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BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT

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

STB No. 29 of 2023

In the matter of an application under section 101(8) of the
Building Maintenance and Strata Management Act in
respect of the development known Eunos Park (MCST
Plan No. 2053)

Between

Evershine Development Pte Ltd

... Applicant(s)

And

The MCST Plan No. 2053

... Respondent(s)

GROUND OF DECISION

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And

The MCST Plan No. 2053

... Respondent(s)

20 November 2023

Coram:	Mr Raymond Lye	(Deputy President)
	Ms Jacqueline Chan	(Member)
	Ms Siti Habibah bte Haji Siraj	(Member)

INTRODUCTION

1. The Applicant – Evershine Development Pte Ltd commenced proceedings against the Respondent – The MCST Plan No. 2053 for alleged water leakages into the Applicant’s 2 storey unit, with the upper unit situated just below the common property roof.
2. The Applicant’s prayed applied for an order for the Respondent to immediately engage a contractor to stop the water seepage from the common pitch roof and to fix all damages (sic) caused including ceilings, walls, floor, door frames and doors. The Applicant takes the position that the roof leaks are continuing and even flows through to the unit below theirs. As such, the rectification efforts of the Respondent have been ineffective.
3. The Respondent’s response in substance was that the MCST had in 2018 engaged a contractor, BK Civil and Construction Pte Ltd (“BK”), to carry out pitch roof waterproofing and rectification works and their warranty is in effect until 2024, wherein they will deal with and rectify any leakages arising from the pitch roof into the penthouse units underneath. The Respondent takes the position that the leakage complaints of the Applicant arising from the pitch roof have been dealt with and rectified by BK, and that the Respondent has taken reasonable steps to deal with each complaint and will continue to do so.
4. The several mediation sessions were ultimately unsuccessful and a one-day arbitration hearing was conducted on 13 October 2023.

Preliminary Issues

Joint expert

5. At mediation parties agreed to jointly appoint an expert to determine the source of the leaks into the Applicant's unit and propose rectification methods, which would be binding.
6. Parties appointed Mr Ng Dick Young of SYT Consultants Pte Ltd (NDY)
7. NDY prepared 2 reports dated 13 August 2023 and 9 September 2023. His first report opined that the leaks likely originate from the pitch roof or dormer roof, and proposed reinstalling all flashings of the dormer roofs. His second report concluded that the leaks come from the pitch-roof valley flashings, which could be defective in some parts considering the long span of roof valleys, and proposed reinstalling all the defective flashings of the pitch-roof valleys, especially those above the Applicant's unit as a precedent case.
8. The Board is not convinced by either of the reports as their conclusion and opinion does not appear to be backed up by any cogent evidence. NDY did not do his own water testing nor produce or document any evidence of damaged flashings, whether dormer or pitch-roof, in both reports. NDY appeared to rely on assumptions and information derived from other sources at face value without verification, with the conclusions of both reports seemingly inconsistent as to the cause of the leaks.
9. It is trite law that the Tribunal or Court is the ultimate trier and decider of what the facts are in each case, and although it may rely on the assistance of experts, jointly appointed or otherwise, is not bound by their opinions and may exercise independent judgment. The Board will accordingly discount the weight to be attributed to NDY's reports and decide the issue of leaks based on the available evidence actually adduced.
10. The Board also notes that NDY did not disclose his existing business relationship with the director of the Applicant vis-a-vis a related entity of the Applicant, with the Respondent raising doubts about the impartiality of NDY and for his reports to be discounted. The Board finds that NDY should have disclosed his relationship with the Applicant before his joint appointment so that his impartiality is not put into question. However, since the Board has decided that the contents of NDY's reports do not carry much weight for the substantive reasons aforesaid, the Board does not have to disregard the same, and will treat his reports as evidence for the Applicant.

Issue of Damages and Duty of MCST

11. Applicant's Form 8 only requires the Respondent to stop the leaks and to rectify the damaged areas. It did not seek damages. The High Court held in *MCST No. 3602 v Declan Pearse MacFadden [2022] SLR 623* that a claim against an MCST to take action to repair part of common property comes under section 101(1)(c), and not 101(1)(a) BMSMA. As such, the exception in section 101(3) disallows the Board from ordering damages. The Board therefore has no jurisdiction in the present case to order the damages and compensation that the Applicant seeks from the Respondent. It also held that the duty on an MCST to maintain common property is to act reasonably. There is no strict liability.

Inter-floor leaks

12. As a preliminary issue, although parties dealt with issues relating to inter-floor leakage between Applicant's unit and the unit below it, #XXX, the affected SP is not a party to the present proceedings and issues between the Applicant and the Respondent as to the pitch roof leaks can be dealt with directly between the parties. The Board does not see any basis nor need to deal with it.

ISSUES BEFORE THE BOARD

13. There are therefore two main issues for decision:
- (i) Are there leakages originating from the common property roof into Applicant's unit:
 - (ii) If so, has the Respondent acted reasonably in dealing with it.

Are there leaks?

14. Presumption under section 101(8) triggered primarily arising from IGM's report dated 22 October 2022 on leakages from the roof into the Applicant's unit. The Applicant relies on NDY's reports that the leaks are due to damaged flashings that require complete replacement. The Respondent concedes there are leaks, but takes the position that the leaks do not originate from the flashings but rather gaps between roof tiles, and each complaint of leakage has been rectified by its roofing contractor. This is because the Respondent has a contract with BK for roof repairs and waterproofing works to the pitch roof with a 5 year warranty until 2024.
15. The Board has tried hard to look for any evidence of damaged flashings and found none from NDY's reports nor BK's reports, nor even IGM's report. BK's report dated 19 September 2023 exhibited photographs of valley gutters above Applicant's unit and R4 Bryan Lim testified that they were in good order with no damage or cracks. As for flashings, NDY's photographs show some flashings on the roof, but none showing any damage on them, and none directly above the parts of the Applicant's unit where the leaks allegedly occurred (Annex A, A7 and A8 of NDY report of 9 September 2023). Bryan Lim testified that there was no damage to the flashings or valley gutters on the pitch roof (transcript p236, 247 and 256).
16. The hole above the Applicant's kitchen area where sunlight could be seen entering was identified by BK as coming from defective roof tile and repaired, whose workers having actually climbed to the affected rooftop spot. NDY did not do so even though he was present. On another occasion, a hole with a narrow beam of sunlight seen was found at the tip of the pitch roof above the Applicant's living hall. BK found this arose from gaps in the roof tiles, which were sealed off. Photographic evidence was produced (R4 LYW-07).
17. On the facts the Board prefers the testimony of R4 Bryan Lim of BK whose workers had climbed to the rooftop and had taken and exhibited photographs of the cause of the leakages, which arose from affected roof tiles and for which rectification work was done. On the other hand, NDY did not consider the issue of the roof tiles being the cause of the leaks, despite not finding any proof of damaged flashings.
18. On the facts, the Board finds on a balance of probability that the leaks more likely arose from affected roof tiles more so than flashings on the pitch roof, for which evidence was not convincing.

Has Respondent dealt with leaks reasonably?

19. Has the MCST acted reasonably with regards its duty under section 29(1)(b)(i) as to common property 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)?

20. Section 29(1)(b) has 2 limbs; first limb refers to proper maintenance by good and serviceable repair, and the second limb refers to renewal or replacement where reasonably necessary. The latter comes into play presumably where the affected common property is in such a poor state that it can no longer be properly maintained by repair alone.
21. In seeking that the pitch roof flashings be replaced, the Applicant is effectively asking to apply the second limb and would have to show that the condition of the existing flashings are in such a bad state that they cannot be repaired. We have already found that there is no evidence pointing to any defects with the existing flashings, much less justifying their replacement.
22. On the facts, the Board finds that after repairs effected by BK on the complaints of the Applicant, the leaks in the Applicant's unit had abated by the time of the arbitration hearing (transcript p259), as confirmed by the testimony of A1 Wong Pong Loong (transcript p66). Since the Board has already found that the leaks originated from gaps in the roof tiles, the question is whether the method of repair undertaken by the Respondent through BK is reasonable to keep the roof in good and serviceable repair? If not, then would the roof tiles have to be replaced?
23. To questions by the Board, Bryan Lim testified and produced photographic evidence that the gaps between the roof tiles were repaired by applying sealant to it followed by 3 coats of waterproofing membranes. They had applied the waterproofing membrane over the entire pitch roof in 2019 and as part of the 5-year warranty would attend to any defects until 2024 (transcript p242, 243, 250, 252, 254 and 255).
24. The Board notes that there is no evidence of extensive damage to the roof tiles nor many complaints of roof leaks after BK's rectification works, despite the age of the development (about 27 years) and wear and tear of the roof (transcript p268, 271 and 272). On the facts, the Board is unable to find fault with the methodology of BK's rectification works. The Board holds that the Applicant has failed to show on a balance of probability that the Respondent has failed to reasonably maintain the common pitch roof in good and serviceable repair.
25. There may soon come a time when the roof tiles and flashings are of such a state of disrepair that they may well have to be replaced, but that will be a matter for another Tribunal and another time.

CONCLUSION

26. The Applicant's claim against the Respondent is dismissed.
27. Having heard the parties oral submissions on costs, the Board orders the Applicant to pay the Respondent costs and disbursements fixed at \$10,000 all inclusive.

Dated this 20th day of November 2023

MR RAYMOND LYE
Deputy President

MS JACQUELINE CHAN
Member

MS SITI HABIBAH BTE HAJI SIRAJ
Member

Sankar Saminathan & Tessa Low (M/s Sterling Law Corporation) for the Applicant
Justin Chan & Abigail Ong (M/s Justin Chan Chambers) for the Respondent