BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT

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

STB No. 56 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 **Waterfall Gardens** (MCST No. **3602)**

Between

Declan Pearse MacFadden

… Applicant(s)

And

The Management Corporation Strata Title Plan No. 3602

... Respondent(s)

GROUNDS OF DECISION

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... Respondent(s)

9 & 10 February 2021

13 April 2021

Coram:	Mr. Oommen Mathew	(Deputy President)
	Mr. Frankie Chia Soo Hien	(Member)
	Mr. Shahrom Bin Mohamed Ariff	(Member)

BACKGROUND

1 The Applicant is the sole subsidiary proprietor of a unit 10 Farrer Road #XXX Waterfall Gardens, Singapore 268822 ("the Unit"). The Unit has 4 bedrooms in total which comprise of the master bedroom (which the Applicant and his partner used) and 3 other bedrooms. The Respondent is the management corporation of the development known as Waterfall Gardens ("the Respondent"). It was common ground that the Applicant lived in the Unit with his partner, Victoria, his daughter Niamh Ethna MacFadden ("Niamh") and her fiancé, Rob, and his son, Fiachra Ross MacFadden ("Fiachra"). Fiachra only started living there from 24 March 2020 after his return from the United States of America ("USA"). Niamh and Rob used Bedroom 3 while Bedroom 2 which was adjacent to the master bedroom was meant for Fiachra's usage.

2 The Applicant was absent at the hearing on both 9 and 10 February 2021 (and the earlier mediation sessions), according to his counsel, as a result of the Covid-19 situation which kept him out of Singapore. Prior to the commencement of the hearing, his counsel also sought leave to adduce two (2) audio recordings[1] and three (3) video recordings[2] as further evidence for the hearing. At the hearing, only Niamh from the MacFadden family gave oral evidence. On 10 February 2021, at the start of the hearing, the Board was informed that Fiachra's AEIC was to be disregarded.

3 For the Respondent, Sanjay Ravikumar, the Condominium Manager, Loggie Bruce Jamieson ("Loggie"), the expert appointed by the Respondent, and Chin Tao Ren, Edison ("Edison") (the loss adjustor from Toplis & Harding (S) Pte Ltd ("Toplis") who had filed a joint affidavit with Victor Fong Whye Poy gave evidence while the AEIC of Abdullah bin Mohamad, the Condominium supervisor, was disregarded. It was also accepted that only Edison was required for the purposes of the oral hearing as one of the two loss adjustors who came for the assessment.

PRELIMINARY ISSUES

4 Parties were asked to deal with two preliminary issues. Firstly, they were queried as to what the status was if the Applicant himself did not appear or give evidence at the hearing. Secondly and connected to this, they were queried as to the effect of Regulation 18 of the Building Maintenance and Strata Management (Strata Titles Boards) Regulations 2005 ("BMSMR 2005").

5 Regulation 15 of the BMSMR 2005 states as follows :-

> "***Absence of persons before Board***
> *15. If, at the time appointed for the arbitration hearing of a dispute or matter, the applicant or any other party to the dispute or matter does not appear, a Board may, if it is satisfied that the applicant or such other party who does not appear has been duly notified of the arbitration hearing in accordance with regulation 14, proceed with the arbitration hearing and make such order as the Board thinks fit.*"

The Board was of the view that the hearing could proceed given that the Applicant had legal representation from the outset and according to the Applicant's counsel, Niamh had the requisite Letter of Authority from the Applicant in these proceedings.

6 Regulation 18(1) of the BMSMR 2005 provides that:

> *"**Evidence***

[1] Audio recording of 21 July 2021 marked AW1d and audio recording of 27 July 2020 marked AW le and the respective transcripts were AW1a and AW1b.
[2] Video recordings of 29 June 2020, 27 July 2020 and 29 July 2020 were marked AW1f, AW1g and AW1h respectively.

> *18.-(1) 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.*"

7 Having considered the dicta of the High Court decision of *Yap Sing Lee v Management Corporation Strata Title Plan No 1267* [3] where the High Court appeared to contemplate the possibility of the application of Parts I to III of the Evidence Act, the Board is nevertheless of the view that the clear wording in Regulation 18 above does not compel this Board to be bound strictly by the provisions of the Evidence Act. In any event, the Board finds that Niamh was able to give direct evidence on most of the relevant events save the initial reporting of the leak and hence, the Applicant's case in the proceedings would not be adversely impacted.

LATE FEBRUARY 2020 – 31 MARCH 2020

8 The Applicant first reported that there was leakage to his unit in late February 2020. There was some dispute between the parties as to the precise date though it was agreed it was in late February 2020. During this time, the Applicant and his partner, his daughter Niamh and her fiancé, Rob (i.e. altogether 4 adults) lived in the Unit using the Master Bedroom and Bedroom 3.

9 The Board notes that while the Applicant's counsel indicated at the start of the hearing that he did not agree to the Chronology of Events as set out by the Respondent, [4] the Applicant tellingly did not produce another version of the timeline of events. The Applicant's sole witness, Niamh, was taken through the Chronology of Events and save for the actual date of the Applicant's call reporting the leakage in late February 2020, had no real significant disagreement with the Respondent's timeline. Hence, for the purposes of the hearing, the Board accepts that the version of the Respondent's Chronology of Events is largely accurate. Insofar as the repairs internally to rectify the defects in the Unit are concerned, the Board accepts that the timeline set out in Niamh's AEIC[5] is accurate.

10 From the period of 23 February 2020 to 31 March 2020, the Respondent liaised with the developer and with at least three (3) contractors (i.e. Singapore Hackers, Wave Fluid, IGM) to ascertain the source of the leak and for the contractors to provide quotations for rectification works.[6] In the midst of this, on or about 16 March 2020, the Applicant and his partner moved out of the Unit and entered into a lease at #XXX The Coterie @ 72 Holland Road from 16 March 2020 - 15 June 2020. [7] While the Applicant moved out, Niamh and Rob stayed at the Unit. At about the same period, sometime on or about 24 March 2020, Fiachra returned from the USA and moved into the Unit.

[3] [2011] 2 SLR 998 at paras [59] and [60].
[4] Respondent's Bundle of Documents ("RBOD"), at pp 1-20.
[5] AEIC of Niamh at para [47].
[6] RBOD, at pp 2-8.
[7] *Supra* n 5, at para [14] and at Tab C.

11 The Respondent contacted its expert witness, Loggie, a Building Surveyor, on or about 27 March 2020 to inspect the leakage.[8] On 31 March 2020, the inspection by Loggie was rescheduled as the Applicant informed the Respondent that Niamh was put on stay home notice till 9 April 2020.[9]

CIRCUIT BREAKER PERIOD

12 As a result of the Covid-19 pandemic, the Government imposed the Circuit Breaker period which commenced on 7 April 2020 to 4 May 2020. This was subsequently extended to 1 June 2020. Sometime between 14 April 2020 to 16 April 2020, Loggie carried out investigations into the leakage and the source of the leak was confirmed to originate from the concealed rainwater downpipe ("RWDP") located in the common area of Waterfall Gardens, more precisely in the 9th storey above the Unit. The actual survey report of Loggie [10] was handed to the Respondent on or about 21 May 2020. [11] In the meantime, the Respondent made arrangements to provide a water suction vacuum to the Applicant's unit for vacuuming out the water in the Applicant's unit during this period.[12]

13 During this period, sometime around 27 April 2020, the Respondent also contacted a contractor (i.e. Wave Fluid) and the developer to cover the drainage pipe to prevent any rain from flowing down the RWDP but due to Covid-19 restrictions, both indicated that they were unable to resume work and/or to schedule appointments. [13] As stated above, the report from Loggie was only given on 21 May 2020 due to the Covid-19 situation. On 26 May 2020, the Applicant wrote requesting the Respondent to pay damages for the rectification works and rental expenses that were incurred.[14]

POST CIRCUIT BREAKER PERIOD

14 From 5 June 2020, the Respondent liaised with at least 3 contractors (Wave Fluid, IGM, LTC Coat) for final quotations for rectification works pursuant to Mr Loggie's report. [15] Further rental expenses were also incurred by the Applicant when Niamh and Fiachra moved to separate alternative accommodation for the period from 3 July 2020 to 10 October 2020.

15 During this period, correspondence was exchanged between both parties on damages payable to the Applicant and when the Respondent could access the Applicant's unit to commence rectification works.[16] The loss adjusters from the Respondent's insurers,

[8] RBOD, at p 8 s/no. 20.
[9] *Id*, at p 8 s/no. 21.
[10] *Id*, at pp 37-50.
[11] *Id*, at p 13 s/no. 39.
[12] *Id*, at pp 9-13.
[13] *Id*, at p 10 s/no. 28 & p 13 s/no. 40.
[14] *Id*, at p 13 s/no. 41.
[15] *Id*, at p 14 s/no. 44.
[16] *Id*, at p 14 s/no. 45 – p 18 s/no. 58.

Toplis, viewed the Applicant's unit to verify the damages.[17] Repair and testing works to the RWDP were carried out from or around 28 July 2020 and completed on or about 8 August 2020 and a corrective repairs report dated 19 August 2020 was furnished by Loggie upon completion of the works. [18] The repairs to the RWDP were carried out from outside the Unit by way of spider man access by LTC Coat at the Respondent's cost. The internal works relating to the pipes in the Unit was done on 23 July 2020 and reinstated completely on 13 August 2020 by LTC Coat at the Respondent's expense.

16 Thereafter, the rectification works in the Unit commenced on or around 27 July 2020 by Interior File and hacking works completed by 29 July 2020. Interior File came back to install the doors, door frames on 21-22 September 2020 with painting works done on 23 and 24 September 2020. Thereafter, wardrobes were installed on 1 and 2 October 2020 and 5 and 12 October 2020.[19] In the interim, Big Red Pte Ltd ("Big Red") supplied and installed the replacement wooden flooring as well as conducted dehumidifying procedures from 30 July – 16 September 2020.

ORDER SOUGHT BY THE APPLICANT

17 The Applicant seeks the following order:

> *"An Order for the Respondent to compensate the Applicant for all costs and expenses incurred in respect of all damage and consequential loss, including but not limited to, repair and/or rectification works and costs of alternative accommodation, arising out of or in connection with the leak from the building rainwater drainage downpipe in the common area of Waterfall Gardens Condominium."*

LIST OF AGREED ISSUES

18 The list of agreed issues were as follows:

(a) Whether the Respondent is liable in respect of the leak;

(b) Whether the Respondent is in breach of its duty to maintain the RWDP;

(c) Whether there was inordinate delay by the Respondent in establishing the cause of the leak and the repair of the same; and

(d) Whether the Respondent is liable in respect of the damage to the Applicant's unit and the costs of alternative accommodation.

19 If the Respondent was liable in respect of the leak, the Board also had to consider the

[17] *Id*, at p 18 s/no. 59.
[18] *Id*, at pp 51-59.
[19] *Supra* n 5, at para [47].

extent of damage to award the Applicant pursuant to section 101(3) of the Building Maintenance and Strata Management Act (Cap. 30C, 2008 Rev Ed) ("BMSMA"), given that the leakage to the Unit was from a concealed RWDP located in common property.

20 The Applicant claimed for the rectification of damages to the Unit arising from the leakage and rental for himself and his family during the period when rectification works were performed with respect to the said leakage. The Respondent did not dispute that the leakage was from the concealed RWDP but submitted that the existence of this pipe was not known to the Respondent prior to this incident and that the Respondent could not have carried out maintenance over the RWDP. [20] In that respect, the Respondent argues that it could not have been responsible / liable for the cause of the leakage and/or that there was nothing that the Respondent could have done to prevent the leakage from the RWDP from occurring. [21]

BOARD'S FINDINGS

21 The Board found that issues in the above paragraphs [18(a)] and [18(b)] are inextricably linked and the Respondent's liability, if any, must be flowing from the statutory duty imposed on the Respondent or any cause of action the Applicant had against the Respondent.

Whether the Respondent is liable in respect of the leak

22 For the purposes of the hearing, both parties agreed that the RWDP is common property.

23 It was the Respondent's expert witness, Loggie's evidence that access to the RWDP had to be done by "*a specialist contractor using trained industrial rope access personnel whereby the common concealed rainwater downpipe duct was hacked and exposed at 3 access locations before concluding the location of the pipe failure*…" Clearly, the leakage was from common property and was not within any SP's unit. As the RWDP is common property, it followed that the Respondent would be responsible for matters dealing with the common property.

Whether the Respondent was in breach of its duty to maintain the RWDP

24 It is apposite to examine the manner in which the Applicant formulated his case in his submissions. The Applicant took the position that his action was twofold :-

(a) An action in negligence and/or

(b) Action in breach of the Respondent's statutory duty under section 29 of the BMSMA to maintain the RWDP.[22]

[20] Respondent's Opening Statement ("ROS"), at paras [2] and [3].
[21] *Id*, at paras [5], [6] and [11].
[22] Applicant's closing submissions, at para [17].

25 However, the Applicant's submissions seemed to focus substantially on the statutory duty under section 29 of the BMSMA. The relevant provisions of section 29 of the BMSMA (cited by the Applicant) namely sections 29(1)(a) and 29(1)(b)(i) are set out below :-

> **"*Duties and powers of management corporation in respect of property***
> *29.-(1) Except as otherwise provided in subsection (3), it shall be the duty of the management corporation –*
> *(a) …to control, manage and administer the common property for the benefit of all the subsidiary proprietors constituting the management corporation;*
>
> *(b) to properly maintain and keep in a state of good and serviceable repair (including where reasonably necessary, renew or replace the whole or part thereof) -*
> *(i) the common property;*
> *…*"

26 The pertinent provision appears to be section 29(1)(b)(i) of the BMSMA. The MCST's duty is prescribed as being to properly maintain and keep in a state of good and serviceable repair the common property and in this case, the RWDP. This duty is mandatory and non delegable. In the Board's opinion, it matters not that the MCST could not have known of the existence of the RWDP as argued by the Respondent. The fact remains that so long as the RWDP is common property, the duty falls on the Respondent. There is also no argument that the Respondent did not properly maintain and keep the RWDP in a state of good and serviceable repair.

27 The Applicant relies on the Court of Appeal case of *Keller Piano Co (Pte) Ltd v Management Corporation Strata Plan No. 1298* [23] (*"Keller Piano"*). This was a case where the subsidiary proprietor in a shopping mall brought an action against the MCST for damages caused by a leakage to its unit as a result of leakage from the pipe above the unit. *Keller Piano* dealt with a case brought for (i) negligence and (ii) for breach of the MCST's statutory duty to maintain and keep the pipe in a state of good and serviceable repair. *Keller Piano's* case for breach of statutory duty failed and the matter was no longer pursued on this ground. Rather, the Court of Appeal dealt with the argument of *res ipsa loquitur* on the basis of the case run in negligence.

28 It is important to place *Keller Piano* in its right context when examining the Applicant's arguments on the *res ipsa loquitur* principle. As pointed out above, apart from a fleeting reference to negligence, the Applicant has not developed his case on this ground any further. In the Board's view, the argument of *res ipsa loquitur* has no place in arguments relating to a case based on breach of statutory duty.

29 The Board notes that the only direct evidence on the duty to maintain the RWDP was canvassed by the Respondent's expert, Loggie, who opined that "…… *it is not practical*

[23] [1994] 3 SLR(R) 965.

or possible for the MCST and/or their service providers to inspect and maintain a concealed rainwater downpipe as an act of preventive maintenance…." [24]

30 However, the Board views this statement as self-serving and intended purely for the Respondent's case. The pertinent report to study is the contemporaneous report of Loggie dated 20 May 2020 which followed the site inspections on 14, 15 and 16 April 2020. The scope of Loggie was "*…..to carry out an inspection and report on the causation of water seepage to Unit #XXX (Block 10) and to propose corrective repairs …* ." [25] The expert was appointed to find out the cause of the leak to recommend the appropriate remedial measures. It was not to apportion or delegate responsibilities stipulated for in the statute.

31 Even if the Board was wrong on this, Loggie's opinion does not assist as he has opined that it is not ***practical or possible*** to inspect and maintain. The duty on the MCST does not involve questions of practicality. It is a mandatory positive duty to **properly maintain** and keep it in a state of good and serviceable repair. As such, the Board is of the opinion that the Respondent was in breach of this positive duty to properly maintain the RWDP.

32 The Respondent relied on three (3) cases [26] to show that the onus remains on the Applicant to prove negligence or default. None of the three (3) cases cited assists the Board as they do not deal with the relevant provisions in the BMSMA.

33 Although neither party submitted any cases directly relevant to the interpretation of the relevant provision in the BMSMA, the Board finds that the High Court of New South Wales case of *Seiwa Pty Ltd v. Owners Strata Plan 35042* [27] is relevant. In this case, the owner of a unit commenced proceedings for damages and injunction against the owners corporation (equivalent of our MCST) for inter alia, alleged breach of duty to maintain the common property. The relevant section 62 of the (NSW) Strata Management Act 1996 states:-

> *"62. What are the duties of an owners corporation to maintain and repair property?*
>
> *(1) An owners corporation must properly maintain and keep in a state of good and serviceable repair the common property and any personal property in the owners corporation*"

34 As the court there observed, "…*section 62(1) imposes on owners corporation a duty to maintain, and keep in a state of good and serviceable repair, the common property. The duty is not one to use reasonable care to maintain and keep in good repair the common property, nor one to use best endeavours to do so, nor one to take reasonable steps to do*

[24] AEIC of Loggie, at para [17(c)].
[25] *Supra* n 6, at p 38 para [1.1].
[26] Respondent's Submissions, at para [24].
[27] [2006] NSWSC 1157.

*so, but **a strict duty** to maintain and keep in repair*.[28]

35 It appears therefore from the equivalent provision in the New South Wales Act that the duty under section 29(1)(b) of the BMSMA appears to be that of strict liability. This in turn will not absolve the Respondent of liability even if they were unaware of the state of the RDWP or maintenance thereof. As such, the Board finds that the Respondent was in breach of its statutory duty to maintain and keep in good repair the RWDP and as such, liable for the leak from the RWDP into the Unit.

Whether there was inordinate delay by the Respondent establishing the cause of the leak and the repair of the same

36 The Applicant has raised an issue as to the delay in establishing the cause of the leak and repair. In doing so, the Applicant has submitted that the Respondent was (i) unprofessional/inefficient in handling the rectification and/or (ii) failed to carry out repair works during the Circuit Breaker period. There has also been some disagreement on whether the Applicant had contributed to this delay as well.

37 The Board notes that when confronted with the Chronology of Events in detail and inspite of Applicant's counsel's position at the opening of the hearing, the Applicant's only witness was unable to point to any real or significant delay in the investigations carried out as well as the repair works done by the Respondent. In this regard, the Board had also indicated that it had taken "judicial notice" or the equivalent of a fact well recognized that a Circuit Breaker period had been imposed by the Government from 7 April 2020 to 1 June 2020. The Board accepts that the Respondent's arguments are cogent and that for all the general allegations of inordinate delay, the Applicant was unable to point to any such significant period of delay. As such, the Applicant was unable to prove any inordinate delay on the part of the Respondent in establishing the cause of the leak and repair.

38 In the Board's view, both the Circuit Breaker period (which was unprecedented in Singapore's recent history) of eight (8) weeks coupled with the difficulty of actually ascertaining the source of the leak clearly contributed to the delay in rectifying the leak. In this regard, the observations in the expert evidence of Loggie (being unchallenged) is germane to this issue.

> "*17. I would conclude by stating the following:*
>
> *(a) The initial investigation works carried out by the previously engaged contractor/s assisted in my investigation.*
>
> *(b) The as-built drawings made available did not show the existence of the concealed rainwater downpipe which was concluded to be the source of the*

[28] *Id*, at para [3].

water leakage. See RBOD page 108 & 109. However, regardless, it would be reasonable to first proceed with an inspection, testing as appropriate to accessible areas prior to opening up of the common service duct as carried out by the previously engaged contractor/s to eliminate the closest and most probable source of the water seepage."

Whether the Respondent is liable in respect of the damage to the Applicant's unit and the costs of alternative accommodation

39 There are 2 distinct heads of claims here, namely :-

(a) Costs of rectification of damages to Applicant's unit; and
(b) Cost of alternative accommodation.

40 The Board notes that the Respondent's closing submissions did not deal, in any detail, on the various quantum claims as the Respondent seems to have hung their case on the liability peg almost entirely. Nevertheless, the Board is required to investigate and determine on the quantum of claims made and to that extent, some of the cross examination by Respondent's counsel assists.

41 The Board notes that it is empowered to award damages pursuant to section 101(1)(a) and 101(3) of the BMSMA which state as follows :-

"***General power to make orders to settle disputes or rectify complaints, etc.***
101.-(1) Subject to subsections (4), (6) and (7), a Board may, pursuant to an application by a management corporation or subsidiary management corporation, a subsidiary proprietor, mortgagee in possession, lessee or occupier of a lot in a subdivided building, make an order for the settlement of a dispute, or the rectification of a complaint, with respect to-
(a) any defect in a lot, a subdivided building or its common property or limited common property;
...
(3)Any order made under subsection (1), except an order made with respect to the exercise or performance of, or the failure to exercise or perform, a power, duty or function conferred or imposed by this Act or the by-laws, may provide for the payment of damages not exceeding an amount that may be ordered by a District Court if the dispute had been the subject of civil proceedings in that Court."

The onus remains on the Applicant to prove that he and the occupants in the Unit were deprived of the use of the Unit as a result of the leak. Equally, the Board also notes that this claim for damages is necessarily subject to the issue of remoteness and more crucially the principle of mitigation of damages. In *Cristian Priwisata Yacob and another v*

Wibowo Boediono and another and another suit [29], George Wei J held that it is clear that the duty to mitigate arises in respect of both claims in tort and contract.

(i) Costs of rectification of damages to Applicant's unit

42 The Board reviewed the tabulation of the expenses / costs incurred by the Applicants with respect to damages to the Applicant's property as a result of the leakage:[30]

S/N	Description of invoice	Amount
1	Interior File [31]	$17,542.65
2	Big Red Invoice [32]	$13,268.00
3	Report Fees of Big Red	$374.50
4	Cost of deploying humidifiers [33]	$1,498.00
5	Strip Light for Wardrobes	$190.00
	Total:	**$32,873.15**

43 In relation to Interior File's costs of repairs of amounting to $17,542.65, the Board notes that the repairs were to make good defects to the Master Bedroom, Bedroom 2 (identified as Bedroom 1 in the quote) and the hallway. The Respondent's loss adjustors, Toplis, also opined that the necessary repairs would have involved :-

(a) The timber floor of the master bedroom, half of the next bedroom and a third of the passageway;
(b) The built-in wardrobes in the master bedroom and bedroom 1; and
(c) The timber doorframes in the master bedroom and master toilet.

44 The Board is of the opinion that there is no justifiable reason why there should be any apportionment of liability in this case and rejects the loss adjustor's apportionment attempts. The Board also notes that the revised Interior File invoice for the actual work done dated 25 October 2020 [34] for $17,542.65 is substantially lower than the first quote from Interior File dated 5 June 2020 as the former invoice did not include the items for the supply and installation of the American Oak flooring as well as work to Niamh's room. The Board therefore allows for the claim on Interior's file for the full sum of $17,542.65.

45 In relation to the Big Red invoice, the Board notes that Big Red was used to supply and install the American Oak flooring as Interior File was unable to do so. However, the invoice does not make clear if the flooring in Bedrooms 2 and 3 were also changed as there are sanding and varnishing works on Bedrooms 2 and 3 as well. Neither party has tendered detailed submissions on the quantum claimed. The Board will therefore allow

[29] [2017] SGHC 8, at para [310].
[30] Joint AEIC of Victor Fong Whye Phoy and Edison, at para [22] and also pp 88 to 91 of RBOD.
[31] *Supra* n 5, at para [46] and Tab U.
[32] *Id*, at para [45] and Tab T.
[33] *Id*, at para [44] and Tab S.
[34] *Id*, at Tab U.

the Applicant's claim for the Big Red invoice save for the sanding and varnishing of Bedrooms 2 and 3 - $540 x 2 = $1,080. [35]

46 In relation to the report fees of Big Red (with respect to moisture test readings conducted by Big Red) amounting to $374.50,[36] and cost of deploying humidifiers amounting to $1,498.00,[37] the Board notes that Loggie had been appointed as the professional to investigate the matter and he had furnished a corrective repairs report dated 19 August 2020 upon completion of the works which surmised that the Unit was drying up quickly enough so that further tests by the Applicant's contractor, Big Red was not required. The Board also agrees with the Respondent that representatives from Big Red were not called to testify with regards to the necessity of incurring expenses for conducting moisture meter testing and the use of dehumidifiers [38] and without evidence supporting the same, these were unnecessary. The Board disallows the claims for these two (2) items and the strip light for wardrobes amounting to $190.

47 Hence, the total allowed for the repairs by Big Red would be $12,112.40 for the reinstatement works being ($12,400-$1,080 = $11,320 + $792.40 (GST)). The total sum allowed for the rectification works is **$29,655.05**.

(ii) Cost of alternative accommodation

48 The Board also noted the Applicant's claims for rental for himself and his family during the period when rectification works were performed arising from the leakage:

Tenant(s)	Address & Period of tenancy	Amount claimed
Applicant & Partner	#XXX The Coterie @ 72 Holland Road from 16 March 2020 - 15 June 2020 [39]	$4,200 / month x 3 months = $12,600
Niamh & Rob	#XXX The Coterie @ 72 Holland Road from 3 July 2020 - 2 October 2020 [40]	$2,800 / month x 3 months = $8,400
Fiachra	#XXX Fortville from 5 July 2020 – 10 October 2020 [41]	$3,000 / month x $3\frac{7}{30}$ months = $9,700
	Total:	**$30,700**

49 In principle, the Board is of the view that claims for rental costs of alternate accommodation is permissible. Support for this proposition can be found in *Cheng Fu Zay and another v Management Corporation Strata Title Plan No 1919 (Scott Vickers Engineering Pte Ltd, Third Party)* [42] where the High Court noted the Deputy Registrar's

[35] RBOD, at p 84.
[36] *Id*, at p 85.
[37] *Id*, at p 86.
[38] *Supra* n 26, at paras 7 (vv) – (yy).
[39] Applicant's Opening Statement ("AOS") at para [9], AEIC of Niamh at [Tab I].
[40] AOS at para [23].
[41] *Id*, at para [24].
[42] [2008] 3 SLR(R) 328.

decision to allow the claim for loss of rent at paragraph [24] as follows:

> "***LOSS OF RENTAL INCOME***
>
> *22. A very brief submission was made by the defendants that such a claim for 'loss in rental was pure economic loss in tort which is too remote, and not of a dangerous nature, and therefore cannot be claimed'. No authority was cited to support the submission. Having reviewed the law in this area, I find the submission wholly misconceived in these circumstances. Water leaking into a home would undoubtedly affect the comfort of its occupants. The more severe and prolonged the leakage, the more severe the extent of the damage.* ***If it results in the owner being deprived the use of premises, then rental costs of alternative accommodation (in owner occupied situations) or loss of rental (in rented out situations) would be claimable since both flow directly from the damage caused.*** *In either situation, costs of repairs would also be claimable.*"

50 In this regard, the unique feature of the present case is that the Applicant has hoisted claims for three (3) separate accommodations arising out of the leakage in the Unit over three (3) separate periods stretching from 16 March 2020 - 10 October 2020.

APPLICANT AND PARTNER

51 The Applicant and his partner moved out with effect from 16 March 2020. While the leak to the unit would have affected the Master bedroom occupied by the Applicant and his partner, the Board accepts the Respondent's challenge and contention that there was no reason why the Applicant and his partner had to move out from 16 March 2020, considering that there was a spare room available. No evidence of any attempt to use the spare bedroom 3 or convert it for the Applicant's use was shown. The Board opines that the Applicant was unable to show directly or otherwise that the alternate accommodation was necessary and that he and his partner could not remain there in the Unit. As such, the claim for the Applicant's alternate accommodation amounting to $12,600 is disallowed.

NIAMH AND ROB AND FIACHRA

52 Niamh and Rob entered into a tenancy agreement at the Coterie as well for three (3) months from 3 July 2020. Almost concurrently at the same time (from 5 July – 2 October 2020), Fiachra signed another lease at the Fortville from 5 July 2020. Collectively, the claims in rental came up to $8,400 and $9,700 respectively.

53 Considering the proximity of dates around which they had moved out of their unit, there does not seem to be any logical reason as to why both Niamh and Fiachra could not have moved to one bigger unit even if they had to. This is especially so considering all the members of the family had always been under one roof. Secondly, it has not been proven to the Board's satisfaction that both the siblings had to even move out by early July 2020.

The need, if at all, to move out would only surface when the real heavy works commenced. Of course, it would not be reasonable to expect the lease to commence only when the work begins as there would be some uncertainty as to when the work would actually commence. However from the timeline of events [43], it would appear that the reinstatement of internal pipes was completed on 23 July 2020 and the hacking commenced on 27 July 2020 was completed on 29 July 2020. Thirdly, both Niamh and Rob were occupying Bedroom 2 which was not proven to be adversely affected by the leak. The Board saw no reason why the claims by Niamh and Rob for the full three (3) months of alternative accommodation was reasonable in the circumstances. The Board has, however, given due consideration for Fiachra's medical condition and the Board has decided that for all the above reasons and the duty of the Applicant to act reasonably to mitigate the damages as well as factoring in the intensity and frequency of the rectification works, the Board will allow for two (2) months of Fiachra's rental which was a higher figure than Niamh's alternative accommodation. This would be a total of **$6,000**.

BOARD'S DECISION

54 The Board hereby orders that the Respondent do pay the Applicant the sum of $49,055.05 comprising:

a the sum of $35,655.05 in damages being:
   (i) $29,655.05 for the actual rectification works in the Unit; and
   (ii) $6,000 for the alternative accomodation;

b the sum of $1,400 comprising the STB Application Fee of $500 and Hearing Fees of $900 (i.e. $300 x 3 days) for the arbitration hearings on 9 February 2021, 10 February 2021 and 13 April 2021; and

c legal costs of $12,000.

within fourteen (14) days from the date of this Order.

Dated this 13th day of April 2021

Mr Oommen Mathew
Deputy President

[43] *Supra* n 5.

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Mr Frankie Chia Soo Hien
Member

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Mr Shahrom Bin Mohamed Ariff
Member

Mr Lim Kian Leng Malcolm & Mr Phone Ko Canaan (M/s Tan & Lim) for the Applicant.
Mr Hong Heng Leong (M/s Just Law LLC) for the Respondent.