

BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT

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

STB No. 41 of 2019

In the matter of an application under **Sections 101(1) and 101(8)** of the Building Maintenance and Strata Management Act in respect of the development known as **MANDALAY MANSION** (MCST No. **221**)

Between

Edna Kong Suet Peng

... Applicant

And

**The Management Corporation Strata Title
Plan No. 221**

... Respondent

FOUNDATIONS OF DECISION

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... Respondent

22 November 2019

27 November 2019

18 December 2019

Coram: Mr. Raymond Lye (Deputy President)
 Mr. Tan Kian Hoon (Member)
 Mr. Chng Beng Guan (Member)

BACKGROUND

- 1 The Applicant is the subsidiary proprietor of a penthouse unit located at 15 Minbu Road #14-15 Mandalay Mansion, Singapore 308166 (the “**Applicant**”). The Respondent is the Management Corporation of Mandalay Mansion (the “**Respondent**”).
- 2 It is not in dispute that the rooftop (located directly above the Applicant’s unit) is “common property” as defined in Section 2(1) of the Building Maintenance and Strata Management Act (Cap. 30C, 2008 Rev Ed) (“**BMSMA**”).
- 3 On 21 August 2018, a part of the false ceiling in the Applicant’s second living room (part of which was repurposed as a dance studio) collapsed, together with spalled concrete.

The Applicant's husband, Mr Chua Hock Seng ("**Mr Chua**"), was present at the time. He gave evidence that the collapse injured three (3) persons and that the police, ambulance and the Building and Construction Authority ("**BCA**") were contacted for assistance.¹

- 4 On 13 September 2018, the BCA issued a Notice to Maintain to the Applicant and Respondent (the "**Parties**"). The Applicant appointed Er Lee Hon Leong ("**Er Lee**") and the Respondent engaged Er Goh Khai Siang ("**Er Goh**") to perform inspections and each provide a report of their findings and recommendations to the BCA pursuant to the Notice. Investigations continued in relation to the collapse of the false ceiling.
- 5 On or around 13 January 2019, the parties attended a meeting with Mr Ivan Goh ("**Mr Goh**") of IGM Construction (S) Pte Ltd ("**IGM**"), who had been engaged by the Respondent to perform thermographic scans on the building.² During the meeting, Mr Goh highlighted that with respect to the roof, the scans suggested "*negligent foundation maintenance of the roof leading to serious porosity and water-proofing/ingress issues*".³ IGM subsequently produced a service report (the "**IGM Report**") indicating their findings as well as a quotation (both dated 21 January 2019) to the Respondent.⁴
- 6 As parties were unable to resolve the dispute regarding the collapse of the false ceiling, the Applicant filed an application with the Strata Titles Boards ("**STB**") on 22 May 2019.
- 7 On 11 September 2019, the Board gave directions for parties to engage their own Professional Engineers to perform a joint investigation on the incident. The parties re-engaged Er Lee and Er Goh respectively and they performed the joint investigation on 20 September 2019. Both engineers reported that:
 - (a) The false ceiling collapsed due to the weight of spalled concrete resting on it;⁵
 - (b) Signs of previous water stains were observed but there were no signs of dripping water;⁶ and
 - (c) Seepage of moisture into the concrete slab led to the corrosion of the reinforcement bars, eventually resulting in spalling concrete.⁷

ORDERS SOUGHT BY THE APPLICANT

- 8 The Applicant sought the following orders:

"(1) That the Respondent be ordered to engage a BCA registered and licensed water assessment company to conduct a waterproofing assessment on the MCST Roof and on the applicant's unit ceiling and rectify all defects highlighted in this waterproofing

¹ Affidavit of evidence in chief of Chua Hock Seng dated 30 October 2019, at para 2.

² Transcript of 22 November 2019, page 238, at lines 18 to 24.

³ Chua Hock Seng, *supra* n 1, at para 13.

⁴ Second supplemental affidavit of evidence in chief of Chua Hock Seng dated 20 October 2019, Exhibit D.

⁵ Joint Expert's List of Agreed and Disagreed Points, at point i(a).

⁶ *Id.*, at point i(c).

⁷ Affidavit of evidence in chief of Lee Hon Leong dated 30 October 2019, Exhibit E, section 5, at para 3; affidavit of evidence in chief of Goh Khai Siang dated 30 October 2019, Tab 2, section 5, at para 1.

assessment report within one month from the date of this Application.

(2) That the Respondent be ordered to reimburse all the repair costs incurred by the Applicant thus far and make good all damages including but not limited to the ceiling of the Applicant's unit.

(3) That the Respondent be ordered to reimburse the Applicant the costs and disbursement of this Application.”

ISSUES BEFORE THE BOARD

- 9 As it was established during the experts' joint investigation that there was moisture present within the concrete slab located immediately above the Applicant's second living room, the primary issue before the Board was whether the Respondent had rebutted the statutory presumption under Section 101(8) of the Building Maintenance and Strata Management Act (“**BMSMA**”).

APPLICANT'S CASE

- 10 The Applicant's position is that the Respondent's has failed to rebut the statutory presumption under s. 101(8) of the BMSMA.⁸
- 11 Mr Yeoh Cheng Yow Jake (“**Mr Yeoh**”), a Chartered Building Surveyor engaged by Mr Chua to perform an additional investigation, was called to provide evidence as an expert witness. Mr Yeoh conducted an inspection of Mandalay Mansion on 15 October 2019 – which involved a visual inspection of the site aided by a “*standard quality tool kit*”.⁹
- 12 Mr Yeoh released his initial inspection report on 17 October 2019 and an additional defects report on 28 October 2019. In summary, Mr Yeoh highlighted that:
- (a) The root cause of the collapse was the “*failure of the waterproofing system [of the rooftop], which resulted in water ingress to the concrete and rebar*”;¹⁰
 - (b) The torch on membrane was performed in a spot repair manner – resulting in an uneven surface and leading to water ponding on the rooftop;¹¹ and
 - (c) “*Active and past efflorescence stains*” were observed under the soffit ceiling slab of the Applicant's unit, coinciding with some water ponding areas on the rooftop.¹²
- 13 The Applicant called on Er Lee to provide evidence as an expert witness. As a part of Er Lee's report to the BCA (dated 12 September 2018), a visual inspection, tapping (to check for hollowness) and load tests to the false ceiling supports were performed. Notably, Er Lee found that:

⁸ Applicant's Opening Statement, at para 12.

⁹ Affidavit of evidence in chief of Yeoh Cheng Yow Jake dated 30 October 2019, Exhibit B, Executive Summary, at para 3.

¹⁰ *Id.*, Exhibit C, at section 5(a).

¹¹ *Id.*, Exhibit C, at section 3(c) to 3(d).

¹² *Id.*, Exhibit B, Executive Summary, at para 5.

- (a) There was evidence of water ponding on the rooftop above the collapsed area of the Applicant's unit¹³ (among other areas);
- (b) If ponding occurred directly on the roof slab at any point of time in the past (i.e. penetrating the waterproofing membrane), this could have led to water ingress and caused spalling concrete over time¹⁴; and
- (c) Supports for the false ceiling were safe and adequate in consideration of load tests performed¹⁵.

- 14 Among other things, Er Lee concluded in his joint inspection report (dated 25 September 2019) that the most probable cause of the spalling concrete was ingress of moisture due to ineffective waterproofing of the roof - in consideration of "*extensive spalling concrete and corroded steel reinforcement bars on the roof slab soffit*".¹⁶
- 15 Mr Chua was called by the Applicant to provide evidence. In his affidavit of evidence in chief, Mr Chua mentioned that the Respondent had denied his requests for them to provide records evidencing waterproofing works on the rooftop as well as the IGM Report.¹⁷ The said report was eventually presented to the Board as an exhibit to Mr Chua's supplemental affidavit dated 20 November 2019.

RESPONDENT'S CASE

- 16 The Respondent's position is that the Applicant was responsible for the spalling concrete that led to the collapse of the false ceiling since the Applicant:
- (a) Failed to adequately address the issue of spalling concrete (stemming from the false ceiling installed by the previous owner) when the Applicant conducted works on the unit in 2012; and
 - (b) "*Had not properly installed*" the current false ceiling – which worsened the issue of spalling concrete and led to the collapse of said false ceiling.¹⁸
- 17 Mr Peter Wong Ying Wai ("**Mr Wong**"), the former chairman of the Management Council, gave evidence that Mr Chua had written to the Respondent on 14 December 2012 to enquire on whether the Respondent would take on the costs of rectifying spalling concrete issues as well as cracks observed in certain parts of the Applicant's unit.¹⁹ It is not in dispute that the Applicant was conducting works to the unit at or around that point of time.
- 18 Having visited the Applicant's unit around December 2012 to check on the affected areas

¹³ Lee Hon Leong, *supra* n 7, Exhibit C, at section 2.3.9.

¹⁴ *Id.*, Exhibit C, at section 4.9.

¹⁵ *Id.*, Exhibit C, at section 2.4.6.

¹⁶ *Id.*, Exhibit D, section 5.0, at para 3.

¹⁷ Chua Hock Seng, *supra* n 1, at para 21.

¹⁸ Respondent's Opening Statement, at para 4.

¹⁹ Affidavit of evidence in chief of Peter Wong Ying Wai dated 30 October 2019, para 10.

(during his tenure as chairman), Mr Wong's opinion was that the damage to the ceiling was caused by "*the previous subsidiary proprietors' internal fittings and/or failure to maintain their ceiling properly*" since the affected areas from the collapse of the false ceiling corresponded with the areas where the previous owner(s) of the unit had installed false ceilings.²⁰

- 19 Mr Wong also filed an interlocutory application on 11 November 2019 to adduce supplemental/additional evidence, which included documents from a 2014 legal dispute between the Applicant's husband and their contractor in the Subordinate Courts (as it was then known).²¹ Mr Wong stated that the documents were key in showing that the Applicant "*did not carry out the necessary or proper repairs to the spalling before installing its false ceiling*".²²
- 20 Mr De Souza Terence John ("**Mr De Souza**"), an employee of the Managing Agent of Mandalay Mansion, was called by the Respondent to give evidence. Mr De Souza stated that the Respondent appointed Annai Constructions Pte Ltd ("**Annai**") to perform further waterproofing works on the roof of Mandalay Mansion on or around 14 September 2018.²³ A spray test of the rooftop (with water drain off) was performed subsequently.²⁴
- 21 Er Chan Yew Liang ("**Er Chan**"), a Professional Engineer, was called by the Respondent to provide evidence as an expert witness. Although Er Chan did not perform a physical inspection of the Applicant's unit, he relied on photographs taken of the affected areas in the Applicant's unit for his report.²⁵
- 22 In his report dated 30 October 2019, Er Chan concluded that the causes leading to the collapse of the false ceiling arose from the quality of the concrete. He mentioned that the metal hangers holding up the false ceiling were fixed onto areas of the concrete slab that were previously repaired with cement plaster²⁶ as well as areas that had unrectified spalling concrete issues²⁷.
- 23 Er Goh was then called by the Respondent to provide evidence as an expert witness. He had performed a visual inspection of 24 units within Mandalay Mansion (including the Applicant's unit) and produced his first report on 28 November 2018. He also provided a second report dated 28 September 2019 after performing a joint investigation with Er Lee. In summary, Er Goh highlighted that:

(a) The possible causes of spalling concrete were:

- i. "*Inadequate compaction/vibration applied that those areas in question during construction stage under the common situation of congestion of reinforcement*";²⁸

²⁰ Peter Wong Ying Wai, *supra* n 19, at para 14.

²¹ *Arte Associates (Private) Ltd. v Chua Hock Seng [DC Suit No 287 of 2014]*

²² Supplemental affidavit of evidence in chief of Peter Wong Ying Wai dated 11 November 2019, at para 5.

²³ Affidavit of evidence in chief of De Souza Terence John dated 30 October 2019, at para 8.

²⁴ Transcript of 27 November 2019, page 4, at lines 2 to 7.

²⁵ Transcript of 27 November 2019, page 105, at lines 1 to 10.

²⁶ Affidavit of evidence in chief of Chan Yew Liang dated 30 October 2019, Exhibit CYL-1, at para 21.

²⁷ *Id.*, Exhibit CYL-1, at para 22.

²⁸ Goh Khai Siang, *supra* n 7, Tab 1, at section 4, para 5, at point a.

- ii. “*Inadequate concrete cover to the reinforcement*”;²⁹
- iii. “*Carbonation*”;³⁰ and that

(b) The collapse of the false ceiling was due to inadequacy of the supports and mechanical fasteners attached to the reinforced concrete slab or beam to withstand the load of said false ceiling.³¹

24 During the hearing, Er Goh opined that the waterproofing layer was still intact as water ponding was observed atop the roof during the joint investigation on 20 September 2019. He mentioned that water would not pond on the roof if the waterproofing membrane was faulty and that water would seep through instead³².

BOARD’S FINDINGS

25 Having considered the submissions and evidence presented at the hearing, the Board makes the below finding of fact.

Presence of moisture within the roof slab

26 There is no dispute that there was moisture present within the concrete slab located directly above the Applicant’s second living room as highlighted during the joint investigation by Er Lee and Er Goh.³³ Notably, Er Lee and Er Goh both opined on the presence of moisture trapped inside the concrete roof slab prior to the 2018 works performed by Annai to the waterproofing layer.³⁴

Respondent’s onus to rebut statutory presumption

27 Section 101(8) of the BMSMA states that:

“(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

²⁹ *Id.*, Tab 1, at section 4, para 5, at point b.

³⁰ *Id.*, Tab 2, section 5, at para 1.

³¹ *Id.*, Tab 2, section 7, at para 1.

³² Transcript of 27 November 2019, page 173, line 24, to page 174, line 7.

³³ *Supra* n 7.

³⁴ Transcript of 22 November 2019, page 150, lines 7 to 14; and transcript of 27 November 2019, page 179, line 8 to page 180, line 7.

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.”*

28 As there was evidence of moisture present in the roof slab directly above the Applicant’s unit, the Respondent had the onus to rebut the statutory presumption pursuant to section 101(8) of the BMSMA.

Respondent’s failure to rebut statutory presumption

- 29 The Board notes that the Respondent failed to rule out water seepage from the rooftop into the Applicant’s unit as a possible cause of the spalling concrete despite experts from both sides commenting on the specific need to test for the presence of dampness/moisture in the concrete slab above the Applicant’s unit via thermographic scans³⁵ or through the use of a moisture detector³⁶.
- 30 According to evidence provided by Mr De Souza, the thermographic test carried out by IGM of the rooftop (purportedly revealing issues with the waterproofing membrane) was performed without authorization from the Respondent – although it is not in dispute that the Respondent did engage IGM to perform thermographic tests on other areas.³⁷
- 31 The Board is unable to comment on the findings from IGM given that IGM was not present to give evidence on their findings. The Board notes, however, that the Respondent did not order further tests to check on the serviceability of the waterproofing membrane on the rooftop - having been informed by Mr Goh of IGM that the membrane was damaged after the collapse.³⁸ In any event, Mr De Souza conceded that the Respondent did have a waterproofing specialist who provided a warranty for the waterproofing on the roof, but that when leakage occurred, they refused to honour the warranty because the Respondent damaged the waterproofing during the removal of the water tank. As a result, the Respondent then engaged Annai.³⁹
- 32 While Er Goh provided alternative explanations on why the concrete spalling occurred (*e.g.* inadequate concrete cover), the Board notes that further tests were not performed to supplement Er Goh’s visual inspection and to narrow down the probable cause(s) of spalling concrete in the Applicant’s unit. Further, the Board’s view is that the waterproofing membrane on the rooftop of Mandalay Mansion was not tested in a satisfactory manner. Instead of the spray test performed by Annai (during which water was allowed to run off⁴⁰), a water ponding test should have been performed. Er Goh mentioned that the test was brought up during a meeting with the Respondent but

³⁵ Yeoh Cheng Yow Jake, *supra* n 9, Exhibit B, page 2, under “Recommendation”, at para 2.

³⁶ Goh Khai Siang, *supra* n 7, Tab 1, page 11, at para 2.

³⁷ Transcript of 27 November 2019, page 88, at lines 4 to 9.

³⁸ Chua Hock Seng, *supra* n 3.

³⁹ Transcript of 27 November 2019, page 26, line 8 to page 27, line 15.

⁴⁰ Transcript of 27 November 2019, page 97, lines 17 to 21.

eventually “*wasn’t followed through*”⁴¹.

- 33 When questioned by the Board regarding whether it was possible that water could have leaked from the rooftop into the concrete slab and remained trapped within the substrate prior to the repairs of the waterproofing membrane performed by Annai in 2018 (assuming the new waterproofing membrane was effective), Er Goh conceded that:
- (a) There was “*still a possibility that the moisture are retained [sic] [...] prior to the new waterproofing membrane*”;
 - (b) Moisture trapped below the waterproofing layer would be “*trapped there for as long as it is*” and that there was “*no way of the moisture coming out*”; and
 - (c) The moisture would eventually “*react with the rebar and cause corrosion*”.⁴²
- 34 In his expert’s report and testimony before the Board, Er Chan did not expound on the tests and methods used to pinpoint the cause of spalling concrete. When questioned by Applicant’s counsel on why ingress of water from the rooftop was not investigated further as a possible cause, Er Chan replied that there was no need to do so as the concrete spalling was due to the “*nature of the material*” and that water ingress was “*a minor factor [causing concrete spalling]*” without elaborating further.⁴³
- 35 It is pertinent to note that after the collapse of the false ceiling, the Respondent engaged Annai in September 2018 to waterproof the whole rooftop as a precaution because the Respondent of was the view that the collapse might have been due to water ingress causing the concrete to spall.⁴⁴ It was unfortunate that they did not see fit to test the roof slab for moisture that may have already been present.

Respondent’s failure to discharge burden of proof relating to poor workmanship of renovation works carried out in 2012 as the root cause of the collapse

- 36 The Respondent adduced evidence of a prior lawsuit in 2014 involving the Applicant and their decorator in an attempt to show that the renovation work to the Applicant’s unit in 2012 was not done properly, including works done to the false ceiling.
- 37 In 2012, the Respondent engaged Er Wang Khang Neng (“**Er Wang**”) of EPM Consultants (“**EPM**”) to perform an inspection of the Applicant’s unit (among other units) to investigate the issue of spalling concrete.⁴⁵ Er Wang subsequently released a report dated 31 October 2012. The Board notes that the area on the floor plan marked out by Er Wang⁴⁶, which had spalling concrete, does not overlap with the area where the 2018 collapse occurred⁴⁷.

⁴¹ Transcript of 27 November 2019, page 178, lines 1 to 11.

⁴² *Id.*, page 179, line 8 to page 180, line 7.

⁴³ *Id.*, page 107, line 15 to page 108, line 20.

⁴⁴ *Id.*, page 30, line 22 to page 31, line 12.

⁴⁵ *Supra* n 18, at para 11 to para 12.

⁴⁶ Goh Khai Siang, *supra* n 7, tab 1, at page 97.

⁴⁷ Goh Khai Siang, *supra* n 7, tab 1, at page 65.

- 38 As to the evidence relating to the 2014 lawsuit, what was exhibited was substantially incomplete or selective, and the Board is unable to discern with any degree of clarity that it is relevant to the collapsed false ceiling in question when compared to Er Wang’s clear diagram of where the spalling concrete occurred in 2012.
- 39 Additionally, simulated loads tests performed in August 2018 by Er Lee on the false ceiling supports using a force equivalent to 10 kilograms (a force estimated by Er Lee as the dead load of the false ceiling) suggested that said supports were adequate for its purpose.⁴⁸ Er Goh, on the other hand, commented during the hearing that the weight was “*too light*” but subsequently agreed that he did not perform any further tests of his own accord.⁴⁹
- 40 The Board further notes that the Respondent did rely on Er Lee’s estimate of the weight of spalled concrete which accumulated on the false ceiling of the collapsed area (i.e. 374 kilograms) in the Respondent’s Closing Submissions.⁵⁰ This suggests that the Respondent was aware and accepted that the false ceiling supports above the collapsed area actually withstood a much greater force than what was utilized in Er Lee’s load test (i.e. 10 kilograms) before eventually giving way.
- 41 As to the assertions that the cause of the false ceiling collapse may have been due to insufficient concrete cover, Er Goh confirmed to a question by the Board that no tests were done on the sufficiency of the cover.⁵¹
- 42 The Board is of the view that the Respondent has not discharged the burden of showing that the collapse of the false ceiling was a result of the false ceiling works in 2012 carried out by the Applicant. This is so even if the Applicant bears the responsibility for the periodic inspection and maintenance of their property.

Respondent’s duty to maintain the roof

- 43 The Board is also of the view that the Respondent has the duty to maintain and repair the roof slab under Section 29(1)(b)(i) of the BMSMA. The relevant portions of S.29 of the BMSMA states:

“1) Except as otherwise provided in subsection (3), it shall be the duty of a management corporation —

(a) to control, manage and administer the common property for the benefit of all the subsidiary proprietors constituting the management corporation;

(b) to properly maintain and keep in a state of good and serviceable repair (including, where reasonably necessary, renew or replace the whole or part thereof) —

i. the common property; [...]”

⁴⁸ Lee Hon Leong, *supra* n 7, exhibit C, at point 2.4.6.

⁴⁹ Transcript of 27 November 2019, page 153, line 21 to page 155, line 22.

⁵⁰ Respondent’s Closing Submissions, at para 133.

⁵¹ Transcript of 27 November 2019, page 172, line 1 to line 18.

- 44 The Board notes that the Respondent has not provided a complete set of repair and/or maintenance works carried out on the rooftop in the past five(5) years, save for the selective documents relating to waterproofing works done by Annai in 2018. When the question was posed to Mr De Souza as to whether he felt it was necessary to produce them, he replied no because “*everything is there, everything what I – whatever I said is in the AEIC*”.⁵²

BOARD’S DECISION

- 45 The Board finds that the Respondent has not rebutted the statutory presumption under Section 101(8) of the BMSMA and therefore remains liable. Accordingly, this application is allowed.
- 46 The Board orders as follows:
1. That the Applicant and Respondent be ordered to jointly engage a Qualified Person (“QP”) at the Respondent’s costs to:
 - a. Assess the water tightness of the building roof, as well as the presence of moisture in the roof slab, if any , and prescribe the rectifications to the waterproofing works and/or roof slab, if any;
 - b. Prescribe the repairs works to the spalling concrete affecting the Applicant’s unit where required;
 - c. Prescribe the period of rectification and/or repair works for items (a) and (b) above, if any; and
 - d. Such assessment report to be completed within one (1) month from the date of this Order (i.e. by 17th January 2020).
 2. That the Respondent be ordered to engage a BCA-registered contractor(s) to carry out the repair works to the Applicant’s unit, at the Respondent’s costs, as prescribed by the QP and to make good the false ceiling and any other part of the Applicant’s unit so affected by the above-mentioned works to be certified by said QP upon completion;
 3. That the Respondent be ordered to pay the Applicant damages, costs and disbursements of this Application, excluding STB fees, in the amount of \$85,000 all in; and
 4. That the Respondent be further ordered to reimburse the Applicant the cost of transcription services, the STB application fee of \$500 and to bear the total STB fees for the four (4) arbitration hearings held on 13th November 2019, 22nd November 2019, 27th November 2019 and 18th December 2019 of \$1,200.

⁵² Transcript of 27 November 2019, page 18, line 21 to page 19, line 24.

Dated this 18th day of December 2019

Mr. Raymond Lye
Deputy President

Mr. Tan Kian Hoon
Member

Mr. Chng Beng Guan
Member

Mr. Jeffrey Beh (M/s Lee Bon Leong & Co.) for the Applicant.

Mr. Foo Maw Shen, Mr. Chu Hua Yi, Mr. Too Fang Yi and
Mr. Leon Tan (M/s Dentons Rodyk & Davidson LLP) for the
Respondent.