

**BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT**

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

STB No. 51 of 2020

In the matter of an application under Section 101 of  
the Building Maintenance and Strata Management  
Act in respect of the development known as  
**Braddell View Estate (MCST No. 4340)**

Between

**Zainal Abidin de Silva / Norjahan Binte  
Mohamed Saleh**

... Applicant(s)

And

**Choy Kok Meng**

... Respondent(s)

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**GROUNDS OF DECISION**

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... Respondent(s)

25 January & 26 January 2021

**25 March 2021**

Coram:                      Mr. Raymond Lye Hoong Yip      (Deputy President)  
                                    Dr. Tan Teng Hooi                      (Member)  
                                    Mr. Zahidi Bin Abdul Rahman      (Member)

**BACKGROUND**

1      The Applicants are the subsidiary proprietors of a unit at 10E Braddell Hill #XXX Singapore 579724 (“the Applicants”). The Respondent is the subsidiary proprietor of the unit #XXX which is above the Applicants’ unit (“the Respondent”).

**ORDER SOUGHT BY THE APPLICANTS**

2      The Applicants seek an Order from the Board for:

*“(i) the Respondent to engage a contractor to carry out repairs to resolve the water leakage into and outside the Applicants’ unit to the satisfaction of an independent expert to be engaged by the Respondent;*

*(ii) the Respondent to pay the costs of rectification quoted by Applicants' contractor to make good the damage caused by the water leakage; and*

*(iii) the Respondent to pay the filing fees for this application and costs/reimbursements related to the filing of this application."*

- 3 During the first mediation session on 15 October 2020, parties agreed to jointly appoint a building surveyor and the matter was fixed for a second mediation / direction hearing on 3 December 2020.
- 4 On 18 November 2020, the Applicants requested to bring forward the date of the 2<sup>nd</sup> mediation / direction hearing. The 2<sup>nd</sup> mediation / direction hearing was brought forward to 25 November 2020 and the Respondent was absent. Directions were given by the Board and the notice of arbitration hearing was given to parties.
- 5 Before the commencement of the arbitration hearing, the Applicants sought leave to amend the prayers in their application to include legal fees and surveyor's costs incurred by the Applicants; and damages in relation to inconvenience, anxiety and loss of enjoyment arising from the water leakage. Leave was granted and the amended prayers are as follows <sup>1</sup>:

*"The Applicants seek an order from the Board for:*

- (i) the Respondent to engage a contractor to carry out repairs to resolve the water leakage into and outside the Applicant's unit to the satisfaction of an independent expert to be engaged by the Respondent;*
- (ii) the Respondent to pay the costs of rectification quoted by the Applicants' contractor to make good the damage caused by the water leakage; and*
- (iii) the Respondent to pay the filing fees for this application and costs/reimbursements related to the filing of this application.*
- (iv) the Respondent to pay for the Applicant's legal fees and and surveyor cost.*
- (v) the Respondent to pay damages for causing much inconvenience, anxiety and continuous loss of enjoyment due to the prolonged water leakage."*

## **ISSUES BEFORE THE BOARD**

- 6 The three issues before the Board are:
  - a. whether the statutory presumption in Section 101(8) of the Building Maintenance and Strata Management Act (Cap. 30C, 2008 Rev Ed) ("the Act") applies in view of the allegations of water damage in the Applicants' unit which is situated immediately below the Respondent's unit;

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<sup>1</sup> Amended Form 8 filed by the Applicants on 26 January 2021 and marked "AA".

- b. If so, whether the Respondent had rebutted the statutory presumption under section 101(8) of the Act; and
- c. whether the Applicants were estopped from filing this application because the matter of water leakages had been litigated before in the Courts.

### THE APPLICANTS' CASE

- 7 The Applicants' case was that the water leakage started from April 2020.<sup>2</sup> However, at Section E of their application to the Strata Titles Boards, the Applicants observed that sometime in early 2018, there was already water seepage from the wall and ceiling adjoining the external wall and common toilet at the Applicants' dining area. At that point in time, the Management Corporation ("MC") had written to the Respondent on the seepage incident and when the Respondent did not respond, the MC proceeded to do grouting works at the Applicants' unit in June 2018 to prevent further seepage.<sup>3</sup>
- 8 On or about April 2020, it is the Applicants' case that besides the seepage at the dining area, there was also water seepage at the Applicants' master bedroom wall adjoining the master bedroom toilet. Four (4) letters were sent by the MC to the Respondent on the water seepages which repeated that the burden lies on the Respondent (i.e. the upper floor unit owner) to prove the contrary (i.e. that the water leakage was not from his unit). There was no response from the Respondent to the letters and this application was subsequently filed on 8 September 2020.<sup>4</sup>
- 9 The Applicants' case is that the water leakage matter litigated in the Courts was for the period March 2008 to 6 January 2010.<sup>5</sup> They argued that every fresh spate of water leakage from the Respondent's premises to the Applicants' premises gives rise to new claim(s) for legal remedies and that they are not estopped from commencing with these proceedings.<sup>6</sup>

### THE RESPONDENT'S CASE

- 10 The Respondent denies the Applicants' Expert's report that there was water leakage from his unit to the Applicants' unit and alleges the Applicants' leakage claims to be a scam for the Applicants to make a quick profit as the Applicants had succeeded in a water leakage matter filed against the Respondent at the State Courts in 2008 with final judgment obtained in 2011.<sup>7</sup> The Applicants had "*enjoyed the windfalls*"<sup>8</sup> from the previous Court matters wherein a sum of \$50,831.24 was awarded to the Applicants, paid

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<sup>2</sup> Affidavit of evidence in chief in reply of Zainal Abidin De Silva & Norjahan Binte Mohamed Saleh dated 13 January 2021 at paragraph [7].

<sup>3</sup> Document marked as "AA" at Section E(b) S/Nos. 1 - 3.

<sup>4</sup> Applicant's Opening Statement ("AOS") dated 20 January 2021 at paragraph 6 with reference to the Affidavit of evidence-in-chief ("AEIC") of Zainal Abidin De Silva at pp 68-69 and pp 71-76.

<sup>5</sup> *Supra* n 2, at paragraph [6].

<sup>6</sup> *Supra* n 2, at paragraph [8].

<sup>7</sup> AEIC of Choy Kok Meng dated 28 December 2020 and at S/Nos. 6 & 7.

<sup>8</sup> Affidavit of evidence in chief in reply ("Reply Affidavit") of Choy Kok Meng affirmed before the Board on 26 January 2021 under the sub-heading "*Affidavit of Evidence-in-Chief of Zainal Abidin De Silva*".

by the Respondent.<sup>9</sup>

- 11 The Respondent was of the view that the floor of each of the units sat on or was supported by reinforced concrete structural beams which are not permeable to water.<sup>10</sup> He therefore attributed the leakage at the Applicants' dining area to be from heavy rain downpour<sup>11</sup>, and the leakage at the master bedroom to be from the PVC trunking of the Applicants' air conditioning unit, and/or from the exterior wall and/or from the Applicants' master toilet.<sup>12</sup>
- 12 The Respondent also alleges the said Expert was biased / accusatory / assumptious on the basis that (i) the Expert did not provide him with details on the moisture meter that was used<sup>13</sup>; that (ii) the Expert did not query the Applicants on paintworks which they had done<sup>14</sup>; and (iii) where the Expert ignored other factors as heavy rain<sup>15</sup>, and failed to trace the path of leakage from the Applicants' master bedroom in identifying the source of the water leakage<sup>16</sup>. The Respondent further cast doubts on the efficacy of the moisture meter<sup>17</sup> used by the said Expert and on his curriculum vitae.<sup>18</sup>

## BOARD'S FINDINGS

- 13 The Board accepts the evidence of the Applicants' Expert, Mr Wong Yew Fai ("Mr Wong"), that there was water leakage / seepage from the Respondent's unit into the Applicants' unit. The evidence given by the Applicants' Expert, Mr Wong Yew Fai, was "...because of: (1). missing cement pointing, used water trapped in the gaps between the tiles of the Respondent's bathroom could not discharge directly to the water outlet and had therefore caused the floor at the bathroom of the Respondent's Premises to be always in damp or wet condition and this condition together with (2). water seepage that was probably due to a leaking water tap at the washing area of the Respondent's Premises had caused the water seepage defects at the balcony, dining room, common bathroom, and master bathroom of the Applicants' Premises."<sup>19</sup>
- 14 During the cross-examination of Mr Wong by the Respondent, the Respondent cast doubts on the efficacy of the two-pin moisture meter to detect moisture and the exchange goes as follows:

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<sup>9</sup> *Supra* n 7, at S/No. 5.

<sup>10</sup> *Supra* n 7, at S/No. 9.

<sup>11</sup> *Supra* n 7, at S/No. 11(b).

<sup>12</sup> *Supra* n 7, at S/No. 10(a) to 10(d).

<sup>13</sup> *Supra* n 8, under the sub-heading "Affidavit of Evidence-in-Chief of Wong Yew Fai" at S/No. 5.

<sup>14</sup> *Supra* n 8, under the sub-heading "Affidavit of Evidence-in-Chief of Wong Yew Fai – 3.1 State of Condition at Unit 07-18" at d).

<sup>15</sup> *Supra* n 8, under the sub-heading "Affidavit of Evidence-in-Chief of Wong Yew Fai – 3.1 State of Condition at Unit 07-18" at h).

<sup>16</sup> *Supra* n 8, under the sub-heading "Affidavit of Evidence-in-Chief of Wong Yew Fai – 3.1 State of Condition at Unit 07-18" at d) and j).

<sup>17</sup> *Supra* n 8, under the sub-heading "Affidavit of Evidence-in-Chief of Wong Yew Fai – 3.1 State of Condition at Unit 07-18" from k) to o).

<sup>18</sup> *Supra* n 8, under the sub-heading "Affidavit of Evidence-in-Chief of Wong Yew Fai" at S/Nos. 7 & 8.

<sup>19</sup> Affidavit of Evidence-in-Chief in Reply of Wong Yew Fai dated 19 January 2021 at paragraph [7].

“Mr Choy: Okay, do you know how a two-pin moisture works -- I mean that one you have there? In principle, how does it work?”

...  
A It’s conductivity. It’s conductivity. It works on conductivity but electronics, how it - -

...  
A -- functions, I cannot explain because I’m not the expert of that. But I follow the user manual, -- and I use it accordingly. And it’s suitable for both timber and concrete, it’s stated very clearly in the manual.”  
20

“Q ...You know, two-pin, you know, the size of the pin is a pin and you measure a few points and you say that a pin is supposed to be -- the two pin is supposed to be injected into the concrete or into the wood. Any two pins, they are not on the surface, you can’t measure conductivity on a surface.

...  
Mr Choy: ...Do you know the two pins have to be inserted?  
A. The pin is the sensor. We are checking the moisture content on the surface. Can be -- if not painted, bare concrete tiles, hard surface, bare concrete, so we are checking the condition of the surface, not necessary concrete.

...  
Q We are talking about concrete and we are not even talking about wood, wood you can even pierce through with the two pins but concrete, dry concrete you can pierce with the two pins? Surface – surface wetness as you can touch it and then you can --that is not the true measurement.

A. The user manual did not say that I must pierce through the concrete.”  
21

15 Based on the manual of the moisture meter submitted by the Applicants during the hearing<sup>22</sup>, the Board notes that under the headings “2. Specification” and “4. Measuring Procedure”, it was stated that in relation to the application of the moisture meter it was “Designed to check the moisture level of wood, concrete and other non-wood material” and “3) It is recommended that the test pins are inserted to a minimum depth of 2mm into the material under test. If a depth of 2mm cannot be obtained, then insert the test pins to their maximum achievable depth”, respectively. From the evidence adduced, the Board does not find that it is necessary for the 2 pins of the moisture meter to be embedded into the concrete areas in order to obtain relevant readings. The Board noted the Expert’s evidence that “Moisture meter readings revealed that high intensity of moisture readings beyond 60 (Wet) at area directly below the bath rooms areas”.<sup>23</sup>

<sup>20</sup> Transcript of 25 January 2021 at Page 37 Line 23 to Page 38 Line 11.

<sup>21</sup> *Id.*, at Page 39 Line 23 to Page 41 Line 8.

<sup>22</sup> Document was marked as “A-1”.

<sup>23</sup> AEIC of Wong Yew Fai dated 23 December 2020 at p 25, paragraph 3.0(d).

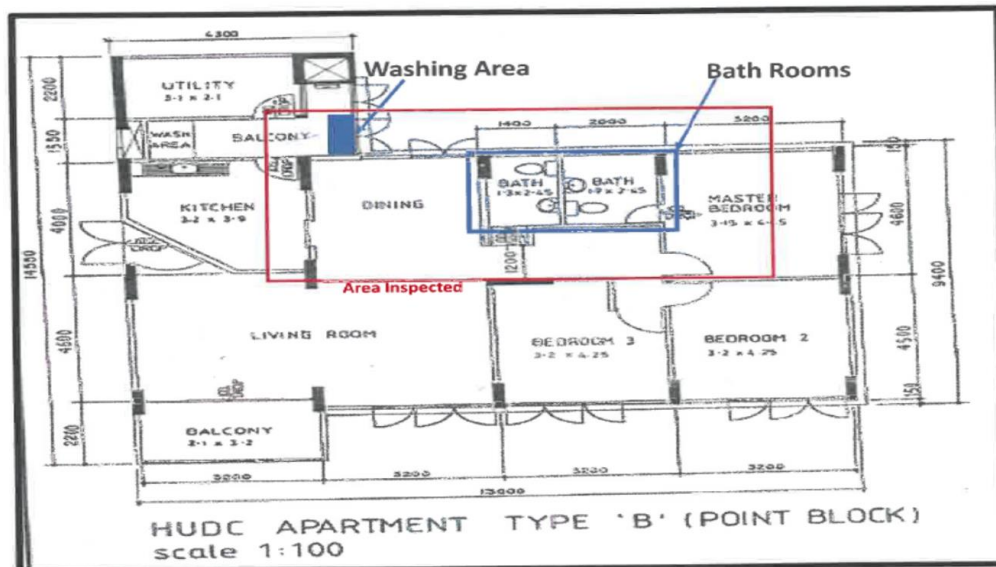
- 16 The Board agrees with the Applicants' submission that less weight is to be given to the Respondent's opinion evidence with respect to the source of water leakage and the use of the moisture meter given that the Respondent was not an expert in water leakage matters. The Respondent was an electrical engineer by training and a systems engineer before his retirement and the Board notes in *Yap Boon Fong Yvonne v Wong Kok Mun Alvin and another* that where a witness of fact is offering opinion evidence, the evidence so given was admissible if there was no other person in a better position than that witness to render the said opinion evidence. Although this is not the case here as the Respondent could have appointed a qualified building surveyor or civil / structural engineer, if he so wished, to be his expert witness, the fact that it was the applicant / respondent himself giving opinion evidence will only affect the weight to be given to the evidence.<sup>24</sup>
- 17 The Board notes that the Respondent had made sweeping statements of opinion e.g. that reinforced concrete is not permeable to water and that "*residue water has not the energy to force through*" such concrete; but has not been able to substantiate them in any way.<sup>25</sup> This contrasts not just with the views of the Applicants' Expert but with the generally accepted view among building professionals that concrete is permeable to water and water will find its level over time (cf People's Park Complex [1990] SGSTB 3 and similar findings in other STB cases), necessitating the installation of waterproofing membranes etc. The Board therefore thus places less weight on the evidence from the Respondent, in comparison to the Applicants' Expert's evidence.
- 18 The Board further notes that the Applicants' Expert did not solely rely on the moisture meter readings in arriving at his conclusion and recommendation.<sup>26</sup> The said Expert had conducted visual inspections of both parties' units and visited the units on 2 separate occasions i.e. 2 December 2020 and 16 December 2020. The said Expert documented extensively on the dampness patches found in the Applicants' unit and the Board did not find any basis to doubt his findings and/or credentials as a professional civil and structural engineer.
- 19 The Board also finds the Respondent to have created a new "wet" washing area by leveling the balcony to the same level as the utility and kitchen area (a map of the Respondent's unit is provided below), which may be a source of leakage to the Applicants' unit as there was no waterproofing done at the new "wet" washing area.

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<sup>24</sup> *Yap Boon Fong Yvonne v Wong Kok Mun Alvin and another* [2018] SGHC 26 at paragraphs [96]-[102].

<sup>25</sup> AEIC of Choy Kok Meng dated 28 December 2020 at S/Nos. 9, 10d.) and 11a) and Reply Affidavit of Choy Kok Meng affirmed before the Board on 26 January 2021 at S/No. 9g), and under the sub-heading "*Wong YF conclusion and recommendation*".

<sup>26</sup> *Supra* n 23, at p 26, paragraphs 4.2 to 4.5.



Layout of Unit #XXX

The Respondent gave evidence of the leveling of the flooring for the balcony area and that no waterproofing was done as follows<sup>27</sup>:

*“Mr Zahidi: ...the second question, is it also the same time that you relocate the wash area and the kitchen, about the same time?”*

*A. I just knocked the wall down.*

*Mr Zahidi: Okay.*

*A. Knocked the wall down, we don't cook very much...*

*...*

*Mr Zahidi: ...Did you make any opening in the floor for the kitchen, that means do you have anything –*

*A. No, no, we do not make any kitchen. You see, the so-called balcony area is where you hang your clothes. It was not called balcony anyway, it's not sticking out. It's just that that is an indoor hanger where you hang your clothes. So you have a step between the kitchen and the utility room, it was the utility room. And all I did not to fill up with -- fill partially with concrete and the other part was left as a deck. And there is also a drainpipe, a drain --*

*Mr Zahidi: To the new washing area?*

*A. Ah, the washing -- actually it was I did not built it, I just --*

*Mr Zahidi: Lift up the floor?*

*A. Lift up the floor to that area only.*

*Mr Zahidi: Okay.*

*A. Of course allowing a certain portion where there is a drain hole, a big drain hole.*

*Mr Zahidi: The drain hole is existing or new?*

*A. I just wash my feet.*

*Mr Zahidi: No, the drain hole, is it existing or new?*

*A. It is existing, it's always there, because I did not do anything to modify*

<sup>27</sup> Transcript of 26 January 2021 at p 170 Line 7 to p 172 Line 2.



- the thing. That's why I dare not to touch the column or the floor, I only to --*
- Mr Zahidi: Okay just for my understanding, there is a level difference between the kitchen and the utility area.*
- A. Yes, there is the --*
- Mr Zahidi: So to create the new wash area, you lift up the so-called balcony area. sufficient for you to have a drop into the washing -- the new washing bay.*
- A. It was a drain, it was like a drain, all the way through down there. I lift up a certain portion of it.*
- Mr Zahidi: Okay.*
- A. Lift it up so that it levels with my utility room and the kitchen, level up same level.*
- Mr Zahidi: So --*
- A. So that I do not fall or step on the step and fall, you see.*
- Mr Zahidi: Understand. So can I take it that now your kitchen and your utility area, your old kitchen and your utility area is almost the same level.*
- A. All the same level.*
- Mr Zahidi Okay. The next question is, **did you add waterproofing membrane while you are doing this lifting of the floor?***
- A. **No, I didn't do any - - I didn't do anything to those place,***  
*...*  
*because it was also a -- actually the drain was to -- when you wash the kitchen or utility room, the water supposed to drain out to that channel.*
- ..*
- A. That's what HUDC was made to that effect.*
- ...*
- A. All I did is to uplift a certain -- uplift so that it levels up with it."*

### ***Respondent's onus to rebut statutory presumption***

20 Section 101(8) of the Act states:

*“(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.”*

- 21 Pursuant to section 101(8) of the Act, there is a rebuttable presumption against the other lot above where there is “*any evidence of dampness, moisture or water penetration*” on the ceiling of the lot below. It is the Respondent’s evidence that he did engage a water leakage specialist and the Applicants had engaged their Expert, namely Mr Wong’s company, M/s YMW Consultants, to survey both units and to provide quotations initially.<sup>28</sup> When both experts wanted to conduct water ponding tests, it is the Respondent’s evidence that he refused for both experts (i.e. the Applicants’ and his own expert) to conduct the water ponding tests.<sup>29</sup> Without evidence by the Respondent to rebut the statutory presumption, the leakage in the Applicants’ unit would be from the Respondent’s unit.

***Applicants may file the present claims with the Strata Titles Boards even though water leakage had previously been litigated before in the Courts***

- 22 The Respondent has not raised issue(s) of an estoppel / res judicata, but has made allegations of scam by the Applicants in respect of water leakages from his unit to the Applicants’ unit (as per paragraph [10] above) based on past claim(s) filed against him by the Applicants. The Applicants had also made references to their claims against the Respondent with respect to the said water leakages filed with the Small Claims Tribunal in 2001<sup>30</sup>, and at the Magistrate’s Court (“MC”) in August 2008<sup>31</sup>. During the hearing, upon the Respondent’s cross-examination of the Co-Applicant, Mr Zainal De Silva (“Mr Zainal”) on the claims filed in the MC, Mr Zainal testified that the Respondent did not rectify the water leakage but the Applicants did grouting works at their own unit to arrest the water leakage:

- “Q. When the court is already awards the damages, are you happy that there is no more leakage from there on?  
A. When the court gave the judgment, we were not happy, okay, because there was still the main aim of the reason we went to court, to get it repaired. It was not repaired. Immediately after the thing, it was not repaired.  
Q. Why did you not go back to the court and says through your lawyers, why did you not go back and says “I’m not happy, that is not being settled, I don’t accept it”? Why didn’t you do that?  
A. We -- after the 2010, okay, the case actually spread because there is these different stages tried by quantum, legal costs and even we have to go to WSS because you did not pay up, then you go by instalment. By the time you finished your instalment was 2012...Right, and then we waited, we wanted to repair, we have to wait that there is no leakage, but there was leakage. That was the reason we employed a company to do grouting.

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<sup>28</sup> *Supra* n 7, at S/No. 12b.

<sup>29</sup> *Ibid.*

<sup>30</sup> AEIC of Zainal Abidin De Silva dated 28 December 2020 at paragraph [8].

<sup>31</sup> *Id.*, at paragraph [9].

- ...
- A. *We were hoping very highly that after the case, you would do a repair.*
- ...
- A. *...because by 2012, we waited, as I said earlier. We were hoping that you would do a repair, but you did not do a repair, okay. So we tried to do it with the money you gave, we tried and repaired it ourselves okay. We get the grouting company who gave us a guarantee of one year.*<sup>32</sup>
- ...
- Mr Choy: *Okay, we're talking about that case, MC Suit, 2008 right to this date, there was leakage from -- until this case comes up again. Are you saying that there's leakage?*
- A. *The leakage starts from I do my grouting around 2012. After the grouting, it stops for a while as guaranteed by the company. 14 months after the grouting, the leak starts again, because grouting is a temporary measure. So long as the upper floor do not do any repair, the leakage will never be removed.*<sup>33</sup>

23 In view of the above, the Board finds it useful to refer the doctrine of *res judicata* summarised in the headnotes of *Goh Nellie v Goh Lian Teck & other* [2007] 1 SLR(R) 453 (“*Goh Nellie*”) as follows:

*“(2) The umbrella doctrine of res judicata encompassed three conceptually distinct though interrelated principles. The first of these was known as “cause of action estoppel”, which prevented a party from asserting or denying as against the other party the existence of a particular cause of action, the non-existence of which had been determined by a court of competent jurisdiction in previous litigation between the parties.*

*(3) If the previous decision did not determine the cause of action sued on in the later proceedings, that decision might still be invoked as having determined, as an essential step in its reasoning, an issue that proved relevant in the later case and further consideration of the issue might be foreclosed. This was commonly known as “issue estoppel”. To establish an issue estoppel: (a) there had to be final and conclusive judgment on the merits; (b) that judgment had to be of a court of competent jurisdiction; (c) there had to be identity between the parties to the two actions that were being compared, and (d) there had to be identity of subject matter in the two proceedings.*

*(4) In some cases, where neither cause of action estoppel or issue estoppel were available, a defendant might rely on the “extended doctrine of res judicata” or, as it were more popularly known, the defence of abuse of process. This was distinct from cause of action and issue estoppels. Cause of action estoppel and issue estoppel were absolute bars to relitigation, save in the case of the latter where there was a limited exception in “special cases” or “special circumstances”. Abuse of*

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<sup>32</sup> Transcript of 26 January 2021 at p 24 Line 7 to p 28 Line 14.

<sup>33</sup> *Id.* at p 28 Lines 5 to 14.

*process was not subject to the same test, the task of the court being to draw the balance between the competing claims of one party to put his case before the court and of the other not to be unjustly hounded given the earlier history of the matter..."*

### ***Cause of action estoppel***

- 24 The Applicants gave evidence that the claims in the MC suit were for water leakages arising from the period of March 2008 to 6 January 2010 whereas the water leakages for the present proceedings arise from the period of April 2020.<sup>34</sup> It is clear to the Board that there is no identity in the subject matter filed in the MC suit with the present proceedings, and therefore cause of action estoppel does not operate to prevent the Applicants from asserting the present claims against the Respondent.

### ***Issue estoppel***

- 25 Counsel for the Applicants did not make substantive submissions on issue estoppel for the present proceedings. The Board notes from the Grounds of Decision by District Judge Francis Tseng in the Applicants' MC Suit<sup>35</sup> that the issues traversed by the Court were claims made in relation to a breach of statutory duty pursuant to section 21(b) of the HUDC Housing Estates Act (Cap. 131), By-law 21 of the Second Schedule to the HUDC Housing Estates Act, and Section 63(b) of the Act (which the Court held is in pari materia with section 21(b) of the HUDC Housing Estates Act)<sup>36</sup>, as well as the tort of nuisance.<sup>37</sup> The issues to be addressed in the present case are different. The Board is of the view that issue estoppel therefore does not arise / apply in this case.

### ***Abuse of process***

- 26 The Respondent gave evidence as follows:

*"I sincerely hope that Strata Titles Board will not permit him [i.e. the Applicant(s)] to make such claim repeatedly. I do not much respect when the persons whose aims are greed and they show no empathy. I believe that the Applicants would continue to pursue fulfill his cause (to profit) perpetually for as many years to come."*<sup>38</sup>

- 27 The Applicants' reply was that based on common sense / general knowledge, *"however much the expenditure by us (i.e. the Applicants), the best repair and rectification works cannot last if there are continuing or fresh water leakages from the Respondent's Premises to our Premises..."* and *"that interfloor leakage can never be repaired from the unit below."*<sup>39</sup> This was not a case of repeated claims being made against the Respondent in relation to the water leakages for no good reason but more of a case for the Respondent to do the necessary rectifications to arrest the leakages.

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<sup>34</sup> *Supra* n 2, at paragraphs [6] & [7].

<sup>35</sup> Zainal Abidin De Silva and Another v Choy Kok Meng [2010] SGMC 1.

<sup>36</sup> *Id.*, at paragraphs [16], [17], [30] and [31].

<sup>37</sup> *Supra* n 35, at paragraphs [21], [22], [32] and [33].

<sup>38</sup> *Supra* n 7, at S/No. 4.

<sup>39</sup> *Supra* n 2, at paragraphs [9] and [11].

28 The Board is of the view therefore that the present proceedings was not an abuse of process.

***Respondent's conduct***

29 The Board notes that the parties have entered into a written agreement dated 15 October 2020 to jointly appoint a building surveyor to determine the water leakage issues, if any, and to make recommendations as to rectification, further agreeing to be bound by the findings and recommendations. However, the Respondent did not comply with the said agreement because he did not agree to accepting the quotations of those who did not visit his premises first and for those that did, he did not agree with their proposal to do a water-ponding test as part of their investigations.

30 The Board further notes that in answer to queries from the Board at trial, the Respondent did eventually say that the ponding test could be proof whether the leakage emanated from his premises, but that he did not think it should be done. In the Board's view, the Respondent's conduct in this regard has been unreasonable resulting in the non-compliance with the said agreement, which would otherwise have resolved the dispute without the need for an arbitration hearing.

31 Further, the Respondent was a "no-show" for the second mediation session without any good reason, despite having been informed of the date in advance and a call being made to him just before the start of the session. The second mediation thus could not proceed and the time and attendance of the Board panel members and the Applicants were wasted for this purpose.

**BOARD'S DECISION**

32 The Board finds that the Respondent had not rebutted the statutory presumption under section 101(8) of the Act and remains liable.

33 The Board hereby orders that:

"1 The Respondent shall engage, at his own cost, within two (2) weeks from the date of this order a Building and Construction Authority ("BCA") registered building contractor to carry out and complete all necessary corrective repair(s) to the defects in the Respondent's unit as outlined in the report of YMW Consultants dated 20 December 2020 so as to resolve the water leakage from the Respondent's unit to the Applicants' unit to the satisfaction of an independent building surveyor / water seepage specialist to be engaged by the Respondent, at his own cost, including the costs of any tests to be recommended by the said building surveyor / water seepage specialist including water ponding tests, etc; and

2 Such corrective works stated in (1) shall be completed within ten (10) weeks from the date of this order. The report of the independent building surveyor / water seepage specialist as to his / her satisfaction with the corrective works shall be completed and extended to both the Applicants and the Respondent within two (2) weeks of the completion of the said corrective works."

- 34 The Applicants claim general damages of the sum of \$10,000, special damages of the sum of \$5,500 and disbursements of \$7,200 inclusive of all STB fees and costs of \$10,000 for this application. The Board has heard both the Applicants and Respondent on these issues.
- 35 On the issue of damages, the Board agrees that the cost of rectification of the Applicants' unit should be borne by the Respondent. The Board notes the error in item 1(b) of the Applicants' quotation found in the exhibit marked as "ZNDS-10" of Mr Zainal's Affidavit of Evidence-in-Chief dated 28 December 2020 as pointed out by the Respondent. The Applicants' counsel submitted that it is an obvious typographical error as it should read as \$280 per foot run and not that the entire cabinet of almost seven (7) feet should cost only \$280.
- 36 The Board is of the view that the "Qty" of one (1) unit is an obvious typographical error. When the dimensions of the cabinet as stated in item 1(b) is calculated with respect to the unit price, the total price of \$1,960 would be equivalent to a cabinet of 7 feet in length and closely matching the dimensions stated therein. The Panel notes that such a price for a new cabinet of such dimensions is fair. However, the Board agrees with the Respondent that a discount to the quotation obtained by the Applicants should be factored in as the existing cabinet will be replaced with a new one. The Board therefore orders damages of the sum of \$4,500 as costs of rectifications of the Applicants' unit.
- 37 The Board notes that the Applicants continued to reside in the affected unit and did not have to close-down or was deprived of use of any particular part of the unit at any time. As such the Board awards the sum of \$2,500 as damages for inconvenience, anxiety and loss of enjoyment.
- 38 On the issue of costs and disbursements, the Board agrees with the Applicants' submissions as fair in the circumstances and so ordered costs of \$17,200, inclusive of STB and transcription fees.

Dated this 25<sup>th</sup> day of March 2021

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Mr. Raymond Lye Hoong Yip  
Deputy President

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Mr. Zahidi Bin Abdul Rahman  
Member

Zainal Abidin de Silva / Norjahan Binte  
Mohamed Saleh v Choy Kok Meng

STB No. 51 of 2020 (Braddell View Estate)

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Dr. Tan Teng Hooi  
Member

Ms. Margaret Neo Kee Heng (M/s Hoh Law  
Corporation) for the Applicants.  
Mr. Choy Kok Meng, Respondent in-person.

Clerical errors corrected on 29 March 2021.