

**BUILDING MAINTENANCE AND STRATA MANAGEMENT
ACT**

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

STB No. 13 of 2015

In the matter of an application under **section 101** of
the Building Maintenance and Strata Management
Act in respect of the development known as
Palmwoods (MCST Plan No. 2447)

Between

Ho Yew Choong Victor / Khew Cai Jun

... Applicant(s)

And

Lam Wai Kong Davy

... Respondent

Coram: Mr. Alfonso Ang (President)
Mrs. Tan Sook Yee (Member)
Dr. Richard Tan Han Shing (Member)

Counsel: Ms. Lim Poh Choo (M/s Alan Shankar) for the Applicants

Respondent: Mr. Lam Wai Kong Davy (In-Person)

GROUNDINGS OF DECISION

1. The Applicants, Ho Yew Choong, Victor and Khew Cai Jun are the subsidiary proprietors of 450 Upper Changi Road, #03-05, Palmwoods (the "Premises") and the Respondent, Lam Wai Kong, Davy is the subsidiary proprietor of 450 Upper Changi Road, #04-05, Palmwoods. The Applicants' lot is situated immediately below the Respondent's.

BACKGROUND

2. Sometime in July 2015, the Applicants observed brown specks in the ceilings of one the bedrooms and toilet of the Premises. Following a Management Corporation Strata Plan No. 2447's ("MCST") inspection, the MCST wrote to the Respondent on 18 July 2015, informing him of the Applicants' complaint of leakage problem which they alleged originated from the Respondent's toilet flooring.
3. By way of an email dated 8 August 2015, the 2nd Applicant brought to the Respondent's attention that a contractor appointed by the MCST assessed the inter-floor water leakage problem and recommended waterproofing of the Respondent's toilet in order to rectify the leak.
4. On 12 August 2015, the Respondent replied by way of an email, rejecting the recommendation of the MCST's contractor, on the basis that the alleged water damage was attributed to a concealed pipe in his lot which he had since rectified.
5. On 28 August 2015, the Applicants observed further instances of water damage to their Premises.
6. As the Applicants alleged that the Respondent had failed to remedy the water seepage problem, they filed an application under section 101(8) of the Building Maintenance and Strata Management Act (Cap. 30C) (BMSMA).

7. The Applicants sought the following orders against the Respondent:-

- “
- 1) *Repair and rectification of inter-floor water seepage by repairing the water proofing membrane in the Respondent's unit.*
 - 2) *Repainting of the walls and ceiling in the bedroom and common toilet of the Applicant's unit that have sustained water damage from inter-floor seepage.*
 - 3) *Replacement of the cornices in the bedroom of the Applicant's unit that have sustained water damage from inter-floor seepage.*
 - 4) *Reimbursement the Applicant's STB fees and any and all cost of legal counsel and legal proceedings incurred until resolution of this case.* ”

8. Both Applicants testified at the hearing. The Respondent gave evidence, in addition to his expert witness, Mr Jimmy Oh, an operator of a licensed plumbing company.

APPLICANTS' CASE

9. Ho Yew Choong Victor, (AW1) in paragraph 7 of his Affidavit of Evidence in Chief (AEIC) said that he first noticed brown specks in the ceiling of their daughter's playroom (i.e. the bedroom) about two weeks before 12 July 2014. *“The brown specks were located at the cornices and along the edge which connects to the common bathroom of the Premises and also in the false ceiling of the adjacent common bathroom/toilet.”*

10. On 12 July 2014, the Applicants complained of drilling noises from the Respondent's lot, and observed the appearance of *“more brown specks and some of the specks had enlarged”*. This was confirmed in paragraphs 8 and 9 of AW1's AEIC wherein he stated that following his complaint, a security guard investigated and informed him that the drilling was the Respondent's act of installing a water-heater.

11. The leakage experienced by the Applicants progressed into *“a large water bubble on the wall just below the brown stains and various dark patches on the ceiling around the cornice”* (“the Damages”), a perceived result of the Respondent’s installation of the water-heater compromising the integrity of the Respondent’s common bathroom.
12. The aggravation of the damage led the Applicants raising the issue with the Property Officer of the MSCT, one Mr. Hardeep, who on 14 July 2014 inspected the Damages at the Applicants’ lot and duly informed AW1 that a contractor would be called in to assess the Damages and provide the former with a quotation for the rectification works.
13. On 17 July 2014, a contractor appointed by the MCST, one Mr. Kenny, came to the Premises to assess the Damages. Mr. Kenny was of the view that the Damages were *“the result of water seepage”* and recommended that the Respondent’s common bathroom *“should be re-waterproofed”*. This was confirmed in an email sent by the 2nd Applicant to the Respondent dated 8 August 2015, exhibited at TAB A, VH 3 of AW1’s AEIC.
14. The 1st Applicant claimed that Mr. Kenny opined that the Respondent was not likely to agree to waterproofing, hence proposed the alternative *“to carry out pressure grouting”* from the Premises (paragraphs 12 and 13 of AW1’s AEIC).
15. It was submitted by the 1st Applicant that the following day, 18 July 2014, Mr Hardeep and the Property Manager, one Mr Zamri, went to the Premises and photographed the Damages. Mr Zamri then informed the 1st Applicant that pressure grouting would stop the leakage for 1-2 years, whilst re-waterproofing would last for an approximate 15 years (paragraph 14 of AW1’s AEIC).
16. The 1st Applicant exhibited copy of an MCST letter dated 18 July 2014 wherein the MCST notified the Respondent of the Applicants’ inter-floor water seepage complaints, the Damages, and probable cause (TAB A, VH 3 of his AEIC). In the same letter, the Respondent was referred to photographic evidence of the water seepage and the statutory

presumption of liability and the Applicants appealed for his co-operation in resolving the problem.

17. Meanwhile, the Respondent verbally informed Khew Cai Jun (AW2) that he had “*bought external pipes to drain the excess water*” from his common bathroom, and that no further leakage problem should arise. Thereafter, the Applicants reported that the Respondent declined contact in the following weeks to discuss the matter.
18. The Applicants are of the view that the Respondent should solely bear the costs of repairs in accordance with the provisions of the BMSMA, and consequently objected to the Respondent’s proposed cost-sharing arrangements.
19. The Respondent contacted AW1 on 4 May 2015 and informed AW1 that he had arranged for two “specialists” to inspect the Damages and requested that the Premises be made accessible to them. The Applicants submitted that this was complied with despite the short notice.
20. AW1 alleged that the first “specialist”, whom AW1 believed to be the Respondent’s plumber, informed the Respondent in AW1’s presence that the leak was not serious, whilst the second “specialist” was heard to have reported that the leak was a result of defective waterproofing (paragraphs 32 and 33 of AW1’s AEIC).
21. AW1 stated in paragraph 34 of his AEIC that the Respondent did not submit any reports with regard to the conclusion of the inspections.
22. The Applicants exhibited evidence (at TAB A, VH 7 of AW1’s AEIC) of a year-long unresolved water leakage problem in the Premises, and formation of stalactites.
23. The Applicants reported that the water-marks and water stains have grown, coupled with the persistent presence of the water bubble. The Applicants further claimed that the stains on the

ceiling boards would have worsened had they not placed a basin to collect the dripping water percolating from the Respondent's upper floor lot.

RESPONDENT'S CASE

24. Lam Wai Kong, Davy (RW1) agreed that there was an occurrence of inter-floor leakage. He, however, contended that the source and cause stemmed from a defective concealed pipe serving his lot. The Respondent submitted that he had discharged his duty accordingly by shutting off the concealed pipes and installing exposed pipes.
25. The Respondent also disputed the extent of the damage caused in the Premises and the methodology to rectify the defect.
26. The Respondent explained that during the week-long rectification works, large amounts of water were discharged due to a valve that was difficult to shut. In respect of the rectification carried out, the Respondent referred to copies of photographs (at Exhibit – Photos of his AEIC) exhibiting the completed repairs.
27. The Respondent said that following the completion of rectification works in connection with the alleged defective pipe, water leakage in the Premises should have ceased, and accordingly, the Applicants had no grounds for complaint.
28. The Respondent's case is that the Applicants were arguably misconceived to specify waterproofing as the sole reasonable remedy.
29. In the Respondent's evidence, the Applicants complained that the water leakage caused discolouration of the cornices in an adjacent bathroom. The Respondent submitted that he had observed "*those spots of discolouration on the cornice... (to be) very minor*", and argued that they are a natural consequence of fair wear and tear (paragraph 4 of his AEIC).

30. The Respondent's "expert witness", Mr. Jimmy Oh (RW2), an experienced plumber, testified that after inspecting the Respondent's premises, he saw signs of possible previous seepage which had dried up completely.

31. RW2's conclusion after the inspection was as follows:-

"I reported to Mr Lam that the situation is minor, and that the only repair needed is to remove the dried up protrusions caused by the seepage, and make good the cornice and wall by painting over them."

32. RW2 said that on 20 July 2015, he was prepared to instruct his workers to carry out such necessary remedial work. However, the Applicants denied access to their lot.

33. In addition to RW2's findings, the Respondent contended at paragraph 9 of his AEIC that contrary to what the Applicants claimed of further water damage, these alleged spots of concern were *minor stains* which had not visibly worsened from their initial state. The Respondent's primary argument was that the observations of his expert and himself were testament to the leakage problem being resolved following the concealed pipe replacement with exposed pipes.

34. The Respondent claimed that the extent of the Applicants' repair requests were excessive.

35. The Respondent exhibited his proposal to the Applicants, evidenced by an email to the Applicants' Counsel (Alan Shankar & Lim LLC (ASL)) dated 12 July 2015. In this email he proposed a fully independent surveyor or licensed plumbing contractor appointed by a third party to review and advise on the leakage problem, with a view towards an amicable settlement. Relevant portions of the email are stated as follows :

From the evidence (at Exhibit – Email) of the Respondent's AEIC, the Respondent proposed inter alia,:

“We propose the appointment of an independently appointed surveyor for this purpose on a shared basis and are therefore ready on sharing the cost... (notwithstanding that a licensed plumbing contractor can suffice).”

36. The Respondent’s offer of 12 July 2015 was rejected outright by the Applicants on 16 July 2015. Their counsel replied:

“... Your proposal therein is unacceptable to our clients.

Further, be informed that our clients’ proposal for amicable settlement vide our letter dated 25 June 2015 is withdrawn.

... Our clients will proceed as per the direction of the Strata Title Board given on 29 June 2015. We will inform you when our clients’ AEICs are ready for exchange.”

BOARD’S FINDINGS

37. In the course of hearing the evidence, it was clear to the Board that the relationship between the Applicants and the Respondent was acrimonious. The Board will disregard their personal issues as these are matters for another forum and will not make any comment on those matters.
38. The Board will confine the findings solely to matters pertaining to issues connected with the application.
39. The Board is mindful of the following:
- i. The occurrence of the inter-floor leak emanated from the common bathroom of the Respondent’s upper floor lot to the bedroom and common toilets of the Applicants’ lower floor lot.

- ii. The Respondent conceded that the leakage problem in the Applicants' lot was due to a defect within his own lot. The thrust of the Respondent's argument, however, was that the source of the leaks had been rectified and hence the application was unreasonable. However, he alluded to the fact that if any repair is required, there were options besides changing the water membrane.
- iii. The Respondent argued that the defects were not so serious as to cause the extent of the Applicants' alleged damages to his Premises. In particular, there was no need to change the entire cornices. That required replacement of the entire cornices in the bedroom.
- iv. As the Respondent has agreed to paint the walls and ceiling in the bedroom and common toilet, there is no need for the Board to make a finding on this.
- v. There are stalactites in the inter floor area. The Respondent's "expert witness", (RW2) a plumber of over 20 years' standing testified that he did could not touch the stalactite but he could see from a distance of a few feet that it was 'dry' and that it has not increased in size. The Board is of the view that this evidence is insufficient and the Respondent has not proved that there is no more leak.

BOARD'S DECISION / ORDER

- 40. The Board makes the following order addressing specifically what the Applicants had "pleaded" in their application and will deal with each of the specific prayers set out in the application.
- 41. Section D (a) 1. Repair and rectification of inter-floor seepage by repairing the water proofing membrane in the Respondent's unit
 - (i) The duty of the Respondent is to ensure that there is no water leakage emanating from his premises to that of the Applicants. The methodology as to how this can be done

varies. The Respondent could, in the extreme, if he so wishes convert the entire toilet into a study room to prevent any water leakage. This could solve the problem. However, there is no suggestion that he will do so.

- (ii) The Respondent's suggestion that both parties share the costs of "an independent surveyor appointed by a third party to review the issue" had been turned down by the Applicants.
- (iii) The Applicants, in their submissions have now abandoned their prayer that the Respondent change the water membrane. They now seek an order that their surveyor access the Respondent's unit to conduct an investigation and recommend a solution to arrest the leakage and carry out such remedial actions as may be recommended at his cost.
- (iv) The Board would ordinarily allow the Respondent to engage a plumber to resolve the problem. It is clear to us that the Respondent's plumber had not been able to do so or was only partially successful.
- (v) We do not accept that the Applicants can demand that the Respondent change the water proofing membrane as the source and cause of the leak have not been identified. The Applicants cannot insist that the water membrane be repaired or changed when there are other methods to plug the source of leak such as grouting. The cost of grouting is about one tenth the price of repair or change of water membrane. Both of these methods are recognized and acceptable methods in the building industry and accepted by the Building and Construction Authority.
- (vi) The Board does not accept the Applicants' submission that the Respondent should be compelled to engage a surveyor of the Applicants' choice to conduct a survey and recommend a solution. The Board also notes that this suggestion was only brought up at the Applicants' submission.

(vii) Neither party has been able to conclusively ascertain the cause(s) of the leak and hence we are no clearer as to how the damage can be stopped. Compelling the Respondent to change the water membrane when the cause of the leak has not been ascertained would be meaningless and may well be an unnecessarily expensive exercise. The cause of the leak has to be determined and the remedy should be recommended by an expert in this field. The Board therefore will not grant the application as prayed. The Board orders that the Respondent engage his own surveyor to conduct a survey to ascertain the cause of the water seepage and conduct such repairs as may be recommended by the surveyor within six weeks from the date of this order. The costs of the survey and rectification are to be borne by the Respondent.

42. Section D (a) (2). Repainting of the walls and ceiling in the bedroom and common toilet of the Applicants' unit that have sustained water damaged from inter-floor seepage

As the Respondent has agreed to paint all the walls instead of only the affected areas, the Board orders that the Respondent paint all the walls and ceiling of the bedroom of the Applicants' unit six weeks from the date of this order.

43. Section D (a) (3). Replacement of the cornices in the bedroom of the Applicants' unit that have sustained water damage from inter-floor seepage

The Board finds and agrees with the Respondent that the extent of the damage to the cornices was not such that it required the entire cornices be replaced. It accordingly orders that the Respondent repair and repaint the affected parts of the cornices within six weeks from the date of this order.

44. Section D (a) 4. Reimbursement the Applicants' STB fee and any and all costs of legal counsel and legal proceedings incurred until resolution of this case.

45. The Board will deal with the issue of costs.

- (i) At the first day of hearing on 24 August 2015, it was brought to the Board's attention that the Applicants had failed and/or refused to exchange their affidavits of evidence in chief with the Respondent notwithstanding directions being given by the Board. As the Respondent did not have the Applicants' affidavits on the day of the hearing, he was in no position to prepare his case and cross-examine the Applicants. It was only when the Board ordered that the Respondent be given copies of the Applicants' affidavits of evidence in chief, were they made available to the Respondent. The hearing which was fixed for 2 days was vacated and the Board reserved the issue of costs.
- (ii) The Board finds that the conduct of the Applicants' counsel, in refusing the Respondent's reasonable request as to the mode of exchange of affidavits, unwarranted. They made no effort at all to attempt to serve the affidavits. For the costs thrown away we order that the Applicants pay costs fixed at \$1,000.
- (iii) As regards costs for the hearing, the Board is mindful that the Applicants did partially succeed in their prayers. The Board rejects the Applicants' submission that they are entitled to "costs on an indemnity basis". There is no basis for an award of costs on that basis.

- (iv) Bearing in mind that only one of the 3 prayers was granted as drafted, we do not allow the Applicants' costs in full and accordingly award a sum of \$1,500 (being half costs of \$3,000) to the Applicants.

Dated this 15th day of October 2015.

MR ALFONSO ANG
President

MRS TAN SOOK YEE
Member

DR RICHARD TAN HAN SHING
Member