

**BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT**

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

STB No. 22 of 2019

In the matter of an application under Sections 101(1)(a), 101(8)(a) and 101(8)(b) of the Building Maintenance and Strata Management Act in respect of the development known as **EAST BAY GARDENS** (MCST No. **2130**)

Between

**Tan Mei Choo**

... Applicant

And

**Tan Yew Lee (Jeremy)**

... Respondent

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**GROUND OF DECISION**

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Between

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... Applicant

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**Tan Yew Lee (Jeremy)**

... Respondent

30 July 2019

**5 September 2019**

Coram:                    Mr. Alfonso Ang                    (President)  
                                 Mr. Colin Kin                        (Member)  
                                 Mr. Tony Tay Chye Teck            (Member)

**BACKGROUND**

1     The Applicant is the subsidiary proprietor of a 2-storey residential unit at 91 Lorong G Telok Kurau #01-04 East Bay Gardens, Singapore 426282 (“**the Applicant**”). The Respondent is the subsidiary proprietor of residential unit #03-04 which is above the Applicant’s unit (“**the Respondent**”).

**ORDERS SOUGHT BY THE APPLICANT**

2     The Applicant seeks the following orders:

*“(1) Respondent to engage at Respondent’s own cost, a building surveyor/structural engineer/water seepage specialist to ascertain the water leakages as per the Strata Titles Board’s directions.*

*(2) Respondent to ensure all the repair works to Applicant’s unit be done on Saturdays only. Otherwise the Respondent will have to pay for the Applicant’s Leave from work accordingly.*

*(3) Respondent to bear all filing and hearing fees for filing this Application at the Strata Titles Board.*

*(4) Respondent to pay for the Applicant's Leave from work to attend mediations/hearings at the Strata Titles Board.*

*(5) Respondent to pay reimbursements to Applicant, if any."*

### **ISSUES BEFORE THE BOARD**

- 3 The issues before the Board were whether there was water leakage emanating from the Respondent's unit into the Applicant's unit which caused damage to the Applicant's unit, and whether the Respondent had rebutted the statutory presumption under section 101(8) of the Building Maintenance and Strata Management Act (Cap. 30C, 2008 Rev Ed) ("**BMSMA**").

### **APPLICANT'S CASE**

- 4 The Applicant had observed and documented the water leakage which emanated from the Respondent's unit to her son's bathroom from 31 December 2018 to 20 May 2019 at various dates and times. She had provided videos and photographs of the water leakages in her affidavit.
- 5 The Applicant highlighted that based on the photographs and video taken, the water leakage from the Respondent's unit to her son's bathroom came from: (a) the concrete area surrounding the S-trap pipe and (b) the joint between the S-trap pipe and the immediate surrounding concrete area located above the false ceiling of her son's bathroom.
- 6 On 2 January 2019, the Applicant had contacted a plumber from AG Plumber who inspected her unit on the same day and inspected the Respondent's unit the next day. However, the plumber was unable to make any conclusive finding.<sup>1</sup> The Applicant then informed the managing agent of the condominium, who subsequently notified the Respondent that they had found the water leakage to be emanating from the Respondent's unit.<sup>2</sup>
- 7 On 15 February 2019, the Applicant wrote to the Community Mediation Centre to refer the matter for voluntary mediation. However, the Respondent declined to participate.<sup>3</sup>
- 8 On 20 February 2019 the Applicant filed this application with the Strata Titles Boards ("**STB**").

### **RESPONDENT'S CASE**

- 9 The Respondent mentioned that he had responded to the Applicant's complaint(s) and appointed three (3) licensed plumbers and one (1) "Seepage Expert" to investigate and

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<sup>1</sup> Affidavit of evidence in chief of Tan Mei Choo dated 17 June 2019 at para 8.

<sup>2</sup> Affidavit of evidence in chief of Tan Mei Choo dated 17 June 2019 at para 9.

<sup>3</sup> Affidavit of evidence in chief of Tan Mei Choo dated 17 June 2019 at para 14.

test the water leakages”.<sup>4</sup> He said that all of them had consistently found that there was no water supply pipe leakage.<sup>5</sup>

- 10 The Respondent had intended to call one Ng Yee Hong (“**Mr. Ng**”), a licensed plumber to give evidence. Mr. Ng’s affidavit of evidence in chief was also submitted to the Board. However, on the day of hearing, Mr. Ng did not turn up. Accordingly, his evidence is disregarded.
- 11 The Respondent then called one Kwan Sai Hong, Jasper (“**Mr. Kwan**”) who was described by the Respondent as the “Seepage Expert”<sup>6</sup>. Mr. Kwan gave evidence to the Board in his personal capacity, and not as a practising architect.
- 12 On 18 January 2019, Mr. Kwan was asked by the Respondent to carry out an inspection regarding water seepage on the false ceiling of the Applicant’s bath/WC. He also prepared a report dated 28 January 2019 based on his “non-intrusive” methods of inspection and the four (4) methods/procedures he used are as follows<sup>7</sup>:
  - a Visual observation;
  - b Touch and feel with fingers;
  - c Use infrared thermal camera to scan for any temperature differences on the surface; and
  - d Use moisture meters to measure moisture content on the surface and inside of the wall.
- 13 In summary, Mr. Kwan stated in both his report and in his affidavit of evidence in chief dated 20 June 2019 that:
  - a The insulation which was supposed to be wrapped onto the floor trap was removed;
  - b The use of an infrared thermal camera to scan for water presence on the wall or floor in the Applicant’s unit as well as on the wall of the Respondent’s unit did not reveal any presence of water. Therefore, there is no water leakage from the Respondent’s water pipe; and
  - c The ice-water test conducted on the floor trap (uninsulated) resulted in condensation forming on the floor trap. This gave rise to water dripping from the floor trap to the Applicant’s unit.
- 14 During the hearing, Mr. Kwan gave evidence based on his report of 28 January 2019 that water leakage could be due to:
  - a Condensation arising from air-conditioning condensate since the insulation on the

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<sup>4</sup> Affidavit of evidence in chief of Tan Yew Lee (Jeremy) dated 21 June 2019 at page 7.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> Affidavit of evidence in chief of Kwan Sai Hong, Jasper dated 20 June 2019 at page 5.

floor trap had been removed; and

- b Condensation from water droplets on the floor trap which resulted from rising warm air during hot showers taken in the Applicant's windowless bathroom through a small hole in the false ceiling.

- 15 It appears from the evidence of the Respondent's expert witness that the water leakage was due to condensation on the water pipe situated above the false ceiling of the Applicant's unit, which was not insulated.

### **BOARD'S FINDINGS**

- 16 Having considered the submissions and evidence presented at the hearing, the Board makes the below findings of fact.

#### ***Water leakage emanating from Respondent's unit to Applicant's unit***

- 17 The Board finds that there is ample evidence that water had emanated from the Respondent's unit and seeped into the Applicant's unit. The photographs taken by and the videos recorded by the Applicant showed that there was water dripping from the area around the floor trap, the bottom of the floor trap as well as the ceiling board of the Applicant's unit onto the wall and into a container from the Respondent's unit above.
- 18 The Respondent does not dispute the presence of water in the Applicant's unit. However, he attributes the presence of water to condensation in the Applicant's unit and not to any leakage. In fact, the Respondent's expert witness, Mr. Kwan, had stated in his affidavit of evidence in chief that there was water emanating from the Respondent's unit to the Applicant's unit during the ice-water test conducted on the Respondent's floor trap.

#### ***Respondent's onus to rebut statutory presumption***

- 19 Section 101(8) of the 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.”*

- 20 Pursuant to section 101(8) of the BMSMA, the Respondent had the onus to rebut the statutory presumption so long as there is any evidence of dampness, moisture or water penetration to the lower unit.

***Respondent's failure to rebut statutory presumption***

- 21 The Board notes that although Mr. Kwan confirmed his status as an architect, he also mentioned in his affidavit that he “*currently specialise in detecting water seepage in buildings.*”<sup>8</sup> The Board notes that Mr. Kwan gave evidence in his personal capacity and not as a practising architect.
- 22 During the hearing, Mr. Kwan had named five (5) common tests which he would normally perform to detect water leakage. He had only performed two (2) out of the five (5) tests, namely the infrared and ice water tests, and was unable to detect the source of water leakage from the Respondent's unit to the Applicant's unit.
- 23 When questioned by Applicant's Counsel on why he did not perform the other standard industry practice tests to detect water seepage, Mr. Kwan gave evidence during the hearing that he would “*...look at the water seepage pattern first then recommend...don't think necessary [to conduct other tests] from [his] experience.*” The Board finds that he was merely validating what he thought was the cause of the seepage and refused to do other standard industry practice tests to ascertain the real cause of the seepage.
- 24 Upon further questioning by the Applicant's Counsel, Mr. Kwan had in fact replied that, in consideration of the water leakage pattern, there was a possibility that water leakage could be due to air-conditioning usage. However, he did not perform other such tests to verify that the water leakage was not from the air-conditioning usage. Accordingly, it was questionable whether Mr. Kwan had performed thorough and/or extensive test(s) in order to determine and/or verify the source of water leakage.
- 25 The Board also notes that after this Application was filed with the STB, the Respondent did not engage a qualified building surveyor to inspect the Applicant's unit and his own unit, despite knowing that the Applicant continued to face the problem of water leakage seeping into her unit. In respect of this, it is the Applicant's evidence that water leakage was observed up until 20 May 2019 after the Applicant had filed her application with the STB on 20 February 2019.

**BOARD'S DECISION**

- 26 The Board finds that the Respondent had not rebutted the statutory presumption under section 101(8) of the BMSMA and remains liable.
- 27 The Board hereby orders that:
- a The Respondent shall engage, at his own costs, within two (2) weeks from the date of this order an independent building surveyor agreed upon by the Applicant to

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<sup>8</sup> Affidavit of evidence in chief of Kwan Sai Hong, Jasper dated 20 June 2019 at para 1.

examine and ascertain the cause(s) of the water leakage and the remedial action(s) required to stop the water leakage to the Applicant's unit;

- b The Applicant shall co-operate, assist and grant the necessary access to her unit for the building surveyor's work, rectification(s) and/or repair work(s) to be carried out;
- c The Respondent shall engage, at his own costs, a contractor to carry out and complete all necessary remedial work(s) as recommended by the independent building surveyor to stop water leakage from the Respondent's unit to the Applicant's unit; and
- d The above (a) to (c) shall be completed within ten (10) weeks from the date of this order.

28 The Board will hear the parties on costs.

Dated this 5<sup>th</sup> day of September 2019

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Mr. Alfonso Ang  
President

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Mr. Colin Kin  
Member

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Mr. Tony Tay Chye Teck  
Member

Mr. Tan Hee Joek (M/s Tan See Swan & Co.) for the Applicant.

Mr. Keith Hsu and Mr. Mohammad Rizuan (M/s B. Rao & K.S. Rajah) for the Respondent.