

BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT

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

**STB No. 61 of 2013**

In the matter of an application under section 101 of the Building Maintenance and Strata Management Act in respect of the development known as **Caspian** (MCST Plan No. 3951)

Between

1. Doreen Lee Eng Lin
2. Regina Lee Eng Joo

... Applicants

1. Huang Yizhong
2. Zhang Li

... Respondents

Coram: Mr Alfonso Ang  
Deputy President

Panel Members: Mrs Tan Sook Yee  
Mr Lee Keh Sai

Counsel: Mr Michael Por and Ms Li Jiaxin (M/s Michael Por Law Corporation) for the Applicants  
Mr Steven Lee (M/s Lee Chai & Boon) for the Respondents

## **GROUND OF DECISION**

1. The Applicants are subsidiary proprietors of #XXX Caspian (the “Premises”) and the Respondents are the subsidiary proprietors of #XXX Caspian. The Applicants’ unit is situated directly above the Respondents’.
2. The present case is an unusual one. Typical cases concerning inter-floor leakage involve water leakage that emanates from the unit directly above, causing damage to the unit below. The presumption in Section 101(8) of the Building Maintenance and Strata Management Act (BMSMA) (Cap. 30C) will then operate in presuming that the apartment above is responsible for such a leak.
3. However, in the present case, the moisture emerged on the floor of the Premises, which had been attributed to the Respondents’ tenants’ prolonged use of their air-conditioning at unusually low temperatures directly below the Applicants’ unit. The Applicants claimed that the Respondents’ tenants’ use of the air-conditioning had resulted in condensation forming on the floor of the Premises, which ceased when the tenants moved out. Therefore, in the present case, the presumption in Section 101(8) would fail to apply as the moisture had not emanated from the unit directly above the Applicants’. As such, the Applicants’ had the burden of proving, on the balance of probabilities, that the moisture that had caused damage to their apartment was reasonably attributed to the Respondents.
4. In August 2013, the Applicants filed an application, complaining of mould and dampness on the floor of the 3 bedrooms of the Premises. They claimed that the damage had been due to the formation of condensation, which had formed as a result of the excessive usage of the Respondents’ air-conditioning system at very low temperatures. The Applicants filed an application and sought to claim the cost of the following:-
  - a) Replacement of damaged timber flooring in bedrooms;
  - b) Mould inspection and remediation services;
  - c) Treatment and repainting of walls and ceilings in bedrooms;

- d) Cost of damaged furniture and/or items;
  - e) Estimated rental to be incurred while the rectification works are carried out;  
and
  - f) Charges involved in the filing of the application and any further professional fees to be incurred.
5. After 2 unsuccessful attempts to resolve the matter through mediation, the dispute proceeded for a hearing.

Both parties were represented by counsel. The Applicants had two witnesses, Doreen Lee Eng Lin and their expert witness, Mr Kenneth Hugh Jones, a chartered surveyor. Both the Respondents gave evidence, in addition to their expert witness, Mr Jeffrey Toh Thye An.

## **THE EVIDENCE**

6. The Applicants gave evidence that the damage caused to the Premises and their furniture had been caused by the Respondents' tenants' prolonged usage of their air conditioners at low temperatures. They claimed that the concrete floor slab between their apartments had been cooled long enough for condensation to form on the upper surface when the moisture-laden air came into contact with the cold surface of the floor. This had resulted in the growth of mould on the floor of the Premises, which had also spread to the Applicants' furniture and electronic items. The Applicants maintained that they had done what they could to mitigate the condensation problem by mopping the floor to remove the water droplets and small puddles of water and mould which had collected in specific areas of the Premises.
7. The Applicants' main contention was that although there was no legally binding law or regulation in relation to the usage of air-conditioning, the Respondents had a duty to ensure that in using their air-conditioning, no loss or damage was caused to the property of their neighbours, who are equally entitled to enjoy their own property. It

was submitted that the Respondents' prolonged use at a low temperature of their air-conditioning had interfered with the Applicants' use and enjoyment of the Applicants' Premises, as the Respondents' use of their air-conditioning in this allegedly unreasonable manner caused the wood rot and mould growth on the flooring of their Premises.

Expert Witness – Mr Kenneth Jones (the “Applicants’ Expert”)

8. The Applicant engaged Kenneth Jones, a Chartered Building Surveyor from the firm Robinson Jones Associated Pte Ltd in connection with the condensation. In his report tendered by him at the hearing he noted the following damage to the Applicant's premises.
  - a) Moisture damage to varnish on timber strip flooring below the bed frame, and between the bed and the window of the Master Bedroom;
  - b) Presence of mould growth on the surface of the timber flooring strips in the Master Bedroom, Bedroom 2 and Bedroom 3;
  - c) Localised detachment of pointing was observed on the floor of the Living Room;
9. The Applicants' Expert was engaged after the condensation in the Premises had taken place, and after the problem had ceased, as new tenants who had different living habits had moved into the Premises. Thus, he was unable to determine the precise conditions of the Premises that had led to the condensation at the material time.
10. However, it was his opinion that it was the Respondents' use of their air-conditioning which had cooled the concrete slab between the apartments. This in turn caused a temperature difference that resulted in condensation occurring on the parquet flooring. He concluded that as there could have been no other explanation, it was

reasonable to conclude that the excessive moisture found in the Applicants' apartment was due to the Respondent's excessive use of their air-conditioning.

#### Respondents' Evidence

11. Both Respondents gave evidence. At the material time of the condensation, the Respondents' apartment had been occupied by tenants, who, as a result of the tensions arising from the condensation, had since moved out. New tenants had since moved in, which coincided with the time when the condensation problem in the Premises ceased.
12. The main thrust of the Respondents' evidence was that the Applicants had unreasonably attributed the damage to the use of their air-conditioning unit. They also contended that there are no laws or regulations that restricted the use of their air-conditioning, as long as they used the air-conditioning system within the limits of its design. The Respondents gave also evidence that they had taken all reasonable measures to try reach an amicable solution between the parties.
13. The Respondents contended that the Applicants had not taken efforts to eliminate all other possible causes for the damage suffered by the Applicants, and questioned the conclusion that it had been caused by the excessive use of the Respondents' air-conditioning, as it had been drawn many months after the condensation had occurred.

#### Respondents' Evidence – Jeffrey Toh Thye An (the "Respondents' Expert")

14. The Respondents engaged Jeffrey Toh Thye An, a director of Vision Building Forensics Pte Ltd.
15. The Respondents' Expert was also engaged after the condensation in the Premises had taken place, and he was consequently also unable to determine the precise

conditions of the Premises that had led to the condensation in the Applicants' apartment.

16. In his report, the Respondents' Expert made the following observations:
  - a) Mould typically accompanying condensation was not observed;
  - b) The timber parquet flooring did not appear to have been previously soaked or dampened by condensate water of the alleged condensation;
  - c) There were no observations of warping, heaving or darkening of wood grains typically associated with significant water damage to timber parquet flooring;
  - d) It could not be concluded that the discolouration of the flooring was solely due to the alleged condensation; and
  - e) The condition of the Premises was inconsistent with an environment with excessive condensation.
  
17. He opined that in order for the alleged condensation to occur, the temperature setting of the Respondents' unit had to be set at 18 degrees Celsius for more than 3 days continuously such that the temperature of the concrete slab of 200mm thick is cooled below the dew point of about 21 degrees Celsius. However, he noted that even with an 18°C setting, the ambient temperature of the Respondents' unit or the surface of the floor of the Premises could not attain a temperature of 18°C due to conduction losses in construction material or heat gain at the external walls and thermal bridges such as windows and concrete ledges.
  
18. During cross-examination, the Respondents' Expert did not agree that the water droplets that had formed as a result of the Respondents' use of their air-conditioning system. He was of the view that the evidence could not prove conclusively that the water droplets that had formed in the Premises were as a result of the Respondents' use of their air-conditioning system. His assessment was that it was not possible that the prolonged use of the Respondents' air-conditioning system caused the excessive cooling of the concrete slab, which resulted in the condensation forming on the floor of the Premises.

19. He could not conclusively ascertain the cause of the water droplets without access to the Premises at the material time of condensation. He indicated that measurement tests should have been done earlier. However, based on the evidence available to him, he was of the opinion that it was not possible that the Respondents' use of their air-conditioning system could have been the cause of the damage in the Premises.

## **DECISION/ORDER**

20. From the evidence adduced before the Board, it was clear that the Premises had suffered damage. As to precisely what caused the damage in the Premises, the Board was unable to come to a definitive conclusion as both parties' experts did not have the opportunity to inspect the Premises and record the precise conditions prevailing at the material time of the condensation. Consequently, the Board is unable to attribute all of the damage caused to the Premises and furniture to the Respondents' use of their air-conditioning unit.
21. However, on the facts before the Board, and on a balance of probabilities, the Board accepts that the Applicant has made out the case for the damage to the areas under the beds in the three bedrooms in the Premises. There is corroborative evidence adduced, that at the material time when the condensation in these areas was most pronounced , there was a combination of two factors viz. the lower surface temperature and the lack of ventilation (as opined by Yang Architects Pte Ltd exhibited at Annex D of the Applicants' Application).
22. Accordingly The Board finds that the damage to the floor in the areas under the beds in the three bedrooms is on the balance of probabilities caused by condensation resulting from the manner of use of the airconditioning system by the Respondent's former tenant.

23. However even on the balance of probabilities, the Board is unable, on the evidence before it, to conclude that the Respondents were responsible for the damage to the other areas of the Premises where the alleged condensation on the floor was minimal. The Board is also of the view that the Respondents cannot be held responsible for damage caused to the Applicants' furniture or appliances. These are movable objects, damage to them could not be conclusively attributed to the Respondents' use of their air-conditioning system.
  
24. The Board is of the opinion that the rectification of the damaged flooring can be carried out without the Applicants having to move out of the Premises, and therefore the claim for rental incurred while the rectification works are carried out will not be granted.
  
25. After considering all the above, the Board accepts the evidence of the Applicant and accordingly makes the following orders:
  - a. The Respondents shall engage a contractor to carry out effective and proper repairs to rectify the damage in the areas of the floors of the bedrooms by replacing the damaged timber flooring in the areas situated below the beds in the bedrooms (the "Works").
  
  - b. In relation to (a) above, the Respondents shall within 14 days, engage and pay any mutually acceptable experienced contractor to carry out the Works.
  
  - c. The Respondents shall ensure that the Works are completed within two months of the Order herein.

- d. In the event the Respondents fail to comply fully 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.
- e. The Board is of the opinion that parties shall bear their own costs as the Applicants failed to succeed on all of their claims.

Dated this 23rd day of July 2014

MR ALFONSO ANG

Deputy President

MRS TAN SOOK YEE

Member

MR LEE KEH SAI

Member