

BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT

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

STB No. 59 of 2018

In the matter of an application under **section 101** of the Building Maintenance and Strata Management Act in respect of the development known as **ASPEN HEIGHTS** (MCST No. 2532)

Between

Tan Toh Ken & Sim Wen Wei Sarah

... Applicants

And

Wang Zheng Ming & Chong Oi Choo

... Respondents

GROUNDS OF DECISION

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9 November 2018

7 December 2018

Coram:	Mr Alfonso Ang	(President)
	Mr Cyril Seah	(Member)
	Mr Winston Hauw	(Member)

1. The Applicants are the subsidiary proprietors of residential unit #06-29 at the Aspen Heights, 263 River Valley Road, Singapore 238309. The Respondents are the subsidiary proprietors of residential unit #07-29 situated directly above the Applicants' unit.

ORDER SOUGHT BY THE APPLICANTS

2. The Applicants seek an order that the Respondents fix the inter-floor leakage and make good the affected area and repair the resulting damage due to the water leakage.

ISSUE(S) BEFORE THE BOARD

3. The main issue before the Board was whether the Respondents' unit emanated water which

seeped into the Applicants' unit, thereby causing damage to the Applicants' unit. If so, the Board would also have to determine the damage to the Applicants' unit and to make such order(s) to ensure that the issue would be resolved.

BACKGROUND

4. In December 2017, the Applicants acquired their unit and began renovations. Their contractor, a director from HAP Studio Pte Ltd ("**HAP**"), found that there was water leakage in the Applicants' master bedroom toilet and the common toilet.
5. The Applicants raised the water leakage issue to the managing committee of the estate ("the **MCST**"). From December 2017 to April 2018, the Applicants had left the matter for the MCST to deal directly with the Respondents. During this period, the MCST engaged two independent water seepage specialists namely, IGM Construction (S) Pte Ltd ("**IGM**") and SiD Solutions Pte Ltd ("**SiD**"). Having inspected the Applicants' unit, the two independent water seepage specialists concluded that the water leakage emanated from the Respondents' unit. Despite the MCST's efforts to contact the Respondents to rectify the water leakage problem, the Respondents were unresponsive and/or uncooperative.
6. It was only at the beginning of April 2018 that the Applicants and the Respondents ("**Parties**") began to communicate directly to try to resolve the matter. Unfortunately, communications between the Parties broke down and the Parties could not arrive at a resolution.
7. On 10 May 2018, the Applicants filed this application.

BOARD'S DECISION

Respondents' failure to rebut statutory presumption

8. The Board finds that there was overwhelming evidence that water had emanated from the Respondents' unit and seeped into the Applicants' unit. The Applicants had engaged an expert from a firm specializing in building surveys. In the expert's report dated September 2018, the cause of the water leakage was attributed to the air-conditioning pipe or the water supply pipe. The same expert witness also testified during the hearing that the water had leaked from the attached toilet of the Respondents' unit to the Applicants' unit. SiD attributed the water leakage to a defective concealed water pipe in its report dated 27 March 2018, whilst IGM had attributed the water leakage to a faulty air-conditioning discharge pipe in the Respondents' unit in a report dated 2 April 2018.
9. In fact, one of the Respondents, Mr Wang Zheng Ming ("**Mr Wang**"), had stated in the Respondents' Opening Statement that "*I agree now that there is a water seepage problem*". Mr Wang had confirmed this position when he *admitted* at the hearing that "*...there is inter-floor leakage issues*" and "*...we agree that this is an inter-floor seepage based on all the information available to me now actually*".
10. Section 101(8) of the Building Maintenance and Strata Management Act ("**BMSMA**"), states as follows:

“(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.”

11. Pursuant to section 101(8) of the BMSMA, the Respondents had the onus to rebut the statutory presumption.
12. In April 2018 before the commencement of this Application, the Respondents were already informed by the MCST specifically and repeatedly, that the burden lies on the Respondents to prove that the water leakage defects were not within their unit to rebut this statutory presumption. The Respondents had also received the investigation reports of SiD and IGM on 31 March 2018 and 2 April 2018 respectively from the MCST prior to the commencement of this Application. Hence, the Respondents clearly had sufficient information on the water leakage defects from the MCST’s independent experts, and knew that the onus laid on themselves to adduce evidence contrary to the two independent water seepage specialists even before the commencement of this Application.
13. Mr Wang also accepted in his cross-examination that any reasonable proprietor that wished to offer evidence to rebut the application of the statutory presumption would do so by engaging a water seepage specialist to investigate the issue. However, during the hearing, the Respondents did not adduce any independent and objective evidence to dispute the evidence of the three experts and/or to rebut the statutory presumption.
14. Accordingly, the Board is of the view that the Respondents had not rebutted the presumption under section 101(8) of the BMSMA, and the Applicants have successfully proven their case.

No unreasonable or unprofessional conduct by Applicants and Applicants’ solicitor

15. The Respondents submitted that the Applicants had acted unreasonably and, amongst other things, had refused to conduct a joint inspection and dragged the matter. The Respondents also alleged that the Applicants refused to share information with them to assist in an open and meaningful joint inspection.

16. In the course of mediation, the Parties had initially agreed to jointly appoint a qualified building surveyor to:
- (i) Determine whether there is water leaking from the Respondents' to the Applicants' premises;
 - (ii) Ascertain the cause(s) of the water leakage; and
 - (iii) Make recommendations as to the rectifications that are required to rectify the defects that caused the water leakage.

However, the Respondents refused to proceed as agreed thereafter. After the Respondents' refusal, the Applicants proceeded to engage their own expert to inspect the premises to ascertain the cause of the leakage.

17. Having heard evidence from both Parties, the Board is of the view that the Applicants had conducted themselves reasonably in the course of the matter.
18. The Respondents further submitted that the Applicants' solicitor had used unprofessional tactics during the hearing. The Board is of the view that the Applicants' solicitor had not conducted himself in an unprofessional manner overall.

Conclusion on liability

19. Based on all the facts and evidence before the Board, the Respondents had failed to rebut the statutory presumption and failed to adduce independent and objective evidence that is contrary to all the objective evidence from the three experts engaged by the Applicants and the MCST. Finally, and most importantly, the Respondents had admitted to the water leakage issue. Accordingly, the Board is of the view that the Applicants have proven their case and will now consider the issue of damages.

Damages

20. The Applicants sought an order that the Respondents carry out effective and proper repairs to resolve the water leakage to the satisfaction of their expert.
21. The Applicants also asked that the Respondents pay a sum of S\$5,500.00 being the costs of rectification that was quoted by the Applicants' contractor, HAP. Save for the said quotation, there was no evidence adduced as to the extent of the damage.
22. The Board hereby orders that:
- (i) The Respondents engage, at their own costs, a building surveyor or a water seepage specialist to examine and determine the remedial actions required to stop the water leakage to the Applicants' unit;

- (ii) The Applicants shall assist and grant the necessary access to their unit for the rectification and/or repair work to be carried out;
- (iii) The Respondents shall engage a contractor to carry out and complete all necessary remedial works required to stop the water leakage;
- (iv) The Respondents engage, at their own costs, a contractor to make good the damage to the Applicants' unit or alternatively, for the Respondents to pay the Applicants the sum of S\$5,500.00 being the costs of rectification quoted to the Applicants and the Respondents to assist and cooperate fully with the Applicants in the rectification thereof; and
- (v) The above (i), (ii), (iii) and (iv) are to be completed within ten (10) weeks from the date of judgment.

23. The Board will hear the Parties on costs.

Dated this 7th day of December 2018

Mr Alfonso Ang
President

Mr Cyril Seah
Member

Mr Winston Hauw
Member

Mr Vishy Sundar (WongPartnership LLP) for the Applicants.
Mr Wang Zheng Ming (in person) for the Respondents.