

BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT

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

STB No. 60 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 **Nouvelle Park** (MCST Plan No. 2022)

Between

- 1. Wong Tin Tak**
- 2. Fu Mei Hwa**

... Applicants

And

- 1. Lee Kee Hian**
- 2. Tan Phaik Ai**

... Respondents

Coram: Mr Tan Lian Ker
President

Panel Members: Mr Richard Tan Ming Kirk
Mr Chan Ewe Jin

Counsel: Mr Eric Ng Yuen (M/s Malkin & Maxwell LLP) for the Applicants
Mr Dennis Chua (M/s Dennis Chua & Co) for the Respondents

GROUND OF DECISION

1. The Applicants are subsidiary proprietors of a lot (unit #03-09 in Block 133) in Nouvelle Park and the Respondents are the subsidiary proprietors of the lot directly above the Applicants' lot (unit #04-09).
2. The Applicants sought various orders from the Board against the Respondents in relation to the damage caused by water leakage from the Respondents' unit to the Applicants' unit. The orders sought included orders for the Respondents to rectify defects in five areas (i.e. the Respondents' common toilet, master toilet, yard toilet, yard and kitchen) by, among other things, replacing their concealed water pipes and water proofing membranes. In addition, they wanted an order for all rectification to be done "to the Applicant's satisfaction". The Applicants also claimed the sum of \$4,930.00 for costs of repairs to the Applicants' damaged concrete soffit, false ceiling and cabinet and legal costs plus disbursements amounting to a total sum of \$40,300.00.
3. The Respondents opposed the Applicants' application on the basis that it was frivolous and there was no basis for the Board to grant the orders sought. The reason, they argued, was that they had taken the necessary actions to rectify all the known and detected seepages at every significant stage of the dispute. Among other things, they argued that the Applicants had unreasonably rejected their offer for a global settlement and insisted on proceeding with the hearing. The Respondents also argued that there is no basis for the Applicants to seek an order that the Respondents pay for the costs of installing a new cabinet.

Applicants' Case

4. The Applicants gave evidence that, among other things, water leakage from the Respondents' unit had been ongoing for many years, probably since 2006. This resulted in damage to their lot and the formation of stalactites their. The Applicants' expert gave evidence that the leakage was due to a slow flow of water because a fast flow of water would have washed the calcium deposits away. However, the water leakages were not noticed earlier because the false ceiling of the Applicants initially hid them from view. However, by October 2011, the water leakages had become more extensive and extended to all the five areas mentioned earlier.
5. The Applicants submitted that, while the Respondents had attempted some rectification works, the evidence showed that the water leakages continued because, among other things, the rectification works were superficial, by way of water proofing paint and there was a failure to repair the water pipes embedded in the walls concerned.

6. The Applicants relied on section 101(8) of the Building Maintenance and Strata Management Act (“BMSMA”) which provides that:

“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.”

7. The Applicants’ counsel also argued that so long as they adduced evidence of dampness, which they submitted they had sufficiently done, the Applicants would be able to rely on the presumption in section 101(8) of the BMSMA. They also submitted that the Respondents had not been able to rebut the presumption.

Respondent’s Case

8. The Respondents argued, among other things, that:

(a) the Applicants had no legal basis to dictate the type of rectification works required to fix the defect;

(b) the Respondents had taken all actions necessary to rectify all the known defects and detected seepages at every significant stage of the dispute; and

(c) there was no basis for the Applicants to proceed with the hearing.

9. The Respondents also submitted that because the Applicants were unreasonable in their demands, regardless of the outcome on liability, the Applicants ought to pay the costs of the proceedings. They quantified it at \$25,000.00 and all reasonable disbursements.

Board’s Decision on Liability

10. The Board is of the view that so long as the Applicants could prove dampness (or moisture or water penetration) on their ceiling or on any finishing material attached to it, they would be able to rely on the presumption in section 101(8) of the BMSMA. The Applicants need not prove water dripping or (to use the term mentioned during the hearing) “active” water droplets, water leaking or water seeping. Once dampness (or moisture or water penetration) was proved, the onus was on the Respondents to prove that there was no defect in their unit that caused the dampness, moisture or water penetration.

11. On the other hand, the Board is of the view that the Applicants cannot demand that the rectification be done to their satisfaction or dictate exactly how the rectification works should be done so long as what the Respondents do is reasonable. As stated in the document "Good Industries Practices – Waterproofing for Internal Wet Areas" published by the Building and Construction Authority in 2003, the repairs to leakage through walls and slabs vary based on the causes determined. For the avoidance of doubt, this Board agrees with the view of the Board in *Re Mimosa Road (Strata Title Plan No. 493)*[1990] SGSTB 2 that if a defect exists, abstaining from using the facility does not remedy the defect.

12. Inclusive of the day of final oral submissions, the hearing took five days. Altogether ten witnesses were called and 15 affidavits filed. In addition, many photographs, documents and authorities were also submitted. As the Applicants were careful and meticulous, they produced a lot of documentary evidence including the transcript of a conversation recorded by the First Applicant using his handphone.

13. Suffice to say, the Board found the results of the water ponding test in the presence of both experts the most helpful in determining whether there were still defects remaining in the Respondents' unit. During the proceedings, the Board suggested that parties consider agreeing to the conduct of water ponding and water pressure tests in the presence of both experts to ascertain if the rectification works of the Respondents had fixed the defects or remaining defects and stopped the water seepages.

14. While parties did not agree to the water pressure tests, they agreed to water ponding tests over all the affected areas other than the kitchen. This was because the Respondents expert felt it was not possible to conduct a proper water ponding test in the kitchen due to the constraints of the site. The water ponding tests were carried out by the Respondents' expert with the Applicants and their expert being given an opportunity to observe.

15. Subsequently, the Respondents also engaged a PUB licensed plumber to carry out water pressure tests. However, they did this without notifying or affording the Applicants and their expert the opportunity to observe the tests.

16. The outcome of the water ponding tests were briefly as follows:

(a) Dyed water from the water ponding tests had clearly seeped through the Applicants floor to the ceiling of the Respondents kitchen. The Respondents' expert view was that this was due to the defective waterproofing under the floor finishes of the Respondents' yard adjacent to the kitchen and that it was also likely that the waterproofing under the floor finishes of the Respondents' yard toilet may have also failed.

(b) There was no water leakage in the master toilet. However, the opinion of the Applicants' expert was that this was due to a superficial method of repair that will only provide a short-term solution.

(c) As for the common toilet, there was disagreement between the two experts whether there was any water leakage or seepage. The Applicants' expert maintained that there was seepage to the common toilet ceiling of the Applicants because there were orange stains on the drain outlet. However, the Respondents' expert said there were no signs of water seepage.

17. While the outcome of the water ponding tests was helpful to confirm that the Respondents' rectification did not completely resolve all the problems, the Board did not find the water pressure tests conducted by the Respondents' plumber on the pipes reliable.

18. After considering all the evidence, the Board was satisfied that, except for the master toilet, the Respondent had not rebutted the presumption contained in section 101(8) of the BMSMA and proven that the water seepage was not due to a defect in the Respondents' unit. The Board was also satisfied that the rectification works done so far have not completely fixed all the defects that cause the water seepages.

19. In addition, the Board was also satisfied that damage had been done to the Applicants' concrete soffit, false ceiling and cabinet. However, the sum of \$4,930.00 claimed for the repairs to the damaged concrete soffit, false ceiling and cabinet appears to be on the high side. For example, a sum of \$850.00 was quoted for "Haulage of Debris". The Board was of the view that the total sum of \$3,900.00 for the repairs to the damaged concrete soffit, false ceiling and cabinet would be reasonable.

20. In the premises, the Board orders the Respondent to:

- (a) rectify the defects in their water supply pipes that cause water leakages;
- (b) reconstruct the water proofing in their common toilet, kitchen, yard and yard toilet in accordance with SS CP82:1999; and
- (c) pay the Applicants the sum of \$3,900.00 for repairs to the damaged concrete soffit, false ceiling and cabinet,

by 15th June 2013 at the latest.

Board's decision on costs

21. The Board was satisfied that the application was not frivolous. However, the Board was of the view that the proceedings need not have been so protracted.

22. Prior to the start of the hearing, the Board attempted to get the parties to agree to documents and narrow the issues in order to save time and costs but without success.

The Board also made a number of attempts during the hearing to remind the parties and their witnesses to stick to the relevant issues and questions concerned.

23. During the final oral arguments on the last day of the hearing, the Board asked the Applicants' counsel whether in view of the results of the water ponding tests they were continuing to ask for every order in their application and their position was still yes. It was not until counsel for the Applicants was asked again towards the end of his oral submission that the Applicants conceded that there was no need for an order to hack the master toilet of the Respondents' unit.

24. When the Respondents' counsel was similarly asked whether they were conceding anything as a result of the same water ponding test, they also initially said no. Subsequently, the Respondents' counsel conceded that their own expert had already noted water seepages after the water ponding test and recommended replacing the waterproofing membrane in both the Respondents' yard and yard toilet.

25. The Board is of the view that the amount of \$40,300.00 claimed by the Applicants for costs is not appropriate as the proceedings need not have been so protracted.

26. After considering the submissions of Applicants and the Respondents and taking into account all the relevant circumstances, the Board is of the view that the Respondents should pay costs (inclusive of all disbursements) fixed at \$20,000.00.

Dated this 15th day of May, 2013.

MR TAN LIAN KER
President
Strata Titles Board

MR RICHARD TAN MING KIRK
Member
Strata Titles Board

MR CHAN EWE JIN
Member
Strata Titles Board

[2012] SGSTB