues

- 33 The Board notes that Mr Yeoh of Absolute Inspection, who acted as the joint expert for parties at the mediation stage, was called as the Applicant’s expert witness at the hearing. The Board further notes that, at Mrs Roy’s request, Mr Yeoh performed a further inspection of the Applicant’s unit on 11 January 2021 and issued the Supplementary Report on the water seepage issues, and that the Respondents were not informed of nor had knowledge of both the inspection and the Supplementary Report.
- 34 The Board will consider whether these events have affected the objectivity of Mr Yeoh’s professional views reflected in the Joint Report and the Supplementary Report (collectively, “the Absolute Inspection Reports”) and consequently, whether the Board should disregard the contents of any or all of the Absolute Inspection Reports.

⁴² Transcript of 19 February 2021, page 77, lines 22 to 24.

⁴³ *Id.*, p 80, lines 1 to 3.

⁴⁴ *Id.*, p 80, lines 7 to 9.

⁴⁵ AWS, *supra* n 6, at para 24.

- 35 For completeness, the Board will reiterate the rationale behind a decision made at the hearing on 18 February 2021 to disregard the SiD Reports and a video of the site purported recorded by Kenn – notwithstanding the fact that the oral grounds for the Board’s decision were already provided on the day of the hearing.⁴⁶
- 36 Further, the Board notes that in the Respondents’ Closing Submissions (“RCS”), the Respondents have:
- (a) Made further submissions on the admissibility of the SiD Reports;⁴⁷
 - (b) Made further references to the SiD Reports;⁴⁸ and
 - (c) Hired SiD Solutions to perform a further inspection and tests (between 26 February 2021 and 1 March 2021) and included the results of the same (“the New SiD Reports”) in the RCS.
- 37 The Board will address the Respondents’ actions listed in [36] above.

BOARD’S FINDINGS

Whether the Absolute Inspection Reports are objective

- 38 The Respondents alleged that Mrs Roy got Mr Yeoh of Absolute Inspection to perform an inspection of the Applicant’s unit and issue the Supplementary Report without their knowledge, and that they found it “*very suspicious*” when Absolute Inspection told them to write to their company and to include Mrs Roy when the Respondents requested for a further inspection to be done, when Mrs Roy did not inform the Respondents when she requested for the Supplementary Report.⁴⁹
- 39 Although the Respondents have not made their objections clear, the Board will consider if either or both the Joint Report and/or the Supplementary Report may be tainted by a lack of objectivity on the part of Mr Yeoh.
- 40 It is clear to the Board that any allegation of lack of objectivity should not taint the Joint Report, since the parties jointly appointed Absolute Inspection and duly attended the joint inspection of the Applicant’s and Respondents’ units pursuant to the Written Agreement. The Respondents had also made no suggestions of impropriety in terms of objectivity of the Joint Report. However, the Board will consider the status of the Supplementary Report.
- 41 In response to Mr Tan’s queries on this matter during the hearing, Mr Yeoh clarified that he told Mrs Roy that “*it is a courtesy to inform*” the Respondents about the further inspection but emphasized that he was not privy to what was actually communicated to

⁴⁶ The SiD Reports are referenced in RW-1 and are appended as Appendices I to M-1 of RW-1.

⁴⁷ RCS, *supra* n 32, at pp 2 to 3.

⁴⁸ *Id.*, at pp 4 to 7.

⁴⁹ RW-1, *supra* n 5, at para 12.

the Respondents.⁵⁰

- 42 When questioned by the Board on this issue, Mr Yeoh stated that the Supplementary Report was “*submitted for the consumption of both parties*” and confirmed that he has submitted the Supplementary Report in his capacity as the joint expert with a duty to the Board.⁵¹
- 43 Since Mr Yeoh has provided a reasonable explanation regarding the events which transpired and also provided a further affirmation with respect to his duty to the Board as the joint expert, the Board is satisfied that the Absolute Inspection Reports were made objectively and may be relied upon as evidence.

Admissibility of the SiD Reports and the video purportedly recorded by Kenn

- 44 The Respondents appended the SiD Reports to their AEIC and sought to have the said reports, as well as a video presumably taken by Kenn of SiD Solutions, admitted as evidence. The person responsible for the report and video did not present his AEIC to the Board nor did he attend before the Board to be affirmed or sworn as a witness. Further, the Board has no information on the background, qualifications and/or experience of this person, and whether or not he is in a position to give an “expert” opinion.
- 45 It is clear that a Board is not strictly bound by the rules of evidence applicable to civil proceedings in the courts. Regulation 18(1) of the Building Maintenance and Strata Management (Strata Titles Boards) Regulations 2005 (“BMSMR”) provides that:
- “A Board shall not be bound to apply the rules of evidence applicable to civil proceedings in any court but may inform itself on any matter in such manner as it thinks fit.”*
- 46 With that said, the existence of discretion with regard to applying the rules of evidence does not imply that a Board should wholly disregard such rules – especially when the attendance of witnesses before the court or tribunal to prove and test their evidence is a fundamental tenet of our dispute resolution regime.
- 47 To emphasize the unique position of expert witnesses in a tribunal context, such witnesses are “*unusual in that they are entitled to give evidence of opinion based on their knowledge and experience, whereas lay witnesses may not give such opinion evidence and are limited to giving evidence of fact*”.⁵²
- 48 Where the evidence sought to be admitted is likely to have material influence on the Board’s final decision (*e.g.* in the case of an expert’s report), the Board is not inclined to allow it to be admitted without the maker present at a hearing unless such evidence falls within the trite exceptions to the hearsay rule. This is because the credibility of said evidence would not have been tested by way of cross-examination as well as further clarifications from the Board at a hearing, including the questions as to his experience

⁵⁰ Transcript of 18 February 2021, p 137, lines 2 to 6.

⁵¹ *Id.*, page 178, at lines 16 to 22.

⁵² Bala Reddy *et al*, *Law and Practice of Tribunals in Singapore* (SAL Academy Publishing, 2019), p 127, at 6.22.

and qualifications.

- 49 The Board further notes that there is no lack of expert's evidence with regard to the water seepage issues at the Applicant's unit and the conditions of both the Applicant's and Respondents' units, since there was a Joint Report by Mr Yeoh for the purpose of the proceedings.
- 50 In consideration of the above factors, the Board decided to disregard the SiD Reports and video as evidence for this hearing on the basis that they were not admissible. At the hearing, the parties were clearly instructed that they should not refer to the contents of the SiD Reports or the video by Kenn from that point onward.

Reference to the SiD Reports and the New SiD Reports included in the RCS

- 51 The Board notes that the Respondents have not heeded the Board's directions – continuing to refer to the disregarded SiD Reports in their closing submissions and even going so far as to include fresh evidence of inspections and tests done in the RCS without leave from the Board. This is clearly inappropriate; not only is it in breach of the Board's directions, reference to them in such circumstances will surely be unfair and prejudicial to the Applicant, a point which the Applicant's counsel has made.⁵³
- 52 For the same reasons stated in [44] to [49] above, the Board will wholly disregard the following when coming to a decision on this matter:
- (a) The images of the SiD Reports and the New SiD Reports embedded in the RCS;
 - (b) Any other images (*e.g.* site photographs) relating to the same embedded in the RCS; and
 - (c) Any textual references to the same in the RCS.

Status of the Written Agreement

- 53 There is no dispute that the Written Agreement is binding on the parties. The Board refers to the second clause of the same, which states:

*“The parties **agree to be irrevocably bound** by the appointed Building Surveyor's findings as to the leakage, if any, and recommendations for rectifications to be carried out.”*

[Emphasis added]

- 54 It is clear to the Board that the Respondents decided not to abide by the terms of the Written Agreement because the findings in the Joint Report were unfavourable to the

⁵³ This was raised in an urgent letter from the Applicant's counsel to the Board (dated 11 March 2021), which was copied to the Respondents, outlining the Applicant's objections regarding the Respondents' actions mentioned in [51] of this decision.

Respondents. The Respondents made repeated assertions that the Joint Report and/or findings of Mr Yeoh were “*wrong*” and “*flawed*”.⁵⁴

- 55 However, the Respondents have not shown nor provided any basis for making such assertions. The Board notes that the Respondents also assert that their prior rectification efforts were effective in preventing water leakage even though the works were done by an “*unlicensed contractor*”.⁵⁵

Applicability of the statutory presumption in section 101(8) BMSMA

- 56 The law with respect to the statutory presumption in section 101(8) has been reiterated in multiple past cases before the Boards. This subsection states that:

“(8) In any proceedings under this section with respect to any alleged defect in a lot or in any common property or limited common property situated immediately (whether wholly or partly) above another lot or any common property or limited common property, it shall be presumed, in the absence of proof to the contrary, that the defect is within that lot or common property or limited common property, as the case may be, above if there is any evidence of dampness, moisture or water penetration —

- (a) ***on the ceiling that forms part of the interior of the lot, common property or limited common property, as the case may be, immediately below; or***
- (b) ***on any finishing material (including plaster, panel or gypsum board) attached, glued, laid or applied to the ceiling that forms part of the interior of the lot, common property or limited common property, as the case may be, immediately below.”***

[Emphases added]

- 57 With regard to the kitchen of the Applicant’s unit, the Joint Report highlighted the presence of “*visible staining, discoloration and residual [sic] observed ... clear side effects arising from water ingress and leaking through the upper floor’s unit*”.⁵⁶ With reference to the floor plan⁵⁷ and photographs of the staining⁵⁸, the Board notes that the affected area appears to be directly below the Respondents’ unit, and not the common corridor.
- 58 Similar observations were made by Mr Yeoh with respect to the master bedroom of the Applicant’s unit. The photographs in the Supplementary Report show clear signs of staining on the ceiling and adjoining walls.⁵⁹
- 59 As for the bathroom of the Applicant’s unit, the reinforcement bars in the ceiling soffit

⁵⁴ RCS, *supra* n 32, at pp 3, 4, 27, 28, 30 and 32.

⁵⁵ See [63] herein.

⁵⁶ AW-2, *supra* n 1, p 22, at point 3.2.

⁵⁷ *Id.*, at p 35.

⁵⁸ *Id.*, at p 30.

⁵⁹ *Id.*, at pp 54 to 57.

are indeed corroded.⁶⁰ Further, Mr Yeoh testified that by using a torchlight on the affected area, he could “*see the reflectivity*” and “*this suggests ... that there is very, very small micro small droplets in the water coming in*”.⁶¹

60 As there are signs of dampness and/or water penetration found on the ceiling of the three (3) affected areas highlighted in the Joint Report (*i.e.* the kitchen, master bedroom and the bathroom of the Applicant’s unit), the Board finds that the statutory presumption applies and the onus of rebutting the presumption lies with the Respondents.

Whether the Respondents have rebutted the statutory presumption

61 The Respondents have put forward several theories with regard to the potential causes of the leak, including the possibilities that “*the Applicant has a defect in her master bedroom wall that needs further investigation*”⁶² and that water might have seeped into the kitchen of the Applicant’s unit from the “*external corridor wall ... during the monsoon season*”⁶³, among other things.

62 However, the Respondents have failed to back up these theories with credible evidence, including expert evidence. At this juncture, the Board stresses that it is limited to making a final decision based on the evidence placed before it, factual and/or expert.

63 Through the course of the hearing, Mr Tan has repeated that the waterproofing works performed in the Respondents’ unit were performed by an “*unlicensed contractor*” who is a “*very experienced guy*”.⁶⁴ The Respondents, however, have failed to provide credible evidence that the waterproofing works were indeed performed and even if performed, whether such works were in accordance with industry standards.

64 In fact, the Joint Report does elaborate on the quality of the waterproofing work done in the Respondent’s bathroom, namely that the “*existing floor finishes is observed to be severely worn off, with the top coat of epoxy coating damaged at approximately 50% of the bath floor area*”, and it was assessed that “*the top coating of epoxy coating was applied as an adhoc response to mitigate previous leaking issue found at the ceiling of [the Applicant’s unit]*”.⁶⁵

65 The Board draws attention to a piece of testimony given in *Tan Toh Ken and anor v Wang Zheng Ming and anor* (“*Aspen Heights*”), another water seepage matter before a Board.⁶⁶ During cross-examination by the Applicant’s counsel at the hearing, one of the Respondents conceded that “*any reasonable proprietor that wishes to offer evidence to rebut the application of the statutory presumption would do so by engaging a water seepage specialist to investigate the issue*”.

⁶⁰ AW-2, *supra* n 1, at pp 28, 29 and 51.

⁶¹ Transcript of 18 February 2021, p 169, at lines 9 to 15.

⁶² RCS, *supra* n 32, at p 16.

⁶³ *Id.*, at p 33.

⁶⁴ Transcript of 19 February 2021, p 43, at lines 22 to 24.

⁶⁵ AW-2, p 23, at paras 4.11 to 4.12.

⁶⁶ *Tan Toh Ken & Sim Wen Wei Sarah v Wang Zheng Ming & Chong Oi Choo* [2018] SGSTB 10, at [13].

- 66 Here, the Board notes that both parties have already appointed Mr Yeoh as the joint expert and have agreed to be bound by his report, and his report is clear as to his findings and recommendations. The Board is unable to accept the Respondents' assertions about the quality of their experienced "unlicensed contractor" (who was also not called as a witness).
- 67 For the reasons stated above, the Board finds that the Respondents have not made out their case and have failed to rebut the statutory presumption.

Duty of the Respondents to identify and rectify the areas within their lot which are causing the water seepage to the Applicant's unit

- 68 As the Respondents have failed to rebut the statutory presumption, it follows that it is the Respondents' duty to identify and rectify any existing defects in their lot causing water seepage to the Applicant's unit, as well as to rectify any damage to the Applicant's property stemming from the leak.
- 69 The Board is of the view that the Respondents have acted on their own terms thus far - carrying out rectification works in a piecemeal fashion as they saw fit.
- 70 The Board notes that there are still areas left unaddressed by the Respondents. For instance, Mr Yeoh gave evidence that some of the active pipes in the Respondents' toilet are still concealed and that it is not possible to determine whether these are leaking within the wall cavities.⁶⁷ The Respondents did not dispute this point during the hearing or in their closing submissions.
- 71 The Respondents have attempted to use the case of *Palmwoods* to argue that they have the right to choose their method of rectification. However, the case at hand is different from *Palmwoods* in several ways.
- 72 Notably, the Applicants in *Palmwoods* did not call any expert witness during the trial to give evidence regarding the source of the leakage. The actual cause of the leakage was unidentified. Therefore, the Applicants in that case had no basis to make a specific demand that the Respondents should replace the waterproofing membrane in their toilet - or any specific method of rectification, for that matter.⁶⁸
- 73 Further, *Palmwoods* did not involve a binding written agreement, entered into by the parties, for a joint expert to be appointed to perform a joint inspection regarding the water seepage issues, document his findings, make recommendations as to how the issues should be rectified and that parties agree to be bound by the recommendations.
- 74 In this scenario, there are grounds for specific rectification methods to be prescribed since:
- (a) The joint expert (*i.e.* Mr Yeoh) has assessed the situation on-site and tendered his expert's opinion and recommendations as to how the water seepage issues may be

⁶⁷ Transcript of 18 February 2021, p 177, at lines 2 to 11.

⁶⁸ *Palmwoods*, at [41(v)]

rectified; and

(b) The Written Agreement imposes an obligation for parties to adhere to the recommendations made by the joint expert with respect to rectification works to the Applicant's and Respondents' units.

75 Accordingly, the Board finds that the Respondents are obligated to perform the rectification works to their unit and the Applicant's unit according to the recommendations stated in the Joint Report and as clarified at trial.

76 On the issue of loss of income in terms of the "discount" of \$150 for five (5) months rental income on the Applicant's part,⁶⁹ the Board notes that as the tenant remained in occupation and the Applicant relied on a screenshot of a Whatsapp message,⁷⁰ which contents are unclear, the Board is unable to allow the same.

77 On the day of the oral decision, the Applicant's counsel also sought damages and said that despite it not having been sought in the Applicant's application form (*i.e.* Form 8), that the Board should allow the claim as part of the Board's discretion to do so. The Board is unable to agree as it would be unfair to the Respondents to deal with such a claim so late in the day when it was not sought at the beginning and no interlocutory application was made to amend the main application to include this claim.

78 The Applicant's counsel also sought indemnity costs against the Respondents and sought to convince the Board that this is an exceptional case that would allow for it.⁷¹ The Board was unable to agree and as such, standard costs would be appropriate.

BOARD'S DECISION

79 The Board finds that the Respondents have not successfully rebutted the statutory presumption under section 101(8) of the BMSMA.

80 This application is allowed.

81 The Board orders that the Respondents are to, at their own cost:

- a) Engage a qualified person to conduct thermographic / thermal imaging infra-red scans to determine the source(s) of water leakage;
- b) Subject to the outcome of [81(a)] above, to engage a BCA licensed contractor to perform waterproofing works to the areas in the Respondents' bathroom and kitchen highlighted in the Joint Report, in accordance with BCA's Code of Practice, in particular, to hack off the existing flooring and to apply a new water proofing membrane with re-screeding thereafter;

⁶⁹ AW-1, *supra* n 3, at para 68

⁷⁰ *Id.*, at p 203.

⁷¹ See *Airtrust (Hong Kong) Ltd v PH Hydraulics & Engineering Pte Ltd* [2016] SGHC 167.

- c) Thereafter, to conduct water ponding tests to the areas mentioned above in accordance with BCA's Code of Practice to confirm the efficacy of the waterproofing works done;
- d) After a period of three (3) weeks upon the successful completion of the water ponding test, to repaint the affected areas in the Applicant's unit highlighted above.

82 The Board heard the parties on costs for the trial which took place over one and a half days and orders that the Respondents pay the Applicant an all-in sum of \$20,000 for costs and disbursements, inclusive of the STB fees incurred in this matter, within seven (7) days of the date of the Board's Order.

Dated this 19th day of March 2021

Mr. Raymond Lye
Deputy President

Mr. Lim Peng Hong
Member

Mr. Tony Tan
Member

Mr. Chong Yue-En (M/s Bethel Chambers) for the Applicant.

Mr. Tan Meng Yan (in person) for the Respondents.

Clerical errors corrected on 24 March 2021.