

**BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT**

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

STB No. 8 of 2019

In the matter of an application under **section 101** of the Building Maintenance and Strata Management Act in respect of the development known as **THE BALMORAL** (MCST No. **1374**)

Between

**Raman Dhir**

... Applicant

And

**MCST Plan No. 1374**

... Respondent

---

**GROUND OF DECISION**

---

**BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT**

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

STB No. 8 of 2019

In the matter of an application under **section 101** of the Building Maintenance and Strata Management Act in respect of the development known as **THE BALMORAL** (MCST No. **1374**)

Between

**Raman Dhir**

... Applicant

And

**MCST Plan No. 1374**

... Respondent

Coram:                      Mr. Seng Kwang Boon                      (Deputy President)  
                                         Mr. Kong Mun Kwong                      (Member)  
                                         Mr. Tony Tay Chye Teck                      (Member)

**BACKGROUND**

- 1     The Applicant is Raman Dhir. He is a subsidiary proprietor (“SP”) of the development called The Balmoral.
- 2     The Respondent is the MCST Plan No. 1374.
- 3     The dispute between the parties was heard by the Board over several days in July 2019. The Board rendered its decision on 31 July 2019 (“1<sup>st</sup> Decision”). The Applicant appealed against the 1<sup>st</sup> Decision. The High Court found that the RC Flat Roof and the Awning were common properties, reversing the finding of the Board and remitted the matter back

to the Board to consider the presumption under section 101(8) of the Building Maintenance and Strata Management Act (“BMSMA”) in coming to its decision on the Applicant’s claim.

4 The rehearing was heard in July 2020 and the Board’s decision was rendered on 29 July 2020 (“2<sup>nd</sup> Decision”).

5 The Applicant appealed against the 2<sup>nd</sup> Decision and the High Court directed the following four matters to be remitted back to the Board for the present rehearing. The four matters are:

(a) Whether the presumption under section 101(8) of the BMSMA applies to the RC Flat Roof;

(b) The Applicant’s claim in respect of the external wall joint of the 4<sup>th</sup> storey balcony and external ceiling board below the 4<sup>th</sup> storey balcony;

(c) The Applicant’s claim of \$700 for the repairs done to the Fixed Windows; and

(d) The issue of costs.

6 At the directions hearing for this rehearing, the Board noticed that the item in [5(b)] above appeared to be a new matter that had not been raised by the Applicant before in the first appeal. The Board directed parties to address that point in their written submissions because the Board had no knowledge if the High Court was aware of this fact.

7 The Board has read the submissions of both parties and will rehear the item in [5(b)] as the High Court had knowledge of this and had directed the Board to rehear it.

**THE RC FLAT ROOF**

- 8 There was a misunderstanding as to whether the enclosed space under the RC Flat Roof contained any rooms. An undated photograph tendered by the Applicant showing water stains on the ceiling under the RC Flat Roof was rejected by the Board as the said undated photograph was described as a room in level 3 by Applicant's contractor. This has now been clarified by a joint inspection in 2021 as suggested by the High Court. The undated photograph in fact showed water stains on the ceiling of a room directly under the RC Flat roof and not a room on the 3<sup>rd</sup> level.
- 9 However, there were no signs of dampness, moisture or water penetration on the ceiling directly below the RC Flat Roof on the day of a joint inspection on 22 June 2018 according to witness Kalai, who was the property site manager. He was under oath and the Board had no reason to doubt him. The Applicant had also allegedly claimed that he had painted over the ceiling. There was no mistake or a misunderstanding here.
- 10 As there was this undated photograph showing water stains on the ceiling under the RC Flat Roof, there must have been some leakages from the RC Flat Roof into the ceiling sometime before 22 June 2018.
- 11 Accordingly, the Board finds that the presumption applies to this area. The Respondent is responsible to make good the damages caused to the areas directly below the RC Flat Roof. The Respondent will reimburse the Applicant for the cost of repairs done to the above said areas (*i.e.* the ceiling and the walls).
- 12 The Respondent is disputing the quantum of repair. The Board is of the view that it is too late in the day to raise this. As we had said before, the Respondent had been reluctant to do the repairs and the Applicant had no choice but to go ahead himself. It is also not in

the interest of both parties, in our view, to go for costly assessment, in the circumstances of this case. However, the Board's problem is that the Applicant had referred to an invoice for \$4,100 as the cost of repairs. The Respondent had rightly objected on the grounds that the said invoice was for "*Painting Works ... To apply wall fillers and new paintwork using Nippon Vinilex Paint. Wall Painting using Nippon Vinilex Paint. To reinstate original colour wall paint coat to Entranceway, Lvl 1 and Lvl 2*".<sup>1</sup> The Applicant had not referred the Board to any other invoice.

13 The Applicant will have to provide some other evidence that the \$4,100 of repairs was for the damaged areas under the RC Flat Roof and not elsewhere.

14 As the Applicant is asking for reimbursement, it is therefore necessary for the Applicant to show some proof that the amount in the invoice had been fully paid by him.

### **THE EXTERNAL CEILING BOARD AND THE EXTERNAL WALL JOINT**

15 Section 2(1) of the BMSMA provides as follows:

*““common property”, subject to subsection (9), means —*

*(a) in relation to any land and building comprised or to be comprised in a strata title plan, such part of the land and building —*

- (i) not comprised in any lot or proposed lot in that strata title plan; and*
- (ii) used or capable of being used or enjoyed by occupiers of 2 or more lots or proposed lots;*

*(b) in relation to any other land and building, such part of the land and building —*

- (i) not comprised in any non-strata lot; and*

---

<sup>1</sup> Affidavit of evidence-in-chief (“AEIC”) of Raman Dhir, at pg 162.

*(ii) used or capable of being used or enjoyed by occupiers of 2 or more non-strata lots within that land or building; or*

*(c) in relation to any land and building mentioned in paragraph (a) or (b), any of the following whether or not comprised in a lot, proposed lot or non-strata lot:*

*(i) the pipes, wires, cables or ducts which are used, or capable of being used or enjoyed, by occupiers of 2 or more lots, proposed lots or non-strata lots (as the case may be) within that land or building, or are used or capable of being used for the servicing or enjoyment of the common property;*

*(ii) the cubic space enclosed by a structure enclosing pipes, wires, cables or ducts mentioned in sub-paragraph (i);*

*(iii) any structural element of the building;*

*(iv) the waterproof membrane attached to an external wall or a roof;*

*Examples*

*(a) A foundation, load-bearing wall, column or beam, a shear core, strut, ground anchor, slab (not including any layer that is the underlayment or the flooring finishing), truss and common staircase.*

*(b) An external wall, or a roof or façade of a building which is used or enjoyed, or capable of being used or enjoyed, by occupiers of 2 or more lots, proposed lots or non-strata lots.*

*(c) A garden, sporting or recreational facility, car park or parking area for other vehicles, none of which are comprised in a lot, proposed lot or non-strata lot.*

- (d) *A central air-conditioning system and its appurtenances, and a fire sprinkler protection system and its appurtenances.*
- (e) *Any chute, pipe, wire, cable, duct or facility for the passage or provision of water, sewage, drainage, gas, oil, electricity, telephone, radio, television, garbage, heating or cooling systems, or any other similar services.”*

16 An external wall joint is actually the area where two external walls joined. External walls are common properties and logically it follows that the joined area of the two common properties must necessarily be common property as well. We find that the external wall joint is a common property. It is also our view, which we had previously stated, that the presumption under section 101(8) of the BMSMA does not apply to lateral seepages (*i.e.* through windows or walls). Therefore, it does not apply to external wall joints as well.

17 The 4<sup>th</sup> storey balcony floor is a private strata area of the unit<sup>2</sup>.

18 There is no definition of “facade” in the BMSMA. The ordinary meaning of “facade” is defined as “*the front of a building*” in the Oxford Advanced Learner’s Dictionary. The external walls and other structures facing outwards can be said to be the unit’s facade, however the piece of suspended ceiling board which is situated below the soffit of the balcony slab is questionable. Not everything visible from outside made up the facade of the unit. Also, the piece of suspended ceiling board is not a structural element as envisaged by section 2(1) of the BMSMA.

19 “*Structural element*”, as defined in section 2(1) of the BMSMA:

---

<sup>2</sup> See AEIC of Low Lee Luang.

*“... for a building, means an internal or external load-bearing component of the building that is essential to the stability of the building or part of the building, but does not include any door or window”.*

- 20 However, the Board is of the view that there is no necessity to define the piece of suspended ceiling board to be a common property or not within the meaning of section 2(1) of the BMSMA to decide liability.
- 21 On the evidence available before the Board, there were only two possible sources of leakage that could have caused the damages to the suspended ceiling board. One is from the balcony floor directly above the suspended ceiling board and the other from the external wall joint.
- 22 The Board noted that there was grouting carried out to the external wall joint, but this did not mean that the wall or the wall joint itself was structurally defective and the balcony floor slab was not defective. For the rainwater to seep through the external wall joint and into the ceiling void and punch a big hole in the suspended ceiling board was probably unlikely given the extent of the water damage and stain marks around the suspended ceiling board. Also, no expert evidence was tendered, and no proper testing and investigation was done to the area by an expert. The Board also noted in this case that the Applicant had engaged numerous contractors to carry out grouting and waterproofing works at various locations in his unit and the immediate result was that the leaks were not arrested. This exercise of grouting by the Applicant’s contractor was another trial and error approach to eliminate any suspected potential water seepage at the external wall joint.
- 23 As stated before, the presumption under section 101(8) of the BMSMA does not apply



for lateral seepages through walls, windows and wall joints. The Board, therefore, ruled out that the source of water seepage was from the common property, i.e. the external wall joint.

24 The other source of seepage would be from the balcony floor slab directly above the suspended ceiling board. There were evidence of ponding and chokage at the balcony floor area. The presumption in section 101(8) of the BMSMA would apply in this case. The Board finds that the water seepage that caused the damages to the suspended ceiling board came from the balcony floor which is a private strata area belonging to the Applicant. So even if the suspended ceiling board is a common property, the Applicant is responsible for its damage and must bear responsibility.

25 The Board dismissed this claim.

### **THE \$700 INVOICE**

26 The Board had ordered that “*any repairs to fixed window panels will be paid by the Respondent*”.

27 As we had stated previously, it is too late to dispute quantum and it is not in the interests of both parties to do an expensive assessment exercise.

28 It appears to us that the \$700 invoice was for repairs to the windows. The Respondent will therefore reimburse the Applicant that amount on proof that the amount in the invoice had been fully paid by the Applicant.

### **COSTS**

29 It is clear to the Board that the fundamental issue at this rehearing was for damages to the

various parts of the Applicant's unit because of water seepages.

30 The Applicant had succeeded in some claims and failed in others.

31 In exercising our discretion in awarding costs, we are aware that costs should follow the event.

32 However, in this rehearing, we are of the view that it would be unfair to penalize any party on costs. The Board is of the view that fairness is an important factor in the exercise of the discretion.

### **THE BOARD'S ORDERS**

33 The Board orders as follows: -

- (1) The Respondent will reimburse the Applicant the sum of \$4,100 for repairs to the ceiling and walls below the RC Flat Roof upon proof that the said sum had been fully paid by the Applicant and it was for repairs to the ceiling and walls below the RC Flat Roof.
- (2) The claims in respect of the external ceiling board and external wall joint are dismissed.
- (3) The Respondent will reimburse the Applicant the sum of \$700 for the window repairs upon proof that the said sum had been fully paid by the Applicant.
- (4) Each party to pay its own costs in this rehearing.
- (5) The Board's decisions in respect of costs in the other hearing and rehearing remain unchanged.
- (6) There will be no order on interest.

Dated this 8<sup>th</sup> day of September 2021

---

Mr. Seng Kwang Boon  
Deputy President

---

Mr. Kong Mun Kwong  
Member

---

Mr. Tony Tay Chye Teck  
Member

Ms. Carolyn Tan Beng Hui and Mr. Kevin Leong (Tan & Au LLP) for the Applicant.

Mr. Lim Tat and Ms. Jasmin Kang (Aequitas Law LLP) for the Respondent.