

BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT

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

STB No. 100 of 2012

In the matter of an application under Section 101 of
the Building Maintenance and Strata Management
Act in respect of the development known as
GLORIA MANSION (MCST Plan No. 589)

Between

BOO SHOW LIH

... Applicant(s)

And

SOH POH FOH/CHOO YENG SI

... Respondent(s)

Coram: Mr. Alfonso Ang
Deputy President

Panel Members: Mr. Cyril Seah
Mr. Tony Tan Keng Joo

Counsel: Mr. Ong Ying Ping
(M/s OTP Law Corporation for the Applicant)

GROUND OF DECISION

INTRODUCTION

1. The Applicant, Boo Show Lih, is the subsidiary proprietor of #XXX Gloria Mansion (“the premises”) and the Respondents, Soh Poh Foh and Choo Yeng Si, are the subsidiary proprietors of #XXX Gloria Mansion. The Applicant’s premises are situated directly below the Respondents’.

2. In July 2012, the Applicant complained of leakages/seepage in the ceiling of their premises from the Respondents' premises and filed an application and sought the following orders (as amended on 18 February 2013):-

- (i) to stop the seepage coming from the kitchen of #XXX
- (ii) waterproof of the kitchen of #XXX and that this waterproofing should last at least 5 years
- (iii) repair and rectify the kitchen
- (iv) to employ a mutually agreed contractor to diagnose and repair the damage
- (v) repair the damage to the kitchen wooden cabinet
- (vi) reimburse \$500 being the fee paid to the Strata Titles Board and whatever fee to be incurred during the hearing.

3. After 3 unsuccessful attempts to resolve the matter, the dispute proceeded for a hearing.

4. The Applicant was represented by counsel and 2 witnesses gave evidence on her behalf namely her son Oei Hsin Hsi and Kenneth Hugh Jones, a Chartered Surveyor, The Respondents acted through her son, Soh Kee Meng, and evidence was adduced through another of her son, Soo Jee Kwang.

THE EVIDENCE

Applicant's evidence—Oei Hsin Hsi

5. Oei Hsin Hsi in his evidence in chief stated that the Applicant's unit had previously experienced recurring leakage, which had been resolved amicably with the Respondents. This was confirmed in paragraph 23 of Soh Jee Kwang (Respondents' witness) AEIC where he stated that on 29 October 2011 and 20 April 2012 the Respondents had "*acceded to the Applicant's demands to carry out repairs.*"

6. However in respect of the current dispute before the Board, the Respondents had failed and or refused to carry out the rectification. In paragraph 8 of his AEIC he confirmed that in "early part of July 2012, my mother and I noticed that there were leaks from the kitchen ceiling, especially where stains appear in topmost parts of the kitchen cabinet which is in contact with the ceiling". Attempts at settlement with the Respondents proved futile.

7. His evidence in chief was not questioned nor disputed by the Respondents.

Expert witness—Mr Kenneth Jones

8. The Applicant engaged Kenneth Jones, a Chartered Building Surveyor from the firm Robinson Jones Associates Pte Ltd in connection with the interfloor leakage. In his report tendered by him at the hearing he noted the following damage to the Applicant's premises.

8.1 **Kitchen:** Blistered paintwork and water stains to wall and soffit of RC slab to kitchen near the washing machine tap, indicating the presence of absorbed moisture within the fabric of the wall and soffit in those locations. Since moisture in the wall would move downward due to gravity and there are no concealed water pipes at high level within unit #XXX, the moisture source from the Respondents' unit was responsible for the damage. This damage was noted to be confined to a localized area of the kitchen away from the cooking area, indicating that the damage was not caused by moisture in the air and/or cooking. Moisture damage was also noted on parts of the kitchen cabinet abutting the soffit of the ceiling where the blisters occurred.

8.2 **Bedroom 1:** Small dark stains at several locations on the soffit of timber false ceiling.

8.3 **Bedroom 2:** Stains on the soffit of timber false ceiling at the abutment to party wall between the bedroom and the living area.

9. Kenneth Jones' conclusion after the inspection was as follows:

"...I carried out an inspection on the Claimant's unit on 29 April 2013 to ascertain that the water seepage to the Claimant's unit in the areas inspected originated from the outside of the unit. In fact, I was able to ascertain that they originated from the unit upstairs, which is the Respondents' unit."

10. Kenneth Jones was denied access to the Respondents' unit, and so was unable to determine the precise origin of the leakage. He however made recommendations regarding repairs and estimated the cost to be between \$3000 and \$5000.

11. During cross-examination, Kenneth Jones did not agree that the damage to the Applicant's ceiling in the kitchen was because of water being deliberately applied onto to the ceiling. He also discounted that it could have been caused by any other factors other than the water coming from the unit above the Applicant's premises. He could not ascertain the cause of the leak as he did not have access to the Respondents' premises but was of the opinion that the leak emanated from the Respondents' premises.

Respondents' Evidence—Soo Jee Kwang

12. The Respondents' only witness is Soo Jee Kwang. The main thrust of his evidence was that the Applicant had unreasonably reneged on a private settlement agreement when he had acted in a "good neighborliness" manner. He also maintained that he had refused to allow the Applicant the opportunity to conduct a survey on his premises. Amongst the reasons he gave for the refusal which are found in paragraphs 20 and 21 of his AEIC was that he was not obliged to give the Applicant the name of his surveyor.

13. The Respondents had not adduced any evidence to show that the leaks did not emanate from his premises and up to the date of the hearing failed to produce any evidence or expert evidence to rebut the presumption under Section 101(8) of the Building Maintenance and Strata Management Act (BMSMA).

DECISION/ORDER

14. From the evidence adduced before the Board, it was clear that the Applicant's premises had suffered damage from leak that emanated from the Respondents' premises. As to precisely what caused the leak and what needed to be done to rectify the problem, the Board was unable to come to a conclusion as the expert witness of the Applicant was not able to have access to the premises.

15. The Respondents had also failed to adduce any evidence which would assist the Board in any way and had failed to rebut the presumption in section 101(8) of the Building Maintenance and Strata Management Act (BMSMA).

16. The presumption in Section 101 (8) states that:

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

(a) on the ceiling that forms part of the interior of the lot, common property or limited common property, as the case may be, immediately below; or

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

17. In addition to the presumption under Section 101(8) (BMSMA) the Applicant's case was supported by the fact she had an expert opinion through Kenneth Jones. Kenneth Jones's evidence was adduced and we accepted his evidence that the leak emanated from the Respondents' premises. The Board had no other evidence to the contrary.

18. Under the circumstances, we accepted that the Applicant had made out the case. The Board however will confine the leaks to the kitchen premises as this was the basis of the Applicant and not the whole house as argued by the Applicant. In this aspect we accept the Respondents' argument that the damage should be confined to the kitchen.

19. After considering all the above the Board accepted the evidence of the Applicant and accordingly made the following orders:

- a) The Respondents shall engage a contractor to carry out effective and proper repairs to all the leakages to the Applicant's kitchen.
- b) In relation to (a) above, the Respondents shall within 5 days, engage and pay Mr Kenneth Jones of Robinson Jones & Associates Pte Ltd or any other mutually acceptable professional engineer/architect/building surveyor ("the Professional") to:
 - (i) carry out an inspection of the water leakage into the Applicants' unit with a view towards establishing the cause thereof;
 - (ii) to identify and define the scope of remedial works to rectify the water leakage ("the Works") in both the Applicant's and Respondents' units;
 - (iii) to prepare a report for the perusal of the Applicant and the Respondents, which report and recommendation the Applicant and the Respondents agree to abide by;
 - (iv) to recommend to the Respondents an experienced contractor to carry out the Works;
 - (v) to supervise the execution of, and certify the completion of the Works, and to inform the Applicant on completion of the Works,
- c) The Respondents shall provide the Professional with a copy of the Order within 14 days hereof.

- d) The Respondents shall employ and pay the recommended Contractor to execute and complete the Works under the direction and supervision of the Professional.
- e) The Respondents shall ensure that the Works are completed within two months of the Order herein.
- f) In the event the Respondents fail to fully comply with any of the terms of this Order, the Applicant may proceed to take all reasonable steps to give effect to the same, and recover all costs incurred as a debt from the Respondents.
- g) The Respondents shall pay the Applicant costs fixed at \$3000 and reasonable disbursement.

Dated this 25th day of June 2013

MR ALFONSO ANG
Deputy President

MR CYRIL SEAH
Member

MR TONY TAN KENG JOO
Member